

NORTH CAROLINA REGISTER

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November 16, 2015

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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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215 North Dawson Street

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Raleigh, North Carolina 27603

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(919) 715-4000

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545 Legislative Office Building

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NORTH CAROLINA REGISTER
 Publication Schedule for January 2015 – December 2015

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
29:13	01/02/15	12/08/14	01/17/15	03/03/15	03/20/15	05/01/15	05/2016	09/29/15
29:14	01/15/15	12/19/14	01/30/15	03/16/15	03/20/15	05/01/15	05/2016	10/12/15
29:15	02/02/15	01/09/15	02/17/15	04/06/15	04/20/15	06/01/15	05/2016	10/30/15
29:16	02/16/15	01/26/15	03/03/15	04/17/15	04/20/15	06/01/15	05/2016	11/13/15
29:17	03/02/15	02/09/15	03/17/15	05/01/15	05/20/15	07/01/15	05/2016	11/27/15
29:18	03/16/15	02/23/15	03/31/15	05/15/15	05/20/15	07/01/15	05/2016	12/11/15
29:19	04/01/15	03/11/15	04/16/15	06/01/15	06/22/15	08/01/15	05/2016	12/27/15
29:20	04/15/15	03/24/15	04/30/15	06/15/15	06/22/15	08/01/15	05/2016	01/10/16
29:21	05/01/15	04/10/15	05/16/15	06/30/15	07/20/15	09/01/15	05/2016	01/26/16
29:22	05/15/15	04/24/15	05/30/15	07/14/15	07/20/15	09/01/15	05/2016	02/09/16
29:23	06/01/15	05/08/15	06/16/15	07/31/15	08/20/15	10/01/15	05/2016	02/26/16
29:24	06/15/15	05/22/15	06/30/15	08/14/15	08/20/15	10/01/15	05/2016	03/11/16
30:01	07/01/15	06/10/15	07/16/15	08/31/15	09/21/15	11/01/15	05/2016	03/27/16
30:02	07/15/15	06/23/15	07/30/15	09/14/15	09/21/15	11/01/15	05/2016	04/10/16
30:03	08/03/15	07/13/15	08/18/15	10/02/15	10/20/15	12/01/15	05/2016	04/29/16
30:04	08/17/15	07/27/15	09/01/15	10/16/15	10/20/15	12/01/15	05/2016	05/13/16
30:05	09/01/15	08/11/15	09/16/15	11/02/15	11/20/15	01/01/16	05/2016	05/28/16
30:06	09/15/15	08/24/15	09/30/15	11/16/15	11/20/15	01/01/16	05/2016	06/11/16
30:07	10/01/15	09/10/15	10/16/15	11/30/15	12/21/15	02/01/16	05/2016	06/27/16
30:08	10/15/15	09/24/15	10/30/15	12/14/15	12/21/15	02/01/16	05/2016	07/11/16
30:09	11/02/15	10/12/15	11/17/15	01/02/16	01/20/16	03/01/16	05/2016	07/29/16
30:10	11/16/15	10/23/15	12/01/15	01/15/16	01/20/16	03/01/16	05/2016	08/12/16
30:11	12/01/15	11/05/15	12/16/15	02/01/16	02/22/16	04/01/16	05/2016	08/27/16
30:12	12/15/15	11/20/15	12/30/15	02/15/16	02/22/16	04/01/16	05/2016	09/10/16

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) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) 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; and
- (7) 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 rul

NOTICE OF RULE MAKING PROCEEDINGS AND PUBLIC HEARING

NORTH CAROLINA BUILDING CODE COUNCIL

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

Citation to Existing Rule Affected by this Rule-Making: *North Carolina Electrical, Existing Building, and Plumbing Codes.*

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

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

Public Hearing: **Tuesday, December 15, 2015, 9:00AM, NCSU McKimmon Center, 1101 Gorman Street, Raleigh, NC 27606.**
Comments on both the proposed rule and any fiscal impact will be accepted.

Comment Procedures: *Written comments may be sent to Barry Gupton, Secretary, NC Building Code Council, NC Department of Insurance, 322 Chapanoke Road, Suite 200, Raleigh, NC 27603. Comments on both the proposed rule and any fiscal impact will be accepted. Comment period expires on January 15, 2016.*

Statement of Subject Matter:

1. Request by Leon Skinner, representing the NC Existing Building Code Ad Hoc Committee, to amend the 2015 NC Existing Building Code, Section 101.

101.11. Accessibility for detached one- and two-family dwellings and townhouses. In detached one- and two-family dwellings and townhouses, where there are four or more dwelling units or sleeping units in a single structure, the provisions for accessibility of this code for Group R-3 shall apply.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is June 1, 2016 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2017).

Reason Given – The purpose of this amendment is to coordinate with the Residential Code as to how accessibility applies to attached dwelling units.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

2. Request by Leon Skinner, representing the NC Existing Building Code Ad Hoc Committee, to amend the 2015 NC Existing Building Code, Section 407. The proposed amendment is as follows:

[B] 407.1 Conformance.

No change shall be made in the use or occupancy of any building that would place the building in a different division of the same group of occupancy or in a different group of occupancies, unless such building is made to comply with the requirements of the *International Building Code* for such division or group of occupancy. Subject to the approval of the building official, the use or occupancy of *existing buildings* shall be permitted to be changed and the building is allowed to be occupied for purposes in other groups without conforming to all of the requirements of this code for those groups, provided the new or proposed use is ~~of equal or lesser hazard~~ less hazardous, based on ~~Table 407.1~~ life and fire risk, than the existing use.

Table 407.1

Relative Occupancy Hazard

Life and Fire Risk Hazard	Occupancy Category
1 (highest)	H 1, H 2, H 3
2	A 1, A 2 (w/ nightclub), H 4, F 1, I 3, M, S 1
3	A 2 (w/o nightclub), A 3, A 5, B, F 2, I 2, R 1, S 2
4	A 4, E, I 1, R 2 greater than two stories in height or greater than 4 dwelling units
5 (lowest)	R 2 two stories or less in height and four dwelling units or less, R 3, R 4, U, One and Two Family Dwellings.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is June 1, 2016 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2017).

Reason Given – This purpose of this proposal is to coordinate the prescriptive requirements with the change of occupancy where applicable.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

3. Request by Barry Gupton, Staff to advertise the modified amendment to the 2011 NC Electrical Code, Article 300.9. The Rules Review Commission objected to the June 9, 2015 adoption for “failure to comply with the APA.” The proposed amendment is as follows:

300.9 Raceways in Wet Locations Above Grade. Where raceways are in wet locations above grade, the interior of these raceways shall be considered to be a wet location. Insulated conductors and cables installed in raceway in wet locations above grade shall comply with 310.10(C).

Exception: The raceway shall not be considered a wet location if:

- (1) The section of raceway routed in a wet location above grade does not exceed 1500 mm (5 ft) in length;
- (2) Any fittings or conduit bodies are watertight and listed for use in wet locations; and
- (3) Raceway is open at its termination point in a dry location.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is June 1, 2016 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2017).

Reason Given – This proposal is to recognize the interior of enclosures with listed “rain-tight” fittings as dry locations.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

4. Request by Al Bass, Building Code Council, to amend the 2012 NC Plumbing Code for condensate drains. The proposed amendment is as follows:

307.2.1.1 Condensing furnaces and boilers. Where condensate drains from condensing furnaces or boilers are installed in locations subject to freezing, the condensate drain lines in attics shall be freeze protected in accordance with the manufacturer’s recommendations

701.7 Connections. Direct connection of a condensate drain, a steam exhaust blow-off or drip pipe shall not be made with the building drainage system.

715.6 Crawl Spaces. All hub drains or floor drains installed in crawl spaces shall be protected from backflow into the building by a check valve or back-water valve installed in the lateral serving the said hub drain or floor drain.

802.1.5 Non-potable clear-water waste. Where devices and equipment such as process tanks, filters, condensate drains, drips and boilers discharge non-potable water to the building drainage system, the discharge shall be through an indirect waste pipe by means of an air break or air gap.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is June 1, 2016 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2017).

Reason Given – This proposal clarifies the existing code language to specifically allow condensate drainage to pass through the residential plumbing drainage systems.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

5. Public Comment is Solicited from Interested Stakeholders on Large Dwelling Units (Resort and Bed & Breakfast Homes)

The Building Code Council Chair will appoint an Ad-hoc Committee to discuss Resort Homes and Bed & Breakfast Homes, and the committee will keep the Council up to date on the progress.

Session Law 2014-413 (House Bill 74) added a definition for “Bed and Breakfast Homes” to allow not more than 8-guest rooms in a private home. Larger houses are being proposed for resort areas to accommodate groups of people who are not familiar with the building safety features or with each other.

A Public Hearing (Agenda C-Items) will be held at the December 15, 2015 Council Meeting to allow interested stakeholders the ability to be involved in the process and provide valuable information to the Committee in order that they make an informed recommendation to the Council.

NOTICE:

Appeals and Interpretations of the North Carolina State Building Codes are published online at the following link.

http://www.ncdoi.com/OSFM/Engineering_and_Codes/Default.aspx?field1=Code_Interpretations&user=Code_Enforcement_Resources

NOTICE:

Objections and Legislative Review requests may be made to the NC Office of Administrative Hearings in accordance with G.S. 150B-21.3(b2) after Rules are adopted by the Building Code Council.

<http://www.ncoah.com/rules/>

PUBLIC NOTICE
Social Services Commission

Extension of Comment Period

Notice of Text for all of 10A NCAC 71P proposed by the Social Services Commission was published in the NC Register September 15, 2015, Volume 30, Issue 06. The comment period has been extended to December 28, 2015. The Social Services Commission will hold a Public Hearing for State/County Special Assistance Rules- All of 10A NCAC 71P on Tuesday, November 17, 2015 at 10:00 am, at the McBryde Building, 820 S. Boylan Avenue, Raleigh, NC 27603, and Room 151. Interested parties can also attend the meeting by telephone conference at (712) 775-7085 Access Code: 674696. Public comments may be submitted on the proposed rules through December 28, 2015 to: Carlotta Dixon, Program Compliance Section Chief, NC Division of Social Services, 2401 Mail Service Center, Raleigh, NC 27699 or carlotta.dixon@dhhs.nc.gov.

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 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Insurance intends to readopt without substantive changes the rules cited as 11 NCAC 18 .0103; 20 .0202 – .0204, .0301, .0302, .0404, .0410, .0601; 21 .0106.

Pursuant to G.S. 150B-21.2(c)(1), the text of rules to be readopted without substantive changes are not required to be published. The text of the rules are available on the OAH website: <http://reports.oah.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncdoi.com/>

Proposed Effective Date: March 1, 2016

Public Hearing:

Date: December 7, 2015

Time: 9:00 a.m. – 11:00 a.m.

Location: Jim Long Hearing Room (Room 3099) on the third floor of the Dobbs Building located at 430 N. Salisbury Street, Raleigh, NC 27603.

Reason for Proposed Action: Pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21-3A(c)(2)g the Department of Insurance is initiating the re-adoption process.

Comments may be submitted to: Loretta Peace-Bunch, 1201 Mail Service Center, Raleigh, NC 27699-1201, email NCDOIRulesComments@ncdoi.gov.

Comment period ends: January 15, 2016, 5:00 p.m.

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
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4
- No fiscal note required by G.S. 150B-21.3A(d)(2)

CHAPTER 18 - MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

SECTION .0100 – PURPOSE AND SCOPE

11 NCAC 18 .0103 FILING REQUIREMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

CHAPTER 20 - MANAGED CARE HEALTH BENEFIT PLANS

SECTION .0200 - CONTRACTS BETWEEN NETWORK PLAN CARRIERS AND HEALTHCARE PROVIDERS

11 NCAC 20 .0202 CONTRACT PROVISIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

11 NCAC 20 .0203 CHANGES REQUIRING APPROVAL (READOPTION WITHOUT SUBSTANTIVE CHANGES)

11 NCAC 20 .0204 CARRIER AND INTERMEDIARY CONTRACTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0300 - PROVIDER ACCESSIBILITY AND AVAILABILITY

11 NCAC 20 .0301 PROVIDER AVAILABILITY STANDARDS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

11 NCAC 20 .0302 PROVIDER ACCESSIBILITY STANDARDS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0400 - NETWORK PROVIDER CREDENTIALS

11 NCAC 20 .0404 APPLICATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

11 NCAC 20 .0410 DELEGATION OF CREDENTIAL VERIFICATION ACTIVITIES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0600 - SIGNIFICANT MODIFICATIONS TO HMO OPERATIONS

11 NCAC 20 .0601 APPLICATIONS FOR MODIFICATIONS TO SERVICE AREAS OR PRODUCT LINES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

CHAPTER 21 - THIRD PARTY ADMINISTRATORS

SECTION .0100 - GENERAL PROVISIONS

11 NCAC 21 .0106 PAYMENT OF CLAIMS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rules cited as 15A NCAC 02D .2701-.2705.

Link to agency website pursuant to G.S. 150B-19.1(c): http://www.ncair.org/rules/hearing/

Proposed Effective Date: April 1, 2016

Public Hearing:

Date: December 16, 2015

Time: 6:00 p.m.

Location: The Chamber at the Charlotte-Mecklenburg Government Center, 600 East Fourth Street, Charlotte, NC 28202

Date: December 17, 2015

Time: 6:00 p.m.

Location: Archdale Building, Ground Floor Hearing Room, 512 N. Salisbury St., Raleigh, NC 27604

Date: January 5, 2016

Time: 6:00 p.m.

Location: Roland Grise Middle School Auditorium, 4412 Lake Ave, Wilmington, NC 28403

Reason for Proposed Action: To receive comments on adoption of proposed rules to implement standards of performance for carbon dioxide (CO2) emissions for existing electric utility generating units (EGUs) under Clean Air Act Section 111(d). On October 23, 2015, the Environmental Protection Agency promulgated a new rule for Carbon Dioxide Emission Guidelines for Existing Electric Utility Generating Units requiring states to develop a plan, including necessary rules, to address CO2

emissions from existing EGUs. A new section of rules, 15A NCAC 02D .2700, Standards of Performance for Existing Electric Utility Generating Units under Clean Air Act Section 111(d), is proposed for adoption to implement the Section 111(d) provisions through application of the best system of emission reductions (BSER) for existing fossil fuel-fired EGUs in order to reduce CO2 emissions through heat rate improvement.

Rule 15A NCAC 02D .2701, Purpose and Applicability, is proposed for adoption to specify fossil fuel-fired EGUs are subject to regulation under the Section 111(d) Rule in Section 15A NCAC 02D .2700.

Rule 15A NCAC 02D .2702, Definitions, is proposed for adoption to define terms that are used in Section 15A NCAC 02D .2700.

Rule 15A NCAC 02D .2703, Standards of Performance Requirements for Carbon Dioxide, is proposed for adoption to identify the BSER measures for carbon dioxide emissions at affected EGUs located in North Carolina and contains a compliance schedule for implementing the identified BSER measures.

Rule 15A NCAC 02D .2704, Permitting, is proposed for adoption to define the permit requirements for affected EGUs under Section 15A NCAC 02D .2700.

Rule 15A NCAC 02D .2705, Monitoring, Recordkeeping and Reporting, is proposed for adoption to specify the monitoring, recordkeeping and reporting requirements for each BSER measure implemented under 15A NCAC 02D .2703.

Comments may be submitted to: Joelle Burluson, 1641 Mail Service Center, Raleigh, NC 27699-1641, phone (919) 707-8720, fax (919) 707-8720, email daq.publiccomments@ncdenr.gov (Please type 111(d) in subject line).

Comment period ends: January 15, 2016

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
Substantial economic impact (>=\$1,000,000)
Approved by OSBM
No fiscal note required by G.S. 150B-21.4

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02D – AIR POLLUTION CONTROL REQUIREMENTS

SECTION .2700 – STANDARDS OF PERFORMANCE FOR EXISTING ELECTRIC UTILITY GENERATING UNITS UNDER CLEAN AIR ACT SECTION 111(D)

15A NCAC 02D .2701 PURPOSE AND APPLICABILITY

(a) Purpose. The purpose of this Section is to implement the provision(s) in Clean Air Act Section 111(d) for Best System of Emission Reduction for Existing Electric Generating Units to reduce the emissions of carbon dioxide through heat rate improvement.

(b) Applicability. This Section applies to the following, that are fossil fuel-fired steam electric utility generating units (EGUs) to the extent they are subject to regulation in 40 CFR Part 60.5845 that:

- (1) Serve a generator connected to a utility power distribution system with a nameplate capacity of 25 MW-net or greater and capable of selling greater than 25 MW of electricity;
- (2) Have a base load rating or design heat input capacity greater than 250 MMBtu/hr or greater heat input of fossil fuel either alone or in combination with any other fuel; and
- (3) Are stationary combustion turbines that meet the definition of either a natural gas combined cycle or combined heat and power combustion turbine.

(c) Excluded units. This Section does not apply to the fossil fuel-fired steam EGUs that are excluded under 40 CFR Part 60.5850.

(d) Retired unit exemption. Any unit that is permanently retired shall be exempted from this Section as of its retirement date.

(e) Effect on other authorities. No provision of this Section, any application submitted or any permit issued pursuant to Rule .2704 of this Section shall be construed as exempting any unit or source covered under this Section or the owner or operator from complying with any other requirements of this Subchapter or 15A NCAC 02Q.

(f) In the event all or any portion of 40 CFR 60 Subpart UUUU containing the guidelines is:

- (1) Declared or adjudged to be invalid or unconstitutional or stayed by the United States Court of Appeals for the Fourth Circuit, by the District of Columbia Circuit, or by the United States Supreme Court; or
- (2) Withdrawn, repealed, revoked or otherwise rendered of no force and effect by the United States Environmental Protection Agency, Congress, or Presidential Executive Order.

Such action shall render the regulation as incorporated herein, or that portion thereof that may be affected by such action, as invalid, void, stayed, or otherwise without force and effect for purposes of this Rule upon the date such action becomes final and effective; provided, further, that such declaration, adjudication, stay, or other action described herein shall not affect the remaining

portions, if any, of the regulation as incorporated herein, which shall remain of full force and effect as if such portion so declared or adjudged invalid or unconstitutional or stayed or otherwise invalidated or effected were not originally a part of this Rule.

Authority G.S. 143-215.3(a); 143-215.107(a)(5),(10).

15A NCAC 02D .2702 DEFINITIONS

For the purpose of this Section, the following definitions apply.

- (1) "Affected electric generating unit (EGU)" means a fossil fuel fired steam generating unit that:
 - (a) serves a generator connected to a utility power distribution system with a nameplate capacity of 25 MW-net or greater and capable of selling greater than 25 MW of electricity;
 - (b) has a base load rating or design heat input capacity greater than 250 MMBtu/hr or greater heat input of fossil fuel either alone or in combination with any other fuel;
 - (c) is a stationary combustion turbine that meets the definition of either a natural gas combined cycle or combined heat and power combustion turbine; and
 - (d) includes, and shall not extend beyond, the following systems: fuel combustion system, combustion air system, steam system, draft system, turbine system, air pollution control system, cooling system, and auxiliary equipment contained within the facility that uses electrical power.
- (2) "Air heater leakage reduction (ALR)" means to reduce air leakage between the combustion air and the exhaust gas of Lungstrom, or rotary air heaters by removal of existing air preheater seals and replacing them with newer high performance seals.
- (3) "Best system of emission reduction (BSER)" means a design, equipment, work practice, or operational standard, or combination thereof, which reflects the best technological system of continuous emission reduction taking into consideration the cost of achieving such reduction, and any non-air quality health and environmental impact and energy requirements.
- (4) "Combustion optimization with neural network (CO)" means a system that conducts real-time monitoring and controls fuel and air flow distribution, furnace exhaust gas temperatures, and boiler steam temperatures to maximize heat recovery and minimize carbon monoxide emissions and nitrogen oxides emissions. CO systems are based on nonlinear, multivariable steady-state models derived from historical unit operating data that identify the best combination of independent operating variables

- that produce optimum combustion and thermal efficiency with low emissions.
- (5) "Condenser rebundle, retube, rebuild (CRR)" means to replace, repair or reconfigure tube elements, tube sheets, the condenser shell and other condenser components in order to correct leaks, plugging and debris build up to increase effective heat transfer surface area, or to otherwise improve heat transfer and fluid flow in the condenser. CRR results in greater and more consistent condenser vacuum under the range of boiler operating conditions and available cooling water temperatures.
- (6) "Controllable loss reduction (CLR)" means developing and implementing a site-specific plan for best operations and maintenance practices (O&M) to maintain performance. CLR involves a comprehensive effort to collect information that may not be readily collected through existing sensors and data collection systems, interpret all data collected, and make decisions regarding actions to be taken to improve or maintain performance. CLR consists of implementing a plan and instructing staff in the value and practice of collecting and reporting information regarding the ongoing performance of all the pieces of equipment comprising the power plant and implementing changes to operating or maintenance practices that are determined to improve heat rate.
- (7) "Forced draft fan variable frequency drive (FDF)" means equipment used to reduce fan power consumption by electronically controlling combustion air flowrate. FDF utilizes a silicon controlled rectifier or equivalent device to control electrical frequency and voltage to the fan motor, thereby matching fan speed and combustion air flowrate with operating load.
- (8) "Heat input" from fuel is determined by multiplying the higher heating value of the fuel times the amount of fuel consumed over that time.
- (9) "Heat rate" means the amount of fuel thermal energy or heat input in million Btu (MMBtu) used by an electrical generator or power plant to generate one kilowatt-hour (kWh) of electricity. For this rule, heat input is expressed in units of Btu heat input per net kWh generated.
- (10) "Induced draft fan or booster fan variable frequency drive (IBD)" means equipment used to reduce fan power consumption by electronically controlling exhaust gas flowrate. IBD utilizes a silicon controlled rectifier or an equivalent device to control electrical frequency and voltage to the fan motor, thereby matching fan speed and exhaust gas flowrate with operating load.
- (11) "Intelligent soot blowing (ISB)" means the use of software, instrumentation, sensors, and automated controls to achieve more effective cleaning of furnace wall and convective section heat transfer surfaces. The ISB system may consist of devices for monitoring furnace exhaust gas temperatures, steam temperatures, and furnace wall temperatures at different locations, a control system, and furnace cleaning devices. The ISB's control system digitally processes the received information to evaluate the effects of real-time heat transfer performance in order to allocate high pressure steam or high pressure air to cleaning devices in specified heat transfer zones. The ISB activates furnace cleaning devices (also known as "soot blowers") when measurement sensors indicate the need to remove ash or slag deposits from the furnace location where it is most effective to do so, resulting in improved boiler efficiency as well as reduced energy demand from soot blower and furnace cleaning systems.
- (12) "Nameplate capacity" means nameplate capacity as defined in 40 CFR 60.5880.
- (13) "Natural gas" means natural gas as defined in 40 CFR 60.5880.
- (14) "Natural gas combined cycle (NGCC)" means an electric generating unit that uses a stationary combustion turbine firing natural gas from which the heat from the combustion turbine exhaust gas is recovered by a heat recovery steam generating unit to generate additional electricity.
- (15) "Net generation" means net-electric output as defined in 40 CFR 60.5880.
- (16) "Steam generating unit" means any furnace, boiler or other device used for combusting fossil fuel and producing steam plus any integrated equipment that provides electricity or useful thermal energy output to the affected unit or auxiliary equipment.
- (17) "Variable speed drives" means a system to increase and decrease the operating speed of fluid moving equipment such as fans or pumps by reducing the drives' rotational speed in revolutions per minute to meet required changes in fluid flow rates.

Authority G.S. 143-215.3(a); 143-215.107(a)(5),(10).

PROPOSED RULES

15A NCAC 02D .2703 STANDARDS OF PERFORMANCE REQUIREMENTS FOR CARBON DIOXIDE

(a) This Section applies to affected electric generating units (EGUs) listed below. The owner or operator shall apply the following heat rate improvement measures, identified as Best System of Emission Reduction (BSER) measures for carbon dioxide emissions at the affected EGU or an alternative BSER approved pursuant to Paragraph (e) of this Rule at the affected EGU.

Affected Units - Coal-fired EGUs		
Utility Company - Facility	Unit ID	Best System of Emission Reduction Measure(s)
Duke Energy - Asheville	<u>1</u>	<u>none</u>
Duke Energy - Asheville	<u>2</u>	<u>none</u>
Duke Energy - Belews Creek	<u>1</u>	<u>CLR and FDF</u>
Duke Energy - Belews Creek	<u>2</u>	<u>CLR and FDF</u>
Duke Energy - Cliffside	<u>5</u>	<u>none</u>
Duke Energy - Cliffside	<u>6</u>	<u>ALR, CO, FDF, and ISB</u>
Duke Energy - G G Allen	<u>1</u>	<u>none</u>
Duke Energy - G G Allen	<u>2</u>	<u>none</u>
Duke Energy - G G Allen	<u>3</u>	<u>none</u>
Duke Energy - G G Allen	<u>4</u>	<u>none</u>
Duke Energy - G G Allen	<u>5</u>	<u>none</u>
Duke Energy - Marshall	<u>1</u>	<u>ISB</u>
Duke Energy - Marshall	<u>2</u>	<u>ISB</u>
Duke Energy - Marshall	<u>3</u>	<u>ALR, CO, FDF and ISB</u>
Duke Energy - Marshall	<u>4</u>	<u>ALR, CO, FDF and ISB</u>
Duke Energy - Mayo	<u>1A & 1B</u>	<u>none</u>
Duke Energy - Roxboro	<u>1</u>	<u>none</u>
Duke Energy - Roxboro	<u>2</u>	<u>FDF, IBD and ISB</u>
Duke Energy - Roxboro	<u>3A & 3B</u>	<u>ISB</u>
Duke Energy - Roxboro	<u>4A & 4B</u>	<u>ISB</u>
Edgecombe Genco - Battleboro	<u>1</u>	<u>none</u>
Edgecombe Genco - Battleboro	<u>2</u>	<u>none</u>
Westmoreland Partners - Roanoke Valley Energy Facility I	<u>1</u>	<u>none</u>
Westmoreland Partners - Roanoke Valley Energy Facility II	<u>1</u>	<u>none</u>

Affected Units -Natural Gas Combined Cycle EGUs		
Utility Company - Facility	Unit ID	Best System of Emission Reduction Measure(s)
Dominion Resources - Rosemary	<u>GEN1</u>	<u>NGCC operation firing natural gas</u>
Dominion Resources - Rosemary	<u>GEN2</u>	
Dominion Resources - Rosemary	<u>GEN3</u>	
Duke Energy - Buck	<u>CT11</u>	
Duke Energy - Buck	<u>CT12</u>	
Duke Energy - Buck	<u>ST10</u>	
Duke Energy - Dan River	<u>CT8</u>	
Duke Energy - Dan River	<u>CT9</u>	
Duke Energy - Dan River	<u>ST7</u>	
Duke Energy - H F Lee	<u>1A</u>	
Duke Energy - H F Lee	<u>1B</u>	
Duke Energy - H F Lee	<u>1C</u>	
Duke Energy - H F Lee	<u>ST1</u>	
Duke Energy - L V Sutton	<u>1A</u>	
Duke Energy - L V Sutton	<u>1B</u>	
Duke Energy - L V Sutton	<u>ST1</u>	

PROPOSED RULES

Duke Energy - Sherwood H Smith Jr	<u>7</u>
Duke Energy - Sherwood H Smith Jr	<u>8</u>
Duke Energy - Sherwood H Smith Jr	<u>9</u>
Duke Energy - Sherwood H Smith Jr	<u>10</u>
Duke Energy - Sherwood H Smith Jr	<u>ST4</u>
Duke Energy - Sherwood H Smith Jr	<u>ST5</u>
Public Works Commission – Butler Warner	<u>1</u>
Public Works Commission – Butler Warner	<u>2</u>
Public Works Commission – Butler Warner	<u>3</u>
Public Works Commission – Butler Warner	<u>6</u>
Public Works Commission – Butler Warner	<u>7</u>
Public Works Commission – Butler Warner	<u>8</u>
Public Works Commission – Butler Warner	<u>9</u>
Southern Company - Rowan	<u>4</u>
Southern Company - Rowan	<u>5</u>
Southern Company - Rowan	<u>STG</u>

(b) The following work practice standards shall be applied for each BSER measure identified for the affected EGUs:

(1) Air heater leakage reduction (ALR), Forced draft fan variable frequency drive (FDF), Induced draft fan and/or booster fan variable frequency drive (IBD), and Condenser rebundle, retube, rebuild (CRR).

(A) Installation shall be performed according to each manufacturer's installation procedures. The owner or operator shall follow each manufacturer's performance acceptance test procedures, assure the performance test acceptance criteria are met, and document the acceptance test results.

(B) Ongoing maintenance shall be performed according to each manufacturer's recommended maintenance procedures at the prescribed frequency levels.

(2) Intelligent soot blowing (ISB) and Combustion Optimization and Neural Networks (CO).

(A) Installation shall be performed in accordance with each manufacturer's specification and site-specific design. The owner or operator shall verify performance of each BSER measure in accordance with each manufacturer's performance acceptance test procedures, assure the performance acceptance test criteria are met, and document the acceptance test results.

(B) Plant personnel responsible for the operation of each BSER measure shall follow procedures to best utilize the measure per each manufacturer's operating guidelines and to best achieve the goal of reducing heat rate.

(C) Ongoing maintenance shall be performed according to each manufacturer's recommended maintenance procedures at the prescribed frequency levels.

(3) Controllable loss reduction (CLR).

(A) The owner or operator shall develop an EGU-specific CLR plan and submit an electronic copy of the plan to the Director of the Division of Air Quality within one year of the initial effective date of this Rule. This plan shall include the devices and methods for measuring performance parameters; requirements for the frequency of data collection; method(s) for collecting and reporting the data; procedures for identifying a loss in EGU efficiency including any calculations; actions identified to improve EGU heat rate including equipment optimization or maintenance or changes to EGU operating methods; and a schedule for implementation of the actions to be taken.

(B) The owner or operator shall implement actions identified by the CLR plan within the timeframe specified by the plan. The owner or operator shall maintain all sensors, instrumentation, information technology, or other equipment used by the CLR plan in accordance with the equipment manufacturers' maintenance procedures and schedule.

(4) Natural gas combined cycle operation (NGCC).

(A) The owner or operator shall operate the NGCC unit, including the combustion turbine and the associated heat recovery steam generator, using

natural gas as fuel during normal operation in accordance with the manufacturers' recommended procedures.

- (B) Ongoing maintenance shall be performed according to the manufacturer's recommended maintenance procedures at the prescribed frequency levels.

(c) Alternative BSER. The owner or operator of an affected unit may apply one or more alternative measures that constitute the best system of emissions reduction for carbon dioxide emissions from coal-fired EGUs on a unit-specific basis upon approval by the Director by demonstrating to the Director that application of the alternative measures on a unit-specific basis would achieve an equivalent or greater heat rate improvement than application of the measures identified in Paragraph (a) of this Rule.

(d) Any alternative BSER demonstration shall be submitted no later than six months after the initial effective date of this Rule and shall include:

- (1) the name and address of the company and the name and telephone number of a company officer over whose signature the demonstration is submitted;
- (2) a description of all operations conducted at the location to which the demonstration applies and the purpose that the equipment serves within the operations;
- (3) the type of EGU;
- (4) the remaining useful life of the EGU;
- (5) the unit's calendar year 2015 baseline data including net heat rate, net generation, annual capacity factor, and carbon dioxide emissions;
- (6) the unit's projected 2019 capacity factor based on heat input and net generation;
- (7) reference to the specific operational and equipment controls or measures in the Tables in Paragraph (a) of this Rule for which alternative operational or equipment controls or measures are proposed;
- (8) a description of the proposed alternative operational or equipment controls or measures, the magnitude of carbon dioxide emission reduction that will be achieved, and the quantity of carbon dioxide that will be emitted if the alternative operational or equipment controls or measures are instituted;
- (9) whether the proposed measure is adequately demonstrated pursuant to Clean Air Act Section 111(a)(1) to reduce heat rate;
- (10) the feasibility of applying a specific heat rate improvement measure on a given unit;
- (11) the degree of heat rate reduction potential for a specific feasible heat rate improvement measure;
- (12) a description of any site-specific limitations;
- (13) the associated costs of the proposed alternative equipment or measure including capital, fixed

and variable operational and maintenance (O&M) costs and fuel savings;

- (14) the cost per ton of carbon dioxide emissions reduction;
- (15) any non-air quality health and environmental impact and energy requirements;
- (16) a schedule for the installation or institution of the alternative operational or equipment controls or measures to achieve compliance by the date specified in Paragraph (g) of this Rule including increments of progress specified in 40 CFR 60.21(h); and
- (17) certification in the form of a written statement signed by the responsible official as defined in 15A NCAC 02Q .0502 that emissions of all other air contaminants from the subject source are in compliance with all applicable local, state and federal laws and regulations.
- (18) the company's basis of the alternative control capability to achieve equivalent or greater carbon dioxide emission reductions than the measure included in Paragraph (a) of this Rule.

The demonstration may include a copy of the permit application and need not duplicate information in the permit application.

(e) The Director shall approve a demonstration for alternative control if:

- (1) The demonstration is submitted in accordance with Paragraph (d) of this Rule;
- (2) All other air contaminant emissions from the facility are in compliance with, or under a schedule for compliance with, all applicable local, state, and federal regulations;
- (3) Based on the Division's technical analysis of the unit-specific information provided under Paragraph (d) of this Rule, the Director determines that application of the alternative measures on a unit-specific basis would achieve an equivalent or greater heat rate improvement than application of the measures identified in Paragraph (a) of this Rule; and
- (4) The demonstration contains a schedule, including increments of progress specified in 40 CFR 60.21(h), for the installation or institution of the alternative operational or equipment controls or measures to achieve the heat rate improvement by the compliance date specified in Paragraph (g) of this Rule.

(f) When measures different from those specified in the Tables in Paragraph (a) of this Rule are approved by the Director, the permit shall contain a condition stating such controls and associated monitoring, recordkeeping, and reporting requirements to verify implementation of the measures.

(g) Compliance schedule. Owners and operators of the affected facilities in Paragraph (b) of this Rule shall implement the identified BSER measures or alternative BSER approved pursuant to Paragraph (e) of this Rule by September 1, 2019 that were not in place prior to the following date for the corresponding affected utility company(s):

- (1) July 31, 2015 for all affected EGUs for Duke Energy.
- (2) August 31, 2015 for all affected EGUs for both Edgemore Genco - Battleboro and Westmoreland Partners - Roanoke Valley Energy Facility.

(h) All alternative BSER demonstrations, and any modifications or changes to those determinations, approved or determined by the Division pursuant to Paragraphs (c) through (e) of this Rule shall be submitted by the Division to the U.S. Environmental Protection Agency (EPA) as a revision to the state plan. No alternative BSER demonstration, nor any modification or change to a demonstration, approved or determined by the Division pursuant to Paragraphs (c) through (e) of this Rule shall revise the state plan or be used as a state plan credit, until it is approved by the U.S. EPA as a state plan revision.

Authority G.S. 143-215.3(a); 143-215.65; 143-215.66; 143-215.107(a)(5),(10).

15A NCAC 02D .2704 PERMITTING

(a) The owner or operator of any source covered under this Section shall submit permit applications as required containing heat rate improvement evaluations for each affected unit to comply with the requirements of this Section following the procedures and requirements in 15A NCAC 02Q .0500 containing Title V permitting procedures for each affected source. The owner or operator may determine that an alternative BSER measure would achieve an equivalent or greater heat rate reduction than achieved under the requirements of the BSER measures identified in Rule .2703(a) of this Section. In such a situation the owner or operator shall follow the procedures contained in Rule .2703(c) and (d) of this Section.

(b) The Director shall review applications submitted under Paragraph (a) of this Rule and issue permits for compliance with this Section following the procedures and requirements in 15A NCAC 02Q .0500 (Title V permitting procedures) for each affected source. In the event that the owner or operator submits a permit application with an alternative BSER following the procedures contained in Rule .2703(c) and (d) of this Section, the Director shall review applications submitted under Paragraph (a) of this Rule and issue permits for compliance with this Section following the procedures and requirements contained in Rule .2703(e) of this Section.

Authority G.S. 143-215.3(a); 143-215.107(a)(5),(10); 143-215.108.

15A NCAC 02D .2705 MONITORING, RECORDKEEPING AND REPORTING

(a) For measures implemented under Rule .2703(a) of this Section, the following monitoring, recordkeeping and reporting activities shall be performed for each air heater leakage reduction (ALR), forced draft fan variable frequency drive (FVD), induced draft fan or booster fan variable frequency drive (IBD) and condenser rebundle, retube, rebuild (CRR):

- (1) The owner or operator shall record installation activities completed, including the corresponding dates of completion, maintain

the installation records on site, and the records shall be available for review by the Division of Air Quality. Installation records refers to work orders, invoices, permits, photographs, engineering drawings or specifications and other documentation routinely developed to install or modify equipment or otherwise make plant improvements.

- (2) The owner or operator shall record maintenance activities completed, including the corresponding dates, maintain the records on site for ten years, and the records shall be available for review by the Division of Air Quality.

(b) For measures implemented under Rule .2703(a) of this Section, the following monitoring, recordkeeping and reporting activities shall be performed for each intelligent soot blowing (ISB) and combustion optimization with neural network (CO):

- (1) The owner or operator shall record installation activities completed, including the corresponding dates of completion, maintain the installation records on site for 10 years, and the records shall be available for review by the Division of Air Quality. Installation records refers to work orders, invoices, permits, photographs, engineering drawings or specifications and other documentation routinely developed to install or modify equipment or otherwise make plant improvements.

- (2) The owner or operator shall monitor and record all operating parameters associated with each BSER measure required in Rule .2703(a) of this Section and their respective control systems in accordance with the manufacturer's recommended operating procedures. The owner or operator shall record forced or operational outages of the BSER measures, the corresponding time period and the reason(s) why. The owner or operator shall maintain the operating records on site for ten years and the operating records shall be available for review by the Division of Air Quality.

- (3) The owner or operator shall record maintenance activities completed, including the corresponding dates, maintain the records on site for ten years, and the records shall be available for review by the Division of Air Quality.

(c) The following monitoring, recordkeeping and reporting activities shall be performed for controllable loss reduction (CLR):

- (1) The owner or operator shall submit an electronic copy of the CLR plan to the Director of the Division of Air Quality within one year of the initial effective date of this Rule.
- (2) The owner or operator shall monitor and record all parameters defined in the CLR plan in accordance to the procedures defined in the

plan. The owner operator shall maintain electronic records of the data collected and any calculations associated with the CLR plan and the records shall be available for review by the Division of Air Quality.

(3) The owner or operator shall record instances where the CLR plan identified a loss in EGU heat rate and any actions taken or the rationale and related information as to why action was not taken.

(d) The following monitoring, recordkeeping and reporting activities shall be performed for natural gas combined cycle (NGCC):

(1) The owner or operator shall monitor and record all operating parameters associated with NGCC and its respective control systems in accordance with the manufacturer's recommended operating procedures. The owner or operator shall maintain the operating records on site for ten years and the operating records shall be available for review by the Division of Air Quality.

(2) The owner or operator shall record maintenance activities completed, including the corresponding dates, maintain the records on site for ten years, and the records shall be available for review by the Division of Air Quality.

(e) In the event that the owner or operator submits a permit application with an alternative BSER following the procedures contained in Rule 02D .2703(c) and (d) of this Section, then the owner or operator shall submit a permit application that includes monitoring, recordkeeping and reporting activities for the installation, operation and maintenance of the alternative BSER measure in accordance with the manufacturer's recommended procedures.

(f) The owner or operator shall submit an annual compliance report to the Director of the Division of Air Quality each year starting one year from the initial effective date of this Rule. The annual compliance report shall include:

(1) The following parameters on an annual average basis:

(A) Carbon dioxide emissions in short tons;

(B) Net electrical generation in MWh-net;

(C) Heat input in MMBtu;

(D) Gross electrical generation in MWh-gross;

(E) Calculated heat rate in Btu/kWh-net; and

(F) Calculated carbon dioxide emission rate in lb/MWh-net.

(2) Activities resulting from compliance with this Rule and the corresponding date(s) including:

(A) Installation of equipment related to the BSER measures;

(B) Forced or operational outages of equipment lasting longer than ten days related to the BSER measures, the

corresponding time period and the reason(s) why;

(C) Instances where operational procedures associated with the BSER measures were not observed for an period lasting longer than ten days and the reason(s) why; and

(D) Instances where a loss in EGU heat rate was identified in the CLR plan and the resulting actions taken or, the rationale and related information as to why no action was taken.

Authority G.S. 143-215.3(a); 143-215.65; 143-215.66; 143-215.107(a)(5),(10).

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Wildlife Resources Commission intends to adopt the rules cited as 15A NCAC 10B .0224 and .0225 and amend the rules cited as 15A NCAC 10B .0106, .0107, .0118, .0201 - .0203; 10C .0205, .0305, .0306, .0314, .0319, .0401, .0402; 10D .0102, .0103; 10I .0103 - .0105.

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

Proposed Effective Date:

March 1, 2016 - 15A NCAC 10B .0106, .0118, .0201
August 1, 2016 - 15A NCAC 10B .0107, .0202, .0203, .0224, .0225; 10C .0205, .0305, .0306, .0314, .0319, .0401, .0402; 10D .0102, .0103; 10I .0103 - .0105

Public Hearing:

Date: January 5, 2016

Time: 7:00 p.m.

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

Date: January 6, 2016

Time: 7:00 p.m.

Location: Southern Alamance High School, 631 Southern High School Rd., Graham, NC 27253

Date: January 7, 2016

Time: 7:00 p.m.

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

Date: January 12, 2016

Time: 7:00 p.m.

Location: Haywood Community College, 185 Freedlander Dr., Clyde, NC 28721

Date: January 13, 2016

Time: 7:00 p.m.

Location: Western Piedmont Community College, 1001 Burkemont Ave., Morganton, NC 28655

Date: January 14, 2016
Time: 7:00 p.m.
Location: Elkin High School, 334 Elk Spur St., Elkin, NC 28621

Date: January 19, 2016
Time: 7:00 p.m.
Location: Swain Auditorium, 200 E. Church St., Edenton, NC 27932

Date: January 20, 2016
Time: 7:00 p.m.
Location: Craven Community College, 302 Broad St., New Bern, NC 28560

Date: January 21, 2016
Time: 7:00 p.m.
Location: Nash Community College, 522 N Old Carriage Rd., Rocky Mount, NC 27804

Reason for Proposed Action: Every year the NC Wildlife Resources Commission reviews the need to adjust seasons, bag limits, and the management of land in order to achieve conservation management goals, comply with statutory changes, and respond with constituent requests.

Comments may be submitted to: Kate Pipkin, 1701 Mail Service Center, Raleigh, NC 27699-1701

Comment period ends: January 25, 2016

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
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0100 - GENERAL REGULATIONS

15A NCAC 10B .0106 WILDLIFE TAKEN FOR DEPREDATIONS

(a) Depredation permits allow the taking 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 shall 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 .0105 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 shall be issued to a landholder or an authorized representative of a unit of local government for depredations on public property; and 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. WDCAs may not issue depredation permits for coyotes in the counties of Beaufort, Dare, Hyde, Tyrrell, Washington; big game animals; bats; or species listed as endangered, threatened, or special concern under 15A NCAC 10I .0103, .0104 and .0105 of this Chapter. WDCAs shall report to the Wildlife Resources Commission the number and disposition of animals taken, by county, annually. Records shall 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 shall 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~~ months or equivalent in continuing education credits.

(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 shall 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 shall 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 shall 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 shall have the depredation permit in his or her possession. Except as provided by Subparagraphs of (d)(2) through (5) of this Rule, all wildlife killed under a depredation permit shall 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 shall 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 shall 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 shall be euthanized while still in the trap in accordance with G.S. 113-291.12. For all other animals taken alive, the animal shall be euthanized or 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 shall have the depredation permit in his or her possession.

(f) Reporting Requirements. Any landholder who kills an alligator, a coyote in the counties of Beaufort, Dare, Hyde, Tyrrell, or Washington, 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. Any landowner who kills a coyote in the counties of Beaufort, Dare, Hyde, Tyrrell and Washington shall report such kill as directed on the form provided with the depredation permit. The killing and method of disposition of every alligator and bear, or coyote in the counties of Beaufort, Dare, Hyde, Tyrrell or Washington taken without a permit shall

be reported to the Wildlife Resources Commission within 24 hours following the time of such killing.

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

15A NCAC 10B .0107 BLACK BEAR

It is unlawful to take or possess a female bear with a cub or cubs at its side, or to take or possess a cub bear. For the purpose of this Rule, a cub bear is defined as any bear weighing less than 75 ~~50~~ pounds.

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

Note to Rule .0118: The text shown in italics, Paragraph (f), was a temporary amendment effective February 27, 2015. The temporary amendment will expire on December 11, 2015.

15A NCAC 10B .0118 SALE OF WILDLIFE

(a) The carcasses or pelts of bobcats, opossums, and raccoon that have been lawfully taken by any hunting method, upon compliance with applicable fur tagging requirements set forth in 15A NCAC 10B .0400, may be sold to licensed fur dealers. The sale of carcasses or pelts of bobcats, opossums, and raccoon killed accidentally or taken by hunting for control of depredations is permitted under the conditions set forth in 15A NCAC 10B .0106(e)(4) and 15A NCAC 10B .0127.

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

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

(d) The pelt or feathers of deer, elk, fox, pheasant, quail, rabbit, or squirrel (fox and gray) may be bought or sold for the purpose of making fishing flies provided that the source of these animals can be documented as being legally obtained from out of state sources or from lawfully operated commercial breeding facilities. The buying and selling of migratory game birds shall be in accordance with 50 C.F.R. 20.91. 50 C.F.R. 20.91 is hereby incorporated by reference, shall include any later amendments and editions of the incorporated material, and may be accessed free of cost at <http://www.gpo.gov/fdsys/pkg/CFR-2014-title50-vol9/pdf/CFR-2014-title50-vol9-sec20-91.pdf>.

(e) The Executive Director or his designee may issue Trophy Wildlife Sale permits as authorized in G.S. 113-274 for the sale of lawfully taken and possessed individual dead wildlife specimens or their parts that are mounted, stuffed, or otherwise permanently preserved that may be sold under G.S. 113-291.3. A copy of the permit shall be retained with the specimen.

(f) Antlers, antler velvet, and hides from cervids held under a captivity license as authorized in 15A NCAC 10H .0301 may be sold.

(g) Raw hides from any lawfully-taken or possessed white-tailed deer may be sold.

Authority G.S. 113-134; 113-273; 113-274; 113-276.2; 113-291.3; 113-337; 50 C.F.R. 20.91.

SECTION .0200 – HUNTING

15A NCAC 10B .0201 PROHIBITED TAKING AND MANNER OF TAKE

(a) It is unlawful for any person to take, or have in possession, any wild animal or wild bird listed in this Section except during the open seasons and in accordance with the limits herein prescribed, or as prescribed by 15A NCAC 10B .0300 pertaining to trapping or 15A NCAC 10D applicable to game lands managed by the Wildlife Resources Commission, unless otherwise permitted by law. Lawful seasons and bag limits for each species apply beginning with the first day of the listed season and continue through the last day of the listed season, with all dates being included. When any hunting season ends on a January 1 that falls on a Sunday, that season is extended to Monday, January 2.

(b) On Sundays, hunting on private lands is allowed under with the following conditions: restrictions:

- (1) ~~Only archery~~ Archery equipment as described in 15A NCAC 10B .0116, falconry, and dogs where and when allowed the other days of the week are lawful methods of take, except as prohibited in G.S. 103-2: take; and
- (2) Firearms are lawful methods of take when used as described in G.S. 103-2: and
- ~~(3)~~ (3) Migratory game birds may not be taken.

(c) On Sundays, hunting on public lands is allowed with the following restrictions:

- (1) Only falconry and dogs used in conjunction with falconry are lawful methods of take; and
- (2) Migratory game birds may not be taken.

These restrictions do not apply to military installations under the exclusive jurisdiction of the federal government.

(d) Those animals not classified as game animals in G.S. 113-129(7c), and for which a season is set under this Section, may be taken during the hours and methods authorized for taking game animals.

Note: Where local laws govern hunting, or are in conflict with this Subchapter, the local law shall prevail.

Authority G.S. 103-2; 113-134; 113-291.1(a); 113-291.2; 113-291.3.

15A NCAC 10B .0202 BEAR

(a) Open Seasons for hunting bear shall be from the:

- (1) Monday on or nearest October 15 to the Saturday before Thanksgiving and the third Monday after Thanksgiving to January 1 in and west of Surry, Wilkes, Caldwell, Burke, and Cleveland counties.

- (2) Second Monday in November to January 1 in all of Bladen, Carteret, Cumberland, Duplin, New Hanover, Onslow, Pamlico, Pender, and Sampson counties.
- (3) First Monday in December to the third Saturday thereafter in Brunswick, Columbus, and Robeson counties.
- (4) Second Monday in November to the following Saturday and the third Monday after Thanksgiving to the fifth Saturday after Thanksgiving in all of Beaufort, Camden, Chowan, Craven, Dare, Edgecombe, Greene, Halifax, Hyde, Jones, Lenoir, Martin, Nash, Northampton, Pasquotank, Pitt, Tyrrell, Washington, Wayne, and Wilson counties.
- (5) Saturday preceding the second Monday in November to the following Saturday and the third Monday after Thanksgiving to the fifth Saturday after Thanksgiving in Bertie, Currituck, Gates, Hertford, and Perquimans counties.
- (6) Concurrent with the open season for all lawful weapons for hunting deer as specified in 15A NCAC 10B .0203(a)(1) in Alamance, Alexander, Anson, Cabarrus, Caswell, Catawba, Chatham, Davie, Davidson, Durham, Franklin, Forsyth, Gaston, Granville, Guilford, Harnett, Hoke, Iredell, Johnston, Lee, Lincoln, Mecklenburg, Montgomery, Moore, Orange, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Stokes, Union, Vance, Warren, Wake, and Yadkin counties.

(b) Restrictions

- (1) For purposes of this Paragraph, "bait" means any natural, unprocessed food product that is a grain, fruit, nut, vegetable, or other material harvested from a plant crop that is not modified from its raw components.
- (2) Bears shall not be taken with the use or aid of:
 - (A) any processed food product as defined in G.S. 113-294(r), any animal, animal part or product, salt, salt lick, honey, sugar, sugar-based material, syrups, candy, pastry, gum, candy block, oils, spices, peanut butter, or grease;
 - (B) any extracts of substances identified in Part (A) of this Subparagraph;
 - (C) any substances modified by substances identified in Part (A) of this Subparagraph, including any extracts of those substances; or
 - (D) any bear bait attractant, including sprays, aerosols, scent balls, and scent powders.
- (3) Bears may be taken with the aid of bait from the first open Monday through the following Saturday only in the counties in Subparagraphs (a)(1) through (a)(5) of this Rule. In counties with a season split into two or more segments,

this Subparagraph applies only to the first segment.

- (4) Bears shall not be taken while in the act of consuming bait.
- (5) Bears may be taken with the aid of bait during the entire open season in the counties identified in Subparagraph (a)(6) of this Rule.
- (6) Hunters shall not take bears using dogs in the following counties: Alamance south of Interstate 85, Anson west of N.C. Hwy 742, Cabarrus, Chatham, Davie, Davidson, Franklin, Forsyth, Gaston, Guilford, Lee, Lincoln, Mecklenburg, Montgomery, Orange south of Interstate 85, Randolph, Rockingham, Rowan, Stanly, Union, and Wake south of N.C. Hwy 98. In all other counties and parts of counties, hunters may take bears using dogs and may release dogs in the vicinity of bait.

(c) No Open Season. There is no open season in those parts of counties included in the following posted bear sanctuaries:

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

(d) The daily bag limit is one, the possession limit is one, and the season limit is one.

(e) Kill Reports. The carcass of each bear shall be reported as provided by 15A NCAC 10B .0113.

Authority G.S. 113-134; 113-291.1; 113-291.2; 113-291.7; 113-305.

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, 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 that part of Hyde county known as Lake Mattamuskeet National Wildlife Refuge; in those parts of Dare and Hyde counties known as Alligator River 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 January 1 in all of Cleveland, Polk, 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 Parts (A), (B), (C), (D), (E), (F), and (G) of this Subparagraph: (Refer to 15A NCAC 10D .0103 for either-sex deer seasons on Game Lands). Deer of either sex may be taken during the open season identified in Part (H) of this Subparagraph.

(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; 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. A youth is defined as a person under 16 years of age.

(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

**Refer to 15A NCAC 10D .0103 for either-sex deer 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 seven 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.

(H) The fourth Saturday in September, subject to the following restriction:

only persons under the age of 16 years may hunt.

(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) Saturday on or nearest September 10 to the Sunday prior to the opening of the blackpowder firearms and bow and arrow season identified in Part (c)(1)(C) of this Rule; and the Sunday immediately following the closing of blackpowder firearms and bow and arrow season identified in Part (c)(1)(C) of this Rule to the Sunday 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, Polk, 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 (Blackpowder 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 blackpowder 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, Polk, 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 blackpowder 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 only in all other counties.

(B) Dogs shall not be used for hunting deer during the blackpowder 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).

- (3) As used in this Paragraph, blackpowder firearms means "Any firearm - including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system - manufactured in or before 1898; any replica of this type of firearm if such replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; and any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading handgun that is designed to use blackpowder, blackpowder substitute, or any other propellant loaded through the muzzle and that cannot use fixed ammunition."

