

before the license can be placed into active status. The board at the time of the appearance shall impose upon the licensee reasonable conditions necessary to insure that the licensee can practice with the care and skill sufficient to protect the health, safety and welfare of the public.

~~(3) Any inactive licensee who elects active status is not eligible to elect to return to inactive status until the next licensure renewal period.~~

Specific Authority ~~456.036 455.711~~ FS. Law Implemented ~~456.036 455.711~~ FS. History—New 11-28-94, Amended 3-28-95, Formerly 59W-12.007, Amended _____.

DEPARTMENT OF HEALTH

Board of Osteopathic Medicine

RULE TITLE: RULE NO.:

Violations and Penalties 64B15-19.002

PURPOSE AND EFFECT: The purpose of the rule amendment is to update the rule text with regard to violations and penalties to be imposed by the Board.

SUBJECT AREA TO BE ADDRESSED: Violations and penalties.

SPECIFIC AUTHORITY: 456.079, 459.015(5) FS.

LAW IMPLEMENTED: 456.079 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: William Buckhalt, Executive Director, Board of Osteopathic Medicine/MQA, 2020 Capital Circle, S. E., Bin #C06, Tallahassee, Florida 32399-3256

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

FISH AND WILDLIFE CONSERVATION COMMISSION

Division of Law Enforcement

RULE TITLE: RULE NO.:

Derelict Vessels 68D-16

PURPOSE AND EFFECT: To consider improvements to the Derelict Vessel Removal Grant Program administered by the Fish and Wildlife Conservation Commission.

SUBJECT AREA TO BE ADDRESSED: Improvements to the Derelict Vessel Removal Grant Program administered by the Commission. This program, funded from the Coastal Protection Trust Fund, provides grants to coastal local governments for the removal of derelict vessels from the public waters of the state.

SPECIFIC AUTHORITY: 376.15 FS.

LAW IMPLEMENTED: 327.15, 823.11 FS.

A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 10:00 a.m., Tuesday, December 5, 2000

PLACE: FWC, Bureau of Marine Enforcement, District 2 Field Office, 3200 Northeast 151 Street, North Miami, Florida 33181

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Captain Alan S. Richard, Boating Law and Waterway Management Coordinator, Office of Enforcement Planning and Policy, 620 South Meridian Street, Tallahassee, Florida 32399-1600

A copy of the agenda may be obtained by contacting: Ms. Wendy Huszagh, Derelict Vessel Removal Grant Specialist, Boating Law and Waterway Management Section, Office of Enforcement Planning and Policy, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)488-5600.

Pursuant to the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop is asked to advise the agency at least 5 calendar days prior to the workshop by contacting Ms. Wendy Huszagh, Derelict Vessel Removal Grant Specialist, Boating Law and Waterway Management Section, Office of Enforcement Planning and Policy, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)488-5600. If you are hearing or speech impaired, please contact the agency by calling (850)488-9542.

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

**Section II
Proposed Rules**

DEPARTMENT OF BANKING AND FINANCE

Division of Accounting and Auditing

RULE TITLES: RULE NOS.:

Applicability 3A-5.001

Definitions 3A-5.002

Format of Schedule 3A-5.003

PURPOSE AND EFFECT: Chapter 2000-371, Laws of Florida, enacted the "Florida Single Audit Act" effective July 1, 2000. Section 215.97, F.S., requires the Comptroller to enact rules to provide guidance to state awarding agencies, recipients and subrecipients, and independent auditors of state financial assistance relating to the format of the Schedule of State Financial Assistance.

SUMMARY: The proposed rules set forth the format of the Schedule of State Financial Assistance to be used by state awarding agencies, recipients and subrecipients, and independent auditors of state financial assistance.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory cost has been prepared.

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

SPECIFIC AUTHORITY: 17.29, 215.97(4) FS.

LAW IMPLEMENTED: 215.97 FS.

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

TIME AND DATE: 10:00 a.m., December 11, 2000

PLACE: Room 434, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Bob Spooner, Chief, Bureau of Auditing, Room 448, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida 32399-0350, (850)410-9194

THE FULL TEXT OF THE PROPOSED RULES IS:

3A-5.001 Applicability.

These rules apply to state agencies awarding state financial assistance; recipients and subrecipients of state financial assistance; and to independent auditors of state financial assistance.

Specific Authority 215.97(4) FS. Law Implemented 215.97 FS. History—New

3A-5.002 Definitions.

(1) The terms in Section 215.97(2), F.S., shall have the same meanings when used in this Chapter and are hereby incorporated by reference.

(2) “State agency” or “agency” as defined in Section 216.011(1)(qg), F.S., shall have the same meanings when used in this Chapter and are hereby incorporated by reference.

Specific Authority 215.97(4) FS. Law Implemented 215.97 FS. History—New

3A-5.003 Format of Schedule.

(1) The Schedule of Expenditures of State Financial Assistance shall be included on the nonstate entity’s Schedule of Expenditures of Federal Awards and State Financial Assistance. If a nonstate entity does not receive federal financial assistance, a Schedule of Expenditures of State Financial Assistance shall be prepared. At a minimum, the Schedule of Expenditures of State Financial Assistance shall:

(a) List individual state projects by state agency, including identifying contract or grant number.

(b) For state financial assistance received as a subrecipient, the name of the pass-through entity and identifying contract/grant number assigned by the pass-through entity.

(c) Provide total state financial assistance expended for each individual state project and the CSFA number.

(d) Provide total state financial assistance transferred to subrecipients for each state project.

(e) Include as expenditures in the schedule, the value of state financial assistance expended in the form of non-cash assistance. The value of state non-cash assistance will be established in accordance with the rules of the Executive Office of the Governor.

(f) Include notes that describe the significant accounting policies used in preparing the schedule.

(2) The Schedule of Expenditures of Federal Awards and State Financial Assistance shall be in a format similar to the sample presented below:

NAME OF NONSTATE ENTITY				
SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND STATE FINANCIAL ASSISTANCE				
For the Fiscal Year Ended Month/Date/Year				
Federal/State Agency, Pass-through Entity	CFDA	Contract Grant	Expenditures (in thousands)	Transfers to Subrecipients (in thousands)
Federal Program/State Project	No.	No.		
FEDERAL AGENCY NAME				
Direct Programs				
XXXXX	XXXXX	XXXXX	XXXXX	XXXXX
Indirect Programs				
Passed through (insert name of entity)				
XXXXX	XXXXX	XXXXX	XXXXX	XXXXX
TOTAL FEDERAL AGENCY			XXXXX	XXXXX
TOTAL EXPENDITURES OF FEDERAL AWARDS			XXXXX	XXXXX
STATE AGENCY NAME				
Direct Projects				
XXXXX	XXXXX	XXXXX	XXXXX	XXXXX
Indirect Projects				
Passed through (insert name of entity)				
XXXXXX	XXXXX	XXXXX	XXXXX	XXXXX
TOTAL STATE AGENCY			XXXXX	XXXXX
TOTAL EXPENDITURES OF STATE FINANCIAL ASSISTANCE			XXXXX	XXXXX

Specific Authority 215.97(4) FS. Law Implemented 215.97 FS. History—New

NAME OF PERSON ORIGINATING PROPOSED RULE: Bob Spooner, Chief, Bureau of Auditing, Division of Accounting and Auditing

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Doug Darling, Director, Division of Accounting and Auditing

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 9, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 27, 2000

DEPARTMENT OF EDUCATION

Florida School for the Deaf and the Blind

RULE TITLE: Use of School Facilities and Equipment

RULE NO.: 6D-6.003

PURPOSE AND EFFECT: The purpose of this Rule is to increase the amount of personal liability and property damage insurance required from organizations requesting the use of FSDB facilities. Verification of insurance must be on file with FSDB earlier than previously stipulated.

SUMMARY: This proposed rule establishes an increase in the amount of insurance required by entities seeking to use the facilities of the Florida School for the Deaf and the Blind.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: None.

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

SPECIFIC AUTHORITY: 242.331(3) FS.

LAW IMPLEMENTED: 229.053(2)(i),(j), 230.23(4)(m), 242.331(4) FS.

