

# What Are Rules and Why Do They Matter?

(And other rulemaking bits and bobs)

Amber May and Amanda Reeder  
Rules Review Commission Counsel

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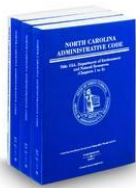
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## What is a Rule?

► 150B-21(8a) defines a Rule as, "any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee[.]"



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## What is the purpose of a Rule?

"[R]ules fill the interstices of statutes. They go beyond mere interpretation of statutory language or application of such language and within statutory limits set down additional substantive requirements."

State, ex rel. Comm. of Insurance v. N.C. Rate Bureau, 300 N.C. 381, 269 S.E.2d 547, 567 (1980).

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# Why does it matter?

## Rules = Law

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What are not Rules?

150B-2(Ba)

"Statements concerning only the internal management of an agency—if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency..."

"nonbinding, interpretive statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule"

"A form, the contents or substantive requirements of which are prescribed by rule or statute"

"Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries."

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What else are not Rules?

- o "a form, the contents or substantive requirements of which are prescribed by rule or statute."

150B-2(Ba)(d)

This means that if the contents of the form are not in the law, and the agency is requiring them, then the contents must be in a rule.

21 NCAC 160C .0106 FORM BAR-5  
 (a) The Form BAR-5 shall be filed by one applying to take the examination to receive a registered harbor certificate. It requires the following:  
 (1) the name, address, social security number, and birthdate of the applicant;  
 (2) higher school training; and  
 (3) the length of harbor experience.  
 (b) The Form BAR-5 shall not be filed for the applicant's attention that the information on the form is correct.  
 (c) The fee as 21 NCAC 160C .0106(c)(1) shall accompany the form.  
 History Note: Adopted G.S. Stat. L. 1964-1, 1964-20, 1964-21, 1968-14; amended G.S. February 1, 1976; Repealed G.S. February 1, 1976; amended G.S. March 1, 1984; amended G.S. March 1, 1984; Legislative Repeal Conference G.S. March 1, 1988; Conference Amended G.S. April 8, 1992; amended G.S. September 1, 2015; May 1, 2000; Repealed G.S. October 1, 2016; amended G.S. October 1, 2020.

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# What else are not Rules?

"Nonbinding interpretive statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule." 150B-2(8a)(c)

## POLICIES

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# Rule vs. Policy

### Rule

"any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency." 150B-2(8a)

### Policy

"any nonbinding interpretive statement within the delegated authority of an agency that merely defines, interprets, or explains the meaning of a statute or rule. The term includes any document issued by the agency which is intended and used purely to assist a person to comply with the law, such as a guidance document." 150B-2(7a)

Unlike a rule, a policy does not have the force of law.

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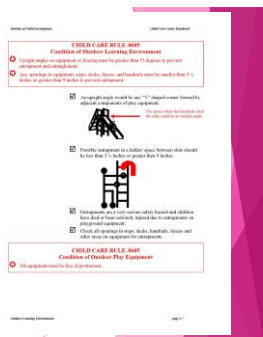
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# Rule vs. Policy

## Child Care Commission

10A NCAC 09 .0605

- (g) Any openings in equipment, steps, decks, handrails, and fencing shall be smaller than 3 1/2 inches or greater than 9 inches to prevent entrapment.
- (h) All upright angles shall be greater than 55 degrees to prevent entrapment and entanglement.



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# Rules vs. Policy

## Board of Pharmacy

### Rule

**21 NCAC 46-2201 HOURS; RECORDS; PROVIDERS; CORRESPONDENCE; RECIPROcity (EFFECTIVE UNTIL DECEMBER 31, 2017)**

(1) An amount of hours earned, a pharmacist shall accumulate 15 hours of continuing education annually.

(2) Most of these continuing education hours shall be obtained through contact programs. Contact programs are those in which there is an opportunity for two-way communication between the presenter and attendee, which may include educational content that exceeds the content hour requirements provided that the program is approved by the Board.

(3) A pharmacist who accumulates more than the required 15 hours of continuing education in a single year may carry over up to five contact hours to be applied to the following year's continuing education requirements.

(4) A pharmacist shall preserve all continuing education records for three years.

(5) Upon license renewal, the pharmacist shall report continuing education hours on a form provided by the Board. The Board may require a pharmacist to submit original receipts of accumulated hours and certificate of credit as a condition of continuing education audit.

