(3) The Division shall evaluate each complete Application in accordance with the requirements of Section 220.153, F.S.

(4) The Division shall have ten (10) business days to review each Application for completeness and to notify any Applicant in writing if the Division determines that it is incomplete. The Division's notice shall specify the reasons for its determination, and the Applicant shall have fifteen (15) business days after receipt of such notice to submit a revised Apportionment Application to the Division. If the Applicant fails to submit a revised Apportionment Application within the required time, the Division shall notify the Applicant in writing that it is not approved.

The Division shall notify the Florida Department of Revenue of any approved Application.

Rulemaking Authority 220.153(5) FS. Law Implemented 220.153 FS. History–New_____.

Section II
Proposed Rules

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Agricultural Water Policy

RULE NOS.:	RULE TITLES:
5M-16.001	Approved BMPs
5M-16.002	Presumption of Compliance
5M-16.003	Notice of Intent to Implement BMPs
5M-16.004	Recordkeeping
5M-16.005	Previously submitted NOIs

PURPOSE AND EFFECT: The purpose of this rule is to effect pollutant reduction through the implementation of agricultural best management practices (BMPs) that may be determined to have minimal individual or cumulative adverse impacts to the water resources of the state.

SUMMARY: The proposed rule establishes procedures for Florida citrus operations to submit a Notice of Intent (NOI) which contains agricultural water quality and quantity best management practices (BMPs) applicable to the operation covered by the NOI. Submittal of the NOI to the Florida Department of Agricultural and Consumer Services and implementation of identified BMPs that have been verified effective by the Florida Department of Environmental Protection provides a presumption of compliance with state water quality standards and release from the provisions of Section 376.307(5), Florida Statutes, for those pollutants addressed by the practices. The rule adopts the BMP manual and procedures for enrollment, and requires that records maintained by the participant confirming the implementation of BMPs are subject to inspection.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of $200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: The Department's analysis of the economic impact of the rule did not trigger any of the requirements in Section 120.541(1), Florida Statutes, for preparing a Statement of Economic Regulatory Costs (SERC). As part of this analysis, the Department relied upon its past experiences with voluntary Best Management Practices implementation activities and costs, if any, they would not exceed the economic analysis criteria in a SERC as set forth in Section 120.541(2)(a), Florida Statutes. Additionally, no interested party submitted additional information regarding the economic impact.

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: 403.067(7)(c)2., 570.07(10), 570.07(23) FS.

LAW IMPLEMENTED: 403.067(7)(c)2. 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 RULES IS: Bill Bartnick, Environmental Administrator, Office of Agricultural Water Policy, 1203 Governor Square Boulevard, Suite 200, Tallahassee, Florida 32301, (850)617-1700 or Fax (850)617-1701

THE FULL TEXT OF THE PROPOSED RULES IS:

5M-16.001 Approved BMPs.

The manual titled Water Quality/Quantity Best Management Practices for Florida Citrus (2012), DACS-P-01756, is hereby adopted and incorporated by reference. Copies of the manual may be obtained from the University of Florida Cooperative Extension Service county office or from the Florida Department of Agriculture and Consumer Services (FDACS), Office of Agricultural Water Policy, 1203 Governor Square Boulevard, Suite 200, Tallahassee, FL 32301 or accessed online at http://www.flrules.org/Gateway/reference.

Rulemaking Authority 403.067(7)(c)2., 570.07(10), 570.07(23) FS. Law Implemented 403.067(7)(c)2. FS. History–New_____.

5M-16.002 Presumption of Compliance.

Pursuant to Section 403.067(7)(c)3., F.S., agricultural operations that implement BMPs, in accordance with FDACS rules, that have been verified by the Florida Department of Environmental Protection as effective in reducing pollutants addressed by the practices are presumed to comply with state water quality standards, and are released from the provisions of Section 376.307(5), F.S., for those pollutants. In order to meet the requirements for a presumption of compliance and release from Section 376.307(5), F.S., the producer must:

(1) Submit a Notice of Intent to Implement, as provided in Rule 5M-16.003, F.A.C., that identifies the applicable BMPs;

(2) Implement all applicable BMPs in accordance with the timeline requirements in Rule 5M-16.003, F.A.C.; and

(3) Maintain records to document the implementation and maintenance of the identified BMPs, in accordance with Rule 5M-16.004, F.A.C.

Rulemaking Authority 403.067(7)(c)2., 570.07(10), 570.07(23) FS. Law Implemented 403.067(7)(c)2. FS. History–New_____.

5M-16.003 Notice of Intent to Implement BMPs.

(1) A Notice of Intent to Implement (NOI) BMPs and the accompanying BMP Checklist, both of which are in the manual referenced in Rule 5M-16.001, F.A.C., shall be submitted to the FDACS Office of Agricultural Water Policy, 1203 Governor Square Boulevard, Suite 200, Tallahassee, Florida 32301. The Notice of Intent to Implement Water Quality/Quantity Best Management Practices for Florida Citrus (DACS-01598, Rev. 05/12), hereby adopted and incorporated by reference, may be obtained from FDACS or accessed online at http://www.flrules.org/Gateway/reference.

(2) The Notice of Intent to Implement BMPs shall include:

(a) The name of the property owner, the location of the property, the property tax ID number(s), and any other pertinent property identification information;

(b) The amount of acreage on which BMPs will be implemented;

(c) The name and contact information of a person to contact;

(d) The signature of the land owner, lease holder, or authorized agent; and

(e) A BMP Checklist with a schedule for implementation, as contained in the manual. The producer shall select the applicable BMPs by following the instructions in the manual. Except as provided in the manual, all applicable BMPs must be implemented as soon as practicable, but no later than 18 months after submittal of the NOI.

(3) Submittal of the Notice of Intent to Implement Bumps enables the producer to receive assistance with BMP implementation.

Remaking Authority 403.067(7)(c)2., 570.07(10), 570.07(23) FS. Law Implemented 403.067(7)(c)2. FS. History–New_____.

5M-16.004 Recordkeeping.

BMP participants must keep records, as directed in the manual, to document the implementation and maintenance of the practices submitted to FDACS pursuant to this rule. These records are subject to inspection upon request, in accordance with a mutually agreed upon time and manner, and must be retained for a period of at least five years.

Rulemaking Authority 403.067(7)(c)2., 570.07(10), 570.07(23) FS. Law Implemented 403.067(7)(c)2. FS. History–New_____.

5M-16.005 Previously submitted NOIs.

(1) In order to retain a presumption of compliance with state water quality standards:

(a) Citrus growers who, prior to the effective date of this rule, submitted an Notice of Intent to Implement Nitrogen Best Management Practices for Florida Ridge Citrus (July 23, 2002) and adopted by reference in Rule 5E-1.023, F.A.C., must:

1. Within two years of the effective date of this rule, submit a new NOI and BMP checklist in accordance with Rule 5M-16.003, F.A.C., and

2. Implement the applicable BMPs on the checklist, in accordance with Rule 5M-16.003, F.A.C.

(b) Flatwoods citrus growers who, prior to the effective date of this rule, submitted an NOI and checklist under the programs listed in subparagraphs 1., 2., or 3., below must continue to implement the applicable BMPs on the checklist, and must follow the guidelines applicable to the operation contained in Nutrition of Florida Citrus Trees, Second Edition, UF-IFAS Publication SL253 (January 2008), hereby adopted and incorporated by reference. Copies of the document may be obtained from the University of Florida Cooperative Extension Service county office or accessed online at http://www.flrules.org/Gateway/reference.

1. Water Quality/Quantity BMPs for Indian River Area Citrus Groves (January 2005), as revised by the January 2005 updates adopted by reference in Rule 5M-2.002, F.A.C.

2. Best Management Practices for Citrus Groves in the Peace River and Manasota Basins (October 2004), adopted by reference in Rule 5M-5.002, F.A.C.

3. Best Management Practices for Gulf Citrus (March 2006), adopted by reference in Rule 5M-7.002, F.A.C.

(2) Flatwoods citrus growers re-establishing inactive groves or renovating groves, who enrolled prior to the effective date of this rule, must contact FDACS for assistance in submitting a new NOI and BMP checklist pursuant to Rule 5M-16.003, F.A.C.

(3) NOIs or BMP checklists submitted on or after the effective date of this rule chapter for citrus BMP programs adopted prior to the effective date of this rule chapter will be deemed invalid.

Rulemaking Authority 403.067(7)(c)2., 570.07(10), 570.07(23) FS. Law Implemented 403.067(7)(c)2. FS. History–New_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Richard J. Budell, Director, Office of Agricultural Water Policy

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Adam H. Putnam, Commissioner of Agriculture and Consumer Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 6, 2012

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 17, 2012

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:
33-602.210 Use of Force

PURPOSE AND EFFECT: The purpose and effect of the rule is to establish guidelines governing the use of force and/or restraints to protect persons or property, prevent escape, restore order, maintain custody and control, and to enforce Department rules. The amendments provide new definitions; broaden the type of information that should be stated on camera after a use of force; clarify the circumstances under which electronic immobilization devices and specialty munitions may be used; clarify the circumstances under which chemical agents may be used; refine the documentation and procedures, including medical procedures, that should be followed before and after the use of chemical agents; and provide safety provisions concerning the storage and issuance of chemical agents. The amendments are made for the purpose of promoting operational efficiency, updating and responding to changes in law and policy.

SUMMARY: The changes are primarily organizational in nature, and certain technical terminology is updated. Correctional staff continues to be directed to use the least amount of force necessary to control a disturbance and to cease the escalation of use of force upon gaining offender compliance. Use of force must be supervised (whenever possible), fully documented, and only administered by properly trained staff. Additionally, officers at work camps are permitted to carry an MK-9 sized OC dispenser. A process is established whereby the Office of Inspector General can refer an investigation to the warden. The amount of time a warden has to forward use of force reports and relevant tapes to the Inspector General is lengthened from 5 to 11 days.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of $200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: information provided by the Office of Inspector General and the Bureau of Security Operations within the Office of Institutions indicates that the changes largely are stylistic and organizational in nature. The proposed changes only affect internal security operations and will not exceed any one of the economic analysis criteria in a SERC as set forth in Section 120.541(2)(a), F.S.

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: 944.09 FS.

LAW IMPLEMENTED: 776.07, 944.09, 944.35 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: Laura Gallagher, 501 South Calhoun Street, Tallahassee, Florida 32399-2500

THE FULL TEXT OF THE PROPOSED RULE IS:

(Substantial rewording of Rule 33-602.210 follows. See Florida Administrative Code for present text.)

33-602.210 Use of Force.

(1) Prior to any organized use of force, the shift supervisor 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 that may be exacerbated by the intended force. Form DC4-650B is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of the form is_____. Medical staff shall be consulted about physical conditions of an inmate that may be aggravated by the application of force or chemical agents unless safety concerns prevent prior consultation.

(2) Definitions.

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

(b) Emergency Action Center – The unit located in the Central Office charged with receiving reports regarding serious incidents, such as riots and escapes, from all Department of Corrections' (Department) facilities and reporting the information to the proper authorities. This unit also receives requests for criminal histories, warrant confirmations, and offender location requests from law enforcement agencies throughout the United States.

(c) Incident Commander – The employee responsible for the management of emergency incidents, such as riots and natural disasters.

(d) Nondeadly Force – Any force that is neither intended nor likely to cause death or serious bodily harm.

(e) Organized Use of Force – Any force that may be administered to control, escort, or geographically relocate any inmate when the immediate application is not immediately necessary to prevent a hazard to any person.

(f) Reactionary Use of Force – Any force that must be administered quickly or immediately to compel the cessation of an inmate's violence or resistance to orders.

(g) Reasonable Force – Any force that is not excessive for protecting oneself or another or for gaining an inmate's compliance with a lawful order.

(h) Rubber Ball Rounds – Multiple pellets fired from cartridges at the lower extremities of rioters and designed to inflict pain compliance.

(i) S-2 – The mental health classification denoting mild impairment in the ability to meet the ordinary demands of living within general inmate housing (which includes segregation) due to a diagnosed mental 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, which the inmate may exercise his or her right to refuse.

(j) S-3 – The mental health classification denoting moderate impairment in the ability to meet the ordinary demands of living within general inmate housing, due to a diagnosed mental 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, which the inmate may exercise his or her right to refuse.

(k) Shift Supervisor – The highest ranking correctional officer of the on-duty shift.

(l) 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.

(m) Serious Bodily Injury – A physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(n) Specialty Impact Munitions – Munitions designed to incapacitate, distract, and control a subject with a relatively low likelihood of life-threatening injury.

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

(3) A video camera operator shall commence recording all reactionary use of force incidents upon arrival at the scene as soon as possible. All organized use of force incidents shall be video recorded unless exigent or emergency circumstances prevent such action. Except in the circumstances described in sub-subparagraph (3)(n)2.e., video recordings shall continue uninterrupted from commencement until the situation is stable and under control and the inmate is placed in a secure cell or transport vehicle for transfer.

(a) The shift supervisor during any organized use of force shall include in each video recorded markers of the following:

1. Date and time of the recording;

2. Location of the recording;

3. Name and rank of supervisor(s) present;

4. Name and rank of person authorizing use of chemical agent (if applicable);

5. Name and DC number of the inmate involved in the use of force;

6. Name of the camera operator;

7. Brief description of efforts taken to stabilize or control the inmate prior to the application of force;

8. Final warning order administered by a supervisor or incident commander;

9. Clear, concise, and audible verbal warning to the inmate of pending application of force or entry into cell for extraction;

10. Application of chemical agents;

11. Verbal order for a decontamination shower;

12. Decontamination of the inmate;

13. Any medical examination performed after the use of force;

14. Physical escort and placement in a decontaminated cell after incident;

15. Verbal refusals by inmates to participate in decontamination or medical examination (if applicable);

16. The name and rank of each Department staff member present.

(b) Whenever an inmate fails to comply with a lawful order and exhibits a threatening demeanor or disruptive or hazardous behavior, the on-scene supervisor of an organized use of force shall announce a clear, concise, and audible warning to the inmate that force will be administered if there is no immediate compliance and cessation of the behavior.

(c) Video recordings of post use of force medical exams shall be conducted through a window or at a distance in such a manner so as to provide the maximum amount of privacy needed for the exams and so as to limit the disclosure of inmate protected health information to the minimum amount necessary. Inmates involved in an organized use of force shall be video recorded continually until they have been placed in a vehicle for transportation or in a secure cell.

(d) Anytime there is a change in the on-scene supervisor or other staff during an application of an organized use of force, a new video recording will be initiated and the requirements in paragraphs (3)(a) and (b) above shall be repeated.

(4) Department staff shall use force, organized or reactionary, only as a last resort when it reasonably appears that other alternatives are not feasible to obtain compliance with law or administrative rules or to defend themselves or others against any physical threat of injury or death.

(5) Any use of force shall cease being applied whenever an inmate complies with orders or ceases the behavior for which the use of force was necessary.

(6) Use of force shall not be applied for punishment. Physical restraints such as handcuffs, leg irons, flex cuffs, and other such devices shall only be used for restraint purposes and not for punishment.

(7) Inmates shall not be carried, dragged, or lifted by restraint devices.

(8) Use of Chemical Agents. All chemical agents shall be used with caution and in accordance with the manufacturer's instructions.

(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. OC is the primary chemical agent to be utilized for cell extractions and other in-cell uses unless circumstances exist as outlined below, and they shall only be used in the manner prescribed herein.

2. CS – Orthochlorobenzal Malononitrile or Orthochlorobenzylidene Malononitrile – An irritant agent that causes burning sensation and tearing of the eyes, nasal discharge, and skin and upper respiratory irritation.

a. CS may be used during cell extractions and other in-cell incidents if OC applications previously administered were ineffective in obtaining compliance or ceasing disruptive actions or physically threatening behavior.

b. The warden or designee may authorize the use of CS as an initial primary chemical agent whenever past applications of OC to an inmate were documented on Form DC6-230, Report of Force Used, as having been applied and ineffective. Form DC6-230 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of the form is _____.

c. The warden or designee may authorize the use of CS as an initial or primary chemical agent during in-cell applications whenever an inmate attempts to deploy a shield, barrier, or obstruction in an obvious attempt to avoid contact with an application of chemical agents. Justification for the use of CS whenever an inmate barricades or presents physical obstructions to counter chemical agent applications shall be noted on Form DC6-230, Report of Force Used, by the reporting officer.

