

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.

What is a "standing committee"? I assume we're talking about the two committees created in G.S. 143-136?

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.

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.

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.

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.

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

Brian Liebman
Commission Counsel

Date submitted to agency: September 17, 2024

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:

Table 202.5.5 is edited as follows:

Table 202.5.5
Typical Timeline Example for Adopted Rules

Rule Petition Received:	February 1
Standing Committee First Review:	February – March <u>June</u>
Rule Petition Granted for Public Hearing : <u>Hearing (B-items):</u>	March BCC meeting
Notice of Hearing Published:	April NC Register
Hearing Held : <u>Held (C-items):</u>	June BCC public hearing
Standing Committee Final Review:	June – September <u>BCC Standing Committee meeting</u>
Final Rule Adoption : <u>Adoption (D-items):</u>	September <u>June</u> BCC meeting
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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Appendix C is edited as follows:

Typical Timeline Example for Adopted Rules	
Rule Petition Received:	February 1
Standing Committee First Review	February - March <u>June</u>
Rule Petition Granted for Public Hearing : <u>Hearing (B-items):</u>	March BCC meeting
Notice of Hearing Published:	April NC Register
Hearing Held : <u>Held (C-items):</u>	June BCC public hearing

SUBMISSION FOR PERMANENT RULE

Standing Committee Final Review	June – September <u>BCC Standing Committee meeting</u>
Final Rule Adoption : <u>Adoption (D-items):</u>	September <u>June</u> BCC meeting
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.