(6) All approved continuing education courses are acceptable if they provide education on matters that will maintain or improve the participant's professional competence and proficiency as a pharmacist.

(7) Continuing education shall not serve as a barrier to reciprocity, however all hours earned by reciprocity must meet the continuing education standards specified in this Rule within the first renewal period after licensure in this state.

History Note: Authority G.S. 90-65.4, 90-65.17, 90-65.18.  
 2012 January 7, 1982.  
 amended 2/7 January 7, 2003; April 1, 2005; August 1, 2008; August 1, 1988; September 1, 1982; May 7, 1989.

### Policy

Pharmacists FAQs available at [http://www.ncbcp.org/faq/Pharmacists/faq\\_ContinuingEducation](http://www.ncbcp.org/faq/Pharmacists/faq_ContinuingEducation)

Q: What are the CE requirements for Pharmacists?  
 A: All Pharmacists must complete 15 hours of continuing education, a total of 15 hours to renew every year. Eight (8) of those hours must be CE hours and the remaining hours can be either Live or Correspondence.

**CARRY OVER HOURS**

Q: What can carry over hours?  
 A: Contact hour hours can carry CE hours that may be carried over to the next year's renewal.

Q: How do the carry over hours work?  
 A: When you renew your license, the program will automatically carry over the additional hours. Allowances are limited to only one in addition of extra hours of CE.

Q: When CE hours qualify to carry over hours?  
 A: Carry over hours are those programs, and the hours are carried over first, followed by correspondence hours. CE hours are carried over first, followed by correspondence hours. CE hours are carried over first, followed by correspondence hours.

Q: How are carry over hours identified on my CE Report?  
 A: A check mark in the Carry Over column will designate carry over hours.

Q: How long must I maintain my CE certificate?  
 A: All Pharmacists must maintain their CE certificates for a period of 3 years or longer.

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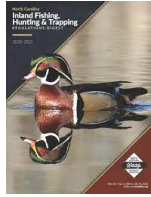
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# Other examples of policies...



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# When are rules not needed?

Aspirational statements are **not** rules.

Rule of thumb: If you want to use a word other than "shall" because you cannot or do not intend to require something of your regulated public, it is not a rule.

When you merely want to restate a state or federal law or a federal regulation. (See G.S. 150B-19(4))

G.S. 150B-21.6 incorporating material in a rule by reference

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### G.S 150B-21.6 Incorporation by Reference

- An agency may incorporate the following materials:
  - Another rule or part of a rule adopted by that agency; and
  - All of part of a code, standard, or regulation adopted by another agency, the federal government or a generally recognized organization or association
- Necessary information to incorporate material by reference:
  - Whether the incorporation includes subsequent amendments and editions;
  - Where can it be obtained; and
  - The cost

13

### When are rules not needed? (Take 2)

- When the General Assembly expressly states within statute what is required, and that requirement is determined by the agency to be sufficient to address the concern.

**SECTION 140 G.S. 17C** reads in relevant part:

"(c) In addition to the requirements of subsection (b) of this section, the Commission, by rule and regulation, shall fix other qualifications for the employment, hiring, and retention of criminal justice officers including minimum age, education, physical and mental standards, citizenship, good moral character, experience, and such other matters as relate to the competence and reliability of persons to assume and discharge the responsibilities of criminal justice officers and the officers. The Commission shall prescribe the means for proving evidence of fulfillment of these requirements. The Commission shall ensure the administration of a psychological screening examination, including a face-to-face, in-person interview conducted by a licensed psychologist, to determine the criminal justice officer's psychological suitability to properly fulfill the responsibilities of the criminal justice officer. If face-to-face, in-person, is not practicable, the face-to-face evaluation may be virtual as long as both the audio and video allow for a professional clinical evaluation in a clinical environment. The psychological screening examination shall be given (1) prior to the initial certification or (2) prior to the criminal justice officer performing any action requiring certification by the Commission.

Senate Bill 900      Session Law 2021-138      Page 7

14

### When are rules not needed (Take 3)

- When the General Assembly exempts the agency from rulemaking
- See Session Law 2021-75, exempting the State Treasurer and the Supplemental Retirement Board of Teachers from promulgating rules using the AR for various State retirement plans and creating a special rulemaking process for the agencies to follow.

