

### Regulatory Analysis

Notice of Intended Action to be published: 761—Chapter 12  
“Declaratory Orders”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A.9

State or federal law(s) implemented by the rulemaking: Iowa Code sections 17A.9 and 17A.19

#### *Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

February 13, 2025  
1:30 to 2 p.m.

[Microsoft Teams](#)  
Or dial: 515.817.6093  
Conference ID: 163 303 932

#### *Public Comment*

Any interested person may submit written comments concerning this Regulatory Analysis, which must be received by the Department of Transportation no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Tracy George  
800 Lincoln Way  
Ames, Iowa 50010  
Email: [Tracy.George@iowadot.us](mailto:Tracy.George@iowadot.us)

#### *Purpose and Summary*

This proposed chapter explains the process on how a person or agency may file with the Department a petition for a declaratory order and how the Department will respond to that petition.

#### *Analysis of Impact*

**1. Persons affected by the proposed rulemaking:**

• **Classes of persons that will bear the costs of the proposed rulemaking:**

All persons or agencies submitting a petition for declaratory order are affected by the proposed rules. However, there are no costs associated with submitting a petition.

• **Classes of persons that will benefit from the proposed rulemaking:**

Persons or agencies submitting a petition for declaratory order benefit from this chapter because the rules provide clarity and transparency.

**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:**

Proposed Chapter 12 explains the declaratory order process and is intended to ensure that the process is understood and transparent.

• **Qualitative description of impact:**

Proposed Chapter 12 explains the process and ensures those who wish to submit a petition are aware of the process.

**3. Costs to the State:**

• **Implementation and enforcement costs borne by the agency or any other agency:**

There are no costs to the State to implement this proposed chapter.

- **Anticipated effect on state revenues:**

There is no anticipated effect on state revenues.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

The major purpose of this chapter is to explain the process, which benefits those involved.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

There are no less costly methods or less intrusive methods for achieving the purpose of this chapter.

6. **Alternative methods considered by the agency:**

- **Description of any alternative methods that were seriously considered by the agency:**

The Department did not consider any alternative methods.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

The Department feels this chapter is necessary and needs to have its own rules concerning the declaratory order process.

*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?**

This proposed chapter has no impact on small business.

*Text of Proposed Rulemaking*

ITEM 1. Rescind 761—Chapter 12 and adopt the following **new** chapter in lieu thereof:

CHAPTER 12  
DECLARATORY ORDERS

**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.

**12.2(2)** The petition is to be submitted to the rules administrator either by mail to Rules Administrator, Government and Community Relations, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; or by email to the rules administrator’s email address listed on the department’s website at [iowadot.gov/administrativerules](http://iowadot.gov/administrativerules).

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

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

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PETITION BY (insert petitioner’s name)  FOR DECLARATORY ORDER ON (insert number of statute, rule, etc. and brief description of subject matter)		DOCKET NO. _____  PETITION FOR DECLARATORY ORDER
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(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. that 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 that 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 rulemaking, 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 is to be dated and signed by the petitioner or, if applicable, petitioner’s representative.

**12.2(5)** If applicable, the petition is also to 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 rules administrator. The administrator will within five days of receipt send an acknowledgment of receipt with the assigned docket number to the petitioner or, if applicable, petitioner’s representative.

**761—12.3(17A) Action on petition.**

**12.3(1)** A declaratory order or an order declining to issue a declaratory order is issued by the director.

**12.3(2)** 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 rulemaking, 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.

**12.3(3)** If the director issues an order declining to issue a declaratory order, the order needs to indicate the specific grounds for declining to issue a declaratory order and constitutes final agency action on the petition.

**761—12.4(17A) Effect of a declaratory order.** A declaratory order 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.