

CHAPTER 05 – RULES REVIEW COMMISSION

SECTION .0100 - GENERAL

26 NCAC 05 .0101 DEFINITIONS

As used in this Chapter the following terms have the following meanings unless the context indicates otherwise:

- (1) "Agency" means as defined in G.S. 150B-2(1b).
- (2) "Commission" or "RRC" means the Rules Review Commission as established in G.S. 143B-30.1.
- (3) "Objection letter" means any letter or other written correspondence from the public pursuant to G.S. 150B-21.3(b2) objecting to a rule and requesting review of the rule by the General Assembly filed with the Rules Review Commission while the rule is under review by the Rules Review Commission.
- (4) "Review" means the statutory "Part 3. Review by Commission" at G.S. 150B-21.8 and following including the RRC action as set out in G.S. 150B-21.10.
- (5) "Rewritten rules" mean rules that have been revised in an attempt to satisfy an objection by the Commission.
- (6) "Technical Changes" mean the changes made by an agency to reply to a request from the Commission or its staff as set out in G.S. 150B-21.10. Technical changes shall not result in a substantive change in the meaning, interpretation, or application of a rule and include the following categories of changes:
 - (a) Correcting errors of a general nature including:
 - (i) obvious typographical errors, misspellings, punctuation, and grammatical errors;
 - (ii) errors in complying with OAH or statutory requirements that are not substantive errors; and
 - (iii) proof of compliance with the legally required process.
 - (b) Correcting errors that would appear to be substantive changes except that they do not change the intended or accepted meaning, interpretation or application of the rule including:
 - (i) changing "should" or "will" to "shall" or "must;"
 - (ii) clarifying the use of "approved;"
 - (iii) clarifying or correcting the use of "and," "or" or "and/or;"
 - (iv) clarifying or deleting commonly used adjectives or adverbs such as "thoroughly," "clearly," "adequately," "appropriate," and "substantial;" and
 - (v) inserting substantive contents of a rule's name into the rule itself.
 - (c) Requesting agencies to rewrite a rule, paragraph, or portions of a rule to more clearly express the intent of the agency when the meaning and application of the rule is known and understood.
 - (d) Acting on agencies' requests on behalf of citizens or agency staff to clarify the intent, requirements, or prohibition of a rule that would not result in a change in the rule's enforcement.
 - (e) Deleting or rewriting portions of rules that are not necessary rather than raising objections.

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

26 NCAC 05 .0102 COMMUNICATIONS WITH COMMISSIONERS

History Note: Authority G.S. 143B-30.1;
Eff. August 1, 2008;
Repealed Eff. June 1, 2023.

26 NCAC 05 .0103 SUBMISSION OF WRITTEN COMMENTS CONCERNING PERMANENT RULES TO THE RRC

- (a) Written comments submitted by any person concerning a permanent rule shall be received by the RRC staff by 5:00 p.m. Eastern Time of the fifth business day prior to the RRC meeting at which the permanent rule is to be reviewed. If comments are submitted electronically, the comments shall be sent to rrc.comments@oah.nc.gov.
- (b) Written comments shall state how a rule either complies with or fails to comply with the statutory grounds for the RRC's review set out in G.S. 150B-21.9.
- (c) Persons submitting comments shall also submit a copy of the comments at the same time and in the same manner to the agency's rulemaking coordinator. Rulemaking coordinator contact information is located at www.ncoah.com/rules.
- (d) A person or agency may submit rebuttal comments concerning permanent rules. Comments from a person shall be submitted in the same manner as set out in Paragraph (a) of this Rule prior to 5:00 p.m. Eastern Time of the business day before the RRC meeting at which the rule is to be reviewed. An agency may submit rebuttal comments before or at the RRC meeting.
- (e) Any person submitting written comments or submitting rebuttal comments at an RRC meeting shall submit sufficient copies for each of the Commissioners, commission counsel, agency rulemaking coordinator, and the permanent record, a total of 16 copies.
- (f) The Chair may waive the requirements of this Rule based on the factors in Rule .0112 of this Chapter.
- (g) Written comments not submitted in accordance with this Rule are subject to being excluded from the record by the Commission.

