

Section III
Notices of Changes, Corrections and
Withdrawals

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

RULE NO.: RULE TITLE:
33-108.201 Sanitary Practices Relating to
Correctional Facilities

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol.
35, No. 28, July 17, 2009 issue of the Florida Administrative
Weekly has been withdrawn.

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:
33-404.107 Use of Force with Mentally
Disordered Inmates

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol.
36, No. 9, March 5, 2010 issue of the Florida Administrative
Weekly has been withdrawn.

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:
33-601.901 Confidential Records

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol.
36, No. 18, May 7, 2010 issue of the Florida Administrative
Weekly has been withdrawn.

DEPARTMENT OF MANAGEMENT SERVICES

Agency for Workforce Innovation

RULE NOS.: RULE TITLES:
60BB-3.0261 Definitions Relating to Extended
Benefits
60BB-3.0262 Eligibility for Extended Benefits
60BB-3.0263 How to Apply for Extended Benefits

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol.
35, No. 42, October 23, 2009 issue of the Florida
Administrative Weekly has been withdrawn.

DEPARTMENT OF BUSINESS AND PROFESSIONAL
REGULATION

Division of Hotels and Restaurants

RULE NO.: RULE TITLE:
61C-1.004 General 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. 36, No. 18, May 7, 2010
issue of the Florida Administrative Weekly.

Paragraph (1)(d) of the Notice of Change for the above rule
which was published in Vol. 36, No. 30, July 30, 2010 issue of
the FAW was inadvertently not stricken out.

61C-1.004 General Sanitation and Safety Requirements.

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

(1) Water, plumbing and waste.

(d) Sewage shall be disposed of in a public sewage system
or other approved sewage system in accordance with the
provisions of Chapter 64E-6 or 62-601, F.A.C., whichever is
applicable. Grease interceptors shall be designed and installed
in accordance with provisions of Chapter 64E-6, F.A.C., or the
local building authority having jurisdiction.

DEPARTMENT OF BUSINESS AND PROFESSIONAL
REGULATION

Regulatory Council of Community Association Managers

RULE NO.: RULE TITLE:
61E14-4.005 Prelicensure Education Provider
Approval

SECOND 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. 42, of the
October 23, 2009, issue of the Florida Administrative Weekly.
A previous Notice of Change was published in Vol. 36, No. 32
of the Florida Administrative Weekly on August 13, 2010.
These changes are in addition to those changes outlined in the
previous Notice of Change. The changes are in response to
written comments submitted by the staff of the Joint
Administrative Procedure Committee. The changes shall be as
follows:

Subsection (4) of the rule shall read:

(4) Prelicensure education provider status shall be valid
from the date of approval until May 31 of every even
numbered year. Those seeking renewal of provider status must
reapply on Forms DBPR 0020-1 and DBPR CAM 4306,
referenced in subsection (2) above, to the Council and submit
the appropriate renewal fee pursuant to subsection
61E14-3.001(16) 61-20.504(16), F.A.C. Providers who fail to

renew their provider status on a timely basis in accordance with this rule shall not offer or advertise a course as an approved course for Prelicensure education.

Subsection (8) is being deleted and subsection (9) shall be renumbered as subsection (8).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Anthony Spivey, Executive Director, Regulatory Council of Community Managers, 1940 North Monroe Street, Tallahassee, FL 32399-0762

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 Massage

RULE NO.: 64B7-27.008 RULE TITLE: Initial Fee for Licensure

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule published in Vol. 36, No. 30, of the July 30, 2010, issue of the Florida Administrative Weekly. The rule notice did not contain the required language regarding requests for a public hearing. The correction is as follows:

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FLORIDA ADMINISTRATIVE WEEKLY.

The change does not affect the substance of the proposed rule as it appeared in the Florida Administrative Weekly as outlined above.

THE PERSON TO BE CONTACTED REGARDING THE ABOVE CHANGE IS: Anthony Jusevitch, Executive Director, Board of Massage Therapy/MQA, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3256

DEPARTMENT OF HEALTH

Board of Medicine

RULE NOS.: 64B8-9.0131 RULE TITLES: Standards of Practice for Physicians Practicing in Pain Management Clinics
64B8-9.0132 Requirement for Pain Management Clinic Registration; Inspection or Accreditation

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. 36, No. 16, April 23, 2010 issue of the Florida Administrative Weekly.

The Board held a public hearing on these rules on June 4, 2010, and again on August 7, 2010. The Board, at its meeting of August 7, 2010, voted to make the following changes to the rules in response to comments received at the public hearings, and in response to written comments submitted by the staff of the Joint Administrative Procedures Committee (JAPC). The changes are as follows:

For Rule 64B8-9.0131:

1. The preamble to the rule shall now read: "THIS RULE IS APPLICABLE TO PHYSICIANS PRACTICING IN PRIVATELY OWNED PAIN MANAGEMENT CLINICS THAT ARE REQUIRED TO BE REGISTERED PURSUANT TO SECTION 458.3265, F.S., WHO PRIMARILY ENGAGE IN THE TREATMENT OF PAIN BY PRESCRIBING OR DISPENSING CONTROLLED SUBSTANCE MEDICATIONS."