(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 at 1722 Mail Service Center, Raleigh, N.C. 27699-1722. 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.

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

15A NCAC 10B .0224 AMERICAN ALLIGATOR

- (a) The season for taking American alligators by hunting is September 1 to October 1.
- (b) Hunting is by permit only.
- (c) The bag limit is one per permit.
- (d) American alligators may be taken by: catch pole, harpoon, gig, wooden peg, bang stick, archery equipment and artificial lights. Firearms shall only be used to dispatch American alligators that are restrained.

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

15A NCAC 10B .0225 ELK

- (a) The season for taking elk by hunting is September 1 to October 1.
- (b) Hunting is by permit only.
- (c) The bag limit is one per permit.
- (d) Elk may be taken by any legal weapon.

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

SUBCHAPTER 10C - INLAND FISHING REGULATIONS

SECTION .0200 - GENERAL REGULATIONS

15A NCAC 10C .0205 PUBLIC MOUNTAIN TROUT WATERS

- (a) For purposes of this Rule, the following definitions apply:
 - (1) "Natural bait" means 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.
 - (2) "Artificial lure" means a fishing lure that neither contains nor has been treated by any

substance that attracts fish by the sense of taste or smell.

- (3) "Youth anglers" are individuals under 16 years of age.
- (b) For purposes of this Rule, 15A NCAC 10C .0316, and 15A NCAC 10D .0104, the following classifications apply:
 - (1) "Public Mountain Trout Waters" are all waters included in this Rule and so designated in 15A NCAC 10D .0104.
 - (2) "Catch and Release/Artificial Flies Only Trout Waters" are Public Mountain Trout Waters where only artificial flies having one single hook may be used. No trout may be possessed or harvested while fishing these streams. Waters designated as such include tributaries unless otherwise noted.
 - (3) "Catch and Release/Artificial Lures Only Trout Waters" are Public Mountain Trout Waters where only artificial lures having one single hook may be used. No trout may be possessed or harvested while fishing these streams. Waters designated as such include tributaries unless otherwise noted.
 - (4) "Delayed Harvest Trout Waters" are Public Mountain Trout Waters where between October 1 and one-half hour after sunset on the Friday before the first Saturday of the following June it is unlawful to possess natural bait, use more than a single hook on an artificial lure, or harvest or possess trout while fishing. From 6:00 a.m. on the first Saturday in June until noon that same day only youth anglers may fish and these waters have no bait or lure restrictions. From noon on the first Saturday in June until October 1 anglers of all ages may fish and these waters have no bait or lure restrictions. Waters designated as such do not include tributaries unless otherwise noted.
 - (5) "Hatchery Supported Trout Waters" are Public Mountain Trout Waters that have no bait or lure restrictions. Waters designated as such do not include tributaries unless otherwise noted.
 - (6) "Special Regulation Trout Waters" are Public Mountain Trout Waters where watercourse-specific regulations apply. Waters designated as such do not include tributaries unless otherwise noted.
 - (7) "Wild Trout Waters" are Public Mountain Trout Waters which are identified as such in this Rule or 15A NCAC 10D .0104. Only artificial lures having only one single hook may be used. No person shall possess natural bait while fishing these waters. Waters designated as such do not include tributaries unless otherwise noted.
 - (8) "Wild Trout Waters/Natural Bait" are Public Mountain Trout Waters where all artificial lures and natural baits, except live fish, may be used provided they are fished using only one single

hook. Waters designated as such include tributaries unless otherwise noted.

- (9) "Undesignated Waters" are all other waters in the state. These waters have no bait or lure restrictions. Trout may not be possessed while fishing these waters from March 1 until 7:00 a.m. on the first Saturday in April.
- (c) Seasons, creel and size limits. Seasons, creel and size limits for trout in all waters are listed in Rule .0316 of this Subchapter.
- (d) Classifications. This Paragraph designates waters in each county that have a specific classification. Waters on game lands are so designated in 15A NCAC 10D .0104, unless otherwise indicated in this Paragraph. All other waters are classified as Undesignated Waters.
 - (1) Alleghany
 - (A) Delayed Harvest Trout Waters are as follows:
Little River (S.R. 1133 bridge to 275 yards downstream of the intersection of S.R. 1128 and S.R. 1129 [marked by a sign on each bank])
 - (B) Hatchery Supported Trout Waters are as follows:
Big Pine Creek
Bledsoe Creek
Brush Creek (N.C. 21 bridge to confluence with Little River, except where posted against trespassing)
Cranberry Creek
(Big) Glade Creek
Little River (275 yards downstream from the intersection of S.R. 1128 and S.R. 1129 [marked by a sign on each bank] to McCann Dam)
Meadow Fork
Pine Swamp Creek
Piney Fork
Prathers Creek
 - (C) Wild Trout Waters are as follows:
Big Sandy Creek (portion on Stone Mountain State Park)
Stone Mountain Creek (portion on Stone Mountain State Park)
 - (2) Ashe County
 - (A) Catch and Release/Artificial Lures Only Trout Waters are as follows:
Big Horse Creek (Virginia state line to Mud Creek at S.R. 1363, excluding tributaries)
 - (B) Delayed Harvest Trout Waters are as follows:
Big Horse Creek (S.R. 1324 bridge to North Fork New River)
Helton Creek (Virginia state line to New River)
South Fork New River (upstream end of Todd Island to the SR 1351 bridge)

- (C) Trout Lake
 Hatchery Supported Trout Waters are as follows:
 Beaver Creek (N.C. 221 to South Fork New River)
 Big Horse Creek (Mud Creek at S.R. 1363 to S.R. 1324 bridge)
 Big Laurel Creek (S.R. 1315 bridge to confluence with North Fork New River)
 Buffalo Creek (S.R. 1133 bridge to N.C. 194-88 bridge)
 Cranberry Creek (Alleghany Co. line to South Fork New River)
 Nathans Creek
 North Fork New River (Watauga Co. line to Sharp Dam)
 Old Fields Creek (N.C. 221 to South Fork New River)
 Peak Creek (headwaters to Trout Lake, except Blue Ridge Parkway waters)
 Roan Creek
 Three Top Creek (~~except game land portion~~)
- (3) Avery County
 (A) Catch and Release/Artificial Flies Only Trout Waters are as follows:
 Elk River (portion on Lees-McRae College property, excluding the millpond)
 Lost Cove Creek (game land portion, excluding Gragg Prong and Rockhouse Creek)
 (B) Catch and Release/Artificial Lures Only Trout Waters are as follows:
 Wilson Creek (game land portion)
 (C) Hatchery Supported Trout Waters are as follows:
 Boyde Coffey Lake
 Elk River (S.R. 1305 crossing immediately upstream of Big Falls to the Tennessee state line)
 Linville River (Land Harbor line [below dam] to the Blue Ridge Parkway boundary line, except where posted against trespassing)
 Milltimber Creek
 North Toe River — upper (Watauga St. to Roby Shoemaker Wetlands and Family Recreational Park, except where posted against trespassing)
 North Toe River — lower (S.R. 1164 to Mitchell Co. line, except where posted against trespassing)
 Squirrel Creek
 Wildcat Lake
- (D) Wild Trout Waters are as follows:
 Birchfield Creek
 Cow Camp Creek
 Cranberry Creek (headwaters to U.S. 19E/N.C. 194 bridge)
 Gragg Prong
 Horse Creek
 Kentucky Creek
 North Harper Creek
 Plumtree Creek
 Roaring Creek
 Rockhouse Creek
 Shawneehaw Creek (portion adjacent to Banner Elk Greenway)
 South Harper Creek
 Webb Prong
- (4) Buncombe County
 (A) Catch and Release/Artificial Lures Only Trout Waters are as follows:
 Carter Creek (game land portion)
 (B) Hatchery Supported Trout Waters are as follows:
 Bent Creek (headwaters to N.C. Arboretum boundary line)
 Cane Creek (headwaters to S.R. 3138 bridge)
 Corner Rock Creek (Little Andy Creek to confluence with Walker Branch)
 Dillingham Creek (Corner Rock Creek to Ivy Creek)
 Ivy Creek (Ivy River) (Dillingham Creek to U.S. 19-23 bridge)
 Lake Powhatan
 Reems Creek (Sugar Camp Fork to U.S. 19-23 bridge, except where posted against trespassing)
 Rich Branch (downstream from the confluence with Rocky Branch)
 Stony Creek
 Swannanoa (S.R. 2702 bridge near Ridgecrest to Wood Avenue bridge [intersection of N.C. 81 and U.S. 74A in Asheville], except where posted against trespassing)
- (5) Burke County
 (A) Catch and Release/Artificial Lures Only Trout Waters are as follows:
 Henry Fork (portion on South Mountains State Park)
 (B) Delayed Harvest Trout Waters are as follows:
 Jacob Fork (Shinny Creek to lower South Mountains State Park boundary)
 (C) Hatchery Supported Trout Waters are as follows:

- Carroll Creek (game land portion above S.R. 1405)
 Henry Fork (lower South Mountain State Park line downstream to S.R. 1919 at Ivy Creek)
 Linville River portion within Linville Gorge Wilderness area and portion below Lake James powerhouse from upstream bridge on S.R. 1223 to Muddy Creek)
- (D) Special Regulation Trout Waters are as follows:
 Catawba River (Muddy Creek to City of Morganton water intake dam)
- (E) Wild Trout Waters are as follows:
 All waters located on South Mountains State Park, except those waters identified in parts A and B of this Subparagraph
- (6) Caldwell County
- (A) Delayed Harvest Trout Waters are as follows:
 Wilson Creek (game land portion below Lost Cove Creek to Philips Branch)
- (B) Hatchery Supported Trout Waters are as follows:
 Boone Fork Pond
 Buffalo Creek (mouth of Joes Creek to McCloud Branch)
 Joes Creek (first falls upstream of S.R. 1574 to confluence with Buffalo Creek)
 Wilson Creek (Phillips Branch to Brown Mountain Beach Dam, except where posted against trespassing)
 Yadkin River (Happy Valley Ruritan Community Park to S.R. 1515)
- (C) Wild Trout Waters are as follows:
 Buffalo Creek (Watauga Co. line to Long Ridge Branch including game land tributaries)
 Joes Creek (Watauga Co. line to first falls upstream of the end of S.R. 1574)
 Rockhouse Creek
- (7) Cherokee County
- (A) Hatchery Supported Trout Waters are as follows:
 Davis Creek (confluence of Bald and Dockery creeks to Hanging Dog Creek)
 Hyatt Creek (Big Dam Branch to Valley River)
- Junaluska Creek (Ashturn Creek to Valley River)
 Shuler Creek (Joe Brown Hwy [S.R. 1325] bridge to Tennessee state line)
 Valley River (S.R. 1359 to U.S. 19 ~~business~~-Business bridge in Murphy)
- (B) Wild Trout Waters/Natural Bait are as follows:
 Bald Creek (game land portion)
 Dockery Creek (game land portion)
 North Shoal Creek (game land portion)
- (8) Clay County
- (A) Delayed Harvest Trout Waters are as follows:
 Fires Creek (USFS Rd. 340A to the foot bridge in the USFS Fires Creek Picnic Area)
- (B) Hatchery Supported Trout Waters are as follows:
 Buck Creek (game land portion downstream of U.S. 64 bridge)
 Fires Creek (foot bridge in the USFS Fires Creek Picnic Area to S.R. 1300)
 Tusquitee Creek (Compass Creek to lower S.R. 1300 bridge)
- (9) Graham County
- (A) Delayed Harvest Trout Waters are as follows:
 (Big) Snowbird Creek (USFS footbridge at the old railroad junction to USFS Rd. 2579)
- (B) Hatchery Supported Trout Waters are as follows:
 Calderwood Reservoir (Cheoah Dam to Tennessee state line)
 Cheoah Reservoir
 Panther Creek (confluence of Stand Creek and Rock Creek to Lake Fontana)
~~Santeelah~~-Santeetlah Creek (Johns Branch to Lake ~~Santeelah~~Santeetlah)
 (Big) Snowbird Creek (USFS Road 2579 to S.R. 1127 bridge)
 Stecoah Creek (upper game land boundary to Lake Fontana)
 Tulula Creek (S.R. 1201 to lower bridge on S.R. 1275)
 West Buffalo Creek
 Yellow Creek (Lake ~~Santeelah~~ Santeetlah hydropower pipeline to Cheoah River)
- (C) Wild Trout Waters are as follows:
 Little Buffalo Creek
 South Fork Squally Creek

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- (D) Squally Creek
Wild Trout Waters/Natural Bait are as follows:
Deep Creek
Franks Creek
Long Creek (game land portion)
- (10) Haywood County
(A) Delayed Harvest Trout Waters are as follows:
West Fork Pigeon River (Queen Creek to the first game land boundary upstream of Lake Logan)
(B) Hatchery Supported Trout Waters are as follows:
Cold Springs Creek (Fall Branch to Pigeon River)
Jonathan Creek (upstream S.R. 1302 bridge to Pigeon River, except where posted against trespassing)
Pigeon River (Stamey Cove Branch to upstream U.S. 19-23 bridge)
Richland Creek (Russ Avenue [U.S. 276] bridge to U.S. 19 bridge)
West Fork Pigeon River (Tom Creek to Queen Creek, including portions on game lands, except Middle Prong)
(C) Wild Trout Waters/Natural Bait are as follows:
Hemphill Creek
Hurricane Creek
- (11) Henderson County
(A) Delayed Harvest Trout Waters are as follows:
North Fork Mills River (game land portion below the Hendersonville watershed dam)
(B) Hatchery Supported Trout Waters are as follows:
(Rocky) Broad River (end of S.R. 1611 to Rutherford Co. line)
Cane Creek (railroad bridge upstream of S.R. 1551 bridge to U.S. 25 bridge)
Clear Creek (Laurel Fork to S.R. 1582)
Green River (Lake Summit powerhouse to game land boundary)
(Big) Hungry River
- (12) Jackson County
(A) Catch and Release/Artificial Lures Only Trout Waters are as follows:
Flat Creek
Tuckasegee River (upstream from the Clark property)
- (B) Delayed Harvest Trout Waters are as follows:
Tuckasegee River (downstream N.C. 107 bridge to the falls located 275 yards upstream of the U.S. 23-441 bridge [marked by a sign on each bank])
(C) Hatchery Supported Trout Waters are as follows:
Balsam Lake
Bear Creek Lake
Cedar Cliff Lake
Cullowhee Creek (Tilley Creek to Tuckasegee River)
Dark Ridge Creek (Jones Creek to Scott Creek)
Greens Creek (Greens Creek Baptist Church on S.R. ~~4730-1370~~ to Savannah Creek)
Savannah Creek (~~downstream of S.R. 1300 bridge~~ Shell Branch to Cagle Branch)
Scott Creek (Dark Ridge Creek to Tuckasegee River, except where posted against trespassing)
Tanasee Creek Lake
Tuckasegee River — upper (John Brown Branch to the downstream N.C. 107 bridge)
Tuckasegee River — lower (falls located 275 yards upstream of U.S. 23-441 bridge [marked by a sign on each bank] to S.R. 1534 bridge at Wilmot)
Wolf Creek Lake
(D) Wild Trout Waters are as follows:
Gage Creek
North Fork Scott Creek
Tanasee Creek
Whitewater River (downstream from Silver Run Creek to South Carolina state line)
Wolf Creek (except Balsam Lake and Wolf Creek Lake)
(E) Wild Trout Waters/Natural Bait are as follows:
Buff Creek
Chattooga River (S.R. 1100 bridge to the South Carolina state line)
Lower Fowler Creek (game land portion)
Scotsman Creek (game land portion)
- (13) Macon County
(A) Delayed Harvest Trout Waters are as follows:
Nantahala River (Whiteoak Creek to Nantahala hydropower discharge canal)

- (B) Hatchery Supported Trout Waters are as follows:
 Burningtown Creek (Left Prong to Little Tennessee River)
 Cartoogechaye Creek (downstream U.S. 64 bridge to Little Tennessee River)
 Cliffside Lake
 Cullasaja River (Sequoyah Dam to U.S. 64 bridge near junction of S.R. 1672)
 Nantahala River — upper (Dicks Creek to Whiteoak Creek)
 Nantahala River — lower (Nantahala hydropower discharge canal to Swain Co. line)
 Queens Creek Lake
- (C) Wild Trout Waters/Natural Bait are as follows:
 Chattooga River (S.R. 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)
- (14) Madison County
 (A) Delayed Harvest Trout Waters are as follows:
 Big Laurel Creek (N.C. 208 bridge to the U.S. 25-70 bridge)
 Shelton Laurel Creek (N.C. 208 bridge at Belva to the confluence with Big Laurel Creek)
 Spring Creek (N.C. 209 bridge at Hot Springs city limits to iron bridge at end of Andrews Ave.)
 (B) Hatchery Supported Trout Waters are as follows:
 Big Laurel Creek (Mars Hill watershed boundary to the S.R. 1318 [Big Laurel Rd.] bridge downstream of Bearpen Branch)
 Big Pine Creek (S.R. 1151 bridge to French Broad River)
 Little Ivy Creek (confluence of Middle Fork and Paint Fork at Beech Glen to confluence with Ivy Creek at Forks of Ivy)
 Max Patch Pond
 Meadow Fork Creek (S.R. 1165 to Spring Creek)
 Puncheon Fork (Hampton Creek to Big Laurel Creek)
 Roaring Fork (Fall Branch to Meadow Fork)
- Shelton Laurel Creek (confluence of Big Creek and Mill Creek to N.C. 208 bridge at Belva)
 Shut-in Creek
 Spillcorn Creek
 Spring Creek (junction of N.C. 209 and N.C. 63 to USFS Rd. 223)
 West Fork Shut-in Creek (lower game land boundary to confluence with East Fork Shut-in Creek)
- (C) Wild Trout Waters/Natural Bait are as follows:
 Big Creek (headwaters to the lower game land boundary)
- (15) McDowell County
 (A) Catch and Release/Artificial Lures Only Trout Waters are as follows:
 Newberry Creek (game land portion)
 (B) Delayed Harvest Trout Waters are as follows:
 Catawba River (portion adjacent to Marion Greenway)
 Curtis Creek (game land portion downstream of the USFS boundary at Deep Branch)
 Mill Creek (U.S. 70 bridge to I-40 bridge)
 (C) Hatchery Supported Trout Waters are as follows:
 Armstrong Creek (Cato Holler line downstream to upper Greenlee line)
 Catawba River (Catawba Falls Campground to Old Fort Recreation Park)
 Little Buck Creek (game land portion)
 Mill Creek (upper railroad bridge to U.S. 70 bridge, except where posted against trespassing)
 North Fork Catawba River (headwaters to North Cove School at S.R. 1569 bridge)
- (16) Mitchell County
 (A) Delayed Harvest Trout Waters are as follows:
 Cane Creek (N.C. 226 bridge to S.R. 1189 bridge)
 North Toe River (U.S. 19E bridge to N.C. 226 bridge)
 (B) Hatchery Supported Trout Waters are as follows:
 Big Rock Creek (headwaters to N.C. 226 bridge at S.R. 1307 intersection)
 Cane Creek (S.R. 1219 to N.C. 226 bridge)
 East Fork Grassy Creek

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- Grassy Creek (East Fork Grassy Creek to mouth)
- Little Rock Creek (Green Creek bridge to Big Rock Creek, except where posted against trespassing)
- North Toe River (Avery Co. line to S.R. 1121 bridge)
- (C) Wild Trout Waters are as follows:
Green Creek (headwaters to Green Creek bridge, except where posted against trespassing)
Little Rock Creek (above Green Creek bridge, including all tributaries, except where posted against trespassing)
Wiles Creek (game land boundary to mouth)
- (17) Polk County
(A) Delayed Harvest Trout Waters are as follows:
Green River (Fishtop Falls Access Area to the confluence with Cove Creek)
(B) Hatchery Supported Trout Waters are as follows:
Green River (Mouth of Cove Creek to the natural gas pipeline crossing)
North Pacolet River (Joels Creek to N.C. 108 bridge)
- (18) Rutherford County
(A) Hatchery Supported Trout Waters are as follows:
(Rocky) Broad River (Henderson Co. line to U.S. 64/74 bridge, except where posted against trespassing)
- (19) Stokes County
(A) Hatchery Supported Trout Waters are as follows:
Dan River (Virginia state line downstream to a point 200 yards below the end of S.R. 1421)
- (20) Surry County
(A) Delayed Harvest Trout Waters are as follows:
Ararat River (N.C. 103 bridge to U.S. 52 bridge portion adjacent to the Ararat River Greenway)
Mitchell River (.6 mile upstream of the end of S.R. 1333 to the S.R. 1330 bridge below Kapps-Kapps Mill Dam)
(B) Hatchery Supported Trout Waters are as follows:
Ararat River (S.R. 1727 bridge downstream to the N.C. 103 bridge)
- Big Elkin Creek (dam 440 yards upstream of N.C. 268 bridge to a point 265 yards downstream of N.C. 268 [marked by a sign on each bank])
Fisher River (Cooper Creek) (Virginia state line to I-77 bridge)
Little Fisher River (Virginia state line to N.C. 89 bridge)
Lovills Creek (U.S. 52 Business bridge to Ararat River)
Pauls Creek (Virginia state line to .3 miles below S.R. 1625 bridge)
- (21) Swain County
(A) Delayed Harvest Waters Trout Waters are as follows:
Tuckasegee River (U.S. 19 bridge to Slope Street bridge)
(~~A~~)(B) Hatchery Supported Trout Waters are as follows:
Alarka Creek (game land boundary to Fontana Reservoir)
Calderwood Reservoir (Cheoah Dam to Tennessee state line)
Cheoah Reservoir
Connelly Creek (Camp Branch to Tuckasegee River)
Deep Creek (Great Smoky Mountains National Park Boundary line to Tuckasegee River)
Nantahala River (Macon Co. line to existing Fontana Lake water level)
(~~B~~) ~~Delayed Harvest Waters Trout Waters are as follows:~~
~~Tuckasegee River (U.S. 19 bridge to Slope Street bridge)~~
- (22) Transylvania County
(A) Catch and Release/Artificial Flies Only Trout Waters are as follows:
Davidson River (headwaters to Avery Creek, excluding Avery Creek, Looking Glass Creek and Grogan Creek)
(B) Delayed Harvest Waters Trout Waters are as follows:
East Fork French Broad River (Glady Fork to French Broad River)
Little River (confluence of Lake Dense to 100 yards downstream of Hooker Falls)
(C) Hatchery Supported Trout Waters are as follows:
Davidson River (Avery Creek to lower USFS boundary)
French Broad River (confluence of North Fork French Broad River and West Fork) French Broad River to the

- Island Ford Rd. [S.R. 1110] Access Area
 Middle Fork French Broad River (upstream U.S. 178 bridge to French Broad River)
 West Fork French Broad River (Camp Cove Branch to confluence with North Fork French Broad River)
- (D) Wild Trout Waters are as follows:
 All waters located on Gorges State Park
 Whitewater River (downstream from Silver Run Creek to South Carolina state line)
- (E) Wild Trout Waters/Natural Bait are as follows:
 North Fork French Broad River (game land portion downstream of S.R. 1326)
 Thompson River (S.R. 1152 to South Carolina state line, except where posted against trespassing)
- (23) Watauga County
- (A) Catch and Release/Artificial Lures Only Trout Waters are as follows:
 Dugger Creek (portions on Blue Ridge Mountain Club)
 Laurel Creek (portions on Blue Ridge ~~mountain~~ Mountain Club and Powder Horn Mountain Development)
 Pond Creek (headwaters to Locust Ridge Rd. bridge, excluding the pond adjacent to Coffee Lake)
- (B) Delayed Harvest Trout Waters are as follows:
~~Coffee Lake Coffey~~
 Watauga River (adjacent to intersection of S.R. 1557 and S.R. 1558 to N.C. 105 bridge and S.R. 1114 bridge to N.C. 194 bridge at Valle Crucis)
- (C) Hatchery Supported Trout Waters are as follows:
 Beaverdam Creek (confluence of Beaverdam Creek and Little Beaverdam Creek to an unnamed tributary adjacent to the intersection of S.R. 1201 and S.R. 1203)
 Beech Creek
 Buckeye Creek (Buckeye Creek Reservoir dam to Grassy Gap Creek)
 Buckeye Creek Reservoir
- Cove Creek (S.R. 1233 bridge at Zionville to S.R. 1233 bridge at Amantha)
 Dutch Creek (second bridge on S.R. 1134 to mouth)
 Elk Creek (S.R. 1510 bridge at Triplett to Wilkes Co. line, except where posted against trespassing)
 Laurel Creek (S.R. 1123 bridge at S.R. 1157 intersection to Watauga River)
 Meat Camp Creek (S.R. 1340 bridge at S.R. 1384 intersection to N.C. 194)
 Middle Fork New River (Lake Chetola dam to South Fork New River)
 Norris Fork Creek
 South Fork New River (canoe launch 70 yards upstream of U.S. 421 bridge to lower boundary of Brookshire Park)
 Stony Fork (S.R. 1500 bridge at S.R. 1505 intersection to Wilkes Co. line)
- (D) Wild Trout Waters are as follows:
 Dutch Creek (headwaters to second bridge on S.R. 1134)
 Howard Creek
 Maine Branch (headwaters to North Fork New River)
 North Fork New River (from confluence with Maine and Mine branches to Ashe Co. line)
 Watauga River (Avery Co. line to S.R. 1580 bridge)
 Winkler Creek (lower bridge on S.R. 1549 to confluence with South Fork New River)
- (24) Wilkes County
- (A) Catch and Release/Artificial Lures Only Trout Waters are as follows:
 Dugger Creek (portions on Blue Ridge Mountain club)
 Harris Creek (portion on Stone Mountain State Park)
- (B) Delayed Harvest Trout Waters are as follows:
 East Prong Roaring River (Bullhead Creek downstream to Stone Mountain State Park lower boundary)
 Elk Creek — upper (Watauga Co. line to lower boundary of the Blue Ridge Mountain Club)
 Elk Creek — lower (portion on Leatherwood Mountains development)

- Reddies River (Town of North Wilkesboro water intake dam to confluence with the Yadkin River)
- Stone Mountain Creek (from falls at ~~Allegheny~~Alleghany Co. line to confluence with East Prong Roaring River and Bullhead Creek)
- (C) Hatchery Supported Trout Waters are as follows:
 Bell Branch Pond
 Cub Creek (.5 mile upstream of S.R. 2460 bridge to S.R. 1001 bridge)
 Darnell Creek (North Prong Reddies River) (downstream ford on S.R. 1569 to confluence with North Fork Reddies River)
East Prong Roaring River (Stone Mountain State Park lower boundary to S.R. 1002 bridge)
 Fall Creek (S.R. 1300 bridge to confluence with South Prong Lewis Fork, except where posted against trespassing)
 Middle Fork Reddies River (Clear Prong) (headwaters to bridge on S.R. 1580)
 Middle Prong Roaring River (headwaters to bridge on S.R. 1736)
 North Fork Reddies River (Vannoy Creek) (headwaters to Union School bridge on S.R. 1559)
 Pike Creek
 Pike Creek Pond
 South Fork Reddies River (S.R. 1355 bridge to confluence with Middle Fork Reddies River)
 South Prong Lewis Fork (Fall Creek to S.R. 1155 bridge)
- (D) Wild Trout Waters are as follows:
 Big Sandy Creek (portion on Stone Mountain State Park)
 Garden Creek (portion on Stone Mountain State Park)
 Widow Creek (portion on Stone Mountain State Park)
- (25) Yancey County
 (A) Catch and Release/Artificial Flies Only Trout Waters are as follows:
 South Toe River (headwaters to Upper Creek)
 Upper Creek
 (B) Delayed Harvest Trout Waters are as follows:

- Cane River (Blackberry Ridge Rd. to downstream boundary of Cane River County Park)
- (C) Hatchery Supported Trout Waters are as follows:
 Bald Mountain Creek (except where posted against trespassing)
 Cane River (Bee Branch [S.R. 1110] to Bowlens Creek)
 Price Creek (junction of S.R. 1120 and S.R. 1121 to Indian Creek)
 South Toe River (Clear Creek to lower boundary line of Yancey Co. ~~recreation park~~Recreation Park, except where posted against trespassing)
- (D) Wild Trout Waters are as follows:
 Cattail Creek (bridge at Mountain Farm Community Rd. to N.C. 187 bridge)
 Licksillet Creek
 Middle Creek (game land boundary to mouth)

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

SECTION .0300 - GAME FISH

15A NCAC 10C .0305 BLACK BASS

- (a) The daily creel limit for Largemouth, Smallmouth and Spotted Bass — collectively known as Black Bass — is five fish, except in waters identified in Paragraphs ~~(b) and (b)~~, (c) and (d) of this Rule. There is no minimum size limit for these fish, but only two of them may be less than 14 inches except in waters identified in Paragraphs (b), (c), (d), (e), (f), (g), (h), (i), ~~(j) and (j)~~, (k) and (l) of this Rule. There is no closed season, except for waters identified in Paragraph ~~(k)~~ (l) of this Rule.
- (b) 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.
- (c) In Lake Santeetlah in Graham County, there is no daily creel limit for Black Bass less than 14 inches. The daily creel limit for Black Bass greater than 14 inches is five fish.
- (d) In Lake Chatuge in Clay County, the daily creel limit for Black Bass is 10 fish, the minimum size limit for Largemouth Bass is 12 inches, with no exceptions, and there is no minimum size limit for Smallmouth Bass and Spotted Bass.
- ~~(d)~~(e) The minimum size limit for Black Bass is 14 inches, with no exceptions in:
- (1) Lake Raleigh in Wake County;
 - (2) Lake Mattamuskeet and associated canals in Hyde County;
 - (3) Pungo Lake in Washington and Hyde counties;
 - (4) New Lake in Hyde County;
 - (5) 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).

~~(e)~~(f) 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 exceptions.

~~(f)~~(g) In Lake Phelps the minimum size limit is 14 inches, with no exceptions, and no fish between 16 and 20 inches may be possessed.

~~(g)~~(h) In Shearon Harris Reservoir and Lake Hampton in Yadkin County, there is no minimum size limit for Black Bass, but only two Black Bass less than 14 inches and no Black Bass between 16 and 20 inches may be possessed.

~~(h)~~(i) In Randleman Reservoir, there is no minimum size limit for Largemouth Bass, but only two Largemouth Bass less than 14 inches and only one Largemouth Bass greater than 20 inches may be possessed.

~~(i)~~(j) In Lake Thom-A-Lex in Davidson County, the minimum size limit for Black Bass is 18 inches with no exceptions.

~~(j)~~(k) In the Alleghany County portion of New River downstream of Fields Dam (Grayson County, Virginia) there is no minimum size limit for Black Bass, but no fish between 14 and ~~20~~22 inches in length may be possessed and only one Black Bass greater than ~~20~~22 inches may be possessed.

~~(k)~~(l) In Sutton Lake, the minimum size limit for Black Bass is 14 inches with no exceptions and no Black Bass may be possessed from December 1 through March 31.

~~(l)~~(m) For purposes of this Rule, creel limits apply to Largemouth, Smallmouth and Spotted Bass in aggregate unless otherwise specified.

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

15A NCAC 10C .0306 CRAPPIE

(a) There is no daily creel limit for Crappie, except for waters identified in Paragraphs (b), (c), ~~and~~(d) and (e) of this Rule. There is no minimum size limit for these fish, except for waters identified in Paragraphs ~~(e)~~(d) and ~~(d)~~(e). There is no closed season.

(b) In Buckhorn Reservoir in Wilson and Nash counties the daily creel limit is 20 fish.

(c) In Lake Chatuge in Clay County the daily creel limit is 30 fish.

~~(e)~~(d) In the following waters, the daily creel limit is 20 fish and the minimum size limit is 10 inches:

- (1) B. Everett Jordan Reservoir,
- (2) Roanoke River and its tributaries downstream of Roanoke Rapids dam,
- (3) Cashie River and its tributaries,
- (4) Middle River and its tributaries, and
- (5) Eastmost River and its tributaries.

~~(d)~~(e) In the following waters, the daily creel limit is 20 fish and the minimum size limit is eight inches:

- (1) Pee Dee River from Blewett Falls Dam to the South Carolina state line;
- (2) Badin Lake;
- (3) Falls Lake (Stanly and Montgomery counties);

- (4) Lake Tillery;
- (5) Blewett Falls Lake;
- (6) Lake Norman;
- (7) Lake Hyco;
- (8) Lake Ramseur;
- (9) Cane Creek Lake;
- (10) Lake Hampton (Yadkin County);

~~(10)~~(11) Tar River downstream of Tar River Reservoir Dam;

~~(11)~~(12) Neuse River downstream of Falls Lake Dam;

~~(12)~~(13) Haw River downstream of Jordan Lake Dam;

~~(13)~~(14) Deep River downstream of Lockville Dam;

~~(14)~~(15) Cape Fear River;

~~(15)~~(16) Waccamaw River downstream of Lake Waccamaw Dam;

~~(16)~~(17) Lumber River including Drowning Creek;

~~(17)~~(18) all other public fishing waters east of Interstate 95, except Tar River Reservoir in Nash County, Sutton Lake in New Hanover County, and waters listed in Paragraph (c) of this Rule; and

~~(18)~~(19) all public waters west of Interstate 77.

For waters in Subparagraphs ~~(10)~~(11) through ~~(18)~~(19), the restrictions apply to all tributaries.

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

15A NCAC 10C .0314 STRIPED BASS

(a) The daily creel limit for Striped Bass and its hybrids is four fish in the aggregate, except in waters identified in Paragraphs (b), (e), (f), (g), (h), ~~and~~(i) and (j) of this Rule. The minimum size limit for these fish is 20 inches, except in waters identified in Paragraphs (b), (c), (d), (e), (f), (g), (h), ~~and~~(i) and (j) of this Rule. There is no closed season, except for waters identified in Paragraphs ~~(f)~~, (g), (h), (i), ~~and~~(j) and (k) of this Rule.

(b) 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 daily creel limit on Striped Bass and its 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 its hybrids is four in the aggregate with no minimum size limit.

(c) In Lake Gaston and Roanoke Rapids Reservoir, the minimum size limit for Striped Bass and its hybrids is 20 inches from October 1 through May 31. There is no minimum size limit for these fish from June 1 through September 30.

(d) In Lake Norman, Arrowhead Lake (Anson Co.), High Rock Pond (Caswell Co.), Moss Lake, Mountain Island Reservoir, Oak Hollow Lake, Lake Thom-A-Lex, Lake Townsend, and Salem Lake the minimum size limit for Striped Bass and its hybrids is 16 inches.

(e) In Lake Chatuge in Clay County, the daily creel limit is 15 in the aggregate. There is no minimum size limit, but only two may be greater than 22 inches.

~~(e)~~(f) In Lake ~~Matamuskeet~~Mattamuskeet, and in the Pee Dee River and its tributaries downstream from the Blewett Falls Dam to the South Carolina state line, the daily creel limit is three fish in the aggregate, and the minimum size limit is 18 inches.

~~(f)~~(g) 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 not specified in Paragraphs (e), (g), (h), and (i) of this Rule, the daily creel limit for Striped Bass and its hybrids is two fish in the aggregate. The minimum size limit is 18 inches but no Striped Bass or hybrids between the lengths of 22 inches and 27 inches shall be possessed. In these waters, the season for taking and possessing Striped Bass is closed from May 1 through September 30.

~~(g)~~(h) In the inland fishing waters of the Cape Fear River and its tributaries downstream of Buckhorn Dam, the season for taking and possessing Striped Bass is closed year-round.

~~(h)~~(i) 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 its 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 its hybrids is two fish in the aggregate and the minimum size limit is 18 inches. No fish between 22 inches and 27 inches in length shall be possessed in the daily creel limit. Only one fish larger than 27 inches may be possessed in the daily creel limit.

~~(i)~~(j) 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.

~~(j)~~(k) 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.

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

15A NCAC 10C .0319 WHITE PERCH

(a) There is no daily creel limit and no minimum limit size for White Perch. There is no closed season for White Perch.

(b) In and west of Haywood, Buncombe, and Rutherford counties, it is unlawful to transport, possess, or release live White Perch.

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

**SECTION .0400 - JURISDICTION OF AGENCIES:
CLASSIFICATION OF WATERS**

**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 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; and
 - (H) all other inland fishing waters east of I-95.
 - (3) Grass carp shall not be taken or possessed on Lake James, Lookout Shoals Lake, Lake Norman, Mountain Island Reservoir, Lake Wylie, and John H. Kerr Reservoir, except that one fish per day may be taken with archery equipment.
 - (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. Trout seasons are designated in 15A NCAC 10C .0316.
- (c) Nongame fishes taken by hook and line, grabbling, or by licensed special devices may be sold, with the following exceptions:
- (1) alewife and blueback herring, excluding those less than six inches in length collected from Kerr Reservoir (Granville, Vance, and Warren counties);
 - (2) blue crab; and
 - (3) bowfin.
- (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. The daily possession limit for freshwater mussels is 200 in the aggregate, except there is no daily possession limit for the Asiatic clam (*Corbicula fluminea*).

(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 where this creel limit applies shall be posted on-site with signs indicating the creel limit.

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

- (1) Lake Norman;
- (2) Mountain Island Lake;
- (3) Lake Wylie;
- (4) Badin Lake; and
- (5) Lake Tillery.

(g) The daily creel limit for American eels taken from or possessed, regardless of origin, while boating on or fishing in inland fishing waters is 25, and the minimum size limit is 9 inches.

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

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

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

- (1) a net of dip net design not greater than six feet across;
- (2) a seine of not greater than 12 feet in length (except in Lake Waccamaw where there is no length limitation) and with a bar mesh measure of not more than one-fourth inch;
- (3) a cast net;
- (4) a bow net for the seasons and waters in which the use of bow nets is authorized in 15A NCAC 10C .0407;
- (5) a dip net when used in conjunction with a licensed hand-crank electrofisher where authorized by local law;
- ~~(5)~~(6) a gig (except in Public Mountain Trout Waters);
- ~~(6)~~(7) up to three traps for the seasons and waters in which the use of traps is authorized in 15A NCAC 10C .0407;
- ~~(7)~~(8) up to two eel pots;
- ~~(8)~~(9) a spear gun for the seasons and waters in which the use of a spear gun is authorized in 15A NCAC 10C .0407;
- ~~(9)~~(10) 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;
- ~~(10)~~(11) a hand-held line with a single bait attached;

~~(11)~~(12) 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

~~(12)~~(13) 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 taken while netting for bait shall be returned unharmed to the water, except white perch may be taken when captured in a cast net being used to collect nongame fishes for bait or personal consumption in all impounded waters west of I-95 and in the Tar River Reservoir (Nash County).

(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 25 eels, none of which may be less than 9 inches in length, shall be taken from or possessed, regardless of origin, while boating on or fishing in 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; and
 - (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.

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

SUBCHAPTER 10D - GAME LANDS REGULATIONS

SECTION .0100 - GAME LANDS REGULATIONS

15A NCAC 10D .0102 GENERAL REGULATIONS REGARDING USE

(a) For purposes of this Subchapter, the following definitions apply:

- (1) "Permanent Hunting Blind" means any structure that is used for hunter concealment, constructed from manmade or natural materials, and that is not disassembled and removed at the end of each day's hunt.
- (2) "Target shooting" means the discharge of a firearm for purposes other than hunting, trapping, or self-defense.
- (3) "Youth" are individuals under 16 years of age.

(b) 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.
- (7) Restricted Deer Hunting Zone. On portions of game lands posted as "Restricted Deer Hunting Zones" the use of dogs for taking deer is prohibited, except as allowed by permit as provided in G.S. 113-264(d).
- (8) Day Use Only Zone. Portions of game lands posted as "Day Use Only Zones" are closed to all use by the general public from sunset to sunrise.

The Commission shall conduct a public input meeting in the area where the game land is located before establishing an archery, a restricted firearms, a restricted zone, ~~or a restricted deer hunting zone,~~ or a day use only zone. After the input meeting, the public comments shall be presented at an official Commission meeting for final determination.

- (c) 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.
- (d) 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 Butner-Falls of Neuse, Jordan, Kerr Scott and Vance game lands, no person shall possess loaded firearms, ammunition, bows and arrows, crossbows, or other weapons except as provided in the Code of Federal Regulations, Title 36, Chapter III, Part 327.13. On Buckhorn, ~~Butner Falls of Neuse~~, Chatham, Harris, Hyco, ~~Jordan, Kerr Scott~~, Lee, Mayo, ~~and 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.

(e) Game Lands License: Hunting and Trapping

- (1) Requirement. Except as provided in Subparagraph (4) of this Paragraph, any person entering upon any game land for the purpose of hunting, trapping, running dogs or training dogs using wildlife shall have in his or her possession a game lands license in addition to the appropriate hunting or trapping license, or a license that conveys the game land use privilege
- (2) For commission-sanctioned field trials, active participants (as defined in 15A NCAC 10B .0114) in a field trial using wildlife shall possess a game lands license in addition to the appropriate North Carolina hunting license, or a license that conveys the game land use privilege, except non-residents may substitute hunting licenses from their state(s) of residence.
- (3) For any other field trial using wildlife occurring on game lands, judges and active participants shall possess a game lands license in addition to the appropriate North Carolina hunting license, or a license that conveys the game land use privilege
- (4) Exceptions:
 - (A) a person under 16 years of age may hunt on game lands on the license of his parent or legal guardian;

- (B) 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.

(f) Field Trials and Training Dogs. Any individual or organization sponsoring a field trial on the Sandhills Field Trial area or the Laurinburg Fox Trial facility shall file with the Commission 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 Sandhills Field Trial area or the Laurinburg Fox Trial facility 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 approved use. 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 mission of the agency.

(g) 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~~-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.

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

- (1) is driving in the vehicle gallery of a scheduled bird dog field trial held on the Sandhills Game Land; or
- (2) is a disabled sportsman as defined in Paragraph (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).

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

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

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

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

On game lands where the privileges described in Paragraph (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.

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

(m) Non-Highway Licensed Vehicles. It is unlawful to operate motorized land vehicles not licensed for highway use on Game Lands except for designated areas on National Forests. Disabled persons as defined in Paragraph (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.

(n) Disabled Access Program. Permits issued under this program shall be based upon medical evidence submitted by the person verifying that a handicap exists that limits physical mobility to the extent that normal utilization of the game lands is not possible without vehicular assistance. Persons meeting this requirement may operate electric wheel chairs, all terrain vehicles, and other passenger vehicles on any Commission-maintained road open for vehicular travel and those trails posted for vehicular travel and ungated or open-gated roads otherwise closed to vehicular traffic on game lands owned by the Wildlife Resources Commission and on game lands whose owners have agreed to such use. Those game lands, or parts thereof, where this Paragraph applies are designated in the game land rules and map book. This Paragraph does not permit vehicular access on fields, openings, roads, paths, or trails planted to wildlife food or cover. One 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.

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

(p) Shooting Ranges. On public shooting ranges managed by the Commission, 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. Open days and hours of operation shall be designated on signs and at least one of such signs will be posted at the entrance to each shooting range. 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.

Authority G.S. 113-129; 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306; 143-318.10.

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 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 designated youth waterfowl days occurring after the end of the regular waterfowl seasons only, youths may hunt on managed waterfowl impoundments from ½ hour before sunrise to sunset. Restrictions 1, 3 and 5 in the preceding numbered list still apply.

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:

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- (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, Thanksgiving Day, Christmas Day, 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, Thanksgiving Day, Christmas Day, 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 deer 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.
 - (C) On the Lick Creek Tract, deer and bear hunting is archery only.
 - (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.
 - (3) 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.
 - (C) Target shooting is prohibited.
 - (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 the use of dogs for hunting deer and bear is prohibited.
 - (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.
 - (G) The use of dogs for pursuing or taking foxes is prohibited March 15 through July 15.
 - (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.

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- (10) Buckridge Game Land in Tyrrell County.
 - (B) Horseback riding is prohibited.
 - (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.
 - (D) Target shooting is prohibited.
 - (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 Saturday 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:
 - (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, Thursdays, and Saturdays 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.
 - (J) Camping is allowed at any time in the designated Mountains-to-Sea Trail Camping Area and shall not exceed a maximum stay of two consecutive nights. Campfires are prohibited in this camping area.
- (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.
 - (C) Target shooting is prohibited.
- (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.
- (E) Target shooting is prohibited.
- (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~~ traffic and on those gated roads and trails that are posted specifically for equestrian use. People age 16 or older horseback riding on this game land must possess a Game Lands license.
- (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 SR 1746 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 NC 62 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.
- (G) Target shooting is prohibited, except at the R. Wayne Bailey-Caswell Shooting Range.
- ~~(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)(18) 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)(19) 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)(20) 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)(21) 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.~~
- ~~(E) Horseback riding is allowed anytime May 16 through August 31 and on Sundays only September 1 through May 15 on those roads that are open to vehicular traffic and on those gated~~

- (23)(22) roads and trails posted specifically for equestrian use.
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)(23) 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)(24) 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)(25) 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)(26) 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)(27) Dover Bay Game Land in Craven County
- (29)(28) ~~DuPont~~-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)(29) 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)(30) 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)(31) 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

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- (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 through January 1 and April 1 through May 15 to individuals that possess a valid hunting opportunity permit.
- ~~(33)~~(32) 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)~~(33) 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)~~(34) 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)~~(35) 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:
 - (i) Tuesdays, Fridays, and Saturdays of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, and New Year's Days; and
 - (iii) 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, except on those areas posted as an Archery Zone.
 - (F) Target shooting is prohibited.
 - (G) Horseback riding is prohibited.
- ~~(37)~~(36) Holly Shelter Game Land in Pender County
 - (A) ~~Three~~ 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 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.

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- (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~~ prohibited:
 - (i) ~~all open days~~ 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-Road~~; and
 - (ii) on Tuesdays, Thursdays and Fridays, except for the area north of 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, where the use of dogs for deer and bear hunting is by permit only.
- (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.
- (I) Target shooting is prohibited, except on the Holly Shelter Shooting Range.
- (J) Geocaching is restricted to closed days for taking bear, deer, turkey and waterfowl.
- ~~(38)~~(37) 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)~~(38) J. Morgan Futch Game Land in Tyrrell County, Permit Only Area.
- ~~(40)~~(39) 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)~~(40) 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:
 - (i) Mondays, Wednesdays, and Saturdays of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, and New Year's Days; and
 - (iii) 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. People age 16 or older who ride horseback on trails occurring entirely within the game land boundaries must possess a Game Lands license.
 - (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)~~(41) 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)~~(42) 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)~~(43) 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)~~(44) 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)~~(45) 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)~~(46) 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)~~(47) 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)~~(48) 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:
 - (i) Tuesdays, Thursdays, and Saturdays applicable waterfowl seasons;
 - (ii) Christmas and New Year's Days; and
 - (iii) the opening and closing days of the applicable waterfowl seasons.
 - (D) Target shooting is prohibited.
- ~~(50)~~(49) 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)~~(50) 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)~~(51) 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)~~(52) 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)~~(53) 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.

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- ~~(55)~~(54) 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) Operating any vessel or vehicle powered by an internal combustion engine; and
 - (ii) Swimming.
 - (I) Target shooting is prohibited.
- ~~(56)~~(55) 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)~~(56) 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)~~(57) 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.
- (E) Horseback riding is allowed only on roads opened to vehicular traffic and only during the following times:
 - (i) during June, July, and August; and
 - (ii) on Sundays during the other months or parts of months when deer and turkey seasons are closed.
- ~~(59)~~(58) 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)~~(59) 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)~~(60) 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 from May 16 through August 31 and Sundays from September 1 through October 31. All horseback riding is prohibited from November 1 through May 15.
 - (D) Deer and bear hunting is by permit only.
- ~~(62)~~(61) 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)~~(62) Rhodes Pond Game Land in Cumberland and Harnett counties
- (A) Hunting is by permit only.
 - (B) Swimming is prohibited on the area.
- ~~(64)~~(63) 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)~~(64) Roanoke Island Marshes Game Land in Dare County-Hunting is by permit only.
- ~~(66)~~(65) 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)~~(66) 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.
 - (I) Target shooting is prohibited.
- ~~(68)~~(67) Rocky Run Game Land in Onslow County: Hunting is by permit only.
- ~~(69)~~(68) 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.
 - (C) Target shooting is prohibited.
- ~~(70)~~(69) 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.
 - (vii) raccoon and opossum may be taken on open days from sunrise Monday on or nearest October 15 through the last day of February.
- (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

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- 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 ~~preceding~~ preceding 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.
- (L) Target shooting is prohibited, except at the John F. Lentz Hunter Education Complex.
- ~~(74)~~(70) 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)~~(71) 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)~~(72) Second Creek Game Land in Rowan County-hunting is by permit only.
- ~~(74)~~(73) 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)~~(74) 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 Saturday 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)~~(75) 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) The use of dogs for hunting deer is prohibited on Mondays, Wednesdays, and Fridays.
- (D) Swimming in all lakes is prohibited.
- (E) 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.
- (F) Target shooting is prohibited.
- (G) Geocaching is restricted to closed days for taking bear, deer, turkey and waterfowl.
- ~~(77)~~(76) 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)~~(77) 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)~~(78) Tar River Game Land in Edgecombe County – hunting is by permit only.
- ~~(79)~~ Texas Plantation Game Land in Tyrrell 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. People age 16 or older horseback riding on this game land must possess a Game Lands license.
- (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.

- (C) On the posted waterfowl impoundment, 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) Mondays, Wednesdays and Saturdays of the applicable waterfowl seasons.
- (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.
- (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~~ 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) Feral 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 feral 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.

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

SUBCHAPTER 10I - ENDANGERED AND THREATENED SPECIES

SECTION .0100 - ENDANGERED AND THREATENED SPECIES

15A NCAC 10I .0103 ENDANGERED SPECIES LISTED

(a) The following species of resident wildlife are designated as federally-listed endangered species:

- (1) Amphibians:
None Listed At This Time.
- (2) Birds:
 - (A) Bachman's warbler (*Vermivora bachmanii*);
 - (B) Ivory-billed woodpecker (*Campephilus principalis*);
 - (C) Kirtland's warbler (*Dendroica kirtlandii*);
 - (D) Piping plover (*Charadrius melodus circumcinctus*);
 - (E) Red-cockaded woodpecker (*Picoides borealis*);
 - (F) Roseate tern (*Sterna dougallii dougallii*);
 - (G) Wood stork (*Mycteria americana*).
- (3) Crustacea: None Listed At This Time.
- (4) Fish:
 - (A) Cape Fear shiner (*Notropis mekistocholas*);
 - (B) Roanoke logperch (*Percina rex*);
 - (C) Shortnose sturgeon (*Acipenser brevirostrum*), when found in inland fishing waters-~~waters~~;
 - (D) Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*), when found in inland fishing waters.
- (5) Mammals:

- (A) Carolina northern flying squirrel (*Glaucomys sabrinus coloratus*);
- ~~(B) Eastern cougar (*Puma concolor*);~~
- ~~(C)(B)~~ Gray bat (*Myotis grisescens*);
- ~~(D)(C)~~ Indiana bat (*Myotis sodalis*);
- ~~(E)(D)~~ Manatee (*Trichechus manatus*), when found in inland fishing waters;
- ~~(F)(E)~~ Virginia big-eared bat (*Corynorhinus townsendii virginianus*).

- (6) Mollusks:
 - (A) Appalachian elktoe (*Alasmidonta raveneliana*);
 - (B) Carolina heelsplitter (*Lasmigona decorata*);
 - (C) Dwarf wedge mussel (*Alasmidonta heterodon*);
 - (D) James spiny mussel (*Pleurobema collina*);
 - (E) Little-wing pearly mussel (*Pegias fabula*);
 - (F) Tan riffleshell (*Epioblasma florentina walkeri*);
 - (G) Tar River spiny mussel (*Elliptio steinstansana*).
- (7) Reptiles:
 - (A) Kemp's ridley seaturtle (*Lepidochelys kempii*);
 - (B) Atlantic hawksbill seaturtle (*Eretmochelys imbricata imbricata*);
 - (C) Leatherback seaturtle (*Dermochelys coriacea*).

