



August 23, 2022 - Mining Commission

Rulemaking 101

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Mining Commission Rules

Codified in the Administrative Code at:

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

15A NCAC 05A – Organization and Structure (2 rules)

15A NCAC 05B – Permitting and Reporting (7 rules)

15A NCAC 05C* - Geophysical Exploration (26 rules)

15A NCAC 05F – Civil Penalties (12 rules)

15A NCAC 05G – Uranium Exploration Regulations (3 rules)

Department of Environmental Quality



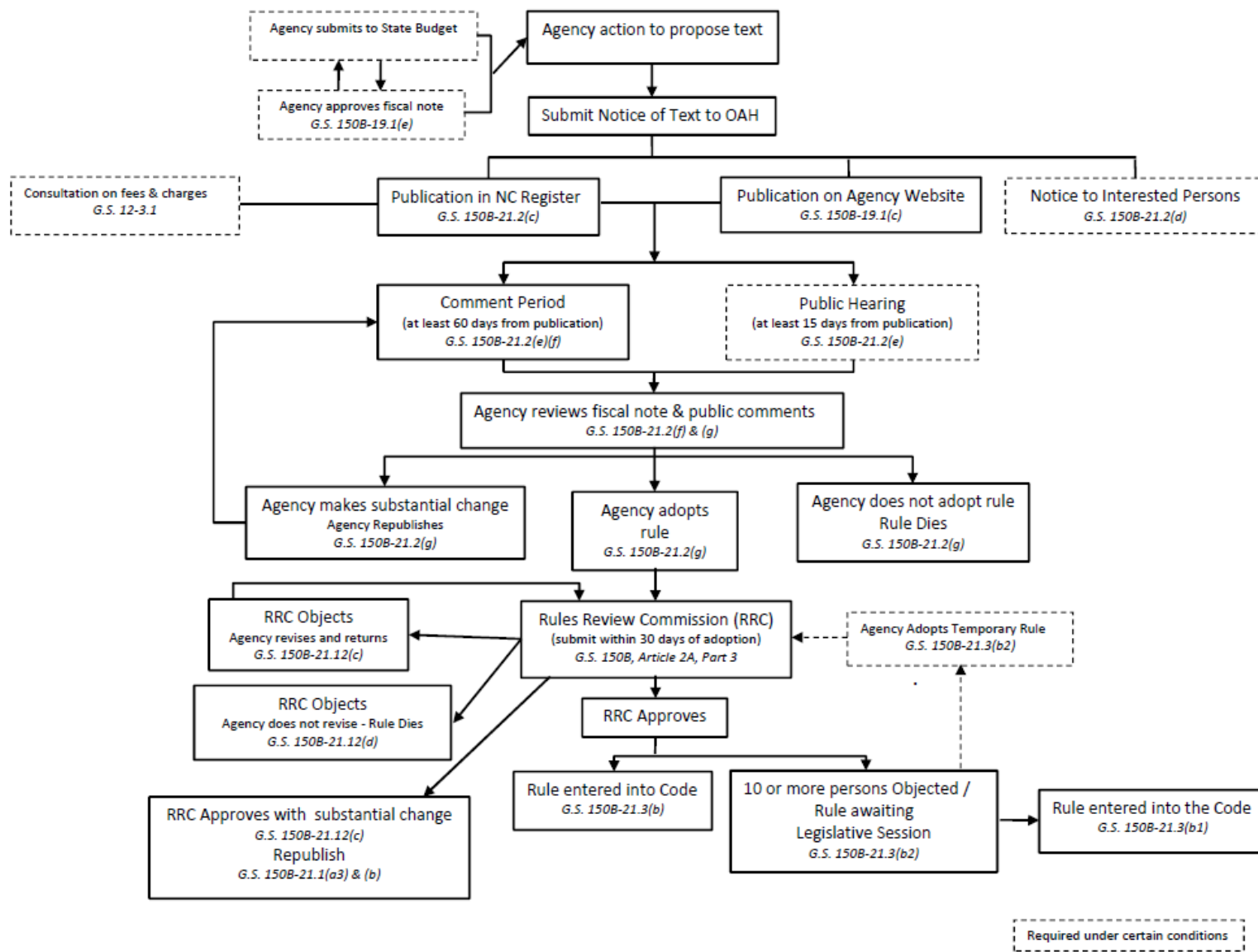
Process

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

PERMANENT RULEMAKING PROCESS



Rulemaking Steps

- Draft rule text indicating proposed changes to the existing rule.
- Develop fiscal note (FN) and Office of State Budget & Management approval
- Mining Commission approve rules and FN to proceed to public hearing and comment. Formal Action.
- Comment period = 60 days
- Develop Hearing Officer's Report (HOR)
- Mining 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?



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 review and 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 Mining 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.



Example of a Proposed Rulemaking Schedule

Action / Responsibility	Date
Draft rule changes and fiscal note (FN)	January – March 2021
EMC Approval of Rules and FN for public comment & hearing	May 7, 2021
Public Comment Period	June 15, 2021 – August 14, 2021
EMC Approves Hearing Officer's Report, FN, and Adopt Rules	November 19, 2021
Rules Review Commission Approval of Rules	December 17, 2021
Proposed effective date	January 1, 2022

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.



Periodic Review and Expiration of Existing Rules

- G.S. 150B-21.3A created by S.L. 2013-413.
- Requires agencies to review its rules every 10 years.
- Office of Administrative Hearings provides us a 'report' (excel spreadsheet) containing a listing of each rule.
- Begin by classifying each rule as either Necessary or Unnecessary.
- Mining Commission approves classifications for proceeding to 60-day public comment period (no hearing required).



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

- Receive and review all public comments on the rules and the classifications.
- Rules that are Necessary = Readoption (Rulemaking)
- Rules that are Unnecessary = Expire
- Respond to all comments that are objections to a rule or the classification as defined in G.S. 150B-21.3A(a)(5). That response will be in the report itself. The Mining Commission is not required to respond to the individual commenter.



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

- Mining Commission makes final determination of the classifications and responses to public comment for submittal to the RRC.
- If a comment is received objecting to the rule or the classification that was classified as Unnecessary, may need to change the classification to Necessary.
- G.S. 150B-21.3A(c)(1) requires agencies to review the public comments and prepare a brief response addressing the merits of each comment to accompany the report filed for RRC review.
- RRC's authority to change the classification to Necessary if the comment has merit.



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

- The report, with the initial and final determinations and any public comments received are filed to the RRC.
- Recently, the RRC approved December 2023 for the Mining Commission to complete this mandate.
- This means the Mining Commission has to take final action and file to the RRC no later than **November 15, 2023** in order to have the RRC review/approve at its December 2023 meeting.
- Once approved by the RRC, the report, public comments & responses are submitted to the Joint Legislative Administrative Procedure Oversight Committee.



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

Report becomes final if the Joint Legislative Administrative Procedure Oversight Committee meets or 61 days have passed once it was submitted to the Committee.

Unnecessary = Expire

Necessary = Readoption

Readoption is rulemaking. Preparing proposed amendments to existing rules, proposing repeal of a rule or creating new rules. FN developed & OSBM approval, 60-day comment period....

Readoption deadline to be established by the RRC....



Questions

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