2. In subsection (1) of the rule the following language shall be inserted following the word "Definitions." "The following definitions apply to this rule only."

3. In paragraph (1)(d), the word "currently" shall be deleted.

4. In subparagraph (2)(c)3., "i.e." shall be changed to "e.g."

5. The last sentence of paragraph (2)(e) shall be changed to read as follows: "The management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder requires extra care, monitoring, and documentation, and requires consultation with or referral to an addictionologist or psychiatrist."

6. Subparagraph (2)(f)1., shall be changed to read as follows: "Referral to an outside laboratory. A physician shall send the patient to a Clinical Laboratory Improvement Amendments (CLIA)-certified laboratory or a collection site owned or operated by a CLIA-certified laboratory;"

7. In subparagraph (2)(f)3., the phrase "CLIA-certified test" shall be changed to "CLIA-approved test"

8. Subparagraph (2)(h)1., shall be reworded to read as follows: "If a patient's initial drug testing reflects the adulteration of the specimen or the presence of illegal or controlled substances (other than medications with approved prescriptions), or when the testing result is questioned by either the patient or the physician, the specimen will be sent to a CLIA-certified laboratory for gas or liquid chromatography/mass spectrometry (GC/MS or LC/MS or LC/MS/MS or GC/MS/MS) confirmation. If the result of the GC/MS or LC/MS or LC/MS/MS or GC/MS/MS testing is positive, the physician shall refer the patient for further consultation with a board-certified pain management physician, an addiction medicine specialist, or from a mental health addiction facility as it pertains to drug abuse or addiction. After consultation is obtained, the physician shall document in the medical record the results of the consultation. The treating physician shall not prescribe or dispense any

controlled substances until there is written concurrence of medical necessity of continued controlled substance therapy provided by a board-certified pain management physician, an addiction medicine specialist, or to a mental health addiction facility. If the treating physician is a board-certified pain management physician, or an addiction specialist, the physician does not need to refer the patient for further consultation. If the physician suspects diversion, then the patient shall be discharged and all results of testing and actions taken by the physician shall be documented in the patient's medical record."

9. In sub-subparagraph (2)(i)1.i., the words "Medical Director or" shall be deleted.

10. In sub-subparagraph (2)(j)3.d., the word "clinics" shall be changed to "clinic's."

11. In paragraph (2)(l), all references to "Medical Director or Designated Physician" shall be changed to "Designated Physician."

12. Paragraph (2)(m) shall be reworded to read:

(m) Data Collection and Reporting.

1. Reporting of adverse incidents. The Designated Physician for each pain-management clinic shall report all adverse incidents to the Department of Health as set forth in Section 458.351, F.S.

2. The Designated Physician shall also report to the Board of Medicine, in writing, on a quarterly basis the following data:

a. Number of new and repeat patients seen and treated at the clinic who are prescribed or dispensed controlled substance medications for the treatment of chronic, non-malignant pain;

b. The number of patients discharged due to drug abuse;

c. The number of patients discharged due to drug diversion; and

d. The number of patients treated at the pain clinic whose domicile is located somewhere other than in Florida. A patient's domicile is the patient's fixed or permanent home to which he intends to return even though he may temporarily reside elsewhere.

3. All physicians practicing in pain-management clinics shall advise the Board of Medicine in writing, within 10 calendar days of beginning or ending his or her practice at a pain-management clinic."

13. Paragraph (2)(n) shall be reworded to read as follows:

(n) Training Requirements. Effective July 1, 2012, physicians who have not met the qualifications set forth in subparagraphs 1. through 6., below, shall have successfully completed a pain medicine fellowship that is accredited by the Accreditation Council for Graduate Medical Education (ACGME) or a pain medicine residency that is accredited by ACGME. Prior to July 1, 2012, physicians prescribing or dispensing controlled substance medications in pain-management clinics registered pursuant to Section 458.309(4), F.S., must meet one of the following qualifications:

1. Board certification by a specialty board recognized by the American Board of Medical Specialties (ABMS) and holds a sub-specialty certification in pain medicine;

2. Board certification in pain medicine by the American Board of Pain Medicine (ABPM);

3. Successful completion of a pain medicine fellowship that is accredited by the Accreditation Council for Graduate Medical Education (ACGME) or a pain medicine residency that is accredited by the ACGME;

4. Successful completion of a residency program in physical medicine and rehabilitation, anesthesiology, neurology, neurosurgery, or psychiatry approved by the ACGME;

5. Current staff privileges at a Florida-licensed hospital to practice pain medicine or perform pain medicine procedures;

6. Three (3) years of documented full-time practice, which is defined as an average of 20 hours per week each year, in pain-management and within six months of the effective date of this rule, attendance and successful completion of 40 hours of in-person, live-participatory AMA Category I CME courses in pain management that address all the following subject areas:

a. The goals of treating both short term and ongoing pain treatment;

b. Controlled substance prescribing rules, including controlled substances agreements;

c. Drug screening or testing, including usefulness and limitations;

d. The use of controlled substances in treating short-term and ongoing pain syndromes, including usefulness and limitations;

e. Evidenced-based non-controlled pharmacological pain treatments;

f. Evidenced-based non-pharmacological pain treatments;

g. A complete pain medicine history and a physical examination;

h. Appropriate progress note keeping;

i. Comorbidities with pain disorders, including psychiatric and addictive disorders;

j. Drug abuse and diversion, and prevention of same;

k. Risk management; and

l. Medical ethics.

