

CHAPTER 68
DECLARATORY ORDERS BY THE ELEVATOR SAFETY BOARD

875—68.1(17A,89A) Petition for declaratory order. Any person may file at the board's offices a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose.

68.1(1) The petition must be in writing and provide the following information where applicable and known to the requester:

- a.* A clear and concise statement of all relevant facts on which the order is requested.
- b.* A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders whose applicability is questioned, and any other relevant law.
- c.* The questions the petitioner wants answered, stated clearly and concisely.
- d.* The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
- e.* The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
- f.* 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 directed by, are pending determination by, or are under investigation by any governmental entity.
- g.* 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 in the petition.

68.1(2) 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.

875—68.2(17A,89A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to rule 875—68.6(17A,89A) to whom notice is required by any provision of law. The board may also give notice to any other persons.

875—68.3(17A,89A) Intervention.

68.3(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 shall be allowed to intervene in a proceeding for a declaratory order.

68.3(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 board.

68.3(3) A petition for intervention shall be filed at the board office. Such a petition is deemed filed when it is received by that office. The board 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. A petition for intervention must be in writing and provide the following information where applicable and known to the requester:

- (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 in the declaratory order proceeding.

b. 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.

875—68.4(17A,89A) Briefs. The petitioner or intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

875—68.5(17A,89A) Inquiries. Inquiries concerning the status of a declaratory order may be made at the board office.

875—68.6(17A,89A) Service and filing of petitions and other papers.

68.6(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.

68.6(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 board at the board office. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

68.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rules 875—69.10(17A,89A) and 875—69.11(17A,89A).

875—68.7(17A,89A) Board review procedures.

68.7(1) Unless the board makes other arrangements, petitions for declaratory order will be reviewed and may be granted or denied at the next scheduled board meeting following receipt of the petition. However, if the petition is received less than three weeks prior to the scheduled meeting, the petition will be reviewed at the subsequent meeting. The board may request the petitioner to submit additional information or argument concerning the petition. The board 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 board by any person.

68.7(2) The petitioner and all intervenors shall be provided a reasonable opportunity to make a presentation to the board. The length of time allotted for presentation shall be reasonable in light of the complexity and number of issues involved.

875—68.8(17A,89A) Action on petition.

68.8(1) Within the time allowed after receipt of a petition for a declaratory order, the board shall take action on the petition within 30 days after receipt as required by Iowa Code section 17A.9.

68.8(2) The date of issuance of an order or of a refusal to issue an order is the date of mailing or date of delivery if service is by other means, unless another date is specified in the order.

875—68.9(17A,89A) Refusal to issue order.

68.9(1) The board 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:

a. The petition does not provide the required information.

- b.* The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.
- c.* The board 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 board 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 board 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 petitioner.
- j.* The petitioner requests the board to determine whether a statute is unconstitutional on its face.

68.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final board action on the petition.

68.9(3) 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 refusal to issue an order.

875—68.10(17A,89A) Contents of declaratory order—effective date. In addition to the ruling 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.

875—68.11(17A,89A) 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.

875—68.12(17A,89A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order in a contested case proceeding. It is binding on the board, 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 board. The issuance of a declaratory order constitutes final board action on the petition.

These rules are intended to implement Iowa Code chapters 17A and 89A.

[Filed 6/16/06, Notice 5/10/06—published 7/5/06, effective 8/9/06]