RULES OF THE
ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY

CHAPTER 1-2
ADMINISTRATIVE PROCEDURES

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PART I GENERAL PROVISIONS (Applicable to all parts)

1-2.00 INTENT

It is the Commission's intent to encourage non-adversarial resolution of disputes whenever possible, and to facilitate prompt and efficient solutions for the protection of the environment. It is recognized that diverse environmental concerns and coordinating mechanisms between agencies, federal, state, regional and local, require and provide differing procedures for dispute resolution that in themselves can cause confusion. The following rule attempts to identify the available processes and clarify the procedures for their application.
Section History – *amended 3/16/06 and effective 3/17/06.*

1-2.001 DEFINITIONS

For the purposes of this Chapter, the term:

(a) *Commission* means the Environmental Protection Commission of Hillsborough County.

(b) *Executive Director* means the environmental director appointed by the Commission pursuant to Section 7 of the Special Act Chapter 84-446, Laws of Florida as Amended by Chapter 87-495 (EPC Act) or staff authorized in writing to sign agency actions on his or her behalf.

(c) *Permit* means written approval from the Executive Director to conduct an activity regulated by the EPC. This is also referred to as an authorization or Executive Director Authorization.
Section History - *adopted 3/16/06 and effective 3/17/06; amended 8/9/12 and effective 8/20/12; amended 5/18/23 and effective 5/19/23.*

1-2.01 DOCUMENTS

(a) All documents filed pursuant to the procedures in this rule shall contain the name of the person filing, their address and telephone number, e-mail address, the file number to which the request applies if any, and a certificate of service attesting to having simultaneously provided copies of the document to all known parties involved in the proceeding. The Executive Director or the Legal Department shall be served with a copy of all documents, except as may be filed pursuant to Part II below.

(b) All documents received after 5 P.M. Eastern Standard Time shall be entered as received the following regular business day.

(c) The original initiating document for all processes shall be served upon the Commission or the Executive Director through delivery of an e-mail to the Legal Department or any other electronic filing method expressly provided by the Executive Director, unless stated differently. The original of subsequent documents shall be provided via e-mail to the appropriate Hearing Officer, mediator or party.

(d) The e-mail used in any initial pleading shall be the e-mail contact for future service of pleadings and correspondences in the matter unless a party files a separate Notice of E-Mail Designation identifying an alternate e-mail for service in any matter.

(e) A representative must file a notice of appearance if there is an addition or change in representation during any administrative proceeding.
Section History - *amended 3/16/06 and effective 3/17/06; amended 5/18/23 and effective 5/19/23.*

1-2.02 LEGAL REPRESENTATION

It is not required that a party have legal counsel, although in some cases it may be advisable. It is

intended that these procedures be as informal as possible, without prejudicing any party's rights, so that prompt and non-adversarial resolution can be achieved.
Section History - *adopted and effective 8/21/97.*

1-2.03 DISCOVERY and PUBLIC RECORDS

Public Records Act requests shall be processed according to the requirements of law. Any person may arrange directly with staff to view the administrative files of the agency during regular business hours. Copies will be made upon payment of cost. Each party to any of the proceedings below may avail itself of discovery at its own expense as allowed by the Florida Rules of Civil Procedure, the Florida Rules of Judicial Administration, or as permitted by the Hearing Officer, Administrative Law Judge or mediator.
Section History - *amended 3/16/06 and effective 3/17/06; amended 5/18/23 and effective 5/19/23.*

1-2.04 OPTIONS FOR ADMINISTRATIVE REVIEW

Pre-Application Meeting. If an applicant is uncertain regarding the applicable regulations or requirements for compliance with environmental regulations, the applicant may request a pre-application meeting with staff as provided in Part II below.

Mediation. If a substantially affected party disputes a fact or interpretation of the regulations asserted by staff, it may request mediation as provided in Part II below.

Estoppel Rights. If an applicant for a permit alleges that the Commission or staff is estopped from taking a certain position in a matter because of a prior act of the Commission or staff, the applicant may request review to determine applicability of estoppel as provided in Part III below.

84-446 Appeal. If a substantially affected party challenges the correctness of a decision or order of the Executive Director issued pursuant to the EPC Act and the rules adopted thereunder, it may file an appeal for administrative hearing pursuant to Part IV below.

Petition Under Chapter 120 Delegated Program. If a substantially affected party challenges the correctness of a permit decision or order of the Executive Director issued pursuant to delegation from the Florida Department of Environmental Protection (DEP) or the Southwest Florida Water Management District, it may file a Chapter 120, Florida Statutes (F.S.) petition as provided in Part V below.

Variance or Waiver. If a regulated entity seeks a variance or waiver from existing regulations, it may apply as provided in Part VI below.

Private Property Rights. If a regulated entity seeks relief as provided by section 70.001, F.S. because an existing use or vested right is inordinately burdened by the application of law, or that its use is unreasonably or unfairly burdened, it may request review pursuant to Part VII.

Dispute Resolution. If a regulated entity seeks relief as provided by section 70.51, F.S. because an enforcement action or development order unreasonably or unfairly burdens the use of its land or property, it may request review pursuant to Part VII.
Section History - *amended 3/16/06 and effective 3/17/06; amended 8/9/12 and effective 8/20/12; amended 5/18/23 and effective 5/19/23.*

1-2.05 REQUEST FOR DECISION OF THE EXECUTIVE DIRECTOR

Any applicant for any permit may request a written decision of the Executive Director approving or

denying the application no earlier than 30 calendar days after submittal of a complete application. The written request shall cite this rule section and shall provide a basis for the need for a written decision from the Executive Director. Except where a different time is provided by another rule, the Executive Director shall issue a written decision setting forth the position and reasons within 30 calendar days of a written request therefore. The written decision shall include a point of entry to challenge the decision pursuant to section 1-2.30.

