STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CARTER SIGN RENTALS, INC.,

Petitioner,

vs. Case No. 13-1623RX

DEPARTMENT OF TRANSPORTATION,

Respondent.
_______________________________/

NISSI, INC.,

Petitioner,

vs. Case No. 13-3518RX

DEPARTMENT OF TRANSPORTATION,

Respondent.
_______________________________/

SUMMARY FINAL ORDER

Pursuant to notice, a final hearing in this cause was held in Tallahassee, Florida, on December 11, 2013, before the Division of Administrative Hearings by its designated Administrative Law Judge Linzie F. Bogan.

APPEARANCES

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STATEMENT OF THE ISSUE

Whether Florida Administrative Code Rule 14-10.007(6)(b), which provides for revocation of outdoor advertising permits for nonconforming signs that are abandoned or discontinued, is an "invalid exercise of delegated legislative authority" as alleged by Petitioners.

PRELIMINARY STATEMENT

On May 1, 2013, Carter Sign Rentals, Inc. (Carter) filed a Petition to Challenge the Validity of an Existing Rule, asserting that rule 14-10.007(6)(b) exceeds the Department of Transportation's (Department) statutory authority.[1/] Carter's rule challenge petition has been assigned Division of Administrative Hearings (DOAH) Case No. 13-1623RX. A hearing was initially scheduled for June 20 and 21, 2013, but was rescheduled, upon Carter's unopposed motion, to August 27-29,

2013, and rescheduled again to December 10 through 12, 2013, upon Carter's unopposed motion.

On September 16, 2013, Nissi, Inc. (Nissi) filed a Petition to Challenge the Validity of an Existing Rule, which also challenges rule 14-10.007(6)(b). The Nissi rule challenge has been assigned DOAH Case No. 13-3518RX. Upon Nissi's unopposed motion, the Carter and Nissi challenges were consolidated.

On December 3, 2013, upon Carter's Motion to Shorten the Final Hearing, an Amended Notice of Hearing setting the hearing for December 11 and 12, 2013, was entered. On December 6, 2013, the parties filed a Joint Prehearing Stipulation setting forth agreed-upon facts, agreed upon conclusions of law, and issues of law that remain to be litigated. The parties agree that there are no disputes of material fact related to this proceeding.

On December 9, 2013, Carter filed a Motion for Summary Final Order and Memorandum of Law. On December 10, 2013, Nissi filed a Notice of Joinder in and Adoption of Motion for Summary Final Order. On December 18, 2013, the Department filed a Response to Petitioners' Motion for Summary Final Order and Cross-Motion for Summary Final Order.

At the formal hearing on December 11, 2013, Joint Exhibits 1 through 10 were received into evidence. No witnesses were called. The parties each filed a Proposed Final Order and the same have been considered in preparing this Final Order.

FINDINGS OF FACT

1. The Department of Transportation is the state agency responsible for administering and enforcing the outdoor advertising program in accordance with chapter 479, Florida Statutes.

2. The Department adopted Florida Administrative Code Chapter 14-10, which provides for the permitting and control of outdoor advertising signs visible to and within controlled areas of interstates and federal-aid highways. Rule 14-10.007 provides regulations for nonconforming signs. Section 479.01(17), Florida Statutes, defines nonconforming signs as signs that were lawfully erected but which do not comply with later enacted laws, regulations, or ordinances on the land use, setback, size, spacing and lighting provisions of state or local law, or fail to comply with current regulations due to changed conditions.

3. Rule 14-10.007 provides in part that:

> (6) A nonconforming sign may continue to exist so long as it is not destroyed, abandoned, or discontinued. "Destroyed," "abandoned," and "discontinued" have the following meanings:
>
> * * *
>
> (b) A nonconforming sign is "abandoned" or "discontinued" when a sign structure no longer exists at the permitted location or the sign owner fails to operate and maintain the sign, for a period of 12 months or longer. Signs displaying bona fide public interest messages are not "abandoned" or

"discontinued" within the meaning of this section. The following conditions shall be considered failure to operate and maintain the sign:

1. Signs displaying only an "available for lease" or similar message,

2. Signs displaying advertising for a product or service which is no longer available,

3. Signs which are blank or do not identify a particular product, service, or facility.

4. Carter is licensed to engage in the business of outdoor advertising in Florida and holds an outdoor advertising permit for a nonconforming outdoor advertising sign bearing Tag No. AS 228. The outdoor advertising sign for the referenced tag number is located in Lee County, Florida ("Carter Sign"). On February 22, 2010, the Department issued a Notice of Intent to Revoke Sign Permit to Carter for sign bearing Tag No. AS 228. The notice advises that "this nonconforming sign has not displayed advertising copy for 12 months or more, and is deemed abandoned, pursuant to s. 14-10.007(6)(b), Florida Administrative Code."

5. Petitioner Nissi is licensed to engage in the business of outdoor advertising in Florida and holds outdoor advertising signs bearing Tag Nos. BK 731 and BK 732, which signs are located in Pasco County, and BN 604, BN 605, AR 261, AR 262, AT 485 and AT 486, which signs are located in Hernando County ("Nissi

Signs"). In June and July 2013, the Department issued notices of intent to revoke sign permits, pursuant to rule 14-10.007(6)(b), based on the signs not displaying advertising for 12 months or longer. The notice issued to Nissi advised that the Department deemed the signs as having been abandoned.

6. Carter and Nissi, as owners of nonconforming signs receiving violations under rule 14-10.007(6)(b), have standing and timely challenged the rule in dispute herein.

CONCLUSIONS OF LAW

7. DOAH has jurisdiction over the parties and subject matter of this proceeding. § 120.56, Fla. Stat. (2012).[2/]

8. Petitioners challenge rule 14-10.007(6)(b) pursuant to section 120.56, which allows substantially affected persons to challenge a rule's facial validity, without consideration of a specific factual scenario. See Fairfield Communities v. Fla. Land and Water Adjudicatory Comm'n, 522 So. 2d 1012 (Fla. 1st DCA 1988).

9. Petitioners contend that rule 14-10.007(6)(b) is an invalid exercise of delegated legislative authority under section 120.52(8) because: (a) the Department exceeded the grant of rulemaking authority delegated by the Florida Legislature; (b) the rule enlarges, modifies, and contravenes the specific authority cited in the statutes to be implemented; (c) the rule is vague, fails to establish adequate standards for agency

decisions, and vests unbridled discretion in the Department; and (d) the rule is arbitrary and capricious.

10. The last paragraph of section 120.52(8), also known as the flush left provision, includes general standards for challenging a rule and provides, in part, as follows:

> 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.

This "set of general standards [is] to be used in determining the validity of a rule in all cases." Sw. Fla. Water Mgmt. Dist. v. Save the Manatee Club, Inc., 773 So. 2d 594, 597-98 (Fla. 1st DCA 2000).

11. This standard has been held to mean that:

> Agencies have rulemaking authority only where the Legislature has enacted a specific statute, and authorized the agency to implement it, and then only if the (proposed) rule implements or interprets specific powers

> or duties, as opposed to improvising in an area that can be said to fall only generally within some class of powers or duties the Legislature has conferred on the agency.

Bd. of Trustees of Internal Improvement Trust Fund v. Day Cruise Ass'n, Inc., 794 So. 2d 696 (Fla. 1st DCA 2001).

12. Pursuant to section 120.56(3), Petitioners have the burden of proving by a preponderance of the evidence that the existing rule is an invalid exercise of delegated legislative authority as to the objections raised.

I. Rulemaking Authority

13. Section 334.044(1), Florida Statutes, provides that the Department is authorized "[t]o adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of law conferring duties upon it."

14. Section 479.02(1), Florida Statutes, imposes a duty on the Department to:

> "[a]dminister and enforce . . . the agreement between the state and the United States Department of Transportation relating to the size, lighting, and spacing of signs in accordance with Title I of the Highway Beautification Act of 1965 and Title 23, United States Code, and federal regulations in effect as of the effective date of this act.