A PUBLIC HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m., December 16, 2000

PLACE: Wilson Music Auditorium, FSDB Campus, St. Augustine, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Elaine F. Ocuto, Executive Assistant to the President, Florida School for the Deaf and the Blind, 207 N. San Marco Avenue, St. Augustine, FL 32084-2799

THE FULL TEXT OF THE PROPOSED RULE IS:

6D-6.003 Use of School Facilities and Equipment.

(1) Request for use of School facilities for educational, cultural, charitable and philanthropic purposes will be considered by the President's Administrative Management Team Advisory Committee, ~~consisting of the President, the two School Principals and the Business Manager~~, subject to the following conditions:

(a) All requests for use of campus facilities will only be considered if, in the opinion of the President's Administrative Management Team Advisory Committee, they are consistent with the best interests of the School, staff and students.

(b) Organizations granted use of FSDB facilities are required to obtain "not less than" ~~\$1,000,000.00~~ \$500,000.00 personal liability and ~~\$1,000,000.00~~ \$500,000.00 property damage insurance to cover persons and premises involved in the scheduled activity. FSDB will be named "additional insured" in the insurance of all organizations using FSDB facilities. Verification of this insurance must be on file in the FSDB Business Office at least ~~ten business~~ five days prior to the rental date.

(c) Charges for use of any campus facility will be based on flat rate usage fees and the prevailing hourly costs for utility fee recovery, services of custodial, technical, groundskeeping and security personnel, as well as additional flat rate fees per

use for equipment/supplies and normal repairs. These charges will preserve the high quality of FSDB service and support, as well as provide proper maintenance and operation of FSDB property. The Business Manager will recommend a schedule of determine charges through review of current fiscal data reflecting utility, labor and supply costs, for approval and adoption by the Board of Trustees on an annual basis.

~~(d) The Business Manager shall assess charges for use of any school facilities and equipment.~~

1. Charges may ~~shall~~ be waived if use is of obvious benefit to the educational, social, and health needs of the students or the School.

2. Levy charges for the recovery of costs for utilities, personnel services, security, materials, garbage removal, equipment, breakage and any other item or service directly connected with the use of the facility.

~~3. Levy charges specified in 2 above or when capital costs for normal wear and tear or indirect cost for processing, administration and any other service are required.~~

(d) Payment for facility usage shall require 50% of total fees due, along with the signed contract, immediately following the School's approval. The remaining balance of total fees is due at least 10 business days prior to the scheduled event. Non-payment by the scheduled due date, may result in the cancellation of the event.

(e) All arrangements regarding dates and purpose of use and appropriate fees will be coordinated by the Business Office, subject to the approval of the President's Administrative Management Team Advisory Committee.

(f) Only FSDB personnel will prepare, maintain, clean and repair FSDB's facilities and equipment. In addition, only FSDB personnel or approved contract personnel will operate campus HVAC, lighting and sound systems. All normal conditions of employment apply to FSDB personnel engaged in activities connected with facility rentals.

(g) All request for the use of FSDB facilities must be made to the FSDB Business office at least ~~30 business~~ 10 work days prior to the scheduled event. An estimate of Charges A Facility Rate Schedule and Agreement Form, Form FSDB R-1, effective 2-19-91, will be used to itemize charges and provide for signatures of consent to these charges by both lessor and lessee. All facility usage requests must be in writing and directed to Form FSDB R-1 can be obtained from the Business Manager, Florida School for the Deaf and the Blind, 207 North San Marco Avenue, St. Augustine, FL 32084. All written requests must describe, in detail the following:

1. Requested facility;
2. Hour(s) and date(s) of requested usage;
3. Type of use being requested;
4. Description of type of attendance expected for the event; and
5. Any benefits to the school.

It is understood that the School reserves the right, at anytime, to relocate or cancel an event, which may be deemed in the best interest of the School.

~~This form must be on file in the FSDB Business office at least 3 days prior to the event.~~

(2) through (5) No change.

Specific Authority 235.02, 242.331(3) FS. Law Implemented 235.02, 242.331(4), 273.01, 273.03 FS. History--New 12-19-74, Amended 4-17-85, 9-8-85, Formerly 6D-6.03, Amended 8-26-86, 2-19-91, 11-1-95, _____.
Cf. Facility Rate Schedule and Agreement Form ~~Form FSDB R-1.~~

NAME OF PERSON ORIGINATING PROPOSED RULE:
Elmer Dillingham, Jr., President, Florida School for the Deaf and the Blind

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Trustees of the Florida School for the Deaf and the Blind

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 28, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 29, 2000

DEPARTMENT OF TRANSPORTATION

RULE CHAPTER TITLE: Incorporation by Reference
RULE CHAPTER NO.: 14-15

RULE TITLE: Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways
RULE NO.: 14-15.002

PURPOSE AND EFFECT: The Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways, commonly referred to as the "Green Book," is being amended to include the following: definition of terms are alphabetized, the term "accident" is changed to "crashes," statutory language is inserted into the Introduction section, the revision date is added to the cover page, added figures and information are added to Chapter 9 on Bicycle Facilities, and a Chapter 14 is added for Design Exceptions.

Notice of Rule Development was published July 23, 1999. A Rule Development Workshop was scheduled and conducted on September 7, 1999. The manual was revised to reflect changes resulting from that Rule Development Workshop.

SUMMARY: The Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways is amended significantly from the 1989 edition which was previously adopted.

SPECIFIC AUTHORITY: 334.044(2), 336.045(1) FS.

LAW IMPLEMENTED: 336.045 FS.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Regulatory Cost has been prepared.

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

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m., December 20, 2000

PLACE: Suwannee Room, Room 250, Haydon Burns Building, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: James C. Myers, Administrative and Management Support Level IV, Florida Department of Transportation, Office of the General Counsel, 605 Suwannee Street, Mail Station 58, Tallahassee, Florida 32399-0458

THE FULL TEXT OF THE PROPOSED RULE IS:

14-15.002 Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways.

The Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways, 2001 ~~"Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways",~~ 1989 edition, is hereby incorporated by this rule and made a part of the rules of the Department of Transportation. Copies of this Department manual and any amendments thereto are available from the Department of Transportation, Maps and Publications Sales, 605 Suwannee Street, Mail Station 12, Tallahassee, Florida 32399-0450, at no more than cost pursuant to 120.53(2)(a), Florida Statutes.

Specific Authority 334.044(2), 336.045(1) FS. Law Implemented ~~120.53(2),~~ 336.045 FS. History--New 1-22-76, Amended 7-13-81, 6-24-84, Formerly 14-15.02, Amended 8-25-86, 11-29-89, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Billy L. Hattaway, State Roadway Design Engineer

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Thomas F. Barry, Jr., P.E., Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 2, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 23, 1999

DEPARTMENT OF CORRECTIONS

RULE TITLE: Probation and Parole – Use of Force
RULE NO.: 33-302.105

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to clarify the circumstances in which the use of force is appropriate in probation and parole settings and to establish procedures relating thereto.

SUMMARY: The proposed rule clarifies: situations in which use of force is permissible, the amount of force to be used, procedures relating to preparation of Use of Force Reports, review of Use of Force Reports, treatment of injuries sustained in incidents involving the use of force, and procedures relating to the use of chemical agents.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 944.09 FS.

LAW IMPLEMENTED: 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: Giselle Lysten Rivera, Office of the General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE FULL TEXT OF THE PROPOSED RULE IS:

33-302.105 Probation and Parole – Use of Force.

(1) Physical force shall not be used on offenders under supervision ~~or others~~ in the performance of duty unless required:

(a) ~~I~~n self-defense or the protection of others; or

(b) ~~T~~o prevent damage to property or

(c) ~~T~~o quell a disturbance; or

(d) ~~T~~o overcome physical resistance to a lawful command; or

(e) To prevent an offender from inflicting injury to herself or himself; or

(f) When assisting law enforcement personnel in the lawful performance of their duties.

(2) Physical force shall be employed only as a last resort when it reasonably appears that other alternatives are not feasible. When use of force is justified, only that amount and type of force that reasonably appears necessary to accomplish the authorized objective shall be used. Force shall not be used solely in response to verbal abuse that does not rise to the level of a physical altercation.

