

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: 911 Board

RULE CITATION: 09 NCAC 06C .0111, .0112, .0113, .0114, .0205, and .0216.

RECOMMENDED ACTION:

- X Note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

At its January 2016 meeting, the Commission objected to the six above-referenced rules submitted by the 911 Board.

The Commission objected to Rules 09 NCAC 06C .0111, .0112, .0113, .0114, .0205, and .0216, finding the agency failed to comply with the Administrative Procedure Act because they were not published in the NC Register for the public comment period required by G.S. 150B-21.2.

The Board published these Rules in the February 1, 2016 NC Register. The comment period will end April 1, 2016. The Commission will review these Rules after the public comment period ends and the agency adopts them.

Therefore, there is no action for the Commission to take at this time.



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6700

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

January 21, 2016

Teresa Bank
NC Department of Information Technology
Sent via email to Teresa.Bank@nc.gov

Re: Objection to Rules 09 NCAC 06C .0105, .0106, .0107, .0111, .0112, .0113, .0114, .0205, .0216, .0302, .0303, and .0304.

Dear Ms. Bank:

At its meeting today, the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

The Commission objected to Rules .0111, .0112, .0113, .0114, .0205, and .0216, finding the agency failed to comply with the Administrative Procedure Act because the rules were not published in the NC Register for the public comment period required by G.S. 150B-21.2. The Commission is aware that the Board has submitted these Rules for publication in the February 1, 2016 Register.

The Commission also objected to Rule .0112 because as the Rule was originally submitted, the Board proposed to respond requests for declaratory ruling outside of the timeline set forth in G.S. 150B-4. Therefore, the Commission found that the Board did not have the statutory authority to change the timeline set forth in statute.

The Commission objected to Rules .0107, .0302, .0303, and .0304, finding the Board lacked statutory authority to require CMRS providers to submit a plan for preapproval of all reimbursable costs. Further, the Commission found the Board does not have the authority to require submission of records to prove that costs were incurred. These requirements exceed the requirements of G.S. 62A-45.

The Commission objected to Rules .0105 and .0106 for ambiguity. Specifically, Paragraph (c) of both rules state that the Board "may, in its discretion, file a complaint with any other regulatory body exercising jurisdiction." There is no guidance in the rule as to when this may occur and therefore, the Rules are ambiguous.

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
919/431-3000
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Clerk's Office
919/431-3000
fax: 919/431-3100

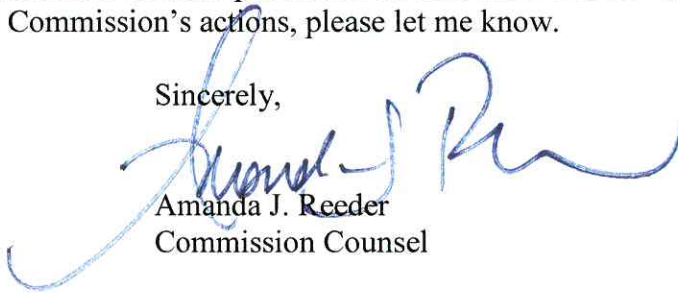
Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
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The Commission also objected to Rule .0106 for lack of statutory authority, as Paragraph (d) states that the Board may suspend disbursements of a PSAP that is not compliant with the statutes, rules, or requirements of an FCC order. However, G.S. 62A-48 states that the Board is required to suspend disbursements under these circumstances. Therefore, the Commission found that the Board does not have authority for the Rule as submitted.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

A handwritten signature in blue ink, appearing to read "Amanda J. Reeder", is written over the typed name and title.