(b) The following species of resident wildlife are designated as state-listed endangered species:

- (1) Amphibians: Green salamander (*Aneides aeneus*).
- (2) Birds:
 - (A) American peregrine falcon (*Falco peregrinus anatum*);
 - (B) Bewick's wren (*Thryomanes bewickii*).
- (3) Crustacea: Bennett's Mill cave water slater (*Caecidotea carolinensis*).
- (4) Fish:
 - (A) Blotchside logperch (*Percina burtoni*);
 - (B) Bridle shiner (*Notropis bifrenatus*);
 - (C) Dusky darter (*Percina sciera*);
 - (D) Orangefin madtom (*Noturus gilberti*);
 - (E) Paddlefish (*Polyodon spathula*);
 - (F) Robust redhorse (*Moxostoma robustum*);
 - (G) Rustyside sucker (*Thoburnia hamiltoni*);
 - (H) Stonecat (*Noturus flavus*).
- (5) Mammals: None Listed At This Time.
- (6) Mollusks:
 - (A) Atlantic pigtoe (*Fusconaia masoni*);
 - (B) Barrel floater (*Anodonta couperiana*);
 - (C) Brook floater (*Alasmidonta varicosa*);

- (D) Carolina creekshell (*Villosa vaughaniana*);
 - (E) Fragile glyph (*Glyphyalinia clingmani*);
 - (F) Green floater (*Lasmigona subviridis*);
 - (G) Greenfield rams-horn (*Helisoma eucosmium*);
 - (H) Knotty elimia (*Elimia christyi*);
 - (I) Magnificent rams-horn (*Planorbella magnifica*);
 - (J) Neuse spike (*Elliptio judithae*);
 - (K) Purple wartyback (*Cyclonaias tuberculata*);
 - (L) Savannah lilliput (*Toxolasma pullus*);
 - (M) Slippershell mussel (*Alasmidonta viridis*);
 - (N) Tennessee clubshell (*Pleurobema oviforme*);
 - (O) Tennessee heelsplitter (*Lasmigona holstonia*);
 - (P) Tennessee pigtoe (*Fusconaia barnesiana*);
 - (Q) Yellow lampmussel (*Lampsilis cariosa*);
 - (R) Yellow lance (*Elliptio lanceolata*).
- (7) Reptiles:
- (A) Eastern coral snake (*Micrurus fulvius fulvius*);
 - (B) Eastern diamondback rattlesnake (*Crotalus adamanteus*).
- (b) The following species of resident wildlife are designated as state-listed threatened species:
- (1) Amphibians:
 - (A) Carolina gopher frog (*Rana capito capito*);
 - (B) Eastern tiger salamander (*Ambystoma tigrinum tigrinum*);
 - (C) Junaluska salamander (*Eurycea junaluska*); and
 - (D) Wehrle's salamander (*Plethodon wehrlei*).
 - (2) Birds:
 - (A) Bald eagle (*Haliaeetus leucocephalus*);
 - (B) Gull-billed tern (*Sterna nilotica aranea*); and
 - (C) Northern saw-whet owl (*Aegolius acadicus*).
 - (3) Crustacea: None Listed At This Time.
 - (4) Fish:
 - (A) American brook lamprey (*Lampetra appendix*);
 - (B) Banded sculpin (*Cottus carolinae*);
 - (C) Bigeye jumprock (*Scartomyzon ariommus*);
 - (D) Blackbanded darter (*Percina nigrofasciata*);
 - (E) Carolina madtom (*Noturus furiosus*);
 - (F) Carolina pygmy sunfish (*Elassoma boehlkei*);
 - (G) Carolina redhorse (*Moxostoma* sp.) (Pee Dee River and its tributaries and Cape Fear River and its tributaries);
 - (H) Least brook lamprey (*Lampetra aepyptera*);
 - (I) Logperch (*Percina caprodes*);
 - (J) Rosyface chub (*Hybopsis rubrifrons*);
 - (K) Sharphead darter (*Etheostoma acuticeps*);
 - (L) Sicklefin redhorse (*Moxostoma* sp.) (Hiwassee River and its tributaries and Little Tennessee River and its tributaries);
 - (M) Turquoise darter (*Etheostoma inscriptum*); and
 - (N) Waccamaw darter (*Etheostoma perlongum*).
 - (5) Mammals:
 - (A) Eastern woodrat (*Neotoma floridana floridana*);
 - (B) Rafinesque's big-eared bat (*Corynorhinus rafinesquii rafinesquii*); and
 - (C) Red wolf (*Canis rufus*).
 - (6) Mollusks:
 - (A) Alewife floater (*Anodonta implicata*);
 - (B) Big-tooth covert (*Fumonelix jonesiana*);

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

15A NCAC 10I .0104 THREATENED SPECIES LISTED

(a) The following species of resident wildlife are designated as federally-listed threatened species:

- (1) Amphibians: None Listed At This Time.
- (2) Birds: ~~Piping plover (*Charadrius melodus melodus*)~~.
 - (A) Piping Plover (*Charadrius melodus melodus*)
 - (B) Red Knot (*Calidris canutus rufa*)
- (3) Crustacea: None Listed At This Time.
- (4) Fish:
 - (A) Spotfin chub (*Cyprinella monacha*); and
 - (B) Waccamaw silverside (*Menidia extensa*).
- (5) Mammals: Northern Long-eared Bat (*Myotis septentrionalis*)
- (6) Mollusks: Noonday globe (*Patera clarki nantahala*).
- (7) Reptiles:
 - (A) Bog turtle (*Glyptemys muhlenbergii*);
 - (B) American alligator (*Alligator mississippiensis*);
 - (C) Green sea turtle (*Chelonia mydas*); and
 - (D) Loggerhead sea turtle (*Caretta caretta*).

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|--|--|
| <p>(C) Cape Fear threetooth (<i>Triodopsis soelneri</i>);</p> <p>(D) Carolina fatmucket (<i>Lampsilis radiata conspicua</i>);</p> <p>(E) Clingman covert (<i>Fumonelix wheatleyi clingmanicus</i>);</p> <p>(F) Eastern lampmussel (<i>Lampsilis radiata radiata</i>);</p> <p>(G) Eastern pondmussel (<i>Ligumia nasuta</i>);</p> <p>(H) Engraved covert (<i>Fumonelix orestes</i>);</p> <p>(I) Mountain creekshell (<i>Villosa vanuxemensis</i>);</p> <p>(J) Roan supercoil (<i>Paravitrea varidens</i>);</p> <p>(K) Roanoke slabshell (<i>Elliptio roanokensis</i>);</p> <p>(L) Sculpted supercoil (<i>Paravitrea ternaria</i>);</p> <p>(M) Seep mudalia (<i>Leptoxis dilatata</i>);</p> <p>(N) Smoky Mountain covert (<i>Inflectarius ferrissi</i>);</p> <p>(O) Squawfoot (<i>Strophitus undulatus</i>);</p> <p>(P) Tidewater mucket (<i>Leptodea ochracea</i>);</p> <p>(Q) Triangle floater (<i>Alasmidonta undulata</i>);</p> <p>(R) Waccamaw ambersnail (<i>Catinella waccamawensis</i>);</p> <p>(S) Waccamaw fatmucket (<i>Lampsilis fullerikati</i>);</p> <p>(T) Waccamaw spike (<i>Elliptio waccamawensis</i>).</p> <p>(7) Reptiles: None Listed At This Time.</p> | <p>(k) Southern zigzag salamander (<i>Plethodon ventralis</i>);</p> <p>(l) Weller's salamander (<i>Plethodon welleri</i>).</p> <p>(2) Birds:</p> <p>(a) American oystercatcher (<i>Haematopus palliatus</i>);</p> <p>(b) Bachman's sparrow (<i>Aimophila aestivalis</i>);</p> <p>(c) Black-capped chickadee (<i>Poecile atricapillus</i>);</p> <p>(d) Black rail (<i>Laterallus jamaicensis</i>);</p> <p>(e) Black skimmer (<i>Rynchops niger</i>);</p> <p>(f) Brown creeper (<i>Certhia americana nigrescens</i>);</p> <p>(g) Cerulean warbler (<i>Dendroica cerulea</i>);</p> <p>(h) Common tern (<i>Sterna hirundo</i>);</p> <p>(i) Glossy ibis (<i>Plegadis falcinellus</i>);</p> <p>(j) Golden-winged warbler (<i>Vermivora chrysoptera</i>);</p> <p>(k) Henslow's sparrow (<i>Ammodramus henslowii</i>);</p> <p>(l) Least bittern (<i>Ixobrychus exilis</i>);</p> <p>(m) Least tern (<i>Sterna antillarum</i>);</p> <p>(n) Little blue heron (<i>Egretta caerulea</i>);</p> <p>(o) Loggerhead shrike (<i>Lanius ludovicianus</i>);</p> <p>(p) Olive-sided flycatcher (<i>Contopus cooperi</i>);</p> <p>(q) Painted bunting (<i>Passerina ciris</i>);</p> <p>(r) Red crossbill (<i>Loxia curvirostra</i>);</p> <p>(s) Snowy egret (<i>Egretta thula</i>);</p> <p>(t) Tricolored heron (<i>Egretta tricolor</i>);</p> <p>(u) Vesper sparrow (<i>Poocetes gramineus</i>);</p> <p>(v) Wilson's plover (<i>Charadrius wilsonia</i>);</p> <p>(w) Yellow-bellied sapsucker (<i>Sphyrapicus varius appalachiensis</i>).</p> <p>(3) Crustacea:</p> <p>(a) Broad River spiny crayfish (<i>Cambarus spicatus</i>);</p> <p>(b) Carolina skistodiaptomus (<i>Skistodiaptomus carolinensis</i>);</p> <p>(c) Carolina well diacyclops (<i>Diacyclops jeannelli putei</i>);</p> <p>(d) Chowanoke crayfish (<i>Orconectes virginensis</i>);</p> <p>(e) Graceful clam shrimp (<i>Lynceus gracilicornis</i>);</p> <p>(f) Greensboro burrowing crayfish (<i>Cambarus catagius</i>);</p> <p>(g) Hiwassee headwaters crayfish (<i>Cambarus parrishi</i>);</p> <p>(h) Little Tennessee River crayfish (<i>Cambarus georgiae</i>);</p> <p>(i) North Carolina spiny crayfish (<i>Orconectes carolinensis</i>);</p> <p>(j) Oconee stream crayfish (<i>Cambarus chaugaensis</i>);</p> |
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Authority G.S. 113-134; 113-291.2; 113-292; 113-333.

15A NCAC 10I .0105 SPECIAL CONCERN SPECIES LISTED

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

- (1) Amphibians:
- (a) Crevice salamander (*Plethodon longicrus*);
- (b) Dwarf salamander (*Eurycea quadridigitata*);
- (c) Eastern hellbender (*Cryptobranchus alleganiensis alleganiensis*);
- (d) Four-toed salamander (*Hemidactylium scutatum*);
- (e) Longtail salamander (*Eurycea longicauda longicauda*);
- (f) Mole salamander (*Ambystoma talpoideum*);
- (g) Mountain chorus frog (*Pseudacris brachyphona*);
- (h) Mudpuppy (*Necturus maculosus*);
- (i) Neuse River waterdog (*Necturus lewisi*);
- (j) River frog (*Rana heckscheri*);

PROPOSED RULES

- (k) Waccamaw crayfish (*Procambarus braswelli*).
- (4) Fish:
- ~~(a)~~ Atlantic sturgeon (*Acipenser oxyrinchus*);
- ~~(b)~~(a) Bluefin killifish (*Lucania goodei*);
- ~~(c)~~(b) Blue Ridge sculpin (*Cottus caeruleomentum*);
- ~~(d)~~(c) Blueside darter (*Etheostoma jessiae*);
- ~~(e)~~(d) Broadtail madtom (*Noturus* sp.) (Lumber River and its tributaries and Cape Fear River and its tributaries);
- ~~(f)~~(e) Carolina darter (*Etheostoma collis*);
- ~~(g)~~(f) Cutlip minnow (*Exoglossum maxillingua*);
- ~~(h)~~(g) Freshwater drum (*Aplodinotus grunniens*) (French Broad River);
- ~~(i)~~(h) Highfin carpsucker (*Carpiodes velifer*) (Cape Fear River and its tributaries);
- ~~(j)~~(i) Kanawha minnow (*Phenacobius teretulus*);
- ~~(k)~~(j) Lake sturgeon (*Acipenser fulvescens*);
- ~~(l)~~(k) Least killifish (*Heterandria formosa*);
- ~~(m)~~(l) Longhead darter (*Percina macrocephala*);
- ~~(n)~~(m) Mooneye (*Hiodon tergisus*);
- ~~(o)~~(n) Mountain madtom (*Noturus eleutherus*);
- ~~(p)~~(o) Olive darter (*Percina squamata*);
- ~~(q)~~(p) Pinewoods darter (*Etheostoma mariae*);
- ~~(r)~~(q) River carpsucker (*Carpiodes carpio*);
- ~~(s)~~(r) Riverweed darter (*Etheostoma podostemone*);
- ~~(t)~~(s) Sandhills chub (*Semotilus lumbee*);
- ~~(u)~~(t) Sharpnose darter (*Percina oxyrhynchus*);
- ~~(v)~~(u) Smoky dace (*Clinostomus* sp.) (Little Tennessee River and tributaries);
- ~~(w)~~(v) Striped shiner (*Luxilus chrysocephalus*);
- ~~(x)~~(w) Tennessee snubnose darter (*Etheostoma simoterum*);
- ~~(y)~~(x) Thinlip chub (*Cyprinella zanema*) (Lumber River and its tributaries and Cape Fear River and its tributaries);
- ~~(z)~~(y) Waccamaw killifish (*Fundulus waccamensis*);
- ~~(aa)~~(z) Wounded darter (*Etheostoma vulneratum*);
- ~~(bb)~~(aa) Yellowfin shiner (*Notropis lutipinnis*) (Savannah River and its tributaries);
- (5) Mammals:
- (a) Allegheny woodrat (*Neotoma magister*);
- (b) Buxton Woods white-footed mouse (*Peromyscus leucopus buxtoni*);
- (c) Coleman's oldfield mouse (*Peromyscus polionotus colemani*);
- (d) Eastern big-eared bat (*Corynorhinus rafinesquii macrotis*);
- (e) Eastern small-footed bat (*Myotis leibii leibii*);
- ~~(f)~~ Elk (*Cervus elaphus*);
- ~~(g)~~(f) Florida yellow bat (*Lasiurus intermedius floridanus*);
- ~~(h)~~(g) Pungo white-footed mouse (*Peromyscus leucopus easti*);
- ~~(i)~~(h) Southeastern bat (*Myotis austroriparius*);
- ~~(j)~~(i) Southern rock shrew (*Sorex dispar blitchi*);
- ~~(k)~~(j) Southern rock vole (*Microtus chrotorrhinus carolinensis*);
- ~~(l)~~(k) Southern water shrew (*Sorex palustris punctulatus*);
- ~~(m)~~(l) Star-nosed mole (*Condylura cristata parva*).
- (6) Mollusks:
- (a) Appalachian gloss (*Zonitoides patuloides*);
- (b) Bidentate dome (*Ventridens coelaxis*);
- (c) Black mantleslug (*Pallifera hemphilli*);
- (d) Blackwater ancyloid (*Ferrissia hendersoni*);
- (e) Blue-foot lancetooth (*Haplotrema kendeighi*);
- (f) Cape Fear spike (*Elliptio marsupiobesa*);
- (g) Dark glyph (*Glyphyalinia junaluskana*);
- (h) Dwarf proud globe (*Patera clarki clarki*);
- (i) Dwarf threetooth (*Triodopsis fulciden*);
- (j) Fringed coil (*Helicodiscus fimbriatus*);
- (k) Glossy supercoil (*Paravitrea placentula*);
- (l) Great Smoky slitmouth (*Stenotrema depilatum*);
- (m) High mountain supercoil (*Paravitrea andrewsae*);
- (n) Honey glyph (*Glyphyalinia vanattai*);
- (o) Lamellate supercoil (*Paravitrea lamellidens*);
- (p) Mirey Ridge supercoil (*Paravitrea clappi*);
- (q) Notched rainbow (*Villosa constricta*);
- (r) Open supercoil (*Paravitrea umbilicaris*);
- (s) Pink glyph (*Glyphyalinia pentadelphia*);
- (t) Pod lance (*Elliptio folliculata*);

- (u) Queen crater (Appalachina chilhoweensis);
 - (v) Rainbow (Villosa iris);
 - (w) Ramp Cove supercoil (Paravitrea lacteodens);
 - (x) Saw-tooth disc (Discus bryanti);
 - (y) Spike (Elliptio dilatata);
 - (z) Spiral coil (Helicodiscus bonamicus);
 - (aa) Velvet covert (Inflectarius subpalliatu);
 - (bb) Waccamaw amnicola (Amnicola sp.);
 - (cc) Waccamaw lampmussel (Lampsilis crocata);
 - (dd) Waccamaw siltsnail (Cincinnatia sp.);
 - (ee) Wavy-rayed lampmussel (Lampsilis fasciola).
- (7) Reptiles:
- (a) Carolina pigmy rattlesnake (Sistrurus miliarius miliarius);
 - (b) Carolina watersnake (Nerodia sipedon williamengelsi);
 - (c) Diamondback terrapin (Malaclemys terrapin);
 - (d) Eastern smooth green snake (Opheodrys vernalis vernalis);
 - (e) Eastern spiny softshell (Apalone spinifera spinifera);
 - (f) Mimic glass lizard (Ophisaurus mimicus);
 - (g) Northern pine snake (Pituophis melanoleucus melanoleucus);
 - (h) Outer Banks kingsnake (Lampropeltis getula sticticeps);
 - (i) Southern hognose snake (Heterodon simus);
 - (j) Stripeneck musk turtle (Sternotherus minor peltifer);
 - (k) Timber rattlesnake (Crotalus horridus).

Reason for Proposed Action: *The Town of Cedar Point made formal application to the Wildlife Resources Commission requesting a no-wake zone on Palmetto Drive Canal in Cedar Point, Carteret County. The Town advertised and held a public hearing and submitted a resolution requesting the Commission to promulgate rulemaking.*

Comments may be submitted to: *Kate Pipkin, 1701 Mail Service Center, Raleigh, NC 27699-1701*

Comment period ends: *January 25, 2016*

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
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

15A NCAC 10F .0330 CARTERET COUNTY

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

- (1) the waters of Money Island Slough beginning at the east end of Money Island near the Anchorage Marina Basin and ending at the west end of Money Island where Brooks Avenue deadends at the slough;
- (2) the waters of Taylor Creek located within the territorial limits of the Town of Beaufort;

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to amend the rule cited as 15A NCAC 10F .0330.

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

Proposed Effective Date: *May 1, 2016*

Public Hearing:

Date: *January 20, 2016*

Time: *7:00 p.m.*

Location: *Craven Community College, 302 Broad St, New Bern, NC 28560*

- (3) the waters of Pelletier Creek beginning at the entrance to Pelletier Creek at the Intracoastal Waterway and ending at U.S. Highway 70;
- (4) the waters of Bogue Sound Harbor Channel in Morehead City between Sugar Loaf Island and the seawall on the south side of Evans, Shepard and Shackelford Streets and bounded on the east by the State Ports Authority and on the west by the eastern right-of-way margin of South 13th Street extended;
- (5) the waters of Gallant's Channel from the US 70 crossing over the Grayden Paul bridge to Taylor's Creek;
- (6) the waters of Cedar Island Bay and Harbor from N.C. Highway 12 to Cedar Island Bay Channel Light 8;
- (7) the waters of the small cove on the west side of Radio Island south of Old Causeway Road;
- (8) the waters of the Newport River beginning at the north side of the Beaufort Drawbridge and ending at marker #6;
- (9) the waters of Spooners Creek within the territorial limits of the Town of Morehead City as delineated by appropriate markers;
- (10) the waters of Taylor's Creek from the eastern end of the current no wake zone eastward to Channel Marker #1A;
- (11) the waters of the Newport River at Bogue Sound including all waters surrounding the Port of Morehead City to Brandt Island as delineated by appropriate markers;
- (12) the waters of Morgans Creek as delineated by appropriate markers;
- (13) the waters of Cannonsgate Marina and the Cannonsgate Marina Channel, beginning at its intersection with Bogue Sound at 34.70163 N, 76.98157 W as delineated by appropriate markers; and
- (14) the waters of the Newport River within 200 yards of the Newport River Beach Access Boat Ramp, beginning at the shore north of the U.S. 70 bridge at a point at 34.72141 N, 76.68707 W, west to a point at 34.72128 N, 76.68893 W, north to a point at 34.72376 N, 76.68911 N, then east to the shore at 34.72371 N, 76.68631 W.
- (15) the waters of Palmetto Drive canal, a tributary to the White Oak River, beginning at a point on the western shore at 34.67903N, 77.10142W to a point on the eastern shore at 34.67899, 77.10098 and extending the entire length of the canal.

(b) Speed Limit. It is unlawful to operate a motorboat or vessel at a speed greater than no-wake speed while on the waters of the regulated areas designated in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Carteret County, with respect to the regulated areas designated in Subparagraphs (1), (3), (5), (6), (7), (8), (10), (12) and (13) of Paragraph (a) of this Rule, and the Board of

Commissioners of the Town of Beaufort, with respect to the regulated area designated in Subparagraph (2) of Paragraph (a) of this Rule, and the Board of Commissioners of Morehead City, with respect to Subparagraph (4), (9), and (14) of Paragraph (a) of this Rule, and the North Carolina State Ports Authority, with respect to the regulated area designated in Subparagraph (11) of Paragraph (a) of this Rule are designated as suitable agencies for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to adopt the rule cited as 15A NCAC 10F .0377.

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

Proposed Effective Date: *May 1, 2016*

Public Hearing:

Date: *January 12, 2016*

Time: *7:00 p.m.*

Location: *Haywood Community College, 185 Freedlander Drive, Clyde, NC 28721*

Reason for Proposed Action: *Duke Energy Carolinas, LLC, made a formal request to the Wildlife Resources Commission to establish a no-vessel entry swimming area at the Pines Recreation Area Swim Beach on Lake Glenville, Jackson County.*

Comments may be submitted to: *Kate Pipkin, 1701 Mail Service Center, Raleigh, NC 27699-1701*

Comment period ends: *January 25, 2016*

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
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

15A NCAC 10F .0377 JACKSON COUNTY

(a) This Rule applies to the public swimming area known as the Pines Recreation Swim Area on Lake Glenville. The public swimming area shall be marked with four no-boats buoys set at the following locations: 35.197889N, 83.160944W; 35.197583N, 83.160639W; 35.197417N, 83.160306W; and 35.197417N, 83.159833W.

(b) No person operating or responsible for the operation of a vessel shall permit it to enter the marked public swimming area described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Jackson County or Duke Energy Carolinas, LLC are designated as suitable entities for placement and maintenance of the markers implementing this Rule.

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

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 32 – NORTH CAROLINA MEDICAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Medical Board intends to adopt the rule cited as 21 NCAC 32M .0117.

Link to agency website pursuant to G.S. 150B-19.1(c): www.ncmedboard.org/about_the_board/rule_changes

Proposed Effective Date: April 1, 2016

Public Hearing:

Date: January 14, 2016

Time: 10:00 a.m.

Location: North Carolina Medical Board, 1203 Front Street, Raleigh, NC 27609

Reason for Proposed Action: To allow the NC Board of Nursing to receive certain information obtained in the NC Controlled Substances Reporting System pursuant to NCGS 90-113.74.

Comments may be submitted to: Wanda Long, NC Medical Board, P.O. Box 20007, Raleigh, NC 27619, fax (919) 326-0036, email rules@ncmedboard.org

Comment period ends: January 14, 2016

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
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

SUBCHAPTER 32M - APPROVAL OF NURSE PRACTITIONERS

SECTION .0100 – REPORTING CRITERIA

21 NCAC 32M .0117 REPORTING CRITERIA

(a) The Department of Health and Human Services ("Department") may report to the North Carolina Board of Nursing ("Board of Nursing") information regarding the prescribing practices of those nurse practitioners ("prescribers") whose prescribing:

- (1) falls within the top one percent of those prescribing 100 milligrams of morphine equivalents ("MME") per patient per day; or
- (2) falls within the top one percent of those prescribing 100 MME's per patient per day in combination with any benzodiazepine and who are within the top one percent of all controlled substance prescribers by volume.

(b) In addition, the Department may report to the Board information regarding prescribers who have had two or more patient deaths in the preceding 12 months due to opioid poisoning.

(c) The Department may submit these reports to the Board upon request and may include the information described in G.S. 90-113.73(b).

(d) The reports and communications between the Department and the Board shall remain confidential pursuant to G.S. 90-16 and G.S. 90-113.74.

Authority G.S. 90-113.74.

* * * * *

CHAPTER 36 - BOARD OF NURSING

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Nursing intends to adopt the rule cited as 21 NCAC 36 .0815.

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

Proposed Effective Date: April 1, 2016

Public Hearing:

Date: January 22, 2016

Time: 1:00 p.m.

Location: NC Board of Nursing, 4516 Lake Boone Trail, Raleigh, NC 27607

Reason for Proposed Action: *In accordance with Session Law 2013-152 Section 3, in order to receive reports from the Department of Health and Human Services (DHHS) of data from the controlled substances reporting system, the Board is required to adopt rules setting criteria for DHHS to provide reports. The report encompasses inappropriate or excessive prescribing of opioids by licensees as part of a concerted statewide effort to stem prescription drug abuse, addiction and deaths due to overdose.*

Comments may be submitted to: Angela H. Ellis, APA Coordinator, NC Board of Nursing, P.O. Box 2129, Raleigh, NC 27602-2129, phone (919) 782-3211 ext 259, fax (919) 781-9461, email angela@ncbon.com

Comment period ends: January 22, 2016

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
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

SECTION .0800 - APPROVAL AND PRACTICE PARAMETERS FOR NURSE PRACTITIONERS

21 NCAC 36 .0815 REPORTING CRITERIA

(a) The Department of Health and Human Services ("Department") may report to the North Carolina Board of Nursing ("Board") information regarding the prescribing practices of those nurse practitioners ("prescribers") whose prescribing:

- (1) falls within the top one percent of those prescribing 100 milligrams of morphine equivalents ("MME") per patient per day; or
- (2) falls within the top one percent of those prescribing 100 MME's per patient per day in combination with any benzodiazepine and who are within the top one percent of all controlled substance prescribers by volume.

(b) In addition, the Department may report to the Board information regarding prescribers who have had two or more patient deaths in the preceding 12 months due to opioid poisoning.

(c) The Department may submit these reports to the Board upon request and may include the information described in G.S. 90-113.73(b).

(d) The reports and communications between the Department and the Board shall remain confidential pursuant to G.S. 90-113.74.

Authority G.S. 90-113.74.

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of Administrative Hearings intends to adopt the rules cited as 26 NCAC 03 .0501-.0504 and amend the rules cited as 26 NCAC 03 .0101-.0102.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncoah.com/>

Proposed Effective Date: March 1, 2016

Public Hearing:

Date: January 15, 2016

Time: 9:00 a.m.

Location: 1711 New Hope Church Road, Raleigh, NC 27609

Reason for Proposed Action: *G.S. 150B-23.3 permits documents filed and served in a contested case to be filed and served electronically by means of the service provided by the Office of Administrative Hearings (OAH) for e-filing and e-service of documents via the Internet, as defined by rules adopted*

by OAH. The rule amendments and adoptions set out the procedure for electronic filing with OAH.

Comments may be submitted to: Bill Culpepper, 1711 New Hope Church Road, Raleigh, NC 27609, email bill.culpepper@oah.nc.gov

Comment period ends: January 15, 2016

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
Substantial economic impact (>=\$1,000,000)
Approved by OSBM
No fiscal note required by G.S. 150B-21.4

CHAPTER 03 - HEARINGS DIVISION

SECTION .0100 - HEARING PROCEDURES

26 NCAC 03 .0101 GENERAL

(a) The rules in this Chapter in effect on January 1, 2012 shall apply to contested cases commenced on or after January 1, 2012. The rules in this Chapter in effect on December 31, 2011 shall apply to contested cases commenced on or before December 31, 2011.

(b)(a) The Rules of Civil Procedure as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes shall apply in contested cases in the Office of Administrative Hearings (OAH) unless another specific statute or rule of the Office of Administrative Hearings provides otherwise.