**PART V. AUTHORIZATION FOR THE DEPARTMENT OF STATE TREASURER AND THE SUPPLEMENTAL RETIREMENT BOARD OF TEACHERS TO ADOPT ADMINISTRATIVE FEES UNDER THE SUPPLEMENTAL RETIREMENT PLAN OF NORTH CAROLINA, THE NORTH CAROLINA DEFERRED COMPENSATION PLAN, AND THE NORTH CAROLINA PUBLIC SCHOOL TEACHERS' AND PROFESSIONAL EDUCATORS' INVESTMENT PLAN**

**SECTION 134(a) G.S. 135-93** reads in relevant part:

"§ 135-91. Administration.

Page 4      Session Law 2021-75      House Bill 108

(6) The Department of State Treasurer and the Board of Teachers shall have full power and authority to adopt rules and regulations for the administration of the Plan, provided they are not inconsistent with the provisions of this Article.

(7) Subject to the limitations specified in this subsection, the Department of State Treasurer and the Board of Teachers may, adopt a rule or amended rule to impose or change administrative fees under the Plan, provided that the rule is adopted at a public hearing that complies with Article 13C of Chapter 143 of the General Statutes. At least 30 days prior to such public hearing, the Department of State Treasurer shall post a copy of the rule on the Department of State Treasurer's public website and, subject to the approval of the Department of State Treasurer, send copies of the draft rule to persons requesting a copy. During the 30-day period preceding the public hearing at which the rule is to be adopted, the Department of State Treasurer and the Board of Teachers shall accept comments on the draft rule. Following the adoption or amendment of a rule concerning the imposition of, or a change to, an administrative fee, the Department of State Treasurer shall post the adopted rule to its public website and, subject to the approval of the Department of State Treasurer, provide a link to a copy of the adopted rule to persons requesting a copy. Rules adopted pursuant to this subsection shall remain in effect until amended or repealed by the Department of State Treasurer and the Board of Teachers and are not subject to Article 24 of Chapter 150B of the General Statutes. This subsection applies only to rules creating administrative fees charged by the Department of State Treasurer and the Board of Teachers for the Supplemental Retirement Plan of North Carolina, the North Carolina Deferred Compensation Plan, and the North Carolina Public School Teachers' and Professional Educators' Investment Plan. The Department of State Treasurer and the Board of Teachers may not adopt a rule or amended rule to impose or change an administrative fee under the Plan that exceeds the following amounts:

15



And in the 2021 Session, there is HB 159

**PART V. STATE BOARD OF EDUCATION REQUIRED TO USE BULKMAKING TO ADOPT STANDARDS**  
**SECTION 115B** G.S. 115C-12 reads as rewritten:  
**§ 115C-12. Powers and duties of the Board generally.**  
 The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish all needed rules and regulations for the system of free public schools, subject to laws enacted by the General Assembly. Except as otherwise provided by law, the State Board of Education shall adopt any rules, regulations, policies, standards, or statements of general applicability in accordance with Chapter 150B of the General Statutes. Any such rules, regulations, policies, standards, or statements of general applicability are not valid unless they are adopted in substantial compliance with Chapter 150B of the General Statutes. In accordance with Section 7 and 8 of Article 101 of the North Carolina Constitution, the Superintendent of Public Instruction, as an elected officer and Council of State members, shall administer all needed rules and regulations adopted by the State Board of Education through the Department of Public Instruction. The powers and duties of the State Board of Education are defined as follows.

House Bill 159-2021 Edition Page 3

General Assembly Of North Carolina Session 2021

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Cabarrus County Board of Education v. Department of State Treasurer, Retirement Systems, 374 N.C. 3, 839 S.E.2d 814 (2020)

- Case involved the way that the cost of pension of certain retirees would be funded

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**Cabarrus County Board of Education v. Department of State Treasurer, Retirement Systems, 374 N.C. 3, 839 S.E.2d 814 (2020)**

• S.L. 2014-88

The General Assembly of North Carolina enacts: SECTION 1. (a) G.S. 135-5 is amended by adding a new subsection to read:

"(a3) Anti-Pension-Spiking Contribution-Based Benefit Cap. - Notwithstanding any other provision of this section, every service retirement allowance provided under this section for members who retire on or after January 1, 2015, is subject to adjustment pursuant to a contribution-based benefit cap under this subsection. **The Board of Trustees shall select a contribution-based benefit cap factor** recommended by the actuary, based upon actual experience, such that no more than three-quarters of one percent (0.75%) of retirement allowances are expected to be capped. The Board of Trustees shall modify such factors every five years, as shall be deemed necessary, based upon the five-year experience study as required by G.S. 135-6(n).

