Section I
Notices of Development of Proposed Rules and Negotiated Rulemaking

DEPARTMENT OF EDUCATION

State Board of Education

RULE NO.: RULE TITLE:
6A-1.0014 Comprehensive Management Information System

PURPOSE AND EFFECT: The purpose of this rule development is to revise existing requirements of the statewide comprehensive management information system which are necessary in order to implement changes recommended by school districts and to make changes in state reporting and local recordkeeping procedures for state and/or federal programs. The effect is to maintain compatibility among state and local information systems components. The statewide comprehensive management information system provides the data on which the measurement of school improvement and accountability is based.

SUBJECT AREA TO BE ADDRESSED: DOE Information Data Base Requirements, 2009-2010.

RULEMAKING AUTHORITY: 120.53(1)(b), 1001.02(1), 1008.385(3) FS.

LAW IMPLEMENTED: 1001.23, 1002.22(3)(d)3., 1008.385(2), 1010.305(2) FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Lavan Dukes, Education Information and Accountability Services Section, Department of Education, 325 West Gaines Street, Tallahassee, Florida 32399-0400, (850)245-0400. To request a rule development workshop, please contact: Lynn Abbott, Agency Clerk, Department of Education, (850)245-9661 or e-mail lynn.abbott@fldoe.org or go to https://app1.fldoe.org/rules/default.aspx

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

6A-1.0014 Comprehensive Management Information System.

(1) Each school district and the Department shall develop and implement an automated information system component which shall be part of, and compatible with, the statewide comprehensive management information system. Each information system component shall contain automated student, staff and finance information systems and shall include procedures for the security, privacy and retention of automated records. The procedures for the security, privacy and retention of automated student records shall be in accordance with the requirements of 20 U.S.C. 1232g(b)(3), 34 C.F.R. Part 99 and Section 1002.22, F.S.

(2) The data elements, procedures and timelines for state reporting, local recordkeeping and statewide records transfer to be implemented by each school district and the Department within its automated information system component as prescribed in the publications entitled "DOE Information Data Base Requirements: Volume I – Automated Student Information System, 2009 ~~2008~~," "DOE Information Data Base Requirements: Volume II – Automated Staff Information System, 2009 ~~2008~~," and "DOE Information Data Base Requirements: Volume III – Automated Finance Information System, 1995." These publications which include the 'Department procedures for the security, privacy and retention of school district student and staff records collected and maintained at the state level are hereby incorporated by reference and made a part of this rule. Copies of these publications may be obtained from Education Information and Accountability Services, Department of Education, 325 West Gaines Street, Tallahassee, Florida 32399.

(3) If any portion of this rule and reference materials is adversely affected by the courts, the affected portion should be considered, repealed and the rule shall be repromulgated.

Rulemaking ~~Specific~~ Authority 1001.02(1), 1008.385(3) FS. Law Implemented 1001.23, 1002.22(3)(d)3., 1008.385(2) FS. History–New 2-19-87, Amended 12-21-87, 12-13-88, 3-25-90, 3-24-91, 3-17-92, 12-23-92, 2-16-94, 3-21-95, 7-3-96, 5-20-97, 10-13-98, 10-18-99, 10-17-00, 5-19-03, 7-20-04, 4-21-05, 3-1-07, 3-24-08, 11-26-08, _____.

DEPARTMENT OF EDUCATION

State Board of Education

RULE NO.: RULE TITLE:
6A-1.039 Supplemental Educational Services in Title I Schools

PURPOSE AND EFFECT: The purpose of the rule development is to review the process for approval of providers and to establish internal complaint procedures as required by Section 1008.331, Florida Statutes, as amended. The effect will be a rule which is consistent with governing law.

SUBJECT AREA TO BE ADDRESSED: Supplemental educational services.

RULEMAKING AUTHORITY: 1008.331 FS.

LAW IMPLEMENTED: 1008.331 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: September 7, 2009, 9:00 a.m. – 12:00 Noon

PLACE: Florida Department of Education, 325 West Gaines Street, Room 1721, Tallahassee, Florida 32399-0400

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Katrice Green, Program Director, Bureau of Student Assistance, 325 West Gaines Street, Tallahassee, FL 32399-0400; (850)245-9183

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

DEPARTMENT OF EDUCATION

State Board of Education

RULE NO.: RULE TITLE:

6A-2.0030 Qualified School Construction Bond Program

PURPOSE AND EFFECT: The purpose of this rule development is to implement the administration of the Qualified School Construction Bond Program, which was established pursuant to the American Recovery and Reinvestment Act of 2009.

SUBJECT AREA TO BE ADDRESSED: The development of allocation and application processes for the Program, including required documentation to be provided by the education agencies.

RULEMAKING AUTHORITY: 159.845 FS.

LAW IMPLEMENTED: 159.841, 159.842, 159.843, 159.844, 159.845 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Mr. Spessard Boatright, Director, Office of Educational Facilities, 325 West Gaines Street, Suite 1054, Tallahassee, FL 32399. To request a rule development workshop, please contact: Lynn Abbott, Agency Clerk, Department of Education, (850)245-9661 or e-mail lynn.abbott@fldoe.org or go to https://app1.fldoe.org/rules/default.aspx

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

6A-2.0030 Qualified School Construction Bond Program.

(1) Qualified School Construction Bonds (QSCBs). The American Recovery and Reinvestment Act of 2009 authorized the issuance of Qualified School Construction Bonds (QSCBs) to finance school construction and other eligible projects for public schools. The amount of QSCBs issued in each state is limited under federal law. This rule is created pursuant to Sections 159.841, 159.842, 159.843, 159.844, and 159.845, Florida Statutes, which authorizes the Department of Education (the Department) to establish a program for allocating the available allocation authority in Florida. Under this program, qualified school districts, charter schools or state education agencies can borrow funds with no interest cost. A Qualified School Construction Bond is an interest-free bond issued by a state or local governmental entity, the proceeds of which are used to construct or improve certain eligible public schools, or for certain land or equipment purchases. Instead of receiving periodic interest payments from the issuer, the QSCB bondholder (potential bondholders include banks, insurance companies, and corporations actively involved in the business of lending money) receives a federal income tax credit while the bond is outstanding, in an amount equal to a percentage of the face amount of the bond. The education agency's debt service obligation is only for the principal amount of the bonds. The full faith and credit of the State of Florida is not pledged to QSCB bonds issued by agencies other than the Florida Department of Education.

(a) Eligibility Criteria.

1. All school districts, charter schools or state educational agencies are eligible to apply.

2. Eligible QSCB projects include all projects permitted to be financed with QSCBs under federal law, including:

a. New construction of a public school owned facility,

b. Rehabilitation or repair of an existing public school owned facility,

c. Land acquisition for the facility to be constructed with the QSCB proceeds, and

d. Equipment to be used in the facility that is being constructed, rehabilitated, or repaired with the proceeds of QSCBs.

NOTE: Lease payments may not be made with QSCB proceeds.

(b) Application Process.

1. Application shall be made through submission of Form OEF 411, A Qualified School Construction Bond Program Application, which is hereby incorporated by reference and may be obtained from the Department's website at http://www.fldoe.org/edfacil/oef/federalbond.asp.

2. Applications must be received from the districts or charter schools on or before October 1, or such other date as established by the Department.

3. Districts or charter schools should not request more bonding authority than can be reasonably expected to be repaid, and the district or charter school must expect that the QSCBs will be issued prior to the end of the calendar year in which an application is made.

4. Applications must clearly explain the pledged revenue from which the district or charter school intends to repay the bond principal upon maturity.

5. The application must include the following documents:

a. A copy of the resolution referenced in the Certificate of Eligibility section of the application.

b. A completed project spending plan, Form OEF 412 Project Listing, which is hereby incorporated by reference and may be obtained from the Department's website at http://www.fldoe.org/edfacil/oef/federalbond.asp.

6. Charter schools must submit a copy of the most current financial audit containing an auditor's opinion that the charter school with remain a "going concern" until the QSCBs mature.

(c) Allocation Process.

1. After the federally imposed state bonding authority is known for each calendar year, the school districts and charter schools will be notified by the Department.

2. The total available state volume cap limitation will be divided between two pools, the school districts pool and the charter schools pool. The pools will be established based on the ratio of the number charter schools divided by the number of students served, as compared to the total student population.

3. Applications are reviewed for eligibility and completeness. Districts or charter schools may be contacted for further information or clarification.

4. Applications from school districts must include only survey recommended projects.

5. District applications will be considered and allotments awarded based on the following factors:

a. Existing classroom funding needs for compliance with the constitutionally mandated class-size reduction requirements;

b. Increasing enrollment growth of greater than 1% per year;

c. Need to replace aging facilities, 50 years and older, based on a Department of Education approved analysis; or

d. Existing funding needs for survey recommended projects included in a current Educational Plant Survey approved by the Department of Education.

6. Charter school applications will be considered and allotments awarded based on the review and evaluation of the description of the facility; including, but not limited to, the age, condition, ownership, number of students currently being served, projected number of students to be served, and a photograph(s) of the existing facility demonstrating a need for the project to be financed with QSCB proceeds.

7. Once the Department determines the allocations to be awarded, each district or charter school will be notified in writing. Districts or charter schools whose applications have been denied and those with ineligible projects will also be notified.

8. Any allotment balance remaining after the initial allocation process will revert to a state-wide allocation pool, to which unissued/returned allotments will be added. The state-wide pool may be reallocated at a later date or retained for use by the state.

9. A final confirmation letter of the allocation will be provided upon the districts or charter schools submission of the Issuance Report (OEF Form 413).

(d) Administration. In addition to previously stated requirements, there are a number of administrative items school districts or charter schools must keep in mind:

1. Qualified School Construction Bond (QSCB) proceeds cannot be used to pay debt service or other outstanding debt obligations incurred to finance project costs.

2. Qualified School Construction Bond (QSCB) proceeds cannot be used to make lease payments.

3. The District or charter school must comply with all information requests from the Department so that federal accountability and reporting requirements can be met.

4. Each district or charter school must determine whether the purposes for which QSCBs are issued conform to state law regarding indebtedness.

5. Each district or charter school is responsible for repayment of the principal upon maturity.

6. School districts shall not use PECO or CO&DS revenues to pay QSCB debt service obligations, but may use District School Tax revenues pursuant to Section 1011.71, F.S. (often referred to as local discretionary capital outlay millage).

7. If District School Tax proceeds are proposed for repayment of QSCB debt, those proceeds shall not exceed the Certificates of Participation (COPs) limit established for Districts School Tax revenue in Section 1011.71, F.S.

8. If a district or charter school determines that its allotment will not be used, the district or charter school should notify the Department as soon as possible.

9. If the scope of one of a district's or charter school's approved projects changes, the district or charter school must receive the approval of the Department before reallocating the funds to other projects. Requests will be reviewed on a case-by-case basis.

a. The Department may allow reallocations among approved projects, as identified on the current QSCB award letter, to another current approved project.

b. The Department will disallow the reallocation of funds to new or unapproved projects.

10. Districts or charter schools must have all bonds issued by December 31 of its funding year.

11. As districts or charter schools issue QSCB bonds, an issuance report (OEF Form 413) and a copy of the cover of the official statement must be forwarded to the Department upon issuance of the bonds in order to receive a final confirmation of the volume cap allocation.

12. On December 31 of the district's or charter schools' funding year, unused allotments will revert back to the State for reallocation or retained for use by the state.

13. Allocations of the volume limitation are granted first from carried-forward balances from previous years and then from the current year balance.

(2) Required Documentation. The Application must include the following:

(a) A completed project listing in a format provided by the Office of Educational Facilities.

(b) Charter schools must submit a copy of the most current financial audit containing an auditor's opinion that the charter school with remain a "going concern" until the QSCBs mature, or for the following 15 years.

(c) Charter school applications must include a narrative description of the existing facility; including, but not limited to, the age, condition, ownership, number of students currently being served, projected number of students to be served, and a photograph(s) of the facility.

Rulemaking Authority 159.845 FS. Law Implemented 159.841, 159.842, 159.843, 159.844 159.845 FS. History–New _____.

DEPARTMENT OF EDUCATION

State Board of Education

RULE NO.: RULE TITLE:
6A-6.0960 Florida Tax Credit Scholarship Program

PURPOSE AND EFFECT: The purpose of this rule development is to rename the program in accordance with Section 220.187, Florida Statutes, and to allow the Department the authority to conduct private school on-site inspections, as appropriate, in conjunction with a formal complaint and refer an inquiry to the Office of Inspector General with the Department at any point. The effect will be a rule which will further strengthen the Department's administration and implementation of the program.

SUBJECT AREA TO BE ADDRESSED: Corporate Tax Credit Scholarship Program.

RULEMAKING AUTHORITY: 220.187 FS.

LAW IMPLEMENTED: 220.187 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Laura Harrison, Director of Scholarship Programs, (850)245-0502 or laura.harrison@fldoe.org. To request a rule development workshop, please contact: Lynn Abbott, Agency Clerk, Department of Education, (850)245-9661 or e-mail lynn.abbott@fldoe.org or go to https://app1.fldoe.org/rules/ default.aspx

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

6A-6.0960 Florida ~~Corporate~~ Tax Credit Scholarship Program.

(1) through (9)(b) No change.

(c) The Department shall review the response to the letter of inquiry and:

1. If satisfied that no violation of laws or rules related to scholarship program participation occurred, notify the parent, private school, or school district and complainant that the inquiry will be closed.

2. If more information is needed, request additional information related to the inquiry from the complainant, parent, private school, ~~or~~ school district, or conduct a site audit/inspection as appropriate.