(c) The Office of Administrative Hearings shall supply forms for use in contested cases. These forms shall conform to the format of the Administrative Office of the Courts' Judicial Department Forms Manual.

(d)(b) The Office of Administrative Hearings shall permit the filing of contested case documents and other pleadings in the OAH electronic filing system (e-OAH), by facsimile (fax), or by

electronic mail by with an attached file either in PDF format or a document compatible with Microsoft Word 2007-2013. Faxed documents shall be sent to: (919) 431-3100. Electronic mail with attachment shall be sent by electronic transmission to: oah.clerks@oah.nc.gov. The faxed or electronic mail with attachment documents shall be deemed a "filing" within the meaning of 26 NCAC 03 .0102(a)(2) provided the original signed document, one copy document and the appropriate filing fee (if a fee is required by G.S. 150B-23.2) is received by OAH within seven business days following the faxed or electronic transmission of the faxed or electronic mail with attachment documents. Other electronic transmissions, for example, electronic Electronic mail without attached file as specified in this Paragraph, Paragraph shall not constitute a valid filing with the Office of Administrative Hearings.

(e) Every pleading and other documents filed with OAH shall be signed by the attorney, mediator, or other party who prepared the document, if it was prepared by an attorney, and shall contain his the preparer's name, mailing address, electronic mail address, and telephone number, number, and Documents prepared by an attorney shall have the attorney's North Carolina State Bar number. An original and one copy of each document shall be filed.

(f) Except as otherwise provided by statutes or by rules adopted under G.S. 150B-38(h), the rules contained in this Chapter shall govern the conduct of contested case hearings under G.S. 150B-40 when an Administrative Law Judge has been assigned to preside in the contested case.

Authority G.S. 7A-750; 7A-751(a); 150B-23.2; 150B-23.3; 150B-40(c).

26 NCAC 03 .0102 DEFINITIONS AND CONSTRUCTION

(a) The definitions contained in G.S. 150B-2 are incorporated herein by reference. In addition, the following definitions apply:

- (1) "Chief Administrative Law Judge" means the person appointed according to G.S. 7A-752.
(2) "File or Filing" "File" or "Filing" means means: (A) to place the paper or item to be filed into the care and custody of the chief hearings clerk of the Office of Administrative Hearings, and acceptance thereof by the clerk, him, except that when a party submits a document for filing to the administrative law judge during the course of a contested case hearing and the filing is accepted by the administrative law judge, may permit the papers to be filed with him in which event the administrative law judge shall note thereon the filing date. All documents filed with the Office of Administrative Hearings, except exhibits, shall be in duplicate in letter size 8 1/2 by 11" 8 1/2" by 11"; or (B) electronic filing as defined in Rule .0501(1) of this Chapter.

- (3) ~~"Service or Serve"~~ "Service" or "Serve" means means:
- (A) delivery by electronic mail with an attached file in a format that is readily accessible to the recipient;
 - (B) delivery by facsimile (fax);
 - (C) personal delivery;
 - (D) delivery by first class United States Postal Service mail; ~~or~~
 - (E) delivery by overnight express mail ~~service~~ service; or
 - (F) electronic service as defined in Rule .0501(4) of this Chapter.

(b) A Certificate of Service by the person making the service shall be appended to every document requiring service under these Rules.

(c) Service by mail is complete upon placing the item to be served, enclosed in a wrapper addressed to the person to be served, in an official depository of the United States Postal Service.

(d) Service by overnight express mail ~~is~~ complete upon placing the item to be served, enclosed in a wrapper addressed to the person to be served, in the custody of an overnight express mail service.

(e) Service by electronic mail or fax ~~is~~ shall be deemed to occur one hour after it is sent, provided that:

- (1) documents sent after 5 pm are deemed sent at 8 am the following business day; and
- (2) documents sent by electronic mail or fax that are not readable in a format in which the content is readily accessible to by the recipient are not deemed ~~served~~ served until actually received in a form in which the content is readily accessible to the receiving party. Within five business days of ~~receipt~~ receipt of an unreadable document, the receiving party shall notify the sending party of the unreadability of that the document document sent by electronic mail is not in a format readily accessible to the recipient.

Service by electronic mail or fax is treated the same as service by mail for the purpose of adding three days to the prescribed period to respond under ~~N.C.R. Civ.P. (6)(e)~~ Rule 6(e) of the Rules of Civil Procedure as contained in G.S. 1A-1.

(f) The rules of statutory construction contained in Chapter 12 of the General Statutes shall be applied in the construction of these Rules.

Authority G.S. 7A-752; 150B-23; 150B-23.3.

SECTION .0500 – ELECTRONIC FILING

26 NCAC 03 .0501 DEFINITIONS

In addition to the definitions contained in G.S. 150B-23.3, the following terms shall mean:

- (1) "Electronic filing" or "filed electronically" means the electronic transmission of the petition, notice of hearing, pleadings, or any other documents filed in a contested case with

the Office of Administrative Hearings by uploading to the case docket using the OAH electronic filing system (e-OAH) accessed through a link on the OAH website at www.ncoah.com.

- (2) "Electronic Filing Service Provider (EFSP)" means the service provided by the Office of Administrative Hearings for electronic filing and electronic service of documents by way of the Internet accessed through a link on the OAH website at www.ncoah.com.
- (3) "Electronic signature" or "signed electronically" means a graphic version of the e-OAH user's signature or "s/" followed by the e-OAH user's typewritten name. This shall be the legal equivalent of the e-OAH user's handwritten signature.
- (4) "Electronic service" or "served electronically" means the electronic transmission of the petition, notice of hearing, pleadings, or any other documents to an attorney, mediator, or party utilizing the attorney's, mediator's, or party's electronic mail address registered with the Office of Administrative Hearings in e-OAH.
- (5) "Filed" means received by the chief hearings clerk of the Office of Administrative Hearings in e-OAH.

Authority G.S. 7A-750; 150B-23; 150B-23.3.

26 NCAC 03 .0502 GENERAL

(a) The Office of Administrative Hearings shall permit documents filed and served in a contested case to be filed and served electronically by means of the Electronic Filing Service Provider. All attorneys, mediators, and other parties using e-OAH shall register to use the system through a link on the OAH website at www.ncoah.com. All e-OAH users shall keep current their electronic mail address in e-OAH.

(b) In contested cases filed in e-OAH, registration as an e-OAH user constitutes waiver of the right to receive notice or service by first class mail, certified mail, or personal delivery, and consent to electronic service and receipt of contested case documents at the e-OAH user's electronic mail address registered in e-OAH.

(c) An e-OAH user shall be responsible for the readability of any document filed or served electronically by that user. Within five business days of receipt of an unreadable document filed or served electronically, the receiving party shall notify the sending party of the unreadability of the document.

(d) Pleadings and other documents filed or served electronically shall contain the electronic signature of the attorney, mediator, or party who prepared the document and the preparer's name, mailing address, electronic mail address, and telephone number. Documents prepared by an attorney shall have the attorney's North Carolina State Bar number.

(e) Documents filed in e-OAH are filed when received by the chief hearings clerk of the Office of Administrative Hearings. Upon completion of filing, the clerk shall send the e-OAH user a

confirmation receipt that includes the date and time of filing which shall be proof of filing.

(f) Documents filed electronically after 5 pm shall be deemed filed at 8 am the following business day.

(g) An e-OAH filing in a contested case shall be served electronically on all other attorneys or other parties in that contested case and shall include a certificate of service.

(h) Electronic service shall be treated as the same as service by mail for the purpose of adding three days to the prescribed period to respond under Rule 6(e) of the Rules of Civil Procedure as contained in G.S. 1A-1.

(i) A subpoena issued in a contested case by the chief hearings clerk of the Office of Administrative Hearings shall be signed electronically by the clerk.

(j) In contested cases filed electronically, the applicable filing fee shall be:

- (1) forwarded by first class mail or overnight express mail contemporaneously with the electronic filing;

(2) paid personally to the chief hearings clerk of the Office of Administrative Hearings within five business days of the filing; or

(3) paid by electronic funds transfer.

Authority G.S. 7A-750; 150B-23; 150B-23.2; 150B-23.3.

26 NCAC 03 .0503 REGISTRANTS

Only attorneys, mediators, and other parties associated with a contested case docket shall be permitted to register with e-OAH.

Authority G.S. 7A-750; 150B-23; 150B-23.3.

26 NCAC 03 .0504 INTEGRATION WITH OTHER RULES

The rules in this Section are intended to supplement the other rules in this Chapter. In the event of a conflict, the rules in this Section shall control with respect to contested cases filed in e-OAH.

Authority G.S. 7A-750; 150B-23.3.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission October 15, 2015 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
Jeff Hyde (1st Vice Chair)
Robert A. Bryan, Jr.
Margaret Currin
Jay Hemphill
Jeffrey A. Poley

Appointed by House
Garth Dunklin (Chair)
Stephanie Simpson (2nd Vice Chair)
Anna Baird Choi
Jeanette Doran
Ralph A. Walker

COMMISSION COUNSEL

Abigail Hammond	(919)431-3076
Amber Cronk May	(919)431-3074
Amanda Reeder	(919)431-3079
Jason Thomas	(919)431-3081

RULES REVIEW COMMISSION MEETING DATES

November 19, 2015	December 17, 2015
January 21, 2016	February 18, 2016

**RULES REVIEW COMMISSION MEETING
MINUTES
October 15, 2015**

The Rules Review Commission met on Thursday, October 15, 2015, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Bobby Bryan, Anna Choi, Jeanette Doran, Garth Dunklin, Jay Hemphill, Jeff Hyde, Jeff Poley, and Ralph Walker.

Staff members present were Commission Counsels Abigail Hammond, Amber Cronk May, Amanda Reeder, and Jason Thomas; and Julie Brincefield, Alex Burgos, and Dana Vojtko.

The meeting was called to order at 10:02 a.m. with Chairman Dunklin presiding.

New Commissioners Bobby Bryan and Jeff Poley were welcomed and introduced by Chairman Dunklin.

Retired Court of Appeals Judge and Commissioner, the Honorable Ralph Walker, administered the oath of office to new Commissioners Bobby Bryan and Jeff Poley.

Chairman Dunklin called to attention the presence of Wake County Sherriff, Donnie Harrison.

Chairman Dunklin recognized Commissioners Walker and Whitaker for their service.

OAH Chief Administrative Law Judge, the Honorable Julian Mann, III, addressed the Commission.

Chairman Dunklin read into the record the following statements of economic interest for:

Bobby Bryan, which stated there was no actual conflict of interest or the potential for a conflict of interest.

Jeff Poley, which stated there was no actual conflict of interest. However, there is the potential for a conflict of interest because Mr. Poley is a Partner with the law firm of Parker Poe Adams & Bernstein, LLP, and his spouse is a Partner with the law firm of Cranfill Sumner & Hartzog, LLP. Should any employees or partners of the aforesaid firms, or any of the firms'

current or former clients, come before the Commission for official action, Mr. Poley should exercise appropriate caution in the performance of his public duties. This could include recusing himself to the extent that those interests would influence or could reasonably appear to influence his actions.

Chairman Dunklin read the notice required by G.S. 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts.

APPROVAL OF MINUTES

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the September 17, 2015 meeting. There were none and the minutes were approved as distributed.

FOLLOW UP MATTERS

Environmental Management Commission

The Commission voted to allow 12 letters of objection submitted pursuant to G.S. 150B-21.3 to be withdrawn pursuant to Rule 26 NCAC 05 .0113.

15A NCAC 02B .0295 was unanimously approved.

Property Tax Commission

17 NCAC 11 .0216 and .0217 – The Commission objected to both rules for failure to comply with Part 2 of the Administrative Procedure Act, specifically as the Property Tax Commission asserted at the time of filing these Rules that the Property Tax Commission was exempt from the notice and hearing requirements of Article 2A of G.S. 150B under G.S. 150B-1(d)(4). The Commission found that the cited exemption does not apply to the Property Tax Commission, which is an independent agency created by statute and separate from the Department of Revenue; therefore, the Property Tax Commission failed to comply with Part 2 of the Administrative Procedure Act.

Further, and in addition to the objection set forth in the prior paragraph, the Commission objected to the following language set forth in Rule 17 NCAC 11 .0216:

An appellant represented by an attorney who is a member of a law firm is urged to see that another member of the firm be prepared to present his case in the event that primary attorney is unable to attend the hearing.

The Commission found this language to be: outside the authority delegated to the agency by the General Assembly; unclear and ambiguous; and unnecessary.

Board of Massage and Bodywork Therapy

21 NCAC 30 .0702 was unanimously approved.

21 NCAC 30 .1001, .1002, .1003, .1004, .1005, .1006, .1007, .1008, .1009, .1010, .1011, .1012, .1013, .1014, .1015 - There has been no response by the agency on these Rules, therefore no action was required by the Commission.

Building Code Council

2011 NC Electrical Code – 300.9 – The Rule was returned at the request of the agency, therefore no action was required by the Commission.

LOG OF FILINGS (PERMANENT RULES)

NC Rural Electrification Authority

04 NCAC 08 .0304 was unanimously approved.

Department of Health and Human Services

10A NCAC 14D .0101 was unanimously approved.

Prior to the discussion of the rule from the Department of Health and Human Services, Commissioner Poley recused himself and did not participate in any discussion or vote concerning these Rules because his law firm, Parker Poe Adams & Bernstein, LLP, works with DHHS from time to time.

Criminal Justice Education and Training Standards Commission

All rules were unanimously approved.

Department of Labor

13 NCAC 07G .0101 was unanimously approved.

The Commission received more than 10 letters of objection to 13 NCAC 07G .0101. Pursuant to G.S. 150B-21.3, the rule is now subject to legislative review and a delayed effective date.

Environmental Management Commission

The Commission voted to extend the period of review for these Rules in accordance with G.S. 150B-21.10. They did so in response to a request from the Environmental Management Commission to extend the period of review in order to allow for approval of technical change requests.

Board of Pharmacy

21 NCAC 46 .2612 was unanimously approved.

Board of Podiatry Examiners

All rules were unanimously approved.

EXISTING RULES REVIEW

Council of State

06 NCAC 01 - The Commission unanimously approved the report as submitted by the agency.

06 NCAC 02 - The Commission unanimously approved the report as submitted by the agency.

06 NCAC 03 - The Commission unanimously approved the report as submitted by the agency.

06 NCAC 04 - The Commission unanimously approved the report as submitted by the agency.

Commission for Public Health

10A NCAC 40 - The Commission unanimously approved the report as submitted by the agency.

10A NCAC 47 - The Commission unanimously approved the report as submitted by the agency.

Department of Insurance

11 NCAC 11 - The Commission unanimously approved the report as submitted by the agency.

11 NCAC 19 - The Commission unanimously approved the report as submitted by the agency.

Department of the Secretary of State

18 NCAC 01 - The Commission unanimously approved the report as submitted by the agency.

18 NCAC 04 - The Commission unanimously approved the report as submitted by the agency.

18 NCAC 13 - The Commission unanimously approved the report as submitted by the agency.

Ann Wall with the agency addressed the Commission.

State Human Resources Commission

25 NCAC 01D – The Commission unanimously approved the report as submitted by the agency.

Prior to the discussion of the report from the State Human Resources Commission, Commissioner Doran recused herself and did not participate in any discussion or vote concerning the report because she has a possible conflict for she is a state employee and supervises state employees.

COMMISSION BUSINESS

Commissioners and Commission counsel discussed consistency in review of rules pursuant to G.S. 150B-2.8(a)(d).

Ann Wall with the Secretary of State addressed the Commission.

Bill Peaslee with the Department of Administration addressed the Commission.

Staff gave the Commission a brief legislative update.

The meeting adjourned at 12:14 p.m.

The next regularly scheduled meeting of the Commission is Thursday, November 19th at 10:00 a.m.

There is a digital recording of the entire meeting available from the Office of Administrative Hearings /Rules Division.

Respectfully Submitted,

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:

Garth Dunklin, Chair

DRAFT

October 2015

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Hollis Yelverton	NCDOL
ALLEN MCNEELY	NCDOL
KEVIN BEAUREGARD	NCDOL
Jane Gilchrist	INCDOL
Jennifer Hayward	NCDOL
Carla Rose	NCDOL
David Lingertell	NCIDOR
Jack T Shiras	Property Tax Commission
Sue Homewood	NCDEQ
Nadine Pfeiffer	DHSR
Megan Lamphere	DHSR
Libby Kinsey	DHSR
Marquet Duke	OSHR
Jennifer Everett	DEQ
Grant Postaw	BOP
Amanda Honaker	TSS
Maggie Craven	OSHR
Penney DePas	NC Board of Podiatry Exmrs
Arnell	SOS
Frances Liles	NCREA
Karen Higgins	NCDEQ

S/I

October 2015

Rules Review Commission
Meeting
Please **Print** Legibly

Name	Agency
<i>Merrily Chock</i>	<i>NCCTETS</i>
<i>Raymond Holz</i>	<i>Restoration Systems, Inc</i>
<i>Dennis Schoch</i>	<i>OSHR</i>
<i>Bill Penolze</i>	<i>COG</i>

LIST OF APPROVED PERMANENT RULES
October 15, 2015 Meeting

NC RURAL ELECTRIFICATION AUTHORITY

Loan Applications and Categories 04 NCAC 08 .0304

HEALTH AND HUMAN SERVICES, DEPARTMENT OF

Scope and Definitions 10A NCAC 14D .0101

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

Documentation of Educational Requirements 12 NCAC 09B .0106

Minimum Standards for Law Enforcement Officers 12 NCAC 09B .0111

Minimum Standards for Local Confinement Personnel 12 NCAC 09B .0114

Minimum Standards for Juvenile Justice Officers 12 NCAC 09B .0117

Admission of Trainees 12 NCAC 09B .0203

General Instructor Certification 12 NCAC 09B .0302

Certification of School Directors 12 NCAC 09B .0501

Instructor Qualifications 12 NCAC 09F .0104

Education 12 NCAC 09G .0204

General Instructor Certification 12 NCAC 09G .0308

LABOR, DEPARTMENT OF

Handling of Antineoplastic Agents 13 NCAC 07G .0101

ENVIRONMENTAL MANAGEMENT COMMISSION

Mitigation Program Requirements for Protection and Mainte... 15A NCAC 02B .0295

MASSAGE AND BODYWORK THERAPY, BOARD OF

Continuing Education Definitions 21 NCAC 30 .0702

PHARMACY, BOARD OF

Storage of Devices and Medical Equipment 21 NCAC 46 .2612

PODIATRY EXAMINERS, BOARD OF

License Re-Instatement 21 NCAC 52 .0215

Forms and Applications 21 NCAC 52 .0611

RRC DETERMINATION
PERIODIC RULE REVIEW
October 15, 2015
Necessary with Substantive Public Interest

State Human Resources Commission

25 NCAC 01D .0201

25 NCAC 01D .2701

**RRC DETERMINATION
PERIODIC RULE REVIEW
October 15, 2015
Necessary without Substantive Public Interest**

Council of State	11 NCAC 11C .0307	11 NCAC 11F .0604
06 NCAC 01 .0101	11 NCAC 11C .0310	11 NCAC 11F .0605
06 NCAC 01 .0102	11 NCAC 11C .0311	11 NCAC 11F .0606
06 NCAC 01 .0103	11 NCAC 11C .0405	11 NCAC 11F .0701
06 NCAC 01 .0104	11 NCAC 11C .0406	11 NCAC 11F .0801
06 NCAC 01 .0105	11 NCAC 11C .0407	
06 NCAC 01 .0106	11 NCAC 11C .0501	Insurance, Department of
06 NCAC 01 .0107	11 NCAC 11C .0502	11 NCAC 11H .0101
06 NCAC 02 .0101	11 NCAC 11C .0503	11 NCAC 11H .0102
06 NCAC 02 .0102	11 NCAC 11C .0504	11 NCAC 11H .0103
06 NCAC 02 .0103	11 NCAC 11C .0505	11 NCAC 11H .0104
06 NCAC 02 .0104	11 NCAC 11C .0601	11 NCAC 11H .0105
06 NCAC 04 .0101	11 NCAC 11C .0602	11 NCAC 11H .0106
06 NCAC 04 .0102	11 NCAC 11C .0603	11 NCAC 11H .0107
	11 NCAC 11C .0604	11 NCAC 11H .0108
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10A NCAC 47A .0101	11 NCAC 11D .0104	11 NCAC 11H .0110
10A NCAC 47A .0102	11 NCAC 11D .0107	11 NCAC 11H .0111
10A NCAC 47B .0101	11 NCAC 11D .0110	11 NCAC 19A .0102
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10A NCAC 47B .0103	11 NCAC 11D .0112	11 NCAC 19A .0104
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10A NCAC 47B .0105	11 NCAC 11D .0169	11 NCAC 19A .0106
10A NCAC 47B .0106	11 NCAC 11D .0170	11 NCAC 19A .0107
10A NCAC 47B .0108		11 NCAC 19A .0108
10A NCAC 47B .0109	Insurance, Commissioner of	
10A NCAC 47C .0101	11 NCAC 11F .0201	Secretary of State, Department of the
10A NCAC 47C .0102	11 NCAC 11F .0202	18 NCAC 01 .0103
10A NCAC 47C .0104	11 NCAC 11F .0203	18 NCAC 04 .0101
10A NCAC 47C .0105	11 NCAC 11F .0204	18 NCAC 04 .0102
10A NCAC 47C .0106	11 NCAC 11F .0205	18 NCAC 04 .0201
	11 NCAC 11F .0206	18 NCAC 04 .0202
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11 NCAC 11A .0105	11 NCAC 11F .0208	18 NCAC 04 .0204
11 NCAC 11A .0106	11 NCAC 11F .0301	18 NCAC 04 .0206
11 NCAC 11B .0152	11 NCAC 11F .0302	18 NCAC 04 .0302
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11 NCAC 11C .0129	11 NCAC 11F .0603	

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18 NCAC 13 .0201	18 NCAC 13 .0415	25 NCAC 01D .0112
18 NCAC 13 .0202	18 NCAC 13 .0416	25 NCAC 01D .0113
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PERIODIC RULE REVIEW
October 15, 2015
Unnecessary**

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06 NCAC 03 .0104	of the	25 NCAC 01D .0705
	18 NCAC 01 .0101	25 NCAC 01D .0706
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10A NCAC 40B .0104	18 NCAC 01 .0602	25 NCAC 01D .0708
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11 NCAC 11C .0102	25 NCAC 01D .0305	25 NCAC 01D .1202
11 NCAC 11C .0103	25 NCAC 01D .0308	25 NCAC 01D .1203
11 NCAC 11C .0132	25 NCAC 01D .0405	25 NCAC 01D .1204
11 NCAC 11C .0133	25 NCAC 01D .0406	25 NCAC 01D .1206
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25 NCAC 01D .1926
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25 NCAC 01D .2108
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25 NCAC 01D .2604

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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>.

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*Chief Administrative Law Judge
JULIAN MANN, III*

*Senior Administrative Law Judge
FRED G. MORRISON JR.*

ADMINISTRATIVE LAW JUDGES

Melissa Owens Lassiter	A. B. Elkins II
Don Overby	Selina Brooks
J. Randall May	Phil Berger, Jr.
J. Randolph Ward	

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FILED
OFFICE OF ADMINISTRATIVE HEARINGS
7/17/2015 8:11 AM

STATE OF NORTH CAROLINA
COUNTY OF SCOTLAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15DOJ00214

DEFFERSON LUVONTAE GRAHAM PETITIONER, V. N C CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION RESPONDENT.	<p style="text-align: center;">PROPOSAL FOR DECISION</p>
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This case came on for hearing on June 8, 2015 before Administrative Law Judge J. Randall May in Lillington, North Carolina. This case was heard after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: Defferson Luvontae Graham, *pro se*
 15743 Hamlet Road
 Gibson, North Carolina 28343

Respondent: Hal F. Askins, Special Deputy Attorney General
 Attorney for Respondent
 Department of Justice
 Law Enforcement Liaison Section
 9001 Mail Service Center
 Raleigh, North Carolina 27699-9001

ISSUES

Does substantial evidence exist for Respondent to suspend Petitioner's correctional officer certification for three (3) years for the commission of the DAC Misdemeanor offense of assault on a female?

RULES AT ISSUE

12 NCAC 09G .0102(9)(g)
12 NCAC 09G .0504(b)(3)

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following FINDINGS OF FACTS.

In making the FINDINGS OF FACTS, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate facts 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 the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by certified mail, the proposed suspension letter, mailed by Respondent, the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter "The Commission"), on November 19, 2014.

2. Respondent, North Carolina Criminal Justice Education and Training Standards Commission, has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 09G, to certify correctional officers and to revoke, suspend, or deny such certification.

3. Petitioner testified and admitted that he was employed as a correctional officer and had notice of the proceedings and charges against him as he had received a copy of the Proposed Suspension of Correctional Officer Certification mailed to him. (Respondent's Exhibit 1)

4. Petitioner was charged criminally with assault on a female, victim Elizabeth Graham, on offense date 7 March, 2014, in violation of N.C.G.S. § 14-33. The charges against Petitioner were voluntarily dismissed pursuant to negotiations on 28 March, 2014. (Respondent's Exhibit 3)

5. Subsequently, Respondent found probable cause to suspend Petitioner's certification as a correctional officer as a result of the *commission* of the DAC misdemeanor assault on a female in violation of N.C.G.S. § 14-33. (Respondent's Exhibit 1)

6. Deputy C.R. Smith of the Richmond County Sheriff's Office testified that he personally knew Petitioner from having previously worked with him, and that on 7 March, 2014 he was on duty and responded to a call for assistance at 545 Battle Dairy Road in Rockingham County. He responded to the residence within two minutes of receiving the call; hereupon he had to separate Petitioner and Elizabeth Flowers Graham who were or had been engaged in a domestic confrontation regarding Petitioner's attempts to exercise visitation rights with his children.

7. Ms. Graham complained of a cut to her wrist allegedly caused by Petitioner slamming a door on her wrist when he attempted to enter the home against her will. Petitioner did not reside at the residence on 7 March, 2014.

8. Deputy Smith observed a small cut on Ms. Graham's wrist. Petitioner had no injuries. In accordance with his standard procedure, Deputy Smith removed the uninjured party from the scene by requesting Petitioner to drive his vehicle to the Rockingham County magistrate's office.

9. At the magistrate's office, Petitioner was charged with the criminal offenses of assault on a female and domestic criminal trespass as shown in Respondent's Exhibit 3, as introduced into evidence herein.

10. Deputy Smith's written report of incident was identified and introduced into evidence as Respondent's Exhibit 4.

11. Petitioner offered testimony that he had gone to the residence on 7 March, 2014 to exercise visitation with his children, but when he arrived, his wife, Elizabeth Graham, from whom he is estranged, attempted to prevent him from entering the residence and slammed the door in his face. As a defensive reflex he put his hands out and caused the door to strike his wife's arm and bracelet, causing the injury to his wife.

