

NORTH CAROLINA REGISTER

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February 1, 2013

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Contact List for Rulemaking Questions or Concerns

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

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

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Raleigh, North Carolina 27603

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Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee

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NORTH CAROLINA REGISTER
Publication Schedule for January 2013 – December 2013

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
27:13	01/02/13	12/06/12	01/17/13	03/04/13	03/20/13	05/01/13	05/2014	09/29/13
27:14	01/15/13	12/19/12	01/30/13	03/18/13	03/20/13	05/01/13	05/2014	10/12/13
27:15	02/01/13	01/10/13	02/16/13	04/02/13	04/22/13	06/01/13	05/2014	10/29/13
27:16	02/15/13	01/25/13	03/02/13	04/16/13	04/22/13	06/01/13	05/2014	11/12/13
27:17	03/01/13	02/08/13	03/16/13	04/30/13	05/20/13	07/01/13	05/2014	11/26/13
27:18	03/15/13	02/22/13	03/30/13	05/14/13	05/20/13	07/01/13	05/2014	12/10/13
27:19	04/01/13	03/08/13	04/16/13	05/31/13	06/20/13	08/01/13	05/2014	12/27/13
27:20	04/15/13	03/22/13	04/30/13	06/14/13	06/20/13	08/01/13	05/2014	01/10/14
27:21	05/01/13	04/10/13	05/16/13	07/01/13	07/22/13	09/01/13	05/2014	01/26/14
27:22	05/15/13	04/24/13	05/30/13	07/15/13	07/22/13	09/01/13	05/2014	02/09/14
27:23	06/03/13	05/10/13	06/18/13	08/02/13	08/20/13	10/01/13	05/2014	02/28/14
27:24	06/17/13	05/24/13	07/02/13	08/16/13	08/20/13	10/01/13	05/2014	03/14/14
28:01	07/01/13	06/10/13	07/16/13	08/30/13	09/20/13	11/01/13	05/2014	03/28/14
28:02	07/15/13	06/21/13	07/30/13	09/13/13	09/20/13	11/01/13	05/2014	04/11/14
28:03	08/01/13	07/11/13	08/16/13	09/30/13	10/21/13	12/01/13	05/2014	04/28/14
28:04	08/15/13	07/25/13	08/30/13	10/14/13	10/21/13	12/01/13	05/2014	05/12/14
28:05	09/03/13	08/12/13	09/18/13	11/04/13	11/20/13	01/01/14	05/2014	05/31/14
28:06	09/16/13	08/23/13	10/01/13	11/15/13	11/20/13	01/01/14	05/2014	06/13/14
28:07	10/01/13	09/10/13	10/16/13	12/02/13	12/20/13	02/01/14	05/2014	06/28/14
28:08	10/15/13	09/24/13	10/30/13	12/16/13	12/20/13	02/01/14	05/2014	07/12/14
28:09	11/01/13	10/11/13	11/16/13	12/31/13	01/21/14	03/01/14	05/2014	07/29/14
28:10	11/15/13	10/24/13	11/30/13	01/14/14	01/21/14	03/01/14	05/2014	08/12/14
28:11	12/02/13	11/06/13	12/17/13	01/31/14	02/20/14	04/01/14	05/2014	08/29/14
28:12	12/16/13	11/21/13	12/31/13	02/14/14	02/20/14	04/01/14	05/2014	09/12/14

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.



Pat McCrory
Governor

January 7, 2013

EXECUTIVE ORDER NO. 1

ESTABLISHING A PROCEDURE FOR THE APPOINTMENT OF JUSTICES AND JUDGES

WHEREAS, the Constitution and Laws of the State of North Carolina entrust the Governor with the duty of appointing Justices and Judges of the General Court of Justice when vacancies occur; and,

WHEREAS, the quality of our system of justice is determined by the quality of the judicial officers who serve within our judicial system; and,

WHEREAS, a fair, impartial, independent, highly qualified and diverse judiciary is essential to ensuring justice for all who come before North Carolina's courts and to fostering public confidence in the integrity of the judicial process; and,

WHEREAS, it is essential that the Governor fills judicial vacancies with persons of the highest quality who by temperament, education, experience, ability and integrity will impartially and independently interpret the laws and administer justice; and,

WHEREAS, this goal can best be achieved by the solicitation, receipt, and consideration of information pertaining to outstanding candidates from all quarters of the State to the end that these important constitutional duties are performed; and,

WHEREAS, any Executive Orders previously entered which are inconsistent with these principles should be rescinded.

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

Section 1. Purpose and Scope of this Executive Order

When a vacancy occurs in the office of Chief Justice or Associate Justice of the Supreme Court, Judge of the Court of Appeals, or Judge of the Superior Court, the Governor will appoint a person to fill the vacancy pursuant to article IV, section 19 of the North Carolina Constitution. Qualifications to be considered by the Governor shall include, but not be limited to, a candidate's integrity, legal knowledge and ability, professional experience, judicial temperament, diligence, health, financial responsibility and previous public service.

Section 2. Review


The Governor and his staff will periodically evaluate the effectiveness of this order in providing citizens a fair, impartial, independent, highly qualified and diverse judiciary.

Section 3. Effect and Duration

This Executive Order is effective immediately and will apply to any and all vacancies existing as of the date hereafter. This Executive Order supersedes and replaces all other executive orders on this subject. It shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this the seventh day of January, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-seventh.




Pat McCrory
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

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

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

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to amend the rule cited as 10A NCAC 41A .0101.

Agency obtained G.S. 150B-19.1 certification:

- ☒ **OSBM certified on:** December 3, 2012
- ☐ **RRC certified on:**
- ☐ **Not Required**

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://cph.publichealth.nc.gov/>

Proposed Effective Date: July 1, 2013

Public Hearing:

Date: February 18, 2013

Time: 3:00 p.m.

Location: Cardinal Room, located at: 5605 Six Forks Road, Raleigh, NC

Reason for Proposed Action: The amendment modifies the rule regarding the minimum value of CD4 T-helper lymphocytes to indicate that all CD4 results are reportable by laboratories and indicate that all HIV viral load results, including an undetectable level, are reportable. The change will help the division ensure that there is an effective and accurate mechanism to monitor whether persons living with HIV are accessing resources for care for their disease.

Procedure by which a person can object to the agency on a proposed rule: Objections may be submitted in writing to Chris G. Hoke, JD, the Rule-Making Coordinator, during the public comment period. Additionally, objections may be made verbally and/or in writing at the public hearing for this rule.

Comments may be submitted to: Chris Hoke, JD, 1931 Mail Service Center, Raleigh, NC 27699-1931, phone (919)707-5006, email chris.hoke@dhhs.nc.gov.

Comment period ends: April 2, 2013

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S.

150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- ☒ **State funds affected**
- ☐ **Environmental permitting of DOT affected**
- ☐ **Analysis submitted to Board of Transportation**
- ☐ **Local funds affected**
- ☐ **Date submitted to OSBM:**
- ☐ **Substantial economic impact (≥\$500,000)**
- ☒ **Approved by OSBM**
- ☐ **No fiscal note required by G.S. 150B-21.4**

CHAPTER 41 – HEALTH: EPIDEMIOLOGY

SUBCHAPTER 41A – COMMUNICABLE DISEASE CONTROL

SECTION .0100 – REPORTING OF COMMUNICABLE DISEASES

10A NCAC 41A .0101 REPORTABLE DISEASES AND CONDITIONS

(a) The following named diseases and conditions are declared to be dangerous to the public health and are hereby made reportable within the time period specified after the disease or condition is reasonably suspected to exist:

- (1) acquired immune deficiency syndrome (AIDS) - 24 hours;
- (2) anthrax - immediately;
- (3) botulism - immediately;
- (4) brucellosis - 7 days;
- (5) campylobacter infection - 24 hours;
- (6) chancroid - 24 hours;
- (7) chlamydial infection (laboratory confirmed) - 7 days;
- (8) cholera - 24 hours;
- (9) Creutzfeldt-Jakob disease – 7 days;
- (10) cryptosporidiosis - 24 hours;
- (11) cyclosporiasis - 24 hours;
- (12) dengue - 7 days;
- (13) diphtheria - 24 hours;

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| <p>(14) <i>Escherichia coli</i>, shiga toxin-producing - 24 hours;</p> <p>(15) ehrlichiosis - 7 days;</p> <p>(16) encephalitis, arboviral - 7 days;</p> <p>(17) foodborne disease, including <i>Clostridium perfringens</i>, staphylococcal, <i>Bacillus cereus</i>, and other and unknown causes - 24 hours;</p> <p>(18) gonorrhea - 24 hours;</p> <p>(19) granuloma inguinale - 24 hours;</p> <p>(20) <i>Haemophilus influenzae</i>, invasive disease - 24 hours;</p> <p>(21) Hantavirus infection - 7 days;</p> <p>(22) Hemolytic-uremic syndrome - 24 hours;</p> <p>(23) Hemorrhagic fever virus infection - immediately;</p> <p>(24) hepatitis A - 24 hours;</p> <p>(25) hepatitis B - 24 hours;</p> <p>(26) hepatitis B carriage - 7 days;</p> <p>(27) hepatitis C, acute - 7 days;</p> <p>(28) human immunodeficiency virus (HIV) infection confirmed - 24 hours;</p> <p>(29) influenza virus infection causing death in persons less than 18 years of age - 24 hours;</p> <p>(30) legionellosis - 7 days;</p> <p>(31) leprosy - 7 days;</p> <p>(32) leptospirosis - 7 days;</p> <p>(33) listeriosis - 24 hours;</p> <p>(34) Lyme disease - 7 days;</p> <p>(35) lymphogranuloma venereum - 7 days;</p> <p>(36) malaria - 7 days;</p> <p>(37) measles (rubeola) - 24 hours;</p> <p>(38) meningitis, pneumococcal - 7 days;</p> <p>(39) meningococcal disease - 24 hours;</p> <p>(40) monkeypox - 24 hours;</p> <p>(41) mumps - 7 days;</p> <p>(42) nongonococcal urethritis - 7 days;</p> <p>(43) novel influenza virus infection - immediately;</p> <p>(44) plague - immediately;</p> <p>(45) paralytic poliomyelitis - 24 hours;</p> <p>(46) pelvic inflammatory disease - 7 days;</p> <p>(47) psittacosis - 7 days;</p> <p>(48) Q fever - 7 days;</p> <p>(49) rabies, human - 24 hours;</p> <p>(50) Rocky Mountain spotted fever - 7 days;</p> <p>(51) rubella - 24 hours;</p> <p>(52) rubella congenital syndrome - 7 days;</p> <p>(53) salmonellosis - 24 hours;</p> <p>(54) severe acute respiratory syndrome (SARS) - 24 hours;</p> <p>(55) shigellosis - 24 hours;</p> <p>(56) smallpox - immediately;</p> <p>(57) <i>Staphylococcus aureus</i> with reduced susceptibility to vancomycin - 24 hours;</p> <p>(58) streptococcal infection, Group A, invasive disease - 7 days;</p> <p>(59) syphilis - 24 hours;</p> <p>(60) tetanus - 7 days;</p> <p>(61) toxic shock syndrome - 7 days;</p> <p>(62) trichinosis - 7 days;</p> | <p>(63) tuberculosis - 24 hours;</p> <p>(64) tularemia - immediately;</p> <p>(65) typhoid - 24 hours;</p> <p>(66) typhoid carriage (<i>Salmonella typhi</i>) - 7 days;</p> <p>(67) typhus, epidemic (louse-borne) - 7 days;</p> <p>(68) vaccinia - 24 hours;</p> <p>(69) vibrio infection (other than cholera) - 24 hours;</p> <p>(70) whooping cough - 24 hours;</p> <p>(71) yellow fever - 7 days.</p> <p>(b) For purposes of reporting confirmed human immunodeficiency virus (HIV) infection is defined as a positive virus culture, repeatedly reactive EIA antibody test confirmed by western blot or indirect immunofluorescent antibody test, positive nucleic acid detection (NAT) test, or other confirmed testing method approved by the Director of the State Public Health Laboratory conducted on or after February 1, 1990. In selecting additional tests for approval, the Director of the State Public Health Laboratory shall consider whether such tests have been approved by the federal Food and Drug Administration, recommended by the federal Centers for Disease Control and Prevention, and endorsed by the Association of Public Health Laboratories.</p> <p>(c) In addition to the laboratory reports for <i>Mycobacterium tuberculosis</i>, <i>Neisseria gonorrhoeae</i>, and syphilis specified in G.S. 130A-139, laboratories shall report:</p> <p>(1) Isolation or other specific identification of the following organisms or their products from human clinical specimens:</p> <p>(A) Any hantavirus or hemorrhagic fever virus.</p> <p>(B) Arthropod-borne virus (any type).</p> <p>(C) <i>Bacillus anthracis</i>, the cause of anthrax.</p> <p>(D) <i>Bordetella pertussis</i>, the cause of whooping cough (pertussis).</p> <p>(E) <i>Borrelia burgdorferi</i>, the cause of Lyme disease (confirmed tests).</p> <p>(F) <i>Brucella</i> spp., the causes of brucellosis.</p> <p>(G) <i>Campylobacter</i> spp., the causes of campylobacteriosis.</p> <p>(H) <i>Chlamydia trachomatis</i>, the cause of genital chlamydial infection, conjunctivitis (adult and newborn) and pneumonia of newborns.</p> <p>(I) <i>Clostridium botulinum</i>, a cause of botulism.</p> <p>(J) <i>Clostridium tetani</i>, the cause of tetanus.</p> <p>(K) <i>Corynebacterium diphtheriae</i>, the cause of diphtheria.</p> <p>(L) <i>Coxiella burnetii</i>, the cause of Q fever.</p> <p>(M) <i>Cryptosporidium parvum</i>, the cause of human cryptosporidiosis.</p> <p>(N) <i>Cyclospora cayentanesis</i>, the cause of cyclosporiasis.</p> |
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| <p>(O) Ehrlichia spp., the causes of ehrlichiosis.</p> <p>(P) Shiga toxin-producing Escherichia coli, a cause of hemorrhagic colitis, hemolytic uremic syndrome, and thrombotic thrombocytopenic purpura.</p> <p>(Q) Francisella tularensis, the cause of tularemia.</p> <p>(R) Hepatitis B virus or any component thereof, such as hepatitis B surface antigen.</p> <p>(S) Human Immunodeficiency Virus, the cause of AIDS.</p> <p>(T) Legionella spp., the causes of legionellosis.</p> <p>(U) Leptospira spp., the causes of leptospirosis.</p> <p>(V) Listeria monocytogenes, the cause of listeriosis.</p> <p>(W) Monkeypox.</p> <p>(X) Mycobacterium leprae, the cause of leprosy.</p> <p>(Y) Plasmodium falciparum, P. malariae, P. ovale, and P. vivax, the causes of malaria in humans.</p> <p>(Z) Poliovirus (any), the cause of poliomyelitis.</p> <p>(AA) Rabies virus.</p> <p>(BB) Rickettsia rickettsii, the cause of Rocky Mountain spotted fever.</p> <p>(CC) Rubella virus.</p> <p>(DD) Salmonella spp., the causes of salmonellosis.</p> <p>(EE) Shigella spp., the causes of shigellosis.</p> <p>(FF) Smallpox virus, the cause of smallpox.</p> <p>(GG) Staphylococcus aureus with reduced susceptibility to vanomycin.</p> <p>(HH) Trichinella spiralis, the cause of trichinosis.</p> <p>(II) Vaccinia virus.</p> <p>(JJ) Vibrio spp., the causes of cholera and other vibrioses.</p> <p>(KK) Yellow fever virus.</p> <p>(LL) Yersinia pestis, the cause of plague.</p> <p>(2) Isolation or other specific identification of the following organisms from normally sterile human body sites:</p> <p>(A) Group A Streptococcus pyogenes (group A streptococci).</p> <p>(B) Haemophilus influenzae, serotype b.</p> <p>(C) Neisseria meningitidis, the cause of meningococcal disease.</p> <p>(3) Positive serologic test results, as specified, for the following infections:</p> | <p>(A) Fourfold or greater changes or equivalent changes in serum antibody titers to:</p> <p>(i) Any arthropod-borne viruses associated with meningitis or encephalitis in a human.</p> <p>(ii) Any hantavirus or hemorrhagic fever virus.</p> <p>(iii) Chlamydia psittaci, the cause of psittacosis.</p> <p>(iv) Coxiella burnetii, the cause of Q fever.</p> <p>(v) Dengue virus.</p> <p>(vi) Ehrlichia spp., the causes of ehrlichiosis.</p> <p>(vii) Measles (rubeola) virus.</p> <p>(viii) Mumps virus.</p> <p>(ix) Rickettsia rickettsii, the cause of Rocky Mountain spotted fever.</p> <p>(x) Rubella virus.</p> <p>(xi) Yellow fever virus.</p> <p>(B) The presence of IgM serum antibodies to:</p> <p>(i) Chlamydia psittaci</p> <p>(ii) Hepatitis A virus.</p> <p>(iii) Hepatitis B virus core antigen.</p> <p>(iv) Rubella virus.</p> <p>(v) Rubeola (measles) virus.</p> <p>(vi) Yellow fever virus.</p> <p>(4) Laboratory results from tests to determine the absolute and relative counts for the T-helper (CD4) subset of lymphocytes that have a level below that specified by the Centers for Disease Control and Prevention as the criteria used to define an AIDS diagnosis, and all results from tests to determine HIV viral load.</p> |
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Authority G.S. 130A-134; 130A-135; 130A-139; 130A-141.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Private Protective Services Board intends to amend the Rule cited as 12 NCAC 07D .0707.

Agency obtained G.S. 150B-19.1 certification:

- ☐ OSBM certified on:
- ☒ RRC certified on: *October 18, 2012*
- ☐ Not Required

Link to agency website pursuant to G.S. 150B-19.1(c):
www.ncdoj.gov

Proposed Effective Date: *June 1, 2013*

Public Hearing:

Date: February 18, 2013

Time: 2:00 p.m.

Location: 4901 Glenwood Avenue, Suite 200, Raleigh, NC 27612

Reason for Proposed Action: *The reason for the amendment to the rule is to establish a minimum score for the written test and a standard for re-taking the course.*

Procedure by which a person can object to the agency on a proposed rule: *Objections to the proposed rule changes shall be submitted by the end of the comment period in writing to Anthony Bonapart, Deputy Director, Private Protective Services Board, 4901 Glenwood Avenue, Suite 200, Raleigh, NC 27612*

Comments may be submitted to: Anthony Bonapart, PPSB Deputy Director, 4901 Glenwood Avenue, Suite 200, Raleigh, NC 27612

Comment period ends: April 2, 2013

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

Fiscal impact (check all that apply).

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Date submitted to OSBM:
- ☐ Substantial economic impact (≥\$500,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4

SUBCHAPTER 07D - PRIVATE PROTECTIVE SERVICES BOARD

CHAPTER 07 - PRIVATE PROTECTIVE SERVICES

SECTION .0700 - SECURITY GUARD REGISTRATION (UNARMED)

12 NCAC 07D .0707 TRAINING REQUIREMENTS FOR UNARMED SECURITY GUARDS

(a) Applicants for an unarmed security guard registration shall complete a basic training course for unarmed security guards within 30 days from the date of permanent hire. The course shall consist of a minimum of 16 hours of classroom instruction including:

- (1) The Security Officer in North Carolina -- (minimum of one hour);
- (2) Legal Issues for Security Officers -- (minimum of three hours);
- (3) Emergency Response -- (minimum of three hours);
- (4) Communications -- (minimum of two hours);
- (5) Patrol Procedures -- (minimum of three hours);
- (6) Note Taking and Report Writing -- (minimum of three hours);
- (7) Department -- (minimum of one hour).

A minimum of four hours of classroom instruction shall be completed within 20 calendar days of a probationary or regular security guard's being placed on a duty station. These four hours shall include The Security Officer in North Carolina and Legal Issues for Security Officers.

(b) Licensees shall submit the name and resume for a proposed certified unarmed security guard trainer to the Director for Board Approval.

(c) Training shall be conducted by a Board certified unarmed security guard trainer. A Board approved lesson plan covering the training requirements in 12 NCAC 07D .0707(a) shall be made available to each trainer. The Board shall approve other media training materials that deliver the training requirements of 12 NCAC 07D .0707(a).

(d) The 16 hours of training may be delivered interactively under the following conditions:

- (1) The training is presented by a Private Protective Services Board certified unarmed security officer ~~trainer~~ trainer;
- (2) Each student is given a copy of the PPS unarmed security officer training manual to use for the duration of the 16 hour training ~~course~~ course;
- (3) The technology used allows the trainer to see the students and the students to see the trainer in real time during the ~~training~~ training;
- (4) All students in each classroom are able to see and read the screen or ~~monitor~~ monitor; and they must be able to ~~clearly~~ clearly hear and understand the audio presentation. All monitors used in each classroom must be at least 32 inches ~~wide~~ wide;
- (5) The technology used is of sufficient quality so that the training audio and video is done smoothly and without ~~interruption~~ interruption;
- (6) Each student is taught to use the audio and video equipment in their classroom prior to the start of the 16 hour unarmed security officer training ~~course~~ course;

- (7) The total number of students receiving the interactive training at one time does not exceed 35 ~~students-students;~~
- (8) All training not included in the NC Private Protective Services unarmed security officer training manual is done either before or after the 16 hour unarmed security officer ~~training-training;~~
- (9) The Director of Private Protective Services is notified five days prior to training of the location of each classroom, name and location of the certified trainer, and the number of students who will be ~~present-present;~~
- (10) The sponsoring agency allows the Director or designee access via computer of the training during the time that it is taking ~~place-place;~~ and
- (11) Any student scoring below 65 percent on the written test shall not be allowed to re-test without completing the entire 16 hours of classroom instruction again.

Authority G.S. 74C-5; 74C-11; 74C-13.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 06 - BOARD OF BARBER EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Barber Examiners intends to amend the rules cited as 21 NCAC 06A .0301, .0303; 06C .0907; 06F .0101, .0116; 06H .0101; 06I .0105; 06J .0101; 06K .0104; 06L .0103-.0104, .0114, .0118-.0119; 06M .0101-.0102; 06N .0104-.0105, .0107-.0109, .0112; 06Q .0101, .0103; 06S .0101 and repeal the rule cited as 21 NCAC 06A .0103.

Agency obtained G.S. 150B-19.1 certification:

- ☐ OSBM certified on:
- ☐ RRC certified on:
- ☒ Not Required

Link to agency website pursuant to G.S. 150B-19.1(c):
www.ncbarbers.com

Proposed Effective Date: June 1, 2013

Public Hearing:

Date: February 19, 2013

Time: 10:00 a.m.

Location: 5809-102 Departure Drive, Raleigh, NC 27616

Reason for Proposed Action: *These rules have been written or amended by the Board to provide more consistent language with G.S. 86A and to provide clear language for required licensee actions per G.S. 86A.*

Procedure by which a person can object to the agency on a proposed rule: *Interested persons may present oral or written comments at the rule making hearing. The record will be open for receipt of written comments from February 1, 2013 until April 2, 2013. Written comments not presented at the hearing should be directed to W. Bain Jones, Jr.*

Comments may be submitted to: W. Bain Jones, Jr., 5809-102 Departure Drive, Raleigh, NC 27609

Comment period ends: April 2, 2013

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

Fiscal impact (check all that apply).

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Date submitted to OSBM:
- ☐ Substantial economic impact (≥\$500,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4

SUBCHAPTER 06A - DEPARTMENTAL RULES

SECTION .0100 - ORGANIZATIONAL RULES

21 NCAC 06A .0103 OFFICE HOURS

~~The office hours of the Board are 8:00 a.m. to 4:30 p.m., Monday through Friday. The office is closed on the recognized State holidays set forth in 25 NCAE 01E .0901.~~

Authority G.S. 86A-6.

SECTION .0300 - EXECUTIVE DIRECTOR

21 NCAC 06A .0301 EXECUTIVE DIRECTOR

(a) The executive ~~secretary-director~~ may be the holder of a registered barber certificate in this state.

(b) The executive director shall hold an earned Bachelor of Science or Bachelor of Arts degree or higher from a college or university recognized by one of the regional accrediting agencies

for educational institutions in the United States or its foreign equivalent.

Authority G.S. 86A-6.

21 NCAC 06A .0303 DUTIES OF EXECUTIVE DIRECTOR

The executive ~~secretary~~ director shall be responsible for establishing a list of applicants eligible to sit for the barber exam, issuing certificates to those applicants who pass the barbers exam and notifying those applicants who fail the exam.

Authority G.S. 86A-5(a)(4).

SUBCHAPTER 06C - CONTESTED CASES

SECTION .0900 - HEARING OFFICERS

21 NCAC 06C .0907 DISQUALIFICATION

The members of the Board who are not challenged in an affidavit of disqualification shall decide whether to disqualify the person being challenged by the following procedural rules:

- (1) The person whose disqualification is to be determined will not participate in the decision but may be called upon to furnish information to the remaining members of the Board.
- (2) The Chairman shall appoint a member of the Board or the Executive ~~Secretary~~ Director to investigate the allegations of the affidavit, if necessary.
- (3) The investigator shall report his findings and recommendations to the remaining members of the Board who will then decide whether to disqualify the challenged individual.
- (4) A record of the proceedings will be maintained as part of the contested case record.

Authority G.S. 150B-40.

SUBCHAPTER 06F - BARBER SCHOOLS

21 NCAC 06F .0101 PHYSICAL STRUCTURE

(a) The physical structure of barber schools in North Carolina shall conform to the following criteria:

- (1) be a minimum of 14 linear feet wide;
- (2) be equipped with a minimum of ten barber chairs in sanitary and safe condition sufficient for the number of students enrolled;
- (3) have a minimum of 896 square feet in the practical area for the first ten chairs;
- (4) have an additional 70 square feet in the practical area for each additional barber chair over the required ten;
- (5) have at least five linear feet of space between each chair, center to center;
- (6) have no more than two students enrolled per barber chair;

- (7) be equipped with toilet facilities with hand-washing sink or basin sufficient to serve the number of people at the school;
- (8) have concrete or wood floors covered with smooth, nonporous materials;
- (9) have instructional materials, for example, blackboard space, slide programs, sufficient to teach barbering;
- (10) have a workstand, with a mounted mirror with minimum dimensions of 36 inches tall and 20 inches wide, for each barber chair in the practical work area, constructed of material that renders it easily cleaned;
- (11) have a tool cabinet for each barber chair, with a door as nearly air tight as possible;
- (12) have a towel cabinet, or other method of storage, such that clean towels are stored separate from used towels;
- (13) have at least one fully functional sink or lavatory, with hot and cold water, for each two barber chairs, located within seven unobstructed linear feet of each barbering area;
- (14) have the school separate from any other place or type of business by a substantial wall of ceiling height;
- (15) have a classroom area, separate from the practical area;
- (16) have desk chairs sufficient to serve the number of students enrolled, and a desk and chair for the instructors;
- (17) have a time clock for electronic recordation of student hours;
- (18) have an informational sign displayed in each practical area of the school indicating that all barbering services are performed by students; and
- (19) have a bulletin board hanging in each classroom area with a posting of the sanitation rules and minimum school curricula as prescribed under 21 NCAC 06F .0210, or any other memorandum, letter or rule issued by the Board which states it is to be posted for the information of students.

This Paragraph applies to barber schools permitted on or after December 1, 1994 or which undergo modifications or structural renovations after that date.

(b) Barber schools permitted on or after July 1, 2008, shall have a minimum of 20 square feet per student in the classroom area.

(c) The sink distance requirement set forth in Subparagraph (a)(13) of this Rule does not apply to barber schools permitted on or before September 1, 2009.

(d) All shops must comply with the minimum mirror dimensions set forth in Subparagraph (a)(10) of this Rule by June 1, 2014.

(e) All barber schools permitted after June 1, 2013, must receive a satisfactory building inspection by the jurisdiction having authority prior to obtaining a shop inspection pursuant to 21 NCAC 06L .0105.

Authority G.S. 86A-15; 86A-22.

21 NCAC 06F .0116 STUDENTS WITH CRIMINAL RECORDS

- (a) Prior to enrollment and the acceptance of any enrollment fee or tuition, the barber school shall notify the applicant of the Board's statutes and rules regarding criminal convictions and registered sex offenders and have the applicant sign and date the notice indicating that the applicant has been so informed.
- (b) Persons making application for student permits who have been convicted of a felony shall furnish to the Board a certified copy of their Federal Bureau of Investigation criminal record report. ~~criminal history.~~
- (c) Failure to include any information regarding felony convictions on applications for student permits may result in revocation of a student permit after a hearing.

Authority G.S. 86A-18; 86A-22.

SUBCHAPTER 06H - BARBER SCHOOL OWNERS AND MANAGERS

21 NCAC 06H .0101 DUTIES AND RESPONSIBILITIES

Barber school managers shall:

- (1) file for a school permit at least 30 days before opening the school for business;
- (2) ensure that all students are instructed ~~as nearly alike as possible;~~ alike;
- (3) ensure compliance with the North Carolina General Statutes governing barber schools and barbering and the administrative rules of the Board.

Authority G.S. 86A-13; 86A-15; 86A-22.

21 NCAC 06I .0105 APPRENTICE BARBER

- (a) A student who has trained in another state may take the examination to become a registered apprentice barber provided:
- (1) he proves satisfactorily to the Board that his hours of training in the out-of-state barber school are the substantive equivalent to those in North Carolina;
 - (2) he provides proof of completion of barber school training;
 - (3) he completes and furnishes to the Board Form BAR-7;
 - (4) he pays the required fee according to 21 NCAC 06N .0101; and
 - (5) he furnishes a certified copy of any court record involving a felony conviction ~~his Federal Bureau of Investigation criminal record report.~~

Authority G.S. 86A-5; 86A-18; 86A-24; 86A-25.

SUBCHAPTER 06J - APPRENTICE BARBERS

21 NCAC 06J .0101 REGISTERED APPRENTICE

In order to become a registered apprentice barber, an applicant shall:

- (1) attend an approved barber school for a period of at least 1528 hours or the equivalent as determined by the Board. (For curriculum requirements see 21 NCAC 06F .0120);
- (2) furnish the Board with Form BAR-4 and pay the fee according to 21 NCAC 06N .0101; and
- (3) make a score of at least 70 percent on both a written and practical apprentice examination.
- (4) submit a certified copy of his Federal Bureau of Investigation criminal record report.

Authority G.S. 86A-3; 86A-10; 86A-24; 86A-25.

SUBCHAPTER 06K - REGISTERED BARBER

21 NCAC 06K .0104 OUT-OF-STATE APPLICANTS

An applicant who is licensed as a barber in another state and who wants to apply to become registered as a barber in this state must establish his out-of-state license and experience and must provide:

- (1) a certified copy of the applicant's out-of-state license;
- ~~(2) letter of experience from the out-of-state Board;~~
- ~~(3)~~(2) three sworn affidavits verifying the experience of the applicant;
- ~~(4) a current 2" x 3" photograph of the applicant;~~
- ~~(5)~~(3) form BAR-8 and the required fee;
- ~~(6) a certificate of satisfactory health signed by a physician;~~
- ~~(7)~~(4) a certified copy of his Federal Bureau of Investigation criminal record report; a copy of any court record involving a felony conviction; and
- ~~(8)~~(5) a certified statement from the applicant's out-of-state Board stating the following:
 - (a) the applicant's length of licensure in that state,
 - (b) whether such licensure has been continuous or has been interrupted by periods when the applicant was not licensed in the state,
 - (c) the reasons for any such interruptions in licensure, and
 - (d) whether or not there have been any disciplinary actions against the applicant's license.
- (6) a certified transcript describing the number of instructional hours and course content from the school where the applicant received his barber training.

Authority G.S. 86A-12; 86A-15; 86A-25.

SUBCHAPTER 06L - BARBER SHOPS

21 NCAC 06L .0103 EQUIPMENT

- (a) Each barber shall have a cabinet for barbering equipment. The cabinets shall be constructed of material that may be easily cleaned.
- (b) Each shop shall have smooth finished walls, ceilings and floors, and no exposed pipes.
- (c) Each barber chair shall be covered with a smooth, non-porous surface, such as vinyl or leather, which is easily cleaned.
- (d) Each shop shall have within the shop or building functioning toilet facilities for employees and patrons.
- (e) Each barber shop shall have a cabinet, or other method of storage, such that clean towels are stored separate from used towels.
- (f) In addition to the requirements of Paragraph (d) of this Rule, barber shops which are permitted on or after January 1, 1995 or which undergo modifications or structural renovations after that date must have within the shop or building a hand-washing sink or lavatory for patrons with hot and cold water, soap and disposable towels.
- (g) Where a barber shop is located within a shop licensed by the North Carolina Board of Cosmetic Art Examiners, the toilet facility and sink may be shared with the cosmetology shop.
- (h) Paragraphs (a), (d) and (f) of this Rule do not apply to barber shops operated by the Division of Prisons.
- (i) All equipment and tools used in the course of providing barbering services must be manufactured specifically for barbering and maintained in a sanitary and good operating condition.

Authority G.S. 86A-15.

21 NCAC 06L .0114 POLICY PROHIBITING PETS

- (a) With the exception of trained guide or assistance animals no animals are permitted in a barber shop. ~~However, the Board shall grant a one year exemption for only one animal per barber shop if the following requirements are met:~~
- (1) ~~A written request applying for the exemption is made by the owner or manager of the barber shop;~~
- (2) ~~The barber shop owner or manager is also the owner of the animal to be exempted;~~
- (3) ~~The owner of the barber shop submits to the Board written documentation from a veterinarian, licensed by the State of North Carolina, indicating that the animal is in good health and has received all appropriate vaccinations and related medical treatment;~~
- (4) ~~The owner of the barber shop submits to the Board proof of a general liability (or equivalent) insurance policy which contains coverage in an amount which totals at least one million dollars. The policy shall include coverage for any actions taken by the animal;~~
- (5) ~~The barber shop manager submits to the Board written documentation that the animal would not be a danger to the general health, safety and welfare of the public; and~~

- ~~(6) The barber shop manager submits a photograph of the animal which is the subject of the proposed exemption.~~
- ~~(b) If granted, the barber shop manager shall maintain the photograph of the animal exempted at the barber shop.~~
- ~~(c) Such exemption may be renewed.~~

Authority G.S. 86A-15.

21 NCAC 06L .0118 SANITARY RATINGS AND POSTING OF RATINGS

- (a) The sanitary rating of a barber shop shall be based on a system of grading outlined in this Subchapter. Based on the grading, all establishments will be rated in the following manner:
 - (1) all establishments receiving a rating of at least 90 percent or more, shall be awarded a grade A;
 - (2) all establishments receiving a rating of at least 80 percent, and less than 90 percent, shall be awarded a grade B.
- (b) Every barber shop shall be given a sanitary rating. A barber school shall be graded ~~two to four~~ one to three times a year, and a barber shop shall be graded ~~one to three~~ two to four times a year.
- (c) The sanitary rating given to a barber shop establishment shall be posted in a conspicuous place at all times.
- (d) No barber shop shall be permitted to operate without first having obtained a sanitary rating card with a grade of not less than 80 percent.
- (e) Barber inspectors shall give each barber shop a new sanitary rating card each year.
- (f) Violation of Chapter 86A or any administrative rule adopted by the Board or the operation of a barber shop which fails to receive a sanitary rating of at least 80 percent (grade B) shall be sufficient cause for revoking or suspending the letter of approval or permit.
- (g) A re-inspection for the purpose of raising the sanitary rating of a barber shop shall not be given within 30 days of the last inspection, unless the rating at the last inspection was less than 80 percent.

Authority G.S. 86A-5(a)(1); 86A-15.

21 NCAC 06L .0119 SYSTEMS OF GRADING BARBER SHOPS

The system of grading the sanitary rating of all barber shops and schools, shall be as follows, setting out areas to be inspected and considered, and the maximum points given for compliance:

- (1) clean and well-repaired entrance and waiting area 2;
- (2) general condition of the barber shop 5;
- (3) water system; hot and cold running water, septic system 2;
- (4) walls, ceiling and floors:
 - (a) construction and covering 4;
 - (b) clean 4;
 - (c) good repair 3;

- (5) lighting and ventilation (windows included);
their adequacy and cleanliness 3;
- (6) public toilet:
 - (a) clean and well ventilated 5;
 - (b) soap and individual towels furnished 5;
 - (c) hot and cold running water 2;
- (7) cleanliness as to person and dress 1;
- (8) linens:
 - (a) supply of clean towels 2;
 - (b) soiled towels 3;
 - (c) hair cloth 1;
- (9) soiled towel receptacle 4;
- (10) tools and instruments 4;
 - (a) disinfectants selected from those approved by the Federal Environmental Protection Agency 4;
 - (b) disinfectants used properly 4;
 - (c) all implements cleaned, disinfected, and property stored 8;
- (11) working area
 - (a) work stand clean 3;
 - (b) lavatories clean 2;
 - (c) jars and containers clean and disinfected 1;
 - (d) no unnecessary articles in work area 1;
- (12) certificate posted; 10;
- (13) sanitary law posted; 1;
- (14) sterilizing solution/container 20;

Authority G.S. 86A-5(a)(1); 86A-15.

SUBCHAPTER 06M - BARBERSHOP INSPECTORS

21 NCAC 06M .0101 QUALIFICATIONS

The Board shall choose barber inspectors who shall be experienced barbers and who shall hold a current North Carolina certificate as a registered ~~barber~~, barber and barber instructor.

Authority G.S. 86A-7.

21 NCAC 06M .0102 DUTIES AND RESPONSIBILITIES

Barber shop inspectors shall:

- (1) regularly inspect existing barber shops and barber schools and to inspect new barber shops and barber schools prior to opening;
- (2) inspect any business that advertises or holds itself out as possibly offering barbering services or employing barbers on the premises, whether licensed or unlicensed;
- (3) investigate complaints in the inspector's assigned inspection area;
- (4) file weekly reports with the Board which contain a summary of the inspector's activities of the past week and make necessary recommendations to the Board;

~~(5) write receipts for all money collected, providing duplicate copies to the payor and to the Board office;~~

~~(6)(5)~~ issue notices of violations and warnings for violations of the Board's law or administrative rules; and

~~(7)(6)~~ administer examinations as directed by the Board office.

Authority G.S. 86A-7; 86A-13; 86A-15; 86A-22.

SUBCHAPTER 06N – FORMS

21 NCAC 06N .0104 FORM BAR-3

(a) Form BAR-3 must be filed for permission to enroll in barber school. It requires information such as, but not limited to, the following:

- (1) name, address, and birth date of applicant;
- (2) applicant's prior barber school attendance, if any;
- (3) name of school enrolled;
- (4) date of enrollment;
- (5) a certified copy of his Federal Bureau of Investigation criminal record report, felony convictions, if any; and
- (6) signature of school manager.

~~(b) The lower portion of Form BAR-3 is a physician's statement certifying that the applicant is free from communicable and infectious diseases.~~

~~(e)(b)~~ A fee as required in G.S. 86A-25 must accompany this form.

Authority G.S. 86A-18; 86A-22; 86A-25; 150B-11.

21 NCAC 06N .0105 FORM BAR-4

(a) Form BAR-4 must be filed by one desiring to take the examination to receive a registered apprentice certificate. It requires information such as, but not limited to, the following:

- (1) name, address, and birthdate of applicant;
- (2) name of barber school attended;
- (3) place of proposed employment as an apprentice barber; and
- (4) a certified copy of his Federal Bureau of Investigation criminal record report, felony convictions, if any;

(b) The lower portion of the front page contains a course training certification to be filled in by the manager of the barber school the applicant attended.

(c) A fee as required in G.S. 86A-25 must be submitted with the application.

(d) Form BAR-4 must be notarized.

~~(e) The lower portion of the back page of Form BAR-4 contains a physician's statement certifying that the applicant is free from communicable and infectious diseases.~~

Authority G.S. 86A-1; 86A-10; 86A-15; 86A-24; 86A-25; 150B-11.

21 NCAC 06N .0106 FORM BAR-5

(a) Form BAR-5 must be filed by one desiring to take the examination to receive a registered barber certificate. It requires information such as, but not limited to, the following:

- (1) name, address, and birthdate of applicant;
- (2) place of proposed employment;
- (3) barber school training;
- (4) a certified copy of his Federal Bureau of Investigation criminal record report; felony convictions, if any; and
- (5) barbering experience.

(b) Form BAR-5 must be notarized in two places.

~~(c) The lower portion of the third page of Form BAR-5 contains a physician's statement certifying that the applicant is free from communicable and infectious diseases.~~

~~(d)(c)~~ A fee as required in G.S. 86A-25 must accompany this form.

Authority G.S. 86A-1; 86A-3; 86A-10; 86A-15; 86A-25; 150B-11.

21 NCAC 06N .0108 FORM BAR-7

(a) Form BAR-7 must be filed by one who has practiced less than three years in some state other than North Carolina and who desires to take the examination to obtain an apprentice license in North Carolina. It requires background information such as, but not limited to, the following:

- (1) name, address and birthdate of applicant;
- (2) name of barber school attended;
- (3) experience background and status of each barber license in another state;
- (4) a certified copy of his Federal Bureau of Investigation criminal record report; a copy of felony convictions, if any; and
- (5) a photograph approximately 2" x 3 " in size.

(b) An examination fee according to G.S. 86A-25 must accompany this form.

(c) Form BAR-7 must be notarized.

(d) Form BAR-7 must be accompanied by a copy of a barber school transcript and a letter from the other state Board verifying licensure in that state if licensed.

(e) Form BAR-7 must be accompanied by one sworn affidavit verifying experience, if any.

~~(f) The lower portion of the back page of Form BAR-7 contains a physician's statement certifying that the applicant is free from communicable and infectious diseases, which must be completed.~~

Authority G.S. 86A-1; 86A-12; 86A-25; 150B-11.

21 NCAC 06N .0109 FORM BAR-8

(a) Form BAR-8 must be filed by one who has practiced as a barber in some state other than North Carolina for three years or more and who desires to obtain a certificate as a registered barber in North Carolina. It requires background such as, but not limited to, the following:

- (1) name, address and birthdate of applicant;
- (2) name and address of barber school attended in other state;

- (3) barbering experience and status of each barber license in another state; and
- (4) a certified copy of his Federal Bureau of Investigation criminal record report; felony convictions, if any.

(b) A fee in accordance with G.S. 86A-25 must accompany this form.

(c) Form BAR-8 must be accompanied by a copy of a current out-of-state license and three notarized statements from persons who can attest to the applicant's out-of-state experience.

(d) Form BAR-8 must be notarized.

~~(e) Form BAR-8 includes a physician's statement, which must certify that the applicant is free from communicable and infectious diseases.~~

~~(f) Form BAR-8 must be accompanied by a photograph of the applicant which is approximately 2" x 3" in size.~~

~~(g)(e)~~ Form BAR-8 must be accompanied by a copy of a barber school transcript and verification from the applicant's out-of-state Board of the applicant's licensure in that state.

Authority G.S. 86A-1; 86A-12; 86A-15; 86A-25; 150B-11;

21 NCAC 06N .0112 ACCESS TO FORMS

The forms described in 21 NCAC 06N .0002.0102 to ~~.0011.0111~~ are on file with the Board and may be inspected during regular office hours; may be accessed via downloadable document from the Board's Internet website, www.ncbarbers.com, or may be obtained at the Board's office.

Authority G.S. 150B-11.

SUBCHAPTER 06Q - PROHIBITED PRACTICES

21 NCAC 06Q .0101 ADDITIONAL GROUNDS FOR DENIAL OR DISCIPLINE

Except as provided in Chapter 86A of the General Statutes, no person shall do any of the following:

- (1) Operate or attempt to operate a barber shop without a permit;
- (2) Advertising barbering services unless the establishment and personnel employed therein are licensed or permitted;
- (3) Use or display a barber pole for the purpose of offering barber services to the consuming public without a barber shop permit;
- (4) Fail to positively identify a Registered Barber, apprentice barber, or student barber with a right to work permit prior to allowing the person to perform barbering services;
- (5) Fail to maintain and produce a license or permit as defined by 21 NCAC 06P .0103(7) upon the request of the Executive Director or an inspector during an inspection;
- (6) Violate a Settlement Agreement entered into with the Board; or
- (7) Violate the Board's law or any administrative rule adopted by the Board or a local department of health for barbers, barber shops or barber schools.

(8) Fail to disclose a felony criminal conviction.

Authority G.S. 86A-1; 86A-2; 86A-5(a); 86A-10; 86A-11; 86A-13; 86A-15; 86A-16; 86A-17; 86A-18; 86A-20; 86A-22; 86A-23; 86A-24;

21 NCAC 06Q .0103 REGISTERED SEX OFFENDER

The Board may refuse to issue or renew, or shall revoke or suspend any license or permit issued pursuant to Chapter 86A of the General Statutes, where the applicant, licensee or permittee has been adjudicated a felony sexual offender and is required to register pursuant to Chapter 14, Section 208.5 of the General Statutes or any similar statutes or ordinances. In determining whether to issue or renew a license, the Board shall consider the following:

- (1) Crime committed for which registration was required;
- (2) Length of time the applicant, licensee or permittee was to register as a sex offender;
- (3) Whether the applicant, licensee or permittee is allowed to have contact with the victim or others;
- (4) Length of time licensed as a barber or shop owner in this or another state;
- (5) Enrollment in a treatment program relevant to the crime committed;
- (6) Whether the registered sex offender is a student applicant;
- (7) Additional criminal convictions; and
- (8) Letters of recommendation from members of the community where the crime was committed and where the applicant, licensee or permittee currently resides stating whether or not the person considers the applicant, licensee or permittee a threat to the community.
- (9) No certificate shall be issued or renewed for any applicant registered as a sex offender.

Authority G.S. 86A-17; 86A-18.

SUBCHAPTER 06S – EXAMINATIONS

21 NCAC 06S .0101 GENERAL EXAMINATION INSTRUCTIONS

(a) All candidates scheduled for an examination, conducted by the Board must bring:

- (1) two forms of identification, one of which must be photo bearing;
- (2) exam approval documentation;
- (3) tools and supplies as required by the Board; and
- (4) a hygienically clean ~~model-model~~ with natural hair and beard of sufficient length to demonstrate practical barbering proficiency as determined by the Board.

(b) No briefcases, bags, books, papers or study materials are allowed in the examination room. The exam facility is not responsible for lost or misplaced items.

(c) No cell phones, calculators or other electronic devices are permitted for use during the examination.

(d) No eating, drinking, smoking or gum-chewing is permitted during the examination.

(e) No visitors, children, pets or guests are allowed at the test center.

(f) No extra time for the examination will be permitted unless mandated by State and federal law such as the Americans with Disabilities Act.

(g) No leaving the test center during the examination. Candidates may visit the restroom with the test center manager's permission, but will not receive any additional time for the examination.

(h) No giving or receiving assistance during the examination. If a candidate gives or receives assistance during the examination, the test center manager will stop the examination and the candidate will be dismissed from the test center. The Board's approved test center manager will not score the examination and will report the candidate to the Board, which will make any decisions regarding discipline.

(i) Candidates must maintain silence during the examination, and shall not mention the name of the school attended or the names of instructors. Candidates shall not wear or carry any school identification on uniforms or equipment.

Authority G.S. 86A-8; 86A-9; 86A-10; 86A-24.

* * * * *

CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Cosmetic Art Examiners intends to amend the rules cited as 21 NCAC 14T .0602-.0603.

Agency obtained G.S. 150B-19.1 certification:

- ☐ OSBM certified on:
- ☐ RRC certified on:
- ☒ Not Required

Link to agency website pursuant to G.S. 150B-19.1(c):
www.nccosmeticarts.com/uploads/board/prjanuary2013.pdf

Proposed Effective Date: June 1, 2013

Public Hearing:

Date: February 18, 2013

Time: 9:00 a.m.

Location: 1207 Front Street, Suite 110, Raleigh, NC 27609

Reason for Proposed Action: *These rule changes provide more detailed information on the required hair cutting techniques and implements included in the cosmetology and apprentice curricula.*

Procedure by which a person can object to the agency on a proposed rule: *Interested persons may present oral or written comments at the rule-making hearing. In addition, the record*

will be open for receipt of written comments from February 1, 2013-April 4, 2013. Written comments not presented at the hearing should be directed to Stefanie Kuzdrall.

Comments may be submitted to: Stefanie Kuzdrall, 1207 Front Street, Suite 110, Raleigh, NC 27609

Comment period ends: April 4, 2013

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

concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Date submitted to OSBM:
- ☐ Substantial economic impact (≥\$500,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4

SUBCHAPTER 14T – COSMETIC ART SCHOOLS

SECTION .0600 - CURRICULA

21 NCAC 14T .0602 COSMETOLOGY CURRICULUM

(a) To meet the approval of the Board, a cosmetologist training course must consist of at least 1500 hours of instruction in theory and practical application, divided as follows:

Theory and Performance Requirements	Hours	Services	
Beginners: Professional image, sanitation, bacteriology, disinfection, first aid, anatomy, electricity, chemistry, professional ethics, draping, shampooing, roller sets, pin curls, ridge curls with C shaping, fingerwaves, braids, artificial hair, up-styles, blowdrying brush control, blowdrying with curling iron, pressing/thermal, hair cutting, partings, perm wraps, relaxer sectioning, color application sectioning, scalp treatments, manicures, pedicures, and artificial nails	300		
Advanced: Styles and techniques of cosmetology services including arranging, dressing, curling, waving, <u>cutting techniques and implements including razors; clippers; thinning shears; and shears.</u> cleansing, cutting, singeing, bleaching or coloring hair; esthetics and manicuring; and business management and salon business	1200		
Performance Requirements		Mannequin	Live Model
Scalp and hair treatments			10
Fullhead fingerwave and style		5 or	5
Fullhead pincurl and style		5 or	5
Hair styling – sets, blowdrying, thermal press/flat iron, and artificial hair		70	100
Haircuts		10	75
Chemical reformation or permanent waving and relaxers		25	10
Temporary color			2
Color application – semi, demi, permanent color and hair lightening		10	30
Multidimensional color – low/high lighting, cap, bleach		10	15
Lash and brow color			2
Nail care – manicures and pedicures			15
Artificial nails sets		5 or	5

PROPOSED RULES

Facials with surface manipulations			10
Makeup application			<u>2</u>
Hair removal			5

- (b) A minimum of 300 hours of theory is required prior to conducting live model performances on the public.
- (c) Certification of live model or mannequin performance completions is required along with the graduation form and application for the examination.
- (d) A live model may be substituted for a mannequin for any mannequin service.
- (e) All mannequin services may be performed using a simulated product.
- (f) Simulated product is not allowed for credit for live model performance.
- (g) Mannequin services shall not be substituted for live model services.
- (h) Sharing of performance completions is not allowed.
- (i) Credit for a performance shall be given to only one student.
- (j) A nail set is one hand including all four fingers and thumb.

Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17.

21 NCAC 14T .0603 APPRENTICE COSMETOLOGY CURRICULUM

(a) To meet the approval of the Board, an apprentice cosmetologist training course must consist of at least 1200 hours of instruction in theory and practical application, divided as follows:

Theory and Performance Requirements	Hours	Services	
Beginners: Professional image, sanitation, bacteriology, disinfection, first aid, anatomy, electricity, chemistry, professional ethics, draping, shampooing, roller sets, pin curls, ridge curls with C shaping, fingerwaves, braids, artificial hair, up-styles, blowdrying brush control, blowdrying with curling iron, pressing/thermal, hair cutting, partings, perm wraps, relaxer sectioning, color application sectioning, scalp treatments, manicures, pedicures, and artificial nails	300		
Advanced: Styles and techniques of cosmetology services including arranging, dressing, curling, waving, <u>cutting techniques and implements including razors; clippers; thinning shears; and shears</u> , cleansing, cutting, singeing, bleaching or coloring hair, esthetics and manicuring; and business management and salon business	900		
Performance Requirements		Mannequin	Live Model
Scalp and hair treatments			8
Fullhead fingerwave and style		3 or	3
Fullhead pincurl and style		3 or	3
Hair styling – sets, blowdrying, thermal press/flat iron, and artificial hair		56	80
Haircuts		8	60
Chemical reformation or permanent waving and relaxers		19	8
Temporary color			1
Color application – semi, demi, permanent color and hair lightening		8	11
Multidimensional color – low/high lighting, cap, bleach		3	8
Lash and brow color			1
Nail care – manicures and pedicures			12
Artificial nails sets		4 or	4
Facials with surface manipulations			7

PROPOSED RULES

Makeup application			1
Hair removal			3

- (b) A minimum of 300 hours of theory is required prior to conducting live model performances on the public.
- (c) Certification of live model or mannequin performance completions is required along with the graduation form and application for the examination.
- (d) A live model may be substituted for a mannequin for any mannequin service.
- (e) All mannequin services may be performed using a simulated product.
- (f) Simulated product is not allowed for credit for live model performance.
- (g) Mannequin services shall not be substituted for live model services.
- (h) Sharing of performance completions is not allowed.
- (i) Credit for a performance shall be given to only one student.
- (j) A nail set is one hand including all four fingers and thumb.

Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17.

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 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: Coastal Resources Commission

Rule Citation: 15A NCAC 07H .0306

Effective Date: January 3, 2013

Date Approved by the Rules Review Commission: December 20, 2012

Reason for Action: The effective date of a recent act of the General Assembly or of the U.S. Congress: S.L. 2012-202 Section 3.(a). As a result of the passage of House Bill 819 and it subsequently becoming law (S.L. 2012-202), the Coastal Resources Commission is required to adopt temporary rules allowing for the replacement of single-family or duplex residential structures that cannot meet the setback criteria of 15A NCAC 07H .0306(a)(2). S.L. 2012-202 specifically targets single-family or duplex residential structures greater than 5,000 square feet which are currently required to be set back from the first line of stable, natural vegetation 120 feet or 60 times the shoreline erosion rate, whichever is greater. In order to qualify for the exemption, the structure being replaced cannot exceed its original footprint or square footage, must meet a minimum setback of 60 feet or 30 times the erosion rate, whichever is greater, and must be located as far landward on the lot as feasible. The provision would only apply to single-family or duplex residential structures constructed prior to August 11, 2009. S.L. 2012-202 Section 3.(b) specifically directs the Coastal Resources Commission to adopt temporary rules that are "substantively identical to the provisions of Section 3.(a) of this Act" and that they "shall remain in effect until permanent rules...become effective".

CHAPTER 07 – COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0300 - OCEAN HAZARD AREAS

15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS

(a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in the CRC's Rules shall be located according to whichever of the following is applicable:

- (1) The ocean hazard setback for development is measured in a landward direction from the

vegetation line, the static vegetation line or the measurement line, whichever is applicable. The setback distance is determined by both the size of development and the shoreline erosion rate as defined in 15A NCAC 07H .0304. Development size is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:

- (A) The total square footage of heated or air-conditioned living space;
- (B) The total square footage of parking elevated above ground level; and
- (C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load bearing.

Decks, roof-covered porches and walkways are not included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.

- (2) With the exception of those types of development defined in 15A NCAC 07H .0309, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback distance. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback is established based on the following criteria:

- (A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
- (B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
- (C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000 square feet requires a minimum setback of 130

- feet or 65 times the shoreline erosion rate, whichever is greater;
- (D) A building or other structure greater than or equal to 20,000 square feet but less than 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion rate, whichever is greater;
- (E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion rate, whichever is greater;
- (F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion rate, whichever is greater;
- (G) A building or other structure greater than or equal to 80,000 square feet but less than 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline erosion rate, whichever is greater;
- (H) A building or other structure greater than or equal to 100,000 square feet requires a minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;
- (I) Infrastructure that is linear in nature such as roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
- (J) Parking lots greater than or equal to 5,000 square feet requires a setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater; ~~and~~
- (K) Notwithstanding any other setback requirement of this Subparagraph, a building or other structure greater than or equal to 5,000 square feet in a community with a static line exception in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever is greater. The setback shall be measured landward from either the static_vegetation line, the vegetation line or measurement line, whichever is farthest ~~landward~~ landward; and
- (L) Notwithstanding any other setback requirement of this Subparagraph, replacement of single-family or duplex residential structures with a total floor area greater than 5,000 square feet shall be allowed provided that the structure meets the following criteria:
- (i) the structure was originally constructed prior to August 11, 2009;
 - (ii) the structure as replaced does not exceed the original footprint or square footage;
 - (iii) it is not possible for the structure to be rebuilt in a location that meets the ocean hazard setback criteria required under Subparagraph (a)(2) of this Rule;
 - (iv) the structure as replaced meets the minimum setback required under Part (a)(2)(A) of this Rule; and
 - (v) the structure is rebuilt as far landward on the lot as feasible.
- (3) If a primary dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the crest of the primary dune or the ocean hazard setback, whichever is farthest from vegetation line, static vegetation line or measurement line, whichever is applicable. For existing lots, however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located oceanward of the primary dune. In such cases, the development may be located landward of the ocean hazard setback but shall not be located on or oceanward of a frontal dune. The words "existing lots" in this Rule shall mean a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.
- (4) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot on which the development is proposed, the development shall be set landward of the frontal dune or landward of the ocean hazard setback whichever is farthest from the vegetation line, static_vegetation line or measurement line, whichever is applicable.

- (5) If neither a primary nor frontal dune exist in the AEC on or landward of the lot on which development is proposed, the structure shall be landward of the ocean hazard setback.
- (6) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirements established in this Rule and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements.
- (7) Established common-law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.
- (8) Beach fill as defined in this Section represents a temporary response to coastal erosion, and compatible beach fill as defined in 15A NCAC 07H .0312 can be expected to erode at least as fast as, if not faster than, the pre-project beach. Furthermore, there is no assurance of future funding or beach-compatible sediment for continued beach fill projects and project maintenance. A vegetation line that becomes established oceanward of the pre-project vegetation line in an area that has received beach fill may be more vulnerable to natural hazards along the oceanfront. A development setback measured from the vegetation line provides less protection from ocean hazards. Therefore, development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the static vegetation line as defined in this Section. However, in order to allow for development landward of the large-scale beach fill project that is less than 2,500 square feet and cannot meet the setback requirements from the static vegetation line, but can or has the potential to meet the setback requirements from the vegetation line set forth in Subparagraph (1) and (2)(A) of this Paragraph a local government or community may petition the Coastal Resources Commission for a "static line exception" in accordance with 15A NCAC 07J .1200 to allow development of property that lies both within the jurisdictional boundary of the petitioner as well as the boundaries of the large-scale beach fill project. This static line exception shall also allow development greater than 5,000 square feet to use the setback provisions defined in Part (a)(2)(K) of this Rule in areas that lie within the jurisdictional

boundary of the petitioner as well as the boundaries of the large-scale beach fill project. The procedures for a static line exception request are defined in 15A NCAC 07J .1200. If the request is approved, the Coastal Resources Commission shall allow development setbacks to be measured from a vegetation line that is oceanward of the static vegetation line under the following conditions:

- (A) Development meets all setback requirements from the vegetation line defined in Subparagraphs (a)(1) and (a)(2)(A) of this Rule;
- (B) Total floor area of a building is no greater than 2,500 square feet;
- (C) Development setbacks are calculated from the shoreline erosion rate in place at the time of permit issuance;
- (D) No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent building or structure. When the configuration of a lot precludes the placement of a building or structure in line with the landward-most adjacent building or structure, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, a distance no less than 30 times the shoreline erosion rate or 60 feet, whichever is greater;
- (E) With the exception of swimming pools, the development defined in 15A NCAC 07H .0309(a) is allowed oceanward of the static vegetation line; and
- (F) Development is not eligible for the exception defined in 15A NCAC 07H .0309(b).

(b) In order to avoid weakening the protective nature of ocean beaches and primary and frontal dunes, no development is permitted that involves the removal or relocation of primary or frontal dune sand or vegetation thereon which would adversely affect the integrity of the dune. Other dunes within the ocean hazard area shall not be disturbed unless the development of the property is otherwise impracticable, and any disturbance of any other dunes is allowed only to the extent allowed by 15A NCAC 07H .0308(b).

(c) Development shall not cause irreversible damage to historic architectural or archaeological resources documented by the

Division of Archives and History, the National Historical Registry, the local land-use plan, or other sources.

(d) Development shall comply with minimum lot size and setback requirements established by local regulations.

(e) Mobile homes shall not be placed within the high hazard flood area unless they are within mobile home parks existing as of June 1, 1979.

(f) Development shall comply with general management objective for ocean hazard areas set forth in 15A NCAC_07H .0303.

(g) Development shall not interfere with legal access to, or use of, public resources nor shall such development increase the risk of damage to public trust areas.

(h) Development proposals shall incorporate measures to avoid or minimize adverse impacts of the project. These measures shall be implemented at the applicant's expense and may include actions that:

- (1) minimize or avoid adverse impacts by limiting the magnitude or degree of the action,
- (2) restore the affected environment, or
- (3) compensate for the adverse impacts by replacing or providing substitute resources.

(i) Prior to the issuance of any permit for development in the ocean hazard AECs, there shall be a written acknowledgment from the applicant to DCM that the applicant is aware of the risks associated with development in this hazardous area and the limited suitability of this area for permanent structures. By granting permits, the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development.

(j) All relocation of structures requires permit approval. Structures relocated with public funds shall comply with the applicable setback line as well as other applicable AEC rules. Structures including septic tanks and other essential accessories relocated entirely with non-public funds shall be relocated the

maximum feasible distance landward of the present location; septic tanks may not be located oceanward of the primary structure. In these cases, all other applicable local and state rules shall be met.

(k) Permits shall include the condition that any structure shall be relocated or dismantled when it becomes imminently threatened by changes in shoreline configuration as defined in 15A NCAC 07H .0308(a)(2)(B). The structure(s) shall be relocated or dismantled within two years of the time when it becomes imminently threatened, and in any case upon its collapse or subsidence. However, if natural shoreline recovery or beach renourishment takes place within two years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or dismantled at that time. This condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed under 15A NCAC 07H .0308(a)(2).

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;

Eff. September 9, 1977;

Amended Eff. December 1, 1991; March 1, 1988; September 1, 1986; December 1, 1985;

RRC Objection due to ambiguity Eff. January 24, 1992;

Amended Eff. March 1, 1992;

RRC Objection due to ambiguity Eff. May 21, 1992;

Amended Eff. February 1, 1993; October 1, 1992; June 19, 1992;

RRC Objection due to ambiguity Eff. May 18, 1995;

Amended Eff. August 11, 2009; April 1, 2007; November 1, 2004; June 27, 1995;

Temporary Amendment Eff. January 3, 2013.

APPROVED RULES

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

Rules approved by the Rules Review Commission at its meeting on December 20, 2012.

**REGISTER CITATION TO THE
NOTICE OF TEXT****ADMINISTRATION, DEPARTMENT OF**

<u>Purpose</u>	01	NCAC 09	.0401	27:04 NCR
<u>Definitions</u>	01	NCAC 09	.0402	27:04 NCR
<u>Organization</u>	01	NCAC 09	.0403	27:04 NCR
<u>Criteria for Designation of Growth Centers</u>	01	NCAC 09	.0404	27:04 NCR
<u>Application for Growth Center Designation</u>	01	NCAC 09	.0405	27:04 NCR
<u>Review of Application</u>	01	NCAC 09	.0406	27:04 NCR
<u>Definitions</u>	01	NCAC 11	.2102	27:04 NCR
<u>Complaints: Form: Contents: Filing</u>	01	NCAC 11	.2103	27:04 NCR
<u>Amendment for Complaint</u>	01	NCAC 11	.2104	27:04 NCR
<u>Withdrawal of Complaint</u>	01	NCAC 11	.2105	27:04 NCR
<u>Investigation: Subpoenas</u>	01	NCAC 11	.2111	27:04 NCR
<u>Conciliation Agreements</u>	01	NCAC 11	.2116	27:04 NCR
<u>Definitions</u>	01	NCAC 11	.2201	27:04 NCR
<u>Filing of Complaint</u>	01	NCAC 11	.2202	27:04 NCR
<u>Notice of Respondent</u>	01	NCAC 11	.2203	27:04 NCR
<u>Investigation: Opinion: and Conciliation</u>	01	NCAC 11	.2204	27:04 NCR
<u>Purpose</u>	01	NCAC 22	.0101	27:04 NCR
<u>Definitions</u>	01	NCAC 22	.0102	27:04 NCR
<u>General</u>	01	NCAC 22	.0201	27:04 NCR
<u>Pollution Control Account</u>	01	NCAC 22	.0202	27:04 NCR
<u>Water Supply Systems Account</u>	01	NCAC 22	.0203	27:04 NCR
<u>Grant Limitations</u>	01	NCAC 22	.0204	27:04 NCR
<u>Eligible Applicants</u>	01	NCAC 22	.0205	27:04 NCR
<u>Eligible Projects and Project Costs</u>	01	NCAC 22	.0206	27:04 NCR
<u>Applicants</u>	01	NCAC 22	.0207	27:04 NCR
<u>Environmental Assessment</u>	01	NCAC 22	.0208	27:04 NCR
<u>Determination of Eligibility</u>	01	NCAC 22	.0209	27:04 NCR
<u>Public Notices</u>	01	NCAC 22	.0301	27:04 NCR
<u>Hearings</u>	01	NCAC 22	.0302	27:04 NCR
<u>Consideration of Information Presented at Hearing</u>	01	NCAC 22	.0303	27:04 NCR
<u>General Criteria</u>	01	NCAC 22	.0401	27:04 NCR
<u>Criteria for Water Conservation</u>	01	NCAC 22	.0402	27:04 NCR
<u>Criteria for Grant Increases</u>	01	NCAC 22	.0403	27:04 NCR
<u>Water Pollution Control Needs</u>	01	NCAC 22	.0501	27:04 NCR
<u>Applicable Conditions</u>	01	NCAC 22	.0502	27:04 NCR
<u>Service Area Need</u>	01	NCAC 22	.0503	27:04 NCR
<u>Financial Need of Applicant</u>	01	NCAC 22	.0504	27:04 NCR

APPROVED RULES

<u>Fiscal Responsibility of the Applicant</u>	01	NCAC 22 .0505	27:04 NCR
<u>Status of Project</u>	01	NCAC 22 .0506	27:04 NCR
<u>Public Need</u>	01	NCAC 22 .0601	27:04 NCR
<u>Public Health Need</u>	01	NCAC 22 .0602	27:04 NCR
<u>Financial Need of the Applicant</u>	01	NCAC 22 .0603	27:04 NCR
<u>Fiscal Responsibility of the Applicant</u>	01	NCAC 22 .0604	27:04 NCR
<u>Financing of the Project</u>	01	NCAC 22 .0605	27:04 NCR
<u>Status of Project</u>	01	NCAC 22 .0606	27:04 NCR
<u>Public Necessity: Health: Safety and Welfare</u>	01	NCAC 22 .0701	27:04 NCR
<u>Compatibility with State, Regional and Local Planning</u>	01	NCAC 22 .0702	27:04 NCR
<u>Financial Considerations</u>	01	NCAC 22 .0703	27:04 NCR
<u>Environmental Assessment</u>	01	NCAC 22 .0704	27:04 NCR
<u>Review Periods</u>	01	NCAC 22 .0801	27:04 NCR
<u>Assignment of Priorities</u>	01	NCAC 22 .0802	27:04 NCR
<u>Determination of Grant Awards</u>	01	NCAC 22 .0901	27:04 NCR
<u>Certificate of Eligibility for Grant Awards</u>	01	NCAC 22 .0902	27:04 NCR
<u>Failure to Qualify for Grant Awards</u>	01	NCAC 22 .0903	27:04 NCR
<u>Restrictions: Grants Relating to Federal Grants and Loans</u>	01	NCAC 22 .0904	27:04 NCR
<u>Payment of Grants</u>	01	NCAC 22 .0905	27:04 NCR
<u>Application of Federal, State and Local Laws</u>	01	NCAC 22 .0906	27:04 NCR
<u>General Provisions</u>	01	NCAC 22 .1001	27:04 NCR
<u>Audit of Projects</u>	01	NCAC 22 .1002	27:04 NCR
<u>Annual Reports to the Advisory Budget Commission</u>	01	NCAC 22 .1101	27:04 NCR
<u>Information and Application Forms</u>	01	NCAC 22 .1102	27:04 NCR
<u>Severability</u>	01	NCAC 22 .1103	27:04 NCR

BANKS, OFFICE OF THE COMMISSIONER OF

<u>Application</u>	04	NCAC 03C .0101*	n/a G.S 150B-21.5(a)(3)
<u>Report to Banking Commission</u>	04	NCAC 03C .0103*	n/a G.S 150B-21.5(a)(3)
<u>Review by Banking Commission</u>	04	NCAC 03C .0104*	n/a G.S 150B-21.5(a)(3)
<u>Bank Certificate</u>	04	NCAC 03C .0107*	n/a G.S 150B-21.5(a)(3)
<u>Organizational Expenses</u>	04	NCAC 03C .0110*	n/a G.S 150B-21.5(b)(1)
<u>National Bank Conversion</u>	04	NCAC 03C .0111*	n/a G.S 150B-21.5(a)(3)
<u>Elimination of Director Liability</u>	04	NCAC 03C .0112*	n/a G.S 150B-21.5(a)(3)
<u>Establishment of Branches and Limited Service Facilities</u>	04	NCAC 03C .0201*	n/a G.S 150B-21.5(a)(3) and (b)(1)
<u>Discontinuance</u>	04	NCAC 03C .0202*	n/a G.S 150B-21.5(b)(1)
<u>Discontinuance of a Limited Service Facility</u>	04	NCAC 03C .0203*	n/a G.S 150B-21.5(b)(1)
<u>Conversion of Branch to Limited Service Facility</u>	04	NCAC 03C .0204*	n/a G.S 150B-21.5(b)(1)
<u>Investigation</u>	04	NCAC 03C .0403*	n/a G.S 150B-21.5(a)(3)
<u>Report</u>	04	NCAC 03C .0404*	n/a G.S 150B-21.5(a)(3)
<u>Review by the Banking Commission</u>	04	NCAC 03C .0405*	n/a G.S 150B-21.5(a)(3)
<u>Waiver by Commissioner</u>	04	NCAC 03C .0407*	n/a G.S 150B-21.5(a)(3)
<u>Days and Hours of Regular Operation</u>	04	NCAC 03C .0503*	n/a G.S 150B-21.5(b)(1)
<u>Oath of Directors</u>	04	NCAC 03C .0801*	n/a G.S 150B-21.5(b)(1)
<u>Depository Banks</u>	04	NCAC 03C .0802*	n/a G.S 150B-21.5(b)(1)

<u>Other Real Estate</u>	04	NCAC 03C .0803*	n/a G.S 150B-21.5(b)(1)
<u>Suspension of Investment and Loan Limitation</u>	04	NCAC 03C .0804*	n/a G.S 150B-21.5(b)(1)
<u>Subsidiary Investment Approval</u>	04	NCAC 03C .0807*	n/a G.S 150B-21.5(b)(1)
<u>Retention: Reproduction and Disposition of Bank Records</u>	04	NCAC 03C .0903	n/a G.S 150B-21.5(a)(3)
<u>Leasing of Personal Property</u>	04	NCAC 03C .1002*	n/a G.S 150B-21.5(a)(3)
<u>Capital Stock</u>	04	NCAC 03C .1103*	n/a G.S 150B-21.5(b)(1)
<u>Maintenance of Capital Surplus</u>	04	NCAC 03C .1104*	n/a G.S 150B-21.5(b)(1)
<u>Notice of Impairment</u>	04	NCAC 03C .1105*	n/a G.S 150B-21.5(b)(1)
<u>School of Thrift or Savings Plan</u>	04	NCAC 03C .1201*	n/a G.S 150B-21.5(b)(1)
<u>Resume of the Plan</u>	04	NCAC 03C .1202*	n/a G.S 150B-21.5(b)(1)
<u>Share Purchase and Option Plans</u>	04	NCAC 03C .1302*	n/a G.S 150B-21.5(b)(1)
<u>Reserve Fund Defined</u>	04	NCAC 03C .1403*	n/a G.S 150B-21.5(b)(1)
<u>Definitions</u>	04	NCAC 03C .1701*	n/a G.S 150B-21.5(b)(1)
<u>Establishment of Lockbox Services</u>	04	NCAC 03C .1703*	n/a G.S 150B-21.5(b)(1)
<u>Establishment of a Trust Representative Office (TRO)</u>	04	NCAC 03C .1704*	n/a G.S 150B-21.5(b)(1)
<u>Cash-Out Transactions</u>	04	NCAC 03L .0404*	n/a G.S 150B-21.5(b)(1)
<u>Limitation on Delayed Deposit Check Cashing</u>	04	NCAC 03L .0405*	n/a G.S 150B-21.5(b)(1)

CHILD CARE COMMISSION

<u>Early Learning Standards and Curricula</u>	10A	NCAC 09 .3007*	26:23 NCR
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MEDICAL CARE COMMISSION

<u>Denial, Amendment, or Revocation of License</u>	10A	NCAC 13D .2106*	27:03 NCR
<u>Suspension of Admissions</u>	10A	NCAC 13D .2107	27:03 NCR
<u>General Standards of Administration</u>	10A	NCAC 13D .2202	27:03 NCR
<u>Patients Not to be Admitted</u>	10A	NCAC 13D .2203*	27:03 NCR
<u>Nursing Staffing Requirements</u>	10A	NCAC 13D .2303*	27:03 NCR
<u>Medication Administration</u>	10A	NCAC 13D .2306	27:03 NCR
<u>Drug Procurement</u>	10A	NCAC 13D .2604*	27:03 NCR
<u>Specialized Rehabilitative and Habilitative Services</u>	10A	NCAC 13D .3001	27:03 NCR
<u>Quality of Specialized Rehabilitation Services</u>	10A	NCAC 13D .3002	27:03 NCR
<u>HIV Designated Unit Policies and Procedures</u>	10A	NCAC 13D .3011	27:03 NCR
<u>Physician in an HIV Designated Unit</u>	10A	NCAC 13D .3012	27:03 NCR
<u>Special Nursing Requirements for an HIV Designated Unit</u>	10A	NCAC 13D .3013	27:03 NCR
<u>Specialized Staff Education for HIV Designated Units</u>	10A	NCAC 13D .3014	27:03 NCR
<u>Use of Investigational Drugs for HIV Designated Units</u>	10A	NCAC 13D .3015	27:03 NCR
<u>Additional Social Work Requirements for HIV Designated Units</u>	10A	NCAC 13D .3016	27:03 NCR
<u>Physician Requirements for Inpatient Rehabilitation Facility...</u>	10A	NCAC 13D .3021	27:03 NCR
<u>Admission Criteria for Inpatient Rehabilitation Facility...</u>	10A	NCAC 13D .3022	27:03 NCR
<u>Comprehensive Inpatient Rehabilitation Evaluation</u>	10A	NCAC 13D .3023	27:03 NCR
<u>Comprehensive Inpatient Rehabilitation Interdisciplinary</u>	10A	NCAC 13D .3024	27:03 NCR
<u>Discharge Criteria for Inpatient Rehabilitation Facility...</u>	10A	NCAC 13D .3025	27:03 NCR
<u>Comprehensive Rehabilitation Personnel Administration</u>	10A	NCAC 13D .3026	27:03 NCR

APPROVED RULES

<u>Comprehensive Inpatient Rehabilitation Program Staffing R...</u>	10A NCAC 13D .3027	27:03 NCR
<u>Staff Training for Inpatient Rehabilitation Facilities or...</u>	10A NCAC 13D .3028	27:03 NCR
<u>Equipment Reqs/Comprehensive Inpatient Rehabilitation Pro...</u>	10A NCAC 13D .3029	27:03 NCR
<u>Physical Facility Reqs/Inpatient Rehabilitation Facilitie...</u>	10A NCAC 13D .3030	27:03 NCR
<u>Deemed Status for Inpatient Rehabilitation Facilities or</u>	10A NCAC 13D .3033	27:03 NCR
<u>Criminal Histories</u>	10A NCAC 13P .0511*	26:24 NCR
<u>Denial, Suspension, Amendment or Revocation</u>	10A NCAC 13P .0701	27:03 NCR
<u>Procedures for Denial, Suspension, Amendment, or Revocation</u>	10A NCAC 13P .0702	27:03 NCR
<u>Enforcement Definitions</u>	10A NCAC 13P .1501	27:03 NCR
<u>Licensed EMS Providers</u>	10A NCAC 13P .1502*	27:03 NCR
<u>Specialty Care Transport Programs</u>	10A NCAC 13P .1503*	27:03 NCR
<u>Trauma Centers</u>	10A NCAC 13P .1504*	27:03 NCR
<u>EMS Educational Institutions</u>	10A NCAC 13P .1505*	27:03 NCR
<u>EMS Vehicle Permits</u>	10A NCAC 13P .1506	27:03 NCR
<u>EMS Personnel Credentials</u>	10A NCAC 13P .1507*	27:03 NCR
<u>Summary Suspension</u>	10A NCAC 13P .1508	27:03 NCR
<u>Procedures for Denial, Suspension, Amendment, or Revocation</u>	10A NCAC 13P .1509	27:03 NCR

HHS - HEALTH SERVICE REGULATION, DIVISION OF

<u>Location of the Agency</u>	10A NCAC 14C .0102	27:05 NCR
<u>Health Maintenance Organizations</u>	10A NCAC 14C .0302	27:05 NCR
<u>Definitions</u>	10A NCAC 14C .1701*	27:05 NCR
<u>Information Required of Applicant</u>	10A NCAC 14C .1702*	27:05 NCR
<u>Performance Standards</u>	10A NCAC 14C .1703	27:05 NCR
<u>Support Services</u>	10A NCAC 14C .1704	27:05 NCR
<u>Staffing and Staff Training</u>	10A NCAC 14C .1705*	27:05 NCR
<u>Definitions</u>	10A NCAC 14C .3301	27:05 NCR
<u>Information Required of Applicant</u>	10A NCAC 14C .3302	27:05 NCR
<u>Performance Standards</u>	10A NCAC 14C .3303	27:05 NCR
<u>Staffing and Staff Training</u>	10A NCAC 14C .3305	27:05 NCR

PRIVATE PROTECTIVE SERVICES BOARD

<u>Uniform and Equipment</u>	12 NCAC 07D .0105*	26:19 NCR
<u>Suspension of Authority to Expend Funds</u>	12 NCAC 07D .0114	27:01 NCR
<u>Application for Firearms Trainer Certificate</u>	12 NCAC 07D .0902*	26:19 NCR
<u>Renewal of Firearms Trainer Certificate</u>	12 NCAC 07D .0904*	26:19 NCR
<u>Unarmed Trainer Certificate</u>	12 NCAC 07D .0909*	26:19 NCR
<u>Application for an Unarmed Trainer Certificate</u>	12 NCAC 07D .0910	26:19 NCR
<u>Renewal of an Unarmed Trainer Certificate</u>	12 NCAC 07D .0911*	26:19 NCR
<u>Rosters of Unarmed Trainer Classes</u>	12 NCAC 07D .0912*	26:19 NCR
<u>Consideration of Experience</u>	12 NCAC 07D .1106*	26:19 NCR
<u>Grandfather Clause</u>	12 NCAC 07D .1108	26:19 NCR
<u>Application for Unarmed Armored Car Service Guard</u>	12 NCAC 07D .1401*	26:19 NCR

<u>Registr...</u>			
<u>Fees for Unarmed Armored Car Service Guard Registration</u>	12	NCAC 07D .1402	26:19 NCR
<u>Minimum Standards for Unarmed Armored Car Service Guard R...</u>	12	NCAC 07D .1403*	26:19 NCR
<u>Investigation for Unarmed Armored Car Service Guard Regis...</u>	12	NCAC 07D .1404*	26:19 NCR
<u>Unarmed Armored Car Service Guard Registration Identifica...</u>	12	NCAC 07D .1405*	26:19 NCR
<u>Renewal or Reissue of Unarmed Armored Car Service Guard R...</u>	12	NCAC 07D .1406*	26:19 NCR
<u>Training Requirements for Unarmed Armored Car Service Guards</u>	12	NCAC 07D .1407*	26:19 NCR
<u>Application/Armed Car Service Guard Firearms Registration...</u>	12	NCAC 07D .1501*	26:19 NCR
<u>Fees for Armed Armored Car Service Guard Firearm Registra...</u>	12	NCAC 07D .1502	26:19 NCR
<u>Minimum Standards for Armed Armored Car Service Guard Fir...</u>	12	NCAC 07D .1503	26:19 NCR
<u>Investigation for Armed Armored Car Service Guard Firearm...</u>	12	NCAC 07D .1504*	26:19 NCR
<u>Armed Armored Car Service Guard Registration Identificati...</u>	12	NCAC 07D .1505*	26:19 NCR
<u>Renewal of Armed Armored Car Service Guard Firearm Regist...</u>	12	NCAC 07D .1506*	26:19 NCR
<u>Training Requirement for Armed Armored are Service Guards</u>	12	NCAC 07D .1507*	26:19 NCR

SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Instructors</u>	12	NCAC 10B .2004*	27:02 NCR
<u>Instructors</u>	12	NCAC 10B .2102*	27:02 NCR

WILDLIFE RESOURCES COMMISSION

<u>Wildlife Taken for Depredations</u>	15A	NCAC 10B .0106*	27:04 NCR
<u>Dog Training and Field Trials</u>	15A	NCAC 10B .0114*	27:04 NCR
<u>Wildlife Collectors</u>	15A	NCAC 10B .0119*	27:04 NCR
<u>Possession of Wildlife Killed Accidentally or Found Dead</u>	15A	NCAC 10B .0127*	27:04 NCR
<u>Deer (White Tailed)</u>	15A	NCAC 10B .0203*	27:04 NCR
<u>Squirrels</u>	15A	NCAC 10B .0206	27:04 NCR
<u>Wild Turkey</u>	15A	NCAC 10B .0209*	27:04 NCR
<u>Public Mountain Trout Waters</u>	15A	NCAC 10C .0205*	27:04 NCR
<u>Trotlines and Set-Hooks</u>	15A	NCAC 10C .0206*	27:04 NCR
<u>Possession of Certain Fishes</u>	15A	NCAC 10C .0211*	27:04 NCR
<u>Open Seasons: Creel and Size Limits</u>	15A	NCAC 10C .0305*	27:04 NCR
<u>Manner of Taking Non-game Fishes: Purchase and Sale</u>	15A	NCAC 10C .0401*	27:04 NCR
<u>Taking Non-game Fishes for Bait or Personal Consumption</u>	15A	NCAC 10C .0402*	27:04 NCR
<u>General Regulations Regarding Use</u>	15A	NCAC 10D .0102*	27:04 NCR

APPROVED RULES

<u>Hunting On Game Lands</u>	15A NCAC 10D .0103*	27:04 NCR
<u>Protection of Endangered/Threatened/Special Concern</u>	15A NCAC 10I .0102*	27:04 NCR
<u>General Regulations Regarding Use of Conservation Areas</u>	15A NCAC 10J .0102*	27:04 NCR

TRANSPORTATION, DEPARTMENT OF

<u>Issuance or Denial of Selective Vegetation Removal Permit...</u>	19A NCAC 02E .0609*	27:02 NCR
<u>Conditions of Selective Vegetation Removal Permit for Out...</u>	19A NCAC 02E .0610*	27:02 NCR

LOCKSMITH LICENSING BOARD

<u>Due Date</u>	21 NCAC 29 .0702	27:05 NCR
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SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS, BOARD OF EXAMINERS FOR

<u>Standards for Audiologists Who Dispense Hearing Aids</u>	21 NCAC 64 .0220*	27:03 NCR
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TITLE 01 – DEPARTMENT OF ADMINISTRATION		01 NCAC 11 .2116	CONCILIATION AGREEMENTS
01 NCAC 09 .0401	PURPOSE	<i>History Note: Authority G.S. 41A-7; Eff. October 1, 1983; Amended Eff. February 1, 1989; Repealed Eff. January 1, 2013.</i>	
01 NCAC 09 .0402	DEFINITIONS		
01 NCAC 09 .0403	ORGANIZATION		
01 NCAC 09 .0404	CRITERIA FOR DESIGNATION		
OF GROWTH CENTERS			
01 NCAC 09 .0405	APPLICATION FOR GROWTH	01 NCAC 11 .2201	DEFINITIONS
CENTER DESIGNATION		01 NCAC 11 .2202	FILING OF COMPLAINT
		01 NCAC 11 .2203	NOTICE TO RESPONDENT
01 NCAC 09 .0406	REVIEW OF APPLICATION	01 NCAC 11 .2204	INVESTIGATION: OPINION: AND CONCILIATION
<i>History Note: Authority G.S. 143-506.7; 143-506.10; Eff. December 3, 1980; Transferred From T01:10 Eff. January 1, 1982; Repealed Eff. January 1, 2013.</i>		<i>History Note: Authority G.S. 143-422.3; Eff. February 1, 1989; Repealed Eff. January 1, 2013.</i>	
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01 NCAC 11 .2102	DEFINITIONS	01 NCAC 22 .0101	PURPOSE
01 NCAC 11 .2103	COMPLAINTS: FORM:	01 NCAC 22 .0102	DEFINITIONS
CONTENTS: FILING		<i>History Note: Authority S.L. 1977, Ch. 677; Eff. February 1, 1976; Readopted Eff. February 27, 1979; Amended Eff. August 1, 1988; January 1, 1980; Repealed Eff. January 1, 2013.</i>	
01 NCAC 11 .2104	AMENDMENT OF COMPLAINT		
01 NCAC 11 .2105	WITHDRAWAL OF COMPLAINT		
COMPLAINT			
<i>History Note: Authority G.S. 41A-1; 41A-2; 41A-7; Eff. October 1, 1983; Amended Eff. March 1, 1989; February 1, 1989; Repealed Eff. January 1, 2013.</i>			
01 NCAC 11 .2111	INVESTIGATION: SUBPOENAS	01 NCAC 22 .0201	GENERAL
<i>History Note: Authority G.S. 41A-8; Eff. October 1, 1983; Amended Eff. March 1, 1989; Repealed Eff. January 1, 2013.</i>		01 NCAC 22 .0202	POLLUTION CONTROL
		ACCOUNT	
		01 NCAC 22 .0203	WATER SUPPLY SYSTEMS
		ACCOUNT	
		01 NCAC 22 .0204	GRANT LIMITATIONS
		01 NCAC 22 .0205	ELIGIBLE APPLICANTS
		01 NCAC 22 .0206	ELIGIBLE PROJECTS AND
		PROJECT COSTS	

01 NCAC 22 .0207 APPLICATIONS
01 NCAC 22 .0208 ENVIRONMENTAL
ASSESSMENT
01 NCAC 22 .0209 DETERMINATION OF
ELIGIBILITY

History Note: Authority G.S. 133-24; S.L. 1977, Ch. 677; S.L. 1981, Ch. 909, s.8, s.14; Eff. February 1, 1976; Readopted Eff. February 27, 1979; Amended Eff. January 1, 1980; Legislative Objection Lodged Eff. September 20, 1982 (Rules .0205, .0207); Amended Eff. October 1, 1982; Curative Amended Eff. October 28, 1982; Amended Eff. August 1, 1988; July 1, 1987; Repealed Eff. January 1, 2013.

