



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

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January 16, 2020

Mariah Street
Department of Natural and Cultural Resources
Sent via email only to: Mariah.Street@ncdcr.gov

Re: Extension of the Period of Review for Rules 07 NCAC 13F .0202, .0303, and .0304

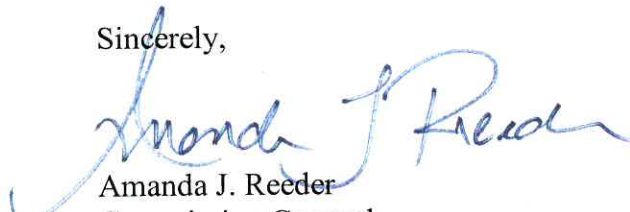
Dear Ms. Street:

At its meeting this morning, the Rules Review Commission extended the period of review for the above-captioned rules in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period in order to allow the agency to address the technical change requests and submit the rewritten rules at a later meeting.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,



Amanda J. Reeder
Commission Counsel

cc: Carol Tingley, DNCR

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Burgos, Alexander N

Subject: FW: 07 NCAC 13F - Request for Technical Changes Extension Request

From: Street, Mariah <mariah.street@ncdcr.gov>

Sent: Thursday, January 9, 2020 12:47 PM

To: Reeder, Amanda J <amanda.reeder@oah.nc.gov>

Subject: 07 NCAC 13F - Request for Technical Changes Extension Request

Hi Amanda,

The Department of Natural and Cultural Resources is currently working on the technical changes that were requested for the designated rules in 07 NCAC 13F. Upon further review, we would like to request an extension in order to address all of the changes adequately and to make any other changes.

Best,

Mariah C. Street

Agency Legal Consultant

NC Dept. of Natural and Cultural Resources

(919) 814-6764 (**Please note the new phone number**)

mariah.street@ncdcr.gov

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 07 NCAC 13F .0202

DEADLINE FOR RECEIPT: Friday, January 10, 2020

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 call our office to inquire concerning the staff recommendation.

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

Please insert page numbers on each page. [See Rule 26 NCAC 02C .0108(1)(h)]

On Page 1, lines 6, 8, and 9, 11, 19, and Page 2, line 4 and line 16, you cannot use the word "should" in a Rule. That does not set a standard, but is an aspirational statement. Each place it is used within this Rule, replace the word with "may" or "shall" depending upon what you mean.

In (a)(1), line 6, define "rewarding experience"

On line 7, define "sufficient"

On line 7, is this "worthy of consideration" by the Secretary?

Line 8, why do you need "Generally"? What does it add to this sentence? If you need, define it.

I note that G.S. 143B-135.150(1) specifies that the river must be "no less than a mile." What authority are you relying upon to require 2.5 to 5 miles? Is it G.S. 143B-135.156(e)?

In (a)(2), line 10, who determines what is "necessary" here?

Line 10, define "high quality"

On line 11, identified by whom?

Line 11, define "adequate"

In (b), line 13, replace "Subsection" with "Paragraph"

In (b), so that I'm clear, you are specifying the criteria in 143B-135.148 for Class I rivers, correct? That statute says:

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 23, 2019

Class I. Natural river areas. Those free-flowing rivers or segments of rivers and adjacent lands existing in a natural condition. Those rivers or segments of rivers that are free of man-made impoundments and generally inaccessible except by trail, with the lands within the boundaries essentially primitive and the waters essentially unpolluted. These represent vestiges of primitive America.

I take it your regulated public knows what the impoundments on lines 16-18 are?

On line 18, prohibited by whom?

And since only dam construction is prohibited, does that mean the other types of things listed here, such as “diversion works” will be allowed?

What does (b)(1)(B) mean? Your regulated public may understand this, but I do not and wanted to ask.

In (b)(2)(A), line 21, are you missing a word like “accessed” between “must be” and “foot”?

On line 22, define “certain instances” and “primarily”

On line 22, you state that access “may” be by motorized watercraft. You need to state in this Rule when that may be allowed or under what circumstances it will not be allowed when on coastal waters.

In (b)(2)(B), line 24, what is a “narrow incised river valley”?

On line 25, what is “broad”?

On line 25, delete “presence, however,” and replace it with “presence”

Line 26, define “inconspicuous” Who determines whether the road is inconspicuous?