Section History - *amended 3/16/06 and effective 3/17/06; amended 8/9/12 and effective 8/20/12; amended 5/18/23 and effective 5/19/23.*

1-2.051 PUBLIC NOTICE REQUIREMENTS

(a) **General Noticing.** Any applicant for any of the following permits or authorizations from the Executive Director shall provide notice to citizens who may be affected by the issuance of the permit: initial wastewater permits in excess of 100,000 gallons discharge per day; authorizations issued under Rule 1-7.202(1)(c) or (d); authorizations issued under Rule 1-10.05(2)(a)(1); and air construction permits issued under Chapter 1-3. Public notification required by any other law that meets this noticing rule shall be sufficient and this rule shall not require any duplicate notice. Compliance with noticing requirements under Stationary Air Pollution Sources Chapter 1-3, Rules of the EPC shall serve as compliance with this sub-section (a). The notice must include posting a sign in a conspicuous place upon the property which is the subject of the permit. The posted sign must be no smaller than a 30 inch by 48 inch sign and must be legible from the nearest public road. The notice format shall be available by contacting the Executive Director staff. Notice shall be posted by the applicant at the applicant's expense no later than 15 calendar days after submittal of any application to the Executive Director. Signage must remain on the property for at least 30 calendar days but must be removed by the applicant no later than 30 calendar days after the issuance or denial of the permit sought. The notice must include the following: the location of the proposed site for permit; the type of permit requested; and how to obtain additional information from the staff regarding the proposed permit. Notice under this subsection (a) is not required for the following: application for renewal, modification, or transfer of the aforementioned permits, and application for any initial operating permit that follows issuance of a construction permit at the same facility for any of the aforementioned permits or authorizations.

(b) **Projects of Heightened Public Concern**. Those activities which, because of their size, potential effect on the environment or the public, controversial nature, or location, are reasonably expected by the Executive Director to result in a heightened public concern or likelihood of request for a Chapter 120 petition or an appeal pursuant to section 9 of the EPC Act may be deemed by the Executive Director as "projects of heightened public concern." A project of heightened public concern may include any activity that requires an Executive Director's permit and also any renewal, modification, transfer, or subsequent operating permit (collectively referred to as "activity"). A project of heightened public concern may also include an activity referred to in subsection 1-2.051(a).

(1) (A) The following subsection applies to all applicable activities, except for General Permits and renewals of competitive motor vehicle events authorizations. Within 20 calendar days of notice from the Executive Director that the activity is a project of heightened public concern, the applicant shall provide additional notice at the applicant's expense by mail or hand delivery to the following: (i) immediately adjacent property owners; (ii) all neighborhoods included in the Registry of Neighborhood Organizations pursuant to the Hillsborough County Neighborhood Bill of Rights, adopted in the Land Development Code in section 10.03.02, that are located within one mile of the activity; and (iii) all neighborhood organizations registered with the Commission or a municipality which lie within one mile of the activity. The staff will provide the applicant with the potentially affected neighborhood organization lists and, within 10 calendar days of receipt of the lists, the applicant shall provide the staff written evidence that the adjacent property

owners and neighborhood organizations were notified. The notice must include the following: the location of the proposed site for the activity; the type of activity requested; and how to obtain additional information from the staff regarding the proposed activity.

(1) (B) For projects involving General Permits and renewals of competitive motor vehicle events authorizations, within 5 calendar days of notice from the Executive Director that the activity is a project of heightened public concern, the applicant shall provide additional notice at the applicant's expense by mail or hand delivery to the following: (i) immediately adjacent property owners; (ii) all neighborhoods included in the Registry of Neighborhood Organizations pursuant to the Hillsborough County Neighborhood Bill of Rights, adopted in the Land Development Code in section 10.03.02, that are located within 1,000 feet of the activity; and (iii) all neighborhood organizations registered with the Commission or a municipality which lie within 1,000 feet of the activity. The staff will provide the applicant with the potentially affected neighborhood organization lists and, within 5 calendar days of receipt of the lists, the applicant shall provide the staff written evidence that the adjacent property owners and neighborhood organizations were notified. The notice must include the following: the location of the proposed site for the activity; the type of activity requested; and how to obtain additional information from the staff regarding the proposed activity.

(1) (C) If the General Permit or competitive motor vehicle events authorization is a renewal and at the time of renewal it is deemed a project of heightened public concern, the applicant shall post a sign provided by the Executive Director's staff. The sign must be posted conspicuously on the property so as to be readily viewable from the busiest adjacent public roadway. The applicant must pick up and post the sign within 5 calendar days of notice of the Executive Director's heightened public concern determination, and the sign must remain posted for 20 days.

(2) Within 20 calendar days of notice from Executive Director that the activity is a project of heightened public concern, the applicant shall also post additional signage that meets the following criteria: the posted sign must be no smaller than a 30 inch by 48 inch sign and must be legible from the nearest public road. The notice format shall be provided by the staff but shall be posted by the applicant at the applicant's expense. Signage must remain on the property for at least 30 calendar days but must be removed by the applicant no later than 30 calendar days after the denial or issuance of the activity being sought. The notice must include the following: the location of the proposed site for the activity; the type of activity requested; and how to obtain additional information from the staff regarding the proposed activity. This subsection is not applicable to General Permits and renewals of competitive motor vehicle events authorizations.

(3) Upon request from any substantially affected person or the Executive Director regarding a project of heightened public concern, the staff may also conduct a public workshop to be held no later than 10 calendar days before the intended agency action is issued or for General Permits and renewals of competitive motor vehicle events authorizations, as soon as practicable.

(4) Within 20 days of issuance of the agency action from the Executive Director for an activity deemed a project of heightened public concern the applicant shall publish at the applicant's expense, a notice of agency action or intended agency action, in a newspaper of general circulation, as defined in Chapter 50, F.S., within the affected area. The notice must include the notice of rights so that substantially affected parties may have the opportunity to file a petition or appeal. The requirements in this subsection are in addition to any other requirements contained in any other rules or laws. This subsection does not apply to General Permits. General Permits are not required to be noticed unless so required under State rules or section 403.814(3), F.S. is utilized. Renewals of competitive motor vehicle events authorizations deemed a project of heightened public concern must also publish notice pursuant to this section, and publication by the applicant of such notice must occur within 20 days of agency action or within 20 days of the applicant becoming eligible to use the renewal.

(c) **Processing Timeframes**. Any form of notice or workshop required under sub-sections (a) or (b)

shall not extend any timeframes for reviewing applications under any applicable laws governing application processing.

Section History - *adopted 04/20/06 and effective 04/21/06; amended 12/13/07 and effective 12/14/07; amended 8/9/12 and effective 8/20/12; amended 5/18/23 and effective 5/19/23.*

1-2.052 REPEAL OF DECISION OF THE EXECUTIVE DIRECTOR

(a) A decision of the Executive Director, including Director Authorizations, permits, or other decisions shall be effective until suspended, revoked, surrendered, or expired.

(b) Failure to comply with pollution control laws and rules shall be grounds for suspension or revocation.

(c) The Executive Director may suspend or revoke any decision issued by him or her if he or she finds that the permit holder or his or her agent:

(1) Submitted false or inaccurate information in the application or required reports.

(2) Has violated law, Commission or Executive Director orders, rules or approval conditions.

