

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

**DEPARTMENT OF EDUCATION**

**State Board of Education**

RULE NO.:                   RULE TITLE:  
6A-1.0081                   Charter Schools Financial Conditions

NOTICE OF CONTINUATION

Notice is hereby given that the above rule, as noticed in Vol. 35, No. 50, December 18, 2009 Florida Administrative Weekly has been continued from January 19, 2010 to March 16, 2010.

**DEPARTMENT OF EDUCATION**

**State Board of Education**

RULE NOS.:                   RULE TITLES:  
6A-1.0421                   Temporary Inability of  
                                  Superintendent of Schools to  
                                  Perform the Duties of Office  
6A-1.0691                   Procedures for Appealing a District  
                                  School Board Decision  
6A-1.099811                 Differentiated Accountability State  
                                  System of School Improvement

NOTICE OF CONTINUATION

Notice is hereby given that the above rule, as noticed in Vol. 35, No. 50, December 18, 2009 Florida Administrative Weekly has been continued from January 19, 2010 to March 16, 2010.

**DEPARTMENT OF EDUCATION**

**State Board of Education**

RULE NOS.:                   RULE TITLES:  
6A-10.0312                 Minimum Standards of  
                                  College-Level Communication and  
                                  Computation Skills  
6A-10.0314                 Applications of College-Level  
                                  Communication and Computation  
                                  Skills in State Universities and  
                                  Community Colleges  
6A-10.0317                 Participation in the College-Level  
                                  Communication and Computation  
                                  Skills Testing Program by  
                                  Nonpublic Postsecondary  
                                  Institutions

NOTICE OF CONTINUATION

Notice is hereby given that the above rule, as noticed in Vol. 35, No. 50, December 18, 2009 Florida Administrative Weekly has been continued from January 19, 2010 to March 16, 2010.

**DEPARTMENT OF EDUCATION**

**State Board of Education**

RULE NO.:                   RULE TITLE:  
6A-14.064                   Dual Enrollment/Early College  
                                  Programs

NOTICE OF CONTINUATION

Notice is hereby given that the above rule, as noticed in Vol. 35, No. 50, December 18, 2009 Florida Administrative Weekly has been continued from January 19, 2010 to March 16, 2010.

**DEPARTMENT OF REVENUE**

**Property Tax Oversight Program**

RULE NOS.:                   RULE TITLES:  
12D-9.001                   Taxpayer Rights in Value Adjustment  
                                  Board Proceedings  
12D-9.002                   Informal Conference Procedures  
12D-9.003                   Definitions  
12D-9.004                   Composition of the Value  
                                  Adjustment Board  
12D-9.005                   Duties of the Board  
12D-9.006                   Clerk of the Value Adjustment Board  
12D-9.007                   Role of the Clerk of the Value  
                                  Adjustment Board  
12D-9.008                   Appointment of Legal Counsel to the  
                                  Value Adjustment Board  
12D-9.009                   Role of Legal Counsel to the Board  
12D-9.010                   Appointment of Special Magistrates  
                                  to the Value Adjustment Board  
12D-9.011                   Role of Special Magistrates to the  
                                  Value Adjustment Board  
12D-9.012                   Training of Special Magistrates,  
                                  Value Adjustment Board Members  
                                  and Legal Counsel  
12D-9.013                   Organizational Meeting of the Value  
                                  Adjustment Board  
12D-9.014                   Prehearing Checklist  
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12D-9.016                   Filing and Service  
12D-9.017                   Ex Parte Communication Prohibition  
12D-9.018                   Representation of the Taxpayer  
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12D-9.020	Exchange of Evidence
12D-9.021	Withdrawn or Settled Petitions; Petitions Acknowledged as Correct; Non Appearance; Summary Disposition of Petitions
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12D-9.025	Procedures for Conducting a Hearing; Presentation of Evidence; Testimony of Witnesses
12D-9.026	Procedures for Conducting a Hearing by Electronic Media
12D-9.027	Process of Administrative Review
12D-9.028	Petitions on Transfer of “Portability” Assessment Difference
12D-9.029	Procedures for Remanding Value Assessments to the Property Appraiser
12D-9.030	Recommended Decisions
12D-9.031	Consideration and Adoption of Recommended Decisions of Special Magistrates by Value Adjustment Boards in Administrative Reviews
12D-9.032	Final Decisions
12D-9.033	Further Judicial Proceedings
12D-9.034	Record of the Proceeding
12D-9.035	Duty of Clerk to Prepare and Transmit Record
12D-9.036	Procedures for Petitions on Denials of Tax Deferrals
12D-9.037	Certification of Assessment Rolls
12D-9.038	Public Notice of Findings and Results of Value Adjustment Board

**NOTICE OF CHANGE**

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 35, No. 35, September 4, 2009 issue of the Florida Administrative Weekly.

The Department has made two technical changes to phrases that are used throughout the proposed new rules in Rule Chapter 12D-9, F.A.C., as published in the Notice of Proposed Rule on September 4, 2009. One technical change is to change the phrase “clerk of the board” or the word “clerk”, wherever this phrase or word appeared in the September 4 notice, to instead read “board clerk”. The other technical change is to change the phrase “legal counsel to the board”, wherever this phrase appeared in the September 4 notice, to instead read “board legal counsel”.

A revised redline version of the proposed new rules in Rule Chapter 12D-9, F.A.C., will be available at <http://dor.myflorida.com/dor/property/vab/rules>. This redline version shows each addition and deletion to the text that was originally published in the Notice of Proposed Rule on September 4, 2009.

12D-9.001 Taxpayer Rights in Value Adjustment Board Proceedings.

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

When adopted, subsections (2)(i), (j), and (k) of Rule 12D-9.001 will read as follows:

(i) The right to have evidence presented and considered at a public hearing or at a time when the petitioner has been given reasonable notice;

(j) The right to have witnesses sworn and cross-examined;

(k) The right to be issued a timely written decision within 20 calendar days of the last day the board is in session pursuant to Section 194.032, Florida Statutes by the value adjustment board containing findings of fact and conclusions of law and reasons for upholding or overturning the determination of the property appraiser or tax collector.

(2)(l) through (2)(o) No change.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 192.0105, 193.074, 194.011, 194.013, 194.015, 194.032, 194.034, 194.035, 194.036, 194.301, 195.002, 195.027, 195.084, 195.096, 196.011, 196.151, 196.193, 196.194, 197.122, 213.05 FS. History—New \_\_\_\_\_.

12D-9.002 Informal Conference Procedures.

(1) through (3) No change.

When adopted, subsection (4) of Rule 12D-9.002, will read as follows:

(4) The request for an informal conference is not a prerequisite to administrative or judicial review of property assessments. Requesting or participating in an informal conference does not extend the petition filing deadline. A taxpayer may file a petition while seeking an informal conference in order to preserve his or her right to an administrative hearing.

12D-9.003 Definitions.

(1) through (7) No change.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 192.001, 194.011, 194.013, 194.015, 194.032, 194.034, 194.035, 194.036, 194.171, 195.022, 213.05 FS., AGO 2002-058 History—New \_\_\_\_\_.

12D-9.004 Composition of the Value Adjustment Board.

When adopted, subsection (1)(a) of Rule 12D-9.004, will read as follows:

(1) Every county shall have a value adjustment board which consists of:

(a) Two members of the governing body of the county, elected by the governing body from among its members, one of whom shall be elected as the chairperson of the value adjustment board;

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

When adopted, paragraph (1)(c)3. of Rule 12D-9.004, will read as follows:

3. Citizen members must not be:

a. A member or employee of any taxing authority in this state; or,

b. A person who represents property owners, property appraisers, tax collectors, or taxing authorities in any administrative or judicial review of property taxes.

(1)(c)4. through (4)(b) No change.

When adopted, subsection (5) of Rule 12D-9.004, will read as follows:

(5) The value adjustment board cannot hold its organizational meeting until all members of the board are appointed even if the number and type of members appointed are sufficient to constitute a quorum. If board legal counsel has not been previously appointed for that year, such appointment must be the first order of business.

12D-9.005 Duties of the Board.

When adopted, subsection (1)(a) of Rule 12D-9.005, will read as follows:

(1)(a) The value adjustment board shall begin hearings on petitions not earlier than 30 days and not later than 60 days after the mailing of the notice provided in Section 194.011(1), Florida Statutes; however, no board hearing shall be held before approval of all or any part of the county's assessment rolls by the Department of Revenue. The board shall meet for the following purposes:

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

When adopted, subsection (1)(c) of Rule 12D-9.005, will read as follows:

(1)(c) The board shall remain in session until its duties are completed concerning all assessment rolls or parts of assessment rolls. The board may temporarily recess but shall reconvene when necessary to hear petitions, complaints, or appeals and disputes filed upon the roll or portion of the roll when approved. The board shall make its decisions timely so that the board clerk may observe the requirement that such decisions shall be issued within 20 calendar days of the last day the board is in session pursuant to Section 194.032, Florida Statutes.

(2)(a) and (2)(b) No change.

When adopted, subsection (2)(c) of Rule 12D-9.005, will read as follows:

(2)(c) The board shall not provide notices or establish a local procedure instructing petitioners to contact the property appraiser's or tax collector's office or any other agency with questions about board hearings or procedures. The board,

board legal counsel, board clerk, special magistrate or other board representative shall not otherwise enlist the property appraiser's or tax collector's office to perform administrative duties for the board. Personnel performing any of the board's duties shall be independent of the property appraiser's and tax collector's office. This section shall not prevent the board clerk or personnel performing board duties from referring petitioners to the property appraiser or tax collector for issues within the responsibility of the property appraiser or tax collector. This section shall not prevent the property appraiser from providing data to assist the board clerk with the notice of tax impact.

(3) and (4) No change.

When adopted, subsection (5) of Rule 12D-9.005, will read as follows:

(5) Failure on three occasions with respect to any single tax year for the board to convene at the scheduled time of meetings of the board shall constitute grounds for removal from office by the Governor for neglect of duties.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 192.0105, 194.011, 194.015, 194.032, 194.034, 194.035, 194.037, 213.05 FS. History--New \_\_\_\_\_.

12D-9.006 Clerk of the Value Adjustment Board.

No change.

12D-9.007 Role of the Clerk of the Value Adjustment Board.

(1) through (2) No change.

When adopted, subsection (3) of Rule 12D-9.007, will read as follows:

(3) The board clerk shall receive and acknowledge completed petitions and promptly furnish a copy of all completed and timely filed petitions to the property appraiser or tax collector. Alternatively, the property appraiser or the tax collector may obtain the relevant information from the board clerk electronically.

(4) through (5) No change.

When adopted, subsection (6) of Rule 12D-9.007, will read as follows:

(6) If an incomplete petition, which includes a petition not accompanied by the required filing fee, is received within the time required, the board clerk shall notify the petitioner and give the petitioner an opportunity to complete the petition within 10 calendar days from the date notification is mailed. Such petition shall be timely if completed and filed including payment of the fee if previously unpaid within the time frame provided in the board clerk's notice of incomplete petition.

(7) No change.

When adopted, subsection (8) of Rule 12D-9.007, will read as follows:

(8) The board clerk shall ensure public notice of and access to all hearings. Hearings must be conducted in facilities that are clearly identified for such purpose and are freely

accessible to the public while hearings are being conducted. The board clerk shall assure proper signage to identify such facilities.

(9) No change.

When adopted, subsection (10) of Rule 12D-9.007, will read as follows:

(10) The board clerk shall timely notify the petitioner by first class mail of the decisions of the board so that such decisions shall be issued within 20 calendar days of the last day the board is in session pursuant to Section 194.032, Florida Statutes, and shall otherwise notify the property appraiser or tax collector of such decision. In counties using special magistrates the board clerk shall also make available to both parties as soon as practicable a copy of the recommended decision of the special magistrate by mail or electronic means. No party shall have access to decisions prior to any other party.

(11) through (12) No change.

When adopted, subsections (13) through (14) of Rule 12D-9.007, will read as follows:

(13) The board clerk shall make available to the public copies of all additional internal operating procedures and forms of the board or special magistrates described in Rule 12D-9.005, F.A.C. and shall post any such procedures and forms on the board clerk's website, if any. Making materials available on a website is sufficient; however, provisions shall be made for persons that have hardship. Such materials shall be consistent with Department rules and forms.

(14) The board clerk shall provide notification of appeals or value adjustment board petitions taken with respect to property located within a municipality to the chief executive officer of each municipality as provided in Section 193.116, Florida Statutes. The board clerk shall also publish any notice required by Section 196.194, Florida Statutes.

(15) No change.

12D-9.008 Appointment of Legal Counsel to the Value Adjustment Board.

No change.

12D-9.009 Role of Legal Counsel to the Board.

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

When adopted, subsection (1)(f) of Rule 12D-9.009, will read as follows:

(f) Board legal counsel shall review and respond to written complaints alleging noncompliance with the law by the board, special magistrates, board clerk, and the parties. The legal counsel shall send a copy of the complaint along with the response to the department. This section does not refer to routine requests for reconsideration, requests for rescheduling, and pleadings and argument in petitions.

(2) No change.

12D-9.010 Appointment of Special Magistrates to the Value Adjustment Board.

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

When adopted, subsection (5)(b) of Rule 12D-9.010, will read as follows:

(5)(b) The selection of a special magistrate must be based solely on the experience and qualification of such magistrate, and must not be influenced by any party, or prospective party, to a board proceeding or by any such party with an interest in the outcome of such proceeding. Special magistrates must adhere to Rule 12D-9.022, F.A.C. relating to disqualification or recusal.

12D-9.011 Role of Special Magistrates to the Value Adjustment Board.

When adopted, the introductory sentence of subsection (1) of Rule 12D-9.011 will read as follows:

(1) The role of the special magistrate is to conduct hearings, take testimony and make recommendations to the board regarding petitions filed before the board. In carrying out these duties the special magistrate shall:

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

When adopted, subsections (1)(d) through (3) of Rule 12D-9.011, will read as follows:

(1)(d) Make recommendations to the board which shall include proposed findings of fact, proposed conclusions of law, and the reasons for upholding or overturning the determination of the property appraiser or tax collector, also see Rule 12D-9.030, F.A.C.

(2) The special magistrate shall perform other duties as set out in the rules of the department and other areas of Florida law, and shall abide by all limitations on the special magistrate's authority as provided by law.

(3) When the special magistrate determines that the property appraiser did not establish a presumption of correctness, or determines that the property appraiser established a presumption of correctness that is overcome, as provided in Rule 12D-9.027, F.A.C., and the record contains competent substantial evidence for establishing value, an appraiser special magistrate is required to establish a revised value for the petitioned property. In establishing the revised value when authorized by law, the board or special magistrate is not restricted to any specific value offered by the parties.

12D-9.012 Training of Special Magistrates, Value Adjustment Board Members and Legal Counsel.

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

When adopted, subsection (1)(d) of Rule 12D-9.012, will read as follows:

(1)(d) The roles of the board, board clerk, board legal counsel, special magistrates, and the property appraiser or tax collector and their staff;

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

When adopted, subsection (4)(a) of Rule 12D-9.012, will read as follows:

(4)(a) Each special magistrate that has five years of experience and, in those counties that do not use special magistrates, each board member or the board legal counsel must receive the training, including any updated modules, before conducting hearings, but need not complete the training examinations, and shall provide a statement acknowledging receipt of the training to the board clerk.

(4)(b) No change.

When adopted, subsection (5) of Rule 12D-9.012, will read as follows:

(5) The department's training is the official training for special magistrates regarding administrative reviews. The board clerk and board legal counsel may provide orientation to the special magistrates relating to local operating or ministerial procedures only. Such orientation meetings shall be open to the public for observation. This does not prevent board legal counsel from giving legal advice; however, to the fullest extent practicable, such legal advice should be in writing and public record. For requirements for decisions specifically based on legal advice see subsections 12D-9.030(6) and paragraph 12D-9.032(1)(b), F.A.C.

(6) No change.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 194.035, 195.022, 195.084, 213.05, Chapter 475, Part II FS. History--New \_\_\_\_\_.

12D-9.013 Organizational Meeting of the Value Adjustment Board.

(1)(a) No change.

When adopted, subsections (1)(b) and (c) of Rule 12D-9.013, will read as follows:

(1)(b) Introduce the board clerk, or any designee of the board clerk and provide the board clerk's contact information;

(c) Appoint or ratify the private board legal counsel. At the meeting at which board counsel is appointed, this item shall be the first order of business.

(1)(d) through (1)(i) No change.

When adopted, subsections (1)(j), (k), and (l) and subsection (2) of Rule 12D-9.013, will read as follows:

(j) Make available to the public, special magistrates and board members, Rules 12D-51.001, 51.002, 51.003, F.A.C., and Chapters 192 through 195, F.S., as reference information containing the guidelines and statutes applicable to assessments and assessment administration.

(k) Adopt or ratify by resolution any filing fee for petitions for that year, in an amount not to exceed \$15.

(l) For purposes of this rule, making available to the public means, in addition to having copies at the meeting, the board may refer to a website containing copies of such documents.

(2) The board shall announce the tentative schedule for the value adjustment board taking into consideration the number of petitions filed, the possibility of the need to reschedule and the requirement that the board stay in session until all petitions have been heard.

(3) No change.

12D-9.014 Prehearing Checklist.

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

When adopted, subsection (1)(d) of Rule 12D-9.014, will read as follows:

(d) No board members represent other government entities or taxpayers in any administrative or judicial review of property taxes, and citizen members are not members or employees of a taxing authority, during their membership on the board;

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

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 194.032, 194.034, 194.035, 195.084, 213.05 FS. History--New \_\_\_\_\_.

12D-9.015 Petition; Form and Filing Fee.

When adopted, subsection (1)(a) of Rule 12D-9.015, will read as follows:

(1)(a) For the purpose of requesting a hearing before the value adjustment board, the department prescribes Form DR-486. The Form DR-486 series is adopted and incorporated by reference in Rule 12D-16.002, F.A.C.

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

When adopted, subsection (2)(c) of Rule 12D-9.015, will read as follows:

(c) State the approximate time anticipated by the petitioner for presenting and arguing his or her petition before the board or special magistrate to be considered by the board clerk as provided in subsection 12D-9.019(1), F.A.C., and may provide dates of nonavailability for scheduling purposes if applicable;

(2)(d) through (2)(f)1. No change.

When adopted, subsection (2)(f)2. of Rule 12D-9.015, will read as follows:

2. Contain a signature field to be signed by an authorized agent. If the authorized agent is subject to licensure as described in Rule 12D-9.018, F.A.C., a space to provide identification of the licensing body and license number. If the authorized agent is not subject to licensure, for example a family member, a space to indicate the petition is accompanied by a written authorization of the taxpayer if not otherwise signed by the taxpayer;

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

When adopted, subsection (3) of Rule 12D-9.015, will read as follows:

(3) The petition form shall provide notice to the petitioner that the person signing the petition becomes the agent of the taxpayer for the purpose of serving process to obtain personal

jurisdiction over the taxpayer for the entire value adjustment board proceeding, including any appeals to circuit court of a board decision by the property appraiser or tax collector.

(4) through the introductory sentence of subsection (7) No change.

When adopted, subsection (7)(a) of Rule 12D-9.015, will read as follows:

(7)(a) Other than fees required for late filed applications under Sections 193.155(8)(i) and 196.011(8), F.S., only a single filing fee shall be charged to any particular parcel of property despite the existence of multiple issues or hearings pertaining to such parcels.

(7)(b) No change.

When adopted, subsection (7)(c) of Rule 12D-9.015, will read as follows:

(7)(c) For joint petitions filed pursuant to Section 194.011(3)(e) or (f), F.S., a single filing fee shall be charged. Such fee shall be calculated as the cost of the time required for the special magistrate in hearing the joint petition and shall not exceed \$5 per parcel, for each additional parcel included in the petition, in addition to any filing fee for the petition. Said fee is to be proportionately paid by affected parcel owners.

(7)(d) through (7)(e) No change.

When adopted, subsection (8) of Rule 12D-9.015, will read as follows:

(8) An owner of contiguous, undeveloped parcels may file a single joint petition if the property appraiser determines such parcels are substantially similar in nature. A condominium association, cooperative association, or any homeowners' association as defined in Section 723.075, F.S., with approval of its board of administration or directors, may file with the value adjustment board a single joint petition on behalf of any association members who own parcels of property which the property appraiser determines are substantially similar with respect to location, proximity to amenities, number of rooms, living area, and condition. The property appraiser shall provide the petitioner with such determination upon request by the petitioner. The petitioner must obtain the determination from the property appraiser prior to filing the petition and must file the determination provided and completed by the property appraiser with the petition. An incorporated attached list of parcels by parcel number or account number, with an indication on the petition form showing a joint petition, shall be sufficient to signify a joint petition.

(9)(a) through (9)(b) No change.

When adopted, subsection (9)(c) of Rule 12D-9.015, will read as follows:

(9)(c) The board clerk shall rely on the licensure information provided by a licensed agent, or written authorization provided by an unlicensed agent, in accepting the petition.

(10) through (10)(e) No change.

When adopted, subsection (10)(f) of Rule 12D-9.015, will read as follows:

(10)(f) With respect to exemption or classification claims relating to an exemption or classification that is not reflected on the notice of property taxes, including late filed exemption claims, on or before the 25th day following the mailing of the notice of proposed property taxes, or on or before the 30th day following the mailing of the written notification of the denial of the exemption or classification, whichever date is later.

(10)(g) No change.

When adopted, subsections (11)(a) through (11)(b) of Rule 12D-9.015, will read as follows:

(11) Late Filed Petitions.

(a) The board may not extend the time for filing a petition. The board is not authorized to set and publish a deadline for late filed petitions. However, the failure to meet the statutory deadline for filing a petition to the board does not prevent consideration of such a petition by the board or special magistrate when the board or board designee determines that the petitioner has demonstrated good cause justifying consideration and that the delay will not, in fact, be harmful to the performance of board functions in the taxing process. "Good cause" means the verifiable showing of extraordinary circumstances, as follows:

1. Personal, family, or business crisis or emergency at a critical time or for an extended period of time that would cause a reasonable person's attention to be diverted from filing;

2. Physical or mental illness, infirmity, or disability that would reasonably affect the petitioner's ability to timely file;  
or,

3. Miscommunication with, or misinformation received from, the clerk, property appraiser, or their staff regarding the necessity or the proper procedure for filing that would cause a reasonable person's attention to be diverted from timely filing;  
or,

4. Any other cause beyond the control of the petitioner that would prevent a reasonably prudent petitioner from timely filing.

(b) The board clerk shall accept but not schedule for hearing a petition submitted to the board after the statutory deadline has expired, and shall submit the petition to the board or board designee for good cause consideration if the petition is accompanied by a written explanation for the delay in filing. Unless scheduled together or by the same notice, the decision regarding good cause for late filing of the petition must be made before a hearing is scheduled, and the parties shall be notified of such decision.

(11)(c) No change.

When adopted, subsections (11)(d) through (11)(f) of Rule 12D-9.015, will read as follows:

(d) The board is authorized to, but need not, require good cause hearings before good cause determinations are made. The board or a board designee, which includes the board legal

counsel or a special magistrate, shall determine whether the petitioner has demonstrated, in writing, good cause justifying consideration of the petition. If the board or a board designee determines that the petitioner has demonstrated good cause, the board clerk shall accept the petition for filing and so notify the petitioner and the property appraiser or the tax collector.

(e) If the board or a board designee determines that the petitioner has not demonstrated good cause, or if the petition is not accompanied by a written explanation for the delay in filing, the board clerk shall notify the petitioner and the property appraiser or tax collector.

(f) A person who files a petition may timely file an action in circuit court to preserve the right to proceed in circuit court. (Sections 193.155(8)(k), 194.036, 194.171(2), and 196.151, F.S.).

(12) through (13) No change.

When adopted, subsection (14) of Rule 12D-9.015, will read as follows:

(14) Copies of the forms incorporated in Rule 12D-16.002, F.A.C., may be obtained at the Department's Internet site: <http://dor.myflorida.com/dor/property/forms/>.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 193.155, 194.011, 194.013, 194.032, 194.034, 194.036, 194.171, 195.022, 195.084, 196.151, 197.253, 197.301, 197.3041, 197.3047, 197.3073, 197.3079, 200.069, 213.05 FS. History–New \_\_\_\_\_.

12D-9.016 Filing and Service.

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

When adopted, subsections (2)(c) through (3) of Rule 12D-9.016, will read as follows:

(2)(c) Any document that is required to be filed, served, provided or made available may be filed, served, provided or made available electronically, if the board and the board clerk make such resources available, and no party is prejudiced.

(d) Local procedure may supersede provisions regarding the number of copies that must be provided.

(3) When a party files a document with the board, other than the petition, that party shall serve copies of the document to all parties in the proceeding. When a document is filed that does not clearly indicate it has been provided to the other party, the board clerk, board legal counsel, board members and special magistrates shall inform the party of the requirement to provide to every party or shall exercise care to ensure that a copy is provided to every party, and that no ex parte communication occurs.

(4) No change.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.013, 194.015, 194.032, 194.034, 194.035, 195.022, 195.084, 213.05 FS. History–New \_\_\_\_\_.

12D-9.017 Ex Parte Communication Prohibition.

(1) through (3) No change.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 194.032, 194.034, 194.035, 213.05 FS. History–New \_\_\_\_\_.

12D-9.018 Representation of the Taxpayer.

(1) through (5) No change.

When adopted, subsections (6) and (7) of Rule 12D-9.018, will read as follows:

(6) When duplicate petitions are filed on the same property, the board clerk shall contact the owner and all petitioners to resolve the issue.

(7) The board clerk may require the use of an agent number to facilitate scheduling of hearings as long as such use is not inconsistent with this rule.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.013, 194.032, 194.034, 195.022, 195.084, 213.05, Chapter 475, Part I and II FS. History–New \_\_\_\_\_.

12D-9.019 Scheduling and Notice of a Hearing.

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

When adopted, subsection (1)(c) of Rule 12D-9.019, will read as follows:

(c) Upon request of a party, the board clerk shall consult with the petitioner and the property appraiser or tax collector to ensure that, within the board clerk's judgment, an adequate amount of time is provided for presenting and considering evidence.

(2) No change.

When adopted, subsection (3)(a) of Rule 12D-9.019, will read as follows:

(3)(a) The notice of hearing before the value adjustment board shall be in writing, and shall be delivered by regular or certified U.S. mail or personal delivery, or in the manner requested by the petitioner on Form DR-486, so that the notice shall be received by the petitioner no less than twenty-five (25) calendar days prior to the day of such scheduled appearance. The Form DR-486 series is adopted and incorporated by reference in Rule 12D-16.002, F.A.C. The notice of hearing form shall meet the requirements of this section and shall be subject to approval by the department. The department provides Form DR-481 as a format for the form of such notice. Form DR-481 is adopted and incorporated by reference in Rule 12D-16.002, F.A.C. The notice shall include these elements:

(3)(a)1. through (3)(a)11. No change.

When adopted, subsection (3)(b) of Rule 12D-9.019, will read as follows:

(3)(b) If the petitioner has requested a copy of the property record card, it shall be sent no later than the time at which the notice of hearing is sent.

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

When adopted, subsections (5)(c), and (d) of Rule 12D-9.019, will read as follows:

(5)(c) The board clerk shall give appropriate notice to the petitioner of the determination as to good cause. Form DR-485WCN is designated and may be used for this purpose. Form DR-485WCN is adopted and incorporated by reference in Rule 12D-16.002, F.A.C. The board clerk shall also appropriately notify the property appraiser or tax collector.

(d) When rescheduling hearings under this rule subsection or subsection (4) above, if the parties are unable to agree on an earlier date, the board clerk is authorized to schedule the hearing and send a notice of such hearing by regular or certified U.S. mail or personal delivery, or in the manner requested by the petitioner on the petition Form DR-486, so that the notice shall be received by the petitioner no less than twenty-five (25) calendar days prior to the day of such scheduled appearance. The board clerk is responsible for notifying the parties of any rescheduling.

(6) through (7)(c) No change.

When adopted, subsection (8) of Rule 12D-9.019, will read as follows:

(8) Copies of the forms incorporated in Rule 12D-16.002, F.A.C., may be obtained at the Department's Internet site: <http://dor.myflorida.com/dor/property/forms/>.

12D-9.020 Exchange of Evidence.

When adopted, subsection (1) of Rule 12D-9.020, will read as follows:

(1) The petitioner has the option of participating in an exchange of evidence with the property appraiser. If the petitioner chooses not to participate in the evidence exchange, the petitioner may still present evidence for consideration by the board or the special magistrate. However, as described in this section, if the property appraiser asks in writing for specific evidence before the hearing in connection with a filed petition, and the petitioner has this evidence and knowingly refuses to provide it to the property appraiser a reasonable time before the hearing, the evidence cannot be presented by the petitioner or accepted for consideration by the board or special magistrate. Reasonableness shall be determined by whether the material can be reviewed, investigated, and responded to or rebutted in the time frame remaining before the hearing. These requirements are more specifically described in subsection (8) and in paragraphs 12D-9.025(4)(a) and (f), F.A.C.

(2)(a) through (6) No change.

When adopted, subsections (7), (8), and (9) of Rule 12D-9.020, will read as follows:

(7) A property appraiser shall not use at a hearing evidence that was not supplied to the petitioner as required. The remedy for such non compliance shall be a rescheduling of the hearing to allow the petitioner an opportunity to review the information of the property appraiser.

(8) No petitioner may present for consideration, nor may a board or special magistrate accept for consideration, testimony or other evidentiary materials that were specifically requested of the petitioner in writing by the property appraiser in

connection with a filed petition, of which the petitioner had knowledge and denied to the property appraiser. Such evidentiary materials shall be considered timely if provided to the property appraiser no later than fifteen (15) days before the hearing in accordance with the exchange of evidence rules in this section. If provided to the property appraiser less than fifteen (15) days before the hearing, such materials shall be considered timely if the board or special magistrate determines they were provided a reasonable time before the hearing, as described in paragraph 12D-9.025(4)(f), F.A.C. A petitioner's ability to introduce the evidence, requested of the petitioner in writing by the property appraiser, is lost if not provided to the property appraiser as described in this paragraph. This provision does not preclude rebuttal evidence that was not specifically requested of the petitioner by the property appraiser.

(9) As the trier of fact, the board or special magistrate may independently rule on the admissibility and use of evidence. If the board or special magistrate has any questions relating to the admissibility and use of evidence, the board or special magistrate should consult with the board legal counsel. The basis for any ruling on admissibility of evidence must be reflected in the record.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 193.074, 194.011, 194.015, 194.032, 194.034, 194.035, 195.022, 195.084, 200.069, 213.05 FS. History—New \_\_\_\_\_.

12D-9.021 Withdrawn or Settled Petitions; Petitions Acknowledged as Correct; Non Appearance; Summary Disposition of Petitions.

When adopted, the introductory paragraph of subsection (1) of Rule 12D-9.021, will read as follows:

(1) A petitioner may withdraw a petition prior to the scheduled hearing. Form DR-485WI is prescribed by the department for such purpose; however, other written or electronic means may be used. Form DR-485WI is adopted and incorporated by reference in Rule 12D-16.002, F.A.C. Form DR-485WI shall indicate the reason for the withdrawal as one of the following:

When adopted, subsections (3) through (9) of Rule 12D-9.021, will read as follows:

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

(3) If a property appraiser or tax collector agrees with a petition challenging a decision to deny an exemption, classification, portability assessment difference transfer, or deferral, the property appraiser or tax collector shall issue the petitioner a notice granting said exemption, classification, portability assessment difference transfer, or deferral and shall file with the board clerk a notice that the petition was acknowledged as correct. The board clerk shall cancel the hearing upon receiving the notice of acknowledgement and there shall be no further proceeding on the matter acknowledged as correct.



(4) If parties do not file a notice of withdrawal or notice of acknowledgement but indicate the same at the hearing, the board or special magistrate shall so state on the hearing record and shall not proceed with the hearing and shall not issue a decision. If a petition is withdrawn or acknowledged as correct under subsection (1), (2), or (3), or settlement is reached and filed by the parties, at any time before a recommended decision or final board decision is issued, the board, special magistrate or clerk need not issue such decision. The board clerk shall list and report all withdrawals, settlements, acknowledgements of correctness as withdrawn or settled petitions. Settled petitions shall include those acknowledged as correct by the property appraiser or tax collector.

(5) For all withdrawn or settled petitions, a special magistrate shall not produce a recommended decision and the board shall not produce a final decision.

(6) When a petitioner does not appear by the commencement of a scheduled hearing and the petitioner has not indicated a desire to have their petition heard without their attendance and a good cause request is not pending, the board or the special magistrate shall not commence or proceed with the hearing and shall produce a decision or recommended decision as described in this section. If the petitioner makes a good cause request before the decision, if no special magistrate is used, or recommended decision, if a special magistrate is used, is issued, the board or board designee shall rule on the good cause request before determining that the decision or recommended decision should be set aside and that the hearing should be rescheduled, or that the board or special magistrate should issue the decision or recommended decision.

(7) When a petitioner does not appear by the commencement of a scheduled hearing and a good cause request is pending, the board or board designee shall rule on the good cause request before determining that the hearing should be rescheduled or that the board or special magistrate should issue a decision or recommended decision.

(a) If the board or board designee finds good cause for the petitioner’s failure to appear, the board clerk shall reschedule the hearing.

