

NORTH CAROLINA REGISTER

VOLUME 27 • ISSUE 04 • Pages 397 - 548

August 15, 2012

I. EXECUTIVE ORDERS	
Executive Order No. 122	397 – 398
Executive Order No. 123	399 – 403
II. PROPOSED RULES	
Administration, Department of	404 – 409
Environment and Natural Resources, Department of	409 – 469
Wildlife Resources Commission	409 – 469
III. TEMPORARY RULES	
Environment and Natural Resources, Department of	470 – 472
Wildlife Resources Commission	470 – 472
IV. RULES REVIEW COMMISSION	473 – 481
V. CONTESTED CASE DECISIONS	
Index to ALJ Decisions	482 – 485
Text of ALJ Decisions	
11 DHR 12727, 11 DHR 12794, 11 DHR 12795, 11 DHR 12796	486 – 507
11 DHR 14571	508 – 517
12 DHR 00861	518 – 528
11 DOJ 13148	529 – 537
11 DOJ 13159	538 – 542
11 DST 10875	543 – 548

Contact List for Rulemaking Questions or Concerns

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

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

Office of Administrative Hearings

Rules Division

1711 New Hope Church Road

(919) 431-3000

Raleigh, North Carolina 27609

(919) 431-3104 FAX

contact: Molly Masich, Codifier of Rules

molly.masich@oah.nc.gov

(919) 431-3071

Dana Vojtko, Publications Coordinator

dana.vojtko@oah.nc.gov

(919) 431-3075

Julie Edwards, Editorial Assistant

julie.edwards@oah.nc.gov

(919) 431-3073

Tammara Chalmers, Editorial Assistant

tammara.chalmers@oah.nc.gov

(919) 431-3083

Rule Review and Legal Issues

Rules Review Commission

1711 New Hope Church Road

(919) 431-3000

Raleigh, North Carolina 27609

(919) 431-3104 FAX

contact: Joe DeLuca Jr., Commission Counsel

joe.deluca@oah.nc.gov

(919) 431-3081

Bobby Bryan, Commission Counsel

bobby.bryan@oah.nc.gov

(919) 431-3079

Fiscal Notes & Economic Analysis and Governor's Review

Office of State Budget and Management

116 West Jones Street

(919) 807-4700

Raleigh, North Carolina 27603-8005

(919) 733-0640 FAX

Contact: Anca Grozav, Economic Analyst

osbmruleanalysis@osbm.nc.gov

(919) 807-4740

NC Association of County Commissioners

215 North Dawson Street

(919) 715-2893

Raleigh, North Carolina 27603

contact: Amy Bason

amy.bason@ncacc.org

NC League of Municipalities

(919) 715-4000

215 North Dawson Street

Raleigh, North Carolina 27603

contact: Erin L. Wynia

ewynia@nclm.org

Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee

545 Legislative Office Building

300 North Salisbury Street

(919) 733-2578

Raleigh, North Carolina 27611

(919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney

Karen.cochrane-brown@ncleg.net

Jeff Hudson, Staff Attorney

Jeffrey.hudson@ncleg.net

NORTH CAROLINA REGISTER
Publication Schedule for January 2012 – December 2012

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

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

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

FILING DEADLINES

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

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

NOTICE OF TEXT

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

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

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

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

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 122

STATE TRANSPORTATION LOGISTICS COORDINATING COUNCIL

WHEREAS, the Governor's Logistics Task Force, established by Executive Order 32, studied and focused on how logistics and transportation assets are managed in the State of North Carolina; and

WHEREAS, the Governor's Logistics Task Force recommended the creation of a consolidated body to provide better coordination of the State's logistic assets and to accelerate economic development in the State of North Carolina by cross sector partnership among the State's transportation logistic entities, including the North Carolina Global TransPark, the North Carolina State Ports Authority, and the North Carolina Railroad Company; and

WHEREAS, in response to the recommendation of the Governor's Logistics Task Force, I established the State Transportation Logistics Coordinating Council in Executive Order 85, which is no longer in effect, and the Council needs to be reestablished.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

Section 1. Establishment

The State Transportation Logistics Coordinating Council (hereinafter the "Council") is hereby reestablished.

Section 2. Membership

The Council shall serve at the pleasure of the Governor. The Governor shall appoint members to the Council as follows:

- a. The Commissioner of Agriculture;
- b. The Secretary of Transportation, who shall serve as Chair of the Council;
- c. The Secretary of the Department of Commerce;
- d. The Secretary of the Department of Environment and Natural Resources;
- e. The Chief Executive Director of the North Carolina State Ports Authority;
- f. The President of the North Carolina Railroad Company;
- g. The Executive Director of the North Carolina Global TransPark; and
- h. Other persons as determined necessary by the Chair.

Section 3. Duties

The Council shall identify areas for cooperation among the State's transportation logistics entities and shall work to implement such cooperation. Areas for review and action shall include, but not be limited to, the following issues:

- a. improving the State's transportation services,
- b. coordinating on projects to create or expand companies in North Carolina,
- c. coordinating on projects to attract companies to the State, and
- d. sharing personnel and resources to the fullest extent practicable.

Section 4. Meetings

The Council shall meet quarterly or upon the call of the Governor or the Chair. A majority of the Council shall constitute a quorum for the transaction of business.

Section 5. Administration

The Council shall be administratively housed in the Department of Transportation. The Department shall provide clerical support and other services required by the Council. No per diem allowance shall be paid to members of the Council. Members of the Council and staff may receive necessary travel and subsistence expenses in accordance with State law and the policies and regulations of the Office of State Budget and Management.

Section 6. Effect and Duration

This Executive Order is effective immediately. It supersedes and replaces all other executive orders on this subject. It shall remain in effect until July 22, 2016, pursuant to N.C. Gen. Stat. § 147-16.2, unless earlier rescinded.

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




Beverly Eaves Perdue
Governor

ATTEST:


Elaine F. Marshall
Chief Deputy Secretary of State



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 123

NORTH CAROLINA STATEWIDE INDEPENDENT LIVING COUNCIL

WHEREAS, the federal Rehabilitation Act of 1973, as amended, (hereinafter the "Rehabilitation Act") recognized the importance of empowering individuals with disabilities to maximize employment, economic self-sufficiency, independence, inclusion, and integration into society, and the importance of assisting states and providers of services in fulfilling the aspirations of individuals with disabilities for meaningful and gainful employment and independent living; and

WHEREAS, the purpose of independent living services and centers for independent living is to promote a philosophy of independent living, including a philosophy of consumer control, peer support, self-help, self-determination, equal access, individual advocacy, and systems advocacy, in order to maximize the leadership, empowerment, independence and productivity of individuals with disabilities, and the integration and full inclusion of individuals with disabilities into the mainstream of American society; and

WHEREAS, it is essential for North Carolinians with disabilities to have the opportunity to meet the goals and purposes outlined in the Rehabilitation Act; and

WHEREAS, a Statewide Independent Living Council established under federal law has existed in North Carolina for over 20 years, and has operated as an independent, nonprofit, 501(c)(3) corporation since 2006; and

WHEREAS, the Statewide Independent Living Council is an important part of the State's continued service to its citizens with disabilities, and

WHEREAS, Title VII, Section 705 of the Rehabilitation Act requires that, in order to be eligible to receive financial assistance under the Rehabilitation Act, each state must formally establish a statewide independent living council through the authority of the state; and

WHEREAS, establishing the North Carolina Statewide Independent Living Council through the authority of the State is necessary to comply with federal law and will help articulate the Governor's standards and expectations for the Statewide Independent Living Council so that it may continue to promote independent living, dignity, inclusion and non-discrimination for all people with disabilities in North Carolina.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

Section 1. Establishment

- a. The North Carolina Statewide Independent Living Council (hereinafter the "Council"), is hereby established. The Council shall continue its service to the citizens of North Carolina to meet the requirements of the Rehabilitation Act of 1973; to provide guidance for providing, expanding, and improving the provision of independent living services; and to develop and support statewide networks of centers for independent living.
- b. The Council shall exist as an entity independent of any other agency or political subdivision of the State. The Council may operate as a 501(c)(3) entity organized under Chapter 55A of the North Carolina General Statutes.

Section 2. Membership

- a. All members of the Council shall be appointed by the Governor and shall serve at the pleasure of the Governor. The Governor shall select members after soliciting recommendations from representatives of entities representing a broad range of individuals with disabilities and entities interested in assisting individuals with disabilities.
- b. The Council shall consist of no more than 20 voting members.
- c. The Council shall be composed of members who provide diversity in gender, race and statewide geographic representation, who represent a broad range of individuals with disabilities, and who are knowledgeable about centers for independent living and independent living services.
- d. A majority of the Council's total membership (including voting and ex-officio members) shall be individuals with disabilities, as defined in 34 C.F.R. § 364.4(b), and shall not be employed by any State agency or center for independent living. Additionally, a majority of the Council's voting members also shall be individuals with disabilities, as defined in 34 C.F.R. § 364.4(b), and shall not be employed by any State agency or center for independent living.
- e. The Council shall include the following voting members:
 - 1. One director of a center for independent living, selected by the Governor from two directors who are chosen and nominated by the directors of centers within the State.
 - 2. One director of an American Indian Vocational Rehabilitation Services project that is carried out under Section 121 of the Rehabilitation Act.
 - 3. At least ten individuals with disabilities.

- f. The Council may also include the following voting members, provided that such appointments must be consistent with the requirements of Section 2.d:
 - 1. A parent and/or legal guardian of an individual with a disability.
 - 2. A representative of the private business sector.
 - 3. A representative of a community college, college or university who is familiar with services for individuals with disabilities.
 - 4. A representative of a nonprofit organization that provides services for or advocates for individuals with disabilities.
 - 5. Other individuals as determined by the Governor.
- g. The Council shall include the following ex-officio, non-voting members:
 - 1. A representative of each of the designated state units (the Division of Vocational Rehabilitation and the Division of Services for the Blind).
 - 2. A representative from the state's federally mandated protection and advocacy entity.
 - 3. A representative of the Council on Developmental Disabilities.
 - 4. A representative of the Client Assistance Program.
 - 5. A representative of the Division of Services for the Deaf and Hard of Hearing.
- h. Council members shall serve terms of three years which shall expire on August 15. Provided, however, that initial appointment terms for the voting members of the Council shall be staggered for one, two, or three years so that approximately one-third of the terms expire each year. Vacancies on the Council shall be filled by the Governor. In the event of a vacancy caused by a reason other than the expiration of a term, the Governor shall appoint a person to serve for the remainder of the unexpired term. A vacancy shall not affect the power of the remaining members to execute the duties of the Council.
- i. No member of the Council may serve for more than two full consecutive terms. For purposes of this subsection, a member who serves two years or more of an unexpired or partial term is considered to have served one full term. A member is not permitted to continue serving in holdover once he/she completes two full consecutive terms on the board. Any member who has served for two full consecutive terms is not eligible to serve on the Council again for at least one year from the date his/her appointment ended.

Section 3. Meetings and Operations of the Council

- a. The Council shall select a Chairperson from among the voting members of the Council and may select from among the voting members of the Council other officers as the Council deems necessary.
- b. The Council shall adopt procedures consistent with federal law, state law and this Executive Order governing its organization and operations.

- c. The Council shall meet at least quarterly, at the call of the Chairperson or the Governor, or as otherwise provided in procedures adopted by the Council. The Council may hold any hearings or forums that are necessary to fulfill Council duties.
- d. The Council shall conduct all business at public meetings in compliance with the Open Meetings Law, N.C. General Statutes Chapter 143, Article 33C. Public notice of the time, date and place of each meeting shall be given in the manner required by the Open Meetings Law.
- e. For the purpose of transacting the business of the Council, a quorum shall consist of a simple majority of voting members.

Section 4. Ethics and Other Standards

Members of the Council shall be subject to the requirements of the State Government Ethics Act, N.C. General Statute Chapter 138A. Members of the Council shall also be subject to the provisions of Executive Order 34 (2009), *Ethics and Attendance Standards for Gubernatorial Appointees to Boards*.

Section 5. Duties

In working with the designated state unit(s) and other state agencies and private entities to maximize employment, economic self-sufficiency, independence, inclusion, and integration into society for individuals with disabilities, the Council shall have the following duties:

- a. Jointly develop and sign, in conjunction with the designated state unit(s), the State Plan required by the Rehabilitation Act.
- b. Monitor, review and evaluate the implementation of the State Plan.
- c. Coordinate activities with the North Carolina Vocational Rehabilitation Council, and other state councils or entities that address the needs of specific disability populations and issues under other federal law.
- d. Submit to the United States Secretary of Education all periodic reports as the Secretary may reasonably request. Keep records and afford access to the records as the Secretary finds necessary to verify the periodic reports. Copies of any reports submitted under this paragraph shall be provided to the Office of the Governor as well as to the representatives of state agencies identified in Section 2.g.
- e. In conjunction with the designated state unit(s), prepare a resource plan for the provision of resources for the Council, including staff and personnel, made available under parts B and C of Chapter 1 of Title VII of the Rehabilitation Act, Section 110 (consistent with Section 101(a)(18)), and from other public and private sources that may be necessary to carry out the Council's functions. A description of the Council's resource plan must be included in the State Plan. The Council is responsible for the proper expenditure of funds

and use of resources that it receives under the resource plan. The Council shall ensure that any additional federal requirements regarding the resource plan are met.

- f. Consistent with applicable state and federal law, supervise and evaluate staff and personnel as may be necessary to carry out the Council's functions under this Executive Order and the Rehabilitation Act.
- g. Perform other duties as requested by the Governor and any other duties deemed necessary by the Council to meet its responsibilities under this Executive Order and the Rehabilitation Act. However, the Council can use its federal funds only to perform its federal duties as set forth in Section 705 of the Rehabilitation Act.

Section 6. Administration and Expenses

The state designated unit(s) may provide necessary administrative and staff support services to the Council as requested by the Council or the Governor. Such staff may not be assigned duties by the state designated unit(s) or any other agency or office of the State that would create a conflict of interest. As provided in Section 705 of the Rehabilitation Act, the Council may use resources provided under its resource plan to reimburse members of the Council for reasonable and necessary expenses of attending Council meetings and performing Council duties (including child care and personal assistance services) and to pay compensation to a member of the Council, if the member is not employed or must forfeit wages from other employment, for each day the member is engaged in performing Council duties.

Section 7. Effect and Duration

This Executive Order is effective immediately. It supersedes and replaces all other executive orders on this subject. This Executive Order shall remain in effect until July 24, 2016, pursuant to N.C. Gen. Stat. §147-16.2, or until rescinded.

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




Beverly Eaves Perdue
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

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

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

TITLE 01 – DEPARTMENT OF ADMINISTRATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Administration intends to repeal the rules cited as 01 NCAC 01A .0303-.0304; 09 .0401-.0406; 11 .2102-.2105, .2111, .2116, .2201-.2204; 13 .0101-.0103, .0201-.0203, .0301-.0305; 19A .0103; 19B .0101-.0103, .0201, .0301-.0303; 21F .0101-.0102, .0201-.0205, .0301-.0304, .0401-.0405, .0501-.0504; 22 .0101-.0101, .0201-.0209, .0301-.0303, .0401-.0403, .0501-.0506, .0601-.0606, .0701-.0704, .0801-.0802, .0901-.0906, .1001-.1002, .1101-.1103, 23 .0101-.0108; 24 .0101-.0107; 30C .0104-.0105, .0201; 36 .0101; 37 .0101-.0103, .0201-.0208, .0301-.0307.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.doa.state.nc.us/secretary/policy.aspx>

Proposed Effective Date: December 1, 2012

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Written request for a public hearing on the proposed repeal(s) may be submitted to the Secretary, Department of Administration, 116 West Jones Street, Raleigh, NC 27611. The request must be received by August 30, 2012.

Reason for Proposed Action:

01 NCAC 01A .0303-.0304 – Based on agency review, these rules do not reflect current or expected future practice and do not reflect Human Resources best practices. In addition, these rules are among those previously recommended by OSBM to the General Assembly for repeal.

01 NCAC 09 .0401-.0406 – This rule change repeals all rules in Section .0400. There is no longer an "Interim Balanced Growth Board" and the rules are obsolete. In addition, these rules are among those previously recommended by OSBM to the General Assembly for repeal.

01 NCAC 11 .2102-.2105, .2111, .2116, .2201-.2204 – This rule change repeals all rules in Chapter 11. These rules are duplicative of state statute (N.C.G.S. Chapter 41A) and federal statute and regulations (42 U.S.C. 3600-3620 and 24 C.F.R. Subchapter A, respectively) and, therefore, are unnecessary. In addition, these rules are among those previously recommended by OSBM to the General Assembly for repeal.

01 NCAC 13 .0101-.0103, .0201-.0203, .0301-.0305 – This rule change repeals all rules in Chapter 13. There is no longer an "Office for Citizen Participation" and the rules are obsolete. In addition, these rules are among those previously recommended by OSBM to the General Assembly for repeal.

01 NCAC 19A .0103 – This rule is unnecessary or duplicative in light of existing statute because N.C.G.S. 143B-386 provides that youth members of the Youth Advisory Council be elected by the procedure adopted by the Youth Advisory Council. In addition, this rule is among those previously recommended by OSBM to the General Assembly for repeal.

01 NCAC 19B .0101-.0103, .0201, .0301-.0303 – This rule change repeals all rules in Subchapter 19B. The North Carolina Fund for Children and Families Commission (established by Executive Order) is defunct and no longer receives appropriations. Therefore, the rules are obsolete. In addition, these rules are among those previously recommended by OSBM to the General Assembly for repeal.

01 NCAC 21F .0101-.0102, .0201-.0205, .0301-.0304, .0401-.0405, .0501-.0504 – This rule change repeals all rules in Subchapter 21F. These rules are superfluous and duplicative of state statute (G.S. 143, Article 36A) and, therefore, are unnecessary. In addition, these rules are among those previously recommended by OSBM to the General Assembly for repeal.

01 NCAC 22 .0101-.0102, .0201-.0209, .0301-.0303, .0401-.0403, .0501-.0506, .0601-.0606, .0701-.0704, .0801-.0802, .0901-.0906, .1001-.1002, .1101-.1103; 23 .0101-.0108; 24 .0101-.0107 – Upon consultation with DENR, DOA has learned that the program has concluded and, therefore, that the rules are obsolete. Except to provide an important incremental benefit – along with other similar repeals – of ridding the Administrative Code of unnecessary rules, this repeal will not impact any existing entity economically or otherwise. These rules are among those previously recommended by OSBM to the General Assembly for repeal.

01 NCAC 30C .0104-.0105, .0201 – This rule change repeals all rules in Subchapter 30C. This is a conforming change because the statute allowing for the rules (Subchapter 159F) has been repealed. In addition, these rules are among those previously recommended by OSBM to the General Assembly for repeal.

01 NCAC 36 .0101 – This rule change repeals a rule that is not relevant because, after the rule became effective in 1987, funding was never provided for and action was never taken related to public radio general support standards. Further, this authorizing statute (G.S. 143B-426.12) was repealed as part of Session Law 2011-266, s. 1.13(a). In addition, this rule is among those previously recommended by OSBM to the General Assembly for repeal.

01 NCAC 37 .0101-.0103, .0201-.0208, .0301-.0307 – Upon consultation with DENR, DOA has learned that these rules were never implemented due to NC's withdrawal from an interstate compact and subsequent litigation that has since been resolved and, therefore the rules are obsolete. Except to provide an important incremental benefit – along with other similar repeals

– of ridding the Administrative Code of unnecessary rules, this repeal will not impact any existing entity economically or otherwise. These rules are among those previously recommended by OSBM to the General Assembly for repeal.

Procedure by which a person can object to the agency on a proposed rule: Any persons may file a written submission containing data, comments, or arguments for or against a rule, after publication of a rulemaking notice by the Department. Written comments must be received by the Secretary by October 15, 2012. Written comments should be sent to the Secretary, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611. The envelope containing the written submission should bear the notation **WRITTEN COMMENTS RE:** and clearly state the rule(s) commented upon.

Comments may be submitted to: Secretary of Administration, ATTN: William E. H. Creech, Rule-making Coordinator, 1301 Mail Service Center, Raleigh, NC 27699-1301

Comment period ends: October 15, 2012

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

Fiscal impact (check all that apply).

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

NOTE: Pursuant to G.S. 150B-21.17, the Codifier has determined that publication of the complete text of the rules proposed for repeal is impractical. The text of the repealed rules is accessible on the OAH Website: <http://www.ncoah.com>.

CHAPTER 01 - DEPARTMENTAL RULES

SUBCHAPTER 01A - ORGANIZATION OF THE DEPARTMENT

SECTION .0300 - DEPARTMENTAL PERSONNEL PROCEDURES

- 01 NCAC 01A .0303 INTERVIEWING
- 01 NCAC 01A .0304 VACANCY LISTS

Authority G.S. 143B-10.

CHAPTER 09 - DIVISION OF INTERGOVERNMENTAL RELATIONS

SECTION .0400 - BALANCED GROWTH POLICY

- 01 NCAC 09 .0401 PURPOSE
- 01 NCAC 09 .0402 DEFINITIONS
- 01 NCAC 09 .0403 ORGANIZATION
- 01 NCAC 09 .0404 CRITERIA FOR DESIGNATION OF GROWTH CENTERS
- 01 NCAC 09 .0405 APPLICATION FOR GROWTH CENTER DESIGNATION
- 01 NCAC 09 .0406 REVIEW OF APPLICATION

Authority G.S. 143-506.7; 143-506.10.

CHAPTER 11 - HUMAN RELATIONS COUNCIL

SECTION .2100 - FAIR HOUSING

- 01 NCAC 11 .2102 DEFINITIONS
- 01 NCAC 11 .2103 COMPLAINTS: FORM: CONTENTS: FILING
- 01 NCAC 11 .2104 AMENDMENT OF COMPLAINT
- 01 NCAC 11 .2105 WITHDRAWAL OF COMPLAINT
- 01 NCAC 11 .2111 INVESTIGATION: SUBPOENAS
- 01 NCAC 11 .2116 CONCILIATION AGREEMENTS

Authority G.S. 41A-1; 41A-2; 41A-7; 41A-8.

SECTION .2200 - FAIR EMPLOYMENT

- 01 NCAC 11 .2201 DEFINITIONS
- 01 NCAC 11 .2202 FILING OF COMPLAINT
- 01 NCAC 11 .2203 NOTICE TO RESPONDENT
- 01 NCAC 11 .2204 INVESTIGATION: OPINION: AND CONCILIATION

Authority G.S. 143-422.3.

CHAPTER 13 - OFFICE FOR CITIZEN PARTICIPATION

SECTION .0100 - GENERAL PROVISIONS

- 01 NCAC 13 .0101 ORGANIZATION
- 01 NCAC 13 .0102 COMMISSION ON CITIZEN PARTICIPATION
- 01 NCAC 13 .0103 PURPOSE

Authority G.S. 143B-12 to 143B-14.

**SECTION .0200 - INFORMATION COLLECTION AND
DISSEMINATION***Authority G.S. 143B-10; Exec. Order No. 27.*

01 NCAC 13 .0201	INSTRUCTIONAL MATERIAL
01 NCAC 13 .0202	NEWSLETTER
01 NCAC 13 .0203	RESOURCE LIBRARY

*Authority G.S. 143B-12 to 143B-14.***SECTION .0300 - OTHER PROGRAMS**

01 NCAC 13 .0301	RIGHTS OF VOLUNTEERS
01 NCAC 13 .0302	TRAINING
01 NCAC 13 .0303	PROGRAM EVALUATION
01 NCAC 13 .0304	METHODS OF EVALUATION
01 NCAC 13 .0305	FIELD WORK

*Authority G.S. 143B-12 to 143B-14.***CHAPTER 19 - YOUTH ADVOCACY AND
INVOLVEMENT OFFICE****SUBCHAPTER 19A - STATE YOUTH INVOLVEMENT
OFFICE****SECTION .0100 - STATE YOUTH ADVISORY COUNCIL**

01 NCAC 19A .0103	ELECTION OF YOUTH MEMBERS
--------------------------	--------------------------------------

*Authority G.S. 143B-386 through 143B-388.***SUBCHAPTER 19B - STATE YOUTH INVOLVEMENT
OFFICE****SECTION .0100 - GENERAL PROVISIONS**

01 NCAC 19B .0101	AUTHORITY AND PURPOSE
01 NCAC 19B .0102	REQUESTS FOR INFORMATION BY THE PUBLIC
01 NCAC 19B .0103	CONFIDENTIALITY OF CLIENT INFORMATION

*Authority G.S. 143B-10; Exec. Order No. 27.***SECTION .0200 - SELECTION OF RECIPIENTS FOR
GRANTS**

01 NCAC 19B .0201	SELECTION CRITERIA
--------------------------	---------------------------

*Authority G.S. 143B-10; Exec. Order No. 27.***SECTION .0300 - APPLICATION PROCESS AND
SCHEDULE**

01 NCAC 19B .0301	SCHEDULE
01 NCAC 19B .0302	RESPONSE
01 NCAC 19B .0303	AUDIT

CHAPTER 21 - ADMINISTRATIVE ANALYSIS DIVISION**SUBCHAPTER 21F - N.C. STATE EMPLOYEE
SUGGESTION SYSTEM****SECTION .0100 - GENERAL PROVISIONS**

01 NCAC 21F .0101	PURPOSE
01 NCAC 21F .0102	DEFINITIONS

*Authority G.S. 143-340(1).***SECTION .0200 - ELIGIBILITY REQUIREMENTS:
EMPLOYEE ELIGIBILITY; SUGGESTION
ELIGIBILITY AND SUGGESTER ELIGIBILITY**

01 NCAC 21F .0201	FULL TIME EMPLOYEES
01 NCAC 21F .0202	PART-TIME AND TEMPORARY EMPLOYEES
01 NCAC 21F .0203	SUGGESTION ELIGIBILITY
01 NCAC 21F .0204	SUGGESTER ELIGIBILITY
01 NCAC 21F .0205	RESPONSIBILITY OF EXECUTIVE SECRETARY

*Authority G.S. 143-340(1).***SECTION .0300 - TYPES OF AWARDS: MONETARY;
NON-MONETARY AND SPECIAL AWARDS**

01 NCAC 21F .0301	GENERAL PROVISIONS
01 NCAC 21F .0302	MONETARY AWARDS
01 NCAC 21F .0303	NON-MONETARY AWARDS
01 NCAC 21F .0304	SPECIAL AWARDS

*Authority G.S. 143-340(1).***SECTION .0400 - PROTECTION CRITERIA:
EMPLOYEE PROTECTION**

01 NCAC 21F .0401	EMPLOYMENT STATUS
01 NCAC 21F .0402	ADMINISTRATIVE REVIEW
01 NCAC 21F .0403	DISCRIMINATION
01 NCAC 21F .0404	TAXES
01 NCAC 21F .0405	FILE REVIEW AND COPY

*Authority G.S. 143-340(1).***SECTION .0500 - PROTECTION CRITERIA: STATE
PROTECTION**

01 NCAC 21F .0501	POLICY CHANGES
01 NCAC 21F .0502	CLAIMS AGAINST THE STATE
01 NCAC 21F .0503	TERMINATION RIGHTS
01 NCAC 21F .0504	USE OF IDEAS

Authority G.S. 143-340(1).

CHAPTER 22 - CLEAN WATER BOND ACT

SECTION .0100 - GENERAL PROVISIONS

01 NCAC 22 .0101 PURPOSE
01 NCAC 22 .0102 DEFINITIONS

Authority S.L. 1977, Ch. 677.

SECTION .0200 - GRANTS

01 NCAC 22 .0201 GENERAL
01 NCAC 22 .0202 POLLUTION CONTROL ACCOUNT
01 NCAC 22 .0203 WATER SUPPLY SYSTEMS ACCOUNT
01 NCAC 22 .0204 GRANT LIMITATIONS
01 NCAC 22 .0205 ELIGIBLE APPLICANTS
01 NCAC 22 .0206 ELIGIBLE PROJECTS AND PROJECT COSTS
01 NCAC 22 .0207 APPLICATIONS
01 NCAC 22 .0208 ENVIRONMENTAL ASSESSMENT
01 NCAC 22 .0209 DETERMINATION OF ELIGIBILITY

Authority S.L. 1977, Ch. 677; G.S. 133-24; S.L. 1981, Ch. 909, s.8, s.14.

SECTION .0300 - PUBLIC NOTICES AND HEARINGS

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

Authority S.L. 1977, Ch. 677.

SECTION .0400 - CRITERIA FOR EVALUATION OF ELIGIBLE APPLICATIONS

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

Authority S.L. 1977, Ch. 677.

SECTION .0500 - PRIORITY CRITERIA FOR WASTEWATER TREATMENT WORK PROJECTS

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

THE APPLICANT

01 NCAC 22 .0506

STATUS OF PROJECT

Authority S.L. 1977, Ch. 677.

SECTION .0600 - PRIORITY CRITERIA FOR WASTEWATER COLLECTION SYSTEM PROJECTS

01 NCAC 22 .0601 PUBLIC NEED
01 NCAC 22 .0602 PUBLIC HEALTH NEED
01 NCAC 22 .0603 FINANCIAL NEED OF THE APPLICANT
01 NCAC 22 .0604 FISCAL RESPONSIBILITY OF THE APPLICANT
01 NCAC 22 .0605 FINANCING OF THE PROJECT
01 NCAC 22 .0606 STATUS OF PROJECT

Authority S.L. 1977, Ch. 677.

SECTION .0700 - PRIORITY CRITERIA FOR WATER SUPPLY SYSTEMS PROJECTS

01 NCAC 22 .0701 PUBLIC NECESSITY: HEALTH: SAFETY AND WELFARE
01 NCAC 22 .0702 COMPATIBILITY WITH STATE, REGIONAL AND LOCAL PLANNING
01 NCAC 22 .0703 FINANCIAL CONSIDERATIONS
01 NCAC 22 .0704 ENVIRONMENTAL ASSESSMENT

Authority S.L. 1977, Ch. 677.

SECTION .0800 - REVIEW OF APPLICATIONS AND ASSIGNMENT OF PRIORITIES

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

Authority S.L. 1977, Ch. 677.

SECTION .0900 - GRANT AWARDS

01 NCAC 22 .0901 DETERMINATION OF GRANT AWARDS
01 NCAC 22 .0902 CERTIFICATE OF ELIGIBILITY FOR GRANT AWARDS
01 NCAC 22 .0903 FAILURE TO QUALIFY FOR GRANT AWARDS
01 NCAC 22 .0904 RESTRICTIONS: GRANTS RELATING TO FEDERAL GRANTS AND LOANS
01 NCAC 22 .0905 PAYMENT OF GRANTS
01 NCAC 22 .0906 APPLICATION OF FEDERAL, STATE AND LOCAL LAWS

Authority S.L. 1977, Ch. 677.

SECTION .1000 - INSPECTION AND AUDIT OF PROJECTS

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

Authority S.L. 1977, Ch. 677.

SECTION .1100 - REPORTS AND SEVERABILITY

01 NCAC 22 .1101 ANNUAL REPORTS TO THE
ADVISORY BUDGET COMMISSION
01 NCAC 22 .1102 INFORMATION AND
APPLICATION FORMS
01 NCAC 22 .1103 SEVERABILITY

Authority S.L. 1977, Ch. 677.

CHAPTER 23 - REGIONAL WATER SUPPLY PLANNING
ACT OF 1971

01 NCAC 23 .0101 DEFINITIONS
01 NCAC 23 .0102 SUBMISSION OF APPLICATION
FORMS
01 NCAC 23 .0103 PROCESSING APPLICATIONS
01 NCAC 23 .0104 EXECUTION OF PLANNING
ADVANCES
01 NCAC 23 .0105 SUBMISSION OF THE
ENGINEERING REPORT
01 NCAC 23 .0106 ADMINISTRATION OF
OUTSTANDING PLANNING ADVANCE ACCOUNTS
01 NCAC 23 .0107 RESPONSIBILITIES OF STATE
AGENCIES
01 NCAC 23 .0108 SEVERABILITY

Authority G.S. 162A-20 to 162A-25.

CHAPTER 24 - REGIONAL SEWAGE DISPOSAL
PLANNING ACT OF 1971

01 NCAC 24 .0101 DEFINITIONS
01 NCAC 24 .0102 SUBMISSION AND
PROCESSING OF APPLICATION: ELIGIBILITY
01 NCAC 24 .0103 EXECUTION OF PLANNING
ADVANCES
01 NCAC 24 .0104 SUBMISSION OF REGIONAL
SEWAGE DISPOSAL PLAN
01 NCAC 24 .0105 ADMINISTRATION OF
OUTSTANDING PLANNING ADVANCE ACCOUNTS
01 NCAC 24 .0106 RESPONSIBILITIES OF STATE
AGENCIES
01 NCAC 24 .0107 SEVERABILITY

Authority G.S. 162A-26 to 162A-30.

CHAPTER 30 - STATE CONSTRUCTION

SUBCHAPTER 30C - ENERGY DEVELOPMENT
AUTHORITY

SECTION .0100 - GENERAL PROVISIONS

01 NCAC 30C .0104 REQUESTS FOR
INFORMATION BY THE PUBLIC
01 NCAC 30C .0105 FUNCTION

Authority 159F-4(c); G.S. 159F-5(a)(1) through (a)(16); 159F-6; 159F-7(c); 159F-8.

SECTION .0200 - RULEMAKING AND
ADMINISTRATIVE HEARING PROCEDURES

01 NCAC 30C .0201 RULE-MAKING AND
ADMINISTRATIVE HEARING PROCEDURES

Authority G.S. 150B-11; 150B-14; 159F.

CHAPTER 36 - AGENCY FOR PUBLIC
TELECOMMUNICATIONS

01 NCAC 36 .0101 PUBLIC RADIO: GENERAL
SUPPORT STANDARDS

Authority G.S. 143B-426.12.

CHAPTER 37 - N.C. LOW-LEVEL RADIOACTIVE
WASTE MANAGEMENT AUTHORITY

SECTION .0100 - GENERAL INFORMATION

01 NCAC 37 .0101 PURPOSE
01 NCAC 37 .0102 DEFINITIONS
01 NCAC 37 .0103 MAILING LIST

Authority G.S. 104G-6; 104G-6(a)(2); 104G-6(a)(20); 104G-9; 104G-23(a); 150B-11; 150B-21.2.

SECTION .0200 - SITE SELECTION CRITERIA

01 NCAC 37 .0201 INTRODUCTION
01 NCAC 37 .0202 HYDROLOGICAL AND
GEOLOGICAL FACTORS
01 NCAC 37 .0203 ENVIRONMENTAL AND
PUBLIC HEALTH FACTORS
01 NCAC 37 .0204 NATURAL AND CULTURAL
RESOURCES
01 NCAC 37 .0205 LOCAL LAND USES
01 NCAC 37 .0206 TRANSPORTATION
01 NCAC 37 .0207 AESTHETIC FACTORS
01 NCAC 37 .0208 ADDITIONAL CRITERIA
APPLICABLE ONLY TO SELECTION OF PREFERRED
SITE

Authority G.S. 104G-6; 104G-6(a); 104G-7; 104G-9; 104G-23(a); 150B-11; 150B-21.6.

SECTION .0300 - SITE SELECTION PROCEDURE

01 NCAC 37 .0301 GENERAL
01 NCAC 37 .0302 IDENTIFICATION OF
POTENTIALLY SUITABLE AREAS

**01 NCAC 37 .0303 PUBLIC MEETINGS IN
POTENTIALLY SUITABLE AREAS**
**01 NCAC 37 .0304 SELECTION OF POTENTIALLY
SUITABLE SITES**
**01 NCAC 37 .0305 SITE DESIGNATION REVIEW
COMMITTEE**
01 NCAC 37 .0306 PREFERRED SITE
**01 NCAC 37 .0307 PREFERRED SITE LOCAL
ADVISORY COMMITTEE**

Authority G.S. 104G-4; 104G-6; 104G-6(a)(2); 104G-9; 104G-11(b); 104G-19; 104G-23(a); 143-318.11; 143-318.12; 150B-11.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to adopt the rule cited as 15A NCAC 10B .0127 and amend the rules cited as 15A NCAC 10B .0101, .0106, .0114, .0119, .0203, .0206, .0209; 10C .0205-.0206, .0211, .0305, .0401-.0402; 10D .0102-.0103; 10H .0301-.0302, .0304; 10I .0102; and 10J .0102.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncwildlife.org/> (Click link "Public Notices & Pending Rules")

Proposed Effective Date:

January 1, 2013 – 15A NCAC 10B .0101, .0114, .0119, .0127, .0209; 10H .0301-.0302, .0304; 10I .0102; 10J .0102

August 1, 2013 – 15A NCAC 10B .0106, .0203, .0206; 10C .0205-.0206, .0211, .0305, .0401-.0402; 10D .0102-.0103;

Public Hearing:

Date: September 11, 2012

Time: 7:00 p.m.

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

Public Hearing:

Date: September 12, 2012

Time: 7:00 p.m.

Location: Courthouse, 212 W Elm Street, Graham, NC 27253

Public Hearing:

Date: September 13, 2012

Time: 7:00 p.m.

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

Public Hearing:

Date: September 18, 2012

Time: 7:00 p.m.

Location: Tri-County Community College, 21 Campus Circle, Murphy, NC 28906

Public Hearing:

Date: September 19, 2012

Time: 7:00 p.m.

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

Public Hearing:

Date: September 20, 2012

Time: 7:00 p.m.

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

Public Hearing:

Date: September 25, 2012

Time: 7:00 p.m.

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

Public Hearing:

Date: September 26, 2012

Time: 7:00 p.m.

Location: Courthouse, 302 Broad Street, New Bern, NC 28560

Public Hearing:

Date: September 27, 2012

Time: 7:00 p.m.

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

Reason for Proposed Action:

15A NCAC 10B .0101 – As amended, this rule will establish captive cervid importation criteria for captive cervid licensees who are certified through the WRC herd certification program. Imported animals must meet certain criteria articulated in the rule in order to reduce the risk of importing cervids with Chronic Wasting Disease.

15A NCAC 10B .0106 – As amended, this rule would ease requirements upon the public in addressing problems with depredating wildlife.

15A NCAC 10B .0114 – As amended, this rule would allow people training dogs to carry firearms in order to conform to statutory requirements for open carry of firearms (G.S. 14-415.11).

15A NCAC 10B .0119 – As amended, this rule would allow for the take of threatened species with an open season under a hunting license instead of a collection license.

15A NCAC 10B .0127 – This is a new rule that consolidates the restrictions and permissions for possession of animals found dead or killed accidentally.

15A NCAC 10B .0203 – As amended, this rule changes deer season dates and conforms to the statutory requirements for open carry firearms.

15A NCAC 10B .0206 – As amended, this rule expands the number of counties where fox squirrel hunting is allowed.

15A NCAC 10B .0209 – As amended, this rule would allow an adult to take more than one youth hunting on youth turkey day and expand the number of days in this season from the current (one) to six.

15A NCAC 10C .0205 – As amended, this rule would add to and modify the list of waters designated as Public Mountain Trout Waters (PMTW) and further classified as hatchery-supported, delayed-harvest, or wild trout waters. It is also removes waters from the PMTW to reflect changes in management, landmarks and partnerships with private landowners.

15A NCAC 10C .0206 – As amended, this rule would allow the use of set hooks in impounded waters of power reservoirs and municipally-owned water supply reservoirs which are designated as Public Mountain Trout Waters.

15A NCAC 10C .0211 – As amended, this rule would add bighead and silver carp to the list of species which are unlawful to transport, purchase, possess, sell or stock into public or private waters.

15A NCAC 10C .0305 – As amended, this rule would change size and creel limits for striped bass, black bass, American shad, and walleye.

15A NCAC 10C .0401 – As amended, this rule would make it unlawful to possess river herring (alewife or blueback herring) greater than six inches while boating on or fishing in inland waters of coastal rivers and their tributaries.

15A NCAC 10C .0402 – As amended, this rule would allow the possession of live river herring (alewife or blueback herring) on Lake Rhodhiss and Lake James. It would also make it unlawful to possess river herring greater than six inches while boating on or fishing in inland waters of coastal rivers and their tributaries.

15A NCAC 10D .0102 – As amended, this rule would conform to the statutory requirements for open carry of firearms (G.S. 14-415.11), expand trapping opportunities and increase the efficient management of the game lands.

15A NCAC 10D .0103 – As amended, this rule would conform to the statutory requirements for open carry of firearms (G.S. 14-415.11); increase available camping days; increase rule clarity; create a dove hunt for youth and adults at a specific game lands and make administrative changes.

15A NCAC 10H .0301 – As amended, this rule will allow for the issuance of new captive cervid licenses and change the standards for current licensees.

15A NCAC 10H .0302 – As amended, this rule would increase fencing requirements for new facilities and expanded facilities.

15A NCAC 10H .0304 – Update the captive herd certification to allow all cervid owners to expand their pens and receive animals from Certified herds.

15A NCAC 10I .0102 – As amended, this rule would give the Commission the authority to create an open season for a specified threatened species, the American alligator.

15A NCAC 10J .0102 – As amended, this rule would conform to the statutory requirements for open carry of firearms (G.S. 14-415.11).

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

15A NCAC 10B, 10D, 10H, 10I, 10J rules – Objections may be submitted in writing or via electronic mail during the comment period to Kate Pipkin, NC Wildlife Resources Commission, 1722 Mail Service Center, Raleigh, NC 27699-1722 or email kathryn.pipkin@ncwildlife.org.

15A NCAC 10C rules – Objections may be submitted in writing or via electronic mail during the comment period to Christian

Waters, NC Wildlife Resources Commission, 1721 Mail Service Center, Raleigh, NC 27699-1721 or email christian.waters@ncwildlife.org.

