

WAIVER REQUEST

Pursuant to 26 NCAC 05 .0112, the undersigned requests a waiver of 26 NCAC 05 .0206(b)(3), as set forth below.

1. As set forth in the schedule adopted by the Rules Review Commission, Rule 26 NCAC 05 .0211, the following reports are scheduled for the Commission for Public Health (“CPH”):
 - a. October 2015, 10A NCAC 40 and 10A NCAC 47; and
 - b. November 2015, 10A NCAC 46 and 10A NCAC 48.
2. On Friday, February 20, 2015, the Commission for Public Health filed all four of the above-identified reports. The comment period for all four reports was scheduled to run from February 27, 2015 through April 28, 2015. The comment period provided by the agency was in accordance with 26 NCAC 05 .0203(b) and would allow the Rules Division of the Office of Administrative Hearings (“OAH”) five business days to post the report.
3. On Wednesday, February 25, 2015, two of the four reports were posted on OAH’s website. 10A NCAC 47 and 10A NCAC 48 were posted on OAH’s website. 10A NCAC 40 and 10A NCAC 46 were not posted on OAH’s website.
4. On Wednesday, June 17, 2015, OAH staff discovered the failure to post 10A NCAC 40 and 10A NCAC 46. In consultation with CPH’s rulemaking coordinator, the reports were posted on OAH’s website for a 30 day comment period running from June 18, 2015 through July 18, 2015.
5. CPH did comply with G.S. 150B-21.3(c)(1), which requires the following:

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

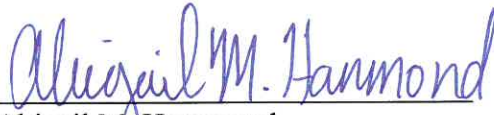
...

(c) 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:

- (1) Step 1: The agency shall conduct an analysis of each existing rule and make an initial determination as to whether the rule is (i) necessary with substantive public interest, (ii) necessary without substantive public interest, or (iii) unnecessary. The agency shall then post the results of the initial determination on its Web site and invite the public to comment on the rules and the agency's initial determination. The agency shall also submit the results of the initial determination to the Office of Administrative Hearings for posting on its Web site. The agency shall accept public comment for no less than 60 days following the posting. ...

CPH did post the report on its Web site and invited the public to comment. CPH did submit the initial determinations to OAH. CPH did accept public comments for 60 days following the posting on its Web site. CPH did not receive any comments during the 60 days for either 10A NCAC 40 or 10A NCAC 46. CPH is scheduled to review all four reports at their August 12, 2015 meeting.

6. OAH, after receipt of the four reports, posted only two of the reports and failed to post the other two of the reports. A waiver of 26 NCAC 05 .0206 is sought by the undersigned to accommodate CPH in meeting the deadlines set forth in 26 NCAC 05 .0203(c) and 26 NCAC 05 .0211(a).
7. The undersigned believes that CPH has complied with the statutory requirements of G.S. 150B-21.3A(c)(1) and the failure of OAH to post the reports in accordance with 26 NCAC 05 .0203(b) and 26 NCAC 05 .0206(b)(3) should not result in CPH being penalized, resulting in an inability of CPH to meet the filing deadlines set forth in 26 NCAC 05 .0203(c) and the scheduled review set forth in 26 NCAC 05 .0211(a).
8. The undersigned requests a waiver of 26 NCAC 05 .0206(b)(3), and for CPH's comment period from February 27, 2015 through April 28, 2015 on the reports for 10A NCAC 40 or 10A NCAC 46 to satisfy the statutory requirements of G.S. 150B-3A(c)(1). These two reports are presently posted on OAH's website with an abbreviated comment period. The failure to post the reports by OAH is outside of CPH's control. If the posting requirements set forth in 26 NCAC 05 .0206(b)(3) are not waived for these two reports, then both reports will need to be reposted on CPH's and OAH's website, and CPH will not make the deadlines set forth in 26 NCAC 05 .0203(c) and 26 NCAC 05 .0211(a), thereby requiring CPH to request a waiver of deadlines based on OAH's failure to post the reports in a timely fashion following CPH's submission to OAH. This will require notice to any and all interested parties and will require additional effort from CPH. This is an unreasonable harm to an agency that complied with the requirements of G.S. 150B-21.3A(c)(1). By allowing this waiver, CPH will be able to maintain all scheduled reviewed dates and it will maintain a status quo of the process that may be calendared by interested parties.
9. The undersigned has attached and highlighted all referenced rules. The undersigned requests your consideration of this matter and waiver of 26 NCAC 05 .0206(b)(3) that will allow CPH to proceed with consideration of 10A NCAC 40 and 10A NCAC 46 at their upcoming August 12, 2015 meeting and to comply with the scheduled dates set forth in 26 NCAC 05 .0203(c) and 26 NCAC 05 .0211(a).


