

**HOMELAND SECURITY AND EMERGENCY
MANAGEMENT DEPARTMENT[605]**

Adopted and Filed

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 17A.3, the Homeland Security and Emergency Management Department hereby amends Chapter 3, “Declaratory Orders,” Iowa Administrative Code.

These amendments implement changes that have been made in Iowa Code chapter 29C that transformed the Homeland Security and Emergency Management Division of the Department of Public Defense to a stand-alone department and update the physical address of the Department.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 14, 2015, as **ARC 2189C**. A public hearing was held on November 3, 2015. No public comment was received during the comment period or during the public hearing. These amendments are identical to those published under Notice of Intended Action.

The Department of Homeland Security and Emergency Management adopted these amendments on November 18, 2015.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 29C.

These amendments will become effective January 13, 2016.

The following amendment is adopted.

Amend **605—Chapter 3** as follows:

CHAPTER 3
DECLARATORY ORDERS

605—3.1(17A) Petition for declaratory order. Any person may file a petition with the homeland security and emergency management ~~division~~ department for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the division department at Homeland Security and Emergency Management ~~Division~~ Department, Hoover State Office Building 7900 Hickman Road, Suite 500, Des Moines Windsor Heights, Iowa 50319 50324. A petition is deemed filed when it is received by that office. The division department shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division department an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

<u>HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION DEPARTMENT</u>	
Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	} PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. to 8. No change.

The petition must be dated and signed by the petitioner or the petitioner’s representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner’s representative and a statement indicating the person to whom communications concerning the petition should be directed.

605—3.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the homeland security and emergency management division department shall give notice of the petition to all persons not served by the petitioner pursuant to 605—3.6(17A) to whom notice is required by any provision of law. The division department may also give notice to any other persons.

605—3.3(17A) Intervention.

3.3(1) No change.

3.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the homeland security and emergency management division department.

3.3(3) A petition for intervention shall be filed at the Homeland Security and Emergency Management Division Department, Hoover State Office Building 7900 Hickman Road, Suite 500, Des Moines Windsor Heights, Iowa 50319 50324. Such a petition is deemed filed when it is received by that office. The division department will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

<u>HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION DEPARTMENT</u>	
Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	}
PETITION FOR INTERVENTION	

The petition for intervention must provide the following information:

1. to 6. No change.

The petition must be dated and signed by the intervenor or the intervenor’s representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor’s representative, and a statement indicating the person to whom communications should be directed.

605—3.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The homeland security and emergency management division department may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

605—3.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Administrator Director, Homeland Security and Emergency Management Division Department, Hoover State Office Building 7900 Hickman Road, Suite 500, Des Moines Windsor Heights, Iowa 50319 50324.

605—3.6(17A) Service and filing of petitions and other papers.

3.6(1) No change.

3.6(2) Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Homeland Security and Emergency Management Division Department, Hoover State Office Building 7900 Hickman Road, Suite 500, Des Moines Windsor Heights, Iowa 50319 50324. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the division department.

3.6(3) No change.

605—3.7(17A) Consideration. Upon request by petitioner, the homeland security and emergency management division department must schedule a brief and informal meeting between the original petitioner, all intervenors, and the division department, a member of the division department, or a member of the staff of the division department, to discuss the questions raised. The division department may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the division department by any person.

605—3.8(17A) Action on petition.

3.8(1) Within the time allowed by Iowa Code section 17A.9(5), after receipt of a petition for a declaratory order, the ~~administrator~~ director or designee shall take action on the petition as required by Iowa Code section 17A.9(5).

3.8(2) No change.

605—3.9(17A) Refusal to issue order.

3.9(1) The homeland security and emergency management ~~division~~ department shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. No change.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the ~~division~~ department to issue an order.
3. The ~~division~~ department does not have jurisdiction over the questions presented in the petition.
4. to 7. No change.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a ~~division~~ department decision already made.
9. No change.
10. The petitioner requests the homeland security and emergency management ~~division~~ department to determine whether a statute is unconstitutional on its face.

3.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final ~~division~~ department action on the petition.

3.9(3) No change.

605—3.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

605—3.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

605—3.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the homeland security and emergency management ~~division~~ department, the petitioner, and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the homeland security and emergency management ~~division~~ department. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code chapter 17A.

[Filed 11/18/15, effective 1/13/16]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/9/15.