

01 NCAC 01B .0603 DISPOSITION OF REQUESTS

(a) When the Secretary of Administration or the Secretary's designee deems it appropriate to issue a declaratory ruling, the Secretary shall issue such declaratory ruling within 60 days of the receipt of the REQUEST FOR DECLARATORY RULING.

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

(c) The Secretary shall proceed to issue a declaratory ruling where the person requesting the ruling shows that, with regard to the following facts presented:

- (1) the rule in question is unclear on its face;
- (2) circumstances are so changed since the adoption of the rule that a declaratory ruling is warranted;
- (3) the factors specified in the request were not given appropriate consideration by the agency at the time the rule was adopted;
- (4) the statute administered by the agency is unclear in its application to the requesting person's facts, or
- (5) a fair question exists regarding the validity of the agency's rule due to:
 - (A) an absence of statutory authority for the agency's adoption of the rule;
 - (B) irregularities in the agency's rule-making proceedings; or
 - (C) improper filing or distribution of the rule after the agency's adoption thereof.

(d) Whenever the Secretary of Administration believes "for good cause" that the issuance of a declaratory ruling is undesirable, the Secretary may refuse to issue such ruling. The Secretary shall notify in writing, the person requesting the ruling, stating the reasons for the denial of the request.

(e) For purposes of Subpart (d) of this Rule, the Secretary of Administration will ordinarily refuse to issue a declaratory ruling:

- (1) where there has been a similar controlling factual determination in a contested case;
- (2) the rule-making record shows that the factual issues raised by the request were specifically considered prior to adoption of the rule; or
- (3) where the subject matter of the request is involved in pending litigation in any state or federal court in North Carolina.

(f) If the agency finds evidence that the factors listed in Subparagraphs (c)(1), (2), or (3) of this Rule exist beyond the specific facts presented in a particular petition for a declaratory ruling, the agency shall consider rule-making proceedings on the rule.

*History Note: Authority G.S. 150B-4;
Eff. July 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.*