

APA-1
Revised 4/2018

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control No. 220 Department or Agency: Conservation and Natural Resources

Rule No.: 220-2-.155

Rule Title: Paddlefish Management Areas and Seasons Established. [REPEALED]

☐ New ☐ Amend ☒ Repeal (of Existing Rule) ☐ Adopt by Reference

Would the absence of the proposed rule significantly harm
or endanger the public health, welfare, or safety? YES

Is there a reasonable relationship between the state's police
power and the protection of the public health, safety, or welfare? YES

Is there another, less restrictive method of regulation available
that could adequately protect the public? NO

Does the proposed rule have the effect of directly or indirectly
increasing the costs of any goods or services involved and,
if so, to what degree? NO

Is the increase in cost, if any, more harmful to the public than
the harm that might result from the absence of the rule? N/A

Are all facets of the rulemaking process designed solely for the
purpose of, and so they have, as their primary effect, the
protection of the public? YES

Does the proposed action relate to or affect in any manner any
litigation which the agency is a party to concerning the subject
matter of the proposed rule? NO

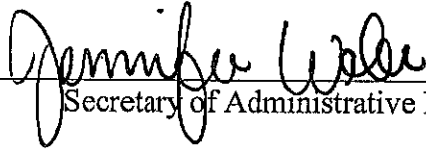
Does the proposed rule have any economic impact? NO

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by
a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama
1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975 and that it conforms to all applicable filing requirements of the Alabama Administrative Procedure Division of the Legislative Reference Service.

Signature of Certifying Officer



Secretary of Administrative Procedure

Date

8-14-18

Department of Conservation and Natural Resources
Wildlife & Freshwater Fisheries

NOTICE OF INTENDED ACTION

AGENCY NAME: Department of Conservation and Natural Resources

RULE NO. & TITLE: 220-2-.155 Paddlefish Management Areas and Season Established.
[REPEALED]

INTENDED ACTION: Repeal Rule

SUBSTANCE OF PROPOSED ACTION: To repeal the regulation because continuing the commercial paddlefish season would jeopardize the sustainability of the paddlefish fishery.

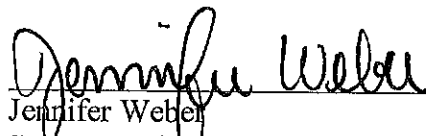
TIME, PLACE, MANNER OF PRESENTING VIEWS: Interested persons may present their views in writing to the Director of Wildlife & Freshwater Fisheries at any time during the period stated below, or orally if requested in writing 48 hours in advance to the Director of Wildlife & Freshwater Fisheries, and then by personally appearing at Room 474, Folsom Administrative Building, 64 North Union Street, Montgomery, Alabama, at 10:00 a.m., Friday, October 5, 2018.

If ADA accommodations are needed, please contact Daisy Perry at (334) 242-3165 or daisy.perry@dcnr.alabama.gov. Requests should be made as soon as possible but at least seven days prior to the date of a personal appearance to present views regarding the proposed rules.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Friday, October 5, 2018.

CONTACT PERSON AT AGENCY: Chuck Sykes, Director, Wildlife & Freshwater Fisheries, 5th Floor, 64 N. Union Street, Montgomery, Alabama 36130, 334-242-3465.



Jennifer Weber
Secretary of Administrative Procedure

Christopher M. Blankenship

220-2-.155 Paddlefish Management Areas and Seasons Established [REPEALED]