3. If a violation of laws or rules related to scholarship program participation has been committed by:

a. A parent, then the Department shall notify the appropriate nonprofit scholarship-funding organization of the violation which it may use to reconsider its determination of student eligibility.

b. A private school, then the Department shall proceed with the noncompliance procedures related to the Commissioner's authority established pursuant to Section 220.187(10), F.S., and this rule.

c. A school district, then the Department shall take any actions allowable under law to compel school district compliance with program requirements and to ameliorate the effect of the violation on the parent, student, or private school as appropriate.

(d) The Department may at any point in the process set forth in this rule, refer an inquiry to the Department's Office of Inspector General or another appropriate agency for full investigation.

(e) No change.

Rulemaking ~~Specific~~ Authority 220.187(9)(i), 220.187(12)(c) FS. Law Implemented 220.187 FS. History–New 2-5-07, Amended 11-26-08, _____.

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to http://www.dep.state.fl.us/ under the link or button titled "Official Notices."

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:
33-103.005 Informal Grievance

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to provide consistency with changes to Form DC6-236, Inmate Request. Form DC6-236 was amended to include a box that can be checked to indicate its use as an

Informal Grievance; as a result, the proposed rule is amended to remove language specifically requiring an inmate to write this information on the form.

SUBJECT AREA TO BE ADDRESSED: Informal Grievances.

RULEMAKING AUTHORITY: 944.09 FS.

LAW IMPLEMENTED: 944.09 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Kendra Lee Jowers, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

33-103.005 Informal Grievance.

(1) No change.

(2) When submitting an informal grievance, the inmate shall use Form DC6-236, Inmate Request, and shall:

(a) No change.

(b) On ~~top of the page, or on~~ the ~~same~~ line reading ~~as the word~~ "Request", ~~or on the first line of the request section~~ the inmate shall check the box to indicate that Form DC6-236 is being used as an ~~print the words~~ "Informal Grievance". Failure to do this will cause the request to be handled routinely and it will not be considered an informal grievance. This will also cause the form to be unacceptable as documentation of having met the informal step if it is attached to a formal grievance submitted at the next step.

1. No change.

2. When completing the inmate request form for submission as an informal grievance, the inmate shall ensure that the form is legible, that included facts are accurately stated, and that only one issue or complaint is addressed. If additional space is needed, the inmate shall use attachments and not multiple copies of Form DC6-236. The inmate shall sign and date the form and write in his Department of Corrections number and forward the informal grievance to the designated staff person. If an inmate fails to sign his grievance, it shall result in a delay in addressing the grievance until it can be verified that it is that inmate's grievance. Form DC6-236 is incorporated by reference in Rule 33-103.019, F.A.C.

(3) through (5) No change.

Rulemaking ~~Specific~~ Authority 944.09 FS. Law Implemented 944.09 FS. History–New 10-12-89, Amended 1-15-92, 12-22-92, 3-30-94, 4-17-94, 4-10-95, 8-10-97, 12-7-97, 2-17-99, Formerly 33-29.005, Amended 8-1-00, 2-9-05, 3-25-08, _____.

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:

33-208.003 Range of Disciplinary Actions

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to explicitly include unauthorized use of Department weapons as a ground for disciplinary action.

SUBJECT AREA TO BE ADDRESSED: Disciplinary Actions.

RULEMAKING AUTHORITY: 944.09 FS.

LAW IMPLEMENTED: 944.09 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Kendra Lee Jowers, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

33-208.003 Range of Disciplinary Actions.

Violations of the foregoing Rules of Conduct as well as other departmental and institutional policies will result in disciplinary actions, which may be by oral reprimand, written reprimand, suspension, reduction in pay, demotion or dismissal.

Any employee who feels that unjust disciplinary action such as an oral or written reprimand has been given has the right to submit a grievance as established by the grievance procedures of the Department of Corrections. For disciplinary actions involving, suspension, reduction in pay, demotion, or dismissal, permanent Career Service employees have the right to appeal to the Public Employees Relations Commission. Violation of more than one rule shall be considered in the application of discipline and may result in greater discipline than specified for one offense alone.

Any questions regarding these rules and personnel procedures should be referred to the employee's circuit administrator, warden or Personnel Officer.

The preceding section titled Rules of Conduct and the following list of offenses and work deficiencies with their ranges of disciplinary actions will be used by this Department in administering an effective disciplinary program.

THE SEVERITY OF PENALTIES MAY VARY DEPENDING UPON THE FREQUENCY AND NATURE OF A PARTICULAR OFFENSE AND THE CIRCUMSTANCES SURROUNDING EACH CASE. WHILE THE FOLLOWING GUIDELINES ARE NOT A SUBSTITUTE FOR IMPARTIAL SUPERVISION AND EFFECTIVE MANAGEMENT, AND DO NOT SET

ABSOLUTE MINIMUM AND MAXIMUM PENALTIES, IT IS EXPECTED THAT ALL SUPERVISORS WILL CONSIDER THEM IN REACHING DISCIPLINARY DECISIONS.

Offense or Deficiency	First Occurrence	Second Occurrence	Third Occurrence	Fourth Occurrence
(1) Gambling	Oral or Written Reprimand	Written Reprimand or up to 10 day Suspension	Up to 30 days Suspension or dismissal	Dismissal
(2) Horseplay or Fighting	Same	Same	Same	Same
(3) Loafing	Same	Same	Same	Same
(4) Tardiness (With a 2-month period)	Same	Same	Same	Same
(5) Excessive Absenteeism	Same	Same	Same	Same
(6) Malicious Use of Profane or Abusive Language Toward Inmates, Visitors, or Persons Under Supervision	Same	Same	Same	Same
(7) Absence Without Authorized Leave	Same	Same	Same	Same
(8) Unauthorized Distribution of Written or Printed Material of any Description	Same	Same	Same	Same
(9) Unauthorized Solicitations or Sales on DC Premises or While on Duty	Same	Same	Same	Same
(10) Substandard Quality and/or Quantity of Work	Same	Same	Same	Same
(11) Reporting to Work Improperly Dressed for Job Assignment	Same	Same	Same	Same
(12) Sleeping on Job	Written Reprimand, up to 30 days Suspension or Dismissal	Dismissal		
(13) Negligence	Same	Same		
(14) Revealing Confidential Information in DC records to unauthorized person	Same	Same		
(15) Possession of an Unauthorized Intoxicant, Narcotic, Barbiturate, Hallucinogenic drug, Central nervous system stimulant, Weapon or Firearm on DC Property	Same	Same		
(16*) Reporting to Work under the Influence of an Intoxicant, Narcotic, Barbiturate, Hallucinogenic drug, or Central nervous system stimulant	Same	Same		
(17*) Drinking an Intoxicant or using a Narcotic, Barbiturate, Hallucinogenic drug, or Central nervous system stimulant on the job	Same	Same		

*The Governor and Cabinet by Resolution adopted July 17, 1973, have established the State Policy on Alcoholism which recognized alcoholism as treatable illness, a medical and public health problem and an employment problem. When an employee drinks to the extent that it affects his or her work performance, the employee is a problem drinker. As with any health liability, alcoholism is of serious concern to the employee and employer alike. Therefore, it is the policy of this state to recognize alcoholism as a disease. The Career Service Personnel Rules and Regulations (Rule 60K-4.010, F.A.C.) requires that a dismissal action taken against an employee for habitual drunkenness shall be in accordance with the State Policy on Alcoholism as adopted by the Administration Commission and the guidelines issued by the Secretary of Administration.

(18) Failure to maintain direct (sight) supervision of assigned medium, close or maximum custody inmates while outside the institution security perimeter	Written Reprimand, up to 30 days of Suspension or Dismissal	Dismissal
(19) Leaving the Assigned Work Station without Authorization	Same	Same
(20) Use of Corporal Punishment, Verbal or Physical Abuse of an Inmate	Same	Same
(21) Falsification of Forms or Records	Same	Same
(22) Conduct Unbecoming a Public Employee	Same	Same
(23) Stealing DC Property, Property of an Inmate Visitor or Employee	Same	Same
(24) Willful Violation of Rules, Regulations, Directives or Policy Statements	Same	Same
(25) Unauthorized Use of DC Equipment, ~~or~~ Property, or Weapons	Same	Same
(26) Insubordination	Same	Same
(27) Destruction or Abuse of DC Property or Equipment	Same	Same
(28) Destruction of Evidence or Giving False Testimony	Written Reprimand, up to 30 days Suspension or Dismissal	Dismissal
(29) Unlawfully Obtaining Money from or on behalf of an Inmate or Person under Supervision	Same	Same
(30) Failure to Report and Turn in Without Delay all Property Found, Seized, or Taken Officially	Same	Same
(31) Failure to Submit to a Required Physical Exam	Same	Same
(32) Failure to follow Oral or Written Instructions	Same	Same
(33) Abuse of Sick Leave Privileges	Same	Same
(34) Careless or Unsafe Handling of Firearms or Other Weapons	Same	Same
(35) Cowardice	Same	Same
(36) Failure to report for duty when instructed to do so in time of emergency or potential emergency	Same	Same

Rulemaking ~~Specific~~ Authority 944.09 FS. Law Implemented 110.227, 944.09, 944.14, 944.35, 944.36, 944.37, 944.38, 944.39, 944.47 FS. History–New 10-8-76, Formerly 33-4.03, Amended 1-30-96, Formerly 33-4.003, Amended 8-5-07, 11-13-07, _____.

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:

33-602.210 Use of Force

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to: clarify the scope of the rule; specify the type of information that should be stated on camera after a spontaneous use of force; specify the circumstances under which electronic immobilization devices may or may not be used; clarify the circumstances under which chemical agents may be used; outline the procedures that should be followed after the use of chemical agents; and add storage, issuance, and safety provisions.

SUBJECT AREA TO BE ADDRESSED: Use of Force.

RULEMAKING AUTHORITY: 944.09 FS.

LAW IMPLEMENTED: 776.07, 944.09, 944.35 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Kendra Lee Jowers, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

33-602.210 Use of Force.

(1) Except as otherwise provided by law or Department rules, employees are prohibited from using force on anyone other than an inmate, or in any manner not expressly authorized herein.

(2)~~(1)~~ Non-deadly Force. This subsection applies only to non-deadly levels of force; use of deadly force is addressed in subsections (2) and (3). In accordance with Section 944.35, F.S., employees are authorized to apply physical force only when and to the degree that it reasonably appears necessary in order to:

(a) ~~To~~ Dddefend himself or another against an inmate using unlawful force;

(b) ~~To~~ Ppprevent the escape from a state correctional institution or facility of an inmate or aid in the recapture of an escaped inmate;

(c) ~~To~~ Ppprevent the escape of an inmate during transporting or while outside a correctional institution or facility;

(d) ~~To~~ Ppprevent damage to property;

(e) ~~To~~ Qquell a disturbance;

(f) ~~To~~ Oovercome an inmate's physical resistance to a lawful command;

(g) ~~To~~ Ppprevent an inmate from inflicting further injury to himself (suicide attempt); or

(h) ~~To~~ Rrestrain the inmate when ordered to allow medical treatment in accordance with the provisions of subsection (12) of this rule.

(3)~~(2)~~ Use of Deadly Force – For the purposes of this rule, deadly force refers to force that is likely to cause death or great bodily harm. A correctional officer is authorized to use deadly force only when the officer believes that such force is necessary to prevent imminent death or great bodily harm to himself or another.

(4)~~(3)~~ Use of Deadly Force to Prevent Escape or to Recapture Escapee. Generally, correctional officers are authorized to use force, including deadly force, as necessary to prevent the escape of an inmate from a penal institution.

(a) Escape attempts from inside an institutional perimeter where armed perimeter staff are assigned:

1. In institutions that have a double fence, where time permits, a verbal warning to halt shall be given before the inmate touches the inner fence. Time permitting, a warning shot shall then be fired before the inmate begins to pass over, through or under the inner fence. The firearm shall not be fired at the inmate until he has begun to pass over, through or under the inner fence.

2. In institutions that have a single fence, and time permitting, a verbal warning will be given to halt and a warning shot will be fired before the inmate reaches the perimeter fence. The firearm shall not be fired at the inmate until he has begun to pass over, through or under the fence.

3. Warning shots are only authorized as provided in subparagraphs (3)(a)1. and 2. above. In all other instances where deadly force is authorized during inmate escape attempts, a verbal warning shall be issued if time and circumstances permit.

(b) Apprehension of escaped inmates once they are outside an institutional perimeter.

1. Correctional officers are considered to be in active pursuit of an inmate who has escaped from an institution or supervised work squad so long as the escape commander determines that the escape recovery efforts are active. When the inmate has refused a verbal order to stop, the correctional officer is authorized to use deadly force to stop the inmate, once the officer has clearly identified the individual as the escaped inmate and is sure of the target and what lies beyond.

2. Once the escape commander determines that immediate recapture efforts are over, recapture becomes a law enforcement agency function and department staff only provide assistance to local law enforcement. Correctional officers who are utilized to assist outside law enforcement agencies are authorized to use deadly force only in self defense or to defend others against deadly use of force.

3. When an inmate fails to return from a furlough or non-supervised outside assignment or escapes from a department work release center or a contract work release center, recapture is a law enforcement agency function and department staff only provide assistance to local law enforcement. Correctional officers who are utilized to assist outside law enforcement agencies are authorized to use deadly force only in self defense or to defend others against deadly use of force.

(c) Escape attempts by inmates while being transported or escorted outside institutional perimeters, e.g., court appearances, hearings and medical visits, or while being supervised while in a hospital for treatment. Deadly force is only authorized in accordance with paragraph (1)(c), when the officers are in immediate active pursuit of the escapee. The escape commander will determine when the period of active pursuit has ended. At this point, involvement by correctional officers will be limited to assisting law enforcement officers and deadly force is only authorized for self defense or to defend others against deadly use of force.

