

SUBCHAPTER 6B - RULE-MAKING: DECLARATORY RULINGS AND CONTESTED CASES

SECTION .0100 - RULE-MAKING AND DECLARATORY RULINGS

04 NCAC 06B .0101 PETITIONS

History Note: Authority G.S. 54-109.12; 150B-16;
 Eff. February 1, 1976;
 Readopted Eff. April 4, 1978;
 Repealed Eff. June 1, 1990.

04 NCAC 06B .0102 NOTICE

History Note: Authority G.S. 54-109.12; 150B-12;
 Eff. February 1, 1976;
 Readopted Eff. April 4, 1978;
 Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c).

04 NCAC 06B .0103 HEARINGS

History Note: Authority G.S. 54-109.12; 150B-11(3); 150B-12(d),(e);
 Eff. February 1, 1976;
 Readopted Eff. April 4, 1978;
 Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c).

04 NCAC 06B .0104 TEMPORARY RULES

History Note: Authority G.S. 54-109.12; 150B-13;
 Eff. February 1, 1976;
 Readopted Eff. April 4, 1978;
 Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c).

04 NCAC 06B .0105 DECLARATORY RULINGS

History Note: Authority G.S. 54-109.12; 150B-17;
 Eff. February 1, 1976;
 Readopted Eff. April 4, 1978;
 Repealed Eff. June 1, 1990.

SECTION .0200 - CONTESTED CASES

- 04 NCAC 06B .0201 REQUEST FOR HEARING**
- 04 NCAC 06B .0202 GRANTING OR DENYING HEARING REQUESTS**
- 04 NCAC 06B .0203 NOTICE OF HEARING**
- 04 NCAC 06B .0204 WHO SHALL HEAR CONTESTED CASES**
- 04 NCAC 06B .0205 PETITION FOR INTERVENTION**
- 04 NCAC 06B .0206 TYPES OF INTERVENTION**

History Note: Authority G.S. 1A-1, Rule 24; 54-109.12; 150B-23; 150B-38; 150B-40;
 Eff. February 1, 1976;
 Readopted Eff. April 4, 1978;
 Repealed Eff. June 1, 1990.

SECTION .0300 - RULE-MAKING HEARINGS

04 NCAC 06B .0301 PETITION FOR ADOPTION: AMENDMENT OR REPEAL OF RULES

(a) Right to Petition. Any interested person may petition the Administrator to promulgate, amend, or repeal an administrative rule.

(b) Form of Petition. The petition shall be in writing, signed by the petitioning party or parties and must include the address of the petitioning party. In addition, the petition shall contain the following information:

- (1) a draft of the proposed rule, amendment or repeal or a summary thereof;
- (2) the reason(s) for the proposal;
- (3) the effect on existing rules or orders or both;
- (4) any data showing the probable effect of the proposal on existing practices in the area involved, including cost; and
- (5) the names of those most likely to be affected by the proposal with addresses if reasonably known.

(c) Address for Petition. Petitions shall be addressed to the Division at its mailing address.

(d) Disposition of Petition. Upon receipt of a petition, the Administrator shall make a study of the facts stated in the petition and any additional information he deems relevant. The Administrator's disposition of the petition will be made in one of the following forms within 30 days of receipt of the petition:

- (1) a written denial of the proposal setting forth the reasons for the denial, or
- (2) a written communication to the petitioner indicating the Administrator's plan to initiate rulemaking procedures pursuant to G.S. 150B-21.2.

*History Note: Authority G.S. 54-109.12; 150B-20; 150B-21.2;
Eff. June 1, 1990;
Amended Eff. March 1, 2013;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

04 NCAC 06B .0302 NOTICE OF RULE-MAKING HEARINGS

Any person or agency desiring to be placed on the mailing list for the Administrator's rule-making notices may file such request by furnishing a name and mailing address in writing to the Division at its mailing address. The request must state the subject areas within the authority of the Administrator's office for which the notice is requested. The Administrator may require actual postage and stationery costs to be paid by persons receiving such notices if the person receiving the notices requests more than one copy of the notice.

