

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Department of Labor

RULE CITATION: 13 NCAC 07F .0201

RECOMMENDATION DATE: September 23, 2025

RECOMMENDED ACTION:

- X No action
- Approve, but note staff's comment
 - Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
 - Extend the period of review

COMMENT:

The Department of Labor has filed these rules pursuant to G.S. 21.5(c1). This is a statutory provision added to the APA on June 27, 2025, by S.L. 2025-28. The text of the provision is as follows:

*(c1) OSHA Standard. – The Occupational Safety and Health Division of the Department of Labor is not required to publish a notice of text in the North Carolina Register or hold a public hearing when it proposes to adopt a rule that concerns an occupational safety and health standard that is identical to a federal regulation promulgated by the Secretary of the United States Department of Labor. **The Division shall file the rule with the Commission for the purpose of receiving written objections to the rule in accordance with G.S. 150B-21.3(b2).***

G.S. 150B-21.3(b2) is the section of the APA which triggers legislative review of a rule if the Commission receives ten letters requesting legislative review. The text of the provision is as follows:

(b2) Objection. – Any person who objects to the adoption of a permanent rule may submit written comments to the agency. If the objection is not resolved prior to adoption of the rule, a person may submit written objections to the Commission. If the Commission receives written objections from 10 or more persons, no later than 5:00 P.M. of the day following the day the Commission approves the rule, clearly requesting review by the legislature in accordance with instructions posted on the

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agency's Web site pursuant to G.S. 150B-19.1(c)(4), and the Commission approves the rule, the rule will become effective as provided in subsection (b1) of this section. The Commission shall notify the agency that the rule is subject to legislative disapproval on the day following the day it receives 10 or more written objections. If the Commission receives objections from 10 or more persons clearly requesting review by the legislature, and the rule objected to is one of a group of related rules adopted by the agency at the same time, the agency that adopted the rule may cause any of the other rules in the group to become effective as provided in subsection (b1) of this section by submitting a written statement to that effect to the Codifier of Rules before the other rules become effective.

It is my opinion that the highlighted provision in (c1) is a limitation on the Commission's review of rules filed pursuant to G.S. 21.5(c1). Stated another way, in my view the only purpose for filing this rule with the Commission is to allow for members of the public to request legislative review. This process does not require action by the Commission, so I recommend no action on this rule.

Seth Ascher
Commission Counsel