

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 02 - RULES DIVISION

**SUBCHAPTER 02C - SUBMISSION PROCEDURES FOR RULES AND OTHER DOCUMENTS
TO BE PUBLISHED IN THE NORTH CAROLINA REGISTER AND THE NORTH
CAROLINA ADMINISTRATIVE CODE**

SECTION .0100 - GENERAL

26 NCAC 02C .0101 SCOPE

- (a) The rules in this Section set forth the general requirements for an agency to submit rules and documents for publication.
- (b) For notices and rules submitted for publication in the Register, an agency shall also comply with the requirements set out in Sections .0200 and .0300 of this Subchapter.
- (c) For a rule submitted for inclusion in the Code that was noticed in the Register, an agency shall also comply with the requirements set out in Section .0400 of this Subchapter.
- (d) For a rule submitted for inclusion in the Code and the rule was not noticed in the Register, an agency shall also comply with the requirements set out in Sections .0200 and .0400 of this Subchapter.
- (e) For a temporary rule submitted for publication in the Register and the Code, an agency shall also comply with the requirements set out in Sections .0200 through .0500 of this Subchapter.
- (f) For a rule submitted for publication on the OAH website, an agency shall also comply with the requirements set out in Sections .0200 and .0700 of this Subchapter.
- (g) For an emergency rule submitted for review and publication in the Register and Code, an agency shall also comply with the requirements set out in Sections .0200 and .0600 of this Subchapter.

*History Note: Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19;
Eff. April 1, 1996;
Temporary Amendment Eff. July 1, 2003;
Amended Eff. April 1, 2004.*

26 NCAC 02C .0102 DEFINITIONS

The following definitions shall apply throughout this Chapter and to all forms prescribed pursuant to this Chapter unless the context indicates otherwise:

- (1) "Action" means the adoption, amendment, or repeal of a rule.
- (2) "Adoption" means a new rule with a new rule number.
- (3) "Adoption by agency" means the date that an agency takes final action on a rule.
- (4) "Amendment" means an existing rule with a deletion, addition or other change to that existing rule.
- (5) "Citation" means a reference to a rule by Title, Chapter or Subchapter, and Section or Rule number.
- (6) "Code" means the North Carolina Administrative Code.
- (7) "Commission" means the Rules Review Commission.
- (8) "Form" means an original form provided by OAH; a computer generated form from the OAH website, or from a CD or a diskette provided by OAH; a legible photocopy of an original OAH form; or an agency generated form identical to the OAH form.
- (9) "OAH" means the Codifier of Rules at the Office of Administrative Hearings.
- (10) "Original" means a copy of the document marked or stamped as such.
- (11) "Publication" includes publication on the OAH website or in the Register or entry into the Code.
- (12) "Register" means the North Carolina Register.
- (13) "Repeal" means the deletion of the entire text of a rule. When a rule is repealed, that rule number shall not be used again. The number, rule name, and final history note shall remain in the Code permanently for publication and reference purposes.

*History Note: Authority G.S. 150B-21.17; 150B-21.18;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996;*

Amended Eff. April 1, 1997;
Temporary Amendment Eff. July 1, 2003;
Amended Eff. April 1, 2004.

26 NCAC 02C .0103 ORIGINAL AND DUPLICATE COPY

- (a) An agency shall submit an original and one copy of any document and form for publication in the Register or Code.
- (b) An agency shall include an additional copy of the rule with any rule that is submitted to the Commission.
- (c) An agency shall permanently mark or stamp the original rule and form as original and date it at the time of marking or stamping.
- (d) An agency shall submit documents in the following manner:
 - (1) the original submission form;
 - (2) the original of the rule;
 - (3) the copy of the submission form;
 - (4) the copy, highlighted if required by Rule .0405 of this Subchapter;
 - (5) the agency return copy of the submission form and envelope, if any;
 - (6) the agency return copy of the rule, if any; and
 - (7) the copy of the rule for RRC, if any.

History Note: Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996;
Amended Eff. April 1, 2004; August 1, 2000; April 1, 1997.

26 NCAC 02C .0104 RETURN COPY

If an agency desires a returned copy of any document submitted to OAH, the agency shall submit an additional copy permanently marked as the agency's return copy and a self addressed envelope with sufficient postage affixed for U.S. mail or state government interoffice delivery.

History Note: Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996;
Temporary Amendment Eff. January 1, 2003;
Amended Eff. April 1, 2004 (this amendment replaces the amendment approved by RRC on October 16, 2003).

26 NCAC 02C .0105 ELECTRONIC VERSION

- (a) The electronic version must be a 3 1/2 inch (1.44 Mb) high density diskette or CD compatible with or convertible to the most recent version of Microsoft Word. The filed electronic version must identify the name of the document to be retrieved and the software used. OAH shall refuse to accept for publication any document in which the electronic version is not compatible with or convertible to the most recent version of Microsoft Word.
- (b) The diskette or CD may contain multiple rules filed at the same time. Each rule must be saved as a separate document.
- (c) An electronic version is not required if an agency that is unable to provide an electronic version that is compatible with or convertible to the most recent version of Microsoft Word submits a written statement to the Codifier of Rules to that effect. This statement must be signed by the agency head or rule-making coordinator.

