

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

- (a) The State Energy Director shall make a determination on the completeness of the request for a declaratory ruling based on Rule .0133 of this Section.
- (b) Before deciding the merits of the request, and upon consideration of the complete request for a declaratory ruling, the Director shall determine if additional information or presentation(s) are needed and if so:
- (1) request additional written submissions from the petitioner(s);
 - (2) request a written response from the State Energy Office staff or any other person; and
 - (3) hear oral arguments from the petitioner(s), interveners, and the State Energy Office staff or their legal counsel.
- (c) The Director shall decline to issue a declaratory ruling if any of the following are found:
- (1) that there has been a similar determination in a previous contested case or declaratory ruling;
 - (2) that the matter is the subject of a pending contested case, hearing, or litigation in any North Carolina or federal court;
 - (3) that no genuine controversy exists as to the application of a statute, rule, or order to the specific factual situation presented; or
 - (4) that the factual situation presented as the subject of the declaratory ruling was specifically considered upon the adoption of the rule being questioned, as evidenced by the rulemaking record.
- (d) The Department shall keep a record of each request for declaratory ruling, which shall include the following items;
- (1) the request for a ruling;
 - (2) any written submission by a party;
 - (3) the facts on which the ruling was based;
 - (4) any transcripts of oral proceedings, if available, and recordings of oral arguments;
 - (5) any other information such as documents, photographs, recordings, maps, plats, articles, and studies considered by the Director in the making of the decision; and
 - (6) the declaratory ruling, or the decision to decline to issue a declaratory ruling, together with the reasons therefore.
- (e) The Department shall notify the petitioner in writing of the Director's decision on the request for declaratory ruling, including the basis for the decision.
- (f) For purposes of this Section, a declaratory ruling shall be deemed to be in effect until:
- (1) the statute or rule interpreted by the declaratory ruling is repealed or the relevant provisions of the statute or rule are amended or altered;
 - (2) any court of the Appellate Division of the General Courts of Justice construes the statute or rule that is the subject of a declaratory ruling to be irreconcilable with the declaratory ruling; or
 - (3) any court sets aside the declaratory ruling in litigation between the Department and the party requesting the ruling.
- (g) Any Division of the Department may be a party to any request for declaratory ruling upon written request. The request shall be made to the Director within five days of receipt of notice of the request for a declaratory ruling.
- (h) Upon written request, the petitioner(s), intervener(s), and the Division each shall be allowed to present oral arguments to the Director. No party shall offer testimony or conduct cross-examination before the Director.
- (i) The Director shall issue a decision on whether to grant or deny the request for declaratory ruling within 30 days of the receipt of the petition. If granted, the Director shall have 45 days from the date of granting the request to issue a ruling on the merits of the request.
- (k) A declaratory ruling, or failure to issue a declaratory ruling, is subject to judicial review as provided in G.S. 150B-4(a)(1).

History Note: *Authority G.S. 143-58.4(c); 143B-344.44(b)(3); 150B-4;*
Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;
Eff. July 3, 1978;
Readopted Eff. April 1, 2021.