On line 26, under what circumstances “may” this be permissible?

In (b)(3)(A), line 28, define “essentially” Who determines this?

Line 29, define “substantial evidence”

Line 30, define “inconspicuous”

On line 30, within the Rule, state under what circumstances this may be permitted.

On lines 31-32, what is “in keeping with the natural river environment”?

In (b)(3)(B), line 33, what is “old field succession areas (including early stages)”?

On line 34, define “relatively unobtrusive”

On line 34, under what circumstances will this be permitted?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 23, 2019

In (b)(3)(C), line 35, what is “enhanced”? What is “extremely well”?

Line 36, visible to whom?

On line 37, define “unique natural features”

In (c), Page 2, line 1, replace “Subsection” with “Paragraph”

And I take it that this Paragraph specifies criteria for Class II rivers, as set forth in G.S. 143B-135.148:

Class II. Scenic river areas. Those rivers or segments of rivers that are largely free of impoundments, with the lands within the boundaries largely primitive and largely undeveloped, but accessible in places by roads.

If so, then why do you need the first sentence of (c)(1), line 3? It just repeats statute.

If you need to retain it, remove the parenthesis from “or segment” And what is “largely free”?

Line 4, define “significant”

On line 5, prohibited by whom?

In (c)(2), line 6, replace “which” with “that”

On line 6, define “occasionally” and “short”

On line 7, define “conspicuous” “inconspicuous” and “well-screened”

On line 8, under what circumstances may this be permitted? The Rule needs to stat that.

What is the point of (c)(3)(A)? What are you regulating in this Part? I suggest deleting it altogether.

If you need to retain it:

On line 10, define “more amenable”

Line 11, define “active” and “intensive” and “recreational uses”

On line 11, “kept” by whom?

On line 12, what are these restraints? How are they known? And what is “degradation”?

In (c)(3)(B), line 13, define “largely free” and “structures”

Line 14, define “dispersed”

On line 15, what are “low density vacation homes”? Who determines this? Based upon what?

Line 15, define “small”

On line 16, “limited” by whom?

On lines 16-17, define “relatively short stretches”? Relative to what? Determined by whom?

On line 17, delete “Indigenous construction materials are preferred.” This does not impose a requirement and as such, is not rule language. Delete it.

On line 18, who will determine if this is permissible and based upon what? That information needs to be set forth in the Rule.

On line 18, define “without a substantially adverse effect”

In (c)(3)(C), insert the citation to this Act. If you mean the “Sedimentation Pollution Control Act of 1973” then please use the correct name and the citation is G.S. 113A-50 et. seq.

In (c)(3)(D), line 22, define “occasional”

And on line 22, “may” be permitted when? You must give the circumstances when this will be allowed within the Rule.

I am only asking – this Rule does not address recreational river areas, which are also addressed by G.S. 143B-135.148. Is this intentional? (I note that this designation was added by SL 1989-752, which became effective after this Rule was last amended.)

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 23, 2019

07 NCAC 13F .0202 is readopted as published in 34:07 NCR 547 as follows:

07 NCAC 13F .0202 CRITERIA FOR DESIGNATION

(a) In addition to the criteria listed in G.S. 143B-135.150, the following criteria for a river to qualify as either natural or scenic shall apply to this Subchapter:

(1) A river segment should be long enough to provide a rewarding experience and to encompass a sufficient portion of those features and processes that make the segment worthy of consideration. Generally, in urban areas, any segment included in the rivers system should be at least two and one-half miles long. In non-urban areas, a segment should be at least five miles in length.

(2) Boundaries. The natural features and forces necessary for the maintenance of a high quality riverine resource must be identified, and boundaries should be established to provide for adequate protection of these features.

(b) In addition to the criterion set out in Subsection (a) of this Rule, a river shall meet the following criteria for designation as a natural river:

(1) Water Flow

(A) The river (or segment) must be free from impoundments including dams, diversion works, artificial constrictions of the river, rock rip-rap, concrete blocks, retaining walls, rock filled gabions, or pilings. Future dam construction within the river (or segment) shall be prohibited.

(B) The infiltration capacity should approximate that of an undisturbed watershed.

(2) Public Access

(A) Public access shall be limited to trails and must be by foot or non-powered water craft, except in certain instances, primarily on coastal waters, where access may be by motorized watercraft.

