

## **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: North Carolina Board of Agriculture

RULE CITATION: 02 NCAC 52J .0201

RECOMMENDED ACTION: September 14, 2022

Approve, but note staff's comment

X Object, based on:

X Lack of statutory authority

X Unclear or ambiguous

X Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

*At its August 18, 2022, meeting, the Rules Review Commission (hereinafter "the Commission") objected to this Rule for its lack of clarity and ambiguousness pursuant to G.S. 150B-21.9(a)(2).*

*The Board of Agriculture (hereinafter "the Board") was sent a statement of objection pursuant to G.S. 150B-21.12(a) on August 19, 2022, by staff counsel.*

*The Board changed the Rule pursuant to G.S. 150B-21.12(a) to attempt to satisfy the Commission's objection, and timely submitted the revised Rule to the Commission on September 9, 2022.*

*As amended, Paragraph (n) prohibits "abuse", which the agency defines as a list of crimes in the State of North Carolina, against agency employees. As these activities are unlawful without regard to the employment of the victim, prohibiting "abuse" is not reasonably necessary pursuant to G.S. 150B-21.9(a)(3). The list also cites a statute which does not exist, to wit: G.S. 12-277.1. This error would also make the Rule unclear and ambiguous pursuant to G.S. 150B-21.9(a)(2). Accordingly, the Board has not satisfied the Commission's August 2022 objection for lack of clarity and ambiguity, and has created an additional basis for objection.*

*Paragraph (n) states that applicants and licensees "may" not "harass (as defined in G.S. 14.277.3)" sic agency employees. G.S. 14-277.3 was repealed effective December 1, 2008. Paragraph (n)(2)<sup>1</sup> provides a different definition of "harass" which appears to be from G.S. 14-277.3A(b)(2). The agency has adopted two definitions, one of which is facially ambiguous. Accordingly, while the Board satisfied the Commission's August 2022 objection for lack of clarity and ambiguity in one*

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*1 Paragraph (n)(2) states "Harass means to knowingly conduct, including ..." While the actions which are included are illustrative of the conduct, the "conduct" is not actually stated.*

*William W. Peaslee  
Commission Counsel*

*respect, it has created another. Accordingly, the Rule is not clear and unambiguous pursuant to G.S. 150B-21.9(a)(2).*

*While Commission did not object to the Rule at its August 18, 2022 meeting pursuant to G.S. 150B-21.9(a)(1), staff further recommends objection as the Rule is not within the authority delegated to the Board. Pursuant to G.S. 19A-24(a)(4), the Board has authority to adopt rules “to implement [Article 3.], including federal regulations promulgated under Title 7, Chapter 54, of the United States Code.” Article 3. Chapter 19A is the Animal Welfare Act. Pursuant to G.S. 19A-21:*

The purposes of this [Act] are (i) to protect the owners of dogs and cats from the theft of such pets; (ii) to prevent the sale or use of stolen pets; (iii) to insure that animals, as items of commerce, are provided humane care and treatment by regulating the transportation, sale, purchase, housing, care, handling and treatment of such animals by persons or organizations engaged in transporting, buying, or selling them for such use; (iv) to insure that animals confined in pet shops, kennels, animal shelters and auction markets are provided humane care and treatment; (v) to prohibit the sale, trade or adoption of those animals which show physical signs of infection, communicable disease, or congenital abnormalities, unless veterinary care is assured subsequent to sale, trade or adoption.

*The purposes do not include the regulation of the behavior of the public. Accordingly, the Board does not have authority to adopt Paragraph (n) of this Rule.*

*Staff recommends objection to the above-referenced rule as the Rule is not clear and unambiguous pursuant to G.S. 150B-21.9(a)(2), is not reasonably necessary pursuant to G.S. 150B-21.9(a)(3), and is not within the authority delegated to the Board pursuant to G.S. 150B-21-9(a)(1).*

*§ 150B-21.9. Standards and timetable for review by Commission.*

*(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:*

*(1) It is within the authority delegated to the agency by the General Assembly.*

*(2) It is clear and unambiguous.*

*(3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.*

*(4) It was adopted in accordance with Part 2 of this Article.*

*The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.*

*The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.*

*(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.*

*(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)*

§ 150B-21.12. PROCEDURE WHEN COMMISSION OBJECTS TO A PERMANENT RULE.

(a) *Action.* - When the Commission objects to a permanent rule, it must send the agency that adopted the rule a written statement of the objection and the reason for the objection. The agency that adopted the rule must take one of the following actions:

(1) Change the rule to satisfy the Commission's objection and submit the revised rule to the Commission.

