

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: June 29, 2011

Section V Petitions and Dispositions Regarding Rule Variance or Waiver

DEPARTMENT OF LAW ENFORCEMENT

NOTICE IS HEREBY GIVEN that on July 1, 2011, the Criminal Justice Standards and Training Commission, received a petition for a permanent waiver of subsection 11B-27.00212(14), F.A.C., from DeLand Police Department. The rule requires officers to requalify with a firearm every two years on a course of fire mandated by Commission rule. The petition supports the requested waiver by stating that the officer for whom the waiver is sought did successfully complete the course of fire, however, the instructor who supervised the mandatory shoot was not fully certified as a CJSTC firearms instructor at the time of the officer's requalification. Petitioner states that the officer will suffer a substantial hardship if his certification is rendered inactive as a result of this situation. Petitioner further states that it would violate the principles of fairness to fail to recognize that the officer affected by this situation did successfully complete the requirement simply because the instructor failed to comply with all administrative aspects of firearms instructor certification.

A copy of the Petition for Variance or Waiver may be obtained by contacting: Grace A. Jaye, Assistant General Counsel, Florida Department of Law Enforcement, P. O. Box 1489, Tallahassee, FL 32302.

WATER MANAGEMENT DISTRICTS

NOTICE IS HEREBY GIVEN that on June 30, 2011, the South Florida Water Management District (District), received a petition for waiver from Florida Power & Light Company, Application No. 11-0630-1, for utilization of Works or Lands of the District known as the L-12 for a proposed access gate within the north right of way of Section 27, Township 43 South, Range 39 East, Palm Beach County. The petition seeks relief from subsections 40E-6.011(4), (6), Florida Administrative Code, which governs the placement of permanent or semi-permanent above-ground encroachments within 40 feet from the top of bank within Works or Lands of the District.

A copy of the Petition for Variance or Waiver may be obtained by contacting: Juli Russell at (561)682-6268 or e-mail: jurussel@sfwmd.gov. The District will accept comments concerning the petition for 14 days from the date of publication

of this notice. To be considered, comments must be received by the end of business on the 14th day at the South Florida Water Management District, 3301 Gun Club Road, MSC 1410, West Palm Beach, FL 33406, Attn: Juli Russell, Office of Counsel.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

The Department of Business and Professional Regulation, Division of Hotels and Restaurants, Bureau of Elevator Safety hereby gives notice on June 29, 2011, the Division issued an order. The Final Order was in response to a Petition for Variance from Blue Palm Management LLC, filed April 13, 2011, and advertised in Vol. 37, No. 18, of the Florida Administrative Weekly. No comments were received in response to the petition. The Final Order on the Petition for Variance grants the Petitioner a variance from Rule 3.11.3 ASME A17.3, 1996 edition, as adopted by Chapter 30, Section 3001.2 Florida Building Code, adopted by paragraph 61C-5.001(1)(a), Florida Administrative Code, that requires upgrading the elevators for firefighters' emergency operations until January 1, 2014, because the Petitioner has demonstrated that the purpose of the statute underlying the rule will be met and that Petitioner would suffer a substantial hardship if required to comply with this rule (VW 2011-114).

A copy of the Order may be obtained by contacting: Mark Boutin, Bureau of Elevator Safety, 1940 North Monroe Street, Tallahassee, Florida 32399-1013.

The Department of Business and Professional Regulation, Division of Hotels and Restaurants, Bureau of Elevator Safety hereby gives notice on June 29, 2011 the Division issued an order. The Final Order was in response to a Petition for emergency Variance from Naples Community Hospital, filed June 2, 2011, and advertised in Vol. 37, No. 24, of the Florida Administrative Weekly. No comments were received in response to the petition. The Final Order on the Petition for Variance grants the Petitioner a variance from Rule 3.11.3 ASME A17.3, 1996 edition, as adopted by Chapter 30, Section 3001.2 Florida Building Code, adopted by paragraph 61C-5.001(1)(a), Florida Administrative Code, that requires upgrading the elevators for firefighters' emergency operations until September 1, 2011, because the Petitioner has demonstrated that the purpose of the statute underlying the rule will be met and that Petitioner would suffer a substantial hardship if required to comply with this rule (VW 2011-188).

