Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 261—Chapter 198
"Petition for Declaratory Order"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 15.106A
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 17A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

October 22, 2024	1963 Bell Avenue
9:30 to 9:45 a.m.	Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Economic Development Authority (Authority) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Email: lisa.connell@iowaeda.com

Purpose and Summary

Pursuant to Executive Order 10, the Authority proposes to rescind Chapter 198 and adopt a new chapter in lieu thereof. The new chapter will remove language that repeats statute or is otherwise unnecessary.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Persons who want to petition the Authority for a declaratory order may incur the costs described below.

- Classes of persons that will benefit from the proposed rulemaking:

The proposed rulemaking will benefit persons interested in participating in the petition for declaratory order procedures of the Authority.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Members of the public who want to petition the Authority for a declaratory order may incur costs to draft and submit petitions.

- Qualitative description of impact:

The proposed rulemaking will provide clarity about the form, contents, and filing of petitions for declaratory orders, the procedural rights of persons in relation to the petitions, and the disposition of

the petitions, as well as the classes of circumstances in which the Authority will not issue a declaratory order.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Authority staff time is required to review, evaluate, and respond to petitions for declaratory orders. No additional costs are imposed by the proposed rulemaking compared to the current chapter.

- Anticipated effect on state revenues:

The rulemaking has no anticipated effect on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Costs to participate in the petition for declaratory order process are minimal and incurred only by those who choose to participate. The proposed rulemaking will provide clarity about the Authority's procedures.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Authority has not identified any less costly methods or less intrusive methods of describing the form and procedures for petitions for declaratory orders.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Authority did not consider any alternative methods.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Authority did not consider any alternative methods because the Authority did not identify any less costly or less intrusive methods.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rules do not have a substantial impact on small business. The rules do not establish compliance or reporting requirements. The rules do not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 261—Chapter 198 and adopt the following **new** chapter in lieu thereof:

CHAPTER 198
PETITION FOR DECLARATORY ORDER

261—198.1(17A) Petition for declaratory order. Any person may file a petition with the authority for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the authority at Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, Attn: Legal Counsel. Petitions may also be delivered by email to an email address supplied by the authority's legal counsel. A petition is deemed filed when it is received by the authority. The authority will provide the petitioner with a file-stamped copy of the petition if the petitioner provides the authority an extra copy for this purpose. The authority will accept only typewritten petitions that substantially conform to the following form:

BEFORE THE ECONOMIC DEVELOPMENT AUTHORITY

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. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by the petitioner for a meeting provided for by rule 261—198.7(17A).

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.

261—198.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the authority shall give notice of the petition to all persons not served by the petitioner pursuant to rule 261—198.6(17A) to whom notice is required by any provision of law. The authority may give notice to any other persons.

261—198.3(17A) Intervention.

198.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order may intervene in a proceeding for a declaratory order.

198.3(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 authority.

198.3(3) A petition for intervention shall be filed at the address or email address indicated in rule 261—198.1(17A). A petition is deemed filed when it is received by the authority. The authority will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. The authority will accept only typewritten petitions that substantially conform to the following form:

BEFORE THE ECONOMIC DEVELOPMENT AUTHORITY

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. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented by the declaratory order proceeding.

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 the intervenor's representative, and a statement indicating the person to whom communications should be directed.

261—198.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The authority may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

261—198.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the address or email address indicated in rule 261—198.1(17A).

261—198.6(17A) Service and filing of petitions and other documents.

198.6(1) Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing with the authority. The party filing a document is responsible for service on all parties and other affected or interested persons.

198.6(2) All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed at the address or email address indicated in rule 261—198.1(17A). All documents are considered filed upon receipt.

261—198.7(17A) Consideration. The authority may schedule a brief and informal meeting between the original petitioner, all intervenors, and authority staff to discuss the questions raised. The authority may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the authority by any person.

261—198.8(17A) Action on petition.

198.8(1) The authority shall take action on the petition in the time frame established by Iowa Code section 17A.9(5).

198.8(2) The date of issuance of an order or of a refusal to issue an order is the date of mailing of the order or refusal or date of delivery if service is by other means unless another date is specified in the order.

261—198.9(17A) Refusal to issue order.

198.9(1) The authority shall not issue a declaratory order if 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:

a. The petition does not substantially comply with the form indicated in rule 261—198.1(17A).

b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the authority to issue an order.

c. The authority does not have jurisdiction over the questions presented in the petition.

d. The questions presented by the petition are also presented in a current rulemaking, contested case, or other authority or judicial proceeding, that may definitively resolve them.

e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct to establish the effect of that conduct or to challenge a decision the authority has already made.

i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

j. The petitioner requests the authority to determine whether a statute is unconstitutional on its face.

198.9(2) If the authority refuses to issue a declaratory order, the authority must indicate the specific grounds for the refusal. Refusal to issue a declaratory order constitutes final agency action on the petition.

198.9(3) The authority's refusal to issue a declaratory order pursuant to this provision does not preclude a petitioner from filing a new petition that seeks to eliminate the grounds for the authority's refusal to issue an order.

261—198.10(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.

261—198.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be provided promptly to the original petitioner and all intervenors.

261—198.12(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 authority, the petitioner, and any intervenors who consent to be bound 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 authority. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code section 17A.9.