(2) Submit a written response to the Commission indicating that the agency has decided not to change the rule.

(b) *Time Limit.* - An agency that is not a board or commission must take one of the actions listed in subsection (a) of this section within 30 days after receiving the Commission's statement of objection. A board or commission must take one of these actions within 30 days after receiving the Commission's statement of objection or within 10 days after the board or commission's next regularly scheduled meeting, whichever comes later.

(c) *Changes.* - When an agency changes a rule in response to an objection by the Commission, the Commission must determine whether the change satisfies the Commission's objection. If it does, the Commission must approve the rule. If it does not, the Commission must send the agency a written statement of the Commission's continued objection and the reason for the continued objection. The Commission must also determine whether the change is substantial. In making this determination, the Commission shall use the standards set forth in G.S. 150B-21.2(g). If the change is substantial, the revised rule shall be published and reviewed in accordance with the procedure set forth in G.S. 150B-21.1(a3) and (b).

(d) *Return of Rule.* - A rule to which the Commission has objected remains under review by the Commission until the agency that adopted the rule decides not to satisfy the Commission's objection and makes a written request to the Commission to return the rule to the agency. When the Commission returns a rule to which it has objected, it must notify the Codifier of Rules of its action. If the rule that is returned would have increased or decreased expenditures or revenues of a unit of local government, the Commission must also notify the Governor of its action and must send a copy of the record of the Commission's review of the rule to the Governor. The record of review consists of the rule, the Commission's letter of objection to the rule, the agency's written response to the Commission's letter, and any other relevant documents before the Commission when it decided to object to the rule.

*Regulatory Reform (1991, c. 418, s. 1; 1995, c. 415, s. 5; c. 507, s. 27.8(h), (y); 2003-229, s. 10; 2011-291, s. 2.60; 2011-398, s. 8.)*

§ 14-277.3A. STALKING.

(a) *Legislative Intent.* - The General Assembly finds that stalking is a serious problem in this State and nationwide. Stalking involves severe intrusions on the victim's personal privacy and autonomy. It is a crime that causes a long-lasting impact on the victim's quality of life and creates risks to the security and safety of the victim and others, even in the absence of express threats of physical harm. Stalking conduct often becomes increasingly violent over time.

The General Assembly recognizes the dangerous nature of stalking as well as the strong connections between stalking and domestic violence and between stalking and sexual assault. Therefore, the General Assembly enacts this law to encourage effective intervention by the criminal justice system before stalking escalates into behavior that has serious or lethal consequences. The General Assembly intends to enact a stalking statute that permits the criminal justice system to hold stalkers accountable for a wide range of acts, communications, and conduct. The General Assembly recognizes that stalking includes, but is not limited to, a pattern of following, observing, or monitoring the victim, or committing violent or intimidating acts against the victim, regardless of the means.

(b) *Definitions.* - The following definitions apply in this section:

(1) *Course of conduct.* - Two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, is in the presence of, or follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(2) *Harasses or harassment.* - Knowing conduct, including written or printed communication or transmission, telephone, cellular, or other wireless telephonic communication, facsimile transmission, pager messages or transmissions, answering machine or voice mail messages or transmissions, and electronic mail messages or other computerized or electronic transmissions directed at a specific person that torments, terrorizes, or terrifies that person and that serves no legitimate purpose.

(3) *Reasonable person.* - A reasonable person in the victim's circumstances.

(4) *Substantial emotional distress.* - Significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

(c) *Offense.* - A defendant is guilty of stalking if the defendant willfully on more than one occasion harasses another person without legal purpose or willfully engages in a course of conduct directed at a specific person without legal purpose and the defendant knows or should know that the harassment or the course of conduct would cause a reasonable person to do any of the following:

(1) Fear for the person's safety or the safety of the person's immediate family or close personal associates.

(2) Suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment.

(d) *Classification.* - A violation of this section is a Class A1 misdemeanor. A defendant convicted of a Class A1 misdemeanor under this section, who is sentenced to a community punishment, shall be placed on supervised probation in addition to any other punishment imposed by the court. A defendant who commits the offense of stalking after having been previously convicted of a stalking offense is guilty of a Class F felony. A defendant who commits the offense of stalking when there is a court order in effect prohibiting the conduct described under this section by the defendant against the victim is guilty of a Class H felony.

(e) *Jurisdiction.* - Pursuant to G.S. 15A-134, if any part of the offense occurred within North Carolina, including the defendant's course of conduct or the effect on the victim, then the defendant may be prosecuted in this State. (2008-167, s. 2.)