Comments may be submitted to:

15A NCAC 10B, 10D, 10H, 10I, 10J rules – Kate Pipkin, NC Wildlife Resources Commission, 1722 Mail Service Center, Raleigh, NC 27699-1722; phone (919) 707-0065; email kathryn.pipkin@ncwildlife.org.

15A NCAC 10C rules – Christian Waters, NC Wildlife Resources Commission, 1721 Mail Service Center, Raleigh, NC 27699-1721; phone (919) 707-0223; email christian.waters@ncwildlife.org.

Comment period ends: October 15, 2012

Procedure for Subjecting a Proposed Rule to Legislative

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

Fiscal impact (check all that apply).

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

CHAPTER 10 – WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0100 - GENERAL REGULATIONS

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

(a) The following definitions apply to this rule:

- (1) "Category 1 cervid" means any white-tailed deer, white-tailed deer hybrid, Sika deer, red deer, elk, elk hybrid, moose or any other species of cervid in which the scientific community has documented Chronic Wasting Disease (CWD).

- (2) "Category 2 cervid" means any species of cervid in which the scientific community has not documented CWD.

~~(a)(b)~~ Before any live wild bird or wild animal is imported into North Carolina for any purpose, a permit shall be obtained from the Executive Director of the North Carolina Wildlife Resources Commission authorizing the importation, using application forms provided by the Commission. Only captive cervid licensees with Certified Herds as defined in 15A NCAC 10H .0304 may obtain permits to import cervids.

~~(b)(c)~~ Deer, elk, or other species in the family Cervidae may only be imported into the state of North Carolina from a herd in which Chronic Wasting Disease (CWD) has not been detected for at least five years and has been managed using standards equivalent to, or more stringent than, the criteria specified in 15A NCAC 10H .0301 and 15A NCAC 10H .0302. The individual U.S. or Mexican state or territory, Canadian province or other country of origin must have CWD monitoring requirements that are at least as stringent as those described in this Rule, 15A NCAC 10H .0301 and 15A NCAC 10H .0302. The originating individual U.S. or Mexican state's or territory's, Canadian province's or other country's CWD monitoring program must be jointly reviewed by Wildlife Resources Commission and Department of Agriculture and Consumer Services personnel before approval of any importation of cervids into North Carolina. There shall be no importation of any cervid from individual U.S. or Mexican states or territories, Canadian provinces or other countries in which CWD has been detected, either in a wild herd or a captive herd.

(d) Importation permits for cervids will only be issued for animals that come from U.S. or Mexican states or territories, Canadian provinces or other countries of origin which have a license type, certification program or monitoring program that requires captive cervid facility owners to, at a minimum,:

- (1) submit for CWD testing all deceased animals over the age of 12 months;
- (2) tag, tattoo or otherwise permanently mark all animals over the age of 12 months; and
- (3) keep records of all acquisitions and all dispositions in the facility.

The requirements specified in Subparagraphs (1), (2) and (3) of this Paragraph apply only to facilities holding Category 1 cervids, both Category 1 cervids and Category 2 cervids and facilities that have held any Category 1 animal in the previous five years. Importation permit applications must indicate the source herd and if the source herd includes any Category 1 cervids or has in the past five years then that herd must be successfully participating in a certification program or monitoring program with the requirements listed in this paragraph, or has a license type that does the same.

~~(e)(e)~~ Cervids imported into North Carolina shall be individually identified by tags provided by the Wildlife Resources Commission that shall be affixed by the licensee to each cervid as set forth in 15A NCAC 10H .0301.

~~(d)(f)~~ Waterfowl imported into North Carolina must be received from facilities or individuals who are certified under the National Poultry Improvement Plan (NPIP) as pullorum-typhoid and avian influenza negative. If the source birds are not part of NPIP, they must be tested pullorum-typhoid and avian influenza

negative by NPIP standards within 30 days prior to entry into North Carolina. Health certificates for imported waterfowl shall be available for inspection by authorized Commission personnel upon request.

Authority G.S. 106.549.97; 113-134; 113-272.6; 113-274; 113-291.3.

15A NCAC 10B .0106 WILDLIFE TAKEN FOR DEPREDACTIONS

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

(1) Endangered or Threatened Species.

No permit shall be issued to take any endangered or threatened species of wildlife listed under ~~15A NCAC 10I~~ 15A NCAC 10I, except alligators, by reason of depredations to property. Only the Executive Director may issue depredation permits for Special Concern species listed in 15A NCAC 10I .0103 and for alligators. An individual may take an endangered or threatened species in immediate defense of his own life or of the lives of others without a permit. Any endangered or threatened species which may constitute a demonstrable but non-immediate threat to human safety shall be reported to a federal or state wildlife enforcement officer, who, upon verification of the report, may take or remove the specimen as provided by 15A NCAC 10I .0102. Depredation permits for other species shall be issued under the following conditions:

(2) Other Wildlife Species. Except as provided in Subparagraph (1) of this Paragraph, the Executive Director or an agent of the Wildlife Resources Commission may, upon application of a landholder and after such investigation of the circumstances as he may require, issue a permit to such landholder to take any species of

(1) for taking wildlife which is or has been damaging or destroying his property provided there is evidence of property damage, damage in excess of fifty dollars (\$50.00). No permit may be issued for the taking of any migratory birds and other federally protected animals unless a corresponding valid U.S. Fish and Wildlife Service depredation permit, if required, has been issued. The permit shall name the species allowed to be taken and and, in the discretion of the Executive Director or an agent, may contain limitations as to age, sex or any other condition within the species so named. The permit must be issued to a landholder or an authorized representative of a unit of local government for depredations on

public property. The permit shall ~~may~~ be used only by ~~the landholder or another person~~ individuals named on the permit.

- (3)(2) ~~Special Circumstances. In addition to the circumstances described in Subparagraph (2) of this Paragraph, the Executive Director or his designee may issue a permit to a person or persons for the taking of wildlife resources in circumstances of overabundance or when the wildlife resources present a danger to human safety. Cities as defined in G.S. 160A-1(2) Municipalities seeking such a depredation permit must apply to the Executive Director using a form supplied by the Commission which will request the following information:~~

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

- (4) Wildlife Damage Control Agents: Upon completion of a training course designed for the purpose of reviewing and updating information on wildlife laws and safe, humane wildlife handling techniques and demonstration of a knowledge of wildlife laws and safe, humane wildlife handling techniques, an individual with no record of wildlife law violations may apply to the Wildlife Resources Commission (Commission) to become a Wildlife Damage Control Agent (WDCA). Those persons who demonstrate knowledge of wildlife laws and safe, humane wildlife handling techniques by a passing score of at least 85 percent on a written examination provided by a representative of the Wildlife Resources Commission in cooperation with the training course provider shall be approved. Those persons failing to obtain a passing score 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 big game animals, bats, or species listed as endangered, threatened or special concern under 15A NCAC 10I .0103, .0104 and .0105 of this Chapter. WDCAs must report to the Wildlife Resources Commission the number and disposition of animals taken, by county, annually. Records must be available for inspection by a Wildlife Enforcement officer at any time during normal business hours. Wildlife Damage Control Agent status shall be revoked at any time by the Executive Director when there is evidence of violations of wildlife laws, failure to report, or inhumane treatment of animals by the WDCA. A WDCA may not charge for the permit, but may charge for his or her investigations and control services. In order to maintain a knowledge of current laws, rules, and techniques, each WDCA must renew his or her agent status every three years by showing proof of having attended at least one training course provided for the purpose of reviewing and updating information on wildlife laws and safe, humane wildlife handling techniques within the previous 12 months.

- (b) ~~Term of Permit. Each depredation permit issued by the Executive Director or an agent shall have entered thereon a date or time of an expiration after which date or time after which the depredation permit is no longer valid. The depredation permit authorizes possession of any wildlife resources taken under the permit and must be retained as long as the wildlife resource is in the permittee's possession. All individuals taking wildlife resources under the authority of a depredation permit are obligated to the conditions written on the permit and the requirements specified in this Rule. the same is invalid for any purpose, except as evidence of lawful possession of any wildlife that may be retained thereunder.~~

(c) Manner of Taking:

- (1) Taking Without a Permit. Wildlife taken without a permit while committing depredations to property may, during the open season on the species, be taken by the landholder by any lawful method. During the closed season such depredating wildlife may be taken without a permit only by the use of ~~firearms~~; firearms or archery equipment as defined in 15A NCAC 10B .0116. Landholders may use artificial lights to take depredating wildlife.
- (2) Taking With a Permit. Wildlife taken under a depredation permit may be taken only by the method or methods authorized by the permit. When trapping is authorized, in order to limit the taking to the intended purpose, the permit may specify a reasonable distance from the property sought to be protected, according to the particular circumstances, within which the

traps must be set. The Executive Director or agent may also state in a permit authorizing trapping whether or not bait may be used and the type of bait, if any, that is authorized. In addition to any trapping restrictions that may be contained in the permit the method of trapping must be in accordance with the requirements and restrictions imposed by G.S. 113-291.6 and other local laws passed by the General Assembly. No depredation permit shall authorize the use of poisons or pesticides in taking wildlife except in accordance with the provisions of the North Carolina Pesticide Law of 1971, the Structural Pest Control Act of 1955, and G.S. 113, Article 22A. No depredation permit shall authorize the taking of wildlife by any method by any landholder upon the lands of ~~another~~. 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.

(d) Disposition of Wildlife Taken:

- (1) Generally. Except as provided by the succeeding Subparagraphs of this Paragraph, any wildlife killed ~~accidentally or~~ without a permit while committing depredations shall be buried or otherwise disposed of in a safe and sanitary manner on the property. Wildlife killed under a depredation permit may be transported to an alternate disposal site if desired. Anyone in possession of carcasses of animals being transported under a depredation permit must have the depredation permit in their possession. Except as provided by the succeeding Subparagraphs of (d)(2) through (5) ~~(6)~~ of this Rule, all wildlife killed under a depredation permit must be buried or otherwise disposed of ~~in a safe and sanitary manner~~. as stated on the permit.
- (2) ~~Deer.~~ Deer and feral swine. The edible portions of feral swine and ~~of up to five~~ deer may be retained by the landholder for consumption but must not be transported from the property where the depredations took place without a valid depredation permit. The landholder may give a second party the edible portions of the feral swine and deer taken under the depredation permit. The receiver of the edible portions must hold a copy of the depredation permit. The nonedible portions of any deer ~~the~~ carcass, including head, hide, feet, and antlers, shall be disposed of as specified in Subparagraph (1) of this Paragraph or turned over to a wildlife

enforcement officer for disposition. ~~When a deer is accidentally killed on a road or highway by reason of collision with a motor vehicle, the law enforcement officer who investigates the accident shall, upon request of the operator of the vehicle, provide such operator a written permit authorizing him to possess and transport the carcass of such deer for his personal and lawful use, including delivery of such carcass to a second person for his private use or the use by a charitable organization upon endorsement of such permit to such person or organization by name and when no money or other consideration of value is received for such delivery or endorsement.~~

- (3) ~~Fox. Any fox killed accidentally shall be disposed of in the manner provided by Subparagraph (1) or (6) of this Paragraph.~~ Any fox killed under a depredation permit may be disposed of ~~in the same manner 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 ~~either accidentally or~~ for control of depredations to property, whether with or without a permit, may be sold to a licensed fur dealer provided that the person offering such carcass or pelt for sale has a valid hunting or trapping license, 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 ~~Carnivora and beaver~~ shall be humanely euthanized either at the site of capture or at a facility designed to humanely handle the euthanasia or released on the property where captured. Feral swine must be euthanized while still in the trap in accordance with G.S. 113-291.12. For all other animals taken alive, the animal must be euthanized or else released on property with permission of the landowner. When the relocation site is public property, written permission must be obtained from an appropriate local, state or federal official before any animal may be released. Animals transported or held for euthanasia must be euthanized within 12 hours of capture. Anyone in possession of live animals being transported for relocation or euthanasia under a depredation permit must

have the depredation permit in his or her possession.

- (6) ~~A person killing a wild bird or wild animal accidentally with a motor vehicle or finding a dead wild bird or wild animal which was killed accidentally may possess that wild bird or wild animal for a period not to exceed 10 days for the purpose of delivering it to a taxidermist for preparation. The taxidermist may accept the wild bird or wild animal after satisfying himself that the animal was killed accidentally. The taxidermist shall certify and record the circumstances of acquisition as determined by the injuries to the animal. Licensed taxidermists shall keep accurate records of each wildlife specimen received pursuant to the rule as required by 15A NCAC 10H .1003 of this Chapter. Upon delivery of the finished taxidermy product to the person presenting the animal, the taxidermist shall give the person a receipt indicating the sex and species, date of delivery, circumstances of initial acquisition and the name, address, and signature of the taxidermist. The receipt shall be permanently affixed to the back or bottom of the finished product and shall be retained by the person for as long as the mounted specimen is kept. Mounted specimens possessed pursuant to this Rule may not be sold and, if such specimens are transferred by gift or inheritance, the new owner must retain the permit to document the legality of possession. This provision does not allow possession of accidentally killed raptors; nongame migratory birds; species listed as endangered, threatened, or of special concern under 15A NCAC 10I .0103, .0104, and .0105 of this Chapter; black bear or wild turkey.~~
- (7) ~~Edible portions of feral swine taken under depredation permit may be retained by the landowner for consumption or, if stipulated on the permit, donated to a charitable food organization.~~

(e) Reporting Requirements. Any landholder who kills a an alligator, deer, Canada goose, bear or wild turkey under a valid depredation permit shall report such kill on the form provided with the permit and mail the form upon the expiration date to the Wildlife Resources Commission. The killing and method of disposition of every alligator and bear taken game animal and game bird, every furbearing animal, and every nongame animal or nongame bird for which there is no open season, when killed for committing depredations to property, without a permit, shall be reported to the Wildlife Resources Commission within 24 hours following the time of such killing. ~~killing, except that when the carcass or pelt of a fox, killed under a depredation permit, or of a furbearing animal, killed with or without a permit, is lawfully sold to a licensed fur dealer in this State the fur dealer is required to report the source of acquisition and no report is required of the seller.~~

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 .0114 DOG TRAINING AND FIELD TRIALS

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

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

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

(d) Except as allowed by rules pertaining to authorized field trials, ~~and handguns carried by individuals with valid concealed handgun permits~~, it is unlawful to carry firearms, axes, saws or climbing irons while training or running dogs during closed season on game animals.

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

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

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

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

15A NCAC 10B .0119 WILDLIFE COLLECTORS

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

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

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

(d) Methods of Taking. The manner of taking wildlife resources under a collection license may be specified by the

Executive Director pursuant to G.S. 113-272.4(d) and need not be restricted to the usual methods of hunting or trapping.

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

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

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

Authority G.S. 113-134; 113-272.4.

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

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

- (1) When a deer is accidentally killed on a road or highway by reason of collision with a motor vehicle, the law enforcement officer who investigates the accident shall, upon request, authorize possession and transport of the carcass of such deer for personal and lawful use, including delivery of such carcass to a second person for his private use or the use by a charitable organization. Commission employees may authorize possession of any deer or turkey found dead of natural causes or as the result of a vehicle collision.
- (2) Black bears shall not be possessed. Species listed as endangered, threatened, or of special concern under 15A NCAC 10I .0103, .0104, and .0105 may be possessed with written permission. Raptors and nongame migratory birds may be possessed under federal permits.
- (3) For all other wildlife possession shall be legal. The sale of any wildlife or wildlife parts found dead is prohibited, except licensed trappers and hunters may sell the carcasses or pelt of any beaver, coyote, groundhog, mink, muskrat, nutria, opossum, otter, raccoon, skunk, weasel or bobcat to a licensed fur dealer if the dead furbearing animal was found during the open season for that species. Licensed trappers and hunters may also sell the carcasses or pelt of

any fox to a licensed fur dealer if the dead fox was found during an open fox season and the county in which the fox was found allows for the sale of fox carcasses and pelts. All tagging requirements set forth in 15A NCAC 10B .0400 apply.

Authority G.S. 113-134; 113-274; 113-291.3, 113-291.4; 113-331; 113-333; 113-337.

SECTION .0200 - HUNTING

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 Alexander, Alleghany, Ashe, Catawba, Davie, Forsyth, Gaston, Iredell, Lincoln, Stokes, Surry, Watauga, Wilkes*, and Yadkin counties.

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

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

Swain, Transylvania, and Yancey counties.

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

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

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

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

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

(B) The open either-sex deer hunting dates established by the appropriate military commands during the period from Saturday on or nearest October 15 through January 1 in that part of

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

- (2) Restrictions
- (A) Dogs may not be used for hunting deer during the bow and arrow season, except a single dog on a leash may be used to retrieve a wounded deer in accordance with G.S. 113-291.1(k).
- ~~(B) It is unlawful to carry any type of firearm while hunting with a bow during the bow and arrow deer hunting season, except:~~
- ~~(i) if the firearm is a handgun carried by an individual with a valid concealed handgun permit. The individual carrying a handgun must adhere to the requirements set forth in North Carolina G.S. 14-415.11, even if the state issuing the concealed handgun permit is not North Carolina; or~~
- ~~(ii) the firearm is a .22 caliber rimfire pistol carried for the purpose of dispatching a wounded deer in accordance with G.S. 113-291.1(k).~~
- ~~(C)(B)~~ Only archery equipment bows and arrows of the types authorized in 15A NCAC 10B .0116 for taking deer may be used during the bow and arrow deer hunting season.

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

- (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph, deer may be taken only with muzzle-loading firearms and bow and arrow during the following seasons:
- (A) The Saturday on or nearest October 1 to the Friday of the second week thereafter in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (A) of Subparagraph (a)(1) of this Rule, except on Nicholson Creek, Rockfish Creek and Sandhills Game Lands.
- (B) The third Saturday preceding Thanksgiving until the Friday of the second week thereafter in the counties* and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (B) of Subparagraph (a)(1) of this Rule.
- *Refer to 15A NCAC 10D .0103(h) for seasons on Buffalo Cove game land.

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

(2) Restrictions

- (A) Deer of either sex may be taken during muzzle-loading firearms and bow and arrow season in and east of the following counties: Polk, Rutherford, McDowell, Burke, Caldwell, Watauga, and Ashe. Deer of either sex may be taken on the last day of this season muzzle-loading firearms and bow and arrow season in all other counties.
- (B) Dogs shall not be used for hunting deer during the muzzle-loading firearms and bow and arrow seasons, except a single dog on a leash may be used to retrieve a wounded deer in accordance with G.S. 113-291.1(k).
- ~~(C) Pistols shall not be carried while hunting deer during the muzzle-loading firearms and bow and arrow seasons, except:~~
- ~~(i) a handgun may be carried by an individual with a valid concealed handgun permit. The individual carrying a handgun must adhere to the requirements set forth in North Carolina G.S. 14-415.11, even if the state issuing the concealed handgun permit is not North Carolina; and~~
- ~~(ii) a .22 caliber rimfire pistol may be carried for the purpose of dispatching a wounded deer in accordance with G.S. 113-291.1(k).~~

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

- (1) Authorization. Subject to the restrictions set out in Subparagraph (3) of this Paragraph and the bag limits set out in Paragraph (e) of this Rule, deer of either sex may be taken with bow

and arrow in participating cities in the state, as defined in G.S. 160A-1(2), from the second Saturday following January 1 to the fifth Saturday thereafter. Deer shall not be taken on any game land or part thereof that occurs within a city boundary.

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

- (3) Restrictions:

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

~~(B) It is unlawful to carry any type of firearm while hunting with a bow during the urban season, except:~~

- ~~(i) if the firearm is a handgun carried by an individual with a valid concealed handgun permit. The individual carrying a handgun must adhere to the requirements set forth in North Carolina G.S. 14-415.11, even if the state issuing the concealed handgun permit is not North Carolina; or~~

- ~~(ii) the firearm is a .22 caliber rimfire pistol carried for the purpose of dispatching a wounded deer in accordance with G.S. 113-291.1(k).~~

~~(C)(B)~~ Only archery equipment bows and arrows 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 .0206 SQUIRRELS

- (a) Open Seasons:

- (1) Gray and red squirrels may be taken by hunting on the Monday on or closest to October 15 to the last day of February.
- (2) Fox squirrels may be taken by hunting on the Monday on or nearest October 15 to December 31 in the counties of Alleghany, Anson, Ashe, Bladen, Brunswick, Cumberland, Duplin, Edgecombe, Greene, Harnett, Hoke, Johnston, Jones, Lenoir, Moore, New Hanover, Onslow, Pender, Pitt, Richmond, Sampson, ~~Scotland~~ Scotland, Stokes, Surry, Watauga, Wayne and Wilkes, and Wayne.

- (b) Bag Limits:

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

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

15A NCAC 10B .0209 WILD TURKEY

- (a) Open Seasons:

- (1) Spring Wild Turkey Season shall be from the second Saturday in April through the Saturday of the fourth week thereafter on bearded or male turkeys only in all counties statewide.
- (2) Spring Youth Only Wild Turkey Season: the Spring Youth Only Wild Turkey Season shall be ~~for one day on~~ from the first Saturday in

April until the Friday thereafter on bearded or male wild turkeys only. The bag limit during the Spring Youth Only Wild Turkey season is one bird. For purposes of this Subparagraph a youth hunter shall be less than 16 years of age. Each youth hunting during this season shall be accompanied by a properly licensed adult at least 21 years of age. ~~An adult may accompany only one youth during any particular hunt and only one weapon is allowed per youth hunter.~~ The adult must remain in close enough proximity to monitor the activities of, and communicate with, the youths at all times.

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

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

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

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

SUBCHAPTER 10C - INLAND FISHING REGULATIONS

SECTION .0200 - GENERAL REGULATIONS

15A NCAC 10C .0205 PUBLIC MOUNTAIN TROUT WATERS

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

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

included in the classification unless specifically set out therein.

(A) Alleghany County:

New River (not trout water)

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

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

Big Pine Creek
(Big) Glade Creek

Bledsoe Creek
Pine Swamp Creek
South Fork New River (not trout water)

Prather Creek
Cranberry Creek
Piney Fork

Meadow Fork

~~Yadkin River (not trout water)~~

~~Roaring River (not trout water)~~

~~East Prong Roaring River (that portion on Stone Mountain State Park) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]~~

(B) Ashe County:

New River (not trout waters)

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

Helton Creek (Virginia State line to New River) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]

Big Horse Creek (Mud Creek at SR 1363 to confluence with North Fork New River) [Delayed Harvest Regulations apply to portion between SR 1324 bridge and North

- Fork New River. See Subparagraph (a)(5) of this Rule.]
 Buffalo Creek (SR 1133 bridge headwaters to junction of NC 194-88 bridge) and SR-1131)
 Big Laurel Creek
 Three Top Creek (portion not on game lands)
 South Fork New River (Todd Island Park ~~not trout waters~~) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule]
 Cranberry Creek (Alleghany County line to South Fork New River)
 Nathans Creek
 Peak Creek (headwaters to Trout Lake, except Blue Ridge Parkway waters)
 Trout Lake [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Roan Creek
 Beaver Creek
~~Pine Swamp Creek (all forks)~~
~~Old Fields Creek~~
~~Mill Creek (except where posted against trespass)~~
- (C) Avery County:
 Nolichucky River (not trout waters)
 North Toe River – upper (Watauga Street to Roby Shoemaker Wetlands and Family Recreational Park, except where posted against trespass)
 North Toe River – lower (SR 1164 to Mitchell County line, except where posted against trespass)
 Squirrel Creek
 Elk River (SR 1305 crossing immediately upstream of Big Falls to the Tennessee State line line, including portions of tributaries on game lands)
 Wildcat Lake
- Catawba River (not trout water)
 Johns River (not trout water)
 Wilson Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
 Lost Cove Creek [not Hatchery Supported trout water, see Subparagraph (a)(4) of this Rule.]
 Buck Timber Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
 Cary Flat Branch [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
 Boyde Coffey Lake
 Linville River [Land Harbor line (below dam) to Blue Ridge Parkway boundary line, except where posted against trespass]
 Milltimber Creek
- (D) Buncombe County:
 French Broad River (not trout water)
 Ivy Creek (Ivy River) (Dillingham Creek to US 19-23 bridge)
 Dillingham Creek (Corner Rock Creek to Ivy Creek)
 Stony Creek
 Corner Rock Creek (Little Andy Creek to confluence with including tributaries, except Walker Branch)
 Reems Creek (Sugar Camp Fork to US 19-23 bridge, except where posted against trespass)
 Swannanoa River (SR 2702 bridge near Ridgecrest to Wood Avenue Bridge, intersection of NC 81W and US 74A in Asheville, except where posted against trespass)
 Bent Creek (headwaters to N.C. Arboretum boundary

- ~~line) line, including portions of tributaries on game lands)~~
 Lake Powhatan
Rich Branch (downstream from confluence with Rocky Branch)
 Cane Creek (headwaters to SR 3138 bridge)
- (E) Burke County:
 Catawba River (Muddy Creek to the City of Morganton water intake dam) [Special Regulations apply. See Subparagraph (a)(7) of this Rule.]
 South Fork Catawba River (not trout water)
 Henry Fork (lower South Mountains State Park line downstream to SR 1919 at Ivy Creek)
 Jacob Fork (Shinny Creek to lower South Mountain State Park boundary) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Johns River (not trout water)
 Parks Creek (portion not on game lands not trout water)
 Carroll Creek (game lands portion above SR ~~1405~~) ~~1405 including tributaries~~
 Linville River (portion within Linville Gorge Wilderness Area ~~Area, including tributaries~~, and portion below Lake James powerhouse from upstream bridge on SR 1223 to Muddy Creek)
- (F) Caldwell County:
 Catawba River (not trout water)
 Johns River (not trout water)
 Wilson Creek (game lands portion downstream of Lost Cove Creek to Brown Mountain Beach dam, except where posted against trespass) [Delayed Harvest Regulations apply to game lands portion between Lost Cove Creek and Phillips Branch. See Subparagraph (a)(5) of this Rule.)
 Estes Mill Creek (not trout water)
 Mulberry Creek (portion not on game lands not trout water)
 Boone Fork [not Hatchery Supported trout water. See Subparagraph (a)(2) of this Rule.]
 Boone Fork Pond
 Yadkin River (Happy Valley Ruritan Community Park to SR 1515)
 Buffalo Creek (mouth of Joes Creek to McCloud Branch)
 Joes Creek (first falls upstream of SR 1574 to confluence with Buffalo Creek)
- (G) Cherokee County:
 Hiwassee River (not trout water)
 Shuler Creek (Joe Brown Highway (SR 1325) bridge to Tennessee line)
 Davis Creek (confluence of Bald and Dockery creeks to Hanging Dog Creek)
 Valley River (headwaters to US 19 business bridge in Murphy)
 Hyatt Creek (Big Dam Branch to Valley River) ~~including portions of tributaries on game lands~~
 Junaluska Creek (Ashturn Creek to Valley River) ~~River, including portions of tributaries on game lands~~
- (H) Clay County:
 Hiwassee River (not trout water)
Fires Creek (USFS Road 340A to the foot bridge in the US Forest Service Fires Creek Picnic Area) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Fires Creek (foot bridge in the US Forest Service Fires

- Creek Picnic Area to SR 1300)
Tusquitee Creek (headwaters to lower SR 1300 bridge)
Nantahala River (not trout water)
Buck Creek (game land portion downstream of US 64 bridge)
- (I) Graham County:
Little Tennessee River (not trout water)
Calderwood Reservoir (Cheoah Dam to Tennessee State line)
Cheoah River (not trout water)
~~Yellow Creek~~
Santeetlah Reservoir (not trout water)
West Buffalo Creek
~~Little Buffalo Creek~~
Santeetlah Creek (Johns Branch to Lake Santeetlah) ~~mouth including portions of tributaries within this section located on game lands, excluding Johns Branch and Little Santeetlah Creek~~ (Big) Snowbird Creek (USFS foot bridge at the old railroad junction to USFS Road 2579) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.] (Big) Snowbird Creek (USFS Road 2579 old railroad junction to SR 1127 bridge) ~~bridge, including portions of tributaries on game lands~~ Mountain Creek (game lands boundary to SR 1138 bridge)
Tulula Creek (headwaters to lower bridge on SR 1275)
Cheoah Reservoir
- Fontana Reservoir (not trout water)
Stecoah Creek
Panther Creek (confluence of Stand Creek and Rock Creek to Lake Fontana) ~~including portions of tributaries on game lands~~
- (J) Haywood County:
Pigeon River (Stamey Cove Branch to upstream US 19-23 bridge)
Cold Springs Creek (Fall Branch to Pigeon River) ~~including portions of tributaries on game lands~~
Jonathan Creek (upstream SR 1302 bridge to Pigeon River, except where posted against trespass)
Richland Creek (Russ Avenue (US 276) bridge to US 19 US 23-74 bridge)
West Fork Pigeon River (Tom Creek to the first game land boundary upstream of Lake Logan) [Delayed Harvest Regulations apply to the portion from Queen Creek to the first game land boundary upstream of Lake Logan. See Subparagraph (a)(5) of this Rule.]
- (K) Henderson County:
(Rocky) Broad River (Rocky River Lane to Rutherford County line)
~~Green River upper (mouth of Joe Creek to mouth of Bobs Creek)~~
Green River —lower (Lake Summit ~~Dam~~ powerhouse to game land boundary) I-26 bridge)
(Big) Hungry River
French Broad River (not trout water)
Cane Creek (railroad bridge upstream of SR 1551 bridge to US 25 bridge)
Mud Creek (not trout water)
Clear Creek (Laurel Fork SR 1591 bridge at Jack Mountain Lane to SR 1582)
Mills River (not trout water)
North Fork Mills River (game lands portion below

- the Hendersonville watershed dam). [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- (L) Jackson County:
- Tuckasegee River (confluence with West Fork Tuckasegee River to SR 1534 bridge at Wilmot) [Delayed Harvest Regulations apply to that portion between the downstream NC 107 bridge and the falls located 275 yards upstreams of US 23-441 bridge as marked by a sign on each bank. See Subparagraph (a)(5) of this Rule.]
- Scott Creek (entire stream, except where posted against trespass)
- Dark Ridge Creek (Jones Creek to Scotts Creek)
- Savannah Creek (Headwaters to Bradley's Packing House on NC 116)
- Greens Creek (Greens Creek Baptist Church on SR 1730 to Savannah Creek)
- Cullowhee Creek (Tilley Creek to Tuckasegee River)
- Cedar Cliff Lake
- Bear Creek Lake
- Wolf Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
- Wolf Creek Lake
- Balsam Lake
- Tanasee Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
- Tanasee Creek Lake
- (M) Macon County:
- Little Tennessee River (not trout water)
- Nantahala River (Nantahala Dam to Swain County line) [Delayed Harvest Regulations apply to the portion from Whiteoak Creek to the Nantahala hydropower discharge canal. See Subparagraph (a)(5) of this Rule.]
- Queens Creek Lake
- Burningtown Creek (Left Prong to Little Tennessee River) ~~including portions of tributaries on game lands~~
- Cullasaja River (Sequoyah Sequoyah Dam to US 64 bridge near junction of SR 1672) ~~1672, including portions of tributaries on game lands, excluding those portions of Buck Creek and Turtle Pond Creek on game lands. [Wild Trout Regulations apply. See Subparagraphs (a)(2) and (a)(6) of this Rule.]~~
- Skitty Creek
- Cliffside Lake
- Cartoogechaye Creek (downstream US 64 bridge to Little Tennessee River)
- (N) Madison County:
- French Broad River (not trout water)
- ~~Shut-In~~ Shut-in Creek (including portions of tributaries on game lands)
- West Fork Shut-in Creek (lower game land boundary to confluence with East Fork Shut-in Creek)
- Spring ~~Creek upper Creek – upper~~ (junction of NC 209 and NC 63 to US Forest Service road 223)
- Spring ~~Creek lower Creek – lower~~ (NC 209 bridge at Hot Springs city limits to iron bridge at end of Andrews Avenue) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- Meadow Fork Creek
- Roaring Fork (Fall Branch to Meadow Fork) ~~including portions of tributaries on game lands~~
- Max Patch Pond
- Big Laurel Creek (Mars Hill Watershed boundary to the SR 1318 bridge, also known as Big Laurel Road bridge, downstream of Bearpen Branch)
- Big Laurel Creek (NC 208 bridge to US 25-70 bridge) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]

- ~~Spillcorn Creek (entire stream, excluding tributaries)~~
Shelton Laurel Creek (confluence of Big Creek and Mill Creek to NC 208 bridge at Belva)
Shelton Laurel Creek (NC 208 bridge at Belva to the confluence with Big Laurel Creek) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
Puncheon Fork (Hampton Creek to Big Laurel Creek)
Big Pine Creek (SR 1151 bridge to French Broad River)
Ivy Creek (not trout waters)
Little Ivy Creek (confluence of Middle Fork and Paint Fork at Beech Glen to confluence with Ivy Creek at Forks of Ivy)
- (O) McDowell County:
Catawba River – upper (Catawba Falls Campground to Old Fort Recreation Park)
Catawba River – lower (portion adjacent to Marion Greenway) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
Buck Creek (portion not on game lands, not trout water)
Little Buck Creek (game land portion ~~including portions of tributaries on game lands~~)
Curtis Creek game lands portion downstream of US Forest Service boundary at Deep Branch. [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
North Fork Catawba River (headwaters to SR 1569 bridge)
Armstrong Creek (Cato Holler line downstream to upper Greenlee line)
Mill Creek (upper railroad bridge to I 40 bridge, except where posted against trespass) [Delayed Harvest Regulations apply to that portion between US 70 bridge and I 40 bridge. See Subparagraph (a)(5) of this Rule.]
- (P) Mitchell County:
Nolichucky River (not trout water)
Big Rock Creek (headwaters to NC 226 bridge at SR 1307 intersection)
Little Rock Creek (Green Creek Bridge to Big Rock Creek, except where posted against trespass)
Cane Creek (SR 1219 to SR 1189 bridge) [Delayed Harvest Regulations apply to that portion from NC 226 bridge to SR 1189 bridge. See Subparagraph (a)(5) of this Rule.]
Grassy Creek (East Fork Grassy Creek to mouth)
East Fork Grassy Creek
North Toe River (Avery County line to SR 1121 bridge)
North Toe River (US 19E bridge to NC 226 bridge) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- (Q) Polk County:
Broad River (not trout water)
North Pacolet River (Joels Creek to NC 108 bridge)
Green River (Fishtop Falls Access Area to the natural gas pipeline crossing) [Delayed Harvest Regulations apply to the portion from Fishtop Falls Access Area to Cove Creek. See Subparagraph (a)(5) of this Rule.]
- (R) Rutherford County:
(Rocky) Broad River (Henderson County line to US 64/74 bridge, except where posted against trespass)
- (S) Stokes County:
Dan River (Virginia State line downstream to a point 200 yards below the end of SR 1421)
- (T) Surry County:
Yadkin River (not trout water)

- Big Elkin Creek (Dam 440 yards upstream of NC 268 bridge to a point 265 yards downstream of NC 268 bridge as marked by a sign on each bank)
 Ararat River (SR 1727 bridge downstream to the NC 103 bridge)
 Araat River (NC 103 bridge to US 52 bridge) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Stewarts Creek (not trout water)
 Pauls Creek (Virginia State line to 0.3 mile below SR 1625 bridge - lower Caudle property line)
 Fisher River (Cooper Creek) (Virginia State line to Interstate 77)
 Little Fisher River (Virginia State line to NC 89 bridge)
 Mitchell River (0.6 mile upstream of the end of SR 1333 to the SR 1330 bridge below Kapps Mill Dam) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- (U) Swain County:
 Little Tennessee River (not trout water)
 Calderwood Reservoir (Cheoah Dam to Tennessee State line)
 Cheoah Reservoir
 Fontana Reservoir (not trout water)
 Alarka Creek (game lands boundary to Fontana Reservoir)
 Nantahala River (Macon County line to existing Fontana Reservoir water level)
 Tuckasegee River (not trout water)
 Deep Creek (Great Smoky Mountains National Park boundary line to Tuckasegee River)
- (V) Transylvania County:
 French Broad River (confluence of North Fork French Broad River and West Fork French Broad River to the Island Ford Road (SR 1110) Access Area)
 Davidson River (Avery Creek to lower US Forest Service boundary line)
 East Fork French Broad River (Gladly Fork to French Broad River) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Little River (confluence of Lake Dense outflow to 100 yards downstream of Hooker Falls) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Middle Fork French Broad River
 West Fork French Broad River (Camp Cove Branch to confluence with North Fork French Broad SR 1342 and SR 1309 intersection to junction of west and north forks, including portions of tributaries within this section located on game lands)
- (W) Watauga County:
 New River (not trout waters)
 ~~North Fork New River (from confluence with Maine and Mine branches to Ashe County line)~~
 ~~Maine Branch (headwaters to North Fork New River)~~
 South New Fork New River (~~not trout water~~) (canoe launch 70 yards upstream of US 421 bridge to lower boundary of Brookshire Park)
 Meat Camp Creek
 Norris Fork Creek
 ~~Howard Creek (downstream from lower falls)~~

- Middle Fork New River
(Lake Chetola Dam to South Fork New River)
- Yadkin River (not trout water)
- Stony Fork (headwaters to Wilkes County line)
- Elk Creek (SR 1510 bridge at Triplett to Wilkes County line, except where posted against trespass)
- Watauga River (adjacent to the intersection of SR 1557 and SR 1558 to NC 105 bridge and SR 1114 bridge to NC 194 bridge at Valle Crucis). [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- Beech Creek
- Buckeye Creek Reservoir
- Buckeye Creek (Buckeye Creek Reservoir dam to Grassy Gap Creek)
- Coffee Lake [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- Beaverdam Creek (confluence of Beaverdam Creek and Little Beaverdam Creek to an unnamed tributary adjacent to the intersection of SR 1201 and SR 1203)
- Laurel Creek
- Cove Creek (SR 1233 bridge at Zionville to SR 1233 bridge at Amantha)
- Dutch Creek (second bridge on SR 1134 to mouth)
- (X) Wilkes County:
- Yadkin River (not trout water)
- Roaring River (not trout water)
- East Prong Roaring River (~~from~~ Bullhead Creek ~~downstream to~~ Brewer's Mill on SR 1943 ~~to~~ Stone Mountain State Park lower boundary) [Delayed Harvest Regulations apply. ~~apply to portion on Stone Mountain State Park~~. See Subparagraph (a)(5) of this Rule.]
- East Prong Roaring River (Stone Mountain State Park lower boundary to Brewer's Mill on SR 1943)
- Stone Mountain Creek [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- Middle Prong Roaring River (headwaters to second bridge on SR 1736)
- Bell Branch Pond
- Boundary Line Pond
- West Prong Roaring River (not trout waters)
- Pike Creek
- Pike Creek Pond
- Cub Creek (0.5 miles upstream of SR 2460 bridge to SR 1001 bridge)
- Reddies River (Town of North Wilkesboro water intake dam to confluence with Yadkin River) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- Middle Fork Reddies River (Clear Prong) (headwaters to bridge on SR 1580)
- South Fork Reddies River (SR 1355 bridge headwaters to confluence with Middle Fork Reddies River)
- North Fork Reddies River (Vannoy Creek) (headwaters to Union School bridge on SR 1559)
- Darnell Creek (North Prong Reddies River) (downstream ford on SR 1569 to confluence with North Fork Reddies River)
- Lewis Fork Creek (not trout water)
- South Prong Lewis Fork (Fall Creek to SR 1155)

- ~~bridge headwaters to Lewis Fork Baptist Church)~~
Fall Creek (SR 1300 bridge to confluence with South Prong Lewis Fork
except portions posted against trespass)
Elk Creek – upper (Watauga County line to lower boundary of ~~Reynolds Blue Ridge development~~) Blue Ridge Mountain Club
[Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
Elk Creek – lower (portion on Leatherwood Mountains development) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- (Y) Yancey County:
Nolichucky River (not trout water)
Cane River [Bee Branch (SR 1110) to Bowlens Creek]
Bald Mountain Creek (except portions posted against trespass)
Indian Creek (not trout water)
Price Creek (junction of SR 1120 and SR 1121 to Indian Creek)
North Toe River (not trout water)
South Toe River (Clear Creek to lower boundary line of Yancey County recreation park except where posted against trespass)
- (2) Wild Trout Waters. All waters designated as Public Mountain Trout Waters on the game lands listed in Subparagraph (b)(2) of 15A NCAC 10D .0104, are classified as Wild Trout Waters unless classified otherwise in Subparagraph (a)(1) of this Rule. The trout waters listed in this Subparagraph are also classified as Wild Trout Waters.
- (A) Alleghany County:
Big Sandy Creek (portion on Stone Mountain State Park)
Stone Mountain Creek (that portion on Stone Mountain State Park)
- (B) Ashe County:
Big Horse Creek (Virginia State Line to Mud Creek at SR 1363) [Catch and Release/Artificial Lures Only
- Regulations apply. See Subparagraph (a)(3) of this Rule.]
Unnamed tributary of Three Top Creek (portion located on Three Top Mountain Game Land) [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]
- (C) Avery County:
Birchfield Creek (entire stream)
Cow Camp Creek (entire stream)
Cranberry Creek (headwaters to US 19E/NC 194 bridge)
Elk River (portion on Lees-McRae College property, excluding the millpond) [Catch and Release/Artificial Flies Only Regulations apply. See Subparagraph (a)(4) of this Rule.]
Gragg Prong (entire stream)
Horse Creek (entire stream)
Jones Creek (entire stream)
Kentucky Creek (entire stream)
North Harper Creek (entire stream)
Plumtree Creek (entire stream)
Roaring Creek (entire stream)
Rockhouse Creek (entire stream)
Shawneehaw Creek (portion adjacent to Banner Elk Greenway)
South Harper Creek (entire stream)
Webb Prong (entire stream)
Wilson Creek [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]
- (D) Buncombe County:
Carter Creek (game land portion) [Catch and Release/Artificial Lures only Regulations apply. See Subparagraph (a)(3) of this Rule.]
- (E) Burke County:
All waters located on South Mountain State Park, except the main stream of Jacob Fork
Between the mouth of Shinny Creek and the lower park boundary where Delayed Harvest Regulations apply, and Henry Fork and tributaries where Catch and Release/Artificial Lures Only Regulations apply. See Subparagraphs (a)(3) and (a)(5) of this Rule.
- (F) Caldwell County:

- Buffalo Creek (Watauga County line to Long Ridge Branch including tributaries on game lands)
Joes Creek (Watauga County line to first falls upstream of the end of SR 1574)
Rockhouse Creek (entire stream)
- (G) Cherokee County:
Bald Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
Dockery Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
North Shoal Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- (H) Graham County:
Franks Creek (entire stream) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
Little Buffalo Creek (entire stream)
South Fork Squally Creek (entire stream)
Squally Creek (entire stream)
- (I) Haywood County
Hemphill Creek [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of the Rule.]
Hurricane Creek (including portions of tributaries on game lands) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- (J) Jackson County:
Buff Creek (entire stream) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
Gage Creek (entire stream)
North Fork Scott Creek (entire stream)
~~Shoal Creek (Glenville Reservoir pipeline to mouth) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]~~
Tanasee Creek (entire stream)
West Fork Tuckasegee River (Shoal Creek to existing water level of Little Glenville Lake) [Wild Trout/Natural
- ~~Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]~~
Whitewater River (downstream from Silver Run Creek to South Carolina State line)
Wolf Creek (entire stream, except Balsam Lake and Wolf Creek Lake)
- (K) Madison County:
Big Creek (headwaters to the lower game land boundary, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- (L) Mitchell County:
Green Creek (headwaters to Green Creek Bridge, except where posted against trespass)
Little Rock Creek (headwaters to Green Creek Bridge, including all tributaries, except where posted against trespass)
Wiles Creek (game land boundary to mouth)
- (M) Transylvania County:
All waters located on Gorges State Park
Whitewater River (downstream from Silver Run Creek to South Carolina State line)
- (N) Watauga County:
Dugger Creek (portions on ~~Reynolds Blue Ridge development, Blue Ridge Mountain Club, including tributaries. Anglers must check in at the development security office on Triplett Road prior to fishing tributaries~~) [Catch and Release/Artificial Lure Only Trout Waters Regulations apply. See Subparagraph (a)(3) of this Rule.]
Dutch Creek (headwaters to second bridge on SR 1134)
~~Howard Howards Creek (entire stream headwaters to lower falls)~~
Laurel Creek (portions on ~~Reynolds Blue Ridge Blue Ridge Mountain Club and Powder Horn Mountain developments, including tributaries. Anglers fishing the upper section of Laurel Creek must check in at the Reynolds Blue Ridge security office on Triplett Road prior to fishing. Anglers fishing the lower section of Laurel Creek must access the creek from the parking area on Powder Horn Mountain property adjacent to Laurel Creek on Triplett Road.) Development, including tributaries~~)

- [Catch and Release/Artificial Lure Only Trout Waters Regulations apply. See subparagraph (a)(3) of this Rule.]
Maine Branch (headwaters to North Fork New River)
North Fork New River (from confluence with Maine and Mine branches to Ashe County line)
 Pond Creek (headwaters to Locust Ridge Road bridge, excluding the pond adjacent to Coffee Lake) [Catch and Release/Artificial Lure Only Trout Waters Regulations Apply. See Subparagraph (a)(3) of this Rule.]
 Watauga River (Avery County line to SR 1580 bridge steel bridge at Riverside Farm Road)
 Winkler Creek (lower bridge on SR 1549 to confluence with South Fork New River)
- (O) Wilkes County:
 Big Sandy Creek (portion on Stone Mountain State Park)
 Dugger Creek (portions on ~~Reynolds Blue Ridge development, Blue Ridge Mountain Club~~, including ~~tributaries~~. ~~Anglers must check in at the development security office on Triplett Road prior to fishing~~ tributaries) [Catch and Release/Artificial Lure Only Trout Waters Regulations apply. See Subparagraph (a)(3) of this Rule.]
 Garden Creek (portion on Stone Mountain State Park)
 Harris Creek and tributaries (portions on Stone Mountain State Park) [Catch and Release Artificial Lures Only Regulations apply. See Subparagraph (a)(4) of this Rule.]
 Widow Creek (portion on Stone Mountain State Park)
- (P) Yancey County:
 Cattail Creek (Bridge at Mountain Farm Community Road (Private) to NC 197 bridge)
 Lickskillet Creek (entire stream)
 Middle Creek (game land boundary to mouth)
- (3) Catch and Release/Artificial Lures Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Artificial Lures Only waters. Only artificial lures having one single hook may be used. No trout may be harvested or be in possession while fishing these streams:
- (A) Ashe County:
 Big Horse Creek (Virginia State line to Mud Creek at SR 1363 excluding tributaries)
 Unnamed tributary of Three Top Creek (portion located on Three Top Mountain Game Lands)
- (B) Avery County:
 Wilson Creek (game land portion)
- (C) Buncombe County:
 Carter Creek (game land portion)
- (D) Burke County:
 Henry Fork (portion on South Mountains State Park)
- (E) Jackson County:
 Flat Creek
 Tuckasegee River (upstream of Clarke property)
- (F) McDowell County:
 Newberry Creek (game land portion)
- (G) Watauga County:
 Dugger Creek (portions on ~~Reynolds Blue Ridge development, Blue Ridge Mountain Club~~, including ~~tributaries~~. ~~Anglers must check in at the development security office on Triplett Road prior to fishing~~ tributaries)
 Laurel Creek (portions on ~~Reynolds Blue Ridge Blue Ridge Mountain Club~~ and Powder Horn Mountain ~~developments, including tributaries~~. ~~Anglers fishing the upper section of Laurel Creek must check in at the development security office on Triplett Road prior to fishing~~. ~~Anglers fishing the lower section of Laurel Creek must access the creek from the parking area on Powder Horn Mountain property adjacent to Laurel Creek on Triplett Road~~.) Development, including tributaries)
 Pond Creek (headwaters to Locust Ridge bridge, excluding the pond adjacent to Coffee Lake)
- (H) Wilkes County:
 Dugger Creek (portions on ~~Reynolds Blue Ridge development, Blue Ridge Mountain Club~~, including ~~tributaries~~. ~~Anglers must check in at the development security office on Triplett Road prior to fishing~~ tributaries)
 Harris Creek (portion on Stone Mountain State Park)

- (4) Catch and Release/Artificial Flies Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Artificial Flies Only waters. Only artificial flies having one single hook may be used. No trout may be harvested or be in possession while fishing these streams:
- (A) Avery County:
Elk River (portion on Lees-McRae College property, excluding the millpond)
Lost Cove Creek (game land portion, excluding Gragg Prong and Rockhouse Creek)
- (B) Transylvania County:
Davidson River (headwaters to Avery Creek, excluding Avery Creek, Looking Glass Creek and Grogan Creek)
- (C) Yancey County:
South Toe River (headwaters to Upper Creek, including tributaries)
Upper Creek (entire stream)
- (5) Delayed Harvest Trout Waters. Those portions of designated Hatchery Supported Trout Waters as listed in this Subparagraph, excluding tributaries except as noted, are further classified as Delayed Harvest Waters. Between 1 October and one-half hour after sunset on the Friday before the first Saturday of the following June, inclusive, it is unlawful to possess natural bait, use more than a single hook on an artificial lure, or harvest or possess trout while fishing these waters. These waters are closed to fishing between one-half hour after sunset on the Friday before the first Saturday in June and 6:00 a.m. on the first Saturday in June. At 6:00 a.m. on the first Saturday in June these waters are open for fishing under Hatchery Supported Waters rules for youth anglers only. Youth is defined as a person under 16 years of age. At 12:00 p.m. on the first Saturday in June these streams open for fishing under Hatchery Supported Waters rules for all anglers:
- (A) Alleghany County:
Little River (Whitehead to a point 275 yards downstream of the intersection of SR 1128 and SR 1129 as marked by a sign on each bank)
- (B) Ashe County:
Trout Lake
Helton Creek (Virginia state line to New River)
South Fork New River (Todd Island Park)
- Big Horse Creek (SR 1324 bridge to North Fork New River)
- (C) Burke County:
Jacob Fork (Shinny Creek to lower South Mountains State Park boundary)
- (D) Caldwell County:
Wilson Creek (game lands portion downstream of Lost Cove Creek to Phillips Branch)
- (E) Clay County:
Fires Creek (USFS Road 340A to the foot bridge in the US Forest Service Fires Creek Picnic Area)
- (F) Graham County:
(Big) Snowbird Creek (USFS foot bridge at the old railroad junction to USFS Road 2579)
- ~~(E)~~(G) Haywood County:
West Fork Pigeon River (Queen Creek to the first game land boundary upstream of Lake Logan)
- ~~(F)~~(H) Henderson County:
North Fork Mills River (game land portion below the Hendersonville watershed dam)
- ~~(G)~~(I) Jackson County:
Tuckasegee River (downstream NC 107 bridge falls located 275 yards upstream of the US 23-441 bridge as marked by a sign on each bank)
- ~~(H)~~(J) Macon County:
Nantahala River (Whiteoak Creek to the Nantahala hydropower discharge canal)
- ~~(I)~~(K) Madison County:
Big Laurel Creek (NC 208 bridge to the US 25-70 bridge)
Shelton Laurel Creek (NC 208 bridge at Belva to the confluence with Big Laurel Creek)
Spring Creek (NC 209 bridge at Hot Springs city limits to iron bridge at end of Andrews Avenue)
- ~~(J)~~(L) McDowell County:
Catawba River (portion adjacent to Marion Greenway)
Curtis Creek (game lands portion downstream of U.S. Forest Service boundary at Deep Branch)
Mill Creek (US70 bridge to I 40 bridge)
- ~~(K)~~(M) Mitchell County:
Cane Creek (NC 226 bridge to SR 1189 bridge)
North Toe River (US 19E bridge to NC 226 bridge)
- ~~(L)~~(N) Polk County:

- Green River (Fishtop Falls Access Area to confluence with Cove Creek)
- (M)(O) Surry County:
Mitchell River (0.6 mile upstream of the end of SR 1333 to the SR 1330 bridge below Kapps Mill Dam)
Ararat River (NC 103 bridge to US 52 bridge)
- (N)(P) Transylvania County:
East Fork French Broad River (Glady Fork to French Broad River)
Little River (confluence of Lake Dense to 100 yards downstream of Hooker Falls)
- (O)(Q) Watauga County:
Watauga River (adjacent to intersection of SR 1557 and SR 1558 to NC 105 bridge and SR 1114 bridge to NC 194 bridge at Valle Crucis)
Coffee Lake
- (P)(R) Wilkes County:
East Prong Roaring River (from Bullhead Creek downstream to the Stone Mountain State Park lower boundary)
Stone Mountain Creek (from falls at Allegheny County line to confluence with East Prong Roaring River and Bullhead Creek in Stone Mountain State Park)
Reddies River (Town of North Wilkesboro water intake dam to confluence with Yadkin River)
Elk Creek – upper (Watauga County line to lower boundary of ~~Reynolds Blue Ridge development~~ Blue Ridge Mountain Club)
Elk Creek – lower (portion on Leatherwood Mountains development)
- (6) Wild Trout/Natural Bait Waters. Those portions of designated Wild Trout Waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Wild Trout/Natural Bait Waters. All artificial lures and natural baits, except live fish, are allowed provided they are fished using only one single hook. The creel limit, size limit, and open season are the same as other Wild Trout Waters [see 15A NCAC 10C .0305(a)]:
- (A) Cherokee County:
Bald Creek (game land portions)
Dockery Creek (game land portions)
North Shoal Creek (game land portions)
- (B) Graham County:
Deep Creek
Long Creek (game land portion)
- (C) Franks Creek
Haywood County:
Hemphill Creek (including tributaries)
Hurricane Creek (including portions of tributaries on game lands)
- (D) Jackson County:
Buff Creek
Chattooga River (SR 1100 bridge to South Carolina state line)
(lower) Fowler Creek (game land portion)
Scotsman Creek (game land portion)
~~Shoal Creek (Glenville Reservoir pipeline to mouth)~~
~~West Fork Tuckasegee River (Shoal Creek to existing water level of Little Glenville Lake)~~
- (E) Macon County:
Chattooga River (SR 1100 bridge to South Carolina state line)
Jarrett Creek (game land portion)
~~Kimsey Creek~~
Nantahala River (game land portion upstream of U.S. 64)
Overflow Creek (game land portion)
~~Park Creek~~
Tellico Creek (game land portion)
Turtle Pond Creek (game land portion)
- (F) Madison County:
Big Creek (headwaters to the lower game land boundary, including tributaries)
- (G) Transylvania County:
North Fork French Broad River (game land portions downstream of SR 1326)
Thompson River (SR 1152 to South Carolina state line, except where posted against trespass, including portions of tributaries within this section located on game lands)
- (7) Special Regulation Trout Waters. Those portions of Designated Public Mountain Trout Waters as listed in this Subparagraph, excluding tributaries as noted, are further classified as Special Regulation Trout Waters. Regulations specific to each water are defined below:
- Burke County
Catawba River (Muddy Creek to City of Morganton water intake dam).
Regulation: The daily creel limit is 7 trout and only one of which may be greater than 14 inches in length. There are no bait restrictions and no closed season.

(b) Fishing in Trout Waters

- (1) Hatchery Supported Trout Waters. It is unlawful to take fish of any kind by any manner from designated public mountain trout waters during the closed seasons for trout fishing. The seasons, size limits, creel limits and possession limits apply in all waters, whether designated or not, as public mountain trout waters. Except in power reservoirs and city water supply reservoirs so designated, it is unlawful to fish in designated public mountain trout waters with more than one line. Night fishing is not allowed in most hatchery supported trout waters on game lands [see 15A NCAC 10D .0104(b)(1)].
- (2) Wild Trout Waters. Except as otherwise provided in Subparagraphs (a)(3), (a)(4), and (a)(6) of this Rule, the following rules apply to fishing in wild trout waters.
 - (A) Open Season. There is a year round open season for the licensed taking of trout.
 - (B) Creel Limit. The daily creel limit is four trout.
 - (C) Size Limit. The minimum size limit is seven inches.
 - (D) Manner of Taking. Only artificial lures having only one single hook may be used. No person shall possess natural bait while fishing wild trout waters except those waters listed in 15A NCAC 10C .0205(a)(6).
 - (E) Night Fishing. Fishing on wild trout waters is not allowed between one-half hour after sunset and one-half hour before sunrise.

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

15A NCAC 10C .0206 TROTTLINES AND SET-HOOKS

Trotlines and set-hooks may be set in the inland waters of North Carolina, provided no live bait is used. ~~used; except that no trotlines or set-hooks may be set in designated public mountain trout waters or in any of the impounded waters on the Sandhills Game Land. Trotlines and set-hooks may not be set in any of the impounded waters on the Sandhills Game Land. Trotlines and set-hooks may not be set in any designated public mountain trout waters except impounded waters of power reservoirs and municipally-owned water supply reservoirs open to the public for fishing.~~ In Lake Waccamaw, trotlines or set-hooks may be set only from October 1 through April 30. For the purposes of this Rule, a set-hook is defined as any hook and line that is attached at one end only to a stationary or floating object and that is not under immediate control and attendance of the person using the

device. Each trotline, set hook, and jug hook shall bear legible and indelible identification of the user's name and address. For purposes of this Rule, a "jug-hook" is a single hook and line attached to a float. Each trotline shall be conspicuously marked at each end and each set-hook conspicuously marked at one end with a flag, float, or other prominent object so that its location is readily discernable by boat operators and swimmers. Trotlines shall be set parallel to the nearest shore in all inland fishing waters unless otherwise prohibited. The number of jug-hooks that may be fished is limited to 70 per boat. All trotlines, throwlines, set-hooks, and jug-hooks shall be fished at least once daily and all fish removed at that time. Untended trotlines, set-hooks, and jug-hooks may be removed from the water by wildlife enforcement officers when located in areas of multiple water use. For purposes of this Rule, a trotline or set-hook is considered "untended" when no bait is present on the device. It is unlawful to use metal cans or glass jugs as floats.

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

15A NCAC 10C .0211 POSSESSION OF CERTAIN FISHES

(a) It is unlawful to transport, purchase, possess, or sell any live individuals of piranha, "walking catfish" (*Clarias batrachus*), snakehead fish (from the Family Channidae, formerly Ophiocephalidae), black carp (*Mylopharyngodon piceus*), bighead carp (*Hypophthalmichthys nobilis*), silver carp (*Hypophthalmichthys molitrix*), rudd (*Scardinius erythrophthalmus*), round goby (*Neogobius melanostomus*), tubenose goby (*Proterorhinus marmoratus*), ruffe (*Gymnocephalus cernuus*), Japanese mysterysnail (*Cipangopaludina japonica*), Chinese mysterysnail (*Cipangopaludina chinensis malleata*), red-rim melania (*Melanoides tuberculatus*), virile crayfish (*Orconectes Gremicambarus*) *virilis*), rusty crayfish (*Orconectes Procericambarus*) *rusticus*), Australian red claw crayfish or "red claw" (*Cherax quadricarinatus*, or other species of "giant" crayfish species in the genus *Cherax*), white amur or "grass carp" (*Ctenopharyngodon idella*), swamp or "rice" eel (*Monopterus albus*), red shiner (*Cyprinella lutrensis*), or zebra mussel (*Dreissena polymorpha*) or quagga mussel (*Dreissena rostriformis bugensis*) or any mussel in the family Dreissenidae, or to stock any of them in the public or private waters of North Carolina.

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

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

SECTION .0300 - GAME FISH

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

PROPOSED RULES

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

GAME FISHES	DAILY CREEL LIMITS	MINIMUM SIZE LIMITS	OPEN SEASON
Mountain Trout:			
Wild Trout Waters	4	7 in.	ALL YEAR (exc. (3))
Hatchery Supported Trout Waters and undesignated waters	7 (exc. (3))	None (exc. (3))	All year, except March 1 to 7:00 a.m. on first Saturday in April (exc. (3))
Muskellunge	1	42 in.	ALL YEAR
Pickarel: Chain and Redfin	None	None	ALL YEAR
Walleye	8 (exc. (8) (7)&(20))	None (exc. (8) (7)&(20))	ALL YEAR
Sauger	8	15 in.	ALL YEAR
Black Bass:			
Largemouth	5	14 in. <u>(2 fish may be less than 14 in.)</u>	ALL YEAR
Smallmouth and Spotted	(excs. (18)&(21) (16),(19)&(21))	(excs. (7),(9),(18)&(21) (6),(8),(16),(19)&(21))	(exc. (15) (13))
Roanoke and Rock Bass	None (exc. (20) (18))	None (exc. (20) (18))	ALL YEAR
White Bass	25	None	ALL YEAR
Sea Trout (Spotted or Speckled)	(exc. (17) (15))	(exc. (17) (15))	(exc. (17) (15))
Flounder	(exc. (17) (15))	(exc. (17) (15))	(exc. (17) (15))
Red drum (channel bass, red fish, puppy drum)	(exc. (17) (15))	(exc. (17) (15))	(exc. (17) (15))
Striped Bass	8 aggregate	16 in. <u>(2 fish may be less than 16 in.)</u>	ALL YEAR
and their hybrids	(excs. (1),(2), (5) , (6),(10)&(12) (4),(5)&(10))	(excs. (1),(2), (5) , (6),(10)&(12) (4),(5)&(10))	(excs. (6),(12)&(13) (5),(10)&(11)) (6),(10)&(12) (4),(5)&(10))
(Morone Hybrids)			
Shad: (American and hickory)	10 aggregate (exc. (19) (17))	None	ALL YEAR (exc. (16) (14))
Kokanee Salmon	7	None	ALL YEAR
Crappie and sunfish	None (excs. (4),(11)&(14) (9)&(12))	None (exc. (11) (9))	ALL YEAR (exc. (4))

(b) Exceptions

- (1) In the Dan River upstream from its confluence with Bannister River to the ~~Brantly Steam Plant Dam~~ dam at Union Street in Danville, VA and in John H. Kerr Reservoir the creel limit on striped bass and Morone hybrids is two in the aggregate and the minimum size limit is 24 ~~26~~ inches from October 1 through May 31. From June 1 through September 30 the daily creel limit on striped bass and Morone hybrids is four in aggregate with no minimum size limit.

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

- Norman the creel limit on striped bass and Morone hybrids is four in aggregate with a minimum size limit of 16 inches from October 1 through May 31 and no minimum size limit from June 1 through September 30.
- (3) In designated public mountain trout waters the season for taking all species of fish is the same as the trout fishing season. There is no closed season on taking trout from Linville River within Linville Gorge Wilderness Area (including tributaries), Catawba River from Muddy Creek to the City of Morganton water intake dam, and the impounded waters of power reservoirs and municipally-owned water supply reservoirs open to the public for fishing.
- ~~(4) On Mattamuskeet Lake, federal regulations apply.~~
- ~~(5)(4)~~ In the inland fishing waters of Neuse, Pungo and Tar Pamlico rivers and their tributaries extending upstream to the first impoundment of the main course on the river or its tributaries, and in all other inland fishing waters east of Interstate 95, subject to the exceptions listed in this Paragraph, the daily creel limit for striped bass and their hybrids is two fish in aggregate. The minimum length limit is 18 inches and no striped bass or striped bass hybrids between the lengths of 22 inches and 27 inches may be possessed. In these waters, the season for taking and possessing striped bass is closed from May 1 through September 30. In the inland fishing waters of the Cape Fear River and its tributaries, the season for taking and possessing striped bass is closed year-round. In the Pee Dee River and its tributaries from the South Carolina line upstream to Blewett Falls Dam, the season for taking and possessing striped bass and their hybrids is open year-round, the daily creel limit is three fish in aggregate and the minimum length limit is 18 inches.
- ~~(6)(5)~~ In the inland and joint fishing waters [as identified in 15A NCAC 10C .0107(1)(e)] of the Roanoke River Striped Bass Management Area, which includes the Roanoke, Cashie, Middle and Eastmost rivers and their tributaries, the open season for taking and possessing striped bass and their hybrids is March 1 through April 30 from the joint-coastal fishing waters boundary at Albemarle Sound upstream to Roanoke Rapids Lake dam. During the open season the daily creel limit for striped bass and their hybrids is two fish in aggregate, the minimum size limit is 18 inches. No fish between 22 inches and 27 inches in length shall be retained in the daily creel limit. Only one fish larger than 27 inches may be retained in the daily creel limit.
- ~~(7)(6)~~ The maximum combined number of black bass of all species that may be retained per day is five fish, no more than two of which may be smaller than the applicable minimum size limit. The minimum size limit for all species of black bass is 14 inches, with no exception in: in Lake Luke Marion in Moore County; Reedy Creek Park lakes in Mecklenburg County; Lake Rim in Cumberland County; Lake Raleigh in Wake County; County; Sutton Lake in New Hanover County; Lake Mattamuskeet and associated canals in Hyde County; Pungo Lake in Washington and Hyde counties; New Lake in Hyde County; and the Currituck, Roanoke, Croatan and Albemarle sounds and all their tributaries including but not limited to Roanoke River downstream of Roanoke Rapids Dam, Chowan River, Yeopim River, Pasquotank River, Perquimans River, North River, Northwest River, Scuppernon River and Alligator River (including the Alligator/Pungo Canal east of the NC Hwy 264/45 bridge). Tar River downstream of Tar River Reservoir Dam, Neuse River downstream of Falls Lake Dam, Haw River downstream of Jordan Lake Dam, Deep River downstream of Lockville Dam, Cape Fear River, Waccamaw River downstream of Lake Waccamaw Dam, the entire Lumber River including Drowning Creek, in all their tributaries, and in all other public fishing waters east of Interstate 95 (except Tar River Reservoir in Nash County), South Yadkin River downstream of Cooleemee Dam, Yadkin Pee Dee River from Idols Dam to the South Carolina State line including High Rock Lake, Tuckertown Lake, Badin Lake, Falls Lake, Lake Tillery and Blewett Falls Lake. In Cane Creek Lake in Union County, and Buckhorn Reservoir in Wilson and Nash counties the minimum size limit for largemouth bass is 16 inches, with no exception. In Lake Phelps and Shearon Harris Reservoir no black bass between 16 and 20 inches shall be possessed. In Randleman Reservoir only one largemouth bass greater than 20 inches may be possessed.
- ~~(8)(7)~~ A minimum size limit of 15 inches applies to walleye taken from Lake James and its tributaries, and the daily creel limit for walleye is four fish in Linville River upstream from the NC 126 bridge above Lake James.
- ~~(9)(8)~~ The minimum size limit for all black bass, with no exception, is 18 inches in Lake Thom-A-Lex in Davidson County.
- ~~(10)~~ In all impounded inland waters and their tributaries, except those waters described in Exceptions (1) and (4), the daily creel limit of striped bass and their hybrids may include not

- ~~more than two fish of smaller size than the minimum size limit.~~
- (11)(9) A daily creel limit of 20 fish and a minimum size limit of 10 inches apply to crappie in B. Everett Jordan Reservoir and in the Roanoke River and its tributaries downstream of Roanoke Rapids dam and in the Cashie, Middle, and Eastmost rivers and their tributaries. A daily creel limit of 20 fish and a minimum size limit of eight inches apply to crappie in the following waters: all public waters west of Interstate 77, South Yadkin River downstream of Cooleemee Dam, Yadkin-Pee Dee River from Idols Dam to the South Carolina State line including High Rock Lake, Tuckertown Lake, Badin Lake, Falls Lake, Lake Tillery, and Blewett Falls Lake, Lake Norman, Lake Hyco, Lake Ramseur, Cane Creek Lake, Tar River downstream of Tar River Reservoir Dam, Neuse River downstream of Falls Lake Dam, Haw River downstream of Jordan Lake Dam, Deep River downstream of Lockville Dam, Cape Fear River, Waccamaw River downstream of Lake Waccamaw Dam, the entire Lumber River including Drowning Creek, in all their tributaries, and in all other public fishing waters east of Interstate 95, except Tar River Reservoir in Nash County, Sutton Lake in New Hanover County, and Roanoke River and tributaries below Roanoke Rapids dam, as listed above. In Buckhorn Reservoir in Wilson and Nash counties a daily creel limit of 20 fish applies to crappie.
- (12)(10) In designated inland fishing waters of Roanoke Sound, Croatan Sound, Albemarle Sound, Chowan River, Currituck Sound, Alligator River, Scuppernong River, and their tributaries (excluding the Roanoke River and Cashie River and their tributaries), striped bass fishing season, size limits and creel limits are the same as those established by rules or proclamations of the Marine Fisheries Commission in adjacent joint or coastal fishing waters.
- (13)(11) The Executive Director may, by proclamation, suspend or extend the hook-and-line season for striped bass in the inland and joint waters of coastal rivers and their tributaries. It is unlawful to violate the provisions of any proclamation issued under this authority.
- (14)(12) In Roanoke River downstream of Roanoke Rapids Dam, Tar River downstream of Tar River Reservoir Dam, Neuse River downstream of Falls Lake Dam, Haw River downstream of Jordan Lake Dam, Deep River downstream of Lockville Dam, Cape Fear River, Waccamaw River downstream of Lake Waccamaw Dam, the entire Lumber River including Drowning Creek, in all their tributaries, and in all other public fishing waters east of Interstate 95, except Tar River Reservoir in Nash County, Sutton Lake in New Hanover County, and Roanoke River and tributaries below Roanoke Rapids dam, as listed above. In Buckhorn Reservoir in Wilson and Nash counties a daily creel limit of 20 fish applies to crappie.
- (15)(13) In Sutton Lake, no largemouth bass shall be possessed from December 1 through March 31.
- (16)(14) The season for taking American and hickory shad with bow nets is March 1 through April 30.
- (17)(15) In inland fishing waters, sea trout (spotted or speckled), flounder, and red drum recreational seasons, size limits and creel limits are the same as those established by Marine Fisheries Commission rule or proclamations issued by the Fisheries Director in adjacent joint or coastal fishing waters.
- (18)(16) In the Alleghany County portion of New River downstream of Fields Dam (Grayson County, Virginia) no black bass between 14 and 20 inches in length shall be possessed and only one black bass greater than 20 inches may be possessed in the daily creel limit. No minimum size limit applies to black bass less than 14 inches in length in this section of New River.
- (19)(17) In the inland waters of Roanoke River, Neuse River, and their tributaries, the daily creel limit for American and hickory shad is 10 in aggregate, only one of which may be an American shad. In the inland waters of the Cape Fear River and its tributaries, the daily creel limit for American and hickory shad is 10 in aggregate, only five of which may be American shad. In Roanoke Rapids Reservoir, Lake Gaston and John H. Kerr Reservoir, no American shad may be possessed.
- (20)(18) In all public fishing waters east of Interstate 77, the minimum length for Roanoke and rock bass is 8 inches and the daily creel limit is two fish in aggregate.
- (21)(19) In Lake Cammack in Alamance County and Lake Holt in Granville County the daily creel limit for largemouth bass is 10 fish and no more than two fish greater than 14 inches may be possessed.
- (20) In John H. Kerr Reservoir, Lake Gaston, and Roanoke Rapids Lake, the minimum size limit for walleye is 18 inches and the daily creel limit is five fish.
- (21) In Lake Santeetlah in Graham County, there is no daily creel limit for black bass less than 14 inches and no more than five black bass greater than 14 inches may be possessed.

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

SECTION .0400 - NONGAME FISH

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

(a) Except as permitted by the rules in this Section, it is unlawful to take nongame fishes from the inland fishing waters of North Carolina in any manner other than with hook and line or grabbling. Nongame fishes may be taken by hook and line or 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 ~~No~~ person shall take ~~or possess river herring (alewife and blueback)~~ that are greater than six inches in total length ~~from the inland fishing waters of or possess such herring regardless of origin;~~ coastal rivers and their tributaries including Roanoke River downstream of Roanoke Rapids Dam, Tar River downstream of Rocky Mount Mill Dam, Neuse River downstream of Milburnie Dam, Cape Fear River downstream of Buckhorn Dam, Pee Dee River downstream of Blewett Falls Dam, the entire Lumber River including Drowning Creek, in all their tributaries, and in all other inland fishing waters east of Interstate 95.
- (3) Grass carp shall not be taken or possessed on Lake James, Lookout Shoals Lake, Lake Norman, Mountain Island Reservoir and Lake Wylie, except that one fish per day may be taken by bow and arrow.
- (4) No trotlines or set-hooks shall be used in the impounded waters located on the Sandhills Game Land or in designated public mountain trout waters.
- (5) In Lake Waccamaw, trotlines or set-hooks may be used only from October 1 through April 30.
- (6) In inland fishing waters, gray trout (weakfish) recreational seasons, size limits and creel limits are the same as those established by Marine Fisheries Commission rule or proclamations issued by the Fisheries Director in adjacent joint or coastal fishing waters.

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

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

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

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

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

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

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

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

- (1) a net of dip net design not greater than six feet across;
- (2) a seine of not greater than 12 feet in length (except in Lake Waccamaw where there is no length limitation) and with a bar mesh measure of not more than one-fourth inch;
- (3) a cast net;
- (4) minnow traps not exceeding 12 inches in diameter and 24 inches in length, with funnel openings not exceeding one inch in diameter, and which are under the immediate control and attendance of the individual operating them;
- (5) a hand-held line with a single bait attached;
- (6) a single, multiple-bait line for taking crabs not to exceed 100 feet in length, marked on each end with a solid float no less than five inches in diameter, bearing legible and indelible identification of the user's name and address, and under the immediate control and attendance of the person using the device; with a limit of one line per person and no more than one line per vessel; or
- (7) a collapsible crab trap with the largest open dimension not greater than 18 inches and which by design is collapsed at all times when in the water, except when it is being retrieved or lowered to the bottom, with a limit of one trap per person.

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

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

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

- (1) No more than 50 eels, none of which may be less than six inches in length, shall be taken or possessed from inland fishing waters;
 - (2) While boating on or fishing in the following inland fishing waters, no river No-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: taken or possessed from the inland fishing waters of coastal rivers and their tributaries including Roanoke River downstream of Roanoke Rapids Dam, Tar River downstream of Rocky Mount Mill Dam, Neuse River downstream of Milburnie Dam, Cape Fear River downstream of Buckhorn Dam, Pee Dee River downstream of Blewett Falls Dam, the entire Lumber River including Drowning Creek, and in all other inland fishing waters east of Interstate 95; and
 - (3) No more than 50 crabs per person per day or 100 per vessel per day with a minimum carapace width of five inches (point to point.)
- (e) Any fishes taken for bait purposes are included within the daily possession limit for that species, if one is specified.
- (f) It is unlawful to take nongame fish for bait or any other fish bait from designated public mountain trout waters and:
- (1) Chatham County
Deep River
Rocky River
Bear Creek
 - (2) Lee County
Deep River
 - (3) Moore County
Deep River
 - (4) Randolph County
Deep River below the Coleridge Dam
Fork Creek
- (g) In the waters of the Little Tennessee ~~River, River and the Catawba River upstream of Rhodiss Dam,~~ including all the tributaries and impoundments thereof, and on adjacent shorelines, docks, access ramps and bridge crossings, it is unlawful to transport, possess or release live alewife or live blueback herring.

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

SUBCHAPTER 10D - GAME LANDS REGULATIONS

SECTION .0100 - GAME LANDS REGULATIONS

15A NCAC 10D .0102 GENERAL REGULATIONS REGARDING USE

- (a) Trespass. Entry on game lands for purposes other than hunting, trapping or fishing shall be as authorized by the landowner. 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) Establishment of Archery, Restricted Firearms, and Restricted Zones. The Commission shall conduct a public input meeting in the area where the game land is located before establishing any archery, restricted firearms or restricted zone. After the input meeting the public comments shall be presented to an official Commission meeting for final determination.
- (7) Scouting-only Zone. On portions of the game lands posted as "Scouting-only Zones" the discharge of firearms or bow and arrow is prohibited.

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

(c) 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.

~~Possession of Hunting Devices. Firearms and archery equipment may only be possessed on a game land during the open hunting seasons or hunting days for game birds or game animals, other than fox or coyote. Firearms and archery equipment may also be possessed if:~~

- ~~(1) the device is cased or not immediately available for use;~~
- ~~(2) the device is used by persons participating in field trials on field trial areas;~~
- ~~(3) the device is used by persons on target shooting areas designated by the landowner;~~
- ~~(4) the device is possessed in designated camping areas for defense of persons and property;~~
- ~~(5) the device 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 on game lands at any time other than by deer hunters during the special bow and arrow and muzzle-loading firearms deer hunting season, except under conditions authorized in G.S. 113-291.1(k), and by individuals training dogs during closed season without field trial authorization; or~~
- ~~(6) the device is a handgun carried by an individual with a valid concealed handgun permit. The individual carrying a 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. The permission to carry a handgun does not apply on the following game lands: Bladen Lakes State Forest, Buckhorn, Butner-Falls of Neuse, Chatham, DuPont State Forest, Harris, Hyco, Jordan, Kerr Scott, Lee, Mayo, Pee Dee River north of U.S. 74, Sutton Lake, Vance and that portion of R. Wayne Bailey-Caswell that is located north of U.S. 158 and east of N.C. 119.~~

~~This Paragraph does not prevent possession or use of a bow and arrow as a licensed special fishing device in those waters where~~

~~such use is authorized. Furthermore, only shotguns with any size shot, archery equipment as defined in 15A NCAC 10B .0116, and handguns carried by individuals with valid concealed handgun permits may be possessed during the big game season for turkey. No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting on any posted waterfowl impoundment on any game land, or while hunting waterfowl on Butner Falls of Neuse Game Land or New Hope Game Land, except shotgun shells containing lead buckshot may be used while deer hunting. Every individual carrying a concealed handgun must adhere to the requirements set forth in G.S. 14-415.11, even if the state issuing the concealed handgun permit is not North Carolina. On Buckhorn, Butner-Falls of Neuse, Chatham, Harris, Hyco, Jordan, Kerr Scott, Lee, Mayo, Sutton Lake, and Vance game lands and Pee Dee River Game Land north of U.S. 74, and that portion of R. Wayne Bailey-Caswell Game Land that is located north of U.S. 158 and east of N.C. 119 no person shall possess a firearm during closed hunting seasons or closed hunting days for game birds or game animals, except under the following conditions:~~

- ~~(1) the firearm is cased or not immediately available for use;~~
- ~~(2) the firearm is used by persons participating in field trials on field trial areas; or~~
- ~~(3) the firearm is possessed in designated camping areas for defense of persons and property.~~

(d) Game Lands License: Hunting and Trapping

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

(e) Field Trials and Training Dogs. A person serving as judge of a field trial which, pursuant to a written request from the sponsoring organization, has been authorized in writing and scheduled for occurrence on a game land by an authorized representative of the Wildlife Resources Commission, and any

nonresident Handler, Scout or Owner participating therein may participate without procuring a game lands license, provided such nonresident has in his possession a valid hunting license issued by the state of his residence. Any individual or organization sponsoring a field trial on the Sandhills Field Trial grounds or the Laurinburg Fox Trial facility shall file with the commission's agent an application to use the area and facility accompanied by the facility use fee computed at the rate of two hundred dollars (\$200.00) ~~one hundred dollars (\$100.00)~~ for each scheduled day of the trial. The total facility use fee shall cover the period from 12:00 noon of the day preceding the first scheduled day of the trial to 10:00 a.m. of the day following the last scheduled day of the trial. The facility use fee shall be paid for all intermediate days on which for any reason trials are not run but the building or facilities are used or occupied. A fee of seventy-five dollars (\$75.00) ~~twenty-five dollars (\$25.00)~~ per day shall be charged to sporting, educational, or scouting groups for scheduled events utilizing the club house only. No person or group of persons or any other entity shall enter or use in any manner any of the physical facilities located on the Laurinburg Fox Trial or the Sandhills Field Trial grounds without first having obtained written approval of such entry or use from an authorized agent of the Wildlife Resources Commission, and no such entry or use of any such facility shall exceed the scope of or continue beyond the approval so obtained. The Sandhills Field Trial facilities shall be used only for field trials scheduled with the approval of the Wildlife Resources Commission. No more than 16 days of field trials may be scheduled for occurrence on the Sandhills facilities during any calendar month, and no more than four days may be scheduled during any calendar week; provided, that a field trial requiring more than four days may be scheduled during one week upon reduction of the maximum number of days allowable during some other week so that the monthly maximum of 16 days is not exceeded. Before October 1 of each year, the North Carolina Field Trial Association or other organization desiring use of the Sandhills facilities between October 22 and November 18 and between December 3 and March 31 shall submit its proposed schedule of such use to the Wildlife Resources Commission for its consideration and approval. The use of the Sandhills Field Trial facilities at any time by individuals for training dogs is prohibited; elsewhere on the Sandhills Game Lands dogs may be trained only on Mondays, Wednesdays and Saturdays from October 1 through April 1. Dogs may not be trained or permitted to run unleashed from April 1 through August 15 on any game land located west of I-95, except when participating in field trials sanctioned by the Wildlife Resources Commission. Dogs may not be trained or permitted to run unleashed from March 15 through June 15 on any game land located east of I-95, except when participating in field trials sanctioned by the Wildlife Resources Commission. Additionally, on game lands located west of I-95 where special hunts are scheduled for sportsmen participating in the Disabled Sportsman Program, dogs may not be trained or allowed to run unleashed during legal big game hunting hours on the dates of the special hunts. A field trial shall be authorized when such field trial does not conflict with other planned activities on the Game Land or field trial facilities and the applying organization can demonstrate their experience and expertise in conducting genuine field trial activities. Entry to physical facilities, other

than by field trial organizations under permit, shall be granted when they do not conflict with other planned activities previously approved by the Commission and they do not conflict with the primary goals of the agency.

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

- (1) on the field trial course of the Sandhills Game Land;
- ~~(2) on the Harmon Den and Sherwood bear sanctuaries in Haywood County;~~
- ~~(3)~~(2) in posted "safety zones" located on any game land;
- ~~(4)~~(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;
- ~~(5)~~(4) on the John's River Waterfowl Refuge in Burke County; and
- ~~(6)~~(5) on the Dupont State Forest Game Lands.

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

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

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

- (1) is driving in the vehicle gallery of a scheduled bird dog field trial held on the Sandhills Game Land; or
- (2) is a disabled sportsman as defined in Paragraph (k) of this Rule or holds a Disabled Access Program Permit as described in Paragraph (n) of this Rule and is abiding by the rules described in Paragraph (n).

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

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

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

- (1) missing 50 percent or more of one or more limbs, whether by amputation or natural causes;

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

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

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

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

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

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

~~(n)(m)~~ Disabled Access Program. Permits issued under this program shall be based upon medical evidence submitted by the person verifying that a handicap exists that limits physical mobility to the extent that normal utilization of the game lands is not possible without vehicular assistance. Persons meeting this requirement may operate electric wheel chairs, all terrain vehicles, and other passenger vehicles on any Commission-maintained road open for vehicular travel and those trails posted for vehicular travel and ungated or open-gated roads otherwise closed to vehicular traffic on game lands owned by the Wildlife Resources Commission and on game lands whose owners have

agreed to such use. Those game lands, or parts thereof, where this Paragraph applies are designated in the game land rules and map book. This Paragraph does not permit vehicular access on fields, openings, roads, paths, or trails planted to wildlife food or cover. One ~~able-bodied~~ 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 prominently display the vehicular access permit issued by the Wildlife Resources Commission in the passenger area of the vehicle. It is unlawful for anyone other than disabled persons as defined in Paragraph (k) of this Rule and those holding a Disabled Access Permit to hunt, during waterfowl season, within 100 yards of a waterfowl blind designated by the Wildlife Resources Commission as a Disabled Sportsman's hunting blind.