(3) Use of Force Reports.

(a) The employee engaged in the use of force shall immediately notify his or her supervisor of the incident. A Community Corrections Report of Force Used, Form DC3-210, An Assault Incident Report Form shall be prepared, dated and signed by the employee using force and submitted to the circuit correctional probation administrator within one five working days (Monday through Friday) following the of such an incident with copies provided to the division director of

community corrections. If more than one employee was involved in the initial use of force, the circuit administrator will appoint the highest ranking official involved, or the most senior employee, to complete the report. Form DC3-210 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, Office of the General Counsel, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. The effective date of this form is _____.

(b) Each additional employee involved in the use of force who agrees with the facts and circumstances as reported shall prepare a Community Corrections Report of Force Used – Staff Supplement, Form DC3-211, and shall submit it to the circuit administrator within one working day (Monday through Friday) following the incident. Form DC3-211 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, Office of the General Counsel, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. The effective date of this form is _____.

(c) Any employee involved in a use of force who disagrees with the facts and circumstances as reported on the Community Corrections Report of Force Used shall complete a separate Community Corrections Report of Force Used within one working day following the incident.

(d) Whenever an employee witnesses a use of force incident, but was not physically involved in the use of force, the employee shall enter a report on the Management Information Notification System (MINS) database.

(e) The circuit administrator shall review the report and any other statements from the offender or witnesses and process his or her recommendation on whether the appropriate level of force was used in the incident to the inspector general field office for review within five working days (Monday-Friday).

(f) The inspector general field office shall review all reports for accuracy and forward their findings to the Office of the Inspector General in central office within five working days (Monday through Friday).

(g) The Office of the Inspector General in central office shall either approve the action, or if disapproved, refer it for investigation.

(h) If the use of force is approved by the Office of the Inspector General, the original DC3-210 packet will be retained by the Office of the Inspector General and a copy will be returned to the circuit administrator for distribution. The circuit administrator's office will be responsible for distributing copies of the DC3-210 to the locations designated on the form.

(i) The Office of the Inspector General will retain any reports that are associated with incidents referred for a criminal investigation as part of a case file.

(j) When a use of force occurs, the servicing personnel office will complete the Use of Force Log, Form DC2-802, utilizing information from the DC3-210 and DC3-211. The

DC2-802 will be the only document maintained in the employee's personnel file tracking the use of force incident. Form DC2-802 is incorporated in Rule 33-602.210(8). The effective date of this form is 2-7-00.

(k) The inspector general shall notify the circuit administrator and regional director of any officer involved in three or more use of force incidents in a 12-month period. The regional director shall review the circumstances for possible reassignment of the officer.

(4) Staff or Offender Injury Sustained During Use of Force Incident.

(a) Medical attention for any injury sustained by staff during an incident involving the use of force shall be sought through Worker's Compensation, unless injuries warrant the summoning of emergency medical personnel.

(b) When safety is not jeopardized, the offender will be asked if any injury was sustained as soon as possible following a use of force incident. If the offender responds in the affirmative and the offender is in the custody of law enforcement, the correctional probation officer shall convey the reported injury to law enforcement. The officer shall document details of this reported injury in case notes, including the name of the law enforcement officer and any witnesses.

(c) If the offender is not in custody, the officer shall call emergency services for the offender as soon as possible, without jeopardizing the officer's safety. Documentation of contacts for medical services shall be included in the Community Corrections Report of Force Used.

(5)(2) Use of Handcuffs.

(a) Officers shall use handcuffs only in case of emergencies in the office involving the following: self-defense or to prevent injury to others or required in accordance with use of force procedures.

1. Self-defense or the protection of others; or
 2. To prevent damage to property; or
 3. To quell a disturbance; or
 4. To overcome physical resistance to a lawful command;
- or
5. To prevent an offender from inflicting injury to herself or himself; or
 6. When assisting law enforcement in the lawful performance of their duties.

(b) The handcuffs shall be maintained by the supervisor in an accessible location in the office.

(c) No employee will be permitted to use or access the handcuffs until he or she has completed the basic handcuff training provided by the department.

(d) In any case in which handcuffs are used, an accurate record shall be maintained as to the location and reason for use, and a factual description of the circumstances and the incident. This information shall be reflected on the Community

Corrections Report of Force Used, Form DC3-210. The officer who used the handcuffs shall complete the report within one working day (Monday through Friday) after the incident.

(6)(3) Use of chemical agents.

(a) Chemical agents shall be used only for self defense or defense of another and only after all other reasonable efforts to avoid confrontation with a disorderly person or persons posing an immediate threat of bodily harm to an officer have been exhausted.

(b) Chemical agents shall be used only by persons trained by instructors certified by the Florida Department of Law Enforcement, as certified instructors and shall be used only for authorized purposes as outlined in this rule. FDLE training shall be coordinated by the director of the Florida Corrections Academy. Officers shall receive training within 6 months after hire and shall receive retraining yearly. Training documentation shall be maintained in the employee's personnel file. Chemical agents shall be used only according to the principles taught by FDLE and only in situations authorized in this rule.

(c) Only those chemical agents containing oleoresin capsicum and that are non-flammable shall be approved for use. Chemical agents may be issued to correctional probation staff including clerical support staff who have received training pursuant to (6)(3)(b). Support staff may, upon request, be issued a chemical agent with less than two (2) ounces. Correctional probation staff who have received training may carry chemical agents upon their persons during working hours. If an employee has a question regarding chemical agents, he shall refer to the manufacturer's instructions or shall contact his supervisor.

(d) through (e) No change.

(f) The supervisor and circuit administrator shall be notified immediately following the use of chemical agents.

(g)(4) No change.

(h)(5) In any case in which chemical agents are used, an accurate record shall be maintained as to what type was used, how much was used, and the location and reason for use, and a factual description of the circumstances and the incident. This information shall be reflected on the Community Corrections Report of Force Used Assault Incident Report, Form DC3-210 DC4-954. The officer who used the chemical agent shall complete the report within one working day (Monday through Friday) 48 hours after the incident. This form is hereby incorporated by reference. A copy of the form may be obtained from the Probation and Parole Services Program Office, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. If forms are to be mailed, the request must be accompanied by a self-addressed stamped envelope. The effective date of this form is March 4, 1992.

(7) Report of Suspected Offender Abuse.

(a) Any employee who witnesses, or has reasonable cause to suspect, that an offender has been unlawfully abused will immediately prepare an independent report (not a Community Corrections Report of Force Used form) pursuant to s. 944.35(3)(d), F.S.

(b) The report or written communication shall be delivered to the Inspector General’s Office with a copy to the circuit administrator.

(c) If the Inspector General’s investigation finds that a violation of law occurred, the State Attorney within the circuit of that probation office shall be notified by the Office of the Inspector General.

Specific Authority 944.09 FS. Law Implemented 944.35 FS. History—New 5-28-86, Amended 8-6-90, 2-15-98, Formerly 33-24.017, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Tina Hayes

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Michael W. Moore, Secretary, Department of Corrections

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 26, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 5, 2000

DEPARTMENT OF CORRECTIONS

RULE TITLES:	RULE NOS.:
Inmate Discipline – Terminology and Definitions	33-601.302
Reporting Disciplinary Infractions	33-601.303
Preparation of Disciplinary Reports	33-601.304
Inmate Discipline – Investigation	33-601.305
Inmate Discipline – Use of Confidential Informants During Investigation	33-601.3055
Disciplinary Hearings	33-601.307
Disciplinary Team, Hearing Officer Findings and Action	33-601.308
Inmate Discipline – Review and Final Action	33-601.309
Inmate Discipline – Rehearings	33-601.310
Inmate Discipline – Miscellaneous Provisions	33-601.311
Inmate Discipline – Forms	33-601.313

PURPOSE AND EFFECT: The purpose and effect of the proposed rules is to provide definitions of applicable terms, establish forms relevant to inmate discipline, and clarify procedures relating to inmate discipline.

SUMMARY: The proposed rules clarify: titles, waivers, procedures relating to deliberations and hearings, procedures relating to inmates held in administrative confinement pending disciplinary hearings, procedures relating to actions which may be taken following a finding of guilt, and procedures relating to rehearings. The proposed rules also establish time limits for investigations and establish procedures relating to the use of confidential information in disciplinary proceedings.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 944.09, 944.091 FS.

