

## TITLE 20 – OFFICE OF THE STATE TREASURER

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of State Treasurer intends to adopt the rules cited as 20 NCAC 01F .0111, .0208, and repeal the rules cited as 20 NCAC 01F .0102, .0203, .0204, and .0207.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** <https://www.nctreasurer.com/office-state-treasurer/nc-administrative-code-rules>

**Proposed Effective Date:** December 1, 2021

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than August 31, 2021 to Laura Rowe, Rulemaking Coordinator, Department of State Treasurer, 3200 Atlantic Avenue, Raleigh, NC 27604.*

**Reason for Proposed Action:** *Section 150B-20(a) of the Administrative Procedure Act (APA) provides in part that “[e]ach agency must establish by rule the procedure for submitting a rulemaking petition to it and the procedure the agency follows in considering a rulemaking petition.” The Department of State Treasurer (Department) is proposing to adopt new rule 20 NCAC 01F .0111 to comply with this requirement of the APA. In proposing the adoption of 20 NCAC 01F .0111, the State Treasurer is also proposing to repeal current rule 20 NCAC 01F .0102 Correspondence. Repeal of 20 NCAC 01F .0102 is proposed because more comprehensive information about submitting a petition for rulemaking is included in the proposed new rule, making the current rule duplicative.*

*Section 150B-4(a) of the APA provides in part that “[t]he agency shall prescribe in its rules the procedure for requesting a declaratory ruling and the circumstances in which rulings shall or shall not be issued.” It is proposed that the Department’s rules in Section .0200, Subchapter 01F, Chapter 1, Title 20 be updated by adopting a new rule and repealing some current rules. The new rule seeks to update the Department’s declaratory ruling section by adopting a comprehensive rule that prescribes the procedure for requesting a declaratory ruling and sets forth the circumstances in which rulings will not be issued.*

*In proposing the adoption of 20 NCAC 01F .0208, the State Treasurer is also proposing to repeal the following rules in Title 20, Chapter 1, Subchapter 01F, Section .0200: 20 NCAC 01F .0203 Form of Requests; 20 NCAC 01F .0204 Who Makes Ruling; and 20 NCAC 01F .0207 Ruling Procedures. These rules are proposed for repeal because the information contained within them has been incorporated in the proposed new rule and updated to better conform with the requirements of the APA.*

**Comments may be submitted to:** Laura Rowe, 3200 Atlantic Avenue, Raleigh, NC 27604; email [DST.NCAC@nctreasurer.com](mailto:DST.NCAC@nctreasurer.com)

**Comment period ends:** October 15, 2021

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or email. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

**Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- State funds affected
- Local funds affected
- Substantial economic impact ( $\geq$  \$1,000,000)
- Approved by OSBM
- No fiscal note required

### CHAPTER 01 - DEPARTMENTAL RULES

#### SUBCHAPTER 01F - PROCEDURAL RIGHTS

#### SECTION .0100 - RULE-MAKING PROCEDURES

#### 20 NCAC 01F .0102 CORRESPONDENCE

~~All correspondence within the Department of State Treasurer should be addressed to the division within the department.~~

*History Note: Authority G.S. 143A-31;  
Eff. February 1, 1976;  
Readopted Eff. September 15, 1977;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 5, 2016.*

## **20 NCAC 01F .0111      PETITION FOR RULEMAKING**

(a) All petitions requesting the adoption, amendment, or repeal of a rule shall be in writing and mailed to the attention of the Rulemaking Coordinator at the address specified in Rule 20 NCAC 01A .0101.

(b) The petition for rulemaking shall:

- (1) contain the names and addresses of petitioners;
- (2) identify the agency, board, or commission to whom the petition is directed for consideration; and
- (3) for petitions to adopt or amend a rule, draft text of the proposed rule or amendment and a statement of the effect of the requested rule change.

(c) The petition may contain the following information:

- (1) the reason for the proposal;
- (2) anticipated cost factors; or
- (3) any additional data supporting the petition.

