
THE RULES REVIEW COMMISSION &
THE PERMANENT RULEMAKING PROCESS

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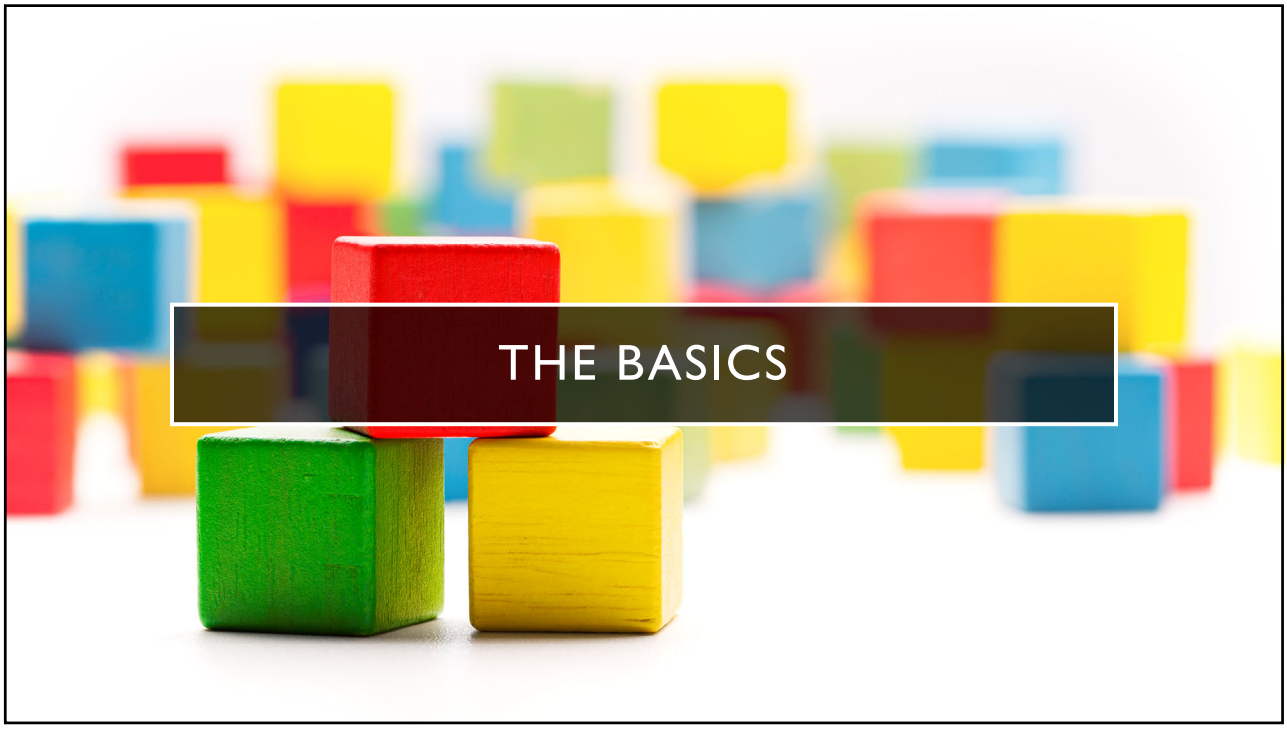
THE BASICS

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WHAT IS RULEMAKING?

The Administrative Procedure Act (G.S. 150B) provides for a uniform procedure for the adoption of rules and authorizes OAH to publish the North Carolina Register and the North Carolina Administrative Code.

Except for a few exemptions found in G.S. 150B-1(d) and other agency specific statutes, State agencies and occupational licensing boards/commissions are required to follow this uniform procedure in providing notice and opportunity to comment for the public and interested persons for proposed rules, and for the filing of adopted rules for review and codification into the Code.

3

WHO ARE RULEMAKING COORDINATORS?

§ 150B-21

- Each agency must designate one or more rulemaking coordinators to oversee the agency's rulemaking functions.
  - See also 26 NCAC 02C .0107, which requires the agency to notify OAH in writing of the name and address of the rulemaking coordinator.
- The coordinator shall serve as the liaison between the agency, other agencies, units of local government, and the public in the rulemaking process.
  - Prepares notices of public hearings
  - Coordinates access to the agency's rules
  - Screens proposed rules before publication in the Register for accurate fiscal notes

https://www.oah.nc.gov/rulemaking-coordinator-list

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Rulemaking Record
§ 150B-21.2(i)

Agencies **must** keep a record of rulemaking proceedings, which includes:

- all written comments received,
- a transcript or recording of any public hearing held on the rule,
- any fiscal note prepared for the rule (if applicable), and
- any written explanation made by the agency for adopting the rule.