Amanda J. Reeder
Commission Counsel



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6700

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

December 17, 2015

Teresa Bank
NC ITS

Sent via email to Teresa.Bank@nc.gov

Re: Extension of the Period of Review 09 NCAC 06C

Dear Ms. Bank:

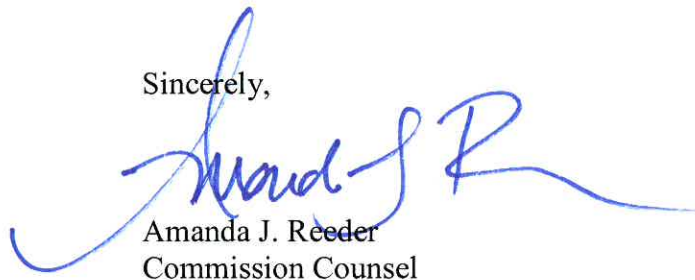
At its meeting this morning, the Rules Review Commission extended the period of review for the above-captioned rules in accordance with G.S. 150B-21.10. They did so because the Board did not submit rewritten rules in the timeframe set forth in Rule 26 NCAC 05 .0108. Therefore, the Commission did not have before it all information necessary to approve or object to the Rules.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days.

The Commission anticipates reviewing the rules at its January 21, 2016 meeting.

Should you have any questions regarding the Commission's actions, please let me know.

Sincerely,



Amanda J. Reeder
Commission Counsel

Administration
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fax: 919/431-3100

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Civil Rights
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REQUEST FOR TECHNICAL CHANGE

AGENCY: 911 Board

RULE CITATION: 09 NCAC 06C, All Rules Submitted

DEADLINE FOR RECEIPT: Friday, December 11, 2015

NOTE WELL: *This request when viewed on computer extends 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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

All of these Rules are adoptions. Therefore, you will not have any highlighting to reflect changes made to these Rules after publication. Please follow Rule 26 NCAC 02C .0405(b)(1) to reflect changes made after publication.

Further, please be sure next you are showing all changes made to if the Rules from the text that was published. There are changes that were made post-publication that are not reflected here. Some are pointed out in the text of the Request for Technical Change, but you need to be sure that you are comparing the current text to what was actually published for all Rules.

Please note, where you have adopted the Rule as a different Rule number, please state the deleted number, the new number and the name of the Rule as it currently is. Therefore, for Rule .0103, it's "09 NCAC ~~.0402~~ .0103 Definitions." I have noted this for many Rules in the Request for Technical Changes, but where I did not, please do still make this change.

Please confirm that you intend the Rules to become effective July 1, 2016.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: November 30, 2015

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: 911 Board

RULE CITATION: 09 NCAC 06C .0111 - .0114

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☐ Unclear or ambiguous
 - ☐ Unnecessary
- ☒ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff recommends objection to these Rules because they were not adopted in compliance with G.S. 150B, Article 2A. The text of these Rules were not published in the NC Register and the public did not have an opportunity to comment on them.

Staff notes that the 911 Board published one rule regarding declaratory rulings in the NC Register. The text stated:

09 NCAC 06C .0108 DECLARATORY RULINGS

(a) Any request for a determination regarding the application of a relevant rule, statute or rule established by the 911 Board to a specific factual situation must be directed to the Board Chair or Executive Director at the address in Rule .0102 of this Section. The request for a ruling will follow this Rule and Rules .0109 through .0112 of this Section. A declaratory ruling proceeding may include written submissions, an oral hearing, or other procedure determined by the Board as may be appropriate in the circumstances of the particular request.

(b) Declaratory rulings pursuant to G.S. 150B-4 shall be issued by the Board only on the validity or applicability of a relevant statute, rule or order of the Board to stipulated facts. A declaratory ruling shall not be issued on a matter requiring an evidentiary proceeding.

(c) As used in this Rule and Rules .0109 through .0112, "standard" shall refer to and include such standards, policies and procedures adopted by the Board pursuant to authority found in G.S. 62A, Article 3.

(d) A person aggrieved must possess such an interest in the question to be ruled on that the petitioner's need to have such a ruling in order to comply with statutory requirements, these Rules, or standards shall be apparent from the petition and shall be explained therein.

Amanda J. Reeder
Commission Counsel

The Board adopted that Rule, with minor changes, as Rule 09 NCAC 06C .0110. However, all of the language in Rules 09 NCAC 06C .0111 through .0114 is new and details the procedure for requesting the ruling, the guidance the Board will use in determining whether to grant the request, the duration of the ruling, and that records will be kept. These Rules address details that were not published and that there was no notice would be considered by the Board.

Therefore, staff is recommending objection to these four rules for failure to comply with the APA.