01 NCAC 22 .0301 PUBLIC NOTICES
01 NCAC 22 .0302 HEARINGS
01 NCAC 22 .0303 CONSIDERATION OF
INFORMATION PRESENTED AT HEARING

History Note: Authority S.L. 1977, Ch. 677; Eff. February 1, 1976; Readopted Eff. February 27, 1979; Repealed Eff. January 1, 2013.

01 NCAC 22 .0401 GENERAL CRITERIA
01 NCAC 22 .0402 CRITERIA FOR WATER
CONSERVATION
01 NCAC 22 .0403 CRITERIA FOR GRANT
INCREASES

History Note: Authority S.L. 1977, Ch. 677; Eff. February 1, 1976; Readopted Eff. February 27, 1979; Repealed Eff. January 1, 2013.

01 NCAC 22 .0501 WATER POLLUTION
CONTROL NEEDS
01 NCAC 22 .0502 APPLICABLE CONDITIONS
01 NCAC 22 .0503 SERVICE AREA NEED
01 NCAC 22 .0504 FINANCIAL NEED OF
APPLICANT
01 NCAC 22 .0505 FISCAL RESPONSIBILITY OF
THE APPLICANT
01 NCAC 22 .0506 STATUS OF PROJECT

History Note: Authority S.L. 1977, Ch. 677; Eff. February 1, 1976; Readopted Eff. February 27, 1979; Repealed Eff. January 1, 2013.

01 NCAC 22 .0601 PUBLIC NEED
01 NCAC 22 .0602 PUBLIC HEALTH NEED
01 NCAC 22 .0603 FINANCIAL NEED OF THE
APPLICANT

01 NCAC 22 .0604 FISCAL RESPONSIBILITY OF
THE APPLICANT

History Note: Authority S.L. 1977, Ch. 677; Eff. February 1, 1976; Readopted Eff. February 27, 1979; Repealed Eff. January 1, 2013.

01 NCAC 22 .0605 FINANCING OF THE PROJECT
01 NCAC 22 .0606 STATUS OF PROJECT

History Note: Authority S.L. 1977, Ch. 677; Eff. February 27, 1979; Repealed Eff. January 1, 2013.

01 NCAC 22 .0701 PUBLIC NECESSITY: HEALTH:
SAFETY AND WELFARE
01 NCAC 22 .0702 COMPATIBILITY WITH STATE,
REGIONAL AND LOCAL PLANNING

History Note: Authority S.L. 1977, Ch. 677; Eff. February 1, 1976; Readopted Eff. February 27, 1979; Repealed Eff. January 1, 2013.

01 NCAC 22 .0703 FINANCIAL CONSIDERATIONS
01 NCAC 22 .0704 ENVIRONMENTAL
ASSESSMENT

History Note: Authority S.L. 1977, Ch. 677; Eff. February 27, 1979; Repealed Eff. January 1, 2013.

01 NCAC 22 .0801 REVIEW PERIODS
01 NCAC 22 .0802 ASSIGNMENT OF PRIORITIES

History Note: Authority S.L. 1977, Ch. 677; Eff. February 1, 1976; Readopted Eff. February 27, 1979; Amended Eff. January 1, 1980; Repealed Eff. January 1, 2013.

01 NCAC 22 .0901 DETERMINATION OF GRANT
AWARDS
01 NCAC 22 .0902 CERTIFICATE OF ELIGIBILITY
FOR GRANT AWARDS
01 NCAC 22 .0903 FAILURE TO QUALIFY FOR
GRANT AWARDS
01 NCAC 22 .0904 RESTRICTIONS: GRANTS
RELATING TO FEDERAL GRANTS AND LOANS
01 NCAC 22 .0905 PAYMENT OF GRANTS

History Note: Authority S.L. 1977, Ch. 677; Eff. February 1, 1976; Readopted Eff. February 27, 1979; Amended Eff. January 1, 1980; Repealed Eff. January 1, 2013.

**01 NCAC 22 .0906 APPLICATION OF FEDERAL,
STATE AND LOCAL LAWS**

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 27, 1979;
Repealed Eff. January 1, 2013.*

**01 NCAC 22 .1001 GENERAL PROVISIONS
01 NCAC 22 .1002 AUDIT OF PROJECTS**

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 27, 1979;
Repealed Eff. January 1, 2013.*

**01 NCAC 22 .1101 ANNUAL REPORTS TO THE
ADVISORY BUDGET COMMISSION**

**01 NCAC 22 .1102 INFORMATION AND
APPLICATION FORMS**

01 NCAC 22 .1103 SEVERABILITY

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 27, 1979;
Repealed Eff. January 1, 2013.*

TITLE – DEPARTMENT OF COMMERCE

04 NCAC 03C .0101 APPLICATION

A new bank, industrial bank or trust company shall be incorporated and chartered in the manner prescribed in G.S. 53C-3-1 through G.S. 53C-3-7, 53-137, and 53-333 and in no other way. A charter application, on a form provided by the Office of the Commissioner of Banks, together with a copy of the proposed Articles of Incorporation and payment of the prescribed fee, must be filed with:

Office of the Commissioner of Banks
4309 Mail Service Center
Raleigh, North Carolina 27699-4309.

*History Note: Authority G.S. 53C-2-5; 53C-3-1(a); 53-137;
53-333;
Eff. February 1, 1976;
Amended Eff. January 1, 2013; September 1, 2006; September 1,
1990; November 1, 1982; July 24, 1979; August 1, 1978.*

**04 NCAC 03C .0103 REPORT TO BANKING
COMMISSION**

Following the completion of that examination the Commissioner of Banks shall prepare an order covering the results of that examination along with his decision for approval or disapproval of the application.

*History Note: Authority G.S. 53C-2-5; 53C-3-4;
Eff. February 1, 1976;
Amended Eff. January 1, 2013.*

**04 NCAC 03C .0104 REVIEW BY BANKING
COMMISSION**

The order of the Commissioner of Banks shall be submitted to the Banking Commission at a regular or called meeting. Following a public hearing the Banking Commission will issue its final agency decision approving or disapproving the application.

*History Note: Authority G.S. 53C-2-5; 53C-3-5; 53C-3-6;
Eff. February 1, 1976;
Amended Eff. January 1, 2013; September 1, 1990.*

04 NCAC 03C .0107 BANK CERTIFICATE

Upon final action approving an application for a new bank the Commissioner of Banks shall issue to the bank a Bank Certificate, which contains a certification that all statutory requirements have been satisfied and is an authorization to begin business.

*History Note: Authority G.S. 53C-2-5; 53C-3-7;
Eff. February 1, 1976;
Amended Eff. January 1, 2013.*

04 NCAC 03C .0110 ORGANIZATIONAL EXPENSES

*History Note: Authority G.S. 53-2; 53-92; 53-104;
Eff. February 1, 1976;
Amended Eff. July 1, 1991; September 1, 1990;
Repealed Eff. January 1, 2013.*

**04 NCAC 03C .0111 NATIONAL BANK
CONVERSION**

(a) A national bank may apply for authority to convert to a state bank. An application for conversion must be made on a form provided by the Office of the Commissioner of Banks. The application for conversion, together with a copy of the proposed articles of incorporation and payment of the prescribed fee, must be filed with:

Office of the Commissioner of Banks
4309 Mail Service Center
Raleigh, North Carolina 27699-4309.

(b) Upon receipt of a copy of the articles of incorporation and the completed application for conversion, the Commissioner shall make an examination into all the facts connected with the conversion. Following the completion of that examination, the Commissioner shall issue a written decision approving or disapproving the application pursuant to G.S. 53C-7-301.

(c) Upon approval by the Commissioner of Banks, he shall forward to the Secretary of State for appropriate filing the articles of incorporation along with the certification of approval. The Commissioner shall issue to the bank a Bank Certificate and any Branch Certificate(s) as needed.

*History Note: Authority G.S. 53C-2-5; 53C-7-301;
Eff. September 26, 1979;
Amended Eff. January 1, 2013; September 1, 2006; September 1,
1990; August 1, 1988.*

04 NCAC 03C .0112 ELIMINATION OF DIRECTOR LIABILITY

(a) Bank charter amendments limiting director liability pursuant to G.S. 55-2-02(b)(3) must provide that director liability is not eliminated or limited with regards to acts or omissions where the elimination of personal liability of directors would be contrary to the provisions of G.S. 53C.

(b) A new bank, industrial bank, or trust company may submit proposed bank charter amendments to the Commissioner for review prior to an approval and giving the required notice to shareholders.

History Note: Authority G.S. 53C-2-5; 53C-4-6; 55-2-02(b)(3); 55-8-30; Eff. June 1, 1995; Amended Eff. January 1, 2013.

04 NCAC 03C .0201 ESTABLISHMENT OF BRANCHES

Banks may establish branches upon written approval of the Commissioner of Banks pursuant to G.S. 53C-6-15 and as set out in this Rule.

- (1) Application. An application to establish a branch bank must be submitted in writing on a form provided by the Office of the Commissioner of Banks. The application, together with the fee prescribed in 04 NCAC 03C .1601, must be filed with:

Office of the Commissioner of Banks
4309 Mail Service Center
Raleigh, North Carolina 27699-4309.

- (2) Notice of filing of an application. Upon acceptance of an application for filing, the applicant shall publish a notice of the filing of the application in a newspaper published in the city, town or county where the branch is proposed to be located. The required public notice must be approved by the Commissioner of Banks as prescribed in this Rule prior to publication. The Commissioner of Banks shall mail a notice of the filing of the application to each state-chartered bank operating a banking office in the community to be served by the proposed branch. A copy of the notice shall be mailed to the Regional Administrator of National Banks for the National Bank Region for North Carolina. The publication shall include:
 - (a) the name and location of the main office of the bank making the application;
 - (b) the name and location of the branch being opened;
 - (c) a statement that the public may submit written comments on the application to the Commissioner of Banks;

- (d) a statement that the comment period shall end 14 days from the date of publication.
- (3) Written comments. Any interested person may submit to the Commissioner of Banks written comments and information on an application within 14 days after the notice has been published as provided in Item (2) of this Rule. All written comments received during the comment period shall become part of the official record compiled with respect to the application.
- (4) Examination by Commissioner. Upon receipt of a completed application, the Commissioner of Banks shall conduct an examination into all the facts connected with the establishment of a branch.
- (5) Action by Commissioner. No final decision may be made by the Commissioner of Banks until the comment period has expired. The final decision of the Commissioner of Banks on an application shall be in writing and include findings of fact and conclusions of law.
- (6) Notification of Commissioner's action. The applicant and all persons who have made written requests for such notice shall be given notice of the Commissioner of Banks' final decision on each application.
- (7) Request for review by Banking Commission. The applicant or any interested person may request the State Banking Commission to review the decision of the Commissioner of Banks with respect to an application to establish a branch within 14 days from the time the Commissioner of Banks issues his written decision. The request for review must be in writing and must be sent to the address shown in Item (1) of this Rule.
- (8) Review by Banking Commission. When requested by the applicant or any interested person, the decision of the Commissioner of Banks shall be reviewed at a public hearing by the State Banking Commission at its next regular or called meeting. Following the public hearing, the State Banking Commission shall issue its final order approving, modifying or disapproving the decision of the Commissioner of Banks. Notice of the public hearing shall be published in a newspaper published in the city, town or county where the proposed branch is to be located at least 10 days prior to the scheduled hearing.
- (9) Decision by Commissioner final. If there has been no written request for review within the 14-day period as provided in Item (7) of this Rule, the decision issued by the Commissioner of Banks shall become final with respect to the application.

History Note: Authority G.S. 53C-2-5; 53C-6-15;
Eff. February 1, 1976;
Amended Eff. January 1, 2013; September 1, 2006; June 1, 1995; July 1, 1991; October 1, 1990; November 1, 1982.

04 NCAC 03C .0202 DISCONTINUANCE

History Note: Authority G.S. 53-4; 53-62; 53-92; 53-104;
Eff. February 1, 1976;
Amended Eff. September 1, 2006; June 1, 1995; October 1, 1990; November 1, 1982;
Repealed Eff. January 1, 2013.

04 NCAC 03C .0203 DISCONTINUANCE OF A LIMITED SERVICE FACILITY
04 NCAC 03C .0204 CONVERSION OF BRANCH TO LIMITED SERVICE FACILITY

History Note: Authority G.S. 53-62; 53-92; 53-104; 53-122(3);
Eff. September 1, 1990;
Amended Eff. September 1, 2006; June 1, 1995;
Repealed Eff. January 1, 2013.

04 NCAC 03C .0403 INVESTIGATION

Upon receipt of a completed application for combination the Commissioner of Banks shall make an investigation into all the facts connected with the proposed combination. The investigation will take into account all statutory requirements and criteria.

History Note: Authority G.S. 53C-2-5; 53C-7-202;
Eff. February 1, 1976;
Amended Eff. January 1, 2013; September 1, 1990.

04 NCAC 03C .0404 ORDER

Following the completion of the investigation, the Commissioner of Banks shall issue a written order including his decision for approval or disapproval of the application.

History Note: Authority G.S. 53C-2-5; 53C-7-203;
Eff. February 1, 1976;
Amended Eff. January 1, 2013; September 1, 1990.

04 NCAC 03C .0405 REVIEW BY THE BANKING COMMISSION

The Commissioner's order shall be submitted to the Banking Commission at a regular or called meeting. Following a public hearing, the Banking Commission will issue its final agency decision approving or disapproving the application.

04 NCAC 03C .0903 RETENTION: REPRODUCTION AND DISPOSITION OF BANK RECORDS

(a) Each bank or branch thereof shall keep and retain in some safe and secure place the books, ledgers, records, and documents hereinafter set forth for the periods specified.

Bank Records
to be Retained

Minimum
Retention Period

ACCOUNTING

History Note: Authority G.S. 53C-2-5; 53C-7-203; 53C-7-209;
Eff. February 1, 1976;
Amended Eff. January 1, 2013; September 1, 1990.

04 NCAC 03C .0407 WAIVER BY COMMISSIONER

When the Commissioner of Banks finds that he must act immediately to approve a merger, combination or transfer of assets and liabilities due to an insolvent, unsafe or unsound condition in any bank, the requirements in this Section .0400 pertaining to publication, notice and public hearing may be waived by the Commissioner of Banks, who shall take into account all relevant facts and circumstances, including, without limitation, the effect of approval upon the safety and soundness of the institution. When exercising waiver under this Rule, the Commissioner of Banks shall advise the members of the State Banking Commission of his actions with respect to the merger, combination or transfer of assets and liabilities.

History Note: Authority G.S. 53C-2-5; 53C-2-1; 53C-9-101;
Eff. November 1, 1982;
Amended Eff. January 1, 2013.

04 NCAC 03C .0503 DAYS AND HOURS OF REGULAR OPERATION

History Note: Authority G.S. 53-77.1A(d); 53-92;
Eff. July 1, 1990;
Repealed Eff. January 1, 2013.

04 NCAC 03C .0801 OATH OF DIRECTORS
04 NCAC 03C .0802 DEPOSITORY BANKS
04 NCAC 03C .0803 OTHER REAL ESTATE
04 NCAC 03C .0804 SUSPENSION OF INVESTMENT AND LOAN LIMITATION

History Note: Authority G.S. 53-43(3)c; 53-49; 53-80; 53-81; 53-84; 53-92; 53-99;
Eff. February 1, 1976;
Amended Eff. September 1, 2006; May 1, 1992; September 26, 1979;
Repealed Eff. January 1, 2013.

04 NCAC 03C .0807 SUBSIDIARY INVESTMENT APPROVAL

History Note: Authority G.S. 53-47; 53-93; 53-95; 53-104;
Eff. May 1, 1992;
Amended Eff. December 1, 2011; June 1, 1995;
Repealed Eff. January 1, 2013.

- | | | |
|----|---|---------|
| 1. | Daily Reserve Calculation and Averages | 3 years |
| 2. | Difference Records (Over/Short) | 2 years |
| 3. | Paid Bills and Invoices | 3 years |
| 4. | Quarterly Report of Condition and Income and Supporting Work Papers | 5 years |

ADMINISTRATIVE

- | | | |
|----|--|-----------|
| 1. | Documentation of Charged-off Assets | 10 years |
| 2. | Escheat Reports and Records | 10 years |
| 3. | Minute Books of Meetings of Stockholders, Directors, and Executive Committee | Permanent |

AUDIT

- | | | |
|----|---------------------------------------|---------|
| 1. | Audit Reports (Internal and External) | 3 years |
| 2. | Audit Work Papers (Internal) | 3 years |

BANK PROPERTIES

- | | | |
|----|--|----------------|
| 1. | Fixed Assets-Evidence of Ownership (After Acquisition) | 5 years |
| 2. | Fixed Assets-Leases (After Termination) | 5 years |
| 3. | Real Estate-Construction Records | 5 years |
| 4. | Real Estate-Deeds | Until conveyed |
| 5. | Real Estate-Leases (After Termination) | 5 years |

CAPITAL

- | | | |
|----|--|-----------|
| 1. | Capital Stock Certificate Books, Stubs, or Interleaves | Permanent |
| 2. | Capital Stock Ledger | Permanent |
| 3. | Capital Stock Transfer Register | Permanent |
| 4. | Proxies | 3 years |

COLLECTIONS

- | | | |
|----|--|-------------------------------------|
| 1. | Collection Registers (Incoming and Outgoing) | 3 years after item paid or returned |
| 2. | Receipts and Advices (After Closed) | 1 year |

CREDIT CARDS

- | | | |
|----|--|-----------|
| 1. | Borrowing Authority Resolutions (After Closed) | 3 years |
| 2. | Customer Application (After Closed) | 1 year |
| 3. | Disclosure and Compliance Documents | 25 months |
| 4. | Merchants' Agreement (After Closed) | 2 years |
| 5. | Posting or Transaction Journal | 2 years |
| 6. | Sales Tickets or Drafts | 3 years |
| 7. | Statement of Account | 5 years |

DEMAND DEPOSIT AND TRANSACTION ACCOUNTS

- | | | |
|----|------------------------------------|---------|
| 1. | Checks and Debits | 5 years |
| 2. | Daily Report on Overdrafts | 2 years |
| 3. | Deposit Resolutions (After Closed) | 3 years |
| 4. | Deposit Tickets and Credits | 5 years |
| 5. | Ledgers, Statements, or Stubs | 5 years |
| 6. | Letters of Administration | 5 years |
| 7. | Posting or Transaction Journals | 2 years |
| 8. | Powers of Attorney | 5 years |

9.	Return Item Records	1 year
10.	Signature Cards (After Closed)	5 years
11.	Stop Payment Orders	1 year
12.	Tax Waivers	1 year
13.	Undelivered Statements	1 year
14.	Unidentified or Unclaimed Deposit Records	Until escheated

DUE FROM BANKS

1.	Advise of Entry (After Cleared)	3 months
2.	Drafts (After Paid)	5 years
3.	Draft Register or Carbon Copy	Until paid
4.	Reconcilements	5 years
5.	Statements	3 years

GENERAL LEDGER

1.	Daily Statement of Condition	5 years
2.	General Journal (If Book of Original Entries, with Descriptions)	15 years
3.	General Ledgers	15 years
4.	General Ledger Tickets	5 years

INSURANCE

1.	Bankers Blanket Bond and Excess	5 years
2.	General Casualty Liability Policies Expired	5 years

INTERNATIONAL

1.	Bankers Acceptances	3 years
2.	Collection Records	3 years after item paid or returned
3.	Letters of Credit and Documents expiration	3 years after
4.	Transfer Orders (Wire or Written)	1 year

INVESTMENTS

1.	Accrual and Bond Amortization or Accretion Records (After Period Ends)	3 years
2.	Brokers' Confirmations, Invoices, Statements	3 years
3.	Ledgers	3 years

LEASE RECEIVABLES (OTHER THAN REAL ESTATE)

1.	Lease Agreements and Documents (After Termination)	5 years
2.	Rental Payment Records	5 years
3.	Record of Disposition of Property	5 years

LEGAL JUDICIAL AUTHORIZATION

1.	Attachments and/or Garnishments	10 years
2.	Court Case Records (After Final Disposition)	10 years
3.	Probate Court Appointment (After Closed)	10 years

LOANS (COMMERCIAL, CONSUMER, MORTGAGE)

1.	Appraisals, Financing Statements, and Title Opinions Pertaining to Collateral	Until paid
2.	Borrowing Resolutions	3 years after

		payment of debt
3.	Credit Files (Financial Statements, Applications, Correspondence) (After Paid)	2 years
4.	Collateral Records (After Released)	5 years
5.	Interest Rebate Records	1 year
6.	Liability Cards and/or Ledgers (After Closed)	3 years
7.	Loan Ledger Cards or History Sheets (After Paid)	3 years
8.	Loan Proceeds Disbursement Records	Until paid
9.	Loans Paid Record	3 years
10.	Mortgage Files and Supporting Documents (After Paid)	2 years
11.	Note and/or Loan Register (After Paid)	3 years
12.	Posting or Transaction Journal	2 years

MAIL

1.	Insurance Records of Registered and Certified	1 year
2.	Registered and Certified Records (In and Out)	1 year
3.	Return Receipt Record	1 year

MISCELLANEOUS

1.	Cash and Security Vault Records-Opening, Closing	6 months
2.	Taxes>Returns and Supporting Papers	3 years or until cleared by IRS and Dept. of Revenue
3.	Travelers Checks-Applications	1 year

MONEY TRANSFER

1.	Copy of Incoming and Outgoing Transfers	1 year
2.	General Correspondence	1 year
3.	Receipts and Advices (After Closed)	1 year
4.	Transfer Request Records	1 year

NIGHT DEPOSITORY

1.	Customer Agreement (After Closed)	1 year
2.	Customer Receipt	1 year
3.	Daily Inventory	1 year

OFFICIAL CHECKS

1.	Official Checks (Dividend, Cashiers, Expense, Loan) and Money Orders (After Paid)	5 years
2.	Official Check Register or Carbon Copy	Until paid or escheated
3.	Certified Checks or Receipts (After Paid)	5 years
4.	Certified Check Register or File Copy	Until paid or escheated
5.	Affidavits and Indemnity pertaining to Issuance of Duplicate Checks	Permanent

PROOF AND TRANSIT

1.	Advice of Correction	6 months
2.	Cash Tickets	6 months
3.	Outgoing Cash Letters and Accompanying Items (Microfilm)	2 years
4.	Proof Sheets, Tapes, and Listings	2 years

SAFE DEPOSIT

- | | | |
|----|---|-----------|
| 1. | Access Records (After Closed) | 3 years |
| 2. | Box History Card | Permanent |
| 3. | Contracts and Agreements (After Closed) | 3 years |
| 4. | Forced Entry Records | 10 years |

SAFEKEEPING AND CUSTOMER SECURITIES

- | | | |
|----|--|---------|
| 1. | Broker Confirmations, Invoices, Statements | 3 years |
| 2. | Buy and Sell Orders | 3 years |
| 3. | Customer Contracts and Agreements (After Closed) | 3 years |
| 4. | In and Out Records (Movement of Securities) | 3 years |
| 5. | Safekeeping Receipts (After Closed) | 3 years |

SAVINGS AND TIME DEPOSITS

- | | | |
|-----|---|----------------------------|
| 1. | Certificates of Deposit Paid | 5 years |
| 2. | Certificates of Deposit Records (Register, Ledger, Copy) | Until paid or
escheated |
| 3. | Daily Report of Overdrafts | 2 years |
| 4. | Debits and Withdrawals | 5 years |
| 5. | Deposit and Credit Tickets | 5 years |
| 6. | Deposit Resolution (After Closed) | 3 years |
| 7. | Ledgers or Statements | 5 years |
| 8. | Posting or Transaction Journal | 1 year |
| 9. | Signature Cards, Contracts, and Agreements (After Closed) | 5 years |
| 10. | Undelivered Statements | 1 year |
| 11. | Unidentified or Unclaimed Deposit Records | Until escheated |

TELLERS

- | | | |
|----|--|----------|
| 1. | Balance Sheets, Recaps, or Records | 1 year |
| 2. | Cash Item Report | 1 year |
| 3. | Machine Tapes, Cash Ticket Copies, Posting or Transaction Journals | 6 months |

TRUST (Corporate)

- | | | |
|----|--|--|
| 1. | Account Ledger or Record | 7 years after
account closed |
| 2. | Posting or Transaction Journal | 7 years |
| 3. | Bonds of Indemnity | Permanent |
| 4. | Stock Certificates (Cancelled) | until returned to
corporation |
| 5. | Dividend Checks – Paid | 5 years |
| 6. | Dividend Check Register or Carbon Copy | Until paid |
| 7. | Bonds and Coupons –
Cancelled or Cremation Certificates | 7 years after
paid or until
returned to
corporation |
| 8. | Resolutions and Authorizations | 7 years after
account closed |

TRUST (Employee Benefit)

- | | | |
|----|--|---------------------------------|
| 1. | Accountings | 6 years after
account closed |
| 2. | Agreements, Authorizations and Resolutions | 6 years after
account closed |

- | | | |
|----|-------------------------------|---------------------------------|
| 3. | Account Ledger or Record | 6 years after
account closed |
| 4. | Disbursement Checks | 6 years |
| 5. | Check Register or Carbon Copy | Until Paid |
| 6. | Bonds of Indemnity | Permanent |

TRUST (Personal)

- | | | |
|----|-------------------------------|---------------------------------|
| 1. | Accountings | 3 years after
account closed |
| 2. | Agreements and Authorizations | 5 years after
account closed |
| 3. | Account Ledger or Record | 7 years after
account closed |
| 4. | Minutes of Committee Meetings | Permanent |
| 5. | Receipts for Assets Delivered | 3 years after
account closed |
| 6. | Tax Return | 10 years or
until IRS clears |
| 7. | Disbursement Checks | 5 years |
| 8. | Check Register or Carbon Copy | Until paid |
| 9. | Bonds of Indemnity | Permanent |

(b) Nothing in these Rules shall prohibit any bank or branch thereof from keeping and maintaining any and all of its records for a longer period of time than the minimum time set forth as the minimum retention period.

(c) Paragraph (a) of this Rule sets forth state minimum records retention requirements and does not necessarily include nor cover records required to be kept by federal agencies such as federal bank supervisory agencies, wage hour, and other federal agencies. Banks shall also observe the requirements of such federal agencies in retention of records required by such agencies.

(d) Nothing in these Rules shall prohibit any bank or branch thereof from causing any or all of its records, whether permanent records or records designated to be retained for a minimum period of time, to be maintained pursuant to G.S. 53C-6-14.

History Note: Authority G.S. 53C-2-5; 53C-6-14; 53C-8-1;

Eff. February 1, 1976;

Amended Eff. January 1, 2013; May 1, 1992; September 1, 1990; January 1, 1985.

04 NCAC 03C .1002 LEASING OF PERSONAL PROPERTY

Each bank or branch thereof acquiring and leasing personal property or personal property subject to an existing lease together with the lessor's interest therein and incurring such additional obligations as may be incident to becoming an owner and lessor of such property may do so only when subject to the following restrictions:

- | | |
|---|--|
| <p>(1) Before the acquisition thereof upon the specific request and for the use of the customer the prospective lessee shall execute an agreement to lease such property;</p> <p>(2) During the minimum period of the lease, terms require payment to the bank rentals which in the aggregate will exceed the total expenditures by the bank for or in connection with the ownership, maintenance, and protection of the property. In determining the total expenditures under this Rule, a bank may deduct a realistic residual value in determining the rentals to be charged during the term of a lease agreement. Any unguaranteed portion of the estimated residual value relied upon by the bank to calculate total expenditures under this</p> | <p>(3) The total leasing obligations or rentals to any bank of any person, partnership, association, corporation; or limited liability company shall at no time exceed the legal limit permitted by G.S. 53C-6-1;</p> <p>(4) The overall investment of the bank in such property leased to all lessees shall at no time exceed 200 percent of its capital;</p> <p>(5) The bank shall at all times maintain adequate protection by way of insurance or indemnity provided by the lessee;</p> <p>(6) No such lease or other agreement shall obligate the bank to maintain, repair, or service personal property in connection with any lease held by it;</p> |
|---|--|

- (7) No personal property acquired pursuant to the ownership or lease of personal property shall be included in the computable investment in fixed assets under G.S. 53C-5-2;
- (8) Rental payments collected by the bank under lease arrangements shall be rent and shall not be deemed to be interest or compensation for the use of money loaned;
- (9) Upon expiration of any lease whether by virtue of the lease agreement or by virtue of the retaking of possession by the bank, such personal property shall be re-let, sold, or otherwise disposed of, or charged off within one year from the time of expiration of such lease; and
- (10) Upon written request the Commissioner may waive or modify any of the foregoing restrictions. In evaluating such a request, the Commissioner shall consider such factors as:
 - (a) the bank's size, profitability, capital sufficiency, risk profile, market, and operational capabilities, especially with a view towards the bank's involvement in lease financing;
 - (b) current best practices of financial institutions engaged in lease financing;
 - (c) the nature, size, duration, aggregate amount, and other risks attendant to the bank's lease financing transactions;
 - (d) the risk of significant loss to the bank if the Commissioner does not grant the request.

History Note: Authority G.S. 53C-2-5; 53C-5-2; 53C-8-1;
Eff. February 1, 1976;
Amended Eff. January 1, 2013; April 1, 2007; September 1, 1990; September 1, 1983; May 1, 1982.

04 NCAC 03C .1103 CAPITAL STOCK
04 NCAC 03C .1104 MAINTENANCE OF CAPITAL SURPLUS
04 NCAC 03C .1105 NOTICE OF IMPAIRMENT

History Note: Authority G.S. 53-1(3)d; 53-2(4); 53-42; 53-104;
Eff. May 1, 1992;
Repealed Eff. January 1, 2013.

04 NCAC 03C .1201 SCHOOL THRIFT OR SAVINGS PLAN
04 NCAC 03C .1202 RESUME OF THE PLAN

History Note: Authority G.S. 53-43.6; 53-92; 53-104;
Eff. February 1, 1976;
Repealed Eff. January 1, 2013.

04 NCAC 03C .1302 SHARE PURCHASE AND OPTION PLANS

History Note: Authority G.S. 53-10; 53-43; 53-43.3; 53-104;
Eff. February 1, 1976;
Amended Eff. October 1, 2011; June 1, 1995; July 1, 1990;
Repealed Eff. January 1, 2013.

04 NCAC 03C .1403 RESERVE FUND DEFINED

History Note: Authority G.S. 53-51; 53-92; 53-104;
Eff. September 26, 1979;
Amended Eff. August 6, 1981;
Repealed Eff. January 1, 2013.

04 NCAC 03C .1701 DEFINITIONS

History Note: Authority G.S. 53-104; 53-115; 53-127;
Eff. June 1, 1995;
Repealed Eff. January 1, 2013.

04 NCAC 03C .1703 ESTABLISHMENT OF LOCKBOX SERVICES
04 NCAC 03C .1704 ESTABLISHMENT OF A TRUST REPRESENTATIVE OFFICE (TRO)

History Note: Authority G.S. 53-104; 53-115; 53-127;
Eff. June 1, 1995;
Repealed Eff. January 1, 2013.

04 NCAC 03L .0404 CASH-OUT TRANSACTIONS
04 NCAC 03L .0405 LIMITATION ON DELAYED DEPOSIT CHECK CASHING

History Note: Authority G.S. 53-92; 53-93; 53-281; 53-282;
 53-288;
Eff. July 1, 2000;
Repealed Eff. January 1, 2013.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 09 .3007 EARLY LEARNING STANDARDS AND CURRICULA

- (a) NC Pre-K programs shall use North Carolina's Early Learning and Development Standards (and subsequent editions), as developed by a group of state and national early childhood experts. The Early Learning and Development Standards can be found on the Division of Child Development and Early Education's website at <http://www.ncchildcare.net>.
- (b) Each NC Pre-K classroom shall use a curriculum as defined in 10A NCAC 09 .0102.

History Note: Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a);
Eff. January 1, 2013.

10A NCAC 13D .2106 DENIAL, AMENDMENT, OR REVOCATION OF LICENSE

(a) The Department shall deny any licensure application upon becoming aware that the applicant is not in compliance with G.S. 131E, Article 9 and the rules adopted under that law.

(b) The Department may amend a license by reducing it from a full license to a provisional license whenever the Department finds that:

- (1) the licensee has substantially failed to comply with the provisions of G.S. 131E, Article 6 and the rules promulgated under that article; and
- (2) there is continued non-compliance after the third revisit.

(c) The Department shall give the licensee written notice of the amendment to the license. This notice shall be given personally or by certified mail and shall set forth:

- (1) the length of the provisional license;
- (2) a reference to the statement of deficiencies that contains the facts;
- (3) the statutes or rules alleged to be violated; and
- (4) notice of the facility's right to a contested case hearing on the amendment of the license.

(d) The provisional license shall be effective as specified in the notice and shall be posted in a location within the facility, accessible to public view, in lieu of the full license. The provisional license shall remain in effect until:

- (1) the Department restores the licensee to full licensure status; or
- (2) the Department revokes the licensee's license.

(e) The Department may revoke a license whenever:

- (1) The Department finds that:
 - (A) the licensee has substantially failed to comply with the provisions of G.S. 131E, Article 6 and the rules promulgated under that article; and
 - (B) there continues to be non-compliance at the third revisit; or
- (2) The Department finds that there has been any failure to comply with the provisions of G.S. 131E, Article 6 and the rules promulgated under that article that endanger the health, safety or welfare of the patients in the facility.

(f) The issuance of a provisional license is not a procedural prerequisite to the revocation of a license pursuant to Paragraph (e) of this Rule.

(g) The Department may, in accordance with G.S. 131E-232, petition to have a temporary manager appointed to operate a facility.

*History Note: Authority G.S. 131E-104;
Eff. January 1, 1996;
Amended Eff. January 1, 2013.*

10A NCAC 13D .2107 SUSPENSION OF ADMISSIONS

(a) The Department may suspend the admission of new patients to a facility when warranted under the provisions of G.S. 131E-109(c).

(b) The Department shall notify the facility personally or by certified mail of the decision to suspend admissions. Such notice shall include:

- (1) a reference to the statement of deficiencies that contains the facts;
- (2) citation of statutes and rules alleged to be violated; and
- (3) notice of the facility's right to a contested case hearing on the suspension.

(c) The suspension is effective on the date specified in the notice of suspension. The suspension shall remain effective until the facility demonstrates to the Department that conditions are no longer detrimental to the health and safety of the patients.

(d) The facility shall not admit new patients during the effective period of the suspension.

(e) Patients requiring hospitalization during the period of suspension of admissions shall be readmitted after hospitalization or on return from temporary care to the facility based on the availability of a bed and the ability of the facility to provide necessary care. Upon return from the hospital, the requirements of G.S. 131E-130 apply.

*History Note: Authority G.S. 131E-104;
Eff. January 1, 1996;
Amended Eff. January 1, 2013.*

10A NCAC 13D .2202 ADMISSIONS

(a) No patient shall be admitted except by a physician. Admission shall be in accordance with facility policies and procedures.

(b) The facility shall acquire, prior to or at the time of admission, orders for the immediate care of the patient from the admitting physician.

(c) Within 48 hours of admission, the facility shall acquire medical information which shall include current medical findings, diagnoses, and other information necessary to formalize the initial plan of care.

(d) Only persons who are 18 years of age or older shall be admitted to the adult care home portion of a combination facility.

*History Note: Authority G.S. 131E-104;
RRC objection due to lack of statutory authority Eff. July 13, 1995;
Eff. January 1, 1996;
Amended Eff. January 1, 2013.*

10A NCAC 13D .2203 PATIENTS NOT TO BE ADMITTED

(a) Patients who require health, habilitative or rehabilitative care beyond those for which the facility is licensed and is capable of providing shall not be admitted to the licensed nursing home.

(b) No person requiring continuous nursing care shall be admitted to an adult care home bed in a combination facility, except under emergency situations as described in Rule .2105 of this Subchapter. Should an existing resident of an adult care home bed require continuous nursing care, the facility shall either discharge the resident or provide the next available nursing facility bed (that is not needed to comply with G.S.

131E-130) to the resident to ensure continuity of care and to prevent unnecessary discharge from the facility.

(c) During the resident's stay in the adult care section of the combination facility, the facility shall ensure that necessary nursing services are provided. Should the facility be unable to provide necessary services the resident requires, whether in the adult care or nursing section, the facility shall follow discharge procedures according to Rule .2205 of this Subchapter.

*History Note: Authority G.S. 131E-104;
RRC objection due to lack of statutory authority Eff. July 13, 1995;
Eff. January 1, 1996;
Amended Eff. January 1, 2013.*

10A NCAC 13D .2303 NURSE STAFFING REQUIREMENTS

(a) The facility shall provide licensed nursing personnel consistent with applicable occupational regulations and sufficient to accomplish the following:

- (1) patient needs assessment;
- (2) patient care planning; and
- (3) supervisory functions in accordance with the levels of patient care advertised or offered by the facility.

(b) The facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the physical, mental, and psychosocial well-being of each patient, as determined by patient assessments and individual plans of care.

(c) A multi-storied facility shall have at least one direct-care staff member on duty on each patient care floor at all times.

(d) Except for designated units with higher staffing requirements noted elsewhere in this Subchapter, daily direct patient care nursing staff, licensed and unlicensed, shall include:

- (1) At least one licensed nurse on duty for direct patient care at all times.
- (2) A registered nurse for at least eight consecutive hours a day, seven days a week. This coverage can be spread over more than one shift if such a need exists. The director of nursing may be counted as meeting the requirements for both the director of nursing and patient staffing for facilities with a total census of 60 nursing beds or less.

*History Note: Authority G.S. 131E-104; 131E-114.1;
Eff. January 1, 1996;
Amended Eff. January 1, 2013.*

10A NCAC 13D .2306 MEDICATION ADMINISTRATION

(a) The facility shall ensure that medications are administered in accordance with applicable occupational licensure regulations and manufacturer's recommendations.

(b) The facility shall ensure that each patient's drug regimen is free from drugs used in excessive dose or duplicative therapy, for excessive duration or without indications for the prescription of the drug. Drugs shall not be used without monitoring or in

the presence of adverse conditions that indicate the drugs' usage should be modified or discontinued. As used in this Paragraph:

- (1) "Excessive dose" means the total amount of any medication (including duplicate therapy) given at one time or over a period of time that is greater than the amount recommended by the manufacturer for a resident's age and condition.
- (2) "Excessive Duration" means the medication is administered beyond the manufacturer's recommended time frames or facility-established stop order policies or without either evidence of additional therapeutic benefit for the resident or clinical evidence that would warrant the continued use of the medication.
- (3) "Duplicative Therapy" means multiple medications of the same pharmacological class or category or any medication therapy that replicates a particular effect of another medication that the individual is taking.
- (4) "Indications for the prescription" means a documented clinical rationale for administering a medication that is based upon an assessment of the resident's condition and therapeutic goals and is consistent with manufacturer's recommendations.
- (5) "Monitoring" means ongoing collection and analysis of information (such as observations and diagnostic test results) and comparison to baseline data in order to:
 - (A) Ascertain the individual's response to treatment and care, including progress or lack of progress toward a therapeutic goal;
 - (B) Detect any complications or adverse consequences of the condition or of the treatments; and
 - (C) Support decisions about modifying, discontinuing, or continuing any interventions.

(c) Antipsychotic therapy shall not be initiated on any patient unless necessary to treat a clinically diagnosed and clinically documented condition. When antipsychotic therapy is prescribed, unless clinically contraindicated, gradual dose reductions and behavioral interventions shall be employed in an effort to discontinue these drugs. "Gradual dose reduction" means the stepwise tapering of a dose to determine if symptoms, conditions or risks can be managed by a lower dose or if the dose or the medication can be discontinued.

(d) The facility shall ensure that procedures aimed at minimizing medication error rates include the following:

- (1) All medications or drugs and treatments shall be administered and discontinued in accordance with signed medical orders which are recorded in the patient's medical record. Such orders shall be complete and include drug name, strength, quantity to be administered, route of administration,

- frequency and, if ordered on an as-needed basis, a stated indication for use.
- (2) The requirements for self-administration of medication shall include the following:
 - (A) determination by the interdisciplinary team that this practice is safe;
 - (B) administration ordered by the physician or other person legally authorized to prescribe medications;
 - (C) instructions for administration printed on the medication label; and
 - (D) administration of medication monitored by the nursing staff and consultant pharmacist.
- (3) The administration of one patient's medications to another patient is prohibited except in the case of an emergency. In the event of such emergency, the facility shall ensure that the borrowed medications are replaced and so documented.
- (4) Omission of medications and the reason for omission shall be indicated in the patient's medical record.
- (5) Medication administration records shall provide time of administration, identification of the drug and strength of drug, quantity of drug administered, route of administration, frequency, documentation sufficient to determine the staff who administered the drugs. Medication administration records shall indicate documentation of injection sites and topical medication sites requiring rotation of transdermal medication.
- (6) The pharmacy shall receive an exact copy of each physician's order for medications and treatments.
- (7) When medication orders do not state the number of doses or days to administer the medication, the facility shall implement automatic stop orders according to manufacturer's recommendations.
- (8) The facility shall maintain an accountability of controlled substances as defined by the North Carolina Controlled Substances Act, G.S. 90, Article 5.

History Note: Authority G.S. 131E-104; Eff. January 1, 1996; Amended Eff. January 1, 2013.

10A NCAC 13D .2604 DRUG PROCUREMENT

- (a) The facility shall not possess a stock of prescription drugs for general or common use except as permitted by the North Carolina Board of Pharmacy and as follows:
 - (1) for all intravenous and irrigation solutions in single unit quantities exceeding 49 ml. and related equipment for the use and administration of such;
 - (2) diagnostic agents;

- (3) vaccines;
- (4) drugs designated for inclusion in an emergency kit approved by the facility's Quality Assurance Committee;
- (5) water for injection; and
- (6) normal saline for injection.
- (b) Patient Drugs:
 - (1) The contents of all prescriptions shall be kept in the original container bearing the original label as described in Subparagraph (b)(2) of this Rule.
 - (2) Except in a 72-hour or less unit dose system, each individual patient's prescription drugs shall be labeled with the following information:
 - (A) the name of the patient for whom the drug is intended;
 - (B) the most recent date of issue;
 - (C) the name of the prescriber;
 - (D) the name and concentration of the drug, quantity dispensed, and prescription serial number;
 - (E) a statement of generic equivalency which shall be indicated if a brand other than the brand prescribed is dispensed;
 - (F) the expiration date, unless dispensed in a single unit or unit dose package;
 - (G) auxiliary statements as required of the drug;
 - (H) the name, address and telephone number of the dispensing pharmacy; and
 - (I) the name of the dispensing pharmacist.
- (c) Non-prescription drugs shall be kept in the original container as received from the supplier and shall be labeled with at least:
 - (1) the name and concentration of the drug, and quantity packaged;
 - (2) the name of the manufacturer, lot number and expiration date.

History Note: Authority G.S. 131E-104; 131E-117; Eff. January 1, 1996; Amended Eff. January 1, 2013.

10A NCAC 13D .3001 SPECIALIZED REHABILITATIVE AND HABILITATIVE SERVICES
10A NCAC 13D .3002 QUALITY OF SPECIALIZED REHABILITATION SERVICES

History Note: Authority G.S. 131E-104; RRC objection due to lack of statutory authority Eff. July 13, 1995 (Rule .3002); Eff. January 1, 1996; Repealed Eff. January 1, 2013.

**10A NCAC 13D .3011 HIV DESIGNATED UNIT
POLICIES AND PROCEDURES**
**10A NCAC 13D .3012 PHYSICIAN SERVICES IN AN
HIV DESIGNATED UNIT**
**10A NCAC 13D .3013 SPECIAL NURSING
REQUIREMENTS FOR AN HIV DESIGNATED UNIT**
**10A NCAC 13D .3014 SPECIALIZED STAFF
EDUCATION FOR HIV DESIGNATED UNITS**
**10A NCAC 13D .3015 USE OF INVESTIGATIONAL
DRUGS FOR HIV DESIGNATED UNITS**
**10A NCAC 13D .3016 ADDITIONAL SOCIAL WORK
REQUIREMENTS FOR HIV DESIGNATED UNITS**

*History Note: Authority G.S. 131E-104;
 RRC objection due to ambiguity Eff. July 13, 1995 (Rules .3011,
 .3012);
 RRC objection due to lack of statutory authority and ambiguity
 Eff. July 13, 1995 (Rule .3013);
 RRC objection due to lack of statutory authority Eff. July 13,
 1995 (Rules .3015, .3016);
 Eff. January 1, 1996;
 Repealed Eff. January 1, 2013.*

**10A NCAC 13D .3021 PHYSICIAN REQUIREMENTS
FOR INPATIENT REHABILITATION FACILITIES OR
UNITS**
**10A NCAC 13D .3022 ADMISSION CRITERIA FOR
INPATIENT REHABILITATION FACILITIES OR UNITS**
**10A NCAC 13D .3023 COMPREHENSIVE INPATIENT
REHABILITATION EVALUATION**
**10A NCAC 13D .3024 COMPREHENSIVE INPATIENT
REHABILITATION INTERDISCIPLINARY
TREAT/PLAN**
**10A NCAC 13D .3025 DISCHARGE CRITERIA FOR
INPATIENT REHABILITATION FACILITIES OR UNITS**
**10A NCAC 13D .3026 COMPREHENSIVE
REHABILITATION PERSONNEL ADMINISTRATION**
**10A NCAC 13D .3027 COMPREHENSIVE INPATIENT
REHABILITATION PROGRAM STAFFING
REQUIREMENTS**
**10A NCAC 13D .3028 STAFF TRAINING FOR
INPATIENT REHABILITATION FACILITIES OR UNIT**
**10A NCAC 13D .3029 EQUIPMENT
REQS/COMPREHENSIVE INPATIENT
REHABILITATION PROGRAMS**
**10A NCAC 13D .3030 PHYSICAL FACILITY
REQS/INPATIENT REHABILITATION FACILITIES OR
UNIT**

*History Note: Authority G.S. 131E-104;
 RRC objection due to lack of statutory authority Eff. July 13,
 1995 (Rules .3021, .3027);
 Eff. January 1, 1996;
 Repealed Eff. January 1, 2013.*

**10A NCAC 13D .3033 DEEMED STATUS FOR
INPATIENT REHABILITATION FACILITIES OR UNITS**

History Note: Authority G.S. 131E-104;

*Eff. January 1, 1996;
 Repealed Eff. January 1, 2013.*

10A NCAC 13P .0511 CRIMINAL HISTORIES

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

(b) In addition to Paragraph (a) of this Rule, the OEMS shall carry out the following for all EMS Personnel whose primary residence is outside North Carolina, individuals who have resided in North Carolina for 60 months or less, and individuals under investigation who may be subject to administrative enforcement action by the Department under the provisions of Rule .1507 of this Subchapter:

- (1) obtain a signed consent form for a criminal history check;
- (2) obtain fingerprints on an SBI identification card or live scan electronic fingerprinting system at an agency approved by the North Carolina Department of Justice, State Bureau of Investigation;
- (3) obtain the criminal history from the Department of Justice; and
- (4) collect any processing fees from the individual identified in Paragraph (a) or (b) as required by the Department of Justice pursuant to G.S. 114-19.21 prior to conducting the criminal history background check.

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

*History Note: Authority G.S. 114-19.21; 131E-159(g); 143-508(d)(3),(10);
 Eff. January 1, 2009;
 Amended Eff. January 1, 2013.*

**10A NCAC 13P .0701 DENIAL, SUSPENSION,
AMENDMENT OR REVOCATION**

*History Note: Authority G.S. 131E-155.1(d); 131E-157(c);
 131E-159(a),(f); 131E-162; 143-508(d)(10);
 Temporary Adoption Eff. January 1, 2002;
 Eff. January 1, 2004;
 Amended Eff. January 1, 2009;
 Repealed Eff. January 1, 2013.*

**10A NCAC 13P .0702 PROCEDURES FOR DENIAL,
SUSPENSION, AMENDMENT, OR REVOCATION**

*History Note: Authority G.S. 143-508(d)(10);
 Temporary Adoption Eff. January 1, 2002;
 Eff. April 1, 2003;*

Repealed Eff. January 1, 2013.

10A NCAC 13P .1501 ENFORCEMENT DEFINITIONS

Notwithstanding Section .0100 of this Subchapter, for the purpose of this Section, the following definitions apply to Rules .1502, .1503, .1504, and .1506 for EMS Systems, Licensed EMS Providers, Specialty Care Transport Programs, and EMS Educational Institutions:

- (1) "Contingencies" mean conditions placed on an initial or renewal designation, approval or license that, if unmet, can result in the loss or amendment of the designation, approval, or license.
- (2) "Deficiency" means the failure to meet essential criteria for credentialing, approval, or licensing as specified in Sections .0200, .0300 or .0600 of this Subchapter that can serve as the basis for a focused review or denial of a designation, approval or license.
- (3) "Essential Criteria" means those items listed in Sections .0200, .0300 or .0600 of this Subchapter that are the minimum requirements for the respective application for initial or renewal designation, approval, or licensing.
- (4) "Focused Review" means an evaluation by the OEMS of a regulated entity's corrective actions to remove contingencies that are a result of deficiencies placed upon it following review of an application for renewal.

History Note: Authority G.S. 131E-155(13a); 143-508(b),(d)(1),(d)(4),(d)(13); Eff. January 1, 2013.

10A NCAC 13P .1502 LICENSED EMS PROVIDERS

(a) The Department shall amend any EMS Provider license by reducing it from a full license to a provisional license whenever the Department finds that:

- (1) the licensee failed to comply with the provisions of G.S. 131E, Article 7, and the rules adopted under that article;
- (2) there is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and
- (3) there is a reasonable probability that the licensee will be able thereafter to remain in compliance with the licensure rules for the foreseeable future.

(b) The Department shall give the licensee written notice of the amendment of the EMS Provider license. This notice shall be given personally or by certified mail and shall set forth:

- (1) the length of the provisional EMS Provider license;
- (2) the factual allegations;
- (3) the statutes or rules alleged to be violated; and
- (4) notice of the EMS provider's right to a contested case hearing on the amendment of the EMS Provider license.

(c) The provisional EMS Provider license is effective immediately upon its receipt by the licensee and shall be posted in a location at the primary business location of the EMS Provider, accessible to public view, in lieu of the full license. The provisional license remains in effect until the Department:

- (1) restores the licensee to full licensure status; or
- (2) revokes the licensee's license.

(d) The Department shall revoke or suspend an EMS Provider license whenever the Department finds that the licensee:

- (1) failed to comply with the provisions of G.S. 131E, Article 7, and the rules adopted under that article and it is not reasonably probable that the licensee can remedy the licensure deficiencies within 12 months or less;
- (2) failed to comply with the provisions of G.S. 131E, Article 7, and the rules adopted under that Article and, although the licensee may be able to remedy the deficiencies, it is not reasonably probable that the licensee will be able to remain in compliance with licensure rules for the foreseeable future;
- (3) failed to comply with the provision of G.S. 131E, Article 7, and the rules adopted under that article that endanger the health, safety or welfare of the patients cared for or transported by the licensee;
- (4) obtained or attempted to obtain an ambulance permit, EMS nontransporting vehicle permit, or EMS Provider license through fraud or misrepresentation;
- (5) repeated deficiencies placed on the EMS Provider License in previous compliance site visits;
- (6) failed to provide emergency medical care within the defined EMS service area in a timely manner as determined by the EMS System;
- (7) altered, destroyed, attempted to destroy, withheld or delayed release of evidence, records, or documents needed for a complaint investigation; or
- (8) continues to operate within an EMS System after a Board of County Commissioners has terminated its affiliation with the licensee.

(e) The issuance of a provisional EMS Provider license is not a procedural prerequisite to the revocation or suspension of a license pursuant to Paragraph (d) of this Rule.

History Note: Authority G.S. 131E-155.1(d); 143-508(d)(10); Eff. January 1, 2013.

10A NCAC 13P .1503 SPECIALTY CARE TRANSPORT PROGRAMS

(a) The Department shall deny the initial or renewal approval, without first allowing a focused review, of a SCTP for any of the following reasons:

- (1) failure to comply with the provisions of G.S.131E, Article 7 and the rules adopted under that Article;
- (2) obtaining or attempting to obtain approval through fraud or misrepresentation;
- (3) endangerment to the health, safety, or welfare of patients cared for by the SCTP; or
- (4) repeated deficiencies placed on the program in previous site visits.

(b) When an SCTP is required to have a focused review, it must demonstrate compliance with the provisions of G.S. 131E, Article 7 and the rules adopted under that Article within 12 months or less.

(c) The Department shall revoke an SCTP approval at any time or deny a request for renewal of approval whenever the Department finds that the SCTP failed to comply with the provisions of G.S.131E, Article 7 and the rules adopted under that Article; and

- (1) it is not probable that the SCTP can remedy the deficiencies within 12 months or less;
- (2) although the SCTP may be able to remedy the deficiencies, it is not probable that the SCTP shall be able to remain in compliance with designation rules for the foreseeable future;
- (3) the SCTP fails to meet the requirements of a focused review;
- (4) endangerment to the health, safety, or welfare of patients cared for or transported by the SCTP;
- (5) fails to provide SCTP services within the defined service area in a timely manner as determined by the Department;
- (6) continues to operate within an EMS System after a Board of County Commissioners has terminated its affiliation with the SCTP; or
- (7) alters, destroys or attempts to destroy evidence needed for a complaint investigation.

(d) The Department shall give the SCTP written notice of revocation. This notice shall be given personally or by certified mail and shall set forth:

- (1) the factual allegations;
- (2) the statutes or rules alleged to be violated; and
- (3) notice of the program's right to a contested case hearing on the revocation of the approval.

(e) Focused review is not a procedural prerequisite to the revocation of an approval pursuant to Paragraph (c) of this Rule.

History Note: Authority 143-508(d)(10), (d)(13); Eff. January 1, 2013.

10A NCAC 13P .1504 TRAUMA CENTERS

(a) The Department shall deny the initial or renewal designation, without first allowing a focused review, of a trauma center for any of the following reasons:

- (1) failure to comply with G.S. 131E-162 and the rules adopted under that Statute;
- (2) obtaining or attempting to obtain a trauma center designation through fraud or misrepresentation;

- (3) endangerment to the health, safety, or welfare of patients cared for in the hospital; or
- (4) repeated deficiencies placed on the trauma center in previous site visits.

(b) When a trauma center is required to have a focused review, it must demonstrate compliance with the provisions of G.S. 131E-162 and the rules adopted under that Statute within 12 months or less.

(c) The Department shall revoke a trauma center designation at any time or deny a request for renewal of designation, whenever the Department finds that the trauma center has failed to comply with the provisions of G.S. 131E-162 and the rules adopted under that Statute; and

- (1) it is not probable that the trauma center can remedy the deficiencies within 12 months or less;
- (2) although the trauma center may be able to remedy the deficiencies it is not probable that the trauma center shall be able to remain in compliance with designation rules for the foreseeable future;
- (3) the trauma center failed to meet the requirements of a focused review;
- (4) failure to comply endangers the health, safety, or welfare of patients cared for in the trauma center; or
- (5) the trauma center altered, destroyed or attempted to destroy evidence needed for a complaint investigation.

(d) The Department shall give the trauma center written notice of revocation. This notice shall be given personally or by certified mail and shall set forth:

- (1) the factual allegations;
- (2) the statutes or rules alleged to be violated; and
- (3) notice of the hospital's right to a contested case hearing on the revocation of the designation.

(e) Focused review is not a procedural prerequisite to the revocation of a designation pursuant to Paragraph (c) of this Rule.

(f) A trauma center may voluntarily withdraw its designation for a maximum of one year by submitting a written request to the Department. This request shall include the reasons for withdrawal and a plan for resolution of the issues. To reactivate the designation, the facility shall provide to the Department written documentation of compliance. Voluntary withdrawal does not affect the original expiration date of the trauma center's designation.

(g) If the trauma center fails to resolve the issues which resulted in a voluntary withdrawal within one year, the Department shall revoke the trauma center designation.

(h) In the event of a revocation or voluntary withdrawal, the Department shall provide written notification to all hospitals and emergency medical services providers within the trauma center's defined trauma primary catchment area. The Department shall provide written notification to all hospitals and emergency medical services providers within the trauma center's defined trauma primary catchment area if, and when, the voluntary withdrawal reactivates to full designation.

History Note: Authority G.S. 131E-162; 143-508(d)(10); Eff. January 1, 2013.

10A NCAC 13P .1505 EMS EDUCATIONAL INSTITUTIONS

(a) The Department shall deny the initial or renewal credential, without first allowing a focused review, of an EMS Educational Institution for any of the following reasons:

- (1) failure to comply with the provisions of Section .0600 of this Subchapter;
- (2) attempting to obtain an EMS Educational Institution designation through fraud or misrepresentation;
- (3) endangerment to the health, safety, or welfare of patients cared by students of the EMS Educational Institution; or
- (4) repetition of deficiencies placed on the EMS Educational Institution in previous compliance site visits.

(b) When an EMS Educational Institution is required to have a focused review, it must demonstrate compliance with the provisions of Section .0600 of this Subchapter within 12 months or less.

(c) The Department will revoke an EMS Educational Institution credential at any time or deny a request for renewal of credential, whenever the Department finds that the EMS Educational Institution has failed to comply with the provisions of Section .0600 of this Subchapter; and:

- (1) it is not probable that the EMS Educational Institution can remedy the deficiencies within 12 months or less;
- (2) although the EMS Educational Institution may be able to remedy the deficiencies, it is not probable that the EMS Educational Institution shall be able to remain in compliance with credentialing rules for the foreseeable future;
- (3) the EMS Educational Institution failed to meet the requirements of a focused review;
- (4) the failure to comply endangered the health, safety, or welfare of patients cared for as part of an EMS educational program; or
- (5) the EMS Educational Institution altered, destroyed or attempted to destroy evidence needed for a complaint investigation.

(d) The Department shall give the EMS Educational Institution written notice of revocation. This notice shall be given personally or by certified mail and shall set forth:

- (1) the factual allegations;
- (2) the statutes or rules alleged to be violated; and
- (3) notice of the EMS Educational Institution's right to a contested case hearing on the revocation of the credential.

(e) Focused review is not a procedural prerequisite to the revocation of a credential pursuant to Paragraph (c) of this Rule.

(f) An EMS Educational Institution may voluntarily withdraw its credential for a maximum of one year by submitting a written request. This request shall include the reasons for withdrawal and a plan for resolution of the deficiencies. To reactivate the credential, the institution shall provide to the Department written

documentation of compliance. Voluntary withdrawal does not affect the original expiration date of the EMS Educational Institution's credential.

(g) If the institution fails to resolve the issues which resulted in a voluntary withdrawal within one year, the Department shall revoke the EMS Educational Institution credential.

(h) In the event of a revocation or voluntary withdrawal, the Department shall provide written notification to all EMS Systems within the EMS Educational Institution's defined service area. The Department shall provide written notification to all EMS Systems within the EMS Educational Institution's defined service area if, and when, the voluntary withdrawal reactivates to full credential.

History Note: Authority G.S. 143-508(d)(4),(d)(10); Eff. January 1, 2013.

10A NCAC 13P .1506 EMS VEHICLE PERMITS

(a) The Department shall deny, suspend, or revoke the permit of an ambulance or EMS nontransporting vehicle if the EMS Provider:

- (1) failed to comply with the provisions of G.S. 131E, Article 7, and the rules adopted under that Article;
- (2) obtained or attempted to obtain a permit through fraud or misrepresentation;
- (3) has continued deficiencies identified as repeated from previous compliance site visits;
- (4) failed to provide emergency medical care within the defined EMS service area in a timely manner as determined by the EMS System;
- (5) continued to operate the ambulance or nontransporting vehicle in a county after written notification by a Board of Commissioners to cease operations in that county;
- (6) altered, destroyed or attempted to destroy evidence needed for a complaint investigation; or
- (7) does not possess a valid EMS Provider License.

(b) In lieu of suspension or revocation, the Department shall issue a temporary permit for an ambulance or EMS nontransporting vehicle whenever the Department finds that:

- (1) the EMS Provider to which that vehicle is assigned has failed to comply with the provisions of G.S. 131E, Article 7, and the rules adopted under that Article;
- (2) there is a reasonable probability that the EMS Provider can remedy the permit deficiencies within a length of time determined by the Department; and
- (3) there is a reasonable probability that the EMS Provider will be willing and able to remain in compliance with the rules regarding vehicle permits for the foreseeable future.

(c) The Department shall give the EMS Provider written notice of the temporary permit. This notice shall be given personally or by certified mail and shall set forth:

- (1) the duration of the temporary permit not to exceed 60 days;
- (2) a copy of the vehicle inspection form;
- (3) the statutes or rules alleged to be violated; and
- (4) notice of the EMS Provider's right to a contested case hearing on the temporary permit.

(d) The temporary permit is effective immediately upon its receipt by the EMS Provider and remains in effect until the earlier of the expiration date of the permit or until the Department:

- (1) restores the vehicle to full permitted status; or
- (2) suspends or revokes the vehicle permit.

History Note: Authority G.S. 131E-156(c),(d); 131E-157(c); Eff. January 1, 2013.

10A NCAC 13P .1507 EMS PERSONNEL CREDENTIALS

(a) An EMS credential which has been forfeited under G.S.15A-1331A may not be reinstated until the person has successfully complied with the court's requirements, has petitioned the Department for reinstatement, has appeared before the EMS Disciplinary Committee, and has had reinstatement approved.

(b) The Department shall amend, deny, suspend, or revoke the credentials of EMS personnel for any of the following reasons:

- (1) failure to comply with the applicable performance and credentialing requirements as found in this Subchapter;
- (2) making false statements or representations to the Department or willfully concealing information in connection with an application for credentials;
- (3) making false statements or representations, willfully concealing information, or failing to respond within a reasonable period of time and in a reasonable manner to inquiries from the Department during a complaint investigation;
- (4) tampering with or falsifying any record used in the process of obtaining an initial EMS credential or in the renewal of an EMS credential;
- (5) in any manner or using any medium, engaging in the stealing, manipulating, copying, reproducing or reconstructing of any written EMS credentialing examination questions or scenarios;
- (6) cheating or assisting others to cheat while preparing to take or when taking a written EMS credentialing examination;
- (7) altering an EMS credential, using an EMS credential that has been altered or permitting or allowing another person to use his or her EMS credential for the purpose of alteration. Altering includes changing the name,

expiration date or any other information appearing on the EMS credential;

- (8) unprofessional conduct, including a failure to comply with the rules relating to the proper function of credentialed EMS personnel contained in this Subchapter or the performance of or attempt to perform a procedure that is detrimental to the health and safety of any person or that is beyond the scope of practice of credentialed EMS personnel or EMS instructors;
- (9) being unable to perform as credentialed EMS personnel with reasonable skill and safety to patients and the public by reason of illness; use of alcohol, drugs, chemicals, or any other type of material; or any physical or mental abnormality;
- (10) conviction in any court of a crime involving moral turpitude, a conviction of a felony, or conviction of a crime involving the scope of practice of credentialed EMS personnel;
- (11) by false representations obtaining or attempting to obtain money or anything of value from a patient;
- (12) adjudication of mental incompetence;
- (13) lack of competence to practice with a reasonable degree of skill and safety for patients including a failure to perform a prescribed procedure, failure to perform a prescribed procedure competently or performance of a procedure that is not within the scope of practice of credentialed EMS personnel or EMS instructors;
- (14) performing as an EMT-I, EMT-P, or EMD in any EMS System in which the individual is not affiliated and authorized to function;
- (15) testing positive for any substance, legal or illegal, that has impaired the physical or psychological ability of the credentialed EMS personnel to perform all required or expected functions while on duty;
- (16) failure to comply with G.S. 143-518 regarding the use or disclosure of records or data associated with EMS Systems, Specialty Care Transport Programs, or patients;
- (17) refusing to consent to any criminal history check required by G.S. 131E-159;
- (18) abandoning or neglecting a patient who is in need of care, without making reasonable arrangements for the continuation of such care;
- (19) falsifying a patient's record or any controlled substance records;
- (20) harassing, abusing, or intimidating a patient either physically or verbally;
- (21) engaging in any activities of a sexual nature with a patient including kissing, fondling or touching while responsible for the care of that individual;

- (22) any criminal arrests that involve charges which have been determined by the Department to indicate a necessity to seek action in order to further protect the public pending adjudication by a court;
- (23) altering, destroying or attempting to destroy evidence needed for a complaint investigation;
- (24) as a condition to the issuance of an encumbered EMS credential with limited and restricted practices for persons in the chemical addiction or abuse treatment program; or
- (25) representing or allowing others to represent that the credentialed EMS personnel has a credential that the credentialed EMS personnel does not in fact have.

(c) Pursuant to the provisions of S.L. 2011-37, any person listed on the North Carolina Department of Justice Sex Offender and Public Protection Registry shall be denied initial or renewal EMS credentials.

(d) When a person who is credentialed to practice as an EMS professional is also credentialed in another jurisdiction and that other jurisdiction takes disciplinary action against the person, the Department shall summarily impose the same or lesser disciplinary action upon receipt of the other jurisdiction's action. The EMS professional may request a hearing before the EMS Disciplinary Committee. At the hearing the issues shall be limited to:

- (1) whether the person against whom action was taken by the other jurisdiction and the Department are the same person;
- (2) whether the conduct found by the other jurisdiction also violates the rules of the Medical Care Commission; and
- (3) whether the sanction imposed by the other jurisdiction is lawful under North Carolina law.

History Note: Authority G.S. 131E-159(f),(g); 143-508(d)(10); S.L. 2011-37;
Eff. January 1, 2013.

10A NCAC 13P .1508 SUMMARY SUSPENSION

In accordance with G.S. 150B-3(c) an EMS Provider License, EMS Vehicle Permit, or EMS credential may be summarily suspended if the public health, safety, or welfare requires emergency action. This determination is delegated to the Chief of the OEMS. For EMS credentials, this determination shall be made following review by the EMS Disciplinary Committee pursuant to G.S. 131E-159(f). Such a finding shall be incorporated with the order of the Department and the order is effective on the date specified in the order or on service of the certified copy of the order at the last known address of the affected party, whichever is later, and continues to be effective during the proceedings. Failure to receive the order because of refusal of service or unknown address does not invalidate the order.

History Note: Authority G.S. 131E-159(f); 150B-3(c);
Eff. January 1, 2013.

10A NCAC 13P .1509 PROCEDURES FOR DENIAL, SUSPENSION, AMENDMENT, OR REVOCATION

The procedures for contested cases in G.S. 150B, Article 3, apply to the denial, suspension, amendment or revocation of credentials, licenses, permits, approvals, or designations.

History Note: Authority G.S. 143-508(d)(10);
Eff. January 1, 2013.

10A NCAC 14C .0102 LOCATION OF THE AGENCY

As used in this Subchapter, the agency is the Certificate of Need Section in the Division of Health Service Regulation, North Carolina Department of Health and Human Services. The location of the agency is 809 Ruggles Drive, Raleigh, North Carolina, 27603. The mailing address of the agency is Certificate of Need Section, Division of Health Service Regulation, 2704 Mail Service Center, Raleigh, NC 27699-2704. The telephone number of the agency is 919-855-3873.

History Note: Authority G.S. 131E-177;
Eff. November 1, 1996;
Amended Eff. January 1, 2013; January 1, 2000.

10A NCAC 14C .0302 HEALTH MAINTENANCE ORGANIZATIONS

History Note: Authority G.S. 131E-177; 131E-180;
Eff. January 1, 1982;
Amended Eff. November 1, 1996; January 1, 1990; November 1, 1989; February 1, 1986;
Temporary Amendment Eff. January 1, 2000;
Amended Eff. April 1, 2001;
Repealed Eff. January 1, 2013.

10A NCAC 14C .1701 DEFINITIONS

The following definitions apply to all rules in this Section:

- (1) "Approved heart-lung bypass machine" means a heart-lung bypass machine that was not operational prior to the beginning of the review period.
- (2) "Capacity" of a heart-lung bypass machine means 400 adult-equivalent open heart surgical procedures per year. One open heart surgical procedure on persons age 14 and under is valued at two adult open heart surgical procedures. For purposes of determining capacity, one open heart surgical procedure is defined to be one visit or trip by a patient to an operating room for an open heart operation.
- (3) "Cardiac Surgical Intensive Care Unit" means an intensive care unit as defined in 10A NCAC 14C .1201(2) and that is for exclusive use by post-surgical open heart patients.
- (4) "Existing heart-lung bypass machine" means a heart-lung bypass machine in operation prior to the beginning of the review period.

- (5) "Heart-lung bypass machine" has the same meaning as defined in G.S. 131E-176(10a).
- (6) "Open heart surgery services" has the same meaning as defined in G.S. 131E-176(18b).
- (7) "Open heart surgical procedures" means specialized surgical procedures that:
 - (a) utilize a heart-lung bypass machine (the "pump"); and
 - (b) are designed to correct congenital or acquired cardiac and coronary disease by opening the chest for surgery on the heart muscle, valves, arteries, or other parts of the heart.

History Note: Authority G.S. 131E-177(1); 131E-183;
Eff. January 1, 1987;
Amended Eff. November 1, 1989;
Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. November 1, 1996; January 4, 1994;
Temporary Amendment Eff. January 1, 1999;
Temporary Eff. January 1, 1999 Expired on October 12, 1999;
Temporary Amendment Eff. January 1, 2000 and shall expire on the date on which the permanent amendment to this Rule, approved by the Rules Review Commission on November 17, 1999, becomes effective;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. March 1, 2010;
Amended Eff. January 1, 2013; November 1, 2010.

10A NCAC 14C .1702 INFORMATION REQUIRED OF APPLICANT

- (a) An applicant that proposes to add an open heart surgery room or to acquire a heart-lung bypass machine shall use the acute care facility/medical equipment application form.
- (b) An applicant shall define the service area for the proposed project which shall be like the applicant's service area for other health services, unless the applicant documents that other providers are expected to refer patients to the applicant, including the methodology and assumptions used to define the service area.
- (c) An applicant shall provide the following information:
 - (1) the number of procedures performed on each heart-lung bypass machine owned by or operated in the facility during the 12-month period prior to the submission of the application, identified by ICD-9, ICD-10, or CPT code;
 - (2) a projection of the number of procedures using the applicant's existing, approved and proposed heart-lung bypass machines in each of the first three years following completion of the proposed project identified by ICD-9, ICD-10, or CPT code, including the methodology and assumptions used to make the projections;
 - (3) the number of patients from the proposed service area who are projected to receive procedures using the applicant's existing,

- approved, and proposed heart-lung bypass equipment by patient's county of residence in each of the first three years following completion of the proposed project, including the methodology and assumptions used to make these projections;
- (4) the projected patient referral sources;
- (5) evidence of the applicant's capability to communicate efficiently with emergency transportation agencies and with all hospitals serving the proposed service area;
- (6) the number and composition of open heart surgical teams available to the applicant; and
- (7) evidence of the applicant's capability to perform both cardiac catheterization and open heart surgical procedures 24 hours per day, 7 days per week.

History Note: Authority G.S. 131E-177(1); 131E-183;
Eff. January 1, 1987;
Amended Eff. November 1, 1989;
Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. November 1, 1996; January 4, 1994;
Temporary Amendment January 1, 1999;
Temporary Eff. January 1, 1999 Expired on October 12, 1999;
Temporary Amendment Eff. January 1, 2000;
Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000;
Amended Eff. January 1, 2013; April 1, 2001.

10A NCAC 14C .1703 PERFORMANCE STANDARDS

- (a) An applicant that proposes to develop open-heart surgery services shall:
 - (1) demonstrate that the projected utilization and proposed staffing patterns are such that each open heart surgical team shall perform at least 150 open heart surgical procedures in the third year following completion of the project; and
 - (2) document the assumptions and provide data supporting the methodology used to make these projections.
- (b) An applicant that proposes to acquire a heart-lung bypass machine shall demonstrate either:
 - (1) that the applicant's projected annual utilization of its existing, approved, and proposed heart-lung bypass machines (other than a machine acquired pursuant to 10A NCAC 14C .1703(b)(3)) will be at least 200 open heart surgical procedures per machine during the third year following completion of the project;
 - (2) that the projected annual utilization of its existing, approved, and proposed heart-lung bypass machines (other than a machine acquired pursuant to 10A NCAC 14C .1703(b)(3)), will be at least 900 hours per year during the third year following

- completion of the project, as measured in minutes used or staffed on standby for all procedures; or
- (3) that the proposed machine is needed to provide coverage for open-heart surgery emergencies and will not be scheduled for use at the same time as the applicant's equipment used to support scheduled open heart surgical procedures.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Eff. January 1, 1987; Amended Eff. November 1, 1989; Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. January 4, 1994; Temporary Amendment January 1, 1999; Temporary Eff. January 1, 1999 expired October 12, 1999; Temporary Amendment Eff. January 1, 2000 and shall expire on the date the permanent amendment to this rule, approved by the Rules Review Commission on November 17, 1999, becomes effective; Amended Eff. July 1, 2000; Temporary Amendment Eff. January 1, 2002; Amended Eff. April 1, 2003; Temporary Amendment Eff. February 1, 2010; Amended Eff. January 1, 2013; November 1, 2010.