In addition to the CME set forth in paragraph 6. above, physicians must be able to document hospital privileges at a Florida-licensed hospital; practice under the direct supervision of a physician who is qualified in subparagraph 1. through 4. above; or have the practice reviewed by a Florida-licensed risk manager and document compliance with all recommendations of the risk management review.

7. Upon completion of the 40 hours of CME set forth above, physicians qualifying under 6. above, must also document the completion of 15 hours of live lecture format, Category I CME in pain management for every year the physician is practicing pain management.

14. Paragraph (2)(o) shall be deleted.

15. The Rulemaking Authority and Law Implemented shall include Ch. 2010-211, Laws of Florida.

For Rule 64B8-9.0132:

1. All references in the rule to “Medical Director or Designated Physician” shall be changed to “Designated Physician.”

2. Paragraph (1)(c) shall be changed to read as follows: “(c) The Designated Physician must notify the Board within 10 calendar days, in writing, of any changes to the registration information, including the termination of his or her employment with the pain management clinic.”

3. Paragraph (2)(d) shall be changed to read as follows: “(d) The inspector(s) shall determine compliance with the requirements of Rule 64B8-9.0131, F.A.C. This shall include review of a random selection of patient records for patients who are treated for pain, selected by the inspector(s) for each physician practicing in the clinic or who has practiced in the clinic during the past six months.”

4. In the third sentence of paragraph (2)(e), the phrase “corrective action” shall be changed to “corrective action plan.”

5. Section 458.309(5), F.S. and Chapter 2010-211, Laws of Florida, shall be added to the Rulemaking Authority and the Law Implemented citations.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Larry McPherson, Executive Director, Board of Medicine, 4052 Bald Cypress Way, Bin #C03, Tallahassee, Florida 32399-3253

DEPARTMENT OF HEALTH

Board of Nursing

RULE NO.: 64B9-8.005 RULE TITLE: Unprofessional Conduct

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 36, No. 11, March 19, 2010 issue of the Florida Administrative Weekly has been withdrawn.

DEPARTMENT OF HEALTH

Board of Nursing Home Administrators

RULE NO.: 64B10-11.001 RULE TITLE: Application for Examination

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. 38, September 25, 2009 issue of the Florida Administrative Weekly.

The change is in response to concerns stated by the Joint Administrative Procedures Committee in a letter dated October 8, 2009.

The changes are as follows:

64B10-11.001, second line, shall read as “The application shall be made on the Application for Nursing Home Administrators Examination and Endorsement/Temporary form.....”

The revision date of form DH-MQA-NHA002 shall be corrected to read as “7/10”.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Bruce Deterding, Executive Director, Board of Nursing Home Administrators/MQA, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3257

DEPARTMENT OF HEALTH

Board of Nursing Home Administrators

RULE NO.: 64B10-11.003 RULE TITLE: Reexamination

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. 36, No. 4, January 29, 2010 issue of the Florida Administrative Weekly.

The change is in response to an incorrect revision date on form DH MQA 1129. The change will correct the revision date from 10/09 to 7/10 on the form.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Bruce Deterding, Executive Director, Board of Nursing Home Administrators/MQA, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3257

DEPARTMENT OF HEALTH

Board of Nursing Home Administrators

RULE NO.: 64B10-15.001 RULE TITLE: Continuing Education for Licensure Renewal

SECOND NOTICE OF CHANGE

Notice is hereby given that the following change has been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 36, No. 9, of the March 3, 2010, and the Notice of Change Vol. 36, No. 17, April 30, 2010 issue of the Florida Administrative Weekly. The change is in response to concerns stated by the Joint Administrative Procedures Committee in letters dated April 28, 2010 and May 18, 2010.

The change is as follows:

(7) Licensees who participate in the development of Florida exam questions may be awarded up to five hours of continuing education credit, comprised of two (2) hours of laws and rules and three (3) hours optional, upon request of the Board.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Bruce Deterding, Executive Director, Board of Nursing Home Administrators/MQA, 4052 Bald Cypress Way, Bin # C07, Tallahassee, Florida 32399-3257

DEPARTMENT OF HEALTH

Board of Optometry

RULE NO.: 64B13-4.004
 RULE TITLE: Manner of Application
 NOTICE OF CHANGE

Notice is hereby given that the following change has been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 36, No. 21, of the May 28, 2009, issue of the Florida Administrative Weekly. The change updates the revision date on the form incorporated by reference. The change is as follows:

(2) All applications for examination shall be made on the form titled "Application for Optometry Examination" number DH-MQA 1128 (Revised 5/10 ~~6/09~~), which is hereby incorporated by reference and can be obtained from the board office or from the Board of Optometry's website at: <http://www.doh.state.fl.us/mqa/optometry>. All applications for examination shall include the application fee as specified in subsection 64B13-6.001(7)(8), F.A.C., the department administrative cost as specified in Rule 64B13-1.016, F.A.C. ~~examination fee as specified in subsection 64B13-6.001(1), F.A.C.~~, and the initial licensure fee as specified in subsection 64B13-6.001(1) ~~or (2)~~, F.A.C. No application shall be deemed complete which does not set forth all the information required by said forms and which fails to include all fees as set forth in this rule. Applications for licensure must be received by the Department at least 120 ~~60~~ days prior to the examination.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Bruce Deterding., Executive Director, Board of Orthotists and Prosthetists, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3257

DEPARTMENT OF HEALTH

Board of Respiratory Care

RULE NO.: 64B32-2.001
 RULE TITLE: License by Endorsement
 NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 36, No. 24, June 18, 2010 issue of the Florida Administrative Weekly.

The correction is needed for the typographical error on page two of the application form to correct the word "blank ink" to "black ink". The citation to rule "64B32-2.001(2)(d)2." in

section six, page three, is corrected to read as rule "64B32-2.001(3)(d)". The quotation marks around the phrase "Voluntarily relinquish your CRT license" on page five have been removed.

The correction does not affect the substance of the rule as it appeared in the Florida Administrative Weekly as outlined above.

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

FISH AND WILDLIFE CONSERVATION COMMISSION

RULE NO.: 68-5.001
 RULE TITLE: Introduction of Non-native Species into the State

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 36, No. 2, January 15, 2010 issue of the Florida Administrative Weekly has been withdrawn.

FISH AND WILDLIFE CONSERVATION COMMISSION

RULE NO.: 68-5.004
 RULE TITLE: Amnesty for Persons Relinquishing Non-native Pets

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 36, No. 12, March 26, 2010 issue of the Florida Administrative Weekly has been withdrawn.

FISH AND WILDLIFE CONSERVATION COMMISSION

Vessel Registration and Boating Safety

RULE NOS.: 68D-21.001, 68D-21.002, 68D-21.003, 68D-21.004
 RULE TITLES: Requirements for Applications, Procedures for Reviewing Applications, Procedures for Providing for Public Notice and Participation, Criteria for Approval of Ordinances

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. 36, No. 21, May 28, 2010 issue of the Florida Administrative Weekly.

The following reflects proposed rule changes intended to improve clarity and consistency within the rule and in response to public comments received during an open period for comments. The Florida Fish and Wildlife Conservation Commission, sitting as agency head, approved the changes at its public meeting held on June 23-24, 2010, in Winter Park,

Florida. Amendments were also made in response to comments provided by the Joint Administrative Procedures Committee on July 12, 2010.

THE FULL TEXT OF THE PROPOSED RULE IS:

68D-21.001 Requirements for Applications.

(1) Approval by the Florida Fish and Wildlife Conservation Commission is not required for ordinances adopted pursuant to paragraph 327.46(1)(b), F.S. Florida Statutes Regulatory markers necessary for implementing those ordinances must be permitted as required in Sections 327.40 and 327.41, F.S. Florida Statutes, and as provided in Chapter 68D-23, F.A.C.

(2) Any municipality or county application for approval of an ordinance establishing a boating-restricted area pursuant to paragraph 327.46(1)(c), F.S. Florida Statutes, must be submitted to: Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, Boating and Waterways Section.

(3) Each application must include:

(a) through (c) No change.

(d) A statement identifying the provision within paragraph 327.46(1)(c), F.S. Florida Statutes authorizing regulation of vessel speed or operation by the ordinance.

(e) One or more scaled drawings no larger than 8 1/2 inches by 11 inches, reproducible in black and white on standard office photocopying equipment which clearly show the following:

1. through 4. No change.

5. The location of any of the following within a proposed boating-restricted area or used as a basis for establishing a boating restricted area:

a. through c. No change.

d. Any bend or other intervening obstruction to visibility that may obscure other vessels or other users of the waterway in a narrow channel, fairway, or other similar area within the meaning of Inland Navigation Rule 9 (33 U.S.C. § 2009) as adopted by Section 327.33, F.S. Florida Statutes.

e. Any specific hazards to navigation (with a label or legend describing the hazard).

6. If relied upon as a basis for establishing the boating-restricted area, the location and description of any of the following:

a. Any specific area subject to unsafe levels of vessel traffic congestion.

b.f. Any specific area subject to hazardous water levels or currents.

g. ~~Any specific hazards to navigation (with a label or legend describing the hazard).~~

c.h. ~~Any reported boating accident, if relied upon as a basis for establishing the boating-restricted area.~~

d.i. ~~Any issuance of a Uniform Boating Citation, if relied upon as a basis for establishing the boating-restricted area.~~

7.6. ~~The shoreline-to-shoreline width of the body of water upon which the boating restricted area is to be established and, if the water body is a lake or pond, the total surface area expressed in acres.~~

(f) Documentation that the ordinance was developed, prior to presenting language for adoption to the governing body, in consultation and coordination with:

1. The governing body of every other ~~the~~ county or municipality sharing jurisdiction over the area in which the boating-restricted area is located.

