



North Carolina Department of Public Safety

Prevent. Protect. Prepare.

Pat McCrory, Governor

Frank L. Perry, Secretary

May 26, 2016

Amanda J. Reeder
Commission Counsel
Office of Administrative Hearings- Rules Division
Sent via email to Amanda.Reeder@oah.nc.gov

Re: Objection to Rule 14B NCAC 03 .0104

Dear Ms. Reeder:

This is in response to your letter dated May 19, 2016, as required under G.S. 150B-21.12. The Division of North Carolina Emergency Management concurs with the Rule Review Commission's finding that the proposed amendment to the text and the entire text of the current 14B NCAC 03 .0104 is not a rule as defined in G.S. 150B-2(8a).

Thank you for your assistance in this matter.

Sincerely,

William M. Polk
Assistant General 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

May 19, 2016

Will Polk
Department of Public Safety – Division of Emergency Management
Sent via email to Will.Polk@ncdps.gov

Re: Objection to Rule 14B NCAC 03 .0104

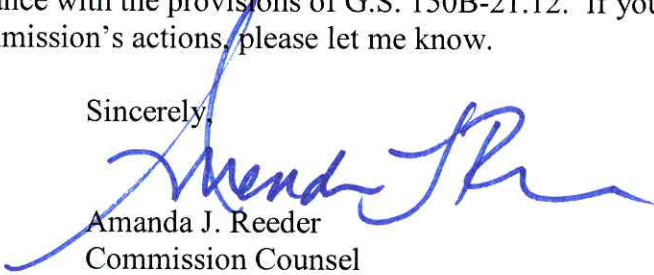
Dear Mr. Polk:

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

The Commission objected to the Rule, finding the agency failed to comply with the Administrative Procedure Act. Specifically, the Commission found that the text presented was not a rule as defined in G.S. 150B-2(8a), as the contents set forth only the internal management of the agency and does not affect the procedural or substantive rights of anyone outside of the agency. Therefore, pursuant to G.S. 150B-2(8a)(a), the Commission found that this was not a rule.

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,


Amanda J. Reeder
Commission Counsel

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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: Department of Public Safety – Division of Emergency Management

RULE CITATION: 14B NCAC 03 .0104

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 this Rule based upon failure to comply with the APA, as the language contained in the Rule is not a rule.

G.S. 150B-2(8a) defines the term "rule" as follows:

(8a) "Rule" means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. **The term does not include the following:**

The definition of "rule" expressly excludes the following:

- a. **Statements concerning only the internal management of an agency** or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, **if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.**

The language contained within this Rule only addresses the internal organization of the Division of Emergency Management. The Rule does not appear to affect the rights of anyone who is not employed by the agency. Further, this Rule appears to only set internal policy and organization of the employees of the Division.

Amanda J. Reeder

Commission Counsel

Staff notes that this Rule was last amended in 1983, which predates G.S. 150B. G.S. 150B Article 2A only applies to rules, not internal policies. The Rules Review Commission only has authority to review rules under Article 2A. Therefore, staff does not believe that this language complies with the APA, because it is not a rule.

Therefore, staff recommends objection to this Rule for failure to comply with the APA.

*Amanda J. Reeder
Commission Counsel*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Public Safety – Division of Emergency Management

RULE CITATION: 14B NCAC 03 .0104

DEADLINE FOR RECEIPT: Tuesday, May 10, 2016

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 follow the formatting requirements of Rule 26 NCAC 02C .0108, namely:

- 1.5 line spacing;
- Start line numbers over at 1 for each page; and
- Page numbers centered at the bottom of the page

Please follow the requirements in Rule 26 NCAC 02C .0404 and properly phrase the Introductory Statement. You need to state the volume and issue and page of the publication in the NC Register, as well as the action taken.

Why do you need this Rule? See G.S. 150B-2(8a):

(8a) "Rule" means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. **The term does not include the following:**

- a. **Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.**

This Rule doesn't seem to have any use outside of the internal organization.