*History Note: Authority G.S. 54-109.12; 150B-21.2;
Eff. June 1, 1990;
Amended Eff. July 1, 2013;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

04 NCAC 06B .0303 RULE-MAKING HEARINGS: GENERAL INFORMATION

The hearing officer shall have control of the proceedings, including extensions of any time requirements, order of presentations, time allotments for presentations, direction of the flow of the discussion and the management of the hearing. Each person participating in the hearing shall be given an opportunity to present views, data, and comments.

*History Note: Authority G.S. 54-109.12; 150B-21.2;
Eff. June 1, 1990;
Amended Eff. July 1, 2013;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

SECTION .0400 - DECLARATORY RULINGS

04 NCAC 06B .0401 PETITION FOR DECLARATORY RULING

(a) Petitioner Must Possess Interest. The petitioner must possess such an interest in the question to be ruled on that the petitioner's need to have such a ruling in order to comply with statutory requirements, Division rules, or Division policy shall be apparent from the petition and shall be fully explained therein.

(b) Form and Content of Petition. The petition shall be typewritten and shall contain the name and address of the petitioner, the specific factual situation involved, the question or questions sought to be answered, and the identification of the rules, statutes, or orders applicable to the question presented.

(c) Written Brief May Be Submitted. The petitioner may submit a written brief, but oral argument shall not be allowed unless deemed necessary by the Administrator.

(d) Mailing Address. All requests for declaratory rulings shall be mailed to the Division at its mailing address.

History Note: Authority G.S. 54-109.12; 150B-17;
Eff. June 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 06B .0402 RESPONSE OF ADMINISTRATOR TO PETITION

(a) A written response to the petition for a declaratory ruling, whether in the form of a declaratory ruling or a refusal to issue a declaratory ruling, shall be issued as set forth in G.S. 150B-4.

(b) The Administrator shall issue a declaratory ruling, except when:

- (1) the request for a declaratory ruling does not meet the requirements set forth in this Subchapter;
- (2) the subject matter is one in which the Administrator has no authority to issue a binding decision;
- (3) the question is presented in such a manner that the Administrator cannot determine what the question is, or that the Administrator cannot respond with a specific ruling;
- (4) the petitioner does not qualify as a person aggrieved, as defined in G.S. 150B-2(6);
- (5) the Administrator has previously issued a declaratory ruling, or issued a final agency decision in a contested case, in which the same facts were considered;
- (6) the facts underlying the request for a declaratory ruling were considered at the time the Rule was adopted; or
- (7) the subject matter of the petition is involved in pending litigation.

(c) When the Administrator refuses to issue a declaratory ruling, the Administrator shall notify the petitioner of its decision in writing, stating reasons for the denial of a declaratory ruling.

History Note: Authority G.S. 54-109.12; 150B-4;
Eff. June 1, 1990;
Readopted Eff. February 1, 2018.

SECTION .0500 - ADMINISTRATIVE HEARINGS

04 NCAC 06B .0501 RIGHT TO HEARING

Whenever the Administrator acts in such a way as to affect the rights, duties or privileges of a specific identified party, the party may appeal for a final decision by the Administrator in accordance with Article 3A of G.S. 150B.

History Note: Authority G.S. 150B-38;
Eff. June 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 06B .0502 INFORMAL SETTLEMENT

(a) Attendance at Settlement Conference. Before a hearing request can be acted upon, a person must first make an effort to resolve the matter with the Division informally and must attend and participate in any scheduled meetings or conferences.

(b) Settlement Statement. A proposed settlement, including a stipulated statement of facts, shall be set forth in writing by the Division. If the proposed settlement is agreed to by all parties to the matter, it shall represent the final disposition of the matter and shall be signed by all parties to the matter or their legal representatives. If the proposed settlement is not agreed to and signed by all parties, then the matter shall proceed as provided in this Section.

History Note: Authority G.S. 54-109.12;
Eff. June 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 06B .0503 REQUEST FOR HEARING

- (a) Form of Request. A request for an administrative hearing must be in writing and must contain the following information:
- (1) name and address of the person requesting the hearing;
 - (2) a concise statement of the action by the Administrator that is being challenged;
 - (3) a concise statement of the manner in which the petitioner is aggrieved; and
 - (4) a clear and specific demand for a public hearing.
- (b) Address for Request. The request for hearing shall be filed with the Division at its mailing address.