LAW IMPLEMENTED: 20.315, 120.55, 944.09, 944.34, 944.719, 945.04, 945.091 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: Giselle Lylen Rivera, Office of the General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE FULL TEXT OF THE PROPOSED RULES IS:

(Substantial rewording of rule 33-601.302 follows. See Florida Administrative for present text.)

33-601.302 Inmate Discipline – Terminology and Definitions.

The following terms, as defined, shall be standard usage throughout the Department:

(1) Classification officer – as used herein, refers to any classification officer position, including senior classification officer and classification supervisor.

(2) Contact Card – refers to Form DC4-364A, a written log used to document aberrant behavior of an inmate. Correctional officers maintain this card in the inmate’s assigned dormitory.

(3) Corrective Consultation – A written reprimand for a violation of rules of such a minor nature that no disciplinary report is necessary.

(4) Department Head – The staff person in charge of a work unit at a correctional facility.

(5) Designating Authority – The employee assigned by the warden who shall review disciplinary reports prior to hearing to determine if the disciplinary report is in accordance with due process requirements and rules 33-601.301-601.314, and whether it shall be designated as minor or major as defined by 33-601.302(11) and (12).

(6) Disciplinary Hearing – The procedure used to provide administrative due process requirements for inmates charged with violating the rules of the Department.

(7) Disciplinary Report – A formal method of charging an inmate with a rule violation. The disciplinary report is an Offender Based Information System (OBIS) computer screen entry into the Automated Discipline and Integrated Offender System (ADIOS).

(8) Disciplinary Team – A team made up of at least two staff persons, one of whom shall be a correctional officer lieutenant or above who will be responsible for hearing disciplinary reports.

(9) Hearing Officer – An employee, who is of the rank of Lieutenant or higher, who will be responsible for hearing disciplinary reports designated as minor.

(10) Investigator – The staff member assigned to investigate infractions, conduct interviews and collect evidence relating to the disciplinary infraction.

(11) Major Violation – Any rule violation where the maximum penalty is 30 DC + 30 GT or greater, or where the maximum penalty is less than 30 DC + 30 GT and the designating authority has determined that based upon one or more of the criteria listed in 33-601.302(12), it is assigned to the disciplinary team as a major disciplinary report.

(12) Minor Violation – Any rule violation for which the maximum penalty that could be imposed is less than 30 days disciplinary confinement + 30 days loss of gain time shall be considered for assignment to the hearing officer as a minor disciplinary report based on:

(a) The nature and circumstances of the offense;

(b) The inmate's disciplinary history;

(c) The period of time that has elapsed since the inmate's last disciplinary report.

(13) Rehearing – A process to reconsider the disciplinary report due to discovery of an error at any time after a finding of guilt.

(14) Staff Assistant – An employee, appointed by the warden, whose name is placed on a list maintained by the disciplinary team and who is assigned by the team to assist the inmate. A staff assistant is not to take the position of an advocate or defense attorney. A staff assistant is assigned to an inmate under the following circumstances:

(a) To explain the charges or disciplinary procedures to the inmate.

(b) To assist the inmate when the disciplinary team determines that the inmate is illiterate or does not understand English.

(c) When the inmate has a disability that would hinder his or her ability to represent himself or herself.

(d) When the complexity of the issue makes it unlikely that the inmate will be able to properly represent himself.

(15) Shift Supervisor – The correctional officer in charge of security on any work shift.

(16) Witness – Any person having information relevant to facts in dispute of the case.

Specific Authority 944.09 FS. Law Implemented 20.315, 944.09 FS. History–New 3-12-84, Formerly 33-22.02, Amended 12-30-86, 10-1-95, Formerly 33-22.002, Amended 5-21-00, _____.

33-601.303 Reporting Disciplinary Infractions.

(1) When any employee or person supervising inmates witnesses an act or has reason to believe that an act has been committed by an inmate which is in violation of the rules or procedures of the Department and that employee determines that the infraction can be properly disposed of without a formal disciplinary report, the employee shall take the necessary action to resolve the matter. The employee may decide to reprimand the inmate verbally or in writing through use of Form DC6-117, Corrective Consultation of Inmate.

(a) A verbal reprimand is any employee's verbal counseling to the inmate designed to motivate the inmate to comply with, or to clarify the rules of prohibited conduct, departmental rules or procedures or institutional regulations. Verbal reprimands will be documented on the inmate's contact card, Form DC4-364A.

(b) If the employee decides to reprimand the inmate in writing, the employee shall issue the inmate a Corrective Consultation, Form DC6-117. Form DC6-117 is incorporated in rule 33-601.313. A copy of the corrective consultation will be provided to the inmate within twenty-four hours of the writing of the corrective consultation and a copy will be placed in the inmate's institutional file.

(2) If the employee cannot resolve the matter through a verbal reprimand or corrective consultation, the employee shall consult with and obtain approval from his or her the employee's supervisor regarding preparation of a formal disciplinary report, ~~Form EF6-014~~ unless the employee is at the department head level or correctional officer lieutenant level or above.

(3) When it appears that laws of the state have been violated, the Office of the Inspector General shall be notified, who will in turn contact the State Attorney when deemed appropriate shall be notified. If the State Attorney decides to prosecute, his office shall be consulted as to the suitability of disciplinary action being taken by the institution prior to the prosecution being concluded.

(a) through (c) No change.

Specific Authority 944.09 FS. Law Implemented 20.315, 944.09, 944.34, 945.04 FS. History–New 3-12-84, Formerly 33-22.04, Amended 12-30-86, 10-1-95, Formerly 33-22.004, Amended 5-21-00, _____.

33-601.304 Preparation of Disciplinary Reports.

(1) through (2)(h) No change.

(3) The completed disciplinary report shall be turned in to the shift supervisor.

Specific Authority 944.09 FS. Law Implemented 20.315, 944.09, 944.34, 945.04 FS. History–New 3-12-84, Formerly 33-22.05, Amended 12-30-86, 10-1-95, Formerly 33-22.005, Amended 5-21-00, _____.

33-601.305 Inmate Discipline – Investigation.

The investigating officer shall initiate the investigation of the infraction within 24 hours of the writing after receipt of the disciplinary report. The investigating officer is responsible for the following:

(1) through (2)(a) No change.

(b) Ensuring that the inmate has been provided a written copy of the charges.

(b) through (d) renumbered (c) through (e) No change.

(f) Completing and obtaining the inmate's signature on the Witness Disposition, Form DC6-112B. Form DC6-112B is incorporated by reference in Rule 33-601.313.

(3) Interviewing additional persons who may have information pertaining to the infraction, including those who are listed in the statement of facts or specifically referenced by the charging staff person or specifically identified by the charged inmate who may have information pertaining to the infraction.

(4) Recording the results of the investigation on the Disciplinary Investigative Report, Form DC6-112A. Form DC6-112A is incorporated by reference in Rule 33-601.313.

Specific Authority 944.09 FS. Law Implemented 20.315, 944.09, 944.34, 945.04 FS. History—New 10-1-95, Formerly 33-22.0055, Amended 5-21-00,

33-601.3055 Inmate Discipline – Use of Confidential Informants During Investigation.

The investigator shall interview the informant and obtain a statement of the incident in question. This information shall be recorded by the investigator in the disciplinary investigative report. The investigator shall also document whether the informant has direct or indirect knowledge of the case, whether the informant has provided information in the past, and whether the information has been reliable, unreliable, or both. If the informant has allegedly provided confidential information in the past, the investigator will document to whom and confirm with the staff member in the disciplinary investigative report. The investigator will document only the informant's social security number for identification purposes on the witness disposition form after the charged inmate reviews and signs the form.

Specific Authority 944.09 FS. Law Implemented 20.315, 944.09, 944.34, 945.04 FS. History—New

33-601.307 Disciplinary Hearings.