History Note: Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996;
Amended Eff. November 1, 2006; January 1, 2006; April 1, 2004; August 1, 2000.

26 NCAC 02C .0106 REFUSAL OF PUBLICATION

- (a) OAH shall refuse to publish any document submitted for publication that does not meet its requirements.
- (b) OAH shall return the document to the agency with an indication of the changes needed.

- (c) The agency may resubmit the document for publication, but the date that OAH receives such resubmission shall govern the publication date.
- (d) If the returned rule is for inclusion in the Code, the agency shall resubmit the rule to OAH within 48 hours.

History Note: Authority G.S. 150B-21.19;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996;
Temporary Amendment Eff. July 1, 2003;
Amended Eff. April 1, 2004.

26 NCAC 02C .0107 RULE-MAKING COORDINATOR AND MAILING LIST

- (a) Each agency head shall notify OAH in writing of the name and address of the agency's rule-making coordinator.
- (b) The rule-making coordinator shall notify OAH of any change in the agency's address.
- (c) Any person who desires to be on the OAH mailing list shall notify OAH in writing with their name and address.

History Note: Authority G.S. 150B-21;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996.

26 NCAC 02C .0108 GENERAL FORMAT INSTRUCTIONS

An agency shall format each rule submitted to OAH for publication in the Register or Code as follows:

- (1) Paper Specifications:
 - (a) 8½ by 11 inch plain white paper, 16 to 32 lb.;
 - (b) one side of the sheet only;
 - (c) black ink;
 - (d) 10 point font size;
 - (e) portrait print (8½ x 11), no landscape printing (11 x 8½);
 - (f) numbered lines on the left margin with each page starting with line 1;
 - (g) 1.5 line spacing;
 - (h) page numbers centered at the bottom of the page for each rule that has more than one page of text; and
 - (i) no staples.
- (2) Tab and Margin Settings:
 - (a) tab settings for all rules shall be set relative from the left margin at increments of .5;
 - (b) text shall be with a one inch margin on all sides.
- (3) The Introductory Statement shall start on page 1, line 1 of each rule.
- (4) When a new chapter, subchapter, or section of rules is adopted, the Chapter, Subchapter, and Section names shall be provided in bold print with the first rule following the introductory statement. One line shall be skipped between the introductory statement and each chapter, subchapter, and section name.
- (5) One line shall be skipped before starting the line that provides the rule citation and rule name. The first digit of the title number shall be placed in position 1. One tab shall be between the rule number and rule name. The rule name shall be in capital letters and the rule number and name shall be in bold print.
- (6) Body of the Rule:
 - (a) the body of the rule shall start on the line immediately following the rule name with the following markings:
 - (i) adoptions - new text shall be underlined;
 - (ii) amendments - any text to be deleted shall be struck through and new text shall be underlined;
 - (iii) repeals - text of the rule shall not be included;
 - (b) there shall be no lines skipped in the body of the rule except before and in tables;
 - (c) the first level of text shall be flush left and with two spaces after the closing parenthesis if the paragraph is identified by a letter;
 - (d) the second level of text shall start with one tab and one hanging indent after the closing parenthesis;

- (e) the third level of text shall start with two tabs and one hanging indent after the closing parenthesis;
 - (f) the fourth level of text shall start with three tabs and one hanging indent after the closing parenthesis;
 - (g) the fifth level of text shall start with four tabs and one hanging indent after the closing parenthesis;
 - (h) the sixth level of text shall start with five tabs and one hanging indent after the closing parenthesis.
- (7) Punctuation shall be considered part of the word when there are no spaces between the punctuation and the word. When underlining or striking through text:
- (a) when a word is deleted, the punctuation shall also be struck through with the previous word; and
 - (b) when punctuation is added, the existing word shall be struck through and followed by the word and punctuation underlined.
- The smallest unit of text to be struck through or underlined shall be an entire word or block of characters separated from other text by spaces.
- (8) Charts or Tables shall be in a format that is accommodated by the most recent version of Microsoft Word.
- (9) History Note Specifications:
- (a) shall be in italic font;
 - (b) shall start on the second line following the body of the rule;
 - (c) the first line of the History Note shall start in the first position; all lines following shall be two tabs;
 - (d) the first line shall start with the words "History Note:", followed by one tab and the word "Authority". The agency shall then cite the authority(ies) in numerical order for that rule;
 - (e) the effective date of the original adoption of the rule shall be the next line following the authority. The abbreviation "Eff." shall be followed by this date;
 - (f) on the line following the "Eff." date, the amended dates shall be preceded with the words "Amended Eff." and the dates shall be listed in chronological order, with the most recent amended date listed first;
 - (g) a temporary rule shall be listed as a separate item in the history note with the following words: "Temporary (Adoption, Amendment, or Repeal) Eff. (date)";
 - (h) an emergency rule shall be listed as a separate item in the history note with the following words: "Emergency (Adoption, Amendment, or Repeal) Eff. (date)";
 - (i) the repealed date of a rule shall be the last line of the history note and start with the words "Repealed Eff." followed by the date;
 - (j) all items in the history note shall be separated by semicolons with the last line ending with a period;
 - (k) all history of a rule shall be in chronological order following the authority for the rule;
 - (l) all dates in the history note shall be complete with the month spelled out, and shall not contain any abbreviations.
- (10) Numbers within the text shall be as follows:
- (a) numbers from one to nine shall be spelled out;
 - (b) figures shall be used for numbers over nine;
 - (c) if a phrase contains two numbers, only one of which is over nine, figures shall represent both.
- (11) Monetary figures within the text shall be spelled out followed by the numerical figure in parenthesis. Decimal and zeros shall be used only for even dollar amounts of sums less than one thousand dollars (\$1,000).