(5)~~(4)~~ Physical force shall be employed only as a last resort when it reasonably appears that other alternatives are not feasible to control the situation and will not be used solely in

response to verbal abuse that does not rise to a level of a disturbance. When the use of force is justified, only that amount and type of force that reasonably appears necessary to accomplish the authorized objective shall be used. Utilization of the custodial touch, with the hand firmly grasped around the inmate's tricep or elbow, during internal transport of restrained inmates shall not be considered a use of force when the transport hold is for the safety of the inmate and resistance is not met.

(a) All authorized use of force incidents will be video recorded.

(b)1. The administration of chemical agents on an inmate creating a disturbance in his or her cell when the officer is attempting to resolve the situation without extracting the inmate from the cell will also be video recorded. The video recording will include: a specific introductory statement, including the date and time, the names and ranks of the supervisor present and the camera operator, and the name and DC number of the inmate; the attempts to resolve the situation without the use of chemical agents; the final order by the supervisor; an advisement to the inmate that chemical agents will be administered if he or she continues the disruptive behavior; an additional advisement to the inmate that this warning will not be repeated prior to the application of chemical agents should he or she become disruptive again after the supervisor, camera and camera operator have left the area; and any response made by the inmate. The video recording will also include the actual application of chemical agents, the offer of a decontaminating shower and medical examination, and the inmate's return to a secure, decontaminated cell. Should the inmate refuse the shower for decontamination purposes or refuse the medical examination, both the staff providing the opportunity in each case and the inmate's responses will be recorded.

2. If, during the same shift, the inmate should cease the conduct creating the disturbance while the supervisor, camera and camera operator are present, but resume such conduct after the supervisor, camera and camera operator have left the area, videotaping of the actual application of the chemical agents is not required. The department will defer to the judgment of the supervisor as to whether the reintroduction of the camera and operator at the scene of the disruptive conduct to videotape the actual application of the chemical agents will be counterproductive to his or her efforts to regain control of the situation. If the determination is made to return the camera and operator to the scene, the warning that chemical agents will be administered if he or she continues the disruptive behavior and application of the chemical agents will be recorded. If the determination is made not to videotape the actual application of the chemical agents, the original video recording will resume following the final exposure to chemical agents, include a statement referring to the originating incident, and continue from this point until the decontaminating shower and medical examination are offered and the inmate is returned to secure, decontaminated housing.

3. If a different supervisor takes command of the incident due to shift change or other circumstances in which there is a staff change, a new video recording will be initiated and the requirements in subparagraph 1. and 2. above will be repeated.

(c) All spontaneous use of force incidents will be videotaped from the point the video camera operator arrives at the scene. Videotaping shall continue uninterrupted until the incident is under control, the involved inmate is escorted to medical, and the inmate is subsequently returned to secure housing. At the conclusion of the recording of such incidents, the shift supervisor or designee shall provide an on-camera statement including as much of the following information as is available at the time:

1. Date and time;

2. His or her name and rank;

3. The name and rank of the camera operator;

4. The inmate's name and DC number;

5. A brief summary of the events leading up to the use of force;

6. The names and ranks of all involved staff members.

(d) Videotaping of post use of force medical exams shall be done in such a manner as to provide the privacy needed for the exam. If it is necessary to transport the inmate to an outside facility for treatment or to another department facility for secure housing purposes, videotaping shall continue until the inmate is loaded and secured in the transport vehicle.

(6)~~(5)~~ There shall be no corporal punishment of any kind. Handcuffs, leg irons and other such devices shall be used only for restraint, and not for punishment.

(7)~~(6)~~ The provisions of this rule shall be incorporated into the Department of Corrections' use of force training curriculum.

(8)~~(7)~~ The warden or, in his absence, the duty warden will be consulted and give her or his permission prior to use of physical force. In spontaneous use of force incidents when circumstances do not permit prior approval, the warden or, in his absence, the duty warden will be notified immediately following any use of force incident. Whenever force is authorized, the employee who was responsible for making the decision to use force pursuant to subsection (1) shall prepare, date and sign Form DC6-232, Authorization for Use of Force Report, either during, or immediately after, the tour of duty when force was used. If the authorization for force is given after normal working hours, the person authorizing the force shall complete and sign Form DC6-232 within one working day (Monday through Friday) following the incident. Form DC6-232 is incorporated by reference in subsection (22) of this rule.

(9)~~(8)~~ Whenever force is used the employee initially using force shall complete Form DC6-230, Institutions Report of Force Used, the completed form shall include a detailed written report of force used. If more than one employee was involved in the initial use of force, the highest ranking official involved or the most senior employee shall complete the report. Each additional employee involved in the use of force who agrees with the facts and circumstances as reported on Form DC6-230 Section I shall prepare Form DC6-231, Institutions Report of Force Used Staff Supplement. The report shall describe in detail the type and amount of force used by him or her. Each employee shall individually write his or her own report, then submit the completed report to the clerical personnel designated by the warden to type all the reports onto one form to be signed by each employee. Any additional employee who does not agree with the facts and circumstances as reported in Form DC6-230 Section I shall prepare a separate Form DC6-230, Institutions Report of Force Used. Forms DC6-230 and DC6-231 are incorporated by reference in subsection (22) of this rule.

(10)~~(9)~~ The Authorization for Use of Force Report and the Institutions Report of Force Used shall be completed by those staff involved either during or immediately after the tour of duty when force was used. If an emergency arises, the warden may authorize the employee to complete the reports immediately upon his return on the next calendar day. Barring such an emergency, all reports must be typed and submitted to the warden or acting warden within 1 working day (Monday through Friday) following the incident.

(11)~~(10)~~ The warden or acting warden shall immediately conduct a preliminary review of the video tape(s) and all associated reports for signs of excessive force or procedural deviation. If signs of excessive force or procedural deviation are noted by the warden or assigned inspector, she or he will notify the Office of the Inspector General directly, so that there is no undue delay in initiating an investigation. The warden shall then appoint a staff member of equal or higher rank than those involved in the use of force to collect all pertinent information and required documentation. This information will include the reports of all involved staff and the statements of staff witnesses, inmate witnesses, the inmate subject, and the completed Form DC1-813, Use of Force File Checklist. Form DC1-813 is incorporated by reference in subsection (22) of this rule. All inmate statements (subject and witnesses) shall be made in writing using Form DC6-112C, Witness Statement. Form DC6-112C is incorporated by reference in Rule 33-601.313, F.A.C. All employees who witness but do not participate in the use of force shall complete, Form DC6-210, Incident Report. Form DC6-210 is incorporated by reference in subsection (22) of this rule. This process will be completed within 5 working days (Monday through Friday). The warden shall review the information and note any inappropriate actions. The warden shall review Form DC1-813, Use of Force File Checklist, and shall forward the videotape(s) and associated reports on the use of force and the warden's review to the institutional inspector within five working days. The institutional inspector will ensure that all documentation is complete and will forward all materials to the Use of Force Unit within the Office of the Inspector General (OIG) within 5 working days. The Use of Force Unit within the OIG, following its review, will either approve the use of force action or disapprove it. If the Use of Force Unit finds that the use of force was appropriate, the OIG's written determination of the appropriateness of the force used and the reasons therefor, shall be forwarded to the circuit administrator or warden upon completion of the review. If the Use of Force Unit finds that the use of force was inappropriate, the OIG shall conduct a complete investigation into the incident and forward the findings of fact to the appropriate regional director. The OIG shall also advise the warden in writing of the reason for the disapproval so that the warden can take any needed corrective action. If employee disciplinary action appears warranted, the warden shall prepare Form DC6-296, Disapproved Use of Force/Disposition Report, and forward the materials to the service center employee relations supervisor. Form DC6-296 is incorporated by reference in subsection (22) of this rule. The warden shall document all corrective action taken. Copies of the employee's report, the warden's summary and the inspector general's review and determination shall be kept in the inmate's file. Form DC2-802, Use of Force Log, shall be placed in every employee's personnel file. This form will be maintained by the servicing personnel office and shall contain a record of every report of use of force and staff supplement completed by the employee. The warden or his designee shall be responsible for submitting accurate information to the personnel office in order to maintain Form DC2-802. Any use of force reports completed prior to April 15, 1998 shall remain in the file. Form DC2-802 is incorporated by reference in subsection (22) of this rule.

(12)~~(11)~~ Any employee who witnesses, or has reasonable cause to suspect, that an inmate has been unlawfully abused shall immediately prepare, date and sign Form DC6-210, Incident Report, pursuant to Section 944.35(3)(d), F.S., specifically describing the nature of the force used, the location and time of the incident and the persons involved. The report shall be delivered to the inspector general of the department with a copy delivered to the warden of the institution. The inspector general shall conduct an appropriate investigation and, if probable cause exists that a crime has been committed, notify the state attorney in the circuit in which the institution is located.

(13)~~(12)~~ Force or restraint may be used to administer medical treatment when ordered by a physician or clinical associate, and only when treatment is necessary to protect the health of other persons, as in the case of contagious and venereal diseases, or when treatment is offered in satisfaction of a duty to protect the inmate against self-inflicted injury or death. The physician or clinical associate shall prepare Form

DC6-232, Authorization for Use of Force Report, documenting the reasons that force or restraint was authorized. The physician's or clinical associate's report shall be attached to Form DC6-230, Institutions Report of Force Used, when actual force is used, or Form DC6-210, Incident Report, when restraints are applied without the use of force as described above. In each instance a DC4-701C, Emergency Room Record, shall be completed in its entirety with applicable data, or the letters N/A used to indicate not applicable. Form DC4-708, Diagram of Injury, shall also be completed in its entirety with applicable data, or the letters N/A used to indicate not applicable. In each case, the examination shall be complete and result in a clear statement by the medical provider that there is or is not an injury, and the record shall provide sufficient documentation to support that conclusion. In all cases where physical force is used to manage an inmate, the inmate and any employee who is involved will be required to receive a medical examination or will sign Form DC4-711A, Refusal of Health Care Services, declining the examination. In those cases where an injury is claimed but not substantiated by medical examination, the statement by the medical provider shall indicate this, and the documentation shall be sufficient to support that no injury was found upon examination. Forms DC4-711A, DC4-701C and DC4-708 are incorporated by reference in subsection (22) of this rule. When the use of four-point or five-point psychiatric restraints is authorized and the inmate does not offer resistance to the application of the restraints, the completion of Form DC6-230, Institutions Report of Force Used, or Form DC6-231, Institutions Report of Force Used Staff Supplement, will not be required. In these situations, where there is no resistance to the application of psychiatric restraints, the application of the restraints will be videotaped and Form DC6-210, Incident Report, will be completed. The videotape, the completed Incident Report, and the completed Form DC6-232, Authorization for Use of Force Report, will be forwarded to the warden or acting warden for review within one working day. The warden will forward the videotape and associated reports to the institutional inspector within five working days. The institutional inspector will ensure that all documentation is complete and will forward all materials to the Office of the Inspector General, as outlined in subsection (10) above, for review. If at any time prior to or during the application of the psychiatric restraints the inmate offers resistance to the application, the steps outlined in subsection (8) above will be followed.

(14)~~(13)~~ The use of electronic immobilization devices (EIDs), batons, chemical agents, or specialty impact munitions within institutions shall be authorized only by the warden, or duty warden if the warden is not available. Batons shall be used only by trained baton squad members to disarm an inmate or during situations in which the squad has been activated to quell a disturbance. The decision to use chemical agents, specialty impact munitions, or authorized EIDs ~~electronic immobilization devices~~ shall be based on which level of force is most likely to resolve the situation with the least amount of injury to all parties involved. Hands-on physical force shall be avoided if injury is less likely to occur by using chemical agents, specialty impact munitions, or EIDs ~~electronic immobilization devices~~.

(15)~~(14)~~ Batons, chemical agents, EIDs ~~electronic immobilization devices~~, and specialty impact munitions shall not be used on inmates who are assigned to inpatient mental health care in an infirmary, transitional care unit, crisis stabilization unit, corrections mental health institution, or other mental health treatment facility, except when it appears reasonably necessary to:

(a) Prevent an inmate or inmates from taking control of the health unit, or to subdue a take-over of the health unit.

(b) Prevent an inmate or inmates from taking a hostage or to help free a hostage.

(c) Prevent an inmate or inmates from escaping.

(d) Stop an assault on staff or other inmates when other means of intervention are likely to be ineffective or pose a risk of injury to the intervening staff.

(16)~~(15)~~ Use of EIDs ~~electronic immobilization devices~~. EIDs shall not be used on anyone other than an inmate during an authorized use of force.

(a) EIDs ~~Electronic immobilization devices~~ authorized by the department include:

1. Handheld EIDs ~~Ultron II or Nova Sprit handheld~~, which shall be the intermediate level of force alternative, issued primarily for the purpose of transportation and supervision of inmates outside the institution;

2. Electronic ~~Ultron electronic~~ shields, which shall be primarily used by force cell extraction teams; and

3. Electronic restraint belts, which are ~~is~~ authorized ~~for use~~ for inmate court appearances and other transports of high profile or high-risk inmates.

(b) EIDs ~~Electronic immobilization devices~~ shall only be used by officers who have successfully completed the Department of Corrections' authorized training for these devices.

