

Burgos, Alexander N

Subject: FW: RFC for 15A NCAC 10B .0503

From: Ascher, Seth M <seth.ascher@oah.nc.gov>

Sent: Monday, December 11, 2023 10:28 AM

To: Ruhlman, Carrie A <carrie.ruhlman@ncwildlife.org>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Bonner, Melva G <melva.bonner@ncwildlife.org>

Subject: RE: RFC for 15A NCAC 10B .0503

Carrie,

Thank you for your responses. At this point, I anticipate recommending approval of the revised rules.

Note that I will plan to specifically note the issue with “additional herd management requirements as specified by the Wildlife Resources Commission” since that language looks potentially vague, but I agree with you that the legislature appears to have directed that language to be included in the rule.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

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Burgos, Alexander N

Subject: FW: RFC for 15A NCAC 10B .0503
Attachments: RFC 15A NCAC 10B .0503 WRC - WRCResponses.docx; 15A NCAC 10B .0503 TechChange (12-6-23)1.docx

From: Ruhlman, Carrie A <carrie.ruhlman@ncwildlife.org>
Sent: Wednesday, December 6, 2023 3:40 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Bonner, Melva G <melva.bonner@ncwildlife.org>
Subject: RE: RFC for 15A NCAC 10B .0503

Hi Seth,

Attached are our responses to your technical change request and the revised rule text. Please let me know if you have any additional questions/concerns.

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1 15A NCAC 10B .0503 is adopted as published in 38:04 NCR 190 as follows:

2
3 **15A NCAC 10B .0503 SURVEILLANCE AREA**

4 (a) Inside a surveillance area, placement of minerals or salt licks to purposefully congregate wildlife shall be
5 prohibited. Placement of bait, food, or food product to purposefully congregate wildlife shall be prohibited from
6 January 2 through August 31 inside a Surveillance Area, except ~~that~~ that:

7 (1) bird feeders specifically designed for nongame birds ~~and other activities specifically permitted by~~
8 the Commission shall be ~~allowed~~ allowed;

9 (2) ~~Placement~~ placement of bait, food, or food products to hunt during the urban archery season shall
10 be allowed within the established season in participating ~~municipalities~~ municipalities; and

11 (3) the placement of food specifically permitted by the Commission for scientific research, population
12 management, and wildlife control may be allowed.

13 (b) White-tailed deer fawn rehabilitation is prohibited in a Surveillance Area.

14 (c) White-tailed deer fawns originating from within a Surveillance Area shall not be transported outside the
15 Surveillance Area.

16 (d) No cervid carcass or carcass parts originating from inside a Primary Surveillance Area (PSA) or Secondary
17 Surveillance Area (SSA) shall be transported outside of the county of origin, except:

18 (1) meat that has been boned out so that no pieces or fragments of bone remain;

19 (2) caped hides with no part of the skull or spinal column attached;

20 (3) antlers, antlers attached to cleaned skull plates, or skulls free from meat or brain tissue;

21 (4) cleaned lower jawbones with teeth or cleaned teeth;

22 (5) finished taxidermy products and tanned hides;

23 (6) carcass or carcass parts permitted by the Commission for disposal outside of the Surveillance Area;

24 (7) carcass or carcass parts originating inside a PSA county may be transported into contiguous
25 PSA(s) counties; ~~or outside of the PSA as specified in Subparagraphs (d)(1) through (6) of this~~
26 Rule; and

27 (8) carcass or carcass parts originating inside a SSA county may be transported into contiguous
28 SSA(s) or PSA(s) counties; ~~or outside of the SSA as specified in Subparagraphs (d)(1) through~~
29 (6) of this Rule.

30 (e) No person shall possess or use a substance or material that contains or is labeled as containing any excretion
31 collected from a cervid, including feces, urine, blood, gland oil, or other bodily fluid for the purposes of taking or
32 attempting to take, attracting, or scouting wildlife inside a surveillance area. This prohibition shall not apply to the
33 following substances:

34 (1) products labeled as containing synthetic analogs of cervid excretions;

35 (2) natural substances labeled as being collected from facilities within North Carolina that have a valid
36 Farmed Cervid License from the North Carolina Department of Agriculture and Services;

1 (3) natural deer urine products labeled as containing excretions from facilities within North Carolina
2 that have a valid Farmed Cervid License from the North Carolina Department of Agriculture and
3 Consumer Services; and

4 (4) natural deer urine products labeled as containing excretions from facilities that meet all the
5 following requirements:

6 (A) determined to be free of Chronic Wasting Disease (CWD) based on testing by an
7 independent laboratory using a method that may help detect the presence of CWD prions;

8 (B) complies with a federally approved CWD herd certification program and any federal CWD
9 protocols; and

10 (C) participates in additional herd management requirements as specified by the Wildlife
11 Resources Commission.

12
13 *History Note:* *Authority G.S. 113-134; 113-306;*
14 *Temporary Adoption Eff. July 1, 2022;*
15 *Emergency Adoption Eff. September 1, 2022;*
16 *Temporary Adoption Eff. November 29, 2022;*
17 *Temporary Adoption Eff. July 1, 2023;*
18 *Eff. January 1, 2024.*
19

Request for Changes Pursuant to N.C. Gen. Stat. § 150B-21.10

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

If the request includes questions, please contact the reviewing attorney to discuss.

In order to properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
- Rule 26 NCAC 02C .0404 – The Rule addresses changing the introductory statement.
- Rule 26 NCAC 02C .0405 – The Rule addresses properly formatting changes made after publication in the NC Register.

Note the following general instructions:

1. You must submit the revised rule via email to oah.rules@oah.nc.gov. The electronic copy must be saved as the official rule name (XX NCAC XXXX).
2. For rules longer than one page, insert a page number.
3. Use line numbers; if the rule spans more than one page, have the line numbers reset at one for each page.
4. Do not use track changes. Make all changes using manual strikethroughs, underlines and highlighting.
5. You cannot change just one part of a word. For example:
 - Wrong: “~~a~~Association”
 - Right: “~~association~~ Association”
6. Treat punctuation as part of a word. For example:
 - Wrong: “day;; and”
 - Right: “~~day~~, day; and”
7. Formatting instructions and examples may be found at:
<https://www.oah.nc.gov/rule-format-examples>

If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.

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

AGENCY: Wildlife Resources Commission

RULE CITATION: 15A NCAC 10B .0503

DEADLINE FOR RECEIPT: December 8, 2023

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

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

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

On page 1, line 7, what are “other activities specifically permitted by the Commission”? Government programs mostly. How would someone know what is permitted here? Revised for clarity.

On page 1, lines 21 through 24, items (d)(7) and (d)(8) seem at odds with (d) on line 14. That is, items that meet a category in (d)(1) through (6) can be transported out of a county of origin without reference to (7) and (8). So (7) and (8) are unnecessary to the extent that they are meant to restrict transport between counties. On the other hand, if (7) and (8) are meant to restrict transportation within a county, it is not consistent with the “outside of the county of origin” language on line 14. (7) and (8) are meant to relax the restrictions of (1)– (6) in primary and secondary surveillance areas. Revised for clarity.

On page 2, line 4, what are the “additional herd management requirements as specified by the Wildlife Resources Commission.”? Not sure. See explanation below. How would someone know what these requirements are? Not sure. See explanation below.

In 2020 changes were proposed to Rule 10B .0201 that resulted in [S.L. 2021-176](#). We amended 10B .0201 consistent with language required by the Session Law and that rule is awaiting legislative review in the 2024 session. The language in this rule is also consistent with language in the Session Law and rule 10B .0201 (with the exception of (g)(2) from 10B .0201). We are keeping required language as consistent as possible between rules.

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

Seth Ascher
Commission Counsel

Date submitted to agency: November 27, 2023

Burgos, Alexander N

From: Ascher, Seth M
Sent: Monday, November 27, 2023 4:41 PM
To: Ruhlman, Carrie A; Bonner, Melva G
Cc: Burgos, Alexander N
Subject: RFC for 15A NCAC 10B .0503
Attachments: RFC 15A NCAC 10B .0503 WRC.docx

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the Wildlife Resources Commission for the December 2023 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, December 14, 2023, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get close to the meeting. If there are any other representatives from your agency who want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Attached is the Request for Changes Pursuant to G.S. 150B-21.10. Please submit the revised Rules and forms to me via email, no later than 5 p.m. on December 8, 2023.

Note that I have made no comment on 15A NCAC 10B .0501 and 15A NCAC 10F .0333 because I anticipate recommending approval of those rules as written. If something changes regarding those rules, I will let you know.

Please let me know if you have any questions or concerns.

Seth Ascher
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

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