

SUBCHAPTER 12D – PETITION FOR RULEMAKING AND DECLARATORY RULINGS

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

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

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

History Note: Authority G.S. 143-58.4(c); 143B-344.44(b)(3); 150B-20;
Emergency Rule Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;
Eff. July 3, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017;
Amended Eff. April 1, 2021.

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

(a) Any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule by the 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.

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

04 NCAC 12D .0103 CONTENTS OF PETITION

History Note: Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449;
Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;
Eff. July 3, 1978;
Repealed Eff. April 1, 2021.

04 NCAC 12D .0104 DISPOSITION OF PETITIONS

04 NCAC 12D .0105 TIMING OF NOTICE

04 NCAC 12D .0106	NOTICE MAILING LIST
04 NCAC 12D .0107	ADDITIONAL INFORMATION
04 NCAC 12D .0108	REQUEST TO PARTICIPATE
04 NCAC 12D .0109	CONTENTS OF REQUEST
04 NCAC 12D .0110	RECEIPT OF REQUEST: SPECIFIC TIME LIMITS
04 NCAC 12D .0111	WRITTEN SUBMISSIONS
04 NCAC 12D .0112	PRESIDING OFFICER; POWERS AND DUTIES
04 NCAC 12D .0113	STATEMENT OF REASONS FOR DECISION
04 NCAC 12D .0114	RECORD OF PROCEEDINGS
04 NCAC 12D .0115	SUBJECTS OF DECLARATORY RULINGS

History Note: Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449;
Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;
Eff. July 3, 1978;
Expired Eff. November 1, 2017 pursuant to G.S. 150B-21.3A.

04 NCAC 12D .0116 ISSUANCE OF DECLARATORY RULINGS

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

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

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.

04 NCAC 12D .0118 RECORD OF DECISION
04 NCAC 12D .0119 DEFINITION

History Note: Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449; Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978; Eff. July 3, 1978; Expired Eff. November 1, 2017 pursuant to G.S. 150B-21.3A.

04 NCAC 12D .0120 RIGHT TO ADMINISTRATIVE HEARING IN A CONTESTED CASE

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. 150B-23; 143B-429; 143B-430; 143B-431; 143B-449; Made Permanent Eff. July 3, 1978; Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c).

04 NCAC 12D .0121 REQUEST FOR ADMINISTRATIVE HEARING IN A CONTESTED CASE

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; Made Permanent Eff. July 3, 1978; Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c).

04 NCAC 12D .0122 GRANTING OR DENYING HEARING REQUESTS

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; Made Permanent Eff. July 3, 1978; Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c).

04 NCAC 12D .0123 NOTICE OF HEARING

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;
Made Permanent Eff. July 3, 1978;
Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c).

04 NCAC 12D .0124 WHO SHALL HEAR CONTESTED CASES

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-30; 143B-431; 143B-449;
Made Permanent Eff. July 3, 1978;
Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c).

04 NCAC 12D .0125 PETITION FOR INTERVENTION

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;
Made Permanent Eff. July 3, 1978;
Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c).

04 NCAC 12D .0126 TYPES OF INTERVENTION

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;
Made Permanent Eff. July 3, 1978;
Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c).

04 NCAC 12D .0127 DISQUALIFICATION OF HEARING OFFICERS

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;
Made Permanent Eff. July 3, 1978;
Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c).

04 NCAC 12D .0128 FAILURE TO APPEAR

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;
Made Permanent Eff. July 3, 1978;
Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c).

04 NCAC 12D .0129 SIMPLIFICATION OF ISSUES

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;
Made Permanent Eff. July 3, 1978;
Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c).

04 NCAC 12D .0130 SUBPOENAS

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;
Made Permanent Eff. July 3, 1978;
Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c).

04 NCAC 12D .0131 FINAL DECISIONS IN ADMINISTRATIVE HEARINGS

History Note: Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449;
Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;
Eff. July 3, 1978;
Expired Eff. November 1, 2017 pursuant to G.S. 150B-21.3A.

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;
Eff. April 1, 2021.

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 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 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);
Eff. April 1, 2021.

