

Regulatory Analysis

871 Chapter 44

DECLARATORY ORDERS

Purpose and Summary

This rule provides direction on Declaratory Orders for the Department of Workforce Development.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
General Public.
 - Classes of persons that will benefit from the proposed rulemaking:
General Public.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
Not applicable.
 - Qualitative description of impact:
Not applicable.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
None.
 - Anticipated effect on state revenues:
None.
4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:
Not applicable.
5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:
Not applicable.
6. Alternative methods considered by the agency:
 - Description of any alternative methods that were seriously considered by the agency:
None.
 - Reasons why alternative methods were rejected in favor of the proposed rulemaking:

871.44 provides the foundational rules for Declaratory Orders by the Department of Workforce Development.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking’s compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Not applicable.

Text of Proposed Rulemaking

871—44.1 (17A) Petition for declaratory order. Any person may file a petition with the agency for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the Department of Workforce Development at 1000 East Grand Avenue, Des Moines, Iowa 50319. If the petition deals with a statute within the express jurisdiction of one of the divisions, it shall be forwarded to that division for determination. Service of petitions for district court review of all agency decisions, rulings and actions (where such service is required by Iowa Code chapter 17A) will be made by the agency. Declaratory orders made by the divisions are considered final rulings for the agency with regard to Iowa Code chapter 17A.

A petition is deemed filed when it is received by that office. The agency 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 should be emailed, typewritten or legibly handwritten in ink and should substantially conform to the following form:

DEPARTMENT OF WORKFORCE DEVELOPMENT	
Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	}
	PETITION FOR DECLARATORY ORDER

The petition should 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 44.4(17A,84A).

The petition should be dated and signed by the petitioner or the petitioner's representative. It should 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.

871—44.2 (17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the agency should give notice of the petition to all persons not served by the petitioner pursuant to rule 44.6(17A) to whom notice is required by any provision of law. The agency may also give notice to any other persons.

871—44.3 (17A) Intervention.

44.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order are allowed to intervene in a proceeding for a declaratory order.

44.3(2) Any person who files a petition for intervention prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the department of workforce development.

44.3(3) A petition for intervention should be filed at 1000 East Grand Avenue, Des Moines, Iowa 50319. Such a petition is deemed filed when it is received by that office. The agency 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~~ should be typewritten or legibly handwritten in ink and should substantially conform to the following form:

DEPARTMENT OF WORKFORCE DEVELOPMENT		
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 should 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 should be dated and signed by the intervenor or the intervenor's representative. It should 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.

871—44.4 (17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The department of workforce development may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

871—44.5 (17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the director of the Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

871—44.6 (17A) Service and filing of petitions and other papers.

44.6(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 should 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, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

44.6(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 director of the Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

44.6(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 rule 871—26.11(17A,96).

871—44.7 (17A) Consideration. Upon request by petitioner, the Department of Workforce Development schedules a brief and informal meeting between the original petitioner, all intervenors and a member of the staff of the Department of Workforce Development to discuss the questions raised. The agency may solicit comments from any person on the questions raised, and any person may submit comments.

871—44.8 (17A) Action on petition.

44.8(1) After receipt of a petition or a declaratory order, the director of the Department of Workforce Development or designee takes action on the petition as required by Iowa Code section 17A.9(5).

44.8(2) The date an order is issued or refused is defined in rule 877—26.2(17A,96).

871—44.9 (17A) Refusal to issue order.

44.9(1) The Department of Workforce Development will not issue a declaratory order where prohibited by Iowa Code section 17A.9(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 Department of Workforce Development to issue an order.
3. The agency 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.
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 a previously made agency decision.
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 petitioner.
10. The petitioner requests the agency to determine whether a statute is unconstitutional on its face.

44.9(2) A refusal to issue a declaratory order will indicate the specific grounds for the refusal and constitutes final agency action on the petition.

44.9(3) 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 a ruling.

871—44.10 (17A) Contents of declaratory order—effective date. In addition to the ruling itself, a declaratory order contains 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.

871—44.11 (17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order are mailed promptly to the original petitioner and all intervenors.

871—44.12 (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 Department of Workforce Development, 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 Department of Workforce Development. The issuance of a declaratory order constitutes final agency action on the petition.