History Note: Authority G.S. 143B-30.1;
Eff. August 1, 2008;
Amended Eff. June 1, 2023; May 1, 2016.

26 NCAC 05 .0104 SUBMISSION OF WRITTEN COMMENTS CONCERNING TEMPORARY RULES TO THE RRC

- (a) Written comments submitted by any person concerning a temporary rule shall be received by the RRC staff by 5:00 p.m. Eastern Time on the business day prior to the RRC meeting at which the temporary rule is to be reviewed. If comments are submitted electronically, the comments shall be sent to rrc.comments@oah.nc.gov.
- (b) Written comments shall state how a rule either complies with or fails to comply with the statutory grounds for the RRC's review set out in G.S. 150B-21.1 and G.S. 150B-21.9.
- (c) Persons submitting comments shall also submit a copy of the comments at the same time and in the same manner to the agency's rulemaking coordinator. Rulemaking coordinator contact information is located at www.ncoah.com/rules.
- (d) A person or agency may submit rebuttal comments concerning temporary rules. An agency may submit rebuttal comments at the RRC meeting.
- (e) Any person submitting written comments or rebuttal comments at an RRC meeting shall submit sufficient copies for each of the Commissioners, commission counsel, agency rulemaking coordinator, and the permanent record, a total of 16 copies.
- (f) The Chair may waive the requirements of this Rule based on the factors in Rule .0112 of this Chapter.
- (g) Written comments not submitted in accordance with this Rule are subject to being excluded from the record by the Commission.

History Note: Authority G.S. 143B-30.1;
Eff. August 1, 2008;
Amended Eff. June 1, 2023; May 1, 2016.

26 NCAC 05 .0105 REQUIRED NOTICE PRIOR TO ORAL RRC PRESENTATION

- (a) The Chair may allow an agency or any person to make oral statements in support of or in opposition to a rule, or to a report as set forth in Rule .0206 of this Chapter.
- (b) Any person or agency desiring to make an oral statement concerning a permanent rule shall notify the RRC staff in writing by 5:00 p.m. Eastern Time of the second business day before the RRC meeting. The notice shall identify the rule upon which the oral statement will be made and shall also include the name, address, telephone number, fax number and email address of the individual who will be making the oral statement. If the person did not submit a written comment, the person shall state whether the oral statement will support or oppose the rule or report.
- (c) Any person or agency desiring to make an oral statement concerning a temporary rule shall notify the RRC staff prior to the start of the RRC meeting or RRC designee meeting at which a temporary rule will be reviewed. The

notice shall identify the rule upon which the oral statement will be made and shall also include the name, address, telephone number, fax number and email address of the individual who will be making the oral statement. If the person did not submit a written comment, the person shall state whether the oral statement will support or oppose the rule.

(d) At the same time the person notifies the RRC staff, the person shall also notify the rulemaking coordinator for the agency proposing the rule if the person wishes to speak in opposition to the rule or report. If a person fails to notify the agency in accordance with this rule, the Chair may deny a request to make an oral statement to the RRC.

(e) If the Commission asks an individual to address a rule or report, the prior notice required by this Rule does not apply.

*History Note: Authority G.S. 143B-30.1;
Eff. August 1, 2008;
Amended Eff. October 1, 2024; June 1, 2023; April 1, 2014.*

26 NCAC 05 .0106 LIMITATIONS ON ORAL PRESENTATIONS

(a) The RRC Chair in open session may set time limits on oral presentations before the Commission.

(b) Unless the Chair sets other time limits for oral presentations, the time allowed for presentations shall not exceed five minutes for each requesting person or agency. The Chair may require that oral presentations be limited to representative spokespersons for those advocating or those opposing rule approval by the RRC.

(c) Factors that the Chair may use in determining time limits are:

- (1) the length of the agenda and of the meeting;
- (2) the number of rules subject to comment;
- (3) the complexity of the issues;
- (4) the public interest in a particular rule or report;
- (5) the number of people desiring to address the RRC concerning the rule or report;
- (6) the variations in the speakers' arguments and the level of agreement within their positions or relationships;
- (7) the nature of the comments in relation to the RRC scope of review; and
- (8) the amount of notice given to the agency.

