

RULE 121

DECLARATORY ORDERS

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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