



STATE OF NORTH CAROLINA
OFFICE OF STATE BUDGET AND MANAGEMENT



Employment First State for Individuals with Disabilities

ROY COOPER
GOVERNOR

CHARLES PERUSSE
STATE BUDGET DIRECTOR

February 26, 2021

MEMORANDUM

TO: Governor Roy Cooper

The Honorable Phil Berger
President Pro Tempore of the Senate

The Honorable Tim Moore
Speaker of the House

Mr. Kevin Leonard, Executive Director
North Carolina Association of County Commissioners

Mr. Paul Meyer, Executive Director
North Carolina League of Municipalities

FROM: Charles Perusse *Charles Perusse*

SUBJECT: Schedule of Anticipated Administrative Rule Actions and Summary of
Administrative Rules Affecting Local Governments

Enclosed is a report required by G.S. 150B-21.28. The report contains a schedule of rule actions state agencies anticipate taking in Fiscal Year 2021-22 that might affect state government or local governments, or that might create a substantial economic impact. The second part of this report includes a summary of rules agencies adopted in Fiscal Year 2019-20 that had an economic impact on local governments.

Please contact Taylor Coburn (taylor.coburn@osbm.nc.gov) should you have any questions or comments about these items.

Enclosure

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North Carolina Rules with Economic Impact

2021

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Background

On May 17, 1994, Governor James B. Hunt Jr. issued Executive Order No. 49 entitled “Fiscal Notes on Administrative Rules Affecting Local Governments.” The Executive Order set forth policies and procedures for state agencies to follow when proposing permanent rules with an impact on local governments. Through Session Law 1995-415, the General Assembly incorporated these policies, as well as other changes, in [G.S. 150B-21.28](#) of the [Administrative Procedure Act](#) (APA). The revised APA increases state agencies’ awareness of the effect proposed rules would have on local governments and enables local governments to be more involved in estimating the fiscal impact of permanent rules on local budgets.

According to requirements in the APA, the North Carolina Office of State Budget and Management (OSBM) prepares annually a report containing a schedule of anticipated rule actions in the upcoming fiscal year, as well as a summary of the projected economic impact on local governments of rules adopted in the preceding fiscal year. OSBM provides a copy of this annual report to the Governor, the General Assembly, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities, as required by the APA.

Outline

I. Summary

The Summary section contains statistics on anticipated rule actions in the following fiscal year that might have an economic impact, and rules adopted in the previous year with projected impact on local governments.

II. Schedule of Anticipated Rule Actions, July 1, 2021 – June 30, 2022

This section contains information on rules state agencies expect to adopt in SFY 2021-22 that would have an impact on: i) state expenditure or distribution of funds; ii) local government revenues or expenditures; or iii) would create a substantial economic impact. Substantial impact is statutorily defined as an aggregate financial impact to all parties involved of \$1,000,000 or greater over a 12-month period ([G.S. 150B-21.4\(b1\)](#)). The information in this section is organized by agency and agency division, and it includes the rule title, the North Carolina Administrative Code (NCAC) citation, staff contact information, proposed action, anticipated impact, and a brief description of the rule change.

III. Rules that Affected Local Governments, Adopted July 1, 2019 – June 30, 2020

The last section provides information on rules North Carolina agencies adopted in SFY 2019-20 that have a projected impact on local governments. The information is organized by agency and by adoption date, and it includes the rule title, NCAC citation, staff contact information, and expected net impact on local government revenues and expenditures over a five-year period.

I. Summary

In SFY 2021-22, state agencies anticipate taking action on 57 different rule packages, based on reports submitted by 45 percent of agencies. This report uses the terms “rule change” or “rule” to refer to a package of permanent individual rules an agency proposes to adopt together that constitute a new policy. Therefore, the number of individual rules on which the agencies plan to take action is higher than the number noted in this report. See Table 1 below for a breakdown by agency.

The 57 rule package actions agencies anticipate making in SFY 2021-22 is a larger amount than the 52 actions agencies anticipated engaging in during the current fiscal year (SFY 2020-21), based on information presented in the [2020 NC Rules with Economic Impact Report](#). Approximately 45.6% of the 57 anticipated rule actions with economic impact for the following year include an amendment to existing regulations. Twelve of the anticipated rule actions are related to rule packages agencies are required to readopt per [G.S. 150B-21.3A](#). New rule adoptions make up 38.6% of the anticipated actions, and 5.3% include rule repeals (see Table 2).

Table 1. Number of Anticipated Rules with Economic Impact in SFY 2021-22

Agency	Number of Rule Packages	Percentage of Total
Department of Environmental Quality	23	40.4%
Department of Health and Human Resources	13	22.8%
Department of State Treasurer	10	17.5%
Wildlife Resources Commission	6	10.5%
Department of Administration	3	5.3%
North Carolina Industrial Commission	1	1.8%
North Carolina Building Code Council	1	1.8%
Total Anticipated Rules	57	100.0%

Table 2. Number of Anticipated Rules by Type of Action

Type of Impact	Number of Rule Packages	Percentage of Total
Amend	24	42.1%
Readopt	11	19.3%
Adopt	17	29.8%
Adopt and Amend	2	3.5%
Adopt, Amend, and Repeal	3	5.3%
Repeal and Amend	0	0.0%
Repeal and Adopt	0	0.0%
Repeal	0	0.0%
Total Anticipated Rules	57	100.0%

The Department of Environmental Quality (DEQ) and Department of Health and Human Services (DHHS) anticipate carrying out the majority of the rulemaking in SFY 2021-22. Note that five of the 23 DEQ actions and six of the 13 DHHS actions are readoptions of existing regulations, which are required for the agency to comply with the review of existing regulation provisions in [G.S. 150B-21.3A](#).

