

**SUBCHAPTER 01B - RULEMAKING AND ADMINISTRATIVE HEARINGS**

**SECTION .0100 - PETITIONS AND RULES**

- 14B NCAC 01B .0101    PETITION FOR RULEMAKING HEARINGS**
- 14B NCAC 01B .0102    CONTENTS OF PETITION**
- 14B NCAC 01B .0103    DISPOSITION OF PETITIONS**

*History Note:*    Authority G.S. 150B-16;  
                          Eff. February 1, 1976;  
                          Amended Eff. December 1, 1979;  
                          Transferred from 14A NCAC 01B .0101 Eff. June 1, 2013 (14B NCAC 01B .0101);  
                          Transferred from 14A NCAC 01B .0102 Eff. June 1, 2013 (14B NCAC 01B .0102);  
                          Transferred from 14A NCAC 01B .0103 Eff. June 1, 2013 (14B NCAC 01B .0103);  
                          Expired Eff. February 1, 2017 pursuant to G.S. 150B-21.3A.

**SECTION .0200 – NOTICE OF RULEMAKING HEARINGS**

- 14B NCAC 01B .0201    NOTICE MAILING LIST**
- 14B NCAC 01B .0202    ADDITIONAL INFORMATION**

*History Note*    Authority G.S. 150B-12;  
                          Eff. February 1, 1976;  
                          Amended Eff. December 1, 1979;  
                          Transferred from 14A NCAC 01B .0201 Eff. June 1, 2013 (14B NCAC 01B .0201);  
                          Transferred from 14A NCAC 01B .0202 Eff. June 1, 2013 (14B NCAC 01B .0202);  
                          Expired Eff. February 1, 2017 pursuant to G.S. 150B-21.3A.

**SECTION .0300 - RULEMAKING HEARINGS**

- 14B NCAC 01B .0301    REQUEST TO PARTICIPATE**
- 14B NCAC 01B .0302    CONTENTS OF REQUEST**
- 14B NCAC 01B .0303    RECEIPT OF REQUEST: SPECIFIC TIME LIMITS**
- 14B NCAC 01B .0304    WRITTEN SUBMISSIONS**
- 14B NCAC 01B .0305    HEARING OFFICE: POWERS AND DUTIES**
- 14B NCAC 01B .0306    STATEMENT OF REASONS FOR DECISION**
- 14B NCAC 01B .0307    RECORD OF PROCEEDINGS**
- 14A NCAC 01B .0308    TEMPORARY RULES**

*History Note:*    Authority G.S. 150B-12; 150B-12(e); 150B-13;  
                          Eff. February 1, 1976;  
                          Amended Eff. July 1, 1988; December 1, 1979;  
                          Transferred from 14A NCAC 01B .0301 Eff. June 1, 2013 (14B NCAC 01B .0301);  
                          Transferred from 14A NCAC 01B .0302 Eff. June 1, 2013 (14B NCAC 01B .0302);  
                          Transferred from 14A NCAC 01B .0303 Eff. June 1, 2013 (14B NCAC 01B .0303);  
                          Transferred from 14A NCAC 01B .0304 Eff. June 1, 2013 (14B NCAC 01B .0304);  
                          Transferred from 14A NCAC 01B .0305 Eff. June 1, 2013 (14B NCAC 01B .0305);  
                          Transferred from 14A NCAC 01B .0306 Eff. June 1, 2013 (14B NCAC 01B .0306);  
                          Transferred from 14A NCAC 01B .0307 Eff. June 1, 2013 (14B NCAC 01B .0307);  
                          Transferred from 14A NCAC 01B .0308 Eff. June 1, 2013 (14B NCAC 01B .0308);  
                          Expired Eff. February 1, 2017 pursuant to G.S. 150B-21.3A.

**SECTION .0400 - DECLARATORY RULINGS**

- 14B NCAC 01B .0401    SUBJECTS OF DECLARATORY RULINGS**

Any person substantially affected by a statute administered or rule promulgated by the Secretary of the Department of Crime Control and Public Safety may request a declaratory ruling as to either the manner in which a statute or rule applies to a given factual situation, if at all, or whether a particular agency rule is valid.

*History Note:* Authority G.S. 150B-17;  
Eff. February 1, 1976;  
Amended Eff. December 1, 1979;  
Transferred from 14A NCAC 01B .0401 Eff. June 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 3, 2017.

#### **14B NCAC 01B .0402 SUBMISSION OF REQUEST FOR RULING**

All requests for declaratory rulings shall be written and mailed to the Secretary, Department of Crime Control and Public Safety, P.O. Box 27687, Raleigh, N.C. 27611. The container of the request should bear the notation: REQUEST FOR DECLARATORY RULING. The request 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;
- (4) a statement of whether an oral hearing is desired, and if so, the reason therefore.

*History Note:* Authority G.S. 150B-17;  
Eff. February 1, 1976;  
Amended Eff. December 1, 1979;  
Transferred from 14A NCAC 01B .0402 Eff. June 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 3, 2017.

#### **14B NCAC 01B .0403 DISPOSITION OF REQUESTS**

(a) When the Secretary of the Department of Crime Control and Public Safety deems it appropriate to issue a declaratory ruling, he shall issue such declaratory ruling within sixty days of receipt of the petition.

(b) A declaratory ruling proceeding may consist of written submissions, an oral hearing, or other procedure as may be appropriate in the circumstances of the particular request as determined by the secretary.

(c) Whenever the secretary believes "for good cause" that the issuance of a declaratory ruling is undesirable, he may refuse to issue such ruling. When good cause is deemed to exist, he will notify the petitioner of his decision in writing, stating the reasons for the denial of the declaratory ruling.

(d) For purposes of Subpart (c) of this Rule, the Secretary of the Department of Crime Control and Public Safety 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 to the factors specified in the request for a declaratory ruling a full consideration 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 rulemaking record;
- (4) where the subject matter of the request is involved in pending litigation in any state or federal court in North Carolina.

*History Note:* Authority G.S. 150B-17;  
Eff. February 1, 1976;  
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Transferred from 14A NCAC 01B .0403 Eff. June 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 3, 2017.

#### **14B NCAC 01B .0404 RECORD OF DECISION**

A record of all declaratory rulemaking proceedings will be maintained in the Office of the Secretary of Crime Control and Public Safety for as long as the ruling is in effect and for five years 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 declaratory rulemaking proceedings will be available for public inspection during the regular office hours of the Department of Crime Control and Public Safety.

*History Note:* Authority G.S. 150B-17;  
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Transferred from 14A NCAC 01B .0404 Eff. June 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 3, 2017.

#### **14B NCAC 01B .0405 DEFINITION**

For purposes of Rule .0404 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 Crime Control and Public Safety changes the declaratory ruling prospectively for good reasons; or until any court sets aside the ruling in litigation between the Department of Crime Control and Public Safety 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;  
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Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 3, 2017.

### **SECTION .0500 - CONTESTED CASE**

#### **14B NCAC 01B .0501 REQUEST FOR HEARING**

*History Note:* Authority G.S. 150A-23;  
Eff. February 1, 1976;  
Amended Eff. July 1, 1988; December 1, 1979;  
Transferred from 14A NCAC 01B .0502 Eff. June 1, 2013;  
Expired Eff. February 1, 2017 pursuant to G.S. 150B-21.3A.