(3) Has failed to submit operational reports or other information required by Commission rules.

(4) Has refused lawful inspection.

(d) No suspension or revocation shall become effective except after notice is served by personal service or certified mail upon the person or persons named therein. However, if a hearing is requested pursuant to Part IV of this rule, the effective date will be based on a final order issued after the hearing process is finalized. The notice shall specify the provision of the law, or rule alleged to be violated, or the permit condition or order alleged to be violated, and the facts alleged to constitute a violation thereof. This subsection does not preclude the Executive Director from seeking immediate injunctive relief under section 18 of the EPC Act.

Section History - adopted 8/9/12 and effective 8/20/12.

1-2.053 REQUEST FOR ADDITIONAL INFORMATION

If the Executive Director asks a permit applicant to respond to a written request for additional information (RAI) and the applicant does not timely respond in writing to the RAI, that failure to respond to the RAI is grounds for denial of the application. The denial does not prohibit the applicant from reapplying for the same activity by submitting the appropriate application and fee. Unless a law provides differently, the Executive Director will provide at least 30 days to respond to an RAI.

Section History - *New and adopted 5/18/23 and effective 5/19/23.*

1-2.07 APPOINTMENT OF HEARING OFFICERS, MEDIATORS AND SPECIAL MASTERS

(a) Upon recommendation of the Executive Director, the Commission will appoint as many Hearing Officers as needed to hear appeals pursuant to section 9 of the EPC Act, and such other matters as designated by the Commission. Except as provided in paragraph (b) below, cases will be assigned to Hearing Officers on rotation and upon determination that no conflict of interest exists.

(b) In the case of legally sufficient petitions filed under Part V, Administrative Law Judges will be those assigned by the Division of Administrative Hearings.

(c) Mediators will be appointed by the Executive Director as provided in section 1-2.11. Special Masters will be appointed by the Executive Director upon mutual agreement of the parties as provided in section 1-2.61.

Section History - *amended 3/16/06 and effective 3/17/06; amended 8/9/12 and effective 8/20/12.*

1-2.08 JUDICIAL REVIEW

(a) Upon the conclusion of an appeal pursuant to Section 9 of the EPC Act, any person aggrieved by the final administrative decision (Final Order) of the Commission may seek judicial review by filing an appeal with the Second District Court of Appeal.

(b) Upon conclusion of a Chapter 120 administrative petition process, any person aggrieved by the Final Order pursuant to a delegation from the DEP or the Southwest Florida Water Management District may seek judicial review by filing an appeal with the Second District Court of Appeal.

Section History - *amended 3/16/06 and effective 3/17/06; amended 5/18/23 and effective 5/19/23.*

PART II INFORMAL PROCESS

1-2.10 PRE-APPLICATION MEETING

Any applicant may seek assistance from staff by arranging a pre-application meeting with appropriate staff handling the proposed project. Staff will assist the applicant by explaining the type of information that will be reviewed and the standards and rules which may apply. Upon request, staff will make every reasonable effort to include other agency staff as appropriate.

Section History - *amended 3/16/06 and effective 3/17/06.*

1-2.11 REQUEST FOR MEDIATION

(a) Any person desiring mediation to resolve a perceived dispute of fact or interpretation of law prior to or following a written decision of the Executive Director may do so upon written request to the Executive Director. If an appropriate request is made hereunder, and the Executive Director agrees to using mediation, the following procedures shall apply. This option shall not be construed to limit efforts at any time to resolve or settle decisions or concerns through meetings and negotiation with appropriate staff or the Executive Director. If the written decision of the Executive Director states that mediation is not available, then sections 1-2.11 and 1-2.12 shall not apply. A request for mediation alone shall not toll the time for filing an appeal or petition of the written decision of the Executive Director.

(b) Mediation may consist of engaging the services of a trained mediator or may involve asking a mutually acceptable person uninvolved in the dispute (collectively referred to as "mediator") to listen to each side and assist in facilitating a resolution.

(1) Upon receipt of a request for mediation and an appeal or petition which cannot be resolved directly with staff or the Executive Director, the Executive Director will forward the names of three mediators for the petitioner or appellant's review and appropriate information regarding cost. The Executive Director shall also advise of the possibility of selecting an uninvolved person acceptable to both parties to assist in dispute resolution.

(2) If appellant does not make a selection within five business days of receipt of a list of three mediators, the Executive Director shall select a mediator and schedule the matter for mediation or the Executive Director may cancel the mediation.

Section History - *amended 3/16/06 and effective 3/17/06.*

1-2.12 MEDIATION PROCESS

(a) The mediation process shall be subject to Chapter 44, F.S. The Mediator shall schedule the mediation within 10 calendar days of the Mediator's selection and shall commence the mediation within 25 calendar days of the Mediator's selection, unless all parties agree to an extension. The Mediator may request the parties submit position papers or other documentation to assist in preparing the Mediator.

(1) The mediation shall be informal, should foster open communications between the parties to clarify facts and resolve the dispute, and should determine whether resolution can be achieved by agreement.

(2) Statements and settlement documents made at or in preparation for any mediation meeting shall not be used as evidence in any subsequent proceeding, unless agreed and signed by both parties.

(b) If settlement is reached, all terms and conditions shall be written and signed by the appellant or petitioner and the Executive Director and shall be binding in any subsequent proceeding. If all issues in dispute are resolved, any pending appeal or petition shall be dismissed.

(c) Unless agreed otherwise, the costs of mediation shall be divided and paid equally by the parties.

(d) If at any time, any party or the mediator believes that additional efforts at mediation will be futile in identifying issues or achieving settlement, written notice of termination of mediation shall be provided to the parties and the mediator.

(e) If mediation does not achieve settlement of an issue in a pending and timely filed appeal or petition, the Executive Director will immediately arrange for the Commission Chair to appoint a Hearing Officer pursuant to section 1-2.07 or will refer the matter to the Division of Administrative Hearings pursuant to Part V, with notice thereof provided to each party.

Section History - *amended 3/16/06 and effective 3/17/06.*

PART III ESTOPPEL

1-2.20 REQUEST FOR HEARING TO DETERMINE ESTOPPEL

(a) Any applicant for a permit who claims that the Commission or Executive Director is estopped from implementing any applicable regulations because of prior actions of the Commission, staff, or the Executive Director, may file a request for relief under this part with the Executive Director.