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

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

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

smaller may be allowed to travel from the range if it presents no risk of harm or injury to any person(s). Persons using a shooting range must obey posted range safety rules and those persons who violate range safety rules or create a public safety hazard must leave the shooting range if directed to by law enforcement officers or Commission employees. No person shall handle any firearms on a shooting range while under the influence of an impairing substance. The consumption of alcohol or alcoholic beverages on a shooting range is prohibited. Shooting ranges are open from sunrise to sunset on Monday through Saturday. Firearms shall be unloaded and cased when being transported to the shooting range while on Game Lands. No person, when using any shooting range, shall do any act which is prohibited or neglect to do any act which is required by signs or markings placed on such area under authority of this Rule for the purpose of regulating the use of the area.

~~(+)(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. 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306.

15A NCAC 10D .0103 HUNTING ON GAME LANDS

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

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

(c) Tree Stands. It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts or wire to a tree on any game land designated herein. This prohibition does not apply to lag-screw steps or portable stands that are removed after use with no metal left remaining in or attached to the tree.

(d) Time and Manner of Taking. 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 ~~Except where~~ 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. Chapter, hunting on game lands is permitted during the open season for the game or furbearing species being hunted. On managed waterfowl impoundments, persons hunters shall: ~~shall~~

- (1) not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates; ~~dates, and hunting is prohibited~~
- (2) not hunt after 1:00 p.m. on such hunting dates; ~~decoys shall~~
- (3) not ~~be set~~ decoys out prior to 4:00 a.m. ~~and must be removed~~
- (4) remove decoys by 3:00 p.m. each day; and day. ~~No person shall~~

- (5) not operate any vessel or vehicle powered by an internal combustion engine. ~~engine on a managed waterfowl impoundment.~~

On waterfowl impoundments that have a posted "Scouting-only Zone," trapping during the trapping season and waterfowl hunting on designated waterfowl hunting days are the only activities allowed on the portion of the impoundment outside of the posted "Scouting-only Zone." No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal which has been so mutilated. No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the commission or its agent. A decision to grant or deny authorization shall be made based on the best management practices for the wildlife species in question. No person shall take or attempt to take any game birds or game animals attracted to such foods.

(e) Definitions:

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

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

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

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

- (1) Alcoa Game Land in Davidson, Davie, Montgomery, Rowan and Stanly counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season in that portion in Montgomery county and deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season in those portions in Davie, Davidson, Rowan and Stanly counties.
- (2) Alligator River Game Land in Tyrrell County
 - (A) Six Day per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season.
- (3) Angola Bay Game Land in Duplin and Pender counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (4) Bachelor Bay Game Land in Bertie, Martin and Washington counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (5) Bertie County Game Land in Bertie County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (6) Bladen Lakes State Forest Game Land in Bladen County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) ~~Handguns shall not be carried and, except~~ Except for muzzle-loaders, rifles larger than .22 caliber rimfire shall not be used, used or possessed.
 - (D) On the Singletary Lake Tract deer and bear may be taken only by still hunting.
 - (E) Wild turkey hunting on the Singletary Lake Tract is by permit only.
 - (F) Camping is restricted to September 1 through the last day of February ~~February 28~~ and March 31 ~~April 7~~ through May 14 in areas both designated and posted as camping areas.
- (7) Brinkleyville Game Land in Halifax County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable deer with visible antlers season.
 - (C) Horseback riding is prohibited.
- (8) Brunswick County Game Land in Brunswick County
 - (A) Hunting is by permit only.
 - (B) The use of dogs for hunting deer is prohibited.
- (9) Buckhorn Game Land in Orange County
 - (A) Hunting is by permit only.
 - (B) Horseback riding is prohibited.
- (10) Buckridge Game Land in Tyrrell County.
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days of the second week of the December Bear Season. If any of these days falls on a Tuesday, Friday or Saturday, bear hunting shall be allowed on those days.
- (11) Buffalo Cove Game Land in Caldwell and Wilkes Counties
 - (A) Six Days per Week Area
 - (B) The Deer With Visible Antlers season for deer consists of the open hunting days from the Monday before Thanksgiving through the third Saturday after Thanksgiving. Deer may be taken with bow and arrow on open days beginning the Monday on or nearest September 10 to the third Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving and during the deer with visible antlers season. Deer may be taken with muzzle-loading firearms on open days beginning the Monday on or nearest October 1 through the Saturday of the second week thereafter, and during the Deer With Visible Antlers season.
 - (C) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (D) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.

- | | |
|--|--|
| <p>(12) Bullard and Branch Hunting Preserve Game Lands in Robeson County</p> <p>(A) Three Days per Week Area</p> <p>(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(13) Butner - Falls of Neuse Game Land in Durham, Granville and Wake counties</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Waterfowl shall be taken only on Tuesdays, Thursdays and Saturdays; Christmas, New Year's and Martin Luther King, Jr. Days and on the opening and closing days of the applicable waterfowl seasons. On the posted waterfowl impoundments a special permit is required for all waterfowl hunting after November 1.</p> <p>(D) Horseback riding is prohibited.</p> <p>(E) Target shooting is prohibited</p> <p>(F) Wild turkey hunting is by permit only, except on those areas posted as an archery zone.</p> <p>(G) The use of dogs for hunting deer is prohibited on that portion west of NC 50 and south of Falls Lake.</p> <p>(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.</p> <p>(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 <u>March 31</u> April 7 through May 14.</p> <p>(14) Buxton Woods Game Land in Dare County:</p> <p>(A) Six Days per Week Area.</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(15) Cape Fear River Wetlands Game Land in Pender County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Turkey Hunting is by permit only on that portion known as the Roan Island Tract.</p> | <p>(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.</p> <p>(16) Carteret County Game Land in Carteret County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) The use of dogs for hunting deer is prohibited.</p> <p>(17) R. Wayne Bailey-Caswell Game Land in Caswell County</p> <p>(A) Three Days per Week Area</p> <p>(B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Horseback riding is allowed only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons. Horseback riding is allowed only on roads opened to vehicular traffic. Participants must obtain a game lands license prior to engaging in such activity.</p> <p>(D) The area encompassed by the following roads is permit-only for all quail and woodcock hunting and all bird dog training: From Yanceyville south on NC 62 to the intersection of SR 1746, west on SR1746 to the intersection of SR 1156, south on SR 1156 to the intersection of SR 1783, east on SR 1783 to the intersection of NC 62, north on NC62 to the intersection of SR 1736, east on SR 1736 to the intersection of SR 1730, east on SR 1730 to NC 86, north on NC 86 to NC 62.</p> <p>(E) On the posted waterfowl impoundment, waterfowl hunting is by permit only after November 1.</p> <p>(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 <u>March 31</u> April 7 through May 14.</p> <p>(18) Catawba Game Land in Catawba County</p> <p>(A) Three Days per Week Area</p> <p>(B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.</p> |
|--|--|

- | | |
|--|---|
| <p>(C) Deer may be taken with bow and arrow only from the tract known as Molly's Backbone.</p> <p>(19) Chatham Game Land in Chatham County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Wild turkey hunting is by permit only.</p> <p>(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.</p> <p>(E) Target shooting is prohibited.</p> <p>(20) Cherokee Game Land in Ashe County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(21) Chowan Game Land in Chowan County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers Season.</p> <p>(22) Chowan Swamp Game Land in Bertie, Gates and Hertford counties.</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(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.</p> <p>(D) Camping is restricted to September 1 through the last day of February and <u>March 31</u> April 7 through May 14 in areas both designated and posted as camping areas.</p> <p>(23) Cold Mountain Game Land in Haywood County</p> <p>(A) Six Days per Week Area</p> <p>(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.</p> | <p>(C) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.</p> <p>(24) Columbus County Game Land in Columbus County.</p> <p>(A) Three Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(25) Croatan Game Land in Carteret, Craven and Jones counties</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Waterfowl shall be taken only on the following days:</p> <p>(i) the opening and closing days of the applicable waterfowl seasons;</p> <p>(ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and</p> <p>(iii) Tuesdays and Saturdays of the applicable waterfowl seasons.</p> <p>(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.</p> <p>(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.</p> <p>(26) Currituck Banks Game Land in Currituck County</p> <p>(A) Six Days per Week Area</p> <p>(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.</p> <p>(C) Licensed hunting guides may accompany the permitted individual or party provided the guides do not possess or use a firearm.</p> <p>(D) The boundary of the Game Land shall extend 5 yards from the edge of the marsh or shoreline.</p> <p>(E) Dogs are allowed only for waterfowl hunting by permitted waterfowl hunters on the day of their hunt.</p> <p>(F) No screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.</p> |
|--|---|

- (G) Deer of either sex may be taken all the days of the applicable deer with visible antlers season.
- (27) Dare Game Land in Dare County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (C) No hunting is allowed on posted parts of bombing range.
- (D) The use and training of dogs is prohibited from March 1 through June 30.
- (28) Dover Bay Game Land in Craven County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the days of the applicable deer with visible antlers season.
- (29) Dupont State Forest Game Lands in Henderson and Transylvania counties
- (A) Hunting is by Permit only.
- (B) The training and use of dogs for hunting is prohibited except by special hunt permit holders during scheduled permit hunts.
- (30) Elk Knob Game Land in Watauga County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (31) Embro Game Land in Halifax and Warren counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited.
- (32) Goose Creek Game Land in Beaufort and Pamlico counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Except as provided in Part (D) of this Subparagraph, waterfowl in posted waterfowl impoundments shall be taken only on the following days:
- (i) the opening and closing days of the applicable waterfowl seasons;
- (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
- (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) Beginning on the first open waterfowl season day in October and through the end of the waterfowl season, waterfowl hunting is by permit only on the following waterfowl impoundments: Pamlico Point, Campbell Creek, Hunting Creek, Spring Creek, Smith Creek and Hobucken.
- (E) On Pamlico Point and Campbell Creek Waterfowl Impoundments all activities, except waterfowl hunting on designated waterfowl hunting days and trapping during the trapping season, are restricted to the posted Scouting-only Zone during the period November 1 through March 15.
- (F) Camping is restricted to September 1 through the last day of February ~~February 28~~ and March 31 ~~April 7~~ through May 14 in areas both designated and posted as camping areas.
- (G) Hunting and vehicular access on the Parker Farm Tract is restricted from September 1 to the end of February and April 1 to May 15 to individuals that possess a valid hunting opportunity permit.
- (33) Green River Game Land in Henderson, and Polk counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited.
- (34) Green Swamp Game Land in Brunswick County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (35) Gull Rock Game Land in Hyde County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl on posted waterfowl impoundments shall be taken only on the following days:
- (i) the opening and closing days of the applicable waterfowl seasons; and
- (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
- (iii) Tuesdays and Saturdays of the applicable waterfowl season.
- (D) Camping is restricted to September 1 through the last day of February

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

- Tobacco Trail anytime the trail is open for use. On all other trails posted for equestrian use, horseback riding is allowed only during June, July and August, and on Sundays the remainder of the year except during open turkey and deer seasons.
- (E) Target shooting is prohibited.
- (F) Wild turkey hunting is by permit only, except on those areas posted as an Archery Zone.
- (G) The use of bicycles is restricted to designated areas, except that this restriction does not apply to hunters engaged in the act of hunting during the open days of the applicable seasons for game birds and game animals.
- (42) Juniper Creek Game Land in Brunswick and Columbus counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the Deer With Visible Antlers Season.
- (C) Camping is restricted to September 1 through the last day of February and ~~March 31-April 7~~ through May 14 in areas both designated and posted as camping areas.
- (43) Kerr Scott Game Land in Wilkes County
- (A) Six Days per Week Area
- (B) Use of centerfire rifles is prohibited.
- (C) Use of muzzleloaders, shotguns, or rifles for hunting deer during the applicable Deer With Visible Antlers Season is prohibited.
- (D) Tree stands shall not be left overnight and no screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.
- (E) Deer of either sex may be taken on all open days of the applicable deer with visible antlers season.
- (F) Hunting on posted waterfowl impoundments is by permit only.
- (G) The use of firearms for hunting wild turkey is prohibited.
- (44) Lantern Acres Game Land in Tyrrell and Washington counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Wild turkey hunting is by permit only.
- (D) The use of dogs for hunting deer on the Godley Tract is prohibited.
- (E) Waterfowl hunting on posted waterfowl impoundments is by permit only.
- (45) Lee Game Land in Lee County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Target shooting is prohibited.
- (46) Light Ground Pocosin Game Land in Pamlico County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer with Visible Antlers Season.
- (47) Linwood Game Land in Davidson County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken on all of the open days of the applicable Deer With Visible Antlers Season.
- (48) Lower Fishing Creek Game Land in Edgecombe and Halifax counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited.
- (D) The use of dogs for hunting deer is prohibited.
- (49) Mayo Game Land in Person County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl shall be taken only on Tuesdays, Thursdays and Saturdays; Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons.
- (D) Target shooting is prohibited.
- (50) Mitchell River Game Land in Surry County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the last six days of the applicable Deer with Visible Antlers Season.
- (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (51) Nantahala Game Land in Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer

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

- | | |
|---|---|
| <p>(D) Deer and bear hunting is by permit only.</p> <p>(62) Pungo River Game Land in Hyde County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(63) Rhodes Pond Game Land in Cumberland and Harnett counties</p> <p>(A) Hunting is by permit only.</p> <p>(B) Swimming is prohibited on the area.</p> <p>(64) Roanoke River Wetlands in Bertie, Halifax, Martin and Northampton counties</p> <p>(A) Hunting is by Permit only.</p> <p>(B) Vehicles are prohibited on roads or trails except those operated on Commission business or by permit holders.</p> <p>(C) Camping is restricted to September 1 through <u>the last day of February</u> February 28 and <u>March 31</u> April 7 through May 14 in areas both designated and posted as camping areas, provided, however, that camping is allowed at any time within 100 yards of the Roanoke River on the state-owned portion of the game land.</p> <p>(65) Roanoke Island Marshes Game Land in Dare County-Hunting is by permit only.</p> <p>(66) Robeson Game Land in Robeson County</p> <p>(A) Three Days per Week Area</p> <p>(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(67) Rockfish Creek Game Land in Hoke County</p> <p>(A) Three Days per Week Area</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(E) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.</p> <p>(F) The use of dogs for hunting deer is prohibited.</p> | <p>(G) Wild turkey hunting is by permit only.</p> <p>(H) Taking fox squirrels is prohibited.</p> <p>(68) Rocky Run Game Land in Onslow County: Hunting is by permit only.</p> <p>(69) Sampson Game Land in Sampson County</p> <p>(A) Three Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(70) Sandhills Game Land in Hoke, Moore, Richmond and Scotland counties</p> <p>(A) Three Days per Week Area</p> <p>(B) <u>Hunting is prohibited on the J. Robert Gordon Field Trial Grounds from October 22 through March 31 except as follows:</u></p> <p>(i) <u>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;</u></p> <p>(ii) <u>dove may be taken all open days from the opening day of the dove season through the third Saturday thereafter;</u></p> <p>(iii) <u>opossum, raccoon and squirrel (gray and fox) may be taken all the open days from second Monday before Thanksgiving through the Saturday following Thanksgiving;</u></p> <p>(iv) <u>rabbit may be taken all open days from the second Saturday preceding Thanksgiving through the Saturday following Thanksgiving;</u></p> <p>(v) <u>waterfowl may be taken on open days during any waterfowl season; and</u></p> <p>(vi) <u>wild animals and wild birds may be taken as part of a Disabled Sportsmen Program Permit Hunt.</u></p> |
|---|---|

- ~~(B)(C)~~ The Deer With Visible Antlers season for deer ~~is consists of~~ 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, field trial grounds where the gun season is open days from the second Monday before Thanksgiving through the Saturday following Thanksgiving.
- ~~(D)~~ The bow-and-arrow season is all open days from the Saturday on or nearest to Sept. 10 to the fourth Friday before Thanksgiving and, except on the J. Robert Gordon Field Trial Grounds, the third Monday after Thanksgiving through January 1. Deer may be taken with archery equipment ~~bow and arrow~~ 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, ~~and from the third Monday after Thanksgiving through January 1, except on the field trial grounds.~~
- ~~(E)~~ Muzzleloader season is all the open days from the fourth Saturday preceeding Thanksgiving through the Wednesday of the second week thereafter and, except on the J. Robert Gordon Field Trial Grounds, the third Monday after Thanksgiving through January 1. Deer may be taken with muzzle-loading firearms on all open hunting days during the muzzleloader season and ~~beginning the fourth Saturday before Thanksgiving through the Wednesday of the second week thereafter, during the Deer With Visible Antlers season, season, and from the third Monday after Thanksgiving through January 1, except on the field trial grounds.~~
- ~~(C)(F)~~ Either-sex deer hunting during the Deer With Visible Antlers Season is by permit only. ~~Except for the deer, opossum, rabbit, raccoon and squirrel seasons indicated for the field trial grounds in this Rule and Disabled Sportsman Program hunts, the field trial grounds are closed to all hunting during the period October 22 to March 31.~~
- ~~(D)(G)~~ In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.
- ~~(E)(H)~~ Wild turkey hunting is by permit only.
- ~~(F)~~ ~~Dove hunting on the field trial grounds is prohibited from the third Sunday in September through the remainder of the hunting season.~~
- ~~(G)~~ ~~Opossum, raccoon and squirrel (fox and gray) hunting on the field trial grounds is allowed on open days from the second Monday before Thanksgiving through the Saturday following Thanksgiving and rabbit season on the field trial grounds is from the Saturday preceeding Thanksgiving through the Saturday following Thanksgiving.~~
- ~~(H)(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 ~~April 7~~ through May 14.
- (71) Sandy Creek Game Land in Nash and Franklin Counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
 - (D) The use of dogs for hunting deer is prohibited.
- (72) Sandy Mush Game Land in Buncombe and Madison counties.
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer with Visible Antlers season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.

- (D) Dogs shall only be trained on Mondays, Wednesdays and Saturdays and only as allowed in 15A NCAC 10D .0102(e).
- (E) Dove hunting is by permit only from the opening day through the second Saturday of dove season.
- (73) Second Creek Game Land in Rowan County- hunting is by permit only.
- (74) Shocco Creek Game Land in Franklin, Halifax, Nash and Warren counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
- (75) South Mountains Game Land in Burke, Cleveland, McDowell and Rutherford counties
 - (A) Six Days per Week Area
 - (B) The Deer With Visible Antlers season for deer consists of the open hunting days from the Monday before Thanksgiving through the third Saturday after Thanksgiving. Deer may be taken with bow and arrow on open days beginning the Monday on or nearest September 10 to the third Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving and during the Deer With Visible Antlers season. Deer may be taken with muzzle-loading firearms on open days beginning the Monday on or nearest October 1 through the Saturday of the second week thereafter, and during the Deer With Visible Antlers season.
 - (C) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (D) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
 - (E) That part of South Mountains Game Land in Cleveland, McDowell, and Rutherford counties is closed to all grouse, quail and woodcock hunting and all bird dog training.
- (76) Stones Creek Game Land in Onslow County
 - (A) Six-Day per Week Area.
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Swimming in all lakes is prohibited.
- (D) Waterfowl on posted waterfowl impoundments may be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (77) Suggs Mill Pond Game Land in Bladen and Cumberland counties
 - (A) Hunting and trapping is by Permit only.
 - (B) Camping is restricted to September 1 through the last day of February ~~February 28~~ and March 31 ~~April 7~~ through May 14 in areas both designated and posted as camping areas.
 - (C) Entry is prohibited on scheduled hunt or trapping days except for:
 - (i) hunters or trappers holding special hunt or trapping permits; and
 - (ii) persons using Campground Road to access Suggs Mill Pond Lake at the dam.
- (78) Sutton Lake Game Land in New Hanover and Brunswick counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Target shooting is prohibited.
- (79) Tar River Game Land in Edgecombe County – hunting is by permit only.
- (80) Three Top Mountain Game Land in Ashe County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
- (81) Thurmond Chatham Game Land in Alleghany and Wilkes counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. Participants must obtain a

- game lands license prior to horseback riding on this area.
- (D) The maximum period of consecutive overnight camping at any designated campground is 14 days within any 30 day period from May 1 through August 31. After 14 consecutive days of camping all personal belongings must be removed from the game land.
- (82) Tillery game Land in Halifax County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited.
- (D) The use of dogs for hunting deer is prohibited.
- (E) Wild turkey hunting is by permit only.
- (83) Toxaway Game Land in Jackson and Transylvania counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (84) Uwharrie Game Land in Davidson, Montgomery and Randolph counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last open six days of the applicable Deer With Visible Antlers Season.
- (85) Vance Game Land in Vance County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) The use of dogs, centerfire rifles and handguns for hunting deer is prohibited on the Nutbush Peninsula tract.
- (86) Van Swamp Game Land in Beaufort and Washington counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season.
- (87) White Oak River Game Land in Onslow County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Except as provided in Part (D) of this Subparagraph, waterfowl in posted waterfowl impoundments shall be taken only on the following days:
- (i) the opening and closing days of the applicable waterfowl seasons;
- (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
- (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) Beginning on the first open waterfowl season day in October and through the end of the waterfowl season, a permit is required for hunting posted waterfowl impoundments.
- (E) The Huggins Tract and Morton Tracts have the following restrictions:
- (i) Access on Hargett Avenue and Sloan Farm Road requires a valid Hunting Opportunity Permit;
- (ii) Hunting is by permit only; and
- (iii) The use of dogs for hunting deer is prohibited.
- (F) Wild turkey hunting is by permit only.
- (88) Whitehall Plantation Game Land in Bladen County
- (A) Hunting and trapping is by permit only.
- (B) Camping is restricted to September 1 through the last day of February and March 31 ~~April 7~~ through May 14 in areas both designated and posted as camping areas.
- (i) On permitted type hunts deer of either sex may be taken on the hunt dates indicated on the permit. Completed applications must be received by the Commission not later than the first day of September next preceding the dates of hunt. Permits shall be issued by random computer selection, shall be mailed to the permittees prior to the hunt, and are nontransferable. A hunter making a kill must validate the kill and report the kill to a wildlife cooperator agent or by phone.
- (j) The following game lands and refuges are closed to all hunting except to those individuals who have obtained a valid and current permit from the Wildlife Resources Commission:
- (1) Bertie, Halifax and Martin counties—Roanoke River Wetlands,

- (2) Bertie County—Roanoke River National Wildlife Refuge,
- (3) Bladen County—Suggs Mill Pond Game Lands,
- (4) Burke County—John's River Waterfowl Refuge,
- (5) Dare County—Dare Game Lands (Those parts of bombing range posted against hunting),
- (6) Dare County—Roanoke Sound Marshes Game Lands, and
- (7) Henderson and Transylvania counties—Dupont State Forest Game Lands.

(k) Access to Hunting Creek Swamp Waterfowl Refuge in Davie County requires written permission from the Commission. Written permission will be granted only when entry onto the Waterfowl Refuge will not compromise the primary purpose for establishing the Waterfowl Refuge and the person requesting entry can demonstrate a valid need or the person is a contractor or agent of the Commission conducting official business. "Valid need" includes issues of access to private property, scientific investigations, surveys, or other access to conduct activities in the public interest.

(l) Free-ranging swine may be taken by licensed hunters during the open season for any game animal using any legal manner of take allowed during those seasons. Dogs may not be used to hunt free-ranging swine except on game lands which 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.

~~(n)(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 10H - REGULATED ACTIVITIES

SECTION .0300 - HOLDING WILDLIFE IN CAPTIVITY

15A NCAC 10H .0301 GENERAL REQUIREMENTS

(a) Captivity Permit or License Required

- (1) Requirement. The possession of any species of wild animal that is or once was native to this State or any species of wild bird, native or

migratory, that naturally occurs or historically occurred in this State or any member of the family Cervidae is unlawful unless the institution or individual in possession obtains from the North Carolina Wildlife Resources Commission (Commission) a captivity permit or a captivity license as provided by this Rule.

- (2) Injured, Crippled or Orphaned Wildlife. When an individual has taken possession of an injured, crippled or orphaned wild animal or wild bird, that individual shall contact the Commission within 24 hours of taking possession in order to apply for a captivity permit, provided, however, that under no circumstances shall an individual take possession of an injured, crippled or orphaned wild turkey, black bear, deer, elk or any other member of the family Cervidae except as described in Subparagraph (3) of this Paragraph.

- (3) Rehabilitation of white-tailed deer fawns. An individual may apply to the Commission to become a permitted white-tailed deer fawn rehabilitator for the State of North Carolina. Individuals deemed to be qualified according to this Section to rehabilitate injured or orphaned fawns may receive a captivity permit to possess fawns only for such a period of time as may be required for the rehabilitation and release of the fawns to the wild. These captivity permits apply only to wild white-tailed deer fawns and are available only to individuals recognized by the Commission as white-tailed deer fawn rehabilitators.

(b) Captivity Permit. A captivity permit shall be requested by mail, phone, facsimile or electronic transmission or in person. A captivity permit authorizes possession of the animal or bird only for such period of time as may be required for the rehabilitation and release of the animal or bird to the wild; or to obtain a captivity license as provided by Paragraph (c) of this Rule, if such a license is authorized; or to make a proper disposition of the animal or bird if the application for such license is denied, or when an existing captivity license is not renewed or is terminated. Captivity permits shall not be issued for wild turkey, black bear, deer, elk or any other member of the family Cervidae except as described in Subparagraph (a)(3) of this Rule.

(c) Captivity License.

- (1) The purpose of captivity license is to provide humane treatment for wild animals or wild birds that are unfit for release. For purposes of this Rule, wild animals are considered "unfit" if they are incapacitated by injury or otherwise; if they are a non-native species that poses a risk to the habitat or to other species in that habitat; or if they have been rendered tame by proximity to humans to the extent that they cannot feed or care for themselves without human assistance. Persons interested in

- obtaining a captivity license shall contact the Commission for an application.
- (2) Denial of captivity license. Circumstances or purposes for which a captivity license shall not be issued include the following:
- (A) For the purpose of holding a wild animal or wild bird that was acquired unlawfully.
- (B) For the purpose of holding the wild animal or wild bird as a pet. For purposes of this Rule, the term "pet" means an animal kept for amusement or companionship. The term shall not be construed to include cervids held in captivity for breeding for sale to another licensed operator.
- (C) For the purpose of holding wild animals or wild birds for hunting in North Carolina.
- (D) For the purpose of holding wild turkey or black bear.
- (E) ~~For the purpose of holding deer, elk or any other member of the family Cervidae, except current licenses which may be renewed as specified in Subparagraph (6) of this Paragraph.~~ For the purpose of obtaining an additional captivity license for a person who already holds a captivity license.
- (F) For the purpose of obtaining a new license if the applicant had a license which was revoked less than five years prior to the application for a new license.
- (3) Required Facilities. No captivity license shall be issued until the applicant has constructed or acquired a facility for keeping the animal or bird in captivity that complies with the standards set forth in Rule .0302 of this Section and the adequacy of such facility has been verified on inspection by a representative of the Commission.
- (4) Term of License
- (A) Dependent Wildlife. If the wild animal or wild bird has been permanently rendered incapable of subsisting in the wild, the license authorizing its retention in captivity shall be an annual license terminating on December 31 of the year for which issued.
- (B) Rehabilitable Wildlife. When the wild animal or wild bird is temporarily incapacitated, and may be rehabilitated for release to the wild, any captivity license that is issued shall be for a period less than one year as rehabilitation may require.
- (C) Concurrent Federal Permit. No State captivity license for an endangered or threatened species or a migratory bird, regardless of the term specified, shall operate to authorize retention thereof for a longer period than is allowed by any concurrent federal permit that may be required for retention of the bird or animal.
- (5) Holders of Captivity License for cervids.
- (A) Inspection of records. The licensee shall make all records pertaining to tags, licenses or permits issued by the Commission available for inspection by the Commission at any time during normal business hours, or at any time an outbreak of Chronic Wasting Disease (CWD) is suspected or confirmed within five miles of the facility or within the facility itself.
- (B) Inspection. The licensee shall make all enclosures at each licensed facility and the record-book(s) documenting required monitoring of the outer fence of the enclosure(s) available for inspection by the Commission at any time during normal business hours, or at any time an outbreak of CWD is suspected or confirmed within five miles of the facility or within the facility itself.
- (C) Fence Monitoring Requirement. The fence surrounding the enclosure shall be inspected by the licensee or licensee's agent once a week during normal weather conditions to verify its stability and to detect the existence of any conditions or activities that threaten its stability. In the event of severe weather or any other condition that presents potential for damage to the fence, inspection shall occur every three hours until cessation of the threatening condition, except that no inspection is required under circumstances that threaten the safety of the person conducting the inspection.
- (D) A record-book shall be maintained to record the time and date of the inspection, the name of the person who performed the inspection, and the condition of the fence at time of inspection. The person who performs the inspection shall enter the date and time of detection and the location of any damage threatening the stability of the fence. If damage has caused the fence to be breachable, the

- licensee shall enter a description of measures taken to prevent ingress or egress by cervids. Each record-book entry shall bear the signature or initials of the licensee attesting to the veracity of the entry. The record-book shall be made available to inspection by a representative of the Commission upon request during normal business operating hours.
- (E) Maintenance. Any opening or passage through the enclosure fence that results from damage shall, within one hour of detection, be sealed or otherwise secured to prevent a cervid from escape. Any damage to the enclosure fence that threatens its stability shall be repaired within one week of detection. Any damage to the electric fence which makes it non-functional shall be repaired within one week.
- (F) Escape. When a licensee discovers the escape of any cervid from the facility, the licensee or designee shall report within 24 hours the escape to the Commission. If possible, the escaped cervid shall be recaptured alive. If live recapture is not possible, the licensee shall request a wildlife take permit and take the escaped cervid pursuant to the terms of the permit. A recaptured live cervid shall be submitted to the Commission for CWD testing using a test recognized by the Southeastern Cooperative Wildlife Disease Study unless the executive director determines that the risk of CWD transmission as a result of this escape is negligible based upon:
- (i) amount of time the escaped cervid remained out of the facility;
 - (ii) proximity of the escaped cervid to wild populations;
 - (iii) known susceptibility of the escaped cervid species to CWD;
 - (iv) nature of the terrain in to which the cervid escaped.
- (G) Chronic Wasting Disease (CWD)
- (i) Detection. Each licensee shall notify the Commission within 24 hours if any cervid within the facility exhibits clinical symptoms of CWD or if a quarantine is placed on the facility by the State Veterinarian. All captive cervids that exhibit symptoms of CWD shall be tested for CWD.
 - (ii) Cervid death. The carcass of any captive Category 1 cervid as defined in 15A NCAC 10B .0101 that was 12 ~~six~~ months or older at time of death shall be transported and submitted by the licensee or his designee to a North Carolina Department of Agriculture diagnostic lab for CWD evaluation within 48 hours of the cervid's death, or by the end of the next business day, whichever is later. Ear tags distributed by the Commission and subsequently affixed to the cervids as required by this Rule, may not be removed from the cervid's head prior to submitting the head for CWD evaluation.
 - (iii) The Commission shall require testing or forfeiture of cervids from a facility holding cervids in this state should the following circumstances or conditions occur:
 - (I) The facility has transferred a cervid that is received by a facility in which CWD is confirmed within five years of the cervid's transport date and that transferred cervid has tested positive for CWD or the test for CWD was inconclusive or the transferred cervid was no longer available for testing.
 - (II) The facility has received a cervid that originated from a facility in which CWD has been confirmed within five years of the cervid's transport

- date and that received cervid has tested positive for CWD or the test for CWD was inconclusive or the received cervid was no longer available for testing.
- (H) Tagging Required. Effective upon receipt of tags from the Commission, each licensee shall implement the tagging requirement using only the tags provided by the Commission as follows:
- (i) All cervids born within a facility shall be tagged by March 1 following the birthing season each year. Fawns and calves must be tagged with a button ear tag before sale or transfer to another captive cervid facility within North Carolina. The receiver is required to affix the bangle ear tag before March 1 following the birth of the calf or fawn.
- (ii) All cervids transferred to a facility shall be tagged within five days of the cervid's arrival at the licensee's facility. However, no cervids shall be transported from one facility to another unless both sending and receiving herds are certified according to 15A NCAC 10H .0304.
- (I) Application for Tags.
- (i) Application for tags for calves and fawns. Application for tags for cervids born within a facility shall be made by the licensee by December 1 following the birthing season of each year. The licensee shall provide the following information, along with a statement and licensee's signature verifying that the information is accurate:
- (I) Applicant name, mailing address, and telephone number;
- (II) Facility name and site address;
- (III) Captivity license number;
- (IV) Species of each cervid; and
- (V) Birth year of each cervid.
- (ii) Application for tags for cervids that were not born at the facility site shall be made by written request for the appropriate number of tags along with the licensee's application for transportation of the cervid, along with a statement and licensee's signature verifying that the information is accurate. These tag applications shall not be processed unless accompanied by a completed application for transportation. However, no transportation permits shall be issued nor shall cervids be transported from one facility to another unless both sending and receiving herds are certified according to 15A NCAC 10H .0304.
- (J) Placement of Tags.
- (i) A single button ear tag provided by the Commission shall be permanently affixed by the licensee onto either the right or left ear of each cervid, provided that the ear chosen to bear the button tag shall not also bear a bangle tag, so that each ear of the cervid bears only one tag.
- (ii) A single bangle ear tag provided by the Commission shall be permanently affixed by the licensee onto the right or left ear of each cervid except Muntjac deer, provided that the ear bearing the bangle tag does not also bear the button tag, so that each ear of the cervid bears only one tag. Muntjac deer are not required to be tagged with the bangle tag.
- (iii) Once a tag is affixed in the manner required by this Rule, it shall not be removed.

- (K) Reporting Tags Requirement. For all cervids, except calves and fawns, the licensee shall submit a Cervidae Tagging Report within 30 days of receipt of the tags. Cervidae Tagging Reports for calves and fawns shall be submitted by March 1 following the birthing season each year. A Cervidae Tagging Report shall provide the following information and be accompanied by a statement and licensee's signature verifying that the information is accurate:
- (i) Licensee name, mailing address, and telephone number;
 - (ii) Facility name and site address, including the County in which the site is located;
 - (iii) Captivity license number;
 - (iv) Species and sex of each cervid;
 - (v) Tag number(s) for each cervid; and
 - (vi) Birth year of each cervid.
- (L) Replacement of Tags. The Commission shall replace tags that are lost or unusable and shall extend the time within which a licensee shall tag cervids consistent with time required to issue a replacement.
- (i) Lost Tags. The loss of a tag shall be reported to the Commission by the licensee and application shall be made for a replacement upon discovery of the loss. Application for a replacement shall include the information required by Part (c)(5)(I) of this Rule along with a statement and applicant's signature verifying that the information is accurate. Lost tags shall be replaced on the animal by the licensee within 30 days of receipt of the replacement tag.
 - (ii) Unusable Tags. Tags that cannot be properly affixed to the ear of a cervid or that cannot be read because of malformation or damage to the tags or obscurement of the tag numbers shall be returned to the Commission along with an application for a replacement tag with a statement and applicant's signature verifying that the information in the application is accurate.
- (6) Renewal of captivity license for cervids. Existing captivity licenses for the possession of cervids at existing facilities shall be renewed as long as the applicant for renewal has live cervids and continues to meet the requirements of this Section for the license. ~~Only licensees with Certified Herds, as defined in 15A NCAC 10H .0304, may request in their renewal applications to expand pen size or the number of pens on the licensed facility to increase the holding capacity of that facility.~~ All expanded pens shall adhere to fencing specifications set forth in 15A NCAC 10H .0302. No renewals shall be issued for a license that has been allowed to lapse due to the negligence of the former licensee.
- (7) Provision for licensing the possession of cervids in an existing facility. A captivity license shall only be issued to an individual who is 18 years of age or older. If the licensee of an existing facility voluntarily surrenders his or her captivity license, becomes incapacitated or mentally incompetent, or dies, a person who has obtained lawful possession of the facility from the previous licensee or that licensee's estate, may request that the existing captivity license be transferred to him or her to operate the existing facility. Any license transferred under this provision shall be subject to the same terms and conditions imposed on the original licensee at the time of his or her surrender or death and shall be valid only for the purpose of holding the cervids of the existing facility within that existing facility. In addition, any actions pending from complaint, investigation or other cause shall be continued notwithstanding the termination of the original license.
- (d) Nontransferable. No license or permit or tag issued pursuant to this Rule is transferable, either as to the holder or the site of a holding facility, except as provided in Subparagraph (c)(7) of this Rule.
- (e) Sale, Transfer or Release of Captive Wildlife.
- (1) It is unlawful for any person to transfer or receive any wild animal or wild bird that is being held under a captivity permit issued under Paragraph (b) of this Rule, except that any such animal or bird may be surrendered to an agent of the Commission.
 - (2) It is unlawful for any person holding a captivity license issued under Paragraph (c) of this Rule to sell or transfer the animal or bird held under such license, except that such animal or bird may be surrendered to an agent

of the Commission, and any such licensee may sell or transfer the animal or bird (except members of the family Cervidae) to another person who has obtained a license to hold it in captivity. For animals in the family Cervidae, sale or transfer of animals is allowed only intrastate from between Certified Herds, as defined in 15A NCAC 10H .0304. Any captive cervid may be sold to a buyer outside of North Carolina. Upon such a sale or transfer, the seller or transferor shall obtain a receipt for the animal or bird showing the name, address, and license number of the buyer or transferee, a copy of which shall be provided to the Commission.

- (3) It is unlawful for any person to release into the wild for any purpose or allow to range free:
- (A) any species of deer, elk or other members of the family Cervidae, or
 - (B) any wolf, coyote, or other non-indigenous member of the family Canidae, or
 - (C) any member of the family Suidae.

(f) Transportation Permit.

- (1) Except as otherwise provided herein, no transportation permit is required to move any lawfully held wild animal or wild bird within the State.
- (2) No person shall transport black bear or Cervidae for any purpose without first obtaining a transportation permit from the Commission.
- (3) Except as provided in Subparagraph (f)(4) of this Rule, no transportation permits shall be issued for deer, elk, or other species in the family Cervidae except into and between Certified Herds as defined in 15A NCAC 10H .0304.
- (4) Cervid Transportation. A permit to transport deer, elk, or other species in the family Cervidae may be issued by the Commission to an applicant for the purpose of transporting the animal or animals for export out of state, to a slaughterhouse for slaughter, from a N.C. Certified Herd to another captive cervid facility. ~~Certified Herd as defined in 15A NCAC 10H .0304,~~ or to a veterinary medical facility for treatment provided that the animal for which the permit is issued does not exhibit clinical symptoms of Chronic Wasting Disease. No person shall transport a cervid to slaughter or export out of state without bearing a copy of the transportation permit issued by the Commission authorizing that transportation. No person shall transport a cervid for veterinary treatment without having obtained approval from the Commission as provided by Part (f)(4)(D) of this Rule. Any person transporting a cervid shall present the

transportation permit to any law enforcement officer or any representative of the Commission upon request, except that a person transporting a cervid by verbal authorization for veterinary treatment shall provide the name of the person who issued the approval to any law enforcement officer or any representative of the Commission upon request.

