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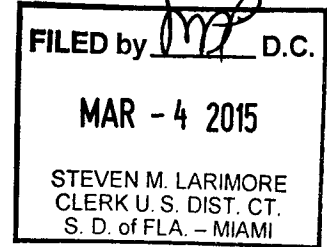
**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 12-22958-CIV-SEITZ

UNITED STATES OF AMERICA,
Plaintiff,

v.

Secretary, Fla. Dept. of Corrections, et. al.,
Defendant(s). /



THIRD PARTY COMPLAINT
FOR SPECIFIC PERFORMANCE OF PRELIMINARY INJUNCTION
ORDERED AGAINST DEFENDANTS

The above case came before this Honorable Court on or around June 4 or 5, 2013. Since that time, the Defendant(s) have failed to comply with numerous orders and/or injunctions issued by this Court.

This complaint is a direct result of the Defendant(s) numerous defaults and/or outright failure to comply to this Court's directions in that:

a) On the 17th day of January, 2013, an initial order was directed towards the Florida Department of Corrections to implement a Kosher/CFO option for Jewish inmates, and,

b) That on the 4th day of June, 2013, the F.D.O.C. filed a new policy, F.A.C. 503.006, and essentially told this Honorable Court "We aren't going to do this."

c) That on the 22nd day of November 2013, this Court again ordered and/or asked the F.D.O.C. to provide reasoning as to why it/they would not comply with this Court's order.

d) The F.D.O.C. then began a systematic display of reasoning as to why it could not possibly sponsor a CFO/Kosher program, which came down to cost efficiency and/or a lack of funding.

Furthermore, the Defendants, failing to overcome the "cost problem" decided to implement the least costly program it could come up with and began to change their administrative codes in an effort to reflect the Defendant's new option and legality of such. See, Exhibit A-1, A-2). As you'll see, the policy states "Hot meals will be served per day." And, Ex A-2 now has the sentence removed. You'll notice amended change dates on bottom of each Exhibit on the 2nd page of each Exhibit.

The Defendants are furthering their own agenda to the detriment of my Jewish heritage and are outright making a mockery of my beliefs and tenants and the need to eat only Kosher food items by not providing prepackaged food stuffs per their own policy 503.006 religious diets/CFO. This was amended over five times in two years so that 1) they could refuse anyone, or remove anyone, and 2) so they could allow anyone expressing an interest to participate. They call it "kosher" and only a handful of participants are Jewish, and out of those few, only a portion are or were born Jewish and truly understand the need to keep Kosher and the dietary laws, most participants are not Jewish, nor do they observe Kosher dietary laws, nor do they care to do so.

Moreover, the Defendants continuously show their contempt for this Honorable Court in their overall implementation, care and delivery of CFO food stuff to participants in the program by:

a) Not serving prepackaged, preplated food as per their current policy (March 22, 2014);

- b) preparing and handling of food in a non-Kosher setting and using non-Kosher equipment;
- c) preparing and storing of food a day or two in advance;
- d) refusing to allow Kosher observant inmates to eat separately, or in a Kosher approved dining hall;
- e) ordering all CFO participants to not only eat in an unclean environment, but they have to eat off (and/or out of) their brown paper bags that the cold meals are served within;
- f) refusing to allow CFO participants to bring their bowls or cups so we don't have to eat off of (and/or out of) a paper sack;
- g) refusing to allow CFO participants to take food stuffs to their dormitory where proper Kosher observance can take place;
- h) Assistant Warden of Security, Marlow, telling me "the court order tells us to feed you in the dining room, and off of (and/or out of) bags," and to date he has failed to provide said court order (as per policy);
- i) Mr. Marlow stating, "we will not be serving prepackaged-preplated meals at this institution, nor will I (the complainant) receive any hot meals."
- j) that per 503.006 (see Exhibit B incorporated herein by reference) that the religious diet program presented to this court, repeatedly is still not in compliance, and;
- k) Assistant Warden Programs, Martin CI did inform this complainant that you approved everything they are doing by court order in September of 2014, again without providing said proof;

1) This court was led to believe (by the Defendants) that all three meals would be “served” prepackaged and “prepared” in a “Kosher” setting, and that with the exclusion of the peanut butter, jelly, cereal, fish and condiments, this is not being adhered to, and food stuffs are being handled in an area where staff used the restroom facilities (as I worked in this area for about 2 or 3 days until their food service director Ms. Brown redirected my work area due to excessive over explanations as to why her (Ms. Brown’s) methods could not be used for Kosher food preparation and the setting in which the preparation is being done).

The setting and idea of this CFO program was to allow Kosher observance to Jewish inmates that have a sincere need to keep their dietary laws, not for the general population to have at it after answering a few meager questions presented to them by an untrained clergy person, and in fact, it feels like I am being punished for being Jewish and causing the Defendants to have to provide me with a meal consistent with my beliefs or doctrine as well as dietary laws.

And the fact that the F.D.O.C. purposely and arbitrarily changed F.A.C. ch. 33-204.003 Food Services – Standard of Operations (which was changed previously due to the fact that the Defendants were facing litigation for attempting to serve “all” cold meals to the entire prison population) due the present litigation so that the above administrative code no longer reflects “(1) General inmates shall receive three meals per day, of which at least two shall be hot meals.” To now read, “(1) General. Inmates shall receive three meals per day.”

Granted, the fact that it was changed in May of 2014, but that’s when the Defendants decided to treat the CFO meals in a different manner under similar circumstances which is causing harm to complainant physically and emotionally. The Defendants feed over 100,000 inmates (3) hot meals per day, yet, due to the fact they are being ordered to expand their dietary

options, they want to do so in a way that is inconsistent with the First Amendment of the United States Constitution for me, a Jewish inmate.

See Exhibit C, an article by Dara Kam, News Service of Florida, which states in pertinent part: "... The contention is that the F.D.O.C. are using present menu to discourage or punish inmates." The same article goes on to explain partial history of the case, up to and including "the agency is trying to do away with decades – old rule requiring that inmates receive two hot meals a day. Too late, as the defendants did do away with said rules and law using their rule making authority under F.S.A. §120.54 and 120.536.

You'll notice that both of these statutes contend that rules cannot be changed arbitrarily, yet the Defendants chose to ignore that fact ... again.


CONCLUSION

I assert that the Defendants are still being arbitrary and outright ignoring this Honorable Court's instructions and are seeking multiple ways to defy every order this Honorable Court puts forth by serving CFO diets (me) cold meals, in and on paper bags, without access to either cold or hot water during certain meals, forcing me to eat in a room that infested with mold, cockroaches, open drainage on the floors by allowing a mockery to be made of strict Kosher observance by allowing inmates who are not hereditarily Jewish, Muslim, or Seventh Day Adventists to "sign-up" and be participants.

WHEREFORE, the complainant respectfully prays that this Honorable Court grant this third-party complaint and order the Defendants to comply with all of this Honorable Court's Orders, to the letter or to place the program in abeyance until such a time that the above can be fully investigated, and/or to initiate fines against the Defendants in lieu of failure to comply in the amount of no more than \$50,000.00 per day and/or no less than \$10,000.00 per day, until

such compliance is observed or verified and any all other relief deemed just and proper in this premise.

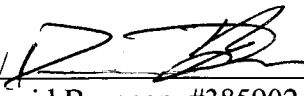
Respectfully Submitted,

/s/  #385902
David Brennan, #385902

UNNOTARIZED OATH


I, David Brennan, swear under penalty of perjury and I declare that the facts stated in this motion are true and correct under United States Law 18 U.S.C. §1621 and 28 U.S.C. §1746.

Executed on this 26th day of February 2015.

/s/  #385902
David Brennan, #385902

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this motion was placed in the hands of prison officials for mailing to: Assistant Attorney General, Office of the Attorney General, 5005. Australian Ave, #400 ~~515 North Flagler Drive, Suite 900~~, West Palm Beach, Florida 33401 on this 26th day of February 2015.

/s/  #385902
David Brennan, #385902
Martin Correctional Institution
1150 S.W. Allapattah Road
Indiantown, Florida 34956

Exhibit

A-1

Policy: 7-18-10 33-204.003

Policy: 1-03-2014 33-204.003
Updated

CFO. Memo

33-204.003 Food Services – Standards of Operation.

(1) General. Inmates shall receive three meals per day, of which at least two shall be hot meals. The meals shall be provided at regular meal times during each 24-hour period, with a period of no more than 14 hours between the end of the evening meal and the beginning of the morning meal, weather and security permitting. Holiday substitutions that deviate from the master menu must be approved in advance by the institutional warden, work release center major, or drug treatment center chief correctional officer. Prescribed therapeutic diets shall be available to all inmates with a current diet prescription.

(2) Confinement.

(a) All inmates in confinement shall receive normal institutional meals as are available to the general population, except that if any item on the normal menu or any food utensil might create a security problem in the confinement area, then another item of comparable quality or other appropriate utensils shall be substituted. Substitutions shall be documented on Form DC6-209, Housing Unit Log, and Form DC6-210, Incident Report. Form DC6-209 is incorporated by reference in Rule 33-601.800, F.A.C. Form DC6-210 is incorporated by reference in Rule 33-602.210, F.A.C.

(b) Hot food served in satellite food operations shall be protected from contamination in transit and shall be served at temperatures set by the Department of Health.

(c) The provisions of Rule 33-602.223, F.A.C., shall be utilized in placing inmates on the special management meal.

(d) Food shall not be withheld, nor the standard menu varied, as a disciplinary sanction or as a reward for good behavior or work for an individual inmate.

(3) Menus. The Dietary Reference Intakes of the Food and Nutrition Board – National Academy of Sciences shall serve as the standard for the preparation of menus and the evaluation of menus served. The Dietary Reference Intakes of the Food and Nutrition Board are hereby incorporated by reference. A copy of the Dietary Reference Intakes may be obtained from the Bureau of Institutional Support Services, Food Service Section, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. The Dietary Reference Intakes were copyrighted in 2001.

(a) The master menus reviewed by the master menu committee shall be used by all institutions and facilities within the department. The master menus shall be reviewed at least annually by the department's master menu committee to determine the need for adjustments based upon cost, nutritional value, equipment capabilities, product availability and staff determined inmate preferences.

(b) Food preparation and service shall be scheduled to ensure that food is served as soon after completion of preparation as possible and at the appropriate temperature.

(c) Meals shall be prepared and served in accordance with the master menu in effect. No specially prepared meals shall be served except those approved therapeutic diets that are prescribed by the attending physician, clinical associate or dentist.