As agencies continue to engage in the existing rule review process, there might be additional rulemaking actions than those contained in this report. Based on the [Readoption Schedule](#) published by the Office of Administrative Hearings (as of February 15, 2021), agencies are planning to review another 9 rule chapters, totaling 413 individual rules, in the following fiscal year. At this point, it is unclear how many of those rules will be repealed or readopted, and of those readopted, how many will result in an economic impact. Since agencies may still be in the planning stages for their readoption packages, they may not be able to state whether the rules will be readopted with substantive changes. Therefore, it is possible for the total number of rule actions with economic impact to be higher in the upcoming year than the 57 reported here.

Table 3 presents the number of anticipated rule actions in the next fiscal year that agencies estimate will have a state government, local government, or substantial economic impact, which is defined in [G.S. 150B-21.4\(b1\)](#) as an aggregate economic impact of \$1 million or more over a 12-month period. In comparison to the estimates for the current fiscal year (see the [2020 NC Rules with Economic Impact Report](#)), agencies report a decrease in rules that might have an impact on state or local governments, and a small decrease from six to five rules with substantial economic impact. For more details, see Table 6 in Section II of this report.

Table 3. Number of Anticipated Rules by Type of Impact

Type of Impact	Number of Rule Packages	Percentage of Total
State Government	28	49.1%
Local Government	22	38.6%
Substantial Economic Impact	5	8.8%

In SFY 2019-20, state agencies adopted 20 rule changes estimated to have an impact on local governments (either a cost or benefit), as shown in Table 4.

Table 4. Number of Rules Adopted in SFY 2019-2020 with Local Government Impact, by Agency

Agency	Number of Rule Packages	Percentage of Total
Department of Environmental Quality	8	40.0%
Wildlife Resources Commission	6	30.0%
Department of Health and Human Services	5	25.0%
Department of Administration	1	5.0%
Total Adopted Rules	20	100.0%

Table 5 below presents the estimated quantified impact on local governments over a five-year period resulting from the rules adopted in SFY 2019-20. The net present value of these quantified impacts on local governments is approximately \$24.45 million in costs (computed using a 7% discount rate, as mandated in [G.S. 150B-21.4\(b1\)](#) for fiscal note analyses). Note, these rule changes may result in additional costs and benefits to local governments during the next five years, however these impacts were difficult to quantify. See Table 7 in Section III of this report for more detailed information on these rule changes.

Table 5. Estimated Impact on Local Governments of Rules Adopted by Agencies in SFY 2019-2020, (in thousands of \$)*

Agency	SFY	SFY	SFY	SFY	SFY
	2019-20	2020-21	2021-22	2022-23	2023-24
Department of Environmental Quality	\$231	\$1,437	\$5,917	\$4,871	\$17,864
Department of Health and Human Services	\$71	-\$13	-\$13	\$71	-\$13
Department of Administration	Unquantified				
Wildlife Resources Commission	\$5	\$0	\$0	\$0	\$0
Total Impact of Adopted Rules	\$307	\$1,424	\$5,904	\$4,942	\$17,850

*Note that positive values are net costs to local governments and negative values are net benefits.

II. Schedule of Anticipated Rules Actions in SFY 2021-2022

Table 6. Schedule of Anticipated Rule Actions between July 1, 2021 and June 30, 2022

#	Division	Rule Title and Description	NCAC Citation(s)	Contact		Rule Action	Required by Federal Law/ Regulation	Impacts		
				Name	Phone			State	Local	Substantial
Department of Environmental Quality										
1	Marine Fisheries	Restrict Highly Efficient Fishing Gears on State Ocean Artificial Reefs	15A NCAC 03I .0109	Catherine Blum	252-808-8014	Readopt	No	S	-	-
Proposed amendments remove requirements for artificial reefs, as these requirements are being adopted in a new rule. Proposed amendments also clarify restrictions for research sanctuaries.										
2	Marine Fisheries	Restrict Highly Efficient Fishing Gears on State Ocean Artificial Reefs	15A NCAC 03J .0404, 03R .0119	Catherine Blum	252-808-8014	Adopt	No	S	-	-
Proposed rules establish protections for all finfish species on artificial reefs in state ocean waters by restricting the use of highly efficient fishing gears, which includes all gears except hand line, hook and line, and spearfishing gear.										
3	Marine Fisheries	Hook and Line Modifications	15A NCAC 03J .0306	Catherine Blum	252-808-8014	Amend	No	S	-	U
Proposed amendments require the use of barbless, non-offset circle hooks while fishing with natural bait in coastal fishing waters if a hook has a gap width greater than three-fourths inch. Proposed amendments also require barbs to either be compressed or removed if using a hook with multiple points while fishing in coastal fishing waters.										
4	Marine Fisheries	Prohibit Repacking of Foreign Crab Meat	15A NCAC 03L .0210	Catherine Blum	252-808-8014	Adopt	No	S	U	-
The proposed rule makes it unlawful to repack any foreign crab meat in North Carolina into another container for sale in the State of North Carolina. This rule does not apply to crab meat that has been transformed into another product, such as crab cakes or other value-added products.										
5	Marine Fisheries	Prohibit Repacking of Foreign Crab Meat	15A NCAC 18A .0136, .0173	Catherine Blum	252-808-8014	Readopt	No	S	-	-
Proposed amendments remove record-keeping and other requirements related to repacking foreign crab meat in North Carolina into another container for sale in the State of North Carolina, to align with a proposed adopted rule that makes the practice unlawful.										
6	Air Quality	Municipal Solid Waste Landfill Rules	15A NCAC 02D .1700	Patrick Knowlson	919-707-8711	Amend	Yes	S	L	-
To revise the landfill rules for consistency with new federal landfill requirements.										

