STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA PRISONERS' LEGAL AID ORGANIZATION, INC., a non profit Florida Corporation, and TERESA BURNS, a private citizen,	)	
Petitioners,	)	
vs.	)	CASE NO. 96-2943RX
DEPARTMENT OF CORRECTIONS,	)	
Respondent.	)	

FINAL ORDER

Pursuant to notice, this cause was heard by James W. York, the assigned Hearing Officer of the Division of Administrative Hearings, on August 5, 1996, in Tallahassee, Florida.

APPEARANCES

For Petitioners: Teresa Burns, pro se, Chairman
Florida Prisoners' Legal Aid Organization, Inc.
14365 East Colonial Drive, Suite 1A
Orlando, Florida 32826

For Respondent: Judy Bone, Esquire
Assistant General Counsel
Department of Corrections
2601 Blairstone Road
Tallahassee, Florida 32399-2500

STATEMENT OF THE ISSUE

At issue in this proceeding is the validity of Rule 33-11.0065(1)(a)6., Florida Administrative Code.

Petitioners allege that (1) Respondent materially failed to follow the applicable rulemaking procedures required by Section 120.54, Florida Statutes; (2) Respondent violated Section 120.54(2)(b)2., Florida Statutes, by denying one of the Petitioners an opportunity to file a written request for an economic impact statement regarding the challenged rule; (3) that the rule enlarges, modifies, or contravenes the specific provisions of law purported to be implemented and in violation of Section 120.56, Florida Statutes; and (4) that the adopted rule violates provisions of the United States Constitution.

Respondent disputes the standing of Petitioners to maintain the challenge to the rule in question.

PRELIMINARY STATEMENT

On June 19, 1996, Petitioners filed an original Petition for Determination of the Invalidity of an Existing rule pursuant to Section 120.56, Florida Statutes. On July 2, 1996, Petitioners filed a Motion to Voluntarily Withdraw Petition and/or to Submit Amended Petition. On July 5, 1996, Petitioners filed an Amended Petition and the Motion to Amend was granted on July 15, 1996.

On July 9, 1996, a Notice of Hearing was issued, scheduling the final hearing for August 5, 1996, in Tallahassee, Florida. Also on July 9, 1996, an Order to Show Cause was issued, ordering Petitioners to Show Cause as to why the petition should not be dismissed on the basis of lack of standing for Petitioners to challenge the disputed rule. On July 30, 1996, Petitioners filed a timely response to the Order to Show Cause. On July 31, 1996, an Order on Standing was issued, determining that Petitioners had shown cause as to why the amended petition should not be dismissed prior to hearing and ordering that the final hearing would take place as originally scheduled. This order did not, of course, relieve Petitioners from their burden to prove standing at the final hearing.

On August 2, 1996, Petitioners indicated that they wished to have the date for final hearing in this cause continued to a later date. Due to the short time remaining until the scheduled hearing, a hearing was set up by telephone conference call so that Petitioner could make an oral motion for continuance. A hearing reporter was present during the telephone hearing and a transcript of the hearing has been filed. Petitioners made the motion to continue the final hearing and Respondent objected on the basis that Petitioners had not shown good cause. Ms. Burns suggested that she could attend the final hearing on August 5, 1996 by telephone. Based upon Ms. Burns' assertion that she would not present witness testimony, the hearing date was not continued and the hearing remained scheduled on August 5, 1996 in Tallahassee, with Ms. Burns attending and participating by telephone.

At the hearing, Petitioners renewed an oral motion for continuance of the final hearing based primarily on the assertion that Petitioners had not had the time or opportunity to file exhibits. Ms. Burns, upon being afforded the opportunity to file the exhibits post-hearing, withdrew the motion for continuance.

Petitioners presented no witnesses at the hearing and tendered five post-hearing exhibits as well as an affidavit executed by Ms. Burns to indicate that she was present by telephone at the hearing, did take an oath to give truthful testimony, and did provide testimony during the hearing. Petitioners also filed a post-hearing motion for sanctions against Respondent.

