

NOTICE OF PROPOSED RULE

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

DIVISION OF AGRICULTURAL ENVIRONMENTAL SERVICES

BUREAU OF ENTOMOLOGY AND PEST CONTROL

RULE CHAPTER TITLE:

RULE CHAPTER NO.:

Mosquito Control Program Administration

5E-13

RULE TITLE:

RULE NO.:

Definitions

5E-13.021

Eligibility for State Aid

5E-13.022

Program Directors, Employment and Classification

5E-13.032

Penalty for Failure to Comply with Public Law 92-516,

The Federal Insecticide, Fungicide, and Rodenticide

Act (FIFRA) of the U.S. Environmental Protection

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Demonstrable Increase in Other Indicator of

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Mosquito Control Aircraft Registration, Inspection,

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Protection of Natural Resources and of the Health,

Safety, and Welfare of Arthropod Control Employees

And the General Public 5E-13.039

Criteria for Licensure ~~or Certification~~ of Applicators 5E-13.040

Criteria for Arthropod Control That May Affect

Environmentally Sensitive and Biologically

Productive Public Lands and Other Public Lands 5E-13.042

PURPOSE, EFFECT AND SUMMARY: The purpose of the rule amendment would clarify definitions of licensure and certification, requirements for the mosquito control director's examination, clarify requirements for demonstrating an increase in arthropod population levels and reduce the number of employees a certified applicator can supervise. It will also clarify requirements for training records, for passing the public health pest control examination and for continuing education units for public health pest control certification, and clarify language regarding arthropod control plans. The proposed rule amendments address mosquito control activities, licensure and certification including public health pest control certification and licensing, demonstrating an increase in arthropod population levels, supervision by certified applicators, training records, public health pest control examinations and continuing education units, and arthropod control plans for public lands.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No SOERC has been prepared.

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

SPECIFIC AUTHORITY: 388.361, F.S.

LAW IMPLEMENTED: 388.361, F.S.

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

TIME AND DATE: June 20, 2006 , 2:30 p.m.-5:00 p.m.

PLACE: 14101 North West US Highway 441, East Building , Suite 800, Alachua, Fl. 32615 . Telephone: 386-418-5500.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND FOR A COPY OF THE PROPOSED RULE IS: James Clauson, Bureau of Entomology and Pest Control, Division of Agricultural Environmental Services, 1203 Governors Square Blvd., Suite 300, Tallahassee, Fl. 32301. Telephone: 850-922-7011.

THE FULL TEXT OF THE PROPOSED RULE IS:

5E-13.021 Definitions.

In addition to those terms contained in Section 388.011, F.S., the following terms shall mean:

(1) through (14) No change.

(15) “License” ~~“Certification”~~ – the recognition by the department that a person is competent in the use of pesticides and other arthropod control measures. ~~Thus, upon completion of all requirements for licensing as an applicator, shall be authorized to use or supervise the use of arthropod control pesticides.~~

(16) “Licensed Certified-applicator” – any person 18 years or older who is licensed to use or supervise the use of a pesticide intended for arthropod control.

(17) through (20) No Change.

(21) “Public health pest control” – a category or classification of licensure ~~certification~~ that includes private applicators, federal, state, or other governmental employees using or supervising the use of general or restricted-use pesticides in public health programs for the management and control of pests having medical and public health and nuisance importance.

(22) through (27) No Change

(28) “Direct supervision” – supervision by licensed applicators, who are responsible for the pesticide use activities and actions of unlicensed individuals. The licensed direct supervisor in which the supervisor must be in immediate contact, either directly or by electronic means, including, but not limited to, cell phones, radios and computers.

Specific Authority 388.361 FS. Law Implemented 388.361 FS. History–New 1-1-77, Formerly 10D-54.21, Amended 2-10-87, Formerly 10D-54.021, Amended 3-14-94, 6-10-04.

5E-13.022 Eligibility for State Approved Program and/or Aid.