3. CN – Chloroacetophene – An agent that causes tearing of the eyes, nasal discharge, and skin and upper respiratory irritation. CN projectiles, grenades, and thermal foggers shall only be used within institutions, upon Department of Corrections property, in response to unauthorized mass gatherings, disturbances involving multiple inmates, or for crowd control. CN shall not be authorized for use after the expiration date noted on the canister.

(b) Chemical agents shall be used only after other reasonable efforts to control a disorderly inmate or group of inmates have been exhausted.

(c) Chemical agents shall only be used when the use of force is authorized and the level of force is necessary to prevent injuries to staff or inmates.

(d) Any accidental or incidental discharge of a chemical agent by a staff member within any institution shall be reported on Form DC6-230, Report of Force Used.

(e) Authorization for an organized use of force application of chemical agents within an institution may only be authorized by the warden or designee.

(f) Only staff members who have received training in the use of chemical agents may discharge, carry, possess, or use chemical agents within an institution, except during emergencies such as riots or disasters or at the direction of the warden or designee.

(g) A confinement or close management lieutenant or shift supervisor shall be responsible for the issuance of a final order to an inmate ordering compliance or cessation of disruptive behavior prior to the application of chemical agents. Additionally, a confinement or close management lieutenant, shift supervisor, or staff member of greater rank shall be present and observe the application of chemical agents to inmates in such housing settings.

(h) Any application of chemical agents within an institution shall be noted on Form DC6-230, Report of Force Used. Any officer who uses chemical agents shall record the following on Form DC6-230:

1. Type of agent discharged;

2. Amount of agent discharged;

3. Method of administration;

4. Name of the person who authorized issuance or possession of the chemical agent;

5. Name of person who administered the chemical agent;

6. Amount of the chemical agent used;

7. Reason the chemical agent was used.

(i) Chemical agents shall be stored in the designated main arsenal in a secure manner. The warden shall authorize and designate secure locations where chemical agents shall be stored that are accessible only to officers.

(j) Chemical agents assigned to institutions may not be removed from the facility at anytime without authorization from the warden or designee.

(k) All chemical agent dispensers shall be numbered and recorded on Form DC6-216, Chemical Agent Accountability Log. Form DC6-216 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of the form is 7-25-02. Form DC6-216 shall be maintained in any location where chemical agents are stored. Chemical agent dispensers shall be weighed prior to issuance and upon return to storage. The shift supervisor shall verify the weight of chemical agent dispensers upon return to storage. Additionally, the shift supervisor shall ensure all issued chemical agent dispensers are accounted for and recorded on Form DC6-216. The chief of security shall monitor the canister weights following each use of chemical agents to ensure the contents are consistent after a reported use of force and recorded on Form DC6-216.

(l) Issuance and use of chemical agents:

1. Only correctional officers and staff trained in the use of chemical agents, in possession of a current and valid certification, and assigned to institutions and work camps shall be issued an approved OC dispenser to carry while on duty. Officers who have been issued chemical agent dispensers are authorized to administer or dispense chemical agents during the performance of their duties under reactionary circumstances (including but not limited to self-defense, the defense of others, or in opposition to force) without additional authorization for intervention for self-defense or the defense of others. The warden is authorized to exempt an officer from carrying, possessing, or using chemical agents. Officers assigned to armed perimeter posts may be exempted from the requirement to carry OC by the warden or designee.

2. An MK-9 sized canister or equivalent OC dispenser may be issued to correctional officers who have received appropriate training, are in possession of a valid certification, and who are assigned to internal security posts, recreation fields, shift supervisor posts, or designated as special response team members within an institution, including work camps. These officers are authorized to administer chemical agents during reactionary disturbance incidents that involve multiple inmates housed in locations where multiple inmates are generally present, such as open bay dorms, dining halls, recreation fields, canteens, and meal lines. This option shall only be exercised in response to mass disturbance critical incidents and as necessary to restore control, stability, or disciplinary order and shall normally not be used indoors.

3. For those security positions assigned to housing units with a secure officer's station, an MK-4 sized canister or equivalent OC dispenser will be passed on from shift to shift and accounted for on Form DC6-209, Housing Unit Log, at the beginning of each shift with an entry for each canister indicated by canister number and officer initials who is assigned that canister. Form DC6-209 is incorporated by reference in Rule 33-601.800, F.A.C. Canisters that are not being worn by staff on shifts that have fewer assigned staff will remain in the officer station, stored in a secure, locked cabinet or drawer designated for this purpose. The number of chemical agent canisters assigned to a housing unit shall not exceed the maximum number of staff (officer and sergeant) assigned for the highest staffed shift per the institutional post chart. Any evidence of tampering, broken or missing seal, or signs that the canister is not functional will be immediately reported to the shift officer in charge, a Form DC6-210, Incident Report, completed and a replacement made. Form DC6-210 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 S. Calhoun Street, Tallahassee, FL 32399-2500. The effective date of the form is _____.The canisters will be inventoried and inspected once per week by the arsenal sergeant with appropriate entry placed on the Housing Unit Log.

4. For those staff assigned to internal security and designated A-Team members, exchange of approved canisters shall occur on the compound, with the canister number and confirmation of seal status and condition of canister called into the control room and notation made on the DC6-281, Control Room Security Equipment/ Weapons Check Out/In Log. Form DC6-281 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 S. Calhoun Street, Tallahassee, FL 32399-2500. The effective date of the form is _____. The canisters will be inventoried and inspected once per week by the arsenal sergeant with appropriate entry placed on the Control Room Log.

5. For those staff assigned to food service, wellness, gate areas, program areas, and other compound posts that are not manned on a 24-hour basis, the staff assigned to the daylight shift shall pick up their canisters at the control room immediately prior to proceeding to their assigned post. The exchange of canisters for their reliefs shall occur on the compound, with the canister number and confirmation of seal status and condition of canister called into the Control Room and notation made on Form DC6-281 Control Room Security Equipment/Weapons Check Out/In Log. The canisters will be inventoried and inspected once per week by the arsenal sergeant with appropriate entry placed on the Control Room Log.

6. Chemical agent dispensers shall be securely encased and attached to the officer's belt. Each chemical agent dispenser shall 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 and the seal number on the dispenser he or she received. Form DC6-213 is hereby incorporated by reference. Copies of this form are available from the Forms

Control Administrator, 501 S. Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of the form is_____. Officers shall examine the condition of the canister and the safety seal at the time of receiving or being issued any chemical dispenser to ensure that the canister is not damaged and that the seal is intact and report any alteration or broken seal to the shift supervisor. Shift supervisors shall examine the seal of any chemical dispenser reported to be altered, broken, or manipulated and upon confirmation of alteration, breakage, or manipulation shall report the observation on Form DC6-210, Incident Report, prior to the end of the shift. The sergeant in charge of the arsenal shall maintain a master inventory of all individual chemical agent dispensers in storage. The master inventory shall indicate the weight of each dispenser at the time the original seal is attached and shall annotate the weight of the dispenser any time a dispenser is returned with a broken seal on Form DC6-216, Chemical Agent Accountability Log, and replace the seal or attach a new one. The arsenal sergeant shall report any discrepancies in the weight of the dispenser to the chief of security and complete Form DC6-210.

(m) Use of chemical agents on inmates outside of controlled conditions. Officers may utilize chemical agents whenever an inmate becomes disorderly or disruptive or does not comply with clear and audible orders that have been communicated to cease such behavior. During emergency situations with multiple inmates in an outside area, chemical agents may be applied to quell the disturbance. An inmate shall at no time be removed from his or her assigned cell or placed at an alternate location, have clothing removed, or be restrained for the purpose of chemical agent application. If an officer administers chemical agents while an inmate is handcuffed or wearing restraints, and removal of such restraints was not possible prior to the application, the officer shall record an explanation of the circumstances on Form DC6-230, Report of Force Used.

(n) Use of chemical agents on inmates under controlled conditions:

1. When an inmate in a secure housing unit occupied by other inmates becomes disorderly or disruptive or the officer's ability to provide unit security is adversely impacted by an inmate's behavior, and the inmate refuses to comply with clear and audible orders to cease his or her behavior, the confinement or close management lieutenant, shift supervisor, or person of higher rank shall be contacted and consulted for instructions prior to any application of chemical agents.

2. Whenever the confinement, close management lieutenant, or shift supervisor's efforts to control a disorderly inmate have failed, and the use of chemical agents is necessary to gain control of the inmate while minimizing the risk of injuries to others, the shift supervisor shall ensure the following:

a. Uninvolved inmates in the cell or immediate area are given the opportunity to exit or depart the potentially affected area, if such relocation does not create or cause a hazard to the safety of others.

b. The warden or designee is contacted and gives authorization to use chemical agents in the area.

c. A clear and audible order is given for the inmate to cease the disruptive or dangerous behavior.

d. If the inmate fails to comply with the order of the shift supervisor and continues to disobey lawful orders or continues disruptive behavior, the shift supervisor shall issue a clear and audible final order. During the final order, the shift supervisor shall put the inmate on notice that chemical agents are to be administered imminently if his or her disruptive behavior does not immediately cease.

e. A video recording is not required if, during the same shift, the inmate ceases the conduct creating the disturbance while the shift supervisor and camera operator are present with a camera but resumes such conduct after the shift supervisor and camera operator have departed the area prior to an application of chemical agents. The shift supervisor has the authority at anytime to recommence video tape recording of subsequent incidents, but in all cases where the administration of chemical agents is subsequently required 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 is ordered, medical examination is offered, and the inmate is returned to secure, decontaminated housing.

f. The application of chemical agents in the amount of no greater than three (3) one-second bursts may be administered upon an inmate after at least three (3) minutes have elapsed from the time a clear and audible final warning is communicated to the inmate to cease his or her disruptive or dangerous behavior and the inmate does not comply with the orders.

g. If the inmate's disruptive behavior continues after the initial application, a subsequent application of chemical agents in the amount of no greater than three (3) one-second bursts may be administered upon an inmate after at least five (5) minutes have elapsed since the initial chemical agent application.

h. If the inmate does not comply with orders after a minimum of five (5) minutes have elapsed from the conclusion of the second application of chemical agents, the warden or designee shall be consulted to evaluate what further response is necessary to regain compliance or control of the inmate.

(o) Additional applications of chemical agents and forced cell extractions:

1. The warden or designee shall be consulted to evaluate further responses after a third application of chemical agents has been administered, the inmate fails to cease his or her disruptive or dangerous behavior, and such inmate does not

comply with orders. Additional copies of Form DC6-230, Report of Force Used, shall be used to document the incident. The shift supervisor shall ensure all use of force applications are properly documented on Form DC6-230.

2. The warden or designee may authorize subsequent applications of chemical agents as necessary to obtain safety or compliance; however, such applications shall not be administered or discharged upon an inmate after the initial three applications until at least sixty (60) minutes have elapsed from the time of the last application.

(p) Medical requirements:

1. Inmates who have been administered any chemical agent shall be monitored by a staff member or officer for no less than one (1) hour after application. The affected inmate shall remain in a standing or sitting position. The monitoring staff members or officers shall immediately seek medical attention by the appropriate medical staff or competent medical authority any time signs of respiratory distress, labored breathing, excessive or persistent coughing, or chest or arm pain are evident or if unconsciousness occurs or other signs of medical distress are observed. The absence of medical staff on scene does not preclude taking action as an emergency responder.

2. All inmates exposed to chemical agents shall be ordered to shower in cool water and change inner and outer garments within 20 minutes from the last application of chemical agents, unless there is a documentable emergency resulting in an extension of this time frame or unless the inmate refuses to participate in the decontamination process. The shift supervisor or confinement lieutenant shall record the decontamination activities on the following forms:

a. Form DC6-210, Incident Report; or

b. Form DC6-229, Daily Record of Special Housing. Form DC6-229 is incorporated by reference in Rule 33-601.800, F.A.C.

3. The shift supervisor shall summon a medical staff member to the physical location of an inmate who has been exposed to a chemical application. The medical staff member shall conduct an examination of the inmate after the decontamination process is completed. The health services staff or ranking officer present shall ensure that any inmate who has a history of experiencing or who exhibits symptoms of physical distress as a result of chemical agent exposure is immediately provided all necessary medical attention. Medical staff members shall record any observations and medical actions taken on the following forms, including the presence or non-presence of injury:

a. Form DC4-701C, Emergency Room Record. Form DC4-701C is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of the form is_____.

b. Form DC4-708, Diagram of Injury. Form DC4-708 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of the form is_____.

4. In addition to completing a medical examination of any inmate who is exposed to chemical agents, the attending medical staff member shall make a mental health referral for any inmate classified as "S-2" or "S-3" on Form DC4-529, Staff Request/Referral, and forward it immediately for a mental health evaluation to be conducted on the inmate. Form DC4-529 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of the form is_____. Mental health staff shall evaluate the inmate no later than the next business day. The mental health staff member who conducts the evaluation shall consult with the shift supervisor and recommend appropriate measures that may be necessary for the safety of the inmate, including placement in isolation management, a transitional care unit, or crisis stabilization as those placements are defined in Rule 33-404.103, F.A.C.

5. Any time an inmate refuses to take a shower after an application of chemical agents, medical staff shall conduct a cell-front examination and explain in a clear and audible tone the purpose of decontamination and potential physical implications of not completing decontamination. Medical staff members shall record notes of any decontamination consultation on Form DC4-701C, Emergency Room Record.

6. Upon completion of the decontamination consultation with the inmate by a medical services staff member, the shift supervisor shall order the inmate to submit to a decontamination shower. If the affected inmate refuses to participate in a decontamination shower, a second order shall be given by the shift supervisor with a member of the medical services staff or a supervisor physically present when possible. The shift supervisor shall annotate on Form DC6-210, Incident Report, that a second order was administered and the inmate refused compliance.

7. The shift supervisor shall consult with the attending medical services staff member and determine if an inmate requires medical attention or treatment any time decontamination is not completed. Whenever the medical services staff member has observed the inmate who has refused decontamination post application of chemical agents and determined that reasonable medical attention is not necessary, the shift supervisor shall ensure that the affected inmate is monitored for a minimum of two (2) hours and offered a shower at least every thirty (30) minutes during the two (2) hour observation period. All inmate welfare checks or required physical observations post refusal to submit to decontamination orders shall be recorded on Form DC6-229, Daily Record of Special Housing. The officer assigned to

conduct welfare checks or physical observations of an inmate shall without unnecessary delay summon medical attention if he or she at any time observes or suspects that an inmate may be experiencing medical distress.

8. The shift supervisor shall comply with provisions stated in subparagraph (3)(a)13. if, upon consultation with medical services staff, he or she is advised a decontamination shower is necessary for the safety of the inmate or the failure to complete a decontamination shower is a hazard to the inmate. The inmate shall be relocated to a decontamination cell.

a. Upon introduction into a decontamination cell, the inmate who refused or obstructed efforts to participate in a decontamination shower shall be placed in a sitting or standing position for a minimum of forty-five (45) to sixty (60) minutes after the use of chemical agents, including any inmate who must be physically held or is incapacitated, to permit officers to place approved restraining devices on the inmate, e.g., handcuffs.

b. Officers shall use all reasonable and due care to avoid physically placing the inmate in any position that may contribute to positional asphyxia, restricted blood circulation, or interference with physical functions that permit life processes to occur or in any position that causes any physical injury. Restraints shall not be applied in any manner for the purpose of administration of punishment. The inmate shall not be directed, ordered, or required to stand or sit uninterrupted if such action is intended for reasons of punishment or likely to cause injury. Any portion of the inmate's body exposed to or that came into contact with chemical agents, including the eyes, shall be flushed with water as soon as possible after application for at least approximately five (5) to ten (10) minutes or until the affected inmate experiences relief. The inmate should be advised by the officer in charge to avoid rubbing any irritated area with a cloth or towel. No oils, creams, or topical medications shall be applied to the inmate without approval of a member of the medical services staff.

9. The warden or designee may authorize placing an inmate in four point or multipoint restraints after consultation with a member of health services staff. Approval from the warden or designee shall be obtained prior to any inmate being placed in four-point or multipoint restraints. Health services staff shall review the medical record of the inmate prior to advising the warden or designee of known medical conditions that would affect the health of the inmate should chemical agents be administered or the inmate be placed in four-point or multipoint restraints. A member of the health services staff shall monitor without interruption an inmate post application of chemical agents and when the inmate is subsequently placed in four or multipoint restraints. Medical attention shall be provided, upon detection of physical distress, without unnecessary delay. No inmate shall be restrained in a manner which restricts breathing.

