

CHAPTER 2  
DECLARATORY ORDERS  
[Prior to 2/11/87, see 191—2.6]


**191—2.1(17A) Petition for declaratory order.**

**2.1(1)** Any person or agency may file a petition with the insurance 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, at the address disclosed in rule 191—1.2(502,505). A petition is deemed filed when it is received. The division shall provide petitioner with a file-stamped copy of the petition if 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:

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BEFORE THE INSURANCE DIVISION OF THE STATE OF IOWA

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Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).		PETITION FOR DECLARATORY ORDER
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- 2.1(2)** The petition shall provide the following information:
- a. A clear and concise statement of all relevant facts upon which the order is requested.
  - b. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability or interpretation is questioned, and any other relevant law.
  - c. The questions petitioner wants answered, stated clearly and concisely.
  - d. The answers to the questions desired by petitioner and a summary of the reasons urged by petitioner in support of those answers.
  - e. The reasons for requesting the declaratory order and disclosure of petitioner’s interest in the outcome.
  - f. A statement indicating whether petitioner is currently a party to another proceeding involving the questions at issue and whether, to petitioner’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
  - g. Any request by petitioner for a meeting provided for by rule 2.7(17A).

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

**191—2.2(17A) Notice of petition.** Within seven days after receipt of a petition for a declaratory order, the insurance division shall give notice of the petition to all persons not served by petitioner pursuant to rule 2.6(17A) to whom notice is required by any provision of law. The division may also give notice to any other persons.

**191—2.3(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 insurance division.

**191—2.4(17A) Briefs.** Petitioner or any intervenor shall file a brief in support of the position urged.

**191—2.5(17A) Inquiries.** Inquiries concerning the status of a declaratory proceeding may be made to the insurance division at the address disclosed in rule 191—1.2(502,505).

**191—2.6(17A) Service and filing of petitions and other papers.**

**2.6(1)** 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. The party filing a document is responsible for service.

**2.6(2)** All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the insurance division at the address disclosed in rule 191—1.2(502,505). All petitions, briefs, or other papers required to be served upon a party shall be filed simultaneously with the division.

**2.6(3)** Method of service, time of filing, and proof of mailing shall be as provided by rule 3.12(17A).

**191—2.7(17A) Consideration.** Upon request by petitioner, the insurance division must schedule a brief and informal meeting between the original petitioner, all intervenors, and the commissioner or a member of the commissioner's staff, to discuss the questions raised.

**191—2.8(17A) Action on petition.**

**2.8(1)** Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receiving a petition for a declaratory order, the insurance division shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

**2.8(2)** The date of issuance of an order is as defined in rule 3.2(17A).

**191—2.9(17A) Refusal to issue order.**

**2.9(1)** The insurance division 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 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 petitioner will be aggrieved or adversely affected by failure of the division to issue an order.
- c.* The agency 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.* Petitioner requests the division to determine whether a statute is unconstitutional on its face.

**2.9(2)** A refusal to issue a declaratory order must indicate the specific grounds for refusal and constitutes final agency action on the petition.

**2.9(3)** Refusal to issue a declaratory order pursuant to this provision does not preclude filing of a new petition that seeks to eliminate the grounds for refusal to issue a ruling.

**191—2.10(17A) 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.

**191—2.11(17A) 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.

**191—2.12(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 insurance division, 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 division. Issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

[Filed 1/1/75]

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