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The **NORTH CAROLINA REGISTER**

IN THIS ISSUE

EXECUTIVE ORDER

PROPOSED RULES

Agriculture

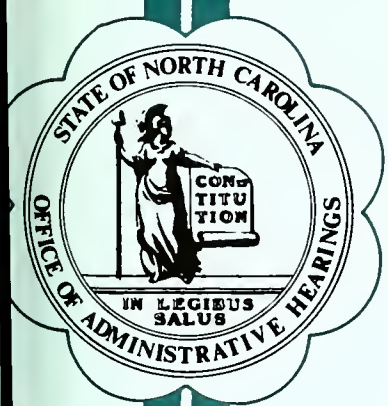
Economic and Community Development

**Environment, Health, and
Natural Resources**

State Personnel

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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed, administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: *Subscriptions*.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 52 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. **1:1 NCR 101-201, April 1, 1986** refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

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NORTH CAROLINA REGISTER

ISSUE CONTENTS



*Office of Administrative Hearings
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I. EXECUTIVE ORDER

Executive Order 99892

II. PROPOSED RULES

Agriculture

Plant Industry895

Economic and Community Development

Departmental Rules901

Environment, Health, and Natural Resources

Wildlife Resources

Commission903

State Personnel

State Personnel Commission ...923

III. CUMULATIVE INDEX.....927

Julian Mann, III
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NORTH CAROLINA REGISTER
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 (January 1990 - December 1991)

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|------------|---------------------|--------------------------------|---|---------------------------|
| ***** | ***** | ***** | ***** | ***** |
| 01/02/90 | 12/07/89 | 12/14/89 | 02/01/90 | 05/01/90 |
| 01/16/90 | 12/20/89 | 12/29/89 | 02/15/90 | 05/01/90 |
| 02/01/90 | 01/10/90 | 01/18/90 | 03/03/90 | 06/01/90 |
| 02/15/90 | 01/25/90 | 02/01/90 | 03/17/90 | 06/01/90 |
| 03/01/90 | 02/08/90 | 02/15/90 | 03/31/90 | 07/01/90 |
| 03/15/90 | 02/22/90 | 03/01/90 | 04/14/90 | 07/01/90 |
| 04/02/90 | 03/12/90 | 03/19/90 | 05/02/90 | 08/01/90 |
| 05/01/90 | 04/09/90 | 04/17/90 | 05/31/90 | 09/01/90 |
| 06/01/90 | 05/10/90 | 05/17/90 | 07/01/90 | 10/01/90 |
| 07/02/90 | 06/11/90 | 06/18/90 | 08/01/90 | 11/01/90 |
| 08/01/90 | 07/11/90 | 07/18/90 | 08/31/90 | 12/01/90 |
| 09/04/90 | 08/13/90 | 08/20/90 | 10/04/90 | 01/01/91 |
| 10/01/90 | 09/10/90 | 09/17/90 | 10/31/90 | 02/01/91 |
| 11/01/90 | 10/11/90 | 10/18/90 | 11/30/90 | 03/01/91 |
| 12/03/90 | 11/08/90 | 11/15/90 | 01/02/91 | 04/01/91 |
| 01/02/91 | 12/07/90 | 12/14/90 | 02/01/91 | 05/01/91 |
| 02/01/91 | 01/10/91 | 01/18/91 | 03/03/91 | 06/01/91 |
| 03/01/91 | 02/08/91 | 02/15/91 | 03/31/91 | 07/01/91 |
| 04/01/91 | 03/11/91 | 03/18/91 | 05/01/91 | 08/01/91 |
| 05/01/91 | 04/10/91 | 04/17/91 | 05/31/91 | 09/01/91 |
| 06/03/91 | 05/10/91 | 05/17/91 | 07/03/91 | 10/01/91 |
| 07/01/91 | 06/10/91 | 06/17/91 | 07/31/91 | 11/01/91 |
| 08/01/91 | 07/11/91 | 07/18/91 | 08/31/91 | 12/01/91 |
| 09/03/91 | 08/12/91 | 08/19/91 | 10/03/91 | 01/01/92 |
| 10/01/91 | 09/10/91 | 09/17/91 | 10/31/91 | 02/01/92 |
| 11/01/91 | 10/11/91 | 10/18/91 | 12/01/91 | 03/01/92 |
| 12/02/91 | 11/07/91 | 11/14/91 | 01/01/92 | 04/01/92 |

* The "Earliest Effective Date" is computed assuming that the public hearing and adoption occur in the calendar month immediately following the "Issue Date", that the agency files the rule with The Administrative Rules Review Commission by the 20th of the same calendar month and that ARRC approves the rule at the next calendar month meeting.

EXECUTIVE ORDER

EXECUTIVE ORDER NUMBER 99

GOVERNOR'S COMMISSION ON REDUCTION OF INFANT MORTALITY

Whereas, the State of North Carolina has the highest infant mortality rate among the states; and

Whereas, the infant mortality rate increased from 11.6 deaths to 12.1 deaths per 1,000 live births between 1986 and 1987, a four and three-tenths percent (4.3%) increase; and

Whereas, the infant mortality rate increased from 12.1 deaths to 12.6 deaths per 1,000 live births between 1987 and 1988, a four and one-tenth percent (4.1%) increase; and

Whereas, babies who are born prematurely or weigh less than 5 1/2 pounds at birth are 40 times more likely to die within the first month of life as are normal weight babies; and

Whereas, the cost of intensive care for one low birth weight infant ranges from \$30,000 to several hundred thousand dollars in a neonatal intensive care nursery to save its life; and

Whereas, premature infants are at a high risk for long-term handicapping conditions including mental retardation, cerebral palsy, and blindness, which often require continued support from tax dollars for their care; and

Whereas, the cost of intensive neonatal care for five low birth weight babies would pay for the prenatal care of 149 women; and

Whereas, in November 1988, two reports were released which outlined problems and made definitive recommendations concerning the problems of infant mortality and prenatal care, one report having been prepared by the North Carolina Department of Human Resources Infant Mortality Task Force and the second by the North Carolina Institute of Medicine's Task Force to Reduce Infant Mortality and Morbidity; and

Whereas, one of the high priority recommendations listed in both reports is the initiation of a coordinated effort among state and local agencies and the business community particularly to educate the public concerning prenatal care as well as other efforts to promote the birth of healthy babies and reduce infant mortality in the State of North Carolina; NOW, THEREFORE,

By the authority vested in me as Governor by the Constitution and laws of North Carolina it is ORDERED:

Section 1. Establishment. I hereby establish the Governor's Commission on Reduction of Infant Mortality.

Section 2. Membership. The Commission shall consist of not less than 27 members. The Governor of North Carolina shall appoint at least 25 persons as members of the Commission. These 25 appointees shall be distributed as follows:

| <u>No. of Appointees</u> | <u>Representing</u> |
|--------------------------|---|
| 3 | Organizations or associations described in Chapter 61 of the North Carolina General Statutes and qualified under Sec. 501(c)(3) of the Internal Revenue Code of 1986. |
| 3 | the various professions, businesses, and industries doing business in North Carolina |
| 1 | members of the general public |
| 1 | Public education |
| 1 | the North Carolina Nurses Association |
| 1 | the North Carolina Society of Public Health Educators |
| 1 | the North Carolina Association of Local Health Directors |
| 1 | the School of Public Health, University of North Carolina (Chapel Hill) |
| 1 | the North Carolina Academy of Family Physicians |
| 1 | the North Carolina Pediatric Society |
| 1 | the North Carolina Obstetrics and Gynecology Society |
| 1 | the North Carolina Hospital Association |
| 1 | the North Carolina Perinatal Association |
| 1 | N.C. Chapter, American College of Nurse - Midwives |
| 1 | other Health Care Provider Professions |

In addition to the above members, the Governor shall seek recommendations from the following groups for the purpose of making the following appointments:

| <u>No. of Appointees</u> | <u>Representing</u> |
|--------------------------|--|
| 2 | the North Carolina Institute of Medicine |
| 2 | the North Carolina Chapters of the March of Dimes Birth Defects Foundation |

The Speaker of the House of Representatives of the North Carolina General Assembly shall appoint one member who shall be, at the time of appointment, a duly elected and serving member of the House of Representatives of the North Carolina General Assembly.

The President of the Senate of the North Carolina General Assembly shall appoint one member who shall be, at the time of appointment, a duly elected and serving member of the Senate of the North Carolina General Assembly.

Section 3. Chairmanship and Terms. The Governor shall designate from the membership a Chairperson and Vice-Chairperson of the Commission. Members totalling one-third (1/3) or less of the total membership of the Commission shall be appointed to initial terms of one (1) year each. Members totalling one-third (1/3) or less of the total membership of the Commission shall be appointed to initial terms of two (2) years each. The remaining members shall be appointed to initial terms of three (3) years each. After completion of these initial terms, all appointees shall be appointed to terms of three (3) years each. Members may be reappointed for additional terms. The Governor shall designate the length of each members' initial term pursuant to this section. During their terms all members serve at the pleasure of the Governor. All vacancies shall be filled by the appointing authority for the remainder of the unexpired term.

Section 4. Meetings. The Commission shall meet at least once each calendar quarter and at other times as directed by the Governor or upon call by the Chairperson.

Section 5. Duties and Powers. The Commission shall perform such duties as assigned by the Governor. It shall have the following specific duties, powers and functions:

- (1) Advise the Governor and the Secretary of the Department of Environment, Health and Natural Resources on measures necessary to reduce current rates of infant mortality and morbidity.
- (2) Assess existing programs concerning pre-conceptional health of women through health and welfare of infants during the first year of life, including prenatal care, whether such programs be public or private. A primary goal of this assessment shall be the elimination of duplication and gaps in establishing effective, efficient delivery of services.

- (3) Facilitate coordination of existing and/or proposed state and local programs relating to prenatal care and reduction of infant mortality and morbidity.
- (4) Determine whether such existing programs as outlined above are in need of assistance in carrying out their purpose and to determine whether such programs in need of assistance would effectively benefit from such assistance as the Commission, through its association with any private, non-profit corporation referred to in Section 6, is able to give.
- (5) Promote programs among business and industry within the state which, if implemented and utilized by employees, would have a beneficial effect upon maternal and infant health.

Section 6. Public Private Partnership. The Commission may, in its discretion, associate itself with and work in conjunction with a private, non-profit organization organized pursuant to the provisions of Chapter 55A of the North Carolina General Statutes (and for which tax exempt status under the Internal Revenue Code of 1986 and under the Revenue Laws of the State of North Carolina shall have been granted), which organization shall have as its purpose the furtherance of the goals of this Order and the Commission. The Commission shall not seek funds from the State of North Carolina for appropriation to any entity referred to under this Section.

Section 7. Cooperation of State Agencies. All state agencies, departments, and officials shall cooperate with the Commission and provide such technical advice, information, and other assistance as the Commission shall request.

Section 8. Consultation with Existing Public Policy Groups. In carrying out its duties and functions the Commission shall consult with the Institute of Medicine and, in the discretion of the Commission, any other medical or public or private groups which have conducted studies or have expertise in the area of infant mortality in North Carolina.

Section 9. Administrative Support and Expenses. The administrative support for the Commission shall be provided by the Department of Environment, Health and Natural Resources.

Section 10. Annual Report. The Commission shall, promptly following the close of each cal-

EXECUTIVE ORDER

endar year, submit an annual report of its activities for the preceding year to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives of the North Carolina General Assembly.

This Order is effective this the 13th day of December, 1989.

TITLE 2 - DEPARTMENT OF AGRICULTURE

Notice is hereby given in accordance with G.S. 150B-12 that the Genetic Engineering Review Board intends to adopt rules cited as 2 NCAC 48E .0101; .0201; .0301 - .0305; .0401 - .0403; .0501 - .0503.

The proposed effective date of this action is June 1, 1990.

The public hearing will be conducted at 1:30 p.m. on February 13, 1990 at Conference Room, L.Y. Ballentine Bldg., 2109 Blue Ridge Rd., Raleigh, NC 27612.

Comment Procedures: Written comments concerning the proposed rules may be submitted by February 28, 1990 to: Genetic Engineering Review Board, N.C. Department of Agriculture, P.O. Box 27647, Raleigh, NC 27611, Attn: Bill Dickerson. Oral comments may be presented at the hearing. Further information on the proposed rules may be obtained by contacting Mr. Dickerson at the above address, or call (919) 733-6930.

CHAPTER 48 - PLANT INDUSTRY

SUBCHAPTER 48E - GENETICALLY ENGINEERED ORGANISMS

SECTION .0100 - DEFINITIONS

.0101 DEFINITIONS

As used in this Subchapter:

- (1) "Adverse effect" means physical injury to agriculture, public health or the environment.
- (2) "Application notice date" means the date of the last newspaper publication of notice of a proposed release or commercial use, as provided for in 2 NCAC 48E .0304(c)(1).
- (3) "Board" means the Genetic Engineering Review Board.
- (4) "Commercial use" means the sale, offering for sale, or distribution of a genetically engineered organism.
- (5) "Commissioner" means the Commissioner of Agriculture.
- (6) "Confidential business information" means trade secrets, proprietary information, financial data, and other information which the applicant has a reasonable need to shield from competitors, but shall not include information regarding the adverse effects of a proposed release of any organism, nor shall

it include any information which has been submitted but not designated as confidential for the purposes of any corresponding application or notice filed with a federal agency.

- (7) "Contained facility" is one that complies with applicable National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules: Appendix G or Appendix K or United States Department of Agriculture (USDA) Plant Protection and Quarantine Guidelines for Containment of Plant Pests Under Permit. Where a facility is of a type not covered by these NIH or USDA guidelines, a "contained facility" is one that has been determined by the Commissioner to be adequately contained.
- (8) "Genetic engineering" means the introduction of new genetic material to an organism or the regrouping of an organism's genes, except for the breeding of plants, animals and other organisms by traditional methods. The following activities are not considered to be genetic engineering and no permit is required for the release of organisms produced by such methods:
 - (a) Artificial insemination;
 - (b) Hand pollination;
 - (c) Genetic manipulation of microorganisms by traditional methods such as conjugation, transformation or transduction;
 - (d) Classical selection procedures based on sexual reproduction;
 - (e) Somaclonal variant selection;
 - (f) Selection of spontaneous mutants;
 - (g) Embryo rescue;
 - (h) Superovulation;
 - (i) Embryo transfer within species;
 - (j) Mutagenesis induced by chemicals, radiation or transposons;
 - (k) Protoplast fusion;
 - (l) Vaccination with a non-replicating moiety.
- (9) "Genetically engineered organism" means any living animal, plant, bacterium, cyanobacterium, fungus, protist or virus derived from genetic engineering as defined in this Rule.
- (10) "Release" means the placement or use of a genetically engineered organism outside a contained facility.