10. Medical services staff members shall record all observations and recommendations on the following forms:

a. Form DC4-701C, Emergency Room Exam.

b. Form DC4-708, Diagram of Injury.

c. Form DC4-701, Chronological Record of Health Care. Form DC4-701 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of the form is 4-8-10.

(9) Non-deadly Force. In accordance with Section 944.35, F.S., officers are authorized to apply lawful and reasonably necessary physical force to:

(a) Defend themselves or others from actions that are likely to cause injury or death;

(b) Prevent the escape of a convicted felon from the custody of a correctional institution, any facility where an inmate is not permitted to depart without authorization, or as necessary to gain custody of an escaped inmate;

(c) Prevent the escape of an inmate during transport or while outside a correctional institution or facility;

(d) Prevent damage to property;

(e) Quell a disturbance;

(f) Overcome an inmate's physical resistance to a lawful command;

(g) Prevent an inmate from inflicting any self-injury or from attempts to commit suicide; or

(h) Reasonably restrain an inmate to permit the administration of necessary medical treatment.

(10) Only reasonable, lawful, and the minimal amount of force necessary shall be employed to control the situation. Force shall not be used solely as a response to verbal abuse. Utilization of the custodial touch, with the hand firmly grasped around the inmate's triceps or elbow, during internal transport of restrained inmates when resistance is not encountered shall not be considered a use of force when the transport hold is for the safety of the inmate or officer. The warden or designee shall be consulted and must authorize any organized use of force prior to application. The warden or designee shall be notified without unnecessary delay any time a reactionary use of force incident occurs and circumstances did not permit obtaining authorization prior to the use of force. The person who was responsible for requesting authorization to use force shall prepare, date, and sign Form DC6-232, Authorization for Use of Force, either prior to or immediately after the end of the shift when force was used. Form DC6-232 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of the form is 7-25-02. If the authorization for an organized use of force is granted after normal working hours, the authority granting the action shall complete and sign Form DC6-232 within one day following the incident, excluding weekends and holidays.

(11) Any time force is used, the officer initially using force shall complete Form DC6-230, Report of Force Used. The completed form shall include the events that led to the use of force, the actual events that occurred, and the post-event actions. If more than one officer was involved in the use of force, the initial officer using force shall complete the report. Any participant who objects to information recorded by the reporting officer or who has additional observations to add to the narrative or description of the incident written by the reporting officer shall complete and attach Form DC6-230, Report of Force Used. No officer or employee shall receive discipline for providing updated information to a use of force report, provided the updated information is presented without unnecessary delay after discovery of the discrepancy. Updates or addendums recorded on any Form DC6-230, Report of Force Used, should be completed and forwarded to the warden not later than one (1) business day (excluding weekends and holidays) following the date that the original Form DC6-232, Authorization for Use of Force, is signed and dated.

(a) Form DC6-230, Report of Force Used, shall be completed by those staff involved in any application of force, reactionary or organized, that occurred during their shift. Form DC6-230 shall be completed no later than the end of the shift during which the use of force occurred. The warden or designee is authorized to permit a delay of completing required use of force reports for up to 72 hours when circumstances prohibit completion of the reports by the end of the shift. All reports must be typed. No use of force report may be altered, changed, or destroyed by any employee. Officers may submit amendments to a report at any time with authorization from the warden or designee. The warden or designee shall then appoint a staff member of equal or higher rank than those involved in the use of force incident to collect all pertinent information and required documentation. This information shall include the reports of all involved staff who do not agree with the account as reported in the DC6-230 or the statements of staff witnesses, inmate witnesses, or the inmate subject. 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. Any employee who witnesses but does not participate in a use of force and suspects inappropriate action shall complete Form DC6-210, Incident Report. The Office of Inspector General field offices within each region shall provide the institutions, via electronic mail, with a use of force number once one is assigned and entered into the Office of Inspector General electronic logging system.

(b) The warden or designee shall conduct a preliminary review of facts recorded in reports to determine if the application or demonstration of force was lawful and a procedurally appropriate application. The warden or designee shall review all use of force reports. Any time improperly applied or unlawful use of force is indicated in a report, the warden or designee shall review any available video recording of the incident.

(c) Any time a warden or designee assigned to review and evaluate use of force reports suspects the application of force was contrary to this rule or was unlawful, he or she shall notify the Office of Inspector General without unnecessary delay.

(d) The warden or designee shall review the information and note any inappropriate actions in memorandum and attach the information to Form DC6-230, Report of Force Used. All videotape recordings of force applications and the original and one copy of Form DC6-230 shall be forwarded to the Office of Inspector General within eleven (11) business days. Requests for extensions for DC6-230s to be forwarded after eleven (11) days shall require authorization from the Assistant Secretary of Institutions and the Inspector General or designee.

(e) The warden shall keep all original completed forms and a copy of Form DC6-230, Report of Force Used, until notified that the final review by the Office of Inspector General is complete. All original reports pertaining to a use of force shall be retained by the warden or designee.

(f) The Office of Inspector General shall report a disposition to the warden of any use of force within fourteen (14) business days of receipt. The warden shall be noticed of any extension to the review granted by the Inspector General or designee prior to the expiration of the fourteen (14) business days. The Inspector General shall notify the warden that a case has been reviewed and action was appropriate or a further review has commenced.

(g) Any time a witness of a reported use of force chooses to make a written statement, or is a use of force participating staff member and chooses to provide additional information not annotated in the reporting officer's initial Form DC6-230, Report of Force Used, submission, such person shall complete Form DC6-230. No employee may interfere with or obstruct such reporting or order any participant or witness involved in the use of force to alter, change, or not produce a written report of an incident in which the employee was involved or which he or she observed.

(h) Upon review of the submitted documents, the Office of Inspector General shall notify the warden in writing or by electronic mail of the findings. All video recordings submitted with use of force reports shall be retained and maintained by the Office of Inspector General in accordance with records retention statutes. The Office of Inspector General shall notify the regional director and warden any time a reasonable suspicion or probable cause is found that the force administered by a staff member was not in compliance with law, rule, or procedure. The Office of Inspector General or the warden, upon referral by the Office of Inspector General, shall conduct an investigation of the incident. Any staff member who is a subject of an investigation based on suspicion or allegation that force administered with their participation was

not in compliance with this rule shall be notified by written letter when the matter is being investigated by the Office of Inspector General. Staff members shall not disclose or discuss any information concerning a use of force administrative investigation until receiving notice that a determination has been issued by the Office of Inspector General or warden. Wardens shall complete Form DC6-296, Disapproved Use of Force/Warden Disposition Report, should their review of referred cases lead to a determination that force was not appropriately used. All disciplinary actions shall be forwarded to the Human Resources Section upon completion. Form DC6-296, Disapproved Use of Force/Warden Disposition Report, is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of the form is 7-25-02.

(i) The Assistant Secretary of Institutions, regional director, or warden shall be responsible for issuing any corrective action pursuant to a finding of non-compliance with this rule. Copies of the employee's report, the warden's summary, and the Office of Inspector General review and determination shall be kept in the inmate's file pursuant to public records retention law. Form DC2-802, Use of Force Log, shall be placed in every employee's personnel file. Form DC2-802 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500. The effective date of the form is 2-7-00. This form shall be maintained by the servicing personnel office and shall contain a record of every use of force report completed by the employee.

(j) The warden or 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 and be retained for the applicable retention period.

(k) The Office of Inspector General shall notify the warden of any officer involved in eight or more use of force incidents in an eighteen month period.

(l) Any incident that necessitates the drafting of Form DC6-230, Report of Force Used, shall be reported to the Emergency Action Center (EAC).

(m) Any employee or officer who witnesses, has reasonable cause to suspect, or has knowledge that any inmate has been a victim or subject of an unlawful battery or has been abused in violation of law or the Department's administrative rules shall without unnecessary delay report the incident to the warden or designee and complete Form DC6-210, Incident Report, describing his or her observations, knowledge, or suspicion. No employee shall commit a battery on or engage in cruel or inhuman treatment of any inmate. The warden or designee shall forward a copy of all reports involving allegations of inmate abuse, neglect, or battery to the Office of Inspector General without unnecessary delay.

(n) Officers may use reasonable physical force to restrain an inmate, upon supervision and direction of a physician or medical practitioner, for the purpose of providing necessary treatment or for the safety of an employee. The attending Qualified Health Care Provider who directs or observes medically necessary use of force shall prepare Form DC6-232, Authorization for Use of Force. Officers who use force pursuant to a physician or medical practitioner's request shall complete Form DC6-230, Report of Force Used, when actual force is used, or Form DC6-210, Incident Report, when restraints are applied with no physical resistance by the inmate, and the form shall be forwarded to the warden.

(o) The attending physician or medical practitioner shall complete Form DC4-701C, Emergency Room Record, and Form DC4-708, Diagram of Injury, with applicable data or the letters "N/A" used to indicate inapplicability. The attending physician or medical practitioner shall document the presence or absence of any injury in his or her records whenever force has been applied. Every physical examination of an inmate patient who has been the subject of an application of force shall be documented with specificity by the attending physician or medical practitioner to include extent of injury, type of injury, and a description of any injury. Any time a physician or attending medical practitioner reports reasonable suspicion of abuse of an inmate to the warden or the Office of Inspector General, it shall be reported on Form DC6-210, Incident Report.

(p) Any employee or officer who participates in the application of reactionary or organized use of force and receives or experiences any injury shall report such injury to the officer in charge. Injured staff shall be offered an opportunity to receive a medical examination. Should the employee or officer decline a post-use of force medical examination, he or she shall sign Form DC4-711A, Refusal of Health Care Services, indicating an examination was offered but declined. 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. Form DC4-711A is incorporated by reference in Rule 33-401.105, F.A.C.

(q) 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 DC6-210, Incident Report, shall be required. The application of the restraints will be videotaped. The videotape, Form DC6-210, Incident Report, Form DC6-232, Authorization for Use of Force Report, Form DC4-701C, Emergency Room Record, and Form DC4-708, Diagram of Injury, shall also be completed in their entirety with applicable data or the letters

"N/A" used to indicate inapplicability and shall be forwarded to the warden or acting warden for review within one working day. Each institution shall retain the reports for the applicable retention period. 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 (4) shall be followed.

(12) 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. An 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 him or herself or another.

(a) Use of Firearms. In order for all concerned to be aware of their responsibilities, the procedures set forth in this rule shall be readily available at all institutions and facilities for staff review.

(b) Firearms or weapons shall be issued to an officer 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. Officers 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 reasonable danger to innocent bystanders:

1. To prevent an escape of an inmate who is actively attempting to flee custody;

2. To prevent any conveyance to gain unauthorized entry into or exit from a correctional institution;

3. To prevent serious or life threatening injury to themselves or another person; or

4. To quell a riot.

(c) Shot guns are approved for use by the rapid response teams during riots and mass disturbances. Only #6 shot is authorized to be discharged from shotguns during attempts to cease riots or mass disturbances unless otherwise specifically authorized by the warden or designee.

(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 a reasonable belief that the life of a bystander may 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;

4. Until the employee is sure that an escape is occurring or has occurred and he or she reasonably believes that the person to be fired upon is an escapee that is serving a sentence for a violation of a felony;

5. Unless the officer has positively identified an escape is occurring and the target is a Department inmate;

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

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

(f) No officer shall discharge any firearm except as authorized by 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 weapons, such as waving arms in a manner 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. The aircraft shall be secured using armed security staff and shall be prevented from being flown away by securing the flight equipment with locks and chains without causing damage to the aircraft.

5. If the landing occurs due to an in-flight emergency, e.g., engine failure, staff shall 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. Staff are authorized to shoot any inmate attempting to escape in accordance with this rule. When circumstances permit, a verbal warning to halt and a warning shot shall be fired prior to the inmate reaching the aircraft to board.

7. If weapons are fired from an aircraft, Department personnel are authorized to return fire and use deadly force to protect the themselves and others upon property of the institution.

8. Firearms shall not be used on departing aircraft after leaving contact with the ground. Immediate notification, without delay, shall be made to the law enforcement agency of local jurisdiction and the Office of Inspector General upon an aircraft landing on Department property. The Office of Inspector General shall notify the Florida Department of Law Enforcement, Federal Bureau of Investigation, and the Federal Aviation Administration.

9. All inmates shall receive orientation in regard to this subsection of the rule. This orientation shall contain instructions indicating that should any aircraft attempt to land on or near the property of any Department 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 or her from escaping.

10. This subsection of the rule shall be made a part of the Department's orientation program at all reception centers.

(h) Use of a conveyance to gain unauthorized entry into or exit from a correctional institution or facility. The institution or facility shall take the following steps to prevent any conveyance or vehicle from being used to gain unauthorized forced entry into or forced exit from its perimeter area:

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

2. If the vehicle does not stop and continues to be driven or operated in a manner that indicates the driver intends to or is in the process of forcibly entering or exiting the perimeter, officers may use deadly force to prevent serious injury or death to any person or to prevent the escape of an inmate.

(i) Any officer who discharges a firearm shall report the incident on Form DC6-210, Incident Report. Any officer who has fired a weapon during the performance of his or her duty, time permitting, shall secure the scene and immediately notify his or her supervisor and the Office of Inspector General. The senior officer in charge at the scene of the incident shall ensure all evidence is undisturbed, including locations of empty cartridges, until processed by a law enforcement agency or the Office of Inspector General.

(j) Any officer who accidently or negligently discharges a Department firearm or any firearm upon institutional property shall report the incident to the warden or designee without unnecessary delay and shall complete Form DC6-210, Incident Report.

(13) Use of Deadly Force to Prevent Escape or to Recapture Escapee. Officers are authorized to use force, including deadly force, as necessary to prevent the escape of an inmate from a correctional institution.

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

1. A loud verbal warning shall be made, if possible, instructing the inmate to stop or halt prior to the inmate's contact with any inner fence in institutions that have a double fence. A warning shot may be safely fired prior to any inmate's attempt to cross or pass over, through, or under the inner fence. The firearm shall not be fired at the inmate until he or she has begun to cross or pass over, through, or under the inner fence.

2. A loud verbal warning shall be reasonably made where possible instructing the inmate to stop or halt and a warning shot safely fired prior to the inmate's contact with the fence. A firearm shall not be fired at the inmate until he or she has begun to cross, or to pass over, through, or under the fence in institutions that have a single fence.

3. Warning shots are authorized only as provided herein. In all other instances where deadly force is authorized during inmate escape attempts, a loud verbal warning shall be issued if time and circumstances permit.

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

1. Officers are considered to be in active pursuit of an escaped inmate who has fled from an institution or supervised work detail so long as the escape commander determines that the escape recovery efforts are active. An officer is authorized to use deadly force, after giving a loud verbal warning for the inmate to stop or halt the escape attempt, when the inmate is demonstrating a refusal to cease active flight or escape from an institution or supervised work detail. A firearm shall not be fired if it creates a hazard to persons other than the inmate.

2. The officer in charge of the incident shall be the incident commander until relieved by a higher authority or the incident is turned over to a law enforcement agency or the Office of Inspector General. The incident commander of the escape attempt shall determine when active recapture efforts are terminated. Upon order of incident termination, the incident commander of the escape attempt may provide assistance to any law enforcement agency that is conducting an investigation of the incident. Officers who are utilized to assist outside law enforcement agencies are authorized to use deadly force pursuant to Florida law.

3. Officers may provide assistance to any law enforcement agency that is seeking to capture or take into custody any inmate who has failed to return from a furlough or non-supervised outside assignment or who has escaped from any work release center. Correctional officers who are utilized to assist outside law enforcement agencies are authorized to use deadly force pursuant to Florida law.

(c) Escape attempts by inmates who are 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, are included within the purview of this subsection.

(14) Other authorized uses of force. The use of electronic immobilization devices (EIDs), batons, chemical agents, specialty impact munitions, or other less lethal weapons within institutions shall be authorized only by the warden or designee. Such weapons shall be utilized by officers who have completed training on their use and shall be used in accordance with manufacturer specifications. Hands-on physical force shall not be used if injury is less likely to occur by using chemical agents, specialty impact munitions, or EIDs. Batons, chemical agents, EIDs, specialty impact munitions, and other authorized less lethal weapons 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, as such facilities are defined in Rule 33-404.103, F.A.C., except when attempts by available mental health staff to physically control dangerous or violent behavior are unsuccessful.