- (A) Slaughter. Application for a transportation permit for purpose of slaughter shall be submitted in writing to the Commission and shall include the following information along with a statement and applicant's signature verifying that the information is accurate:
 - (i) Applicant name, mailing address, and telephone number;
 - (ii) Facility site address;
 - (iii) Captivity license number;
 - (iv) Name, address, county and phone number of the slaughter house to which the cervid will be transported;
 - (v) Vehicle or trailer license plate number and state of issuance of the vehicle or trailer used to transport the cervid;
 - (vi) Name and location of the North Carolina Department of Agriculture Diagnostic lab where the head of the cervid is to be submitted for CWD testing;
 - (vii) Date of transportation;
 - (viii) Species and sex of each cervid; and
 - (ix) Tag number(s) for each cervid.
- (B) Exportation. Nothing in this rule shall be construed to prohibit the lawful exportation of a member of the family Cervidae for sale out of state. Application for a transportation permit for purpose of exportation out of state shall be submitted in writing to the Commission and shall include the following information along with a statement and applicant's signature verifying that the information is accurate:
 - (i) Applicant's name, mailing address and telephone number;
 - (ii) Facility site address;
 - (iii) Captivity license number;

- (iv) Vehicle or trailer license plate number and state of issuance of the vehicle or trailer used to transport the cervid;
 - (v) Name, site address, county, state and phone number of the destination facility to which the cervid is exported;
 - (vi) A copy of the importation permit from the state of the destination facility that names the destination facility to which the animal is to be exported;
 - (vii) Date of departure;
 - (viii) Species and sex of each cervid; and
 - (ix) Tag number(s) for each cervid.
- (C) Between herds. Application for a transportation permit for purpose of moving a cervid from ~~one a Certified Herd to another captive cervid facility~~ Certified Herd, as defined in 15A NCAC 10H .0304, shall be submitted in writing to the Commission and shall include the following information along with a statement and applicant's signature verifying that the information is accurate:
- (i) Applicant's name, mailing address and telephone number;
 - (ii) Facility site address;
 - (iii) Captivity license number;
 - (iv) Vehicle or trailer license plate number and state of issuance of the vehicle or trailer used to transport the cervid;
 - (v) Name, site address, county, and phone number of the destination facility to which the cervid is moved;
 - (vi) Date of departure;
 - (vii) Species and sex of each cervid; and
 - (viii) Tag number(s)for each cervid.
- (D) Veterinary treatment. No approval shall be issued for transportation of a cervid to a veterinary clinic out of the state of North Carolina, or for transportation from a facility out of the state of North Carolina to a veterinary clinic in North Carolina. An applicant from a North Carolina facility seeking to transport a cervid for veterinary treatment to a facility within North Carolina shall contact the Wildlife Telecommunications Center or the Wildlife Management Division of the Commission to obtain verbal authorization to transport the cervid to a specified veterinary clinic and to return the cervid to the facility. Verbal approval to transport a cervid to a veterinary clinic shall authorize transport only to the specified veterinary clinic and directly back to the facility, and shall not be construed to permit intervening destinations. To obtain verbal authorization to transport, the applicant shall provide staff of the Commission the applicant's name and phone number, applicant's facility name, site address and phone number, the cervid species, sex and tag numbers, and the name, address and phone number of the veterinary facility to which the cervid shall be transported. Within five days of transporting the cervid to the veterinary facility for treatment, the licensee shall provide the following information in writing to the Commission, along with a statement and applicant's signature verifying that the information is correct:
- (i) Applicant's name, mailing address and telephone number;
 - (ii) Facility name and site address;
 - (iii) Captivity license number;
 - (iv) Vehicle or trailer license plate number and state of issuance of the vehicle or trailer used to transport the cervid;
 - (v) Date of transportation;
 - (vi) Species and sex of each cervid;
 - (vii) Tag number(s) for each cervid;
 - (viii) Name, address and phone number of the veterinarian and clinic that treated the cervid;
 - (ix) Symptoms for which cervid received treatment; and
 - (x) Diagnosis of veterinarian who treated the cervid.
- (g) Slaughter at cervid facility. Application for a permit for purpose of slaughter at the cervid facility shall be submitted in writing to the Commission and shall include the following

information along with a statement and applicant's signature verifying that the information is accurate:

- (1) Applicant name, mailing address, and telephone number;
- (2) Facility site address;
- (3) Captivity license number;
- (4) Name and location of the North Carolina Department of Agriculture Diagnostic lab where the head of the cervid is to be submitted for CWD testing;
- (5) Date of slaughter;
- (6) Species and sex of each cervid; and
- (7) Tag number(s) for each cervid.

Permits or authorization may not be sold or traded by the licensee to any individual for the hunting or collection of captive cervids. Only the licensee may kill a cervid within the cervid enclosure.

Authority G.S. 106-549.97(b); 113-134; 113-272.5; 113-272.6; 113-274.

15A NCAC 10H .0302 MINIMUM STANDARDS

(a) Exemptions. Publicly financed zoos, scientific and biological research facilities, and institutions of higher education that were granted an exemption by the Commission from the standards of this Rule prior to December 1, 2005 are exempt from the standards set forth in this Rule for all birds and animals except the black bear so long as the captivity license in effect on that date has not expired or been revoked.

(b) With the exception of those entities named in Paragraph (a) of this Rule who have received exemption from the Commission, all holders of captivity licenses shall comply with the following requirements:

- (1) Deer, Elk and other species of the family Cervidae

- (A) ~~Enclosure.~~ Enclosure specifications. The enclosure shall be on a well-drained site containing natural or manmade shelter for shade. The minimum size of the enclosure for all cervids except Muntjac deer shall be not less than one-half acre for the first three animals and an additional one-fourth acre for each additional animal held provided that no more than 25 percent shall be covered with water. For facilities licensed after January 1, 2013 and any facilities that expand their enclosures, minimum enclosure size shall be based upon the placement of an interior electric fence or the eight foot high fence, whichever fence creates the smaller enclosure size. At no time shall the number of cervids in the enclosure exceed the number allowed by the captivity license, except that fawns and calves shall not count towards the total number of cervids in a facility

from the time they are born until March 1 of the following year. ~~The enclosure shall be surrounded by a fence of sufficient strength and design to contain the animal under any circumstances, at least eight feet high, and dog proof to a height of at least six feet.~~ For enclosures exclusively holding Muntjac deer, the minimum pen size shall be 800 square feet for the first three animals and 200 square feet for each additional animal. No exposed barbed wire, nails, or other protrusions that may cause injury to the animal shall be permitted within the enclosure. Captive cervids shall not be contained within or allowed to enter a place of residence.

- (B) Fencing. All enclosures shall be surrounded by a fence of sufficient strength and design to contain the animal under any circumstances, at least eight feet high, and dog-proof to a height of at least six feet. Facilities first licensed after January 1, 2013 and facilities licensed after that date which expand their enclosures or add a new enclosure shall have one fence meeting these standards surrounding the entire perimeter of each enclosure and a second electric fence with five strands placed internally or externally at a distance of two feet from the entire perimeter of the eight-foot high fence. The strands shall be placed at 12, 20, 28, 36 and 48 inches above ground. The strands placed at 20 and 36 inches shall be non-electrified grounding strands. The electric fence shall have current running through it whenever a captive cervid is within the enclosure, except during maintenance of the electric fence. Enclosures and enclosure expansions shall not contain wild deer or elk. The licensee shall ensure his enclosure is devoid of wild deer or elk before stocking with cervids.

- ~~(B)~~(C) Sanitation and Care. Licensees shall provide an ample supply of clear water and salt at all times. Food shall be placed in the enclosure as needed, but not less than three times weekly. An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained. The animal(s) shall be

- protected against fright or harm from other animals.
- (2) **Wild Boars**
- (A) **Enclosure.** The enclosure shall be on a site containing trees or brush for shade. The minimum size of the enclosure shall be not less than one-half acre for the first three animals and an additional one-fourth acre for each additional animal held. The enclosure shall be surrounded by a fence at least five feet high and of sufficient strength to contain the animals. No exposed barbed wire or protruding nails shall be permitted within the enclosure. A roofed building large enough to provide shelter in both a standing or a lying position for each boar must be provided. This building shall be closed on three sides. A pool of water for wallowing or a sprinkler system shall be provided on days when heat could cause stress to the animal(s).
- (B) **Sanitation and Care.** Licensees shall provide an ample supply of clear water at all times. Food shall be placed in the enclosure as needed, but in any case, not less than three times weekly. An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained.
- (3) **Wild Birds**
- (A) **Enclosure.** The enclosure shall be large enough for the bird or birds to assume all natural postures. The enclosure shall be designed in such a way that the birds cannot injure themselves and are able to maintain a natural plumage. Protection from sun, weather, and predators shall also be provided.
- (B) **Sanitation and Care.** The cage shall be kept clean, dry, and free from mold or damp feed. Ample food and clean water shall be available at all times.
- (4) **Alligators**
- (A) **Enclosure.** The enclosure shall be surrounded by a fence of sufficient strength to contain the animals and that shall prevent contact between the observer and alligator. The enclosure shall contain a pool of water large enough for the animal to completely submerge itself. If more than one animal is kept, the pool must be large enough for all animals to be able to submerge themselves at the same time. A land area with both horizontal dimensions at least as long as the animal shall also be provided. In case of more than one animal, the land area shall have both horizontal dimensions at least as long as the longest animals to occupy the land area at the same time without overlap.
- (B) **Sanitation and Care.** The water area shall be kept clean and food adequate to maintain good health provided. Protection shall be provided at all times from extremes in temperature that could cause stress to the animal.
- (5) **Black Bear**
- (A) **Educational Institutions and Zoos Operated or Established by Governmental Agencies**
- (i) **Enclosure.** A permanent, stationary metal cage, at least eight feet wide by 12 feet long by six feet high and located in the shade or where shaded during the afternoon hours of summer, is required. The cage shall have a concrete floor in which a drainable pool one and one-half feet deep and not less than four by five feet has been constructed. The bars of the cage shall be of iron or steel at least one-fourth inch in diameter, or heavy gauge steel chain link fencing may be used. The gate shall be equipped with a lock or safety catch, and guard rails shall be placed outside the cage so as to prevent contact between the observer and the caged animal. The cage must contain a den at least five feet long by five feet wide by four feet high and so constructed as to be easily cleaned. A "scratch log" shall be placed inside the cage. The cage shall be equipped with a removable food trough. Running water shall be provided for flushing the floor and changing the pool.
- (ii) **Sanitation and Care.** Food adequate to maintain good

- health shall be provided daily; and clean, clear drinking water shall be available at all times. The floor of the cage and the food trough shall be flushed with water and the water in the pool changed daily. The den shall be flushed and cleaned at least once each week in hot weather. An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained. Brush, canvas, or other material shall be placed over the cage to provide additional shade when necessary for the health of the animal. The use of collars, tethers or stakes to restrain the bear is prohibited, except as a temporary safety device.
- (B) Conditions Simulating Natural Habitat. Black bears held in captivity by other than educational institutions or governmental zoos shall be held without caging under conditions simulating a natural habitat. All of the following conditions must exist to simulate a natural habitat in a holding facility:
- (i) The method of confinement is by chain link fence, wall, moat, or a combination of such, without the use of chains or tethers.
 - (ii) The area of confinement is at least one acre in extent for one or two bears and an additional one-eighth acre for each additional bear.
 - (iii) Bears are free, under normal conditions, to move throughout such area.
 - (iv) At least one-half of the area of confinement is wooded with living trees, shrubs and other perennial vegetation capable of providing shelter from sun and wind.
 - (v) The area of confinement contains a pool not less than one and one-half feet deep and not less than four by five feet in size.
 - (vi) Provision is made for a den for each bear to which the bear may retire for rest, shelter from the elements, or respite from public observation.
 - (vii) The area of confinement presents an overall appearance of a natural habitat and affords the bears protection from harassment or annoyance.
 - (viii) Provisions are made for food and water that are adequate to maintain good health and for maintenance of sanitation.
 - (ix) The applicant shall document that the applicant owns or has a lease of the real property upon which the holding facility is located, provided that if the applicant is a lessee, the lease is for a duration of at least five years from the point of stocking the facility.
- (6) Cougar
- (A) Educational or scientific research institutions and zoos supported by public funds.
- (i) Enclosure. A permanent, stationary metal cage, at least nine feet wide by 18 feet long by nine feet high and located in the shade or where shaded during the afternoon hours of summer, is required. The cage shall have a concrete floor. The bars of the cage shall be of iron or steel at least one-fourth inch in diameter, or heavy gauge steel chain link fencing may be used. The gate shall be equipped with a lock or safety catch, and guard rails shall be placed outside the cage so as to prevent contact between the observer and the caged animal. The cage shall contain a den at least five feet long by five feet wide by four feet high and so constructed as to be easily cleaned. A "scratch log" shall be placed inside the cage. The cage shall be

- equipped with a removable food trough. Running water shall be provided for flushing the floor and changing the pool.
- (ii) Sanitation and Care. Food adequate to maintain good health shall be provided daily; and clean, clear drinking water shall be available at all times. The floor of the cage and the food trough shall be flushed with water and the water in the pool changed as necessary to maintain good health of the animal. The den shall be flushed and cleaned at least once each week. An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained. Brush, canvas, or other material shall be readily available to be placed over the cage to provide additional shade when necessary. The use of collars, tethers or stakes to restrain the cougar is prohibited, except as a temporary safety device.
- (B) Cougars held in captivity by other than educational or scientific institutions or publicly supported zoos shall be held without caging under conditions simulating a natural habitat. Applicants for a captivity license to hold cougar shall apply to the Commission on forms provided by the Commission, and shall provide plans that describe how the applicant's facility will comply with the requirement to simulate a natural habitat. All of the following conditions must exist to simulate a natural habitat in a holding facility.
- (i) The method of confinement is by chain link fence, without the use of chains or tethers, provided that:
- (I) Nine gauge chain link fencing shall be at least 12 feet in height with a four foot fence overhang at a 45 degree angle on the inside of the pen to prevent escape from climbing and jumping.
- (II) Fence posts and at least six inches of the fence skirt shall be imbedded in a six inch wide by one foot deep concrete footer to prevent escape by digging.
- (ii) The area of confinement shall be at least one acre for two cougars with an additional one-eighth acre for each additional cougar. If, following a site evaluation, the Commission determines that terrain and topographical features offer sufficient escape, cover and refuge, and meet all other specifications, and that the safety and health of the animal(s) will not be compromised, smaller areas shall be permitted.
- (iii) Cougars shall be free under normal conditions to move throughout the area of confinement.
- (iv) At least one-half of the area of confinement shall be wooded with living trees, shrubs and other perennial vegetation capable of providing shelter from sun and wind; and a 20 foot wide strip along the inside of the fence shall be maintained free of trees, shrubs and any other obstructions which could provide a base from which escape through leaping could occur.
- (v) The area of confinement shall contain a pool not less than one and one-half feet deep and not less than four by five feet in size.
- (vi) Each cougar shall be provided a den to which the cougar may retire for rest, shelter from the elements, or respite from public observation. Each den shall be four feet wide by four

- feet high by four feet deep. Each den shall be enclosed entirely within at least an eight feet wide by ten feet deep by 12 feet high security cage. The security cage shall be completely within the confines of the facility, cement-floored, shall have nine gauge fencing on all sides and the top, and shall have a four foot, 45 degree fence overhang around the outside top edge to prevent cougar access to the top of the security cage.
- (vii) The area of confinement shall protect the cougar from harassment or annoyance.
- (C) Provisions shall be made for maintenance of sanitation and for food and water adequate to maintain good health of the animal(s).
- (D) The applicant shall document that the applicant owns or has a lease of the real property upon which the holding facility is located, provided that if the applicant is a lessee, the lease is for a duration of at least five years from the point of stocking the facility.
- (7) Other Wild Animal Enclosures.
- (A) General Enclosure Requirements.
- (i) The enclosure shall provide protection from free ranging animals and from sun or weather that could cause stress to the animals.
- (ii) A den area in which the animal can escape from view and large enough for the animal to turn around and lie down shall be provided for each animal within the enclosure.
- (iii) No tethers or chains shall be used to restrain the animal.
- (iv) Either a tree limb, exercise device, or shelf large enough to accommodate the animal shall be provided to allow for exercise and climbing.
- (v) Sanitation and Care. Fresh food shall be provided daily, and clean water shall be available at all times.
- (vi) An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained.
- (B) Single Animal Enclosures for certain animals. The single-animal enclosure for the animals listed in this Subparagraph shall be a cage with the following minimum dimensions and horizontal areas:

Dimensions in Feet

Animal	Length	Width	Height	Per Animal
Bobcat, Otter	10	5	5	50
Raccoon, Fox, Woodchuck	8	4	4	32
Opossum, Skunk, Rabbit	6	3	3	18
Squirrel	4	2	2	8

- (C) Single Enclosure Requirements for animals not mentioned elsewhere in this Rule. For animals not listed above or mentioned elsewhere in this Rule, single animal enclosures shall be a cage with one horizontal dimension being at least four times the nose-rump length of the animal and the other horizontal dimension being at least twice the nose-rump length of the animal. The vertical dimensions shall be at least twice the nose-rump length of the animal. Under no circumstances shall a cage be less than four feet by two feet by two feet.
- (D) Multiple Animal Enclosures. The minimum area of horizontal space shall be determined by multiplying the required square footage for a single animal by a factor of 1.5 for one additional animal and the result by the same factor, successively, for each additional animal. The vertical dimension for multiple animal enclosures shall remain the same as for single animal enclosures.
- (E) Young animals. The young of any animal may be kept with the parent in

a single-animal enclosure only until weaning. After weaning, if the animals are kept together, the requirements for multiple-animal enclosures apply.

Authority G.S. 19A-11; 106-549.97(b); 113-134; 113-272.5, 113-272.6.

15A NCAC 10H .0304 CAPTIVE CERVID HERD CERTIFICATION PROGRAM

(a) The Wildlife Resources Commission has established this Captive Cervid Herd Certification Program in order to prevent the introduction of Chronic Wasting Disease (CWD) into North Carolina and reduce the potential for spread of CWD while allowing ~~for the importation of captive cervids, transportation of cervids from herds in which CWD has not been detected for at least five years, in accordance with the requirements in this Section.~~ Only licensees with Certified Herds as defined in Paragraph (e) of this Rule may import captive cervids under the conditions and restrictions set forth in 15A NCAC 10B .0101. ~~request to expand their pen size to accommodate additional cervids and transport cervids within North Carolina for purposes other than those specified in 15A NCAC 10H .0301(f)(4). Licensees with Certified Herds may also import cervids from a herd in which CWD has not been detected for at least five years and has been managed using standards equivalent to, or more stringent than, the criteria specified in 15A NCAC 10H .0301 and 15A NCAC 10H .0302. The individual U.S. or Mexican state or territory, Canadian province or other country of origin must have CWD monitoring requirements that are at least as stringent as those described in this Section. The originating individual U.S. or Mexican state's or territory's, Canadian province's or other country's CWD monitoring program must be jointly reviewed by Wildlife Resources Commission and Department of Agriculture and Consumer Services personnel before approval of any importation of cervids into North Carolina. There shall be no importation from individual U.S. or Mexican states or territories, Canadian provinces or other countries in which CWD has been detected, either in a wild or captive herd.~~

(b) Enrollment qualifications. Only captive cervid herds held under a valid captivity license are eligible for enrollment in the Captive Cervid Herd Certification Program. Licensees shall comply with all captivity license requirements outlined in this Section and the rules and laws regulating possession, transportation and importation of cervids in order to remain in the Captive Cervid Herd Certification Program.

(c) Enrollment application. Each individual holding a current and valid Captivity License for cervids may apply to be enrolled in the Captive Cervid Herd Certification Program. All applications shall be in writing on a form supplied by the Commission. The Commission shall deny an application if:

- (1) the licensee has not complied with all the requirements under the captivity license statutes and all rules pertaining to the holding of cervids in captivity and the transportation or importation of cervids resulting in a failed

inspection report for the licensee's most recent inspection; or a pending citation;

- (2) the licensee has provided false information; or
- (3) CWD has been confirmed in a cervid at the licensee's facility.

(d) Enrollment dates. The enrollment date is:

- (1) the first date upon official inspection, documented by Wildlife Resources Commission and Department of Agriculture and Consumer Services personnel, on which the licensee has complied with all captivity rules and statutes that pertain to cervids, including tagging, provided that the licensee has continued to comply with these regulations; or
- (2) the date on which a waiver was issued by the Wildlife Resources Commission Executive Director under the conditions set forth in 15A NCAC 10A .1101(a) that brought the licensee into compliance assuming that there were no other compliance actions pending, provided that the licensee has continued to comply with the captive cervid regulations.

This date may be retroactive but may extend back no earlier than the date Wildlife Resources Commission and Department of Agriculture and Consumer Services personnel documented that the licensee came into compliance with all captivity rules and statutes related to holding cervids in captivity, including tagging of all cervids.

(e) Certified herd. When ~~a herd is enrolled~~ an enrollment date is set for a herd in the Captive Cervid Herd Certification Program, ~~it~~ the herd shall be placed in First Year status. If the herd continues to meet the requirements of the Captive Cervid Herd Certification Program, each year on the anniversary of the enrollment date the herd status shall be upgraded by one year. One year from the date a herd is placed in Fifth Year status, the herd status shall be changed to Certified, and the herd shall remain in Certified status as long as it is enrolled in the Captive Cervid Herd Certification Program, provided its status is not lost or suspended without reinstatement as described in Paragraph (f).

(f) Herd status

- (1) A Certified Herd or any herd enrolled in the program shall have its status suspended or reduced if:
 - (A) the licensee fails to comply with any of the ongoing requirements for captive cervid licenses as identified in 15A NCAC 10H .0301;
 - (B) the licensee violates any other North Carolina law or rule related to captive cervids;
 - (C) an animal in the herd exhibits clinical signs of CWD;
 - (D) an animal in the herd can be traced back to a herd with an animal exhibiting clinical signs of CWD; or
 - (E) the herd is quarantined by the State Veterinarian.

- (2) A Certified Herd or any herd enrolled in the program shall lose its status if:
- (A) an animal in the herd can be traced back to a herd in which CWD has been detected;
 - (B) CWD is detected in an animal in the herd; or
 - (C) the licensee loses his or her license.

The Wildlife Resources Commission shall review cases of suspended status upon request. A Certified Herd with suspended status may regain its status if the licensee corrects within 30 days the deficiency under which the status was suspended or, in the case of suspected CWD, the disease was not detected in the suspect animal.

(g) Inspection. If an inspection of the captive cervids is needed as a part of certification, including reinstating a suspended status, the licensee is responsible for assembling, handling and restraining the captive cervids and all costs incurred to present the animals for inspection.

Authority G.S. 106-549.97(b); 113-134; 113-272.5; 113-272.6; 113-274; 113-292.

SUBCHAPTER 10I - ENDANGERED AND THREATENED SPECIES

SECTION .0100 - ENDANGERED AND THREATENED SPECIES

15A NCAC 10I .0102 PROTECTION OF ENDANGERED/THREATENED/SPECIAL CONCERN

(a) No Open Season. There shall be ~~is~~ no open season for taking any of the species listed as endangered in Rule .0103, or threatened in Rule .0104 of this ~~Section~~ Section, except for the American alligator (*Alligator mississippiensis*) as set forth in the rules of this Chapter. Unless otherwise provided in North Carolina General Statutes or the rules of this Chapter, there is no open season for taking any of the species listed as special concern in Rule .0105 of this Section. Except as provided in Paragraphs (b), (c) and (e) of this Rule, it is unlawful to take or possess any of such species at any time.

(b) Permits. The executive director may issue permits to take or possess an endangered, threatened, or special concern species:

- (1) To an individual or institution with experience and training in handling, and caring for the wildlife and in conducting a scientific study, for the purpose of scientific investigation relevant to perpetuation or restoration of said species or as a part of a scientifically valid study or restoration effort;
- (2) To a public or private educator or exhibitor who demonstrates that he or she has lawfully obtained the specimen or specimens in his or her possession, possesses the requisite equipment and expertise to care for such specimen or specimens and abides by the caging requirements for the species set forth in 15A NCAC 10H .0302;

- (3) To a person who lawfully possessed any such species for more than 90 days immediately prior to the date that such species was listed and who abides by the caging requirements for the species set forth in 15A NCAC 10H .0302, provided however, that no permit shall be issued more than ninety days after the effective date of the initial listing for that species; and

- (4) To a person with demonstrable depredation from a Special Concern ~~species~~ Species, or the American alligator (*Alligator mississippiensis*).

(c) Taking Without a Permit:

- (1) An individual may take an endangered, threatened, or special concern species in defense of his own life or the lives of others; or
- (2) A state or federal conservation officer or employee who is designated by his agency to do so may, when acting in the course of his official duties, take, possess, and transport endangered, threatened, or special concern species if the action is necessary to:
 - (A) aid a sick, injured, diseased or orphaned specimen;
 - (B) dispose of a dead specimen;
 - (C) salvage a dead specimen which may be useful for scientific study; or
 - (D) remove specimens which constitute a demonstrable but nonimmediate threat to human safety, provided the taking is done in a humane and noninjurious manner. The taking may involve injuring or killing endangered, threatened, or special concern species only if it is not reasonably possible to eliminate the threat by live-capturing and releasing the specimen unharmed, in a habitat that is suitable for the survival of that species.

(d) Reporting. Any taking or possession of an endangered, threatened, or special concern species under Paragraphs (b) and (c) of this Rule is subject to applicable reporting requirements of federal law and regulations and the reporting requirements of the permit issued by the Executive Director or of 15A NCAC 10B .0106(e).

(e) Exceptions.

- (1) Notwithstanding any other provisions of this Rule, processed meat and other parts of American alligators, which have been lawfully taken in a state in which there is an open season for harvesting alligators, may be possessed, bought and sold when such products are marketed in packages or containers which are labeled to indicate the state in which they were taken and the identity,

address, and lawful authority of the processor or distributor;

- (2) Raptors listed as special concern species in Rule .0105 of this Section may be taken from the wild for falconry purposes and for falconry propagation, provided that a valid North Carolina endangered species permit has been obtained as required in Paragraph (b) of this Rule;
- (3) Captive-bred raptors listed as special concern species may be bought, sold, bartered or traded as provided in 50 C.F.R. 21.30 when marked as required under those regulations; and
- (4) Importation, possession, sales, transportation and exportation of species listed as special concern species in Rule .0105 of this Section is allowed under permit by retail and wholesale establishments whose primary function is providing scientific supplies for research provided that:
 - (A) the specimens were lawfully obtained from captive or wild populations outside of North Carolina;
 - (B) they are possessed in indoor facilities;
 - (C) all transportation of specimens provides safeguards adequate to prevent accidental escape; and
 - (D) importation, possession and sale or transfer is permitted only as listed in Parts (e)(4)(A) and (B) of this Rule.

(f) A written application to the Commission is required for a permit to authorize importation, and possession for the purpose of retail or wholesale sale. The application shall identify the source of the specimens, and provide documentation of lawful acquisition. Applications for permits shall include plans for holding, transportation, advertisement, and sale in such detail as to allow a determination of the safeguards provided against accidental escape and sales to unauthorized individuals.

(g) Purchase, importation, and possession of special concern species within North Carolina is allowed under permit to state and federal governmental agencies, corporate research entities, and research institutions provided that:

- (1) sales are permitted to out of state consumers;
- (2) they must be possessed in indoor facilities and that all transportation of specimens provides safeguards adequate to prevent accidental escape;
- (3) the agency's or institution's Animal Use and Care Committee has approved the research protocol for this species; and
- (4) no specimens may be stocked or released in the public or private waters or lands of North Carolina and may not be transferred to any private individual.

Authority G.S. 113-134; 113-291.2; 113-291.3; 113-292; 113-333.

SUBCHAPTER 10J - WILDLIFE CONSERVATION AREA

REGULATIONS

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

(a) Trespass. Entry on areas posted as Wildlife Conservation Areas for purposes other than wildlife observation, hunting, trapping or fishing shall be as authorized by the landowner. On those areas designated and posted as Colonial Waterbird Nesting Areas, entry is prohibited during the period of April 1 through August 31 of each year, except by written permission of the landowner. Entry into Colonial Waterbird Nesting Areas during the period of September 1 through March 31 is as authorized by the landowner.

(b) Littering. No person shall deposit any litter, trash, garbage, or other refuse at any place on any wildlife conservation area except in receptacles provided for disposal of such refuse. No garbage dumps or sanitary landfills shall be established on any wildlife conservation area by any person, firm, corporation, county or municipality, except as permitted by the landowner.

(c) Use and possession of weapons. No person shall discharge:

- (1) any weapon from a vehicle;
- (2) any weapon within 200 yards of any building or designated camping areas;
- (3) any weapons within, into, or across a posted "safety zone;" and
- (4) a firearm within, into, or across a posted "restricted zone."

~~Possession of Hunting Devices Firearms and archery equipment may only be possessed on a designated wildlife conservation area during the open hunting seasons or hunting days for game birds or game animals thereon except firearms and archery equipment may also be possessed under the following conditions:~~

- ~~(1) the device is eased or not immediately available for use;~~
- ~~(2) the device may be possessed in designated camping areas for defense of persons and property;~~
- ~~(3) the device 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 on designated wildlife conservation areas at any time other than by deer hunters during the special bow and arrow and muzzle-loading firearms deer hunting season, except under conditions authorized in G.S. 113-291.1(k), or~~
- ~~(4) the device is a handgun carried by an individual with a valid concealed handgun permit. The individual carrying a 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.~~

~~This Rule does not prevent possession or use of bow and arrow as a licensed special fishing device in those waters where such use is authorized. During the closed firearms seasons on big game (deer, bear, wild turkey), no person shall possess a shotgun shell larger than No. 4 shot or any rifle or pistol larger than a .22~~

~~caliber rimfire while on a designated wildlife conservation area except that shotgun shells containing any size steel or non-toxic shot may be used while waterfowl hunting.~~ No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting waterfowl on any area designated as a wildlife conservation area, except shotgun shells containing lead buckshot may be used while deer hunting. Every individual carrying a concealed handgun must adhere to the requirements set forth in G.S. 14-415.11, even if the state issuing the concealed handgun permit is not North Carolina.

(d) License Requirements:

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

(e) Training Dogs. Dogs shall not be trained on designated wildlife conservation areas except during open hunting seasons for game animals or game birds thereon. Dogs are not allowed to enter any wildlife conservation area designated and posted as a colonial waterbird nesting area during the period of April 1 through August 31.

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

- (1) on the Nona Pitt Hinson Cohen Wildlife Conservation Area in Richmond County; and

- (2) in posted "safety zones" located on any Wildlife Conservation Area.

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

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

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

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

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

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

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

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

~~(o)(n)~~ Possession and removal. No living or dead nongame wildlife, fungi, invertebrates, eggs, nests, animal parts, plants, plant materials, or other materials may be possessed on or removed from conservation areas without written permission from the Commission. For purposes of this Rule, "other materials" includes: all metals, minerals, rocks, soil, organic debris, buildings, fences, historic artifacts and water.

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

Note from the Codifier: The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.

This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: Wildlife Resources Commission

Rule Citation: 15A NCAC 10B .0219, .0223

Effective Date: August 1, 2012

Date Approved by the Rules Review Commission:
July 19, 2012

Reason for Action:

The North Carolina Wildlife Resources Commission (WRC) seeks to temporarily amend 15A NCAC 10B .0219 & 15A NCAC 10B .0223 pursuant to two separate authorities - G.S. § 150B-21.1(a)(7), which allows WRC to set seasons, bag limits and regulations regarding hunting on public lands by temporary rulemaking, and pursuant to G.S. § 150B-21.3(b2) subsequent to the receipt of ten or more letters of objection to these same rules approved by the Rules Review Commission (RRC) on June 20, 2012.

Background

SL 2011-369 amended several provisions of Subchapter IV of Chapter 113 of the General Statutes to permit WRC to regulate the taking of feral swine, and seasons and the manner of taking of wild animals and wild birds with the use of artificial lights and electronic calls. In so doing, SL 2011-369 repealed the statutory provisions that allowed for the use of electronic calls in the taking of coyotes, effective October 1, 2011.

The purpose of the delegation of this authority was to allow WRC to address serious depredation problems caused by both feral swine and coyotes. Both of these animals are non-indigenous species that have either been unlawfully released or have escaped into the wild, and have established significant populations statewide.

In many rural areas of the State, particularly in eastern North Carolina, feral swine do tremendous localized damage to commercial crops, and their “rooting” activities negatively impact the ecosystems of woodlands, wetlands and fallow fields, as well as cultivated fields. Prior to the effective date of SL 2011-369, these animals were not under the control of WRC, and landowners would shoot them day and night in an effort to control them and minimize land and crop damage.

Similarly, coyotes are now living in the wild in all one hundred counties and do much damage to domesticated farm

animals through predation. Individually, they can prey on poultry and smaller livestock, and when hunting in packs, may kill much larger domesticated animals. This creates a significant economic hardship for the owners of these animals. In addition, coyotes kill a significant number of domesticated pets, particularly dogs and cats. While this may also be economically significant, depending on the breed, in nearly all cases, losing a pet through wild animal predation is very emotional for the owner. Although coyotes have been under the regulatory jurisdiction of WRC for some time, the authority to use electronic calls was established in statute prior to the enactment of SL 2011-369, rather than in rule.

An unintended consequence of the timing of the transfer of the regulation of feral swine and electronic calls was that it was necessary for WRC to quickly enact temporary rules that would allow the public to continue the take of feral swine as they had done prior to WRC regulatory authority, and to continue to take coyotes using electronic calls. Accordingly, 15A NCAC 10B .0219 was temporarily amended to allow coyotes to be taken with electronic calls, and 15A NCAC 10B .0223 was temporarily adopted to establish an unrestricted open season and no bag limits on feral swine. Both had an effective date of October 1, 2011, and both were made permanent by February 1, 2012.

It would have been possible to address the issue of taking feral swine and coyotes with lights at night by temporary rulemaking as well, and this was a change urged on WRC by a portion of the regulated community for both of these species. The use of lights is generally accepted to greatly facilitate the take of both species, and landowners with problem populations were very anxious to have the extended hours as an additional tool for increased control, as were many hunters of these species.

However, WRC realized that any plan for the use of lights at night would generate significant public interest. Accordingly, WRC determined that it would not enact temporary rules with respect to the use of lights, but would, instead, pursue permanent rulemaking to allow for greater public input. Accordingly, rather than address the use of lights in temporary rulemaking, WRC filed notice of text for permanent rules on January 25, 2012, and notice of text was published in the N.C. Register on February 15, 2012.

There were five public hearings throughout the state, and over 3,500 comments received, the majority of which were in favor of the proposal. When all comments were considered, 67% were in favor of the use of lights for taking coyotes, while 71% favored the use of lights for taking feral swine. When only

in-state comments were considered, 77% favored the coyote proposal, and 79% favored the feral swine proposal.

After careful consideration, WRC amended these rules on May 3, 2012 to permit the hunting of both feral swine and coyotes on private lands at night, and with lights. The Rules Review Commission (RRC) approved these rules on June 20, 2012. However, since more than ten letters of objection have been received, these rules are now subject to Legislative review.

WRC now seeks to implement these rules by temporary rulemaking pending further action by the General Assembly.

Authority and Justification

Legal Authority

G.S. § 150B-21.1(a)(7) provides that WRC may establish hunting or fishing seasons, bag limits or rules regulating management of public game lands. The intent of the proposed temporary rules is to liberalize take by extending the open the season for feral swine and coyotes on private lands to include night hours on private lands, and to allow for the use of lights private lands in order to allow landowners and hunters as much flexibility as possible in localized control of these species.

G.S. § 113-291.1 (a) states in pertinent part that “Except as otherwise provided, game may only be taken between a half hour before sunrise and a half hour after sunset...” In order to allow for the use of lights on private lands, it is necessary to extend lawful shooting hours for both species, as well as to provide for the manner of take. In addition, WRC has statutory authority to regulate public lands in a manner different from private lands, and these rules do so by making the extended shooting hours and the use of lights inapplicable to public lands. WRC views these modification of lawful hours, manner of take, and no night hunting on public lands as being an exercise of its authority to set seasons in that available hours and the manner of take are both integral to the setting of seasons and well within the authority cited in the preceding paragraph, as is the authority to regulate use of public lands under WRC management.

G.S. § 150B-21.3(b2) provides that “When the requirements of this subsection have been met and a rule is subject to legislative disapproval, the agency may adopt the rule as a temporary rule if the rule would have met the criteria listed in G.S. 150B-21.1(a) at the time the notice of text for the permanent rule was published in the North Carolina Register.”

As previously noted, these two rules were duly adopted and approved on June 20, 2012 after compliance with the relevant provisions of the Administrative Procedures Act. Since the relevant provisions of SL 2011-369 went into effect on October 1, 2011, WRC could have sought temporary rules for 210 days thereafter. The date Notice of Text was filed for the permanent rules, February 15, 2012, was within the 210 day window as required by G.S. § 150B-21.1. WRC believes that the extended shooting hours and use of lights as a manner of take,

were matters altered by the statutory changes that could have been addressed by temporary rulemaking, and thus meet the criteria of § 150B-21.1(a)(2).

Justification for Temporary Rules

As has already been noted herein, the intent of the General Assembly giving regulatory authority to WRC for the take of coyotes and feral swine, was that WRC would assist private landowners in minimizing damage to their property and controlling populations of these non-indigenous species by liberalizing manner of take with as few restrictions as possible. These proposed temporary rules address those concerns.

If temporary rulemaking is not allowed, the earliest a decision on the rules subject to legislative review by operation of law would be March 2013 and could be several months later. Denial of the temporary rules would result in the rules being delayed eight months or longer. WRC has carefully considered the comments opposing the permanent rules, but has concluded that it is in the best interest of the property owners and those they get to assist them, to be able to begin utilizing liberalize methods and hours. WRC further believes that there will also be a substantial benefit to indigenous wildlife and the ecosystem by a reduction in the numbers of these non-indigenous species.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0200 - HUNTING

15A NCAC 10B .0219 COYOTE

(a) This Rule applies to hunting coyotes. There is no closed season for taking ~~coyotes~~ coyotes by hunting. Coyotes may be taken on private lands anytime during the day or night. Coyotes may be taken on public lands without a permit from the hours of one-half hour before sunrise until one-half hour after sunset, and from one-half hour after sunset to one-half hour before sunrise by permit only.

(b) There are no bag limit restrictions on coyotes.

(c) Manner of Take. Hunters may use electronic ~~calls~~ calls and artificial lights.

History Note: Authority G.S. 113-129; 113-134; 113-291; 113-264; 113-291.1 113-291.2;

Eff. July 1, 1993;

Temporary Amendment Eff. October 1, 2011;

Amended Eff. January 1, 2012;

Temporary Amendment Eff. August 1, 2012.

15A NCAC 10B .0223 FERAL SWINE

(a) ~~Open season.~~ This Rule applies to hunting feral swine. There is no closed season for taking feral ~~swine~~ swine by hunting. Feral swine may be taken on private lands anytime during the day or night. Feral swine may be taken on public lands without a permit from the hours of one-half hour before

TEMPORARY RULES

sunrise until one-half hour after sunset, and from one-half hour after sunset to one-half hour before sunrise by permit only.

(b) ~~Bag limits.~~ There are no bag limit ~~restrictions.~~ restrictions on feral swine.

(c) Manner of take. Hunters may use artificial lights.

History Note: Authority G.S. 113-129; 113-134; 113-264; 113-291; 113-291.1; 113-291.2;

Temporary Adoption Eff. October 1, 2011;

Eff. January 1, 2012;

Temporary Amendment Eff. August 1, 2012.

This Section contains information for the meeting of the Rules Review Commission on Thursday July 19, 2012 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS**Appointed by Senate**

Addison Bell
Margaret Currin
Pete Osborne
Bob Rippy
Faylene Whitaker

Appointed by House

Ralph A. Walker
Anna Baird-Choi
Jeanette Doran
Garth K. Dunklin
Stephanie Simpson

COMMISSION COUNSEL

Joe DeLuca (919)431-3081
Bobby Bryan (919)431-3079

RULES REVIEW COMMISSION MEETING DATES

August 16, 2012 September 20, 2012
October 18, 2012 November 15, 2012

RULES REVIEW COMMISSION**July 19, 2012****MINUTES**

The Rules Review Commission met on Thursday, July 19, 2012, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Anna Baird Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Bob Rippy, Stephanie Simpson, Ralph Walker.

Staff members present were: Joe DeLuca and Bobby Bryan, Commission Counsel; Molly Masich; Dana Vojtko; Julie Edwards; and Tammara Chalmers.

The meeting was called to order at 10:02 a.m. with Chairman Walker presiding. He reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts as required by NCGS 138A-15(e).

Chairman Walker recognized former Commissioner George Lucier.

New Commissioners Anna Baird Choi and Jeanette Doran were welcomed and introduced by Chairman Walker. He then administered the oath of office to the new Commissioners.

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

Anna Baird Choi, which stated there was no actual conflict of interest. However, there is the potential for a conflict of interest because Ms. Baird-Choi is an attorney with the law firm of Allen, Pinnix & Nichols, P.A. which represents several occupational licensing boards which come before the Commission during the rulemaking process. Additionally, Ms. Choi's spouse is employed as a Deputy City Attorney for the City of Raleigh ("City"). Ms. Choi should exercise appropriate caution in the performance of her public duties should issues involving employees or partners of the firm, any of the firm's current or former clients, or the City come before the Commission for official action or otherwise seek to conduct business with the Commission. This would include recusing herself to the extent that those interests would influence or could reasonably appear to influence her actions.

Jeanette Doran, which stated there was no actual conflict of interest. However, there is the potential for a conflict of interest because Ms. Doran is the Executive Director and General Counsel for the NC Institute for Constitutional Law. Her husband also owns a threshold amount of stock in Duke Energy Corporation. Ms. Doran should exercise appropriate caution in the performance of her

public duties should matters being litigated by the NC Institute for Constitutional Law or issues involving Duke Energy Corporation come before the Commission for official action or otherwise seek to conduct business with the Commission. This would include recusing herself to the extent that those interests would influence or could reasonably appear to influence her actions

The Chairman introduced Sarah Beth Koonce, an extern from the Department of Labor.

APPROVAL OF MINUTES

Chairman Walker asked for any discussion, comments, or corrections concerning the minutes of the June 20, 2012 meeting. There were none and the minutes were approved as distributed.

FOLLOW-UP MATTERS

10A NCAC 09 .0901, .0902, .1702, .1706, .1718 – Child Care Commission –The agency has not yet met and responded to the objection and no action was taken.

10A NCAC 13D .2701 – Medical Care Commission. The Commission approved the re-written rule submitted by the agency.

Cindy DePorter addressed the Commission.

12 NCAC 09E .0102 – Criminal Justice Education and Training Standards Commission – The agency has not yet met and responded to the objection and no action was taken.

10A NCAC 18A .2608, .2609, .2610, .2611, .2612 – Commission for Public Health – The Commission approved these repealed rules.

10A NCAC 18A .2653 – Commission for Public Health – The Commission approved the rewritten rule submitted by the agency.

21 NCAC 02 .0204 – Board of Architecture – Prior to the discussion of this Rule Commissioner Choi recused herself and did not participate in any discussion or vote concerning this rule because the law firm where she is employed represents the Board.

The Commission approved the rewritten rule submitted by the agency.

21 NCAC 03 .0201 – Athletic Trainer Examiners – The Commission approved the rewritten rule submitted by the agency.

Commissioner Dunklin questioned the Board about its continued charging the increased fees after telling the Commission that it would cease doing so until the amended rule was effective. He also pointed out some misleading portions of the agency's website.