Statutory Authority G.S. 106-770.

SECTION .0200 - DELEGATION OF AUTHORITY

.0201 POWERS DELEGATED

PROPOSED RULES

To the extent provided in this Subchapter, the Board hereby delegates to the Commissioner the authority:

- (1) to grant, deny, suspend, modify or revoke permits;
- (2) to establish advisory committees;
- (3) to exercise powers of the Board under G.S. 106-772 (permit applications), G.S. 106-773 (public hearings on permit applications) and G.S. 106-774 (confidential business information).

Statutory Authority G.S. 106-770.

SECTION .0300 - PERMITS REQUIRED; TYPES OF PERMITS; PERMIT APPLICATIONS; PUBLIC NOTICE; PUBLIC HEARING; ISSUANCE OF PERMITS; MODIFICATION, SUSPENSION, REVOCATION OF PERMITS

.0301 PERMITS REQUIRED

A genetically engineered organism may not be released into the environment, or sold, offered for sale or distributed for release into the environment within North Carolina unless a permit for its release or commercial use has been issued pursuant to this Subchapter.

Statutory Authority G.S. 106-770.

.0302 CLASSES OF PERMITS

There are two classes of permits for releases or commercial uses of a genetically engineered organism(s):

- (1) general permits; and
- (2) limited permits.

Statutory Authority G.S. 106-770.

.0303 GENERAL PERMITS

(a) In response to a petition by any person, a recommendation of the Commissioner, or upon its own motion, the Board may, by rules adopted pursuant to the Administrative Procedure Act (G.S. 150B), establish as part of these rules general permits for classes of activities for which limited permits will not be required. Such general permits may contain conditions or restrictions on their applicability.

(b) Public notice of any proposed rule regarding the adoption of a general permit shall be given in accordance with G.S. 150B-12 and by:

- (1) mailing a copy of the proposed general permit to any person who has filed a written request to be so notified;
- (2) publishing notice of the proposed general permit at least once in newspapers having general circulation throughout North Carolina.

(c) In accordance with the Administrative Procedure Act, the Commissioner may suspend any activities being conducted under a general permit for failure to comply with the Genetically Engineered Organisms Act or any rules of this Subchapter, or if the Commissioner deems it necessary to protect agriculture, public health or the environment from potential adverse effects of a release. Any such suspension shall be reviewed by the Board within 30 days. The Commissioner shall state in writing the reasons for such action.

(d) The following classes of activities are hereby permitted by general permit and no permit application shall be required:

- (1) Releases of genetically engineered organisms between July 1, 1990 and December 31, 1990, which are otherwise in compliance with state and federal law;
- (2) Releases of genetically engineered organisms resulting from activities performed in contained facilities where both the release of the organism and the facility comply with NIH Guidelines for Research Involving Recombinant DNA Molecules;
- (3) Releases of genetically engineered organisms from large-scale fermentation processes and associated recovery and purification processes if the following conditions are met:
 - (A) The host organism is non-pathogenic and non-toxicogenic;
 - (B) The vector/insert is well-characterized, free from known harmful sequences and limited in size to the extent possible to the DNA required to perform the intended function;
 - (C) The number of viable genetically engineered organisms in the process streams is minimized by a validated inactivation procedure prior to release;
- (4) Releases or commercial uses of drugs or devices containing genetically engineered organisms and intended for prophylactic, therapeutic or diagnostic use in humans where such releases or uses are regulated under the Food, Drug, and Cosmetic Act, 21 USC A 301 et seq., or the Public Health Service Act, 42 USC AA 262, 263;
- (5) Releases of microorganisms created by intragenetic microbial transfer of genetic material if the microorganisms involved are neither pathogens nor pesticidal.

Statutory Authority G.S. 106-770.

.0304 LIMITED PERMITS

(a) Limited Permits Required. The release or commercial use of genetically engineered organisms not covered by a general permit pursuant to 2 NCAC 48E .0303 requires a limited permit. Limited permits may cover multiple releases or commercial uses. Any person seeking to obtain a limited permit must file an application with the Commissioner.

(b) Application Procedure:

- (1) Where the applicant is making a federal submission regarding the proposed release or commercial use of a genetically engineered organism, a copy of the federal submission appended to a Submittal Summary for the Release of a Genetically Engineered Organism, as prescribed by the Board, shall constitute an application to the Commissioner.
- (2) Where there is no federal submission regarding the proposed release or commercial use of a genetically engineered organism, limited permit applications shall be on forms or in the format that the Board shall prescribe, appended to a Submittal Summary for the Release of a Genetically Engineered Organism. Such limited permit applications shall include all of the data required by the Board.
- (3) An applicant for a limited permit may designate as "confidential" any portions of the application which the applicant believes are entitled to treatment as confidential business information (CBI), as defined in this Subchapter. The applicant shall submit two copies of the permit application to the Commissioner: one containing CBI ("CBI" copy), and the other with CBI deleted ("public information" copy) from both the application submission and the Submittal Summary for the Release of a Genetically Engineered Organism. Deletions of confidential business information in the public information copy shall be indicated in a manner prescribed by the Commissioner.
- (4) Within ten days of receipt of an application, the Commissioner shall send written notification to the applicant informing the applicant whether or not the application is complete and, if not, what additional information is required to complete the application.
- (5) A completed application shall consist of a completed Submittal Summary for the Release of a Genetically Engineered Organism, all of the data required in the federal submission, or, where there is no

federal submission, all of the data required by the Board.

- (6) During the permit review process, the Commissioner may request additional information as deemed necessary. To the extent possible, however, the Commissioner shall base the permit decision on the data originally submitted as part of a completed permit application.
 - (7) The application may be withdrawn at any time by written notice from the applicant to the Commissioner.
- (c) Public Notice of Proposed Release or Commercial Use.
- (1) Within 15 days after receiving a completed permit application, the Commissioner shall publish notice and a brief description of the proposed release or commercial use as follows:
 - (A) by mailing a copy of the public information version of the Submittal Summary for the Release of a Genetically Engineered Organism to any person who has filed a written request to be notified of proposed releases or commercial uses; and
 - (B) by publishing notice of the proposed release at least once in a newspaper having general circulation in each county where a release is proposed to occur and by mailing a copy of the public information version of the Submittal Summary for the Release of a Genetically Engineered Organism to the County Manager or County Administrator in the county(ies) where the proposed release(s) is to occur;
 - (C) by publishing notice of a proposed commercial use at least once in newspapers having general circulation throughout the State.
 - (2) All notices of proposed releases or commercial uses shall state:
 - (A) where the public information version of the application may be inspected and copied;
 - (B) that any person may submit written comments on the proposed release or commercial use to the Commissioner within 30 days of the application notice date;
 - (C) that any person may request that a public hearing be held on the proposed release or commercial use by filing a written request with the Commissioner within 30 days of the application notice date.
 - (3) Any person who makes a written request to the Commissioner, upon payment of a reasonable fee to cover costs of copying and postage, shall be promptly sent a

- copy of the public information version of the application.
- (d) Public Comments and Hearings.
- (1) Any person may submit written comments to the Commissioner or request a public hearing on a proposed release or commercial use within 30 days of the application notice date.
 - (2) In the case of proposed releases, if the Commissioner determines that significant public interest and justification exists for holding a hearing, the Commissioner shall hold a hearing in the county(ies) where the release(s) is proposed to occur. At least 30 days before a hearing date, the Commissioner shall publish notice of the hearing at least once in a newspaper having general circulation in the county(ies) where the release(s) is proposed to occur.
 - (3) In the case of proposed commercial uses, if the Commissioner determines that significant public interest and justification exists for holding a hearing, the Commissioner shall hold a hearing or hearings in one or more locations to be determined by the Commissioner. At least 30 days before a hearing date, the Commissioner shall publish notice of a public hearing at least once in a newspaper(s) having general circulation in the county(ies) where the hearing(s) are to be held, and in any other manner deemed by the Commissioner to be appropriate.
 - (4) The public notice of the hearing shall include the information included on the public information version of the Submittal Summary for the Release of a Genetically Engineered Organism, the date, time and place of the hearing, and other information prescribed by the Board. The notice shall also state where the public information version of the application may be inspected and copied.
- (e) Issuance of Permits.
- (1) The Commissioner shall make a decision on a permit application within 75 days of receipt of a completed application unless a public hearing is held. If a public hearing is held, the Commissioner shall make a decision on a permit application within 105 days of receipt of a completed application. With the written consent of the applicant these time periods may be extended. At the time a decision is made on a permit, the Commissioner shall simultaneously notify the applicant and any other persons who have requested such notification.
 - (2) In reviewing a permit application, the Commissioner may consider the history of previous releases or commercial uses in North Carolina or elsewhere.
 - (3) After the public comment period and the public hearing, if any, the Commissioner may issue a permit under this Article based on the federal review and approval of the proposed release if he determines that federal regulation of the release sufficiently protects agriculture, public health and the environment in North Carolina.
 - (4) The Commissioner may, if he deems it necessary to protect agriculture, public health or the environment from potential adverse effects of the proposed release:
 - (A) place restrictions on the number and location of organisms released, method of release, training of persons involved with the release of organisms, disposal of organisms, and other conditions of release or commercial use;
 - (B) require measures to limit dispersal of released organisms or spread of inserted genes or gene products;
 - (C) require monitoring of the abundance and dispersal of the released organism or inserted genes or gene products; or
 - (D) deny the permit, in which case the Commissioner shall state in writing the reasons for the denial.
 - (5) A permit issued by the Commissioner will become effective 15 days after issuance unless a request for Board review is received by the Chairman of the Board, or his designee, within ten days after issuance, pursuant to 2 NCAC 48E .0502. If such a request is received, the permit will become effective when the Chairman or his designee denies the request or, if the Chairman or his designee decides to hold a Board review of the request, the permit will become effective if and when the Board affirms or modifies the permit decision of the Commissioner.
- (f) Modification, Suspension or Revocation of Permits.
- (1) Upon request from an applicant, the Commissioner may modify a permit if he determines that such modification will not result in an adverse effect on agriculture, public health and the environment; provided, however, that a permit may not be modified with respect to the following:
 - (A) organism(s) released or used;
 - (B) genetic sequences which change the phenotype or potential adverse effects of the organism(s);

- (C) county or counties of release;
 - (D) any conditions expressly placed on the release or commercial use by the permit, unless the permit provides for subsequent modifications of such conditions by the Commissioner.
- (2) In accordance with the Administrative Procedure Act, the Commissioner may suspend, revoke or modify a limited permit for failure to comply with the Genetically Engineered Organisms Act or any rules of this Subchapter, or if the Commissioner deems it necessary to protect agriculture, public health or the environment from potential adverse effects of a release or commercial use. The Commissioner shall state in writing the reasons for such action.

Statutory Authority G.S. 106-770.

**.0305 INSTRUCTIONAL INFORMATION;
REQUESTS FOR NOTICE**

(a) The Commissioner shall prepare and provide all necessary forms and instructions explaining the types of permits, permit application process, petition process for establishing general permits, issuance and modification of permits, and public hearing and public notice process. Information may be obtained by calling or writing:

Genetic Engineering Review Board
Plant Industry Division
North Carolina Department of Agriculture
P.O. Box 27647
Raleigh, North Carolina 27611
Phone: (919) 733-6930

(b) Persons who wish to be notified of actions taken by the Board or the Commissioner shall make such requests in writing addressed to:

Genetic Engineering Review Board
Plant Industry Division
North Carolina Department of Agriculture
P.O. Box 27647
Raleigh, North Carolina 27611
Phone: (919) 733-6930

Failure to provide or receive such notice shall not affect the validity of any permit issued hereunder.

Statutory Authority G.S. 106-770.

**SECTION .0400 - CONFIDENTIAL BUSINESS
INFORMATION**

**.0401 DESIGNATION OF CONFIDENTIAL
INFORMATION**

As provided in Rule .0304(b)(3) of this Subchapter, information submitted as part of a permit application, which meets the definition of

confidential business information as set forth in Rule .0101(4) of this Subchapter, may be designated as confidential business information by clearly and conspicuously marking such information as provided in Rule .0304(b)(3) of this Subchapter, as "confidential business information".

Statutory Authority G.S. 106-770.

**.0402 ACCESS TO CONFIDENTIAL
BUSINESS INFORMATION**

(a) The following persons, upon signing a non-disclosure agreement with the Commissioner, may have access to confidential business information submitted as part of a permit application:

- (1) employees of the Department of Agriculture who are involved in reviewing permit applications;
- (2) members of the Genetic Engineering Review Board on review or appeal of a decision of the Commissioner pursuant to Section .0500 of this Subchapter; provided, however, that no Board member shall review confidential business information if he or she is, or represents in any capacity, a person engaged in any business or enterprise in competition with the applicant or in which confidential business information could be utilized for product development purposes;
- (3) advisors selected by the Department of Agriculture to assist in reviewing permit applications, where the Commissioner determines that the advisors must have access to the confidential business information in order to perform their review effectively; provided, however, that any such advisor must sign an affidavit affirming that the advisor is not, nor does the advisor represent in any capacity, a person engaged in any business or enterprise in competition with the applicant or in which the confidential business information could be utilized for commercial or product development purposes; and provided further that prior to the release of any confidential business information to an advisor, the Commissioner shall notify the applicant of his intention to release the confidential business information to such an advisor and the applicant will have ten days to notify the Commissioner of any objection regarding such a release of confidential business information;
- (4) federal officials, pursuant to Rule .0403 of this Section herein.

(b) Any person engaged in the review of the effects of a proposed release of a genetically engineered organism who believes that access to undisclosed confidential business information is necessary in order to perform such review effectively may request the disclosure of material designated as confidential business information by submitting a written petition in a form prescribed by the Board to the Commissioner within 30 days of the application notice date. Such a petition shall state the reasons that such confidential business information is necessary to the performance of the petitioner's review. In addition, the petitioner shall sign an affidavit affirming that the petitioner is not, nor does petitioner represent in any capacity, a person engaged in any business or enterprise in competition with the applicant or in which the confidential business information could be utilized for commercial or product development purposes.

(c) The applicant shall be notified of the petition and shall have an opportunity to respond to the petition. Such response may include an offer by the applicant to produce the confidential business information, in total or in part, to the petitioner pursuant to terms to be expressed in a written agreement between the applicant and the petitioner, and explanation by the applicant as to why the petitioner does not need the confidential business information in order to perform such review, or an offer by the applicant to provide the petitioner with other information which is not confidential and responds to the petitioner's reasons for requesting the confidential business information.