(d) The agency adopting the rule shall be allowed an opportunity to address the Commission when a person addresses the Commission in opposition to a rule, unless the agency fails to appear after notice of written comments opposing approval of the rule. When a comment in opposition to a rule first occurs by an oral comment at the Commission meeting, the agency shall be allowed an opportunity to address the Commission at the next meeting of the Commission or Commission's designee where the rule is under review.

*History Note: Authority G.S. 143B-30.1;
Eff. August 1, 2008;
Amended Eff. June 1, 2023; April 1, 2014.*

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 where:

- (1) 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 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. October 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. October 1, 2024; June 1, 2023; February 1, 2012.

26 NCAC 05 .0109 COMMUNICATIONS WITH RRC STAFF

History Note: Authority G.S. 143B-30.1;
Eff. August 1, 2008;
Repealed Eff. June 1, 2023.

26 NCAC 05 .0110 FILING OBJECTION LETTERS

- (a) The RRC shall not consider any objection letter which is dated prior to the time the agency adopts the rule.
- (b) All objection letters shall be delivered via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, 27609, or via email to oah.rules@oah.nc.gov.

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

26 NCAC 05 .0111 RESPONSE TO OBJECTION LETTERS

- (a) The RRC staff shall respond to any objection letter for which it has a return address and that is not eligible for consideration.
- (b) The RRC staff's response shall inform the letter writer that the objection letter is not eligible for consideration as it was untimely and inform the letter writer how to file a timely objection letter.
- (c) The RRC staff may respond to letters that were filed by a single individual on behalf of multiple individuals to the individual filing the letters.

History Note: Authority G.S. 143B-30.1;
Eff. August 1, 2008.

26 NCAC 05 .0112 WAIVER

- (a) The Commission in open session may waive any rule for which no specific waiver provision is set out.
- (b) Any person or agency requesting a waiver shall do so in writing and shall set out the specific rule for which a waiver is requested and the reasons justifying such a waiver.

- (c) Any person desiring a waiver of the Commission's rules shall submit a copy of the request to the rulemaking coordinator for the agency proposing a rule at the same time and in the same manner as the submission to the RRC.
- (d) The factors to be used in deciding whether to waive a rule are:
- (1) the necessity for a waiver;
 - (2) the amount of notice given to the Commission and its staff, the agency proposing the rule, and interested parties;
 - (3) the applicant's responsibility for the conditions creating the need for a waiver;
 - (4) the applicant's previous requests for a waiver;
 - (5) the applicant's knowledge of or experience with the rulemaking process;
 - (6) the precedential value of such a waiver;
 - (7) the harm to the applicant if a waiver is not granted;
 - (8) the harm to the agency if a waiver is granted when the agency is not the applicant.

History Note: Authority G.S. 143B-30.1;
Eff. August 1, 2008.

26 NCAC 05 .0113 WITHDRAWAL OF OBJECTION LETTERS

- (a) A person may request that the Commission allow withdrawal of his or her previously filed objection letter to a rule prior to the meeting at which that rule is approved as set out below.
- (b) A request to withdraw an objection letter after a rule has been approved is untimely and shall be returned to the requesting party with a denial by the Commission staff.
- (c) The original request to withdraw a previously filed objection letter must be signed by the person who wrote the objection letter, notarized and delivered to the Commission by the close of business on the last day prior to the meeting at which the rule that is the subject of the objection letter is approved.
- (d) The Commission shall act on the request to withdraw the previously filed objection letter at the meeting. The staff attorney offering comments on the rule shall also announce how the request to withdraw the previously filed objection letter would affect the rule's effective date and whether the rule would be subject to legislative review.
- (e) The Commission shall base its decision on:
- (1) the factual circumstances concerning the objection letter and the request to withdraw any letter;
 - (2) any defects in either the objection letter or the request to withdraw the objection letter;
 - (3) the history of the particular rulemaking;
 - (4) the notice provided to all parties and the Commission;
 - (5) the good faith of the person making the withdrawal request; and
 - (6) any factors the Commission may use in deciding whether to grant a waiver from its rules.