A copy of the Order may be obtained by contacting: Mark Boutin, Bureau of Elevator Safety, 1940 North Monroe Street, Tallahassee, Florida 32399-1013.

The Department of Business and Professional Regulation, Division of Hotels and Restaurants, Bureau of Elevator Safety hereby gives notice on June 29, 2011, the Division issued an order. The Final Order was in response to a Petition for

emergency Variance from Naples Community Hospital, filed June 2, 2011, and advertised in Vol. 37, No. 24, of the Florida Administrative Weekly. No comments were received in response to the petition. The Final Order on the Petition for Variance grants the Petitioner a variance from Rule 3.11.3 ASME A17.3, 1996 edition, as adopted by Chapter 30, Section 3001.2 Florida Building Code, adopted by paragraph 61C-5.001(1)(a), Florida Administrative Code, that requires upgrading the elevators for firefighters' emergency operations until May 1, 2012, because the Petitioner has demonstrated that the purpose of the statute underlying the rule will be met and that Petitioner would suffer a substantial hardship if required to comply with this rule (VW 2011-191).

A copy of the Order may be obtained by contacting: Mark Boutin, Bureau of Elevator Safety, 1940 North Monroe Street, Tallahassee, Florida 32399-1013.

The Department of Business and Professional Regulation, Division of Hotels and Restaurants, Bureau of Elevator Safety hereby gives notice on June 29, 2011, the Division issued an order. The Final Order was in response to a Petition for emergency Variance from University of Florida, filed June 6, 2011, and advertised in Vol. 37, No. 24, of the Florida Administrative Weekly. No comments were received in response to the petition. The Final Order on the Petition for Variance grants the Petitioner a variance from Rule 3.11.3 ASME A17.3, 1996 edition, as adopted by Chapter 30, Section 3001.2 Florida Building Code, adopted by paragraph 61C-5.001(1)(a), Florida Administrative Code, that requires upgrading the elevators for firefighters' emergency operations until June 1, 2016, because the Petitioner has demonstrated that the purpose of the statute underlying the rule will be met and that Petitioner would suffer a substantial hardship if required to comply with this rule (VW 2011-193).

A copy of the Order may be obtained by contacting: Mark Boutin, Bureau of Elevator Safety, 1940 North Monroe Street, Tallahassee, Florida 32399-1013.

The Department of Business and Professional Regulation, Division of Hotels and Restaurants, Bureau of Elevator Safety hereby gives notice on June 29, 2011, the Division issued an order. The Final Order was in response to a Petition for emergency Variance from Imperial Pines Condo, filed June 6, 2011, and advertised in Vol. 37, No. 24, of the Florida Administrative Weekly. No comments were received in response to the petition. The Final Order on the Petition for Variance grants the Petitioner a variance from Rule 3.11.3 ASME A17.3, 1996 edition, as adopted by Chapter 30, Section 3001.2 Florida Building Code, adopted by paragraph 61C-5.001(1)(a), Florida Administrative Code, that requires upgrading the elevators for firefighters' emergency operations until January 15, 2015, because the Petitioner has

demonstrated that the purpose of the statute underlying the rule will be met and that Petitioner would suffer a substantial hardship if required to comply with this rule (VW 2011-194).

A copy of the Order may be obtained by contacting: Mark Boutin, Bureau of Elevator Safety, 1940 North Monroe Street, Tallahassee, Florida 32399-1013.