(1) A district or county will be eligible to receive state aid for control of arthropods when it provides the following: an annual budget for such purpose; a contractual services ~~contract~~ agreement with the department; a signed acknowledgement of being subject to Section 215.97, F.S.; a detailed work plan budget on DACS Form 13623, (Rev 5/03) entitled “Detailed Work Plan Budget-Arthropod Control”; an operational work plan on DACS Form 13666, (Rev 4/04) entitled “Operational Work Plan for Mosquito Control” hereby incorporated by reference and the district or county complies with provisions of Section 388.271(1),

F.S. Copies of these forms may be received from the department's Bureau of Entomology and Pest Control, 1203 Governors Square Boulevard, Suite 300, Magnolia Center I, Tallahassee, Florida 32301.

(2) through (3) No change

Specific Authority 388.361 FS. Law Implemented 388.361 FS., Section 11, Chapter 91-428, Laws of Florida. History--New 1-1-77, Formerly 10D-54.22, 10D-54.022, Amended 6-10-04.

5E-13.032 Program Directors, Employment and Classification.

(1) Districts or counties in the state budgeting local funds in excess of thirty thousand dollars (\$30,000) for arthropod control during a fiscal year shall employ a qualified director ~~person~~ to plan, supervise and direct the execution of county or district arthropod control programs.

(2) Persons seeking position of mosquito control program director must submit to the board of commissioners a written application setting forth their complete educational background, work experience and three (3) names of persons as reference to their ability in public or business administration.

(3) Commissioners shall forward to the department their recommendation for the new director, along with that individual's written application, to obtain written approval from ~~together with the individual's written application, for employment as mosquito control program director~~ of the department, pursuant to Section 5E-13.032(4), F.A.C. ~~the applicant can be employed following passing an examination as required in subsection 5E-13.032(5), F.A.C.~~

(4) The following minimum director classifications are based upon amount of local funds budgeted for the fiscal year in which they are initially employed and for which they assume responsibilities of administration.

(a) Director I –

Local budget \$30,000.00 to \$249,999.99.

Minimum qualifications for Director I position: High school graduate with minimum of three (3) years of training and field experience in control of mosquitoes, or three (3) years experience in managing a comparable program, or a graduate of four (4) year college or university with a degree in the basic sciences or engineering.

(b) Director II –

Local budget \$250,000.00 to \$999,999.99.

Minimum qualifications for Director II position: Graduate of four (4) year college or university with a degree in the basic sciences or engineering. Requirements for college degree shall be waived upon proof of a satisfactory work experience record of four (4)

years duration directing or assisting in directing a work program in the mosquito or arthropod control field of comparable size and budget to that of the District or County where the application is pending.

(c) Director III –

Local budget \$1,000,000.00 and over.

Minimum qualifications for Director III position: Graduate of four (4) year college or university with a degree in the basic sciences or engineering and two years work experience in mosquito control.

(5) Mosquito Control Program Directors Certification.

(a) Persons applying for a Director I, II, or III position must hold a valid Director's Certification. When a mosquito control program director's position is to be filled, the applicant shall take and pass a written examination prior to appointment or obtain the Director's Certification within six (6) months of employment.

(b) In order to obtain this certification the applicant must pass the department's Director's Certification Examination by scoring 70% or better.

(c) Applicants must hold a valid Public Health Pest Control license in order to take the Director's Certification Exam.

(d) The Director's Certification expires when the holder's Public Health Pest Control license expires.

(e) The Director's Exam shall be taken only once within any four (4) month period.

(f) Persons employed as Directors when they apply for a Director's position in another Florida approved program are exempt from Section 5E-13.032(5)(a).

(6) The department shall be notified, in writing, when a director's position becomes vacant or open.

Specific Authority 388.361 FS. Law Implemented 388.162 FS. History—New 1-1-77, Formerly 10D-54.32, Amended 2-10-87, Formerly 10D-54.032, Amended 3-14-94, 7-5-95, 6-10-04.

5E-13.034 Penalty for Failure to Comply with Public Law 92-516, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of the U. S. Environmental Protection Agency and Their Rules.

(1) The board of commissioners of a county, or mosquito control district, whichever is applicable, shall be notified when it is found that the mosquito control program director is violating the Federal or state laws or rules governing the application of restricted pesticides. The board of commissioners will take whatever action is necessary to prevent future violations.