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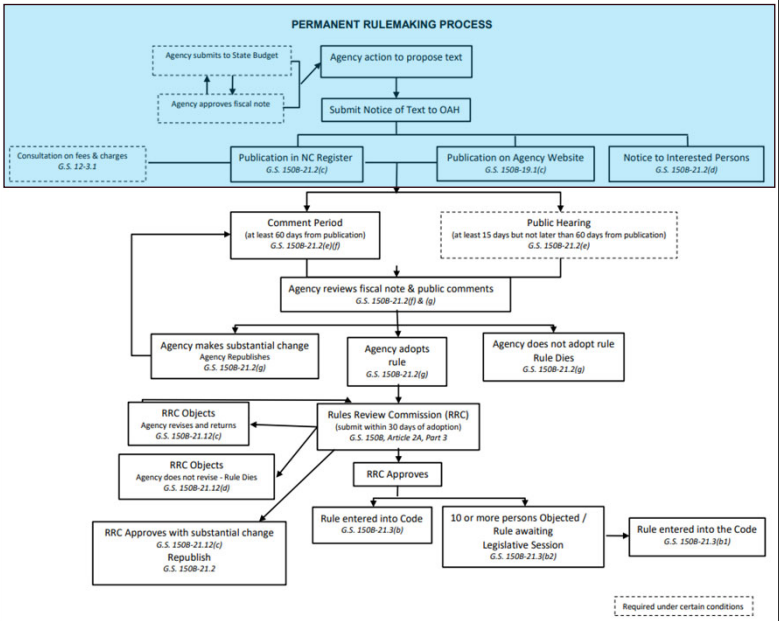
PERMANENT RULEMAKING FLOW CHART



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Fiscal Notes and Fees

Fiscal Notes
§ 150B-21.4

- The agency is responsible for determining the cost/benefit impact of any proposed rule.
  - § 150B-19.1(e)
- An agency must prepare a fiscal note and submit it to OSBM prior to publishing in the Register any new rule or amendment that:
  - "would require the expenditure or distribution of funds" under the State Budget Act;
  - "would affect a unit of local government"; or
  - "would have a substantial economic impact".

Julie Ventaloro
OSBM Economic Analyst
984-236-0694
julie.ventaloro@osbm.nc.gov

Fees and Charges
§ 12-3.1

Any rule that establishes a fee or charge, or increases an existing fee or charge, triggers a requirement to comply with G.S. 12-3.1.

G.S. 12-3.1 requires the agency to make a written request for a consultation with the Joint Legislative Commission on Government Operations including:

1. The amount of the current fee/charge;

2. The amount of the proposed new fee/charge or the amount of the increase;

3. The statutory authority for the fee/charge; and

4. A detailed explanation of the need for the establishment or increase of the fee/charge.

Bridget Edwards
Lead Fiscal Analyst
919-733-4910
bridget.edwards@ncleg.gov

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REINS Act (SL 2025-82 / HB 402)

Previously	New Requirements *Effective July 29, 2025*
Fiscal notes required for rules with "substantial economic impact" of **at least $1 million over 12 months**.	"Substantial economic impact" revised to **at least $1 million over <u>five-year period</u>**.
	Cost of ≥ $1 million over five years: Requires adoption by a <u>vote</u> of at least <u>two-thirds</u> of the board or commission.
	Cost of ≥ $10 million over five years: Requires adoption by a <u>unanimous vote</u> of the board of commission.
	Cost of ≥ $20 million over five years: Requires <u>ratification</u> by the General Assembly.

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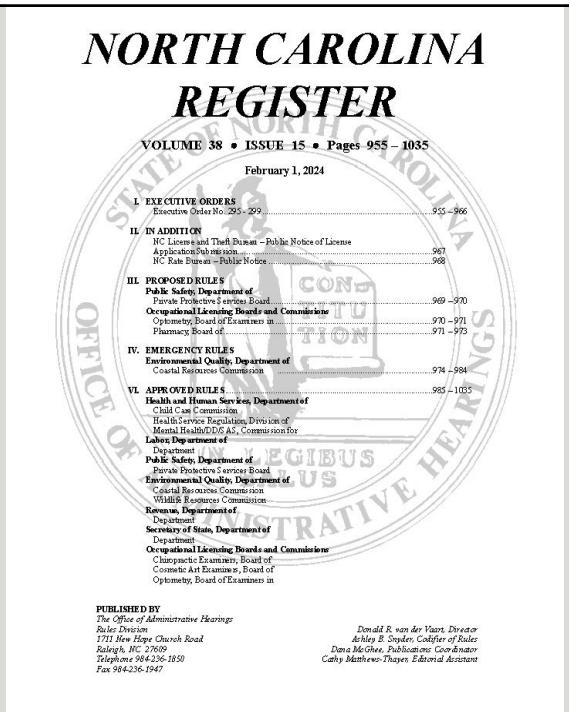
Public Notice of Text

