

SUBCHAPTER 01B - RULE-MAKING HEARINGS: EMERGENCY RULES: AND DECLARATORY RULINGS

SECTION .0100 - RULE-MAKING HEARINGS AND EMERGENCY RULES

04 NCAC 01B .0101 PETITIONS

(a) Any person wishing to submit a petition requesting the adoption, amendment or repeal of a rule by the Secretary's Office of the Department of Commerce shall address a petition to:

Secretary, Department of Commerce
4301 Mail Service Center
Raleigh, North Carolina 27699-4301.

(b) The petition should contain the following information:

- (1) an indication of the subject area to which the petition is directed;
- (2) either a draft of the proposed rule or a summary of its contents;
- (3) reasons for proposal;
- (4) effect of 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).

History Note: *Authority G.S. 150B-16;*
 Eff. February 1, 1976;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016;
 Amended Eff. January 1, 2020.

04 NCAC 01B .0102 DISPOSITION OF PETITIONS

(a) The secretary will determine, based on a study of the facts stated in the petition whether the public interest will be served by granting it. Prior to making this determination, he may request additional information from the petitioner(s); he may contact interested person(s) 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. He will consider all the contents of the submitted petition, plus any additional information he deems relevant.

(b) Within 30 days of submission of the petition, the secretary will render a final decision. If the decision is to deny the petition, the secretary will notify the petitioner in writing, stating the reasons therefor. If the decision is to grant the petition, within 30 days of submission and the final decision, the secretary will initiate a rule-making hearing by issuing a rule-making notice as provided in these rules.

History Note: *Authority G.S. 150B-16;*
 Eff. February 1, 1976;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01B .0103 NOTICE

(a) Upon a determination to hold a rule-making hearing, either in response to a petition or otherwise, the Secretary will give at least 10 days notice to all interested parties of a public hearing on the proposed rule.

(b) Any person or agency desiring to be placed on the mailing list for the Department of Commerce secretary's office rule-making notices may file such request in writing, furnishing his name and mailing address to:

Secretary, Department of Commerce
4301 Mail Service Center
Raleigh, North Carolina 27699-4301.

The request must state the subject areas within the authority of the secretary's office for which the notice is requested. The secretary may require reasonable postage and stationery costs to be paid by persons receiving such notices.

(c) In addition to notices sent to persons requesting them, public notice of rule-making hearings will usually be by publication in three newspapers of general circulation in different parts of the state.

History Note: Authority G.S. 150B-12;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016;
Amended Eff. January 1, 2020.

04 NCAC 01B .0104 HEARINGS: LOCATION OF

Unless otherwise stated in a particular rule-making notice, hearings before the Secretary of the Department of Commerce will be held at the secretary's office, in Raleigh, North Carolina.

History Note: Authority G.S. 150B-12;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01B .0105 REQUEST TO PARTICIPATE

(a) Any person desiring to present oral data, views, or arguments on the proposed rule must, at least five days before the hearing, file a notice with:

Secretary, Department of Commerce
4301 Mail Service Center
Raleigh, North Carolina 27699-4301.

Notice of this presentation may be waived or a failure to give the notice may be excused by the secretary for good reason. Any person permitted to make an oral presentation is encouraged to submit a written copy of the presentation prior to or at the meeting.

(b) A request to make an oral presentation must contain a brief summary of the individual's views with respect thereto, and a statement of the length of time the individual intends to speak. Presentations may not exceed 10 minutes unless, upon request, either before or at the hearing, the secretary grants an extension of time, for good reason.

(c) Upon receipt of the request to make an oral presentation the secretary will acknowledge receipt of the request, and inform the person requesting of the imposition of any limitations deemed necessary to the end of a full and effective public hearing on the proposed rule.

History Note: Authority G.S. 150B-12;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016;
Amended Eff. January 1, 2020.