(2) Licensure Certification of applicators may be suspended, revoked, or renewal thereof denied, by the Department, its successor agency or programs, upon one or more of the following grounds:

- (a) Violation of FIFRA, any relevant EPA rule or regulation, or any ordinance or regulation of the Commissioners;
 - (b) Conviction in any court within this state of the violation of any provision of this Act, or any rule or regulation or ordinance of the Department or the Commissioners;
 - (c) A final order imposing civil penalties under subsection 14(a), Public Law 92-516, or a criminal conviction under subsection 14(b), of said Public Law;
 - (d) Knowingly using methods or materials unsuitable for control undertaken;
 - (e) Performing control in a negligent manner;
 - (f) Failure to give the Department or Commissioners or authorized representatives thereof, true information upon request regarding methods and materials used, work performed, falsification of records, or other information essential to the administration of this measure;
 - (g) Failure of the licensed ~~certified~~ applicators to maintain for a period of at least three (3) ~~two~~ years operational records containing information on kinds, amounts, uses, dates, and places of application of restricted use of pesticides.
- (3) through (5) No Change.

Specific Authority 388.361 FS. Law Implemented 388.361 FS., Section 11, Chapter 91-428, Laws of Florida. History—New 1-1-77, Formerly 10D-54.34, 10D-54.034.

5E-13.036 Demonstrable Increase or Other Indicator of Arthropod Population Level

(1) Mosquito and other arthropod control programs will insure that the application of pesticides are made only when necessary by determining a need in accordance with specific criteria that demonstrate a potential for a mosquito-borne disease outbreak or numbers of disease vector mosquitoes sufficient for disease transmission or defined levels of, or a quantifiable increase in numbers of pestiferous mosquitoes or other arthropods as defined by Section 388.011(1), F.S. To determine the need for applications of adulticides, at least one of the following criteria shall ~~will~~ be met and documented by records:

(~~a~~-1) When a large population of adult mosquitoes is demonstrated by either a quantifiable increase in, or a sustained elevated, mosquito population level as detected by landing rate counts or trap counts ~~standard surveillance methods, including~~.

(~~b~~-2) Where adult mosquito populations build to levels exceeding 25 mosquitoes per trap night or 5 mosquitoes per trap hour during crepuscular periods.

(~~c~~-3) When service requests for arthropod control from the public have been confirmed by one or more standard ~~recognized~~ surveillance methods, which include:

(i ~~a~~) landing rate counts.

(ii ~~b~~) mosquito trap counts.

(iii-~~e~~) visual confirmation of the presence of adult or immature mosquitoes by a licensed applicator, or an applicator operating under the direct supervision of a licensed applicator.

(~~d~~ 4) When counts as determined by landing rate counts ~~normal surveillance methods~~ in the daytime exceed 5 per minute for stable flies (dogflies) on beaches and bayshores.

(~~25~~) Aircraft applications of mosquito adulticides along beaches and bayshores shall be justified only when there is a demonstrable three-fold increase over a base population.

(~~36~~) All surveillance and adulticide application records shall be kept on file for at least three (3) years. ~~to document need for adulticide applications.~~

Specific Authority 388.361 FS. Law Implemented 388.361(2)(a) FS. History—New 2-10-87, Formerly 10D-54.036, Amended 3-14-94, 7-5-95.

5E-13.0371 Mosquito Control Aircraft Registration, Inspection, Security, Storage, Transactions, Recordkeeping, Area-of-Application Information and Forms.

(1) through (6) No Change.

(7) Area-of-Application Information. The information listed in paragraphs 5E-13.0371(6)(a) through (6)(g), F.A.C. is required only when a declaration of an Executive Order pursuant to the emergency powers granted to the Governor or the Commissioner of Agriculture declaring an emergency in the State of Florida. Such information shall be provided and filed with the Department in a manner determined by the department.

(8) Forms. The following forms are hereby incorporated by reference. These forms may be obtained from the Florida Department of Agriculture and Consumer Services, Pesticide Certification Office, 3125 Conner Boulevard, Building 8 (L29), Tallahassee, Florida 32399-1650, telephone (850)488-3314.

(a) Application for Aircraft Registration (DACS-13354), New 01/02.