12. Petitioner further testified that he did not reside with his wife at the time, but lived separately. When he went to court on the criminal charges he was represented by legal counsel and was advised to enter into an agreement in order to have the charges dismissed.

13. Petitioner's testimony and explanation of how the injuries to Elizabeth Graham were caused by Petitioner's "defense reflex" is not credible in light of all the evidence presented.

BASED UPON the foregoing Findings of Fact and upon the preponderance or greater weight of the evidence in the whole record, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter. To the extent that the Findings of Facts contain Conclusions of Law, or that the

Conclusions or Law are Findings of Fact, they should be so considered without regard to the given labels.

2. The North Carolina Criminal Justice Education and Training Standards Commission has authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9G, to certify correctional officers and probation/parole officers and to revoke, suspend, or deny such certification.

3. Pursuant to 12 NCAC 09G .0504(b)(3), the Commission may suspend, revoke, or deny certification of a correctional officer when the Commission finds the applicant for certification or the certified officer ... has committed or been convicted of a misdemeanor as defined in 12 NCAC 09G .0102 after certification.

4. Pursuant to 12 NCAC 09G .0102(9), a "Misdemeanor" means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses are classified by the Commission as the following as set forth in G.S. Or other state or federal law . . . (g) 14-33(c) Assault, battery with circumstances.

5. Pursuant to 12 NCAC 09G .0505(b)(1), when the Commission suspends or denies the certification of a corrections officer (including probation/parole officers), the period of sanction shall be not less than three years; however, the Commission may substitute a period of probation in lieu of suspension of certification following an administrative hearing where the cause of sanction is ... commission or conviction of a misdemeanor as defined in 12 NCAC 09G .0102.

6. A preponderance of evidence exists to support the conclusion that Petitioner committed the DAC misdemeanor offense of assault on a female by shoving an open door on her, thereby cutting her wrist with a bracelet she was wearing on 7 March 2014.

7. The findings of the Probable Cause Committee of the Respondent are supported by substantial evidence and are not arbitrary and capricious.

8. The party with the burden of proof in a contested case must establish the facts required by N.C.G.S. § 150B-23(a) by a preponderance of the evidence. N.C.G.S. § 150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C.G.S. § 150B-34(a).

9. Petitioner has the burden of proof in the case at bar. Overcash v. N.C. Dep't. Of Env't & Natural Resources, 172 N.C. App 6971, 635 S.E. 2d 442 (2006).

10. Petitioner has failed to show by a preponderance of the evidence that Respondent's proposed suspension of Petitioner's correctional officer certification is not supported by substantial evidence.

PROPOSAL FOR DECISION

NOW, THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends Respondent suspend Petitioner's correctional officer certification for a period for not less than three (3) years based upon Petitioner's commission of the DAC misdemeanor- assault on a female.

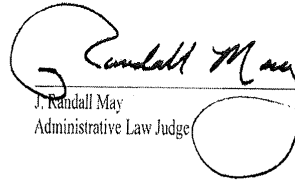
NOTICE

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. N.C.G.S. § 150B-40(e).

The Agency that will make the final decision in this contested case is the North Carolina Criminal Justice Education and Training Standards Commission.

IT IS SO ORDERED.

This the 17th day of July, 2015.


J. Randall May
Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
7/16/2015 9:09 AM

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 00215

EDWARD HOLLEY,
Petitioner,

v.

NORTH CAROLINA CRIMINAL
JUSTICE EDUCATION AND
TRAINING STANDARDS
COMMISSION,
Respondent.

PROPOSAL FOR DECISION

In accordance with North Carolina General Statute § 150B-40(e), Respondent requested the designation of an administrative law judge to preside at an Article 3A, North Carolina General Statute § 150B, contested case hearing in this matter. Based upon the Respondent's request, Administrative Law Judge Melissa Owens Lassiter heard this contested case in Raleigh, North Carolina on May 26, 2015. Pursuant to the undersigned's June 30, 2015 Order, Respondent filed a proposed Proposal for Decision with the Office of Administrative Hearings on July 9, 2015.

APPEARANCES

Petitioner: Edward Holley, Pro Se, 904 Kensington Drive, Apartment H, Cary, North Carolina 27511

Respondent: J. Joy Strickland, Assistant Attorney General, N.C. Department of Justice, 9001 Mail Service Center, Raleigh, North Carolina 27699-9001

ISSUE

Did the Respondent properly propose to suspend Petitioner's correctional officer certification for the commission of the DAC misdemeanor offense of Assault on a Female?

RULES AT ISSUE

12 NCAC 09G .0102
12 NCAC 09G .0504(b)(3)
12 NCAC 09G .0505(b)(1)

APPLICABLE STATUTE AND RULES

N.C. Gen. Stat. § 14-33(c)(2)
12 NCAC 9G .0201(9)(g), 12 NCAC 9G .0504(b)(3), 12 NCAC 9G .0505(b)(1)

FINDINGS OF FACT

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, and both parties received Notice of Hearing.

2. On December 2, 2014, Respondent notified Petitioner, via certified mail, that its Probable Cause Committee had found probable cause to suspend Petitioner's correctional officer certification for committing the "DAC Misdemeanor" offense of "Assault on a Female," in violation of N.C.G.S. § 14-33(c)(2), by spitting in April Jones' face on [May 30, 2013]. (Respondent's Exhibit 5) Respondent's probable cause letter mistakenly references the date of offense as *March 7, 2014*. However, Respondent's investigator Michelle Schilling established at hearing that the matter presented to the Probable Cause Committee was the allegation was that Petitioner committed an "Assault on a Female" on victim April Jones Holley on *May 30, 2013*.

3. Respondent has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 09G, to certify correctional officers, and to revoke, suspend, or deny such certification.

4. Petitioner currently holds a general certification as a correctional officer approved by Respondent on February 28, 2001. (Respondent's Exhibit 1)

5. On May 30, 2013, Petitioner was charged criminally with the offense of "Assault on a Female," for spitting in the face of victim April Jones (now April Holley) in violation of N.C.G.S. § 14-33. The criminal charge against Petitioner was dismissed after he complied with a deferred prosecution agreement in Wake County file number 13 CR 212781. (Respondent's Exhibit 3)

6. On August 20, 2013, Petitioner signed a domestic violence deferral agreement. On that form, Petitioner initialed beside the following sentences: "I HEREBY PLEAD GUILTY to this (these) charge(s)." and "I am PLEADING GUILTY because I am in fact guilty." In addition, Petitioner completed a Domestic Violence Deferral Statement of Guilt indicating in pertinent part:

I, Edward Holley, HEREBY ACKNOWLEDGE MY GUILT to the offense(s) of
AOF . . . I assaulted April Jones by spitting on her on or about 5/30/13.

(Respondent's Exhibit 3)

7. At the contested case hearing, Michelle Schilling, Respondent's investigator, investigated the allegation of Petitioner's commission of the "Assault on a Female" offense. Schilling obtained a certified copy of the arrest warrant, and obtained a copy of the Cary Police Department report concerning the allegation of "Assault on a Female" by Petitioner. (Respondent's Exhibits 3-4)

8. Ms. April Holley, formerly April Jones, is Petitioner's wife. At the contested case hearing, Ms. Holley explained that on May 30, 2013, when Petitioner was arrested for the "Assault on a Female" charge, she and Petitioner were dating, and living together. Between 3:00 p.m. and 4:00 p.m. on May 30, 2013, Holley was playing on her cell phone, while Petitioner was grilling meats outside, and cooking vegetables and pasta in the house. Petitioner got upset with her about playing games on her phone, and they argued. During their argument, Petitioner spit on her face. April Holley left the house with her daughter, and returned around 11:00 p.m.

9. After April Holley returned home, she and Petitioner continued to argue. Petitioner tried to spit on her again, but his mouth seemed too dry. Ms. Holley called the police to get him out of the house, so she could get some peace, since she was leaving the next day to attend a family member's graduation.

10. After the May 30, 2013 incident occurred, Petitioner left the house for a month. Subsequently, she and Petitioner attended counseling, and got married.

11. Cary Police Officer Thomas Vibert has been an officer with the Cary Police Department for 8 years. On May 30, 2013, Officer Vibert was dispatched to the address of 244 Coconut Mews in Cary, North Carolina concerning a domestic violence issue. When Officer Vibert arrived at the scene, he made contact with Petitioner, Petitioner's then-girlfriend Ms. April Jones, and Ms. Holley's daughter Ariel Jones. Upon his arrival at 244 Coconut Mews, Vibert discussed what happened with April Jones, and documented their conversations in his police report as follows:

She had arrived home from work at around 1800 hours. She was sitting in the living room playing a game on her phone. The Petitioner came inside from cooking on the grill and started yelling at her because she spent too much time on the phone. The argument moved upstairs, so she went back downstairs but Petitioner followed her. She said that is when Petitioner spit food in her face. She reacted to being spit on by pushing Petitioner in the chest, went into the bathroom to clean the food off her face, and then she left the house with her daughter Ariel to go for a drive to cool down. When she returned to the apartment, the argument with the Petitioner began again, and he tried to spit on her for a second time but no spit came out. This is when she contacted the police.

(Respondent's Exhibit 4)

12. Officer Vibert also spoke to Petitioner regarding the allegations, and documented their conversation in his police report as follows:

He began by saying that he and Ms. Jones had been arguing all night. Petitioner said that he had been outside grilling food. When he came inside, he saw Ms. Jones playing on her phone and he started yelling at Ms. Jones, because he thought she spent too much time on her phone. He said that he and Ms. Jones argued for several minutes, and he admitted that at one point he spit on Ms. Jones, because he was frustrated with her and that after the spitting Ms. Jones had pushed him. After these statements, Petitioner began to change his story, and told Officer Vibert that he had in fact been washing dishes when Ms. Jones slapped him from behind, and he had spit on her in self-defense because his hands were wet from the dishwasher. Petitioner told Officer Vibert that he was going to file charges of communicating threats against Ms. Jones with the magistrate. Officer Vibert asked if the only reason Petitioner was going to file charges against Ms. Jones was to be vindictive, Petitioner responded yes.

(Respondent's Exhibit 4)

13. Officer Vibert discussed what happened with Ariel, Ms. Jones' daughter, and documented such conversation in his police report as follows:

Initially, Ariel did not want to be part of the investigation or talk to the police. However, later she asked to speak with Officer Vibert privately. Ariel told Officer Vibert that Petitioner had come in from the outside where he had been grilling, and started yelling at Ms. Jones to get off her cell phone. After the yelling, Petitioner and Ms. Jones went upstairs and continued to argue while Ariel stayed downstairs. She said that when Ms. Jones and Petitioner came back downstairs, Ariel saw Petitioner spit in Ms. Jones' face and Ms. Jones push the Petitioner away. Ms. Jones cleaned off her face after which she and her mother left the house. Ariel then told Officer Vibert that when she and her mother returned to the house she saw Petitioner try and spit on Ms. Jones again, but that no spit came out. That is when her mom called the police.

(Respondent's Exhibit 4)

14. Petitioner is currently working as a Corrections Sergeant at North Carolina Central Prison. He has worked in this facility for 15 years, 13 of them as a Sergeant. At the time of the incident, he and Ms. Jones had been living together for 5-6 years. The couple married approximately four months after the incident.

15. Petitioner gave a statement to the police on May 30, 2013, the night the incident occurred. Petitioner thought the officers were at his home only because Ms. Jones had wanted him out of the bedroom, so they could both get some sleep. Petitioner only told Officer Vibert about the spitting incident, after the officer asked him about the day that had led up to the call. Petitioner did not know, at the time of the incident, that spitting on someone was an assault. He thought that you had to actually touch them.

16. At hearing, Petitioner testified that he had not been grilling outside, but had been cooking on the stove and washing dishes, after which, he fixed himself a plate of food, and went upstairs. Ms. Holley followed him to the bedroom where she tried to knock the plate out of his hands. When Ms. Holley started arguing with Petitioner, Ariel told Ms. Holley to leave Petitioner alone. Petitioner spit on Ms. Holley.

17. On or about June 1, 2013, Petitioner completed and signed a document titled "Employee/Witness Statement Form," at the request of his supervisor. The following language is written above the signature line:

I understand this statement will be considered part of the official investigation and that I may be called on to testify or provide written or verbal clarifying statements. The statement I have provided is an accurate account of the case to the best of my knowledge.

(Respondent's Exhibit 2)

18. When Petitioner completed the Employee/Witness Statement Form, he stated that his girlfriend and her daughter were having an argument, that he came downstairs to see what was happening, and decided to go back upstairs. As he walked upstairs, April Jones followed him. Ariel stood between them. Petitioner blew his breath over Ariel's shoulder into Ms. Holley's face. (Respondent's Exhibit 2)

19. At hearing, Respondent's counsel asked Petitioner why he indicated on the Employee/Witness form that the argument was between his girlfriend and her daughter, as opposed to he and Ms. Holley. Respondent's counsel also asked Petitioner why he had left out the spitting incident on that form. Petitioner replied that he had a lot on his mind, he was nervous, and generally overwhelmed from the situation.

20. Petitioner also wrote in the Employee/Witness Statement Form that the police officers had told him and Ms. Holley that they did not think a crime had been committed. (Respondent's Exhibit 2) However, at hearing, Officer Vibert denied making the statement that no crime had been committed. Instead, Vibert went to the magistrate's office to obtain a warrant for "Assault on a Female," because in his opinion, he had probable cause to believe that an assault on a female had occurred.

21. On December 22, 2014, Respondent received Petitioner's request for a hearing. In that request, Petitioner stated that Ms. Holley followed him upstairs, knocked his plate of food out of his hands, and physically hit him. Petitioner also stated that as he stood up from picking up the food, Ms. Holley tried again to knock the plate out of his hands, and that he spit food on her. Furthermore, Petitioner stated that Ms. Holley never made a complaint to the police about him spitting on her, and the police told Ariel that Ms. Holley could be arrested for assault. (Respondent's Exhibit 6)

22. In contrast, Officer Vibert alleged that Ms. Holley did complain about the spitting incident while he was taking the report, and that he never made a statement to Ariel Jones that Ms. April Jones could be arrested for assault.

23. In his request for a hearing, Petitioner claimed that the police officer said he needed to call his supervisor to let the supervisor make the decision, because Ms. Holley never complained, and never mentioned Petitioner spitting on her. Furthermore, Petitioner claimed that on the way to jail, the arresting officer told Petitioner that from what he saw at Petitioner's house, the Petitioner was right to defend himself, and that is why he had called his supervisor. (Respondent's Exhibit 6)

24. At hearing, Officer Vibert explained that Petitioner's assertions regarding Vibert, in this request for hearing, were not true. Officer Vibert reiterated that when he was taking the domestic violence report, Ms. Holley told him that Petitioner spit on her. Officer Vibert informed his sergeant of the investigation as was normal procedure, but it was his decision alone to arrest Petitioner.

25. Petitioner's assertions that he spit on Ms. Holley in self-defense are not credible in light of Petitioner's inconsistent statements, and the other evidence presented against him. Ms. April Jones Holley testified at hearing that Petitioner spit in her face without provocation. Jones Holley's testimony, together with Petitioner's own admission on May 30, 2013, that he spit on Ms. Hólley Holley, and Petitioner's admissions of guilt in the deferred prosecution paperwork, show that Petitioner committed the criminal offense of "Assault on a Female."

26. Petitioner committed the DAC misdemeanor of "Assault on a Female," in violation of N.C.G.S. § 14-33, on May 30, 2013, when he assaulted April Jones (Holley) by spitting food in her face.

27. The May 30, 2013 incident between Petitioner and April Jones Holley is the only time an incident of that nature has occurred between Petitioner and Ms. Holley. Petitioner and Ms. Holley have attended marriage counseling sessions, and are on a great path. At hearing, Ms. Holley further opined that Petitioner's job is his livelihood, and is all he knows. Mr. and Ms. Holley are buying a home together, and are trying to put the May 30, 2013 incident behind them. Ms. Holley described how May 30, 2013 was a bad night, and Petitioner never physically hit her. They now try to talk to each other, and not at each other. Ms. Holley opined that her husband is a good man, that he made a mistake when this May 30, 2013 incident happened, and he has grown from it.

28. There was no evidence presented at hearing that Petitioner had been involved in, or was disciplined for, engaging in any violent acts during his employment with the NC Department of Correction (now Division of Adult Correction with NC Department of Public Safety).

CONCLUSIONS OF LAW

1. The parties are properly before the undersigned Administrative Law Judge and jurisdiction and venue are proper.

2. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter. To the extent that the Findings of Facts contain Conclusions of Law, or that the Conclusions or Law are Findings of Fact, they should be so considered without regard to the given labels.

3. The North Carolina Criminal Justice Education and Training Standards Commission has authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9G, to certify correctional officers and to revoke, suspend, or deny such certification.

4. Pursuant to 12 NCAC 09G .0504(b)(3), the Commission may suspend, revoke, or deny certification of a corrections officer when the commission finds the applicant for certification or the certified officer ... has committed or been convicted of a misdemeanor as defined in 12 NCAC 09G .0102 after certification.

5. Pursuant to 12 NCAC 09G .0102, a "Misdemeanor" for corrections officers means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses are classified by the Commission as the following as set forth in G.S. Or other state or federal law ... (g) Assault, Battery with circumstances.

6. Pursuant to 12 NCAC 08G .0505(b)(1), when the Commission suspends or denies the certification of a corrections officer, the period of sanction shall be not less than three years; however, the Commission may either reduce or suspend the period of sanction under Paragraph (c) of this Rule or substitute a period of probation in lieu of suspension of certification following an administrative hearing where the cause of sanction is ... commission or conviction of a misdemeanor.

7. North Carolina General Statute § 14-33(c) (2), "Assault on a Female," states:

Unless the conduct is covered under some other provision of law providing greater punishment, any person who commits any assault, assault and battery, or affray is guilty of a Class A1 misdemeanor if, in the course of the assault, assault and battery, or affray, he or she:

Assaults a female, he being a male person at least 18 years of age.

N.C.G.S. §14-33(c)(2013).

8. The party with the burden of proof in a contested case must establish the facts required by N.C.G.S. § 150B-23(a) by a preponderance of the evidence. N.C.G.S. § 150B-29(a).

The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C.G.S. § 150B-34(a).

9. A preponderance of the evidence exists to support the conclusion that Petitioner committed the "DAC Misdemeanor Offense" of "Assault on a Female" when Petitioner spit in Ms. Holley' face on or about May 30, 2013.

10. The findings of the probable cause committee of the Respondent are supported by substantial evidence and are not arbitrary and capricious.

11. The preponderance of the evidence also showed that the May 30, 2013 incident between Petitioner and April Jones Holley was a result of a domestic argument, wherein both parties acknowledged fault. Petitioner admitted to spitting in his wife's face, and expressed remorse for doing so. Petitioner and April Jones Holley are now married, have received marital counseling, are buying a home, and are committed to making their marriage work. Petitioner has worked as a correctional officer for Central Prison for 15 years without being involved in, or was disciplined for, engaging in any violent acts during his employment, and worked 13 of those years as a sergeant.


PROPOSAL FOR DECISION

NOW, THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, the Undersigned recommends Respondent suspend Petitioner's correctional officer certification for a period of not less than three (3) years based upon Petitioner's commission of the DAC misdemeanor of assault on a female. The Undersigned recommends the Respondent exercise its discretion pursuant to 12 NCAC 9G .0505(b)(1), and place Petitioner on probation in lieu of suspending Petitioner's certification. During this period of probation, Petitioner shall obey all state and federal laws and the rules of the Respondent.

NOTICE AND ORDER

The North Carolina Criminal Justice Education and Training Standards Commission will make the final decision in this contested case. That agency 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. N.C.G.S. § 150B-40(e).

This the 16th day of July, 2015


Melissa Owens Lassiter
Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
8/17/2015 11:52 AM

STATE OF NORTH CAROLINA
COUNTY OF ROBESON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15DOJ00216

Christopher Paul Abner Petitioner v. N C Criminal Justice Education And Training Standards Commission Respondent	PROPOSAL FOR DECISION
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THIS MATTER came on for hearing before Hon. J. Randolph Ward on May 13, 2015 in Fayetteville, North Carolina, upon Respondent's request, pursuant to N.C. Gen. Stat. § 150B-40(e), for designation of an Administrative Law Judge to preside at the hearing of this contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: Allison Pope Cooper, Esq.
Bailey & Dixon, LLP
Raleigh, North Carolina

Respondent: J. Joy Strickland, Assistant Attorney General
N.C. Department of Justice
Raleigh, North Carolina

ISSUE

Is Respondent's proposed denial of Petitioner's application for correctional officer certification, based on the allegation that Petitioner knowingly made a material misrepresentation of information required for certification, supported by the evidence?

STATUTES AND RULES CITED

N.C. Gen. Stat. § 20-111(2), 150B-23(a), 150B-29(a), 150B-34(a), and 150B-40(e); 12 NCAC 09A .0204(b)(6), 12 NCAC 09B .0101(4), 12 NCAC 09G .0102(2), 12 NCAC 09G .0206(5)(c), 12 NCAC 09G .0206(6), 12 NCAC 09G .0504(b)(6), and 12 NCAC 09G .0505(b)(5)

EXHIBITS ADMITTED INTO EVIDENCE

Petitioner's Exhibits ("P. Exs.") 1-7 & 9

Respondent's Exhibits ("R. Exs.") 1-8

WITNESSES

For Petitioner: Christopher P. Abner, Petitioner
Lt. Tony Lowry, Lumberton Correctional Institution
Sgt. Gary Jacobs, Lumberton Correctional Institution

For Respondent: None

UPON DUE CONSIDERATION of the arguments of counsel; the exhibits admitted; the sworn testimony of each of the witnesses in light of their opportunity to see, hear, know, and recall relevant facts and occurrences, any interests they may have, and whether their testimony is reasonable and consistent with other credible evidence; and upon assessing the preponderance of the evidence from the record as a whole in accordance with the applicable law, the undersigned Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The North Carolina Criminal Justice Education and Training Standards Commission has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12, Chapter 9G, of the North Carolina Administrative Code to certify correctional officers, juvenile justice officers, criminal justice instructors, and law enforcement officers and to revoke, suspend, or deny such certification.
2. In January 2014, Petitioner submitted an application to Respondent for certification as a law enforcement officer with the Red Springs Police Department as the "appointing agency." Petitioner represents that this application was withdrawn after he was employed at the Lumberton Correctional Institute in March 2014, where he has been continuously employed since that date as a non-certified correctional officer.
3. In March 2014, Petitioner submitted an application to Respondent for certification as a corrections officer. On December 3, 2014, Respondent proposed to deny this application based on finding probable cause to believe that Petitioner had knowingly made material misrepresentations in his previous application with the Red Springs Police Department. Specifically, the Commission cited Petitioner's failure to report one of his two arrests for Driving While Impaired ("DWI") and making statements suggesting that he had only one such arrest in three components of his Red Springs application: the Report of Appointment/Application for Certification Law Enforcement Officer (Form F-5A (LE)), the Personal History Statement (Form F-3 (DJJDP)), and the Mandated Background Investigation Form (Form F-8). Respondent served Petitioner with its *Proposed Denial*

of *Correctional Officer Certification* dated December 3, 2014, which included due notice of his right to appeal. Petitioner timely requested a contested case hearing on December 19, 2014.

4. Prior to these two applications for certification, Petitioner had been charged on two separate occasions with DWI. The first was on April 30, 2010, when Petitioner was arrested in Cumberland County. That citation indicates that he was stopped at 3:50 a.m. and that a breath test showed he had a blood alcohol level of .10. This resulted in his license being taken by civil revocation on May 30, 2010. At the time of his first DWI charge, Petitioner was also charged with driving with expired registration in violation of N.C. Gen. Stat. § 20-111(2). He testified that he was held for approximately one hour before being released. Both the DWI and expired registration charges were dismissed on June 9, 2011 because, as an Assistant District Attorney noted for the record, “neither the arresting officer nor the chemical analyst remain w[ith] local law enforcement and neither is available to testify.” Petitioner was arrested for a second time for DWI on November 27, 2010 in Robeson County and was adjudged guilty on November 30, 2011. His driver’s license was taken for a year, but the judge granted him a limited driving privilege for that period.

5. The first material misrepresentation cited by Respondent’s Probable Cause finding is in the Criminal Record Section of the Report of Appointment/Application for Certification (Form F-5A (LE)) prepared and signed by Petitioner as part of his application with the Red Springs Police Department. It instructs that the “applicant must list any and all criminal charges regardless of the date of offense and the disposition (to include dismissals, not guilty, nol pros, PJC, or any other disposition where you entered a plea of guilty).” Petitioner listed the November 27, 2010 DWI arrest in Robeson County but omitted any mention of the April 30, 2010 DWI arrest in Cumberland County. His signature on this form on January 10, 2014 acknowledged (in bold print) “that any omission, falsification or misrepresentation of any factor or portion of such information can be the sole basis for termination of my employment and/or denial ... of my certification.... I further understand that I have a continuing duty to notify the Commission of all criminal offenses which I am arrested for or charged with” Petitioner testified that he had applied for correctional officer certification a couple of years before this and had completed a Form F-5A (DOC), which asks the applicant to list only convictions and, therefore, mistakenly prepared the Form F-5A (LE) the same way.

6. The second material misrepresentation cited by Respondent is in the Criminal Offense Record section of the Personal History Statement (Form F-3 (DJJDP)) prepared and dated by Petitioner “12/13/13” as part of his application with the Red Springs Police Department. This section required the applicant to list offenses. It was prefaced with these instructions:

NOTE: In the following questions, include all offenses other than minor traffic offenses. The following are **NOT** minor traffic offenses and must be listed below: DWI, DUI (alcohol or drugs), failure to stop in the event of an accident, driving while license permanently revoked and speeding to

elude arrest.

Answer all of the following questions completely and accurately. **Any falsifications or misstatements of fact may be sufficient to disqualify you.** If any doubts exists in your mind as to whether or not you were arrested or charged with a criminal offense at some point in your life, or whether an offense remains on your record, you should answer "Yes." You should answer "No," **only** if you have never been arrested or charged, or your record was expunged by a judge's court order.

(Emphasis in original.) The first question in the section, #28, asked:

Have you ever been arrested by a law enforcement officer or otherwise charged with a criminal offense? (The term "charged" includes being issued a citation or criminal summons.) If yes, give details.

Petitioner responded by checking the "Yes" box and described being charged with "DWI - Level 5" on "11/27/2010" by an "NC State Trooper"--all references to the Robeson County arrest. Petitioner omitted any mention of his DWI arrest in Cumberland County on April 30, 2010. Petitioner averred before a notary that "each and every statement made on this form is true and complete and I understand that any misstatement or omission of information will subject me to disqualification or dismissal."

