
**FLORIDA ADMINISTRATIVE CODES
[MISCELLANEOUS CODES]**

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FLORIDA ADMINISTRATIVE CODES | ORGANIZATION

CODES: 28-101.001

28-101.001 | STATEMENT OF AGENCY ORGANIZATION AND OPERATION

(1) The agency head shall maintain a current Statement of Agency Organization and Operation. The statement shall describe the organization of the agency and outline the general course of the agency's operations. The purpose of the statement is:

(a) To inform the public, in a complete and concise manner, of the nature of the agency's business, operations, delegation of authority, internal organization and other related matters;

(b) To provide assistance to the public when dealing with the agency; and

(c) To expedite the processing of agency matters on behalf of the public.

(2) The Statement of Agency Organization and Operation shall:

(a) Describe the agency head and his or her duties, as well as state the method of selection or appointment of the agency head, and the length of his or her term.

(b) Describe the organizational units and sub-units within the agency, including their assigned functions, duties, responsibilities, statutory authority, and statutes and rules they are charged with implementing. The designation of units and sub-units shall be consistent with Section 20.04, F.S., or as otherwise provided by law.

(c) Describe the manner by which publications, documents, forms, applications for licenses, permits and other similar certifications or rights granted by the agency, or other information, may be obtained.

(d) Identify the agency clerk by name, position, address, e-mail address, and telephone number; and set out his or her duties and responsibilities.

(e) State whether documents can be filed by electronic mail or facsimile transmission, including applicable telephone numbers and electronic mail addresses where filings may be submitted, and set forth the acceptable nature and scope of such filings, including the following:

That the filing date for a document transmitted by electronic mail or by facsimile shall be the date the agency receives the complete document. Any document received by the office of the agency clerk after 5:00 p.m. shall be filed as of 8:00 a.m. on the next regular business day.

(f) Identify the name, address, and e-mail address of the appropriate contact person for obtaining information about variances from or waivers of agency rules, and indicate how to file a petition for variance or waiver.

(g) Set forth the agency's hours of operation during which filings will be accepted.

(h) Set forth where and how agency index of final orders can be accessed.

(3) The agency clerk shall provide a copy of its Statement of Agency Organization and Operation to any person upon request.

(4) An agency shall publish a statement of organization and operation on the agency's website.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07, 12-24-07, 2-5-13, 6-26-13.

FLORIDA ADMINISTRATIVE CODES | MEETINGS, HEARINGS, WORKSHOPS

CODES: 28-102.001 through 28-102.003

28-102.001 | NOTICE TO PUBLIC MEETING, HEARING, OR WORKSHOP

(1) Except where otherwise provided, the agency shall give at least seven days notice of any public meeting, hearing, or workshop by publication in the Florida Administrative Register and on agency's website. Provisions regarding notices of hearings in proceedings for determining substantial interests are found in Rules 28-106.208 and 28-106.302, F.A.C.

(2) An agency shall utilize the following form, or a substantially similar form, in providing notice of any public meeting, hearing, or workshop.

NOTICE OF PUBLIC MEETING, HEARING, OR WORKSHOP

The (name of the agency) announces a public meeting, hearing, or workshop to which all persons are invited.

DATE AND TIME:

PLACE:

PURPOSE:

A copy of the agenda may be obtained by writing to (name of the agency) at (address) or by calling (name) at (telephone number).

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/hearing/meeting is asked to advise the agency at least 5 days before the workshop/hearing/meeting by contacting (name) at (telephone number). If you are hearing or speech impaired, please contact the agency by calling (telephone number of TDD).

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5)(b)1. FS. History—New 4-1-97, Amended 1-15-07, 2-5-13.

28-102.002 | AGENDA FOR MEETING, HEARINGS, OR WORKSHOPS

(1) (a) The agenda shall state with specificity the items that will be considered at a meeting, hearing, or workshop. All matters involving the exercise of agency discretion and policy-making shall be listed and summarized on the agenda. Matters which are solely ministerial, or internal administrative matters that do not affect the interests of the public generally, may be included on the agenda.

(b) An agency shall utilize the following form, or substantially similar form in preparing its agenda:

NAME OF AGENCY TIME, DATE & PLACE OF MEETING THIS MEETING IS OPEN TO THE PUBLIC

1. Call to Order.
2. Review of Minutes.
3. Old Business: Specific listing of all matters involving agency discretion or policy-making with brief summary of each.
4. New Business: Specific listing of all matters involving agency discretion or policy-making with brief summary of each.
5. Other Business: Specific listing of all matters involving agency discretion or policy-making with brief summary of each.