(d) The master menu shall be adhered to except that specific menus and menu items are subject to change by the person in charge of food service at each facility due to production problems, product availability, or security issues. Failure to order a product does not constitute a lack of availability. Substitutions will not be planned to utilize leftovers. When menu substitutions are required, the substitutions will be from the same food group as the original menu item. The master menu manual provides a list of appropriate substitutions within food groups. All inmates shall receive the same food items as specified on the master menu. Adequate amounts of food must be prepared to serve all inmates according to the master menu.

(e) All vegetables shall be prepared without meat, animal fat, meat-based broth, margarine or butter to be suitable for religious and strict vegetarian diets.

(4) Vegan meal pattern. Inmates may choose the vegan (strict vegetarian) meal pattern by submitting Form DC6-236, Inmate Request, to the food service director at the facility where the inmate is housed. An inmate who is transferred to another facility shall be allowed to continue the vegan meal pattern at the new facility by showing the inmate request that was approved by the previous food service director until his request is approved by the new food service director. Form DC6-236 is incorporated by reference in Rule 33-103.019, F.A.C.

(a) The following inmates shall be removed immediately from the vegan meal pattern:

1. Inmates observed eating from the regular menu;
2. Inmates observed eating the alternative entrée; and
3. Inmates who intentionally purchase, possess, or consume items from the canteen that contain any animal products or byproducts.

(b) Staff shall document the incident on Form DC6-210, Incident Report. Such inmates shall be ineligible to reapply for the

vegan meal pattern for six months after involuntary removal.

(c) An inmate who voluntarily requests to be removed from the vegan meal pattern may not reapply for the pattern for 30 days.

(5) Therapeutic Diets. Therapeutic diets for medical or dental reasons shall be provided as ordered by a Department of Corrections credentialed physician, clinical associate (physicians assistant, advanced registered nurse practitioner) or dentist. All orders for therapeutic diets shall be in writing. Non-standard therapeutic diets shall be approved by the public health nutrition program manager and the regional medical executive director. Therapeutic diets shall be served for a maximum of 90 days. Diets extending for periods longer than 90 days shall require a new diet order from the attending Department of Corrections credentialed physician, clinical associate (physicians assistant or advanced registered nurse practitioner) or dentist. Diet prescription orders must be received in food services prior to the expiration of the current prescription to avoid interruption of the therapeutic diet. The Public Health Nutrition Program Manager and the Public Health Consultants shall be available for consultation by health and food service personnel regarding therapeutic diets.

(6) Religious Diets. The alternate entree and the vegan meal pattern provides meal options for the religious requirements of inmates whose religions require a pork-free, lacto-ovo, lacto-vegetarian, or vegan diet.

Rulemaking Authority 944.09 FS. Law Implemented 944.09 FS. History—New 1-18-89, Amended 7-21-97, Formerly 33-30.003, Amended 8-9-00, 11-16-00, 10-2-01, 2-18-02, 7-2-03, 11-1-04, 2-27-05, 10-16-05, 1-17-06, 4-27-09, 3-3-10, ~~7-18-10~~ updated on 5.15.14

944.09 (P)

Dave

Rule 33-204.003, F.A.C.

WEST'S FLORIDA ADMINISTRATIVE CODE
TITLE 33. DEPARTMENT OF CORRECTIONS
CHAPTER 33-204. FOOD SERVICES

Current with amendments available through January 3, 2014.

33-204.003. Food Services -- Standards of Operation.

(1) General. Inmates shall receive three meals per day, of which at least two shall be hot meals. The meals shall be provided at regular meal times during each 24-hour period, with a period of no more than 14 hours between the end of the evening meal and the beginning of the morning meal, weather and security permitting. Holiday substitutions that deviate from the master menu must be approved in advance by the institutional warden, work release center major, or drug treatment center chief correctional officer. Prescribed therapeutic diets shall be available to all inmates with a current diet prescription.

(2) Confinement and special housing units.

(a) All inmates in confinement and special housing shall receive normal institutional meals as are available to the general population, except that if any item on the normal menu or any food utensil might create a security problem in the confinement area, then another item of comparable quality or other appropriate utensils shall be substituted. Substitutions shall be documented on Form DC6-209, Housing Unit Log, and Form DC6-210, Incident Report. Form DC6-209 is incorporated by reference in > Rule 33-601.800, F.A.C. Form DC6-210 is incorporated by reference in > Rule 33-602.210, F.A.C.

(b) Upon entering confinement or special housing, an inmate shall designate his or her singular choice of the regular menu, alternate entrée, or vegan meal pattern. The inmate may voluntarily alter this choice by submitting Form DC6-236, Inmate Request, to the food service director every 30 days. Form DC6-236 is incorporated by reference in > Rule 33-103.005, F.A.C.

(c) Hot food served in satellite food operations shall be protected from contamination in transit and shall be served at temperatures set by the Department of Health.

(d) The provisions of > Rule 33-602.223, F.A.C., shall be utilized in placing inmates on the special management meal.

(e) Food shall not be withheld, nor the standard menu varied, as a disciplinary sanction or as a reward for good behavior or work for an individual inmate.

(3) Menus. The Dietary Reference Intakes of the Food and Nutrition Board - National Academy of Sciences shall serve as the standard for the preparation of menus and the evaluation of menus served. The Dietary Reference Intakes of the Food and Nutrition Board are hereby incorporated by reference. A copy of the Dietary Reference Intakes may be obtained from the Bureau of Contract Management and Monitoring, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The Dietary Reference Intakes were copyrighted in 2004.

(a) The master menus reviewed by the master menu committee shall be used by all institutions and facilities within the department. The master menus shall be reviewed at least annually by the department's master menu committee to determine the need for adjustments based upon cost, nutritional value, equipment capabilities, product availability and staff determined inmate preferences.

(b) Food preparation and service shall be scheduled to ensure that food is served as soon after completion of preparation as possible and at the appropriate temperature.

(c) Meals shall be prepared and served in accordance with the master menu in effect. No specially prepared meals shall be served except those approved therapeutic diets that are prescribed by the attending physician, clinical associate or dentist.

(d) The master menu shall be adhered to except that specific menus and menu items are subject to change by the person in charge of food service at each facility due to production or equipment problems, non-delivery of ingredients or food items, security issues, use of farm produce or USDA commodities, or as authorized by the warden. When menu substitutions are required, the substitutions will be from the same food group as the original menu item. The master menu manual provides a list of appropriate substitutions within food groups. Adequate amounts of food must be prepared to serve all inmates according to the master menu.

(e) All vegetables shall be prepared without meat, animal fat, meat-based broth, margarine or butter to be suitable for religious and strict vegetarian diets.

(f) Food and beverage shall not be consumed in food preparation areas.

(g) Leftover foods must be labeled with the contents, date, and time of production and handled in accordance with the provisions of subsections 64E-11.004(3) and 64E-11.004(14), F.A.C. Food Hygiene. Subsections 64E-11.004(3) and 64E-11.004(14), F.A.C., are hereby

incorporated by reference. Copies of these rules are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500, <http://www.flrules.org/Gateway/reference.asp?No=Ref-02067>. The effective date of these rules is 7-14-2003.

(h) Toilet and hand-washing facilities shall be readily available to food service staff and inmate food handlers. Food service staff and inmate food handlers are required to wash their hands prior to reporting to duty and after using toilet facilities.

(i) A copy of Chapter 64E-11, F.A.C., Food Hygiene, will be available for reference at each department food service facility.

(4) Vegan meal pattern. Inmates may choose the vegan meal pattern by submitting Form DC6-236, Inmate Request, to the food service director at the facility where the inmate is housed, and shall indicate if they are participating as a vegan. An inmate who is transferred to another facility shall be allowed to continue the vegan meal pattern at the new facility by showing the inmate request that was approved by the previous food service director until his request is approved by the new food service director.

(a) The following inmates shall be removed immediately from the vegan meal pattern:

1. Inmates observed eating from the regular menu;

2. Inmates observed eating the alternative entrée; and

3. Inmates who are not on the meal pattern for religious reasons and who intentionally purchase, possess, or consume items from the canteen that contain any animal products or byproducts.

(b) Staff shall document the incident on Form DC6-210, Incident Report. Such inmates shall be ineligible to reapply for the vegan meal pattern for six months after involuntary removal.

(c) An inmate who voluntarily requests to be removed from the vegan meal pattern may not reapply for the pattern for a minimum of 30 days.

(5) Therapeutic Diets. Therapeutic diets for medical or dental reasons shall be provided as ordered by a Department of Corrections credentialed physician, clinical associate (physicians assistant, advanced registered nurse practitioner) or dentist. All orders for therapeutic diets shall be in writing. Non-standard therapeutic diets shall be approved by the public health nutrition program manager and the regional medical executive director. Therapeutic diets shall be served for a maximum of 90 days. Diets extending for periods longer than 90 days shall require a new diet order from the attending Department of Corrections credentialed physician, clinical associate (physicians assistant or advanced registered nurse practitioner) or dentist. Diet prescription orders must be received in food services prior to the expiration of the current prescription to avoid interruption of the therapeutic diet. The Public Health Nutrition Program Manager and the Public Health Nutrition Consultants shall be available for consultation by health and food service personnel regarding therapeutic diets.

(6) Religious Diets. The alternate entree and the vegan meal pattern provides meal options for the religious requirements of inmates.

(7) Meal attendance for inmates on the vegan meal pattern or a therapeutic diet shall be tracked using Form DC4-668, Diet Attendance Roster. Form DC4-668 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 S. Calhoun St., Tallahassee FL 32399-2500, <http://www.flrules.org/Gateway/reference.asp?No=Ref-01869>. The effective date of the form is 12-12.

(a) An inmate on the vegan meal pattern who misses 10% or more of his or her vegan meals within a month will be removed from the vegan meal plan and may not re-apply for a minimum of six months.

(b) An inmate on a therapeutic diet who, following the orientation, misses 10% or more of his or her meals during the first month, or misses nine meals in any calendar month thereafter, is subject to disciplinary action.

Adopted Jan. 18, 1989; Amended July 21, 1997; Transferred from 33-30.003; Amended Aug. 9, 2000, Nov. 16, 2000, Oct. 2, 2001, Feb. 18, 2002, July 2, 2003, Nov. 1, 2004, Feb. 27, 2005, Oct. 16, 2005, Jan. 17, 2006; Amended April 27, 2009. Amended March 3, 2010; July 18, 2010; Dec. 30, 2012.

