

Burgos, Alexander N

Subject: FW: Department of Labor RFC- June 2026

From: Snyder, Ashley B <ashley.snyder@labor.nc.gov>
Sent: Friday, June 19, 2026 2:31 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Rose, Carla <carla.rose@labor.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Department of Labor RFC- June 2026

Thanks, Seth. Received. Will touch base next week.

Ashley Snyder
General Counsel
NC Department of Labor

General Counsel's Office: 919-707-7713
Direct: 919-707-7715

1101 Mail Service Center
Raleigh, NC 27699-1101
Ashley.Snyder@labor.nc.gov

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Friday, June 19, 2026 12:37 PM
To: Snyder, Ashley B <ashley.snyder@labor.nc.gov>
Cc: Rose, Carla <carla.rose@labor.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: Department of Labor RFC- June 2026

Ashley,

Attached is a staff opinion recommending that the Commission object to this repeal for failure to comply with the APA , or in the alternative extend the period of review.

As I am sure you are aware, the Commission is open to hearing more from you orally or in writing. However, given the timelines for the meeting, I needed to get this staff opinion out today.

Seth Ascher
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

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Burgos, Alexander N

Subject: FW: Department of Labor RFC- June 2026
Attachments: Department of Labor RFC May 26 ABS.docx

From: Snyder, Ashley B <ashley.snyder@labor.nc.gov>
Sent: Thursday, June 11, 2026 5:04 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Rose, Carla <carla.rose@labor.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Department of Labor RFC- June 2026

Seth,

See attached. Happy to answer any follow-up questions as well.

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**Request for Changes Pursuant to
N.C. Gen. Stat. § 150B-21.10**

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

If the request includes questions, please contact the reviewing attorney to discuss.

In order to properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
- Rule 26 NCAC 02C .0404 – The Rule addresses changing the introductory statement.
- Rule 26 NCAC 02C .0405 – The Rule addresses properly formatting changes made after publication in the NC Register.

Note the following general instructions:

1. You must submit the revised rule via email to oah.rules@oah.nc.gov. The electronic copy must be saved as the official rule name (XX NCAC XXXX).
2. For rules longer than one page, insert a page number.
3. Use line numbers; if the rule spans more than one page, have the line numbers reset at one for each page.
4. Do not use track changes. Make all changes using manual strikethroughs, underlines and highlighting.
5. You cannot change just one part of a word. For example:
 - Wrong: “~~a~~Association”
 - Right: “~~association~~ Association”
6. Treat punctuation as part of a word. For example:
 - Wrong: “day;; and”
 - Right: “~~day,~~ day, and”
7. Formatting instructions and examples may be found at:
<https://www.oah.nc.gov/rule-format-examples>

If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.

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

AGENCY: Department of Labor

RULE CITATION: 13 NCAC 19 .0101-.0702

DEADLINE FOR RECEIPT: June 15, 2026

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:

As you may be aware, using G.S. 150B-21.5(b)(3) to repeal rules without publication appears to be a novel application of the law. This raises a number of legal questions.

Are you aware of circumstances when this provision has been used to repeal rules without publication?

No.

What is your position as to how the RRC should evaluate these repeals?

The agency has declared these rules in excess of its statutory authority. That action occurred in the Submission for Permanent Rule form. If an agency declares rules in excess of its statutory authority, an agency is allowed to repeal pursuant to G.S. 150B-21.5(b)(3).

What is your interpretation of the term "declared" in this context?

Similar to the definition you have copied below. It is a formal or official statement made by, generally, a government entity, here an agency.

Cards on the table, my initial legal research has led me to think that this refers to a "declaratory ruling" under G.S. 150B-4 or possibly G.S. 1-253. I am looking at the language cited below, and the general use of the term "declare" and the APA in statutes at large.

First, the statute is silent as to who must make the declaration. The purpose of this provision is to allow agencies a shorter process to repeal rules.

It is relevant that declaratory rulings are issued by agencies. If an agency has authority in the context of a declaratory ruling to declare a rule in excess of the agency's authority,

Seth Ascher
Commission Counsel

Date submitted to agency: June 2, 2026

the agency possesses the authority to declare its rules in excess of statutory authority. Here, the agency is acting pre-emptively to clear the Code of rules without authority.

I also think it is relevant that a “fast track” repeal process also exists in G.S. 150B-21.3A(f). This provision allows agencies to subject rules that are merely unnecessary to review at any time. I am not aware of this being done, but based on my reading this would allow an agency to repeal a rule via a periodic review report or a “fast” re-adoption deadline subject to RRC approval which would allow the rule to expire.

