

CHAPTER 28-105
DECLARATORY STATEMENTS

28-105.001 Purpose and Use of Declaratory Statement.

28-105.002 The Petition.

28-105.003 Agency Disposition.

Library References: Rigot & DeMeo, *By the Way, More APA*, 71 Fla. B. J. 32 (October 1997).

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 only 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 or for obtaining a policy statement of general applicability from an agency. A petition for declaratory statement must describe the potential impact of statutes, rules, or orders upon the petitioner's interests.

Specific Authority 120.54(5) FS.

Law Implemented 120.565 FS.

History--New 4-1-97.

ANNOTATIONS

Particularity

Letter challenging action of city and requesting declaratory statement did not state with particularity petitioner's circumstances or law that may apply as required by Rule 28-105.002, F.A.C. In addition, under Rule 28-105.001, F.A.C., declaratory statement is not proper method of challenging action of another person. Petition was denied. In re Petition of Dr. Evelio de Hoyos for Declaratory Statement, 19 FALR 3835 (1995).

28-105.002 The Petition.

A petition seeking a declaratory statement shall be filed with the clerk of 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, telephone number, and any facsimile number of the petitioner.

(3) The name, address, telephone number, and any facsimile number of the attorney or qualified representative (if any) of the petitioner.

(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.

Specific Authority 120.54(5) FS.

Law Implemented 120.565 FS.

History--New 4-1-97, Amended 3-18-98.

ANNOTATIONS

Purpose

Letter challenging action of city and requesting declaratory statement did not state with particularity petitioner's circumstances or law that may apply as required by Rule 28-105.002, F.A.C. In addition, under Rule 28-105.001, F.A.C., declaratory statement is not proper method of challenging action of another person. Petition was denied. In re Petition of Dr. Evelio de Hoyos for Declaratory Statement, 19

FALR 3835 (1995).

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. If a hearing is held, it shall be conducted in accordance with Sections 120.569 and 120.57(2), F.S. 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.

Specific Authority 120.54(5) FS.

Law Implemented 120.565 FS.

History--New 4-1-97.