- The public is notified of agency rulemaking through:
  - a notice published in the North Carolina Register [§ 150B-21.2(a)], and
  - posting of required information on the agency's website [§ 150B-19.1(c)].
- This notice provides a means for interested parties to participate and debate the merits of a proposed rule before adoption by the agency.



NORTH CAROLINA REGISTER

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February 1, 2024

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What must be published? When and Where?

On the Agency Website

§150B-19.1(c) requires an agency to publish the following on its website no later than the date the notice of text is published in the NC Register:

1. The text of a proposed rule.
2. An explanation of the proposed rule and the reason for the proposed rule.
3. Any federal certification required by G.S. 150B-19.1(g).
4. Instructions on how and where to submit oral or written comments on the proposed rule, including a description of the procedure by which a person can object to a proposed rule and subject the proposed rule to legislative review.
5. Any fiscal note that has been prepared.

In the NC Register

§150B-21.2(c) defines what MUST be included in the notice of text:

1. The text of the proposed rule.
2. A short explanation.
3. A link to the rule posting on the agency's website.
4. A citation to legal authority for adoption.
5. The proposed effective date.
6. Date, time, and place of any public hearing scheduled.
7. Instructions to demand a public hearing.
8. Comment period.
9. If prepared, a statement that a copy of the fiscal note is available from the agency.

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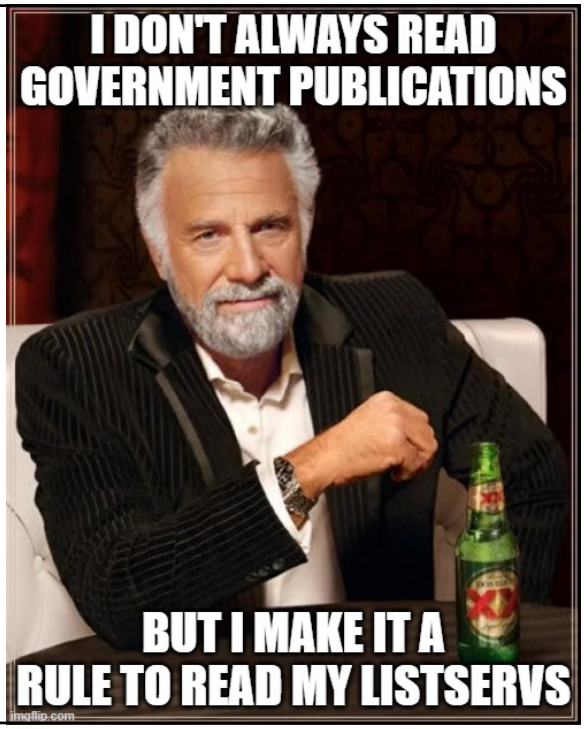
Copy of Notice to Interested Persons

- § 150B-21.2(d) requires an agency to maintain a mailing list and send notice of text for proposed rules to each person who has requested notice of rulemaking.
- An agency may charge an annual fee to each person on the agency's mailing list to cover copying and mailing costs.
- Email listservs are acceptable.



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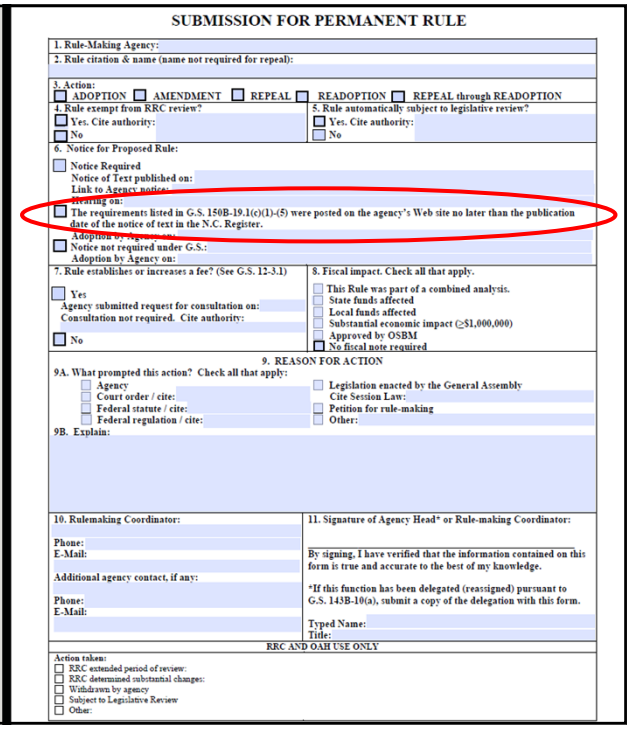
Attestation of Compliance (26 NCAC 05 .0116)