Authority: > 944.09 FS. Law Implemented > 944.09 FS.

STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS
RELIGIOUS DIET MENU - CERTIFIED FOOD OPTION

FACILITY OR

INSTITUTION NAME: Prison CT

MONTH OF

OPERATION:

Revised March 2014




Department of Corrections Approval
Shane Phillips, Operations Manager

Kathleen L. Fuhrman, MS, RD, LD #ND-234
Public Health Nutrition Program Manager

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
BREAKFAST						
1 ea peanut butter (3 oz)	1 ea peanut butter (3 oz)	1 ea peanut butter (3 oz)	1 ea peanut butter (3 oz)	1 ea peanut butter (3 oz)	1 ea peanut butter (3 oz)	1 ea peanut butter (3 oz)
1 pk cold cereal (.75 oz)	1 pk cold cereal (.75 oz)	1 pk cold cereal (.75 oz)	1 pk cold cereal (.75 oz)	1 pk cold cereal (.75 oz)	1 pk cold cereal (.75 oz)	1 pk cold cereal (.75 oz)
2 ea bread	2 ea bread	2 ea bread	2 ea bread	2 ea bread	2 ea bread	2 ea bread
2 pk jelly	2 pk jelly	2 pk jelly	2 pk jelly	2 pk jelly	2 pk jelly	2 pk jelly
2 ea margarine	2 ea margarine	2 ea margarine	2 ea margarine	2 ea margarine	2 ea margarine	2 ea margarine
1 pk coffee	1 pk coffee	1 pk coffee	1 pk coffee	1 pk coffee	1 pk coffee	1 pk coffee
2 pk sugar	2 pk sugar	2 pk sugar	2 pk sugar	2 pk sugar	2 pk sugar	2 pk sugar
1 pk breakfast beverage	1 pk breakfast beverage	1 pk breakfast beverage	1 pk breakfast beverage	1 pk breakfast beverage	1 pk breakfast beverage	1 pk breakfast beverage
LUNCH						
1 pk sardines (3.53 oz)	1 c beans, canned	1 c beans, canned	1 pk sardines (3.53 oz)	1 c beans, canned	1 pk sardines (3.53 oz)	1 c beans, canned
1 c tomatoes	1 c cabbage	1 c cabbage	1 c beans, canned	1 c cabbage	1 c beans, canned	1 c cabbage
1 c beans, canned	1 pk dressing (12 g)	1 pk dressing (12 g)	1 c carrot	1 pk dressing (12 g)	1 c carrot	1 pk dressing (12 g)
3 pk saline crackers (2ea/pk)	2 ea bread	2 ea bread	3 pk saline crackers (2ea/pk)	2 ea bread	3 pk saline crackers (2ea/pk)	2 ea bread
2 ea margarine	2 ea margarine	2 ea margarine	2 ea margarine	2 ea margarine	2 ea margarine	2 ea margarine
2 ea mustard	1 ea orange	1 ea orange	2 ea mustard	1 ea orange	2 ea mustard	1 ea orange
1 pk beverage	1 pk beverage	1 pk beverage	1 pk beverage	1 pk beverage	1 pk beverage	1 pk beverage
DINNER						
1 c beans, canned	1 pk sardines (3.53 oz)	1 pk peanut butter (3 oz)	1 c beans, canned	1 pk peanut butter (3 oz)	1 c beans, canned	1 pk sardines (3.53 oz)
1 c cabbage	1 c beans, canned	1 c beans, canned	1 c cabbage	1 c beans, canned	1 c cabbage	1 c beans, canned
1 pk dressing (12 g)	1 c tomatoes	1 c tomatoes	1 pk dressing (12 g)	1 c tomatoes	1 pk dressing (12 g)	1 c tomatoes, fresh
2 ea bread	3 pk saline crackers (2ea/pk)	2 ea bread	2 ea bread	2 ea bread	2 ea bread	3 pk saline crackers (2ea/pk)
2 ea margarine	2 ea margarine	2 ea margarine	2 ea margarine	2 ea margarine	2 ea margarine	2 ea margarine
1 ea orange	2 ea mustard	2 pk jelly	1 ea banana	2 pk jelly	1 ea orange	2 ea mustard
1 pk beverage	1 pk beverage	1 pk beverage	1 pk beverage	1 pk beverage	1 pk beverage	1 pk beverage

+ Salt/Pepper shall be offered

This is to certify that this menu is reviewed monthly and is served as written unless otherwise noted



Food Service Director

MENU SUBJECT TO CHANGE DUE TO
PRODUCTION PROBLEMS, PRODUCT
AVAILABILITY, OR SECURITY ISSUES

Updated 3/03/2014

Exhibit

A-2

Policy 33-204,003 FAC updated 5-15-14

33-204.003 Food Services – Standards of Operation.

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(e) All vegetables shall be prepared without meat, animal fat, meat-based broth, margarine or butter to be suitable for religious and strict vegetarian diets.

X(f) Food and beverage shall not be consumed in food preparation areas.

X(g) Leftover foods must be labeled with the contents, date, and time of production and handled in accordance with the provisions of subsections 64E-11.004(3) and 64E-11.004(14), F.A.C. Food Hygiene. Subsections 64E-11.004(3) and 64E-11.004(14), F.A.C., are hereby incorporated by reference. Copies of these rules are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500, <http://www.flrules.org/Gateway/reference.asp?No=Ref-02067>. The effective date of these rules is 7-14-2003.

X(h) Toilet and hand-washing facilities shall be readily available to food service staff and inmate food handlers. Food service staff and inmate food handlers are required to wash their hands prior to reporting to duty and after using toilet facilities.

(i) A copy of Chapter 64E-11, F.A.C., Food Hygiene, will be available for reference at each department food service facility.

(4) Vegan meal pattern. Inmates may choose the vegan meal pattern by submitting Form DC6-236, Inmate Request, to the food service director at the facility where the inmate is housed, and shall indicate if they are participating as a vegan. An inmate who is transferred to another facility shall be allowed to continue the vegan meal pattern at the new facility by showing the inmate request that was approved by the previous food service director until his request is approved by the new food service director.

(a) The following inmates shall be removed immediately from the vegan meal pattern:

1. Inmates observed eating from the regular menu;
2. Inmates observed eating the alternative entrée; and
3. Inmates who are not on the meal pattern for religious reasons and who intentionally purchase, possess, or consume items from the canteen that contain any animal products or byproducts.

(b) Staff shall document the incident on Form DC6-210, Incident Report. Such inmates shall be ineligible to reapply for the vegan meal pattern for six months after involuntary removal.

(c) An inmate who voluntarily requests to be removed from the vegan meal pattern may not reapply for the pattern for a minimum of 30 days.

(5) Therapeutic Diets. Therapeutic diets for medical or dental reasons shall be provided as ordered by a Department of Corrections credentialed physician, clinical associate (physicians assistant, advanced registered nurse practitioner) or dentist. All orders for therapeutic diets shall be in writing. Non-standard therapeutic diets shall be approved by the public health nutrition program manager and the regional medical executive director. Therapeutic diets shall be served for a maximum of 90 days. Diets extending for periods longer than 90 days shall require a new diet order from the attending Department of Corrections credentialed physician, clinical associate (physicians assistant or advanced registered nurse practitioner) or dentist. Diet prescription orders must be received in food services prior to the expiration of the current prescription to avoid interruption of the therapeutic diet. The Public Health Nutrition Program Manager and the Public Health Nutrition Consultants shall be available for consultation by health and food service personnel regarding therapeutic diets.

(6) Religious Diets. The alternate entree and the vegan meal pattern provides meal options for the religious requirements of inmates.

(7) Meal attendance for inmates on the vegan meal pattern or a therapeutic diet shall be tracked using Form DC4-668, Diet Attendance Roster, Form DC4-668 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 S. Calhoun St., Tallahassee FL 32399-2500, <http://www.flrules.org/Gateway/reference.asp?No=Ref-01869>. The effective date of the form is 12-12.

(a) An inmate on the vegan meal pattern who misses 10% or more of his or her vegan meals within a month will be removed from the vegan meal plan and may not re-apply for a minimum of six months.

(b) An inmate on a therapeutic diet who, following the orientation, misses 10% or more of his or her meals during the first month, or misses nine meals in any calendar month thereafter, is subject to disciplinary action.

Rulemaking Authority 944.09 FS. Law Implemented 944.09 FS. History—New 1-18-89, Amended 7-21-97, Formerly 33-30.003, Amended 8-9-00, 11-16-00, 10-2-01, 2-18-02, 7-2-03, 11-1-04, 2-27-05, 10-16-05, 1-17-06, 4-27-09, 3-3-10, 7-18-10, 12-30-12, 5-15-14.

Exhibit

B

Policy/Procedure 503.006

Procedure 503.006

NOTICE: Institutions will be notified when applications for participation will be accepted.**PURPOSE:** To establish Department of Corrections' guidelines regarding the Department's Religious Diet Program.**DEFINITIONS:**

- (1) **CFO**, where used herein, refers to the certified food option. The CFO accommodates religious dietary needs through prepackaged processed meals certified by a nationally accepted kosher certification service.
- (2) **Chaplain**, where used herein, refers to an employee with responsibilities at an institution who possesses skills in the area of religion, pastoral care, and religious programming.
- (3) **Faith Code List**, where used herein, refers to a list of inmate religious faith/affiliation codes for data entry in the Offender Based Information System (OBIS).
- (4) **RDP**, where used herein, refers to Religious Diet Program.

SPECIFIC PROCEDURES:

- (1) It is the policy of the Department of Corrections to afford inmates a reasonable opportunity to observe their religious diet preferences by offering a RDP within the constraints of budget limitations and the security and orderly running of Department of Corrections' institutions in accordance with this procedure.
- (2) The Religious Diet Program will consist of three (3) options:
 - (a) The first option provides for religious diet needs through the alternate entrée. The alternate entrée is a substitute non-meat entrée offered at meals. Any inmate may request the alternate entrée at meal time when the food is distributed. No paperwork or interviews are required for the alternate entrée.
 - (b) The second option provides for religious diet needs through the vegan meal pattern which excludes all animal byproducts. Inmates may choose the vegan meal pattern by submitting an "Inmate Request," DC6-236, to the Food Service Director at the facility where the inmate is housed as specified in Rule 33-204.003, F.A.C.
 - (c) The third option provides for religious diet needs through the CFO, which accommodates religious diet needs through prepackaged processed meals certified by a nationally accepted kosher certification service. An inmate who claims that the tenets of her/his claimed religious faith require provision of meals that conform to religious diet requirements and that no other meal option offered by the Department (such as vegan or alternate entrée) is capable of meeting the diet requirements of that inmate's professed religious faith may request to participate in the CFO as described in sections (3) and (4) of this procedure.