(d) If the applicant and the petitioner can not reach an agreement within 15 days after the petition is filed with the Commissioner, the Commissioner shall then determine, within five additional days, whether the petitioner does require access to any or all of the confidential business information requested by the petitioner in order to make an effective, independent review of the proposed release. By mutual written agreement of the petitioner and the applicant, the Commissioner may delay a decision on the petition until further written notice by the petitioner. If the Commissioner determines that the petitioner does require access to some or all of the confidential business information requested by the petitioner, the Commissioner shall notify the applicant and the petitioner of his decision, and the applicant shall:

- (1) upon the signing of a non-disclosure agreement by the petitioner, as prescribed by the Board, provide to the petitioner that portion of the confidential business

information which the Commissioner has determined is required by the petitioner;

- (2) seek Board review or appeal of the Commissioner's decision pursuant to Section .0500 of this Subchapter; or
- (3) withdraw its application.

If, pursuant to Section .0500 of this Subchapter, the applicant seeks Board review or appeals a decision regarding confidential business information, the applicant shall not be required to reveal the confidential business information pending review or appeal. If the application is withdrawn, all confidential business information shall be returned to the applicant and shall not be disclosed.

Statutory Authority G.S. 106-770.

.0403 AGREEMENTS WITH FEDERAL AGENCIES; CBI

The Commissioner may enter into cooperative agreements with federal agencies to facilitate the sharing of information, including confidential business information, which may be received as part of a federal or state submission or application. Such agreements shall ensure the protection of confidential business information from disclosure to unauthorized persons.

Statutory Authority G.S. 106-770.

SECTION .0500 - APPEAL PROCESS

.0501 RECONSIDERATION BY THE COMMISSIONER

Any person adversely affected by a decision of the Commissioner under these Rules may request in writing that the Commissioner reconsider such decision. The Commissioner shall render a decision on such a request within ten days of receiving it.

Statutory Authority G.S. 106-770.

.0502 BOARD REVIEW

(a) It is the policy of the Board that disputes arising from the issuance of a permit decision by the Commissioner, pursuant to these Rules, shall be settled informally, if possible. Decisions made by the Commissioner regarding permits may be appealed to the Board by any person adversely affected by a decision of the Commissioner by filing a written request for Board review of such decision with the Chairman of the Board, or, in his absence, with another member of the Board designated by the Chairman for that purpose, within ten days after the Commissioner's decision. The request shall set forth the decision of the Commissioner which is in dispute, the relief

requested, and the reasons why such relief is necessary and appropriate. The Chairman, or his designee as provided in this Rule, shall review such request and decide whether to hold a Board meeting to consider the request within five days of receipt of such a request. When a decision is made on a request for Board review, the Chairman or his designee shall notify the applicant, the person requesting Board review, and others who have requested such notification. If the decision is to conduct a Board review, the Board shall meet within ten days of such decision. After reviewing the Commissioner's decision, the board may affirm, modify or reverse. The Board shall state in writing the reason(s) for its decision.

(b) When the Commissioner concludes that an applicant is required to release some or all of its confidential business information, pursuant to Rule .0402(d) of this Subchapter, the applicant may seek Board review of that decision by filing a written request with the Chairman of the Board or, in his absence, with another Board member designated by the Chairman for that purpose, within ten days of the Commissioner's decision. The request shall set forth the decision of the Commissioner which is in dispute, the relief requested, and the reasons why such relief is necessary and appropriate. The Chairman, or his designee as provided in this Rule, shall review such request and decide whether to hold a Board meeting to consider the request within five days of receipt of such a request. When a decision is made on a request for Board review, the Chairman, or his designee, shall notify the applicant and the petitioner seeking the confidential business information. If the decision is to conduct a Board review, the Board shall meet within ten days of such decision. After reviewing the Commissioner's decision, the Board may affirm, modify or reverse. The Board shall state in writing the reason(s) for its decision.

Statutory Authority G.S. 106-770.

.0503 FORMAL APPEALS

Formal appeals of the decisions of the Commissioner or the Board rendered pursuant to these Rules or the Genetically Engineered Organisms Act shall be governed by the Administrative Procedure Act, Chapter 150B of the General Statutes.

Statutory Authority G.S. 106-770.

TITLE 4 - DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

Notice is hereby given in accordance with G.S. 150B-12 that the Commerce Finance Center intends to adopt and amend rule(s) cited as 4 NCAC 1J .0102, .0201 and .0501.

The proposed effective date of this action is May 1, 1990.

The public hearing will be conducted at 10:00 a.m. on February 8, 1990 at Room 6168, Dobbs Building, 430 N. Salisbury Street, Raleigh, NC 27611.

Comment Procedures: Any person interested in these rules may present oral comments to the action proposed at the public rulemaking hearing or deliver written comments to the Commerce Finance Center no later than February 5, 1990. Anyone planning to attend the hearing should notify Bruce Strickland, Jr., Commerce Finance Center, by February 5, 1990.

CHAPTER 1 - DEPARTMENTAL RULES

SUBCHAPTER 1J - NORTH CAROLINA JOBS TAX CREDIT

SECTION .0100 - PURPOSE AND DEFINITIONS

.0102 DEFINITIONS

(a) "Distress factor": a distress factor is defined as the sum of:

- (1) the county's rank in a ranking of counties by rate of unemployment from lowest to highest; and
- (2) the county's rank in a ranking of counties by per capita income from highest to lowest.

(b) "Date of signing" shall be defined as the date on which the Secretary of ~~Commerce~~, Economic and Community Development, his designee, or the Commerce Finance Center receives and accepts as complete, a commitment under Paragraph (d) of G.S. 105-130.40 and G.S. 105-151.17. Such a commitment will not be so defined unless it is signed by a officer of the corporation or by the taxpayer.

(c) "Department" means the North Carolina Department of ~~Commerce~~, Economic and Community Development.

(d) "Eligible employer" is defined as a corporation or taxpayer that is located or proposes to locate in a distressed county and has received an approved "Determination of Eligibility" from the Department of Economic and Community Development.

PROPOSED RULES

(e) "Full time employee" is defined as an employee who holds a full time job.

(f) "Full time job" is defined as a position that is located in the distressed county and requires at least 1600 hours of work per year and is intended to be held by one person during the entire year.

(g) "Letter of Commitment" is defined as an agreement between the department and a corporation or a taxpayer. This letter of commitment will set out:

- (1) the name of the corporation or the individual taxpayer entity that will file the North Carolina tax return under Chapter 105;
 - (2) the name that will be used in the conduct of business, if different from;
 - (3) the permanent or Home Office address of the management group directing the operation of the business;
 - (4) the location(s) of the qualifying business operations within the distressed county;
 - (5) a schedule showing the number of permanent full time positions to be created and the time sequence for their being filled;
 - (6) an estimate of the cost of new capital expenditures within the distressed county over the two year time period of the commitment;
 - (7) an official contact with the operating firm to whom inquiries pertinent to the agreement can be directed;
 - (8) the date of signing, as defined in Paragraph (b) of this Rule;
 - (9) where the scope of a project changes significantly after the Letter of Commitment has been filed, and within the same calendar year, a corporation or individual taxpayer may then file a new letter of commitment in that year which shows revised data;
 - (10) "severely distressed county" is defined as a county designated as such by the Secretary of the Department of ~~Commerce~~ Economic and Community Development. The Secretary will make such a designation only if a county has a distressed factor that is one of the ~~20~~ 25 highest in the state.
- (h) "Determination of Eligibility" is defined as the finding made by the Department of Economic and Community Development that the corporation or taxpayer which is creating jobs is eligible to participate in the Job Tax Credit program. Such finding will be based on information submitted on a format prescribed by the Secretary, which shows:

- (1) Corporation or taxpayer name, local (NC) address, county, telephone number; and
- (2) Evidence offered by the corporation or taxpayer that its firm is eligible to participate in the Job Tax Credit based on one of the following criteria:
 - (A) Firm obtained a Job Tax Credit for the year 1988.
 - (B) Firm is listed in the Directory of Manufacturing Firms in North Carolina, published by the North Carolina Department of Economic and Community Development.
 - (C) Firm has a primary SIC Code in the manufacturing group numbered 20-299 as listed in the Standard Industrial Classification Manual, 1987, published by the Executive Office of the President, Office of Management and Budget.
 - (D) Firm otherwise documents in narrative form, on form provided by Department, its position that it is engaged in the manufacturing of goods or is engaged in an industrial activity such as the processing of foods, raw materials, chemicals or process agents, goods in process, or finished goods.

Statutory Authority G.S. 105-130.40(a),(c) and (d); 105-151.17(a),(c) and (d); Chapter 568, 1987 S.L.; Chapter 111 and 753, 1989 S.L.

SECTION .0200 - DESIGNATION OF SEVERELY DISTRESSED COUNTIES

.0201 DESIGNATION OF SEVERELY DISTRESSED COUNTIES

On or before December 31 of each calendar year, the secretary of the department shall designate which counties are considered as severely distressed, and shall provide that information to the Secretary of Revenue. The department will obtain from the North Carolina Employment Security Commission the adjusted monthly estimates of unemployment for the most recent 36 month period for which data is available. Those monthly estimates will be averaged and those averages used to rank the counties by arranging them in numerical order of the county with the lowest unemployment as number 1 to the county with the highest unemployment as number 100.

The department will obtain from the United States Department of Commerce the latest available annual per capita income figures, by county, for the most recent 36 month period for which data is available. Those annual figures will be averaged and those averages used to rank the counties in numerical order of the county with

the highest per capita income average as number 1 to the county with the lowest per capita income average as number 100. These two rankings will be totaled so as to provide a sum which will be the county's distress factor. Those ~~20~~ 25 counties with the highest distress factors will be designated as severely distressed by the Secretary of ~~Commerce~~ Economic and Community Development. The list of counties so designated will be provided to the Secretary of the North Carolina Department of Revenue. In addition, written notice of that designation will be given to the chairman of elected governing board in each county so designated.

Statutory Authority G.S. 105-130.40(c) and (d); 105-151.17(e) and (d); Chapter 568, 1987 S.L.; Chapter 111 and 753, 1989 S.L.

SECTION .0500 - DETERMINATION OF ELIGIBILITY

.0501 DETERMINATION OF ELIGIBILITY
 "Determination of Eligibility" will be made in the form prescribed by the Department of Economic and Community Development. Corporation or taxpayer will complete that form as defined in Rule .0102 (h) of this Subchapter. When accepted, approved or disapproved, and signed by the Secretary or his designee, that action will be given to the corporation or taxpayer requesting the Determination. Such actions will be kept on record at the Commerce Finance Center, Room 2174, Dobbs Building, 430 N. Salisbury Street, Raleigh, North Carolina 27611.

Statutory Authority G.S. 105-130.40 (b1); 105-151.17 (b1); Chapter 753, 1989 S.L.

TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Wildlife Resources Commission intends to amend rule(s) cited as 15A NCAC 10B .0202 - .0203, .0209; 10C .0205, .0301, .0305, .0404, .0407; 10D .0002 - .0004.

The proposed effective date of this action is July 1, 1990.

All public hearings will be conducted at 7:00 p.m. on:

District 1
 February 5, 1990
 Swain Auditorium
 Edenton

District 2
 February 6, 1990
 Courthouse
 New Bern

District 3
 February 7, 1990
 Courthouse
 Nashville

District 4
 February 8, 1990
 Courthouse
 Elizabethtown

District 5
 February 9, 1990
 Courthouse
 Graham

District 9
 February 12, 1990
 Courthouse
 Hendersonville

District 8
 February 13, 1990
 Morganton Civic Center Auditorium
 Morganton

District 7
 February 14, 1990
 High School
 Elkin

District 6
 February 15, 1990
 North Stanley High School
 Albemarle

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing or by mailing to N.C. Wildlife Resources Commission, 512 N. Salisbury St., Raleigh, NC 27611. The record of hearing is open from fifteen days preceding the date of the hearing to fifteen days after the date of hearing.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0200 - HUNTING

.0202 BEAR

(a) Open Seasons

(1) Monday on or nearest October 15 to the Saturday before Thanksgiving and the

PROPOSED RULES

third Monday after Thanksgiving to January 1 in and west of the boundary formed by NC 16 from the Virginia State line to Wilkesboro and NC 18 from Wilkesboro to the South Carolina State line.

- (2) Second Monday in November to the following Saturday in Beaufort, Camden, Craven, Jones, Pamlico, Pasquotank, and Washington Counties; and in that part of Bertie County southeast of US 17.
- (3) Second Monday in November to the following Wednesday in Gates, Hyde and ~~Tyrrel~~ Tyrrell Counties.
- (4) Second Monday in November to January 1 in Bladen, Carteret, Duplin, New Hanover, Onslow and Pender Counties; in that part of Cumberland County south of NC 24 and east of the Cape Fear River; and in that part of Sampson county south of NC 24.
- (5) Second Monday in December to January 1 in Brunswick and Columbus Counties.

(b) No Open Season. There is no open season in any area not included in Paragraph (a) of this Rule or in those parts of counties included in the following posted bear sanctuaries:

- Avery, Burke and Caldwell Counties--Daniel Boone bear sanctuary
- Beaufort, Bertie and Washington Counties--Bachelor Bay bear sanctuary
- Beaufort and Pamlico Counties--Gum Swamp bear sanctuary
- Bladen County--Suggs Mill Pond bear sanctuary
- Brunswick County--Green Swamp bear sanctuary
- Buncombe, Haywood, Henderson and Transylvania Counties--Pisgah bear sanctuary
- Carteret, Craven and Jones Counties--Croatan bear sanctuary
- Clay County--Fires Creek bear sanctuary
- Currituck County--North River bear sanctuary
- Dare County--Bombing Range bear sanctuary
- Haywood County--Harmon Den bear sanctuary
- Haywood County--Sherwood bear sanctuary
- Hyde County--Gull Rock bear sanctuary
- Hyde County--Pungo River bear sanctuary
- Jackson County--Panthertown-Bonas Defeat bear sanctuary
- Jones and Onslow Counties--Hofmann bear sanctuary
- Macon County--Standing Indian bear sanctuary
- Macon County--Wayah bear sanctuary

- Madison County--Rich Mountain bear sanctuary
- McDowell and Yancey Counties--Mt. Mitchell bear sanctuary
- Mitchell and Yancey Counties--Flat Top bear sanctuary
- Washington County--Bull Bay bear sanctuary
- Wilkes County--Thurmond Chatham bear sanctuary

(c) Bag limits: daily, one; possession, one; season, one.