(1)(a) No hearing shall commence prior to 24 hours following the delivery of the charges except when the inmate's release date does not allow time for such notice or the inmate waives the 24 hour period. In such cases, an explanation shall be provided in the basis of findings section of the disciplinary report. The inmate may waive the 24-hour waiting period. In such cases, a waiver must be signed by the inmate, witnessed by an employee, and copies attached to each copy of the disciplinary report. Form DC6-112D, 24 Hour/Refusal to

Appear Waiver, shall be used for this purpose. The disciplinary team or hearing officer shall provide an explanation in the basis of findings section whenever the waiver process is utilized. Form DC6-112D is incorporated in Rule 33-601.313.

(b) through (f) No change.

(g) If the inmate pleads "guilty," no further evidence needs to be heard. If the inmate pleads "not guilty," evidence is to be presented, including witness statement forms obtained from witnesses. ~~The chairman of the disciplinary team or the hearing officer may determine that the source of certain information or the information itself should not be revealed to the inmate when the disclosure would endanger the safety or well-being of another person or affect institutional security and order. If a witness statement is not read, the reason(s) shall be documented in the witness disposition form.~~ If other evidence is not revealed to the inmate, the reason(s) shall be documented in the basis of findings section of the disciplinary report. The inmate may make any closing statement, written or verbal, concerning the infraction for consideration by the hearing officer or disciplinary team. In the event the inmate refuses to enter a plea, it shall be treated as a "not guilty" plea insofar as hearing procedures are concerned. A "no contest" plea shall be handled as a guilty plea.

~~(h) During disciplinary team deliberations, only the team, employees being trained, and others whom the warden, chief of security, or correctional probation supervisor have previously authorized to be present and have determined will not disrupt the hearing and will benefit by observing the proceedings, shall be present.~~ The hearing officer or disciplinary team shall ensure the following in accordance with 33-601.308:

1. through (3)(g) No change.

(h) If the team or hearing officer utilizes confidential informant information during the hearing, the team or hearing officer shall determine whether the informant has direct or indirect knowledge of the events in question. The team or hearing officer shall consider the informant's reliability by analyzing the informant's past record for providing accurate or inaccurate information. The disciplinary team or hearing officer shall not accept assurance alone from an officer as to the authenticity of the informant's information. Hearsay and second-hand knowledge not corroborated by other evidence shall not be used to support a finding of guilt. Unless supported by other evidence, information provided by a single informant shall not be used to support a finding of guilt unless the information is especially compelling. The team or hearing officer shall document the information used to determine guilt and the reliability of the information in the basis of decision section of the Disciplinary Hearing Worksheet, Form DC6-112E. If disclosure of the information would endanger the informant or adversely affect institutional security and order, the team or hearing officer shall document the information and the reasons for not revealing it to the inmate in the comment section of the witness disposition form.

(h) through (i) renumbered (i) through (j) No change.

(k) The only persons present during disciplinary team deliberations shall be the team, employees being trained, and others whom the warden, the chief of security, or the classification supervisor have previously authorized to be present after having determined that these persons will not disrupt the hearing and will benefit by observing the proceedings.

(4) through (a) No change.

(b) If further review suggests a different charge should have been indicated or that additions, deletions or changes should be made in the statement of facts (change section narrative) then the originator shall rewrite the disciplinary report shall be rewritten, a copy of the new or corrected disciplinary report shall be delivered to the inmate, a new investigation shall be prepared and the disciplinary report shall be scheduled for a hearing. The original report shall not be processed. Notation of this occurrence shall be incorporated in the findings of the disciplinary team or hearing officer with an indication of the reason that the disciplinary report was rewritten and delayed.

(c) The inmate shall be informed of the final decision by the hearing officer or disciplinary team and the basis for that decision.

(d) The hearing officer's electronic signature and name or the electronic signature and names of all members of the disciplinary team shall be typed or printed on the Disciplinary Report, ~~Form EF6-011~~.

(5)(a) through (b) No change.

Specific Authority 944.09 FS. Law Implemented 20.315, 944.09, 944.34, 945.04 FS. History–New 3-12-84, Formerly 33-22.06, Amended 12-30-86, 10-1-95, 12-10-97, 5-19-98, Formerly 33-22.006, Amended 5-21-00, _____.

33-601.308 Disciplinary Team, Hearing Officer Findings and Action.

(1) The disciplinary team or hearing officer's findings shall enumerate the specific facts derived from the disciplinary report, the disciplinary investigative report investigation or the witness statements and what specific evidence was used in the disciplinary teams's or hearing officer's conclusion.

(2) through (c) No change.

(3) If the inmate has been held in administrative confinement pending the disciplinary hearing and the decision is not to impose disciplinary confinement as part of the disciplinary action, the disciplinary team or hearing officer shall notify the confinement supervisor who shall coordinate the release of the inmate from administrative confinement. If the confinement supervisor discovers other pending issues or actions, the institutional classification team will be required to immediately review the case.

~~(4)(3)~~ If the inmate is found guilty the disciplinary team shall impose any one or a combination of the below actions. The hearing officer's authority is limited to subparagraphs ~~(3)(a)~~ through ~~(3)(j)~~ below:

(a) through (j)1. No change.

2. Payment for damaged, destroyed or misappropriated property shall be at the replacement value and inmate or staff labor costs shall not be included. However, outside labor costs may be charged when the damage is the result of a deliberate destructive act. In such cases, the disciplinary team chairman or hearing officer shall prepare a memo, forward a copy to the service center and place a copy ~~documentation shall be placed~~ in the inmate file at the local institution detailing the cost involved. The total cost shall be reflected in the disciplinary report.

3. through (n) No change.

(o) Require inmates assigned to work release a community correctional centers to participate in the work release program to pay the cost of substance abuse analysis test(s) administered when the result(s) are positive.

(4) through (5) renumbered (5) through (6) No change.

Specific Authority 944.09, 945.091 FS. Law Implemented 20.315, 944.09, 945.04, 945.091 FS. History–New 3-12-84, Formerly 33-22.08, Amended 11-13-84, 12-30-86, 6-25-89, 7-17-90, 10-1-95, 11-25-98, 8-5-99, Formerly 33-22.008, Amended 5-21-00, _____.

33-601.309 Inmate Discipline – Review and Final Action.

(1) The c~~Chief~~ correctional officers at a community work release centers, or the senior staff person at a contract facility~~ies~~ shall review the disciplinary action and recommend approval, modification or disapproval to the warden.

(2) No change.

(3) The regional director of institutions acts as the final reviewing authority for all disciplinary reports in which the recommended penalty exceeds 365 days loss of gain time.

(4) The warden or regional director of institutions shall approve, modify downward or disapprove the recommended disciplinary action. The above mentioned or the d~~Deputy~~ Director of i~~Institutions~~ (classification) is authorized to direct a rehearing of the disciplinary report as provided for in rule 33-601.310. Review of each disciplinary report is the responsibility of the warden or regional director and cannot be delegated to other staff members.

(5) When the warden ~~or regional probation administrator~~ is the reporting officer of a disciplinary report the regional director of institutions shall act as reviewing and approving authority.

(6) No change.

Specific Authority 944.09 FS. Law Implemented 20.315, 944.09, 944.34, 944.719, 945.04 FS. History–New 3-12-84, Formerly 33-22.09, Amended 12-30-86, 6-20-91, 10-1-95, Formerly 33-22.009, Amended 5-21-00, _____.

33-601.310 Inmate Discipline – Rehearings.

(1) If an error is discovered at any time after an inmate has been found guilty of a disciplinary infraction, the warden, the facility administrator of a private facility, or the ~~d~~Deputy ~~d~~Director of ~~i~~nstitutions (classification) or designee is authorized to cause a rehearing to take place within 30 days of the discovery of the error or the receipt of a successful grievance or appeal. The individual ordering the rehearing shall note the specific reasons for the rehearing on the disciplinary report. A rehearing shall not be held following a finding of “not guilty”.

(2) The investigation may incorporate those portions of the previous investigation that are not affected by the need for the rehearing. The rehearing shall proceed according to the provisions of rule 33-601.307. No inmate is authorized to request a rehearing.

Specific Authority 944.09 FS. Law Implemented 20.315, 944.09, 944.34, 944.719, 945.04 FS. History–New 10-1-95, Formerly 33-22.0105, Amended 5-21-00,_____.