Abigail M. Hammond

July 7, 2015

26 NCAC 05 .0112 WAIVER

- (a) The Commission in open session may waive any rule for which no specific waiver provision is set out.
- (b) Any person or agency requesting a waiver shall do so in writing and shall set out the specific rule for which a waiver is requested and the reasons justifying such a waiver.
- (c) Any person desiring a waiver of the Commission's rules shall submit a copy of the request to the rulemaking coordinator for the agency proposing a rule at the same time and in the same manner as the submission to the RRC.
- (d) The factors to be used in deciding whether to waive a rule are:
 - (1) the necessity for a waiver;
 - (2) the amount of notice given to the Commission and its staff, the agency proposing the rule, and interested parties;
 - (3) the applicant's responsibility for the conditions creating the need for a waiver;
 - (4) the applicant's previous requests for a waiver;
 - (5) the applicant's knowledge of or experience with the rulemaking process;
 - (6) the precedential value of such a waiver;
 - (7) the harm to the applicant if a waiver is not granted;
 - (8) the harm to the agency if a waiver is granted when the agency is not the applicant.

History Note: *Authority G.S. 143B-30.1;*
 Eff. August 1, 2008.

26 NCAC 05 .0203 DEADLINES

(a) The Commission shall submit by email to the rulemaking coordinator of an agency subject to the review a report containing its existing rules. Agencies shall have 10 business days after the report is sent to review it for accuracy and completeness. An agency shall notify the Commission staff by email at oah.rules@oah.nc.gov of any errors or missing rules within the 10 business days following the date the RRC sent the report.

(b) An agency shall complete the report as set out in Rule .0206(b) of this Section. The agency shall then submit its initial report to the Office of Administrative Hearings at the above email address and OAH shall post the report on its website within five business days of receipt.

(c) All reports shall be filed on or before the 15th day of the month for Commission review of the report at its meeting the following month, using the schedule set forth in Rule .0211 of this Section. Commission counsel shall notify an agency if he or she intends to recommend reviewing this report at a later meeting. The Commission may delay reviewing a report until a later meeting if the workload of the Commission and its staff makes the review impracticable. If the Commission delays reviewing a report, it shall notify the agency. In rescheduling any review, the Commission shall consider the date on which the report was filed with the Commission.

(d) All deadlines that require filing or notification as set forth in this Rule shall be by 5:00 p.m. on the business day of the deadline or the next business day following the deadline if the deadline falls on a non-business day.

*History Note: Authority G.S. 150B-21.3A;
Eff. April 1, 2014.*

26 NCAC 05 .0206 REPORT

- (a) All agencies participating in the review shall use the report prepared by the Commission.
- (b) The agency shall complete the following fields of the report prior to posting:
 - (1) the initial agency determination;
 - (2) whether a rule is necessary to implement or conform to federal law. If it is, the agency must include a citation to that law in the report; and
 - (3) the public comment period, which shall be no less than 60 days and begin upon posting on the agency's and the Office of Administrative Hearings' websites. If the posting does not occur on the same day for both sites, the comment period shall begin upon posting on the second website.
- (c) The agency shall post the report on its website continuously throughout the public comment period and accept comments on the initial determinations made by the agency in the report.
- (d) Prior to submitting the report to the Commission, the agency shall state in the report whether comments were received and the final determination for each rule. The agency shall attach to the report a copy of every comment received. The full text of all comments shall be included with or attached to the report. The agency shall also attach a brief response addressing the merits of each comment.
- (e) The agency shall submit a report with all fields completed along with all required attachments set forth in Paragraph (d) of this Rule. Reports that are not complete shall be considered not filed and shall be returned to the agency to complete.
- (f) The agency shall submit the report to the Commission with one original of the report and the comments received. The agency shall also submit an electronic version of the report that shall be compatible with or convertible to the most recent version of Microsoft Excel. The electronic report shall be submitted by email at oah.rules@oah.nc.gov.

History Note: *Authority G.S. 150B-21.3A;*
 Eff. April 1, 2014.

26 NCAC 05 .0211 SCHEDULE

(a) The Commission shall review the report prepared for the identified portion of the Administrative Code on the month and year as set forth below:

July 2014	August 2014	September 2014	October 2014	November 2014
03 NCAC 01 21 NCAC 23 21 NCAC 37	04 NCAC 24 21 NCAC 08 21 NCAC 52 24 NCAC 02 25 NCAC 01A 25 NCAC 01B 25 NCAC 01C 25 NCAC 02	04 NCAC 17 15A NCAC 01A 15A NCAC 01S 18 NCAC 03 18 NCAC 05 21 NCAC 01 21 NCAC 30 21 NCAC 42 21 NCAC 45	15A NCAC 02B 15A NCAC 02H 15A NCAC 02T 15A NCAC 02U	04 NCAC 14 11 NCAC 14 11 NCAC 18 11 NCAC 20 11 NCAC 21 11 NCAC 22 13 NCAC 08 13 NCAC 10 15A NCAC 12A 15A NCAC 12B 15A NCAC 12C 15A NCAC 12D 15A NCAC 12F 15A NCAC 12G 15A NCAC 12I 15A NCAC 12J 15A NCAC 12K 15A NCAC 01G 15A NCAC 01H 21 NCAC 20 21 NCAC 21 21 NCAC 28 21 NCAC 69 24 NCAC 03
December 2014	January 2015	February 2015	March 2015	April 2015
10A NCAC 45 21 NCAC 02 21 NCAC 14 21 NCAC 62	02 NCAC 09B 02 NCAC 09C 02 NCAC 09D 02 NCAC 09E 02 NCAC 09F 02 NCAC 09G 02 NCAC 09H 02 NCAC 09J 02 NCAC 09K 02 NCAC 09M 02 NCAC 09N 02 NCAC 09O 02 NCAC 38 02 NCAC 43F 02 NCAC 51 02 NCAC 52A 02 NCAC 52K 02 NCAC 54 10A NCAC 13A 10A NCAC 13D 10A NCAC 14I 15A NCAC 01F	09 NCAC 03 09 NCAC 06 10A NCAC 97 15A NCAC 02S 21 NCAC 06	04 NCAC 08 10A NCAC 05 10A NCAC 09	10A NCAC 13L 10A NCAC 13M 10A NCAC 13O 10A NCAC 26A 10A NCAC 26B 10A NCAC 26D 15A NCAC 02R 21 NCAC 11 21 NCAC 32
May 2015	June 2015	July 2015	August 2015	September 2015
07 NCAC 04	04 NCAC 02R	02 NCAC 20B	02 NCAC 57	04 NCAC 15