(B) Motorized vehicles shall not be visible from the river and no roads or other provisions for overland motorized travel are permitted within a narrow incised river valley, or if the river valley is broad, within one-fourth mile of, and parallel to, the river bank. The presence, however, of inconspicuous roads leading to the river area may be permissible.

(3) Environmental Quality

(A) Natural rivers and adjacent land areas present natural features and processes essentially undisturbed by man. Shorelines are free of habitation and other substantial evidence of man's intrusion, except that inconspicuous dwellings may be permitted. Watersheds are natural-like in appearance and all conservation methods employed must be in keeping with the natural river environment.

(B) Abandoned pasture, old field succession areas (including early stages), old burns, and relatively unobtrusive forest management activity areas can be permitted.

(C) Natural river area designation is enhanced by the existence of climax species or extremely well developed vegetational communities, visible indigenous animal species, high water quality, and unique natural features.

(c) In addition to the criteria set out in Subsection (a) of this Rule, a river shall meet the following criteria for designation as a scenic river:

- (1) Water Flow. The river (or segment) shall be largely free of impoundments. If an impoundment is present, water should not have the characteristics of impoundment for any significant distance. Future dam construction within the segment shall be prohibited.
- (2) Public access to scenic rivers may be by roads which occasionally bridge the river. Short stretches of conspicuous or longer stretches of inconspicuous and well-screened roads or railroads paralleling the river area may be permitted.
- (3) Environmental Quality
 - (A) Scenic river areas are more amenable to multiple use than natural river areas. They are more suited for active and intensive recreational uses. However, these uses must be kept within the restraints imposed by the ability of the resources to support use without degradation.
 - (B) Scenic river shorelines and adjacent lands shall be largely free of structures. Forested landscapes mixed with dispersed agricultural uses and rural dwellings or settlements, including low density vacation homes, are characteristic of scenic river areas. Small communities or any concentration of habitation should be limited to relatively short stretches. Indigenous construction materials are preferred. Farming, timber harvest, and similar resource use is permissible if accomplished without a substantially adverse effect on natural appearance.
 - (C) Acceptable erosion control devices, in accordance with the Sedimentation and Pollution Control Act, must be installed.
 - (D) Occasional utility easements, perpendicular to the river course, may be permitted.

History Note: Authority G.S. 143B-135.142; 143B-135.150; 143B-135.156;
Eff. April 4, 1979;
Amended Eff. August 1, 1988; January 1, 1985; October 1, 1984;
Transferred from 15A NCAC 12F .0202 Eff. April 1, ~~2017~~; 2017;
Readopted Eff. February 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 07 NCAC 13F .0303

DEADLINE FOR RECEIPT: Friday, January 10, 2020

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 call our office to inquire concerning the staff recommendation.

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

Please insert page numbers on each page. [See Rule 26 NCAC 02C .0108(1)(h)]

In (a), line 4, define "primary"

On line 4, replace "which" with "that"

On line 5, define "outstanding"

On line 5, "river-related"

And what are "river related outdoor recreation opportunities"?

In (a)(2), line 7, define "partially"? And removed by whom?

In (a)(3), line 8, please capitalize "State"

On line 8, why do you need "and designated as a natural river area"? Doesn't this Rule apply to natural river areas? Why repeat this here?

If you need to retain it, please replace "and" with "that are"

In (a)(4), line 10, what do you mean by "providing shade to the river" Will this apply when the trees are dead? Or are you addressing the trees without foliage in the winter?

And what is a "hazard to public health and safety."?

In (b), what does this mean? What are "reasonable restraints" and "allowable volumes" and employed by whom?

In (c)(1), line 14, define "harmonious with the natural character of the area"

On line 15, define "more harmonious" And who will be the judge of whether it is more harmonious?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 23, 2019

In (c)(2), line 16, define “clearly”

On line 17, as well as line 30, what are the “management objectives”? Where are those established?

On line 17, what is the “approved management plan”? Who approved it? Based upon what?

In (c)(3), line 9, what are “management facilities”?

On line 19, define “significant adverse effects”

On line 19, define “natural character”

In (c)(4), line 21, define “adequate”

On line 21, “may” be provided by whom? If it’s the Department, then you must state within the Rule under what circumstances the agency will provide these.

In (c)(5)(A), line 24, define “low density day use” and “primitive overnight use”

On line 24, who will determine whether this is necessary? And based upon what?

Also on line 24, replace “are permissible” with “shall be allowed” or “shall be permitted.”

In (c)(5)(B), line 25, define “major public use areas”

On line 26, I suggest deleting “outside of, but”

In (c)(5)(C), line 27, define “simple comfort and convenience facilities”

On line 28, who will determine if this is necessary?

On line 28, what are “certain selected points”? Selected by whom?

On line 29, who determines whether these are necessary?

On line 30, define “enjoyable experience” and “popular sites”

In (d), line 31, you say these “may” be consistent. Do you mean “shall” instead? If not, then you need to state within the Rule under what circumstances the activities listed in (d)(1) through (6) would not be consistent. You do not have to list every circumstance, but you must provide some guidance within the Rule text.

In (d)(1), line 32, replace “which” with “That.”

On line 32, end the sentence after “less.” Then delete “Ideally... shelter.” You do not provide aspirational statements in rules; rules regulate. This language is unnecessary and you need to delete it.

On line 34, define “interpretative purposes”

Amanda J. Reeder
Commission Counsel

Date submitted to agency: December 23, 2019

In (d)(3), line 36, so that I'm clear – only trails for horseback riding (not hiking or backpacking) must parallel and run along the river? The other trails can meander from the river?

In (d)(4), Page 2, line 1, insert a comma after "rafting"

End the sentence after "power boating." Then you can start a new sentence "Power boating..."

On lines 2-3, please either provide your statutory authority to set the use of power boating in certain spots outside of rulemaking or set those limits within the Rule itself.

In (d)(6), line 5, the proper term is "State rules." And what rules are you referring to?

In (e)(2), line 9, under what circumstances may the trail provide this? And who determines this, based upon what?

On line 9, define "intermediate"

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

07 NCAC 13F .0303 is readopted as published in 34:07 NCR 547 as follows:

07 NCAC 13F .0303 MANAGEMENT OF NATURAL RIVER AREAS

(a) The management of a natural river area shall give primary emphasis to protecting the values which make it outstanding while providing river related outdoor recreation opportunities in a natural setting:

- (1) No dredging or sand and gravel operations shall be permitted.
- (2) Felled trees that partially block passage down the river or obstruct stream flow may be removed.
- (3) No clearcutting of trees shall be allowed on lands owned by the state and designated as a natural river area.
- (4) No streamside trees providing shade to the river shall be cut unless they present a hazard to public health and safety.

(b) Reasonable restraints on allowable volumes of use may be employed.

(c) Facilities

- (1) Existing structures that are not harmonious with the natural character of the area shall be screened or made more harmonious.
- (2) New structures shall be prohibited unless they are clearly in keeping with the natural river area classification and management objectives and conform with the approved management plan for the area.
- (3) Management facilities may be permitted if no significant adverse effect occurs to the natural character of the area.
- (4) Adequate parking, launch ramps, and information displays may be provided at the beginning and at the end of designated natural river segments.
- (5) Recreation Facilities
 - (A) Low density day use and, where necessary, primitive overnight use, are permissible.
 - (B) Major public use areas, such as campgrounds, interpretative centers, or administrative headquarters shall be located outside of, but adjacent to, natural river areas.
 - (C) Simple comfort and convenience facilities, such as fireplaces, potable water, shelters, toilets, and where necessary, primitive camping facilities may be provided at certain selected points within natural river areas for recreation users to the extent that they are necessary to provide an enjoyable experience, protect popular sites, and meet the management objectives.

(d) Recreation activities that may be consistent with the management of a natural river area in the system are:

- (1) hiking, defined as foot travel on trails which can be traversed in one day or less; Ideally, these trails should be loop trails with some shelter. Loop trails of one-half mile to two miles may be used for interpretative purposes;
- (2) backpacking;
- (3) horseback riding on trails parallel to and along a designated river area;

- (4) boating, which may include tubing, kayaking, canoeing, rafting and power boating; However, power boating may be restricted by such means as limitations on engine size and limitations of use at specified times and at specified places;
- (5) swimming;
- (6) hunting and fishing, where consistent with state regulations.