(b) If the board or board designee does not find good cause for the petitioner’s failure to appear, the board or special magistrate shall issue a decision or recommended decision.

(8) Decisions issued under subsection (6) or subsection (7) shall not be treated as withdrawn or settled petitions and shall contain:

(a) A finding of fact that the petitioner did not appear at the hearing and did not state good cause; and

(b) A conclusion of law that the relief is denied and the decision is being issued in order that any right the petitioner may have to bring an action in circuit court is not impaired.

(9) Copies of the forms incorporated in Rule 12D-16.002, F.A.C. may be obtained at the Department’s Internet site: <http://dor.myflorida.com/dor/property/forms/>.

12D-9.022 Disqualification or Recusal of Special Magistrates or Board Members.

When adopted, subsection (1) of Rule 12D-9.022, will read as follows:

(1) If either the petitioner or the property appraiser communicates a reasonable belief that a special magistrate does not possess the statutory qualifications in accordance with Sections 194.035 and 475.611(1)(h) and (i), F.S., to conduct a particular proceeding, the basis for that belief shall be included in the record of the proceeding or submitted prior to the hearing in writing to the board legal counsel.

(2)(a) through (3) No change.

When adopted, subsection (4)(a) of Rule 12D-9.022, will read as follows:

(4)(a) If either the petitioner or the property appraiser communicates a reasonable belief that a board member or special magistrate has a conflict of interest, the basis for that belief shall be stated in the record of the proceeding or submitted prior to the hearing in writing to the board legal counsel.

(4)(b) through (4)(e) No change.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 194.035, 213.05, 475.611 FS. History–New \_\_\_\_\_.

12D-9.023 Hearings Before Board or Special Magistrates.

(1) through (2) No change.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 195.022, 195.084, 213.05 FS. History–New \_\_\_\_\_.

12D-9.024 Procedures for Commencement of a Hearing.

(1) through (6) No change.

When adopted, subsection (7) of Rule 12D-9.024, will read as follows:

(7) After the opening statement, and clarification of any questions with the parties, the board or special magistrate shall proceed with the hearing. The property appraiser shall indicate for the record his or her determination of just value, classified use value, tax exemption, property classification, or “portability” assessment difference, or deferral or penalties. Under Subsection 194.301(1), F.S., in a hearing on just, classified use, or assessed value, the first issue to be considered is whether the property appraiser establishes a presumption of correctness for the assessment. The property appraiser shall present evidence on this issue first.

(8) No change.

When adopted, subsection (9)(a) of Rule 12D-9.024, will read as follows:

(9)(a) If the petitioner does not appear by the commencement of a scheduled hearing, the board or special magistrate shall not commence the hearing and shall proceed under the requirements set forth in subsection 12D-9.021(6), F.A.C., unless:

(9)(a)1. through (9)(b)3. No change.

When adopted, subsection (10) of Rule 12D-9.024, will read as follows:

(10) If the property appraiser or tax collector does not appear by the commencement of a scheduled hearing, except a good cause hearing, the board or special magistrate shall state on the record that the property appraiser or tax collector did not appear at the hearing. Then, the board or special magistrate shall request the petitioner to state for the record whether he or she wants to have the hearing rescheduled or wants to proceed with the hearing without the property appraiser or tax collector. If the petitioner elects to have the hearing rescheduled, the board clerk shall reschedule the hearing. If the petitioner elects to proceed with the hearing without the property appraiser or tax collector, the board or special magistrate shall proceed with the hearing and shall produce a decision or recommended decision.

(11) No change.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 195.022, 195.084, 213.05 FS. History—New \_\_\_\_\_.

12D-9.025 Procedures for Conducting a Hearing; Presentation of Evidence; Testimony of Witnesses.

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

When adopted, subsection (2)(d) of Rule 12D-9.025, will read as follows:

(2)(d) As the trier of fact, the board or special magistrate may independently rule on the admissibility and use of evidence. If the board or special magistrate has any questions relating to the admissibility and use of evidence, the board or special magistrate should consult with the board legal counsel. The basis for any ruling on admissibility of evidence must be reflected in the record. The special magistrate may delay ruling on the question during the hearing and consult with board legal counsel after the hearing.

(3)(a) No change.

When adopted, subsections (3)(b) through the introductory sentence of subsection (4)(c) of Rule 12D-9.025, will read as follows:

(3)(b) Under Section 194.301, F.S., “preponderance of the evidence” is the standard of proof that applies in assessment challenges. The “clear and convincing evidence” standard of proof no longer applies, starting with 2009 assessments. A taxpayer shall never have the burden of proving that the property appraiser’s assessment is not supported by any reasonable hypothesis of a legal assessment.

(4)(a) No evidence shall be considered by the board or special magistrate except when presented and admitted during the time scheduled for the petitioner’s hearing, or at a time when the petitioner has been given reasonable notice. The petitioner may still present evidence if he or she does not participate in the evidence exchange. However, if the property appraiser asks in writing for specific evidence before the hearing in connection with a filed petition, and the petitioner has this evidence and refuses to provide it to the property appraiser, the evidence cannot be presented by the petitioner or accepted for consideration by the board or special magistrate. These requirements are more specifically described in paragraph (f) below.

(b) If a party submits evidence to the board clerk prior to the hearing, the board or special magistrate shall not review or consider such evidence prior to the hearing.

(c) In order to be reviewed by the board or special magistrate, any evidence filed with the board clerk shall be brought to the hearing by the party. This requirement shall not apply where:

(4)(c)1. through (4)(e) No change.

When adopted, paragraph (4)(f) of Rule 12D-9.025, will read as follows:

(4)(f)1. No petitioner shall present for consideration, nor shall the board or special magistrate accept for consideration, testimony or other evidentiary materials that were specifically requested of the petitioner in writing by the property appraiser in connection with a filed petition, of which the petitioner had knowledge and denied to the property appraiser. Such evidentiary materials shall be considered timely if provided to the property appraiser no later than fifteen (15) days before the hearing in accordance with the exchange of evidence rules in Rule 12D-9.020, F.A.C., and, if provided to the property appraiser less than fifteen (15) days before the hearing, shall be considered timely if the board or special magistrate determines they were provided a reasonable time before the hearing. A petitioner’s ability to introduce the evidence, requested of the petitioner in writing by the property appraiser, is lost if not provided to the property appraiser as described in this paragraph. This provision does not preclude rebuttal evidence that was not specifically requested of the petitioner by the property appraiser. For purposes of this rule and Rule 12D-9.020, F.A.C., reasonableness shall be assumed if the property appraiser does not object. Otherwise, reasonableness shall be determined by whether the material can be reviewed, investigated, and responded to or rebutted in the time frame remaining before the hearing. If a petitioner has acted in good faith and not denied evidence to the property appraiser prior to the hearing, as provided by Section 194.034(1)(d), F.S., but wishes to submit evidence at the hearing which is of a nature that would require investigation or verification by the property

appraiser, then the special magistrate may allow the hearing to be recessed and, if necessary, rescheduled so that the property appraiser may review such evidence.

2. A property appraiser shall not present undisclosed evidence that was not supplied to the petitioner as required under the evidence exchange rule, Rule 12D-9.020, F.A.C. The remedy for such noncompliance shall be a rescheduling of the hearing to allow the petitioner an opportunity to review the information of the property appraiser.

(5) No change.

When adopted, subsection (6)(a) of Rule 12D-9.025, will read as follows:

(6)(a) By agreement of the parties entered in the record, the board or special magistrate may leave the record open and postpone completion of the hearing to a date certain to allow a party to collect and provide additional relevant and credible evidence. Such postponements shall be limited to instances where, after completing original presentations of evidence, the parties agree to the collection and submittal of additional, specific factual evidence for consideration by the board or special magistrate. In lieu of completing the hearing, upon agreement of the parties the board or special magistrate is authorized to consider such evidence without further hearing.

(6)(b) through (9) No change.

When adopted, subsection (10) of Rule 12D-9.025, will read as follows:

(10) For purposes of reporting board action on decisions and on the notice of tax impact, the value as reflected on the initial roll shall mean the property appraiser's determination as presented at the commencement of the hearing or as reduced by the property appraiser during the hearing, but before a decision by the board or a recommended decision by the special magistrate. See Rule 12D-9.038, F.A.C.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 193.092, 194.011, 194.032, 194.034, 195.022, 195.084, 213.05 FS. History—New \_\_\_\_\_.

12D-9.026 Procedures for Conducting a Hearing by Electronic Media.

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

When adopted, subsection (1)(c) of Rule 12D-9.026, will read as follows:

(c) The board must reasonably accommodate parties that have hardship or lack necessary equipment or ability to access equipment. The board must provide a physical location at which a party may appear, if requested.

(2) through (4) No change.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 195.035, 195.022, 195.084, 213.05 FS. History—New \_\_\_\_\_.

12D-9.027 Process of Administrative Review.

When adopted, Rule 12D-9.027, will read as follows:

(1) This section sets forth the sequence of general procedural steps for administrative reviews. This order of steps applies to: the consideration of evidence, the development of conclusions, and the production of written decisions. The board or special magistrate shall follow this general sequence in order to fulfill the procedural requirements of Section 194.301, Florida Statutes. The following subsections set forth the steps for administrative reviews of:

(a) Just valuations in subsection (2);

(b) Classified use valuations, and assessed valuations of limited increase property, in subsection (3); and

(c) Exemptions, classifications, and portability assessment transfers in subsection (4).

(2) In administrative reviews of the just valuation of property, the board or special magistrate shall follow this sequence of general procedural steps:

(a) Determine whether the property appraiser established a presumption of correctness for the assessment, and determine whether the property appraiser's just valuation methodology is appropriate. The presumption of correctness is not established unless the admitted evidence proves by a preponderance of the evidence that the property appraiser's just valuation methodology complies with Section 193.011, Florida Statutes, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate.

(b)1. In administrative reviews of just valuations, if the property appraiser establishes a presumption of correctness, determine whether the admitted evidence proves by a preponderance of the evidence that:

a. The property appraiser's just valuation does not represent just value; or

b. The property appraiser's just valuation is arbitrarily based on appraisal practices that are different from the appraisal practices generally applied by the property appraiser to comparable property within the same county.

2. If one or both of the conditions in subparagraph (b)1. above are determined to exist, the property appraiser's presumption of correctness is overcome.

3. If the property appraiser does not establish a presumption of correctness, or if the presumption of correctness is overcome, the board or special magistrate shall determine whether the hearing record contains competent, substantial evidence of just value which cumulatively meets the criteria of Section 193.011, Florida Statutes, and professionally accepted appraisal practices.

a. If the hearing record contains competent, substantial evidence for establishing a revised just value, the board or an appraiser special magistrate shall establish a revised just value based only upon such evidence. In establishing a revised just value, the board or special magistrate is not restricted to any specific value offered by one of the parties.

b. If the hearing record lacks competent, substantial evidence for establishing a revised just value, the board or special magistrate shall remand the assessment to the property appraiser with appropriate directions for establishing just value.

4. If the property appraiser establishes a presumption of correctness and that presumption of correctness is not overcome as described in subparagraph (b)1. above, the assessment stands.

(3) In administrative reviews of the classified use valuation of property or administrative reviews of the assessed valuation of limited increase property, the board or special magistrate shall follow this sequence of general procedural steps:

(a) Identify the statutory criteria that apply to the classified use valuation of the property or to the assessed valuation of limited increase property, as applicable.

(b) Determine whether the property appraiser established a presumption of correctness for the assessment, and determine whether the property appraiser's classified use or assessed valuation methodology is appropriate. The presumption of correctness is not established unless the admitted evidence proves by a preponderance of the evidence that the property appraiser's valuation methodology complies with the statutory criteria that apply to the classified use valuation or assessed valuation, as applicable, of the petitioned property.

(c)1. In administrative reviews of classified use valuations, if the property appraiser establishes a presumption of correctness, determine whether the admitted evidence proves by a preponderance of the evidence that:

a. The property appraiser's classified use valuation does not represent classified use value; or

b. The property appraiser's classified use valuation is arbitrarily based on classified use valuation practices that are different from the classified use valuation practices generally applied by the property appraiser to comparable property of the same property classification within the same county.

2. If one or both of the conditions in subparagraph (c)1. above are determined to exist, the property appraiser's presumption of correctness is overcome.

3. If the property appraiser does not establish a presumption of correctness, or if the presumption of correctness is overcome, the board or special magistrate shall determine whether the hearing record contains competent, substantial evidence of classified use value which cumulatively meets the statutory criteria that apply to the classified use valuation of the petitioned property.

a. If the hearing record contains competent, substantial evidence for establishing a revised classified use value, the board or an appraiser special magistrate shall establish a revised classified use value based only upon such evidence. In

establishing a revised classified use value, the board or special magistrate is not restricted to any specific value offered by one of the parties.

4. If the property appraiser establishes a presumption of correctness and that presumption of correctness is not overcome as described in subparagraph (c)1. above, the assessment stands.  
b. If the hearing record lacks competent, substantial evidence for establishing a revised classified use value, the board or special magistrate shall remand the assessment to the property appraiser with appropriate directions for establishing classified use value.

(d)1. In administrative reviews of assessed valuations of limited increase property, if the property appraiser establishes a presumption of correctness, determine whether the admitted evidence proves by a preponderance of the evidence that:

a. The property appraiser's assessed valuation does not represent assessed value; or

b. The property appraiser's assessed valuation is arbitrarily based on assessed valuation practices that are different from the assessed valuation practices generally applied by the property appraiser to comparable property within the same county.

2. If one or both of the conditions in subparagraph (d)1. above are determined to exist, the property appraiser's presumption of correctness is overcome.

3. If the property appraiser does not establish a presumption of correctness, or if the presumption of correctness is overcome, the board or special magistrate shall determine whether the hearing record contains competent, substantial evidence of assessed value which cumulatively meets the statutory criteria that apply to the assessed valuation of the petitioned property.

a. If the hearing record contains competent, substantial evidence for establishing a revised assessed value, the board or an appraiser special magistrate shall establish a revised assessed value based only upon such evidence. In establishing a revised assessed value, the board or special magistrate is not restricted to any specific value offered by one of the parties.

b. If the hearing record lacks competent, substantial evidence for establishing a revised assessed value, the board or special magistrate shall remand the assessment to the property appraiser with appropriate directions for establishing assessed value.

4. If the property appraiser establishes a presumption of correctness and that presumption of correctness is not overcome as described in subparagraph (d)1. above, the assessment stands.

(4) In administrative reviews of exemptions, classifications, and portability assessment transfers, the board or special magistrate shall follow this sequence of general procedural steps:

(a) In the case of an exemption, the board or special magistrate shall consider whether the denial was valid or invalid and shall:

1. Review the exemption denial, and compare it to the applicable statutory criteria in Section 196.193(5), F.S.;

2. Determine whether the denial was valid under Section 196.193, F.S.; and

3. If the denial is found to be invalid, not give weight to the exemption denial or to any evidence supporting the basis for such denial, but shall instead proceed to dispose of the matter without further consideration in compliance with Section 194.301, F.S.

4. If the denial is found to be valid, proceed with steps paragraphs (b) through (g) below.

(b) Consider the admitted evidence presented by the parties.

(c) Identify the particular exemption, property classification, or portability assessment transfer issue that is the subject of the petition.

(d) Identify the statutory criteria that apply to the particular exemption, property classification, or portability assessment difference transfer that was identified as the issue under administrative review.

(e) Identify and consider the essential characteristics of the petitioned property or the property owner, as applicable, based on the statutory criteria that apply to the issue under administrative review.

(f) Identify and consider the basis used by the property appraiser in issuing the denial for the petitioned property.

(g) Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's denial is incorrect and the exemption, classification, or portability assessment transfer should be granted because all of the applicable statutory criteria are satisfied. Where necessary and where the context will permit in these rules, the term "statutory criteria" includes any constitutional criteria that do not require implementation by legislation.

(5) "Standard of proof" means the level of proof needed by the board or special magistrate to reach a particular conclusion. The standard of proof that applies in administrative reviews is called "preponderance of the evidence," which means "greater weight of the evidence."

(6) When applied to evidence, the term "sufficient" is a test of adequacy. Sufficient evidence is admitted evidence that has enough overall weight, in terms of relevance and credibility, to legally justify a particular conclusion. A particular conclusion is justified when the overall weight of the admitted evidence meets the standard of proof that applies to the issue under consideration. The board or special magistrate must determine whether the admitted evidence is sufficiently relevant and credible to reach the standard of proof that applies

to the issue under consideration. In determining whether the admitted evidence is sufficient for a particular issue under consideration, the board or special magistrate shall:

(a) Consider the relevance and credibility of the admitted evidence as a whole, regardless of which party presented the evidence;

(b) Determine the relevance and credibility, or overall weight, of the evidence;

(c) Compare the overall weight of the evidence to the standard of proof;

(d) Determine whether the overall weight of the evidence is sufficient to reach the standard of proof; and

(e) Produce a conclusion of law based on the determination of whether the overall weight of the evidence has reached the standard of proof.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 193.122, 194.011, 194.015, 194.032, 194.034, 194.036, 194.037, 194.301, 195.002, 195.084, 195.096, 196.011, 196.151, 196.193, 197.122, 213.05 FS. History—New \_\_\_\_\_.