NOTICE IS HEREBY GIVEN that on June 29, 2011, the Department of Business and Professional Regulation, Division of Hotels and Restaurants, received a petition for an Emergency Variance for Subparagraph 3-305.11(A)(2), 2001 FDA Food Code, Paragraph 3-305.14, 2001 FDA Food Code, Paragraph 6-202.15, 2001 FDA Food Code, Paragraph 6-202.16, 2001 FDA Food Code, subsections 61C-4.010(1), (6), Florida Administrative Code, from A & M Food Services, Jacksonville, FL. The above referenced F.A.C. addresses the requirement for proper handling and dispensing of food. They are requesting to dispense bulk potentially hazardous foods other than frankfurters from an open air mobile food dispensing vehicle.

The Division of Hotels and Restaurants will accept comments concerning the Petition for 5 days from the date of publication of this notice. To be considered, comments must be received on or before 5:00 p.m.

A copy of the Petition for Variance or Waiver may be obtained by contacting: Lydia.Gonzalez@DBPR.state.fl.us, Division of Hotels and Restaurants, 1940 North Monroe Street, Tallahassee, Florida 32399-1011.

The Department of Business and Professional Regulation, Division of Hotels and Restaurants hereby gives notice on June 2, 2011, the Department received a Petition for an Emergency Variance for Paragraph 4-301.12(A), 2001 FDA Food Code and subsection 61C-4.010(5), Florida Administrative Code, from Oasis, Bonita Springs, FL. The above referenced F.A.C. addresses the requirement that dishwashing facilities for manually washing, rinsing and sanitizing equipment and utensils are provided. They are requesting to utilize dishwashing facilities located within another licensed establishment under the same ownership.

The Petition for this variance was published in Vol. 37, No. 24, on June 17, 2011. The Order for this Petition was signed on June 23, 2011, and after a complete review of the variance request, the Division finds that the application of this rule will create a financial hardship to the food service establishment. Furthermore, the Division finds that the Petitioner meets the burden of demonstrating that the underlying statute has been achieved by the Petitioner ensuring the dishwashing area located within Vasari Country Club main kitchen (SEA4605639) is maintained in a clean and sanitary manner and all sinks are provided with hot and cold running water under pressure and available during all hours of operation. If

the owner of Vasari Country Club main kitchen (SEA4605639) changes, the division must be notified immediately and a written agreement provided.

A copy of the Order or additional information may be obtained by contacting: Lydia.Gonzalez@DBPR.state.fl.us, Division of Hotels and Restaurants, 1940 North Monroe Street, Tallahassee, Florida 32399-1011.

NOTICE IS HEREBY GIVEN that on June 23, 2011, the Florida Department of Business and Professional Regulation, Division of Hotels and Restaurants, received a petition for an Emergency Variance for paragraph 61C-1.004(1)(a), Florida Administrative Code, Paragraph 5-202.11(A), 2001 FDA Food Code, subsection 61C-1.004(1), Florida Administrative Code, Paragraph 4-301.12(A), 2001 FDA Food Code and subsection 61C-4.010(5), Florida Administrative Code, from Tacos Y'all, Destin, FL. The above referenced F.A.C. addresses the requirement that each establishment have an approved plumbing system installed to transport water and wastewater; an area for food preparation, and dishwashing facilities for manually washing, rinsing and sanitizing equipment and utensils. They are requesting to utilize holding tanks to provide potable water and to collect wastewater and to share warewashing and food preparation areas with a licensed establishment under the same ownership.

The Division of Hotels and Restaurants will accept comments concerning the Petition for 5 days from the date of publication of this notice. To be considered, comments must be received on or before 5:00 p.m.

A copy of the Petition for Variance or Waiver may be obtained by contacting: Lydia.Gonzalez@dbpr.state.fl.us, Division of Hotels and Restaurants, 1940 North Monroe Street, Tallahassee, Florida 32399-1011.

The Division of Pari-Mutuel Wagering, Department of Business and Professional Regulation (Division), hereby gives notice on June 30, 2011, it issued a final order to a petition for emergency variance or waiver from PPI, Inc., d/b/a The Isle Casino and Racing at Pompano Park, Petitioner, filed May 12, 2011, and advertised in Vol. 37, No. 24, of the Florida Administrative Weekly – DBPR Case No.: 2011025419 (VW 2011-168).

The final order grants Petitioner and Intervenor Calder Race Course, Inc., a temporary waiver of the requirements of subsection 61D-11.016(1), Florida Administrative Code (F.A.C.), which requires that poker tables have clearly designated rake circles, imprest trays, tip boxes, and drop box slots for tournament poker tables. Petitioner wishes to purchase and use exclusively for poker tournaments. Specifically, the final action grants Petitioner and Intervenor a waiver for their tournament poker tables from the rake circle, imprest tray, tip

box, and drop box requirements of subsection 61D-11.016(1), F.A.C., for two years or until the Division adopts a new rule governing tournament poker tables, whichever occurs first.

A copy of the Order or additional information may be obtained by contacting: Agency Clerk, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-2202, (850)921-0342.

The Board of Accountancy hereby gives notice of the issuance of an Order regarding the Petition for Variance, filed on March 28, 2011, by Craig Harrington. The Notice of Petition for Waiver or Variance was published in Vol. 37, No. 15, of the April 15, 2011, Florida Administrative Weekly. Petitioner sought a waiver or variance of paragraph 61H1-28.0052(1)(b), F.A.C., entitled “Number of Sittings, and Granting of Credit, Release of Grades and Completion of Examination, Transition Rules” which requires candidates to pass all four test sections of the CPA Examination within a rolling eighteen-month period, which begins on the NASBA grade release for the first test section passed. The Board considered the instant Petition at a duly-noticed public meeting held on May 6, 2011, Tampa, Florida.

The Board’s Order, filed on June 2, 2011, granted the petition finding that Petitioner established that the purpose of the underlying statute, Section 473.306, Florida Statutes, would be met by granting a variance from paragraph 61H1-28.0052(1)(b), F.A.C. The Board further found that Petitioner established that applying the requirements of the aforementioned rule to his circumstances would violate principles of fairness and impose substantial hardship.

A copy of the Order or additional information may be obtained by contacting: Voloria Kelly, Division Director, Board of Accountancy, 240 N.W. 76th Dr., Suite A, Gainesville, Florida 32607.

The Board of Accountancy hereby gives notice of the issuance of an Order regarding the Petition for Waiver or Variance, filed on March 23, 2011, by Anthony Perez. The Notice of Petition for Waiver or Variance was published in Vol. 37, No. 15, of the April 15, 2011, Florida Administrative Weekly. The Petitioner sought a waiver or variance of subsection 61H1-31.001(4), F.A.C., entitled “Fees” that requires a fee of two hundred and fifty dollars (\$250.00) for reactivation of a delinquent status license to active.

Petitioner also sought a waiver or variance of subsection 61H1-33.003(6), F.A.C., entitled “Continuing Professional Education” which requires that each Florida certified public accountant, as a part of the biennial licensure renewal, on or before December 31 prior to his/her biennial license renewal, report on forms prescribed by the Board, compliance with continuing professional education requirements completed

during the applicable reestablishment period. The Board considered the instant Petition at a duly-noticed public meeting held May 6, 2011, Tampa, Florida.

The Board's Order, filed June 14, 2011, denied the petition finding that Petitioner had failed to establish that the purpose of the underlying statute, Section 473.312, Florida Statutes, would be met by granting a variance or waiver from paragraph 61H1-33.003(1)(b) and subsection 61H1-31.001(4), F.A.C. The Board further found that Petitioner failed to establish that the Board's full application of the aforementioned rules to his circumstances would violate principles of fairness and impose substantial hardship.