(c) EIDs shall be used only in the following circumstances:

1. After all reasonable efforts and lesser levels of force, especially verbalization, have been exhausted;

2. To prevent any unauthorized individual from taking possession of an officer's firearm;

3. To prevent an inmate from physically harming himself or others;

4. To prevent an inmate from escaping;

5. To prevent an inmate from taking a hostage or to help free a hostage;

6. In cell extractions, when it is determined that less injury will result than if other force alternatives are utilized; and

7. To gain control of an inmate so that the appropriate restraint devices can be applied.

(d)~~(c)~~ EIDs ~~Electronic immobilization devices~~ shall be used in accordance with the manufacturer's specifications and limitations, and will not be:

1.Used to punish any inmate;

2. Employed into any large metal object;

3. Used in the presence of combustible materials;

4. Used if the officer's hand, the unit, or the inmate is wet;

5. Used on a female inmate who is known to be pregnant;

6. Applied to the head, genitals, female breasts (handheld unit), open wounds or stitches;

7. Used on people with known neuromuscular diseases;

8. Used on an inmate who is less than 80 pounds in weight (electronic shield);

9. Used against an inmate brandishing a handgun, firearm, or knife, except in life-threatening situations;

10. Used to threaten or gain information from an inmate;

11. Used on an inmate unless physical resistance has to be overcome;

12. Used to wake up a suspected intoxicated individual; or

13. Used as a prod.

(e)~~(d)~~ If possible, the shift supervisor shall counsel with the inmate, issue the final order, and be present when EIDs ~~electronic immobilization devices~~ are used at the institution or facility.

(f)~~(e)~~ When in a close management or confinement setting, prior to utilizing EIDs ~~electronic immobilization devices~~, the officer shall review Form DC4-650B, Risk Assessment for the Use of Chemical Restraint Agents and Electronic Immobilization Devices, to determine whether the inmate has a medical condition which may be exacerbated by use of EIDs ~~electronic immobilization devices~~. If no form is available, and where time and circumstances permit, medical staff shall be consulted to determine if the inmate has any medical condition that would make the use of an EID ~~electronic immobilization device~~ dangerous to that inmate's health. Form DC4-650B is incorporated by reference in subsection (22) of this rule.

(g)~~(f)~~ Handheld EIDs ~~electronic immobilization devices~~ shall be issued to the unarmed officers on any inmate transport where firearms are issued, or on any outside hospital assignment where firearms are issued. The chief of security, or in his absence, the shift supervisor, shall determine the number of officers who will be issued firearms and EIDs ~~electronic immobilization devices~~ during such trips.

(h)~~(g)~~ As soon as possible following each use of an EID, ~~electronic immobilization device~~ the inmate shall be afforded medical examination and treatment. Medical staff shall, upon completing the medical examination, make a mental health referral for each inmate who is classified S-2 or S-3 on the health profile. The referral shall be made by completing Form DC4-529, Staff Request/Referral, and sending it to mental health staff. Form DC4-529 is incorporated by reference in subsection (22) of this rule. Mental health staff shall evaluate the inmate not later than the next working day to determine whether a higher level of mental health care (isolation management, transitional, or crisis stabilization) is indicated. For the purposes of this rule, the following definitions shall apply:

1. S-2 is the mental health classification denoting mild impairment in the ability to meet the ordinary demands of living within general inmate housing (which includes segregation), which impairment is associated with an Axis I disorder (excluding substance use disorders) or symptoms thereof, schizotypal personality disorder, borderline personality disorder, or mental retardation. The impairment in functioning is not so severe as to prevent satisfactory adjustment in general inmate housing, with provision of mental health services.

2. S-3 is the mental health classification denoting moderate impairment in the ability to meet the ordinary demands of living within general inmate housing, due to the presence of an Axis I disorder (excluding substance abuse disorders), borderline personality disorder, or schizotypal personality disorder. The impairment in functioning is not so severe as to prevent satisfactory adjustment in general inmate housing with provision of mental health services. Clinical management of the disorder may require at least periodic administration of psychotropic medication, of which the inmate may exercise his or her right to refuse.

(i)~~(h)~~ In any case where EIDs ~~electronic immobilization devices~~ are used, Form DC6-230, Institutions Report of Force Used, shall be prepared and shall include:

1. What precipitated the use of the device; and

2. To what extent it was used and what results were derived from its use.

(j)~~(i)~~ EIDs ~~Electronic immobilization devices~~ shall be stored and maintained in either the main arsenal or the control room mini-arsenal. The warden may authorize, in writing, the storage of one handheld unit and one shield in the confinement unit or close management unit. These devices shall be kept secured in a locked cabinet when not in use. The arsenal sergeant will be responsible for the proper documentation of the maintenance, storage, and issue of EIDs.

(k)~~(j)~~ All EIDs ~~electronic immobilization devices~~ shall be accounted for in the same manner as firearms.

(l)~~(k)~~ There shall be no attempt to alter, tamper with, or repair any EID ~~electronic immobilization device~~. If a unit malfunctions or needs repair, it shall be sent to an authorized repair station. If a unit requires attention, it shall not be issued until repaired. If a unit ~~any electronic immobilization device~~ is dropped or knocked out of the hand, it shall be immediately tested to determine if it is damaged or is operating properly. Repair will be conducted by authorized repair sources only.

(m)~~(l)~~ EIDs ~~Electronic immobilization devices~~ shall not be utilized after the application of any chemical agents.

(17)~~(16)~~ Use of Chemical Agents. Chemical agents shall not be used on anyone other than an inmate during an authorized use of force.

(a) The following chemical agents are authorized for use by the department:

1. OC – Oleoresin Capsicum (pepper spray) – An inflammatory agent that causes tearing and involuntary closing of the eyes, nasal discharge, sneezing, disorientation, and the sensation of respiratory distress.

a. OC is the primary chemical agent to be used for cell extractions and other in-cell, individual, use, unless circumstances exist as outlined in subparagraph 2. below.

b. OC shall be used only in the manner prescribed in department rules and procedures, consistent with manufacturer directions.

c. OC shall not be used in conjunction with any EID ~~electronic immobilization device~~.

2. CS – Orthochlorbenzal Malononitrile or Orthochlorobenzylidene Malononitrile – An irritant agent that causes eyes to burn and tear, nasal discharge, and skin and upper respiratory irritation.

a. CS shall be used for cell extractions and other in-cell, individual, use only when OC is ineffective and efforts to talk the inmate into cooperating have failed.

b. When documentation is available, e.g., Form DC6-230, Institutions Report of Force Used, to substantiate that the use of OC has in the past proven ineffective in controlling a specific inmate, the warden or duty warden has the option to authorize the use of CS as the initial/primary chemical agent.

c. CS is additionally authorized as the initial/primary chemical agent during in-cell applications in which the inmate has covered his person or fabricated a barrier in an effort to prevent direct contact with the chemical agent.

d. When CS is used as the initial/primary chemical agent the justification shall be listed in Section I of Form DC6-230, Institutions Report of Force Used.

e. CS shall be used only in the manner prescribed in department rules and procedures, consistent with manufacturer directions.

f. CS shall not be used in conjunction with any EID ~~electronic immobilization device~~.

3. CN – Cloroacetophene – An lacrimator agent that causes tearing of the eyes, nasal discharge, and skin and upper respiratory irritation.

a. CN projectiles, grenades and thermal foggers shall only be used for institutional disturbances and crowd control.

b. CN shall be authorized for use as set forth in sub-subparagraph a. above only until the expiration date of current stores, at which time CN is no longer authorized for use.

c. CN shall not be used in conjunction with any EID ~~electronic immobilization device~~.

(b) Chemical agents, OC, CN or CS, shall be used only after all other reasonable efforts to control a disorderly inmate or group of inmates have been exhausted. All chemical agents shall be used with caution.

(c) In controlled situations when time constraints are not an issue, chemical agents can only be used if authorized by the warden or, in his or her absence, the duty warden. Additionally, in accordance with paragraph (k) below, certified correctional staff will be pre-authorized to administer chemical agents in instances where chemical agents must be used for intervention in self-defense, i.e., when the officer believes that he or she is in imminent threat of bodily harm or that the use of chemical agents will prevent injury to other staff, visitors, volunteers or inmates.

(d) Except in cases of emergency, as determined by the warden or duty warden, chemical agents shall be employed only by persons trained in their use.

(e) Chemical agents shall never be used to punish an inmate.

(f) No inmate shall be removed from his assigned cell and placed into another cell for the purpose of administering chemical agents.

(g) No inmate shall be handcuffed solely for the purpose of administering chemical agents. If chemical agents are administered to a handcuffed inmate, an explanation as to why the removal of the handcuffs was not feasible shall be included in Section I of Form DC6-230, Institutions Report of Force Used.

(h) No inmate shall be stripped of his clothing or comfort items for the explicit purpose of administering chemical agents.

(i) Chemical agents shall only be used when a use of force is necessary and when this level of force is the least likely to cause injuries to staff or inmates.

(j) All chemical agents shall be used with caution and in accordance with the manufacturer's instructions. The Material Safety Data Sheet (MSDS) for chemical agents shall be kept where chemical agents are located.

(k) Chemical agents shall be stored in the main arsenal. A small amount of chemical agents may be stored in secure locations such as the control room mini-arsenal or the officer's station in confinement and close management units until its use is authorized. Each stored chemical agent dispenser will be numbered. Form DC6-216, Chemical Agent Accountability Log, will be kept in all areas in which chemical agents are stored and will be utilized to record the weight of each numbered chemical agent dispenser prior to issue and again when it is returned to the secure inventory storage area. The weighing process will be conducted and a verifying entry will be made in the log, including the signature of the shift supervisor authorizing the use of the chemical agent. The chief

of security shall monitor the canister weights following each use of chemical agents to ensure the amounts used are consistent with that expected by reviewing and initialing Form DC6-216. Form DC6-216 is incorporated by reference in subsection (22) of this rule.

(1) Issuance of chemical agents.

1. Certified officers assigned to major institutions and work camps are designated by the Secretary of the Department as required to carry chemical agents and shall be issued one three or four ounce dispenser of OC pepper spray after being properly trained in chemical agent utilization. These officers are authorized to administer chemical agents in spontaneous circumstances without additional authorization for intervention in self-defense, i.e., when the officer believes that he is in imminent threat of bodily harm or that the use of chemical agents will prevent injury to other staff, visitors, volunteers, or inmates. Certified security officers assigned to armed perimeter posts may be exempted from this requirement by the warden.

2. Certified officers assigned to major institutions and posted to internal security, recreation field, shift supervisor posts, or designated as "A" team response members are authorized by the Secretary to be issued one MK-9, or equivalent, dispenser of OC in addition to the dispenser issued in accordance with subparagraph (16)(l)1. These officers are authorized to administer the chemical agents listed in this subparagraph in spontaneous disturbance situations involving multiple inmates in locations where large numbers of inmates are present, such as recreation fields, canteen, and meal lines. This option shall only be utilized in disturbance situations rising to the level of inmate involvement where this enhanced option is deemed necessary and shall not be used indoors.

3. The chemical agent dispenser shall be securely encased and attached to the officer's belt. Each chemical agent dispenser will be secured within a pouch or to a holstering device by a numbered, breakable seal. Form DC6-213, Individual Chemical Agent Dispenser Accountability Log, will be utilized to document the name of the officer to whom each dispenser is assigned as well as the seal number on the dispenser she or he received. Form DC6-213 is incorporated by reference into subsection (22) of this rule. Upon receiving the dispenser and pouch, the officer will examine the safety seal to ensure that it is intact. If the seal is broken, the Shift Supervisor will be notified immediately and Form DC6-210, Incident Report, will be written. The arsenal sergeant shall maintain a master inventory of all individual chemical agent dispensers complete with the weight of the dispenser at the time the original seal is attached. Whenever a dispenser is returned with a broken seal, the arsenal sergeant shall document the weight of the dispenser on Form DC6-216, Chemical Agent Accountability Log, and attach a new seal. Any discrepancies in the weight of the dispenser will be reported to the chief of security, and Form DC6-210, Incident Report, shall be completed.

(m) In any case where chemical agents are used, an accurate record shall be maintained as to what type of agent was used, how much was used, method of administration, person authorized to draw chemical agent when issued from a secure location, person administering the chemical agent, location administered, and reason for use. This information shall be included in Section I of Form DC6-230, Institutions Report of Force Used.

(n) Procedure for the use of chemical agents on disruptive inmates under controlled conditions:

1. If an inmate becomes disorderly, disruptive, or unruly to the point he is creating a disturbance impacting the housing unit, other inmates, or the officer's ability to provide unit security, and attempts by officers at counseling and ordering the cessation of disruptive behavior fails, the confinement or close management lieutenant or shift supervisor or person of higher rank shall be contacted for further instructions

2. If the confinement or close management lieutenant or shift supervisor's efforts to control the disorderly inmate have failed and the use of chemical agents is the least level of force that can be expected to successfully gain control of the disruptive inmate while minimizing the risk of injuries to all involved, the shift supervisor shall:

a. When in a close management or confinement setting, review Form DC4-650B, Risk Assessment for the Use of Chemical Restraint Agents and Electronic Immobilization Devices, to determine if the inmate has a medical condition that would be exacerbated by the use of chemical agents; as with the use of EIDS, if no form is available, where time and circumstances permit, contact medical staff to determine whether the inmate has any medical condition that would make the use of chemical agents dangerous to that inmate's health; and

b. Contact the warden or, in his or her absence, the duty warden and request authorization to utilize chemical agents.

