

CHAPTER 12
DECLARATORY ORDERS
[Prior to 11/8/06, see rule 761—10.4(17A)]

Chapter rescission date pursuant to Iowa Code section 17A.7: 8/27/30

761—12.1(17A) Definitions.

“*Declaratory order*” means the department’s interpretation of a statute, rule or order as applied to specified circumstances. A declaratory order is issued in response to a petition for declaratory order.

“*Director*” means the director of transportation or the director’s designee.

“*Petition for declaratory order*” means a formal request from a person or agency to the department asking how the department will apply a statute, rule or order based on a specific set of facts contained in the petition. The purpose of the petition is to seek binding advice from the department, not to challenge a decision that the department has already made.

[ARC 9446C, IAB 7/23/25, effective 8/27/25]

761—12.2(17A) Petition for declaratory order.

12.2(1) Any person or agency may file with the department a petition for declaratory order.

12.2(2) The petition is to be submitted to the rules administrator either by mail to Rules Administrator, Office of the Director, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; or by email to the rules administrator’s email address listed on the department’s website at iowadot.gov/administrativerules.

12.2(3) The petition is to be typewritten or legibly handwritten in ink and is to substantially conform to the following form:

IOWA DEPARTMENT OF TRANSPORTATION
800 Lincoln Way, Ames, Iowa 50010

PETITION BY (insert petitioner’s name) FOR DECLARATORY ORDER ON (insert number of statute, rule, etc. and brief description of subject matter)	}	DOCKET NO. _____ PETITION FOR DECLARATORY ORDER
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(In separate numbered paragraphs, the petition shall include the following.)

1. The petitioner’s name, address and telephone number.
2. The exact words, passages, sentences or paragraphs of statutes, rules, etc. that are the subject of the inquiry.
3. A clear, concise and complete statement of all relevant facts for which the order is requested.
4. The uncertainties or conflicting interpretations that arise when the cited statutes, rules, etc. are applied to the facts.
5. (Optional) The interpretation urged based upon the facts set forth.
6. The reasons for the petition and a full disclosure of the petitioner’s interest.
7. Whether the petitioner is currently a party to a rulemaking, contested case or judicial proceeding involving the controversy or uncertainty.
8. The names and addresses, when known, of other persons who may be affected by the declaratory order.

12.2(4) The petition is to be dated and signed by the petitioner or, if applicable, petitioner’s representative.

12.2(5) If applicable, the petition is also to include the name, address and telephone number of the petitioner’s representative and a statement indicating the person to whom communications concerning the petition should be directed.

12.2(6) The date of receipt of the petition is the day it reaches the department's rules administrator. The administrator will within five days of receipt send an acknowledgment of receipt with the assigned docket number to the petitioner or, if applicable, petitioner's representative.

[ARC 9446C, IAB 7/23/25, effective 8/27/25]

761—12.3(17A) Action on petition.

12.3(1) A declaratory order or an order declining to issue a declaratory order is issued by the director.

12.3(2) The director may issue an order declining to issue a declaratory order on some or all of the questions raised in the petition 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 the failure of the department to issue a declaratory order.
- c. The department does not have jurisdiction over the questions presented in the petition.
- d. The questions presented in the petition are also presented in a current rulemaking, contested case, or other agency or judicial proceeding that may definitively resolve them.
- e. The questions presented in the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
- f. The questions posed or facts presented in the petition are unclear, vague, incomplete, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue a declaratory order.
- g. There is no need to issue a declaratory 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 department 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 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 petitioner requests the department to determine whether a statute is unconstitutional on its face.

12.3(3) If the director issues an order declining to issue a declaratory order, the order needs to indicate the specific grounds for declining to issue a declaratory order and constitutes final agency action on the petition.

[ARC 9446C, IAB 7/23/25, effective 8/27/25]

761—12.4(17A) Effect of a declaratory order. A declaratory order is binding on the department and the petitioner 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 department. The issuance of a declaratory order constitutes final agency action on the petition.

[ARC 9446C, IAB 7/23/25, effective 8/27/25]

These rules are intended to implement Iowa Code sections 17A.9 and 17A.19.

[Filed 10/11/06, Notice 8/30/06—published 11/8/06, effective 12/13/06]

[Filed ARC 2231C (Notice ARC 2117C, IAB 9/2/15), IAB 11/11/15, effective 12/16/15]

[Filed ARC 2889C (Notice ARC 2779C, IAB 10/26/16), IAB 1/4/17, effective 2/8/17]

[Filed ARC 4492C (Notice ARC 4325C, IAB 3/13/19), IAB 6/5/19, effective 7/10/19]

[Editorial change: IAC Supplement 7/28/21]

[Filed ARC 9446C (Notice ARC 9093C, IAB 4/16/25), IAB 7/23/25, effective 8/27/25]