

SUBCHAPTER 14B - RULE-MAKING PROCEDURES

SECTION .0100 - PETITIONS FOR RULE-MAKING

21 NCAC 14B .0101 PETITIONS

Any person wishing to submit a petition requesting the adoption of a rule by the Board must address a petition to the chairman of the Board at the Board's address.

History Note: *Authority G.S. 150B-16;*
Eff. February 1, 1976;
Amended Eff. January 1, 1989; April 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

21 NCAC 14B .0102 CONTENTS OF PETITIONS

The petition must contain the following information:

- (1) a draft of the proposed rule or amendment,
- (2) a summary of the contents of the proposed rule or amendment,
- (3) reason for the proposal,
- (4) effect of the new rule or amendment on existing rules,
- (5) data supporting the rule proposal,
- (6) effect of the proposed rule or amendment on existing practices in the area involved, including cost factors, and
- (7) name and address of each petitioner.

History Note: *Authority G.S. 150B-16;*
Eff. February 1, 1976;
Amended Eff. January 1, 1989; April 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

21 NCAC 14B .0103 AMENDMENT OR REPEAL

21 NCAC 14B .0104 CONTENTS OF PETITIONS

History Note: *Authority G.S. 150B-16;*
Eff. February 1, 1976;
Repealed Eff. April 1, 1988.

21 NCAC 14B .0105 GRANTING OR DENYING PETITIONS

The Board must determine, based on a study of the facts stated in the petition, whether the public interest will be better served by granting or denying the petition. The Board must consider all the contents of the submitted petitions plus any additional information deemed relevant.

History Note: *Authority G.S. 150B-16;*
Eff. February 1, 1976;
Amended Eff. January 1, 1989; April 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

21 NCAC 14B .0106 RECOMMENDATION

History Note: *Authority G.S. 88-23; 150B-16;*
Eff. February 1, 1976;
Repealed Eff. August 1, 1988.

21 NCAC 14B .0107 FINAL DECISION

Within 30 days of submission of the petition or at its next regularly scheduled meeting, whichever is later, the Board will render a final decision. If the decision is to deny the petition, the chairman of the Board will notify the petitioner in writing stating the reasons therefor. If the decision is to grant the petition, the Board will initiate a rule-making proceeding.

History Note: Authority G.S. 150B-16;
Eff. February 1, 1976;
Amended Eff. January 1, 1989; April 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

SECTION .0200 - NOTICE

21 NCAC 14B .0201 NOTICE TO PUBLIC

Upon a determination to hold rule-making proceedings, either in response to a petition or otherwise, the Board will give 30 days notice by publication in the North Carolina Register.

History Note: Authority G.S. 150B-12; 150B-16;
Eff. February 1, 1976;
Amended Eff. January 1, 1989; April 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

21 NCAC 14B .0202 MAILING LIST **21 NCAC 14B .0203 PUBLIC NOTICE** **21 NCAC 14B .0204 INFORMATION REQUESTS**

History Note: Authority G.S. 88-23; 150B-11(1); 150B-16; 150B-23;
Eff. February 1, 1976;
Repealed Eff. April 1, 1988.

SECTION .0300 - HEARINGS

21 NCAC 14B .0301 LOCATION OF HEARINGS

History Note: Authority G.S. 88-23; 150B-23;
Eff. February 1, 1976;
Repealed Eff. April 1, 1988.

21 NCAC 14B .0302 PROCEDURE FOR MAKING ORAL PRESENTATION AT HEARING

(a) A person desiring to make an oral presentation on a proposed rule or amendment to rule at a rule-making hearing must file a request to make a presentation with the chairman of the Board, at the Board's address, at least 15 days before the hearing. The presiding officer at the hearing may, however, waive or excuse a person's failure to give this notice for good reason.

(b) A request to make an oral presentation must contain a brief summary of the subject on which the individual desires to speak and an estimation of the length of time needed. An oral presentation may not exceed five minutes unless the presiding officer, either before or at the hearing, grants an extension of time for good reason.

(c) A person who makes an oral presentation at a rule-making hearing is encouraged to submit a written copy of the presentation to the Board either before or at the hearing.