3. Prior to using chemical agents, the inmate again shall be counseled with by the shift supervisor concerning his behavior.

a. If this attempt to counsel with the inmate is unsuccessful, the inmate will be given a final order by the shift supervisor to cease his actions. The inmate will also be informed at this time that chemical agents will be administered if he continues his disruptive behavior.

b. If the inmate continues his disruptive behavior, approximately three minutes after the order is given, staff are authorized to administer chemical agents in the form of no more than three one-second bursts. Staff are authorized to immediately utilize chemical agents if physical injury to staff or other inmates appears imminent.

c. If after approximately five minutes from the initial exposure the inmate still continues his disruptive behavior, staff are authorized to again administer chemical agents for no more than three one-second bursts.

d. If the second administration of chemical agents fails to control the inmate's disruptive behavior, the duty warden shall again be consulted to determine the next course of action. Additional actions include:

I. Additional administration of the same type or other type of chemical agent; and

II. Other uses of force as authorized by this rule.

e. Any uninvolved inmates in the cell or immediate area shall be given an opportunity to leave the potentially affected area, if it will not jeopardize the safety of staff or other inmates.

f. Except in cases of extreme emergency as determined by the warden or duty warden, the confinement or close management lieutenant or the shift supervisor shall counsel with, issue the final order, and be present during the administering of chemical agents. If the confinement or close management lieutenant or the shift supervisor is unavailable, he shall provide a written explanation as to why he was not available to supervise the administration of chemical agents.

(o) Medical Requirements.

1. Following the administration of chemical agents, the inmate will be monitored for any signs of respiratory distress; i.e., labored breathing, excessive or persistent coughing, or other signs of distress. The inmate will be questioned about any past history of respiratory problems such as asthma, bronchitis, emphysema, or shortness of breath. If the inmate displays or reports any of these symptoms or conditions, the inmate requires immediate attention by medical staff who have reviewed the inmate's medical record for any history of such respiratory problems.

2. In the event chemical agents are utilized on an inmate who is out of control to the degree where four (4)-point restraints are required for safety purposes, he will be constantly monitored by health services staff for signs of distress and, if distress occurs, treated to alleviate the distress. Approval from the warden or the duty warden is to be obtained prior to placing an inmate in four (4)-point restraints. Approval must also be subsequently obtained from the designated health authority.

3. Following the use of chemical agents, except as noted above, staff will avoid placing the inmate in a lying-down position, either face down or face up.

a. The inmate will be maintained in a sitting or standing position for at least forty-five (45) to sixty (60) minutes after the use of chemical agents.

b. Constant observation for the possibility of respiratory distress is required and any indication of distress will prompt immediate assessment by medical staff.

c. If symptoms of the spray persist after sixty (60) minutes, the inmate will be brought for immediate medical attention.

4. The inmate will not be held or mechanically restrained in any way that would obstruct movement of the inmate's chest or abdomen. If the inmate has been subjected to chemical agents and then personally restrained to allow security to place mechanical restraining devices on the inmate (such as handcuffs), the inmate will be moved to a sitting or standing position immediately after s/he is secured.

5. Once the inmate is compliant, he shall be showered as soon as possible but not later than 20 minutes after final application of chemical agents. The inmate shall be examined by medical staff immediately after showering. In each instance a Form DC4-701C, Emergency Room Record, shall be completed in its entirety with applicable data, or the letters N/A used to indicate not applicable. If an injury is claimed or found to exist, Form DC4-708, Diagram of Injury, shall also be completed in its entirety with applicable data, or the letters N/A used to indicate not applicable. In each case, the examination shall be complete and result in a clear statement by the medical provider that there is or is not an injury, and the record shall provide sufficient documentation to support that conclusion. In those cases where an injury is claimed but not substantiated by medical examination, the statement shall indicate that, and the documentation shall be sufficient to support that no injury was found upon examination. Medical staff shall, upon completing the medical examination, make a mental health referral for each inmate who is classified S-2 or S-3 on the health profile. The referral shall be made by completing Form DC4-529, Staff Request/Referral, and sending it to mental health staff. Mental health staff shall evaluate the inmate not later than the next working day, to determine whether a higher level of mental health care (isolation management, transitional or crisis stabilization) is indicated.

(p) Any part of the body exposed to chemical agents, especially eyes, shall be flushed with water as soon as possible after exposure for at least five to ten minutes or until the affected inmate experiences relief. The affected area shall not be rubbed with a cloth or towel, and no oils, creams, or topical medications shall be applied unless medical staff so directs.

(q) Inmates exposed to chemical agents shall be ordered by the shift supervisor to shower and change both inner and outer wear within 20 minutes after exposure for decontamination purposes.

1. If an inmate refuses to shower or change, the refusal shall result in a disciplinary report and be documented:

a. On Form DC6-210, Incident Report, by the shift supervisor; or

b. On Form DC6-229, Daily Record of Segregation, by the confinement lieutenant or shift supervisor, if the inmate is in confinement or close management. Form DC6-229 is incorporated by reference in Rule 33-602.220, F.A.C.

2. In the event the inmate refuses to shower or change, staff shall advise the medical staff member who is responsible for examining the inmate following the use of force of this refusal and medical staff shall immediately report to the area to conduct a cell-front examination and to explain the importance of showering after exposure to chemical agents, except in case of emergency which shall be documented.

3. The shift supervisor shall again order the inmate to shower. If the inmate refuses again, this refusal shall also be documented in writing and witnessed by the shift supervisor and medical staff.

4. If medical staff determine that there is no immediate medical need for the inmate to shower, then for the next 2 hours the inmate shall be checked every 30 minutes and given the opportunity to shower. These checks shall be documented on Form DC6-229, Daily Record of Segregation.

5. If health services staff determine that a medical need requires the inmate to be showered, the provisions of subsection 33-602.210(12), F.A.C., shall be followed to shower the inmate and move him to a decontaminated cell.

(r) Upon request, appropriate health services staff shall provide the following completed forms to Department inspectors or legal staff: Form DC4-701C, Use of Force Exam; Form DC4-708, Diagram of Injury; and Form DC4-701, Chronological Record of Health Care.

(18)~~(17)~~ Specialty Impact Munitions. Specialty impact munitions shall be used primarily by the department's rapid response teams and correctional emergency response teams during riots and disturbances. They are intended as a less lethal alternative to the use of deadly force. Specialty impact munitions shall only be employed by officers trained in their use and effects and shall not be used on anyone other than an inmate during an authorized use of force.

(a) Definitions:

1. Specialty Impact Munitions – Munitions designed to incapacitate, distract, and control a subject with less likelihood of life-threatening injury.

2. Rubber Ball Rounds – Multiple pellets fired from cartridges at the lower extremities of rioters, designed to inflict pain compliance.

3. Wooden Baton Rounds – Multiple wooden baton rounds fired from a 37-mm weapon, designed to be skip fired into the lower extremities of rioters to inflict pain compliance.

4. Skip Firing – The practice of firing specialty impact munitions 5-7 feet in front of rioters, thereby deflecting the munitions into the legs of the rioters.

5. Direct Firing – The practice of firing specialty munitions directly into a group of rioters, from a distance of greater than 20 feet with a target area of the waist or below.

(b) The following specialty impact munitions have been approved for use by the department:

1. 37-mm rubber ball pellet rounds,

2. 12 gauge rubber ball pellet rounds,

3. 37-mm wooden baton rounds.

4. 40-mm direct impact – OC marking rounds.

(c) Selection and deployment of specialty impact munitions during a riot or disturbance shall be authorized by the ultimate commander and supervised by the rapid response or correctional emergency response team leader. For the purposes of this rule, the ultimate commander is the secretary or his designee at the central office level, the regional director or his designee at the regional level, or the warden or his designee at the institution level.

(d) Specialty impact munitions shall only be used after all other reasonable alternatives to regain control have been exhausted. They are generally intended to be used as an interim force response between the use of chemical agents and lethal force.

(e) Specialty impact munitions shall not be deployed in the direction of any individual at a distance of less than 10 feet, unless the threat justifies the escalation to deadly force.

(f) Storage of Specialty Impact Munitions.

1. Specialty impact munitions shall be stored and maintained in the main arsenal.

2. Specialty impact munitions shall not be mixed with lethal munitions. Weapons designated to deploy specialty impact munitions shall be marked in a manner to alert staff of their intended use.

3. All specialty impact munitions will be accounted for in the same manner as firearms and ammunition.

(g) After each use of specialty impact munitions, exposed inmates shall be examined by medical personnel.

(h) In any case where specialty impact munitions are deployed Form DC6-230, Institutions Report of Force Used, shall be filed in accordance with use of force procedures set forth in this rule.

(19)~~(18)~~ Use of Firearms. In order for all concerned to be aware of their responsibilities, the statewide procedures set forth in this rule shall be included in the appropriate Department of Corrections procedures, post orders and escape emergency plans at each institution.

(a) No employee shall, in conjunction with his job responsibilities, carry a firearm or weapon on or about his person, either concealed or unconcealed, unless it is state equipment which has been properly issued and the employee is acting within the scope of official duties with the Department of Corrections.

(b) Firearms or weapons shall be issued to an employee only upon instructions of the warden, duty warden, chief of security or shift supervisor by the arsenal officer or the officer designated to issue weapons. Employees shall not intentionally

discharge a firearm at or in the direction of another person except under the following circumstances and after all reasonable non-lethal alternatives have been exhausted, and there is no danger to innocent bystanders:

1. Escape or apprehension of an identified escapee;

2. Use of vehicle to gain unauthorized entry into or exit from a correctional institution in order to facilitate an escape;

3. To prevent injury to a person including self-defense; or

4. To quell a riot.

(c) The use of twelve gauge #6 steel turkeyshot is approved for use by the rapid response teams during riots and disturbances. It is intended to be fired from a distance in the direction of the rioters' lower extremities to inflict pain compliance to directions and orders. It is acknowledged that the #6 steel shot has the potential of inflicting a lethal injury; however, its use is considered a less lethal interim munition to be used prior to more lethal loads authorized by the department.

(d) Weapons to be used shall be designated by the person in charge.

(e) Firearms shall not be discharged:

1. In any case where there is reason to believe that the life of an innocent bystander will be endangered by discharge of the firearm;

2. From any moving vehicle unless such action is reasonably believed necessary to protect oneself or another from imminent death or great bodily harm;

3. As a warning except during escapes, unless exceptional circumstances exist which would justify the firing of a warning shot;

4. Until the employee is sure that an escape is occurring or has occurred and he is reasonably certain that the person to be fired upon is an escapee;

5. Until the employee is sure of the target and what lies beyond;

6. If an inmate is escaping and the officer is recapturing the inmate in a congested area;

7. Except after all reasonable non-lethal alternatives have been exhausted; or

8. On the mere suspicion that a crime, no matter how serious, has been committed.

(f) Any correctional employee who willfully or wantonly fires or otherwise discharges his weapon carelessly or at random may be prosecuted in accordance with Florida law.

(g) Because helicopters or other aircraft may be used during an escape or assault, the following policy shall apply:

1. When it can be done safely, actions other than firing of weapons, such as waving of arms in such a manner as to indicate disapproval to enter an area, shall be made in an attempt to cause the aircraft to leave.

2. If these attempts fail, the aircraft shall be allowed to land.

3. All inmates shall be kept away from the aircraft.

4. Secure the aircraft using armed security staff, or prevent it from being flown away by securing the flight equipment with locks and chains without causing damage to the aircraft.

5. If the landing was brought about due to an emergency, i.e., engine failure or other reason, maintain security of the aircraft and all occupants until their removal from the site.

6. Once the aircraft lands, efforts shall be directed to stop any inmate from boarding the aircraft in an attempt to escape. Staff are authorized to shoot any inmate attempting to escape in accordance with existing policy. When circumstances permit, a verbal warning to halt and a warning shot shall be fired prior to the inmate reaching the aircraft.

7. If weapons are fired from an aircraft, department personnel are authorized to return fire and use deadly force to protect the life and well being of inmates, staff and other individuals who may be on the compound.

8. If attempts to prevent inmates from boarding the aircraft fail and the aircraft leaves, the aircraft is not to be fired upon, unless the officer is returning fire as described in subparagraph 7. above. Immediate notification should be made to law enforcement personnel and the Federal Aviation Administration giving departing flight directions and any other information necessary to identify the aircraft. Additional information on the escaped inmates, possible damage to the aircraft, and weapons used by persons in the aircraft should also be reported.

9. All inmates shall receive orientation in regard to this policy. This orientation shall contain instructions indicating that should any helicopter or aircraft either attempt to land on or near the property of any Department of Corrections facility, inmates are required to move away from the aircraft. Movement toward the aircraft by an inmate shall be viewed as an escape attempt and shall subject the inmate to the use of deadly force to prevent him from escaping.

10. This policy shall be made a part of the department's orientation program at all reception centers.

(h) Use of vehicle to gain unauthorized entry into or exit from a correctional institution:

1. The institution or facility shall take steps to prevent vehicles from being used to gain unauthorized forced entry into or forced exit from its perimeter area.

2. If it becomes necessary, the following procedure should be followed:

a. Time permitting, a verbal order to halt shall be issued followed by a warning shot if the vehicle fails to stop.

b. If the vehicle continues and it is evident that it is going to ram the perimeter area and will thereby endanger lives of staff or inmates, and if there is a clear line of fire, firearms shall be used to disable the vehicle. <u>If weapons are fired from a vehicle, staff are authorized to return fire and use deadly force to protect the lives of staff, inmates, or other individuals.</u>

c. When possible and time permitting, any shot fired at a vehicle, shall be aimed at a tire or engine with the intent of disabling the vehicle.

(i) The employee discharging a weapon shall file a complete written report of the incident. If any correctional employee has fired a weapon during the performance of his duty, every effort shall be made to collect the empty cartridges which shall be tagged, dated, and signed for, so that accurate information and evidence are maintained for future investigation of the incident.

(20)~~(19)~~ Pepperball Launching System (PLS). The PLS shall be used primarily by restricted labor squad supervisors and exercise officers for designated confinement, close management, maximum management, and death row populations. The PLS is intended for the dispersal of chemical agents in situations where the use of aerosol type agents would not be effective due to weather conditions or when their use could subject the officer or uninvolved inmates to injury. The PLS shall only be employed by officers trained in their use and effects

(a) The secretary shall designate those institutions authorized to utilize the PLS.

