



*State of North Carolina
Department of the Secretary of State*

ELAINE F. MARSHALL
SECRETARY OF STATE

ANN B. WALL
General Counsel

By Email

Jeanette Doran, Chair
Andrew P. Atkins, Vice Chair
Robert A. Bryan, Second Vice Chair

Rules Review Commission
1711 New Hope Church Road
Raleigh, North Carolina 27609

September 13, 2022

Re: Request for Consideration of Late Submission of Pre-Review Checklist

Dear Chair Doran, Vice Chairs Atkins and Bryan:

I am writing on behalf of the NC Bar Association's Administrative Law Section Chair, Bain Jones, and Vice Chair, Fred Moreno.

At the RRC's meeting on August 25, 2022, you asked Section Chair Jones if the Section would be willing to submit ideas for ensuring that the RRC's staff attorneys do not have to deal with pre-reviews of rules that are facially unprepared for such pre-review. Chair Jones agreed.

Unfortunately, there was a miscommunication within the Section. Although a draft of a checklist was prepared, it was not timely submitted to the RRC. I am, therefore, on behalf of Chair Jones and Vice Chair Moreno, asking that you consider the attached suggested checklist as a basis for your next steps in improving the pre-review process.

Chair Jones and I will be available to answer questions during Thursday's meeting of the RRC.

We hope that you will find the draft checklist to be helpful.

Regards,

A handwritten signature in cursive script that reads "Ann B. Wall".

Ann B. Wall
General Counsel

Cc: W. Bain Jones, Fred Moreno

Checklist

Name of agency, board, or commission

Name of division or unit within agency

I am the ___ rulemaking coordinator. ___ General Counsel ___ outside counsel
___ agency head, board or commission chair.

Please read the checklist below. Complete the checklist and affirm that you and your agency have completed the steps checked off. Submit the completed checklist to the RRC staff attorneys with the rules for which you seek pre-review.

___ I/we understand that RRC is not required to provide pre-reviews to agencies and that pre-reviews are conducted only as staff resources are available. RRC staff attorneys may prioritize pre-reviews for agencies that have done their due diligence before asking for pre-reviews. Due diligence may be shown, for example, by completion of the steps mentioned in the pre-review checklist. RRC staff attorneys may refuse to do a pre-review upon approval of the Codifier of Rules if an agency has failed to demonstrate due diligence. Consideration will be given to the size of the agency, board, or commission, the resources it has available for rulemaking, and the experience level of staff or counsel with regard to rulemaking.

___ I/we have reviewed the rulemaking authority of the agency, board, commission, or subunit and think we have the authority to make the rules submitted for pre-review.

___ I/we have reviewed the rulemaking authority to ensure that the correct agency, board, commission, or subunit is submitting the rules for pre-review. For example, sometimes an agency may staff a board or commission but only the board or commission has authority to make the rules, not the agency.

___ I/we have checked each citation in the statutory history for every rule submitted for pre-review.

___ All citations in the statutory history for all rules submitted for pre-review are valid and have not been repealed as of the date of this checklist.

___ I/we have reviewed all rules submitted for pre-review and the current, correct name of the agency, board, or commission, or subunit is used in all of the rules.

___ I/we have reviewed all rules submitted for pre-review to ensure that all citations within the rules to addresses, telephone numbers, URLs, etc., are correct.

___ I/we have reviewed all rules submitted for pre-review to ensure that all citations within the rules are correct, for example, to federal law or rule, or to documents incorporated by reference.

___ I/we have reviewed each mention of a form in the rule to check to see if:
___ The General Statutes set out the mandatory content of the form.

If our form has other mandatory elements that should be in in a rule (*insert citation to definition in 150B-2*).

If yes, those additional mandatory elements are:

Included in an existing rule

Included in a new or amended rule for which we ask for pre-review.

If no, I/we understand that we will need a rule for the additional, non-statutory mandatory elements or RRC staff attorneys may recommend that the RRC object to the rule(s). I/we are asking for guidance from RRC staff attorneys on this issue.

I/we have reviewed the rules to look for instances in which the rules call for the exercise of discretion by the agency, board, or commission or one of its employees.

Standards for exercise of that discretion are included in the law

We have an existing rule describing how that discretion should be exercised.

We are amending an existing rule or are proposing a new rule regarding how the discretion will be exercised.

We do not have a rule regarding how the discretion will be exercised, and understand that we will have to have such a rule or RRC staff attorneys may recommend that the RRC object to the rule(s). I/we are asking for guidance from RRC staff attorneys on this issue.

I/we or at least one person involved in this rulemaking has reviewed the Administrative Rule Style Guide.

I/we have reviewed the OAH rules for rulemaking at 26 NCAC 02, SubChapter C regarding numbering, lists, punctuation, etc.