Note: Examples of proper formatting can be found on the OAH website located at www.ncoah.com/rules.

*History Note: Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996;
Amended Eff. August 1, 2000;*

*Temporary Amendment Eff. July 1, 2003;
Amended Eff. January 1, 2006; April 1, 2004.*

26 NCAC 02C .0109 CITATION TO AUTHORITIES

(a) The agency shall cite authorities according to the most current edition of the rules of citation contained in "A Uniform System of Citation" except as listed in Paragraph (b) of this Rule. "A Uniform System of Citation" is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be obtained from the Harvard Law Review Association, Gannett House, 1511 Massachusetts Ave., Cambridge, Massachusetts 02138 at a cost of sixteen dollars (\$16.00).

(b) The agency shall cite:

- (1) the General Statutes of North Carolina as "G.S. #";
- (2) the Session Laws of North Carolina as "S.L. 20xx-xxx, s. x";
- (3) an Executive Order issued by the Governor as "E.O. #, (Governor's name), (year)";
- (4) the North Carolina Administrative Code as "(Title #) NCAC (Chapter or Subchapter #) (.####)"; and
- (5) the North Carolina Register as "(Vol. #) NCR (Issue #), (page #)".

*History Note: Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996;
Amended Eff. December 1, 2002.*

26 NCAC 02C .0110 ILLUSTRATIONS/NOTES

An agency may include material in the text of a rule which is not a substantive portion of the rule but is an illustration of something in the rule. Illustrations shall be merely examples or clarifications which, when not read, do not change the meaning of the rule. The material which is meant only as an illustration shall be set aside by preceding it with the word "Note:".

*History Note: Authority G.S. 150B-21.18; 150B-21.19; 150B-21.20;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996.*

26 NCAC 02C .0111 WAIVER

OAH may waive any rule in this Subchapter that is not statutorily required if an agency submits a written request. Factors OAH shall use in determining whether to grant the waiver are:

- (1) degree of disruption to OAH publication and work schedule;
- (2) cost to OAH;
- (3) degree of benefit to the public;
- (4) whether the agency had control over the circumstances that required the requested waiver;
- (5) notice to and opposition by the public;
- (6) need for the waiver; and
- (7) previous requests for waivers submitted from the agency.

*History Note: Authority G.S. 150B-19(6); 150B-21.19;
Eff. April 1, 1997.*

26 NCAC 02C .0112 AGENCY FINAL COPY

*History Note: Authority G.S. 150B-21.5; 150B-21.20;
Temporary Adoption Eff. January 1, 2003;
Temporary Repeal Eff. July 1, 2003.*

26 NCAC 02C .0113 AUTHORIZATION FOR SIGNATURE

(a) If the head of a principal state department has delegated the authority to sign forms to another pursuant to G.S. 143B-10(a), then the agency shall submit a copy of the delegation with rule filings. That delegation authorization does not

apply to all agency, boards or commission heads. The following is a listing of principal state department heads that may delegate the function of signing forms for the agency head:

- (1) Department of Cultural Resources
- (2) Department of Health and Human Services
- (3) Department of Revenue
- (4) Department of Crime Control and Public Safety
- (5) Department of Correction
- (6) Department of Environment and Natural Resources
- (7) Department of Transportation
- (8) Department of Administration
- (9) Department of Commerce
- (10) Department of Juvenile Justice and Delinquency Prevention.

(b) It is necessary to submit only one copy of the delegation with all rules filed by an agency for a single month's review by the Commission.

History Note: Authority G.S. 150B-21.19;
Eff. April 1, 2004.

26 NCAC 02C .0114 AGENCY FINAL COPY

- (a) OAH shall send electronically a final draft of an adopted emergency, temporary or permanent rule to an agency's rule-making coordinator after the rule is filed with OAH.
- (b) The agency shall notify OAH of any error made in the draft within 10 business days of notification by OAH.
- (c) If OAH receives written notification from the agency of any error made by OAH, OAH shall correct the error.
- (d) If OAH receives written notification from the agency of any error in the content of the rule not made by OAH, OAH shall return the rule to the Commission.