History Note: Authority G.S. 143B-30.1;
Eff. December 1, 2010.

26 NCAC 05 .0114 RRC RULE APPROVAL CONTINGENT ON TECHNICAL CHANGE

- (a) When the Commission approves a rule contingent on an agency's making requested technical changes, the agency shall make all changes requested by the Commission prior to 5:00 p.m. Eastern Time on the next business day after the rule is approved, or such other date or time as may be set by the Commission.
- (b) If the changes are made as set out in Paragraph (a) of this Rule, the rule shall become effective pursuant to G.S. 150B-21.3. If the changes have not been made as set out in Paragraph (a) of this Rule, the rule shall not become effective and shall be calendared on the Commission's agenda for the following month.

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

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.

(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.

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

26 NCAC 05 .0116 ATTESTATION OF COMPLIANCE WITH RULEMAKING REQUIREMENTS

(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. 150B-21.9(a)(4).

History Note: Authority G.S. 143B-30.1;
Eff. October 1, 2024.

SECTION .0200 – PERIODIC REVIEW OF EXISTING RULES

26 NCAC 05 .0201 SCOPE

History Note: Authority G.S. 150B-21.3A;
Eff. April 1, 2014;
Repealed Eff. June 1, 2023.

26 NCAC 05 .0202 DEFINITIONS

In addition to the definitions in G.S. 150B-21.3A and in Rule .0101 of this Chapter, for the purposes of this Section the following definitions apply:

- (1) "Determination" means a classification of a rule as necessary or unnecessary.
- (2) "Existing rules" means rules currently in the Code as of January 1, 2024 and every 10 years thereafter.
- (3) "Report" means the report established pursuant to Rule .0206 of this Section, used to implement steps one through three in G.S. 150B-21.3A(c).

History Note: Authority G.S. 150B-21.3A;
Eff. April 1, 2014;
Amended Eff. June 1, 2023.

26 NCAC 05 .0203 DEADLINES

(a) The Commission shall submit by email to the rulemaking coordinator of an agency subject to the review a report containing its existing rules. Agencies shall have 10 business days after the report is sent to review it for accuracy and completeness. An agency shall notify the Commission staff by email at oah.rules@oah.nc.gov of any errors or missing rules within the 10 business days following the date the RRC sent the report.

(b) An agency shall complete the report as set out in Rule .0206(b) of this Section. The agency shall then submit its initial report to the Office of Administrative Hearings at the above email address and OAH shall post the report on its website within five business days of receipt.

(c) All reports shall be filed on or before the 20th day of the month for Commission review of the report at its meeting the following month, using the schedule set forth in Rule .0211 of this Section. Commission counsel shall notify an agency if he or she intends to recommend reviewing this report at a later meeting. The Commission may delay reviewing a report until a later meeting if the workload of the Commission and its staff makes the review impracticable. If the Commission delays reviewing a report, it shall notify the agency. In rescheduling any review, the Commission shall consider the date on which the report was filed with the Commission.

(d) All deadlines that require filing or notification as set forth in this Rule shall be by 5:00 p.m. Eastern Time on the business day of the deadline or the next business day following the deadline if the deadline falls on a non-business day.

*History Note: Authority G.S. 150B-21.3A;
Eff. April 1, 2014;
Amended Eff. June 1, 2023.*

26 NCAC 05 .0204 EXTENSION OF TIME

(a) If the agency cannot meet the filing deadline set forth in Rules .0203(c) and .0211 of this Section, the agency head may submit a written request for an extension of time from the Commission. The Commission shall consider the request at its next regularly scheduled meeting. The Commission's decision shall be made on a case by case basis, considering the justification offered by the agency requesting the extension, which may include:

- (1) the efforts of the agency to comply with the review;
- (2) any illness or incapacity of the staff member assigned responsibility for submitting the report;
- (3) changes of composition to the agency or its staff that resulted in a delay of the review;
- (4) whether the agency received a volume of comments that requires additional time to respond; and
- (5) arguments for or against the delay by members of the public.

(b) A request solely citing time constraints to complete the report is insufficient for an extension of time.