1 02 NCAC 52J .0201 is readopted with changes as published in 36:12 NCR 1004-1005 as follows:

2  
3 **SECTION .0200 - FACILITIES AND OPERATING STANDARDS**

4  
5 **02 NCAC 52J .0201 GENERAL**

6 (a) Housing facilities for dogs and cats shall be structurally sound and maintained in good repair to protect the animals  
7 from injury, contain the animals and restrict the entrance of other animals and people.

8 (b) All light fixtures and electrical outlets in animal areas shall be [safe and] in compliance with the State Building  
9 Code. Electrical appliances, light fixtures, electrical outlets, and electrical cords shall be located or protected in such  
10 a way that animals do not have access to them.

11 (c) Facilities shall have reliable and safe adequate electric power as necessary to comply with the Animal Welfare Act.

12 (d) ~~Supplies of food and bedding shall be stored in facilities which adequately protect such supplies against infestation~~  
13 ~~or contamination by vermin and insects. All open bags of food shall be stored in airtight containers with lids.~~  
14 ~~Refrigeration shall be provided for supplies of perishable food.~~ Storage of food and bedding:

15 (1) food and bedding shall be stored in cabinets and/or sealed containers which adequately protect such  
16 supplies against infestation or contamination by vermin and insects;

17 (2) all open bags of food and edible treats shall be stored in airtight containers with lids;

18 (3) refrigeration shall be provided for supplies of perishable food including opened cans of food;

19 (4) clean bedding and laundry shall be: stored in cabinets and/or sealed containers; stored separately  
20 from soiled laundry and materials; and stored separately from general housing areas for animals; and

21 (5) in areas housing animals being observed or treated for contagious disease, bedding shall only be stored  
22 in sealed cabinets if that clean laundry is dedicated solely for the use for those specific animals.

23 (e) ~~The facility shall provide~~ Provisions shall be made for the daily removal and disposal of animal and food waste,  
24 soiled bedding and debris from the ~~housing~~ facility in accordance with local ordinances, to assure the facility will be  
25 maintained in a clean and sanitary manner.

26 (f) Hot and cold running, potable water must be available. Facilities such as a washroom, basin or sink shall be  
27 provided to maintain cleanliness among animal caretakers, animals, and animal food and water receptacles.

28 (g) Each facility shall have the ability to confirm ambient ~~temperature.~~ [temperature, a temperature. A functional room  
29 thermometer shall be present in each separate area of indoor enclosures, common areas and exercise areas.

30 (h) A separate five-foot tall perimeter fence is required if any ~~animals~~ animal(s) ~~has/have~~ [has or ] ~~have~~ unsupervised  
31 access to an outdoor primary enclosure, common area, and/or including unsupervised exercise areas. Supervision of  
32 animals is required for any animal(s) within any outdoor enclosure, common area, or exercise area without a separate  
33 five-foot tall perimeter fence.

34 (i) An adequate drainage system must be provided for the ~~housing~~ facility.

35 (j) All areas of a facility are subject to review or inspection by North Carolina Department of Agriculture and  
36 Consumer Services (‘NCDA&CS’) employees during normal business hours (8:00 a.m. through 5:30 p.m. Monday  
37 through Friday).

1 (k) All animals in a facility are subject to the requirements of the Animal Welfare Act, regardless of ownership.

2 (l) A licensee or registrant shall comply with all federal, state and local laws, rules and ordinances relating to or  
3 affecting the welfare of dogs and cats in its facility.

4 (m) A licensee or registrant and all agents of the facility shall ~~cooperate fully and truthfully~~ be truthful with  
5 NCDA&CS employees during all phases of ~~inspections or investigations.~~ inspections, reviews and/or investigations.

6 (n) Neither an applicant for a license or registration nor a licensee or registrant or any agent of a facility may ~~interfere~~  
7 ~~with, threaten, abuse (including verbally abuse), or harass~~ abuse, harass (as defined in G.S. 14.277.3), delay or obstruct  
8 ~~any [inspector, or state]inspector or State [official, while such]official while~~ inspectors or officials are [carrying out  
9 ~~their duties.]attempting to discharge their official duties. For the purposes of this rule, the following definitions apply:~~

10 (1) "Abuse" means:

11 (A) Communicating a threat as defined by G.S. 12-277.1;

12 (B) Using profane, indecent or threatening language to any person over the telephone,  
13 annoying or harassing by repeated telephoning or making false statements over the  
14 telephone as defined by G.S. 14-196;

15 (C) Cyberstalking as defined by G.S. 14-196.3;

16 (D) Stalking as defined by G.S. 14-277.3A; and/or

17 (E) Disorderly conduct as defined by G.S. 14-288.4.

