

SUBCHAPTER 63B – PROCEDURAL RULES

SECTION .0100 – RULE-MAKING PROCEDURES

10A NCAC 63B .0101 PETITIONS

(a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Commission for the Blind shall make his request in a petition addressed to:

Director
Division of Services for the Blind
309 Ashe Avenue
2601 Mail Service Center
Raleigh, North Carolina 27699-2601

(b) The petition shall contain the following information:

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

(c) The Commission for the Blind shall determine whether the public interest will be served by granting the petition. The Commission shall consider all of the contents of the submitted petition and any additional information it deems relevant.

(d) Within 120 days of submission of the petition, the Commission shall render a decision to deny the petition or to initiate rule-making proceedings, in accordance with G.S. 150B-20. If the decision is to approve the petition, the Commission shall initiate a rule-making proceeding by issuing notice, as provided in G.S. 150B-21.2.

History Note: Authority G.S. 143B-157; 150B-20; 150B-21.2;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; February 1, 1986.

10A NCAC 63B .0102 NOTICE

(a) Any person or agency desiring to be on the list for rule-making notices may file a written request, furnishing the name and mailing address, with the Commission for the Blind at the address shown in 10A NCAC 63B .0101(a). The request must state the subject areas for which notice is requested. The Commission shall review the mailing list periodically and may write to any person on the list to inquire whether he wishes to remain on the list. If no response is received, that person may be removed from the list.

(b) Any person desiring information in addition to that provided in a particular notice of rule-making proceeding or notice of text may contact the Commission for the Blind at the address shown in 10A NCAC 63B .0101(a).

History Note: Authority G.S. 143B-157; 150B-21.2; 150B-21.6;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; February 1, 1986.

10A NCAC 63B .0103 HEARING OFFICER

The Commission for the Blind, or one or more members of the Commission, or one or more hearing officers designated and authorized by the Commission, shall be hearing officers in a rule making hearing.

History Note: Authority G.S. 143B-157;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002.

10A NCAC 63B .0104 HEARINGS

(a) Written comments must clearly state the rule to which the comments are addressed and the name and address of the submitting person. Written comments must be sent to the Commission for the Blind at the address shown in 10A NCAC 63B .0101(a).

(b) The hearing officer shall promptly acknowledge receipt of all written submissions.

(c) The presiding officer at the hearing shall have complete control over the proceedings, including:

- (1) the responsibility of having a record made in accordance with G.S. 150B-21.2;
- (2) extension of any time allotments;
- (3) recognition of speakers;
- (4) prevention of repetitious presentations; and
- (5) general management of the hearings.

The presiding hearing officer shall assure that each person at the hearing is given a fair opportunity to present information, views, and arguments.

*History Note: Authority G.S. 143B-157; 150B-21.2;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; April 1, 1990; February 1, 1986.*

10A NCAC 63B .0105 DECISION

(a) Any person who desires a written statement of the Commission's reasons for the decision to adopt or reject a rule may, within 30 days after the decision, submit a request to the Commission for the Blind at the address shown in 10A NCAC 63B .0101(a).

(b) The Commission for the Blind shall issue the statement of reasons within 30 days after receipt of the request.

*History Note: Authority G.S. 143B-157; 150B-21.2;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; August 1, 1990; February 1, 1986.*

10A NCAC 63B .0106 RECORD OF PROCEEDINGS

A record of all rule-making proceedings, including any petitions received by the Division of Services for the Blind APA Coordinator's office, shall be maintained by the APA Coordinator's office and shall be available for public inspection during regular office hours. This record shall be kept in accordance with G.S. 150B-21.2.

*History Note: Authority G.S. 143B-157; 150B-21.2;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; April 1, 1990; February 1, 1986.*

10A NCAC 63B .0107 FEES

A fee of ten cents (\$.10) per page shall be charged by the hearing office to persons requesting materials relating to the rule making hearing.

*History Note: Authority G.S. 143B-157; 150B-19;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977.*

10A NCAC 63B .0108 DECLARATORY RULINGS

(a) The director of the Division shall have the power to make declaratory rulings. All requests for declaratory rulings shall be made by written petition and shall be submitted to the Division at the address shown in 10A NCAC 63B .0101(a).

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

- (1) the name and address of the petitioner;
- (2) the rule to which the petition relates;

- (3) a concise statement of the manner in which the petitioner is aggrieved by the rule or its potential application to him; and
 - (4) the consequences of a failure to issue a declaratory ruling.
- (c) Whenever the director believes for good cause that the issuance of a declaratory ruling is undesirable, he may refuse to issue one. The director shall then notify the petitioner and the hearing office in writing of his decision, stating the reasons for the denial. The director may refuse to issue a declaratory ruling:
- (1) unless the petitioner shows that the circumstances are so changed since adoption of the rule that such a ruling would be warranted;
 - (2) if there has been a similar controlling factual determination in a contested case, or if the question being raised was specifically considered upon adoption of the rule being questioned as evidenced by the rule-making record; or
 - (3) if the circumstances show that a contested case hearing would be appropriate.
- (d) Where a declaratory ruling is appropriate, the director of the Division shall issue the ruling within 60 days of the receipt of the petition.
- (e) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedure as may be deemed appropriate by the director in that particular case.
- (f) The director of the Division 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.
- (g) A record of all declaratory ruling proceedings shall be maintained by the hearing office and shall be available for public inspection during regular business hours. This record shall include:
- (1) the original request;
 - (2) the reasons for refusing to issue a ruling, if applicable;
 - (3) all written memoranda and information submitted;
 - (4) any transcript or recording of an oral hearing; and
 - (5) a statement of the ruling.

History Note: Authority G.S. 143B-157; 150B-4;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; April 1, 1990; February 1, 1986.

SECTION .0200 – CONTESTED CASES

10A NCAC 63B .0201 HEARING OFFICERS

All contested cases arising under the rules contained in Subchapters 63F, 63E and 63G of this Chapter shall be heard by an Administrative Law Judge from the Office of Administrative Hearings and conducted according to G.S. 150B. Contested cases arising under the Business Enterprises Program or the Vocational Rehabilitation Program shall be heard in accordance with the rules of Subchapter 63C or 63G as appropriate.

History Note: Authority G.S. 111-16; 143B-157; 150B-23; 34 C.F.R. 361; 34 C.F.R. 395; 20 U.S.C. Sec. 107;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; August 1, 1990; February 1, 1986; June 1, 1983.