

**SUBCHAPTER 1B - DEPARTMENTAL ADMINISTRATIVE PROCEDURES**

**SECTION .0100 - GENERAL PROVISIONS**

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*History Note:*      Authority G.S. 134B-10; 150A-12; 150A-16;  
                            Eff. February 1, 1976;  
                            Readopted Eff. February 27, 1979;  
                            Repealed Eff. July 1, 1987.

**01 NCAC 01B .0107      SCOPE OF RULES**

These rules establish basic minimum procedures for the adoption, amendment or repeal of administrative rules and shall apply to all elements of the Department of Administration unless specifically provided otherwise.

*History Note:*      Authority G.S. 143B-10;  
                            Eff. July 1, 1987;  
                            Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2,  
                            2016.

**01 NCAC 01B .0108      ORGANIZATION OF CHAPTER**

*History Note:*      Authority G.S. 143B-10; 150B-12; 150B-14; 150B-17;  
                            Eff. July 1, 1987;  
                            Repealed Eff. August 1, 1988.

**SECTION .0200 - RULEMAKING HEARINGS: PETITIONS**

- 01 NCAC 01B .0201      HEARING LOCATION**
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*History Note:*      Authority G.S. 150A-12(a),(d),(e); 150A-13;  
                            Eff. February 1, 1976;  
                            Readopted Eff. February 27, 1979;  
                            Repealed Eff. July 1, 1987.

**01 NCAC 01B .0207      SUBMITTING THE PETITION**

Any person wishing to submit a petition requesting the adoption, amendment or repeal of a rule by the Department of Administration or any of its elements shall address a petition to: Secretary, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611. The container of the petition should clearly bear the notation: RULEMAKING PETITION RE and then the subject area.

*History Note:*      Authority G.S. 150B-20;  
                            Eff. July 1, 1987;  
                            Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2,  
                            2016.

**01 NCAC 01B .0208      CONTENTS OF PETITION**

The petition should include the following information:

- (1) an indication of the subject area to which the petition is directed; for example, "This is a petition to hold a rulemaking hearing to amend rule .000 pertaining to Administrative Procedure Act filing requirements:"
- (2) either a draft of the proposed rule or a summary of its contents;
- (3) reasons for the proposal;
- (4) the effect on existing rules or orders;
- (5) any data supporting the proposal;
- (6) effect of the proposed rule on existing practices in the area involved including cost factors;
- (7) names of those most likely to be affected by the proposed rule with addresses if reasonably known;
- (8) name(s) and address(es) of petitioner(s).

Any of the above may be waived at the discretion of the Secretary.

*History Note: Authority G.S. 150B-20;  
Eff. July 1, 1987;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.*

**01 NCAC 01B .0209      DISPOSITION OF PETITIONS**

(a) The Secretary of Administration or the Secretary's designee will determine whether the public interest will be served by granting the request. Prior to making this determination, the Secretary or the Secretary's designee may request additional information from the petitioner(s); he may contact interested persons or persons likely to be affected by the proposed rule and request comments; he may use any other appropriate method for obtaining information on which to base his determination. The Secretary or the Secretary's designee shall consider all of the contents of the petition submitted plus any other information obtained by the means described herein.

(b) Within 30 days of submission of the petition, a final decision will be rendered by the Secretary of the Department of Administration. If the decision is to deny the petition, the Secretary will notify the petitioner(s) in writing, stating the reasons therefor. If the decision is to grant the petition, the Secretary, within 30 days of submission, will initiate a rulemaking proceeding by issuing a rulemaking notice as provided in these Rules and in G.S. 150B-12 or G.S. 150B-13.

*History Note: Authority G.S. 150B-20;  
Eff. July 1, 1987;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.*

**01 NCAC 01B .0210      RECOURSE TO DENIAL OF THE PETITION**

If the Secretary denies the petition for rulemaking, the petitioner(s) may seek judicial review of the denial to determine whether the Department abused its discretion. This action will require the petitioner to file a civil suit against the Department in Superior Court of Wake County or in superior court of the county where the petitioner resides.

*History Note: Authority G.S. 150B-20;  
Eff. July 1, 1987;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.*

**SECTION .0300 - RULEMAKING HEARINGS: NOTICE REQUIREMENTS**

- 01 NCAC 01B .0301      SUBJECTS OF DECLARATORY RULINGS**
- 01 NCAC 01B .0302      SUBMISSION OF REQUEST FOR RULING**
- 01 NCAC 01B .0303      DISPOSITION OF REQUESTS**
- 01 NCAC 01B .0304      RECORD OF DECISION**
- 01 NCAC 01B .0305      DEFINITION**

*History Note:* Authority G.S. 150A-12(e); 150A-17;  
Eff. February 1, 1976;  
Readopted Eff. February 27, 1979;  
Repealed Eff. July 1, 1987.

**01 NCAC 01B .0306 TIMING OF NOTICE**

Upon a determination to hold a rulemaking proceeding, either in response to a petition or otherwise, the Secretary shall give at least 30 days notice to all interested persons of a public hearing on the proposed rule.

*History Note:* Authority G.S. 150B-19.1; 150B-21.1; 150B-21.2;  
Eff. July 1, 1987;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

**01 NCAC 01B .0307 MANNER OF NOTICE-NORTH CAROLINA REGISTER**

*History Note:* Authority G.S. 150B-12;  
Eff. July 11, 1987;  
Repealed Eff. August 1, 1988.

**01 NCAC 01B .0308 ADDITIONAL INFORMATION**

Persons desiring information in addition to that provided in an individual rulemaking notice may contact: Secretary, Department of Administration, Raleigh, North Carolina 27611. The envelope containing the request should clearly bear the notation: REQUEST FOR INFORMATION ON PROPOSED RULES. Any written communication should clearly indicate the rulemaking proceeding which is the subject of the inquiry.

*History Note:* Authority G.S. 150B-19.1;  
Eff. July 1, 1987;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

**SECTION .0400 - RULEMAKING HEARINGS: LOCATION: PARTICIPATION**

**01 NCAC 01B .0401 RIGHT TO HEARING**

**01 NCAC 01B .0402 REQUEST FOR HEARING**

**01 NCAC 01B .0403 GRANTING OR DENYING HEARING REQUESTS**

*History Note:* Authority G.S. 150A-2; 150A-23;  
Eff. February 1, 1976;  
Readopted Eff. February 27, 1979;  
Repealed Eff. July 1, 1987.

**01 NCAC 01B .0404 WHO SHALL HEAR CONTESTED CASES**

*History Note:* Authority G.S. 150B-32;  
Eff. February 1, 1976;  
Readopted Eff. February 27, 1979;  
Repealed Eff. March 1, 1988.

**01 NCAC 01B .0405 HEARING LOCATION**

Unless otherwise stated in a particular rule-making notice, the Department of Administration rule-making hearings will be held at the Administration Building, 116 West Jones Street, Raleigh, North Carolina 27611.

*History Note:* Authority G.S. 150B-19.1; 150B-21.1; 150B-21.2;  
Eff. July 1, 1987;

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.*

**01 NCAC 01B .0406 REQUEST TO PARTICIPATE IN HEARINGS**

(a) Any person desiring to present oral data, views, or arguments on a proposed rule should file a request to participate with the Secretary in such a manner that the request will be received by the agency head at least one day prior to the rule-making hearing.

(b) The request to participate should contain a clear reference to the proposed rule, a brief summary of the person's views with respect thereto, and how long the person desires to speak. The envelope containing the request should clearly bear the notation: REQUEST TO PARTICIPATE IN RULE-MAKING HEARING RE: and the subject matter of the proposed rule.

*History Note: Authority G.S. 150B-19.1; 150B-21.1; 150B-21.2;  
Eff. July 1, 1987;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.*

**01 NCAC 01B .0407 AGENCY RESPONSE TO THE REQUEST TO PARTICIPATE**

Upon receipt of a request to participate in a rule-making hearing, the Secretary or the official presiding over the hearing will acknowledge receipt of the request and inform the person of any limitations on oral presentations deemed necessary for a full and effective public proceeding on the proposed rule. In general, each presentation will be limited to 15 minutes unless some other time limit is prescribed by the hearing officer.

*History Note: Authority G.S. 150B-19.1; 150B-21.1; 150B-21.2;  
Eff. July 1, 1987;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.*

**01 NCAC 01B .0408 PRESENTATION OF ORAL COMMENT**

(a) The hearing officer shall create an agenda of members of the public who have requested participation in the rule-making hearing.

(b) If time allows, the hearing officer shall permit limited comment by attending members of the public who have not submitted requests to participate.

(c) Any person making an oral presentation is encouraged to submit a written copy of the presentation to the agency head, the hearing officer, or an agency designee prior to or during the rule-making hearing.

*History Note: Authority G.S. 150B-19.1; 150B-21.1; 150B-21.2;  
Eff. July 1, 1987;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.*

**01 NCAC 01B .0409 PRESIDING OFFICER: POWERS AND DUTIES**

The presiding officer at the hearing shall have complete control of the proceedings including: extension of any time requirements, recognition of speakers, time allotments for presentations, the right to question speakers, direction of the discussion and management of the hearing. The presiding officer, at all times, will take care that each person participating in the hearing is given a fair opportunity to present views, data and comments.

*History Note: Authority G.S. 150B-19.1; 150B-21.1; 150B-21.2;  
Eff. July 1, 1987;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.*

**SECTION .0500 - RULEMAKING HEARINGS: DECISIONS: AND RELATED PROCEDURES**

**01 NCAC 01B .0501 FAILURE TO APPEAR**

**01 NCAC 01B .0502      SIMPLIFICATION OF ISSUES**  
**01 NCAC 01B .0503      SUBPOENAS**  
**01 NCAC 01B .0504      FINAL DECISIONS IN ADMINISTRATIVE HEARINGS**

*History Note:*     *Authority G.S. 150A-25(a); 150A-27; 150A-33(5); 150A-43;*  
                          *Eff. February 1, 1976;*  
                          *Readopted Eff. February 27, 1979;*  
                          *Repealed Eff. July 1, 1987.*

**01 NCAC 01B .0505      FILING WRITTEN COMMENTS ON PROPOSED RULES**

- (a) Any persons may file a written submission containing data, comments, or arguments for or against a rule, after publication of a rulemaking notice by the Departments. Written comments must be received by the Secretary not later than 60 days after the notice is issued, unless a different period has been prescribed in the notice or granted upon request. The written comments should be sent to the Secretary, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611.
- (b) The envelope containing the written submission should bear the notation WRITTEN COMMENT RE: and clearly state the rule(s) or proposed rule(s) commented upon. Upon receipt of written comments, acknowledgement will be made with an assurance that the comments therein will be considered fully by the Secretary of the Department of Administration or the Secretary's designee.

*History Note:*     *Authority G.S. 150B-19.1; 150B-21.1; 150B-21.2; 150B-21.3(b2);*  
                          *Eff. July 1, 1987;*  
                          *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2,*  
                          *2016.*

**01 NCAC 01B .0506      STATEMENT OF REASONS FOR DECISION**

- (a) Any interested person desiring a concise statement of the principal reasons for and against the adoption of a rule by the Secretary of Administration and the factors that led to overruling the considerations urged against its adoption may submit a request to the Secretary of Administration, 116 West Jones Street, Raleigh, North Carolina 27611.
- (b) For purposes of Subsection (a) this Rule, an "interested person" shall be any person whose rights, duties or privileges might be affected by the adoption of the rule in question or any group or organization of persons whose rights, duties or privileges might be affected by the rule.
- (c) The request must be made in writing and submitted prior to adoption of the rule or within 30 days thereafter. The envelope containing the request should clearly bear the notation REQUEST FOR STATEMENT OF REASONING RE: and clearly state the rule or rules in question.

*History Note:*     *Authority G.S. 150B-20;*  
                          *Eff. July 1, 1987;*  
                          *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2,*  
                          *2016.*

**01 NCAC 01B .0507      RECORD OF PROCEEDINGS**  
**01 NCAC 01B .0508      TEMPORARY RULES**

*History Note:*     *Authority G.S. 150B-12; 150B-13;*  
                          *Eff. July 1, 1987;*  
                          *Expired Eff. March 1, 2016 pursuant to G.S. 150B-21.3A.*

**SECTION .0600 - DECLARATORY RULINGS**

**01 NCAC 01B .0601      SUBJECTS OF DECLARATORY RULINGS**

- (a) Any person substantially affected by a statute or rule administered by the Department of Administration may request a declaratory ruling as to the validity of an agency rule or as to either the manner in which a statute or rule applies to a given factual situation.
- (b) A declaratory ruling issued by the agency:

- (1) is binding upon the agency and upon the person requesting it;
- (2) may be reviewed by the courts in the same manner as the final agency action in a contested case; and
- (3) may be altered by a subsequent declaratory ruling of the agency, but may not be altered retroactively.

*History Note:* Authority G.S. 150B-4;  
Eff. July 1, 1987;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

#### **01 NCAC 01B .0602 SUBMISSION OF REQUEST FOR DECLARATORY RULING**

All requests for declaratory rulings shall be written and mailed to the Secretary of Administration, 116 West Jones Street, Raleigh, North Carolina 27611. The container of the request should bear the notation: REQUEST FOR DECLARATORY RULING. The request must include the following information:

- (1) name and address of petitioner,
- (2) statute or rule to which petition relates,
- (3) concise statement of the manner in which petitioner is aggrieved by the rule or statute or its potential application to him,
- (4) a statement whether an oral hearing is desired and, if so, the reason therefor.

*History Note:* Authority G.S. 150B-4;  
Eff. July 1, 1987;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

#### **01 NCAC 01B .0603 DISPOSITION OF REQUESTS**

(a) When the Secretary of Administration or the Secretary's designee deems it appropriate to issue a declaratory ruling, the Secretary shall issue such declaratory ruling within 60 days of the receipt of the REQUEST FOR DECLARATORY RULING.

(b) A declaratory ruling proceeding may consist of written submissions, an oral hearing or other procedure as may be appropriate in the circumstances of the particular request.

(c) The Secretary shall proceed to issue a declaratory ruling where the person requesting the ruling shows that, with regard to the following facts presented:

- (1) the rule in question is unclear on its face;
- (2) circumstances are so changed since the adoption of the rule that a declaratory ruling is warranted;
- (3) the factors specified in the request were not given appropriate consideration by the agency at the time the rule was adopted;
- (4) the statute administered by the agency is unclear in its application to the requesting person's facts, or
- (5) a fair question exists regarding the validity of the agency's rule due to:
  - (A) an absence of statutory authority for the agency's adoption of the rule;
  - (B) irregularities in the agency's rule-making proceedings; or
  - (C) improper filing or distribution of the rule after the agency's adoption thereof.

(d) Whenever the Secretary of Administration believes "for good cause" that the issuance of a declaratory ruling is undesirable, the Secretary may refuse to issue such ruling. The Secretary shall notify in writing, the person requesting the ruling, stating the reasons for the denial of the request.

(e) For purposes of Subpart (d) of this Rule, the Secretary of Administration will ordinarily refuse to issue a declaratory ruling:

- (1) where there has been a similar controlling factual determination in a contested case;
- (2) the rule-making record shows that the factual issues raised by the request were specifically considered prior to adoption of the rule; or
- (3) where the subject matter of the request is involved in pending litigation in any state or federal court in North Carolina.

(f) If the agency finds evidence that the factors listed in Subparagraphs (c)(1), (2), or (3) of this Rule exist beyond the specific facts presented in a particular petition for a declaratory ruling, the agency shall consider rule-making proceedings on the rule.

*History Note:* Authority G.S. 150B-4;  
Eff. July 1, 1987;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

#### **01 NCAC 01B .0604 RECORD OF DECISION**

A record of all declaratory rulemaking proceedings will be maintained in the office of the Secretary for as long as the ruling is in effect. This record will contain: the petition, the notice, all written submissions filed in the request, whether filed by the petitioner or any other person, and a record or summary of oral presentations, if any. Records of rulemaking proceedings will be available for public inspection during the regular office hours of the Department of Administration.

*History Note:* Authority G.S. 150B-4;  
Eff. July 1, 1987;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

#### **01 NCAC 01B .0605 DEFINITION**

For purposes of Rule .0604 of this Subchapter, a declaratory ruling shall be deemed to be "in effect": until the statute or rule interpreted by the declaratory ruling is amended, altered or repealed; until the Secretary of the Department of Administration changes the declaratory ruling prospectively for good reasons; or until any court sets aside the ruling in litigation between the Department of Administration and the party requesting the rule; or until any court of the Appellate Division of the General Court of Justice shall construe the statute or rule which is the subject of the declaratory ruling in a manner plainly irreconcilable with the declaratory ruling.

*History Note:* Authority G.S. 150B-4;  
Eff. July 1, 1987;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

### **SECTION .0700 - ADMINISTRATIVE HEARING PROCEDURES**

#### **01 NCAC 01B .0701 HEARING PROCEDURES**

*History Note:* Authority G.S. 150B-14(c);  
Eff. July 1, 1987;  
Amended Eff. August 1, 1988;  
Expired Eff. March 1, 2016 pursuant to G.S. 150B-21.3A.

#### **01 NCAC 01B .0702 ADMINISTRATIVE LAW JUDGE: RECOMMENDED DECISION**

*History Note:* Authority G.S. 150B-34; 150B-36;  
Eff. November 1, 1988;  
Expired Eff. March 1, 2016 pursuant to G.S. 150B-21.3A.