

Burgos, Alexander N

Subject: FW: October 2024 RRC - 2024 NC Admin Code - Table 202.5.5 and Appendix C - Requests for Changes

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Thursday, October 3, 2024 3:30 PM

To: Rittlinger, David B <david.rittlinger@ncdoi.gov>

Cc: Heuser, Kyle <kyle.heuser@ncdoi.gov>; Childs, Nathan D <nchilds@NCDOJ.GOV>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Holder, Karen <Karen.Holder@ncdoi.gov>

Subject: RE: October 2024 RRC - 2024 NC Admin Code - Table 202.5.5 and Appendix C - Requests for Changes

Hi David,

Hope you are well, too. Your changes look good, so I believe I'll be able to recommend approval at the October meeting.

This isn't too complicated, so I'll just forward your last email over to oah.rules and let Alex and Dana know these are the final rules.

Best,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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Burgos, Alexander N

Subject: FW: October 2024 RRC - 2024 NC Admin Code - Table 202.5.5 and Appendix C - Requests for Changes

Attachments: D-3 20240319 Item B-4 2024 NCACP Table 202.5 and Appendix C Rev 1. Form_0400_for_Permanent_Rule_September_2024.pdf; D-3 20240319 Item B-4 2024 NCACP Table 202.5 and Appendix C Rev 1. Form_0400_for_Permanent_Rule_September_2024.docx; 2024-0924 NCBCC responses10.2024 - BCC - NC Admin Code Table 202.5.5 and Appendix C.pdf; 2024-0924 NCBCC responses10.2024 - BCC - NC Admin Code Table 202.5.5 and Appendix C.docx

Importance: High

From: Rittlinger, David B <david.rittlinger@ncdoi.gov>
Sent: Tuesday, September 24, 2024 2:22 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Heuser, Kyle <kyle.heuser@ncdoi.gov>; Childs, Nathan D <nchilds@NCDOJ.GOV>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Holder, Karen <Karen.Holder@ncdoi.gov>
Subject: RE: October 2024 RRC - 2024 NC Admin Code - Table 202.5.5 and Appendix C - Requests for Changes
Importance: High

Brian,
Good afternoon. I hope you are well.
I have attached a separate pdf and MS Word copy of the following documents concerning the 2024 NC Administration Code and Policies:

Documents included:
Comments responses to the 9/17/24 RRC staff attorney comments.
(1) Updated Form 400 form for 2024 NC Admin Code - Table 202.5.5 and Appendix C

Let me know if you have any questions or comments.

Thank you for your work on this.
Have a great day.

David Bruce Rittlinger, PE, LEED AP
Division Chief – Codes and Interpretations



North Carolina
Office of State Fire Marshal
1202 Mail Service Center
Raleigh, NC 27699-1202
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Link to free view of 2018 NC Codes
<https://codes.iccsafe.org/codes/north-carolina>

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: N.C. Building Code Council

RULE CITATION: NC Administrative Code, Table 202.5.5, Appendix C

DEADLINE FOR RECEIPT: **Tuesday, October 1, 2024.**

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

The table doesn't reflect when the agency sends the petition to OAH. Under 150B-20(a), an agency must send a rulemaking petition to OAH for publication on our website within 3 business days of receipt. NCBCC rulemaking coordinator response: Clarified the intent as follows in the table:

*Rule Petition Sent to the North Carolina
Office of Administrative Hearings Pursuant
to N.C.G.S. 150B-20(a) for Posting to the
Public Within Three Business Days: February 1*

What is a "standing committee"? I assume we're talking about the two committees created in G.S. 143-136? NCBCC rulemaking coordinator response: No. The standing committees are noted in 2024 NCACP 202.8.2 as follows:

202.8.2 Standing committees. *The standing committees shall consist of members of the Building Code Council. The Chair of the Building Code Council shall appoint the chair and members of each committee.*

The standing committees are listed in the front of the 2024 NCACP for each of following areas: Administration, Building, Electrical, Energy, Existing Building, Fire Prevention, Mechanical, Residential and Structural. These respective standing committees provide the first review and consideration of new rule petitions prior to the super committee review and consideration and the NCBCC review and consideration.

A recommendation of granting a new rule petition is then sent to the super committees for their consideration. If a standing committee denies a petition, the petition does not move forward in the process.

No changes were made per this comment and response.