2. The United States Coast Guard if the boating-restricted area is to be established on navigable waters of the United States as defined in 33 C.F.R. § 2.36(a) (2009), which is adopted by reference and is available at <http://www.gpoaccess.gov/cfr/index.html>.

3. The United States Army Corps of Engineers if the boating-restricted area is to be established on navigable waters of the United States as defined in 33 C.F.R. § 329.4 (2009), which is adopted by reference and is available at <http://www.gpoaccess.gov/cfr/index.html>.

(g) through (h) No change.

(i) Proof that the applicant has at its own cost published, as provided by Sections 50.011-50.031, F.S. Florida Statutes, once a week for 2 consecutive weeks, prior a notice of the public hearing on the ordinance application in a newspaper of general circulation in the area(s) affected by the ordinance. ~~The notices must be published at least 7 days, but not more than 30 days, before the application is submitted.~~

(j) through (k) No change.

(4) through (5) No change.

Rulemaking Authority 327.04, 327.46 FS. Law Implemented 327.46 FS. History—New_____.

68D-21.002 Procedures for Reviewing Applications.

(1) No change.

(2) Within 30 days following receipt of a completed application, the Boating and Waterways Section will provide notice of such receipt: to the applicant by mail or by email using the same method by which the application was submitted and to the public as provided in Rule 68D-21.003, F.A.C.

~~(a) To the applicant by mail or by email using the same method by which the application was submitted and to the public as provided in Rule 68D-21.003.~~

~~(b) In order to receive further notifications pertaining to an application, including copies of notices and correspondence, a person must so notify the Boating and Waterways Section within 21 days following the publication of the notice of receipt in the Florida Administrative Weekly.~~

(3) The Boating and Waterways Section will within 90 days following receipt of a completed application, review and act upon the application as follows:

(a) The Boating and Waterways Section will determine whether or not each boating-restricted area created in the ordinance is authorized under paragraph 327.46(1)(b) or (c), F.S. Florida Statutes. If any boating-restricted area created in the ordinance is not authorized pursuant to one of those paragraphs, the application will be denied. As provided in subsection 68D-21.001(1), F.A.C., approval is not required for ordinances in which every boating-restricted area established therein is authorized under paragraph 327.46(1)(b), F.S. Florida Statutes.

(b) The Boating and Waterways Section will determine whether or not each boating-restricted area established in the ordinance was developed prior to ~~adoption~~ the first reading of the ordinance:

1. through 3. No change.

(c) The Boating and Waterways Section will determine whether or not the application and appendix establish a *prima facie* showing that the ordinance is necessary to protect public safety by evaluating if at least one of the criteria in Rule 68D-21.004, F.A.C., has been met.

(d) If there is a *prima facie* showing that the ordinance is necessary to protect public safety and that at least one of the criteria in Rule 68D-21.004, F.A.C., has been met, the Boating and Waterways Section will:

1. Review all written public comments received within 21 days following the notice provided to the public as required in Rule 68D-21.003, F.A.C., publication in the Florida Administrative Weekly of the notice of receipt of a complete application and all testimony, evidence, and exhibits presented at a public hearing if one was requested;

2. No change.

3. Conduct a public hearing within the applicant's jurisdiction if a written request for such a hearing is received within 21 days following the notice provided to the public as required in Rule 68D-21.003, F.A.C publication in the Florida Administrative Weekly of the notice of receipt of the application.

(e) Based on the totality of the information received, the Boating and Waterways Section will determine whether or not there is substantial competent evidence that the ordinance is necessary to protect public safety.

1. An ordinance will be considered necessary to protect public safety only if it is required for the purposes of protecting human life and limb, vessel traffic safety, and, as defined in Rule 68D-23.103, F.A.C., maritime property.

2. No ordinance establishing a boating restricted area will be approved for the purpose of noise abatement or for the protection of shoreline, shore-based structures, or upland property from vessel wake or shoreline wash. As provided in Section 327.33(2), F.S. Florida Statutes, "vessel wake and

shoreline wash resulting from the reasonable and prudent operation of a vessel shall, absent negligence, not constitute damage or endangerment to property." The wake resulting from the reasonable and prudent operation of a vessel is a force which should be anticipated by the owners of property adjacent to the navigable waters of this state.

(4) The Boating and Waterways Section will act to approve or deny the application within the time limits specified in Section 327.46(1)(c), F.S. Florida Statutes. Upon approval or denial of the application, the Boating and Waterways Section will provide notice of the approval or denial as provided in Rule 68D-21.003, F.A.C. If no request for review is timely received, this notice will constitute final agency action.

(5) The Florida Fish and Wildlife Conservation Commission, sitting as agency head at its next available regularly scheduled meeting, will review any approval or denial determination made by the Boating and Waterways Section upon timely receipt of a request for review. Any substantially affected person may request review of the approval or denial; the request must be received by the Boating and Waterway Section within 21 days following the notice provided to the public as required in Rule 68D-21.003, F.A.C publication in the Florida Administrative Weekly of the notice of approval or denial.

Rulemaking Authority 327.04, 327.46 FS. Law Implemented 327.46 FS. History--New_____.