REQUEST FOR TECHNICAL CHANGE

AGENCY: 911 Board

RULE CITATION: 09 NCAC 06C .0111

DEADLINE FOR RECEIPT: Friday, December 11, 2015

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (b)(1), line 6, insert a comma after "address"

In (b)(2), line 7, insert a comma after "rule" and delete the "or" before "statute"

In (b)(4), delete or define "concise"

In (c), line 11, when may the Board ask for this information?

In (c)(1), line 12, I suggest stating "... authorities that support the interpretation..." And I assume that is if there are any?

In (c)(2) and (c)(3), what is the Board's authority to request these, especially in light of G.S. 150B-19.1?

End (c)(2), line 15, with a semicolon.

Please remove the extra line space on line 19.

Is (d) necessary? It recites Rule .0110.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: November 30, 2015

09 NCAC 06C .0111 is adopted.

09 NCAC 06C .0111 REQUESTS FOR DECLARATORY RULINGS

(a) Requests for a declaratory ruling shall be in writing and dated.

(b) The request shall contain:

(1) The petitioner's name, address and telephone number;

(2) The rule or statute, or order referred to;

(3) A statement of facts supporting the petitioner's request for a declaratory ruling;

(4) A concise statement of the manner in which the petitioner is aggrieved by the rule, statute, or standard, or its potential application to the petitioner;

(c) The Board may request the following in addition to information required in (b) of this Rule:

(1) A statement of any legal authorities, in support of the interpretation given the statute or rule by the petitioner;

(2) A statement of the practices or procedures likely to be affected by the requested declaratory ruling and the persons likely to be affected by the ruling.

(3) A draft of the declaratory ruling sought by the petitioner, if a specified outcome is sought by the petitioner; and

(4) A statement of whether the petitioner desires to present oral argument.

(d) All requests for declaratory rulings shall be delivered to the Board at the address listed in .0102 of this Section.

History Note: Authority G.S. 62A-42; 150B-4;

Eff. July 1, 2016.

RRC STAFF OPINION

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AGENCY: 911 Board

RULE CITATION: 09 NCAC 06C .0112

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☐ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff recommends objecting to this Rule based upon a lack of statutory authority, in addition to a failure to comply with the APA as reflected in the earlier Staff Opinion.

In Paragraph (b), it appears that the Board is proposing to respond to persons aggrieved petitioning for a declaratory ruling under G.S. 150B-4 within 45 days. This timeline extends the timeframe set forth in the statute. The statute requires an agency to respond to such a request within 30 days to either grant or deny it. If the petition is granted, the agency has 45 days to issue the ruling after granting the petition. Here, the agency states that it will respond by granting the petition and issuing the ruling within 45 days, or it will deny the request within 45 days. Staff believes that the Board does not have statutory authority to extend the deadline to deny the petition from 30 days to 45 days.

G.S. 150B-4(a1) states:

(a1) An agency shall respond to a request for a declaratory ruling as follows:

- (1) Within 30 days of receipt of the request for a declaratory ruling, the agency shall make a written decision to grant or deny the request. If the agency fails to make a written decision to grant or deny the request within 30 days, the failure shall be deemed a decision to deny the request.

Amanda J. Reeder
Commission Counsel

(2) If the agency denies the request, the decision is immediately subject to judicial review in accordance with Article 4 of this Chapter.

(3) If the agency grants the request, the agency shall issue a written ruling on the merits within 45 days of the decision to grant the request. A declaratory ruling is subject to judicial review in accordance with Article 4 of this Chapter.

(4) If the agency fails to issue a declaratory ruling within 45 days, the failure shall be deemed a denial on the merits, and the person aggrieved may seek judicial review pursuant to Article 4 of this Chapter. Upon review of an agency's failure to issue a declaratory ruling, the court shall not consider any basis for the denial that was not presented in writing to the person aggrieved.

REQUEST FOR TECHNICAL CHANGE

AGENCY: 911 Board

RULE CITATION: 09 NCAC 06C .0112

DEADLINE FOR RECEIPT: Friday, December 11, 2015

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Subparagraphs (a)(1) and (3) are very similar. Why do you need them both?

Isn't the circumstance in (a)(2) included in (a)(5)?

In (a)(4), what is "specificity"? And will the Board not request additional information under Rule .0111 to address this?

