

10A NCAC 01A .0108 DECLARATORY RULINGS

(a) The Secretary or his designee shall have the power to make declaratory rulings. All requests for declaratory rulings shall be by written petition and shall be submitted to:

Staff Attorney for Administrative Procedures
Department of Human Resources
101 Blair Drive
Raleigh, North Carolina 27603

(b) Every request for a declaratory ruling must include the following information:

- (1) the name and address of the petitioner,
- (2) the statute or rule to which the petition relates,
- (3) a concise statement of the manner in which the petitioner is aggrieved by the rule or statute or its potential application to him, and
- (4) the consequences of a failure to issue a declaratory ruling.

(c) Whenever the Secretary or his designee believes for good cause that the issuance of a declaratory ruling is undesirable, he may refuse to issue one. When good cause is deemed to exist, the Secretary or his designee shall notify in writing the petitioner and the Staff Attorney for administrative procedures of his decision, stating reasons for the denial of a declaratory ruling. The Secretary or his designee may refuse to consider the validity of a rule:

- (1) unless the petitioner shows that the circumstances are so changed since adoption of the rule that such a ruling would be warranted,
- (2) unless the rule making record evidences a failure by the agency to consider specified relevant factors,
- (3) if a factual situation similar to that being raised for a declaratory ruling was specifically considered upon adoption of the rule being questioned as evidenced by the rule making record, or
- (4) if circumstances stated in the request or otherwise known to the agency show that a contested case hearing would presently be appropriate.

(d) Where a declaratory ruling is deemed appropriate, the Secretary or his designee shall issue the ruling within 60 days of the receipt of the petition.

(e) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedure as may be deemed appropriate, in the discretion of the Secretary or his designee in the particular case.

(f) The Secretary or his designee may issue notice to persons who might be affected by the ruling that written comments may be submitted or oral presentations received at a scheduled hearing.

(g) A record of all declaratory ruling proceedings shall be maintained by the Staff Attorney for administrative procedures and shall be available for public inspection during regular business hours. This record shall contain:

- (1) the original request,
- (2) the reasons for refusing to issue a ruling when the request is denied,
- (3) all written memoranda and information submitted,
- (4) any written minutes or audio tape or other record of the oral hearing, and
- (5) a statement of the ruling when the request is granted.

*History Note: Authority G.S. 143B-10(j)(2); 150B-11; 150B-17;
Eff. February 1, 1976;
Amended Eff. November 1, 1989; April 1, 1985;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 23,
2017.*