

CHAPTER 4
AGENCY PROCEDURE FOR RULE MAKING, WAIVER OF RULES,
AND DECLARATORY ORDERS

DIVISION I
AGENCY PROCEDURE FOR RULE MAKING

191—4.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules proposed or adopted by the division are subject to the provisions of Iowa Code chapter 17A and the provisions of this chapter.

[ARC 4780C, IAB 11/20/19, effective 12/25/19]

191—4.2(17A) Definitions. The definitions in Iowa Code section 17A.2 are incorporated into this chapter by this reference. In addition to those definitions and the definitions in rule 191—1.1(502,505), the following definitions apply:

“*Commissioner*” means the commissioner of insurance or the commissioner’s designee. For the purposes of this chapter, “commissioner” includes both the commissioner of insurance and the administrator as defined in Iowa Code chapter 502.

“*Waiver*” means action by the division that suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term “variance” as used in Iowa Code chapter 17A is included in this definition of “waiver” for purposes of this chapter.

[ARC 4780C, IAB 11/20/19, effective 12/25/19]

191—4.3(17A) Severability. If any provision of any rule adopted by the division, or if the application of any such rule to any person or circumstance, is for any reason held to be invalid, illegal or unenforceable by any court of law, the validity, legality and enforceability of the remainder of the rule and its application to other persons or circumstances shall not be affected or impaired thereby.

[ARC 4780C, IAB 11/20/19, effective 12/25/19]

191—4.4(17A) Public rule-making docket. The division shall maintain on the division’s website a current public rule-making docket listing each pending rule-making proceeding and relevant rule-making information, including the information required by Iowa Code sections 17A.3(1) “d” and 17A.6A(2). If a rule-making docket for all agencies is maintained on the Iowa legislature’s website, the division may utilize the legislature’s docket, in whole or in part, instead of creating a duplicative separate docket.

[ARC 4780C, IAB 11/20/19, effective 12/25/19]

191—4.5(17A) Rule making.

4.5(1) Notice of proposed rule making. The division must publish a Notice of Intended Action in the Iowa Administrative Bulletin prior to the adoption of a rule unless otherwise authorized by Iowa Code section 17A.4(3). The Notice of Intended Action must include:

- a. A brief explanation of the purpose of the proposed rule;
- b. The specific legal authority for the proposed rule;
- c. Except to the extent impracticable, the text of the proposed rule;
- d. The methods that persons and agencies may use to present their views on the proposed rule; and
- e. Any other information required by statute or rule.

4.5(2) Public participation.

a. With regard to proposed rules published under Notice of Intended Action, the division must receive and consider, from any person or agency, written comments and written requests to make an oral presentation when the comments and requests are prepared and submitted in conformance with the following:

(1) Comments and requests must clearly state the name, address and telephone number of the person or agency authoring the comment or request and the number and title of the proposed rule as given in the Notice of Intended Action.

(2) If an oral presentation is requested, the requester is encouraged to set forth the general subject of the presentation.

(3) Comments and requests must be submitted as specified in the Notice of Intended Action and received no later than the date specified in the Notice. The specified date must be no less than 20 days after publication of the Notice.

b. The receipt and acceptance for consideration of written comments and written requests must be promptly acknowledged by the division.

(1) Written comments received after the deadline may be accepted by the division although their consideration is not assured.

(2) Written requests to make an oral presentation received after the deadline will not be accepted.

c. In addition to the formal procedures contained in this rule, the division may solicit viewpoints or advice concerning proposed rules through informal conferences or consultations as the division may deem desirable.

4.5(3) *Regulatory analysis.* A request for the issuance of regulatory analysis pursuant to Iowa Code section 17A.4A must be submitted to the division at the address in rule 191—1.4(502,505) or as instructed on the division's website.

4.5(4) *Concise statement.* The division must issue a concise statement of the principal reasons for and against a rule that has been adopted if the statement is requested in accordance with this subrule.

a. The request for a concise statement must:

(1) Clearly state the name, address and telephone number of the person or agency authoring the request and the number and title of the rule which is the subject of the request.

(2) Be submitted in writing to the division at the address set forth in rule 191—1.4(502,505) or as instructed on the division's website and be postmarked no later than 30 days after publication in the Iowa Administrative Bulletin of the rule that is the subject of the request for a concise statement.

b. The concise statement issued by the division in response to the request must include the following:

(1) The principal reasons for adopting the rule;

(2) An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change; and

(3) The principal reasons urged in the rule-making proceeding for and against the rule, and the division's reasons for overruling the arguments made against the rule.

c. A requested concise statement must be issued either at the time of rule adoption or within 35 days after the division receives the request.

4.5(5) *Registration for copies of Notices of Intended Action.* Any person, entity, small business, or trade or occupational association may register its name and address with the agency to receive copies of Notices of Intended Action.

a. The request must be in writing, specify whether the requester wants to receive insurance rules, securities rules, or both, and specify the number of copies of the Notice of Intended Action the requester wishes to receive.

b. The requester must reimburse the division for the actual costs incurred in providing copies.

c. The division must promptly acknowledge the receipt of the request.

4.5(6) *Records.* The division must maintain public rule-making documents and other public records related to rule making in an accessible format for public inspection.

[ARC 4780C, IAB 11/20/19, effective 12/25/19]

191—4.6(17A) Differences between adopted rule and rule proposed in Notice of Intended Action. The division shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action upon which the adopted rule is based unless the differences are within the scope of the subject matter announced in the Notice of Intended Action, are in character with the issues raised in that

Notice, and are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto.

[ARC 4780C, IAB 11/20/19, effective 12/25/19]

191—4.7(17A) Petition for rule making.

4.7(1) Any person or agency may file a petition for rule making with the division at the address disclosed in rule 191—1.4(502,505) or as instructed on the division’s website. A petition is deemed filed when it is received. The division must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose.

4.7(2) The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE IOWA INSURANCE COMMISSIONER	
Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (State subject matter).	}
	PETITION FOR RULE MAKING

4.7(3) The petition shall provide the following information in separate numbered paragraphs:

1. The petitioner’s name, address, and telephone number.
2. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation to the particular portion or portions of the rule proposed to be amended or repealed.
3. A citation to any law deemed relevant to the division’s authority to take the action urged or to the desirability of that action.
4. A brief summary of the petitioner’s arguments in support of the action urged in the petition.
5. A brief summary of any data supporting the action urged in the petition.
6. 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 proposed action which is the subject of the petition.
7. If desired, a request to meet informally with the division to discuss the petition.

4.7(4) The petition must be dated and signed by the petitioner or the petitioner’s representative. It must also include the name, mailing address, email address if available, and telephone number of the petitioner and the petitioner’s representative, and a statement indicating the person to whom communications concerning the petition should be directed.

4.7(5) The division may deny a petition because it does not substantially conform to the required form.

4.7(6) The petitioner may submit a brief in support of the action urged in the petition. The division may request a brief from the petitioner or from any other person concerning the substance of the petition.

4.7(7) Upon request by the petitioner in the petition, the division must schedule a brief and informal meeting between the petitioner and the division or a member of the division’s staff to discuss the petition. The division may request the petitioner to submit additional information or argument concerning the petition.

4.7(8) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the division must, in writing, deny the petition, and notify the petitioner of its action and the specific grounds for the denial, or grant the petition and notify the petitioner that it has instituted rule-making proceedings on the subject of the petition. The petitioner shall be deemed notified of the denial or grant of the petition on the date when the division mails or delivers the required notification to the petitioner.

[ARC 4780C, IAB 11/20/19, effective 12/25/19]

The rules in this division are intended to implement Iowa Code section 17A.7.

191—4.8 to 4.20 Reserved.

DIVISION II
WAIVER AND VARIANCE OF RULES**191—4.21(17A) Waivers.**

4.21(1) Scope. Division II of this chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the division in situations when no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede the rules in this division with respect to any waiver from that rule. Division II of this chapter shall not preclude the division from granting waivers in other contexts or on the basis of other standards if a statute or agency rule authorizes the division to do so and the division deems it appropriate to do so.