15. The "agreement" (Agreement) referenced in section 479.02(1), is the Agreement of January 27, 1972, between the State of Florida and United States Department of Transportation

pertaining to "carrying out national policy relative to control of outdoor advertising in areas adjacent to the National System of Interstate and Defense Highways and the Federal-aid Primary System, as authorized by Chapter 479, Florida Statutes, and Title 23, section 131, United States Code."

16. Section 479.02(7) authorizes the Department to "[a]dopt such rules as it deems necessary or proper for the administration of this chapter, including rules which identify activities that may not be recognized as industrial or commercial activities for purposes of determination of an area as an unzoned commercial or industrial area."

17. The Department's rule is clearly within its grant of rulemaking authority delegated by the Florida Legislature in that section 479.02 provides the Department authority to administer and enforce Title I of the Highway Beautification Act of 1965, Title 23, United States Code, and related federal regulations. The federal regulations give the Department the authority to define abandonment and discontinuance within the criterion established by the Federal regulations. The Department's rule does not enlarge, modify, or contravene the federal criterion. The rule reflects the federal regulation's criterion.

18. Petitioners assert that the Department's rulemaking authority is insufficient for the adoption of a rule related to the content of outdoor advertising signs. Contrary to

Petitioners' assertion, the rule, as applied in the instant proceeding, is not regulating the "content of outdoor advertising signs" but is instead regulating the absence of content for an outdoor advertising sign. Regardless, Petitioners have not established that the rule exceeds the Department's grant of rulemaking authority.

19. As explained in Board of Trustees of Internal Improvement Trust Fund v. Day Cruise Association, Inc., 794 So. 2d 696 (Fla. lst DCA 2001), a grant of rulemaking authority is normally of little interest, as almost all agencies have a general grant of rulemaking authority. The test, as expressed in Day Cruise, more often centers on whether the grant of rulemaking authority can be used in conjunction with a specific provision of law to be implemented.

20. Petitioners argue that the present case is similar to State Department of Financial Services v. Peter R. Brown Construction, Inc., 108 So. 3d 723 (Fla. 1st DCA 2013), wherein the Court found a statute authorizing rules on the processing of payments did not provide authority for a rule prohibiting certain expenditures. The statute referenced in Brown Construction was narrowly tailored to a specific subject-the processing of invoices. Conversely, the rulemaking authority in the present case broadly allows the Department to "[a]dopt rules as it deems necessary or proper for the administration of [Chapter 479]."

21. A broad grant of rulemaking authority allows state agencies to create rules needed to effectively administer their program areas. In Frandsden v. Department of Environmental Protection, 829 So. 2d 267 (Fla. 1st DCA 2002), a rule limiting expressions of free speech to non-commercial activities approved by the park manager was found to be within the ambit of the authority of the Department of Environmental Protection, Division of Recreation and Parks under the statute to: a) make rules to carry out its specific duties; b) supervise, administer, and control the operation of all public parks; and c) preserve, manage, regulate, and protect all parks and recreational areas held by the state. As established in Frandsen, a grant of rulemaking authority does not need to be so specific as to write the rule.

22. The Department, by adopting a rule on the abandonment and discontinuance of nonconforming signs, has not exceeded its grant of rulemaking authority to adopt rules as it deems necessary or proper for the administration of the outdoor advertising program.

II. Specific Statutory Authority

23. Petitioners further argue that rule 14-10.007(6)(b) enlarges, modifies, and contravenes the specific provision of the law implemented. Petitioners argue that sections 339.05, 479.02 and 479.07(9), cited as authority for the rule, do not confer

authority for the Department to adopt a rule regulating the content of outdoor advertising signs.

24. The rule, however, does not regulate the content of outdoor advertising signs. The rule provides that nonconforming outdoor advertising signs that do not display outdoor advertising or other messages for a period in excess of 12 months will be deemed abandoned and will lose the permits issued under chapter 479. Nonconforming signs that are "available for lease" for over a year are likewise considered abandoned.