(2) The person designated to preside may make specific changes in the agenda after it has been made available for distribution, only for "good cause" shown.

(3) The agenda and any meeting materials available in electronic form shall be published on the agency's website. Confidential and exempt information need not be published.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.525 FS. History—New 4-1-97, Amended 2-5-13.

28-102.003 | EMERGENCY MEETINGS

(1) An agency may hold an emergency meeting notwithstanding the provisions of Rules 28-102.001 and 28-102.002, F.A.C., for the purpose of acting upon emergency matters posing an immediate danger to the public health, safety or welfare.

(2) Whenever an emergency meeting must be held, the agency shall give notice of the meeting on its website, if it has one, and by any procedure that is fair under the circumstances, such as notifying at least one major newspaper of general circulation in the area where the meeting will take place, and the agency may also notify all major wire services of the time, date, place, and purpose of the meeting.

(3) Following an emergency meeting, the agency shall publish in the appropriate publication prescribed by Section 120.54(3), F.S., and on its website, if it has one, notice of the time, date and place of the meeting, a statement setting forth the reasons why an emergency meeting was necessary and a statement setting forth the action taken at the meeting. This notice is in addition to the notice requirements of Section 120.525(3)(c), F.S.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.525, 120.54(5)(b)1. FS. History—New 4-1-97, Amended 1-15-07, 2-5-13.

FLORIDA ADMINISTRATIVE CODES | RULEMAKING

CODES: 28-103.001 through 28-103.006

28-103.001 | ADVANCE NOTICE OF AGENCY RULEMAKING PROCEEDINGS

Rulemaking Authority 120.54(5) FS. Law Implemented 120.54(2)(a), (3)(a) FS. History—New 4-1-97, Repealed 12-4-12.

REPEALED

28-103.002 | RULE DEVELOPMENT WORKSHOPS

Rulemaking Authority 120.54(5) FS. Law Implemented 120.54(2)(c), (5) FS. History—New 4-1-97, Amended 1-15-07, Repealed 12-4-12.

REPEALED

28-103.003 | NEGOTIATED RULEMAKING

Rulemaking Authority 120.54(5) FS. Law Implemented 120.54(2)(d) FS. History—New 4-1-97, Repealed 12-4-12.

REPEALED

28-103.004 | PUBLIC HEARING

Rulemaking Authority 120.54(5) FS. Law Implemented 120.525, 120.54(3)(c) FS. History—New 4-1-97, Repealed 12-4-12.

REPEALED

28-103.005 | EVIDENTIARY PROCEEDING DURING RULEMAKING

Rulemaking Authority 120.54(5) FS. Law Implemented 120.54(3)(c)2. FS. History—New 4-1-97, Amended 3-18-98, Repealed 12-4-12.

REPEALED

28-103.006 | PETITIONS TO INITIATE RULEMAKING

Rulemaking Authority 120.54(5) FS. Law Implemented 120.54(7) FS. History—New 4-1-97, Repealed 12-4-12.

REPEALED

FLORIDA ADMINISTRATIVE CODES | VARIANCE/WAIVER

CODES: 28-104.001 through 28-104.006

28-104.001 | PURPOSE; CONSTRUCTION

This chapter implements Section 120.542, F.S., by establishing the procedures for granting or denying petitions for variances and waivers of agency rules, and, should be read in conjunction with the provisions of Sections 120.52(18), 120.52(19) and 120.542, F.S.

Rulemaking Authority 14.202, 120.542 FS. Law Implemented 120.542(5)(b)8. FS. History—New 4-1-97, Amended 1-15-07.

28-104.002 | PETITION FOR VARIANCE OR WAIVER

(1) A petition for a variance from or waiver of an agency rule shall be filed with the clerk of the agency that adopted the rule, with a copy to the Joint Administrative Procedures Committee, Room 680, Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400.

(2) The petition must include the following information:

(a) The caption shall read:

Petition for (Variance from) or (Waiver of) Rule (Citation)

(b) The name, address, any e-mail address, telephone number, and any facsimile number of the petitioner, if the party is not represented by an attorney or a qualified representative;

(c) The name, address, e-mail address, telephone number, and any facsimile number of the attorney or qualified representative of the petitioner, if any;

(d) The applicable rule or portion of the rule;

(e) The citation to the statute the rule is implementing;

(f) The type of action requested;

(g) The specific facts that demonstrate a substantial hardship or a violation of principles of fairness that would justify a waiver or variance for the petitioner;

(h) The reason why the variance or the waiver requested would serve the purposes of the underlying statute; and

(i) A statement whether the variance or waiver is permanent or temporary. If the variance or waiver is temporary, the petition shall include the dates indicating the duration of the requested variance or waiver.