(b) In controlled situations when time constraints are not an issue, the PLS can only be used if authorized by the warden or duty warden. Additionally, certified correctional staff will be designated by the warden to utilize the PLS and will be pre-authorized to administer chemical agents in instances where chemical agents must be used immediately to quell assaults and fights among inmates assigned as outlined in paragraphs (c) and (d) below.

(c) PLS is authorized for use to quell assaults and fights among inmates assigned to restricted labor squads. Authorized activiation of the PLS by staff assigned to restricted labor squads does not constitute deadly force.

(d) PLS is authorized for use in designated confinement, close management and death row recreation areas to quell assaults and fights among inmates.

(e) PLS is classified as less-than-lethal at all distances, but, unless the incident necessitates otherwise, it shall be primarily utilized at a distance of five (5) feet or greater to prevent the inmate from attempting to take control of the launcher.

(f) Written authorization from the warden or acting warden shall be received prior to utilization of the PLS for situations other than those described in paragraphs (c) and (d) above. This written authorization shall detail the reasons it was necessary to utilize the PLS in addition to or in place of aerosol type chemical agents.

(g) All subsequent reports, medical requirements and reviews required for the use of chemical agents as outlined in subsection (16) above shall be completed after the use of the PLS.

(h) Each assigned PLS system shall be numbered, maintained, and inventoried by the shift supervisor or designee on Form DC6-216, Chemical Agent Accountability Log.

(21)~~(20)~~ Medical Attention Following Use of Force. Appropriate medical treatment shall be provided immediately or, in the case of a riot or other man-made or natural disaster, as soon as possible following resolution of the riot or disaster. Any treatment or follow-up action shall be documented in Section III of Form DC6-230, Institutions Report of Force Used. A qualified health care provider shall examine any person physically involved in a use of force to determine the extent of injury, if any, and shall prepare a report which shall include a statement of whether further examination by a physician is necessary. Any noticeable physical injury shall be examined by a physician and the physician shall prepare a report documenting the extent of the injury and the treatment prescribed. Such report shall be completed within 1 working day of the incident and shall be submitted to the warden for initial review. The qualified health provider and physician shall use Form DC4-701C, Emergency Room Record, to document an examination following use of force. Form DC4-708, Diagram of Injury, shall be used along with Form DC4-701C to document obvious physical injuries. A copy of the report, along with the referenced forms, shall be attached to the Institutions Report of Force Used. The original reports shall be filed in the medical record.

(22) No weapon shall be issued for any purpose other than the authorized use of force, or to a certified training officer for the purpose of approved training, without prior written authorization from the warden.

(23) Any officer who accidentally discharges a weapon shall complete Form DC6-210, Incident Report, by the end of his or her assigned shift.

(24)~~(21)~~ Any violations of the provisions of this section shall be subject to the penalties prescribed in Section 944.35, F.S.

(25)~~(22)~~ The following forms are hereby incorporated by reference. Copies of these forms are available from the Forms Control Administrator, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500.

(a) DC1-813, Use of Force File Checklist, effective September 18, 2006.

(b) DC2-802, Use of Force Log, effective February 7, 2000.

(c) DC4-529, Staff Request/Referral, effective January 6, 2009.

(d) DC4-701C, Emergency Room Record, effective October 4, 2007.

(e) DC4-708, Diagram of Injury, effective October 4, 2007.

(f) DC4-711A, Refusal of Health Care Services, effective January 6, 2009.

(g) DC6-210, Incident Report, effective March 3, 2008.

(h) DC6-213, Individual Chemical Agent Dispenser Accountability Log, effective September 18, 2006.

(i) DC6-216, Chemical Agent Accountability Log, effective July 25, 2002.

(j) DC6-230, Institutions Report of Force Used, effective August 25, 2003.

(k) DC6-231, Institutions Report of Force Used Staff Supplement, effective August 25, 2003.

(l) DC6-232, Authorization for Use of Force Report, effective July 25, 2002.

(m) DC6-296, Disapproved Use of Force/Disposition Report, effective July 25, 2002.

(n) DC4-650B, Risk Assessment for the Use of Chemical Restraint Agents and Electronic Immobilization Devices, effective August 4, 2008.

Rulemaking Authority 944.09 FS. Law Implemented 776.07, 944.09, 944.35 FS. History–New 4-8-81, Amended 10-10-83, 9-28-85, Formerly 33-3.066, Amended 3-26-86, 11-21-86, 4-21-93, 7-26-93, 11-2-94, 2-12-97, 11-8-98, Formerly 33-3.0066, Amended 10-6-99, 2-7-00, 7-25-02, 8-25-03, 2-25-04, 11-7-04, 4-17-05, 8-1-05, 3-2-06, 9-18-06, 10-4-07, 3-3-08, 8-4-08, 1-6-09, 5-26-09,_____.

WATER MANAGEMENT DISTRICTS

Suwannee River Water Management District

RULE NO.: RULE TITLE:

40B-4.3020 Content of Works of the District Development Permit Applications

PURPOSE AND EFFECT: The purpose of the rule development is to update this section of Chapter 40B-4, Florida Administrative Code, based on staff review of the current Application for General Works of the District Development Permit. The effect of the proposed rule amendments will be to include additional content on the application form for the applicants to verify that the applicant understands certain requirements for projects within works of the District.

SUBJECT AREA TO BE ADDRESSED: This proposed rule development will include additional content on the Application for General Works of the District Development Permit, and will thereby ensure better comprehension of the subject rules.

RULEMAKING AUTHORITY: 373.044, 373.113, 373.171, 373.413 FS.

LAW IMPLEMENTED: 373.084, 363.085, 373.086 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Linda Welch, Rules Coordinator, Suwannee River Water Management District, 9225 C.R. 49, Live Oak, Florida 32060, (386)362-1001 or 1(800)226-1066 (FL only)

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

WATER MANAGEMENT DISTRICTS

Southwest Florida Water Management District

RULE NO.: RULE TITLE:

40D-3.037 Rules, Publications and Agreements Incorporated by Reference

PURPOSE AND EFFECT: The purpose and effect of this rulemaking is to incorporate by reference a revised Appendix dated July 2009 to the Memorandum of Agreement Between the U.S. Environmental Protection Agency, Region IV, Superfund Division and the Southwest Florida Water Management District. The revised Appendix adds the Alaric Area Groundwater Plume, Helena Chemical Company and Stauffer Chemical Company Combined Superfund Sites, located in Hillsborough County, to the list of Superfund Sites to be addressed by the Agreement.

SUBJECT AREA TO BE ADDRESSED: Agreements Incorporated by Reference.

RULEMAKING AUTHORITY: 373.044, 373.113, 373.309 FS.

LAW IMPLEMENTED: 373.046, 373.103, 373.308, 373.309, 373.324, 373.333 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Martha A. Moore, Esq., Southwest Florida Water Management District, 2379 S. Broad St., Brooksville, FL 34606-6899, (352)796-7211, ext. 4660

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

DEPARTMENT OF VETERANS' AFFAIRS

Division of Veterans' Benefits and Assistance

RULE NO.: RULE TITLE:

55A-3.006 Continuing Certification

PURPOSE AND EFFECT: The proposed amendment will require Veteran Service Officers attending a training refresher course to pass an exam demonstrating mastery of the covered material.

SUBJECT AREA TO BE ADDRESSED: The current rule makes the exam optional at the descretion of FDVA.

RULEMAKING AUTHORITY: 292.05(3) FS.

LAW IMPLEMENTED: 292.11 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Ron Lynn, (850)487-1533

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

DEPARTMENT OF VETERANS' AFFAIRS

Division of Veterans' Benefits and Assistance

RULE NO.: RULE TITLE:

55A-3.007 Failure to Attend Training Refresher Course

PURPOSE AND EFFECT: The proposed amendment requires county or city Veteran Service Officers who fail to attend a required refresher training course to demonstrate proficiency in the course material as a condition of continued certification.

SUBJECT AREA TO BE ADDRESSED: The current rule gives the Department the discretion to require a demonstration of proficiency.

RULEMAKING AUTHORITY: 292.05(3) FS.

LAW IMPLEMENTED: 292.11 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Ron Lynn, (850)487-1533

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

DEPARTMENT OF VETERANS' AFFAIRS

Division of Veterans' Benefits and Assistance

RULE NO.: RULE TITLE:

55A-5.008 Supervisory Inspection Review

PURPOSE AND EFFECT: The proposed amendment requires FDVA's Bureau of State Approving Agency to suspend for 60 days an educational institution from participation in GI Bill educational programs, for noncompliance with Federal standards. At the end of the 60 day period, if FDVA finds that the institution has conformed its programs to the standards then it shall lift the suspension.

SUBJECT AREA TO BE ADDRESSED: The current rule gives FDVA the discretion to impose the penalty of suspension on an educational institution for noncompliance. The current rule also gives FDVA the discretion to lift the suspension after proof of compliance within 60 days.

RULEMAKING AUTHORITY: 292.05(3) FS.

LAW IMPLEMENTED: 295.124 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Ron Lynn, (850)487-1533

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

AGENCY FOR HEALTH CARE ADMINISTRATION

Health Facility and Agency Licensing

RULE NO.: RULE TITLE:

59A-7.021 Laboratory Licensure – Qualifications, Licensure, Operation and Application

PURPOSE AND EFFECT: The agency is proposing to amend the rule that incorporates the laboratory licensure application and identifies information needed in laboratory applications.

SUBJECT AREA TO BE ADDRESSED: Revisions to laboratory applications that are incorporated by reference, requirements for accepting applications, requirements for notifications to the agency of laboratory changes, and the removal of language addressing licensure for Certificates of Exemption, as Certificates of Exemption licenses are no longer issued by the Agency, effective July 1, 2009, with revisions to Chapter 483, Part I, Florida Statutes.

RULEMAKING AUTHORITY: 483.051 FS.

LAW IMPLEMENTED: 483.051, 483.091, 483.101, 483.101(1), 483.111, 483.172, 483.181, 483.221, 483.23 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: September 8, 2009, 1:30 p.m. – 4:30 p.m.

PLACE: Agency for Health Care Administration, Building 3, Conference Room C, 2727 Mahan Drive, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Karen Rivera, Laboratory Unit, 2727 Mahan Drive, Building 1, Mail Stop 32, Tallahassee, Florida 32308, (850)487-3109

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

59A-7.021 Laboratory Licensure – Qualifications, Licensure, Operation and Application.

(1) The application for ~~initial~~ licensure shall include the following information applicable to the laboratory operation:

(a) The application for an initial licensure, including changes of ownership and additions of speciality and subspeciality shall contain:

1.~~(a)~~ Name, mailing and street address of the laboratory.

2.~~(b)~~ Specialties and subspecialties performed.

3.~~(c)~~ A list of equipment.

4.~~(d)~~ The number of hours the director spends in the laboratory.

5.~~(e)~~ Names, mailing and street addresses of specimen collection stations, branch offices and other facilities representing the clinical laboratory.

6.~~(f)~~ Name and source of proficiency testing programs.

7.~~(g)~~ Annual volume of tests anticipated to be performed.

8.~~(h)~~ Location and type of alternate-site testing in hospital facilities.

9.~~(i)~~ The name, address and ~~employee~~ employer or tax identification number of the laboratory owner.

10.~~(j) For a corporate applicant, the application must include~~ A ~~a~~ current certificate of status or authorization pursuant to Chapters ~~Section~~ 607.~~0128~~, 608, 617 or 620, F.S.

11.~~(k)~~ Such other information requested on AHCA Form 3170-2004B ~~3000-4~~, Initial Clinical Laboratory Licensure Application, or AHCA Form 3170-2004C, Change of Licensed Owner Application REV August 2009 ~~Nov 2002,~~ necessary in carrying out the purpose of this part as stated in Section 483.021, F.S., and Chapter 408, Part II, Florida Statutes as applicable to the laboratory operation. AHCA Forms 3170-2004B and 3170-2004C ~~3000-4, Initial Clinical Laboratory Licensure Application,~~ REV August 2009 ~~Nov 2002~~, shall be obtained from the agency and is incorporated by reference herein and are available at: http://ahca.myflorida.com/MCHQ/Health Facility Regulation/Laboratory Licensure/applications.shtml.

(b)~~(l) Notwithstanding the requirements of paragraphs (a) through (k) above~~ T~~t~~he application for renewal licensure shall contain ~~the following information applicable to the laboratory operation~~:

1. Name, mailing and street address of the laboratory.

2. Specialties and subspecialties performed.

3. Names, mailing and street addresses of specimen collection stations, branch offices and other facilities representing the clinical laboratory.

4. Annual volume of tests performed.

5. Location and type of alternate-site testing in hospital facilities.

6. The name and employer or tax identification number of the laboratory owner.

7. Such other information requested on AHCA Form 3170-2004A, ~~3170-2004~~, Clinical Laboratory License Renewal Application, REV August 2009 ~~Nov 2002~~, necessary in carrying out the purpose of this part as stated in Section 483.021, F.S. and Chapter 408, Part II, Florida Statutes, as applicable to the laboratory operation. AHCA Form 3170-2004A, ~~3170-2004~~, Clinical Laboratory License Renewal Application, REV August 2009 ~~Nov 2002~~, shall be obtained from the agency and is incorporated by reference herein and are available at: http://ahca.myflorida.com/MCHQ/Health Facility Regulation/Laboratory Licensure/applications.shtml.

(c)~~(m)~~ In addition to information required under paragraphs 59A-7.021(1)(a) and (b) ~~through (l)~~, F.A.C., accredited laboratories surveyed by an approved accreditation program in lieu of the agency, as specified in Rule 59A-7.033, F.A.C., must also submit:

1. Proof of current accreditation or licensure by the approved accreditation program; and

2. Proof of authorization for the approved accreditation program to submit to the agency such records or other information about the laboratory required for the agency to determine compliance with Chapter 59A-7, F.A.C. and Chapter 483, Part I, F.S.