A copy of the Order or additional information may be obtained by contacting: Veloria Kelly, Division Director, Board of Accountancy, 240 N.W. 76th Dr., Suite A, Gainesville, Florida 32607.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

NOTICE IS HEREBY GIVEN that on June 14, 2011, the Department of Environmental Protection, received a petition for the School Board of Brevard County seeking a variance from paragraph 62-602.270(1)(a), F.A.C., to allow students enrolled in the Waste Resources Technology program at the Heritage High School Academy of Environmental Studies to be eligible to take the Level C Water and/or Wastewater examination for operator certification prior to obtaining a high school diploma. The petition has been assigned OGC File No.: 11-0873. Any interested person or other agency may submit written comments on the petition with 14 days after publication of this notice.

A copy of the Petition for Variance or Waiver may be obtained by contacting: Ronald McCulley, Department of Environmental Protection, Operator Certification Program, Bureau of Water Facilities Funding, 2600 Blair Stone Road, MS #3506, Tallahassee, FL 32399-2400, telephone (850)245-7500, email: ronald.mcculley@dep.state.fl.us.

DEPARTMENT OF HEALTH

NOTICE IS HEREBY GIVEN that on July 1, 2011, the Board of Dentistry, received a petition for waiver or variance, filed by Derek D. Haber, D.M.D., M.S., seeking a waiver or variance of Rule 64B5-14.005, F.A.C., concerning the applicant must demonstrate both training and administration of the particular type of anesthesia to 20 patients within 2 years of applying for a conscious sedation permit.

Comments on this petition should be filed with the: Board of Dentistry, 4052 Bald Cypress Way, Bin #C08, Tallahassee, Florida 32399-3258, within 14 days of publication of this notice.

A copy of the Petition for Variance or Waiver may be obtained by contacting: Sue Foster, Executive Director, at the above address or telephone (850)245-4474.

NOTICE IS HEREBY GIVEN that on June 28, 2011, the Department of Health, received a petition for variance from Richard Bruno, representing Hydrologex, LLC. Specifically, the petitioner seeks a variance from paragraph 64E-6.026(1)(b), Florida Administrative Code, which requires third-party testing approved through the NSF-ETV program in order to apply for an innovative system permit.

A copy of the Petition for Variance or Waiver may be obtained by contacting: Agency Clerk, Department of Health, Office of the General Counsel, 4052 Bald Cypress Way, Bin #A02, Tallahassee, Florida 32399-1703.

The Department of Health hereby gives notice:

The order was issued in response to an amended petition for a variance filed on April 6, 2011, by Martha Harrell Chumbler, representing Infiltrator Systems, Inc., regarding the "IM-1060 Tank". The amended petition replaced an earlier petition for variance filed on December 23, 2011, by Daniel Hernandez, esq. In the amended petition, Petitioner sought a variance from paragraphs 64E-6.013(1)(a), (2)(a), (2)(i), (3)(f), (6)(c), (10)(d), Florida Administrative Code, which requires tanks to be constructed of concrete, fiberglass or polyethylene; tank stiffening members to be a homogenous integral part of the structure; joints, mid-seams, risers and lids to be sealed using a bonding compound that meets ASTM C 990-96; tanks to meet either category 3 or 4 burial conditions; polyethylene receptacles to meet IATMO PS 1-93, Paragraph 5.4, regarding wall, top, bottom and cover thickness; and tanks with seams below the outlet invert to be watertightness tested per ASTM C 1227-98 after installation in the field. Notice of the original petition was published in the January 14, 2011, edition of the Florida Administrative Weekly and notice of the amended petition was published in the April 22, 2011, edition.

The Department found that the Petitioner demonstrated that the underlying intent of the statute could be achieved by alternative means and that strict application of the rules would create a substantial hardship in the Petitioner's particular circumstance. Therefore, pursuant to the requirements of Section 120.542(2), Florida Statutes, the Department GRANTED WITH STIPULATIONS Petitioner's request for a variance.

A copy of the Order or additional information may be obtained by contacting: Agency Clerk, Department of Health, Office of the General Counsel, 4052 Bald Cypress Way, Bin #A02, Tallahassee, Florida 32399-1703.
