

21 NCAC 42K .0703 RESPONSE TO THE REQUEST

(a) Upon receipt of a Request for Declaratory Ruling, the Board shall determine whether a ruling is appropriate under the facts stated.

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

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

(c) When the Board determines for good cause that the issuance of a declaratory ruling is undesirable, the Board shall notify, in writing, the person requesting the ruling, stating the reasons for the denial of the request. The Board will ordinarily decline to issue a declaratory ruling where:

- (1) there has been a similar controlling factual determination made by the Board 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) the subject-matter of the request is involved in pending litigation in any state or federal court in North Carolina.

(d) Prior to issuing a declaratory ruling, the Board may give notice of the declaratory proceedings to any person it deems appropriate and may direct that fact-finding proceedings appropriate to the circumstances of the particular request be conducted. The proceedings may consist of written submissions, an oral hearing, or other appropriate procedures. Any proceedings conducted by the Board shall be scheduled to provide the desired facts to the Board so that a decision on the declaratory ruling request may be issued within 60 days after receipt of the request.

(e) If the Board finds evidence that the factors listed in Subparagraphs (b)(1), (2), or (3) of this Rule exist or potentially exist despite a lack of evidence of the existence of such factors presented in a particular petition for a declaratory ruling, the Board shall consider rule-making proceedings on the rule.

History Note: Authority G.S. 150B-4;

Eff. June 1, 1989;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.