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

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

.0203 DEER (WHITE-TAILED)

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

(b) Open Seasons (All Lawful Weapons)

(1) Male Deer With Visible Antlers. Male 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) Monday on or nearest October 15 to January 1 in the following counties and parts of counties:

| | | |
|-------------|---|------------|
| Beaufort | - | Duplin |
| Bertie | | Edgecombe |
| Bladen | | Franklin |
| Brunswick | | Gates |
| Camden | | Greene |
| Carteret | | Halifax |
| Chowan | | Hertford |
| Columbus* | | Hoke |
| Craven | | Hyde |
| Currituck | | Jones |
| Dare | | |
| Lenoir | | Pitt |
| Martin | | Richmond** |
| Nash | | Robeson |
| New Hanover | | Scotland** |
| Northampton | | Tyrrell |
| Onslow | | Vance |
| Pamlico | | Warren |
| Pasquotank | | Washington |
| Pender | | Wayne |
| Perquimans | | Wilson |

Cumberland: All of the county except
That part ~~north~~ south of NC 24. east

PROPOSED RULES

of Fayetteville and east of NC 240 north of Fayetteville.

Harnett: That part west of NC 87.

Johnston: All of the county except that part south of US 70 and west of I-95.

Moore**: That part south of NC 244 and east of US 4. All of the county except that part north of NC 211 and west of US 1.

Sampson: All of the county except that part west of NC 242 and north of US 13.

Wake: That part north of NC 54 west of Raleigh and US 70 east of Raleigh.

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

**See 15A NCAC 10D .0003(d)(2) for seasons on Sandhills Game Land.

(B) ~~Monday of Thanksgiving week to second Saturday after Thanksgiving Day in the following counties and parts of counties:~~

| | |
|-----------|---------|
| Alexander | Davie |
| Alleghany | Forsyth |
| Ashe | Gaston |
| Catawba | Davie |
| Iredell | Watauga |
| Lincoln | Wilkes |
| Stokes | Yadkin |
| Surry | |

~~Mecklenburg: That part west of I-77, south of NC 73, east of the Catawba River, and north of NC 16 and SR 2004, except Cowan's Ford Waterfowl Refuge.~~

(B) (C) ~~Monday of Thanksgiving week to third Saturday after Thanksgiving Day in the following counties and parts of counties:~~

| | |
|-----------|------------|
| Alexander | Alleghany |
| Ashe | Catawba |
| Avery | Clay |
| Buncombe | Cleveland |
| Burke | Graham |
| Caldwell | Haywood |
| Cherokee | Henderson |
| Davie | Forsyth |
| Gaston | Iredell |
| Jackson | Polk |
| Lincoln | Stokes |
| Surry | Watauga |
| Wilkes | Yadkin |
| Macon | Rutherford |

| | |
|----------|--------------|
| Madison | Swain |
| McDowell | Transylvania |
| Mitchell | Yancey |

Mecklenburg: That part west of I-77, south of NC 73, east of the Catawba River, and north of NC 16 and SR 2004, except Cowan's Ford Waterfowl Refuge.

(C) ~~(D)~~ Monday before Thanksgiving week to January 1 in the following counties and parts of counties:

| | |
|----------|------------|
| Alamance | Durham |
| Anson | Granville |
| Caswell | Guilford |
| Chatham | Lee |
| Davidson | Montgomery |
| Orange | Stanly |
| Person | Union |
| Randolph | Rockingham |
| Rowan | |

Cabarrus: That part east of I-85.

Cumberland: That part north of NC 24, east of Fayetteville and east of NC 240 north of Fayetteville, but excluding the area located north and east of a boundary formed by US 13, US 301, SR 1802, SR 1709 and the Cape Fear River.

Harnett: That part east of NC 87, and west of US 401 north of Lillington and the Cape Fear River south of Lillington.

Johnston: That part south of US 70 and west of I-95.

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

Sampson: The part west of NC 242 and north of US 13.

Wake: That part south of NC 54 west of Raleigh and US 70 east of Raleigh.

(2) Deer of Either Sex. Deer of either sex may be taken during the open seasons and in the counties and portions of counties listed below:

(A) The open either-sex deer hunting dates established by the U.S. Fish and Wildlife Service during the period from the first Saturday in October to January 1 in those parts of Hyde and Washington Counties known as the Pungo National Wildlife Refuge, in those parts of Camden, Gates and Pasquotank Counties known as the Dismal Swamp National Wildlife Refuge, and in that part of Currituck County known as the Mackay Island National Wildlife Refuge.

PROPOSED RULES

(B) The open either-sex deer hunting dates established by the appropriate military commands during the period from Monday on or nearest October 15 to 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) The open either-sex deer hunting dates established by the U.S. Fish and Wildlife Service during the period from the Monday on or nearest October 15 to January 1 ~~in those parts of Camden, Gates and Pasquotank Counties known as the Dismal Swamp 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.~~

(D) Third Saturday in October for youth either sex deer hunting by permit only on a designated portion of Belews Creek Steam Station in Stokes County.

(E) The second Saturday in December in all of Buncombe, Haywood, Henderson, Madison, Polk, and Transylvania Counties.

(F) Wednesday of the week following Thanksgiving in all of Catawba, Cleveland, Forsyth, Greene, Rutherford, and Wilson Counties; and in the following parts of Counties:

Alleghany: All of the county except game lands.

Ashe: All of the county except game lands.

Burke: All of the county except game lands.

Caldwell: All of the county except game lands.

Cumberland: That part south of SR 1709, west of SR 1802, west of US 301 and east of the Cape Fear River.

Davidson: That part north of I-85, except game lands.

Johnston: That part north of US 70 and west of I-95.

McDowell: All of the county except game lands.

Mecklenburg: That part west of I-77, south of NC 73, east of the Catawba River, and north of NC 16 and SR 2004

except for the Cowan's Ford Waterfowl Refuge.

~~Moore: That part north of NC 211, except game lands.~~

Nash: That part south of US 64.

Rowan: That part north of I-85 and west of US 52, except game lands.

Wake: That part south of NC 54 west of Raleigh and south of US 70 east of Raleigh.

Washington: That part east of NC 32 and south of US 64.

Wayne: That part north of US 70.

(G) Wednesday and Thursday of the week following Thanksgiving in all of Camden, Dare, Iredell and Surry Counties and in the following parts of counties:

Alexander: All of the county except game lands.

Davie: All of the county except game lands.

Moore: That part north of NC 211, except game lands.

~~Pamlico: All of the county except game lands.~~

~~Pasquotank: All of the county except Dismal Swamp National Wildlife Refuge.~~

Scotland: That part north of US 74, except game lands.

~~Robeson: That part east of a boundary formed by SR 1004, NC 41, NC 211, SR 1620, SR 2225, NC 130 and NC 41.~~

Stokes: All of the county except game lands.

Tyrrell: That part south of US 64.

Wilkes: All of the county except game lands.

(H) Wednesday to Saturday of the week following Thanksgiving in all of Alamance, Caswell, Chatham, Durham, Franklin, Granville, Lee, Orange, Pasquotank, Person, Rockingham and Vance Counties and in the following parts of counties:

Columbus: That part west of a line formed by US 74, SR 1005, and SR 1125.

Cumberland: That part east of I-95 and south of NC 24.

~~Currituck: All of the county except the Outer Banks and the Mackay Island National Wildlife Refuge.~~

Edgecombe: That part south of US 64.

Guilford: That part north of a boundary formed by I-40 and I-85.

Lenoir: That part west of NC 11.

- Moore: That part south of NC 211, except game lands.
- Nash: That part north of US 64.
- Perquimans: That part south of US 17 and east of Perquimans River.
- Randolph: That part south of US 64 and west of US 220, except on game lands.
- Richmond: That part east of Little River, except game lands.
- Robeson: That part east of a line formed by SR 1005, US 301, and I-95.
- Stanly: ~~That part west of NC 52 and south of NC 24-27. All of the county except that part east of US 52 and north of NC 24-27.~~
- Wake: That part north of NC 54 west of Raleigh and north of US 70 east of Raleigh.
- ~~Washington: That part west of NC 32 and south of US 64.~~
- Wayne: That part south of US 70.
- (I) Wednesday of the week following Thanksgiving to Saturday of next succeeding week in all of ~~Duplin, Martin, Pitt Hyde~~ and Warren Counties and in the following parts of counties:
- Anson: All of the county except game lands. ~~and the Pee Dee National Wildlife Refuge.~~
- Beaufort: ~~All of the county except game lands.~~
- Bladen: ~~All of the county except on game lands.~~
- Brunswick: ~~That part north and east of a line formed by US 47, NC 211, and the Lockwood Folly River.~~
- Cabarrus: That part east of US 52.
- Carteret: All of the county except game lands.
- Chowan: That part north of US 17.
- Columbus: ~~That part east of US 701, NC 430, SR 1157, SR 1111, SR 1139, SR 1118, SR 1108 and SR 1104.~~
- Craven: ~~All of the county except game lands.~~
- Currituck: All of the county except the Outer Banks.
- Davidson: That part south of I-85, except on game lands.
- Edgecombe: ~~That part north of US 64.~~
- Hyde: ~~All of the county except Pungo National Wildlife Refuge.~~
- Johnston: That part south of US 70 and east of I-95.
- Jones: ~~All of the county except game lands.~~
- Lenoir: ~~That part east of NC 11.~~
- Montgomery: All of the county except on game lands.
- Pamlico: All of the county except on game lands.
- ~~New Hanover: That part north of US 74.~~
- ~~Onslow: All of the county except game lands.~~
- ~~Perquimans: All of the county except that part south of US 47 and east of Perquimans River.~~
- Richmond: That part west of Little River. ~~except Pee Dee National Wildlife Refuge.~~
- Rowan: That part ~~south of I-85~~ and east of US 52, except on game lands.
- Sampson: That part south of NC 24.
- Stanly: That part east of NC 52 and north of NC 24-27 except game lands.
- Washington: That part west of NC 32 and south of US 64.
- (J) Monday of Thanksgiving week to the third Saturday after Thanksgiving Day in that part of Buncombe County east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of SR 3503, NC 280 and SR 3501.
- (K) Wednesday of the week following Thanksgiving to January 1 in all of ~~Bertie, Brunswick, Halifax, Hertford, Gates, and Northampton, and Pitt~~ Counties, and in the following parts of counties:
- Beaufort: All of the county except game lands.
- Bertie: All the county except Roanoke River Wetlands.
- Bladen: All of the county except game lands.
- Chowan: That part south of US 17.
- Columbus: That part east of a line formed by US 74, SR 1005, and SR 1125.
- Craven: All of the county except game lands.
- Duplin: All of the county except game lands.
- Edgecombe: That part north of US 64.
- ~~Gates: All of the county except Dismal Swamp National Wildlife Refuge.~~
- Halifax: All of the county except Roanoke River Wetlands.
- Jones: All of the county except game lands.
- Lenoir: That part east of NC 11.
- Martin: All of the county except Roanoke River Wetlands.
- New Hanover: That part north of US 74.
- Onslow: All of the county except game lands.

PROPOSED RULES

Pender: All of the county except game lands.

Perquimans: All of the county except that part south of US 17 and east of the Perquimans River.

(3) Game Lands Either-Sex Hunts. On the hunt dates indicated, deer of either sex may be taken by permittees engaged in managed hunts conducted on game lands in accordance with 15A NCAC 10D .0003(d)(4) (5).

(c) Open Seasons (Bow and Arrow)

(1) Authorization. Subject to the restrictions set out in Subparagraph (3) of this Paragraph and the bag limits set out in Paragraph (c) of this Rule (and except where prohibited by local law), deer of either sex may be taken with bow and arrow during the following seasons:

(A) Monday on or nearest September 10 to the fourth Saturday thereafter in the counties and parts of counties having the open season for male deer specified by Part (A) of Subparagraph (b)(1) of this Rule, except on the Sandhills Game Land.

~~(B) Monday on or nearest September 10 to the second Saturday before Thanksgiving in the counties and parts of counties having the open seasons for male deer specified by Part (B) of Subparagraph (b)(1) of this Rule.~~

~~(B) (C) Monday on or nearest September 10 to the fourth Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving in the counties and parts of counties having the open seasons for male deer specified by Part (C) of Subparagraph (b)(1) of this Rule. except in Yancey County.~~

~~(C) (D) Monday on or nearest September 10 to the third Saturday before Thanksgiving in the counties and parts of counties having the open season for male deer specified by Part (D) (C) of Subparagraph (b)(1) of this Rule, and on Sandhills Game Land.~~

(2) Yancey County

~~(A) Monday on or nearest September 10 to the fourth Saturday thereafter for antlered deer only.~~

~~(B) Monday on or nearest October 15 to the Saturday before Thanksgiving for deer of either sex.~~

~~(2) (3) Restrictions~~

(A) Dogs may not be used for hunting deer during the bow and arrow season.

~~(B) It is unlawful to carry any type of firearm while hunting with a bow during the bow and arrow deer hunting season.~~

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

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

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

(A) Monday on or nearest October 8 to the following Saturday in the counties and parts of counties having the open seasons for male deer specified by Items (A) and ~~(C)~~ (B) of Subparagraph (b)(1) of this Rule, except on Sandhills Game Land.

~~(B) Monday to Saturday of the week preceding Thanksgiving week in the counties and parts of counties having the open seasons for male deer specified by Item (B) of Subparagraph (b)(1) of this Rule.~~

~~(B) (C) Monday to Saturday of the second week before Thanksgiving week in the counties and parts of counties having the open season for male deer specified by Part (C) of Subparagraph (b)(1) of this Rule, and on Sandhills Game Land.~~

(2) Restrictions

(A) Only male deer with visible antlers may be taken during the muzzle-loading firearms seasons except that:

(i) On the last day of the established muzzle-loading firearms season a maximum of two antlerless deer may be substituted for an equal number of antlered deer when taken in that part of any county listed below that has an established gun either-sex deer season.

| | |
|------------|-------------|
| Alexander | Cleveland |
| Alleghany | Davie |
| Ashe | Forsyth |
| Burke | Iredell |
| Caldwell | Mecklenburg |
| Catawba | McDowell |
| Rutherford | Stokes |
| Surry | Wilkes |

(ii) In those areas with an established gun either-sex deer season in counties or parts of counties listed in Paragraph (b)(1)(A) or ~~(D)~~ (C) of this Rule a maximum of two antlerless deer may be substituted for an equal number of antlered deer and one additional

antlerless deer is permitted without substitution.

