

## 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: Medical Care Commission

RULE CITATION: 10A NCAC 13G .0317 and .0318

RECOMMENDED ACTION:

X APPROVE THE REPORT AFTER DESIGNATING THESE RULES AS "NECESSARY WITH SUBSTANTIVE PUBLIC INTEREST"

COMMENT: The comments to these rules have merit within the meaning of G.S. 150B-21.3A(c)(2) and, pursuant to that statute, should be designated as "necessary with substantive public interest."

The comments state objections to both rules, meeting the definition of a "public comment" in G.S. 150B-21.3A(a)(5). Both comments appear assert that the term "foot candle" is, in practical effect, ambiguous. Ambiguity is one of the standards for review set forth in G.S. 150B-21.9(a). Thus, under the standards set forth in G.S. 150B-21.3A(c)(2), the comments have merit.

### **§ 150B-21.3A. Periodic review and expiration of existing rules.**

(a) Definitions. - For purposes of this section, the following definitions apply:

(5) Public comment. - Means **written comments objecting to the rule, in whole or in part**, received by an agency from any member of the public, including an association or other organization representing the regulated community or other members of the public.

(b) Review Process. - Each agency subject to this Article shall conduct a review of the agency's existing rules at least once every 10 years in accordance with the following process:

- (2) Step 2: The Commission shall review the reports received from the agencies pursuant to subdivision (1) of this subsection. If a public comment relates to a rule that the agency determined to be necessary and without substantive public interest or unnecessary, the Commission shall determine whether the public comment has merit and, if so, designate the rule as necessary with substantive public interest. For purposes of this subsection, a public comment has merit if it addresses the specific substance of the rule and relates to any of the standards for review by the Commission set forth in G.S. 150B-21.9(a).

Staff recommends that the Rules Review Commission approve the report as submitted by the Medical Care Commission, subject to the designation 10A NCAC 13G .0317 and .0318 as “necessary with substantive public interest.”