25. In the context of the Department's program governing the maintenance of nonconforming signs, a sign that, for a period of 12 months or longer, displays only an "available for lease" or similar message, displays advertising for a product or service which is no longer available, or which is blank or does not identify a particular product, service, or facility, has not been properly "maintained" within the meaning of the Agreement and is therefore considered abandoned or discontinued. The Agreement, which is incorporated into section 479.02 by express reference, expressly authorizes the Department to adopt standards related to the maintenance of signs, such as those in the instant case, that are within the scope of the agreement.

26. The phasing out of nonconforming signs that have been unused for over a year is consistent with federal law, as expressed in 23 C.F.R. § 750.707(d)(6), which provides:

> The sign may continue as long as it is not destroyed, abandoned, or discontinued. If permitted by State law and reerected in kind, exception may be made for signs destroyed due to vandalism and other criminal or tortious acts.
>
> (i) Each state shall develop criteria to define destruction, abandonment and discontinuance. These criteria may provide that a sign which for a designated period of time has obsolete advertising matter or is without advertising matter or is in need of substantial repair may constitute abandonment or discontinuance. Similarly, a sign damaged in excess of a certain percentage of its replacement cost may be considered destroyed.
>
> (ii) Where an existing nonconforming sign ceases to display advertising matter, a reasonable period of time to replace advertising content must be established by each State. Where new content is not put on a structure within the established period, the use of the structure as a nonconforming outdoor advertising sign is terminated and shall constitute an abandonment or discontinuance. Where a State establishes a period of more than one (1) year as a reasonable period for change of message, it shall justify that period as a customary enforcement practice within the State. This established period may be waived for an involuntary discontinuance such as the closing of a highway for repair in front of the sign.

27. As previously noted, the Agreement between the State of Florida and the United States Department of Transportation requires the State of Florida to administer and enforce federal regulations on outdoor advertising. Included within the applicable federal regulations are the provisions of 23 C.F.R.

§ 750.707(d)(6), which relate to the discontinuance of nonconforming signs under the Highway Beautification Act of 1965.

28. Section 479.07(9), which is also cited as authority for rule 14-10.007, prohibits the permitting of signs that do not meet size and spacing requirements. Signs that were lawfully erected, but do not meet the current requirements, are considered nonconforming signs as defined by section 479.01(17).

29. Rule 14-10.007(6)(b) is clearly within the grant of rulemaking authority delegated by the Florida Legislature in that the authorizing statutes provide the Department authority to administer and enforce federal regulations. See Brazil v. Div.of Admin., State Dep't of Transp., 347 So. 2d 755 (Fla. 1st DCA 1977), disapproved on other grounds by LaPointe Outdoor Adver. v. Florida Dep't of Transp., 398 So. 2d 1370 (Fla. 1981) (section 479.02 provides sufficient authority for rules based on federal regulations because it is "obvious the legislature may adopt provisions of federal statutes and administrative rules made by a federal administrative body . . .").

30. The Department's obligation to administer and enforce federal regulations was addressed in Chancellor Media Whiteco Outdoor Corporation v. State of Florida, Department of Transportation, 796 So. 2d 547 (Fla. 1st DCA 2001), rev. denied, 821 So. 2d 293 (Fla. 2002), wherein the Court affirmed an order

directing the removal of nonconforming signs reconstructed after being destroyed by wildfire, stating:

> Florida has exerted considerable effort over the last 30 years in complying with the Highway Beautification Act in order to protect its full share of federal highway funds. The federal-state agreement has been executed, legislation required for compliance has been enacted, and comprehensive state administrative rules have been enacted. The legislature surely did not intend to cast aside these years of effort and imperil the state's share of future federal highway funds simply to allow erection of some nonconforming highway billboards. We instead conclude, as respecting highway signs, that the legislative intent was to authorize erection of new like-kind signs to replace grandfathered signs only if erection of the signs would not be contrary to the Highway Beautification Act and the federal regulations. Because the appellant's nonconforming signs do not satisfy this condition they are not authorized.

Chancellor, 769 So. 2d at 549-550.

31. The Department's rule does not enlarge, modify, or contravene the federal criterion. The rule reflects the federal regulation's criterion that if a nonconforming sign is void of advertising copy for a year, or from a plain language approach "blank" for a year, then it is considered abandoned and discontinued, thus justifying the revocation of the permit to operate the sign.

