

Burgos, Alexander N

Subject: FW: Response to Staff Recommendation - 13 NCAC 07F .0201
Attachments: Response to Staff Recommendation - 13 NCAC 07F .0201.pdf

From: Plott, Sophie R <sophie.plott@labor.nc.gov>
Sent: Wednesday, June 25, 2025 4:03 PM
To: rrc.comments <rrc.comments@oah.nc.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Jackson, Barbara <barbara.jackson@labor.nc.gov>; Snyder, Ashley B <ashley.snyder@labor.nc.gov>; Rose, Carla <carla.rose@labor.nc.gov>
Subject: Response to Staff Recommendation - 13 NCAC 07F .0201

Rules Review Commission and Mr. Peaslee,

Please see the attached regarding the NC Department of Labor's rule on the RRC agenda for tomorrow. I am sending on behalf of Interim General Counsel, Barbara Jackson, copied here.

Sincerely,

Sophie R. Plott
Deputy General Counsel
NC Department of Labor
Direct: 919-707-7711
Main Legal Affairs: 919-707-7713

Mailing Address:
1101 Mail Service Center
Raleigh, NC 27699-1101
sophie.plott@labor.nc.gov

Please visit our website at www.labor.nc.gov

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LUKE FARLEY
COMMISSIONER

BARBARA JACKSON
INTERIM GENERAL
COUNSEL

June 25, 2025

Chair and Commissioners
North Carolina Rules Review Commission
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609

**RE: Response to Staff Recommendation
Proposed Rule 13 NCAC 07F .0201**

Madam Chair and Commissioners:

I write regarding staff's recommendation that the Rules Review Commission object to the proposed amendment to **13 NCAC 07F .0201**, which the NC Department of Labor Occupational Safety and Health Division submitted to comply with US Department of Labor Occupational Safety and Health Act mandates. We were surprised by staff's recommendation to object, particularly given that the Department revised the proposed rule based on Commission Counsel's feedback and because it tracks language used in another NCDOL rule this Commission approved just six months ago.

The language contained in the proposed amendment to **13 NCAC 07F .0201** mirrors **13 NCAC 07F .0101** (approved December 2024), which also incorporates the Code of Federal Regulations by reference and which this Commission approved without objection:

13 NCAC 07F .0201 CONSTRUCTION The provisions for the Occupational Safety and Health Standards for Construction, Title 29 of the Code of Federal Regulations Part 1926 promulgated as of <u>June 30, 2022</u> , <u>January 1, 2025</u> , and exclusive of subsequent amendments, are incorporated by reference except as modified or amended in 13 NCAC 07F .0202 through .0207. <u>Copies of Title 29 of the Code of Federal Regulations Part 1926 are available at no cost at the following websites: https://www.labor.nc.gov/29-cfr-part-1926-construction-standards and https://www.ecfr.gov/on/2025-01-01/title-29.</u>	13 NCAC 07F .0101 GENERAL INDUSTRY The provisions for the Occupational Safety and Health Standards for General Industry, Title 29 of the Code of Federal Regulations Part 1910 promulgated as of <u>June 1, 2022</u> ; <u>July 1, 2024</u> ; <u>October 10, 2024</u> ; and exclusive of subsequent amendments, are incorporated by reference except as modified or amended in 13 NCAC 07F .0103 <u>through .0106</u> .
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We believe our proposed language is fully consistent with both that precedent and the statutory requirements of **N.C.G.S. 150B-21.6**. In addition to the language approved by this Commission with respect to **13 NCAC 07F .0101**, the proposed amendment to **13 NCAC 07F .0201** contains language directing the public to an additional source of information—the online Code of Federal Regulations, which is a point in time system.

Context and Authority

An important factor that weighs strongly in favor of adopting the rule is NCDOL’s robust standard incorporation rule—**13 NCAC 07A .0301**—which governs incorporation by reference for OSH rules across Chapter 07. Paragraph (e) of that rule specifically incorporates **29 CFR 1926** and clearly identifies how the public may access those materials. This incorporation already is in effect and unambiguous. Given NCDOL’s clear authorization to incorporate by reference, it is difficult to reconcile staff’s position that our proposed rule fails to provide adequate notice regarding incorporated materials, especially since the underlying CFR provisions already are incorporated by reference and publicly accessible through **13 NCAC 07A .0301**.

We also note that staff’s May 21, 2025 feedback did not indicate that failure to recite incorporation language during the comment period would be grounds for objection. Had we been made aware, we could have provided this explanation much earlier.

RRC Practice: Precedent for Cross-Referenced Incorporation

We reviewed RRC actions during the past six months and found numerous examples when staff raised technical change requests regarding incorporation by reference. In most cases, however, when the material already had been incorporated by reference in another rule, RRC accepted cross-references without requiring full re-incorporation. For example:

- **Radiation Protection Commission (10A NCAC 15 .0207, April 2025):** Rule withdrawn for other reasons; no objection to incorporation language per se.
- **Structural Pest Control Committee (02 NCAC 34 .0101, Jan. 2025):** RRC allowed the agency to cite an existing incorporation by reference instead of requiring full re-incorporation.
- **Environmental Management Commission (Dec. 2024):** RRC accepted cross-reference to previously incorporated CFR provisions.
- **NCDOL (13 NCAC 07F .0101, Dec. 2024):** RRC approved rule using the same citation structure now at issue without objection.

These examples demonstrate a consistent pattern of adoption by the Commission. When the CFR already is incorporated elsewhere in an agency’s rules and accessible as required by law, the Commission has accepted cross-referencing without objection.

Conclusion

We respectfully request that the Commission reject staff's recommendation to object and allow the amended version of **13 NCAC 07F .0201** to proceed. The revised rule reflects both the text and structure of rules previously approved by the Commission and clearly complies with **N.C.G.S. 150B-21.6** via reference to **13 NCAC 07A .0301(e)**.

Thank you for your time and thoughtful consideration. I look forward to attending your meeting tomorrow and will be available to respond to any comments or questions.

Sincerely,

Barbara A. Jackson

Barbara A. Jackson

Cc: William W. Peaslee
Commission Counsel

Ashley Snyder
NCDOL General Counsel