(b) A request for relief under this part shall contain information sufficient to permit a determination by the Executive Director pursuant to the following criteria:

(1) There was a valid, unexpired act of the Commission, the staff, or the Executive Director, upon which the applicant reasonably relied in good faith; and that

(2) The applicant made a substantial change in position or incurred extensive obligations or expenses in reliance upon that valid, unexpired act; and that

(3) Denying the applicant a permit under the rules adopted pursuant to the EPC Act, or issuing a permit consistent with the criteria and standards of any rules, would destroy his or her rights and be inequitable, unjust or fundamentally unfair.

(c) If the Executive Director cannot resolve the matter to the applicant's satisfaction following reasonable efforts to address the concerns regarding application of the Commission's rules, the Executive Director shall review the request for compliance with the criteria set forth above, prepare a written report with findings and conclusions within 30 calendar days of receipt of the initial request, unless a different time is agreed to by the parties. Such report shall contain a Notice of Rights explaining the applicant's administrative review rights under Part IV of this rule.

(d) The Hearing Officer shall determine procedural matters and shall follow the procedures under Part IV of this rule where applicable and not in conflict with this section. Following a hearing and such review as necessary, the Hearing Officer shall render a recommendation to the Commission regarding estoppel by employing the criteria in subsection b above. The applicant has the burden of demonstrating that the criteria are met. Upon receipt of the recommendation, the Commission will render a Final Order at its next regular meeting. If the recommendation is received within 15 calendar days or less of the next meeting, then the Commission may hear it at the following meeting.

(e) The Hearing Officer assigned to hear the request shall be a Hearing Officer appointed by the Commission pursuant to section 1-2.07 above.

(f) Notwithstanding anything in the Commission's regulations to the contrary, if the Hearing Officer determines that a finding of estoppel would result in a threat of peril to public health, safety or welfare of the residents of the county, the request for relief under this part may be denied by the Commission.

Section History - *amended 3/16/06 and effective 3/17/06; amended 8/9/12 and effective 8/20/12; amended 5/18/23 and effective 5/19/23.*

PART IV CHAPTER 84-446 APPEAL

1-2.30 ADMINISTRATIVE REVIEW

(a) Any person who has received a permit, Citation of Violation, Order to Correct, or other written decision of the Executive Director pursuant to the EPC Act, and any person whose interests protected by the EPC Act are adversely affected by an action or decision of the Executive Director, may obtain administrative review of the basis for the action or decision by appealing to the Commission.

(b) To be accepted and processed, a Notice of Appeal must be received by the Legal Department on behalf of the Commission Chair within 20 calendar days after receipt of notice of the disputed action or date of publication, whichever is earlier, unless the adversely affected person specifically requested such notice, then such date shall be 20 calendar days from receipt of notice.

(c) All Notices of Appeal filed under these rules shall contain:

(1) The name, address, e-mail, and telephone number of the Appellant; the name, e-mail, address, and telephone number of the Appellant's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the Appellant will be aggrieved or how his or her interests will be adversely affected by the Executive Director's determination;

(2) A statement of when and how the Appellant received notice of the agency decision;

(3) A statement of all disputed issues of material fact. If there are none, the Notice of Appeal must so indicate;

(4) The specific facts the Appellant contends warrant reversal or modification of the Executive Director's proposed action;

(5) A statement of the specific laws or rules the Appellant contends require reversal or modification of the Executive Director's proposed action; and

(6) A statement of the relief sought by the Appellant, stating precisely the action Appellant wishes the Commission to take with respect to the Executive Director's proposed action or decision.

(d) Upon receipt of a Notice of Appeal involving disputed issues of material fact, the Commission's Legal Department shall perform a sufficiency review as described below and accept or dismiss the Notice of Appeal. If accepted by the Legal Department, it shall, unless otherwise provided by law, refer the matter to the assigned Hearing Officer. The Legal Department shall also provide the Hearing Officer a copy of the Notice of Appeal and a copy of the Executive Director's proposed action or decision.

(e) A Notice of Appeal shall only be dismissed if it is not in substantial compliance with subsection (c) of this rule section, it has been untimely filed or it contains allegations or requests for relief that are not designed to be addressed in a Section 9 Appeal. Dismissal of a Notice of Appeal shall, at least once, be without prejudice to allow the Appellant to file a timely amended Notice of Appeal curing the defect, unless it conclusively appears from the face of the Notice of Appeal that the defect cannot be cured. The Order dismissing an appeal with prejudice shall be reviewed in accordance with a non-final order pursuant to Rule 9.030(c)(2), Florida Rules of Appellate Procedure by filing a petition for writ of certiorari in a court of competent jurisdiction.

(f) The Commission's Legal Department shall promptly give written notice to all parties of the action taken on the Notice of Appeal, shall state with particularity its reasons if the Notice of Appeal is not granted, and shall state the deadline for filing an amended Notice of Appeal, if applicable.

(g) The Appellant may amend the Notice of Appeal prior to the appointment of the Hearing Officer by filing and serving an amended Notice of Appeal in the manner prescribed for filing and serving an original Notice of Appeal. The Appellant may amend the Notice of Appeal after the designation of the Hearing Officer only upon order of the Hearing Officer.

(h) If the law or facts warrant it, the Executive Director may revise the agency's position and file a change of agency action. Upon serving a change of agency action to the parties, the Appellant may amend the Notice of Appeal in accordance with section 1-2.30(g) above or any party may file an appropriate response.

(i) A notice of appeal challenging a modification (e.g. modified permit) of an Executive Director's final decision shall be limited to the changes made by the modified decision and does not re-open the original Executive Director decision to an administrative appeal on the unchanged portions of the decision.

Section History - *amended 3/16/06 and effective 3/17/06; amended 8/9/12 and effective 8/20/12; amended 5/18/23 and effective 5/19/23.*

1-2.31 FILING, SERVICE

(a) A Notice of Appeal shall be served and filed by electronic mail ("e-mail") or other specified electronic method to the Legal Department.

(b) Upon transfer of the case to the Hearing Officer, the original pleadings, papers, documents or notices shall be filed electronically with the Hearing Officer, until such time as the Hearing Officer issues his or her report and recommendation to the Commission, or the matter is otherwise resolved. Copies of any pleadings, papers, documents, motions, or notices filed with the Hearing Officer shall be provided to the Legal Department and any other party of record.

(c) Service of any pleadings, papers, documents or notices must be by e-mail or any other specified electronic method. Otherwise, procedures for service shall be in accordance with the Florida Rules of Civil Procedure and the Florida Rules of Judicial Administration regarding electronic filing and service. If a party is represented by an attorney of record, service shall be had by serving the party's attorney.