32. Petitioners note that subsection (2)(b) of rule 14-10.007 was held to be invalid in Lamar Outdoor Advertising —

Lakeland v. Florida Department of Transportation, 17 So. 3d 799 (Fla. 1st DCA 2009), and urge a similar result here. The rule challenged in Lamar-Lakeland provided that raising the Height Above Ground Level (HAGL) of a nonconforming sign would not be considered reasonable repair and maintenance and would cause a sign to lose its nonconforming status. The Court in Lamar-Lakeland found that the "height" of a sign is distinct from the "size" of a sign and therefore regulations as to height exceeded the authority in section 479.02(1) to control only the "size, lighting, and spacing" of signs in accordance with federal regulations. The height of signs is restricted only by state law in section 479.07(9)(b), as the federal-state agreement, 23 U.S.C. § 131, and the Code of Federal Regulations do not impose any restrictions on a sign's height. The present case is distinguishable from Lamar-Lakeland because rule 14-0.007(6)(b) does not address a sign's height and the abandonment of nonconforming signs is specifically provided for in federal law.

33. Not considered in Lamar-Lakeland is the distinction between nonconforming and conforming signs. Section 479.02(1) gives the Department the authority to regulate signs as it relates to "size, lighting, and spacing" in accordance with federal regulations. The Department has promulgated rule 14-10.007 to regulate nonconforming signs, defined by section 479.01(17), as signs that were "lawfully erected, but which do

not comply with land use, setback, size, spacing, and lighting provisions of state or local law, rule, or regulation, or ordinance passed at a later date . . . ." Because nonconforming signs, by definition, do not comply with size, spacing, and lighting requirements, it falls within the Department's authority to apply the federal regulations as specifically authorized by section 479.02(1) and (7).

34. Nonconforming uses are allowed to remain under a grandfather provision, despite their non-adherence to current regulations, but are subject to removal once they lose their nonconforming status. League to Save Lake Tahoe v. Crystal Enter., 685 F.2d 1142 (9th Cir. 1982) (a nonconforming use may be terminated after the lapse of a reasonable period of time regardless of whether the property owner intends to abandon the use); Lytle Co. v. Clark, 491 F.2d 834 (10th Cir. 1974) (after a prescribed period of time without use, a nonconforming use may be considered abandoned). The Department's regulations, which mirror federal regulations, provide that the permitting rights of nonconforming signs are extinguished after the signs have suffered a period of non-use for over one year. In adopting rule 14-10.007(6)(b), the Department is enforcing the size, lighting, spacing, and zoning requirements of federal and state law by not allowing signs not in conformance with those laws to continue after they have been abandoned.

III. Vagueness

35. Section 120.52(8)(d) provides that a rule is an invalid exercise of delegated legislative authority if "[t]he rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion with the agency." Petitioners suggest that the rule is vague because the terms "blank" and "bona fide public service message" are not defined, leaving sign owners to guess as to their meaning. Blank is not a word subject to numerous interpretations and, therefore, a further definition is unwarranted. Petitioners have not indicated that they left their signs without a message for over a year because they interpreted "blank" to mean something not contemplated by the rule. Petitioners merely allegedly failed to comply with a very plain term and now seek redress by having the term "blank" subject to unnecessary scrutiny. Osage Outdoor Adver., Inc., v. State Highway Comm'n of Mo., 696 S.W. 2d 805 (Mo. Ct.App 1985) (owners of nonconforming signs advertising product no longer available must be required to know the adequacy of their tenant's advertising message, and correct any deficiencies within the time alotted).

36. The term "bona fide public service message" is also not subject to numerous interpretations. The term "bona fide" means the use must be real, actual, and of a genuine nature, as opposed to a sham or deception. Gianolo v. Markham, 564 So. 2d 1131

(Fla. 4th DCA 1990)(citing Hausman v. Rudkin, 268 So. 2d 407 (Fla. 4th DCA 1972)). The Department takes a plain language interpretation of this provision to mean information that benefits the public.