33-601.311 Inmate Discipline – Miscellaneous Provisions.

(1) through (2)(b) No change.

(c) If it becomes necessary to transfer an inmate who is serving a disciplinary penalty to another institution and the sending institutions feels this disciplinary penalty should continue at the receiving institution, the sending institution shall attach a copy of the disciplinary report to the inmate file, and attach a complete cover memorandum requesting that the penalty be continued at the receiving institution.

(3) Should disagreements occur between the facility administrator of a privately operated correctional institution and the classification staff pertaining to disciplinary matters, the regional director of institutions shall be responsible for resolution.

(4) No change.

Specific Authority 944.09 FS. Law Implemented 20.315, 944.09, 944.34, 944.719, 945.04 FS. History–New 3-12-84, Formerly 33-22.11, Amended 12-30-86, 5-24-90, 6-20-91, 10-1-95, Formerly 33-22.011, Amended 5-21-00,_____.

33-601.313 Inmate Discipline – Forms.

(1) through (b) No change.

(c) DC4-364A, Contact Card, effective date
~~EF6-011, Disciplinary Report, effective date 5-21-00.~~

(d) through (h) No change.

(2) Copies of these forms can be obtained from The Forms Control Administrator, Office of the General Counsel, 2601 Blair Stone Road, Tallahassee, Fla. 32399-2500. ~~If forms are to be mailed, the request must be accompanied by a self addressed stamped envelope.~~

Specific Authority 944.09 FS. Law Implemented 20.315, 120.55, 944.09, 944.34, 945.04 FS. History–New 10-1-95, Formerly 33-22.0117, Amended 5-21-00,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Richard Dugger

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Michael W. Moore, Secretary, Department of Corrections

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 20, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 18, 2000

DEPARTMENT OF CORRECTIONS

RULE TITLE: Inmate Substance Abuse Testing

RULE NO.: 33-602.2045

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to correct relevant titles, provide and update forms, and clarify procedures relating to inmate substance abuse testing.

SUMMARY: The proposed rule provides definitions of relevant terms, clarifies procedures for on-site testing of inmates by authorized personnel, clarifies procedures relative to confirmation testing, corrects titles, clarifies the titles of persons in authority who may order testing, and clarifies procedures relating to random drug testing.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 944.09, 944.472, 944.473 FS.

LAW IMPLEMENTED: 944.09, 944.472, 944.473 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: Giselle Lysten Rivera, Office of the General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE FULL TEXT OF THE PROPOSED RULE IS:

33-602.2045 Inmate Substance Abuse Testing.

~~The Office of the Inspector General Bureau of Security and Institutional Operations~~ shall be responsible for the development and implementation of the department’s substance abuse testing program.

(1) Definitions.

(a) Random Selection – A computerized random selection model utilized to obtain a sample of inmates to be tested for drugs or alcohol. ~~Every inmate in the custody of the department has an equal chance of being selected.~~

~~(b)~~ Collector – a correctional officer who has been trained and certified by certified testing personnel or by other personnel who have been certified on the proper procedures for collecting, handling, and disposing of urine specimens, and on the procedures for completing the chain of evidence form.

~~(b)(e)~~ Tester – a correctional officer who has been trained and certified by the manufacturer of the onsite testing device or certified training personnel, affiliated with the department, on the proper procedures for collecting urine specimens, including the completion and maintenance of the Chain of Custody Form, the handling and disposing of urine specimens, and the administration and interpretation of the on-site testing device contractor or a master trainer to operate the drug testing equipment, and to review and certify test results. All testing personnel must be approved by the Office of the Inspector General. The Chain of Custody Form is incorporated by reference in Section (3)(g) of this rule.

~~(c)(d)~~ No change.

~~(d)(e)~~ Chain of Custody evidence Form – the form used to document the identity and integrity of an inmate’s specimen from time of collection until the specimen is prepared for shipment to a designated outside laboratory for confirmation testing, through specimen transport, testing, and reporting of results. Form DC6-217 is used for this purpose. This form will be provided by the laboratory conducting confirmation tests on specimens that had a positive result on the on-site testing device.

~~(e)(f)~~ Test refusal – failure on the part of an inmate to fully comply with the department’s substance abuse testing procedures, which includes failing to provide a valid urine specimen, attempting to alter his or her urine specimen with adulterants, as established by an on-site specimen validity testing device, and using substitute urine in makeshift devices or objects. Any inmate who refuses to comply with the testing process or fails to provide a valid specimen, within the specified time frames as stipulated in section (3)(b)8. and (3)(b)10., shall be given a disciplinary report in accordance with rules 33-601.301-601.314.

~~(f)~~ Dry cell – refers to a secure cell without a water supply or one in which the water supply has been interrupted.

~~(g)~~ Bashful Bladder (Avoidant Paruresis) – is a documented medical condition that prevents a person from urinating in the presence of another person or in a public facility.

(2) through (2)(a) No change.

1. Inmates suspected of involvement with drugs or alcohol shall be subject to for-cause testing upon order of the warden ~~or~~ duty warden of the institution, or the correctional officer chief of the facility, or their designees, or the Office of the Inspector General the major of the community facility. An inmate should only ~~can~~ be tested for a maximum ~~minimum~~ of

four three drugs on a for-cause basis, unless extenuating circumstances exist. For-cause tests will only be conducted on inmates who meet the criteria outlined in 2.a. through c. below.

2. through 4. No change.

5. Upon approval of the warden, duty warden, correctional officer chief, or major their designees, or the Office of the Inspector General, collection and testing procedures shall be conducted immediately pursuant to this rule.

6. A copy of the Incident Report, Form DC6-210, shall be attached to the facility’s copy of the Chain of Custody evidence Form for positive specimens sent to the laboratory for confirmation testing and both documents shall be immediately forwarded to the testing facility. Form DC6-210 is incorporated in Rule 33-602.210. The Chain of Custody Form is incorporated by reference in section (3)(g) of this rule.

(b) Random Substance Abuse Testing. All correctional facilities shall receive on a weekly basis a list of the names and DC numbers of inmates generated through random selection for substance abuse testing. The list will be electronically transmitted from the Offender Base Information System to the secure printer of the warden of each major institution or the correctional officer chief of the correctional facility and to the major of each community correctional center. Any facility that does not have a secure printer will have their respective list printed to a secure printer at another facility as designated by the warden of the institution or correctional officer chief of the facility. The list is considered confidential and shall not be disseminated to inmates or non-essential staff members prior to testing. Each time an inmate's name appears on the random list, he or she shall be tested regardless of whether or not he or she has been previously tested.

(c) No change.

(3) Procedures.

(a) Chain of Custody evidence.

1. At a minimum, the Chain of Custody evidence Form, DC6-217, must include inmate offender and tester collector identification, ~~initials~~ initialed by both the inmate and the tester collector, date and time of collection, and type of test (i.e., random, for-cause or substance abuse ~~treatment~~ program participation), and identification of all individuals who had custody of the specimen from the time of collection until the specimen was prepared for shipment to the laboratory. Once the outside laboratory receives the specimen, it will become the laboratory’s responsibility to maintain a chain of custody throughout the testing process.

2. The Chain of Custody evidence Form, DC6-217 allows for any comments by the tester collector regarding any unusual observations. Any failure by the inmate to cooperate with the collection process, and the unusual nature (e.g., discolored urine or urine containing foreign objects) of any specimen provided shall be noted.

3. The ~~tester collector~~ shall ensure that all collected urine specimens, being sent to a designated outside laboratory for confirmation testing, are properly labeled and sealed with a security ~~evidence~~ label as provided on the Chain of Custody Form. The ~~tester collector~~ shall also ensure that the Chain of Custody evidence Form for all collected urine specimens is completed in accordance with procedures. ~~One form can be used to accompany multiple urine specimens collected and transported together.~~

4. If an inmate is unable or unwilling to enter his or her initials on the Chain of Custody evidence Form, the ~~tester collector~~ will make a notation in the comment section of the Chain of Custody evidence Form and leave the space blank. The ~~tester collector~~ will not under any circumstances sign the Chain of Custody evidence Form for an inmate.