12D-9.028 Petitions on Transfer of "Portability" Assessment Difference.

(1) No change.

When adopted, subsection (2) of Rule 12D-9.028, will read as follows:

(2) A petitioner may file a petition with the value adjustment board, in the county where the new homestead is located, to petition either a denial of a transfer or the amount of the transfer, on Form DR-486PORT. Form DR-486PORT is adopted and incorporated by reference in Rule 12D-16.002, F.A.C. Such petition must be filed at any time during the taxable year on or before the 25th day following the mailing of the notice of proposed property taxes as provided in Section 194.011, F.S. If only a part of a transfer of assessment increase differential is granted, the notice of proposed property taxes shall function as notice of the taxpayer's right to appeal to the board.

(3) through (4) No change.

When adopted, subsection (5) of Rule 12D-9.028, will read as follows:

(5) If the petitioner does not agree with the amount of the assessment limitation difference for which the petitioner qualifies as stated by the property appraiser in the county where the previous homestead property was located, or if the property appraiser in that county has not stated that the petitioner qualifies to transfer any assessment limitation difference, upon the petitioner filing a petition to the value adjustment board in the county where the new homestead property is located, the board clerk in that county shall, upon receiving the petition, send a notice using Form DR-486XCO, to the board clerk in the county where the previous homestead

was located, which shall reconvene if it has already adjourned. Form DR-486XCO is adopted and incorporated by reference in Rule 12D-16.002, F.A.C.

(6)(a) through (7) No change.

When adopted, subsection (8) of Rule 12D-9.028, will read as follows:

(8) Copies of the forms incorporated in Rule 12D-16.002, F.A.C. may be obtained at the Department's Internet site: <http://dor.myflorida.com/dor/property/forms/>.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1) FS. Law Implemented 193.155, 194.011, 195.084, 213.05 FS. History—New

12D-9.029 Procedures for Remanding Value Assessments to the Property Appraiser.

When adopted, subsection (1) of Rule 12D-9.029, will read as follows:

(1) The board or appraiser special magistrate shall remand a value assessment to the property appraiser when the board or special magistrate has concluded that:

(a) The property appraiser did not establish a presumption of correctness, or has concluded that the property appraiser established a presumption of correctness that is overcome, as provided in Rule 12D-9.027, F.A.C.; and

(b) The record does not contain the competent substantial evidence necessary for the board or special magistrate to establish a revised just value, classified use value, or assessed value, as applicable.

(2) through (3) No change.

When adopted, subsection (4) of Rule 12D-9.029, will read as follows:

(4) The board or special magistrate shall, on the appropriate decision form from the Form DR-485 series, produce written findings of fact and conclusions of law necessary to determine that a remand is required, but shall not render a recommended or final decision unless a continuation hearing is held as provided in subsection (9). The Form DR-485 series is adopted and incorporated by reference in Rule 12D-16.002, F.A.C.

(5) through (9)(a) No change.

When adopted, subsection (9)(b) of Rule 12D-9.029, will read as follows:

(9)(b) The board clerk shall schedule a continuation hearing if the petitioner notifies the board clerk, within 25 days of the date the board clerk sends the written remand review, that the results of the property appraiser's written remand review are unacceptable to the petitioner and that the petitioner requests a further hearing on the petition. The board clerk shall send the notice of hearing so that it will be received by the petitioner no less than twenty-five (25) calendar days prior to the day of such scheduled appearance, as described in subsection 12D-9.019(3), F.A.C. When a petitioner does not notify the board clerk that the results of the property

appraiser's written remand review are unacceptable to the petitioner and does not request a continuation hearing, or if the petitioner waives a continuation hearing, the board or special magistrate shall issue a decision or recommended decision. Such decision shall contain:

1. A finding of fact that the petitioner did not request a continuation hearing or waived such hearing; and

2. A conclusion of law that the decision is being issued in order that any right the petitioner may have to bring an action in circuit court is not impaired.

The petition shall be treated and listed as board action for purposes of the notice required by Rule 12D-9.038, F.A.C.

(9)(c) through (13) No change.

When adopted, subsection (14) of Rule 12D-9.029, will read as follows:

(14) Copies of the forms incorporated in Rule 12D-16.002, F.A.C. may be obtained at the Department's Internet site: <http://dor.myflorida.com/dor/property/forms/>.

12D-9.030 Recommended Decisions.

(1) through (5) No change.

When adopted, subsections (6) and (7) of Rule 12D-9.030, will read as follows:

(6) Legal advice from the board legal counsel relating to the facts of a petition or to the specific outcome of a decision, if in writing, shall be included in the record and referenced within the findings of fact and conclusions of law. If not in writing, such advice shall be documented within the findings of fact and conclusions of law.

(7) Copies of the forms incorporated in Rule 12D-16.002, F.A.C., may be obtained at the Department's Internet site: <http://dor.myflorida.com/dor/property/forms/>.

12D-9.031 Consideration and Adoption of Recommended Decisions of Special Magistrates by Value Adjustment Boards in Administrative Reviews.

(1) No change.

When adopted, subsection (2) of Rule 12D-9.031, will read as follows:

(2) As provided in Sections 194.034(2) and 194.035(1), F.S., the board shall consider the recommended decisions of special magistrates and may act upon the recommended decisions without further hearing. If the board holds further hearing for such consideration, the board clerk shall send notice of the hearing to the parties. Any notice of hearing shall be in the same form as specified in paragraph 12D-9.019(3)(a), F.A.C., but need not include items specified in subparagraphs 6. through 9. of that subsection. The board shall consider whether the recommended decisions meet the requirements of subsection (1), and may rely on board legal counsel for such determination. Adoption of recommended decisions need not include a review of the underlying record.

(3) through (4)(c) No change.

## 12D-9.032 Final Decisions.

When adopted, subsections (1) and (2) of Rule 12D-9.032, will read as follows:

(1)(a) For each petition not withdrawn or settled, the board shall produce a written final decision that contains findings of fact, conclusions of law, and reasons for upholding or overturning the property appraiser's determination. Each final decision shall contain sufficient factual and legal information and reasoning to enable the parties to understand the basis for the decision, and shall otherwise meet the requirements of law. The board may fulfill the requirement to produce a written final decision by adopting by reference a recommended decision of the special magistrate containing the required elements and providing notice that it has done so. The board may adopt the special magistrate's recommended decision as the decision of the board incorporating the recommended decision by reference, using a postcard or similar notice. The board shall ensure regular and timely approval of recommended decisions.

(b) Legal advice from the board legal counsel relating to the facts of a petition or to the specific outcome of a decision, if in writing, shall be included in the record and referenced within the findings of fact and conclusions of law. If not in writing, such advice shall be documented within the findings of fact and conclusions of law.

(2) A final decision of the board shall state the just, assessed, taxable, and exempt value, for the county both before and after board action. Board action shall not include changes made as a result of action by the property appraiser. If the property appraiser has reduced his or her value or granted an exemption, property classification, or "portability" assessment difference transfer, whether before or during the hearing but before board action, the values in the "before" column shall reflect the adjusted figure before board action.

(3) No change.

When adopted, subsections (4) through (6)(a) of Rule 12D-9.032, will read as follows:

(4) Upon issuance of a final decision by the board, the board shall provide it to the board clerk and the board clerk shall promptly provide notice of the final decision to the parties. Notice of the final decision may be made by providing a copy of the decision. The board shall issue all final decisions within 20 calendar days of the last day the board is in session pursuant to Section 194.032, F.S.

(5) For the purpose of producing the final decisions of the board, the department prescribes the Form DR-485 series, and any electronic equivalent forms approved by the department under Section 195.022, F.S. The Form DR-485 series is adopted and incorporated by reference in Rule 12D-16.002, F.A.C. The Form DR-485 series, or approved electronic equivalent forms, are the only forms that shall be used for producing a final decision of the board. Before using any form to notify petitioners of the final decision, the board shall

submit the proposed form to the department for approval. The board shall not use a form to notify the petitioner unless the department has approved the form. All decisions of the board, and all forms used to produce final decisions on petitions heard by the board, must contain the following required elements:

(a) Findings of fact;

(b) Conclusions of law; and

(c) Reasons for upholding or overturning the determination of the property appraiser.

(6)(a) If, prior to a final decision, any communication is received from a party concerning a board process on a petition or concerning a recommended decision, a copy of the communication shall promptly be furnished to all parties, the board clerk, and the board legal counsel. No such communication shall be furnished to the board or a special magistrate unless a copy is immediately furnished to all parties. A party may waive notification or furnishing of copies under this subsection.

(6)(b) through (6)(d) No change.

When adopted, subsection (7) of Rule 12D-9.032, will read as follows:

(7) Copies of the forms incorporated in Rule 12D-16.002, F.A.C. may be obtained at the Department's Internet site: <http://dor.myflorida.com/dor/property/forms/>.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 194.032, 194.034, 194.035, 194.036, 195.022, 213.05 FS. History—New \_\_\_\_\_.

## 12D-9.033 Further Judicial Proceedings.

After the board issues its final decision, further proceedings and the timing thereof are as provided in Sections 194.036 and 194.171, Florida Statutes.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.013, 194.015, 194.032, 194.034, 194.035, 194.036, 195.022, 213.05 FS. History—New \_\_\_\_\_.

## 12D-9.034 Record of the Proceeding.

No change.

## 12D-9.035 Duty of Clerk to Prepare and Transmit Record.

When adopted, subsection (1) of Rule 12D-9.035 will read as follows:

(1) When a change in the tax roll made by the board becomes subject to review by the Circuit Court pursuant to Section 194.036(1)(c), F.S., it shall be the duty of the board clerk, when requested, to prepare the record for review. The record shall consist of a copy of each paper, including the petition and each exhibit in the proceeding together with a copy of the board's decision and written findings of fact and conclusions of law. The board clerk shall transmit to the Court this record, and the board clerk's certification of the record which shall be in the following form:

Certification of Record

I hereby certify that the attached record, consisting of sequentially numbered pages one through \_\_\_\_\_, consists of true copies of all papers, exhibits, and the Board's findings of fact and conclusions of law, in the proceeding before the \_\_\_\_\_ County Value Adjustment Board upon petition numbered \_\_\_\_\_ filed by \_\_\_\_\_.

\_\_\_\_\_  
Clerk of Value Adjustment Board

By: \_\_\_\_\_

\_\_\_\_\_  
Deputy Clerk

Should the verbatim transcript be prepared other than by a court reporter, the board clerk shall also make the following certification:

CERTIFICATION OF VERBATIM TRANSCRIPT

I hereby certify that the attached verbatim transcript consisting of sequentially numbered pages \_\_\_\_\_ through \_\_\_\_\_ is an accurate and true transcript of the hearing held on \_\_\_\_\_ in the proceeding before the County Value Adjustment Board petition numbered \_\_\_\_\_ filed by: \_\_\_\_\_

\_\_\_\_\_  
Clerk of Value Adjustment Board

By: \_\_\_\_\_

\_\_\_\_\_  
Deputy Clerk

(2) No change.

12D-9.036 Procedures for Petitions on Denials of Tax Deferrals.

No change.

Part III

Uniform Certification of Assessment Rolls

12D-9.037 Certification of Assessment Rolls.

When adopted, subsection (1) and the introductory paragraph of subsection (2) of Rule 12D-9.037, will read as follows:

(1)(a) When the tax rolls have been extended pursuant to Section 197.323, F.S., the initial certification of the value adjustment board shall be made on Form DR-488P. Form DR-488P is adopted and incorporated by reference in Rule 12D-16.002, F.A.C.

(b) After all hearings have been held, the board shall certify an assessment roll or part of an assessment roll that has been finally approved pursuant to Section 193.1142, F.S. The certification shall be on the form prescribed by the department referenced in subsection (2) of this rule. A sufficient number of copies of the board's certification shall be delivered to the property appraiser who shall attach the same to each copy of each assessment roll prepared by the property appraiser.

(2) The form shall include a certification signed by the board chair, on behalf of the entire board, on Form DR-488, adopted and incorporated by reference in Rule 12D-16.002, F.A.C. designated for this purpose, that all requirements in Chapter 194, F.S., and department rules, were met as follows

(2)(a) through (3) No change.

When adopted, subsection (4) of Rule 12D-9.037, will read as follows:

(4) Copies of the forms incorporated in Rule 12D-16.002, F.A.C., may be obtained at the Department's Internet site: <http://dor.myflorida.com/dor/property/forms/>.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 193.122, 194.011, 195.022, 195.084, 213.05 FS. History--New \_\_\_\_\_.

12D-9.038 Public Notice of Findings and Results of Value Adjustment Board.

When adopted, subsection (1) of Rule 12D-9.038, will read as follows:

(1) After all hearings have been completed, the board clerk shall publish a public notice advising all taxpayers of the findings and results of the board decisions, which shall include changes made by the board to the property appraiser's initial roll. Such notice shall be published to permit filing within the timeframe in subsections 12D-17.004(1) and (2), F.A.C., where provided. For petitioned parcels, the property appraiser's initial roll shall be the property appraiser's determinations as presented at the commencement of the hearing or as reduced by the property appraiser during the hearing but before a decision by the board or a recommended decision by a special magistrate. This section shall not prevent the property appraiser from providing data to assist the board clerk with the notice of tax impact. The public notice shall be in the form of a newspaper advertisement and shall be referred to as the "tax impact notice". The format of the tax impact notice shall be substantially as prescribed in Form DR-529, Notice Tax Impact of Value Adjustment Board, incorporated by reference in Rule 12D-16.002, F.A.C.

(2) through (5) No change.

When adopted, subsection (6) of Rule 12D-9.038, will read as follows:

(6) Copies of the forms incorporated in Rule 12D-16.002, F.A.C., may be obtained at the Department's Internet site: <http://dor.myflorida.com/dor/property/forms/>.

**DEPARTMENT OF REVENUE**

**Property Tax Oversight Program**

RULE NO.:

RULE TITLE:

12D-16.002

Index to Forms

**NOTICE OF CHANGE**

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 35, No. 35, September 4, 2009 issue of the Florida Administrative Weekly.

12D-16.002 Index to Forms.

When adopted, subsections (1) of Rule 12D-16.002 will read as follows:



(1) The following paragraphs list the forms utilized by the Department of Revenue. A copy of these forms may be obtained from the Department's website at <http://dor.myflorida.com/dor/>, or by writing to: Director, Property Tax Oversight Program, Department of Revenue, Post Office Box 3000, Tallahassee, Florida 32315-3000. The Department of Revenue adopts, and hereby incorporates by reference in this rule, the following forms and instructions:

Form Number	Title	Effective Date
(2) through (21)(d)	No change.	
<u>(22) DR-481</u>	<u>Value Adjustment Board- Notice of Hearing (n. 12/09)</u>	_____
(23)(a) through (24)	No change.	
When adopted, subsections (25) through (27) of Rule 12D-16.002, will read as follows:		
<u>(25) 485 series:</u>		
<u>(a) DR-485M</u>	<u>Notice of Decision of the Value Adjustment Board (n. 12/09)</u>	_____
<u>(b) DR-485R</u>	<u>Value Adjustment Board – Remand to Property Appraiser (n. 12/09)</u>	_____
<u>(c) DR-485V</u>	<u>Decision of The Value Adjustment Board – Value Petition (n. 12/09)</u>	_____
<u>(d) DR-485WCN</u>	<u>Value Adjustment Board-Clerk's Notice (n. 12/09)</u>	_____
<u>(e) DR-485WI</u>	<u>Value Adjustment Board – Withdrawal of Petition (n. 12/09)</u>	_____
<u>(f) DR-485XC</u>	<u>Decision of the Value Adjustment Board-Exemption, Classification, or Assessment Difference Transfer Petition (n. 12/09)</u>	_____
<u>(26) 486 Series:</u>		
<u>(a) DR-486</u>	<u>Petition to The Value Adjustment Board Request for Hearing (r. 12/09 12/96)</u>	_____ 12/96
<u>(b) DR-486DP</u>	<u>Petition to the Value Adjustment Board-Tax Deferral or Penalties-Request for Hearing (n. 12/09)</u>	_____
<u>(c) DR-486PORT</u>	<u>Petition to the Value Adjustment Board-Transfer of Homestead Assessment Difference-Request for Hearing (r. 12/09 8/09)</u>	_____ 12/09
<u>(d) DR-486XCO</u>	<u>Cross-County Notice of Appeal and Petition-Transfer of Homestead Assessment Difference (r. 12/09 8/09)</u>	_____ 12/09
<u>(e) DR-487</u>	<u>Certification of Compliance (r. 12/99)</u>	12/96
<u>(27)(a)DR-488</u>	<u>Certification Certificate of the Value Adjustment Board (r. 12/09 3/92)</u>	_____ 4/00
<u>(b) DR-488P</u>	<u>Initial Certification of the Value Adjustment Board (n. 12/09)</u>	_____

(27) through (28)(d) renumbered (28) through (29)(d) No change.  
When adopted, subsection (30) of Rule 12D-16.002, will read as follows:

<u>(30)(29)(a) DR-490</u>	<u>Notice of Disapproval of Application for Property Tax Exemption or Classification by The County Property Appraiser (r. 12/09 12/03)</u>	_____ 1/04
<u>(b) DR-490PORT</u>	<u>Notice of Denial of Transfer of Homestead Assessment Difference (r. 12/09 8/09)</u>	_____ 12/09
(30)(a) through (50)(b) renumbered (31)(a) through (51)(b) No change.		
When adopted, subsection (51)(c) of Rule 12D-16.002, will read as follows:		
<u>(c) DR-529</u>	<u>Notice of Tax Impact of Value Adjustment Board (r. 12/09 12/96)</u>	_____ 12/96
(51)(a) through (55) renumbered (52)(a) through (56) No change.		
When adopted, subsection (57) of Rule 12D-16.002, will read as follows:		
<u>(57)(a) DR-571A</u>	<u>Disapproval of Application for Tax Deferral-Homestead, Affordable Rental Housing, or Working Waterfront (n. 12/09)</u>	_____ 6/94
<u>(b) DR-584</u>	<u>Tax Collectors Budget Schedule (r. 2/94)</u>	12/94
<u>(c) DR-585</u>	<u>Minimum Standards Contract (n. 8/77)</u>	8/77
(58) through (61)(b) No change.		

**BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND**

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

**DEPARTMENT OF CORRECTIONS**

<b>RULE NO.:</b>	<b>RULE TITLE:</b>
33-602.210	Use of Force
	<b>NOTICE OF CHANGE</b>

Notice is hereby given that the following changes have been made to the proposed rule in accordance with Section 120.54(3)(d)1., F.S., published in Vol. 35, No. 38 September 25, 2009, issue of the Florida Administrative Weekly.

- 33-602.210 Use of Force.
- (1) through (14) No change.
- (15) Batons, chemical agents, EIDs, and specialty impact munitions shall not be used on inmates who are assigned to inpatient mental health care in an infirmary, transitional care unit, crisis stabilization unit, corrections mental health institution, or other mental health treatment facility, except

when attempts by available mental health staff to otherwise deescalate and resolve the situation are unsuccessful and it appears reasonably necessary to:

(a) through (d) No change.

(e) Disarm an inmate in possession of a weapon capable of causing injury to staff when other possible means of disarming the inmate pose a risk of injury to the staff involved.

(15) through (16) No change.

(17) Use of Chemical Agents. Chemical agents shall not be used on anyone other than an inmate during an authorized use of force.

(a) through (q) No change.

(r) Upon request, appropriate health services staff shall provide the following completed forms to Department inspectors or legal staff: Form DC4-701C, Use of Force Exam; Form DC4-708, Diagram of Injury; and Form DC4-701, Chronological Record of Health Care. Form DC4-701 is incorporated by reference in subsection (25) of this rule.

(18) through (24) No change.

(25) The following forms are hereby incorporated by reference. Copies of these forms are available from the Forms Control Administrator, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500.

(a) through (n) No change.

(o) DC4-701, Chronological Record of Health Care, effective \_\_\_\_\_.

Rulemaking Authority 944.09 FS. Law Implemented 776.07, 944.09, 944.35 FS. History—New 4-8-81, Amended 10-10-83, 9-28-85, Formerly 33-3.066, Amended 3-26-86, 11-21-86, 4-21-93, 7-26-93, 11-2-94, 2-12-97, 11-8-98, Formerly 33-3.0066, Amended 10-6-99, 2-7-00, 7-25-02, 8-25-03, 2-25-04, 11-7-04, 4-17-05, 8-1-05, 3-2-06, 9-18-06, 10-4-07, 3-3-08, 8-4-08, 1-6-09, 5-26-09, \_\_\_\_\_.

**DEPARTMENT OF ELDER AFFAIRS**

**Long-Term Care Ombudsman Program**

RULE NOS.:	RULE TITLES:
58L-2.001	Definitions
58L-2.003	Purpose
58L-2.005	Prohibitions
58L-2.007	Procedures

**NOTICE OF WITHDRAWAL**

Notice is hereby given that the above rule, as noticed in Vol. 35, No. 41, October 16, 2009 issue of the Florida Administrative Weekly has been withdrawn.

**DEPARTMENT OF MANAGEMENT SERVICES**

**Agency for Workforce Innovation**

RULE NOS.:	RULE TITLES:
60BB-3.0251	Definitions Relating to Emergency Unemployment Compensation
60BB-3.0252	Emergency Unemployment Compensation

60BB-3.0253	Emergency Unemployment Compensation Individual Accounts
60BB-3.0254	How to Apply for Emergency Unemployment Compensation
	<b>NOTICE OF CHANGE</b>

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 35, No. 36, September 11, 2009 issue of the Florida Administrative Weekly.

**60BB-3.0251 Definitions Relating to Emergency Unemployment Compensation**

(1) Emergency Unemployment Compensation: A federally funded program created by Public Laws 110-252, 110-449, 111-5, 111-92, and 111-118, and ~~111-5~~ and implemented in Florida through an agreement between the Agency for Workforce Innovation and the United States Department of Labor which provides additional weeks of unemployment benefits to qualified individuals who have exhausted their rights to regular unemployment compensation on claims that were effective on or after May 2, 2006.

(2) Extended unemployment compensation: Benefits, including benefits payable to federal civilian employees and to ex-servicemembers under 5 U.S.C. ss. 8501-8525, that are payable to an individual under Sections 443.1115 or 443.1117, Florida Statutes.

(3) Qualifying benefit year: The benefit year established on a Florida claim for regular unemployment compensation which was effective on or after May 2, 2006, and is the basis of the individual's eligibility for emergency unemployment compensation.

(4) Regular unemployment compensation: Benefits payable to an individual under Chapter 443, Florida Statutes, including benefits payable to federal civilian employees and to ex servicemembers under 5 U.S.C. ss. 8501-8525, other than extended unemployment compensation under Section 443.1115, Florida Statutes.

Rulemaking Authority 443.1317(1)(b) FS. Law Implemented 443.036, 443.221(3) FS. History—New \_\_\_\_\_.

**60BB-3.0252 Eligibility for Emergency Unemployment Compensation**

(1) Eligibility Conditions. Emergency Unemployment Compensation is available to individuals who:

(a) Have exhausted all rights to regular unemployment compensation on a Florida claim with a benefit year that ended on or after May 1, 2007;

(b) Have no rights to unemployment compensation under any other state or federal law;

(c) Are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and

(d) Are legally authorized to work in the United States.

(2) Exhaustion of Benefits. For purposes of this rule, an individual has exhausted all rights to regular unemployment compensation when that individual:

(a) Has received all regular unemployment compensation available on the qualifying benefit year; or

(b) Had rights to regular unemployment compensation on the qualifying benefit year, but has insufficient wage credits to establish a new ~~those rights were terminated because the~~ benefit year for regular unemployment compensation ended.

(3) Amount Payable.

(a) The amount of emergency unemployment compensation payable to an individual for any week of total unemployment will be equal to the amount of regular unemployment compensation payable during the individual's qualifying benefit year for a week of total unemployment.

(b) The maximum amount of emergency unemployment compensation payable to any individual will not exceed the amount established for such individual in the emergency unemployment compensation account described in Rule 60BB-3.0253, F.A.C.

(4) Applicable Law. The terms and conditions of the law under which the individual claimed and received regular unemployment compensation will apply to claims for and payment of emergency unemployment compensation.

(5) Overpayments. An individual who receives emergency unemployment compensation to which he is not entitled will repay any such overpayment to the Agency for Workforce Innovation. The requirement to repay the overpayment will not be waived.

(a) The Agency may recoup any such overpayments by deducting 50 percent of the weekly benefit amount from any future payments until the overpayment is repaid in full.

(b) Recoupment of overpayments from future benefits may occur at any time during the 3-year period after the date the individual received the payment of the emergency unemployment compensation to which he was not entitled.

(c) No waiver of such recoupment may occur except as permitted by Section 443.151(6)(c), Florida Statutes.

Rulemaking Authority 443.1317(1)(b) FS. Law Implemented 443.091, ~~443.101~~, 443.111, 443.151(6), 443.221(3) FS. History—New \_\_\_\_\_.

60BB-3.0253 Emergency Unemployment Compensation Individual Accounts.

(1) Establishment of Account. Persons deemed eligible under Rule 60BB-3.0252, F.A.C., will be paid from emergency unemployment compensation accounts established set up for each individual with respect to that individual's benefit year.

(2) Eligibility Established Prior to November 23, 2008. The emergency unemployment compensation accounts of individuals whose period of eligibility began between July 6, 2008 and November 22, 2008, will be augmented as provided in this subsection.

(a) The amount established in an account under this subsection will equal the lesser of:

1. 50 percent of the total amount of regular unemployment compensation payable to the individual during his or her benefit year; or

2. 13 times the individual's average weekly benefit amount for the benefit year.

(b) Benefits under this subsection may be paid only for weeks of unemployment beginning on or after July 6, 2008.

(c) If the individual exhausts these benefits before November 23, 2008, no further benefits may be paid to the individual except as provided in subsections (3), (4), (5), and ~~(6)~~(4) of this rule.

(3) Tier One.

(a) Tier One ~~one~~ benefits may be paid only for weeks of unemployment beginning on or after November 23, 2008.

(b) The emergency unemployment compensation account of each individual whose period of eligibility began after November 22, 2008, will be augmented with an amount equal to the lesser of:

1. 80 percent of the total amount of regular unemployment compensation payable to the individual during his or her benefit year; or

2. 20 times the individual's average weekly benefit amount for the benefit year.

(c) The emergency unemployment compensation account of an individual whose period of eligibility began before November 23, 2008 will, if the individual remains otherwise eligible, receive an additional augmentation equal to the amount previously paid under paragraph (b) of this subsection minus the amount actually received under subsection (2).

(d) Tier One ~~one~~ benefits may be paid only in cases in which an individual's regular unemployment compensation benefits are exhausted by the week ending February 20, 2010 ~~December 19, 2009~~.

(4) Tier Two.

(a) The emergency unemployment compensation account of an individual who receives benefits pursuant to subsection (3) of this rule will receive an additional augmentation pursuant to paragraph (b) of this subsection if:

1. The individual exhausts all Tier One ~~first-tier~~ benefits by the week ending February 27, 2010 ~~December 26, 2009~~;

2. The individual remains otherwise eligible; ~~and~~

~~3. During or after the week these benefits are exhausted, but no later than the week ending December 26, 2009, one of the following circumstances occur:~~

~~a. An extended benefit period is in effect under the Federal State Extended Unemployment Compensation Act of 1970;~~

~~b. The rate of insured unemployment for the current week and the immediately preceding 12 weeks equals or exceeds 4 percent; or~~

~~e. The average rate of total unemployment, seasonally adjusted, for the most recent 3 month period for which data for all States are published equals or exceeds 6 percent.~~

~~(b) Amount Added to Account. The amount established in an account under this subsection will equal the lesser of:~~

~~1. 54 ~~50~~ percent of the total amount of regular unemployment compensation payable to the individual during his or her benefit year; or~~

~~2. 14 ~~13~~ times the individual's average weekly benefit amount for the benefit year.~~

~~(c) Tier two benefits may be paid only for weeks of unemployment beginning on or after November 23, 2008.~~

~~(5) Tier Three.~~

~~(a) The emergency unemployment compensation account of an individual who receives benefits pursuant to subsection (4) of this rule will receive an additional augmentation pursuant to paragraph (b) of this subsection if:~~

~~1. The individual exhausts all Tier Two benefits by the week ending February 27, 2010;~~

~~2. The individual remains otherwise eligible; and~~

~~3. During or after the week these benefits are exhausted, but no later than the week ending February 27, 2010, one of the following circumstances occur:~~

~~a. The rate of insured unemployment for the current week and the immediately preceding 12 weeks equals or exceeds 4 percent; or~~

~~b. The average rate of total unemployment, seasonally adjusted, for the most recent 3 month period for which data for all States are published equals or exceeds 6 percent.~~

~~(b) The amount established in an account under this subsection will equal the lesser of:~~

~~1. 50 percent of the total amount of regular unemployment compensation payable to the individual during his or her benefit year; or~~

~~2. 13 times the individual's average weekly benefit amount for the benefit year.~~

~~(c) Tier Three benefits may be paid only for weeks of unemployment beginning on or after November 8, 2009.~~

~~(6) Tier Four.~~

~~(a) The emergency unemployment compensation account of an individual who receives benefits pursuant to subsection (5) of this rule will receive an additional augmentation pursuant to paragraph (b) of this subsection if:~~

~~1. The individual exhausts all Tier Three benefits by the week ending February 27, 2010;~~

~~2. The individual remains otherwise eligible; and~~

~~3. During or after the week these benefits are exhausted, but no later than the week ending February 27, 2010, one of the following circumstances occur:~~

~~a. The rate of insured unemployment for the current week and the immediately preceding 12 weeks equals or exceeds 6 percent; or~~

b. The average rate of total unemployment, seasonally adjusted, for the most recent 3 month period for which data for all States are published equals or exceeds 8.5 percent.

(b) The amount established in an account under this subsection will equal the lesser of:

1. 24 percent of the total amount of regular unemployment compensation payable to the individual during his or her benefit year; or

2. 6 times the individual's average weekly benefit amount for the benefit year.

(c) Tier Four benefits may be paid only for weeks of unemployment beginning on or after November 8, 2009.

(7)(5) Termination of Emergency Unemployment Compensation. An individual who has a balance remaining in his or her individual account as of February 28, 2010 ~~December 31, 2009~~, will continue to receive emergency unemployment compensation from such balance for any week beginning after that date for which he or she meets the eligibility requirements of this rule, except that no compensation will be payable for any week beginning after July ~~May~~ 31, 2010.

Rulemaking Authority 443.1317(1)(b) FS. Law Implemented 443.111, 443.191, 443.221(3) FS. History—New\_\_\_\_\_.

60BB-3.0254 How to Apply for Emergency Unemployment Compensation.

(1) Method of Application. Individuals whose regular unemployment compensation benefits are exhausted, whose benefit year expires between July 6, 2008 and February 20, 2010 ~~December 31, 2009~~, or who are entitled to an augmentation of their emergency unemployment compensation accounts pursuant to Rule 60BB-3.0253, F.A.C., will receive notice regarding their eligibility or ineligibility for emergency unemployment compensation. Individuals who qualify for augmentation under any of the provisions set forth in subsections 60BB-3.0253(4)-(6), F.A.C., will be ~~are~~ deemed eligible to will receive these benefits without filing an application as long as they comply with the continued claims reporting requirements set forth in Rule 60BB-3.015, F.A.C. All other individuals who wish to receive emergency unemployment compensation must submit an application for benefits to the Agency for Workforce Innovation. ~~Applications must be filed by December 19, 2009.~~ An application may be submitted:

(a) Online by clicking on the "Internet Unemployment Compensation Claim Application (Initial Claim)" link to using the Online Internet Unemployment Compensation Claim Application (11/07), or by clicking on the "Solicitud de Reclamo de Compensacion por Desempleo en el Internet (Reclamo Inicial)" link to the Online Internet Unemployment Compensation Claim Application (Spanish version) (11/07),

which are incorporated by reference in paragraphs 60BB-3.029(1)(yy) and (zz), F.A.C., and which are available at [www.fluidnow.com](http://www.fluidnow.com); or:

(b) In writing on one of the following forms listed in subsection (2) of this rule, which are hereby incorporated by reference into this rule and which are available at [www.floridajobs.org/unemployment/uc\\_emp\\_claims.html](http://www.floridajobs.org/unemployment/uc_emp_claims.html):

- (i) Form AWI-UC310EUC (Rev. 12/08);
  - (ii) Formulario AWI-UC310EUC(S) (Rev. 12/08), or
  - (iii) Form AWI-UCB310EUC(C) (Rev. 12/08);
- or
- (e) By telephone at (800)204-2418.

(2) Submitting Written Applications.

(a) To submit a written application for emergency unemployment compensation under subsections (2), (3), or (4) of Rule 60BB-3.0253, F.A.C., the claimant must complete and submit one of the following forms:

1. Form AWI-UC310EUC (Rev. 10/09), Application for Emergency Unemployment Compensation;
2. Form AWI-UC310EUC (S) (Rev. 10/09), Solicitud de Compensacion de emergencia por desempleo, or
3. Form AWI-UC310EUC (C) (Rev. 10/09), Aplikasyon pou Aloksyon Chomaj sou Ka Dijan.

(b) To submit a written application for emergency unemployment compensation under subsections (5) or (6) of Rule 60BB-3.0253, F.A.C., the claimant must complete and submit one of the following forms:

1. Form AWI-UC310EUCIII (12-09), Application for Tier III;
2. Form AWI UC310EUCIII (Sp) (12-09), Agencia para la innovacion en la fuerza de trabajo de Florida Compensacion de emergencia por desempleo; or
3. Form AWI-UCB310EUCIII (Cr) (12-09), Ajans pou Inovasyon Fos Travay "Agency for Workforce Innovation" Konpansasyon Chomaj Dijans.

(c) The applications described in paragraph (2)(b) of this rule will be mailed to:

1. All out of state claimants whose application for extended benefits was denied because the law of their state of residence did not permit payment of extended benefits; and
2. All claimants who did not qualify for extended benefits because their Tier Two benefits expired before February 27, 2009.

(d) All applications mailed pursuant to paragraph (2)(c) of this rule will be accompanied by Form AWI UC310EUCIII LTR(N) (Rev. 12/09), Emergency Unemployment Compensation Instruction Sheet or a Form AWI UC310EUCIII LTR(S) (Rev. 12/09), Emergency Unemployment Compensation Instruction Sheet, which are hereby incorporated by reference into this rule.

(3) Submitting Written Applications. The claimant must submit his or her application by mailing the completed form to the address set forth on the form and/or accompanying instructions.

~~the Form AWI UC310EUC, (Rev. 12/08), Formulario AWI UC310EUC(S) (Rev. 12/08), or Form AWI UCB310EUC(C) (Rev. 12/08), as appropriate, and either:~~

(a) Mail the completed form to the Agency for Workforce Innovation, Unemployment Compensation Records Unit, P. O. Drawer 5350, Tallahassee, Florida 32314-5350; or

(b) Fax the form to the Agency for Workforce Innovation, Unemployment Compensation Records Unit, (850)921-3938.

(4)(3) Notice of Determination.

(a) Notice of the Agency's determination of a claimant's eligibility or ineligibility for emergency unemployment compensation under subsection (2) or (3) of Rule 60BB-3.0253, F.A.C., will be mailed to the claimant on a Form AWI-UCB11 EUC (12/08), which is hereby incorporated by reference into this rule.

(b) Notice of the Agency's determination of a claimant's eligibility or ineligibility for emergency unemployment compensation under subsection (4) of Rule 60BB-3.0253, F.A.C., will be mailed to the claimant on a Form AWI-UCB11 EUC-2 (03/09), which is hereby incorporated by reference into this rule.

(c) Notice of ineligibility for cases in which the claimant does not meet the eligibility requirements of Rule 60BB-3.0252, F.A.C., will be mailed to the claimant on a Form AWI-UCB11-I EUC (10/09), Emergency Unemployment Compensation Monetary Determination (06/09), which is hereby incorporated by reference into this rule.

(b) Notice of the Agency's determination of a claimant's eligibility or ineligibility for emergency unemployment compensation under subsections (2) or (3) of Rule 60BB-3.0253, F.A.C., will be mailed to the claimant on a Form AWI-UCB11 EUC (11/09), Emergency Unemployment Compensation Monetary Determination, which is hereby incorporated by reference into this rule.

(c) Notice of the Agency's determination of a claimant's eligibility or ineligibility for emergency unemployment compensation under paragraph (4)(b) of Rule 60BB-3.0253, F.A.C., will be mailed to the claimant:

1. On a Form AWI-UCB11 EUC-2 (12/22/09) Emergency Unemployment Compensation Monetary Determination, which is hereby incorporated by reference into this rule, when the claimant exhausts his Tier One benefits; or

2. On a Form AWI-UCB11 EUC-2R (12/09), Emergency Unemployment Compensation Tier II Monetary Determination, which is hereby incorporated by reference into this rule, when the claimant:

a. Claimed weeks on a Florida claim for extended benefits in a state in which extended benefits are not payable;

b. Received extended benefit payments for any week ending on or after November 14, 2009; or

c. Was determined to be entitled to an additional week of Tier Two benefits under the augmentation authorized by Public Law 111-92 for any week ending on or after November 14, 2009.

(d) Notice of the Agency’s determination of a claimant’s eligibility or ineligibility for emergency unemployment compensation under subsection (5) of Rule 60BB-3.0253, F.A.C., will be mailed to the claimant on a Form AWI-UCB11 EUC3 (12/22/09) Emergency Unemployment Compensation Monetary Determination, which is hereby incorporated by reference into this rule.

(e) Notice of the Agency’s determination of a claimant’s eligibility or ineligibility for emergency unemployment compensation under subsection (6) of Rule 60BB-3.0253, F.A.C., will be mailed to the claimant on a Form AWI-UCB11 EUC4 (12/09). Emergency Unemployment Compensation Monetary Determination, which is hereby incorporated by reference into this rule.

Remaking Authority 443.1317(1)(b) FS. Law Implemented 443.091, 443.101, 443.111, 443.151, 443.221(3) FS. History–New \_\_\_\_\_.

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**Division of Hotels and Restaurants**

RULE NO.:                   RULE TITLE:  
61C-3.001                   Sanitation and Safety Requirements  
  NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 35, No. 44, November 6, 2009 issue of the Florida Administrative Weekly.

61C-3.001 Sanitation and Safety Requirements.

The following requirements and standards shall be met by all public lodging establishments.

(1) Glassware, tableware, and utensils –

(a) The handling, cleaning, and sanitizing of glassware, tableware, and utensils in public lodging establishments shall be subject to the provisions of Chapter 4, Food Code, as adopted by reference in Rule 61C-1.001, F.A.C. As referenced in this chapter of the Food Code, the term “food establishment” shall apply to all public lodging establishments as defined in Chapter 509, F.S.

(b) Any public lodging establishment which cannot comply with this provision shall post in a conspicuous place a placard or sign which clearly states “NOTICE TO GUESTS: Dishware, glassware, kitchenware and/or utensils have been provided in this room as a guest convenience. These items have been cleaned within this room or unit using ordinary household dishwashing facilities and agents. They have not been sanitized according to Federal and State standards for

public food service establishments.”, or its equivalent, in each guest room where such dishware, glassware, kitchenware or utensils are provided.

(c) Any public lodging establishment initiating new construction or extensive remodeling involving the construction of walls or plumbing fixtures in any area which would permit compliance with any portion of these requirements shall fully comply with the above requirements.

(2) Kitchen and kitchen equipment – Kitchen appliances and refrigeration equipment shall be kept clean, free from odors, and in good repair. Refrigerators shall be properly drained. Kitchens shall be ventilated to minimize the occurrence of excessive heat, steam, condensation, vapors, objectionable odors, smoke, and fumes. Kitchens must also have at least 10 foot candles of light, sufficient and suitable cooking utensils, and adequate garbage receptacles. A kitchen sink with hot and cold running water under pressure is required.

(3) Ice –

(a) Ice making machines shall utilize water from an approved source pursuant to Chapters 62-550 and 62-555, F.A.C., and shall be constructed, located, installed, operated, and maintained so as to prevent contamination of the ice. Ice obtained from outside the establishment shall be from a source approved under Chapter 500, F.S. Ice storage bins shall be drained through an air gap according to the provisions of the local building authority having jurisdiction.

(b) Canvas containers shall not be used unless provided with a sanitary single-service liner so as to completely protect the ice from contamination. Ice buckets and other ice containers shall be made of a smooth, nonabsorbent, impervious material; shall be designed to facilitate cleaning; shall be kept clean; and shall be stored and handled in a sanitary manner. Ice buckets and other ice containers must be cleaned and sanitized between each guest or be provided with a sanitary single-service liner which is changed at least daily. Between uses, ice containers used to transfer ice from ice making machines to ice storage bins shall be stored in a way that protects the ice containers and ice-dispensing utensils from contamination.

(c) Ice for consumer use shall be dispensed only with scoops, tongs or other ice-dispensing utensils or through automatic self-service, ice-dispensing equipment. Ice-dispensing utensils shall be made of a smooth, nonabsorbent, impervious material; shall be designed to facilitate cleaning; and shall be kept clean. Ice-dispensing utensils shall be stored on a clean surface, attached to a nonoxidizing chain or tether, and stored inside the ice bin or in the ice with the utensil’s handle extended out of the ice.

(4) Locks – An approved locking device for the purposes of Section 509.211, F.S., is a locking device that meets the requirements of National Fire Protection Association 101 (NFPA 101), Life Safety Code, 2006 edition, as adopted by the

Division of State Fire Marshal in Rule 69A-3.012, F.A.C., herein adopted by reference. Public lodging establishments as defined in paragraph 61C-1.002(4)(a), F.A.C., shall have at least one approved locking device which cannot be opened by a non-master guest room key on all outside and connecting doors. An approved locking device does not include a “sliding chain” or “hook and eye” type device.

(5) Balcony Inspection –

(a) through (b) No change.

(c) Certification of inspection shall be submitted on DBPR HR-7020, CERTIFICATE OF BALCONY INSPECTION, incorporated herein by reference and effective 2008 July 1. Copies of this form are available from the Division of Hotels and Restaurants Internet website [www.MyFloridaLicense.com/dbpr/hr](http://www.MyFloridaLicense.com/dbpr/hr); by e-mail to [call.center@dbpr.state.fl.us](mailto:call.center@dbpr.state.fl.us); by phone request to the department at (850)487-1395; or upon written request to the Division of Hotels and Restaurants, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-1014.

(d) The division and the applicable local government agency or office shall receive the Certificate of Balcony Inspection from hotels and motels on or before January 1 of every third year and from other public lodging establishments on or before October 1 of every third year.

(e) No change.

(f) Upon change of ownership, the operator shall file a new Certificate of Balcony Inspection.

~~(6)(12)~~ Resort condominiums, nontransient apartments and resort dwellings are exempt from subsection ~~subsections~~ (1), ~~(2)~~, and ~~(3)~~ of this rule. Establishments opting to provide any of the services listed in subsection (1) ~~subsections (2) and (3)~~ of this rule shall comply with the requirements described herein.

(12) No change.

Rulemaking Specific Authority 509.032, 509.2112 FS. Law Implemented 509.032, 509.211, 509.2112, 509.221 FS. History—Amended 1-20-63, Revised 2-4-71, Amended 9-19-84, Formerly 7C-3.01, Amended 12-31-90, Formerly 7C-3.001, Amended 3-31-94, 9-25-96, 1-18-98, 8-12-08,\_\_\_\_\_.

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**Regulatory Council of Community Association Managers**

RULE NO.: 61E14-2.001                      RULE TITLE: Standards of Professional Conduct

**NOTICE OF WITHDRAWAL**

Notice is hereby given that the above rule, as noticed in Vol. 35, No. 38, September 25, 2009 issue of the Florida Administrative Weekly has been withdrawn.

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**Board of Accountancy**

RULE NO.: 61H1-20.0094                      RULE TITLE: Standards for Accountants Services on Prospective Financial Statements

**NOTICE OF CHANGE**

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 35, No. 43, October 30, 2009 issue of the Florida Administrative Weekly.

The changes are in response to written comments submitted by the staff of the Joint Administrative Procedures Committee.

61H1-20.0094 Standards for Accountants Services on Prospective Financial Statements.

The changes are as follows:

(1) The first sentence of the rule shall now read as follows: “Standards for Accountants Services on Prospective Financial Statements” shall be deemed and construed to mean Statements on Standards Accountants Services on Prospective Financial Statements published by the American Institute of Certified Public Accountants in effect as of June 30, 2008, hereby incorporated by reference and available from the AICPA’s Resource Online at [www.cpa2biz.com](http://www.cpa2biz.com) or by telephonic request at 1(888)777-7077.

(2) This Notice of Change supersedes the Notice of Change for the rule that published on January 15, 2010, in Vol. 36, No. 2 of the Florida Administrative Weekly.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Voloria Kelly, Division Director, Board of Accountancy, 240 N.W. 76th Dr., Suite A, Gainesville, Florida 32607

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**Board of Accountancy**

RULE NO.: 61H1-35.001                      RULE TITLE: Application for Foreign Licensure Examination

**NOTICE OF WITHDRAWAL**

Notice is hereby given that the above rule, as noticed in Vol. 35, No. 40, October 9, 2009 issue of the Florida Administrative Weekly has been withdrawn.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Notices for the Department of Environmental Protection between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled “Official Notices.”

**DEPARTMENT OF HEALTH**

**Board of Pharmacy**

RULE NO.: 64B16-27.500  
 RULE TITLE: Negative Drug Formulary  
 NOTICE OF PUBLIC HEARING

The Board of Pharmacy announces a hearing regarding the above rule, as noticed in Vol. 35, No. 50, December 18, 2009 Florida Administrative Weekly.

DATE AND TIME: Tuesday, February 9, 2010, 1:00 p.m., or as soon thereafter as can be heard.

PLACE: Embassy Suites, 9300 Baymeadows Rd., Jacksonville, Florida 32256

GENERAL SUBJECT MATTER TO BE CONSIDERED: To discuss proposed text of Rule 64B16-27.500, F.A.C.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least five days before the workshop/meeting by contacting: Rebecca Poston, Executive Director, Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3254. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

**DEPARTMENT OF HEALTH**

**Board of Psychology**

RULE NO.: 64B19-11.005  
 RULE TITLE: Supervised Experience Requirements  
 NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 35, No. 49, December 11, 2009 issue of the Florida Administrative Weekly.

The change is in response to comments stated at the October 16, 2009 Board meeting. The Board determined that the Statement of Regulatory Costs previously prepared and approved was appropriate and no modifications were necessary with the changes.

The change is as follows:

64B19-11.005 Supervised Experience Requirements.

(1)(e) The psychology resident or post-doctoral fellow shall inform all service users of her or his supervised status and provide the name of the supervising psychologist. All written work, Ceonsultation, reports, and summaries shall be co-signed by the supervising psychologist. Progress notes may be co-signed at the discretion of the supervising psychologist.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Allen Hall, Executive Director, Board of Psychology/MQA, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

**DEPARTMENT OF HEALTH**

**Board of Speech-Language Pathology and Audiology**

RULE NO.: 64B20-2.003  
 RULE TITLE: Provisional License; Requirements  
 NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 35, No. 50, December 18, 2009 issue of the Florida Administrative Weekly.

The correction is as follows:

(4) In addition to the application form, candidates for a provisional license shall also complete Form SPA-2A, Speech-Language Pathology and/or Audiology Verification of Employment for a Provisional Licensee, which is incorporated by reference herein, ~~revised December, 2009~~ August 2008, and can be obtained from the Board of Speech-Language Pathology and Audiology, Department of Health, 4052 Bald Cypress Way, #C06, Tallahassee, Florida 32399-3256. Said form shall provide the following:

(a) through (b) No change.

THE PERSON TO BE CONTACTED REGARDING THIS CORRECTION IS: Kaye Howerton, Executive Director, Board of Speech Language Pathology, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3256

**DEPARTMENT OF CHILDREN AND FAMILY SERVICES**

**Family Safety and Preservation Program**

RULE NOS.:	RULE TITLES:
65C-35.001	Definitions
65C-35.002	Behavioral Health Services
65C-35.003	Parent or Legal Guardian Involvement
65C-35.004	Caregiver Involvement
65C-35.005	Child Involvement in Treatment Planning.
65C-35.006	Taking a Child Into Custody Who is Taking Psychotropic Medication
65C-35.007	Authority to Provide Psychotropic Medications to Children in Out-of-Home Care Placements
65C-35.008	Parent or Legal Guardian Declines to Consent to or Withdraws Consent for the Provision of Psychotropic Medication
65C-35.009	Parent or Legal Guardian Rights Terminated; Parent or Legal Guardian Refuses to Participate; or Parent or Legal Guardian Location or Identify Unknown



- 65C-35.010 Emergency Administration of Psychotropic Medication
- 65C-35.011 Medication Administration and Monitoring
- 65C-35.012 Requests for Second Opinions
- 65C-35.013 Medical Report

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 35, No. 43, October 30, 2009 issue of the Florida Administrative Weekly.

65C-35.001 Definitions.

(1) “Assent” when used in this chapter means a process by which a provider of medical services helps the patient achieve a developmentally appropriate awareness of the nature of his or her condition; informs the patient of what can be expected with tests and treatment; makes a clinical assessment of the patient’s understanding of the situation and the factors influencing how he or she is responding; and solicits an expression of the patient’s willingness to accept the proposed care.

(2) No change.

(3) “Caregiver” means, for purpose of this chapter, a person who is approved in writing by the Department as responsible for providing for the child’s daily needs, or any other person legally responsible for the child’s welfare in a residential setting ~~the person or persons with whom the child resides or who is responsible for providing the child’s daily needs.~~

(4) “Chemical Restraint” means the use of a medication ~~psychotropic drug~~ as a restraint to control behavior or restrict freedom of movement that is not an accepted standard ~~an accepted standard~~ treatment for the person's medical or psychiatric condition.

(5) “Children’s Legal Services” is a statewide law firm focusing on children’s issues within the Department of Children and Families.

(6) “Child Protective Investigator” means an authorized agent in a professional position within the Department or designated sheriff’s office with the authority and responsibility of investigating reports of child abuse, neglect, or abandonment received by the Florida Abuse Hotline, as defined in Section 39.01(62)(58), F.S.

(7) through (9) No change.

(10) “Express and Informed Consent” means, for the purposes of this chapter; voluntary written consent from a competent person who has received full, accurate, and sufficient information and explanation about a child’s medical condition, medication, and treatment to enable the person to make a knowledgeable decision without being subjected to any deceit or coercion. Express and informed consent for the administration of psychotropic medication may only be given by a parent whose rights have not been terminated, or a legal guardian of the child. Sufficient explanation includes but is not

limited to the following information, provided and explained in plain language by the prescribing physician to the consent giver: the medication, reason for prescribing it, and its purpose or intended results; side effects, risks, and contraindications, including effects of stopping the medication; method for administering the medication, and dosage range when applicable; potential drug interactions; alternative treatments; and the behavioral health or other services used to complement the use of medication, when applicable ~~consent from a child’s parent or legal guardian as defined in Section 394.455(9), F.S. and as described in Section 394.459(3)(a), F.S. See those sections for further details.~~

(11) No change.

(12) “Guardian ad Litem” is defined in Section 39.820(1), F.S.

~~(13)(12)~~ “Lead Agency” means the not-for-profit or governmental community-based care provider responsible for the provision of support and services for eligible children and their families who have been abused, abandoned, or neglected.

~~(14)(13)~~ “Legal Guardian” means a permanent guardian as described in Section 39.6221, F.S., or a “guardian” as defined in Section 744.102, F.S., or a relative with a court order of temporary custody under Chapter 751, F.S. Dependency case managers and Guardians ~~a~~Ad Litem do not meet the definition of legal guardian.

~~(15)(14)~~ “Medical Report” means a report prepared by the prescribing physician that includes information required by Section 39.407(3)(c), F.S. The form for the medical report is “Medical Report” (form CF-FSP 5339 dated October 2009), which is hereby incorporated by reference and is available by contacting the Family Safety Program Office at 1317 Winewood Boulevard, Tallahassee, Florida 32399-0700, or at <http://www.dcf.state.fl.us/DCFForms/Search/DCFFormSearch.aspx>.

~~(16)(15)~~ “Out-of-Home Care” means the placement of a child, arranged and supervised by the Department of Children and Families or its agent, outside the home of the child’s custodial parent or legal guardian. This includes placement in licensed shelter, foster home, group home, Residential Treatment Center (including Statewide Inpatient Psychiatric Programs), and non-licensed relative/non-relative settings.

~~(17)(16)~~ “Prescribing Physician” is a physician licensed under Chapter 458 or 459, Florida Statutes.

~~(18)(17)~~ “Psychotropic Medication” means, for the purpose of this rule, any chemical substance prescribed with the intent to treat: psychiatric disorders; disturbances of reality testing, cognitive impairment, mood disorders or emotional dysregulation; ~~psychiatric disorders; disturbances of reality testing, cognitive impairment, mood disorders or emotional dysregulation;~~ and those substances, which though prescribed with the intent to treat other medical conditions have the effect of altering brain chemistry or involve any of the medications in the categories listed below. The medications include, without limitation, the following major categories:

(a) through (i) No change.

~~(19)(18)~~ “Residential treatment center” means a 24-hour residential program which provides mental health services to emotionally disturbed children or adolescents as defined in Section ~~§~~ 394.492(5) or (6), F.S. that is licensed by the Agency for Health Care Administration. For purposes of this rule, therapeutic group homes are not considered a residential treatment center.

~~(20)(19)~~ “Resource Record” means the child’s standardized record that contains copies of all available and accessible medical and psychological information (including behavioral health information) pertaining to the child as described in subsections 65C-30.001(24) and 65C-30.011~~(18)(17)~~, (4)-(6), F.A.C.

~~(21)(20)~~ “Statewide Inpatient Psychiatric Program” or “SIPP” means those residential mental health treatment programs selected and contracted by the Agency for Healthcare Administration to participate in the Institution for Mental Disease waiver.

Rulemaking Authority 39.407(3)(g) FS. Law Implemented 39.407(1), (2), (3) FS. History–New \_\_\_\_\_.

#### 65C-35.002 Behavioral Health Services.

(1) Behavioral health services shall be provided to children in out-of-home care without delay once the need for such services is identified. Prior to prescribing a psychotropic medication, the physician must consider other treatment interventions that may include, but are not limited to, medical, mental health, behavioral, counseling, or other services. All decision making should be guided by the principle that it is important to comprehensively address all the concerns in a child’s life – family, legal, health, education, and social/emotional issues – as well as to provide behavioral supports and parent training, so that a child’s behavioral and mental health issues can be addressed in the least restrictive setting and in a comprehensive treatment plan.

(2) through (3) No change.

(4) The Medical Report must include recommendations for medical, behavioral health, or other services that will be used in conjunction with the psychotropic medication, will be used in adjunct to as required by Section 39.407(3)(c)~~(e)~~5., F.S.

(5) Prior to prescribing a psychotropic medication, the physician must consider the child’s history for conditions that may indicate the presence of brain injury (for example, blows to head, fetal alcohol syndrome, loss of consciousness, head scars, fever above 104°) and document any follow-up assessments or referrals on the Medical Report.

~~(6)(5)~~ The administration of psychotropic medication for the sole purpose of chemical restraint is strictly prohibited.

Rulemaking Authority 39.407(3)(g), 39.0121 FS. Law Implemented 39.407(1), (3), ~~39.6 012(2)~~, 409.1674 FS. History–New \_\_\_\_\_.

#### 65C-35.003 Parent or Legal Guardian Involvement.

(1) The dependency case manager or child protective investigator shall facilitate ~~make reasonable efforts to ensure that~~ the child’s parent (where parental rights are intact) or legal guardian attendings of medical appointments, and obtains the parent or legal guardian obtaining of information about medications, possible side effects, and other details about treatment listed in (2) of this section ~~ete~~.

(2) No change.

(a) through (e) No change.

(f) Possible side effects of stopping the medication; ~~and~~ (g) Alternative treatment options;

~~(h)(g)~~ How treatment will be monitored; and

~~(i)(h)~~ The physician’s plan to reduce and/or eliminate ongoing administration of the medication.

(3) No change.

(4) The dependency case manager or child protective investigator shall make the following minimum efforts to enable the prescribing physician to obtain express and informed consent from the child’s parent or legal guardian:-

(a) Attempt to invite the parent or legal guardian to the doctor’s appointment and to offer them transportation to the appointment, if necessary;-

(b) Attempt to contact the parent or legal guardian as soon as possible upon learning of the recommendation for psychotropic medication by the prescribing physician and provide specific information to them on how and when to contact the physician;- and

(c) No change.

(5) No change.

Rulemaking Authority 39.407(3)(g) FS. Law Implemented 39.407(3); ~~409.1674~~ FS. History–New \_\_\_\_\_.

#### 65C-35.004 Caregiver Involvement.

(1) The child’s caregiver must make every effort to attend medical appointments and obtain the information about medications, possible side effects, and other information as listed in (2) of this section ~~ete~~. Caregivers do not have the authority to provide express and informed consent for psychotropic medication. However, nothing in this rule prohibits caregivers from expressing their concerns regarding prescribing psychotropic medication to children.

(2) No change.

(a) A copy of the Medical Report;

~~(b)(a)~~ The method of administering the medication;

~~(c)(b)~~ An explanation of the nature and purpose of the treatment;

~~(d)(c)~~ The recognized side effects, risks and contraindications of the medication;

~~(e)(d)~~ Drug-interaction precautions;

~~(f)(e)~~ Possible side effects of stopping the medication;

~~(g)(f)~~ Alternative treatment options;

(h) How treatment will be monitored; and

~~(i)(g)~~ The physician’s plan to reduce and/or eliminate ongoing administration of the medication.

(3) The caregiver shall monitor the child, and report to the prescribing physician and the dependency case manager any behavior or other incident that could indicate an adverse side effect.

Rulemaking Authority 39.407(3)(g) FS. Law Implemented 39.407(3) History–New\_\_\_\_\_.

65C-35.005 Child Involvement in Treatment Planning.

No change.

65C-35.006 Taking a Child Into Custody ~~Who Is~~ Taking Psychotropic Medication.

(1) No change.

(a) The child protective investigator must seek written authorization from the parent or legal guardian to continue administration of currently prescribed psychotropic medications. This authorization is good for the first 28 calendar days the child is in shelter.

(b) The child protective investigator must take the following actions:

1. If the medication is in its original container, and clearly marked as a current prescription for the child, the medication must continue to be provided to the child. The protective investigator must notify or cause to be notified the parent or legal guardian that the medication is being provided to the child.

2. through 5. No change.

(2), through (4) No change.

(5) Authorization in a shelter order to continue the medication shall be valid only until the arraignment hearing on the petition for dependency, or for 28 calendar days following the date of removal, whichever occurs first.

(6) Within 28 calendar days of removal, or no later than the arraignment hearing on the petition for dependency, whichever occurs first, the child must be evaluated by a physician to determine whether it is appropriate to continue the medication.

(7) All actions taken by the child protective investigator will be entered into FSFN within three (3) business days of receipt of the parent or legal guardian authorization or court order approving the medication.

(8) No change.

Rulemaking Authority 39.407(3)(g) FS. Law Implemented 39.407(1),(2), (3) FS. History–New\_\_\_\_\_.

65C-35.007 Authority to Provide Psychotropic Medications to Children in Out-of-Home Care Placements.

(1) No change.

(2) If the parents’ or guardians’ legal rights have been terminated; their identity or location is unknown; or they decline to approve administration of psychotropic medication, and any party believes that administration of the medication is in the best interest of the child and medically necessary, then authorization to treat with psychotropic medication must be pursued through a court order. Children’s Legal Services must file a motion in court that will allow the court to “hear” the request and upon consideration of the facts, circumstances, and law, authorize the provision of the medication. Court authorization must occur before the psychotropic medication is administered to the child except in the circumstances described in Rule 65C-35~~2~~.010, F.A.C.

(3) In no case may the dependency case manager, child protective investigator, the child’s caregiver, representatives from the Department of Juvenile Justice, or staff from Residential Treatment Centers provide express and informed consent for a child in out-of-home care to be prescribed a psychotropic medication ~~unless permitted pursuant to a court order with specificity.~~

(4) No change.

(5) All details about prescribed psychotropic medications, updates, (including changes in dosage or physician prescribed cessation of the medication), and including all actions taken by the dependency case manager or child protective investigator, will be entered into FSFN by the dependency case manager or child protective investigator within three (3) business days of the action.

(6) No change.

(a) No change.

(b) The condition and purpose for which the medication is prescribed for the is child;

(c) through (k) No change.

(7) through (9) No change.

Rulemaking Authority 39.407(3)(g) FS. Law Implemented 39.407(2), (3), ~~409-1671~~ FS. History–New\_\_\_\_\_.

65C-35.008 Parent or Legal Guardian Declines to Consent to or Withdraws Consent for the Provision of Psychotropic Medication.

(1) If the parent or legal guardian declines to authorize the provision of psychotropic medication, or withdraws consent that was previously provided, the parent or legal guardian’s decision, and any reason provided therefore, must be recorded in the Medical Report. If the prescribing physician determines that the parent or legal guardian cannot provide express and informed consent, the basis for that determination must be recorded in the Medical Report. In either event, the following steps must be taken:

(a) The dependency case manager shall consult with the prescribing physician within one (1) business day of being notified that the parent will not authorize the provision of

psychotropic medication, withdraws consent, or is found by the prescribing physician to lack the ability to provide express and informed consent.

(b) If the prescribing physician determines that the medication is medically necessary for the child despite the lack of authorization, the prescribing physician must include the reasons for recommending the administration of the medication in the Medical Report.

~~(c) The dependency case manager shall provide Children's Legal Services with the information necessary to inform the court that psychotropic medication has been recommended but not authorized; the reasons the parent or legal guardian did not authorize the provision of the medication, and the prescribing physician's position regarding the need to administer the medication. Children's Legal Services shall file a motion to authorize medication within one business day of this consultation.~~

~~(2) If, after considering the parent or legal guardian's position, the prescribing physician chooses to revise the recommended treatment, the prescribing physician must document this revision in the Medical Report.~~

~~(3) When the parent declines to provide express and informed consent, the Department must seek court approval for the administration of psychotropic medication. The following steps must be taken:~~

~~(a) The dependency case manager must obtain a completed Medical Report from the prescribing physician.~~

~~(d)(b) Within three (3) business days of receiving the Medical Report from the prescribing physician, the dependency case manager must submit the Medical Report and any supporting documentation to Children's Legal Services, with a request for legal action to obtain a court order authorizing the administration of the prescribed medication.~~

~~(e)(e) Children's Legal Services must file a motion in court that will allow the court to "hear" the request and upon consideration of the facts, circumstances, and law, determine whether to authorize the provision of the medication. Children's Legal Services shall notify all parties. Court authorization must occur before the psychotropic medication is administered to the child.~~

Rulemaking Authority 39.407(3)(g) FS. Law Implemented 39.407(1), (2), (3) FS. History--New \_\_\_\_\_.

65C-35.009 Parent or Legal Guardian Rights Terminated; Parent or Legal Guardian Refuses to Participate; or Parent or Legal Guardian Location or Identify Unknown.

(1) through (2) No change.

(3) Within three (3) one (1) business days of receiving the Medical Report from the prescribing physician, the dependency case manager or child protective investigator must

submit the Medical Report and other documentation to Children's Legal Services, with a request for court authorization to administer the prescribed medication.

(4) Children's Legal Services must file a motion in court that will allow the court to "hear" the request and upon consideration of the facts, circumstances, and law, authorize the provision of the medication. Children's Legal Services shall notify all parties. Court authorization must occur before the psychotropic medication is administered to the child.

Rulemaking Authority 39.407(3)(g) FS. Law Implemented 39.407(3); 409.1674 FS. History--New \_\_\_\_\_.

65C-35.010 Emergency Administration of Psychotropic Medication.

(1) Psychotropic medications may be administered in advance of a court order or parental authorization under two circumstances, as described in Section 39.407(3)(e), F.S.: at the time the child is admitted to any hospital, Crisis Stabilization Unit (CSU) or Psychiatric Residential Treatment Center if the prescribing physician certifies that delay in providing the prescribed psychotropic medication would more likely than not cause significant harm to the child.

(a) If the prescribing physician certifies that delay in providing the prescribed psychotropic medication would more likely than not cause significant harm to the child. This certification shall be in writing on the Medical Report form.

(b) If the child is in a hospital, Crisis Stabilization Unit (CSU), or Psychiatric Residential Treatment Center.

(2) No change.

(3) If express and informed consent has not been obtained, If the prescribing physician did not obtain express and informed consent from the parent or legal guardian, the dependency case manager or child protective investigator must obtain a completed copy of the Medical Report that is signed by a treating physician and provide it to Children's Legal Services in time for a motion to be filed by Children's Legal Services within three (3) business days of beginning the medication, as required in Section 39.407(3)(e)1., F.S. within two (2) business days after the medication is initiated. This report shall also be provided to the child's Guardian Ad Litem, the child's lawyer and all other parties within two (2) business days of initiation of the medication to the child.

(a) Children's Legal Services shall submit a motion to the court within three (3) business days of the initiation of the medication, and shall schedule the motion to be heard at the next regularly scheduled court hearing, or within 30 calendar days after the date of the prescription, whichever occurs sooner. All parties shall be notified within three (3) business working days.

(b) If any party objects to the motion the court shall hold a hearing within seven (7) calendar days.

(c) Medication information will be entered into FSFN within three (3) business days of beginning the medication.

Rulemaking Authority 39.407(3)(g) FS. Law Implemented 39.407(1), (2), (3) FS. History--New\_\_\_\_\_.

65C-35.011 Medication Administration and Monitoring.

(1) through (2) No change.

