

## SUBCHAPTER 1B - RULEMAKING PROCEDURE

### SECTION .0100 - RULEMAKING GENERALLY

#### 19A NCAC 01B .0101 PROCEDURAL REQUIREMENTS

*History Note:* Authority G.S. 20-1; 136-18; 143B-346; 143B-350(f), (g); 150A-1; 150A-10; 150A-23;  
Resolutions of the Board of Transportation: November 7, 1975, July 24, 1973;  
Eff. July 1, 1978;  
Repealed Eff. November 1, 1993.

#### 19A NCAC 01B .0102 GENERAL PROCEDURE

This Subchapter is to be read and applied in conjunction with the applicable statutes of the Administrative Procedure Act.

*History Note:* Authority G.S. 143B-350; 150B-18;  
Eff. July 1, 1978;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 24, 2015.

#### 19A NCAC 01B .0103 STATUTORY PROVISIONS

The procedures set forth in this Subchapter are in accordance with Article 2A of the Administrative Procedure Act. These procedures are established to implement Article 2A of the Administrative Procedure Act and should be read in conjunction with those statutory provisions.

*History Note:* Authority G.S. 143B-10(j); 143B-350; 150B-1; 150B-10(j);  
Eff. July 1, 1978;  
Amended Eff. November 1, 1993;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 24, 2015.

### SECTION .0200 - PETITIONING FOR RULEMAKING

#### 19A NCAC 01B .0201 PETITIONING PROCEDURES

Any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule by the Department of Transportation shall submit a written petition to:

Secretary, Department of Transportation  
Highway Building  
1 South Wilmington Street  
P.O. Box 25201  
Raleigh, North Carolina 27611

The outside envelope containing the petition shall clearly display the notation:  
RULEMAKING PETITION, RE: and then the subject area.

*History Note:* Authority G.S. 143B-10(j); 143B-350; 150B-20;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1993;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 24, 2015.

#### 19A NCAC 01B .0202 CONTENTS OF PETITION

A petition for adoption, amendment or repeal of a rule shall include the following information:

- (1) the rulemaking authority to which the petition is directed;
- (2) an indication of the subject areas to which petition is directed;
- (3) a draft of the proposed rule including a citation of any prior rules which will be amended by the proposed rule, and the statutory authority for the agency to adopt the rule;
- (4) a statement of the reasons and argument for the proposal;
- (5) a statement of the effect on existing rules or orders;
- (6) the effects of the proposed rule or rule change;

- (7) names and addresses of those who will be affected by the proposed rule or rule change; and
- (8) names, addresses, and telephone numbers of petitioners.

*History Note:* Authority G.S. 143B-350; 150B-20;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1993;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 24, 2015.

#### **19A NCAC 01B .0203 CONSIDERATION AND DISPOSITION OF PETITION**

(a) The Secretary of Transportation may designate a member of the Department of Transportation to determine whether to grant or deny the request for a rulemaking petition. The Secretary or his designee will determine, based on a study of the facts submitted in the petition, whether the public interest will be served by granting the petition. Prior to making this determination, the Secretary or his designee may request additional information from the petitioner; he may contact interested persons who will be affected by the proposed rule or rule change and request comments; he may use any other appropriate method for obtaining information on which to base his determination.

(b) Any designate of the Secretary shall make a recommendation to the Secretary for the institution of rulemaking proceedings or for the denial of the petition, as the case may be.

(c) If the decision is to deny the petition, the Secretary will notify the petitioner in writing, stating the reasons for the denial. If the decision is to grant the petition, the Secretary will initiate the rulemaking process and inform the petitioner in writing.

*History Note:* Authority G.S. 143B-350; 150B-20;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1993;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 24, 2015.

### **SECTION .0300 - RULEMAKING HEARING**

#### **19A NCAC 01B .0301 HEARING OFFICER**

The Board of Transportation, as rulemaking authority for all transportation functions assigned to the Department of Transportation, has delegated the power to appoint the hearing officer or board to the Secretary of Transportation, who may, in his discretion, reassign this function.

*History Note:* Authority G.S. 143B-10(a); 143B-350;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1993;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 24, 2015.

#### **19A NCAC 01B .0302 RECORD OF HEARINGS**

(a) The rulemaking coordinator shall make a complete record of every rulemaking proceeding and it shall contain:

- (1) the original petition;
- (2) all notices;
- (3) all written comments received or presented;
- (4) a transcript or recording of all oral presentations made at a public hearing;
- (5) the final draft of the rule;
- (6) all written explanations made by the agency for adopting the rule;
- (7) all filing submitted to the Office of Administrative Hearings;
- (8) a copy of the published rule; and
- (9) any other pertinent correspondence or records.

(b) A copy of this record shall be maintained in the Office of the Secretary.

*History Note:* Authority G.S. 143B-350; 150B-21; 150B-21.2;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1993;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 24, 2015.

## SECTION .0400 - DECLARATORY RULINGS

### 19A NCAC 01B .0401 REQUEST FOR DECLARATORY RULING

A request for a declaratory ruling must include the following information:

- (1) the name, address and telephone numbers of the requesting party;
- (2) the statute, rule, order, or ordinance to which the request relates; and
- (3) a concise statement of the manner in which the requesting party is aggrieved by the rule, order, ordinance, or statute, or its potential application to him.

All requests for declaratory rulings shall be written and mailed or delivered to:

Secretary, Department of Transportation  
Highway Building  
1 South Wilmington Street  
P.O. Box 25201  
Raleigh, North Carolina 27611

*History Note:* Authority G.S. 150B-4;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1993;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 24, 2015.

### 19A NCAC 01B .0402 PROCEDURE

A declaratory ruling procedure may consist of written submissions or such other procedure as may be deemed appropriate in a particular case by the hearing officer.

*History Note:* Authority G.S. 150B-4;  
Eff. July 1, 1978;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 24, 2015.

### 19A NCAC 01B .0403 BASIS FOR DENIAL OF REQUEST FOR DECLARATORY RULING

The hearing officer may deny a request for a declaratory ruling for any of the following reasons:

- (1) Similar determination made elsewhere that applies;
- (2) Contested case hearing would be more appropriate;
- (3) Matter is currently under litigation.

*History Note:* Authority G.S. 150B-4;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1993;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 24, 2015.

## SECTION .0500 - PUBLIC INSPECTION

### 19A NCAC 01B .0501 INSPECTION OF GENERAL RULES: POLICIES: ETC.

The following are available for public inspection between 8:00 a.m. and 5:00 p.m. on Monday through Friday, holidays excepted, at:

Office of the Secretary  
Department of Transportation  
Highway Building  
1 South Wilmington Street  
Raleigh, North Carolina 27611:

- (1) all rules and all other written statements of policy or interpretations formulated, adopted or used by the Department of Transportation;
- (2) all orders, decisions, opinions and declaratory rulings, together with all materials used in formulating such; and

- (3) all rules, codes, standards and regulations which have been adopted by reference by any rulemaking authority within the Department of Transportation.

*History Note:* Authority G.S. 132-6; 143B-350;  
Eff. July 1, 1978;  
Amended Eff. November 1, 1993;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 24, 2015.

**19A NCAC 01B .0502 INSPECTION OF TRAFFIC ORDINANCES**

Traffic Ordinances are available for public inspection at:

Transportation Mobility and Safety  
(Mail) 1561 Mail Service Center  
Raleigh, 27699-1561  
(Delivery) 750 N. Greenfield Parkway  
Garner, NC 27529

*History Note:* Authority G.S. 132-6; 143B-350;  
Eff. July 1, 1978;  
Amended Eff. October 1, 2013; November 1, 1993;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 24, 2015.