(B) Dogs may not be used for hunting deer during the muzzle-loading firearms seasons.

(C) Pistols may not be carried while hunting deer during the muzzle-loading firearms seasons.

(e) Bag Limits

(1) Male Deer With Visible Antlers. Daily, two; possession, ~~two~~; four; season, four, one of the four male deer with visible antlers is required to have a minimum of four points on one main antler beam.

(2) Antlerless Deer. Where antlerless deer may be lawfully taken, a maximum of two antlerless deer may be substituted for an equal number of antlered deer in the limits contained in Subparagraph (1) of this Paragraph. Antlerless deer include males with knobs or buttons covered by skin or velvet as distinguished from spikes protruding through the skin.

(3) Managed Game Land Hunts. ~~Excluded from~~ In addition to the possession and season limits set forth in Subparagraphs (1) and (2) of this Paragraph one additional either sex deer is permitted when are deer of either sex taken by permittees engaged in managed hunts conducted on game lands in accordance with 15A NCAC 10D .0003(d)(4) and (5), such deer being in addition to the specific possession and season limits set out in this Paragraph.

(4) In those areas with an established gun either-sex deer season in counties and parts of counties listed in Paragraph (b)(1)(A) or ~~(D)~~ (C) of this Rule, one additional antlerless deer is permitted without substitution when taken during a gun either-sex, bow and arrow or muzzle-loading firearms season.

(f) Kill Reports. The carcass of each deer shall be tagged and the kill reported as provided by 15A NCAC 10B .0113.

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

.0209 WILD TURKEY (BEARDED TURKEYS ONLY)

(a) Open Season: Second Saturday in April to Saturday of the fourth week thereafter on bearded turkeys in the following counties: Alleghany, Ashe, Bertie, Buncombe, ~~Burke~~, Caswell, Cherokee, Clay, Durham, Graham, Granville, Haywood, Hyde, ~~Jackson~~, Macon,

McDowell, Mitchell, ~~Onslow~~, Orange, Person, Rockingham, Scotland, and in the following portions of counties:

Alamance: All of the county except that part south of I-85 and west of NC 87.

Anson: That part east of US 52 and north of US 74.

Bladen: ~~All of the county except that part bounded on the west by US 701, on the east by 210, and on the south by NC 53, SR 1730, and the Columbus County line.~~ That part south of NC 701 and east of a line formed by NC 210, NC 53, SR 1730.

Brunswick: That part north of US 74-76.

Burke: That part north of I-40.

Caldwell: That part west of US 321.

Carteret: That part west of US 70 and north of NC 24.

Chatham: That part north and west of US 1.

Chowan: That part south of US 17.

Columbus: That part south of US 74 and west of NC 410 and that part north of NC 87.

Craven: That part west of US 70, and south of SR ~~1100~~, 1101.

Guilford: That part north of a boundary formed by I-85 and I-40.

Halifax: That part north of NC 903 and east of I-95.

Haywood: ~~That part north of I-40.~~

Henderson: That part west of I-26.

Hoke: That part south and west of NC 211.

Jackson: That part south of US 74 except the portion bounded on the north by NC 281, on the west by NC 107, and on the south by US 64.

Johnston: That part south of US 70 and I-95 and east of US 701.

Jones: ~~That part south of SR 1105 and NC 58 to Maysville and east of US 17.~~

Madison: All of the county except that part north of NC 208, NC 212 and SR 1434.

Martin: That part north of a boundary formed by US 64 from the Washington County line to Williamston, north of NC 125 from Williamston to the junction with NC 142, and north of NC 142 to the Edgecombe County line.

Montgomery: That part south of NC 24-27.

Northampton: That part south of a boundary formed by US 158 from the Halifax County line to Jackson, NC 305 from Jackson to Rich Square, US 258 from Rich Square to NC 308, and NC 308 to the Bertie County line.

Onslow: All of the county except that part east of a line formed by US 17, SR 1434 and SR 1442.

Pender: That part west of US 421, ~~from the Sampson County line to NC 210 and south of NC 210 and NC 133 to the New Hanover County line.~~

Perquimans: That part south of US 17.

Richmond: That part north of US 74.

Robeson: That part east of I-95 and south of US 74.

Surry: That part west of I-77.

Swain: All of the county except that part south of US 19 and west of NC 28.

Transylvania: All of the county except that part west of US 178, and south of US 64.

Watauga: That part north and east of US 421, 321.

Wilkes: That part north of ~~US 421,~~ NC 268.

Yancey: All of the county except that part bounded on the west by NC 197, on the north by US 19E, and on the east by NC 80.

**The Sandhills Game Land in Richmond, Scotland, and Moore Counties and the Roanoke River Wetlands in Bertie, Halifax, and Martin Counties are closed to turkey hunting except by holders of special permits authorizing turkey hunting. Such permits are issued by authorized representatives of the Wildlife Resources Commission.

(b) Bag Limits: Daily, one; possession, two; season, two.

(c) Dogs Prohibited. It is unlawful to use dogs for hunting turkeys.

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

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

SUBCHAPTER 10C - INLAND FISHING REGULATIONS

SECTION .0200 - GENERAL REGULATIONS

.0205 PUBLIC MOUNTAIN TROUT WATERS

(a) Designation of Public Mountain Trout Waters. On game lands located in western North Carolina certain waters are classified and designated as public mountain trout waters. Those not further specifically classified as native trout waters are classified as general trout waters. (See 15A NCAC 10D .0004) Other streams, portions of streams, and bodies of water which are not located on game lands are designated within this Rule as public mountain trout waters and are classified as general or native trout waters. These waters are posted and lists thereof are filed with the clerks of superior court of the counties in which they are located:

(1) General Trout Waters. The general public mountain trout waters which are not located on game lands are designated in this Subparagraph under the counties where located. Indentation indicates the watercourse named is tributary to the next preceding watercourse named and not so indented. The designation applies to the entire watercourse or impoundment named except as otherwise indicated in parentheses following the name. Other clarifying information may also be included parenthetically:

(H) Clay County:

- Hiwassee River (not trout water)
- Fires Creek (bear sanctuary line to SR 1300)
- Tusquitee Creek (headwaters to lower bridge on SR 1300)
- Tuni Creek
- Shooting Creek (headwaters to US 64 bridge at SR 1338)
- Hothouse Creek
- Vineyard Creek
- ~~Little Tennessee River (not trout water)~~
- ~~Nantahala River (Roaring Fork to existing Nantahala Lake water level)~~

Note: See Part I, Subparagraph (2) of this Paragraph (a) for seasonal designation of a portion of Nantahala River as native trout water.

(M) Macon County:

- Little Tennessee River (not trout water)
- Nantahala River (~~lower~~) (~~Roaring Fork~~) (Nantahala Dam to Swain County line on US 19)
- Queens Creek Lake
- Roaring Fork Creek (US Forest Service property line to mouth)
- Burningtown Creek
- Cullasaja River (Sequoah Dam to US 64 bridge near junction of SR 1672)
- Ellijay Creek (except where posted against trespass)
- Mirror Lake
- Cartoogechaye Creek (US 64 bridge to Little Tennessee River)
- Tessentee Creek (Nichols Branch to Little
- Tennessee River, except where posted against trespassing)
- Savannah River (not trout water)
- Big Creek (base of falls to Georgia State line)

Note: See Part I, Subparagraph (2) of this Paragraph (a) for seasonal designation of a portion of Nantahala River as native trout water.

(T) Surry County:

- Yadkin River (not trout water)

PROPOSED RULES

Ararat River (~~not trout water~~) (~~Virginia State line to Johnson Creek~~)

Little Fisher River (Virginia State line to NC 89 bridge)

Cooper Creek

Merritt Creek

Pauls Creek (Virginia State line to SR 1625)

- (2) Native Trout Waters. The native trout waters which are not located on game lands are designated in this Subparagraph under the counties where located:

~~(4) Clay and Macon Counties. That portion of the Nantahala River located upstream from Nantahala Lake and all tributaries (excluding impoundments) which are designated as general trout water in Parts (H) and (M) of Subparagraph (1) of this Paragraph (a) are redesignated native trout water during the period from January 1 to the reopening of the general trout season in the Spring, and shall remain general trout water during the balance of the year.~~

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

SECTION .0300 - GAME FISH

.0301 INLAND GAME FISHES DESIGNATED

The following fishes are classified and designated as inland game fishes:

- (1) mountain trout, all species including but not limited to rainbow, steelhead, golden, brown and brook trout;
- (2) muskellunge and tiger muskie;
- (3) chain pickerel (jack);
- (4) walleye;
- (5) black bass, including spotted, smallmouth and largemouth bass;
- (6) white bass;
- (7) spotted sea trout (speckled trout), when found in inland fishing waters;
- (8) flounder, when found in inland fishing waters;
- (9) red drum (channel bass, red fish, puppy drum), when found in inland fishing waters;
- (10) ~~(8)~~ striped bass and Morone hybrids (striped bass-white bass), when found in inland fishing waters;
- (11) ~~(9)~~ kokanee salmon;
- (12) ~~(10)~~ Panfishes, including as a group, white perch and yellow perch (when found in inland fishing waters), crappie, warmouth, redbreast or robin, bluegill or bream, rock bass, redeye, sauger, and all other species

of sunfish, perch and pickerel not specifically listed in this Rule.

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

.0305 OPEN SEASONS: CREEL AND SIZE LIMITS

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

| GAME FISHES | DAILY CREEL LIMITS |
|---|-----------------------------------|
| Mountain Trout (All Species) | 7 (exceptn. 3) |
| Muskellunge and Tiger Musky | 2 |
| Chain Pickerel (Jack) | None (exceptn. 4) |
| Walleye | 8 (exceptn. 9 and 10) |
| Sauger | 8 |
| Black Bass: Largemouth | 8 (exceptn. 8 and 10) |
| Smallmouth and Spotted | 8 (exceptn. 8 and 10) |
| White Bass | 25 (exceptn. 4) |
| Sea Trout (Spotted or Speckled) | None |
| Flounder | None |
| Red drum (channel bass, red fish, puppy drum) | None |
| Striped Bass and their hybrids | 8 aggregate (exc. 1 and 6) |

PROPOSED RULES

| | | | |
|---------------------------------|--|--|------------------------|
| (Morone Hybrids) | | None | ALL YEAR (excpn. 5) |
| Kokanee Salmon | 7 | | |
| Panfishes | None (excpn. 5) | None | ALL YEAR (excpn. 7) |
| NONGAME FISHERIES | None | (b) Exceptions | |
| MINIMUM SIZE LIMITS | OPEN SEASON (EXCPTN. 2) | (6) In the inland fishing waters of the coastal rivers and their tributaries extending upstream to the first impoundment, or to the headwaters, if unimpounded, the daily creel limit for striped bass and their hybrids is three fish, <u>except from April 1 to May 31 the daily creel limit is four fish and no fish between the lengths of 22 inches and 27 inches may be retained.</u> | |
| None (excpn. 3) | All year, except March 1 to 1/2 hr. before sunrise on first Saturday in April (excpns. 2 and 3) | (7) See 15A NCAC 10C .0407 for open seasons for taking nongame fishes by special devices. | |
| 30 in. | ALL YEAR | (8) The maximum combined number of black bass of all species that may be retained is eight 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 12 <u>14</u> inches, <u>with no exception in Lake Luke Marion in Moore County, in Reedy Creek Park lakes in Mecklenburg County, and in Currituck Sound and tributaries north of Wright Memorial Bridge; in North River and tributaries in Currituck and Camden Counties north of a line between Camden Point and the end of SR 1124. and in In</u> and west of Madison, Buncombe, Henderson and Polk Counties <u>the minimum size limit is 12 inches.</u> In B. Everett Jordan Reservoir a daily creel limit of four fish and a minimum size limit of 16 inches, with no exception, apply to largemouth bass. In Falls of Neuse Reservoir, east of SR 1004, Sutton Lake and Tuckertown Lake the daily creel limit for black bass is four fish, no black bass between the lengths of 12 inches and 16 inches may be retained, and the minimum size limit for black bass is 16 inches, except that the daily creel may contain two black bass of less than 12 inches in length. In John H. Kerr Reservoir and Lake Gaston the <u>black bass daily creel limit is</u> of five fish. shall apply to black bass, provided that this limit shall become effective only when and if the State of Virginia imposes a like creel limit for black bass taken from these impoundments. <u>In W. Kerr Scott Reservoir there is no minimum size limit for spotted bass.</u> | |
| None | ALL YEAR | | |
| None (excpn. 9) | ALL YEAR | | |
| 15 in. | ALL YEAR | | |
| 14 in. (excpns. 4, 8 and 11) | ALL YEAR | | |
| 12 in. (excpns. 4, 8 and 11) | ALL YEAR | | |
| None | ALL YEAR | | |
| None <u>12 in.</u> | ALL YEAR | | |
| <u>13 in.</u> <u>14 in.</u> | <u>ALL YEAR</u> <u>ALL YEAR</u> | | |
| 16 in. (exc. 1 and 12) | ALL YEAR | | |
| None | ALL YEAR | | |

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

SECTION .0400 - NONGAME FISH

.0404 SPECIAL DEVICE FISHING

(b) Nets. Manually operated nets, including seines and bow, cast, dip, gill, drift and fyke nets may be used under the special device fishing license.

- (1) No fixed or gill net or other stationary net which may be authorized as a special fishing device may be more than 100 yards in length, nor shall any such net be placed within 50 yards of any other fixed net. Fixed nets must be set so that they run parallel to the nearest shoreline, except in the Neuse, Trent, Northeast Cape Fear, Cape Fear, and Black Rivers and their tributaries. No anchored or fixed gill net or drift net shall be used unless such net is marked for the protection of boat operators. A net shall be deemed so marked when there is attached to it at each end a floating plastic jug or other floating object not less than six inches in its smallest dimensions. Floats marking the ends shall be colored white. Glass floats and metal cans may not be used. A net shall be deemed so marked when there is attached to it at each end two separate yellow buoys which shall be of solid foam or other solid buoyant material no less than five inches in its smallest dimensions. All nets shall be affixed with a tag upon which the owners name and address is legibly and indelibly inscribed.

(c) Crab pots. Persons owning property adjacent to the inland fishing waters of coastal rivers and their tributaries are permitted to set two crab pots to be attached to their property and not subject to special device license requirements.

Statutory Authority G.S. 113-134; 113-272.2; 113-276; 113-292.