(d) The Commission's Legal Department may, for good cause shown, grant a request for an extension of time for filing the Notice of Appeal or any initial pleading. Requests for extension of time must be filed with the Legal Department prior to the applicable deadline. A timely request for extension of time shall toll the running of the time period for filing a Notice of Appeal until the request is acted upon.

(e) Any person who receives notice of an Executive Director decision and who fails to file a written appeal or request for extension of time to file an appeal within 20 calendar days waives the right to request a hearing on such matter and the decision shall become final.

Section History - *amended 3/16/06 and effective 3/17/06; amended 8/9/12 and effective 8/20/12; amended 5/18/23 and effective 5/19/23.*

1-2.32 PROCESS BEFORE THE HEARING OFFICER

(a) For each timely and appropriate appeal raising factual or legal issues that cannot otherwise be resolved, a Hearing Officer shall be appointed as provided in section 1-2.07 and notice thereof provided to each party.

(b) The Hearing Officer shall set each appeal for hearing at the earliest reasonable date, and cause notice thereof to be served upon the Appellant and the Executive Director.

(c) Each party may avail itself of discovery at its own expense as allowed by the Rules of Civil Procedure. Hearings and the timing of any discovery shall be at the discretion of the Hearing Officer. Procedural motions may be decided by the Hearing Officer, without hearing, using the Rules of Civil

Procedure as guidance. Requests for reconsideration or rehearing made within 10 calendar days of a ruling on a motion may be granted.

(d) The Hearing Officer shall have the power to issue notices of hearings, subpoenas, and to require the attendance of witnesses, and the production of evidence, to administer oaths, and take testimony as may be necessary. The Hearing Officer shall rule upon offers of proof, receive relevant evidence, dispose of procedural requests or similar matters, and in general, regulate the course of the hearings. The Hearing Officer may dismiss an appeal upon the Executive Director's written withdrawal of the appealed decision, or the Appellant's written withdrawal of his or her appeal.

(e) The Hearing Officer shall require the parties to prepare pre-hearing statements of the facts and issues in dispute, and may request written briefs or memoranda of law be furnished when deemed necessary.

(f) All requests for relief shall be by motion. All motions shall be in writing unless made on the record during a hearing and the Hearing Officer allows the introduction of an oral motion, and any motion shall fully state the action requested and the grounds relied upon. When time allows, the other parties may, within seven business days of service of a written motion, file a response in opposition. Written motions will normally be disposed of after the response period has expired, based on the motion, together with any supporting or opposing memoranda. The Hearing Officer may conduct such proceedings and shall enter such orders as are deemed necessary to dispose of issues raised by the motion without the need for a hearing. Allowing hearings on motions shall be at the discretion of the Hearing Officer.

(g) Unless prohibited by law, all motions may be decided by the Hearing Officer. In the event the Hearing Officer enters any order granting a motion disposing the case other than an Order Relinquishing Jurisdiction pursuant to a voluntary dismissal or similar reason, the matter will be referred to the Commission as a recommendation and will be subject to sections 1-2.34 and 1-2.35.

(h) Motions, other than a motion to dismiss, a motion to strike, or a motion for summary final order, shall include a statement that the party making the motion has conferred with all other parties of record and shall state as to each party whether the party has any objection to the motion.

(i) Any party may move for summary final order whenever there is no genuine issue as to any material fact. The motion may be accompanied by supporting affidavits. All other parties may, within seven business days of service, file a response in opposition, with or without supporting affidavits. A party moving for summary final order less than 12 calendar days prior to the final hearing waives any objection to the continuance of the final hearing.

(j) Motions for extension of time shall be filed prior to the expiration of the deadline sought to be extended, shall state good cause for the request, and may be granted at the discretion of the Hearing Officer.

(k) At any time after a matter has been filed with the Commission, the Hearing Officer may direct the parties to confer for the purpose of clarifying and simplifying issues, discussing the possibilities of settlement, examining documents and other exhibits, exchanging names and addresses of witnesses, resolving other procedural matters, and entering into a pre-hearing stipulation. The Hearing Officer may also request the parties to meet at a case management conference at any reasonable time after the Notice of Appeal has been transferred to the Hearing Officer.

(l) The Hearing Officer may grant a continuance of a hearing for good cause shown. Except in cases of emergency, requests for continuance must be made at least five business days prior to the date noticed for the hearing.

(m) If there are separate matters which involve similar issues of law or fact, or identical parties, the matters may be consolidated by the Hearing Officer if it appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party.

Section History - *amended 3/16/06 and Effective 3/17/06; amended 5/18/23 and effective 5/19/23.*

1-2.33 ADMINISTRATIVE HEARING

(a) All hearings shall be public.

(b) The Hearing Officer shall afford all parties properly appearing before him or her the requisite due process of law including, but not limited to, the right to:

(1) Present the case by oral and documentary evidence.

(2) Submit rebuttal evidence and conduct such cross examination as may be required, subject, however, to the ruling of the Hearing Officer.

(3) Be accompanied, represented and advised by counsel, or to represent oneself.

(c) All testimony taken at any hearing before the Hearing Officer shall be under oath or affirmation.

(d) The burden of proof shall be on the Executive Director to establish each material fact reasonably raised in the appeal of a Citation. The burden of proof shall be on the applicant to establish entitlement to a permit, order, authorization, exemption, or exception allowed by the rules. Fact issues not raised by the Notice of Appeal shall be accepted as undisputed. Hearings held under this section shall be *de novo* in nature.

(e) The Hearing Officer shall give probative effect to evidence which would be admissible in civil proceedings in Florida courts, but in receiving evidence due regard shall be given to the technical and highly complicated subject matter which the Commission and Executive Director must handle, and the exclusionary rules of evidence shall not be used to prevent the receipt of evidence having substantial probative effect. Otherwise, effect shall be given to the rules of evidence recognized by Florida law.

(f) A full and complete record of all proceedings and testimony presented shall be taken by stenographic or mechanical device and accurately and completely preserved and filed, together with any exhibit or documentary evidence admitted during any hearing. Upon payment and receipt of all costs or fees necessary in producing same, a certified transcript of the whole, or any part of the record, shall be furnished to any party in such proceeding requesting the same.

(g) Where procedural matters are not provided for in this rule or by the Hearing Officer, the Florida Rules of Civil Procedure and the Florida Rules of Judicial Administration may be applied.

Section History - *amended 3/16/06 and effective 3/17/06; amended 8/9/12 and effective 8/20/12; amended 5/18/23 and effective 5/19/23.*

1-2.34 REPORT AND RECOMMENDATION

(a) The Hearing Officer shall hear and determine all factual disputes properly raised by the Notice of Appeal concerning actions or decisions of the Executive Director pursuant to the EPC Act, and rules promulgated by the Commission.