History Note: Authority G.S. 150B-21.5; 150B-21.20;
Temporary Adoption Eff. July 1, 2003;
Eff. April 1, 2004.

26 NCAC 02C .0115 NOTIFICATION OF CONSULTATION

An agency who is required by G.S. 12-3.1 to consult with the Joint Legislative Commission on Governmental Operations shall notify OAH of the date of the consultation by notation on the Emergency Rulemaking Findings of Need form, the Temporary Rulemaking Findings of Need form, or the Submission for Permanent Rule form if the consultation occurred before the form was filed with the Commission or OAH. If consultation occurred after the forms were filed with the Commission or OAH, the agency shall notify OAH in writing citing the rule and the date of consultation.

History Note: Authority G.S. 150B-21.3(c1); 150B-21.18;
Eff. April 1, 2004.

SECTION .0200 – CODIFICATION OF RULES

26 NCAC 02C .0201 SCOPE

The rules in this Section set forth the codification system of the North Carolina Administrative Code. Rules submitted for publication in the North Carolina Register and the North Carolina Administrative Code shall comply with this codification system.

History Note: Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19;
Eff. April 1, 1996.

26 NCAC 02C .0202 CODIFICATION SYSTEM

- (a) All rules shall be codified within the system described in this Section.
- (b) OAH shall assign a title number to any agency that publishes its rules in the Code.
- (c) The agency shall arrange its rules in Chapters, and arrange them in subchapters. The agency shall arrange the chapters or subchapters into sections, and the sections into rules.
- (d) The agency may reserve in writing a specified chapter, subchapter, section or rule for future use.

History Note: Authority G.S. 150B-21.18; 150B-21.19;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996.

26 NCAC 02C .0203 SUBCHAPTER SUBDIVISION

- (a) An agency may use the subchapter to divide chapters into subject areas.
- (b) When subdividing a chapter into subchapters, an agency shall subdivide the entire chapter into at least two subchapters.
- (c) A subchapter of the Code shall be represented by a capital letter following the chapter number. Subchapters shall be lettered consecutively unless a subchapter letter has been reserved.

History Note: Authority G.S. 150B-21.18; 150B-21.19;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996.

26 NCAC 02C .0204 SECTION SUBDIVISION

- (a) The agency shall place rules in the same subject area in one section. The section is the subdivision that contains rules.
- (b) All sections shall be represented as the first two digits of a four digit number following a decimal. Sections shall be consecutive starting with Section .0100 unless a section number has been reserved. There is a limit of 99 sections within any chapter or subchapter.

History Note: Authority G.S. 150B-21.18; 150B-21.19;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996.

26 NCAC 02C .0205 RULE

The rule shall be represented by the second two digits of the four numbers following a decimal. Rules shall be numbered consecutively unless a rule number has been reserved. The last two digits of the first rule shall be "01".

History Note: Authority G.S. 150B-21.18; 150B-21.19;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996.

26 NCAC 02C .0206 RULE SUBDIVISION

- (a) For rules adopted by an agency prior to July 1, 2004, an agency shall subdivide a rule containing more than one idea into paragraphs labeled: (a), (b), (c), Any subdivided paragraphs shall be labeled: (1), (2), (3), ...; (A), (B), (C), ...; (i),

(ii), (iii), ...; (I), (II), (III), All subdivisions of rules shall be represented by this order, and each label shall be in parentheses.

(b) For rules adopted by an agency on or after July 1, 2004, an agency shall subdivide a rule containing more than one idea into paragraphs labeled: (a), (b), (c), Any subdivided paragraphs shall be labeled: (1), (2), (3), ...; (A), (B), (C), All subdivisions of rules shall be represented by this order, and each label shall be in parentheses.

History Note: Authority G.S. 150B-21.18; 150B-21.19;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996;
Amended Eff. April 1, 2004.

26 NCAC 02C .0207 LISTING WITHIN RULES

(a) For a rule adopted by an agency prior to July 1, 2004, when the rule is not subdivided into paragraphs but contains a list, the sequence of labels for the lists shall be: (1), (2), (3), ...; (a), (b), (c), ...; (i), (ii), (iii), ...; (A), (B), (C), ...; (I), (II), (III),

(b) For a rule adopted by an agency on or after July 1, 2004, when the rule is not subdivided into paragraphs but contains a list, the sequence of labels for the lists shall be: (1), (2), (3), ...; (a), (b), (c), ...; (i), (ii), (iii),....

(c) A rule shall not begin with a list. A list contained within a rule shall be preceded by some form of introductory material.

(d) If there is a list within a paragraph, the rule shall follow the sequence in Rule .0206 of this Section.