(a) Use of EIDs and less lethal weapons. EIDs shall not be used on anyone other than an inmate during an authorized use of force or upon any person to prevent serious injury or death. EIDs authorized by the Department include:

1. Handheld EIDs, 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 shields, which may be used by force cell extraction teams; and

3. Electronic restraint belts, which are authorized to be placed on an inmate for appearance in court, during transportation, or when the inmate is determined to be high risk or to have a history of violent behavior.

4. If possible, the shift supervisor shall counsel with the inmate, issue the final order, and be present prior to the use of an EID at an institution or during work detail or transport.

5. Handheld EIDs shall be issued to unarmed officers on any inmate transport or any outside hospital visit where firearms are issued. The chief of security or, in his or her absence, the shift supervisor shall determine the number of officers who will be issued firearms and EIDs during the transportation or movement of inmates.

6. An inmate shall be provided a medical examination and treatment as necessary any time he or she has been subject to an application of an EID or less lethal weapon. Medical staff shall, upon completing the medical examination, make a mental health referral for each inmate who is classified with a mental health grade of S-2 or S-3. A referral shall be made upon Form DC4-529, Staff Request/Referral, and forwarded to mental health staff as soon as possible. Mental health staff shall evaluate an inmate no later than the next working day to determine whether a higher level of mental health care (for example, isolation management, transitional care, or crisis stabilization) is indicated.

7. The application of force by an EID or less lethal weapon shall be reported by completion of Form DC6-230, Report of Force Used, by the officer who deployed the device.

8. EIDs and other less lethal weapons 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. All EIDs or less lethal weapons shall be secured in a locked cabinet when not in use. The arsenal sergeant shall be responsible for the proper documentation of the maintenance, storage, and issue of EIDs and less lethal weapons.

9. All EIDs and other less lethal weapons shall be accounted for in the same manner as firearms.

10. There shall be no attempt to alter, tamper with, or repair any EID or less lethal weapon. Devices shall be sent to an authorized repair station if a malfunction occurs or repair is necessary. Any EID or less lethal weapon that is dropped or is subject to possible damage shall be immediately tested to determine if it is safe and properly functioning. EIDs shall not be used after the application of any chemical agents.

(b) Specialty impact munitions. Specialty impact munitions shall be used primarily by the Department's designated armed response teams, 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 not be used on anyone other than an inmate during an authorized use of force.

1. The following specialty impact munitions have been approved for use by the Department:

a. 37/40-mm rubber ball pellet rounds (minimum engagement distance is 15 feet);

b. 12 gauge rubber ball pellet rounds – high velocity (minimum engagement distance is 15 feet);

c. 12 gauge rubber ball pellet rounds – low velocity (minimum engagement distance is 3 feet);

d. 12 gauge drag stabilized (bean bag) rounds (minimum engagement distance is 15 feet);

e. 37/40-mm wooden baton rounds (minimum engagement distance is – skip fired 6 feet in front of target, no direct fire);

f. stinger rubber ball grenades (no minimum engagement distance – stun grenade);

g. 40-mm exact/direct impact – OC marking rounds/short range (minimum engagement distance is 5 feet); and

h. 40-mm exact/direct impact – OC marking rounds/long range (minimum engagement distance is 25 feet).

2. Selection and deployment of specialty impact munitions during a riot or disturbance or other instance where less lethal force options are needed shall be authorized by the Secretary, regional director, or warden or designee. The use of all specialty impact munitions shall be supervised by the tactical field operations leaders, designated armed response team, rapid response team or correctional emergency response team leader.

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

4. Specialty impact munitions shall not be deployed in the direction of any individual in a manner contrary to the manufacturer’s directions or at a distance of less than that recommended by the manufacturer, unless the threat of bodily harm or death justifies the escalation to deadly force.

5. Storage of Specialty Impact Munitions.

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

b. 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.

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

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

7. In any case where specialty impact munitions are deployed, the incident shall be recorded on Form DC6-230, Report of Force Used.

(c) Pepperball Launching System (PLS). The PLS shall be used primarily by restricted labor squad supervisors and exercise officers for 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.

1. The Secretary shall designate those institutions authorized to use the PLS.

2. In controlled situations when time constraints are not an issue, the PLS can only be used if authorized by the warden or designee. The warden or designee shall only authorize trained and certified officers to use the PLS.

3. The PLS is authorized for use to quell mass disturbances, violent events, assaults, and fights among inmates assigned to restricted labor squads. Authorized activation of the PLS by staff assigned to restricted labor squads does not constitute deadly force.

4. PLS is authorized for use in confinement, close management, maximum management, and death row recreation areas to quell mass disturbances, violent events, assaults, and fights among inmates.

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

6. Written authorization from the warden or designee shall be received prior to utilization of the PLS for situations other than those described in subparagraphs 3. and 4. 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.

7. All subsequent reports, medical requirements, and reviews required for the use of chemical agents as outlined in this rule shall be completed after the use of the PLS.

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

(15) 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 on Form DC6-230, 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 that 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 one (1) business 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 observed or known physical injuries. A copy of the report, including referenced forms, shall be attached to Form DC6-230. The original reports shall be filed in the inmate's medical record.

(16) 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 or designee.

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, 4-8-10, 9-13-10, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Jeffery T. Beasley, Inspector General

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Kenneth S. Tucker, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 15, 2012

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 2, 2011

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Division of Hotels and Restaurants

RULE NO.:	RULE TITLE:
61C-1.002	Licensing and Inspection Requirements

PURPOSE AND EFFECT: The proposed rule will update the rule to reflect changes made to Chapter 509, F.S., by Laws of Florida Chapter 2008-055 and Laws of Florida Chapter 2011-119, and the deregulation of roominghouses by Laws of

Florida Chapter 2012-165. The proposed rule will also update forms incorporated by reference and include plain language changes.

SUMMARY: The proposed rule updates the licensing, plan review, and inspection forms, process and requirements; changes resort license classifications to vacation rental; removes roominghouses to comply with statutory deregulation; removes fire safety and bathroom requirements to conform to changes to the division's authority; and removes variance procedures to allow the division to use the variance procedures in Chapter 120, Florida Statutes.

OTHER RULES INCORPORATING THIS RULE: None.

EFFECT ON THOSE OTHER RULES: N/A

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of $200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: the economic review conducted by the agency

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: 509.032, 509.241 FS.

LAW IMPLEMENTED: 213.0535, 509.032, 509.221, 509.241, 509.242, 509.251, 559.79 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: Michelle Comingore, Operations Review Specialist, Division of Hotels and Restaurants, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399, (850)488-1133, Michelle.Comingore@dbpr.state.fl.us

THE FULL TEXT OF THE PROPOSED RULE IS:

61C-1.002 Licensing and Inspection Requirements.

(1) No change.

(2) To apply for licensure, an applicant must submit the appropriate application and t~~T~~he required fee, pursuant to Section 509.251, F.S., and Rule 61C-1.008, F.A.C., to the division ~~shall accompany the application, which is BPR form 21-020, APPLICATION FOR LICENSE, incorporated herein by reference and effective 9-25-96~~. ~~Copies of this form may be obtained from any division office~~. Any license fee received by the division is non-refundable once the establishment commences operation.

(a) License Applications.

1. Public lodging establishments, except vacation rentals, required to be licensed by the division, under Chapter 509, F.S., must submit DBPR HR-7027, APPLICATION FOR PUBLIC LODGING ESTABLISHMENT LICENSE (https://www.flrules.org/Gateway/reference.asp?No=Ref-01504), incorporated herein by reference and effective 2012 October 1. Instructions for filling out DBPR HR-7027 are provided in DBPR HR-7027i, INSTRUCTIONS FOR COMPLETING DBPR HR-7027 APPLICATION FOR PUBLIC LODGING ESTABLISHMENT LICENSE (https://www.flrules.org/Gateway/reference.asp?No=Ref-01505), incorporated herein by reference and effective 2012 October 1.

2. Vacation rentals required to be licensed by the division under Chapter 509, F.S., must submit DBPR HR-7028, APPLICATION FOR VACATION RENTAL LICENSE (https://www.flrules.org/Gateway/reference.asp?No=Ref-01506), incorporated herein by reference and effective 2012 October 1. Instructions for filling out DBPR HR-7028 are provided in DBPR HR-7028i, INSTRUCTIONS FOR COMPLETING DBPR HR-7028 APPLICATION FOR VACATION RENTAL LICENSE (https://www.flrules.org/Gateway/reference.asp?No=Ref-01507), incorporated herein by reference and effective 2012 October 1.

3. Public food service establishments required to be licensed by the division under Chapter 509, F.S., must submit one of the following applications, as appropriate to the establishment.

a. DBPR HR-7007, APPLICATION FOR PUBLIC FOOD SERVICE ESTABLISHMENT LICENSE (https://www.flrules.org/Gateway/reference.asp?No=Ref-01508), incorporated herein by reference and effective 2011 August 22. Instructions for filling out DBPR HR-7007 are provided in DBPR HR-7007i, INSTRUCTIONS FOR COMPLETING DBPR HR-7007 APPLICATION FOR PUBLIC FOOD SERVICE ESTABLISHMENT LICENSE (https://www.flrules.org/Gateway/reference.asp?No=Ref-01509), incorporated herein by reference and effective 2011 August 22.

b. DBPR HR-7030, APPLICATION FOR PUBLIC FOOD SERVICE ESTABLISHMENT LICENSE WITH PLAN REVIEW (https://www.flrules.org/Gateway/reference.asp?No=Ref-01510), incorporated herein by reference and effective 2011 August 22. Instructions for filling out DBPR HR-7030 are provided in DBPR HR-7030i, INSTRUCTIONS FOR COMPLETING DBPR HR-7030 APPLICATION FOR PUBLIC FOOD SERVICE ESTABLISHMENT LICENSE WITH PLAN REVIEW (https://www.flrules.org/Gateway/reference.asp?No=Ref-01511), incorporated herein by reference and effective 2011 August 22.

c. DBPR HR-7031, APPLICATION FOR MOBILE FOOD DISPENSING VEHICLE LICENSE WITH PLAN REVIEW (https://www.flrules.org/Gateway/reference.asp?No=Ref-01512), incorporated herein by reference and effective 2011 August 22. Instructions for filling out DBPR HR-7031 are provided in DBPR HR-7031i, INSTRUCTIONS FOR COMPLETING DBPR HR-7031 APPLICATION FOR MOBILE FOOD DISPENSING VEHICLE LICENSE WITH PLAN REVIEW (https://www.flrules.org/Gateway/reference.asp?No=Ref-01513), incorporated herein by reference and effective 2011 August 22.

4. Temporary public food service establishments required to be licensed by the division under Chapter 509, F.S., must submit DBPR HR-7029, APPLICATION FOR TEMPORARY EVENT VENDOR LICENSE (https://www.flrules.org/Gateway/reference.asp?No=Ref-01514), incorporated herein by reference and effective 2011 August 22. Instructions for filling out DBPR HR-7029 are provided in DBPR HR-7029i, INSTRUCTIONS FOR COMPLETING DBPR HR-7029 APPLICATION FOR TEMPORARY EVENT VENDOR LICENSE (https://www.flrules.org/Gateway/reference.asp?No=Ref-01515), incorporated herein by reference and effective 2011 August 22. The division will provide the applicant a copy of this application, including instructions, at the time of inspection.

(b)~~(a)~~ Pursuant to Section 559.79(1), F.S., the application shall require the name, address and social security number of each person who owns 10 percent or more of the outstanding stock or equity interest in the licensed activity ~~and the name, address and social security number of each officer, director, chief executive, or other person who is determined by the division to be able directly or indirectly to control the operation of the business of the licensed entity~~. The division shall keep the social security number of each person reported on the application ~~shall be kept~~ confidential ~~by the division~~, except in accordance with Section 559.79(3), F.S., and as provided in law with other governmental agencies.

(c)~~(b)~~ Pursuant to Section 213.0535, F.S., the application shall require the federal employer identification number and sales tax identification number of the applicant. Such numbers shall be kept confidential by the division except as provided in conjunction with the Registration Information Sharing and Exchange Program and as provided in law with other governmental agencies.

(3) Upon the division determining that each new application for license or application for change of ownership is complete, the establishment shall pass an opening inspection by the division prior to issuance of the license. An opening inspection shall not be required for vacation rentals or vending machines. An opening inspection shall not be required for a change of ownership for public food service establishments that do not require a plan review if within 120 days prior to the postmark date on the application the establishment had a satisfactory inspection that did not result in administrative action or require a call-back inspection.

(4) ~~The criteria for licensing~~ Ppublic lodging establishments as defined in Section 509.013(4), F.S., are licensed ~~shall be~~ in accordance with the ~~following~~ classifications in Section 509.242, F.S., and ~~requirements~~:

(a) Transient establishments ~~– transient establishments~~ are licensed ~~classified~~ as hotels, motels, transient apartments, and vacation rentals. ~~rooming houses as defined in Section 509.242, F.S., which are rented or leased to guests by an operator whose intention is that such guests' occupancy will be temporary.~~

1. Vacation rentals are further classified as condominiums or dwellings and will be issued a single, group or collective license pursuant to Section 509.251, F.S. A vacation rental condominium license will be issued for a unit or group of units in a condominium, cooperative, or timeshare plan. A vacation rental dwelling license will be issued for a single-family house, a townhouse, or a unit or group of units in a duplex, triplex, quadruplex, or other dwelling unit that has four or less units collectively.

a. A single license is a license issued by the division to an individual person or entity, but not an authorized agent. A single license may include one single-family house or townhouse, or a unit or group of units within a single building that are owned and operated by the same individual person or entity.

b. A group license is a license issued by the division to an authorized agent to cover all units within a building or group of buildings in a single complex. A group license shall only cover those units which are held out to the public as a place regularly rented to guests as defined in Chapter 509, F.S.

c. A collective license is a license issued by the division to an authorized agent who represents a collective group of houses or units found on separate locations. A collective license may not be issued for more than 75 houses or units per license and is restricted to counties within one district.

2. Responsibilities of the Vacation Rental Licensee.

a. For inspection purposes, the licensee or designee shall, upon request, meet the inspector at the site of a specified establishment with keys to the licensed house or unit being inspected.

b. The licensee or operator shall notify the division of any and all houses or units represented for inclusion in the vacation rental license application. Anytime a change occurs in the street or unit address or number of houses or units included under the license, the licensee or operator shall notify the division of any and all houses or units included in the license at least 60 days prior to the expiration date of the license. In addition, a list of the included houses or units shall be maintained in a written form for inspection by request.

c. Failure to fulfill any of the responsibilities of the licensee set forth in sub-subparagraphs a. and b. above constitutes failure to make the premises available for inspection.

d. In the case of a single license, the licensee shall be responsible for all violations pursuant to Chapter 509, F.S., and Chapters 61C-1 and 61C-3, F.A.C.

e. In the case of a collective license or group license, the authorized agent shall be responsible for all violations pursuant to Chapter 509, F.S., and Chapters 61C-1 and 61C-3, F.A.C., if violations occurred while the dwelling or unit was listed under the licensed agent or as reflected in records filed with the division.