History Note: Authority G.S. 150B-11(1); 150B-12;
Eff. February 1, 1976;
Amended Eff. January 1, 1989; April 1, 1988;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

21 NCAC 14B .0303 REQUEST FOR ORAL PRESENTATIONS

*History Note: Authority G.S. 150B-11(1); 150B-23;
Eff. February 1, 1976;
Amended Eff. April 1, 1988;
Repealed Eff. January 1, 1989.*

21 NCAC 14B .0304 ACKNOWLEDGEMENT OF A REQUEST TO MAKE AN ORAL PRESENTATION

Upon receipt of a request to make an oral presentation at a rule-making hearing, the chairman must acknowledge receipt of the request and inform the person requesting time for an oral presentation of the imposition of any limitations deemed necessary to the end of a full and effective public hearing on the proposed rule or amendment.

*History Note: Authority G.S. 150B-11(1);
Eff. February 1, 1976;
Amended Eff. January 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.*

21 NCAC 14B .0305 WRITTEN STATEMENT

- (a) Any person may file a written statement containing data, comments, or arguments in support of or in opposition to a proposed rule or rule change. Such statements may be filed before, during, or for five days after the hearing by delivering the statement by mail or in person to the chairman of the Board, at the Board's mailing address.
- (b) An extension of time for filing written statements may be granted either in the notice of the particular rule-making hearing or by the presiding officer of the hearing.
- (c) All such submitted statements should clearly state the rule or proposed rule to which the comments are addressed.

*History Note: Authority G.S. 150B-11(1); 150B-12;
Eff. February 1, 1976;
Amended Eff. January 1, 1989; April 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.*

21 NCAC 14B .0306 ACKNOWLEDGEMENT

Acknowledgement of all written comments received by the Board will be issued by the Chairman of the North Carolina State Board of Cosmetic Art Examiners.

*History Note: Authority G.S. 150B-11(1);
Eff. February 1, 1976;
Amended Eff. April 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.*

21 NCAC 14B .0307 CONTROL OF HEARINGS

- (a) Purpose. The purpose of this Rule is to provide uniform procedures for the conduct of public comment hearings.
- (b) The presiding officer at the hearings shall have control of the proceedings including the following:
 - (1) extension of any time requirements,
 - (2) recognition of speakers,

- (3) time allotment for presentations, and
 - (4) direction of the flow of discussion and the management of the hearing.
- (c) The presiding officer at all times shall take care that each person participating in the hearing is given an opportunity to present views, data and comments.
- (d) Public comment hearings shall be open to the public, and members of the public shall be entitled to testify, subject to the provisions of this Rule.
- (e) Public comment hearing shall be open to print and electronic media, subject to the following limitations by the board, or the person designated by the board to preside over the hearing, when such pooling are necessary to allow the hearing to go forward:
 - (1) Pooling of the number of media representatives when their number and equipment together with the number of members of the public present exceeds the capacity of the hearing room;
 - (2) Limitation on the placement of cameras to specific locations within the hearing room; or
 - (3) Prohibition of interviews conducted within the hearing room during the hearing.
- (f) Public comment hearings shall be presided over by the board or an individual knowledgeable in the subject area of the proposed rules who has been designated by the chairman to preside over the hearing.
- (g) The person presiding over the hearing shall:
 - (1) Call the hearing to order;
 - (2) Identify the proposed rules which are the subject matter of the hearing, and provide copies of them upon request;
 - (3) Cause a recording of the hearing to be made;
 - (4) Establish speaker time limits;
 - (5) Recognize those who wish to be heard;
 - (6) If necessary, refuse to recognize people for speaking, or revoke recognition of speakers;
 - (7) If necessary, limit the activity of the media;
 - (8) If necessary, continue or move the hearing; and
 - (9) Adjourn or continue the hearing.
- (h) The hearing shall be continued when:
 - (1) The weather is so inclement that it is reasonable to conclude that people wishing to attend the hearing are unable to do so;
 - (2) The chairman or the individual designated by the chairman to preside over the hearing is ill or unavoidably absent; or
 - (3) Continuing the hearing will facilitate greater participation by the public.
- (i) The hearing may be moved to another location when the original location is not able to accommodate the number of people who wish to attend the hearing.
- (j) The hearing shall be continued past the scheduled time or to another date when:
 - (1) The time available is not sufficient to give each person who wishes to speak a reasonable opportunity to do so; or
 - (2) The capacity of the room in which the hearing is to be held does not accommodate the number of people who wish to attend the hearing and it is not possible to move the hearing to another location.
- (k) People who wish to speak about the rules which are the subject matter of the hearing shall be asked to write on the speaker's list their full names and if they represent other persons, the identity of the persons represented.
- (l) People who wish to speak shall be asked to provide the information called for by Paragraph (k) of this Rule no later than before the last speaker on the list has finished speaking.
- (m) People whose names appear on the speaker's list shall be afforded an opportunity to speak at the hearing within the limits on public participation.
- (n) Written comments must be submitted by the deadline listed in the rule making notice.
- (o) The person presiding over the hearing shall:
 - (1) Refuse to recognize for speaking or revoke the recognition of any person who:
 - (A) Speaks or acts in an abusive or disruptive manner; or
 - (B) Refuses to keep comments relevant to the proposed rules which are the subject matter of the hearing;
 - (2) Limit the duration of the hearing and limit the amount of time each speaker may speak to a time which allocates approximately equal speaking time to each person shown on the speaker's list as wishing to speak; and