History Note: Authority G.S. 150B-21.18; 150B-21.19;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996;
Amended Eff. April 1, 2004.

SECTION .0300 - THE NORTH CAROLINA REGISTER

26 NCAC 02C .0301 SCOPE

The rules in this Section set forth the filing requirements for rules submitted for publication in the North Carolina Register. The agency shall also comply with the requirements set out in Sections .0100 and .0200 of this Subchapter.

*History Note: Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19;
Eff. April 1, 1996.*

26 NCAC 02C .0302 SUBMISSION AND PUBLICATION SCHEDULE

(a) Submissions for publication in the Register shall be received in OAH by the closing date for the issue as determined under Paragraph (b) of this Rule.

(b) OAH shall publish the Register on the first and fifteenth of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, OAH shall publish the Register on the next State business day. The last day for filing for any issue of the Register shall be 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees. In computing the time prescribed or allowed by this Rule, the day of publication of the Register shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or State holiday, in which event the period shall run until the preceding day which is not a Saturday, Sunday, or State holiday. OAH shall publish in each issue of the Register a table of publication deadlines and schedules for at least the next 12 issues. This table is published as a public service and the computation of time periods are not to be deemed binding or controlling.

*History Note: Authority G.S. 150B-21.17;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996.*

26 NCAC 02C .0303 AVAILABILITY OF THE NORTH CAROLINA REGISTER

(a) A print subscription to the Register is available from LexisNexis Matthew Bender and may be ordered directly from LexisNexis by calling 1-800-833-9844, ordering from the online store at www.lexisnexis.com/bookstorelink/, or by writing to LexisNexis Matthew Bender, Order Fulfillment, 1275 Broadway, Albany, NY 12204.

(b) The Register is available at no charge on the OAH website: <http://www.ncoah.com>.

*History Note: Authority G.S. 150B-21.25;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996;
Amended Eff. August 1, 2000; December 1, 1999;
Temporary Amendment Eff. January 1, 2003;
Amended Eff. November 1, 2007; August 1, 2004.*

26 NCAC 02C .0304 NOTICE OF PERMANENT RULE-MAKING PROCEEDINGS

26 NCAC 02C .0305 PUBLICATION OF RULE-MAKING AGENDA

*History Note: Authority G.S. 150B-21.17;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996;
Temporary Amendment Eff. January 1, 2003(Rule .0305);
Temporary Repeal Eff. July 1, 2003;
Repealed Eff. April 1, 2004.*

26 NCAC 02C .0306 PUBLICATION OF NOTICE OF TEXT

(a) The agency shall submit its Notice of Text on an OAH Notice of Text form. If the information contained in the notice exceeds the space provided on the form, the agency shall also submit an electronic version of the information.

(b) All rules submitted for publication by an agency at the same time, with the same proposed effective date, and with the same public hearing date and location if a hearing is scheduled, shall be listed on a single form.

- (c) The agency shall submit the text of the proposed rule and an electronic version.
- (d) A rule proposed to be adopted or amended shall meet the following requirements:
 - (1) The rule shall contain an introductory statement immediately preceding the text. The statement shall contain the rule citation and the action proposed to be taken.
 - (2) Following the introductory statement, the rule number, name, text and history note shall be in the form specified in Rule 26 NCAC 02C .0108:
 - (A) any text to be deleted from an existing rule shall be indicated by strikeout marks;
 - (B) any new or added text shall be underlined; and
 - (C) punctuation shall be considered a part of the previous word, such as:
 - (i) when the previous word is deleted, the punctuation shall also be struck through with the previous word; and
 - (ii) when punctuation is added after an existing word, the existing word shall be struck through and followed by the word and punctuation underlined.The smallest unit of text to be struck through or underlined shall be an entire word or block of characters separated from other text by spaces.
- (e) A rule proposed to be repealed shall meet the following requirements:
 - (1) The rule shall contain an introductory statement. The statement shall contain the rule citation and the action proposed to be taken.
 - (2) Following the introductory statement, the rule shall contain the number and rule name of the rule proposed to be repealed.
 - (3) A history note shall follow the rule number and name.

History Note: Authority G.S. 150B-21.17;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996;
Amended Eff. August 1, 2000;
Temporary Amendment Eff. January 1, 2003;
Amended Eff. August 1, 2004.

26 NCAC 02C .0307 OTHER NOTICES FOR PUBLICATION

OAH may publish any document or notice that is not statutorily required if an agency submits a written request. Factors OAH shall use in determining whether to grant the request are:

- (1) degree of disruption to OAH publication and work schedule; and
- (2) degree of benefit to the public.

History Note: Authority G.S. 150B-21.17(6); 150B-19(5)(a); 150B-21.25;
Eff. April 1, 1997;
Amended Eff. November 1, 2007.

26 NCAC 02C .0308 ELECTRONIC FILING

(a) An agency may file rules and other documents for publication in the Register by electronic mail. The electronic mail shall include an attached document(s) that is compatible with or convertible to the most recent version of Microsoft Word.