.0407 PERMITTED SPECIAL DEVICES AND OPEN SEASONS

Except in designated public mountain trout waters, and in impounded waters located on the Sandhills Game Land, there is a year-round open season for the licensed taking of nongame fishes by bow and arrow. Seasons and waters in which the use of other special devices is authorized are indicated by counties below:

- (67) Pamlico:

- (a) December 1 to June 5 with dip, bow and gill nets in all inland public waters;
 (b) ~~Persons owning property adjacent to the inland fishing waters of Dawson Creek and Tarklin Creek are permitted to set two crab pots to be attached to their property and not subject to special device license requirements;~~

Statutory Authority G.S. 113-134; 113-276; 113-292.

SUBCHAPTER 10D - GAME LANDS REGULATIONS

.0002 GENERAL REGULATIONS REGARDING USE

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

- (1) on the field trial course of the Sandhills Game Land;
- (2) on the Harmon Den and Sherwood bear sanctuaries in Haywood County;
- (3) in posted "safety zones" located on any game land;
- (4) by the use of multiple sets (with anchors less than 15 feet apart) or bait on the National Forest Lands bounded by the Blue Ridge Parkway on the south, US 276 on the north and east, and NC 215 on the west;
- (5) on that portion of the Butner-Falls of Neuse Game Lands marked as the Penny Bend Rabbit Research area;
- (6) on Cowan's Ford Waterfowl Refuge in Gaston, Lincoln and Mecklenburg Counties;
- (7) on the Hunting Creek Swamp Waterfowl Refuge.

On those areas of state-owned land known collectively as the Roanoke River Wetlands and including the Broadneck, Company Swamp, Conine Island, Speller-Outlaw and Urquhart tracts, controlled trapping is allowed under a permit system. For information contact the Division of Wildlife Management of the Wildlife Resources Commission.

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

.0003 HUNTING ON GAME LANDS

(a) Safety Requirements. No person while hunting on any designated game land shall be under the influence of alcohol or any narcotic

drug, or fail to comply with special restrictions regarding the use of the Blue Ridge Parkway where it adjoins game lands listed in this Rule.

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

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

(d) ~~(c)~~ Time and Manner of Taking. Except where closed to hunting or limited to specific dates by these regulations, hunting on game lands is permitted during the open season for the game or furbearing species being hunted. On managed waterfowl impoundments, hunters shall not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates, and hunting is prohibited after 1:00 p.m. on such hunting dates; decoys may not be set out prior to 4:00 a.m. and must be removed by 3:00 p.m. each day. On Butner-Falls of Neuse, New Hope and Shearon Harris Game Lands waterfowl hunting is prohibited after 1:00 p.m. on the open hunting days. No person shall operate any vessel or vehicle powered by an internal combustion engine on a managed waterfowl impoundment.

No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal which has been so mutilated.

No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the commission or its agent and no person shall take or attempt to take any game birds or game animals attracted to such foods.

No live wild animals or wild birds shall be removed from any game land.

(e) ~~(d)~~ Hunting Dates:

- (1) Doves may be taken on the following game lands and dove hunting is limited to Mondays, Wednesdays, Saturdays and to Thanksgiving, Christmas and New ~~Years~~ Year's Days within the federally-announced season:

Buncombe County--Browntown Farms Game Land

Guilford County--Guilford County Farm Game Land

Lenoir County--Caswell Farm Game Land

Wayne County--Cherry Farm Game Land

- (2) Any game may be taken during the open seasons on the following game lands and hunting is limited to Mondays, Wednesdays, Saturdays and Thanksgiving, Christmas and New ~~Years~~ Year's Days. In addition, deer may be taken with bow and arrow on the opening day of the bow and arrow season for deer. 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. Additional restrictions apply as indicated in parentheses following specific designations:

Ashe County--Carson Woods Game Land

Bertie County--Bertie County Game Lands

Bladen County--Bladen Lakes State Forest

Game Lands (Handguns may not be carried and, except for muzzle-loaders, rifles larger than .22 caliber rimfire may not be used or possessed. On the Breece Tract and the Singletary Tract deer and bear may be taken only by still hunting. Deer of either sex may be taken on the first Wednesday after Thanksgiving and on the second Saturday after Thanksgiving.)

Caswell County--Caswell Game Land

(That part designated and posted as a "safety zone" is closed to all hunting and trapping, and entry upon such area for any purpose, except by authorized personnel in the performance of their duties, is prohibited. On areas posted as "restricted zones" hunting is limited to bow and arrow.)

Catawba and Iredell Counties--Catawba Game Land (No deer may be taken from the tracts known as Island Point or Molly's Backbone.)

Lenoir County--H.M. Bizzell, Sr., Game Land

Onslow County--White Oak River Impoundment Game Land (In addition to the dates above indicated, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.)

Pender County--Holly Shelter Game Land (In addition to the dates above indicated, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons. Deer of either sex may be taken on the first Wednesday after Thanksgiving and on the second Saturday after Thanksgiving.)

Richmond, Scotland and Moore Counties--Sandhills Game Land (The regular gun season for deer consists of the open hunting dates from the second Monday before

Thanksgiving to the third Saturday after Thanksgiving except on the field trial grounds where the gun season is from the second Monday before Thanksgiving to the Saturday following Thanksgiving. Deer may be taken with bow and arrow on all open hunting dates during the bow and arrow season, as well as during the regular gun season. Deer may be taken with muzzle-loading firearms on Monday, Wednesday and Saturday of the second week before Thanksgiving week, and during the regular gun season. Except for the deer seasons above indicated and the managed either-sex permit hunts, the field trial grounds are closed to all hunting during the period October 22 to March 31. In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.) Wild turkey hunting is by permit only.

Robeson County--Bullard and Branch Hunting Preserve Game Land

Stokes County--Sauratown Plantation Game Land

Yadkin County--Huntsville Community Farms Game Land

- (3) Any game may be taken on the following game lands during the open season, except that:
- (A) Bears may not be taken on lands designated and posted as bear sanctuaries;
 - (B) Wild boar may not be taken with the use of dogs on such bear sanctuaries, and wild boar may be hunted only during the bow and arrow seasons and the regular gun season on male deer on bear sanctuaries located in and west of the counties of Madison, Buncombe, Henderson and Polk;
 - (C) On game lands open to deer hunting located in or west of the counties of Rockingham, Guilford, Randolph, Montgomery and Anson, dogs may not be used for any hunting (day or night) during the regular season for hunting deer with guns; except that small game may be hunted with dogs in season on all game lands, other than bear sanctuaries, in the counties of Cherokee, Clay, Jackson, Macon, Madison, Polk and Swain;
 - (D) On Croatan, Goose Creek, New Hope and Shearon Harris Game Lands 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; except that outside the posted waterfowl impoundments on Goose Creek Game Land hunting any waterfowl in season is permitted any week day during the last 10 days of the regular duck season as established by the U.S. Fish and Wildlife Service; On the Pamlico Point, Campbell Creek, and Spring Creek impoundments a special permit is required for hunting on those opening and closing days of the waterfowl season as well as on those Saturdays that fall after November 1 of the season and on Thanksgiving ~~Christmas~~, and New Year's day;

- (E) On the posted waterfowl impoundments of Gull Rock Game Land hunting of any species of wildlife is limited to Mondays, Wednesdays, Saturdays; Thanksgiving, Christmas, and New Year's Days; and the opening and closing days of the applicable waterfowl seasons;
- (F) On bear sanctuaries in and west of Madison, Buncombe, Henderson and Polk Counties dogs may not be trained or allowed to run unleashed between March 1 and October 11;
- (G) On Butner-Falls of Neuse and Person Game Lands waterfowl may 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;
- (H) On Angola Bay, Croatan, Goose Creek, Hofmann Forest and Tuscarora Game Lands deer of either sex may be taken from the first Wednesday after Thanksgiving through the following Saturday;
- (I) Horseback riding is allowed on the Caswell and Thurmond Chatham game lands 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;
- (J) On the posted waterfowl impoundments on the New Hope and Butner-Falls of Neuse game lands a special permit is required for all waterfowl hunting.
- (K) ~~(J)~~ Additional restrictions or modifications apply as indicated in parentheses following specific designations:
Alexander and Caldwell Counties--Brushy Mountains Game Lands
Anson County--Anson Game Land

PROPOSED RULES

Ashe County--Bluff Mountain Game Lands
Ashe County--Cherokee Game Lands
Ashe and Watauga Counties--Elk Knob Game Land

Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Jackson, Madison, McDowell, Mitchell, Transylvania, Watauga and Yancey Counties--Pisgah Game Lands (Harmon Den and Sherwood Bear Sanctuaries in Haywood County are closed to hunting raccoon, opossum and wildcat. Training raccoon and opossum dogs is prohibited from March 1 to October 11 in that part of Madison County north of the French Broad River, south of US 25-70 and west of SR 1319.)

Beaufort, Bertie and Washington Counties--Bachelor Bay Game Lands

Beaufort and Pamlico Counties--Goose Creek Game Land

Brunswick County--Green Swamp Game Land

Burke County--South Mountains Game Lands

Burke, McDowell and Rutherford Counties--Dysartsville Game Lands

Caldwell County--Yadkin Game Land

Carteret, Craven and Jones Counties--Croatan Game Lands (It is unlawful to train dogs or allow dogs to run unleashed between March 1 and July 31)

Chatham County--Chatham Game Land
Chatham, Durham, Orange, and Wake Counties--New Hope Game Lands

Chatham and Wake Counties--Shearon Harris Game Land

Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania Counties--Nantahala Game Lands (It is unlawful to take or hunt deer on Fires Creek Bear Sanctuary. Raccoon and opossum may be hunted only from sunset Friday until sunrise on Saturday and from sunset until 12:00 midnight on Saturday on Fires Creek Bear Sanctuary in Clay County and in that part of Cherokee County north of US 64 and NC 294, east of Persimmon Creek and Hiwassee Lake, south of Hiwassee Lake and west of Nottely River; in the same part of Cherokee County dog training is prohibited from March 1 to October 11. It is unlawful to train dogs or allow dogs to run unleashed on Fires Creek Bear Sanctuary at any time, except that dogs may be used when hunting raccoon or opossum and for hunting grouse and rabbits during the open sea-

sons. It is unlawful to train dogs or allow dogs to run unleashed on any game land in Graham County between March 1 and October 11.)

Chowan County--Chowan Game Land
Chowan County--Chowan Swamp Game Land

Cleveland County--Gardner-Webb Game Land

Craven County--Neuse River Game Land

Craven County--Tuscarora Game Land

Currituck County--North River Game Land

Currituck County--Northwest River Marsh Game Land

Dare County--Dare Game Land (No hunting on posted parts of bombing range.)

Davidson, Davie and Rowan Counties--Alcoa Game Land

Davidson County--Linwood Game Land

Davidson, Montgomery, Randolph and Stanly Counties--Uwharrie Game Land

Duplin and Pender Counties--Angola Bay Game Land

Durham, Granville and Wake Counties--Butner-Falls of Neuse Game Land (On portions of the Butner-Falls of Neuse Game Land designated and posted as "safety zones" and on that part marked as the Penny Bend Rabbit Research Area no hunting is permitted. On portions posted as "restricted zones" hunting is limited to bow and arrow during the bow and arrow season and the regular gun season for deer.)

Franklin County--Franklin Game Lands

Gates County--Chowan Swamp Game Land

Granville County--Granville Game Lands

Halifax County--Halifax Game Land

Henderson, Polk and Rutherford Counties--Green River Game Lands

Hyde County--Gull Rock Game Land

Hyde County--Pungo River Game Land

Hyde and Tyrrell Counties--New Lake Game Land

Jones and Onslow Counties--Hofmann Forest Game Land

Lee County--Lee Game Land

McDowell County--Hickory Nut Mountain Game Land

Moore County--Moore Game Land

New Hanover County--Catfish Lake Game Land

Orange County--Orange Game Land

Person County--Person Game Land

Transylvania County--Toxaway Game Land

Vance County--Vance Game Land

Warren County--Warren Game Lands

Wilkes County--Thurmond Chatham Game Land

- (4) Deer of either sex may be taken on the hunt dates indicated by holders of permits to participate in managed hunts scheduled and conducted in accordance with this Subparagraph on the game lands or portions of game lands included in the following schedule:

Wednesday and Thursday Friday and Saturday of the first week after Thanksgiving Week:

Uwharrie and Alcoa southeast of NC 49

Third Saturday after Thanksgiving Day:

Carson Woods

Thurmond Chatham

Thursday and Friday of the ~~third~~ week before ~~after~~ Thanksgiving Week:

Sandhills east of US 1

Sandhills west of US 1

Fourth Saturday after Thanksgiving Day:

Carson Woods

Dysartsville in McDowell County

Hickorynut Mountain in McDowell County

Pisgah in Avery County

Pisgah in Burke County

Pisgah in Caldwell County

Pisgah in McDowell County

Pisgah in Yancey County north of US 19-19E

South Mountains

Thurmond Chatham

Fifth Saturday after Thanksgiving Day:

Thurmond Chatham

Application forms for permits to participate in managed deer hunts on game lands, together with pertinent information and instructions, may be obtained from hunting and fishing license agents and from the Wildlife Resources Commission. Completed applications must be received by the Commission not later than the first day of October next preceding the dates of hunt. Permits are issued by random computer selection, are mailed to the permittees 30 days prior to the hunt, and are nontransferable. Each permit is accompanied by an appropriate big game tag. A hunter making a kill must tag the deer and report the kill to a wildlife cooperator agent.

- (5) Except as otherwise indicated, the following game lands or indicated portions thereof are closed to all hunting: Bertie, Halifax and Martin Counties--Roanoke River Wetlands, consisting of the state-owned Broadneck, Company Swamp,

Conine Island, Speller-Outlaw and Urquhart tracts (controlled hunting is scheduled and allowed by permit only. Interested persons should contact the Division of Wildlife Management of the Wildlife Resources Commission at the Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27611.)

Caswell County--Caswell Game Land (That portion designated and posted as a "Safety Zone")

Dare County--Dare Game Lands (Those parts of bombing range posted against hunting)

Davie--Hunting Creek Swamp Waterfowl Refuge

Gaston, Lincoln and Mecklenburg Counties--Cowan's Ford Waterfowl Refuge (except for youth either-sex deer hunts by permit only on the first and second Saturdays in October).

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

.0004 FISHING ON GAME LANDS

(a) Generally. Except as otherwise indicated herein, fishing on game lands which are open to fishing shall be in accordance with the statewide regulations. All game lands are open to public fishing except restocked ponds on the New Hope Game Land when posted against fishing, Hunting Creek Swamp Waterfowl Refuge, Grogan Creek in Transylvania County, and in the case of private ponds where fishing may be prohibited by the owners thereof. No trotline or set-hook nor any net, trap, gig, bow and arrow or other special fishing device of a type mentioned in 15A NCAC 10C .0403 may be used in any of the impounded waters located on the Sandhills Game Land. The game lands license is not required to fish on the central and eastern game lands where there are no designated public mountain trout waters.