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II. Schedule of Anticipated Rules Actions in SFY 2021-2022

7	Air Quality	NOx SIP Call Rules	15A NCAC 02D .1400	Patrick Knowlson	919-707-8711	Adopt and Amend	Yes	U	-	-	
		To adopt and amend the Nitrogen Oxide Rules to include/reference to the appropriate state level EGU budget, the state level non-EGU budget, the process for alternative monitoring and associated general MRR requirements on the sources.									
8	Waste Management	Coal Combustion Residual Units	15A NCAC 13B .2000	Ed Mussler	919-707-8281	Adopt	Yes	U	U	-	
		The proposed new rules contain requirements for coal combustion residual landfills to conform to requirements in 40 CFR 257 Subpart D and the Coal Ash Management Act of 2014. The rules also update existing permitting requirements consistent with other sanitary landfills in NC. The rules are needed to obtain permit program approval from US EPA for CCR Unit permitting. Only minimal impacts to state and local governments are expected, and no substantial economic impacts are expected, but this is uncertain at this time since the rules are still being drafted, and no impact analysis has been finalized or reviewed by OSBM.									
9	Waste Management	Underground Storage Tanks	15A NCAC 02N Rules .0406, .0901, .0905, and .0906	Ruth Strauss	919-707-8299	Amend	Yes	U	U	-	
		The amendments to these rules are being made pursuant to S.L. 2018-114 s. 19 and 19.1 and S.L. 2020-74 s. 17. Although an impact analysis has not been reviewed by OSBM yet, the amendments are expected to have little to no impacts on state and local government and no substantial economic impacts because these Session Laws implemented the required changes directly, effective upon the effective date of each of the Session Laws. Both Session Laws also stated that the changes implemented by Session Law would remain effective until the rules were amended to be consistent with the changes made by the Session Laws. Rules .0406 and .0901 incorporate portions of 40 CFR 280 by reference.									
10	Waste Management	Photovoltaic Modules as Universal Waste	15A NCAC 13A .0119	Jenny Patterson	336-767-0031	Amend	No	U	U	U	
		The proposed amendments add photovoltaic modules (for example from solar panels) as a state universal waste. Universal waste is a subset of hazardous waste and apply to specific categories of materials that would otherwise be a hazardous waste when disposed. Universal wastes have less stringent management standards to encourage recycling instead of disposal. Although an impact analysis has not been reviewed by OSBM yet, the amendments would reduce the cost of management of the recycled PV modules (that would be otherwise be a hazardous waste when disposed).									
11	Waste Management	Clarifications to Hazardous Waste Management Rules	15A NCAC 13A .0110-.0118	Jenny Patterson	336-767-0031	Amend	No	U	U	U	
		The proposed amendments will provide clarifications to the existing federal regulations that are incorporated by reference in the state rules. For instance, the term "annual" is used in describing the period of recurrence for training in the federal regulations, however, this term is not defined in state rules or federal regulations. Additional amendments are required to maintain state authorization of the Hazardous Waste Management Program. The proposed amendments for authorization purposes provide clarification as it pertains to delegation of authority (e.g., clarifying EPA retains authority over certain portions of the electronic manifest program). The amendments are not anticipated to have a fiscal impact to state or local government.									
12	Water Resources	Triennial Review of Surface Water Quality Standards	15A NCAC 02B .0100, .0200, .0300	Julie Ventaloro	919-707-9117	Amend	Yes	S	L	SE	

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II. Schedule of Anticipated Rules Actions in SFY 2021-2022

Updating surface water quality standards in compliance with Clean Water Act. Anticipate a net benefit to State and local governments, net cost to private regulated entities.							
13	Water Resources	Groundwater Corrective Action rules	15A NCAC 02L .0100	Julie Ventaloro	919-707-9117	Readopt	No
		Readoption with numerous administrative changes and updates. Modest impact expected to regulated entities from additional requirement to provide financial assurance. Minimal impact, if any, to state and local government.					
14	Water Resources	Water Use Registration and Allocation rules	15A NCAC 02E .0100, .0300, 0600	Linwood Peele	919-707-9024	Readopt	No
		Readoption with minor administrative changes and updates.					
15	Water Resources	Central Coastal Plain Capacity Use Area	15A NCAC 02E .0500	Gabrielle Chianese	919-707-9008	Readopt	No
		Readoption with minor administrative changes and updates.					
16	Coastal Management	Technical Standards for Beach Fill Projects	15A NCAC 7H .0312	Angela Willis	252-808-2808	Amend	No
		The CRC has proposed amendments to eliminate the rigid sampling protocol in favor of a simpler process where the project's consultant/engineer designs a sampling protocol that assures sediment compatibility between the beach and borrow area.					
17	Coastal Management	Unvegetated Beach Areas	15A NCAC 07H .0304; .0305	Angela Willis	252-808-2808	Amend	No
		On August 3, 2020, Hurricane Isaias severely impacted the oceanfront dune system along portions of Oak Island, completely washing away the primary frontal dune along with the established vegetation, from which oceanfront setbacks are measured. The geographic extent of the two affected areas make it impossible to identify a vegetation line by using interpolation from vegetation on adjacent properties. The Commission can designate Unvegetated Beach Areas of Environmental Concern (AEC) in these two locations for the purpose of authorizing staff to establish a Measurement Line.					
18	Coastal Management	Use Standards for Ocean Hazard Areas (Deck Repairs)	15A NCAC 07H .0309	Angela Willis	252-808-2808	Amend	No
		There have been a number of oceanfront deck collapses in North Carolina and nearby states in recent years. While there may be many reasons for such collapses, the Commission is considering amendments to the CRC's rule 15A NCAC 07H .0309 to address a possible regulatory disincentive to proper deck maintenance.					
19	Coastal Management	Development Period Extension	15A NCAC 07J .0403; .0404	Angela Willis	252-808-2808	Amend	No
						S	L