"(a) An agency shall attest that the requirements listed in G.S. 150B-19.1(c)(1)-(5) were posted on the agency Web site no later than the publication date of the notice of text for a proposed rule in the North Carolina Register.

(b) Failure to comply with this Rule shall be grounds for objection to the proposed rule pursuant to G.S. 150B21.9(a)(4)."

Eff. October 1, 2024.



SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency:
2. Rule citation & name (name not required for repeal):
3. Action:
☐ ADOPTION ☐ AMENDMENT ☐ REPEAL ☐ READOPTION ☐ REPEAL through READOPTION
4. Rule exempt from RRC review?
☐ Yes. Cite authority:
☐ No
5. Rule automatically subject to legislative review?
☐ Yes. Cite authority:
☐ No
6. Notice for Proposed Rule:
☐ Notice Required
Notice of Text published on:
Link to Agency notice:
Hearing on:
☐ The requirements listed in G.S. 150B-19.1(c)(1)-(5) were posted on the agency's Web site no later than the publication date of the notice of text in the N.C. Register.
Adoption by Agency on:
☐ Notice not required under G.S.:
Adoption by Agency on:
7. Rule establishes or increases a fee? (See G.S. 12-3.1)
☐ Yes
Agency submitted request for consultation on:
Consultation not required. Cite authority:
☐ No
8. Fiscal impact. Check all that apply.
☐ This Rule was part of a combined analysis.
☐ State funds affected
☐ Local funds affected
☐ Substantial economic impact (≥$1,000,000)
☐ Approved by OSBM
☐ No fiscal note required
9. REASON FOR ACTION
9A. What prompted this action? Check all that apply:
☐ Agency
☐ Court order / cite:
☐ Federal statute / cite:
☐ Federal regulation / cite:
☐ Legislation enacted by the General Assembly
Cite Session Law:
☐ Petition for rule-making
☐ Other:
9B. Explain:
10. Rulemaking Coordinator:
Phone:
E-Mail:
Additional agency contact, if any:
Phone:
E-Mail:
11. Signature of Agency Head* or Rule-making Coordinator:
By signing, I have verified that the information contained on this form is true and accurate to the best of my knowledge.
*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.
Typed Name:
Title:
RRC AND OAH USE ONLY
Action taken:
☐ RRC extended period of review:
☐ RRC determined substantial changes:
☐ Withdrawn by agency
☐ Subject to Legislative Review
☐ Other:

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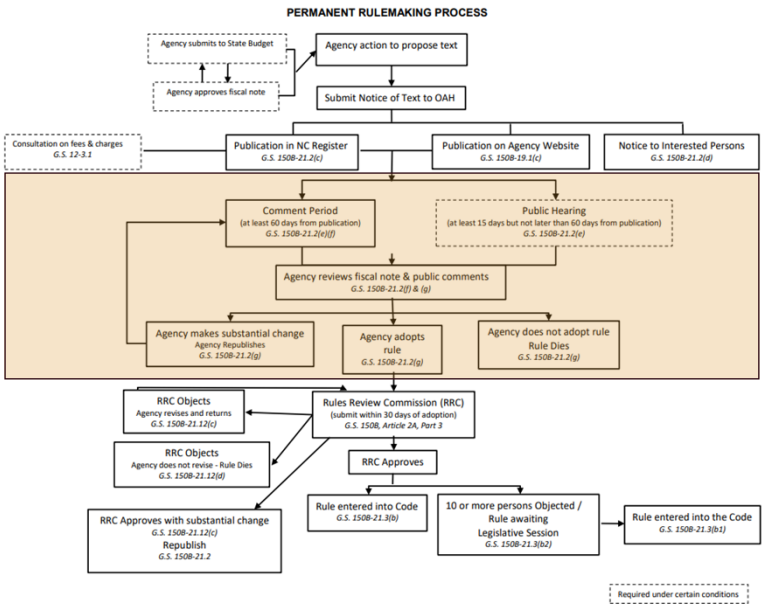
PERMANENT RULEMAKING FLOW CHART



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PUBLIC COMMENTS
§ 150B-21.2(f)

- The agency must accept public comment on the rule text and any fiscal note for at least 60 days, or until the date of any public hearing, whichever is longer.
- An agency must consider all written and oral comments received.
- Written comments must be included in the rulemaking record.



