

10A NCAC 45B .0104 DECLARATORY RULINGS

- (a) The Department shall in accordance with G.S. 150B-4 issue declaratory rulings concerning rules found in 15A NCAC 13, 15A NCAC 18, and 10A NCAC 39 through 47.
- (b) All requests for declaratory rulings shall be by written petition and shall be submitted to: Division of Public Health, 1915 Mail Service Center, Raleigh, North Carolina 27699-1915.
- (c) 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.
- (d) The Department shall refuse to issue a declaratory ruling whenever the Department believes for good cause that the issuance of a declaratory ruling is undesirable. When good cause is deemed to exist, the Department shall notify the petitioner of the decision in writing, stating the reasons for the denial of a declaratory ruling. The Department shall issue a declaratory ruling under the following circumstances:
- (1) the petitioner shows that the circumstances are so changed since adoption of the rule that such a ruling would be warranted;
 - (2) the rule making record evidences a failure by the agency to consider specified relevant factors.
- (e) The Department shall not issue a declaratory ruling under the following circumstances:
- (1) if there has been a similar controlling factual determination in a contested case, or if the factual context being raised for a declaratory ruling was specifically considered upon adoption of the rule being questioned as evidenced by the rule making record; or
 - (2) if circumstances stated in the request or otherwise known to the agency show that a contested case hearing would presently be appropriate.
- (f) 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 Department, in the particular case.
- (g) The Department 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.

*History Note: Authority G.S. 150B-4;
Eff. February 1, 1976;
Amended Eff. March 1, 1987; December 22, 1980;
Transferred and Recodified from 10 NCAC 4B .0108 Eff. April 4, 1990;
Amended Eff. November 1, 2005; December 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015.*