

09 NCAC 06B .1203 RESPONSE TO A REQUEST FOR A DECLARATORY RULING

(a) The State CIO shall consider the request within 30 days of receipt. The State CIO shall issue a ruling except:

- (1) When the State CIO finds that the person making the request is not a "person aggrieved," as defined in G.S. 150B-2(6);
- (2) When the State CIO finds, in a request concerning the validity of a rule, that the rulemaking record shows that the agency considered all factors identified by the petitioner as specific or relevant when the rule in question was adopted;
- (3) When the State CIO finds that the person requesting the ruling is not directly or indirectly affected substantially in his person, property, or public office or employment by the rule, statute, or order of the department which is the subject of the request;
- (4) When the petition does not state with enough specificity the factual situation involved, or the question is presented in such a manner that the State CIO cannot determine what the question is, or that the State CIO cannot respond with a specific ruling that will be binding on all parties;
- (5) When the State CIO has made a determination in a similar contested case, or where the factual context being raised for a declaratory ruling was specifically considered upon the adoption of the rule or directive being questioned, as evidenced by the rulemaking record; or
- (6) Where the subject matter of the request is involved in pending litigation or contested case in any state or federal court in North Carolina.

(b) The State CIO shall, not later than the 30th day after receiving such a request, deposit in the United States mail, postage prepaid, a written statement addressed to the person making the request and setting forth the ruling on the merits of the request for a declaratory ruling, or setting forth the reason the ruling was not made, as the case may be. The State CIO may rule at any meeting convened to consider the request, or defer the ruling until a later date, but not later than the 30th day after the request for a ruling is received. The State CIO may gather additional information, may give notice to other persons and may permit such other persons to submit information or arguments under such conditions as are set forth in any notice given to the requesting party.

(c) Whenever the State CIO believes for good cause that the issuance of a declaratory ruling is undesirable, he may refuse to do so. When good cause for refusing to issue a declaratory ruling is deemed to exist, the State CIO shall notify the petitioner of his decision in writing, stating reasons for the denial of a declaratory ruling.

(d) The State CIO shall consider a request to make a declaratory ruling on the validity of a rule only when the petitioner shows that circumstances are so changed since adoption of the rule that such a ruling would be warranted, or that the rule-making record for the rule evidences a failure by the agency to consider facts presented in the petition at the time of adoption of the rule. The petitioner shall state in his request the consequences of a failure to issue a ruling.

History Note: *Authority G.S. 150B-4;*
 Eff. September 1, 2013;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25,
 2015.