Ann Christian addressed the Commission.

21 NCAC 22F .0103, .0114 – Hearing Aid Dealers and Fitters Board. The Commission approved the rewritten rules submitted by agency.

25 NCAC 01B .0437, .0438 – State Personnel Commission. The Commission approved the rewritten rules submitted by the agency.

LOG OF FILINGS

Chairman Walker presided over the review of the log of permanent rules.

Social Work Certification and Licensure Board

Prior to the discussion of this Rule, Commissioner Choi recused herself and did not participate in any discussion or vote concerning these rules because the law firm where she is employed represents the Board.

All rules were approved unanimously.

Department of Cultural Resources

Josh Davis addressed the Commission.

07 NCAC 04N .0202 was approved unanimously.

Department of Labor

Jane Ammonds Gilchrist addressed the Commission.

Erin Gould addressed the Commission.

All rules were approved with the following exception:

13 NCAC 12 .0903 – The Commission objected to this rule based on ambiguity. It seems to me that the phrase “any day on which a business is in operation” is unclear.

It is certainly possible that “in operation” could mean legally operating, i.e., that its legal status as a business is not questioned and that the business is entitled to carry on any of its business functions. Another way of saying this is that the business is in existence by “operation of law” and is therefore “operating.”

A dictionary definition would be more restrictive. Black’s Law Dictionary (Fifth Edition) defines “operate” as “to perform a function, or operation, or produce an effect.” This would seem to require that the business, through its employees, is taking some action that is an active part of its function, operation, or production. That would seem to be what is implied or intended.

But even that does not completely settle the question. For instance in the case of a sole proprietorship where on a given “day-off” for a business, no employees are performing any functions or operations or producing anything for the business, but the owner is carrying out necessary components of the business, such as sales, maintenance, payroll and other paperwork, or documentation of compliance with various federal, state or local laws or regulation, is the business “in operation” that day? Would a factory engaged in manufacturing of some product and with no retail sales be in operation and “open for business” if manufacturing lines were shut down for necessary maintenance one day a week?

The Commission granted the Agency's Request for Waiver of Rule 26 NCAC 05 .0108 and approved the re-written rule 13 NCAC 12 .0903.

Department of Environment and Natural Resources

All rules were approved unanimously with the following exception.

15A NCAC 01A .0102 was withdrawn by the agency.

Department of Transportation

All rules were approved unanimously.

Commissioner Choi was not present for the vote.

Medical Board

Nancy Hemphill addressed the Commission.

During the discussion, Chairman Walker briefly excused himself but returned before the vote. Vice-Chairman Currin presided in his absence.

All rules were approved unanimously.

Board of Funeral Service

Prior to the discussion of this Rule, Commissioner Choi recused herself and did not participate in any discussion or vote concerning these rules because the law firm where she is employed represents the Board.

All rules were approved unanimously.

Board of Examiners in Optometry

All rules were approved unanimously.

TEMPORARY LOG OF FILINGS

Chairman Walker presided over the review of the log of temporary rules. There were two rules from the Wildlife Resources Commission. These rules had been approved as permanent rules by the Commission at its previous meeting. However they were subject to legislative review and a delayed effective date because the Commission received ten letters of objection. The agency was seeking to make these rules effective under the provisions of G.S. 150B-21.3(b2) and -21.1(a)(7).

Wildlife Resources Commission

15A NCAC 10B .0219, and .0223 were approved unanimously.

OTHER BUSINESS

Staff informed the Commission that Senate Bill 810 has been signed into law by the Governor. The bill requires agencies that are within the departments of the Council of State, other than the Governor, to submit the text of a proposed rule change and an analysis of the change to the Commission and obtain a certification from the Commission, or the Commission's designee, that the agency adhered to the principles set forth in G.S. 150B-19.1. A rough draft of a form to be used was provided.

During the discussion, Chairman Walker excused himself and Vice-Chairman Currin presided over the remainder of the meeting.

The meeting adjourned at 12:17 p.m.

The next scheduled meeting of the Commission is Thursday, August 16 at 10:00 a.m.

Respectfully Submitted,

Julie Edwards
Editorial Assistant

Rules Review Commission

Meeting

Please Print Legibly

JULY 19, 2012

Name	Agency
Betsy Steickland	NCDOJ
Micki Lilly	NC Social Work Cert + Lic. Bd
ERIN Gould	NCDOJ
Jane Aldrich	NCDOJ
Jennifer Hargwood	NCDOJ
Sarah Beth Rance	NCDOJ
Jennifer Everett	NC DENR
William Cary	NC DENR
Larry Michael	NC DHHS
Don Proband	MH/PP/SW
Nancy Heywood	NC Medical Board
Judy R. Daye	NC DHHS
CATHERINE EVANS	NCBA
Meri Ann	NC DHHS
Russell Bannay	NCBA
Becky Wertz	DHHS
Cindy DeFoster	DHHS
ANCA GROZAV	OSBM
Josh Davis	DER
Kate Piptern	NCWRAC
May Mueler Adair	SECC

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
E. ANN Christian	NCRATE Athy
Bob Martin	NC DPH
Megan Lamphere	NC DHEC DHR
Andre Pierce	Wake County Env. Services
Conor Brackett	NC Medical Society
Chris Evans	BCBMC
John Bartley	DOJ - DHR
Please Print Legibly	Please Print Legibly
Please Print Legibly	Please Print Legibly
Please Print Legibly	Please Print Legibly
Please Print Legibly	Please Print Legibly
Please Print Legibly	Please Print Legibly
Please Print Legibly	Please Print Legibly
Please Print Legibly	Please Print Legibly
Please Print Legibly	Please Print Legibly
Please Print Legibly	Please Print Legibly
Please Print Legibly	Please Print Legibly
Please Print Legibly	Please Print Legibly
Please Print Legibly	Please Print Legibly
Please Print Legibly	Please Print Legibly
Please Print Legibly	Please Print Legibly
Please Print Legibly	Please Print Legibly

**LIST OF APPROVED PERMANENT RULES
July 19, 2012 Meeting**

CULTURAL RESOURCES, DEPARTMENT OF

Admission Fees

07 NCAC 04N .0202

MEDICAL CARE COMMISSION

Provision of Nutrition and Dietetic Services

10A NCAC 13D .2701

LABOR, DEPARTMENT OF

Address

13 NCAC 12 .0901

Definitions

13 NCAC 12 .0902

Presumption of Compliance

13 NCAC 12 .0903

Filing of Complaints

13 NCAC 12 .0904

Hearings

13 NCAC 12 .0905

Civil Penalties

13 NCAC 12 .0906

ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF

Department Head

15A NCAC 01A .0101

How to Contact the Department

15A NCAC 01A .0102

Councils and Committees

15A NCAC 01A .0103

Model Rules

15A NCAC 01B .0101

Definitions

15A NCAC 01B .0201

Request for Contested Case Hearing

15A NCAC 01B .0202

Request for Contested Case Hearing

15A NCAC 01B .0203

Final Agency Decision in Contested Case Proceedings

15A NCAC 01B .0204

Scope of Section

15A NCAC 01B .0301

Definitions

15A NCAC 01B .0302

Concession Contracts

15A NCAC 01B .0303

Definitions

15A NCAC 01B .0401

Public Access

15A NCAC 01B .0402

Application of Resolution Procedure

15A NCAC 01G .0201

Initial Review of Claim

15A NCAC 01G .0202

Letter of Notification

15A NCAC 01G .0203

Response to Letter of Notification

15A NCAC 01G .0204

Follow-Up to Unserved Notification

15A NCAC 01G .0205

Claims Deemed Complete

15A NCAC 01G .0206

Claim Determination

15A NCAC 01G .0207

Introduction

15A NCAC 01G .0301

Filled Lands

15A NCAC 01G .0302

Privately Owned Beds

15A NCAC 01G .0303

Marshlands and Swamplands

15A NCAC 01G .0304

Limited Rights

15A NCAC 01G .0305

Purpose

15A NCAC 01J .1401

Definitions

15A NCAC 01J .1402

Eligible Project Costs

15A NCAC 01J .1501

<u>Application Filing Deadlines</u>	15A NCAC 01J .1601
<u>General Provisions</u>	15A NCAC 01J .1602
<u>Common Criteria</u>	15A NCAC 01J .1701
<u>Assignment of Category to Wastewater System Applications</u>	15A NCAC 01J .1801
<u>Existing Conditions</u>	15A NCAC 01J .1901
<u>Water Quality Improvement Criteria</u>	15A NCAC 01J .1902
<u>Public Necessity: Health: Safety: and Welfare</u>	15A NCAC 01J .2001
<u>Project Planning</u>	15A NCAC 01J .2002
<u>Source Water Protection</u>	15A NCAC 01J .2003
<u>Criteria for Loan Adjustments</u>	15A NCAC 01J .2101
<u>Repayment of Principal and Interest on Loans</u>	15A NCAC 01J .2201
<u>General</u>	15A NCAC 01K .0101
<u>Applicability</u>	15A NCAC 01K .0102
<u>Definitions</u>	15A NCAC 01K .0103
<u>Eligibility</u>	15A NCAC 01K .0201
<u>Application Procedures</u>	15A NCAC 01K .0202
<u>Bank Eligibility</u>	15A NCAC 01K .0301
<u>Loan Processing by Banks</u>	15A NCAC 01K .0302
<u>Duties of the Loan Fund Coordinato</u>	15A NCAC 01K .0303
<u>Loan Approval Criteria</u>	15A NCAC 01K .0304
<u>Delinquent Accounts</u>	15A NCAC 01K .0305
<u>Loan Administration Fees and Costs</u>	15A NCAC 01K .0401
<u>Interest and Term</u>	15A NCAC 01K .0402
<u>Additional Conditions</u>	15A NCAC 01K .0403
<u>Funding of Loan</u>	15A NCAC 01K .0404

PUBLIC HEALTH, COMMISSION FOR

<u>Sources of Food</u>	15A NCAC 18A .2608
<u>Refrigeration Thawing and Preparation of Food</u>	15A NCAC 18A .2609
<u>Storage Handling and Display of Food</u>	15A NCAC 18A .2610
<u>Re-Serving of Food</u>	15A NCAC 18A .2611
<u>Shellfish</u>	15A NCAC 18A .2612
<u>Food</u>	15A NCAC 18A .2653

TRANSPORTATION, DEPARTMENT OF

<u>Permits-Weight, Dimensions and Limitations</u>	19A NCAC 02D .0607
<u>Employment of Specialized Services</u>	19A NCAC 02E .0701

ARCHITECTURE, BOARD OF

<u>Forms of Practice</u>	21 NCAC 02 .0204
--------------------------	------------------

ATHLETIC TRAINER EXAMINERS

<u>Fees</u>	21 NCAC 03 .0201
-------------	------------------

HEARING AID DEALERS AND FITTERS BOARD

<u>Submission of Applications and Fees</u>	21	NCAC 22F .0103
<u>Training and Supervision</u>	21	NCAC 22F .0114

MEDICAL BOARD

<u>Authority to Prescribe</u>	21	NCAC 32B .1001
<u>Application of Resident's Training License</u>	21	NCAC 32B .1402
<u>Continuing Medical Education (CME) Required</u>	21	NCAC 32R .0101
<u>Approved Categories of CME</u>	21	NCAC 32R .0102
<u>Exceptions</u>	21	NCAC 32R .0103
<u>Reporting</u>	21	NCAC 32R .0104
<u>Waiver for Licensees Serving on Active Duty in the Armed ...</u>	21	NCAC 32R .0105
<u>Prescriptive Authority</u>	21	NCAC 32S .0212

FUNERAL SERVICE, BOARD OF

<u>Purpose of Board</u>	21	NCAC 34A .0102
<u>Public Inspection of Materials</u>	21	NCAC 34A .0105

OPTOMETRY, BOARD OF EXAMINERS IN

<u>Application for Licensure by Reciprocity</u>	21	NCAC 42B .0104
<u>Application</u>	21	NCAC 42D .0103
<u>Registration</u>	21	NCAC 42D .0104
<u>Annual Renewal</u>	21	NCAC 42D .0105
<u>Accreditation</u>	21	NCAC 42D .0106
<u>Termination of Registration</u>	21	NCAC 42D .0108

SOCIAL WORK CERTIFICATION AND LICENSURE BOARD

<u>Application Fee</u>	21	NCAC 63 .0208
<u>Provisional Licenses</u>	21	NCAC 63 .0210
<u>Renewal Fees</u>	21	NCAC 63 .0403
<u>Reinstatement</u>	21	NCAC 63 .0404

STATE PERSONNEL COMMISSION

<u>State Personnel Commission: Procedures</u>	25	NCAC 01B .0437
<u>Establishment of Reasonable Attorney Fees by the Commission</u>	25	NCAC 01B .0438

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Beecher R. Gray	Randall May
Selina Brooks	A. B. Elkins II
Melissa Owens Lassiter	Joe Webster
Don Overby	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u>			
James Ivery Smith, Ivy Lee Armstrong v. ABC Commission	11 ABC 08266	04/12/12	
Trawick Enterprises LLC v. ABC Commission	11 ABC 08901	05/11/12	27:01 NCR 39
Dawson Street Mini Mart Lovell Glover v. ABC Commission	11 ABC 12597	05/23/12	
ABC Commission v. Christian Broome Hunt T/A Ricky's Sports Bar and Grill	11 ABC 13161	05/03/12	
Alabarati Brothers, LLC T/A Day N Nite Food Mart, v. ABC Commission	11 ABC 13545	05/01/12	
Playground LLC, T/A Playground v. ABC Commission	11 ABC 14031	05/16/12	27:01 NCR 64
ABC Commission v. Quick Quality, Inc., T/A Rock Star Grill and Bar	11 ABC 14036	07/05/12	
ABC Commission v. D's Drive Thru Inc. T/A D's Drive Thru	12 ABC 00060	05/29/12	
ABC Commission v. Choudhary, LLC T/A Speedway	12 ABC 00721	05/01/12	
<u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u>			
Bright Haven Residential and Community Care d/b/a New Directions Group Home v. Division of Medical Assistance, DHHS	10 DHR 00232	04/27/12	
Warren W Gold, Gold Care Inc. d/b/a Hill Forest Rest Home, v. DHHS/Division of Health Service Regulation, Adult Care Licensure Section	10 DHR 01666	05/18/12	
Warren W Gold, Gold Care Inc. d/b/a Hill Forest Rest Home v. DHHS, Division of Health Service Regulation, Adult Care Licensure and Certification Section	10 DHR 05801	05/18/12	
Gold Care Inc. Licensee Hill Forest Rest Home Warren W. Gold v. DHHS, Adult Care Licensure Section	10 DHR 05861	05/18/12	
Mary Ann Barnes v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	11 DHR 6488	07/16/12	
Powell's Medical Facility and Eddie N. Powell, M.D., v. DHHS, Division of Medical Assistance	11 DHR 01451	03/05/12	27:01 NCR 75
Julie Sadowski v. DHHS, Division of Health Service Regulation	11 DHR 01955	04/03/12	
Cherry's Group Home, Alphonso Cherry v. DHSR Michelle Elliot	11 DHR 09590	07/12/12	
Teresa Diane Marsh v. DHHS, Division of Health Service Regulation	11 DHR 11456	04/27/12	
Betty Parks v. Division of Child Development, DHHS	11 DHR 11738	06/20/12	
Lorrie Ann Varner v. DHHS, Regulation Health Care Personnel Registry Section	11 DHR 11867	08/02/12	
Timothy John Murray v. DHHS, Division of Health Service Regulation	11 DHR 12594	06/15/12	
Holly Springs Hospital II, LLC v. DHHS, Division of Health Service Regulation, CON Section and Rex Hospital, Inc., Harnett Health System, Inc. and WakeMed	11 DHR 12727	04/12/12	27:04 NCR 486
Rex Hospital, Inc., v. DHHS, Division of Health Service Regulation, CON Section and WakeMed, Holly Springs Hospital II, LLC, and Harnett Health System, Inc.	11 DHR 12794	04/12/12	27:04 NCR 486

CONTESTED CASE DECISIONS

Harnett Health System, Inc., v. DHHS, Division of Health Service Regulation, CON Section and Rex Hospital, Inc., Holly Springs Hospital II, LLC, and WakeMed	11 DHR 12795	04/12/12	27:04 NCR 486
WakeMed v. DHHS, Division of Health Service Regulation, CON Section and Holly Springs Hospital II, LLC, Rex Hospital, Inc., and Harnett Health System, Inc	11 DHR 12796	04/12/12	27:04 NCR 486
Sandra Ellis v. DHHS	11 DHR 12959	07/11/12	
Vendell Haughton v. DHHS, Division of Medical Assistance	11 DHR 13616	07/05/12	
Tarsand Denise Morrison v. DHHS, Division of Health Service Regulation	11 DHR 13906	07/11/12	
Care Well of Charlotte Inc, Joy Steele v. DHHS	11 DHR 13909	08/02/12	
Michael Timothy Smith, Jr. v. DHHS, Division of Health Service Regulation	11 DHR 14184	08/01/12	
Cynthia Tuck Champion v. DHHS, Division of Health Service Regulation	11 DHR 14283	06/15/12	
Lauren Stewart v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	11 DHR 14570	06/08/12	
Alice M. Oakley v. Division of Child Development, DHHS	11 DHR 14571	05/15/12	27:04 NCR 509
Althea L. Flythe v. Durham County Health Department	12 DHR 00242	05/17/12	
Jerri Long v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	12 DHR 00361	07/06/12	
Jessica Lynn Ward v. DHHS	12 DHR 00643	05/17/12	
Trinity Child Care II & I v. DHHS, Division of Public Health, Child and Adult Care Food Program	12 DHR 00861	04/20/12	27:04 NCR 519
Faith Home Care of NC, Bonita Wright v. DHHS, DMA	12 DHR 00928	07/25/12	
Angela C Jackson v. DHHS	12 DHR 01097	06/19/12	
Paula N Umstead v. DHHS	12 DHR 01098	05/11/12	
ACI Support Specialists Inc. Case #2009-4249 v. DHHS	12 DHR 01141	06/06/12	
AriLand Healthcare Service, LLC, NCMHL #018-092, Shawn Kuhl Director of Operations v. DHHS, Emery E. Milliken, General Counsel	12 DHR 01165	05/25/12	
Kenneth Holman v. DHHS	12 DHR 01244	06/05/12	
Hillcrest Resthome Inc. (\$2000 penalty) v. DHHS	12 DHR 01289	05/30/12	
Hillcrest Resthome Inc. (\$4000 penalty) v. DHHS	12 DHR 01290	05/30/12	
Vivian Barrear v. DHHS, Division of Medical Assistance DHHS	12 DHR 01296	06/06/12	
Patricia Satterwhite v. DHHS	12 DHR 01338	07/23/12	
Clydette Dickens v. Nash Co DSS	12 DHR 01625	05/15/12	
Robert Lee Raines v. DHHS	12 DHR 01736	05/30/12	
Ms. Antoinette L. Williams v. DHHS	12 DHR 01739	06/15/12	
Tricia Watkins v. DHHS, Division of Medical Assistance, Office of Medicaid TLW-Auditing Office	12 DHR 01807	06/01/12	
First Path Home Care Services Gregory Locklear v. DHHS	12 DHR 01878	06/22/12	
John and Christina Shipman v. DHHS	12 DHR 02107	07/24/12	
Madeline Brown v. DHHS, Division of Health Service Regulation	12 DHR 02257	06/01/12	
Evelyn Evans v. DHHS, Division of Health Service Regulation	12 DHR 02258	07/02/12	
Precious Haven Inc. Melissa McAllister v. DHHS, Program Integrity	12 DHR 02430	05/18/12	
Michael and Jamie Hart v. Davidson County, Department of Social Services	12 DHR 02542	07/03/12	
Jessica L Thomas v. Randolph County DSS	12 DHR 02955	07/24/12	
Marco Evans v. DHHS, Division of Health Service Regulation	12 DHR 04110	07/30/12	
James C. Bartley v. DHHS, DMA	12 DHR 04116	07/25/12	
Cathy Crosland v. DHHS, Division of Health Service Regulation	12 DHR 05610	08/06/12	

DEPARTMENT OF CORRECTIONS

Myron Roderick Nunn v. Jennifer O'Neal, Accountant DOC	12 DOC 01022	07/12/12	
--	--------------	----------	--

DEPARTMENT OF JUSTICE

Greary Michael Chlebus v. Criminal Justice Education and Training Standards Commission	11 DOJ 4829	04/27/12	
Barbara Renay Whaley v. Criminal Justice Education and Training Standards Commission	11 DOJ 10316	04/25/12	
Robert Kendrick Mewborn v. Criminal Justice Education and Training Standards Commission	11 DOJ 10318	04/23/12	
Athena Lynn Prevatte v. Sheriffs' Education and Training Standards Commission	11 DOJ 13148	05/25/12	27:04 NCR 530
Shatel Nate Coates v. Sheriffs' Education and Training Standards	11 DOJ 13151	07/05/12	
Ko Yang v. Sheriff's Education and Training Standards Commission	11 DOJ 13153	06/14/12	
Walter Scott Thomas v. Sheriff's Education and Training Standards Commission	11 DOJ 13155	05/10/12	
Darryl Howard v. Criminal Justice Education and Training Standards Commission	11 DOJ 13157	04/12/12	
Charlesene Cotton v. Criminal Justice Education and Training Standards Commission	11 DOJ 13159	06/05/12	27:04 NCR 539
Steve Michael Galloway, Jr, Private Protective Services Board	11 DOJ 14434	04/23/12	
Justin Thomas Medlin v. Alarm Systems Licensing Board	11 DOJ 14493	04/23/12	
Angela Louise Giles v. Private Protective Services Board	12 DOJ 00557	04/18/12	
Marshall Todd Martin v. Sheriffs' Education	12 DOJ 00650	07/13/12	

CONTESTED CASE DECISIONS

Michael Wayne McFalling v. Private Protective Services Board	12 DOJ 00814	05/21/12	
Robert John Farmer v. Alarm Systems Licensing Board	12 DOJ 00887	05/04/12	
Ricky Lee Ruhlman v. Private Protective Services Board	12 DOJ 01211	04/18/12	
Leroy Wilson Jr., Private Protective Services Board	12 DOJ 01293	04/18/12	
Clyde Eric Lovette v. Alarm Systems Licensing Board	12 DOJ 01498	05/02/12	
Andre Carl Banks Jr., v. Alarm Systems Licensing Board	12 DOJ 01695	06/22/12	
Ryan Patrick Brooks v. Private Protective Services Board	12 DOJ 01696	06/05/12	
Dustin Lee Chavis v. Private Protective Services Board	12 DOJ 01697	06/01/12	
Jeffrey Adam Hopson v. Sheriffs' Education and Training Standards Commission	12 DOJ 01761	06/07/12	
John Henry Ceaser v. Sheriffs' Education and Training Standards Commission	12 DOJ 01762	06/18/12	
Jerome Douglas Mayfield v. Private Protective Services Board	12 DOJ 02381	06/15/12	
Elijah K. Vogel v. Private Protective Services Board	12 DOJ 02619	06/05/12	

DEPARTMENT OF STATE TREASURER

Russell E. Greene v. Department of State Treasurer Retirement Systems Division	11 DST 10875	06/14/12	27:04 NCR 544
Marsha W Lilly, Robert L Hinton v. Retirement System	12 DST 01108	05/22/12	

STATE BOARD OF EDUCATION

Louis A. Hrebar v. State Board of Education	11 EDC 01445	07/27/12	
Delene Huggins v. Department of Public Instruction	11 EDC 08899	06/28/12	
Myra F. Moore v. NC Board of Education	11 EDC 11927	05/01/12	
North Carolina Learns Inc. d/b/a North Carolina Virtual Academy	12 EDC 01801	05/18/12	

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Pamlico-Tar River Foundation, NC Coastal Federation, Environmental Defense Fund, and Sierra Club v. DENR, Division of Water Quality and PCS Phosphate Company, Inc	09 EHR 1839	04/26/12	27:01 NCR 87
--	-------------	----------	--------------

Don Hillebrand v. County of Watauga County Health Dept	10 EHR 00933	05/10/12	
House of Raeford Farms, Inc., v. DENR	10 EHR 05508	05/31/12	27:01 NCR 99

Lacy H Caple DDS v. Division of Radiation Protection Bennifer Pate	11 EHR 11454	05/09/12	
--	--------------	----------	--

Save Mart of Duplin LLC v. DENR	12 EHR 02328	07/25/12	
---------------------------------	--------------	----------	--

DIVISION OF EMPLOYMENT SECURITY

Dwight Marvin Wright v. Department of Commerce, Division of Employment Security	12 ESC 05042	07/27/12	
---	--------------	----------	--

MISCELLANEOUS

Richard Lee Taylor v. City of Charlotte	11 MIS 14140	05/15/12	
---	--------------	----------	--

Lloyd M Anthony v. New Hanover County Sheriff Office	12 MIS 01803	06/07/12	
--	--------------	----------	--

OFFICE OF STATE PERSONNEL

Dorothy H. Williams v. DHHS, Central Regional Hospital	10 OSP 5424	03/28/12	27:01 NCR 119
--	-------------	----------	---------------

Larry F. Murphy v. Employment Security Commission of North Carolina	10 OSP 03213	06/04/12	
---	--------------	----------	--

Walter Bruce Williams v. Dept. of Crime Control and Public Safety Butner Public Safety Division	10 OSP 03551	04/23/12	27:01 NCR 148
---	--------------	----------	---------------

Daniel Chase Parrott v. Crime Control and Public Safety, Butner Public Safety Division	10 OSP 04792	05/30/12	
--	--------------	----------	--

Beatrice T. Jackson v. Durham County Health Department	11 OSP 3835	06/08/12	
--	-------------	----------	--

Kimberly F. Loflin v. DOT, DMV	11 OSP 06762	07/10/12	
--------------------------------	--------------	----------	--

John Fargher v. DOT	11 OSP 08111	04/18/12	
---------------------	--------------	----------	--

Fredericka Florentina Demmings v. County of Durham	11 OSP 11498	06/12/12	
--	--------------	----------	--

William C. Spender v. Dept. of Agriculture & Consumer Services, Veterinary Division	11 OSP 12479	04/27/12	
---	--------------	----------	--

Terrence McDonald v. NCSU	11 OSP 12682	05/21/12	
---------------------------	--------------	----------	--

Terrence McDonald v. DHHS, Emery Milliken	11 OSP 12683	05/18/12	
---	--------------	----------	--

Raeford Quick v. DOC	11 OSP 14436	05/22/12	
----------------------	--------------	----------	--

Bon-Jerald Jacobs v. Pitt County Department of Social Services	12 OSP 00634	06/12/12	
--	--------------	----------	--

Diane Farrington v. Chapel Hill-Carrboro City Schools	12 OSP 01300	07/12/12	
---	--------------	----------	--

Natalie Wallace-Gomes v. Winston-Salem State University	12 OSP 01627	05/15/12	
---	--------------	----------	--

Clark D. Whitlow v. UNC-Chapel Hill	12 OSP 01740	06/12/12	
-------------------------------------	--------------	----------	--

CONTESTED CASE DECISIONS

Jeffrey L Wardick, v. Employment Securities Commission of NC	12 OSP 02027	07/17/12
Brenda S. Sessoms v. Department of Public Safety	12 OSP 02507	07/25/12
Sheila Bradley v. Community College System Sandhills Community College	12 OSP 02473	06/06/12
Natalie Wallace-Gomes v. Winston Salem State University	12 OSP 02950	08/01/12
Jaymar v. Department of Corrections, Central Prison	12 OSP 03381	07/20/12

DEPARTMENT OF REVENUE

Jerry Lamont Lindsey v. Department of Revenue	11 REV 1914	07/25/12
Brian Daniel Reeves v. Department of Revenue	12 REV 01539	06/04/12

OFFICE OF SECRETARY OF STATE

Rezell Gore	12 SOS 00492	07/10/12
Jennifer Lynn Pierce-Founder Share Our Shoes v. Secretary of State's Office	12 SOS 01653	07/11/12

UNC HOSPITALS

Onyedika C Nwaebube v. UNC Hospitals	12 UNC 01110	06/25/12
Nephatiya Wade v. UNC Hospitals Chapel Hill NC	12 UNC 01209	07/17/12

Filed

STATE OF NORTH CAROLINA

2012 MAY 17 AM 11:47

IN THE OFFICE OF

COUNTY OF WAKE

ADMINISTRATIVE HEARINGS

HOLLY SPRINGS HOSPITAL II, LLC,

Office of
Administrative Hearings

Petitioner,

v.

11 DHR 12727

N.C. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, DIVISION OF
HEALTH SERVICE REGULATION,
CERTIFICATE OF NEED SECTION,

Respondent,

and

REX HOSPITAL, INC., HARNETT
HEALTH SYSTEM, INC. and WAKEMED,

Intervenors.

REX HOSPITAL, INC.,

Petitioner,

v.

11 DHR 12794

N.C. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, DIVISION OF
HEALTH SERVICE REGULATION,
CERTIFICATE OF NEED SECTION,

Respondent,

and

WAKEMED, HOLLY SPRINGS HOSPITAL
II, LLC, and HARNETT HEALTH
SYSTEM, INC.,

Intervenors.

HARNETT HEALTH SYSTEM, INC.,)

Petitioner,)

v.)

11 DHR 12795

**N.C. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, DIVISION OF
HEALTH SERVICE REGULATION,
CERTIFICATE OF NEED SECTION,**)

Respondent,)

and)

**REX HOSPITAL, INC., HOLLY SPRINGS
HOSPITAL II, LLC and WAKEMED,**)

Intervenors.)

WAKEMED,)

Petitioner,)

v.)

11 DHR 12796

**N.C. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, DIVISION OF
HEALTH SERVICE REGULATION,
CERTIFICATE OF NEED SECTION,**)

Respondent,)

and)

**HOLLY SPRINGS HOSPITAL II, LLC,
REX HOSPITAL, INC., and HARNETT
HEALTH SYSTEM, INC.,**)

Intervenors.)

**RECOMMENDED DECISION ON WAKEMED'S MOTION FOR SUMMARY
JUDGMENT**

THIS cause came before the Undersigned Administrative Law Judge upon Petitioner WakeMed's Motion for Summary Judgment (the "Motion") made orally by counsel for WakeMed in open court on April 10, 2012 against the Rex Hospital application, Project I.D. No. J-8667-11 ("Rex Hospital application"). WakeMed's motion sought summary judgment as a matter of law against the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section ("CON Section" or "Agency") and Rex Hospital, Inc. ("Rex") on the basis that the Agency erred as a matter of law in its decision and findings concerning the Rex Hospital application under Criterion 18a of the Certificate of Need Act ("CON Act"), N.C. Gen. Stat. § 131E-183(a)(18a). WakeMed stated its oral motion was made in light of the Undersigned Administrative Law Judge granting a March 19, 2012 summary judgment motion on the same grounds filed by Holly Springs Hospital II LLC ("Novant") against the other applications in the same 2011 Wake County Acute Care Bed Review (the "Review") that were addressed by the Agency in the same set of findings.

On April 12, 2012, the Undersigned Administrative Law Judge signed and filed a written recommended decision granting summary judgment as a matter of law against the Agency and each of the following applications in the Review:

1. Rex Hospital's application proposing to develop a new community hospital in Holly Springs with 50 acute care beds (including eight obstetrics beds), an emergency department, three operating rooms relocated from Rex Hospital, a dedicated C-section operating room, a relocated linear accelerator, and a relocated CT scanner, identified as Project No. J-8669-11, which was approved by the Agency.
2. Rex Hospital's application proposing to develop a new community hospital in Wakefield with 40 acute care beds (including six obstetrics beds), an emergency department, one operating room relocated from Rex Hospital, a dedicated c-section operating room, and a relocated CT scanner, identified as Project No. J-8670-11, which was disapproved by the Agency.
3. WakeMed's application proposing to develop 79 acute care beds on the existing WakeMed Raleigh Campus, to be housed in two new floors to be added to the E Tower

and to be used as medical/surgical beds and to dedicate the beds on the sixth floor of the E Tower to neuroscience patients, including stroke patients, identified as Project No. J-8660-11, which was conditionally approved by the Agency to develop only 29 beds.

4. WakeMed's application proposing to develop 22 acute care beds at the existing WakeMed Cary Hospital by converting 22 existing observation beds to acute care beds, identified as Project No. J-8661-11, which was approved by the Agency.

5. Novant's application proposing to develop a new community hospital in Holly Springs with 50 acute care beds, (including ten obstetrics beds), an emergency department, two operating rooms relocated from the approved but not yet developed Novant Holly Springs Surgery Center, a dedicated c-section operating room, and a CT scanner, identified as Project No. J-8673-11, which was disapproved by the Agency.

Although Novant's motion sought summary judgment "against the Agency with respect to all of the applications in this review on the basis of Criterion 18a of the CON Law," the Undersigned Administrative Law Judge did not enter at that time summary judgment concerning the Rex Hospital application because Novant had not filed a contested case petition challenging the Rex Hospital application. Rex's counsel requested additional time, which the Court granted, to respond to WakeMed's oral motion.

Rex and the Agency filed a response to WakeMed's Motion for Summary Judgment on April 19, 2012 and requested that, pursuant to Rule 56(c) of the North Carolina Rules of Civil Procedure, the Court enter summary judgment in favor of Rex and the Agency on the grounds that WakeMed was not substantially prejudiced by the Agency's conditional approval of the Rex Hospital application and, if there was any Agency error concerning the Rex Hospital application, it was harmless error. The Agency and Rex also filed the Affidavit of Craig Smith, the Chief of the CON Section.

On April 23, 2012, WakeMed filed a Reply Brief with attached Exhibits, which Reply challenged the April 19, 2012 Affidavit of Craig Smith. On April 23, 2012 WakeMed also filed a Notice of Filing and an Affidavit of Daniel Sullivan.

On April 24, 2012, the Undersigned heard oral argument by counsel for the Agency, Rex and WakeMed. On Friday, April 27, 2012, Rex and the Agency filed a Motion to Strike and Response to WakeMed's Reply, which renewed their request that summary judgment be entered against WakeMed and their Motion to Strike WakeMed's April 23, 2012 Notice of Filing or, in the alternative, asked that additional documents they submitted to be made part of the record.

Having considered WakeMed's Motion, the briefs filed by WakeMed, Rex and the Agency, the record in this case, and the arguments of counsel at a hearing conducted on April 24, 2012, the Undersigned enters this Recommended Decision granting WakeMed's Motion for Summary Judgment against the Agency and Rex concerning the Rex Hospital application on the basis that the Agency erred as a matter of law in its decision and findings concerning Criterion 18a regarding the Rex Hospital application in the 2011 Wake County Acute Care Bed Review.

SUMMARY OF UNDISPUTED FACTS

1. The 2011 State Medical Facilities Plan ("SMFP") contained a determination that 101 additional acute care beds were needed in Wake County. *See* Agency Findings p. 2 (attached as Exhibit D to WakeMed's Petition for Contested Case). The review cycle for consideration of any applications seeking to develop any beds pursuant to this need determination began May 1, 2011, and the applications were due by April 15, 2011.

2. On April 15, 2011, Rex Hospital filed an application proposing to develop 11 new acute care beds, 16 new observation beds, a new dedicated cardiac emergency department, a new satellite pharmacy, a new satellite laboratory and a change in scope to develop a new tower on its main campus that would house cardiac catheterization, peripheral vascular and other cardiac related services, identified as Project No. J-8667-11, at a total capital cost of over \$278 million.

3. On April 15, 2011, Rex Hospital filed a separate application proposing to develop a new community hospital in Holly Springs with 50 acute care beds (including eight obstetrics beds), an emergency department, three operating rooms relocated from Rex Hospital, a dedicated C-section operating room, a relocated linear accelerator, and a relocated CT scanner, identified as Project No. J-8669-11.

4. On April 15, 2011, Rex Hospital also filed a separate application proposing to develop a new community hospital in Wakefield with 40 acute care beds (including six obstetrics beds), an emergency department, one operating room relocated from Rex Hospital, a dedicated c-section operating room, and a relocated CT scanner, identified as Project No. J-8670-11.

5. On April 15, 2011, WakeMed filed an application proposing to develop 79 acute care beds on the existing WakeMed Raleigh Campus, to be housed in two new floors to be added to the E Tower and to be used as medical/surgical beds. WakeMed proposed to dedicate the beds on the sixth floor of the E Tower to neuroscience patients, including stroke patients. The application was identified as Project No. J-8660-11.

6. On April 15, 2011, WakeMed filed an application proposing to develop 22 acute care beds at the existing WakeMed Cary Hospital by converting 22 existing observation beds to acute care beds, identified as Project No. J-8661-11.

7. On April 15, 2011, Novant filed an application proposing to develop a new community hospital in Holly Springs with 50 acute care beds (including ten obstetrics beds), an emergency department, two operating rooms relocated from the approved but not yet developed Novant Holly Springs Surgery Center, a dedicated c-section operating room, and a CT scanner, identified as Project No. J-8673-11.

8. Because the applications in the Review proposed to develop a total of 252 new acute care beds, and because the SMFP contained a determinative limitation of 101 new acute care beds, all of the applications could not be approved. *Id.* at 258.

9. The Agency notified the applicants of its determination that the applications were competitive and, as required for competitive reviews, accepted competitive comments on the other applications from the applicants and held a public hearing. The Agency also conducted a comparative analysis of the applications. *See* Agency File pp. 49, 53, 59, 62-66 (Deposition Ex. 1) attached to WakeMed April 23, 2012 Reply, Ex. B.

10. The Agency issued a single set of findings that addressed all of the applications. No application was identified in the findings as being non-competitive. The Agency included an analysis and discussion of the Rex Hospital application under each of the criteria and under each of the factors in the comparative analysis. At the end of its comparative analysis, the Agency summarized the reasons why each application was approved or disapproved. The Agency's summary findings concerning the Rex Hospital application included findings from its comparative analysis of all of the applications. *See* Agency Findings pp. 258-267.

11. The Agency did not give notice to any of the parties in its decision letters that any of the applications were no longer competitive as a result of its decision on the applications. *See* Agency File pp. 62-66.

12. The CON Section Project Analyst and CON Section Chief who made the decision and issued the findings admitted in deposition that the applications were competitive. *See Smith Dep.*, Vol. I, p. 94, l. 4-7; *McKillip Dep.* Vol. II, p. 125 l. 24 – p. 126 l. 10 attached as Exhibits 12 and 11 to Novant's March 19, 2012 Motion for Summary Judgment.

13. The Agency made its decision in the 2011 Wake County Acute Care Bed Review on September 27, 2011, and issued one set of findings concerning each and all of the applications on October 4, 2011. *See* Agency Findings at 1.

14. The Agency conditionally approved the Rex Hospital application, the Rex Holly Springs application, and the two WakeMed applications. *Id.* at 269-271.

15. Criterion 18a of the CON Act states:

The applicant shall demonstrate the expected effects of the proposed services on *competition* in the proposed service area, including how any *enhanced competition* will have a positive impact upon the cost effectiveness, quality, and access to the services proposed; and in the case of applications for services where *competition* between providers will not have a favorable impact on cost-effectiveness, quality, and access to the services proposed, the applicant shall demonstrate that its application is for a service on which *competition* will not have a favorable impact.

See N.C. Gen. Stat. § 131E-183(a)(18a) (emphasis added).

16. With respect to the Rex Hospital application, the Agency made the following findings under Criterion 18a:

Rex Hospital. See Section II.6, page 45, Section II.7, pages 45-48, Section III.2, pages 190-193, and Section VI, pages 250-274. The applicant adequately demonstrates that its proposal would have a positive impact upon the cost effectiveness, quality, and access to the proposed services for the following reasons:

- a) the applicant adequately demonstrates that its proposal would be cost-effective [see Criteria (1), (3), (5) and (12) for additional discussion];
- b) the applicant demonstrates that Rex Hospital provides adequate access to the proposed services by the medically underserved [see Criteria (1) and (13) for additional discussion]; and
- c) the applicant adequately demonstrates that Rex Hospital provides quality services [see Criteria (1), (7), and (8) for additional discussion].

Therefore, the application is conforming to this criterion.

Agency Findings pp. 180-181.

17. The Agency's findings under Criterion 18a concerning the Rex Hospital application do not discuss competition. *Id.* at 181. On the face of its findings, the Agency did not address the "expected effects of the proposed services on its competition" or the impact of competition when determining whether the Rex Hospital application was conforming or non-conforming with Criterion 18a. *Id.* at 180-182.

18. The Agency on the face of its findings used the same analysis and approach in its findings under Criterion 18a concerning each of the applications in the Review. *Id.*

19. In the Recommended Decision issued in open court on April 10, 2012 and signed and filed in writing on April 12, 2012, the Undersigned granted Novant's motion for summary judgment on the basis that the Agency erred as a matter of law in its decision and findings under Criterion 18a concerning the Rex Holly Springs application, Rex Wakefield application, WakeMed Raleigh application, and WakeMed Cary application.

20. Rex, Novant and WakeMed are all affected persons with regard to the Agency's decision on the applications in the Wake County Acute Care Bed Review because each was an applicant in the review. Rex and WakeMed are also each affected persons because they each are existing providers of acute care bed services in Wake County. *See* N.C. Gen. Stat. §§ 131E-188(c).

21. The Rex Hospital application's need methodology included a projected shift of over 27,000 inpatient days of care provided to cardiac patients from WakeMed Raleigh to Rex Hospital. Rex included and relied upon in Section III of the Rex Holly Springs application and Section III of the Rex Wakefield application excerpts of the quantitative and qualitative aspects of this need methodology from the Rex Hospital application. The Rex Holly Springs and Rex Wakefield applications also projected to shift inpatient day volume from the Rex Hospital main

campus to the Rex Holly Springs Hospital and Rex Wakefield Hospital projects. *See, e.g.* Rex Holly Springs Application, p. 198; Rex Wakefield Application, p. 192.

