

CHAPTER 26 PETITIONS

[Prior to 6/10/92, see 345—6.5(96) and 6.8(96)]
[Prior to 5/21/97, see Job Service[345] Ch 9]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

877—26.1(17A,96) Petition for rule making. Any person may file a petition for rule making with Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The agency must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink, and must substantially conform to the following form:

DEPARTMENT OF WORKFORCE DEVELOPMENT DIVISION OF WORKFORCE DEVELOPMENT CENTER ADMINISTRATION

Petition by (Name of Petitioner) for the
(adoption, amendment, or repeal) of rules
relating to (state the subject matter).



PETITION FOR
RULE MAKING

The petition must provide the following information:

1. A statement to 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rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the agency's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by subrule 26.1(5).

26.1(1) 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.

26.1(2) The agency may deny a petition because it does not substantially conform to the required form.

26.1(3) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The agency may request a brief from the petitioner or from any other person concerning the substance of the petition.

26.1(4) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Director, Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

26.1(5) Agency consideration.

a. Within 14 days after the filing of a petition, the agency must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the agency must schedule a brief and informal meeting between the petitioner and the agency, a member of the agency, or a member of the staff of the agency to discuss the petition. The agency may request the petitioner to submit additional information or argument concerning the petition. The agency may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the agency by any person.

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

c. Denial of petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the agency's rejection of the petition.

This rule is intended to implement Iowa Code section 17A.7 and chapter 96.

877—26.2(17A,96) Petition for declaratory order. Any person may file a petition with the department of workforce development for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the department of workforce development at its offices at 1000 East Grand Avenue, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The department of workforce development shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF WORKFORCE DEVELOPMENT DIVISION OF WORKFORCE DEVELOPMENT CENTER ADMINISTRATION		
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 petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by subrule 26.2(6).

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 the petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

26.2(1) Notice of petition. Within 10 days after receipt of a petition for a declaratory order, the department of workforce development shall give notice of the petition to all persons not served by the petitioner pursuant to subrule 26.2(5) to whom notice is required by any provision of law. The department of workforce development may also give notice to any other persons.

26.2(2) Interventions. Persons who qualify under 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 shall be allowed to intervene in a proceeding for a declaratory order. 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 department of workforce development. A petition for intervention shall be filed at 1000 East Grand Avenue, Des Moines, Iowa 50319. Such petition is deemed filed when it is received by that office. The department of workforce development 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:

DEPARTMENT OF WORKFORCE DEVELOPMENT DIVISION OF WORKFORCE DEVELOPMENT CENTER ADMINISTRATION		
Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in the original petition).	}	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualification 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, any governmental entity.
6. Whether the intervenor consents to be bound by the determination of the matters presented in 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 intervenor's representative, and a statement indicating the person to whom communications should be directed.

26.2(3) Briefs. The petitioner or intervenor may file a brief in support of the position urged. The department of workforce development may request a brief from the petitioner, any intervenor or any other person concerning the questions raised.

26.2(4) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Director, Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

26.2(5) Service and filing of petitions and other papers.

a. 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. The party filing a document is responsible for service on all parties and other affected or interested parties.

b. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Director, Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the department of workforce development.

c. Service upon a party represented by an attorney shall be made upon the attorney and a copy will be sent to the petitioner. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

d. After the notice of hearing, all pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the department of workforce development.

e. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the department of workforce development, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

f. Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

26.2(6) Consideration. Upon request by petitioner, the department of workforce development must schedule a brief and informal meeting between the original petitioner, all intervenors, and the department, a member of the department, or a member of the staff of the department, to discuss the questions raised. The department may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the department by any person.

26.2(7) Action on petition. Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the director or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5). The date of issuance of an order or of a refusal to issue an order is the date of mailing of the decision or date of delivery if service by another means unless another date is specified in the order. The administrative rules committee of the workforce development board will be advised of the disposition of all petitions.

26.2(8) Refusal to issue order. The department of workforce development shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all of the questions raised for 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 of workforce development to issue an order.
- c. The department of workforce development 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 an agency 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 petitioner.
- j. The petitioner requests the department of workforce development to determine whether a statute is unconstitutional on its face.

A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

26.2(9) *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, 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.

26.2(10) *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.

26.2(11) *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 department of workforce development and 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 department of workforce development. The issuance of a declaratory order constitutes final agency action on the petition. The administrative rules committee of the workforce development board will be advised of the disposition of all declaratory orders.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapter 96.

[Filed 10/28/75, Notice 9/22/75—published 11/17/75, effective 12/23/75]

[Filed 4/29/76, Notice 3/22/76—published 5/17/76, effective 6/21/76]

[Filed 12/9/76, Notice 11/3/76—published 12/29/76, effective 2/2/77]

[Filed 9/30/77, Notice 8/24/77—published 10/19/77, effective 11/23/77]

[Filed emergency 9/5/86—published 9/24/86, effective 9/5/86]

[Filed emergency 10/1/86—published 10/22/86, effective 10/1/86]

[Filed 12/8/86, Notice 10/22/86—published 12/31/86, effective 2/4/87]

[Filed 5/22/92, Notice 4/15/92—published 6/10/92, effective 7/15/92]

[Filed 4/28/97, Notice 2/26/97—published 5/21/97, effective 6/25/97]

[Filed 4/29/99, Notice 3/10/99—published 5/19/99, effective 6/23/99]