

NORTH CAROLINA EDUCATION LOTTERY POLICIES AND PROCEDURES MANUAL

CHAPTER 10 – COMMISSION AND EXECUTIVE OFFICE

10.5 – RULEMAKING POLICY AND PROCEDURE

SCOPE

The North Carolina General Assembly has directed the North Carolina State Lottery Commission (“Commission”) to adopt and implement any rules necessary to carry out the provisions of the North Carolina State Lottery Act, Chapter 18C of the North Carolina General Statutes (the “Act”), and to resolve any conflicts in the best interest of the State. As it adopts and implements such rules, the Commission is exempt from the administrative rulemaking procedures outlined in the North Carolina Administrative Procedure Act, Chapter 150B of the North Carolina General Statutes.

PURPOSE

This Rulemaking Policy and Procedure establishes a transparent, deliberative rulemaking process tailored to the Commission’s regulatory purposes. Taking into consideration the evolving nature of authorized gaming and wagering in North Carolina, this Rulemaking Policy and Procedure provides the Commission flexibility to act in a timely manner to serve the public interest, while including provisions that ensure the general public and all stakeholders have an opportunity to be heard through public comment.

POLICY

1. **The following principles shall guide the Commission as it develops and drafts rules:**
 - a. The Commission shall adopt rules that are necessary to serve the public interest.
 - b. The Commission shall adopt rules to ensure that gaming is administered with the highest level of integrity and to cultivate compliance by the regulated public.
 - c. The Commission shall seek to limit the administrative burden upon those persons or entities who must comply with rules.
 - d. Rules shall be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret applicable law, including the Act.
 - e. The Commission shall consider the cumulative effect of all rules adopted by the Commission related to the specific purpose for which a rule is proposed. The Commission shall not adopt a rule that is unnecessary.
 - f. When appropriate, rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information.
 - g. Rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner.
 - h. The Commission shall remain informed of evolving standards and practices that support and expand responsible gaming and shall consider rules that prevent and mitigate gambling-related harms; help players to make informed decisions; and empower players through the use of technology.

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- i. Where applicable, Commission rules shall protect North Carolina players and consumers from unfair or predatory business practices.
- 2. Interested Person Registration**
 - a. The Commission shall maintain an electronic mailing list of persons that have requested notice of proposed rulemaking. A form for registering as an interested person shall be posted on the Commission's website.
 - b. When the Commission approves proposed rulemaking, it will electronically disseminate the proposed rulemaking text, time period for public comment, instructions for submitting written comments, and the date, time, and location of public hearing(s) scheduled, if any, to each person on the electronic mailing list that has requested notice.
 - 3. Commission Approval of Proposed Rulemaking**
 - a. Before issuing notice of proposed rulemaking, staff shall obtain formal approval from the Commission or the applicable committee of the Commission, as determined by the Chair.
 - b. A proposal for rulemaking shall:
 - i. Identify rules proposed for adoption, amendment, or repeal.
 - ii. Include the proposed rule language, indicating deleted text with overstrikes and added text with underlines.
 - iii. Provide a short explanation of the reason for the proposed rule(s).
 - 4. Notice of Proposed Rulemaking**
 - a. After the Commission or applicable committee of the Commission has approved a proposed rulemaking, Commission staff shall issue notice of proposed rulemaking.
 - b. Notice of proposed rulemaking shall include:
 - i. Text of the proposed rule(s).
 - ii. Proposed effective date.
 - iii. Date, time, and place of the public hearing scheduled, if any, with instructions on how to submit a request to present at the public hearing.
 - iv. Instructions on how, when, and where to submit written comments on the proposed rule.
 - c. Publication of Notice. Notice of proposed rulemaking shall be published on the Commission's website.
 - d. Dissemination to Interested Parties. Notice of proposed rulemaking shall be electronically mailed to licensees and all persons who have registered with the Commission as interested persons.