In (b), this is not the correct timeframe under G.S. 150B-4.

On line 25, since the Board "may" take this action, when will it not? Some guidance needs to be contained in this Rule.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: November 30, 2015

09 NCAC 06C .0112 is adopted.

09 NCAC 06C .0112 RESPONSE TO A REQUEST FOR A DECLARATORY RULING

(a) The Board shall consider the request within 30 days of receipt. The Board shall issue a ruling except:

- (1) When the Board finds that the person making the request is not a "person aggrieved," as defined in G.S. 150B-2(6);
- (2) When the Board finds, in a request concerning the validity of a rule, that the rulemaking record shows that the agency considered all factors identified by the petitioner as specific or relevant when the rule in question was adopted;
- (3) When the Board finds that the person requesting the ruling is not directly or indirectly affected substantially in his person, property, or public office or employment by the rule, statute, or order of the Board which is the subject of the request;
- (4) When the petition does not state with enough specificity the factual situation involved, or the question is presented in such a manner that the Board cannot determine what the question is, or that the Board cannot respond with a specific ruling that shall be binding on all parties;
- (5) When the Board has made a determination in a similar contested case, or where the factual context being raised for a declaratory ruling was specifically considered upon the adoption of the rule or directive being questioned, as evidenced by the rulemaking record; or
- (6) Where the subject matter of the request is involved in pending litigation or contested case in any state or federal court in North Carolina.

(b) The Board shall, not later than the 45th day after receiving such a request, deposit in the United States mail, postage prepaid, a written statement addressed to the person making the request and setting forth the ruling on the merits of the request for a declaratory ruling, or setting forth the reason the ruling was not made, as the case may be. The Board may rule at any meeting convened to consider the request, or defer the ruling until a later date, but not later than the 45th day after the request for a ruling is received. The Board may gather additional information, may give notice to other persons and may permit such other persons to submit information or arguments under such conditions as are set forth in any notice given to the requesting party.

*History Note: Authority G.S. 62A-42; 150B-4;
Eff. July 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: 911 Board

RULE CITATION: 09 NCAC 06C .0113

DEADLINE FOR RECEIPT: Friday, December 11, 2015

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

The name of the Rule is not subject to RRC review, so this is only a suggestion – wouldn't a better name be "Duration of a Declaratory Ruling"?

In Item (1), do you mean to include order?

In Item (2), when will this happen? When there's another petition that affects it, or just of their volition?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: November 30, 2015

09 NCAC 06C .0113 is adopted.

09 NCAC 06C .0113 EFFECT OF A DECLARATORY RULING

For purposes of this Section, a declaratory ruling shall be deemed to be in effect until:

(1) The portion of the statute or rule interpreted by the declaratory ruling is amended or repealed;

(2) The Board changes the declaratory ruling prospectively; or

(3) Any court sets aside the ruling.

History Note: Authority G.S. 62A-42; 150B-4;

Eff. July 1, 2016.

REQUEST FOR TECHNICAL CHANGE

AGENCY: 911 Board

RULE CITATION: 09 NCAC 06C .0114

DEADLINE FOR RECEIPT: Friday, December 11, 2015

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Just so I understand – these will not be on the website?

On line 5, does your regulated public know what “business hours” are?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: November 30, 2015

09 NCAC 06C .0114 is adopted.

09 NCAC 06C .0114 RECORD OF RULING

A record of all declaratory ruling proceedings shall be maintained at the Board's office and shall be available for public inspection during business hours.

History Note: Authority G.S. 62A-42; 150B-4;

Eff. July 1, 2016.

RRC STAFF OPINION

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AGENCY: 911 Board

RULE CITATION: 09 NCAC 06C .0205

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
- X Failure to comply with the APA
- Extend the period of review

COMMENT:

Staff recommends objection to this Rule because Paragraph (b) was not adopted in compliance with G.S. 150B, Article 2A. It appears that the requirement for annual testing of the Comprehensive Emergency Management Plan (CEMP) contained in that Paragraph was not published in the NC Register and the public did not comment on them.