15A NCAC 08 15A NCAC 18D 17 NCAC 03 17 NCAC 06	10A NCAC 21 10A NCAC 22 21 NCAC 50 21 NCAC 61	02 NCAC 37 02 NCAC 42 02 NCAC 59A 02 NCAC 59B 02 NCAC 59C 02 NCAC 59E 02 NCAC 59F 02 NCAC 59G 02 NCAC 60A 02 NCAC 60B 15A NCAC 01I 15A NCAC 09 21 NCAC 60 21 NCAC 63	10A NCAC 13H 10A NCAC 70I 10A NCAC 70K 19A NCAC 01 19A NCAC 04 19A NCAC 05 19A NCAC 06	10A NCAC 63 15A NCAC 18C
October 2015	November 2015	December 2015	January 2016	February 2016
06 NCAC 01 06 NCAC 02 06 NCAC 03 06 NCAC 04 10A NCAC 40 10A NCAC 47 11 NCAC 11 11 NCAC 19 18 NCAC 01 18 NCAC 04 18 NCAC 13 25 NCAC 01D	10A NCAC 14J 10A NCAC 46 10A NCAC 48 13 NCAC 15 13 NCAC 20 15A NCAC 12H	15A NCAC 02D 15A NCAC 02Q 15A NCAC 07B	01 NCAC 01 01 NCAC 03 01 NCAC 04 01 NCAC 25 01 NCAC 26 10A NCAC 13P 10A NCAC 26E 10A NCAC 26F 15A NCAC 04 21 NCAC 18 21 NCAC 29	10A NCAC 10 10A NCAC 89 13 NCAC 07 13 NCAC 12
March 2016	April 2016	May 2016	June 2016	July 2016
04 NCAC 01 10A NCAC 17 15A NCAC 01L 15A NCAC 01N 20 NCAC 01 20 NCAC 04 20 NCAC 07	10A NCAC 13J 10A NCAC 27A 10A NCAC 27B 10A NCAC 27D 11 NCAC 06 11 NCAC 13 16 NCAC 01 16 NCAC 02 16 NCAC 03 25 NCAC 01F	01 NCAC 05 10A NCAC 23 10A NCAC 25 21 NCAC 38 26 NCAC 01 26 NCAC 02 26 NCAC 03 26 NCAC 04	04 NCAC 02S 17 NCAC 01 17 NCAC 09 17 NCAC 10 17 NCAC 11 17 NCAC 12 25 NCAC 01H 25 NCAC 01I 25 NCAC 01J	19A NCAC 02
August 2016	September 2016	October 2016	November 2016	December 2016
10A NCAC 06 10A NCAC 67 10A NCAC 68 10A NCAC 69 10A NCAC 70A 10A NCAC 70B 10A NCAC 70C 10A NCAC 70D 10A NCAC 70E 10A NCAC 70F 10A NCAC 70G 10A NCAC 70H 10A NCAC 72	12 NCAC 01 12 NCAC 02 12 NCAC 03 12 NCAC 04 12 NCAC 06 21 NCAC 12 21 NCAC 17 21 NCAC 22 21 NCAC 64 25 NCAC 01E 25 NCAC 01K 25 NCAC 01L 25 NCAC 01M 25 NCAC 01N 25 NCAC 01O	10A NCAC 39 10A NCAC 43C 10A NCAC 43E 10A NCAC 43G 10A NCAC 43H 10A NCAC 43I 10A NCAC 43J 18 NCAC 06 18 NCAC 07 18 NCAC 10	10A NCAC 14F 15A NCAC 10F 15A NCAC 10H 20 NCAC 03 20 NCAC 08 20 NCAC 09 20 NCAC 10	01 NCAC 09 01 NCAC 15 01 NCAC 17 01 NCAC 19 01 NCAC 35 08 NCAC 01 08 NCAC 02 08 NCAC 03 08 NCAC 04 08 NCAC 05 08 NCAC 06 08 NCAC 07 08 NCAC 08 08 NCAC 09 08 NCAC 10 08 NCAC 12 08 NCAC 13

				11 NCAC 10 11 NCAC 16 14B NCAC 01 14B NCAC 02 14B NCAC 03 14B NCAC 04 14B NCAC 05 14B NCAC 06 14B NCAC 07 15A NCAC 02A 15A NCAC 02C 15A NCAC 02E
January 2017	February 2017	March 2017	April 2017	May 2017
02 NCAC 48C 02 NCAC 48D 02 NCAC 48F 02 NCAC 52B 02 NCAC 52C 02 NCAC 52D 02 NCAC 52E 02 NCAC 52F 02 NCAC 52G 02 NCAC 52H 02 NCAC 52I 02 NCAC 59D 02 NCAC 59H 10A NCAC 27E 10A NCAC 27F 10A NCAC 27H 15A NCAC 05A 15A NCAC 05B 15A NCAC 05C 15A NCAC 05F 15A NCAC 05G	04 NCAC 06 10A NCAC 01 15A NCAC 01D 15A NCAC 01E	10A NCAC 71 21 NCAC 04 21 NCAC 31	10A NCAC 27I 10A NCAC 28A 13 NCAC 14 15A NCAC 01C 15A NCAC 13A 15A NCAC 13B 15A NCAC 13C	07 NCAC 01 07 NCAC 02 07 NCAC 03 07 NCAC 05 07 NCAC 06 07 NCAC 07 07 NCAC 08 07 NCAC 09 07 NCAC 10 07 NCAC 11 07 NCAC 12 10A NCAC 13B 12 NCAC 10
June 2017	July 2017	August 2017	September 2017	October 2017
04 NCAC 02T 15A NCAC 07O 17 NCAC 05 21 NCAC 25 21 NCAC 26	02 NCAC 29 02 NCAC 31 02 NCAC 39 02 NCAC 43A 02 NCAC 43B 02 NCAC 43C 02 NCAC 43D 02 NCAC 43E 02 NCAC 43G 02 NCAC 43L 02 NCAC 43M 02 NCAC 53 02 NCAC 58 21 NCAC 54 24 NCAC 01	04 NCAC 12 10A NCAC 70J 10A NCAC 70L 10A NCAC 70M 10A NCAC 70N 10A NCAC 70O 12 NCAC 11 21 NCAC 57	04 NCAC 03 10A NCAC 43A 10A NCAC 43B 10A NCAC 43F	10A NCAC 13C 10A NCAC 42 10A NCAC 43D 10A NCAC 44 15A NCAC 02K 18 NCAC 02 18 NCAC 12
November 2017	December 2017	January 2018	February 2018	March 2018
01 NCAC 38 01 NCAC 39 01 NCAC 40 01 NCAC 43 01 NCAC 44	10A NCAC 41A 10A NCAC 41B 10A NCAC 41D 10A NCAC 41E 10A NCAC 41F	10A NCAC 13F 10A NCAC 28B 10A NCAC 28C 15A NCAC 07A 15A NCAC 07H	01 NCAC 41B 04 NCAC 19 15A NCAC 02L 15A NCAC 02N 15A NCAC 02O	21 NCAC 58 21 NCAC 68

