

## **DHHS Directive Number III-1**

**Title:** Rules Review and Processing Procedure  
**Effective Date:** January 12, 2009  
**Revision History:** January 1, 2002; November 3, 2008  
**Authority:** G.S. 143B-10; G.S. 143B-14; G.S. 150B; G.S. 120-30.48

### **Purpose**

The purpose of this directive is to ensure that all proposed administrative rules prepared by or presented to the department for adoption by the department or the various rulemaking commissions assigned to the department are reviewed and processed for adoption in accordance with the North Carolina Administrative Procedures Act (NC APA) and all other applicable laws. The procedures mandated by this directive are necessary to ensure that the above-stated purpose is carried out.

### **Policy**

The Director of the Office of General Counsel (General Counsel) is delegated responsibility for supervising the rules review and processing procedure as set out herein.

1. Each Division Director shall appoint a division APA coordinator. The division APA coordinator shall:
  - A. Serve as a liaison between the division and the General Counsel;
  - B. Prepare notices of public hearings;
  - C. Coordinate access to rules of relevance to the division;
  - D. Screen all proposed rule actions prior to publication in the NC Register to ensure that an accurate fiscal note has been completed as required by applicable law;
  - E. Consult with the NC Association of County Commissioners and the NC League of Municipalities to determine which local governments would be affected by any proposed rule action;
  - F. Lead the division's efforts (in consultation, as required by law, with the NC League of Municipalities, the NC Association of County Commissioners, and samples of county and city managers, as appropriate) in the development and drafting of any rules or rule changes that could:

1. Require any unit of local government, including a county, city, school administrative unit or other local entity funded by or through a unit of local government to carry out additional or modified responsibilities;
    2. Increase the cost of providing or delivering a public service funded in whole or in part by any unit of local government; or
    3. Otherwise affect the expenditures or revenues of a unit of local government.
  - G. Compile a schedule of the administrative rules and amendments expected to be proposed during the next fiscal year and provide the schedule to the General Counsel and Division Director for submission by the Division APA coordinator to the Office of State Budget and Management;
  - H. Prepare the certification required by G.S. 150B-21(f)(1) and compile the items identified in G.S. 150B-21(f)(2); and
  - I. Take all steps necessary to ensure compliance by the division with this directive, the General Counsel's instructions and applicable law.
2. Review Procedure/Proposed Permanent Rules
- A. Submission for Review:
    1. Proposed rules subject to the notice provisions contained in G.S. 150B-21.2(a)(1) must be submitted to the General Counsel for review at least 45 days prior to the date the notice of hearing is to be submitted to the State Register for publication (or the date the notice is to be mailed to the newspapers if the Register is not yet in operation). The proposed rules must be accompanied by a fiscal impact statement.
    2. Proposed rules not subject to the notice provisions contained in G.S. 150B-12 must be submitted to the General Counsel for review at least 45 days prior to their submission for filing. The proposed rules must be accompanied by a fiscal impact statement.
  - B. Upon receipt of the proposed rules and impact statement, the General Counsel and the appropriate program analyst shall review the proposed rules for statutory authority, compliance with state/federal law (including the provisions of 150B), fiscal impact and compliance with departmental policy;
  - C. All proposed rules having possible budgetary impact shall be submitted to the Office of State Budget for review and approval;
  - D. Not later than 45 days after receipt of the proposed rules, the division will be notified of the results of the review and will be provided further instructions for processing the proposed rules. No proposed rules shall be presented for public hearing or adoption without the approval of the General Counsel; and
  - E. In the event a proposed rule is modified subsequent to its submission for review, the General Counsel should be notified as soon as possible and the new text submitted for review.
3. Review Procedure/Proposed Temporary Rules

- A. Any division wishing to adopt or present for adoption a temporary rule, shall notify the General Counsel as soon as possible of the circumstances necessitating the rule's adoption; and
  - B. To the extent possible, the proposed temporary rule shall be reviewed in accordance with the procedures set out in (3) above.
4. Publication of Proposed Permanent Rules/Division Responsibilities
- A. Commission Rules - At least 30 thirty days prior to the adoption of commission rules which require a public hearing, notice of the public hearing must be published in the State Register (or if the Register is not yet operational, in three (3) newspapers of general circulation). Additionally, a copy of the notice of hearing shall be sent to the Office of General Counsel, the Office of Administrative Hearings, the Attorney General and the Governor.
  - B. Agency Rules - At least 60 days prior to the adoption of Agency rules or at least 30 days prior to the public hearing date, notice of the public hearing must be published in the State Register (or if the Register is not yet operational, in three (3) newspapers of general circulation). Additionally, a copy of the notice of hearing shall be sent to the Office of General Counsel, the Office of Administrative Hearings, the Attorney General and the Governor.
  - C. Notice - The hearing notice shall contain the following information:
    - 1. A reference to the statutory authority under which the action is proposed;
    - 2. The time and place of the public hearing and a statement of the manner in which data, opinions and arguments may be submitted for consideration (including the opening and closing dates of the rulemaking record);
    - 3. The text of the proposed rule or amendment in the form specified in G.S. 150B-63(d)(2) (strike and underline) and the proposed effective date of the rule or amendment.
5. Publication of Proposed Rules/General Counsel's Responsibilities
- Prior to the publication of the notice of public hearing, the General Counsel shall transmit a copy of the proposed rule and fiscal impact form to the Fiscal Research Division, Office of State Budget, NC Association of County Commissioners and NC League of Municipalities.
6. Public Hearing
- A. The proposed rule, as contained in the notice of hearing, shall not be altered before the public hearing.
  - B. Prior to the adoption of the rule, the rulemaking record shall remain open at least 30 days to permit adequate comment on the proposed rule. All comments submitted during this time shall become part of the rulemaking record and shall be considered prior to adoption of the rule.
  - C. If requested to do so by an interested party, either prior to adoption or within 30 days thereafter, the division/commission shall issue a concise statement of the principle reasons for or against the adoption of a proposed rule. A copy of the

request and the response shall be sent to the General Counsel.

7. Filing of Adopted Rules

- A. All adopted rules (other than temporary rules) shall be submitted for filing no later than the last day of the month two months prior to the effective date of the rule. (Example: If the rule is to become effective November 1, the rule must be submitted for filing no later than September 30.) In cases where a large number of rules are being submitted, the division should allow additional time for adequate review and processing. Failure to do so could result in a delay in filing and resultant delay in the effective date of the rules.
- B. Rules submitted for filing shall be in the form prescribed by the General Counsel.
- C. Upon receipt of the adopted rules, the Director shall review the rules and file them in accordance with G.S. 150B, Article 5. The Director shall act as coordinator for any questions, comments, or complaints received from the Office of Administrative Hearings, Rules Review Commission, general public or other agencies concerning these rules and shall work with the division in preparing a departmental response.

8. Petitions for Rulemaking

- A. Any petition for rulemaking received by a division concerning a rule adopted under the Secretary's authority shall be responded to within 30 days of its receipt. A copy of the petition shall be sent to the General Counsel as soon as possible after its receipt. The division's response shall be submitted to the General Counsel for review.
- B. Any petition for rulemaking received by a division concerning a rule adopted under Commission authority shall be submitted to the Commission for response at their next regularly scheduled meeting, but in no case later than 120 days of its submission. A copy of the petition shall be sent to the General Counsel as soon as possible after its receipt. Any divisional response to the petition shall be submitted to the General Counsel for review.

9. Requests for Declaratory Rulings

- A. A copy of any formal request for a declaratory ruling received by a division shall be sent to the General Counsel as soon as possible after its receipt along with the division's proposed response. If the response is to be issued by a commission, the division's proposed response shall be submitted to the General Counsel for review.
- B. A response to the request shall be issued within 60 days of its receipt.

10. Waiver

Any waiver of the above requirements must be obtained in advance from the General Counsel.

APPROVED

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Lanier M. Cansler, Secretary  
Department of Health and Human Services