7. The third material misrepresentation cited by Respondent is in the Applicant Interview Questions section (pages 14-28) of the Mandated Background Investigation Form (Form F-8) prepared and dated "12/12/2013" by Petitioner as part of his application with the Red Springs Police Department. Question 35 of this section asked, "Have you ever been arrested, detained, or charged with a crime, even if the charges against you have been dismissed?" Petitioner responded, "Just the DUI" (obviously using the abbreviation for "Driving Under the Influence" in place of "DWI" for the "Driving While Impaired" statute that replaced it). Because he characterized this DUI in a prior answer (question 10) as a "Level 5 DUI" just as he had described the Robeson County offense in the Personal History Statement (Form F-3 (DJJDP)), it appears that Petitioner was not referring to the Cumberland County DWI in his answer to question 35. When asked about his use of the singular term, Petitioner said he understood that question 35 required him to include charges that were dismissed but that he mistakenly failed to put an "s" on "DUI."
8. Question 35 was one of several questions scattered through the Applicant Interview Questions section of the Mandated Background Investigation Form (Form F-8) that inquired whether the applicant had violated the law, each using different characterizations of such acts with the manifest purpose of avoiding any reasons or rationalizations that an applicant could honestly use to avoid revealing such activity. Question 9 asked, "Has your drivers license **ever** been **suspended or revoked**? If so, when and why?" Although he had two DWIs in 2010, Petitioner answered, "Yes. I receive [*sic*] **a DUI in 2010** and my license was suspended for a year." He also neglected to mention the civil revocation

that resulted from his Cumberland County DWI on April 30, 2010. Question 10 asked, "Have you **ever** been **arrested** for DWI? Or DUI?" Petitioner answered, "Yes **a** Level 5 **DUI in 2010**," – again, incorrectly declaring that he had a single drunken driving arrest ever. As a follow up to question 10, question 11 asks, "How many **tickets** have you received in your driving career?" He answered, "Over 5." Question 12 asked, "Starting with the most recent ticket, give the year, location, violation and disposition. This should **include any tickets that were dismissed** or given prayer for judgment in court." Petitioner responded with only "My last ticket was **the DUI** in 2010," again saying that there was only one DWI in 2010 and neglecting to mention his two citations on April 30, 2010. Question 31 asked, "Have you committed an **illegal act** in the last five years, and if so, what?" Petitioner answered only "**DUI**." (Emphasis added in bold and underline throughout.)

9. Petitioner contends that any omissions in his application were inadvertent. During Respondent's investigation, Petitioner was requested to provide a statement addressing the reason that he did not include his DWI arrest in Cumberland County in his Red Springs application. His written response, dated June 17, 2014, stated that "[t]he reason [the DWI] was not added was that I was never convicted of a DWI in Cumberland County. The case was dismissed. Therefore I didn't know that dismissed cases needed to be put on the application. . . . If anything it was a simple oversight on my part." (See R. Ex. 6) Petitioner also testified that he may have overlooked including the Cumberland County DWI charge in his paperwork because he was "rushed." Although the Commission allowed an extension of time benefiting the Red Springs Police Department, Petitioner testified that he had only "three days after Christmas" in 2013 to complete all of the paperwork for his application for correctional officer certification before his BLET certification expired at the end of the year. Petitioner was contacted about omitting the Cumberland County DWI arrest from his Red Springs application before he submitted his March 12, 2014 Application for Correctional Officer Certification (see R. Exs. 6 & 8), and he disclosed his April 30, 2010 Cumberland County DWI with the Report of Appointment/Application for Certification (Form F-5A (DOC)) in that package by attaching the AOC criminal record search results required by 12 NCAC 09G .0206(5)(c).

10. The above-referenced written responses to eight questions on three forms, apparently answered at three different times, in which Petitioner omitted to mention and/or contradicted the fact of his Cumberland County DWI arrest on April 30, 2010, evince a considered decision not to disclose this charge in his application for law enforcement officer certification submitted to the Commission in January 2014. This misrepresentation was material because, while a single DWI might be perceived as a driver's isolated misjudgment about the degree of his inebriation, two DWIs in seven months suggests a reckless disregard for the public's safety and his own, and the possibility of a dangerous addiction, and cast significantly greater doubt on Petitioner's judgment and fitness to serve. Willingness to deceive when providing information on applications for law enforcement officer and corrections officer certification is among the specified indicia of a lack of the honesty necessary for those positions. See 12 NCAC 09A .0204(b)(6) and 12 NCAC 09G .0504(b)(6).

11. The parties stipulated that Petitioner cooperated in providing his fingerprints to the Red Springs Police Department as part of his application, as required by 12 NCAC 09B .0101(4), for the purpose of running a complete criminal history that would reveal any criminal charges on his record.
12. Lieutenant Tony Lowery testified that in his capacity as Petitioner's Manager at Lumberton Correctional Institution ("LCI") since April 2004, he has monitored and completed the TAPs performance evaluation forms for Petitioner. He indicated on the latest TAPs evaluation that Petitioner has performed his job as a correctional officer in a professional manner; that he maintains control of offenders and accountability for equipment in his possession; and that he has received "Good" and "Very Good" evaluations on his TAPs performance reviews. Sergeant Gary Jacobs, Petitioner's direct supervisor at LCI, testified that he monitors inmates and correctional officers in the facility. He does not work with Petitioner on a daily basis but supervised his shift for a period of time. He indicated that Petitioner was not the subject of any disciplinary action during that performance evaluation cycle and received an overall rating of "Good." Sgt. Jacobs testified that he has been impressed with Petitioner and that it is his desire for Petitioner to continue his employment with LCI. Lt. Lowery and Sgt. Jacobs agreed that it is important for applicants to accurately and thoroughly complete paperwork for certification.
13. The preponderance of the credible evidence of record shows that Petitioner knowingly made a material misrepresentation of information required for certification by omitting disclosure of his arrest for Driving While Impaired in Cumberland County on April 30, 2010, in his application for law enforcement officer certification submitted in January 2014.
14. To the extent that portions of the following Conclusions of Law include findings of fact, such are incorporated by reference into these Findings of Fact.

Upon the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. To the extent that portions of the foregoing Findings of Fact include Conclusions of Law, such are incorporated by reference into these Conclusions of Law.
2. The parties and the subject matter of this hearing are properly before the Office of Administrative Hearings. N.C. Gen. Stat. §150B-40(e).
3. The party with the burden of proof in a contested case must establish the facts required by G.S. § 150B-23(a) by a preponderance of the evidence. N.C. Gen. Stat. § 150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C. Gen. Stat. § 150B-34(a).

4. The N.C. Criminal Justice Education and Training Standards Commission may deny the certification of a corrections officer when the Commission finds that the applicant for certification has knowingly made a material misrepresentation of any information required for certification or accreditation. 12 NCAC 09G .0504(b)(6). Respondent is the certifying body for both criminal justice officers and correctional officers.
5. A misrepresentation or omission is “material” if it would have influenced the party's judgment or decision to act. *Latta v. Rainey*, 202 N.C. App. 587, 599, 689 S.E.2d 898, 909 (2010).
6. The honesty of an applicant is a material consideration, if not the primary factor, in the Commission’s determination of an applicant’s fitness for certification as a corrections officer. 12 NCAC 09G .0206(6). “Good moral character has many attributes, but none are more important than honesty and candor.” *In re Legg*, 325 N.C. 658, 386 S.E.2d 174 (1989).
7. The Commission’s interpretation of the proper application of 12 NCAC 09G .0504(b)(6) is due “great consideration” and is “strongly persuasive.” *MacPherson v. City of Asheville*, 283 N.C. 299, 307, 196 S.E.2d 200, 206 (1973). The Commission is entitled to consider an applicant’s honesty in preparing any application for certification--regardless of when it was submitted--in furtherance of its duty to see that every person employed as a correctional officer demonstrates good moral character. 12 NCAC 09G .0206.
8. The preponderance of the evidence supports the conclusion that Petitioner knowingly misrepresented material facts required for certification in his application for certification as a law enforcement officer, and Respondent properly resolved to deny his application for certification as a correctional officer due to this failure to demonstrate good moral character. 12 NCAC 09G .0206(6).
9. Petitioner failed to show that Respondent’s Probable Cause Committee erred by preponderance of the evidence.
10. Pursuant to 12 NCAC 09G .0505(b)(5), when the Commission denies the certification of a corrections officer, the period of sanction shall be not less than three years. Following an administrative hearing, however, the Commission may either reduce or suspend the period of sanction under Paragraph (c) of this Rule or substitute a period of probation in lieu of suspension of certification, where the cause of sanction is material misrepresentation of any information required for certification or accreditation. The Commission could consider Petitioner’s service at LCI as a mitigating factor.

PROPOSAL FOR DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Commission deny Petitioner’s correctional officer certification for a period of not less than three (3) years.

NOTICE AND ORDER

The North Carolina Criminal Justice Education and Training Standards Commission is the agency that will make the Final Decision in this contested case. As the final decision-maker, that agency 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. Gen. Stat. § 150B-40(e).

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, N.C. 27699-6714.

IT IS SO ORDERED.

This the 17th day of August, 2015.



J. Randolph Ward
Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
6/19/2015 4:30 PM

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 02730

ANDRÉ DESHAUD PICKENS,)
)
 Petitioner,)
)
 v.)
)
 N.C. PRIVATE PROTECTIVE)
 SERVICES BOARD,)
)
 Respondent.)

PROPOSAL FOR DECISION

On May 26, 2015, Administrative Law Judge Melissa Lassiter called this case for hearing in Raleigh, North Carolina.

APPEARANCES

Petitioner appeared *pro se*.

Respondent was represented by attorney Jeffrey P. Gray, Bailey & Dixon, LLP, P.O. Box 1351, Raleigh, North Carolina 27602.

ISSUE

Whether Petitioner should be denied an unarmed guard registration based on Petitioner's lack of good moral character and temperate habits as evidenced by a conviction of felony Possession of Cocaine?

APPLICABLE STATUTES AND RULES

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. Gen. Stat. §74C-1, *et seq.*, and is charged with the duty of licensing and registering individuals engaged in the armed and unarmed security guard and patrol business.
2. On September 9, 2014, Petitioner applied to Respondent Board for an unarmed guard registration.
3. On March 31, 2015, Respondent denied the unarmed guard registration due

to Petitioner's criminal record which showed the following:

A conviction in Wilkes County, State of North Carolina, on September 19, 2001 for felony Possession of Cocaine.

4. Petitioner requested a hearing on Respondent's denial of the unarmed guard registration.
5. By Notice of Hearing dated April 15, 2015, and mailed via certified mail, Respondent advised Petitioner that a hearing on the denial of his unarmed guard registration would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on May 26, 2015. Petitioner appeared at the hearing.
6. Petitioner's Criminal History Record Check, which showed the above felony Possession of Cocaine, was admitted into evidence as part of Respondent's Exhibit 1, Petitioner's application.
7. In 2001, Petitioner was 20 years old, and resided in North Wilkesboro, NC after recently moving there from Texas. Although he was 20 years old, Petitioner was in high school, having never received his high school diploma in the State of Texas. He had never obtained either a Texas or a North Carolina driver's license at that time.
8. One day he picked up a friend who also did not have a driver's license. As soon as he left his friend's house, the police pulled him over. The police discovered he did not have a driver's license, and neither did his friend.
9. The Police conducted a search of the car, and found cocaine in between the seats and two (2) grams of cocaine on his person, for a total of approximately ten (10) grams of cocaine between his car and his person. The cocaine that was in the car was placed there by his friend after they were pulled over by the Police.
10. Beginning August 12, 2014, Petitioner worked for the Bureau of Security Specialists, Inc. as an unarmed guard for eight (8) months, and was assigned to the Wilkes Regional Medical Center where he patrolled the area to deter crime.
11. Petitioner attended Wilkes Community College where he obtained an Associate's degree in Criminal Justice. He then transferred to Gardner-Webb College, and is pursuing a degree in Criminal Justice. He currently has a 3.5 GPA.
12. At hearing, Petitioner emphasized the cocaine offense was 14 years ago, and admits his mistake. He was new to the area, and began hanging around

with the "wrong crowd" in an attempt to make friends. He testified he was never a "real drug user."

13. Brent Honeycutt, Operations Manager of Bureau of Security Specialist, Inc., testified on behalf of Petitioner. Mr. Honeycutt has served as Operations Manager for five (5) years at Bureau of Security Specialist, Inc, was a Deputy Sheriff with the Gaston County Sheriff's Office for five (5) years, and prior to that was employed by the North Carolina Department of Correction.
14. Mr. Honeycutt would not normally hire someone with this type of conviction on his criminal record, but after receiving recommendations from Petitioner's instructors at Wilkes Community College, he decided to give Petitioner a chance.
15. Petitioner received training on-site at Wilkes Regional Medical Center, and the staff soon began giving him very positive feedback about Petitioner. Petitioner excelled at the training, followed all protocols for the hospital, and had a good attitude.
16. As a former law enforcement officer, Mr. Honeycutt believes that the additional cocaine found in the vehicle was not Petitioner's, and was placed there by his friend.
17. Larry Pickens, Petitioner's father, testified on his son's behalf. Petitioner came to live with him in Wilkes County from his mother's home in Texas. He related that his son has dreams, and as a father he wants them to come true for him. He is very proud of him, especially for going to college.
18. Mr. Pickens remembered the incident in question, and in his opinion, his son "let someone in his car who got him in trouble."
19. Two (2) letters of character from instructors at Wilkes Community College were admitted into evidence. Petitioner's instructors have had positive experiences in teaching Petitioner, are impressed with Petitioner's work diligence and desire to improve his knowledge, and highly recommend Petitioner. Instructor Wilkes finds Petitioner to be hard working and ethical in his dealings with others. Instructor Esposito noted that Petitioner discussed his past mistakes with Esposito, and is now dedicating his life to his young son, and his chosen career path. He believes Petitioner has "the ability to conform to our society's laws, and to be a productive member of it."

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings.
2. Under G.S. §74C-12(a)(25), Respondent Board may refuse to grant a

registration if it is determined that the applicant has demonstrated intemperate habits or lacks good moral character.

3. Under G.S. §74C-8(d)(2), conviction of any crime involving the illegal use or possession of a controlled substance, drug or narcotic is *prima facie* evidence that the applicant does not have good moral character or temperate habits.
4. Respondent Board presented evidence that Petitioner had demonstrated intemperate habits and lacked good moral character through conviction in Wilkes County, North Carolina for felony Possession of Cocaine, a controlled substance or drug.
5. Petitioner presented evidence sufficient to explain the factual basis for the charge, and has rebutted the presumption though his demonstrated work ethic, efforts to obtain an education, the testimony of two (2) credible character witnesses, and numerous letters attesting to his good character.

FINAL DECISION

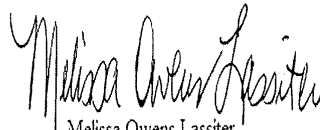
Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby recommends that Petitioner be issued an unarmed guard registration.

NOTICE AND ORDER

The North Carolina Private Protective Services Board will make the Final Decision in this contested case. As the Final Decision maker, that agency 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. Gen. Stat. § 150B-40(e).

The undersigned hereby orders that agency serve a copy of its Final Decision in this case on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

This the 19th day of June, 2015


Melissa Owens Lassiter
Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
8/27/2015 1:40 PM

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15DOJ03448

Donelle Farrar Petitioner v. N C Private Protective Services Board Respondent	PROPOSAL FOR DECISION
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THIS MATTER came on for hearing before Hon. J. Randolph Ward, on June 23, 2015 in Raleigh, upon Respondent's request, pursuant to N.C. Gen. Stat. § 150B-40(e), for designation of an Administrative Law Judge to preside at the hearing of this contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: Sandra J. Polin
Attorney at Law
Apex, North Carolina

Respondent: Jeffrey P. Gray
Bailey & Dixon, LLP
Raleigh, North Carolina

ISSUES

Whether Petitioner should be denied a Private Investigator Associate license based on lack of good moral character and temperate habits, as evidenced by an unfavorable employment history.

APPLICABLE STATUTES

N.C. Gen. Stat. §§ 74C-8(d)(2), 74C-12(a)(25), and 150B-40(e).

EXHIBITS ADMITTED INTO EVIDENCE

Respondent's Exhibits ("R. Exs.") 1 - 3

WITNESSES

For Petitioner: Mr. Donelle Farrar, Petitioner
Rev. Charles Tyner, White Oak Missionary Baptist Church
Mr. Hart Miles, Atty., Miles Law Firm, P.A.

For Respondent: Mr. Anthony Bonaparte, Dep. Director, N.C. Private Protective Services Board

UPON DUE CONSIDERATION of the arguments of counsel; the exhibits admitted; and the sworn testimony of each of the witnesses, in light of their opportunity to see, hear, know, and recall relevant facts and occurrences, any interests they may have, and whether their testimony is reasonable and consistent with other credible evidence; and upon assessing the preponderance of the evidence from the record as a whole in accordance with the applicable law, the undersigned makes the following:

FINDINGS OF FACT

1. The Private Protective Services Board (hereinafter, "Respondent" or "the Board") is established pursuant to N.C. Gen. Stat. §74C-1, *et seq.*, and is charged with the duty of licensing and registering individuals engaged in the private protective services industry, which is defined to include Private Investigators.
2. On November 3, 2014, Petitioner Donelle Farrar applied to the Board for a Private Investigator Associate License, under the sponsorship of Anthony Rogers, a licensed Private Investigator. By letter dated April 29, 2015, Petitioner was advised that the Board denied his application on April 23, 2015 due to "unfavorable employment history" and gave Petitioner due notice of his right to file an appeal to be heard in the Office of Administrative Hearings ("OAH").
3. Respondent acknowledged receipt of Petitioner's timely request for hearing and served him with a Notice of Hearing on May 12, 2015. The Notice stated that the reasons for the denial were "1) Unfavorable employment history; and 2) lack of good moral character and temperate habits." The second reason consists of a statutory requirement for licensure set out in N.C. Gen. Stat. §74C-8(d)(2).
4. Anthony Bonaparte, Deputy Director for the Board, testified Petitioner's employment history was characterized as "unfavorable" because his record with the Wake County Sheriff's Office indicated that he had been disciplined by his employer on three occasions that suggested he had been dishonest. Mr. Bonaparte testified that incidents of apparent dishonesty generally triggered further investigation by the Board.
5. Petitioner began working for the Wake County Sheriff's Department in November 1996, when he was the minimum age of 21 years old, and resigned on January 16, 2008 to take a contract position in Afghanistan. He first worked as a courtroom bailiff and later was a civil process server. From April 2004 until April 2005, he was assigned to the

Information Desk in the Wake County Public Safety Center due to a disciplinary action. From April 2005 until December 2007, he was a patrol deputy and was among the first assigned specially to respond to domestic violence calls. He was demoted in December 2007 to the rank of Detention Officer and resigned in January 2008 to accept a position with DynCorp International in Afghanistan. After that company's contract in Afghanistan ended in 2012, Petitioner was the owner and operator of the firm Signal 88 Security, in Raleigh, through the date of his application to Respondent.

6. The Board's review of Petitioner's personnel file indicated that all evaluations and overall scores while at the Sheriff's Department were "meets" or "exceeds expectations." There were several commendations concerning Petitioner's teaching of Basic Law Enforcement Training, and in-service courses.
7. Petitioner's first disciplinary action arose from having stopped his patrol vehicle in an irregular position in a parking area on Wake Forest Road, blocking access to some handicap spaces. He became involved in a conversation with a young lady that lasted an unanticipated 40 minutes. A citizen called the Sheriff's Department to complain. When his supervisor contacted him and asked his location, Petitioner said he was on Raleigh Boulevard, which was where he intended to go next. On April 12, 2000, he was suspended by the Sheriff's Department for 20 hours for giving this false information to his supervisor.
8. On April 20, 2004, while driving his patrol car, Petitioner reached for some papers on the back seat, and briefly lost control of the vehicle, allowing it to spin. However, he was able to regain control before the automobile struck anything, and there was no damage to the car, persons or property. A witness to the incident called in a report that a Deputy was driving recklessly. When contacted about the incident, Petitioner initially denied that he was the Deputy involved. Petitioner was suspended on April 28, 2004 for 60 hours without pay. He was also taken off patrol, and reassigned to the information desk at the Public Safety Center.
9. Petitioner received a speeding ticket, and/or committed a red light violation, when pursuing a motorist who was speeding in a school zone, and paid the associated fine. On one occasion, Petitioner paid the property tax on his personal vehicle late. The evidence does not show that these were, or involved, acts of moral turpitude.
10. Petitioner's personnel file also contained a memorandum regarding Petitioner being demoted from the rank of Master Deputy Sheriff to the rank of Detention Officer effective December 10, 2007. It stated that the demotion was the result of an internal investigation in which he was cited for conduct unbecoming a law enforcement officer, with no additional details. The Petitioner told the Board's investigator, and testified at the hearing, that the discipline arose out of his arrest of a recalcitrant drunken female driver, who refused to blow the breathalyzer. After the arrestee was processed, she was having trouble finding someone to take her home. Petitioner was going off duty, so he gave her a ride in his patrol car as far as his home, and then used his personal vehicle to take her the extra distance to her home. His assistance did not have a direct law

enforcement purpose, and violated Department policy. The woman reported this favor to the Department, in what Petitioner speculated was her vain hope that it would help her get out of the Driving While Impaired conviction she eventually received. She did not accuse Petitioner of any misconduct towards her. However, Petitioner testified that this episode occurred at a time when multiple instances of abusive treatment of women under similar circumstances were in the news, and that the Department felt it was important to stringently enforce its rules.

11. Prior to the December 2007 incident, Petitioner had applied to work for DynCorp International in Afghanistan. The Sheriff's Department recommended him for the position. He was hired, received the necessary security clearances from the Federal government, and served as the head of a domestic violence unit, working with the Afghan police, until DynCorp's contract ended in April 2012.
12. Including his work with his own security company, Petitioner accumulated 19 years of law enforcement related experience. His two documented misstatements of fact occurred when he was 25 and 29 years old. There is no evidence that Petitioner's intent in the third incident was more malevolent than an ill-advised bending of the rules to help a citizen. On the date of the hearing, Petitioner was 39 years old.
13. The Board's Investigator contacted Anthony Rogers, Petitioner's sponsor, who said that he was aware of the 2004 and 2007 incidents in his discipline records. The Investigator also interviewed Lieutenant Newkirk of the Wake County Sheriff's Office, who had supervised Petitioner while he was in the Patrol Division. He stated that Petitioner did a good job as one of the first Domestic Violence Officers. He said that he would recommend Petitioner for a Private Investigator Associate's license and thinks that he would be good at that job.
14. Two character witnesses testified on behalf of Petitioner. Pastor Charles Tyner, the minister at the White Oak Missionary Baptist Church in Apex since 1972, testified that he has known Petitioner "all his life," because his parents and Petitioner were members of his church. He considers Petitioner to be a man of good character, has never known him to lie or steal, and would recommend him for licensure. Pastor Tyner has been an educator for thirty years, including service as a high school principal, and he served on the Wake County Board of Education for eight years. He was aware of Petitioner's service as a Deputy Sheriff, and a private contractor in Afghanistan, but not the disciplinary matters discussed at the hearing.
15. Hart Miles, a licensed attorney for 19 years, whose practice includes State and federal criminal defense, has known Petitioner since 1996. Mr. Miles was an Assistant District Attorney when Petitioner was a courtroom bailiff. Mr. Miles testified that he knew Petitioner to be professional as both a courtroom deputy and a road deputy who "handled himself well," and never knew of his integrity being questioned by a Judge or an Assistant District Attorney. Mr. Miles testified that what he had heard during the hearing about Petitioner's disciplinary history was concerning, but felt that his willingness to finally admit and take responsibility for his errors somewhat mitigated that concern.

16. Petitioner testified that he graduated from Broughton High School in Raleigh in 1994; served in the Marine Corps, and was honorably discharged; and following discharge, worked at Walmart and at Carolina Builders before going into law enforcement. Petitioner admitted that he was disciplined three times during his 11 years with the Sheriff's Department, but does not believe that these incidents eight or more years ago fairly define who he is.
17. The statute governing licensing by the Private Protective Services Board requires that "the applicant [be] of good moral character and temperate habits." It sets out specific examples that "shall be *prima facie* evidence" of the lack of such character and habits, i.e., convictions of firearms offenses, illegal use or trafficking in controlled substances, criminal violence, thefts, crimes of moral turpitude, and addiction. None of the incidents for which Petitioner was disciplined as a Deputy Sheriff fall within any the statute's examples of *prima facie* evidence of the lack of good moral character and temperate habits. None of Petitioner's infractions evidence the degree of moral degradation exemplified by the criminal and intemperate acts listed in the statute.
18. The preponderance of the evidence shows that Petitioner was culpable of two instances of untruthful denials of embarrassing errors 11 and 15 years ago, when he was in his twenties, and of inappropriately providing transportation to a citizen eight years ago. None of these, either individually or collectively, resulted in criminal sanctions, or separation from his employment as a law enforcement officer. They do not demonstrate that Petitioner lacks good moral character or temperate habits. The absence of similar incidents in the intervening years, and the Petitioner's honorable service in law enforcement and public safety occupations, prove by the preponderance of the evidence that Petitioner possesses good moral character and temperate habits.
19. The parties were timely served with OAH's notice of this hearing on March 11, 2015.

Based upon the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings. N.C. General Statutes § 150B-40(e).
2. The Respondent Board may refuse to grant a license if it is determined that the applicant has demonstrated intemperate habits or lacks good moral character. N.C. Gen. Stat. § 74C-12(a)(25). Serious criminal conduct, acts of moral turpitude, and addiction to drugs or alcohol are *prima facie* evidence of a lack of "good moral character and temperate habits." N.C. Gen. Stat. § 74C-8(d)(2).
3. When assessing whether past transgressions evidence a present lack of good moral character, "the question becomes essentially one of time and growth." *In re Dillingham*, 188 N.C. 162, 124 S.E. 130 (1924). "Whether a person is of good moral character is seldom subject to proof by reference to one or two incidents." *In re Legg*,

325 N.C. 658, 386 S.E.2d 174 (1989). Good moral character has been defined as "honesty, fairness, and respect for the rights of others and for the laws of the state and nation." *In re Willis*, 288 N.C. 1, 215 S.E.2d 771 (1975), *app. disp.*, 423 U.S. 976 (1975).

4. The preponderance of the evidence shows that Petitioner possesses the good moral character and temperate habits required to be eligible for a Private Investigator Associate License. N.C. Gen. Stat. § 74C-8(d)(2).

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

PROPOSAL FOR DECISION

Based upon the law regarding fitness to receive a Private Investigator Associate License and the facts adduced at the hearing concerning the character and habits of Petitioner, it is respectfully recommended that, if otherwise qualified, the Board grant Petitioner this license.

NOTICE AND ORDER

The North Carolina Private Protective Services Board is the agency that will make the Final Decision in this contested case. As the final decision-maker, that agency 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. Gen. Stat. § 150B-40(e).

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, N.C. 27699-6714.

This the 27th day of August, 2015.



J. Randolph Ward
Administrative Law Judge