- (3) Limit presentations on behalf of the same organization or entity to no more than three, provided that all those representing such organization or entity may enter their names and addresses into the record as supporting the position of the organization or entity.

History Note: Authority G.S. 88B-4; 143-318.4; 150B 21.2;
Eff. February 1, 1976;
Amended Eff. April 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

21 NCAC 14B .0308 REQUEST FOR STATEMENT ON ADOPTED RULE

Any person or agency desiring a concise statement of the principal reasons for and against the adoption of a rule by the Board and the factors that led to sustaining or overruling the considerations urged for or against its adoption may submit a request in writing to the chairman of the Board at the Board's address. Such requests may be submitted either prior to the rule-making hearing or within 30 days thereafter.

History Note: Authority G.S. 150B-11(1); 150B-12(e);
Eff. February 1, 1976;
Amended Eff. January 1, 1989; April 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

21 NCAC 14B .0309 RECORDS

(a) A record of all rule-making proceedings will be maintained as long as the rule is in effect and for five years thereafter. This record will contain the following:

- (1) the original petition, if any;
- (2) the notice;
- (3) all written memoranda and information submitted;
- (4) a record or summary of oral presentations, if any; and
- (5) any statement of reasons for and against adoption of a rule issued by the Board.

(b) The record will be maintained in a file at the Board's address.

History Note: Authority G.S. 150B-11(1);
Eff. February 1, 1976;
Amended Eff. January 1, 1989; April 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

SECTION .0400 - EMERGENCY RULES

21 NCAC 14B .0401 POWER TO ISSUE
21 NCAC 14B .0402 LENGTH OF EFFECTIVENESS

History Note: Authority G.S. 88-23; 150B-13;
Eff. February 1, 1976;
Repealed Eff. April 1, 1988.

SECTION .0500 - DECLARATORY RULINGS

21 NCAC 14B .0501 REQUEST FOR DECLARATORY RULING

Any person substantially affected by a statute administered or rule promulgated by the Board may request a declaratory ruling as to how the statute or rule applies to a given factual situation or whether a particular board

rule is valid. All requests for declaratory rulings must be in writing and mailed to the chairman of the Board at the Board's address.

History Note: Authority G.S. 150B-17;
Eff. February 1, 1976;
Amended Eff. January 1, 1989; April 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

21 NCAC 14B .0502 CONTENTS OF REQUEST

All requests for a declaratory ruling must include the following information:

- (1) name and address of petitioner;
- (2) statute or rule to which the petition relates;
- (3) concise statement of the manner in which the petitioner is aggrieved, or thinks that he may be aggrieved by the rule or statute and its application to him; and
- (4) statement of whether an oral hearing is desired and if so the reasons therefor.

History Note: Authority G.S. 150B-17;
Eff. February 1, 1976;
Amended Eff. January 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

21 NCAC 14B .0503 REFUSAL TO ISSUE DECLARATORY RULING

Whenever the Board believes for good reason that the issuance of a declaratory ruling is inappropriate, it may refuse to do so. When good reason is deemed to exist, the Board will notify the petitioner of its decision in writing stating reasons for the denial of a declaratory ruling.

History Note: Authority G.S. 150B-17;
Eff. February 1, 1976;
Amended Eff. January 1, 1989; April 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

21 NCAC 14B .0504 ISSUANCE OF DECLARATORY RULING

History Note: Authority G.S. 150B-17;
Eff. February 1, 1976;
Repealed Eff. August 1, 2014.

21 NCAC 14B .0505 PROCEDURE

A declaratory ruling procedure may consist of written statements, oral hearings or such other procedures as may be appropriate in a particular case.