~~5. An entry shall be made on the chain of evidence form, DC6-217, each time the urine specimens are transferred to the custody of another individual.~~

(b) Specimen Collection Procedures.

1. The ~~tester collector~~ shall ensure that all urine specimens are collected in accordance with procedures. All collections shall be performed under direct observation, where the ~~tester collector~~ directly observes the voiding of urine into the specimen cup. Direct observation may also be accomplished through use of mirrors strategically mounted in the collection rest room.

2. Under no circumstances is direct observation by a ~~tester collector~~ of the opposite sex from the inmate allowed.

3. The ~~tester collector~~ shall ensure that there is positive inmate identification prior to collecting the inmate's urine specimen. Sight, name, DC number, and examination of picture identification card shall provide positive identification of the inmate selected for drug testing.

4. The ~~tester collector~~ shall search the inmate to ensure that the inmate is not concealing any substances or materials that which could be used to alter or substitute his or her urine specimen. If any such substances or materials are found, the inmate will be charged with refusing to submit to a substance abuse test.

5. No change.

6. The ~~tester collector~~ shall give each inmate a closed specimen cup with an identification label containing the inmate's name and DC number prior to collecting the inmate's urine specimen. The ~~tester collector~~ shall ensure that the inmate acknowledges his or her correct identity information on the label of the specimen cup.

7. The inmate is expected to provide a minimum of 30 ml of urine. If the inmate provides less than this amount, the ~~tester collector~~ shall again attempt to collect an adequate specimen. If the inmate cannot immediately submit another urine specimen, then the procedure outlined in 8. below for a claimed inability to provide a urine specimen shall apply.

8. An inmate who has not provided an adulterated urine specimen and who indicates a claimed inability to provide an adequate urine specimen shall be detained in the presence of the ~~tester collector~~ or other designated person for a period not to exceed 1 hour to provide an adequate specimen. During that time, the inmate shall be allowed to consume one cup (8 oz.) of water or other beverage every 1/2 hour, not to exceed a total of 2 cups during this time period and an Acknowledgement of Beverage Form, DC1-823, shall be completed. If after the 1 hour period an inmate still fails to submit a valid adequate urine specimen, the inmate shall be considered to have refused to provide a urine specimen and a disciplinary report shall be prepared in accordance with rules 33-601.301-601.314. ~~The collector shall note such failure to provide a specimen on the chain of evidence form, DC6-217.~~ If an inmate claims an inability to urinate due to a "bashful bladder" condition, procedures set forth in (3)(c) shall apply. Forms DC1-823, Acknowledgement of Beverage Form, is incorporated by reference in Section (3)(g) of this rule.

9. After the inmate has voided a urine specimen into the cup, the tester will visually inspect the urine specimen to make sure that the specimen appears to be valid and unadulterated ~~collector shall direct the inmate to close the cup tightly before placing the cup into the collector's custody.~~ If the tester suspects that the specimen has been adulterated based upon observation, experience, or prior training, the tester will utilize the on-site specimen validity-testing device in front of the inmate following the manufacturer's testing protocols. If a positive result is received on the on-site specimen validity testing device indicating that the urine specimen was adulterated, the adulterated specimen will not be accepted as a valid specimen and will be discarded. The inmate will be required to submit a valid and unadulterated specimen. If the inmate cannot submit a valid and unadulterated specimen, then the procedure outlined below in section (3)(b)10. shall apply.

10. Inmates who have adulterated their urine specimen by ingesting substances, as established by the on-site testing device, shall be detained in the presence of the tester or placed in a "dry cell" for a period not to exceed two (2) hours. During that time, the inmate shall not be allowed to consume any water or other beverage. If, after the two hour period, an inmate still fails to submit an unadulterated valid urine specimen, the inmate shall be considered to have refused to provide a urine specimen and a disciplinary report shall be prepared in accordance with rules 33-601.301-601.314. The collector shall visually inspect all urine specimens placed in his or her custody to ensure that a valid, fresh, unadulterated urine specimen was provided. Urine specimens which are discovered to be obviously altered (e.g., discolored or containing foreign objects), will not be accepted as valid specimens. A suspect urine specimen will be discarded and the inmate will be required to submit another urine specimen. If the inmate

cannot submit a urine specimen, then the procedure outlined above for a claimed inability to provide a urine specimen shall apply.

11. Once the tester has determined that the urine specimen is valid and unadulterated, the tester shall direct the inmate where to place the urine specimen so that the on-site test can be conducted. The specimen must be in view of the inmate throughout the entire testing process.

12.44. If a urine specimen contains blood or appears to contain blood, the inmate who produced the specimen shall be referred immediately to the medical department for evaluation. If no valid reason exists for having blood in the specimen, the inmate will be required to provide another urine specimen. If the inmate cannot submit a urine specimen, then the procedure outlined above for a claimed inability to provide a urine specimen shall apply.

12. ~~Once the urine specimen has been securely closed by the inmate, the collector shall attach a security evidence label across the lid of the sample cup under the inmate's observation. The collector shall instruct the inmate to place his or her initials on the chain of evidence form verifying that the urine specimen was collected and sealed under the inmate's observation and that the specimen cup identification is correct.~~

(c) No change.

1. The inmate shall be informed that he or she will be placed in a dry holding cell until he or she can provide a valid urine specimen. The inmate shall be issued a hospital or other type privacy gown during the time that he or she is housed in the dry holding cell.

2. The inmate shall remove the contents of his or her pockets, and his or her shirt, shoes, pants and hat. The inmate shall be thoroughly searched prior to entering the dry holding cell to prevent him or her from using any adulterants such as bleach or cleanser to alter his or her urine specimen.

3. The ~~tester collector~~ shall give the inmate a closed specimen cup with an identification label containing the inmate's name and DC number. The ~~testing collecting~~ officer shall ensure that the inmate acknowledges his or her correct identity information on the label of the specimen cup.

4. The inmate shall be allowed to consume one cup (8 oz.) of water or other beverage every 1/2 hour, not to exceed a total of two cups during the time spent in the dry holding cell and an Acknowledgement of Beverage Form, DC1-823, shall be completed.

5. No change.

6. Upon receipt of the urine specimen ~~that has been securely closed by the inmate~~, the ~~tester collector~~ shall visually inspect the urine specimen to ensure it appears valid and unadulterated and the procedures outlined in (3)(d)1. for the testing of urine specimens shall be followed ~~attach a security evidence label across the lid of the sample cup under the inmate's observation. The inmate shall be instructed to place~~

his or her initials on the chain of evidence form verifying that the urine specimen was collected and that the specimen cup identification is correct.

(d) Testing of urine specimens.

1. Only certified testing personnel are authorized to utilize the on-site testing equipment ~~operate the drug testing equipment. For every on-site test conducted, regardless of purpose, the Inmate Scannable Drug Testing Control Card shall be filled out. The Inmate Scannable Drug Testing Control Card, is incorporated in section (3)(g) of this rule.~~

2. Certified testers shall follow collection procedures in section (3)(b) ~~examine each specimen prior to testing to ensure that the security evidence label is intact and that the specimen labeling and the chain of evidence form, DC6-217, is in proper order. In the event that the tamper-evident seal is damaged or the chain of evidence form is incomplete, the tester shall not test those urine specimens.~~

3. All on-site testing procedures shall be conducted in the presence of the inmate in accordance with the manufacturer's protocols. ~~Any specimens found to be positive upon initial testing shall be re-tested at the department testing facility that day with a fresh aliquot of the specimen prior to reporting test results. Specimens testing negative on the retest shall be reported as negative.~~

4. After the tester has taken a sample of urine from the specimen cup for the on-site testing device, the tester shall close the cup tightly. When a urine specimen's initial test results are positive, the tester shall follow the following procedures:

a. ~~After double-checking the positive specimen's identity, the tester shall pipette a second urine sample from the original urine specimen cup and conduct the urinalysis testing procedure again, testing each positive specimen only for those drugs found positive on the initial test. Batch runs of several initial positive specimens are authorized.~~

b. ~~If a specimen's results are negative on repeat testing, the tester shall document the test results on the random sample list and chain of custody form and dispose of the urine specimen and specimen cup.~~

e. ~~If the urine specimen's test results are again positive on repeat testing, the tester shall document the test results as positive on the random list and substance abuse list and chain of custody form.~~

5. Negative test results. The tester shall inform the inmate of the negative test results of the on-site testing device. The tester shall record all negative test results on the Inmate Scannable Drug Testing Control Card and the OBIS printout. The tester will then dispose of the remaining specimen, specimen cup and testing device. All forms shall be retained in accordance with state law and rules governing the retention of records.