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PUBLIC HEARING
§ 150B-21.2(e)

When **must** an agency hold a public hearing on proposed rule?

- If it receives a written request for hearing within 15 days of publication of the notice of text.

An agency **may otherwise choose** to hold a public hearing.

In either case, the procedure followed is the same:

- The hearing must be held **at least 15 days but not later than 60 days** from publication of notice of hearing.
- The agency must accept comments on both the proposed rule and any accompanying fiscal note.
- The hearing must be recorded or transcribed.

If a noticed hearing must be rescheduled for any reason, the agency *must* publish notice in the Register at least 15 days prior to the new hearing.

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ADOPTION
§ 150B-21.2(G)

Once the agency has held a public hearing (if required or if they so choose) and the comment period has closed, the agency may take action to formally adopt the proposed rule or amendment.

However, the agency MAY NOT adopt the rule:

- until the time for commenting on the proposed text has elapsed and the agency has considered the comments.
- if more than 12 months have elapsed since the end of the comment period.
- if the agency makes changes that cause the rule text to differ **substantially** from the proposed text published in the Register.

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- An adopted rule **differs substantially** from a proposed rule if it does one or more of the following:
  - Affects the **interests of persons** who, based on the proposed text published in the *NC Register*, could not have reasonably determined that the rule would affect their interests.
  - Addresses a **subject matter** or an issue that is not addressed in the proposed text of the rule.
  - Produces an **effect** that could not reasonably have been expected based on the proposed text of the rule.

SUBSTANTIAL DIFFERENCE

§ 150B-21.2(G)

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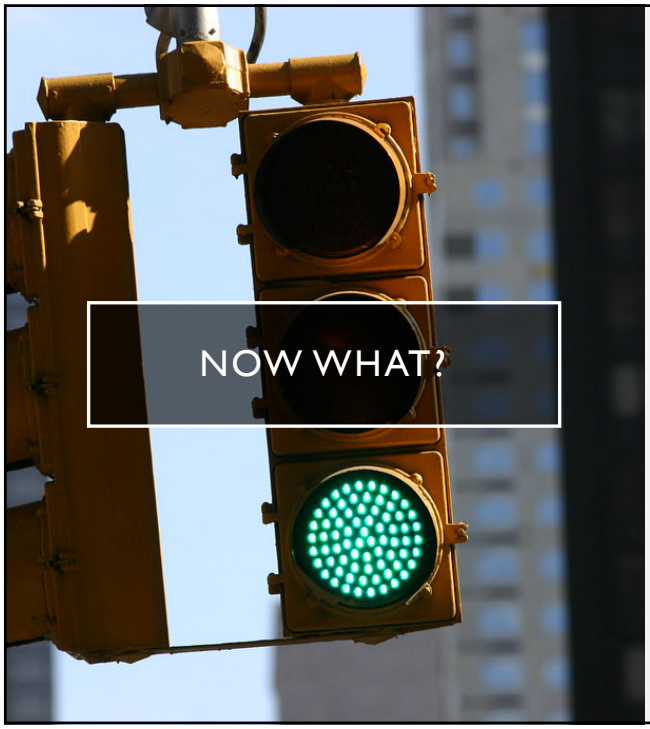

If the agency reviews comments, and makes no rule changes, or non-substantial changes, it may adopt the Rule and submit it to the RRC for review.

A rule **must** be sent to the RRC **within 30 days of adoption**.

If the agency makes substantial changes to the Rule, the agency should **republish** the new language in the Register.

Finally, if the agency chooses not to adopt the Rule, the Rule dies.

