

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Insurance Department

Department Legal Division

Contact Booth Rand E-mail booth.rand@arkansas.gov Phone 501-371-2820

Statutory Authority for Promulgating Rules Ark Code Ann § 25-15-206 and Ark Code Ann § 25-15-204 (b) (1)

Rule Title: Final Rule 121: "Declaratory Orders"

Intended Effective Date
(Check One)

Date

☐ Emergency (ACA 25-15-204)

Legal Notice Published

Sept 16, 17, 18, 2020

☒ 10 Days After Filing (ACA 25-15-204)

Final Date for Public Comment

10/20/2020

☐ Other _____
(Must be more than 10 days after filing date.)

Reviewed by Legislative Council

Dec 16, 2020

Adopted by State Agency

Nov 30, 2020

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Clara Mezza

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12/21/2020

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Clara D. Mezza
Signature

501-683-3497

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Phone Number

E-mail Address

Insurance Administrative Coordinator

Title

December 21, 2020

Date

SUMMARY

RULE 121

Declaratory Orders

AID issues this emergency rule in order to avoid challenges to our authority to issue declaratory orders. The Arkansas Administrative Procedures Act requires AID to have a validly enacted Rule authorizing declaratory Orders. Ark. Code Ann. §25-15-206 states that each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory orders as to the applicability of any rule, statute, or order enforced by it. Currently, for authority to issue declaratory orders, the only reference to AID authority to issue declaratory orders, is referred to in a document entitled, "AID Rules of Practice and Procedure," written prior to 1980. There exists no Rule history file for this document as we do have and maintain for our promulgated rules. We are therefore unsure if these Rules of practice and procedure were validly promulgated. We currently have a pending declaratory action and, out of an abundance of caution, we are in need of immediate rule authority and authority in the future to issue declaratory orders.

The proposed emergency Rule herein for declaratory orders is copied from the Arkansas Attorney General's "Model Rule of Procedure for Regulatory and Licensing Agencies." AID copied the Model Rule section in this manual pertaining to declaratory orders.

We intend to adopt the currently proposed emergency rule as a permanent rule within 120 days.

RULE 121

DECLARATORY ORDERS

- 1. BACKGROUND**
- 2. AUTHORITY**
- 3. THE PETITION**
- 4. EFFECTIVE DATE**

SECTION 1. BACKGROUND & PURPOSE

A declaratory order is a means of resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory order may be used only to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory order is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from an agency. A petition or declaratory order must describe the potential impact of statutes, rules, or orders upon the petitioner's interests.

SECTION 2. AUTHORITY

Ark. Code Ann. §25-15-206 states that each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory orders as to the applicability of any rule, statute, or order enforced by it. These declaratory orders shall have the same status as agency orders in cases of adjudication. Ark. Code Ann. §25-15-204 (b) (1) states that if an agency finds that imminent peril to the public health, safety, or welfare or compliance with federal laws or regulations requires adoption of a rule upon less than thirty (30) days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it may choose, to adopt an emergency rule. The rule may be effective for no longer than one hundred twenty (120) days.

SECTION 3. THE PETITION

The process to obtain a declaratory order is begun by filing with the Insurance Commissioner a petition that provides the following information:

1. The name, address, telephone number and facsimile number of the petitioner;
2. The name, address, telephone number and facsimile number of the attorney of the petitioner;

3. The statutory provision(s), agency rule(s), or agency order(s) on which the declaratory order is sought;
4. A description of how the statutes, rules, or orders may substantially affect the petitioner and the petitioner's particular set of circumstances, and the question or issue on which the petitioner seeks a declaratory order;
5. The signature of the petitioner or petitioner's attorney;
6. The date; and
7. Request for a hearing, if desired.

The agency may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts. Within ninety (90) days of the filing of the petition, the agency will render a final order denying the petition or issuing a declaratory order.

SECTION 4. EFFECTIVE DATE

This Rule is effective after review and approval by the Arkansas Legislative Council, ten (10) days after filing of the approved Rule with the Arkansas Secretary of State.



ALAN McCLAIN
INSURANCE COMMISSIONER

12-23-2020

DATE