History Note: Authority G.S. 54-109.12; 150B-38;
Eff. June 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 06B .0504 NOTICE OF HEARING

Notice of a public hearing shall be given in writing to the appropriate parties in advance of the hearing date as required by the law applicable to the hearing being held.

History Note: Authority G.S. 150B-38;
Eff. June 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 06B .0505 INTERVENTION IN AN ADMINISTRATIVE HEARING

- (a) Petition to Intervene. A petition to intervene may be permitted if timely and if the petition meets the criteria set forth in G.S. 1A-1, Rule 24(b).
- (b) Intervention Criteria. In addition, the Administrator, in his discretion, may allow intervention or limited intervention when:
- (1) Similar rights will be affected;
 - (2) Intervention will not confuse issues;
 - (3) Issues are the same or similar to the issue in question;
 - (4) Intervention is in the public interest; and
 - (5) Intervention will not prejudice the rights of parties.
- (c) Form of Petition. A petition to intervene shall contain the name of the petitioner, the title of the hearing, the date and time of the hearing, if known, and the grounds for intervention. The petition for intervention shall be addressed to all parties affected thereby and to the Division at its mailing address.
- (d) Notice of Intervention. If the Administrator allows intervention, notice of that decision shall be issued promptly to all parties and to the petitioner. Notification will include a statement of any limitation of time, subject matter, evidence, or other limitations imposed on the intervenor. If the Administrator's decision is to deny intervention, the petitioner will be notified promptly.

History Note: Authority G.S. 1A-1; 150B-38;
Eff. June 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 06B .0506 DEPOSITIONS

The use of depositions may be allowed only when attendance at a hearing would work a hardship on a person otherwise available to be subpoenaed as a witness, and such hardship is so great as to be unreasonable in light of the testimony that person may be expected to give. In such a case, a deposition will be taken in accordance with the North Carolina Rules of Civil Procedure. All necessary rulings as to whether a deposition will be allowed or as to methods of securing a deposition are within the power and discretion of the hearing officer.

History Note: Authority G.S. 1A-1; 150B-39;
Eff. June 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 06B .0507 SUBPOENAS

- (a) Hearing Officer May Issue Subpoena. Any hearing officer may issue subpoenas in the name of the Administrator.

(b) Request for Subpoena. Subpoenas requiring the attendance of witnesses, or the production of documents, evidence or things will be issued promptly by a hearing officer after receipt of a written request from a party to a contested case for such subpoena.

History Note: Authority G.S. 150B-38; 150B-39;
Eff. June 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 06B .0508 SERVICE OF SUBPOENAS

(a) Methods of Service. Subpoenas shall be served as the officer issuing the subpoena shall direct. Subpoenas may be directed to be served by any of the following methods:

- (1) by an employee of the Division; or
- (2) by the sheriff of the county in which the person subpoenaed resides, when the party requesting such subpoena prepays the sheriff's service fee.

(b) Form of Subpoena. Subpoenas will be issued in duplicate with a "Return of Service" form attached to each copy. The person serving the subpoena shall fill out the "Return of Service" form for each copy and promptly return one copy of the subpoena, with the attached "Return of Service" form completed.

History Note: Authority G.S. 150B-38; 150B-39;
Eff. June 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 06B .0509 OBJECTION TO A SUBPOENA

(a) Form of Objection. Except as may be otherwise stated in a particular subpoena, a party or person receiving a subpoena from the Division may object thereto by filing a written objection to the subpoena with the Division at its mailing address. An objection to a subpoena must include a concise but complete statement of reasons why the subpoena should be revoked or modified. These reasons may include any reason in law for holding the subpoena invalid.

(b) Service of Objection. The objection shall be served upon the Administrator and the party who requested the subpoena. Service shall be in accordance with the North Carolina Rules of Civil Procedure.

(c) Response to Objection. The party requesting the subpoena may file a written response to the objection. The response shall be served in like manner as the objection.

(d) Hearing on Subpoena. After receipt of the objection and response thereto, the hearing officer may issue a notice to the party who requested the subpoena and the party challenging the subpoena, and may notify all other parties of a hearing, to be scheduled as soon as practicable, at which time evidence and testimony regarding the objection and response may be presented.

History Note: Authority G.S. 150B-38; 150B-40;
Eff. June 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.