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II. Schedule of Anticipated Rules Actions in SFY 2021-2022

the Commission approved rule language to lengthen the initial expiration date for most new Major Permits to five years from the date of permit issuance; eliminate the ability to obtain a single two-year renewal when permitted development has not begun; lengthen the initial expiration date for publicly sponsored, multi-phased beach nourishment projects to 10 years from the date of permit issuance, and allow for 10-year renewals

20	Coastal Management	Development Line	15A NCAC 07H .0306 & 07J .1301	Angela Willis	252-808-2808	Amend	No	-	L	-
Although it is not clearly stated in these rules, the Coastal Resources Commission (CRC) expressed their intent to discourage the use of decks and accessory structures (i.e., pools) from being used to delineate DLs. However, due to the ambiguity in the rule (15A NCAC 07J .1300), DLs have been delineated differently from one community to the next, and these structures listed under 15A NCAC 07H .0309(a) may or may not be seaward of the DL at some locations.										
21	Coastal Management	Shorefront Access Policies	15A NCAC 07M .0300	Angela Willis	252-808-2808	Amend	No	-	L	-
It has been at least 10 years since many of the rules associated with the Public Beach and Coastal Waterfront Access Program have been amended. While the Program continues to be quite successful and popular with local governments, Staff proposed amendments to address mainly implementation aspects of the Program, as well as reorganize some of the individual rules based on grant administration, local government requirements, and project selection.										
22	Coastal Management	Floating Structures	15A NCAC 07M .0600 & 07H .0208	Angela Willis	252-808-2808	Amend	No	-	-	-
Due to the expanding shellfish aquaculture industry in North Carolina and the increasing demand for shellfish water column leases with associated gear, the Coastal Resources Commission has been discussing ways to formalize the division's role in reviewing leases, and which activities might be suitable for CAMA permitting through CRC rulemaking. To allow floating upweller systems at a private docking facility, the Commission approved amendments to 15A NCAC 07H .0208(b)(6) Piers and Docking Facilities, a reference to 7H .0208(b)(5) Marinas as well as amendments to 7M .0602 and 7M .0603 Floating Structure Policies. 15A NCAC 7H .0208(b)(6)(B) - the amendment to this rule includes platforms in the calculation of square footage of shading impacts and clarifies that these systems are part of the allowance of shading impacts associated with docking facilities.										
23	Coastal Management	Structural Accessways	15A NCAC 07K .0207 & 07H .0308	Angela Willis	252-808-2808	Amend	No	-	L	-
7H .0308(c) contains the CRC's specific use standards for structural accessways, and as proposed, would include the allowance for beach mats in some cases. The 7K .0207 Rule establishes a permit exemption for structural beach accessways and would also be amended to allow for the use of limited beach access mats when crossing the frontal or primary dune.										

Department of Health and Human Services

1	DHSR	Certificate of Need Readoptions Phase 2	10A NCAC 14C .1601, .1603, .1701, .1703, .1901, .1903, .2301, .2303, .2701, .2703, .3701, .3703	Nadine Pfeiffer	919-855-3811	Readopt	No	U	-	-
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II. Schedule of Anticipated Rules Actions in SFY 2021-2022

These rules are being readopted following the periodic review and expiration of existing rules process having been identified as "Necessary With Substantive Public Interest," in Subchapter 10A NCAC 14C. The Healthcare Planning and Certificate of Need Section of DHSR is responsible for reviewing applications and awarding applicants a Certificate of Need (CON) only when need is demonstrated based on the State Medical Facilities Plan and criterion in law for health care providers acquiring, replacing, or adding to their facilities and equipment, and for the initiation of certain medical services. Monitoring of the progress of conditions in the awarded CON is conducted by the Healthcare Planning and Certificate of Need Section through licensing with the respective agency within DHSR. These rules are being readopted with substantive changes from stakeholder input. These rules will update the cardiac catheterization equipment and cardiac angioplasty equipment definitions and performance standards; open-heart surgery services and heart-lung bypass machines definitions and performance standards; radiation therapy equipment definitions and performance standards; computed tomography equipment definitions and performance standards; magnetic resonance imaging scanner definitions and performance standards; and positron emission tomography scanner definitions and performance standards. There is a possibility for state impact if the rules increase the time for CON applications review by CON staff. There will be no local government impact. None of these changes are predicted to be of a substantial fiscal impact; however, the amount of fiscal impact is unknown.