(b) Ownership Declaration and Sales and Use Tax Report on Aircraft (DR-42A), Rev. 03/02.

(c) Aircraft Bill of Sale AC Form 8050-2 (09/92).

(d) Report of Aircraft Transaction (DACS-13355), New 01/02.

Specific Authority 487.051(1)(d), (e), 570.07(23), (39), (40) FS. Law Implemented 388.361(2)(b), 487.051(1)(d), (e), 570.07(39), (40) FS. History—New 2-25-03.

5E-13.039 Protection of Natural Resources and of the Health, Safety, and Welfare of Arthropod Control Employees and the General Public.

(1) Methods of mosquito control performed on private land where natural resources are a major concern shall be conducted in a manner to protect the environmental and ecological integrity of the lands and waters.

(2) To protect the health, safety and welfare of arthropod control employees and the general public, applicators licensed ~~certified~~ in public health pest control ~~may directly or health-related pest control will~~ supervise no more than 10 unlicensed ~~15 unlicensed~~ employees and shall provide instructions and training to those employees to include the following:

(a) The safety procedures and precautions to be followed in handling or applying arthropod control pesticides as specified by their labeling.

(b) The proper use and care of safety clothing and equipment to be worn or used as may be specified in the label.

(c) The common symptoms of pesticide poisoning.

(d) The dangers of eating, drinking or smoking while handling or applying pesticides and the need to wash clothing worn and bathe after working with pesticides in order to avoid unnecessary prolonged exposure to pesticides residues.

(e) The name and location of nearby medical facility at which emergency treatment for pesticide exposure may be obtained.

(f) Instructions regarding operation of application equipment in or over residential areas to minimize exposure to the general public.

(g) Instructions regarding emergency procedures to be followed in the event of an accidental pesticide spill particularly those relating to a vehicular accident and resultant spill and dumping procedures in the event of an aircraft emergency.

(3) Licensed applicators shall keep on file, and make available to the department upon request, records showing the training required in 5E-13.039(2), F.A.C. was provided to all unlicensed applicators under their direct supervision. These records shall be maintained for a minimum of three years.

Specific Authority 388.361 FS. Law Implemented 388.361(2)(d) FS., Section 11, Chapter 91-428, Laws of Florida. History--New 2-10-87, Formerly 10D-54.039.

5E-13.040 Criteria for Licensure ~~or Certification~~ of Applicators.

(1) It is a violation of these rules for a person to apply ~~or supervise the application of~~ a pesticide intended to control arthropods on property other than his own individual residential or agricultural property unless he is licensed to do so or is working under the direct supervision of a licensed applicator, as allowed under 5E-13.039(2), F.A.C.

(2) ~~Licensing and exemptions.~~ All persons who apply an arthropod control pesticide, unless operating they operate under the direct supervision of a licensed applicator, shall be licensed as a Public Health Pest Control ~~apply to the department for certification and be licensed as an arthropod control pesticide~~ applicator by the department whether such pesticides used are classified as general use or restricted use, except those applicators controlling arthropods upon their own individual residential or agricultural property.

(3) ~~Certification standards.~~ Competency standards for licensing the certification of Public Health Pest Control ~~public health pest control~~ applicators will be determined by applicants passing the Public Health Pest Control examination administered by the department, by obtaining a score of 70 percent or above, which demonstrates a practical knowledge of the principles of mosquito control and an examination that demonstrates a practical knowledge of the principles and practices of arthropod control and the safe use of pesticides and a category examination which demonstrates a practical knowledge of vector-disease transmission as it relates to and influences application programs. In addition, applicants shall pass the General Standards (Core) examination administered by the department, by obtaining a score of 70 percent or above, to demonstrate a knowledge of pesticide use and safety. A passing grade of 70 percent, or above, will be required on this examination administered by the department.

