

1 **04 NCAC 12D .0117 IS READOPTED AS PUBLISHED IN 35:08 NCR 831 WITH CHANGES AS**
2 **FOLLOWS:**

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4 **04 NCAC 12D .0117 DISPOSITION OF REQUEST FOR DECLARATORY RULING**

5 ~~(a) When the Secretary of Commerce deems it appropriate to issue a declaratory ruling, he shall issue such~~
6 ~~declaratory ruling within 60 days of receipt of the petition.~~

7 ~~(b) A declaratory ruling proceeding may consist of written submissions, an oral hearing, or other procedure as may~~
8 ~~be appropriate in the circumstances of the particular request.~~

9 ~~(c) Whenever the secretary believes "for good cause" that the issuance of a declaratory ruling is undesirable, he may~~
10 ~~refuse to issue such ruling. When good cause is deemed to exist, he will notify the petitioner of his decision in~~
11 ~~writing, stating the reasons for the denial of the declaratory ruling.~~

12 ~~(d) For purposes of Subpart (c) of this Rule, the Secretary of Commerce will ordinarily refuse to issue a declaratory~~
13 ~~ruling:~~

14 ~~(1) — unless the petitioner shows that the circumstances are so changed since the adoption of the rule~~
15 ~~that such a ruling would be warranted;~~

16 ~~(2) — unless the petitioner shows that the agency did not give to the factors specified in the request for a~~
17 ~~declaratory ruling a full consideration at the time the rule was issued;~~

18 ~~(3) — where there has been a similar controlling factor determination in a contested case, or where the~~
19 ~~factual context being raised for a declaratory ruling was specifically considered upon the adoption~~
20 ~~of the rule or directive being questioned, as evidenced by the rulemaking record;~~

21 ~~(4) — where the subject matter of the request is involved in pending litigation in any state or federal~~
22 ~~court in North Carolina.~~

23 (a) The State Energy Director shall make a determination on the completeness of the request for a declaratory ruling
24 based on Rule .0133 of this Section.

25 (b) Before deciding the merits of the request, and upon consideration of the complete request for a declaratory
26 ruling, the Director shall determine if additional information or presentation(s) are needed and if so:

27 (1) request additional written submissions from the petitioner(s);

28 (2) request a written response from the State Energy Office staff or any other person; and

29 (3) hear oral arguments from the petitioner(s), interveners, and the State Energy Office staff or their
30 legal counsel.

31 (c) The Director shall decline to issue a declaratory ruling if any of the following are found:

32 (1) that there has been a similar determination in a previous contested case or declaratory ruling;

33 (2) that the matter is the subject of a pending contested case, hearing, or litigation in any North
34 Carolina or federal court;

35 (3) that no genuine controversy exists as to the application of a statute, rule, or order to the specific
36 factual situation presented; or

- 1 (4) that the factual situation presented as the subject of the declaratory ruling was specifically
2 considered upon the adoption of the rule being questioned, as evidenced by the rulemaking
3 ~~record;~~ record.
- 4 (d) The Department shall keep a record of each request for declaratory ruling, which shall include the following
5 items:
- 6 (1) the request for a ruling;
7 (2) any written submission by a party;
8 (3) the facts on which the ruling was based;
9 (4) any transcripts of oral proceedings, if available, and recordings of oral arguments;
10 (5) any other information such as documents, photographs, recordings, maps, plats, articles, and
11 studies considered by the Director in the making of the decision; and
12 (6) the declaratory ruling, or the decision to decline to issue a declaratory ruling, together with the
13 reasons therefore.
- 14 (e) The Department shall notify the petitioner in writing of the Director's decision on the request for declaratory
15 ruling, including the basis for the decision.
- 16 (f) For purposes of this Section, a declaratory ruling shall be deemed to be in effect until:
- 17 (1) the statute or rule interpreted by the declaratory ruling is repealed or the relevant provisions of the
18 statute or rule are amended or altered;
19 (2) any court of the Appellate Division of the General Courts of Justice construes the statute or rule
20 that is the subject of a declaratory ruling to be irreconcilable with the declaratory ruling; or
21 (3) any court sets aside the declaratory ruling in litigation between the Department and the party
22 requesting the ruling.
- 23 (g) Any Division of the Department may be a party to any request for declaratory ruling upon written request. The
24 request shall be made to the Director within five days of receipt of notice of the request for a declaratory ruling.
- 25 (h) Upon written request, the petitioner(s), intervener(s), and the Division each shall be allowed to present oral
26 arguments to the Director. No party shall offer testimony or conduct cross-examination before the Director.
- 27 (i) The Director shall issue a decision on whether to grant or deny the request for declaratory ruling within 30 days
28 of the receipt of the petition. If granted, the Director shall have 45 days from the date of granting the request to
29 issue a ruling on the merits of the request.
- 30 (k) A declaratory ruling, or failure to issue a declaratory ruling, is subject to judicial review as provided in G.S.
31 150B-4(a)(1).

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33 *History Note:* *Filed as an Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on*
34 *July 3, 1978;*
35 *Statutory Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449; 143-58.4(c); 143B-*
36 *344.44(b)(3); 150B-4;*
37 *Made Permanent Eff. July 3, 1978;*

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Readopted Eff. April 1, 2021.

04 NCAC 12D .0133 IS ADOPTED AS PUBLISHED IN 35:08 NCR 831 WITH CHANGES AS FOLLOWS:

04 NCAC 12D .0133 SUBMISSION OF REQUEST FOR DECLARATORY RULING

(a) All requests for a declaratory ruling shall be filed in accordance with Rule .0101 of this Section.

(b) All requests for declaratory rulings shall include the following:

(1) the name and address of petitioner(s);

(2) the statute, rule, or order upon which a ruling is desired;

(3) a ~~concise~~ statement as to whether the request is for a ruling on the validity of a rule or on the applicability of a statute, rule, or order to a given factual situation;

(4) arguments or data demonstrating that the petitioner is aggrieved by the statute, rule, or order, or by its potential application to the petitioner;

(5) a statement of the consequences of failure to issue a declaratory ruling in favor of the petitioner;

(6) a statement of the desired outcome; and

(7) a statement of whether an oral argument is desired, and if so, the reason(s) for requesting such an oral argument.

(c) A petitioner may request a declaratory ruling on the applicability of a statute, rule, or order to the petitioner, or on the validity of a Department rule. The petitioner may request both types of declaratory ruling in a single request. A request on the applicability of a statute, rule, or order shall include a ~~detailed~~ statement of the facts and documentation supporting such facts, in addition to the requirements of Paragraph (b) of this Rule. A request to determine the validity of a Department rule shall state the petitioner's reason(s) for the request and a written argument, in addition to the requirements of Paragraph (b) of this Rule.

(d) Any other person may petition to become a party by filing a motion to intervene in the manner provided in G.S. 1A-1, Rule 24. The State Energy Director shall determine whether to grant the motion to intervene in accordance with Rule 24 of the North Carolina Rules of Civil Procedure.

History Note: Authority G.S. 143-58.4(c); 143B-344.44(b)(3); ~~150B-3~~;
Eff. April 1, 2021.