(b) All parties may submit proposed findings of fact, conclusions of law, orders, and memoranda on the issues within a time designated by the Hearing Officer.

(c) The Hearing Officer shall within 30 calendar days after the hearing or receipt of the hearing transcript, whichever is later, file a report titled the "recommended order." The recommended order to be considered by the Commission shall include a caption, time and place of hearing, appearances entered at the hearing, statement of the issues, findings of fact and conclusions of law (separately numbered and stated), and a recommendation for final agency action based upon the evidence submitted to the Hearing Officer and based upon applicable laws and rules. The Hearing Officer shall not rule on constitutional issues, except when the law allows the Hearing Officer to make such a ruling and when the ruling is necessary for making a conclusion of law.

(d) When a Hearing Officer issues the recommended order, the file maintained by the Hearing Officer in that matter shall be provided to the Legal Department, and the Hearing Officer shall have no further responsibility in the matter unless the Commission refers it back for additional review.

Section History - *amended 3/16/06 and effective 3/17/06; amended 8/9/12 and effective 8/20/12; amended 5/18/23 and effective 5/19/23.*

1-2.35 EXCEPTIONS AND FINAL ORDER

(a) The parties may file exceptions to findings of fact and conclusions of law contained in the Hearing Officer's recommended order to the Legal Department within 10 calendar days of entry of the recommended order. Exceptions shall be limited to challenge of the Hearing Officer's determination of facts with specific reference to evidence in the record, or to the Hearing Officer's application of the existing laws and rules to the facts as found. Copies shall be served on all parties. The Legal Department will distribute the exceptions and responses to the commissioners.

(b) Any party may file responses to another party's exceptions within 10 calendar days from the date the exceptions were served.

(c) If no exceptions are timely filed, the Commission shall adopt the Hearing Officer's findings of fact, and shall make appropriate conclusions of law, and render a Final Order.

(d) If exceptions are timely filed, they shall be heard by the Commission on reasonable notice. In such proceeding to review exceptions the Commission may hear argument from all parties on issues reasonably raised by the exceptions. Each party shall have ten minutes to argue their exceptions and respond to another party's exceptions, unless the Commission approves a different time limit. Material questions of fact necessary to final application of the laws and rules, will be referred back to the Hearing Officer for review.

(e) The Commission may reject, reverse or modify a finding of fact only if it finds that the fact is not supported by substantial competent evidence in the record.

(f) The Commission shall affirm, reverse, or modify the Hearing Officer's findings of fact, make appropriate conclusions of law, and promptly render a written Final Order thereon, provided that the Commission shall not take any action which conflicts with or nullifies any provision of the EPC Act or the rules enacted pursuant to said act.

Section History - *amended 3/16/06 effective 3/17/06; amended 8/9/12 and effective 8/20/12; amended 5/18/23 and effective 5/19/23.*

PART V DELEGATED PROGRAMS

1-2.40 PETITION OF CHAPTER 120 DELEGATED ACTION

(a) Any person who files a timely petition of the Executive Director's decision on a state permit, notice of violation, or other decision in a regulatory program for which the Commission has delegation from the DEP or the Southwest Florida Water Management District, and which by the terms of the delegation agreement requires administrative review pursuant to Chapter 120, F.S., such petition shall be subject to the applicable procedures of Chapter 120, F.S. and the rules promulgated thereunder.

(b) Any such petition shall be filed with the Executive Director and be copied to DEP Office of General Counsel, and shall meet the applicable requirements of Chapter 120, F.S. and Chapters 62-4, Florida Administrative Code.

(c) If timely, and if resolution cannot be obtained through other process such as mediation, a petition under this part will be referred to the Division of Administrative Hearings for processing pursuant to Chapter 120, F.S. and the rules promulgated thereunder.

(d) Upon receipt of the Administrative Law Judge's recommended order, the Executive Director or the Secretary of DEP, as required by the delegation agreement, shall issue a Final Order according to Chapter 120, F.S., the rules promulgated thereunder, the requirements of the delegation order, and any applicable operating agreements.

Section History - *amended 3/16/06 and effective 3/17/06.*

PART VI VARIANCE OR WAIVER

1-2.50 REQUEST FOR VARIANCE OR WAIVER

(a) Upon application, the Executive Director may recommend to the Commission that a variance or waiver be granted from the provisions of the rules adopted pursuant to the EPC Act, where the applicant demonstrates:

(1) A substantial hardship as defined by section 120.542, F.S., or that a violation of the principles of fairness as defined by section 120.542, F.S., would occur, and

(2) The purpose of the underlying rule can be, or has been, achieved by other means, and

(3) The provision from which the variance or waiver is being sought did not originate with the DEP where the variance must be considered by the DEP pursuant to section 403.201, F.S. or the variance or waiver must be considered by the DEP or the Southwest Florida Water Management District pursuant to Chapter 120, F.S. Additionally, the Commission does not process variances or waivers of state-delegated rules.

(b) The application must specify the rule for which the variance or waiver is requested, the type of action requested, the specific facts that would justify a variance or waiver, and the reasons why and the manner by which the purposes of the underlying rule would still be met.

(c) Notice of the application must be published by the applicant in a newspaper of general circulation, as defined in Chapter 50, F.S., in the County at least 10 calendar days prior to the public hearing, and such notice shall include a summary of the factual basis for the application, the date of the Commission hearing, and information regarding how interested persons can review the application and provide comment.

(d) The Commission will consider the application, the Executive Director's recommendation, and the comments of the public at a public hearing during a Commission meeting. The Commission shall grant, in whole or part, or deny the application by written decision supported by competent substantial evidence. The Commission may impose additional conditions in a variance or waiver.

Section History - *amended 3/16/06 and effective 3/17/06; amended 8/9/12 and effective 8/20/12.*

PART VII PRIVATE PROPERTY RIGHTS

1-2.60 CLAIM UNDER THE BERT HARRIS ACT

(a) Any person claiming that a specific action of the Commission or Executive Director in implementing regulations subject to section 70.001, F.S., has inordinately burdened an existing use or vested right in his or her property as defined in section 70.001(3), F.S., must present a written claim to the Commission Chair with a copy to the Executive Director, within one year of the challenged action. The claim must specifically identify the action taken by the Commission or staff, the property affected, the use or right claimed to be vested, the manner by which the action inordinately burdens the use or vested right, and must include an appraisal demonstrating the alleged loss in fair market value.