• "The Act establishes a retirement benefit cap applicable to certain employees with an average final compensation of \$100,000 or more per year whose retirement benefit payment would otherwise be significantly greater than the contributions made by that retiree during the course of his or her employment with the State." **Cabarrus County Board of Education v. Department of State Treasurer, Retirement Systems, 374 N.C. 3, 389 S.E.2d 814, 815 (2020).**

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**Cabarrus County Board of Education v. Department of State Treasurer, Retirement Systems, 374 N.C. 3, 839 S.E.2d 814 (2020)**

- The Board of trustees adopted a cap factor, but did not go through the rule-making process set forth in the APA.
- Subsequent to that, the superintendent of the Cabarrus County School system was set to retire and was eligible to receive retirement benefits.
- The Retirement Systems determined that his pension benefits were subject to the contribution-based benefit cap and sent notification both to him and to the Board of Education that an additional \$208,405.81 would be required in order for him to receive his full benefits. The Board of Education submitted this amount on his behalf.
- The Board of Education then sought a declaratory ruling "asking that the invoice and the cap factor used to calculate the amount shown on the invoice be declared "void and of no effect because the [Board of Trustees] did not following the rule-making procedures of the Administrative Procedure Act." **Cabarrus County Board of Education v. Department of State Treasurer, Retirement Systems, 374 N.C. 3, 839 S.E.2d 814, 816 (2020).**

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**Cabarrus County Board of Education v. Department of State Treasurer, Retirement Systems, 374 N.C. 3, 839 S.E.2d 814 (2020)**

- ▶ In this case, the issue was not whether the cap factor fell within the definition of a Rule pursuant to G.S. 150B-2(8a), but whether it was implicitly exempted from the rule-making process. The Court noted that there was no argument that the cap factor was explicitly exempted from the process.
- ▶ "... the Court has consistently refused to recognize the existence of any implicit exemption from the provisions of the Administrative Procedure Act in the absence of clearly-stated legislative intent to the contrary. A presumption that the rulemaking provisions of the Administrative Procedure Act apply to the formulation of Rules... in the absence of an explicit or implicit exemption."
- ▶ Obvious question - what is an "implicit presumption"?

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State v. Reaves-Smith, 271 N.C. App. 337, 844 S.E.2d 19 (2020)

This was a criminal case, where the defendant appealed a conviction for attempted robbery with a dangerous weapon. The Court of Appeals upheld the conviction in the opinion.

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The North Carolina Criminal Justice Education and Training Standards Commission shall develop a policy regarding standard procedures for the conduct of show-ups in accordance with this section. The policy shall apply to all law enforcement agencies and shall address all of the following, in addition to the provisions of the section:

- (1) Detailed instructions for eyewitnesses;
- (2) Confidence statements by the eyewitness, including information related to the eyewitness' vision, the circumstances of the events witnessed, and communication with other eyewitnesses, if any;
- (3) Training of law enforcement officers specific to conducting show-ups;
- (4) Any other matters deemed appropriate by the Commission.

N.C. Gen. Stat. § 15A-284.52(c2)

In North Carolina, policies established by State agencies are "nonbinding interpretive statement[s]" used purely to assist a person to comply with the law, such as a guidance document." N.C. Gen. Stat. § 150B-21.7(a) (2019) (emphasis added). "When a term has long-standing legal significance, it is presumed that legislators intended the same significance to attach by use of that term, absent indications to the contrary." *State v. Fleisher*, 370 N.C. 313, 329, 307 S.E.2d 529, 540 (2017) (citation and quotation marks omitted). There is no indication that the legislature's use of the term "policy" in Section 15A-284.52(c2) was intended to have any other significance or meaning. In fact, the delegation of authority to establish other policies the agency deemed appropriate is a clear indication that the guidelines established pursuant to Section 15A-284.52(c2) were just that: guidelines.

Statutes are binding acts of the General Assembly. By definition, policies from State agencies are nonbinding guidelines. The plain language of the statute shows that the legislature delegated authority to the North Carolina Criminal Justice Education and Training Standards Commission to establish nonbinding guidelines to assist law enforcement. Because the language of Section 15A-284.52(c2) does not place additional statutory requirements on law enforcement, but rather requires the North Carolina Criminal Justice Education and Training Standards Commission to develop nonbinding guidelines, only Section 15A-284.52(c1) sets forth the requirements for show-up identification compliance.

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Takeaways from Cabarrus County Board of Education v. Department of State Treasurer, Retirement Systems, 374 N.C. 3, 839 S.E.2d 814 (2020)

- ▶ In this case, the Court found that "... the establishment of a cap factor is a discretionary decision that must be made by the Board of Trustees, with the aid of an actuary, rather than a ministerial decision over which the Board of Trustees has little to no control." *Cabarrus County Board of Education v. Department of State Treasurer, Retirement Systems*, 374 N.C. 3, 839 S.E.2d 814, 828 (2020)
- ▶ Takeaway: Just because the General Assembly doesn't say "adopt a rule," doesn't mean that rules aren't required.

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**Examples of statutory language that provides agencies authority for rulemaking**

- “create”
- “adopt”
- “establish”
- “require”
- “charge a fee”

- And all of these examples are often in statute without referring to “rules” or “APA” in the sentence. Such as “establish a program” or “create a process”
- This all goes back to the definition of Rule in G.S. 150B-2(b): “[A]ny agency regulation, standard, or statement of general applicability[.] The term includes the establishment of a fee[.]”



28

**Quick Update on the “fixes” for the agency in Cabarrus County Board of Education:**

**Session Law 2021-72**

▶ **SECTION 1.1.(b)**

G.S. 135-8(f) is amended by adding a new subdivision to read:

(b) Notwithstanding Chapter 150B of the General Statutes, as of the beginning of the fiscal year following 90 days after the assessment of a contribution-based benefit cap liability that is not paid as a lump sum payment, the required employer contribution rate for an employer shall be adjusted to include an additional contribution amount equal to a rate per centum that is estimated to extinguish the contribution-based benefit cap liability on an amortization schedule selected by the Board that has been applied to unfunded liabilities in the most recent actuarial valuation.”



29

**AND**

- ▶ Once more with gusto! SL 2021-75, exempting the Board of Trustees from rulemaking pursuant to the APA.



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**PART V. AUTHORIZATION FOR THE DEPARTMENT OF STATE TREASURER AND THE SUPPLEMENTAL RETIREMENT BOARD OF TRUSTEES TO ADOPT ADMINISTRATIVE FEES UNDER THE SUPPLEMENTAL RETIREMENT PLAN OF NORTH CAROLINA, THE NORTH CAROLINA DEFERRED COMPENSATION PLAN, AND THE NORTH CAROLINA PUBLIC SCHOOL TEACHERS’ AND PROFESSIONAL EDUCATORS’ INVESTMENT PLAN**

**SECTION 3.1(a) G.S. 135-91 reads as revised:**

“§ 135-91. Administration.

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Page 4      Session Law 2021-75      House Bill 108

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(5) The Department of State Treasurer and the Board of Trustees shall have full power and authority to adopt rules and regulations for the administration of the Plan, provided they are not inconsistent with the provisions of this Article.

(6) Subject to the limitations specified in this subsection, the Department of State Treasurer and the Board of Trustees may, adopt a new or amended rule to impose or change administrative fees under the Plan, provided that the rule is adopted at a public meeting that complies with Article 33C of Chapter 143 of the General Statutes. At least 30 days prior to such public meeting, the Department of State Treasurer shall post a copy of a draft of the rule on the Department of State Treasurer’s public website and, subject to the approval of the Department of State Treasurer, send copies of the draft rule to persons requesting a copy. Within the 30-day period preceding the public meeting at which the rule is to be adopted, the Department of State Treasurer and the Board of Trustees shall accept comments on the draft rule. Following the adoption or amendment of a rule concerning the imposition of, or a change to, an administrative fee, the Department of State Treasurer shall post the adopted rule to its public website and, subject to the approval of the Department of State Treasurer, provide a link to a copy of the adopted rule to persons requesting a copy. Rules adopted pursuant to this subsection shall remain in effect until amended or repealed by the Department of State Treasurer and the Board of Trustees and are not subject to Article 24C of Chapter 150B of the General Statutes. This subsection applies only to rules creating administrative fees charged by the Department of State Treasurer and the Board of Trustees for the Supplemental Retirement Plan of North Carolina, the North Carolina Deferred Compensation Plan, and the North Carolina Public School Teachers’ and Professional Educators’ Investment Plan. The Department of State Treasurer and the Board of Trustees may not adopt a new or amended rule to impose or change an administrative fee under the Plan that exceeds the following amount:

# In Summary:

- If a State agency says that a third party:
- ▶ Is required to do something;
  - ▶ Can be penalized for not doing something; or
  - ▶ Is given a right or benefit:

IT'S A  
RULE

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So, we need a rule, now what?