(e) Access

- (1) Direct river access shall be provided and occur only at the beginning and end of designated natural rivers or segments.
- (2) Perpendicular side trails may provide non-vehicular river access at intermediate points along the river or segment.

History Note: Authority G.S. 143B-135.156;
Eff. April 4, 1979;
Transferred from 15A NCAC 12F .0304 Eff. April 1, ~~2017~~, 2017;
Readopted Eff. February 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 07 NCAC 13F .0304

DEADLINE FOR RECEIPT: Friday, January 10, 2020

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 call our office to inquire concerning the staff recommendation.

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

In (a), line 4, delete "so as"

On line 4, what is "maintain and provide"? And what are "outdoor recreation opportunities"?

On lines 4-5, what is a "near-natural setting"?

On lines 5-6, what does this sentence mean? And what is it regulating?

On line 5, define "Diversity and volume"

On line 5, define "more intensive management practices"

In (b), what does this mean? What are "reasonable restraints" and "allowable volumes" and employed by whom?

In (c)(1), line 10, insert a comma after "Section"

On line 10, what are "interpretative" facilities?

And what are "administrative" facilities? Are they different from "management" facilities in Rule .0303?

In (c)(2), line 11, replace "can" with "may" but also state when this allowed.

Also on line 11, define "some"

On line 11, replace "such" with "the"

On line 12, who will make this scenic road designation? Using what authority? I note that G.S. 143B-135.140 et seq only speaks to the natural and scenic rivers system. Please provide that information here.

On line 13, developed by whom?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: December 23, 2019

In (c)(3), line 14, I note that Rule .0303(c)(5) refers to “recreation facilities” Should this be the same term?

In (c)(3)(A), line 15, what is “similar”?

And do you mean to refer to what is in Rule .0303(c)(4)?

In (c)(3)(B)(i), line 18, who will provide this? How will it be determined whether it may be provided?

In (c)(3)(B)(ii), line 20, who may provide this? Based upon what?

On line 20, define “appropriate”

In (d)(1), line 22, who “may” permit this and based upon what?

On line 22, define “appropriate”

In (d)(2), line 23, who “may” permit this and based upon what?

On line 23, define “intermediate points”

In (d)(3), line 24, what are “designated sections”? And who will designate them?

In (e), line 26, do you mean to refer to Rule .0303(d)?

On line 26, insert a comma after “Section”

Delete (f). It does not establish any regulatory standard and serves no purpose in this Rule.

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

07 NCAC 13F .0304 is readopted as published in 34:07 NCR 547 as follows:

07 NCAC 13F .0304 MANAGEMENT OF SCENIC RIVER AREAS

(a) A scenic river area shall be managed so as to maintain and provide outdoor recreation opportunities in the near-natural setting. Diversity and volume of recreational use will dictate more intensive management practices on segments designated as scenic.

(b) Reasonable restraints on allowable volumes of use may be employed.

(c) Facilities

(1) Facilities at access points may include any of those allowed at public access on natural rivers listed in Rule .0303(c) of this Section plus campgrounds, interpretative, and administrative facilities.

(2) Scenic rivers can have roads paralleling some portions of the river. Where such roads are public, they may be designated as scenic roads. Overlooks, roadside picnic areas, and undeveloped tent and trailer camping facilities may be developed.

(3) Recreational Facilities

(A) Boating facilities shall be similar to those found on natural river areas listed in Rule .0303(c) of this Section.

(B) Bicycle Facilities

(i) Bicycle rest areas may be provided and may be in conjunction with roadside picnic areas, overlooks, and rest stops for other activities.

(ii) Overnight camping facilities for cyclists may be provided at appropriate intervals.

(d) Access

(1) Direct vehicular access may be permitted at appropriate points along a scenic river.

(2) Access facilities for boating and floating may be permitted at intermediate points along the river.

(3) Motorized vehicles shall be allowed on designated sections of the land area.

(e) Activities. Activities consistent with the management of a scenic river in the system are the same as those for a natural river area listed in Rule .0303(c) of this Section plus scenic driving and bicycling.

(f) Integrated public and private investments on designated scenic river areas shall be encouraged.

History Note: Authority G.S. 143B-135.156;

Eff. April 4, 1979;

Transferred from 15A NCAC 12F .0304 Eff. April 1, ~~2017~~, 2017;

Readopted Eff. February 1, 2020.