4.21(2) Authority to grant waivers. The division may grant a waiver from a rule only if the division has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The division may not waive the following categories of rules:

- a. Rules setting requirements that are created or duties that are imposed by statute.
- b. Rules that provide definitions or interpretations, set fees, clarify enforcement authority, deal with fraud or are the subject of prosecutorial discretion.
- c. Rules that merely define the meaning of a statute or other provision of law or precedent if the commissioner does not possess delegated authority to bind the courts to any extent with the commissioner's definition.

4.21(3) Criteria for order for waiver. In response to a petition completed pursuant to rule 191—4.22(17A), except for a petition seeking a waiver order issued pursuant to subrule 4.21(4), the division may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the division finds, based on clear and convincing evidence, all of the following:

- a. Application of the rule would impose an undue hardship on the person for whom the waiver is requested;
- b. Waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
- c. Provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law;
- d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested; and
- e. If the rule implements Iowa Code chapter 502 or is being applied in conjunction with implementation of Iowa Code chapter 502, the waiver is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes fairly intended by the policy and provisions of Iowa Code chapter 502.

4.21(4) Criteria for waiver related to approval of a manner of electronic delivery of notices of cancellation, nonrenewal or termination. This subrule is intended to implement Iowa Code sections 17A.9A and 505B.1.

a. For purposes of Iowa Code chapter 505B and this subrule, in addition to the definitions in rule 191—4.2(17A), the following definitions shall apply:

“Intended recipient” means the person to whom notice is required to be delivered, including but not limited to notices listed in the definition of “notice of cancellation, nonrenewal or termination” in this paragraph and in 191—paragraphs 20.80(1)“b,” 30.9(1)“b,” 35.9(1)“b,” 39.33(1)“b,” and 40.26(1)“b.”

“Notice of cancellation, nonrenewal or termination” means:

1. Notice of an insurance company's termination of an insurance policy at the end of a term or before the termination date;
2. Notice of an insurance company's decision or intention not to renew a policy; and
3. For purposes of notices required by Iowa Code chapters 505B, 508, 509B, 513B, 514, 514B, 514D, 514G, 515, 515D, 518, 518A and 519, includes but is not limited to the following:

- An insurance company's notice of cancellation, nonrenewal, suspension, exclusion, intention not to renew, failure to renew, termination, replacement, rescission, forfeiture or lapse in an annuity policy, a life insurance policy, a long-term care insurance policy, or an insurance policy other than life;
- An insurance company's rescission or discontinuance of an accident and health insurance policy;
- An insurance company's notice of cancellation of personal lines policies or contracts;
- A health maintenance organization's notice to an enrollee of cancellation or rescission of membership;
- An employer's or group policyholder's notice to an employee or member of the termination or substantial modification of the continuation of an employer group accident or health policy; or
- A carrier's advance notice to affected small employers, participants, and beneficiaries of its decision to discontinue offering a particular type of health insurance coverage.

b. This subrule shall apply to all insurance companies holding a certificate of authority to transact the business of insurance in Iowa, health maintenance organizations, employers, group policyholders, or carriers and to all requirements by statute or rule related to notices of cancellation, nonrenewal or termination. This subrule shall apply when an insurance company, health maintenance organization, employer, group policyholder, or carrier seeks the commissioner's approval of a manner for delivering by electronic means required notices of cancellation, nonrenewal or termination, as described in Iowa Code section 505B.1.

c. The commissioner, by order pursuant to this chapter, may approve a request for approval of a manner for delivering notices of cancellation, nonrenewal or termination by an electronic means if the commissioner has jurisdiction to enforce the statute or rule requiring the notice and if the requested approval is consistent with Iowa Code section 505B.1 and with this chapter.

d. In response to a petition submitted pursuant to rule 191—4.22(17A) and related statutes and rules, the commissioner may issue an order approving an insurer's proposed manner for delivering notices of cancellation, nonrenewal or termination by an electronic means rather than mail, if the commissioner finds, based on clear and convincing evidence, all of the following:

- (1) The proposed manner allows the commissioner, the insurer and the intended recipient to verify receipt by the intended recipient;
- (2) The proposed manner provides for consent, by the intended recipient, to have notices or documents delivered by electronic means, in compliance with Iowa Code chapter 505B; and
- (3) The proposed manner provides that the insurance company shall maintain adequate records of notices, receipts and consents. The records shall be available for review upon request by the commissioner and the intended recipient and be shall maintained for a period of five years from the date of cancellation, nonrenewal or termination.

e. Such an order would constitute approval by the commissioner to satisfy Iowa Code chapter 505B.

f. Although any proposed manner that complies with the above requirements may be approved, the following system is provided as an example, for purposes of guidance, of an insurer's system of verifiable receipt that will be approved by the commissioner if the system includes all of the following aspects:

- (1) The system provides that the intended recipients shall give written consent to the insurer of delivery of required notices of cancellation, nonrenewal and termination by electronic means, in compliance with Iowa Code section 505B.1.

- (2) The system provides that when an insurer is required to provide notices of cancellation, nonrenewal and termination, the insurer shall provide to the intended recipients a link to the required notice by electronic mail.

- (3) The system provides that the insurer provide intended recipients with user names and passwords to log in to the insurer's notice system website.

- (4) The system provides that the link required by subparagraph 4.21(4) "f"(2) shall be to a secure website that requires the intended recipients' user names and passwords for the intended recipients to access the insurer's notice system website and the contents of the notices.

(5) The system provides that when the intended recipients log in to the insurer’s notice system website, either the insurer’s notice to the intended recipients or the intended recipients’ online inboxes will be the first thing automatically displayed.

(6) The system provides a procedure whereby, if the intended recipients do not log in to the intended recipients’ accounts within seven days after the insurer sent the link to the intended recipients by email, the insurer shall mail paper copies of the notices to the intended recipients’ last-known physical addresses.

(7) The system provides for adequate maintenance of records by the insurer as required by subparagraph 4.21(4) “d”(3).

g. The commissioner may, upon proper request by an insurance company pursuant to rule 191—2.6(17A,22) or another applicable rule, maintain the confidentiality of information in any document or materials submitted in support of a request for approval under this rule:

(1) If release of the specific information would disclose trade secrets protected by law pursuant to Iowa Code section 22.7(3) and 191—subrule 2.12(12); or

(2) If the specific information otherwise must be withheld from public inspection pursuant to Iowa Code chapter 22 or rule 191—2.12(17A,22).

[ARC 4780C, IAB 11/20/19, effective 12/25/19]

191—4.22(17A) Petition for waiver. A petition for a waiver must be submitted in writing to the division as follows:

4.22(1) Applications. If the petition relates to an application or license, the petition must be made in accordance with the filing requirements for the application or license in question.

4.22(2) Contested cases. If the petition relates to a pending contested case, the petition must be filed in the contested case proceeding, using the caption of the contested case. The waiver petition shall be decided within the context of the contested case unless the presiding officer, other than the commissioner, determines that the petition should be referred directly to the commissioner.

4.22(3) Other. If the petition does not relate to an application or a pending contested case, the petition must be submitted to the division at the address in rule 191—1.4(502,505) or as instructed on the division’s website.

4.22(4) Content of petition. A petition for waiver must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE IOWA INSURANCE COMMISSIONER		
In the matter of: (Name of Person Requesting Waiver or Variance)	}	REQUEST FOR WAIVER OF RULE (Specify number of rule for which waiver is requested)

4.22(5) The petition shall provide the following information in separate numbered paragraphs:

1. The name, address and telephone number of the entity or person for whom a waiver is being requested, and the case number of any related contested case.

2. A description and citation of the specific rule from which a waiver is requested.

3. The specific waiver requested, including the precise scope and duration.

4. The relevant facts that the petitioner believes would justify a waiver under each of the criteria described in subrule 4.21(3). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes justify a waiver.

