

RULEMAKING PETITIONS

G.S. § 150B-20. Petitioning an agency to adopt a rule.

(a) **Petition.** - A person may petition an agency to adopt a rule by submitting to the agency a written rule-making petition requesting the adoption. A person may submit written comments with a rule-making petition. If a rule-making 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. Each agency must establish by rule the procedure for submitting a rule-making petition to it and the procedure the agency follows in considering a rule-making petition. An agency receiving a rule-making petition shall, within three business days of receipt of the petition, send the proposed text of the requested rule change and the statement of the effect of the requested rule change to the Office of Administrative Hearings. The Office of Administrative Hearings shall, within three business days of receipt of the proposed text of the requested rule change and the statement of the effect of the requested rule change, distribute the information via its mailing list and publish the information on its Web site.

(b) **Time.** - An agency must grant or deny a rule-making petition submitted to it within 30 days after the date the rule-making petition is submitted, unless the agency is a board or commission. If the agency is a board or commission, it must grant or deny a rule-making petition within 120 days after the date the rule-making petition is submitted.

(c) **Action.** - If an agency denies a rule-making petition, it must send the person who submitted the petition a written statement of the reasons for denying the petition. If an agency grants a rule-making petition, it must inform the person who submitted the rule-making petition of its decision and must initiate rule-making proceedings. When an agency grants a rule-making petition, the notice of text it publishes in the North Carolina Register may state that the agency is initiating rule making as the result of a rule-making petition and state the name of the person who submitted the rule-making petition. If the rule-making petition requested the creation or amendment of a rule, the notice of text the agency publishes may set out the text of the requested rule change submitted with the rule-making petition and state whether the agency endorses the proposed text.

(d) **Review.** - Denial of a rule-making petition is a final agency decision and is subject to judicial review under Article 4 of this Chapter. Failure of an agency to grant or deny a rule-making petition within the time limits set in subsection (b) is a denial of the rule-making petition.

(e) Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 7.10(b). (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1991, c. 418, s. 1; c. 477, s. 2; 1996, 2nd Ex. Sess., c. 18, s. 7.10(b); 1997-34, s. 2; 2003-229, s. 1; 2017-211, s. 1(a).)

Rule 10A NCAC 26A .0103, PETITIONS

(a) Except for petitions regarding the addition, deletion, or rescheduling of controlled substances which are governed by 10A NCAC 26F .0117, any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule by the Commission or the Division Director shall address the petition to: A.P.A. Coordinator, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 3001 Mail Service Center, Raleigh, North Carolina 27699-3001.

(b) The petition shall contain the following information:

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

(c) The A.P.A. coordinator shall determine whether the rule comes under the statutory authority of the Commission or the Division Director or both and submit the petition to the appropriate body.

(d) The Commission or Division Director shall determine, based on a study of the facts stated in the petition, whether the public interest will be served by granting the petition. The Commission or Division Director shall consider all the contents of the petition, plus any additional information deemed relevant.

(e) The Commission or Division Director shall render a final decision on the petition within the time requirements of G.S. 150B-20. If the decision is to deny the petition, the petitioner shall be notified in writing and provided the reasons for the denial. Denial of the petition shall be considered a final agency decision as specified in G.S. 150B-20. If the decision is to approve the petition, rule-making proceedings shall be initiated in accordance with the rules in this Section.