

SUBCHAPTER 01B - PROCEDURAL RULES

SECTION .0100 - RULEMAKING PROCEDURES

07 NCAC 01B .0101 DEFINITIONS

The following definitions apply throughout Title 7, North Carolina Administrative Code:

- (1) Department -- the Department of Cultural Resources, and any agency, division, commission, council, committee, or board of that department;
- (2) Secretary -- the Secretary of the Department of Cultural Resources.

*History Note: Authority G.S. 143B-10;
Eff. February 1, 1976;
Readopted Eff. December 1, 1977;
Amended Eff. June 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2017.*

07 NCAC 01B .0102 PETITIONS

(a) Any person may request a public hearing on the adoption, amendment or repeal of a rule promulgated by the Department of Cultural Resources by addressing a petition to the Office of the Secretary, Department of Cultural Resources, 109 East Jones Street, Raleigh, N.C. 27611.

(b) The petition must contain the following information:

- (1) name and address of each petitioner;
- (2) a citation to any rule petitioner desires to repeal or amend, a draft of the proposed rule or amendment, or a summary of the major elements of a proposed rule;
- (3) reasons for submitting the petition;
- (4) any supporting data;
- (5) anticipated effect of a proposed rule or repeal of a rule on the petitioner and on existing practices in the area involved, including cost factors if possible;
- (6) names and addresses of others likely to be affected by the proposed rule or repeal of a rule, if known.

(c) The Secretary will promptly forward petitions over which he has no rulemaking authority to the Commission or other agency within the Department which has authority to promulgate rules over the subject matter of the petition.

(d) The Department may request further information regarding the petition from the petitioner or from any other person.

(e) The petitioner will be notified in writing either that the petition is denied or approved as provided for in G.S. 150B-16.

*History Note: Authority G.S. 143B-10; 143B-14; 150B-16;
Eff. February 1, 1976;
Readopted Eff. December 1, 1977;
Amended Eff. June 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2017.*

07 NCAC 01B .0103 NOTICE

*History Note: Authority G.S. 150B-12; 150B-14;
Eff. February 1, 1976;
Readopted Eff. December 1, 1977;
Amended Eff. June 1, 1989;
Expired Eff. August 1, 2017 pursuant to G.S. 150B-21.3A.*

07 NCAC 01B .0104 MAILING LISTS

- (a) Any person or agency may be placed on mailing lists for department rulemaking notices by filing a request in writing, furnishing name and mailing address to the Office of the Secretary, Department of Cultural Resources, Raleigh, North Carolina 27611.
- (b) The request must specify subject areas within the rulemaking authority of the Department for which notice is requested.
- (c) The Department employee who maintains the lists will review them from time to time. He may write to any person on the lists and inquire whether that person still wishes to receive notices of rulemaking hearings. If no response is received, that person may be removed from the lists.
- (d) The Department may charge reasonable postage fees and copying costs to persons on its mailing lists.

History Note: Authority G.S. 143B-10; 150B-12;
Eff. February 1, 1976;
Readopted Eff. December 1, 1977;
Amended Eff. June 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2017.

07 NCAC 01B .0105 WRITTEN SUBMISSIONS

- (a) Following notice of a rulemaking hearing, any person may submit written data, views, or arguments regarding a proposed rule for consideration by the Department. Submissions must include the person's name, address, and interest in the proposed rule, and must clearly identify the rule with which the comments are concerned. Unless otherwise designated in the particular rulemaking notice, or unless an exemption is granted by the hearing officer, written submissions:
 - (1) must not exceed the number of pages designated in the notice;
 - (2) must be received no later than the day scheduled for the hearing; and
 - (3) must be addressed to the hearing officer designated in the notice.
- (b) The hearing officer will acknowledge promptly receipt of all written submissions.

History Note: Authority G.S. 143B-10; 150B-12;
Eff. February 1, 1976;
Readopted Eff. December 1, 1977;
Amended Eff. June 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2017.

07 NCAC 01B .0106 HEARINGS

07 NCAC 01B .0107 STATEMENT OF REASONS FOR DECISION

07 NCAC 01B .0108 RECORD OF RULEMAKING

History Note: Authority G.S. 150B-12;
Eff. February 1, 1976;
Readopted Eff. December 1, 1977;
Amended Eff. June 1, 1989;
Expired Eff. August 1, 2017 pursuant to G.S. 150B-21.3A.

07 NCAC 01B .0109 EMERGENCY RULEMAKING

History Note: Authority G.S. 150A-13; 143B-10;
Eff. February 1, 1976;
Readopted Eff. December 1, 1977;
Repealed Eff. March 1, 1989 in accordance with G.S. 150B-59(c).

07 NCAC 01B .0110 DECLARATORY RULINGS

- (a) Requests for declaratory rulings must be made in writing to the Office of the Secretary, Department of Cultural Resources, Raleigh, North Carolina 27611. Such requests must include:
 - (1) the name and address of the petitioner;

- (2) a citation to the rule or statute in question;
 - (3) arguments or data which demonstrate that the petitioner is aggrieved by the rule or statute or its potential application to him; and
 - (4) consequences of a failure to issue a declaratory ruling in favor of the petitioner;
 - (5) a statement of whether an oral hearing is desired, and, if so, the reasons for requesting such an oral hearing.
- (b) The Department may refuse to issue a declaratory ruling if:
- (1) Similar factual circumstances were specifically considered in the rulemaking proceedings;
 - (2) There has been a similar determination in a previous contested case or declaratory ruling; or
 - (3) There exists other good cause to refuse to issue a ruling.
- (c) Before deciding the merits of the request, the Department may:
- (1) request written submissions from any person;
 - (2) consult with members of the Department staff or any other person; or
 - (3) hold an informal oral hearing.
- (d) Requests for declaratory rulings will be decided by the Secretary, by any employee designated by the Secretary, or by the appropriate agency of the Department.
- (e) Within 60 days of receipt of the petitioner's request, the petitioner will be sent either:
- (1) written notification that the request for a declaratory ruling is denied, including reasons for the denial; or
 - (2) written notification that the request is approved and a copy of the ruling.
- (f) A record of the declaratory ruling proceeding will be maintained for public inspection at the Office of the Secretary of the Department of Cultural Resources, Raleigh, North Carolina 27611. The record will contain all submissions of the petitioner, other information considered, a transcript or summary of any hearing, and either a statement of the reasons denying the petition or the ruling.

History Note: Authority G.S. 143B-14; 150B-17; Eff. February 1, 1976; Readopted Eff. December 1, 1977; Amended Eff. June 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2017.

SECTION .0200 - CONTESTED CASE PROCEDURES

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History Note: Authority G.S. 140A-24; 140A-32; 143B-10; 143B-14; 150A-2; 150A-10; 150A-11; 150A-23; 150A-25; 150A-27; 150A-31; 150A-32; 150A-33; 150A-34; 150A-37; Eff. February 1, 1976; Readopted Eff. December 1, 1977;

Repealed Eff. March 1, 1989 in accordance with G.S. 150B-59(c).