Staff notes that while this Rule was not published in the NC Register, all of the plan requirements set forth in Paragraph (a) and annual testing for each component plan set forth in Paragraph (b) of this Rule were contained in rules that the 911 Board published that mention or address the CEMP in the NC Register.

Those proposed rules were:

09 NCAC 06C .0208 (adopted by the Board as Rule 06C .0210):

(a) General.

- (1) Any Primary PSAP, Backup PSAP, and Secondary PSAP that receives 911 Funds from the NC 911 Board shall comply with all NC 911 Board Rules.
- (2) All equipment, software, and services used in the daily operation of the PSAP shall be kept in working order at all times.
- (3) The PSAP shall be provided with an alternate means of communication that is compatible with the alternate means of communication provided at the Emergency Response Facilities (ERFs).
 - (A) The alternate means of communication shall be readily available to the telecommunicator in the event of failure of the primary communications system.

Amanda J. Reeder
Commission Counsel

- (B) Telecommunicators shall be trained and capable of using the alternate means of communication in the event of failure of the primary communications system.
- (4) Each PSAP shall maintain a Backup PSAP or have an arrangement for backup provided by another PSAP. Agencies may also pool resources and create regional backup centers.
 - (A) The Backup PSAP shall be capable, when staffed, of performing the emergency functions performed at the primary PSAP.
 - (B) The Backup PSAP shall be separated geographically from the primary PSAP at a distance that ensures the survivability of the alternate center.
 - (C) Each PSAP shall develop a formal written plan to maintain and operate the Backup PSAP or if backup is provided by another PSAP a formal written plan that defines the duties and responsibilities of the alternate PSAP.
 - (i) The plan shall include the ability to reroute incoming emergency 911 call traffic to the backup center and to process and dispatch emergency 911 calls at that center.
 - (ii) The plan shall be included in the Comprehensive Emergency Management Plan (CEMP).
- (5) The PSAP shall be capable of continuous operation long enough to enable the transfer of operations to the Backup PSAP in the event of an emergency in the PSAP or in the building that houses the PSAP.
- (6) Systems that are essential to the operation of the PSAP shall be designed to accommodate peak workloads.
- (7) PSAPs shall be designed to accommodate the staffing level necessary to operate the center as required by the Rules set herein.
- (8) The design of the PSAP shall be based on the number of personnel needed to handle peak workloads as required by the Rules set herein.
- (9) Each PSAP shall have a written Comprehensive Emergency Management Plan (CEMP).
- (10) Emergency Fire Plan. There shall be a local management approved, written, dated, and annually tested emergency fire plan that is part of the CEMP.
- (11) Damage Control Plan. There shall be a local management approved, written, dated, and annually tested damage control plan that is part of the CEMP.
- (12) Backup Plan. There shall be a local management approved, written, dated, and annually tested backup PSAP plan that is part of the CEMP and approved by the NC 911 Board.
- (13) Penetrations into the PSAP shall be limited to those necessary for the operation of the center.

09 NCAC 06C .0209 (adopted by the Board as Rule 06C .0211):

(d) 911 Emergency Number Alternative Routing.

- (1) PSAPs shall maintain a written plan as part of the Comprehensive Emergency Management Plan (CEMP) for rerouting incoming calls on 911 emergency lines when the center is unable to accept such calls.
- (2) The PSAP shall practice this plan at least once annually.

The Board published other rules that addressed or required a CEMP. Those rules were:

09 NCAC 06C .0102 (Adopted by the Board as Rule 06C .0103):

(h) "Comprehensive Emergency Management Plan (CEMP)" means a disaster recovery plan that conforms to guidelines established by the Public Safety Answering Point and is designed to address natural, technological, and man-made disasters.

09 NCAC 06C .0207 (Adopted by the Board as Rule 06C .0209):

- (11) Standard operating procedures shall include but not be limited to the following:
 - (C) Procedures related to the CEMP
- (12) Every PSAP shall have a comprehensive regional emergency communications plan as part of the CEMP.

Staff recognizes that the concept of a CEMP was published and that the requirements in Paragraph (a) were published in Rule 09 NCAC 06C .0208(a)(9) through (12), highlighted above. In addition, the annual testing requirement for each component required by Paragraph (b) of this Rule was published in that Rule. It also appears that Rule 09 NCAC 06C .0209 required the annual testing of the back-up rerouting procedures. (Please note, that language was not adopted by the Board in the current version of Rule 09 NCAC 06C .0209, which is now .0211.)