History Note: Authority G.S. 88-23; 150B-17;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

21 NCAC 14B .0506 CIRCUMSTANCES

The Board may refuse to issue a declaratory ruling on the validity of a rule if:

- (1) When the Board has already made a controlling decision on substantially similar facts in a contested case;
- (2) When the facts underlying the request for a ruling were specifically considered at the time of the adoption of the rule in question; and

- (3) When the subject matter of the request is involved in pending litigation in North Carolina.

History Note: Authority G.S. 150B-17;
Eff. February 1, 1976;
Amended Eff. January 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

21 NCAC 14B .0507 CIRCUMSTANCES

History Note: Authority G.S. 88-23; 150B-17;
Eff. February 1, 1976;
Repealed Eff. January 1, 1989.

SECTION .0600 - FEES

21 NCAC 14B .0601 COPYING CHARGES

The Board may charge a small fee for providing copies of its rules, Chapter 88 of the North Carolina General Statutes, and other public documents in its possession.

History Note: Authority G.S. 12-3.1; 150B-11(1);
Eff. February 1, 1976;
Amended Eff. January 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

21 NCAC 14B .0602 AMOUNT

History Note: Authority G.S. 88-23; 150B-11(1);
Eff. February 1, 1976;
Repealed Eff. January 1, 1989.

21 NCAC 14B .0603 POSTAGE AND HANDLING

There will be a five dollar (\$5.00) charge for postage and handling for all mailings.

History Note: Authority G.S. 12-3.1; 150B-11(1);
Eff. December 1, 1990;
Temporary Amendment Eff. December 1, 2001;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

21 NCAC 14B .0604 COSMETOLOGIST LICENSE FEE

History Note: Filed as a Temporary Adoption Eff. August 17, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Authority G.S. 88-21;
Temporary Adoption Expired.

21 NCAC 14B .0605 COSMETOLOGIST LICENSE FEE AND STAGGERED LICENSE RENEWAL SCHEDULE

(a) All cosmetology licenses expiring on and after October 1, 2013 shall pay the renewal fee of thirty-nine dollars (\$39.00), and complete 24 hours of continuing education as required by G.S. 88B-21 to be eligible for license renewal.

(b) Upon renewal of the license expiring October 1, 2010 the Board shall issue a new license with staggered expiration dates. Licensees shall be divided into renewal groups by first digit of license number and shall pay prorated fees for renewal as follows:

License Number (first digit in number)	Staggered Expiration Date	Fees/CE Hours Due
3, 4 or 5	October 1, 2011	\$13/0 hours
6 or 7	October 1, 2012	\$26/12 hours
0, 1, 2, 8 or 9	October 1, 2013	\$39/24 hours

History Note: Authority G.S. 88B-20; 88B-21;
Eff. August 1, 1998;
Amended Eff. August 1, 2010;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

21 NCAC 14B .0606 RESERVED FOR FUTURE CODIFICATION

21 NCAC 14B .0607 WAIVERS

- (a) Individuals who wish to request a waiver of a rule shall submit to the Board a written request which includes:
- (1) The rule for which a waiver is requested;
 - (2) The reason for requesting the waiver along with supporting documents;
 - (3) Evidence of how the waiver will provide for the health and safety of the consumer or licensee; and
 - (4) The signature of applicant.
- (b) The Board shall approve a waiver request only if:
- (1) The administrative rule for which the waiver is being requested is not mandated by law; and
 - (2) The Board finds that approval of the requested waiver shall not jeopardize the health and safety of employees or the public.

History Note: Authority G.S. 88B-4;
Eff. April 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.

21 NCAC 14B .0608 COMPLAINTS

- (a) Any person may file a complaint alleging violation of the Cosmetic Art Act or this Chapter with the Board for investigation and disciplinary action per G.S. 88B-24.
- (b) The complaint shall be filed in writing with the Board. Complaints will be accepted by fax, mail, email, through the Board's online complaint form at www.nccosmeticarts.com or delivered in office. Upon receipt of a complaint, Board staff shall review the content for jurisdiction and when finding authority under G.S. 88B or this Chapter assign the complaint for investigation. Complaints received alleging violation outside the jurisdictional authority of the Board shall be forwarded to the appropriate agency and the complainant notified, if contact information is provided by the complainant.
- (c) The Board shall notify the complainant and the respondent in any complaint filed with the Board of the disposition of the case.

History Note: Authority G.S. 88B-4;
Eff. December 1, 2016.