(d) If the State Treasurer is the appropriate rulemaking body to consider the petition, within 30 days of submission of the petition, the State Treasurer, or deputy pursuant to G.S. 147-75, shall render a final decision. If the decision is to deny the petition, the petitioner shall be notified in writing, stating the reasons for the denial. If the decision is to grant the petition, written notice of the decision shall be provided as set forth in G.S. 150B-20(c) and rulemaking proceedings shall be initiated.

(e) If a board or commission within the Department of State Treasurer is the appropriate rulemaking body to consider the petition, the petition shall be forwarded to the chair of the board or commission. Within 120 days of submission of the petition, the board or commission shall render a final decision. If the decision is to deny the petition, the petitioner shall be notified by the board or commission in writing, stating the reasons for the denial. If the decision is to grant the petition, written notice of the decision shall be provided as set forth in G.S. 150B-20(c) and rulemaking proceedings shall be initiated.

*History Note:      Authority G.S. 150B-20;  
                                 Eff. December 1, 2021.*

## **SECTION .0200 - DECLARATORY RULINGS**

### **20 NCAC 01F .0203      FORM OF REQUESTS**

All requests for a declaratory ruling must include the following information:

- ~~(1) name, address and telephone number of petitioner;~~
- ~~(2) statute or rule to which petition relates;~~
- ~~(3) concise statement of the manner in which petitioner is aggrieved by the rule or statute, or its potential application to him;~~
- ~~(4) a statement of whether an oral hearing is desired, and if so, the reasons for such an oral hearing.~~

*History Note:      Authority G.S. 150B-17;  
                                 Eff. February 1, 1976;  
                                 Readopted Eff. September 15, 1977;  
                                 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 5, 2016.*

### **20 NCAC 01F .0204      WHO MAKES RULING**

~~The chief officer shall have the power to make such declaratory rulings. All requests for declaratory rulings shall be written and mailed to the chief officer.~~

*History Note:      Authority G.S. 150B-17;  
                                 Eff. February 1, 1976;  
                                 Readopted Eff. September 15, 1977;  
                                 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 5, 2016.*

### **20 NCAC 01F .0207      RULING PROCEDURES**

~~Declaratory ruling procedures may consist of written submissions, an oral hearing, or such other procedures as may be appropriate in a particular case.~~

*History Note:      Authority G.S. 150B-17;  
                                 Eff. February 1, 1976;  
                                 Readopted Eff. September 15, 1977;  
                                 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 5, 2016.*

## **20 NCAC 01F .0208      DECLARATORY RULINGS**

(a) All requests for declaratory rulings shall be in writing and mailed to the attention of the Rulemaking Coordinator at the address specified in Rule 20 NCAC 01A .0101.

(b) The request for declaratory ruling shall:

- (1) contain the name and address of the requestor;
- (2) identify the agency, board, or commission to whom the request is directed for consideration;

- (3) identify the statute, rule, or order to which the request relates; and
- (4) contain a statement of the manner in which the requestor is affected, or thinks that the requestor may be affected, by the statute, rule, or order and its application to the requestor.

(c) A decision to grant or deny a request for a declaratory ruling will be made by the State Treasurer, a deputy pursuant to G.S. 147-75, or board or commission within 30 days of receipt. The requestor shall be notified in writing of a decision to grant or deny the request.

(d) A request for declaratory ruling shall be denied by the State Treasurer, deputy, or appropriate board or commission if:

- (1) the request does not meet the requirements set forth in this Rule;
- (2) a declaratory ruling has previously been issued on same or similar facts;
- (3) a controlling decision has already been issued on same or similar facts in a contested case;
- (4) the facts underlying the request were considered at the time of adoption of the rule; or
- (5) the subject matter of the request is involved in pending litigation.

(e) If the request is granted, the State Treasurer, deputy, or appropriate board or commission shall issue a written ruling within 45 days of the decision to grant the request.

*History Note:* Authority G.S. 150B-4;  
Eff. December 1, 2021.