Therefore, staff recommends objection to this Rule for failure to comply with the APA for the annual testing requirement for the CEMP in Paragraph (b) of the Rule, which was required without any public notice.

REQUEST FOR TECHNICAL CHANGE

AGENCY: 911 Board

RULE CITATION: 09 NCAC 06C .0205

DEADLINE FOR RECEIPT: Friday, December 11, 2015

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Please amend the Submission for Permanent Rule form and Introductory Statement to reflect that portions of the Rule was published as .0208(a)(9) – (12) and .0209(d).

Please end (a)(1) and (2) with semicolons, not commas.

In (b), are the “component” plans the plans in (a)(1) through (3)? Is the term “component plan” known to your regulated public? If not, I recommend stating “The PSAP shall test the plans in Paragraph (a) and the CEMP...”

Also, on line 9, generally “at least” is not favored in rules, as rules set the minimum standard. Do you need to retain it here?

In the History Note, why are you citing to G.S. 62A-49?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: November 30, 2015

09 NCAC 06C .0205 is adopted.

09 NCAC 06C .0205 COMPREHENSIVE EMERGENCY MANAGEMENT PLAN (CEMP)

(a) Each PSAP shall have a written Comprehensive Emergency Management Plan (CEMP) that includes:

(1) An emergency fire plan,

(2) A damage control plan, and

(3) A back-up PSAP plan that includes alternate 911 call routing conforming to 47 C.F.R. 20.18 and
G.S. 62A-49.

(b) The PSAP shall test each component plan and the CEMP at least once annually.

History Note: Authority G.S. 62A-42; 62A-46; 62A-49; 47 C.F.R. 20.18;

Eff. July 1, 2016.

- 1 ~~(B)~~ The system shall, upon Upon detection of faults or failures, the system shall send an
2 appropriate message consisting of visual and audible indications, indications to personnel
3 designated by the PSAP.
- 4 ~~(3)~~ The system shall provide A a log of system messages and transactions, transactions shall be
5 generated and maintained.
- 6 ~~(4)~~ A spare display screen, pointing device, and keyboard shall be available in the PSAP for immediate
7 change-out.
- 8
- 9 ~~(b) Secondary Method.~~
- 10 ~~(4)(b)~~ A PSAPS shall maintain a secondary CAD method shall be provided and shall be available for use
11 in the event of a failure of the CAD system.
- 12 ~~(e) Security.~~
- 13 ~~(1)~~ CAD systems shall utilize different levels of security to restrict unauthorized access to sensitive and
14 critical information, programs, and operating system functions.
- 15 ~~(2)~~ The PSAP shall have the ability to control user and supervisor access to the various security levels.
- 16 ~~(3)~~ Physical access to the CAD system hardware shall be limited to authorized personnel as determined
17 by the PSAP.
- 18 ~~(4)(c)~~ Operation of the CAD system software shall be limited to authorized personnel by log-on/password
19 control, workstation limitations, or other means as required by the PSAP.
- 20 ~~(5)(d)~~ The PSAP shall provide network isolation necessary to preserve bandwidth capacity for the efficient
21 operation of the CAD system and processing of emergency 911 calls.
- 22 ~~(A)~~ The CAD system shall provide measures to prevent denial of service attacks and any other
23 undesired access to the CAD portion of the network.
- 24 ~~(B)~~ The CAD system shall employ antivirus software where necessary to protect the system
25 from infection.
- 26 ~~(d) Emergency 911 call Data Exchange.~~
- 27 ~~(4)(e)~~ The CAD system should shall have the capability to allow emergency 911 call data exchange
28 between the CAD system and other CAD systems, systems, and between the CAD system and other
29 systems.
- 30 ~~(2)~~ The CAD system should have the capability to allow data exchange between the CAD system and
31 other systems.
- 32 ~~(e) CAD Capabilities.~~
- 33 ~~(1)~~ The installation of a CAD system in emergency service dispatching shall not negate the
34 requirements for a secondary dispatch circuit.
- 35 ~~(2)~~ The PSAP shall provide software that is for or part of the CAD system that will provide data entry;
36 resource recommendations, notification, and tracking; store records relating to all emergency 911
37 calls and all other calls for service and status changes; and track those resources before, during, and

1 after emergency calls, preserving records of those emergency 911 calls and status changes for later
2 analysis.