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5. Public Comment Period

- a. The Commission or the applicable committee of the Commission shall accept comments for at least 30 calendar days after notice, or until the date of the public hearing, whichever is longer.
- b. All comments must be submitted in writing using methods (e.g., web submission form, email, regular mail) and forms outlined in the notice, as prescribed by the Commission or its staff.
- c. In the event a proposed rule is substantially changed after the public comment period has ended, the Commission or applicable committee of the Commission may authorize another public comment period. The Commission or applicable committee shall determine whether a substantial change has been made. Generally, a substantial change does one or more of the following:
 - i. Materially changes the scope of the rule as to the number of persons or entities affected or the interests of the persons or entities affected by the proposed text of the rule noticed;
 - ii. Addresses a subject matter or an issue that is not addressed in the proposed text of the rule; or
 - iii. Produces a material effect that could not reasonably have been expected based on the original proposed text of the rule.
- d. If the Commission or applicable committee of the Commission directs another public comment period after a substantial change to a proposed rule, then notice of this additional comment period shall be made by publication on the Commission's website and electronic mail to all interested persons and licensees. The additional comment period will be limited and apply only to the changed portions of the proposed rule. The Commission shall not be required to consider comments that do not directly or indirectly relate to the proposed changes to the proposed rule. The length of the public comment period shall be determined by the Commission or committee and may be shorter than required in paragraph 5(a) above.

6. Public Hearing

- a. If the Commission or applicable committee of the Commission finds that a public hearing on an issue of proposed rulemaking is in the public interest, then it may, but shall not be required to, direct staff to hold and administer a virtual or in-person public hearing on proposed rulemaking and collect additional information from the public. Commissioners may, in their discretion, attend and observe a public hearing.
- b. The public hearing shall be scheduled for no sooner than 5 calendar days after notice of proposed rulemaking is issued.

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- c. Hearing attendees will be subject to the security protocols set forth by the designated facility or virtual platform selected for the public hearing.
- d. Individuals who wish to make an oral presentation at a public hearing must register to speak at least one business day in advance of the hearing via web portal or by phone, as directed in the notice of proposed rulemaking.
 - i. Registrations to speak will be accepted on a first-come first-served basis.
 - ii. To the extent practicable, registrants will speak in the order they registered.
 - iii. Registration to speak does not guarantee the opportunity to speak.
 - iv. The Commission or Commission staff may limit the number of registrations and/or speakers due to time constraints.
 - v. Registrants shall identify any organization or entity on whose behalf they intend to speak.
- e. Oral presentations at a public hearing are limited to three (3) minutes per speaker. Any deviation from this limit is at the discretion of Commission staff conducting the hearing. Oral presentations shall be memorialized by a stenographer or by a suitable technologic solution. Authorized speakers shall identify themselves on the record, as well as any organizations or entities on whose behalf they are speaking.

7. Commission or Committee Action

- a. Except in the case of emergency rulemaking undertaken by the Executive Director, the Commission shall act by majority vote in a public meeting to adopt, amend, or repeal a rule.
- b. The Commission or applicable committee of the Commission shall not act upon a proposed rule until the time for commenting and public hearing, if applicable, has passed. The Commission shall not adopt, amend, or repeal a rule if more than 12 months have elapsed since the end of the time period for public comment.
- c. Commission staff shall provide the Commission and/or the applicable committee of the Commission with a compilation or summary of all timely public comments submitted in accordance with the notice of proposed rulemaking. Following the public comment period, Commission staff shall also provide the Commission with a recommendation or recommendations to:
 - i. Adopt the proposed rule text without making any changes;
 - ii. Adopt the proposed rule text with only technical changes;
 - iii. Adopt the proposed rule text with substantial changes made after considering the general feedback received through public comment;
 - iv. Make substantial changes to the proposed rule text and solicit additional public comment in accordance with paragraph 7(c) above; or
 - v. Do not adopt the proposed rule text.
- d. When the applicable committee of the Commission rather than the Commission itself takes proposed rulemaking actions pursuant to paragraphs 3-6 of this

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Rulemaking Policy and Procedure, it shall report to the Commission its actions, including formal recommendations, if any, regarding rules included in the proposed rulemaking.

8. Publication

- a. After the Commission has adopted a rule, the Commission staff shall publish the rule on the Commission's website and send an electronic notification to all registered interested persons and licensees.
- b. Notwithstanding the Commission's full exemption to the Administrative Procedure Act, N.C. Gen. Stat. § 150B -1(c)(7), Commission staff shall submit the adopted rule to the Codifier of Rules to be published in the North Carolina Administrative Code as required by N.C. Gen. Stat. § 150B-21.21(b).