10A NCAC 14C .1704 SUPPORT SERVICES

(a) An applicant that proposes to acquire a heart-lung bypass machine shall demonstrate that the following services will be available in the facility 24 hours per day, 7 days per week:

- (1) electrocardiography laboratory and testing services, including stress testing and continuous cardiogram monitoring;
- (2) echocardiography service;
- (3) blood gas laboratory;
- (4) nuclear medicine laboratory;
- (5) pulmonary function unit;
- (6) staffed blood bank;
- (7) hematology laboratory or coagulation laboratory;
- (8) microbiology laboratory; and
- (9) clinical pathology laboratory with facilities for blood chemistry.

(b) An applicant that proposes to develop open-heart surgery services shall demonstrate that the following services will be available in the facility 24 hours per day, 7 days per week:

- (1) a dedicated cardiac surgical intensive care unit;
- (2) for facilities performing pediatric open heart surgery services, a pediatric intensive care unit that will be a distinct intensive care unit and will meet the requirements of 10A NCAC 14C .1300;
- (3) an emergency department with full-time director, staffed for cardiac emergencies with acute coronary suspect surveillance area and

- voice communication linkage to the ambulance service and the coronary care unit; and
- (4) cardiac catheterization services including both diagnostic and interventional cardiac catheterization capabilities.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Eff. January 1, 1987; Amended Eff. November 1, 1989; Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. January 1, 2013; January 4, 1994.

10A NCAC 14C .1705 STAFFING AND STAFF TRAINING

(a) An applicant that proposes to acquire a heart-lung bypass machine shall demonstrate that it can meet the following staffing requirements:

- (1) at least two cardiovascular surgeons on the medical staff, at least one of whom is certified by the American Board of Thoracic Surgery; and
- (2) one perfusionist certified by the American Board of Cardiovascular Perfusion and licensed by the Perfusionist Advisory Committee of the North Carolina Medical Board per operational heart lung bypass machine and an additional licensed, certified perfusionist on standby.

(b) An applicant that proposes to develop open-heart surgery services shall demonstrate that it can meet the following staffing requirements:

- (1) one cardiovascular surgeon who has been designated to serve as director of the open heart surgery program and who has the following special qualifications:
 - (A) certification by the American Board of Thoracic Surgery; and
 - (B) licensed by the North Carolina Medical Board to practice medicine; and
- (2) at least one open heart surgical team comprised of at least the following professional and technical personnel:
 - (A) one cardiovascular surgeon board certified by the American Board of Thoracic Surgery;
 - (B) one assistant surgeon;
 - (C) one anesthesiologist certified by The American Board of Anesthesiology and trained in open heart surgical procedures;
 - (D) one certified registered nurse anesthetist;
 - (E) one circulating nurse or scrub nurse, with training in open heart surgical procedures;

- (F) one operating room technician or nurse with training in open heart surgical procedures;
- (G) one licensed, certified perfusionist;
- (H) staff for the dedicated cardiac surgical intensive care unit to ensure the availability of 1 registered nurse for every 2 patients during the first 48 hours of post-operative care; and
- (I) if pediatric open heart surgical procedures are performed, at least one cardiac surgeon trained to perform pediatric open heart surgical procedures.

(c) An applicant that proposes to acquire a heart-lung bypass machine or to develop open-heart surgery services shall demonstrate that it can provide the following:

- (1) staff training for certification in cardiopulmonary resuscitation and advanced cardiac life support; and
- (2) a program of staff education and training that ensures improvements in technique and the training of new personnel.

History Note: Authority G.S. 131E-177(1); 131E-183(b);

Eff. January 1, 1987;

Amended Eff. November 1, 1989;

Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Amended Eff. January 1, 2013; January 4, 1994.

10A NCAC 14C .3301 DEFINITIONS
10A NCAC 14C .3302 INFORMATION REQUIRED OF APPLICANT
10A NCAC 14C .3303 PERFORMANCE STANDARDS

History Note: Authority G.S. 131E-177(1); 131E-183(b);

Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Eff. February 1, 1994;

Temporary Amendment Eff. May 15, 2002;

Amended Eff. April 1, 2007; April 1, 2003;

Repealed Eff. January 1, 2013.

10A NCAC 14C .3305 STAFFING AND STAFF TRAINING

History Note: Authority G.S. 131E-177(1); 131E-183(b);

Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Eff. February 1, 1994;

Temporary Amendment Eff. May 15, 2002;

Amended Eff. April 1, 2003;

Repealed Eff. January 1, 2013.

TITLE 12 – DEPARTMENT OF JUSTICE

12 NCAC 07D .0105 UNIFORMS AND EQUIPMENT

(a) No holder of a license, trainee permit, unarmed security guard registration, armed security guard registration, or firearms trainer certificate while engaged in private protective services, shall wear or display any badge, insignia, device, shield, patch or pattern that indicates or tends to indicate that the individual is a sworn law enforcement officer or that contains or includes the word "police" or the equivalent thereof, or is similar in wording to any law enforcement agency in the local area of the licensee's operations.

(b) No holder, while performing any private security service, shall have or utilize any vehicle or equipment displaying the words "law enforcement officer," "police," or the equivalent thereof, or have any sign, shield, marking, accessory or insignia that indicates that the vehicle is a vehicle of a law enforcement agency.

(c) A holder who is required to wear a military style uniform while in the performance of private security services shall have:

- (1) affixed over the left breast pocket of the uniform and on all caps or hats worn by the individual, badges or patches, distinct in design from those used by law enforcement agencies within the local area of the licensee's operations;
- (2) affixed over the right breast pocket of the uniform a metal, plastic, or cloth tag not less than three inches nor more than five inches in length and not less than three-fourths inch nor more than one inch in height containing the words "Security Guard" or "Security Officer" in capital letters approximately one-half inch in height; and
- (3) affixed over the "Security Guard" or "Security Officer" tag, a metal, plastic, or cloth tag bearing the name of the wearer. The name tag may be smaller than the "Security Guard" or "Security Officer" tag if it is displayed in capital letters five-sixteenth inch to one-half inch in height.

(d) The wearing of the armed or unarmed private protective services card visible on the outermost garment (except foul weather clothing) satisfies the requirements of Subparagraphs (c)(1), (2) and (3) of this Rule.

(e) All holders who perform the duties of a security guard or security officer and who are not required to wear a military style uniform shall have affixed over the right or left breast pocket of the outermost garment (except for rainwear or other foul weather clothing) a tag as described in (c)(2) of this Rule.

History Note: Authority G.S. 74C-5; 74C-12; 74C-15;

Eff. June 1, 1984;

Amended Eff. January 1, 2013; July 1, 1995; July 1, 1987.

**12 NCAC 07D .0114 SUSPENSION OF AUTHORITY
TO EXPEND FUNDS**

In the event that the Board's authority to expend funds is suspended pursuant to G.S. 93B-2(d), the Board shall continue to issue and renew licenses, registrations, and certifications and all fees tendered shall be placed in an escrow account maintained by the Board for this purpose. Once the Board's authority is restored, the funds shall be moved from the escrow account into the general operating account.

*History Note: Authority G.S. 93B-2(d);
Eff. January 1, 2013.*

**12 NCAC 07D .0902 APPLICATION FOR FIREARMS
TRAINER CERTIFICATE**

Each applicant for a firearms trainer certificate shall submit an original and one copy of the application to the Board. The application shall be accompanied by:

- (1) one set of classifiable fingerprints on an applicant fingerprint card;
- (2) one head and shoulders color digital photograph of the applicant in JPG format of adequate quality for identification, taken within six months prior to submission and submitted by e-mail to PPSASL-Photos@ncdoj.gov or by compact disc;
- (3) a certified statement of the result of a criminal history records search by the appropriate governmental authority housing criminal record information or clerk of superior court in each county where the applicant has resided within the immediate preceding 60 months, and if any address history contains an out of state address, a criminal record check from the reporting service designated by the Board pursuant to G.S. 74C-8.1(a);
- (4) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board;
- (5) the applicant's non-refundable registration fee;
- (6) a certificate of successful completion of the training required by 12 NCAC 07D .0901(3) and (4). This training shall have been completed within 60 days of the submission of the application; and
- (7) the actual cost charged to the Private Protective Services Board by the North Carolina Justice Academy to cover the cost of the firearms training course given by the N.C. Justice Academy and collected by the Private Protective Services Board.

*History Note: Authority G.S. 74C-5; 74C-8.1(a); 74C-13;
Eff. June 1, 1984;
Amended Eff. August 1, 1998; December 1, 1995; July 1, 1987;
December 1, 1985;*

*Temporary Amendment Eff. July 17, 2001;
Amended Eff. January 1, 2013; May 1, 2012; August 1, 2002.*

**12 NCAC 07D .0904 RENEWAL OF A FIREARMS
TRAINER CERTIFICATE**

(a) Each applicant for renewal of a firearms trainer certificate shall complete a renewal form provided by the Board. This form shall be submitted not less than 30 days prior to the expiration of the applicant's current certificate and shall be accompanied by:

- (1) certification of the successful completion of a firearms trainer refresher course approved by the Board and the Attorney General consisting of a minimum of eight hours of classroom and practical range training in handgun and shotgun safety and maintenance, range operations, control and safety procedures, and methods of handgun and shotgun firing. This training shall be completed within 180 days of the submission of the renewal application;
- (2) a certified statement of the result of a criminal records search from the appropriate governmental authority housing criminal record information or clerk of superior court in each county where the applicant has resided within the immediately preceding 48 months and if any address history contains an out of state address, a criminal record check from the reporting service designated by the Board pursuant to G.S. 74C-8.1(a);
- (3) the applicant's renewal fee; and
- (4) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board.

(b) Members of the armed forces whose certification is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the certification renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be furnished to the Board.

*History Note: Authority G.S. 74C-5; 74C-8.1(a); 74C-13;
Eff. June 1, 1984;
Amended Eff. January 1, 2013; October 1, 2010; June 1, 2009;
December 1, 1995; December 1, 1985.*

**12 NCAC 07D .0909 UNARMED TRAINER
CERTIFICATE**

(a) To receive an unarmed trainer certificate, an applicant shall meet the following requirements:

- (1) comply with the requirements of 12 NCAC 07D .0703;
- (2) have a minimum of one year experience in security with a contract security company or proprietary security organization, or one year

- experience with any federal, U.S. military, state, county or municipal law enforcement agency;
- (3) successfully complete a training course approved by the Board and the Attorney General that consists of a minimum of 24 hours classroom instruction including the following topic areas:
- (A) civil liability for the security trainer - two hours;
 - (B) interpersonal communications in instruction - three hours;
 - (C) teaching adults - four hours;
 - (D) principles of instruction - one hour;
 - (E) methods and strategies of instruction - one hour;
 - (F) principles of instruction: audio-visual aids - three hours; and
 - (G) student performance: 45 minute presentation;
- (4) provide the Board a favorable recommendation from the employing or contracting licensee; and
- (5) comply with the application process for an Unarmed Trainer Certificate as set forth in 12 NCAC 07D .0910.

(b) In lieu of completing the training course set forth in Subparagraph (a)(3) of this Rule, an applicant may submit to the Board a Criminal Justice General Instructor Certificate from North Carolina Criminal Justice Education and Training Standards Commission or any training certification that meets or exceeds the requirements of Subparagraph (a)(3) of this Rule and is approved by the Director of the Private Protective Services Board.

(c) An Unarmed Trainer Certificate shall expire two years after the date of issuance.

History Note: Authority G.S. 74C-8; 74C-9; 74C-11; 74C-13;
Eff. October 1, 2004;
Amended Eff. January 1, 2013; January 1, 2008.

12 NCAC 07D .0910 APPLICATION FOR AN UNARMED TRAINER CERTIFICATE

Each applicant for an unarmed trainer certificate shall submit an application to the Board. The application shall be accompanied by:

- (1) the certified trainer application fee established in 12 NCAC 07D .0903(a)(2); and
- (2) a certificate of successful completion of the training required. This training shall have been completed within 120 days of the submission of the application or current certificate of other acceptable certification as set forth in 12 NCAC 07D .0909(b).

History Note: Authority G.S. 74C-8; 74C-9; 74C-11; 74C-13;
Eff. October 1, 2004;

Amended Eff. January 1, 2013.

12 NCAC 07D .0911 RENEWAL OF AN UNARMED TRAINER CERTIFICATE

(a) Each applicant for renewal of an unarmed trainer certificate shall complete a board renewal form. This form shall be submitted not less than 30 days prior to the expiration of the applicant's current certificate. In addition, the applicant shall include the following:

- (1) the renewal fee set forth in 12 NCAC 07D .0903(a)(3);
- (2) certification of a minimum of 16 hours of Board approved armed or unarmed instruction performed during the current unarmed trainer certification period; and
- (3) a statement verifying the classes taught during the current unarmed trainer certification period on a form prescribed by the Board.

(b) Members of the armed forces whose certification is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the certification renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be furnished to the Board.

History Note: Authority G.S. 74C-8; 74C-9; 74C-11; 74C-13;
Eff. August 1, 2004;
Amended Eff. January 1, 2013; October 1, 2010; January 1, 2008.

12 NCAC 07D .0912 ROSTERS OF UNARMED TRAINER CLASSES

Each unarmed trainer shall send to the Board training officer, by e-mail, all rosters of classes taught during the current unarmed trainer certification period by June 30 and by December 31 of each year.

History Note: Authority G.S. 74C-5; 74C-13;
Eff. January 1, 2013.

12 NCAC 07D .1106 CONSIDERATION OF EXPERIENCE

(a) The Board shall consider any practical experience gained prior to the application date. The Board shall not consider experience claimed by the applicant if the experience was:

- (1) gained by contracting private protective services to another person, firm, association, or corporation while not in possession of a valid private protective services license; or
- (2) gained when employed by a company contracting private protective services to another person, firm, association, or corporation while the company is not in possession of a valid private protective services license.

(b) The Board shall consider any educational experience referred to in 12 NCAC 07D .1105.

History Note: Authority G.S. 74C-5(2);
Eff. July 1, 1994;
Amended Eff. January 1, 2013; April 1, 1999.

12 NCAC 07D .1108 GRANDFATHER CLAUSE

History Note: Authority G.S. 74C-5(2);
Eff. July 1, 1994;
Repealed Eff. January 1, 2013.

12 NCAC 07D .1401 APPLICATION FOR UNARMED ARMORED CAR SERVICE GUARD REGISTRATION

(a) Each armored car employer or his designee shall submit and sign an application form for the registration of each unarmed armored car service guard employee to the Board. This form shall be accompanied by:

- (1) one set of classifiable fingerprints on an applicant fingerprint card;
- (2) two head and shoulders color digital photographs of the applicant in JPG format of acceptable quality for identification, taken within six months prior to submission and submitted by e-mail to PPSASL-Photos@ncdoj.gov or by compact disc;
- (3) a certified statement of the result of a criminal records search from the appropriate governmental authority housing criminal record information or clerk of superior court in each county where the applicant has resided within the immediately preceding 48 months, and if any address history contains an out of state address, a criminal record check from the reporting service designated by the Board pursuant to G.S. 74C-8.1(a);
- (4) the applicant's non-refundable registration fee; and
- (5) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board.

(b) The employer of each applicant for registration shall give the applicant a copy of the application and shall retain a copy of the application in the individual's personnel file in the employer's office.

(c) The applicant's copy of the application shall serve as a temporary registration card that shall be carried by the applicant when he is within the scope of his employment and that shall be exhibited upon the request of any law enforcement officer or authorized representative of the Board.

(d) A statement signed by a certified trainer that the applicant has successfully completed the training requirements of 12 NCAC 07D .1407 shall be submitted to the Director with the application.

(e) A copy of the statement specified in Paragraph (d) of this Rule shall be retained by the licensee in the individual applicant's personnel file in the employer's office.

History Note: Authority G.S. 74C-3; 74C-5; 74C-8.1(a);
Eff. January 1, 2013.

12 NCAC 07D .1402 FEES FOR UNARMED ARMORED CAR SERVICE GUARD REGISTRATION

(a) Fees for unarmed armored car service guards are as follows:

- (1) thirty dollar (\$30.00) non-refundable initial registration fee;
- (2) thirty dollar (\$30.00) annual renewal, or reissue fee;
- (3) fifteen dollar (\$15.00) transfer fee; and
- (4) twenty-five dollars (\$25.00) late renewal fee to be paid within 90 days from the date the registration expires and to be paid in addition to the renewal fee.

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

History Note: Authority G.S. 74C-3; 74C-5; 74C-9;
Eff. January 1, 2013.

12 NCAC 07D .1403 MINIMUM STANDARDS FOR UNARMED ARMORED CAR SERVICE GUARD REGISTRATION

An applicant for registration as an unarmed armored service guard shall:

- (1) be at least 18 years of age;
- (2) be a citizen of the United States or a resident alien;
- (3) be of good moral character and temperate habits. Any of the following within the last five years shall be prima facie evidence that the applicant does not have good moral character or temperate habits:
 - (a) conviction by any local, state, federal, or military court of any crime involving the illegal use, carrying, or possession of a firearm;
 - (b) conviction of any crime involving the illegal use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, narcotic, or alcoholic beverage;
 - (c) conviction of a crime involving felonious assault or an act of violence;
 - (d) conviction of a crime involving unlawful breaking or entering, burglary, larceny, or any offense involving moral turpitude; or
 - (e) a history of addiction to alcohol or a narcotic drug. For purposes of this Item, "conviction" means the entry of

- a plea of guilty, plea of no contest, or a verdict of guilty;
- (4) not have been declared by any court of competent jurisdiction incompetent by reason of mental disease or defect, or not have been involuntarily committed to an institution for treatment of mental disease or defect by a district court judge. When an individual has been treated and found to have been restored by a psychiatrist, the Board shall consider this evidence and determine whether the applicant is mentally competent; and
- (5) not have had a revocation by the Board.

History Note: Authority G.S. 74C-3; 74C-5;
Eff. January 1, 2013.

12 NCAC 07D .1404 INVESTIGATION FOR UNARMED ARMORED CAR SERVICE GUARD REGISTRATION

- (a) After the administrator receives a complete application for registration as an armored car service guard, the administrator shall cause to be made such further investigation of the applicant as the administrator deems necessary based upon the criminal history, financial history, or other information received.
- (b) Any denial of an applicant for registration by the administrator is subject to review by the Board.

History Note: Authority G.S. 74C-3; 74C-5;
Eff. January 1, 2013.

12 NCAC 07D .1405 UNARMED ARMORED CAR SERVICE GUARD REGISTRATION IDENTIFICATION CARDS

- (a) A registration identification card shall be carried by an armored car service guard registrant when performing the duties of a private protective services employee.
- (b) The registration identification card shall be exhibited upon the request of any law enforcement officer or any authorized representative of the Board.
- (c) Registration identification card holders shall within five business days notify the Board upon receipt of any information relating to the holder's eligibility to continue holding the card.
- (d) The guard transfer form and fee shall be submitted to the Board by the employer within 10 days of the beginning of employment.
- (e) Upon revocation or suspension by the Board, a holder shall return the registration identification card to the administrator within 10 days of the date of the revocation or suspension.

History Note: Authority G.S. 74C-3; 74C-5;
Eff. January 1, 2013.

12 NCAC 07D .1406 RENEWAL OR REISSUE OF UNARMED ARMORED CAR SERVICE GUARD REGISTRATION

- (a) Each applicant for renewal of an unarmed armored car service guard registration identification card or his employer, shall complete a form provided by the Board. This form shall be

submitted not fewer than 30 days prior to the expiration of the applicant's current registration and shall be accompanied by:

- (1) statements of any criminal record obtained from the appropriate authority in each area where the applicant has resided within the immediately preceding 12 months or a criminal record check from the reporting service designated by the Board pursuant to G.S. 74C-8.1(a); and
 - (2) the applicant's renewal fee.
- (b) Each applicant for reissue of a registration identification card shall complete, and his employer shall sign a form provided by the Board. This form shall be submitted to the Board and accompanied by:
- (1) two head and shoulders color digital photographs of the applicant in JPG format of acceptable quality for identification, taken within six months prior to submission and submitted by e-mail to PPSASL-Photos@ncdoj.gov or by compact disc; and
 - (2) the applicant's reissue fee.
- (c) The employer of each applicant for a registration renewal or reissue shall give the applicant a copy of the application that will serve as a record of application for renewal or reissue and shall retain a copy of the application in the individual's personnel file in the employer's office.
- (d) Members of the armed forces whose registration is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the registration renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be furnished to the Board.

History Note: Authority G.S. 74C-3; 74C-5; 78C-8.1(a);
Eff. January 1, 2013.

12 NCAC 07D .1407 TRAINING REQUIREMENTS FOR UNARMED ARMORED CAR SERVICE GUARDS

- (a) Applicants for an unarmed armored car service guard registration shall complete a basic training course for unarmed armored car service guards within 30 days from the date of permanent hire. The course shall consist of a minimum of 16 hours of classroom instruction including:
- (1) The Security Officer in North Carolina – (minimum of one hour);
 - (2) Legal Issues for Security Officers – (minimum of three hours);
 - (3) Deportment – (minimum of one hour);
 - (4) Armored Security Operations – (minimum of five hours);
 - (5) Emergency Situations – (minimum of three hours); and
 - (6) Safe Driver Training – (minimum of three hours);

A minimum of four hours of classroom instruction shall be completed within 20 calendar days of a probationary or regular armored car service guard being placed on a duty station. These

four hours shall include The Security Officer in North Carolina and Legal Issues for Security Officers. Unarmed armored car service guard training is not transferable to qualify as unarmed security guard training.

(b) Licensees shall submit their names and resumes for proposed certified unarmed trainer registrations to the Director for Board approval.

(c) Training shall be conducted by a Board certified unarmed trainer. A Board approved lesson plan covering the training requirements in Paragraph (a) of this Rule shall be made available to each trainer by the Board. The trainer may use other media training materials that deliver the training requirements of Paragraph (a) of this Rule.

(d) The 16 hours of training may be delivered interactively under the following conditions:

- (1) The training is presented by a Private Protective Services Board certified unarmed trainer.
- (2) Each student is given a copy of the Private Protective Services unarmed armored car service guard training manual to use for the duration of the 16 hour training course.
- (3) The technology used allows the trainer to see the students and the students to see the trainer in real time during the training.
- (4) All students in each classroom are able to see and read the screen or monitor, and they must be able to hear and understand the audio presentation. All monitors used in each classroom must be at least 32 inches wide.
- (5) The technology used is of sufficient quality so that the training audio and video is done smoothly and without interruption.
- (6) Each student is taught to use the audio and video equipment in the classroom prior to the start of the 16 hour unarmed security officer training course.
- (7) The total number of students receiving the interactive training at one time does not exceed 35 students.
- (8) All training not included in the NC Private Protective Services unarmed armored car service guard training manual is done either before or after the 16 hour unarmed armored car service guard training.
- (9) The Director of Private Protective Services is notified five days prior to training of the location of each classroom, the name and location of the certified trainer, and the number of students who will be present.
- (10) The sponsoring agency allows the Director or designee access via computer to the training during the time that it is taking place.

History Note: Authority G.S. 74C-3; 74C-5;
Eff. January 1, 2013.

12 NCAC 07D .1501 APPLICATION/ARMED ARMORED CAR SERVICE GUARD FIREARM REGISTRATION PERMIT

(a) Each armored car employer or his designee shall submit and sign an application form for the registration of each armed armored car service guard applicant to the Board. This form shall be accompanied by:

- (1) one set of classifiable fingerprints on an applicant fingerprint card;
- (2) two head and shoulders color digital photographs of the applicant in JPG format of acceptable quality for identification, taken within six months prior to submission and submitted by e-mail to PPSASL-Photos@ncdoj.gov or by compact disc;
- (3) a certified statement of the result of a criminal records search from the appropriate governmental authority housing criminal record information or clerk of superior court in each county where the applicant has resided within the immediately preceding 48 months, and if any address history contains an out of state address, a criminal record check from the reporting service designated by the Board pursuant to G.S. 74C-8.1(a);
- (4) the applicant's non-refundable registration fee;
- (5) a statement signed by a certified trainer that the applicant has successfully completed the training requirements of 12 NCAC 07D .1507; and
- (6) a certification by the applicant that he or she is at least 18 years of age.

(b) The employer of each applicant for registration shall give the applicant a copy of the application and shall retain a copy of the application in the individual's personnel file in the employer's office.

(c) The applicant's copy of the application shall serve as a temporary registration card that shall be carried by the applicant when he is within the scope of his employment and that shall be exhibited upon the request of any law enforcement officer or authorized representative of the Board.

(d) Applications submitted without proof of completion of a Board approved firearms training course shall not serve as temporary registration cards unless the armored car employer has obtained prior approval from the Director. The Director shall grant prior approval if the armored car employer provides proof satisfactory to the Director that the applicant has received prior firearms training.

(e) The provisions of Paragraphs (a), (b), and (c) of this Rule also apply to any employee whose employment is terminated within 30 days of employment.

History Note: Authority G.S. 74C-3; 74C-5; 74C-8.1(a); 74C-13;
Eff. January 1, 2013.

12 NCAC 07D .1502 FEES FOR ARMED ARMORED CAR SERVICE GUARD FIREARM REGISTRATION PERMIT

(a) Fees for armed armored car service guard firearm registration permits are as follows:

- (1) thirty dollars (\$30.00) non-refundable initial registration fee;
- (2) thirty dollars (\$30.00) annual renewal, or reissue fee; and
- (3) fifteen dollars (\$15.00) application fee.

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

History Note: Authority G.S. 74C-3; 74C-5; 74C-9; 74C-13; Eff. January 1, 2013.

12 NCAC 07D .1503 MINIMUM STDS/ARMED ARMORED CAR SERVICE GUARD FIREARM REGISTRATION PERMIT

Applicants for an armed armored car firearms registration shall meet all the requirements of 12 NCAC 07D .1403 and 12 NCAC 07D .1407.

History Note: Authority G.S. 74C-3; 74C-5; 74C-13; Eff. January 1, 2013.

12 NCAC 07D .1504 INVESTIGATION/ARMED ARMORED CAR SERVICE GUARD FIREARM REGISTRATION PERMIT

(a) After the administrator receives a complete application for registration as an armed armored car service guard, the administrator shall cause to be made such further investigation of the applicant as the administrator deems necessary, based upon the criminal history, financial history, or other information received.

(b) Any denial of an applicant for registration by the administrator is subject to review by the Board.

History Note: Authority G.S. 74C-3; 74C-5; 74C-13; Eff. January 1, 2013.

12 NCAC 07D .1505 ARMED ARMORED CAR SERVICE GUARD FIREARM REGISTRATION PERMIT IDENTIFICATION CARDS

(a) The provisions of 12 NCAC 07D .1405 apply to armed armored car service guards.

(b) Upon termination of employment of an armed armored car service guard, the employer shall return the employee's registration card to the Board within 15 days of the employee's termination.

History Note: Authority G.S. 74C-3; 74C-5; 74C-13; Eff. January 1, 2013.

12 NCAC 07D .1506 RENEWAL OF ARMED ARMORED CAR SERVICE GUARD FIREARM REGISTRATION PERMIT

(a) Each applicant for renewal of an armed armored car service guard firearm registration permit identification card or his

employer shall complete a form provided by the Board. This form shall be submitted not more than 90 days nor fewer than 30 days prior to expiration of the applicant's current armed registration and shall be accompanied by:

- (1) two head and shoulders color digital photographs of the applicant in JPG format of acceptable quality for identification, taken within six months prior to submission and submitted by e-mail to PPSASL-Photos@ncdoj.gov or by compact disc;
- (2) a certified statement of the result of a criminal records search from the appropriate governmental authority housing criminal record information or clerk of superior court in each county where the applicant has resided within the immediately preceding 12 months, and if any address history contains an out of state address, a criminal record check from the reporting service designated by the Board pursuant to G.S. 74C-8.1(a);
- (3) the applicant's renewal fee; and
- (4) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board.

(b) The employer of each applicant for a registration renewal shall give the applicant a copy of the application that will serve as a record of application for renewal and shall retain a copy of the application in the individual's personnel file in the employer's office.

(c) Applications for renewal shall be accompanied by a statement signed by a certified trainer that the applicant has successfully completed the training requirements of 12 NCAC 07D .1507.

(d) Members of the armed forces whose registration is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the registration renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be furnished to the Board.

History Note: Authority G.S. 74C-3; 74C-5; 74C-8.1(a); 74C-13;

Eff. January 1, 2013.

12 NCAC 07D .1507 TRAINING REQUIREMENTS FOR ARMED ARMORED CAR SERVICE GUARDS

(a) Prior to applying, applicants for an armed armored car service guard firearm registration permit shall complete the basic unarmed armored car service guard training course set forth in 12 NCAC 07D .1407. Private Investigator Licensees applying for an armed armored car service guard firearm registration permit shall 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 .1407(a). Private Investigator Licensees applying for an armed armored car service guard firearm registration permit are not required to complete the following training blocks found in the basic training course referenced in 12 NCAC 07D. 1407(a): "Emergency Situations," "Department," "Armored Security Operations," and "Safe Driver Training." A Private Investigator Licensee applying for an armed armored car service guard firearm registration permit shall meet all additional training requirements set forth in 12 NCAC 07D .1407 as well as the training requirements set forth in this Rule.

(b) Applicants for an armed armored car service guard firearm registration permit shall complete a basic training course for armed security guards that 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 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) Applicants for an armed armored service guard firearm registration permit 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 shall 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 this Subchapter 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 armored car service guard firearm registration permit.

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

(f) No more than six new or renewal armed armored car service 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 armored car service guard firearm registration permit shall complete a basic recertification training course for armed security guards [that consists of at least four hours of classroom instruction and is a review of the requirements set forth in Subparagraphs (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 armored car service 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 armored car service guard, an applicant shall complete, in addition to the requirements of Paragraphs (a), (b) and (c) of this Rule, four hours of classroom training that 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 concurrently 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 Subparagraphs (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 armored car service 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 concurrently with the trainer certificate upon completion of an annual qualification with their duty weapons as set forth in Paragraph (c) of this Rule.

(l) An armed armored car service guard shall qualify annually for both day and night firing with his or her duty weapon and shotgun, if applicable. If the armed armored car service guard fails to qualify on either course of fire, the guard cannot carry a firearm until such time as he or she meets the qualification requirements. Upon failure to qualify the firearm instructor must notify the armed armored car service guard that he or she is 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.

(m) Armed armored car service guard personnel may also work as armed security guards only if they hold an unarmed or armed security guard registration.

History Note: Authority G.S. 74C-3; 74C-5; 74C-13; Eff. January 1, 2013.

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 range qualification must be taught by a Firearms Instructor certified in accordance with 12 NCAC 09B .0304(e). The instructor who teaches the classroom instruction regarding use of force may either hold Professional Lecturer Certification as set out in 12 NCAC 09B .0306(a)(1); 12 NCAC 10B .0906, or .0916 or hold a Specific Certification-Firearms issued by the North Carolina Criminal Justice Education and Training Standards Commission;
 - (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 and Subject Control Arrest Techniques: Equipment Retention 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);
 - (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); and
 - (vii) Active Shooter: Practical Refresher must be taught by a General Instructor as set out in Sub-item (1)(a) of this Rule, who has also completed the North Carolina Justice Academy's "Rapid Deployment Instructor Training Course."
- In addition, each instructor certified by the Criminal Justice Education and Training Standards Commission to teach in a Commission-certified course shall remain competent in his or her specific or specialty areas. Competent 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) Instructors who teach a required in-service training course must achieve a passing grade on a course-specific test developed by the North Carolina Justice Academy or by the agency delivering the training. Instructors who teach a required in-service training course online, in addition to meeting the above testing requirement, must also complete the in-service training for the course he or she will be teaching. Instructors who teach an in-service training course in a traditional classroom format will receive credit toward their own in-service training requirements, provided that

- they pass all required tests and have their instruction documented once completed.
- (3) The use of guest participants is permitted provided they are subject to the direct on-site supervision of a commission-certified instructor.
 - (4) The instructor shall deliver the training consistent with the specifications as established in the rules in this Section.
 - (5) 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.

History Note: Authority G.S. 17E-4; 17E-7; Eff. January 1, 2007; Amended Eff. January 1, 2013; February 1, 2012; January 1, 2011; March 1, 2010; January 1, 2009.

12 NCAC 10B .2102 INSTRUCTORS

The following requirements and responsibilities are hereby established for instructors who conduct the Deputy Sheriffs' and Detention Officers' In-Service Firearms Training and Requalification Program:

- (1) The instructor who performs the range qualification shall hold "Specific Instructor Certification-Firearms" issued by the North Carolina Criminal Justice Education and Training Standards Commission.
- (2) The instructor who teaches the classroom instruction regarding use of force may either hold a Professional Lecturer Certification as set out in 12 NCAC 09B .0306(a)(1); 12 NCAC 10B .0906, or .0916 or hold a "Specific Certification-Firearms" issued by the North Carolina Criminal Justice Education and Training Standards Commission;
- (3) The instructor shall deliver the training consistent with the minimum specifications as established by 12 NCAC 10B .2103 and .2104; and shall be present at all times during which said training is being conducted to personally provide all supervision, classroom training, range training, and scoring for certification purposes;
- (4) The instructor shall document the successful or unsuccessful completion of training for each officer on a commission Firearms Requalification Record Form and forward such form to each officer's sheriff; and
- (5) The instructor shall submit to the sheriff copies of all courses of fire used for qualification of deputy sheriffs and detention officers in compliance with 12 NCAC 10B .2101(1).

History Note: Authority G.S. 17E-4; 17E-7; Eff. January 1, 1989;

Amended Eff. January 1, 1995; January 1, 1993; January 1, 1991; Temporary Amendment Eff. March 1, 1998; Amended Eff. January 1, 2013; August 1, 1998.

TITLE 15A - DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 10B .0106 WILDLIFE TAKEN FOR DEPREDATIONS

(a) Depredation permits allow the take of undesirable or excess wildlife resources as described in Subparagraphs (1) and (2) of this Paragraph. Only employees of the Wildlife Resources Commission and Wildlife Damage Control Agents may issue depredation permits. Each permit must be written on a form supplied by the Commission. No permit is needed for the owner or lessee of a property to take wildlife while committing depredations on the property, however the manner of taking, disposition of dead wildlife and reporting requirements as described in this Rule still apply.

No permit shall be issued to take any endangered or threatened species of wildlife listed under 15A NCAC 10I, except alligators, by reason of depredations to property. Only the Executive Director may issue depredation permits for Special Concern species listed in 15A NCAC 10I .0103 and for alligators. 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 that 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. Depredation permits for other species shall be issued under the following conditions:

- (1) for taking wildlife that is or has been damaging or destroying property provided there is evidence of property damage. 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, if required, has been issued. The permit shall name the species allowed to be taken and may contain limitations as to age, sex or any other condition within the species so named. The permit must be issued to a landholder or an authorized representative of a unit of local government for depredations on public property. The permit shall be used only by individuals named on the permit.
- (2) for taking of wildlife resources in circumstances of overabundance or when the wildlife resources present a danger to human safety. Cities as defined in G.S. 160A-1(2) seeking such a depredation permit must apply to the Executive Director using a form

supplied by the Commission requesting the following information:

- (A) the name and location of the city;
- (B) the acreage of the affected property;
- (C) a map of the affected property;
- (D) the signature of an authorized city representative;
- (E) the nature of the overabundance or the threat to public safety; and
- (F) a description of previous actions taken by the city to ameliorate the problem.

(b) **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 shall 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 for depredation as defined in Subparagraph (a)(1) of this Rule to landholders and be listed as a second party to provide the control service. WDCA's 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. WDCA's 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 shall 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.

(c) Each depredation permit shall have an expiration date or time after which the depredation permit is no longer valid. The depredation permit authorizes possession of any wildlife resources taken under the permit and must be retained as long as the wildlife resource is in the permittee's possession. All individuals taking wildlife resources under the authority of a depredation permit are obligated to the conditions written on the permit and the requirements specified in this Rule.

(d) **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 or archery equipment as defined in 15A NCAC 10B .0116.

(2) **Taking With a Permit.** Wildlife taken under a depredation permit may be taken only by the method or methods 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 except when the individual is listed as a second party on a depredation permit.

(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.

(e) **Disposition of Wildlife Taken:**

(1) **Generally.** Except as provided by the succeeding Subparagraphs of this Paragraph, any wildlife killed 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 his or her possession. Except as provided by the succeeding Subparagraphs of (d)(2) through (5) of this Rule, all wildlife killed under a

depredation permit must be buried or otherwise disposed of as stated on the permit.

- (2) Deer and feral swine. The edible portions of feral swine and 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 feral swine and deer taken under the depredation permit. The receiver of the edible portions must hold a copy of the depredation permit. The nonedible portions of any deer 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.
- (3) Fox. Any fox killed under a depredation permit may be disposed of as described in Subparagraph (1) of this Paragraph 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.
- (4) Furbearing Animals. The carcass or pelt of any furbearing animal killed during the open season for taking such furbearing animal 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, 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, armadillos, groundhogs, nutria, 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. Feral swine must be euthanized while still in the trap in accordance with G.S. 113-291.12. For all other animals taken alive, the animal must be euthanized or else released on property with permission of the landowner. When the relocation site is public property, written permission must be obtained from an appropriate local, state or federal official before any animal may be released. 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 his or her possession.

(f) Reporting Requirements. Any landholder who kills an alligator, deer, Canada goose, bear or wild turkey under a valid depredation permit shall report such kill on the form provided

with the permit and mail the form upon the expiration date to the Wildlife Resources Commission. The killing and method of disposition of every alligator and bear taken without a permit, shall be reported to the Wildlife Resources Commission within 24 hours following the time of such killing.

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;

Eff. February 1, 1976;

Amended Eff. August 1, 2013; January 1, 2012; August 1 2010; July 1, 2010; May 1, 2008; August 1, 2002; July 1, 1997; July 1, 1995; January 1, 1995; January 1, 1992; August 1, 1990.

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

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

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

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

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

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

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

(g) Pursuant to G.S. 113-291.1(d), hunters may train dogs using shotguns with shot of number 4 size or smaller during the closed season using domestically raised waterfowl and domestically raised game birds. Only nontoxic shot shall be used when training dogs using domestically raised waterfowl. All domestically raised waterfowl shall be individually tagged on one leg with a seamless band stamped with the number of the propagation license for the facility from which the domestically raised waterfowl originated. All other domestically raised game birds shall be individually tagged on one leg with a band indicating the propagation license number for the facility from which the birds originated.

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

Eff. February 1, 1976;

Amended Eff. January 1, 2013; January 1, 2012; May 1, 2006; July 1, 1995; July 1, 1994; July 1, 1991; May 1, 1990.

15A NCAC 10B .0119 WILDLIFE COLLECTORS

(a) Collection Licenses. The Executive Director may license qualified individuals to take or collect any species of wildlife resources except that endangered, threatened and special concern species may not be taken or collected except under a special permit issued by the Executive Director for research purposes, unless there is an open season for the species. If an open season exists for the species then the appropriate hunting, fishing or trapping license serves as the authorization for take. This Rule does not prohibit an individual from killing an endangered, threatened, or special concern species in defense of his own life or the lives of others without a permit. Individuals who annually collect fewer than five reptiles or fewer than 25 amphibians that are not on the endangered, threatened or special concern lists are exempted from this license requirement. The license shall be issued upon payment of a fee in accordance with G.S. 113-272.4, except that licenses shall be issued to representatives of educational or scientific institutions or of governmental agencies without charge. The license shall be used in lieu of any other hunting or trapping license required by law and shall authorize possession and transportation of the wildlife incidental to the authorized taking, except that it shall not authorize the taking, possession or transportation of any species of wildlife in violation of federal laws or regulations.

(b) Limits on collection. Individuals shall collect no more than 10 turtles from the family Chelydridae (snapping turtles) per day and no more than 100 per calendar year. Individuals shall collect no more than 10 turtles from the family Kinosternidae (mud and musk turtles) per day and no more than 100 per calendar year.

(c) Qualifications of Licensees. In addition to representatives of educational and scientific institutions and governmental agencies, the collection license may be issued to any individual for any purpose when it is not deemed inimical to the efficient conservation of the species to be collected or to some other wildlife species that may be dependent thereon.

(d) Methods of Taking. The manner of taking wildlife resources under a collection license may be specified by the Executive Director pursuant to G.S. 113-272.4(d) and need not be restricted to the usual methods of hunting or trapping.

(e) Term of License. The Executive Director may, pursuant to G.S. 113-272.4(c), impose time limits and other restrictions on the duration of any collection license, but unless so restricted the license shall be valid from January 1 through December 31 of the applicable year.

(f) Report of Collecting Activity. Each individual licensed under this Rule shall submit a written report to the Executive Director within 15 days following the date of expiration of the license. The report shall be on a form supplied by the Wildlife Resources Commission and shall show the numbers of each species taken under the license and the use or disposition thereof. The Executive Director may require additional information for statistical purposes such as the dates and places of the taking and the sex, size, weight, condition, and approximate age of each specimen taken. The additional information may be required on the form of report or by a separate writing accompanying the form.

(g) Other Requirements and Restrictions. The Executive Director may, pursuant to G.S. 113-272.4(d), impose such other requirements and restrictions on persons licensed under this Rule as he may deem to be necessary to the efficient administration of the wildlife conservation statutes and rules.

History Note: Authority G.S. 113-134; 113-272.4;

Eff. January 1, 1981;

Amended Eff. January 1, 2013; May 1, 2009; May 1, 2008; April 1, 2001; February 1, 1994; November 1, 1990; September 1, 1989.

15A NCAC 10B .0127 POSSESSION OF WILDLIFE KILLED ACCIDENTALLY OR FOUND DEAD

For wildlife killed accidentally or found dead of natural causes the following apply:

- (1) 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, authorize possession and transport of the carcass of the deer for personal and lawful use, including delivery of the carcass to a second person for his private use or the use by a charitable organization. Commission employees may authorize possession of any deer or turkey found dead of natural causes or as the result of a vehicle collision.
- (2) Black bears shall not be possessed. Species listed as endangered, threatened, or of special concern under 15A NCAC 10I .0103, .0104, and .0105 may be possessed with written permission. Raptors and nongame migratory birds may be possessed under federal permits.
- (3) For all other wildlife resources possession shall be legal. The sale of any wildlife resources or wildlife parts found dead is prohibited, except licensed trappers and

hunters may sell the carcasses or pelt of any beaver, coyote, groundhog, mink, muskrat, nutria, opossum, otter, raccoon, skunk, weasel or bobcat to a licensed fur dealer if the dead furbearing animal was found during the open season for that species. Licensed trappers and hunters may also sell the carcasses or pelt of any fox to a licensed fur dealer if the dead fox was found during an open fox season and the county in which the fox was found allows for the sale of fox carcasses and pelts. All tagging requirements set forth in 15A NCAC 10B .0400 apply.

History Note: Authority G.S. 113-134; 113-274; 113-291.3; 113-291.4; 113-331; 113-333; 113-337; Eff. January 1, 2013.

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

(a) Open Seasons (All Lawful Weapons) for hunting deer:

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

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

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

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

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

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

(C) Monday of Thanksgiving week through the third Saturday after Thanksgiving Day in all of Avery,

Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Swain, Transylvania, and Yancey counties.

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

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

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

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

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

- (B) The open either-sex deer hunting dates established by the appropriate military commands during the period from Saturday on or nearest October 15 through January 1 in that part of Brunswick County known as the Sunny Point Military Ocean Terminal, in that part of Craven County known and marked as Cherry Point Marine Base, in that part of Onslow County known and marked as the Camp Lejeune Marine Base, on Fort Bragg Military Reservation, and on Camp Mackall Military Reservation.
- (C) Youth either sex deer hunts. First Saturday in October for youth either sex deer hunting by permit only on a portion of Belews Creek Steam Station in Stokes County designated by agents of the Commission and the third Saturday in October for youth either-sex deer hunting by permit only on Mountain Island State Forest in Lincoln and Gaston counties; and the second Saturday in November for youth either-sex deer hunting by permit only on apportion of Warrior Creek located on W. Kerr Scott Reservoir, Wilkes County designated by agents of the Commission.
- (D) The last open day of the Deer with Visible Antlers season described in Subparagraph (a)(1) of this Rule in all of Buncombe*, Haywood, Henderson, Madison and Transylvania counties.**
 *except for that part east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of NC 280
 **see 15A NCAC 10D .0103 for deer of either sex seasons on game lands that differ from the days identified in this Subparagraph
- (E) The last six open days of the Deer With Visible Antlers season described in Subparagraph (a)(1) of this Rule in all of Avery, Burke, Caldwell, McDowell, Mitchell and Yancey counties.
- (F) The first six open days and the last six open days of the Deer with Visible Antlers season described in Subparagraph (a)(1) of this Rule in all of Cleveland, Polk and Rutherford counties.
- (G) All the open days of the Deer With Visible Antlers season described in Subparagraph (a)(1) of this Rule in and east of Ashe, Watauga, Wilkes, Alexander, Catawba, Lincoln and Gaston counties and in the following parts of counties:
 Buncombe: That part east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of NC 280; and
 Henderson. That part east of NC 191 and north and west of NC 280.
- (b) Open Seasons (Bow and Arrow) for hunting deer:
 - (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph and the bag limits set out in Paragraph (e) of this Rule, deer of either sex may be taken with bow and arrow during the following seasons:
 - (A) Saturday on or nearest September 10 to the third Friday thereafter in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (A) of Subparagraph (a)(1) of this Rule, except on Nicholson Creek, Rockfish Creek, and Sandhills Game Lands.
 - (B) Saturday on or nearest September 10 to the third Friday before Thanksgiving in the counties and parts of counties having the open seasons for Deer with Visible Antlers specified by Part (B) of Subparagraph (b)(1) of this Rule except for that portion of Buffalo Cove Game Land in Wilkes County.
 - (C) Monday on or nearest September 10 to the third Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (C) of Subparagraph (a)(1) of this Rule and in Cleveland and Rutherford counties.
 - (D) Saturday on or nearest September 10 to the fourth Friday before Thanksgiving in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Nicholson Creek, Rockfish Creek and Sandhills Game Lands.
 - (2) Restrictions
 - (A) Dogs may not be used for hunting deer during the bow and arrow season, except a single dog on a leash may be used to retrieve a wounded

deer in accordance with G.S. 113-291.1(k).

- (B) Only archery equipment of the types authorized in 15A NCAC 10B .0116 for taking deer may be used during the bow and arrow deer hunting season.

(c) Open Seasons (Muzzle-Loading Firearms and Bow and Arrow) for hunting deer:

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

- (A) The Saturday on or nearest October 1 to the Friday of the second week thereafter in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (A) of Subparagraph (a)(1) of this Rule, except on Nicholson Creek, Rockfish Creek and Sandhills Game Lands.

- (B) The third Saturday preceding Thanksgiving until the Friday of the second week thereafter in the counties* and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (B) of Subparagraph (a)(1) of this Rule.

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

- (C) Monday on or nearest October 1 to the Saturday of the second week thereafter in Cleveland and Rutherford counties and in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part C of Subparagraph (a)(1) of this Rule.

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

- (2) Restrictions

- (A) Deer of either sex may be taken during muzzle-loading firearms and bow and arrow season in and east of the following counties: Polk, Rutherford, McDowell, Burke, Caldwell, Watauga, and Ashe. Deer of either sex may be taken on the last

day of this season in all other counties.

- (B) Dogs shall not be used for hunting deer during the muzzle-loading firearms and bow and arrow seasons, except a single dog on a leash may be used to retrieve a wounded deer in accordance with G.S. 113-291.1(k).

(d) Open Season (Urban Season) for hunting deer:

- (1) Authorization. Subject to the restrictions set out in Subparagraph (3) of this Paragraph and the bag limits set out in Paragraph (e) of this Rule, deer of either sex may be taken with bow and arrow in participating cities in the state, as defined in G.S. 160A-1(2), from the second Saturday following January 1 to the fifth Saturday thereafter. Deer shall not be taken on any game land or part thereof that occurs within a city boundary.

- (2) Participation. Cities that intend to participate in the urban season must send a letter to that effect no later than April 1 of the year prior to the start of the urban season to the Executive Director or his designee. Cities must also submit a map of the city's boundaries within which the urban season shall apply.

- (3) Restrictions:

- (A) Dogs shall not be used for hunting deer during the urban season, except a single dog on a leash may be used to retrieve a wounded deer in accordance with G.S. 113-291.1(k).

- (B) Only archery equipment of the types authorized in 15A NCAC 10B .0116 for taking deer shall be used during the urban season.

(e) Bag limits. In and east of Vance, Franklin, Wake, Harnett, Moore and Richmond counties, the possession limit is six deer, up to four of which may be deer with visible antlers. In all other counties of the state the possession limit is six deer, up to two of which may be deer with visible antlers. The season limit in all counties of the state is six deer. In addition to the bag limits described above, a hunter may obtain multiple bonus antlerless deer harvest report cards from the Wildlife Resources Commission or any Wildlife Service Agent to allow the harvest of two additional antlerless deer per card on lands others than lands enrolled in the Commission's game land program during any open deer season in all counties and parts of counties of the State identified in Part (G) of Subparagraph (a)(2) of this Rule. Antlerless deer harvested and reported on the bonus antlerless harvest report card shall not count as part of the possession and season limit. Hunters may also use the bonus antlerless harvest report cards for deer harvested during the season described in Paragraph (d) of this Rule within the boundaries of participating municipalities, except on state-owned game lands. Antlerless deer include males with knobs or buttons covered by skin or velvet as distinguished from spikes protruding through the skin. The bag limits described above do not apply to deer harvested in areas covered in the Deer Management Assistance Program

(DMAP) as described in G.S. 113-291.2(e) for those individuals using Commission-issued DMAP tags and reporting harvest as described on the DMAP license. Season bag limits shall be set by the number of DMAP tags issued and in the hunters' possession. All deer harvested under this program, regardless of the date of harvest, shall be tagged with these DMAP tags and reported as instructed on the DMAP license. The hunter does not have to validate the Big Game Harvest Report Card provided with the hunting license for deer tagged with the DMAP tags. Any deer harvested on lands enrolled in the DMAP and not tagged with DMAP tags may only be harvested during the regularly established deer seasons subject to all the restrictions of those seasons, including bag limits, and reported using the big game harvest report card or the bonus antlerless harvest report card.

History Note: Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.1; 113-291.2;
Eff. February 1, 1976;
Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996, July 1, 1995; December 1, 1994; July 1, 1994; July 1, 1993;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. July 1, 2002; July 1, 2001;
Amended Eff. August 1, 2002 (Approved by RRC on 06/21/01 and 04/18/02);
Temporary Amendment Eff. June 1, 2003;
Amended Eff. June 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003);
Amended Eff. August 1, 2013; August 1, 2012; August 1, 2011;
July 10, 2010; June 1, 2008; May 1, 2007; May 1, 2006; June 1, 2005.

15A NCAC 10B .0206 SQUIRRELS

(a) Open Seasons:

- (1) Gray and red squirrels may be taken by hunting on the Monday on or closest to October 15 to the last day of February.
- (2) Fox squirrels may be taken by hunting on the 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, Stokes, Surry, Watauga, Wayne and Wilkes.

(b) Bag Limits:

- (1) The daily bag limit for gray and red squirrels is eight and there are no season and no possession limits.
- (2) In those counties listed in Subparagraph (a)(2) of this Rule, the daily bag limit for fox squirrels is one; the possession limit is two, and the season limit is 10.

History Note Authority G.S. 113-134; 113-291.2;
Eff. February 1, 1976;

Amended Eff. August 1, 2013; August 1, 2010; May 1, 2009; May 1, 2008; May 1, 2006; July 1, 1995; July 1, 1987; July 1, 1986; July 1, 1985.

15A NCAC 10B .0209 WILD TURKEY

(a) Open Seasons:

- (1) Spring Wild Turkey Season is from the second Saturday in April through the Saturday of the fourth week thereafter on bearded or male turkeys only in all counties statewide.
- (2) Spring Youth Only Wild Turkey Season is from the first Saturday in April until the Friday thereafter on bearded or male wild turkeys only. The bag limit during the Spring Youth Only Wild Turkey season is one bird. For purposes of this Subparagraph a youth hunter is younger than 16 years of age. Each youth hunting during this season shall be accompanied by a properly licensed adult at least 21 years of age. The adult must remain in close enough proximity to monitor the activities of, and communicate with, the youth at all times.

(b) Bag Limits: The daily bag limit is one bird and the annual bag limit shall be two birds. Possession limit is two birds.

(c) Dogs: The use of dogs for hunting wild turkeys is prohibited.

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

History Note: Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.2; 113-291.5;
Eff. February 1, 1976;
Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; July 1, 1995; July 1, 1994; July 1, 1993; July 1, 1992;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. July 1, 2001;
Temporary Amendment Eff. July 1, 2002;
Amended Eff. August 1, 2002 (approved by RRC on 06/21/01 and 04/18/02);
Temporary Amendment Eff. June 1, 2003;
Amended Eff. June 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003);
Amended Eff. January 1, 2013; May 1, 2009; May 1, 2007; November 1, 2005.

15A NCAC 10C .0205 PUBLIC MOUNTAIN TROUT WATERS

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

Subparagraphs (1) through (6) of this Paragraph. These waters are posted and lists thereof are filed with the clerks of superior court of the counties in which they are located:

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

(A) Alleghany County:

New River (not trout water)

Little River (Whitehead to McCann Dam) [Delayed Harvest Regulations apply to portion between Whitehead and a point 275 yards downstream of the intersection of SR 1128 and SR 1129 as marked by a sign on each bank. See Subparagraph (a)(5) of this Rule.]

Brush Creek (NC 21 bridge to confluence with Little River, except where posted against trespass)

Big Pine Creek

(Big) Glade Creek

Bledsoe Creek

Pine Swamp Creek

South Fork New River (not trout water)

Prather Creek

Cranberry Creek

Piney Fork

Meadow Fork

(B) Ashe County:

New River (not trout waters)

North Fork New River (Watauga County line to Sharp Dam)

Helton Creek (Virginia State line to New River)

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

Big Horse Creek (Mud Creek at SR 1363 to confluence with North Fork New River) [Delayed Harvest Regulations apply to portion between SR 1324 bridge and North Fork New River. See Subparagraph (a)(5) of this Rule.]

Buffalo Creek (SR 1133 bridge to NC 194-88 bridge)

Big Laurel Creek

Three Top Creek (portion not on game lands)

South Fork New River (Todd Island park) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule]

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

Old Fields Creek

(C) Avery County:

Nolichucky River (not trout waters)

North Toe River – upper (Watauga Street to Roby Shoemaker Wetlands and Family Recreational Park, except where posted against trespass)

North Toe River – lower (SR 1164 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)

Wildcat Lake

- Catawba River (not trout water)
- Johns River (not trout water)
- Wilson Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
- Lost Cove Creek [not Hatchery Supported trout water, see Subparagraph (a)(4) of this Rule.]
- Buck Timber Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
- Cary Flat Branch [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
- Boyde Coffey Lake
- Linville River [Land Harbor line (below dam) to Blue Ridge Parkway boundary line, except where posted against trespass]
- Milltimber Creek
- (D) Buncombe County:
- French Broad River (not trout water)
- Ivy Creek (Ivy River) (Dillingham Creek to US 19-23 bridge)
- Dillingham Creek (Corner Rock Creek to Ivy Creek)
- Stony Creek
- Corner Rock Creek (Little Andy Creek to confluence with 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)
- Lake Powhatan
- Rich Branch (downstream from confluence with Rocky Branch)
- 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)
- Linville River (portion within Linville Gorge Wilderness Area, and portion below Lake James powerhouse from upstream bridge on SR 1223 to Muddy Creek)
- (F) Caldwell County:
- Catawba River (not trout water)
- Johns River (not trout water)
- Wilson Creek (game lands portion downstream of Lost Cove Creek to Brown Mountain Beach dam, except where posted against trespass) [Delayed Harvest Regulations apply to game lands portion between Lost Cove Creek and Phillips Branch. See Subparagraph (a)(5) of this Rule.]

- Estes Mill Creek
(not trout water)
Mulberry Creek (portion not
on game lands not trout
water)
Boone Fork [not
Hatchery Supported
trout water. See
Subparagraph (a)(2) of
this Rule.]
Boone Fork Pond
Yadkin River (Happy Valley
Ruritan Community Park to
SR 1515)
Buffalo Creek (mouth of
Joes Creek to McCloud
Branch)
Joes Creek (first falls
upstream of SR 1574 to
confluence with Buffalo
Creek)
- (G) Cherokee County:
Hiwassee River (not trout water)
Shuler Creek (Joe Brown
Highway (SR 1325) bridge
to Tennessee line)
Davis Creek (confluence of
Bald and Dockery creeks to
Hanging Dog Creek)
Valley River (headwaters to
US 19 business bridge in
Murphy)
Hyatt Creek (Big
Dam Branch to Valley
River)
Junaluska Creek
(Ashturn Creek to
Valley River)
- (H) Clay County:
Hiwassee River (not trout water)
Fires Creek (USFS Road
340A to the foot bridge in
the US Forest Service Fires
Creek Picnic Area) [Delayed
Harvest Regulations apply.
See Subparagraph (a)(5) of
this Rule.]
Fires Creek (foot bridge in
the US Forest Service Fires
Creek Picnic Area to SR
1300)
Tusquitee Creek (headwaters
to lower SR 1300 bridge)
Nantahala River (not trout
water)
Buck Creek (game
land portion downstream of
US 64 bridge)
- (I) Graham County:
Little Tennessee River (not trout
water)
Calderwood Reservoir
(Cheoah Dam to Tennessee
State line)
Cheoah River (not trout
water)
Yellow Creek
(Lake Santeelah
hydropower
pipeline to Cheoah
River)
Santeelah Reservoir
(not trout water)
West Buffalo Creek
Santeelah Creek
(Johns Branch to
Lake Santeelah)
Big Snowbird
Creek (USFS foot
bridge at the old
railroad junction to
USFS Road 2579)
[Delayed Harvest
Regulations apply.
See Subparapgrah
(a)(5) of this Rule.]
(Big) Snowbird
Creek (USFS Road
2579 to SR 1127
bridge)
Tulula Creek
(headwaters to lower bridge
on SR 1275)
Cheoah Reservoir
Fontana Reservoir (not
trout water)
Stecoah Creek
Panther Creek
(confluence of
Stand Creek and
Rock Creek to Lake
Fontana)
- (J) Haywood County:
Pigeon River (Stamey Cove
Branch to upstream US 19-
23 bridge)
Cold Springs Creek (Fall
Branch to Pigeon River)
Jonathan Creek (upstream
SR 1302 bridge to Pigeon
River, except where posted
against trespass)
Richland Creek (Russ
Avenue (US 276) bridge to
US 19 bridge)
West Fork Pigeon River
(Tom Creek to the first game
land boundary upstream of

- Lake Logan) [Delayed Harvest Regulations apply to the portion from Queen Creek to the first game land boundary upstream of Lake Logan. See Subparagraph (a)(5) of this Rule.]
- (K) Henderson County:
 (Rocky) Broad River (Rocky River Lane to Rutherford County line)
 Green River (Lake Summit Powerhouse to game land boundary)
 (Big) Hungry River
 French Broad River (not trout water)
 Cane Creek (railroad bridge upstream SR 1551 to US 25 bridge)
 Mud Creek (not trout water)
 Clear Creek (Laurel Fork 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 the downstream NC 107 bridge and the falls located 275 yards upstreams of US 23-441 bridge as marked by a sign on each bank. 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)
 Cedar Cliff Lake
 Bear Creek Lake
 Wolf Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
- (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 (Left Prong to Little Tennessee River)
 Cullasaja River (Sequoyah Dam to US 64 bridge near junction of SR 1672)
 Skitty Creek
 Cliffside Lake
 Cartoogechaye Creek (downstream US 64 bridge to Little Tennessee River)
- (N) Madison County:
 French Broad River (not trout water)
 Shut-in Creek
 West Fork Shut-in Creek (lower game land boundary to confluence with East Fork Shut-in Creek)
 Spring Creek - upper (junction of NC 209 and NC 63 to US Forest Service road 223)
 Spring Creek - lower (NC 209 bridge at Hot Springs city limits to iron bridge at end of Andrews Avenue) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Meadow Fork Creek
 Roaring Fork (Fall Branch to Meadow Fork)
 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
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.]
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 – upper (Catawba Falls Campground to Old Fort Recreation Park)
Catawba River – lower (portion adjacent to Marion Greenway) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
Buck Creek (portion not on game lands, not trout water)
Little Buck Creek (game land portion)
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 SR 1189 bridge) [Delayed Harvest Regulations apply to that portion from NC 226 bridge to SR 1189 bridge. See Subparagraph (a)(5) of this Rule.]
Grassy Creek (East Fork Grassy Creek to mouth)
East Fork Grassy Creek
North Toe River (Avery County line to SR 1121 bridge)
North Toe River (US 19E bridge to NC 226 bridge) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- (Q) Polk County:
Broad River (not trout water)
North Pacolet River (Joels Creek to NC 108 bridge)
Green River (Fishtop Falls Access Area to the natural gas pipeline crossing) [Delayed Harvest Regulations apply to the portion from Fishtop Falls Access Area to Cove Creek. See Subparagraph (a)(5) of this Rule.]
- (R) Rutherford County:
(Rocky) Broad River (Henderson County line to US 64/74 bridge,

- except where posted against trespass)
- (S) Stokes County:
 Dan River (Virginia State line downstream to a point 200 yards below the end of SR 1421)
- (T) Surry County:
 Yadkin River (not trout water)
 Big Elkin Creek (dam 440 yards upstream of NC 268 bridge to a point 265 yards downstream of NC 268 bridge as marked by a sign on each bank)
 Ararat River (SR 1727 bridge downstream to the NC 103 bridge)
 Araat River (NC 103 bridge to US 52 bridge) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Stewarts Creek (not trout water)
 Pauls Creek (Virginia State line to 0.3 mile below SR 1625 bridge - lower Caudle property line)
 Fisher River (Cooper Creek) (Virginia State line to Interstate 77)
 Little Fisher River (Virginia State line to NC 89 bridge)
 Mitchell River (0.6 mile upstream of the end of SR 1333 to the SR 1330 bridge below Kapps Mill Dam) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- (U) Swain County:
 Little Tennessee River (not trout water)
 Calderwood Reservoir (Cheoah Dam to Tennessee State line)
 Cheoah Reservoir
 Fontana Reservoir (not trout water)
 Alarka Creek (game lands boundary to Fontana Reservoir)
 Nantahala River (Macon County line to existing Fontana Reservoir water level)
- (V) Transylvania County:
 French Broad River (confluence of North Fork French Broad River and West Fork French Broad River to the Island Ford Road (SR 1110) Access Area)
 Davidson River (Avery Creek to lower US Forest Service boundary line)
 East Fork French Broad River (Gladys 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 (Camp Cove Branch to confluence with North Fork French Broad River)
- (W) Watauga County:
 New River (not trout waters)
 South Fork New River (canoe launch 70 yards upstream of US 421 bridge to lower boundary of Brookshire Park)
 Meat Camp Creek
 Norris Fork Creek
 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 (SR 1510 bridge at Triplett to Wilkes County

- line, 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
- Buckeye Creek (Buckeye Creek Reservoir dam to Grassy Gap Creek)
- Coffee Lake [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- 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 (from Bullhead Creek downstream to Stone Mountain State Park lower boundary) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- East Prong Roaring River (Stone Mountain State Park lower boundary to Brewer's Mill on SR 1943)
- 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 (SR 1355 bridge 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 (Fall Creek to SR 1155 bridge)
- Fall Creek (SR 1300 bridge to confluence with South Prong Lewis Fork except portions posted against trespass)
- Elk Creek – upper (Watauga County line to lower boundary of Blue Ridge Mountain Club) [Delayed Harvest Regulations apply.]

- See Subparagraph (a)(5) of this Rule.]
 Elk Creek – lower (portion on Leatherwood Mountains development) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- (Y) Yancey County:
 Nolichucky River (not trout water)
 Cane River [Bee Branch (SR 1110) to Bowlens Creek]
 Bald Mountain Creek (except portions posted against trespass)
 Indian Creek (not trout water)
 Price Creek (junction of SR 1120 and SR 1121 to Indian Creek)
 North Toe River (not trout water)
 South Toe River (Clear Creek to lower boundary line of Yancey County recreation park except where posted against trespass)
- (2) Wild Trout Waters. All waters designated as Public Mountain Trout Waters on the game lands listed in Subparagraph (b)(2) of 15A NCAC 10D .0104, are classified as Wild Trout Waters unless 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 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)
 Plumbtree Creek (entire stream)
 Roaring Creek (entire stream)
 Rockhouse Creek (entire stream)
 Shawneehaw Creek (portion adjacent to Banner Elk Greenway)
 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:
 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)
Tanasee Creek (entire stream)
Whitewater River (downstream from Silver Run Creek to South Carolina State line)
Wolf Creek (entire stream, except Balsam Lake and Wolf Creek Lake)
- (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:
- (N) All waters located on Gorges State Park
Whitewater River (downstream from Silver Run Creek to South Carolina State line)
Watauga County:
Dugger Creek (portions on Blue Ridge Mountain Club, including tributaries) [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)
Howard Creek (entire stream)
Laurel Creek (portions on Blue Ridge Mountain Club and Powder Horn Mountain developments, including tributaries) [Catch and Release/Artificial Lure Only Trout Waters Regulations apply. See subparagraph (a)(3) of this Rule.]
Maine Branch (headwaters to North Fork New River)
North Fork New River (from confluence with Maine and Mine branches to Ashe County line)
Pond Creek (headwaters to Locust Ridge Road bridge, excluding the pond adjacent to Coffee Lake) [Catch and Release/Artificial Lure Only Trout Waters Regulations Apply. See Subparagraph (a)(3) of this Rule.]
Watauga River (Avery County line to SR 1580 bridge)
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 Blue Ridge Mountain Club, including tributaries) [Catch and Release/Artificial Lure Only Trout Waters Regulations apply. See Subparagraph (a)(3) of this Rule.]
Garden Creek (portion on Stone Mountain State Park)
Harris Creek and tributaries (portions on Stone Mountain State Park) [Catch and Release
Artificial Lures Only Regulations apply. See Subparagraph (a)(4) of this Rule.]
Widow Creek (portion on Stone Mountain State Park)
- (P) Yancey County:

- Cattail Creek (Bridge at Mountain Farm Community Road (Private) to NC 197 bridge)
Lickskillet Creek (entire stream)
Middle Creek (game land boundary to mouth)
- (3) Catch and Release/Artificial Lures Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Artificial Lures Only waters. Only artificial lures having one single hook may be used. No trout may be harvested or be in possession while fishing these streams:
- (A) Ashe County:
Big Horse Creek (Virginia State line to Mud Creek at SR 1363 excluding tributaries)
Unnamed tributary of Three Top Creek (portion located on Three Top Mountain Game Lands)
- (B) Avery County:
Wilson Creek (game land portion)
- (C) Buncombe County:
Carter Creek (game land portion)
- (D) Burke County:
Henry Fork (portion on South Mountains State Park)
- (E) Jackson County:
Flat Creek
Tuckasegee River (upstream of Clarke property)
- (F) McDowell County:
Newberry Creek (game land portion)
- (G) Watauga County:
Dugger Creek (portions on Blue Ridge Mountain Club, including tributaries)
Laurel Creek (portions on Blue Ridge Mountain Club and Powder Horn Mountain developments, including tributaries)
Pond Creek (headwaters to Locust Ridge bridge, excluding the pond adjacent to Coffee Lake)
- (H) Wilkes County:
Dugger Creek (portions on Blue Ridge Mountain Club, including tributaries)
- (4) Catch and Release/Artificial Flies Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Artificial Flies Only waters. Only artificial flies having one single hook may be used. No trout may be harvested or be in possession while fishing these streams:
- (A) Avery County:
Elk River (portion on Lees-McRae College property, excluding the millpond)
Lost Cove Creek (game land portion, excluding Gragg Prong and Rockhouse Creek)
- (B) Transylvania County:
Davidson River (headwaters to Avery Creek, excluding Avery Creek, Looking Glass Creek and Grogan Creek)
- (C) Yancey County:
South Toe River (headwaters to Upper Creek, including tributaries)
Upper Creek (entire stream)
- (5) Delayed Harvest Trout Waters. Those portions of designated Hatchery Supported Trout Waters as listed in this Subparagraph, excluding tributaries except as noted, are further classified as Delayed Harvest Waters. Between 1 October and one-half hour after sunset on the Friday before the first Saturday of the following June, inclusive, it is unlawful to possess natural bait, use more than a single hook on an artificial lure, or harvest or possess trout while fishing these waters. These waters are closed to fishing between one-half hour after sunset on the Friday before the first Saturday in June and 6:00 a.m. on the first Saturday in June. At 6:00 a.m. on the first Saturday in June these waters are open for fishing under Hatchery Supported Waters rules for youth anglers only. Youth is defined as a person under 16 years of age. At 12:00 p.m. on the first Saturday in June these streams open for fishing under Hatchery Supported Waters rules for all anglers:
- (A) Alleghany County:
Little River (Whitehead to a point 275 yards downstream of the intersection of SR 1128 and SR 1129 as marked by a sign on each bank)
- (B) Ashe County:
Trout Lake
Helton Creek (Virginia state line to New River)
South Fork New River (Todd Island Park)
Big Horse Creek (SR 1324 bridge to North Fork New River)
- (C) Burke County:
Jacob Fork (Shinny Creek to lower South Mountains State Park boundary)
- (D) Caldwell County:

- (E) Wilson Creek (game lands portion downstream of Lost Cove Creek to Phillips Branch)
Clay County;
Fires Creek (USFS Road 340A to the foot bridge in the US Forest Service Fires Creek Picnic Area)
- (F) Graham County;
(Big) Snowbird Creek (USFS foot bridge at the old railroad junction to USFS Road 2579)
- (G) Haywood County;
West Fork Pigeon River (Queen Creek to the first game land boundary upstream of Lake Logan)
- (H) Henderson County;
North Fork Mills River (game land portion below the Hendersonville watershed dam)
- (I) Jackson County;
Tuckasegee River (downstream NC 107 bridge falls located 275 yards upstream of the US 23-441 bridge as marked by a sign on each bank)
- (J) Macon County;
Nantahala River (Whiteoak Creek to the Nantahala hydropower discharge canal)
- (K) Madison County.
Big Laurel Creek (NC 208 bridge to the US 25-70 bridge)
Shelton Laurel Creek (NC 208 bridge at Belva to the confluence with Big Laurel Creek)
Spring Creek (NC 209 bridge at Hot Springs city limits to iron bridge at end of Andrews Avenue)
- (L) McDowell County;
Catawba River (portion adjacent to Marion Greenway)
Curtis Creek (game lands portion downstream of U.S. Forest Service boundary at Deep Branch)
Mill Creek (US70 bridge to I 40 bridge)
- (M) Mitchell County;
Cane Creek (NC 226 bridge to SR 1189 bridge)
North Toe River (US 19E bridge to NC 226 bridge)
- (N) Polk County;
Green River (Fishtop Falls Access Area to confluence with Cove Creek)
- (O) Surry County;
Mitchell River (0.6 mile upstream of the end of SR 1333 to the SR 1330 bridge below Kapps Mill Dam)
Ararat River (NC 103 bridge to US 52 bridge)
- (P) Transylvania County;
East Fork French Broad River (Gladly Fork to French Broad River)
Little River (confluence of Lake Dense to 100 yards downstream of Hooker Falls)
- (Q) Watauga County;
Watauga River (adjacent to intersection of SR 1557 and SR 1558 to NC 105 bridge and SR 1114 bridge to NC 194 bridge at Valle Crucis)
Coffee Lake
- (R) Wilkes County;
East Prong Roaring River (from Bullhead Creek downstream to the Stone Mountain State Park lower boundary)
Stone Mountain Creek (from falls at Allegheny County line to confluence with East Prong Roaring River and Bullhead Creek in Stone Mountain State Park)
Reddies River (Town of North Wilkesboro water intake dam to confluence with Yadkin River)
Elk Creek – upper (Watauga County line to lower boundary of Blue Ridge Mountain Club)
Elk Creek – lower (portion on Leatherwood Mountains development)
- (6) Wild Trout/Natural Bait Waters. Those portions of designated Wild Trout Waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Wild Trout/Natural Bait Waters. All artificial lures and natural baits, except live fish, are allowed provided they are fished using only one single hook. The creel limit, size limit, and open season are the same as other Wild Trout Waters [see 15A NCAC 10C .0305(a)]:
- (A) Cherokee County;
Bald Creek (game land portions)
Dockery Creek (game land portions)
North Shoal Creek (game land portions)
- (B) Graham County;
Deep Creek
Long Creek (game land portion)
Franks Creek
- (C) Haywood County;
Hemphill Creek (including tributaries)
Hurricane Creek (including portions of tributaries on game lands)
- (D) Jackson County;
Buff Creek

- (E) Chattooga River (SR 1100 bridge to South Carolina state line)
(lower) Fowler Creek (game land portion)
Scotsman Creek (game land portion)
Macon County:
Chattooga River (SR 1100 bridge to South Carolina state line)
Jarrett Creek (game land portion)
Kimsey Creek
Overflow Creek (game land portion)
Park Creek
Tellico Creek (game land portion)
Turtle Pond Creek (game land portion)
- (F) Madison County:
Big Creek (headwaters to the lower game land boundary, including tributaries)
- (G) Transylvania County:
North Fork French Broad River (game land portions downstream of SR 1326)
Thompson River (SR 1152 to South Carolina state line, except where posted against trespass, including portions of tributaries within this section located on game lands)

- (7) Special Regulation Trout Waters. Those portions of Designated Public Mountain Trout Waters as listed in this Subparagraph, excluding tributaries as noted, are further classified as Special Regulation Trout Waters. Regulations specific to each water are defined below:

Burke County
Catawba River (Muddy Creek to City of Morganton water intake dam).
Regulation: The daily creel limit is 7 trout and only one of which may be greater than 14 inches in length. There are no bait restrictions and 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 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 Subparagraph (a)(6) of this Rule.
 - (E) Night Fishing. Fishing on wild trout waters is not allowed between one-half hour after sunset and one-half hour before sunrise.

History Note: Authority G.S. 113-272; 113-292; Eff. February 1, 1976; Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; July 1, 1995; July 1, 1994; July 1, 1993; October 1, 1992; Temporary Amendment Eff. July 1, 1999; Amended Eff. July 1, 2000; Temporary Amendment Eff. July 1, 2001; Temporary Amendment Eff. July 1, 2002; Amended Eff. August 1, 2002 (approved by RRC on 6/21/01 and 04/18/02); Temporary Amendment Eff. June 1, 2003; Amended Eff. June 1, 2004 (this amendment replaces the amendment approved by RRC on July 17 2003); Amended Eff. August 1, 2013; August 1, 2012; August 1, 2011; August 1, 2010; May 1, 2009; May 1, 2008; May 1, 2007; May 1, 2006; June 1, 2005.

15A NCAC 10C .0206 TROT LINES AND SET-HOOKS

- (a) For purposes of this Rule, the following definitions apply:
 - (1) "set-hook" means any hook and line that is attached at one end only to a stationary or floating object and that is not under immediate control and attendance of the person using the device.
 - (2) "jug-hook" means a single hook and line attached to a float.
 - (3) "untended" means no bait is present on the device.
- (b) Except as otherwise prohibited in this Rule, trotlines and set-hooks may be set in the inland waters of North Carolina, provided no live bait is used. Trotlines and set-hooks may not be set in any of the impounded waters on the Sandhills Game Land. Trotlines and set-hooks may not be set in any designated public mountain trout waters except impounded waters of power reservoirs and municipally-owed water supply reservoirs open to the public for fishing. In Lake Waccamaw, trotlines or set-hooks may be set only from October 1 through April 30.

(c) Each trotline, set hook, and jug hook shall bear legible and indelible identification of the user's name and address. Each trotline shall be conspicuously marked at each end and each set-hook conspicuously marked at one end with a flag, float, or other prominent object so that its location is readily discernable by boat operators and swimmers. Trotlines shall be set parallel to the nearest shore in all inland fishing waters unless otherwise prohibited. The number of jug-hooks that may be fished is limited to 70 per boat. All trotlines, throwlines, set-hooks, and jug-hooks shall be fished at least once daily and all fish removed at that time. Untended trotlines, set-hooks, and jug-hooks may be removed from the water by wildlife enforcement officers when located in areas of multiple water use. It is unlawful to use metal cans or glass jugs as floats.

History Note: Authority G.S. 113-134; 113-272; 113-292; Eff. February 1, 1976; Amended Eff. July 1, 1993; May 1, 1992; July 1, 1989; January 1, 1982; Temporary Amendment Eff. July 1, 2002; Amended Eff. August 1, 2013; May 1, 2008; June 1, 2005; August 1, 2002.

15A NCAC 10C .0211 POSSESSION OF CERTAIN FISHES

(a) It is unlawful to transport, purchase, possess, sell or stock in the public or private waters of North Carolina any live individuals of:

- (1) piranha,
- (2) "walking catfish" (*Clarias batrachus*),
- (3) snakehead fish (from the Family Channidae, formerly Ophiocephalidae),
- (4) black carp (*Mylopharyngodon piceus*),
- (5) bighead carp (*Hypophthalmichthys nobilis*),
- (6) silver carp (*Hypophthalmichthys molitrix*),
- (7) rudd (*Scardinius erythrophthalmus*),
- (8) round goby (*Neogobius melanostomus*),
- (9) tubenose goby (*Proterorhinus marmoratus*),
- (10) ruffe (*Gymnocephalus cernuus*),

- (11) Japanese mysterysnail (*Cipangopaludina japonica*),
- (12) Chinese mysterysnail (*Cipangopaludina chinensis malleata*),
- (13) red-rim melania (*Melanoides tuberculatus*),
- (14) virile crayfish (*Orconectes (Gremicambarus) virilis*),
- (15) rusty crayfish (*Orconectes (Procericambarus) rusticus*),
- (16) Australian red claw crayfish or "red claw" (*Cherax quadricarinatus*, or other species of "giant" crayfish species in the genus *Cherax*),
- (17) white amur or "grass carp" (*Ctenopharyngodon idella*),
- (18) swamp or "rice" eel (*Monopterus albus*),
- (19) red shiner (*Cyprinella lutrensis*),
- (20) zebra mussel (*Dreissena polymorpha*) or
- (21) quagga mussel (*Dreissena rostriformis bugensis*) or any mussel in the family Dreissenidae.

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

History Note: Authority G.S. 113-134; 113-274(c)(1c); 113-292; Eff. February 1, 1976; Amended Eff. September 1, 1984; Temporary Amendment Eff. July 1, 2001; Amended Eff. July 18, 2002; Temporary Amendment Eff. September 1, 2002; Amended Eff. August 1, 2013; August 1, 2011; June 1, 2009, June 1, 2005; August 1, 2004.