3 (A) The PSAP shall put in place safeguards to preserve the operation, sustainability, and
4 maintainability of all elements of the CAD system in the event of the demise or default of
5 the CAD supplier.

6 (B) The system applications shall function under the overall control of a standard operating
7 system that includes support functions and features as required by the PSAP.

8 (f) Computer Aided Dispatch (CAD) Performance configurations shall include:

9 (1) The CAD system shall recommend Recommending units for assignment to calls.

10 (A) The CAD system shall ensure Ensuring that the optimum response units are selected.

11 (B) The CAD system shall allow Allowing the telecommunicator to override the CAD
12 recommendation for unit assignment.

13 (C) The CAD system shall have the ability to prioritize all system processes so that emergency
14 operations take precedence.

15 (2) The CAD system shall detect Detecting and reporting errors, faults or failures.

16 (A) The CAD system shall automatically perform all required reconfiguration as a result of
17 errors, faults or failures.

18 (B) The CAD system shall queue a notification message to the supervisor and any designated
19 telecommunicator positions.

20 (3) Under all conditions, the CAD system response time shall not exceed 2 seconds, measured from the
21 time a telecommunicator completes a keyboard entry to the time of full display of the system
22 response at any position where a response is required.

23 (4) The CAD system shall be available and fully functional 99.95 percent of the time, excluding planned
24 maintenance.

25 (5) (3) The CAD system shall include automatic power-fail recovery capability.

26
27 History Note: Authority G.S. 62A-42;

28 Eff. July 1, 2016.

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: 911 Board

RULE CITATION: 09 NCAC 06C .0216

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☒ Failure to comply with the APA
 - ☐ Extend the period of review

COMMENT:

Staff recommends objecting to this Rule for failure to comply with the APA, as it was not published in the NC Register and the public was not given an opportunity to comment on the Rule. Staff is not aware that the agency published any notice that it would conduct these reviews in the rules published in the NC Register.

In addition, staff believes as written, the Rule is ambiguous. The Board will conduct reviews of PSAP operations, but it does not state when the reviews will occur, if notice will be given prior to that review, what will happen if the PSAP fails to correct the deficiency, or the timeframe the PSAP will have to do so.

REQUEST FOR TECHNICAL CHANGE

AGENCY: 911 Board

RULE CITATION: 09 NCAC 06C .0216

DEADLINE FOR RECEIPT: Friday, December 11, 2015

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 5, and (b), line 7, "Rules" should be capitalized.

When will this review take place? In response to a complaint, on a schedule, or whenever the Board determines to do it? Will there be notice?

So that I understand, this assessment will only occur for ensuring compliance with the rules in Section .0200?

What will the report include? Deficiencies and the remedy? If so, why not combine (b) and (c)?

In the History Note, please correct the citation to "62A-46(a)(4); 62A-46(a)(5)"

In the History Note, why are you citing to G.S. 62A-42(a)(5)? That part of the statute states:

§ 62A-42. Powers and duties of the 911 Board.

(a) Duties. - The 911 Board has the following powers and duties:

(5) To investigate the revenues and expenditures associated with the operation of a PSAP to ensure compliance with restrictions on the use of amounts distributed from the 911 Fund.

Is this to address the financial report required by Rule .0204?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: November 30, 2015

09 NCAC 06C .0216 is adopted.

09 NCAC 06C .0216 ASSESSING PSAP OPERATIONS

(a) The Board shall conduct reviews of PSAP operations to determine whether a PSAP meets Section .0200 of these rules.

(b) A written report shall be provided to a PSAP within seven calendar days of the date of review. The report shall state any deficiencies that identify a failure to fulfill Section .0200 of these rules.

(c) The report shall include procedures to remediate deficiencies.

History Note: Authority G.S. 62A-42(A)(4), (5);

Eff. July 1, 2016.