21 NCAC 26 .0108 is proposed for adoption as follows:

21 NCAC 26 .0108 DECLARATORY RULING PROCEDURES

(a) All requests for declaratory rulings shall be in writing and mailed to the Board at the Board's address.

(b) Each request for a declaratory ruling shall include the following information:

(1) the name and address of the person requesting the ruling;

(2) the statute or rule to which the request relates;

(3) a concise statement of the manner in which the requesting person is aggrieved by the rule or statute or its potential application to him or her;

(4) names and addresses of additional third persons known to the person aggrieved who may possibly be affected by the requested ruling;

(5) a statement of all material facts;

(6) a statement whether or not the person aggrieved is aware of any pending Board action or court action that may bear on the applicability of the statute or rule to the person's particular situation; and

(7) a statement of the arguments and legal authority supporting the person's position on the applicability of this statute or ~~rule; and~~ rule.

The petitioner shall sign and verify the request before an officer qualified to administer oaths that the information supplied in the request is true and accurate.

(c) Within 30 days of receipt of a request for a declaratory ruling, the Board shall determine whether a ruling is appropriate under the facts stated.

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

(1) the rule or statute in question is unclear on its face;

(2) circumstances are so changed since the adoption of a 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 rule or statute is unclear in its application to the requesting person's facts; or

(5) a fair question exists regarding the validity of the rule because of an absence of authority for the Board's adoption of the rule or other irregularities in the Board's rule-making proceedings.

(e) The Board shall not issue a declaratory ruling when the petitioner or his or her request is the subject of, or materially related to, an investigation by the Board or contested case before the Board.

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

(1) there has been a similar controlling factual determination made by the Board;

(2) the rule-making record shows that the factual issues raised by the request were specifically considered prior to, or at the time of adoption of the rule;

(3) the subject matter of the request is involved in pending litigation in any state or federal court in North Carolina, or pending legislation or rulemaking;

(4) the request does not comply with the procedural guidelines within Paragraphs (a) and (b) of this Rule;

(5) the Board has previously issued a declaratory ruling on substantially similar facts;

(6) the Board has previously issued a final agency decision in a contested case on substantially similar facts;

(7) the subject matter is one concerning which the Board is without authority to make a decision binding the Board or the petitioner;

(8) the petitioner is not aggrieved by the rule or statute in question or otherwise has no interest in the subject matter of the request; or

(9) there is reason to believe that the petitioner or some other person or entity materially connected to the subject matter of the request is acting in violation of the G.S. Chapter 89A or the rules adopted by the Board.

The denial of the request is immediately subject to judicial review in accordance with Article 4 of G.S. Chapter 150B.

(g) Prior to issuing a declaratory ruling, the Board may give notice of the declaratory proceedings to any persons it deems appropriate and may direct that fact-finding proceedings appropriate to the circumstances of the particular request be conducted by the Board. The proceedings may consist of written submissions, an oral hearing, or other appropriate procedures. A written ruling on the merits shall be issued within 45 days of the decision to grant the request.

(h) If the Board finds evidence that the factors listed in Subparagraphs (d)(1), (2), or (3) of this Rule exist or potentially exist beyond the specific facts presented in a particular petition for declaratory ruling, the Board shall consider rule-making proceedings on the rule.

(i) A record of each declaratory ruling and the procedures conducted therefor will be maintained by the Board. The record will contain:

(1) the request for a declaratory ruling;

(2) all written submissions filed in the request, whether filed by the person requesting the ruling or by any other person;

(3) a record or summary of oral presentations, if any; and

(4) a copy of the declaratory ruling.

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