6. Positive test results. The tester shall inform the inmate of the positive results of the on-site testing device. The inmate will then be given the opportunity to sign an Affidavit for Admission of Drug Use, DC1-824. Form DC1-824, Affidavit for Admission of Drug Use, is incorporated by reference in section (3)(g) of this rule.

a. If the inmate chooses to sign the Affidavit for Admission of Drug Use, DC1-824, the testing officer shall complete the affidavit form and have the inmate swear to its content, with the officer witnessing the inmate's signature. The inmate will be placed into administrative confinement and a disciplinary report written. The signed Affidavit for Admission of Drug Use, DC1-824, will be attached to the disciplinary report to be used as evidence in the disciplinary report hearing.

b. The testing officer will complete the Inmate Scannable Drug Testing Control Card indicating the positive results of the on-site testing device.

c. If the inmate does not sign the Affidavit for Admission of Drug Use, DC1-824, the following steps shall be taken:

i. Once the urine specimen has been securely closed by the tester, the tester shall attach a security seal from the Chain of Custody Form across the lid of the sample cup under the inmate's observation.

ii. The tester shall instruct the inmate to place his or her initials on the Chain of Custody Form verifying that the urine specimen was collected and sealed under the inmate's observation and that the specimen cup identification is correct.

iii. The tester shall then prepare the urine specimen for shipment, by a commercial carrier, to the designated outside laboratory for confirmation testing.

iv. Inmates with positive test results on the on-site testing device shall immediately be placed in administrative confinement pending investigation until results of the confirmation test are received.

7. Once received from the outside laboratory, the confirmation testing results will be entered onto the respective Inmate Scannable Drug Testing Control Card. If the confirmation testing results are positive, a copy of the results will be attached to the disciplinary report for use as evidence during the disciplinary hearing.

(e) ~~Other on-site testing device procedures of urine specimens. Community correctional centers are authorized to conduct on-site testing of urine specimens in lieu of transporting specimens to testing facilities for initial testing.~~

1. Due to product limitations, it may become necessary to utilize other noninvasive on-site testing devices for alcohol testing. In such instances, the certified tester will utilize the on-site testing device in the presence of the inmate following the manufacturer's testing protocols. If the initial result of the on-site testing device is positive, and the inmate declines to sign the Affidavit for Admission of Drug Use Form, DC1-824, then a urine specimen will be obtained from the inmate and sent to a designated outside laboratory for confirmation testing,

in accordance with the procedures outlined in section (3)(b), specimen collection procedures, and section (3)(d), testing of urine specimens.

1. Specimen collection procedures. Collectors shall follow collection procedures in (3)(b), with the exception that a security evidence label shall not be placed on the lid of the cup unless the specimen is found to be positive.

2. Testing procedures. All on-site testing procedures shall be conducted in the presence of the inmate in accordance with the manufacturer's protocols.

a. After the collector has taken a sample of urine from the specimen cup for the test, the inmate shall be directed to close the cup tightly.

b. After the collector has followed the steps specified in the manufacturer's protocols, the collector shall record the test results on the chain of evidence form.

3. Negative test results. The collector shall inform the inmate of the negative test results of the on-site test. The collector shall record all negative test results on the chain of evidence form and dispose of the remaining specimen, specimen cup and test device. All chain of custody forms shall be retained in accordance with state law and rules governing the retention of records.

4. Positive test results. The collector shall inform the inmate of the positive test results of the on-site test. The collector shall record the positive test results on the chain of custody form and prepare the urine specimen for transfer to the designated testing facility in accordance with (3)(b) for a verification urine drug test. Inmates with positive test results on the initial on-site test shall immediately be placed in administrative confinement pending investigation until results of the confirmation test are received. a second test is conducted pursuant to (3)(d) and results are obtained.

~~2.5.~~ All correctional facilities shall maintain a record of all reasonable suspicion substance abuse tests conducted. This record shall be maintained by the correctional officer chief or his designee. Form DC6-237, Reasonable Suspicion Testing Tracking Form, shall be utilized for this purpose. Form DC6-237, Reasonable Suspicion Testing Tracking Form, is incorporated by reference in section (3)(g) of this rule.

(f) Record keeping. Each testing facility shall keep all records pertaining to the testing program. This includes the drug testing list and results, Chain of Custody evidence documentation forms, laboratory confirmation reports, and inventory control logs hard copy instrument printouts of calibration and testing, results of performance on proficiency test specimens, results of performance on inspections, and instrument and other equipment maintenance records. All records shall be kept in accordance with state law and rules regarding retention of records.

(g) Forms. The following forms referenced in this rule are hereby incorporated by reference. Copies of these forms, unless otherwise indicated, may be obtained from the Forms

Control Administrator, Office of the General Counsel, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. ~~If forms are to be mailed, the request must be accompanied by a self-addressed, stamped envelope.~~

1. Form DC1-823, Acknowledgement of Beverage, effective date _____, Form DC6-217, Chain of Evidence, effective date February 8, 2000.

2. Form DC1-824 Affidavit for Admission of Drug Use, effective date _____.

3. Chain of Custody, effective date _____, is a vendor form that may be obtained directly from the vendor or through the Office of the Inspector General, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500.

4. Inmate Scannable Drug Testing Control Card, effective date _____, is a vendor form that may be obtained directly from the vendor or through the Office of the Inspector General, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500.

~~5.2.~~ Form DC6-237, Reasonable Suspicion Testing Tracking Form, effective date February 8, 2000.

Specific Authority 944.09, 944.472, 944.473 FS. Law Implemented 944.09, 944.472, 944.473 FS. History--New 2-8-00, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Fred Schuknecht
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Michael W. Moore, Secretary, Department of Corrections
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 1, 2000
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 22, 2000

**DEPARTMENT OF HEALTH
Board of Osteopathic Medicine**

RULE TITLE: Procedure
RULE NO.: 64B15-16.002

PURPOSE AND EFFECT: The purpose of the rule amendments is to impose further licensure requirements for applicants.

SUMMARY: The Board is amending subsection (3) of this rule to require applicants to document certain situations for having taken a non-AOA approved rotating internship.

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

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

SPECIFIC AUTHORITY: 459.005, 459.006(1), 459.007(1) FS.

LAW IMPLEMENTED: 459.006(1), 459.007(1) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: William Buckhalt, Executive Director, Board of Osteopathic Medicine/QA, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3256

THE FULL TEXT OF THE PROPOSED RULE IS:

64B15-16.002 Procedure.

(1) through (2) No change.

(3) When the AOA approves the ACGME residency's PGY-1 year for educational equivalency and denies the demonstration of good cause for having taken the ACGME residency, the Board of Osteopathic Medicine shall review the applicant's demonstration of good cause. Good cause for having taken a non-AOA approved rotating internship shall be:

(a) Personal limitation created by a documented physical or medical disability.

(b) Unique documented opportunity otherwise unavailable that meets a practice area of critical need.

(c) Documented legal ~~Legal~~ restriction which requires physical presence in a particular state or local area.

(d) No change.

(e) Previous program met all AOA requirements but, due to documented circumstances beyond the control of the applicant, was discontinued.

(f) through (g) No change.

(4) No change.

Specific Authority 459.006(1), 459.007(1), 459.005 FS. Law Implemented 459.006(1), 459.007(1) FS. History--New 7-15-96, Formerly 59W-16.002, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Osteopathic Medicine

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Osteopathic Medicine

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 15, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 18, 2000

**Section III
Notices of Changes, Corrections and
Withdrawals**

DEPARTMENT OF INSURANCE

Risidual markets and Special Risk Pools

RULE NO.:
4J-1.001

RULE TITLE:
FWUA Plan of Operation and
Articles of Agreement Adopted