

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Wildlife Resources Commission

RULE CITATION: 15A NCAC 10A .0401

DEADLINE FOR RECEIPT: October 13, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

On line 10, if someone were petitioning to adopt a new rule, how would they know what citation to give it?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Seth Ascher
Commission Counsel
Date submitted to agency: October 5, 2023

1 15A NCAC 10A .0401 is readopted with changes as published in 37:22 NCR 2128 as follows:

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3 **15A NCAC 10A .0401 FORM AND CONTENTS OF PETITION**

4 (a) A written petition requesting rulemaking shall be sent to the Executive Director of the Wildlife Resources
5 Commission at 1701 Mail Service Center, Raleigh, NC 27699-1700 for U.S. Postal Service delivery or 1751 Varsity
6 Drive, Raleigh, NC 27606-2576 for other delivery services or in person and must contain:

- 7 (1) the name and address of the petitioner;
- 8 (2) the name and address of the person, group, or organization, if any, on behalf of which the petition
9 is made, together with the representative capacity of the petitioner;
- 10 (3) the citation to any the rule sought to be adopted, amended, or repealed;
- 11 (4) suggested language for any the rule sought to be adopted or amended and a statement of its desired
12 effect; and
- 13 (5) the signature of the petitioner.

14 (b) In addition to the ~~foregoing~~, information required by Paragraph (a), the petition may contain expression of any
15 reasons in support or arguments in favor of the regulatory action ~~proposed. Any proposed, and~~ tables, charts, maps,
16 publications, photographs, or other supporting materials that the petitioner deems pertinent to the proposal ~~may be~~
17 ~~included~~ by way of exhibits or attachments.

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19 *History Note: Authority G.S. 150B-20;*
20 *Eff. February 1, 1976;*
21 *Amended Eff. November 1, 2023; July 1, 2018; July 1, 1993; April 15, 1979.*

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REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Wildlife Resources Commission

RULE CITATION: 15 NCAC 10A .0402

DEADLINE FOR RECEIPT: October 13, 2023

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In reviewing this Rule, the staff recommends the following changes be made:

*On line 4, grammatically I think you still need an article before Executive Director. So, **the** ~~The Executive Director~~ Director.”*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 15A NCAC 10A .0402 is readopted with changes as published in 37:22 NCR 2128 as follows:

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3 **15A NCAC 10A .0402 ACTION ON PETITION**

4 (a) Upon receipt, The Executive Director Director, or his or her designee, shall cause the petition requesting
5 rulemaking to be marked or stamped stamp the petition with the date of its receipt by him, which date shall constitute
6 the date of its submission. The Executive Director shall then refer the petition requesting rulemaking shall then be
7 referred to the ~~Wildlife Resources~~ Commission for its consideration.

8 (b) Within three business days of receipt, the proposed text and statement of effect of the petition shall be forwarded
9 to the Office of Administrative Hearings as required by G.S. 150B-20.

10 (c) Within 120 days following submission of the petition requesting rulemaking, the ~~Wildlife Resources~~ Commission
11 shall:

12 (1) deny the petition in writing, stating the reason or reasons for such denial; or

13 (2) initiate rulemaking proceedings in accordance with G.S. 150B-20.

14 (e)(d) ~~The Wildlife Resources~~ Commission shall notify the person who submitted the petition of the action taken.
15 taken by the Commission. **Any denial Denial** of a petition requesting rulemaking shall be sent to the petitioner at the
16 address therein indicated by registered mail, "return receipt requested."

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18 *History Note: Authority G.S. 150B-20;*

19 *Eff. February 1, 1976;*

20 *Amended Eff. November 1, 2023; July 1, 1993.*

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REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Wildlife Resources Commission

RULE CITATION: 15A NCAC 10A .1201

DEADLINE FOR RECEIPT: October 13, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

G.S. 113-306(f) provides that the “Commission may adopt rules governing the exercise of emergency powers by the Executive Director when the Commission determines that such powers are necessary to respond to a wildlife disease that threatens irreparable injury to wildlife or the public.” It appears that a determination by the Commission is necessary before the Executive Director can exercise emergency powers under the statute. The edits to the rule appear to eliminate the Commission’s determination from this process. Is this intentional? And if so, how does this not contradict the statute?

If this was unintentional, it appears that undoing the changes to line 4 would solve the problem. Or consider on line 4 something like: “Upon a determination by the Commission that a wildlife disease...”

G.S. 113-306(f) requires that: “The rules shall provide that the Executive Director must consult with the Commission, the State Veterinarian, and the Governor prior to implementing the emergency powers.” On lines 5 and 6, the rule only provides that the Director consult with the Governor and the State Veterinarian. How does this meet the statutory requirements?

To address the prior comment, consider on line 6: “with the Commission, the Governor’s office and...”

In the history note on line 29, “March 1, 2011” is the effective date, and “November 1, 2023” should be the amended effective date. This should be formatted like you have in the other rules.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Seth Ascher
Commission Counsel

Date submitted to agency: October 5, 2023

1 15A NCAC 10A .1201 is readopted with changes as published in 37:22 NCR 2128 as follows:

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3 **15A NCAC 10A .1201 EMERGENCY POWERS**

4 (a) Upon ~~a finding by the Wildlife Resources Commission~~ determining that a wildlife disease threatens irreparable
5 injury to wildlife or to the public, the Executive Director shall develop an emergency response plan in consultation
6 with the Governor's office and the State ~~Veterinarian~~. ~~The plan may prescribe~~ Veterinarian prescribing one or more
7 of the following actions:

- 8 (1) shorten or lengthen harvest seasons;
- 9 (2) prohibit transport of wildlife resources or parts thereof;
- 10 (3) prohibit possession of wildlife resources;
- 11 (4) confiscate wildlife resources;
- 12 (5) revoke licenses or permits;
- 13 (6) expand or restrict daily bag limits, daily creel limits, and possession limits;
- 14 (7) establish mandatory wildlife check stations;
- 15 (8) restrict public access to game lands;
- 16 (9) require prepayment of outside testing costs by persons who desire disease testing of their harvested
17 wildlife resource when such testing is not essential to the objectives of the plan;
- 18 (10) prohibit supplemental feeding or baiting of wildlife;
- 19 (11) prohibit **any** other activities that aid in the transmission or movement of the disease as determined
20 by the best available science regarding the disease threat;
- 21 (12) implement **any** other activities necessary to reduce infection opportunities; and
- 22 (13) implement **any** other requirements necessary to assist in the detection and isolation of the disease.

23 (b) The Commission shall inform the public of the implementation of emergency powers and actions in the response
24 plan through press releases, postings on the Wildlife Commission ~~web site~~, website and social media, ~~letters~~ emails
25 ~~sent~~ to representatives of sportsmen's groups or other constituents likely to be directly affected, and ~~by~~ employee
26 outreach.

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28 *History Note: Authority G.S. 113-134; 113-306(f);*
29 *Eff. November 1, 2023; March 1, 2011.*