RRC STAFF OPINION

*Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.*

AGENCY: PLANT CONSERVATION BOARD

RULE CITATION: 02 NCAC 48F .0305

RECOMMENDED ACTION:

Approve the technical change to paragraph (c)(4) on page 3 and the remainder of the rule with the exception of sub-paragraph(d)(6) on page 3 lines 9 – 15. You should take no action concerning the change to sub-paragraph (d)(6) as explained below.

COMMENT:

*The attached portion of Session Law 2011-394 in Section 18.(d) states that rules “adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14.” In my opinion the change adopted pursuant to that section is the deletion of the export certification fee in (d)(6) of the rule. This means that you are entitled to review the remainder of this rule under G.S. 150B-21.8 but are not required or entitled to take any action on Paragraph (d) of this rule.*

*If the agency makes the requested change to the rule in paragraph (c)(4) – which I would expect them to do since the statutory cite is incorrect – then you should do as we typically do: approve the amendment and the remainder of this rule except that you take no action concerning sub-paragraph (d)(6).*

*The rule will then be subject to a delayed effective date and legislative review as set out in G.S. 150B-21.3(b1) as though 10 or more objection letters had been received.*

*This “review but take no action” is a procedure that the RRC recently followed in April of this year.*

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 2011**

**SESSION LAW 2011-394**

 **HOUSE BILL 119**

SECTION 18.(a) Definitions. – The definitions set out in G.S. 106-202.12 and 02 NCAC 48F .0305 (Collection and Sale of Ginseng Rule) apply to this section and its implementation.

SECTION 18.(b) Collection and Sale of Ginseng Rule 02 NCAC 48F .0305. – Until the effective date of the revised permanent rule that the Board is required to adopt pursuant to Section 18(d) of this act, the Board and the Department shall implement Collection and Sale of Ginseng Rule 02 NCAC 48F .0305, as provided in Section 18(c) of this act.

SECTION 18.(c) Implementation. – Notwithstanding subdivision (6) of subsection (d) of Collection and Sale of Ginseng Rule 02 NCAC 48F .0305, there shall be no charge for an export certification.

SECTION 18.(d) Additional Rule-Making Authority. – The Board shall adopt a rule to replace Collection and Sale of Ginseng Rule 02 NCAC 48F .0305. Notwithstanding G.S. 150B-19(4), the rule adopted by the Board pursuant to this section shall be substantively identical to the provisions of Section 18(c) of this act. Rules adopted pursuant to this section are not subject to the publication of notice of text or public hearing requirements of G.S. 150B-21.2. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

[SL2011-0394 Pages 16 and 17]