- (1) A commercial fishing season for paddlefish (*Polyodon spathula*) is hereby established for three areas of Alabama, as provided for below. These areas hereafter are referred to as Paddlefish Management Areas (PMA's), and are hereby established as, and shall constitute, special fishery "wildlife management areas", in accordance with Sections 9-11-300 and 9-11-301, Code of Alabama, 1975. Three PMA's shall occur in portions of Autauga, Lowndes, Dallas, Clarke, Monroe, and Wilcox counties on the Alabama River, as described below. These rules shall govern according to the following restrictions and regulations:
- (2) **Locations.**
 - (a) **Upper Alabama River Paddlefish Management Area (UAR) (Autauga/Lowndes/Dallas Counties).** The public waters of the mainstem portion (tributaries excluded) of the Alabama River from Alabama River Mile (ARM) 235.5 (32.3161621°N 86.7898589°W) to ARM 207.0 (32.386725°N 86.997467°W). This is from one-half mile below Robert F. Henry Lock and Dam to U.S. Highway 80, Cecil Jackson Bypass Bridge. In addition, the public waters of the mainstem portion (tributaries excluded) of the Alabama River ARM 197.1 (32.358606°N 87.044413°W) to ARM 166.0 (32.1541113°N 87.1555624°W). This is from the mouth of Coast Guard Slough (Dallas County), 0.86 mile downstream of the former Little Miami Public Use Area to the mouth of White Oak Creek (Dallas County). A total of 59.6 river miles will be open for commercial harvest of paddlefish.
 - (b) **Middle Alabama River Paddlefish Management Area (MAR) (Wilcox County).** The Public waters of the mainstem portion (tributaries excluded) of the Alabama River from ARM 131.6 (32.0814245°N 87.4021318°W) to ARM 85.6 (31.7269344°N 87.4694156°W). This is from the power line crossing below Miller's Ferry Power House (Wilcox County) to Davis Ferry Landing (Monroe County). A total of 46.0 river miles will be open for commercial harvest of paddlefish.
 - (c) **Lower Alabama River Paddlefish Management Area (LAR) (Monroe/Clarke Counties).** The public waters of the mainstem portion (tributaries excluded) of the Alabama River from ARM 71.8 (31.6041739°N 87.5495901°W) to ARM 27.4 (31.2943224°N 87.7663244°W). This is from one-half mile below Claiborne Lock and Dam to Dixie Landing boat ramp. A total of 44.4 river miles will be open for commercial harvest of paddlefish.

(3) **Season.**

- (a) **UAR:** Weekdays (M, T, W, Th, and F) in February of each year.
- (b) **MAR:** Weekdays (M, T, W, Th, and F) in February of each year.
- (c) **LAR:** Weekdays (M, T, W, Th, and F) in February of each year.
- (d) Weekend (Saturday and Sunday) commercial paddlefish fishing is not permitted and commercial paddlefish harvesters and helpers are prohibited from being on the water in a PMA on weekends during the month of February.

(4) **Fishing Hours.**

- (a) **LAR:** sunrise – 1600 hours each day; Monday – Friday.
- (b) **MAR:** sunrise – 1600 hours each day; Monday – Friday.
- (c) **UAR:** sunrise – 1600 hours each day; Monday – Friday.

- (5) **Persons Eligible.** Residents of the State of Alabama who are eighteen (18) years of age or older and have purchased a resident commercial freshwater fishing license from October 1 to September 30 of the previous year are eligible to apply for a Resident Commercial Paddlefish Harvester Permit. Nonresidents of states that allow Alabama residents to commercially fish for paddlefish are allowed to apply. Nonresidents of states that prohibit Alabama residents from commercially harvesting paddlefish are prohibited from engaging in commercial paddlefish fishing in Alabama. Currently, the only states that allow Alabama residents to commercially harvest paddlefish are Tennessee, Kentucky, Illinois, and Missouri. Only residents of these states that were issued valid roe fish harvest permits/licenses from their states of residence, which were valid for that state's respective license year prior to October 1, will be eligible to apply to commercially harvest paddlefish in Alabama for the upcoming season. Not less than fifty percent (50%) of the available permits shall be made available to eligible Alabama residents. In no event, shall the percentage of available permits for nonresidents of any other state exceed any percentage restriction placed on that state's nonresidents to commercially harvest paddlefish in that state.

- (6) **Harvest and Helper Permits.** The following permits and tags are established and required to commercially harvest paddlefish in Alabama.

- (a) **Alabama Residents.** Commercial Paddlefish Harvester Permit [\$1250.00]. This permit is required for the holder to fish and take paddlefish in a designated paddlefish management area for the purpose of harvesting flesh and roe during designated commercial paddlefish seasons. An Alabama

Commercial Freshwater Fishing License is required in addition to the Commercial Paddlefish Harvester Permit to harvest and possess paddlefish.

- (b) **Nonresidents.** Nonresident Commercial Paddlefish Harvester Permit - The cost for the permit will be same as what the applicant's State of residency would charge an Alabama resident to commercially fish for paddlefish in that State but in no event shall the cost be less than the fee charged to a resident of Alabama. This permit is required for the holder to fish and take paddlefish in a designated paddlefish management area for the purpose of harvesting flesh and roe during designated seasons. An Alabama Commercial Freshwater Nonresident Fishing License is required in addition to the Nonresident Commercial Paddlefish Harvester Permit to harvest and possess paddlefish.
 - (c) **Alabama and Nonresidents.** Commercial Paddlefish Helper Permit [\$100.00]. This permit is required for the holder to fish and/or assist as a helper with a permitted commercial paddlefish harvester. This permit is required for one helper to assist on the paddlefish harvester's boat and for other helpers who(m) possess, process, and transport paddlefish carcasses and/or roe. There are no limits to how many permitted helpers a harvester can have; however, each helper permit is specific for a particular harvester. That is, a helper can assist multiple harvesters, but they must have separate helper permits for each harvester that they help.
 - (d) **Carcass Tags.** It shall be required that all harvested paddlefish possess an Alabama Department of Conservation and Natural Resources (ADCNR) issued serial tag attached through the dorsal fin. The cost is \$10 per tag. Harvesters and/or their permitted helpers can purchase up to 100 carcass tags per week with a maximum of 200 tags total during the season.
Carcass tag fees are non-refundable and tags are non-transferable.
Carcass tags can only be purchased from the Alabama Division of Wildlife and Freshwater Fisheries (ADWFF) Administrative Office, 64 N. Union Street, Suite 567 (Folsom Administration Building), Montgomery. Commercial paddlefish harvesters will tag each harvested paddlefish after the fish is removed from the net and placed in their fishing vessel. The tag is to remain on the fish until the flesh is processed and packaged for retail sale.
- (7) **Dealer's Licenses.** (Required by Section 9-11-153, Code of Alabama, 1975, as amended by Act No. 2012-471).
- (a) **Alabama Residents.** Commercial Paddlefish Dealer's License [\$750.00]. This license is required of every resident person, firm, association, or corporation to buy, sell, process, or ship paddlefish roe or flesh acquired from a permitted paddlefish harvester. Any employee or agent of a dealer shall be required to possess a copy of the dealer license, signed by the

dealer, at all times he is performing any activities pursuant to such license. This license is not required for a permitted paddlefish harvester to sell or ship within Alabama paddlefish roe or flesh that the harvester has caught, to an Alabama licensed commercial paddlefish dealer. An Alabama wholesale freshwater fish dealer license is required in addition to the Commercial Paddlefish Dealer's License to buy, process, sell, or ship paddlefish roe and flesh.

- (b) **Nonresidents.** Commercial Paddlefish Dealer's License – The cost for this license will be same as what the applicant's State of residency would charge an Alabama resident to buy, sell, process, or ship paddlefish roe or flesh within that State but in no event shall the cost be less than the fee charged to a resident of Alabama. This license is required of every nonresident person, firm, association, or corporation to buy, sell, process, or ship paddlefish roe or flesh acquired from a permitted paddlefish harvester. Any employee or agent of a dealer shall be required to possess a copy of the dealer license, signed by the dealer; at all times he is performing any activities pursuant to such license. This license is not required for a permitted paddlefish harvester to sell or ship within Alabama paddlefish roe or flesh that the harvester has caught, to an Alabama licensed commercial paddlefish dealer. An Alabama wholesale freshwater fish dealer license is required in addition to the Commercial Paddlefish Dealer's License to buy, process, sell, or ship paddlefish roe and flesh.

(8) **Size Limit.**

- (a) The minimum length to possess and harvest paddlefish is 35" (889 mm) curved eye-to-fork (CEFL) and only egg-bearing females are legal within the three PMA's. The CEFL is the length from the anterior portion (front) of the eye to the fork of the tail measured with a flexible tape measured along curvature of the body. The possession and harvest of any male paddlefish, female paddlefish with no eggs, and any female paddlefish under 35" CEFL is prohibited.
- (b) Prior to sale to a commercial paddlefish dealer, paddlefish carcasses may not be altered in a manner that the length of the fish cannot be determined. If a paddlefish has been altered to not allow the minimum length (CEFL) determination, then the carcass and roe are subject to confiscation.

(9) **Applications.**

- (a) Commercial paddlefish harvester and helper permit application forms will be posted online at <http://www.outdooralabama/paddlefish> by October 15 each year. A news release will also announce commercial paddlefish season details and instructions for applying each year. Eligible nonresident

commercial freshwater fishers that wish to apply for an Alabama commercial paddlefish permit may obtain the necessary forms and information by contacting ADWFF at (334) 242-3471.

- (b) A total of 4 separate applicants will be randomly selected for the opportunity to purchase permits for each of the three PMA's for a total of 12 permits in a given season. Commercial paddlefish harvester permits are non-refundable and non-transferable.
- (10) **Designated Boat Ramps.** All commercial roe harvesters and helpers can only launch and take out from one of the designated boat ramps from their respective Paddlefish Management Area. Boat ramps are PMA specific:
- (a) **UAR Paddlefish Management Area.**
 - 1. USACE Benton boat ramp off US Highway 80 (32.3127563°N 86.8192047°W); 15 miles east of Selma.
 - 2. USACE Steeles Landing Boat ramp off Autauga County Road 1 (32.430651°N 86.832682°W); 10.5 miles west of Autaugaville.
 - 3. USACE Six Mile Creek boat ramp off HWY 41 (32.3256762°N 87.0152170°W); 7 miles south of Selma.
 - 4. Portland Access boat ramp off Dallas County Road 225 (32.1529105°N 87.1579930°W); 3 miles southeast of Portland.
 - (b) **MAR Paddlefish Management Area.**
 - 1. USACE Cobb's Landing boat ramp off State Highway 28 (32.0668569°N 87.4010475°W); 3 miles southwest of Miller's Ferry.
 - 2. USACE Holly Landing boat ramp off HWY 10 as it crosses the Alabama River (31.9693976°N 87.4128761°W); 7 miles west of Camden.
 - 3. USACE Bell's Landing boat ramp off HWY 41 (31.8070616°N 87.4227007°W); 3 Miles southwest of Hybart.
 - (c) **LAR Paddlefish Management Area.**
 - 1. USACE Claiborne Lock and Dam Ramp off Monroe County Road 17 (31.6095112°N 87.5492510°W); 17 miles northwest of

Monroeville.

2. Eureka Landing boat ramp off Monroe County Road 8 (31.3932747°N 87.7088037°W); three miles northwest of Eliska.
3. Dixie Landing boat ramp off HWY 59 (31.2948937°N 87.7643321°W); 4 miles west of Chrysler.

(11) Gear and Fishing Restrictions: Alabama River PMA's

- (a) Paddlefish may only be harvested by the use of gill nets, as provided for below.
- (b) A gill net (may be referred to hereafter within as "net" or "nets") is defined as a single net attached to float and lead lines.
- (c) The use of tied-down gill nets (hobbled) is prohibited.
- (d) The use of monofilament (including monotwist) gill nets is prohibited; only multifilament (nylon) nets are permitted.
- (e) The maximum number of gill nets permitted to fish concurrently is five and only five gill nets may be in possession per harvester on the water during commercial paddlefish fishing.
- (f) The use of mechanical gear (rollers) to deploy and retrieve gill nets is permitted.
- (g) A fluorescent orange float is required on each float end. The float size must be approximately the size of a 1 gallon milk container or similar to a bullet-type float measuring 5" in diameter and 11" in length. Floats on each end of the gill net must be visible from the surface of the water.
- (h) Total length of each gill net cannot exceed 200 feet.
- (i) Total depth of each gill net cannot exceed 24 feet.
- (j) Gill nets must have a minimum mesh size of 6-inch bar measure (knot to knot).
- (k) Gill nets must be checked every 2 hours to reduce bycatch mortality.
- (l) Gill nets are prohibited from being fished within 50 yards above and below any tributary (i.e., creek, stream, or backwater) emptying into the Alabama