2

MICHAEL D. CREWS
SECRETARY**PROCEDURE NUMBER: 503.006****PROCEDURE TITLE: RELIGIOUS DIET PROGRAM****RESPONSIBLE AUTHORITY: OFFICE OF RE-ENTRY****EFFECTIVE DATE: DECEMBER 13, 2013****INITIAL ISSUE DATE: MARCH 22, 2013****SUPERSEDES: NONE****RELEVANT DC FORMS: DC4-668, DC5-324, AND DC6-236****ACA/CAC STANDARDS: 4-4.319 AND 4-4.320****STATE/FEDERAL STATUTES: NONE****FLORIDA ADMINISTRATIVE CODE: CHAPTER 33-103 AND RULES 33-204.003, 33-503.001, AND 33-601.301 THROUGH 33-601.314, F.A.C.**

STATE CORRECTIONAL INSTITUTION
1100 S.W. ALLAPATTAN ROAD
INDIANTOWN, FLORIDA 34956

STATE CORRECTIONAL INSTITUTION
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Procedure 503.006

(3) ELIGIBILITY AND SCREENING CRITERIA FOR THE CERTIFIED FOOD OPTION:

- (a) Inmates who want to participate in the CFO will submit a DC6-236 to the Chaplain. If any other institution personnel receive an inmate's request to participate in the CFO, such requests will be forwarded to the Chaplain. The inmate must provide a written statement on the DC6-236 indicating interest in participation in the CFO.
- (b) The Chaplain will review the DC6-236 and the stated religious faith entered on the "Personal Characteristics" OBIS screen, to determine whether the inmate has satisfied basic criteria permitting her/him to be considered for participation in the CFO. Basic eligibility requirements include:
1. the inmate has submitted a DC6-236 requesting the CFO;
 2. the inmate's religious preference as indicated on the "Personal Characteristics" OBIS screen is consistent with those religions known to have religious diet restrictions that are readily achieved through the Department's RDP; or
 3. the inmate has expressed beliefs concerning religious diet requirements that the CFO satisfies regardless of the inmate's religious preference as it appears on the "Personal Characteristics" OBIS screen; and
- (c) If the inmate is eligible to enroll in the CFO, an application will be processed as provided in section (4) of this procedure.
- (d) If the inmate is not eligible to enroll in the CFO, the Chaplain will deny the inmate's request. The inmate may choose the vegan meal pattern in accordance with Rule 33-204.003, F.A.C., or appeal a denial to participate in the CFO through use of the Inmate Grievance process in accordance with chapter 33-103, F.A.C.
- (e) An inmate is not eligible to enroll in the CFO if s/he:
1. has voluntarily withdrawn from the CFO within the past six (6) months; or has requested to participate in the CFO and has been disapproved for any reason within the past six (6) months;
 2. has a medical or mental health condition that requires a prescribed therapeutic diet as set forth in "Prescribed Therapeutic Diets," Procedure 401.009 (the inmate's medical requirements will take priority until such time as the medical authority determines resumption of the religious diet poses no medical concerns); or
 3. is unable to manage the religious diet in a manner consistent with institutional safety or security.
- ✱ (f) Eligible inmates must complete a written application on the "Religious Diet Program Application for the Certified Food Option," DC5-324, with the Chaplain in which the inmate must clearly articulate what her/his religious diet requirements are and why the inmate is required to observe the diet restrictions stated.

(4) APPLICATION PROCESS FOR THE CERTIFIED FOOD OPTION:

- (a) Upon a determination that an inmate may meet one (1) or more of the basic eligibility criteria in section (3)(b) of this procedure, the Chaplain will arrange for an inmate in person

Procedure 503.006

interview.

- (b) The inmate will be required to complete and sign the DC5-324 agreeing to the conditions of the CFO. If the inmate is unable to read or understand the form, the Chaplain will read the form to her/him. The inmate will be advised that her/his signing the form constitutes agreement to abide by the requirements and conditions of the CFO program. The inmate must sign the document to be eligible for participation.
- (c) The Chaplain will make the appropriate entry on the "Classification Contact Log" OBIS screen.
- (d) The original DC5-324 will be placed in the inmate's institutional file.
- (e) The Chaplain will provide updates, as appropriate, to classification and the Food Service Director of any changes to the inmates participating in the CFO by updating the "Classification Contact Log" OBIS screen using the correct certified food option status code and providing explanatory comments.
- (5) VOLUNTARY WITHDRAWALS FROM THE CERTIFIED FOOD OPTION:**
- (a) The inmate may terminate her/his participation in the Department's CFO at any time by submitting a written DC6-236 to the Chaplain.
- (b) After interviewing the inmate, the Chaplain will confirm the inmate's removal from the CFO with an entry on the "Classification Contact Log" OBIS screen.
- (c) The Chaplain will provide updates, as appropriate, to classification and the Food Service Director of any inmates that withdraw from the CFO by updating the "Classification Contact Log" OBIS screen using the correct certified food option status code and providing explanatory comments.
- (d) A copy of the approved voluntary request to withdraw from the CFO will be filed in the inmate's institutional file.
- (e) Inmates that voluntarily withdraw from the CFO may not reapply for six (6) months.
- (6) COMPLIANCE:**
- (a) Inmates participating in the CFO are not to purchase, possess, or consume any food that is not consistent with or that specifically violates the standards of the CFO regardless of the source of the food.
- (b) Inmates enrolled in the CFO will be provided a copy of the RDP approved canteen menu.
- (c) CFO participation compliance will be tracked by the Food Service Director on the Diet Attendance Roster," DC4-668 and reported to the Chaplain's office monthly.

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Procedure 503.006

(7) CERTIFIED FOOD OPTION MENU AND FOOD PREPARATION REQUIREMENTS:(a) Certified Food Option Menu:

1. A CFO menu, which includes the approved menu and product specifications, will be used for food procurement and meal service at all institutions. The CFO menu will be certified and maintained by the Public Health Nutrition Program Manager, who is a Registered Dietitian, located in the Department's central office Bureau of Contract Management and Monitoring Operations Section.
2. The CFO menu will be reviewed annually to assess responsiveness to inmate eating preferences, operational impact, product pricing, and nutritional content.
3. Following the annual CFO menu update, and before the updated menu is implemented, a nutritional analysis is conducted by the Public Health Nutrition Program Manager to ensure the CFO menu considers the Dietary Reference Intakes (DRIs) for groups published by the Food and Nutrition Board of the National Academy of the Sciences.

Changes or substitutions to the CFO menu will not be made at the institutional level. If menu changes or substitutions are required due to extenuating circumstances such as late delivery, temporarily inoperative equipment, etc., the Food Service Director, or designee, will coordinate all changes or substitutions with her/his regional Public Health Nutritional Consultant, who is a Registered Dietitian. Prior to approval, the regional Public Health Nutritional Consultant will review all changes or substitutions with the Public Health Nutrition Program Manager.

(b) Certified Food Option Prepackaged Meal Preparation Requirements:

1. Prepackaged meals purchased for use on the CFO menu will be certified by a nationally accepted kosher certification service. In addition to the kosher certification, any protein food items (not contained in the pre-plated meals), bread, cereal, margarine, condiments, vegetable juice, and beverages listed as part of the CFO menu must be certified parve, meaning they are certified to contain neither meat nor dairy products.

Prepackaged meals (except bread and beverages as detailed immediately below) will be procured and served in sealed individual serving packages marked with the appropriate religious certification. Any item to be heated is double-wrapped and sealed in a package that may be heated in a conventional or microwave oven.

2. Nothing cut, processed, prepared, or served from a container is offered except:
 - a. Loaf bread, which may be served directly from a package that contains the kosher parve certification or removed from that same package and packaged by servers in a disposable single use sealable plastic bag immediately before service.
 - b. Individually packaged beverage or instant beverage powder is provided to be reconstituted by the inmate.
 - c. When ordered by the Warden, due to packaging that may be a security concern, food may be removed from an individual container and placed in a covered or wrapped disposable container to serve. Any such removal shall be conducted as described in section (7)(b)4 below.

5

Procedure 503.006

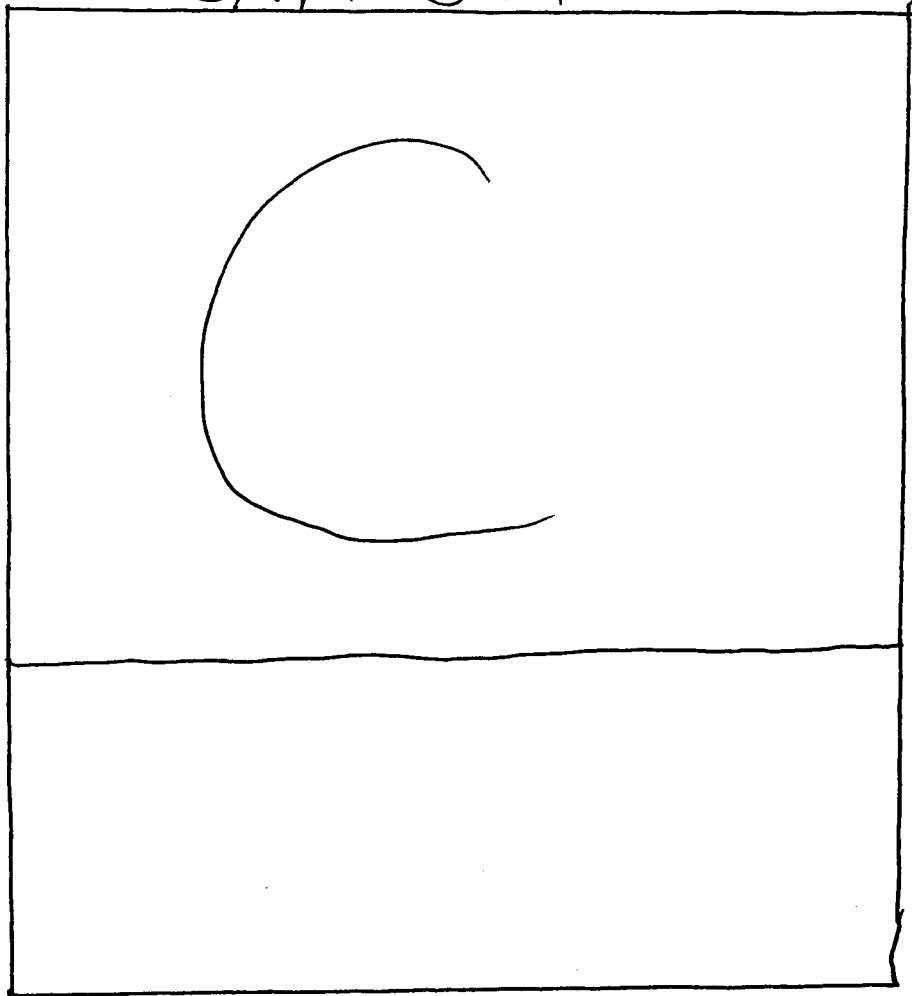
4. Before any food is removed from the original manufacturer's packaging as authorized above, an area must be prepared by covering the surface with two (2) layers of butcher paper or plastic wrap. The butcher paper will remain dry. Only disposable single use utensils (i.e., serving spoons, plates, cups, etc.) and single use disposable plastic gloves will come into direct contact with the prepared food when handling is authorized.

/s/
Secretary

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Exhibit



Controversy continues over kosher meals in Florida prisons

BY DARA KAM

The News Service of Florida

Peanut butter, sardines and cabbage may be healthy options for some scrupulous dieters.

But Florida prison inmates whose kosher meals are comprised primarily of those three staples served cold seven days a week say the chow isn't just nutritionally inadequate, it's plain gross.

They contend that the peanut butter, sardines and cabbage served up daily by the Florida Department of Corrections are designed to discourage inmates from signing up for the kosher meals or to punish inmates if they do.

Critics say that the chow is far from what a federal judge had in mind last year when she ordered the state to start serving kosher meals to inmates.

Agency officials insist the revised kosher meal option — which until last month included items such as meatloaf, Salisbury steak and turkey cutlets — is a way for the cash-strapped prison system to cut costs while complying with the court order.

I would say that peanut butter, sardines and cabbage every day looks a lot like punishment," said Luke Goodrich, deputy general counsel for the Becket Fund for Religious Liberty which sued the state on behalf of Bruce Rich, an Orthodox Jew who was denied a kosher diet.

Rich dropped his case in December after U.S. District Judge Patricia Seitz gave the agency until July 1 to offer kosher meals to "all prisoners with a sincere religious basis for keeping kosher." Seitz's ruling, which the state is appealing, came in a separate lawsuit filed by the U.S. Department of Justice against the corrections department. A trial in that case is set for Aug. 25.

According to the Department of Corrections, 3,100 of the state's more than 100,000 inmates are receiving the diet at the six institutions where it is now offered, and more than 5,000 others have been approved for the diet.

Meanwhile, the agency is trying to do away with a decades-old rule requiring that inmates receive two hot meals each day.

"As stated the proposed rule is to allow the department to more effectively manage its food service operations, and that includes being able to implement a kosher meal plan in the most cost-effective way possible, while meeting the nutritional and religious needs," department spokeswoman Jessica Cary said in an e-mail.

But Florida Justice Institute Executive Director Randall Berg said the cold-meal rule revision is clearly another punitive measure.

The state has been embroiled in legal challenges over the kosher meals for more than a decade. The kosher meals are available not only for Jewish prisoners, but for Muslim and Seventh-Day Adventists, whose religions also prescribe dietary restrictions.

The state has argued that providing kosher meals is prohibitively expensive and poses a security risk because inmates would have to be transferred to facilities that either had kosher kitchens or that served the meals. In line with other court decisions, Seitz rejected those arguments in her December ruling.

Dave

West's F.S.A. § 120.536

WEST'S FLORIDA STATUTES ANNOTATED

TITLE X. PUBLIC OFFICERS, EMPLOYEES, AND RECORDS (CHAPTERS 110-123)
CHAPTER 120. ADMINISTRATIVE PROCEDURE ACT

Current through Ch. 272 (End) of the 2013 1st Reg. Sess. of the 23rd Legislature

120.536. Rulemaking authority; repeal; challenge

(1) A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.

(2) Unless otherwise expressly provided by law:

(a) The repeal of one or more provisions of law implemented by a rule that on its face implements only the provision or provisions repealed and no other provision of law nullifies the rule. Whenever notice of the nullification of a rule under this subsection is received from the committee or otherwise, the Department of State shall remove the rule from the Florida Administrative Code as of the effective date of the law effecting the nullification and update the historical notes for the code to show the rule repealed by operation of law.

(b) The repeal of one or more provisions of law implemented by a rule that on its face implements the provision or provisions repealed and one or more other provisions of law nullifies the rule or applicable portion of the rule to the extent that it implements the repealed law. The agency having authority to repeal or amend the rule shall, within 180 days after the effective date of the repealing law, publish a notice of rule development identifying all portions of rules affected by the repealing law, and if no notice is timely published the operation of each rule implementing a repealed provision of law shall be suspended until such notice is published.

(c) The repeal of one or more provisions of law that, other than as provided in paragraph (a) or paragraph (b), causes a rule or portion of a rule to be of uncertain enforceability requires the Department of State to treat the rule as provided by s. 120.555. A rule shall be considered to be of uncertain enforceability under this paragraph if the division notifies the Department of State that a rule or a portion of the rule has been invalidated in a division proceeding based upon a repeal of law, or the committee gives written notification to the Department of State and the agency having power to amend or repeal the rule that a law has been repealed creating doubt about whether the rule is still in full force and effect.

(3) The Administrative Procedures Committee or any substantially affected person may petition an agency to repeal any rule, or portion thereof, because it exceeds the rulemaking authority permitted by this section. Not later than 30 days after the date of filing the petition if the agency is headed by an individual, or not later than 45 days if the agency is headed by a collegial body, the agency shall initiate rulemaking proceedings to repeal the rule, or portion thereof, or deny the petition, giving a written statement of its reasons for the denial.

(4) Nothing in this section shall be construed to change the legal status of a rule that has otherwise been judicially or administratively determined to be invalid.

CREDIT(S)

Laws 1996, c. 96-159, § 9, eff. Oct. 1, 1996. Amended by Laws 1999, c. 99-379, § 3, eff. June 18, 1999; Laws 2000, c. 2000-151, § 15, eff. July 4, 2000; Laws 2005, c. 2005-2, § 15, eff. July 5, 2005; Laws 2008, c. 2008-104, § 4, eff. July 1, 2008; Laws 2012, c. 2012-31, § 1, eff. May 27, 2012.

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

Amendment Notes:

Laws 1999, c. 99-379, § 1, provides:

"It is the intent of the Legislature that modifications contained in sections 2 and 3 of this act which apply to rulemaking are to clarify the limited authority of agencies to adopt rules in accordance with chapter 96-159, Laws of Florida, and are intended to reject the class of powers and duties analysis. However, it is not the intent of the Legislature to reverse the result of any specific judicial decision."

Laws 1999, c. 99-379, § 3, in subsec. (1), substituted "or interpret the specific powers" for ", interpret, or make specific the particular powers" and "implementing or interpreting the specific" for "the particular" and inserted "or is within the agency's class of powers and duties" following "capricious"; in subsec. (2), inserted the paragraph (a) designation and paragraph (b), relating to a listing of rules and

Mio.

West's F.S.A. § 120.54

WEST'S FLORIDA STATUTES ANNOTATED
TITLE X. PUBLIC OFFICERS, EMPLOYEES, AND RECORDS (CHAPTERS 110-123)
CHAPTER 120. ADMINISTRATIVE PROCEDURE ACT

Current with chapters in effect from the 2014 2nd Reg. Sess. of the 23rd Legislature through March 31, 2014

120.54. Rulemaking

(1) General provisions applicable to all rules other than emergency rules.--

(a) Rulemaking is not a matter of agency discretion. Each agency statement defined as a rule by s. 120.52 shall be adopted by the rulemaking procedure provided by this section as soon as feasible and practicable.

1. Rulemaking shall be presumed feasible unless the agency proves that:

a. The agency has not had sufficient time to acquire the knowledge and experience reasonably necessary to address a statement by rulemaking; or

b. Related matters are not sufficiently resolved to enable the agency to address a statement by rulemaking.

2. Rulemaking shall be presumed practicable to the extent necessary to provide fair notice to affected persons of relevant agency procedures and applicable principles, criteria, or standards for agency decisions unless the agency proves that:

a. Detail or precision in the establishment of principles, criteria, or standards for agency decisions is not reasonable under the circumstances; or

b. The particular questions addressed are of such a narrow scope that more specific resolution of the matter is impractical outside of an adjudication to determine the substantial interests of a party based on individual circumstances.

(b) Whenever an act of the Legislature is enacted which requires implementation of the act by rules of an agency within the executive branch of state government, such rules shall be drafted and formally proposed as provided in this section within 180 days after the effective date of the act, unless the act provides otherwise.

(c) No statutory provision shall be delayed in its implementation pending an agency's adoption of implementing rules unless there is an express statutory provision prohibiting its application until the adoption of implementing rules.

(d) In adopting rules, all agencies must, among the alternative approaches to any regulatory objective and to the extent allowed by law, choose the alternative that does not impose regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

(e) No agency has inherent rulemaking authority, nor has any agency authority to establish penalties for violation of a rule unless the Legislature, when establishing a penalty, specifically provides that the penalty applies to rules.

(f) An agency may adopt rules authorized by law and necessary to the proper implementation of a statute prior to the effective date of the statute, but the rules may not be effective until the statute upon which they are based is effective. An agency may not adopt retroactive rules, including retroactive rules intended to clarify existing law, unless that power is expressly authorized by statute.

(g) Each rule adopted shall contain only one subject.

(h) In rulemaking proceedings, the agency may recognize any material which may be judicially noticed, and it may provide that materials so recognized be incorporated into the record of the proceeding. Before the record of any proceeding is completed, all parties shall be provided a list of these materials and given a reasonable opportunity to examine them and offer written comments or written rebuttal.

(i) 1. A rule may incorporate material by reference but only as the material exists on the date the rule is adopted. For purposes of the rule, changes in the material are not effective unless the rule is amended to incorporate the changes.