(c) If an agency head submits a request for an extension, the agency shall post notice on its website and notify its interested persons mailing list maintained pursuant to G.S. 150B-21.2(d) that the RRC will review the request at its next regularly scheduled meeting. The notice shall also inform the public that individuals may contact the Commission to object to the delay.

(d) Any person desiring to submit written arguments against the delay proposed by an agency shall submit the comments by email to the individual commissioners, RRC staff, and the agency rulemaking coordinator by 5:00 p.m. Eastern Time on the Tuesday prior to the meeting.

*History Note: Authority G.S. 150B-21.3A;
Eff. April 1, 2014;
Amended Eff. June 1, 2023.*

26 NCAC 05 .0205 AGENCY REQUEST TO RESCHEDULE REPORTS FOR EARLIER REVIEW AND ADD UNNECESSARY RULES TO THE SCHEDULE

(a) If an agency wishes to reschedule a report for review before the date set forth in Rule .0211 of this Section, the agency shall send a written request to the Commission. The request shall contain:

- (1) the Title and Chapter of the Report;
- (2) the reason for the request;
- (3) if the report was already posted, a copy of the report and any public comments received;
- (4) the date the report was originally scheduled for review; and
- (5) the date that the agency seeks for Commission review.

(b) An agency seeking earlier review shall, on the date of submission of the request to the Commission, post notice on its website and notify its interested persons mailing list maintained pursuant to G.S. 150B-21.2(d) of the meeting date on which the Commission will review its request as set forth in Paragraph (e) of this Rule. The notice shall also inform the public that the individuals may contact the Commission to object to the rescheduling.

(c) The Commission's decision to grant the request for earlier review shall be made on a case-by-case basis, considering the following:

- (1) the reason offered by the agency;
- (2) the workload of the Commission; and
- (3) arguments for or against the rescheduling by members of the public.

(d) If an agency designates a rule as unnecessary and places it on the current year schedule as set forth in G.S. 150B-21.3A(e), it shall file written notice of this designation with the Commission. The Commission shall consider the notice at its next regularly scheduled meeting.

(e) For any requests made pursuant to this Rule, the Commission shall consider a request filed on or before the 20th day of the month at its meeting the next month and shall then place the rule or rules on the schedule. Following the Commission's decision, the Commission shall notify the agency of the date the agency is required to submit the report.

History Note: Authority G.S. 150B-21.3A;
Eff. April 1, 2014;
Amended Eff. June 1, 2023; December 1, 2016.

26 NCAC 05 .0206 REPORT

- (a) All agencies participating in the review shall use the report prepared by the Commission.
- (b) The agency shall complete the following fields of the report prior to posting:
 - (1) the initial agency determination;
 - (2) whether a rule is necessary to implement or conform to federal law. If it is, the agency must include a citation to that law in the report; and
 - (3) the public comment period, which shall be no less than 60 days and begin upon posting on the agency's and the Office of Administrative Hearings' websites. If the posting does not occur on the same day for both sites, the comment period shall begin upon posting on the second website.
- (c) The agency shall post the report on its website continuously throughout the public comment period and accept comments on the initial determinations made by the agency in the report.
- (d) Prior to submitting the report to the Commission, the agency shall state in the report whether comments were received and the final determination for each rule. The agency shall attach to the report a copy of every comment received. The full text of all comments shall be included with or attached to the report. The agency shall also attach a brief response addressing the merits of each comment.
- (e) The agency shall submit a report with all fields completed along with all required attachments set forth in Paragraph (d) of this Rule. Reports that are not complete shall be considered not filed and shall be returned to the agency to complete.
- (f) The agency shall submit the report to the Commission with one original of the report and the comments received. The agency shall also submit an electronic version of the report that shall be compatible with or convertible to the most recent version of Microsoft Excel. The electronic report shall be submitted by email at oah.rules@oah.nc.gov.

History Note: Authority G.S. 150B-21.3A;
Eff. April 1, 2014.