18 (2) "Harass" means knowingly conduct, including oral, written or printed communication or transmission,  
19 telephone, cellular, or other wireless telephonic communication, facsimile transmission, page messages or  
20 transmissions, answering machine or voice mail messages or transmissions, electronic mail messages, or  
21 other computerized or electronic transmissions directed at a specific person that torments, terrorizes or  
22 terrifies that person and that serves no legitimate purpose.

23 ~~(m)~~(o) No dog or cat shall be in a window display except during business hours and then only in compliance with  
24 standards set forth in this Section.

25 (p) Battery operated or electrical behavioral control devices, such as shock collars, shock prods, or electrical fences,  
26 as well as pinch-collars and prong-collars, may only be used on an animal in a boarding kennel with the specific  
27 written consent of the owner of that animal.

28 (q) All facilities shall be equipped with an operational smoke alarm and carbon monoxide alarm and shall have a  
29 means of fire suppression, such as functional fire extinguishers or a sprinkler system on the premises.

30 (r) All licensed and registered facilities must develop and maintain a plan of action for the continuity of care and/or  
31 evacuation of animals in the event of a natural or manmade disaster.

32 (s) For the purposes of ~~NCCGS~~G.S. [§]19A-23(5a), written standards for an "approved foster care provider" shall  
33 include but not be limited to: the application process; sanitation protocols; provision of daily observation of the  
34 animals; feeding and watering protocols; provision and documentation of veterinary care; provision and  
35 documentation of human and same-species daily interaction, exercise, play and environmental enrichment for animals  
36 in long term care; requirements for inspection by the shelter; and compliance by the foster care provider with the NC  
37 Animal Welfare Act and ~~it~~its rules issued pursuant thereto.

1 (t) For the purposes of [NCCS]G.S. 19A-23(5b), written standards for an “approved rescue organization” shall include  
2 but not be limited to: the application process; sanitation protocols; provision of daily observation of the animals;  
3 feeding and watering protocols; provision and documentation of veterinary care of the shelter’s animals; provision  
4 and documentation of human and same-species daily interaction, exercise, play and environmental enrichment for the  
5 shelter’s animals in long term care at the rescue; requirements for inspection by the shelter; and compliance by the  
6 rescue with the North Carolina [NC] Animal Welfare Act and [it]it’s rules issued pursuant thereto.

7  
8 *History Note: Authority G.S. 19A-24; G.S. 19A-30(3);*  
9 *Eff. April 1, 1984; Amended Eff. January 1, 2005;*  
10 *Readopted Eff. October 1, 2022.*



## 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: North Carolina Board of Agriculture

RULE CITATION: 02 NCAC 52J .0208

RECOMMENDED ACTION: September 13, 2022

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

*At its August 18, 2022, meeting, the Rules Review Commission (hereinafter "the Commission") objected to this Rule for its lack of clarity and ambiguousness pursuant to G.S. 150B-21.9(a)(2).*

*The Board of Agriculture (hereinafter "the Board") was sent a statement of objection pursuant to G.S. 150B-21.12(a) on August 19, 2022, by staff counsel.*

*The Board changed the Rule pursuant to G.S. 150B-21.12(a) to attempt to satisfy the Commission's objection, and timely submitted the revised Rule to the Commission on September 9, 2022.*

*As changed post-objection, the Rule continues to require the facility to employ an "adequate" number of employees "adequately" trained to care for animals in a facility.*

*Notwithstanding the definition of "adequate" in 02 NCAC 52J .0104, the Rule remains facially ambiguous and is more like a broad statement of policy than a substantive requirement. The regulated public would be left to either guess at the number of employees required thus expose itself to a penalty by the Animal Welfare Division (AWD) or make further inquiry to AWD, "how many employees must we have?" Further, the Board's Rule provides no guidance to the employees of the regulator regarding the number of employees a facility is required to have. The lack of an objective standard opens the door to caprice and inequity.*

*Staff recommends that the Commission find that, pursuant to G.S. 150B-21.12(c), the change to the rule does not satisfy the Commission's August 2022 objection.*

William W. Peaslee  
Commission Counsel

**§ 150B-21.9. Standards and timetable for review by Commission.**

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

**02 NCAC 52J .0104 DEFINITIONS** (with proposed revisions.)

(2) “Adequate” means a condition which, when met, does not jeopardize an animal’s comfort, safety, or health. Adequate veterinary care means provision of veterinary care sufficient to address relief of pain and/or suffering experienced by the animal and sufficient to address the medical condition.

