

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.