

CHAPTER 3
DECLARATORY ORDERS

[Ch 3, IAC 7/1/75 rescinded 3/7/79; see Ch 4]
[Prior to 10/8/86, Beer and Liquor Control Department[150]]

185—3.1(17A) Petition for declaratory order. Any person may file a petition with the alcoholic beverages 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 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3941. A petition is deemed filed when it is received by that office. The division 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:

ALCOHOLIC BEVERAGES DIVISION	
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 rule 3.7(17A).

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.


185—3.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the alcoholic beverages division shall give notice of the petition to all persons not served by the petitioner pursuant to rule 3.6(17A) to whom notice is required by any provision of law. The division may also give notice to any other persons.

185—3.3(17A) Intervention.

3.3(1) *Qualified persons.* Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 15 days of the filing of a petition for declaratory order (after time for notice under rule 3.2(17A) and before 30-day time for agency action under 3.8(17A)) shall be allowed to intervene in a proceeding for a declaratory order.

3.3(2) *Agency discretion.* 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 division.

3.3(3) Filing of petition. A petition for intervention shall be filed at 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3941. Such a petition is deemed filed when it is received by that office. The division 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:

ALCOHOLIC BEVERAGES DIVISION	
Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	
	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

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.

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.

185—3.4(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.

185—3.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Administrator, Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3941.

185—3.6(17A) Service and filing of petitions and other papers.

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

3.6(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 Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3941. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the division.

3.6(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 contested case rule 185—10.13(17A).

185—3.7(17A) Consideration. Upon request by petitioner, the alcoholic beverages division must schedule a brief and informal meeting between the original petitioner, all intervenors, and the division,

a member of the division, or a member of the staff of the division, to discuss the questions raised. The division may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the division by any person.

185—3.8(17A) Action on petition.

3.8(1) Agency action. Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the administrator or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

3.8(2) Issuance of order. The date of issuance of an order or of a refusal to issue an order is as defined in contested case rule 185—10.2(17A).

185—3.9(17A) Refusal to issue order.

3.9(1) Refusal to issue order. The 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:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the division to issue an order.
3. The division does not have jurisdiction over the questions presented in the petition.
4. 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.
5. 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.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. 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.
9. 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.
10. The petitioner requests the division to determine whether a statute is unconstitutional on its face.

3.9(2) Grounds for refusal. A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

3.9(3) Filing of new 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.

185—3.10(17A) 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, 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.

185—3.11(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.

185—3.12(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 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. The 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 2/16/79, Notice 12/27/79—published 3/7/79, effective 4/16/79]

[Filed without Notice 7/6/79—published 7/25/79, effective 8/29/79]

[Filed emergency 10/10/85—published 11/6/85, effective 10/10/85]

[Filed emergency 7/1/86—published 7/30/86, effective 7/1/86]¹

[Editorially transferred from [150] to [185], IAC Supp. 10/8/86; see IAB 7/30/86]

[Filed 4/28/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

¹ See Alcoholic Beverages Division, IAB 7/30/86