(b) The Executive Director will provide written notice of the claim by certified mail to the address kept on file by the County Property Appraiser to all owners of real property contiguous to the subject property, and to any substantially affected party who submitted testimony in support or opposition to the challenged action and who requests notice of any subsequent proceeding.

(c) The Executive Director will submit to the claimant, within 180 calendar days of receiving the claim or as may be agreed by the parties, a settlement offer which addresses any identified inordinate burden, if any, and which continues to protect the public interest served by the questioned regulation.

(d) If the settlement is accepted, the parties will proceed to implement the agreement. If the settlement contravenes an existing statute, the parties will jointly file a suit in circuit court to obtain judicial approval.

(e) If the settlement is rejected, the Executive Director will issue a No Further Administrative Action Letter (i.e., ripeness decision), identifying the allowable uses for the subject property.

(f) (1) If a judicial decision subsequently requires that the Commission compensate a claimant for an inordinate burden to his or her property, the Commission will seek legal title to that property interest.

(2) If the court finds that the Commission made a bona fide settlement offer and ripeness decision pursuant to section 70.001(6)c, F.S., which the claimant failed to accept, the Commission will seek attorneys' fees and costs.

Section History – *amended 3/16/06 and effective 3/17/06; amended 5/18/23 and effective 5/19/23.*

1-2.61 CLAIM UNDER THE DISPUTE RESOLUTION ACT

(a) Any person claiming that a Commission or Executive Director enforcement action, permit, or development order unfairly burdens the use of his or her land or real property, may seek relief as allowed by section 70.51, F.S. by filing a written request for appointment of a special master to the Commission Chair with a copy to the Executive Director, within 30 calendar days of the challenged action. The request must specifically identify the action taken by the Commission or Executive Director, the property affected, and must explain how the action taken is alleged to be unreasonable or to unfairly burden the claimant's property.

(b) If all administrative appeals have not been exhausted at the time of the request, the Executive Director may:

(1) Treat the request for a special master as an administrative appeal under Chapter 84-446, Laws of Florida, as provided in Part IV above if made within 20 calendar days of the challenged action, granting the claimant the option to submit a new request at the conclusion of the appeal;

(2) Convert an ongoing administrative appeal to the special master process; or

(3) Suspend the request for a special master pending conclusion of an ongoing administrative appeal or expiration of 4 months, whichever occurs first.

(c) Within 10 calendar days of the filing or decision to proceed as described above, the Executive Director will forward the request to a mutually agreed upon special master.

(d) The Executive Director will provide written notice of the request by certified mail to the address kept on file by the County Property Appraiser to all owners of real property contiguous to the subject property, and to any substantially affected party who submitted testimony in support or opposition to the Commission or Executive Director action and who requests notice of any subsequent proceeding. Within 21 calendar days of the filing of the request or decision to proceed as described above, any property owner or substantially affected person receiving notice from the Commission or Executive Director, may request permission to participate in the special master proceeding, but not as a party or intervenor.

(e) Within 15 calendar days of the filing of the request or decision to proceed as described above, the Executive Director will respond to the claimant setting forth the Commission's position regarding the allegations, and include a statement explaining the public purpose of the regulations upon which the action or development order is based

(f) Within 45 calendar days of receipt of the request or as agreed by the parties, the special master must hold a hearing. The purpose of the hearing is to focus attention on the impact of the challenged action, and to explore alternatives.

(1) The special master will provide at least 40 calendar days notice prior to the hearing.

(2) The hearing will be informal and not require the services of an attorney. The hearing will be open to the public.

(3) The special master may subpoena any nonparty witness in the state to aid in the disposition of the matter.

(4) Actions or statements made by participants in the special master hearing are inadmissible in any subsequent judicial or administrative proceeding.

(5) The special master may hear from all parties and witnesses necessary to understand the matter, and must weigh all information offered at the hearing, in the request for relief, and any responses.

(g) The parties may settle the issues at any time and end the proceedings. If an acceptable solution is not reached after the special master's attempt at mediation, the special master must determine whether the action is unreasonable or unfairly burdens the real property. The circumstances to be examined in making this determination include those set forth in section 70.51(18), F.S.

(h) Within 14 calendar days after the conclusion of the hearing, the special master must prepare and submit a written recommendation to the parties.

(1) If the special master determines that the action is not unreasonable or unfairly burdens the real property, the proceeding ends and the claimant may pursue other available remedies;

(2) If the special master determines that the action is unreasonable or unfairly burdens the real property, the special master may, with the claimant's consent, recommend one or more alternative solutions. The selected alternatives must protect the public interest served by the underlying regulation and also allow for reduced restraints on the use of the real property.

(i) Within 45 calendar days of receipt of the special master's recommendation, the Commission will accept, modify through agreement, or reject the recommendation. Failure to act is a rejection. The Executive Director will issue a written No Further Administrative Action Letter (i.e., ripeness decision) within 30 calendar days if the Commission rejects the recommendation, or if the claimant rejects the Commission's decision on the recommendation. The ripeness decision will describe the uses available to the real property.

(j) Fees, costs and expenses of the special master process are to be shared equally between all governmental parties and the claimant. The Commission or Executive Director shall estimate the costs and shall submit the analysis and allocation to the claimant at the time of submitting its response to the initial request. Payment shall be submitted to the special master or otherwise arranged for prior to the hearing being held.

Section History - *amended 3/16/06 and effective 3/17/06; amended 5/18/23 and effective 5/19/23.*

PART VIII RULEMAKING

1-2.70 GENERAL PROVISIONS

(a) Any person may file a written request with the Commission's Legal Department to be given advance notice of Commission proceedings to adopt, amend, or repeal a rule, as provided in section 5 of Chapter 84-446, Laws of Florida. The written request may specify that advance notice is requested of all Commission rulemaking proceedings, or of only those Commission rulemaking proceedings involving specific subjects.

(b) Any person may file a written request to the Commission's Legal Department to adopt, amend, or repeal a rule.

(c) After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.

Section History *- adopted 3/16/06 and effective 3/17/06.*

1-2.71 ADOPTION PROCEDURES

(a) Pursuant to section 5 of the EPC Act, the Commission may adopt, amend, or repeal appropriate

rules reasonably necessary for the implementation and effective enforcement, administration and interpretation of the provisions of the EPC Act.

(b) Staff may conduct rule workshop(s) any time prior to the Commission hearing.

