

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Rules Review Commission intends to amend the rules cited as 26 NCAC 05 .0107, .0108 and .0115.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://www.oah.nc.gov/rules-division/rules-review-commission>

Proposed Effective Date: September 1, 2024

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Any person requesting a public hearing may send a written request within 15 days of publication of the N.C. Register to Brian Liebman at brian.liebman@oah.nc.gov*

Reason for Proposed Action: *Following changes to the Commission's 2024 meeting schedule to maximize the time for review of rules by the agency, staff, and the Commissioners, the Commission is amending 26 NCAC 05 .0107 and 26 NCAC 05 .0108 to clarify timelines. Additionally, the Commission is amending 26 NCAC 05 .0115 to clarify the criteria the Commission will use when granting an extension and to clarify when responses to requests for changes are due in the wake of an extension.*

Comments may be submitted to: Brian Liebman, 1711 New Hope Church Rd, Raleigh, NC 27609; phone (984) 236-1948; email brian.liebman@oah.nc.gov

Comment period ends: August 2, 2024

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit a written objection to the Rules Review Commission. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☐ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact (\geq \$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required

CHAPTER 05 - RULES REVIEW COMMISSION

SECTION .0100 - GENERAL

26 NCAC 05 .0107 WITHDRAWAL OR AMENDMENT OF RULES AFTER FILING WITH RRC

(a) An agency shall not withdraw a rule after filing with the RRC and before review by the RRC when:

- (1) the rule is a readoption; or
- (2) the staff recommendation to object to the rule applies to existing language.

(b) An agency shall make no changes to any rule after filing with the RRC and before review by the RRC except:

- (1) in response to a request for technical changes from the RRC or from the RRC staff; or
- (2) after notifying RRC staff of the changes in writing, identifying each change, and providing an explanation for each change.

(c) Following the posting of a staff recommendation to object to a rule on the OAH website, the agency shall submit no further changes to the rule before review by the RRC, ~~except:~~ except where:

- (1) ~~where~~ staff has not recommended objection pursuant to G.S. 150B-21.9(a)(1) or G.S. 150B-21.9(a)(4);
- (2) the agency's rulemaking coordinator makes a written representation to RRC staff that any changes made are intended to remedy identified ambiguities or eliminate language that repeats the content of a law, another rule, or a federal regulation; and
- (3) the agency submits the changes no later than 5:00 p.m. Eastern Time on the ~~Monday~~ fifth business day immediately preceding the RRC meeting at which the rules subject to the staff recommendation are to be reviewed.

*History Note: Authority G.S. 143B-30.1;
Eff. August 1, 2008;
Amended Eff. September 1, 2024; June 1, 2023.*

26 NCAC 05 .0108 SUBMISSION OF REWRITTEN RULES OR RULES WITH TECHNICAL CHANGES

- (a) The RRC shall not review rules rewritten in response to an objection until the next regular meeting following the objection.
- (b) All rules containing technical changes made in response to a request by the RRC staff shall be submitted to the RRC staff by the earlier of:
- (1) 5:00 p.m. Eastern Time 10 business days after the Requests for Technical Change are submitted to the agency rulemaking coordinator; or
 - (2) 5:00 p.m. Eastern Time of the second Friday before the RRC meeting. If that Friday is a holiday, then the rules shall be submitted on the last business day before the holiday.
- (c) All rewritten rules shall be submitted to the RRC staff by 5:00 p.m. Eastern Time of the second Friday before the RRC meeting. If that Friday is a holiday, then the rewritten rules shall be submitted on the last business day before the holiday.
- (d) These deadlines may be waived by the RRC staff when an agency that is a board or commission does not meet until the day of the deadline or later or when the original submission is deficient and requires further changes.

History Note: Authority G.S. 143B-30.1; 150B-21.10;
Eff. August 1, 2008;
Amended Eff. September 1, 2024; June 1, 2023; February 1, 2012.

26 NCAC 05 .0115 EXTENSIONS OF THE PERIOD FOR REVIEW

- (a) An agency may submit a request for an extension pursuant to G.S. 150B-21.10(3) to respond to Requests for Technical Changes and make rule revisions in response thereto or to rebut RRC staff opinions, at or before the RRC meeting at which the agency's rules are reviewed.
- (b) In exercising its discretion to grant the extension and the length of the extension, the RRC shall consider the complexity of Request for Technical Changes or staff recommendations for objection, the complexity of the rules, the RRC's current and projected agenda, the circumstances proffered by the agency as to the necessity for an extension, RRC staff availability and counsel, and public comment in its determination whether to grant the request. ~~Any rule subject to an extension shall be reviewed at the second regularly scheduled meeting following the extension unless:~~
- ~~(1) the agency provides written notice to RRC staff of the agency's intent that the rule be reviewed at the first regularly scheduled meeting following the extension; and~~
 - ~~(2) the agency submits to RRC staff written responses to all Requests for Technical Changes no later than 10 business days prior to the first regularly scheduled RRC meeting following the extension.~~
- (c) For rules subject to an extension, the agency shall submit to RRC staff all written responses to Requests for Technical Changes and RRC staff opinions, or revised rules no later than the second Friday prior to the RRC meeting to which the review is extended. ~~Submission of written notice pursuant to Subparagraph (b)(1) of this Rule shall not prevent an agency from subsequently informing RRC staff in writing of the agency's intention to have its rules reviewed at the second regularly scheduled meeting following the extension.~~
- (d) ~~An agency shall submit responses to all of RRC staff's Requests for Technical Changes no later than 10 business days prior to the second regularly scheduled meeting following the extension.~~

History Note: Authority G.S. 143B-30.1;
Eff. June 1, 2023;
Amended Eff. September 1, 2024.