"An agency shall not seek to implement or enforce against any person a policy, guideline, or other interpretive statement that meets the definition of a rule contained in G.S. 150B-2(8a) if the policy, guideline, or other interpretive statement has not been adopted in accordance with this Article."  
G.S. 150B-18

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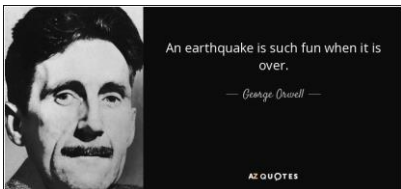
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So, your next step is to go through rulemaking, as set forth in G.S. 150B.



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### Speaking of rulemaking, what's new in that realm?

- ▶ We're glad you asked!
- ▶ There are some pending bills, such as HB 327, which will clarify the effective date of rules pending legislative review.

March 18, 2021

A BILL TO BE ENTITLED  
 AN ACT TO UPDATE THE PROCESS FOR LEGISLATIVE REVIEW OF RULES, TO DESIGNATE THE NORTH CAROLINA ADMINISTRATIVE CODE PUBLISHED ONLINE AS THE OFFICIAL VERSION AND REMOVE THE REQUIREMENT TO PUBLISH AND PROVIDE PRINTED COPIES, TO UPDATE THE MODEL CODE OF JUDICIAL CONDUCT FOR STATE ADMINISTRATIVE LAW JUDGES, AND TO MAKE CLARIFYING CHANGES TO THE OCCUPATIONAL LICENSING LAWS.

34



**SECTION 1. G.S. 150B-21.3 made as rewritten.**  
**150B-21.3. Effective date of rules.**

(b1) **Delayed Effective Dates.** Except as provided in G.S. 14-4.1, if the Commission received written objections to the rule in accordance with subsection (b)(2) of this section, the rule becomes effective on the earlier of the thirty-first legislative day or the date of adjournment of the next regular session of the General Assembly that begins at least 27 days after the date the Commission approved the rule, unless a different effective date applies under this section. If a bill that specifically disapproves the rule is introduced in either house of the General Assembly before the thirty-first legislative day of that session, the rule becomes effective on the weekend of the day an undebatable final action is taken on the bill or the day that session of the General Assembly adjourns unless another ending or bill that specifically disapproves the rule, later, of September 1 of the calendar year of that session or the day that session of the General Assembly adjourns, whichever is later. If the bill that specifically disapproves the rule, if the sponsor certifies the rule expires in one legislative day from the date that would otherwise apply under this subsection, the later date applies. A permanent rule that is not approved by the Commission or that is specifically disapproved by a bill enacted law before the session effective date last becomes effective.

A bill that specifically disapproves a rule if it contains a provision that refers to the rule by appropriate North Carolina Administrative Code citation and states that the rule is disapproved. Notwithstanding any rule of either house of the General Assembly, any member of the General Assembly may introduce a bill during the first 30 legislative days of any regular session to disapprove a rule that has been approved by the Commission and that either has not become effective or has become effective by executive order under subsection (c) of this section.

35



### And in the 2020 Session, there were changes to the mandatory hearings for temporary rulemaking

**PROVIDE FOR THE RESCHEDULING OF PUBLIC HEARINGS DURING TEMPORARY RULE MAKING.**  
**SECTION 4.25(a) G.S. 150B-21.1 made as rewritten.**  
**150B-21.1. Procedure for adopting a temporary rule.**

- (a) Unless otherwise provided by law, the agency shall:
- (1) At least 30 business days prior to adopting a temporary rule, submit the rule and a notice of public hearing to the Clerk of Rules, and the Clerk of Rules shall publish the proposed temporary rule and the notice of public hearing on the Internet no later than five business days.
  - (2) At least 30 business days prior to adopting a temporary rule, notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule and of the public hearing.
  - (3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.
  - (4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published. If notice of a public hearing has been published and that public hearing has been cancelled, the agency shall publish notice at least five days prior to the date of any rescheduled hearing.

**SECTION 4.25(b)** This section is effective retroactively to March 10, 2020.

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# Any Questions? Now or later?



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If you come up  
with questions  
later, feel free to  
contact us!

Ashley Snyder - Codifier (new as of July 1, 2021)  
Amber May - Commission Counsel  
Amanda Reeder - Commission Counsel  
Alex Burgos - Paralegal  
[www.ncoah.com](http://www.ncoah.com)

38

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