(c) No rule, rule amendment, or rule repeal shall be adopted or become effective without a noticed public hearing being held by the Commission. The notice of public hearing to adopt, amend, or repeal a rule shall generally explain the subject matter of the rulemaking at issue and the date, time, and location of the Commission's public hearing. The notice shall be published in a newspaper of general circulation, as defined in Chapter 50, F.S., in the County at least 10 calendar days prior to the hearing. The proposed rule shall be available for inspection and copying by the public at the time of the publication of notice by contacting the Commission's Legal Department. The latest revisions of the proposed rule may also be available on-line on the Commission's internet site.

(d) The notice shall be mailed or electronically mailed to all persons specifically named in the proposed rulemaking and to all persons who have made requests of the Commission as described in section 1-2.70(a) for advance notice of its proceedings if requested at least 14 calendar days prior to such hearing.

(e) At the Commission's public hearing, the Commission may adopt, revise and adopt, or reject the proposed rule, rule amendment, or rule repeal. Immediately after adoption, the staff shall file the adopted action with the Clerk of the Circuit Court and the rule or repeal shall become effective upon filing, unless timely challenged pursuant to section 1-2.73. For the limited purposes of this subsection, "filing" shall mean delivery to the Clerk of the Circuit Court – Board of County Commissioners Records Department.

Section History - *adopted 3/16/06 and effective 3/17/06; amended 8/9/12 and effective 8/20/12.*

1-2.72 GENERAL PROCEDURES FOR CHALLENGING THE VALIDITY OF AN EXISTING RULE OR PROPOSED RULE

(a) Any person substantially affected by a rule or a proposed rule may seek an administrative determination of the validity of the rule on the grounds that the rule is an invalid exercise of delegated legislative authority.

(b) The petition seeking an administrative determination must state with particularity the provisions alleged to be invalid with sufficient explanation of the facts or grounds for the alleged invalidity and facts sufficient to show that the person challenging the rule is substantially affected by it, or that the person challenging the proposed rule would be substantially affected by it.

(c) The petition shall be filed with the Commission Chair and the Commission's Legal Department. Upon receipt of the petition on the existing rule or proposed rulemaking, the Commission's Legal Department shall accept or dismiss the petition, and if accepted shall, unless otherwise provided by law, refer the matter to the assigned Hearing Officer within 30 calendar days.

(d) The petition shall only be dismissed if it is not in substantial compliance with this Part or it has been untimely filed as to a proposed rule. Dismissal of a petition shall, at least once, be without prejudice to the party's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured. The Order dismissing with prejudice a petition filed under this Part shall be reviewed in accordance with a non-final order pursuant to Rule 9.030(c)(2), Florida Rules of Appellate Procedure by filing a petition for writ of certiorari in a court of competent jurisdiction.

(e) The Hearing Officer shall conduct a hearing within 60 calendar days thereafter, unless the petition is withdrawn or a continuance is granted by agreement of the parties or for good cause shown. The Commission shall follow the applicable rulemaking procedures set forth in this Part. In the event the Commission fails to follow any applicable procedure in this Part, the rule shall not be subject to invalidation if the Commission shows that the substantial interests of the petitioner and the fairness of the proceedings have not been impaired.

(f) Within 30 calendar days after the hearing, the Hearing Officer shall render a final decision and state the reasons in writing. The Hearing Officer shall forthwith transmit copies of the decision to the Commission.

(g) Hearings held under this section shall be de novo in nature. The standard of proof shall be the preponderance of the evidence. Hearings shall be conducted in the same manner as provided for in Part IV of this chapter, except that the Hearing Officer's order shall be final agency action. The petitioner and the Commission acting through its Executive Director shall be adverse parties. At the discretion of the Hearing Officer, substantially affected persons may petition to join the proceedings as intervenors on appropriate terms which shall not unduly delay the proceedings, and the intervenors may not raise new issues in the case. Any petition to intervene must be filed no later than 20 days before the hearing.

(h) "Invalid exercise of delegated legislative authority" means action which goes beyond the powers, functions, and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one of the following applies:

(1) The agency has exceeded its grant of rulemaking authority;

(2) The rule contravenes the specific provisions of law implemented;

(3) The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency; or

(4) The rule is arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational.

(i) Within 30 calendar days of issuance of the Hearing Officer's final decision, a substantially affected party may seek judicial review of the final decision by filing a writ of certiorari with the Thirteenth Judicial Circuit Court.

Section History - *adopted 3/16/06 and effective 3/17/06.*

1-2.73 CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS

(a) In accordance with section 1-2.72, any substantially affected person may seek an administrative determination of the validity of any proposed rule by filing a petition seeking such a determination with the Commission. In accordance with section 1-2.72, the petition must be filed with the Commission Chair and Commission's Legal Department within 20 calendar days after the public hearing approving the proposed rulemaking. The petition shall state with particularity the objections to the proposed rule and the reasons that the proposed rule is an invalid exercise of delegated legislative authority. The petitioner has the burden of going forward. The Commission then has the burden to prove by a preponderance of the evidence that the proposed rule is not an invalid exercise of delegated legislative authority as to the objections raised. Any person who is substantially affected by a change in the proposed rule may seek a determination of the validity of such change.

(b) The Hearing Officer may declare in the final decision the proposed rule to be valid or wholly or partly invalid. The proposed rule or provision of a proposed rule declared invalid shall be withdrawn by the Commission and shall not be adopted. The Commission may proceed with all other steps in the rulemaking process as to the valid portions of the rule. If the Commission chooses to file the rule pursuant to the Hearing Officer's final decision, it shall immediately file it pursuant to section 1-2.71(e). In the event part of a proposed rule is declared invalid, the Commission may, in its sole discretion, withdraw the proposed rule in its entirety. If the rule is invalidated in whole or part or if the Commission chooses to withdraw the proposed rule, the Commission shall give notice of the decision in a newspaper of general circulation in the County within 10 calendar days.

(c) When any substantially affected person seeks determination of the validity of a proposed rule pursuant to this section, the proposed rule is not presumed to be valid or invalid.

Section History - *adopted 3/16/06 and effective 3/17/06.*

1-2.74 CHALLENGING EXISTING RULES; SPECIAL PROVISIONS

(a) In accordance with section 1-2.72, a substantially affected person may seek an administrative determination of the validity of an existing rule at any time during the existence of the rule. The petitioner has the burden of proving by a preponderance of the evidence that the existing rule is an invalid exercise of delegated legislative authority as to the objections raised.

(b) The Hearing Officer may declare all or part of a rule invalid. Unless the Hearing Officer's decision is reversed in whole or part by a court of competent jurisdiction, the rule or part thereof declared invalid shall become void when the time for filing an appeal expires. The Commission shall give notice of the decision in a newspaper of general circulation, as defined in Chapter 50, F.S., in the County within 10 calendar days.

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