(3) The petition for a variance or waiver may be withdrawn by the applicant at any time before final agency action.

(4) Upon receipt of a petition for variance or waiver, the agency shall furnish a copy of the petition to any other agency responsible for implementing the rule.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5)(b)8. FS. History—New 4-1-97, Amended 3-18-98, 2-5-13.

28-104.003 | COMMENTS ON PETITION

(1) Any interested person or other agency may submit written comments on the petition for a variance or waiver within 14 days after the notice required by Section 120.542(6), F.S. The agency shall state in any order disposing of the petition whether comments were received by the agency.

(2) The agency shall maintain the comments as part of the record.

(3) The right to comment pursuant to this section does not alone confer party status in any proceeding arising from a petition for variance or waiver.

Rulemaking Authority 14.202, 120.54(5)(b)8. FS. Law Implemented 120.54(5)(b)8. FS. History—New 4-1-97, Amended 2-5-13.

28-104.004 | PETITION FOR EMERGENCY VARIANCE OR WAIVER

(1) A person requesting an emergency variance from or waiver of an agency rule shall so state in the caption to the petition.

(2) In addition to the other requirements of Section 120.542(5), F.S., and this chapter, the petition shall specify:

(a) The specific facts that make the situation an emergency; and

(b) The specific facts to show that the petitioner will suffer an immediate adverse effect unless the variance or waiver is issued more expeditiously than the time frames provided in Section 120.542, F.S.

Rulemaking Authority 14.202, 120.54(5)(b)8. FS. Law Implemented 120.54(5)(b)8. FS. History—New 4-1-97.

28-104.005 | TIME FOR CONSIDERATION OF EMERGENCY PETITION

(1) Within 5 days after filing a petition for emergency variance or waiver with the agency clerk, the agency shall give notice of receipt of the petition on its website, if it has one. The agency shall also give notice by any procedure that is fair under the circumstances or provide notice of the petition to the Department of State for publication in the first available issue of the Florida Administrative Register. Any notice under this subsection shall inform interested persons of the right to submit comments. Interested persons or other agencies may submit written comments on the petition for emergency variance or waiver within 5 days after publication of the notice required herein. The notice and comment requirements in this subsection shall not apply if the agency head finds that an immediate danger to the public health, safety, or welfare requires an immediate final order, which final order shall recite with particularity the facts underlying such finding.

(2) The agency shall grant or deny a petition for emergency variance or waiver or determine that the request is not an emergency within 30 days of its receipt by the agency. If such petition is not granted or denied within this time limit, the petition shall be deemed approved unless the time limit is waived by the petitioner.

(3) If the agency decides that the situation is not an emergency, the agency shall so notify the petitioner in writing, and the petition shall then be reviewed by the agency on a non-emergency basis as set forth in Section 120.542(7), F.S.

(4) The duration of an emergency variance or waiver shall be determined by the agency.

(5) The agency shall issue a written order granting or denying the petition. The order shall state the facts and reasons supporting the agency's action.

Rulemaking Authority 14.202, 120.54(5)(b)8. FS. Law Implemented 120.54(5)(b)8. FS. History—New 4-1-97, Amended 1-15-07, 12-24-07, 2-5-13.

28-104.0051 | REVOCATION OF EMERGENCY OR TEMPORARY VARIANCE OR WAIVER

(1) Upon receipt of evidence sufficient to show that the recipient of an order granting an emergency or temporary variance or waiver is not in compliance with the requirements of that order, the agency shall issue an order to show cause why the emergency variance or waiver should not be revoked.

(2) The recipient of an emergency or temporary variance or waiver shall respond to the order to show cause why the emergency variance or waiver should not be revoked within 15 days of the mailing date of the order to show cause. Failure to timely respond shall result in a final order revoking the emergency or temporary variance or waiver.

Rulemaking Authority 14.202, 120.54(5)(b)8. FS. Law Implemented 120.54(5)(b)8. FS. History—New 3-18-98.

28-104.006 | REQUEST FOR INFORMATION

(1) When a person inquires of the agency about the possibility of relief from any rule requirements or the remedies available pursuant to Section 120.542, F.S., the agency shall provide the information required by Section 120.542(4), F.S., within 15 days of the inquiry.

(2) In its response to a request for information, the agency shall indicate the name, address and e-mail address of the appropriate contact person for additional information and shall indicate how a petition for variance or waiver is filed with the agency.

Rulemaking Authority 14.202, 120.54(5)(b)8. FS. Law Implemented 120.542(4) FS. History—New 4-1-97, Amended 2-5-13.

FLORIDA ADMINISTRATIVE CODES | DECLARATORY STATEMENTS

CODES: 28-105.001 through 28-105.0027

28-105.001 | PURPOSE AND USE OF DECLARATORY STATEMENT

A declaratory statement is a means for 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 statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

Rulemaking Authority 14.202, 120.54(5)(b)6. FS. Law Implemented 120.54(5)(b)6. FS. History—New 4-1-97, Amended 1-15-07.

28-105.002 | THE PETITION

A petition seeking a declaratory statement shall be filed with the clerk of the agency that has the authority to interpret the statute, rule, or order at issue and shall provide the following information:

- (1) The caption shall read: Petition for Declaratory Statement Before (Name of Agency).
- (2) The name, address, any e-mail address, telephone number, and any facsimile number of the petitioner.
- (3) The name, address, any e-mail address, telephone number, and any facsimile number of the petitioner's attorney or qualified representative if any.
- (4) The statutory provision(s), agency rule(s), or agency order(s) on which the declaratory statement is sought.
- (5) A description of how the statutes, rules, or orders may substantially affect the petitioner in the petitioner's particular set of circumstances.
- (6) The signature of the petitioner or of the petitioner's attorney or qualified representative.
- (7) The date.

Rulemaking Authority 14.202, 120.54(5)(b)6. FS. Law Implemented 120.565 FS. History—New 4-1-97, Amended 3-18-98, 1-15-07, 2-5-13.

28-105.0024 | NOTICE OF FILING

The agency shall file a notice of the Petition for Declaratory Statement in the next available Florida Administrative Register including the following information:

- (1) The name of the agency with which the Petition for Declaratory Statement is filed.
- (2) The name of the Petitioner.
- (3) The date the Petition for Declaratory Statement was received.
- (4) The statutory provision(s), rule(s) or order(s) on which the declaratory statement is sought.
- (5) The contact name, address, e-mail address, and phone number where a copy of the petition may be obtained.
- (6) The applicable time limit for filing motions to intervene or petitions for administrative hearing by persons whose substantial interests may be affected.

Rulemaking Authority 14.202, 120.54(5)(b)6. FS. Law Implemented 120.54(5)(b)6. FS. History—New 1-15-07, Amended 2-5-13.

28-105.0027 | INTERVENTION

(1) Persons other than the original parties to a pending proceeding whose substantial interests will be affected by the disposition of the declaratory statement and who desire to become parties may move the presiding officer for leave to intervene. The presiding officer shall allow for intervention of persons meeting the requirements for intervention of this rule. Except for good cause shown, motions for leave to intervene must be filed within 21 days after publication of (or such later time as is specified in) the notice in the Florida Administrative Register. The presiding officer may impose terms and conditions on the intervener to limit prejudice to other parties.

(2) The motion to intervene shall contain the following information:

(a) The name, address, the e-mail address, and facsimile number, if any, of the intervener; if the intervener is not represented by an attorney or qualified representative; and

(b) The name, address, e-mail address, telephone number, and any facsimile number of the intervener's attorney or qualified representative, if any; and

(c) Allegations sufficient to demonstrate that the intervener is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to agency rule, or that the substantial interests of the intervener are subject to determination or will be affected by the declaratory statement; and

(d) The signature of the intervener or intervener's attorney or qualified representative; and

(e) The date.

(3) Any party may, within seven days of service of the motion, file a response in opposition.

Rulemaking Authority 14.202, 120.54(5)(b)6. FS. Law Implemented 120.54(5)(b)6. FS. History—New 1-15-07, Amended 2-5-13.

28-105.003 | AGENCY DISPOSITION

The agency may hold a hearing to consider a petition for declaratory statement. If the agency is headed by a collegial body, it shall take action on a petition for declaratory statement only at a duly noticed public meeting. 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 90 days of the filing of the petition, the agency shall render a final order denying the petition or issuing a declaratory statement.

Rulemaking Authority 14.202, 120.54(5)(b)6. FS. Law Implemented 120.54(5)(b)6. FS. History—New 4-1-97, Amended 1-15-07.

28-105.004 | NOTICE OF DISPOSITION

The agency shall file a Notice of Disposition for the Declaratory Statement or denial of the petition in the next available issue of the Florida Administrative Register including the following information:

- (1) The name of the agency.
- (2) A summary statement of the agency's decision.
- (3) The agency, contact person, address, and e-mail address where a copy of the petition and final order may be obtained.
- (4) The date the final order is filed.

*Rulemaking Authority 14.202, 120.54(5)(b)6. FS. Law Implemented 120.54(5)(b)6. FS. History—
New 1-15-07, Amended 2-5-13.*

FLORIDA ADMINISTRATIVE CODES | EXCEPTION TO UNIFORM RULES

CODES: 28-108.001 through 28-108.002

28-108.001 | PETITION FOR EXCEPTION TO UNIFORM RULES OF PROCEDURE

(1) The agency head shall file a petition with the Administration Commission for an exception to the Uniform Rules of Procedure as provided in Section 120.54(5)(a)2., F.S., for procedural rules within the scope of any Uniform Rule of Procedure that includes the following:

- (a) Grounds for the request for the exception.
- (b) Citation to the particular Uniform Rule of Procedure for which each exception is sought.
- (c) Specific citation to the provisions of existing agency rule for which an exception is sought, if any.
- (d) Attachment of the proposed rule language as an exhibit to the petition.

(2) The agency shall publish notice of the petition in the next available edition of the Florida Administrative Register, after consultation with the agency clerk of the Administration Commission. The notice shall include:

- (a) The name of the agency seeking an exception;
- (b) The uniform rule of procedure from which the exception is sought;
- (c) The date the matter is expected to be heard by the Administration Commission;
- (d) The contact name, address, e-mail address, and phone number where a copy of the petition may be obtained.

(3) The Administration Commission shall provide interested persons with the opportunity to file written statements or make oral presentations in support of or in opposition to the exception.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 9-9-98, 1-15-07, 2-5-13.

28-108.002 | FINAL DISPOSITION ON PETITION FOR EXCEPTION

The Administration Commission shall publish, at the agency's expense, notice in the next available edition of the Florida Administrative Register of the disposition of the petition, and shall transmit a copy of the notice to the Joint Administrative Procedures Committee, the Department of State, and any person who requests a copy.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97.

FLORIDA ADMINISTRATIVE CODES | COMMUNICATIONS MEDIA TECHNOLOGY

CODES: 28-109.001 through 28-109.005

28-109.001 | GENERAL

This chapter implements the provisions of Section 120.54(5)(b)2., F.S., by providing general procedures to be followed when the agency desires to conduct a proceeding by means of communications media technology or to provide public access to a proceeding by the use of communications media technology.

Specific Authority 120.54(5) FS. Law Implemented 120.54(5)(b)2. FS. History—New 4-1-97.

28-109.002 | DEFINITIONS AS USED IN THIS RULE CHAPTER

(1) "Access point" means a designated place where a person interested in attending a communications media technology proceeding may go for the purpose of attending the proceeding.

(2) "Attend" means having access to the communications media technology network being used to conduct a proceeding, or being used to take evidence, testimony, or argument relative to issues being considered at a proceeding.

(3) "Communications media technology" (CMT) means the electronic transmission of printed matter, audio, full-motion video, freeze frame video, compressed video, and digital video by any method available.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History--New 4-1-97.

28-109.003 | APPLICATION AND CONSTRUCTION

(1) The agency may conduct a proceeding by using CMT and may provide CMT access to a proceeding for purposes of taking evidence, testimony, or argument.

(2) A proceeding is not a CMT proceeding merely because it is broadcast over a communications network.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97.

28-109.004 | GOVERNMENT IN THE SUNSHINE

(1) Nothing in this chapter shall be construed to permit the agency to conduct any proceeding otherwise subject to the provisions of Section 286.011, F.S., exclusively by means of CMT without making provision for the attendance of any member of the public who desires to attend.

(2) No proceeding otherwise subject to Section 286.011, F.S., shall be conducted exclusively by means of CMT if the available technology is insufficient to permit all interested persons to attend. If during the course of a CMT proceeding technical problems develop with the communications network that prevent interested persons from attending, the agency shall terminate the proceeding until the problems have been corrected.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07.

28-109.005 | NOTICE

When the agency chooses to conduct a CMT proceeding, it shall provide notice in the same manner as required for a non-CMT proceeding, and shall plainly state that such proceeding is to be conducted utilizing CMT and identify the specific type of CMT to be used. The notice shall describe how interested persons may attend and shall include:

- (1) The address or addresses of all access points, specifically designating those which are in locations normally open to the public.
- (2) The address of each access point where an interested person may go for the purpose of attending the proceeding.
- (3) An address, e-mail address, and telephone number where an interested person may write or call for additional information.
- (4) An address, e-mail address, and designated person to whom a person may submit written or other physical evidence which he or she intends to offer into evidence during the CMT proceedings.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History--New 4-1-97, Amended 1-15-07, 6-26-13.

APPENDIX

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ORIGINAL SOURCE

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