5. A history of any prior contacts between the division and the petitioner relating to the regulated activity, application or license affected by the proposed waiver, including a description of each affected license held by the petitioner, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the prior five years and any waivers or waiver applications filed by the petitioner with the division within the prior five years.

6. Any information known to the petitioner regarding the division's treatment of similar cases.
7. The name, address and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.
8. The name, address and telephone number of any entity or person who would be adversely affected by the granting of a waiver.
9. The name, address and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.
10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the division with information relevant to the waiver.

4.22(6) Notice. The division must acknowledge a petition upon receipt. The division must ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the division may give notice to other persons. To accomplish this notice provision, the division may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and to provide a written statement to the division attesting that notice has been provided.

[ARC 4780C, IAB 11/20/19, effective 12/25/19]

191—4.23(17A) Waiver hearing procedures and ruling.

4.23(1) Procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to agency proceedings for a waiver only when the division so provides by rule or order or is required to do so by statute.

4.23(2) Additional information. Prior to issuing an order granting or denying a waiver, the division may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the division may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the division.

4.23(3) Division discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the division, upon consideration of all relevant factors. Each petition for a waiver must be evaluated by the division based on the unique, individual circumstances set out in the petition.

4.23(4) Ruling. An order granting or denying a waiver must be in writing and must contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

4.23(5) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the division should exercise its discretion to grant a waiver from a division rule.

4.23(6) Narrowly tailored exception. A waiver, if granted, must provide the narrowest exception possible to the provisions of a rule.

4.23(7) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the division must balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

4.23(8) Conditions. The division may place any condition on a waiver that the division finds desirable to protect the public health, safety, and welfare.

4.23(9) Time period of waiver. A waiver must not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the division, a waiver may be renewed if the division finds that grounds for a waiver continue to exist.

4.23(10) Time for ruling. The division must grant or deny a petition for a waiver as soon as practicable but, in any event, must do so within 120 days of its receipt unless the petitioner agrees to a

later date. However, if a petition is filed in a contested case, the division must grant or deny the petition no later than the time at which the final decision in that contested case is issued.

4.23(11) *When deemed denied.* Failure of the division to grant or deny a petition within the required time period shall be deemed a denial of that petition by the division. However, the division shall remain responsible for issuing an order denying a waiver.

4.23(12) *Service of order.* Within seven days of its issuance, any order issued under this chapter must be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

4.23(13) *Cancellation of a waiver.* A waiver issued by the division pursuant to this chapter may be withdrawn, canceled, modified or revoked if, after appropriate notice and hearing, the division issues an order finding any of the following:

- a. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
- b. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
- c. The subject of the waiver order has failed to comply with all conditions contained in the order; or
- d. The waiver is contrary to the public health, safety and welfare in light of newly discovered evidence or changed circumstances.

4.23(14) *Violations.* Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

[ARC 4780C, IAB 11/20/19, effective 12/25/19]

The rules in this division are intended to implement Iowa Code section 17A.9A and Executive Order Number 11 (September 14, 1999).

191—4.24 to 4.36 Reserved.

DIVISION III
DECLARATORY ORDERS

191—4.37(17A) Petition for declaratory order.

4.37(1) Any person or agency may file a petition with the division for a declaratory order as to the applicability to specified circumstances of a statute, rule or order within the primary jurisdiction of the division.

4.37(2) The petition must be submitted to the division at the address provided in rule 191—1.4(502,505) or as instructed on the division’s website.

4.37(3) The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE IOWA INSURANCE COMMISSIONER	
Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	}
PETITION FOR DECLARATORY ORDER	

4.37(4) The petition for declaratory order must provide the following information in separate numbered paragraphs:

1. The petitioner’s name, address, and telephone number.
2. The citation to and the exact words, passages, sentences or paragraphs of the statute, rule, or order that is the subject of the petition.
3. A clear and concise statement of all relevant facts upon which the declaratory order is requested.

