



**STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS**

July 22, 2022

Sirena Jones, NCDOJ  
North Carolina Sheriffs' Education and Training Standards Commission (NC SETSC)  
**Sent via email only to: [scjones@ncdoj.gov](mailto:scjones@ncdoj.gov)**

Re: Objection to 12 NCAC 10B .0704

Dear Ms. Jones:

At its meeting on July 21, 2022, the Rules Review Commission (RRC) objected to 12 NCAC 10B .0704 finding that: the Rule was not within the statutory authority delegated to the NC SETSC pursuant to G.S. 150B-21.9(a)(1), the Rule was not clear and unambiguous pursuant to G.S. 150B-21.9(a)(2), and the Rule was not adopted in accordance with the Administrative Procedures Act pursuant to G.S. 150B-21.9(a)(4).

Specifically, the RRC adopted the opinion of counsel attached hereto and incorporated by reference regarding the issue of the agency exceeding its authority, and clarity and ambiguousness. (See Parts 1 & 3 of the RRC Staff Opinion).

The RRC found that, notwithstanding the agency's second amendment to the Rule<sup>1</sup>, the Rule did not prescribe the contents or substantive requirements of the forms identified in the Rule. Rather, the agency left the contents or substantive requirements of the forms open-ended by its employ of the word "includes".

Pursuant to G.S. 150B-2(8a) d., a form does not fall under the definition of a "Rule" if the contents and substantive requirements of the form are prescribed by rule or statute. 12 NCAC 10B .0704 does not prescribe all of the contents or substantive requirements of Form F-7A or Form 7-B. A review of Subchapter 10A fails to reveal the contents or substantive requirements of these forms. 12 NCAC 10B .0704 does not reference any other subchapter or statute which prescribes the contents or substantive requirements of these forms.

---

<sup>1</sup> The NC SETSC filed a second revision of the Rule after staff counsel had issued the staff opinion.

**Donald Robert van der Vaart**, Director  
Chief Administrative Law Judge

**Fred G. Morrison, Jr.**  
Senior Administrative Law Judge

*An Equal Employment Opportunity Employer*

1711 New Hope Church Road, Raleigh, NC 27609  
Telephone: (984) 236-1850 | Facsimile: (984) 236-1871  
[www.oah.nc.gov](http://www.oah.nc.gov)

Accordingly, the agency has failed to comply with the Administrative Procures Act by requiring the regulated public to use forms without adopting the forms or adopting a rule prescribing the complete contents or substantive requirements thereof.

Please respond to this objection 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,  
/s/ William W. Peaslee  
William W. Peaslee  
Commission Counsel

cc: Robert Pickett, Esq., NCDOJ



**STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS**

July 21, 2022

Jennifer Everett  
Coastal Resources Commission  
**Sent via email only to: [Jennifer.everett@ncdenr.gov](mailto:Jennifer.everett@ncdenr.gov)**

Re: Extension of the Period of Review for 15A NCAC 07H .0501, .0502, .0503, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0601, .0602, .0603, .0604, .1301, .1302, .1303, .1304, .1305, .1401, .1402, .1403, .1404, .1405, .1501, .1502, .1503, .1504, .1505, .1601, .1602, .1603, .1604, .1605, .1805, 2001, .2002, .2003, .2004, .2005, .2101, .2102, .2103, .2104, .2105, .2201, .2202, .2203, .2204, .2205, .2301, .2302, .2303, .2304, .2305, .2401, .2402, .2403, .2404, .2405, .2601, .2602, .2603, .2604, .2605, .2701, .2702, .2703, .2704, .2705; 15A NCAC 07I .0204, .0302, .0305, .0306, .0401, .0402, .0406, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0511, .0601, .0602, .0701, .0702; 15A NCAC 07J .0102, .0201, .0203, .0204, .0206, .0207, .0208, .0207, .0208, .0209, .0210, .0211, .0301, .0302, .0312, .0602, .0603, .0604, .0605, .0701, .0702, .0703; 15A NCAC 07M .0201, .0202, .0401, .0402, .0403, .0503, .0601, .0602, .0603, .0701, .0702, .0703, .0704, .0705, .0801, .0802, .0902, .1001, .1002, .1101, .1102, .1201, .1202.

Dear Ms. Everett:

At its meeting this morning, the Rules Review Commission extended the period of review for the above-captioned rules in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period of review in order to allow the Commission additional time to address technical change requests.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days.

If you have any questions regarding the Commission's actions, please let me know.

**Donald R. van der Vaart**, Director  
Chief Administrative Law Judge

**Fred G. Morrison, Jr.**  
Senior Administrative Law Judge

*An Equal Employment Opportunity Employer*

1711 New Hope Church Road, Raleigh, NC 27609  
Telephone: (984) 236-1850 | Facsimile: (984) 236-1871  
[www.oah.nc.gov](http://www.oah.nc.gov)



**STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS**

Sincerely,

Brian Liebman  
Commission Counsel

Cc: Mike Lopazanski  
William W. Peaslee  
Lawrence R. Duke

**Donald R. van der Vaart**, Director  
Chief Administrative Law Judge

**Fred G. Morrison, Jr.**  
Senior Administrative Law Judge

*An Equal Employment Opportunity Employer*  
1711 New Hope Church Road, Raleigh, NC 27609  
Telephone: (984) 236-1850 | Facsimile: (984) 236-1871  
[www.oah.nc.gov](http://www.oah.nc.gov)



**STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS**

July 22, 2022

Deborah Ragan  
Board of Physical Therapy Examiners  
Via Email only to: [dragan@ncptboard.org](mailto:dragan@ncptboard.org)

Re: Extension of the Period of Review for 21 NCAC 48B .0102, 21 NCAC 48E .0104, 21 NCAC 48F .0101, .0103, 21 NCAC 48G .0105, .0203, .0504

Dear Ms. Ragan:

At its July 21, 2022 meeting, the Rules Review Commission extended the period of review for the above-captioned rules in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period of review to allow the Board additional time to address change requests.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days.

If you have any questions regarding the Commission's actions, please let me know.

/s/ William W. Peaslee  
William W. Peaslee  
Commission Counsel

Cc: Alexander Burgos

**Donald Robert van der Vaart**, Director  
Chief Administrative Law Judge

**Fred G. Morrison, Jr.**  
Senior Administrative Law Judge

*An Equal Employment Opportunity Employer*  
1711 New Hope Church Road, Raleigh, NC 27609  
Telephone: (984) 236-1850 | Facsimile: (984) 236-1871  
[www.oah.nc.gov](http://www.oah.nc.gov)