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

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

GAME FISHES	DAILY CREEL LIMITS	MINIMUM SIZE LIMITS	OPEN SEASON
Mountain Trout:			
Wild Trout Waters	4	7 in.	ALL YEAR (exc. (3))
Hatchery Supported Trout Waters and undesignated waters	7 (exc. (3))	None (exc. (3))	All year, except March 1 to 7:00 a.m. on first Saturday in April (exc. (3))
Muskellunge	1	42 in.	ALL YEAR
Pickrel: Chain and Redfin	None	None	ALL YEAR
Walleye	8	None	ALL YEAR

Sauger	(exc. (7)&(20)) 8	(exc. (7)&(20)) 15 in.	ALL YEAR
Black Bass:			
Largemouth	5	14 in. (2 fish may be less than 14 in.)	ALL YEAR
Smallmouth	(excs. (16),(19)&(21))	(excs. (6),(8),(16),(19)&(21))	(exc. (13))
and Spotted			
Roanoke and Rock Bass	None (exc. (18))	None (exc. (18))	ALL YEAR
White Bass	25	None	ALL YEAR
Sea Trout (Spotted or Speckled)	(exc. (15))	(exc. (15))	(exc. (15))
Flounder	(exc. (15))	(exc. (15))	(exc. (15))
Red drum (channel bass, red fish, puppy drum)	(exc. (15))	(exc. (15))	(exc. (15))
Striped Bass	8 aggregate	16 in. (2 fish may be less than 16 in.)	ALL YEAR
and their hybrids			
(Morone Hybrids)	(excs. (1),(2), (4),(5)&(10))	(excs. (1),(2), (4),(5)&(10))	(excs. (4),(5),(10)&(11))
Shad: (American and hickory)	10 aggregate (exc. (17))	None	ALL YEAR (exc. (14))
Kokanee Salmon	7	None	ALL YEAR
Crappie and sunfish	None (excs. (9)&(12))	None (exc. (9))	ALL YEAR

(b) Exceptions

- (1) In the Dan River upstream from its confluence with Bannister River to the dam at Union Street in Danville, VA 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 24 inches from October 1 through May 31. From June 1 through September 30 the daily creel limit on striped bass and Morone hybrids is four in aggregate with no minimum size limit.
- (2) In the Cape Fear River upstream of Buckhorn Dam and the Deep and Haw rivers to the first impoundment and in B. Everett Jordan Reservoir, Lake Rhodhiss, Lake Hickory, and Lookout Shoals Reservoir, the creel limit on striped bass and Morone hybrids is four in the aggregate and the minimum size limit is 20 inches. In Lake Gaston and Roanoke Rapids Reservoir the creel limit on striped bass and Morone hybrids is four in aggregate with a minimum size limit of 20 inches from October 1 through May 31 and no minimum size limit from June 1 through September 30. In Lake Norman the creel limit on striped bass and Morone hybrids is four in aggregate with a minimum size limit of 16 inches from October 1 through May 31 and no minimum size limit from June 1 through September 30.

- (3) In designated public mountain trout waters the season for taking all species of fish is the same as the trout fishing season. There is no closed season on taking trout from Linville River within Linville Gorge Wilderness Area (including tributaries), Catawba River from Muddy Creek to the City of Morganton water intake dam, and the impounded waters of power reservoirs and municipally-owned water supply reservoirs open to the public for fishing.

- (4) 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.
- (5) 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.
- (6) The minimum size limit for all species of black bass is 14 inches, with no exception in:
- (A) Lake Raleigh in Wake County;
 - (B) Sutton Lake in New Hanover County;
 - (C) Lake Mattamuskeet and associated canals in Hyde County;
 - (D) Pungo Lake in Washington and Hyde counties;
 - (E) New Lake in Hyde County;
 - (F) and the Currituck, Roanoke, Croatan and Albemarle sounds and all their tributaries including Roanoke River downstream of Roanoke Rapids Dam, Chowan River, Yeopim River, Pasquotank River, Perquimans River, North River, Northwest River, Scuppernong River and Alligator River (including the Alligator/Pungo Canal east of the NC Hwy 264/45 bridge).
- In Cane Creek Lake in Union County, and Buckhorn Reservoir in Wilson and Nash counties the minimum size limit for largemouth bass is 16 inches, with no exception. In Lake Phelps and Shearon Harris Reservoir no black bass between 16 and 20 inches shall be possessed. In Randleman Reservoir only one largemouth bass greater than 20 inches may be possessed.
- (7) 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.
- (8) The minimum size limit for all black bass, with no exception, is 18 inches in Lake Thom-A-Lex in Davidson County.
- (9) 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 all the following waters and to the tributaries of the waters specified in Parts A, H, I, J, K L, M, N and O of this Subparagraph:
- (A) all public waters west of Interstate 77,
 - (B) South Yadkin River downstream of Cooleemee Dam,
 - (C) 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,
 - (D) Lake Norman,
 - (E) Lake Hyco,
 - (F) Lake Ramseur,
 - (G) Cane Creek Lake,
 - (H) Tar River downstream of Tar River Reservoir Dam,
 - (I) Neuse River downstream of Falls Lake Dam,
 - (J) Haw River downstream of Jordan Lake Dam,
 - (K) Deep River downstream of Lockville Dam,
 - (L) Cape Fear River,
 - (M) Waccamaw River downstream of Lake Waccamaw Dam,
 - (N) Lumber River including Drowning Creek,
 - (O) 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.
- (10) In designated inland fishing waters of Roanoke Sound, Croatan Sound, Albemarle Sound, Chowan River, Currituck Sound, Alligator River, Scuppernong River, and their tributaries (excluding the Roanoke River and Cashie River and their tributaries), striped bass fishing season, size limits and creel limits are the same as those established by rules or proclamations of the Marine Fisheries

- Commission in adjacent joint or coastal fishing waters.
- (11) 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.
- (12) 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.
- (13) In Sutton Lake, no largemouth bass shall be possessed from December 1 through March 31.
- (14) The season for taking American and hickory shad with bow nets is March 1 through April 30.
- (15) In inland fishing waters, sea trout (spotted or speckled), flounder, and red drum recreational seasons, size limits and creel limits are the same as those established by Marine Fisheries Commission rule or proclamations issued by the Fisheries Director in adjacent joint or coastal fishing waters.
- (16) In the Alleghany County portion of New River downstream of Fields Dam (Grayson County, Virginia), the daily creel limit for black bass is five fish, except no black bass between 14 and 20 inches in length shall be possessed and only one black bass greater than 20 inches may be possessed in the daily creel limit.
- (17) In the inland waters of Roanoke River, Neuse River, and their tributaries, the daily creel limit for American and hickory shad is 10 in aggregate, only one of which may be an American shad. In the inland waters of the Cape Fear River and its tributaries, the daily creel limit for American and hickory shad is 10 in aggregate, only five of which may be American shad. In Roanoke Rapids Reservoir, Lake Gaston and John H. Kerr Reservoir, no American shad may be possessed.
- (18) In all public fishing waters east of Interstate 77, the minimum length for Roanoke and rock bass is 8 inches and the daily creel limit is two fish in aggregate.
- (19) In Lake Cammack in Alamance County and Lake Holt in Granville County the daily creel limit for largemouth bass is 10 fish and no more than two fish greater than 14 inches may be possessed.
- (20) In John H. Kerr Reservoir, Lake Gaston, and Roanoke Rapids Lake, the minimum size limit for walleye is 18 inches and the daily creel limit is five fish.
- (21) In Lake Santeetlah in Graham County, there is no daily creel limit for black bass less than 14 inches and no more than five black bass greater than 14 inches may be possessed.
- History Note: Authority G.S. 113-134; 113-292; 113-304; 113-305;
Eff. February 1, 1976;
Temporary Amendment Eff. May 10, 1990, for a period of 180 days to expire on November 1, 1990;
Temporary Amendment Eff. May 22, 1990, for a period of 168 days to expire on November 1, 1990;
Temporary Amendment Eff. May 1, 1991, for a period of 180 days to expire on November 1, 1991;
Amended Eff. July 1, 1994; July 1, 1993; October 1, 1992;
Temporary Amendment Eff. December 1, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; July 1, 1995;
Temporary Amendment Eff. November 1, 1998;
Amended Eff. April 1, 1999;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. July 1, 2001;
Temporary Amendment Eff. March 8, 2002 [This rule replaces the rule proposed for permanent amendment effective July 1, 2002 and approved by RRC in May 2001];
Amended Eff. August 1, 2002 (approved by RRC in April 2002);
Temporary Amendment Eff. June 1, 2003;
Amended Eff. June 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003);
Amended Eff. August 1, 2013; August 1, 2012; March 1, 2012; August 1, 2011; August 1, 2010; May 1, 2009; July 1, 2008; May 1, 2008; May 1, 2007; May 1, 2006; June 1, 2005.*
- 15A NCAC 10C .0401 MANNER OF TAKING NONGAME FISHES: PURCHASE AND SALE**
- (a) Except as permitted by the rules in this Section, it is unlawful to take nongame fishes from the inland fishing waters of North Carolina in any manner other than with hook and line or grabbling. Nongame fishes may be taken by hook and line or 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) While boating on or fishing in the following inland fishing waters, no person shall take river herring (alewife and blueback) that are

greater than six inches in total length or possess such herring regardless of origin in:

- (A) Roanoke River downstream of Roanoke Rapids Dam,
 - (B) Tar River downstream of Rocky Mount Mill Dam,
 - (C) Neuse River downstream of Milburnie Dam,
 - (D) Cape Fear River downstream of Buckhorn Dam,
 - (E) Pee Dee River downstream of Blewett Falls Dam,
 - (F) Lumber River including Drowning Creek,
 - (G) all the tributaries to the rivers listed above,
 - (H) all other inland fishing waters east of Interstate 95.
- (3) Grass carp shall not be taken or possessed on Lake James, Lookout Shoals Lake, Lake Norman, Mountain Island Reservoir and Lake Wylie, except that one fish per day may be taken by bow and arrow.
 - (4) No trotlines or set-hooks shall be used in the impounded waters located on the Sandhills Game Land or in designated public mountain trout waters.
 - (5) In Lake Waccamaw, trotlines or set-hooks may be used only from October 1 through April 30.
 - (6) In inland fishing waters, gray trout (weakfish) recreational seasons, size limits and creel limits are the same as those established by Marine Fisheries Commission rule or proclamations issued by the Fisheries Director in adjacent joint or coastal fishing waters.

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

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

(d) Freshwater mussels, including the Asiatic clam (*Corbicula fluminea*), may be taken only 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) In waters that are stocked and managed for catfish and located on game lands, on Commission-owned property, or on the property of a cooperator, including waters within the Community Fishing Program, it is unlawful to take channel, white, or blue catfish (forked tail catfish) by means other than hook and line; the daily creel limit for forked tail catfish is six fish in aggregate. Waters to which this creel limit applies shall be posted, as specified in 15A NCAC 10E .0103.

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

History Note: Authority G.S. 113-134; 113-272; 113-292; Eff. February 1, 1976;
Amended Eff. July 1, 1994; July 1, 1993; May 1, 1992;
Temporary Amendment Eff. December 1, 1994;
Amended Eff. July 1, 1998; July 1, 1996; July 1, 1995;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. July 1, 2002; July 1, 2001;
Amended Eff. August 1, 2002 (approved by RRC on 06/21/01 and 04/18/02);
Temporary Amendment Eff. June 1, 2003;
Amended Eff. May 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003);
Amended Eff. August 1, 2013; August 1, 2012; August 1, 2011;
August 1, 2010; May 1, 2009; May 1, 2008; May 1, 2007; May 1, 2006; June 1, 2005.

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 that are under the immediate control and attendance of the individual operating them;
- (5) a hand-held line with a single bait attached;
- (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
- (7) a collapsible crab trap with the largest open dimension not greater than 18 inches and that 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 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;
- (2) While boating on or fishing in the following inland fishing waters, no river herring (alewife and blueback) that are greater than six inches in total length shall be taken and no such river herring shall be possessed regardless of origin:
 - (A) Roanoke River downstream of Roanoke Rapids Dam,
 - (B) Tar River downstream of Rocky Mount Mill Dam,
 - (C) Neuse River downstream of Milburnie Dam,
 - (D) Cape Fear River downstream of Buckhorn Dam,
 - (E) Pee Dee River downstream of Blewett Falls Dam,
 - (F) Lumber River including Drowning Creek,
 - (G) the tributaries to the rivers listed above,
 - (H) 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) shall be taken.

(e) Any fishes taken for bait purposes are included within the daily possession limit for that species.

(f) It is unlawful to take nongame fish for bait or any other fish bait from designated public mountain trout waters and from the bodies of water specified for the following counties:

- (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, 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.

History Note: Authority G.S. 113-134; 113-135; 113-135.1; 113-272; 113-272.3; 113-292;

Eff. February 1, 1976;

Amended Eff. July 1, 2000; July 1, 1998; July 1, 1993; July 1, 1992; May 1, 1992; July 1, 1989;

Temporary Amendment Eff. July 1, 2001;

Amended Eff. July 18, 2002;

Temporary Amendment Eff. June 1, 2003;

Amended Eff. June 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003);

Amended Eff. August 1, 2013; August 1, 2010; May 1, 2008; May 1, 2007; May 1, 2006.

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

The Commission shall conduct a public input meeting in the area where the game land is located before establishing any archery, restricted firearms or restricted zone. After the input meeting the public comments shall be presented to an official Commission meeting for final determination.

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

(c) Use of weapons. No person shall discharge:

- (1) any weapon within 150 yards of any game land building or designated game land camping area, except where posted otherwise;
- (2) any weapon within 150 yards of any residence located on or adjacent to game lands, except on Butner-Falls of Neuse and Jordan game lands; and
- (3) any firearm within 150 yards of any residence located on or adjacent to Butner-Falls of Neuse and Jordan Game Lands.

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, except shotgun shells containing lead buckshot may be used while deer hunting. Every individual carrying a concealed handgun must adhere to the requirements set forth in G.S. 14-415.11, even if the state issuing the concealed handgun permit is not North Carolina. On Buckhorn, Butner-Falls of Neuse, Chatham, Harris, Hyco, Jordan, Kerr Scott, Lee, Mayo, Sutton Lake, and Vance game lands and Pee Dee River Game Land north of U.S 74, and that portion of R. Wayne Bailey- Caswell Game Land that is located north of U.S. 158 and east of N.C. 119, no person shall possess a firearm during closed hunting seasons or closed hunting days for game birds or game animals, except under the following conditions:

- (1) the firearm is a .22 caliber pistol with a barrel not greater than seven and one-half inches in length and shooting only short, long, or long rifle ammunition carried as a side arm;
- (2) the firearm is cased or not immediately available for use;
- (3) the firearm is used by persons participating in field trials on field trial areas; or
- (4) the firearm is possessed in designated camping areas for defense of persons and property.

(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)(1) 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 that, pursuant to a written request from the sponsoring organization, has been authorized in writing and scheduled for occurrence on a game land by an authorized representative of the Wildlife Resources Commission, and any nonresident handler, scout or owner participating therein may participate without procuring a game lands license, provided such nonresident has in his possession a valid hunting license issued by the state of his residence. Any individual or organization sponsoring a field trial on the Sandhills Field Trial grounds or the Laurinburg Fox Trial facility shall file with the Commissions agent an application to use the area and facility accompanied by the facility use fee computed at the rate of two hundred dollars (\$200.00) 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 seventy-five dollars (\$75.00) 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) in posted "safety zones" located on any game land;
- (3) 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;
- (4) on the John's River Waterfowl Refuge in Burke County; and
- (5) 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) 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 (j) of this Rule or holds a Disabled Access Program Permit as described in Paragraph (m) of this Rule and is abiding by the rules described in Paragraph (m).

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

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

(j) 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 (m) of this Rule apply, participants in the program may operate electric wheel chairs, all terrain vehicles or other passenger vehicles:

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

Each program participant may be accompanied by one 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 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.

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

(l) 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 (j) of this Rule and people who have obtained a Disabled Access Program permit are exempt from the previous sentence but must comply with the terms of

their permit. Furthermore, disabled persons, as defined under the federal Americans with Disabilities Act, may use wheelchairs or other mobility devices designed for indoor pedestrian use on any area where foot travel is allowed.

(m) Disabled Access Program. Permits issued under this program shall be based upon medical evidence submitted by the person verifying that a handicap exists that limits physical mobility to the extent that normal utilization of the game lands is not possible without vehicular assistance. Persons meeting this requirement may operate electric wheel chairs, all terrain vehicles, and other passenger vehicles on any Commission-maintained road open for vehicular travel and those trails posted for vehicular travel and ungated or open-gated roads otherwise closed to vehicular traffic on game lands owned by the Wildlife Resources Commission and on game lands whose owners have agreed to such use. Those game lands, or parts thereof, where this Paragraph applies are designated in the game land rules and map book. This Paragraph does not permit vehicular access on fields, openings, roads, paths, or trails planted to wildlife food or cover. One companion, who is identified by a companion 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 display the vehicular access permit issued by the Wildlife Resources Commission in the passenger area of the vehicle where it can easily be seen by Commission staff outside the vehicle. It is unlawful for anyone other than disabled persons as defined in Paragraph (j) 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.

(n) 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.

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

(p) 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 that have been approved by the Commission and for which a permit has been issued may be conducted, provided that the permit authorizing such activity is available for inspection by wildlife enforcement officers at the time the activity is taking place. No person, when using any shooting range, shall deposit any debris or refuse on the grounds of the

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

(q) Limited-access Roads. During the months of June, July and August, roads posted as "Limited-access Roads" are open to motorized vehicles from 5:00 a.m. to 10:00 p.m. only. These roads shall be posted with the opening and closing times.

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

Eff. February 1, 1976;

Amended Eff. July 1, 1993; April 1, 1992;

Temporary Amendment Eff. October 11, 1993;

Amended Eff. July 1, 1998; July 1, 1996; July 1, 1995; July 1, 1994;

Temporary Amendment Eff. July 1, 1999;

Amended Eff. July 1, 2000;

Temporary Amendment Eff. August 31, 2001;

Amended Eff. August 1, 2002;

Amended Eff. June 1, 2004; (this amendment replaces the amendment approved by RRC on July 17, 2003);

Amended Eff. January 1, 2013; January 1, 2012; June 1, 2011; August 1, 2010; May 1, 2009; May 1, 2008; May 1, 2007; May 1, 2006; November 1, 2005.

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 or gates, or otherwise prevent vehicles from using any roadway.

(c) **Tree Stands.** It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts or wire to a tree on any game land designated herein. This prohibition does not apply to lag-screw steps or portable stands that are removed after use with no metal left remaining in or attached to the tree.

(d) **Time and Manner of Taking.** Hunting is allowed on game lands only during the open season for game animals and game birds, unless hunting is allowed by permit. Individual game lands or parts thereof may be closed to hunting or limited to specific dates by this Chapter. Persons shall hunt only with weapons lawful for the open game animal or game bird seasons. On managed waterfowl impoundments, persons shall:

- (1) not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates;
- (2) not hunt after 1:00 p.m. on such hunting dates;
- (3) not set decoys out prior to 4:00 a.m.;
- (4) remove decoys by 3:00 p.m. each day; and
- (5) not operate any vessel or vehicle powered by an internal combustion engine.

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 that 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.

(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, except for game lands in this Rule that specifically allow hunting on Tuesdays, Thursday and Fridays. Falconry may also be practiced on Sundays. 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. Feral Swine 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 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) Except for muzzle-loaders, rifles larger than .22 caliber rimfire shall not be used.
 - (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 September 1 through the last day of February and March 31 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 is prohibited.
- (8) Brunswick County Game Land in Brunswick County
 - (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 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. If any of these days falls on a Tuesday, Friday or Saturday, bear hunting is allowed on those days.
- (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.
- (12) Bullard and Branch Hunting Preserve Game Lands in Robeson County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (13) Butner - Falls of Neuse Game Land in Durham, Granville and Wake counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl shall be taken only on Tuesdays, Thursdays and Saturdays; Christmas, New Year's and Martin Luther King, Jr. Days and on the opening and closing days of the applicable waterfowl seasons. On the posted waterfowl impoundments a special permit is required for all waterfowl hunting after November 1.
 - (D) Horseback riding is prohibited.
 - (E) Target shooting is prohibited
 - (F) Wild turkey hunting is by permit only, except on those areas posted as an archery zone.
 - (G) The use of dogs for hunting deer is prohibited on that portion west of NC 50 and south of Falls Lake.
 - (H) The use of bicycles is restricted to designated areas, except that this restriction does not apply to hunters engaged in the act of hunting during the open days of the applicable seasons for game birds and game animals.

- (I) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and March 31 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.
 - (C) Horseback riding is allowed only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons. Horseback riding is allowed only on roads opened to vehicular traffic. Participants must obtain a game lands license prior to engaging in such activity.
 - (D) The area encompassed by the following roads is permit-only for all quail and woodcock hunting and all bird dog training: From Yanceyville south on NC 62 to the intersection of SR 1746, west on SR1746 to the intersection of SR 1156, south on SR 1156 to the intersection of SR 1783, east on SR 1783 to the intersection of NC 62, north on NC62 to the intersection of SR 1736, east on SR 1736 to the intersection of SR 1730, east on SR 1730 to NC 86, north on NC 86 to NC 62.
- (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 March 31 through May 14.
- (18) Catawba Game Land in Catawba County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (C) Deer may be taken with bow and arrow only from the tract known as Molly's Backbone.
- (19) Chatham Game Land in Chatham County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Wild turkey hunting is by permit only.
 - (D) Horseback riding is allowed only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons.
 - (E) Target shooting is prohibited.
- (20) Cherokee Game Land in Ashe County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (21) Chowan Game Land in Chowan County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers Season.
- (22) Chowan Swamp Game Land in Bertie, Gates and Hertford counties.
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Bear hunting is restricted to the first three hunting days during the November bear season and the first three hunting days during the second week of the December bear season except that portion of Chowan Swamp Game Land in Gates County

- that is east of Highway 158/13, south of Highway 158, west of Highway 32, and north of Catherine Creek and the Chowan River where the bear season is the same as the season dates for the Gates County bear season.
- (D) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
- (23) Cold Mountain Game Land in Haywood County
- (A) Six Days per Week Area
- (B) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (C) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (24) Columbus County Game Land in Columbus County.
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (25) Croatan Game Land in Carteret, Craven and Jones counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl shall be taken only on the following days:
- (i) the opening and closing days of the applicable waterfowl seasons;
- (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
- (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) Beginning on the first open waterfowl day in October through the end of the waterfowl season, waterfowl hunting from designated Disabled Sportsmen blinds on the Catfish Lake Waterfowl Impoundment is by permit only.
- (E) Dove hunting is by permit only for the first two open days 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 use a firearm.
- (D) The boundary of the Game Land shall extend 5 yards from the edge of the marsh or shoreline.
- (E) Dogs are allowed only for waterfowl hunting by permitted waterfowl hunters on the day of their hunt.
- (F) No screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.
- (G) Deer of either sex may be taken all the days of the applicable deer with visible antlers season.
- (27) Dare Game Land in Dare County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (C) No hunting is allowed 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.
- (30) Elk Knob Game Land in Watauga County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (31) Embro Game Land in Halifax and Warren counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited.
- (32) Goose Creek Game Land in Beaufort and Pamlico counties
- (A) Six Days per Week Area

- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Except as provided in Part (D) of this Subparagraph, waterfowl in posted waterfowl impoundments shall be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
 - (D) Beginning on the first open waterfowl season day in October and through the end of the waterfowl season, waterfowl hunting is by permit only on the following waterfowl impoundments: Pamlico Point, Campbell Creek, Hunting Creek, Spring Creek, Smith Creek and Hobucken.
 - (E) On Pamlico Point and Campbell Creek Waterfowl Impoundments all activities, except waterfowl hunting on designated waterfowl hunting days and trapping during the trapping season, are restricted to the posted Scouting-only Zone during the period November 1 through March 15.
 - (F) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
 - (G) Hunting and vehicular access on the Parker Farm Tract is restricted from September 1 to the end of February and April 1 to May 15 to individuals that possess a valid hunting opportunity permit.
- (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 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 the last day of February and March 31 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 the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
 - (E) On that portion north of the Bear Garden Road, west of Shaw Road to Baby Branch, east of the Northeast Cape Fear River, south of NC 53 and west of NC 50, deer hunting and bear hunting are permit only.
 - (F) The use of dogs for hunting deer and bear is prohibited on that portion of the game land that is south of Baby Branch extending west to Stag Park Road, west of Shaw Road, north of Meeks Road extending west to Stag Park Road and east of Stag Park Road.
 - (G) Hunting and vehicular access on the Pender 4 Tract is restricted from September 1 to the last day of February and April 1 to May 15 to individuals that possess valid hunting opportunity permits, unless otherwise authorized by the Wildlife Resources Commission.
 - (H) Hunters who possess a Disabled Access Permit may operate an All Terrain Vehicle on and within 100 yards of trails designated for Disabled Sportsman Access.
- (38) Hyco Game land in Person County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Target shooting is prohibited.
- (39) J. Morgan Futch Game Land in Tyrrell County, Permit Only Area.
- (40) Johns River Game Land in Burke County
- (A) Hunting is by permit only.
 - (B) During permitted deer hunts deer of either-sex may be taken by permit holders.
 - (C) Entry on posted waterfowl impoundments is prohibited October 1 through March 31 except by lawful waterfowl hunting permit holders and only on those days written on the permits.
 - (D) The use or construction of permanent hunting blinds is prohibited.
- (41) Jordan Game Land in Chatham, Durham, Orange and Wake counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.
 - (D) Horseback riding is prohibited except on those areas posted as American Tobacco Trail and other areas posted for equestrian use. Unless otherwise posted, horseback riding is permitted on posted portions of the American Tobacco Trail anytime the trail is open for use. On all other trails posted for equestrian use, horseback riding is allowed only during June, July and August, and on Sundays the remainder of the year except during open turkey and deer seasons.
 - (E) Target shooting is prohibited.
 - (F) Wild turkey hunting is by permit only, except on those areas posted as an Archery Zone.
 - (G) The use of bicycles is restricted to designated areas, except that this restriction does not apply to hunters engaged in the act of hunting during the open days of the applicable seasons for game birds and game animals.
- (42) Juniper Creek Game Land in Brunswick and Columbus counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the Deer With Visible Antlers Season.
 - (C) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
- (43) Kerr Scott Game Land in Wilkes County
- (A) Six Days per Week Area
 - (B) Use of centerfire rifles is prohibited.
 - (C) Use of muzzleloaders, shotguns, or rifles for hunting deer during the applicable Deer With Visible Antlers Season is prohibited.
 - (D) Tree stands shall not be left overnight and no screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.
 - (E) Deer of either sex may be taken on all open days of the applicable deer with visible antlers season.

- (F) Hunting on posted waterfowl impoundments is by permit only.
- (G) The use of firearms for hunting wild turkey is prohibited.
- (44) Lantern Acres Game Land in Tyrrell and Washington counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Wild turkey hunting is by permit only.
 - (D) The use of dogs for hunting deer on the Godley Tract is prohibited.
 - (E) Waterfowl hunting on posted waterfowl impoundments is by permit only.
- (45) Lee Game Land in Lee County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Target shooting is prohibited.
- (46) Light Ground Pocosin Game Land in Pamlico County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer with Visible Antlers Season.
- (47) Linwood Game Land in Davidson County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken on all of the open days of the applicable Deer With Visible Antlers Season.
- (48) Lower Fishing Creek Game Land in Edgecombe and Halifax counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
 - (D) The use of dogs for hunting deer is prohibited.
- (49) Mayo Game Land in Person County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl shall be taken only on Tuesdays, Thursdays and Saturdays; 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 is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (51) Nantahala Game Land in Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season in that portion located in Transylvania County.
- (52) Needmore Game Land in Macon and Swain counties.
 - (A) Six Days per Week Area
 - (B) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
 - (C) On posted dove fields, dove hunting on the opening day of dove season is by permit only.
- (53) Neuse River Game Land in Craven 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.
- (54) New Lake Game Land in Hyde and Tyrrell counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (55) Nicholson Creek Game Land in Hoke County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken with bow and arrow on open hunting days from the Saturday on or nearest September 10 to the fourth Friday before Thanksgiving.
 - (C) Deer of either sex may be taken with muzzle-loading firearms on open hunting days beginning the fourth Saturday before Thanksgiving through the Wednesday of the second week thereafter.
 - (D) The Deer With Visible Antlers season consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving.

- (E) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (F) The use of dogs for hunting deer is prohibited.
- (G) Wild turkey hunting is by permit only.
- (H) On Lake Upchurch, the following activities are prohibited:
 - (i) No person shall operate any vessel or vehicle powered by an internal combustion engine; and
 - (ii) Swimming.
- (56) North River Game Land in Camden and Currituck counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.
 - (D) 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.
 - (C) Use of centerfire rifles is prohibited in that portion in Anson and Richmond counties North of US-74.
 - (D) 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.
 - (C) Horseback riding is prohibited from November 1 through January 1.
- (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) Horseback riding is prohibited on the Black Bear (McDowell County), Linville River (Burke County), and Little Tablerock Tracts (Avery, McDowell, and Mitchell counties).
- (61) Pond Mountain Game Land in Ashe County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
 - (D) Deer and bear hunting is by permit only.
- (62) Pungo River Game Land in Hyde County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (63) Rhodes Pond Game Land in Cumberland and Harnett counties
 - (A) Hunting is by permit only.
 - (B) Swimming is prohibited on the area.
- (64) Roanoke River Wetlands in Bertie, Halifax, Martin and Northampton counties
 - (A) Hunting is by Permit only.
 - (B) Vehicles are prohibited on roads or trails except those operated on Commission business or by permit holders.
 - (C) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas, provided, however, that camping is allowed at any time within 100 yards of the Roanoke River on the state-owned portion of the game land.
- (65) Roanoke Island Marshes Game Land in Dare County-Hunting is by permit only.
- (66) Robeson Game Land in Robeson County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (67) Rockfish Creek Game Land in Hoke County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken with bow and arrow on open hunting days from the Saturday on or nearest

- September 10 to the fourth Friday before Thanksgiving.
- (C) Deer of either sex may be taken with muzzle-loading firearms on open hunting days beginning the fourth Saturday before Thanksgiving through the Wednesday of the second week thereafter.
- (D) The Deer With Visible Antlers season consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving.
- (E) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (F) The use of dogs for hunting deer is prohibited.
- (G) Wild turkey hunting is by permit only.
- (H) Taking fox squirrels is prohibited.
- (68) Rocky Run Game Land in Onslow County: Hunting is by permit only.
- (69) Sampson Game Land in Sampson County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (70) Sandhills Game Land in Hoke, Moore, Richmond and Scotland counties
- (A) Three Days per Week Area
- (B) Hunting is prohibited on the J. Robert Gordon Field Trial Grounds from October 22 through March 31 except as follows:
- (i) deer may be taken with archery equipment on all the open days of the bow-and-arrow season through the fourth Friday before Thanksgiving; with legal muzzleloading firearms and archery equipment all the open days of the muzzleloader season through the second Saturday before Thanksgiving; and with all legal weapons from the second Monday before Thanksgiving through the Saturday following Thanksgiving;
- (ii) dove may be taken all open days from the opening day of the dove season through the third Saturday thereafter;
- (iii) opossum, raccoon and squirrel (gray and fox) may be taken all the open days from second Monday before Thanksgiving through the Saturday following Thanksgiving;
- (iv) rabbit may be taken all open days from the second Saturday preceding Thanksgiving through the Saturday following Thanksgiving;
- (v) waterfowl may be taken on open days during any waterfowl season; and
- (vi) wild animals and wild birds may be taken as part of a Disabled Sportsmen Program Permit Hunt.
- (C) The Deer With Visible Antlers season is the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving except on the J. Robert Gordon Field Trial Grounds.
- (D) The bow-and-arrow season is all open days from the Saturday on or nearest to Sept. 10 to the fourth Friday before Thanksgiving and, except on the J. Robert Gordon Field Trial Grounds, the third Monday after Thanksgiving through January 1. Deer may be taken with archery equipment on all open hunting days during the bow and arrow season, the Deer with Visible antlers season, and the muzzleloader season as stated in this Subparagraph.
- (E) Muzzleloader season is all the open days from the fourth Saturday preceeding Thanksgiving through the Wednesday of the second week thereafter and, except on the J. Robert Gordon Field Trial Grounds, the third Monday after Thanksgiving through January 1. Deer may be taken with muzzle-loading firearms on all open hunting days during the muzzleloader season and the Deer With Visible Antlers season.
- (F) Either-sex deer hunting during the Deer With Visible Antlers Season is by permit only.
- (G) In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.
- (H) Wild turkey hunting is by permit only.

- (I) The following areas are permit-only for all quail and woodcock hunting and dog training on birds:
 - (i) In Richmond County: that part east of US 1;
 - (ii) In Scotland County: that part west of SR 1328 and north of Gardner Farm Lane and that part east of SR 1328 and north of Scotland Lake Lane.
- (J) Horseback riding on field trial grounds from October 22 through March 31 is prohibited unless riding in authorized field trials.
- (K) 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 March 31 through May 14.
- (71) Sandy Creek Game Land in Nash and Franklin Counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
 - (D) The use of dogs for hunting deer is prohibited.
- (72) Sandy Mush Game Land in Buncombe and Madison counties.
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer with Visible Antlers season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
 - (D) Dogs shall only be trained on Mondays, Wednesdays and Saturdays and only as allowed in 15A NCAC 10D .0102(e).
 - (E) Dove hunting is by permit only from the opening day through the second Saturday of dove season.
- (73) Second Creek Game Land in Rowan County- hunting is by permit only.
- (74) Shocco Creek Game Land in Franklin, Halifax, Nash and Warren counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
- (75) South Mountains Game Land in Burke, Cleveland, McDowell and Rutherford counties
 - (A) Six Days per Week Area
 - (B) The Deer With Visible Antlers season 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.
 - (E) That part of South Mountains Game Land in Cleveland, McDowell, and Rutherford counties is closed to all grouse, quail and woodcock hunting and all bird dog training.
- (76) Stones Creek Game Land in Onslow County
 - (A) Six-Day per Week Area.
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Swimming in all lakes is prohibited.
 - (D) Waterfowl on posted waterfowl impoundments may be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (77) Suggs Mill Pond Game Land in Bladen and Cumberland counties
 - (A) Hunting and trapping is by Permit only.
 - (B) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas

- both designated and posted as camping areas.
- (C) Entry is prohibited on scheduled hunt or trapping days except for:
- (i) hunters or trappers holding special hunt or trapping permits; and
- (ii) persons using Campground Road to access Suggs Mill Pond Lake at the dam.
- (78) Sutton Lake Game Land in New Hanover and Brunswick counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Target shooting is prohibited.
- (79) Tar River Game Land in Edgecombe County – hunting is by permit only.
- (80) Three Top Mountain Game Land in Ashe County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited.
- (81) Thurmond Chatham Game Land in Alleghany and Wilkes counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. Participants must obtain a game lands license prior to horseback riding on this area.
- (D) The maximum period of consecutive overnight camping at any designated campground is 14 days within any 30 day period from May 1 through August 31. After 14 consecutive days of camping all personal belongings must be removed from the game land.
- (82) Tillery game Land in Halifax County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited.
- (D) The use of dogs for hunting deer is prohibited.
- (E) Wild turkey hunting is by permit only.
- (83) Toxaway Game Land in Jackson and Transylvania counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (84) Uwharrie Game Land in Davidson, Montgomery and Randolph counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last open six days of the applicable Deer With Visible Antlers Season.
- (85) Vance Game Land in Vance County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) The use of dogs, centerfire rifles and handguns for hunting deer is prohibited on the Nutbush Peninsula tract.
- (86) Van Swamp Game Land in Beaufort and Washington counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season.
- (87) White Oak River Game Land in Onslow County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Except as provided in Part (D) of this Subparagraph, waterfowl in posted waterfowl impoundments shall be taken only on the following days:
- (i) the opening and closing days of the applicable waterfowl seasons;
- (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
- (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) Beginning on the first open waterfowl season day in October and through

- the end of the waterfowl season, a permit is required for hunting posted waterfowl impoundments.
- (E) The Huggins Tract and Morton Tracts have the following restrictions:
- (i) Access on Hargett Avenue and Sloan Farm Road requires a valid Hunting Opportunity Permit;
 - (ii) Hunting is by permit only; and
 - (iii) The use of dogs for hunting deer is prohibited.
- (F) Wild turkey hunting is by permit only.
- (88) Whitehall Plantation Game Land in Bladen County
- (A) Hunting and trapping is by permit only.
 - (B) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.

(i) On permitted type hunts, deer of either sex may be taken on the hunt dates indicated on the permit. Completed applications must be received by the Commission not later than the first day of September next preceding the dates of hunt. Permits shall be issued by random computer selection, shall be mailed to the permittees prior to the hunt, and are nontransferable. A hunter making a kill must validate the kill and report the kill to a wildlife cooperator 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:

- (1) Bertie, Halifax and Martin counties—Roanoke River Wetlands,
- (2) Bertie County—Roanoke River National Wildlife Refuge,
- (3) Bladen County—Suggs Mill Pond Game Lands,
- (4) Burke County—John's River Waterfowl Refuge,
- (5) Dare County—Dare Game Lands (Those parts of bombing range posted against hunting),
- (6) Dare County—Roanoke Sound Marshes Game Lands, and
- (7) Henderson and Transylvania counties—Dupont State Forest Game Lands.

(k) Access to Hunting Creek Swamp Waterfowl Refuge in Davie County requires written permission from the Commission. Written permission will be granted only when entry onto the Waterfowl Refuge will not compromise the primary purpose for establishing the Waterfowl Refuge and the person requesting entry can demonstrate a valid need or the 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.

(l) 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. Dogs may not be used to hunt free-ranging swine except on game lands that allow the use of dogs for hunting deer or bear and during the applicable deer or bear season.

(m) 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 prohibited in Paragraph (h) of this Rule.

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

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

(p) When waterfowl hunting is specifically permitted in this Rule on Christmas and New Years' Day and those days fall on Sundays, the open waterfowl hunting day shall be the following day.

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

Eff. February 1, 1976;

Temporary Amendment Eff. October 3, 1991;

Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; September 1, 1995; July 1, 1995; September 1, 1994; July 1, 1994;

Temporary Amendment Eff. October 1, 1999; July 1, 1999;

Amended Eff. July 1, 2000;

Temporary Amendment Eff. July 1, 2002; July 1, 2001;

Amended Eff. August 1, 2002 (approved by RRC on 06/21/01 and 04/18/02);

Temporary Amendment Eff. June 1, 2003;

Amended Eff. June 1, 2004 (this replaces the amendment approved by RRC on July 17, 2003);

Amended Eff. January 1, 2013; August 1, 2012; August 1, 2011; August 1, 2010; May 1, 2009; May 1, 2008; May 1, 2007; October 1, 2006; August 1, 2006; May 1, 2006; February 1, 2006; June 1, 2005; October 1, 2004.

15A NCAC 101.0102 PROTECTION OF ENDANGERED/THREATENED/SPECIAL CONCERN

(a) No Open Season. There is no open season for taking any of the species listed as endangered in Rule .0103, or threatened in Rule .0104 of this Section, except for the American alligator (*Alligator mississippiensis*) as set forth in the rules of this Chapter. Unless otherwise provided in North Carolina General Statutes or the rules of this Chapter, there is no open season for taking any of the species listed as special concern in Rule .0105 of this Section. Except as provided in Paragraphs (b), (c) and (e) of this Rule, it is unlawful to take or possess any of such species at any time.

(b) Permits. The executive director may issue permits to take or possess an endangered, threatened, or special concern species:

- (1) To an individual or institution with experience and training in handling, and caring for the wildlife and in conducting a scientific study, for the purpose of scientific investigation relevant to perpetuation or restoration of said species or as a part of a scientifically valid study or restoration effort;
 - (2) To a public or private educator or exhibitor who demonstrates that he or she has lawfully obtained the specimen or specimens in his or her possession, possesses the requisite equipment and expertise to care for such specimen or specimens and abides by the caging requirements for the species set forth in 15A NCAC 10H .0302;
 - (3) To a person who lawfully possessed any such species for more than 90 days immediately prior to the date that such species was listed and who abides by the caging requirements for the species set forth in 15A NCAC 10H .0302, provided however, that no permit shall be issued more than ninety days after the effective date of the initial listing for that species; or
 - (4) To a person with demonstrable depredation from a Special Concern Species, or the American alligator (*Alligator mississippiensis*).
- (c) Taking Without a Permit:
- (1) An individual may take an endangered, threatened, or special concern species in defense of his own life or the lives of others.
 - (2) A state or federal conservation officer or employee who is designated by his agency to do so may, when acting in the course of his official duties, take, possess, and transport endangered, threatened, or special concern species if the action is necessary to:
 - (A) aid a sick, injured, diseased or orphaned specimen;
 - (B) dispose of a dead specimen;
 - (C) salvage a dead specimen that may be useful for scientific study; or
 - (D) remove specimens that constitute a demonstrable but nonimmediate threat to human safety, provided the taking is done in a humane and noninjurious manner. The taking may involve injuring or killing endangered, threatened, or special concern species only if it is not reasonably possible to eliminate the threat by live-capturing and releasing the specimen unharmed, in a habitat that is suitable for the survival of that species.
- (d) Reporting. Any taking or possession of an endangered, threatened, or special concern species under Paragraphs (b) and (c) of this Rule is subject to applicable reporting requirements of federal law and regulations and the reporting requirements of the permit issued by the Executive Director or of 15A NCAC 10B .0106(e).
- (e) Exceptions.
- (1) Notwithstanding any other provisions of this Rule, processed meat and other parts of American alligators, that have been lawfully taken in a state in which there is an open season for harvesting alligators, may be possessed, bought and sold when such products are marketed in packages or containers that are labeled to indicate the state in which they were taken and the identity, address, and lawful authority of the processor or distributor.
 - (2) Raptors listed as special concern species in Rule .0105 of this Section may be taken from the wild for falconry purposes and for falconry propagation, provided that a valid North Carolina endangered species permit has been obtained as required in Paragraph (b) of this Rule.
 - (3) Captive-bred raptors listed as special concern species may be bought, sold, bartered or traded as provided in 50 C.F.R. 21.30 when marked as required under those regulations.
 - (4) Importation, possession, sales, transportation and exportation of species listed as special concern species in Rule .0105 of this Section is allowed under permit by retail and wholesale establishments whose primary function is providing scientific supplies for research provided that:
 - (A) the specimens were lawfully obtained from captive or wild populations outside of North Carolina;
 - (B) they are possessed in indoor facilities;
 - (C) all transportation of specimens provides safeguards adequate to prevent accidental escape; and
 - (D) importation, possession and sale or transfer is permitted only as listed in Parts (e)(4)(A) and (B) of this Rule.
- (f) A written application to the Commission is required for a permit to authorize importation, and possession for the purpose of retail or wholesale sale. The application shall identify the source of the specimens, and provide documentation of lawful acquisition. Applications for permits shall include plans for holding, transportation, advertisement, and sale in such detail as to allow a determination of the safeguards provided against accidental escape and sales to unauthorized individuals.
- (g) Purchase, importation, and possession of special concern species within North Carolina is allowed under permit to state and federal governmental agencies, corporate research entities, and research institutions provided that:
- (1) sales are permitted to out of state consumers;
 - (2) the specimens will be possessed in indoor facilities and safeguards adequate to prevent accidental escape are provided during all transportation of the specimens;

- (3) the agency's or institution's Animal Use and Care Committee has approved the research protocol for this species; and
- (4) no specimens may be stocked or released in the public or private waters or lands of North Carolina and specimens may not be transferred to any private individual.

History Note: Authority G.S. 113-134; 113-291.2; 113-291.3; 113-292; 113-333; Eff. June 11, 1977; Amended Eff. January 1, 2013; January 1, 2012; May 1, 2009; April 1, 2003; April 1, 2001; April 1, 1997; February 1, 1994; September 1, 1989; March 1, 1981; March 17, 1978.

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. 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) Use and possession of weapons. No person shall discharge:
- (1) any weapon from a vehicle;
 - (2) any weapon within 200 yards of any building or designated camping areas;
 - (3) any weapons within, into, or across a posted "safety zone;" or
 - (4) a firearm within, into, or across a posted "restricted zone."

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. Every individual carrying a concealed handgun must adhere to the requirements set forth in G.S. 14-415.11, even if the state issuing the concealed handgun permit is not North Carolina.

(d) License Requirements:

- (1) Hunting and Trapping:
 - (A) Requirement. Except as provided in Part (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) 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.

(h) 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 is allowed except on those areas designated and posted as Colonial Waterbird Nesting Areas.

(i) 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.

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

(k) 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.

(l) 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.

(m) It is unlawful to release animals or birds; domesticated animals, except hunting dogs and raptors where otherwise permitted for hunting or training purposes; and feral animals on

conservation areas without prior written authorization of the Wildlife Resources Commission.

(n) Possession and removal. No living or dead nongame wildlife, fungi, invertebrates, eggs, nests, animal parts, plants, plant materials, or other materials may be possessed on or removed from conservation areas without written permission from the Commission. For purposes of this Rule, "other materials" includes all metals, minerals, rocks, soil, organic debris, buildings, fences, historic artifacts and water.

History Note: Authority G.S. 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306; 113-296; 113-297; Eff. February 1, 1990; Amended Eff. January 1, 2013; January 1, 2012; August 1, 2010; May 1, 2007; May 1, 2006; June 1, 2005.

TITLE 19A – DEPARTMENT OF TRANSPORTATION

19A NCAC 02E .0609 ISSUANCE OR DENIAL OF SELECTIVE VEGETATION REMOVAL PERMIT FOR OUTDOOR ADVERTISING

(a) Within 30 days following receipt of the application for a selective vegetation removal permit for outdoor advertising, including the fee set out in G.S. 136-18.7 and all required documentation set out in G.S. 136-133.2 and these rules, the Division Engineer shall approve or deny the application. The applicant, as part of the application, shall state in writing the date that he has delivered a copy of the application with required attachments to a municipality which has previously advised the Department in writing that it seeks to review such applications. The applicant shall deliver the application to the municipality at least 30 days prior to submitting the application to the Department. Once all required documentation has been received by the Department, the Division Engineer shall have 30 days to approve or deny the application. If written notice of approval or denial is not given to the applicant within the 30-day Department review period, then the application shall be deemed approved. If the application is denied, the Division Engineer shall advise the applicant, in writing, of the reasons for denial.

(b) The application shall be denied by the Division Engineer if:

- (1) The application is for an outdoor advertising location where the outdoor advertising permit is less than two years old pursuant to G.S. 136-133.2;
- (2) The application is for the opening of a view to a sign which has been declared illegal or whose permit has been revoked or is currently involved in litigation with the Department;
- (3) Removal of vegetation will adversely affect the safety of the traveling public;
- (4) The application is for the removal of vegetation planted in accordance with a local, state, or Federal beautification project prior to September 1, 2011 or prior to the issuance of an outdoor advertising permit for the erection of the applicable outdoor advertising structure, whichever date is later, unless a mitigating

replanting plan related to the site for which the vegetation permit request is made as set forth in 19A NCAC 02E .0611, except for the provisions in (d) and (g)(11); and is approved by the applicant, the Department, and, if applicable, the Federal Highway Administration;

- (5) On two previous occasions, the applicant has failed to meet the requirements of a selective vegetation removal permit. This is not cause for denial if the applicant engages a landscape contractor to perform the current work;
- (6) It involves opening of views to junkyards;
- (7) The requested site is subject to a five-year moratorium for willful failure to substantially comply with all requirements specified in a prior selective vegetation removal permit pursuant to G.S. 136-133.4(e);
- (8) The applicant fails to provide all documentation required in applicable General Statutes and rules;
- (9) Any cutting, thinning, pruning, or removal of vegetation encompassing the entirety of the maximum vegetation cutting or removal zone is prohibited due to conditions affecting the right of way to which the State is subjected or agrees in writing to subject itself, including conservation agreements, prior to September 1, 2011 or prior to the issuance of an outdoor advertising permit for the erection of the applicable outdoor advertising structure, whichever date is later, or due to the application at any time of State statutes or Federal statutes or rules, including any conditions mandated as part of the issuance of a permit to the Department for a construction project by a Federal or State agency with jurisdiction over the construction project. The Department may mitigate within the right of way in the cut zone of a permitted outdoor advertising structure so long as trees and other plant materials for mitigation may not be of a projected mature height to decrease the visibility of a sign face, and such mitigation vegetation may not be cut or removed pursuant to a selective vegetation removal permit.

History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-130; 136-133.2; 136-133.3; 136-133.4, 136-93; Temporary Adoption Eff. March 1, 2012; Eff. February 1, 2013.

19A NCAC 02E .0610 CONDITIONS OF SELECTIVE VEGETATION REMOVAL PERMIT FOR OUTDOOR ADVERTISING OR PERMIT REQUIREMENTS

The following apply to the conditions of selective vegetation removal permit for outdoor advertising or permit requirements:

- (1) Selected vegetation, as defined in 136-133.1(b), may be allowed to be cut, thinned, pruned or removed in accordance with the standards set out in G.S. 136-133.4;
- (2) The permittee shall indemnify and hold harmless the North Carolina Department of Transportation, its employees, attorneys, agents, and contractors against any and all claims or causes of action, and all losses there from, arising out of or in any way related to permittee's operation;
- (3) The permittee shall furnish a Performance and Indemnity Bond or certified check or cashier's check made payable to North Carolina Department of Transportation for the minimum sum of two thousand dollars (\$2,000). The bond, certified check or cashier's check shall cover all restoration of the right of way to the condition prior to the occurrence of the damage caused by the permittee or the permittee's agent, if damage occurs during the permitted selective vegetation removal. The bond or certified check or cashier's check is required before each permit to cut vegetation is issued. The bond shall run concurrently with the permit. The bond shall be released after a final inspection of the work by NCDOT reveals that all work provided for and specified by the permit is found to be completed and all damages to the right of way, including damage to fencing and other structures within the right-of-way, have been repaired or restored to the condition prior to the occurrence of the damage caused by the permittee or the permittee's agent;
- (4) Companies that plan to apply for two or more permits may provide continuing bonds for a minimum of one hundred thousand dollars (\$100,000) and this type of bond shall be kept on file by the Department;
- (5) If the work is to be performed by any entity other than the sign owner or permittee, either the permittee or the other entity must furnish the required bonding as described in this Section, for all work provided for and specified by the permit. Required forms for all bonds are available upon request from the Department. Bonds are to be furnished with the Selective Vegetation Removal application form to the appropriate official assigned to receive selective vegetation removal applications at the local NCDOT Division of Highways Office;
- (6) The permittee shall also provide proof of liability insurance of a minimum coverage of five million dollars (\$5,000,000). Whoever performs the work, the permittee, his contractor or agent, shall maintain all legally required insurance coverage, including

worker's compensation and vehicle liability in the amounts required by and according to North Carolina law. The permittee, his contractor and agent, are liable for any losses due to the negligence or willful misconduct of his agents, assigns, and employees. The permittee may, in lieu of providing proof of liability insurance as described in this Paragraph, be shown as an additional insured on the general liability policy of the approved contractor or agent to perform the permitted work on condition that the contractor or agent's policy is for a minimum coverage of five million dollars (\$5,000,000) and the permittee provides proof to the Department of the coverage. The permittee or contractor or agent providing the coverage shall also name the Department as an additional insured on its general liability policy and provide the Department with a copy of the certificate showing the Department named as an additional insured. Regardless of which entity provides the proof of general liability insurance, the required limit of insurance may be obtained by a single general liability policy or the combination of a general liability and excess liability or umbrella policy;

- (7) The permittee shall provide a document verifying the requested selective vegetation removal site location in relationship to corporate limits of a municipality, per G.S. 136-133.1(a)(5). The document shall be a current geographic information system map of the nearest municipality, with color-coded boundary lines and a corresponding key or legend indicating corporate limit and territorial jurisdiction boundaries and indicating the precise location of the outdoor advertising structure. The permittee shall also provide the property tax identification number for the parcel on which the outdoor advertising structure is located. The Department may require additional information if the boundary or sign location remains in question;
- (8) The permittee shall perform site marking of the maximum vegetation cut or removal zone. The applicant shall mark the proper permitted cutting distances according to G.S. 136-133.1(a)(1) – (6). Points A & B along the right-of-way boundary (or fence if there is a control of access fence) are to be marked with visible flagging tape. Points C, D, & E along the edge of the pavement of the travel way are to be marked with spray paint, including the actual distances. If the sign is located at an acceleration or deceleration ramp, points C, D, & E shall be marked along the edge of the pavement of the travel way of the ramp instead of the mainline of the roadway;

- (9) The permittee shall perform tagging of trees. The permittee shall tag with a visible material or flagging all trees, including existing trees and other trees that are, at the time of the selective vegetation removal application, greater than four inches in diameter as measured six inches from the ground and requested to be cut, thinned, pruned, or removed. The applicant shall tag the existing trees (the exact same existing trees as on the site plan) that are desired to be cut, thinned, pruned, or removed with visible material or flagging of a contrasting color. The permittee shall denote on the site plan or on the application the colors of flagging used to mark each category of trees;
- (10) If there are existing trees requested to be removed, before any work can be performed under a selective vegetation removal permit the permittee must:
 - (A) Submit the reimbursement to the Department pursuant to G.S. 136-93.2 in a cashier's or certified check;
 - (B) Fully disassemble two non-conforming outdoor advertising signs and their supporting structures and return the outdoor advertising permits tags to the Department; or
 - (C) Obtain Departmental approval for the replanting plan in accordance with 19A NCAC 02E .0611.
- (11) Should the vegetation removal permit be approved and tree removal is scheduled, for all disputed trees the sign owner shall cut such tree stumps in a level, horizontal manner uniformly across the stump at a four inch height, so that tree rings can be counted by the applicant or the Department to determine the age of the tree;
- (12) After a tree is removed and the applicant or the Department discovers, based on the number of rings in the tree stump, an error in the tree survey report or site plan, the Department shall request an amendment to the tree survey report or site plan, and a redetermination pursuant to G.S. 136-133.1(d) and (e) shall be made by the Department and the applicant shall be subject to that redetermination;
- (13) If any cutting, thinning, pruning, or removal of vegetation from any portion but less than the entirety of the maximum vegetation cutting or removal zone is prohibited due to conditions affecting the right of way to which the State is subjected or agrees in writing to subject itself, including conservation agreements, prior to September 1, 2011, or prior to the issuance of an outdoor advertising permit for the erection of the applicable outdoor advertising structure, whichever date is later, or due to the application at any time of State statutes or Federal statutes or rules, including any conditions mandated as part of the issuance of a permit to the Department for a construction project by a Federal or State agency with jurisdiction over the construction project or due to mitigation within the right of way in the cut zone of a permitted outdoor advertising structure so long as trees and other plant materials for mitigation may not be of a projected mature height to decrease the visibility of a sign face, the permittee shall comply with applicable conditions, mitigation, rules, statutes, or permits for such portion of the cutting or removal zone. If applicable conservation agreements, mitigation or conditions affecting the right of way to which the State is subjected or agrees to in writing to subject itself and other restrictions agreed upon by the State in writing in the right of way, State or Federal rules, statutes, or permits allow certain degrees and methods of cutting, thinning, pruning, or removal for portions of vegetation, the permittee shall comply with applicable conservation agreements, mitigation, conditions, State or Federal rules, statutes or permits including equipment type for those portions of the cutting or removal zone. Portions of the maximum cutting or removal zone not within a conservation or mitigation area nor applicable to conditions affecting the right of way to which the State is subject or agrees in writing to subject itself and other restrictions agreed upon by the State in writing in the right of way, nor regulated by State or Federal rules, statutes, or permits regulating vegetation removal and other activities shall be governed by standards set out in G.S. 136-93.
- (14) The permittee must adhere to erosion control requirements, according to North Carolina General Statutes, Article 4, Chapter 113A entitled: Sedimentation Pollution Control Act of 1973;
- (15) A Division of Highways Inspector may be present while work is underway. The presence or absence of a Division of Highways inspector at the work site does not lessen the permittee's responsibility for conformity with the requirements of the permit and all applicable General Statutes and rules. Should the inspector fail to point out work that does not conform with the requirements, it does not prevent later notification to the permittee that the work is not in compliance with the permit;
- (16) A selective vegetation removal permit must be secured for each applicable outdoor advertising site prior to performing any vegetation removal work;

- (17) Should the Division Engineer or his representative observe unsafe operations, activities or conditions, he shall suspend work. Work shall not resume until the unsafe conditions or activities have been eliminated or corrected. Failure to comply with any of the requirements for safety and traffic control of this permit shall result in suspension of work;
- (18) The applicant must certify that he or she has permission from the adjoining landowner(s) to access their private property for the purpose of conducting activities related to the selective vegetation removal permit application;
- (19) The Permittee or its contractor or agent must have a copy of the Selective Vegetation Removal Permit on the work site at all times during any phase of selective vegetation cutting, thinning, trimming, pruning, removal, or planting operations;
- (20) The permittee or its contractor or agent shall take appropriate measures to locate and protect utilities within the highway right-of-way within the work area of the selective vegetation removal zone. The permittee shall be responsible for restoration of any losses or damages to utilities caused by any actions of the permittee or its contractors or agents to the satisfaction of the utility owner;
- (21) Permits are valid for a period of one year and the permittee may cut, thin, prune, or remove vegetation more than one time during the permit year. If the applicant applies for and is approved for another selective vegetation removal permit during an existing permit year, the previous permit shall become null and void at the same time the new permit is issued;
- (22) The permittee shall provide to the appropriate Department official a 48-hour notification before entering the right-of-way for any work covered by the conditions of the permit. The permittee shall schedule all work with the appropriate Department official. The permittee shall notify the Department in advance of work scheduled for nights, weekends and holidays. The Department reserves the right to modify the permittee's work schedule for nights, weekends, and holidays. When the Department restricts construction in work zones for the safety of the traveling public, the Department shall deny access to the right-of-way for selective vegetation removal;
- (23) If work is planned in an active work zone, the permittee shall receive written permission from the contractor or the Department (if the Department's employees are performing the work). The permittee shall provide the Division Engineer with a copy of the written permission;
- (24) An applicant shall be allowed to use individual and manual-operated power equipment and hand held tools at any site during initial cutting or removal of vegetation or while maintaining a site during the duration of a selected vegetation removal permit. The Department may allow use of power-driven vegetation removal equipment (such as excavator-based land clearing attachments, skid-steer cutters, and bucket trucks) if the permit applicant can demonstrate satisfactorily to the Department with an onsite inspection that the use of such equipment will not cause undue safety hazards, any erosion or unreasonable damage to the right of way. Access for use of any equipment must be gained from the private property side to the right of way for each individual selective removal permit site. Tree removal, which presents a hazard from falling tree parts, shall be performed in accordance with the International Society of Arboriculture Standards. Written authorization must be obtained from the Department for use of power-driven vegetation removal equipment as well as for access to move resources from the private property to the right of way. The applicant must provide information on the permit application for which type(s) of equipment and access is requested. The applicant shall provide contractor qualifications to the Department.
- (25) The Department shall determine the traffic control signage that is required. The permittee shall furnish, erect, and maintain the required signs as directed by the Department;
- (26) The height of stumps remaining after tree removal shall not exceed four inches above the surrounding ground level. The work site shall be left in a clean and orderly appearance at the end of each workday;
- (27) Upon completion of all work, the Department shall notify the Division Engineer who shall notify the Permittee in writing of acceptance, terminate the permit, and return the Performance and Indemnity Bond or certified or cashier's check to the permittee. For replanting work, a different bond release schedule shall be applicable according to 19A NCAC 02E. 0611(g)(8);
- (28) Pursuant to G.S. 136-133.4(e), willful failure to substantially comply with all the requirements specified in the permit, unless otherwise mutually resolved, shall result in immediate and summary revocation of the selective vegetation removal permit and forfeiture of any or all of the Performance and Indemnity Bond or check as determined by the Division Engineer based on conditions stated in this Rule.

History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-93; 136-130; 136-133.4;
Temporary Adoption Eff. March 1, 2012;
Eff. February 1, 2013.

**CHAPTER 64 – BOARD OF EXAMINERS FOR SPEECH
AND LANGUAGE PATHOLOGISTS AND
AUDIOLOGISTS**

**TITLE 21 – OCCUPATIONAL LICENSING BOARDS
AND COMMISSIONS**

CHAPTER 29 – LOCKSMITH LICENSING BOARD

21 NCAC 29 .0702 DUE DATE

Applications for license renewal shall be submitted at least 30 days prior to the date of license expiration. Licensees who submit their applications for renewal after the due date but before the license expiration date shall pay a late fee of one hundred fifty dollars (\$150.00) in addition to the license renewal fee specified in Rule .0404 of this Chapter. Applications shall be deemed submitted on the date of their postmark or upon receipt by staff at the Board's offices, whichever is earlier.

History Note: Authority G.S. 74F-6; 74F-9; 74F-10;
Eff. July 1, 2005;
Amended Eff. January 1, 2013.

**21 NCAC 64 .0220 STANDARDS FOR
AUDIOLOGISTS WHO DISPENSE HEARING AIDS**

A licensed Audiologist who fits and dispenses hearing aids must:

- (1) Comply with 21 Code of Federal Regulations, Subpart H 801.420 and 801.421, in effect as of March 9, 2012 that are hereby incorporated by reference and do not include subsequent amendments. The incorporated material may be obtained on the Board's website free of charge; and
- (2) Disclose all fees to be charged to a patient in conjunction with the evaluation period and purchase of any hearing aid, in writing, prior to the purchase of the hearing aid by the patient.

History Note: Authority G.S. 90-304(a)(3);
Eff. January 1, 2013.

APPROVED RULES

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

Rules approved by the Rules Review Commission at its meeting on October 18, 2012.

**REGISTER CITATION TO THE
NOTICE OF TEXT****INDUSTRIAL COMMISSION**

<u>Location of Offices and Hours of Business</u>	04 NCAC 10A .0101	27:02 NCR
<u>Notice of Accident and Claim of Injury or Occupational Di...</u>	04 NCAC 10A .0103	27:02 NCR
<u>Employer's Requirement to File a Form 19</u>	04 NCAC 10A .0104	27:02 NCR
<u>Filing of Annual Report Requirement</u>	04 NCAC 10A .0106*	27:02 NCR
<u>Computation of Time</u>	04 NCAC 10A .0107*	27:02 NCR
<u>Posting Requirement for Employers</u>	04 NCAC 10A .0201	27:02 NCR
<u>Required Contact Information from Carriers</u>	04 NCAC 10A .0302*	27:02 NCR
<u>Calculating the Seven-Day Waiting Period</u>	04 NCAC 10A .0401*	27:02 NCR
<u>Submission of Earnings Statement Required</u>	04 NCAC 10A .0402*	27:02 NCR
<u>Manner of Payment of Compensation</u>	04 NCAC 10A .0403	27:02 NCR
<u>Trial Return to Work</u>	04 NCAC 10A .0404A*	27:02 NCR
<u>Fees for Medical Compensation</u>	04 NCAC 10A .0407	27:02 NCR
<u>Claims for Death Benefits</u>	04 NCAC 10A .0409*	27:02 NCR
<u>Communication for Medical Information</u>	04 NCAC 10A .0410*	27:02 NCR
<u>Agreements for Prompt Payment of Compensation</u>	04 NCAC 10A .0501*	27:02 NCR
<u>Notice of Last Payment Filing Requirement</u>	04 NCAC 10A .0503	27:02 NCR
<u>Request for Hearing</u>	04 NCAC 10A .0602	27:02 NCR
<u>Discovery - Post Hearing</u>	04 NCAC 10A .0606*	27:02 NCR
<u>Pre-Trial Agreement</u>	04 NCAC 10A .0610*	27:02 NCR
<u>Hearings Before the Commission</u>	04 NCAC 10A .0611*	27:02 NCR
<u>Medical Provider Fee Dispute Procedure</u>	04 NCAC 10A .0614*	27:02 NCR
<u>Cases Removed from a Hearing Calendar</u>	04 NCAC 10A .0615*	27:02 NCR
<u>Disqualification of a Commissioner or Deputy Comm...</u>	04 NCAC 10A .0618*	27:02 NCR
<u>Foreign Language Interpreters</u>	04 NCAC 10A .0619*	27:02 NCR
<u>Remand from the Appellate Courts</u>	04 NCAC 10A .0702A	27:02 NCR
<u>Appeal to the Court of Appeals</u>	04 NCAC 10A .0703	27:02 NCR
<u>Rulemaking</u>	04 NCAC 10A .0803	27:02 NCR
<u>Check Endorsement</u>	04 NCAC 10A .0901	27:02 NCR
<u>Notice</u>	04 NCAC 10A .0902	27:02 NCR
<u>Employee's Obligation to Report Earnings</u>	04 NCAC 10A .0903	27:02 NCR
<u>Preauthorization for Surgery and Inpatient Treatment</u>	04 NCAC 10A .1001*	27:02 NCR
<u>Location of Offices and Hours of Business</u>	04 NCAC 10B .0101*	27:02 NCR
<u>Official Forms</u>	04 NCAC 10B .0102*	27:02 NCR
<u>Filing Fees</u>	04 NCAC 10B .0103	27:02 NCR
<u>Filing by Facsimile Transmission</u>	04 NCAC 10B .0104	27:02 NCR
<u>Medical Malpractice Claims by Prison Inmates</u>	04 NCAC 10B .0202*	27:02 NCR
<u>Motions</u>	04 NCAC 10B .0204*	27:02 NCR

APPROVED RULES

<u>Mediation</u>	04 NCAC 10B .0205*	27:02 NCR
<u>Hearings</u>	04 NCAC 10B .0206*	27:02 NCR
<u>Hearings of Claims by Prison Inmates</u>	04 NCAC 10B .0207*	27:02 NCR
<u>Hearing Costs</u>	04 NCAC 10B .0208	27:02 NCR
<u>Scope</u>	04 NCAC 10B .0301	27:02 NCR
<u>Notice of Appeal to the Full Commission</u>	04 NCAC 10B .0302	27:02 NCR
<u>Proposed Issues on Appeal</u>	04 NCAC 10B .0303*	27:02 NCR
<u>Dismissals of Appeals</u>	04 NCAC 10B .0304	27:02 NCR
<u>Briefs to the Full Commission</u>	04 NCAC 10B .0305*	27:02 NCR
<u>Motion for New Hearing</u>	04 NCAC 10B .0306	27:02 NCR
<u>Motions Before the Full Commission</u>	04 NCAC 10B .0307	27:02 NCR
<u>Stays</u>	04 NCAC 10B .0308	27:02 NCR
<u>New Evidence</u>	04 NCAC 10B .0309	27:02 NCR
<u>Waiver of Oral Argument</u>	04 NCAC 10B .0310*	27:02 NCR
<u>Scope</u>	04 NCAC 10B .0401	27:02 NCR
<u>Stays</u>	04 NCAC 10B .0402	27:02 NCR
<u>Motions for Court of Appeals Cases</u>	04 NCAC 10B .0403	27:02 NCR
<u>Remand from Appellate Courts</u>	04 NCAC 10B .0404	27:02 NCR
<u>Rulemaking</u>	04 NCAC 10B .0502	27:02 NCR
<u>Sanctions</u>	04 NCAC 10B .0503	27:02 NCR
<u>Purpose of the Rules</u>	04 NCAC 10C .0102	27:02 NCR
<u>Qualifications Required</u>	04 NCAC 10C .0105*	27:02 NCR
<u>Professional Responsibility of the Rehabilitation Profess...</u>	04 NCAC 10C .0106*	27:02 NCR
<u>Change of Rehabilitation Professional</u>	04 NCAC 10C .0110*	27:02 NCR
<u>Purpose</u>	04 NCAC 10D .0101*	27:02 NCR
<u>Definitions</u>	04 NCAC 10D .0102*	27:02 NCR
<u>Qualification by the Department of Insurance</u>	04 NCAC 10D .0103	27:02 NCR
<u>Notice to Commission</u>	04 NCAC 10D .0105	27:02 NCR
<u>Contract Provisions</u>	04 NCAC 10D .0106	27:02 NCR
<u>Information for Employee</u>	04 NCAC 10D .0107*	27:02 NCR
<u>Inclusive Provider Panels</u>	04 NCAC 10D .0108*	27:02 NCR
<u>Quality Assurance and Utilization Review</u>	04 NCAC 10D .0109	27:02 NCR
<u>Mailing List</u>	04 NCAC 10E .0102	27:02 NCR
<u>Accident Prevention and Safety Educational Program Fees</u>	04 NCAC 10E .0204*	27:02 NCR
<u>Electronic Medical Billing and Payment Requirement</u>	04 NCAC 10F .0101*	27:02 NCR
<u>Definitions</u>	04 NCAC 10F .0102*	27:02 NCR
<u>Formats for Electronic Medical Bill Processing</u>	04 NCAC 10F .0103*	27:02 NCR
<u>Billing Code Sets</u>	04 NCAC 10F .0104*	27:02 NCR
<u>Employer, Insurance Carrier, Managed Care Org,...</u>	04 NCAC 10F .0106*	27:02 NCR
<u>Communication Between Health Care Providers and Payers</u>	04 NCAC 10F .0107*	27:02 NCR
<u>Effective Date</u>	04 NCAC 10F .0109	27:02 NCR
<u>Selection of Mediator</u>	04 NCAC 10G .0102	27:02 NCR
<u>Duties of Parties, Representatives, and Attorneys</u>	04 NCAC 10G .0104*	27:02 NCR
<u>Authority and Duties of Mediators</u>	04 NCAC 10G .0106*	27:02 NCR
<u>Neutral Evaluation</u>	04 NCAC 10G .0109*	27:02 NCR
<u>Motions</u>	04 NCAC 10G .0111*	27:02 NCR

APPROVED RULES

<u>Miscellaneous</u>	04 NCAC 10G .0112	27:02 NCR
<u>Location of Offices and Hours of Business</u>	04 NCAC 10H .0101	27:02 NCR
<u>Appointment of Guardian Ad Litem</u>	04 NCAC 10H .0203*	27:02 NCR
<u>Written or Recorded Statement</u>	04 NCAC 10H .0204*	27:02 NCR
<u>Review by the Full Commission</u>	04 NCAC 10H .0205*	27:02 NCR
<u>Locations of Office and Hours of Business</u>	04 NCAC 10I .0101	27:02 NCR
<u>Official Form</u>	04 NCAC 10I .0102	27:02 NCR
<u>Procedure</u>	04 NCAC 10I .0202*	27:02 NCR
<u>Attorneys' Fees</u>	04 NCAC 10I .0203*	27:02 NCR
<u>Sanctions</u>	04 NCAC 10I .0205*	27:02 NCR

Rules approved by the Rules Review Commission at its meeting on November 15, 2012.

INDUSTRIAL COMMISSION

<u>Proof of Insurance</u>	04 NCAC 10A .0301*	27:02 NCR
<u>Compromise Settlement Agreements</u>	04 NCAC 10A .0502*	27:02 NCR
<u>Attorneys Retained for Proceedings</u>	04 NCAC 10A .0617*	27:02 NCR
<u>Sanctions</u>	04 NCAC 10A .0802	27:02 NCR
<u>Rules of Civil Procedure</u>	04 NCAC 10B .0201	27:02 NCR
<u>Qualification and Revocation</u>	04 NCAC 10D .0104*	27:02 NCR
<u>Instructions for Filing a Petition for Rule-Making</u>	04 NCAC 10E .0101*	27:02 NCR
<u>Electronic Medical Billing, Reimbursement, and...</u>	04 NCAC 10F .0105*	27:02 NCR
<u>Mediator Certification and Decertification</u>	04 NCAC 10G .0108*	27:02 NCR
<u>Determination of Claims by the Commission</u>	04 NCAC 10H .0201*	27:02 NCR
<u>Hearings Before the Commission</u>	04 NCAC 10H .0202*	27:02 NCR

Rules approved by the Rules Review Commission at its meeting on December 20, 2012.

INDUSTRIAL COMMISSION

<u>Fees for Medical Compensation</u>	04 NCAC 10J .0101*	27:02 NCR
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These rules are subject to the next Legislative Session. (See G.S. 150B-21.3)

INDUSTRIAL COMMISSION

<u>Official Forms</u>	04 NCAC 10A .0102	27:02 NCR
<u>Electronic Payment of Costs</u>	04 NCAC 10A .0105	27:02 NCR
<u>Termination and Suspension of Compensation</u>	04 NCAC 10A .0404*	27:02 NCR
<u>Reinstatement of Compensation</u>	04 NCAC 10A .0405*	27:02 NCR
<u>Discount Rate to be Used in Determining Commuted Values</u>	04 NCAC 10A .0406*	27:02 NCR
<u>Application for or Stipulation to Additional Medical Comp...</u>	04 NCAC 10A .0408*	27:02 NCR
<u>Employer's Obligations Upon Notice; Denial of Liability; ...</u>	04 NCAC 10A .0601*	27:02 NCR
<u>Responding to a Party's Request for Hearing</u>	04 NCAC 10A .0603*	27:02 NCR
<u>Appointment of Guardian Ad Litem</u>	04 NCAC 10A .0604*	27:02 NCR
<u>Discovery</u>	04 NCAC 10A .0605*	27:02 NCR
<u>Discovery of Records and Reports</u>	04 NCAC 10A .0607*	27:02 NCR
<u>Statement of Incident Leading to Claim</u>	04 NCAC 10A .0608*	27:02 NCR

<u>Motions Practice in Contested Cases</u>	04 NCAC 10A .0609*	27:02 NCR
<u>Medical Motions and Emergency Medical Motions</u>	04 NCAC 10A .0609A*	27:02 NCR
<u>Depositions and Additional Hearings</u>	04 NCAC 10A .0612*	27:02 NCR
<u>Expert Witnesses and Fees</u>	04 NCAC 10A .0613*	27:02 NCR
<u>Dismissals</u>	04 NCAC 10A .0616*	27:02 NCR
<u>Review by the Full Commission</u>	04 NCAC 10A .0701*	27:02 NCR
<u>Review of Administrative Decisions</u>	04 NCAC 10A .0702*	27:02 NCR
<u>Remand from the Appellate Courts</u>	04 NCAC 10A .0704	27:02 NCR
<u>Suspension of Rules</u>	04 NCAC 10A .0801*	27:02 NCR
<u>Infants and Incompetents</u>	04 NCAC 10B .0203*	27:02 NCR
<u>Suspension of Rules</u>	04 NCAC 10B .0501*	27:02 NCR
<u>Applicability of the Rules</u>	04 NCAC 10C .0101*	27:02 NCR
<u>Definitions</u>	04 NCAC 10C .0103*	27:02 NCR
<u>Communication</u>	04 NCAC 10C .0107*	27:02 NCR
<u>Interaction with Physicians</u>	04 NCAC 10C .0108*	27:02 NCR
<u>Vocational Rehabilitation Services Return to Work</u>	04 NCAC 10C .0109*	27:02 NCR
<u>Suspension of Rules</u>	04 NCAC 10C .0201*	27:02 NCR
<u>Suspension of Rules</u>	04 NCAC 10D .0110*	27:02 NCR
<u>Document and Record Fees</u>	04 NCAC 10E .0201*	27:02 NCR
<u>Hearing Costs or Fees</u>	04 NCAC 10E .0202*	27:02 NCR
<u>Fees Set by the Commission</u>	04 NCAC 10E .0203	27:02 NCR
<u>Suspension of Rules</u>	04 NCAC 10E .0301*	27:02 NCR
<u>Order for Mediated Settlement Conference</u>	04 NCAC 10G .0101*	27:02 NCR
<u>The Mediated Settlement Conference</u>	04 NCAC 10G .0103*	27:02 NCR
<u>Foreign Language Interpreters</u>	04 NCAC 10G .0104A*	27:02 NCR
<u>Sanctions</u>	04 NCAC 10G .0105*	27:02 NCR
<u>Compensation of the Mediator</u>	04 NCAC 10G .0107*	27:02 NCR
<u>Suspension of Rules</u>	04 NCAC 10G .0110*	27:02 NCR
<u>Suspension of Rules</u>	04 NCAC 10H .0206*	27:02 NCR
<u>Suspension of Rules</u>	04 NCAC 10I .0204*	27:02 NCR

TITLE 04 – DEPARTMENT OF COMMERCE

04 NCAC 10A .0101 LOCATION OF OFFICES AND HOURS OF BUSINESS

The offices of the North Carolina Industrial Commission are located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina. Documents that are not being filed electronically may be filed between the hours of 8:00 a.m. and 5:00 p.m. only. Documents permitted to be filed electronically may be filed until 11:59 p.m. on the required filing date.

History Note: Authority G.S. 97-80(a);
Eff. January 1, 1990;

Amended Eff. January 1, 2011; June 1, 2000;
Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10A .0102 OFFICIAL FORMS

(a) Copies of the Commission's rules, forms, and minutes may be obtained by contacting the Commission in person, by written

request mailed to 4340 Mail Service Center, Raleigh, NC 27699-4340, or from the Commission's website at <http://www.ic.nc.gov/forms.html>.

(b) The use of any printed forms other than those provided by the Commission is prohibited except that insurance carriers, self-insureds, attorneys and other parties may reproduce forms for their own use, provided:

- (1) no statement, question, or information blank contained on the Commission form is omitted from the substituted form, and
- (2) the substituted form is identical in size and format with the Commission form.

History Note: Authority G.S. 97-80(a); 97-81(a);
Eff. January 1, 1990;

Amended Eff. June 1, 2000;
Amended Eff. Pending Legislative Review.

04 NCAC 10A .0103 NOTICE OF ACCIDENT AND CLAIM OF INJURY OR OCCUPATIONAL DISEASE

To give notice of an accident or occupational disease and to make a workers compensation claim, an employee may complete a Form 18 *Notice of Accident to Employer and Claim of Employee, Representative, or Dependent* and file it electronically with Claims Administration, or by mail to North Carolina Industrial Commission, 4335 Mail Service Center, Raleigh, NC 28799-4335.

History Note: Authority G.S. 97-22; 97-24; 97-58; 97-80(a); 97-81;
Eff. January 1, 1990;
Amended Eff. Pending Delayed Effective Date.

04 NCAC 10A .0104 EMPLOYER'S REQUIREMENT TO FILE A FORM 19

(a) The form required to be provided by G.S. 97-92(a) is the Form 19 Employer's Report of Employee's Injury or Occupational Disease to the Industrial Commission.
 (b) The employer, carrier, or administrator shall provide the employee with a copy of the completed Form 19 Employer's Report of Employee's Injury or Occupational Disease to the Industrial Commission, along with a blank Form 18 Notice of Accident to Employer and Claim of Employee, Representative, or Dependent for use by the employee in making a claim.

History Note: Authority G.S. 97-80(a); 97-92;
Eff. March 15, 1995;
Amended Eff. January 1, 2011; August 1, 2006; March 1, 2001; June 1, 2000;
Amended Eff. Pending Delayed Effective Date.

04 NCAC 10A .0105 ELECTRONIC PAYMENT OF COSTS

Electronic payment is required for fees and costs owed to the Commission.

History Note: Authority G.S. 97-80(a);
Eff. January 1, 2011;
Amended Eff. Pending Legislative Review.

04 NCAC 10A .0106 FILING OF ANNUAL REPORT REQUIREMENT

Every carrier, individual self-insurer, group self-insurer, and member self-insurer as defined by G.S. 97-130 shall submit on a yearly basis a Form 51 *Annual Consolidated Fiscal Report of "Medical Only" and "Lost Time" Cases*.

History Note: Authority G.S. 97-80(a); 97-92; 97-93; 97-130;
Eff. Pending Delayed Effective Date.

04 NCAC 10A .0107 COMPUTATION OF TIME

Except as otherwise provided by statute or rule, in computing any period of time prescribed or allowed by the Commission Rules, by order of the Commission, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the

period so computed is included, unless it is a Saturday, Sunday, or a holiday established by the State Personnel Commission, in which event the period runs until the end of the next day that is not a Saturday, Sunday or a holiday established by the State Personnel Commission. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. Whenever a party has the right to do some act or take some proceedings within a prescribed period after the service of any document, three days shall be added to the prescribed period.

History Note: Authority G.S. 97-80;
Eff. Pending Delayed Eff. Date.

04 NCAC 10A .0201 POSTING REQUIREMENT FOR EMPLOYERS

(a) The form required to be posted by G.S. 97-93(e) is the Form 17 *Workers' Compensation Notice to Injured Workers and Employers*, that includes the following:

- (1) name of insurer;
- (2) policy number; and
- (3) dates of coverage.

(b) If there is a change in coverage, the Form 17 *Workers' Compensation Notice to Injured Workers and Employers* shall be amended within five working days.

History Note: Authority G.S. 97-80(a); 97-93;
Eff. January 1, 1990;
Amended Eff. March 15, 1995;
Amended Eff. Pending Delayed Effective Date.

04 NCAC 10A .0301 PROOF OF INSURANCE COVERAGE

(a) Every employer, either personally or through its carrier or third party administrator, subject to the provisions of the Workers' Compensation Act shall file with the Commission proof that it has obtained workers' compensation insurance, and shall post notice of proof of insurance to employees consistent with Rule .0201 of this Subchapter.