04 NCAC 01B .0106 WRITTEN SUBMISSIONS

Any person may file a written submission containing data, comments or arguments, after publication of a rule-making notice up to, and including, the day of the hearing unless a longer period is stated in the particular notice or an extension of time is granted for good reason following notice. Written submissions, except when otherwise stated, must be sent to:

Secretary, Department of Commerce
4301 Mail Service Center
Raleigh, North Carolina 27699-4301.

Such submissions must clearly state the rule(s) or proposed rule(s) to which the comments are addressed. Upon receipt of such written comments prompt acknowledgement will be made.

History Note: Authority G.S. 150B-12;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016;
Amended Eff. January 1, 2020.

04 NCAC 01B .0107 PRESIDING OFFICER: POWERS AND DUTIES

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

History Note: *Authority G.S. 150B-12;*
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01B .0108 STATEMENT OF REASONS FOR DECISION

Any interested person desiring a concise statement of the principal reasons for and against the adoption of the rule by the secretary's office and the factors that led to overruling the considerations urged against its adoption, may submit a request addressed to:

Secretary, Department of Commerce
Mail Service Center
Raleigh, North Carolina 27699-4301.

Such request must be submitted in writing prior to the adoption of the rule or within 30 days thereafter.

History Note: *Authority G.S. 150B-12;*
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016;
Amended Eff. January 1, 2020.

04 NCAC 01B .0109 RECORD OF PROCEEDINGS

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

04 NCAC 01B .0110 TEMPORARY RULES

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

SECTION .0200 - DECLARATORY RULINGS

04 NCAC 01B .0201 REQUEST FOR A DECLARATORY RULING

(a) Any person substantially affected by a statute administered or rule promulgated by the secretary's office of the Department of Commerce may request a declaratory ruling as to:

- (1) whether, and if so how, the statute or rule applies to a given factual situation; or
- (2) whether a particular agency rule is valid.

(b) The secretary has the power to make such declaratory rulings. All requests for declaratory rulings shall be submitted in writing to:

Secretary, Department of Commerce
4301 Mail Service Center
Raleigh, North Carolina 27699-4301.

(c) All requests for a declaratory ruling 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; and

- (4) a statement of whether an oral hearing is desired, and, if so, the reasons for such an oral hearing.

History Note: Authority G.S. 150B-17;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016;
Amended Eff. January 1, 2020.

04 NCAC 01B .0202 DISPOSITION OF REQUESTS

- (a) Whenever the secretary believes for good reason that the issuance of a declaratory ruling is undesirable, he may refuse to do so. When good reason for refusing to issue a declaratory ruling is deemed to exist, the secretary will notify the petitioner of this decision in writing, stating reasons for the denial of a declaratory ruling.
- (b) For purposes of Paragraph (a) of this Rule, the secretary will ordinarily refuse to issue a declaratory ruling:
 - (1) unless the petitioner shows that the circumstances are so changed since the adoption of the rule that such a ruling would be warranted;
 - (2) unless the petitioner shows that the agency did not give a full consideration to the factors specified in the request for a declaratory ruling at the time the rule was issued;
 - (3) where there has been a similar controlling factual determination in a contested case, or where the factual context being raised for a declaratory ruling was specifically considered upon the adoption of the rule or directive being questioned, as evidenced by the rule-making record; or
 - (4) where the subject matter of the request is involved in pending litigation in any state or federal court in North Carolina.
- (c) Where a declaratory ruling is deemed appropriate, the secretary will issue a ruling within 60 days of receipt of the petition.
- (d) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedures as may be appropriate in a particular case.

History Note: Authority G.S. 150B-17;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01B .0203 RECORD OF DECISION

A record of all declaratory ruling proceedings will be maintained in the secretary's office for as long as the ruling is in effect and for one year thereafter. 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 ruling proceedings will be available for public inspection during the regular office hours of the Department of Commerce.

History Note: Authority G.S. 150B-12;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01B .0204 DEFINITION

For purposes of Rule .0203 of this Section, 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 Department of Commerce changes the declaratory ruling prospectively for good reasons; or until any court sets aside the ruling in litigation between the Department of Commerce 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-12; 150B-17;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

