



STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS

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1711 New Hope Church Rd  
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June 14, 2018

John Harriss, Rulemaking Coordinator  
Commission on Pilotage and Navigation of the Cape Fear River and Bar  
**Sent via email only: [john@harrissententerprises.com](mailto:john@harrissententerprises.com)**

Re: 04 NCAC 15 .0119, .0121, .0123, .0124, .0127, and .0128

Dear Mr. Harriss:

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

The Commission objected to Rule .0119 because it is unclear and ambiguous. In line 7 it is unclear whether the word "can" is permissive or mandatory. In addition, in the same line the phrase "at any time" seems to obscure the appropriate averaging period. Finally, the use of the word "may" in line 12 arrogates to the Commission the power to issue or not issue temporary licenses in its absolute, unguided discretion.

The Commission objected to Rule .0121 because it is unclear and ambiguous and is not within the statutory authority delegated to the agency. In line 28 it is unclear what "the various vessels traversing the same" means. Similarly, the sentence on lines 36-37 is ambiguous: is it intended to allow the association to act or to require that a termination recommendation by the association be supported by a majority vote of its members? Finally, there appears to be no statutory authority for the nepotism restriction in Subparagraph (g)(6).

The Commission objected to Rule .0123 because it is unclear and ambiguous. On line 7 the word "immediately" is not defined. In addition, on lines 7-8 the phrase "appropriate sketches and diagrams" is ambiguous.

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The Commission objected to Rule .0124 because it is unclear and ambiguous. The use of the word "may" in lines 13 and 15 arrogates to the Commission the power to act in its absolute, unguided discretion.

The Commission objected to Rule .0127 because it is unclear and ambiguous. It is unclear whether the use of the word "will" is a statement of fact or a regulatory requirement.

The Commission objected to Rule .0128 because it is not within the statutory authority delegated to the agency. G.S. 76A-24 unambiguously authorizes the Commission to receive payments from the pilots' association and is silent regarding payments directly from "each pilot," as required by this 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 action, please let me know.

Sincerely,

A handwritten signature in blue ink, consisting of a stylized 'J' followed by a horizontal line that tapers off to the right.

Jason Thomas  
Commission Counsel

Cc: Cynthia Anthony (cynthia.anthony@ncdps.gov)



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June 21, 2018

Virginia Niehaus, Rulemaking Coordinator  
NC Department of Health and Human Services – Division of Medical Assistance  
**Sent via email only: [virginia.niehaus@dhhs.nc.gov](mailto:virginia.niehaus@dhhs.nc.gov)**

Re: Objection to Rules 10A NCAC 22F .0104, .0301, .0302, .0602, .0603, .0604, and 22J .0105 and .0106.

Dear Ms. Niehaus:

At its meeting on June 14, 2018, the Rules Review Commission objected to the above referenced Rules in accordance with G.S. 150B-21.10.

The Commission objected to 10A NCAC 22F .0104 for lack of statutory authority and ambiguity in Subparagraph (e)(6).

The Commission objected to 10A NCAC 22F .0301 for lack of statutory authority and necessity.

The Commission objected to 10A NCAC 22F .0302 for lack of statutory authority regarding Subparagraph (c)(1).

The Commission objected to 10A NCAC 22F .0602 for lack of statutory authority regarding Subparagraph (a)(3).

The Commission objected to 10A NCAC 22F .0603 for lack of authority and ambiguity in Subparagraph (a)(2).

The Commission objected to 10A NCAC 22F .0604 for necessity regarding Paragraph (b).

The Commission objected to 10A NCAC 22J .0105 for lack of statutory authority regarding the recoupment of an overpayment prior to the exhaustion of all appeal rights.

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The Commission objected to 10A NCAC 22J .0106 for lack of statutory authority regarding Subparagraphs (c)(2) and (c)(4).

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 feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Amber May", with a stylized flourish extending from the end.

Amber May  
Commission Counsel