Assuming you need to retain this Rule:

In (a), line 4, capitalize "Division of Emergency Management."

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 26, 2016

On line 6, capitalize "Division"

On line 7, capitalize "State"

On line 7, capitalize "Director"

In (b), line 9, capitalize "Division"

In (b) and throughout the rest of the Rule, should the name of the sections be capitalized? And the use of "Section" in lieu of the full name?

On line 12, shouldn't "Deputy Director" be capitalized?

In (c), line 17, please insert a comma after "activations"

Also on line 17, should "Emergency Operations Center" be capitalized?

On line 18, please insert a comma after "assigns"

In (d), line 26, capitalize "Division of Emergency Management" or just state "Division"

On line 27, insert a comma after "implementation"

Alternatively, why not break this further down into Subparagraphs, stating, "This includes:

(1) research;

(2) development;...

On line 28, if you want to retain parenthesis, please state "such as hurricanes, tornadoes..." and delete "etc."

On line 29, please state "(such as dam failure..." using proper formatting pursuant to Rule 26 NCAC 02C .0405.

On line 32, I believe "short-term" and "long-term" are hyphenated, since they are modifying "plans"

In (e), line 37, capitalize "Division's"

On line 37, delete "but is not limited to the following;"

Break this Paragraph down further into Subparagraphs.

On line 39, state "non-fixed assets"

On line 39, define "minimal"

On lines 39 and 40, define "large scale"

On line 41, should "Section" be capitalized?

On line 41, "long-term" should be hyphenated.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 26, 2016

On line 42, how is “as needed” determined? Who makes this determination?

In (f), line 45, so that I understand, the function is “plans and coordinate recovery activities”? That is a function? Should it be “plan and coordinate” or “plans and coordinates”?

On line 47, what is “normalcy after a disaster”? Does your regulated public know?

On line 47, define “immediate”

On line 48, what are “essential services”? Does your regulated public know? Does it include electricity, telephone, and internet?

On line 51, define “necessary and appropriate”

In (g), lines 54-55, and Page 2, line 56, “Risk Management” is capitalized, but it’s not in the rest of the Paragraph.

On line 53, replace “plans, implements, and manage” with “planning, implementing, and managing”

On line 53, define “efficient and effective”

On Page 2, line 56, put the period on the inside of the quotation marks after “threats.”

On line 56, what do you mean by “works towards”?

On line 58, define “broad critical”

On lines 60 through 64, indent these Subparagraphs. You published these as indented in the NC Register, so you do not need to show it as a change.

Please end each Subparagraph with a semicolon, not commas. Since you published with commas, you’ll need to show this as a change.

On line 62, define “efficient”

On line 63, capitalize “State” and insert a comma after the term.

On line 64, state “the information...”

In (h), lines 67 and 69, capitalize “Division Director”

On line 67, capitalize “Division”

On line 69, HR will process monthly vehicle and telephone billing, or the administrative branch? State who is doing this.

On line 70, it appears you are missing a word or words. “During activation of the state emergency operations center provides support...”? What are you trying to say here?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 26, 2016

On line 72, “vendors” is misspelled.

On line 72, should “Department” and “Accounts Payable” be capitalized? Are you missing words here? Should it be “the Department’s Accounts Payable,”?

On line 73, you switch your verb tenses from “-ing” (reviewing, processing) to “-s” (monitors, work). I prefer the use of “-ing,” but you need to be consistent.

On line 74, capitalize “Department”

On line 74, please insert a comma after “center” and who collects and provides? State this in the Rule.

On line 76, capitalize “State”

On line 76, state who is responsible for submitting Division expenditures, and capitalize “Division”

In (i), line 79, define “knowledgeable”

On line 79, insert a comma after “events”

On line 80, define “timely” and “accurate”

On line 85, state “shall set up”

Also on line 85, strike the hyphen after “drills” and replace it with a comma.

On line 86, I take it the drill will only affect NC residents and be within the NC jurisdictional authority?

