

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: Board of Barber Examiners

RULE CITATION: 21 NCAC 06F .0101

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:

In (b)(2), the Board of Barber Examiners has changed the required number of barber chairs for barber schools within jail or prison facilities from three chairs to five chairs following publication in the NC Register. Under G.S. 150B-21.2(g), an agency shall not adopt a substantially different rule after the close of the comment period, unless the text is republished for additional comments.

(g) Adoption. - An agency shall not adopt a rule until the time for commenting on the proposed text of the rule has elapsed and shall not adopt a rule if more than 12 months have elapsed since the end of the time for commenting on the proposed text of the rule. Prior to adoption, an agency shall review any fiscal note that has been prepared for the proposed rule and consider any public comments received in connection with the proposed rule or the fiscal note. An agency shall not adopt a rule that differs substantially from the text of a proposed rule published in the North Carolina Register unless the agency publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule for the time set in subsection (f) of this section.

An adopted rule differs substantially from a proposed rule if it does one or more of the following:

- (1) Affects the interests of persons who, based on the proposed text of the rule published in the North Carolina Register, could not reasonably have determined that the rule would affect their interests.

(2) Addresses a subject matter or an issue that is not addressed in the proposed text of the rule.

(3) Produces an effect that could not reasonably have been expected based on the proposed text of the rule.

When an agency adopts a rule, it shall not take subsequent action on the rule without following the procedures in this Part. An agency must submit an adopted rule to the Rules Review Commission within 30 days of the agency's adoption of the rule.

Summary:

It is staff's opinion that the new requirement that jails and prison facilities have five barber chairs, rather than three as published, produces an effect that could not reasonably have been expected based on the proposed text of the Rule. Therefore, it is staff's recommendation that the Commission object to 21 NCAC 06F .0101 for failure to comply with the Administrative Procedure Act.

1 21 NCAC 06F .0101 is amended with changes as published in 32:20 NCR 1919 as follows:

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3 **21 NCAC 06F .0101 PHYSICAL STRUCTURE**

4 (a) For the purpose of this Rule, "practical area" means the area of the school where barbering services are provided.

5 (b) The physical structure of barber schools in North Carolina shall conform to the following criteria:

- 6 (1) be a minimum of 14 linear feet wide;
- 7 (2) be equipped with a minimum of ~~three~~ **five** barber chairs for barber schools within jail or prison
8 facilities or 10 barber chairs for all other schools, and these chairs shall ~~that~~ meet the sanitary
9 conditions required by G.S. 86A-15(a)(2);
- 10 (3) have a minimum of 896 square feet in the practical ~~area for the first 10 chairs; area:~~
- 11 (4) have an additional 70 square feet in the practical area for each additional barber chair over ~~the~~
12 required 10; 10 chairs;
- 13 (5) have at least five linear feet of space between each chair, center to center;
- 14 (6) have no more than two students enrolled per barber chair;
- 15 (7) be equipped with toilet facilities with hand-washing sink or basin;
- 16 (8) have concrete or wood floors covered with smooth, nonporous materials;
- 17 (9) have instructional materials, such as blackboard space or slide programs;
- 18 (10) have a workstand, with a mounted mirror with minimum dimensions of 36 inches tall and 20 inches
19 wide, for each barber chair in the practical area, constructed of material that can be washed and
20 cleansed;
- 21 (11) have a tool cabinet for each barber chair, with a door to limit exposure of the tools to the open air;
- 22 (12) have a towel cabinet, or other method of storage, so that clean towels are stored separate from used
23 towels;
- 24 (13) have at least one ~~fully~~ functional sink or lavatory, with hot and cold water, for each two barber
25 chairs, located within seven unobstructed linear feet of each barber chair. This sink distance
26 requirement does not apply to schools permitted on or before September 1, 2009;
- 27 (14) have the school separate from any other place or type of business, except for a business allowed by
28 G.S. 86A-15(a)(1)(b), by a wall of ceiling height;
- 29 (15) have a classroom area, separate from the practical area, with desk chairs sufficient to serve the
30 number of students enrolled, and a desk and chair for the instructors;
- 31 (16) have a means for electronic recordation of student hours;
- 32 (17) have a sign displayed in each practical area of the school stating that all barbering services are
33 performed by students; and
- 34 (18) have a bulletin board hanging in each classroom area with a posting of the ~~sanitation~~ rules in this
35 Subchapter and the minimum school curricula as set forth in 21 NCAC 06F .0120.

36 This Paragraph applies to barber schools permitted on or after December 1, 1994 or which undergo structural
37 renovations after that date.

1 (c) All barber schools seeking a new permit shall receive a satisfactory building inspection by the jurisdiction having
2 authority prior to obtaining a shop inspection pursuant to 21 NCAC 06L .0105.

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4 *History Note: Authority G.S. 86A-15; 86A-22;*

5 *Eff. February 1, 1976;*

6 *Readopted Eff. February 8, 1978;*

7 *Amended Eff. September 1, 2013; October 1, 2009; June 1, 2008; December 1, 1994; May 1, 1989;*

8 *Readopted Eff. July 1, ~~2016~~ 2016;*

9 *Amended Eff. August 1, 2018.*