							S	L	SE
2	DHSR	Adult Care Home/Family Care Home Infection Control Permanent Rules	10A NCAC 13F .1801, .1802; 10A NCAC 13G .1701, .1702	Nadine Pfeiffer	919-855-3811	Adopt	No		
3	DHSR	Adult Care Home/Family Care Home Readoptions Phase 2.5	10A NCAC 13F .0405, .0509, .1213; 10A NCAC 13G .0509, .1214	Nadine Pfeiffer	919-855-3811	Readopt	No	S	-

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II. Schedule of Anticipated Rules Actions in SFY 2021-2022

Four rules are being readopted following the periodic review and expiration of existing rules process having been identified as "Necessary With Substantive Public Interest," in Subchapters 10A NCAC 13F and 10A NCAC 13G, and one rule is being amended. Adult Care Homes and Family Care Homes are licensed long-term residential healthcare facilities operated by for-profit and non-profit entities that located in urban and rural areas in the State. The Adult Care Licensure Section of DSHR is responsible for the licensure and regulatory oversight of licensed Adult Care Homes and licensed Family Care Homes. They also have oversight by the County Department of Social Services in where they are located. These rules are being amended and readopted with input from a stakeholder group. These rules will update requirements for the qualifications of the food service supervisor, food service orientation, and the availability of corrective action and survey reports. Costs will be incurred by the private entity licensed Adult Care Homes and Family Care Homes with these rule changes. However, it is not anticipated that local government will be impacted from these changes. It is anticipated there will be a state impact with a cost incurred to the Adult Care Licensure Section for regulatory compliance activities. None of these changes are predicted to be of a substantial fiscal impact; however, the amount of fiscal impact is unknown.

4	DHSR	Adult Care Home/Family Care Home Readoptions Phase 3	10A NCAC 13F .0407, .0501, .0502, .0504, .0505, .0903, .0904, .1207; 10A NCAC 13G .0406, .0501, .0502, .0504, .0903, .0904, .1208	Nadine Pfeiffer	919-855-3811	Readopt	No	S	L	-
Ten rules are being readopted following the periodic review and expiration of existing rules process having been identified as "Necessary With Substantive Public Interest," in Subchapters 10A NCAC 13F and 10A NCAC 13G, and five rules are being amended. Adult Care Homes and Family Care Homes are licensed long-term residential healthcare facilities operated by for-profit and non-profit entities that are located in urban and rural areas in the State. The Adult Care Licensure Section of DSHR is responsible for the licensure and regulatory oversight of licensed Adult Care Homes and licensed Family Care Homes. They also have oversight by the County Department of Social Services in where they are located. These rules for amendment and readoption are still being drafted with stakeholder input. These rules will update requirements for other staff qualifications, personal care training and competency as well as program approval, personal care training content and instructors, competency validation for licensed health professional support tasks, training on care of diabetic residents, licensed health professional support, nutrition and food service, and resident death reporting. Costs will be incurred by the private entity licensed Adult Care Homes and Family Care Homes with these rule changes. However, it is anticipated that local government will be impacted from oversight activities costs by the County DSS offices. It is anticipated there will be a state impact with a cost incurred to the Adult Care Licensure Section for regulatory compliance activities. None of these changes are predicted to be of a substantial fiscal impact; however, the amount of fiscal impact is unknown.										
5	DHSR	Adult Care Home/Family Care Home Readoptions Phase 3.5	10A NCAC 13F .0404, .0503, .0507, .0508, .0905, .1005, .1006, .1008, .1010; 10A NCAC 13G .0404, .0503, .0507, .0508, .0905, .1005, .1006, .1008, .1010	Nadine Pfeiffer	919-855-3811	Readopt	No	S	L	U

* S = State Impact, L = Local Impact, SE = Substantial Economic Impact of \$1,000,000 or greater in a 12-month period, U = Impact Unknown.

II. Schedule of Anticipated Rules Actions in SFY 2021-2022

Twelve rules are being readopted following the periodic review and expiration of existing rules process having been identified as "Necessary With Substantive Public Interest," in Subchapters 10A NCAC 13F and 10A NCAC 13G, and six rules are being amended. Adult Care Homes and Family Care Homes are licensed long-term residential healthcare facilities operated by for-profit and non-profit entities that are located in urban and rural areas in the State. The Adult Care Licensure Section of DSHR is responsible for the licensure and regulatory oversight of licensed Adult Care Homes and licensed Family Care Homes. They also have oversight by the County Department of Social Services in where they are located. These rules for amendment and readoption have yet to be drafted with stakeholder input. These rules will update requirements for the qualifications of the activity director and the activities program, medication administration competency, training on assessments and CPR, self-administration of medications, medication storage, controlled substances, and pharmaceutical services. It is anticipated that costs will be incurred by the private entity licensed Adult Care Homes and Family Care Homes with these rule changes. It is also anticipated that local government will be impacted from oversight activities costs by the County DSS offices. It is anticipated there will be a state impact with a cost incurred to the Adult Care Licensure Section for regulatory compliance activities. The amount of anticipated fiscal economic impact is unknown. It is unknown whether these changes will be of a substantial fiscal impact.

6	DHSR	Hospital Readoptions Phase 4	10A NCAC 13B .3801, .3903, .4103, .4104, .4106, .4305, .4603, .4801, .4805, .5102, .5102, .5105, .5406, .5408, .5411	Nadine Pfeiffer	919-855-3811	Readopt	Yes	U	U	-
These rules are being readopted following the periodic review and expiration of existing rules process. These rules have been identified as "Necessary With Substantive Public Interest." Hospitals are facilities licensed and operated by entities that may include county government agencies and for-profit and non-profit entities located in urban and rural areas in the State. The Acute and Home Care Licensure & Certification Section of DSHR is responsible for licensing and regulating these providers. These rules have yet to be drafted with stakeholder input. These rule readoptions will update the requirements for the nurse executive; organization of medical records, neonatal services, and diagnostic imaging; provision of emergency services; the medical director; emergency department policies and procedures; surgical and anesthesia staff; diagnostic imaging safety; infection control policies and procedures; sterile supply services; inpatient rehabilitation facilities or units discharge criteria, staffing and the physical plant. It is anticipated that costs will be incurred by these rule changes by the licensed hospitals; therefore, there will be local government impact. It is anticipated there will be a state impact with a cost incurred to the Acute and Home Care Licensure & Certification Section for regulatory compliance activities. The amount of anticipated fiscal economic impact is unknown. None of these changes are predicted to be of a substantial fiscal impact.										
7	DPH	Update to the 2017 Food Code and Supplement	15A NCAC 18A .2650, .2651, .2652, .2653, .2654, .2655, .2658, .2661, .2670, .2674,	Virginia Niehaus	(919) 634-0184	Amend	No	S	L	SE
Anticipated amendment of the rules governing food establishments to incorporate the 2017 edition of the FDA Food Code, pursuant to authority granted under SL 2019-129. This includes the anticipated readoption of 15A NCAC 18A .2650, .2670, and .2674.										
8	DPH	Reporting of COVID-19 Diagnostic Test Results	10A NCAC 41A .0107	Virginia Niehaus	(919) 634-0184	Adopt	No	S	U	SE

* S = State Impact, L = Local Impact, SE = Substantial Economic Impact of \$1,000,000 or greater in a 12-month period, U = Impact Unknown.

II. Schedule of Anticipated Rules Actions in SFY 2021-2022

Anticipated permanent adoption of this new rule governing the reporting of all COVID-19 diagnostic test results to public health.								
9	DPH	Handling and Transportation of Bodies for the Control of Communicable Diseases	10A NCAC 41A .0212	Virginia Niehaus	(919) 634-0184	Amend	No	S L -
Anticipated permanent amendment of the rule to establish control measures to prevent infection in the handling and transportation of the bodies of persons known to be infected with COVID-19.								
10	DPH	Required Environmental Health Rule Readoptions in 15A NCAC 18A Sections .1300, .2800, and .2900	15A NCAC 18A .1301, .1302, .1304, .1305, .1306, .1307, 1308, .1309, .1310, .1311, .1312, .1313, .1314, .1315, .1316, .1317, .1318, .1319, .1320, .1321, .1323, .1324, .1327, .2801, .2802, .2803, .2804, .2806, .2807, .2808, .2809, .2810, .2812, .2814, .2815, .2816, .2817, .2818, .2819, .2820, .2821, .2822, .2823, .2824, .2825, .2826, .2827, .2829, .2830, .2831, .2832, .2833, .2834, .2835, .2836, .2901	Virginia Niehaus	(919) 634-0184	Readopt	No	U U U
Anticipated readoption of 56 rules in 15A NCAC 18A sections .1300, .2800, and .2900 that govern environmental health in institutions and child care facilities as well as inspection fees in accordance with G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules.								
11	Commission for MH/DD/SAS	Staff Definition	10A NCAC 27G .0104	Denise Baker	984-236-5272	Amend	No	U U U
Amendment of the Rule will permit both pre- and post-degree experience to be considered when credentialing an individual as a Qualified Professional.								
12	Commission for MH/DD/SAS	Definitions	10A NCAC 28A .0102	Denise Baker	984-236-5272	Amend	No	U U U
Amendment of the Rule will permit both pre- and post-degree experience to be considered when credentialing an individual as a Qualified Professional.								

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II. Schedule of Anticipated Rules Actions in SFY 2021-2022

13	Commission for MH/DD/SAS	Community Respite Services for Individuals of All Disability Groups	10A NCAC 27G .5101	Denise Baker	984-236-5272	Amend	No	U	U	U
Amendment of the Rule will permit the addition of definitions for Crisis Respite as well as Peer Operated Respite services.										
Department of Administration										
1	Purchase and Contract	Division of Purchase And Contract	01 NCAC 05A	Shanon Gerger	984-236-0008	Amend	No	U	U	U
2	Purchase and Contract	Purchase Procedures	01 NCAC 05B			Adopt, Amend, and Repeal	No	S	U	U
3	Purchase and Contract	Consultant Contracts	01 NCAC05D			Adopt, Amend, and Repeal	No	S	U	U
Department of State Treasurer										
1	Local Government Commission	Finance Officer Training	NCGS 159-25(d)	Laura Rowe	814-3851	Adopt	No	-	L	-
Adopt rules governing the development and delivery of finance officer training required under NCGS 159-25(d).										
2	Local Government Commission	Finance Officer Qualifications	NCGS 159-25(c)	Laura Rowe	814-3851	Adopt	No	-	L	-
Adopt rules establishing minimum qualifications for finance officers.										
3	Teachers' & State Employees' Retirement System Board of Trustees	Felony Forfeiture	Sec. 4.3 of S.L. 2020-48	Laura Rowe	814-3851	Adopt	No	S	-	-
The agency's criteria for determining whether a felony is job-related for felony forfeiture (different rules for different systems) [Sec. 4.3 of S.L. 2020-48]										
4	Teachers' & State	Return-to-Work Penalty Criteria	Sec. 7 of S.L. 2020-29	Laura Rowe	814-3851	Adopt	No	S	-	-

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II. Schedule of Anticipated Rules Actions in SFY 2021-2022

Employees' Retirement System Board of Trustees	The agency's criteria for determining when to assess the return-to-work penalty to an employer because the actions of the employer contributed to the overpayment [Sec. 7 of S.L. 2020-29]						
5 Teachers' & State Employees' Retirement System Board of Trustees	Criteria for "inactive" status of employer applications	Sec. 1.9 of S.L. 2020-48	Laura Rowe	814-3851	Adopt	No	S - -
	The agency's criteria for determining when to grant employer applications to become inactive [Sec. 1.9 of S.L. 2020-48]						
6 Teachers' & State Employees' Retirement System Board of Trustees	Agency process for determining the employers on the Contribution-Based Benefit Cap "watch list" rule	Sec. 1(e) and 1(f) of S.L. 2014-88	Laura Rowe	814-3851	Adopt	No	S - -
	The agency's process for determining the employers on the Contribution-Based Benefit Cap "watch list" rule, where the Boards approved draft text in January 2019. [Sec. 1(e) and 1(f) of S.L. 2014-88]						
7 Local Governmental Employees' Retirement System Board of Trustees	Felony Forfeiture	Sec. 4.3 of S.L. 2020-48	Laura Rowe	814-3851	Adopt	No	- L -
	The agency's criteria for determining whether a felony is job-related for felony forfeiture (different rules for different systems) [Sec. 4.3 of S.L. 2020-48]						
8 Local Governmental Employees' Retirement System Board of Trustees	Return-to-Work Penalty Criteria	Sec. 7 of S.L. 2020-29	Laura Rowe	814-3851	Adopt	No	- L -
	The agency's criteria for determining when to assess the return-to-work penalty to an employer because the actions of the employer contributed to the overpayment [Sec. 7 of S.L. 2020-29]						
9 Local Governmental Employees' Retirement System Board of Trustees	Criteria for "inactive" status of employer applications	Sec. 1.9 of S.L. 2020-48	Laura Rowe	814-3851	Adopt	No	- L -
	The agency's criteria for determining when to grant employer applications to become inactive [Sec. 1.9 of S.L. 2020-48]						

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II. Schedule of Anticipated Rules Actions in SFY 2021-2022

10	Local Governmental Employees' Retirement System Board of Trustees	Agency process for determining the employers on the Contribution-Based Benefit Cap "watch list" rule	Sec. 1(e) and 1(f) of S.L. 2014-88	Laura Rowe	814-3851	Adopt	No	-	L	-
The agency's process for determining the employers on the Contribution-Based Benefit Cap "watch list" rule, where the Boards approved draft text in January 2019. [Sec. 1(e) and 1(f) of S.L. 2014-88]										
North Carolina Industrial Commission										
1	Industrial Commission	Working Title: Fees for Data Processing Services	Likely will adopt new rule and cite it as 11 NCAC 23E .0205	Gina Cammarano	919-807-2524	Adopt	No	S	L	U
The Industrial Commission expects to adopt a rule establishing fees for data processing services associated with the Commission's new consolidated legal case management system.										
Wildlife Resources Commission										
1	NCWRC	Game Lands Regulations	15A NCAC 10D	Ashley Pekrul	919-707-0014	Amend	No	S	U	-
Multiple modifications to include changes to use, establishment of new game lands, target shooting, fishing, permit requirements, and administrative updates.										
2	NCWRC	Inland Fishing Regulations	15A NCAC 10C	Ashley Pekrul	919-707-0014	Adopt, Amend, and Repeal	No	S	U	-
Modify size and/or creel limits; modify list of waters designated as Public Mountain Trout Waters to further classifications: Hatchery Supported, Delayed Harvest or Wild Trout; and modify/update special fishing devices; Readopt general regulations and game fish rules.										
3	NCWRC	Endangered and Threatened Species	15A NCAC 10I	Ashley Pekrul	919-707-0014	Amend	No	S	U	-
Modify trapping for live sale regulations; adopt wildlife conservation land program rules; amend hunting and trapping seasons.										
4	NCWRC	Regulated Activities	15A NCAC 10H	Ashley Pekrul	919-707-0014	Adopt	No	S	L	-
Adopt rabbit pen and wildlife control technician rules.										
5	NCWRC	Various Water Safety Regulations	15A NCAC 10F	Ashley Pekrul	919-707-0014	Amend	No	S	L	-

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II. Schedule of Anticipated Rules Actions in SFY 2021-2022

		Modify and add no wake zones throughout the state.								
6	NCWRC	Wildlife Management	15A NCAC 10I	Ashley Pekrul	919-707-0014	Adopt and Amend	No	S	U	-
Modify hunting and trapping seasons and bag limits.										
North Carolina Building Code Council										
1	NC BCC	Energy Conservation Requirements	2018 NCRC Section N1106.2, 2018 NCECC Section R406.2	Carl Martin	919-888-0284	Amend	No	-	-	SE
Amendment to energy conservation requirements of the NC Residential Code and Energy Conservation Code to accommodate the use of spray foam insulation in dwelling attics.										