22. In the Review, each of the applicants had to demonstrate that its application satisfied the performance standards contained in 10 N.C.A.C. 14C.3803 concerning the projected volume of inpatient days. This performance standard required Rex Hospital to demonstrate that the existing and proposed new acute care beds located on the Rex Hospital main campus, new acute care beds proposed for the Rex Wakefield campus, and the new acute care beds proposed for Rex Holly Springs campus would reach a certain level of occupancy by the third year of each project. This regulatory criterion required evaluation of Rex's proposed inpatient volume both for each application and for the Rex health care system as a whole. *See* 10 N.C.A.C. 14C.3803. One of Rex's experts, Daniel Carter, acknowledged that the need methodology and demonstration of need in each of Rex's three applications was inter-related. *See* Daniel Carter Dep. Vol. II p. 162 l. 7 – p. 163 l. 6.

23. Because of the above findings of undisputed facts, the Undersigned does not reach or make any further findings concerning whether the record before the Court showed other Agency error or other ways that WakeMed demonstrated substantial prejudice by the Agency's conditional approval of the Rex Hospital application.

CONCLUSIONS OF LAW

Based on the foregoing undisputed facts, the Undersigned concludes as follows:

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this case. *See* N.C. Gen. Stat. §§ 131E-188(a); 150B-23(a).
2. N.C. Gen. Stat. § 150B-33(b)(3a) authorizes an Administrative Law Judge to "rule on all prehearing motions that are authorized by G.S. 1A-1, the Rules of Civil Procedure."

The rules include North Carolina Rule of Civil Procedure 56(c) governing summary judgment. Rule 56(c) provides that summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and that any party is entitled to judgment as a matter of law.”

3. There is no genuine issue of material fact concerning the Agency’s failure to appropriately apply Criterion 18a to each of the applications in the Review, including the Rex Hospital application. Accordingly, summary judgment should be entered as a matter of law against Rex and the Agency concerning its decision and findings on the Rex Hospital Application.

4. To obtain a CON for a proposed project, an applicant must satisfy *each and all* of the review criteria set forth in N.C. Gen. Stat. § 131E-183(a). If an application fails to conform with any one of these criteria, then the applicant is not entitled to a CON for the proposed project as a matter of law. See *Presbyterian-Orthopaedic Hospital v. N.C. Dep’t. of Human Res.*, 122 N.C. App. 529, 534-35, 470 S.E.2d 831, 834 (1996) (holding that “an application must comply with *all* review criteria” and that the failure to comply with one review criterion supports entry of summary judgment against the applicant) (emphasis in original).

5. In a recent decision, the Court of Appeals explained the procedure for review of a CON application as follows:

N.C. Gen. Stat. § 131E-183(a) charges the Agency with reviewing all CON applications utilizing a series of criteria set forth in the statute. The application must either be consistent with or not in conflict with these criteria before a certificate of need for the proposed project shall be issued. A certificate of need may not be granted which would allow more medical facilities or equipment than are needed to serve the public. Each CON application must conform to all applicable review criteria or the CON will not be

granted. The burden rests with the applicant to demonstrate that the CON review criteria are met.

Parkway Urology v. N.C. Dep't. of Health and Human Servs., 205 N.C. App. 529, 534, 696 S.E.2d 187, 191-92 (2010); accord *Good Hope Health System, LLC v. N.C. Dep't. of Health and Human Servs.*, 189 N.C. App. 534, 549, 659 S.E.2d 456, 466 (2008).

6. Both competitive and non-competitive applications must satisfy each and all of the applicable review criteria. N.C. Gen. Stat. § 131E-183; *see also, Mooresville Hosp. Mgmt. Assoc. v. N.C. Dep't of Health and Human Servs.*, 169 N.C. App. 641, 649, 611 S.E.2d 431, 437 (2005) (reversed on other grounds).

7. N.C. Gen. Stat. § 150B-23(a) sets forth five grounds upon which a decision of the Agency after such a review may be reversed, including that the Agency “[e]xceeded its authority or jurisdiction,” “[a]cted erroneously,” or “[f]ailed to use proper procedure.” “In cases appealed from administrative agencies, [q]uestions of law receive *de novo* review, whereas fact-intensive issues such as sufficiency of the evidence to support [the] decision are reviewed under the whole-record test.” *N.C. Dep't. of Revenue v. Bill Davis Racing*, 201 N.C. App. 35, 43, 684 S.E.2d 914, 920 (2009).

8. Thus, questions of whether the Agency exceeded its authority, acted erroneously or failed to use proper procedure are subject to *de novo* review. *See Good Hope Hospital v. N.C. Dep't. of Health and Human Servs.*, 175 N.C. App. 309, 311, 623 S.E.2d 315, 317 (2006) (“In determining whether an agency erred in interpreting a statute, this Court employs a *de novo* standard of review.”); *Parkway Urology*, 205 N.C. App. at 535, 696 S.E.2d at 192; *Total Renal Care of N.C., LLC v. N.C. Dep't. of Health and Human Servs.*, 171 N.C. App. 734, 739, 615 S.E.2d 81, 84 (2005).

9. As the Undersigned previously determined as to all other applications in this review, the Agency also exceeded its statutory authority, acted erroneously and failed to use proper procedure regarding its review, decision and findings under Criterion 18a concerning the Rex Hospital application. The Agency's decision, therefore, is subject to *de novo* review by the Administrative Law Judge. *Id.*

10. The Court of Appeals' decision in *Living Centers-Southeast, Inc. v. N.C. Dep't of Health and Human Services*, 138 N.C. App. 572, 581, 532 S.E.2d 192, 197 (2000) ("[T]he CON Statute . . . does not contemplate the preclusion of a full contested case hearing in a certificate of need case due to a recommended decision of summary judgment by the ALJ") does not preclude the Administrative Law Judge from entering a recommended decision of summary judgment in this matter.

11. The Undersigned further finds that the facts of *Living Centers* are distinguishable from the facts of the present case, and that *Living Centers* cannot be read to preclude entry of a recommended decision granting summary judgment in every CON case involving a competitive review. In addition, the Undersigned notes that the *HCA Crossroads* case, discussed below, came to the North Carolina Supreme Court in the context of an ALJ's recommended decision awarding summary judgment. *See* 327 N.C. 573, 576, 398 S.E.2d 466, 468 (1990).

12. "What orders and decisions an administrative agency may make is dependent upon its statutory purposes and powers and the validity of the acts conferring such powers." *Charlotte Liberty Mut. Ins. Co. v. State ex rel. Lanier*, 16 N.C. App. 381, 384 192 S.E.2d 57, 59 (1972); *see also Boston v. N.C. Private Protective Services Bd.*, 96 N.C. App. 204, 385 S.E.2d 148 (1989) (agency must follow the terms of its authorizing statute). The CON Section is a creature of statute, created for the sole purpose of carrying out the CON Act. *See, e.g. Matter of*

Broad & Gales Creek Community Ass'n, 300 N.C. 267, 280, 266 S.E.2d 645, 654 (1980) (an administrative agency "is a creature of the statute creating it"). Chief among its duties is the evaluation of CON applications against the statutorily-mandated criteria set forth at N.C. Gen. Stat. § 131E-183. Such evaluation is mandatory; the CON Section "*shall* review all applications utilizing the criteria outlined in this subsection." N.C. Gen. Stat. § 131E-183(a) (emphasis added).

13. The language of Criterion 18a is clear and unambiguous, and the legislative intent in amending N.C. Gen. Stat. § 131E-183(a) to add this provision is not difficult to ascertain.

The applicant shall demonstrate the expected effects of the proposed services on *competition* in the proposed service area, including how any *enhanced competition* will have a positive impact upon the cost effectiveness, quality, and access to the services proposed; and in the case of applications for services where *competition* between providers will not have a favorable impact on cost-effectiveness, quality, and access to the services proposed, the applicant shall demonstrate that its application is for a service on which competition will not have a favorable impact.

See N.C. Gen. Stat. § 131E-183(a)(18a) (emphasis added).

14. In the present case, the Agency followed its consistently erroneous practice of failing to make any meaningful analysis of or finding on each of the applications when reviewing the application standing alone under Criterion 18a, but rather made its determinations of conformity based on its determination under other criteria. For example, in approving the Rex Hospital application, the Agency made the following finding with respect to Criterion 18a:

Rex Hospital. See Section II.6, page 45, Section II.7, pages 45-48, Section III.2, pages 190-193, and Section VI, pages 250-274. The applicant adequately demonstrates that its proposal would have a positive impact upon the cost effectiveness, quality, and access to the proposed services for the following reasons:

- a) the applicant adequately demonstrates that its proposal would be cost-effective [see Criteria (1), (3), (5) and (12) for additional discussion];

- b) the applicant demonstrates that Rex Hospital provides adequate access to the proposed services by the medically underserved [see Criteria (1) and (13) for additional discussion]; and
- c) the applicant adequately demonstrates that Rex Hospital provides quality services [see Criteria (1), (7), and (8) for additional discussion].

Therefore, the application is conforming to this criterion.

The Agency made no finding with respect to the Rex Hospital application or any of the other applications in this review regarding whether the applicant “demonstrated the expected effects of the proposed services on competition,” including whether “enhanced competition” would have a positive impact on cost-effectiveness, quality, and access to services.

15. The North Carolina appellate courts have not hesitated to correct even longstanding, consistent practices of the Agency, where the Agency has been consistently wrong. *See, e.g., HCA Crossroads Residential Ctrs. v. N.C. Dep’t. of Human Res.*, 327 N.C. 573, 398 S.E.2d 466 (1990) (holding that the Agency cannot ignore with impunity the statutory time limits for making a decision); *Britthaven, Inc. v. N.C. Dep’t. of Human Res.*, 118 N.C. App. 379, 455 S.E.2d 455 (1995) (holding that the Agency must review each competing application independently against the statutory review criteria before reviewing them comparatively).

16. The Agency’s findings on each of the applications in this review under Criterion 18a, including the Rex Hospital application, are derived from findings on other criteria. In none of these findings does the Agency even mention the word “competition,” much less analyze whether the approval of any one application would enhance competition in the area and, if so, whether such enhanced competition would be beneficial. In practical effect, the Agency analyzed each of the applications in the Review as if Criterion 18a added nothing to the other statutory review criteria.

17. Under controlling authority from our Supreme Court, such an interpretation of the CON Act is not possible. Interpreting the provisions of the CON Act placing a time limit on the Agency's review of applications, the Supreme Court held:

The only other conceivable interpretation of the language of N.C.G.S. § 131R-185(b) is that it merely reiterates the time limits specified in N.C.G.S. § 131E-185(a1)(c) without doing anything more. Under such an interpretation, N.C.G.S. § 131E-185(b) would be entirely redundant and meaningless. Such statutory construction is not permitted, because a statute must be construed, if possible, to give meaning and effect to all of its provisions.

HCA Crossroads, 327 N.C. at 578, 398 S.E.2d at 470.

18. More recently, our Court of Appeals dealt specifically with a case in which the Agency, as it did here, made its decision on one of the statutory criteria dependent upon its findings on other criteria:

The Agency has determined that Criteria 1, 3 and 6 address need-related issues which overlap and which should be analyzed together and consistently. Consequently, the Agency analyzes Criteria 1, 3, and 6 together and if the Agency determines that the need is identified in the SMFP for the service of equipment proposed in the application, and that an application is consistent with the need determination in the SMFP and demonstrates that the population it proposes to serve needs the services it proposes to provide, then to be consistent, *the Agency also will determine that the application does not unnecessarily duplicate existing or approved services.*

[...]

Standing alone, this finding by NCDHHS is problematic. Each criterion contained in N.C. Gen. Stat. § 131E-183(a) must be separately analyzed by NCDHHS.

Parkway Urology, 205 N.C. App. at 537-38, 696 S.E.2d at 194 (emphasis in original, citing *HCA Crossroads*).

19. A review of the Agency findings here shows that it followed precisely the same erroneous course in applying Criterion 18a to each and all of the applications in the 2011 Wake

County Acute Care Bed Review, including the Rex Hospital application. The Agency simply ignored the intent of the General Assembly and analyzed each of the applications as if Criterion 18a added nothing to the statute. The Agency failed to make any analysis regarding competition or to address competition in its findings as required by the plain language of N.C. Gen. Stat. § 131E-183(a)(18a).

20. The Undersigned finds that the Agency erred in its review and findings under Criterion 18a concerning each application standing alone reviewed in the same, single batch cycle before reaching its comparative analysis. As a result, each applicant in the Review is substantially prejudiced as a matter of law by the Agency's failure to first correctly apply Criterion 18a to each of the applications in the single review batch as required by the legislature under N.C. Gen. Stat. § 131E-183. There is no genuine issue of material fact that the Agency treated each of the applications the same in its failure to analyze competition and make any finding concerning the impact of the application on competition under Criterion 18a.

21. Because the Rex Hospital application was reviewed in the same review cycle as the other five applications at issue in this contested case, and because the Agency erred as a matter of law in its review and findings under Criterion 18a concerning each of the applications standing alone, before the Agency made any findings or decisions under its comparative analysis, the Agency's same error of law substantially prejudiced each of the applicants and applications in the same review, including WakeMed, and it is immaterial whether or not any or all of the new acute care beds sought in any particular application remained at issue after the appeals were filed in this contested case.

22. The Agency's error of law in its review and findings under Criterion 18a concerning Rex Hospital application substantially prejudiced WakeMed as a matter of law in the

same way that the Agency's error of law in its review and findings under Criterion 18a concerning the other applications in the Review substantially prejudiced the other applicants and WakeMed.

23. The Agency's error of law in failing to correctly apply Criterion 18a is not harmless error and substantially prejudices each of the applicants in the Review. The failure to directly apply the expressed statutory language constitutes substantial prejudice as a matter of law. *See Hospice at Greensboro, Inc. v. N.C. Dep't of Health and Human Servs*, 185 N.C. App. 1, 17, 647 S.E.2d 651, 661-62 (2000) (holding the Agency's fundamental failure to follow the CON Act to determine need was alone sufficient to establish substantial prejudice as a matter of law). *See also HCA Crossroads*, 327 N.C. 573, 398 S.E.2d 466 (holding that the Agency's failure to follow its statutorily required procedure constituted harm to the Petitioners without further analysis or query regarding substantial prejudice).

24. Because an applicant must be found conforming or conditionally conforming with respect to all applicable statutory criteria and applicable administrative rules before the Agency can issue a CON, *see Presbyterian-Orthopaedic Hospital*, 122 N.C. App. at 534-35, 470 S.E.2d at 834, and because the Agency erred in its application of Criterion 18a with respect to *each* of the applications in this review, including the Rex Hospital application, the Agency's decision in the 2011 Wake County Acute Care Bed review to conditionally approve the Rex Hospital application is erroneous as a matter of law.

25. Because the Undersigned has determined that each of the applicants in the Review was substantially prejudiced as a matter of law by the Agency's failure to follow the expressed statutory language of Criterion 18a, the Undersigned does not reach and does not decide whether WakeMed demonstrated in discovery or forecast to show at hearing other facts or legal reasons

why it was substantially prejudiced by the Agency's conditional approval of the Rex Hospital application.

26. The Undersigned did not reach and does not make any undisputed findings of fact or conclusions or law concerning the information contained in the Affidavit of Daniel Sullivan, the documents filed by WakeMed in its April 23, 2012 Notice of Filing or the documents submitted by Rex and the Agency on April 27, 2012.

27. With regard to its decision and findings on the applications under Criterion 18a, including the Rex Hospital application, the Agency acted erroneously and failed to follow proper procedure in its decision on each of the applications before it. Based on the undisputed facts, summary judgment should be entered as a matter of law as to the Rex Hospital Application.

28. In view of the foregoing findings of undisputed facts and conclusions of law, the Undersigned grants WakeMed's motion for summary judgment and denies the request by Rex and the Agency that summary judgment be entered against WakeMed, with regard to the Rex Hospital application.

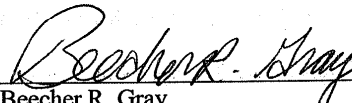
RECOMMENDED DECISION

Based on the foregoing undisputed facts and conclusions of law, the undersigned Administrative Law Judge holds, as a matter of law, that:

1. The Agency erred as a matter of law in its application of N.C. Gen. Stat. § 131E-183(a)(18a) to each of the applications in this review, including the Rex Hospital application. Accordingly, the Agency's decision to conditionally approve the Rex Hospital application was erroneous as a matter of law; and

2. The Agency substantially prejudiced WakeMed and each of the other applicants in the 2011 Wake County Acute Care Bed Review as a matter of law due to its erroneous application of Criterion 18a to each of the applications in the Review.

SO ORDERED this 16 day of May, 2012.


Beecher R. Gray
Administrative Law Judge


NOTICE

The decision of the Administrative Law Judge in this contested case will be revised by the agency making the final decision according to the standards found in N.C. Gen. Stat. § 150B-36(b), (b1), and (b2) prior to its repeal pursuant to S.L. 2011-398. The agency making the final decision is required to give each party an opportunity to file exceptions to the decision of the Administrative Law Judge and to present written arguments to the final agency decision maker. N.C. Gen. Stat. § 150B-36(a). The agency is required by N.C. Gen. Stat. § 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorneys of record and to the Office of Administrative Hearings. The agency that will make the final decision in this contested case is the North Carolina Department of Health and Human Services.

A copy of the foregoing has been mailed to:

<p>Maureen Demarest Murray Susan M. Fradenburg Allyson Jones Labban Smith Moore Leatherwood LLP P.O. Box 21927 Greensboro, NC 27420 Attorneys for WakeMed</p>	<p>Gary S. Qualls Colleen M. Crowley William Stewart K&L Gates 430 Davis Drive, Suite 400 Morrisville, NC 27709 Attorneys for Rex Hospital, Inc.</p>
<p>June S. Ferrell Scott Stroud Assistant Attorneys General N.C. Department of Justice P.O. Box 629 Raleigh, NC 27602-0629 Attorneys for NCDHHS, Division of Health Service Regulation, Certificate of Need Section</p>	<p>Lee M. Whitman Benjamin N. Thompson Sarah H. Johnson Wyrick Robbins Yates & Ponton LLP 4101 Lake Boone Trail, Ste. 300 Raleigh, NC 27607 Attorneys for Harnett Health System, Inc.</p>
<p>Noah H. Huffstetler, III J. Blakely Kiefer Nelson Mullins Riley & Scarborough LLP GlenLake One, Suite 200 4140 Parklake Avenue Raleigh, NC 27612 Attorneys for Holly Springs Hospital II, LLC</p>	<p>Denise M. Gunter Candace S. Friel Nelson Mullins Riley & Scarborough LLP The Knollwood, Suite 530 380 Knollwood Street Winston-Salem, NC 27103 Attorneys for Holly Springs Hospital II, LLC</p>

This the 17th day of May, 2012.


Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
Telephone: (919) 733-2691
Facsimile: (919) 733-3407

Filed

STATE OF NORTH CAROLINA
COUNTY OF GRANVILLE

2012 MAY 15 AM 11:25
IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
11 DHR 14571

Alice M Oakley, Petitioner,	Office of Administrative Hearings	
)	
)	
vs.)	DECISION
)	
Division of Child Development Department of Health and Human Services,)	
Respondent.)	

This matter was heard before Administrative Law Judge Beecher R. Gray on March 29, 2012, in Raleigh, North Carolina.

APPEARANCES

For Petitioner: Alice M. Oakley
2138 Mountain Creek Road
Oxford, NC 27565

For Respondent: Letitia C. Echols
Assistant Attorney General
North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602

APPLICABLE STATUTES AND RULES

N.C.G.S. §§ 110-85, 110-88, 110-88(6a), 110-90(5), 110-90.2, 110-91(10), 110-98, 110-102.2(5), 110-105.2(a) and Child Care Rules 10A NCAC 09 .1716(b), 10A NCAC 09, .1719 and .2206.

ISSUES

Whether Respondent otherwise substantially prejudiced Petitioner's rights and acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule when it revoked the license issued to Alice M. Oakley to operate Alice M. Oakley's Day Care Home.

EXHIBITS ADMITTED INTO EVIDENCE

Respondent's Exhibits (hereinafter "R. Exs.") 1-6, 8-12, 14-18, and 20-21 were admitted. The undersigned took official notice of the relevant statutes and rules included in Respondent's Exhibit 22.

FINDINGS OF FACT

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents, exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge ("ALJ") makes the following Findings of Fact. In making these Findings of Fact, the ALJ has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to, the demeanor of the witnesses; 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.

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing and each stipulated on the record that notice was proper.
2. Respondent, Division of Child Development and Early Education¹ (the "Division" or "DCDEE"), is an administrative agency of North Carolina State Government operating under the laws of North Carolina and administering the licensing program for child care facilities in the State of North Carolina. See N.C.G.S. § 110-85, *et seq.*
3. Under N.C.G.S. § 110-85, the Division has a mandate to ensure that children in child care facilities are in physically safe and healthy environments where the developmental needs of the children are met.
4. Child care is highly regulated in North Carolina.
5. Given that minor children were involved in the subject allegations and investigation of this case, the undersigned will refer to the minor children and their parent(s) by initials only.
6. Sheronda Harris is a child abuse and neglect consultant with the Division. Consultant Harris has worked for the Division for nine (9) years. Previously, Consultant Harris worked for Child Protective Services in Guilford County. Consultant Harris holds a bachelor's degree in social work. Her responsibilities as a child abuse and neglect consultant for the Division include investigating licensed and unlicensed child care homes and centers in multiple counties.

¹ In July of 2011, the Division of Child Development became "The Division of Child Development and Early Education."

7. Deanna Hoxworth is a program manager for the Division's Abuse and Neglect Unit. Program Manager Hoxworth has worked for the Division for nine (9) years. Prior to her current position, she served as a case manager for a child abuse prevention center for three (3) years and performed child prevention service investigations for six (6) years after that. Program Manager Hoxworth holds a bachelor's degree in child and family development. Her responsibilities as program manager for the Division include supervising three (3) supervisors who oversee twelve (12) investigators in forty-nine (49) counties.
8. Tamara Barnes is the Regulatory Services Section Chief for the Division. Chief Barnes has worked for the Division for nineteen (19) years. Chief Barnes served the Division as Licensing Enforcement Program Manager for nine (9) years, Abuse & Neglect Supervisor for two (2) years, and Abuse & Neglect Consultant five (5) years. Chief Barnes previously worked as a child care director in for-profit and religion-sponsored centers, worked at Head Start Resource Referral, and served as a grant manager for Durham Resource Referral. Chief Barnes holds a bachelor's degree in psychology and early childhood from the University of North Carolina at Chapel Hill. Her responsibilities as the regulatory services section chief include: approving the issuance of administrative actions; overseeing the licensing enforcement staff; and overseeing consultants, managers, and supervisors who work across the state.
9. Betsy Stovall is a child protective services social worker for the Granville County Department of Social Services. Social Worker Stovall has worked with Granville County for twelve (12) years. Social Worker Stovall holds a B.S. degree in Social Work from Barton College. Social Worker Stovall's responsibilities include ensuring the safety of children by investigating reports of child maltreatment through interviews, site visits, and coordination with medical providers, law enforcement, and the Division of Child Development, when child care facilities are involved.
10. Dr. Mary Crowson was tendered and accepted as an expert in the field of child maltreatment. Dr. Crowson, who earned a Master of Science degree and PhD in Clinical Child Psychology from the University of Miami, has been a clinical assistant professor at the University of North Carolina School of Medicine ("UNC School of Medicine"), Department of Psychology since 2007. She served as a clinical instructor for one year in the same department. Dr. Crowson worked as a clinical psychologist in private practice for five years. She has also worked as a clinical reviewer, post-doctoral research associate, and adjunct professor at the UNC School of Medicine, Psychiatry Department. Dr. Crowson is published in several scholarly journals, including the Journal of Child Sex Abuse, The North Carolina Psychologist, and the International Journal of Behavioral Development. Her responsibilities include conducting forensic interviews of children who have alleged sex abuse as part of the BEACON program at UNC School of Medicine. Dr. Crowson interviewed the minor child, H.C., for the Child Medical Exam ("CME") in the above-captioned case.

11. Petitioner is the operator of "Alice M. Oakley's Day Care Home," a family child care home located at 2138 Mountain Creek Road, Oxford, North Carolina 27565, under a two-star license issued by Respondent. (R. Ex. 6)
12. Alice M. Oakley's Day Care Home initially received a one-star license on September 1, 2000. Petitioner received its two-star license on October 17, 2001. Its most recent two-star license was issued on July 26, 2010.

Background

13. On June 20, 2011, a child enrolled at Alice M. Oakley's Day Care Home disclosed to her mother that Petitioner's husband, Baxter Reid Oakley, had touched her private area with his fingers while H.C. was in Petitioner's care. H.C. disclosed that the abuse occurred while Petitioner was outside getting the mail or in the bathroom. (R. Ex. 21)
14. On June 21, 2011, H.C.'s parents took her to Granville County Sheriff's Department to report their five (5) year old daughter's disclosure of sexual abuse by Petitioner's husband. (R. Ex. 14)
15. Upon Detective Hunsucker's advice, H.C.'s parents took her to the Emergency Room at UNC Hospitals in Chapel Hill for an examination on June 29, 2011; however, the examination was not completed because of H.C.'s anxiety. (R. Ex. 21) H.C. physically was examined on June 30, 2012, while sedated. (*Id.*)
16. On June 21, 2011, the Division received a report from Granville County Division of Social Services ("DSS") that a child enrolled at Alice M. Oakley's Day Care Home, H.C., inappropriately had been touched by Petitioner's husband. (R. Ex. 1)
17. The Complaint Report was assigned to Sheronda Harris for investigation on June 21, 2011. Consultant Harris reviewed the information concerning Petitioner's facility in the Division's database then contacted Betsy Stovall to discuss the information Social Worker Stovall had gathered concerning the allegations. (R. Ex. 5)
18. On Social Worker Stovall's initial visit to Alice M. Oakley's Day Care Home, Petitioner stated that she thought that the allegations of abuse were based on a complaint made by another child, J.B., who was enrolled in Alice M. Oakley's Day Care in 2008. (R. Ex. 14)
19. On June 22, 2012, the Division summarily suspended Petitioner's license because sexual abuse of an enrolled child was alleged. Therefore, Petitioner's facility was not a safe and healthy environment for children and the conditions at the family child care home represented imminent threat of harm to children under 10A NCAC 09 .1719. (R. Ex. 3 & 4)
20. Consultant Harris hand-delivered the summary suspension to Petitioner on June 22, 2011. The action explained Petitioner's appeal rights and Consultant Harris discussed those rights with Petitioner. (R. Ex. 3 & 4)

21. Petitioner did not appeal the summary suspension.

22. On June 23, 2011, Dr. Mary Crowson, PhD conducted a forensic interview of H.C. at UNC Child Psychiatry in Chapel Hill. (R. Ex. 5 & 21) Dr. Crowson noted that H.C. had given consistent statements regarding her abuse on several occasions. (R. Ex. 21) H.C. reported that "Reid" touched her when Petitioner was outside getting the mail or in the bathroom. (*Id.*) H.C. was angry that Mr. Oakley would not stop touching her and told her mother about the inappropriate touching so her mother could make it stop. (*Id.*) H.C. has slept with her parents since her disclosure because she is scared or having bad dreams. In addition, H.C. "cries and hollers" when she is told "no" and is more forceful than she was before reporting the abuse. (R. Ex. 21) Because of the anger H.C. exhibited concerning Mr. Oakley's behavior and the changes in H.C.'s behavior, Dr. Crowson recommended that H.C. enter counseling. (*Id.*)

23. Based upon her examination and forensic interview with H.C., Dr. Crowson testified--and it is found that it is likely that--H.C. was inappropriately touched by Mr. Oakley.

24. On July 14, 2011, a warrant for Baxter Reid Oakley's arrest was issued in Granville County for two counts of taking indecent liberties with H.C. and J.B. (R. Ex. 15)

25. Baxter Reid Oakley turned himself in at the Granville County Sheriff's Office on July 18, 2011. (R. Ex. 16) Det. Hunsucker testified and the undersigned finds as fact that Mr. Oakley was released on a \$50,000 bond on the same day he was arrested.

26. On July 20, 2011, Granville County DSS substantiated sexual abuse against Baxter Reid Oakley and neglect against Alice M. Oakley and recommended that Petitioner's license permanently be revoked. (R. Ex. 18)

27. By letter dated July 21, 2011, Baxter Reid Oakley was notified that the N.C.D.H.H.S. Criminal Record Check Unit had disqualified him from caring for children on July 19, 2011 under N.C.G.S. § 110-90.2. (R. Ex. 10) The disqualification restricts Mr. Oakley from owning a family child care home, being an employee of a family child care home or a non-licensed home, being present when children are in care at a child care facility, and being a participating provider in the subsidized child care program. (*Id.*)

28. The disqualification letter informed Mr. Oakley that he had sixty (60) days to appeal this disqualification. (*Id.*) Mr. Oakley did not appeal his disqualification.

29. On August 22, 2011, Baxter Reid Oakley was indicted on two counts of taking indecent liberties with the minor children H.C. and J.B. (R. Ex. 17) At the time of this hearing, both charges still were pending.

30. Upon Consultant Harris' and the field staff's recommendations that Petitioner's license be revoked, Respondent's Licensing Enforcement Section of its Regulatory Division facilitated a review of the recommendation with the Internal Review Committee. The Internal Review Committee is comprised of a representative of each Division of

Respondent's Agency except the Regulatory Division, which proposes administrative actions. (R. Ex. 8 & 9)

31. Respondent's Licensing Enforcement Section reviewed the matrix, which is a database of administrative actions taken by the Division over the past three (3) years, and compared the current case to actions taken with similar fact situations in the matrix to assure consistency in actions it takes across the State. The Licensing Enforcement Section provided the Internal Review Committee information from its field staff and facilitated the Internal Review Committee meeting on October 18, 2011. The Internal Review Committee discussed the facts of the case and information provided.
32. After reviewing the information provided by the Licensing Enforcement Section, the Internal Review Committee decided revocation of Alice M. Oakley's Day Care Home's license was appropriate. (R. Ex. 9) On October 28, 2011, the Division sent a Proposed Notice of Administrative Action to Petitioner. Petitioner was allowed fifteen (15) days to provide a written response to the Division's notice. (*Id.*)
33. Petitioner provided a response to the Division's notice on November 7, 2011, in which she asserted that she never has left the children unsupervised or in the care of her husband. (R. Ex. 11)
34. Consultant Harris prepared a memorandum in which she reviewed the assertions in Petitioner's response and compared it with information gathered in her investigation. (R. Ex. 11) On November 22, 2011, the Division's Internal Review Committee considered Consultant Harris' memorandum, Petitioner's response, and Mr. Oakley's disqualification in determining that revocation was the appropriate action in this case. (*Id.*)
35. On December 1, 2011, Chief Barnes approved the revocation, and it was hand-delivered to Petitioner by Consultant Harris on December 2, 2011. (R. Ex. 5 & 12) Consultant Harris explained the information on Petitioner's appeal rights which were enclosed with the administrative action. (R. Ex. 5)
36. Petitioner filed her Petition for a Contested Case hearing on December 15, 2011.

Statutory Authority

37. Incidents of abuse and neglect at child care facilities are violations of child care requirements. Under N.C.G.S. § 110-105.2(a), the Division, local departments of social services, and law enforcement shall cooperate with medical professionals to properly investigate reports of abuse or neglect in child care facilities.
38. Under N.C.G.S. § 110-88(6a), the Child Care Commission has adopted rules for administrative action against a child care facility when the Division's investigations substantiate the occurrence of child abuse or neglect at the facility.

39. The Division has the authority to issue administrative actions, up to and including revocation of a license, when it determines that child abuse or neglect has occurred in a licensed facility. N.C.G.S. § 110-90(5).
40. When child care facilities fail to comply with child care requirements, the Division may permanently revoke a license. N.C.G.S. § 110-102.2(5).
41. Adequate supervision at child care family homes is required by 10A NCAC 09 .1718(a)(7)(A), which requires:

Adequate supervision as described below:

(A) For children who are awake, staff shall interact with the children while moving about the indoor or outdoor area, **and shall be able to hear and see the children at all times**, except when emergencies necessitate that direct supervision is impossible for brief periods of time.

(Emphasis added)

Under N.C.G.S. § 110-98, it is unlawful to provide child care in violation of child care statutes.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this contested case under Chapters 110 and 150B of the North Carolina General Statutes.
2. All parties correctly have been designated, there is no question as to misjoinder or nonjoinder, and the notice of hearing was proper.
3. The primary purpose of child care regulation in the state is defined as providing for the health, safety, and developmental well-being of children in child care facilities. N.C.G.S. § 110-85.
4. At all times relevant to this matter, Petitioner's facility was subject to the child care licensure laws and rules of the State of North Carolina.
5. At all times relevant to this matter, Petitioner's facility operated under a license issued by Respondent.
6. Under N.C.G.S. § 110-105.2(a), Respondent, local DSS agencies, and local law enforcement shall cooperate with the medical community to ensure that reports of abuse or neglect at child care facilities are investigated properly.

7. Mr. Oakley's inappropriate touching of H.C. was not nurturing or appropriate and was not consistent with H.C.'s developmental needs under N.C.G.S. § 110-91(10).
8. Petitioner's failure to adequately supervise the children in her care created an unsafe environment which allowed Mr. Oakley opportunities to inappropriately touch children enrolled in the facility in violation of 10A NCAC 09 .1718(a)(7)(A).
9. The allegations of sexual abuse by Petitioner's husband posed imminent danger to children in Petitioner's care in violation of 10A NCAC 09 .1719.
10. The Division properly exercised its authority to permanently revoke Petitioner's license for her failure to comply with child care requirements under N.C.G.S. § 110-102.2.
11. Respondent properly exercised its authority to revoke a license because Petitioner's violations of child care requirements were hazardous to health or safety under 10A NCAC 09 .2206.
12. Respondent did not otherwise substantially prejudice Petitioner's rights by revoking Petitioner's license.
13. Respondent did not act erroneously by revoking Petitioner's license.
14. Respondent did not fail to use proper procedure by revoking Petitioner's license.
15. Respondent did not act arbitrarily or capriciously by revoking Petitioner's license.
16. Respondent did not fail to act as required by law or rule by revoking Petitioner's license.

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

DECISION

Respondent's decision to revoke Petitioner's child care license is supported by a preponderance of substantial evidence and is **AFFIRMED**.

NOTICE


The Agency that will make the final decision in this contested case is the North Carolina Department of Health and Human Services, Division of Child Development.

The Agency is required to give each party an opportunity to file exceptions to the decision and to present written arguments to those in the Agency who will make the final decision. N.C. Gen. Stat. § 150-36(a). The Agency is required by N.C. Gen. Stat. § 150B-36(b)

to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorneys of record and to the Office of Administrative Hearings.

In accordance with N.C. Gen. Stat. § 150B-36 the Agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence. For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the agency in not adopting the finding of fact. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact.

This the 15 day of May, 2012.


Beecher R. Gray
Administrative Law Judge

A copy of the foregoing was mailed to:

Alice M Oakley
2138 Mountain Creek Road
Oxford, NC 27565
PETITIONER

Letitia C. Echols
Assistant Attorney General
NC Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

This the 15th day of May, 2012.



Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 431 3000
Fax: (919) 431-3100

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

Filed
2012 APR 20 PM 5:00

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 DHR 00861

Trinity Child Care II & I,	Office of	
Petitioner,	Administrative Hearings	
)	
)	
vs.)	
)	
North Carolina Department of Health)	<u>FINAL DECISION</u>
and Human Services, Division of)	
Public Health, Child and Adult Care)	
Food Program)	
Respondent.)	

This contested case was heard before Julian Mann, III, Chief Administrative Law Judge, on March 28, 29, and 30, 2012 in the Office of Administrative Hearings in Raleigh, Wake County, North Carolina.

APPEARANCES

For Petitioner: J. Scott Flowers and Natasha M. Boone
Hutchens, Senter, Kellam & Pettit
Attorneys at Law
4317 Ramsey Street
Fayetteville, North Carolina 28302

For Respondent: Janelle E. Varley,
Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUE

Whether Respondent had sufficient legal and factual justification to deny Petitioner's claims for reimbursement for October, November, December 2011 and January 1 through 12, 2012, based upon Respondent's January 13, 2012 approval date of Petitioner's 2011-2012 Child and Adult Care Food Program Agreement?

STATUTES AND RULES

42 U.S.C. § 1766

7 C.F.R. § 226.2
7 C.F.R. § 226.6
7 C.F.R. § 226.11
N.C.G.S. § 130A-361
10A N.C.A.C. 43J.0101

EXHIBITS

Petitioner's Exhibits A through O were admitted into evidence.

Respondent's Exhibits A1 through A13 were admitted into evidence.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, along with documents and exhibits received and admitted into evidence and the entire record in this proceeding, the undersigned administrative law judge has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. Petitioner, Trinity Child Care II & I, is a child care center with its principal place of business in Fayetteville, Cumberland County, North Carolina.
2. Respondent, the North Carolina Department of Health and Human Services ("NCDHHS"), Division of Public Health ("DPH"), is the State agency authorized to administer the CACFP in North Carolina.
3. The Child and Adult Care Food Program ("CACFP") is a federally funded program administered by the United States Department of Agriculture ("USDA").
4. The purpose of the CACFP is to provide nutritious meals to children and adults enrolled in nonresidential care institutions, such as child care centers, day care homes, and adult day care centers, through the operation of a nonprofit food service program. Participating Institutions are provided monetary reimbursement for qualifying meals served to enrolled children and adult participants by submitting monthly claims for reimbursement to the State agency.
5. CACFP is governed by Title 7, Code of Federal Regulations, Part 226 which is promulgated by the USDA.

6. Respondent incorporated by reference 7 C.F.R. Part 226 in the North Carolina Administrative Code at 10A NCAC 43J .0101. No other rules have been adopted in Subchapter 43J.

7. Under 7 C.F.R. § 226.2, "Institution" means a sponsoring organization, child care center, at-risk afterschool center, outside-school hours care center, emergency shelter or adult day care center which enters into an agreement with the State agency to assume final administrative and financial responsibility for Program operations. Petitioner has participated in the CACFP for approximately ten years. More than 400 pre-school and school aged children are provided meals by Petitioner each school day through Petitioner's participation in the CACFP.

8. Institutions submit applications in order to receive approval from the state agency to participate in the CACFP.

9. The CACFP Agreement ("Agreement") is the contract between the Institution and the state agency that sets forth the terms and conditions with which the Institution and the state agency agree to comply.

10. Institutions within North Carolina, such as Petitioner, submit applications in order to receive approval from Respondent to participate in the CACFP.

11. Respondent administers the CACFP. 7 C.F.R. § 226.6(a) requires Respondent: "[P]rovide sufficient consultative, technical, and managerial personnel to: (a) Administer the Program; (2) Provide sufficient training and technical assistance to institutions; (3) Monitor Program performance; (4) Facilitate the expansion of the Program in low-income and rural areas; and (5) Ensure effective operation of the Program by participating institutions."

12. 7 C.F.R. § 226.6(b) requires Respondent to: "[E]stablish application review procedures, in accordance with paragraphs (b)(1) through (b)(3) of this section, to determine the eligibility of new institutions, renewing institutions, and facilities for which applications are submitted by sponsoring organizations."

13. 7 C.F.R. § 226.6(b)(2) controls Petitioner's application procedures as a renewing institution under the CACFP.

14. Both Petitioner and Respondent must implement and comply with the stated purpose of the CACFP as set forth in 7 C.F.R. § 226.1: "...[T]o enable such institutions to integrate a nutritious food service with organized care services to enrolled participants."

15. Petitioner, pursuant to 7 C.F.R. § 226.2, was a renewing institution as it was participating in the CACFP at the time it submitted its renewal application to Respondent in October of 2011.

16. Petitioner participated in the CACFP for at least the previous ten years prior to its current renewal application. The CACFP fiscal year runs from October 1st through the end of September of the following year. Petitioner's agreement with Respondent for participation in the CACFP for the fiscal year 2010-2011 expired October 1, 2011.

17. Under 7 C.F.R. Part 226, Petitioner, as a renewing institution, was to receive uninterrupted reimbursements for food costs allowed by the CACFP and expended by Petitioner during the 60 day period following October 1, 2011, so long as Petitioner applied for renewal of its participation in the CACFP and such application was accepted by Respondent within the 60 day period.

18. For the previous ten years, Petitioner routinely submitted its CACFP renewal application at the end of September or beginning of October of each year. Petitioner's application had always been approved prior to the 60 day period expiring and Petitioner's payments during the previous ten year period had never before lapsed.

19. In reliance upon its course of dealings with Respondent, with the expectation of receiving reimbursement, Petitioner continuously provided meals to its eligible children in need at its child care center on each business day beginning October 1, 2011, and continuing through January 12, 2012.

20. On October 10, 2011, Respondent received Petitioner's renewal application for participation in the CACFP for the 2011-2012 fiscal year.

21. Petitioner's renewal application was submitted to and received by Diedra Jackson ("Ms. Jackson"), Respondent's employee. Ms. Jackson, was assigned as Petitioner's consultant under the CACFP and authorized by Respondent to accept and review Petitioner's renewal application.

22. By letter dated October 24, 2011, Ms. Jackson denied Petitioner's renewal application. Respondent's basis for denial was that Petitioner's application was incomplete.