River.

- (m) Once a gill net is set in the water, it must be completely removed from the water onto the harvester's boat before re-setting or re-locating the gill net. A set gill net can be checked to remove fish as long as the net is not being dragged.
- (n) The herding or harassing of paddlefish into gill nets via running the boat around a set gill net or revving or accelerating a boat motor around a set gill net is prohibited.
- (o) Commercial paddlefish gill nets are prohibited from being fished after 1600 hours each day.
- (p) Commercial paddlefish harvesters and their fishing vessel and equipment must be off the water by 1700 hours. Commercial paddlefish harvesters and helpers are prohibited from being on the water from 1700 hours to sunrise the following day.
- (q) The "tying up" of any harvested paddlefish to a tree or limb is prohibited.
- (r) A large live well is permitted if the harvesters wish to keep the fish alive while on the water.
- (s) All harvested paddlefish must be kept in the harvester's boat until they are landed at a designated boat ramp for processing.
- (t) Paddlefish eggs may not be removed outside of the fish's body cavity while on the water or adjacent bank. Eggs can only be removed at a designated boat ramp or at the processors facility.
- (u) No processed paddlefish and/or eggs outside of the body cavity can be in possession while on the water.
- (v) Dumping of paddlefish carcasses at any boat ramp and/or public waters is prohibited.
- (w) A 12-gauge needle may be inserted in the abdomen between the pectoral and pelvic fins to determine the presence of eggs in paddlefish over 35 inch CEFL. Paddlefish may be checked once with a needle on either side of the abdomen for a total of 2 times per paddlefish. Repeated checking of paddlefish will increase mortality and is prohibited. This needle and syringe must be on board every commercial paddlefish harvester fishing boat and kept in a sanitary manner. Paddlefish less than 35 inch CEFL must be returned immediately to the water without being checked. It shall be illegal to harvest or possess any paddlefish with more than 2 punctures.

- (x) A 2-inch portion of ovary (including some eggs) must remain attached to each harvested paddlefish until the fish and eggs are received by a licensed commercial paddlefish dealer.
- (y) Paddlefish eggs removed from the fish must be kept in separate containers; eggs from one fish per container. Each container must be labeled with the paddlefish tag number and as paddlefish roe. One container must match one harvested paddlefish.
- (z) Blocking of harvested paddlefish is not permitted.
- (aa) The rostrum (i.e., paddle) can be removed from a legally-harvested paddlefish in front of the eye as long as the curved eye-to-fork (CEFL) can be determined.
- (bb) Paddlefish may not be possessed alive away from harvested waters.
- (cc) The gill rakers inside the mouth can be cut to bleed the fish.
- (dd) Commercially harvested paddlefish (or parts thereof) taken from an authorized PMA and sold must be marketed to a licensed wholesale fish dealer who has a valid Alabama commercial paddlefish dealer license; provided however, that all parts other than roe may be sold within Alabama by the harvester to other individuals for their personal consumption. Donated paddlefish carcasses must retain their carcass tags when they are donated to individuals or other entities and the commercial paddlefish harvester permit holder is required to submit a completed paddlefish carcass donation form (available at <http://www.outdooralabama/paddlefish>) weekly along with their paddlefish roe harvest buyers report.
- (ee) All commercial paddlefish harvester permit holders are required to allow boarding of their vessel if requested by an ADWFF conservation officer, agent, or biologist to examine their catch.
- (ff) Citation(s) for any violation(s) of any commercial fishing laws or regulations during the commercial paddlefish season may result in termination of the commercial paddlefish harvester's permit by the Commissioner of the Alabama Department of Conservation and Natural Resources.
- (gg) Each Commercial Paddlefish Harvester is responsible for the actions and conduct of each of their helpers. Any citation(s) for any violation(s) of any commercial fishing laws or regulations during the commercial paddlefish season by a commercial paddlefish helper may result in termination of the associated commercial paddlefish harvester's permit

by the Commissioner of the Alabama Department of Conservation and Natural Resources.