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III. Rules with Estimated Local Government Impact Adopted in SFY 2019-2020

Table 7. Rules with Estimated Local Government Impact Adopted Between July 1, 2019 and June 30, 2020

Agency, Division	Title of Rule Change	Citation(s)	Contact	Date Adopted	Quantified Impact on Local Government (thousands):*				
					2019- 20	2020- 21	2021- 22	2022- 23	2023- 24
Department of Environmental Quality									
DEQ/DAQ	Group 4 air quality readoptions	15A NCAC 02D .0540, .1800, and .1900	Patrick Knowelson	7/11/19					Unquantified
DEQ/DCM	State port inlet management areas of concern	15A NCAC 07H .0304, .0309, and .0313	Heather Coats	11/19/19	\$0	-\$56	-\$56	-\$56	-\$56
DEQ/DCM	Inlet hazard area boundaries	15A NCAC 07H .0304, 15A NCAC 07H .0306, 15A NCAC 07H .0309, 15A NCAC 07H .0310	Ken Richardson	2/12/20					Unquantified
DEQ/DWM	Solid waste compost	15A NCAC 13B .1401 - .1410	Jessica Montie	9/12/19	\$0	\$6	\$6	-\$6	-\$6
DEQ/DWM	Hazardous Waste Pharmaceuticals	15A NCAC 13A .0111	Jenny Patterson	5/7/20	\$9	\$1	-\$26	-\$28	-\$60
DEQ/DWR	Triennial Review - Surface Water	15A NCAC 02B .0201 - .0206, .0208, .0211 - .0212, .0214-0216, .0218 - .0228, .0230 -.0231	Connie Brower	7/11/19	\$222	\$854	\$5,679	\$4,624	\$17,626
DEQ/DWR	Nutrient strategy rules - Neuse and Tar Pam	15A NCAC 02B .0229, .0232, .0234-.0240, .0255-.0258, .0701, .0703	John Huisman	9/12/19	\$0	\$632	\$314	\$336	\$360
DEQ/DWR	Public water supply protection and emergency response plan	15A NCAC 18C .1305	Jay Frick	2/5/20					Unquantified
Total quantified impact for Department of Environmental Quality:					\$231	\$1,437	\$5,917	\$4,871	\$17,864
Department of Health and Human Services									
DHHS/DHSS	Adult Care Home Change of Licensee & Marketing	10A NCAC 13F .0207, .1206, 13G .0207, .1207	Nadine Pfeiffer	11/8/19	-\$36	-\$36	-\$36	-\$36	-\$36

* Note that positive values are net costs to local governments and negative values are net benefits. The table does not present unquantified costs and benefits.

III. Rules with Estimated Local Government Impact Adopted in SFY 2019-2020

DHHS/DHSR	Adult Care Home Conditions for License Renewal	10A NCAC 13G .0202, .0204, .0208, .0212, 13F .0202, .0204, .0208, .0212	Nadine Pfeiffer	2/14/20	Unquantified				
DHHS/DPH	Lead in Child Care Centers	15A NCAC 18A .2816	Ed Norman	8/7/19	\$84	\$0	\$0	\$84	\$0
DHHS/DPH	Alcohol Breathalyzers	10A NCAC 41B .0201-.0209; .0322, .0323, .0503	Virginia Niehaus	2/5/20	Unquantified				
DHHS/DPH	Reportable Diseases and Conditions	10A NCAC 41A .0101	Jean-Marie Maillard	5/6/20	\$23	\$23	\$23	\$23	\$23
Total quantified impact for Department of Health and Human Services:					\$71	-\$13	-\$13	\$71	-\$13

Department of Administration

DOA	Purchase and Contract Negotiations	01 NCAC 05B .0503	Shanon Gerger	5/20/20	Unquantified				
Total quantified impact for Department of Administration:									

Wildlife Resources Commission

WRC	No Wake Zone Onslow County	15A NCAC 10F .0320	Betsy Haywood	7/18/19	Unquantified				
WRC	Captivity and Rehabilitation (revised)	15A NCAC 10H .1401-.0406	Michael Smallwood	7/18/19	Unquantified				
WRC	No Wake Zone Northampton County	15A NCAC 10F .0336	Michael Smallwood	12/5/19	\$1	\$0	\$0	\$0	\$0
WRC	Annual rule package - Regulations regarding use and hunting on game lands	15A NCAC 10D .0102-.0103	Michael Smallwood	2/27/20	Unquantified				
WRC	Annual rule package - Prohibited take and manner of take	15A NCAC 10B .0201	Michael Smallwood	2/27/20	Unquantified				
WRC	No wake zone Currituck County	15A NCAC 10F .0340	Betsy Haywood	2/27/20	\$3	\$0	\$0	\$0	\$0
Total quantified impact for Wildlife Resources Commission:					\$5	\$0	\$0	\$0	\$0

Total for ALL Agencies (quantifiable impact only)*: **\$307** **\$1,424** **\$5,904** **\$4,942** **\$17,850**

* Note that positive values are net costs to local governments and negative values are net benefits. The table does not present unquantified costs and benefits.