23. Petitioner submitted a second renewal application. This application was received on November 2, 2011.

24. By letter dated November 17, 2011, Ms. Jackson denied Petitioner's second renewal application. The basis for denial was that Petitioner's application was incomplete.

25. Petitioner submitted its third renewal application. This application was received on November 28, 2011.

26. Petitioner's third renewal application cured Petitioner's previous omissions, complied with Respondent's asserted omissions and contained all information required and

necessary for acceptance of the application as proscribed in 7 C.F.R. § 226.6(b)(2) for a complete application.

27. As specified in 7 C.F.R. § 226(b)(3) Respondent was required to accept or reject Petitioner's completed application for CACFP renewal within 30 days of receipt.

28. By letter dated December 6, 2011, Ms. Jackson denied Petitioner's third renewal application. The bases for denial of this application was non-compliance with internal procedures and forms created by Respondent, which were not set forth in 7 C.F.R. § 226.6(b)(2) or North Carolina's Administrative Code.

29. Petitioner's third application was deemed incomplete because it did not comply fully with Respondent's asserted requirements of how that information should be reported, e.g.: (1) Petitioner executed and produced the conflict of interest policy given to it by Respondent, signed the notarized statement attesting that it had its own conflict of interest policy, but did not submit both Respondent's policy and its own policy as required by Respondent; (2) Petitioner produced receipts and other documents showing its expenditures, but Petitioner did not summarize those expenditures in letter form as required by Respondent; and (3) Petitioner entered all of the requested information in Respondent's application forms, but Petitioner did not total some categories and place the total on the proper form.

30. Petitioner's fourth application for renewal was received by Respondent on December 12, 2011. This application, as well as subsequent applications, were treated by Respondent as an application for a "New Institution" as defined in 7 C.F.R. § 226.2.

31. Respondent failed to inform or give notice that Petitioner's application submitted on December 12, 2011, and its subsequent applications, were treated as applications by a New Institution, and that, accordingly, the application procedures would now fall under the guidelines of 7 C.F.R. § 226.6(a)(1) as a New Institution, rather than 7 C.F.R. § 226.6(b)(1) for Renewing Institutions.

32. 7 C.F.R. § 226.6(b)(4)(ii)(B) requires that, "If a state agency denies the application of a renewing institution, it must temporarily extend its agreement with that institution in accordance with paragraph (c)(2)(iii)(D)." Paragraph (c)(2)(iii)(D) provides that, upon denial of a renewing institution's application, the state agency must temporarily extend its current agreement with the renewing institution and continue to pay any valid unpaid claims for reimbursement during the time allotted for corrective action and/or the conclusion of any administrative review.

33. Respondent did not inform Petitioner or give notice to Petitioner of Petitioner's rights under 7 C.F.R. § 226.6(b)(4)(ii)(B).

34. 7 C.F.R. § 226.11(a) allows the state agency implementing CACFP to “[D]evelop a policy under which centers are reimbursed for meals served in accordance with provisions of the Program in the calendar month preceding the calendar month in which the agreement is executed, or the state agency may develop a policy under which centers receive reimbursement only for meals served in approved centers on and after the effective date of the Program agreement.”

35. Respondent designated Arlene Cowan (“Ms. Cowan”) the duty of creating and implementing agency policies, procedures, and rule making with regard to CACFP applications by institutions. Respondent also designated Ms. Cowan as the one individual in charge of administering the CACFP program.

36. Ms. Cowan created and implemented unpromulgated policies and procedures for the Respondent in regard to applications for CACFP participation and compliance by participating institutions by reading applicable portions of 7 C.F.R. Part 226 and announcements by the USDA, interpreting these announcements and establishing binding policies, interpretive statements, regulations, and standards based solely upon her interpretation.

37. Ms. Cowan implemented an unpromulgated policy whereby renewing institutions would receive reimbursement only for meals served in approved centers on and after the effective date of the Program agreement.

38. Petitioner submitted additional applications on December 22, 2011, January 3, 2012, and January 6, 2012.

39. Respondent adopted an unpromulgated policy whereby applications for participation in the CACFP must be approved by two parties within Respondent’s Agency. First, the applicant’s assigned consultant must review and approve the application. Once the assigned consultant approves the application, this consultant sends the application to a second individual for review and approval.

40. Respondent received Petitioner’s application for the second tier review on January 9, 2012. Petitioner’s November 28, 2011 application was not submitted for a second tier review.

41. Respondent approved Petitioner’s application on January 13, 2012. Petitioner was denied reimbursement for October 1, 2011 through January 12, 2012.

42. Ms. Jackson was assigned as the sole consultant to review the applications of 140 institutions seeking renewal of their CACFP agreements in 11 counties in North Carolina at the time she reviewed Petitioner’s application.

43. On at least two occasions prior to November 30, 2011, Petitioner requested that Ms. Jackson meet with Mary Mathis, Director of Operations for Trinity, for assistance in completing the renewal application. Ms. Jackson was not able to meet the requests.

44. Respondent responded in writing to Petitioner's incomplete application on 10/24/11, 11/17/11, 12/6/11, and 12/16/11. Respondent provided instructions in the Incomplete Application letters in an attempt to assist Petitioner in completing their application. (Resp't Exs. A3, A4, A5, A6, and A7). Respondent provided assistance to Petitioner in completing their CACFP application through trainings, memos, instructions, letters, phone calls, and faxes. (Resp't Exs. A2, A3, A4, A5, A6, A7, A10, and A13).

45. Respondent changed some of the application forms for the CACFP 2011-2012 fiscal year.

BASED UPON the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction of this contested case pursuant to Chapters 130A and 150B of the North Carolina General Statutes.

2. The Child and Adult Care Food Program is authorized by 42 U.S.C. § 1766 and regulated by the United States Department of Agriculture pursuant to 7 C.F.R. Part 226.

3. The Respondent administers CACFP in North Carolina pursuant to N.C.G.S. § 130A-361 and 10A N.C.A.C. 43J.010. ¹ Pursuant to these provisions, Respondent is vested with the authority to review and approve applications to participate in the CACFP, enter into agreements with Institutions, and process claims for reimbursement.

4. Petitioner operates an "institution" within the meaning of 7 C.F.R. § 226.2.

5. In order to be eligible to claim and receive reimbursement, an institution must have a valid agreement with the state agency. 7 C.F.R. § 226.11(a).

6. The definition for "new institution" includes the phrase "lapse in participation." 7 C.F.R. § 226.2. Respondent interpreted the term "lapse in participation" found in a federal regulation to occur when a previously-participating institution operates for two or more months

¹ Petitioner made no direct challenge to this rule in its present form; however, Respondent's counsel was uncertain as to the present validity of the information contained therein which incorporates by reference 7 C.F.R. Part 226. This rule has not been amended since its original effective date of August 1, 1998.

without a valid CACFP agreement, but Respondent has not promulgated a rule to implement Respondent's interpretation nor followed the procedures required for public hearing, determination of fiscal costs or review by the Rules Review Commission.

7. Because Respondent determined that Petitioner lapsed in participation, Respondent treated Petitioner as a "new institution" for purposes of reimbursement, but Respondent has not promulgated a rule to implement Respondent's interpretation, nor followed the procedures required for public hearing, determination of fiscal costs, or review by the Rules Review Commission before a rule becomes effective and codified.

8. Pursuant to the North Carolina Administrative Procedure Act, Chapter 150B (the "APA"), and specifically G.S. 150B-2(8a), "Rule" means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or *a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency.* (Emphasis added.) G.S.150B-(8a)(c) defines nonbinding interpretive statements as "statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule." Respondent's interpretations that were not adopted as a rule are "nonbinding." Respondent's interpretation of "new institution" and "lapse in participation" are nonbinding interpretative statements.

9. In administering the CACFP, Respondent is not exempted from Article 2A of Chapter 150B.

10. Pursuant to N.C. Gen. Stat. § 150B-18, an interpretative statement made by Respondent is not valid unless it is adopted in substantial compliance with the APA. G.S. 150B-18 specifically and affirmatively prohibits the enforcement of a nonbinding interpretative statement. It is quoted as follows:

An agency shall not seek to implement or enforce against any person a policy, guideline, or other nonbinding interpretive statement that meets the definition of a rule contained in G.S. 150B-2(8a) if the policy, guideline, or other nonbinding interpretive statement has not been adopted as a rule in accordance with this Article.

11. To the extent a particular method for submitting information by a renewing institution to Respondent for participation in the CACFP is not prescribed in 7 C.F.R. Part 266 or North Carolina law, such methods must be adopted as a rule as defined in G.S. 150B-2(8a).

12. To the extent a particular method for submitting information by a renewing institution is not prescribed in 7 C.F.R. Part 266 or North Carolina law, or properly adopted as a rule pursuant to the APA, such method does not carry the force of law, or failure to comply with such methods cannot serve, by itself, as the basis to deny the application of a renewing institution for participation in the CACFP. *See Dillingham v. N.C. Dept. of Human Resources*, 132 N.C. App. 704 (1999).

13. 7 C.F.R. § 226.2 defines a new institution as an institution applying to participate in the Program for the first time, or an institution applying to participate in the Program after a lapse in participation.

14. Respondent interprets “lapse in participation” to apply to institutions that have previously participated in the program and have not had a valid agreement with the State agency for more than 60 days. *See* Resp’t Ex. A12. This interpretation was not adopted as a rule and is not enforceable against Petitioner.

15. 7 C.F.R. Part 226 does not grant a state agency authority to require renewing institutions to provide information in addition to that set out in 7 C.F.R. § 226.6(b)(2), unless proscribed by rule. To the extent a state agency denies an application for participation in the CACFP solely on the basis that the applicant failed to provide information required by the agency, and such standards are not adopted as a rule and not required by 7 C.F.R. Part 226, such denial is invalid as contrary to law.

16. Because Respondent denied Petitioner’s November 28, 2011 renewal application solely on the basis that Petitioner did not provide information required by Respondent, in methods required by Respondent, but not required by 7 C.F.R. § 226.6(b)(2), North Carolina law, or in rules properly adopted pursuant to the APA, such denial was erroneous.

17. Ms. Jackson’s December 6, 2011 letter to Petitioner constituted an impermissible denial of Petitioner’s completed application.

18. Upon the denial of Petitioner’s completed application, Respondent was required to give Petitioner notice of its right to seek review of the denial and was required to extend Petitioner’s prior agreement and continue to make payments to Petitioner during the period of review pursuant to 7 C.F.R. § 226.6(b)(4)(ii)(B).

19. Respondent failed to implement the requirements of 7 C.F.R. § 226.6(b)(4)(ii)(B) in its December 6, 2011 denial of Petitioner’s application.

20. Respondent’s interpretative statement, per Ms. Cowan’s interpretation of 7 C.F.R. § 226.6.11(a) whereby renewal applicants received reimbursement only for meals served in approved centers on and after the effective date of the Program agreement, rather than beginning the month prior to the Program agreement, required the adoption of a rules as that term is defined in G.S. 150B-2(8a).

21. By Respondent’s failure to adopt rules regarding the interpretation of the C.F.R. and by the Respondent’s failure to adopt rules regarding the establishment of standards that described the procedure and practice requirements of the application process for CACFP participation, wherein these imposed standards interpret, establish, or exceed the requirements of

7 C.F.R. Part 226, Respondent, in seeking to bind Petitioner to its interpretation, exceeded Respondent's authority, failed to use proper procedure, and failed to act as required by law.

22. Respondent acted erroneously by denying Petitioner's valid or substantially valid November 28, 2011 application for participation in the CACFP; by failing to inform Petitioner of its rights to seek review of its December 6, 2011 denial; by failing to extend Petitioner's prior agreement; and by failing to promulgate APA rules to determine Petitioner's eligibility for reimbursement. Petitioner is entitled to receive for the period October 1, 2011 through January 12, 2012, the claimed amount of \$40,000.00, or an amount that may otherwise be mutually accepted as accurate by Petitioner and Respondent.

23. To the extent in this Final Decision that the Findings of Fact contain Conclusions of Law or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the Undersigned makes the following:

DECISION

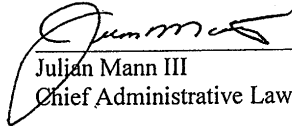
Petitioner's Agreement for participation in the CACFP with Respondent for fiscal year 2011-2012 shall be October 1, 2011. Respondent shall pay to Petitioner the CACFP reimbursement amount of \$40,000.00 as claimed or as may be otherwise mutually accepted as accurately calculated by Petitioner and Respondent for the period October 1, 2011 through January 12, 2012. Respondent shall also reimburse to Petitioner its filing fees as Petitioner is the prevailing party.

IT IS SO ORDERED.

NOTICE

Under G.S. 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge may commence such appeal by filing a Petition for Judicial Review in the Superior Court of Wake County. The party seeking review must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision [This Final Decision was mailed on April 23, 2012]. Under G.S. 150B-47, the Office of Administrative Hearing is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 20th day of April, 2012.


Julian Mann III
Chief Administrative Law Judge

Filed

2012 MAY 25 PM 3:44

STATE OF NORTH CAROLINA
COUNTY OF ROBESON,

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
Administrative Hearings
11 DOJ 13148

ATHENA LYNN PREVATTE)

Petitioner,)

v.)

NORTH CAROLINA SHERIFFS'
EDUCATION AND TRAINING
STANDARDS COMMISSION)


Respondent.)

PROPOSAL FOR DECISION

On April 10, 2012, Administrative Law Judge Joe Webster heard this case in Fayetteville, North Carolina. This case was heard after Respondent requested, pursuant to N.C.G.S. Section 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: Pro se
Respondent: Catherine F. Jordan, Assistant Attorney General


rings
99-9001

ISSUE

Does substantial evidence exist to revoke Petitioner's certification as a deputy sheriff with the Robeson County Sheriff's?

EXHIBITS ADMITTED INTO EVIDENCE

Respondent: Exhibits 1-15

RULES

12 NCAC 10B .0204(d)(1)
12 NCAC 10B .0103(10)(b)
12 NCAC 10B .0205(2)(a)
N.C.G.S. ' 14-160

FINDINGS OF FACT

1. On August 11, 2005, the Robeson County Sheriff's Office submitted a Report of Appointment Form F-4 to the Commission on behalf of Petitioner. (Respondent's Exhibit 1) Petitioner received her probationary certification on August 16, 2005, and received her general certification on August 18, 2006 through the Commission while employed with the Robeson County Sheriff's Office. (Respondent's Exhibit 15) Petitioner has been employed with the Robeson County Sheriff's Office since on or about August 16, 2005.
2. On February 9, 2011, a misdemeanor criminal summons was issued against Petitioner for second degree trespass and first degree trespass. (Respondent's Exhibit 2) The complainant for the criminal summons was Stephen Hunt, and the date of offense was February 1, 2011. The criminal summons stated that Petitioner went on the premises of Stephen Hunt without authorization after she had been notified not to enter and remain there by Stephen Hunt, the owner, person in charge of the premises, lawful occupant, and authorized person.
3. On February 9, 2011, another misdemeanor criminal summons was issued against Petitioner for second degree trespass and injury to personal property. (Respondent's Exhibit 2) The complainant for the criminal summons was Stephen Hunt, and the date of offense was February 6, 2011. The criminal summons stated that Petitioner went on the premises of Stephen Hunt without authorization after she had been notified not to enter and remain there by Stephen Hunt, the owner, person in charge of the premises, lawful occupant, and authorized person, and that she unlawfully and willfully did wantonly injure personal property, a 2003 Chevy Silverado Pickup Truck, the property of Stephen Hunt. The damage caused was in excess of \$200.00.
4. On March 1, 2011, the charges from the offense date of February 1, 2011 were dismissed. (Respondent's Exhibit 2) The dismissal stated that the prosecuting witness did not wish to proceed.
5. On March 1, 2011, the charges from the offense date of February 6, 2011 were dismissed. (Respondent's Exhibit 2) The dismissal stated that the prosecuting witness did not wish to proceed, and that \$800.00 in restitution paid in open court.
6. On or about March 10, 2011, the Commission received notice of Petitioner's criminal charges. (Respondent's Exhibit 3) The Commission's Deputy Director Diane Konopka (Konopka) sent a memorandum to the Commission's Eastern Field Investigator Ted D. Sauls (Sauls) requesting that he conduct an investigation into Petitioner's criminal charges, and, at a minimum, interview Petitioner, Stephen Hunt (Hunt), and the arresting officer. Sauls interviewed Petitioner, Stephen Hunt, Robeson County Sheriff's Office Deputy Sheriff Charles Jacobs, Robeson County Sheriff's Office Deputy Sheriff, Larry Hunt, and Robeson County Sheriff's Office Major, Randy McGuirt.

7. On May 18, 2011, Sauls interviewed Petitioner. (Respondent's Exhibit 4) In the interview Petitioner stated that she and Hunt were dating and living together until he filed the charges against her. She stated that she is 6 ½ months pregnant with Hunt's child. Petitioner stated that she went to Hunt's residence on February 1, 2011 and February 6, 2011 to talk with him. She stated that he had not previously told her to stay away from him or his residence. She stated that she went to his residence to talk with him because he left her without an explanation. She said that they had not been having any trouble and she did not understand why he left her. She said that after her visit on February 6, 2011, Hunt accused her of trespassing and damaging his truck. She said that he charged her with trespassing and injury to personal property a couple of days later. Petitioner's testimony .
8. In the May 18, 2011 interview, Petitioner denied causing any damage to his truck and that the charges were not true. She stated that her attorney told her that he did not think that she could be convicted, but that there was a 5% chance the court might rule against her. Petitioner stated that her attorney advised her to pay Hunt for the damage to his truck and have the charges dismissed. She said that her attorney told her that his fee would be \$800.00 and if she paid Hunt the \$800.00 damage, her attorney would not charge any fee for representing her. Petitioner stated that her attorney told her to pay \$800.00, and that it was best so that she would not lose her law enforcement certification. Petitioner stated that she reluctantly agreed to pay \$800.00 to Hunt to end the matter.
9. On May 18, 2011, Sauls interviewed Hunt. (Respondent's Exhibit 4) In the interview Hunt stated that he and Petitioner were in a dating relationship, and that on February 1, 2011, Petitioner told him that it was best for him to collect his belongings from her house and for him to move on. Hunt stated that he told Petitioner on the telephone that it was over and that she did not need to come back to his house. Hunt stated that Petitioner arrived at his house on February 1, 2011 and was crying, and he told her three times to leave and she left when he stated that he was going to call the Sheriff's Office.
10. In the May 18, 2011 interview, Hunt stated that on February 6, 2011, his wife, whom he was not living with, stopped by his house to drop off their children, and later testified that she stopped by his residence at approximately 11:30pm. Hunt stated that Petitioner stopped by his house when his wife was there, and that Petitioner started beating on his door and yelling at him. Hunt stated that he could hear sounds of beating and banging outside. He stated that he did not open the door, and Petitioner left. Hunt called the Sheriff's Office, and Deputy Jacobs arrived at his residence. Hunt showed Deputy Jacobs his truck that had been keyed or scratched several times from the cab to the tailgate. Hunt stated that he had two citronella candles under his car port, and that one of those was missing. He stated that he found the citronella candle in the back of his truck and it appeared that it had been thrown against the back glass of the truck and it dented or pitted the glass. Hunt stated that his truck was not damaged when he got home and that he is sure that Petitioner did the damage.
11. On May 18, 2011, Sauls spoke with Deputy Jacobs. (Respondent's Exhibit 4) Deputy

Jacobs told Sauls that he went to Hunt's residence the night of February 6, 2011, and that Hunt showed him the scratches and dents he said that Petitioner did to his truck.

12. On May 18, 2011, Sauls spoke with Sergeant Larry Hunt. (Respondent's Exhibit 4) Sergeant Hunt stated that Hunt also showed him the damages he said Petitioner did to his truck. Sergeant Hunt said that the truck had scratches on the driver's side and a dent on the rear window. He said that he saw a citronella bucket that he been thrown against the rear window and was resting in the bed of the truck. He also stated that while he was talking on the phone with Hunt when he called him for help the night of February 6, 2011, that he heard Petitioner's voice over Hunt's cell phone. Sergeant Hunt stated that Petitioner was yelling at Hunt telling him to open the door.
13. On May 20, 2011, Sauls spoke with Major Randy McGuirt. (Respondent's Exhibit 4) Major McGuirt stated that he placed Petitioner on administrative leave due to her behavior and the allegations Hunt made against her as a result of the February 1 and 6, 2011 incidents.
14. At the administrative hearing, Konopka testified that she requested that Sauls conduct the investigation. She testified that the Commission's staff collected the documents to be submitted to the probable cause committee.
15. Hunt testified that he and Petitioner met at work at the Robeson County Sheriff's Office. He testified that in May 2010, he was married with two children, ages four and six. He testified that in May 2010, Petitioner texted him about a photograph from high school or a high school reunion, and that they began texting each other regularly. He testified that they went out for a meal occasionally, and, in May 2010 they began a sexual relationship. He testified that they continued their sexual relationship. In September 2010, his wife moved out of his residence, and he moved into Petitioner's residence. He testified that when he had custody of his children, they stayed at Petitioner's residence. He testified that Petitioner became pregnant in October or November 2010. He testified that he took a paternity test and that the child is his. He testified that on January, 31, 2011, he decided to end his relationship with Petitioner. Until January 31, 2011, Hunt and his children had been residing at Petitioner's residence and stayed at her residence the night of January 31, 2011. On February 1, 2011, Hunt went to Petitioner's residence and packed up his and his children's belongings, and moved out of her residence and returned to his residence. He testified that he did not contact Petitioner because there was nothing else to say. Hunt testified that Petitioner called and texted him, and that he did not respond to her telephone calls or her text messages.
16. Hunt testified that he did not speak with Petitioner from February 1 through February 6. He testified that on February 6, he watched the Super Bowl at his residence by himself. He testified that he left his residence at halftime around 9:00pm to go to McDonald's to get something to eat. He testified that he saw his truck around 9:00pm at his residence and at McDonald's and that it did not have any scratches on the truck. He testified that

although it was dark outside, he could see his truck clearly at his residence and at McDonald's.

17. Hunt testified that around 11:30 pm, his wife stopped by his house to bring their children to the residence. He testified that his wife entered his residence, and that they were there talking when he saw headlights in his driveway. He testified that he heard someone knock on his door, and that he looked outside of his window and saw that Petitioner was outside. He testified that his wife and him turned off the lights in the house and did not go outside. He testified that he walked away from the door and called the Sheriff's Office. He testified that he did not see Petitioner scratch his truck or throw the candle at his truck. He testified that he and his wife are still married, have reconciled, and are living together.
18. Deputy Sheriff Jacobs, Deputy Sheriff Larry Hunt, and Major Randy McGuirt were present and ready to testify, but upon the request of the Administrative Law Judge, it was stipulated that their testimony would be substantially similar to Hunt's testimony and their statements to Sauls.
19. Petitioner testified that in January and February 2011, Hunt and she were living together with his children, and that she was two or three months pregnant with his baby. Petitioner testified that on February 1, 2011, Hunt packed up his and his children's belongings from her residence and left. Petitioner testified that she did not know why Hunt left her. Petitioner testified that on February 6, 2011, she had not heard from Petitioner since February 1, and that they had previously planned on having a Super Bowl party together at her residence with their friends. She testified that his friends arrived at her residence on February 6 for the Super Bowl party, and were asking where Hunt was. She testified that after the Super Bowl party, she wanted to drive around, and she asked her friend Melissa Roam to ride around with her. She testified that she wanted to drive by Hunt's residence to see whether he was at home, and to see one more time if he would speak with her because he never told her why he left her.
20. Petitioner testified that she and Roam arrived at Hunt's residence and saw Hunt's truck, his service car, and Hunt's wife's car in the driveway. Petitioner testified that he walked up to Hunt's door and knocked on the door. Petitioner testified that the door's hinges were loose, and that the knock sounded loud because of the loose hinges. Petitioner testified that she saw Hunt look at her from inside the residence, and turn off the lights inside the residence. Petitioner testified that she knocked on the door a few times, then turned around and walked straight back towards her car. Petitioner testified that she did not come near the driver's side of Hunt's truck. Petitioner testified that Roam could see her the entire time, or that she was in Roam's line of sight the entire time. Petitioner denied scratching Hunt's truck or throwing the citronella candle at his truck.
21. Petitioner testified that when she went to court on these charges, her attorney told her that she could either pay him \$800, and he would give the money to Hunt for his truck and the charges would be dismissed, or that they could go to trial and her attorney would charge

her around \$2300 in attorney fees and there may be a chance that she would be found guilty. Petitioner testified that she chose to give her attorney \$800 and have the charges dismissed rather than give her attorney \$2300 after going to trial and possibly being found guilty. Petitioner testified that she did not go in front of a judge, and that everything was handled between her, her attorney, and Hunt.

22. Roam testified that she and Petitioner drove around after the Super Bowl party on February 6, 2011, and drove by Hunt's residence. She testified that they stopped at Hunt's residence. Roam testified that she saw Petitioner walk to Hunt's door and knock on the door. She testified that she saw Petitioner knock on the door a few times, and she saw the lights turn off inside the residence. Roam testified that she did not see Petitioner kick or scream. She testified that she saw Petitioner turn around and walk away from the door and directly to her vehicle. She testified that she watched Petitioner the entire time they were at Hunt's residence, and that she did not see Petitioner walk near the driver's side of Hunt's truck. She testified that she did not see Petitioner scratch Hunt's truck, and she did not see Petitioner throw a citronella candle his truck.
23. Roam testified that she went to court with Petitioner for the charges. Roam testified that Petitioner's attorney told her that Petitioner could either pay him \$800, and he would give the money to Hunt and the charges would be dismissed, or they could go to trial, and her attorney would charge her approximately \$2300, and she may be found guilty. Roam testified that she had never been to court before, except for going to court with her son for her son's traffic violation and that she had never been charged criminally. She testified that she was a dental hygienist in Lumberton. Roam's testimony was very credible and served to balance the preponderance of the evidence in favor of Petitioner's version of the events relating to whether she damaged Roam's truck.

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 the matter. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are findings of fact, they should be so considered without regard to the given labels.
2. The North Carolina Sheriffs' Education and Training Standards Commission has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to deny, revoke, or suspend such certification.
3. 12 NCAC 10B .0204(d)(1) states that [t]he Commission may revoke, suspend or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of . . . (1) a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor and which occurred after the date of appointment[.]

4. The criminal offense of willful and wanton injury to personal property valued at over \$200.00 under N.C.G.S. Section 14-160 is a Class B misdemeanor. See <http://www.ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Criminal-Justice-Standards/CJ-Standards/Documents/Class-B-Misdemeanor-Manual-2005.aspx>.
5. The elements of willful and wanton injury to personal property under N.C.G.S. ' 14-160 are if any person shall wantonly and willfully injure the personal property of another, causing damage in an amount in excess of two hundred dollars (\$200.00), he shall be guilty of a Class 1 misdemeanor.
6. 12 NCAC 10B .0205(2)(a) states that [w]hen the Commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be . . . (2) not less than five years where the cause of sanction is . . . (a) commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(1)[.]
8. The party with the burden of proof in a contested case must establish the facts required by N.C.G.S. Section 150B-23(a) by a preponderance of the evidence. N.C.G.S. Section 150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C.G.S. Section 150B-34(a).
9. Petitioner has the burden of proof in the case at bar by a preponderance of the evidence and has met this burden of proving that she did not damage Roan's truck.
10. The undersigned concludes that a preponderance of the evidence does not support the conclusion that Petitioner committed the criminal offense of injury to personal property.

PROPOSAL FOR DECISION


Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned recommends the Respondent find that substantial evidence does not support the finding that Petitioner committed the Class B misdemeanor of injury to personal property.

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. Section 150B-40(e).

The Agency that will make the Final Decision in this contested case is the North Carolina Sheriffs' Education and Training Standards Commission.

This the 25th day of May, 2012.



Joe L. Webster
ADMINISTRATIVE LAW JUDGE

A copy of the foregoing was mailed to:

Athena Lynn Prevatte
142 Danbury Drive
Saint Pauls, NC 28384
PETITIONER

Catherine F. Jordan
Lauren D Tally
Assistant Attorney General
NC Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEYS FOR RESPONDENT

This the 28th day of May, 2012.



Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 431 3000
Fax: (919) 431-3100

Filed

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

2012 JUN -5

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
11 DOJ 13159

CHARLESENE COTTON,
Petitioner,
v.

Office of
Administrative Hearings

PROPOSAL FOR DECISION

N.C. CRIMINAL JUSTICE
EDUCATION AND TRAINING
STANDARDS COMMISSION,
Respondent.

This contested case came on for hearing before the Honorable Joe L. Webster, Administrative Law Judge, on July 22, 2010, in the Wayne County Courthouse, Goldsboro, North Carolina.

APPEARANCES

Petitioner: Jonathan W. Trapp
Attorney at Law
3400 Croasdaile Drive
Durham, NC 27705

Respondent: Catherine F. Jordan
Assistant Attorney General
NC Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001

WITNESSES

Petitioner: Charlesene Cotton

Respondent: Edward Zaposky
Shanda Williams

ISSUES

Whether Commission's Findings that Petitioner assaulted and resisted a government official in violation of N.C.A.C. 09A .204(b0(3)(A) is supported by a preponderance of the evidence?

EXHIBITS ADMITTED INTO EVIDENCE

Respondents Exhibits 1-16

FINDINGS OF FACT

BASED UPON careful consideration of 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 FACT:

1. On March 7, 2009, Petitioner Charlesene Cotton accompanied her son to a basketball game in which her son was to participate. The game and all relevant facts took place at Lyon's Park in Durham, North Carolina.
2. After seeing rough play by an opposing player against her son, Petitioner walked over to her son's team's bench to talk to the coach about the tone of the game.
3. Officer Shanda Williams of the Durham Police Department was working off duty at Lyons Park that same morning and was in the gymnasium foyer about two steps away from the gymnasium doorway when she heard a commotion in the gymnasium. Officer Williams estimated there were approximately fifty people in the gym including players and spectators. When Officer Williams looked into the gymnasium she saw Petitioner talking to one of the coaches. Officer Williams approached Petitioner, tapped her on the shoulder and asked her to leave the bench area.
4. Petitioner told the officer that she was asking her son's coach a question and that she wanted to make sure no one got hurt during the game.
5. Officer Williams reiterated to Petitioner that spectators were not supposed to be behind the bench and that Ms. Cotton needed to return to the bleachers.
6. Petitioner told Officer Williams she was not leaving until she got the information she needed from the coach.
7. Officer Williams then told Petitioner she needed to leave the gymnasium. Petitioner was irate and argued with Officer Williams that she had placed "soft hands" on Petitioner.
8. As Petitioner was being lead out of the gym she heard a commotion from behind her and saw her son being restrained by the crowd and Officer Williams calling for back up. While being lead out of the gym by Officer Williams, Petitioner's son, a juvenile, age 15, came up and hit Officer Williams in the mouth. The son's coach and referee grabbed Petitioner's son. Petitioner then went over and grabbed her son.
9. The incident caused pandemonium in the gym and the game came to a stop.
10. Petitioner and her son were arrested by the Durham Police Department.

11. Petitioner denies doing anything wrong.

12. Respondent Probable Cause Committee found that probable cause existed to suspend Petitioner's juvenile justice certification pursuant to 12 N.C.A.C. 09A .0204(b)(3)(A), which provides that the Commission may suspend the certification of a criminal justice officer when the certified officer has committed or been convicted of a criminal offense or unlawful act defined in 12 N.C.A.C. 09A .0103 as a Class B misdemeanor, to wit: the Class B misdemeanor of "Assault Government Official/Employee" (N.C.G.S. Section 14-33(c)(4), [Durham County 2009CR42481] which occurred on March 7, 2009. Further the Probable Cause Committee found that probable cause existed to suspend Petitioner's juvenile justice officer certificate pursuant to 12 N.C.A.C. 09A .0204(b)(3)(A), which provides that the Commission may suspend the certification of a criminal justice officer when the certified officer has committed or been convicted of a criminal offense or unlawful act defined in 12 N.C.A.C. 09A .0103 as a Class B misdemeanor, to wit: the Class B. misdemeanor of "Resisting Public Officer" (N.C.G.S. Section 14-223) [Durham County 2009CR42481] which occurred on March 7, 2009.

CONCLUSION OF LAW

1. The Court has jurisdiction over the parties and subject matter.

2. The undersigned finds by a preponderance of the evidence that Petitioner engaged in disorderly conduct and does not find by a preponderance of the evidence that Petitioner committed an assault upon Officer Williams or that Petitioner resisted arrest.

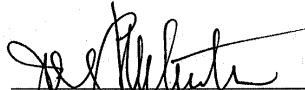
THEREFORE, based on the foregoing the undersigned finds that Petitioner engaged in Disorderly Conduct and the Commission's finding that Petitioner Assaulted a Government Official and Resisted a Police Officer be reversed. The undersigned recommends that Petitioner's 5 year suspension be suspended on condition that Petitioner successfully complete 10 hours of anger management, 10 hours of dispute resolution training and 10 hours of speaking to middle school students about dispute resolution. The undersigned orders Petitioner to submit documentation showing proof of completion of all three terms to Commission and this Court within 90 days of order.

NOTICE

The agency making the final decision in this contested case is required to give each party and 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. A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to any attorney of record. N.C.G.S. § 150B-42(a).

This 4th day of June, 2012.


Judge Joe L. Webster
Administrative Law Judge

A copy of the foregoing was mailed to:

Jonathan W Trapp
Attorney at Law
3400 Croasdaile Drive
Suite 205
Durham, NC 27705
ATTORNEY FOR PETITIONER

Catherine F. Jordan
Assitant Attorney General
NC Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

This the 6th day of June, 2012.



Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 431 3000
Fax: (919) 431-3100

Filed

STATE OF NORTH CAROLINA
COUNTY OF ALEXANDER

2012 JUN 14 PM 12:47

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
11 DST 10875

Office of
Administrative Hearings

RUSSELL E. GREENE,

Petitioner,

v.

NC DEPARTMENT OF STATE
TREASURER RETIREMENT SYSTEMS
DIVISION,

Respondent.

DECISION

THIS MATTER was heard before the Honorable Joe L. Webster, Administrative Law Judge at the Haywood County Courthouse in Waynesville, North Carolina.

APPEARANCES

For Petitioner: John W. Crone, III, Esq.
Thomas Gaither & Gorham
P.O. Box 2507
Hickory, N.C. 28603

For Respondent: Susannah P. Holloway
Assistant Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602-0629

ISSUE

Whether Respondent's calculation of Petitioner's credible service for retirement in the System for sick leave hours accumulated with the City of Lenoir deprived the Petitioner of property, ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

- (1) Exceeded its authority or jurisdiction;
- (2) Acted erroneously;
- (3) Failed to use proper procedure;
- (4) Acted arbitrarily or capriciously; or
- (5) Failed to act as required by law or rule

APPLICABLE STATUTES

N.C.G.S. Section 128-22 and N.C.G.S. 128-26(e)

- 2 -

EXHIBITS

Petitioner's Exhibits: 1-8
Respondent's Exhibits: 1-3

WITNESSES

For Petitioner: Russell Greene
 Crystal Smith
 Kim Stine

For Respondent: Garry Austin

BASED UPON 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 Court makes the following **Findings of Fact**. In making these Findings of Fact, the Court has weighed all evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to the demeanor of the witnesses, 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 FACTS

1. Petitioner disputes how the Retirement System calculated his creditable service towards retirement based on his unused accumulated sick leave hours he had earned while employed by the City of Lenoir.
2. Petitioner earned 4,110 hours of unused sick leave, with one day of sick leave being the equivalent of 24 hours, through his employment as a firefighter with the City of Lenoir.
3. Respondent's Exhibit No. 1, the Personnel Policy for the City of Lenoir, was the Personnel Policy for the City of Lenoir in effect while Petitioner was employed by the City of Lenoir.
4. While employed by the City of Lenoir, the Petitioner earned one day of sick leave per month with no limitation on accumulation.
5. For firefighters, one day of sick leave per month, which the Petitioner earned with the City of Lenoir, was equivalent to 24 hours of sick leave because firefighters work 24-hour shifts.
6. Petitioner had accumulated 171.25 days of unused sick leave while employed by the City of Lenoir. (See Respondent's Exhibit No. 2)

- 3 -

7. Petitioner's 171.25 days of accumulated sick leave was the equivalent of 4,110 hours of unused sick leave based on his earning one 24 hour day per month of sick leave with the City of Lenoir.
8. Petitioner separated from employment with the City of Lenoir in 1999 and began working with Alexander County.
9. Petitioner continues to be employed by Alexander County and has not yet retired.
10. It is not within the witness Crystal Smith's authority, employed as the human resources specialist with the City of Lenoir, to calculate creditable service towards a member's retirement in the Local Governmental Employees' Retirement System. Instead, the Retirement System is vested with such authority, by statute.
11. Therefore, the undersigned gives little weight to Crystal Smith's testimony, and her affidavit submitted as Petitioner's Exhibit 8, stating that: "for the purposes of determining unused sick time for retirement purposes this 24-hour shift equals three days of creditable service towards sick time. . . . [H]e [Petitioner] should receive 513.75 days of creditable service towards the calculation of his sick time."
12. Witness Kim Stine, employed as the assistant human resources director for Alexander County, does not calculate creditable service for retirement in the Local Governmental Employees' Retirement System as part of her job.
13. Therefore, the undersigned gives little weight to any testimony from Kim Stine regarding her calculation of creditable service for Petitioner's retirement in the Local Governmental Employees' Retirement System; and, more specifically, little weight is given to her testimony that Petitioner's accumulated sick leave hours, while he was employed by the City of Lenoir, should be divided by 8 for determining his creditable service in the Local Governmental Employees' Retirement System upon his retirement.
14. The Retirement System is vested with statutory authority to calculate the creditable service of a member towards retirement in the Local Governmental Employees' Retirement System. (*See* N.C.G.S. § 128-22 and § 128-26(e))
15. It is a proper exercise of its statutory authority for the Retirement System to convert Petitioner's sick leave hours, accumulated during his employment with the City of Lenoir, into days of creditable service at retirement by dividing the total number of hours Petitioner accumulated with the City of Lenoir, 4,110 hours, by 24 hours (the length of his shift as a firefighter and the equivalent of the one 24 hour day per month of sick leave which he earned), which is the equivalent of 171.25 days of creditable service towards retirement. (T. pp. 61-63; Respondent's Exhibits No. 1 and No. 2)

- 4 -

CONCLUSIONS OF LAW

1. Under N.C.G.S. §§ 128-22 and 128-26(e), it is the Retirement System alone which is vested with the authority granted by the Legislature to calculate a member's creditable service towards retirement in the System for unused sick leave hours.

2. N.C.G.S. 128-22 states in pertinent part:

A Retirement System is hereby established and placed under the management of the Board of Trustees for the purpose of providing retirement allowances and other benefits under the provisions of this Article for employees of those counties, cities and towns or other eligible employers participating in the said Retirement System.

3. N.C.G.S. § 128-26(e) states in pertinent part:

Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by him since he last became a member, and also if he has a prior service certificate which is in full force and effect, the amount of the service certified on his prior service certificate; and if he has sick leave standing to his credit upon retirement on or after July 1, 1971, one month of credit for each 20 days or portion thereof, but not less than one hour[.]

....

Creditable service for unused sick leave shall be allowed only for sick leave accrued monthly during employment under a duly adopted sick leave policy and for which the member may be able to take credits and be paid for sick leave without restriction.

4. In order to implement the statute, the Retirement System must convert the member's accumulated sick leave hours at retirement into days in order to determine his creditable service at retirement.

5. Pursuant to N.C.G.S. Section 128-26(e), the Retirement System correctly calculated the number of days of creditable service the Petitioner would have towards retirement for his 4,110 hours of sick leave accumulated during his employment with the City of Lenoir, where he earned one 24 hour day of sick leave per month by virtue of his 24-hour shift, by dividing 4,110 by 24 to obtain the figure of 171.25 days of creditable service towards his retirement.

DECISION

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, it is hereby ORDERED, ADJUDGED and DECREED as follows:

- 5 -

The Retirement System correctly projected a calculation of Petitioner's creditable service at retirement based on the sick leave he accumulated during his employment with the City of Lenoir; he earned one 24 hour day per month for a total of 4,110 hours and, therefore, the Retirement System was correct to divide the 4,110 hours by "24" to determine the number of days which Petitioner would receive in creditable service towards his retirement based on this accumulated sick leave; the Retirement System correctly determined, under N.C.G.S. § 128-26(e) and the sick leave earning policy of the City of Lenoir, that Petitioner should receive 171.25 days of creditable service for retirement in the System for sick leave hours he accumulated with the City of Lenoir.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby determines that Respondent's decision regarding the calculation of Petitioner's credible service for retirement in the System for sick leave hours accumulated with the City of Lenoir is affirmed.

ORDER


It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The decision of the Administrative Law Judge in this contested case will be reviewed by the agency making the final decision according to the standards found in G.S. 150B-36(b)(b1) and (b2). The agency making the final decision is required to give each party an opportunity to file exceptions to the decision of the Administrative Law Judge and to present written argument to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency that will make the final decision in this contested case is the North Carolina Department of State Treasurer Retirement Systems Division.

This the 14th day of June, 2012.



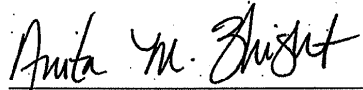
Joe L. Webster
Administrative Law Judge

A copy of the foregoing was mailed to:

John W. Crone III
Thomas Gaither & Gorham
Attorneys at Law
PO Box 2507
Hickory, NC 28603
ATTORNEY FOR PETITIONER

Robert M Curran
Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

This the 14th day of June, 2012.



Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 431 3000
Fax: (919) 431-3100