26 NCAC 05 .0207 PUBLIC COMMENT

- (a) For purposes of this Section, an agency shall accept public comments submitted to the agency by US Postal Service or other delivery service and electronic communication.
- (b) The agency shall send notice of the posting and public comment period to its interested persons mailing list maintained pursuant to G.S. 150B-21.2(d).
- (c) Each agency shall include on its website and in any notice sent to interested persons the following:
 - (1) instructions on how a person may comment on the determination;
 - (2) to whom the comment should be directed;
 - (3) the definition of "public comment" in G.S. 150B-21.3A(a)(5); and
 - (4) that a comment must address the content of the rule to be considered by the Commission.

History Note: Authority G.S. 150B-21.2(d); 150B-21.3A;
Eff. April 1, 2014.

26 NCAC 05 .0208 AGENCY RESPONSE TO PUBLIC COMMENT

- (a) The agency shall address the substance of a public comment as defined in G.S. 150B-21.3A(a)(5).
- (b) Agencies are not required to respond to the individual but shall include a brief response to the merits of the public comment in the report submitted to the Commission.
- (c) The Commission shall consider a report incomplete if the agency does not respond to the merits of the public comments and shall return the report to the agency.

History Note: Authority G.S. 150B-21.3A;
Eff. April 1, 2014.

26 NCAC 05 .0209 EXEMPTION FROM THE PERIODIC REVIEW OF EXISTING RULES

- (a) An agency requesting an exemption from the review pursuant to G.S. 150B-21.3A(d) may make an exemption request for an entire Section, Subchapter, Chapter, or Title of rules if the entire Section, Subchapter, Chapter, or Title of rules were adopted or amended within the previous 10 years prior to the review.
- (b) The Commission shall not grant an exemption for individual rules.
- (c) The agency head must make the written request to the Commission.
- (d) If an agency head submits a request for exemption, the agency shall post notice on its website and notify its interested persons mailing list maintained pursuant to G.S. 150B-21.2(d).
- (e) The Commission shall post notice of the agency's request on its website and provide notice of a public hearing.
- (f) The Commission shall conduct a public hearing to determine whether it should grant the waiver. The Commission shall consider the following:
 - (1) the arguments of the agency;
 - (2) public input;
 - (3) impact on the regulated public affected by the rule; and
 - (4) whether granting the waiver is within the public interest.
- (g) If the Commission grants the waiver request, the Section, Subchapter, Chapter, or Title shall be removed from the current schedule and shall not be reviewed under this Section until the new review schedule is set.

History Note: Authority G.S. 150B-21.3A;
Eff. April 1, 2014.

26 NCAC 05 .0210 AGENCY PRESENTATION TO THE COMMISSION

If a representative from the agency does not appear at the meeting when the agency's report is being reviewed and a question regarding the report is raised, then the Commission shall defer the review to a subsequent meeting.

History Note: Authority G.S. 150B-21.3A;
Eff. April 1, 2014.

26 NCAC 05 .0211 SCHEDULE

- (a) The Commission shall review the report prepared for the identified portion of the Administrative Code pursuant to the schedule found on the OAH website at: <https://www.oah.nc.gov/rules-division/periodic-review-and-expiration-existing-rules>.
- (b) All requests to amend the schedule referenced here shall be made pursuant to Rules .0204 or .0205 of this Section.
- (c) All requests to amend the schedule shall be posted on the OAH website within two business days of receipt by the Commission.
- (d) The Commission shall post notice of any amendment granted on the OAH website within two business days of the meeting where the amendment is granted.

History Note: Authority G.S. 150B-21.3A;
Eff. April 1, 2014;
Amended Eff. July 1, 2023; June 1, 2023; September 1, 2022; August 1, 2021; May 1, 2019;
February 1, 2019; May 1, 2018; March 1, 2018; February 1, 2018; January 1, 2018; December 1,
2017; November 1, 2017; September 1, 2017; July 1, 2017; June 1, 2017; May 1, 2017; April 1,
2017; March 1, 2017; January 1, 2017; December 1, 2016; November 1, 2016; October 1, 2016;
August 1, 2016; June 1, 2016; May 1, 2016; April 1, 2016; March 1, 2016; February 1, 2016;
December 1, 2015.