37. The Department's rule is consistent with guidance provided by the United States Department of Transportation in a Memorandum issued January 17, 1977, regarding what constitutes blank signs under 23 C.F.R. Part §750.707, stating:

> When a sign remains blank for the established period, it loses its nonconforming status or right and must be treated as an abandoned or discontinued sign. Blank is defined as void of advertising matter. An "available for lease" or similar message that concerns the availability of the sign itself does not constitute advertising matter. A sign with such a message is treated as abandoned or discontinued after expiration of the time period established by the State. When a sign displays such a message, the sign owner is in fact acknowledging that the sign facing is without live copy.
>
> Similarly, a sign whose message has been partially obliterated by the owner so as not to identify a particular product, service or facility is treated as a blank sign.

38. The terms included in the rule are subject to a plain and ordinary meaning, establish adequate standards, are not vague, and do not vest unbridled discretion with the Department.

IV. Arbitrary and Capricious

39. Section 120.52(8)(e) provides that a rule is an invalid exercise of delegated legislative authority if the rule is

arbitrary and capricious. A rule is arbitrary if it is not supported by logic or the necessary facts, and a rule is capricious if it is adopted without thought or reason or is irrational.

40. Petitioners allege that rule 14-10.007(6)(b) is arbitrary and capricious because the rule's requirement that nonconforming signs display advertising does not support the legislative intent stated in section 479.015 of protecting the public investments in highways, conserving natural beauty, and ensuring that information is provided in a safe manner.

41. The removal of nonconforming signs that clutter what would otherwise be open space is within the purpose and intent of highway beautification provisions. See Osage Outdoor Adver., Inc. v. State Highway Comm'n of Mo., 696 S.W. 2d 805 (Mo. Ct. App. 1985). Furthermore, the rule is not arbitrary or capricious because it was adopted specifically to comply with federal regulations. Recently, in CBS Outdoor Inc., and SLG Investments, LLC v. Florida Department of Transportation, 124 So. 3d 383 (Fla. 1st DCA 2013), the Court acknowledged that the federal government "leans hard on the states by conditioning serious money on whether they will accommodate federal aesthetic preferences along the interstate highways." The rule in the present case, which is premised on federal requirements relating to aesthetic preferences along the interstate, and subject to

federal penalties, was not taken without thought or reason, as suggested by Petitioners.

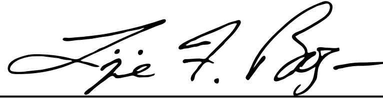
V. Free Speech

42. Lastly, Petitioners argue that rule 14-10.007(6)(b) is an unconstitutional restriction on free speech and is unconstitutional as applied. DOAH is without authority to determine the constitutionality of an existing rule under the Florida Constitution. Dep't of HRS v. Fla. Med. Ctr, NME Hosp., Inc., 578 So. 2d 351, 355 (Fla. 1st DCA 1991). A party may challenge the constitutionality of a rule for the first time on appeal from a final order in a proceeding challenging agency action. See Key Haven Associated Enters., Inc. v. Bd. of Trustees of the Internal Improvement Trust Fund, 427 So. 2d 153 (Fla. 1982); Rice v. Dep't of HRS, 386 So. 2d 844 (Fla. 1st DCA 1980).

DISPOSITION

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that the Department's Cross-Motion for Summary Final Order is GRANTED, and the rule challenges are DISMISSED.

DONE AND ORDERED this 10th day of January, 2014, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of January, 2014.

ENDNOTES

1/ Carter Sign Rentals/Carter-Pritchett Advertising, Inc., also filed a Petition for Formal Administrative Hearing challenging a Notice of Intent to Revoke outdoor advertising permits for an abandoned sign in DOAH Case No. 13-1195. On September 24, 2013, Case No. 13-1195 was consolidated with this matter. On October 25, 2013, upon Carter's motion, Case No. 13-1195 was severed from the instant proceedings and is in abeyance pending the outcome of the instant proceeding.

2/ All subsequent references to Florida Statutes will be to 2012, unless otherwise indicated.

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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 the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the District Court of Appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.