



May 7, 2024 - Oil and Gas Commission

Rulemaking 101

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Oil and Gas Commission Rules

Codified in the NC Administrative Code at:

<http://reports.oah.state.nc.us/ncac.asp?folderName=\Title%2015A%20-%20Environmental%20Quality\Chapter%2005%20-%20Mining%20-%20Mineral%20Resources>

- 15A NCAC 05C - Geophysical Exploration (26 rules)
- 15A NCAC 05H – Oil and Gas Conservation (120 rules)

Periodic Review and Expiration of Existing Rules

G.S. 150B-21.3A

- G.S. 150B-21.3A created by S.L. 2013-413.
- Requires all agencies to review its existing rules every 10 years.
- Rules that are Necessary = **Readoption** (Rulemaking)
- Rules that are Unnecessary = **Expire**



*Periodic Review and Expiration of
Existing Rules G.S. 150B-21.3A*

15A NCAC 05C – Geophysical Exploration

All rules except for two were classified as Necessary.

60-day public comment period, Nov 2 – Jan 8. (no hearing required).

No comments were received.

Oil and Gas Commission approved final classifications.

RRC approved the classifications - February 2024



Periodic Review and Expiration of Existing Rules G.S. 150B-21.3A



The Rules Review Commission is charged to request a consultation with agencies to establish a readoption deadline for rules that were classified as Necessary. And subsequently, approve the proposed deadline.

In addition, pursuant to 26 NCAC 05 .0212, agencies are required to provide:

- Written documentation of the Commission's timeline for readoption, including but not limited to, planned dates for:
 - When the rules will be published for 60-day comment period in the NC Register
 - When a fiscal note will be prepared (or documentation showing that a fiscal note is not necessary)
- Written documentation of the Commission's rulemaking priorities relevant to the timeline for readoption



Rulemaking 101

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

Initial Rulemaking Steps including fiscal analysis, GS 150B-21.2 & 21.4

- 1) Draft rule text indicating proposed changes to the existing rule.
- 2) Develop fiscal analysis and Office of State Budget & Management (OSBM) approval

Costs and Benefit Analysis— Impacts to State & local gov'ts, DOT permitting, and substantial economic impacts (= \$1M or greater)

OSBM –review and approval, 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?

Rulemaking Steps

- 3) Oil & Gas Commission approve draft rules and fiscal analysis to proceed to public hearing and comment. Formal Action.
- 4) Comment period = 60 days (includes public hearing)
- 5) Develop Hearing Officer's Report (HOR) of the rulemaking proceedings
- 6) Oil & Gas Commission approves HOR, fiscal analysis and adopts rules. Final Action.

This will be the readoption date.

- 7) Submit rules to the Rules Review Commission for approval



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.



Rules Review Commission – Effective Dates

- After RRC approval the rules become effective the 1st day of the month following the meeting.
- Objection. - Any person who objects to the adoption of a permanent rule may submit written comments to the Oil & Gas Commission. If the objection is not resolved prior to adoption of the rule, a person may submit written objections to the RRC. If the RRC receives written objections that clearly request review by the legislature from 10 or more persons, no later than 5:00 P.M. following the day the RRC approves the rules then the rules become effective on the 31st legislative day if no disapproval bill was introduced.



Additional Note

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

- (1) Re-letter 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.



Proposed Readoption Timeline

- Staff to complete draft rule amendments – June 31, 2024
- Rules Committee review of draft amendments –early July.
- Rules Committee to hold meeting to discuss draft rule amendments - late July 2024
- Staff to develop fiscal analysis and have OSBM approval – July – September 2024
- Rules Committee review of draft fiscal analysis –early October 2024
- Rules Committee to hold meeting to discuss fiscal analysis - late October
- Oil and Gas Commission regularly scheduled meeting to approve the draft rules and fiscal analysis to proceed to public comment – November 6, 2024
- Rules filed for publication in the NC Register – Nov. 21, 2024



Proposed Readoption Timeline

- Earliest hearing date can occur on or after December 31, 2024
- End of public comment period – February 14, 2025
- Staff to develop Hearing Officer’s Report (HOR) –February 21 - March 28, 2025
- Rules Committee to review draft HOR - March 31 – April 18 2025
- Rules Committee to hold meeting to discuss the HOR – end of April 2025
- Oil and Gas Commission’s regularly scheduled meeting to approve the fiscal analysis and adopt the rules - May 2025.



Proposed Readoption Deadline

- Action: Approve readoption deadline of August 5, 2025 to submit to the RRC.
- The Commission may adopt the rules at its May 2025.
- Proposing a readoption date of August 5 2025 builds in a buffer in the event of unforeseen circumstances occurring. This also allows the Commission to not have to hold a special meeting in the event a delay has occurred during the rulemaking steps.



Questions

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PERMANENT RULEMAKING PROCESS

