DIVISION OF FOOD, NUTRITION AND WELLNESS
1-800-504-6609
(850) 617-7402 FAX

THE HOLLAND BUILDING, SUITE 120
600 SOUTH CALHOUN STREET
TALLAHASSEE, FLORIDA 32399-0001

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

COMMISSIONER NICOLE "NIKKI" FRIED

March 20, 2020

FILED
2020 MAR 20 AM 11:46

Florida Department of State
Administrative Code and Register Section
The Capitol, Room 701
Tallahassee, Florida 32399-0250

Subject: Emergency Rule 5PER20-2

Dear Administrative Code and Register Section:

Please find enclosed the certification package for the above-referenced emergency rule. My contact information is:

Darby Shaw
Florida Department of Agriculture and Consumer Services
General Counsel's Office
407 South Calhoun St., Ste. 520
Tallahassee, Florida 32399
(850) 245-1000 (main)
Darby.Shaw@FDACS.gov

If you have any questions, please contact me at (850) 245-1017.

Sincerely,

/s/ Darby G. Shaw
Darby G. Shaw
Senior Attorney

CERTIFICATION OF THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

EMERGENCY RULE FILED WITH THE

DEPARTMENT OF STATE

I hereby certify that an immediate danger to the public health, safety or welfare requires emergency action and that the attached rule is necessitated by the immediate danger. I further certify that the procedures used in the promulgation of this emergency rule were fair under the circumstances and that the rule otherwise complies with Section 120.54(4), F.S. The adoption of this rule was authorized by the head of the agency and this rule is hereby adopted upon its filing with the Department of State.

Rule No.

5PER20-2

Under the provision of Section 120.54(4)(d), F.S., this rule takes effect upon filing unless a later time and date less than 20 days from filing, is set out below:

Effective Date: _____
(month) (day) (year)

Nicole Fried

Nicole Fried, Commissioner of Agriculture

_____
Number of Pages Certified

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CERTIFICATION OF DEPARTMENT OF STATE
DESIGNATION OF RULE THE VIOLATION OF WHICH IS A MINOR VIOLATION

Pursuant to Section 120.695(2)(c)3, Florida Statutes, I certify as agency head, as defined by section 20.05(1)(b), Florida Statutes, that:

[X] All rules covered by this certification are not rules the violation of which would be minor violation pursuant to Section 120.695, F.S.

[ ] The following parts of the rules covered by this certification have been designated as rules the violation of which would be a minor violation pursuant to Section 120.695, F.S.:

Rules covered by this certification:

5PER20-2

Nicole Fried

Nicole Fried

Commissioner of Agriculture
Title

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Form: DS-FCR-6
Rule 1-1.010(3)(f), F.A.C.; effective 10-17

5PER20-2 (5P-1.002) Appeals.

(1)-(3) No change.

(4) The Appellant shall have fifteen (15) calendar days if participating in the National School Lunch Program and ten (10) calendar days for the Summer Food Service Program to appeal the agency action from the date the Appellant receives the Notice of Action.

(5)-(6) No change.

(7) The Appellant may submit additional written documentation for review by the hearing official either with the request for appeal or within thirty calendar days if participating in the National School Lunch Program and within seven (7) calendar days if participating in the Summer Food Service Program of the date the Appellant submitted the request for appeal. The department has thirty calendar days if Appellant is participating in the National School Lunch Program and seven (7) calendar days if Appellant is participating in the Summer Food Service Program from the date the department received the request for appeal to submit written documentation to the designated hearing official. Any written documentation received after the applicable thirty-day or seven-day deadline will not be considered for review.

(8) No change.

(9) If a hearing is requested, it shall be held within forty-five (45) calendar days for Appellants participating in the National School Lunch Program and within fourteen (14) calendar days for Appellants participating in the Summer Food Service Program of the date the department received the request for appeal, unless otherwise agreed to by both parties. At no time shall the hearing be held prior to the date the hearing officer receives written documentation from both parties. The Appellant shall be provided with at least five (5) calendar days' written notice, sent via certified mail, return receipt requested, of the time and place of the hearing.

(a)-(b) No change.

(10)-(16) No change.

Rulemaking Authority 570.07(23), 595.404(4), (10), (11) FS. Law Implemented 595.404 FS. History–New 3-22-66, 4-11-70, 4-19-73, Repromulgated 12-5-74, Amended 6-28-83, Formerly 6A-7.41, 6A-7.040, Amended 6-21-18, 12-16-18, 3-20-20.