(b) Nontransient establishments ~~nontransient establishments~~ are licensed ~~classified~~ as nontransient apartments. ~~and rooming houses as defined in Section 509.242, F.S., that have more than four units collectively and that are rented for periods of at least 30 days or 1 calendar month, whichever is less, and that are not advertised or held out to the public as places regularly rented for periods of less than 1 calendar month. Rooming houses do not include any establishment exempted pursuant to Section 509.013(4), F.S.~~

~~(c) Resort Condominium and Resort Dwelling – each public lodging establishment classified as a resort condominium or resort dwelling a s defined in Section 509.242, F.S., shall obtain a single, group or collective license pursuant to Section 509.251, F.S., prior to commencing operation.~~

~~1. A single license may include multiple units within a building or group of buildings owned and operated by an individual person or entity, but not an agent licensed under Chapter 475, F.S.~~

~~2. A group license is a license issued by the division to a licensed agent to cover all rooms or units within a building or group of buildings in a single complex. A group license shall only cover those rooms or units which are held out to the public as a place regularly rented to guests as defined in Chapter 509, F.S.~~

~~3. A collective license is a license issued by the division to a licensed agent who represents a collective group of rooms or units found on separate locations of resort condominiums or resort dwellings. A collective license may not be issued for more than 75 units per license and is restricted to counties within one district.~~

~~4. For the purposes of this section, the term "dwelling unit" as it relates to the definition of resort dwelling in Section 509.242(1)(g), F.S., includes duplexes, triplexes, quadruplexes and townhouses that have four or less units collectively.~~

~~5. Responsibilities of the Licensee.~~

~~a. For inspection purposes, the licensee or designee shall, upon request, meet the inspector at the site of a specified establishment with keys to the units or dwellings.~~

~~b. A licensed agent or operator shall notify the division of any and all condominium units or dwelling houses or units represented for inclusion in the license application using BPR form 21-030, LIST FOR COLLECTIVE LICENSE-RESORT CONDOMINIUMS AND RESORT DWELLINGS, incorporated herein by reference and effective 9-25-96, or BPR form 21-031, LIST FOR SINGLE OR GROUP LICENSE-RESORT CONDOMINIUMS AND RESORT DWELLINGS, incorporated herein by reference and effective 9-25-96. Copies of these forms may be obtained from any division office.~~

~~c. Notification of additions or deletions of resort dwelling houses or units listed in a collective license or resort condominiums units in a single or group license shall be sent to the division at least 60 days prior to the expiration date of the license. Notification of changes is required only if changes occur. In addition, any such additions or deletions shall be maintained in a written form for inspection by request. The licensed agent or operator shall notify the division by listing the specific street address and unit number on BPR form 21-032, NOTIFICATION OF CHANGE – RESORT CONDOMINIUMS AND RESORT DWELLINGS, incorporated herein by reference and effective 9-25-96. Copies of this form may be obtained from any division office.~~

~~d. Failure to fulfill any of the responsibilities of the licensee, as set forth in sub-subparagraphs a. – c. above, constitutes failure to make the premises available for inspection.~~

~~e. If a unit has been removed from a collective or group license, the licensee shall inform the division in writing.~~

~~f. In the case of a single license, the owner of the unit or dwelling shall be responsible for all violations pursuant to Chapter 509, F.S., and Chapters 61C-1 and 61C-3, F.A.C.~~

~~g. In the case of a collective license or group license, the licensed agent shall be responsible for all violations pursuant to Chapter 509, F.S., and Chapters 61C-1 and 61C-3, F.A.C., if violations occurred while the unit or dwelling was listed under the licensed agent or as reflected in records filed with the division.~~

(c)~~(d)~~ For all public lodging establishments except vacation rentals ~~for resort condominiums and resort dwellings~~, the operator is required to notify the division immediately of any changes in the number of rental units.

(5) ~~The criteria for licensing~~ Ppublic food service establishments, as defined in Section 509.013(5), F.S., are licensed ~~shall be~~ in accordance with the following classifications and requirements:

(a) Nonseating:

1. No change.

2. Mobile food dispensing vehicle – Mobile food dispensing vehicles are classified as any vehicle mounted public food service establishments which are self-propelled or otherwise movable from place to place and include

self-contained ~~are self-sufficient for~~ utilities, such as gas, water, electricity and liquid waste disposal. The ~~It shall be the responsibility of the~~ owner is responsible for acquainting ~~to acquaint~~ all operators with the requirements of all applicable laws and rules. All mobile food dispensing vehicles required to have vehicle identification numbers shall submit this number to the division on the application for license. All mobile food dispensing vehicles required to have a commissary under Rule 61C-4.0161, F.A.C., must submit DBPR HR-7022, COMMISSARY NOTIFICATION, to the division upon application for plan review or application for a license, if plan review is not required.

3. Caterer ~~Catering~~ – Caterers are classified as any public food service establishments where food or drink is prepared for service elsewhere in response to an agreed upon contract for a function or event. The term includes catering kitchens and commissaries. For the purpose of this rule, the ~~The~~ term "caterer" does not include those establishments licensed pursuant to Chapters 500 or 381, F.S., or any other location where food is provided or displayed for sale by the individual meal ~~or which exclusively prepare or serve traditional bakery goods such as cakes, pastries, bagels, or confections~~. A ~~If a~~ licensed public food service establishment that also provides catering services~~, it~~ is not required to hold a separate catering license from the division. Caterers must meet all applicable standards of a public food service establishment as provided in Rules 61C-1.004, 61C-4.010 and 61C-4.023, F.A.C. Separate independent caterers utilizing the equipment or premises of a licensed public food service establishment are deemed operators as defined by Section 509.013(2), F.S., of such public food service establishment and subject to all applicable requirements of law and rule.

4. No change.

5. Vending machines – Vending machines are classified as any self-service devices licensed pursuant to Chapter 509, F.S., which, upon insertion of coin or token, or by other means, dispense unit servings of potentially hazardous food, either in bulk or packaged, without the necessity of replenishing the device between each operation. All vending machine owners shall submit the serial number of each vending machine to the division on the application for license. The ~~It is the responsibility of the~~ vending machine owner shall ~~to~~ maintain an accurate and current list of vending machine locations with the corresponding serial number. This list shall be made available to the division upon request. The division shall coordinate with the vending machine owner to schedule inspections with the assistance of the owner or the owner's ~~its~~ agent with the capability to open and demonstrate the machine.

6. Theme park food carts – Theme park food carts are classified as mobile or stationary units which operate within the confines of a theme park or entertainment complex as an extension of or in association with a fixed public food service establishment. Such carts shall be licensed collectively by the entity which maintains and operates them. The ~~It shall be the responsibility of the~~ entity which maintains and operates any food cart or group of food carts within a theme park or entertainment complex shall ~~to~~ acquaint all operators with the requirements of all applicable laws and rules. The operator is required to notify the division immediately of any changes in the number of carts.

(b) Seating – Seating establishments are classified as those public food service establishments that provide and maintain accommodations for consumption of food on the premises of the establishment or under the control of the establishment. The operator of the establishment is responsible for providing the number of seats available to the public to the division prior to licensing. Prior to making a~~A~~ny changes in the number of seats provided which may affect the license fee, ~~the Florida Clean Indoor Air Act,~~ fire safety, or the wastewater disposal system, the operator must report the change ~~bathroom requirements or any other sanitation and safety requirements provided in law or rule, shall be reported immediately~~ to the division by submitting DBPR Form HR 5021-103, SEATING CHANGE EVALUATION (https://www.flrules.org/Gateway/reference.asp?No=Ref-00895), incorporated herein by reference and effective 2008 October 22, or any document obtained from the local authorities having jurisdiction that provides proof the operator obtained approval for the change. A change in the number of seats is not valid until approved by the division. License fees related to a seating change are not due until the license is renewed, unless the seating change is part of a license application ~~by the operator~~.

(c) Plan Reviews ~~and Variances~~.

1. The operator of each public food service establishment to be newly constructed, remodeled, converted, or reopened after being out of business for more than 12 months shall submit properly prepared facility plans and specifications to the division for review and approval in accordance with the provisions of Chapter 509, F.S., and Rule Chapters 61C-1 and 61C-4, F.A.C. Such plans must be approved by the division as meeting the sanitation and safety requirements provided in law prior to ~~construction, remodeling, conversion,~~ scheduling of an opening inspection and licensing. For remodeling, plan review submittal is ~~shall~~ not ~~be~~ required if the division can otherwise determine that the intended remodeling will not have an impact on ~~the Florida Clean Indoor Air Act, fire safety, bathroom requirements or~~ any ~~other~~ sanitation and safety requirements provided in law or rule. Plan review is not required for a~~A~~pplications for change of ownership ~~shall not require plan review~~ when no interruption in operation or no change to the establishment~~, construction, remodeling or conversion~~ occurs. Plan reviews for additional ~~vending machines and~~ theme park food carts are ~~shall~~ not ~~be~~ required if such units have been previously reviewed and approved and have no modifications from the originally approved model.

2. The plans and specifications ~~specification~~ shall indicate the general operation of the establishment;~~,~~ the intended menu items; location of employee and public bathrooms; ~~cuisine concept~~, proposed layout, including all work, guest, and employee areas and storeage facilities; ~~arrangement, mechanical plans, and~~ construction finishes ~~materials~~ of work areas;~~,~~ and equipment location, design and installation, including the type ~~and model~~ of proposed fixed equipment and facilities. Plans and specifications must be submitted by the owner, prospective operator or their designated representative along with DBPR HR-7005 ~~BPR Form 21-010~~, APPLICATION FOR PLAN REVIEW (https://www.flrules.org/Gateway/reference.asp?No=Ref-01516), incorporated be reference herein and effective 2011 August 22, or DBPR HR-7030, APPLICATION FOR PUBLIC FOOD SERVICE ESTABLISHMENT LICENSE WITH PLAN REVIEW. Plans and specifications ~~or~~ for mobile food dispensing vehicles~~,~~ must be submitted by the owner, prospective operator or their designated representative along with DBPR HR-7006 ~~BPR Form 21-017~~, MOBILE FOOD DISPENSING VEHICLE ~~VEHICLES~~ PLAN REVIEW APPLICATION (https://www.flrules.org/Gateway/reference.asp?No=Ref-01517), incorporated herein by reference and effective 2011 August 22 ~~9-25-96~~, or DBPR HR-7031, APPLICATION FOR MOBILE FOOD DISPENSING VEHICLE LICENSE WITH PLAN REVIEW. Instructions for filling in DBPR HR-7005 are provided in DBPR HR-7005i, INSTRUCTIONS FOR COMPLETING DBPR HR-7005 APPLICATION FOR PLAN REVIEW (https://www.flrules.org/Gateway/reference.asp?No=Ref-01518), incorporated herein by reference and effective 2011 August 22. Instructions for filling in DBPR HR-7006 are provided in DBPR HR-7006i, INSTRUCTIONS FOR COMPLETING MOBILE FOOD DISPENSING VEHICLE PLAN REVIEW APPLICATION (https://www.flrules.org/Gateway/reference.asp?No=Ref-01519), incorporated herein by reference and effective 2011 August 22. ~~Copies of these forms may be obtained from any division office.~~ The division shall ~~review plans in the order in which they were received and shall~~ grant or deny approval of the plans in writing pursuant to the provisions of Chapter 120, F.S.

3. When the establishment's water source is a well or the sewer source is an onsite sewage treatment and disposal system, applicants for plan review must also submit the Department of Health's Interagency – DOH/DACS/DBPR Onsite Sewage (Septic) and Water Supply Evaluation, which is available with the division's application forms.

~~3. In accordance with Section 509.032(2)(c), F.S., the division shall grant variances from construction standards described by this rule in hardship cases. Hardship cases include circumstances when physical or structural limitations of the premises preclude compliance with the division's requirements or when the establishment conforms to classification as a historic property as described in Section 509.215(6)(a), F.S. It is the responsibility of the applicant to demonstrate the hardship to the division prior to approval of the variance request.~~

~~a. Each variance request shall be accompanied by the appropriate fee as described in Rule 61C-1.008, F.A.C., supportive materials and documents such as a copy of the establishment's license, construction plans and specifications for new or extensively remodeled establishments, and any other information necessary for rendering a decision. The burden of presenting pertinent and supportive facts shall be the responsibility of the applicant.~~

~~b. Emergency variance requests must be acted upon within 30 days of receipt by the division of all information necessary for the Advisory Council to determine the existence of a hardship.~~

~~c. All routine variance requests shall be acted upon at the next regularly scheduled Advisory Council meeting. A completed variance request form must be received by the division at least 10 business days prior to any scheduled Advisory Council meeting. The division shall make available to the public, through the division's district offices, a schedule of all Advisory Council meetings.~~

~~d. The Advisory Council shall review variance requests and recommend agency action to the director. Upon consideration of the merits of each variance request and the recommendations of the Advisory Council, the director or designee shall either grant a variance, as requested, or deny the variance request. The division shall enforce variance provisions and shall take administrative action to ensure compliance with the terms of a variance.~~

~~4. Whenever plans are disapproved or a variance request is denied, the division shall notify the applicant of their right to request a hearing on the matter. Notification shall be in writing and shall indicate that a hearing must be requested within 30 days of the applicant's receipt of notice. The division shall grant or deny a hearing request within 10 days of receipt. All hearings shall be conducted in accordance with the provisions of Chapter 120, F.S.~~

(d) A public food service establishment operating in conjunction with a public lodging establishment must obtain a separate public food service establishment license from ~~with~~ the division, unless the only food served at the public lodging establishment is packaged or prepackaged as defined in Rule 61C-1.001, F.A.C. In such cases, the establishment which prepares the food is subject to the licensing provisions of this chapter, unless otherwise exempt.

(6) Renewal – The licensee is responsible for renewing ~~It is the responsibility of the licensee to renew~~ the license prior to the expiration date. The department provides ~~division makes available~~ to all licensees an application for license renewal ~~BPR form 21-021, APPLICATION FOR LICENSE RENEWAL, incorporated herein by reference and effective 3-31-94~~, which contains all information required by law to

renew the license. Any public lodging establishment or public food service establishment operating on an expired license is deemed to be operating without a license, and subject to the penalties provided for this offense in law and rule. Annual renewal dates for all establishments are determined by district and county ~~in the counties indicated are~~ as follows:

(a) through (g) No change.

(7) The division shall issue a license~~, which is BPR form 21-022, PUBLIC LODGING AND FOOD SERVICE LICENSE, incorporated herein by reference and effective 9-25-96,~~ to each public lodging establishment and public food service establishment which has satisfied the requirements of Chapter 509, F.S., and this chapter upon initial licensing and annual renewal. In addition to the license, the division shall issue a license decal~~, which is BPR form 21-023, LICENSE DECAL, incorporated herein by reference and effective 9-25-96,~~ to each mobile food dispensing vehicle, theme park food cart and vending machine, which must be prominently displayed and affixed to the vehicle, cart or machine. ~~Copies of these forms may be obtained by written request to the Division of Hotels and Restaurants, 1940 North Monroe Street, Tallahassee, Florida 32399-1015.~~

(8) General Inspection Requirements.

(a) Division personnel shall inspect all public lodging establishments as often as necessary for enforcement of the provisions of law and rule and protection of the public's health, safety and welfare. The result of each inspection shall be recorded on DBPR Form HR-5022-014, LODGING INSPECTION REPORT (https://www.flrules.org/Gateway/eference.asp?No=Ref-00935) ~~BPR form 22-014, LODGING INSPECTION REPORT~~, incorporated herein by reference and effective 2009 December 3 ~~9-25-96~~, a legible copy of which shall be provided to the operator. ~~Copies of this form may be obtained from any division office.~~

(b) Division personnel shall inspect all public food service establishments and other places where food is served to or prepared for service to the public as often as necessary for enforcement of the provisions of law and rule and protection of the public's health, safety and welfare. The result of each inspection shall be recorded on DBPR Form HR-5022-015, FOOD SERVICE INSPECTION REPORT (https://www.flrules.org/Gateway/reference.asp?No=Ref-00936) ~~BPR form 22-015, FOOD SERVICE INSPECTION REPORT~~, incorporated herein by reference and effective 2009 October 1 ~~9-25-96~~, a legible copy of which shall be provided to the operator. ~~Copies of this form may be obtained from any division office.~~ Persons operating a public food service establishment shall permit division personnel right of entry during operating hours to observe food preparation and service, and if necessary examine records of the establishment to obtain pertinent information pertaining to food and supplies purchased, received or used.

(c) through (d) No change.

(9) Obtaining forms. All forms incorporated in this section are available from the Division of Hotels and Restaurants internet website www.MyFloridaLicense.com/dbpr/hr; by e-mail to call.center@dbpr.state.fl.us; by phone request to the department at (850)487-1395; or upon written request to the Division of Hotels and Restaurants, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-1014.

Rulemaking ~~Specific~~ Authority 509.032~~(2)(d), (6)~~, 509.241~~(1)~~ FS. Law Implemented 213.0535, 509.032~~(2)(a), (d), (e), (6)~~, 509.221, 509.241~~(1), (3)~~, 509.242, 509.251, 559.79~~(1)~~ FS. History–Amended 1-20-63, 9-19-63, 5-20-64, 2-23-66, 8-9-68, Revised 2-4-71, Amended 10-18-71, Repromulgated 12-18-74, Amended 9-1-83, 10-1-83, Formerly 7C-1.02, Amended 1-30-90, 12-31-90, 2-27-92, 6-15-92, Formerly 7C-1.002, Amended 3-31-94, 3-15-95, 10-9-95, 9-25-96, 5-11-98, 9-9-03, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Bill Veach, Director, Division of Hotels and Restaurants, Department of Business and Professional Regulation

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Ken Lawson, Secretary, Department of Business and Professional Regulation

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 13, 2012

DATE NOTICES OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 6, 2012 and June 8, 2012

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Division of Hotels and Restaurants

RULE NO.: RULE TITLE:

61C-1.008 License Fees

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to update the rule to reflect the deregulation of roominghouses by Chapter 2012-165, Laws of Florida, and correct subsection citations.