(b) Electronic mail with attachment(s) shall be sent by electronic transmission to: oah.rules@ncmail.net. The agency shall simultaneously send a facsimile (fax) copy of the attachment(s).

(c) Electronic submission shall be deemed submitted for publication pursuant to 26 NCAC 02C .0302 on the business day when both the electronic mail with attachment(s) and the faxed copy are received.

History Note: Authority G.S. 150B-21.17;
Eff. January 1, 2006.

SECTION .0400 - NORTH CAROLINA ADMINISTRATIVE CODE

26 NCAC 02C .0401 SCOPE AND AVAILABILITY

- (a) The rules in this Section set forth the requirements for submitting rules for inclusion in the Code. The agency shall also comply with the requirements in Sections .0100 - .0200 of this Subchapter.
- (b) These Rules apply to agencies subject to G.S. 150B, Article 2A, as well as those agencies subject to G.S. 150B-21.21(a) and (b).
- (c) The Official North Carolina Administrative Code is available by subscription from WestGroup and may be ordered directly from WestGroup by calling 1-800-762-5272, ordering from the online store at <http://www.westgroup.com>, or by writing to WestGroup, 610 Opperman Drive, Eagan, MN 55123.
- (d) The North Carolina Administrative Code is available on the OAH website: <http://www.oah.state.nc.us>.

History Note: Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19;
Eff. April 1, 1996;
Amended Eff. December 1, 2002; April 1, 1997.

26 NCAC 02C .0402 PUBLICATION OF A PERMANENT RULE

An agency must submit a permanent rule for publication in the Code with the following:

- (1) An original submission form and copy (Rule .0403 of this Section).
- (2) If applicable, a letter delegating authority for the signature on the submission form (Rule .0113 of this Subchapter).
- (3) An original and copies of the permanent rule (Rule .0103 of this Subchapter) prepared in accordance with Rule .0108 of this Subchapter containing:
 - (a) an introductory statement (Rule .0404 of this Section);
 - (b) the body of the rule (Rule .0405 of this Section);
 - (c) any changes in the rule (Rule .0405 of this Section);
 - (d) the history note (Rule .0406 of this Section).
- (4) A return copy, if desired (Rule .0104 of this Subchapter).
- (5) An electronic version of the rule prepared in accordance with Rule .0105 of this Subchapter.

History Note: Authority G.S. 150B-21.19;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996;
Amended Eff. November 1, 2006; April 1, 2004.

26 NCAC 02C .0403 SUBMISSION FOR PERMANENT RULE FORM

- (a) An agency shall submit a completed typed Submission for Permanent Rule form for each rule submitted for publication in the Code, except that the agency shall submit a single Submission for Permanent Rule form for all repealed rules that are codified within the same chapter.
- (b) The agency head or rule-making coordinator shall sign the Submission for Permanent Rule form.

History Note: Authority G.S. 150B-21.19;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996;
Amended Eff. April 1, 2004; August 1, 2000;

26 NCAC 02C .0404 INTRODUCTORY STATEMENT

- (a) The agency shall include an introductory statement immediately preceding each rule submitted to OAH for publication in the Code. This introductory statement shall contain the rule citation and the action taken.
- (b) If notice of the proposed action was published in the Register, the agency shall include the volume, issue and page or pages of the notice publication in the introductory statement.
- (c) If the text differs in any way from the proposed rule published in the Register, the agency shall include the underlined words "with changes" in the introductory statement.
- (d) When an agency repeals a rule that was noticed to be amended, the agency shall state that the rule was originally proposed to be amended but is repealed in the introductory statement.

(e) If notice of the proposed rule was not required for publication in the Register, the agency shall include a citation to the statute exempting the rule from notice in the introductory statement.

History Note: Authority G.S. 150B-21.19;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996.

26 NCAC 02C .0405 BODY OF THE RULE

(a) The agency shall prepare for publication in the Code any permanent rule not published in the Register or that does not differ in any way from the proposed rule published in the Register according to the general format instructions in Rule .0108 of this Subchapter.

(b) If a permanent rule differs in any way from the proposed rule published in the Register, the following shall apply:

- (1) An agency shall identify changes in an adopted rule by striking through deleted portions, and underlining added portions. The unchanged text shall not be underlined.
- (2) An agency shall identify changes in an amended rule as follows:
 - (A) when text has been added, the text added shall be underlined and highlighted on a copy of the rule;
 - (B) when existing text has been deleted, the text deleted shall be struck through and highlighted on a copy of the rule;
 - (C) when text that was proposed to be deleted has been restored, the restored text shall be highlighted, but not underlined or struck through, on a copy of the rule; and
 - (D) when text that was proposed to be added has been deleted, the deleted proposed text shall not be shown, but an open bracket with five highlighted spaces and a closed bracket shall be inserted where the proposed text is omitted; and
 - (E) when text is required to be highlighted, the highlighting shall be by highlight marker or shall be computer generated. The text shall clearly show through the highlight.
- (3) If the agency repeals a rule originally noticed to be amended, then the agency shall submit the rule as a permanent repeal.