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Emergency Rule 5PER20-2 Appeals.

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC, HEALTH, SAFETY OR WELFARE:

Due to the risk posed by the COVID-19 outbreak to the entire state of Florida, the resulting severe public health emergency declared by the Governor of the State of Florida, and the recommendations of the United States Centers for Disease Control and the Florida Department of Health to implement social distancing measures for approximately 30 days, the Department has determined there is an immediate danger to the public health, safety, and welfare of individuals seeking to exercise their right to due process within the deadlines provided under Rule 5P-1.002, F.A.C. This emergency rule will allow Appellants additional time to respond to agency action and participate in hearings while adhering to recommended social distancing measures, thus protecting the public welfare.

REASONS FOR CONCLUDING THAT THE PROCEDURE USED IS FAIR UNDER THE CIRCUMSTANCES:

The deadlines provided in the emergency rule allow Appellants to adhere to social distancing recommendations by giving them more time to coordinate their response to agency action and allowing additional time to conduct hearings at a later date either by video conference or in person when social distancing recommendations are lifted.

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Notice of Emergency Rule

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
Division of Consumer Services
RULE NO.: RULE TITLE:
5PER20-2 (5P-1.002) Appeals.
SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Due to the risk posed by the COVID-19 outbreak to the entire state of Florida, the resulting severe public health emergency declared by the Governor of the State of Florida, and the recommendations of the United States Centers for Disease Control and the Florida Department of Health to implement social distancing measures for approximately 30 days, the Department has determined there is an immediate danger to the public health, safety, and welfare of individuals seeking to exercise their right to due process within the deadlines provided under Rule 5P-1.002, F.A.C. This emergency rule will allow Appellants additional time to respond to agency action and participate in hearings while adhering to recommended social distancing measures, thus protecting the public welfare.
REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: The deadlines provided in the emergency rule allow Appellants to adhere to social distancing recommendations by giving them more time to coordinate their response to agency action and allowing additional time to conduct hearings at a later date either by video conference or in person when social distancing recommendations are lifted.
SUMMARY: This emergency rule extends the deadlines for Appellants participating in the National School Lunch Program to allow 15 calendar days to respond to agency action, 30 days from receipt of a notice of action to provide documentation for review by the hearing official, and 45 days from receipt of a notice of action to conduct the hearing. The department is also afforded 30 days to provide documentation for review by the hearing official. The deadlines for the Summer Food Service Program are not extended because the Summer Food Service Program is not currently operating or under review by the department.
THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Darby Shaw, Senior Attorney, 407 South Calhoun St., Tallahassee, FL 32399, (850)245-1000.

THE FULL TEXT OF THE EMERGENCY RULE IS:

5PER20-2 (5P-1.002) Appeals.

(1)-(3) No change.

(4) The Appellant shall have fifteen (15) calendar days if participating in the National School Lunch Program and ten (10) calendar days for the Summer Food Service Program to appeal the agency action from the date the Appellant receives the Notice of Action.

(5)-(6) No change.

(7) The Appellant may submit additional written documentation for review by the hearing official either with the request for appeal or within thirty calendar days if participating in the National School Lunch Program and within seven (7) calendar days if participating in the Summer Food Service Program of the date the Appellant submitted the request for appeal. The department has thirty calendar days if Appellant is participating in the National School Lunch Program and seven (7) calendar days if Appellant is participating in the Summer Food Service Program from the date the department received the request for appeal to submit written documentation to the designated hearing official. Any written documentation received after the applicable thirty-day or seven-day deadline will not be considered for review.

(8) No change.

(9) If a hearing is requested, it shall be held within forty-five (45) calendar days for Appellants participating in the National School Lunch Program and within fourteen (14) calendar days for Appellants participating in the Summer Food Service Program of the date the department received the request for appeal, unless otherwise agreed to by both parties. At no time shall the hearing be held prior to the date the hearing officer receives written documentation from both parties. The Appellant shall be provided with at least five (5) calendar days' written notice, sent via certified mail, return receipt requested, of the time and place of the hearing.

(a)-(b) No change.

(10)-(16) No change.

Rulemaking Authority 570.07(23), 595.404(4), (10), (11) FS. Law Implemented 595.404 FS. History–New 3-22-66, 4-11-70, 4-19-73, Repromulgated 12-5-74, Amended 6-28-83, Formerly 6A-7.41, 6A-7.040, Amended 6-21-18, 12-16-18, 3-XX-20.

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

EFFECTIVE DATE: