

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Agriculture and Consumer Services

RULE CITATION: All Rules Submitted

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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:

On the Submission for Permanent Rule forms, please complete Box 5. If you'd like, for any Rule in which there is not a request to make other changes to the form, you can just come to our office and mark the forms you submitted initially.

For all adoptions in 02 NCAC 52L: Please format all changes made to the Rule after publication (either in response to public comments or these Requests for Technical Changes) pursuant to Rule 26 NCAC 02C .0405(b)(1).

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: April 27, 2018

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Agriculture and Consumer Services

RULE CITATION: 02 NCAC 52B .0213

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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:

On the Submission for Permanent Rule form, if you intend to rename the Rule "Importation Requirements: Cervids" (as reflected on the Rule), please put that as the name in Box 2.

In the Rule, why are you removing "farmed" before cervids? G.S. 106-549.97 confers only authority for the Department to regulate farmed cervids. If the intent is to address the authority of the Board of Agriculture in 106-307.5, then please confirm that the Board jointly promulgated this Rule. If it is not the intent, please reinsert "farmed" into the Rule.

In (a), line 4, please underline "from:" Since you published it correctly in the Register, you do not need to show that as a change.

In (a)(1), line 6, and (a)(2), line 10, consider replacing "in which" with "where"

In (a)(3), how will the individuals know the facility is "exposed" or "suspect"? Or are you reciting the language from G.S. 106-549.97(a2)?

In (b), lines 12-13, replace "Title 2, Subchapter 52L of the North Carolina Administrative Code" with "02 NCAC 52L" Since you published it this way in the Register, you do not need to show it as a change.

In (c), line 15, why isn't "CWD susceptible" hyphenated? "CWD-suspect" is on line 13.

On line 16, delete the comma after "Carolina"

On line 17, is the approval by the USDA using USDA standards as set forth in G.S.106-549.97(a1)(6)?

Also on line 17, is "antemortem" one word, or hyphenated as "ante-mortem"? And so that I'm clear, isn't this post-death testing? Is this for transporting dead farmed cervids?

In (d)(1), since it is the term "IVCI" defined by 9 CFR Part 86, I suggest moving the language on lines 22-24 to behind "(IVCI)", so it reads:

Amanda J. Reeder
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Date submitted to agency: April 27, 2018

“an interstate certificate of veterinary inspection (“IVCI”), as set forth in 9 CFR Part 86, which is hereby incorporated by reference, including any subsequent amendments and editions, and available free at [url.] The IVCI shall be maintained by the ... Division;

In (a)(3), line 31, what is “valid”? Is this known?

Also, on line 32, you only say “Veterinary Division” That is sufficient to me, but I note you added “North Carolina Department of Agriculture and Consumer Services” before that language on lines 14 and 15. Do you need to do that here?

In (a)(4), line 33, so that I’m clear – you want to retain “cervidae” and not replace it with “cervids” as you did elsewhere?

In (a)(5), Page 2, lines 4, 7 and 10, please hyphenate “USDA-approved”

In (e), line 14, I suggest inserting a “that,” before “based” and changing “on” to “upon” and then inserting a comma after “experience” and deleting “that” on line 15. Thus, “... any threat of disease that, based upon... experience, will pose...”

In the History Note, depending upon the intent of the rulemaking, do you need to retain the citations to G.S. 106-307.5 and 317?

Also in the History Note, you are adding G.S. 106-401, which addresses quarantine. But for Paragraph (e), aren’t you relying upon G.S. 106-399.4?

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

02 NCAC 52B .0213 is amended with changes as published in 32:06 NCR 501-502 follows:

02 NCAC 52B .0213 IMPORTATION REQUIREMENTS: ~~CERVIDAE~~ FARMED CERVIDS

(a) No ~~cervidae may~~ farmed cervids shall be imported into North Carolina ~~from~~:

(1) a herd located in a county or its equivalent, if not within the United States or in a territory without counties, in which Chronic Wasting Disease (CWD) ("CWD") has been ~~diagnosed or from~~ diagnosed:

(2) a herd located in a county ~~which~~ or its equivalent, if not within the United States or in a territory without counties, that is contiguous to a county or its equivalent, if not within the United States or in a territory without counties, in which CWD has been ~~diagnosed~~ diagnosed; or

(3) a CWD-positive, exposed, or suspect farmed cervid facility.

(b) Any imported farmed cervid that fails to comply with G.S. 106-549.97, Title 2, Subchapter 52L of the North Carolina Administrative Code, or this Rule, shall be deemed a CWD-suspect animal until further investigation by the North Carolina Department of Agriculture and Consumer Services' Veterinary Division.

(c) No CWD susceptible farmed cervids, as identified by the North Carolina Department of Agriculture and Consumer Services' Veterinary Division or the USDA, shall be imported into North Carolina, without first being tested negative for CWD using an ante mortem test approved by the USDA.

(d) All ~~cervidae~~ farmed cervids entering North Carolina ~~must~~ shall be accompanied by all of the following:

(1) an official health certificate issued within 30 days prior to arrival; an interstate certificate of veterinary inspection ("ICVI") that shall be maintained by the farmed cervid owner for a period of five years, subject to inspection and copying by the North Carolina Department of Agriculture and Consumer Services' Veterinary Division, as defined and required by 9 C.F.R. Part 86, which is hereby incorporated by reference including any later amendments and editions, and available free of cost at <https://www.gpo.gov/fdsys/granule/CFR-2014-title9-vol1/CFR-2014-title9-vol1-part86>;

(2) individual ~~animal identification~~ identification such as a bangle type ear tag, with lettering two inches or greater that can be viewed from a distance as required by 02 NCAC 52L .0112 and noted on the ~~health certificate~~ ICVI;

(3) an importation permit issued by the North Carolina State Veterinarian. The request for an importation permit must be made by a licensed, accredited veterinarian, as defined in 02 NCAC 52B .0401, and must be accompanied by a copy of the official health certificate and a copy of the ~~captivity permit issued by the North Carolina Wildlife Resources Commission~~ a valid transportation permit issued by the Veterinary Division;

(4) the following statement ~~must~~ shall also appear on the ~~health certificate~~ ICVI: "All cervidae on this certificate originate from a Chronic Wasting Disease (CWD) monitored or certified herd in which these animals have been kept for at least one year or were natural additions. There has been no diagnosis, signs, or epidemiological evidence of CWD in this herd or any herd contributing to this herd for the previous five years."; and

(5) ~~proof of a negative test for brucellosis for all animals six months of age or older within 30 days prior to arrival. The herd of origin must~~shall ~~have had no diagnosis of brucellosis in the 12 months preceding shipment; and~~

(6) proof of a negative ~~single cervical test for~~USDA approved tuberculosis test for animals six months of age or older conducted within 60 days prior to arrival if the animal originates from a tuberculosis accredited ~~or qualified~~ herd. If the animal is six months of age or older and originates from a herd of unknown status, two negative ~~single cervical~~USDA approved tests for tuberculosis ~~will~~shall be required with the second being greater than 90 days from the initial test and within 60 days prior to arrival. If the animal is less than six months of age and from a herd of unknown status, one negative ~~single cervical~~USDA approved tuberculosis test ~~will~~shall be required. The herd of origin and commingled susceptible species ~~must~~shall have had no diagnosis of tuberculosis in the 36 months preceding shipment.

(e) The State Veterinarian of North Carolina may issue orders prohibiting the importation of certain ~~farmed~~ cervids or issue moratoriums pending the investigation of any threat of disease based on his or her expertise and experience that will pose a risk of spreading disease that will damage or harm the North Carolina farmed cervid industry, including the control or spread of CWD.

*History Note: Authority G.S. 106-307.5; 106-317; 106-400; 106-401; 106-549.97(a2);
Eff. August 1, ~~2002~~. 2002.
Amended Eff. June 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Agriculture and Consumer Services

RULE CITATION: 02 NCAC 52C .0701

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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 reviewing the existing History Note, it appears that this Rule was adopted under Board of Agriculture authority. It also appears that it applied to all deer, not just captive deer, and the Department only has authority to regulate captive deer. This Rule was initially promulgated under Board authority (G.S. 106-317). Therefore, please confirm that the Board of Agriculture participated in this rulemaking.

Please insert the entire History Note into the rule.

Please insert a repealed effective date in the History Note. The earliest the repeal can be effective is June 1, 2018.

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: April 27, 2018

1 02 NCAC 52C .0701 is repealed as published in 32:06 NCR 502 as follows:

2

3 **02 NCAC 52C .0701 INTRASTATE REQUIREMENTS: CERVIDAE**

4

5 *History Note: Authority G.S. 106-549.97(a2)*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Agriculture and Consumer Services

RULE CITATION: 02 NCAC 52L .0101

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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 8, and (b), line 15, please replace "rules" with "regulations"

In (c), what is your authority to say this, especially in light of G.S. 106-549.97(a2), which states:

The Department shall follow the USDA Standards and the provisions set forth in 9 C.F.R. Part 55 and 9 C.F.R. Part 81 in the implementation of this Article with regard to cervids susceptible to Chronic Wasting Disease.

In the History Note, why are you citing to G.S. 106-317, which is the authority of the Board of Agriculture, and G.S. 106-400, which is enforcement authority for the State Veterinarian? Doesn't G.S. 106-549.97 convey sufficient rulemaking authority here?

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: April 27, 2018

02 NCAC 52L .0101 is adopted with changes as published in 32:06 NCR 503 as follows:

SUBCHAPTER 52L – FARMED CERVIDS

SECTION .0100 –FARMED CERVID LICENSE AND PERMIT

02 NCAC 52L .0101 INCORPORATION BY REFERENCE

(a) For the purpose of the rules in this Subchapter, the following rules and standards are hereby incorporated by reference including any subsequent amendments and editions:

(1) 9 C.F.R. Part 55;

(2) 9 C.F.R. Part 81;

(3) 9 C.F.R. Part 86; and

(4) The United States Department of Agriculture’s Chronic Wasting Disease Program Standards (May 2014).

(b) The rules and standards incorporated by reference in Paragraph (a) of this Rule are available free of cost at <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR> and https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-disease-information/sa_alternate_livestock/sa_cervid_health/sa_cwd/ct_cervid_health_program.

(c) If any conflicts arise between the incorporated federal rules and standards with the rules in this Subchapter, the rules in this Subchapter will govern.

History Note: Authority G.S. 106-317; 106-400; 106-549.97(a2);

Eff. June 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Agriculture and Consumer Services

RULE CITATION: 02 NCAC 52L .0102

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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, state "The definitions in the regulations and standards set forth in 02 NCAC 52L .0101 shall apply..."

I suggest you do so because this will be make the language consistent with the recommended changes to Rule .0101.

In (b)(2), line 10, why are the CFR citations not listed in numerical order, such that 9 CFR 55.8 comes before 55.23?

In (b)(3), line 11, and (12), line 25, why is "Certified" capitalized? Is it to mirror the capitalization in the federal regulations?

In (b)(4), line 14, what is "official"?

On line 15, what is "USDA Standards, (6.2) Official CWD Test"? Is this all part of the USDA standard?

In (b)(5), line 16, you use an ampersand between "Agriculture" and "Consumer" but in (b)(16), line 34, you use an "and" Please be consistent in this term.

In (b)(8), isn't the term in G.S. 106-549.97 "North Carolina Captive Cervid Herd Certification Program"? Why are you changing it here?

In (b)(10), so that I'm clear, the permit will be issued by the Department?

In (b)(11), line 23, please make "rules" lowercase. Since it was published lowercase, you do not need to show it as a change; simply do it.

On line 24, please either state "shall include" or "includes"

On line 24, consider replacing "made" with "named" or "of"

In (b)(13), line 28, define "proper"

Amanda J. Reeder
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Is the “approved for use” pursuant to Rule .0112?

On line 29, delete the comma after “Division”

In (b)(15), line 31, delete “but not limited to”

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: April 27, 2018

02 NCAC 52L .0102 is adopted with changes as published in 32:06 NCR 503 as follows:

02 NCAC 52L .0102 DEFINITIONS

(a) The definitions of the incorporated rules and standards under 02 NCAC 52L .0101 apply to such terms when used in this Subchapter, to the extent that they do not conflict with G.S. 106-549.97(a)(1) or Paragraph (b) of this Rule.

(b) The following definitions apply to this Subchapter:

(1) “APHIS” means the United States Department of Agriculture Animal and Plant Health Inspection Service.

(2) “Carcass” means the head, the whole animal, or tissue sample extracted in accordance with the USDA Standards, 9 C.F.R. § 55.23(b)(3), and 9 C.F.R. § 55.8.

(3) “Certified Herd” means any herd that has reached Certified status under an Approved State Chronic Wasting Disease Herd Certification Program as determined by the USDA in accordance with 9 C.F.R. § 55.23(a) and 9 C.F.R. § 55.24(a).

(4) “CWD Testing” means official Chronic Wasting Disease (“CWD”) testing in accordance with the USDA Standards, (6.2) Official CWD Test, and 9 C.F.R. § 55.8.

(5) “Diagnostic Laboratory” means the North Carolina Department of Agriculture & Consumer Services Veterinary Diagnostic Laboratory System.

(6) “Facility” means a facility for farmed cervids.

(7) “Fawns” or “Calves” means cervids under one year of age.

(8) “Herd Certification Program” means the North Carolina Farmed Cervid Herd Certification Program.

(9) “ICVI” means interstate certificate of veterinary inspection.

(10) “Licensed Facility” means any facility issued a farmed cervid license.

(11) “Licensee” means a person issued a farmed cervid license in accordance with the Rules of this Subchapter and include designees made by the licensee.

(12) “Monitored Herd” means any herd that has reached Certified status under the North Carolina Monitored Herd Certification Program for CWD non-susceptible species in accordance with 02 NCAC 52L .0402.

(13) “Officially Identified” means the proper attachment of a tamper-resistant ear tag approved for use by the Veterinary Division, on a farmed cervid.

(14) “State” means the State of North Carolina.

(15) “Temporary Exhibit” means a public display of farmed cervids including but not limited to animal acts, educational displays, carnivals, circuses, parades, shopping center displays, and zoos, whether operated for profit or not.

(16) “Veterinary Division” means the Veterinary Division of the North Carolina Department of Agriculture and Consumer Services.

History Note: Authority G.S. 106-549.97(a2);

1 Eff. June 1, 2018.
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3

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Agriculture and Consumer Services

RULE CITATION: 02 NCAC 52L .0103

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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:

On lines 5 and 6, what is your authority to regulate exhibitions and issue permits on them? G.S. 106-549.97 refers to production, sale, possession, and transportation, not exhibition.

On line 7, make "rules" lowercase. Since you published it this way, you do not need to show it as a change; simply do it.

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: April 27, 2018

02 NCAC 52L .0103 is adopted as published in 32:06 NCR 503 as follows:

02 NCAC 52L .0103 FARMED CERVID LICENSE OR TEMPORARY EXHIBIT PERMIT

REQUIRED

No person shall possess, exhibit, buy or sell, or partake in the production of any farmed cervid within the State unless that person first obtains a farmed cervid license or a temporary exhibit permit from the Veterinary Division in accordance with the Rules in this Subchapter.

History Note: Authority 106-549.97(a2);

Eff. June 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Agriculture and Consumer Services

RULE CITATION: 02 NCAC 52L .0104

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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:

So that I'm clear, is this addressing captivity licenses, as set forth in G.S. 106-549.97?

In (a)(1), line 5, what are the contents of this application? G.S. 150B-2(8a)(d) states that while the form itself does not have to be in rule, the contents of that form must be in rule or law. Where are the contents of the form addressed in rule or law?

Further, where can one obtain a copy of the application?

In (a)(2), line 6, why not replace "persons interested in obtaining a farmed cervid license" with "applicants"?

On line 8, delete the comma after "Program"

In 9b)(1), line 10, please replace "is" with "shall be"

On line 10, I recommend ending the sentence after "issued." Then on line 11, state "If the new license is approved after July 1, it shall take effect on the date of issue." That will simplify what I believe you are trying to say.

In (b)(2), what are the contents of this application?

Line 14, received by whom? The Department?

On line 15, the close of business of what date? The next business day or March 31?

Line 15, consider replacing "work" with "business"

In (b)(3), why not replace "an inventory report in writing" with "a written inventory report"?

In (b)(3)(B), who issues the national premises identification number?

In (b)(3)(C), is this issued by the Department? Is it on the license?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 27, 2018

In (c)(1), line 27, what is an “existing facility”? Are licenses not specific to the facility? Are they issued to a person, rather than the facility?

In (c)(2), is it “a person” or “an applicant”?

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

02 NCAC 52L .0104 is adopted with changes as published in 32:06 NCR 503-504 as follows:

02 NCAC 52L .0104 FARMED CERVID LICENSE

(a) Farmed Cervid License.

(1) Persons interested in obtaining a farmed cervid license shall apply with the Veterinary Division.

(2) Both licensees and persons interested in obtaining a farmed cervid license shall comply with 02 NCAC 52L .0401(c)(1) and 02 NCAC 52L .0402(d)(1) by enrolling herds in either the Herd Certification Program or the Monitored Herd Certification Program, or both.

(b) Terms of License and Inventory Report.

(1) A farmed cervid license is valid from July 1 through June 30 for the year in which it was issued, unless a new license is approved after July 1, then any license approved shall take effect the date of issue.

(2) Licensees may apply for renewal each year during the renewal period of January 1 through March 31. If March 31 falls on a weekend or holiday, then the renewals must be received prior to close of business or postmarked by the next work day.

(3) Licensees shall submit an inventory report in writing with their license renewal. The inventory report shall include the:

(A) licensee's name, mailing address, telephone number, and email address;

(B) licensed facility name, address, and national premises identification number;

(C) farmed cervid license number;

(D) species, sex, and birth year of each farmed cervid;

(E) animal identification numbers for each farmed cervid; and

(F) date of disposition or death of any farmed cervid.

(4) The inventory report shall be accompanied by a statement from the licensee verifying the information provided is accurate.

(c) Renewal of Farmed Cervid License.

(1) Existing farmed cervid licenses at existing facilities shall be renewed as long as the applicant for renewal continues to meet the licensing requirements of this Subchapter.

(2) A person whose license has lapsed shall not be eligible for renewal, but may apply for a new license.

History Note: Authority G.S. 106-549.97(a2);

Eff. June 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Agriculture and Consumer Services

RULE CITATION: 02 NCAC 52L .0105

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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), won't this also include the circumstance in Rule .0104(c)?

In (a)(1), line 5, delete or define "complete"

Also on line 5, what are the contents of this application? Where can someone obtain it?

In (a)(8), line 14, define "proper"

Also, to whom does one apply here?

And doesn't this violate Rule .0104(a)(2), such that you would not grant or renew the application pursuant to Rule .0104(c)?

In (a)(9), line 17, do you mean "cervids" (plural)?

On line 17, delete "that"

Line 17, who determines if this "indicates" the applicant may not comply"? Based upon what experience?

In (b), is this to prevent individuals whose license was suspended or revoked from applying for a new license during the pendency of the suspension?

Please clarify in (c) what you mean by "that facility". Again, are the licenses to an individual, not a facility?

In (d), consider writing this in active voice, and perhaps even creating a list.

The Department shall not issue a farmed cervid license until the applicant has:

(1) constructed or acquired a facility for keeping farmed cervids that complies with 02 NCAC 52L .0201; and

(2) had the facility inspected and verified by the Veterinary Division

What do you mean by "verified"? And how does one arrange for this inspection? Is there a cost?

Amanda J. Reeder

Commission Counsel

Date submitted to agency: April 27, 2018

In (e), isn't this duplicative of (a)(5) and (6)? What does this additional Paragraph address?

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: April 27, 2018

02 NCAC 52L .0105 is adopted with changes as published in 32:06 NCR 504 as follows:

02 NCAC 52L .0105 DENIAL OF FARMED CERVID LICENSE

(a) Circumstances or purposes for which a farmed cervid license shall not be issued or renewed include the following:

- (1) failing to submit a complete application or renewal;
- (2) submitting a falsified application or renewal;
- (3) for the purpose of holding non-farmed cervids or farmed cervids that were transported without a valid transportation permit;
- (4) for the purpose of rehabilitating non-farmed cervids;
- (5) for the purpose of ~~comingling~~commingling farmed and non-farmed cervids;
- (6) keeping any farmed cervid not for agricultural or commercial purposes, such as buying, selling, and production of farmed cervids, or for scientific, exhibition, and educational purposes;
- (7) to an individual under the age of 18 years of age;
- (8) failing to submit the proper application to have herds enrolled in either or both the Herd Certification Program or the Monitored Herd Certification Program; or
- (9) the applicant has violated State or Federal laws or regulations for ~~livestock,~~livestock or non-farmed cervid, and that the nature of the violation indicates that the applicant may not comply with the requirements of the farmed cervid license.

(b) Any person whose farmed cervid license or permit has been revoked or suspended shall not be licensed within the period during which the order of revocation or suspension remains in effect.

(c) Any person who has been an officer, agent, or employee of a person whose farmed cervid license or permit has been revoked or suspended and who was responsible for, participated in, or worked for that person during the violation upon which the order of revocation or suspension was based, shall not be licensed for that facility within the period during which the order of revocation or suspension remains in effect.

(d) No farmed cervid license shall be issued until the applicant has constructed or acquired a facility for keeping farmed cervids that complies with 02 NCAC 52L .0201 and has been verified by the Veterinary Division upon inspection.

(e) No farmed cervid license shall be issued to any person in possession of rehabilitative or non-farmed cervid.

History Note: Authority G.S. 106-549.97(a2);

Eff. June 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Agriculture and Consumer Services

RULE CITATION: 02 NCAC 52L .0106

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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:

What authority are you relying upon to issue exhibit permits?

In (b), line 5, why are "Reindeer" and "Caribou" capitalized?

In (c), line 6, and elsewhere in this Rule where you refer to an application, what are the contents of the application? And where does someone get the application?

In (d), line 7, what do you mean by "Interested persons"? Why not state "Applications shall be submitted to the Division..."?

In (d)(1), line 9, define "detailed exhibit facility plan"

On line 10, I do not think "photographic documentation" is clearer than "pictures" What does this term mean?

On line 10, how does one get the pre-approval from the Division? And this is before submitting an application for the permit to the same Division?

In (e), line 13, how does one arrange for this inspection? Is there a cost associated with it? Does this happen after the application is submitted?

In (e)(2), I understand that there was no 52L .0201(a)(4) through (7), but where did this additional language come from on lines 19-29? How would your regulated public have known this would be affected? Is it contained in federal law? Or is it to ensure consistency with Rule .0201?

In (e)(2)(ii), line 23, and (iii), line 25, define "sufficient"

In (e)(4), line 30, you do not need to retain "Aedin's Law" since you have the citation.

On line 30, the citation should be "G.S. 106-520.3A" Since you published it correctly in the Register, you do not need to show this as a change, but do change it back to the correct format.

On line 30, since the Commissioner has authority to promulgate those Rules, why not just give the citation to them in this Rule?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: April 27, 2018

On line 31, when do these apply or not apply? Does your regulated public know?

In (g)(1), line 35, delete or define "complete"

In (g)(5), line 4, please fix the spelling of "commingling" like you did for Rule .0105.

In (h), is this to prevent individuals whose license was suspended or revoked from applying for a new license during the pendency of the suspension?

On line 6, delete the comma after "suspended"

Please clarify in (i) what you mean by "that exhibit". Are the licenses to an individual, not an exhibit?

In (j), what does this Paragraph do that it not addressed by (g)(4) and (5)?

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

02 NCAC 52L .0106 is adopted with changes as published in 32:06 NCR 504-505 as follows:

02 NCAC 52L .0106 TEMPORARY EXHIBIT PERMIT

(a) Temporary exhibit permits shall not be issued for the buying, selling, or production of farmed cervids.

(b) A temporary exhibit permit shall only be issued for Reindeer or Caribou.

(c) Persons interested in obtaining a temporary exhibit permit shall apply with the Veterinary Division.

(d) Temporary exhibit permits are only valid for the dates and locations specified. Interested persons shall apply to the Veterinary Division:

(1) five business days prior to the date of exhibit if the exhibitor previously submitted a detailed exhibit facility plan, with ~~[pictures,]~~photographic documentation, that have been pre-approved by the Veterinary Division; or

(2) 60 days prior to the date of exhibit.

(e) The Veterinary Division shall only issue temporary exhibit permits when the temporary exhibit area is inspected by the Veterinary Division and meets the following criteria:

(1) all farmed cervids to be exhibited are from a certified herd and officially identified in accordance with 02 NCAC 52L .0112 and 9 C.F.R. 55.25;

(2) [the temporary exhibit facility meets 02 NCAC 52L .0201(a)(4) (7) regarding fencing to prevent 16 farmed cervid escapes; except for farmed cervids exhibited during parades, which shall be secured so that no farmed cervids may escape; and]the temporary exhibit enclosure, with the exception for farmed cervids exhibited during parades, shall:

(i) be an area of at least ten feet by ten feet;

(ii) have fencing at least eight feet in height with a ground clearance of no greater than three inches and sufficient in strength and stability to prevent escape, unless the animals are restrained to prevent escape;

(iii) have an enclosure large enough to ensure each animal has sufficient room to stand erect and lie naturally; and

(iv) have no exposed barbed wire, nails, or other protrusions that may cause injury to the animals shall be permitted within the enclosure;

(3) farmed cervids exhibited shall be secured so that no farmed cervids may escape; and

~~[(3)](4)~~ the temporary exhibit complies with Aedin's Law, N.C. Gen. Stat. § 106-520.3A, and rules promulgated thereunder when those laws and rules apply.

(f) All permit holders shall report any cervid escape, entry, or death within 24 hours of discovery to the Veterinary Division in accordance with 02 NCAC 52L .0110.

(g) Circumstances or purposes for which a temporary exhibit permit shall not be issued include:

(1) failing to submit a complete application;

(2) submitting a falsified application;

1 (3) for the purpose of holding non-farmed cervids or farmed cervids that have been transported without
2 a transportation permit;

3 (4) for the purpose of rehabilitating non-farmed cervids;

4 (5) for the purpose of comingling farmed and non-farmed cervids; and

5 (6) to an individual under the age of 18 years of age.

6 (h) Any person whose farmed cervid license or temporary exhibit permit has been revoked or suspended, shall not be
7 issued a temporary exhibit permit within the period during which the order of revocation or suspension remains in
8 effect.

9 (i) Any person who has been an officer, agent, or employee of a person whose farmed cervid license or permit has
10 been revoked or suspended and who is responsible for, participated in, or worked for that person during the violation
11 upon which the order of revocation or suspension was based, shall not be issued a permit for that exhibit within the
12 period during which the order of revocation or suspension remains in effect.

13 (j) No temporary exhibit permit shall be issued to any person in possession of rehabilitative or non-farmed cervid.

14
15 *History Note: Authority G.S. 106-549.97(a2);*

16 *Eff. June 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Agriculture and Consumer Services

RULE CITATION: 02 NCAC 52L .0107

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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 5, replace "is" with "shall be"

On line 6, delete "in"

In (b), this is one very long sentence. Why not break it up into more than one sentence to make it easier to read?

In (b), line 7, what is "incapacitated"? What is "mentally incompetent"? And who determines this and based upon what?

Line 8, what is "lawful"?

On line 10, how far in advance of the transfer? Will it change depending upon the reason the individual has to transfer the license or permit?

How will the Division decide whether to allow the transfer?

In (c), line 12, replace "provision" with "Rule"

In (d), line 14, it seems like you are missing language. Is it articles, so it reads "from a complaint", etc.?

On line 14, since you say "may," what are the circumstances when the actions won't apply? Or do you mean "shall"?

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: April 27, 2018

02 NCAC 52L .0107 is adopted with changes as published in 32:06 NCR 505 as follows:

02 NCAC 52L .0107 TRANSFER OF FARMED CERVID LICENSE OR TEMPORARY EXHIBIT
PERMIT

(a) No farmed cervid license, permit, or animal identification issued or assigned by the Veterinary Division is transferable, except as provided by in this Rule.

(b) If a farmed cervid licensee or temporary exhibit permit holder becomes incapacitated, mentally incompetent, dies, or if the business is sold or otherwise acquired, a person who is at least 18 years of age and has obtained lawful possession of any farmed cervid and the licensed facility from the previous licensee, or that licensee's estate, may request the Veterinary Division in writing, prior to the transfer, that the existing farmed cervid license, permit, and animal identification be transferred to the new owner.

(c) Any license, permit, or animal identification transferred under this provision shall be subject to the same terms and conditions imposed on the original ~~licensee.~~ licensee or permit holder.

(d) Any actions pending from complaint, investigation, or other cause may be continued notwithstanding any transfer under this Rule.

(e) No farmed cervid license, permit, or animal identification shall be transferred to a person who had a farmed cervid license or permit revoked or suspended by the Veterinary Division within the period during which the order of revocation or suspension remains in effect.

History Note: *Authority G.S. 106-549.97(a2);*

Eff. June 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Agriculture and Consumer Services

RULE CITATION: 02 NCAC 52L .0108

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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:

I am simply asking – are animal identifications transferrable, as well?

And I take it that if the surrender notification is sent, there is no follow up from the Division that needs to be addressed in rule?

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: April 27, 2018

02 NCAC 52L .0108 is adopted as published in 32:06 NCR 505 as follows:

**02 NCAC 52L .0108 VOLUNTARY SURRENDER OF FARMED CERVID LICENSE OR
TEMPORARY EXHIBIT PERMIT**

Farm cervid licensees or temporary exhibit permit holders may voluntarily surrender any license or permit issued under this Subchapter by notifying the Veterinary Division in writing.

History Note: Authority G.S. 106-549.97(a2);

Eff. June 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Agriculture and Consumer Services

RULE CITATION: 02 NCAC 52L .0109

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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)(1), lines 5-6, is the language "regardless of whether tagged with animal identification or not" necessary, in light of the use of "all farmed cervids" on line 5?

On line 6, I think you can delete "also"

On line 7, what are the contents of this form, since it is submitted to your agency?

In (c), line 14, safe for whom? I think that 9 CFR 55.23(b)(4) is clearer, since it states that it must be safe for the inspector. Do you mean the inspector, animal, or both?

On line 15, I realize that this language mimics 9 CFR 55.23(b)(4), but how is this agreement reached? Is it part of the permit? Or is it made at the time of inspection?

In (d), line 17, do you mean "escape" (like you use on line 21)? Do the cervids never leave the enclosure, such that they don't need ingress and egress?

In (e)(2), line 23, who determines whether escape is "imminent"? Is it entirely within the discretion of the licensee?

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: April 27, 2018

02 NCAC 52L .0109 is adopted as published in 32:06 NCR 505 as follows:

02 NCAC 52L .0109 RECORDS AND INSPECTION

(a) Maintenance of Records.

(1) Each licensee shall maintain herd records for all farmed cervids, regardless of whether tagged with animal identification or not, as required by the USDA Standards and 9 C.F.R. § 55.23(b), and also maintain a copy of any CWD Diagnostic Laboratory submission form.

(2) All records required by this Subchapter and any ICVI as defined and required by 9 C.F.R. Part 86 shall be maintained by the licensee for a period of five years.

(b) Inspection of Records. The licensee shall make all records required under this Subchapter available for inspection and copying by the Veterinary Division.

(c) Inspection and Inventory of Licensed Facility and Exhibit. The licensee shall make all enclosures, exhibits, and any farmed cervid available for inspection by the Veterinary Division under conditions where all identification on the animals may be safely read. The licensee shall be responsible for all costs incurred to present the animals for inspection and agree that any liability or injury to the animals during handling rests with the licensee.

(d) Fence Monitoring Requirement. The fence surrounding the enclosure shall be monitored weekly for structural soundness and stability by the licensee to prevent ingress and egress of any cervid.

(e) Maintenance.

(1) Any opening or passage resulting from damage or deterioration to the perimeter fence shall be sealed by the licensee within 24 hours upon detection or the animals secured until the fence is repaired to prevent any farmed cervid escape.

(2) Any damage to the enclosure fence that threatens its stability shall be repaired by the licensee within seven calendar days of detection, or within 24 hours if there is an imminent threat of farmed cervid escape.

History Note: Authority G.S. 106-549.97(a2);

Eff. June 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Agriculture and Consumer Services

RULE CITATION: 02 NCAC 52L .0110

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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 note, the name of a Rule is not within the purview of the RRC. But I do want to be clear – is “breach” considered what happens in Paragraph (b)? If so, why don’t you use the term “breach” in (b)?

In (a), lines 5-6, what are the numbers and email addresses? I suggest you insert them into the Rule. Please note you can change them without notice or comment pursuant to G.S. 150B-21.5(a)(4).

In (a)(1), what if the animal doesn’t have the identification number? Is this why you added the species, sex, and age requirement?

On line 8-9, this is the first time you speak of an animal being deceased. I thought this Rule only addressed escape or disappearance of animals. Is this to address only the instance when an animal escapes and this is found dead?

In (a)(4), this will only occur if the farmed cervid is found, correct?

In (b)(1), line 20, you do not need to repeat “available at [url],” here, nor do you need to repeat the email address or telephone number, since those are all in (a). Just removing it.

(b)(2) through (4) were all added after the public comment period. Was this as a result of public comment, or consultation with another agency?

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: April 27, 2018

02 NCAC 52L .0110 is adopted with changes as published in 32:06 NCR 505-506 as follows:

02 NCAC 52L .0110 ESCAPE, DISAPPEARANCE, OR BREACH OF FACILITY

(a) When a licensee discovers the escape or disappearance of any farmed cervid, the licensee shall report the escape or disappearance within 24 hours by contacting the Veterinary Division by telephone or email. The telephone number and email address is available at <http://www.ncagr.gov/vet/FarmedCervid/>.

(1) The report shall include the identification ~~numbers~~ numbers, species, sex, and age of the animals involved and the estimated time and date of escape or disappearance, and if deceased, the estimated time and date of death.

(2) A recaptured live farmed cervid shall be held in quarantine by itself or with other escapees by the licensee until the Veterinary Division determines the disposition of the farmed ~~cervid.~~ cervid, based on the risk of CWD transmission as a result of this escape. Failure to quarantine the escaped farmed cervid to prevent commingling with the herd shall result in the quarantine of the entire herd.

(3) The licensee shall be responsible for all costs associated with CWD testing and disposal of any escaped animal.

(4) If live recapture is not possible, the licensee shall harvest the escaped cervid and submit the deceased cervid to the Diagnostic Laboratory for CWD testing.

(b) When a licensee discovers the entry of any non-farmed cervid into the licensed facility, the licensee ~~shall~~ shall:

(1) ~~report~~ Report the entry within 24 hours by contacting the Veterinary Division by telephone or email, available at <http://www.ncagr.gov/vet/FarmedCervid/>, for further action or disposition of the non-farmed ~~cervid.~~ cervid:

(2) Obtain a wildlife depredation permit from the North Carolina Wildlife Resources Commission. Contact information can be found at <http://www.ncwildlife.org/Licensing/Regulations/Nongame-and-Other-Regulations/Wildlife-Depredation#5836327-wildlife-taken-with-a-depredation-permit>;

(3) Take the non-farmed cervid in accordance with the wildlife depredation permit; and

(4) Submit the non-farmed cervid for CWD testing.

History Note: Authority G.S. 106-549.97(a2);

Eff. June 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Agriculture and Consumer Services

RULE CITATION: 02 NCAC 52L .0111

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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 6, how does one detect depression in deer?

On line 6, do you mean "death" rather than "eventual death"?

On line 7, please provide the phone number. Please recall, you can amend this Rule to update the number without notice or comment using G.S. 150B-21.5(a)(4). When you do so, delete the url.

In (b), line 8, so that I am clear, is this cannot be transported anywhere out of the facility? They can be moved to a quarantine on the facility premises without being directed to do so, or do they have to get that order from the Veterinary Division first?

In (c), line 10, are the contents of the form what is contained in (c)(1) through (8)?

How does one obtain a copy of the form?

On line 12, is the "report" the same as the form?

And to be clear, this form is one form to report each individual farmed cervid death, and if multiple farmed cervids die at the same time, one report will suffice?

I suggest beginning (c)(1) through (8) with articles, probably "the"

In (c)(4), can't you just state "year of death"?

In (c)(7), the farmed cervid must be sent for testing, even if the licensee kills it to eat it? I am just checking – any cause of death requires testing?

In (d), how will the Veterinary Division tell someone to not do testing? How quickly will this happen?

In (e), line 26, I think you can delete "after death" given that carcass is defined in Rule .0102 and implies a dead animal.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 27, 2018

On line 26, consider inserting “all” before “farmed cervids”

In (f), line 33, since you say “may” please give some guidance on when the Division won’t investigate when these issues are present.

In (g), line 36, replace “should” with “if”

In (g)(1), Page 2, line 1, delete “that has”

In (g)(2), line 2, shouldn’t it be “the facility”? And delete “that has”

In (g)(3), line 4, shouldn’t it be “the facility”? And delete “that has”

And who determines if they “may have been exposed”? How is this determined?

In (g)(4), line 5, shouldn’t it be “the facility”? And delete “that has”

On line 5, consider deleting “later”

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

02 NCAC 52L .0111 is adopted as published in 32:06 NCR 506 as follows:

02 NCAC 52L .0111 REPORTING CWD SYMPTOMS AND FARMED CERVID DEATH

(a) Each licensee shall notify the Veterinary Division by telephone upon discovery if any farmed cervid exhibits clinical symptoms of CWD, including loss of body condition, behavioral changes, excessive salivation, increased drinking and urination, depression, and eventual death. The Veterinary Division's telephone number is available at <http://www.ncagr.gov/vet/FarmedCervid/>.

(b) Farmed cervids that exhibit clinical symptoms of CWD shall not be transported unless directed by the Veterinary Division.

(c) Licensees shall report to the Veterinary Division using a form provided by the Veterinary Division within 24 hours upon knowledge of the death of any farmed cervid, including any slaughtered farmed cervid, whether sent to a slaughterhouse or slaughtered at the farm cervid facility for personal use. The report shall include the following information:

(1) licensee's name, mailing address, telephone number, and email address;

(2) licensed facility name, address, and national premises identification number;

(3) farmed cervid license number;

(4) year of date of death;

(5) species and sex of each farmed cervid;

(6) animal identification for each farmed cervid;

(7) name and location of the Diagnostic Laboratory where the carcass of the farmed cervid is to be submitted for CWD testing; and

(8) a statement from the licensee verifying the information provided is accurate.

(d) The carcass of any farmed cervid that was 12 months of age or older that died of any cause shall be submitted by the licensee to the Diagnostic Laboratory for CWD testing unless instructed otherwise by the Veterinary Division due to the condition of the carcass.

(e) Regardless of age, after death, the carcass of farmed cervids that exhibited clinical symptoms of CWD shall be submitted to the Diagnostic Laboratory for CWD testing unless instructed otherwise by the Veterinary Division due to the condition of the carcass.

(f) In cases where animals escape or disappear and are not available for tissue sampling and testing, or when the samples are of such poor quality, as determined in accordance with the USDA Standards, including (5.6) Sample Collection: Owner Responsibility, (5.7) Sample Collection and Submission Procedures, (5.9) Quality Control, (5.10) Consequences of Poor Quality and Missing Samples, (6.4) Test Results, and (6.5) Autolyzed Samples, that they cannot be tested for CWD, the Veterinary Division may investigate whether the unavailability of animals or usable samples for testing constitutes a failure to comply with program requirements and may affect the herd's status in the Herd Certification Program and the Monitored Herd Certification Program.

(g) The Veterinary Division may require CWD testing or quarantine, or both, at any facility should the following circumstances or conditions occur:

- 1 (1) any herd or animal that has tested positive for CWD within the facility;
- 2 (2) a facility that has received farmed cervid from a facility that tested positive for CWD within five
- 3 years;
- 4 (3) a facility that may have been exposed to any CWD positive or suspect farmed cervid; or
- 5 (4) a facility that has transferred any farmed cervid that later tests positive for CWD within five years
- 6 of transfer.
- 7
- 8 *History Note: Authority G.S. 106-549.97(a2);*
- 9 Eff. June 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Agriculture and Consumer Services

RULE CITATION: 02 NCAC 52L .0112

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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 {See Rule 26 NCAC 02C .0108(1)(h)}

In (a)(2), line 8, how is the tag approved for use? What is required to get the approval?

On line 9, I see that the added language can be inferred from the language on line 32. However, where did the additional language on lines 10-11 come from – was it a result of public comment?

And is the language on lines 10-11 allowing the licensee to use any identification they wish, assuming it conforms with (a)(1)?

In (a)(3), line 13, please make “rules” lowercase. As it was published as “Rules” in the Register, you will need to show this as a change.

On line 14, insert a comma after “birth”

On lines 15-16, I suggest replacing “can prove the age of the fawn or calf by way of record keeping the exact month and year a” with “maintains a record of the month and year the” so it reads “unless the farmed cervid licensee maintains a record of the month and year the calf or fawn was born”

In (b)(1), line 21, what are the contents of the form? Is it just what is contained in (b)(1)(A) through (C)? Do you not require age or sex or species?

How does one obtain this form?

I suggest beginning (b)(1)(A) through (C) with “the”

In (b)(3), line 28, since you say “may,” when will the Division refuse to issue the tags if the completed application is submitted? This guidance needs to be in the Rule.

In (c)(1), line 31, is there a timeframe for the licensee to make this report? Or is it entirely up to them?

In (c)(3), line 34, what is required by this form and where does one obtain it?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 27, 2018

On line 36, since you say “may,” when will the Division refuse to issue the tags if the completed application is submitted? This guidance needs to be in the Rule.

In (c)(4), page 2, line 1, by “notify” do you mean they must highlight it in the submission to draw your attention to it? Or is that the update is included?

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

02 NCAC 52L .0112 is adopted with changes as published in 32:06 NCR 506-507 as follows:

02 NCAC 52L .0112 ANIMAL IDENTIFICATION

(a) Animal Identification Required.

(1) Licensees shall identify all farmed cervids with two forms of animal identification in accordance with the USDA Standards and 9 C.F.R. § 55.25.

(2) As one form of animal identification, [Licensees]licensees shall use USDA official tamper-resistant ear tags, approved for use by the Veterinary [Division,]Division. [to satisfy Subparagraph (a)(1) of this Rule.]The ear tags shall be affixed upon one ear of the farmed cervid by itself. Licensees shall inform the Veterinary Division the type of the second form of animal identification before affixing upon the farmed cervid.

(3) Farmed cervids born within a licensed facility shall be officially identified on or before 12 months of age. Fawns and calves shall be deemed a year old for purposes of the Rules in this Subchapter and shall be officially identified by the first coming July 1 following their birth unless the farmed cervid licensee can prove the age of the fawn or calf by way of record keeping the exact month and year a fawn or calf was born.

(4) All farmed cervids, regardless of age, shall be officially identified before being transported.

(5) All farmed cervids shall be identified and included in the inventory report and records as required by 02 NCAC 52L .0104(b) and 02 NCAC 52L .0109(a).

(b) Application for Animal Identification Tags.

(1) Applicants may request animal identification tags from the Veterinary Division using a form provided by the Veterinary Division by providing the following information:

(A) applicant's name, mailing address, telephone number, and email address;

(B) licensed facility name, address, and national premises identification number; and

(C) farmed cervid license number.

(2) The application shall be accompanied by a statement from the licensee verifying that the information provided is accurate.

(3) The Veterinary Division may provide animal identification tags upon receipt of the completed application.

(c) Replacement of Animal Identification Tags.

(1) Lost Tags. The loss of a tag shall be reported to the Veterinary Division by the licensee.

(2) Unusable Tags. Tags that cannot be affixed to the ear of a farmed cervid or unreadable because of malformation or damage to the tags shall be reported to the Veterinary Division by the licensee.

(3) Licensees may request replacement tags using the same form as provided pursuant to Paragraph (b) of this Rule and shall include the information required by Paragraph (b) of this Rule. The Department may provide replacement tags upon receipt of the application.

1 (4) Licensees shall update their records to reflect any replacement of tags and notify the Veterinary
2 Division of the update when submitting records during the license renewal period.

3

4 *History Note:* *Authority G.S. 106-549.97(a2);*

5 *Eff. June 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Agriculture and Consumer Services

RULE CITATION: 02 NCAC 52L .0113

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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 (c), line 13, what are the contents of the form? Are they what is in (c)(1) through (7)? And how does one obtain a copy of this form?

On line 14, insert a comma after "Division"

Consider beginning (c)(1) through (7) with articles.

In (c)(4) and (5), this is just the farmed cervids that are subject to the permit, correct?

Should (d)(1) through (4) begin with "for"

In (d)(3), line 28, delete "defined and"

In (d)(4), line 31, is "antemortem" one word, or hyphenated as "ante-mortem"? And so that I'm clear, isn't this post-death testing? Is this for transporting dead farmed cervids?

On Page 2, consider moving Paragraphs (g) through (i), which apply to only emergency veterinary treatment, to below Paragraph (k). If the intent is for (k) to apply to emergency veterinary treatment, just move (j) up. This way, you don't have information on general transportation permits, then only veterinary treatment, then back to general permits.

If you do this, please make sure you correct the cross-reference in (c), line 15.

In (g), lines 2-3, replace this with the phone number and email address. These can be changed without notice or comment pursuant to G.S. 150B-21.5(a)(4).

Lines 3-4, consider writing it "At the time of the request, the applicant shall provide..."

What happens then? If the approval will be verbal, I suggest stating that here.

In (i), so that I'm clear – this means no stopping for gas or food?

In (j), line 9, stated on the permit itself?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 27, 2018

In (k), aren't they only going to provide the identification numbers of the farmed cervids not transported? Won't the written notice be that the identified farmed cervids were not transported? This seems to contain a lot of language for what I think you are saying here.

In (l), line 14, end the sentence after "request." Then state "Any person transporting..."

And on lines 15-16, so that I'm clear – they are required to provide the Veterinary Division's telephone number? Not the name of the individual the person spoke to that the Division?

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

02 NCAC 52L .0113 is adopted with changes as published in 32:06 NCR 507-508 as follows:

02 NCAC 52L .0113 TRANSPORTATION PERMIT

(a) No person shall transport any farmed cervid within the State unless that person first obtains a transportation permit from the Veterinary Division.

(b) A transportation permit shall only be issued by the Veterinary Division to an applicant to transport farmed cervids:

(1) from a Certified Herd;

(2) from a herd enrolled in the Monitored Herd Certification Program;

(3) to and from a veterinary medical facility for medical diagnosis or treatment;

(4) to a slaughterhouse for slaughter;

(5) for export out of North Carolina, subject to 9 C.F.R. § 81.3; and

(6) for import into North Carolina, subject to 02 NCAC 52B .0213.

(c) All transportation permit applications shall be submitted to the Veterinary Division using a form provided by the Veterinary Division except for transportation for emergency veterinary treatment purposes in accordance with Paragraph (g) of this Rule, and shall include the following information:

(1) applicant's name, mailing address, telephone number, and email address;

(2) licensed facility or out-of-state facility name, address, and national premises identification number;

(3) farmed cervid license number or out-of-state CWD Herd Certification Program identification number;

(4) species and sex of each farmed cervid;

(5) animal identification for each farmed cervid;

(6) destination name, address, telephone number, and email address; and

(7) reason for the movement.

(d) Transportation permit applications shall include the following information when applicable:

(1) any farmed cervid to be moved for slaughter, the name and location of the Diagnostic Laboratory where the carcass of the farmed cervid is to be submitted for CWD testing;

(2) transporting farmed cervids to an exhibit, the exhibit permit number;

(3) importing farmed cervid into the State, a copy of the ICVI as defined and required by 9 C.F.R. Part 86; and

(4) importing into the State any CWD susceptible farmed cervid, as identified by the Veterinary Division or the USDA, a copy of the negative ante mortem CWD test result using a method approved by the USDA.

(e) The transportation permit application shall be accompanied by a statement from the applicant verifying that the information provided is accurate.

(f) No CWD susceptible farmed cervids shall be exported out of State unless the animals have reached Certified status.

1 (g) Emergency Veterinary Treatment. An applicant seeking to transport any farmed cervid for veterinary treatment
2 shall first contact the Veterinary Division by telephone or email to seek authorization. The telephone number and
3 email address is available at <http://www.ncagr.gov/vet/FarmedCervid/>. The applicant shall provide to the Veterinary
4 Division, at the time of the request, information listed under Paragraph (c) of this Rule.

5 (h) No approval shall be issued for transportation of a farmed cervid to a veterinary medical facility out-of-state.

6 (i) Any verbal authorization from the Veterinary Division shall only allow transportation of the farmed cervid to the
7 specified veterinary medical facility and directly back to the licensed facility, and shall not be construed to permit
8 intervening destinations.

9 (j) Transportation permits shall be valid for 30 calendar days unless otherwise stated.

10 (k) Licensees shall notify the Veterinary Division in writing, including the identification numbers of any farmed
11 cervid not transported in accordance with the transportation permit, within seven calendar days after the expiration of
12 the permit.

13 (l) Any person transporting any farmed cervid shall present the transportation permit to any law enforcement officer
14 or any representative of the Department upon request, except that a person transporting a farmed cervid by verbal
15 authorization for emergency veterinary treatment shall provide the Veterinary Division's telephone number that the
16 person contacted.

17 (m) The owner shall be responsible for securing all farmed cervids during transport so as to prevent escape.

18
19 *History Note: Authority G.S. 106-307.5; 106-549.97(a2);*
20 *Eff. June 1, 2018.*
21

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Agriculture and Consumer Services

RULE CITATION: 02 NCAC 52L .0201

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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 6, should this be "at least one half acre" to be consistent with (b)(1)?

In (a), you state that the smallest enclosure for any farmed cervid, including fawns and calves, will be half an acre, but in (b), you seem to exclude them in the calculation. How do these Paragraphs work together?

In (b)(1), the word "Three" is capitalized, but the first words in (b)(2) and (3) are not. To be consistent, please make "Three" lowercase.

In (b)(3), is there no limit here? Can someone keep 30 farmed cervids on two acres?

On line 11, will the animal husbandry practices be looked at during inspection? Or is this just up to the licensee?

On line 12, is the term "other stresses" known to your regulated public?

In (c), line 13, is the term "impassible areas" known to your regulated public?

In (d), I suggest making this a list for ease of reading, like so:

"The enclosure shall be surrounded by a fence:
(1) of sufficient strength... circumstances;
(2) at least eight feet high; and
(3) with a ground clearance... inches."

On line 15, define "sufficient"

In (e), line 18, insert a comma after "residence"

On line 20, so I'm clear, the owner is preventing escape of the farmed cervid from the residence? You may want to state that here.

And is the individual here an owner or a licensee? You use "licensee" elsewhere in similar situations.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 27, 2018

In (g), line 23, do you need “wishes”? Can’t you state “If a person maintains two or more...”?

And in (g), just so I understand – will this person have individual licenses for each herd? Or is the license to the individual and he or she can keep as many herds as he or she wishes? Or is the license issued to the facility?

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

02 NCAC 52L .0201 is adopted with changes as published in 32:06 NCR 508 as follows:

SECTION .0200 – ENCLOSURE REQUIREMENTS

02 NCAC 52L .0201 ENCLOSURE REQUIREMENTS

(a) The enclosure size for any farmed cervid, including any fawn or calf, shall be at least half acre.

(b) Pen density requirements shall be as follows:

(1) Three or less animals, excluding fawns or calves, for the first half of one acre;

(2) each additional animal, excluding fawns or calves, requires an additional one fourth acre until the enclosure reaches two acres; and

(3) a facility larger than two acres may have more than nine animals, provided animal husbandry practices are utilized to prevent dietary, environmental, behavioral, or other stresses.

(c) Bodies of water and impassible areas shall not be counted towards the minimum enclosure size or the area for pen density.

(d) The enclosure shall be surrounded by a fence of sufficient strength and design to prevent ingress or egress of both farmed and non-farmed cervids under any circumstances, be at least eight feet high, and have a ground clearance of no greater than three inches.

(e) Farmed cervids shall not be contained within or be allowed to enter a place of ~~residence.~~residence except for fawns or calves on a temporary basis in the course of emergency veterinary treatment in accordance with guidance from a licensed veterinarian. Owners shall be responsible for securing all farmed cervids so as to prevent escape.

(f) No exposed barbed wire, nails, or other protrusions that may cause injury to the animals shall be permitted within the enclosure.

(g) If a person wishes to maintain two or more separate herds, that person shall maintain separate herd inventories, records, working facilities, water sources, equipment, and land use. There shall be a buffer zone of at least 30 feet between the perimeter fencing around separate herds, and no commingling of animals shall occur. Movement of animals between herds shall be recorded as if they were separately owned herds.

History Note: Authority; G.S. 106-549.97(a2):

Eff. June 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Agriculture and Consumer Services

RULE CITATION: 02 NCAC 52L .0301

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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 6, how will the Veterinary Division decide whether to take these actions?

And is this the Division or the Department that will take this action, as the Department issues the permits? Is the Division doing it on the behalf of the Department?

On line 7, so that I'm clear, there will not be penalties from your agency for failure to comply with 9 CFR 86?

On line 7, please delete the errant period after "Subchapter" and before the colon. As you did not publish it this way, do not show it as a change; simply delete it.

In (a)(3), so I'm clear – the Department can do this?

In (a)(4), I do not see that the cross-reference addresses this. What do you mean? Is it Rule .0401(f) or (g)?

In (b), line 16, I suggest ending the sentence after "Rule." Then stating "The Veterinary Division may order..."

On line 16, capitalize "State"

Line 16, delete "to"

In (c), line 18, capitalize "Subchapter" Since it was published lowercase in the Register, you will need to show it as a change.

On line 18, delete "but are not limited to"

The provisions of (c)(1) through (7) are expressly required by a rule in Subchapter 52L, and you address this on line 7. Why are you reciting this here? Is it for the convenience of your regulated public?

In (d), why are you addressing revocation expressly here? This is in (a)(2). Are you limiting the Department's revocation authority to only these circumstances?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: April 27, 2018

On line 26, I do not think you mean “or both”

In (d)(1), line 29, and (d)(2), lines 31-32, these cross-references are incorrect. Do you mean to cite to Rule .0111?

In (e)(1), line 36, what is “decommissioning”?

On line 37, do you need “one or more”? I don’t think you do, given the language of (e)(1)(A) through (C).

In (e)(1)(A), Page 2, line 1, this will be in accordance with Rule .0107, correct?

In (e)(2), line 4, delete “has” and “when”

On line 5, do you mean “shall” instead of “may”? If not, what will the Division do with the farmed cervid?

In (f)(1), line 10, what is “proper”?

In (f)(2), line 13, insert “of” after “disposed”

In the History Note, why are you citing to G.S. 106-549.97(j), since you struck (a)(2)?

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: April 27, 2018

02 NCAC 52L .301 is adopted with changes as published in 32:06 NCR 508-509 as follows:

SECTION .0300 – ENFORCEMENT

02 NCAC 52L .0301 LICENSE OR PERMIT REVOCATION, FORFEITURE, AND DEPOPULATION

(a) The Veterinary Division may take one or more of the following actions against any person for failure to comply with the requirements of G.S. 106-549.97, 9 C.F.R. Part 55, 9 C.F.R. Part 81, the USDA Standards, or this Subchapter.:

(1) issue warnings;

~~[(2) assess civil penalties up to five thousand dollars (\$5,000.00) per animal;]~~

~~[(3)](2)~~ revoke any license or permit issued under this Subchapter;

~~[(4)](3)~~ cancel the enrollment in the Herd Certification Program or the Monitored Herd Certification Program; or

~~[(5)](4)~~ reduce the status of a herd in accordance with 02 NCAC 52L .0401(h).

(b) In addition to Paragraph (a) of this Rule, the Veterinary Division may direct the disposition of any farmed cervid in possession by a person without a valid farmed cervid license or permit in accordance with Paragraph (e) of this Rule and may order any farmed cervid brought into this state illegally to be quarantined, tested for CWD, or terminated, or any combination thereof.

(c) Violations of this subchapter include but are not limited to the following circumstances or conditions:

(1) providing inaccurate or false information to the Veterinary Division;

(2) failing to comply with animal identification requirements;

(3) failing to comply with facility enclosure and maintenance requirements;

(4) failing to comply with monitoring or record-keeping requirements;

(5) failing to allow the Veterinary Division to inspect any facility, farmed cervid, or record;

(6) failing to report the death, escape, or disappearance, of any farmed cervid; or

(7) failing to submit deceased farmed cervid for CWD testing.

(d) The Veterinary Division may revoke a farmed cervid license or temporary exhibit permit, or both, under any of the following circumstances or conditions:

(1) The farmed cervid licensee or temporary exhibit permit holder fails to report symptoms of chronic wasting disease in a farmed cervid to the Veterinary Division as required by 02 NCAC 52L .0102(n);

(2) The farmed cervid licensee or temporary exhibit permit holder fails to transport and submit a farmed cervid carcass to a Diagnostic Laboratory for CWD testing as required by 02 NCAC 52L .0102(m)-(n); or

(3) The farmed cervid licensee or temporary exhibit permit holder has transported any farmed cervid without a permit in accordance with 02 NCAC 52L .0113.

(e) Disposition of Farmed Cervid.

(1) In the event of decommissioning a facility, all farmed cervids shall be disposed of by the owner in one or more of the following manners:

1 (A) sell or otherwise transfer ownership and possession of any farmed cervid;

2 (B) export out of state any farmed cervid; or

3 (C) terminate any remaining farmed cervid.

4 (2) In the event the Veterinary Division has directed the disposition of any farmed cervid and when the
5 owner refuses to comply, the Veterinary Division may terminate the farmed cervid, with costs to be
6 paid by the owner.

7 (3) The release of any farmed cervid to the wild by any person without authorization by the Veterinary
8 Division shall be prohibited.

9 (f) Disposal of Dead Farmed Cervids.

10 (1) Licensees shall be responsible for the proper disposal of any dead farmed cervid carcass and the
11 costs associated with disposal.

12 (2) The carcass of farmed cervids that have been designated by the Department as CWD-positive,
13 exposed, or suspect shall be disposed in accordance with the USDA Standards, (4.1) Suitable
14 Disposal Methods, and using one of options provided under USDA Standards, Appendix V: Carcass
15 Disposal of CWD-Positive Animals or Animals of Unknown Status.

16 (3) The carcass of farmed cervids that have not been designated by the Department as CWD-positive,
17 exposed, or suspect may be disposed of in accordance with 02 NCAC 52C .0102.

18
19 History Note: Authority G.S. 106-549.97(a2); 106-549.97(j);
20 Eff. June 1, 2018.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Agriculture and Consumer Services

RULE CITATION: 02 NCAC 52L .0401

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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 6, by "section" do you mean Section .0400? If so, please capitalize it. Since you published it that way in the Register, you do not need to show it as a change. If you do not mean that, please clarify what you mean.

In (b)(1), line 8, what is "valid"?

In (b)(2), line 10, please make "rules" lowercase.

In (c)(1), line 14, how would they be already enrolled?

In (c)(2), how is eligibility determined?

On line 16, under what circumstances will this be requested?

In (c)(3)(A), line 19, what application are you referring to? What are its contents and where can a copy of it be obtained?

In (c)(3)(B), how will they provide false information? About what?

In (c)(3)(C), when will this be requested? Is this a reference to (c)(2)?

In (c)(3)(D), line 22, delete "has"

On line 23, isn't this supposed to be "cervids"?

On line 23, delete "that"

And how will this be indicated and who will make the determination?

In (c)(3)(E), lines 26-27, I take it that the "herd plan" is as defined in 9 CFR 55.1. But what is a "valid" herd plan?

In (c)(3)(F), what is the difference between "pending" and "outstanding"?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 27, 2018

In (c)(3)(G), do you mean they violated a Rule in Subchapter 52L?

In (c)(4), line 34, what else besides the enrollment date will be in the notice?

In (d), line 36, I take it the August 2012 date is due to federal law?

On line 36, delete the comma after "2012"

In (d)(1), Page 2, lines 1-2, and elsewhere the term is used, I take it "Approved State CWD Herd Certification Program" is capitalized to mimic the usage of the term in 9 CFR 55.22?

On line 3, is "source herd" defined anywhere?

In (d)(2), line 4, is this any state or just NC? If it's any state, then it's fine as written, and I suspect that was your intent, but wanted to check.

In (e)(1), line 12, I suggest stating "status, unless the herd is composed of only animals:"

In (e)(2), line 18, what are the requirements?

In (f)(1), line 30, does this include any animals with no status, like non-farmed cervids?

In (f)(2), who will designate this? The Division or the federal government or both?

In (f)(3), line 36, and elsewhere the term is used, why is "Suspended" capitalized?

In (f)(3)(B), if this happens, what happens next? Is a herd plan put into place?

In (f)(3)(C), why do you need the language on lines 8-10, "because the necessary... reasons,"?

On line 12, I recommend inserting a comma after "Part B."

On line 16, make "rules" lowercase. As you published it correctly in the Register, you do not have to show it as a change; simply do it.

On line 17, you say the herd will be reinstated, but nowhere before did you say that they would be removed. What do you mean here?

On lines 17-18, I recommend deleting "into the Herd Certification Program"

On line 20, when would this herd plan have been developed?

On line 20, replace "as well as" with "and"

On line 21, is this every herd plan or just a herd plan that applies to those who did not comply with the rules?

On line 21, isn't this testing required by Rule .0111(c)(7) already?

On line 22, since it "may" be required, what are the circumstances where it would not be required?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 27, 2018

On lines 24-25, what are these? Who determines the necessity?

In (g), you refer to “owner” and “herd owner” but elsewhere in these Rules, they are licensees. Is what is contained in this Rule the correct nomenclature?

In (g)(1), line 29, state “.Q301” As you published this correctly in the Register, you do not need to show this as a change.

In (g)(2), line 31, please make “rule” lowercase. You published it capitalized, so you will need to show it as a change.

On line 32, is this really “proposed”? Isn’t it already done, per line 30?

In (g)(3), line 33, state “Herd owners may send a written appeal” and then delete “by writing” on line 34.

On line 34, replace “ten” with “10” [See Rule 26 NCAC 02C .0108(9)(b)]

In (g)(4), Page 4, line 2, I suggest you delete “requested and”

On line 5, insert a comma after “cases”

On line 5, since the Division “may” postpone the decision, under what circumstances will it not? Or do you mean “shall”?

On line 6, define “reasonable period”

On line 8, delete “that were”

On line 9, delete “are” before “attached”

What do you mean by the sentence on lines 9-11? Are you saying that the Veterinary Division will only release its tissue samples if the owner arranges for the independent test? If so, I think it can be said more simply.

What authority are you relying upon for this appeal mechanism in (g)?

In (g)(6), who will re-designate? The Veterinary Division? And who will investigate further?

In (g)(7), how is this hearing held, where, by whom? Who will make the decision?

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

02 NCAC 52L .0401 is adopted with changes as published in 32:06 NCR 509-5011 as follows:

SECTION .0400 – HERD CERTIFICATION PROGRAMS

02 NCAC 52L .0401 NORTH CAROLINA FARMED CERVID HERD CERTIFICATION PROGRAM

(a) Scope. This section shall only apply to CWD susceptible farmed cervids.

(b) Enrollment Qualifications.

(1) Only applicants that have a valid farmed cervid license or have applied for one shall be eligible to have herds enrolled in the Herd Certification Program.

(2) Applicants shall comply with all farmed cervid license requirements Rules in this Subchapter in order to have herds enrolled and remain in the Herd Certification Program.

(c) Enrollment.

(1) Persons who possess any CWD susceptible farmed cervid in the State shall apply with the Veterinary Division to have herds enrolled in the Herd Certification Program, if not already enrolled.

(2) The Veterinary Division shall determine the herd's enrollment eligibility and compliance with all farmed cervid license rules, and may request additional information regarding the herd animals and operations.

(3) The Veterinary Division shall deny enrollment if:

(A) the applicant submits an incomplete application;

(B) the applicant has provided false information;

(C) the applicant fails to provide additional information requested by the Veterinary Division;

(D) the applicant has previously violated State or Federal laws or regulations for ~~livestock,~~ livestock or non-farmed cervid, and that the nature of the violation indicates

that the applicant may not comply with the requirements of the Herd Certification Program;

(E) the herd to be enrolled has been designated as CWD-positive, exposed, or suspect by the Veterinary Division or by an APHIS employee, and has not yet entered into a valid herd plan;

(F) any pending or outstanding citation exists against the applicant;

(G) the applicant has failed to comply with any farmed cervid license requirement; or

(H) the applicant refuses inspection by the Veterinary Division in accordance with Paragraph (i) of this Rule.

(4) Upon determining that a herd is eligible to participate in the Herd Certification Program in accordance with Paragraphs (b) and (c) of this Rule, the Veterinary Division shall send the applicant a notice of enrollment that includes the herd's enrollment date.

(d) Enrollment Dates. The enrollment date for a herd that joins the North Carolina Herd Certification Program after August 13, 2012, shall be the date the herd is approved for participation upon inspection except:

- (1) For new herds that were formed from and contain only animals from herds enrolled in an Approved State CWD Herd Certification Program, the enrollment date shall be the latest enrollment date for any source herd for the animals;
- (2) The first day that the herd participated in any state program that APHIS at a later date determines qualifies as an Approved State CWD Herd Certification Program;
- (3) If the herd was enrolled in the Monitored Herd Certification Program, then the enrollment date shall be the same as the Monitored Herd Certification Program enrollment date, subject to 9 C.F.R. § 55.22(b)(1)(i); or
- (4) Any other exception provided under 9 C.F.R. § 55.22(b).

(e) Initial and Subsequent Herd Status.

- (1) When a herd is first enrolled in the Herd Certification Program, it shall be placed in the First Year status; except that if the herd is composed only of animals:
 - (A) obtained from herds already enrolled in the Herd Certification Program, the newly enrolled herd shall have the same status as the lowest status of any herd that provided animals for the new herd; or
 - (B) enrolled in the Monitored Herd Certification Program, the newly enrolled herd shall have its status transferred, subject to 9 C.F.R. § 55.22(b)(1)(i).
- (2) If the herd continues to meet the requirements of the Herd Certification Program, each year, on the anniversary of the enrollment date, the herd status shall be upgraded by one year as follows:
 - (A) First Year – starts on enrollment date of the herd in the CWD Herd Certification Program.
 - (B) Second Year – starts on the anniversary date of the First Year.
 - (C) Third Year – starts on the anniversary date of the Second Year.
 - (D) Fourth Year – starts on the anniversary date of the Third Year.
 - (E) Fifth Year – starts on the anniversary date of the Fourth Year.
- (3) One year from the date a herd is placed in Fifth Year status, the herd status shall be changed to Certified, and the herd shall remain in Certified status as long as it is enrolled in the program, provided its status is not lost or suspended.

(f) Loss or Suspension of Herd Status.

- (1) If the Veterinary Division determines that animals from a herd enrolled in the Herd Certification Program have commingled with animals from a herd with a lower program status, including CWD non-susceptible farmed cervids, the herd with the higher program status shall be reduced to the status of the herd with which its animals commingled.
- (2) If a herd is designated a CWD-positive herd or a CWD-exposed herd by the Veterinary Division, it shall upon designation lose its program status and may only reenroll after entering into a herd plan.
- (3) If a herd is designated a CWD-suspect herd, a trace back herd, or a trace forward herd by the Veterinary Division, it shall upon designation be placed in Suspended status pending an

1 epidemiologic investigation by the Veterinary Division in accordance with the USDA Standards. If
2 the epidemiologic investigation:

3 (A) determines that the herd was not commingled with a CWD-positive animal, the herd shall
4 be reinstated to its former program status, and the time spent in Suspended status shall
5 count toward its promotion to the next herd status level;

6 (B) determines that the herd was commingled with a CWD-positive animal, the herd shall lose
7 its program status and shall be designated a CWD-exposed herd;

8 (C) is unable to make a determination regarding the exposure of the herd, because the necessary
9 animal or animals are no longer available for testing (i.e., a trace animal from a known
10 positive herd died and was not tested) or for other reasons, the herd status shall continue as
11 Suspended until a herd plan is developed for the herd in accordance with its definition
12 under 9 C.F.R. 55.1 and the USDA Standards, Part B. Guidance on Responding to CWD
13 Affected Herds. If a herd plan is developed and implemented, the herd shall be reinstated
14 to its former program status, and the time spent in Suspended status shall count toward its
15 promotion to the next herd status level. If the epidemiological investigation finds that the
16 owner of the herd has not complied with the Rules of this Subchapter for animal
17 identification, animal testing, and recordkeeping, the herd shall be reinstated into the Herd
18 Certification Program at the First Year status level, with a new enrollment date set at the
19 date the herd entered into Suspended status. Any herd reinstated after being placed in
20 Suspended status shall then comply with the requirements of the herd plan as well as the
21 requirements of the Herd Certification Program. The herd plan shall require testing of all
22 animals that die in the herd for any reason, regardless of the age of the animal; may require
23 movement restrictions for animals in the herd based on epidemiologic evidence regarding
24 the risk posed by the animals in question; and may include other requirements found
25 necessary to control the risk of spreading CWD.

26 (g) Cancellation of Enrollment and Reduction of Herd Status.

27 (1) An owner may cancel participation of any herd in the Herd Certification Program by surrendering
28 the owner's farmed cervid license in accordance with 02 NCAC 52L .0108 and by decommissioning
29 the facility in accordance with 02 NCAC 52L .301(e)(1).

30 (2) The Veterinary Division may cancel the enrollment or reduce the herd status of an enrolled herd
31 after determining that the herd owner failed to comply with any Rule of this Subchapter, by giving
32 written notice to the herd owner of the reasons for the proposed cancellation or reduction in status.

33 (3) Herd owners may appeal the designation of an animal as CWD-positive, cancellation of enrollment
34 of a herd, or loss or suspension of herd status by writing to the Veterinary Division within ten
35 business days of receiving the written decision. The appeal shall include all of the facts and reasons
36 that the herd owner relies upon to show that the reasons for the proposed action are incorrect or do
37 not support the action.

- (4) To appeal designation of an animal as CWD-positive, the owner may present as evidence the results of a DNA test requested and paid for by the owner to determine whether previous official CWD test results were correctly associated with an animal that belonged to the owner. If the owner intends to present such test results as evidence, the owner shall request the tests and state this in the written notice sent to the Veterinary Division. In such cases the Veterinary Division may postpone a decision on the appeal for a reasonable period pending receipt of the test results. Laboratories approved under 9 C.F.R. § 55.8 are authorized to conduct DNA tests to compare tissue samples tested for CWD to samples from tissues that were collected at the same time from the same animal and are attached to an official animal identification device. The DNA tests are available only if the animal owner arranged to submit animal tissue attached to an official animal identification device along with the other tissues that were collected for the official CWD test.
- (5) The Veterinary Division shall grant or deny the appeal in writing stating the reason for the Veterinary Division's decision.
- (6) If the Veterinary Division grants an appeal of the status of a CWD-positive animal, the animal shall be re-designated as CWD-suspect pending further investigation to establish the final status of the animal and its herd.
- (7) If there is a conflict as to a material fact determined by the Veterinary Division at the time of the appeal, a hearing shall be held to resolve the conflict.
- (8) In the event of cancellation of enrollment by the Veterinary Division, any herd enrolled in the Herd Certification Program by that herd owner shall not reach Certified status until five years after the herd owner's new application for enrollment is approved by the Veterinary Division, regardless of the status of the animals of which the herd is composed.
- (h) Adding Animals to Existing Herd.
- (1) A herd may add animals from herds with the same or a higher herd status with no negative impact on the certification status of the receiving herd.
- (2) If animals are acquired from a herd with a lower herd status, including CWD non-susceptible species, the receiving herd shall revert to the program status of the sending herd.
- (3) If a herd participating in the Herd Certification Program acquires animals from a nonparticipating herd, the receiving herd shall revert to First Year status with a new enrollment date as the date of acquisition of the animal.
- (i) Inspection. If an inspection of any farmed cervid is needed as a part of enrollment, including reinstating a suspended status, the herd owner shall be responsible for assembling, handling, and restraining the farmed cervids. The owners shall be responsible for all costs incurred to present the animals for inspection and agree that any liability or injury to the animals during handling rests with the owner in accordance with the USDA Standards. (2.4) Participating Herd: Requirements for Enrollment.

History Note: Authority G.S. 106-549.97(a2);

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Eff. June 1, 2018.

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Agriculture and Consumer Services

RULE CITATION: 02 NCAC 52L .0402

DEADLINE FOR RECEIPT: Friday, May 11, 2018

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, what do you mean by "section"? If you mean Section .0400, then you already said this in Rule .0401 and can delete it here. Do you instead mean this Rule? If so, state that.

Why do you need (b)?

In (c)(1), line 8, what is "valid"?

In (c)(2), line 10, please make "rules" lowercase. Since you published it correctly in the Register, you do not need to show it as a change; simply do it.

In (d)(1), line 14, how would they be already enrolled?

In (d)(2), how is eligibility determined?

On line 17, under what circumstances will this be requested?

In (d)(3)(A), line 20, what application are you referring to? What are its contents and where can a copy of it be obtained?

In (d)(3)(B), how will they provide false information? About what?

In (d)(3)(C), when will this be requested? Is this a reference to (d)(2)?

In (d)(3)(D), line 23, delete "has"

On line 24, isn't this supposed to be "cervids"?

On line 24, delete "that"

And how will this be indicated and who will make the determination?

In (d)(3)(E), line 28, I take it that the "herd plan" is as defined in 9 CFR 55.1. But what is a "valid" herd plan?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 27, 2018

In (d)(3)(F), what is the difference between “pending” and “outstanding”?

In (d)(3)(G), do you mean they violated a Rule in Subchapter 52L?

In (d)(4), line 35, what else besides the enrollment date will be in the notice?

In (e), line 37, insert a comma after “inspection”

In (e), Page 2, line 2, is “source herd” defined anywhere?

In (f)(1), line 5, end the sentence after “status.” Then state, “However, if the herd...”

In (f)(2), line 8, what are the requirements?

In (f)(3), so that I’m clear – unlike in Rule .0401, the only possibility is loss of status, not suspension?

In (g), line 20, you refer only to “loss” of status. However, (g)(3)(C) includes suspension. Which one is correct?

Also, wherever the term is used, why is “Suspended” capitalized?

In (g)(1), line 22, does “lower program status” include commingling with cervids with no status, such as wild deer?

In (g)(2), line 25, delete the first “herd” so it reads “CWD-positive or CWD-exposed herd...” And why are these term hyphenated, but “CWD susceptible” is not?

In (g)(3)(C), why do you need the language on Page 2, line 36 through Page 3, line 1, “because the necessary... reasons,”?

On line 3, I recommend inserting a comma after “Part B.”

On line 7, make “rules” lowercase. As you published it correctly in the Register, you do not have to show it as a change; simply do it.

On line 8, you say the herd will be reinstated, but nowhere before did you say that they would be removed. What do you mean here?

On lines 8-9, I recommend deleting “into the Monitored Herd Certification Program”

On line 11, when would this herd plan have been developed?

On line 11, replace “as well as” with “and”

On line 12, is this every herd plan or just a herd plan that applies to those who did not comply with the rules?

On line 13, isn’t this testing required by Rule .0111(c)(7) already?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 27, 2018

On line 15, since it “may” be required, what are the circumstances where it would not be required?

On line 16, what are these? Who determines the necessity?

In (h), you refer to “owner” and “herd owner” but elsewhere in these Rules, they are licensees. Is what is contained in this Rule the correct nomenclature?

In (h)(1), line 20, state “.0301” As you published this correctly in the Register, you do not need to show this as a change.

In (h)(2), line 22, please make “rule” lowercase. As you published it correctly in the Register, you do not need to show it as a change.

On line 23, is this really “proposed”? Isn’t it already done, per line 21?

In (h)(3), line 24, state “Herd owners may send a written appeal” and then delete “by writing” on line 24.

In (h)(4), line 28, insert a comma after “writing”

What authority are you relying upon for this appeal mechanism in (h)?

In (h)(5), how is this hearing held, where, by whom? Who will make the decision?

In (h)(6), line 33, spell out “five” [See Rule 26 NCAC 02C .0108(9)(a)] Since you published this correctly in the Register, you do not need to show this as a change; simply do it.

In (i)(2), Page 4, does this mean that the herd will now be subject to Rule .0401?

In (j), lines 9-11, what is your authority for this? Is it the USDA Standard you cite to in Rule .0401(i)?

In (k), line 13, who will the cervid be transferred to? How will this work?

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

02 NCAC 52L .0402 is adopted with changes as published in 32:06 NCR 511-513 as follows:

02 NCAC 52L .0402 NORTH CAROLINA MONITORED HERD CERTIFICATION PROGRAM

(a) Scope. This section shall only apply to CWD non-susceptible farmed cervids.

(b) The Monitored Herd Certification Program shall provide an equivalent standard to the North Carolina Farmed Cervid Herd Certification Program for CWD non-susceptible farmed cervids.

(c) Enrollment Qualifications.

(1) Only applicants that have a valid farmed cervid license or have applied for one shall be eligible to have herds enrolled in the Monitored Herd Certification Program.

(2) Applicants shall comply with all farmed cervid license requirements under the Rules in this Subchapter in order to have herds enrolled and remain in the Monitored Herd Certification Program.

(d) Enrollment Application.

(1) Persons who possess any CWD non-susceptible farmed cervid in the State shall apply with the Veterinary Division to have herds enrolled in the Monitored Herd Certification Program, if not already enrolled.

(2) The Veterinary Division shall determine the herd's enrollment eligibility and compliance with all farmed cervid license rules, and may request additional information regarding the herd animals and operations.

(3) The Veterinary Division shall deny an application if:

(A) the applicant submits an incomplete application;

(B) the applicant has provided false information;

(C) the applicant fails to provide additional information requested by the Veterinary Division;

(D) the applicant has previously violated State or Federal laws or regulations for ~~livestock,~~ livestock or non-farmed cervid, and that the nature of the violation indicates that the applicant may not comply with the requirements of the Monitored Herd Certification Program;

(E) the herd to be enrolled has been commingled with any CWD-positive or CWD-exposed herd and has not yet entered into a valid herd plan.

(F) any pending or outstanding citation exists against the applicant;

(G) the applicant has failed to comply with any farmed cervid license requirement; or

(H) the applicant refuses inspection by the Veterinary Division in accordance with Paragraph (j) of this Rule.

(4) Upon determining that a herd is eligible to participate in the Monitored Herd Certification Program in accordance with Paragraphs (c) and (d) of this Rule, the Veterinary Division shall send the applicant a notice of enrollment that includes the herd's enrollment date.

(e) Enrollment Dates. The enrollment date for a herd that joins the North Carolina Monitored Herd Certification Program shall be the date the herd is approved for participation upon inspection except for new herds that were formed

1 from and contain only animals from herds enrolled in the Monitored Herd Certification Program, the enrollment date
2 shall be the latest enrollment date for any source herd for the animals.

3 (f) Initial and Subsequent Herd Status.

4 (1) When a herd is first enrolled in the Monitored Herd Certification Program, it shall be placed in the
5 First Year status; except that if the herd is composed only of animals obtained from herds already
6 enrolled in the Monitored Herd Certification Program, the newly enrolled herd shall have the same
7 status as the lowest status of any herd that provided animals for the new herd.

8 (2) If the herd continues to meet the requirements of the Monitored Herd Certification Program, each
9 year, on the anniversary of the enrollment date, the herd status shall be upgraded by one year as
10 follows:

11 (A) First Year – starts on enrollment date of the herd in the Monitored Herd Certification
12 Program.

13 (B) Second Year – starts on the anniversary date of the First Year.

14 (C) Third Year – starts on the anniversary date of the Second Year.

15 (D) Fourth Year – starts on the anniversary date of the Third Year.

16 (E) Fifth Year – starts on the anniversary date of the Fourth Year.

17 (3) One year from the date a herd is placed in Fifth Year status, the herd status shall be changed to
18 Certified, and the herd shall remain in Certified status as long as it is enrolled in the program,
19 provided its status is not lost.

20 (g) Loss of Herd Status.

21 (1) If the Veterinary Division determines that animals from a herd enrolled in the Monitored Herd
22 Certification Program have commingled with animals from a herd with a lower program status,
23 including CWD susceptible farmed cervids, the herd with the higher program status shall be reduced
24 to the status of the herd with which its animals commingled.

25 (2) If a herd has been commingled with any CWD-positive herd or CWD-exposed herd, it shall lose its
26 program status and may only reenroll after entering into a herd plan.

27 (3) If a herd has been commingled with any CWD-suspect herd, a trace back herd, or a trace forward
28 herd by the Veterinary Division, it shall be placed in Suspended status pending an epidemiologic
29 investigation by the Veterinary Division in accordance with the USDA Standards. If the
30 epidemiologic investigation:

31 (A) determines that the herd was not commingled with a CWD-positive animal, the herd shall
32 be reinstated to its former program status, and the time spent in Suspended status shall
33 count toward its promotion to the next herd status level;

34 (B) determines that the herd was commingled with a CWD-positive animal, the herd shall lose
35 its program status and may only reenroll after entering into a herd plan;

36 (C) is unable to make a determination regarding the exposure of the herd, because the necessary
37 animal or animals are no longer available for testing (i.e., a trace animal from a known

positive herd died and was not tested) or for other reasons, the herd status shall continue as Suspended until a herd plan is developed for the herd in accordance with its definition under 9 C.F.R. 55.1 and the USDA Standards, Part B. Guidance on Responding to CWD Affected Herds. If a herd plan is developed and implemented, the herd shall be reinstated to its former program status, and the time spent in Suspended status shall count toward its promotion to the next herd status level. If the epidemiological investigation finds that the owner of the herd has not complied with the Rules of this Subchapter for animal identification, animal testing, and recordkeeping, the herd shall be reinstated into the Monitored Herd Certification Program at the First Year status level, with a new enrollment date set at the date the herd entered into Suspended status. Any herd reinstated after being placed in Suspended status shall then comply with the requirements of the herd plan as well as the requirements of the Monitored Herd Certification Program. The herd plan shall require testing of all animals that die in the herd for any reason, regardless of the age of the animal; may require movement restrictions for animals in the herd based on epidemiologic evidence regarding the risk posed by the animals in question; and may include other requirements found necessary to control the risk of spreading CWD.

(h) Cancellation of Enrollment and Reduction of Herd Status.

- (1) An owner may cancel participation of any herd in the Monitored Herd Certification Program by surrendering the owner's farmed cervid license in accordance with 02 NCAC 52L .0108 and by decommissioning the facility in accordance with 02 NCAC 52L .301(e)(1).
- (2) The Veterinary Division may cancel the enrollment or reduce the herd status of an enrolled herd, after determining that the herd owner failed to comply with any Rule of this Subchapter, by giving written notice to the herd owner of the reasons for the proposed cancellation or reduction in status.
- (3) Herd owners may appeal the cancellation of enrollment of a herd or loss of herd status by writing to the Veterinary Division within 10 business days after being informed of the reasons for the action. The appeal shall include all the facts and reasons that the herd owner relies upon to show that the reasons for the proposed action are incorrect or do not support the action.
- (4) The Veterinary Division shall grant or deny the appeal in writing stating the reason for the Veterinary Division's decision.
- (5) If there is a conflict as to a material fact as determined by the Veterinarian Division at the time of the appeal, a hearing shall be held to resolve the conflict.
- (6) In the event of cancellation of enrollment by the Veterinary Division, any herd enrolled in the Monitored Herd Certification Program by that herd owner shall not reach Certified status until 5 years after the herd owner's new application for enrollment is approved by the Veterinary Division, regardless of the status of the animals of which the herd is composed.

(i) Adding Animals to Existing Herd.

1 (1) A herd may add animals from herds with the same or a higher herd status with no negative impact
2 on the certification status of the receiving herd.

3 (2) If animals are acquired from a herd with a lower herd status, including CWD susceptible species,
4 the receiving herd shall revert to the program status of the sending herd.

5 (3) If a herd participating in the Monitored Herd Certification Program acquires animals from a
6 nonparticipating herd, the receiving herd shall revert to First Year status with a new enrollment date
7 as the date of acquisition of the animal.

8 (j) Inspection. If an inspection of any farmed cervid is needed as a part of enrollment, the herd owner shall be
9 responsible for assembling, handling, and restraining the farmed cervids. The owners shall be responsible for all costs
10 incurred to present the animals for inspection and agree that any liability or injury to the animals during handling rests
11 with the owner.

12 (k) If any CWD non-susceptible farmed cervid is determined by the Veterinary Division or the USDA as CWD
13 susceptible, then the farmed cervid shall be transferred under the North Carolina Farmed Cervid Herd Certification
14 Program.

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16 *History Note: Authority G.S. 106-549.97(a2);*
17 *Eff. June 1, 2018.*