(b) Upon actual notice of a workers' compensation claim or upon reporting a workers' compensation claim to a carrier, third party administrator, servicing agent, professional employer organization as defined in G.S. 58-89A-5(14), or the Commission, all employers shall provide the injured worker with the name of their insurance carrier and policy number or shall inform the injured worker of their self-insured status, membership in a self-insurance group or relationship with a professional employer organization that provides the insurance coverage.

(c) Every carrier, third party administrator, servicing agent, or other entity filing a Form 19 *Employer's Report of Employee's Injury or Occupational Disease to the Industrial Commission* shall identify by name and address any professional employer organization and the name of the client company employing the employee who is the subject of the Form 19 *Employer's Report of Employee's Injury or Occupational Disease to the Industrial Commission*.

(d) A professional employer organization shall, within 30 days of initiation or termination of the professional employer

organization's relationship with any client company, notify the Commission of either the initiation or termination of the relationship and the status of the client company's workers' compensation coverage.

(e) Upon notice from the Commission that an employer is non-insured, coverage has lapsed or been canceled, or coverage or self-insured status cannot be verified, an employer shall show proof of coverage to the Commission by:

- (1) a certificate of insurance issued by the insurance agent who procured workers' compensation insurance on behalf of the employer;
- (2) submitting a copy of the letter of approval, license or amended license with subsidiary information, if applicable, from the North Carolina Department of Insurance notifying or indicating the employer has qualified as a self-insured employer for workers' compensation purposes;
- (3) submitting a copy of the Form 18WC Application for Membership indicating the employer is a member of a self-insurance group or fund;
- (4) submitting a copy of a declaration of coverage page from an insurance policy procured in another state that indicates North Carolina is a covered jurisdiction under the workers' compensation policy;
- (5) submitting the names of the general contractor, subcontractor, professional employer organization or other entity that has provided workers' compensation coverage for the employer; provided however, that coverage shall be verified by the Commission in order to be removed from the non-insured docket; or
- (6) submitting other documentation or information relevant to the workers' compensation claim upon request of the Commission.

(f) A principal contractor, intermediate contractor or subcontractor may satisfy the requirements of G.S. 97-19 by obtaining a certificate of insurance issued by the insurance agent who procured insurance on behalf of the subcontractor or a certificate of compliance issued by the Department of Insurance to a self-insured subcontractor. If the subcontractor has notice that the policy of insurance has lapsed, is cancelled, is not renewed, or the subcontractor ceases to qualify as a self-insured employer, the subcontractor shall, within 24 hours, notify any contractor to whom it has provided a certificate of insurance that the certificate or certificate of compliance is no longer valid.

History Note: Authority G.S. 97-19; 97-80(a); 97-93;
Eff. January 1, 1990;
Amended Eff. January 1, 2013; June 1, 2000.

04 NCAC 10A .0302 REQUIRED CONTACT INFORMATION FROM CARRIERS

All insurance carriers, third party administrators and self-insured employers shall designate a primary contact person for workers' compensation issues in North Carolina and shall maintain and

provide annually to the Director of Claims Administration of the Commission, the primary contact person's current contact information, including direct telephone and facsimile numbers, mailing addresses, and email addresses. Contact information shall be updated within 30 days of any change.

History Note: Authority G.S. 97-80(a); 97-94;
Eff. January 1, 2011;
Amended Eff. Pending Delayed Effective Date.

04 NCAC 10A .0401 CALCULATING THE SEVEN-DAY WAITING PERIOD

(a) When the injured employee is not paid wages for the entire day on which the injury occurred, the seven-day waiting period prescribed by the Workers' Compensation Act shall include the day of injury regardless of the hour of the injury.

(b) When the injured employee is paid wages for the entire day on which the injury occurred and fails to return to work on his next regular workday because of the injury, the seven-day waiting period shall begin with the first calendar day following the injury, even though this may or may not be a regularly scheduled workday.

(c) All days, or parts of days, when the injured employee is unable to earn a full day's wages, or is not paid a full day's wages due to injury, shall be counted in computing the waiting period even though the days may not be consecutive, or regularly scheduled workdays.

(d) There is no seven-day waiting period when the permanent partial disability period added to the temporary disability period, exceeds 21 days.

History Note: Authority G.S. 97-28; 97-80(a);
Eff. January 1, 1990;
Amended Eff. Pending Delayed Effective Date.

04 NCAC 10A .0402 SUBMISSION OF EARNINGS STATEMENT REQUIRED

(a) Within 30 days of a request by the employee or the Commission, the employer shall submit a verified statement of the specific days worked and the earnings of the employee during the 52-week period immediately preceding the injury to the Commission and the employee's attorney of record or the employee, if not represented.

(b) In all cases involving a fractional part of a week, the average weekly wage shall be computed based upon the applicable fractional portion of the week worked.

History Note: Authority G.S. 97-2(5); 97-18(b); 97-80(a); 97-81;
Eff. January 1, 1990;
Amended Eff. Pending Delayed Effective Date.

04 NCAC 10A .0403 MANNER OF PAYMENT OF COMPENSATION

(a) All payments of compensation shall be made directly to the employee, dependent, guardian or personal representative. Payment of compensation shall be mailed by first class mail, postage pre-paid, to an address specified by the employee, unless another method is specified by and agreed upon by the parties.

(b) All payments of compensation shall be made in accordance with the award issued by the Commission.

*History Note: Authority G.S. 97-18; 97-80(a);
Eff. January 1, 1990;
Amended Eff. June 1, 2000;
Amended Eff. Pending Delayed Effective Date.*

**04 NCAC 10A .0404 TERMINATION AND
SUSPENSION OF COMPENSATION**

(a) No application to terminate or suspend compensation shall be approved by the Commission without a formal hearing if the effect of the approval is to set aside the provisions of an award of the Commission.

(b) When an employer, carrier, or administrator seeks to terminate or suspend temporary total disability compensation being paid pursuant to G.S. 97-29 for a reason other than those specified in G.S. 97-18(d) (payment without prejudice), G.S. 97-18.1(b) (trial return to work), or G.S. 97-29(b) (expiration of 500-week limit on disability compensation (only for claims arising on or after June 24, 2011)), the employer, carrier, or administrator shall notify the employee's attorney of record or the employee, if not represented, on Form 24, *Application to Terminate or Suspend Payment of Compensation*. This form requests:

- (1) the date of injury or accident and date the disability began;
- (2) the nature and extent of injury;
- (3) the number of weeks compensation paid and the date range including from and to;
- (4) the total amount of indemnity compensation paid to date;
- (5) whether one of the following events has occurred:
 - (A) an agreement was approved by the Commission and the date;
 - (B) an employer admitted employee's right to compensation pursuant to G.S. 97-18(b);
 - (C) an employer paid compensation to the employee without contesting the claim within the statutory period provided under G.S. 97-18(d); or
 - (D) any other event related to the termination or suspension of compensation;
- (6) whether the application is made to terminate or suspend compensation and the grounds; and
- (7) whether the employee is in managed care.

(c) The employer, carrier, or administrator shall specify the grounds and the alleged facts supporting the application, and shall complete the blank space in the "Important Notice to Employee" portion of Form 24 *Application to Terminate or Suspend Payment of Compensation* by inserting a date 17 days from the date the employer, carrier, or administrator serves the completed Form 24 *Application to Terminate or Suspend Payment of Compensation* on the employee's attorney of record by e-mail or facsimile, or the employee, if not represented, by certified mail, return receipt requested. The Form 24 *Application*

to Terminate or Suspend Payment of Compensation and attached documents shall be sent to the Commission via upload to the Electronic Document Fee Portal, and shall be contemporaneously served on employee's counsel by e-mail or facsimile, or on the employee, if unrepresented, by certified mail, return receipt requested.

(d) The Form 24 *Application to Terminate or Suspend Payment of Compensation* shall specify the number of pages of documents attached which are to be considered by the Commission. If the employee or the employee's attorney of record objects by the date inserted on the employer's Form 24 *Application to Terminate or Suspend Payment of Compensation*, the Commission shall set the case for an informal hearing, unless waived by the parties in favor of a formal hearing. The objection shall be accompanied by all currently available supporting documentation. A copy of any objection shall be contemporaneously served on the employer, carrier, or administrator. The Form 24 *Application to Terminate or Suspend Payment of Compensation* or objection may be supplemented with any additional relevant documentation received after the initial filing. The term "carrier" or "administrator" also includes any successor in interest in the pending claim.

(e) If an employee does not object within the allowed time, the Commission shall review the Form 24 *Application to Terminate or Suspend Payment of Compensation* and any attached documentation, and an Administrative Decision and Order shall be rendered without an informal hearing as to whether there is a sufficient basis under the Workers' Compensation Act to terminate or suspend compensation, except as provided in Paragraph (g) of this Rule. Either party may seek review of the Administrative Decision and Order as provided by Rule .0703 of this Subchapter.

(f) If the employee timely objects to the Form 24 *Application to Terminate or Suspend Payment of Compensation*, the Commission shall conduct an informal hearing within 25 days of the receipt by the Commission of the Form 24 *Application to Terminate or Suspend Payment of Compensation*, unless the time is extended for good cause shown. The informal hearing may be by telephone conference between the Commission and the parties or their attorneys of record. The informal hearing may be conducted with the parties or their attorneys of record personally present with the Commission. The Commission shall make arrangements for the informal hearing with a view towards conducting the hearing in the most expeditious manner. The informal hearing shall be no more than 30 minutes, with each side given 10 minutes to present its case and five minutes for rebuttal. Notwithstanding the above, the employer, carrier, or administrator may waive the right to an informal hearing, and proceed to a formal hearing by filing a request for hearing on a Form 33 *Request that Claim be Assigned for Hearing*.

(g) Either party may appeal the Administrative Decision and Order of the Commission as provided by Rule .0703 of this Subchapter. A Deputy Commissioner shall conduct a hearing which shall be a hearing de novo. The hearing shall be peremptorily set and shall not require a Form 33 *Request that Claim be Assigned for Hearing*. The employer has the burden of producing evidence on the issue of the employer's application for termination or suspension of compensation. If the Deputy

Commissioner reverses an order previously granting a Form 24 *Application to Terminate or Suspend Payment of Compensation* motion, the employer, carrier, or administrator shall promptly resume compensation or otherwise comply with the Deputy Commissioners decision, notwithstanding any appeal or application for review to the Full Commission under G.S. 97-85.

(h) If the Commission is unable to reach a decision after an informal hearing, the Industrial Commission shall issue an order to that effect that shall be in lieu of a Form 33 *Request that Claim be Assigned for Hearing*, and the case shall be placed on the formal hearing docket. If additional issues are to be addressed, the employer, carrier, or administrator shall within 30 days of the date of the Administrative Decision and Order file a Form 33 *Request that Claim be Assigned for Hearing* or notify the Commission that a formal hearing is not currently necessary. The effect of placing the case on the docket shall be the same as if the Form 24 *Application to Terminate or Suspend Payment of Compensation* were denied, and compensation shall continue until such time as the case is decided by a Commissioner or a Deputy Commissioner following a formal hearing.

(i) The Commission shall mail any Administrative Decision and Order to the non-prevailing party by certified mail.

(j) No order issued as a result of an informal Form 24 *Application to Terminate or Suspend Payment of Compensation* hearing shall terminate or suspend compensation retroactively to a date preceding the filing date of the Form 24 *Application to Terminate or Suspend Payment of Compensation*. Compensation may be terminated retroactively without a formal hearing where there is agreement by the parties, where allowed by statute, or where the employee is incarcerated. Otherwise, retroactive termination or suspension of compensation to a date preceding the filing of a Form 24 *Application to Terminate or Suspend Payment of Compensation* may be ordered as a result of a formal hearing. Additionally, nothing shall impair an employer's right to seek a credit pursuant to G.S. 97-42.

(k) Any Administrative Decision and Order or other Commission decision allowing the suspension of compensation on the grounds of noncompliance with medical treatment pursuant to G.S. 97-25 or G.S. 97-27, noncompliance with vocational rehabilitation pursuant to G.S. 97-25 or G.S. 97-32.2, or unjustified refusal to return to work pursuant to G.S. 97-32 must specify what action the employee must take to end the suspension and reinstate the compensation.

History Note: Authority G.S. 97-18.1(c); 97-18.1(d); 97-32.2(g); 97-80(a);

Eff. January 1, 1990;

Amended Eff. June 1, 2000; March 15, 1995;

Amended Eff. Pending Legislative Review.

04 NCAC 10A .0404A TRIAL RETURN TO WORK

(a) Except as provided in Paragraph (g) of this Rule, when compensation for total disability being paid pursuant to G.S. 97-29 is terminated because the employee has returned to work for the same or a different employer, the termination is subject to the provisions of G.S. 97-32.1 (trial return to work). When compensation is terminated under these circumstances, the employer, carrier, or administrator shall, within 16 days of the termination of compensation, file a Form 28T *Notice of*

Termination of Compensation by Reason of Trial Return to Work with the Commission and provide a copy of it to the employee's attorney of record or the employee, if unrepresented.

(b) If during the trial return to work period, the employee must stop working due to the injury for which compensation had been paid, the employee may complete and file with the Commission a Form 28U *Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work*, without regard to whether the employer, carrier or administrator has filed a Form 28T *Notice of Termination of Compensation by Reason of Trial Return to Work* as required by Paragraph (a) of this Rule, and provide a copy of the completed form to the employer and carrier or administrator. A Form 28U *Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work* contains a section that shall be completed by the physician who imposed the restrictions or one of the employee's authorized treating physicians, certifying that the employee's injury for which compensation had been paid prevents the employee from continuing the trial return to work. If the employee returned to work with an employer other than the employer at the time of injury, the employee may complete the "Employee's Release of Employment Information" section of a Form 28U *Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work*. An employee's failure to provide a Form 28U *Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work* does not preclude a subsequent finding by the Commission that the trial return to work was unsuccessful.

(c) Upon receipt of a completed Form 28U *Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work*, the employer, carrier, or administrator shall resume payment of compensation for total disability. If the employee fails to provide the required certification of an authorized treating physician as specified in Paragraph (b) of this Rule, or if the employee fails to execute the "Employees Release and Request" section of a Form 28U *Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work*, if required pursuant to Paragraph (b) of this Rule, the employer, carrier, or administrator is not required to resume payment of compensation. Instead, the employer, carrier, or administrator shall return a Form 28U *Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work* to the employee's attorney of or the employee, if unrepresented, along with a statement explaining the reason the Form 28U *Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work* is being returned and the reason compensation is not being reinstated.

(d) The reinstated compensation shall be due and payable and subject to the provisions of G.S. 97-18(g) on the date and for the period commencing on the date the employer, carrier, or administrator receives a completed Form 28U *Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work* certifying an unsuccessful return to work. Such resumption of compensation does not preclude the employee's right to seek, nor the employer's, carrier's, or administrator's right to contest, the payment of compensation for the period prior or subsequent to the reinstatement. If it is thereafter determined by the Commission that any temporary total or temporary partial compensation, including the reinstated

compensation, was not due and payable, a credit shall be given against any other compensation determined to be owed.

(e) When the employer, carrier, or administrator has received a completed Form 28U *Employee's Request that Compensation be Reinstated after Unsuccessful Trial Return to Work* and contests the employee's right to reinstatement of total disability compensation, the employer, carrier, or administrator may suspend or terminate compensation only as provided in G.S. 97-18.1, G.S. 97-83 or G.S. 97-84.

(f) Upon resumption of payment of compensation for total disability, the employer, carrier, or administrator shall complete and file a Form 62 *Notice of Reinstatement or Modification of Compensation* or such other forms as may be required by the Workers' Compensation Act or by Commission rule. A copy of the Form 62 *Notice of Reinstatement or Modification of Compensation* shall be sent to the employee's attorney of record or the employee, if unrepresented.

(g) The trial return to work provisions do not apply to the following:

- (1) cases in which the employee is not absent from work for more than one day or in which medical expenses are less than two thousand dollars (\$2,000);
- (2) cases in which the employee has missed fewer than eight days from work;
- (3) cases in which the employee has been released to return to work by an authorized treating physician as specified in Paragraph (b) of this Rule without restriction or limitation except that if the physician, within 45 days of the employee's return to work date, determines that the employee is not able to perform the job duties assigned, then the employer, carrier, or administrator shall resume benefits. If within the same time period, the physician determines that the employee may work only with restrictions, then the employee is entitled to a resumption of benefits commencing as of the date of the report, unless the employer is able to offer employment consistent with the restrictions, in which case a trial return to work period shall be deemed to have commenced at the time of the employee's initial return to work;
- (4) cases in which the employee has accepted or agreed to accept compensation for permanent partial disability pursuant to G.S. 97-31, unless the trial return to work follows reinstatement of compensation for total disability under G.S. 97-29; and
- (5) claims pending on or filed after 1 January 1995, when the employer, carrier, or administrator contests a claim pursuant to G.S. 97-18(d) within the time allowed thereunder.

(h) This Rule applies to any employee who leaves work on or after February 15, 1995 due to a compensable injury.

History Note: Authority G.S. 97-18(h); 97-29; 97-32.1; 97-80(a);

Eff. February 15, 1995;

Amended Eff. August 1, 2006; June 1, 2000;

Amended Eff. Pending Delayed Effective Date.

04 NCAC 10A .0405 REINSTATEMENT OF COMPENSATION

(a) In a claim in which the employer, carrier, or administrator has admitted liability, when an employee seeks reinstatement of compensation on a basis other than a request for review of an award pursuant to G.S. 97-47, the employee may notify the employer, carrier, or administrator, and the employer's, carrier's, or administrator's attorney of record, on a Form 23 *Application to Reinstatement Payment of Disability Compensation*, or by the filing of a Form 33 *Request that Claim be Assigned for Hearing*.

(b) When reinstatement is sought by the filing of a Form 23 *Application to Reinstatement Payment of Disability Compensation*, the original Form 23 *Application to Reinstatement Payment of Disability Compensation* and the attached documents shall be sent to the Commission at the same time and by the same method by which a copy of the Form 23 and attached documents are sent to the employer, carrier, or administrator and the employer's, carrier's, or administrator's attorney of record. The Form 23 *Application to Reinstatement Payment of Disability Compensation* shall specify the number of pages of documents attached that are to be considered by the Commission. Failure to specify the number of pages shall result in the refusal of the Commission to accept the same for filing. Upon receipt of the Form 23 *Application to Reinstatement Payment of Disability Compensation*, the Commission shall notify the employer, carrier, or administrator that the Form 23 *Application to Reinstatement Payment of Disability Compensation* has been received by providing a copy of a Form 23 *Application to Reinstatement Payment of Disability Compensation* via facsimile or electronic mail. Within 10 days of the receipt of the Form 23 *Application to Reinstatement Payment of Disability Compensation* from the Commission, the employer, carrier, or administrator shall complete Section B of the Form 23 *Application to Reinstatement Payment of Disability Compensation* and send it to the Commission and to the employee, or the employee's attorney of record, at the same time and by the same method by which the form is sent to the Commission.

(c) If the employer, carrier, or administrator does not contest the reinstatement of compensation, the Commission shall review the Form 23 *Application to Reinstatement Payment of Disability Compensation* and any attached documentation and, without a hearing, render an Administrative Decision and Order as to whether the compensation shall be reinstated. This Administrative Decision and Order shall be rendered within five days of the expiration of the time within which the employer, carrier, or administrator could have filed a response to the Form 23 *Application to Reinstatement Payment of Disability Compensation*.

(d) If the employer, carrier, or administrator contests the reinstatement of compensation, the Commission shall schedule an informal hearing to take place within seven days of the receipt of the completed Form 23 *Application to Reinstatement Payment of Disability Compensation* response from the employer, carrier, or administrator. The informal hearing shall be conducted by telephone conference between the Commission,

the parties, and the parties' attorneys of record. The Commission shall make arrangements for the informal hearing with a view towards conducting the hearing in the most expeditious manner under the circumstances. The informal hearing shall be no more than 30 minutes, with each side being given 10 minutes to present its case and five minutes for rebuttal. An Administrative Decision and Order shall be rendered regarding the Form 23 *Application to Reinstate Payment of Disability Compensation* within five business days after the completion of the informal hearing.

(e) If the Commission is unable to render a decision after the informal hearing, the Commission shall issue an order to that effect, that shall be in lieu of a Form 33 *Request that Claim be Assigned for Hearing*, and the case shall be placed on the formal hearing docket. If additional issues are to be addressed, the employee, employer, carrier, or administrator shall within 30 days of the date of the Administrative Decision and Order, file a Form 33 *Request that Claim be Assigned for Hearing* or notify the Commission that a formal hearing is not currently necessary. The Commission shall issue an order to that effect, that shall be in lieu of a Form 33 *Request that Claim be Assigned for Hearing*, and the case shall be placed on the formal hearing docket. If additional issues are to be addressed, the employee, employer, carrier, or administrator shall within 30 days of the Date of the Administrative Decision and Order file a Form 33 *Request that Claim be Assigned for Hearing* or notify the Commission that a formal hearing is not currently necessary.

(f) Either party may appeal the Administrative Decision and Order of the Commission as provided by Rule .0703 of this Subchapter. The Deputy Commissioner shall conduct a hearing de novo. The hearing shall be set without delay and shall not require the filing of a Form 33 *Request that Claim be Assigned for Hearing*. If the Deputy Commissioner reverses an order previously denying a Form 23 *Application to Reinstate Payment of Disability Compensation*, the employer, carrier, or administrator shall resume compensation or otherwise comply with the Deputy Commissioner's decision, notwithstanding any appeal or application for review to the Full Commission of the decision under G.S. 97-85.

(g) Notwithstanding Paragraph (f) of this Rule, the employee may waive the right to an informal hearing and proceed to a formal hearing before a Deputy Commissioner by filing a Form 33 *Request that Claim be Assigned for Hearing*. If the parties, or the parties' attorneys of record, agree that an informal hearing regarding the Form 23 *Application to Reinstate Payment of Disability Compensation* is not necessary, they may so notify the Commission, and an Administrative Decision and Order shall be rendered based on the Form 23 *Application to Reinstate Payment of Disability Compensation*, response, and documentation submitted.

History Note: Authority G.S. 97-18(k); 97-80(a);
Eff. January 1, 1990;
Amended Eff. Pending Legislative Review.

04 NCAC 10A .0406 DISCOUNT RATE TO BE USED IN DETERMINING COMMUTED VALUES

To compute the present value of unaccrued compensation payments, the parties shall utilize the Internal Revenue Service's Applicable Federal Rate or the discount rate that is:

- (1) used to determine the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest,
- (2) set monthly by the Internal Revenue Service for Section 7520 interest rates, and
- (3) found in the Index of Applicable Federal Rate (AFR) Rulings. The Index of AFR Rulings is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be obtained at no charge from the Internal Revenue Service's website, <http://www.irs.gov/app/picklist/list/federalRate.s.html>, or upon request, at the offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m.

History Note: Authority G.S. 97-40; 97-44; 97-80(a);
Eff. January 1, 1990;
Amended Eff. Pending Legislative Review.

04 NCAC 10A .0407 FEES FOR MEDICAL COMPENSATION

History Note: Authority G.S. 97-18(i); 97-25.6; 97-26; 97-80(a); 138-6;
Eff. January 1, 1990;
Amended Eff. June 1, 2000; March 15, 1995;
Repealed Eff. Pending Delayed Eff. Date.

04 NCAC 10A .0408 APPLICATION FOR OR STIPULATION TO ADDITIONAL MEDICAL COMPENSATION

(a) An employee may file an application for additional medical compensation with the Office of the Executive Secretary for an order for payment of additional medical compensation within two years of the date of the last payment of medical or indemnity compensation, whichever shall last occur. An application may be made on a Form 18M *Employee's Application for Additional Medical Compensation*, by written request, or by filing a Form 33 *Request that Claim be Assigned for Hearing* with the Commission.

(b) Upon receipt of the application, the Commission shall notify the employer, carrier, or administrator that the claim has been received by providing a copy of the Form 18M *Employee's Application for Additional Medical Compensation* or the written request. Within 30 days, the employer, carrier, or administrator may send to the Commission and the employee's attorney of record or the employee, if unrepresented, a written statement as to whether the request is accepted or denied. If the request is denied, the employer, carrier, or administrator may state in writing the grounds for the denial and shall attach any supporting documentation to the statement of denial.

(c) The parties may, by agreement or stipulation consistent with the Workers' Compensation Act, provide for additional medical compensation.

(d) This Rule applies to injuries occurring on or after July 5, 1994.

History Note: Authority G.S. 97-25.1; 97-80(a);

Eff. March 15, 1995;

Amended Eff. June 1, 2000;

Amended Eff. Pending Legislative Review.

04 NCAC 10A .0409 CLAIMS FOR DEATH BENEFITS

(a) An employer shall notify the Commission of the occurrence of a death resulting from an injury or occupational disease allegedly arising out of and in the course of employment by filing a Form 19 *Employer's Report of Employee's Injury or Occupational Disease to the Industrial Commission* within five days of knowledge thereof. In addition, an employer, carrier, or administrator shall file with the Commission a Form 29 *Supplemental Report for Fatal Accidents*, within 45 days of knowledge of a death or allegation of death resulting from an injury or occupational disease arising out of and in the course of employment.

(b) An employer, carrier, or administrator shall make a good faith effort to discover the names and addresses of decedent's beneficiaries under G.S. 97-38 and identify them on the Form 29 *Supplemental Report for Fatal Accident*.

(c) In all cases involving minors or incompetents who are potential beneficiaries, a guardian *ad litem* shall be appointed pursuant to Rule .0604 of this Subchapter.

(d) If an issue exists as to whether a person is a beneficiary under G.S. 97-38, the employer, carrier, administrator, or any person asserting a claim for benefits may file a Form 33 *Request that Claim be Assigned for Hearing* for a determination by a Deputy Commissioner.

(e) If the employer, carrier, or administrator accepts liability for a claim involving an employee's death and there are no issues necessitating a hearing for determination of beneficiaries or their respective rights, the parties shall submit an agreement executed by all interested parties or their representatives to the Commission. All agreements shall be submitted to the Commission on a Form 30 *Agreement for Compensation for Death* as set forth in Rule .0501 of this Subchapter.

(f) The agreement shall be submitted along with all relevant supporting documents, including death certificate of the employee, any relevant marriage certificate and birth certificates for any dependents.

(g) If the employer, carrier, or administrator denies liability for a claim involving an employee's death, the employer, carrier, or administrator shall send a letter of denial to all potential beneficiaries, their attorneys of record, if any, all known health care providers that have submitted bills to the employer, carrier, or administrator, and the Commission. The denial letter shall state the reasons for the denial and shall further advise of a right to hearing.

(h) Any potential beneficiary, the employer, the carrier, or the administrator may request a hearing as provided in Rule .0602 of this Subchapter.

(i) Upon approval by the Commission of a Form 30 *Agreement for Compensation for Death*, or the issuance of a final order of the Commission directing payment of death benefits pursuant to G.S. 97-38, payment shall be made by the employer, carrier, or administrator directly to the beneficiaries, with the following exceptions:

- (1) any applicable award of attorney fees shall be paid directly to the attorney; and
- (2) benefits due to a minor or incompetent.

(j) Any benefits due to a minor pursuant to G.S. 97-38 shall be paid directly to the parent as natural guardian of the minor for the use and benefit of the minor if the minor remains in the physical custody of the parent as natural guardian. If the minor is not in the physical custody of the parent as natural guardian, payment shall be made through some other person appointed by a court of competent jurisdiction or to such other person under such terms as the Commission finds is in the best interests of the parties. When a beneficiary reaches the age of 18, any remaining benefits shall be paid directly to the beneficiary.

(k) In order to protect the interests of a beneficiary who is incompetent, the Commission shall order that benefits be paid to the beneficiary's appointed general guardian for the beneficiary's exclusive use and benefit, or to the Clerk of Court in the county in which the beneficiary resides for the beneficiary's exclusive use and benefit as determined by the Clerk of Court.

(l) Upon a change in circumstances, any interested party may request that the Commission amend the terms of any award with respect to a minor or incompetent to direct payment to another party on behalf of the minor or incompetent.

(m) In the case of benefits commuted to present value, only those sums that have not accrued at the time of the entry of the Order are subject to commutation.

(n) Where the parties seek a written opinion and award from the Commission regarding the payment of death benefits in uncontested cases in lieu of presenting testimony at a hearing before a Deputy Commissioner, the parties may make application to the Commission for a written opinion by filing a written request with the Docket Director.

(o) The parties shall file, electronically, by joint stipulation, affidavit or certified document, a proposed opinion and award or order along with the following information:

- (1) a stipulation regarding all jurisdictional matters;
- (2) the decedent's name, social security number, employer, insurance carrier or servicing agent, and the date of the injury giving rise to this claim;
- (3) a Form 22 *Statement of Days Worked or Earnings of Injured Employee* or stipulation as to average weekly wage;
- (4) any affidavits regarding dependents;
- (5) the death certificate;
- (6) a Form 29 *Supplemental Report for Fatal Accidents*;
- (7) Guardian *ad litem* forms, if any beneficiary is a minor or incompetent;
- (8) proof of beneficiary status, such as marriage license, birth certificate, or divorce decree;
- (9) medical records, if any;

- (10) a statement of payment of medical expenses incurred, if any; and
- (11) a funeral bill or stipulation as to payment of the funeral benefit.

(p) Any attorney seeking fees for representation in an uncontested claim shall file an affidavit or itemized statement in support of an award of attorney's fees.

History Note: Authority G.S. 97-38; 97-39; 97-80(a);
Eff. June 1, 2000;
Amended Eff. January 2, 2011;
Amended Eff. Pending Delayed Effective Date.

04 NCAC 10A .0410 COMMUNICATION FOR MEDICAL INFORMATION

(a) When an employer seeks to communicate pursuant to G.S. 97-25.6(c)(2) with an employee's authorized health care provider in writing, without the express authorization of the employee, to obtain relevant medical information not available in the employee's medical records under G.S. 97-25.6(c)(1), the employer may use the Commission's Medical Status Questionnaire.

(b) When an employee seeks a protective order under G.S. 97-25.6(d)(4) or G.S. 97-25.6(f), the employee shall provide the following to the Commission:

- (1) the proposed written communication and any proposed additional information from which the employee seeks a protective order;
- (2) description of any attempt to resolve the issue cooperatively;
- (3) grounds for the protective order; and
- (4) any alternative methods to discover the information.

(c) When responding to an employee's request under G.S. 97-25.6(d)(4) or G.S. 97-25.6(f), for a protective order, the employer shall provide the following to the Commission:

- (1) the statutory provision on which the proposed communication is based;
- (2) description of any attempts which have been made to resolve the issue cooperatively;
- (3) description of any other attempts which have been made to obtain the relevant medical information; and
- (4) justification for the communication.

(d) When an employer seeks the Commission's authorization for other forms of communication pursuant to G.S. 97-25.6(g), the employer shall follow the procedures for motions in Rule .0609 of this Subchapter.

History Note: Authority G.S. 97-25.6; 97-80(a);
Eff. Pending Delayed Effective Date.

04 NCAC 10A .0501 AGREEMENTS FOR PROMPT PAYMENT OF COMPENSATION

(a) To facilitate the payment of compensation within the time prescribed in G.S. 97-18, the Commission shall accept memoranda of agreements on Commission forms.

(b) No agreement for permanent disability shall be approved until the relevant medical and vocational records known to exist

in the case have been filed with the Commission. When requested by the Commission, the parties shall file any additional documentation necessary to determine whether the employee is receiving the disability compensation to which he or she is entitled and that an employee qualifying for disability compensation under G.S. 97-29 or G.S. 97-30, and G.S. 97-31 has the benefit of the more favorable remedy.

(c) All memoranda of agreements shall be submitted to the Commission. Agreements conforming to the provisions of the Workers' Compensation Act shall be approved by the Commission and a copy returned to the employer, carrier, or administrator, and a copy sent to the employee, unless amended by an award, in which event the Commission shall return the award with the agreement.

(d) The employer, carrier, administrator, or the attorney of record, if any, shall provide the employee's attorney of record or the employee, if unrepresented, a copy of a Form 21 *Agreement for Compensation for Disability*, a Form 26 *Supplemental Agreement as to Payment of Compensation*, a Form 26D *Agreement for Payment of Unpaid Compensation in Unrelated Death Cases*, and a Form 30 *Agreement for Compensation for Death*, when the employee or appropriate beneficiary signs the forms.

(e) All memoranda of agreements for cases that are calendared for hearing before a Commissioner or Deputy Commissioner shall be sent directly to that Commissioner or Deputy Commissioner. Before a case is calendared, or once a case has been continued or removed, or after the filing of an Opinion and Award, all memoranda of agreements shall be directed to the Claims Section of the Commission.

(f) After the employer, carrier, or administrator has received a memorandum of agreement that has been signed by the employee and the employee's attorney of record, if any, the employer, carrier, or administrator has 20 days within which to submit the memorandum of agreement to the Commission for review and approval or within which to show cause for not submitting the memorandum of agreement signed only by the employee.

History Note: Authority G.S. 97-18; 97-80(a); 97-82;
Eff. January 1, 1990;
Amended Eff. August 1, 2006;
Amended Eff. Pending Delayed Effective Date.

04 NCAC 10A .0502 COMPROMISE SETTLEMENT AGREEMENTS

(a) The Commission shall not approve a compromise settlement agreement unless it contains the following information:

- (1) The employee knowingly and intentionally waives the right to further benefits under the Workers' Compensation Act for the injury that is the subject of this agreement.
- (2) The employer, carrier or administrator will pay all costs incurred.
- (3) No rights other than those arising under the provisions of the Workers' Compensation Act are compromised or released by this agreement.

- (4) The employee has, or has not, returned to a job or position at the same or a greater average weekly wage as was being earned prior to the injury or occupational disease.
 - (5) Where the employee has not returned to a job or position at the same or a greater wage as was being earned prior to the injury or occupational disease, the employee has, or has not, returned to some other job or position, and, if so, the description of the particular job or position, the name of the employer, and the average weekly wage earned. This Subparagraph does not apply where the employee or counsel certifies that partial wage loss due to an injury or occupational disease is not being claimed.
 - (6) Where the employee has not returned to a job or position at the same or a greater average weekly wage as was being earned prior to the injury or occupational disease, a summary of the employee's age, educational level, past vocational training, past work experience, and any impairment, emotional, mental or physical, that predates the current injury or occupational disease. This Subparagraph does not apply upon a showing of:
 - (A) unreasonable burden upon the parties;
 - (B) the employee is represented by counsel; or
 - (C) even if the employee is not represented by counsel, where the employee or counsel certifies that total wage loss due to an injury or occupational disease is not being claimed.
- (b) No compromise settlement agreement shall be considered by the Commission unless the following requirements are met:
- (1) The relevant medical, vocational, and rehabilitation reports known to exist, including those pertinent to the employee's future earning capacity, are submitted with the agreement to the Commission by the employer, carrier, administrator, or the attorney for the employer.
 - (2) The parties and all attorneys of record have signed the agreement.
 - (3) In a claim where liability is admitted or otherwise has been established, the employer, carrier, or administrator has undertaken to pay all medical expenses for the compensable injury to the date of the settlement agreement.
 - (4) The settlement agreement contains a list of all known medical expenses of the employee related to the injury to the date of the settlement agreement, including medical expenses that the employer, carrier, or administrator disputes, when the employer or insurer has not agreed to pay all medical expenses of the employee related to the injury up to the date of the settlement agreement.
 - (5) The settlement agreement contains a list of the unpaid medical expenses, if known, that will be paid by the employer, carrier, or administrator, if there are unpaid medical expenses that the employer or carrier has agreed to pay. The settlement agreement also contains a list of unpaid medical expenses, if known, that will be paid by the employee, if there are unpaid medical expenses that the employee has agreed to pay.
 - (6) The settlement agreement provides that a party who has agreed to pay a disputed unpaid medical expense will notify in writing the unpaid health care provider of the party's responsibility to pay the unpaid medical expense. Other unpaid health care providers will be notified in writing of the completion of the settlement by the party specified in the settlement agreement:
 - (A) when the employee's attorney has notified the unpaid health care provider in writing under G.S. 97-90(e) not to pursue a private claim against the employee for the costs of medical treatment, or
 - (B) when the unpaid health care provider has notified in writing the employee's attorney of its claim for payment for the costs of medical treatment and has requested notice of a settlement.
 - (7) Any obligation of any party to pay an unpaid disputed medical expense pursuant to a settlement agreement does not require payment of any medical expense in excess of the maximum allowed under G.S. 97-26.
 - (8) The settlement agreement contains a finding that the positions of the parties to the agreement are reasonable as to the payment of medical expenses.
- (c) When a settlement has been reached, the written agreement shall be submitted to the Commission upon execution. All compromise settlement agreements shall be directed to the Office of the Executive Secretary for review or distribution for review in accordance with Paragraphs (a) and (b) of Rule .0609 of this Subchapter.
- (d) Once a compromise settlement agreement has been approved by the Commission, the employer, carrier, or administrator shall furnish an executed copy of the agreement to the employee's attorney of record or the employee, if unrepresented.
- (e) An attorney seeking fees in connection with a Compromise Settlement Agreement shall submit to the Commission a copy of the fee agreement with the client.

History Note: Authority G.S. 97-17; 97-80(a); 97-82; Eff. January 1, 1990; Amended Eff. August 1, 2006; June 1, 2000; March 15, 1995;

Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10A .0503 NOTICE OF LAST PAYMENT FILING REQUIREMENT

The forms required to be provided by G.S. 97-18(h) are (1) Form 28B Report of Employer or Carrier/Administrator of Compensation and Medical Compensation Paid and Notice of Right to Additional Medical Compensation that requires a statement as to the last date of compensation, and (2) Form 28C Report of Employer or Carrier/Administrator of Compensation and Medical Compensation Paid Pursuant to a Compromise Settlement Agreement that requires a statement as to the final payment of compensation.

History Note: Authority G.S. 97-18(h); 97-80(a); Eff. January 1, 1990;

Amended Eff. Pending Delayed Effective Date.

04 NCAC 10A .0601 EMPLOYER'S OBLIGATIONS UPON NOTICE; DENIAL OF LIABILITY; AND SANCTIONS

(a) Upon the employee's filing of a claim for compensation with the Commission, the Commission may order reasonable sanctions against the employer or its insurance carrier if it does not, within 30 days following notice from the Commission of the filing of the claim, or 90 days when a disease is alleged to be from exposure to chemicals, fumes, or other materials or substances in the workplace, do one of the following:

- (1) File a Form 60 *Employer's Admission of Employee's Right to Compensation* to notify the Commission and the employee in writing that the employer is admitting the employee's right to compensation and, if applicable, satisfy the requirements for payment of compensation under G.S. 97-18(b);
- (2) File a Form 61 *Denial of Workers' Compensation Claim* to notify the Commission and the employee that the employer denies the employee's right to compensation consistent with G.S. 97-18(c);
- (3) File a Form 63 *Notice to Employee of Payment of Compensation Without Prejudice* consistent with G.S. 97-18(d).

Requests for extensions of time to comply with G.S. 97-18(j) shall be addressed to the Claims Administration Section.

(b) When liability in any case is denied, the employer or insurance carrier shall provide a detailed statement of the basis of denial that shall be set forth in a letter of denial or Form 61 *Denial of Workers' Compensation Claim*, and that shall be sent to the employee's attorney of record or the employee, if unrepresented, all known health care providers who have submitted bills to the employer or carrier, and the Commission.

History Note: Authority G.S. 97-18; 97-80(a); 97-81(a); Eff. January 1, 1990;

Amended Eff. August 1, 2006; June 1, 2000;

Amended Eff. Pending Legislative Review.

04 NCAC 10A .0602 REQUEST FOR HEARING

(a) Contested claims shall be set on the hearing docket only upon the written request of one of the parties for a hearing or rehearing of the case in dispute. Any request for hearing shall contain the following:

- (1) the basis of the disagreement between the parties, including a statement of the issues raised by the requesting party;
- (2) the date of injury;
- (3) the part of the body injured;
- (4) the city and county where the injury occurred;
- (5) the names and addresses of all doctors and other expert witnesses whose testimony is needed by the requesting party;
- (6) the names of all lay witnesses to be called to testify for the requesting party;
- (7) an estimate of the time required for the hearing of the case; and
- (8) the telephone number(s), email address(es), and mailing address(es) of the party(ies) requesting the hearing and their legal counsel.

(b) A Form 33 *Request that Claim be Assigned for Hearing*, completed in full, shall constitute compliance with this Rule. The request for a hearing shall be filed with the Docket Section of the Commission. A copy of the Request for Hearing shall be forwarded to the attorneys for all opposing parties, or to the opposing parties themselves, if unrepresented.

History Note: Authority G.S. 97-80(a); 97-83;

Eff. January 1, 1990;

Amended Eff. June 1, 2000;

Amended Eff. Pending Delayed Effective Date.

04 NCAC 10A .0603 RESPONDING TO A PARTY'S REQUEST FOR HEARING

(a) No later than 45 days from receipt of a request for hearing from an employee, the self-insured employer, insurance carrier, or counsel for the defendant(s) shall file with the Commission a response to the request for hearing. If a defendant files a request for hearing, the employee is not required to respond.

(b) The response shall contain the following:

- (1) the basis of the disagreement between the parties, including a statement of the issues raised by the plaintiff that are conceded and the issues raised by the plaintiff which are denied;
- (2) the date of the injury if it is contended to be different than that alleged by the plaintiff;
- (3) the part of the body injured if it is contended to be different than that alleged by the plaintiff;
- (4) the city and county where the injury occurred if they are contended to be different than that alleged by the plaintiff;
- (5) the names and addresses of all doctors and other expert witnesses whose testimony is needed by the defendant(s);
- (6) the names of all lay witnesses known by the defendant(s) whose testimony is to be taken;

- (7) an estimate of the time required for the hearing of the case; and
- (8) the telephone number(s), email address(es), and mailing address(es) of the party(ies) responding to the request for hearing and their legal counsel.

(c) A Form 33R *Response to Request that Claim be Assigned for Hearing*, completed in full and filed with the Docket Section of the Commission, shall constitute compliance with this Rule. A copy of the Form 33R *Response to Request that Claim be Assigned for Hearing* shall be forwarded to the attorneys for all opposing parties or the opposing parties themselves, if unrepresented.

History Note: Authority G.S. 97-80(a); 97-83;
Eff. January 1, 1990;
Amended Eff. June 1, 2000;
Amended Eff. Pending Legislative Review.

04 NCAC 10A .0604 APPOINTMENT OF GUARDIAN AD LITEM

- (a) Minors or incompetents may bring an action only through their guardian *ad litem*. Upon the written application on a Form 42 *Application for Appointment of Guardian Ad Litem*, the Commission shall appoint the person as guardian *ad litem*, if the Commission determines it to be in the best interest of the minor or incompetent. The Commission shall appoint the guardian *ad litem* only after due inquiry as to the fitness of the person to be appointed.
- (b) No compensation due or owed to the minor or incompetent shall be paid directly to the guardian *ad litem*.
- (c) The Commission may assess a fee to be paid by the employer or the insurance carrier to an attorney who serves as a guardian *ad litem* for actual services rendered upon receipt of an affidavit of actual time spent in representation of the minor or incompetent as part of the costs.

History Note: Authority G.S. 97-50; 97-79(e); 97-80(a); 97-80(b); 97-91;
Eff. January, 1990;
Amended Eff. January, 2011; June 1, 2000; March 15, 1995;
Amended Eff. Pending Delayed Effective Date.

04 NCAC 10A .0605 DISCOVERY

In addition to depositions and production of books and records provided for in G.S. 97-80, parties may obtain discovery by the use of interrogatories as follows:

- (1) Any party may serve upon any other parties written interrogatories, up to 30 in number, including subparts thereof, to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available from the party interrogated.
- (2) Interrogatories may, without leave of the Commission, be served upon any party after the filing of a Form 18 *Notice of Accident to*

Employer and Claim of Employee, Representative, or Dependent, Form 18B Claim by Employee, Representative, or Dependent for Benefits for Lung Disease, or Form 33 Request that Claim be Assigned for Hearing, or after the acceptance of a claim.

- (3) Each interrogatory shall be answered separately and in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers shall be signed by the person making them and the objections shall be signed by the party making them. The party on whom the interrogatories have been served shall serve a copy of the answers and objections, if any, within 30 days after service of the interrogatories. The parties may stipulate to an extension of time to respond to the interrogatories. A motion to extend the time to respond shall represent that an attempt to reach agreement with the opposing party to informally extend the time for response has been unsuccessful and the opposing parties' position or that there has been a reasonable attempt to contact the opposing party to ascertain its position.
- (4) If there is an objection to or other failure to answer an interrogatory, the party submitting the interrogatories may move the Commission for an order compelling answer. If the Commission orders answer to an interrogatory within a time certain and no answer is made or the objection is still lodged, the Commission may issue an order with sanctions, including the sanctions specified in G.S. 1A-1, Rule 37.
- (5) Interrogatories and requests for production of documents shall relate to matters that are not privileged, that are relevant to an issue in dispute, or that the requesting party reasonably believes may later be disputed. The signature of a party or attorney serving interrogatories or requests for production of documents constitutes a certificate by such person that he or she has personally read each of the interrogatories and requests for production of documents, that no such interrogatory or request for production of documents will oppress a party or cause any unnecessary expense or delay, that the information requested is not known or equally available to the requesting party, and that the interrogatory or requested document relates to an issue presently in dispute or that the requesting party reasonably believes may later be in dispute. A party may serve an interrogatory, however, to obtain verification of facts relating to an issue presently in dispute. Answers to interrogatories may be used to the extent

permitted by Chapter 8C of the North Carolina General Statutes.

- (6) Up to the time a matter is calendared for a hearing, parties may serve requests for production of documents without leave of the Commission.
- (7) Additional methods of discovery as provided by the North Carolina Rules of Civil Procedure may be used only upon motion or by agreement of the parties. The Commission shall approve the motion in the interests of justice or to promote judicial economy.
- (8) Discovery requests and responses, including interrogatories and requests for production of documents, shall not be filed with the Commission, except for the following:
 - (a) notices of depositions;
 - (b) discovery requests and responses pertinent to a pending motion;
 - (c) responses to discovery following a motion or order to compel; and
 - (d) post-hearing discovery requests and responses.

The above listed documents shall be filed with the Commission, as well as served on the opposing party.

- (9) Sanctions shall be imposed under this Rule for failure to comply with a Commission order compelling discovery. A motion by a party or its attorney to compel discovery under this Rule and Rule .0607 of this Subchapter shall represent that informal means of resolving the discovery dispute have been attempted in good faith and state the opposing parties' position or that there has been a reasonable attempt to contact the opposing party and ascertain its position. The parties shall not submit motions to compel production of information otherwise obtainable under G.S. 97-25.6.

History Note: Authority G.S. 97-80(a); 97-80(f);
 Eff. January 1, 1990;
 Amended Eff. January 1, 2011; June 1, 2000;
 Amended Eff. Pending Legislative Review.

04 NCAC 10A .0606 DISCOVERY - POST HEARING

Discovery may not be conducted after the initial hearing on the merits of a case unless allowed by order of a Commissioner or Deputy Commissioner. In determining whether to allow further discovery, the Commissioner or Deputy Commissioner shall consider whether further discovery is in the interests of justice or to promote judicial economy.

History Note: Authority G.S. 97-80(a); 97-80(f);
 Eff. January 1, 1990;
 Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10A .0607 DISCOVERY OF RECORDS AND REPORTS

- (a) Upon written request, any party shall provide to the requesting party without cost, a copy of all medical, vocational and rehabilitation reports, employment records, Commission forms, and written communications with health care providers in its possession, within 30 days of the request, unless objection is made within that time period. The duty to respond exists whether or not a request for hearing has been filed and is a continuing one, and any such reports and records that come into the possession of a party after receipt of a request pursuant to this Rule shall be provided to the requesting party within 15 days from the party's receipt of these reports and records.
- (b) Upon receipt of a request, a carrier or administrator for an employer's workers' compensation program shall inquire of the employer concerning the existence of records encompassed by the request.

History Note: Authority G.S. 97-80(a); 97-80(b); 97-80(f);
 Eff. January 1, 1990;
 Amended Eff. June 1, 2000; March 15, 1995;
 Amended Eff. Pending Legislative Review.

04 NCAC 10A .0608 STATEMENT OF INCIDENT LEADING TO CLAIM

- (a) Upon the request of the employer or his agent to take a written or a recorded statement, the employer or his agent shall advise the employee that the statement may be used to determine whether the claim will be paid or denied. Any plaintiff who gives his or her employer, its carrier, or any agent either a written or recorded statement of the facts and circumstances surrounding his or her injury shall be furnished a copy of the statement within 45 days after request. Further, any plaintiff who shall give a written or recorded statement of the facts and circumstances surrounding his injury shall, without request, be furnished a copy no less than 45 days from the filing of a Form 33 *Request that Claim be Assigned for Hearing*. The copy shall be furnished at the expense of the person, firm or corporation at whose direction the statement was taken.
- (b) If any person, firm or corporation fails to comply with this Rule, then an order may be entered by a Commissioner or Deputy Commissioner prohibiting that person, firm or corporation, or its representative, from introducing the statement into evidence or using any part of the statement.

History Note: Authority G.S. 97-80(a);
 Eff. January 1, 1990;
 Amended Eff. June 1, 2000;
 Amended Eff. Pending Legislative Review.

04 NCAC 10A .0609 MOTIONS PRACTICE IN CONTESTED CASES

- (a) Motions before a Deputy Commissioner:
 - (1) in cases that are currently calendared for hearing before a Deputy Commissioner shall be sent by the filing party directly to the assigned Deputy Commissioner.
 - (2) to reconsider or amend an Opinion and Award, made prior to giving notice of appeal to the

Full Commission, shall be directed by the filing party to the Deputy Commissioner who authored the Opinion and Award.

(b) Motions shall be sent by the filing party directly to the Office of the Executive Secretary:

- (1) when a case is not calendared before a Deputy Commissioner;
- (2) once a case has been continued or removed from a Deputy Commissioner calendar; or
- (3) after the filing of an Opinion and Award when the time for taking appeal has run.

(c) Motions before the Full Commission:

- (1) in cases calendared for hearing before the Full Commission shall be sent by the filing party directly to the Chair of the Full Commission panel.
- (2) filed after notice of appeal to the Full Commission has been given but prior to the calendaring of the case shall be directed by the filing party to the Chair of the Commission.
- (3) in cases continued from the Full Commission hearing docket, shall be directed by the filing party to the Chair of the panel of Commissioners who ordered the continuance.
- (4) filed after the filing of an Opinion and Award by the Full Commission but prior to giving notice of appeal to the Court of Appeals shall be sent by the filing party directly to the Commissioner who authored the Opinion and Award.

(d) A motion shall state with particularity the grounds on which it is based, the relief sought, and the opposing party's position, if known. Service shall be made on all opposing attorneys of record, or on all opposing parties if not represented.

(e) Motions to continue or remove a case from the hearing calendar on which the case is set shall be made as much in advance as possible of the scheduled hearing and may be made in written or oral form. In all cases, the moving party shall provide the basis for the motion and state that the other parties have been advised of the motion and relate the position, if known, of the other parties regarding the motion. Oral motions shall be followed with a written motion from the moving party.

(f) The responding party to a motion shall have 10 days after a motion is served during which to file and serve copies of response in opposition to the motion. The Commission may shorten or extend the time for responding to any motion in the interests of justice or to promote judicial economy.

(g) A party who has not received actual notice of a motion or who has not filed a response at the time action is taken and who is adversely affected by the action may request that it be reconsidered, vacated, or modified. Motions shall be determined without oral argument, unless the Commission determines that oral argument is necessary for a complete understanding of the issues.

(h) Where correspondence relative to a case before the Commission is sent to the Commission, copies of such correspondence shall be contemporaneously sent by the same method of transmission to the opposing party or, if represented, to opposing counsel. Written communications, whether

addressed directly to the Commission or copied to the Commission, may not be used as an opportunity to introduce new evidence or to argue the merits of the case, with the exception of the following:

- (1) written communications, such as a proposed order or legal memorandum, prepared pursuant to the Commission's instructions;
- (2) written communications relative to emergencies, changed circumstances, or scheduling matters that may affect the procedural status of a case such as a request for a continuance due to the health of a litigant or an attorney;
- (3) written communications sent to the tribunal with the consent of the opposing lawyer or opposing party, if unrepresented; and
- (4) any other communication permitted by law or the Rules of the Commission.

(i) All motions and responses thereto shall include a proposed Order to be considered by the Commission.

History Note: Authority G.S. 97-79(b); 97-80(a); 97-84; 97-91;

Eff. January 1, 1990;

Amended Eff. June 1, 2000; March 15, 1995;

Amended Eff. Pending Legislative Review.

04 NCAC 10A .0609A MEDICAL MOTIONS AND EMERGENCY MEDICAL MOTIONS

(a) Motions pursuant to G.S. 97-25 brought before the Office of the Executive Secretary for a ruling shall comply with applicable provisions of Rule .0609 of this Subchapter and shall be submitted electronically to medicalmotions@ic.nc.gov, unless electronic submission is unavailable to the party.

(b) A party may file with the Docket Section a request for a ruling on a motion brought pursuant to G.S. 97-25. A party, also, may appeal an Order from the Executive Secretary's Office on a motion brought pursuant to G.S. 97-25 by giving notice of appeal to the Docket Section within 15 days of receipt of the Order or receipt of the ruling on a Motion to Reconsider the Order filed pursuant to Rule .0703(b) of this Subchapter. The motion brought pursuant to G.S. 97-25 shall contain a designation as a motion brought pursuant to G.S. 97-25, documentation in support of the request including the most recent medical record(s), a representation that informal means of resolving the issues have been attempted in good faith, and the opposing party's position, if known.

(c) A Deputy Commissioner shall conduct a Pre-Trial Conference as soon as possible to clarify the issues. Parties may consent to a review of the contested issues by electronic mail submission of only relevant medical records and opinion letters. Depositions deemed necessary by the Deputy Commissioner shall be set on an expedited schedule at the expense of defendants. Requests for independent medical examinations shall be denied unless there is a demonstrated need for the evaluation. The parties shall provide the deposition transcript to the Deputy Commissioner as soon as possible. Written arguments and briefs shall be filed within five days after the record is closed.

(d) A party may appeal an Order by a Deputy Commissioner on a motion brought pursuant to G.S. 97-25 by giving notice of appeal to the Full Commission within 15 days of receipt of the Order or receipt of the ruling on a Motion to Reconsider the Order filed pursuant to Rule .0703(b) of this Subchapter.

A letter expressing an intent to appeal a Deputy Commissioner's Order on a motion brought pursuant to G.S. 97-25 shall be considered notice of appeal to the Full Commission, provided that the letter specifies the Order from which appeal is taken. After receipt of notice of appeal, the appeal shall be acknowledged by the Docket Section within three days by sending an Order under the name of the Chair of the Panel to which the appeal is assigned. The parties may file briefs on an abbreviated schedule when necessary for a determination of the issues. The panel chair shall also determine if oral arguments are to be by telephone, in person, or waived. All correspondence, briefs, or motions related to the appeal shall be addressed to the panel chair with a copy to the law clerk of the panel chair.

(e) If the motion requests a second opinion examination pursuant to G.S. 97-25, the motion shall specify whether the plaintiff has made a prior written request to the defendants for the examination, as well as the date of the request and the date of the denial, if any.

(f) Motions requesting emergency medical relief shall contain the following:

- (1) a boldface, or otherwise emphasized, designation as "Emergency Medical Motion";
- (2) an explanation of the need for a shortened time period for review, including any hardship that warrants immediate attention or action by the Commission;
- (3) a statement of the time-sensitive nature of the request;
- (4) dates and times related to the issue raised and to the date a ruling is requested;
- (5) documentation in support of the request, including the most recent medical records; and
- (6) a representation that informal means of resolving the issue have been attempted in good faith, and the opposing party's position, if known.

(g) A party may file an Emergency Medical Motion with the Executive Secretary's Office, the Chief Deputy Commissioner, or the Office of the Chair. A proposed Order shall be provided with the motion. The non-moving party(ies) shall be advised by the Commission regarding any time allowed for response and whether informal telephonic oral argument is necessary.

(h) Unless electronic submission is unavailable to the party, Emergency Medical Motions and responses shall be submitted electronically, as follows:

- (1) if filed with the Executive Secretary's Office, to medicalmotions@ic.nc.gov;
- (2) if filed with the Chief Deputy Commissioner, to the Chief Deputy Commissioner and his or her legal assistant; or

- (3) if filed with the Chair of the Commission to the Chair, his or her legal assistant, and his or her law clerk.

History Note: Authority G.S. 97-25; 97-78(f)(2); 97-78(g)(2); 97-80(a); Eff. January 1, 2011;

Amended Eff. Pending Legislative Review.

04 NCAC 10A .0610 PRE-TRIAL AGREEMENT

(a) A Pre-Trial Agreement shall be signed by the attorneys and submitted to the Commissioner or Deputy Commissioner before whom the case is pending 10 days before the hearing, unless a shorter time period is ordered upon agreement of the parties.

(b) The Pre-Trial Agreement shall be prepared in a form that conforms to the Order on Final Pre-Trial Conference adopted in the North Carolina Rules of Practice for the Superior and District Courts. Should the parties fail to comply with a Pre-Trial Order, the Commissioner or Deputy Commissioner shall remove the case from the hearing docket if required in the interests of justice or to promote judicial economy. Should the parties thereafter comply with the Pre-Trial Order after the removal of the case, the Pre-Trial Agreement shall be directed to the Commissioner or Deputy Commissioner who removed the case from the docket; and the Commissioner or Deputy Commissioner shall order the case returned to the hearing as if a Request for Hearing had been filed on the date of the Order to return the case to the hearing docket. No new Form 33 *Request that Claim be Assigned for Hearing* is required.

(c) If the parties need a conference, a Commissioner or Deputy Commissioner shall order the parties to participate in a pre-trial conference. This conference shall be conducted at such place and by such method as the Commissioner or Deputy Commissioner deems appropriate, including conference telephone calls.

(d) Any party may request a pre-trial conference to aid in settling the case or resolving contested issues prior to trial. Requests for such pre-trial conferences shall be directed to the Commissioner or Deputy Commissioner before whom the claim has been calendared.

History Note: Authority G.S. 97-80(a); 97-80(b); 97-83; Eff. January 1, 1990;

Amended Eff. January 1, 2011; June 1, 2000; March 15, 1995; Amended Eff. Pending Delayed Effective Date.

04 NCAC 10A .0611 HEARINGS BEFORE THE COMMISSION

(a) The Commission may, on its own motion, order a hearing or rehearing of any case in dispute. The Commission shall set a contested case for hearing in a location deemed convenient to witnesses and the Commission.

(b) In setting contested cases for hearing, cases in which the payment of workers' compensation benefits is at issue take precedence.

(c) The Commission shall give notice of hearings in every case. Postponement or continuance of a duly scheduled hearing shall be allowed only in the discretion of a Commissioner or Deputy Commissioner before whom the case is set if required in the

interests of justice or to promote judicial economy. Where a party has not notified the Commission of the attorney representing the party prior to the mailing of calendars for hearing, notice to that party constitutes notice to the party's attorney.

(d) In a contested case, the record includes all prior Opinion and Awards, filed Commission forms, form agreements, awards, and orders of the Commission. Any other documents that the parties wish to have included in the record shall be introduced and received into evidence.

(e) Hearing costs shall be assessed in each case set for hearing, including those cases that are settled after being calendared and notices mailed, and shall be payable upon receipt of a statement from the Commission.

(f) In the event of inclement weather or natural disaster, hearings set by the Commission shall be cancelled or delayed if the proceedings before the General Court of Justice in that county are cancelled or delayed.

History Note: Authority G.S. 97-79; 97-80(a); 97-84; 97-91; Eff. January 1, 1990;
Amended Eff. June 1, 2000;
Amended Eff. Pending Delayed Effective Date.

04 NCAC 10A .0612 DEPOSITIONS AND ADDITIONAL HEARINGS

(a) The parties may, by agreement or stipulation with notice to the Commission, conduct depositions for discovery prior to the hearing before the Deputy Commissioner.

(b) When additional testimony is necessary to the disposition of a case, a Commissioner or Deputy Commissioner shall order the deposition of witnesses to be taken on or before a day certain not to exceed 60 days from the date of the ruling; provided, the time allowed may be enlarged in the interests of justice and judicial economy. The costs of such depositions shall be borne by defendants for those medical witnesses who examined the plaintiff at defendants' expense, or when ordered by the Commissioner or Deputy Commissioner.

(c) In cases where a party, or an attorney for either party, refuses to stipulate medical reports and the case is reset or depositions ordered for testimony of medical witnesses, a Commissioner or Deputy Commissioner may assess the costs of such hearing or depositions, including reasonable attorney fees, against the party who refused the stipulation, pursuant to G.S. 97-88 and G.S. 97-88.1.

(d) All evidence and witnesses other than those tendered as an expert witness shall be offered at the hearing before the Deputy Commissioner. Non-expert evidence may be offered after the hearing before the Deputy Commissioner by order of a Commissioner or Deputy Commissioner. The costs of obtaining non-expert testimony by deposition shall be borne by the party making the request unless otherwise ordered by the Commission in the interests of justice or to promote judicial economy.

History Note: Authority G.S. 97-80(a); 97-88; 97-88.1; Eff. June 1, 1990;
Amended Eff. June 1, 2000;
Amended Eff. Pending Legislative Review.

04 NCAC 10A .0613 EXPERT WITNESSES AND FEES

(a) The parties shall file with the Deputy Commissioner within 15 days following the trial, a list identifying all expert witnesses to be deposed and the dates of their depositions unless otherwise extended by the Commission in the interests of justice and judicial economy.

(b) Within 10 days after each expert witness deposition, defendants' counsel shall submit to the Deputy Commissioner, via email, a request to approve the expert's fee. In these requests, counsel shall provide to the Deputy Commissioner, in a cover letter along with the invoice (if provided to counsel), the following:

- (1) the name of the expert deposed;
- (2) his or her practice's name;
- (3) his or her fax number;
- (4) his or her area of specialty and board certifications, if any;
- (5) the length of the deposition; and
- (6) the length of time the expert spent preparing, excluding any time meeting with parties' counsel, for the deposition.

Counsel shall submit a proposed Order that shows the expert's name, practice name and fax number under the "Appearances" section.

(c) Failure to make payment to an expert witness within 30 days following the entry of a fee order shall result in an amount equal to 10 percent being added to the fee payable to the expert witness.

(d) A proposed fee for cancellation of a deposition within five days of scheduled deposition may be submitted to the Deputy Commissioner for consideration and approval if in the interest of justice and judicial economy.

History Note: Authority G.S. 97-18(i); 97-80(a); 97-80(f); Eff. January 1, 1990;
Amended Eff. January 1, 2011; June 1, 2000;
Amended Eff. Pending Legislative Review.

04 NCAC 10A .0614 HEALTH CARE PROVIDER FEE DISPUTE PROCEDURE

(a) Health care providers seeking to resolve a dispute regarding payment of charges for medical compensation shall make an inquiry directly to the employer or employer's workers compensation insurance carrier responsible for the payment of medical fees by using an Industrial Commission Form 26I *Medical Provider Dispute Resolution Questionnaire*.

(b) The Commission shall assist a health care provider who has been unsuccessful in obtaining carrier contact information. No information regarding a specific claim shall be provided by the Commission to the health care provider.

(c) When an employer or carrier does not respond to a health care provider's Form 26I *Medical Provider Dispute Resolution Questionnaire* inquiry regarding a medical fee dispute within 20 days, or denies liability as a Form 26I *Medical Provider Dispute Resolution Questionnaire* response, the health care provider may file a written request seeking assistance from the Commission regarding the fee dispute.

(d) The Commission shall conduct a conference between the health care provider and the employer or carrier in an effort to resolve the dispute.

(e) When the health care provider, with assistance from the Commission is unable to resolve the dispute, the health care provider may request limited intervention in the workers' compensation claim for the sole purpose of resolving the fee dispute.

(f) A health care provider seeking limited intervention in a workers' compensation claim shall file a motion to intervene with the Commission. The Motion to Intervene must include the following:

- (1) the Commission file number, if known;
- (2) the employee's name, address, and last four digits of his or her social security number;
- (3) the date of injury and a description of the workplace injury, including the body parts known to be affected;
- (4) an itemized list of the medical fees in dispute, including CPT codes relating specific charges to the Workers' Compensation Medical Fee Schedule, and explanations directly relating each charge to the employee's workplace injury;
- (5) a copy of the Form 26I *Medical Provider Dispute Resolution Questionnaire* submitted by the health care provider, including all accompanying materials, and any response received back by the health care provider from the employer or carrier contacted;
- (6) a copy of the written request for assistance submitted to the Medical Fees Section of the Commission;
- (7) a copy of the written summary by the Medical Fees Section of the informal resolution process and outcome;
- (8) a sworn affidavit by the health care provider that states:
 - (A) the health care provider has treated the employee;
 - (B) the medical fees itemized by the health care provider are current and unpaid; and
 - (C) the health care provider reasonably believes that the employer or carrier named on the Form 26I *Medical Provider Dispute Resolution Questionnaire* is obligated to pay the fees under the Workers' Compensation Act; and
- (9) a certification of service upon both the employee and the employer or carrier named on the Form 26I *Medical Provider Dispute Resolution Questionnaire*.

(g) A health care provider who has been denied intervention may request a review by the Commission by filing a written request with the Docket Section of the Industrial Commission within 10 days of receipt of the order denying intervention.

(h) The request for review by the Commission shall be served on all parties to the workers' compensation claim and include:

- (1) a statement of facts necessary to an understanding of the issue(s);
- (2) a statement of the relief sought;
- (3) a copy of the motion to intervene, including all attachments required by Paragraph (f) of this Rule; and
- (4) a copy of the order denying intervention.

(i) Within 10 days after service of a request for review by the Commission, any party to the workers' compensation claim may file a response, including supporting affidavits or documentation not previously filed with the Commission.

(j) The Commission's determination shall be made on the basis of the request for review and any response(s), including supporting documentation. No briefs or oral argument are allowed by the Commission.

(k) In accordance with the G.S. 97-90.1, when a health care provider is allowed to intervene by the Commission, the intervention is limited to the medical fee dispute.

(l) Following intervention, a health care provider may request and obtain information from the Commission related to the medical fee. The request for information must be in writing, include a copy of the order allowing the health care provider to intervene, and be directed to the Claims Section of the Commission.

(m) Discovery by a health care provider shall be allowed following a Commission order allowing intervention but is limited to matters related to the medical fee dispute.

(n) A health care provider who has intervened in a workers' compensation claim may obtain a hearing before the Commission on a medical fee dispute by filing an Industrial Commission Form 33I *Intervenor's Request that Claim be Assigned for Hearing* and paying a filing fee.

(o) Upon resolution of a medical fee dispute, costs shall be determined and assessed by the Commission and the health care provider shall be dismissed from the claim. The health care provider shall retain standing to request review of an order from the Commission.

History Note: Authority G.S. 97-26(i); 97-80(a);

Eff. January 1, 1990;

Amended Eff. January 1, 2011; June 1, 2000; March 15, 1995;

Amended Eff. Pending Delayed Effective Date.

04 NCAC 10A .0615 CASES REMOVED FROM A HEARING CALENDAR

(a) A claim may be removed from a hearing calendar by motion of the party requesting the hearing or by the Commission upon its own motion in the interests of justice or to promote judicial economy.

(b) Upon settlement of a case or approval of a form agreement, the parties shall submit a request to remove a case from a hearing calendar and a proposed Order.

(c) After a case has been removed from a hearing calendar, the case may be reset on a hearing calendar by Order of the Commission or filing of a Form 33 *Request that Claim be Assigned for Hearing* by the party requesting a hearing.

History Note: Authority G.S. 97-80(a); 97-84; 97-91;
Eff. January 1, 1990;
Amended Eff. June 1, 2000;
Amended Eff. Pending Delayed Effective Date;

04 NCAC 10A .0616 DISMISSALS

- (a) No claim filed under the Workers' Compensation Act shall be dismissed without prejudice, except upon order of the Commission in the interest of justice. No voluntary dismissal shall be granted after the record in a case is closed. Unless otherwise ordered by the Commission in the interests of justice, a plaintiff shall have one year from the date of the Order of Voluntary Dismissal Without Prejudice to refile his claim.
- (b) Upon notice and opportunity to be heard, any claim may be dismissed with or without prejudice by the Commission on its own motion or by motion of any party if the Commission finds that the party failed to prosecute or to comply with the rules in this Subchapter or any Order of the Commission.
- (c) In a denied claim, if a plaintiff has not requested a hearing within two years of the filing of the Order removing the case from a hearing calendar and has not pursued the claim, upon notice and opportunity to be heard, any claim shall be dismissed with prejudice by the Commission, on its own motion or by motion of any party.

History Note: Authority G.S. 97-80(a); 97-84; 97-91;
Eff. June 1, 2000;
Amended Eff. January 1, 2011;
Amended Eff. Pending Legislative Review.

04 NCAC 10A .0617 ATTORNEYS RETAINED FOR PROCEEDINGS

- (a) Any attorney who is retained by a party in a proceeding before the Commission shall comply with the applicable rules of the North Carolina State Bar. A copy of a notice of representation shall be served upon all other counsel and all unrepresented parties. Thereafter, all notices required to be served on a party shall be served upon the attorney. No direct contact or communication concerning contested matters may be made with a represented party by the opposing party or any person on its behalf, without the attorney's permission except as permitted by G.S. 97-32 or other applicable law.
- (b) Any attorney who wishes to withdraw from representation in a proceeding before the Commission shall file with the Commission, in writing a Motion to Withdraw that contains a statement of reasons for the request and that the request has been served on the client. The attorney shall make reasonable efforts to ascertain the last known address of the client and shall include this information in the motion. A Motion to Withdraw before an award is made shall state whether the withdrawing attorney requests an attorney's fee from the represented party once an award of compensation is made or approved.
- (c) An attorney may withdraw from representation only by written order of the Commission. The issuance of an award of the Commission does not release an attorney as the attorney of record.
- (d) An attorney withdrawing from representation whose client wishes to appeal an Order, Decision, or Award to the Full Commission shall timely file a notice of appeal, as set out by this

Subchapter, on behalf of his or her client either before or with his or her Motion to Withdraw.

(e) Motions to Withdraw shall be submitted electronically to attorneywithdrawals@ic.nc.gov, unless electronic submission is unavailable to the parties. The Motion to Withdraw shall include a proposed Order that includes, in the appearances, the last known address of any pro se party, or the contact information of new counsel, if such counsel has been retained. The proposed Order shall include fax numbers for all parties, if known.

History Note: Authority G.S. 97-80(a); 97-90; 97-91;
Eff. January 1, 2011;
Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10A .0618 DISQUALIFICATION OF A COMMISSIONER OR DEPUTY COMMISSIONER

Commissioners or Deputy Commissioners may recuse themselves from the hearing of any case before the Commission. In the interests of justice, a majority of the Full Commission may remove a Commissioner or Deputy Commissioner from the hearing of a case.

History Note: Authority G.S. 97-79(b); 97-80(a);
Eff. Pending Delayed Effective Date.

04 NCAC 10A .0619 FOREIGN LANGUAGE INTERPRETERS

- (a) When a person who does not speak or understand the English language is called to testify in a hearing, other than in an informal hearing conducted pursuant to G.S. 97-18.1, the person, whether a party or a witness, shall be assisted by a qualified foreign language interpreter.
- (b) To qualify as a foreign language interpreter, a person shall possess sufficient experience and education, or a combination of experience and education, speaking and understanding English and the foreign language to be interpreted, to qualify as an expert witness pursuant to G.S. 8C-1, Rule 702. A person qualified as an interpreter under this Rule shall not be interested in the claim and shall make a declaration under oath or affirmation to interpret accurately, truthfully and without any additions or deletions, all questions propounded to the witness and all responses thereto.
- (c) Any party who is unable to speak or understand English, or who intends to call as a witness a person who is unable to speak or understand English, shall so notify the Commission and the opposing party, in writing, not less than 21 days prior to the date of the hearing. The notice shall state the language(s) that shall be interpreted for the Commission.
- (d) Upon receiving or giving the notice required in Paragraph (c) of this Rule, the employer or insurer shall retain a disinterested interpreter who possesses the qualifications listed in Paragraph (b) of this Rule to appear at the hearing and interpret the testimony of all persons for whom the notice in Paragraph (c) of this Rule has been given or received.
- (e) The interpreter's fee shall constitute a cost as contemplated by G.S. 97-80. A qualified interpreter who interprets testimony for the Commission is entitled to payment of the fee agreed upon by the interpreter and employer or insurer that retained the

interpreter. Except in cases where a claim for compensation has been prosecuted without reasonable ground, the fee agreed upon by the interpreter and employer or insurer shall be paid by the employer or insurer. Where the Commission ultimately determines that the request for an interpreter was unfounded, attendant costs shall be assessed against the movant.

(f) Foreign language interpreters shall abide by the Code of Conduct and Ethics of Foreign Language Interpreters and Translators, contained in Part 4 of Policies and Best Practices for the Use of Foreign Language Interpreting and Translating Services in the North Carolina Court System and promulgated by the North Carolina Administrative Office of the Courts, and shall interpret, as word for word as is practicable, without editing, commenting, or summarizing, testimony or other communications. The Code of Conduct and Ethics of Foreign Language Interpreters and Translators is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be obtained at no charge from the North Carolina Administrative Office of the Court's website, <http://www.nccourts.org/Citizens/CPrograms/Foreign/Document/s/guidelines.pdf>, or upon request, at the offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m.

History Note: Authority G.S. 97-79(b); 97-80(a); Eff. Pending Delayed Effective Date.

04 NCAC 10A .0701 REVIEW BY THE FULL COMMISSION

(a) A letter expressing a request for review is considered an application of review to the Full Commission within the meaning of G.S. 97-85, provided that the letter specifies the Order or Opinion and Award from which appeal is taken.

(b) After receipt of a request for review, the Commission shall supply to the appellant a Form 44 *Application for Review* upon which appellant shall state the grounds for the review. The grounds shall be stated with particularity, including the errors allegedly committed by the Commissioner or Deputy Commissioner and, when applicable, the pages in the transcript on which the alleged errors are recorded. Failure to state with particularity the grounds for review shall result in abandonment of such grounds, as provided in Paragraph (d). Appellant's completed Form 44 *Application for Review* and brief shall be filed and served within 25 days of appellant's receipt of the transcript or receipt of notice that there will be no transcript.

(c) The time for filing a request for review from the decision of a Deputy Commissioner under the rules in this Subchapter shall be tolled until a timely motion to reconsider or to amend the decision has been ruled upon by the Deputy Commissioner. A motion to reconsider or to amend the decision of a Deputy Commissioner shall be filed within 15 days of receipt of notice of the award.

(d) Grounds for review not set forth in the Form 44 *Application for Review* are deemed abandoned, and argument thereon shall not be heard before the Full Commission.

(e) The appellant shall file a Form 44 *Application for Review* and brief in support of his grounds for review with the Commission with a certificate indicating service on the appellee

within 25 days after receipt of the transcript or receipt of notice that there will be no transcript. The appellee shall have 25 days from service of appellant's brief to file a reply brief with the Commission with written statement of service on the appellant. When an appellant fails to file a brief, appellee shall file his brief within 25 days after the appellant's time for filing brief has expired. A party who fails to file a brief shall not be allowed oral argument before the Full Commission. If both parties request review, they shall each file an appellant's and appellee's brief on the schedule set forth in this Paragraph. If the matter has not been calendared for hearing, any party may file with the Docket Director a written stipulation to a single extension of time not to exceed 15 days. In no event shall the cumulative extensions of time exceed 30 days.

(f) After a request for review has been given to the Full Commission, any motions related to the issues for review before the Full Commission shall be filed with the Full Commission, with service on the other parties. Motions related to the issues for review including motions for new trial, to amend the record, or to take additional evidence, filed during the pendency of a request for review to the Full Commission shall be argued before the Full Commission at the time of the hearing of the request for review.

(g) Cases shall be cited to the North Carolina Reports, the North Carolina Court of Appeals Reports, or the North Carolina Reporter, and when possible, to the Southeastern Reporter. Counsel shall not discuss matters outside the record, assert personal opinions or relate personal experiences, or attribute wrongful acts or motives to opposing counsel.

(h) Upon the request of a party or on its own motion, the Commission may waive oral argument in the interests of justice or to promote judicial economy. In the event of such waiver, the Full Commission shall file an award, based on the record and briefs.

(i) Briefs to the Full Commission shall not exceed 35 pages, excluding attachments. No page limit applies to the length of attachments. Briefs shall be prepared using a 12 point type, shall be double spaced, and shall be prepared with non-justified right margins. Each page of the brief shall be numbered at the bottom right of the page. When a party quotes or paraphrases testimony or other evidence from a transcript of the evidence or from an exhibit in the party's brief, the party shall include, at the end of the sentence in the brief that quotes or paraphrases the testimony or other evidence, a parenthetical entry that designates the source of the quoted or paraphrased material and the page number location within the applicable source. The party shall use "T" for transcript, "Ex" for exhibit, and "p" for page number. For example, if a party quotes or paraphrases material located in the transcript on page 11, the party shall use the following format "(T p 11)", and if a party quotes or paraphrases material located in an exhibit [on page 12, the party shall use the following format "(Ex [p 12)". When a party quotes or paraphrases testimony or other evidence in the transcript of a deposition in the party's brief, the party shall include, at the end of the sentence in the brief that quotes or paraphrases the testimony or other evidence from the deposition, a parenthetical entry that contains the name of the name of the person deposed and the page number location within the transcript of the deposition. For example, if a party quotes or paraphrases the testimony of John

Smith, located on page 11 of the transcript of the deposition, the party shall use the following format "(Smith p 11)"

(j) An employee requesting a review of the amount of a disfigurement award shall personally appear before the Full Commission to permit the Full Commission to view the disfigurement.

History Note: Authority G.S. 97-80(a); 97-85;
Eff. January 1, 1990;
Amended Eff. January 1, 2011; June 1, 2000;
Amended Eff. Pending Legislative Review.

04 NCAC 10A .0702 REVIEW OF ADMINISTRATIVE DECISIONS

(a) Administrative decisions include orders, decisions, and awards made in a summary manner, without findings of fact, including decisions on the following:
 applications to approve agreements to pay compensation and medical bills;

- (1) applications to approve the termination or suspension or the reinstatement of compensation;
- (2) applications for change in treatment or providers of medical compensation;
- (3) applications to change the interval of payments; and
- (4) applications for lump sum payments of compensation.

Administrative decisions shall be reviewed upon the filing of a Motion for Reconsideration with the Commission addressed to the Administrative Officer who made the decisions or may be reviewed by requesting a hearing within 15 days of receipt of the decisions or receipt of the ruling on a Motion to Reconsider. These issues may also be raised and determined at a subsequent hearing.

(b) Motions for Reconsideration shall not stay the effect of the order, decision or award; provided that the Administrative Officer making the decision or a Commissioner may enter an order staying its effect pending the ruling on the Motion for Reconsideration or pending a decision by a Commissioner or Deputy Commissioner following a formal hearing. In determining whether or not to grant a stay, the Commissioner or Administrative Officer shall consider whether granting the stay will frustrate the purposes of the order, decision, or award. Motions to Stay shall not be filed with both the Administrative Officer and a Commissioner.

(c) Any request for a hearing to review an administrative decision shall be made to the Commission and filed with the Commission's Docket Director. The Commission shall designate a Commissioner or Deputy Commissioner to hear the review. The Commissioner or Deputy Commissioner hearing the matter shall consider all issues de novo, and no issue shall be considered moot solely because the order has been fully executed during the pendency of the hearing.

(d) Orders filed by a single Commissioner, including orders dismissing reviews to the Full Commission or denying the right of immediate request for review to the Full Commission, are administrative orders and are not final determinations of the Commission. As such, an order filed by a single Commissioner

is not appealable to the North Carolina Court of Appeals. A one-signature order filed by a single Commissioner may be reviewed by:

- (1) filing a Motion for Reconsideration addressed to the Commissioner who filed the order; or
- (2) requesting a review to a Full Commission panel by requesting a hearing within 15 days of receipt of the order or receipt of the ruling on a Motion for Reconsideration.

History Note: Authority G.S. 97-80(a); 97-85
Eff. January 1, 1990;
Amended Eff. January 1, 2011; June 1, 2000;
Amended Eff. Pending Legislative Review.

04 NCAC 10A .0702A REMAND FROM THE APPELLATE COURTS

History Note: Authority G.S. 97-80(a);
Eff. August 1, 2006;
Repealed Eff. Pending Delayed Effective Date.

04 NCAC 10A .0703 APPEAL TO THE COURT OF APPEALS

(a) The time to file a notice of appeal, and bonds therefrom, including in forma pauperis affidavits, to the North Carolina Court of Appeals from the Full Commission is governed by the provisions of G.S. 97-86.

(b) A motion to reconsider or to amend an award of the Full Commission shall be filed within 15 days of receipt of notice of the award. An award of the Full Commission is not final until the disposition is filed by the Commission on the pending motion to reconsider or to amend an award.

History Note: Authority G.S. 97-80(a); 97-86;
Eff. March 15, 1995;
Amended Eff. January 1, 2011; June 1, 2000;
Amended Eff. Pending Delayed Effective Date.

04 NCAC 10A .0704 REMAND FROM THE APPELLATE COURTS

When a case is remanded to the Commission from the appellate courts, each party may file a statement, with or without a brief, to the Full Commission setting forth its position on the actions or proceedings, including evidentiary hearings or depositions, required to comply with the court's decision. This statement shall be filed within 30 days of the issuance of the court's mandate and shall be filed with the Commissioner who authored the Full Commission decision or the Commissioner designated by the Chairman of the Commission if the Commissioner who authored the decision is no longer a member of the Industrial Commission.

History Note: Authority G.S. 97-80(a); 97-86;
Eff. Pending Legislative Review.

04 NCAC 10A .0801 WAIVER OF RULES

In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the rules in

this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a case pending before the Commission upon written application of a party or upon its own initiative. Factors the Commission shall use in determining whether to grant the waiver are:

- (1) the necessity of a waiver;
- (2) the party's responsibility for the conditions creating the need for a waiver;
- (3) the party's prior requests for a waiver;
- (4) the precedential value of such a waiver;
- (5) notice to and opposition by the opposing parties; and
- (6) the harm to the party if the waiver is not granted.

History Note: Authority G.S. 97-80(a);
Eff. January 1, 1990;
Amended Eff. Pending Legislative Review.

04 NCAC 10A .0802 SANCTIONS

History Note: Authority G.S. 1A-1, Rule 37; 97-18; 97-80(a); 97-88.1;
Eff. January 1, 1990;
Amended Eff. June 1, 2000;
Repealed Eff. Pending Delayed Eff. Date.

04 NCAC 10A .0803 RULEMAKING

History Note: Authority G.S. 97-80(a);
Eff. January 1, 1990;
Repealed Eff. Pending Delayed Effective Date.

04 NCAC 10A .0901 CHECK ENDORSEMENT

If a self-insured employer, carrier or third party administrator places "check endorsement" language on the back of an employee's check, the following language (or language approved by the Commission as equivalent) shall be used:

By endorsing this check, I certify that I have not worked for or earned wages from any business or individual during the period covered by this check, or that I have reported any earnings to the employer or carrier paying me workers' compensation benefits. I understand that making a false statement by endorsing this benefit check may result in civil and criminal penalties.

History Note: Authority G.S. 97-80(a); 97-88.2;
Eff. June 1, 2000;
Amended Eff. Pending Delayed Effective Date.

04 NCAC 10A .0902 NOTICE

A self-insured employer, carrier or third party administrator shall not use check endorsement language on the back of an employee's workers' compensation benefit check unless the employee has been provided the following Notice sent by certified mail return receipt requested:

NOTICE TO EMPLOYEE RECEIVING WORKERS' COMPENSATION BENEFITS

This NOTICE is intended to advise you of important information you must know if you are receiving workers' compensation benefits. Please TAKE NOTICE of the following:

(a) When you are receiving weekly workers' compensation benefits, you must report any earnings you receive to the insurance company (or employer if the employer is self-insured) that is paying you the benefits. "Earnings" include any cash, wages or salary received from self-employment or from any employment other than the employment where you were injured. Earnings also include commissions, bonuses, and the cash value for all payments received in any form other than cash (e.g., a building custodian receiving a rent-free apartment). Incentives, commissions, bonuses, or other compensation earned before disability but received during the time you are also receiving workers' compensation benefits do not constitute earnings that must be reported.

(b) You must report any work in any business, even if the business lost money or if profits or income were reinvested or paid to others.

(c) Your endorsement on a benefit check or deposit of the check into an account is your certification that you have not worked for or earned wages from any business or individual during the period covered by the check, or that you have reported any earnings to the employer or carrier paying you workers' compensation benefits and that you are entitled to receive workers' compensation benefits. Your signature on a benefit check is further certification that you have made no material false statement or concealed any material fact regarding your right to receive the benefit check.

(d) Making false statements for the purpose of obtaining workers' compensation benefits may result in civil and criminal penalties.

History Note: Authority G.S. 97-80(a); 97-88.2;
Eff. June 1, 2000;
Amended Eff. Pending Delayed Effective Date.

04 NCAC 10A .0903 EMPLOYEE'S OBLIGATION TO REPORT EARNINGS

(a) A self-insured employer, carrier or third-party administrator may require the employee who has filed a claim to complete a Form 90 *Report of Earnings* when reasonably necessary but not more than once every six months.

(b) The Form 90 *Report of Earnings* shall be sent to the employee by certified mail, return receipt requested, and include a self-addressed stamped envelope for the return of the form.

When the employee is represented by an attorney, the Form 90 *Report of Earnings* shall be sent to the attorney for the employee and not to the employee.

(c) The employee shall complete and return the Form 90 *Report of Earnings* within 15 days after receipt of a Form 90 *Report of Earnings*. If the employee fails to complete and return the Form 90 *Report of Earnings* within 30 days of receipt of the form, the self-insured employer, carrier or third-party administrator may seek an order from the Executive Secretary allowing the suspension of benefits. The self-insured employer, carrier or third-party administrator shall not suspend benefits without Commission approval pursuant to the Workers' Compensation Act. If the Commission suspends benefits for failure to complete and return a Form 90 *Report of Earnings*, the self-insured employer, carrier or third-party administrator shall reinstate benefits to the employee with back payment as soon as the Form 90 *Report of Earnings* is submitted by the employee. If benefits are not reinstated, the employee shall submit a written request for an Order from the Executive Secretary instructing the self-insured employer, carrier or third-party administrator to reinstate benefits. If the employee's earnings report does not indicate continuing eligibility for partial or total disability compensation, the self-insured employer, carrier or third-party administrator may apply to the Commission to terminate or modify benefits by filing a Form 24 *Application to Terminate or Suspend Payment of Compensation* or Form 33 *Request that Claim be Assigned for Hearing*.

History Note: Authority G.S. 97-80(a); 97-88.2;
Eff. June 1, 2000;
Amended Eff. August 1, 2006;
Amended Eff. Pending Delayed Effective Date.

04 NCAC 10A .1001 PREAUTHORIZATION FOR SURGERY AND INPATIENT TREATMENT

(a) An insurer that requires preauthorization must establish a preauthorization review policy that describes the process for requesting preauthorization review. The policy must be publicly available on the insurer's website.

(b) As used in this Section:

- (1) "insurer" means an insurance carrier, self-insured administrator, managed care organization, employer, or any other entity that conducts preauthorization review;
- (2) "preauthorization" means the determination by an insurer that proposed surgical or inpatient treatment is medically necessary; and
- (3) "preauthorization review" means a prospective review process conducted by an insurer to determine whether a proposed surgical or inpatient treatment is medically necessary.

(c) Insurers shall, on an annual basis, electronically submit an electronic copy or link for any medical practice guidelines the insurer utilizes in the preauthorization review process to the Commission at the following electronic site (<ftp://ftp.ic.nc.gov>) by July 1 of each year.

(d) The insurer shall list each surgical procedure and each inpatient service for which preauthorization review is required.

These procedures and services shall be publicly available on the insurer's website.

(e) The preauthorization review policy shall include:

- (1) procedures for requesting preauthorization, responding to and approving requests for preauthorization, and appealing a denial of preauthorization;
- (2) procedures via telephone, fax and email for communicating with the preauthorization agent with decision making powers on a pending request for preauthorization (including Peer Review Physicians) on a continuous basis on every business day (which excludes weekends and holidays) between the hours of 8:00 a.m. and 8:00 p.m. eastern standard time;
- (3) methods by which the insurer shall respond to requests for preauthorization and methods by which a health care provider, claimant, person, or entity requesting preauthorization may respond to inquiries or determinations by the insurer;
- (4) a statement that the insurer will provide a statement with supporting documentation of the substantive clinical justification for a denial of preauthorization, including the relevant clinical criteria upon which the denial is based. Denials based upon lack of information shall specify what information is needed to make a determination;
- (5) an outline of the appeal rights and procedures with instructions on how to submit appeals by mail, email or fax;
- (6) a statement that advises the appealing party of the right to seek authorization for any denied treatment from the Commission; and
- (7) the name, title, address, telephone number, fax number, email address and other contact information for the person with authority over all decision-making for preauthorization determinations (in addition to the claims adjuster), and the normal business hours and time zone of this contact person.

(f) Delivery of a request for preauthorization to the claims adjuster or other designated Preauthorization Agent at the place (email address, fax number, telephone number) provided by the insurer shall constitute receipt of the preauthorization request by the claims adjuster.

(g) Preauthorization agents shall acknowledge receipt of all communications within two business days of the request, and the acknowledgment shall satisfy G.S. 97-25.3(a)(2).

(h) Upon receipt of a request for preauthorization, the insurer shall provide to the health care provider or person making the request the name, telephone number, fax number and email address of the Preauthorization Agent. The Preauthorization Agent must be available on a continuous basis, every business day (which excludes weekends and holidays) from 8:00 a.m. to 8:00 p.m. Eastern Standard Time to facilitate responses to insurer communications or determinations.

(i) Insurers that utilize a Peer Review Physician in making preauthorization decisions shall indicate in their preauthorization review policy the name, licensure, and specialty area of that Peer Review Physician and shall provide a profile ("Peer Review Physician Profile") of that Peer Review Physician. The Peer Review Physician shall be licensed in either North Carolina, South Carolina, Georgia, Virginia, or Tennessee and shall hold professional qualifications, certifications, and fellowship training in a like specialty that is at least equal to that of the treating provider who is requesting preauthorization of surgery or inpatient treatment.

(j) Insurers shall, on an annual basis, electronically submit their Peer Review Physician Profiles to the Commission at the following electronic site (ftp://ftp.ic.nc.gov) by July 1 of each year.

(k) All requests for preauthorization by health care providers, claimant's attorneys, or unrepresented claimants, and all preauthorization determinations made by insurers on the preauthorization requests shall be submitted on Industrial Commission Form 25PR. The Preauthorization Agent is responsible for providing the preauthorization review (PR) claim number and for forwarding medical records, communications, and preauthorization review determinations to the proper entities upon receipt, unless the insurer's Preauthorization Plan designates and identifies another person to perform this requirement.

(l) The failure of an insurer to make a determination on a request for preauthorization within seven business days as specified in G.S. 97-25.3 shall result in an automatic waiver of the insurer's right to contest the requested treatment, unless:

- (1) an extension of time, not to exceed seven business days, is agreed upon by the insurer and the medical provider requesting preauthorization (or the claimant's attorney or unrepresented claimant, if no medical provider has requested preauthorization); or
- (2) an additional extension of time is granted by the Commission pursuant to G.S. 97-25.3(a)(3).

(m) Requests made to the Commission for an extension of time shall be directed to the Office of the Executive Secretary, and shall be simultaneously copied to the requesting health care provider, if any, and to the claimant's attorney or to the claimant, if unrepresented.

(n) In accordance with G.S. 97-18(i), insurers are obligated to pay for any surgery or inpatient treatment provided under G.S. 97-25.3, for which preauthorization was requested for an admitted condition after the right to contest the preauthorization request is waived.

*History Note: Authority G.S. 97-25.3; 97-80(a);
Eff. Pending Delayed Effective Date.*

04 NCAC 10B .0101 LOCATION OF OFFICES AND HOURS OF BUSINESS

For purposes of this Subchapter, the offices of the North Carolina Industrial Commission (Commission) are located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina. Documents that are not being filed electronically may

be filed between the hours of 8:00 a.m. and 5:00 p.m. only. Documents related to tort claims are permitted to be filed electronically until 11:59 p.m. on the required filing date.

*History Note: Authority G.S. 143-291; 143-300;
Eff. January 1, 1989;
Amended Eff. May 1, 2000;
Amended Eff. Pending Delayed Eff. Date.*

04 NCAC 10B .0102 OFFICIAL FORMS

(a) Copies of the Commission's rules, forms, and minutes regarding tort claims can be obtained by contacting the Commission in person, by written request mailed to 4340 Mail Service Center, Raleigh, NC 27699-4340, or from the Commission's website.

(b) The use of any printed forms other than those provided by the Commission is prohibited, except that insurance carriers, self-insureds, attorneys and other parties may reproduce forms for their own use, provided:

- (1) No statement, question, or information blank contained on the Commission form is omitted from the substituted form.
- (2) The substituted form is identical in size and format with the Commission form.

*History Note: Authority G.S. 143-300;
Eff. January 1, 1989;
Amended Eff. May 1, 2000;
Amended Eff. Pending Delayed Eff. Date.*

04 NCAC 10B .0103 FILING FEES

(a) No tort claim shall be accepted for filing with the Commission unless the claim is accompanied by an attorney's check, certified check, money order, or electronic transfer of funds in payment of a filing fee in an amount equal to the filing fee required for the filing of a civil action in the Superior Court division of the General Court of Justice.

(b) The provisions of Paragraph (a) of this Rule notwithstanding, a tort claim that is accompanied by a Petition to Sue as an Indigent shall be accepted for filing upon the date of its receipt.

(c) A Petition to Sue as an Indigent shall consist of an affidavit sufficient to satisfy the provisions of G.S. 1-110, stating that plaintiff is unable to comply with Paragraph (a) of this Rule.

(d) If the Commission determines the plaintiff is able to pay all or any part of the fees assessed under this Rule, an Order shall be issued directing payment of all or any part of that fee, and the plaintiff shall, within 30 days from his receipt of the Order, forward to the Commission an attorney's check, certified check, money order, or electronic fund transfer for the full amount required to be paid. Failure to submit the required amount of the filing fee within this time shall result in the tort claim being dismissed without prejudice.

(e) Upon consideration of a prison inmate's Petition to Sue as an Indigent, the Commission may determine that the inmate's tort claim is frivolous and dismiss the claim pursuant to G.S. 1-110. Appeals from the dismissal of a tort claim pursuant to this statute shall proceed directly to the Full Commission and shall be decided without oral argument. The Commission shall forward

a copy of the file to the Attorney General's Office without cost upon plaintiff's notice of appeal to the Full Commission.

History Note: Authority G.S. 143-291.2; 143-300;
Eff. January 1, 1989;
Amended Eff. May 1, 2000;
Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10B .0104 FILING BY FACSIMILE TRANSMISSION

Filing documents pertaining to tort claims by facsimile transmission is permitted. Any filing fee required shall be received by the Commission contemporaneously with the facsimile by electronic transfer of funds.

History Note: Authority G.S. 143-291; 143-291.2; 143-297; 143-300;
Eff. May 1, 2000;
Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10B .0201 RULES OF CIVIL PROCEDURE

History Note: Authority G.S. 143-300;
Eff. January 1, 1989;
Amended Eff. January 1, 2011; May 1, 2000;
Repealed Eff. Pending Delayed Eff. Date.

04 NCAC 10B .0202 MEDICAL MALPRACTICE CLAIMS BY PRISON INMATES

(a) In medical malpractice cases filed by or on behalf of prison inmates where the plaintiff is alleging that a health care provider as defined in G.S. 90-21.11 failed to comply with the applicable standard of care under G.S. 90-21.12 and the defendant has filed a Motion to Dismiss the claim, all discovery is stayed until the following occur:

- (1) A recorded hearing in which no evidence is taken is held before a Deputy Commissioner or a Special Deputy Commissioner for the purpose of determining:
 - (A) whether a claim for medical malpractice has been stated;
 - (B) whether expert testimony is necessary for the plaintiff to prevail; and
 - (C) if expert testimony is deemed necessary, whether the plaintiff will be able to produce such testimony on the applicable standard of care.
- (2) Upon receipt of a Motion to Dismiss and Request for Hearing from the defendant, the Commission issues an order setting the motion on a hearing docket and the case is assigned to a Deputy Commissioner or a Special Deputy Commissioner.

(b) If the defendant's Motion to Dismiss is granted, an appeal lies to the Full Commission.

(c) If defendant's Motion to Dismiss is denied, the case shall proceed as any other tort claims case. Defendant shall produce medical records to plaintiff within 45 days of the Order of the Commission denying defendant's Motion to Dismiss. Plaintiff

shall then have 120 days to comply with Rule 9(j) of the North Carolina Rules of Civil Procedure.

History Note: Authority G.S. 143-300;
Eff. January 1, 1989;
Recodified from 4 NCAC 10B .0206 Eff. April 17, 2000;
Amended Eff. May 1, 2000;
Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10B .0203 INFANTS AND INCOMPETENTS

(a) Persons seeking to appear on behalf of an infant or incompetent, in accordance with G.S. 1A-1, Rule 17, shall apply on a Form 42 *Application for Appointment of Guardian Ad Litem*. The Commission shall appoint a fit and proper person as guardian *ad litem*, if the Commission determines it to be in the best interest of the minor or incompetent. The Commission shall appoint the guardian *ad litem* only after due inquiry as to the fitness of the person to be appointed.

(b) The Commission may assess a fee to be paid to an attorney who serves as a guardian *ad litem* for actual services rendered upon receipt of an affidavit of actual time spent in representation of the minor or incompetent as part of the costs.

History Note: Authority G.S. 143-291; 143-295; 143-300;
Eff. January 1, 1989;
Recodified from 4 NCAC 10B .0307 Eff. April 17, 2000;
Amended Eff. May 1, 2000;
Amended Eff. Pending Legislative Review.

04 NCAC 10B .0204 MOTIONS

(a) All motions regarding tort claims shall be filed with the Docket Section, unless the case is currently calendared before a Commissioner or Deputy Commissioner. All motions in calendared cases shall be filed with the Commissioner or Deputy Commissioner.

(b) A motion shall state with particularity the grounds on which it is based, the relief sought, and a statement of the opposing party's position, if known. Service shall be made on all opposing attorneys of record, or on all opposing parties, if not represented.

(c) All motions and responses thereto shall include a proposed Order to be considered by the Commission.

(d) By motion of the parties, or on its own motion, the Commission may enlarge the time for an act required or allowed to be done under the Rules in this Subchapter in the interests of justice or to promote judicial economy. An enlargement of time may be granted either before or after the relevant time requirement has elapsed.

(e) Motions to continue or remove a case from the hearing docket shall be made as much in advance as possible of the scheduled hearing and shall be made in writing. The moving party shall state that the other parties have been advised of the motion and relate the position of the other parties regarding the motion. Oral motions are permitted in emergency situations.

(f) The responding party to a motion, with the exception of motions to continue or to remove a case from a hearing docket, has 10 days after a motion is served during which to file and serve copies of a response in opposition to the motion. The Commission may shorten or extend the time for responding to

any motion in the interests of justice or to promote judicial economy.

(g) Notwithstanding Paragraph (f) of this Rule, a motion may be acted upon at any time by the Commission, despite the absence of notice to all parties and without awaiting a response. A party who has not received actual notice of the motion or who has not filed a response at the time such action is taken and who is adversely affected by the ruling may request that it be reconsidered, vacated, or modified. Motions shall be determined without oral argument, unless the Commission orders otherwise in the interests of justice.

(h) When a Motion to Amend Pleadings has been filed, served upon opposing parties, and not previously ruled upon, the Commissioner or Deputy Commissioner may permit amendment of pleadings at the time of the hearing and then proceed to a determination of the case based on the evidence presented at the time of the hearing without requiring additional pleadings.

(i) Motions to dismiss or for summary judgment filed by the defendant on the ground that plaintiff has failed to name the individual officer, agent, employee or involuntary servant whose alleged negligence gave rise to the claim, or has failed to properly name the department or agency of the State with whom such person was employed, shall be ruled upon following the completion of discovery.

(j) Motions to reconsider or amend an order, opinion and award, or decision and order, made prior to giving notice of appeal to the Full Commission, shall be directed to the Deputy Commissioner who authored the Opinion and Award.

(k) Upon request of either party, or upon motion of the Commission, motions shall be set for hearing before a Commissioner or Deputy Commissioner.

History Note: Authority G.S. 143-296; 143-300;
Eff. January 1, 1989;
Recodified from 4 NCAC 10B .0203 Eff. April 17, 2000;
Amended Eff. May 1, 2000;
Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10B .0205 MEDIATION

(a) The parties to tort claims, by agreement or Order of the Commission, shall participate in mediation. Any party participating in mediation is bound by the Rules for Mediated Settlement and Neutral Evaluation Conferences of the Commission found in 04 NCAC 10G, except to the extent the same conflict with the Tort Claims Act or the rules in this Subchapter, in which case the Tort Claims Act and the rules in this Subchapter apply.

(b) An employee or agent of the named governmental entity or agency shall be available via telecommunication. Mediation shall not be delayed due to the absence or unavailability of the employee or agent of the named governmental entity or agency.

History Note: Authority G.S. 143-295; 143-296; 143-300;
Eff. January 1, 1989;
Amended Eff. January 1, 2011; May 1, 2000;
Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10B .0206 HEARINGS

(a) The Commission may, on its own motion, order a hearing, rehearing, or pre-trial conference of any tort claim in dispute.

(b) The Commission shall set a contested case for hearing in a location deemed convenient to witnesses and the Commission, and conducive to an early and just resolution of disputed issues.

(c) The Commission may issue writs of habeas corpus ad testificandum in cases arising under the Tort Claims Act. Requests for issuance of a writ of habeas corpus ad testificandum shall be sent to the Docket Section of the Commission if the case has not been set on a calendar for hearing. If the case has been set on a hearing calendar, the request shall be sent to the Commissioner or Deputy Commissioner before whom the case is set.

(d) The Commission shall give notice of a hearing in every case. A motion for a continuance shall be allowed only by the Commissioner or Deputy Commissioner before whom the case is set in the interests of justice or to promote judicial economy. Where a party has not notified the Commission of the attorney representing the party prior to the mailing of calendars for hearing, notice to that party constitutes notice to the party's attorney.

(e) In cases involving property damage of less than five hundred dollars (\$500.00), the Commission shall, upon its own motion or upon the motion of either party, order a telephonic hearing on the matter.

(f) All subpoenas shall be issued in accordance with Rule 45 of the North Carolina Rules of Civil Procedure, with the exception that production of public records or hospital records as provided in Rule 45(c)(2), shall be served upon the Commissioner or Deputy Commissioner before whom the case is calendared, or upon the Docket Section of the Commission should the case not be calendared.

(g) In the event of inclement weather or natural disaster, hearings set by the Commission shall be cancelled or delayed when the proceedings before the General Court of Justice in that county are cancelled or delayed.

History Note: Authority G.S. 143-296; 143-300;
Eff. January 1, 1989;
Recodified from 4 NCAC 10B .0202 Eff. April 17, 2000;
Amended Eff. January 1, 2011; May 1, 2000;
Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10B .0207 HEARINGS OF CLAIMS BY PRISON INMATES

(a) In tort claims involving a plaintiff who is an inmate in the North Carolina Division of Adult Correction, the Commission shall set contested cases or motions for hearing as follows:

- (1) in the prison unit where plaintiff is incarcerated or in some other prison facility or secure facility;
- (2) by videoteleconference; or
- (3) by telephone conference.

(b) In cases involving multiple filings by an inmate, the Commission may, in the interests of justice and for judicial economy, consolidate all of the claims for hearing upon the motion of either party or upon the Commission's own motion.

(c) The witnesses incarcerated by the North Carolina Division of Adult Correction may be subpoenaed by a writ of habeas corpus ad testificandum. Plaintiff shall file an *Application and Writ of Habeas Corpus Ad Testificandum*, with a copy to the defendant, for review and approval by the Deputy Commissioner before whom the matter is calendared for an evidentiary hearing in accordance with G.S. 97-101.1.

(d) All other subpoenas shall be issued in accordance with Rule 45 of the North Carolina Rules of Civil Procedure, with the exception that production of public records or hospital records as provided in Rule 45(c)(2), shall be served upon the Commissioner or Deputy Commissioner before whom the matter is calendared or upon the Docket Section of the Commission should the case not be calendared.

History Note: Authority G.S. 97-101.1; 143-296; 143-300;
Eff. January 1, 1989;
Recodified from 4 NCAC 10B .0204 Eff. April 17, 2000;
Amended Eff. May 1, 2000;
Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10B .0208 HEARING COSTS

Costs relating to tort claims payable to the Commission are due upon receipt of a bill or statement from the Commission.

History Note: Authority G.S. 7A-305; 143-291.1; 143-291.2; 143-300;
Eff. Pending Delayed Eff. Date.

04 NCAC 10B .0301 SCOPE

The rules in this Section are the applicable Rules for appeals of cases brought pursuant to Article 31 of Chapter 143 of the General Statutes to the Full Commission.

History Note: Authority G.S. 143-292; 143-300;
Eff. January 1, 1989;
Amended Eff. May 1, 2000;
Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10B .0302 NOTICE OF APPEAL TO THE FULL COMMISSION

A letter expressing an intent to appeal shall be considered notice of appeal to the Full Commission within the meaning of G.S. 143-292, provided that the letter specifies the Order, Opinion and Award, or Decision and Order from which appeal is taken.

History Note: Authority G.S. 143-292; 143-300;
Eff. January 1, 1989;
Amended Eff. May 1, 2000;
Amended Eff. Pending Legislative Review.

04 NCAC 10B .0303 PROPOSED ISSUES ON APPEAL

(a) The appellant shall, within 25 days of receipt of the transcript of the record, or receipt of notice that there will be no transcript of the record, file with the Commission a written statement of the proposed issues that the appellant intends to present on appeal. The statement shall certify service upon the opposing party or parties. The purpose of the proposed issues on appeal is to facilitate the preparation of the record on appeal and

does not limit the scope of the issues presented on appeal in appellant's brief.

(b) Failure to file the proposed issues on appeal may result in the dismissal of the appeal either upon the motion of the non-appelling party or upon the Full Commission's own motion.

History Note: Authority G.S. 143-292; 143-300; 362 N.C. 191 (2008);
Eff. January 1, 1989;
Amended Eff. January 1, 2011; May 1, 2000;
Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10B .0304 DISMISSALS OF APPEALS

History Note: Authority G.S. 143-300;
Eff. January 1, 1989;
Recodified from 4 NCAC 10B .0305 Eff. April 17, 2000;
Amended Eff. May 1, 2000;
Repealed Eff. Pending Delayed Eff. Date.

04 NCAC 10B .0305 BRIEFS TO THE FULL COMMISSION

(a) An appellant shall file a Form 44 Application for Review and brief in support of his grounds for review with the Commission, with a certificate indicating service on the appellee, within 25 days after receipt of the transcript, or receipt of notice that there will be no transcript. The appellee shall have 25 days from service of the appellant's brief to file a reply brief with the Commission, with written statement of service on the appellant. When the appellant fails to file a brief, the appellee shall file his brief within 25 days after the appellant's time for filing brief has expired. A party who fails to file a brief shall not be allowed oral argument before the Full Commission. If both parties appeal, they shall each file an appellant's and appellee's brief on the schedule set forth in this Rule. If the matter has not been calendared for hearing, any party may file with the Docket Director a written stipulation to a single extension of time not to exceed 15 days. In no event shall the cumulative extensions of time exceed 30 days.

(b) After request for review has been given to the Full Commission, any motions related to the issues for review before the Full Commission shall be filed with the Full Commission, with service on the other parties. Motions related to the issues for review including motions for new trial, to amend the record, or to take additional evidence, filed during the pendency of a request for review to the Full Commission shall be argued before the Full Commission at the time of the hearing of the request for review.

(c) Cases shall be cited to the North Carolina Reports, the North Carolina Court of Appeals Reports, or the North Carolina Reporter, and when possible, to the Southeastern Reporter. Counsel shall not discuss matters outside the record, assert personal opinions or relate personal experiences, or attribute wrongful acts or motives to opposing counsel.

(d) Briefs to the Full Commission shall not exceed 35 pages, excluding attachments. No page limit applies to the length of attachments. Briefs shall be prepared using a 12 point type, shall be double spaced, and shall be prepared with non-justified right margins. Each page of the brief shall be numbered at the bottom

right of the page. When a party quotes or paraphrases testimony or other evidence from a transcript of the evidence or from an exhibit in the party's brief, the party shall include, at the end of the sentence in the brief that quotes or paraphrases the testimony or other evidence, a parenthetical entry that designates the source of the quoted or paraphrased material and the page number location within the applicable source. The party shall use "T" for transcript, "Ex" for exhibit, and "p" for page number. For example, (1) if a party quotes or paraphrases material located in the transcript on page 11, the party shall use the following format "(T p 11)" and (2) if a party quotes or paraphrases material located in an exhibit on page 12, the party shall use the following format "(Ex p 12)". When a party quotes or paraphrases testimony or other evidence in the transcript of a deposition in the party's brief, the party shall include, at the end of the sentence in the brief that quotes or paraphrases the testimony or other evidence from the deposition, a parenthetical entry that contains the name of the person deposed and the page number location within the transcript of the deposition. For example, if a party quotes or paraphrases the testimony of John Smith, located on page 11 of the transcript of the deposition, the party shall use the following format "(Smith p 11)".

History Note: Authority G.S. 143-296; 143-300;
Eff. January 1, 1989;
Recodified from 4 NCAC 10B .0306 Eff. April 17, 2000;
Amended Eff. May 1, 2000;
Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10B .0306 MOTION FOR NEW HEARING

History Note: Authority G.S. 143-292; 143-296; 143-300;
Eff. January 1, 1989;
Recodified from 4 NCAC 10B .0310 Eff. April 17, 2000;
Amended Eff. May 1, 2000;
Repealed Eff. Pending Delayed Eff. Date.

04 NCAC 10B .0307 MOTIONS BEFORE THE FULL COMMISSION

- (a) After notice of appeal has been given to the Full Commission, any motions related to the claim before the Full Commission shall be filed with the Full Commission, with service on the other parties.
- (b) A Motion for a New Hearing must be filed in writing, and supported by Affidavit. Motions related to the issues for review including motions for new trial, to amend the record, or to take additional evidence, filed during the pendency of an appeal to the Full Commission shall be argued before the Full Commission at the time of the hearing of the appeal.

History Note: Authority G.S. 143-296; 143-300;
Eff. May 1, 2000;
Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10B .0308 STAYS

When a case is appealed to the Full Commission, all orders, opinion and awards, or decision and orders of a Deputy Commissioner are stayed pending appeal.

History Note: Authority G.S. 143-292; 143-296; 143-300;
Eff. May 1, 2000;
Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10B .0309 NEW EVIDENCE

History Note: Authority G.S. 143-300;
Eff. January 1, 1989;
Amended Eff. May 1, 2000;
Repealed Eff. Pending Delayed Eff. Date.

04 NCAC 10B .0310 WAIVER OF ORAL ARGUMENT

Upon the request of a party or its own motion, the Commission may waive oral argument in the interests of justice or to promote judicial economy. In the event of such waiver, the Full Commission shall file an award, based on the record and briefs.

History Note: Authority G.S. 143-292; 143-296; 143-300;
Eff. January 1, 1989;
Recodified from 4 NCAC 10B .0311 Eff. April 17, 2000;
Amended Eff. May 1, 2000;
Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10B .0401 SCOPE

The rules in this Section are the applicable Rules for appeals to the Court of Appeals pursuant to Article 31 of Chapter 143 of the General Statutes.

History Note: Authority G.S. 143-293; 143-300;
Eff. January 1, 1989;
Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10B .0402 STAYS

When a case is appealed to the Court of Appeals, all orders, opinion and awards, or decision and orders of the Full Commission are stayed pending appeal.

History Note: Authority G.S. 143-292; 143-294; 143-296; 143-300;

Eff. January 1, 1989;
Amended Eff. May 1, 2000;
Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10B .0403 MOTIONS FOR COURT OF APPEALS CASES

- (a) Prior to the docketing of the record on appeal in the Court of Appeals, all motions filed by the parties regarding an appeal to the Court of Appeals shall be addressed to and ruled upon by the Chair of the Commission, or the Chair's designee.
- (b) A motion to reconsider or to amend an award of the Full Commission shall be filed within 15 days of receipt of notice of the award. An award of the Full Commission is not final until the disposition is filed by the Commission on the pending motion to reconsider or to amend an award.

History Note: Authority G.S. 143-293; 143-300;
Eff. January 1, 1989;
Amended Eff. May 1, 2000;
Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10B .0404 REMAND FROM APPELLATE COURTS

When a case is remanded to the Commission from the appellate courts, each party may file a statement, with or without a brief to the Full Commission, setting forth its position on the actions or proceedings, including evidentiary hearings or depositions, required to comply with the court's decision. This statement shall be filed within 30 days of the issuance of the court's mandate and shall be filed with the Commissioner who authored the Full Commission decision or the Commissioner designated by the Chairman of the Commission if the Commissioner who authored the decision is no longer a member of the Commission.

History Note: Authority G.S. 143-292; 143-296; 143-300;
Eff. January 1, 1989;
Amended Eff. May 1, 2000;
Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10B .0501 WAIVER OF RULES

In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a case pending before the Commission upon written application of a party or upon its own initiative. Factors the Commission shall use in determining whether to grant the waiver are:

- (1) the necessity of a waiver;
- (2) the party's responsibility for the conditions creating the need for a waiver;
- (3) the party's prior requests for a waiver;
- (4) the precedential value of such a waiver;
- (5) notice to and opposition by the opposing parties; and
- (6) the harm to the party if the waiver is not granted.

History Note: Authority G.S. 143-291; 143-300;
Eff. January 1, 1989;
Amended Eff. May 1, 2000;
Amended Eff. Pending Legislative Review.

04 NCAC 10B .0502 RULEMAKING

History Note: Authority G.S. 143-300;
Eff. January 1, 1989;
Repealed Eff. Pending Delayed Eff. Date.

04 NCAC 10B .0503 SANCTIONS

The Commission may, on its own initiative or motion of a party, impose a sanction against a party, or attorney or both, when the Commission determines that such party, or attorney, or both failed to comply with the Rules in this Subchapter. The Commission may impose sanctions of the type and in the manner prescribed by Rule 37 of the North Carolina Rules of Civil Procedure.

History Note: Authority G.S. 1A-1, Rule 37; 143-291; 143-296; 143-300;
Eff. January 1, 2011;

Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10C .0101 APPLICABILITY OF THE RULES

(a) The rules in this Subchapter apply to:

- (1) cases in which the employer is obligated to provide medical compensation, and the injured worker is obligated to accept medical compensation under the Workers' Compensation Act, or in which such compensation is provided by agreement, and during any period when the employer is paying temporary total disability benefits without prejudice in accordance with G.S. 97-18(d); and
- (2) any rehabilitation professional as defined in Item (1) of Rule .0103 of this Subchapter, who is assigned under the Workers' Compensation Act and approved by the Commission pursuant to Rule .0105 of this Subchapter.

(b) Any rehabilitation professional who is not assigned under the Workers' Compensation Act and approved by the Commission pursuant to Rule .0105 of this Subchapter must disclose his or her role to the health care provider at the time of the initial contact and any other person from whom the non-approved rehabilitation professional seeks information about the case.

History Note: Authority G.S. 97-18(d); 97-25.4; 97-25.5; 97-32.2; 97-80;
Eff. January 1, 1996;
Recodified from 4 NCAC 10C .0103, Eff. April 17, 2000;
Amended Eff. June 1, 2000;
Amended Eff. Pending Legislative Review.

04 NCAC 10C .0102 PURPOSE OF THE RULES

History Note: Authority G.S. 97-25.4;
Eff. January 1, 1996;
Repealed Eff. Pending Delayed Eff. Date.

04 NCAC 10C .0103 DEFINITIONS

As used in this Subchapter:

- (1) "Rehabilitation professional" means a medical case manager, a coordinator of medical rehabilitation services, or a vocational rehabilitation professional providing vocational rehabilitation services, including state, private, or carrier based, whether on site, telephonic, or in or out of state. Physical therapists, occupational therapists, speech therapists, and other direct care providers are not rehabilitation professionals under the rules in this Subchapter.
- (2) "Medical rehabilitation" means the planning and coordination of health care services by a medical case manager or coordinator, with the goal of assisting an injured worker to be restored as nearly as possible to the worker's

pre-injury level of physical function. Medical case management includes:

- (a) case assessment;
 - (b) development, implementation and coordination of a care plan with health care providers, the worker, and his or her family;
 - (c) evaluation of treatment results;
 - (d) planning for community re-entry and return to work; and
 - (e) referral for further vocational rehabilitation services.
- (3) "Vocational rehabilitation" means the delivery and coordination of services under an individualized written plan, with the goal of assisting the injured worker to return to suitable employment, as defined by Item (5) of this Rule or applicable statute, or education and retraining to substantially increase the employee's wage-earning capacity.
- (4) "Return to work" means placement of the injured worker into suitable employment, as defined by Item (5) of this Rule or applicable statute.
- (5) For claims arising before June 24, 2011, "suitable employment" means employment in the labor market or self-employment that is reasonably attainable and that offers an opportunity to restore the worker as soon as possible and as nearly as practicable to pre-injury wage, while giving due consideration to the worker's qualifications (age, education, work experience, physical and mental capacities), impairment, vocational interests, and aptitudes. No one factor shall be considered solely in determining suitable employment. For claims arising on or after June 24, 2011, the statutory definition of "suitable employment," G.S. 97-2(22), applies.
- (6) "Conditional rehabilitation professional" means a rehabilitation professional who has not met the requirements for qualified rehabilitation professionals under Paragraph (d) of Rule .0105 of this Subchapter and who desires to provide services as a rehabilitation professional in cases subject to the rules in this Subchapter.

(b) Rehabilitation professionals who are Registered Nurses providing medical rehabilitation services in North Carolina must have a North Carolina license to practice and are subject to the requirements of the North Carolina Nursing Practice Act. Rehabilitation professionals who are Registered Nurses providing medical rehabilitation services outside North Carolina must have a license to practice in the state in which the medical care is provided.

(c) To provide medical rehabilitation services and vocational rehabilitation services in cases subject to the Rules in this Subchapter, rehabilitation professionals must either be a qualified rehabilitation professional or a conditional rehabilitation professional as set forth in this Rule.

(d) To qualify as a qualified rehabilitation professional, a rehabilitation professional must:

- (1) possess one of the following certifications:
 - (A) Certified Rehabilitation Counselor (CRC), as certified by the Commission on Rehabilitation Counselor Certification;
 - (B) Certified Registered Rehabilitation Nurse (CRRN), as certified by the Rehabilitation Nursing Certification Board;
 - (C) Certified Disability Management Specialist (CDMS), as certified by the Certification of Disability Management Specialists Commission;
 - (D) Certified Vocational Evaluator (CVE), as certified by the Commission on Rehabilitation Counselor Certification;
 - (E) Certified Occupational Health Nurse-Specialist (COHN-S), as certified by the American Board of Occupational Health Nurses;
 - (F) Certified Occupational Health Nurse (COHN), as certified by the American Board of Occupational Health Nurses;
 - (G) Orthopaedic Nurse Certified (ONC), as certified by the Orthopaedic Nurses Certification Board; or
 - (H) Certified Case Manager (CCM), as certified by the Commission for Case Manager Certification; or

(2) have prior employment within the North Carolina Department of Health and Human Services as a vocational rehabilitation provider.

(e) A qualified rehabilitation professional must also:

- (1) possess two years of full-time work experience, or its equivalent, in workers' compensation case management, where at least 30 percent of the rehabilitation professional's time was spent managing medical or vocational rehabilitation services to persons

History Note: Authority G.S. 97-2(22); 97-25.4; 97-25.5; 97-32.2; 97-80;
 Eff. January 1, 1996;
 Recodified from 4 NCAC 10C .0101, Eff. April 17, 2000;
 Amended Eff. June 1, 2000;
 Amended Eff. Pending Legislative Review.

04 NCAC 10C .0105 QUALIFICATIONS REQUIRED

(a) Rehabilitation professionals in cases subject to the rules in this Subchapter shall follow the Code of Ethics specific to their certification as well as any statutes specific to their occupation.

with disabling conditions or diseases within the past 15 years; and

- (2) complete the comprehensive course entitled, "*Workers' Compensation Case Management in NC: A Basic Primer for Medical and Vocational Case Managers*," provided by the Commission or the International Association of Rehabilitation Professionals of the Carolinas.

(f) To maintain "qualified" status, a rehabilitation professional shall attend a two-hour refresher course every five years, beginning with the date of the original course completion. Rehabilitation professionals who completed the course in its pilot phase prior to March 17, 2011 have until July 1, 2016 to meet the refresher program mandate.

(g) Effective July 1, 2013, any rehabilitation professional on the Commission's Registry of Workers' Compensation Rehabilitation Professionals who does not hold a certificate of completion for the mandated course shall lose "qualified" rehabilitation professional status and may work as a conditional rehabilitation professional under supervision of a qualified rehabilitation professional for no longer than six months before completing the required course.

(h) After July 1, 2013, any rehabilitation professional who begins providing rehabilitation services in cases subject to the Rules in this Subchapter shall have six months to obtain a certificate of completion of the mandated course.

(i) The Commission shall oversee the implementation and ongoing administration of the mandated course and training.

(j) Conditional rehabilitation professionals permitted to provide services in cases subject to the rules in this Subchapter include:

- (1) individuals who possess one of the certifications for qualified rehabilitation professionals listed in Subparagraph (d) and (e) of this Rule, but who do not possess the workers' compensation case management experience required by the rules in this Subchapter;
- (2) individuals with a post-baccalaureate degree in a health-related field from an institution accredited by an agency recognized by the United States Department of Education and one year of experience providing rehabilitation services to persons with disabling conditions or diseases;
- (3) individuals with a baccalaureate degree in a health-related field from an institution accredited by an agency recognized by the United States Department of Education and two years of experience providing rehabilitation services to individuals with disabling conditions or diseases; and
- (4) individuals with current North Carolina licensure as a registered nurse and three years of experience in clinical nursing providing care for adults with disabling conditions and diseases.

(k) To provide services as a rehabilitation professional in cases subject to the rules in this Subchapter, a conditional

rehabilitation professional must work under the direct supervision of a qualified rehabilitation professional, who shall ensure that the conditional rehabilitation professional's work meets the requirements of the rules in this Subchapter and any applicable statute, and whose name, address and telephone number shall be on all documents identifying the conditional rehabilitation professional.

(l) As used in this Rule, direct supervision includes regular case review between the conditional rehabilitation professional and the qualified rehabilitation professional supervisor, review by the qualified rehabilitation professional supervisor of all reports, and periodic meetings that occur at least on a quarterly basis.

(m) A rehabilitation professional may maintain conditional rehabilitation professional status for a period of two years only. To continue providing services as a rehabilitation professional in cases subject to the rules in this Subchapter beyond the two year period, the conditional rehabilitation professional must obtain the qualifications for a qualified rehabilitation professional listed under Paragraph (d) of this Rule.

(n) Rehabilitation professionals shall, upon request, provide a resume of their qualifications and credentials during initial meetings with parties and health care providers.

History Note: Authority G.S. 97-25.4; 97-32.2; 97-25.5; 97-80;

Eff. January 1, 1996;

Amended Eff. June 1, 2000;

Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10C .0106 PROFESSIONAL RESPONSIBILITY OF THE REHABILITATION PROFESSIONAL IN WORKERS' COMPENSATION CLAIMS

(a) A rehabilitation professional shall exercise independent professional judgment in making and documenting recommendations for medical and vocational rehabilitation for an injured worker, including any alternatives for medical treatment and cost-effective return-to-work options. It is not the role of the rehabilitation professional to direct medical care.

(b) A rehabilitation professional shall inform the parties of his or her assignment and role in the case. Upon assignment, a rehabilitation professional shall disclose to health care providers and the parties any possible conflict of interest, including any compensation and the carrier's or employer's ownership of or affiliation with the rehabilitation professional.

(c) Subject to the provisions for medical care and treatment set forth in the Workers' Compensation Act, the medical rehabilitation professional may explain medical information to the worker and shall discuss with the worker all treatment options appropriate to the worker's conditions, but shall not advocate any one source for treatment or change in treatment.

(d) As case consultants or expert witnesses, rehabilitation professionals shall provide unbiased, objective opinions. The limits of their relationships shall be defined through written or oral means in accordance with the following, applicable professional codes of ethics or professional conduct, which are hereby incorporated by reference, including subsequent amendments and editions:

- (1) for Certified Rehabilitation Counselors and Certified Vocational Evaluators, the Commission on Rehabilitation Counselor Certification Code of Professional Ethics;
- (2) for Certified Registered Rehabilitation Nurses and Orthopaedic Nurse Certified, the Code of Ethics for Nurses;
- (3) for Certified Disability Management Specialists, the Certification of Disability Management Specialists Commission Code of Professional Conduct;
- (4) for Certified Occupational Health Nurses and Certified Occupational Health Nurse-Specialists, the American Association of Occupational Health Nurses, Inc. Code of Ethics; and
- (5) for Certified Case Managers, the Code of Professional Conduct for Case Managers.

(e) Copies of the codes of ethics or professional conduct listed in Subparagraphs (d)(1) through (d)(5) of this Rule may be obtained at no cost, either upon request at the offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m., or at one of the following applicable websites:

- (1) for Certified Rehabilitation Counselors and Certified Vocational Evaluators, the Commission on Rehabilitation Counselor Certification Code of Professional Ethics), <http://www.crccertification.com/filebin/pdf/CRCCodeOfEthics.pdf>;
- (2) for Certified Registered Rehabilitation Nurses and Orthopaedic Nurse Certified, the Code of Ethics for Nurses, <http://www.nursingworld.org/MainMenuCategories/EthicsStandards/CodeofEthicsforNurses/Code-of-Ethics.pdf>;
- (3) for Certified Disability Management Specialists, the Certification of Disability Management Specialists Commission Code of Professional Conduct, <http://new.cdms.org/docs/CDMS%20Code%20of%20Professional%20Conduct%2008012011.pdf>;
- (4) for Certified Occupational Health Nurses and Certified Occupational Health Nurse-Specialists, the American Association of Occupational Health Nurses, Inc. Code of Ethics, https://www.aaohn.org/dmdocuments/Code_of_Ethics_2009.pdf; and
- (5) for Certified Case Managers, the Code of Professional Conduct for Case Managers http://www.ccmcertification.org/sites/default/files/downloads/2012/CCMC_Code_of_Conduct%202-22-12.pdf.

(f) Rehabilitation professionals shall practice only within the boundaries of their competence, based on their education, training, professional experience, and other professional credentials.

- (g) A rehabilitation professional shall not conduct or assist any party in claims negotiation or investigative activities.
- (h) A rehabilitation professional shall not advise the worker as to any legal matter including claims settlement options or procedures, monetary evaluation of claims, or the applicability to the worker of benefits of any kind under the Workers' Compensation Act during his or her assignment in the case. The rehabilitation professional shall advise the non-represented worker to direct such questions to the Information Specialists at the Commission, and the represented worker to direct questions to his or her attorney.
- (i) Rehabilitation professionals shall not accept any compensation or reward from any source as a result of settlement.

History Note: Authority G.S. 97-25.4; 97-25.5; 97-32.2; 97-80;

Eff. January 1, 1996;

Amended Eff. June 1, 2000;

Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10C .0107 COMMUNICATION

(a) The insurance carrier shall notify the Commission and all parties on a Form 25N *Notice to the Commission of Assignment of Rehabilitation Professional* when a rehabilitation professional is assigned to a case and identify the purpose of the rehabilitation involvement.

(b) At the initial meeting, the rehabilitation professional shall provide the injured worker with a copy of the Rules in this Subchapter, and shall inform the injured worker that the rehabilitation professional is required to share relevant medical and vocational rehabilitation information with the employer and insurance carrier and that the rehabilitation professional may be compelled to testify regarding any information obtained.

(b) The rehabilitation professional shall timely inform injured workers that the Rehabilitation Professional will share relevant and material information with the employer and insurance carrier and that the Rehabilitation Professional may be compelled to testify regarding any information obtained.

(c) In cases where the employer is paying medical compensation to a provider rendering treatment under the Workers' Compensation Act, the injured worker, if requested by a rehabilitation professional, shall sign a Form 25C *Authorization for Rehabilitation Professional to Obtain Medical Records of Current Treatment* authorizing the rehabilitation professional to obtain records of the current treatment.

(d) The rehabilitation professional shall provide copies of all correspondence and reports contemporaneously to all parties [by the same mode of transmission.

(e) In preparing written and oral reports, the rehabilitation professional shall present only information relevant and material to the worker's medical rehabilitation and vocational rehabilitation and shall make every effort to avoid invasion of the worker's privacy.

(f) The rehabilitation professional shall make periodic written reports documenting accurately and completely the substance of all activity in the case, including rehabilitation activity. The rehabilitation professional shall furnish a worker who is unrepresented by counsel with a copy of each periodic report, or,

in the alternative, the rehabilitation professional shall advise the worker either orally or in writing (at least as often as reports are produced) as to the plan for and progress of the case, and that the worker has the right to request a copy of the reports under 04 NCAC 10A .0607.

(g) Frequency and timing of periodic reports shall be determined at the time of referral and shall depend on the type of service provided. Communication of activity to all parties by telephone, facsimile, electronic media, or letter must occur when information relevant to the rehabilitation process is obtained, changes or revisions are recommended or occur in medical or vocational treatment plans, or on any other occasion when the worker's understanding and cooperation is critical to the implementation of the rehabilitation plan.

(h) If requested by the injured worker or his or her attorney, the initial meeting of the injured worker and rehabilitation professional shall take place at the office of the worker's attorney and shall occur within 20 days of the request.

(i) The rehabilitation professional may coordinate activities with the injured worker's attorney, and, at the employer or carrier's discretion, with the defense attorney.

(j) If the rehabilitation professional believes the injured worker is not complying with the provision of rehabilitation services, the rehabilitation professional shall detail in writing the actions that the rehabilitation professional believes the injured worker is required to take to return to compliance. In determining whether the injured worker is in compliance with the provision of rehabilitation services, the rehabilitation professional shall rely on his or her independent professional judgment and training and shall focus on the overall effect that the worker's actions or inactions are having on the rehabilitation goals.

History Note: Authority G.S. 97-25.4; 97-25.5, 97-32.2, 97-2(19), 97-80;

Eff. January 1, 1996;

Amended Eff. June 1, 2000;

Amended Eff. Pending Legislative Review.

04 NCAC 10C .0108 INTERACTION WITH PHYSICIANS

(a) At the initial visit with a physician the rehabilitation professional shall provide identification in the form of a company identification or business card and explain the rehabilitation professional's role in the case.

(b) In all cases, the rehabilitation professional shall advise the worker that the worker has the right to a private examination by the health care provider outside of the presence of the rehabilitation professional. If the worker prefers, he or she may request that the rehabilitation professional accompany him or her during the examination. However, if the worker or the worker's attorney notifies the rehabilitation professional in writing that the worker desires a private examination, no subsequent waiver of that right shall be effective unless the waiver is made in writing by the worker or, if represented, by the worker's attorney.

(c) If the rehabilitation professional needs to have an in-person conference with the physician following an examination, the rehabilitation professional shall reserve with the physician sufficient appointment time for the conference. The worker

shall be offered the opportunity to attend the conference with the physician. If the worker or the physician does not consent to a joint conference, or if in the physician's opinion it is medically contraindicated for the worker to participate in the conference, the rehabilitation professional shall note this in his or her report, may communicate directly with the physician, and shall report the substance of the communication.

(d) When the rehabilitation professional determines that it is necessary to communicate with a physician other than at a joint meeting, the rehabilitation professional shall first notify the injured worker, or his or her attorney if represented, of the rehabilitation professional's intent to communicate and the reasons therefore. The rehabilitation professional is not required to obtain the injured worker's or his or her attorney's prior consent if:

- (1) The communication is limited to scheduling issues or requests for time-sensitive medical records;
- (2) A medical emergency is involved;
- (3) The injured worker's health or medical treatment would either be adversely affected by a delay or benefited by immediate action;
- (4) The communication is limited to advising the physician of the employer or carrier approval for recommended testing or treatment;
- (5) The injured worker or attorney has consented to the communications;
- (6) The communication is initiated by the physician; or
- (7) The injured worker failed to show up for a scheduled appointment or arrived at a time other than the scheduled appointment time.

When a rehabilitation professional communicates with a physician without the prior consent or presence of the injured worker, the rehabilitation professional must document the reasons for and the substance of the communication and report the reasons and substance to the injured worker or his or her attorney, if represented, pursuant to Rule .0106 of this Subchapter.

(e) The following requirements apply to interactions regarding impairment ratings, independent medical examinations, second opinions or consults:

- (1) When a party or health care provider requests a consult, second opinion or independent medical examination, the rehabilitation professional may assemble and forward medical records and information, schedule and coordinate an appointment, and, if the worker consents, have a joint meeting with the health care provider and the worker after a private exam, if requested.
- (2) When any such exam is requested by the carrier, the worker shall receive at least 10 calendar days' notice of the appointment unless the parties agree otherwise or unless otherwise required by statute.

(f) The rehabilitation professional shall simultaneously send to the parties copies of all written communications with health care

providers and shall accurately and completely record and report all oral communications.

History Note: Authority G.S. 97-25.4; 97-25.5; 97-32.2; 97-80;

Eff. January 1, 1996;

Amended Eff. June 1, 2000;

Amended Eff. Pending Legislative Review.

04 NCAC 10C .0109 VOCATIONAL REHABILITATION SERVICES AND RETURN TO WORK

(a) When performing the vocational assessment and formulating and drafting the individualized written rehabilitation plan for the employee required by G.S. 97-32.2(c), the vocational rehabilitation professional shall follow G.S. 97-32.2.

(b) Job placement activities may not be commenced until after a vocational assessment and an individualized written rehabilitation plan for vocational rehabilitation services specifying the goals and the priority for return-to-work options have been completed in the case in accordance with G.S. 97-32.2. Job placement activities shall be directed only toward prospective employers offering the opportunity for suitable employment, as defined by Item (5) of Rule .0103 of this Subchapter or by applicable statute.

(c) Return-to-work options shall be considered in the following order of priority:

- (1) current job, current employer;
- (2) new job, current employer;
- (3) on-the-job training, current employer;
- (4) new job, new employer;
- (5) on-the-job training, new employer;
- (6) formal education or vocational training to prepare worker for job with current or new employer; and
- (7) self-employment, only when its feasibility is documented with reference to the employee's aptitudes and training, adequate capitalization, and market conditions.

(d) When an employee requests retraining or education as permitted in G.S. 97-32.2(a), the vocational rehabilitation professional shall provide a written assessment of the employee's request, that includes an evaluation of:

- (1) the retraining or education requested;
- (2) the availability, location, cost, and identity of providers of the requested retraining or education;
- (3) the likely duration until completion of the requested retraining or education and the likely class schedules, class attendance requirements, and out-of-class time required for homework and study;
- (4) the current or projected availability of employment upon completion; and
- (5) the anticipated pay range for employment upon completion.

(e) The rehabilitation professional shall obtain work restrictions from the health care provider that address the demands of any proposed employment. If ordered by a physician, the

rehabilitation professional shall schedule an appointment with a third party provider to evaluate an injured worker's functional capacity physical capacity, or impairments to work.

(f) The rehabilitation professional shall refer the worker only to opportunities for suitable employment, as defined by Item (5) of Rule .0103 of this Subchapter or by applicable statute.

(g) If the rehabilitation professional intends to utilize written or videotaped job descriptions in the return-to-work process, the rehabilitation professional shall provide a copy of the description to all parties for review before the job description is provided to the doctor. The worker or the worker's attorney shall have seven business days from the mailing of the description to notify the rehabilitation professional, all parties, and the physician of any objections or amendments thereto. The job description and the objections or amendments, if any, shall be submitted to the physician simultaneously. This process shall be expedited when job availability is critical. This waiting period does not apply if the worker or the worker's attorney has pre-approved the job description.

(h) In preparing written job descriptions, the rehabilitation professional shall utilize standards including the Dictionary of Occupational Titles and the Handbook for Analyzing Jobs published by the United States Department of Labor.

(i) In identifying proposed employment for the injured worker, the rehabilitation professional may consider the worker's transportation requirements.

(j) The rehabilitation professional may conduct follow-up after job placement to verify the appropriateness of the job placement.

(k) The rehabilitation professional shall not initiate or continue placement activities that do not appear reasonably likely to result in placement of the injured worker in suitable employment. The rehabilitation professional shall report to the parties when efforts to place the worker in suitable employment do not appear reasonably likely to result in placement of the injured worker in suitable employment.

History Note: Authority G.S. 97-2(22); 97-25.4; 97-25.5; 97-32.2;

Eff. January 1, 1996;

Amended Eff. June 1, 2000;

Amended Eff. Pending Legislative Review.

04 NCAC 10C .0110 CHANGE OF REHABILITATION PROFESSIONAL

(a) By agreement or stipulation of the parties, the rehabilitation professional may be changed.

(b) A rehabilitation professional may be removed from a case upon motion by either party or by the Commission for good cause. The motion shall be filed with the Executive Secretary's Office and served upon all parties and the rehabilitation professional. Any party or the rehabilitation professional may file a response to the motion within 10 days.

(c) A party or the rehabilitation professional may request reconsideration of a ruling or appeal from an order as provided in 04 NCAC 10A .0702 or pursuant to G.S. 97-83 and G.S. 97-84.

History Note: Authority G.S. 97-25.4; 97-25.5; 97-32.2; 97-80; 97-83; 97-84;

Eff. January 1, 1996;
Amended Eff. June 1, 2000;
Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10C .0201 WAIVER OF RULES

In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a case pending before the Commission upon written application of a party or upon its own initiative. Factors the Commission shall use in determining whether to grant the waiver are:

- (1) the necessity of a waiver;
- (2) the party's responsibility for the conditions creating the need for a waiver;
- (3) the party's prior requests for a waiver;
- (4) the precedential value of such a waiver;
- (5) notice to and opposition by the opposing parties; and
- (6) the harm to the party if the waiver is not granted.

History Note: Authority G.S. 97-25.4; 97-80;
Eff. Pending Legislative Review.

04 NCAC 10D .0101 PURPOSE

The rules in this Subchapter are intended to facilitate the timely and cost-effective delivery of appropriate medical compensation services to fulfill the employer's duty to provide such services as are reasonably necessary to effect a cure, give relief, or shorten the period of disability resulting from compensable injuries through the use of Managed Care Organizations (MCOs). The rules in this Subchapter do not affect informal lists or "employer networks" of providers assembled by employers or insurers for their own referrals.

History Note: Authority G.S. 97-2(19); 97-2(20); 97-2(21); 97-25; 97-25.2; 97-25.3(e); 97-25.4(a); 97-26(b); 97-26(c);
Eff. January 1, 1996;
Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10D .0102 DEFINITIONS

As used in this Subchapter:

- (1) "Employer" means an employer as defined by G.S. 97-2(3) who is obligated by the Workers' Compensation Act to pay or provide indemnity or medical compensation, including any insurance carrier, self-insurance fund, third party administrator or other person, firm or corporation undertaking to pay or adjust claims on behalf of the employer's employees.
- (2) "Act" means the North Carolina Workers' Compensation Act, Chapter 97, Article 1 (G.S. 97-1 through G.S. 97-101.1).
- (3) "Employer network" means any group of providers assembled by or for an entity liable for medical compensation that agrees to accept the referrals of that entity's workers' compensation patients, and from among whom

an adjuster, officer, employee, or insured patient of the entity chooses the initial provider; provided, the entity has no right to sell the services of the providers to a third party.

History Note: Authority G.S. 58-50-50; 97-2(3); 97-2(20); 97-2(21); 97-25; 97-25.2; 97-26(b); 97-26(c); 97-77; 97-79.

Eff. January 1, 1996;
Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10D .0103 QUALIFICATION BY DEPARTMENT OF INSURANCE

History Note: Authority G.S. 97-2(21); 97-25;
Eff. January 1, 1996;
Repealed Eff. Pending Delayed Eff. Date.

04 NCAC 10D .0104 QUALIFICATION AND REVOCATION

For ineffective delivery of medical services, failure to comply with applicable laws, rules or regulations, and failure to respond to lawful orders of the Commission or other regulatory authorities, the Commission shall change the provider of medical compensation in accordance with the Workers' Compensation Act.

History Note: Authority G.S. 97.25; 97-25.2;
Eff. January 1, 1996;
Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10D .0105 NOTICE TO COMMISSION

(a) Upon contracting with an employer to provide medical compensation services, an MCO shall provide to the Commission the following:

- (1) a copy of that portion of the contract containing the provisions specified in Rule .0106 of this Subchapter and the method for determining payment to the MCO, excluding those of its terms kept confidential by the North Carolina Department of Insurance, initialed by the employer;
- (2) a copy of its current certificate(s) issued annually by the North Carolina Department of Insurance pursuant to G.S. Chapter 58; and
- (3) the name and address of all owners or shareholders, or related groups of owners or shareholders, holding more than 10 percent interest in the MCO, and whether they are or have any relationship with a provider.

(b) Persons or firms are related, for the purpose of this Rule, if either has the following:

- (1) a financial interest in the other;
- (2) shares officers, agents, or employees; or,
- (3) if natural persons, are first cousins or closer in kinship.

(c) An MCO subject to the Rules in this Subchapter shall report its medical compensation expenditures annually on I.C. Form 51.

*History Note: Authority G.S. 97-25.2;
Eff. January 1, 1996;
Amended Eff. Pending Delayed Eff. Date.*

04 NCAC 10D .0106 CONTRACT PROVISIONS

An MCO's contract with an employer subject to the Rules in this Subchapter shall include:

- (1) the principal place(s) of employment of the covered employees, including address(es) and phone number(s) of the workplace(s);
- (2) the name, title, mailing address, phone number, fax number, and email address, if any, of an officer or responsible employee of the MCO empowered to assent to the treatment or referral of covered employees, capable of obtaining and providing complete business, administrative and medical records generated pursuant to the contract, and empowered to resolve routine disputes with employees, employers and providers under the Commission's jurisdiction;
- (3) the name, title, mailing address, phone number, fax number, and email address, if any, of an adjuster, officer, agent or employee of the employer empowered to negotiate the resolution of routine medical compensation disputes, and receive orders of the Commission on behalf of the employer;
- (4) an acknowledgment that the MCO is bound by applicable requirements of Chapters 58 and 97 of the North Carolina General Statutes and the rules in this Subchapter, and is subject to orders of the Commission to the same extent as the employer;
- (5) the agreement of the employer that it will cooperate and assist in furnishing its employees and supervisors with a phone number and instructions for obtaining emergency treatment and contacting the MCO upon injury to any employee during the workday or on the employer's premises requiring physician attention;
- (6) a dispute resolution plan in accordance with G.S. 97-25.2, including provisions for notice of decision in appeals within 30 days, or within 72 hours of appeal when the regular appeals process would cause a delay in the rendering of health care that would be detrimental to the health of the employee;
- (7) a description of physician panels, including specialties represented, and the employee's right to select his or her attending physician from the appropriate panel, and to subsequently change attending physicians once within the members of the panel; and
- (8) whether the MCO or employer will be responsible for securing the services of "out of network" providers when needed.

*History Note: Authority G.S. 97-25.2;
Eff. January 1, 1996;
Amended Eff. Pending Delayed Eff. Date.*

04 NCAC 10D .0107 INFORMATION FOR EMPLOYEE

(a) Following the onset of an injury, the employer or MCO shall provide to the employee a printed explanation of the system being utilized for his care, suitable for sharing with emergency, "out-of-network", and referral physicians, that shall be filed with any Form 19 submitted to the Commission; provided, that electronic filers may otherwise notify the Commission of the identity of the MCO. This statement shall include the following information:

- (1) the offices to contact concerning medical treatment for the injury, including a telephone number;
- (2) if known at that time, the employee's chosen treating physician, including a phone number for seeking medical assistance outside normal business hours if the injury might cause such a need;
- (3) the applicable methods for choosing and changing treating physicians and resolving disputes concerning physicians or treatment pursuant to G.S. 97-25.2;
- (4) that the MCO can provide access to licensed physicians of all specialties;
- (5) the employer's obligation to pay for treatment for which the employee is referred to the MCO, whether or not the employer admits liability for the injury per G.S. 97-90(e);
- (6) the employee's duty to cooperate in treatment, and right to secure treatment at his or her own expense that does not interfere with the treating physician's treatment; and
- (7) the Commission's File Number, if known when filed.

(b) Providers may include identifying billing information on the statement.

*History Note: Authority G.S. 97-25.2;
Eff. January 1, 1996;
Amended Eff. Pending Delayed Eff. Date.*

04 NCAC 10D .0108 INCLUSIVE PROVIDER PANELS

Following the onset of an injury, and upon an employee's first request to change attending physician, the MCO shall provide the employee with a list of reasonably accessible and available panel physicians qualified to treat or manage the primary condition for which the employer has accepted liability or authorized treatment from which the employee may select the attending physician. The employer and MCO shall provide for access to all medical compensation services, and include in its panels, or otherwise make available for the employee's choice, one or more licensed physicians representing all specialties available in the community to provide necessary treatment for the employee's primary compensable condition.

History Note: Authority G.S. 97-2(19); 97-2(20); 97-25; 97-25.2;

Eff. January 1, 1996;

Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10D .0109 QUALITY ASSURANCE AND UTILIZATION REVIEW

An MCO subject to the Rules in this Subchapter shall comply with the requirements of the North Carolina Department of Insurance for quality assurance and utilization review plans, and upon request, provide the Commission with copies of records generated by, or utilized in, the operation of those programs, and copies of plans or amendments to plans not yet filed with the Department of Insurance.

History Note: Authority G.S. 97-25.2;

Eff. January 1, 1996;

Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10D .0110 WAIVER OF RULES

In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the Rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a case pending before the Commission upon written application of a party or upon its own initiative. Factors the Commission shall use in determining whether to grant the waiver are:

- (1) the necessity of a waiver;
- (2) the party's responsibility for the conditions creating the need for a waiver;
- (3) the party's prior requests for a waiver;
- (4) the precedential value of such a waiver;
- (5) notice to and opposition by the opposing parties; and
- (6) the harm to the party if the waiver is not granted.

History Note: Authority G.S. 97-25.2.; 97-80(a);

Eff. January 1, 1996;

Amended Eff. Pending Legislative Review.

04 NCAC 10E .0101 INSTRUCTIONS FOR FILING A PETITION FOR RULE-MAKING

(a) Any person may petition the Commission to adopt a new rule, or amend or repeal an existing rule by submitting a rule-making petition to the Commission at 4336 Mail Service Center, Raleigh, NC 27699-4336. The petition must be titled "Petition for Rule-making" and must include the following information:

- (1) the name and address of the person submitting the petition;
- (2) a citation to any rule for which an amendment or repeal is requested;
- (3) a draft of any proposed rule or amended rule;
- (4) an explanation of why the new rule or amendment or repeal of an existing rule is requested and the effect of the new rule, amendment, or repeal on the procedures of the Commission; and

- (5) any other information the person submitting the petition considers relevant.

(b) The Commission must decide whether to grant or deny a petition for rule-making within 120 days of receiving the petition. In making the decision, the Commission shall consider the information submitted with the petition and any other relevant information.

(c) When the Commission denies a petition for rule-making, a written notice of the denial must be sent to the person who submitted the request. The notice must state the reason for the denial. When the Commission grants a rule-making petition, the Commission must initiate rule-making proceedings and send written notice of the proceedings to the person who submitted the request.

History Note: Authority G.S. 97-73; 150B-20;

Eff. January 1, 1996;

Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10E .0102 MAILING LIST

(a) Any person or agency desiring to be placed on the mailing list for the Commission's rule-making notices issued pursuant to G.S. 150B-21.2 may file a request in writing to the Chairperson of the Commission at 4336 Mail Service Center Raleigh, NC 27699-4336.

(b) The request shall:

- (1) include the person's name and address;
- (2) specify the subject areas within the authority of the Commission for which notice is requested; and
- (3) state the calendar year(s) for which the notice is desired.

History Note: Authority G.S. 97-73; 97-80(a); 150B-21.2(d);

Eff. Pending Delayed Eff. Date.

04 NCAC 10E .0201 DOCUMENT AND RECORD FEES

(a) The fees in this Rule apply to all subject areas within the authority of the Commission.

(b) Upon written request, to the extent permitted by Article 1 of Chapter 97, Article 31 of Chapter 143, and Chapter 132 of the North Carolina General Statutes, transcripts of Commission proceedings, copies of recordings of Commission proceedings, copies of exhibits from Commission proceedings, and copies of all other public documents are available at the "actual cost" as defined by G.S. 132-6.2(b). The Commission shall provide the "actual cost" on the Commission's website.

(c) Certified copies are available upon request at a cost of one dollar (\$1.00) per certification in addition to any other applicable cost for the document. Electronic copy certification is not available.

(d) Documents shall be sent via certified mail upon request at the actual cost established by the United States Postal Service.

(e) North Carolina sales tax shall be added if applicable.

History Note: Authority G.S. 7A-305; 97-73; 97-79; 97-80; 132-6.2; 143-291.1; 143-291.2; 143-300;

Eff. Pending Legislative Review.

04 NCAC 10E .0202 HEARING COSTS OR FEES

(a) The following hearing costs or fees apply to all subject areas within the authority of the Commission:

- (1) one hundred twenty dollars (\$120.00) for a hearing before a Deputy Commissioner;
- (2) one hundred twenty dollars (\$120.00) if a case is withdrawn after the case is calendared for a specific hearing date;
- (3) two hundred twenty dollars (\$220.00) for a hearing before the Full Commission;
- (4) one hundred twenty dollars (\$120.00) if an appeal or request for review to the Full Commission is withdrawn before the appeal or request for review is scheduled for a specific hearing date;
- (5) one hundred fifty-five dollars (\$155.00) if an appeal or request for review to the Full Commission is withdrawn after the appeal or request for review is calendared for a specific hearing date;
- (6) one hundred twenty dollars (\$120.00) for the dismissal of an appeal or request for review due to the failure to prosecute or perfect the appeal or request for review before the appeal or request for review is calendared for a specific hearing date; and
- (7) one hundred and fifty-five dollars (\$155.00) for the dismissal of an appeal or request for review due to the failure to prosecute or perfect the appeal or request for review after the appeal or request for review is calendared for a specific hearing date.

(b) Failure to pay fees or costs assessed by the Commission may result in further penalty, including a notice and order to show cause as to why a fee or cost assessed by the Commission has not been paid.

History Note: Authority G.S. 7A-305; 97-73; 97-80; 143-291.1; 143-291.2; 143-300; Eff. Pending Legislative Review.

04 NCAC 10E .0203 FEES SET BY THE COMMISSION

(a) In workers' compensation cases, the Commission sets the following fees:

- (1) three hundred seventy-five dollars (\$375.00) for the processing of a compromise settlement agreement;
- (2) two hundred fifty dollars (\$250.00) for the processing a Form 21 *Agreement for Compensation for Disability*, Form 26 *Supplemental Agreement as to Payment of Compensation*, or Form 26A *Employers Admission of Employee's Right to Permanent Partial Disability*;
- (3) three hundred dollars (\$300.00) for the processing of a request for a third party distribution order;

- (4) one hundred seventy-five dollars (\$175.00) for the processing of a Form 24 *Application to Stop or Suspend Payment of Compensation*; and
- (5) a fee equal to the filing fee required to file of a civil action in the Superior Court division of the General Court of Justice for the processing of a Form 33I *Intervenor's Request that Claim be Assigned for Hearing*.

(b) In tort claims cases, the filing fee is an amount equal to the filing fee required to file a civil action in the Superior Court division of the General Court of Justice.

History Note: Authority G.S. 97-10.2; 97-17; 97-18.2; 97-26(i); 97-73; 97-80; 143-291.2; 143-300; Eff. Pending Legislative Review.

04 NCAC 10E .0204 ACCIDENT PREVENTION AND SAFETY EDUCATIONAL PROGRAM FEES

(a) The following fees shall be assessed for accident prevention and safety educational programs:

- (1) one hundred twenty-five dollars (\$125.00) per person for an Accident Prevention Awareness (APCAP) Workshop;
- (2) seventy-five dollars (\$75.00) per person for an Advanced APCAP Workshop;
- (3) thirty dollars (\$30.00) per person for a Safety and Health Workshop;
- (4) twenty dollars (\$20.00) per person for a First Aid, CPR, and AED Course, plus fifteen dollars (\$15.00) per person for materials;
- (5) fifteen dollars per person (\$15.00) for a First Aid Course, plus twelve dollars (\$12.00) per person for materials;
- (6) fifteen dollars per person (\$15.00) for a CPR and AED Course, plus twelve dollars (\$12.00) per person for materials;
- (7) twenty dollars (\$20.00) per person for a Defensive Driving Course, plus four dollars (\$4.00) per person for materials;
- (8) fifty dollars (\$50.00) per person for a Hazardous Waste Operations and Emergency Response (HAZWOPER) Course or Refresher Course;
- (9) thirty dollars (\$30.00) per person for a HAZWOPER Awareness Course;
- (10) twenty-five dollars (\$25.00) per person for a Work Zone Flagger Course, plus five dollars (\$5.00) for materials;
- (11) thirty dollars (\$30.00) per person for a Trenching Competent Person Course;
- (12) thirty-five dollars (\$35.00) per person for a Competent Person Scaffolding Course;
- (13) forty-five dollars (\$45.00) per person for an eight-hour National Fire Protection Association (NFPA) E Arc Flash Course;
- (14) thirty dollars (\$30.00) per person for a four-hour NFPA E Arc Flash Course;

- (15) fifty dollars (\$50.00) per person for a Safety for Supervisors Course;
- (16) one hundred fifty dollars (\$150.00) per person for a Safety Leadership Course;
- (17) a two hundred dollar (\$200.00) flat fee for a (five to eight-hour) Workplace Training;
- (18) a one hundred-fifty dollar (\$150.00) flat fee for a (three to four-hour) Workplace Training (3-4 hours); and
- (19) a one hundred dollar (\$100.00) flat fee for a (one to two-hour) Workplace Training.

(b) In addition to the fees listed in Paragraph (a), each individual or group registering for a class must pay a four dollar and ninety-five cent (\$4.95) registration processing fee to the Commission's third party vendor upon registering for an educational program listed in Paragraph (a).

History Note: Authority G.S. 97-73; 97-80; Eff. Pending Delayed Eff. Date.

04 NCAC 10E .0301 WAIVER OF RULES

In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a case pending before the Commission upon written application of a party or upon its own initiative. Factors the Commission shall use in determining whether to grant the waiver are:

- (1) the necessity of a waiver;
- (2) the party's responsibility for the conditions creating the need for a waiver;
- (3) the party's prior requests for a waiver;
- (4) the precedential value of such a waiver;
- (5) notice to and opposition by the opposing parties; and
- (6) the harm to the party if the waiver is not granted.

History Note: Authority G.S. 97-25.2; 97-25.4; 97-73; 97-80; 130A-425(d); 143-166.4; 143-296; 143-300; Eff. Pending Legislative Review.

04 NCAC 10F .0101 ELECTRONIC MEDICAL BILLING AND PAYMENT REQUIREMENT

Carriers and licensed health care providers shall utilize electronic billing and payment in workers' compensation claims. Carriers and health care providers shall develop and implement electronic billing and payment processes consistent with 45 CFR 162. Carriers and health care providers shall comply with this Rule on or before March 1, 2014. 45 CFR 162 is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be obtained at no charge from the National Archives and Records Administration's website, http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title45/45cfr162_main_02.tpl, or upon request, at the offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m.

History Note: Authority G.S. 97-26(g1); 97-80; Eff. Pending Delayed Eff. Date.

04 NCAC 10F .0102 DEFINITIONS

As used in this Subchapter:

- (1) "Clearinghouse" means a public or private entity, including a billing service, repricing company, community health management information system or community health information system, and "value-added" networks and switches, that is an agent of either the payer or the provider and that may perform the following functions:
 - (a) Processes or facilitates the processing of medical billing information received from a client in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction for further processing of a bill related transaction; or
 - (b) Receives a standard transaction from another entity and processes or facilitates the processing of medical billing information into nonstandard format or nonstandard data content for a client entity.
- (2) "Complete electronic bill" submission means a medical bill that meets all of the criteria enumerated in this Subchapter.
- (3) "Electronic" refers to a communication between computerized data exchange systems that complies with the standards enumerated in this Subchapter.
- (3) "Health Care Provider" is as set forth in G.S. 97-2(20)
- (4) "Health Care Provider Agent" is a person or entity that contracts with a health care provider establishing an agency relationship to process bills for services provided by the health care provider under the terms and conditions of a contract between the agent and health care provider. Such contracts may permit the agent to submit bills, request reconsideration, receive reimbursement, and seek medical dispute resolution for the health care provider services.
- (5) "Implementation guide" is a published document for national electronic standard formats as defined in this Subchapter that specifies data requirements and data transaction sets.
- (6) "National Provider Identification Number" or "NPI" means the unique identifier assigned to a health care provider or health care facility by the Secretary of the United States Department of Health and Human Services.
- (7) "Payer" means the insurance carrier, third-party administrator, managed care

organization, or employer responsible for paying the workers' compensation medical bills.

- (8) "Payer agent" means any person or entity that performs medical bill related processes for the payer responsible for the bill. These processes include reporting to government agencies, electronic transmission, forwarding or receipt of documents, review of reports, adjudication of bill, and final payment.

History Note: Authority G.S. 97-26; 97-26(g1); 97-80;
Eff. January 1, 1996;
Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10F .0103 FORMATS FOR ELECTRONIC MEDICAL BILL PROCESSING

(a) Beginning March 1, 2014, electronic medical billing transactions shall be conducted using the electronic formats adopted under the Code of Federal Regulations, Title 45, part 162, subparts K, N, and P. Whenever a standard format is replaced with a newer standard, the most recent standard shall be used. The requirement to use a new version shall commence on the effective date of the new version as published in the Code of Federal Regulations.

(b) Nothing in this Subchapter shall prohibit payers and health care providers from using a direct data entry methodology for complying with these requirements, provided the methodology complies with the data content requirements of the adopted formats and these Rules.

History Note: Authority G.S. 97-26; 97-26(g1); 97-80;
Eff. January 1, 1996;
Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10F .0104 BILLING CODE SETS

Billing codes and modifier systems identified below are valid codes for the specified workers' compensation transactions, in addition to any code sets defined by the standards adopted in 04 NCAC 10F .0103:

- (1) "CDT-4 Codes" that refers to the codes and nomenclature prescribed by the American Dental Association.
- (2) "CPT-4 Codes" that refers to the procedural terminology and codes contained in the "Current Procedural Terminology, Fourth Edition," as published by the American Medical Association.
- (3) "Diagnosis Related Group (DRG)" that refers to the inpatient classification scheme used by CMS for hospital inpatient reimbursement.
- (4) "Healthcare Common Procedure Coding System" (HCPCS) that refers to a coding system which describes products, supplies, procedures, and health professional services and that includes CPT-4 codes, alphanumeric codes, and related modifiers.
- (5) "ICD-9-CM Codes" that refers to diagnosis and procedure codes in the International

Classification of Diseases, Ninth Revision, Clinical Modification published by the United States Department of Health and Human Services.

- (6) "ICD-10-CM/PCS" that refers to diagnosis and procedure codes in the International Classification of Diseases, Tenth Edition, Clinical Modification/Procedure Coding System.
- (7) National Drug Codes (NDC) of the United States Food and Drug Administration.
- (8) "Revenue Codes" that refers to the 4-digit coding system developed and maintained by the National Uniform Billing Committee for billing inpatient and outpatient hospital services, home health services, and hospice services.
- (9) "National Uniform Billing Committee Codes" that refers to the code structure and instructions established for use by the National Uniform Billing Committee (NUBC).

