

## 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: Commission for Public Health

RULE CITATION: 10A NCAC 43G .0108, .0110, and .0111

RECOMMENDED ACTION:

- X Note staff's comment
- X Designate these Rules as "necessary with substantive public interest."

COMMENT:

*The agency changed the designation of the above-referenced Rules after publication, from "necessary with substantive public interest" to "necessary without substantive public interest."*

*Staff notes that the agency received identical comments for each Rule from agency staff. All comments stated:*

This Rule should not have an Agency Determination as 'Necessary with substantive public interest.' It should have the determination 'Necessary without substantive public interest.'  
This was an error that occurred during the internal Rules Review process.

*It appears that the initial determination of "necessary with" was made in error. For these three Rules, however, the initial determination posted by the agency reflected that it would be readopting them. The change after the comment period to reflect that the agency would not be taking additional action on these Rules may affect the expectations of the regulated public.*

*One Rule that was published as "unnecessary" was changed to "necessary without substantive public interest," apparently in response to the comment. Staff notes that the Commission has historically allowed agencies to change the designation of "unnecessary" and "necessary without substantive public interest" to the other in the past. However, the Commission has determined that agencies cannot change the designation of rules that were published as "necessary with substantive public interest" to a different designation after publication of the report.*

*Therefore, it is staff's recommendation that the classification of these Rules be changed to what was published, "necessary with substantive public interest."*

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Commission Counsel