In (j), isn’t this already addressed by Rule .0101? If not, wouldn’t this information work better there?

On line 88, delete the comma after “who”

On line 89, insert a comma after “officials”

On line 91, state “coordination centers, and shall receive resource requests, deploy regional assets, and track State resources...”

What are “resource requests” and “regional assets”?

On line 98, at the bottom of the History Note, you need to add an amended effective date as “Amended Eff.”

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: April 26, 2016

1 14B NCAC 03 .0104 is proposed for amendment as follows:

2
3 **14B NCAC 03 .0104 ORGANIZATION**

4 (a) The division of emergency management is headed by a director who, under the direction of the ~~Deputy~~
5 ~~Secretary~~ Commissioner of Law Enforcement of the Department of ~~Crime Control and Public Safety~~, supervises and
6 controls the activities of the division and assists in the coordination of the emergency preparedness activities of all
7 state departments and agencies. The director provides assistance, guidance, and coordination to county and
8 municipal governments in developing and maintaining emergency plans and organizations.

9 (b) The division is subdivided into the ~~emergency preparedness operations section~~, the ~~emergency response~~
10 ~~planning and homeland security section~~, the logistics section, the recovery section, risk management section, public
11 affairs office and the administrative support branch. The ~~emergency preparedness operations section is headed by~~
12 ~~the deputy director who supervises the assistant directors of the planning and homeland security section, logistics~~
13 ~~section, recovery section, and risk management sections, and the emergency response section are headed by an~~
14 ~~assistant director~~. The administrative support branch and public affairs office comes under the direction of the
15 director of the division of emergency management.

16 (c) The functions of the ~~emergency preparedness operations section~~ are to manage delivery of State assistance and
17 services in support of local governments. During emergency operations center (EOC) activations the operations
18 section identifies, assigns and manages the resources needed to accomplish the incident objectives. Outside of EOC
19 activation, the operations section coordinates emergency management activities among counties and local
20 governments and plans and prepares for its duties during activations. The operations section consists of three field
21 branch offices, the civil air patrol branch, and the EOC operations branch. plan and train in all aspects of emergency
22 response to include radiological matters. It provides advice to local government officials and emergency
23 management personnel on development of plans, facilities, and training of staff personnel and the general public.

24 (d) The function of the ~~administrative support branch~~ planning and homeland security section manages and
25 coordinates all information and planning functions as they relate to disaster contingency planning and the homeland
26 security grant program planning within the division of emergency management. This includes research,
27 development, coordination, implementation and evaluation of plans and polices focused on natural disasters
28 (hurricanes, tornadoes, flash floods, riverine flooding, storm surge, earthquakes, mudslides, etc.), hazardous
29 materials, nuclear power plants, other radiological/nuclear events, other man-made/technological disasters (dam
30 failure, airplane accidents, search and rescue events, large transportation accidents), weapons of mass destruction,
31 acts of terrorism, and terrorist incidents. The planning and homeland security section coordinates preparation of both
32 strategic (short and long term) and operational (emergency, disaster operations) plans. is to provide support to the
33 division and to local governments in qualifying and applying for federal preparedness funds and programs.

34 (e) The functions of the ~~emergency response section~~ are to develop and implement operating procedures for the
35 state and local emergency operating centers; organize and train the state emergency response team; supervise the
36 area coordinators' activities; and supervise the emergency response efforts of the division logistics section are that
37 they fulfill the division's daily logistics requirements. This includes but is not limited to the following; transportation
38 and distribution (mail, vehicle pools, movement of large items); handling of surplus items and inventory control
39 (both fixed assets and non); warehousing of goods and equipment (including minimal office supplies); large scale
40 contracting; large scale purchasing; training and conference coordination, both internal and external; and exercise
41 coordination, both internal and external. The section also conducts short and long term planning functions and
42 assists facility managers as needed. During EOC activations, the section provides logistical support to the State
43 Emergency Response Team (SERT). The logistics section has three branches: logistics operations, logistics supply,
44 and training and exercise.