SUMMARY: The proposed rule removes roominghouse license fees and corrects subsection citations relating to license fee adjustments.

OTHER RULES INCORPORATING THIS RULE: None.

EFFECT ON THOSE OTHER RULES: N/A

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of $200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: the economic review conducted by the agency.

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: 509.032, 509.251 FS.

LAW IMPLEMENTED: 509.013, 509.032, 509.251, 509.302 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: Michelle Comingore, Operations Review Specialist, Division of Hotels and Restaurants, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399; (850)488-1133, Michelle.Comingore@dbpr.state.fl.us

THE FULL TEXT OF THE PROPOSED RULE IS:

61C-1.008 License Fees.

(1) through (2) No change.

(3) Amount of License Fee – Public Lodging Establishment. The license fee to conduct a public lodging establishment shall be in accordance with the following schedule exclusive of the categories of fee adjustments set forth in subsections ~~rule~~ 61C-1.008(1), (2) and (5)~~(3)~~, F.A.C.:

(a) through (d) No change.

~~(e) NONTRANSIENT ROOMING HOUSES.~~

~~NUMBER OF UNITS~~	~~BASIC FEE~~	~~INCREMENTAL UNIT FEE~~	~~HEP FEE~~	~~TOTAL FEE~~
~~4 OR LESS~~	~~0~~	~~0~~	~~0~~	~~0~~
~~5-25~~	~~$140~~	~~$20~~	~~$10~~	~~$170~~
~~26-50~~	~~$140~~	~~$35~~	~~$10~~	~~$185~~
~~51-100~~	~~$140~~	~~$50~~	~~$10~~	~~$200~~
~~101-200~~	~~$140~~	~~$75~~	~~$10~~	~~$225~~
~~201-300~~	~~$140~~	~~$105~~	~~$10~~	~~$255~~
~~301-400~~	~~$140~~	~~$135~~	~~$10~~	~~$285~~
~~401-500~~	~~$140~~	~~$160~~	~~$10~~	~~$310~~
~~OVER 500~~	~~$140~~	~~$190~~	~~$10~~	~~$340~~

(4) Amount of License Fee – Public Food Service Establishment. The license fee for a public food service establishment shall be in accordance with the following schedule exclusive of the categories of fee adjustments set forth in subsections ~~Rule~~ 61C-1.008(1), (2) and (5)~~(3)~~:

(a) through (c) No change.

(5) No change.

Rulemaking Authority 509.032, 509.251 FS. Law Implemented 509.013, 509.032, 509.251, 509.302 FS. History–New 7-31-79, Revised 9-1-80, Formerly 7C-1.08, Amended 5-10-89, 9-10-89, 10-31-89, 4-3-90, 12-31-90, 9-11-91, 2-27-92, 7-6-9, 8-23-92, 11-4-92, 4-4-93, Formerly 7C-1.008, Amended 9-20-93, 12-22-93, 6-29-95, 10-9-95, 9-25-96, 5-11-98, 9-21-00, 9-10-03, 1-18-12,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Bill Veach, Director, Division of Hotels and Restaurants, Department of Business and Professional Regulation

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Ken Lawson, Secretary, Department of Business and Professional Regulation

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 13, 2012

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 8, 2012

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Architecture and Interior Design

RULE NO.: RULE TITLE:

61G1-13.001 Experience Requirements

PURPOSE AND EFFECT: The Board proposes the rule amendment to update the requirements for meeting the diversified program of architectural experience pursuant to Section 481.211, F.S.

SUMMARY: The requirements for meeting the diversified program of architectural experience pursuant to Section 481.211, F.S. will be updated.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of $200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: During discussion of the economic impact of this rule

at its Board meeting, the Board, based upon the expertise and experience of its members, determined that a Statement of Estimated Regulatory Costs (SERC) was not necessary and that the rule will not require ratification by the Legislature. No person or interested party submitted additional information regarding the economic impact at that time.

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: 481.2055, 481.211 FS.

LAW IMPLEMENTED: 481.209(2)(b), 481.211 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: Anthony Spivey, Executive Director, Board of Architecture and Interior Design, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G1-13.001 Experience Requirements.

The requirements of Section 481.211, F.S. regarding the diversified program of architectural experience may be satisfied as follows:

(1) For applicants for initial licensure, pursuant to Section 481.209, F.S., or by endorsement, pursuant to Section 481.213(3)(a), F.S., completion of the Intern Development Program (IDP) through the National Council of Architectural Registration Boards (NCARB). ~~The diversified program of architectural experience required in Section 481.211, F.S., shall include training and experience under the direct supervision of an architect in the following areas of practice:~~

~~(a) Programming – Client Contact~~

~~(b) Site and Environmental Analysis~~

~~(c) Schematic Design~~

~~(d) Building Cost Analysis~~

~~(e) Code Research~~

~~(f) Design Development~~

~~(g) Construction Documents (graphics)~~

~~(h) Specifications and Material Research~~

~~(i) Documents Checking and Coordination~~

~~(j) Bidding Procedures~~

~~(k) Construction Phase – Office~~

~~(l) Construction Phase – Observation~~

~~(m) Office Procedures~~

(2) For applicants for licensure by endorsement, pursuant to Section 481.213(3)(b), F.S., ten (10) years of experience as a licensed architect in another NCARB jurisdiction. ~~An applicant engaged in a full time teaching position in an architectural program approved by the Board pursuant to Section 481.209(2)(b), F.S., shall receive credit, not to exceed one year, for the internship required in Section 481.209(2)(b), F.S. Notwithstanding the foregoing, no applicant may complete an internship without at least two (2) years of acceptable training in an architect's office (one year of which must be in the United States or Canada) as set forth in subsection 61G1-13.001(1) or Rule 61G1-13.0021, F.A.C.~~

Rulemaking ~~Specific~~ Authority 481.2055, 481.211 FS. Law Implemented ~~481.209(2)(b),~~ 481.211 FS. History–New 12-23-79, Amended 5-18-83, Formerly 21B-13.01, Amended 12-10-86, 1-3-93, Formerly 21B-13.001, Amended 7-14-05, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Architecture and Interior Design

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Architecture and Interior Design

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 17, 2012

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 29, 2012

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Accountancy

RULE NO.:	RULE TITLE:
61H1-29.003	Experience for Licensure by Endorsement

PURPOSE AND EFFECT: The Board proposes the rule amendment to incorporate the Verification of Work Experience form into the rule and to clarify language regarding experience.

SUMMARY: The Verification of Work Experience form will be incorporated into the rule. Language regarding experience will be clarified.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of $200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: During discussion of the economic impact of this rule at its Board meeting, the Board, based upon the expertise and experience of its members, determined that a Statement of Estimated Regulatory Costs (SERC) was not necessary and that the rule will not require ratification by the Legislature. No person or interested party submitted additional information regarding the economic impact at that time.

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: 473.304, 473.306, 473.308 FS.

LAW IMPLEMENTED: 455.217(7), 473.308 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: Veloria A. Kelly, Division Director, Board of Accountancy, 240 N.W. 76th Drive, Suite A, Gainesville, Florida 32607

THE FULL TEXT OF THE PROPOSED RULE IS:

61H1-29.003 Experience for Licensure by Endorsement.

(1) through (2) No change.

(3) Any applicant seeking licensure by endorsement under Section 473.308(8), F.S., must have experience that includes at least five years experience gained in industry, academia, or in the practice of public accounting while licensed as a Certified Public Accountant or Chartered Accountant in the practice of public accounting or as an auditor or accountant in a unit of federal, state, or local government provided that the position held meets the activity and verification ~~supervision~~ requirements set forth in Section 473.308(4)(a) ~~473.308(8)~~, F.S.

(4) No change.

(5) Documentation of the experience shall be made using the Verification of Work Experience form (DBPR Form CPA 32/Revised 07/01/2012), which is hereby incorporated by reference, a copy of which may be obtained from the Board office located at 240 N. W. 76th Drive, Suite A, Gainesville, FL 32607-6655.

Rulemaking Authority 473.304, 473.306, 473.308 FS. Law Implemented 455.217(7), 473.308 FS. History–New 4-24-88, Amended 6-12-88, Formerly 21A-29.003, Amended 2-12-98, 5-19-03, 1-31-05, 2-22-07, 11-18-07, 12-10-09,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Accountancy

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Accountancy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 2, 2012

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 29, 2012

DEPARTMENT OF ENVIRONMENTAL PROTECTION

RULE NO.: RULE TITLE:

62-304.330 Pensacola Bay Basin TMDLs

PURPOSE AND EFFECT: The purpose of the rule is to adopt Total Maximum Daily Loads (TMDLs), and their allocations, for fecal coliform in the Pensacola Bay Basin.

SUMMARY: These TMDLs address certain fecal coliform impairments in the Pensacola Bay Basin. Specifically, the TMDL rules being proposed for adoption are for the Blackwater River (Tidal), the East Bay River (Marine Portion), the Escambia River, Texar Bayou, Carpenter Creek, Turkey Creek, and the Yellow River. These waterbodies were verified as impaired using the methodology established in Chapter 62-303, F.A.C., Identification of Impaired Surface Waters. The methodology used to develop these TMDLs was the percent reduction method. This rulemaking has been given an OGC case number 12-1171.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of $200,000 in the aggregate within one year after the implementation of the rule. A SERC has been prepared by the agency.

Specifically SERCs have been prepared for the Black River (Tidal), the East Bay River (Marine Portion), the Escambia River, Texar Bayou, Carpenter Creek, and the Yellow River. While Section 120.541, F.S., does not necessitate the preparation of a SERC in such instance, the Department has chosen to prepare a SERC for these proposed TMDLs to assist in the determination of whether any costs are incurred as a result of the TMDL, and if so, how much. A SERC was not conducted for Turkey Creek because there are no regulated entities, including NPDES permitted wastewater and municipal stormwater facilities, located in the watershed. The adoption of these TMDLs will not adversely impact the local economy or competitiveness of businesses in the State of Florida.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: There are no regulated entities, including NPDES permitted wastewater and municipal stormwater facilities, located in the Turkey Creek watershed.

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: 403.061, 403.067 FS.

LAW IMPLEMENTED: 403.061, 403.062, 403.067 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: September 27, 2012, 1:30 p.m.

PLACE: Florida Department of Environmental Protection, Bob Martinez Center, 2600 Blair Stone Road, Room 609, Tallahassee, FL

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Ms. Pat Waters at (850)245-8449. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Jan Mandrup-Poulsen, Division of Environmental Assessment and Restoration, Bureau of Watershed Restoration, Mail Station 3555, Florida Department of Environmental Protection, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, telephone (850)245-8448

THE FULL TEXT OF THE PROPOSED RULE IS:

62-304.330 Pensacola Bay Basin TMDLs.

(1) Fecal Coliform TMDL for Bayou Chico, Jones Creek, Jackson Creek, Bayou Chico Beach and Sanders Beach. The Total Maximum Daily Load is 400 counts/100 ml and is allocated as follows:

(a)~~(1)~~ A Wasteload Allocation (WLA) for wastewater point sources is not applicable.

(b)~~(2)~~ The WLA ~~Wasteload Allocation~~ for discharges subject to the Department's National Pollutant Discharge Elimination System Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 1998 to 2005 period, will require a 61 percent reduction at sources contributing to exceedances of the criteria.

(c)~~(3)~~ The Load Allocation (LA) for nonpoint sources is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 1998 to 2005 period, will require a 61 percent reduction at sources contributing to exceedances of the criteria.

(d)~~(4)~~ The Margin of Safety is implicit.

(e)~~(5)~~ While the LA and WLA for fecal coliform have been expressed as the percent reductions needed to attain the applicable Class III criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-stream fecal concentration. However, it is not the intent of the TMDL to abate natural background conditions.

(2) The Blackwater River (Tidal) Fecal Coliform TMDL. The fecal coliform Total Maximum Daily Load for the Blackwater River (Tidal) is 400 counts/100 mL, and is allocated as follows:

(a) The WLA for the Milton Wastewater Treatment Facility (Permit Number FL0021903) is that the facility must meet its permit limits for fecal coliform.

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 2003 to 2011 period, will require a 7 percent reduction at sources contributing to exceedances of the criteria,

(c) The LA for nonpoint sources is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 2003 to 2011 period, will require a 7 percent reduction at sources contributing to exceedances of the criteria, and

(d) The Margin of Safety is implicit.

(e) While the LA and WLA for fecal coliform have been expressed as the percent reductions needed to attain the applicable Class III criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-stream fecal coliform concentrations. However, it is not the intent of these TMDLs to abate natural background conditions.

(3) The East Bay River (Marine Portion) Fecal Coliform TMDL. The TMDL for the East Bay River (Marine Portion) is 43 counts/100mL for fecal coliform, and is allocated as follows:

(a) The WLA for wastewater sources is not applicable,

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 2003 to 2011 period, will require a 92 percent reduction of sources contributing to exceedances of the criteria,

(c) The LA for nonpoint sources is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 2003 to 2011 period, will require a 92 percent reduction of sources contributing to exceedances of the criteria, and

(d) The Margin of Safety is implicit.

(e) While the LA and WLA for fecal coliform have been expressed as the percent reductions needed to attain the applicable Class II criteria, it is the combined reductions from

both anthropogenic point and nonpoint sources that will result in the required reduction of in-stream fecal concentration. However, it is not the intent of the TMDL to abate natural background conditions.

(4) The Escambia River Fecal Coliform TMDL. The TMDL for the Escambia River is 400 counts/100mL for fecal coliform, and is allocated as follows:

(a) The WLA for wastewater sources is not applicable,

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 2003 to 2011 period, will require a 5 percent reduction of sources contributing to exceedances of the criteria,

(c) The LA for nonpoint sources is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 2003 to 2011 period, will require a 5 percent reduction of sources contributing to exceedances of the criteria, and

(d) The Margin of Safety is implicit.

(e) While the LA and WLA for fecal coliform have been expressed as the percent reductions needed to attain the applicable Class III criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-stream fecal concentration. However, it is not the intent of the TMDL to abate natural background conditions.

(5) Texar Bayou Fecal Coliform TMDL. The TMDL for Texar Bayou is 400 counts/100mL for fecal coliform, and is allocated as follows:

(a) The WLA for wastewater sources is not applicable,

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 2003 to 2011 period, will require a 49 percent reduction of sources contributing to exceedances of the criteria,

(c) The LA for nonpoint sources is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 2003 to 2011 period, will require a 49 percent reduction of sources contributing to exceedances of the criteria, and

(d) The Margin of Safety is implicit.

(e) While the LA and WLA for fecal coliform have been expressed as the percent reductions needed to attain the applicable Class III criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-stream fecal concentration. However, it is not the intent of the TMDL to abate natural background conditions.

(6) Carpenter Creek Fecal Coliform TMDL. The TMDL for Carpenter Creek is 400 counts/100mL for fecal coliform, and is allocated as follows:

(a) The WLA for wastewater sources is not applicable,

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from 2006 and 2012, will require a 28 percent reduction of sources contributing to exceedances of the criteria,

(c) The LA for nonpoint sources is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from 2006 and 2012, will require a 28 percent reduction of sources contributing to exceedances of the criteria, and

(d) The Margin of Safety is implicit.

(e) While the LA and WLA for fecal coliform have been expressed as the percent reductions needed to attain the applicable Class III criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-stream fecal concentration. However, it is not the intent of the TMDL to abate natural background conditions.

(7) Turkey Creek Fecal Coliform TMDL. The TMDL for Turkey Creek is 400 counts/100mL for fecal coliform, and is allocated as follows:

(a) The WLA for wastewater sources is not applicable,

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is not applicable,

(c) The LA for nonpoint sources is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from 2006, 2007, and 2009, will require a 73 percent reduction of sources contributing to exceedances of the criteria, and

(d) The Margin of Safety is implicit.

(e) While the LA for fecal coliform have been expressed as the percent reductions needed to attain the applicable Class III criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-stream fecal concentration. However, it is not the intent of the TMDL to abate natural background conditions.