(2) Payment ~~for the correct amount~~ of the licensure fee must accompany the application in order to be accepted. Applications submitted without payment will be returned to the applicant. If test volumes submitted in the application indicate the fee submitted is not the correct fee, the applicant will be notified by the Agency of any amount due. Applications where the correct fee is not timely submitted in response to the Agency's notification will be withdrawn from review as required under Section 408.806(3)(b), F.S. Laboratories seeking initial licensure that claim accreditation and therefore a reduced fee, must provide proof that the clinical laboratory is accredited. Laboratories seeking licensure renewal must provide the most recent survey inspection reports from the accrediting organization as proof of accreditation. Surveys must have been completed by the accrediting organization within the past two years to be acceptable in accordance with Rule 59A-7.033, F.A.C. Accreditation reports must be for the laboratory. Proof that the facility in which the laboratory is located is accredited will not be accepted as proof that the clinical laboratory is accredited.

(3) Separate licensure shall be required for all laboratories maintained on separate premises as defined under subsection 59A-7.020(27), F.A.C., including mobile laboratory units, even though operated under the same management. Separate licensure shall not be required for separate buildings on the same or adjoining grounds. ~~Laboratories maintained on~~

~~separate premises, operated under the same management and performing only waived tests shall be permitted to apply for a single certificate of exemption.~~

(4) Each license is valid only for the person or persons to whom it is issued and shall not be sold, assigned or transferred voluntarily or involuntarily. A license is not valid for any premises other than that for which it was originally issued. A laboratory must be re-licensed if a change of ownership, as defined in Section 408.803(5), F.S. occurs. Application for re-licensure must be made to the agency 60 days prior to the change of ownership and the effective date of the change must be included in the application. When a laboratory is leased by the owner to a second party for operation, said second party must apply to the agency for a new license. A copy of the lease agreement or signed statement showing which party is to be held responsible for the organization, operation and maintenance of the laboratory must be filed with the application.

(5) A license issued to any laboratory shall be revoked and reapplication denied by the agency in any case where the laboratory fails to sustain continued compliance with provisions of Chapter 483, Part I, F.S., or rules promulgated thereunder.

(6) A licensee shall notify the agency ~~by certified mail~~ of a change of name, operation, relocation or impending closure of the laboratory ~~a minimum of thirty (30) days~~ prior to such change or closure. A licensee shall notify the agency by ~~certified~~ mail on company letterhead of a change of director or supervisor immediately upon learning of such change.

(7) Each license shall be returned to the agency immediately upon change of ownership or classification, suspension, revocation, or voluntary cessation of operations.

(8) A license shall be valid for the period specified on the current license.

(a) ~~In no event shall a license be issued for more than a 24 month period~~. In the event that specialties and subspecialties are added to an existing license, the expiration of the additional specialties/subspecialties shall be the expiration date of the current license.

(b) Continued operation of a clinical laboratory that has not submitted an ~~completed~~ application or the ~~required~~ application fee after the date of expiration of its license or after the date of sale in the event of a change of ownership shall be a criminal offense under Section 483.23, F.S., and shall result in administrative action up to and including an administrative fine charged to the laboratory in the amount of $100.00 per day, each day constituting a separate violation as authorized under Section 483.221, F.S.

~~(9) Laboratories issued a licensure certificate of exemption must follow manufacturers' instructions for performing tests and maintain documentation of same. The manufacturers' instructions and documentation of tests performed must be maintained by the laboratory and available for review by the agency.~~

(9)~~(10)~~ Laboratory services provided in a temporary testing location such as a patient's home or health fair, is covered under the license or federal Certificate of Waiver in the case of laboratories doing waived testing only, of the designated primary site or home base using its address provided such services are not offered on a permanent basis. Mobile laboratory units shall be considered separate entities and shall require licensure under Chapter 483, Part I, F.S., for each unit.

~~(11) A laboratory that is issued a licensure certificate and performs waived tests is subject to provisions of subsection 59A-7.021(9), F.A.C., for the waived tests.~~

(10)~~(12)~~ Laboratories are prohibited from performing testing for which they are not authorized. The performance of unauthorized testing shall result in administrative action ~~up to and including an administrative fine charged to the laboratory in the amount of 100.00 per day, each day constituting a separate violation~~ as authorized under Section 483.221, F.S., and Chapter 408, Part II, F.S.

(11)~~(13)~~ All licensed facilities must authorize the agency to submit information requested or required by the federal Centers for Medicare and Medicaid Services to the Agency ~~Health Care Financing Administration~~ for the purpose of determining compliance with the Clinical Laboratory Improvement Amendments of 1988 and federal rules adopted thereunder.

Rulemaking ~~Specific~~ Authority 483.051 FS. Law Implemented 483.051, 483.091, 483.101, 483.101(1), 483.111, 483.172, 483.181, 483.221, 483.23 FS. History–New 11-20-94, Amended 7-4-95, 12-27-95, 3-25-03, _____.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Professional Engineers

RULE NOS.:	RULE TITLES:
61G15-31.010	Design of Structures Utilizing Cold-Formed Steel Framing
61G15-31.011	Design of Aluminum Structures
61G15-31.012	Design of Temporary Support Structures

PURPOSE AND EFFECT: To add additional standards for the practice of structural engineering.

SUBJECT AREA TO BE ADDRESSED: Additional standards for the practice of structural engineering.

RULEMAKING AUTHORITY: 471.008, 471.033(2) FS.

LAW IMPLEMENTED: 471.033(1)(g), (j) FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Carrie Flynn, Executive Director, Board of Professional Engineers, 2507 Callaway Road, Suite 200, Tallahassee, Florida 32301

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notices for the Department of Environmental Protection between December 28, 2001 and June 30, 2006, go to http://www.dep.state.fl.us/ under the link or button titled "Official Notices."

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE NO.:	RULE TITLE:
64B16-26.403	Continuing Education Provider Application; Individual Request Application

PURPOSE AND EFFECT: The Board proposes the rule promulgation to create rule to address continuing education application process.

SUBJECT AREA TO BE ADDRESSED: Continuing Education Provider Application; Individual Request Application.

RULEMAKING AUTHORITY: 465.005, 465.009 FS.

LAW IMPLEMENTED: 465.009 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Rebecca Poston, Executive Director, Board of Pharmacy/MQA, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3254

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Agency for Persons with Disabilities

RULE NO.:	RULE TITLE:
65G-11.001	DD Waiver Waitlist Prioritization

PURPOSE AND EFFECT: The purpose of the rule development is to solicit public input to be used in developing a rule for the process and procedures for prioritizing the wait list for enrollment on the Developmental Disabilities Home and Community Based Services Waiver. This rule is required to implement statutory language adopted during the 2009 Florida legislative session.

SUBJECT AREA TO BE ADDRESSED: DD/HCBS Waiver Waitlist Prioritization.

RULEMAKING AUTHORITY: 393.065(5) FS.

LAW IMPLEMENTED: 393.065(5) FS.

A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATES, TIMES AND PLACES SHOWN BELOW:

DATE AND TIME: September 3, 2009, 6:00 p.m. – 8:00 p.m., EST

PLACE: Santa Fe Community College, 3000 N.W. 83rd Street, Room R01, Gainesville, Florida 32606; ADA Contact: Donna Sparks, (352)395-5521

DATE AND TIME: September 8, 2009, 6:00 p.m. – 8:00 p.m., CST

PLACE: Hillcrest Baptist Church, 800 East Nine Mile Road, Northwest Hall, Pensacola, Florida 32514; ADA Contact: Area 1 Office, (850)595-8351

DATE AND TIME: September 14, 2009, 6:00 p.m. – 8:00 p.m., EST

PLACE: Marian Center, 15701 N.W. 37th Avenue, Auditorium/Multipurpose Building, Opa Locka, Florida 33054; ADA Contact: Area 11 Office, (305)349-1478

DATE AND TIME: September 21, 2009, 6:00 p.m. – 8:00 p.m., EST

PLACE: Gulf Coast Center, 5820 Buckingham Road, Gulf Coast Center Chapel, Ft. Myers, Florida 33905; ADA Contact: Area 8 Office, (239)338-1370

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Agency for Persons with Disabilities, Denise Arnold, 4030 Esplanade Way, Tallahassee, Florida 32399-0950, (850)488-3673

A COPY OF THE DRAFT RULE LANGUAGE WILL BE AVAILABLE ON THE APD WEBSITE (apd.mylforida.com) OR BY REQUESTING A COPY.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

FISH AND WILDLIFE CONSERVATION COMMISSION

RULE NO.:	RULE TITLE:
68-1.003	Florida Fish and Wildlife Conservation Commission Grants Program

PURPOSE AND EFFECT: This rule development will delete the requirement in subsection 68-1.003(7), F.A.C., Derelict Vessel Removal Grant Program, to submit an FWC Derelict or Abandoned Vessel Removal form and allow local law enforcement entities to submit their agency form. Also, the Florida Boating Improvement Program referenced in subsection 68-1.003(9), F.A.C., are making changes to the Program Guidelines (January 2008) to include the requirement that applicants obtain permits prior to applying for a construction grant or they can request funding for the design, engineering, and permitting phases of project. An additional change is also being made to these Program Guidelines to add federal funding requirements to allow the Commission to use funds received from the U.S. Fish and Wildlife Service through the Sport Fish Restoration Act. Additionally, the Florida State Wildlife Grant Program referenced in subsection 68-1.003(11), F.A.C., will be updating their Program Guidelines (dated September 2008).

SUBJECT AREA TO BE ADDRESSED: Grant programs for the Florida Fish and Wildlife Conservation Commission Grants Program.

RULEMAKING AUTHORITY: 206.606, 327.04, 327.47, 379.106 FS.

LAW IMPLEMENTED: 206.606, 327.47, 328.72, 379.106 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Derelict Vessel Removal Grant Program or Florida Boating Improvement Program: Tim Woody, FBIP Program Administrator, or Patricia Harrell, Boating Access Coordinator, Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, Boating and Waterways Section, 620 South Meridian Street, Room 235, Tallahassee, Florida 32399, telephone (850)410-0656, extension 17173 or 17122, or email fbip@myfwc.com. State Wildlife Grant Program: Laura Morse, State Wildlife Grants Coordinator, Florida Fish and Wildlife Conservation Commission, Division of Habitat and Species Conservation, 620 South Meridian Street, Room 3.08E, Tallahassee, Florida 32399, telephone (850)410-0656, extension 17285, or email laura.morse@myfwc.com

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

FINANCIAL SERVICES COMMISSION

Securities

RULE NO.:	RULE TITLE:
69W-600.0021	Effect of Law Enforcement Records on Applications for Registration as Associated Persons

PURPOSE AND EFFECT: The proposed rule imposes disqualifying periods pursuant to which an applicant will be disqualified from eligibility for registration based upon criminal convictions, pleas of nolo contendere, or pleas of guilt, regardless of whether adjudication was withheld. The rule implements the requirements of Section 517.1611(2), Florida Statutes.

SUBJECT AREA TO BE ADDRESSED: Securities Regulation – Registration of Associated Persons.

RULEMAKING AUTHORITY: 517.1611(2) FS.

LAW IMPLEMENTED: 517.12, 517.161 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Pam Epting, Chief, Bureau of Regulatory Review, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399-0375, (850)410-9500, pam.epting@flofr.com

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

69W-600.0021 Effect of Law Enforcement Records on Applications for Registration as Associated Persons.

(1) General Procedure Regarding Law Enforcement Records. At the time of submitting an application for registration as an associated person pursuant to Rule 69W-600.002, F.A.C., the applicant shall supply the Office with the documentation, as specified in this rule, when specifically requested by the Office, relating to: 1) all criminal matters in which the applicant has pled guilty or nolo contendere to, or has been convicted or found guilty, regardless of whether adjudication was withheld, of a class "A" or "B" crime as described in this rule, 2) any pending criminal charges relating to a class "A" or "B" crime as described in this rule, or 3) shall supply evidence that such documentation cannot be obtained. The documentation must be legible. The documentation shall include:

(a) A copy of the police arrest affidavit, arrest report or similar document.

(b) A certified copy of the charges.

(c) A certified copy of the plea, judgment, and sentence where applicable.

(d) A certified copy of an order of entry into pre-trial intervention, and the order of termination of pre-trial intervention showing dismissal of charges where applicable.

(e) A certified copy of an order of termination of probation or supervised release, if applicable.

Evidence that documentation cannot be obtained shall consist of a certified or sworn written statement on the letterhead of the agency that would be the custodian of the documents, signed by a representative of that agency, stating that they have no record of such matter, or that the record is lost or was damaged or destroyed, or otherwise stating why the document cannot be produced.

(2) Effect of Failure to Fully Disclose Law Enforcement Record on Application.

(a) The omission of any part of a law enforcement record required to be disclosed on the Form U-4 is a material misrepresentation or material misstatement on the application and the application shall be denied pursuant to Section 517.161(1)(b), F.S.

(b) If the Office discovers the applicant's failure to disclose any part of a law enforcement record required to be disclosed on the Form U-4 after a registration has been granted, the Office will suspend or revoke each registration currently held by the applicant as follows:

1. Suspension for 12 months if, had the application been accurate, the application would have been granted, based on the statutes and rules applicable to the application at the time the Office granted registration.

2. Revocation if, had the application been accurate, the application would have been denied, based on the statutes and rules applicable to the application at the time the Office granted registration.

(3) Classification of Crimes.

(a) The Office makes a general classification of crimes into two classes: A and B, as listed in subsections (14) and (15), of this rule.