Respondent presented the testimony of Cheryl Dula and Petitioner Burns at the hearing. Respondent also filed a post- hearing objection to Petitioners' exhibits and a response to Petitioners' motion for sanctions.

Rulings on all post-hearing evidentiary submissions and other motions by the parties are contained in the conclusions of law portion of this Final Order.

Official notice is taken of Florida Attorney General Opinion 96-22.

All parties submitted post-hearing proposed findings of fact and conclusions of law. A ruling on each proposed finding of fact can be found in the Appendix to this Final Order.

FINDINGS OF FACT

1. Petitioners have filed a petition seeking to invalidate Department of Corrections (DOC) Rule 33-11.0065(1)(a)6., Florida Administrative Code. The disputed rule relates to "gain time" provisions for inmates of the DOC and provides, in the portion at issue in this proceeding:

> 33-11.0065 Incentive Gain Time
> (1) Ineligibility
> (a) No inmate shall receive or accumulate incentive gain time:
> 6. If convicted of any of the following offenses committed before October 1, 1995 and has 85 percent or less of any sentence remaining to be served. The provisions of (1)(a)6. shall also apply to work, extra and constructive gain time for inmates convicted of offenses committed between July 1, 1978 and June 14, 1983. The provisions of (1)(a)6. shall not apply to educational gain time under s. 944.801, F.S., or to meritorious or educational achievement gain time.

Interests of the Petitioners

2. Petitioner Teresa Burns (Burns) is not an inmate of the DOC but is the wife of Bobby Posey (Posey) who is incarcerated in the custody of Respondent. Posey is serving three consecutive 99 year sentences. Pursuant to the Respondent's adoption and implementation of the disputed rule provision, Posey will not be eligible to earn gain time to reduce his sentences. If Posey earned all gain time theoretically possible, without application of the challenged rule, his tentative release date from the DOC would be in the year 2079.

3. Also at issue in this proceeding is the application of Section 120.54(2)(b)2., Florida Statutes, which provides, in pertinent part, as follows:

> (b) Prior to the adoption, amendment, or repeal of any rule ..., an agency may provide information on its proposed action by preparing an economic impact statement, and must prepare an economic statement if:
> 2. ...within 21 days after the notice required by paragraphs (1)(a) and (b) a written request for preparation of an economic impact statement is filed with the appropriate agency by the Governor, a body corporate and politic, at least 100 people signing a request, or an organization representing at least 100 persons, or any domestic nonprofit corporation or association.

4. Petitioner Florida Prisoners' Legal Aid Organization, Inc. (FPLAO) is, according to the petition and other submissions filed in this proceeding, a corporation registered with the Florida Department of State as a non-profit corporation.

5. Petitioners have offered no evidence to establish that FPLAO is, in fact, a registered Florida corporation (other than Burns' testimony at the hearing wherein she referred to "Florida Prisoners' Legal Aid Organization, Inc."). Respondent has not, however, disputed the corporate status of the FPLAO. In any event, Petitioners did establish, through the unrefuted testimony of Burns, that FPLAO is an organization of "several hundred members."

6. Petitioners have established on the record that the FPLAO is an organization contemplated by the language of Section 120.54(2)(b)2., Florida Statutes. Therefore, FPLAO was entitled to file with DOC, within 21 days of the published notice of the proposed rule, a written request for a statement of the economic impact of the proposed rule.

7. FPLAO and its Chairman, Burns, were on notice of the proposed rule as the proposal was originally published in the Florida Administrative Law Weekly. Further, the Petitioners were aware that the rule, as originally proposed, affected gain time for inmates of the DOC by placing limitations on the amount of gain time that inmates convicted after October 1, 1995, could earn.

8. Petitioners did not make any request for a public hearing relative to the proposed rule nor did either Petitioner make a request to be noticed of any changes in the proposed rule. Petitioners, and specifically the FPLAO, did not make a request for an economic impact statement within 21 days of publication of notice of the proposed rule.