2. An agency rule that incorporates by specific reference another rule of that agency automatically incorporates subsequent amendments to the referenced rule unless a contrary intent is clearly indicated in the referencing rule. A notice of amendments to a rule that has been incorporated by specific reference in other rules of that agency must explain the effect of those amendments on the referencing rules.

3. In rules adopted after December 31, 2010, material may not be incorporated by reference unless:

a. The material has been submitted in the prescribed electronic format to the Department of State and the full text of the material can be made available for free public access through an electronic hyperlink from the rule making the reference in the Florida Administrative Code; or

b. The agency has determined that posting the material on the Internet for purposes of public examination and inspection would constitute a violation of federal copyright law, in which case a statement to that effect, along with the address of locations at the Department of State and the agency at which the material is available for public inspection and examination, must be included in the notice required by subparagraph (3)(a)1.

4. A rule may not be amended by reference only. Amendments must set out the amended rule in full in the same manner as required by the State Constitution for laws.

5. Notwithstanding any contrary provision in this section, when an adopted rule of the Department of Environmental Protection or a water management district is incorporated by reference in the other agency's rule to implement a provision of part IV of chapter 373, subsequent amendments to the rule are not effective as to the incorporating rule unless the agency incorporating by reference notifies the committee and the Department of State of its intent to adopt the subsequent amendment, publishes notice of such intent in the Florida Administrative Register, and files with the Department of State a copy of the amended rule incorporated by reference. Changes in the rule incorporated by reference are effective as to the other agency 20 days after the date of the published notice and filing with the Department of State. The Department of State shall amend the history note of the incorporating rule to show the effective date of such change. Any substantially affected person may, within 14 days after the date of publication of the notice of intent in the Florida Administrative Register, file an objection to rulemaking with the agency. The objection shall specify the portions of the rule incorporated by reference to which the person objects and the reasons for the objection. The agency shall not have the authority under this subparagraph to adopt those portions of the rule specified in such objection. The agency shall publish notice of the objection and of its action in response in the next available issue of the Florida Administrative Register.

6. The Department of State may adopt by rule requirements for incorporating materials pursuant to this paragraph.

(j) A rule published in the Florida Administrative Code must be indexed by the Department of State within 90 days after the rule is filed. The Department of State shall by rule establish procedures for indexing rules.

(k) An agency head may delegate the authority to initiate rule development under subsection (2); however, rulemaking responsibilities of an agency head under subparagraph (3)(a)1., subparagraph (3)(e)1., or subparagraph (3)(c)6. may not be delegated or transferred.

(2) Rule development; workshops; negotiated rulemaking.--

(a) Except when the intended action is the repeal of a rule, agencies shall provide notice of the development of proposed rules by publication of a notice of rule development in the Florida Administrative Register before providing notice of a proposed rule as required by paragraph (3)(a). The notice of rule development shall indicate the subject area to be addressed by rule development, provide a short, plain explanation of the purpose and effect of the proposed rule, cite the specific legal authority for the proposed rule, and include the preliminary text of the proposed rules, if available, or a statement of how a person may promptly obtain, without cost, a copy of any preliminary draft, if available.

(b) All rules should be drafted in readable language. The language is readable if:

1. It avoids the use of obscure words and unnecessarily long or complicated constructions; and
2. It avoids the use of unnecessary technical or specialized language that is understood only by members of particular trades or professions.

(c) An agency may hold public workshops for purposes of rule development. An agency must hold public workshops, including workshops in various regions of the state or the agency's service area, for purposes of rule development if requested in writing by any affected person, unless the agency head explains in writing why a workshop is unnecessary. The explanation is not final agency action subject to review pursuant to ss. 120.569 and 120.57. The failure to provide the explanation when required may be a material error in procedure pursuant to s. 120.56(1)(c). When a workshop or public hearing is held, the agency must ensure that the persons responsible for preparing the proposed rule are available to explain the agency's proposal and to respond to questions or comments regarding the rule being developed. The workshop may be facilitated or mediated by a neutral third person, or the agency may employ other types of dispute resolution alternatives for the workshop that are appropriate for rule development. Notice of a rule development workshop shall be by publication in the Florida Administrative Register not less than 14 days prior to the date on which the workshop is scheduled to be held and shall indicate the subject area which will be addressed; the agency contact person; and the place, date, and time of the workshop.

(d) 1. An agency may use negotiated rulemaking in developing and adopting rules. The agency should consider the use of negotiated rulemaking when complex rules are being drafted or strong opposition to the rules is anticipated. The agency should consider, but is not limited to considering, whether a balanced committee of interested persons who will negotiate in good faith can be assembled, whether the agency is willing to support the work of the negotiating committee, and whether the agency can use the group consensus as the basis for its proposed rule. Negotiated rulemaking uses a committee of designated representatives to draft a mutually acceptable proposed rule.

2. An agency that chooses to use the negotiated rulemaking process described in this paragraph shall publish in the Florida Administrative Register a notice of negotiated rulemaking that includes a listing of the representative groups that will be invited to participate in the negotiated rulemaking process. Any person who believes that his or her interest is not adequately represented may apply to participate within 30 days after publication of the notice. All meetings of the negotiating committee shall be noticed and open to the public pursuant to the provisions of this chapter. The negotiating committee shall be chaired by a neutral facilitator or mediator.

3. The agency's decision to use negotiated rulemaking, its selection of the representative groups, and approval or denial of an application to participate in the negotiated rulemaking process are not agency action. Nothing in this subparagraph is intended to affect the rights of an affected person to challenge a proposed rule developed under this paragraph in accordance with > s. 120.56(2).

(3) Adoption procedures.--

(a) Notices.--

1. Prior to the adoption, amendment, or repeal of any rule other than an emergency rule, an agency, upon approval of the agency head, shall give notice of its intended action, setting forth a short, plain explanation of the purpose and effect of the proposed action; the full text of the proposed rule or amendment and a summary thereof; a reference to the grant of rulemaking authority pursuant to which the rule is adopted; and a reference to the section or subsection of the Florida Statutes or the Laws of Florida being implemented or interpreted. The notice must include a summary of the agency's statement of the estimated regulatory costs, if one has been prepared, based on the factors set forth in > s. 120.541(2); a statement that any person who wishes to provide the agency with information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative as provided by > s. 120.541(1), must do so in writing within 21 days after publication of the notice; and a statement as to whether, based on the statement of the estimated regulatory costs or other information expressly relied upon and described by the agency if no statement of regulatory costs is required, the proposed rule is expected to require legislative ratification pursuant to > s. 120.541(3). The notice must state the procedure for requesting a public hearing on the proposed rule. Except when the intended action is the repeal of a rule, the notice must include a reference both to the date on which and to the place where the notice of rule development that is required by subsection (2) appeared.

2. The notice shall be published in the Florida Administrative Register not less than 28 days prior to the intended action. The proposed rule shall be available for inspection and copying by the public at the time of the publication of notice.

3. The notice shall be mailed to all persons named in the proposed rule and to all persons who, at least 14 days prior to such mailing, have made requests of the agency for advance notice of its proceedings. The agency shall also give such notice as is prescribed by rule to those particular classes of persons to whom the intended action is directed.

4. The adopting agency shall file with the committee, at least 21 days prior to the proposed adoption date, a copy of each rule it proposes to adopt; a copy of any material incorporated by reference in the rule; a detailed written statement of the facts and circumstances justifying the proposed rule; a copy of any statement of estimated regulatory costs that has been prepared pursuant to > s. 120.541; a statement of the extent to which the proposed rule relates to federal standards or rules on the same subject; and the notice required by subparagraph 1.

(b) Special matters to be considered in rule adoption.--

1. Statement of estimated regulatory costs.--Before the adoption, amendment, or repeal of any rule other than an emergency rule, an agency is encouraged to prepare a statement of estimated regulatory costs of the proposed rule, as provided by > s. 120.541. However, an agency must prepare a statement of estimated regulatory costs of the proposed rule, as provided by > s. 120.541, if:

a. The proposed rule will have an adverse impact on small business; or

b. The proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in this state within 1 year after the implementation of the rule.

2. Small businesses, small counties, and small cities.--

a. Each agency, before the adoption, amendment, or repeal of a rule, shall consider the impact of the rule on small businesses as defined by > s. 288.703 and the impact of the rule on small counties or small cities as defined by > s. 120.52. Whenever practicable, an agency shall tier its rules to reduce disproportionate impacts on small businesses, small counties, or small cities to avoid regulating small businesses, small counties, or small cities that do not contribute significantly to the problem the rule is designed to address. An agency may define "small business" to include businesses employing more than 200 persons, may define "small county" to include those with populations of more than 75,000, and may define "small city" to include those with populations of more than 10,000, if it finds that such a definition is necessary to adapt a rule to the needs and problems of small businesses, small counties, or small cities. The agency shall consider each of the following methods for reducing the impact of the proposed rule on small businesses, small counties, and small cities, or any combination of these entities:

(I) Establishing less stringent compliance or reporting requirements in the rule.

(II) Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements.

(III) Consolidating or simplifying the rule's compliance or reporting requirements.

(IV) Establishing performance standards or best management practices to replace design or operational standards in the rule.

(V) Exempting small businesses, small counties, or small cities from any or all requirements of the rule.

b. (I) If the agency determines that the proposed action will affect small businesses as defined by the agency as provided in subparagraph a., the agency shall send written notice of the rule to the rules ombudsman in the Executive Office of the Governor at least 28 days before the intended action.

(II) Each agency shall adopt those regulatory alternatives offered by the rules ombudsman in the Executive Office of the Governor and provided to the agency no later than 21 days after the rules ombudsman's receipt of the written notice of the rule which it finds are feasible and consistent with the stated objectives of the proposed rule and which would reduce the impact on small businesses. When regulatory alternatives are offered by the rules ombudsman in the Executive Office of the Governor, the 90-day period for filing the rule in subparagraph (c)2. is extended for a period of 21 days.

(III) If an agency does not adopt all alternatives offered pursuant to this sub-subparagraph, it shall, before rule adoption or amendment and pursuant to subparagraph (d)1., file a detailed written statement with the committee explaining the reasons for failure to adopt such alternatives. Within 3 working days after the filing of such notice, the agency shall send a copy of such notice to the rules ombudsman in the Executive Office of the Governor.