4. The questions the petitioner wants answered, stated clearly and concisely.
5. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
6. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
7. 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.
8. Any request by the petitioner for a meeting provided for by rule 191—4.43(17A).

4.37(5) The petition for declaratory order must be dated and signed by the petitioner or the petitioner's representative.

4.37(6) If applicable, the petition must also include the name, mailing address, and telephone number of the petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

4.37(7) A petition is deemed filed when it is received by the division. The division must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose.

[ARC 4780C, IAB 11/20/19, effective 12/25/19]

191—4.38(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the division must give notice of the petition to all persons not served by the petitioner pursuant to rule 191—4.42(17A) to whom notice is required by any provision of law. The division may also give notice to any other persons deemed appropriate.

[ARC 4780C, IAB 11/20/19, effective 12/25/19]

191—4.39(17A) Intervention. A person may file a petition for intervention at any time prior to issuance of an order and may be allowed to intervene in a proceeding for a declaratory order at the discretion of the division.

[ARC 4780C, IAB 11/20/19, effective 12/25/19]

191—4.40(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The division may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

[ARC 4780C, IAB 11/20/19, effective 12/25/19]

191—4.41(17A) Inquiries. Inquiries concerning the status of a declaratory proceeding may be made to the division at the address disclosed in rule 191—1.4(502,505).

[ARC 4780C, IAB 11/20/19, effective 12/25/19]

191—4.42(17A) Service and filing of petitions and other papers.

4.42(1) *When service required.* 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 its filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

4.42(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 division at the address disclosed in rule 191—1.4(502,505). All petitions, briefs, or other papers required to be served upon a party shall be filed simultaneously with the division.

4.42(3) *Method of service, time of filing, proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rule 191—3.12(17A).

[ARC 4780C, IAB 11/20/19, effective 12/25/19]

191—4.43(17A) Consideration. Upon request by the petitioner, the division must schedule an informal meeting between the original petitioner, all intervenors, and the commissioner, or a member of the commissioner's staff, to discuss the questions raised.

[ARC 4780C, IAB 11/20/19, effective 12/25/19]

191—4.44(17A) Action on petition.

4.44(1) Within the time allowed by Iowa Code section 17A.9(5), after receiving a petition for a declaratory order, the division shall take action on the petition as required by Iowa Code section 17A.9(5).

4.44(2) The date of issuance of an order is as defined in rule 191—3.2(17A).

[ARC 4780C, IAB 11/20/19, effective 12/25/19]

191—4.45(17A) Refusal to issue order.

4.45(1) The division 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 any of the following reasons:

- a.* The petition does not substantially comply with the required form.
- b.* The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by failure of the division to issue an order.
- c.* The division does not have jurisdiction over the questions presented in the petition.
- d.* The questions presented by the petition are also presented in a current rule making, contested case, or other agency 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 in an effort to establish the effect of that conduct or to challenge a division decision 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 the petitioner.
- j.* The petition requests the division to determine whether a statute is unconstitutional on its face.

4.45(2) A refusal by the division to issue a declaratory order must indicate the specific grounds for refusal and constitutes final agency action on the petition.

4.45(3) Refusal to issue a declaratory order pursuant to this rule does not preclude a petitioner from filing a new petition that seeks to eliminate the grounds for refusal to issue a ruling.

[ARC 4780C, IAB 11/20/19, effective 12/25/19]

191—4.46(17A) Contents of declaratory order—effective date.

4.46(1) In addition to the order itself, a declaratory order must contain the date of its issuance, the name of the 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.

4.46(2) A declaratory order is effective on the date of issuance.

[ARC 4780C, IAB 11/20/19, effective 12/25/19]

191—4.47(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order must be mailed or emailed by the division promptly to the original petitioner and all intervenors.

[ARC 4780C, IAB 11/20/19, effective 12/25/19]

191—4.48(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 division, 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 division. Issuance of a declaratory order constitutes final agency action on the petition.

[ARC 4780C, IAB 11/20/19, effective 12/25/19]

The rules in this division are intended to implement Iowa Code section 17A.9.

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