History Note: Authority G.S. 97-26(g1); 97-80;
Eff. Pending Delayed Eff. Date.

04 NCAC 10F .0105 ELECTRONIC MEDICAL BILLING, REIMBURSEMENT, AND DOCUMENTATION

(a) Payers and payer agents shall:

- (1) accept electronic medical bills submitted in accordance with the standards adopted in this Subchapter;
- (2) transmit acknowledgments and remittance advice in compliance with the standards adopted in this Subchapter in response to electronically submitted medical bills; and
- (3) utilize methods to receive electronic documentation required for the adjudication of a bill.

(b) A health care provider shall:

- (1) exchange medical bill data in accordance with the standards adopted in this Subchapter;
- (2) submit medical bills as defined by this Rule to any payers who have established connectivity with the health care provider system or clearinghouse;
- (3) submit required documentation in accordance with Paragraph (d) of this Rule; and
- (4) receive and act upon any acceptance or rejection acknowledgment from the payer.

(c) To be considered a complete electronic medical bill, the bill or supporting transmissions shall:

- (1) be submitted in the correct billing format, with the correct billing code sets as presented in this Rule;
- (2) be transmitted in compliance with the format requirements described in this Rule;
- (3) include in legible text all medical reports and records, including evaluation reports, narrative reports, assessment reports, progress reports

- and notes, clinical notes, hospital records and diagnostic test results that are necessary for adjudication;
 - (4) identify the:
 - (A) injured employee;
 - (B) employer;
 - (C) insurance carrier, third party administrator, managed care organization or its agent;
 - (D) health care provider; and
 - (E) medical service or product;
 - (5) comply with any other requirements as presented in a companion guide published by the Commission; and
 - (6) use current and valid codes and values as defined in the applicable formats defined in this Subchapter.
- (d) Electronic Acknowledgment:
- (1) Interchange Acknowledgment (TA1) notifies the sender of the receipt of, and structural defects associated with, an incoming transaction.
 - (2) As used in this Paragraph, Implementation Acknowledgment (ASC X12 999) transaction is an electronic notification to the sender of the file that it has been received and has been:
 - (A) accepted as a complete and structurally correct file; or
 - (B) rejected with a valid rejection code.
 - (3) As used in this Paragraph, Health Care Claim Status Response (ASC X12 277) or Acknowledgment transaction (detail acknowledgment) is an electronic notification to the sender of an electronic transaction (individual electronic bill) that the transaction has been received and has been:
 - (A) accepted as a complete, correct submission; or
 - (B) rejected with a valid rejection code.
 - (4) A payer shall acknowledge receipt of an electronic medical bill by returning an Implementation Acknowledgment (ASC X12 999) within one business day of receipt of the electronic submission.
 - (5) Notification of a rejected bill shall be transmitted when an electronic medical bill does not meet the definition of a complete electronic medical bill as described in this Rule or does not meet the edits defined in the applicable implementation guide or guides.
 - (6) A health care provider or its agent may not submit a duplicate electronic medical bill earlier than 60 days from the date originally submitted if a payer has acknowledged acceptance of the original complete electronic medical bill. A health care provider or its agent may submit a corrected medical bill electronically to the payer after receiving notification of a rejection. The corrected medical bill shall be submitted as a new, original bill.
- (7) A payer shall acknowledge receipt of an electronic medical bill by returning a Health Care Claim Status Response or Acknowledgment (ASC X12 277) transaction (detail acknowledgment) within two business days of receipt of the electronic submission.
- (8) Notification of a rejected bill shall be transmitted in an ASC X12 277 response or acknowledgment when an electronic medical bill does not meet the definition of a complete electronic medical bill or does not meet the edits defined in the applicable implementation guide or guides.
- (9) A health care provider or its agent may not submit a duplicate electronic medical bill earlier than 60 days from the date originally submitted if a payer has acknowledged acceptance of the original complete electronic medical bill. A health care provider or its agent may submit a corrected medical bill electronically to the payer after receiving notification of a rejection. The corrected medical bill shall be submitted as a new, original bill.
- (10) Acceptance of a complete medical bill is not an admission of liability by the payer. A payer may subsequently reject an accepted electronic medical bill if the employer or other responsible party named on the medical bill is not legally liable for its payment.
- (11) The subsequent rejection shall occur no later than seven days from the date of receipt of the complete electronic medical bill.
- (12) The rejection transaction shall indicate that the reason for the rejection is due to denial of liability.
- (13) Acceptance of an incomplete medical bill does not satisfy the written notice of injury requirement from an employee or payer as required in G.S. 97-22.
- (14) Acceptance of a complete or incomplete medical bill by a payer does not begin the time period by which a payer shall accept or deny liability for any alleged claim related to such medical treatment pursuant to G.S. 97-18 and 04 NCAC 10A .0601.
- (15) Transmission of an Implementation Acknowledgment under Subparagraph (d)(2) of this Rule and acceptance of a complete, structurally correct file serves as proof of the received date for an electronic medical bill in this Rule.
- (e) Electronic Documentation
- (1) Electronic documentation, including medical reports and records submitted electronically that support an electronic medical bill, may be required by the payer before payment may be

remitted to the health care provider. Electronic documentation may be submitted simultaneously with the electronic medical bill.

- (2) Electronic transmittal by electronic mail shall contain the following information:
 - (A) the name of the injured employee;
 - (B) identification of the worker's employer, the employer's insurance carrier, or the third party administrator or its agent handling the workers' compensation claim;
 - (C) identification of the health care provider billing for services to the employee, and where applicable, its agent;
 - (D) the date(s) of service; and
 - (E) the workers' compensation claim number assigned by the payer, if known.

(f) Electronic remittance notification

- (1) As used in the Paragraph, an electronic remittance notification is an explanation of benefits (EOB) or explanation of review (EOR), submitted electronically regarding payment or denial of a medical bill, recoupment request, or receipt of a refund.
- (2) A payer shall provide an electronic remittance notification in accordance with G.S. 97-18.
- (3) The electronic remittance notification shall contain the appropriate Group Claim Adjustment Reason Codes, Claim Adjustment Reason Codes (CARC) and associated Remittance Advice Remark Codes (RARC) or, for pharmacy charges, the National Council for Prescription Drugs Program (NCPDP) Reject Codes, denoting the reason for payment, adjustment, or denial.
- (4) The remittance notification shall be sent within two days of:
 - (A) the expected date of receipt by the health care provider of payment from the payer; or
 - (B) the date the bill was rejected by the payer. If a recoupment of funds is being requested, the notification shall contain the proper code described in Subparagraph (e)(3) of this Rule and an explanation for the amount and basis of the refund.

(g) A health care provider or its agent may not submit a duplicate paper medical bill earlier than 30 days from the date originally submitted unless the payer has returned the medical bill as incomplete in accordance with this Subchapter. A health care provider or its clearinghouse or agent may submit a corrected paper medical bill to the payer after receiving notification of the return of an incomplete medical bill. The corrected medical bill shall be submitted as a new, original bill.

(h) A payer shall establish connectivity with any clearinghouse that requests the exchange of data in accordance with this Subchapter. A payer or its agent may not reject a standard transaction on the basis that it contains data elements not needed or used by the payer or its agent.

(j) A health care provider that does not send standard transactions shall use an internet-based direct data entry system offered by a payer if the payer does not charge a transaction fee. A health care provider using an Internet-based direct data entry system offered by a payer or other entity shall use the appropriate data content and data condition requirements of the standard transactions.

History Note: Authority G.S. 97-26(g1); 97-80; Eff. Pending Delayed Eff. Date.

04 NCAC 10F .0106 EMPLOYER, INSURANCE CARRIER, MANAGED CARE ORGANIZATION, OR AGENTS' RECEIPT OF MEDICAL BILLS FROM HEALTH CARE PROVIDERS

(a) Upon receipt of medical bills submitted in accordance with the rules in this Subchapter, a payer shall evaluate each bill's conformance with the criteria of a complete medical bill. A payer shall not return to the health care provider medical bills that are complete, unless the bill is a duplicate bill. Within 21 days of receipt of an incomplete medical bill, a payer or its agent shall either:

- (1) Complete the bill by adding missing health care provider identification or demographic information already known to the payer; or
- (2) Return the bill to the sender, in accordance with this Paragraph.

(b) The received date of an electronic medical bill is the date all of the contents of a complete electronic bill are successfully received by the claims payer.

(c) The payer may contact the health care provider to obtain the information necessary to make the bill complete. Any request by the payer or its agent for additional documentation to pay a medical bill shall:

- (1) be made by telephone or electronic transmission unless the information cannot be sent by those media, in which case the sender shall send the information by mail or personal delivery;
- (2) be specific to the bill or the bill's related episode of care;
- (3) describe with specificity the clinical and other information to be included in the response;
- (4) be relevant and necessary for the resolution of the bill;
- (5) be for information that is contained in or is in the process of being incorporated into the injured employee's medical or billing record maintained by the health care provider; and
- (6) indicate the reason for which the insurance carrier is requesting the information.

If the payer or its agent obtains the missing information and completes the bill to the point it can be adjudicated for payment, the payer shall document the name and telephone number of the

person who supplied the information. Health care providers and payers, or their agents, shall maintain, in a reproducible format, documentation of communications related to medical bill processing.

(d) A payer shall not return a medical bill except as provided in this Rule. When returning an electronic medical bill, the payer shall identify the reason(s) for returning the bill by utilizing the appropriate Reason and Rejection Code identified in the standards identified in this Subchapter.

(e) The proper return of an incomplete medical bill in accordance with this section fulfills the obligation of the payer to provide to the health care provider or its agent information related to the incompleteness of the bill.

(f) Payers shall timely reject bills or request additional information needed to reasonably determine the amount payable as follows:

- (1) For bills submitted electronically, the rejection of all or part of the bill shall be sent to the submitter within two days of receipt.
- (2) If bills are submitted in a batch transmission, only the specific bills failing edits shall be rejected.

(g) If a payer has reason to challenge the coverage or amount of a specific line item on a bill, but has no reasonable basis for objections to the remainder of the bill, the uncontested portion shall be paid timely, as required in this Rule.

(i) Payment of all uncontested portions of a complete medical bill shall be made within 30 days of receipt of the original bill, or receipt of additional information requested by the payer allowed under the law. After 60 days an amount equal to 10 percent shall be added to an unpaid bill.

(j) A payer shall not return a medical bill except as provided in this Rule. When returning a medical bill, the payer shall also communicate the reason(s) for returning the bill.

History Note: Authority G.S. 97-18(a); 97-26(g1); 97-80; Eff. Pending Delayed Eff. Date.

04 NCAC 10F .0107 COMMUNICATION BETWEEN HEALTH CARE PROVIDERS AND PAYERS

(a) Any communication between the health care provider and the payer related to medical bill processing shall be of sufficient detail to allow the responder to easily identify the information required to resolve the issue or question related to the medical bill. Generic statements that simply state a conclusion such as "payer improperly reduced the bill" or "health care provider did not document" or other similar phrases with no further description of the factual basis for the sender's position do not satisfy the requirements of this Rule.

(b) When communicating with the health care provider, agent, or assignee, the payer may utilize the ASC X12 Reason Codes, or the NCPDP Reject Codes, to communicate with the health care provider, agent, or assignee.

(c) Communication between the health care provider and payer related to medical bill processing shall be made by telephone or electronic transmission unless the information cannot be sent by those media, in which case the sender shall send the information by mail or personal delivery.

History Note: Authority G.S. 97-26(g1); 97-80(a); Eff. Pending Delayed Eff. Date.

04 NCAC 10F .0109 EFFECTIVE DATE

This Chapter applies to all medical services and products provided on or after March 1, 2014. For medical services and products provided prior to March 1, 2014, medical billing and processing shall be in accordance with the rules in effect at the time the health care was provided.

History Note: Authority G.S. 97-26(g1); 97-80; Eff. Pending Delayed Eff. Date.

04 NCAC 10G .0101 ORDER FOR MEDIATED SETTLEMENT CONFERENCE

(a) Mediation Upon Agreement of the Parties. If the parties to a workers' compensation claim or state tort claim agree to mediate the claim, the parties may schedule and proceed with mediation on their own, or the parties may submit a request for a mediation order pursuant to Paragraph (d) of this Rule. No order from the Commission is necessary if the parties mutually agree to mediate the claim, but the mediator shall file a report of mediation with the Commission as required by Paragraph (g) of Rule .0106 of this Subchapter. If the parties proceed with mediation in the absence of an order from the Commission and the Commission thereafter enters a mediation order, the parties shall notify the Commission that the parties have agreed upon the selection of a mediator or, if the mediated settlement conference has been completed, that the parties request to be excused from any further mediation obligations pursuant to Paragraph (f) of this Rule.

(b) Referral Upon Receipt of a Form 33 *Request that Claim be Assigned for Hearing*. In any case in which the Commission receives a Form 33 *Request that Claim be Assigned for Hearing*, the Commission shall order the case to a mediated settlement conference unless doing so would be contrary to the interests of justice.

(c) By Order of the Commission. Commissioners, Deputy Commissioners, the Commission's Dispute Resolution Coordinator, and such other employees as the Commission Chair designates may, by written order, require the parties and their representatives to attend a mediated settlement conference concerning a dispute within the workers' compensation and state tort claim jurisdiction of the Commission. Requests to disperse with or defer a mediated settlement conference shall be addressed to the Dispute Resolution Coordinator. Unless the context otherwise requires, references to the "Commission" in the rules in this Subchapter shall mean the Dispute Resolution Coordinator.

(d) Mediation Upon Request of a Party. If a case is not otherwise ordered to a mediated settlement conference, a party may move the Commission to order a conference. The motion shall be served on non-moving parties and shall state the reasons why the order should be entered. Responses may be filed in writing with the Commission within 10 days after the date of the service of the motion. Any motion for a mediation order shall be submitted on a form provided by the Commission.

(e) Timing of the Order. The order requiring mediation may be issued whenever it appears that the parties have a dispute arising under the Workers' Compensation Act or the Tort Claims Act.

(f) Motion to Dispense with or Defer Mediated Settlement Conference. Mediation may be dispensed with by the Commission in the interests of justice or judicial economy. As used in this Rule, the term "dispensed with" means setting aside or rescinding the mediation order(s) entered in the case, or excusing the parties from their obligations under the applicable order(s) or the Rules in this Subchapter. Mediation may not be dispensed with by the parties or the mediator unless the parties have agreed, subject to Commission approval, on a full and complete resolution of all disputed issues set forth in the request for hearing filed in the case, and the parties have given notice of the settlement to the Dispute Resolution Coordinator. Within 55 days of the filing of a Form 33 *Request that Claim be Assigned for Hearing*, or otherwise within the deadline set forth in the Commission's order entered pursuant to Paragraph (c) or Paragraph (d) of this Rule, a party may move to dispense with or defer the mediated settlement conference. The motion shall state the reasons the relief is sought and must be received by the Dispute Resolution Coordinator within the applicable deadline.

(g) Exemption from Mediated Settlement Conference. The State shall not be compelled to participate in a mediation or neutral evaluation procedure with a prison inmate.

(h) Motion to Authorize the Use of Neutral Evaluation Procedures. The parties may move the Commission to authorize the use of a neutral evaluation procedure contained in Rule .0109 of this Subchapter in lieu of a mediated settlement conference. The motion shall be filed on a form provided by the Commission within 55 days of the filing of a Form 33 *Request that Claim be Assigned for Hearing*, or otherwise within the deadline set forth in the Commission's order entered pursuant to Paragraph (c) or Paragraph (d) of this Rule, and shall state:

- (1) that all parties consent to the motion;
- (2) that the neutral evaluator and the parties have agreed upon the selection and all terms of compensation of the neutral selected; and
- (3) the name, address, and telephone number of the neutral evaluator selected by the parties.

(i) If the parties are unable to agree to the matters listed in Paragraph (h), the Commission shall deny the motion for authorization to use a neutral evaluation procedure, and the parties shall attend the mediated settlement conference as originally ordered by the Commission. If the parties are able to agree on the matters listed in Paragraph (h), the Commission shall order the use of a neutral evaluation proceeding; provided, however, that the Commission shall not order the use of a neutral evaluation proceeding in any case in which the plaintiff is not represented by counsel.

(j) Cases Involving Plaintiffs Not Represented by Counsel. Unless an unrepresented plaintiff requests that the plaintiff's case be mediated, the Commission shall enter an order dispensing with mediation.

History Note: Authority G.S. 97-80(a),(c); 143-296; 143-300; Rule 1 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions; Eff. January 16, 1996;

Amended Eff. October 1, 1998;

Recodified from 04 NCAC 10A .0616;

Amended Eff. January 1, 2011; June 1, 2000;

Amended Eff. Pending Legislative Review.

04 NCAC 10G .0102 SELECTION OF MEDIATOR

(a) By Agreement of Parties. The parties in a workers' compensation case or a state tort claims case may, by agreement, select a mediator certified by the North Carolina Dispute Resolution Commission within 55 days of the filing of a Form 33 *Request that Claim be Assigned for Hearing*, or otherwise within the deadline set forth in the Commission's order entered pursuant to Paragraph (c) or Paragraph (d) of Rule .0101 of this Subchapter, subject to the Commission's authority to remove the mediator selected by the parties due to a conflict of interest. The stipulation may be transmitted by either party, shall be dated as of the date it is transmitted to the Commission, and must be received by the Dispute Resolution Coordinator within 55 days of the filing of a Form 33 *Request that Claim be Assigned for Hearing*, or otherwise within the deadline set forth in the Commission's order entered pursuant to Paragraph (c) or Paragraph (d) of Rule .0101 of this Subchapter. The scheduled date of the mediated settlement conference shall be within 120 days of the mediation order. The stipulation shall include the date of the scheduled mediation, the name, address and telephone number of the mediator selected by agreement, and shall confirm that the mediator is certified by the Dispute Resolution Commission. The applicable deadline shall be extended by the Dispute Resolution Coordinator upon request of the parties. Any party may waive the applicable deadline for the selection and suggestion of mediators and request that the Commission appoint a mediator.

(b) Appointment by Commission. If the parties fail to notify the Commission of the parties' selection of a mediator within 55 days of the filing of a Form 33 *Request that Claim be Assigned for Hearing*, or otherwise within the deadline set forth in the Commission's order entered pursuant to Paragraph (c) or Paragraph (d) of Rule .0101 of this Subchapter, the Commission shall appoint a mediator to hold a mediated settlement conference in the case. The Commission shall appoint a mediator who meets the requirements in Paragraph (b) of Rule .0108 of this Subchapter. In the absence of any suggestions by the parties with regard to the appointment of mediators, the Commission shall select the mediator for the case by random order, unless the Commission determines that, because of unusual circumstances, a particular mediator should be appointed in a particular case.

(c) Disqualification of Mediator. Any party may move the Commission for an order disqualifying a mediator. For good cause, such order shall be entered. If the mediator is disqualified, an order shall be entered for the selection of a replacement mediator pursuant to this Rule. Nothing in this Paragraph shall preclude mediators from disqualifying themselves.

History Note: Authority G.S. 97-80(a),(c); 143-296; 143-300; Rule 2 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions; Eff. January 16, 1996;

*Amended Eff. October 1, 1998;
Recodified from 04 NCAC 10A .0616;
Amended Eff. January 1, 2011; June 1, 2000;
Amended Eff. Pending Delayed Eff. Date.*

04 NCAC 10G .0103 THE MEDIATED SETTLEMENT CONFERENCE

(a) **Where Conference Is to Be Held.** Unless all parties in a workers' compensation case or a state tort claims case and the mediator otherwise agree, the mediated settlement conference shall be held in the county where the case is pending. The mediator shall reserve a place and make arrangements for the conference and give notice to all attorneys and unrepresented parties of the time and location of the conference.

(b) **When Conference Is to Be Held.** The conference shall be held at the time agreed to by the parties and the mediator, or if the parties do not agree, at the time specified by the mediator.

(c) **Request to Extend Date of Completion.** In the interests of justice, the Commission may extend the deadline for completion of the conference upon the Commission's own motion, a motion or stipulation of the parties or the suggestion of the mediator.

(d) **Recesses.** The mediator may recess the conference at any time and may set times for reconvening. If the time for reconvening is set before the conference is recessed, no further notification is required for persons present at the recessed conference.

(e) **The Mediated Settlement Conference Is Not to Delay Other Proceedings.** A mediated settlement conference is not cause for delay of other proceedings in the case, including the completion of discovery and the filing or hearing of motions, unless ordered by the Commission in the interests of justice. No depositions shall be taken following a Commission order requiring mediation until mediation is concluded, except by agreement of the parties or order of the Commission in the interest of justice.

(f) **Inadmissibility of Negotiations by Parties and Attorneys.** Evidence of statements made and conduct occurring in a mediated settlement conference or other settlement proceeding conducted pursuant to the Rules in this Subchapter, whether attributable to a party, the mediator, other neutral, or a neutral observer present at the settlement conference or proceeding, are not subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same claim, except:

- (1) proceedings for sanctions for violations of the attendance or payment of mediation fee provisions contained in Rule .0104 and Rule.0107 of this Subchapter;
- (2) proceedings to enforce or rescind a settlement of the action;
- (3) disciplinary proceedings before the North Carolina State Bar or any agency enforcing standards of conduct for mediators or other neutrals, including the Commission; or
- (4) proceedings to enforce laws concerning juvenile or elder abuse.

(g) No settlement agreement to resolve any or all issues reached at the settlement conference or proceeding conducted under this Subchapter or reached during a recess in the conference or proceeding shall be enforceable unless the settlement agreement

has been reduced to writing and signed by the parties. No evidence otherwise discoverable shall be inadmissible solely because the evidence is presented or discussed in a mediated settlement conference or other settlement proceeding.

(h) **Inadmissibility of Mediator Testimony.** No mediator, other neutral, or neutral observer present at a settlement proceeding shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement conference or other settlement proceeding conducted pursuant to the Rules in this Subchapter in any Commission case or civil proceeding for any purpose, including proceedings to enforce or rescind a settlement of the action, except:

- (1) to attest to the signing of any settlement agreements;
- (2) proceedings for sanctions for violations of the attendance or payment of mediation fee provisions contained in Rule .0104 and Rule .0107 of this Subchapter;
- (3) disciplinary proceedings before the North Carolina State Bar or any agency enforcing standards of conduct for mediators or other neutrals, including the Commission; and
- (4) proceedings to enforce laws concerning juvenile or elder abuse.

(i) As used in this Subchapter, the term "neutral observer" includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.

History Note: Authority G.S. 97-80(a) , (c); 143-296; 143-300; Rule 3 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions; Eff. January 16, 1996;

Amended Eff. October 1, 1998

Recodified from 04 NCAC 10A .0616;

Amended Eff. January 1, 2011; June 1, 2000;

Amended Eff. Pending Legislative Review.

04 NCAC 10G .0104 DUTIES OF PARTIES, REPRESENTATIVES, AND ATTORNEYS

(a) **Attendance.** The following persons shall physically attend the mediated settlement conference:

- (1) all individual parties;
- (2) in a workers' compensation case, a representative of the employer at the time of injury if:
 - (A) the employer, instead of or in addition to the insurance company or administrator, has decision-making authority with respect to settlement;
 - (B) the employer is offering the claimant employment and the suitability of that employment is in issue;
 - (C) the employer and the claimant have agreed to simultaneously mediate non-compensation issues arising from the injury; or
 - (D) the Commission orders the employer representative to attend the

- conference if the representative's physical attendance is necessary to resolve matters in dispute in the subject action;
- (3) an officer, employee or agent of any party that is not a natural person or a governmental entity who is not such party's outside counsel and who has the authority to decide on behalf of such party whether and on what terms to settle the action;
 - (4) in a workers' compensation case, an employee or agent of any party that is a governmental entity who is not such party's outside counsel or Attorney General's counsel responsible for the case and who has the authority to decide on behalf of such party and on what terms to settle the action.
 - (5) when the governing law prescribes that the terms of a proposed settlement may be approved only by a Board, an employee or agent who is not such party's outside counsel or Attorney General's counsel responsible for the case and who has the authority to negotiate on behalf of and to make a recommendation to the Board. Because G.S. 143-295 provides the Attorney General with settlement authority on behalf of governmental entities and agencies for state tort claims, an employee or agent of the named governmental entity or agency is not required to attend the mediated settlement conference; the Attorney General shall attempt to make an employee or agent of the named governmental entity or agency in a state tort claim available via telecommunication, and mediation shall not be delayed due to the absence or unavailability of the employee or agent of the named governmental entity or agency.
 - (6) The counsels of record; provided, that appearance by counsel does not dispense with or waive the required attendance of the parties listed in Subparagraphs (1) through (4);
 - (7) a representative of each defendant's primary workers' compensation or liability insurance carrier or self-insured that may be obligated to pay all or part of any claim presented in the action. Each carrier or self-insured shall be represented at the conference by an officer, employee or agent who is not such party's outside counsel and who has the authority to decide on behalf of the carrier or self-insured whether and on what terms to settle the action, or who has been authorized to negotiate on behalf of such carrier or self-insured and can communicate during the conference with persons who have such decision making authority; and
 - (8) by order of the Commission, other representatives of parties, employers or

carriers, who may be obligated to pay all or part of any claim presented in the action and who are not required to attend the conference pursuant to Subparagraphs (1) through (6) of this Rule, if the Commission determines that the representative's attendance is necessary for purposes of resolving the matters in dispute in the subject action. Any employer or carrier who may be obligated to pay all or part of any claim presented in the action and who is not required to physically attend the mediated settlement conference pursuant to Subparagraphs (1) through (6) of this Rule or by Commission orders, may attend the conference if the employer or carrier elects to attend. If, during the conference, the mediator determines that the physical attendance of one or more additional persons is necessary to resolve the matters in dispute in the subject action, the mediator may recess the conference and reconvene the conference at a later date and time to allow the additional person or persons to physically attend.

(b) Any party or person required to attend a mediated settlement conference shall physically attend the conference until an agreement is reduced to writing and signed as provided in Paragraph (f) of this Rule, or until an impasse has been declared. Any such party or person may have the physical attendance requirement excused or modified by agreement of all parties and persons required to attend the conference and the mediator, or by order of the Commission in the interests of justice upon motion of a party and notice to all parties and persons required to attend the conference.

(c) In appropriate cases the Commission or the mediator, with the consent of the parties, may allow a party or insurance carrier representative who is required to physically attend a mediated settlement conference under this Rule to attend the conference by telephone, conference call, speaker telephone or videoconferencing; provided that, the party or representative so attending shall bear all costs of such telephone calls or videoconferencing, the mediator may communicate directly with the insurance representative with regard to matters discussed in mediation, and the mediator may set a subsequent mediated settlement conference at which all parties and representatives shall physically attend. The failure to properly appear by telephone or videoconferencing in accordance with this Paragraph shall subject the responsible party(ies) or representative(s) to sanctions pursuant to Rule .0105 of this Subchapter.

(d) Notice of Mediation Order. Within seven days after the receipt of an order for a mediated settlement conference, the carrier or self-insured named in the order shall provide a copy of the order to the employer and all other carriers who may be obligated to pay all or part of any claim presented in the workers' compensation case or any related third-party tortfeasor claims, and shall provide the mediator and the other parties in the action with the name, address and telephone number of all such carriers.

(e) Finalizing Agreement. If an agreement is reached in the mediated settlement conference, the parties shall reduce the agreement to writing, specifying all terms of the agreement that bear on the resolution of the dispute before the Commission, and shall sign the agreement along with their counsel. The parties may use IC Form MSC8, *Mediated Settlement Agreement*, or MSC9, *Mediated Settlement Agreement – Alternative Form*, for this purpose. Execution by counsel of a mediated settlement agreement for an employer or carrier who does not physically attend the mediated settlement conference shall be deemed to be in compliance with this Rule and 04 NCAC 10A .0502. By stipulation of the parties and at the parties' expense, the agreement may be electronically or stenographically recorded. All agreements for payment of compensation shall be submitted for Commission approval in accordance with 04 NCAC 10A .0501 and .0502.

(f) Payment of Mediator's Fee. The mediator's fee shall be paid at the conclusion of the mediated settlement conference, unless otherwise provided by Rule .0107 of this Subchapter, or by agreement with the mediator.

(g) Related Cases. Upon application by any party or person and upon notice to all parties, the Commission may, in the interests of justice, order that an attorney of record, party or representative of an insurance carrier who may be liable for all or any part of a claim pending in a Commission case to attend a mediated settlement conference that may be convened in another pending case, regardless of the forum in which the other case may be pending, provided that all parties in the other pending case consent to the attendance ordered pursuant to this Paragraph. Any disputed issues concerning such an order shall be addressed to the Commission's Dispute Resolution Coordinator. Unless otherwise ordered, any attorney, party or carrier representative who attends a mediated settlement conference pursuant to this Paragraph shall not be required to pay any of the mediation fees or costs related to that conference. Requests that a party, attorney of record, or insurance carrier representative in a related case attend a mediated settlement conference in a Commission case shall be addressed to the court or agency in which the related case is pending, provided that all parties in the Commission case consent to the requested attendance.

History Note: Authority G.S. 97-80(a),(c); 143-295; 143-296; 143-300; Rule 4 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions; Eff. January 16, 1996; Amended Eff. October 1, 1998; Recodified from 04 NCAC 10A .0616; Amended Eff. January 1, 2011; June 1, 2000; Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10G .0104A FOREIGN LANGUAGE INTERPRETERS

(a) When a person who does not speak or understand the English language is required to attend a mediated settlement conference, the person shall be assisted by a qualified foreign language interpreter unless the right to an interpreter is waived by the parties.

(b) To qualify as a foreign language interpreter, a person shall possess sufficient experience and education, or a combination of

experience and education, speaking and understanding English and the foreign language to be interpreted, to qualify as an expert witness pursuant to G.S. 8C-1, Rule 702.

(c) Any party who is unable to speak or understand English shall so notify the Commission and the opposing party(ies) in writing, not less than 21 days prior to the date of the mediated settlement conference. The notice shall state the language(s) that shall be interpreted.

(d) Upon notice of the need for an interpreter, the employer or insurer shall retain a disinterested interpreter, who possesses the qualifications listed in Paragraph (b) of this Rule, to assist at the mediated settlement conference. The parties may select by agreement, or in the absence of an agreement, the Commission may appoint a disinterested interpreter possessing the qualifications listed in Paragraph (b) of this Rule.

(e) The interpreter's fee constitutes a cost as contemplated by G.S. 97-80. A qualified interpreter who appears at a mediated settlement conference is entitled to payment of the fee agreed upon by the interpreter and the employer or insurer who retained the interpreter. Except in cases where a claim for compensation has been prosecuted without reasonable ground, the fee agreed upon by the interpreter and employer or insurer shall be paid by the employer or insurer. Where the Commission ultimately determines that the request for an interpreter was unfounded, attendant costs shall be assessed against the movant.

(f) Foreign language interpreters shall abide by the Code of Conduct and Ethics of Foreign Language Interpreters and Translators, contained in Part 4 of *Policies and Best Practices for the Use of Foreign Language Interpreting and Translating Services in the North Carolina Court System* and promulgated by the North Carolina Administrative Office of the Courts, and shall interpret, as word for word as is practicable, without editing, commenting, or summarizing, testimony or other communications. The Code of Conduct and Ethics of Foreign Language Interpreters and Translators is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be obtained at no charge from the North Carolina Administrative Office of the Court's website, <http://www.nccourts.org/Citizens/CPrograms/Foreign/Documents/guidelines.pdf>, or upon request, at the offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m.

History Note: Authority G.S. 97-79(b); 97-80(a),(c); 143-296; 143-300; Eff. January 1, 2011; Amended Eff. Pending Legislative Review.

04 NCAC 10G .0105 SANCTIONS

If a person or party whose attendance at a mediated settlement conference is required by Rule.0104 of this Subchapter fails to attend or cancels, without Commission approval in accordance with Paragraph (f) of Rule .0101 of this Subchapter, a duly ordered mediated settlement conference without good cause, the Commission may impose upon the party any lawful sanction, including holding the party in contempt or requiring the party to pay fines, attorneys' fees, mediator fees and expenses and loss of earning incurred by persons attending the conference. Any

sanctions that are assessed against a party consistent with the Workers' Comp Act, the Tort Claims Act and the Rules in this Subchapter, including mediated settlement conference postponement fees and sanctions for the unauthorized cancellation or failure to appear at the conference, may be assessed against the party depending on whose conduct necessitated the assessment of sanctions.

History Note: Authority G.S. 97-80(a),(c); 143-296; 143-300; Rule 5 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions; Eff. January 16, 1996; Amended Eff. October 1, 1998; Recodified from 4 NCAC 10A .0616; Amended Eff. June 1, 2000; Amended Eff. Pending Legislative Review.

04 NCAC 10G .0106 AUTHORITY AND DUTIES OF MEDIATORS

(a) Control of Conference. The mediator shall at all times be in control of the mediated settlement conference and the procedures to be followed. Except as otherwise set forth in the Rules in this Subchapter with regard to the finalization of the parties' agreement, there shall be no audio, video, electronic or stenographic recording of the mediation process by any participant.

(b) Private Consultation. The mediator may meet and consult privately with any participant prior to or during the conference. The fact that private communications have occurred with a participant shall be disclosed to all other participants at the beginning of the conference.

(c) Scheduling the Conference. The mediator shall make a good faith effort to schedule the conference at a time that is convenient with the parties, attorneys and mediator. In the absence of agreement, the mediator shall select the date for the conference.

(d) Information to the Parties. The mediator shall define and describe the following to the parties at the beginning of the mediated settlement conference:

- (1) the process of mediation;
- (2) the differences between mediation and other forms of conflict resolution;
- (3) the costs of the conference;
- (4) the facts that the conference is not a trial or hearing, the mediator is not acting in the capacity of a Commissioner or Deputy Commissioner and shall not act in such capacity in the subject case at any time in the future, and the parties retain their right to a hearing if the parties do not reach a settlement;
- (5) the circumstances under which the mediator may meet alone with any of the parties or with any other person;
- (6) whether and under what conditions, communications with the mediator will be held in confidence during the conference;
- (7) the inadmissibility of conduct and statements as provided by G.S. 8C-1, Rule 408 and Paragraph (f) of Rule. 0103 of this Subchapter;

- (8) the duties and responsibilities of the mediator and the parties; and
- (9) the fact that any agreement reached will be reached by mutual consent of the parties.

(e) Disclosure. The mediator shall be impartial and advise all parties of any circumstances bearing on possible bias, prejudice or partiality.

(f) Declaring Impasse. The mediator shall determine when mediation is not viable, that an impasse exists, or that mediation should end.

(g) Reporting Results of Conference. In all cases within the Commission's jurisdiction, whether mediated voluntarily or pursuant to an order of the Commission, the mediator shall report the results of the mediated settlement conference on a form provided by the Commission. If an agreement was reached, the report shall state whether the issue or matter under mediation will be resolved by Commission form agreement, compromise settlement agreement, other settlement agreement, voluntary dismissal or removal from the hearing docket, and shall identify the persons designated to file or submit for approval the agreement, or dismissal. The mediator shall not attach a copy of the parties' memorandum of agreement to the mediator's report transmitted to the Commission and, except as permitted under the Rules in this Subchapter, or unless deemed necessary in the interests of justice by the Commission, the mediator shall not disclose the terms of settlement in the mediator's report. The Commission shall require the mediator to provide statistical data for evaluation of the mediated settlement conference program on forms provided by the Commission.

(h) Scheduling and Holding the Conference. The mediator shall schedule the mediated settlement conference in consultation with the parties and conduct the conference prior to the completion deadline set out in the Commission's order. Deadlines for completion of the conference shall be observed by the mediator unless the time limits are changed by the Commission.

(i) Standards of Conduct. All mediators conducting mediated settlement conferences pursuant to the Rules in this Subchapter shall adhere to the *Standards of Professional Conduct for Mediators* adopted by the Supreme Court of North Carolina and enforced by the North Carolina Dispute Resolution Commission. The *Standards of Professional Conduct for Mediators* is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be obtained at no charge from the North Carolina Administrative Office of the Court's website, http://www.nccourts.org/Courts/CRS/Councils/DRC/Documents/StandardsOfConduct_1-1-12.pdf, or upon request, at the offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m.

History Note: Authority G.S. 97-80(a),(c); 143-296; 143-300; Rule 6 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions; Eff. January 16, 1996; Amended Eff. October 1, 1998; Recodified from 04 NCAC 10A .0616; Amended Eff. June 1, 2000; Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10G .0107 COMPENSATION OF THE MEDIATOR

(a) By Agreement. When the mediator is stipulated to by the parties, compensation shall be as agreed upon between the parties and the mediator.

(b) By Commission Order. When the mediator is appointed by the Commission, the mediator's compensation shall be as follows:

- (1) Conference Fees. The mediator shall be paid by the parties at the rate of one hundred fifty dollars (\$150.00) per hour for mediation services provided at the mediated settlement conference.
- (2) Administrative Fees. The parties shall pay to the mediator a one time, per case administrative fee of one hundred fifty dollars (\$150.00). The mediator's administrative fee shall be paid in full unless, within 10 days after the mediator has been appointed, written notice is given to the mediator and to the Dispute Resolution Coordinator that the issues for which a request for hearing was filed have been fully resolved or that the hearing request has been withdrawn.
- (3) Postponement Fees. As used in this Subchapter, the term "postpone" means to reschedule or otherwise not proceed with a scheduled mediated settlement conference after the conference has been scheduled to convene on a specific date. After a conference is scheduled to convene on a specific date, the conference may not be postponed unless the requesting party notifies all other parties of the grounds for the requested postponement and obtains the consent and approval of the mediator or the Dispute Resolution Coordinator that the postponement is for the benefit of the parties. If the conference is postponed without good cause, the mediator shall be paid a postponement fee. The postponement fee shall be three hundred dollars (\$300.00) if the conference is postponed within seven calendar days of the scheduled date, and one hundred fifty dollars (\$150.00) if the conference is postponed more than seven calendar days prior to the scheduled date. Unless otherwise ordered by the Commission in the interests of justice, postponement fees shall be allocated in equal shares to the party or parties requesting the postponement. As used in this Rule, "good cause" shall mean that the reason for the postponement involves a situation over which the party seeking the postponement has no control, including but not limited to, a party or attorney's illness, a death in a party or attorney's family, a sudden and unexpected demand by a judge that a party or attorney for a party appear in court for a purpose not

inconsistent with the Guidelines established by Rule 3.1(d) of the General Rules of Practice for the Superior and District Courts or inclement weather such that travel is prohibitive.

- (4) The settlement of a case prior to the scheduled date of the mediated settlement conference shall be good cause for a postponement, provided that the mediator was notified of the settlement after the settlement was reached and that the mediator received notice of the settlement at least 14 calendar days prior to the date scheduled for mediation.

(c) Payment by Parties. Payment is due upon completion of the mediated settlement conference; provided, that the State shall be billed at the conference and shall pay within 30 days of receipt of the bill, and insurance companies or carriers whose written procedures do not provide for payment of the mediator at the conference may pay within 15 days of the conference. Unless otherwise agreed to by the parties or ordered by the Commission due to a party or parties violating a Rule in this Subchapter, the costs of the conference shall be allocated to the parties, as follows:

- (1) one share by plaintiff(s);
- (2) one share by the workers' compensation defendant-employer or its insurer, or if more than one employer or carrier is involved, or if there is a dispute between employer(s) or carrier(s), one share by each separately represented entity;
- (3) one share by participating third-party tort defendants or their carrier, or if there are conflicting interests among them, one share from each defendant or group of defendants having shared interests; and
- (4) one share by the defendant State agency in a Tort Claims Act case.

Parties obligated to pay a share of the costs are responsible for equal shares; provided, however, that in workers' compensation claims the defendant shall pay the plaintiff's share of mediation, postponement, and substitution fees, as well as defendant's own share.

(d) Unless the Dispute Resolution Coordinator enters an order allocating such fees to a particular party due to the party violating a Rule in this Subchapter, the fees may be taxed as other costs by the Commission. After the case is concluded, the defendant shall be reimbursed for the plaintiff's share of such fees from benefits that may be determined to be due to the plaintiff, and the defendant may withhold funds from any award for this purpose.

History Note: Authority G.S. 97-80(a),(c); 143-296; 143-300; Rule 7 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions; Eff. January 16, 1996; Amended Eff. October 1, 1998; Recodified from 4 NCAC 10A .0616; Amended Eff. January 1, 2011; June 1, 2000; Amended Eff. Pending Legislative Review.

04 NCAC 10G .0108 MEDIATOR CERTIFICATION AND DECERTIFICATION

(a) **Party Selection.** The parties may, by mutual consent, select any North Carolina Dispute Resolution Commission-certified mediator, with or without the qualifications in Paragraph (b) of this Rule, as the parties' mediator.

(b) **Appointment of Mediators.** If the parties have agreed or been ordered to mediate, and cannot agree on the selection of a mediator, the Commission shall appoint a mediator, who holds current certification from the North Carolina Dispute Resolution Commission that he or she is qualified to carry out mandatory mediations in the Superior Courts of the State of North Carolina and who has filed a declaration with the Commission, on forms provided by the Commission, stating that the declarant agrees to accept and perform mediations of disputes before the Commission with reasonable frequency when called upon for the fees and at the rates of payment specified by the Commission. A mediator making this declaration shall notify the commission when any of the facts declared are no longer accurate.

(c) **Failure of Mediator to Appear at Conference.** If a mediator fails to appear at a scheduled mediated settlement conference, the mediator is not entitled to the administrative fee for the case.

History Note: Authority G.S. 97-80(a),(c); 143-296; 143-300; Rule 8 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions; Eff. January 16, 1996;

Amended Eff. October 1, 1998;

Recodified from 04 NCAC 10A .0616;

Amended Eff. January 1, 2011; June 1, 2000;

Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10G .0109 NEUTRAL EVALUATION

(a) **Nature of Neutral Evaluation.** As used in this Subchapter, neutral evaluation is an abbreviated presentation of facts and issues by the parties to a neutral evaluator at an early stage of the case. The neutral evaluator is responsible for evaluating the strengths and weaknesses of the case, and for providing a candid assessment of liability, settlement value, and a dollar value or range of potential awards if the case proceeds to a hearing. The neutral evaluator is also responsible for identifying areas of agreement and disagreement and suggesting necessary and appropriate discovery.

(b) **When Conference Is to Be Held.** The provisions applicable to the scheduling of mediated settlement conferences set forth in Rule .0103 of this Subchapter also apply to neutral evaluation proceedings.

(c) **Pre-conference Submissions.** No later than 20 days prior to the date established for the neutral evaluation conference to begin, each party may, but is not required to, furnish the evaluator with written information about the case, and shall at the same time certify to the evaluator that the party has served a copy of such summary on all other parties in the case. The information provided to the neutral evaluator and the other parties under this Rule shall be a summary of the facts and issues in the case, shall not be more than 10 pages in length, and shall include as attachments copies of any documents supporting the party's summary. Information provided to the neutral evaluator

and to the other parties pursuant to this Paragraph shall not be filed with the Commission.

(d) **Replies to Pre-conference Submissions.** No later than five days prior to the date established for the neutral evaluation conference to begin, any party may, but is not required to, send additional written information to the neutral evaluator responding to the submission of an opposing party. The party's response shall not exceed five pages in length, and the party sending the response shall certify to the neutral evaluator that the party has served a copy of the response on all other parties in the case. The response shall not be filed with the Commission.

(e) **Conference Procedure.** Prior to a neutral evaluation conference, the neutral evaluator may, if he or she deems it necessary, request additional written information from any party. At the conference, the neutral evaluator may address questions to the parties and give the parties an opportunity to complete their summaries with a brief oral statement.

(f) **Modification of Procedure.** Subject to the approval of the neutral evaluator, the parties may agree to modify the procedures for neutral evaluation required by the Rules in this Subchapter, or the procedures may be modified by order of the Commission in the interests of justice. The modified procedures may include the presentation of submissions in writing or by telephone in lieu of physical appearance at a neutral evaluation conference, and may also include revisions to the time periods and page limitations concerning the parties' submissions.

(g) **Evaluator's Opening Statement.** At the beginning of the neutral evaluation conference, the neutral evaluator shall define and describe the following points to the parties:

- (1) the facts that:
 - (A) the conference is not a hearing,
 - (B) the neutral evaluator is not acting in the capacity of a Commissioner or Deputy Commissioner and shall not act in such capacity in the subject case at any time in the future,
 - (C) the neutral evaluator's opinions are not binding on any party, and
 - (D) the parties retain their right to a hearing if the parties do not reach a settlement;
- (2) the fact that any settlement reached will be only by mutual consent of the parties;
- (3) the process of the proceeding;
- (4) the differences between the proceeding and other forms of conflict resolution;
- (5) the costs of the proceeding;
- (6) the inadmissibility of conduct and statements as provided by G.S. 8C-1, Rule 408 and Paragraph (f) of Rule .0103 in this Subchapter; and
- (7) the duties and responsibilities of the neutral evaluator and the participants.

(h) **Oral Report to Parties by Evaluator.** In addition to the written report to the Commission required under the Rules in this Subchapter, at the conclusion of the neutral evaluation conference, the neutral evaluator shall issue an oral report to the parties advising the parties of the neutral evaluator's opinion of the case. The opinion shall include a candid assessment of

liability, estimated settlement values and options, and the strengths and weaknesses of the parties' claims and defenses if the case proceeds to a hearing. The oral report shall also contain a suggested settlement or disposition of the case and the reasons therefor. The neutral evaluator shall not reduce his or her oral report to writing and shall not inform the Commission thereof.

(i) Report of Evaluator to Commission. Within 10 days after the completion of the neutral evaluation conference, the neutral evaluator:

- (1) shall submit to the Dispute Resolution Coordinator a written report using a form prepared and distributed by the Commission, stating:
 - (A) when and where the conference was held,
 - (B) the names of those persons who attended the conference,
 - (C) whether or not an agreement was reached by the parties, and
 - (D) whether the issue or matter will be resolved by Commission form agreement, compromise settlement agreement, other settlement agreement, voluntary dismissal or removal from the hearing docket;
- (2) shall identify the persons designated to file or submit for approval such agreement, or dismissal; and
- (3) shall provide statistical data for evaluation of the settlement conference programs on forms provided by the Commission.

(j) Evaluator's Authority to Assist Negotiations. If all parties at the neutral evaluation conference request and agree, the neutral evaluator may assist the parties in settlement discussions. If the parties do not reach a settlement during the discussions, the neutral evaluator shall complete the neutral evaluation conference and make his or her written report to the Commission as if the settlement discussions had not occurred.

(k) Finalizing Agreement. If the parties are able to reach an agreement before the conclusion of the neutral evaluation conference and before the evaluator provides his report to the Commission, the parties shall reduce the agreement to writing, specifying all the terms of the parties' agreement that bear on the resolution of the dispute before the Commission, and shall sign the agreement along with the parties' respective counsel. By stipulation of the parties and at their expense, the agreement may be electronically or stenographically recorded. All agreements for payment of compensation shall be submitted for Commission approval and shall be filed with the Commission within 20 days of the conclusion of the conference.

(l) Applicability of Mediation Rules and Duties. All provisions and duties applicable to mediated settlement conferences set forth in Rule .0103 through Rule .0107 of this Subchapter, that are not in conflict with the provisions and duties of Rule .0109 of this Subchapter, apply to neutral evaluation conferences conducted under the Rules in this Subchapter.

(m) Ex Parte Communications Prohibited. Unless all parties agree otherwise, there shall be no ex parte communication prior to the conclusion of the proceeding between the neutral

evaluator and any counsel or party on any matter related to the proceeding except with regard to administrative matters.

(n) Adherence to Standards of Conduct for Neutrals. All neutral evaluators conducting neutral evaluation conferences pursuant to the Rules in the Subchapter shall adhere to any applicable standards of conduct that are adopted by the North Carolina Dispute Resolution Commission and are hereby incorporated by reference and include subsequent amendments and editions. A copy may be obtained at no charge from The North Carolina Court System's website, <http://www.nccourts.org/Courts/CRS/Councils/DRC/Default.asp>, or upon request, at the offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m.

History Note: Authority G.S. 97-80(a),(c); 143-296; 143-300; Rule 11 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions; Eff. January 16, 1996; Amended Eff. October 1, 1998; Recodified from 04 NCAC 10A .0616; Amended Eff. January 1, 2011; June 1, 2000; Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10G .0110 WAIVER OF RULES

In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a case pending before the Commission upon written application of a party or upon its own initiative. Factors the Commission shall use in determining whether to grant the waiver are:

- (1) the necessity of a waiver;
- (2) the party's responsibility for the conditions creating the need for a waiver;
- (3) the party's prior requests for a waiver;
- (4) the precedential value of such a waiver;
- (5) notice to and opposition by the opposing parties; and
- (6) the harm to the party if the waiver is not granted.

History Note: Authority G.S. 97-80(a),(c); 143-296; 143-300; Eff. January 16, 1996; Amended Eff. October 1, 1998; Recodified from 4 NCAC 10A .0616; Amended Eff. June 1, 2000; Amended Eff. Pending Legislative Review.

04 NCAC 10G .0111 MOTIONS

Unless otherwise indicated by the Rules in this Subchapter or an applicable order by the Commission in the interests of justice or judicial economy, motions pursuant to the Rules in this Subchapter shall be addressed to the Commission's Dispute Resolution Coordinator and served on all parties to the claim and the settlement procedure. Responses may be filed with the Commission within 10 days after the date of receipt of the motion. Notwithstanding the above, the Commission may, in

the interests of justice, act upon oral motions, or act upon motions prior to the expiration of the 10-day response period. Motions shall be decided without oral argument unless otherwise ordered in the interests of justice. Any appeals from orders issued pursuant to a motion under the Rules in this Subchapter shall be addressed to the attention of the Commission Chair or the Chair's designee for appropriate action.

History Note: Authority G.S. 97-80(a),(c); 143-296; 143-300;

Eff. January 16, 1996;

Amended Eff. October 1, 1998;

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Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10G .0112 MISCELLANEOUS

Throughout the Rules in this Subchapter any reference to the number of days within which any act may be performed shall mean and refer to calendar days, and shall include Saturdays, Sundays and holidays established by the State Personnel Commission. Provided, however, that if the last day (a) to file a motion, (b) to give notice of the selection of a mediator, or (c) for a pro se plaintiff to give notice that the plaintiff requests mediation is a Saturday, Sunday or holiday established by the State Personnel Commission, the motion or notice may be filed or given on the next day that is not a Saturday, Sunday or holiday established by the State Personnel Commission.

History Note: Authority G.S. 97-80(a),(c); 143-296; 143-300;

Eff. January 16, 1996;

Amended Eff. October 1, 1998;

Recodified from 04 NCAC 10A .0616;

Amended Eff. June 1, 2000;

Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10H .0101 LOCATION OF OFFICES AND HOURS OF BUSINESS

For purposes of this Subsection, the offices of the North Carolina Industrial Commission are located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina. Documents that are not being filed electronically may be filed between the hours of 8:00 a.m. and 5:00 p.m. only. Documents permitted to be filed electronically may be filed until 11:59 p.m. on the required filing date.

History Note: Authority G.S. 143-166.4;

Eff. November 1, 1977;

Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10H .0201 DETERMINATION OF CLAIMS BY THE COMMISSION

(a) Upon application for an award under the provisions of the Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act, the Commission shall determine whether sufficient evidence is contained in the Commission's workers' compensation or other files upon which to base an order for the payment of benefits. If

the Commission is satisfied that such an order should be issued, it shall, without conducting a hearing, file an award directing the payment of benefits.

(b) If the Commission is of the opinion that the Commission's workers' compensation or other files have insufficient evidence upon which to base an award for the payment of benefits, the Commission shall place the case upon the Commission's hearing docket. The Commission shall set a contested case for hearing in a location deemed convenient to witnesses and the Commission.

History Note: Authority G.S. 143-166.4;

Eff. August 1, 1979;

Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10H .0202 HEARINGS BEFORE THE COMMISSION

(a) The Commissioner or Deputy Commissioner before whom a case regarding the Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act is set for hearing, shall order the parties to participate in a pre-trial conference. This conference shall be conducted at such place and by such method as the Commissioner or Deputy Commissioner deems appropriate, including conference telephone calls.

(b) The Commission shall give notice of hearing in every case. Postponement or continuance of a scheduled hearing shall be granted in the interests of justice or to promote judicial economy.

(c) Notice of the hearing shall be given to the Attorney General of the State of North Carolina, who may appear as amicus curiae.

History Note: Authority G.S. 143-166.4;

Eff. August 1, 1979;

Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10H .0203 APPOINTMENT OF GUARDIAN AD LITEM

(a) Infants or incompetents may bring an action under this Subchapter only through their guardian *ad litem*. The Commission shall appoint a person as guardian *ad litem* if the Commission determines it to be in the best interest of the infant or incompetent. The Commission shall appoint a guardian *ad litem* only after due inquiry as to the fitness of the person to be appointed.

(b) No compensation due or owed to the infant or incompetent shall be paid directly to the guardian *ad litem*.

(c) The Commission may assess a fee to be paid to an attorney who serves as a guardian *ad litem* for actual services rendered upon receipt of an affidavit of actual time spent in representation of the infant or incompetent.

History Note: Authority G.S. 143-166.4;

Eff. August 1, 1979;

Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10H .0204 WRITTEN OR RECORDED STATEMENT

(a) Upon the request of the employer or his agent to take a written or a recorded statement in an action pursuant to Article 12A of Chapter 143 of the General Statutes, the employer or his agent shall advise any person eligible for payments that the statement may be used to determine whether the claim will be paid or denied. Any person eligible for payments who gives the employer, its carrier, or any agent either a written or recorded statement of the facts and circumstances surrounding the decedent's injury shall be furnished a copy of such statement within 45 days after request. Any person eligible for payments shall immediately be furnished with a copy of the written or recorded statement following a denial of the claim. A copy shall be furnished at the expense of the party to whom the statement was given.

(b) If any party fails to comply with this Rule, a Commissioner or Deputy Commissioner shall enter an order prohibiting that party from introducing the statement into evidence or using any part of the statement.

*History Note: Authority G.S. 143-166.4;
Eff. August 1, 1979;
Amended Eff. Pending Delayed Eff. Date.*

04 NCAC 10H .0205 REVIEW BY THE FULL COMMISSION

(a) A party may request a review of an award filed by a Deputy Commissioner in an action pursuant to Article 12A of Chapter 143 of the General Statutes by filing a letter expressing a request for review to the Full Commission within 15 days of receipt of the award. The award is binding on the parties if not appealed.

(b) After receipt of notice of review, the Commission shall supply to the appellant and to the appellee a transcript of the record upon which the award is based and from which a review is being taken to the Full Commission. The appellant shall, within ten days of receipt of transcript of the record, file with the Commission a written statement of the particular grounds for the appeal, with service on all opposing parties.

(c) Grounds for review not set forth are deemed to be abandoned and argument thereon shall not be heard before the Full Commission.

(d) When a review is made to the Full Commission, the appellant's brief, if any, in support of his ground for appeal shall be filed with the Commission, with service on all opposing parties no less than 15 days prior to the hearing on review. The appellee shall have five days in which to file a reply brief, if deemed necessary, with the Commission, with service on all opposing parties.

(e) Any motions by either party shall be filed with the Full Commission, with service on all opposing parties.

(f) Upon the request of a party, or its own motion, the Commission may waive oral arguments in the interests of justice or to promote judicial economy. In the event of such waiver, the Full Commission shall file an award based on the record and briefs.

*History Note: Authority G.S. 143-166.4;
Eff. August 1, 1979;*

Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10H .0206 WAIVER OF RULES

In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a case pending before the Commission upon written application of a party or upon its own initiative. Factors the Commission shall use in determining whether to grant the waiver are:

- (1) the necessity of a waiver;
- (2) the party's responsibility for the conditions creating the need for a waiver;
- (3) the party's prior requests for a waiver;
- (4) the precedential value of such a waiver;
- (5) notice to and opposition by the opposing parties; and
- (6) the harm to the party if the waiver is not granted.

*History Note: Authority G.S. 143-166.4;
Eff. Pending Legislative Review.*

04 NCAC 10I .0101 LOCATIONS OF OFFICES AND HOURS OF BUSINESS

For purposes of this Subsection, the offices of the North Carolina Industrial Commission are located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina. Documents pertaining to the Childhood Vaccine-Related Injury claims that are not being filed electronically may be filed between the hours of 8:00 a.m. and 5:00 p.m. only. Documents permitted to be filed electronically may be filed until 11:59 p.m. on the required filing date.

*History Note: Authority G.S. 130A-424; 130A-425(d);
Eff. January 20, 1995;
Amended Eff. Pending Delayed Eff. Date.*

04 NCAC 10I .0102 OFFICIAL FORMS

The use of any printed forms related to Childhood Vaccine-Related Injury claims, other than those provided by the Commission is prohibited, except that insurance carriers, self-insurers, attorneys and other parties may reproduce forms for their own use, provided:

- (1) no statement, question, or information blank contained on the Commission form is omitted from the substituted form; and
- (2) the substituted form is identical in size and format with the Commission form.

*History Note: Authority G.S. 130A-424; 130A-425(d);
Eff. January 20, 1995;
Amended Eff. Pending Delayed Eff. Date.*

04 NCAC 10I .0202 PROCEDURE

When a claim is filed in accordance with G.S. 130A-425(b), the respondent shall determine and report its position to the claimant and the commission on the issues listed in G.S. 130A-426(a) within 90 days. If the respondent agrees that the claimant has

established damages which entitle claimant to money compensation meeting or exceeding the maximum amount set forth in G.S. 130A-427(b), the Commission shall so notify the claimant and respondent, and further notify them of the services the Department of Human Resources proposes to provide pursuant to G.S. 130A-427(a)(5). The Commission shall allow the parties an opportunity to settle the matter before proceeding to hearing.

History Note: Authority G.S. 130A-423; 130A-424; 130A-425; 130A-427;
Eff. January 20, 1995;
Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10I .0203 ATTORNEYS' FEES

An attorney seeking fees pursuant to G.S. 130A-427(a)(4) shall submit to the Commission a copy of the fee agreement, a request for payment of fee, and an affidavit or itemized statement in support of an award of attorneys' fees.

History Note: Authority G.S. 130A-425(d); 130A-427(a)(4);
Eff. January 20, 1995;
Amended Eff. Pending Delayed Eff. Date.

04 NCAC 10I .0204 WAIVER OF RULES

In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a case pending before the Commission upon written application of a party or upon its own initiative. Factors the Commission shall use in determining whether to grant the waiver are:

- (1) the necessity of a waiver;
- (2) the party's responsibility for the conditions creating the need for a waiver;
- (3) the party's prior requests for a waiver;
- (4) the precedential value of such a waiver;
- (5) notice to and opposition by the opposing parties; and
- (6) the harm to the party if the waiver is not granted.

History Note: Authority G.S. 130A-425(d);
Eff. Pending Legislative Review.

04 NCAC 10I .0205 SANCTIONS

(a) The Commission may, on its own initiative or motion of a party, impose a sanction against a party or attorney or both when the Commission determines that such party, or attorney, or both failed to comply with the Rules in this Subchapter. The Commission may impose sanctions of the type and in the manner prescribed by Rule 37 of the North Carolina Rules of Civil Procedure.

(b) Failure to timely file forms as required by either the Rules in this Subchapter or pursuant to the Childhood Vaccine-Related Injury Compensation Program may result in sanctions.

History Note: Authority G.S. 130A-425(d);
Eff. Pending Delayed Eff. Date.

04 NCAC 10J .0101 FEES FOR MEDICAL COMPENSATION

(a) The Commission has adopted and published a Medical Fee Schedule, pursuant to the provisions of G.S. 97-26(a), setting maximum amounts, except for hospital fees pursuant to G.S. 97-26(b), that may be paid for medical, surgical, nursing, dental, and rehabilitative services, and medicines, sick travel, and other treatment, including medical and surgical supplies, original artificial members as may reasonably be necessary at the end of the healing period and the replacement of such artificial members when reasonably necessitated by ordinary use or medical circumstances. The amounts prescribed in the applicable published Fee Schedule shall govern and apply according to G.S. 97-26(c).

(b) The Commission's Medical Fee Schedule contains maximum allowed amounts for medical services provided pursuant to Chapter 97 of the General Statutes. The Medical Fee Schedule utilizes 1995 through the present, Current Procedural Terminology (CPT) codes adopted by the American Medical Association, Healthcare Common Procedure Coding Systems (HCPCS) codes, and jurisdiction-specific codes. A listing of the maximum allowable amount for each code is available on the Commission's website at <http://www.ic.nc.gov/ncic/pages/feesched.asp> and in hardcopy at 430 N. Salisbury Street, Raleigh, North Carolina.

(c) The following methodology provides the basis for the Commission's Medical Fee Schedule:

- (1) CPT codes for General Medicine are based on 1995 North Carolina Medicare values multiplied by 1.58, except for CPT codes 99201-99205 and 99211-99215, which are based on 1995 Medicare values multiplied by 2.05.
- (2) CPT codes for Physical Medicine are based on 1995 North Carolina Medicare values multiplied by 1.36.
- (3) CPT codes for Radiology are based on 1995 North Carolina Medicare values multiplied by 1.96.
- (4) CPT codes for Surgery are based on 1995 North Carolina Medicare values multiplied by 2.06.

(d) The Commission's Hospital Fee Schedule, adopted pursuant to G.S. 97-26(b), provides for payment as follows:

- (1) Inpatient hospital fees: Inpatient services are reimbursed based on a Diagnostic Related Groupings (DRG) methodology. The Hospital Fee Schedule utilizes the 2001 Diagnostic Related Groupings adopted by the State Health Plan. Each DRG amount is based on the amount that the State Health Plan had in effect for the same DRG on June 30, 2001. DRG amounts are further subject to the following payment band that establishes maximum and minimum payment amounts:
 - (A) The maximum payment is 100 percent of the hospital's itemized charges.

- (B) For hospitals other than critical access hospitals, the minimum payment is 75 percent of the hospital's itemized charges. Effective February 1, 2013, the minimum payment rate is the amount provided for under Subparagraph (5) below, subject to adjustment on April 1, 2013 as provided therein.
- (C) For critical access hospitals, the minimum payment is 77.07 percent of the hospital's itemized charges. Effective February 1, 2013, the minimum payment rate is the amount provided for under Subparagraph (5) below, subject to adjustment on April 1, 2013 as provided therein.
- (2) Outpatient hospital fees: Outpatient services are reimbursed based on the hospital's actual charges as billed on the UB-04 claim form, subject to the following percentage discounts:
 - (A) For hospitals other than critical access hospitals, the payment shall be 79 percent of the hospital's billed charges. Effective February 1, 2013, the payment is the amount provided for under Subparagraph (5) below, subject to adjustment on April 1, 2013 as provided therein.
 - (B) For critical access hospitals, the payment shall be 87 percent of the hospital's billed charges. For purposes of the hospital fee schedule, critical access hospitals are those hospitals designated as such pursuant to federal law (42 CFR 485.601 et seq.). Effective February 1, 2013, the critical access hospital's payment is the amount provided for under Subparagraph (5) below, subject to adjustment on April 1, 2013 as provided therein.
- (3) Ambulatory surgery fees: Ambulatory surgery center services are reimbursed at 79 percent of billed charges. Effective February 1, 2013, the ambulatory surgery center services are reimbursed at the amount provided for under Subparagraph (5) below, subject to adjustment on April 1, 2013 as provided therein.
- (4) Other rates: If a provider has agreed under contract with the insurer or managed care organization to accept a different amount or reimbursement methodology, that amount or methodology establishes the applicable fee.
- (5) Payment levels frozen and reduced pending study of new fee schedule: Effective February 1, 2013, inpatient and outpatient payments for each hospital and the payments for each ambulatory surgery center shall be set at the payment rates in effect for those facilities as of June 30, 2012. Effective April 1, 2013, those rates shall then be reduced as follows:
 - (A) Hospital outpatient and ambulatory surgery: The rate in effect as of that date shall be reduced by 15 percent.
 - (B) Hospital inpatient: The minimum payment rate in effect as of that date shall be reduced by 10 percent.
- (6) Effective April 1, 2013, implants shall be paid at no greater than invoice cost plus 28 percent.
- (e) A provider of medical compensation shall submit its statement for services within 75 days of the rendition of the service, or if treatment is longer, within 30 days after the end of the month during which multiple treatments were provided. However, in cases where liability is initially denied but subsequently admitted or determined by the Commission, the time for submission of medical bills shall run from the time the health care provider received notice of the admission or determination of liability. Within 30 days of receipt of the statement, the employer, carrier, or managed care organization, or administrator on its behalf, shall pay or submit the statement to the Commission for approval or send the provider written objections to the statement. If an employer, carrier, administrator, or managed care organization disputes a portion of the provider's bill, the employer, carrier, administrator, or managed care organization, shall pay the uncontested portion of the bill and shall resolve disputes regarding the balance of the charges through its contractual arrangement or through the Commission.
- (f) Pursuant to G.S. 97-18(i), when the 10 percent addition to the bill is uncontested, payment shall be made to the provider without notifying or seeking approval from the Commission. When the 10 percent addition to the bill is contested, any party may request a hearing by the Commission pursuant to G.S. 97-83 and G.S. 97-84.
- (g) When the responsible party seeks an audit of hospital charges, and has paid the hospital charges in full, the payee hospital, upon request, shall provide reasonable access and copies of appropriate records, without charge or fee, to the person(s) chosen by the payor to review and audit the records.
- (h) The responsible employer, carrier, managed care organization, or administrator shall pay the statements of medical compensation providers to whom the employee has been referred by the treating physician authorized by the insurance carrier for the compensable injury or body part, unless the physician has been requested to obtain authorization for referrals or tests; provided that compliance with the request shall not unreasonably delay the treatment or service to be rendered to the employee.
- (i) Employees are entitled to reimbursement for sick travel when the travel is medically necessary and the mileage is 20 or more miles, round trip, at the business standard mileage rate set by the Internal Revenue Service per mile of travel and the actual cost of tolls paid. Employees are entitled to lodging and meal expenses, at a rate to be established for state employees by the North Carolina Director of Budget, when it is medically necessary that the employee stay overnight at a location away from the employee's usual place of residence. Employees are

entitled to reimbursement for the costs of parking or a vehicle for hire, when the costs are medically necessary, at the actual costs of the expenses.

(j) Any employer, carrier or administrator denying a claim in which medical care has previously been authorized is responsible for all costs incurred prior to the date notice of denial is provided to each health care provider to whom authorization has been previously given.

History Note: Authority G.S. 97-18(i); 97-25; 97-25.6; 97-26; 97-80(a); 138-6;
Eff. January 1, 1990;
Amended Eff. January 1, 2013; June 1, 2000.

This Section contains information for the meeting of the Rules Review Commission on February 21, 2013 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS**Appointed by Senate**

Addison Bell
Margaret Currin
Pete Osborne
Bob Rippy
Faylene Whitaker

Appointed by House

Ralph A. Walker
Anna Baird Choi
Jeanette Doran
Garth K. Dunklin
Stephanie Simpson

COMMISSION COUNSEL

Joe Deluca (919)431-3081
Bobby Bryan (919)431-3079

RULES REVIEW COMMISSION MEETING DATES

February 21, 2013 March 21, 2013
April 18, 2013 May 16, 2013

AGENDA**RULES REVIEW COMMISSION**

Thursday, February 21, 2013 10:00 A.M.

1711 New Hope Church Rd., Raleigh, NC 27609

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-Up Matters:
 - A. Child Care Commission – 10A NCAC 09 .3004, .3008 (DeLuca)
 - B. Medical Care Commission – 10A NCAC 13D .2105 (DeLuca)
 - C. Commission for Public Health – 10A NCAC 43D .0708 (DeLuca)
 - D. Department of Transportation – 19A NCAC 01C .0201 (DeLuca)
 - E. Department of Transportation – 19A NCAC 02D .0414 (DeLuca)
 - F. Board of Examiners for Speech and Language Pathologists and Audiologists – 21 NCAC 64 .0903 (Bryan)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between December 21, 2012 and January 22, 2013
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days of the RRC Meeting
- VI. G.S. 150B-19.1 Certification
- VII. Commission Business
 - Next meeting: March 21, 2013

Commission Review**Log of Permanent Rule Filings**

December 21, 2012 through January 22, 2013

ENVIRONMENTAL MANAGEMENT COMMISSION

The rules in Subchapter 2B pertain to surface water standards and monitoring including procedures for assignment of water quality standards (.0100); the standards used to classify the waters of the state (.0200); stream classifications (.0300); effluent limitations (.0400); monitoring and reporting requirements (.0500); and water quality management plans (.0600).

Catawba River Basin
Amend/*

15A NCAC 02B .0308

The rules in Subchapter 2H concern procedures for permits: approvals including point source discharges to the surface waters (.0100); waste not discharged to surface waters (.0200); coastal waste treatment disposal (.0400); water quality certification (.0500); laboratory certification (.0800); local pretreatment programs (.0900); stormwater management (.1000); biological laboratory certification (.1100); special orders (.1200); and discharges to isolated wetlands and isolated waters (.1300).

Stormwater Requirements: Coastal Counties
Amend/*

15A NCAC 02H .1005

COSMETIC ART EXAMINERS, BOARD OF

The rules in Subchapter 14H are sanitation rules for both operators and facilities including sanitation (.0100); shop licensing and physical dimensions (.0200); cosmetic art shop and equipment (.0300); sanitation procedures and practices (.0400); and enforcement, maintenance of licensure (.0500).

Licensees and Students
Amend/*

21 NCAC 14H .0401

Cosmetic Art Shops and Schools
Amend/*

21 NCAC 14H .0402

The rules in Subchapter 14R are continuing education rules.

Continuing Education
Amend/*

21 NCAC 14R .0105

HEARING AID DEALERS AND FITTERS BOARD

The rules in Subchapter 22A concern the organization and definitions of the board (.0100 - .0300).

Meetings of the Board
Repeal/*

21 NCAC 22A .0203

Appointments
Repeal/*

21 NCAC 22A .0204

The rules in Subchapter 22F concern general examination and license provisions.

Time and Place of Examinations
Amend/*

21 NCAC 22F .0101

Review of Examination
Amend/*

21 NCAC 22F .0108

Continuing Education
Amend/*

21 NCAC 22F .0120

The rules in Subchapter 22I concern professional affairs.

Visual Inspection and Hearing Test 21 NCAC 22I .0103
Amend/*

The rules in Subchapter 22J concern code of ethics.

Advertising 21 NCAC 22J .0103
Amend/*

PHARMACY, BOARD OF

The rules in Chapter 46 cover organization of the board (.1200); general definitions (.1300); hospitals and other health facilities (.1400); admission requirements and examinations (.1500); licenses and permits (.1600); drugs dispensed by nurse and physician assistants (.1700); prescriptions (.1800); forms (.1900); administrative provisions (.2000); elections (.2100); continuing education (.2200); prescription information and records (.2300); dispensing in health departments (.2400); miscellaneous provisions (.2500); devices (.2600); nuclear pharmacy (.2700); sterile parenteral pharmaceuticals (.2800); product selection (.2900); disposal of unwanted drugs (.3000); clinical pharmacist practitioner (.3100); impaired pharmacist peer review program (.3200); and registry of pharmacist technicians (.3300).

Definitions 21 NCAC 46 .1317
Amend/*

Responsibilities of the Pharmacist-Manager 21 NCAC 46 .1411
Amend/*

Absence of Pharmacist 21 NCAC 46 .1413
Amend/*

Drug Distribution and Control 21 NCAC 46 .1414
Amend/*

Medication in Health Care Facility Emergency Departments 21 NCAC 46 .1415
Amend/*

Remote Medication Order Processing Services 21 NCAC 46 .1417
Amend/*

Automated Dispensing or Drug Supply Devices 21 NCAC 46 .1814
Amend/*

Records of Dispensing 21 NCAC 46 .2302
Amend/*

Records of Prescription Filling and Refilling 21 NCAC 46 .2303
Amend/*

Automated Data Processing 21 NCAC 46 .2304
Amend/*

Electronic Records 21 NCAC 46 .2508
Adopt/*

Anti-Neoplastic Agents 21 NCAC 46 .2807
Amend/*

PODIATRY EXAMINERS, BOARD OF

The rules in Chapter 52 concern Board of Podiatry Examiners including organization of the Board (.0100); examination and licensing (.0200); professional corporations (.0300); revocation or suspension of license (.0400); certification of podiatric assistants (.0500); general provisions (.0600); petitions for rules (.0700); notice of rulemaking hearings (.0800); rulemaking hearings (.0900); declaratory rulings (.1000); administrative hearing procedures (.1100); administrative hearings decisions related rights and procedures (.1200); nominations for podiatrist members of the board of podiatry examiners; the board of podiatry examiners constituting a board of podiatry elections; and procedures for holding an election (.1300); and scope of practice (.1400).

Examination 21 NCAC 52 .0202
Amend/*

<u>Annual Renewal of License</u> Amend/*	21	NCAC	52	.0207
<u>Fee Schedule</u> Adopt/*	21	NCAC	52	.0613

BUILDING CODE COUNCIL

<u>2012 NC Mechanical Code/Pipe Fittings (120611 Item B-3)</u> Amend/*	1202.5
<u>2012 NC Mechanical Code/Copper and Copper Alloy Tubing (1...</u> Amend/*	1203.8
<u>2012 NC Mechanical Code/Press Connect Joints (120611 Item...</u> Amend/*	1203.3.9
<u>2012 NC Plumbing Code/Pipe Fittings (120611 Item B-6)</u> Amend/*	605.5
<u>2012 NC Plumbing Code/Press Connect Joints (120611 Item B-7)</u> Amend/*	605.15.5
<u>2012 NC Energy Conservation Code/Heat Pump Supplementary ...</u> Amend/*	403.1.2
<u>2012 NC Energy Conservation Code/Scope (120611 Item B-11)</u> Amend/*	501.1
<u>2012 NC Residential Code/Opening Protection (120611 Item ...</u> Amend/*	R302.5.1
<u>2012 NC Residential Code/Townhouse Automatic Fire Sprinkl...</u> Amend/*	R313.1
<u>2012 NC Residential Code/Minimum Depth (120611 Item B-15)</u> Amend/*	R 403.1.4
<u>2012 NC Residential Code/Cantilever Spans (120611 Item B-16)</u> Amend/*	R502.3.3(2)
<u>2012 NC Residential Code/Vapor Retarder (120611 Item B-17)</u> Amend/*	R506.2.3
<u>2012 NC Residential Code/Weepholes (120611 Item B-19)</u> Amend/*	R703.7.6
<u>2012 NC Residential Code/Attachment (120611 Item B-20)</u> Amend/*	R905.2.6
<u>2011 NC Electrical Code/Dwelling Unit Receptacle Outlets ...</u> Amend/*	210.52
<u>2011 NC Electrical Code/Switch Connections (110822 Item B-7)</u> Amend/*	404.2
<u>2012 NC Residential Code/Wall Bracing (120312 Item B-4)</u> Amend/*	R602.10

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
Selina Brooks
Melissa Owens Lassiter
Don Overby

Randall May
A. B. Elkins II
Joe Webster

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u>			
James Ivery Smith, Ivy Lee Armstrong v. ABC Commission	11 ABC 08266	04/12/12	
Trawick Enterprises LLC v. ABC Commission	11 ABC 08901	05/11/12	27:01 NCR 39
Dawson Street Mini Mart Lovell Glover v. ABC Commission	11 ABC 12597	05/23/12	
ABC Commission v. Christian Broome Hunt T/A Ricky's Sports Bar and Grill	11 ABC 13161	05/03/12	
Alabarati Brothers, LLC T/A Day N Nite Food Mart, v. ABC Commission	11 ABC 13545	05/01/12	
Playground LLC, T/A Playground v. ABC Commission	11 ABC 14031	05/16/12	27:01 NCR 64
ABC Commission v. Quick Quality, Inc., T/A Rock Star Grill and Bar	11 ABC 14036	07/05/12	
ABC Commission v. D's Drive Thru Inc. T/A D's Drive Thru	12 ABC 00060	05/29/12	
ABC Commission v. Choudhary, LLC T/A Speedway	12 ABC 00721	05/01/12	
ABC Commission v. Dos Perros Restaurant LLC T/A Dos Perros Restaurant	12 ABC 05312	09/25/12	
ABC Commission v. Bobby Warren Joyner T/A Hillsdale Club	12 ABC 06153	11/06/12	
ABC Commission v. Quick Quality, Inc., T/A Rock Star Grill and Bar	12 ABC 07260	12/11/12	
ABC Commission v. Fat Cats Grill and Oyster Bar Inc, T/A Fat Cats Grill and Oyster Bar	12 ABC 08988	12/19/12	
<u>DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY</u>			
Brian J. Johnson v. Department of Public Safety Victim Services	12 CPS 01664	12/21/12	
George H. Jagers, III v. Crime Victims Compensation Commission	12 CPS 01693	11/01/12	
Teresa Herbin v. Department of Public Safety Victim Services	12 CPS 03680	08/10/12	
Jacqueline M Davis victim-Antonio T Davis v. Dept. of Public Safety	12 CPS 05919	11/06/12	
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Filed

STATE OF NORTH CAROLINA

COUNTY OF WAKE

2012 SEP -5 AM 10:41

Office of
Administrative Hearings

IN THE OFFICE OF

ADMINISTRATIVE HEARINGS

11 DHR 14232

JOHN S. WON

Petitioner,

v.

NORTH CAROLINA DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Respondent.

DECISION

THIS MATTER came on for hearing before Senior Administrative Law Judge Fred G. Morrison Jr., on May 4, 2012, in Raleigh, North Carolina.

APPEARANCES

For Respondent: Tracy J. Hayes
Special Deputy Attorney General
N.C. Department of Justice
Raleigh, North Carolina

For Petitioner: Carrie E. Meigs
Teague, Campbell, Dennis & Gorham
Raleigh, North Carolina

ISSUE

Whether the decision of Respondent's Hearing Officer to uphold DMA's suspension of payments to Petitioner in accordance with 42 C.F.R. § 455.23 was erroneous, contrary to law, rule or procedure, or arbitrary and capricious.

EXHIBITS

For Respondent: Exhibits 1 – 13, 15 and 16 were admitted.

For Petitioner: Exhibits 1, 2, 5 and 6 were admitted.

TESTIMONY

Paula Blake, DMA Program Integrity Dental Investigator and North Carolina Licensed Dental Hygienist, testified on behalf of Respondent at the hearing on May 4, 2012 in Raleigh, North Carolina. Petitioner testified on his own behalf at the hearing.

APPLICABLE STATUTES, RULES, REGULATIONS AND POLICIES

1. The Social Security Act, 42 U.S.C. 1396 *et seq.*
2. 42 CFR § 455.2
3. 42 CFR § 455.23
4. Federal Register, Vol. 76, No. 22
5. North Carolina Administrative Code, Title 10A, Subchapter 22F
6. February 2009 Medicaid Bulletin

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, along with documents and exhibits received and admitted in evidence and the entire record in this proceeding, the Undersigned makes the following Findings of Fact. In making the Findings of Fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which each witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. Respondent, the Department of Health and Human Services ("DHHS"), is the single state agency responsible for administering the North Carolina Medicaid program in accordance with federal and state law pursuant to the Social Security Act, N.C.G.S. §108A-25(b), §108A-54 and the North Carolina State Plan for Medical Assistance. The Division of Medical Assistance ("DMA") is a Division of DHHS and is responsible for ensuring the integrity of the Medicaid program by conducting investigations and monitoring of enrolled NC Medicaid providers and implementing sanctions, including payment suspensions.
2. Petitioner is enrolled in the North Carolina Medicaid program to deliver dental services under Medicaid number 5901093 pursuant to a North Carolina Medicaid Provider Administrative Participation Agreement executed by him on January 12, 2010, for a site location at 3600 Northwest Cary Parkway, Suite 105, Cary, North Carolina (T pp 37-38 and Respondent's Exhibit 9), where he sees approximately 30-50 Medicaid patients per week (T p 19).
3. Petitioner has been a Medicaid provider since around 2005. (T p 35).
4. In accordance with the requirements of 42 C.F.R. § 455.23, DMA suspended Petitioner's Medicaid payments on September 7, 2011, based upon a referral from the Medicaid Fraud Investigations Unit, which constitutes a "credible allegation of fraud" pursuant to 42 C.F.R. § 455.2. Petitioner does not dispute whether he received proper notice of DMA's action or make any allegations that his due process rights were violated.