*“The term “declare” is neither technical nor ambiguous; it is defined [***6] in the American Heritage College Dictionary as: “1. To make known formally or officially. 2. To state emphatically or authoritatively; affirm. 3. To reveal or make manifest: show . . .” The American Heritage College Dictionary (Third Edition 1997). Each of these definitions requires an affirmative action on the part of the declarant.”*

[*Allstate Ins. Co. v. Chatterton, 135 N.C. App. 92, 95, 518 S.E.2d 814, 817 \(1999\)*](#)

Has there been a declaratory ruling or judgement on these rules?

The agency declared these rules in excess of its statutory authority. There has not been a declaratory ruling or judgement as those terms are used in Chapter 150B.

If there is not, where has the agency declared these rules in excess of statutory authority and what is the agency’s authority to do so?

This was addressed in prior questions.

Can you clarify how specifically these rules are not in compliance with statutorily mandated deadlines? Is there something in Article 21 (G.S. 95-240 through G.S. 95-245) that these rules contradict?

Overall, these rules set forth a process that on-the-ground is not in compliance with the timelines in Chapter 95, Article 21.

Pursuant to G.S. 95-242(a), the Department has 20 days to send a copy of the complaint to the employer alleged to have committed a violation under REDA. 13 NCAC .0301 and .0302 set forth the complaint intake process. .0301(b) allows complaints to be amended. .0302(a) states that complaints are filed upon receipt, making the statutory 20-day clock begin. The repeated amendment of complaints and necessary redaction of some complaints (many attach medical records or records, for example) run up against that statutory timeframe. Please note HB 258 is pending to assist with correction of this issue as well by laying out the contents of a complaint and clarifying filing timelines.

Keeping in mind the time issues established in rules .0301 and .0302, rule .0401(b) allows the respondent 30 days from notification of the complaint to respond. (b) further allows the employer to respond within that 30-day timeframe before the investigation begins. Please note 95-242(a) requires the Commissioner to make a determination “not later than 90 days after filing the complaint.” There also needs to be time within that

Seth Ascher

Commission Counsel

Date submitted to agency: June 2, 2026

90 days to conduct an investigation with “interviews” required by .0402 as opposed to written questions , requiring scheduling and more time.

Pursuant to G.S. 150B-19.1(4), the agency is considering the cumulative effect of all rules as being in excess of the agency’s authority. The established process as a whole does not meet the timeliness requirements established in statute.

Many of these rules don’t deal with timelines and seem squarely within the agency’s authority (i.e. 13 NCAC 19 .0101 is an address rule, 13 NCAC 19 .0201 is a definition rule, 13 NCAC 19 .0402 is a procedural rule that appears to afford rights to witnesses, etc.) Assuming, arguendo, that the rules which involve timelines exceed the agency’s authority, how do the rest of these rules exceed the agency’s authority?

The Department considers the cumulative effect of this Chapter of rules as setting forth an inefficient process, and the Department is seeking to reform that process to comply with statutory mandates. See 150B-19.1(4). The Department urges consideration of the rules package as a whole so as not to leave piecemeal rules in place. To the extent it is helpful, the Department has also identified the following statutory issues with individual rules:

13 NCAC 19 .0401 and .0402 – These do not meet the definition of a “rule” within 150B-2(8a)g.

13 NCAC 19 .0501 – This rule repeats G.S. 95-242(c). An agency may not adopt a rule that repeats the content of a law. G.S. 150B-19(4).

13 NCAC 19 .0604 and .0605 – These relate to internal agency management.

13 NCAC 19 .0701 – G.S. 95-242 sets forth a process for conciliation. It does not provide for the Department to be a party to settlements.

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

Burgos, Alexander N

From: Snyder, Ashley B
Sent: Tuesday, June 2, 2026 8:18 PM
To: Ascher, Seth M
Cc: Rose, Carla; Burgos, Alexander N
Subject: RE: Department of Labor RFC- June 2026

Follow Up Flag: Follow up
Flag Status: Completed

Thanks, Seth. Received. I will get back to you.

Ashley Snyder
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From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Tuesday, June 2, 2026 5:30 PM
To: Snyder, Ashley B <ashley.snyder@labor.nc.gov>
Cc: Rose, Carla <carla.rose@labor.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Department of Labor RFC- June 2026

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the Department of Labor for the June 2026 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, June 25, 2026, 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 close to the meeting. If there are any other representatives from your agency who want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Rule 13 NCAC 07F .0502 falls under the 150B-21.5(c1) exception, so we will handle that as we have done previously.

As you are likely aware, your repeals in 13 NCAC 19 raise what appears to be a novel legal question about repeal without publication. I expect that regardless of my ultimate recommendation, I will need to write a staff opinion explaining to the Commission what is going on. In the attached RFC, I have outlined some initial questions I have. Please provide a response by June 15, 2026.

Let me know if you have any questions

Seth Ascher

Counsel to the North Carolina Rules Review Commission
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(984) 236-1934

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