

# **Public Health Rulemaking**

**Legal Basics for Health & Human Services  
Directors and Administrators**

**March 7, 2022**

**Virginia Niehaus, JD, MPH**

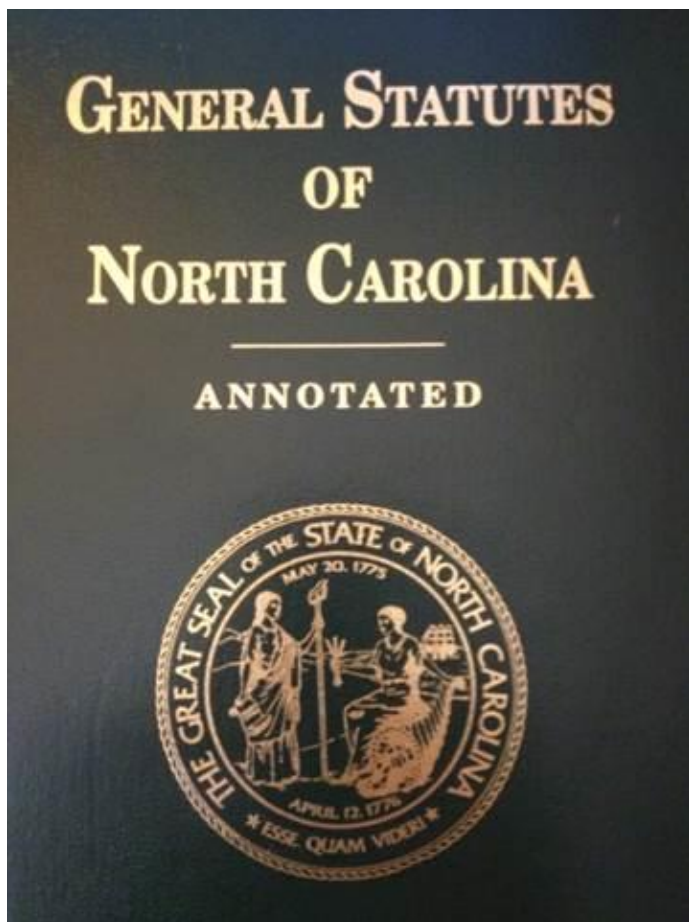
**Director of Regulatory and Legal Affairs,  
NCDHHS, Division of Public Health**

# State Agency Rulemaking Must Be:

- **Within a state agency's delegated statutory authority (as delegated by the General Assembly)**
- **In compliance with the NC Administrative Procedure Act (G.S. 150B, Article 2A)**



# NC Public Health Legislation



- Enacted by the NC General Assembly
- Public health code: G.S. Chapter 130A
  - Example: G.S. 130A-248
- Other chapters of the General Statutes and Session Laws are also relevant to public health
- Chapter 130A addresses matters including:
  - Rulemaking authority
  - Mission and structure of the NC public health system
  - Local health department accreditation
  - Powers and duties of boards of health & local health directors
  - Public health remedies
- Available at [www.ncleg.gov](http://www.ncleg.gov)

# Rulemaking: What is a rule?

**"Rule"** means any agency regulation, standard, or statement of general applicability

- that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency

**or**

- that describes the procedure or practice requirements of an agency

**and**

- that directly or substantially affects the rights or procedures of non-agency persons

SOURCE: G.S. 150B-2(8a)

# Process for Adopting a Rule

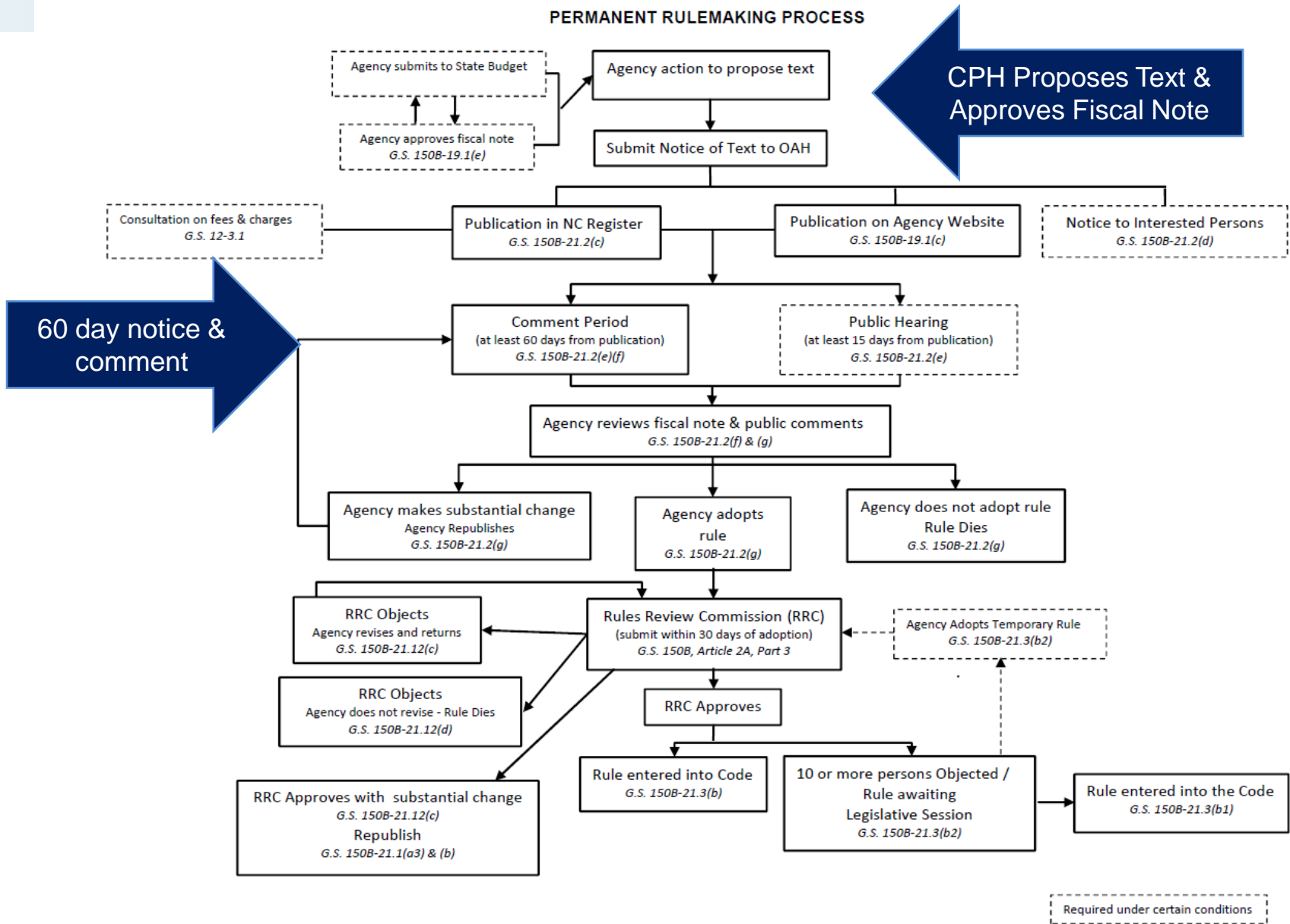
- A rule is **valid** only if adopted in *substantial compliance* with Article 2A of the Administrative Procedure Act (APA; G.S. Chapter 150B)
- Article 2A sets out a **uniform procedure** for the adoption of rules, including:
  - Permanent Rules
  - Emergency Rules
  - Temporary Rules
  - Periodic Review and Expiration of Existing Rules / Readoption

SOURCE: G.S. 150B-18

# Commission for Public Health (CPH)

- The Commission for Public Health (CPH) is the public health rulemaking body for North Carolina.
  - authorized and directed by the legislature to adopt rules to protect and promote the health of the public and to implement public health programs administered by the Division of Public Health
- 13 members; 4 year terms
  - 9 appointed by the Governor
  - 4 elected by the NC Medical Society
- Quarterly meeting schedule

# PERMANENT RULEMAKING PROCESS



# Public Notice and Comment

- Rulemaking efforts are published in the NC Register, posted on the Commission's website, and emailed to interested persons
  - <https://www.oah.nc.gov/rules-division/north-carolina-register>
  - <https://cph.publichealth.nc.gov/>
- Comments may be submitted:
  - By email to: [cphcomment@lists.ncmail.net](mailto:cphcomment@lists.ncmail.net)
  - By mail to:  
Virginia Niehaus  
Rulemaking Coordinator  
Commission for Public Health  
1931 Mail Service Center  
Raleigh, NC 27699-1931



# Public Notice and Comment



NCDHHS



[CPH Home](#)

[About Us](#)

[Commission Members](#)

[Commission Schedule](#)

[Archived Rules](#)

[Contact Us](#)

[DHHS](#) > [Public Health](#) > [Commission for Public Health](#)

## 15A NCAC 18A .2508, .2545 – Display Spa at a Temporary Event (DSTE)

[Session Law 2021-77, Section 8.\(a\)](#) amended G.S. 130A-280 to include "spas operating for display at temporary events" within the term "public swimming pool," effective July 1, 2022. The North Carolina Commission for Public Health (CPH) is proposing to amend rule 15A NCAC 18A .2508 and adopt rule 15A NCAC 18A .2545 to establish a framework to regulate these spas for protection of the public health and safety. The proposed effective date of these rules is July 1, 2022.

**A public hearing will be held on Monday, April 11, 2022 at 2:00 p.m.** The public hearing will be held by teleconference. You may participate in the public hearing by dialing **919-715-0769 (no access code)**.

<b>Proposed Rules:</b>	<a href="#">15A NCAC 18A .2508</a> <a href="#">15A NCAC 18A .2545</a>
<b>Notice:</b>	<a href="#">Notification of Proposed Rule Actions: 15A NCAC 18A .2508, .2545</a>
<b>Fiscal Note:</b>	<a href="#">Fiscal Note for Amendment of 15A NCAC 18A .2508 and Adoption of 15A NCAC 18A .2545</a>
<b>Federal Certification:</b>	N/A

### Public Comments

The public comment period runs from March 1, 2022 to May 2, 2022. Comments will also be accepted at the public hearing.

[Submit Comment](#)

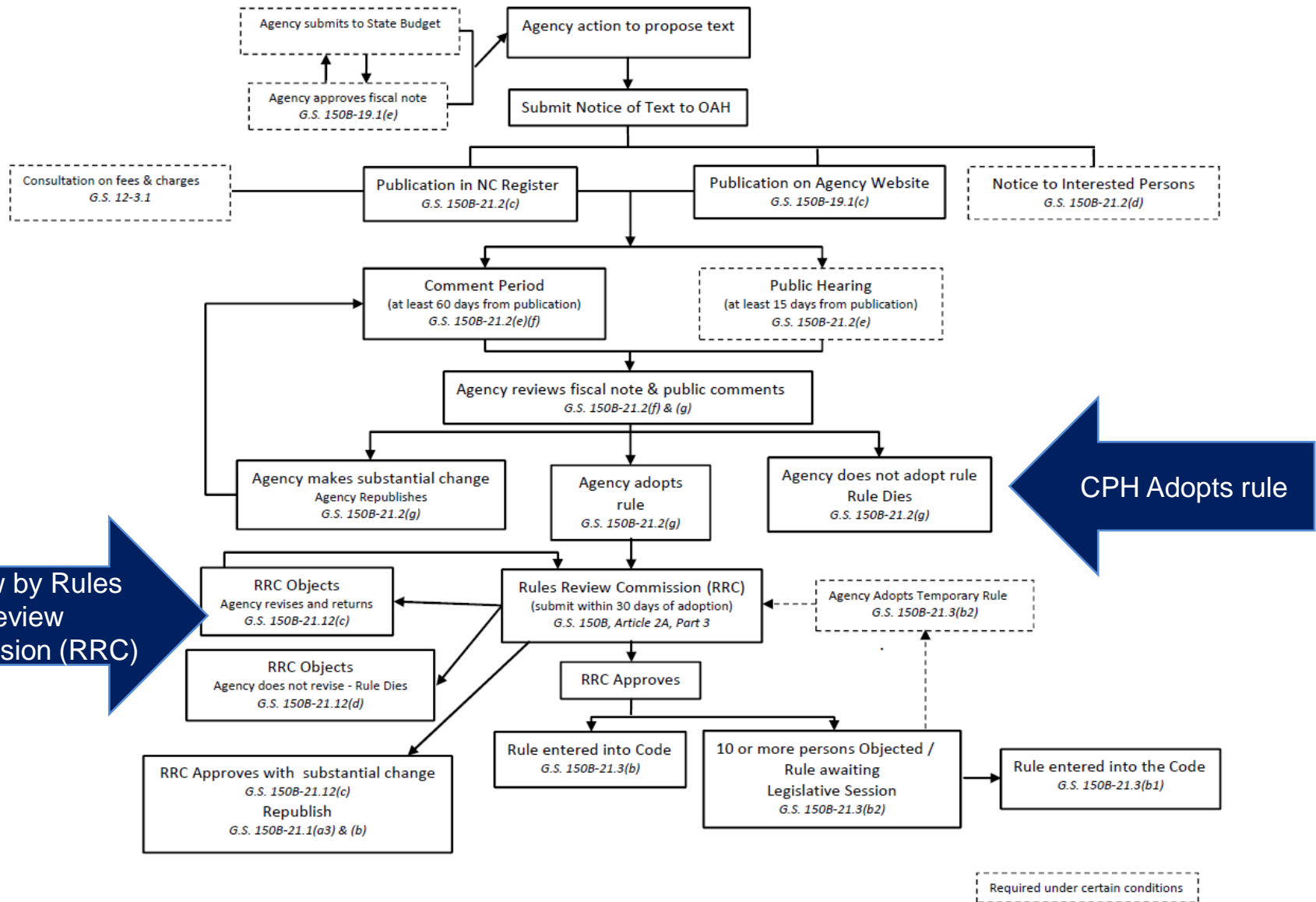
Written comments can be mailed to:

Virginia Niehaus  
Rulemaking Coordinator  
1931 Mail Service Center  
Raleigh, NC 27699-1931

### Additional Links

[Procedure for Subjecting a Proposed Rule to Legislative Review](#)

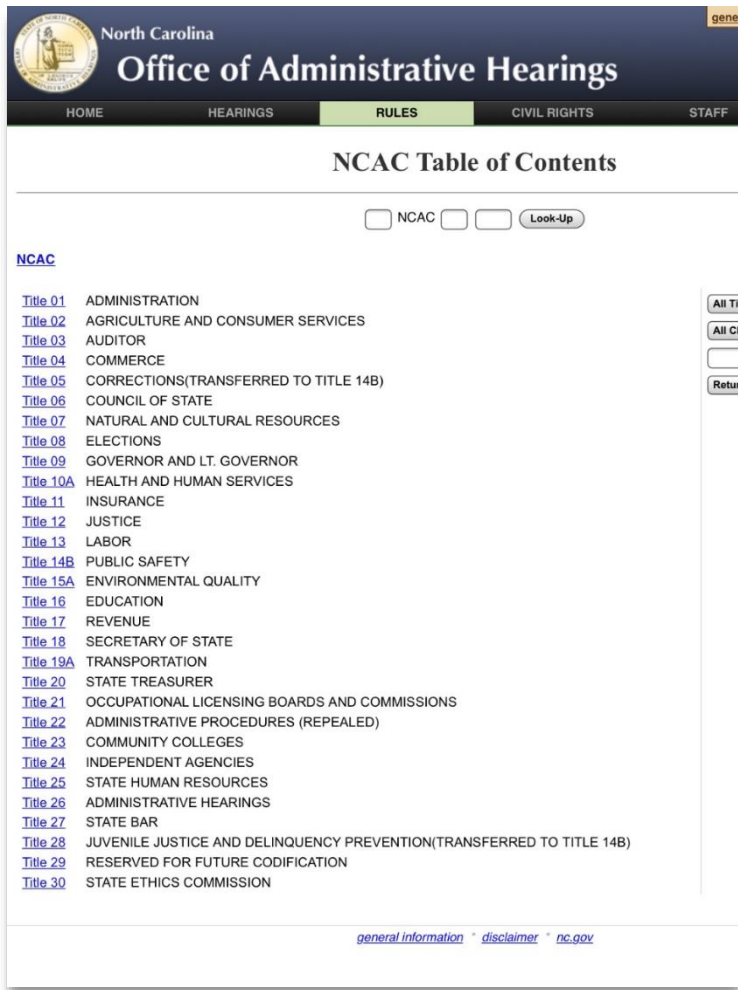
## PERMANENT RULEMAKING PROCESS



# Rules Review Commission (RRC)

- Comprised of 10 members appointed by the General Assembly
- Determines whether a rule meets the following criteria:
  - It is within the authority delegated to the agency by the General Assembly.
  - It is clear and unambiguous.
  - It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency.
  - It was adopted in accordance with G.S. 150B, Article 2A.
- The RRC shall not consider questions relating to the *quality or efficacy* of the rule.

# NC Administrative Code



- Environmental health rules
  - Title 15A, Subchapter 18A; Subchapter 010
- Other public health rules
  - Title 10A, Chapters 39-62
  - E.g., 10A NCAC 41A .0201
- NC public health rules implement statutes addressing matters including:
  - Delegation of authority for LHD staff to serve as “authorized agents” of DPH
  - Environmental health inspections & permitting
  - Communicable disease control & immunizations
  - LHD accreditation standards
- Available at:  
<http://reports.oah.state.nc.us/ncac.asp>

# Resources

- **NC Public Health Code**
  - <https://www.ncleg.gov/Laws/GeneralStatuteSections/Chapter130A>
- **NC Administrative Procedure Act (G.S. 150B)**
  - <https://www.ncleg.gov/Laws/GeneralStatuteSections/Chapter150B>
- **NC Register**
  - <https://www.oah.nc.gov/rules-division/north-carolina-register>
- **North Carolina Administrative Code**
  - <http://reports.oah.state.nc.us/ncac.asp>
- **Commission for Public Health**
  - <https://cph.publichealth.nc.gov/>
- **Rules Review Commission (RRC)**
  - <https://www.oah.nc.gov/rules-division/rules-review-commission>
- **Permanent Rulemaking Flowchart**
  - <https://files.nc.gov/ncoah/documents/Rules/Rules---Rulemaking-Chart---Permanent-Rule.pdf>

# Questions?

## Contact Information

*Virginia Niehaus, JD, MPH*

*Director of Regulatory and Legal Affairs*

*NC DHHS, Division of Public Health*

[virginia.niehaus@dhhs.nc.gov](mailto:virginia.niehaus@dhhs.nc.gov)