68D-21.003 Procedures for Providing for Public Notice and Participation.

(1) Public Notice. The Boating and Waterways Section will provide notice of complete applications received, public meetings or hearing concerning applications, and denial or approval of applications: on the Boating and Waterways Section's web page at http://www.myfwc.com/RECREATION/boat_index.htm and to all parties listed in the "Boating and Waterways Section's Public Distribution List – Ordinances" in which any member of the public may join by a request to the mailing or email address found below in paragraph 68D-21.003(2)(a), F.A.C.

(2) Public Participation.

(a) No change.

(b) If a public hearing is requested under subparagraph 68D-21.002(3)(d)3., F.A.C. or review by the agency head is requested under subsection 68D-21.002(5), F.A.C., members of the public may:

1. through 2. No change.

Rulemaking Authority 327.04, 327.46 FS. Law Implemented 327.46 FS. History--New_____.

68D-21.004 Criteria for Approval of Ordinances ~~Adopted Pursuant to Section 327.46(1)(e), Florida Statutes.~~

(1) Any ordinance submitted pursuant to Section 327.46(1)(c), ~~F.S. Florida Statutes~~, and in compliance with Chapter 68D-21, F.A.C., is subject to review and approval by the Commission.

(2) An ordinance establishing either an “idle speed, no wake” or a “slow speed, minimum wake” boating restricted area will be approved for areas not more than 300 feet from a confluence (intersection) of water bodies presenting a blind corner, a bend in a narrow channel or fairway, or such other area if an intervening obstruction to visibility may obscure other vessels or other users of the waterway.

(a) No change.

(b) A bend or other intervening obstruction to visibility in a narrow channel, fairway, or other similar water body within the meaning of Inland Navigation Rule 9 (33 U.S.C. § 2009) as adopted by Section 327.33, ~~F.S. Florida Statutes~~, is presented where a decision sight distance of less than 300 feet exists and prevents the operator of a vessel from seeing other vessels or other users of the waterway.

~~Any ordinance submitted for approval under this subsection must also contain the following provision: The operator of every vessel within this boating restricted area must navigate with particular alertness and caution as required by Navigation Rule 9(f) and must, upon entering this boating restricted area, sound a 4 to 6 second blast on the vessel's horn or whistle as required by Navigation Rules 9(f) and 34(e). This signal must be answered with a 4 to 6 second blast by the operator of any approaching vessel that may be within hearing around the bend or behind the intervening obstruction as required by Navigation Rule 34(e).~~

(3) An ordinance establishing a “slow speed, minimum wake” boating-restricted area or numerical speed limit boating-restricted area regulated at 25 or 30 miles per hour will be approved for areas:

(a) No change.

(b) Containing a documented navigational hazard of a nature that vessel operation in its vicinity at speed in excess of slow speed, minimum wake endangers the vessel or its occupants. Navigational hazards are presumed to exist within the marked boundaries of mooring fields as permitted by Section 327.40, ~~F.S. Florida Statutes~~.

(c) Subject to unsafe levels of vessel traffic congestion, seasonal or year-round, such that:

1. The traffic density including concentration of fishing vessels or any other vessels would require that vessels slacken speed under Inland Navigation Rule 6(a)(ii) (33 U.S.C. § 2006) as adopted by Section 327.33, ~~F.S. Florida Statutes~~, or

2. It presents a significant risk of collision or a significant threat to boating safety.

3. Unsafe levels of vessel traffic congestion, a significant risk of collision, or a significant threat to boating safety may be demonstrated by:

a. Accident reports – The following reports of boating accidents are acceptable if prepared contemporaneously with the boating accident being reported and if vessel traffic congestion or the speed or wake of a vessel involved in the accident caused or contributed to the accident:

i. Florida Boating Accident Investigation Report, form FWCDLE 146, or Florida Boating Accident ~~Report~~ Self Report, form FWCDLE 146C, supplied by the ~~Commission~~ as provided in Section 327.302, ~~F.S. Florida Statutes~~; United States Coast Guard Recreational Boating Accident Report, form CG-3865, as provided in 33 C.F.R. §§ 173.55, 173.57; United States Coast Guard Report of Marine Casualty, Injury or Death, form CG-2692, as provided in 46 C.F.R. § 4.05-10. The current versions of these forms are adopted by reference in subsection ~~(5)(3)~~; prior editions of these forms are also acceptable.

ii. A law enforcement agency’s official offense or incident report prepared and signed by an officer authorized under Section 327.70, ~~F.S. Florida Statutes~~, to enforce the provisions of chapters 327 and 328, ~~F.S. Florida Statutes~~.

iii. No change.

b. Uniform boating citations issued on citation forms supplied by the ~~Commission~~ as provided in Section 327.74, ~~F.S. Florida Statutes~~, if the violation alleged in the citation is related to the cited vessel’s speed or wake.

c. No change.

d. Other creditable data. For the purposes of this subparagraph, “other creditable data” means facts or data that are of a type reasonably relied upon by experts in the fields of boating safety, maritime safety, navigation safety, ports and waterways safety assessments, or vessel traffic management, as contemplated in Section 90.704, ~~F.S. Florida Statutes~~.