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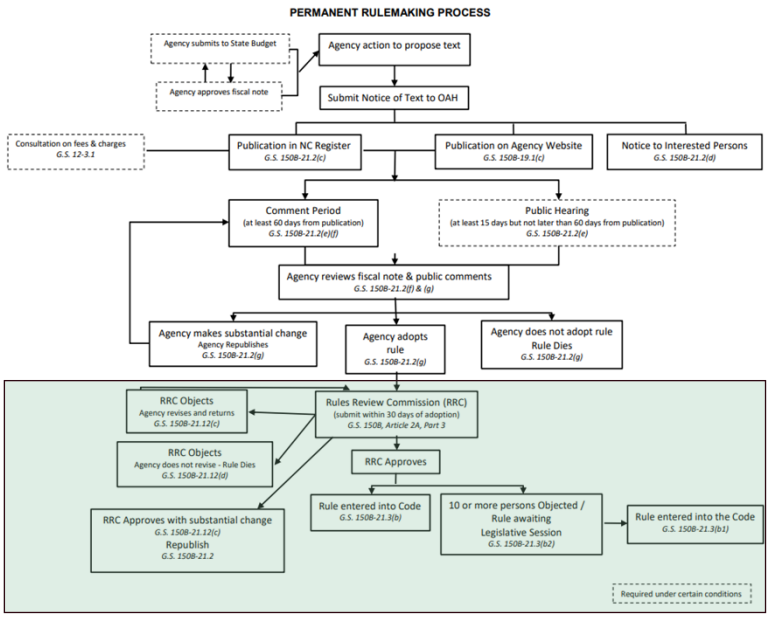
PERMANENT RULEMAKING FLOW CHART



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Who is the RRC, and what do they do?

RRC consists of 10 total members, five appointed by each chamber of the General Assembly. § 143B-30.1.



The RRC reviews temporary and permanent rules.

Generally, for inclusion in the North Carolina Administrative Code, a rule must first be approved by the Commission.

There are some exceptions, which will typically be found in Chapter 150B or in the agency's specific statutes.

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Who is the RRC, and what <u>don't</u> they do?

RRC is **NOT** the Rules Police.



The Commission does not have wide-ranging authority to delve into the quality or efficacy of your rules. In fact, it is statutorily barred from raising such questions:

"The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to the standards set forth in this subsection."

-N.C. Gen. Stat. 150B-21.9(a)

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Standard of Review

*Under § 150B-21.8, "when the Commission reviews an amendment to a temporary or permanent rule, it may review the entire rule that is being amended".

§ 150B-21.9 lays out the **four factors** the Commission must consider:

1. Is the rule within the **authority** delegated to the agency by the General Assembly?
2. Is it **clear** and **unambiguous**?
3. Is it **reasonably necessary** to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency? The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
4. Was it adopted **in accordance with Part 2 of Article 2A** of the Administrative Procedure Act?

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Timeframe and Logistics (§150B-21.9(b))

- The Commission must review a permanent rule submitted to it on or before the twentieth of a month **by the last day of the next month**.
- Permanent rules submitted after the twentieth of a month shall be reviewed **by the last day of the second subsequent month**.
- If the twentieth is not a business day, please ensure your rules have been filed before the twentieth.



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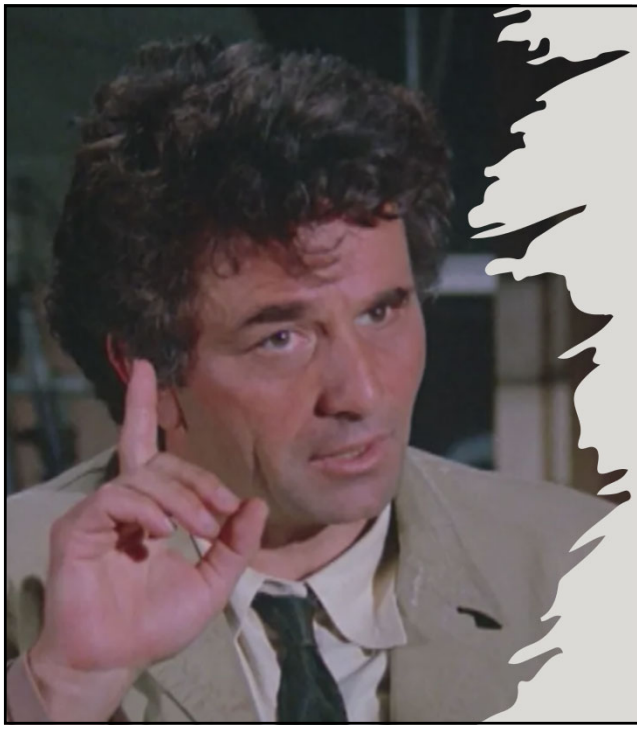

Public Comment to the RRC

- Public Comments should be limited to the four factors considered in § 150B-21.9.
- Written comments should be emailed to rrc.comments@oah.nc.gov.
- Written comments must be submitted by the fifth business day prior to the RRC meeting at which the rule will be considered. 26 NCAC 05 .0103.
- A copy of any written comment should also be provided to the agency's rulemaking coordinator.
- Notice of oral comment must be provided by the second business day prior to the RRC meeting at which the rule will be considered. 26 NCAC 05 .0105.