(4) ~~Recertification.~~ All persons licensed in Public Health Pest Control ~~certified applicators~~ shall provide evidence of continued competency prior to license certificate renewal by accruing a minimum of sixteen (16) examination or by accrual of not less than 16 hours of continuing education units during their four year licensure period credit. Each certificate holder shall complete a minimum of 2 hours of approved continuing education on legislation, safety, pesticide labeling, mosquito biology, and mosquito control techniques, or pass an examination given by the department. Failure to meet continuing education requirements ~~or to pass an examination on the topics detailed above,~~ shall result in the nonrenewal of the license, and applicators shall retake and pass both the Public Health Pest Control and the General Standards (Core) examinations in order to obtain a new license a certificate.

(5) Courses or programs to be considered for continuing education units credit shall contain one or more of the following topics:

(a) The law and rules of the state pertaining to mosquito control.

(b) Precautions necessary to safeguard life, health, and property in the conducting of mosquito control and the application of pesticides.

(c) Mosquitoes, their habits, identification, and relative importance as to nuisance pests and vectors of disease.

(d) Currently accepted practices in the conducting of measures for the control of adult and larval forms of mosquitoes and surveillance techniques.

(e) How to read labels, a review of current state and federal laws on labeling, and a review of changes in or additions to labels on pesticides used in mosquito control.

~~(6-5)~~ Licenses shall be valid for ~~be renewed every~~ 4 years from the date of issuance ~~the original certification~~.

~~(7-6)~~ Re-examination will be required if 16 continuing education units in public health are not obtained ~~license is not renewed~~ within 90 days following ~~of~~ expiration date.

~~(7-)~~ ~~All applicators performing public health pest control shall be licensed by January 1, 1988.~~

(8) Public Health Pest Control applicators shall keep accurate records so that monthly activity reports relative to pesticide application, source reduction, water management, biological control and surveillance activities can be assessed by the department.

Pesticides use records shall include:

(a) The name of applicator.

(b) The pesticide and amount used.

(c) Method of application ~~how applied~~

(d) The location of the application ~~where applied~~

(e) The rate of application ~~rate~~.

(f) Date and time of application.

(g) Surveillance method and data providing justification for any adulticide applications, as required in 5E-13.036, F.A.C.

(h) These reports shall be retained for a period of 3 years and be made available to the department upon request.

(9) All aerial applicators who apply an arthropod control pesticide by aerial means shall be licensed as an Aerial Public Health Pest Control applicator by the department, whether such pesticides are classified as general use or restricted use. The department considers the pilot in command to be the aerial applicator. Licensure shall be obtained by passing the Aerial, Public Health Pest Control, and General Standards (Core) examinations, administered by the department, by obtaining a score of 70 percent or higher. Aerial applicators shall demonstrate a practical knowledge of the principles and practices of aerial pest control and the safe application of pesticides by aerial delivery means. Such competence will be demonstrated in an aerial applicator

~~examination administered by the department. In addition, aerial applicators conducting mosquito control operations must be certified in Public Health Pest Control as outlined above.~~

~~(10) All new mosquito control directors shall demonstrate competence in all the areas as heretofore described for Public Health Pest Control certification. In addition, a director must demonstrate an understanding of budgetary planning and mathematical calculations for mixing and applying pesticides. Directors shall demonstrate their knowledge of the above by passing an examination administered by the department.~~

Specific Authority 388.361 FS. Law Implemented 388.361(4) FS. History--New 2-10-87, Formerly 10D-54.040, Amended 3-14-94.

5E-13.042 Criteria for Arthropod Control That May Affect Environmentally Sensitive and Biologically Productive Public Lands and Other Public Lands.

(1) It is the intent of this rule to implement Section 388.4111, F.S., by establishing the procedures to be followed to implement arthropod control plans on environmentally sensitive and biologically highly productive public lands.

(2) Land management agencies and local arthropod control agencies are encouraged to work cooperatively to informally achieve agreement on regarding arthropod control on public lands ~~public land control plans~~. To that end, local arthropod control agencies shall, upon request of a land management agency, describe alternative arthropod control measures which may be appropriate for particular public land and ~~otherwise~~ upon request provide information relative to arthropod control.

(3) Each public land management agency managing lands in Florida shall:

(a) Determine whether it is managing public lands in Florida that are environmentally sensitive and biologically highly productive.

(b) Give written notice to the department and any affected local arthropod control agencies which lands are environmentally sensitive and biologically productive. A list of the mosquito control agencies shall be provided by the department to all land management agencies. Written notice shall include but not be limited to:

1. Aerial photographs or maps depicting the public lands made subject to the notice;

2. A statement of the purpose for which the lands are managed along with a description of ecological data giving rise to the determination of the land management agency;

3. A specification of the potential ecological harm to be guarded against in planning arthropod control on such land with a detailed statement, ~~in so far as reasonably feasible~~, of what reasonably feasible arthropod control measures, if any, the land management agency believes would be suitable for such lands; and

4. Such other pertinent information relative to such determination that provides a better understanding of the land management agency's problems that need to be addressed in an arthropod control plan for the land subject to such determinations.

(4) A local arthropod control agency upon receipt of a written notice shall:

(a) Prepare a written plan for arthropod control on the environmentally sensitive and biologically highly productive public lands identified in the notice. Such proposed plan shall be submitted to the public land management agency within 45 days from receipt of the notice.

(b) The proposed ~~Public Lands~~ Arthropod Control Plan shall include but not be limited to:

1. The need for arthropod control on the identified lands.

2. The areas where arthropod control measures are proposed.

3. The location of any rotary ditching or other land modification activity.

4. Operational schedules for water level fluctuations.

5. Notification of public lands manager before commencement of control measures.

6. Periodic restrictions as applicable, for example peak fish spawning times.

7. The criteria to be used in determining application of pesticides. Such criteria shall not be less restrictive than criteria ~~Rule~~ in 5E-13.036, F.A.C.

8. The common or chemical name of the pesticides expected to be used.

9. The method of application to be used for each specific product.

10. The rate of application to be used for each specific product.

(5) The proposed public lands Arthropod Control Plan ~~control plan~~ shall:

(a) Become effective immediately upon agreement between the public lands management agency ~~Public Lands Management Agency~~, the local arthropod control agency and the department or

(b) Become effective within 45 days, or such other period of time agreed to by both parties, from receipt by the public lands management agency ~~Public Lands Management Agency~~ unless the agency ~~Public Lands Management Agency~~ objects to the proposed plan. The objection(s) of the land management agency shall be filed with the local arthropod control agency and the department with a statement of the reasons for the objection(s) and suggested alternatives. Failure to object to a proposed control plan or a portion thereof shall be deemed consent to perform control methods not objected to.

(6) If the land management agency and the local arthropod control agency are unable to agree on an Arthropod Control Plan ~~public lands control plan~~, either party may, by written notice, request the department initiate the dispute resolution process

pursuant to Section 388.4111(2)(c), F.S. The department shall, within 15 days of receipt of such written notice forward the proposed control plan, the land management agency's objections, and any other pertinent correspondence or information to the Florida Coordinating Council on Mosquito Control for consideration and recommendation.

(7) Lands identified as environmentally sensitive and biologically highly productive shall remain subject to the local arthropod control agency's general work plan prior to approval of a control plan pursuant to this rule. However, environmentally sensitive and biologically highly productive public lands identified and managed by the Trustees of the Internal Improvement Trust Fund shall not be subject to control measures without the Trustees' consent.

(8) Approved current Arthropod Control Plans ~~control plans~~ shall be kept on file with the department. If neither the land management agency or the local arthropod control agency give notice of the need to revise an approved plan, the approved plan shall continue in effect until replaced by substitute plan. If either the land management agency or the local arthropod control agency wishes to revise an approved plan, written notice shall be given to the department and the other agency. A response shall be given within 45 days. Agreed upon revisions shall be submitted to the department. In the event the parties are unable to agree, the dispute resolution procedures of subsection 5E-13.042(6), F.A.C. ~~(6) of this rule~~ shall be utilized.

Specific Authority 388.361, 388.4111 FS. Law Implemented 388.4111 FS., Section 11, Chapter 91-428, Laws of Florida. History—New 2-10-87, Formerly 10D-54.042.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mr. Steven Dwinell, department of Agriculture and Consumer Services, Room 130, 3125 Conner Blvd., Tallahassee, Fl. 32399-1650.

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Mr. Anderson Rackley, Director, Department of Agriculture and Consumer Services.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 18, 2003.

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 17, 2005