



May 11, 2021 Oil and Gas Commission

Permanent Rulemaking Process 101

Jennifer Everett
DEQ Rulemaking Coordinator



Process

General Statutes in Chapter 150B - Administrative Procedure Act (APA)
- Instructs agencies how to proceed with the rulemaking requirements.

G.S. 150B-19.1 – “Principles of Rulemaking”

G.S. 150B-21.2 – Procedure in Adopting Permanent Rules

Rulemaking Steps

- Draft rule text indicating proposed changes to the existing rule.
- Develop fiscal note (FN) and OSBM approval
- Oil and Gas Commission approve rules and FN to proceed to public hearing and comment. Formal Action.
- Comment period = 60 days
- Develop Hearing Officer's Report (HOR)
- Oil and Gas Commission approves HOR, FN and adopts rules. Final Action.

Fiscal Note G.S. 150B-21.4



- Costs and Benefit Analysis– Impacts to State & local gov'ts, DOT permitting, and substantial economic impacts (= \$1M or greater)
- Office of State Budget and Management (OSBM) –review and approve, certify including adherence to G.S. 150B-19.1(a)(2), (5), & (6).
 - Do the rules seek to reduce the burden upon those persons or entities who must comply with the rule?
 - Are the rules based on sound, reasonably available scientific, technical, economic, and other relevant information?
 - Are the rules designed to achieve the regulatory objective in a cost-effective and timely manner?
- MEC – was exempt from fiscal note development on initial 05H rulemaking



Rules Review Commission – Final Step

G.S. 150B-21.8(c) Review of rule by the Rules Review Commission (RRC) When the RRC reviews an amendment to a permanent rule, it may review the **entire** rule that is being amended.

G.S.150B-21.9. Standards and timetable for review by Commission.

- (a) Standards. – The Commission must determine whether a rule meets all of the following criteria:
 - (1) It is within the authority delegated to the agency by the General Assembly.
 - (2) It is clear and unambiguous.
 - (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
 - (4) It was adopted in accordance with the APA.



Example of a Proposed Rulemaking Schedule

Action / Responsibility	Date
Draft rule changes and fiscal note (FN)	January – March 2020
EMC Approval of Rules and FN for public comment & hearing	May 7, 2020
Public Comment Period	June 15, 2020 – August 14, 2020
EMC Approves Hearing Officer's Report, FN, and Adopt Rules	November 19, 2020
Rules Review Commission Approval of Rules	December 17, 2020
Proposed effective date	January 1, 2021

Additional Note

G.S. 150B-21.5(a) Circumstances when public notice and hearing are not required.

- (1) Reletter or renumber the rule or subparts of the rule.
- (2) Substitute one name for another when an organization or position is renamed.
- (3) Correct a citation in the rule to another rule or law when the citation has become inaccurate since the rule was adopted because of the repeal or renumbering of the cited rule or law.
- (4) Change information that is readily available to the public, such as an address, email address, a telephone number. or a Web site.
- (5) Correct a typographical error.



Petition for Rulemaking G.S. 150B-20

A person may petition an agency to adopt a rule by submitting to the agency a written rulemaking petition requesting the adoption. If a rulemaking petition requests the agency to create or amend a rule, the person must submit the proposed text of the requested rule change and a statement of the effect of the requested rule change.

15A NCAC 05H .0500 -Guides the petitioner of how and what to submit to the Oil and Gas Commission.

Key Timelines:

If the agency is a board or commission, it must grant or deny a rulemaking petition within 120 days after the date the rulemaking petition is submitted.

An agency receiving a rulemaking petition shall, within three business days of receipt of the petition, send the petition to the Office of Administrative Hearings.



Questions

Jennifer Everett
DEQ Rulemaking Coordinator
Office of General Counsel
jennifer.everett@ncdenr.gov
919-707-8614