(8) Yellow River Fecal Coliform TMDL. The TMDL for the Yellow River is 400 counts/100mL for fecal coliform, and is allocated as follows:

(a) The WLA for wastewater sources is not applicable;

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 2003 to 2011 period, will require a 60 percent reduction of sources contributing to exceedances of the criteria,

(c) The LA for nonpoint sources is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 2003 to 2011 period, will require a 60 percent reduction of sources contributing to exceedances of the criteria, and

(d) The Margin of Safety is implicit.

(e) While the LA and WLA for fecal coliform have been expressed as the percent reductions needed to attain the applicable Class III criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-stream fecal concentration. However, it is not the intent of the TMDL to abate natural background conditions.

Rulemaking ~~Specific~~ Authority 403.061, 403.067 FS. Law Implemented 403.061, 403.062, 403.067 FS. History–New 6-3-08, Amended_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Drew Bartlett, Director, Division of Environmental Assessment and Restoration

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Herschel Vinyard Jr., Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 15, 2012

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 23, 2011

DEPARTMENT OF ENVIRONMENTAL PROTECTION

RULE NO.: RULE TITLE:
62-304.335 Perdido Bay Basin TMDLs

PURPOSE AND EFFECT: The purpose of the rule is to adopt a Total Maximum Daily Load (TMDL), and its allocations, for fecal coliform in the Perdido Bay Basin.

SUMMARY: The TMDL addresses a fecal coliform impairment in the Perdido Bay Basin. Specifically, the TMDL rule being proposed for adoption is for Brushy Creek. This waterbody was verified as impaired using the methodology established in Chapter 62-303, F.A.C., Identification of Impaired Surface Waters. The methodology used to develop the TMDL was the percent reduction method. This rulemaking has been given an OGC case number 12-1172.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of $200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: There are no regulated entities, including NPDES permitted wastewater and municipal stormwater facilities, located in the Brushy Creek watershed.

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: 403.061, 403.067 FS.

LAW IMPLEMENTED: 403.061, 403.062, 403.067 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: September 27, 2012, 1:30 p.m.

PLACE: Florida Department of Environmental Protection, Bob Martinez Center, 2600 Blair Stone Road, Room 609, Tallahassee, FL

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Ms. Pat Waters at (850)245-8449. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Jan Mandrup-Poulsen, Division of Environmental Assessment and Restoration, Bureau of Watershed Restoration, Mail Station 3555, Florida Department of Environmental Protection, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, telephone (850)245-8448

THE FULL TEXT OF THE PROPOSED RULE IS:

62-304.335 Perdido Bay Basin TMDLs.

(1) Fecal Coliform TMDL for Elevenmile Creek (US 90). The Total Maximum Daily Load is 400 counts/100 ml and is allocated as follows:

(a) The Wasteload Allocation (WLA) for wastewater point sources subject to the Department's National Pollutant Discharge Elimination System (NPDES) Permitting Program is to meet the Class III water quality criteria for fecal coliform in Chapter 62-302, F.A.C.,

(b) The WLA ~~Wasteload Allocation~~ for discharges subject to the Department's National Pollutant Discharge Elimination System Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 1972 to 2006 period, will require a 63 percent reduction at sources contributing to exceedances of the criteria,

(c) The Load Allocation (LA) for nonpoint sources is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 1972 to 2006 period, will require a 63 percent reduction at sources contributing to exceedances of the criteria,

(d) The Margin of Safety is implicit,

(e) While the LA and WLA for fecal coliform have been expressed as the percent reductions needed to attain the applicable Class III criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-stream fecal concentration. However, it is not the intent of the TMDL to abate natural background conditions.

(2) Fecal Coliform TMDL for Elevenmile Creek (State Road 297A). The Total Maximum Daily Load is 400 counts/100 ml and is allocated as follows:

(a) The WLA ~~Wasteload Allocation~~ for wastewater point sources subject to the Department's National Pollutant Discharge Elimination System Permitting Program is to meet the Class III water quality criteria for fecal coliform in Chapter 62-302, F.A.C.,

(b) The WLA ~~Wasteload Allocation~~ for discharges subject to the Department's National Pollutant Discharge Elimination System Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 1972 to 2006 period, will require a 66 percent reduction at sources contributing to exceedances of the criteria,

(c) The LA ~~Load Allocation~~ for nonpoint sources is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 1972 to 2006 period, will require a 66 percent reduction at sources contributing to exceedances of the criteria,

(d) The Margin of Safety is implicit,

(e) While the LA and WLA for fecal coliform have been expressed as the percent reductions needed to attain the applicable Class III criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-stream fecal concentration. However, it is not the intent of the TMDL to abate natural background conditions.

(3) Fecal Coliform TMDL for Tenmile Creek. The Total Maximum Daily Load for Fecal Coliforms for Tenmile Creek is 400 counts/100 ml and is allocated as follows:

(a) The WLA ~~A Wasteload Allocation~~ for wastewater point sources is not applicable,

(b) The WLA ~~Wasteload Allocation~~ for discharges subject to the Department's National Pollutant Discharge Elimination System Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 1972 to 2006 period, will require a 43 percent reduction at sources contributing to exceedances of the criteria,

(c) The LA ~~Load Allocation~~ for nonpoint sources is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 1972 to 2006 period, will require a 43 percent reduction at sources contributing to exceedances of the criteria,

(d) The Margin of Safety is implicit,

(e) While the LA and WLA for fecal coliform have been expressed as the percent reductions needed to attain the applicable Class III criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-stream fecal concentration. However, it is not the intent of the TMDL to abate natural background conditions.

(4) Fecal Coliform TMDL for Brushy Creek. The TMDL for Brushy Creek is 400 counts/100mL for fecal coliform, and is allocated as follows:

(a) The WLA for wastewater sources is not applicable,

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is not applicable,

(c) The LA for nonpoint sources is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 2004 to 2011 period, will require a 64 percent reduction of sources contributing to exceedances of the criteria, and

(d) The Margin of Safety is implicit.

(e) While the LA for fecal coliform has been expressed as the percent reductions needed to attain the applicable Class III criteria, it is the combined reductions from all anthropogenic sources that will result in the required reduction of in-stream fecal concentration. However, it is not the intent of the TMDL to abate natural background conditions.

Rulemaking ~~Specific~~ Authority 403.061, 403.067 FS. Law Implemented 403.061, 403.062, 403.067 FS. History–New 6-3-08, Amended_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Drew Bartlett, Director, Division of Environmental Assessment and Restoration

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Herschel Vinyard Jr., Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 15, 2012

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 23, 2011

DEPARTMENT OF ENVIRONMENTAL PROTECTION

RULE NO.: RULE TITLE:

62-304.435 Upper East Coast Basin TMDLs

PURPOSE AND EFFECT: The purpose of the rule is to adopt a Total Maximum Daily Load (TMDL), and its allocations, for fecal coliform in the Upper East Coast Basin.

SUMMARY: The TMDL addresses a fecal coliform impairment in the Upper East Coast Basin. Specifically, the TMDL rule being proposed for adoption is for Pellicer Creek. This waterbody was verified as impaired using the methodology established in Chapter 62-303, F.A.C., Identification of Impaired Surface Waters. The methodology used to develop the TMDL was the percent reduction method. This rulemaking has been given an OGC case number 12-1219.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of $200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: There are no regulated entities, including NPDES permitted wastewater and municipal stormwater facilities, located in the Pellicer Creek watershed.

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: 403.061, 403.067 FS.

LAW IMPLEMENTED: 403.061, 403.062, 403.067 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: September 27, 2012, 1:30 p.m.

PLACE: Florida Department of Environmental Protection, Bob Martinez Center, 2600 Blair Stone Road, Room 609, Tallahassee, FL

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Ms. Pat Waters at (850)245-8449. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Jan Mandrup-Poulsen, Division of Environmental Assessment and Restoration, Bureau of Watershed Restoration, Mail Station 3555, Florida Department of Environmental Protection, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, telephone (850)245-8448

THE FULL TEXT OF THE PROPOSED RULE IS:

62-304.435 Upper East Coast Basin TMDLs ~~Spruce Creek~~.

(1) Spruce Creek (Freshwater Segment). The Total Maximum Daily Load for the freshwater segment of Spruce Creek is 400 counts/100mL for fecal coliform, and is allocated as follows:

(a) The Wasteload Allocation (WLA) for discharges subject to the Department's National Pollutant Discharge Elimination System (NPDES) Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 1997 to 2005 period, will require a 53 percent reduction at sources contributing to exceedances of the criteria,

(b) The Load Allocation (LA) for nonpoint sources is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 1997 to 2005 period, will require a 53 percent reduction at sources contributing to exceedances of the criteria,

(c) The Margin of Safety is implicit,

(d) While the LA and WLA for fecal coliform have been expressed as the percent reductions needed to attain the applicable Class III criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-stream fecal concentration. However, it is not the intent of the TMDL to abate natural background conditions.

(2) Spruce Creek (Marine Segment). The Total Maximum Daily Load for the marine segment of Spruce Creek is based on achieving the Class 3 marine minimum dissolved oxygen criterion of 4.0 mg/L, and is allocated as follows:

(a) The WLA ~~Wasteload Allocation~~ for discharges subject to the Department's National Pollutant Discharge Elimination System Municipal Stormwater Permitting Program is a 25 percent reduction of current anthropogenic 5 day biochemical oxygen demand (BOD_5) loading, and a 27 percent reduction of current anthropogenic total phosphorus (TP) loading based on measured concentrations from the 1992 to 2005 period,

(b) The LA ~~Load Allocation~~ for nonpoint sources is a 25 percent reduction of current anthropogenic 5 day biochemical oxygen demand (BOD_5) loading, and a 27 percent reduction of current anthropogenic total phosphorus (TP) loading based on measured concentrations from the 1992 to 2005 period,

(c) The Margin of Safety is implicit.

(3) Fecal Coliform TMDL for Pellicer Creek. The TMDL for Pellicer Creek is 43 counts/100mL for fecal coliform, and is allocated as follows:

(a) The WLA for wastewater sources is not applicable,

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is not applicable,

(c) The LA for nonpoint sources is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from 2004, 2005, and 2009, will require a 94 percent reduction of sources contributing to exceedances of the criteria, and

(d) The Margin of Safety is implicit.

(e) While the LA for fecal coliform has been expressed as the percent reductions needed to attain the applicable Class II criteria, it is the combined reductions from all anthropogenic sources that will result in the required reduction of in-stream fecal concentration. However, it is not the intent of the TMDL to abate natural background conditions.

Rulemaking ~~Specific~~ Authority 403.061, 403.067 FS. Law Implemented 403.061, 403.062, 403.067 FS. History–New 6-3-08, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Drew Bartlett, Director, Division of Environmental Assessment and Restoration

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Herschel Vinyard Jr., Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 15, 2012

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 23, 2011

DEPARTMENT OF ENVIRONMENTAL PROTECTION

RULE NO.:	RULE TITLE:
62-304.645	Springs Coast Basin TMDLs

PURPOSE AND EFFECT: The purpose of the rule is to adopt Total Maximum Daily Loads (TMDLs), and their allocations, for fecal coliform in the Springs Coast Basin.

SUMMARY: These TMDLs address fecal coliform impairments in the Springs Coast Basin. Specifically, the TMDL rules being proposed for adoption are for the 34th Street Basin, Clam Bayou Drain, Clam Bayou (East Drainage), Clam Bayou Drain (Tidal), Cedar Creek (Tidal), Cedar Creek, Curlew Creek Freshwater Segment, McKay Creek Tidal, McKay Creek, and Pinellas Park Ditch No. 1 (Tidal Segment). These waterbodies were verified as impaired using the methodology established in Chapter 62-303, F.A.C., Identification of Impaired Surface Waters. The methodology used to develop these TMDLs was the percent reduction method. This rulemaking has been given an OGC case number 12-1387, which updates the OGC case number (08-2478) used for the rule in the June 22, 2012 workshop notice.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of $200,000 in the aggregate within one year after the implementation of the rule. A SERC has been prepared by the agency.

While Section 120.541, F.S., does not necessitate the preparation of a SERC in instances where the estimated costs are less than $200,000, the Department has chosen to prepare a SERC for all of these proposed TMDLs to assist in the determination of whether any costs are incurred as a result of the TMDL, and if so, how much. The adoption of these TMDLs will not adversely impact the local economy or competitiveness of businesses in the State of Florida.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: Any associated costs will not trip legislative ratification thresholds.

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: 403.061, 403.067 FS.

LAW IMPLEMENTED: 403.061, 403.062, 403.067 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: September 27, 2012, 1:30 p.m.

PLACE: Florida Department of Environmental Protection, Bob Martinez Center, 2600 Blair Stone Road, Room 609, Tallahassee, FL

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THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Jan Mandrup-Poulsen, Division of Environmental Assessment and Restoration, Bureau of Watershed Restoration, Mail Station 3555, Florida Department of Environmental Protection, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, telephone (850)245-8448

THE FULL TEXT OF THE PROPOSED RULE IS:

62-304.645 Springs Coast Basin TMDLs.

(1) Klosterman Bayou Run Tidal Segment. The Total Maximum Daily Load for Klosterman Bayou Run is 400 counts/100 ml for fecal coliform, and is allocated as follows:

(a) The Wasteload Allocation (WLA) for discharges subject to the Department's National Pollutant Discharge Elimination System (NPDES) Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 2005 to 2006 period, is a 52 percent reduction of current fecal coliform loading,

(b) The Load Allocation (LA) for nonpoint sources is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 2005 to 2006 period, is a 52 percent reduction of current fecal coliform loading, and

(c) The Margin of Safety is implicit.

(2) Saint Joes Creek Freshwater Segment. The Total Maximum Daily Loads for the Saint Joes Creek freshwater segment are established as follows: the Main Channel is a median of 4.1×10^{10} colonies/day for fecal coliform and the Miles Creek tributary is a median of 3.2×10^{10} colonies/day for fecal coliform, and are allocated as follows:

(a) The WLA ~~Wasteload Allocation~~ for discharges subject to the Department's NPDES ~~National Pollutant Discharge Elimination System~~ Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 2004 to 2006 period, is a 50 percent reduction of current fecal coliform loading to the Saint Joes Creek Main Channel and based on the measured concentrations from the 2005 to 2006 period, is a 57 percent reduction of fecal coliform loading to the Saint Joes Creek Miles Creek tributary,

(b) The LA ~~Load Allocation~~ for nonpoint sources is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 2004 to 2006 period is a 50 percent reduction of current fecal coliform loading to the Saint Joes Creek Main Channel and based on the measured concentrations from the 2005 to 2006 period, is a 57 percent reduction of fecal coliform loading to the Saint Joes Creek Miles Creek tributary,

(c) The Margin of Safety is implicit,

(d) While the LA ~~Load Allocation~~ and WLA ~~Wasteload Allocation~~ for fecal coliform have been expressed as the percent reductions needed to attain the applicable Class III criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-stream fecal coliform concentrations. However, it is not the intent of the TMDL to abate natural background conditions.

(3) 34th Street Basin Fecal Coliform TMDL. The fecal coliform Total Maximum Daily Load for the 34th Street Basin is 400 counts/100 mL, and is allocated as follows:

(a) The WLA for wastewater sources is not applicable,

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 2008 to 2011 period, will require a 98 percent reduction at sources contributing to exceedances of the criteria,

(c) The LA for nonpoint sources is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 2008 to 2011 period, will require a 98 percent reduction at sources contributing to exceedances of the criteria, and

(d) The Margin of Safety is implicit.

(e) While the LA and WLA for fecal coliform have been expressed as the percent reductions needed to attain the applicable Class III criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-stream fecal coliform concentrations. However, it is not the intent of these TMDLs to abate natural background conditions.

(4) Clam Bayou Drain Fecal Coliform TMDL. The TMDL for the Clam Bayou Drain is 400 counts/100mL for fecal coliform, and is allocated as follows:

(a) The WLA for wastewater sources is not applicable,

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on

the measured concentrations from the 2004 to 2011 period, will require a 86 percent reduction of sources contributing to exceedances of the criteria,

(c) The LA for nonpoint sources is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 2004 to 2011 period, will require a 86 percent reduction of sources contributing to exceedances of the criteria, and

(d) The Margin of Safety is implicit.

(e) While the LA and WLA for fecal coliform have been expressed as the percent reductions needed to attain the applicable Class III criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-stream fecal concentration. However, it is not the intent of the TMDL to abate natural background conditions.