History Note: Authority G.S. 150B-21.19;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996;
Amended Eff. January 1, 2006.

26 NCAC 02C .0406 HISTORY NOTE

(a) The agency shall include a history note for each rule submitted to OAH for publication in the Code, containing the following information:

- (1) the authority for the rule;
- (2) the effective date of the adoption of the rule;
- (3) the effective date of the four most recent amendments to the rule;
- (4) the effective date of the repeal; and
- (5) any other history references pertaining to the rule.

(b) Notwithstanding Paragraph (a) of this Rule, the agency shall combine repealed rules with a single history note if the rules are consecutive numerically in the same section and the effective dates and repealed dates are identical. The agency shall combine authority cites and any other dates.

History Note: Authority G.S. 150B-21.19;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996.

26 NCAC 02C .0407 CHANGES TO RULE, SECTION OR CHAPTER NAMES AND HISTORY NOTES

An agency may change the name of a rule, section or chapter and to a history note by notifying OAH in writing. This letter shall cite the rule, identify the changes, and be signed by the agency head or rule-making coordinator.

History Note: Authority G.S. 150B-21.19; 150B-21.20;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996.

26 NCAC 02C .0408 RECODIFICATION OF RULES

An agency may request that one or more of its rules be recodified. The agency shall submit a letter to OAH containing the citation to the existing rule and the recodified citation, and the reasons for the recodification. The letter shall be signed by the agency head or rule-making coordinator. The recodification shall be effective upon approval by OAH. OAH may refuse to approve a recodification when the recodification does not facilitate the use of the Code.

History Note: Authority G.S. 150B-21.7; 150B-21.18; 150B-21.19; 150B-21.20;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996.

26 NCAC 02C .0409 TRANSFER OF RULES TO ANOTHER AGENCY

An agency desiring to transfer rules pursuant to G.S. 150B-21.7 shall submit a letter to OAH requesting such transfer. The letter shall contain the citation to the existing rule, the recodified citation, and the authority for the transfer. The letter shall be signed by the agency head or rule-making coordinator.

History Note: Authority G.S. 150B-21.7; 150B-21.18; 150B-21.19;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996.

26 NCAC 02C .0410 AGENCY FINAL COPY OF PERMANENT RULES

History Note: Authority G.S. 150B-21.5; 150B-21.20;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996;
Temporary Repeal Eff. January 1, 2003;
Repealed Eff. August 1, 2004.

SECTION .0500 - TEMPORARY RULES

26 NCAC 02C .0501 SCOPE

An agency submitting temporary rules to be published in the Register and Code shall comply with the requirements in Sections .0100 through .0500 of this Subchapter.

History Note: Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19;
Eff. April 1, 1996;
Temporary Amendment Eff. July 1, 2003;
Amended Eff. April 1, 2004.

26 NCAC 02C .0502 PUBLICATION OF A TEMPORARY RULE

An agency shall submit each temporary rule for publication in the Code with the following:

- (1) An original Temporary Rulemaking Findings of Need form and copies (Rule .0503 of this Section).
- (2) If applicable, a letter delegating the authority for the signature on the form (Rule .0113 of this Subchapter).
- (3) An original and copies of the temporary rule (Rule .0103 of this Subchapter) prepared in accordance with Rule .0108 of this Subchapter, containing:
 - (a) an introductory statement (Rule .0404 of this Subchapter);
 - (b) the body of the rule (Rule .0405 of this Subchapter);
 - (c) the history note (Rule .0406 of this Subchapter).
- (4) An agency return copy and envelope, if desired (Rule .0104 of this Subchapter).
- (5) An electronic version of the rule (Rule .0105 of this Subchapter).

History Note: Authority G.S. 150B-21.19;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996;
Amended Eff. April 1, 1997;
Temporary Amendment Eff. July 1, 2003;
Amended Eff. April 1, 2004.

26 NCAC 02C .0503 TEMPORARY RULEMAKING FINDINGS OF NEED FORM

- (a) An agency shall submit a completed typed original Temporary Rulemaking Findings of Need form and two copies for a rule to be submitted for publication in the Code.
- (b) The agency head shall sign the original form. If the agency head has delegated this authority to another pursuant to G.S. 143B-10(a), then the agency shall submit a copy of the delegation.

History Note: Authority G.S. 150B-21.19;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996;
Temporary Amendment Eff. July 1, 2003;
Amended Eff. April 1, 2004.

26 NCAC 02C .0504 APPEARANCE BY AGENCY

History Note: Authority G.S. 150B-21.1;
Temporary Adoption Eff. November 1, 1995;
Eff. April 1, 1996;
Temporary Repeal Eff. July 1, 2003;
Repealed Eff. April 1, 2004.