1 02 NCAC 52J .0208 is readopted with changes as published in 36:12 NCR 1009 as follows:

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3 **02 NCAC 52J .0208 EMPLOYEES**

4 An adequate number of employees shall be utilized to care for the animals in a facility and maintain the prescribed  
5 level of husbandry practices set forth in this Rule. A sufficient number of employees shall be utilized to [sufficiently  
6 care for the animals in the facility and ]maintain the prescribed level of husbandry practices set forth in this Rule. Such  
7 practices shall be under the supervision of an animal caretaker individual who has a background in animal husbandry  
8 ~~or care.~~ is adequately trained and/or experienced in animal husbandry and care and has read and acknowledged their  
9 understanding of these rules and the NC Animal Welfare Act. "Supervision as used in this Rule requires that the  
10 individual:

- 11 (1) ensure employees have access to written or printed direction for providing animal care and maintaining  
12 the prescribed level of husbandry;  
13 (2) ensure employees have access to written or printed instructions describing all procedures that must be  
14 followed; and  
15 (3) ensure employees have access to instructions for how to contact the supervising individual should an  
16 issue or question arise.  
17

18 *History Note: Authority G.S. 19A-24;*  
19 *Eff. April 1, 1984;*  
20 *Readopted Eff. October 1, 2022.*

## RRC STAFF OPINION

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AGENCY: North Carolina Board of Agriculture

RULE CITATION: 15A NCAC 07M .0704 Post Objection

RECOMMENDED ACTION: September 14, 2022

Approve, but note staff's comment

X Object, based on:

Lack of statutory authority

X Unclear or ambiguous

X Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

*At its August 18, 2022, meeting, the Rules Review Commission (hereinafter "the Commission") objected to this Rule for its lack of clarity and ambiguousness pursuant to G.S. 150B-21.9(a)(2).*

*The Board of Agriculture (hereinafter "the Board") was sent a statement of objection pursuant to G.S. 150B-21.12(a) on August 19, 2022, by staff counsel.*

*The Board changed the Rule pursuant to G.S. 150B-21.12(a) to attempt to satisfy the Commission's objection, and timely submitted the revised Rule to the Commission on September 9, 2022.*

*The Board struck the ambiguous language which required unspecified training. This language was replaced with a requirement that "shelter employees" euthanize "animals as set forth and in accordance with the American Veterinary Medical Association **and/or** (emphasis added) Humane Society of the United States..."*

*While the Board satisfied the Commission's objection concerning one ambiguity, it has created another. The inclusion of "and/or" is facially ambiguous.<sup>1</sup>*

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<sup>1</sup> STAFF ASKED THE BOARD TO RESOLVE THIS AMBIGUITY. THE BOARD DENIED THE REQUEST, AS IS ITS PREROGATIVE, AVERRING THAT IT INTENDED TO REPEAL THE RULE IN THE FUTURE.

William W. Peaslee  
Commission Counsel

*Further, staff inquired of the Board whether the Rule, as amended, was necessary considering other Board rules, specifically 02 NCAC 52J .0702. In response the Board agreed that the Rule was not necessary and communicated its intention to repeal the Rule in the future.*

*Accordingly, staff recommends that the Commission find that the Board has not satisfied the Commission's objection for lack of clarity and unambiguity pursuant to G.S. 150B-21.9(a)(2). Staff further recommends that the Commission object to the Rule, as amended, for lack of reasonable necessity pursuant to G.S. 150B-21.9(a)(3).*

William W. Peaslee  
Commission Counsel

1 02 NCAC 52J .0704 is readopted with changes as published in 36:12 NCR 1017 as follows:

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3 **02 NCAC 52J .0704      TECHNICIAN NOT REQUIRED**

4 If an extraordinary circumstance ~~or situation~~ occurs and euthanasia is necessary, the ~~person~~ shelter employee  
5 performing the euthanasia is not required to be a Certified Euthanasia Technician at a certified ~~facility~~ facility so long  
6 as the shelter employee ~~is trained in the euthanasia method for that species that was used in the situation,~~ euthanizes  
7 the animal as set forth and in accordance with the American Veterinary Medical Association and/or Humane Society  
8 of the United States incorporated by reference in 02 NCAC 52J .0401.

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10 *History Note:      Authority G.S. 19A-24;*  
11 *Eff. March 23, 2009;*  
12 *Readopted Eff. October 1, 2022.*