(c) Hearings.--

1. If the intended action concerns any rule other than one relating exclusively to procedure or practice, the agency shall, on the request of any affected person received within 21 days after the date of publication of the notice of intended agency action, give affected persons an opportunity to present evidence and argument on all issues under consideration. The agency may schedule a public hearing on the rule and, if requested by any affected person, shall schedule a public hearing on the rule. When a public hearing is held, the agency must ensure that staff are available to explain the agency's proposal and to respond to questions or comments regarding the rule. If the agency head is a board or other collegial body created under > s. 20.165(4) or > s. 20.43(3)(g), and one or more requested public hearings is scheduled, the board or other collegial body shall conduct at least one of the public hearings itself and may not delegate this responsibility without the consent of those persons requesting the public hearing. Any material pertinent to the issues under consideration submitted to the agency within 21 days after the date of publication of the notice or submitted to the agency between the date of publication of the notice and the end of the final public hearing shall be considered by the agency and made a part of the record of the rulemaking proceeding.

2. Rulemaking proceedings shall be governed solely by the provisions of this section unless a person timely asserts that the person's substantial interests will be affected in the proceeding and affirmatively demonstrates to the agency that the proceeding does not provide adequate opportunity to protect those interests. If the agency determines that the rulemaking proceeding is not adequate to protect the person's interests, it shall suspend the rulemaking proceeding and convene a separate proceeding under the provisions of > ss. 120.569 and > 120.57. Similarly situated persons may be requested to join and participate in the separate proceeding. Upon conclusion of the separate proceeding, the rulemaking proceeding shall be resumed.

(d) Modification or withdrawal of proposed rules.--

1. After the final public hearing on the proposed rule, or after the time for requesting a hearing has expired, if the rule has not been changed from the rule as previously filed with the committee, or contains only technical changes, the adopting agency shall file a notice to that effect with the committee at least 7 days prior to filing the rule for adoption. Any change, other than a technical change that does not affect the substance of the rule, must be supported by the record of public hearings held on the rule, must be in response to written material submitted to the agency within 21 days after the date of publication of the notice of intended agency action or submitted to the agency between the date of publication of the notice and the end of the final public hearing, or must be in response to a proposed objection by the committee. In addition, when any change is made in a proposed rule, other than a technical change, the adopting agency shall provide a copy of a notice of change by certified mail or actual delivery to any person who requests it in writing no later than 21 days after the notice required in paragraph (a). The agency shall file the notice of change with the committee, along with the reasons for the change, and provide the notice of change to persons requesting it, at least 21 days prior to filing the rule for adoption. The notice of change shall be published in the Florida Administrative Register at least 21 days prior to filing the rule for adoption. This subparagraph does not apply to emergency rules adopted pursuant to subsection (4).

2. After the notice required by paragraph (a) and prior to adoption, the agency may withdraw the rule in whole or in part.

3. After adoption and before the rule becomes effective, a rule may be modified or withdrawn only in the following circumstances:

a. When the committee objects to the rule;

b. When a final order, which is not subject to further appeal, is entered in a rule challenge brought pursuant to > s. 120.56 after the date of adoption but before the rule becomes effective pursuant to subparagraph (c)6.;

c. If the rule requires ratification, when more than 90 days have passed since the rule was filed for adoption without the Legislature ratifying the rule, in which case the rule may be withdrawn but may not be modified; or

d. When the committee notifies the agency that an objection to the rule is being considered, in which case the rule may be modified to extend the effective date by not more than 60 days.

4. The agency shall give notice of its decision to withdraw or modify a rule in the first available issue of the publication in which the original notice of rulemaking was published, shall notify those persons [1] described in subparagraph (a)3. in accordance with the requirements of

that subparagraph, and shall notify the Department of State if the rule is required to be filed with the Department of State.

5. After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.

(e) Filing for final adoption; effective date.--

1. If the adopting agency is required to publish its rules in the Florida Administrative Code, the agency, upon approval of the agency head, shall file with the Department of State three certified copies of the rule it proposes to adopt; one copy of any material incorporated by reference in the rule, certified by the agency; a summary of the rule; a summary of any hearings held on the rule; and a detailed written statement of the facts and circumstances justifying the rule. Agencies not required to publish their rules in the Florida Administrative Code shall file one certified copy of the proposed rule, and the other material required by this subparagraph, in the office of the agency head, and such rules shall be open to the public.

2. A rule may not be filed for adoption less than 28 days or more than 90 days after the notice required by paragraph (a), until 21 days after the notice of change required by paragraph (d), until 14 days after the final public hearing, until 21 days after a statement of estimated regulatory costs required under > s. 120.541 has been provided to all persons who submitted a lower cost regulatory alternative and made available to the public, or until the administrative law judge has rendered a decision under > s. 120.56(2), whichever applies. When a required notice of change is published prior to the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after the date of publication. If notice of a public hearing is published prior to the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after adjournment of the final hearing on the rule, 21 days after receipt of all material authorized to be submitted at the hearing, or 21 days after receipt of the transcript, if one is made, whichever is latest. The term "public hearing" includes any public meeting held by any agency at which the rule is considered. If a petition for an administrative determination under > s. 120.56(2) is filed, the period during which a rule must be filed for adoption is extended to 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete.

3. At the time a rule is filed, the agency shall certify that the time limitations prescribed by this paragraph have been complied with, that all statutory rulemaking requirements have been met, and that there is no administrative determination pending on the rule.

4. At the time a rule is filed, the committee shall certify whether the agency has responded in writing to all material and timely written comments or written inquiries made on behalf of the committee. The department shall reject any rule that is not filed within the prescribed time limits; that does not comply with all statutory rulemaking requirements and rules of the department; upon which an agency has not responded in writing to all material and timely written inquiries or written comments; upon which an administrative determination is pending; or which does not include a statement of estimated regulatory costs, if required.

5. If a rule has not been adopted within the time limits imposed by this paragraph or has not been adopted in compliance with all statutory rulemaking requirements, the agency proposing the rule shall withdraw the rule and give notice of its action in the next available issue of the Florida Administrative Register.

6. The proposed rule shall be adopted on being filed with the Department of State and become effective 20 days after being filed, on a later date specified in the notice required by subparagraph (a)1., on a date required by statute, or upon ratification by the Legislature pursuant to > s. 120.541(3). Rules not required to be filed with the Department of State shall become effective when adopted by the agency head, on a later date specified by rule or statute, or upon ratification by the Legislature pursuant to > s. 120.541(3). If the committee notifies an agency that an objection to a rule is being considered, the agency may postpone the adoption of the rule to accommodate review of the rule by the committee. When an agency postpones adoption of a rule to accommodate review by the committee, the 90-day period for filing the rule is tolled until the committee notifies the agency that it has completed its review of the rule.

For the purposes of this paragraph, the term "administrative determination" does not include subsequent judicial review.

(4) Emergency rules.--

(a) If an agency finds that an immediate danger to the public health, safety, or welfare requires emergency action, the agency may adopt any rule necessitated by the immediate danger. The agency may adopt a rule by any procedure which is fair under the circumstances if:

1. The procedure provides at least the procedural protection given by other statutes, the State Constitution, or the United States Constitution.

2. The agency takes only that action necessary to protect the public interest under the emergency procedure.

3. The agency publishes in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. In any event, notice of emergency rules, other than those of educational units or units of government with jurisdiction in only one or a part of one county, including the full text of the rules, shall be published in the first available issue of the Florida Administrative Register and provided to the committee along with any material incorporated by reference in the rules. The agency's findings of immediate danger, necessity, and procedural fairness shall be judicially reviewable.

(b) Rules pertaining to the public health, safety, or welfare shall include rules pertaining to perishable agricultural commodities or rules pertaining to the interpretation and implementation of the 12 requirements of chapters 97-102 and chapter 105 of the Election Code.

(c) An emergency rule adopted under this subsection shall not be effective for a period longer than 90 days and shall not be renewable, except when the agency has initiated rulemaking to adopt rules addressing the subject of the emergency rule and either:

1. A challenge to the proposed rules has been filed and remains pending; or
2. The proposed rules are awaiting ratification by the Legislature pursuant to > s. 120.541(3).

Nothing in this paragraph prohibits the agency from adopting a rule or rules identical to the emergency rule through the rulemaking procedures specified in subsection (3).

(d) Subject to applicable constitutional and statutory provisions, an emergency rule becomes effective immediately on filing, or on a date less than 20 days thereafter if specified in the rule, if the adopting agency finds that such effective date is necessary because of immediate danger to the public health, safety, or welfare.

(5) Uniform rules.--

(a) 1. By July 1, 1997, the Administration Commission shall adopt one or more sets of uniform rules of procedure which shall be reviewed by the committee and filed with the Department of State. Agencies must comply with the uniform rules by July 1, 1998. The uniform rules shall establish procedures that comply with the requirements of this chapter. On filing with the department, the uniform rules shall be the rules of procedure for each agency subject to this chapter unless the Administration Commission grants an exception to the agency under this subsection.

2. An agency may seek exceptions to the uniform rules of procedure by filing a petition with the Administration Commission. The Administration Commission shall approve exceptions to the extent necessary to implement other statutes, to the extent necessary to conform to any requirement imposed as a condition precedent to receipt of federal funds or to permit persons in this state to receive tax benefits under federal law, or as required for the most efficient operation of the agency as determined by the Administration Commission. The reasons for the exceptions shall be published in the Florida Administrative Register.

3. Agency rules that provide exceptions to the uniform rules shall not be filed with the department unless the Administration Commission has approved the exceptions. Each agency that adopts rules that provide exceptions to the uniform rules shall publish a separate chapter in the Florida Administrative Code that delineates clearly the provisions of the agency's rules that provide exceptions to the uniform rules and specifies each alternative chosen from among those authorized by the uniform rules. Each chapter shall be organized in the same manner as the uniform rules.

(b) The uniform rules of procedure adopted by the commission pursuant to this subsection shall include, but are not limited to:

1. Uniform rules for the scheduling of public meetings, hearings, and workshops.

2. Uniform rules for use by each state agency that provide procedures for conducting public meetings, hearings, and workshops, and for taking evidence, testimony, and argument at such public meetings, hearings, and workshops, in person and by means of communications media technology. The rules shall provide that all evidence, testimony, and argument presented shall be afforded equal consideration, regardless of the method of communication. If a public meeting, hearing, or workshop is to be conducted by means of communications media technology, or if attendance may be provided by such means, the notice shall so state. The notice for public meetings, hearings, and workshops utilizing communications media technology shall state how persons interested in attending may do so and shall name locations, if any, where communications media technology facilities will be available. Nothing in this paragraph shall be construed to diminish the right to inspect public records under chapter 119. Limiting points of access to public meetings, hearings, and workshops subject to the provisions of > s. 286.011 to places not normally open to the public shall be presumed to violate the right of access of the public, and any official action taken under such circumstances is void and of no effect. Other laws relating to public meetings, hearings, and workshops, including penal and remedial provisions, shall apply to public meetings, hearings, and workshops conducted by means of communications media technology, and shall be liberally construed in their application to such public meetings, hearings, and workshops. As used in this subparagraph, "communications media technology" means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.