- (hh) Citation(s) for the violation(s) of any commercial fishing laws and regulations during the paddlefish season may result in confiscation of fishing equipment (i.e., towing vehicle, boat, boat motor, boat trailer, gillnets and associated gear) and paddlefish roe and flesh as evidence.
- (ii) Conviction of any laws and regulations during a commercial paddlefish season may result in the loss of opportunity to apply for a future commercial paddlefish harvester permit or commercial paddlefish helper permit for the next 5 years and forfeiture of confiscated fishing equipment, paddlefish roe and flesh.
- (jj) During the commercial paddlefish season it is prohibited for any person to possess, buy, sell, or ship across Alabama state line whole paddlefish, paddlefish parts or eggs without proper permits and documentation as determined by the ADWFF. The following exceptions apply:

1. **Exceptions:**

- (i) Persons who have purchased paddlefish flesh or processed and packaged paddlefish eggs for consumption.
- (ii) Restaurants, grocery stores, hotels, retail fish markets, and wholesale food suppliers selling paddlefish roe or paddlefish parts fully processed, packaged and ready for retail sale in sealed containers.
- (iii) Commercial shipping firms or authorized agents may possess legally taken paddlefish and/or paddlefish eggs or flesh shipped by person having an Alabama commercial roe dealer/buyer license.

- (12) **Harvest, Sale and Shipping Reporting.** Commercial paddlefish harvesters and commercial paddlefish dealers will be required to submit paddlefish daily catch and harvest reports, commercial paddlefish roe buyer's weekly reports, and/or other reports as determined by the ADWFF. Falsification of, incomplete reports, or failure to submit by the specified time or date, these required paddlefish reports to the ADWFF is a violation of this regulation and may result in the loss of opportunity to apply for a future commercial paddlefish harvester permit for the next 5 years. Daily commercial paddlefish harvester and buyer's reports are due the following Friday after the previous fishing week.
- (13) **License Requirements.** Holders of a commercial paddlefish harvester permit and commercial paddlefish dealer's license must have government issued picture

identification on their person during the commercial paddlefish season and while possessing paddlefish eggs, flesh, and parts. The aforementioned permit and license must also be on their person during the season while possessing paddlefish eggs, flesh, and parts.

AUTHOR: Christopher M. Blankenship

STATUTORY AUTHORITY: Code of Alabama, 1975, §§9-2-7, 9-2-8, 9-11-140, 9-11-300, and 9-11-301.

PENALTY: As provided by law.

HISTORY: **New Rule:** Filed November 22, 2013; effective December 27, 2013.
Repealed and New Rule: Filed February 26, 2015; effective April 2, 2015. **Amended:** Filed November 17, 2017; effective January 1, 2018. August 20, 2018.

**ECONOMIC IMPACT
STATEMENT FOR APA RULE
(Section 41-22-23(f))**

Control No. 220 Department or Agency Conservation

Rule No: 220-2-.155

Rule Title: Paddlefish Management Areas and Seasons Established.
[REPEALED]

 New Amend X Repeal Adopt by Reference

 X This rule has no economic impact.

 This rule has an economic impact, as explained below:

1. NEED/EXPECTED BENEFIT OF RULE:
2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:
3. EFFECT OF THIS RULE ON COMPETITION:
4. EFFECT OF THIS RULE ON COST-OF-LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:
5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:
6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:

7. THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:
8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:
9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:
10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED: