

NORTH CAROLINA REGISTER

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TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 05 – RULES REVIEW COMMISSION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Rules Review Commission intends to adopt the rules cited as 26 NCAC 05 .0301-.0303 and amend the rules cited as 26 NCAC 05 .0103 and .0104.

SECTION .0100 - GENERAL

Link to agency website pursuant to G.S. 150B-19.1(c): www.ncoah.com

Proposed Effective Date: May 1, 2016

Public Hearing:

Date: March 17, 2016

Time: 10:00 a.m. or at the end of the RRC meeting, whichever is later.

Location: NC Office of Administrative Hearings, Commission Room, 1711 New Hope Church Road, Raleigh, NC 27609

Reason for Proposed Action: The RRC proposes to amend Rules 26 NCAC 05 .0103 and .0104 to change the deadlines and procedure for submission of public comments regarding permanent and temporary rules that will be reviewed by the Commission. The submission period for permanent rules will be two business days before the meeting, and for temporary rules, the business day before the meeting. In addition, all comments will be sent to the RRC staff, and members of the public will no longer be required to submit comments to each Commissioner individually.

The RRC proposes to adopt Rules 26 NCAC 05 .0301-.0303 to establish the procedure for agencies to submit temporary rules to the RRC for review, including formatting requirements, the requirements for the Findings of Need form, and signatory authority for the form. The intent is to assist agencies in preparing the submission of temporary rules to the RRC.

Comments may be submitted to: Amanda J. Reeder, 6714 Mail Service Center, Raleigh, NC 27699-6700, phone (919) 431-3079, email Amanda.Reeder@oah.nc.gov

Comment period ends: April 15, 2016

Fiscal impact (check all that apply).

- State funds affected
Environmental permitting of DOT affected
Analysis submitted to Board of Transportation
Local funds affected
Substantial economic impact (≥\$1,000,000)
Approved by OSBM
No fiscal note required by G.S. 150B-21.4

26 NCAC 05 .0103 SUBMISSION OF WRITTEN COMMENTS CONCERNING PERMANENT RULES TO THE RRC

(a) Written comments submitted by any person desiring to submit written comments concerning a permanent rule shall submit the comments to the individual commissioners and two copies (unless submitted by email in which case one copy is sufficient) to shall be received by the RRC staff by 5:00 p.m. of the Tuesday of the week second business day prior to the next RRC meeting meeting at which the permanent rule is to be reviewed. Written comments may be submitted electronically to the individual commissioners who accept delivery in an electronic format. If comments are submitted electronically, the comments shall be sent to rrc.comments@oah.nc.gov.

(b) Written submissions comments shall specify state how a rule either complies with or fails to comply with the statutory grounds for the RRC's review set out in G.S. 150B-21.9.

(c) Persons submitting comments shall also submit a copy of the comments at the same time and in the same manner to the agency agency's rulemaking coordinator. Rulemaking coordinator contact information is located at www.ncoah.com/rules.

(d) A person or agency may submit rebuttal comments to comments concerning permanent rules. The comments Comments from a person shall be submitted in the same manner as set out in Paragraph (a) of this Rule prior up to 5:00 p.m. of the business day before the RRC meeting at which the rule is to be reviewed. A person or An agency may submit rebuttal comments at the RRC meeting.

(e) Any person submitting written comments at an RRC meeting or submitting rebuttal comments at an RRC meeting shall submit at the meeting sufficient copies for all each of the members attending, Commissioners, commission counsel, agency rulemaking coordinator, and the permanent record, a maximum of 14 a total of 16 copies.

(f) The Chair may waive the requirements of this Rule based on the factors in Rule .0112 of this Chapter.

(g) Written comments not submitted in accordance with this Rule are subject to being excluded from the record by the Commission.

(h) The RRC staff shall maintain a list of commissioners and rulemaking coordinators with their contact information.

Authority G.S. 143B-30.1.

26 NCAC 05 .0104 SUBMISSION OF WRITTEN COMMENTS CONCERNING TEMPORARY RULES TO THE RRC

(a) Written comments submitted by any person desiring to submit written comments concerning a temporary rule shall submit the comments to the individual commissioners and two copies (unless submitted by email in which case one copy is sufficient) to shall be received by the RRC staff by 5:00 p.m. the

PROPOSED RULES

~~business day~~ prior to ~~or at~~ the RRC meeting ~~or RRC designee meeting~~ at which the temporary rule ~~shall is to~~ be reviewed. If comments are submitted electronically, the comments shall be sent to rrc.comments@oah.nc.gov.

(b) Written ~~submissions~~ comments shall ~~specify~~ state how a rule either complies with or fails to comply with the statutory grounds for the RRC's review set out in G.S. 150B-21.1 and G.S. 150B-21.9.

(c) Persons submitting comments shall also submit a copy of the comments at the same time and in the same manner to the ~~agency~~ agency's rulemaking coordinator. Rulemaking coordinator contact information is located at www.ncoah.com/rules.

(d) A person or agency may submit rebuttal comments ~~to~~ comments concerning temporary rules.

~~(e) Any comments and rebuttal comments~~ An agency may submit rebuttal comments at the RRC meeting.

~~(f)(e)~~ Any person submitting written comments or rebuttal comments at an RRC meeting shall submit ~~at the meeting~~ sufficient copies for ~~all each of~~ the ~~members attending~~, Commissioners, commission counsel, agency rulemaking coordinator, and the permanent record, a ~~maximum of 14~~ total of 16 copies.

~~(g)(f)~~ The Chair may waive the requirements of this Rule based on the factors in Rule .0112 of this Chapter.

~~(h)(g)~~ Written comments not submitted in accordance with this Rule are subject to being excluded from the record by the Commission.

~~(i) The RRC staff shall maintain a list of commissioners and rulemaking coordinators with their contact information.~~

Authority G.S. 143B-30.1.

SECTION .0300 - TEMPORARY RULES FOR RRC REVIEW

26 NCAC 05 .0301 FORMATTING REQUIREMENTS

An agency submitting temporary rules to be reviewed by the Commission shall comply with the requirements in 26 NCAC 02C .0100, .0200, and .0400, which are hereby incorporated by reference, including subsequent amendments and editions.

Authority G.S. 150B-21.1.

26 NCAC 05 .0302 TEMPORARY RULEMAKING FINDINGS OF NEED FORM

(a) An agency shall submit a completed typed original Temporary Rulemaking Findings of Need form for each rule when filing a temporary rule for Commission review. The form may be accessed at no cost at www.ncoah.com/rules.

(b) The form sets forth the requirements of G.S. 150B-21.1 to allow the Commission to determine whether the temporary rule meets the statutory requirements.

(c) The agency head shall sign the original form. If the agency head has delegated this authority to another person pursuant to G.S. 143B-10(a), then the agency shall submit a copy of the delegation.

(d) Pursuant to G.S. 143B-10(a), only the following agency heads may delegate signing of the form:

- (1) the Secretary of the Department of Natural and Cultural Resources;
- (2) the Secretary of the Department of Health and Human Services;
- (3) the Secretary of the Department of Revenue;
- (4) the Secretary of the Department of Public Safety;
- (5) the Secretary of the Department of Environmental Quality;
- (6) the Secretary of the Department of Transportation;
- (7) the Secretary of the Department of Administration; and
- (8) the Secretary of the Department of Commerce.

(e) For all other agencies, the head of an agency shall not delegate signature authority for signing the form pursuant to G.S. 150B-21.1(a)(4).

Authority G.S. 143B-2; 143B-10(a); 150B-21.1(a4).

26 NCAC 05 .0303 FILING A TEMPORARY RULE

For each temporary rule, the agency shall file the following:

- (1) an original and two copies of the Temporary Rulemaking Findings of Need form. The original form shall be signed by the agency head or designee, as set forth in Rule .0302 of this Section;
- (2) if designation authority is invoked under G.S. 143B-10, a letter delegating the authority for the signature on the form, as set forth in Rule .0302 of this Section;
- (3) a copy of the relevant portion of the authority cited that authorizes the promulgation of the temporary rule;
- (4) an original and two copies of the temporary rule prepared in accordance with 26 NCAC 02C .0108, containing:
 - (a) an introductory statement that states the rule was adopted under temporary rulemaking procedures;
 - (b) the text of the rule, showing any changes made after publication as set forth in 26 NCAC 02C .0405; and
 - (c) the history note, as set forth in 26 NCAC 02C .0406; and
- (5) an electronic version of the Rule, as set forth in 26 NCAC 02C .0105.

Authority G.S. 150B-21.1; 150B-21.19.

1 **26 NCAC 05 .0103 SUBMISSION OF WRITTEN COMMENTS CONCERNING PERMANENT**
2 **RULES TO THE RRC**

3 (a) ~~Written comments submitted by any~~ Any person ~~desiring to submit written comments~~ concerning a permanent
4 rule ~~shall submit the comments to the individual commissioners and two copies (unless submitted by email in which~~
5 ~~case one copy is sufficient) to~~ shall be received by the RRC staff by 5:00 p.m. of the ~~Tuesday of the week second~~
6 ~~business day prior to the next RRC meeting.~~ meeting at which the permanent rule is to be reviewed. ~~Written comments~~
7 ~~may be submitted electronically to the individual commissioners who accept delivery in an electronic format. If~~
8 ~~comments are submitted electronically, the comments shall be sent to rrc.comments@oah.nc.gov.~~

9 (b) ~~Written submissions~~ comments shall specify state how a rule either complies with or fails to comply with the
10 statutory grounds for the RRC's review set out in G.S. 150B-21.9.

11 (c) Persons submitting comments shall also submit a copy of the comments at the same time and in the same manner
12 to the ~~agency~~ agency's rulemaking coordinator. Rulemaking coordinator contact information is located at
13 www.ncoah.com/rules.

14 (d) A person or agency may submit rebuttal comments ~~to comments~~ concerning permanent rules. ~~The comments~~
15 Comments from a person shall be submitted in the same manner as set out in Paragraph (a) of this Rule prior up to
16 5:00 p.m. of the business day before the RRC meeting at which the rule is to be reviewed. ~~A person or An~~ agency
17 may submit rebuttal comments at the RRC meeting.

18 (e) Any person submitting written comments ~~at an RRC meeting~~ or submitting rebuttal comments at an RRC meeting
19 shall submit ~~at the meeting~~ sufficient copies for all each of the ~~members attending,~~ Commissioners, commission
20 counsel, agency rulemaking coordinator, and the permanent record, ~~a maximum of 14~~ a total of 16 copies.

21 (f) The Chair may waive the requirements of this Rule based on the factors in Rule .0112 of this Chapter.

22 (g) Written comments not submitted in accordance with this Rule are subject to being excluded from the record by the
23 Commission.

24 ~~(h) The RRC staff shall maintain a list of commissioners and rulemaking coordinators with their contact information.~~

25
26 *History Note: Authority G.S. 143B-30.1;*
27 *Eff. August 1, 2008;*
28

1 **26 NCAC 05 .0104 SUBMISSION OF WRITTEN COMMENTS CONCERNING TEMPORARY**
2 **RULES TO THE RRC**

3 (a) ~~Written comments submitted by any~~ Any person ~~desiring to submit written comments~~ concerning a temporary
4 rule ~~shall submit the comments to the individual commissioners and two copies (unless submitted by email in which~~
5 ~~case one copy is sufficient) to~~ shall be received by the RRC staff by 5:00 p.m. the business day prior to ~~or at~~ the RRC
6 meeting ~~or RRC designee meeting~~ at which the temporary rule shall is to be reviewed. If comments are submitted
7 electronically, the comments shall be sent to rrc.comments@oah.nc.gov.

8 (b) Written ~~submissions~~ comments shall ~~specify state~~ how a rule either complies with or fails to comply with the
9 statutory grounds for the RRC's review set out in G.S. 150B-21.1 and G.S. 150B-21.9.

10 (c) Persons submitting comments shall also submit a copy of the comments at the same time and in the same manner
11 to the ~~agency~~ agency's rulemaking coordinator. Rulemaking coordinator contact information is located at
12 www.ncoah.com/rules.

13 (d) A person or agency may submit rebuttal comments ~~to comments~~ concerning temporary rules.

14 ~~(e) Any comments and rebuttal comments~~ An agency may submit rebuttal comments at the RRC meeting.

15 ~~(f) (e)~~ Any person submitting written comments or rebuttal comments at an RRC meeting shall submit ~~at the meeting~~
16 sufficient copies for ~~all each of the members attending, Commissioners, commission counsel, agency rulemaking~~
17 coordinator, and the permanent record, a ~~maximum of 14~~ total of 16 copies.

18 ~~(g) (f)~~ The Chair may waive the requirements of this Rule based on the factors in Rule .0112 of this Chapter.

19 ~~(h) (g)~~ Written comments not submitted in accordance with this Rule are subject to being excluded from the record
20 by the Commission.

21 ~~(i) The RRC staff shall maintain a list of commissioners and rulemaking coordinators with their contact information.~~

22
23 *History Note: Authority G.S. 143B-30.1;*
24 *Eff. August 1, 2008.*
25

1 **SECTION .0300 - TEMPORARY RULES FOR RRC REVIEW**
2

3 **26 NCAC 05 .0301 FORMATING REQUIREMENTS**

4 An agency submitting temporary rules to be reviewed by the Commission shall comply with the requirements in 26
5 NCAC 02C .0100, .0200, and .0400, which are hereby incorporated by reference, including subsequent amendments
6 and editions.

7
8 *History Note:* *Authority G.S. 150B-21.1;*
9
10

1 **26 NCAC 05 .0302 TEMPORARY RULEMAKING FINDINGS OF NEED FORM**

2 (a) An agency shall submit a completed typed original Temporary Rulemaking Findings of Need form for each rule
3 when filing a temporary rule for Commission review. The form may be accessed at no cost at www.ncoah.com/rules.

4 (b) The form sets forth the requirements of G.S. 150B-21.1 to allow the Commission to determine whether the
5 temporary rule meets the statutory requirements.

6 (c) The agency head shall sign the original form. If the agency head has delegated this authority to another person
7 pursuant to G.S. 143B-10(a), then the agency shall submit a copy of the delegation.

8 (d) Pursuant to G.S. 143B-10(a), only the following agency heads may delegate signing of the form:

9 _____ (1) the Secretary of the Department of Natural and Cultural Resources;

10 _____ (2) the Secretary of the Department of Health and Human Services;

11 _____ (3) the Secretary of the Department of Revenue;

12 _____ (4) the Secretary of the Department of Public Safety;

13 _____ (5) the Secretary of the Department of Environmental Quality;

14 _____ (6) the Secretary of the Department of Transportation;

15 _____ (7) the Secretary of the Department of Administration; and

16 _____ (8) the Secretary of the Department of Commerce.

17 (e) For all other agencies, the head of an agency shall not delegate signature authority for signing the form pursuant
18 to G.S. 150B-21.1(a)(4).

19 *History Note: Authority G.S. 143B-2; 143B-10(a); 150B-21.1(a4);*
20
21
22

1 **26 NCAC 05 .0303 FILING A TEMPORARY RULE**

2 For each temporary rule, the agency shall file the following:

- 3 (1) an original and two copies of the Temporary Rulemaking Findings of Need form. The original form
4 shall be signed by the agency head or designee, as set forth in Rule .0302 of this Section;
5 (2) if designation authority is invoked under G.S. 143B-10, a letter delegating the authority for the
6 signature on the form, as set forth in Rule .0302 of this Section;
7 (3) a copy of the relevant portion of the authority cited that authorizes the promulgation of the temporary
8 rule;
9 (4) an original and two copies of the temporary rule prepared in accordance with 26 NCAC 02C .0108,
10 containing:
11 (a) an introductory statement that states the rule was adopted under temporary rulemaking
12 procedures;
13 (b) the text of the rule, showing any changes made after publication as set forth in 26 NCAC
14 02C .0405; and
15 (c) the history note, as set forth in 26 NCAC 02C .0406; and
16 (5) an electronic version of the Rule, as set forth in 26 NCAC 02C .0105.

17
18 *History Note: Authority G.S. 150B-21.1; 150B-21.19;*
19
20