

04 NCAC 12C .0108 is repealed through readoption as published in 35:08 NCR 831 as follows:

04 NCAC 12C .0108 RESIDENTIAL CONSERVATION SERVICE PROGRAM

*History Note: Filed as an Emergency Amendment [(e)] Eff. November 3, 1980 for a period of 120 days to
expire March 3, 1981;
Statutory Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449; 150B-12;
Title II, Part I (NECPA); P.L. 95-619; 92 Stat. 3206; Title V, Subtitle B (ESA),
P.L. 96-294, 94 Stat. 611;
Eff. October 1, 1980;
Emergency Amendment [(e)] Expired Eff. March 3, 1981;
Amended Eff. March 1, 1983; August 6, 1981;
Repealed Eff. April 1, 2021.*

1 **04 NCAC 12D .0101 IS AMENDED AS PUBLISHED IN 35:08 NCR 831 AS FOLLOWS:**

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3 **SUBCHAPTER 12D – PETITION FOR RULEMAKING AND ADMINISTRATIVE HEARINGS**
4 **DECLARATORY RULINGS**

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6 **04 NCAC 12D .0101 DELEGATION OF AUTHORITY FOR RULEMAKING HEARINGS AND**
7 **STATE ENERGY OFFICE CONTACT INFORMATION**

8 (a) The Secretary of Commerce the Department of Environmental Quality designates the State Energy Director of
9 the Energy Division or his or her designee as the hearing officer to conduct rulemaking hearings in matters
10 pertaining to rules and regulations of the State Energy Division Office.

11 (b) All notices required by the rules in this Subchapter to be submitted to the State Energy Office or the Financial
12 Services Division shall be made to: The North Carolina State Energy Office, 1613 Mail Service Center, Raleigh,
13 NC 27699-1613. The physical address of the State Energy Office is 217 W. Jones St., Raleigh, NC 27603.

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15 *History Note: Authority G.S.—143B-429;—143B-430;—143B-431;—143B-449;—143-58.4(c); 143B-*
16 *344.44(b)(3);150B-20;*
17 *Emergency Rule Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;*
18 *Eff. July 3, 1978;*
19 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3,*
20 *2017;*
21 *Amended Eff. April 1, 2021.*
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04 NCAC 12D .0102 IS READOPTED AS PUBLISHED IN 35:08 NCR 831 AS FOLLOWS:

04 NCAC 12D .0102 PETITION FOR RULEMAKING HEARINGS SUBMISSION AND CONTENTS
OF PETITION FOR RULEMAKING

(a) Any person wishing to submit a petition requesting the adoption, ~~amendment~~ amendment, or repeal of a rule by the ~~Secretary of Commerce~~ State Energy Office, within the Department of Environmental Quality shall petition the State Energy Director by submitting the information required in Paragraph (b) of this Rule. The petitioner shall send the petition in accordance with Rule .0101 of this Section. ~~address a petition to: Director, Energy Division, North Carolina Department of Commerce, 430 North Salisbury Street, P.O. Box 25249, Raleigh, North Carolina 27611. The outside envelope containing the petition should clearly display the notation: RULEMAKING PETITION RE and then the subject area or an indication of any other area over which the Secretary of Commerce may have rulemaking authority.~~

(b) The petition shall contain the following information:

- (1) the text of the proposed rule(s) for adoption or amendment;
- (2) a statement of the reasons for the adoption of a proposed rule(s), amendment or repeal of existing rule(s);
- (3) a statement of the effect on existing rules or orders;
- (4) any documents and data supporting the proposed rule(s);
- (5) the name(s) and addresses(es) of petitioner(s); and
- (6) a request to present the petition to the hearing officers in accordance with Rule .0101 of this Section, if desired.

(c) The petitioner may include the following information within the request:

- (1) the statutory authority for the agency to promulgate the rule(s);
- (2) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including cost factors for persons affected by the proposed rule(s);
- (3) a statement explaining the computation of the costs factors; and
- (4) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rule(s).

(d) The State Energy Director shall return petitions that do not contain the information required by Paragraph (b) of this Rule to the petitioner.

History Note: Filed as an Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;
Statutory Authority G.S. ~~143B-429; 143B-430; 143B-431; 143B-449; ÷ 143-58.4(c); 143B-344.44(b)(3); 150B-20;~~
Made Permanent Eff. July 3, 1978;
Readopted Eff. April 1, 2021.

1 **04 NCAC 12D .0103 IS REPEALED THROUGH READOPTION AS PUBLISHED IN 35:08 NCR 831 AS**
2 **FOLLOWS:**

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4 **04 NCAC 12D .0103 CONTENTS OF PETITION**

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6 *History Note: Filed as an Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on*
7 *July 3, 1978;*
8 *Statutory Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449;*
9 *Made Permanent Eff. July 3, 1978;*
10 *Repealed Eff. April 1, 2021.*

1 04 NCAC 12D .0116 IS READOPTED AS PUBLISHED IN 35:08 NCR 831 AS FOLLOWS:

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3 04 NCAC 12D .0116 ~~SUBMISSION OF REQUEST FOR RULING~~ ISSUANCE OF DECLARATORY
4 RULINGS

5 All requests for declaratory rulings shall be directed to the Secretary of Commerce and mailed to the Director of the
6 Energy Division, 430 N. Salisbury Street, P.O. Box 25249, Raleigh, North Carolina 27611. The outside envelope
7 containing the request should display the notation: REQUEST FOR DECLARATORY RULING. The request must
8 include the following information:

9 (1) ~~name and address of petitioner;~~

10 (2) ~~statute or rule to which petition relates;~~

11 (3) ~~concise statement of the manner in which petitioner is aggrieved by the rule or statute or its~~
12 ~~potential application to him;~~

13 (4) ~~a statement of whether an oral hearing is desired, and if so, the reason therefor.~~

14 At the request of any person aggrieved, as defined in G.S. 150B-2(6), the Secretary of the Department of
15 Environmental Quality may issue a declaratory ruling as provided in G.S. 150B-4 and the rules of this Section.

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19 *History Note:* *Filed as an Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on*
20 *July 3, 1978;*

21 *Statutory Authority* *G.S. ~~143B 429; 143B 430; 143B 431; 143B 449; 143-58.4(c); 143B-~~*
22 *~~344.44(b)(3); 150B-3;~~*

23 *Made Permanent Eff. July 3, 1978;*

24 *Readopted Eff. April 1, 2021.*
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REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Environmental Quality

RULE CITATION: 04 NCAC 12D .0117

DEADLINE FOR RECEIPT: Friday, March 12, 2021

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

End (c)(4) with a period, rather than a semi-colon.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Friday, February 26, 2021

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

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3 **04 NCAC 12D .0117 DISPOSITION OF REQUEST FOR DECLARATORY RULING**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (4) that the factual situation presented as the subject of the declaratory ruling was specifically
37 considered upon the adoption of the rule being questioned, as evidenced by the rulemaking record;

1 (d) The Department shall keep a record of each request for declaratory ruling, which shall include the following
2 items:

- 3 (1) the request for a ruling;
- 4 (2) any written submission by a party;
- 5 (3) the facts on which the ruling was based;
- 6 (4) any transcripts of oral proceedings, if available, and recordings of oral arguments;
- 7 (5) any other information such as documents, photographs, recordings, maps, plats, articles, and
8 studies considered by the Director in the making of the decision; and
- 9 (6) the declaratory ruling, or the decision to decline to issue a declaratory ruling, together with the
10 reasons therefore.

11 (e) The Department shall notify the petitioner in writing of the Director's decision on the request for declaratory
12 ruling, including the basis for the decision.

13 (f) For purposes of this Section, a declaratory ruling shall be deemed to be in effect until:

- 14 (1) the statute or rule interpreted by the declaratory ruling is repealed or the relevant provisions of the
15 statute or rule are amended or altered;
- 16 (2) any court of the Appellate Division of the General Courts of Justice construes the statute or rule
17 that is the subject of a declaratory ruling to be irreconcilable with the declaratory ruling; or
- 18 (3) any court sets aside the declaratory ruling in litigation between the Department and the party
19 requesting the ruling.

20 (g) Any Division of the Department may be a party to any request for declaratory ruling upon written request. The
21 request shall be made to the Director within five days of receipt of notice of the request for a declaratory ruling.

22 (h) Upon written request, the petitioner(s), intervener(s), and the Division each shall be allowed to present oral
23 arguments to the Director. No party shall offer testimony or conduct cross-examination before the Director.

24 (i) The Director shall issue a decision on whether to grant or deny the request for declaratory ruling within 30 days
25 of the receipt of the petition. If granted, the Director shall have 45 days from the date of granting the request to
26 issue a ruling on the merits of the request.

27 (k) A declaratory ruling, or failure to issue a declaratory ruling, is subject to judicial review as provided in G.S.
28 150B-4(a)(1).

30 *History Note: Filed as an Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on*
31 *July 3, 1978;*

32 *Statutory Authority G.S. ~~143B 429; 143B 430; 143B 431; 143B 449; 143-58.4(c); 143B-~~*
33 *~~344.44(b)(3); 150B-4;~~*

34 *Made Permanent Eff. July 3, 1978;*

35 *Readopted Eff. April 1, 2021.*

04 NCAC 12D .0132 IS ADOPTED AS PUBLISHED IN 35:08 NCR 831 AS FOLLOWS:

04 NCAC 12D .0132 DISPOSITION OF PETITIONS FOR RULEMAKING

(a) If the State Energy Director determines the petition to be complete in accordance with Rule .0102 of this Section, the Director shall notice a hearing at least 15 days before the hearing's scheduled date.

(b) The petitioner shall be afforded the opportunity to present the petition to the Director if so requested in accordance with Rule .0102(b)(6) of this Section. The State Energy Office may also make a presentation to the Director.

(c) The Director shall allow one interested person to present the viewpoint of those who oppose initiating rulemaking. The Director shall determine whether additional interested persons are permitted to make oral presentations during the hearing. Interested persons shall request the opportunity to make a presentation to the Director through the State Energy Office, in accordance with Rule .0101 of this Section, at least five days prior to the scheduled hearing. The request shall:

(1) state the interest of the person in the petition for rulemaking;

(2) state the person's position on the petition; and

(3) be accompanied by any supporting materials.

History Note: Authority G.S.-143-58.4(c); 143B-344.44(b)(3);150B-20;

Adopted Eff. April 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Environmental Quality

RULE CITATION: 04 NCAC 12D .0133

DEADLINE FOR RECEIPT: Friday, March 12, 2021

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

In (b)(3), delete or define "concise"

In (c), line 18, delete or define "detailed"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Friday, February 26, 2021

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