SECTION .0600 - EMERGENCY RULES

26 NCAC 02C .0601 SCOPE

An agency submitting emergency rules to be reviewed by the Codifier, and for publication in the Register and Code, shall comply with the requirements in Sections .0100 through .0400 of this Subchapter and this Section.

History Note: Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19;
Temporary Adoption Eff. July 1, 2003;
Eff. April 1, 2004.

26 NCAC 02C .0602 PUBLICATION OF AN EMERGENCY RULE

An agency shall submit an emergency rule for review by OAH and publication in the Register and the Code with the following:

- (1) An original Emergency Rule Findings of Need form and copy (Rule .0603 of this Section).
- (2) If applicable, a letter delegating the authority for the signature on the form (Rule .0113 of this Subchapter).
- (3) An original and copies of the emergency rule (Rule .0103 of this Subchapter) prepared in accordance with Rule .0108 of this Subchapter, containing:
 - (a) an introductory statement (Rule .0404 of this Subchapter);
 - (b) the body of the rule (Rule .0405 of this Subchapter);
 - (c) the history note (Rule .0406 of this Subchapter).
- (4) An agency return copy and envelope, if desired (Rule .0104 of this Subchapter).
- (5) An electronic version of the rule (Rule .0105 of this Subchapter).
- (6) A copy of any document supporting the reason for the emergency rule pursuant to G.S. 150B-21.1A(a). The agency shall highlight the information in the document that is pertinent to the need for the emergency rule.

History Note: Authority G.S. 150B-21.19;
Temporary Adoption Eff. July 1, 2003;
Eff. April 1, 2004.

26 NCAC 02C .0603 EMERGENCY RULE FINDINGS OF NEED FORM

(a) An agency shall submit a completed typed Emergency Rule Findings of Need form for a rule to be submitted for publication in the Code. The agency shall submit a single Emergency Rule Findings of Need form for emergency rules when:

- (1) the rules are codified within the same chapter in the Code;
- (2) the finding for the action is the same;
- (3) the proposed effective date is the same; and
- (4) the rules are submitted at the same time for review by the Codifier of Rules.

(b) The agency head shall sign the Emergency Rule Findings of Need form. If the agency head has delegated this authority to another pursuant to G.S. 143B-10(a), then the agency shall submit a copy of such delegation.

History Note: Authority G.S. 150B-21.19;
Temporary Adoption Eff. July 1, 2003;
Eff. April 1, 2004.

26 NCAC 02C .0604 APPEARANCE BY AGENCY

The Codifier may request that a representative of an agency appear before him during the review to clarify the agency's findings of need, to provide additional information, or to answer questions of any interested person.

History Note: Authority G.S. 150B-21.1A;
Temporary Adoption Eff. July 1, 2003;
Eff. April 1, 2004.

SECTION .0700 – PUBLICATION ON THE OAH WEBSITE

26 NCAC 02C .0701 SCOPE

An agency submitting rules that are required by state or federal law to be published on the OAH website shall comply with the requirements in Sections .0100 through .0400 and this Section.

History Note: Authority G.S. 150B-21.1;
Temporary Adoption Eff. July 1, 2003;
Eff. April 1, 2004.

26 NCAC 02C .0702 PUBLICATION OF A RULE ON THE OAH WEBSITE

An agency shall submit a rule to be published on the OAH website with the following:

- (1) An original Publication on the OAH Website form and copy (Rule .0703 of this Section).
- (2) If applicable, a letter delegating authority for the signature on the form (Rule .0113 of this Subchapter).
- (3) An original and copies of the rule (Rule .0103 of this Subchapter) prepared in accordance with Rule .0108 of this Subchapter, containing:
 - (a) an introductory statement (Rule .0404 of this Subchapter);
 - (b) the body of the rule (Rule .0405 of this Subchapter);
 - (c) the history note (Rule .0406 of this Subchapter).
- (4) An agency return copy and envelope, if desired (Rule .0104 of this Subchapter).
- (5) An electronic version of the rule (Rule .0105 of this Subchapter).

History Note: Authority G.S. 150B-21.19;
Temporary Adoption Eff. July 1, 2003;
Eff. April 1, 2004.

26 NCAC 02C .0703 PUBLICATION FORM

- (a) An agency shall submit a completed typed Publication on the OAH Website form for a rule to be submitted for publication in the OAH website.
- (b) Except as specified in Paragraph (c) of this Rule, the agency shall submit a single form for each permanent rule submitted for publication.
- (c) The agency shall submit a single form for proposed temporary rules when:
 - (1) the rules are codified in the same chapter in the Code;
 - (2) the rules are scheduled for the same public hearing(s); and
 - (3) the comment period is the same.
- (d) The agency head or rulemaking coordinator shall sign the Publication form. If the agency head has delegated this authority to another pursuant to G.S. 143B-10(a), then the agency shall submit a copy of such delegation.

History Note: Authority G.S. 150B-21.19;
Temporary Adoption Eff. July 1, 2003;
Eff. April 1, 2004.