Brian Liebman
Commission Counsel

Date submitted to agency: September 17, 2024

What does it mean that the petition is “granted for public hearing”? Under G.S. 150B-20 a petition is either granted, and the agency goes through rulemaking, or it is denied, and the agency submits a written statement to the petitioner explaining the reason for denial. *NCBCC rulemaking coordinator response: The NCBCC needs time to review new rule petitions once they receive them in February. The Mid-March meeting is where the NCBCC determines if the submitted new rule petition needs modifications by the proponent or not. A new rule petition is required to have a public hearing and be noticed in the NC Register which cannot happen in Mid-March per the receipt schedule and law for an item received in February since the deadline for the notice of hearing is too soon after the new rule petition has been received. Since the NCBCC meetings are quarterly, the public hearing is scheduled for Mid-June so that the item can be properly noticed in the NC Register. “Granted for Public Hearing” is stating that the NCBCC granted the item to proceed to rulemaking proceedings as noted in N.C.G.S. 150B-20(c). No changes were made per this comment and response.*

Which April NC Register? Typically, rules must be filed between 20-30 days before the publication date of the Register (see the 2024 Publication Calendar on our website). For instance, this year, to make it in the April 1 Register, you’d have to have filed by March 8. To make it in the April 15 Register, you’d have to have filed by March 22. *NCBCC rulemaking coordinator response: Mid-April NC Register posting to allow for the public hearing and 60-day public comment period to occur before the NCBCC adopts the rule just after the public hearing and expiration of the 60-day comment period. Clarified the intent as follows:*

*Rule Petition Granted for Public ~~Hearings~~
Hearing (B-items):*

~~March~~Mid-March BCC meeting

Notice of Hearing Published:

~~April~~Mid-April NC Register

Under SL 2023-134, 150B-21.2(e) was amended to add a requirement that hearings be held not later than 60 days after publication in the Register. So if you published in the April 1 Register, you could not have a hearing after 5/31. If you published in the April 15 Register, your hearing couldn’t be later than June 14. Your rule states that the hearing would be at the June public hearing. I don’t know when that is, but this is potentially misleading, as you’d be required to have a hearing in May if you published in the April 1 Register. *NCBCC rulemaking coordinator response: The public hearing would occur pursuant to law noted in N.C.G.S. 150B-21.2(e). The intent is clarified as follows:*

Hearing ~~Held~~Held (C-items):

*~~June~~Mid-June BCC public hearing (no later than
60 days from the NC Register publication date)*

It seems you’re proposing to have the hearing, the Standing Committee final review, and the full BCC adoption at the same June meeting. An agency cannot adopt a rule until the time for commenting has elapsed. The earliest time your comment period could elapse is 5/31 if you published on 4/1, and 6/14 if you published on 4/15. Thus, if your meeting is before 6/14, you’d be out of compliance with the APA. *NCBCC*

Brian Liebman
Commission Counsel

Date submitted to agency: September 17, 2024

rulemaking coordinator response: The NCBCC would perform this action over two meetings in Mid-June. The public hearing would occur day one pursuant to law noted in N.C.G.S. 150B-21.2(e). The standing committee final review and NCBCC final adoption would occur on day two no earlier than the day after the public hearing and the expiration of the 60-day public comment period. The intent for standing committee final review and NCBCC final adoption to occur after the public hearing and the 60-day public comment period has expired is clarified as follows:

Standing Committee Final Review:

~~*June*~~*Mid-June*~~*September*~~*BCC*
Standing Committee meeting (after
the public hearing and expiration of
the 60 day public comment period)

Final Rule ~~Adoption~~ Adoption (D-items):

~~*September*~~*June*~~*Mid-June*~~*BCC*
meeting (after the public hearing
and expiration of the 60 day public
comment period)

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: NC Building Code Council	
2. Rule citation & name (name not required for repeal): 2024 NC Administrative Code and Policies, Table 202.5 and Appendix C (240319 Item B-4)	
3. Action: <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: May 15, 2024 in NC Register, April 24, 2024 agency website Link to Agency notice: https://www.ncosfm.gov/240610-notice1hearing-2 Hearing on: June 11, 2024 Adoption by Agency on: September 10, 2024 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input type="checkbox"/> This Rule was part of a combined analysis. <input type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input type="checkbox"/> Approved by OSBM <input checked="" type="checkbox"/> No fiscal note required
9. REASON FOR ACTION	
9A. What prompted this action? Check all that apply: <div style="display: flex; justify-content: space-between;"><div style="width: 45%;"><input checked="" type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite:</div><div style="width: 45%;"><input type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:</div></div>	
9B. Explain: NC OSFM Code and Interpretations staff has repeatedly heard from stakeholders in the built environment that the code adoption process takes too much time as it seems that petitions sit for long periods of time between NCBCC meetings without any action on them. This petition aims to make the code adoption process more efficient to meet the demands of all stakeholders by speeding up the code adoption time by 90 days without adding additional NCBCC quarterly meetings. The delayed effective date of this Rule is January 1, 2025. The Statutory authority for Rule-making is G. S. 143-136; 143-138.	

SUBMISSION FOR PERMANENT RULE

10. Rulemaking Coordinator: David B. Rittlinger
David B. Rittlinger
Phone: (919)647-0008
E-Mail: david.rittlinger@ncdoi.gov

Additional agency contact, if any:
Phone:
E-Mail:

11. Signature of Agency Head* or Rule-making Coordinator:



***If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

Typed Name: David B. Rittlinger
Title: Interim NC-OSFM Division Chief of Building Code & Interpretations and Chief Code Consultant

RRC AND OAH USE ONLY

Action taken:

- ☐ RRC extended period of review:
- ☐ RRC determined substantial changes:
- ☐ Withdrawn by agency
- ☐ Subject to Legislative Review
- ☐ Other:

SUBMISSION FOR PERMANENT RULE

Table 202.5.5 is edited as follows:

**Table 202.5.5
Typical Timeline Example for Adopted Rules**

Rule Petition Received:	February 1
<u>Rule Petition Sent to the North Carolina Office of Administrative Hearings Pursuant to N.C.G.S. 150B-20(a) for Posting to the Public Within Three Business Days:</u>	<u>February 1</u>
Standing Committee First Review:	February – March <u>June</u>
Rule Petition Granted for Public Hearing ; <u>Hearing (B-items):</u>	March <u>Mid-March</u> BCC meeting
Notice of Hearing Published:	April <u>Mid-April</u> NC Register
Hearing Held <u>Held (C-items):</u>	June <u>Mid-June</u> BCC public hearing (<u>no later than 60 days from the NC Register publication date</u>)
Standing Committee Final Review:	June <u>Mid-June</u> September <u>BCC Standing Committee meeting (after the public hearing and expiration of the 60 day public comment period)</u>
Final Rule Adoption <u>Adoption (D-items):</u>	September <u>June</u> <u>Mid-June</u> BCC meeting (<u>after the public hearing and expiration of the 60 day public comment period</u>)
Rules Review Meeting:	November <u>July or August</u> RRC meeting
Effective:	First day of the month following the month the adopted rule is approved by RRC or a delayed effective date approved by the BCC.

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SUBMISSION FOR PERMANENT RULE

Appendix C is edited as follows:

Typical Timeline Example for Adopted Rules	
Rule Petition Received:	February 1
Rule Petition Sent to the North Carolina Office of Administrative Hearings Pursuant to N.C.G.S. 150B-20(a) for Posting to the Public Within Three Business Days:	February 1
Standing Committee First Review	February - March June
Rule Petition Granted for Public Hearing: Hearing (B-items):	March Mid-March BCC meeting
Notice of Hearing Published:	April Mid-April NC Register
Hearing Held: Held (C-items):	June Mid-June BCC public hearing (no later than 60 days from the NC Register publication date)
Standing Committee Final Review	June Mid-June – September BCC Standing Committee meeting (after the public hearing and expiration of the 60 day public comment period)
Final Rule Adoption: Adoption (D-items):	September June Mid-June BCC meeting (after the public hearing and expiration of the 60 day public comment period)
Rules Review Meeting:	November July or August RRC meeting
Effective:	First day of the month following the month the adopted rule is approved by RRC or a delayed effective date approved by the BCC.

Burgos, Alexander N

From: Liebman, Brian R
Sent: Tuesday, September 17, 2024 5:05 PM
To: Rittlinger, David B
Cc: Heuser, Kyle; Childs, Nathan D; Burgos, Alexander N
Subject: October 2024 RRC - 2024 NC Admin Code - Table 202.5.5 and Appendix C - Requests for Changes
Attachments: 10.2024 - BCC - NC Admin Code Table 202.5.5 and Appendix C.docx

Good afternoon, folks,

I'm the attorney who reviewed the Rules submitted by the Council for the October 2024 RRC meeting. The RRC will formally review these Rules at its meeting on Wednesday, October 30, 2024, at 10:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Please submit the revised Rules and forms to me via email, no later than 5 p.m. on Tuesday, October 1, 2024.

In the meantime, please do not hesitate to reach out via email with any questions or concerns.

Thanks,

Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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