

**621—10.9(17A,20) Refusal to issue order.**

**10.9(1)** The board shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) “b”(2) 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 rule 621—10.2(20).
- b.* The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the board’s failure to issue a declaratory 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 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 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 an agency decision already made.
- i.* The petition requests a declaratory order that would necessarily determine the legal rights, duties or responsibilities of persons or entities 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 the petitioner.
- j.* The petitioner requests the board to determine whether a statute is unconstitutional on its face.

**10.9(2)** A refusal to issue a declaratory order shall indicate the ground or grounds for the refusal and constitutes final agency action on the petition.

**10.9(3)** Refusal to issue a declaratory order pursuant to this rule does not preclude the filing of a new petition that seeks to eliminate the grounds for the prior refusal.

[ARC 4457C, IAB 5/22/19, effective 6/26/19]