rrc staff OPINION

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AGENCY: WILDLIFE RESOURCES COMMISSION

RULE CITATION: 15A NCAC 10G .0403

RECOMMENDED ACTION:

 Approve, but note staff’s comment

X Object, based on:

 X Lack of statutory authority

 Unclear or ambiguous

 Unnecessary

 Failure to comply with the APA

 Extend the period of review

COMMENT:

There is no authority cited for the agency to require Wildlife Services Agents to comply with administrative requirements that have not been adopted as rules.

Robert A. Bryan, Jr.

Commission Counsel

§ 113-134. Rules.

The Marine Fisheries Commission and the Wildlife Resources Commission may, within their jurisdictional limitations imposed by this Article, adopt rules implementing this Subchapter. (1915, c. 84, s. 21; 1917, c. 290, s. 7; C.S., 1878; 1925, c. 168, s. 2; 1935, c. 35; 1945, c. 776; 1953, cc. 774, 1251; 1963, c. 1097, s. 1; 1965, c. 957, s. 2; 1973, c. 1262, s. 28; 1987, c. 827, s. 97.)

Article 21.

Licenses and Permits Issued by the Wildlife Resources Commission.

**§ 113-270.1. License agents.**

(a)        The Wildlife Resources Commission may by rule provide for the appointment of persons as license agents to sell licenses and permits that the Commission is authorized to issue by this Subchapter or by any other provisions of law. To facilitate the convenience of the public, the efficiency of administration, the need to keep statistics and records affecting the conservation of wildlife resources, boating, water safety, and other matters within the jurisdiction of the Wildlife Resources Commission, and the need to issue licenses and permits containing special restrictions, the Wildlife Resources Commission may issue licenses and permits in any particular category through:

(1)        License agents.

(2)        The Wildlife Resources Commission's headquarters.

(3)        Employees of the Wildlife Resources Commission.

(4)        Two or more such sources simultaneously.

(a1)      When there are substantial reasons for differing treatment, the Wildlife Resources Commission may issue a type of license or permit by one method in one locality and by another method in another locality.

(b)        License agents may deduct from the amount collected for each license or permit a fee of six percent (6%).

(b1)      When licenses or permits are to be issued by license agents as provided by subsection (a) of this section, the Wildlife Resources Commission may adopt rules to provide for any of the following:

(1)        Qualifications of the license agents.

(2)        Duties of the license agents.

(3)        Methods and procedures to ensure accountability and security for proceeds and unissued licenses and permits.

(4)        Types and amounts of evidence that a license agent must submit to relieve the agent of responsibility for losses due to occurrences beyond the control of the agent.

(5)        Any other reasonable requirement or condition that the Wildlife Resources Commission deems necessary to expedite and control the issuance of licenses and permits by license agents.

(b2)      The Wildlife Resources Commission may adopt rules to authorize the Executive Director to take any of the following actions related to license agents:

(1)        Select and appoint license agents in areas most convenient for the sale of licenses and permits.

(2)        Limit the number of license agents in an area if necessary for efficiency of operation.

(3)        Require prompt and accurate reporting and remittance of public funds or documents by license agents.

(4)        Conduct periodic and special audits of accounts.

(5)        Suspend or terminate the authorization of any license agent found to be noncompliant with rules adopted by the Wildlife Resources Commission or when State funds or property are reasonably believed to be in jeopardy.

(6)        Require the immediate surrender of all equipment, forms, licenses, permits, records, and State funds and property, issued by or belonging to the Wildlife Resources Commission, in the event of the termination of a license agent.

(b3)      The Wildlife Resources Commission is exempt from the contested case provisions of Chapter 150B of the General Statutes with respect to determinations of whether to authorize or terminate the authority of a person to sell licenses and permits as a license agent of the Wildlife Resources Commission.

(b4)      If any check or bank account draft of any license agent for the issuance of licenses or permits shall be returned by the banking facility upon which the same is drawn for lack of funds, the license agent shall be liable to the Commission for a penalty of five percent (5%) of the amount of the check or bank account draft, but in no event shall the penalty be less than five dollars ($5.00) or more than two hundred dollars ($200.00). License agents shall be assessed a penalty of twenty-five percent (25%) of their issuing fee on all remittances to the Commission after the fifteenth day of the month immediately following the month of sale.

(c)        Repealed by Session Laws 2005-455, s. 3.2. See notes for contingent effective date.

(d)       It is a Class 1 misdemeanor for a license agent to do any of the following:

(1)        Withhold or misappropriate funds from the sale of licenses or permits.

(2)        Falsify records of licenses or permits sold.

(3)        Willfully and knowingly assist or allow a person to obtain a license or permit for which the person is ineligible.

(4)        Willfully issue a backdated license or permit.

(5)        Willfully include false information or omit material information on records, licenses, or permits regarding either:

a.         A person's entitlement to a particular license or permit.

b.         The applicability or term of a particular license or permit.

(6)        Charge or accept any additional fee, remuneration, or other item of value in association with any activity set out in subdivisions (1) through (5) of this subsection.

(e)        through (j) Repealed by Session Laws 2005-455, s. 3.2. See notes for contingent effective date. (1961, c. 352, ss. 4, 9; 1979, c. 830, s. 1; 1985, c. 791, s. 34; 1987, c. 827, s. 98; 1993, c. 539, ss. 852, 853; 1994, Ex. Sess., c. 24, s. 14(c); 2005-455, s. 3.2.)

rrc staff OPINION

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AGENCY: WILDLIFE RESOURCES COMMISSION

RULE CITATION: 15A NCAC 10G .0405

RECOMMENDED ACTION:

 Approve, but note staff’s comment

X Object, based on:

 Lack of statutory authority

X Unclear or ambiguous

 Unnecessary

 Failure to comply with the APA

 Extend the period of review

COMMENT:

In this Rule, it is not clear what standards the Commission uses in determining whether to temporarily suspend or to terminate an agent's appointment. Most of the items listed in (7) and (8) would result in either and it is not clear what the distinction is.

Robert A. Bryan, Jr.

Commission Counsel