

## **SUBCHAPTER 45B - PROCEDURAL RULES**

### **10A NCAC 45B .0101 PETITIONS**

(a) Any person wishing to request a rule change (adoption, amendment, or repeal) of a rule of the Commission for Public Health shall make the request in a petition addressed to the State Health Director, Division of Public Health, 1915 Mail Service Center, Raleigh, North Carolina 27699-1915.

(b) The petition shall contain the following information:

- (1) either a draft of the proposed rule change or a summary of its contents;
- (2) the statutory authority for the agency to make the proposed rule change;
- (3) the reasons for the proposal;
- (4) the effect of the proposed rule change on existing rules and statutes;
- (5) any data supporting the proposal;
- (6) the effect of the proposed rule change on existing practices in the area involved, including cost factors;
- (7) the names and addresses, if known, of those most likely to be affected by the proposed rule change; and
- (8) the name and address of the petitioner.

(c) The Commission for Public Health or the State Health Director, each within their designated authorities, shall determine, based on a study of the facts stated in the petition, whether the public interest will be served by granting the petition. The Commission for Public Health or the State Health Director shall consider all the contents of the submitted petition, plus any additional information it deems relevant.

(d) Within the time period prescribed by G.S. 150B-16, the Commission for Public Health or the State Health Director, each within their designated authorities, shall render a decision to deny the petition or to initiate rule making proceedings. If the decision is to deny the petition, the Commission for Public Health or the State Health Director shall notify the petitioner in writing, stating the reasons for the denial. If the decision is to approve the petition, the Department shall initiate rule-making proceedings as provided in these rules.

*History Note: Authority G.S. 150B-16;  
Eff. February 1, 1976;  
Amended Eff. March 1, 1987; December 22, 1980;  
Transferred and Recodified from 10 NCAC 4B .0101 Eff. April 4, 1990;  
Amended Eff. December 1, 1990;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.*

### **10A NCAC 45B .0102 RESERVED FOR FUTURE CODIFICATION**

### **10A NCAC 45B .0103 RESERVED FOR FUTURE CODIFICATION**

### **10A NCAC 45B .0104 DECLARATORY RULINGS**

(a) The Department shall in accordance with G.S. 150B-4 issue declaratory rulings concerning rules found in 15A NCAC 13, 15A NCAC 18, and 10A NCAC 39 through 47.

(b) All requests for declaratory rulings shall be by written petition and shall be submitted to: Division of Public Health, 1915 Mail Service Center, Raleigh, North Carolina 27699-1915.

(c) Every request for a declaratory ruling must include the following information:

- (1) the name and address of the petitioner,
- (2) the statute or rule to which the petition relates,
- (3) a concise statement of the manner in which the petitioner is aggrieved by the rule or statute or its potential application to him, and
- (4) the consequences of a failure to issue a declaratory ruling.

(d) The Department shall refuse to issue a declaratory ruling whenever the Department believes for good cause that the issuance of a declaratory ruling is undesirable. When good cause is deemed to exist, the Department shall notify the petitioner of the decision in writing, stating the reasons for the denial of a declaratory ruling. The Department shall issue a declaratory ruling under the following circumstances:

- (1) the petitioner shows that the circumstances are so changed since adoption of the rule that such a ruling would be warranted;
- (2) the rule making record evidences a failure by the agency to consider specified relevant factors.

- (e) The Department shall not issue a declaratory ruling under the following circumstances:
- (1) if there has been a similar controlling factual determination in a contested case, or if the factual context being raised for a declaratory ruling was specifically considered upon adoption of the rule being questioned as evidenced by the rule making record; or
  - (2) if circumstances stated in the request or otherwise known to the agency show that a contested case hearing would presently be appropriate.
- (f) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedure as may be deemed appropriate, in the discretion of the Department, in the particular case.
- (g) The Department may issue notice to persons who might be affected by the ruling that written comments may be submitted or oral presentations received at a scheduled hearing.

*History Note:* Authority G.S. 150B-4;  
Eff. February 1, 1976;  
Amended Eff. March 1, 1987; December 22, 1980;  
Transferred and Recodified from 10 NCAC 4B .0108 Eff. April 4, 1990;  
Amended Eff. November 1, 2005; December 1, 1990;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

**10A NCAC 45B .0105      RESERVED FOR FUTURE CODIFICATION**