(5) Clam Bayou (East Drainage) Fecal Coliform TMDL. The TMDL for the Clam Bayou (East Drainage) is 400 counts/100mL for fecal coliform, and is allocated as follows:

(a) The WLA for wastewater sources is not applicable,

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 2004 to 2011 period, will require a 95 percent reduction of sources contributing to exceedances of the criteria,

(c) The LA for nonpoint sources is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 2004 to 2011 period, will require a 95 percent reduction of sources contributing to exceedances of the criteria, and

(d) The Margin of Safety is implicit.

(e) While the LA and WLA for fecal coliform have been expressed as the percent reductions needed to attain the applicable Class III criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-stream fecal concentration. However, it is not the intent of the TMDL to abate natural background conditions.

(6) Clam Bayou Drain (Tidal) Fecal Coliform TMDL. The TMDL for the Clam Bayou Drain (Tidal) is 400 counts/100mL for fecal coliform, and is allocated as follows:

(a) The WLA for wastewater sources is not applicable,

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from 2010, will require a 90 percent reduction of sources contributing to exceedances of the criteria,

(c) The LA for nonpoint sources is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from 2010, will require a 90 percent reduction of sources contributing to exceedances of the criteria, and

(d) The Margin of Safety is implicit.

(e) While the LA and WLA for fecal coliform have been expressed as the percent reductions needed to attain the applicable Class III criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-stream fecal concentration. However, it is not the intent of the TMDL to abate natural background conditions.

(7) Cedar Creek (Tidal) Fecal Coliform TMDL. The TMDL for Cedar Creek (Tidal) is 400 counts/100mL for fecal coliform, and is allocated as follows:

(a) The WLA for wastewater sources is not applicable,

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 2004 to 2011 period, will require a 88 percent reduction of sources contributing to exceedances of the criteria,

(c) The LA for nonpoint sources is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 2004 to 2011 period, will require a 88 percent reduction of sources contributing to exceedances of the criteria, and

(d) The Margin of Safety is implicit.

(e) While the LA and WLA for fecal coliform have been expressed as the percent reductions needed to attain the applicable Class III criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-stream fecal concentration. However, it is not the intent of the TMDL to abate natural background conditions.

(8) Cedar Creek Fecal Coliform TMDL. The TMDL for Cedar Creek is 400 counts/100mL for fecal coliform, and is allocated as follows:

(a) The WLA for wastewater sources is not applicable,

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 2004 to 2010 period, will require a 87 percent reduction of sources contributing to exceedances of the criteria,

(c) The LA for nonpoint sources is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on

the measured concentrations from the 2004 to 2011 period, will require a 87 percent reduction of sources contributing to exceedances of the criteria, and

(d) The Margin of Safety is implicit.

(e) While the LA and WLA for fecal coliform have been expressed as the percent reductions needed to attain the applicable Class III criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-stream fecal concentration. However, it is not the intent of the TMDL to abate natural background conditions.

(9) Curlew Creek Freshwater Segment Fecal Coliform TMDL. The TMDL for the Curlew Creek Freshwater Segment is 400 counts/100mL for fecal coliform, and is allocated as follows:

(a) The WLA for the Mid-County Wastewater Treatment Plant (Permit Number FL0034789) is that the facility must meet its permit limit,

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 2004 to 2011 period, will require a 90 percent reduction of sources contributing to exceedances of the criteria,

(c) The LA for nonpoint sources is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 2004 to 2011 period, will require a 90 percent reduction of sources contributing to exceedances of the criteria, and

(d) The Margin of Safety is implicit.

(e) While the LA and WLA for fecal coliform have been expressed as the percent reductions needed to attain the applicable Class III criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-stream fecal concentration. However, it is not the intent of the TMDL to abate natural background conditions.

(10) McKay Creek (Tidal) Fecal Coliform TMDL. The TMDL for McKay Creek (Tidal) is 400 counts/100mL for fecal coliform, and is allocated as follows:

(a) The WLA for wastewater sources is not applicable,

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from 2004 and 2010, will require no reduction from the existing condition, but must continue to meet applicable water quality standards,

(c) The LA for nonpoint sources is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from 2004 and 2010, will require no reduction from the existing condition, and

(d) The Margin of Safety is implicit.

(e) While the LA and WLA for fecal coliform have been expressed as the percent reductions needed to attain the applicable Class III criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-stream fecal concentration. However, it is not the intent of the TMDL to abate natural background conditions.

(11) McKay Creek Fecal Coliform TMDL. The TMDL for McKay Creek is 400 counts/100mL for fecal coliform, and is allocated as follows:

(a) The WLA for wastewater sources is not applicable,

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 2005 to 2010 period, will require a 91 percent reduction of sources contributing to exceedances of the criteria,

(c) The LA for nonpoint sources is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from the 2005 and 2010 period, will require a 91 percent reduction of sources contributing to exceedances of the criteria, and

(d) The Margin of Safety is implicit.

(e) While the LA and WLA for fecal coliform have been expressed as the percent reductions needed to attain the applicable Class III criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-stream fecal concentration. However, it is not the intent of the TMDL to abate natural background conditions.

(12) Pinellas Park Ditch No. 1 (Tidal Segment) Fecal Coliform. The TMDL for Pinellas Park Ditch No. 1 (Tidal Segment) is 400 counts/100mL for fecal coliform, and is allocated as follows:

(a) The WLA for wastewater sources is not applicable,

(b) The WLA for discharges subject to the Department's NPDES Municipal Stormwater Permitting Program is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on the measured concentrations from 2004, 2006, and 2008, will require a 77 percent reduction of sources contributing to exceedances of the criteria,

(c) The LA for nonpoint sources is to address anthropogenic sources in the basin such that in-stream concentrations meet the fecal coliform criteria which, based on

the measured concentrations from 2004, 2006, and 2008, will require a 77 percent reduction of sources contributing to exceedances of the criteria, and

(d) The Margin of Safety is implicit.

(e) While the LA and WLA for fecal coliform have been expressed as the percent reductions needed to attain the applicable Class III criteria, it is the combined reductions from both anthropogenic point and nonpoint sources that will result in the required reduction of in-stream fecal concentration. However, it is not the intent of the TMDL to abate natural background conditions.

Rulemaking ~~Specific~~ Authority 403.061, 403.067 FS. Law Implemented 403.061, 403.062, 403.067 FS. History–New 6-3-08, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Drew Bartlett, Director, Division of Environmental Assessment and Restoration

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Herschel Vinyard Jr., Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 15, 2012

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 23, 2011

DEPARTMENT OF HEALTH

Board of Hearing Aid Specialists

RULE NO.:	RULE TITLE:
64B6-7.002	Guidelines for Disposition of Disciplinary Cases

PURPOSE AND EFFECT: The Board proposes the rule amendment to make the rule consistent with Sections 456.072(2)(d) and 456.072(1)(ll), F.S.

SUMMARY: The guidelines will be updated to make the rule consistent with Section 456.072, F.S.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of $200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: During discussion of the economic impact of this rule at its Board meeting, the Board, based upon the expertise and experience of its members, determined that a Statement of Estimated Regulatory Costs (SERC) was not necessary and that the rule will not require ratification by the Legislature. No person or interested party submitted additional information regarding the economic impact at that time.

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: 456.079 FS.

LAW IMPLEMENTED: 456.079 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: Sue Foster, Executive Director, Board of Hearing Aid Specialists, 4052 Bald Cypress Way, Bin #C08, Tallahassee, Florida 32399-3258

THE FULL TEXT OF THE PROPOSED RULE IS:

64B6-7.002 Guidelines for Disposition of Disciplinary Cases.

(1) No change.

(2) Violations and Range of Penalties. For applicants, all violations are sufficient for refusal to certify an application for licensure. For licensees or trainees, the imposition of probation as a penalty shall ordinarily require compliance with conditions such as restitution, continuing education and/or training, indirect or direct supervision by a Board-approved monitor, restrictions on practice, submission of reports, appearances before the Board, and/or hours of community service. As appropriate, such conditions of probation also shall be required following any period of suspension. In addition to any other discipline imposed, the Board shall assess the actual costs related to the investigation and prosecution of a case. In imposing discipline pursuant to Sections 120.57(1) and 120.57(2), F.S., the Board shall act in accordance with the following disciplinary guidelines and shall impose a penalty as authorized by Section 456.072(2), F.S., within the range corresponding to the violations set forth below. The verbal identification of offenses are descriptive only; the full language of each statutory provision cited must be consulted in order to determine the conduct included:

(a) through (ff) No change.

(gg) Section 456.072(1)(ll), F.S., Being convicted of, or entering a plea of guilty or nolo contendere to a crime related to health care fraud – If the crime is a felony under Chapter 409, F.S. chapter 817, 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396 the penalty shall be a minimum fine of $10,000 ~~$1000~~ and revocation. Otherwise the penalty range is from a minimum of a reprimand, six months probation and a fine of $10,000 ~~$5,000~~ to a maximum of revocation and a fine of $10,000. For a second offense, a fine of $10,000 and revocation.

(3) through (6) No change.

Rulemaking Authority 456.079 FS. Law Implemented 456.079 FS. History–New 2-11-87, Amended 2-16-89, Formerly 21JJ-7.005, Amended 8-18-93, 9-22-94, Formerly 61G9-7.005, Amended 11-11-02, 6-23-10, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Hearing Aid Specialists

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Hearing Aid Specialists

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 13, 2012

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 3, 2012

FINANCIAL SERVICES COMMISSION

OIR – Insurance Regulation

RULE NO.: RULE TITLE:

69O-157.018 Right to Return Policy – Free Look

PURPOSE AND EFFECT: Repeals Rule 69O-157.018, Florida Administrative Code.

SUMMARY: This rule requires individual long-term care insurers to give policyholders thirty days to examine a policy after its delivery and to return the policy for a full refund of premium if they are not satisfied with the policy for any reason. The rule also requires insurers to provide insureds with a notice of their right to return the policy within 30 days.

This rule substantially restates the language of Section 627.9407(8), Florida Statutes and is unnecessary. As a result, this rule should be repealed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of $200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: Agency personnel familiar with the subject matter of the rule repeal have performed an economic analysis of the rule repeal that shows that the rule repeal is unlikely to have an adverse impact on the State economy in excess of the criteria established in Section 120.541(2)(a), Florida Statutes.

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: 624.308(1), 627.9407(1) FS.

LAW IMPLEMENTED: 624.307(1), 627.9407(1), (7) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: October 3, 2012, 1:00 p.m.

PLACE: 142 Larson Building, 200 East Gaines Street, Tallahassee, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Debra Seymour, Office of Insurance Regulation, E-mail Debra.Seymour@floir.com. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Debra Seymour, Office of Insurance Regulation, E-mail Debra.Seymour@floir.com

THE FULL TEXT OF THE PROPOSED RULE IS:

69O-157.018 Right to Return Policy – Free Look.

Rulemaking ~~Specific~~ Authority 624.308(1), 627.9407(1) FS. Law Implemented 624.307(1), 627.9407(1), (7) FS. History–New 5-17-89, Formerly 4-81.018, 4-157.018, Repealed _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Debra Seymour, Office of Insurance Regulation, E-mail Debra.Seymour@floir.com

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: The Financial Services Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 7, 2012

FINANCIAL SERVICES COMMISSION

OIR – Insurance Regulation

RULE NO.: RULE TITLE:

69O-157.105 Refund of Premium

PURPOSE AND EFFECT: Repeals Rule 69O-157.105, Florida Administrative Code.

SUMMARY: This rule requires insurers that cancel an insurance policy to refund to the policyholder any unearned premium paid to the insurer.

This rule substantially restates the language of Section 627.6645(4), Florida Statutes and is unnecessary. As a result, this rule should be repealed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of $200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: Agency personnel familiar with the subject matter of the rule repeal have performed an economic analysis of the rule repeal that shows that the rule repeal is unlikely to have an adverse impact on the State economy in excess of the criteria established in Section 120.541(2)(a), Florida Statutes.

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: 624.308(1), 627.9701(1), (6), 627.9508 FS.

LAW IMPLEMENTED: 624.307(1), 627.6403, 627.6645, 627.9407 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: October 3, 2012, 1:00 p.m.

PLACE: 142 Larson Building, 200 East Gaines Street, Tallahassee, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Debra Seymour, Office of Insurance Regulation, E-mail Debra.Seymour@floir.com. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Debra Seymour, Office of Insurance Regulation, E-mail Debra.Seymour@floir.com

THE FULL TEXT OF THE PROPOSED RULE IS:

69O-157.105 Refund of Premium.

Rulemaking ~~Specific~~ Authority 624.308(1), 627.9407(1), (6), 627.9408 FS. Law Implemented 624.307(1), 627.6043, 627.6645, 627.9407 FS. History–New 1-13-03, Formerly 4-157.105, Repealed_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Debra Seymour, Office of Insurance Regulation, E-mail Debra.Seymour@floir.com

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: The Financial Services Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 7, 2012

FINANCIAL SERVICES COMMISSION

OIR – Insurance Regulation

RULE NO.:	RULE TITLE:
69O-185.005	Advertisement of Mortgage Insurance

PURPOSE AND EFFECT: Repeals Rule 69O-185.005, Florida Administrative Code.

SUMMARY: This rule prohibits insurers from insuring mortgages which are offered for sale to the public by advertisements that expressly or impliedly represent that the worth, value or safety of the mortgage investment arises by virtue of the proposed mortgage guaranty insurance rather than by virtue of the value of the underlying security or which stress the fact that the mortgage guarantee insurance is regulated by an agency of the State or Federal Government.

This rule substantially restates the language of Section 635.071(3), Florida Statutes and is unnecessary. As a result, this rule should be repealed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of $200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: Agency personnel familiar with the subject matter of the rule repeal have performed an economic analysis of the rule repeal that shows that the rule repeal is unlikely to have an adverse impact on the State economy in excess of the criteria established in Section 120.541(2)(a), Florida Statutes.

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: 635.081 FS.

LAW IMPLEMENTED: 635.071 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: October 3, 2012, 1:00 p.m.

PLACE: 142 Larson Building, 200 East Gaines Street, Tallahassee, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Debra Seymour, Office of Insurance Regulation, E-mail Debra.Seymour@floir.com. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Debra Seymour, Office of Insurance Regulation, E-mail Debra.Seymour@floir.com

THE FULL TEXT OF THE PROPOSED RULE IS:

69O-185.005 Advertisement of Mortgage Insurance.

Rulemaking ~~Specific~~ Authority 635.081 FS. Law Implemented 635.071 FS. History–Repromulgated 12-24-74, Formerly 4-2.09, 4-2.009, 4-185.005, Repealed_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Debra Seymour, Office of Insurance Regulation, E-mail Debra.Seymour@floir.com

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: The Financial Services Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 7, 2012

FINANCIAL SERVICES COMMISSION

OIR – Insurance Regulation

RULE NO.: RULE TITLE:

69O-196.008 Failure to Comply

PURPOSE AND EFFECT: Repeals Rule 69O-196.008, Florida Administrative Code.

SUMMARY: This rule states that the failure of a premium finance company to comply with the requirements of Part XV, Chapter 627, Florida Statutes, or any of the rules lawfully made pursuant thereto shall cause the premium finance company to be subject to action by the Office under Sections 627.832 and 627.833, Florida Statutes.

This rule substantially restates the language of Sections 627.832 and 627.833, Florida Statutes and is unnecessary. As a result, this rule should be repealed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of $200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: Agency personnel familiar with the subject matter of the rule repeal have performed an economic analysis of the rule repeal that shows that the rule repeal is unlikely to have an adverse impact on the State economy in excess of the criteria established in Section 120.541(2)(a), Florida Statutes.

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: 624.308 FS.

LAW IMPLEMENTED: 624.307(1), 627.832, 627.833 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: October 3, 2012, 1:00 p.m.

PLACE: 142 Larson Building, 200 East Gaines Street, Tallahassee, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Debra Seymour, Office of Insurance Regulation, E-mail Debra.Seymour@floir.com. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Debra Seymour, Office of Insurance Regulation, E-mail Debra.Seymour@floir.com

THE FULL TEXT OF THE PROPOSED RULE IS:

69O-196.008 Failure to Comply.

Rulemaking ~~Specific~~ Authority 624.308 FS. Law Implemented 624.307(1), 627.832, 627.833 FS. History–New 10-20-73, Repromulgated 12-24-74, Formerly 4-18.08, 4-18.008, Amended 7-27-95, Formerly 4-196.008, Repealed_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Debra Seymour, Office of Insurance Regulation, E-mail Debra.Seymour@floir.com.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: The Financial Services Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 7, 2012