5. As of the date of the hearing, DMA had suspended from Dr. Won a total of \$589,438.43 in payments for 2011 and \$14,503.58 in payments for 2012. (T p 84; Respondent's Exhibit 16).

6. In addition to operating from his enrolled site location in Cary, Petitioner contends that he traveled to satellite offices owned and operated by other dental providers and performed oral surgery in Alamance, Brunswick, Chatham, Durham, Granville, Johnston, Moore, Person, Vance, New Hanover, and/or Onslow counties approximately once per month. (T pp 22, 25-26).

7. Petitioner claims that he contracted with Dr. Anna Goodrich, a general dentist in Southern Pines (Moore County) North Carolina, in order to provide care to Dr. Goodrich's Medicaid patients. (T pp 27-28). Petitioner did not provide this tribunal with a copy of that contract.

8. Petitioner also claims that he contracted with Dr. Benjamin Koren, a general dentist with offices in Creedmoor (Granville County), Smithfield (Johnston County), Pittsboro (Chatham County), Roxboro (Person County) and Leland (Brunswick County), in order to provide care to Dr. Koren's Medicaid patients. (T p 29). Petitioner did not provide this tribunal with a copy of that contract.

9. Regardless of any side agreements with other providers that Petitioner may or may not have entered into, Petitioner's Medicaid Participation Agreement specifies "That the assigned Tracking/DHHS Provider Number is specific to the provider name and site location identified on page one of this Agreement, and that the provider shall not bill for services provided at or from other site locations using the Tracking/DHHS Provider Number assigned to the site location identified on page one of this Agreement." (Respondent's Exhibit 9, Paragraph 5.r.; T pp 37-38).

10. The February 2009 Medicaid Bulletin promulgated by the Department and published on the DMA website also specifies that "Sole proprietors or single owner LLC providers who have more than one physical service location are required to submit an application for and be issued an individual Medicaid Provider Number (MPN) for each of their physical service locations." (Respondent's Exhibit 10; T p 39).

11. Petitioner agreed "to operate and provide services in accordance with all federal and state laws, regulations and rules, and all policies, provider manuals, implementation updates and bulletins published by the Department, its Divisions and/or its fiscal agent in effect at the time the service is rendered, which are incorporated into this Agreement by this reference." (Respondent's Exhibit 9, Paragraph 3; T pp 35-36).

12. Petitioner admits that all of his services were billed from his Cary (Wake County) office using the Medicaid billing number assigned to that office. Petitioner did not bill through the group practices with which he claimed to be affiliated in other site locations. (T p 41).

13. Even if Petitioner provided services to patients who lived in HRSA medically underserved areas within Alamance, Brunswick, Chatham, Durham, Granville, Johnston, Moore, Person, Vance, New Hanover, or Onslow Counties, these services were provided in direct

violation of Petitioner's Medicaid Participation Agreement and the February 2009 Medicaid Bulletin directed at dental providers.

14. There are other oral and maxillofacial surgeons who provide services to Medicaid recipients in Alamance, Brunswick, Durham, Moore, Vance, New Hanover, and Onslow Counties. (T pp 41-43).

15. There are other general dentists who provide services to Medicaid recipients in Brunswick, Chatham, Johnston and Person counties. Further, recipients in Chatham and Person counties have access to a large number of dental providers, including oral and maxillofacial surgeons, in Durham and Orange counties.

16. The HRSA medically-underserved classification is complex and may only apply to discrete parts of a particular county, as opposed to the entire county. (T p 67).

17. There are areas within Chatham County, Johnston County, Person County and Granville County that are designated as medically-underserved areas, but Petitioner did not provide evidence showing that any of his patients specifically resided in medically-underserved areas. (T pp 67).

18. Petitioner also did not show that he provided services to a "large number" of recipients residing within an HRSA medically-underserved area. (T p 69).

19. Petitioner also did not show that he has made any attempts to receive a Medicaid Provider Number for any practice locations other than his primary location in Cary, NC.

20. DMA fairly and seriously considered Dr. Won's contention that he should be granted a good cause exception for serving patients in medically-underserved locations. (T p 67). DMA also considered the other areas where Petitioner provided care in violation of his Agreement, the impact that the continued suspension of Medicaid reimbursements would have on Petitioner's oral and maxillofacial surgery practice and the potential impact on access to care.

21. Access to patient care will not be jeopardized if the suspension of Petitioner's Medicaid reimbursements continues.

CONCLUSIONS OF LAW

Based on the foregoing facts, the Undersigned makes the following Conclusions of Law:

1. The North Carolina Office of Administrative Hearings has jurisdiction over the parties and subject matter of this contested case pursuant to N.C.G.S. §150B-23 *et seq.* All necessary parties have been joined. The parties have received proper and timely notice of the hearing in this matter.

2. To the extent that the findings of facts contain conclusions of law, or that the conclusions of law are findings of fact, they should be so considered without regard to the given labels. *Bonnie Ann F. v. Callahan Indep. Sch. Bd.*, 835 F. Supp. 340 (1993).

3. Pursuant to 42 C.F.R. § 431.10 (e), the authority of the State Medicaid agency “must not be impaired if any of its rules, regulations, or decisions are subject to review, clearance, or similar action by other offices or agencies of the State. If other State or local agencies or offices perform services for the Medicaid agency, they must not have the authority to change or disapprove any administrative decision of that agency, or otherwise substitute their judgment for that of the Medicaid agency with respect to the application of policies, rules, and regulations issued by the Medicaid agency.”

4. There is no property interest in approved Medicaid payments for services rendered or in participation in the North Carolina Medicaid program. *See, e.g., St. Joseph Hospital v. Electronic Data Systems, Inc. et al.*, 573 F. Supp. 443, 447 (S.D. Tx. 1983). Provider participation in the NC Medicaid program is contract-based. In North Carolina, all Medicaid provider “contracts are terminable at will” and nothing in the regulations governing the NC Medicaid program “creates in the provider a property right or liberty right in continued participation in the Medicaid program.” 10 N.C.A.C. § 22F.0605.

5. In order to prevail on his administrative appeal, the Petitioner must be able to show that the “respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner’s rights, and that the agency: (1) Exceeded its authority or jurisdiction; (2) Acted erroneously; (3) Failed to use proper procedure; (4) Acted arbitrarily or capriciously; or (5) Failed to act as required by law or rule.” N.C.G.S. § 150B-23(a) (emphasis added). Because Petitioner has failed to show that the agency committed any of the prohibited actions enumerated in N.C.G.S. § 150B-23(a)(1)-(5), Petitioner cannot succeed on his appeal.

6. The burden of proof rests on the petitioner challenging an agency decision. *Overcash v. N.C. Dep’t of Env’t & Natural Res.*, 635 S.E. 2d 442, 448 (N.C. Ct. App. 2006), *cert. denied*, 361 N.C. 220 (2007).

7. Respondent is entitled to deference in its interpretation of its own policies and procedures, including its interpretation of the Medicaid Provider Administrative Participation Agreement, Medicaid Billing Guide and February 2009 Medicaid Bulletin. “It is well established ‘that an agency’s construction of its own regulations is entitled to substantial deference.’” *Morrell v. Flaherty*, 338 N.C. 230, 237-238, 449 S.E.2d 175, 179-180 (1994), citing *Martin v. OSHRC*, 499 U.S. 144, 150-51, 113 L. Ed. 2d 117, 127, 111 S.Ct. 1171 (1991). Moreover, the “agency’s interpretation must be given ‘controlling weight unless it is plainly erroneous or inconsistent with the regulation.’” *Id.*, citing *Udall v. Tallman*, 380 U.S. 1, 16-17, 13 L. Ed. 2d 616, 625-26, 85 S. Ct. 792 (1965). DMA’s interpretation that Dr. Won’s billing practices violated the Agreement, the Billing Guide and the Medicaid Bulletin is not plainly erroneous or inconsistent with the regulations.

8. 42 C.F.R. § 455.23(a)(1) requires the State Medicaid agency to “suspend all Medicaid payments to a provider after the agency determines there is a credible allegation of fraud for which an investigation is pending under the Medicaid program against an individual or entity unless the agency has good cause to not suspend payments or to suspend payment only in part.” If a State Medicaid agency does not undertake such a suspension, it is at risk of not

receiving the federal financial participation (FFP) for the State's Medicaid program. 42 C.F.R. § 455.23(a). Respondent acted as required by this regulation.

9. 42 C.F.R. § 455.23(e) states that "[a] State may find that good cause exists not to suspend payments, or not to continue a payment suspension previously imposed, to an individual or entity against which there is an investigation of a credible allegation of fraud if any of the following are applicable" and lists six possible exceptions, including "(4)(i) An individual or entity is the sole community physician or the sole source of essential specialized services in a community" or "(ii) The individual or entity serves a large number of beneficiaries within a HRSA-designated medically underserved area."

10. 42 C.F.R. § 455.23(c)(5) further states that "[a] State's decision to exercise the good cause exceptions in paragraphs (e) or (f) of this section not to suspend payments or to suspend payments only in part does not relieve the State of the obligation to refer any credible allegation of fraud as provided in paragraph (d)(1) of this section." (emphasis added).

11. In responding to public comments submitted as part of the promulgation of 42 CFR § 455.23(e), the Centers for Medicare and Medicaid Services (CMS) stated that "we are concerned about negatively impacting beneficiary access to care... the good cause exception *may* be applied when a beneficiary's access to care is jeopardized because he/she cannot obtain necessary services from a particular provider type." 76 Fed. Reg. 5862, 5937 (emphasis added). Had CMS wanted to require States to apply the good cause exception in all such cases, the regulation and Federal Register would have used the word "shall."

12. The North Carolina Supreme Court has repeatedly held that use of the term 'may' "generally connotes permissive or discretionary action and does not mandate or compel a particular act." *Campbell v. First Baptist Church*, 298 N.C. 476, 483, 259 S.E.2d 558 (1979), quoting *Felton v. Felton*, 213 N.C. 194, 195 S.E. 533 (1938). Furthermore, the preamble to 42 CFR § 455.23(e) notes that the enumerated "good cause" exceptions listed in 42 § 455.23(e)(1)-(6) are those "by which States may determine good cause exists. . . ." 76 Fed. Reg. 5862, 5933 (emphasis added).

13. "If the language used is clear and unambiguous, the Court does not engage in judicial construction but must apply the statute to give effect to the plain and definite meaning of the language." *Fowler v. Valencourt*, 334 N.C. 345, 348, 435 S.E.2d 530, 532 (1993).

14. Petitioner's argument that DMA is required to exercise the good cause exception is not supported by the plain language of the regulation or even the Federal Register, both of which clearly give the State the discretion to determine whether to exercise the good cause exception. 42 C.F.R. 455.23(c)(5).

15. "In determining whether an agency decision is arbitrary or capricious, the reviewing court does not have authority to override decisions within agency discretion when that discretion is exercised in good faith and in accordance with law." *Mann Media, Inc. v. Randolph County Planning Bd.*, 356 N.C. 1, 565 S.E.2d 9 (2002). "The 'arbitrary or capricious standard is a difficult one to meet. Administrative agency decisions may be reversed as arbitrary or

capricious if they are 'patently in bad faith,' [*Burton v. City of Reidsville*, 243 N.C. 405, 407, 90 S.E.2d 700, 702 (1956),] or 'whimsical' in the sense that "they indicate a lack of fair and careful consideration' or 'fail to indicate [] any course of reasoning and the exercise of judgment. []' [*State ex rel. Comm'r of Ins. v. [N.C.] Rate Bureau*, 300 N.C. [381,] 420, 269 S.E.2d [547,] 573 [(1980)]." *Lewis v. N.C. Dep't of Human Resources*, 92 N.C. App. 737, 740, 375 S.E.2d 712, 714 (1989).

16. Petitioner has not carried the burden of demonstrating that DMA's decision was not exercised in good faith or in accordance with the law.

17. *Zamani v. Bremby*, 2012 Conn. Super. LEXIS 1295 (Conn. Super. Ct. May 16, 2012) is not binding on this tribunal. In that case, the court dismissed plaintiffs' claims for money damages and retroactive injunctive and declaratory relief, but allowed plaintiffs' claims for prospective declaratory and injunctive relief to go forward, specifically finding that "The court, of course, has decided only that plaintiffs have made a 'substantial allegation' of a regulatory violation. The court has not decided whether the plaintiffs can prove or have proved these allegations." Petitioner's argument that a North Carolina court must rely on the good cause exception as a basis for lifting a suspension is not supported by *Zamani*.

18. Petitioner did not present any evidence which demonstrated that DMA did not review all of the considerations set forth in 42 CFR § 455.23(e).

19. Petitioner has not met his burden of showing by a preponderance of the evidence that he is the sole community physician for specialized services in multiple communities, or that he serves a large number of recipients in medically underserved areas.

20. Petitioner did not present any evidence demonstrating that, since his initial payment suspension, he has attempted to acquire the appropriate site-specific Medicaid Provider Number from the State Medicaid agency necessary to provide his services in medically underserved areas outside of Wake County. Without a Medicaid Provider Number for any alternate service locations, it is not feasible for Respondent to determine where Petitioner provided the services he claims.

21. Petitioner has not met his burden of showing that DMA or the Hearing Officer's decision in this matter was erroneous, failed to use proper procedure, arbitrary or capricious, or contrary to law or rule.

22. Pursuant to N.C.G.S. § 150B-34, based upon the preponderance of the evidence and "giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency," the Undersigned finds that Respondent DMA did not act erroneously, fail to use proper procedure, act arbitrarily, or capriciously, or fail to act as required by law or rule when it suspended payments to Petitioner enrollment in accordance with 42 C.F.R. §455.23.

DECISION

NOW, THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, it is decided that Respondent's decision to suspend payments to Petitioner should be affirmed.

NOTICE

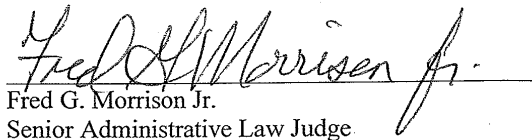
The agency making the final decision in this contested case shall adopt the Decision of the Administrative Law Judge unless the agency demonstrates that the Decision of the Administrative Law Judge is clearly contrary to the preponderance of the admissible evidence in the official record. The agency is required to give each party an opportunity to file exceptions to this Decision issued by the Undersigned, and to present written arguments to those in the agency who will make the final decision. N.C.G.S. §150B-36(a).

In accordance with N.C.G.S. §150B-36, the agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence, giving due regard to the opportunity of the Administrative Law Judge to evaluate the credibility of witnesses. For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the agency. Every finding of fact not specifically rejected as required by Chapter 150B shall be deemed accepted for purposes of judicial review. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency establishing that the new finding of fact is supported by a preponderance of the evidence in the official record.

The agency that will make the final decision in this case is the North Carolina Department of Health and Human Services. This agency is required by N.C.G.S. §150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorneys of record and to the Office of Administrative Hearings.

IT IS SO ORDERED.

This is the 5th day of September, 2012.


Fred G. Morrison Jr.
Senior Administrative Law Judge

On this date mailed to:

Carrie E Meigs
Teague, Campbell, Dennis & Gorham
PO Box 19207
Raleigh NC 27619-
Attorney - Petitioner

Tracy J. Hayes
Special Deputy Attorney General
NC Department of Justice
9001 Mail Service Center
Raleigh NC 27699-9001
Attorney - Respondent

This the 5th day of September, 2012.



N. C. Office of Administrative Hearings
6714 Mail Service Center
Raleigh NC 27699-6714
919 431 3000
Facsimile: 919 431 3100

North Charlotte dialysis facility in Mecklenburg County, Project I.D. No. F-8657-11 ("North Charlotte Application").

2. In its Petition, Renal Advantage asserted that it was an "affected person" by Respondent's decision to approve the North Charlotte Application, because:

(i) Petitioner "provides the same or similar services, i.e. outpatient dialysis services," similar to the services proposed in the North Charlotte Application to individuals residing within the service area or geographic area proposed to be served by the applicant [North Charlotte Dialysis]; and

(ii) Petitioner is a "person" who, prior to the CON Section's receipt of the application at issue in this case, "provided written notice to the Agency of an intention to provide similar services in the future to individuals residing in the service area or geographic area to be served by the applicant" in Project F-8589-

10. On September 15, 2010, Petitioner had informed the Agency of its intention to expand the Glenwater facility by eight (8) stations.

(*Petition for Contested Case, Paragraph 8*) Petitioner Renal Advantage further asserted that it was a "person aggrieved" as defined in N.C. Gen. Stat. § 150B-2(6), because it was "directly and indirectly affected substantially in its person and property" by Respondent's Decision on the DVA Application. *Id.*

3. Petitioner Renal Advantage is the parent corporation or entity of RAI Care Centers of North Carolina, II, LLC ("RAI-NC LLC"). More specifically, RAI-NC LLC is a wholly-owned subsidiary of RAI Care Centers Holdings, II, LLC, which is a wholly-owned subsidiary of Petitioner Renal Advantage. (See Brian Axelroth Affidavit, ¶13, Exhibit 3 to Petitioner's Notice of Filing in Opposition to Respondent-Intervenor's Motion

to Dismiss; Exhibits C and D of Respondent-Intervenor's Brief supporting its Motion to Dismiss).

4. RAI-NC LLC is a state-specific holding company created by Renal Advantage to house its assets located in North Carolina, which were acquired after a 2005 divestiture from DaVita, Inc., the ultimate parent company of DVA. (Axelroth Aff., ¶¶ 4, 7) RAI-NC LLC's assets included two dialysis facilities in Mecklenburg County, RAI-Glenwater-Charlotte ("Glenwater")(Facility I.D. 34-2592) and RAI-Latrobe-Charlotte ("Latrobe")(Facility I.D. 34-2552), among others. (Axelroth Aff., ¶ 4) RAI-NC LLC has no subsidiaries, and is not a member of any joint venture. (Axelroth Aff., ¶ 3)

5. RAI-NC LLC owned, operated, and provided outpatient dialysis services at the RAI-Glenwater-Charlotte ("Glenwater") and RAI-Latrobe-Charlotte ("Latrobe") facilities when Respondent CON Section reviewed DVA's North Charlotte Application and issued its Agency Decision, and when Renal Advantage filed a contested case petition challenging the Agency's December 22, 2011 Decision. Specifically, RAI-NC LLC provided the direct day-to-day patient care, and contracted with Medical Directors in operating the Latrobe facility and the Glenwater facility.

6. RAI-NC LLC was the applicant in the Glenwater Application, which sought, and received a CON for the proposed expansion of the Glenwater facility.

7. RAI-NC LLC did not file a petition challenging the Agency Decision within the 30-day period established by N.C. Gen. Stat. § 131E-188(a), or any time thereafter.

8. Petitioner Renal Advantage and RAI-NC LLC are separate and distinct corporate entities and legal persons. (See Organizational Charts in Exhibits C and D of Respondent-Intervenor's Brief supporting its Motion to Dismiss)

9. While Petitioner Renal Advantage financed, provided unspecified management services, and formally employed staff at RAI Care Centers of North Carolina II, LLC, Petitioner was not the entity that actually owned, operated, and provided outpatient dialysis services at the Glenwater and Latrobe facilities when the CON Section reviewed DVA's North Charlotte Application and issued its Agency Decision, and when Petitioner Renal Advantage filed a contested case petition challenging the Agency Decision.

10. Petitioner Renal Advantage was not an "affected person," as defined in N.C. Gen. Stat. § 131E-188(c), when it filed its contested case petition challenging Respondent's December 22, 2011 Decision.

11. In December 2010, Petitioner Renal Advantage merged with Liberty Dialysis Holdings, Inc.

12. On or about February 28, 2012, Fresenius Medical Care AG & Co. KGaA acquired Liberty Dialysis Holdings, Inc., and the Federal Trade Commission ("FTC") required Fresenius to divest itself of certain assets, including the Glenwater and Latrobe facilities. Pursuant to the FTC's order, Fresenius entered into a divestiture agreement with Dialysis Newco, Inc. d/b/a DSI Renal ("DSI"), effective April 1, 2012. (Jay Yalowitz Affidavit (¶¶ 2-3) in Exhibit 2 to Petitioner's Notice of Filing in Opposition to Respondent-Intervenor's Motion to Dismiss)

13. Before DSI's acquisition of Glenwater and Latrobe, DSI provided written notice of its intended exempt acquisition of these facilities to the CON section. The CON Section approved of such acquisition. (Yalowitz Aff., ¶ 7) Thus, DSI acquired ownership of both the Glenwater and Latrobe facilities during the pendency of this

contested case, effective April 1, 2012. (Yalowitz Aff., ¶ 4) DSI now operates and provides services to Mecklenburg County residents at the Glenwater and Latrobe facilities. (Yalowitz Aff., ¶¶ 5-6)

CONCLUSIONS OF LAW

1. This contested case is subject to dismissal pursuant to Rules 12(b)(1) and (6) of the North Carolina Rules of Civil Procedure for lack of jurisdiction and failure to state a claim, and N.C. Gen. Stat. §§ 131W-188, 150B-33(10) and -36.

2. The right to appeal decisions on certificate of need ("CON") applications is created and defined by statute in N.C. Gen. Stat. § 131E-188. By the express terms of that statute, only a person who meets the definition of "affected person" under N.C. Gen. Stat. § 131E-188(c) has standing to petition for contested a case hearing regarding a CON decision. N.C. Gen. Stat. § 131E-188(a).

3. By definition, a "contested case" is an administrative proceeding "to resolve a dispute between an agency and another person that involves that person's rights, duties, privileges . . ." N.C. Gen. Stat. § 150B-2(2).

4. Compliance with statutory provisions creating the right to appeal an agency decision is necessary to sustain the appeal. *In re Employment Security Comm'n*, 234 N.C. 651, 653, 68 S.E.2d 311, 312 (1951) (holding an "appeal must conform to the statute granting the right and regulating the procedure"); *Lewis v. N.C. Dep't of Human Res.*, 92 N.C. App. 737, 739, 375 S.E. 2d 712, 714 (1989) (upholding agency's dismissal of employee because grievance appeal was filed one day late).

5. The CON Law requires any affected person wishing to challenge a particular CON decision to file a contested case petition within 30 days after the CON

decision is issued. N.C. Gen. Stat. § 131E-188(a). The “timely filing of a petition is necessary to confer subject matter jurisdiction[.]” *Gray v. N.C. Dep’t of Env’t, Health and Nat. Res.*, 149 N.C. App. 374, 378, 560 S.E.2d 394, 397 (2002) (citations omitted); *see also Carolina Digestive Care, PLLC v. N.C. HHS*, 2009 N.C. App. LEXIS 1393, *12 (N.C. Ct. App. 2009) (unpublished).

6. When Renal Advantage filed its contested case petition challenging the CON Section’s Agency Decision, it was not an “affected person,” as defined in N.C. Gen. Stat. § 131E-188(c), as Petitioner lacked standing to petition for a contested case hearing regarding the CON Section’s Agency Decision.

7. Because the undersigned has determined this contested case must be dismissed for lack of subject matter jurisdiction, she will not address Petitioner’s pending Motion to Join DSI as a Party Petitioner.

8. For the foregoing reasons, the undersigned grants Respondent-Intervenor’s Motion to Dismiss pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction.

FINAL DECISION

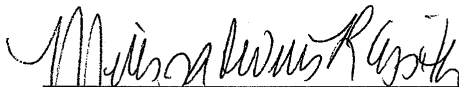
Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby **DISMISSES** this contested case.

NOTICE

Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. **The appealing party must file the petition**

within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision. In conformity with the Office of Administrative Hearings' rule 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision. N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 28th day of August, 2012.


Melissa Owens Lassiter
Administrative Law Judge

CERTIFICATE OF SERVICE


The undersigned hereby certifies that a copy of the foregoing **FINAL DECISION** was served upon the following persons by depositing same in the U.S. Mail, prepaid postage and addressed as follows:

Denise M. Gunter
Nelson Mullins Riley & Scarborough LLP
380 Knollwood Street, Suite 530
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ATTORNEY FOR PETITIONER
RENAL ADVANTAGE, INC.

Joel L. Johnson
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ATTORNEY FOR RESPONDENT

William R. Shenton
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ATTORNEY FOR RESPONDENT-INTERVENOR
DVA HEALTHCARE RENAL CARE, INC.

This the 29th day of August, 2012.



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STATE OF NORTH CAROLINA
COUNTY OF WAKE

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IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 DOJ 05041

BARRY LOUIS CHRISTOPHER, JR.,

Petitioner,

v.

N.C. PRIVATE PROTECTIVE
SERVICES BOARD,

Respondent.

Office of
Administrative Hearings

PROPOSAL FOR DECISION

This contested case was heard before the Honorable Administrative Law Judge Donald W. Overby on June 26, 2012 in Raleigh, North Carolina.

APPEARANCES

Petitioner appeared *pro se*.

Respondent was represented by attorney Jeffrey D. McKinney.

WITNESSES

Respondent – Private Protective Services Board Deputy Director Anthony Bonapart testified for Respondent Board.

Petitioner testified on his own behalf.

ISSUE

Whether grounds exist for Respondent to deny Petitioner's application for unarmed registration for a lack of good moral character on the basis of Petitioner's criminal record.

BURDEN OF PROOF

Respondent has the burden of proving that Petitioner lacks good moral character. Petitioner may rebut Respondent's showing.

STATUTES AND RULES APPLICABLE TO THE CONTESTED CASE

Official notice is taken of the following statutes and rules applicable to this case:
N.C.G.S. §§ 74C-3(a)(6); 74C-8; 74C-9; 74C-11; 74C-12; 12 NCAC 7D § .0700.

FINDINGS OF FACT

1. Respondent Board is established pursuant to N.C.G.S. 74C-1 *et seq.*, and is charged with the duty of licensing and registering individuals engaged in the private protective services profession, including armed and unarmed security guards.
2. On March 9, 2012, Petitioner applied to Respondent for an unarmed security guard registration. A copy of Petitioner's application was introduced as **Exhibit 1**.
3. The Petitioner provided a Florida statewide criminal record search with his application. The criminal record search revealed that he was charged with a misdemeanor on October 4, 2000; a misdemeanor carrying a concealed weapon and felony drug possession on August 1, 2002; and a misdemeanor underage possession of alcohol on November 27, 1997. This record reflects "Adjudication Withheld" for all of the charges.
4. On May 10, 2012, Respondent received further documents from Petitioner regarding Petitioner's application. Copies of these documents were introduced as **Exhibit 3**. Included in those documents was an Order of Supervision from Broward County, Florida, which indicated that Petitioner had entered a plea of *nolo contendere* (sic) in connection with the charge of Drugs-Possess-Poss Sell Deliver Alprazolam, the felony listed above.
5. Petitioner testified that when he was 15 or 16 years old he was prescribed Alprazolam for Attention Deficit Disorder. Years later, around 2002, he was at a bowling alley when a fight broke out, in which he was not involved. The police arrived and searched him and found 15 tablets of Alprazolam on his person. At that time he was no longer being prescribed Alprazolam.
6. Petitioner testified that he did not enter a guilty plea and was not convicted of the crime, but that under Florida law, adjudication was withheld. Under North Carolina law, a plea of *nolo contendere* is equivalent to a plea of "no contest." The "adjudication withheld" is basically equivalent to "prayer for judgment continued" (PJC). In North Carolina, entry of a plea of no contest and receiving a PJC is considered a conviction for purposes herein.
7. Petitioner testified that he is currently licensed in Florida, Indiana and Illinois and he is still employed by Brink's, Inc. He also produced evidence that he has a concealed weapons permit in Florida and that North Carolina grants reciprocity for such a weapons permit. He has even been permitted to carry weapons on airplanes.
8. Petitioner had been counseled and believed that he had not been "convicted" of any criminal offenses. He has received all of his licenses including his conceal-carry at times subsequent to the listed offenses. He was not aware that North Carolina treated the *nolo contendere* as the same as a plea of guilty and that the "adjudication withheld" would be treated as a conviction—much the same as the majority of North Carolina's population.

CONCLUSIONS OF LAW

1. Under N.C.G.S. §74C-12(a)(25), Respondent Board may refuse to grant a registration if it is determined that the applicant lacks good moral character.
2. Respondent Board presented evidence that Petitioner lacked good moral character through his plea of guilty/nolo contendere in connection with his felony charge for possession of a controlled substance.
3. Petitioner presented sufficient evidence to rebut Respondent's evidence as to Petitioner's lack of good moral character; however, Petitioner should be placed on probationary status for a one year period.

Based on the foregoing, the undersigned makes the following:

PROPOSAL FOR DECISION

The North Carolina Private Protective Services Board will make the final decision in this contested case. It is proposed that the Board **REVERSE** its initial decision to deny Petitioner's application for unarmed security guard registration, provided, however, that Petitioner shall be placed on probationary status for a period of one year.

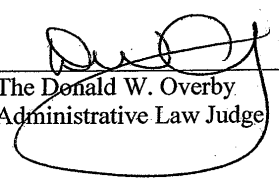
NOTICE AND ORDER

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings of fact and to present oral and written arguments to the agency pursuant to N.C.G.S. §150B-40(e).

The agency that will make the final decision in this contested case is the North Carolina Private Protective Services Board.

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, in accordance with G.S. §150B-36(b).

This the 27th day of Aug, 2012.


The Donald W. Overby
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned attorney for Respondent certifies that on this day the foregoing **Proposal for Decision** was served upon the Petitioner in this action by e-mail and by depositing a copy of the Proposed Proposal For Decision in the United States mail, postage prepaid, and addressed as follows:

Barry Louis Christopher, Jr.
3958 Glenlea Commons Drive
Charlotte, NC 28216
PETITIONER

Jeffrey D. McKinney
Bailey & Dixon, LLP
PO Box 1351
Raleigh, NC 27602

This the 27th day of August, 2012.

29th
nd

Vicki Bullen

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

Filed

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

2012 SEP -7 PM 12:56 IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
11DST04675

Office of
Administrative Hearings

William R Tate,
Petitioner,
v.
North Carolina Department of State Treasurer
Retirement Systems Division,
Respondent.

ORDER GRANTING SUMMARY
JUDGMENT IN FAVOR OF RESPONDENT

THIS MOTION was to be heard before the Honorable Julian Mann, III, Chief Administrative Law Judge, on August 24, 2011. The undersigned, after considering the entire record in this case, including written Motions and Responses of the parties, including careful review of the Honorable Paul G. Gessner's Order Adopting The Final Agency Decision of the Board of Trustees of the North Carolina Local Governmental Employees' Retirement system in Martin H. Beach v. North Carolina Department of Treasurer, Retirement System Division, dated and filed in the Wake County Superior Court on August 24, 2012, and hearing oral arguments, hereby enters the following Order granting summary judgment in favor of Respondent. A brief summary of the material uncontested facts is set forth as follows:

UNCONTESTED FACTS

1. Petitioner retired in the LGERS effective January 1, 2008. At the time of his retirement, he was employed by the Greensboro ABC Board.
2. The Greensboro ABC Board is a covered employer in the LGERS.
3. Petitioner returned to work for the Greensboro ABC Board on January 2, 2008, and continued to work for the Greensboro ABC Board every month thereafter through February 2011.
4. Following his retirement January 1, 2008, Petitioner performed work every month for the Greensboro ABC Board during the periods January 2, 2008, through February 2011 and April 2011 through the present. Since his retirement in January 2008, Petitioner has worked for more than one thousand hours during each successive 12-month period for the Greensboro ABC Board.
5. In the year 2008, Petitioner worked approximately 1200 hours for the Greensboro ABC

Board; in 2009, Petitioner worked approximately 1700 hours for the Greensboro ABC Board; in 2010, Petitioner worked approximately 1700 hours for the Greensboro ABC Board; in 2011, Petitioner had worked approximately 800 hours for the Greensboro ABC Board as of the date this matter was heard by the presiding ALJ.

6. Petitioner has been paid on a regular basis for all work he performed for the Greensboro ABC Board since the effective date of his retirement in January 2008.
7. Petitioner received the sum of \$39,679.08 in retirement benefits from the Retirement System from January 2008 through January 2011.
8. Respondent has widely and consistently communicated--in writing--its interpretation that "rendering no service" during the month following the effective date of retirement means "rendering no work." The importance of this one-month break in service is discussed in numerous written communications available to LGERS employers and employees. During all periods relevant to this case, the Retirement System has consistently published its interpretation of the statute that "service" in the second sentence of G.S. § 128-21(19) means any work at all for a covered employer. It has communicated this interpretation both on its website and in its manuals. Significantly, the 2007 Employee Handbook "Your Retirement Benefits" states on page 23: "Please note that retirement law requires your retirement date to be on the first day of the month, and for your retirement to become effective on the first day of the month, you must do no work for a covered employer at any time during that month."
9. Petitioner submitted a second application for retirement in February 2011 to the LGERS with a new effective retirement date of March 1, 2011.
10. Petitioner did not perform work for the Greensboro ABC Board in March of 2011.

CONCLUSIONS OF LAW

1. At the time of Petitioner's retirement, N.C.G.S. § 128-21(19), the statute governing the definition of retirement in the LGERS, stated in pertinent part:

'Retirement' shall mean withdrawal from active service with a retirement allowance granted under the provisions of this Article. In order for a member's retirement to become effective in any month, the member must render no service at any time during that month.
2. During all periods relevant to this case, Respondent has widely and consistently communicated--in writing--its interpretation that "rendering no service" during the month following the effective date of retirement means "performing no work." The importance of this one-month break in service is discussed in numerous written communications available to LGERS employers and employees. During all periods relevant to this case, the Retirement System has consistently published its interpretation of the statute that

“service” in the second sentence of G.S. § 128-21(19) means any work at all for a covered employer. It has communicated this interpretation both on its website and in its manuals. Significantly, the 2007 Employee Handbook “Your Retirement Benefits” states on page 23: “Please note that retirement law requires your retirement date to be on the first day of the month, and for your retirement to become effective on the first day of the month, you must do no work for a covered employer at any time during that month.” An agency’s interpretations of its governing statutes are accorded some deference. See *Rainey v. N.C. Dept. of Public Instruction*, 361 N.C. 679, 681, 652 S.E.2d 251, 252 (2007) (“Subsection (c) [of N.C.G.S. § 150-51] refers only to the agency’s decision in the specific case before the court. It does not bar the trial court from considering the agency’s expertise and previous interpretations of the statutes it administers, as demonstrated in rules and regulations adopted by the agency or previous decisions outside of the pending case”)

3. Petitioner worked for the Greensboro ABC Board, a covered employer in the LGERS, in the month in which he retired, the month of January 2008.
4. Having returned to service post-retirement in a position for which Petitioner worked over 1000 hours in each succeeding twelve-month period, Petitioner was regularly employed from January 2008 through February 2011 by the Greensboro ABC Board.
5. N.C.G.S. § 128-24(5)(d), the statute governing return to service at the time of Petitioner’s retirement, stated in pertinent part:

Should a beneficiary who retired on an early or service retirement allowance be restored to service as an employee, then the retirement allowance shall cease as of the first day of the month following the month in which the beneficiary is restored to service and the beneficiary shall become a member of the Retirement System and shall contribute thereafter[.]

6. N.C.G.S. § 128-21(10), the statute governing the definition of “employee” at the time of Petitioner’s retirement, stated in pertinent part: “‘Employee’ shall mean any person who is regularly employed in the service of and whose salary or compensation is paid by the employer as defined in subdivision (11) of this section[.]”
7. The North Carolina Administrative Code provision which defines the term “regularly employed” in the Local Governmental Employees’ Retirement System provides: “An officer or employee in a regular position, the duties of which require not less than 1000 hours of service per year shall be an employee as defined in G.S. 128-21(10).” 20 N.C.A.C. 02C .0802.
8. Petitioner violated the provisions of N.C.G.S. § 128-21(19) by working for a covered employer in the LGERS in the month in which his retirement became effective. He and his employer also violated the requirement that regular employees be enrolled as members of the LGERS.

9. Petitioner's January 2008 retirement in the LGERS became null and void as a result of Petitioner's having performed work for the Greensboro ABC Board in the month in which he retired; and Petitioner has, thereby, received an overpayment in benefits in the amount of \$39,679.08, measured by the amount of retirement benefits he was paid from January 2008 through January 2011.
10. Respondent is entitled to receive the overpayment from Petitioner's retirement benefits.
11. Judge Paul G. Gessner's rationale expressed in his Conclusions of Law in the previously referenced *Martin H. Beach v. North Carolina Department of Treasurer, Retirement System Division* is found by the undersigned to be persuasive and is adopted by the undersigned.

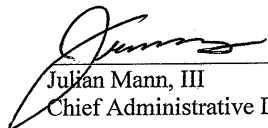
Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. Petitioner's Motion for Summary Judgment is hereby denied
2. Respondent's Motion for Summary Judgment is hereby granted, there being no genuine issue of material fact that Petitioner returned to work for the Greensboro ABC Board in January 2008, the same month in which his retirement became effective, and that, therefore, Respondent is entitled to recover the amount of \$39,679.08 from Petitioner.

NOTICE

The decision of the Administrative Law Judge in this contested case will be reviewed by the agency making the final decision according to the standards found in G.S. 150B 36(b), (b1) and (b2). The agency making the final decision is required to give each party an opportunity to file exceptions to the decision of the Administrative Law Judge and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a). The Agency is required by N.C. Gen. Stat. § 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorneys of record and to the Office of Administrative Hearings. The agency that will make the final decision in this contested case is the North Carolina Department of State Treasurer Retirement Systems Division.

This the 7th day of September, 2012.

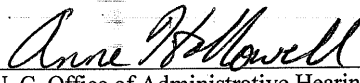

Julian Mann, III
Chief Administrative Law Judge

On this date mailed to:

Seth R. Cohen
PO Box 990
Greensboro NC 27402-0990
Attorney - Petitioner

Robert M. Curran
9001 Mail Service Center
Raleigh NC 27699-9001
Attorney - Respondent

This the 7th day of September, 2012.



N. C. Office of Administrative Hearings
6714 Mail Service Center
Raleigh NC 27699-6714
919 431 3000
Facsimile: 919 431 3100

STATE OF NORTH CAROLINA

COUNTY OF WAKE

Filed

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IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
11 OSP 13381

Phyllis Campbell,
Petitioner,

Office of
Administrative Hearings

vs.

DECISION

North Carolina Department of Corrections,
Respondent.

This contested case was heard before Beecher R. Gray, Administrative Law Judge, in the Office of Administrative Hearings, Courtroom A, located at 1711 New Hope Church Road in Raleigh, North Carolina, on April 5, 2012, and April 30, 2012. Petitioner submitted a proposed decision on July 9, 2012. Respondent filed exceptions to Petitioner's proposed decision on July 30, 2012.

APPEARANCES

Petitioner: James P. West, Esq.
West Law Offices, P.C.
434 Fayetteville Street, Suite 2325
Raleigh, North Carolina 27601

Respondent: Yvonne Ricci, Esq.
Assistant Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602

ISSUES

Whether Respondent, formerly the North Carolina Department of Correction (now The Division of Adult Corrections in the Department of Public Safety), met its burden under N.C.G.S. § 126-35 to show "just cause" to terminate Petitioner's employment in light of the totality of the facts and circumstances surrounding Petitioner's conduct.

Whether Petitioner, Phyllis Campbell, met her burden under N.C.G.S. §§ 126-34.1(a)(3), 126-16, and 126-17 to show that she was discharged in retaliation for Petitioner's equal employment opportunity commission (EEOC) complaint based upon gender discrimination.

EXHIBITS

For Petitioner:

- P. Ex. 1: NC DOC Employment Appraisals of Phyllis Campbell for Fiscal Years 2010/2011 (Rating Cycle 23), 2009/10 (Rating Cycle 22), 2008/09 (Rating Cycle 21), 2006/07 (Rating Cycle 20), 2006/07 (Rating Cycle 19), 2005/06 (Rating Cycle 18), and 2004/05 (Rating Cycle 17)
- P. Ex. 2: NC DOC Witness Statement of Michael Lane

For Respondent:

- R. Ex. 1: NC DOC Witness Statement of Phyllis Campbell dated August 2, 2011
- R. Ex. 2: NC DOC Witness Statement of Phyllis Campbell dated July 5, 2011
- R. Ex. 3: NC DOC Witness Statement of Recardo Parker dated June 24, 2011
- R. Ex. 4: NC DOC Witness Statement of Bianca Pirtle dated June 25, 2011
- R. Ex. 5: NC DOC Letter from Lt. E. Ray to Mr. Anthony Perry dated July 19, 2011
- R. Ex. 8: NC DOC Employment Appraisal of Phyllis Campbell for Fiscal Years 2010/2011 (Rating Cycle 23)
- R. Ex. 9: NC DOC Memorandum from Kenneth Roster to Phyllis Campbell dated May 5, 2011 re: written warning addressing inmate interaction (admitted for the limited purpose of showing that Petitioner was issued a written warning for unacceptable personal conduct)
- R. Ex. 10: NC DOC Memorandum from Kenneth Roster to Phyllis Campbell dated May 5, 2011 re: written warning addressing possession of cigarette and lighter (admitted for the limited purpose of showing that Petitioner was issued a written warning for unacceptable personal conduct)
- R. Ex. 11: NC DOC letter from Kenneth Roster to Phyllis Campbell dated June 21, 2011 re: pre-disciplinary conference
- R. Ex. 12: NC DOC pre-disciplinary conference acknowledgement of Phyllis Campbell dated August 2, 2011
- R. Ex. 13: NC DOC letter from Kenneth Roster to Phyllis Campbell dated August 2, 2011 re: recommendation for dismissal
- R. Ex. 14: NC DOC memorandum from Kenneth Royster to Randall Lee dated August 3, 2011 re: recommendation for dismissal
- R. Ex. 16: Email to Kenneth Royster and Randall Lee dated August 23, 2011 re: draft dismissal letter for Phyllis Campbell and attached draft letter
- R. Ex. 17: NC DOC letter from Kenneth Roster to Phyllis Campbell dated August 30, 2011 re: dismissal for unacceptable personal conduct
- R. Ex. 18: NC DOC Personnel Manual Disciplinary Policies And Procedures, Section 6, Pages 1 (revised July, 1997), 4, 5, 7, 38, 39 (revised December 1, 1996), 40 (revised July 1, 2001), and 41 effective October 1, 1995
- R. Ex. 19: NC DOC Personnel Manual Unlawful Workplace Harassment and Professional Conduct Policy, Section 3, Pages 9 - 16, effective March 1, 2001 and all revised March 1, 2011)

- R. Ex. 20: NC DOC Personnel Manual Violence in the Workplace Section 3, Pages 23 (revised September 1, 2007), 24-31 (revised March 1, 2005), effective April 1, 1997
- R. Ex. 21: NC DOC Policy & Procedures Chapter A, Section .0200 Conduct of Employees Pages 1-8 Issued August 16, 2010
- R. Ex. 22: NC DOC Witness Statement of Phyllis Campbell dated March 24, 2011
- R. Ex. 23: NC DOC letter from Lorraine Dulin to Phyllis Campbell dated April 6, 2011 re: Equal Employment Opportunity ("EEO") Office complaint
- R. Ex. 24: NC DOC EEO Complaint Form dated May 25, 2011
- R. Ex. 25: NC DOC Letter from Gloria Butler to Phyllis Campbell dated September 1, 2011 re: EEO Office investigation
- R. Ex. 26: NC DOC Personnel Late Reports of Recardo Parker, Gary Fuller, Anthony Modiza, and Rashad Martin

WITNESSES

For Petitioner: Phyllis Campbell, Selena Burden, Portia Lucas, Rashad Martin, Michael Lane, Alberta McLaughlin, Cranston Bass

For Respondent: Phyllis Campbell, Recardo Parker, Bianca Pirtle, Eric Ray, Kenneth Royster, James French, Bernard Walker, Gloria Butler

FINDINGS OF FACT

In making Findings of Fact, the undersigned has weighed all the evidence and assessed the credibility of the witnesses, taking into account factors for judging credibility of witnesses, including, but not limited to, the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which the witness testified; the demeanor of the witness; the witness' interests, bias, candor, and any prejudice the witness may have; as well as whether the testimony of the witness is reasonable and consistent with other believable evidence in the case. After careful consideration of the sworn witness testimony presented at the hearing, the documents and exhibits admitted into evidence, and the entire record in this proceeding, the undersigned makes the following FINDINGS OF FACT:

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing and each stipulated on the record that notice was proper.
2. The parties agreed to bifurcate the hearing and present evidence on the issue of whether Petitioner was terminated for just cause, on which Respondent bears the burden of proof, and then to present evidence of whether Petitioner had been subjected to unlawful retaliation, on which Petitioner bears the burden of proof. (Transcript ("Tr.") pp. 105-107)

3. Petitioner Phyllis Campbell ("Petitioner") is a former employee of Respondent North Carolina Department of Correction ("Respondent"). Beginning in July 2004, Petitioner was employed as a correctional officer at Respondent's Polk Correctional Facility and then transferred to Wake Correctional Center in 2007. (Tr. p. 10)
4. By letter dated August 30, 2011, Petitioner was terminated for unacceptable personal conduct. Specifically, the termination letter charged her with exhibiting inappropriate behavior toward Officer Recardo Parker on June 24, 2011, by directing profane and abusive language at him in the presence of inmates waiting to eat. (R. Ex. 17)
5. Petitioner has been unable to secure employment since her termination by Respondent. (Tr. p 124)
6. Petitioner had a good to very good work record for at least the first six and one-half years of her seven year employment tenure with Respondent. In her first six annual evaluations, known as TAPS, she received an overall rating of "very good" four times and "good" twice. In the last TAP evaluation on May 15, 2011, given approximately four months prior to Petitioner's termination, she received an overall rating of "good." (P. Ex. 1, Tr. pp. 58 - 62)
7. Petitioner's manager, Lieutenant Ray, characterized Petitioner as a good correctional officer and acknowledged that she generally was considered a very good employee. When asked about Petitioner's reputation for being truthful, Lieutenant Ray admitted, "I have no reason to think [Petitioner] would falsify." (Tr. pp 61 - 63)
8. In addition, Superintendent of Wake Correctional Center Kenneth Royster acknowledged that Petitioner was regarded as a good or very good employee until approximately the last four months of her employment. (Tr. pp. 84-85)
9. Respondent contends that Petitioner violated Respondent's policies relating to abusive language, dealings with inmates, and violence in the workplace, and that the disciplinary action of termination of Petitioner's employment for unacceptable personal conduct is consistent with the enforcement of Respondent's policies. (R. Exs. 18, 19, 20, 21)
10. An internal appeal was held; the termination was upheld; and Petitioner timely filed her petition for a contested case with the Office of Administrative Hearings.

Just Cause Issue

11. On June 24, 2011, Correctional Officer Recardo Parker submitted to Respondent a complaint against Petitioner alleging that she yelled profane language at him while he was walking with Correctional Officer Bianca Pirtle in an area of the correctional facility in which inmates were present and that Petitioner yelled at him to ask what he had to say to her after she observed him shaking his head. (R. Ex. 4)

12. Officer Parker testified that Petitioner's actions caused a disruption among the inmates, and that they made comments to him about Petitioner's intention to "whop" him. (Tr. pp. 23-25)
13. On cross-examination, Officer Parker admitted that the written statement he submitted to Respondent at the time of the incident (identified as R. Ex. 4), which he characterized as a "full" and "complete" statement, did not include any mention of an inmate disruption and did not identify any comments being made by the inmates. (Tr. pp. 27)
14. Officer Parker further admitted that shortly before the alleged confrontation with Petitioner on June 24, 2011, Petitioner had attempted to report Officer Parker for a rules violation associated with a cell phone being brought into the prison facility by or on behalf of Officer Parker. (Tr. pp. 27-29)
15. Officer Parker acknowledged that the confrontation with Petitioner was not the only correctional officer confrontation in which he had been involved. He was involved in an unrelated incident with Officer Modica that took place in the presence of his managers at the prison facility, including Lieutenant Ray. Officer Parker testified that Officer Modica used profane language that was directed at Officer Parker as a result of the dispute about job duties. Officer Parker denied telling Officer Modica that they would need to take their dispute out "to the street." Officer Parker received only a verbal warning as a result of the incident with Officer Modica. (Tr. pp. 30-32)
16. Officer Parker's assertion under oath that Officer Modica used profane language that was directed at Officer Parker during their confrontation was contradicted by Lieutenant Ray, who was the manager of both correctional officers and was physically present during the incident. According to Lieutenant Ray, "I don't remember the profane language, but I remember [Officer Modica] coming in and making comments about Officer Parker's work ethic." According to Lieutenant Ray, if Officer Modica had used profane language that was directed toward Officer Parker, it likely would have resulted in only a verbal reprimand or a coaching. Officer Parker's denial under oath that he said to Officer Modica that they would need to take their dispute out to the street was also directly contradicted by Lieutenant Ray, who testified that Officer Parker responded to Officer Modica as follows: "We can talk about it up the street." (Tr. pp. 53-57)
17. Officer Parker's assertion under oath that Officer Modica used profane language directed at Officer Parker during their confrontation also was contradicted by Correctional Officer Lane. Officer Lane, who was present during the confrontation between Officer Modica and Officer Parker, did not believe that either officer cursed at the other. His written statement about the incident did not reflect the use of profanity by either officer; Officer Lane testified that he would have noted the profanity in his written statement if he had heard it. (Tr. pp. 189 - 192, P. Ex. 2)
18. Officer Parker's assertion under oath during the hearing that he did not say that he and Officer Modica could take their dispute out "to the street" also was contradicted directly by Officer Lane. According to Officer Lane, when Officer Modica confronted Officer

Parker, Officer Parker responded by telling Officer Modica not to talk to Officer Parker in that manner again and if Officer Modica ever did "we can take it up the street," which Officer Lane knew to mean Officer Parker was telling Officer Modica that they would need to step outside the facility and have a physical fight. At that point, Officer Lane intervened and asked Officer Modica to leave. (Tr. pp. 190-191).

19. Officer Parker further acknowledged that he had been involved in another unrelated incident with Officer Martin, but Officer Parker testified that it did not involve any "verbal or direct contact," and asserted that he had not accused Officer Martin of using profane language directed at him at any time. (Tr. pp. 32-34)
20. Officer Parker's testimony about the alleged incident with Officer Martin directly was contradicted by Officer Martin. Officer Martin testified that Officer Parker filed a complaint against Officer Martin alleging that Officer Martin had threatened him, walked up on him to beat him up, and used profanity directed at him. Officer Martin testified that Officer Parker lied about this incident, which Officer Martin asserted "never happened." Officer Martin opined that Officer Parker "fabricates a lot." Officer Martin was transferred to another shift temporarily after the alleged incident, but his employment with Respondent was not terminated. (Tr. pp. 183-184)
21. On cross-examination by Respondent, Officer Martin further elaborated that Officer Parker lied about two separate alleged incidents involving Officer Martin. In one incident, he alleged that Officer Parker falsely reported that inmates were present during an incident with Officer Martin in the facility yard. In the second incident, Officer Parker alleged that Officer Martin used profanity and threatened him in the presence of two staff members at a gate. (Tr. pp. 186-187)
22. With regard to the incident on which Petitioner's termination is based, Petitioner testified that after she reported Officer Parker for violating facility rules by storing a cell phone in one of the facility's gate areas, she saw Officer Parker in the facility yard at various times and he was smirking at her and saying "little things" to her all day long, so she loudly stated to Officer Parker while she was standing at her post approximately 20 feet away from him that if Officer Parker had something to say to her, he needed to say it. Petitioner denied using profanity at Officer Parker or making any physical gestures at him and denied that any inmates who were present in the area were disrupted or riled. She acknowledged that a few inmates were present when she spoke to Officer Parker during the incident. (Tr. pp. 118-121)
23. Officer Parker's denials in his sworn testimony regarding alleged confrontations he had with other correctional officers were repeatedly and substantially contradicted by the sworn testimonies of Lieutenant Ray and Officer Lane as well as the testimony of Officer Martin. Considered in conjunction with Officer Parker's established history for exaggerating incidents and the retaliatory motive Officer Parker may have had as a result of Petitioner having recently reported Officer Parker for a violation of facility policy involving cell phones, Officer Parker's testimony that Petitioner loudly directed profanity at him during the June 24, 2011, incident with Petitioner is not credible.

24. Female Correctional Officer Bianca Pirtle accompanied Officer Parker during the June 24, 2011, incident involving Petitioner. According to Officer Pirtle, Petitioner yelled, acted in a threatening manner, and cursed at Officer Parker in the presence of approximately 60 inmates, which caused a disruption among the inmates. (Tr. pp. 36-39)
25. On cross-examination, Officer Pirtle admitted that Wake Correctional Center is a minimum security prison in which the inmates generally are regarded as safe. She also acknowledged that the inmate disruption was comprised of only two to three inmates making comments about the incident, none of which resulted in any discipline, and she did "not know" what the other inmates were doing to support her assertion that they were "riled." (Tr. pp. 39 - 47)
26. Officer Pirtle also admitted on cross-examination that Petitioner was standing approximately 15-20 feet from Officers Parker and Pirtle during the incident and that Officer Parker did not indicate at any time that he was scared of Petitioner. (Tr. pp. 42-45).
27. Officer Pirtle acknowledged on cross-examination that she had been social friends with Officer Parker and had at least once met him at a bar after work during the time they worked together at Wake Correctional Center. (Tr. pp. 40 - 41)
28. Petitioner testified that Officers Parker and Pirtle are "close" and often are observed visiting each other at their posts during their shift. (Tr. p. 121)
29. The nature of the relationship between Officer Pirtle and Officer Parker and Officer Parker's own lack of credibility raise material concerns about the credibility of Officer Pirtle's testimony in support of Officer Parker with regard to the June 24, 2011, incident involving Petitioner.
30. After Superintendent Royster became aware of the alleged June 24, 2011, incident involving Petitioner and Officer Parker, the Superintendent ordered an internal investigation. On the basis of the investigation, he decided to recommend that Petitioner be dismissed from her employment with Respondent because she violated Respondent's policies prohibiting expression of a threat, creation of a hostile work environment, and use of abusive language. (Tr. pp. 71-75)
31. On July 21, 2011, Respondent issued a letter from the Superintendent that was received by Petitioner on July 27, 2011, advising Petitioner of the scheduled date of a pre-disciplinary conference on August 2, 2011, based upon the decision to seek the termination of Petitioner's employment because of the June 24, 2011, incident with Officer Parker. (R. Ex. 11)
32. On August 30, 2011, Superintendent Royster, acting on behalf of Respondent, issued a letter to Petitioner advising her of the termination of her employment for unacceptable personal conduct associated with the alleged June 24, 2011, incident involving Officers Parker and Pirtle based upon the conclusion that Petitioner used profanity towards Officer

Parker in the presence of inmates. The letter notified Petitioner of her appeal rights. Petitioner acknowledged her receipt of the letter by signing it. (R. Ex. 17)

33. With regard to the June 24, 2011, incident involving Petitioner and Officer Parker that formed the basis for the Superintendent's decision to recommend termination of Petitioner's employment, Superintendent Royster admitted on cross-examination that: (i) he was unaware that a day or two before the June 24, 2011, incident that Petitioner had reported Officer Parker for bringing a cell phone into the facility, although the Superintendent subsequently changed his testimony as to his knowledge of the report; (ii) Wake Correctional Center was a minimum security facility at which the risk of inmates "committing assault, escape, and those types of things" is "minimal"; and (iii) none of the inmates who were allegedly riled or disrupted by the June 24, 2011, incident were disciplined in any manner. (Tr. pp. 84, 91-94)
34. None of the allegedly riled inmates were called as witnesses to testify in the proceeding about what they saw or heard or how they acted during the June 24, 2011, incident at issue. (Tr. p. 93)
35. Selena Burden, who was employed as a correctional officer at Wake Correctional Center from 2004 through January 2011, testified that she was aware of instances in which correctional officers argued with each other in the presence of inmates at the prison facility, and none were terminated for this conduct. (Tr. pp. 159-160)
36. Correctional Officer Burden additionally testified credibly that she was aware of incidents in which one correctional officer used profanity when speaking with another officer in loud conversations, and it was "just a normal thing on the camp" that happened "[a]ll the time." She confirmed that she was not aware of any correctional officers being terminated for using profanity. (Tr. pp. 159-161)
37. Portia Lucas, who is employed with Respondent as a Sergeant at Polk Correctional Institution, a medium security facility where she has worked since 2002, testified credibly that she is aware of instances in which correctional officers argue with each other in the presence of inmates at Polk, and none have been terminated for such conduct. She also stated that she is aware of correctional officers using profanity on a regular basis and, after correcting herself, confirmed that none have been terminated for use of profanity. (Tr. pp. 168-171)
38. Chaplain Alberta McLaughlin testified credibly that she currently is employed with Respondent as a chaplain at Maury Correctional Facility and previously worked as a correctional officer at Wake Correctional Center from 2007 to 2009. She recounted an incident in which she had an angry argument that involved shouting at two correctional officers in the presence of inmates and their families during a visitation period. She yelled at the other two officers for violating policy by giving money to an inmate and interfering with her direct order for the inmate to hand over a photograph to her. She was not disciplined in any manner and was not aware of any investigation of the other two

correctional officers. Instead, Lieutenant Ray separated the correctional officers and then merely mediated the dispute. (Tr. pp. 194-199)

39. Petitioner's conduct during the June 24, 2011, incident with Officer Parker is within the prevailing, apparent norms of conduct and behavior at Respondent's correctional facilities that typically results in minimal, if any, discipline.
40. Included in the Superintendent's letter dated August 30, 2011, terminating Petitioner's employment were references to two written warnings issued in May 2011—one for inappropriate interaction with an inmate and another for possession of a partially smoked cigarette and lighter in the facility. (R. Ex. 17)
41. These two May 2011 written warnings were issued less than two months after Petitioner made a complaint to Superintendent Royster in mid-March 2011 against Sergeant Bernard Walker for gender-based employment discrimination. (Tr. pp. 85, 90)
42. Prior to Petitioner reporting gender-based employment discrimination to Superintendent Royster, she had been employed as a correctional officer by Respondent at Wake Correctional Center for approximately six and one-half years without receiving any written warnings from Respondent. (Tr. p. 123)
43. The Superintendent acknowledged that Petitioner came to him in the middle of March 2011 to bring a complaint of gender-based employment discrimination against Sergeant Walker based upon his treatment of her and the lack of opportunity for advancement. (Tr. pp. 85, 90)
44. Within one to two weeks after Petitioner complained to the Superintendent about gender discrimination by Sergeant Walker, Sergeant Walker reported Petitioner for undue familiarity with an inmate, which was the event upon which Petitioner's first written warning was based. (Tr. pp. 90-91)
45. Specifically, on March 20, 2011, Sergeant Walker accused Petitioner of standing too closely to and engaging in an extended conversation with an inmate, leading directly to Petitioner's first written warning in May 2011. (P. Ex. 1, Tr. pp. 90-91)
46. The timing of Sergeant Walker's complaint about an incident on March 20, 2011, raises significant concerns about its validity because of the likelihood for personal animus of Sergeant Walker toward Petitioner.
47. On May 4, 2011, Petitioner received a written warning dated May 5, 2011, issued by the Superintendent alleging that Petitioner had engaged in unacceptable personal conduct for her alleged March 20, 2011, interaction with an inmate. The written warning also referenced an action plan initiated on March 18, 2011, based upon 3 conversations between the Petitioner and the same inmate over a 3 month period. The written warning stated that "[t]his action is final and carries no appeal rights since this is the first written warning issued to you." (R. Ex. 9)

48. The Superintendent explained that the basis for the warning to Petitioner for undue familiarity with an inmate was the length of time Petitioner spoke with the inmate. However, he acknowledged that there is no policy with regard to the number of minutes that a correctional officer may speak with an inmate and that correctional officers are encouraged to establish a rapport with inmates because communication is regarded as the first line of defense in correctional facilities. He further acknowledged that Petitioner had been commended as recently as November 2010 for her interaction with inmates. (Tr. pp. 87 - 89)
49. According to Petitioner, the communication she had with the inmate that caused her first written warning for unacceptable personal conduct issued in May 2011 was no longer than conversations she had with other inmates; she discussed nothing of a personal nature; and Respondent did not have any policies limiting the amount of time a correctional officer could speak with an inmate. (Tr. pp. 114-117)
50. Petitioner also submitted a written statement dated August 2, 2011, as part of her internal appeal to Respondent, denying any inappropriate conversation with inmates and asserting that she was unaware of any policy setting a time limit on conversations with inmates. (R. Ex. 1)
51. Correctional Officer Burden, who worked with Petitioner as a correctional officer until January 2011, testified credibly that there is no specific time limit on speaking with inmates, and there are occasions when a correctional officer may speak with an inmate for fifteen to thirty minutes. She also emphasized that communication with inmates is regarded as the first line of defense for a correctional officer. (Tr. pp. 162-163) Sergeant Polk reiterated these principles. (Tr. pp. 171-173, 177- 181)
52. On May 14, 2011, Petitioner received a written warning issued by Superintendent Royster also dated May 5, 2011, alleging that Petitioner had engaged in unacceptable personal conduct for her possession of a partially smoked cigarette and a lighter in her pocket. The written warning stated that "[t]his action is final and carries no appeal rights since this is the second written warning issued to you." (R. Ex. 10)
53. Even after her receipt of the two written warnings dated May 5, 2011, Petitioner received a TAP evaluation with a final evaluation date of May 15, 2011, that referenced both written warnings in the comments sections of the TAP but nevertheless awarded Petitioner an overall rating of Good. Petitioner also was identified in the TAP as being "currently on the [sergeant's] eligibility list" for promotion from her position as a correctional officer. Included in the May 15, 2011, TAP was an interim evaluation dated November 14, 2010, which gave Petitioner an overall rating of Very Good. In addition, the interim review contained positive comments from her supervisor asserting that Petitioner "continues to work well with staff and inmates." (P. Ex. 1, Tr. pp. 58 - 61)
54. Based upon the totality of the circumstances associated with the first written warning issued to Petitioner in May 2011 and the testimony of the witnesses regarding inmate communication policies, the first warning is not a valid basis upon which disciplinary

action against Petitioner as a result of the June 24, 2011, incident involving Petitioner and Officer Parker can be enhanced or otherwise justified.

Retaliation Issue

55. Although Petitioner passed the sergeant's exam in 2008 and her TAPS identified her as eligible for promotion from correctional officer to sergeant, she received very little training from her supervisors as to how to serve as a sergeant. Specifically, Petitioner received two days of training over a period of more than a year after first passing the exam. Petitioner received three more days of training over the remainder of her employment tenure with Respondent. (P. Ex. 1, Tr. pp. 224-226, 232)
56. Correctional Officer Bass confirmed that Petitioner received very little training in relation to the training provided to male correctional officers, including Officer Bass, and that training was allocated at the discretion of the supervising sergeant. (Tr. pp. 262-264)
57. Sergeant Walker, who became Petitioner's supervisor in 2010, never provided any training to Petitioner to serve as a sergeant. (Tr. pp. 236-238)
58. In marked contrast, males, including Correctional Officers Bass, Coslick, Mangum--all of whom had passed the sergeant's exam--and Lane, who had not passed the sergeant's exam, received regular and extensive training in sergeant level functions such as conducting investigations and using Respondent's computer management system. (Tr. pp. 225-226, 233-235)
59. Petitioner made informal complaints to her sergeant, her lieutenant, and other managers about the lack of training opportunities and the fact that males who had not passed the sergeant's exam were receiving training to become sergeants. (Tr. p. 226)
60. Petitioner expressed her concern to Sergeant Walker about her lack of training to become a sergeant. (Tr. p. 238)
61. Sergeant Walker, however, denied recalling any conversations with Petitioner relating to her lack of training opportunities or any other unfair treatment, and he asserted that she advised him that she did not have an interest in working in the operations center. Sergeant Walker also claimed to have provided sergeant training opportunities to another female correctional officer, Officer Pirtle. (Tr. pp. 272-274, 293-295, 308)
62. Petitioner was advised by another sergeant that Sergeant Walker "didn't want to be bothered" with Petitioner and to "just chill out for a while and then we'll train you." (Tr. pp. 238-239)
63. When she continued to be excluded from sergeant training, Petitioner went to Assistant Superintendent Perry to notify him that she was not receiving any training. (Tr. p. 241)

64. When Assistant Superintendent Perry failed to take action, Petitioner went to Superintendent Royster in early March 2011 to complain that she was being excluded from opportunities to train to become a sergeant as a result of gender-based discrimination. She specifically asked to file a complaint against Sergeant Walker. The Superintendent advised Petitioner that he would take care of the matter. (Tr. pp. 241-242, 245)
65. The Superintendent acknowledged that Petitioner came to him in the period early to mid-March 2011 to bring a complaint of gender-based employment discrimination against Sergeant Walker based upon his treatment of her and the lack of opportunity for advancement but later changed his testimony to assert that Petitioner initially complained to him on March 24, 2011. (Tr. pp. 85, 90, 326, 329)
66. Before changing his testimony regarding the date on which Petitioner initially complained of gender discrimination, the Superintendent acknowledged that within one to two weeks after Petitioner complained to him about gender discrimination by Sergeant Walker, Sergeant Walker reported Petitioner for undue familiarity with an inmate, which was the event upon which Petitioner's first written warning was based. (Tr. pp. 90-91)
67. Specifically, on March 20, 2011, Sergeant Walker accused Petitioner of standing too closely to and engaging in an extended conversation with an inmate, leading directly to Petitioner's first written warning in May 2011. (P. Ex. 1, Tr. pp. 90-91, 275-278)
68. Sergeant Walker asserted that Petitioner came to him and apologized for discussing non-DOC related matters with the inmate during the March 20, 2011, incident. This claim is subject to significant credibility concerns as it is inconsistent with both Sergeant Walker's own report, which contains quotes from Petitioner, none of which are admissions of discussing non-DOC matter, and the sworn testimony of Petitioner. (Tr. pp. 288-293, R Ex. 9)
69. Sergeant Walker also addressed an alleged incident of undue familiarity between Petitioner and an inmate on May 23, 2011. (Tr. pp. 279-280) Respondent failed to offer any documentation of the alleged incident, despite Sergeant Walker's claim that he prepared a report of it. Moreover, this alleged incident was not addressed or relied upon by Respondent in any of its disciplinary or termination decisions involving Petitioner and is not relevant. (Tr. pp. 297-302, R. Ex. 17)
70. Sergeant Walker claimed to be fair "across the board" without regard to gender because he documented male correctional officers for arriving late to work. (Tr pp. 280-286, R. Ex. 26)
71. On March 24, 2011, Petitioner submitted a witness statement about the alleged incident with an inmate on March 20, 2011. In the statement, she detailed the manner in which she was treated discriminatorily by Sergeant Walker in relation to his treatment of male correctional officers. (R. Ex. 22)

72. Petitioner waited a few weeks after making her initial discrimination complaint to the Superintendent. After no action was taken in response to her complaint, Petitioner used the computer to electronically file a complaint of gender-based employment discrimination with Respondent's Equal Employment Opportunity office in late March 2011. (Tr. pp. 243, 312)

73. Petitioner's complaint of gender-based employment discrimination was made in good faith by Petitioner and she had a reasonable factual basis on which to lodge the complaint.

74. Approximately one month later, Sergeant Walker's accusation about the events of March 20, 2011, resulted in Petitioner's receipt of a written warning dated May 5, 2011, issued by the Superintendent, alleging that Petitioner had engaged in unacceptable personal conduct for the March 20, 2011, interaction with an inmate. The written warning also referenced an action plan initiated on March 18, 2011, based upon 3 conversations between Petitioner and the same inmate over a 3 month period. The written warning stated that "[t]his action is final and carries no appeal rights since this is the first written warning issued to you." (R. Ex. 9)

75. Petitioner acknowledged that she had been counseled by supervisors other than Sergeant Walker prior to March 2011 for allegedly engaging in extended conversations with an inmate and discussing non-work related issues. (Tr. pp 252-253)

76. After filing a second complaint of gender-based employment discrimination electronically in May 2011, Petitioner was interviewed in August 2011 by Gloria Butler, an employee of Respondent's EEO Office. Petitioner explained that Sergeant Walker was discriminating against her with regard to training and discipline because of her gender. (Tr. pp. 249-251, 312-313, 324-325)

77. Gloria Butler concluded that Petitioner had not been subjected to gender-based discrimination. (R. Ex. 25, Tr. pp. 313, 315)

78. Gloria Butler's investigation did not address the issue of whether Respondent retaliated against Petitioner for her complaint of gender-based discrimination.

79. James French, Deputy Director for Adult Corrections, made the final decision regarding the termination of Petitioner's employment and was not aware that she had made a complaint with Respondent's EEO Office or otherwise claimed gender-related employment discrimination. The Deputy Director acknowledged that he relied upon the recommendation of the Superintendent and did not conduct his own investigation or even review the written warnings given to Petitioner. (Tr. pp. 218-223)

Based upon the Findings of Fact, I make the following:

CONCLUSIONS OF LAW

1. All parties properly are before the Office of Administrative Hearings; jurisdiction and venue are proper. To the extent that the Findings of Fact contain Conclusions of Law or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.
2. Petitioner was a career State employee at the time of her dismissal and is entitled to the protections of the North Carolina State Personnel Act (N.C. Gen. Stat. § 126-1 *et seq.*), specifically, the just cause provision of N.C. Gen. Stat. § 126-35.
3. This case is based upon N.C. Gen. Stat. § 126-35 on the issue of whether Petitioner was disciplined by termination for "just cause" and whether Respondent properly considered and applied the necessary factors and facts in its decision to terminate Petitioner's employment. N.C. Gen. Stat. §§ 126-34.1 and 126-17, address the issue of whether Petitioner was terminated in retaliation for protesting an alleged violation of N.C. Gen. Stat. § 126-16 based on gender-based employment discrimination by Respondent.
4. Under N.C. Gen. Stat. § 126-35(d), in an appeal of a disciplinary action, the employer bears the burden of proving that "just cause" existed for the disciplinary action.
5. N.C. Gen. Stat. § 126-35(a) provides that, "[n]o career State employee subject to the State Personnel Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause." The statute does not define "just cause." The inquiry of whether a discharge is for "just cause" "requires an irreducible act of judgment that cannot always be satisfied by the mechanical application of rules and regulations." *N.C. Dep't of Env. and Nat'l Resources v. Carroll*, 358 N.C. 649, 669, 599 S.E.2d 888, 900 (2004)(cites omitted). "'Just cause,' like justice itself, is not susceptible of precise definition...It is a 'flexible concept, embodying notions of equity and fairness,' that can only be determined upon an examination of the facts and circumstances of each individual case." *Id.*
6. Just cause requires misconduct of a substantial nature and does not encompass technical violations of statute or official duty without a wrongful intention. Among the factors to be considered in determining whether just cause exists are: (i) whether the conduct is isolated or part of a pattern; (ii) the motivation of the employer in taking adverse action and whether there were any improper considerations; (iii) whether the employee intentionally violated clear agency policy and whether the violation was substantial; (iv) whether the employee was acting under any duress or injury that may have contributed to her conduct; (v) whether the employee was acting consistently with departmental practice and custom; (vi) the employee's performance history; and (vii) any other significant mitigating factors.
7. The North Carolina Supreme Court has held that "[d]etermining whether a public employer had just cause to discipline its employee requires two separate inquiries: First,

whether the employee engaged in the conduct the employer alleges, and second, whether that conduct constitutes just cause for the disciplinary action taken.” *Id.* at 665, 599 S.E.2d at 898.

8. The standard used to determine just cause for termination is a different standard than that used for lesser discipline. See *Ramsey v. N.C. Div. Motor Vehicles*, 02 O.S.P. 1623 (April 26, 2004), *aff'd* 647 S.E.2d 125 (N.C. Ct. App. 2007) (holding that written warning, rather than termination, was appropriate penalty for violation of general order), *disc rev. denied*, 659 S.E.2d 739 (N.C. 2008).
9. Respondent failed to meet its burden of proof under N.C. Gen. Stat. § 126-35(d) to prove by a preponderance of the evidence that Petitioner engaged in the conduct of which she was accused in the June 24, 2011, incident that constitutes the basis for Respondent’s finding of unacceptable personal conduct and Respondent’s decision to terminate Petitioner. Specifically, Respondent failed to prove by a preponderance of the evidence that Petitioner either directed profanity at Officer Parker in the presence of inmates or that Petitioner threatened Officer Parker or otherwise acted in a manner that reasonably could be construed as threatening to Officer Parker. The testimonies of Officers Parker and Pirtle were not sufficiently credible to satisfy Respondent’s burden of proof. Respondent failed to offer any additional supporting testimony regarding the incident at issue. Petitioner’s testimony regarding the June 24, 2011, incident was credible and consistent with the positive employment evaluations of Petitioner given by Respondent over a period that exceeded 6 years, which lauded Petitioner for working “well with staff and inmates” as recently as November 2010. (P. Ex. 1)
10. Other correctional officers employed at Wake Correctional Center engaged in confrontations with each other and were subject to either no discipline or limited disciplinary action, such as a verbal warning. Officer Parker, whose complaint about Petitioner regarding the June 24, 2011, incident was the basis for Respondent’s termination decision, was--by his own admission--involved in at least two other confrontations with correctional officers, none of which led to termination or any significant discipline by Respondent of any of the officers involved despite Officer Parker’s allegation in each instance that profanity was directed at him by the other correctional officer involved in the confrontation. The credible testimony of Correctional Officer Burden, who stopped working as a correctional officer at Wake Correctional Center in 2011, confirms that such arguments and even the use of profanity occurred regularly at the correctional facility and none resulted in termination during her tenure. The credible testimony of Chaplain McLaughlin about her loud confrontation with two other correctional officers in the presence of inmates and their families without disciplinary consequence for any of the correctional officers involved provides further confirmation of the manner in which non-violent confrontations between correctional officers were handled at the correctional facility by Respondent. The considerable disparate treatment in this case prevents finding that Respondent had just cause to terminate Petitioner from employment. It would be unreasonable and unjust for Respondent to be able to strictly enforce rules prohibiting unacceptable personal conduct

against this Petitioner under the evidence in this case, in view of Respondent's history of inconsistency in enforcement at this correctional facility.

11. To the extent that Respondent relied upon Petitioner's two prior written warnings in May 2011 to enhance the disciplinary consequences applied to Petitioner as a result of the June 24, 2011, incident with Officer Parker or otherwise justify the decision to terminate Petitioner's employment, such reliance is neither proper nor reasonable. The first written warning, which was given without any right to appeal, was based upon an incident that occurred on March 20, 2011, involving an allegation that Petitioner spent too much time speaking with an inmate. The allegation was reported by Sergeant Bernard Walker, about whom Petitioner had recently lodged a complaint with the Superintendent about gender-based employment discrimination. Given the likelihood of discriminatory animus by Sergeant Walker, the absence of any policy of Respondent limiting the amount of time a correctional officer could speak with an inmate, the credible testimonies of Correctional Officer Burden and Sergeant Lucas that it is not unusual to engage in conversations of a significant time period with an inmate, and the fact that Petitioner positively was recognized in November 2010 and May 2009 in her TAPS for her interaction with inmates, the first written warning should be disregarded in determining the appropriate discipline for Petitioner.
12. — The record contains no evidence that Petitioner at any time intended to violate any policy of Respondent; she did not willfully violate Respondent's personal misconduct policy; and the record contains no evidence that Petitioner's action adversely affected or could have adversely affected the mission or legitimate interests of the State in any material manner.
13. In examining the totality of the circumstances and all of the record evidence, including the nature of the allegations at issue, the credibility of the witnesses, and the favorable employment history of Petitioner, the actions of Petitioner were not sufficient to warrant termination.
14. Respondent's termination of Petitioner was neither just nor equitable and, therefore, was in violation of the letter and spirit of the State Personnel Act, *Carroll*, and its progeny.
15. Respondent's handling of this case, as well as Respondent's choice of punishment--termination--which was outside the range of punishment imposed for similar actions by other employees, raises a concern that Respondent's motivations were, at least to some extent, retaliatory in nature.
16. N.C. Gen. Stat. § 126-17 provides that "No State department, agency, or local political subdivision of North Carolina shall retaliate against an employee for protesting alleged violations of G.S. 126-16," which states that "All State departments and agencies and all local political subdivisions of North Carolina shall give equal opportunity for employment and compensation, without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition as defined in G.S. 168A-3 to all persons otherwise qualified, except where specific age, sex or physical requirements constitute

bona fide occupational qualifications necessary to proper and efficient administration. This section with respect to equal opportunity as to age shall be limited to individuals who are at least 40 years of age."

17. Petitioner's burden to prove retaliation requires her by the preponderance of the evidence to show "(1) that there was statutorily protected participation, (2) that an adverse employment action occurred, and (3) that there was a causal link between the participation and the adverse employment action." *Whatley v Metropolitan Atlanta Rapid Transit Authority*, 632 F.2d. 1325 (5th Cir. 1980). While the preponderance of the record evidence satisfies the first two elements, Petitioner has failed to prove by a preponderance of the evidence that the "but for" causal link standard set forth as element (3) has been satisfied.

18. Although a nexus exists between the time of Petitioner's good faith complaint to the Superintendent of gender-based employment discrimination and the time Respondent initiated its adverse employment actions against Petitioner, Petitioner did not satisfy her burden of proving by a preponderance of the evidence that Respondent terminated her employment because of Petitioner's complaint regarding gender-based discrimination. The termination of Petitioner was based primarily upon her confrontation with Officer Parker. The complaint made by Sergeant Walker of undue familiarity with an inmate, although ostensibly motivated by Sergeant Walker's retaliatory animus, was not the sole factor in the decision to terminate Petitioner's employment, and the record evidence was not sufficient to meet Petitioner's burden of proving that decision-makers, Superintendent Royster and Deputy Director French, acted with discriminatory animus or that the termination resulted from Sergeant Walker's March 20, 2011, complaint. Petitioner's conduct does in fact warrant some lesser discipline than termination, which is the reason for the imposition of a five (5) day suspension without pay.

19. The foregoing Findings of Fact and Conclusions of Law require Petitioner to be disciplined at a level less than termination, such as suspension for five (5) days without pay, in order to be consistent with Respondent's policies and practices at the time Petitioner was discharged.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned determines that Respondent has not carried its burden of proof that Petitioner's conduct rises to the level of "just cause" for termination, and Petitioner has not carried her burden of proof that Respondent's conduct rises to the level of unlawful retaliation. Rather, the undersigned recommends that Respondent should discipline Petitioner by imposing a five (5) day suspension without pay. Accordingly, Respondent's termination of Petitioner from employment is REVERSED, and Petitioner shall be afforded the following remedies:

1. Petitioner shall be reinstated to her former position, with all credit for State service for all purposes being retroactive to the date of dismissal.

2. Petitioner shall be awarded, from the date of dismissal until her reinstatement (minus the five (5) day suspension), back pay and benefits, including sick and vacation leave, and with all bonuses and increases she would have been eligible for had she not been dismissed.
3. Petitioner is awarded reasonable attorney's fees and costs under the provisions of G.S. 150B-33(b)(11).
4. Respondent should correct portions of the information in Petitioner's personnel file to contain only true and accurate information in compliance with N.C. Gen. Stat. §126-25, as stated herein.

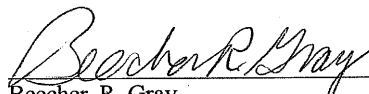
ORDER AND NOTICE

It hereby is ordered that the agency serve a copy of the FINAL DECISION on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, in accordance with N.C. Gen. Stat. § 150B-26(b).

The decision of the Administrative Law Judge in this contested case will be reviewed by the agency making the final decision. The agency making the final decision is required to give each party an opportunity to file exceptions to the decision of the Administrative Law Judge and to present written arguments to those in the agency who will make the final decision.

The agency making the final decision is the North Carolina State Personnel Commission.

This the 27 day of August, 2012.



Beecher R. Gray
Administrative Law Judge

A copy of the foregoing was mailed to:

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This the 28th day of August, 2012.


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