(3) The monitoring of the use of psychotropic medication provided to children will be a joint responsibility among ~~between~~ the prescribing physician, caregiver, dependency case manager or child protective investigator, and the supervisor.

(4) through (8) No change.

(9) ~~A statewide workgroup shall be appointed by the Secretary of The Department may address the to give recommendations to the Department that will ensure the safety and efficacy of psychotropic medication through requirements in lead agency contracts, including but not limited to the utilization of pre-consent reviews or second opinions by child psychiatrists. These recommendations may be amended into the lead agency contracts at the discretion of the Secretary.~~

(10) Lead agencies shall develop and implement protocols which ensure collaboration among those responsible for a child's care, specifically addressing the use of psychotropic medication and the need to share all relevant information with all parties involved in the child's care.

Rulemaking Authority 39.407(3)(g), 39.0121 FS. Law Implemented 39.407(2), (3), ~~409.1674~~ FS. History--New\_\_\_\_\_.

65C-35.012 Requests for Second Opinions.

(1) through (2) No change.

(3) The child protective investigator or dependency case manager must obtain the second opinion within twenty-one (21) calendar days of ~~or~~ receipt of the court order. ~~If the second opinion is not obtained within the required timeframes, the reasons for the delay must be reported to the court and all parties.~~

Rulemaking Authority 39.407(3)(g) FS. Law Implemented 39.407(3)(d) FS. History--New\_\_\_\_\_.

65C-35.013 Medical Report.

(1) If a court order is required to obtain authorization to administer psychotropic medication, the prescribing physician must complete and sign the Medical Report form that is incorporated by reference into ~~this Chapter 65C-35, F.A.C. and includes all requirements set forth in Section 39.407(3)(c), (4)-(5), F.S.~~ The physician may submit a medical report on a form of their choice as long as the form includes all information required on ~~in~~ Section 39.407 (3)(c)(1)-(5), F.S. ~~and~~ the Medical Report that is incorporated by reference in Chapter 65C-35, F.A.C. is included.

Rulemaking Authority 39.407(3)(g) FS. Law Implemented 39.407(3)(c) FS. History--New\_\_\_\_\_.

**DEPARTMENT OF CHILDREN AND FAMILY SERVICES**

**Agency for Persons with Disabilities**

<b>RULE NOS.:</b>	<b>RULE TITLES:</b>
65G-4.0021	Tier Waivers
65G-4.0022	Tier One Waiver
65G-4.0023	Tier Two Waiver
65G-4.0024	Tier Three Waiver
65G-4.0025	Tier Four Waiver

**NOTICE OF CHANGE**

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 35, No. 49, December 11, 2009 issue of the Florida Administrative Weekly.

65G-4.0021 Tier Waivers.

(1) The Agency for Persons with Disabilities will assign clients of home and community-based waiver services for persons with developmental disabilities to one of the four Tier Waivers created by Section 393.0661, F.S. The Agency will determine the Tier Waiver for which each client is eligible and assign the client to that waiver based on the developmental disabilities waiver criteria and limitations contained in the following provisions: Sections 409.906(13) and 393.0661, F.S.; and Rules 59G-13.080 and 59G-13.083, F.A.C. These criteria include:

(a) The client's needs in functional, medical, and behavioral areas, as reflected in the client's assessment using the assessment instrument known as the Questionnaire for Situational Information (QSI), the client's support plan, prior service authorizations and approved cost plan.

(b) The client's cost plan is developed through Agency evaluation of client characteristics, the Agency approved assessment process, support planning information, and the Agency's prior service authorization process.

(c) ~~The services listed below in paragraph (5)(b), when authorized in an approved cost plan, shall be key indicators of a tier assignment because they directly reflect the level of medical, adaptive or behavioral needs of a client.~~

(d) The client needs considered in tier assignments include ~~are~~ only those services approved through the prior service authorization process to be medically necessary;

(e) The client's current living setting; and

(f) The availability of supports and services from other sources, including Medicaid state plan and other federal, state and local programs as well as natural and community supports.

(2) As part of the assessment process, the Individual Cost Guidelines (ICG) and the Questionnaire for Situational Information 4.0 (QSI) are hereby adopted by the Agency as valid and reliable assessment instruments. The ICG and the QSI are available at: <http://apd.myflorida.com/waiver/>

qsi-version-4.pdf, or <http://apd.myflorida.com/waiver/>. The ICG is only valid through December 31, 2009. The QSI is valid in all other instances.

(3) The services described by the Developmental Disabilities Waiver Services Coverage and Limitations Handbook, July 2007 (available at: [http://portal.flmmis.com/FLPublic/Portals/0/StaticContent/Public/HANDBOOKS/CL\\_08\\_070701\\_Waiver\\_DevSev\\_ver1%203%20\(2\).pdf](http://portal.flmmis.com/FLPublic/Portals/0/StaticContent/Public/HANDBOOKS/CL_08_070701_Waiver_DevSev_ver1%203%20(2).pdf) or <http://apd.myflorida.com/waiver/> (hereinafter referred to as the "DD Handbook"), adopted by Rule 59G-13.083, F.A.C. and incorporated herein by reference, are available to clients of the Developmental Disabilities Waiver (hereinafter called "the Tier One Waiver"), the Developmental Disabilities Tier Two Waiver (hereinafter called "the Tier Two Waiver"), and Developmental Disabilities Tier Three Waiver (hereinafter called "the Tier Three Waiver"). The following services described in the DD Handbook are available to clients assigned to the Tier Four Waiver (presently known as The Family and Supported Living Waiver):

- (a) Adult Day Training;
- (b) Behavior Analysis;
- (c) Behavior Assistance ~~et Services~~;
- (d) Consumable Medical Supplies;
- (e) Durable Medical Equipment;
- (f) Environmental Accessibility Adaptations;
- (g) In-Home Support Service;
- (h) Personal Emergency Response System;
- (i) Respite Care;
- (j) Support Coordination;
- (k) Supported Employment;
- (l) Supported Living Coaching; and
- (m) Transportation.

(4) For all Tiers the client must utilize all available State Plan Medicaid services including, but not limited to, personal care assistance, therapies, medical services, and nursing services, that duplicate the waiver services proposed for the client. A client shall not be provided waiver services that duplicate available State Plan Medicaid Services including, but not limited to, personal care assistance, therapies, medical services, and nursing services.

(5) The Agency will review a client's tier eligibility when a client has a significant change in circumstance or condition that impacts on the client's health, safety, or welfare or when a change in the client's plan of care is required to avoid institutionalization. The information identifying and documenting a significant change in circumstance or condition that necessitates additional or different services must be submitted by the client's Waiver Support Coordinator to the appropriate Agency Area office for determination. The agency shall determine whether revision of the tier assignment is necessary when the additional service has been approved through the prior service authorization process.

~~(6) The following services, if approved through the Agency's prior authorization process, will be used as the basis for making a tier assignment or determining whether a tier change is required:~~

- ~~(a) Personal Care Assistance;~~
- ~~(b) Behavior Analysis;~~
- ~~(c) Behavior Assistance;~~
- ~~(d) Supported Living Coaching;~~
- ~~(e) In-home Supports;~~
- ~~(f) Skilled, Residential or Private Duty Nursing Services;~~
- ~~(g) Intensive Behavioral Residential Habilitation Services;~~
- ~~(h) Behavior Focus Residential Habilitation Services at the moderate or above level of support;~~
- ~~(i) Behavior Focus Residential Habilitation Services at the minimal level of support;~~
- ~~(j) Standard Residential Habilitation at the extensive 1, or higher, level of support;~~
- ~~(k) Standard Residential Habilitation at the moderate level of support;~~
- ~~(l) Live-in Residential Habilitation;~~
- ~~(m) Special Medical Home Care;~~
- ~~(n) Occupational Therapy;~~
- ~~(o) Physical Therapy;~~
- ~~(p) Speech Therapy;~~
- ~~(q) Respiratory Therapy;~~
- ~~(r) Specialized Mental Health Services; or~~
- ~~(s) ADT at the 1:1 ratio.~~

~~(6)(7) In determining tier level assignment for clients with behavioral, medical and adaptive needs, the Agency may consider less costly services ~~not listed in paragraph (5)~~ for those clients who choose less costly services to address a documented ~~behavioral~~ need. Waiver Support Coordinators shall coordinate with their clients to ensure that services are selected to keep the cost plan within the assigned Tier budget cap while maintaining the client's health and safety.~~

~~(7) If the tier assignment results in a reduction of the client's cost plan of more than 5% the agency will review the client's support plan and consider the interaction of the various services that promote the health and safety of the client and the client's need for the services.~~

Rulemaking Authority 393.0661(3) FS. Law Implemented 393.0661(3) FS.

65G-4.0022 Tier One Waiver.

(1) The Tier One Waiver is limited to clients that the Agency has determined meet at least one of the following criteria:

(a) The client's needs for medical or adaptive services are intense and cannot be met in Tiers Two, Three, and Four and are essential for avoiding institutionalization, or

(b) The client possesses behavioral problems that are exceptional in intensity, duration, or frequency with resulting service needs that cannot be met in Tiers Two, Three, and Four, and the client presents a substantial risk of harm to themselves or others.

(2) Tier One shall include, but is not limited to clients who are authorized by the Agency to receive the following services which are defined in the DD Handbook:

(a) 180 hours or more of intensive Personal Care Assistance per month;

(b) Supported Living Coaching and In-home Supports, in combination with any of the following additional services: Physical Therapy, Occupational Therapy, Respiratory Therapy or Behavior Analysis;

(c) Behavior analysis and Behavior Assistance services of sixty or more hours per month, if living in the family home; or

(d) Four or more hours per day of continuous Nursing Services.

(3) Clients living in a licensed residential facility receiving any of the following services, defined in Rule 59G-13.084, F.A.C., shall be assigned to the Tier One Waiver:

(a) Intensive Behavioral Residential Habilitation services;

(b) Behavior Focus Residential Habilitation services at the moderate or above level of support; or

(c) Standard Residential Habilitation at the extensive 1, or higher, level of support; or

(d) Special Medical Home Care, as defined in the DD Handbook.

(4) Clients who meet the criteria in subsection (1), and their needs cannot be met in Tier Two, Tier Three or Tier Four, shall be assigned to the Tier One Waiver. The following services as defined in the DD Handbook, if approved through the Agency's prior authorization process, will be used as the primary basis for making an assignment or determining whether a tier change to Tier One is required:

(a) Personal Care Assistance;

(b) Behavior Analysis;

(c) Behavior Assistant Services;

(d) Supported Living Coaching;

(e) In-home Supports;

(f) Skilled, Residential or Private Duty Nursing Services;

(g) Intensive Behavioral Residential Habilitation Services;

(h) Behavior Focus Residential Habilitation Services at the moderate or above level of support;

(i) Behavior Focus Residential Habilitation Services at the minimal level of support;

(j) Standard Residential Habilitation at the extensive 1, or higher, level of support;

(k) Standard Residential Habilitation at the moderate level of support;

(l) Special Medical Home Care;

(m) Occupational Therapy;

(n) Physical Therapy;

(o) Respiratory Therapy;

(p) Specialized Mental Health Services; or

(q) Adult Day Training at the 1:1 ratio.

(5)(4) Needs for services described in subsections (2) ~~and~~, (3) ~~and~~ (4) that can be met through the Tier Two, Tier Three, or Tier Four Waivers are not "services" or "service needs" that support assignment to the Tier One Waiver.

Rulemaking Authority 393.0661(3) FS. Law Implemented 393.0661(3) FS.

65G-4.0023 Tier Two Waiver.

The total budget in a cost plan year for each Tier Two Waiver client shall not exceed \$55,000. The Tier Two Waiver is limited to clients who meet the following criteria:

(1) The client's service needs include placement in a licensed residential facility and authorization for a moderate level of support for standard residential habilitation services or a minimal level of support for behavior focus residential habilitation services as defined in the DD Handbook; or

(2) The client is in supported living and is authorized to receive more than six hours a day of in-home support services. Supported living and in-home support services are defined in the DD Handbook.

Rulemaking Authority 393.0661(3) FS. Law Implemented 393.0661(3) FS.

65G-4.0024 Tier Three Waiver.

The total budget in a cost plan year for each Tier Three Waiver client shall not exceed \$35,000. A client must meet at least one of the following criteria for assignment to the Tier Three Waiver:

(1) The client resides in a licensed residential facility and is not eligible for the Tier One Waiver or the Tier Two Waiver; or

(2) The client resides in their own home, is authorized by the Agency to receive in-home support services and is not eligible for the Tier One Waiver or the Tier Two Waiver and the need for these services cannot be met in Tier Four; or

(3) The client is authorized by the Agency to receive personal care assistance services at the standard or moderate level of support as defined in the DD Handbook.

(4) The client is authorized by the Agency to receive Skilled or Private Duty Nursing Services and is not eligible for the Tier One Waiver or the Tier Two Waiver; or

(5) The client is authorized by the Agency to receive services of a behavior analyst and/or a behavior assistant and the need for these services cannot be met in Tier Four.

~~(6) The client is authorized by the agency to receive the combined services of a behavior analyst and/or a behavior assistant for more than 60 hours per month and is not eligible for the Tier One Waiver or the Tier Two Waiver.~~

~~(6)(7)~~ The client is authorized by the agency to receive at least one of the following services:

- (a) Occupational Therapy;
- (b) Physical Therapy;
- (c) Speech Therapy; or
- (d) Respiratory Therapy.

~~(7)(8)~~ All services described in this rule are defined in the DD Handbook.

Rulemaking Authority 393.0661(3) FS. Law Implemented 393.0661(3) FS.

65G-4.0025 Tier Four Waiver.

(1) The total budget in a cost plan year for each Tier Four Waiver client shall not exceed \$14,792 per year.

(2) Clients who are not eligible for assignment to the Tier One Waiver, the Tier Two Waiver, or the Tier Three Waiver shall be assigned to the Tier Four Waiver:

Rulemaking Authority 393.0661(3) FS. Law Implemented 393.0661(3) FS.

**DEPARTMENT OF FINANCIAL SERVICES**

**Division of State Fire Marshal**

RULE NOS.:	RULE TITLES:
69A-47.013	Regional Access
69A-47.014	Compliance Dates

**NOTICE OF CHANGE**

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 35, No. 48, December 4, 2009 issue of the Florida Administrative Weekly.

69A-47.013 Regional Access.

(1) Each building which is six or more stories in height, including, but not limited to, hotels and condominiums, on which a building permit is issued after September 30, 2006.

69A-47.014 Compliance Dates.

No change.

**Section IV  
Emergency Rules**

**BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND**

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

**DEPARTMENT OF THE LOTTERY**

RULE NO.:	RULE TITLE:
53ER10-1	Payment of Prizes

SUMMARY: This emergency rule replaces Emergency Rule 53ER08-89 and sets forth the procedures that the Florida Lottery shall apply to awarding prizes.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Faith L. Schneider, Legal Analyst, Department of the Lottery, 250 Marriott Drive, Tallahassee, Florida 32399-4011

THE FULL TEXT OF THE EMERGENCY RULE IS:

53ER10-1 Payment of Prizes.

(1) Claiming Prizes. For purposes of this rule, the provisions for claiming a prize as set forth in paragraph 24.115(1)(f), Florida Statutes, will be deemed satisfied upon the claimant meeting the following requirements:

(a) On-line Game Prizes.

1. For on-line game prizes, the claimant must submit the winning on-line ticket for validation at a Lottery office or retailer on or before the 180th day after the winning drawing. Winning on-line tickets submitted to the Lottery by mail for validation must be addressed to the Lottery's prize payment address in an envelope postmarked on or before the 180th day after the winning drawing.

2. If the claimant is not paid at the time of ticket validation, he or she must submit the validated on-line winning ticket, along with the documents specified in paragraph (14)(c) below, for prize payment at a Lottery office on or before the 210th day after the winning drawing. If the claimant chooses to submit the validated on-line winning ticket for prize payment by mail, the ticket and all required documents must be sent to the Lottery's prize payment address and received by the Lottery on or before the 210th day after the winning drawing. Failure of a claimant to submit all required documentation, and receipt by the Lottery thereof, on or before the 210th day after the winning drawing shall result in forfeiture of the prize.

(b) Instant Game Prizes.

1. For instant game prizes, the claimant must submit the winning instant ticket for validation at a Lottery office or retailer on or before the 60th day after the official end of the game. Winning instant tickets submitted to the Lottery by mail for validation must be addressed to the Lottery's prize payment address in an envelope postmarked on or before the 60th day after the official end of the game.

2. If the claimant is not paid at the time of ticket validation, he or she must submit the validated instant winning ticket, along with the documents specified in paragraph (14)(c) below, for prize payment at a Lottery office on or before the 90th day after the official end of the game. If the claimant chooses to submit the validated instant winning ticket for prize payment by mail, the ticket and all required documents must be