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- Prior to consideration by the Commission at its monthly meeting, counsel reviews proposed rules and may issue two documents:
  1) Request for Technical Changes
  2) Staff Opinion
- These documents will be sent to the Commission, as well as the agency, and will be posted on the RRC's monthly online agenda.

https://www.oah.nc.gov/rules-division/rules-review-commission

Requests for Changes

"Technical Changes" mean the changes made by an agency to reply to a request from the Commission or its staff.

Technical changes **shall not result in a substantive change** in the meaning, interpretation, or application of a rule.

Responses are due the earlier of 10 business days following receipt of staff's email OR 5:00 p.m. on the Friday preceding the meeting.

Staff Opinions

Staff Opinions set forth the reviewing attorney's specific grounds and rationale for recommending objection or approval of a rule.

They do NOT reflect on the agency's policy goals and are NOT necessarily the definitive statement of the Commission's action.

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RRC Meetings

- RRC meetings are public meetings, not public hearings – there is no right to speak. Requests to speak are governed by 26 NCAC 05 .0105 and .0106.
- An agency will always have the opportunity to defend its rules.
- The Commission is interested in hearing comments relevant to the standards for review set forth in § 150B-21.9.



- Meetings are usually—**but not always**—the last **Thursday** of the month.
- Meetings begin at **10:00 AM**.
- Oral presentations to the Commission are limited to **5 minutes**, except in the discretion of the Chair.

Upcoming meetings:
Tuesday, November 24, 2026
Thursday, December 17, 2026
Thursday, January 28, 2027
Thursday, February 25, 2027

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RRC Action at the Meeting
§ 150B-21.10

At the first meeting at which a permanent rule is before the Commission for review, the Commission must take one of the following actions:

(1) **Approve** the rule, if the Commission determines that the rule meets the standards for review.

(2) **Object** to the rule, if the Commission determines that the rule does not meet the standards for review.

(3) **Extend the period of review** for the rule, if it determines it needs additional information on the rule to be able to decide whether the rule meets the standards for review.

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Extension of the Period of Review

§ 150B-21.13 & 26 NCAC 05 .0115

An agency may submit a request for an extension to respond to Requests for Technical Changes and make rule revisions or to rebut a staff opinion.

The Commission must notify the agency of the extension and the reason it was granted. The RRC considers:

- 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
- any public comments.

The Commission **must** then either approve or object to the rule **within 70 days** after extending. That means any extension will last no more than two meetings.



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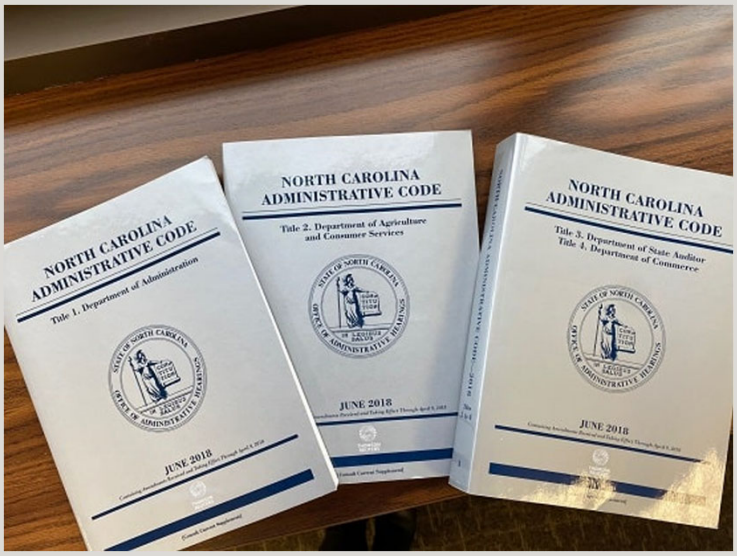
Rule Approval

§ 150B-21.11

If the RRC votes to approve a Rule, it is delivered to the Codifier and *usually* becomes effective on the first day of the next calendar month. §150B-21.3.

However, if the rule is part of a group that includes a rule that was objected to at the same time, the agency may cause it (and any of the other approved rules in the group) to have a delayed effective date by submitting a written statement to that effect to the Commission before the other rules become effective.



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Objection!

The rule is not dead!

An objection does not end the rule review process.

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Objection!