(b) These classifications reflect the Office's evaluation of various crimes in terms of moral turpitude and the seriousness of the crime as such factors relate to the prospective threat to public welfare typically posed by a person who would commit such a crime.

(c) The names or descriptions of crimes, as set out in the classification of crimes, are intended to serve only as generic names or descriptions of crimes and shall not be read as legal titles of crimes, or as limiting the included crimes to crimes bearing the exact name or description stated.

(d) For purposes of this rule, "trigger date" means the date on which an applicant was found guilty, or pled guilty, or pled nolo contendere to a crime.

(e) A charge in the nature of attempt or intent to commit a crime, or conspiracy to commit a crime, is classified the same as the crime itself.

(4) Applicants with a Single Crime. The Office finds it necessary to implement the following standards for applicants whose law enforcement record includes a single crime, subject to the mitigating factors set forth in this rule before registration. All periods referenced in this rule run from the trigger date.

(a) Class A Crime. The applicant will not be granted a registration until 15 years have passed since the trigger date.

(b) Class B Crime. The applicant will not be granted registration until 5 years have passed since the trigger date.

(5) Applicants With Multiple Crimes.

(a) The Office construes Section 517.161, F.S., to require that an applicant whose law enforcement record includes multiple class "A" or "B" crimes, or any combination thereof, wait longer than those whose law enforcement record includes only a single crime before becoming eligible for registration in order to assure that such applicant's greater inability or unwillingness to abide by the law has been overcome. Therefore, the Office finds it necessary that a longer disqualifying period be utilized in such instances, before registration can safely be granted. Accordingly, where the applicant has been found guilty or pled guilty or pled nolo contendere to more than one crime, the Office shall add 5 years to the disqualifying period for each additional crime.

(b) The additional periods are added to the disqualifying period for the one most serious crime, and the combined total disqualifying period then runs from the trigger date of the most recent crime.

(c) Classification as "Single Crime" versus "Multiple Crimes." For purposes of this rule, two (2) or more offenses are considered a single crime if they are based on the same act or transaction or on two (2) or more connected acts or transactions.

(6) Mitigating Factors.

(a) The disqualifying period for a Class "A" or "B" crime or crimes shall be shortened upon proof of one or more of the following factors. Where more than one factor is present the applicant is entitled to add together all of the applicable mitigation amounts and deduct that total from the usual disqualifying period, provided that an applicant shall not be permitted an aggregate mitigation of more than three (3) years for the following factors:

1. One year is deducted if the probation officer or prosecuting attorney in the most recent crime states in a signed writing that the probation officer or prosecuting attorney believes the applicant would pose no significant threat to public welfare if registered as an associated person.

2. One year is deducted if restitution or settlement has been made for all crimes in which wherein restitution or settlement was ordered by the court, and proof of such restitution or settlement is shown in official court documents or as verified in a signed writing by the prosecuting attorney or probation officer.

3. One year will be deducted if the applicant was under age 21 when the crime was committed and there is only one crime in the applicant's law enforcement record.

4. One year is deducted if the applicant furnishes proof that the applicant was at the time of the crime addicted to drugs or suffering active alcoholism. The proof must be accompanied by a written letter from a properly licensed doctor, psychologist, or therapist licensed by a duly constituted state licensing body stating that the licensed person has examined or treated the applicant and that in his or her professional opinion the addiction or alcoholism is currently in remission and has been in remission for the previous 12 months. The professional opinion shall be dated within 45 days of the time of application.

5. Other Mitigating Factors. An applicant is permitted to submit any other evidence of facts that the applicant believes should decrease the disqualifying period before registration is allowed and one additional year shall be deducted if the Office agrees the facts have a mitigating effect on the registration decision.

(b) The burden is upon the applicant to establish these mitigating factors. Where the mitigating factor relates to or requires evidence of government agency or court action, it must be proved by a certified true copy of the agency or court document.

(7) Circumstances Not Constituting Mitigation. The Office finds that no mitigating weight exists, and none will be given, for the following factors:

(a) Type of Plea. The Office draws no distinction among types of plea, e.g., found guilty; pled guilty; pled nolo contendere.

(b) Collateral Attack on Criminal Proceedings. The Office will not allow or give any weight to an attempt to re-litigate, impeach, or collaterally attack judicial criminal proceedings or their results wherein the applicant was found guilty or pled guilty or nolo contendere. Thus the Office will not hear or consider arguments such as: the criminal proceedings were unfair; the judge was biased; the witnesses or prosecutor lied or acted improperly; the defendant only pled guilty due to financial or mental stress; the defendant was temporarily insane at the time of the crime; or the defendant had ineffective counsel.

(c) Subjective Factors. The Office finds that subjective factors involving state of mind have no mitigating weight.

(8) Effect of Pending Appeal in Criminal Proceedings; Reversal on Appeal.

(a) The Office interprets the statutory grounds for denial of registration as arising immediately upon a finding of guilt, or a plea of guilty or nolo contendere, regardless of whether an appeal is or is not allowed to be taken. The Office will not wait for the outcome of an appeal to deny registration, unless a Florida court specifically stays the Office's adverse action.

(b) If on appeal the conviction is reversed, the Office shall immediately drop the said crime as grounds for denial of registration.

(9) Pre-Trial Intervention. The Office considers participation in a pre-trial intervention program to be a pending criminal enforcement action and will not grant registration to any person who at time of application is participating in a pre-trial intervention program. The Office finds it necessary to the public welfare to wait until the pre-trial intervention is successfully completed before registration may be considered.

(10) Effect of Sealing or Expunging of Criminal Record.

(a) An applicant is not required to disclose or acknowledge, and is permitted in fact to affirmatively deny, any arrest or criminal proceeding, the record of which has been legally and properly expunged or sealed by order of a court of competent jurisdiction prior to the time of application, and such denial or failure to disclose is not grounds for adverse action by the Office.

(b) Matters Sealed or Expunged Subsequent to Application. Occasionally an applicant will have a matter sealed or expunged after submitting his or her application, but before a registration decision is made by the Office. In such situations the Office policy is as follows:

1. If the applicant properly revealed the matter on the application, and thereafter has the record sealed or expunged, the Office will not consider the matter in the application decision.

2. However, if the applicant did not reveal the matter on the application and the matter had not been sealed or expunged at the time of making the application, the Office will construe the failure to disclose the matter on the application as a material misrepresentation or material misstatement, and the application shall be denied pursuant to Section 517.161(1)(b), F.S.

(11) Effect of Varying Terminology.

(a) With regard to the following six subparagraphs, the Office treats each phrase in a particular subparagraph as having the same effect as the other phrases in that same subparagraph:

1. Adjudicated guilty; convicted.

2. Found guilty; entered a finding of guilt.

3. Pled guilty; entered a plea of guilty; admitted guilt; admitted the charges.

4. Nolo contendere; no contest; did not contest; did not deny; no denial.

5. Adjudication of guilt withheld; adjudication withheld; no adjudication entered; entry of findings withheld; no official record to be entered; judgment withheld; judgment not entered.

6. Nolle prosse; nolle prosequi; charges withdrawn; charges dismissed; charges dropped.

(b) In all other instances the Office will look to the substantive meaning of the terminology used in the context in which it was used under the law of the jurisdiction where it was used.

(12) Imprisoned Persons and Community Supervision.

(a) Imprisonment. Notwithstanding any provision to the contrary in this rule, the Office shall not register any applicant under Chapter 517, F.S., while the applicant is imprisoned, under arrest, or serving a sentence for any crime. Further, the Office shall not register any applicant who has been released from imprisonment until the later of the period otherwise set out in these rules or five (5) years after the date of release. The Office finds it necessary that the person be released from imprisonment and thereafter demonstrate an ability to abide by the law by passage of at least five (5) years on good behavior, before registration can be granted without undue risk to the public welfare.

(b) Community Supervision. The Office shall not grant registration to any person who at the time of application or at any time during the pendency of the application is under supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of the courts, paroling authorities, correctional agencies, or other criminal justice agencies for any felony crime or any misdemeanor crime involving fraud, dishonest dealing, or moral turpitude.

(13) Effect of Disqualifying Periods. The disqualifying periods established in this rule do not give an applicant a right to registration after any set period of time. Regardless of the expiration of any disqualifying period imposed by these rules, the burden to prove entitlement to registration remains on the applicant.

(14) Class "A" Crimes include felonies involving an act of fraud, dishonesty, or a breach of trust, or money laundering, and the Office finds that such crimes constitute crimes of moral turpitude. The Office finds the following list of crimes are Class "A" crimes. This list is representative only and shall not be construed to constitute a complete or exclusive list of all crimes that are Class "A" crimes. Crimes similar to the crimes on this list may also be considered Class "A" crimes, and no inference should be drawn from the absence of any crime from this list.

(a) Any type of fraud, including but not limited to Fraud, Postal Fraud, Wire Fraud, Securities Fraud, Welfare Fraud, Defrauding the Government, Credit Card Fraud, Defrauding an Innkeeper, Passing worthless check(s) with intent to defraud.

(b) Perjury.

(c) Armed robbery.

(d) Robbery.

(e) Extortion.

(f) Bribery.

(g) Embezzlement.

(h) Grand theft.

(i) Larceny.

(j) Burglary.

(k) Breaking and entering.

(l) Identity Theft.

(m) Any type of forgery or uttering a forged instrument.

(n) Misuse of public office.

(o) Racketeering.

(p) Buying, receiving, concealing, possessing or otherwise dealing in stolen property.

(q) Treason against the United States, or a state, district, or territory thereof.

(r) Altering public documents.

(s) Witness tampering.

(t) Tax evasion.

(u) Impersonating or attempting to impersonate a law enforcement officer.

(v) Money laundering.

(w) Murder in all degrees.

(x) Arson.

(y) Sale, importation, or distribution of controlled substances (drugs); or possession for sale, importation or distribution.

(z) Aggravated Assault (e.g., as with a deadly weapon).

(aa) Aggravated Battery (e.g., as with a deadly weapon).

(bb) Rape.

(cc) Sexually molesting any minor.

(dd) Sexual battery.

(ee) Battery of or threatening a law enforcement officer or public official in the performance of his/her duties.

(ff) Kidnapping.

(15) Class "B" Crimes include any misdemeanor that involves fraud, dishonest dealing or any other act of moral turpitude.

(16) Foreign Law Enforcement Records. If a law enforcement record includes convictions, charges, or arrests outside the United States, the Office shall consider the following factors to reduce, eliminate, or apply a disqualifying period:

(a) Whether the crime in the criminal record would be a crime under the laws of the United States or any state within the United States;

(b) The degree of penalty associated with the same or similar crimes in the United States; and

(c) The extent to which the foreign justice system provided safeguards similar to those provided criminal defendants under the Constitution of the United States; for example, the right of a defendant to a public trial, the right against self-incrimination, the right of notice of the charges, the right to confront witnesses, the right to call witnesses, and the right to counsel.

(17) Form U-4 is incorporated by reference in subsection 69W-301.002(7), F.A.C.

Rulemaking Authority 517.1611(2) FS. Law Implemented 517.12, 517.161 FS. History–New _____.

REQUESTS FOR A RULE DEVELOPMENT WORKSHOP SHOULD BE SUBMITTED BY: September 4, 2009.

AGENCY FOR ENTERPRISE INFORMATION TECHNOLOGY

Office of Information Security

RULE NOS.:	RULE TITLES:
71A-1.001	Purpose; Definitions; Applicability; Exceptions
71A-1.002	Agency Information Security Program
71A-1.003	Agency Information Technology Management
71A-1.004	Agency Contracts, Providers, and Partners
71A-1.005	Confidential and Exempt Information
71A-1.006	Minimum Security Requirements for Information and Information Technology Resources

PURPOSE AND EFFECT: To consider development of a new rule chapter to be the Florida Information Technology Resource Security Policies and Standards to:

1. Document a framework of information security policies and practices for state agencies in order to safeguard the confidentiality, integrity, and availability of Florida government data and information technology resources.

2. Define minimum standards to be used by state agencies to categorize information and information technology resources based on the objectives of providing appropriate levels of information security according to risk levels.

3. Define minimum management, operational and technical security controls to be used by state agencies to secure information and information technology resources.

SUBJECT AREA TO BE ADDRESSED: Information Security Policies and Standards.

RULEMAKING AUTHORITY: 282.318(5) FS.

LAW IMPLEMENTED: 282.318(5) FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Jean-Maree Phillips at (850)922-7502

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

Section II
Proposed Rules

DEPARTMENT OF TRANSPORTATION

RULE NO.:	RULE TITLE:
14-91.007	Selection and Award Process

PURPOSE AND EFFECT: A new subsection (9) is added to Rule 14-91.007, F.A.C., to clarify the compensation of short-listed design-build firms.

SUMMARY: A new subsection(9) is being added to Rule 14-91.007, F.A.C.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 334.044(2), 337.11(7)(b), 337.11(8) FS.

LAW IMPLEMENTED: 337.025, 337.11(7), 337.11(8) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Deanna R. Hurt, Assistant General Counsel and Clerk of Agency Proceedings, Florida Department of Transportation, Office of the General Counsel, 605 Suwannee Street, Mail Station 58, Tallahassee, Florida 32399-0458

THE FULL TEXT OF THE PROPOSED RULE IS:

14-91.007 Selection and Award Process.

(1) through (8) No change.

(9) The Department shall pay short-listed design-build firms submitting fully responsive proposals that are not selected a lump sum amount, stipend, as determined by the solicitation in order to stimulate competition and for the work product contained in the firm's responsive proposals. The Department will not pay the selected design-build firm a stipend. An unselected short list design-build firm that submits a responsive proposal in response to and in accordance with the Department request for detailed proposals will receive a stipend in exchange for the work product contained in that proposal. The Department reserves the right to use any of the