(d) ~~Areas~~ ~~that~~ could have been established as an idle speed, no wake boating-restricted area under paragraph 327.46(1)(b)1, ~~F.S. Florida Statutes~~, provided the applicant demonstrates by competent substantial evidence how the specific regulation will adequately solve public safety concerns in the area.

(4) An ordinance establishing a vessel exclusion zone (an area from which all vessels or certain classes of vessels are excluded) will be approved if the area is reserved exclusively:

1. As a canoe trail or otherwise limits vessel propulsion if the applicant demonstrates by competent substantial evidence how the restriction is necessary to protect public safety pursuant to Section 327.46, F.S., and limited to vessels under oars or under sail if:

a. One of the following restrictions, as defined in Rule 68D-23.103, F.A.C. is imposed: “No Motorized Vessels” or “No Motorboats” or “Motorboats Prohibited”; “No Power-driven Vessels”; “No Internal Combustion Motors”; “Manually Propelled Vessels Only” and

- b. No change.
- 2. No change.

(5) The following forms are adopted and incorporated by reference:

(a) Florida Boating Accident Investigation Report, form FWCDLE 146 (07/2010 40/08), and Florida Boating Accident Report Self Report, form FWCDLE 146C (07/2010 12/06), supplied by the Commission as provided in Section 327.302, F.S. Florida Statutes. These forms may be obtained from the Boating and Waterways Section, 620 South Meridian Street, Tallahassee, FL 32399-1600.

(b) United States Coast Guard Recreational Boating Accident Report, form CG-3865 (Rev. 07/08), as provided in 33 C.F.R. §§ 173.55, 173.57. This form may be obtained from Commandant (CG-5422), U.S. Coast Guard Headquarters, 2100 Second St. SW, S.W., Stop 7581, Washington, DC 20593-7581, or downloaded at <http://www.uscgboating.org/assets/1/Publications/cg3865barform2008.pdf>.

(c) No change.

Rulemaking Authority 327.04, 327.302, 327.46 FS. Law Implemented 327.302, 327.46 FS. History—New_____.

FISH AND WILDLIFE CONSERVATION COMMISSION

Vessel Registration and Boating Safety

RULE NOS.:	RULE TITLES:
68D-23.103	Definitions
68D-23.104	Permits Required; Application for Permits
68D-23.109	Additional Specifications for Information, Danger, and Regulatory Markers

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. 36, No. 21, May 28, 2010 issue of the Florida Administrative Weekly.

The following reflects proposed rule changes intended to clarify and improve the organization within the rule as approved by the Florida Fish and Wildlife Conservation Commission, sitting as agency head, at its public meeting held on June 23-24, 2010, in Winter Park, Florida

THE FULL TEXT OF THE PROPOSED RULES IS:

68D-23.103 Definitions.

For purposes of this chapter and Chapters 68C-22 and 68D-24, F.A.C., the following definitions shall apply:

(1) Types of markers:

(a) “Aid to navigation” means any device external to a vessel intended to assist a navigator to determine position or safe course, or to warn of dangers or obstructions to navigation.

(b) “Information marker” means a device external to a vessel intended to provide the mariner with information concerning matters other than dangers or obstructions to navigation, or regulatory matters.

(c) “Danger marker” means a device external to the vessel intended to provide the mariner with information concerning dangers or obstructions to navigation such as shoals, shallows, rocks, submerged pipes or cables, dams, or low clearance obstructions above the water such as power lines, trestles, or bridges.

~~(d)(e)~~ “Regulatory marker” means a device used to alert the mariner to various regulatory matters such as horsepower, speed, wake, or entry restrictions.

~~(e)(f)~~ “Special mark” means a marker not primarily intended to assist safe navigation, but to indicate special areas or features referred to in charts or other nautical publications. They may be used, for example, to mark anchorages, mooring fields, park boundaries, cable or pipeline areas, marine events, etc. Special marks are colored solid yellow.

~~(f)(g)~~ “Mooring buoy” means a device that is permanently secured to the bottom of a body of water and to which a vessel may be secured when not underway.

~~(g)(h)~~ “Buoy” means any device designed to float which is anchored in the waters of the state and which is used to convey a message, carry a sign, or support a mooring pennant.

~~(h)(i)~~ “Sign” means an object which displays a message and which is attached to another object such as a piling, buoy, structure, or the land itself.

~~(i)(j)~~ “Symbol” means the orange geometric shape displayed on a danger, information, or regulatory marker. The meanings associated with the orange geometric shapes are as follows:

- 1. through 4. No change.

~~(j)(k)~~ “Display area” means the area on danger, information or regulatory marker within which the symbol is displayed.

(2) General definitions:

~~(a)(l)~~ “Boating-restricted area” means an area of the waters of the state within which the operation of vessels is subject to specified restrictions or from which vessels are excluded.

~~(b)(m)~~ “Shore” means that area of land immediately adjacent or contiguous to the waters of the state such that a sign or marker erected thereon is readily visible to the operator of a vessel who might reasonably believe that the sign or marker displays navigational, regulatory or other information relevant to the operation of the vessel.