45 (f) The functions of the recovery section are plans and coordinate recovery activities among citizens, local
46 governments, and various State and Federal agencies with disaster-related primary and support responsibilities to
47 ensure these entities return to normalcy after a disaster. The section provides immediate assistance to reduce or
48 relieve human suffering and support the restoration of essential services, and it coordinates and directs those
49 operations when local government resources are inadequate or exhausted. The recovery section requests and
50 coordinates assistance from other states, the federal government, and private disaster relief organizations as
51 necessary and appropriate. The recovery section has three branches: public assistance, hazard mitigation, and
52 individual assistance.

53 (g) The functions of the risk management section are plans, implements, and manage the efficient and effective
54 acquisition, management, use, and dissemination of geospatial data, information, and information technology. Risk
55 Management's primary mission is to accomplish the goal of a "prepared and resilient North Carolina from all

hazards and threats”. Risk Management works towards improving the preparedness, incident command, response and recovery of North Carolina’s homeland security, law enforcement, and emergency management policy makers and practitioners from hazards and threats. The risk management section provides three broad critical service functions that support local, state and federal homeland security, emergency management, and law enforcement efforts. These functions are: (1) identification, monitoring, and mapping of vulnerability and consequences from hazards and threats on key infrastructure and key resources, (2) establishment and maintenance of key data exchange and information technology infrastructure and applications for the efficient exchange of communication and data, and (3) management of data acquisition, dissemination, maintenance, and exchange between local, state and federal partners. Risk management consists of four branches: information technology branch, GIS data and manipulation branch, flood warning branch, and floodplain mapping branch

(h) The administrative branch includes elements of human resources and finance. Both units fall under the supervision of the division director. The executive officer for the division supervises both elements. Human resources is responsible personnel services in include hiring, firing, promotions, demotions, reassignments, awards, time keeping and maintaining the division personnel files. Additionally, processes the monthly vehicle and telephone billing. During activation of the state emergency operations center provides support to the logistics section in support of the State Emergency Response Team (SERT). Finance is responsible for processing invoices from venders for payment and forwarding to department account payable, reviewing and approving procurement transactions, monitors the application, submission and closeout of grants awarded to the division, works with the department budget controller sections on issues. During activation of the state emergency operations center collects and provides financial information to the State Emergency Response Team (SERT), Governor’s Office and other state agencies. Responsible for submitting division expenditures to the Federal Emergency Management Agency (FEMA) for federally declared disasters.

(i) The function of the public affairs office is to work to ensure the people of North Carolina are informed and knowledgeable about programs, events and conditions affecting their safety and well-being. The staff works to provide timely and accurate information to news media and to inform the general public of emergency action steps to be taken during natural or man-made disasters. The members of the public affairs office respond to media inquiries, write speeches and press releases, and produce educational materials. Public affairs staff members are available for duty 24 hours a day, seven days a week assisting members of the news media either by phone or at the scenes of incidents. When necessary, public affairs staff prepares and distribute news releases and arrange for news conferences. The public affairs staff sets up a joint information center (JIC) for actual events and drills—to include those relating to the three nuclear plants in North Carolina and one just beyond the border in South Carolina.

(j) The state is divided into ~~six~~ three branches and fifteen geographical areas, each branch is headed by a branch manager and each area of which is headed by an area coordinator who, coordinates the state response to emergencies, provides assistance and guidance to local officials and ~~coordinators~~ coordinates in planning and testing plans for emergency services during times of disaster. During disasters, the branch offices serve as regional coordination centers; receiving resource requests, deploying regional assets and tracking state resources to support local government.

*History Note: Authority G.S. 143B-10; ~~143B-474~~ 143B-601; ~~166A-5~~ 166A-19.12;
Eff. December 1, 1979;
Amended Eff. July 1, 1983;
Transferred from 14A NCAC 04 .0104 Eff. June 1, 2013.
Eff. _____.*