26 NCAC 05 .0212 READOPTIONS

- (a) When setting a readoption deadline pursuant to G.S. 150B-21.3A(d)(2), an agency that is not a board or commission shall, within 60 days of receipt of the Commission's consultation request, submit to the Commission:
 - (1) written documentation of the agency's planned timeline for readoption, providing planned dates for all steps required by G.S. 150B-21.2; and
 - (2) written documentation of any of the agency's rulemaking priorities that the agency determines to be relevant to the timeline for readoption.

(b) A board or commission shall take the actions specified in Subparagraphs (a)(1) and (a)(2) of this Rule within 60 days of receipt of the Commission's consultation request, or within 10 days after the board or commission's next regularly scheduled meeting after receipt of the Commission's consultation request, whichever comes later.

(c) To meet the readoption deadline established pursuant to G.S. 150B-21.3A(d)(2) and Paragraphs (a) or (b) of this Rule, an agency, board, or commission shall:

- (1) adopt the rule, as defined in G.S. 150B-2(1a), by the date established pursuant to G.S. 150B-21.3A(d)(2) and Paragraph (a) or (b) of this Rule; and
- (2) file the rule with the Commission within 30 days of adoption.

History Note: Authority G.S. 143B-30.1; 150B-21.2(g); 150B-21.3A;
Eff. June 1, 2023.

SECTION .0300 - TEMPORARY RULES FOR RRC REVIEW

26 NCAC 05 .0301 **FORMATTING REQUIREMENTS**

An agency submitting temporary rules to be reviewed by the Commission shall comply with the requirements in 26 NCAC 02C .0100, .0200, and .0400, which are hereby incorporated by reference, including subsequent amendments and editions.

History Note: Authority G.S. 143B-30.1; 150B-21.1;
Eff. May 1, 2016.

26 NCAC 05 .0302 **TEMPORARY RULEMAKING FINDINGS OF NEED FORM**

(a) An agency shall submit a completed typed original Temporary Rulemaking Findings of Need form for each rule when filing a temporary rule for Commission review. The form may be accessed at no cost at www.ncoah.com/rules.

(b) The form sets forth the requirements of G.S. 150B-21.1 to allow the Commission to determine whether the temporary rule meets the statutory requirements.

(c) The agency head shall sign the original form pursuant to G.S. 150B-21.1(a4). If the agency head has delegated this authority to another person pursuant to statute, then the agency shall submit a copy of the delegation and cite the statutory authority that authorizes the delegation.

History Note: Authority G.S. 143B-30.1; 150B-21.1(a4);
Eff. May 1, 2016.

26 NCAC 05 .0303 **FILING A TEMPORARY RULE**

For each temporary rule, the agency shall file the following:

- (1) an original and two copies of the Temporary Rulemaking Findings of Need form. The original form shall be signed by the agency head or designee, as set forth in Rule .0302 of this Section;
- (2) if designation authority is invoked, a letter delegating the authority for the signature on the form, as set forth in Rule .0302 of this Section;
- (3) a copy of the relevant portion of the authority cited that authorizes the promulgation of the temporary rule;
- (4) an original and two copies of the temporary rule prepared in accordance with 26 NCAC 02C .0108, containing:
 - (a) an introductory statement that states the rule was adopted under temporary rulemaking procedures;
 - (b) the text of the rule, showing any changes made after publication as set forth in 26 NCAC 02C .0405; and
 - (c) the history note, as set forth in 26 NCAC 02C .0406; and
- (5) an electronic version of the Rule, as set forth in 26 NCAC 02C .0105.

History Note: Authority G.S. 143B-30.1; 150B-21.1; 150B-21.19;
Eff. May 1, 2016.

26 NCAC 05 .0304 **WAIVER PURSUANT TO G.S. 150B-21.1(A2)**

(a) Agencies seeking a waiver of the 210-day requirement pursuant to G.S. 150B-21.1(a2) shall submit their request concurrently with the filing of the temporary rule for which the waiver is sought by emailing the request to Commission staff counsel.

(b) In the written waiver request, the agencies shall address all factors which the Commission is required to consider pursuant to G.S. 150B-21.1(a2).

*History Note: Authority G.S. 143B-30.1;
Eff. January 1, 2025.*