~~(c)(4)~~ “Florida Intracoastal Waterway” means:

1. All waters within the right-of-way of the Atlantic Intracoastal Waterway, the Georgia state line north of Fernandina to Miami; the Port Canaveral lock and canal to the Atlantic Intracoastal Waterway; the Atlantic Intracoastal Waterway, Miami to Key West; the Okeechobee Waterway Route 1 across Lake Okeechobee and Route 2 along the southern perimeter of the lake, from Port Mayaca to Clewiston; the Gulf Intracoastal Waterway, Anclote to Fort Myers; the Gulf Intracoastal Waterway, Carrabelle to Tampa Bay; the Gulf Intracoastal Waterway, Carrabelle to Anclote open bay section (using the Gulf of Mexico); and the Gulf Intracoastal Waterway, Carrabelle to the Alabama state line west of Pensacola; and

2. All waters from shoreline to shoreline within the Okeechobee Waterway, Stuart to Fort Myers, not including Route 1 across Lake Okeechobee and Route 2 along the southern perimeter of the lake, from Port Mayaca to Clewiston; the St. Johns River, Jacksonville to Sanford; and, the Apalachicola, Chattahoochee, and Flint Rivers in Florida.

~~(d)(4)~~ “Uniform State Waterway Marking System” means the system of aids to navigation, information markers, regulatory markers, and mooring buoys, as specified in Part 66 of Title 33 of the Code of Federal Regulations.

~~(e)(4)~~ “United States Aids to Navigation System” means the system of aids to navigation, information markers, regulatory markers, and mooring buoys, as specified in Part 62 of Title 33 of the Code of Federal Regulations.

~~(f)(4)~~ “Private Aid to Navigation” means an aid to navigation the establishment of which is authorized by a permit issued by the United States Coast Guard pursuant to Part 66 of Title 33 of the Code of Federal Regulations.

~~(g)(4)~~ “Maritime property” means vessels and their engines, tackle, gear, equipment, appurtenances, furnishings, cargoes, stores, personal property then on board belonging to the vessels’ occupants, and such other similar property as is consistent with the general maritime law of the United States. This definition does not include littoral or riparian property, the shores thereof, seawalls, docks, wharfs, or other property intentionally and permanently attached to the shore.

~~(h)(4)~~ “Inland lake” means a naturally occurring or man-made fresh water lake or pond. The term does not include reservoirs, impoundments, or any portion of the Florida Intracoastal Waterway.

~~(i)(4)~~ “Associated canal” means a man-made canal that is directly attached to an inland lake and that does not connect to other waters or that connects only to another inland lake. The term does not include any portion of a state or federally funded navigation project or any portion of the Florida Intracoastal Waterway.

~~(j)(4)~~ “In writing” means any written or printed form of communication and includes electronic mail, files transferred as attachments to electronic mail, and telefacsimiles.

~~(3)(2)~~ When used on markers, the terms:

(a) through (e) No change.

(f) “Vessel-exclusion zone” means an area from which all vessels or certain classes of vessels are excluded. The following list includes the most common examples of vessel exclusion zones. Whenever the following messages are displayed on vessel-exclusion zone markers, they have the meaning provided. Other messages on vessel-exclusion zone markers are permissible, so long as the markers display language that accurately describes the vessels or classes of vessel that are excluded from the area. All vessel-exclusion zones must be marked with the crossed-diamond symbol as specified in subparagraph ~~(1)(i)(4)~~2., above.

1. through 4. No change.

(g) through (i) No change.

~~(4)(3)~~ The Boating and Waterways Section will authorize the use of other terminology on regulatory markers if the message is clear, unambiguous, and accurately describes a lawfully imposed restriction.

Rulemaking Authority 327.04, 327.40, 327.41, 327.46, 379.2431 FS. Law Implemented 327.40, 327.41, 327.46, 379.2431 FS. History—New 12-23-01, Amended 10-5-06,_____.

(Substantial rewording of Rule 68D-23.104 follows. See Florida Administrative Code for present text.)

68D-23.104 Permits Required; Application for Permits.

(1) Except as provided in subsection 68D-23.112(4), F.A.C., no person, municipality, county or other governmental entity shall place, cause to be placed, or maintain in place any marker in, on or over the waters of the state or the shores thereof without a permit from the Boating and Waterways Section.

(2) Any person, municipality, county, or other governmental entity desiring to place a marker shall apply to the Boating and Waterways Section on the Florida Uniform Waterway Marker Application form, FWCDLE 153 (~~0704~~/2010), which is adopted and incorporated herein by reference. Application forms may be obtained by submitting a request to: Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, Boating and Waterways Section, 620 South Meridian Street, Tallahassee, Florida 32399-1600 or by downloading the application from the Commission webbiest at: http://www.myfwc.com/RECREATION/boat_waterways_index.htm. Each application must include:

(a) One or more scale drawings no larger than 8 1/2 inches by 11 inches, reproducible on standard office photocopying equipment, showing the intended locations for the placement of all proposed markers with each proposed marker labeled to correspond to the list required in paragraph (b) below.

1. If the application is for regulatory markers, the drawing must also depict the exact boundaries of the area within which regulation or restriction is to be in effect.