3. Uniform rules of procedure for the filing of notice of protests and formal written protests. The Administration Commission may prescribe the form and substantive provisions of a required bond.

4. Uniform rules of procedure for the filing of petitions for administrative hearings pursuant to > s. 120.569 or > s. 120.57. Such rules shall require the petition to include:

- a. The identification of the petitioner, including the petitioner's e-mail address, if any, for the transmittal of subsequent documents by electronic means.
- b. A statement of when and how the petitioner received notice of the agency's action or proposed action.
- c. An explanation of how the petitioner's substantial interests are or will be affected by the action or proposed action.
- d. A statement of all material facts disputed by the petitioner or a statement that there are no disputed facts.

e. A statement of the ultimate facts alleged, including a statement of the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action.

f. A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes.

g. A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the proposed action.

5. Uniform rules for the filing of request for administrative hearing by a respondent in agency enforcement and disciplinary actions. Such rules shall require a request to include:

a. The name, address, e-mail address, and telephone number of the party making the request and the name, address, and telephone number of the party's counsel or qualified representative upon whom service of pleadings and other papers shall be made;

b. A statement that the respondent is requesting an administrative hearing and disputes the material facts alleged by the petitioner, in which case the respondent shall identify those material facts that are in dispute, or that the respondent is requesting an administrative hearing and does not dispute the material facts alleged by the petitioner; and

c. A reference by file number to the administrative complaint that the party has received from the agency and the date on which the agency pleading was received.

The agency may provide an election-of-rights form for the respondent's use in requesting a hearing, so long as any form provided by the agency calls for the information in sub-subparagraphs a. through c. and does not impose any additional requirements on a respondent in order to request a hearing, unless such requirements are specifically authorized by law.

6. Uniform rules of procedure for the filing and prompt disposition of petitions for declaratory statements. The rules shall also describe the contents of the notices that must be published in the Florida Administrative Register under > s. 120.565, including any applicable time limit for the filing of petitions to intervene or petitions for administrative hearing by persons whose substantial interests may be affected.

7. Provision of a method by which each agency head shall provide a description of the agency's organization and general course of its operations. The rules shall require that the statement concerning the agency's organization and operations be published on the agency's website.

8. Uniform rules establishing procedures for granting or denying petitions for variances and waivers pursuant to > s. 120.542.

(6) Adoption of federal standards.--Notwithstanding any contrary provision of this section, in the pursuance of state implementation, operation, or enforcement of federal programs, an agency is empowered to adopt rules substantively identical to regulations adopted pursuant to federal law, in accordance with the following procedures:

(a) The agency shall publish notice of intent to adopt a rule pursuant to this subsection in the Florida Administrative Register at least 21 days prior to filing the rule with the Department of State. The agency shall provide a copy of the notice of intent to adopt a rule to the committee at least 21 days prior to the date of filing with the Department of State. Prior to filing the rule with the Department of State, the agency shall consider any written comments received within 14 days after the date of publication of the notice of intent to adopt a rule. The rule shall be adopted upon filing with the Department of State. Substantive changes from the rules as noticed shall require republishing of notice as required in this subsection.

(b) Any rule adopted pursuant to this subsection shall become effective upon the date designated by the agency in the notice of intent to adopt a rule; however, no such rule shall become effective earlier than the effective date of the substantively identical federal regulation.

(c) Any substantially affected person may, within 14 days after the date of publication of the notice of intent to adopt a rule, file an objection to rulemaking with the agency. The objection shall specify the portions of the proposed rule to which the person objects and the specific reasons for the objection. The agency shall not proceed pursuant to this subsection to adopt those portions of the proposed rule specified in an objection, unless the agency deems the objection to be frivolous, but may proceed pursuant to subsection (3). An objection to a proposed rule, which rule in no material respect differs from the requirements of the federal regulation upon which it is based, is deemed to be frivolous.

(d) Whenever any federal regulation adopted as an agency rule pursuant to this subsection is declared invalid or is withdrawn, revoked, repealed, remanded, or suspended, the agency shall, within 60 days thereafter, publish a notice of repeal of the substantively identical agency rule in the Florida Administrative Register. Such repeal is effective upon publication of the notice. Whenever any federal regulation adopted as an agency rule pursuant to this subsection is substantially amended, the agency may adopt the amended regulation as a rule. If the amended regulation is not adopted as a rule within 180 days after the effective date of the amended regulation, the original rule is deemed repealed and the agency shall publish a notice of repeal of the original agency rule in the next available Florida Administrative Register.

(e) Whenever all or part of any rule proposed for adoption by the agency is substantively identical to a regulation adopted pursuant to federal law, such rule shall be written in a manner so that the rule specifically references the regulation whenever possible.

(7) Petition to initiate rulemaking.--

(a) Any person regulated by an agency or having substantial interest in an agency rule may petition an agency to adopt, amend, or repeal a rule or to provide the minimum public information required by this chapter. The petition shall specify the proposed rule and action requested. Not later than 30 calendar days following the date of filing a petition, the agency shall initiate rulemaking proceedings under this chapter, otherwise comply with the requested action, or deny the petition with a written statement of its reasons for the denial.

(b) If the petition filed under this subsection is directed to an unadopted rule, the agency shall, not later than 30 days following the date of filing a petition, initiate rulemaking, or provide notice in the Florida Administrative Register that the agency will hold a public hearing on the petition within 30 days after publication of the notice. The purpose of the public hearing is to consider the comments of the public directed to the agency rule which has not been adopted by the rulemaking procedures or requirements of this chapter, its scope and application, and to consider whether the public interest is served adequately by the application of the rule on a case-by-case basis, as contrasted with its adoption by the rulemaking procedures or requirements set forth in this chapter.

(c) Within 30 days following the public hearing provided for by paragraph (b), if the agency does not initiate rulemaking or otherwise comply with the requested action, the agency shall publish in the Florida Administrative Register a statement of its reasons for not initiating rulemaking or otherwise complying with the requested action, and of any changes it will make in the scope or application of the unadopted rule. The agency shall file the statement with the committee. The committee shall forward a copy of the statement to the substantive committee with primary oversight jurisdiction of the agency in each house of the Legislature. The committee or the committee with primary oversight jurisdiction may hold a hearing directed to the statement of the agency. The committee holding the hearing may recommend to the Legislature the introduction of legislation making the rule a statutory standard or limiting or otherwise modifying the authority of the agency.

(8) Rulemaking record.--In all rulemaking proceedings the agency shall compile a rulemaking record. The record shall include, if applicable, copies of:

- (a) All notices given for the proposed rule.
- (b) Any statement of estimated regulatory costs for the rule.
- (c) A written summary of hearings on the proposed rule.
- (d) The written comments and responses to written comments as required by this section and > s. 120.541.
- (e) All notices and findings made under subsection (4).
- (f) All materials filed by the agency with the committee under subsection (3).
- (g) All materials filed with the Department of State under subsection (3).
- (h) All written inquiries from standing committees of the Legislature concerning the rule.

Each state agency shall retain the record of rulemaking as long as the rule is in effect. When a rule is no longer in effect, the record may be destroyed pursuant to the records-retention schedule developed under > s. 257.36(6).

CREDIT(S)

Laws 1974, c. 74-310, § 1; Laws 1975, c. 75-191, § 3; Laws 1976, c. 76-131, § 3; Laws 1976, c. 76-276 §§ 1, 2; Laws 1977, c. 77-174, § 1; Laws 1977, c. 77-290, § 13; Laws 1977, c. 77-453, § 3; Laws 1978, c. 78-28, § 2; Laws 1978, c. 78-425, § 2; Laws 1979, c. 79-3, § 7; Laws 1979, c. 79-299, § 3; Laws 1979, c. 79-400, § 69; Laws 1980, c. 80-391, § 5; Laws 1981, c. 81-309, § 1; Laws 1983, c. 83-351, § 2; Laws 1984, c. 84-173, § 1; Laws 1984, c. 84-203, § 2; Laws 1985, c. 85-104, § 7; Laws 1986, c. 86-30, § 1; Laws 1987, c. 87-385, § 3; Laws 1990, c. 90-302, § 36; Laws 1992, c. 92-166, §§ 2, 4, 7; Laws 1993, c. 93-187, § 63; Laws 1995, c. 95-147, § 758; Laws 1995, c. 95-295, § 6. Amended by Laws 1996, c. 96-159, § 10, eff. Oct. 1, 1996; Laws 1996, c. 96-320, § 6, eff. July 1, 1996; Laws 1997, c. 97-176, § 3, eff. May 30, 1997; Laws 1998, c. 98-200, § 3, eff. July 1, 1998; Laws 1999, c. 99-379, § 4, eff. June 18, 1999; Laws 2001, c. 2001-75, § 9, eff. May 29, 2001; Laws 2003, c. 2003-94, § 2, eff. June 4, 2003; Laws 2005, c. 2005-278, § 50, eff. Jan. 1, 2006; Laws 2006, c. 2006-82, § 3, eff. July 1, 2006; Laws 2008, c. 2008-104, § 5, eff. July 1, 2008; Laws 2008, c. 2008-104, § 6, eff. Jan. 1, 2009; Laws 2008, c. 2008-149, § 7, eff. July 1, 2008; Laws 2009, c. 2009-187, § 4, eff. July 1, 2009; Laws 2010, c. 2010-279, § 1, eff. Nov. 17, 2010; 2010 Special "A" Session, HJR 9-A; Laws 2011, c. 2011-142, § 49, eff. July 1, 2011; Laws 2011, c. 2011-208, § 8, eff. July 1, 2011; Laws 2011, c. 2011-225, § 1, eff. June 24, 2011; Laws 2012, c. 2012-27, § 2, eff. July 1, 2012; Laws 2012, c. 2012-63, § 1, eff. Oct. 1, 2012; Laws 2013, c. 2013-14, § 4, eff. July 2, 2013; Laws 2013, c. 2013-15, § 13, eff. July 2, 2013.

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