9. Petitioners failed to request a public hearing, notice of changes to the proposed rule, or an economic impact statement, because the rule, as originally proposed, did not affect inmates (including Burns' husband, Posey) convicted prior to October 1, 1995.

10. The only evidence presented to establish what the specific goals or purposes of the FPLAO are consists of Burns' testimony that the purpose of the organization is "for information and support to friends, family, loved ones or information that can be dealt with on the law" in reference to "prison issues."

11. Burns testified that prisoners are members of the FPLAO but was unable to provide a percentage of prisoners vis a vis non-prisoners in the make up of members. There is no evidence in the record to establish the sentences of inmates who belong to the FPLAO.

12. There is no evidence in the record to indicate what specific activities the Florida Prisoners' Legal Aid Organization, Inc. is, or is not, authorized to engage in.

13. Based upon the record in this proceeding, the avowed interests of the FPLAO are not limited to matters affecting the DOC inmates convicted before October 1, 1995. FPLAO received proper notice that the proposed rule would limit incentive gain time for some, if not all, DOC inmates.

14. Petitioners also challenge the rule at issue pursuant to Section 120.54, Florida Statutes, alleging that the rule was not properly promulgated as required by that statute, contending that the rule, as originally noticed, was substantially changed after the initial notice and prior to final adoption without proper notice of the change.

15. Petitioners also seek to challenge the substance of the rule as an invalid exercise of delegated legislative authority pursuant to Section 120.56, Florida Statutes.

Promulgation of the Challenged Rule

16. Petitioners submitted a DOC draft of a proposal to amend Sections 33-11.0035 and 33-11.065, Florida Administrative Code. This document indicates that a proposal to amend these rules was approved by DOC Deputy Secretary, Bill Thurber, on January 12, 1996. There is nothing on the face of the document or in its contents to indicate whether the document is a copy of the proposed rule approved on January 12, 1996 or is a later draft with a notation that the original proposed rule was approved on the prior date. Included in this document is the following provision pertinent to this proceeding:

> 33-11.0065 Incentive Gain Time.
> (1) Ineligibility.
> (a) No inmate shall receive or accumulate incentive gain time:
> 1. through 4. No change.
> (5. If convicted of offenses committed on or after October 1, 1995 and has 85 percent or less of the sentence remaining to be served.)
> (6. If convicted of any of the following offenses committed before October 1, 1995 and has 85 percent or less of any sentence remaining to be served. The provisions of (1)(a)6. shall also apply to work, extra and constructive gain time for inmates convicted of offenses committed between July 1, 1978 and June 14, 1983. The provisions of (1)(a)6. shall not apply to educational gain time under s. 944.801, F.S., or to meritorious or educational achievement incentive gain time.)
> (Emphasis added.)

17. Respondent submitted a document dated January 9, 1996 which indicates that the document is "a proposed final draft" of the rule at issue. This document does not include the provision making the rule applicable to inmates convicted prior to October 1, 1995. Petitioners have failed to establish that their exhibit constitutes proof that the agency intended all along to adopt the rule provision at issue but intentionally made the published proposal "innocuous" so as to deny Petitioners a "point of entry."

18. On March 1, 1996, the DOC published a Notice of Proposed Rule Making in the Florida Administrative Law Weekly. This notice contained the agency's proposal to amend Rules 33-11.0035 and 33-11.0065, Florida Administrative Code, which govern Incentive Gain Time for inmates of DOC. This proposal is summarized in the notice as follows:

> PURPOSE AND EFFECT: The proposed amendments are needed in order to implement legislative changes made in 1995 to statutory gain time provisions.
> SUMMARY: (Proposed amendments to 33-11.0035 provide a requirement that inmates convicted

> of offenses on or after October 1, 1995) serve no less than 85 percent of the sentence imposed, and revise the performance ratings for incentive gain time to delete the "outstanding" category and redefine "satisfactory" and "above satisfactory" performance. (Proposed amendments to 33-11.0065 provide for a restructuring of the procedures for crediting inmates with incentive gain time, incorporating the changes provided for in 33-11.0035).
> SPECIFIC AUTHORITY: 20.315, 944.09, 944.275 FS
> LAW IMPLEMENTED: 20.315, 944.09, 944.275 FS
> (Emphasis supplied.)

Therefore, the proposed rule, as noticed on March 1, 1996, did not purport to affect the incentive gain time of inmates convicted prior to October 1, 1995.

19. On March 20, 1996, the Florida Attorney General issued Attorney General Opinion 96-22 to the Secretary of the Department of Corrections. This opinion was issued to the DOC in response to the following question previously asked by the Secretary:

> May the Department of Corrections, in the exercise of its statutory grant of discretion, adopt a rule that denies an award of work, extra, and incentive gain-time to certain classes of inmates when such rule will be applied prospectively and will not affect such gain-time already awarded?

20. In AGO 96-22, the Attorney General expressed the opinion, in sum:

> The Department of Corrections, in the exercise of its statutory grant of discretion, may adopt a rule that denies an award of work, extra, and incentive gain-time to such classes of inmates it deems appropriate when such rule will be applied prospectively and will not affect such discretionary gain-time already awarded.

21. In this response to the DOC Secretary, the Attorney General indicates the opinion that the DOC has the statutory discretion to properly change rules related to discretionary gain time of inmates convicted prior to October 1, 1995, so long as the rule does not affect discretionary gain time already awarded.

22. After March 20, 1996, and prior to the final enactment of the rule at issue, the DOC added the provision that appeared in the January 12, 1996, internal DOC proposal approved by Deputy Secretary Thurber which applied the limitation on earning gain time to inmates convicted prior to October 1, 1995.

23. On March 25, 1996, the DOC notified the Joint Administrative Procedures Committee of the change in the proposed rule but did not otherwise publish notice of the change.

24. The challenged rule, as finally adopted by the Respondent, contained the provision at issue, Section 33-11.0065(1)(a)6., Florida Administrative Code.

Petitioners' Challenge to the Substance of the Rule

25. Petitioners have presented no evidence in support of the allegations contained in the Amended Petition that the challenged rule enlarges, modifies, or contravenes the provisions of law sought to be implemented in this case.

CONCLUSIONS OF LAW

26. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. Sections 120.56 and 120.57(1), Florida Statutes.

Post-Hearing Submissions

27. Pursuant to a post-hearing order issued on August 6, 1996, Petitioners submitted their Exhibits A, B, C, D, and E on August 15, 1996. Also pursuant to the post-hearing order, Respondent filed a timely written objection to Petitioners' Exhibit A. After due consideration of Respondent's objection to Petitioners' Exhibit A, the objection is overruled and the exhibit is accepted. Respondent's comments within the objection are considered argument going to the weight to be accorded the exhibit.

28. The affidavit of Perri King Dale and attached January 9, 1996 proposed final draft of the rule at issue is accepted without objection.

29. On August 15, 1996, Petitioners filed an "Objection, Motion for Sanctions, and Request for Official Recognition." In this submission, Petitioners object to Respondent's actions which allegedly involved the disruption of a telephone conversation between Petitioner Burns and inmate Posey immediately prior to the final hearing in this case, and the placing of Posey in confinement on the date of the final hearing. Among other things, Petitioners assert that this conduct on the part of Respondent was improper and an attempt to intimidate and distract Petitioner Burns before the hearing and to negatively influence her testimony. The Division of Administrative Hearings has no jurisdiction over the conduct of Respondent as alleged in the motion, the motion does not state grounds for relief, and the Petitioners' motion is denied. Respondent's response to the motion was received and duly considered.

Standing

30. Respondent challenges the standing of both Petitioners to maintain a challenge to the disputed rule pursuant to Sections 120.54 and 120.56, Florida Statutes.

31. A party challenging the validity of an existing or proposed rule bears the burden of proving standing to maintain such a challenge where, as in this proceeding, standing is made an issue. Department of Health and Rehabilitative Services v. Alice, 367 So.2d 1045 (Fla. 1st DCA 1979).

32. Petitioner Burns seeks to demonstrate standing to challenge the disputed rule based upon her contention that "her associational rights with her spouse will be terminated or significantly delayed by application of the rule."

