

CHAPTER 28-105 DECLARATORY STATEMENTS

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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.