10A NCAC 14A 10A NCAC 14G 10A NCAC 14H 11 NCAC 08 14B NCAC 08 14B NCAC 09 14B NCAC 10 14B NCAC 11 14B NCAC 12 14B NCAC 13 14B NCAC 14 21 NCAC 39	10A NCAC 41G 15A NCAC 03 15A NCAC 10B 15A NCAC 10C	15A NCAC 07I 15A NCAC 07J 15A NCAC 07K 15A NCAC 07L 15A NCAC 07M	15A NCAC 02P	
April 2018	May 2018	June 2018	July 2018	August 2018
10A NCAC 26C 10A NCAC 27C 10A NCAC 28D 10A NCAC 28E 11 NCAC 12 15A NCAC 22 15A NCAC 28 21 NCAC 19	01 NCAC 06 01 NCAC 30 13 NCAC 01 13 NCAC 04 13 NCAC 05 13 NCAC 06 13 NCAC 13 13 NCAC 16 13 NCAC 17 13 NCAC 18 13 NCAC 19 21 NCAC 33 21 NCAC 36	21 NCAC 07 21 NCAC 34 21 NCAC 46	19A NCAC 03	12 NCAC 07 20 NCAC 02 21 NCAC 48 21 NCAC 65 21 NCAC 66
September 2018	October 2018	November 2018	December 2018	January 2019
02 NCAC 09L 02 NCAC 34 04 NCAC 16	10A NCAC 13K 10A NCAC 41H 17 NCAC 04 18 NCAC 08 18 NCAC 11 21 NCAC 40	10A NCAC 14C 11 NCAC 05 11 NCAC 07 15A NCAC 18A	01 NCAC 41A 01 NCAC 41C 01 NCAC 41D 01 NCAC 41E 10A NCAC 13G 10A NCAC 41C 15A NCAC 01O 15A NCAC 02G 15A NCAC 02I 15A NCAC 02J 15A NCAC 10A 15A NCAC 10D 15A NCAC 10E 15A NCAC 10G 15A NCAC 10I 15A NCAC 10J 15A NCAC 10K 15A NCAC 18B 15A NCAC 27	02 NCAC 46 02 NCAC 48A 02 NCAC 48B 02 NCAC 52J 02 NCAC 61 11 NCAC 01 11 NCAC 04 11 NCAC 17 15A NCAC 18A, Sections .0100, .0300 - .0900 and .3400
February 2019	March 2019	April 2019	May 2019	June 2019
04 NCAC 20 21 NCAC 03 21 NCAC 10 21 NCAC 16 21 NCAC 53 21 NCAC 56	12 NCAC 09 17 NCAC 07	15A NCAC 11 15A NCAC 14	04 NCAC 10 10A NCAC 27G	10A NCAC 14E 10A NCAC 28F 10A NCAC 28G 10A NCAC 28H 10A NCAC 28I 10A NCAC 29C 10A NCAC 29D

(b) The report shall be filed in accordance with Rule .0203 of this Chapter.

History Note: Authority G.S. 150B-21.3A;
Eff. April 1, 2014.