33. The test for standing to maintain an action pursuant to Chapter 120, Florida Statutes, is whether the party (1) will suffer injury in fact which is of sufficient immediacy to entitle the party to an administrative hearing and (2) that the injury is of a type or nature which the proceeding is designed to protect. Florida Society of Ophthalmology v. State of Florida Board of Optometry, 532 So.2d 1279, 1285 (Fla. 1st DCA 1988) (citing Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981).

34. Petitioners contend that the Agrico test for standing is not applicable in this proceeding because this case is a rule challenge brought pursuant to Sections 120.54 and 120.56, Florida Statutes. The test for standing in a rule challenge case has been held to be distinguishable from that applied in Section 120.57 proceedings, given appropriate facts. In a rule challenge proceeding petitioners are not required to prove that the injury complained of is solely within the "zone of interest" protected by the statute relied upon by the agency as authority for the rule. Florida Medical Association v. Department of Professional Regulation, 426 So.2d 1112, 1117 (Fla. 1st DCA 1983). In rule cases, it is appropriate for the Hearing Officer to consider the effect of other statutes in determining standing. Id. However, in this case, Petitioners have failed to establish that they meet either the Agrico test or the more expanded test for standing outlined in the Florida Medical Association case.

35. Petitioners contend that the challenged rule substantially affects Burn's rights to familial association with her husband, Posey. The rule would appear to affect the members of the FPLAO who are relatives of affected inmates to the same extent that it would affect Burns.

36. Section 944.275, Florida Statutes, provides the DOC with the statutory discretion to award gain time to inmates in their custody. The purpose of gain time would appear to be to provide the DOC with a mechanism to encourage certain inmate activities and to discourage others. Petitioners have not proved that Section 944.75, Florida Statutes, is designed to protect their asserted interests and the Petitioners have not cited any other statutory or regulatory provisions in Florida law which are designed to do so. Petitioners' reliance on federal case law regarding rights of familial association involve child custody and are distinguishable from the facts presented in this case.

37. Effective July 1, 1992, the Division of Administrative Hearings no longer has jurisdiction over rule challenges brought by individuals who are prisoners as defined in Section 120.52(12)(d), Florida Statutes. The Legislature has therefore placed limitations on the standing of inmates who are directly affected by the disputed rule to challenge the rule in an administrative proceeding. Therefore, prisoners who are members of the FPLAO have no standing to challenge the disputed rule in this proceeding as a matter of law.

38. Both Petitioners have established that the challenged rule has some effect on their interests. However, there are a myriad of circumstances in which the direct regulation of prisoners in the custody of the Respondent might indirectly affect Petitioners. The geographic assignment of prisoners, visitation times, disciplinary actions for prisoner infractions, even personal property prisoners are permitted to possess are issues that might indirectly affect the relatives of inmates. However, the Legislature has clearly defined limits on standing to challenge the DOC rules regarding the regulation of prisoners and to permit such challenges in the manner Petitioners seek to do would circumvent this legislative intent.

39. Not everyone having an interest in the outcome of a dispute over an agency's rule that determines the rights and interests of others is entitled to participate as a party in an administrative proceeding to resolve that dispute. Florida Society of Opthalmology, supra, 532 So.2d at 1284.

> Were that not so, each interested citizen could, merely by expressing an interest, participate in the agency's efforts to govern, a result that would unquestionably impede the ability of the agency to function efficiently and inevitably cause an increase in the number of litigated disputes well above the number administrative and appellate judges are capable of handling. Therefore the legislature must define and the courts must enforce certain limits on the public's rights to participate in administrative proceedings. Id.

40. Based upon the evidence of record in this case, neither Petitioner has met the burden to prove standing based on the applicable law.

41. Petitioners have established that the FPLAO is an organization entitled to request an economic impact statement pursuant to Section 120.54(2)(b)2., Florida Statutes.

42. Petitioners contend that the FPLAO failed to request the economic impact statement within the 21 days provided by law because the challenged rule, as originally noticed in the Florida Administrative Law Weekly, did not affect prisoners convicted prior to October 1, 1995, therefore, did not affect the interests of the organization. This argument is not persuasive. The avowed interests of the FPLAO, as indicated in the record in this case, is not limited to prisoners convicted in any specified time period. Petitioners have failed to establish a logical basis for the failure of the FPLAO to request an economic impact statement within the time specified by statute and have therefore failed to prove that the group was denied a point of entry to do so.

43. Petitioners have also established that, after the original published notice of the proposed rule, Respondent made a substantial amendment to the proposal and did not publish notice of the amendment prior to adopting the rule.

44. Section 120.54(13)(b), Florida Statutes, provides in pertinent part:

> (b) After the notice required in subsection (1) and prior to adoption, the agency may withdraw the rule in whole or in part or may make changes in the rule as are supported by the record of public hearings held on the rule, technical changes which do not affect the substance of the rule, changes in response to written material relating to the rule received by the agency within 21 days after the notice and made a part of the record of the proceeding, or changes in response to a proposed objection by the [Administrative Procedures] committee.

45. Petitioners argue that the substantive change in the rule violated Section 120.54(13)(b). However, the record of the rule adoption proceeding was not placed in evidence in this case and Petitioners failed to meet their burden to establish that the proposed rule was changed in a manner not otherwise permitted by the statute. Petitioners present a logical argument in this regard but failed to provide the proof necessary to support it.

The Challenge to the Substance of the Rule

46. Petitioners also challenge the rule pursuant to Section 120.56, Florida Statutes, alleging that the rule enlarges, modifies, or contravenes the provisions of law which it is intended to implement.

47. Respondent relies on Section 944.275, Florida Statutes, as the specific authority to promulgate the rule at issue. Petitioners argue that this statute does not authorize the Respondent to deny incentive gain time on the basis of anything other than the inmate's conduct. In addition, Petitioners contend that the statute does not convey the authority to the agency to impose gain time restrictions on any inmate convicted before October 1, 1995.

48. On March 20, 1996, at the request of the Secretary of the Department of Corrections, the Attorney General of Florida issued his opinion number 96-22 relative to the authority of the agency to promulgate the challenged rule pursuant to Section 944.275. In this opinion, the Attorney General analyzed the history of the gain time statute and directly addressed the issue raised by Petitioners as follows:

> The awarding of incentive gain-time in section 944.275, Florida Statutes, was amended in 1993 and again in 1995. Among the amendments to the statute was a provision making inmates who were sentenced for offenses committed on or after October 1, 1995, ineligible to earn any type of gain-time in an amount that would cause the sentence to expire or terminate prior to the inmate having served a minimum of 85 percent of the sentence imposed. While the 1993 and 1995 amendments altered the amount of gain-time DOC was authorized to award, its discretion whether to award such gain-time was not altered.
>
> Thus, since 1979 section 944.275, Florida Statutes, has recognized the discretion of DOC in awarding incentive gain-time, even though the statute in effect at the time the offense was committed would control the maximum amount of gain-time the department could award. In recognition thereof, the Supreme Court of Florida in Waldrup v. Dugger stated:
>
> Nothing in this opinion, however, shall be read as restricting the discretion accorded DOC under the earlier incentive gain-time statutes. This discretion remains intact.

> If DOC withholds all or some of the incentive gain-time available to Waldrup or similarly situated inmates under the earlier statutes, then DOC's actions cannot be challenged unless they constitute an abuse of discretion.
>
> In Waldrup the Court recognized that the statutory language amending the gain-time statute in 1983 "discloses that the total number of days granted by DOC was discretionary, provided the award never exceeded twenty." Thus, while the 1983 reforms limited DOC's discretion by decreasing the largest possible incentive gain-time award from 37 to 20 days a month, DOC still retained substantial discretion in deciding whether to award such incentive gain-time.

Op. Attorney Gen. 96-22 March 20, 1996, at page 3 (footnotes omitted). This Attorney General's opinion is dispositive, and on that authority it is concluded that the Respondent acted within the authority conveyed by the Legislature in Section 944.275, Florida Statutes, in adopting the challenged rule.

49. Petitioners bear a stringent burden in challenging an agency rule. Agrico Chemical Co. v. State Department of Environmental Regulation, supra. If the rule does not exceed the agency's statutory authority and is reasonably related to an appropriate purpose of the statute, it should be sustained. State Marine Fisheries Commission v. Organized Fishermen of Florida, 503 So.2d 74 (Fla. 1st DCA 1987). Assuming, therefore, that the Petitioners in this case had established standing to proceed, based upon the foregoing, Petitioners failed to prove that the rule in question is invalid pursuant to either Section 120.54 or Section 120.56, Florida Statutes.

Constitutional Issues

50. Finally, Petitioners in this case challenge the disputed rule on constitutional grounds. This issue was also addressed by the Attorney General in opinion 96-22. The Attorney General concluded, in sum:

> The Department of Corrections, in the exercise of its statutory grant of discretion, may adopt a rule that denies an award of work, extra, and incentive gain-time to such classes of inmates it deems appropriate when such rule will be applied prospectively and will not affect such discretionary gain-time already awarded.

Op. Attorney Gen. 96-22, supra, at page 2. Petitioners do not allege that the rule retroactively affects the gain time accumulated by inmates.

51. This opinion of the Attorney General also concludes that the rule does not offend the equal protection clause of the United States Constitution. Id., at page 5.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED:

That petitions filed in this proceeding, challenging the validity of Rule 33-11.0065(1)(a)6., Florida Administrative Code, pursuant to Sections 120.54 and 120.56, Florida Statutes, are dismissed.

DONE and ENTERED this 19th day of September, 1996, in Tallahassee, Florida.

JAMES W. YORK, Hearing Officer
Division of Administrative Hearings
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1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of September, 1996.

APPENDIX TO FINAL ORDER DOAH CASE NO. 96-2943RX

Rulings on Petitioners' Proposed Findings of Fact:

1. Adopted in paragraph 1 of the Final Order.
2. Rejected. Respondent is not required to file such responses.
3. Adopted in paragraphs 5 and 6 of the Final Order.
4. Adopted in substance in paragraph 2 of the Final Order.
5. Rejected, not material or relevant.
6. Rejected, not material or relevant and not supported by the record.
7. Adopted in material part in paragraphs 4-6 of the Final Order. Petitioners' standing involves a conclusion of law and is addressed in that portion of the Final Order.
8. Rejected as argument and conclusions not supported by the record. Burns' standing is addressed in the Conclusions of Law portion of the Final Order.
9. Adopted to the extent relevant in paragraph 16. The remainder of this proposed finding is rejected as argumentative, conclusory and not supported by the evidence.
10. Adopted in material part in paragraph 18 of the Final Order.
11. Rejected, not necessary to conclusions reached and immaterial.
12. Adopted in material part in paragraph 19 of the Final Order.
13. Adopted in material part in paragraphs 22-24 of the

Final Order. Petitioners failed to prove Subsection 33-11.0065(1)(a)6. was "re-added." Whether Respondent acted in a manner "required by law" or not is a legal conclusion and is rejected.

14. Adopted in material part in paragraph 24 of the Final Order.

Rulings on Respondent's Proposed Findings of Fact:

1-2. Adopted in substance in paragraph 18 of the Final Order.

3. Adopted in substance in paragraph 24 of the Final Order.

4. Adopted in substance in paragraph 1 of the Final Order.

5-7. Adopted in substance in paragraph 2 of the Final Order.

8-9. Rejected. Not necessary to conclusions reached.

10. Adopted in substance in paragraph 2 of the Final Order.

11. Not necessary to the conclusions reached.

12. Adopted in substance in paragraphs 10-11 of the Final Order.

13-14. Adopted in substance in paragraphs 7 and 13 of the Final Order.

15-17. Adopted in substance in paragraph 9 of the Final Order.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DIVISION OF ADMINISTRATIVE HEARINGS AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.