9. Expedited rulemaking procedure

- a. The Commission may follow an expedited rulemaking procedure when:
 - i. the Commission's standard rulemaking procedure would be contrary to the public interest;
 - ii. a recent change in federal or State law, federal regulation, or court order requires a rule change; or
 - iii. any other reason as determined by the Commission.
- b. Under expedited rulemaking, the Executive Director may approve a proposed notice of rulemaking after consultation in writing with the Chair of the Commission.
- c. Notice of proposed rulemaking is still required in accordance with paragraph 4.
- d. Public comments will be accepted in accordance with paragraphs 5(a) and 5(b), but the time period for public comment may be reduced to no fewer than 15 calendar days.
- e. At the next available Commission meeting, Commission staff shall provide the Commission:
 - i. The rulemaking proposal;
 - ii. A compilation or summary of all public comments submitted; and
 - iii. A summary explanation for why expedited rulemaking procedure was necessary.
- f. Prior to July 1, 2024, rulemaking proceedings to facilitate the initial implementation of Articles 9 and 10 of the Act, shall adhere to the expedited rulemaking procedure described here. Though the Executive Director may approve proposed rulemaking after consultation with the Chair of the Commission as described above, proposed rulemaking to implement Articles 9 and 10 shall be presented whenever feasible to an appropriate standing committee of the Commission.

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10. Emergency rulemaking procedure

- a. When immediate adoption of a rule is required by a serious or unforeseen threat to the public health, safety, or welfare, the Executive Director may approve immediate adoption of a rule, rule amendment, or rule repeal after taking reasonable steps to consult in writing with the Chair of the Commission.
 - i. There will be no requirement for public comment period or hearing in advance of the rule change taking effect.
 - ii. The effective date of the rule shall be determined by the Executive Director.
 - iii. The Executive Director shall fully inform the Commission of the emergency rulemaking action and the related circumstances as soon as possible.
- b. Contemporaneously with the Executive Director's emergency rulemaking action, or as soon as reasonably practicable thereafter, the Commission staff shall issue notice of the emergency rule change by publication to the Commission's website and electronic mail to all interested persons and licensees.
 - i. No licensee shall be sanctioned for any conduct that violates or otherwise fails to comply with an emergency rule when the conduct occurs prior to the notice by electronic mail to licensees or occurs within a reasonable time after the licensee receives the notice but before the licensee is reasonably able to act upon such notice.
- c. The notice shall include the text of the rule, the effective date, instructions for submission of public comment, and information about any scheduled public hearing. The period for public comment shall be for a period of fifteen (15) days or until the day before the next Commission meeting, whichever is shorter.
- d. At the next scheduled or called Commission meeting, whichever is sooner, Commission staff shall provide the Commission:
 - i. text of the emergency rule,
 - ii. a compilation or summary of public comments submitted, and
 - iii. a justification for why prior Commission approval, public comment period, and hearing were not feasible under the circumstances.
- e. After consideration of the information provided by Commission staff, the Commission shall approve, modify, or repeal the emergency rule change.
- f. When utilizing the emergency rulemaking procedure, the Executive Director shall use the least restrictive measures necessary to protect the public from the emerging threat.

11. Rulemaking actions that do not require Commission approval, notice, or public comment:

- a. The following rulemaking actions shall not require Commission approval, prior notice to interested persons, public comment period, or hearing:
 - i. Proposal to amend a rule to do one of the following:

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1. Re-letter or renumber the rule or subparts of the rule.
2. Rearrange the order of a rule or the order of subsections, subdivisions, or other subparts.
3. Provide a heading for a rule or revise the heading of the rule.
4. Rearrange definitions and lists.
5. Make other changes in arrangement or in form that do not change the substance of the rule and are necessary or desirable for a clear and orderly arrangement of the rule.
6. Substitute one name for another when an organization or position is renamed.
7. 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.
8. Change information that is readily available to the public, such as an address, email address, a telephone number, or a website.
9. Correct a typographical error.
- ii. Proposal to repeal a rule as a result of any of the following:
 1. The law under which the rule was adopted is repealed.
 2. The law under which the rule was adopted or the rule itself is declared unconstitutional.
 3. The rule is declared by a court of competent jurisdiction to be in excess of the Commission's statutory authority.
 4. The rule becomes null, illegal, or otherwise nonviable by operation of law, such as through an enactment of state or federal law or by a binding decision by a court of competent jurisdiction.
- iii. Any other technical change that shall not result in a substantive change in the meaning, interpretation, or application of a rule.
- b. Notification of rulemaking actions taken under paragraph 11 shall be:
 - i. Disseminated electronically to all interested persons and licensees;
 - ii. Published on the NCEL website; and
 - iii. Submitted to the Codifier of Rules to be published in the North Carolina Administrative Code pursuant to N.C. Gen. Stat. § 150B-21.21(b).

12. Record of Rulemaking

- a. The Commission shall keep a record of all rulemaking proceedings.
- b. The record shall include all written comments received, a transcript or recording of all public hearings held, and all written explanations, if any, made by the Commission for adopting any rule.