First Steps – § 150B-21.12(a)

RRC must send the agency that adopted the rule a written statement of the objection and the reason for the objection.

The agency that adopted the rule must take one of the following actions:

(1) Change the rule to satisfy the Commission's objection and submit the revised rule to the Commission; or

(2) Submit a written response to the Commission indicating that the agency has decided not to change the rule.



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Objection!
Agency Responses – § 150B-21.12(c)

When an agency changes a rule in response to an objection by the Commission, the Commission must determine whether the change satisfies the objection.

If it does, the Commission **must approve** the rule.

The Commission must also determine if the **change is substantial**. Substantial changes will need to be republished.

Substantial Change:

Where the changed rule:

1) affects the interests of persons who could not reasonably have determined the rule would have affected their interests from the published text;

2) addresses a subject matter or an issue not addressed in the published text; or

3) produces an effect that could not reasonably have been expected from the published text.

§ 150B-21.2(g)

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Objection!
Return of Rules – § 150B-21.12(d)

The General Assembly made major changes to the APA in late 2023, changing how rules under an objection are returned.

A rule to which RRC has objected stays under RRC review until the agency either:

(1) satisfies the objection; or
(2) submits a written response indicating that the agency has decided not to change the rule.

Timelines:

An agency that is not a board or commission = 30 days from receipt of the objection letter.

A board or commission = the **longer** of 30 days OR 10 days after the board or commission's next **regular** meeting.

§ 150B-21.12(b)

However, under the new language, if the agency does not submit a "revised rule to satisfy the Commission's objection" within the time limit in 150B-21.12(b) or tells RRC it is not changing the rule in writing, RRC "shall return the rule to the agency" and notify the Codifier.

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Legislative Review

- If the Commission receives **written objections to the rule from 10 or more persons,** by no later than 5:00 P.M. of the day following the day the Commission approves the rule, clearly requesting review by the legislature, the rule becomes effective on the earlier of:
  - the thirty-first legislative day; or
  - the day of adjournment of the next regular session of the General Assembly that begins at least 25 days after the date the Commission approved the rule.
- The Commission does not include any letters received before the agency officially adopts the rule in this count.

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Less is More.

Mail: N.C. Rules Review Commission
1711 New Hope Church Rd.
Raleigh, NC 27609

Email: rrc.comments@oah.nc.gov

Re: [XX NCAC XX .XXXX] *<- This is the specific rule(s) one is objecting to with sufficient detail to identify it or them.*

Members of the Commission:

I request that the above rule(s) be reviewed in the upcoming legislative session as set out in N.C.G.S. 150B-21.3. I further request that the rule(s) be subject to a delayed effective date as set out in that same provision.

Thank you for your consideration.

[Your name]

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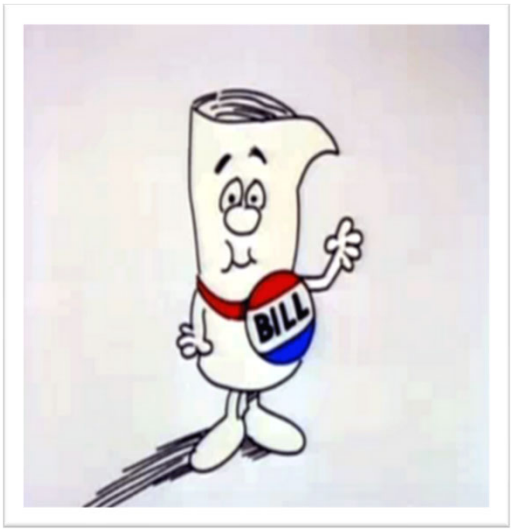

Legislative Review

If a bill that specifically disapproves the rule is introduced in either house of the General Assembly before the **thirty-first legislative day of that session**, the rule becomes effective on the **earlier** of either:

1. The day an **unfavorable** final action is taken on the bill; or
2. The day that the session of the General Assembly **adjourns without ratifying** a bill that specifically disapproves the rule.

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Legislative Review

A permanent rule that is specifically disapproved by a bill enacted into law before the rule becomes effective does not become effective.

§ 150B-21.3(b1)



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Useful Websites:

Rules Division
https://www.oah.nc.gov/rules-division

N.C. Register
https://www.oah.nc.gov/documents/nc-register

N.C. Administrative Code
http://reports.oah.state.nc.us/ncac.asp

Rules Review Commission
https://www.oah.nc.gov/rules-division/rules-review-commission

Information for Rulemaking Coordinators
https://www.oah.nc.gov/rules-division/information-rulemaking-coordinators



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