

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

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.

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. The subject matter of the petition must be within the primary jurisdiction of the department.

12.2(2) The petition must be submitted to the department’s administrative rules coordinator at the following address: Administrative Rules Coordinator, Office of Policy and Legislative Services, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

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

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

PETITION BY (insert petitioner’s name)	}	DOCKET NO. _____
FOR DECLARATORY ORDER ON (insert number of statute, rule, etc. and brief description of subject matter)	}	PETITION FOR DECLARATORY ORDER

(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. which 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 which 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 rule-making, 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 must be dated and signed by the petitioner or, if applicable, petitioner’s representative.

12.2(5) If applicable, the petition must also 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 administrative rules coordinator. The coordinator shall promptly send an acknowledgement of receipt to the petitioner or, if applicable, petitioner’s representative.

761—12.3(17A) Notice of petition. Within 15 days after receipt of a petition for declaratory order, the department shall provide copies of the acknowledgement of receipt and copies of the petition to all persons to whom notice of the petition is required by any provision of law. The department may also give notice to any other persons deemed appropriate.

761—12.4(17A) Action on petition.

12.4(1) A declaratory order or an order declining to issue a declaratory order shall be issued by the director.

12.4(2) The director shall not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

12.4(3) 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 rule-making, 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.

12.4(4) If the director issues an order declining to issue a declaratory order, the order must indicate the specific grounds for declining to issue a declaratory order and constitutes final agency action on the petition.

761—12.5(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 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.

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

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