(b) Designated Public Mountain Trout Waters

(4) Native Trout Waters

(A) Designation. So much of the following public mountain trout waters, including all tributaries unless otherwise indicated, as are located on game lands, are further designated as native trout waters:

Armstrong Creek above the state fish hatchery in McDowell County

Avery Creek in Transylvania County

Big Creek in Haywood County (~~game land portion~~)

Big Creek in Henderson County

Big Creek in Yancey County

Big East Fork of Pigeon River in Haywood County
 Big Snowbird Creek above the old railroad junction in Graham County
 Bowlen's Creek in Yancey County
 Bradley Creek in the counties of Henderson and Transylvania
 Buck Creek in Clay County
 Buck Timber Creek, excluding all tributaries, in Avery County
 Caney Fork Creek in Jackson County
 Cary Flat Branch in Avery County
 Cataloochee Creek in Haywood County
Catawba River in McDowell County
 Colbert Creek in Yancey County
 Curtis Creek above the fish barrier in McDowell County
 Davidson River, above its confluence with Avery Creek, except Grogan Creek in Transylvania County
 Fires Creek in Clay County
 Flat Creek in Jackson County
 Fletcher Creek in Henderson County
 Gage Creek in Jackson County
 Harper Creek in the Counties of Avery and Caldwell
 Left Prong of Pigeon Roost (Bear Wallow) Creek in Mitchell County
 Little East Fork of Pigeon River in Haywood County
 Lost Cove Creek, except Gragg Pong and Rockhouse Creek, in Avery County
 Mackey Creek in McDowell County
 Middle Creek in Yancey County
 Middle Prong, West Fork of Pigeon River in Haywood County
 Nantahala River above the bear sanctuary line in Macon County
 North Fork French Broad River upstream from Long Branch in Transylvania County
 North Harper Creek in Avery County
 Rock Creek in Yancey County
 Slick Rock Creek on the Tennessee line and in Graham County
 South Harper Creek in Avery County
 South Mills River in the counties of Henderson and Transylvania
 South Toe River from headwaters to upper game land boundary below Black Mountain Campground in Yancey County
 Steels Creek in Burke County
 Tanasee Creek in Jackson County
Tuckasegee River, upstream from Clarke property (including Panthertown and Greenland Creeks and tributaries) in Jackson County

Upper Creek in Burke County
 Whitewater River below Silver Run Creek, and excluding all tributaries, in the counties of Jackson and Transylvania
 Wilson Creek above the Jim Todd property in Avery County
 Wolf Creek, except Balsam Lake (Old Mead Lake), in Jackson County

~~Note: See Subparagraph (5) of this Paragraph for seasonal designation of Nantahala River and all tributaries as native trout waters.~~

(C) Special Regulations. The following rules apply as indicated to the game land portion of Lost Cove Creek in Avery County (excluding Gragg Prong and Rockhouse Creek), South Toe River from the concrete bridge above Black Mountain Campground downstream to the game land boundary (excluding Camp Creek and Neals Creek), and to the game land portion of Davidson River above Avery Creek in Transylvania County (excluding Avery Creek, Looking Glass Creek and Grogan Creek), and to the game land portion of Tuckasegee River upstream from Clarke property (including Panthertown and Greenland Creeks and tributaries) and Flat Creek in Jackson County;

- (i) Open Season. There is no closed season.
- (ii) Creel Limit. The daily creel limit is four trout, except no trout may be retained from Tuckasegee River and tributaries and Flat Creek.
- (iii) Size Limits. The minimum size is seven inches and the maximum size is ten inches, except that one trout exceeding fourteen inches may be retained from Lost Cove Creek and South Toe River, and one trout exceeding sixteen inches may be retained from Davidson River.
- (iv) Manner of Taking. Only artificial flies having one single hook may be used.

~~(5) Seasonal Native Trout Waters. All portions of the Nantahala River and its tributaries upstream from Nantahala Lake which are located on game lands and which are designated in this Paragraph (b) as general trout waters are redesignated native trout waters during the period from January 1 until the reopening of the general trout season in the spring, only, and during such period shall be subject to the~~

limits and restrictions contained in Sub-paragraph (4) of this Paragraph.

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

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Wildlife Resources Commission intends to amend rule(s) cited as 15A NCAC 10H .0301 - .0302.

The proposed effective date of this action is May 1, 1990.

The public hearing will be conducted at 10:00 a.m. on February 5, 1990 at Room 386, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from January 22, 1990 to February 20, 1990. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, N.C. 27611.

SUBCHAPTER 10H - REGULATED ACTIVITIES

SECTION .0300 - HOLDING WILDLIFE IN CAPTIVITY

.0301 GENERAL REQUIREMENTS

(a) Captivity Permit

- (1) Requirement. The possession of any species of wild animal which is or once was native to this State or any species of wild bird which naturally occurs or historically occurred in this State, being native or migratory, is unlawful unless the institution or individual in possession thereof has first obtained from the Wildlife Resources Commission a captivity permit or a captivity license as required by this Rule.
- (2) Injured, ~~or~~ Crippled or Orphaned Wildlife. Notwithstanding the preceding Subparagraph (1), a crippled, ~~or injured or orphaned~~ wild animal or wild bird, except deer or black bear may be taken and kept in possession for no longer than five days, provided that during such five-day period the individual in possession thereof shall apply to the Wildlife Resources Commission,

or a wildlife enforcement officer of the Commission, for a captivity permit.

Deer and Black Bear. Captivity permits will not be issued for crippled, injured or orphaned deer or black bear, except to certain rehabilitators predesignated by the Commission to provide temporary care for deer and black bear. No person, except for a rehabilitator predesignated by the Commission, shall keep a crippled, injured or orphaned deer or black bear in possession for longer than a 24 hour period.

- (3) Application and Term. A captivity permit will be issued without charge and may be issued upon informal request by mail, telephone, or other means of communication; but such permit shall authorize possession of the animal or bird only for such period of time as may be required for the rehabilitation and release to the wild; or to obtain a captivity license as provided by Paragraph (b) of this Rule, if such a license is authorized, desired and is issued, or to make a proper disposition of the animal or bird, as determined by the Executive Director, if the application for such license is not desired or for any reason is denied, or when an existing captivity license is not renewed or is terminated.

(b) Captivity License

- (1) Requirement. Except as provided in Paragraph (a) of this Rule, no person shall keep any species of wild animal which is or once was native to this State or any deer, elk, or other member of the family Cervidae; or any coyote, wolf, or other member of the family Canidae; or any species of wild bird which naturally occurs or historically occurred in this State, being either native resident or migratory, without first having obtained from the Wildlife Resources Commission a license to hold the particular species of animal or bird in captivity. Each species of animal or bird shall be the subject of a separate license authorizing the holding of one or more of the species at a location specified in the license.
- (2) Required Facilities. No captivity license shall be issued until the applicant has constructed or acquired a facility for Acquisition of Wildlife. Notwithstanding the provisions of Subparagraph (a)(2) of this Rule, captivity licenses may not be issued if the wild animal or wild bird was acquired unlawfully or merely as a pet.

keeping the animal or bird in captivity which shall comply with the minimum 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.

(3) Term of License

(A) Dependent Wildlife. ~~When~~ 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, ~~the any~~ any captivity license ~~may be which is issued shall be for a such period less than one year as such rehabilitation may require.~~ Captivity licenses will not be issued for rehabilitation of deer and black bear.

(C) Concurrent Federal Permit. No State captivity license for an endangered or threatened species or a migratory bird shall be operative to authorize retention thereof for a longer period than is allowed by any concurrent federal permit that may be required for its retention.

(c) Nontransferability. No license or permit issued pursuant to this Rule shall be transferable, either as to the holder or the site of a holding facility.

(d) Sale or Transfer of Captive Wildlife. It is unlawful for any person to transfer or receive any wild animal or wild bird which is being held under a captivity permit issued under Paragraph (a) of this Rule, except that any such animal or bird may be surrendered to an agent of the Wildlife Resources Commission. It is unlawful for any person holding a captivity license issued under Paragraph (b) 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 to another person who has obtained a license to hold it in captivity. 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 transmitted to the Wildlife Resources Commission. It is unlawful for any person to release into the wild for any purpose or allow to range free any species of deer or any wolf, coyote, or other nonindigenous member of the family Canidae.

(e) Applicability of Section. ~~The requirements of the rules contained in this Section shall not apply to holders of the following licenses: The following licenses include authority for incidental transportation and possession of wildlife covered under the license:~~

- (1) Wildlife and fish collection licenses [G.S. 113-272.4; 15A NCAC 10B .0119; 15A NCAC 10C .0214];
- (2) Controlled shooting preserve license [G.S. 113-273(g); 15A NCAC 10H .0100];
- (3) Commercial trout pond license [G.S. 113-273(c); 15A NCAC 10H .0400];
- (4) Fish propagation license [G.S. 113-273(e); 15A NCAC 10H .0700];
- (5) Falconry permit and license [G.S. 113-270.3(b)(5); 15A NCAC 10H .0800];
- (6) Game bird ~~propagation~~ propagation license [G.S. 113-273(h); 15A NCAC 10H .0900];
- (7) Furbearer propagation license [G.S. 113-273(i); 15A NCAC 10H .1100].

Statutory Authority G.S. 113-134; 113-272.5; 113-274; 113-292.

.0302 MINIMUM STANDARDS

(a) Exemptions. Publicly financed zoos, scientific and biological research facilities, and institutions of higher education ~~shall be~~ are exempt from all of the minimum standards put forth in this Rule for all birds and animals except the black bear. The following are deemed the minimum standards for holding the species indicated in captivity by all other licensees.

(b) Deer and other species of the family Cervidae

(1) Enclosure. The enclosure shall be on a well-drained 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 sturdy fence at least 10 feet high, dog-proof to a height of at least six feet. 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 deer must be provided. This building shall be closed on three sides and provided with a wooden floor. It shall be constructed at least 10 feet from the fence.

(2) Sanitation and Care. Permittees shall provide an ample supply of clear water and salt at all times. Food shall be placed

in the enclosure as needed, but in any case, not less than three times weekly. Straw and leaf litter, replenished every week, shall be used as a floor covering in the shelter. An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained. The animal must be protected against fright. Domestic livestock and dogs shall be excluded from the enclosure.

(c) Wild Boars

(1) 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 sturdy fence at least five feet high. 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 and provided with a wooden or concrete floor. A pool of water for wallowing or a sprinkler system shall be provided on hot days.

(2) Sanitation and Care. Permittees 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.

(d) Wild Birds

(1) 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 excessive sun, weather, and predation shall also be provided.

(2) Sanitation and Care. The cage shall be kept clean, dry, and free from molded or damp feed. Ample food and clean water shall be available at all times.

(e) Alligators

(1) Enclosure. The enclosure shall be surrounded by a sturdy fence so as to 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 being 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.

(2) Sanitation and Care. The water area must be kept clean and adequate food provided. Protection shall be provided at all times from extremes in temperature.

(f) Black Bear

(1) Educational Institutions and Zoos Operated or Established by Governmental Agencies

(A) 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.

(B) Sanitation and Care. Adequate food shall be provided daily; and clean, clear drinking water shall be available at all times. In hot weather, 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 suitable material shall be placed over the cage to provide additional shade when necessary. The use of collars, tethers or stakes to re-

PROPOSED RULES

strain the bear is prohibited, except as a temporary safety device.

(2) **Conditions Simulating Natural Habitat.** Black bears held in captivity by other than educational institutions or governmental zoos must be held without caging under conditions simulating a natural habitat approved by the Wildlife Resources Commission. For a holding facility to be deemed in simulation of a natural habitat, the following conditions must exist:

- (A) The method of confinement is by chain link fence, wall, moat, or a combination of such, without the use of chains or tethers.
- (B) 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, and bears are free, under normal conditions, to move throughout such area.
- (C) 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.
- (D) 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.
- (E) 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.
- (F) The area of confinement presents an overall appearance of a natural habitat and affords the bears protection from harassment or annoyance.
- (G) Provisions are made for adequate food and water and for maintenance of sanitation.
- (H) No circumstance exists which is calculated to avoid, circumvent, defeat or subvert the purpose of the law or these regulations.
- (I) The applicant demonstrates by satisfactory evidence that he owns or has long-term control of the real property upon which the holding facility is located.

(g) **Other Wild Animals**

(1) **Enclosure.** The enclosure must provide protection from excessive sun, weather and free-ranging animals. A den area in which the animal can escape from view and large enough for the animal to turn around and lie down must be provided for each animal within the enclosure. No tethers or chains will be used to restrain

the animal. Either a tree limb, exercise device, or shelf large enough to accommodate the animal must be provided to allow for exercise and climbing.

The single-animal enclosure for the animals listed in this Subparagraph shall be a cage with the following minimum dimensions and horizontal areas:

| Animal | Dimensions in Feet | |
|-------------------------|--------------------|--------------------|
| | Length | Width |
| Cougar | 18 | 9 |
| Bobcat, Otter | 10 | 5 |
| Raccoon, Fox, Woodchuck | 8 | 4 |
| Opossum, Skunk, | 6 | 3 |
| Rabbit | 4 | 2 |
| Squirrel | 4 | 2 |
| | | Sq. Ft. Per Animal |
| Height | | |
| 9 | | 162 |
| 5 | | 50 |
| 4 | | 32 |
| 3 | | 18 |
| 2 | | 8 |

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.

For 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.

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 must be met.

(2) **Sanitation and Care.** Fresh food shall be provided daily, and clean water shall be available at all times. An effective pro-

gram for the control of insects, ectoparasites, disease, and odor shall be established and maintained.

Statutory Authority G.S. 19A-11; 113-134; 113-272.5; 113-292.

TITLE 25 - OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-12 that the Office of State Personnel, State Personnel Commission intends to adopt rules cited as 25 NCAC 1E .1301 - .1307.

The proposed effective date of this action is May 1, 1990.

The public hearing will be conducted at 9:00 a.m. on February 2, 1990 at 101 West Peace Street, Raleigh, N.C.

Comment Procedures: Interested persons may present statements orally or in writing at the hearing or in writing prior to the hearing by mail addressed to: Drake Maynard, OSP, 116 W. Jones Street, Raleigh, N.C., 27611.

