

10A NCAC 63B .0108 DECLARATORY RULINGS

(a) The director of the Division shall have the power to make declaratory rulings. All requests for declaratory rulings shall be made by written petition and shall be submitted to the Division at the address shown in 10A NCAC 63B .0101(a).

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

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

(c) Whenever the director believes for good cause that the issuance of a declaratory ruling is undesirable, he may refuse to issue one. The director shall then notify the petitioner and the hearing office in writing of his decision, stating the reasons for the denial. The director may refuse to issue a declaratory ruling:

- (1) unless the petitioner shows that the circumstances are so changed since adoption of the rule that such a ruling would be warranted;
- (2) if there has been a similar controlling factual determination in a contested case, or if the question being raised was specifically considered upon adoption of the rule being questioned as evidenced by the rule-making record; or
- (3) if the circumstances show that a contested case hearing would be appropriate.

(d) Where a declaratory ruling is appropriate, the director of the Division 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 by the director in that particular case.

(f) The director of the Division 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 hearing office and shall be available for public inspection during regular business hours. This record shall include:

- (1) the original request;
- (2) the reasons for refusing to issue a ruling, if applicable;
- (3) all written memoranda and information submitted;
- (4) any transcript or recording of an oral hearing; and
- (5) a statement of the ruling.

*History Note: Authority G.S. 143B-157; 150B-4;
Eff. February 1, 1976;
Readopted Eff. November 16, 1977;
Amended Eff. August 1, 2002; April 1, 1990; February 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*