CHAPTER 1 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 1E - EMPLOYEE BENEFITS

SECTION .1300 - VOLUNTARY SHARED LEAVE PROGRAM

.1301 PURPOSE

There are occurrences brought about by personal hardship, catastrophic or emergency conditions that cause employees to exhaust all available leave and therefore be placed on leave without pay. It is recognized that such employees forced to go on leave without pay could be without income at the most critical point in their work life. It is also recognized that fellow employees may wish to donate voluntarily some of their vacation leave so as to provide assistance to a fellow state employee. This policy provides an opportunity for employees to assist another employee on a one to one basis, when a personal emergency requires absence from duty for a period of time, resulting in a loss of income due to a lack of accumulated leave. It does not permit "banking" of leave.

Statutory Authority G.S. 126-4.

.1302 POLICY

(a) In those cases of personal hardship, catastrophe, or emergency condition an employee may apply for or be nominated to become a recipient of leave transferred from the vacation leave account of another employee. Personal hardship, catastrophe, or emergency means a medical or family emergency or other hardship situation that is likely to require an employee's absence from duty and to result in a loss of income to the employee because of the lack of available leave.

(b) An employee who has a personal disability and who receives benefits from the Disability Income Plan of North Carolina (DIPNC) is not eligible to participate in the shared leave program.

(c) Participation in this program may not exceed 2080 hours, either continuously or, if for the same condition, on a recurring basis.

Statutory Authority G.S. 126-4.

.1303 ADMINISTRATION

When implemented by a department or university, this program shall be administered by and within the parent department or university of the recipient employee under the conditions set out in the following rules.

Statutory Authority G.S. 126-4.

.1304 QUALIFYING TO PARTICIPATE IN VOLUNTARY SHARED LEAVE PROGRAM

In order to participate in the Voluntary Shared Leave Program, an employee must meet the following conditions:

- (1) Employee must be in permanent, probationary, or trainee appointment status.
- (2) By letter of application to the agency head, recipient shall apply, or be nominated to participate in the program.
- (3) Application for participation would include name, social security number, classification, parent agency, jurisdiction from which donations of leave would be requested, description of emergency, catastrophic, or hardship condition and estimated length of need to participate in the program. Prior to making the employee's status public for purpose of receiving shared leave, employees must sign a release to allow the status to be known.
- (4) The parent department or university shall review the merits of the request and approve or disapprove. Agency heads may chose to delegate the responsibility for reviewing the

validity of requests to an existing peer group or establish a committee for this purpose.

- (5) Establishment of a leave "bank" for use by unnamed employees is expressly prohibited.
- (6) An agency with less than 200 employees may, with concurrence of another agency and with prior approval of the State Personnel Director, establish agreements to be treated as one agency for purposes of this policy.
- (7) For program evaluation purposes, the department or university shall forward a copy of each application for recipients received, indicating approval or disapproval, to the Office of State Personnel.

Statutory Authority G.S. 126-4.

.1305 PARTICIPATION REQUIREMENTS

(a) A donor may contribute only vacation leave.

(b) Minimum amount to be donated is one hour.

(c) The maximum amount of leave allowed to be donated by one individual is to be no more than the amount of the individual's annual accrual rate. However, the amount donated is not to reduce the donor's vacation leave balance below one-half of the annual vacation leave accrual rate.

(d) Leave donated to a recipient's leave account is exempt from the maximum accumulation carry-over restrictions at calendar year end.

(e) An employee may not directly or indirectly intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right which such employee may have with respect to donating, receiving, or using annual leave under this program. Such action by an employee shall be grounds for disciplinary action up to and including dismissal on the basis of personal conduct. Individual leave records are confidential and only individual employees may reveal their donation or receipt of leave.

Statutory Authority G.S. 126-4; 126-22.

.1306 DONOR LEAVE ACCOUNTING AND USAGE PROCEDURES

The following conditions shall control the accounting and usage procedures for leave donations in this program:

- (1) Each agency shall establish a system of leave accountability which will accurately record leave donations and recipients use. Such accounts shall provide a clear and accurate record for financial and management audit purposes.
- (2) Withdrawals from recipient's leave account will be charged to the recipient's account according to usual leave policies.
- (3) Leave transferred under this program will be available for use on a current basis or may be retroactively substituted for leave without pay or used to liquidate advanced annual or sick leave granted to the leave recipient. Retroactivity is limited to 30 calendar days, from the implementation date of the policy in the agency.
- (4) At the expiration of emergency, catastrophic or hardship conditions, as determined by the agency, any unused leave in the recipient's donated leave account shall be treated as follows:
 - (a) The account balance may not exceed 240 hours.
 - (b) In case of the death of the employee, leave would be administered in accordance with 25 NCAC 1E .0210.
 - (c) Any additional unused donated leave beyond 240 hours will be returned to the donor(s) on a pro rata basis. Less than one hour shall not be returned to an individual donor.
 - (d) Each approved emergency, catastrophic, or emergency condition shall stand alone and donated leave not used in accordance with the provisions of this Rule shall be considered as having served its purpose, shall lose its identity, and shall be deleted and the account closed.

Statutory Authority G.S. 126-4.

.1307 DURATION OF PROGRAM

This program is for a two year period beginning at its effective date and expiring two years from that date. This program will be evaluated by the State Personnel Director during the two year period to determine if it meets its purpose. The Director shall recommend continuing, amending, or discontinuing the program for action by the State Personnel Commission.

Statutory Authority G.S. 126-4.

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

| TITLE | DEPARTMENT |
|--------------|---|
| 1 | Administration, Department of |
| 2 | Agriculture, Department of |
| 3 | Auditor, Department of State |
| 4 | Economic and Community Development, Department of |
| 5 | Correction, Department of |
| 6 | Council of State |
| 7 | Cultural Resources, Department of |
| 8 | Elections, State Board of |
| 9 | Governor, Office of the |
| 10 | Human Resources, Department of |
| 11 | Insurance, Department of |
| 12 | Justice, Department of |
| 13 | Labor, Department of |
| 14A | Crime Control and Public Safety, Department of |
| 15 | Environment, Health, and Natural Resources, Department of |
| 16 | Public Education, Department of |
| 17 | Revenue, Department of |
| 18 | Secretary of State, Department of |
| 19A | Transportation, Department of |
| 20 | Treasurer, Department of State |
| *21 | Occupational Licensing Boards |
| 22 | Administrative Procedures |
| 23 | Community Colleges, Department of |
| 24 | Independent Agencies |
| 25 | State Personnel, Office of |
| 26 | Administrative Hearings, Office of |

NOTE: Title 21 contains the chapters of the various occupational licensing boards.

| CHAPTER | LICENSING BOARDS |
|----------------|---|
| 2 | Architecture, Board of |
| 4 | Auctioneers, Commission for |
| 6 | Barber Examiners, Board of |
| 8 | Certified Public Accountant Examiners, Board of |
| 10 | Chiropractic Examiners, Board of |
| 12 | General Contractors, Licensing Board for |
| 14 | Cosmetic Art Examiners, Board of |
| 16 | Dental Examiners, Board of |
| 18 | Electrical Contractors, Board of Examiners of |
| 20 | Foresters, Board of Registration for |
| 21 | Geologists, Board of |
| 22 | Hearing Aid Dealers and Fitters Board |
| 26 | Landscape Architects, Licensing Board of |
| 28 | Landscape Contractors, Registration Board of |
| 31 | Marital & Family Therapy Certification Board |
| 32 | Medical Examiners, Board of |
| 33 | Midwifery Joint Committee |
| 34 | Mortuary Science, Board of |
| 36 | Nursing, Board of |
| 37 | Nursing Home Administrators, Board of |
| 38 | Occupational Therapists, Board of |
| 40 | Opticians, Board of |
| 42 | Optometry, Board of Examiners in |

- 44 Osteopathic Examination and Registration, Board of
- 46 Pharmacy, Board of
- 48 Physical Therapy Examiners, Board of
- 50 Plumbing and Heating Contractors, Board of
- 52 Podiatry Examiners, Board of
- 53 Practicing Counselors, Board of
- 54 Practicing Psychologists, Board of
- 56 Professional Engineers and Land Surveyors, Board of
- 58 Real Estate Commission
- 60 Refrigeration Examiners, Board of
- 62 Sanitarian Examiners, Board of
- 63 Social Work, Certification Board for
- 64 Speech and Language Pathologists and
Audiologists, Board of Examiners of
- 66 Veterinary Medical Board

CUMULATIVE INDEX

CUMULATIVE INDEX
(April 1989 - March 1990)

1989 - 1990

| Pages | Issue |
|-----------------|----------------|
| 1 - 151 | 1 - April |
| 152 - 192 | 2 - April |
| 193 - 216 | 3 - May |
| 217 - 289 | 4 - May |
| 290 - 311 | 5 - June |
| 312 - 364 | 6 - June |
| 365 - 454 | 7 - July |
| 455 - 477 | 8 - July |
| 478 - 521 | 9 - August |
| 522 - 584 | 10 - August |
| 585 - 616 | 11 - September |
| 617 - 658 | 12 - September |
| 659 - 712 | 13 - October |
| 713 - 765 | 14 - October |
| 766 - 801 | 15 - November |
| 802 - 825 | 16 - November |
| 826 - 856 | 17 - December |
| 857 - 891 | 18 - December |
| 892 - 929 | 19 - January |

- AO - Administrative Order
- AG - Attorney General's Opinions
- C - Correction
- FR - Final Rule
- GS - General Statute
- JO - Judicial Orders or Decision
- M - Miscellaneous
- NP - Notice of Petitions
- PR - Proposed Rule
- SO - Statements of Organization
- TR - Temporary Rule

ADMINISTRATION

State Construction, 827 PR

ADMINISTRATIVE HEARINGS

General, 879 PR

Hearings Division, 880 PR

Rules Division, 880 PR

ADMINISTRATIVE ORDER

Administrative Order, 4, 152, 802

AGRICULTURE

CUMULATIVE INDEX

Cotton Warehouse, 220 PR
Markets, 217 PR, 546 PR
Pesticide Board, 292 PR
Plant Conservation Board, 196 PR
Plant Industry, 153 PR, 218 PR, 895 PR
State Fair, 217 PR

COMMUNITY COLLEGES

Board of Community Colleges, 352 PR

CORRECTION

Departmental Rules, 815 FR
Division of Prisons, 472 FR, 646 FR, 759 FR, 817 FR, 883 FR

CRIME CONTROL AND PUBLIC SAFETY

Victim and Justice Services, 573 PR

CULTURAL RESOURCES

Archives and History, 370 PR, 455 PR, 593 PR, 720 PR
Arts Council, 371 PR
U.S.S. North Carolina Battleship Commission, 548 PR

ECONOMIC AND COMMUNITY DEVELOPMENT

Cemetery Commission, 198 PR, 766 PR
Community Assistance, 858 PR
Departmental Rules, 901 PR
Finance Center, 368 PR
Hazardous Waste Management Commission, 716 PR, 834 PR
Milk Commission, 455 PR, 834 PR
Seafood Industrial Park Authority, 806 PR

EDUCATION

Elementary and Secondary Education, 253 PR, 295 PR, 511 PR, 739 PR, 843 PR

ELECTIONS, STATE BOARD OF

Departmental Rules, 661 PR

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management, 239 PR, 508 PR, 574 PR, 735 PR
Community Assistance, 134 PR
Departmental Rules, 601 PR
Economic Opportunity, 178 PR
Environmental Management, 18 PR, 160 PR, 202 PR, 238 PR, 295 PR, 347 PR,
431 PR, 456 PR, 700 PR, 730 PR, 866 PR
Governor's Waste Management Board, 617 C
Land Resources, 868 PR
Marine Fisheries, 47 PR, 457 PR, 866 PR
Wildlife Resources and Water Safety, 134 PR, 178 PR, 207 PR, 252 PR, 574 PR,
700 PR, 738 PR, 776 PR, 809 PR, 872 PR, 903 PR

FINAL DECISION LETTERS

Voting Rights Act, 5, 193, 367, 523, 587, 618, 659, 714, 803, 857

FINAL RULES

List of Rules Codified, 183 FR, 274 FR, 303 FR, 445 FR, 515 FR, 609 FR, 704 FR, 788 FR,
847 FR

GOVERNOR/LT. GOVERNOR

Executive Orders, 1, 290, 312, 365, 478, 522, 585, 713, 826, 892

HUMAN RESOURCES

Aging, Division of, 859 PR
Departmental Rules, 372 PR
Facility Services, 199 PR, 377 PR, 594 PR
Governor's Waste Management Board, 552 PR
Health Services, 153 PR, 315 PR, 405 PR, 661 PR
Medical Assistance, 158 PR, 294 PR, 455 PR, 549 PR, 601 PR, 620 PR, 722 PR, 808 PR
Mental Health, Mental Retardation and Substance Abuse Services, 17 PR, 417 PR, 685 PR
Social Services, 550 PR, 773 PR
Vocational Rehabilitation Services, 7 PR, 766 PR
Water Treatment Facility Operators Board of Certification, 549 PR

INDEPENDENT AGENCIES

Housing Finance Agency, 459 PR

INSURANCE

Admission Requirements, 836 PR
Agent Services Division, 561 PR
Engineering and Building Codes, 775 PR
Fire and Casualty Division, 202 PR, 479 PR, 689 PR
Life, Accident and Health Division, 690 PR

JUSTICE

Criminal Justice Education and Training Standards Commission, 569 PR, 860 PR
Private Protective Services Board, 621 PR
Sheriff's Education and Training Standards Division, 491 PR

LICENSING BOARDS

Architecture, 349 PR
CPA Examiners, 458 PR, 810 PR
Electrical Contractors, 741 PR
General Contractors, 512 PR, 844 PR
Geologists, Board for Licensing of, 878 PR
Landscape Architects, 443 PR, 756 PR
Medical Examiners, 604 PR, 701 PR
North Carolina Certification Board for Social Work, 179 PR
Nursing, Board of, 296 PR, 778 PR
Physical Therapy Examiners, 262 PR
Plumbing and Heating Contractors, 757 PR
Practicing Psychologists, 606 PR
Sanitarian Examiners, Board of, 785 PR

REVENUE

Departmental Rules, 885 FR
Sales and Use Tax, 353 FR

STATE PERSONNEL

State Personnel Commission, 181 PR, 210 PR, 265 PR, 461 PR, 624 PR, 786 PR, 923 PR

STATEMENTS OF ORGANIZATION

Statements of Organization, 524 SO

TRANSPORTATION

Division of Motor Vehicles, 140 FR, 607 FR, 648 FR

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