

## Section II Proposed Rules

### DEPARTMENT OF STATE

#### Division of Elections

RULE NO.: 1S-2.042  
 RULE TITLE: Third-Party Voter Registration Organizations

**PURPOSE AND EFFECT:** The primary purpose of the proposed new rule is to implement law regarding third-party voter registration organizations consistent with the requirements of Chapters 2005-278 and 2007-30, Laws of Florida.

**SUMMARY:** The proposed rule incorporates required forms for registration by third party voter registration organizations, for quarterly reports of such organizations, and complaints against such organizations. The rule also provides procedures to administer the administrative fine provisions of Section 97.0575, F.S.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS:** No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

**SPECIFIC AUTHORITY:** 20.10(3), 97.012(15), 97.0575(1), (4), (8) FS.

**LAW IMPLEMENTED:** 97.021(15), 97.021(36), 97.053, 97.0575 FS.

**IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:**

**DATE AND TIME:** January 12, 2009, 1:00 p.m.

**PLACE:** Room 307, R.A. Gray Building, 500 S. Bronough Street, Tallahassee, Florida 32399

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 5 days before the workshop/meeting by contacting: Gary J. Holland, Assistant General Counsel, Office of General Counsel, Florida Department of State; telephone: (850)245-6536; email: gjholland@dos.state.fl.us. 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).

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS:** Gary J. Holland, Assistant General Counsel, Office of General Counsel, Florida Department of State, telephone: (850)245-6536; email: gjholland@dos.state.fl.us.

THE FULL TEXT OF THE PROPOSED RULE IS:

#### 1S-2.042 Third-Party Voter Registration Organizations.

(1) Forms. The following forms are hereby incorporated by reference and available from the Division of Elections, R.A. Gray Building, Room 316, 500 South Bronough Street, Tallahassee, Florida 32399-0250, by contact at 850-245-6200, or by download from the Division's webpage at: <http://election.dos.state.fl.us/forms/index.shtml>:

(a) Form DS-DE 106 (eff. / / ), entitled "Third-Party Voter Registration Organization Registration Form."

(b) Form DS-DE 107 (eff. / / ), entitled "Quarterly Report Form for Organized Voter Registration Drives by Third-Party Voter Registration Organization."

(c) Form DS-DE 108 (eff. / / ), entitled "Form for Complaint Against Third-Party Voter Registration Organization."

(2) Definitions. For purposes of Section 97.0575, F.S., the following definitions apply:

(a) "Affiliate organization" of a third-party voter registration organization means any person, as defined in Section 1.01(3), F.S., that is associated with the third-party voter registration organization as a subordinate, subsidiary, member, branch, chapter, as a central or parent organization, or through direct or indirect ownership or control. Ownership or control means substantial and effective, though not necessarily predominant, ownership or control.

(b) "Force majeure" means any event or occurrence of societal significance beyond the reasonable control and without the fault of the third-party voter registration organization which could not have been prevented, avoided, or overcome by the exercise of reasonable care, diligence, or foresight of the third-party voter registration organization, including, but not limited to, civil disturbances or acts of war; extraordinarily severe weather, such as hurricanes, floods, or tornadoes; or shortages of food, electric power, or fuel.

(c) "Impossibility of performance" means an actual impossibility or impracticability of compliance as the result of a condition or circumstance which the third-party voter registration organization did not create and could not reasonably have anticipated.

(d) "Organized voter registration drive" means any voter registration activity that is coordinated with, or directed by, a third-party voter registration organization and where one or more persons solicit or collect voter registration applications on behalf of the third-party voter registration organization.

(3) Registration. A third-party voter registration organization shall complete and file Form DS-DE 106 with the Division prior to conducting any voter registration activities. A third-party voter registration organization shall also use Form DS-DE 106 to update or withdraw its registration.

(4) Voter Registration Drive Quarterly Report. A third-party voter registration organization shall use Form DS-DE 107 to file quarterly reports with the Division as required by Section 97.0575(1), F.S. The quarterly reports shall be filed no later than April 15, July 15, October 15, and January 15 to cover the preceding calendar quarter, respectively. If a due date falls on a Saturday, Sunday, or legal holiday, the report is due on the next day which is not a Saturday, Sunday, or legal holiday.

(5) Complaints and Fines.

(a) Any person claiming to have provided a completed voter registration application to a third-party voter registration organization but whose name does not appear as an active voter on the voter registration rolls shall use Form DS-DE 108 to file the complaint with the Division.

(b) Any other person may report allegations of elections fraud, which includes irregularities or fraud involving voter registration, by filing a written complaint with the Division using Form DS-DE 34, entitled "Elections Fraud Complaint," incorporated by reference in Rule 1S-2.025, F.A.C.

(c) If the Division determines that a fine should be imposed on a third-party voter registration organization, the Division shall serve an administrative complaint pursuant to Rule 28-106.2015, F.A.C., upon the third-party voter registration organization by personal delivery or certified mail, return receipt requested. A third-party voter registration organization upon which the Division serves an administrative complaint may request a hearing in accordance with Sections 120.569 and 120.57, F.S., and subsection 28-106.2015(5), F.A.C.

Specific Authority 20.10(3), 97.012(15), 97.0575(1), (4), (8) FS. Law Implemented 97.012(15), (36), 97.053, 97.0575 FS. History—New

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Gary J. Holland, Assistant General Counsel, Office of General Counsel, Florida Department of State, telephone: (850)245-6536; email: gjholland@dos.state.fl.us  
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Kurt S. Browning, Secretary of State  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 10, 2008  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 25, 2008

**DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

**Division of Forestry**

RULE NOS.:                      RULE TITLES:  
5I-4.002                          Purpose and Definitions  
5I-4.006                          Recreational Activities and Facilities

PURPOSE AND EFFECT: The purpose of the proposed rule amendments is to update and clarify the existing fees for use of lands managed by the Department and the regulations for specific activities on these lands in accordance with state law. The effect will improve administration of Department programs and provide guidance for public use.

SUMMARY: These proposed rule amendments will update and clarify the existing fees for use of lands managed by the Department and the regulations for specific activities on these lands in accordance with state law.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 589.011(4), 589.071, 589.12 FS.

LAW IMPLEMENTED: 589.011(3), 589.071 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: January 12, 2009, 10:00 a.m. EST

PLACE: Eyster Conference Room, Conner Building, 3125 Conner Boulevard, Tallahassee, Florida

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 5 days before the workshop/meeting by contacting: John Waldron, (850)414-9852. 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).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: John C. Waldron, Division of Forestry, Department of Agriculture and Consumer Services, 3125 Conner Boulevard, Tallahassee, Florida 32399-1650, (850)414-9852

THE FULL TEXT OF THE PROPOSED RULES IS:

5I-4.002 Purpose and Definitions.

The purpose of this chapter is to provide information regarding the utilization of lands and facilities managed or controlled by the Department of Agriculture and Consumer Services, Division of Forestry. The following words have the meaning indicated:

(1) through (26) No change.

(27) SCHEDULE OF FEES: The Division is authorized under Section Chapter 589.011(3), F.S., to set and charge fees for the use or operation of facilities on state forest or any lands leased to the Division for management purposes. A list of the current fees can be found in the document entitled "User Fees on Florida Division of Forestry Managed Lands, July 2008" which is hereby adopted and incorporated by reference. This fee schedule can be obtained by contacting any State Forest office, the Florida Division of Forestry, Bureau of Forest Management, 3125 Conner Blvd., Tallahassee, FL 32399-1650, or by visiting <http://www.fl-dof.com/forest-recreation/fees.html>. A schedule of current fees effective July 1, 2003 can be obtained through any local Division of Forestry office, by contacting the Florida Division of Forestry, Bureau of Forest Management, 3125 Conner Blvd., Tallahassee, FL 32399-1650 and they are located on the Division of Forestry's website located at [http://www.fl-dof.com/state\\_forests/Forest\\_Fees.html](http://www.fl-dof.com/state_forests/Forest_Fees.html).

(28) through (30) No change.

Specific Authority 589.011(4), 589.071, 589.12 FS. Law Implemented 589.011(3) (4), 589.071 FS. History-New 5-24-92, Amended 1-19-95, 11-6-95, 5-31-04,\_\_\_\_\_.

5I-4.006 Recreational Activities and Facilities.

(1) through (3) No change.

(4)(a) through (g) No change.

(h) Firearms are prohibited on managed lands except during scheduled hunting season or in designated areas. No loaded firearm is allowed in a camping area or day-use area anytime. On lands designated as wildlife management areas or wildlife and environmental areas firearms may be possessed as outlined in FWC Administrative Rule 68A-15.004 or 68A-17.004, F.A.C. Note: A person in possession of a valid Concealed Weapon or Firearm License may carry concealed handguns on managed lands (including non-wildlife management areas, camping areas and day-use areas) under the provisions of Section 790.06, F.S., throughout the year, unless otherwise prohibited pursuant to state or federal law.

(i) through (o) No change.

(5) through (7) No change.

Specific Authority 589.011(4), 589.071, 589.12 FS. Law Implemented 589.071 FS. History-New 5-24-92, Amended 1-19-95, 11-6-95, 5-31-04,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Jim Karels, Director, Division of Forestry, Florida Department of Agriculture and Consumer Services

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Charles H. Bronson, Commissioner, Department of Agriculture and Consumer Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 3, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 3, 2008

**DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

**Division of Food Safety**

RULE NOS.:	RULE TITLES:
5K-4.002	Adoption of Federal Regulations and Other Standards
5K-4.020	Food Permits; Requirements and Fees
5K-4.021	Food Manager Certification
5K-4.029	Tomato Packing Houses

PURPOSE AND EFFECT: The purpose of this rule is to establish inspection procedures and best management practices to enhance the safety of fresh tomatoes packed or repacked in Florida and to implement sections 11-13 of Chapter 2007-67, Laws of Florida, adopted during the 2007 Legislative Session. Procedures and processes will be developed to include sanitation and safety inspections of tomato packing and repacking houses. Guidelines adopted by FDACS entitled "The Tomato Best Practices Manual" (Ch. 5G-6, F.A.C.), which also relate to packing house operations and post harvest handling, are essential to the adoption and implementation of this proposed rule and have been integrated to apply needed practices and procedures for safe production and handling of tomatoes. These rules will have an effect on those establishments permitted by the FDACS in the State of Florida who handle tomatoes from arrival at tomato packing houses through distribution.

SUMMARY: This rule development will address inspection, permit requirements, and best practices in the tomato industry for packers, re-packers and workers.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 500.09(1)(b), (3), (4), 500.12(1) (f), 570.07(6), 570.07(23), 570.481(1)(a) FS.

LAW IMPLEMENTED: 500.03(1)(j), (n), 500.09(1)(b), (4), 500.12(1)(a), (f), 500.147(6), 570.48(2)(e), 570.481(1)(a), (b) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: January 9, 2009, 2:00 p.m. – 4:00 p.m.

PLACE: Dairy Conference Room, The Conner Building, 3125 Conner Boulevard, Tallahassee, Florida

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 48 hours before the workshop/meeting by contacting: Lee M. Cornman, Assistant Director, Division of Food Safety, 3125 Conner Boulevard, Mail Stop C-18, Tallahassee, FL 32399-1650; Telephone: (850)488-0295. 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).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Lee M. Cornman, Assistant Director, Division of Food Safety, 3125 Conner Boulevard, Mail Stop C-18, Tallahassee, FL 32399-1650; Telephone: (850)488-0295

THE FULL TEXT OF THE PROPOSED RULES IS:

5K-4.002 Adoption of Federal Regulations and Other Standards.

(1) through (3) No change.

(4) Food Code – Provisions Adopted.

(a) No change.

(b) All provisions in the “2001 Food Code” and the “Supplement to the 2001 Food Code,” hereafter identified as “FDA Food Code”, that are adopted herein by reference shall apply to all food establishments regulated by the Florida Department of Agriculture and Consumer Services unless specifically exempted within this rule chapter. Interested parties may obtain copies of this publication by contacting the U.S. Government Printing Office, Superintendent of Documents, P. O. Box 371954, Pittsburgh, PA 15250-7954. Copies are also available for examination at the Florida Department of Agriculture and Consumer Services, Division of Food Safety, Bureau of Food and Meat Inspection, 3125 Conner Boulevard, Room 289, Tallahassee, Florida 32399-1650.

(c) No change.

(5) No change.

Specific Authority 500.09, 500.12(1)(f), 500.12(5)(d), 500.12(6), 500.303, 500.304, 500.459, 570.07(23), (24) FS. Law Implemented 500.03, 500.032, 500.04, 500.09, 500.10, 500.11, 500.12(4)(a), 500.121, 500.13, 500.147, 500.166, 500.169, 500.172, 500.301, 500.303, 500.304, 500.459, 570.07(2), (6), (9), (16), (18), (24), 570.0725 FS. History–Revised 3-1-72, Amended 12-31-74, 1-18-83, 6-17-85, Formerly 5E-6.02, Amended 7-25-88, 4-13-92, Formerly 5E-6.002, Amended 8-8-95, 9-9-96, 12-10-96, 4-10-97, 9-8-97, 11-15-99, 2-5-04,\_\_\_\_\_.

5K-4.020 Food Permits; Requirements and Fees.

(1) As used in this rule, the following definitions shall apply in determining food permit fees:

(a) through (bb) No change.

(cc) Tomato Packing House means any establishment that washes, packs, or otherwise treats tomatoes in their unpeeled, natural form before they are marketed.

~~(dd)~~(ee) Wholesale bakery. A food establishment that bakes breads, pastries or other similar baked goods, primarily for wholesale distribution.

(2) through (6) No change.

Specific Authority 500.09, 500.12(1)(b), 500.12(1)(f), 570.07(23) FS. Law Implemented 500.04, 500.09, 500.10, 500.12(1)(a), (b), (c), (d), (f), 500.12(2), 500.12(7), 500.121, 500.171, 500.172, 500.177, 570.15 FS. History–New 1-10-93, Formerly 5E-6.020, Amended 8-8-95, 3-11-98, 3-6-01, 10-30-01, 1-1-03, 11-1-04, 11-5-07, 10-28-08,\_\_\_\_\_.

5K-4.021 Food Manager Certification.

(1) through (2) No change.

(3) Food establishments shall designate in writing its food manager or managers. The designation shall be posted in a conspicuous place within the food establishment. The following types of food establishments are not required to designate a certified food manager:

(a) through (c) No change.

(d) Tomato packing houses.

(4) through (11) No change.

Specific Authority 500.12(6), 570.07(23) FS. Law Implemented 500.12(6) FS. History–New 1-11-94, Formerly 5E-6.021, Amended 1-23-97, 5-25-98,\_\_\_\_\_.

5K-4.029 Tomato Packing House.

(1) PURPOSE.

(a) This rule establishes inspection procedures and best management practices to enhance the safety of fresh tomatoes packed or repacked in tomato packing houses in Florida, as provided by Chapters 500 and 570, F.S.

(b) In addition to the requirements in statute, Chapters 500 and 570, F.S., and applicable Department rules in Chapters 5K-4 and 5G-6, F.A.C., tomato packers and repackers shall comply with the following rules.

(2) DEFINITIONS.

(a) “Department” means the Florida Department of Agriculture and Consumer Services.

(b) “T-BMP” means Tomato Best Management Practices as specified in “The Tomato Best Practices Manual” as adopted and incorporated by reference in Department Rule 5G-6.009, F.A.C.

(c) “Tomato Packing House” means any establishment that washes, packs, or otherwise treats tomatoes in their unpeeled, natural form before they are marketed.

(3) INSPECTION.

(a) Regulatory inspections will be performed as frequently as needed to verify adherence to The Tomato Best Practices Manual for product packed or repacked and will be performed at least once annually in packing houses by the Department.

(b) Tomato packers and repackers shall comply with the requirements specified in The Tomato Best Practices Manual, as adopted and incorporated by reference in Department Rule 5G-6.009, F.A.C. A copy of this document may be obtained by contacting the Division of Fruit and Vegetables by mail at P. O. Box 1072, Winter Haven, Florida 33881-3403; by telephone at (863)291-5820; or, electronically through the Department Internet website at www.doacs.state.fl.us/fruits/.

(c) Tomato Packing Houses are exempt from compliance with the provisions of chapters 3 through 7 of the “FDA Food Code” as adopted in this rule chapter, paragraph 5K-4.002(4)(b), F.A.C.

(d) A handwashing sink supplied with running water shall be maintained within a tomato packing house so that it is accessible at all times for employee use and such sinks may not be used for purposes other than handwashing. Food employees shall use the designated handwash sink to wash their hands as specified in Chapter 2 of the FDA Food Code.

(e) Tomatoes in tomato packing houses shall be protected from contamination after rinsing or sanitization by storing the tomatoes in a clean, dry location where exposure to splash, dust, or other contamination is minimized. Tomatoes may not be stored:

1. In locker rooms;
2. In toilet rooms;
3. In dressing rooms;
4. In garbage rooms;
5. In mechanical rooms;
6. Under sewer lines that are not shielded to intercept potential drips;
7. Under leaking water lines or under lines on which water has condensed;
8. Under open stairwells; or
9. Under other sources of contamination.

Specific Authority 500.09(1)(b), (3), (4), 500.12(1)(f), 570.07(6), 570.07(23) FS. Law Implemented 500.03(1)(j), (n), 500.09(1)(b), (4), 500.12(1)(f), 570.48(2)(e) FS. History—New \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Dr. Marion Aller, Director, Division of Food Safety, Department of Agriculture and Consumer Services

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Charles H. Bronson, Commissioner, Department of Agriculture and Consumer Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 8, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 7, 2008, Vol. 34, No. 45

**DEPARTMENT OF EDUCATION**

**State Board of Education**

RULE NO.: 6A-1.012                      RULE TITLE: Purchasing Policies

PURPOSE AND EFFECT: To update the rule identified to reflect current purchasing practices and procedures to allow District School Boards to purchase goods and services more efficiently and effectively.

SUMMARY: The amendment of Rule 6A-1.012, F.A.C., is a substantial rewording of the existing rule to reflect current purchasing practices, to delineate the types of competitive solicitation available to District School Boards, when competitive solicitations are to be used, when competitive solicitations are not required, and how to procure goods and services without competitive procurement.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 1001.02(1), 1006.27, 1010.04 FS.

LAW IMPLEMENTED: 1006.27, 1001.42(4)(j), 1010.04 FS.

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

DATE AND TIME: January 21, 2009, 8:30 a.m.

PLACE: Kenwood School, 9300 S.W. 79th Avenue, Miami, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Linda Champion, Deputy Commissioner, Finance and Operations, Department of Education, 325 West Gaines Street, Tallahassee, Florida, (850)245-0406

THE FULL TEXT OF THE PROPOSED RULE IS:

(Substantial rewording of Rule 6A-1.012 follows. See Florida Administrative Code for present text)

6A-1.012 Purchasing Policies.

Each district school board shall establish purchasing rules which shall include but not be limited by the following:

(1) Definitions:

(a) The term “competitive solicitation” shall be defined for the purposes of this rule to include purchasing made through the issuance of an invitation to bid, request for proposals and invitation to negotiate. Competitive solicitations are not required for purchases made through the pool purchase provisions of Section 1006.27, Florida Statutes.

(b) “Invitation to bid” shall be defined for the purposes of this rule as a written solicitation for competitive sealed bids. The invitation to bid is used when the district school board is capable of specifically defining the scope of work for which a

contractual service is required or when the district school board is capable of establishing precise specifications defining the actual commodity or group of commodities required. A written solicitation includes a solicitation that is publicly posted.

(c) "Invitation to negotiate" shall be defined for the purposes of this rule as a written solicitation for competitive sealed replies to select one or more vendors with which to commence negotiations for the procurement of commodities or contractual services. The invitation to negotiate is used when the district school board determines that negotiations may be necessary for it to receive the best value. A written solicitation includes a solicitation that is publicly posted.

(d) The term "proposer" shall be defined for the purposes of this rule to include those vendors submitting bids or responses to a competitive solicitation.

(e) "Request for proposals" shall be defined for the purposes of this rule as a written solicitation for competitive sealed proposals. The request for proposals is used when it is not practicable for the district school board to specifically define the scope of work for which the commodity, group of commodities, or contractual service is required and when the district school board is requesting that a responsible vendor propose a commodity, group of commodities, or contractual service to meet the specifications of the solicitation document. A written solicitation includes a solicitation that is publicly posted.

(f) The term "superintendent" shall be defined for the purposes of this rule to mean "superintendent or designee".

(2) The superintendent may be authorized to purchase commodities or contractual services where the total amount does not exceed an amount prescribed by the school board, and does not exceed the applicable appropriation in the district budget. The superintendent may also be authorized to purchase commodities or contractual services under Department of Management Services state term contracts. Assistants functioning under the superintendent's direction may be authorized to perform these purchasing tasks. No person, unless authorized to do so under the rules of the district school board, may make any purchase or enter into any contract involving the use of school funds; no expenditures for any such unauthorized purchase or contract shall be approved by the district school board.

(3) Before making any purchase of commodities or contractual services which the superintendent is authorized by the district school board to make or before recommending any purchase to the district school board, the superintendent shall, insofar as possible, propose standards and specifications. He or she shall see that the commodities or contractual services conform to those standards and specifications, and shall take such other steps as are necessary to see that the maximum value is being received for any money expended.

(4) In each school district in which the purchasing agent for any public agency is authorized by law to make purchases for the benefit of other governmental agencies within the county, the district school board shall have the option to purchase under the current contracts as may be established for any of the public agencies as set forth above at or below the unit price stated therein, if such purchase is to the economic advantage of the district school board, subject to conformance of the items of purchase to the standards and specifications prescribed by the superintendent for said district.

(5) As required by Section 1001.42(10)(j), Florida Statutes, the district school board shall receive and give consideration to the prices available to it under rules of the Department of Management Services, Division of Purchasing. District school boards may use prices established by the Division of Purchasing through its state purchasing agreement price schedule. If district school board policy provides for purchasing under this program of state purchasing agreements the conditions for use shall be those imposed on state agencies.

(6) In lieu of requesting competitive solicitations from three (3) or more sources, district school boards may make purchases at or below the specified prices from contracts awarded by other city or county governmental agencies, other district school boards, community colleges, federal agencies, the public or governmental agencies of any state, or from state university system cooperative bid agreements, when the proposer awarded a contract by another entity defined herein will permit purchases by a district school board at the same terms, conditions, and prices (or below such prices) awarded in such contract, and such purchases are to the economic advantage of the district school board.

(7) Except as authorized by law or rule, competitive solicitations shall be requested from three (3) or more sources for any authorized commodities or contractual services exceeding \$50,000. Districts may not divide the procurement of commodities or contractual services so as to avoid this monetary threshold requirement. District school boards, by rule, shall set this amount or a lesser amount and shall establish purchasing policy relative to purchases of a dollar value less than this formal monetary threshold.

(8) The district school board shall have the authority to reject any or all proposals submitted in response to any competitive solicitation and request new proposals or purchase the required commodities or contractual services in any other manner authorized by this section.

(9) In acceptance of responses to invitations to bid, the district school board may accept the proposal of the lowest responsive, responsible proposer. In the alternative, the district school board may also choose to award contracts to the lowest responsive, responsible bidder as the primary awardee of a contract and to the next lowest responsive, responsible bidder(s) as alternate awardees from whom commodities or contractual services would be purchased should the primary

awardee become unable to provide all of the commodities or contractual services required by the district school board during the term of the contract. Nothing herein is meant to prevent multiple awards to the lowest responsive and responsible bidders when such multiple awards are clearly stated in the bid solicitation documents.

(10) In acceptance of responses to requests for proposals, district school boards may award contracts to one or more responsive, responsible proposers in accordance with the selection criteria published in the request for proposal. The district school board is not required to request proposals for purchases made from contracts of the Department of Management Services as referenced in subsections (2) and (5) of this rule.

(11) The requirement for requesting competitive solicitations for commodities or contractual services from three or more sources is hereby waived as authorized by Section 1010.04(4)(a), Florida Statutes, for:

(a) The purchase by district school boards of professional services which shall include, without limitation, artistic services; academic program reviews; lectures by individuals; auditing services not subject to Section 218.391, F.S.; legal services, including attorney, paralegal, expert witness, court reporting, appraisal or mediator services; and health services involving examination, diagnosis, treatment, prevention, medical consultation or administration; and

(b) The purchase by district school boards of educational services and any type of copyrighted materials including, without limitation, educational tests, textbooks, printed instructional materials, computer software, films, filmstrips, videotapes, dvds, disc or tape recordings, digital recordings, or similar audio-visual materials, and for library and reference books, and printed library cards where such materials are purchased directly from the producer or publisher, the owner of the copyright, an exclusive agent within the state, a governmental agency or a recognized educational institution; and

(12) Additional exemptions authorized under certain conditions:

(a) The requirements for requesting competitive solicitations and making purchases for commodities and contractual services as set forth in this section; are hereby waived as authorized by Section 1010.04(4)(a), Florida Statutes, when the following conditions have been met by the district school board:

1. Competitive solicitations have been requested in the manner prescribed by this rule, and

2. The district school board has made a finding that no valid or acceptable firm proposal has been received within the prescribed time.

(b) When such a finding has been officially made, the district school board may enter into negotiations with suppliers of such commodities and contractual services and shall have

the authority to execute contracts with such vendors under whatever terms and conditions as the district school board determines to be in its best interests;

(c) If less than two responsive proposals for commodity or contractual services are received, the district school board may negotiate on the best terms and conditions or decide to reject all proposals. The district school board shall document the reasons that negotiating terms and conditions with the sole proposer is in the best interest of the school district in lieu of resoliciting proposals;

(d) Commodities or contractual services available only from a single source may be exempted from the competitive solicitation requirements. When a district school board believes that commodities or contractual services are available only from a single source, the district school board shall electronically or otherwise publicly post a description of the commodities or contractual services sought for a period of at least 7 business days. The description must include a request that prospective vendors provide information regarding their ability to supply the commodities or contractual services described. If it is determined in writing by the district school board, after reviewing any information received from prospective vendors, that the commodities or contractual services are available only from a single source, the district school board shall provide notice of its intended decision to enter a single source contract in the manner specified in Section 120.57(3), Florida Statutes, and may negotiate on the best terms and conditions with the single source vendor;

(e) District school boards may dispense with requirements for competitive solicitations for the emergency purchase of commodities or contractual services when the superintendent determines in writing that an immediate danger to the public health, safety, or welfare or other substantial loss to the school district requires emergency action. After the superintendent makes such a written determination, the district school board may proceed with the procurement of commodities or contractual services necessitated by the immediate danger, without requesting competitive solicitations. However, such an emergency purchase shall be made by obtaining pricing information from at least two prospective vendors, which must be retained in the contract file, unless the superintendent determines in writing that the time required to obtain pricing information will increase the immediate danger to the public health, safety, or welfare or other substantial loss to the school district;

(f) A contract for commodities or contractual services may be awarded without competitive solicitations if state or federal law, a grant or a state or federal agency contract prescribes with whom the district school board must contract or if the rate of payment is established during the appropriations process;

(g) A contract for regulated utilities or government franchised services may be awarded without competitive solicitations;

(13) Insofar as practicable, all purchases shall be based on contracts, purchasing card systems, electronic procurements or purchase orders. Within limits prescribed by the district school board, the superintendent shall be authorized to approve purchases under rules of the district school board; provided that in so doing, he or she shall certify that funds to cover the expenditures are authorized by the budget and have not been encumbered.

(14) A district school board, when acquiring, whether by purchase, lease, lease with option to purchase, rental or otherwise, information technology, as defined in Section 282.0041(15), Florida Statutes, may make any acquisition through the bid competitive solicitation process as described herein or by direct negotiation and contract with a vendor or supplier, as best fits the needs of the school district as determined by the district school board.

(15) Except as otherwise required by statute, a district school board, when purchasing insurance, entering risk management programs, or contracting with third party administrators, may make any such acquisitions through the competitive solicitation process as described herein or by direct negotiations and contract.

Specific Authority 1001.02(1), 1006.27, 1010.04 FS. Law Implemented 1006.27, 1001.42(4)(j), 1010.04 FS. History--Amended 12-17-65, 5-24-67, 9-17-72, 4-19-74, 9-19-74, Repromulgated 12-5-74, Amended 2-21-77, 3-10-85, Formerly 6A-1.12, Amended 6-29-89, 7-5-90, 6-10-92, 6-29-93, 4-25-96, 4-14-97, 7-17-00,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Linda Champion, Deputy Commissioner, Finance and Operations

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Dr. Eric J. Smith, Commissioner of Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 8, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 24, 2008

**DEPARTMENT OF EDUCATION**

**State Board of Education**

RULE NO.: 6A-1.044 RULE TITLE: Pupil Attendance Records

PURPOSE AND EFFECT: The purpose of this rule amendment is to delete from rule obsolete attendance forms and obsolete language relating to minimum time requirements.

SUMMARY: The rule provides for the checking and maintenance of student attendance and for the administration of student attendance policies.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 1001.02(1), 1003.01, 1003.23 FS.

LAW IMPLEMENTED: 1003.23 FS.

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

DATE AND TIME: January 21, 2009, 8:30 a.m.

PLACE: Kenwood School, 9300 S.W. 79th Avenue, Miami, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Lavan Dukes, Education Information and Accountability Services Section, Department of Education, 325 West Gaines Street, Tallahassee, Florida 32399-0400

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-1.044 Pupil Attendance Records.

(1) Pupil attendance records shall be maintained for any student enrolled in public schools who is earning high school credit as provided in Section ~~1003.436~~ ~~232.2462~~, Florida Statutes, who is funded as provided in Chapter 1011~~236~~, Florida Statutes, and the Appropriations Act, or who is required to be in attendance by the compulsory attendance requirements as provided in Chapter ~~1003.232~~, Florida Statutes.

(2) through (4) No change.

(5) For the purpose of compliance with this rule, a pupil shall be deemed to be in attendance if actually present at school, or away from school on a school day and engaged in an educational activity which constitutes a part of the school-approved instructional program for that pupil. ~~Any such attendance must be in accordance with the minimum time requirements specified by Section 228.041(13), Florida Statutes.~~

(6) through (11) No change.

(12) Forms ESE 950 Automated Individual Student Attendance Record, Grades PK-12; ESE 953 Automated Individual Student Attendance by Period Record, Grades 9-12; ESE 954 Automated Individual Student Attendance by Period Summary, Grades 9-12 and ESE 981 Automated Student Attendance by Period Summary, Grades 9-12; ESE 955, Automated Multi-Day Student Attendance Register, Grades PK-12; ESE 956, Automated Multi-Day Student Attendance by Period, Grades 9-12; ESE 957, Automated Multi-Day Adult Student Attendance Register; ~~ESE 958 Adult Student Attendance Register; and ESE 982 Adult Student Attendance Roster~~ are hereby incorporated by reference and made a part of this rule to become effective November 2002. These forms may be obtained from Education Information and



Accountability Services, Division of Accountability, Research and Measurement Technology, Department of Education, 325 West Gaines Street, Tallahassee, Florida 32399-0400.

Specific Authority 1001.02(1), 1003.01, 1003.23, 229.053(1), 232.02, 232.021, 232.022 FS. Law Implemented 1003.23, 232.021, 232.022, 232.023 FS. History–New 2-20-71, Amended 9-17-71, 10-18-71, Revised 8-19-72, Amended 11-18-72, Repromulgated 12-5-74, Formerly 6A-1.44, Amended 9-16-87, 1-11-88, 7-5-89, 10-3-91, 11-26-02,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Jay Pfeiffer, Deputy Commissioner, Division of Accountability, Research, and Measurement

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Dr. Eric J. Smith, Commissioner of Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 8, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 12, 2008

**DEPARTMENT OF EDUCATION**

**State Board of Education**

RULE NO.: 6A-1.04514  
RULE TITLE: Exceptional Student Membership in Mainstream Programs

PURPOSE AND EFFECT: This rule is to be repealed as it is now obsolete due to the revision of the Exceptional Student Education/Florida Education Finance Program (ESE/FEFP) funding model instituted by the Florida Legislature in 1997 in Section 1011.62(1)(e)1.c., Florida Statutes.

SUMMARY: The rule is to be repealed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 1001.02, 1001.42(4)(1) FS.

LAW IMPLEMENTED: 1001.42(4)(1), 1011.62(1) FS.

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

DATE AND TIME: January 21, 2009, 8:30 a.m.

PLACE: Kenwood School, 9300 S.W. 79th Avenue, Miami, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Linda Champion, Deputy Commissioner, Finance and Operations, Department of Education, 325 West Gaines Street, Tallahassee, Florida, (850)245-0406

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-1.04514 Exceptional Student Membership in Mainstream Programs.

Specific Authority 229.053(1), 230.23(4)(m) FS. Law Implemented 230.23(4)(m), 236.081(1)(f) FS. History–New 9-19-90, Repealed\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Linda Champion, Deputy Commissioner, Finance and Operations

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Dr. Eric J. Smith, Commissioner of Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 8, 2008

**DEPARTMENT OF EDUCATION**

**State Board of Education**

RULE NO.: 6A-1.09421  
RULE TITLE: High School Competency Test Requirements

PURPOSE AND EFFECT: The proposed rule amendments require adult students who have not yet passed the High School Competency Test (HSCT) to meet the graduation testing requirement with passing scores on the Florida Comprehensive Assessment Test® (FCAT). The required passing scores on the FCAT were determined through a statistical analysis and are comparable to the passing scores previously required on the HSCT, in accordance with Section 1008.22(9), F.S. Beginning with the effective date of this rule, the HSCT will be discontinued, and adult students will be required to register for retake administrations of the FCAT to fulfill the graduation testing requirement for a high school diploma.

SUMMARY: This rule is amended to discontinue the administration of the HSCT and establish passing scores on the FCAT that are comparable to those required on the HSCT. The comparable passing scores on the FCAT will allow adult students to meet their high school testing requirement using a test that is supported by the current statewide assessment program and offered several times per year. In addition to these changes, obsolete provisions related to the administration and content of the HSCT are eliminated.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 1001.02, 1008.22(3)(c)5., 1008.22 (9) FS.

LAW IMPLEMENTED: 1001.02, 1008.22 FS.

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

DATE AND TIME: January 21, 2009; 8:30 a.m.  
 PLACE: Kenwood School, 9300 SW 79th Avenue, Miami, Florida  
 THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Dr. Cornelia Orr, Director, Assessment and School Performance, 325 W. Gaines Street, Suite 414, Tallahassee, Florida 32399, (850)245-0513

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-1.09421 High School Competency Test Requirements. ~~Beginning with the effective date of this rule, the student examination known as the High School Competency Test (HSCT) shall be discontinued. The minimum student performance skills and competencies required for high school graduation by Section 229.57(3)(c)5., Florida Statutes, for the period 1994-95 through 1998-99 shall be determined in the manner prescribed below:~~

~~(1) The student examination, known as the High School Competency Test, shall be administered annually under the direction and supervision of the Commissioner, and shall be:~~

- ~~(a) Kept secured at all times.~~
- ~~(b) Provided to testing centers in the quantity needed.~~
- ~~(c) Administered in accordance with standard written instructions appropriate for the examination.~~

~~(2) The test shall:~~

~~(a) Consist of two (2) sections; one (1) comprising communications skills, and one (1) comprising mathematical skills.~~

~~(b) Be derived from the skills adopted in subsection 6A-1.0941(1), F.A.C., for the time period from 1994-95 through 1998-99.~~

~~(1)(3) Adults who have taken the HSCT test previously but who have not yet earned passing scores in both sections of the test must meet the remaining testing requirements to may retake the examination at any subsequent scheduled administration.~~

~~(4) To qualify for a high school diploma by each adult student must earning passing scores on both sections of the High School Competency Test or earn passing scores on the respective sections of the Florida Comprehensive Assessment Test (FCAT), as defined in Section 1008.22(3)(c), F.S., or scores on a standardized test that are concordant with passing scores on the FCAT as defined in Section 1008.22(9), F.S. High School Competency Test scores shall be reported in terms of an equated score scale. For eligible students, the The passing scale score for Grade 10 FCAT Reading shall be a score equal to or greater than two hundred sixty-eight (268) on the 100 to 500 scale seven hundred (700). For eligible students, the passing scale score for Grade 10 FCAT Mathematics shall be a score equal to or greater than two hundred seventy-eight (278) on the 100 to 500 scale.~~

~~(5) No time limit shall be established for answering the questions on the High School Competency Test; provided, however, that no student shall be permitted to answer test items which have been seen by the student at a time other than the examination session in which the test questions are given to the student and provided that the examination session shall not be longer than the length of time normally scheduled for a school day.~~

~~(2)(6) When the student earns a passing score on a section of the FCAT High School Competency Test, it shall be recorded in the student's cumulative record. If this the student has previously been awarded a Certificate of Completion in lieu of a standard high school diploma by virtue of failure to pass the HSCT High School Competency Test, such student shall be awarded a standard high school diploma. Adequate opportunity to be retested so as to earn a passing score shall remain available to each student until such time as the student earns passing scores on each section of the test.~~

~~(7) Once a student has passed a section of the test measuring skills adopted in subsection 6A-1.0941(1), F.A.C., for the time period 1985-86 through 1993-94, the student will not be required to pass that section of the test measuring skills adopted in subsection 6A-1.0941(1), F.A.C., for the time period from 1994-95 through 1998-99.~~

~~(8) Invalidity of a section of this rule shall not invalidate the remainder of the rule.~~

Specific Authority 1001.02, 1008.22(3)(c)5., 1008.22(9), 1008.22(11) FS. Law Implemented 1001.02, 1008.22 FS. History-New 1-2-95, Amended 12-19-95, 1-16-08,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Jay Pfeiffer, Deputy Commissioner, Accountability, Research, and Measurement

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Dr. Eric J. Smith, Commissioner of Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 10, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 24, 2008

**DEPARTMENT OF EDUCATION**

**State Board of Education**

RULE NO.: 6A-1.09422  
 RULE TITLE: Florida Comprehensive Assessment Test Requirements

PURPOSE AND EFFECT: The purpose of this rule amendment is to remove the passing score requirement on the grade 10 FCAT Writing+ to qualify for a standard high school diploma and to remove the current requirement for grade-level scale scores in order to comply with Senate Bill (SB) 1908. SB 1908 amended Section 1008.22, Florida Statutes, to require that the Commissioner discontinue administration of

multiple-choice test items on the comprehensive assessment of writing until a new comprehensive assessment of writing is administered in 2012-2013. The historical grade-level scale scores and the grade 10 passing standard will remain in rule for student results reported during the 2007 and 2008 FCAT Writing+ administrations which included multiple-choice items. Until a new comprehensive assessment of writing is administered in 2012-2013, the comprehensive assessment of writing will consist of a writing essay scored on a scale of 1 to 6. The score scale for the essay is being added to the rule for clarification purposes. There are no changes in practice; the FCAT writing holistic rubrics have always been on a scale of 1 to 6. The effect is the delay of the implementation of a high school graduation testing requirement in writing, as well as a delay in the use of multiple-choice test items on the statewide comprehensive assessment of writing. However, students will continue to be tested in writing in grades 4, 8, and 10.

**SUMMARY:** This rule is amended to remove the passing score requirement on the grade 10 FCAT Writing+ to qualify for a standard high school diploma and to remove the current requirement for grade-level scale scores.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS:** No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

**SPECIFIC AUTHORITY:** 1001.02, 1008.22(3)(c)5., 1008.22(11) FS.

**LAW IMPLEMENTED:** 1001.02, 1001.11, 1008.22, 1008.25, 1008.33 FS.

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

**DATE AND TIME:** January 21, 2009, 8:30 a.m.

**PLACE:** Kenwood School, 9300 S.W. 79th Avenue, Miami, Florida

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS:** Dr. Cornelia Orr, Director, Assessment and School Performance, 325 W. Gaines Street, Suite 414, Tallahassee, Florida 32399, (850)245-0513

**THE FULL TEXT OF THE PROPOSED RULE IS:**

6A-1.09422 Florida Comprehensive Assessment Test Requirements.

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

(e) The FCAT shall be administered to students in grades 3 through 9 not less than one time per year on a schedule approved by the Commissioner and up to three times per year for students who do not attain minimum performance expectations on the grade 10 FCAT as specified in subsections (7) and (8) of this rule.

(4) Examinee scores on FCAT reading and mathematics shall be reported on a score scale from 100 to 500 defined by the baseline test administered during January and February 1998, and a developmental scale of approximately 0 to 3000 that defines performance across grades 3 through 10. Examinee scores on FCAT Science shall be reported on a score scale from 100 to 500 defined by the baseline test administered during March 2003. Examinee scores on FCAT ~~writing~~ writing shall be reported on a score scale from ~~1 to 6 defined by the FCAT writing holistic rubrics~~ 100 to 500 defined by the baseline test administered during February 2006. Each examinee shall receive a total score for each subject area in addition to part scores that can be reliably reported.

(5) The total scores on FCAT Reading, Mathematics, ~~Writing+~~, and Science are also reported on an achievement-level scale. The total scores that correspond to each achievement level are shown in the following paragraphs.

(a) through (c) No change.

~~(d) Beginning with the effective date of this rule, the~~ The achievement levels for the 2007 and 2008 FCAT Writing+ shall be as shown in the following table.

Writing+ grade-level scale scores (100 to 500) for each achievement level:

Grade	Level 1	Level 2	Level 3	Level 4	Level 5
4	100-239	240-289	290-364	365-426	427-500
8	100-249	250-298	299-355	356-415	416-500
10	100-249	250-299	300-341	342-402	403-500

The passing standard for the 2007 and 2008 Grade 10 FCAT Writing + shall be a score equal to or greater than 300 on the 100 to 500 scale. The achievement levels and passing standard specified in this subsection shall apply only to the 2007 and 2008 administrations of FCAT Writing +.

(6) Pursuant to Section 1008.22(3)(c)5., Florida Statutes, students who were enrolled in grade nine in the fall of 1999 and thereafter, shall be required to earn passing scores on the grade ten Florida Comprehensive Assessment Test in reading and mathematics. ~~Students who were enrolled in grade nine in the fall of 2006 and thereafter, shall be required to earn passing scores on the grade ten Florida Comprehensive Assessment Test in writing.~~

(7) No change.

~~(8) For students in the graduating class of 2009-10 school year and beyond, the passing score for the writing test shall be a score equal to or greater than 300 on the 100 to 500 scale.~~

~~(8)(9)~~ The Commissioner of Education shall review annually student performance levels and recommend to the State Board of Education whether to maintain the existing passing scores and achievement levels or to increase one or more of the requirements.

~~(9)(10)~~ The test shall be administered according to a schedule approved by the Commissioner.

~~(10)(11)~~ Students with disabilities may be provided test modifications or accommodations in accordance with the provisions of Rule 6A-1.0943, F.A.C.

~~(11)(12)~~ Invalidity of a section of this rule shall not invalidate the remainder of the rule.

Specific Authority 1001.02, 1008.22 FS. Law Implemented 1001.02, 1001.11, 1008.22, 1008.25, 1008.33 FS. History—New 1-24-99, Amended 10-7-01, 1-22-02, 12-23-03, 3-27-06, 3-1-07, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Jay Pfeiffer, Deputy Commissioner, Accountability, Research, and Measurement

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Dr. Eric J. Smith, Commissioner of Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 8, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 8, 2008

**DEPARTMENT OF EDUCATION**

**State Board of Education**

RULE NO.: 6A-4.01792  
 RULE TITLE: Specialization Requirements for the Prekindergarten Disabilities Endorsement – Academic Class

PURPOSE AND EFFECT: The purpose of the rule amendment is to add certification in elementary education grades K-6 as an appropriate base coverage for certification in the prekindergarten disabilities endorsement. The effect is more flexibility for certification for elementary teachers who want to serve the prekindergarten level of exceptional students.

SUMMARY: The rule is amended to add elementary education grades K-6 as an appropriate base certification for the additional certification in the prekindergarten disabilities endorsement for teaching exceptional students at the prekindergarten level.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 1001.02(2)(n), 1012.55(1), 1012.56(13) FS.

LAW IMPLEMENTED: 1001.02, 1012.54, 1012.55, 1012.56 FS.

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

DATE AND TIME: January 21, 2009, 8:30 a.m.

PLACE: Kenwood School, 9300 S.W. 79th Avenue, Miami, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Beverly Gregory, Chief, Bureau of Educator Certification, Department of Education, 325 West Gaines Street, Room 201, Tallahassee, Florida 32399-0400, (850)245-0431

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-4.01792 Specialization Requirements for the Prekindergarten Disabilities Endorsement – Academic Class.

(1) A bachelor’s or higher degree with certification in any exceptional student education area, preschool education, primary education, prekindergarten/primary education, elementary education (K-6), or early childhood education, and

(2) No change.

Specific Authority ~~1001.02(2)(n), 1012.55(1), 1012.56(13), 229.053(6), 231.15(1), 231.17(6)~~ FS. Law Implemented ~~1001.02, 1012.55, 1012.54, 1012.56~~ ~~229.053, 231.145, 231.15, 231.17~~ FS. History—New 10-3-91, Amended 5-7-02, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Dr. Frances Haithcock, Chancellor, K-12 Public Schools

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Dr. Eric J. Smith, Commissioner of Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 8, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 31, 2008

**DEPARTMENT OF EDUCATION**

**State Board of Education**

RULE NO.: 6A-14.092  
 RULE TITLE: Textbook Affordability

PURPOSE AND EFFECT: The purpose of the rule is to implement Section 1004.085, Florida Statutes, relating to textbook affordability and to delineate the Department and institutions’ responsibilities as required by the legislation.

SUMMARY: This rule will delineate implementation requirements for institutions within the Florida College System as required by section 1004.085, Florida Statutes, which addresses the concern of textbook affordability in postsecondary education. The rule will also require the Department and institutions within the Florida College System to form a textbook affordability workgroup that will submit a report to the State Board of Education by December 1, 2009 with recommendations for providing textbooks to students otherwise unable to afford them.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 1004.085(3), (4) FS.

LAW IMPLEMENTED: 1004.085 FS.

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

DATE AND TIME: January 21, 2009, 8:30 a.m.

PLACE: Kenwood School, 9300 SW 79th Avenue, Miami, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Julie Alexander, Division of Community Colleges, (850)245-9523, or email Julie.alexander@fldoe.org.

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-14.092 Textbook Affordability.

Pursuant to Section 1004.085, Florida Statutes, institutions within the Florida College System shall:

(1) Adopt textbooks no later than forty-five (45) days prior to the first day of classes to allow sufficient lead time to bookstores to work with publishers so as to confirm availability of the requested materials and to ensure maximum availability of used books. Where courses are added after this forty-five (45) day deadline, textbooks for such courses shall be adopted as soon as is feasible to ensure sufficient lead time.

(2) Pursuant to Section 1004.085(3), Florida Statutes, for those classes added after the thirty (30) day notification deadline, institutions shall post textbook information on their websites immediately as such information becomes available.

(3) Collect and maintain, before textbook adoption is finalized, written or electronically transmitted certifications from course instructors attesting:

(a) that all textbooks and other instructional items ordered will be used, particularly each individual item sold as part of a bundled package, and

(b) the extent to which a new edition differs significantly and substantively from earlier versions, and the value of changing to a new edition.

(4) Provide assistance as requested by the statewide textbook affordability workgroup established by the Department of Education to recommend policies and strategies that address the availability of required textbooks to students otherwise unable to afford the cost. The workgroup shall consist of nine representatives from institutions within the Florida College System chosen based on variable student enrollment (small and large student populations), geographic location (north, central and south) and economic status of student body (high population receiving need-based financial

aid). A report shall be submitted by the workgroup to the State Board of Education by December 1, 2009, that identifies the policies.

Specific Authority 1004.085(3), (4) FS. Law Implemented 1004.085 FS. History—New \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Dr. Willis Holcombe, Chancellor, Division of Community Colleges

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Dr. Eric J. Smith, Commissioner of Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 10, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 12, 2008

**DEPARTMENT OF REVENUE**

**Miscellaneous Tax**

RULE NOS.:	RULE TITLES:
12B-4.003	Public Use Forms
12B-4.007	Recordation of Documents
12B-4.014	Conveyances Not Subject to Tax

PURPOSE AND EFFECT: Chapter 2008-24, Laws of Florida (L.O.F.), repealed the requirement to file a form with the clerk of the court when recording a document transferring an interest in real property previously provided in Section 201.022, Florida Statutes (F.S.). The purpose of these proposed rule changes is to: (1) remove the requirements for filing Form DR-219, Transfers of Interest in Real Property, rendered obsolete by this law, with the clerk of the court; (2) provide a new form to document the exemption provided under Section 201.02(6), F.S.; and (3) update the information on how to obtain a copy of a form from the Department.

SUMMARY: The proposed amendments to Rule 12B-4.003, F.A.C. (Public Use Forms), Rule 12B-4.007, F.A.C. (Recordation of Documents), and Rule 12B-4.014, F.A.C. (Conveyances Not Subject to Tax): (1) remove the requirements regarding the filing of Form DR-219 (Return for Transfers of Interest in Real Property) with the clerk of the court and the provisions regarding the collection allowance previously provided to the clerk of the court for receiving and processing the forms; (2) adopt new Form DR-229 (Documentary Stamp Tax – Subsection 201.02(6), Florida Statutes, Exemption), to be used to document the exemption for the transfer of real property from certain nonprofit organizations to the Board of Trustees of the Internal Improvement Trust Fund, to any state agency, to any water management district, or to any local government; and (3) update the information on how to obtain a copy of a form from the Department.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 201.11, 213.06(1) FS.

LAW IMPLEMENTED: 201.01, 201.02, 201.022, 201.031(1), 201.07, 201.08(1)(a), 201.12, 201.133 FS.

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

DATE AND TIME: January 15, 2009, 10:30 a.m.

PLACE: Room 118, Carlton Building, 501 S. Calhoun Street, Tallahassee, Florida

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 48 hours before the workshop/meeting by contacting: Larry Green at (850)922-4830. 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).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Tim Phillips, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4724

THE FULL TEXT OF THE PROPOSED RULES IS:

12B-4.003 Public Use Forms.

(1) The following public-use forms and instructions are employed by the Department of Revenue in its administration of the documentary stamp tax, and are hereby incorporated in this rule by reference. Copies of these forms are available, without cost, by one or more of the following methods: 1) downloading the form from the Department's Internet site at [www.myflorida.com/dor/forms](http://www.myflorida.com/dor/forms); or, 2) calling the Department at (800)352-3671, Monday through Friday, 8 a.m. to 7 p.m., Eastern Time; or, 3) visiting any local Department of Revenue Service Center; or, 4) writing the Florida Department of Revenue, Distribution Center, 168A Blountstown Highway, Tallahassee, Florida 32304; or, 2) ~~faxing the Distribution Center at (850)922-2208; or, 3) visiting any local Department of Revenue Service Center to personally obtain a copy; or, 4) calling the Forms Request Line during regular office hours at (800)352-3671 (in Florida only) or (850)488-6800; or, 5) downloading selected forms from the Department's Internet site at the address shown inside the parentheses ([www.myflorida.com/dor](http://www.myflorida.com/dor)).~~ Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331 or (850)922-1115.

Form Number	Title	Effective Date
(2) DR-219	Return for Transfers of Interest in Real Property (R-07/98)	05/03

(3) through (4) renumbered (2) through (3) No change.

(4) DR-229	Documentary Stamp Tax – Subsection 201.02(6), Florida Statutes, Exemption (N. 09/08)	_____
------------	--	-------

Specific Authority 201.11, 213.06(1) FS. Law Implemented 201.01, 201.02(1), 201.022, 201.031(1), 201.07, 201.08(1)(a), 201.133 FS. History–Revised 8-18-73, Formerly 12A-4.03, Amended 9-26-77, 12-11-78, Formerly 12B-4.03, Amended 12-5-89, 2-16-93, 10-20-93, 12-30-97, 5-4-03, 6-28-05, 1-1-08,\_\_\_\_\_.

12B-4.007 Recordation of Documents.

The following information pertains to the recordation of documents requiring tax under Chapter 201, F.S.

(1) through (5) No change.

~~(6) Form DR 219: As a condition precedent to recording a deed or other instrument transferring an interest in Florida real property, the grantor or the grantee or his authorized agent shall complete and file with the Clerk of the Circuit Court in the county where the property is located a return, form DR 219. The return shall state the full consideration for the transfer as well as the parcel identification number. If the Return for Transfers of Interest in Florida Real Property (Form DR 219) required under Section 201.022, F.S., is not properly executed and filed by the taxpayer, the Clerk must execute and file the return with the Department. Chapter 201, F.S., allows authorized agents to take as a collection allowance one half of one percent (0.5%) of the tax collected by them. Clerks of Circuit Court are allowed an additional compensation, for the cost of processing the DR 219 forms, of one percent (1%) of the tax paid for all deeds. The Clerk shall deduct this amount from the amount of the tax due and remitted by the Clerk in the manner permitted by the Department. No deduction or allowance of one percent (1%) for the processing of DR 219 forms shall be granted when there is a manifest failure to maintain proper records or make proper reports. These collection allowances shall be taken at the time the tax collected is remitted to the state. The original of the DR 219 return shall be forwarded by the Clerk of the Circuit Court to the Department of Revenue, with a copy forwarded to the County Property Appraiser in the county where the property is located. The return may not be computer generated except by prior permission of the Department. The return shall be confidential as provided by Section 193.074, F.S.~~

Specific Authority 201.11(1), 213.06(1) FS. Law Implemented 201.01, 201.022, 201.12 FS. History–Revised 8-18-73, Formerly 12A-4.07, 12B-4.07, Amended 12-29-86, 12-5-89, 2-16-93, 12-30-97,\_\_\_\_\_.

12B-4.014 Conveyances Not Subject to Tax.

(1) through (13) No change.

(14) An assignment, transfer, or other disposition of real conveying property from a nonprofit organization, as defined in Section 201.02(6), F.S., to any state agency, water management district, or local government is exempt from tax on the conveyance. The exempt status of the document must be indicated by affixing the statement that is provided in label format on Form DR-229 (Documentary Stamp Tax – Subsection 201.02(6), Florida Statutes, Exemption, incorporated by reference in Rule 12B-4.003, F.A.C.) (Section 501(c)(3) IRC) and purpose of the organization must be indicated on the DR-219 form filed with the Clerk.

(15) No change.

Specific Authority 201.11, 213.06(1) FS. Law Implemented 201.01, 201.02 FS. History—Revised 8-18-73, Formerly 12A-4.14, Amended 2-21-77, 12-26-77, 12-23-80, Formerly 12B-4.14, Amended 12-5-89, 6-4-90, 2-13-91, 2-16-93, 10-18-94, 12-30-97, 1-4-01, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Tim Phillips, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4724

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Governor Charlie Crist and members of the Florida Cabinet, Attorney General Bill McCollum, Chief Financial Officer Alex Sink, and Agriculture Commissioner Charles H. Bronson, as agency head of the Department of Revenue

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 9, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Proposed Rule Development was published in the Florida Administrative Weekly on September 26, 2008 (Vol. 34, No. 39, p. 4980). No comments were received by the Department.

**DEPARTMENT OF REVENUE**

**Miscellaneous Tax**

RULE NO.: 12B-5.150  
 RULE TITLE: Public Use Forms

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12B-5.150, F.A.C. (Public Use Forms), is to adopt, by reference, changes to forms used by the Department in the administration of taxes imposed on fuels and pollutants.

SUMMARY: The proposed amendments to Rule 12B-5.150, F.A.C. (Public Use Forms): (1) adopt, by reference, changes to forms used by the Department in the administration of taxes imposed on fuels and pollutants; and (2) update the information on how to obtain copies of forms from the Department.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 206.14(1), 206.59(1), 213.06(1) FS. LAW IMPLEMENTED: 206.02, 206.021, 206.022, 206.025, 206.026, 206.027, 206.028, 206.05, 206.055, 206.095, 206.404, 206.43, 206.86, 206.877, 206.90, 206.91, 206.92, 206.9931, 206.9943 FS.

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

DATE AND TIME: January 15, 2009, 10:30 a.m.

PLACE: Room 118, Carlton Building, 501 S. Calhoun Street, Tallahassee, Florida

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 48 hours before the workshop/meeting by contacting: Larry Green at (850)922-4830. 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).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kim Hancock, Operations Analyst, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4726

THE FULL TEXT OF THE PROPOSED RULE IS:

12B-5.150 Public Use Forms.

(1)(a) The following public use forms and instructions are utilized by the Department and are hereby incorporated by reference in this rule.

(b) Copies of these forms are available ~~may be obtained~~, without cost, by one or more of the following methods: 1) downloading the form from the Department’s Internet site at [www.myflorida.com/dor/forms](http://www.myflorida.com/dor/forms); or, 2) ~~faxing a forms request to the Distribution Center at (850)922-2208; or, 3) calling the~~ Department at (800)352-3671, Monday through Friday, 8 a.m. to 7 p.m., Eastern Time; or, 3) visiting any local Department of Revenue Service Center Distribution Center at (850)488-8422; or, 4) writing the Florida Department of Revenue, Distribution Center, 168A Blountstown Highway, Tallahassee, Florida 32304; ~~or, 5) visiting any local Department of Revenue Service Center to personally obtain a copy.~~ Persons with hearing or speech impairments may call the Department’s TDD at (800)367-8331 or (850)922-1115.

Form Number	Title	Effective Date
(2) DR-138	Application for Fuel Tax Refund – Agriculture, Aquacultural, Commercial Fishing or Commercial Aviation Purposes (R. <u>01/09 01/08</u> )	<u>01/08</u>

- (3) through (8) No change.
- (9) DR-160 Application for Fuel Tax Refund – Mass Transit System Users (R. 01/09 ~~01/08~~) \_\_\_\_\_ 01/08
- (10) DR-166 Florida Pollutant Tax Application (R. 01/09 ~~01/05~~) \_\_\_\_\_ 04/07
- (11) DR-176 Application for Air Carrier Fuel Tax License (R. 01/09 ~~01/05~~) \_\_\_\_\_ 04/07
- (12) No change.
- (13) DR-182 Florida Air Carrier Fuel Tax Return (R. 01/09 ~~01/08~~) \_\_\_\_\_ 01/08
- (14) No change.
- (15) DR-189 Application for Fuel Tax Refund – Municipalities, Counties and School Districts (R. 01/09 ~~01/08~~) \_\_\_\_\_ 01/08
- (16) DR-190 Application for Fuel Tax Refund – Non-Public Schools (R. 01/09 ~~01/08~~) \_\_\_\_\_ 01/08
- (17) No change.
- (18) DR-248 2009 ~~2008~~ Alternative Fuel Use Permit Application, Renewal, and Decal Order Form (R. 01/09 ~~01/08~~) \_\_\_\_\_ 01/08
- (19) DR-904 Pollutants Tax Return (R. 01/09 ~~01/08~~) \_\_\_\_\_ 01/08
- (20) through (35) No change.
- (36) DR-309639 Application for Refund of Tax Paid on Undyed Diesel Used for Off-Road or Other Exempt Purposes (R. 01/09 ~~10/08~~) \_\_\_\_\_ 01/09
- (37) DR-309640 Application for Refund of Tax Paid on Undyed Diesel Consumed by Motor Coaches During Idle Time in Florida (R. 01/09 ~~01/08~~) \_\_\_\_\_ 01/08
- (38) DR-309645 2009 ~~2008~~ Refundable Portion of Local Option and State Comprehensive Enhanced Transportation System (SCETS) Tax (R. 01/09 ~~01/08~~) \_\_\_\_\_ 01/08
- (39) DR-309660 Application for Pollutant Tax Refund (R. 01/09 ~~01/08~~) \_\_\_\_\_ 01/08

Specific Authority 206.14(1), 206.59(1), 213.06(1) FS. Law Implemented 206.02, 206.021, 206.022, 206.025, 206.026, 206.027, 206.028, 206.05, 206.055, 206.095, 206.404, 206.43, 206.86, 206.877, 206.90, 206.91, 206.92, 206.9931, 206.9943 FS. History–New 11-21-96, Amended 10-27-98, 5-1-06, 4-16-07, 1-1-08, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Kim Hancock, Operations Analyst, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4726

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Governor Charlie Crist and members of the Florida Cabinet, Attorney General Bill McCollum, Chief Financial Officer Alex Sink, and Agriculture Commissioner Charles H. Bronson, as agency head of the Department of Revenue

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 9, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Proposed Rule Development was published in the Florida Administrative Weekly on September 26, 2008 (Vol. 34, No. 39, pp. 4980-4981). No comments were received by the Department.

**DEPARTMENT OF REVENUE**

**Miscellaneous Tax**

RULE NO.: 12B-8.016  
 RULE TITLE: Retaliatory Provisions

PURPOSE AND EFFECT: Under Florida’s insurance laws, property and casualty insurance companies pay Florida Insurance Guaranty Association assessments. A portion of these assessments is used to determine an insurer’s retaliatory tax obligation. Previously, the Florida Insurance Guaranty Association categorized its assessment into four separate “groups,” and the Department’s rule referenced these “groups” to help taxpayers calculate their tax liability. The Association no longer uses these “groups.” The purpose of the proposed amendments to Rule 12B-8.016, F.A.C. (Retaliatory Provisions), is to update the computation of the portion of the Florida Insurance Guaranty Association Assessment that should be included on the Florida side of the retaliatory tax computation.

SUMMARY: The proposed amendments to Rule 12B-8.016, F.A.C. (Retaliatory Provisions), update provisions regarding the Florida Insurance Guaranty Association Assessment that is to be included in the retaliatory tax computation.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.



SPECIFIC AUTHORITY: 213.06(1) FS.

LAW IMPLEMENTED: 213.05, 624.509, 624.5091, 624.5092 FS.

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 48 hours before the workshop/meeting by contacting: Larry Green at (850)922-4830. 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).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Robert DuCasse, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4715

THE FULL TEXT OF THE PROPOSED RULE IS:

12B-8.016 Retaliatory Provisions.

(1) through (2) No change.

(3) Credits Against the Tax.

(a)1. through 4. No change.

5. That portion of the Florida Insurance Guarantee Association (~~FIGA~~) assessment that was imposed upon the insurer's property insurance policies, as such insurance is defined in Section 624.604, F.S. Likewise, if the state of domicile would impose a comparable assessment on a similar Florida insurer the foreign or alien insurer must include that portion of the state of domicile's assessment that would relate to the similar foreign insurer's ~~Florida~~ property insurance premiums.

a. For purposes of calculating a foreign or alien insurer's includable portion of its Florida Insurance Guarantee Association FIGA assessment, such insurer should take the amount of premiums which can be classified as property insurance under Section 624.604, F.S., that are subject to the assessment for FIGA GROUP III and GROUP IV assessments and divide them by the total premiums subject to the assessment reported for GROUP III and GROUP IV, respectively. The resulting percentage ~~for GROUP III property insurance premiums~~ would then be multiplied by the insurer's Florida Insurance Guarantee Association total GROUP III assessment to determine the portion of the allowable FIGA assessment ~~that which~~ may be added back for retaliatory tax purposes. ~~The portion of the GROUP IV FIGA assessment to be added back would be determined in the same manner as GROUP III. The total includable FIGA assessment for retaliatory tax purposes would be the sum of the includable GROUP III and GROUP IV FIGA assessments. This process is completed for each Florida Insurance Guarantee Association assessment.~~

b. The Florida Insurance Guarantee Association FIGA GROUP III and GROUP IV assessments to be used in the calculations, as well as the state of domicile's incorporation's comparable assessment retaliatory tax add backs, if any, are those assessments due and payable during the taxable year.

(b) through (c) No change.

(4) through (5) No change.

Specific Authority 213.06(1) FS. Law Implemented 213.05, 624.509, 624.5091, 624.5092 FS. History-New 3-25-90, Amended 4-10-91, 12-9-97, 3-23-98, 10-15-01,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Robert DuCasse, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4715

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Governor Charlie Crist and members of the Florida Cabinet, Attorney General Bill McCollum, Chief Financial Officer Alex Sink, and Agriculture Commissioner Charles H. Bronson, as agency head of the Department of Revenue

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 9, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Proposed Rule Development was published in the Florida Administrative Weekly on September 26, 2008 (Vol. 34, No. 39, p. 4981). No comments were received by the Department.

**DEPARTMENT OF REVENUE**

**Corporate, Estate and Intangible Tax**

RULE NOS.:	RULE TITLES:
12C-1.013	Adjusted Federal Income Defined
12C-1.068	Intangible Tax Credit; Additional Tax Due

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12C-1.013, F.A.C. (Adjusted Federal Income Defined), is to remove provisions that were held invalid by the First District Court of Appeal in Golden West Financial Corp. et al. v. Fla. Dept. of Revenue, 975 So. 2d 567 (1st Fla. DCA Feb. 19, 2008). Pursuant to this decision, corporations are permitted to share Florida net operating loss carryovers on a consolidated return.

Section 220.68, F.S., previously allowed financial organizations to take a credit for the amount of intangible tax paid against the amount of the franchise tax due. Section 8, Chapter 98-132, L.O.F., provides that the tax credit is no longer available for tax years beginning after December 31, 1999. The repeal of Rule 12C-1.068, F.A.C. (Intangible Tax Credit; Additional Tax Due), will remove the rule provisions regarding this tax credit.

SUMMARY: The proposed amendments to Rule 12C-1.013, F.A.C. (Adjusted Federal Income Defined), remove paragraphs (14)(j) and (k). Under these paragraphs, corporations that incurred losses when filing on a separate Florida return basis were prohibited from sharing those losses with members of their affiliated group when electing to file on a Florida consolidated basis.

The proposed repeal of Rule 12C-1.068, F.A.C. (Intangible Tax Credit; Additional Tax Due), removes the provisions regarding the tax credit previously authorized under Section 220.68, F.S., for tax years beginning on or before December 31, 1999.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 213.06(1), 220.51 FS.

LAW IMPLEMENTED: 220.02(3), 220.03(5), 220.13, 220.131(1), 220.43(1), (3), 220.68 FS, s. 127, Chapter 91-112, s. 8, Chapter 98-132, L.O.F.

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

DATE AND TIME: January 15, 2009, 10:30 a.m.

PLACE: Room 118, Carlton Building, 501 S. Calhoun Street, Tallahassee, Florida

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 48 hours before the workshop/meeting by contacting: Larry Green at (850)922-4830. 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).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Gary Moreland, Senior Attorney, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4831

THE FULL TEXT OF THE PROPOSED RULES IS:

12C-1.013 Adjusted Federal Income Defined.

(1) through (13) No change.

(14) Net Operating Losses.

(a) through (i) No change.

(j) Under Treas. Reg. 1.1502-1(f)(2)(ii), the term "separate return limitation year" (SRLY) does not include a separate return year of any corporation which was a member of the affiliated group for each day of such year. The exception in Treas. Reg. 1.1502-1(f)(2)(ii), to the term "separate return limitation year" contemplates an affiliated group which

remains in existence, and is, therefore, eligible to file a consolidated return for each year. If the affiliated group does not elect to file a consolidated return, each corporation must file a separate federal return. The Florida Corporate Income Tax Code generally embraces concepts of law which have been developed in connection with the income tax law of the United States. Section 220.43(1), F.S., provides that to the extent not inconsistent with the provisions of the Florida Income Tax Code or forms or regulations developed by the Department, a taxpayer will, for Florida tax purposes, take into account the items of income, deduction, and exclusion in the same manner as they are reflected for federal purposes. The requirements to file a Florida consolidated return, as well as the benefits and costs associated with filing a Florida consolidated return, are not the same as the requirements, benefits, and costs of filing a federal consolidated return. Florida allows federal net operating loss carryovers as a subtraction pursuant to Section 220.13(1)(b)1., F.S. However, the underlying federal concepts must be applied in a manner consistent with Florida law. Where members of a federal affiliated group have not elected, or are not eligible to elect, under the provisions of Section 220.131, F.S., to file a Florida consolidated return, SRLY concepts will be applied. SRLY concepts are applicable when a NOL carryover exists from a prior taxable year for which a Florida consolidated return was not filed and Florida corporate income tax returns were not filed for all members. The NOL carryover deduction from a subsidiary included in a consolidated NOL deduction is limited to that subsidiary's taxable income included in the consolidated taxable income for that year. Where all members of the federal affiliated group filed Florida corporate income tax returns for all years from which a NOL carryover is available, SRLY concepts will not be imposed.

(k) An example illustrating how SRLY NOL carryovers are utilized in consolidated tax returns when the members of the consolidated group apportion their income within and without Florida is as follows: Example: In 1992, A, a foreign (non Florida) corporation, which is the parent of corporation B, began doing business in Florida. Previously, A was not considered to be doing business in Florida, and therefore, the affiliated group of A and B was not eligible to file consolidated returns. B, a Florida corporation, incorporated in 1986, had filed separate Florida corporate income tax returns. The total Florida portion of B's federal net operating losses from 1986 through 1991 is \$90,000. In the 1992 computation of consolidated taxable income, no intercompany adjustments were necessary.

	A	B	Consolidated
Adjusted federal taxable income before NOLD	\$150,000	\$10,000	\$160,000
Times Florida apportionment factor (1992)	x .5	x .5	x .5
Income apportioned to Florida before NOLD	\$75,000	\$5,000	\$80,000

The net operating loss deduction for Florida in 1992 is limited to B's Florida income. That is, B's adjusted federal taxable income before NOLD times the current year's apportionment factor. Therefore, the net operating loss deduction for 1992 for the A-B consolidated return is \$5,000. The balance of B's net operating loss carryover (\$90,000 - \$5,000) is carried over to subsequent years to be utilized in a similar manner.

- (l) through (o) renumbered (j) through (m) No change.
- (15) through (20) No change.

Specific Authority 213.06(1), 220.51 FS. Law Implemented 220.02(3), 220.03(5), 220.13, 220.131(1), 220.43(1), (3) FS. History--New 10-20-72, Amended 1-19-73, 10-20-73, 10-8-74, 4-21-75, 5-10-78, 11-13-78, 12-18-83, Formerly 12C-1.13, Amended 12-21-88, 12-7-92, 5-17-94, 10-19-94, 3-18-96, 10-2-01, \_\_\_\_\_.

12C-1.068 Intangible Tax Credit; Additional Tax Due.

~~(1) For tax years ending prior to July 1, 1990, the credit banks and savings associations could take against the franchise tax was the lesser of:~~

~~(a) The intangible tax imposed upon, and paid by, any bank or savings association which is subject to Section 199.032, F.S.; or~~

~~(b) 40 percent of the sum of the emergency excise tax due under Chapter 221, F.S., and the franchise tax due, before this credit, under Chapter 220, F.S.~~

~~(2) S. 127, Chapter 91-112, L.O.F., provides that it was the intent of the Florida Legislature that the change in the credit only apply to taxable years beginning after December 31, 1990. Therefore, an additional tax to banks and savings associations was created by Section 127, Chapter 91-112, L.O.F., The additional tax will be equal to any increased credit a bank or savings association received because of the amendment to Section 220.68, F.S. The additional tax will apply to taxable years beginning on or after July 1, 1990, but not later than June 30, 1991. In addition to this tax, banks and savings associations will pay an amount equal to 12 percent of the additional tax.~~

~~(3) Banks and savings associations that elected for taxable years beginning on or after July 1, 1989, but not later than June 30, 1990, not to take the increased credit, will not be subject to the additional tax. However, they must complete Schedule B, Form F-1120, for the taxable year beginning on or after July 1, 1990, but not later than June 30, 1991.~~

~~(4) The credit provided by Section 220.68, F.S., is only allowable to the extent of the franchise tax. Any excess credit above the amount of franchise tax may not be used against the emergency excise tax.~~

Specific Authority 213.06(1), 220.51 FS. Law Implemented 220.68 FS., s. 127, Chapter 91-112, s. 8, Chapter 98-132, L.O.F. History--New 12-21-88, Amended 4-8-92, 5-17-94, 3-18-96, Repealed

NAME OF PERSON ORIGINATING PROPOSED RULE: Gary Moreland, Senior Attorney, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4831

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Governor Charlie Crist and members of the Florida Cabinet, Attorney General Bill McCollum, Chief Financial Officer Alex Sink, and Agriculture Commissioner Charles H. Bronson, as agency head of the Department of Revenue

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 9, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Proposed Rule Development for proposed Rule 12C-1.013, F.A.C. (Adjusted Federal Income Defined), was published in the Florida Administrative Weekly on September 26, 2008 (Vol. 34, No. 39, pp. 4981-4982). No comments were received by the Department. No Notice of Proposed Rule Development is required to be published in the Florida Administrative Weekly when repealing a rule section.

**DEPARTMENT OF REVENUE**

**Corporate, Estate and Intangible Tax**

<b>RULE NOS.:</b>	<b>RULE TITLES:</b>
12C-3.0015	Documents, Extensions, and Due Dates for Filing
12C-3.007	Interest on Overpayment of Taxes
12C-3.008	Public Use Forms
12C-3.009	Penalties and Interest
12C-3.010	Final Certificate and Nontaxable Certificate Mailing Procedure
12C-3.013	Protest Procedures

PURPOSE AND EFFECT: Florida's estate tax is based on the federal credit for state death taxes. Effective January 1, 2005, the effective rate for the federal credit was reduced to zero, and a deduction was enacted. Since, the effective rate for the federal credit is now zero, the Florida estate tax is zero. This federal provision is scheduled to sunset on December 31, 2010. In the event that no further action is taken by the United States Congress and President regarding the federal credit, the Florida estate tax will be applicable for the estate of a decedent whose date of death is after December 31, 2010.

Florida continues to impose an automatic lien on a decedent's Florida real property. To remove the lien, the estate must file certain forms regarding Florida estate tax with the clerk of the court. These proposed changes are necessary to update the Florida estate tax rules and forms while simplifying and easing the filing burden on estates.

SUMMARY: The proposed amendments to Rule 12C-3.0015, F.A.C.( Documents, Extensions, and Due Dates for Filing): (1) remove the requirement to file Form DR-301, Preliminary Notice and Report, which lists the assets of the estate; (2)

update the provisions regarding when an estate is required to file a Florida estate tax return and what documentation must be filed with that return; and (3) provide what documents will be issued by the Department to remove the automatic Florida estate tax lien on the decedent's real property when a Florida estate tax return is required, including when a federal return is required and when no federal return is required.

The proposed repeal of Rule 12C-3.007, F.A.C. (Interest on Overpayments of Taxes) removes the obsolete provision that no interest will be paid on refunded estate tax or interest. Section 213.255, F.S., and Rule 12-3.0015, F.A.C., provide for the payment of interest on overpayments of taxes administered by the Department.

The proposed amendments to Rule 12C-3.008, F.A.C. (Public Use Forms): (1) update information on how to obtain forms from the Department; (2) remove Form DR-301, Preliminary Notice and Report, which is no longer used by the Department; (3) adopt, by reference, changes to Form DR-308, Request and Certificate for Waiver and Release of Florida Estate Tax Lien, to include the social security number of the decedent as an identifying number to administer the removal of Florida's automatic lien on the decedent's real property and to remove the social security number from the portion of the form that is filed with the clerk of the circuit court; (4) adopt, by reference, new Form DR-313, Affidavit of No Florida Estate Tax Due When Federal Return is Required; and (5) adopt, by reference, updates to Form F-706, Florida Estate Tax Return for Residents, Nonresidents, and Nonresident Aliens.

The proposed repeal of Rule 12C-3.009, F.A.C. (Penalties and Interest), removes obsolete or unnecessary provisions regarding the imposition of penalties and interest imposed on a deficiency in filing a Florida estate tax return or paying the amount of estate tax due with a return that are provided in Sections 198.15, 198.18, and 198.37-198.40, F.S.

The proposed amendments to Rule 12C-3.010, F.A.C. (Final Certificate and Nontaxable Certificate Mailing Procedure), provide that the Department will no longer issue a Final Certificate or Nontaxable Certificate to the personal representative of an estate for a decedent who died after December 31, 2004, and before January 1, 2011, and state which affidavits may be filed by the personal representative to evidence that no Florida estate tax liability is due for decedents who died during that period.

The proposed repeal of Rule 12C-3.013, F.A.C. (Protest Procedures), removes the unnecessary referral to Rule 12-6.0033, F.A.C., to protest any billing issued to an estate by the Department.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS:** No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

**SPECIFIC AUTHORITY:** 72.011, 198.08, 198.32(2), 213.06(1), 213.21 FS.

**LAW IMPLEMENTED:** 72.011, 92.525(1)(b), 198.02, 198.03, 198.04, 198.05, 198.08, 198.12, 198.13, 198.14, 198.15, 198.16, 198.18, 198.19, 198.22, 198.26, 198.29, 198.32, 198.33(1), 198.37, 198.38, 198.39, 198.40, 213.21, 213.235, 213.37, 837.06 FS.

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

**DATE AND TIME:** January 15, 2009, 10:30 a.m.

**PLACE:** Room 118, Carlton Building, 501 S. Calhoun Street, Tallahassee, Florida

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 48 hours before the workshop/meeting by contacting: Larry Green at (850)922-4830. 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).

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS:** Joe Parramore, Revenue Program Administrator I, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4709

**THE FULL TEXT OF THE PROPOSED RULES IS:**

12C-3.0015 Documents, Extensions, and Due Dates for Filing.

~~(1) Preliminary Notice and Report. For estates of decedents dying before January 1, 2000, within 2 months after the decedent's death or within a like period after qualifying as such, the personal representative shall submit to the Department of Revenue Form DR-301, Preliminary Notice and Report, to determine whether or not the estate is subject to tax.~~

(1)(2) Decedents who died prior to January 1, 2005, or after December 31, 2010 Estate Not Subject to Tax.

(a)1. When the decedent died prior to January 1, 2005, or after December 31, 2010, and the personal representative of an estate is required to file a federal estate tax form (Form 706 or 706-NA), the personal representative of every Florida resident, nonresident, or alien decedent whose estate includes Florida real property is required to file with the Department within nine months from the date of decedent's death: For decedents dying prior to January 1, 2000:

If the estate is not required to file the federal estate tax Form 706, upon receipt of the Form DR-301 and a \$5 fee, a nontaxable certificate will be issued to the estate's representative. This nontaxable certificate (Form DR-302) may be recorded in the county where the decedent owned property.

a. A Florida estate tax return (Form F-706, incorporated by reference in Rule 12C-3.008, F.A.C.);

b. A copy of the executed federal estate tax return; and

c. Any payment of the Florida estate tax due.

2. When the estate owes Florida estate tax, upon receipt of a copy of the closing letter issued by the Internal Revenue Service and the payment of any Florida estate tax, penalty, or interest due, the Department will issue a Final Certificate for Estate Tax (Form DR-304). This certificate has the same effect as a receipt.

3. If the Internal Revenue Service determines that the estate owes no federal estate tax, a nontaxable certificate may be requested from the Department when filing Form F-706. Upon receipt of a copy of the closing letter issued by the Internal Revenue Service, the Department will issue a Nontaxable Certificate and Receipt for Estate Tax (Form DR-302).

(b) To remove any Florida estate tax lien on the decedent's Florida real property, certificates issued by the Department (Forms DR-302 and DR-304) must be filed with the clerk of the circuit court in every county where the decedent owned real property. For decedents dying on or after January 1, 2000:

The Department will no longer issue a Nontaxable Certificate and Receipt for Estate Tax (Form DR-302) in this instance. For decedents dying on or after January 1, 2000, if the estate is not required to file federal estate tax Form 706 or Florida estate tax Form F-706, the personal representative may file an Affidavit of No Florida Estate Tax Due (Form DR-312) with the Clerk of Court in each county where the decedent owned property. The affidavit will attest that no federal estate tax return (Form 706) is required to be filed for the estate and no Florida estate tax is due pursuant to Chapter 198, F.S. The certificate (Form DR-302) or affidavit (Form DR-312), when recorded in the county where the decedent's property is located, will remove the Department's lien. The certificate or affidavit is admissible as evidence to show nonliability for tax.

(2)(3) Decedents who died on or after January 1, 2005, and prior to January 1, 2011 Estate Possibly Subject to Tax.

(a) No Florida estate tax return is required to be filed when the decedent died on or after January 1, 2005, and prior to January 1, 2011. For decedents dying prior to January 1, 2000; In addition to the form DR-301, the personal representative (as defined in Section 198.01(2), F.S.) of every estate of a Florida resident, nonresident, or alien decedent whose estate includes Florida property and is required to file under the federal Internal Revenue Code shall file a copy of the executed federal estate tax return (federal form 706 or federal form 706 NA), together with any payment of the Florida estate tax due within

nine months from the date of death. If the Department of Revenue determines that the estate owes no tax to Florida, upon payment of a \$5 fee and receipt of a copy of the federal closing letter, the Department will issue to the personal representative a Nontaxable Certificate and Receipt for Estate Tax (form DR-302). This certificate has the same effect as a receipt. It may be recorded in the county or counties in which the decedent owned property. The certificate is admissible as evidence that the estate owes no Florida estate tax.

(b) When the personal representative is not required to file a federal estate tax form (Form 706 or 706-NA), an Affidavit of No Florida Estate Tax Due (Form DR-312, incorporated by reference in Rule 12C-3.008, F.A.C.) must be filed with the clerk of the circuit court in every county where the decedent owned real property to remove any Florida estate tax lien on the decedent's real property. This affidavit is admissible as evidence that no Florida estate tax is due by the estate. For decedents dying on or after January 1, 2000;

The personal representative of an estate owning Florida property must file the Florida Estate Tax Return for Residents, Nonresidents and Nonresident Aliens (Form F-706), and a copy of the executed federal estate tax return (Form 706 or Form 706-NA), together with any payment of Florida estate tax estimated to be due. Upon receipt of a copy of the federal closing letter and payment of any Florida estate tax due, the Department will issue a Final Certificate for Estate Tax (Form DR-304). This certificate may be recorded as evidence that no additional Florida Estate Tax is due. If no tax is due, upon payment of a \$5 fee and receipt of a copy of the federal closing letter, the Department will issue a Nontaxable Certificate and Receipt for Estate Tax (Form DR-302).

(c) When the personal representative is required to file a federal estate tax form (Form 706 or 706-NA) and owes no Florida estate tax, an Affidavit of No Florida Estate Tax Due When Federal Return is Required (Form DR-313, incorporated by reference in Rule 12C-3.008, F.A.C.) must be filed with the clerk of the circuit court to remove any Florida estate tax lien on the decedent's real property. This affidavit is admissible as evidence that no Florida estate tax is due by the estate.

(4) Domicile Statement – If the estate is filing as a nonresident or nonresident alien, the personal representative must file a Domicile Statement (Form DR-310, incorporated by reference in Rule 12C-3.008, F.A.C.), with the copies of the executed Florida Form F-706 and executed federal Form 706.

(5) through (6) No change.

Specific Authority 198.08, 198.32(2), 213.06(1) FS. Law Implemented 198.02, 198.03, 198.04, 198.05, 198.13, 198.14, 198.15, 198.32 FS. History—New 12-13-94, Amended 1-22-01,\_\_\_\_\_.

12C-3.007 Interest on Overpayment of Taxes.  
No interest shall be paid on refunded taxes or interest.

Specific Authority 198.08, 213.06(1) FS. Law Implemented 198.29 FS., Decision of Supreme Court of Florida in case of Mailman v. Green, 111 So. 2d 267. History—New 2-19-72, Formerly 12C-3.07, Repealed \_\_\_\_\_.

12C-3.008 Public Use Forms.

(1)(a) The following public-use forms and instructions are employed by the Department in its administration of the Florida estate tax dealings with the public and are hereby adopted by reference.

(b) Copies of these forms are available, without cost, by one or more of the following methods: 1) downloading these forms from the Department’s Internet site at www.myflorida.com/dor/forms; or, 2) faxing a forms request to the Distribution Center at (850)922-2208; or, 3) calling the Department at (800)352-3671, Monday through Friday, 8 a.m. to 7 p.m., Eastern Time; or, 3) visiting any local Department of Revenue Service Center Distribution Center at (850)488-8422; or, 4) writing the Florida Department of Revenue, Distribution Center, 168A Blountstown Highway, Tallahassee, Florida 32304; or, 5) visiting any local Department of Revenue Service Center to personally obtain a copy. Persons with hearing or speech impairments may call the Department’s TDD at (800)367-8331 or (850)922-1115.

Form Number	Title	Effective Date
<del>(2)</del> DR-304	<u>Preliminary Notice and Report</u> <del>(R. 08/06)</del>	10/06
<del>(2)</del> <del>(3)</del> DR-308	<u>Request and Certificate for Waiver and Release of Florida Estate Tax Lien</u> <del>(R. 12/07 08/06)</del>	____ 10/06
<del>(3)</del> <del>(4)</del> DR-310	<u>Domicile Statement</u> <del>(R. 12/07 08/06)</del>	____ 10/06
<del>(4)</del> <del>(5)</del> No change.		
<del>(5)</del> DR-313	<u>Affidavit of No Florida Estate Tax Due When Federal Return is Required</u> <del>N. 12/07)</del>	____
(6) F-706	<u>Florida Estate Tax Return for Residents, Nonresidents and Nonresident Aliens</u> <del>(R. ____ 08/06)</del>	____ 10/06

Specific Authority 198.08, 198.32(2), 213.06(1) FS. Law Implemented 92.525(1)(b), 198.08, 198.13, 198.22, 198.26, 198.32(2), 198.33(1), 198.38, 198.39, 213.37, 837.06 FS. History—New 9-26-77, Formerly 12C-3.08, Amended 1-11-93, 8-25-94, 1-22-01, 5-4-03, 10-30-06, 11-6-07, \_\_\_\_\_.

12C-3.009 Penalties and Interest.

(1) Civil Penalties:

(a) Late Payment. In addition to any other penalties, for any estate tax due on or after July 1, 1991 that is not paid by the due date or by the due date of any extension granted by the Department, specific penalties shall be added to the tax:

- Effective:
- July 1, 1991: ~~5 percent of the unpaid tax if paid by the 30th day after the due date.~~
  - After 30 days: ~~10 percent of the unpaid tax.~~
- Effective:
- January 1, 1993: ~~10 percent of the unpaid tax if paid by the 30th day after the due date.~~
  - After 30 days: ~~20 percent of the unpaid tax.~~

(b) Failure to Pay Tax. In addition to any other penalties, if any part of a deficiency in Florida estate tax due is due to negligence or intentional disregard of the provisions of Chapter 198, F.S., and these rules, but without fraud, the specific penalty for non-payment of estate tax is:

- Effective:
- July 1, 1991: ~~5 percent per month of the unpaid tax up to a maximum of 25 percent of the unpaid tax.~~
- Effective:
- January 1, 1993: ~~10 percent per month of the unpaid tax up to a maximum of 50 percent of the unpaid tax.~~

(c) If the deficiency is due to fraud, an additional penalty shall be added to the tax owed:

- Effective:
- July 1, 1991: ~~50 percent of the unpaid tax.~~
- Effective:
- January 1, 1993: ~~100 percent of the unpaid tax.~~

(2) Criminal Penalties:

(a) Failure to Make Return. Any person who willfully fails to pay the tax, make the return, keep records necessary for preparing the return and computing the tax, or supply information required by law or regulations, is guilty of a first degree misdemeanor.

(b) False Return. Any person who willfully aids or assists in, or procures, counsels or advises the preparation or presentation of a false or fraudulent return, affidavit, claim, or document is guilty of a third degree felony.

(c) False Statement in Return. Any person who knowingly makes any false statement in any notice or return required to be filed under Chapter 198, F.S., is guilty of a first degree misdemeanor.

(d) Failure to Pay Tax, Evasion of Tax. Any person who is required to but fails to collect, account for, and pay over any estate tax imposed is guilty of a third degree felony. Any person who willfully attempts in any manner to evade or defeat this estate tax or the payment of this estate tax is guilty of a third degree felony.

(3) Interest.

(a) Interest shall be calculated at the following rate:

~~1. One percent per month (prorated daily using the daily factor of .000328767) for payments due prior to January 1, 2000.~~

~~2. For payments due on or after January 1, 2000, the rate of interest established pursuant to Section 213.235, F.S., and Rule 12 3.0015, F.A.C. (prorated daily).~~

~~(b) Interest accrues on the amount due from the original due date of the estate tax to the date the tax is paid. Interest is not imposed on penalties.~~

Specific Authority 198.08, 213.06(1) FS. Law Implemented 198.15, 198.16, 198.18, 198.37, 198.38, 198.39, 198.40, 213.235 FS. History—New 4-2-78, Formerly 12C-3.09, Amended 1-11-93, 8-25-94, 4-2-00, Repealed \_\_\_\_\_.

12C-3.010 Final Certificate and Nontaxable Certificate Mailing Procedure.

(1) When the decedent died prior to January 1, 2005, or after December 31, 2010, Section 198.19, F.S., requires that a Final Certificate (DR-304) be issued to the personal representative. However, if an attorney is representing the estate and files the estate tax return, the Final Certificate will be mailed to the attorney, and a copy of the Final Certificate transmittal letter will be sent to the personal representative. Otherwise, the Final Certificate will be mailed to the personal representative. If it is determined that no estate taxes are due to the State of Florida, the Department (upon receipt of a \$5.00 fee for each certificate requested) will issue a Nontaxable Certificate to either the personal representative, administrator, curator, heirs, devisees, or legatees of the decedent.

(2) For decedents who died on or after January 1, 2005, and prior to January 1, 2011, the Department will not issue a Final Certificate or Nontaxable Certificate to the personal representative of the estate, as defined in Section 198.01(2), F.S. The personal representative may file an Affidavit of No Florida Estate Tax Due (Form DR-312) or an Affidavit of No Florida Estate Tax Due When Federal Return is Required (Form DR-313), as provided in Rule 12C-3.0015, F.A.C., to evidence that no Florida estate tax liability is due.

Specific Authority 198.08, 213.06(1) FS. Law Implemented 198.12, 198.19 FS. History—New 6-7-78, Formerly 12C-3.10, Amended 1-11-93, 8-25-94, 12-13-94, \_\_\_\_\_.

12C-3.013 Protest Procedures.

~~The personal representative of an estate shall use the procedures contained in Rule 12 6.0033, F.A.C., to protest any billing issued to the estate by the Department.~~

Specific Authority 72.011, 198.08, 213.06(1), 213.21 FS. Law Implemented 72.011, 198.08, 213.21 FS. History—New 8-25-94, Amended 1-22-01, Repealed \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Joe Parramore, Revenue Program Administrator I, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4709

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Governor Charlie Crist and members of the Florida Cabinet, Attorney General Bill McCollum, Chief Financial Officer Alex Sink, and Agriculture Commissioner Charles H. Bronson, as agency head of the Department of Revenue

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 9, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Proposed Rule Development was published in the Florida Administrative Weekly on September 26, 2008 (Vol. 34, No. 39, pp. 4982-4983). No comments were received by the Department.

**DEPARTMENT OF TRANSPORTATION**

RULE NO.: 14-43.001  
 RULE TITLE: Regulation of Overhanging Encroachments

PURPOSE AND EFFECT: Rule 14-43.001, F.A.C., is amended and a revised application form is being incorporated by reference.

SUMMARY: Rule 14-43.001, F.A.C., is being amended, including incorporating a revised application form.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 334.044(2), 337.407 FS.

LAW IMPLEMENTED: 337.406, 337.407, 479.01, 479.16, 768.28 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: James C. Myers, Clerk of Agency Proceedings, Florida Department of Transportation, Office of the General Counsel, 605 Suwannee Street, Mail Station 58, Tallahassee, Florida 32399-0458

THE FULL TEXT OF THE PROPOSED RULE IS:

- 14-43.001 Regulation of Overhanging Encroachments.
- (1) Definitions.

(a) "Applicant" means any person or entity, including a local governmental entity, seeking permission for an overhanging encroachment.

(b) "Banner" means a length or sheet of cloth, fabric, plastic, or other flexible material bearing a message which may be either of the following:

1. "Pole Banner," ~~means a banner~~ which is located adjacent to the travel lanes of the roadway and is attached to a single existing permanent support.

2. "Street Banner," ~~means a banner~~ which extends over the travel lanes of the roadway and is attached to two or more existing permanent supports.

(c) "Canopy" means a permanent or semi-permanent, on-premise roof-like ~~encroachment or~~ projection partially extending over the right of way.

(d) "Department" means the State of Florida Department of Transportation.

(e) "Local Governmental Entity" ~~means has the same meaning~~ as provided in Section ~~334.03(14)~~ ~~41.45(1)(d)~~, F.S.

(f) "Overhanging Encroachment" ~~means for purposes of this rule includes~~ a sign, canopy, or banner, as these terms are herein defined, which is placed along and over any state roads which are within municipalities, or which are of curb and gutter construction outside municipalities.

(g) "Sign" ~~means has the same meaning~~ as provided in Section 479.01(17), F.S.

(2) Overhanging encroachments are prohibited on limited access facilities, including the Interstate System; Overhanging encroachments and are subject to the following conditions on non limited access facilities:

(a) No new supports may be located within state right of way.

(b) ~~Any overhanging encroachment M~~ must be allowed by the ~~affected~~ local governmental entity within whose jurisdictional boundaries the banners are to be placed.

(c) Must be adjusted or removed at the owner's expense if the ~~Any~~ overhanging encroachment ~~which~~ interferes with Department construction ~~must be adjusted or removed at the owner's expense.~~

(d) ~~Overhanging encroachments M~~ may not obstruct the view of any traffic signal, traffic device, or official sign, nor in any way interfere with motorists' ability to safely operate ~~their~~ vehicles.

(e) ~~Overhanging encroachments M~~ must comply with the setback or clearance requirements set forth in paragraphs (2)(h) (3) and (2)(i) (4) below. ~~The Department will notify the owner that the~~ Overhanging encroachment must be adjusted within 36 hours of notification to meet setback or clearance requirements, and, upon failure of the owner to make such adjustment, it will shall be removed by the Department. If the overhanging encroachment presents a safety hazard, the Department will shall remove it and notify the owner of the removal.

(f) ~~No overhanging encroachment M~~ may not be erected or maintained in a manner which ~~would~~ interfere with the Department's maintenance, operation, or other use of a transportation facility.

(g) Upon removal ~~When an overhanging encroachment must be removed~~ by the Department, the owner may reclaim it within 30 calendar days from the date of removal, upon payment of any costs incurred by the Department in removing the overhanging encroachment.

~~(h)(3) Signs and Canopies. Signs and canopies are prohibited along and over limited access facilities, including the Interstate System.~~ Signs and canopies which meet the criteria of Section 479.16(1), F.S., may only be placed along and over any ~~other~~ roads within corporate limits of a municipality, or outside municipalities where curb and gutter construction exists in compliance with the following conditions:

~~1.(a)~~ Where curb and gutter construction exists, the entire structure, including attachments and supports, must clear the sidewalk vertically by at least nine feet; the outside edge of the structure must be at least two feet behind a vertical line extending upward from the face of the curb; and the entire structure must comply with the Department's clear zone requirements set forth in Table 2.11.9 Clear Zone Widths and Table 2.11.10 Clear Zone Widths for Curved Alignments on Highways With Flush Shoulders (January 2000, Revised 1/01), incorporated herein by reference. Copies of these tables are available from the Department's Maintenance Office, 605 Suwannee Street, MS 52, Tallahassee, Florida 32399-0450.

~~2.(b)~~ Within municipalities where there is not ~~no~~ curb and gutter construction, the entire structure, including attachments and supports, may not extend more than six feet over the right of way; may not extend closer than 12 feet from the edge of the driving lane; must have a vertical clearance of at least 10 feet; and the entire structure must comply with the Department's clear zone requirements as set forth in Table 2.11.9 Clear Zone Widths and Table 2.11.10 Clear Zone Widths for Curved Alignments on Highways With Flush Shoulders (January 2000, Revised 1/01), incorporated herein by reference, referenced in (a) above. Copies of these tables are available from the Department's Maintenance Office, 605 Suwannee Street, MS 52, Tallahassee, Florida 32399-0450.

~~3.(c)~~ The design of ~~and~~ canopies or signs, as to bracing and attachments to buildings, shall be approved for safety features by the appropriate official of the local governmental entity within whose jurisdictional boundaries the banners are placed affected.

~~4.(d)~~ No canopy or sign shall be erected away from the site of the business which it promotes.

~~5.(e)~~ Lighting of signs and canopies shall conform to the requirements of Section 479.11(5), F.S.



~~(1)(4) Banners.~~ Banners may be placed along and over any non limited access state roads which are within municipalities, or which are of curb and gutter construction outside municipalities subject to the following conditions:

~~1.(a) There must be w~~Written authorization for the placement of banners from the local governmental entity within whose jurisdictional boundaries the banners are to be placed ~~must be provided.~~

~~2.(b) Banners may will be displayed allowed~~ for a period not to exceed 30 consecutive calendar days ~~and may.~~ Banners ~~will not be allowed to be displayed~~ within 180 days of the last day of its most recent display period.

3. Placement of banners on frangible light standards or other frangible devices will require a load rating analysis, signed and sealed by a registered professional engineer, certifying that the specific light standards or devices used to support the banners will handle the additional load placed on the structures by the banner and attachments, and will not exceed the wind loading design requirements of the structure. Copies of load rating analyses previously submitted are acceptable for subsequent applications when specifications are the same.

4. Banners may not be placed within 500 feet of a limited access interchange.

5. Banners are not permitted where a Department construction project is planned or ongoing during the requested display period.

~~6.(e) Street banners may be displayed are allowed~~ for routinely recurring events, e.g., events occurring monthly or quarterly, unless otherwise provided in this rule, provided the banner is displayed for no more than three consecutive days per month, for 12 months.

7. Street banners must be:

a. Placed a minimum of 1,000 feet apart on the right of way of non limited access roadways; and

b. At its lowest point vertically clear the pavement by at least 18 feet.

~~8.(d) Pole banners must be;~~

a. Placed a minimum of 1,000 feet apart on the same side of the travel lane on non limited access facilities outside the corporate limits of a municipality;:-

b.1. At its The lowest point of the banner must be at least 14 2 feet above the pavement elevation;

c.2. A pole banner must be Aattached to a light standard or other such device which is permanently located in the right of way.

9. Pole bBanners may not be attached to any utility pole.

~~(c) Placement of banners on frangible light standards or other frangible devices will require a load rating analysis, signed and sealed by a registered professional engineer, certifying that the specific light standards or devices used to support the banners will handle the additional load placed on~~

~~the structures by the banner and attachments, and will not exceed the wind loading design requirements of the structure. Copies of load rating analyses previously submitted are acceptable for subsequent applications when all specifications are the same.~~

~~(f) Banners may not be placed within 500 feet of a limited access interchange.~~

~~(g) Street banners may only be placed on the right of way of non limited access roadways and must vertically clear the pavement by at least 18 feet. Street banners must be a minimum of 1,000 feet apart.~~

~~10.(5) Any object or device other than a banner, whether characterized as an ornament, decoration, display, or by other descriptive term, which is to be attached to a single existing permanent support must meet the requirements of this rule for pole banners.~~

~~(3)(6) Applications for a sign or canopy an overhanging eneroachment~~ must be made in writing to the appropriate District Maintenance Office ~~and shall include:-~~

~~(a) Applications for overhanging signs and canopies shall include:~~

~~(a)1-~~ The name and address of the applicant.

~~(b)2-~~ A drawing of the sign or canopy, drawn to scale, including any message, logo, or emblem.

~~(c)3-~~ A sketch of the specific location of the sign or canopy, including height, location of supports, proximity to utility poles, and the identification of the state highway where the sign or canopy will be located.

~~(d)4-~~ Sketches or specific descriptions of the method to be used to affix the sign or canopy to the support structure(s).

~~(e)5-~~ Proof of compliance with resolutions of the any applicable local governmental entity within whose jurisdictional boundaries the banners are to be placed regulations.

~~(4)(b) Applications for banners shall be made no later than 30 days and no earlier than 365 days prior to the requested installation date. The application shall be on Application to Place Banners on Non Limited Access Right of Way, DOT Form 575-070-18, Rev. 08/08 03/05, incorporated herein by reference. Copies of DOT Form 575-070-18 are available from the State Maintenance Engineer or any District Maintenance Engineer. The application shall include:~~

~~1. The name, address, and telephone number of the applicant. Additionally, the name of the contact person must be supplied.~~

~~2. A drawing of the banner(s), drawn to scale, including any message, logo, or emblem.~~

~~3. A sketch of the specific location of the banner(s), including height, location of supports, proximity to utility poles, and the identification of the state highway where the banner(s) will be located.~~

~~4. Sketches, photographs, or specific descriptions of the method to be used to affix the banner(s) to the support structure(s).~~

~~5. The beginning and ending dates of the display period requested.~~

~~6. Proof of compliance with the requirements of subsection (4)(c) and any local governmental regulations.~~

~~7. Written authorization from the local governmental entity granting permission to the applicant for the installation of the banners. No banner shall be allowed when the local governmental entity has an ordinance prohibiting its installation.~~

~~8. When the roadway requested for banner installation is under the ownership of an Expressway Authority, written authorization from the affected Expressway Authority granting permission to the applicant for the installation of the banners must be provided.~~

~~9. A load rating analysis by a registered professional engineer. See (4)(c), above.~~

~~(c) Banners will not be allowed where a Department construction project is planned or ongoing during the requested display period.~~

~~(d) The applicant shall agree as follows:~~

~~1. To the extent provided by law, the applicant shall indemnify, defend, and hold harmless the Department and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by an applicant, its agents, or employees arising from activities associated herewith.~~

~~2. When the Department receives a notice of claim for damages that may have been caused by the applicant in the performance of activities hereunder, the Department will immediately forward the claim to applicant. The applicant and the Department will evaluate the claim and report their findings to each other within 14 working days and will jointly discuss options in defending the claim. After reviewing the claim, the Department will determine whether to require the participation of the applicant in the defense of the claim or to require that the applicants defend the Department in such claim as described in this section. The Department's failure to promptly notify the applicant of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by the applicant. The applicant shall bear all expenses of the Department in defense of the claim.~~

~~(e) If the application is denied, the Department shall provide a Notice of Administrative Hearing Rights to the applicant.~~

~~(7) Failure to comply with the provisions of this rule shall result in the issuance of a Notice of Intent to Deny the Application or a Notice of Noncompliance, which shall include a Notice of Administrative Hearing Rights.~~

~~(8) Provision of any notice, denial, revocation, or Notice of Administrative Hearing Rights by the Department under this rule shall not constitute or create entitlement to an administrative hearing where such right does not otherwise exist.~~

Specific Authority 334.044(2), 337.407 FS. Law Implemented 337.406, 337.407, 479.01, 479.16, 768.28 FS. History--Amended 3-21-64, 5-9-70, 7-9-75, Formerly 14-43.01, Amended 8-3-99, 8-2-01, 5-30-05,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Lynn Holschuh, Outdoor Advertising Administrator

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Stephanie C. Kopelousos, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 4, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 5, 2008

**DEPARTMENT OF TRANSPORTATION**

RULE NOS.:	RULE TITLES:
14-98.005	Application and Award Procedures
14-98.008	Forms

PURPOSE AND EFFECT: Rule 14-98.005, F.A.C., is amended because of a revision to the Subgrant Application for Highway Safety Funds, Form 500-065-01, to incorporate updated versions of other incorporated documents that have been revised since the previous amendment. Rule 14-98.008, F.A.C., is being repealed and its incorporated forms are moved to Rule 14-98.005, F.A.C.

SUMMARY: Rule 14-98.005, F.A.C., is being amended, including updating the Subgrant Application for Highway Safety Funds, Form 500-065-01 and incorporating by reference other documents. Rule 14-98.008, F.A.C., is being repealed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 334.044(2) FS.

LAW IMPLEMENTED: 334.044(25) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: James C. Myers, Clerk of Agency Proceedings, Florida Department of Transportation, Office of the General Counsel, 605 Suwannee Street, Mail Station 58, Tallahassee, Florida 32399-0458

THE FULL TEXT OF THE PROPOSED RULE IS:

14-98.005 Application and Award Procedures.

(1) The Department Safety Office (Office) will conduct an analysis of the traffic crash history of the state each year, based on the most currently available crash data from the Department of Highway Safety and Motor Vehicles, identifying those counties with the most severe traffic crash problems, in a Traffic Safety Matrix.

(2) The selection of subgrant recipients will be based, in part, on their position on the Traffic Safety Matrix for the particular type of highway safety problem. Data from the Department of Highway Safety and Motor Vehicles, pertinent local safety data, the Office's annual observational survey of safety belt use, and past subgrant history will also be considered when selecting potential subgrant recipients.

(3) Only activities included in the Highway Safety Plan may be funded by the program.

(4)(3) To be eligible for funding, an applicant:

(a) Cannot have been funded for an activity in the same priority area of the Highway Safety Plan for more than three consecutive fiscal years. Agencies that have received funding in the same priority area for three consecutive years must wait one year before being eligible for highway safety grant funding in that priority area. The three-year limit shall not apply to statewide programs for training, coordination, evaluation, or public awareness.

(b) Cannot request funding that would supplant funds previously allocated or appropriated by the applicant for the same activity, nor can funding replace equipment previously purchased with local or federal funds.

(c) Shall not be eligible for funding if it has violated a condition of a previous subgrant.

(5)(4) The Office will provide, upon request, the Highway Safety Concept Paper, Form 500-065-17, Rev. 12/08, as well as information on how to prepare a concept paper for highway safety funding to any potential applicant. Concept papers will be accepted annually from January 1 through March 31 for the upcoming fiscal year. Concept papers must be post marked no later than March 31 to be considered for funding. The Office will formally acknowledge receipt of all concept papers.

(6)(5) The Office will review all concept papers for compliance with this rule and state and federal rules and regulations, hereby listed herein. ~~(a) Federal.~~ The following listed federal rules are incorporated by reference:

(a)1- 41 C.F.R., Part 60, *Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, Revised July 1, 2008 December 13, 2000.*

(b)2- 49 C.F.R., Part 18, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, Revised October 1, 2007 March 18, 1988.*

(c)3- 49 C.F.R., Part 19, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, Revised October 1, 2007.*

(d)4- 49 C.F.R., Part 20, *New Restrictions on Lobbying, Revised October 1, 2007 February 26, 1990.*

(e)5- 49 C.F.R., Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs, Revised October 1, 2007 2001.*

(f)6- 49 C.F.R., Part 29, *Governmentwide Debarment Department and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), Revised October 1, 2007 May 26, 1988.*

(g)7- 2 C.F.R., Part 220, *OMB Circular A-21, Cost Principles for Educational Institutions (OMB Circular A-21), Revised January 1, 2008 8/8/00.*

(h)8- 2 C.F.R., Part 225, *OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87), Revised January 1, 2008 5/4/95, as Further Amended 8/29/97.*

(i)9- OMB Circular A-102, *Grants and Cooperative Agreements with State and Local Governments*, August 29, 1997.

(j)10- 2 C.F.R., Part 215, *OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (OMB Circular A-110), Revised January 1, 2008 11/19/93, as Further Amended 9/30/99.*

(k)11- 2 C.F.R., Part 230, *OMB Circular A-122, Cost Principles for Non-Profit Organizations (OMB Circular A-122), January 1, 2008 June 1, 1998.*

(l)12- OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*, June 27, 2003 30, 1997.

(m) Highway Safety Grant Funding Policy for NHTSA/FHWA Field Administered Grants, Revised July 24, 2007.

(n)13- 10 U.S.C. 2304(g), *Armed Forces, Contracts: Competition Requirements, Armed Forces Procurement, January 3, 2006 1/23/00.*

(o)14- 31 U.S.C. 3801 Definitions, *Money and Finance, Administrative Remedies for False Claims and Statements The Program Fraud Civil Remedies Act of 1966, January 3, 2006 01/05/99.*

(p)15- 33 U.S.C. 1251 Congressional Declaration of Goals and Policy, *Navigation and Navigable Waters, Federal Water Pollution Prevention and Control Act*, January 3, 2006.

(q)16- 41 U.S.C. 253(g) Competition Requirements, *Public Contracts, Procurement Procedures Completion Requirements*, January 3, 2006 01/05/99.

~~(r)17-~~ 42 U.S.C. 7401 Congressional Finding and Declaration of Purpose, *The Public Health and Welfare, Air Pollution Prevention and Control Clean Air Act*, January 3, 2006 01/05/99.

~~(s)18-~~ Executive Order 11246, *Equal Employment Opportunity*, September 24, 1965, as amended.

~~(t)19-~~ Executive Order 11375, Amending Executive Order 11246, relating to *Equal Employment Opportunity*, October 13, 1967.

~~(b) State. The following Florida Statutes are listed for reference purposes:~~

- ~~1. Section 112.061, F.S.~~
- ~~2. Chapter 119, F.S.~~
- ~~3. Section 216.347, F.S.~~
- ~~4. Chapter 287, F.S.~~
- ~~5. Section 768.28, F.S.~~

~~(7)(6)~~ Concept papers that comply with state and federal rules and regulations will be prioritized on the basis of:

(a) The Concept Paper Evaluation Form, ~~FDOT~~ Form 500-065-18, Rev. 01/02.

- (b) Program ~~subgrant~~ history,
- (c) The Traffic Safety Matrix, and

(d) Analysis of relevant crash data, citation data, and survey results.

~~(8)(7)~~ One copy ~~Two copies~~ of the application form, Subgrant Application for Highway Safety Funds, ~~FDOT~~ Form 500-065-01, Rev. 09/08 ~~09/05~~, will be sent to those applicants whose concept papers are selected for funding. Applicants whose concept papers were not selected for funding will be notified by the Office.

~~(9)(8)~~ Applicants shall forward one copy of the completed ~~agreement application~~ and a minimum of three signature pages, containing all original signatures, to the Office.

(9) Each corporation not for profit applicant shall attach to its application a copy of its "certificate of status" from the Florida Department of State verifying its not for profit status, and a current financial statement which shows that it has funds equal to the amount of the subgrant award on deposit in a special account designated for project activities only.

~~(10) The Office shall review all applications and will reject any applications not meeting the requirements of these rules and applicable Federal and State laws, within ten working days of receipt of said applications. In the event that an applicant submits a Subgrant Application for Highway Safety Funds, FDOT Form 500-065-01, Rev. 09/05, for an activity that is not included in the Highway Safety Plan, the application shall be rejected. Failure to reject any application within ten days shall not result in the automatic award of a subgrant. All subgrants are subject to funds availability.~~

(10) Forms. The following forms used in the Highway Traffic Safety Program are hereby incorporated by reference:

(a) Subgrant Application for Highway Safety Funds – Form 500-065-01, Rev. 09/08.

(b) Statement of Highway Safety Project Costs – Form 500-065-04, Rev. 01/02.

(c) Summary Statement of Personnel Services Cost – Form 500-065-05, Rev. 01/02.

(d) Personnel Services Time Sheet – Form 500-065-06, Rev. 01/02.

(e) Detail of Costs – Form 500-065-07, Rev. 01/02.

(f) Non-Expendable Property Accountability Record – Form 500-065-09, Rev. 12/08.

(g) Highway Safety Concept Paper – Form 500-065-17, Rev. 09/08.

Copies of these forms may be obtained by writing or calling the Florida Department of Transportation, State Safety Office, 605 Suwannee Street, MS-17, Tallahassee, Florida 32399-0450; telephone (850)245-1500.

~~(11) Notice of denial. Notice of the Office's intended action will be provided in accordance with Rule 28-106.111, F.A.C. The Department's action to deny will become final unless a timely petition for a hearing is filed in accordance with Rules 28-106.104, 28-106.201, and 28-106.301, F.A.C. In order to be timely, the petition must be filed with the Department's Clerk of Agency Proceedings within 21 days after receipt of the Department's notice, in accordance with Rule 28-106.111. Provision of any notice, denial, revocation, or notice of Administrative Hearing Rights by the Department under this rule shall not constitute, or create, entitlement to an administrative hearing where such right does not otherwise exist.~~

Specific Authority 334.044(2) FS. Law Implemented 334.044(25) FS. History—New 12-30-84, Amended 6-10-85, Formerly 9B-32.05, 9B-32.005, 11-19-89, Formerly 9G-15.005, Amended 12-7-93, 11-29-94, 1-17-99, 4-16-02, 8-6-02, 11-2-03, 8-24-04, 1-17-06, \_\_\_\_\_.

14-98.008 Forms.

Specific Authority 334.044(2),(25) FS. Law Implemented 334.044(25) FS. History—New 6-10-85, Formerly 9B-32.08, 9B-32.008, Amended 11-19-89, Formerly 9G-15.008, Amended 12-7-93, 6-14-94, 11-29-94, 4-16-02, 8-6-02, 11-2-03, 8-24-04, 1-17-06, Repealed \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Marianne A. Trussell, State Safety Officer

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Stephanie C. Kopelousos, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 4, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 3, 2008

**DEPARTMENT OF TRANSPORTATION**

RULE NO.:                   RULE TITLE:  
14-116.002                Letters of Credit

PURPOSE AND EFFECT: Rule 14-116.002, F.A.C., is being amended to clarify language and to include updated procedures, including provision for electronic presentation of a draft via facsimile transmission or electronic mail, or both.

SUMMARY: Rule 14-116.002, F.A.C., is being amended.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 334.044(2) FS.

LAW IMPLEMENTED: 334.044(30), 334.187, 337.106, 337.175 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: James C. Myers, Clerk of Agency Proceedings, Florida Department of Transportation, Office of the General Counsel, 605 Suwannee Street, Mail Station 58, Tallahassee, Florida 32399-0458

**THE FULL TEXT OF THE PROPOSED RULE IS:**

14-116.002 Letters of Credit.

(1) Purpose. This rule establishes the requirements of the Department of Transportation Comptroller for the approval of letters of credit, which are provided by a bank or savings association financial institution at the request of an the applicant/professional service provider/contractor.

(2) Qualifications of Banks or Savings Associations Providing Letters of Credit.

(a) The letter of credit provided ~~by the financial institution~~ at the request of the applicant/professional service provider/contractor shall be issued by banks or savings associations which must:

1. Be organized and existing under the laws of this state; or
2. Be organized under the laws of the United States and have its principal place of business in this state; or
3. Have a branch office which is authorized under the laws of this state or of the United States to receive deposits in this state; and
4. Have and maintain an average financial condition ranking of 35 or more from two nationally recognized financial rating services, compiled quarterly by the Florida Department of Financial Services, Division of Treasury.

(b) In the event the required average financial condition set forth in subparagraph (2)(a)4. above is ~~and net worth of the financial institution~~ are not maintained, the Department will ~~shall~~ notify the applicant/service provider/contractor of such noncompliance. Within 30 days after receiving the notice of noncompliance, the applicant/professional service provider/contractor shall provide ~~cause to have provided~~ to the Department a substitute letter of credit issued by a bank or savings association, ~~with an institution~~ meeting the requirements of this rule.

(3) Requirements of Letter of Credit. Letters of credit shall be issued solely for the benefit of the Department. Letter of credit language must be approved by the Department's Comptroller and ~~must include, at a minimum,~~ the following:

(a) The expiration date of the letter of credit shall be automatically extended without amendment, for one year from the expiration date unless otherwise authorized in writing by the Department. Letters of credit furnished under the requirements of Section 337.106, F.S., shall not be required to be extended beyond the duration required by that section. If the letter of credit is not automatically extended for such additional one year period ~~then~~, at least 30 days prior to the expiration date then in effect, the bank or savings association shall notify the Department by registered or certified U.S. Mail or courier, postage prepaid, return receipt requested. This notification shall be sent to the Florida Department of Transportation, Office of Comptroller, 605 Suwannee Street, Mail Station ~~42B 24~~, Tallahassee, Florida 32399-0450, or to any other address specified in writing by the Department's Comptroller, ~~Florida Department of Transportation~~.

(b) If notice is given that the letter of credit will not be automatically extended and if the purpose for which the letter of credit was issued still exists, the Department shall draw down any remaining balance on the letter of credit unless a substitute letter of credit meeting the requirements of this rule is provided at least 14 days prior to the ~~final~~ expiration date of the letter of credit for which the substitute letter of credit is being provided.

(c) Once it is determined by the Department that the average financial condition ranking of a bank or savings association financial institution is less than 35, the Department will notify the bank or savings association financial institution and the applicant/professional service provider/contractor by registered mail that if a substitute letter of credit is not received within 30 days of notification, the Department will ~~shall~~ draw down any remaining balance on the letter of credit if the purpose for which the letter of credit was issued still exists.

(d) The letter of credit must provide for draws to be made on a bank or savings association located in the State of Florida and additionally must provide for draws by electronic presentation of a draft via facsimile transmission or electronic mail, or both.

~~(e) Letters of credit provided in lieu of professional liability insurance must remain valid for the time period specified in Section 337.106, F.S.~~

Specific Authority 334.044(2) FS. Law Implemented 334.044(30), 334.187, 337.106, 337.175 FS. History--New 3-23-93, Amended 8-24-93, 10-11-94, 10-5-97, 1-18-04,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Robin Naitove, Comptroller

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Stephanie C. Kopelousos, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 4, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 24, 2008

**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."

**REGIONAL PLANNING COUNCILS**

**Southwest Florida Regional Planning Council**

RULE NOS.:	RULE TITLES:
29I-1.001	Name and Scope
29I-1.002	Purpose
29I-1.003	Staff Functions; General Description
29I-1.004	Council Membership and Appointments, Term of Service, Vacancies, Removal from Office
29I-1.005	Officers, Term, Duties, Committees
29I-1.006	Conduct of Meetings
29I-1.008	Responsibilities and Authority
29I-1.010	Information Requests

PURPOSE AND EFFECT: Changes in the Southwest Florida Regional Planning Council Bylaws.

SUMMARY: Revisions to the Council purpose, membership and appointment, and the conduct of meetings. Other minor changes to the current Bylaws.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 120.53, 160.02, 163.01, 186.505, 186.509, 380.06 FS.

LAW IMPLEMENTED: 119.01, 120.53, 160.02, 163.01, 163.02, 186.501, 186.502, 186.503, 186.505, 186.509, 380.06, 380.07 FS.

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

DATE AND TIME: January 6, 2009, 1:30 p.m.

PLACE: Offices of the Southwest Florida Regional Planning Council, 1926 Victoria Avenue, Fort Myers, FL

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 5 days before the workshop/meeting by contacting: Mrs. Deborah Kooi at (239)338-2550, ext. 210. 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).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Mr. Kenneth Heatherington at (239)338-2550, ext. #222

THE FULL TEXT OF THE PROPOSED RULE IS:

29I-1.001 Name and Scope.

The name of this agency is the Southwest Florida Regional Planning Council (SWFRPC, or "Council"), a voluntary association of counties and cities formed as of November 8, 1973, under the laws of Florida and comprising the 9th Comprehensive Regional Planning District as provided for by ~~Part I of Chapter 23 of the Florida Statutes and Rule 22E-1.001 of the Administrative Regulations of the State of Florida.~~

Specific Authority 120.53(1) FS. Law Implemented 120.53(1), 163.01, 380.06(7)(a), (b), 380.06(8), 380.07 FS. History--New 2-9-76, Formerly 29I-1.01, Amended\_\_\_\_\_.

29I-1.002 Purpose.

(1) Purpose. The purposes of the Southwest Florida Regional Planning Council shall be:

~~(a)(1)~~ To provide a means to permit local governmental units to make the most efficient use of their powers to cooperate for mutual advantages in order to provide services and facilities that will accord best with geographic, economic, social, land use, transportation, public safety resources and other factors influencing the needs and development of local communities within Planning District No. 9;

~~(b)(2)~~ To serve as a regional coordinator for the local governmental units comprising the planning district;

~~(c)(3)~~ To exchange information on and review programs of region concerns;

~~(d)(4)~~ To promote communication between the local governments for the conservation and compatible development of the Southwest Region;

~~(e)(5)~~ To cooperate with Federal, State and local government and non-government agencies to accomplish regional objectives; and

~~(f)(6)~~ To do all things authorized for a Regional Planning Agency under Chapters 163, 186 and 380 of the Florida Statutes, and other applicable Florida, Federal and Local Laws, rules and regulations.

(2) Mission. It is the mission of the Council:

To work together across neighboring communities to consistently protect and improve the unique and relatively unspoiled character of the physical, economic and social worlds we share for the benefit of our future generations.

Specific Authority 120.53(1) FS. Law Implemented 120.53(1), 160.02, 163.02, 380.06(7), 380.07(2) FS. History–New 2-9-76, Amended 7-18-82, Formerly 29I-1.02, Amended 5-7-92,\_\_\_\_\_.

29I-1.003 Staff Functions; General Description.

~~(4)~~ The Council shall appoint an Executive Director who shall have the responsibility for the general management of the affairs of the Council, subject to the governing laws of the State and such regulations as may be adopted by the Council.

(1) The Executive Director shall annually prepare a budget for the Council and transmit the Council’s budget request to the member governmental units.

(2) The Executive Director shall be responsible for the general management of the Council’s office, for assisting the Secretary of the Council in the recording and maintenance of Council minutes and other documents of record, for any moneys received on behalf of the Council, for the keeping of financial statements in such form and in accordance with such procedures as shall be required by the Treasurer.

(3) The Executive Director may appoint and discharge any employee or subordinates in accordance with the policies Regulations Personnel of the Council and applicable Federal and Florida Statutes and regulations, and shall fix their compensation within such limits as may be provided by the approved Council budget, employee salary and wage schedule, and

(4) The Executive Director may make agreements on behalf of the Council in performing the duties entrusted to him and. ~~The Executive Director~~ shall attest all necessary instruments.

~~(2) The following are the general services performed by the Staff:~~

~~(a) Information Services. Maintain and provide at reasonable cost to the requestor, information to assist in regional issue decision making.~~

~~(b) Regional planning, review, coordination, analysis and comment for the Local, State and Federal governments including the functions generally stated by the Policies of the Council in Chapter 29I-2, F.A.C., hereof and specifically the Regional Planning Agency responsibilities:~~

~~1. For processing Applications for Developments of Regional Impact (DRI’s) pursuant to Chapter 380 of the Florida Statutes; and~~

~~2. Areawide clearinghouse review responsibilities.~~

~~(e) Advise and assist local governments within the Region when requested or required, and when the Council is able to provide the services.~~

Specific Authority 120.53(1), 163.01(5) FS. Law Implemented 120.53(1), 163.01(5), 380.06(7)(a), (b), 380.06(8), 380.07 FS. History–New 2-9-76, Formerly 29I-1.03, Amended 5-7-92,\_\_\_\_\_.

29I-1.004 Council Membership and Appointments, Term of Service, Vacancies, Removal from Office.

(1) Membership and Appointments.

(a) The Council shall include the Counties of Charlotte, Collier, Glades, Hendry, Lee and Sarasota, each of which shall be represented on the Council by two voting representatives appointed by their respective Board of County Commissioners.

(b) All municipalities within each county shall select one representative of one of the municipalities within the county who will be a voting representative.

(c) Further, each city has the option to be a member local government and to appoint one representative from the city’s governing board; cities taking this option shall not participate in the process in paragraph (b) above.

(d) The representative(s) to the Council from each member local government shall be the elected chief representative of said local government or a member of its governing body chosen by such body to be its representative.

~~(e)(4)~~ The Governor of the State of Florida shall appoint a maximum of one third of the members. Each county in the region shall have a minimum of one appointment by the Governor.

~~(f)(e)~~ Changes in membership provisions shall require a two thirds vote of the members.

(2) Terms of Service.

(a) Council members shall serve, and may be reappointed, at the pleasure of the appointing authority.

(b) Member governments may appoint alternate representative(s) to the Council. Alternate representative(s) shall be the chief elected official of said local government or a member of its governing body chosen by such body to be its alternate representative.

(3) Vacancies.

Any vacancy shall be filled for the unexpired term in the same manner as the initial appointment.

(4) Removal from Service.

Should a Council member have three consecutive unexplained absences from regular Council meetings, the Council shall so advise the appropriate appointing authority and request another appointment. Voting representatives will continue to occupy their offices until the Council is notified in writing of their replacement.

Specific Authority 120.53(1) FS. Law Implemented 120.53(1), 186.501, 186.502, 186.503, 163.01 FS. History—New 2-9-76, Amended 2-20-77, 7-18-82, Formerly 29I-1.04, Amended 5-4-88, 3-1-95, \_\_\_\_\_.

29I-1.005 Officers, Term, Duties, Committees.

(1) The regular January monthly meeting shall ~~include be the Annual Meeting for conducting business and~~ electing from the regular membership officers with duties as follows:

(a) ~~Chairman~~ – The ~~Chairman~~ shall be the Chief Executive Officer, responsible for executing contracts for the Council, for overseeing the organization of the work of the Council, for seeing that all policy decisions of the Council are carried out, and for such other executive level functions as the Council shall assign. Except as provided for elsewhere, the ~~Chairman~~ shall serve as a non-voting member of each advisory committee.

(b) ~~Vice-Chairman~~ – The ~~Vice-Chairman~~ shall act for the ~~Chairman~~ in his/her absence, or in the event of ~~the Chair's~~ his inability to act, perform all the functions of the ~~Chairman~~.

(c) Secretary – The Secretary shall conduct the correspondence of the Council, keep and distribute the minutes of the meetings, be custodian of the records and seal, keep the roll of all members, and discharge such other duties as may be assigned ~~to him~~ by the ~~Chairman~~ or the members. The Executive Director shall serve as deputy to the Secretary.

(d) Treasurer – The Treasurer shall supervise the financial affairs of the Council, including recommending designation of checking and savings account depositories, and perform such other duties as usually pertain to that office. Except as provided for elsewhere, each negotiable check or warrant shall bear the signature of the Treasurer.

(2) Each officer so elected shall serve one (1) year or until re-elected or ~~a~~ his successor is elected.

(3) A Nominating Committee comprised of at least three (3) Council members, each from a different County shall be appointed by the ~~Chairman~~ at the regular December meeting of the Council for the purpose of proposing candidates for all offices for the following year. Additional nominations may be made by any Council member at the ~~January monthly Annual m~~ Meeting. Newly elected officers shall be declared to be installed following their election at the ~~January monthly Annual m~~ Meeting and shall assume the duties of office upon adjournment of said meeting.

(4) Standing and Special Committees.

The Council is empowered to designate and appoint ~~or employ such staff,~~ standing committees, study groups, boards, and consultants consisting of members or non-members as the Council determines are essential or desirable to carry out its policies and objectives. The Council is empowered to direct the Executive Director to assign staff to support such standing committees, study groups, boards and consultants to carry out the Council's policies and objectives. The ~~Chairman~~ may appoint such special Advisory Committees consisting of

members or non-members as he deems necessary or expedient to assist the Council and staff from time to time. Standing Committee members shall serve for terms of one (1) year. Special advisory committee members shall serve for the same period as the appointing ~~Chairman~~. All Committee actions shall be advisory only to the Council. The Council may, however, delegate certain specific administrative and review prerogatives to a committee in order to expedite the Council's work.

Specific Authority 120.53(1) FS. Law Implemented 120.53(1), 163.01 FS. History—New 2-9-76, Amended 2-20-77, Formerly 29I-1.05, Amended \_\_\_\_\_.

29I-1.006 Conduct of Meetings.

(1) The Council shall hold regular monthly meetings at a time and place to be determined by the membership prior to adjournment of the previous meeting or by the ~~Chairman~~ in the absence of such determination. A monthly meeting may be waived by a majority of the Council. Business to have been conducted at the waived meeting shall be considered at the next successive monthly meeting.

(2) Special meetings of the Council may be called by the ~~Chairman~~ at his/her discretion or when requested by six (6) voting members.

(3) Voting.

(a) Council members must be present to vote. A quorum shall consist of a majority of the total voting membership of the Council, representing at least and a voting member from each of four (4) or more of the Counties. When a quorum is present, a majority of those present may take action on matters properly presented at the meeting. ~~Each M~~ members present shall vote on each question presented to the Council unless ~~they he~~ disqualifies themselves himself. Business shall be transacted only at regular or special called meetings and shall be duly recorded in the minutes thereof.

(b) As permitted by Florida Statutes, Council members are present at a meeting when participating through interactive video and telephone systems.

(4) Minutes.

(a) The Council shall record minutes of its proceedings and official actions in the office of the Council.

(b) The minutes of prior meetings approved by a majority of the members present, shall become the official minutes.

(c) Each resolution shall be signed by the presiding officer at the meeting and by the Executive Director and entered in the minutes.

(5) Rules of Debate.

(a) ~~Chairman~~ Participation: The presiding ~~Chairman~~ shall not be deprived of any rights and privileges of a Council ~~memberman~~ by reason of being the presiding ~~Chairman~~, but may move or second a motion only after the gavel has been passed to the ~~Vice-Chairman~~ or another member of the Council.



(b) Form of Address: ~~Mmembers~~ Each shall address only the presiding officer for recognition; shall confine themselves ~~himself~~ to the question under debate; and shall avoid personalities and indecorous language.

(c) The Question: Upon the closing of debate the ~~Chairman~~ shall call the question by voice or roll call vote. ~~Mmembers~~ Any may give a brief statement or file a written explanation of their ~~his~~ vote.

~~(6) Minutes:~~

~~The minutes of prior meetings approved by a majority of the members present, shall become the official Minutes. Each resolution shall be signed by the presiding officer at the meeting and by the Executive Director and entered in the Minutes.~~

~~(6)(7) Amending the Agenda. Addressing the Council.~~

~~(a) If a subject is not on the Agenda it may be added by motion and a majority vote that the subject should not be delayed until the next meeting.~~

~~(b) Any person appearing to provide the Council factual information or expert opinion to consider prior to taking official action shall be governed by the following procedure:~~

~~1. Prior to addressing the Council the speaker shall approach the front center of the conference table and clearly state his full name, home address, the person he represents and the subject of his address.~~

~~2. Before providing factual information or expert opinion if any member of the Council or the speaker requests, the Chairman shall place the speaker under the following oath with right hand upraised: "I willfully swear under oath the facts and testimony I furnish this Council to be the truth, the whole truth and nothing but the truth; and not inconsistent or contradictory with other statements made by me under oath." a. No person shall be required to take this oath more than once in any given day, but shall be reminded he is under oath before again addressing the Council.~~

~~b. Those asking questions or desiring to comment on a matter before the Council shall not be required to take the oath. The Council can at any time request such a speaker to take the above oath.~~

~~(c) Each speaker shall limit his address to ten (10) minutes unless granted additional time by majority vote of the Council. All remarks shall be to the Council as a body and not to any individual member. No person, other than a Councilman, shall discuss directly or through a Councilman, without authorization of the presiding officer. No questions shall be asked a Councilman except through the presiding officer.~~

~~(7)(8) DRI Recommendations.~~

~~(a) When the Council is considering the recommendations it shall make to a local government, the Council, in addition to its normal staff presentation, shall allow limited presentations not to exceed ten (10) minutes each by the following: the developer; the adjacent or contiguous city and county involved; technical consultants to the Council; and members of~~

the public, who shall be required to submit a "Request to Speak" form register prior to the beginning of the meeting. The applicant may request an additional time thirty (30) minutes for presentation. The Chair may limit or restrict the time available for any presentation. Any Council member may ask the developer, or any person present, specific questions concerning specific issues of the proposed development.

(b) The Council may close debate by a majority vote of the members present.

~~(9) Appeal of a (DRI) Development Order.~~

~~(a) Prior to Council action to appeal an Order of a City Council or Board of County Commissioners approving a Development of Regional Impact (DRI) the Council in addition to its normal staff presentation shall allow limited presentations not to exceed thirty (30) minutes each by the following: The City or County that issued the Order; the developer; the adjacent, contiguous or integral city and county; members of the public who the Council by majority vote determines best represent the affected organizations, institutions and civic associations and technical consultants to the Council.~~

~~(b) The Council shall by majority vote determine the amount of time allocated for and the order of the public presentations.~~

~~(8)(10) Voting shall be by voice, but a members (8) shall have their his votes recorded in the mMinutes if they he so desires. A roll call vote shall be held upon proper motion. All other questions of procedure shall be governed by Robert's Rules of Order, Revised.~~

~~(9)(11) Staff memoranda and committee resolutions, minutes and reports are prepared for the purpose of providing the Council with the basic information it requires to make decisions. Such staff memoranda and committee resolutions, minutes and reports are advisory only and not final actions or conclusions of the Council itself. The Council shall release all such data to the chief executive officer of each member governmental unit upon his request.~~

~~(10)(12) All official meetings of the Council shall be open to the public as required by Florida Sunshine Laws, Chapter 286, F.S., and shall meet the requirements of the applicable sections of the Florida Administrative Procedures Act, Chapter 120, F.S. The Council shall ~~hold and~~ give seven (7) days notice of meetings and workshops, in addition to any other notices as required by Florida Statutes.~~

Specific Authority 120.53(1) FS. Law Implemented 120.53(1), 160.02(1), (6), 163.01, 380.06(7), (8), 380.07, 837 FS. History—New 2-9-76, Amended 2-20-77, 7-18-82, Formerly 29I-1.06, Amended 5-7-92, \_\_\_\_\_.

29I-1.008 Responsibilities and Authority.

The Council shall exercise all powers granted to regional planning councils, or regional planning agencies by Section 186.505, F.S., and by its Interlocal Agreement dated,

~~November 8, 1973, amended October 28, 1980, have all responsibilities and authority conferred by the Interlocal Agreement establishing the Council, including the following:~~

~~(1) To exercise the powers granted by the Florida Statutes as now exist or as from time to time amended.~~

~~(2) To conduct studies of the Region's resources with respect to existing and emerging problems of industry, commerce, transportation, population, housing, agriculture, public services, human resources, natural resources, government, and any other matters which are relevant to regional planning.~~

~~(3) To adopt rules of procedure and by-laws, to regulate its affairs and conduct its business.~~

~~(4) To adopt an official seal.~~

~~(5) To maintain office space at such places within the Region as may from time to time be required in performance of its duties.~~

~~(6) To employ and set the compensation of the Executive Director, who shall employ and discharge professional, technical or clerical staff as may be necessary to carry out the purposes of the Council.~~

~~(7) To authorize compensation for members of the Council for per diem, travel, and other reasonable expenses for meetings, hearings and other official business conducted outside the Region's boundaries.~~

~~(8) To hold public hearings, sponsor public forums, and conduct other activities whenever deemed necessary or useful in the execution of the functions of the Council.~~

~~(9) To acquire, own, operate, maintain, lease or sell real or personal property and hold title hereto in the name of the Council.~~

~~(10) To fix and determine in accordance with applicable laws by resolution, rules and regulations relating to advertisement for bids, manner of bidding and amount below which same will not be required.~~

~~(11) To sue and be sued, implead and be impleaded, complain and defend, intervene and appeal, before all courts and administrative agencies.~~

~~(12) To accept gifts, apply for and use grants, assistance funds and bequests of money and other property from the United States, the State, local units of government, and any person for any Council purpose and to enter into agreements required in connection therewith, and to hold, use, and dispose of such moneys or property in accordance with the terms of the gift, grant, loan or agreement relating thereto.~~

~~(13) To make and enter into all contracts and agreements, and do and perform all acts and deeds necessary or incidental to the performance of its duties and the exercise of its powers.~~

~~(14) To prescribe all terms and conditions for the employment of officers, employees, and agents including, but not limited to, the fixing of pay and classification plans,~~

~~benefits, and the filing of performance and fidelity bonds and such policies of insurance covering itself and employees as it may deem advisable.~~

~~(15) To participate with other government agencies, educational institutions, and private organizations in the coordination of the activities above.~~

~~(16) To determine and collect charges or fees for the provision of assistance for special services and for reviews and referrals.~~

~~(17) To select and appoint such advisory bodies as the Council may find appropriate for the conduct of its activities.~~

~~(18) To enter into contracts to provide, at cost, such services related to its responsibilities as may be requested by local governments within the Region and which the Council finds feasible to perform.~~

Specific Authority 120.53(1), 160.02 FS. Law Implemented 120.53(1), 160.02, 380.06(7)(a), (b), 380.06(8) FS. History—New 2-9-76, Amended 7-18-82, Formerly 29I-1.08, Amended 5-7-92, \_\_\_\_\_.

29I-1.010 Information Requests.

(1) The principal office of the Southwest Florida Regional Planning Council is located at 1926 Victoria Avenue, Fort Myers, FL 33901-3414 ~~4980 Bayline Drive, 4th Floor, North Fort Myers, Florida 33917-3909~~. The office hours are Monday through Friday, from 8:00 a.m. to 5:00 p.m. All official forms, publications or documents of the Council are available for public inspection at the Council's principal office during regular business hours.

(2) All information requests are fulfilled in compliance with the Florida Public Records Law, Chapter 119, F.S. ~~Information available for public inspection includes the following:~~

~~(a) Basic demographic, geographic and economic data projections;~~

~~(b) Planning periodicals, published tests, and~~

~~(c) All information relating to the planning and review activities of the Council.~~

(3) Copies of the Council's forms, publications and official documents prepared for public dissemination are available as follows:

(a) Public agencies, defined as those organizations representing the public; government agencies situated in the State of Florida receive Council publications at no charge.

(b) Private organizations situated in Florida and all parties outside of Florida can receive Council publications at cost.

(c) Publications out of print or singular documents are available for inspection at its principal office. Persons wishing photocopies may receive same at cost.

Specific Authority 120.53(1) FS. Law Implemented 119.01, 120.53(1), 120.53(2) FS. History—New 2-9-76, Formerly 29I-1.10, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Mrs. Andrea Messina, SWFRPC Chair  
NAME OF AGENCY HEAD WHO APPROVED THE  
PROPOSED RULE: Mr. Kenneth Heatherington, Executive  
Director  
DATE PROPOSED RULE APPROVED BY AGENCY  
HEAD: September 18, 2008  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT  
PUBLISHED IN FAW: October 3, 2008

**REGIONAL PLANNING COUNCILS**

**Southwest Florida Regional Planning Council**

RULE NOS.:	RULE TITLES:
29I-4.001	DRI Review Process
29I-4.004	DRI-ADA Form
29I-4.006	Request for DRI Review
29I-4.007	DRI Review Fee
29I-4.011	Areawide Development of Regional Impact
29I-4.012	Florida's Quality Developments Program
29I-4.013	Review of Amendments to Development Orders

PURPOSE AND EFFECT: Changes in the Southwest Florida Regional Planning Council Bylaws.

SUMMARY: Revisions to the Council purpose, membership and appointment, and the conduct of meetings. Other minor changes to the current Bylaws.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 120.53, 160.02, 163.01, 186.505, 186.509, 380.06 FS.

LAW IMPLEMENTED: 119.01, 120.53, 160.02, 163.01, 163.02, 186.501, 186.502, 186.503, 186.505, 186.509, 380.06, 380.07 FS.

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

DATE AND TIME: January 6, 2009, 1:30 p.m.

PLACE: Offices of the Southwest Florida Regional Planning Council, 1926 Victoria Avenue, Fort Myers, FL

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 5 days before the workshop/meeting by contacting: Mrs. Deborah Kooi at (239)338-2550 ext. #210. If you are hearing or speech impaired, please contact the agency using the Florida Relay Servic

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Mr. Kenneth Heatherington at (239)338-2550, ext. 222

THE FULL TEXT OF THE PROPOSED RULES IS:

29I-4.001 DRI Review Process.

(1) The DRI Review Process incorporates the following Council practices and procedures in conjunction with the required guidelines, reviews, reports, recommendations, and time limitations imposed by Chapter 380, F.S. The Southwest Florida Regional Planning Council (SWFRPC) has been charged by the State with the responsibility of reviewing Developments of Regional Impact (DRI's) as defined and authorized by Chapter 380, F.S. The SWFRPC is responsible for State Region ~~IX~~ 9, encompassing the Counties of Charlotte, Collier, Glades, Hendry, Lee and Sarasota.

(2) By law, the SWFRPC has 50 days in which to review an Application for Development Approval (ADA) after receiving notice that the legislative body of the local government will hold a DRI Public Hearing. However, the local government cannot schedule a DRI Public Hearing until it has received a letter from the SWFRPC indicating that the application is sufficient for review or that the SWFRPC has received notification from the developer that the additional requested information will not be supplied.

(3) Upon receiving a DRI-ADA, the SWFRPC has 30 calendar days in which to determine the sufficiency of the information provided. In order to provide an applicant with reasonable assurance that ADA will be acceptable, all information requested must be in the ADA. If the information in an ADA is determined by the SWFRPC to be insufficient, the applicant and the local government will be notified, in writing, of any information desired. If additional information is requested, the applicant has two options:

(a) To provide a letter within five working days of the receipt of the statement, requesting additional information, stating that the additional information will be provided to the SWFRPC and the local government. The applicant may choose to supply some of the requested information and decline, in writing, to provide the balance.

(b) To notify the SWFRPC that the requested additional information will not be provided. In this case, the SWFRPC may find it necessary to recommend that the ADA be denied for lack of information.

(4) Within 30 calendar days after receipt of such additional information, the SWFRPC shall review it following procedures specified in (3)(a) and (b) above and may request only that information needed to clarify such additional information or to answer new questions raised by, or directly related to, such additional information.

(5) If an applicant does not provide the information requested by the SWFRPC within 120 days of its request, the application shall be considered withdrawn. The SWFRPC

Executive Director, at his discretion, may grant an additional 45 day extension, upon formal written request for an extension by the applicant. Any further time extension, beyond the discretionary 45 day time extension, must be formally requested by the applicant and approved by the SWFRPC board at its regular monthly meeting, prior to expiration of the discretionary 45 day extension.

Any such extension shall be based upon the complexity, availability of data and additional analysis caused by a time extension and any unnecessary hardships upon the developer.

(6) If the application is sufficient or if the developer has notified the SWFRPC that the additional requested information will not be provided, the SWFRPC, within 10 days of finding the application sufficient or receipt of notice from the applicant, will notify the local government and the applicant in writing. The local government is then required to set a DRI Public Hearing date at its next scheduled meeting. The notice of Public Hearing must be published at least 60 days in advance of the Hearing. The DRI Public Hearing date should be at least 10 days after the SWFRPC's meeting at which the DRI Assessment Report is officially adopted.

(7) The receipt of the local government notice of a DRI Public Hearing by the SWFRPC initiates the statutorily provided 50-day review period within which the Council must prepare and transmit a DRI Assessment Report to the local government. To eliminate the possibility of having to set up special Council meeting dates, the local government and the SWFRPC must coordinate the transmittal of the notice of the DRI Public Hearing so it is received by the SWFRPC no less than 45 days before the Council meeting at which the DRI Assessment Report would be officially adopted by the Council.

(8) After the DRI Public Hearing is held, the local government has 30 days to issue a Development Order. However, a time extension may be requested by the applicant. During the DRI Public Hearing, the local governments must consider the report and recommendations of the SWFRPC. The Development Order should approve, approve with conditions or deny the DRI. The Development Order should address all the regional issues raised by the SWFRPC indicating how these issues have or have not been resolved.

(9) Certified copies of the Development Orders shall be sent by the local government to the state land planning agency ~~Department of Community Affairs~~, the SWFRPC, and the applicant. Upon receipt of a copy of the Development Order to the state land planning agency ~~Department of Community Affairs~~, the SWFRPC, the owner, and the developer, a 45 day period begins during which appeals may be initiated. ~~Three~~ Four parties may appeal a Development Order: the landowner, the developer, ~~the SWFRPC~~ or the state land planning agency ~~Department of Community Affairs~~. No development permit should be issued by the local government during this 45 day period. Should an appeal take place, no development permit

should be issued by the local government until the appeal is adjudicated. An appeal is made to the Land and Water & Adjudicatory Commission ~~(Governor and Cabinet)~~. Decisions of the Commission are subject to judicial review under Chapter 120, F.S.

(10) The Council will review substantial deviation determinations made by local government on approved DRI Development Orders. The Council will assist the state land planning agency ~~Department of Veteran and Community Affairs~~ in monitoring the progress of the development and its compliance with the terms of the approved development. The Council will notify local governments if the required annual report is not received from the developer.

Specific Authority 120.53(1), 163.01, 186.505 FS. Law Implemented 120.53(1), 163.01, 186.505, 380.06, 380.07 FS. History--New 2-9-76, Amended 2-20-77, 9-26-77, 7-18-82, Formerly 29I-4.01, Amended 7-27-86, 2-19-92,\_\_\_\_\_.

29I-4.004 DRI-ADA Form.

(1) An application for development approval shall be submitted using the state land planning agency ~~Department of Community Affairs~~ official ADA forms specified within Rules ~~of the Department of Community Affairs Chapter 9J-2.010, 9J-2, F.A.C. Rule Forms, RPM BSP ADA 1, Development of Regional Impact Application for Development Approval under Section 380.06, F.S., effective 11/90, hereby incorporated by reference, shall be used~~ and may be obtained from the SWFRPC. Each question shall be fully answered. The Standard ADA form is subject to clarification to reflect specific regional concerns and to clarify the intent and response necessary to specific questions or parts of questions. Such supplemental questions shall be provided to the applicant at the preapplication meeting.

(2) Applications are required to be submitted on 8 1/2 x 11 inch paper bond. Digital files and geo-referenced data may also be required. Each question must be repeated in the application text with the answer following.

Specific Authority 120.53(1), 163.01, 186.505 FS. Law Implemented 120.53(1), 163.01, 186.505, 380.06, 380.07 FS. History--New 2-9-76 Amended 2-20-77, 7-18-82, Formerly 29I-4.04, Amended 7-27-86, 2-19-92,\_\_\_\_\_.

29I-4.006 Request for DRI Review.

The applicant must complete and deliver with the application for development approval (ADA) a "SWFRPC receipt and review fee agreement for review of developments of regional impact," ~~(eff. 1/91)~~, available from Southwest Florida Regional Planning Council).

Specific Authority 120.53(1), 163.01 FS. Law Implemented 120.53(1), 163.01, 380.06, 380.07 FS. History--New 2-9-76, Amended 2-20-77, Formerly 29I-4.06, Amended 2-19-92,\_\_\_\_\_.

## 29I-4.007 DRI Review Fee.

The DRI review fee for each DRI application, Florida Quality Development application, substantial deviation application, substantial deviation determination, supplemental plans and reviews identified in a development order requiring regional review or approval and review of each annual report are governed by the provisions of Rule 9J-2.0252, F.A.C. (DRI Review Fee Rule). ~~Please refer to this rule when determining the appropriate fee. The applicant may request a review and final determination of a fee less than \$75,000 by the SWFRPC at a regularly scheduled meeting, consistent with the provisions of Rule 9J 2.0252, F.A.C.~~

Specific Authority 120.53(1), 163.01, 186.505 FS. Law Implemented 120.53(1), 163.01(5)(h), 380.06, 380.07 FS. History--New 8-19-76, Amended 2-20-77, 7-18-82, Formerly 29I-4.07, Amended 7-27-86, 9-20-88, 2-19-92,\_\_\_\_\_.

## 29I-4.011 Areawide Development of Regional Impact.

(1) An authorized developer may submit an areawide development of regional impact to be reviewed pursuant to the procedures and standards set forth in Section 380.06, F.S. The areawide development-of-regional-impact review shall include an area wide development plan in addition to any other information required by rule pursuant to Section 380.06, F.S., and the information required in the state land planning agency Department of Community Affairs official ADA form.

(2) Prior to filing an Areawide DRI, the authorized developer shall submit a petition to the local government, the SWFRPC, and the state land planning agency Department of Community Affairs requesting authorization to submit an Areawide ADA. Such petition shall include proof that timely, actual notice has been provided by the petitioner to each person owning land within the proposed areawide development plan. This notice shall be in addition to other notice of public hearings as required by Section 380.06, F.S.

(3) Criteria used by the SWFRPC for evaluating a petition shall include, but not be limited to:

(a) Whether the developer is financially capable of processing the application for development approval through final approval pursuant to this section.

(b) Whether the defined planning area and anticipated development therein appear to be of a character, magnitude, and location that a proposed areawide development plan would be in the public interest. Any public interest determination under this criterion is preliminary and not binding on the state land planning agency Department of Community Affairs, the SWFRPC, or local government.

(4) The local government shall submit any order which approves the petition, or approves the petition with conditions, to the petitioner, to all owners of property within the defined planning area, to the SWFRPC, and to the state land planning agency Department of Community Affairs, within 30 days after the order becomes effective.

(5) The petitioner, an owner of property within the defined planning area, ~~the SWFRPC by vote at a regularly scheduled meeting, or the state land planning agency Department of Community Affairs~~ may appeal the decision of the local government to the Florida Land and Water Adjudicatory Commission by filing a notice of appeal with the Commission. The procedures established in Section 380.07, F.S., shall be followed for such an appeal.

(6) In reviewing an application for a proposed areawide development of regional impact, the SWFRPC shall evaluate the following criteria, in addition to any other criteria set forth in this rule:

(a) Whether the developer has demonstrated its legal, financial, and administrative ability to perform any commitments it has made in the application for a proposed areawide development of regional impact.

(b) Whether the developer has demonstrated that all property owners within the defined planning area consent or do not object to the proposed areawide development of regional impact.

(c) Whether the area and the anticipated development are consistent with the applicable, local, regional, and state comprehensive plans and any state land development plan.

Specific Authority 120.53, 163.01, 186.505 FS. Law Implemented 120.53, 163.01, 186.505, 380.06, 380.07 FS. History--New 7-27-86, Amended\_\_\_\_\_.

## 29I-4.012 Florida's Quality Developments Program.

(1) An authorized developer may file an application under the Florida's Quality Developments program pursuant to Section 380.061, F.S. The developer shall submit the application to the state land planning agency Department of Community Affairs, the SWFRPC, and the appropriate local government for review. The review shall be conducted under the time limits and procedures set forth in Section 120.60, F.S., except that the 90-day time limit shall cease to run when all three entities reviewing the project have notified the applicant of their decision on whether the development should be designated under this program.

(2) Criteria used by the SWFRPC for review of an application submitted under this program shall be as specified within Section 380.06, F.S.

Specific Authority 120.53, 163.01, 186.505 FS. Law Implemented 120.53, 163.01, 186.505, 380.06, 380.07 FS. History--New 7-27-86, Amended\_\_\_\_\_.

## 29I-4.013 Review of Amendments to Development Orders.

(1) The developer shall submit, simultaneously, to the local government, the SWFRPC, and the state land planning agency Department of Community Affairs, the request for approval of a proposed change to a previously approved

development of regional impact. The form for this submission shall be as prescribed by rule of the Department of Community Affairs.

(2) The SWFRPC shall review the proposed change and may, in its discretion and within 30 days of submittal by the developer of the request for approval of a change, advise the local government of its intention to participate at the public hearing before the local government.

(3) The decision of the local government to approve, with or without conditions, or to deny the proposed change that the developer asserts does not require further review, shall be subject to the appeal provisions of Section 380.07, F.S. ~~However, the SWFRPC shall not appeal the local government decision if the SWFRPC declined to participate at the local hearing.~~

(4) If a proposed change requires further development-of-regional-impact review pursuant to this section, the review shall be conducted subject to the following additional conditions:

(a) The development of regional impact review conducted by the SWFRPC shall address only those issues raised by the proposed change except as provided in paragraph (b).

(b) The SWFRPC shall consider, and recommend whether to approve, approve with conditions, or deny the proposed change as it relates to the entire development.

(c) If the SWFRPC determines that the proposed change as it related to the entire development should be approved, any new conditions in the amendment to the development order recommended by the SWFRPC shall address only those issues raised by the proposed change.

Specific Authority 120.53, 163.01, 186.505 FS. Law Implemented 120.53, 163.01, 186.505, 380.06, 380.07 FS. History—New 7-27-86, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ms. Andrea Messina, SWFRPC Chair

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Mr. Kenneth Heatherington, Executive Director

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 18, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 3, 2008

**REGIONAL PLANNING COUNCILS**

**Southwest Florida Regional Planning Council**

RULE NO.: 29I-5.003  
 RULE TITLE: Review Criteria

PURPOSE AND EFFECT: Changes in the Southwest Florida Regional Planning Council Bylaws.

SUMMARY: Revisions to the Council purpose, membership and appointment, and the conduct of meetings. Other minor changes to the current Bylaws.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 120.53, 160.02, 163.01, 186.505, 186.509, 380.06 FS.

LAW IMPLEMENTED: 119.01, 120.53, 160.02, 163.01, 163.02, 186.501, 186.502, 186.503, 186.505, 186.509, 380.06, 380.07 FS.

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

DATE AND TIME: January 6, 2009, 1:30 p.m.

PLACE: Offices of the Southwest Florida Regional Planning Council, 1926 Victoria Avenue, Fort Myers, FL

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 5 days before the workshop/meeting by contacting: Mrs. Deborah Kooi at (239)338-2550, ext. #210. 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).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Mr. Kenneth Heatherington at (239)338-2550, ext. #222

THE FULL TEXT OF THE PROPOSED RULE IS:

29I-5.003 Review Criteria.

(1) Projects of Regional Significance.

In reviewing Projects of Regional Significance, the following criteria is generally used in whole or in part:

(a) Project’s consistency with adopted Regional and local goals, objectives and policies.

(b) The need for the project and whether it duplicates an existing program.

(c) Appropriateness of the proposed funding levels and its project costs.

(d) Accuracy of data utilized; appropriateness of methodology, and the completeness of the proposal.

(e) The project’s potential for air, noise and water pollution.

(f) The potential impact on historic/archeologic sites, wildlife habitats and sensitive ecosystems.

(g) The potential for increased surface water runoff and/or erosion.

(h) The accessibility to adequate infrastructure.

(i) The location of project in relation to those it will serve.

(j) If the project is located in the coastal zone, the project's compatibility with the State's Coastal Zone Management Program.

(k) The impact of traffic generated by the project.

(l) The effects on energy resource supply and demand.

(m) The project's potential secondary impacts including impacts on neighboring communities.

(n) The potential displacement of people, housing or business.

(o) The project's relationship to flood plain.

(2) Projects of Less than Regional Significance.

In reviewing Projects of Less Than Regional Significance, consistency with adopted Regional and local goals, objectives and policies is assessed. ~~The SWFRPC's goals, objectives, and policies are contained in Chapter 29I-2, Florida Administrative Code.~~

Specific Authority 163.01, 120.53(1) FS. Law Implemented 163.01, 120.53(1) FS. History--New 9-5-78, Amended 10-15-78, Formerly 29I-5.03, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Ms. Andrea Messina, SWFRPC Chair

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Mr. Kenneth Heatherington, Executive Director

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 18, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 3, 2008

**REGIONAL PLANNING COUNCILS**

**Southwest Florida Regional Planning Council**

RULE NO.: 29I-7.004                      RULE TITLE: Costs

PURPOSE AND EFFECT: Changes in the Southwest Florida Regional Planning Council Bylaws.

SUMMARY: Revisions to the Council purpose, membership and appointment, and the conduct of meetings. Other minor changes to the current Bylaws.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 120.53, 160.02, 163.01, 186.505, 186.509, 380.06 FS.

LAW IMPLEMENTED: 119.01, 120.53, 160.02, 163.01, 163.02, 186.501, 186.502, 186.503, 186.505, 186.509, 380.06, 380.07 FS.

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

DATE AND TIME: January 6, 2009, 1:30 p.m.

PLACE: Offices of the Southwest Florida Regional Planning Council, 1926 Victoria Avenue, Fort Myers, FL

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 5 days before the workshop/meeting by contacting: Mrs. Deborah Kooi at (239)338-2550, ext. 210. 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).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Mr. Kenneth Heatherington at (239)338-2550, ext. 222

THE FULL TEXT OF THE PROPOSED RULE IS:

29I-7.004 Costs.

(1) There shall be no charge for processing a RDRP initiation request and facilitation of the initial settlement meeting. The SWFRPC shall be compensated for situation assessments, facilitation of additional settlement meetings, mediation, technical assistance, and other staff services at its standard rate or as negotiated by the parties ~~a rate of \$60 per hour plus any additional out-of-pocket expenses~~. Outside professional neutrals shall be compensated at their standard rate or as negotiated by the parties.

(2) The costs of administration, settlement meetings, mediation, or advisory decision-making shall be split equally between the parties or as otherwise agreed. The agreed upon cost allocation shall be documented in a written fee agreement.

(3) Jurisdictions formally adopting this process shall establish budgeting procedures for paying the cost of participation in this process.

Specific Authority 186.509 FS. Law Implemented 186.509 FS. History--New 4-12-94, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Ms. Andrea Messina, SWFRPC Chair

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Mr. Kenneth Heatherington, Executive Director

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 18, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 3, 2008

**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 ENVIRONMENTAL PROTECTION**

RULE NO.: RULE TITLE:  
62-285.421 Clean Diesel Rebate Program

**PURPOSE AND EFFECT:** The purpose and effect of the proposed new Rule 62-285.421, F.A.C., Clean Diesel Rebate Program, is to establish a process by which the department will distribute rebate funds, as available, to owners of qualifying heavy-duty diesel trucks who have purchased an auxiliary power unit in the year 2009 or later. A copy of the proposed form for applying for the rebate is available on the department's website at <http://www.dep.state.fl.us/Air/rules/regulatory.htm>.

**SUMMARY:** The proposed rule establishes a rebate funding process for idle-reduction equipment on heavy-duty diesel trucks.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS:** The department has prepared a statement of estimated regulatory cost, a copy of which is available on the above website. It estimates that 166 rebates of \$1,500.00 each will be available under the proposed rule.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

**SPECIFIC AUTHORITY:** 403.061 FS.

**LAW IMPLEMENTED:** 403.031, 403.061 FS.

**IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):**

**DATE AND TIME:** January 14, 2009, 10:00 a.m.

**PLACE:** Florida Department of Environmental Protection, Division of Air Resource Management, 111 South Magnolia Drive, Suite 23, Director's Conference Room, Tallahassee, Florida

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 48 hours before the workshop/meeting by contacting: Ms. Lynn Scarce at (850)921-9551. 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).

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS:** Ms. Kelly Stevens at (850)921-9550

**THE FULL TEXT OF THE PROPOSED RULE IS:**

62-285.421 Clean Diesel Rebate Program.

(1) Rebates Available. The Department of Environmental Protection (Department) makes available Clean Diesel Rebates in an amount equal to \$1,500 per qualifying vehicle for eligible applicants that equip their vehicles with auxiliary power units (APUs). Funding for the Clean Diesel Rebate program is limited and will be awarded on a first-come, first-served basis starting March 15, 2009, and continuing while rebate funds are still available. If more eligible applications than remaining funds can cover are postmarked on the same day, rebates will be awarded to such applicants, as funds allow, on the basis of earliest APU installation date. Availability of rebate funds may be checked online at <http://www.dep.state.fl.us/air/>.

(2) Eligibility.

(a) The eligible applicant for a Clean Diesel Rebate must be an individual or corporate owner of a qualifying vehicle.

(b) The APU must be purchased and professionally installed on the qualifying vehicle in 2009 or later.

(c) The total invoice price of the APU and installation less taxes must be greater than or equal to \$1,500.

(d) The Department shall not award multiple rebates for a single qualifying vehicle or rebates for more than three separate qualifying vehicles to any one applicant.

(e) For the purposes of this rule:

1. A qualifying vehicle is a 2006 or older Florida-registered Class 8 on-road commercial diesel vehicle equipped with a sleeper berth and a 2006 or older vehicle engine.

2. A Class 8 vehicle means a vehicle with a manufacturer's gross vehicle weight rating greater than 33,001 pounds.

3. An auxiliary power unit (APU) means:

a. A manufactured device that contains an engine certified under 40 CFR Part 89, as adopted and incorporated by reference at Rule 62-204.800, F.A.C., designed to eliminate the need for the vehicle's main drive engine to supply cooling, heating and electrical power to the Class 8 diesel truck upon which it is installed; or

b. A manufactured device that contains a battery powered system designed to eliminate the need for the vehicle's main drive engine to supply cooling, heating and electrical power to the Class 8 diesel truck upon which it is installed.

(3) Application.

(a) The applicant for a Clean Diesel Rebate must submit a completed Clean Diesel Rebate Application form (DEP Form 62-285.421(1), effective March 15, 2009, hereby adopted and incorporated by reference) to the Department after purchase and professional installation of the APU. The form is available from the Department of Environmental Protection, Division of Air Resource Management, 2600 Blair Stone Road, MS #5510, Tallahassee, FL 32399-2400, and on the internet at <http://www.dep.state.fl.us/air/>.



(b) The applicant must also submit a photocopy of the Florida vehicle registration; a photocopy of the signed original APU purchase invoice showing installation date, equipment and labor cost, and payment received; and a photograph of the diesel vehicle and installed APU. Failure to provide all required information and supporting documentation, or submission of false or incorrect information, will result in a delay or denial of the rebate.

(c) The signed and dated original application form and the required supporting documentation must be mailed on or after March 15, 2009 to:

Department of Environmental Protection  
Division of Air Resource Management  
2600 Blair Stone Road, MS #5510  
Tallahassee, FL 32399-2400

ATTN: Clean Diesel Rebate Program

PROPOSED EFFECTIVE DATE MARCH 15, 2009.

Specific Authority 403.061 FS. Law Implemented 403.031, 403.061 FS. History—New 3-15-09.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Mr. Joseph Kahn, Director, Division of Air Resource Management

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Mr. Michael W. Sole, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 1, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 19, 2008

**DEPARTMENT OF HEALTH**

**Board of Medicine**

RULE NO.: 64B8-8.001  
RULE TITLE: Disciplinary Guidelines

PURPOSE AND EFFECT: The proposed rule amendments are intended to clarify various penalties for specific violations.

SUMMARY: The proposed rule amendments address violations which are appropriate for continuing medical education and community service with regard to penalties. The rule also clarifies language with regard to probation following periods of suspension.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: A Statement of Estimated Regulatory Cost has been prepared and is available by contacting: Larry McPherson, Jr., Executive Director, at the address listed below.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 456.0375(4)(c), 456.50(2), 456.0575, 456.079, 458.309, 458.331(5) FS.

LAW IMPLEMENTED: 456.0375(4)(c), 456.50(2), 456.0575, 456.072, 456.079, 458.331(5) FS.

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

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

THE FULL TEXT OF THE PROPOSED RULE IS:

64B8-8.001 Disciplinary Guidelines.

(1) Purpose. Pursuant to Section 456.079, F.S., the Board provides within this rule disciplinary guidelines which shall be imposed upon applicants or licensees whom it regulates under Chapter 458, F.S. The purpose of this rule is to notify applicants and licensees of the ranges of penalties which will routinely be imposed unless the Board finds it necessary to deviate from the guidelines for the stated reasons given within this rule. The ranges of penalties provided below are based upon a single count violation of each provision listed; multiple counts of the violated provisions or a combination of the violations may result in a higher penalty than that for a single, isolated violation. Each range includes the lowest and highest penalty and all penalties falling between, including appropriate continuing medical education (CME). The purposes of the imposition of discipline are to punish the applicants or licensees for violations and to deter them from future violations; to offer opportunities for rehabilitation, when appropriate; and to deter other applicants or licensees from violations.

(2) Violations and Range of Penalties. In imposing discipline upon applicants and licensees, in proceedings pursuant to Sections 120.57(1) and (2), F.S., the Board shall act in accordance with the following disciplinary guidelines and shall impose a penalty within the range corresponding to the violations set forth below. The verbal identification of offenses are descriptive only; the full language of each statutory provision cited must be consulted in order to determine the conduct included.

RECOMMENDED RANGE OF PENALTY

VIOLATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
(a) Attempting to obtain, obtaining or renewing a license or certificate by bribery, fraud or through an error of the Department or the Board.			
(458.331(1)(a), F.S.)			
(456.072(1)(h), F.S.)			
1. No change.			
2. Attempting to renew a license by bribery or fraud.	2. <del>Revocation</del> <del>From revocation</del> of the license <del>and with ability to reapply upon</del> payment of a <del>\$5,000</del> <del>\$10,000.00</del> fine to <del>permanent</del> revocation and a \$10,000 fine.	2. Revocation and a \$10,000.00 fine.	
3. Obtaining or renewing a license by bribery or fraud.	3. <del>Revocation</del> <del>From revocation</del> of the license <del>and with ability to reapply upon</del> payment of a <del>\$5,000</del> <del>\$10,000.00</del> fine to <del>permanent</del> revocation and a \$10,000 fine.	3. Revocation and a \$10,000.00 fine.	
4. No change.			
(b) Action taken against license by another jurisdiction.	(b) From imposition of discipline comparable to the discipline which would have been imposed if the substantive violation had occurred in Florida to suspension or denial of the license until the license is unencumbered in the jurisdiction in which disciplinary action was originally taken, and an administrative fine ranging from \$1,000.00 to \$5,000.00.	(b) From imposition of discipline comparable to the discipline which would have been imposed if the substantive violation had occurred in Florida to revocation or denial of the license, and an administrative fine ranging from \$5,000.00 to \$10,000.00.	
(458.331(1)(b), F.S.)			
(456.072(1)(f), F.S.)			
1. Action taken against license by another jurisdiction relating to healthcare fraud in dollar amounts in excess of \$5,000.00.	1. Revocation or in the case of application for licensure, denial of licensure, and a fine of \$10,000.00.		
2. Action taken against license by another jurisdiction relating to healthcare fraud in dollar amounts of \$5,000.00	2. A \$10,000.00 administrative fine, <u>100 hours of community service</u> , and suspension of the license, followed by a period of probation.	2. Revocation or denial and a fine of \$10,000.00.	
or less.			
(c) Guilty of crime directly relating to practice or ability to practice.	(c) From probation to revocation or denial of the license, <del>and</del> an administrative fine ranging from \$1,000.00 to \$10,000.00, <u>and 50 to 100 hours of community service</u> .	(c) From suspension to revocation or denial of the license, <del>and</del> an administrative fine ranging from \$5,000.00 to \$10,000.00, <u>and from 100 to 200 hours of community service</u> .	
(458.331(1)(c), F.S.)			
(456.072(1)(c), F.S.)			
1. No change.			
2. Involving a crime related to healthcare fraud in dollar amounts of \$5,000.00 or less.	2. A \$10,000.00 administrative fine, compliance with any criminal probation, a reprimand, <u>from 100 to 200 hours of community service</u> and suspension of the license, followed by a period of probation.	2. Revocation and a fine of \$10,000.00.	

(d) False, deceptive, or misleading advertising.

(458.331(1)(d), F.S.)

1. Negligent false, deceptive, or misleading advertising.

(458.331(1)(d), F.S.)

2. Fraudulent false, deceptive or misleading advertising

(e) Failure to report another licensee in violation.

(458.331(1)(e), F.S.)

(456.072(1)(i), F.S.)

(f) Aiding unlicensed practice.

(458.331(1)(f), F.S.)

(456.072(1)(j), F.S.)

(g) Failure to perform legal obligation.

(458.331(1)(g), F.S.)

(456.072(1)(k), F.S.)

1. Failing to register a laser device.

(456.072(1)(d), F.S.)

2. Continuing medical education (CME) violations.

(456.072(1)(e), F.S.)

(456.072(1)(s), F.S.)

1. From a letter of concern to one (1) year suspension or denial, to be followed by a period of probation, 50 to 100 hours of community service and an administrative fine from \$1,000.00 to \$5,000.00.

2. From reprimand to up to one (1) year suspension or denial, to be followed by a period of probation, 50 to 100 hours of community service and an administrative fine of \$10,000.00.

(e) From a letter of concern to probation or denial, 50 to 100 hours of community service and an administrative fine from \$1,000.00 to \$5,000.00.

(f) From probation to revocation or denial, 50 to 100 hours of community service and an administrative fine from \$1,000.00 to \$10,000.00.

(g) For any offense not specifically listed herein, based upon the severity of the offense and the potential for patient harm, from a letter of concern to revocation or denial, 100 hours of community service and an administrative fine from \$1,000.00 to \$10,000.00, unless otherwise provided by law.

1. If the device is an approved device, from an administrative fine of \$1,000.00 to \$5,000.00; if the device is not approved, from an administrative fine from \$5,000.00 to a suspension or denial, 50 to 100 hours of community service and an administrative fine of \$10,000.00.

2. Within twelve months of the date of the filing of the final order, the licensee must submit certified documentation of completion of all CME requirements for the period for which the citation was issued; prior to renewing the license for the next biennium, Respondent must document compliance with the CME requirements for the relevant period; AND:

1. From reprimand to up to one (1) year suspension or denial, to be followed by a period of probation, from 100 to 200 hours of community service and an administrative fine from \$5,000.00 to \$10,000.00.

2. From suspension, to be followed by a period of probation, up to revocation, from 100 to 200 hours of community service and a fine of \$10,000.00.

(e) From probation to suspension or denial, from 100 to 200 hours of community service and an administrative fine from \$5,000.00 to \$10,000.00.

(f) From suspension, to be followed by a period of probation, to revocation or denial, from 100 to 200 hours of community service and an administrative fine from \$5,000.00 to \$10,000.00.

(g) For any offense not specifically listed herein, based upon the severity of the offense and the potential for patient harm, from a reprimand to revocation or denial, from 100 to 200 hours of community service and an administrative fine from \$5,000.00 to \$10,000.00, unless otherwise provided by law.

1. If the device is an approved device, from a reprimand to probation or restriction of practice, from 100 to 200 hours of community service and an administrative fine of \$5,000.00 to \$10,000.00; if the device is not approved, from suspension to revocation and an administrative fine of \$10,000.00.

2. Within twelve months of the date of the filing of the final order, the licensee must submit certified documentation of completion of all CME requirements for the period for which the citation was issued; prior to renewing the license for the next biennium, Respondent must document compliance with the CME requirements for the relevant period; AND:

2. Continuing medical education (CME) violations.

(456.072(1)(e), F.S.)

(456.072(1)(s), F.S.)

<p>a. Failure to document required HIV/ AIDS and related infections of TB or domestic violence or medical errors CME, or substituted end-of-life care CME.</p>	<p>a. An administrative fine of \$500.00 to \$1,000.00.</p>	<p>a. A reprimand and an administrative fine of \$1,000.00 to \$5,000.00.</p>	<p>a. Failure to document required HIV/ AIDS and related infections of TB or domestic violence or medical errors CME, or substituted end-of-life care CME.</p>
<p>b. Failure to document required HIV/AIDS and related infections of TB and failure to document domestic violence and failure to document medical errors CME.</p>	<p>b. An administrative fine of \$1,000.00 to \$2,000.00.</p>	<p>b. A reprimand and an administrative fine of \$5,000.00 to \$10,000.00.</p>	<p>b. Failure to document required HIV/AIDS and related infections of TB and failure to document domestic violence and failure to document medical errors CME.</p>
<p>c. Failure to document some, but not all CME hours.</p>	<p>c. An administrative fine of \$100.00 per hour not documented.</p>	<p>c. A reprimand and an administrative fine of \$500.00 per hour not documented.</p>	<p>c. Failure to document some, but not all CME hours.</p>
<p>d. Failure to document any CME hours.</p>	<p>d. A reprimand and an administrative fine from \$5,000.00 to \$10,000.00</p>	<p>d. Suspension until documentation of completion, a reprimand and an administrative fine of \$10,000.00.</p>	<p>d. Failure to document any CME hours.</p>
<p>2. Continuing medical education (CME) violations. (456.072(1)(e), F.S.) (456.072(1)(s), F.S.)</p>	<p>2. Within twelve months of the date of the filing of the final order, the licensee must submit certified documentation of completion of all CME requirements for the period for which the citation was issued; prior to renewing the license for the next biennium, Respondent must document compliance with the CME requirements for the relevant period; AND:</p>	<p>2. Within twelve months of the date of the filing of the final order, the licensee must submit certified documentation of completion of all CME requirements for the period for which the citation was issued; prior to renewing the license for the next biennium, Respondent must document compliance with the CME requirements for the relevant period; AND:</p>	<p>2. Continuing medical education (CME) violations. (456.072(1)(e), F.S.) (456.072(1)(s), F.S.)</p>
<p><del>3. Failure to comply with the requirements of Section 381.026 and 381.0261, F.S., to provide patients with information about patient rights. (456.072(1)(t), F.S.)</del></p>	<p><del>3. Corrective action for nonwillful violations.</del></p>	<p><del>3. Administrative fine of up to \$100.00 for the second and subsequent nonwillful violations; and an administrative fine from \$250.00 to \$500.00 for the second and subsequent willful violations with each intentional and willful violation a separate violation subject to said fine.</del></p>	

~~3.4.~~ Failing to comply with the requirements for profiling and credentialing.

(456.039, F.S.) (456.072(1)(v), F.S.); (458.319, F.S.);

a. No change.

b. Involving violations of any provision of Chapter 456, F.S., for making misleading, untrue, deceptive or fraudulent representations on a profile, credentialing, or initial or renewal licensure application.

(I) Negligently making misleading or untrue representations on a profile, credentialing, or initial licensure or renewal application.

(II) Fraudulently making misleading, untrue, deceptive or fraudulent representations on a profile, credentialing, or initial licensure or renewal application.

5. Failing to report to the board within 30 days after the licensee has been convicted of a crime in any jurisdiction. Convictions prior to the enactment of this section not reported in writing to the board, on or before October 1, 1999.

(456.072(1)(w), F.S.)

6. Failing to comply with obligations regarding ownership and control of medical records, patient records; report or copies of records to be furnished.

(456.054, F.S.)

7. Failing to maintain confidentiality of communication between a patient and a psychiatrist.

(456.059, F.S.)

8. Failing to report final disposition of professional liability claims and actions.

(456.049, F.S.)

(I) From a \$1,000.00 fine and 3 hours CME on ethics to suspension, to be followed by a period of probation, and a reprimand, 50 to 100 hours of community service and a \$5,000.00 administrative fine.

(II) Referral to State Attorney for prosecution pursuant to Sections 456.067 and 456.066, F.S., and from suspension, to be followed by a period of probation, and 100 to 200 hours of community service, and a reprimand and a \$10,000.00 fine to revocation or denial and a \$10,000 fine.

5. From an administrative fine of \$2,000.00 to a fine of \$5,000.00, 50 to 100 hours of community service and a reprimand or denial ~~without the ability to reapply~~.

6. From a letter of concern to two (2) years suspension followed by probation or denial, 50 to 100 hours of community service and an administrative fine from \$1,000.00 to \$5,000.00.

7. From a \$5,000.00 administrative fine, 50 to 100 hours of community service and a reprimand to suspension, to be followed by a period of probation, and a \$10,000.00 administrative fine or denial.

8. If the licensee complies within six (6) months of the violation then an administrative fine of up to \$2,000.00; if compliance after six (6) months, an administrative fine of up to \$5,000.00 and a reprimand.

(I) From suspension, to be followed by a period of probation, and a reprimand, from 100 to 200 hours of community service, and a \$10,000.00 fine to revocation or denial.

(II) Referral to State Attorney for prosecution and revocation or denial and a \$10,000.00 fine.

5. From suspension, to be followed by a period of probation, 100 to 200 hours of community service, to revocation ~~without the ability to reapply~~ and an administrative fine from \$5,000.00 to \$10,000.00.

6. From a reprimand to two (2) years suspension followed by probation or denial, 100 to 200 hours of community service and an administrative fine from \$5,000.00 to \$10,000.00.

7. From suspension, to be followed by a period of probation, and 100 to 200 hours of community service to revocation or denial.

8. If the licensee complies within six (6) months of the violation, then a reprimand and an administrative fine from \$5,000.00 to \$10,000.00; if compliance after six (6) months, from suspension, to be followed by a period of probation, to revocation and an administrative fine of \$10,000.00.

9. Failing to disclose financial interest to patient.  
(456.052, F.S.)

(h) Filing a false report or failing to file a report as required.  
(458.331(1)(h), F.S.)

(456.072(1)(l), F.S.)

1. Negligently filing a false report or failing to file a report as required.

2. Fraudulently filing a false report or failing to file a report as required.

3. Involving healthcare fraud in dollar amounts in excess of \$5,000.00.

4. Involving healthcare fraud in dollar amounts of \$5,000.00 or less.

(i) Kickbacks or split fee arrangements.  
(458.331(1)(i), F.S.)  
(456.054, F.S.)

(j) Sexual misconduct  
(458.331(1)(j), F.S.)  
(458.329, F.S.)  
(456.072(1)(u), F.S.)

(k) Deceptive, untrue, or fraudulent representations in the practice of medicine.  
(458.331(1)(k), F.S.)  
(456.072(1)(a), (m), F.S.)

1. Deceptive, untrue, or fraudulent representations in the practice of medicine involving healthcare fraud in dollar amounts in excess of \$5,000.00.

9. A refund of fees paid by or on behalf of the patient and from an administrative fine of \$1,000.00, 50 hours of community service to a reprimand, 100 hours of community service and an administrative fine of \$5,000.00.

1. From a letter of concern or denial to one (1) year probation, and an administrative fine from \$1,000.00 to \$5,000.00.

2. From one (1) year probation to revocation or denial and a \$10,000.00 fine.

3. Revocation or in the case of application for licensure, denial of licensure, and a \$10,000.00 fine.

4. A \$10,000.00 administrative fine, 100 to 200 hours of community service, suspension of the license, followed by a period of probation.

(i) A refund of fees paid by or on behalf of the patient, 50 to 100 hours of community service and from six (6) months suspension, to be followed by a period of probation, to revocation or denial and an administrative fine from \$1,000.00 to \$10,000.00.

(j) From one (1) year suspension to be followed by a period of probation and a reprimand, 100 to 200 hours of community service, and an administrative fine of \$5,000.00 to revocation or denial and an administrative fine of \$10,000.00.

(k) From probation, and 50 to 100 hours of community service; to revocation or ~~and~~ denial, and an administrative fine from \$1,000.00 to \$10,000.00.

1. Revocation or in the case of application for licensure, denial of licensure.

9. A refund of fees paid by or on behalf of the patient and from restriction of practice, 100 hours of community service and an administrative fine of \$5,000.00 to a reprimand, 200 hours of community service and an administrative fine of \$10,000.00.

1. From one (1) year probation to revocation or denial and an administrative fine from \$5,000.00 to \$10,000.00.

2. From suspension, to be followed by a period of probation, to revocation and a \$10,000.00 fine.

4. Revocation and a \$10,000.00 fine.

(i) A refund of fees paid by or on behalf of the patient, 100 to 200 hours of community service, and from a two (2) year suspension, to be followed by a period of probation, to revocation or denial and an administrative fine from \$5,000.00 to \$10,000.00.

(j) Revocation.

(k) From suspension, to be followed by a period of probation, 100 to 200 hours of community service, to revocation ~~or and~~ denial and an administrative fine from \$5,000.00 to \$10,000.00.

1. Revocation or denial ~~without the ability to reapply~~ and payment of a \$10,000.00 fine.

2. Deceptive, untrue, or fraudulent representations in the practice of medicine involving healthcare fraud in dollar amounts of \$5,000.00 or less.

(l) Improper solicitation of patients. (458.331(1)(l), F.S.)

(m) Failure to keep appropriate written medical records. (458.331(1)(m), F.S.)

1. Failure to keep appropriate written medical records involving healthcare fraud in dollar amounts in excess of \$5,000.00.

2. Failure to keep appropriate written medical records involving healthcare fraud in dollar amounts of \$5,000.00 or less.

(n) Exercising influence on patient for financial gain.

(458.331(1)(n), F.S.)

(456.072(1)(n), F.S.)

(o) Improper advertising of pharmacy.

(458.331(1)(o), F.S.)

(p) Performing professional services not authorized by patient.

(458.331(1)(p), F.S.)

(q) Inappropriate or excessive prescribing.

(458.331(1)(q), F.S.)

(r) Prescribing or dispensing of a scheduled drug by the physician to himself.

(458.331(1)(r), F.S.)

2. A \$10,000.00 administrative fine, suspension of the license, followed by a period of probation, 100 to 200 hours of community service.

(l) From one (1) year suspension, to be followed by a period of probation, 50 to 100 hours of community service, to revocation or denial and an administrative fine from \$1,000.00 to \$10,000.00.

(m) From a reprimand to denial or two (2) years suspension followed by probation, 50 to 100 hours of community service, and an administrative fine from \$1,000.00 to \$10,000.00.

1. Revocation or in the case of application for licensure, denial of licensure.

2. A \$10,000.00 administrative fine, suspension of the license, followed by a period of probation, 100 to 200 hours of community service.

(n) Payment of fees paid by or on behalf of the patient and from probation to denial or two (2) years suspension, to be followed by a period of probation, 50 to 100 hours of community service, and an administrative fine from \$5,000.00 to \$10,000.00.

(o) From a reprimand and \$250.00 fine or denial to one year probation, to be followed by a period of probation, 50 to 100 hours of community service, and an administrative fine from \$250.00 to \$5,000.00.

(p) From a reprimand or denial to two (2) years suspension, to be followed by a period of probation, 50 to 100 hours of community service, and an administrative fine from \$1,000.00 to \$10,000.00.

(q) From one (1) year probation to revocation or denial and 50 to 100 hours of community service; and an administrative fine from \$1,000.00 to 10,000.00.

(r) From one (1) year probation, 50 to 100 hours of community service, to revocation or denial and an administrative fine from \$1,000.00 to \$5,000.00, and a mental and physical examination.

2. Revocation.

(l) From one (1) year suspension, to be followed by a period of probation, 100 to 200 hours of community service, to revocation or denial and an administrative fine from \$5,000.00 to \$10,000.00.

(m) From probation to suspension followed by probation or denial, 100 to 200 hours of community service, and an administrative fine from \$5,000.00 to \$10,000.00.

1. Revocation or denial ~~without the ability to re-apply~~ and payment of a \$10,000.00 fine.

2. Revocation or denial.

(n) Payment of fees paid by or on behalf of the patient and from suspension, 100 to 200 hours of community service, to revocation or denial and an administrative fine of \$10,000.00.

(o) From probation, 100 to 200 hours of community service to suspension, to be followed by a period of probation, or denial and an administrative fine of \$5,000.00 to \$10,000.00.

(p) From probation, 100 to 200 hours of community service to revocation or denial and an administrative fine of \$5,000.00 to \$10,000.00.

(q) From suspension, to be followed by a period of probation, and 100 to 200 hours of community service to revocation or denial and an administrative fine from \$5,000.00 to \$10,000.00.

(r) From suspension, to be followed by a period of probation, 100 to 200 hours of community service, to revocation or denial and an administrative fine from \$5,000.00 to \$10,000.00, and a mental and physical examination.

(s) Inability to practice medicine with skill and safety.  
(458.331(1)(s), F.S.)

(s) From probation, 50 to 100 hours of community service, to denial or indefinite suspension until licensee is able to demonstrate ability to practice with reasonable skill and safety followed by probation, and an administrative fine from \$1,000.00 to \$5,000.00.

(s) From indefinite suspension, followed by probation, 100 to 200 hours of community service, to suspension for a minimum of five (5) years or until licensee is able to demonstrate ability

to practice with reasonable skill and safety followed by probation, and an administrative fine from \$5,000.00 to \$10,000.00.

(t) Failure to practice medicine in accordance with appropriate level of care, skill and treatment recognized in general law related to the practice of medicine.  
(456.50(1)(g), F.S.)

(t) From one (1) year probation, 50 to 100 hours of community service, to revocation or denial and an administrative fine from \$1,000.00 to \$10,000.00.

(t) From two (2) years probation, 100 to 200 hours of community service, to revocation or denial and an administrative fine from \$5,000.00 to \$10,000.00.

(458.331(1)(t), F.S.)  
1. Gross Malpractice.

1. From one (1) year suspension followed by three (3) years probation, 50 to 100 hours of community service; to revocation or denial and an administrative fine from \$1,000.00 to \$10,000.00 and licensee shall be subject to reexamination.

1. From suspension, to be followed by a period of probation, 100 to 200 hours of community service, or denial to revocation or denial and an administrative fine of \$5,000.00 to \$10,000.00, and an evaluation or reexamination by a physician evaluation program approved by the Board.

2. No change.

(u) Performing of experimental treatment without informed consent.  
(458.331(1)(u), F.S.)

(u) From one (1) year suspension, to be followed by a period of probation; 100 to 200 hours of community service; to revocation or denial and an administrative fine from \$1,000.00 to \$10,000.00.

(u) Revocation or denial.

(v) Practicing beyond scope permitted.  
(458.331(1)(v), F.S.)  
(456.072(1)(o), F.S.)

(v) From two (2) years suspension; 50 to 100 hours of community service; to revocation or denial and an administrative fine from \$1,000.00 to \$10,000.00.

(v) From suspension; 100 to 200 hours of community service; to revocation or denial and an administrative fine from \$5,000.00 to \$10,000.00.

(w) Delegation of professional responsibilities to unqualified person. (458.331(1)(w), F.S.)  
(456.072(1)(p), F.S.)

(w) From one (1) year probation, 50 to 100 hours of community service; to denial or five (5) years suspension followed by probation, and an administrative fine from \$1,000.00 to \$10,000.00.

(w) From suspension, to be followed by a period of probation; 100 to 200 hours of community service; to revocation or denial and an administrative fine from \$5,000.00 to \$10,000.00.

(x)1. Violation of law, rule, or failure to comply with subpoena.  
(458.331(1)(nn), F.S.)  
(456.072(1)(b), (q), F.S.)

(x)1. For any offense not specifically listed herein, based upon the severity of the offense and the potential for patient harm, from a reprimand, 50 to 200 hours of community service, to revocation or denial and an administrative fine from \$1,000.00 to \$10,000.00.

(x)1. From probation, 100 to 200 hours of community service; to revocation or denial and an administrative fine from \$5,000.00 to \$10,000.00.



2. Violation of an order of the Board.  
458.331(1)(x), F.S.

3. Failure to comply with any provision of Rule 64B8-8.019, F.A.C.

(y) Conspiring to restrict another from lawfully advertising services.  
(458.331(1)(y), F.S.)

(z) Aiding an unlawful abortion.  
(458.331(1)(z), F.S.)

(aa) Presigning prescription forms.  
(458.331(1)(aa), F.S.)

(bb) Prescribing a Schedule II substance for Office use.  
(458.331(1)(bb), F.S.)

(cc) Improper prescribing of Schedule II amphetamine or sympathomimetic amine drug.  
(458.331(1)(cc), F.S.)

(dd) Failure to adequately supervise assisting personnel.  
(458.331(1)(dd), F.S.)

(ee) Improper use of substances for muscle building or enhancement of athletic performance.  
(458.331(1)(ee), F.S.)

2. Reprimand, 50 to 100 hours of community service; and an administrative fine from \$5,000.00 to \$10,000.00, to revocation or denial based upon the severity of the offense and the potential for patient harm.

3. From a \$1,000.00 fine, letter of concern, 50 hours of community service; demonstration of compliance with the rule or denial to a \$5,000.00 fine, a reprimand, completion of a laws and rules course, a term of probation, 100 hours of community service; demonstration of compliance with the rule or denial.

(y) A reprimand or denial; 50 to 100 hours of community service; and an administrative fine ranging from \$1,000.00 to \$5,000.00.

(z) From one (1) year suspension, to be followed by a period of probation, 50 to 100 hours of community service; to revocation or denial and an administrative fine from \$1,000.00 to \$10,000.00.

(aa) From a reprimand to two (2) years probation, 50 to 100 hours of community service; and an administrative fine from \$1,000.00 to \$5,000.00.

(bb) From a reprimand to probation with CME in pharmacology, 50 to 100 hours of community service; and an administrative fine from \$1,000.00 to \$5,000.00.

(cc) From probation, 50 hours of community service, to denial or two (2) years suspension followed by probation, 100 hours of community service, and an administrative fine from \$1,000.00 to \$10,000.00.

(dd) From probation, 50 hours of community service, to denial or two (2) years suspension followed by probation, 100 hours of community service, and an administrative fine from \$1,000.00 to \$5,000.00.

(ee) From one (1) year suspension, to be followed by a period of probation, 50 to 100 hours of community service, to revocation or denial and an administrative fine from \$1,000.00 to \$5,000.00.

2. From suspension, to be followed by a period of probation, 100 to 200 hours of community service; and a \$10,000.00 fine or denial to revocation.

3. From a \$7,500.00 fine, a reprimand, a term of probation, completion of a laws and rules course, 100 to 200 hours of community service; demonstration of compliance with the rule or denial to a \$10,000.00 fine and revocation.

(y) Probation or denial; 100 to 200 hours of community service; and an administrative fine from \$5,000.00 to \$10,000.00.

(z) From suspension, to be followed by a period of probation, 100 to 200 hours of community service; to revocation or denial and an administrative fine from \$5,000.00 to \$10,000.00.

(aa) From suspension, to be followed by a period of probation, 100 to 200 hours of community service; to revocation or denial and an administrative fine from \$5,000.00 to \$10,000.00.

(bb) From probation to suspension, to be followed by a period of probation, or denial, 100 to 200 hours of community service; and an administrative fine from \$5,000.00 to \$10,000.00.

(cc) From suspension, to be followed by a period of probation, 100 to 200 hours of community service, to revocation or denial of the license and an administrative fine ranging from \$5,000.00 to \$10,000.00.

(dd) From one (1) year suspension, to be followed by a period of probation, 100 to 200 hours of community service, to revocation or denial and an administrative fine from \$5,000.00 to \$10,000.00.

(ee) From suspension, to be followed by a period of probation, 100 to 200 hours of community service, to revocation or denial of the license and an administrative fine ranging from \$5,000.00 to \$10,000.00.

(ff) Use of amygdalin (laetrile).  
(458.331(1)(ff), F.S.)

(ff) From one (1) year suspension, to be followed by a period of probation, 50 to 100 hours of community service, to revocation or denial and an administrative fine from \$1,000.00 to \$10,000.00.

(ff) From suspension, to be followed by a period of probation, 100 to 200 hours of community service, to revocation or denial of the license and an administrative fine ranging from \$5,000.00 to \$10,000.00.

(gg) Misrepresenting or concealing a material fact.  
(458.331(1)(gg), F.S.)

(gg) From suspension, to be followed by a period of probation, 50 to 100 hours of community service, to denial or revocation of license and an administrative fine from \$1,000.00 to \$5,000.00 with ability to reapply upon payment of up to a \$10,000.00 fine to denial of license without ability to reapply.

(gg) From suspension, to be followed by a period of probation, 100 to 200 hours of community service, to revocation or denial and an administrative fine from \$5,000.00 to \$10,000.00.

(hh) Improperly interfering with an investigation or a disciplinary proceeding (458.331(1)(hh), F.S.)

(hh) From suspension, to be followed by a period of probation, 50 to 100 hours of community service, to denial or revocation of license and with ability to reapply upon payment of a \$5,000.00 \$1,000.00 fine to denial of license without ability to reapply.

(hh) From suspension, to be followed by a period of probation, 100 to 200 hours of community service, to revocation or denial and an administrative fine from \$5,000.00 to \$10,000.00.

(ii) Failing to report any licensee in violation who practices in a hospital or an H.M.O.; or failing to report any person in violation of Chapter 456, F.S.  
(458.331(1)(ii), F.S.)

(ii) From a reprimand to probation, 50 to 100 hours of community service, or denial and an administrative fine from \$1,000.00 to \$5,000.00.

(ii) From probation, 100 to 200 hours of community service, to suspension, to be followed by a period of probation, or denial, and an administrative fine from \$5,000.00 to \$10,000.00.

(456.072(1)(i), F.S.)  
(jj) Providing written medical opinion without reasonable investigation.  
(458.331(1)(jj), F.S.)

(jj) From suspension, to be followed by a period of probation, 50 to 100 hours of community service to denial or revocation of license and with ability to reapply upon payment of a \$1,000.00 to \$5,000.00 fine to denial of license without ability to reapply.

(jj) From suspension, to be followed by a period of probation, 100 to 200 hours of community service to revocation or denial of the license and an administrative fine ranging from \$5,000.00 to \$10,000.00.

(kk) Failure to report disciplinary action by another jurisdiction.  
(458.331(1)(kk), F.S.)

(kk) From an administrative fine of \$2,000.00 to a fine of \$5,000.00 and a reprimand, 50 to 100 hours of community service to denial or revocation of license and with ability to reapply upon payment of a \$5,000.00 \$1,000.00 fine to denial or revocation of license without ability to reapply.

(kk) From probation, 100 to 200 hours of community service, to suspension, to be followed by a period of probation, or denial, and an administrative fine from \$5,000.00 to \$10,000.00.

(ll) Improper holding oneself out as a specialist.  
(458.331(1)(ll), F.S.)

(ll) From letter of concern, 50 to 100 hours of community service, to one (1) year suspension, to be followed by a period of probation, or denial and an administrative fine from \$500.00 to \$5,000.00.

(ll) From reprimand, 100 to 200 hours of community service, to up to one (1) year suspension, to be followed by a period of probation, or denial, and an administrative fine from \$5,000.00 to \$10,000.00.

(mm) Failing to provide patients with information about patient rights and how to file a patient complaint.

(458.331(1)(mm), F.S.)

456.072(1)(t), F.S.)

(nn) Violating Chapter 458, Chapter 456, or any rules adopted pursuant thereto.

(458.331(1)(nn), F.S.)

(oo)(~~mm~~) Improper use of information about accident victims for commercial or any other solicitation of the people involved in such accidents.

(456.072(1)(x), F.S.)

(pp)(~~nn~~) Theft or reproduction of an examination.

(456.018, F.S.)

(qq)(~~oo~~) Violation of Patient Self Referral Act.

(456.053, F.S.)

(rr)(~~pp~~) Violation of medical director clinic responsibilities.

(456.0375(4)(c), F.S.)

1. Failure to file or renew registration form.

2. Failure to display registration certificate.

3. Failure to post signs identifying medical/clinical director in conspicuous location.

4. Failure to ensure that all health care practitioners employed at clinic have active, unencumbered license.

(mm) Corrective action for nonwillful violations.

(nn) From a reprimand, 50 to 200 hours of community service, to revocation or denial and an administrative fine from \$1,000.00 to \$10,000.00.

(oo)(~~mm~~) From an administrative fine of \$1,000.00 to a fine of \$5,000.00, reprimand, 50 to 100 hours of community service and probation.

(pp)(~~nn~~) Revocation or denial without ability to reapply.

(qq)(~~oo~~) In addition to any civil penalty imposed pursuant to Section 456.053, F.S., for each separate violation, from an administrative fine of \$5,000.00 to an administrative fine of \$10,000.00, and 50 to 100 hours of community service.

(rr)(~~pp~~) Based upon the severity of the offense and the potential for patient harm, from a letter of concern, 50 to 100 hours of community service, to revocation and an administrative fine from \$1,000.00 to \$10,000.00.

1. Notice of Non-Compliance if filed or renewed within 90 days. (See Rule 64B8-8.011, F.A.C.)

2. Notice of Non-Compliance. (See Rule 64B8-8.011, F.A.C.)

3. Notice of Non-Compliance. (See Rule 64B8-8.011, F.A.C.)

4. From probation, 50 to 100 hours of community service, to revocation, and an administrative fine from \$1,000.00 to \$10,000.00.

(mm) Administrative fine of up to \$100.00 for the second and subsequent nonwillful violations; and an administrative fine from \$250.00 to \$500.00 for the second and subsequent willful violations with each intentional and willful violation a separate violation subject to said fine.

(nn) From probation, 100 to 200 hours of community service; to revocation or denial and an administrative fine from \$5,000.00 to \$10,000.00.

(oo)(~~mm~~) From reprimand to up to one (1) year suspension, 100 to 200 hours of community service or denial, and an administrative fine from \$5,000.00 to \$10,000.00.

(~~nn~~) Revocation or denial without ability to reapply.

(qq)(~~oo~~) From probation, 100 to 200 hours of community service to suspension, to be followed by a period of probation, or denial, and an administrative fine from \$5,000.00 to \$10,000.00.

(rr)(~~pp~~) Restricted from serving as the medical director of any registered clinic and based upon the severity of the offense and the potential for patient harm, from a reprimand, 100 to 200 hours of community service, to revocation and an administrative fine from \$5,000.00 to \$10,000.00.

1. From a reprimand and a fine of \$500 for each day the licensee served as director while the clinic was not registered, to permanent restriction on serving as a medical director.

2. Citation or a \$2,000 fine. (See Rule 64B8-8.017, F.A.C.)

3. Citation. (See Rule 64B8-8.017, F.A.C.)

4. From suspension, to be followed by a period of probation, 100 to 200 hours of community service, to revocation, and an administrative fine from \$5,000.00 to \$10,000.00.

- |  |   |  |
|--|---|--|
| <p>5. Failure to review patient referral contracts or agreements executed by clinic.</p>   | <p>5. A refund of fees paid by or on behalf of the patient, <u>50 hours of community service</u>, and from an administrative fine of \$1,000.00 to a reprimand, <u>100 hours of community service</u>, and an administrative fine of \$5,000.00.</p>                | <p>5. A refund of fees paid by or on behalf of the patient and from restriction of practice, <u>100 hours of community service</u>, and an administrative fine of \$5,000.00 to a reprimand, <u>200 hours of community service</u>, and an administrative fine of \$10,000.00.</p> |
| <p>6. Failure to ensure that all health care practitioners employed at clinic have active appropriate certification or licensure for the level of care being provided.</p> | <p>6. From probation, <u>50 to 100 hours of community service</u>, to revocation, and an administrative fine from \$1,000.00 to \$10,000.00.</p>  | <p>6. From suspension, <u>to be followed by a period of probation, 100 to 200 hours of community service</u>, to revocation, and an administrative fine from \$5,000.00 to \$10,000.00.</p>  |
| <p>7. Failure to comply with Section 456.057, F.S., with regard to clinic records.</p>   | <p>7. From a letter of concern to two (2) years suspension followed by probation, <u>50 to 100 hours of community service</u>, and an administrative fine from \$1,000.00 to \$5,000.00.</p>  | <p>7. From a reprimand to two (2) years suspension followed by probation, <u>100 to 200 hours of community service</u>, and an administrative fine from \$5,000.00 to \$10,000.00.</p>   |
| <p>8. Failure to ensure compliance with recordkeeping requirements.</p>  | <p>8. From a letter of concern to two (2) years suspension followed by probation, <u>50 to 100 hours of community service</u>, and an administrative fine from \$1,000.00 to \$5,000.00.</p>  | <p>8. From a reprimand to two (2) years suspension followed by probation, <u>100 to 200 hours of community service</u>, and an administrative fine from \$5,000.00 to \$10,000.00.</p>   |
| <p>9. Failure to ensure compliance with office surgery requirements.</p>   | <p>9. From probation, <u>50 to 100 hours of community service</u>, to revocation, and an administrative fine from \$1,000.00 to \$10,000.00.</p>  | <p>9. From suspension, <u>to be followed by a period of probation, 100 to 200 hours of community service</u>, to revocation, and an administrative fine from \$5,000.00 to \$10,000.00.</p>  |
| <p>10. Failure to ensure compliance with adverse incident reporting requirements.</p>  | <p>10. Notice of Non-Compliance if filed within 90 days. (See Rule 64B8-8.011, F.A.C.)</p>  | <p>10. From a reprimand and a fine of \$500 for each day the licensee served as director while the clinic was not registered, to permanent restriction on serving as a medical director.</p>   |
| <p>11. Failure to conduct systematic reviews of clinic billings.</p>   | <p>11. From a reprimand to two (2) years suspension followed by probation, <u>50 to 100 hours of community service</u>, and an administrative fine from \$1,000.00 to \$10,000.00.</p>  | <p>11. From probation, <u>100 to 200 hours of community service</u>, to suspension followed by probation, and an administrative fine from \$5,000.00 to \$10,000.00.</p>   |
| <p>12. Failure to take immediate corrective action upon discovery of unlawful billing.</p>   | <p>12. A refund of fees paid by or on behalf of the patient and from six (6) months suspension, <u>to be followed by a period of probation, 50 to 100 hours of community service</u>, to revocation, and an administrative fine from \$1,000.00 to \$10,000.00.</p> | <p>12. A refund of fees paid by or on behalf of the patient and from a two (2) year suspension, <u>to be followed by a period of probation, 100 to 200 hours of community service</u>, to revocation, and an administrative fine from \$5,000.00 to \$10,000.00.</p>               |
| <p>13. Serving as medical/clinical director for more registered clinics than provided by Department rule.</p>  | <p>13. From probation, <u>50 to 100 hours of community service</u>, to two (2) years suspension followed by probation, <u>150 hours of community service</u>, and an administrative fine from \$1,000.00 to \$5,000.00.</p>   | <p>13. From one (1) year suspension, <u>to be followed by a period of probation, 200 hours of community service</u>, to revocation, and an administrative fine from \$5,000.00 to \$10,000.00.</p>   |

~~(ss)(qq)~~ Performing or attempting to perform health care services on the wrong patient, a wrong site procedure, a wrong procedure, or an unauthorized procedure or a procedure that is medically unnecessary or otherwise unrelated to the patient's diagnosis or medical condition.  
(456.072(1)(bb), F.S.)

~~(ss)(qq)~~ From a \$1,000.00 fine, a letter of concern, a minimum of five (5) hours of risk management education, and one (1) hour lecture on wrong-site surgery in the State of Florida to a \$10,000.00 fine, a letter of concern, a minimum of five (5) hours of risk management education, a ~~minimum of fifty~~ (50) to 100 hours of community service, undergo a risk management assessment, a one (1) hour lecture on wrong-site surgery, and suspension to be followed by a term of probation.

~~(ss)(qq)~~ From a \$10,000.00 fine, a reprimand, ~~a minimum of 100 fifty~~ ~~(50) to 200~~ hours of community service, undergo a risk management assessment, and probation or denial to a \$10,000.00 fine and revocation.

~~(ss)(qq)~~ From a \$10,000.00 fine, a reprimand, 200 ~~a minimum of one hundred~~ ~~(100)~~ hours of community service, undergo a competency evaluation, and suspension to be followed by a term of probation to a \$10,000.00 fine and revocation.

~~(tt)(rr)~~ Leaving a foreign body in a patient, such as a sponge, clamp, forceps, surgical needle, or other paraphernalia commonly used in surgical, examination, or other diagnostic procedures.  
(456.072(1)(bb), F.S.)

~~(tt)(rr)~~ From a \$2,000.00 to a \$10,000.00 fine, a letter of concern, a minimum of five (5) hours of risk management education, ~~a minimum of 50~~ to 100 hours of community service, and a one hour lecture to the staff of a Florida licensed healthcare facility on retained foreign body objects to revocation.

~~(tt)(rr)~~ From a \$10,000.00 fine, a reprimand and probation, 100 to 200 hours of community service, or denial to revocation.

~~(uu)(ss)~~ For the practitioner(s) responsible for the adverse incident, failing to inform a patient, or an individual identified pursuant to Section 765.401(1), F.S., in person about adverse incidents that result in serious harm to the patient.  
(456.0575, F.S.)

~~(uu)(ss)~~ From a reprimand to probation, 50 to 100 hours of community service, or denial and an administrative fine of \$1,000 to \$5,000.

~~(uu)(ss)~~ From probation, 100 to 200 hours of community service, to suspension or denial and an administrative fine of \$5,000 to \$10,000.

~~(vv)(tt)~~ Being terminated from a treatment program for impaired practitioners, for failure to comply with the terms of the monitoring or treatment contract or for not successfully completing any drug-treatment or alcohol-treatment program.  
(456.072(1)(gg), F.S.)

~~(vv)(tt)~~ From suspension until licensee demonstrates compliance with all terms of the monitoring or treatment contract, and is able to demonstrate to the Board the ability to practice with reasonable skill and safety to be followed by a term of probation; and a fine of \$1,000 to \$2,500, to revocation.

~~(vv)(tt)~~ From suspension until licensee demonstrates compliance with all terms of the monitoring or treatment contract and is able to demonstrate to the Board the ability to practice with reasonable skill and safety to be followed by a term of probation; and a fine of \$2,500 to \$10,000, to revocation.

(3) through (7) No change.

Specific Authority 456.0375(4)(c), 456.50(2), 456.0575, 456.079, 458.309, 458.331(5) FS. Law Implemented 456.0375(4)(c), 456.50(2), 456.0575, 456.072, 456.079, 458.331(5) FS. History—New 12-5-79, Formerly 21M-20.01, Amended 1-11-87, 6-20-90, Formerly 21M-20.001, Amended 11-4-93, Formerly 61F6-20.001, Amended 6-24-96, 12-22-96, Formerly 59R-8.001, Amended 5-14-98, 12-28-99, 1-31-01, 7-10-01, 6-4-02, 9-10-02, 12-11-02, 8-20-03, 6-7-04, 8-17-04, 1-4-06, 8-13-06, 8-29-06, 11-22-06, 1-30-07,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Rules Committee, Board of Medicine  
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Medicine  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 15, 2008  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 18, 2008

**DEPARTMENT OF HEALTH**

**Board of Medicine**

RULE NO.: 64B8-10.003  
RULE TITLE: Costs of Reproducing Medical Records

PURPOSE AND EFFECT: The proposed rule amendments are intended to address the costs associated with the reproduction of medical records.

SUMMARY: For patients and other governmental entities, the costs of reproducing medical records shall remain the same as they have been since 1988. For other entities, the cost of reproducing medical records shall be increased to \$1.00 per page.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: A Statement of Estimated Regulatory Cost has been prepared and is available by contacting: Larry McPherson, Jr., Executive Director, at the address listed below.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 456.057(18), 458.309 FS.

LAW IMPLEMENTED: 456.057(18) FS.

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

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

THE FULL TEXT OF THE PROPOSED RULE IS:

64B8-10.003 Costs of Reproducing Medical Records.

Recognizing that patient access to medical records is important and necessary to assure continuity of patient care, the Board of Medicine urges physicians to provide their patients a copy of their medical records, upon request, without cost, especially when the patient is economically disadvantaged. The Board, however, also recognizes that the cost of reproducing voluminous medical records may be financially burdensome to some practitioners. Therefore, the following rule sets forth the permitted costs for the reproduction of medical records.

(1) Any person licensed pursuant to Chapter 458, F.S., required to release copies of patient medical records may condition such release upon payment by the requesting party of the reasonable costs of reproducing the records.

(2) For patients and governmental entities, the reasonable Reasonable costs of reproducing copies of written or typed documents or reports shall not be more than the following:

(a) For the first 25 pages, the cost shall be \$ 1.00 per page.

(b) For each page in excess of 25 pages, the cost shall be 25 cents.

(3) For other entities, the reasonable costs of reproducing copies of written or typed documents or reports shall not be more than \$1.00 per page.

~~(4)~~(3) Reasonable costs of reproducing x-rays, and such other special kinds of records shall be the actual costs. The phrase "actual costs" means the cost of the material and supplies used to duplicate the record, as well as the labor costs and overhead costs associated with such duplication.

Specific Authority ~~456.057(18)~~, 458.309 FS. Law Implemented ~~456.057(18)~~ ~~456.061~~, ~~456.058~~, ~~458.331(4)~~ FS. History—New 11-17-87, Amended 5-12-88, Formerly 21M-26.003, 61F6-26.003, 59R-10.003, Amended\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Rules Committee, Board of Medicine  
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Medicine  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 15, 2008  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 5, 2008

**DEPARTMENT OF HEALTH**

**Board of Medicine**

RULE NOS.: 64B8-42.001  
RULE TITLES: Licensure by Endorsement  
64B8-42.002 Licensure by Examination

PURPOSE AND EFFECT: The Board proposes the rule amendments to incorporate application forms.

SUMMARY: The rule amendment will incorporate application forms.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS:** No Statement of Estimated Regulatory Cost was prepared. The Board determined the proposed rule will not have an impact on small business.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

**SPECIFIC AUTHORITY:** 456.017(1), 468.507 FS.

**LAW IMPLEMENTED:** 456.027, 468.507, 468.509, 468.513 FS.

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

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS:** Allen Hall, Executive Director, Dietetics and Nutrition Council/MQA, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

**THE FULL TEXT OF THE PROPOSED RULES IS:**

64B8-42.001 Licensure by Endorsement.

Each applicant for certification as a dietitian/nutritionist by endorsement shall file application DOH Form DH-MQA 1161, ND APP, Rev. 12/2008, incorporated by reference, and demonstrate the following:

(1) through (2) No change.

Specific Authority 468.507 FS. Law Implemented 468.507, 468.513 FS. History–New 4-9-89, Formerly 21M-48.001, 61F6-48.001, 59R-42.001, Amended \_\_\_\_\_.

64B8-42.002 Licensure by Examination.

(1) Every applicant for certification by examination shall file application DOH Form DH-MQA 1161, ND APP, Rev. 12/2008, incorporated by reference, and demonstrate to the Council that he meets one of the following:

(a)1. Has a baccalaureate or post baccalaureate degree with a major in human nutrition, food and nutrition, dietetics, food management or equivalent major as determined by the Council from a school or program accredited by the appropriate accrediting agency recognized by the Council on Post-secondary Accreditation or its successor and the United States Department of Education and

2. Has completed 900 hours of planned and continuous supervised practice in dietetics or nutrition, or has education or experience determined to be equivalent by the Council as described in subsection (3); or

(b)1. Has an academic degree with a major course of study in human nutrition, food and nutrition, dietetics, or food management from a foreign country, provided that degree has been validated by an accrediting agency approved by the U.S.

Department of Education as equivalent to the baccalaureate or post baccalaureate degree conferred by a regionally accredited college or university in the United States; and

2. Has completed 900 hours of planned and continuous supervised practice in dietetics or nutrition, or has education or experience determined to be equivalent by the Council as described in subsection (3).

(2) through (5) No change.

Specific Authority 456.017(1), 468.507 FS. Law Implemented 456.027, 468.509 FS. History–New 4-9-89, Amended 11-28-90, 3-24-91, 11-9-92, 5-6-93, Formerly 21M-48.002, Amended 11-4-93, 6-9-94, Formerly 61F6-48.002, Amended 11-12-95, Formerly 59R-42.002, Amended 8-19-99, 3-9-08, \_\_\_\_\_.

**NAME OF PERSON ORIGINATING PROPOSED RULE:** Dietetics and Nutrition Council

**NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE:** Board of Medicine

**DATE PROPOSED RULE APPROVED BY AGENCY HEAD:** December 5, 2008

**DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW:** October 24, 2008

**DEPARTMENT OF HEALTH**

**Board of Medicine**

<b>RULE NO.:</b>	<b>RULE TITLE:</b>
64B8-52.004	Requirements for Approval of Training Courses for Laser and Light-Based Hair Removal or Reduction

**PURPOSE AND EFFECT:** The proposed rule amendment is intended to revise the requirement regarding the number of years of post-graduate training for instructors teaching laser and light-based hair removal courses from two years to one year.

**SUMMARY:** proposed rule amendment revises the requirement regarding the number of years of post-graduate training for instructors teaching laser and light-based hair removal courses from two years to one year.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS:** A Statement of Estimated Regulatory Cost has been prepared and is available by contacting: Larry McPherson, Jr., Executive Director, at the address listed below.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

**SPECIFIC AUTHORITY:** 456.025(7), 478.43 FS.

**LAW IMPLEMENTED:** 456.025(7), 478.42(5), 478.43(3), 478.50 FS.

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

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

THE FULL TEXT OF THE PROPOSED RULE IS:

64B8-52.004 Requirements for Approval of Training Courses for Laser and Light-Based Hair Removal or Reduction.

The Electrolysis Council will approve laser and light-based hair removal or reduction continuing education training courses upon application if the following requirements are met:

- (1) through (2) No change.
- (3) The instructors of each laser and light-based hair removal course have one year ~~two years~~ of post-certification experience. Verifiable documentation of this experience must be submitted to the Council with the application.

Specific Authority 456.025(7), 478.43 FS. Law Implemented 456.025(7), 478.42(5), 478.43(3), 478.50 FS. History—New 10-3-00, Amended 12-24-01, 12-26-02, 8-17-04, 7-3-06, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Rules Committee, Board of Medicine  
 NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Medicine  
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 15, 2008  
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 19, 2008

**DEPARTMENT OF HEALTH**

**Board of Optometry**

RULE NO.: 64B13-18.002      RULE TITLE: Formulary of Topical Ocular Pharmaceutical Agents

PURPOSE AND EFFECT: The Board proposes the rule amendment to adopt the updated revisions recommended by the Topical Optical Pharmaceutical Agents Committee.

SUMMARY: The updated revisions recommended by the Topical Ocular Pharmaceutical Agents Committee is adopted.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 463.005, 463.055(2)(a) FS.  
 LAW IMPLEMENTED: 463.0055 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Joe Baker, Jr., Executive Director, Board of Optometry/MQA, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3259

THE FULL TEXT OF THE PROPOSED RULE IS:

64B13-18.002 Formulary of Topical Ocular Pharmaceutical Agents.

The topical ocular pharmaceutical formulary consists of pharmaceutical agents which a certified optometrist is qualified to administer and prescribe in the practice of optometry pursuant to Section 463.0055(2)(a), F.S. The topical ocular pharmaceutical agents in the formulary include the following legend drugs alone or in combination in concentrations up to those specified, or any lesser concentration that is commercially available:

- (1) through (3) No change.
- (4) ANTIBACTERIAL.
  - (a) through (j) No change
  - (k) Levofloxacin – 1.5 ~~0.05~~%;
  - (l) Gatifloxacin – 0.3%;
  - (m) Moxifloxacin – 0.5%;
  - (n) Sodium sulfacetamide – 10.0% (alone and in combination);
  - (o) Azithromycin – 1% ~~and~~
  - ~~(p) Levofloxacin – 1.5%.~~
- (5) NON-STEROIDAL AND STEROIDAL ANTI-INFLAMMATORY AGENTS
  - (a) through (m) No change.
  - (n) Nopafenac – 0.1% ~~and~~
  - ~~(o) Brimonidine tartrate – 0.1%.~~
- (6) ANTIHISTAMINES, MAST CELL STABILIZERS AND ANTI-ALLERGY AGENTS
  - (a) through (d) No change.
  - ~~(e) Ketotifen fumarate – 0.025%;~~
  - ~~(e)(f) Azelastine HCl – 0.05%;~~
  - ~~(f)(g) Pemirolast potassium – 0.1%;~~ and
  - ~~(g)(h) Epinastine HCl – 0.05%.~~
  - (7) through (9) No change.

Specific Authority 463.005, 463.0055(2)(a) FS. Law Implemented 463.0055 FS. History—New 3-30-87, Amended 4-5-88, 5-7-90, Formerly 21-18.002, Amended 5-10-92, 1-29-93, Formerly 21Q-18.002, Amended 8-31-93, 7-30-94, Formerly 61F8-18.002, Amended 2-11-96, 4-21-96, 1-12-97, 6-8-97, Formerly 59V-18.002, Amended 6-15-00, 6-7-05, 6-10-06, 6-26-08, \_\_\_\_\_.



NAME OF PERSON ORIGINATING PROPOSED RULE:  
Board of Optometry  
NAME OF AGENCY HEAD WHO APPROVED THE  
PROPOSED RULE: Board of Optometry  
DATE PROPOSED RULE APPROVED BY AGENCY  
HEAD: October 17, 2008  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT  
PUBLISHED IN FAW: November 7, 2008

**FLORIDA HOUSING FINANCE CORPORATION**

RULE NO.: 67-32.004  
RULE TITLE: General Program Restrictions  
PURPOSE AND EFFECT: Pursuant to Florida Statutes Chapter 420.5087(3)(d), F.S., the Florida Housing Finance Corporation administers the Elderly Housing Community Loan (EHCL) Program. This program provides loans to sponsors of affordable rental housing for very low income elderly households. Chapter 67-32, F.A.C., provides the procedures for the administration of this loan program and criteria for receiving, evaluating, and competitively ranking all applications for loans under the EHCL program.

SUMMARY: The intent of this Rule is to provide loans to sponsors of housing for the elderly to make health, or sanitation repairs or improvements which are required by federal, state, or local regulation or code, or life-safety or security-related repairs or improvements to such housing. Revisions to the Rule are required to implement technical and clarifying changes. The adoption of these revisions will increase the efficiency and effectiveness of local program service delivery and will provide greater clarification of the program.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 420.5087 FS.

LAW IMPLEMENTED: 420.5087 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: January 12, 2009, 10:00 a.m.

PLACE: Florida Housing Finance Corporation, 227 North Bronough Street, 6th Floor Seltzer Room, Tallahassee, Florida 32301-1329

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 5 days before the workshop/meeting by contacting: Jody Bedgood (850)488-4197. 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).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Derek Helms, EHCL Administrator, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329

THE FULL TEXT OF THE PROPOSED RULE IS:

67-32.004 General Program Restrictions.

(1) The proceeds of all loans shall be used for life-safety, ~~building preservation~~, health, sanitation, or security-related repairs or improvements which result in making the Development safe and secure, and meeting requirements of state, federal, or local regulation.

(2) through (3) No change.

Specific Authority 420.5087(3)(d) FS. Law Implemented 420.5087(3)(d) FS. History—New 10-2-89, Amended 1-9-92, 2-25-96, Formerly 9I-32.004, Amended 11-9-98, 1-2-00, 12-31-00, 3-17-02, Repromulgated 5-5-03, Amended 1-26-06,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Jody Bedgood, Program Manager, (850)488-4197

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Housing Finance Corporation Board of Directors

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 31, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 14, 2008

**DEPARTMENT OF FINANCIAL SERVICES**

**Division of Workers' Compensation**

RULE NO.: 69L-6.028  
RULE TITLE: Procedures for Imputing Payroll and Penalty Calculations

PURPOSE AND EFFECT: The purpose and effect of the proposed rule amendment is to provide the Department alternative means and methods by which it may calculate an employer's imputed payroll and penalty, to clarify the timeframe within which such imputation may occur, and to define the meaning of "non-compliance" within the meaning of the rule. Additionally, the proposed rule amendment deletes language from the existing rule regarding penalty assessments for periods of noncompliance that occurred prior to October 1, 2003.

SUMMARY: Provides the Department with alternative methods for calculating an employer's imputed payroll and penalty, clarifies the timeframe within which imputation may occur, defines meaning of "non-compliance" for purposes of the rule, and deletes obsolete language regarding penalty assessments.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 440.107(9), 440.591 FS.

LAW IMPLEMENTED: 440.107(7)(e) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: Thursday, January 22, 2009, 10:00 a.m.

PLACE: 104 J Hartman Bldg., 2012 Capital Circle S.E., Tallahassee, FL

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 5 days before the workshop/meeting by contacting: Tasha Carter at (850)413-1878. 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).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Tasha Carter, Bureau Chief, Bureau of Compliance, Division of Workers' Compensation, Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-4228, phone (850)413-1878

THE FULL TEXT OF THE PROPOSED RULE IS:

69L-6.028 Procedures for Imputing Payroll and Penalty Calculations.

(1) In the event an employer fails to provide business records sufficient for the department to determine the employer's payroll for the time period requested in the business records request for the calculation of the penalty pursuant to Section 440.107(7)(e), F.S., the department shall impute the employer's payroll at any time after ten, but before the expiration of twenty ~~at any time after the expiration of fifteen~~ business days after receipt by the employer of a written request to produce such business records.

(2) The employer's period of non-compliance shall be either the same as the time period requested in the business records request for the calculation of the penalty or an alternative period of non-compliance as determined by the department, whichever is less. The department may determine an alternative period of non-compliance by obtaining records from other sources during the department's investigation of the employer that evidence a period of non-compliance different than the time period requested in the business records request for the calculation of the penalty.

(a) For purposes of this rule, "non-compliance" means the employer's failure to secure the payment of workers' compensation pursuant to Chapter 440, F.S.

~~(3)(2)~~ When an employer fails to provide business records sufficient to enable the department to determine the employer's payroll for the time period requested in the business records request for purposes of calculating the penalty provided for in Section 440.107(7)(d), F.S., the imputed weekly payroll for each employee, corporate officer, sole proprietor or partner ~~for the portion of the period of the employer's non-compliance occurring on or after October 1, 2003~~ shall be calculated as follows:

(a) For each employee, ~~employees~~ other than corporate officers, ~~for each employee~~ identified by the department as an employee of such employer at any time during the period of the employer's non-compliance, the imputed weekly payroll for each week of the employer's non-compliance for each such employee shall be the statewide average weekly wage as defined in Section 440.12(2), F.S., that is in effect at the time the stop-work order was issued to the employer, multiplied by 1.5. Employees include sole proprietors and partners in a partnership.

(b) If the employer is a corporation, for each corporate officer of such employer identified as such on the records of the Division of Corporations at the time of issuance of the stop-work order, the imputed weekly payroll for each week of the employer's non-compliance for each such corporate officer shall be the statewide average weekly wage as defined in Section 440.12(2), F.S., that is in effect at the time the stop-work order was issued to the employer, multiplied by 1.5.

(c) If a portion of the period of non-compliance includes a partial week of non-compliance, the imputed weekly payroll for such partial week of non-compliance shall be prorated from the imputed weekly payroll for a full week.

(d) The imputed weekly payroll for each employee, corporate officer, sole proprietor, or partner shall be assigned to the highest rated workers' compensation classification code associated with the employer's business activities. If, unless the employer's business records demonstrate the assignment of an alternative workers' compensation classification code, such classification code will be applicable to all employees. However, the department may assign an alternative workers' compensation classification code for an employee based upon the investigator's physical observation of that employee's activities.

~~(3) If subsequent to imputation of weekly payroll pursuant to subsection (2) herein, but before and only until the expiration of forty-five calendar days from the receipt by the employer of written request to produce business records, the employer provides business records sufficient for the department to determine the employer's payroll for the period requested for the calculation of the penalty pursuant to Section~~

~~440.107(7)(c), F.S., the department shall recalculate the employer's penalty to reflect the payroll information provided in such business records.~~

~~(4) If the department imputes the employer's payroll, the employer shall have twenty business days after service of the order assessing the penalty to provide business records sufficient for the department to determine the employer's payroll for the period requested in the business records request for the calculation of the penalty or for the alternative period of non-compliance. If the employer provides such business records, the department shall recalculate the employer's penalty pursuant to Section 440.107(7)(d), F.S. If business records sufficient for the department to determine the employer's payroll for the period requested in the business records request for the calculation of the penalty or for the alternative period of non-compliance are not provided to the department within twenty business days after service of the order assessing the penalty, the penalty based upon the time period requested for the calculation of the penalty imputing the employer's payroll for the time period in the business records request for the calculation of the penalty will remain in effect. Where periods of the employer's non-compliance occurred prior to October 1, 2003, and the employer fails to provide business records sufficient to enable the department to determine the employer's payroll for periods of non-compliance prior to October 1, 2003, for purposes of calculating the penalty to be assessed against the employer for periods of non-compliance prior to October 1, 2003, the department shall assess against the employer a penalty of \$100 per day for each and every calendar day in the period of non-compliance occurring prior to October 1, 2003, the employer was not in compliance, pursuant to Section 440.107(5), F.S. (2002).~~

~~Specific Authority 440.107(9), 440.591 FS. Law Implemented 440.107(5) (2002); 440.107(7)(e) FS. History--New 7-12-05, Amended 8-31-06,\_\_\_\_\_.~~

~~NAME OF PERSON ORIGINATING PROPOSED RULE:  
Tasha Carter, Bureau Chief, Bureau of Compliance, Division of Workers' Compensation~~

~~NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Alex Sink, Chief Financial Officer, Department of Financial Services~~

~~DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 15, 2008~~

~~DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 3, 2008~~

**DEPARTMENT OF FINANCIAL SERVICES**

**Division of Workers' Compensation**

<b>RULE CHAPTER NO.:</b>	<b>RULE CHAPTER TITLE:</b>
69L-56	Electronic Data Interchange (EDI) Requirements for Proof of Coverage and Claims (Non-Medical)
<b>RULE NOS.:</b>	<b>RULE TITLES:</b>
69L-56.001	Forms and Instructions
69L-56.002	Definitions
69L-56.100	Proof of Coverage (POC) Electronic Reporting Requirements
69L-56.110	Technical Requirements for POC EDI Transmissions
69L-56.200	Policy Cancellation or Non-Renewal Requirements
69L-56.205	Policy Reporting Requirements for Employee Leasing Companies
69L-56.210	Time Periods for Filing Electronic Policy Information
69L-56.300	Claims EDI Reporting Requirements and Implementation Schedules
69L-56.301	Electronic First Report of Injury or Illness
69L-56.3012	Electronic Notice of Denial and Rescinded Denial
69L-56.3013	Electronic Periodic Claim Cost Reports
69L-56.304	Electronic Notice of Action or Change, Including Change in Claims Administration, Required by the Insurer's Primary Implementation Schedule
69L-56.3045	Electronic Notice of Action or Change, Suspensions, and Reinstatement of Indemnity Benefits Required by Insurer's Secondary Implementation Guide
69L-56.307	Electronic Cancellation of Claim
69L-56.310	Technical Requirements for Claims EDI Transmissions
69L-56.330	Electronic Formats for Reporting the Employee's 8th Day of Disability and the Claim Administrator's Knowledge of the 8th Day of Disability

**PURPOSE AND EFFECT:** Rule Chapter 69L-56, F.A.C., is being amended to incorporate by reference the revised Form DFS-F5-DWC-EDI-1, "EDI Trading Partner Profile", and the revised Form DFS-F5-DWC-EDI-4, "Secure Socket Layer (SSL)/File Transfer Protocol (FTP) Instructions". The revised Florida Division of Workers' Compensation Proof of Coverage (POC) Electronic Data Interchange (EDI) Implementation Manual (1/01/08), which contains revisions to the Element

Requirement Table and Edit Matrix, and requires insurer reporting of total payroll and number of employees, is also incorporated by reference. The rule is also being amended to incorporate by reference the revised national standard International Association of Industrial Accident Boards and Commissions (IAIABC) EDI Implementation Guide for Proof of Coverage Release 2.1 (6/01/07) and the IAIABC EDI Release 3 Implementation Guide for Claims (1/01/08). Rule 69L-56.205, F.A.C., is being added to specify the insurer requirements of reporting proof of coverage information to the Division of Workers' Compensation for a professional employer organization or employee leasing company and its client companies. The proposed rule also adds a definition regarding the meaning of "Cancellation/Non-Renewal Effective Date", which clarifies that such an event occurs at 12:01 a.m. on that Transaction Set Type Effective Date reported to the Division of Workers' Compensation, or as derived by the Division of Workers' Compensation as determined in Rule 69L-56.200, F.A.C. Additionally, the proposed rule deletes redundant language from Rule 69L-56.100, F.A.C., changes the title to fully reflect the scope of the rule, and makes clerical revisions where necessary. Rule 69L-56.330, F.A.C., which has become obsolete, is to be repealed concurrently upon adoption of these proposed amendments.

**SUMMARY:** Amends the rule chapter to incorporate by reference revised forms, instructions, manuals and implementation guides for use by insurers in the electronic reporting of proof of coverage and claims information to the Division of Workers' Compensation. Rule 69L-56.205, F.A.C., is added to specify insurer requirements of reporting proof of coverage information to the Division for a professional employer organization or employee leasing company and its client companies. Also, adds a definition for "Cancellation/Non-Renewal Date", deletes redundant language from Rule 69L-56.100, F.A.C., and changes the rule chapter's title. Rule 69L-56.330, F.A.C., which has become obsolete, is to be repealed concurrently upon adoption of the proposed amendments.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS:** No Statement of Estimated Regulatory Cost was prepared.

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

**SPECIFIC AUTHORITY:** 440.185(7), 440.42(3), 440.591, 440.593(5), 627.4133(4) FS.

**LAW IMPLEMENTED:** 440.185(7), (9), 440.42(3), 440.593, 627.4133(4) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME, AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: Wednesday, January 21, 2009, 10:00 a.m.  
 PLACE: 104J Hartman Building, 2012 Capital Circle S.E., Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Linda Yon, EDI Coordinator, Bureau of Data Quality and Collection, Division of Workers' Compensation, Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-4226, phone (850)413-1702 or Linda.Yon@myfloridacfo.com.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this program, please advise the Department at least 5 calendar days before the program by contacting the person listed above.

THE FULL TEXT OF THE PROPOSED RULES IS:

**ELECTRONIC DATA INTERCHANGE (EDI) ~~TECHNICAL~~ REQUIREMENTS FOR PROOF OF COVERAGE AND CLAIMS (NON-MEDICAL)**

69L-56.001 Forms and Instructions.

The following forms are incorporated herein by reference and adopted for use in filing Proof of Coverage (POC) and Claims (non-medical) Electronic Data Interchange (EDI) transactions to the Division. All of the forms may be obtained from the Division of Workers' Compensation at its website, [http://www.myfloridacfo.com/WC/edi\\_clms.html](http://www.myfloridacfo.com/WC/edi_clms.html) ~~http://www.fldfs.com/wc/edi.html~~

(1) DFS-F5-DWC-EDI-1, "EDI Trading Partner Profile" (1/01/2008 ~~10/01/2006~~).

(2) through (4) No change.

(5) DFS-F5-DWC-EDI-4, "Secure Socket Layer (SSL)/File Transfer Protocol (FTP) Instructions" (1/01/2008 ~~10/01/2006~~).

Specific Authority 440.591, 440.593(5), FS. Law Implemented 440.593, FS. History--New 3-5-02, Formerly 38F-56.001, 4L-56.001, Amended 5-29-05, 1-7-07, \_\_\_\_\_.

69L-56.002 Definitions.

Unless otherwise defined in this section, definitions of data elements and terms used in this rule are defined in the Data Dictionary located in Section 6 of the "IAIABC Implementation Guide for Claims: First, Subsequent, Header, Trailer & Acknowledgement Detail Records, Release 3, January 1, 2008 ~~June 1, 2006~~ Edition", and in the Data Dictionary located in Section 6 of the "IAIABC Implementation Guide for Proof of Coverage: Insured, Employer, Header, Trailer & Acknowledgement Records, Release 2.1, 6/01/07 ~~10/01/06~~ Edition", and in the IAIABC

“Glossary”, and in the IAIABC “Supplement” for both IAIABC products, all of which are incorporated herein by reference. Copies of the IAIABC guides, supplements, and glossary may be obtained from the IAIABC’s website at <http://www.iaiaabc.org>, under “EDI” link, then “Implementation Guides” link [www.iaiaabc.org/edi/implementation.asp](http://www.iaiaabc.org/edi/implementation.asp).

When used in this chapter, the following terms have the following meanings:

(1) through (6) No change.

(7) “Business day” means a day on which normal business is conducted by the State of Florida and excludes observed holidays as set out in Section 110.117(1), F.S. (see also State Holidays under [http://dms.myflorida.com/human\\_resource\\_support/human\\_resource\\_management/for\\_state\\_hr\\_practitioners](http://dms.myflorida.com/human_resource_support/human_resource_management/for_state_hr_practitioners) <http://www.myflorida.com/myflorida/government/policies/holidays.html>).

(8) No change.

(9) “Cancellation/Non-Renewal Effective Date” means the Transaction Set Type Effective Date as defined in the IAIABC EDI Implementation Guide for Proof of Coverage: Insured, Employer, Header, Trailer & Acknowledgement Records, Release 2.1, 6/01/07, for a cancellation or non-renewal of any workers’ compensation insurance policy, contract of insurance or renewal; and shall be effective at 12:01 a.m. on the Transaction Set Type Effective Date reported to the Division, or the Cancellation/Non-Renewal Effective Date derived by the Division as determined in Rule 69L-56.200, F.A.C.

(10)(9) “Catastrophic Event” means the occurrence of an event outside the control of an insurer, claim administrator, or third party vendor, such as a telecommunications failure due to a natural disaster or act of terrorism (including but not limited to cyber terrorism), in which recovery time will prevent an insurer, claim administrator, or third party vendor from meeting the filing requirements of Chapter 440, F.S., and this rule. Programming errors, systems malfunctions, or electronic data interchange failures that are not the direct result of a catastrophic event are not considered to be a catastrophic event as defined in this rule.

(11)(10) “Claim Administrator” means any insurer, service company/third party administrator, self-serviced self-insured employer or fund, or managing general agent, responsible for adjusting workers’ compensation claims, that is electronically sending its data directly to the Division.

(12)(11) “Claim Administrator Primary Address”, “Claim Administrator Secondary Address”, “Claim Administrator City”, “Claim Administrator State Code”, and “Claim Administrator Postal Code” comprise the address associated with the physical location of the claims office at which a workers’ compensation claim is being adjusted.

(13)(12) “Claim Administrator Alternate Postal Code” means the zip code associated with the Claim Administrator’s mailing address established for receiving mail on behalf of the claims office at which a workers’ compensation claim is being adjusted.

(14)(13) “Claim Type Code” means a code representing the current classification of the claim as either a “Lost Time/Indemnity Case” (Claim Type Code “I”), “Medical Only to Lost Time Case” (Claim Type Code “L”), “Became Medical Only Case” (Claim Type Code “B”) or “Medical Only Case” (Claim Type Code “M”).

(15) “Client Company” is as defined in subsection 468.520(6), F.S.

(16)(14) “Date of Maximum Medical Improvement” (MMI) means the date on which maximum medical improvement has been achieved with respect to all compensable medical or psychiatric conditions caused by a compensable injury or disease (i.e., overall MMI).

(17)(15) “Date Claim Administrator Had Knowledge of Lost Time” means the date the claim administrator was notified or became aware that the employee was disabled for eight (8) or more days and was entitled to indemnity benefits. If the claim administrator acquires a claim from another claim administrator and is filing the Electronic First Report of Injury or Illness with the Division, the “Date Claim Administrator Had Knowledge of Lost Time” shall be the date the acquiring claim administrator had knowledge of the employee’s 8th day of disability.

(18)(16) “Days” means calendar days, unless otherwise noted.

(19)(17) “Denied Case” means a “Full Denial” or “Partial Denial” case for which all indemnity benefits are initially denied by the claim administrator.

(20)(18) “Department” means the Department of Financial Services.

(21)(19) “Division” means the Division of Workers’ Compensation.

(22)(20) “Electronic Data Interchange” (EDI) means a computer-to-computer exchange of business transactions in a standardized electronic format.

(23)(21) “Electronic Form Equivalent” means information sent in Division-approved electronic formats as specified in this rule, instead of otherwise required paper documents. Electronic form equivalents may require additional information not required in Rules 69L-3.0045, 69L-3.0091, 69L-3.012, 69L-3.016, 69L-3.0213, 69L-3.025, F.A.C., for paper form filings. Electronic form equivalents do not include information sent by facsimile, file data attached to electronic mail, or computer-generated paper forms.

(24) “Employee leasing” is as defined in subsection 468.520(4), F.S.

(25) “Employee leasing company” is as defined in subsection 468.520(5), F.S.

(26) “Employee Leasing Policy Identification Code” is a code which identifies a policy written as an Employee leasing policy, and the type of leasing operation.

~~(27)~~~~(22)~~ “Employer Paid Salary in Lieu of Compensation” means the employer paid the employee salary, wages, or other remuneration for a period of disability for which the insurer would have otherwise been obligated to pay indemnity benefits. This does not include the waiting week if the employee was not disabled for 22 or more days.

~~(28)~~~~(23)~~ “File” or “Filed” means a transaction has been received by the Division and passes quality and structural edits and is assigned an Application Acknowledgement Code of “TA” (Transaction Accepted).

~~(29)~~~~(24)~~ “FROI” means the First Report of Injury Record Layout adopted by the IAIABC as a Claims EDI Release 3 standard, and is comprised of the First Report of Injury Record identified by Transaction Set ID “148” paired with the First Report of Injury Companion Record identified by Transaction Set ID “R21”. The “FROI” record layout (148/R21) is located in the Technical Documentation, Section 2, in the IAIABC EDI Implementation Guide for First, Subsequent, Acknowledgement Detail, Header, & Trailer Records, Release 3, ~~January 1, 2008~~ ~~June 1, 2006~~, which is incorporated herein by reference. A copy of the guide may be obtained from the IAIABC’s website at <http://www.iaiaabc.org>, under “EDI” link, then “Implementation Guides” link <http://iaiaabc.org/edi/implementation.asp>.

~~(30)~~~~(25)~~ “Full Denial” means any case for which the claim administrator has denied liability for all workers’ compensation benefits (i.e., both indemnity and medical benefits). A “Full Denial” is represented by a FROI or SROI MTC 04 (Denial).

~~(31)~~~~(26)~~ “Gross Weekly Amount” means the weekly amount payable for a specific Benefit Type and excludes the application of any Benefit Adjustments or Benefit Credits. The Gross Weekly Amount is usually equal to the Calculated Weekly Compensation Amount (a/k/a/ statutory compensation rate) except when the weekly rate for a Benefit Type is paid as a percentage of either the Calculated Weekly Compensation Amount (Comp Rate), Average Wage, or average temporary total disability benefits, such as for Permanent Total Supplemental Benefits, Death Benefits, and Impairment Income Benefits.

~~(32)~~~~(27)~~ “Header Record” means the first record of a batch. The header record shall uniquely identify a sender, as well as the date and time a batch is prepared, and the transaction set within the batch.

~~(33)~~~~(28)~~ “IAIABC” means the International Association of Industrial Accident Boards and Commissions ([www.iaiaabc.org](http://www.iaiaabc.org)), which is a professional trade association comprised of state workers’ compensation regulators and insurance representatives.

~~(34)~~~~(29)~~ “Industry Code” means the 5 or 6-digit code that represents the nature of the employer’s business as published in the North American Industry Classification System (NAICS) 2002 Edition, hereby incorporated by reference.

NAICS code information may be obtained by contacting the NAICS Association, 341 East James Circle, Sandy, Utah, 84070, or from the NAICS website at [www.naics.com](http://www.naics.com).

~~(35)~~~~(30)~~ “Initial Date of Lost Time” means the employee’s eighth (8th) day of disability, i.e., the first day on which the employee sustains disability as defined in Section 440.02, F.S., after fulfilling the seven (7) day waiting week requirement in Section 440.12, F.S. The Initial Date of Lost Time does not mean the “Initial Date Disability Began”.

~~(36)~~~~(31)~~ “Initial Disposition” means the first action taken by the claim administrator following its knowledge of an injury to accept or deny compensability of the claim and pay or deny benefits, including payment or denial of both indemnity and medical benefits, or denial of indemnity benefits only.

~~(37)~~~~(32)~~ “Insurer” means an insurer as defined in Section 440.02, F.S.

~~(38)~~~~(33)~~ “Insurer Code #” means the Division-assigned number for the insurer bearing the financial risk of the claim.-

~~(39)~~~~(34)~~ “Jurisdiction Designee Received Date” means the date on which a third party vendor received Proof of Coverage data from an insurer that is not submitting their electronic Proof of Coverage data directly with the Division. This date shall be used in place of the date the Division received electronic Proof of Coverage data for purposes of calculating the effective date of the cancellation or non-renewal, and timely filings of electronic Proof of Coverage data.

~~(40)~~~~(35)~~ “Knowledge” or “Notification” means an entity’s earliest receipt of information, including by mail, telephone, facsimile, direct personal contact, or electronic submission.

~~(41)~~~~(36)~~ “Lost Time/Indemnity Case” means a work-related injury or illness which causes the employee to be disabled for more than 7 calendar days, or for which indemnity benefits have been paid. A Lost Time/Indemnity Case shall also include: A case involving a compensable volunteer as defined in Section 440.02, F.S., where no indemnity benefits will be paid, but where the employee is disabled for more than 7 calendar days; a compensable death case pursuant to Section 440.16, F.S., for which there are no known or confirmed dependents; a case where a compensable injury results in disability of more than 7 calendar days where the “Employer Paid Salary in Lieu of Compensation” as defined in this section; a case for which indemnity benefits were paid prior to the date the claim administrator learned of a change in jurisdiction and filed SROI MTC S8 (Suspension, Jurisdiction Change); and a case where indemnity benefits were paid but subsequently suspended because the employee could not be located and the claim administrator filed SROI MTC S6 (Suspension, Claimant’s Whereabouts Unknown). The first 7 calendar days of disability do not have to occur consecutively, but are determined on a cumulative basis and can occur over a period of time. A “Lost Time/Indemnity Case” is represented by Claim Type Code “I” (Indemnity).

~~(42)~~~~(37)~~ “Maintenance Type Code” (MTC) defines the specific purpose of individual claims transactions within the batch being sent, i.e., a code that represents the type of filing being sent electronically (For example: MTC IP = initial payment, MTC 04 = Total or Full Denial). MTC’s and data elements required by this rule may not exactly match paper claim forms and associated data reporting requirements set out in Rule Chapter 69L-3, F.A.C.

~~(43)~~~~(38)~~ “Manual Classification Code” means the 4-digit code assigned by the National Council on Compensation Insurance (NCCI) for the particular occupation of the injured employee as documented in the NCCI Scopes™ Manual 2006 Edition, which is hereby incorporated by reference. A listing of Manual Classification Codes may be obtained by contacting NCCI’s Customer Service Center at 1(800)622-4123.

~~(44)~~~~(39)~~ “Medical Only Case” means a work-related injury or illness which requires medical treatment for which charges will be incurred, but which does not cause the employee to be disabled for more than 7 calendar days. A “Medical Only Case” is represented by Claim Type “M” (Medical Only) and is limited to being reported on MTC 04 and PD filings where the claim was initially accepted as a Medical Only Case prior to the denial of indemnity benefits.

~~(45)~~~~(40)~~ “Medical Only to Lost Time Case” means a work-related injury or illness which initially does not result in disability of more than 7 calendar days, but later results in disability of more than 7 days, where disability is either delayed and does not immediately follow the accident, or where one or more broken periods of disability occur within the first 7 days after disability has commenced and the combined disability periods eventually total more than 7 days. A “Medical Only to Lost Time Case” includes a case for which Impairment Income Benefits are the first and only indemnity benefits paid, or for which the initial payment of indemnity benefits is made in a lump sum for an award, advance, stipulated agreement or settlement. A “Medical Only to Lost Time Case” is represented by Claim Type Code “L” (Became Lost Time/Indemnity).

~~(46)~~~~(41)~~ “Net Weekly Amount” means the weekly amount paid for an indemnity benefit such as temporary total benefits, impairment income benefits, etc., inclusive of any Benefit Adjustments or Benefit Credits being applied to the benefit type. The Net Weekly Amount equals the “Gross Weekly Amount” where no adjustments or credits are applied.

~~(47)~~~~(42)~~ “Partial Denial” means a case where compensability is accepted but the claim administrator initially denies all indemnity benefits and only medical benefits will be paid; Partial Denial also means a case where a specific indemnity benefit(s) was previously paid but subsequently denied, either in whole or in part. A “Partial Denial” is represented by a SROI MTC “PD”.

~~(48)~~~~(43)~~ “Payment Issue Date” for MTC “IP”(Initial Payment), and “PY” (Payment) means the date payment of a specific indemnity benefit corresponding to the MTC being reported left the control of the claim administrator (or the claim administrator’s legal representative if delivery is made by the legal representative) for delivery to the employee or the employee’s representative, whether by U.S. Postal Service or other delivery service, hand delivery, or transfer of electronic funds. The Payment Issue Date shall not be sent as the date the check is requested, created, or issued in the claim administrator’s system unless the check leaves the control of the claim administrator the same day it is requested, created, or issued for delivery to the employee or the employee’s representative.

~~(49)~~~~(44)~~ “Permanent Impairment Percentage” means “Permanent Impairment” as defined in Section 440.02, F.S.

~~(50)~~~~(45)~~ “Sender” means one of the following entities sending electronic filings to the Division:

(a) through (c) No change.

For Claims EDI filing purposes, “sender” does not include an entity acting as an intermediary for sending transmissions to the Division on behalf of an insurer or claim administrator where the sender is not the insurer or claim administrator handling the claim.

~~(51)~~~~(46)~~ “SROI” means the Subsequent Report of Injury Record Layout adopted by the IAIABC as a Claims EDI Release 3 standard, and includes the Subsequent Report Record identified by Transaction Set “A49” paired with the Subsequent Report Companion Record identified with Transaction Set ID “R22”. The “SROI” record layout (A49/R22) is located in the Technical Documentation, Section 2, in the IAIABC EDI Implementation Guide for First, Subsequent, Acknowledgement Detail, Header, & Trailer Records, Release 3, January 1, 2008 ~~June 1, 2006~~, and Supplement, which is incorporated herein by reference. A copy of the guide may be obtained from the IAIABC’s website at <http://www.iaabc.org>, under the “EDI” link, then “Implementation Guides” link <http://iaabc.org/edi/implementation.asp>.

~~(52)~~~~(47)~~ “Third Party Vendor” means an entity acting as a submission agent or vendor on behalf of an insurer, service company or third party administrator, which has been authorized to electronically send required data to the Division.

~~(53)~~~~(48)~~ “Trading Partner” means an entity approved by the Division in accordance with Rules 69L-56.110, 69L-56.310 and 69L-56.320, F.A.C., to exchange data electronically with the Division.

~~(54)~~~~(49)~~ “Trailer Record” means the last record that designates the end of a batch of transactions. It shall provide a count of transactions contained within the batch, not including the header and trailer transactions.

~~(55)~~~~(50)~~ “Transaction” is one or more records within a batch which communicates information representing an electronic form equivalent.

~~(56)~~(54) “Transaction Accepted Code TA” means an Application Acknowledgement Code returned by the Division on the acknowledgement transaction to represent that a transaction was received by the Division and passed required edits.

~~(57)~~(52) “Transaction Rejected Code TR” means an Application Acknowledgement Code returned by the Division on the acknowledgement transaction to represent that a transaction was received by the Division and did not pass required edits.

~~(58)~~(53) “Transmission” consists of one or more batches sent to or received by the Division or a trading partner.

~~(59)~~(54) “Triplicate Code” is a series of three two-digit numeric codes that define the specific purpose of individual records in a Proof of Coverage transmission, i.e., new policy, renewal, endorsement, cancellation or non-renewal. It is a combination of the Transaction Set Purpose Code, Transaction Set Type Code and Transaction Set Reason Code as defined in the Data Dictionary, Section 6 of the IAIABC EDI Implementation Guide for Proof of Coverage: Insured, Employer, Header, Trailer & Acknowledgement Records, Release 2.1, 6/01/2007 ~~10/01/06~~ Edition, which is incorporated herein by reference. A copy of the guide may be found at <http://www.iaabc.org>, under the “EDI” link, then “Implementation Guides” link <http://iaabc.org/edi/implementation.asp>.

Specific Authority 440.591, 440.593(5) FS. Law Implemented 440.593 FS. History—New 3-5-02, Formerly 38F-56.002, 4L-56.002, Amended 5-29-05, 1-7-07, \_\_\_\_\_.

#### 69L-56.100 Proof of Coverage (POC) Electronic Reporting Requirements.

(1) Effective March 1, 2002, every insurer authorized to insure employers in the State of Florida, except for individual self-insurers approved under Section 440.38, F.S., shall file policy information electronically to the Division rather than by filing on paper forms previously required.

Every insurer shall send to the department by electronic data interchange electronic policy information for Certificates of Insurance, Endorsements, Reinstatements, Cancellations and Non-Renewals pursuant to the filing time periods in Rule 69L-56.210, F.A.C., of this chapter. Such policy information shall be sent in accordance with the “EDI Trading Partner Requirements” set forth in Sections 2 through 6 of the Florida Division of Workers’ Compensation Proof of Coverage Electronic Data Interchange (EDI) Implementation Manual, 1/01/2008 ~~January 2005~~, which is incorporated herein by reference. A copy of the manual may be obtained from the Division of Workers’ Compensation at its website, [http://www.myfloridacfo.com/WC/edi\\_poc.html](http://www.myfloridacfo.com/WC/edi_poc.html) ~~<http://www.fldfs.com/wc/edi.html>~~, or by sending a request to the Division of Workers’ Compensation, Bureau Office of Data Quality and Collection, 200 East Gaines Street, Tallahassee, Florida 32399-4226. The Division will not accept an electronic transaction that fails to comply with the “EDI Trading Partner

Requirements” in Sections 2 through 6 in this manual. The insurer shall send electronic transmissions either directly to the Division or through a third party vendor.

~~Every insurer shall send to the Division by electronic data interchange electronic policy information for Certificates of Insurance, Endorsements, Reinstatements, Cancellations and Non-Renewals pursuant to the filing time periods in Rule 69L-56.210, F.A.C. Such policy information shall be sent in accordance with the “EDI Trading Partner Requirements” set forth in Section 2 through 6 of the Florida Division of Workers’ Compensation Proof of Coverage Electronic Data Interchange (EDI) Implementation Manual, July 2006, which is incorporated herein by reference. A copy of the manual may be obtained from the Division of Workers’ Compensation at its website, <http://www.fldfs.com/wc/edi.html>. The Division will not accept an electronic transaction that fails to comply with the “EDI Trading Partner Requirements” in Sections 2 through 6 in this manual. The insurer shall send electronic transmissions either directly to the Division or through a third party vendor.~~

(2) On or before April 2, 2007, all electronic form equivalents of Proof of Coverage data shall be sent in the Proof of Coverage formats adopted by the IAIABC and located in Section 2 of the IAIABC EDI Implementation Guide for Proof of Coverage: Insured, Employer, Header, Trailer & Acknowledgement Records, Release 2.1, 6/01/2007 ~~10/01/06~~ Edition.

(3)(a) At least one (1) business day before the insurer or third party vendor sends its first transmission to the Division, the insurer or third party vendor shall send to the Division in an email addressed to [poc.edi@myfloridacfo.com](mailto:poc.edi@myfloridacfo.com) ~~[poc.edi@fldfs.com](mailto:poc.edi@fldfs.com)~~, their profile information using the following forms adopted in Rule 69L-56.001, F.A.C.:

1. “EDI Trading Partner Profile,” DFS-F5-DWC-EDI-1 (1/01/2008 ~~10/01/2006~~), and
2. “EDI Trading Partner Insurer/Claim Administrator ID List”, DFS-F5-DWC-EDI-2 (10/01/2006), and
3. “EDI Transmission Profile – Sender’s Specifications,” DFS-F5-DWC-EDI-3 (10/01/2006).

(b) The insurer or third party vendor shall report changes to its profile information to the Division at least one (1) business day before sending transactions containing new profile-related information. The insurer or third party vendor shall report the new profile information by emailing a revised “EDI Trading Partner Profile”, DFS-F5-DWC-EDI-1 (1/01/2008 ~~10/01/2006~~), and if applicable, the “EDI Trading Partner Insurer/Claim Administrator ID List”, DFS-F5-DWC-EDI-2 (10/01/2006), and if applicable, the “EDI Transmission Profile – Sender’s Specifications”, DFS-F5-DWC-EDI-3 (10/01/2006) to the Division at [poc.edi@myfloridacfo.com](mailto:poc.edi@myfloridacfo.com) ~~[poc.edi@fldfs.com](mailto:poc.edi@fldfs.com)~~.



(c) If the insurer suspends the use of a third party vendor and begins sending its electronic Proof of Coverage data directly to the Division, the insurer shall, at least one (1) business day prior to the effective date of this change, email a revised “EDI Transmission Profile – Sender’s Specifications,” DFS-F5-DWC-EDI-3 (10/01/2006), to the Division at [poc.edi@myfloridacfo.com](mailto:poc.edi@myfloridacfo.com) ~~poc.edi@fldfs.com~~.

(d) If the insurer changes third party vendors, the insurer shall, at least one (1) business day prior to the effective date of the change, send an email to the Division at [poc.edi@myfloridacfo.com](mailto:poc.edi@myfloridacfo.com) ~~poc.edi@fldfs.com~~ to report the name of the new vendor and effective date on which POC transactions will be sent by the new vendor.

(e) Insurers or third party vendors that experience a catastrophic event resulting in the insurer’s failure to meet the filing requirements of this rule, shall submit a written or electronic request to the Division for approval to submit required electronic form equivalents in an alternative filing timeline. The request shall be sent to the Division within 15 business days after the catastrophic event. The request shall contain a detailed explanation of the nature of the event, date of occurrence, and measures being taken to resume electronic submission. The insurer or third party vendor shall also provide an estimated date by which electronic submission of affected EDI filings will be resumed. Approval to submit in an alternative filing timeline shall be granted by the Division if a catastrophic event prevents electronic submission. The approval must be obtained from the Division’s

Specific Authority 440.185(7), 440.591, 440.593(5), FS. Law Implemented 440.185(7), 440.593, FS. History—New 3-5-02, Formerly 38F-56.100, 4L-56.100, Amended 5-29-05, 1-7-07, \_\_\_\_\_.

#### 69L-56.110 Technical Requirements for POC EDI Transmissions.

(1) In order to send Proof of Coverage data electronically to the Division, the insurer or third party vendor shall complete the testing requirements set forth in Section 1 of the Florida Division of Workers’ Compensation Proof of Coverage Electronic Data Interchange (EDI) Implementation Manual, 1/01/08 ~~July 2006~~. Each transmission for Test or Production purposes shall be in the PC1-Insured Record format and PC2-Employer Record format located in Section 2 of the IAIABC EDI Implementation Guide for Proof of Coverage: Insured, Employer, Header, Trailer & Acknowledgement Records, Release 2.1, 6/01/07 ~~10/01/06~~ Edition and Supplement.

(2) Each transmission shall contain the following as set forth in Section 2 of the IAIABC EDI Implementation Guide for Proof of Coverage: Insured, Employer, Header, Trailer & Acknowledgement Records, Release 2.1, 6/01/07 ~~10/01/06~~ Edition:

(a) through (c) No change.

(3) No change.

(a) through (d) No change.

(4) POC EDI transmissions may be sent on a daily basis, and shall be sent via secured File Transfer Protocol (FTP). Effective June 1, 2005, electronic transmissions of Proof of Coverage data required pursuant to this rule, shall be sent to the Division using Secure Socket Layer/File Transfer Protocol (SSL/FTP) in accordance with instructions on Form DFS-F5-DWC-EDI-4 (1/01/2008 ~~10/01/2006~~).

(5) No change.

(6) Transmissions shall be sent using the flat file PC1 and PC2 formats located in Section of the IAIABC EDI Implementation Guide for Proof of Coverage: Insured, Employer, Header, Trailer & Acknowledgement Records, Release 2.1, 6/01/07 ~~10/01/06~~ Edition and Supplement.

(7) No change.

(8) All insurers or third party vendors shall have the capability to receive and process the Division’s POC EDI Acknowledgement Transaction (AKP), described in Section 2 of the IAIABC EDI Implementation Guide for Proof of Coverage: Insured, Employer, Header, Trailer & Acknowledgement Records, Release 2.1, 6/01/07 ~~10/01/06~~ Edition and Supplement. The Division will also send, when applicable, a re-acknowledgment transaction (ACR) to identify an EDI filing previously acknowledged with Application Acknowledgement Code “TR” (Transaction Rejected) due to improper processing, that was subsequently re-processed by the Division and re-assigned an Application Acknowledgement Code of “TA” (Transaction Accepted). The claim administrator shall have the option of processing re-acknowledgement transactions.

(9) The definitions established in Section 6 of the IAIABC EDI Implementation Guide for Proof of Coverage: Insured, Employer, Header, Trailer & Acknowledgement Records, Release 2.1, 6/01/07 ~~10/01/06~~ Edition and Supplement, shall be utilized when reporting data elements to the Division.

(10) The insurer or third party vendor shall send the PC1 and PC2 transactions required in Rule 69L-56.210, F.A.C., in accordance with the information appearing in the “Sub Type Code” column in the “Proof of Coverage Transaction Overview” document, located in Section 4 of the IAIABC EDI Implementation Guide for Proof of Coverage: Insured, Employer, Header, Trailer & Acknowledgement Records, Release 2.1, 6/01/07 ~~10/01/06~~ Edition. If the PC2 record is required and is rejected by the Division, both the PC1 and PC2 records shall be re-sent together in the same transmission. The Division will not “hold” a PC1 record in anticipation of the return of a corrected corresponding PC2 record.

(11) through (12) No change.

Specific Authority 440.591, 440.593(5), FS. Law Implemented 440.593, FS. History—New 3-5-02, Formerly 38F-56.110, 4L-56.110, Amended 5-29-05, 1-7-07, \_\_\_\_\_.

69L-56.200 Policy Cancellation or Non-Renewal Requirements.

(1) Except for cancellation for nonpayment of premium or failure to pay deductible, or cancellation or non-renewal at the request of the insured, an insurer shall not cancel or non-renew any workers' compensation insurance policy, contract of insurance, or renewal until at least 30 days have elapsed after the insurer has electronically filed a cancellation or non-renewal with the Division, either directly or through a third party vendor. When an insurer files an electronic cancellation or non-renewal directly with the Division for any reason other than non-payment of premium or failure to pay deductible or when cancellation or non-renewal is requested by the insured, the 30-day notice period (Cancellation/Non-Renewal Effective Date) shall be calculated from the first day following the date on which the electronic cancellation or non-renewal was filed with the Division. If the insurer files an electronic cancellation or non-renewal through a third party vendor for any reason other than non-payment of premium or failure to pay deductible, or when cancellation or non-renewal is requested by the insured, the 30-day notice period (Cancellation/Non-Renewal Effective Date) shall be calculated from the first day following the "Jurisdiction Designee Received Date".

(2)(a) For any workers' compensation insurance policy, contract of insurance, or renewal with a policy effective date prior to October 1, 2003, an insurer shall not cancel or non-renew the policy for non-payment of premium or failure to pay deductible until and unless 30 days have elapsed after the insurer has electronically filed a cancellation or non-renewal with the Division, either directly or through a third party vendor. When an insurer files an electronic cancellation or non-renewal directly with the Division, the 30-day notice period (Cancellation/Non-Renewal Effective Date) shall be calculated from the first day following the date on which the electronic cancellation or non-renewal was filed with the Division. If the insurer files an electronic cancellation or non-renewal through a third party vendor, the 30-day notice period (Cancellation/Non-Renewal Effective Date) shall be calculated from the first day following the "Jurisdiction Designee Received Date".

(b) No change.

(3) If an insured requests cancellation or non-renewal of any workers' compensation insurance policy, contract of insurance or renewal, the cancellation or non-renewal shall be effective on the date the insurer sends the cancellation or non-renewal to the insured. Notification to the Division is not required to cancel or non-renew a workers' compensation insurance policy, contract of insurance, or renewal when cancellation or non-renewal is requested by the insured. However, the insurer shall advise the Division of the Cancellation/Non-Renewal Effective Date ~~cancellation or~~

~~non-renewal~~ requested by the insured in accordance with the electronic filing time periods for policy information set out in subsection 69L-56.210(7), F.A.C.

(4) No change.

Specific Authority 440.185(7), 440.42(3), 440.591, 440.593(5), 627.4133(4) FS. Law Implemented 440.185(7), 440.42(3), 440.593, 627.4133(4) FS. History--New 5-29-05, Amended 1-7-07,\_\_\_\_\_.

69L-56.205 Policy Reporting Requirements for Employee Leasing Companies.

(1) For any workers' compensation insurance policy, contract of insurance or renewal written for an Employee leasing company or clients of an Employee leasing company, with a policy effective date on or after July 1, 2009, the insurer shall electronically file any workers' compensation insurance policy, contract of insurance, or renewal pursuant to the requirements set forth in Rule 69L-56.210, F.A.C., and report one of the Employee Leasing Policy Identification Codes shown below from Section 6 of the IAABC EDI Implementation Guide for Proof of Coverage: Insured, Employer, Header, Trailer & Acknowledgement Records, Release 2.1, 6/01/07 Edition and Supplement:

(a) Employee Leasing Policy Identification Code (2) – identifies an Employee leasing policy for leased workers of multiple client companies. The non-leased workers of the Employee leasing company may also be covered under this policy. The insured name reported shall be the name of the Employee leasing company and shall be reported on the IAABC POC Release 2.1 Insured Record (PC1). The client names reported shall be the legal business name of each client company, and shall not be preceded with the name of the Employee leasing company and shall be reported on the IAABC POC Release 2.1 Employer Record(s) (PC2).

1. If an Employee leasing company policy is reported with the Employee Leasing Policy Identification Code (2), an Employee leasing policy for leased workers of multiple client companies, the Insurer shall report the addition of client companies to the policy in accordance with subsection 69L-56.210(2), F.A.C., using Triplicate Codes 00-31-54, 00-31-87 or 00-31-86.

2. If an Employee leasing company policy is reported with Employee Leasing Policy Identification Code (2), an Employee leasing policy for leased workers of multiple client companies, the Insurer shall report the deletion of client companies from the policy in accordance with subsection 69L-56.210(2), F.A.C., using Triplicate Codes 00-33-56 or 00-33-87.

3. Cancellation or non-renewal of the entire policy for Employee Leasing Policy Identification Code (2) shall be reported in accordance with Rule 69L-56.200, F.A.C.

(b)1. Employee Leasing Policy Identification Code (3) – identifies an Employee leasing policy for non-leased workers of the Employee leasing company. The insured name reported shall be the legal business name of the Employee leasing company and shall be reported on the IAIABC POC Release 2.1 Insured Record (PC1).

2. Cancellation or non-renewal of a policy for Employee Leasing Policy Identification Code (3) shall be reported in accordance with Rule 69L-56.200, F.A.C.

(c)1. Employee Leasing Policy Identification Code (4) – identifies a Client company policy for leased workers of the Client company. The insured name reported shall be the name of the Client company and shall not be preceded with the name of the Employee leasing company and shall be reported on the IAIABC POC Release 2.1 Insured Record (PC1).

2. Cancellation or non-renewal of a policy for the Employee Leasing Policy Identification Code (4) shall be reported in accordance with Rule 69L-56.200, F.A.C.

(d)1. Employee Leasing Policy Identification Code (5) – identifies an Employee leasing policy for leased workers of a single client company. The insured name reported shall be the name of the Employee leasing company and shall be reported on the IAIABC POC Release 2.1 Insured Record (PC1). The client name reported shall be the legal business name of the client company, and shall not be preceded with the name of the Employee leasing company, and shall be reported on the IAIABC POC Release 2.1 Employer Record(s) (PC2).

2. Cancellation or non-renewal of a policy for Employee Leasing Policy Identification Code (5) shall be reported in accordance with Rule 69L-56.200, F.A.C.

Specific Authority 440.185(7), 440.42(3), 440.591, 440.593(5) FS. Law Implemented 440.185(7), 440.42(3), 440.593 FS. History–New \_\_\_\_\_.

69L-56.210 Time Periods for Filing Electronic Policy Information.

Pursuant to subsection 440.593(1), F.S., the Division may establish different deadlines for filing required reports electronically than are otherwise required when reporting information by other means. Accordingly, notwithstanding the deadlines for filing policy information by other means as set forth in subsection 440.185(7), F.S., an insurer, other than an individual self-insurer approved under Section 440.38, F.S., must electronically file the following information in accordance with the provisions of this rule, and shall have received an Application Acknowledgement Code of “TA” (Transaction Accepted) by the Division within the following deadlines:

(1) through (6) No change.

(7) No later than ten days after the cancellation or non-renewal of any workers' compensation insurance policy, contract of insurance, or renewal for which an insured has requested cancellation or non-renewal, the insurer shall send

the electronic cancellation or non-renewal to the Division. The electronic cancellation or non-renewal shall be represented by Triplicate Codes containing Transaction Set Type Codes “42” & “60”, with the exception of Triplicate Code “00-60-64”, pursuant to the “Transaction Overview” document, located in Section 4 of the IAIABC EDI Implementation Guide for Proof of Coverage: Insured, Employer, Header, Trailer & Acknowledgement Records, Release 2.1, 6/01/07 ~~10/01/06~~ Edition and Supplement.

(8) No change.

Specific Authority 440.185(7), 440.42(3), 440.591, 440.593(5), 627.4133(4) FS. Law Implemented 440.185(7), (9), 440.42(3), 440.593, 627.4133(4) FS. History–New 5-29-05, Amended 1-7-07, \_\_\_\_\_.

69L-56.300 Claims EDI Reporting Requirements and Implementation Schedules.

(1)(a) On or before the implementation schedules set out in paragraphs (3)(a) and (b) of this section, every insurer shall file claims information for all “Lost Time/Indemnity,” “Medical Only to Lost Time,” and “Denied” cases via electronic data interchange (EDI) pursuant to paragraph (d) of this section, rather than by submitting paper forms otherwise required in Rules 69L-3.0045, 69L-3.0091, 69L-3.012, 69L-3.016, 69L-3.0213 and 69L-3.025, F.A.C. The insurer shall file the electronic form equivalent of the First Report of Injury or Illness, Notice of Denial, Claim Cost Report, Notice of Action/Change, and Aggregate Claims Administration Change Report adopted in Rule 69L-3.025, F.A.C., pursuant to the requirements and timeframes set out in Rules 69L-56.301, 69L-56.3012, 69L-56.3013, 69L-56.304 and 69L-56.3045, F.A.C., and in accordance with the “FL Claims EDI R3 Trading Partner Filing Specifications” contained in Section 1 of the “Florida Division of Workers’ Compensation Claims Electronic Data Interchange (EDI) R3 Implementation Manual, September 2006” and “Supplement,” incorporated herein by reference, and hereafter referred to as the “FL Claims EDI Implementation Manual.” A copy of the FL Claims EDI Implementation Manual may be obtained from the Division of Workers’ Compensation at its website, [http://www.myfloridacfo.com/WC/edi\\_clms.html](http://www.myfloridacfo.com/WC/edi_clms.html) ~~www.fldfs.com/WC/edi\_clms.html~~.

(b) through (c) No change.

(d) The claim administrator shall report the Claims EDI filings required in Rules 69L-56.301, 69L-56.3012, 69L-56.3013, 69L-56.304, 69L-56.3045 and 69L-56.307, F.A.C., using the First Report of Injury (FROI) and Subsequent Report of Injury (SROI) electronic record layouts adopted by the International Association of Industrial Accident Boards and Commissions (IAIABC). A sample of the FROI, which consists of the 148 and companion R21 records, and a sample of the SROI, which consists of the A49 and companion R22 records, are located in Section 2, “Technical Documentation” of the “IAIABC EDI Implementation Guide for Claims: First,

Subsequent, Header, Trailer & Acknowledgement Detail Records, Release 3, January 1, 2008 ~~June 1, 2006~~ Edition” and “Supplement,” incorporated herein by reference, and hereafter referred to as the IAIABC Claims EDI Release 3 Implementation Guide. A copy of this guide may be obtained from the IAIABC at its website, <http://www.iaiaabc.org>, under “EDI” link, then “Implementation Guides” link <http://www.iaiaabc.org/edi/implementation.asp>.

1. The claim administrator shall send the FROI (148/R21), SROI (A49/R22), and combination FROI and SROI records with the Maintenance Type Code (MTC) or MTC combinations specified in Rules 69L-56.301, 69L-56.3012, 69L-56.3013, 69L-56.304, 69L-56.3045 and 69L-56.307, F.A.C., to represent the Claims EDI Filing being sent to the Division (Example: FROI MTC 04 = Total Denial of an Electronic First Report of Injury or Illness; SROI MTC FN = Electronic Final Claim Cost Report; FROI MTC 00 with SROI MTC IP = Electronic First Report of Injury or Illness where the Initial Payment is made by claim administrator.)

(e) through (k) No change.

(l) Claim administrators who, directly or through its third party vendor, experience a catastrophic event resulting in the insurer’s failure to meet the filing requirements of this rule, shall submit a written or electronic request to the Division for approval to submit required electronic form equivalents in an alternative filing timeline. The request shall be sent to the Division within 15 business days after the catastrophic event. The request shall contain a detailed explanation of the nature of the event, date of occurrence, and measures being taken to resume electronic submission. The claim administrator shall also provide an estimated date by which electronic submission of affected EDI filings will be resumed. Approval to submit in an alternative filing timeline shall be granted by the Division if a catastrophic event prevents electronic submission. The approval must be obtained from the Division’s Bureau Office of Data Quality and Collection, 200 E. Gaines Street, Tallahassee, Florida 32399-4226, or via email at [claims.edi@myfloridacfo.com](mailto:claims.edi@myfloridacfo.com) ~~claims.edi@fldfs.com~~. If approved, the electronic form equivalents that were due to be filed during the time the claim administrator was unable to file due to a catastrophic event, shall be sent with Late Reason Code “LB” (Late notification/payment due to a Natural Disaster) or “LC” (Late notification/payment due to an act of Terrorism).

(m) No change.

(2) Trading Partner Profile Documents:

(a) At least two (2) business days prior to sending its first test transmission to the Division, the claim administrator shall send to the Division in an email addressed to [claims.edi@myfloridacfo.com](mailto:claims.edi@myfloridacfo.com) ~~claims.edi@fldfs.com~~, the claim administrator’s current profile information using the following forms adopted in Rule 69L-56.001, F.A.C.:

1. “EDI Trading Partner Profile,” DFS-F5-DWC-EDI-1 (1/01/2008 ~~10/01/2006~~), and

2. through 4. No change.

Claim administrators filing Electronic First Reports of Injury or Illness or Electronic Claim Cost Reports on a voluntary basis using the IAIABC Release 1 standard formats shall re-file their profile information with the Division using the forms in subparagraphs (2)(a)1.-4. above, even if the claim administrator’s profile information has not changed since previously reported to the Division.

(b) The claim administrator shall report changes to its profile information required on the forms listed in subparagraphs (2)(a)1.-4. above, at least two (2) business days prior to sending transactions containing revised profile-related information to the Division. The insurer or its claim administrator shall report revisions to its profile information by emailing to the Division at [claims.edi@myfloridacfo.com](mailto:claims.edi@myfloridacfo.com) ~~claims.edi@fldfs.com~~, a revised “EDI Trading Partner Profile,” DFS-F5-DWC-EDI-1 (1/01/2008 ~~10/02/2006~~), and if applicable, a revised “EDI Trading Partner Insurer/Claim Administrator ID List”, DFS-F5-DWC-EDI-2 (10/01/2006), and if applicable, a revised “EDI Trading Partner Claim Administrator Address List”, DFS-F5-DWC-EDI-2A (10/01/2006), and if applicable, a revised “EDI Transmission Profile – Sender’s Specifications”, DFS-F5-DWC-EDI-3 (10/01/2006). Failure by the claim administrator to report changes to its trading partner profile information using the forms adopted in this rule, including changes to the Submitter ID (i.e., Trading Partner FEIN/Postal Code on the Header Record), may result in the rejection of an entire transmission or individual transaction(s) containing profile information that is different from that reported on profile documents previously filed with the Division by the claim administrator.

(c) If the insurer or its claim administrator contracts with a new third party vendor, the insurer or its claim administrator shall, at least two (2) business days prior to the effective date of the change in vendors, send an email to the Division at [claims.edi@myfloridacfo.com](mailto:claims.edi@myfloridacfo.com) ~~claims.edi@fldfs.com~~ to report the name of the new vendor and effective date on which Claims EDI transactions will be sent via the new vendor.

(3) Claims EDI Implementation Schedules:

(a) through (d) No change.

(e) After the conclusion of the three month time period specified in paragraph 69L-56.300(3)(d), F.A.C., above, if the claim administrator is unable to receive an Application Acknowledgement Code of “TA” from the Division for an electronic form equivalent required by this rule chapter, and the claim administrator needs to meet the reporting requirements of this rule, the claim administrator shall submit an e-mail to the Division at [claims.edi@myfloridacfo.com](mailto:claims.edi@myfloridacfo.com) ~~claims.edi@fldfs.com~~ to request approval to alternatively file a DWC form pursuant to Rules 69L-3.0045, 69L-3.0091, 69L-3.012, 69L-3.016, 69L-3.0213 and 69L-3.025, F.A.C., in

lieu of the electronic form equivalent. The request shall include the following information: Claim Administrator Name and FEIN, Employee Name, Employee ID Number (Social Security Number or Division Assigned Number), Date of Injury, Claim Administrator File Number, Maintenance Type Code (MTC), Date Transmission Sent for the MTC(s) attempted unsuccessfully, the DWC form requesting to be filed (i.e., DWC-13), and an explanation of the reasons electronic submission failed. If the Division approves the claim administrator's request to send a DWC form in lieu of the electronic form equivalent, all subsequent filings due for the claim shall be sent via EDI; the claim administrator shall not file additional DWC forms for the claim unless the claim administrator has received advance approval from the Division.

Specific Authority 440.591, 440.593(5) FS. Law Implemented 440.593 FS. History—New 1-7-07, Amended.

#### 69L-56.301 Electronic First Report of Injury or Illness.

On or before the compliance date established in the insurer's Primary Implementation Schedule set forth in paragraph 69L-56.300(3)(a), F.A.C., the insurer shall file the electronic form equivalent for claims information otherwise reported on Form DFS-F2-DWC-1 adopted in Rules 69L-3.0045 and 69L-3.025, F.A.C. Pursuant to subsection 440.593(1), F.S., the Division may establish different deadlines for filing required reports electronically than are otherwise required when reporting information by other means. Accordingly, notwithstanding the deadlines for filing the injury report by other means as set forth in subsection 440.185(2), F.S., the insurer or its claim administrator shall send to the Division the electronic form equivalent of the First Report of Injury or Illness for the following cases, and by the following filing time periods:

(1) Initial Payment for "Lost Time Case" or "Medical Only to Lost Time Case" (FROI MTC 00 with SROI MTC IP, EP, CD, VE, or PY as found in the IAIABC Implementation Guide for Claims: First, Subsequent, Header, Trailer & Acknowledgement Detail Records, Release 3, January 1, 2008 ~~June 1, 2006~~ Edition):

(a) through (b) No change.

(2) "Denied Case":

(FROI MTC 04, or SROI MTC PD with applicable FROI MTC as found in the IAIABC Implementation Guide for Claims: First, Subsequent, Header, Trailer & Acknowledgement Detail Records, Release 3, January 1, 2008 ~~June 1, 2006~~ Edition).

(a) through (c) No change.

(3) through (8) No change.

(9) If the employee does not have or wish to provide a Social Security Number, the claim administrator shall contact the Division by following the instructions provided on the Division's website: <http://www.myfloridacfo.com/WC/organization/odqc.html> ~~www.fdfs.com/WC/organization/odqc.html~~

(under Records Management – Division-Assigned Numbers) and obtain a Division-assigned number. Upon receipt of the employee's Social Security Number, the claim administrator shall file MTC 02 (Change) and provide the employee and employer with Form DFS-F2-DWC-4, pursuant to Rule 69L-3.025, F.A.C.

(10) No change.

Specific Authority 440.591, 440.593(5) FS. Law Implemented 440.593 FS. History—New 1-7-07, Amended.

69L-56.3012 Electronic Notice of Denial and Rescinded Denial.

(FROI/SROI MTC 04, SROI MTC PD as found in the IAIABC Implementation Guide for Claims: First, Subsequent, Header, Trailer & Acknowledgement Detail Records, Release 3, January 1, 2008 ~~June 1, 2006~~ Edition)

On or before the compliance date established in the insurer's Primary Implementation Schedule set forth in paragraph 69L-56.301(3)(a), F.A.C., the insurer shall file the electronic form equivalent for the denial information otherwise reported on Form DFS-F2-DWC-12, adopted in Rules 69L-3.012 and 69L-3.025, F.A.C. The claim administrator shall send to the Division an Electronic Notice of Denial to report the reason for the denial of indemnity benefits for the following types of denial notices, and by the following time periods:

(1) through (7) No change.

Specific Authority 440.591, 440.593(5) FS. Law Implemented 440.593 FS. History—New 1-7-07, Amended.

#### 69L-56.3013 Electronic Periodic Claim Cost Reports.

(SROI MTC SA, FN as found in the IAIABC Implementation Guide for Claims: First, Subsequent, Header, Trailer & Acknowledgement Detail Records, Release 3, January 1, 2008 ~~June 1, 2006~~ Edition).

On or before the compliance date established in the insurer's Primary Implementation Schedule set forth in paragraph 69L-56.300(3)(a), F.A.C., the insurer shall file the electronic form equivalent for claim cost information otherwise reported on Form DFS-F2-DWC-13 adopted in Rules 69L-3.016 and 69L-3.025, F.A.C. If payment has been made for any of the Benefit Type (BT) Codes or Other Benefit Type (OBT) Codes listed in subsections (1) and (2) of this section, the claim administrator shall report on the Electronic Claim Cost Report, the cumulative amount paid (i.e., Benefit Type Amount Paid, Other Benefit Type Amount) in dollars and cents for each applicable BT Code, with the exception of BT Codes reporting employer payment, and OBT Code. The claim administrator shall also report the amount of weeks (i.e., Benefit Type Claim Weeks) and/or days (i.e., Benefit Type Claim Days), the effective date of each indemnity benefit (i.e., Benefit Period Start Date), and the date through which indemnity benefits were paid at the time of reporting (i.e., Benefit Period Through

Date), unless otherwise indicated below. For purposes of the Electronic Claim Cost Report, the Benefit Period Start Date shall be reported as the earliest date benefits were paid for a Benefit Type Code, regardless of whether multiple disability periods were paid for the Benefit Type Code.

(1) through (6) No change.

Specific Authority 440.591, 440.593(5), FS. Law Implemented 440.593, FS. History--New 1-7-07, Amended.

69L-56.304 Electronic Notice of Action or Change, Including Change in Claims Administration, Required by the Insurer's Primary Implementation Schedule.

(FROI/SROI MTC 02, FROI MTC AQ, AU, SROI IP, PY, EP as found in the IAIABC Implementation Guide for Claims: First, Subsequent, Header, Trailer & Acknowledgement Detail Records, Release 3, January 1, 2008 ~~June 1, 2006~~ Edition).

(1) Electronic Notice of Action or Change (MTC 02). On or before the compliance date established in the insurer's Primary Implementation Schedule set forth in paragraph 69L-56.300(3)(a), F.A.C., the insurer shall file an Electronic Notice of Action or Change for reporting changes to the information specified in paragraphs (1)(a) and (b) of this section. The claim administrator shall file the FROI or SROI MTC 02 (Change) on or before 14 days after the claim administrator has knowledge of the new or changed information. However, MTC 02 shall not be sent if a data element changes as a result of an event that requires the reporting of another MTC in accordance with the definition of Maintenance Type Code (MTC) in the Data Dictionary located in Section 6 of the IAIABC Claims EDI Release 3 Implementation Guide. If there is a change in Insurer FEIN or Claims Administrator FEIN, Claim Administrator Postal Code, and Claim Administrator Claim Number due to the acquisition of a claim, the claim administrator shall file MTC AQ or AU with applicable SROI pursuant to subsection (2) of this section.

(a) The claim administrator shall file a FROI or SROI MTC 02 (Change) as noted below, and provide Form DFS-F2-DWC-4 to the employee and employer pursuant to Rules 69L-3.0091 and 69L-3.025, F.A.C., if any of the following data elements are changed or reported for the first time:

1. through 11. No change.

(b) No change.

(2) No change.

(a) through (b) No change.

(c) No change.

1. through 6. No change.

7. No change.

~~a.~~ The claim administrator shall file an Electronic Notice of Denial with the Division by reporting the applicable Full Denial Reason Code(s) and Full Denial Effective Date on the

SROI MTC 04 (Denial). The Denial Reason Narrative shall also be sent on the SROI MTC 04 (Denial) to supplement the Denial Reason Code(s).

~~b.~~ In addition to filing the Electronic Notice of Denial with the Division, the claim administrator shall provide a paper copy of Form DFS-F2-DWC-12, Notice of Denial, adopted in Rules 69L-3.012 and 69L-3.025, F.A.C., to the employer and employee, in accordance with the filing time period set out for Form DFS-F2-DWC-12 in Rule 69L-3.012, F.A.C.

(d) No change.

1. through 2. No change.

(3) through (5) No change.

(6) The filing of a FROI or SROI MTC 02 to report a change in Insurer FEIN, Claim Administrator FEIN, or Claim Administrator Postal Code and Claim Administrator Claim Number due to the establishment of a new or elimination of a claims office location or subsidiary entity within the insurer's organization does not negate the obligation of the trading partner (insurer or claim administrator) to file a revised "EDI Trading Partner Profile, DFS-F5-DWC-EDI-1 (1/01/2008 ~~10/01/2006~~), and if applicable, a revised "EDI Trading Partner Insurer/Claim Administrator ID List", DFS-F5-DWC-EDI-2 (10/01/2006), and if applicable, a revised "EDI Trading Partner Claim Administrator Address List", DFS-F5-DWC-EDI-2A (10/01/2006), pursuant to subsection 69L-56.300(2), F.A.C.

Specific Authority 440.591, 440.593(5) FS. Law Implemented 440.593 FS. History--New 1-7-07, Amended.

69L-56.3045 Electronic Notice of Action or Change, Suspensions, and Reinstatement of Indemnity Benefits Required by Insurer's Secondary Implementation Guide.

(SROI MTC 02, CA, CB, AB, S1-S8, P7, RB, ER as found in the IAIABC Implementation Guide for Claims: First, Subsequent, Header, Trailer & Acknowledgement Detail Records, Release 3, January 1, 2008 ~~June 1, 2006~~ Edition)

(1) through (6) No change.

Specific Authority 440.591, 440.593(5) FS. Law Implemented 440.593 FS. History--New 1-7-07, Amended.

69L-56.307 Electronic Cancellation of Claim. (FROI MTC 01 as found in the IAIABC Implementation Guide for Claims: First, Subsequent, Header, Trailer & Acknowledgement Detail Records, Release 3, January 1, 2008 ~~June 1, 2006~~ Edition)

(1) through (2) No change.

Specific Authority 440.591, 440.593(5) FS. Law Implemented 440.593 FS. History--New 1-7-07, Amended.

69L-56.310 Technical Requirements for Claims EDI Transmissions.

(1) Insurers shall send Claims EDI Filings required in Rules 69L-56.301, 69L-56.3012, 69L-56.3013, 69L-56.304, 69L-56.3045, 69L-56.307 and 69L-56.330, F.A.C., to the Division using only the following transmission methods:

- (a) No change.
- (b) Secure Socket Layer/File Transfer Protocol (SSL/FTP) in accordance with instructions on Form DFS-F5-DWC-EDI-4 (1/01/2008 ~~10/1/2006~~).
- (2) No change.
- (3)(a) through (c) No change.

(d) Header records shall include the following information:

- 1. through 2. No change.
- 3. Sender Identifier. The Sender Identifier (Sender ID) shall consist of the claim administrator’s FEIN and Postal Code as reported on Form DFS-F5-DWC-EDI-3 (10/01/2006 ~~01/01/2005~~), EDI Transmission Profile – Sender’s Specifications.

(4) through (11) No change.

Specific Authority 440.591, 440.593 FS. Law Implemented 440.593 FS. History–New 1-7-07, Amended \_\_\_\_\_.

69L-56.330 Electronic Formats for Reporting the Employee’s 8th Day of Disability and the Claim Administrator’s Knowledge of the 8th Day of Disability.

~~(1) Until required by this rule to report Claims EDI filings using the IAIABC Release 3 standard, if a claim administrator is voluntarily reporting Claims EDI information using the IAIABC EDI Release 1 standard and reports the electronic First Report of Injury or Illness with Claim Type “L” (“Became Lost Time/Indemnity”, a.k.a., Medical Only to Lost Time), the claim administrator shall report the employee’s 8th day of disability and the claim administrator’s knowledge of the 8th day of disability at the same time the electronic form equivalent of Form DFS F2 DWC 1 is required to be sent to the Division as specified in Rule 69L 56.301, F.A.C., using any of the electronic formats approved by the Division and adopted by reference in this rule.~~

~~(2) If the initial payment of benefits is for Impairment Income Benefits or settlement agreement or order for indemnity benefits, or follows a total or partial denial, the claim administrator is not required to electronically report the employee’s 8th day of disability and the claim administrator’s knowledge of 8th day of disability.~~

~~(3) The claim administrator shall utilize the electronic format, “Electronic Supplement to the First Report of Injury (DWC-1) Transaction (January 2005)”, from the Division’s web site at [www.fldfs.com/wc/edi.html](http://www.fldfs.com/wc/edi.html), or the “8th Day of Disability For EDI Submitters” database located at~~

~~[www.fldfs.com/wc/](http://www.fldfs.com/wc/) to report the employee’s 8th day of disability and the claim administrator’s knowledge of the 8th day of disability required in Rule Chapter 69L-3, F.A.C.~~

Specific Authority 440.591, 440.593 FS. Law Implemented 440.593 FS. History–New 5-29-05, Amended 1-7-07, Repealed \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Linda Yon, EDI Coordinator, Bureau of Data Quality and Collection, Division of Workers’ Compensation

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Alex Sink, Chief Financial Officer, Department of Financial Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 15, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 31, 2008

**FINANCIAL SERVICES COMMISSION**

**Finance**

RULE NO.: 69V-560.1000  
 RULE TITLE: Disciplinary Guidelines

PURPOSE AND EFFECT: During the regular 2008 legislative session, the Florida Legislature passed Senate Bill 2158, relating to money services businesses. The bill was signed into law on June 17, 2008, and will take effect on January 1, 2009. This law makes significant changes to Chapter 560, Florida Statutes. The new law imposes additional regulatory requirements on money services businesses including money transmitters, payment instrument sellers, foreign currency exchangers, check cashers, and deferred presentment providers. The law also requires the Commission to adopt disciplinary guidelines for each ground for which disciplinary action may be imposed by the Office of Financial Regulation against a money services business under Chapter 560, F.S. The rule implements this statutory requirement.

SUMMARY: The rules sets forth disciplinary guidelines applicable to money services businesses for violations of Chapter 560, F.S.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 560.105, 560.1141 FS.

LAW IMPLEMENTED: 560.109, 560.110, 560.111, 560.114, 560.1141, 560.118, 560.123, 560.1235, 560.125, 560.126, 560.128, 560.204, 560.208, 560.2085, 560.209, 560.210, 560.211, 560.213, 560.303, 560.309, 560.310, 560.403, 560.404, 560.405, 560.406 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Mike Ramsden, Chief, Money Transmitter Regulation, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399, (850)410-9805, mike.ramsden@lofr.com

THE FULL TEXT OF THE PROPOSED RULE IS:

69V-560.1000 Disciplinary Guidelines.

Pursuant to Section 560.1141, F.S., listed below are disciplinary guidelines applicable to each ground for disciplinary action that may be imposed by the Office against a Chapter 560, F.S., licensee for a material violation of Chapter 560, F.S. For purposes of this rule, the term "citation" means any written notice provided to and received by the licensee that specifies a violation of Chapter 560, F.S., or any rule promulgated under that chapter.

	Statute	Violation Description	1st Citation	2nd Citation	3rd Citation
(1)	560.109(3)(a)	Failure to make available to the Office within 3 days all required books and records after written notice.	Fine: A Suspension	Fine: B Suspension	Fine: C Suspension
(2)	560.109(7)	Failure to pay reasonable and necessary costs for exams or investigations based on actual costs incurred.	Fine: A Suspension	Fine: B Suspension	Fine: C Suspension
(3)	560.1092(1)	Failure to pay to the Office the expenses of an examination at a rate adopted by rule.	Fine: A Suspension	Fine: B Suspension	Fine: C Suspension
(4)	560.110	Failure to maintain all records for 5 years.	Fine: A Suspension Revocation	Fine: B Suspension Revocation	Fine: C Suspension Revocation
(5)	560.110(1)	Failure to make books and records available to the Office within 3 business days after receipt of a written request.	Fine: A Suspension	Fine: B Suspension	Fine: C Suspension
(6)	560.111(1)(a)	Receiving or possessing property, except in payment of a just demand, and, with intent to deceive or defraud, to omit to make or to cause to be made a full and true entry thereof in its books and accounts, or to concur in omitting to make any material entry thereof.	Fine: C Revocation	N/A	N/A



(7)	560.111(1)(b)	Embezzle, abstract, or misapply any money, property, or other thing of value belonging to the money services business, an authorized vendor, or customer with intent to deceive or defraud.	Fine: C Revocation	N/A	N/A
(8)	560.111(1)(c)	Making false entry in books and records with intent to deceive or defraud another person, appropriate regulator, or authorized third party appointed by the Office to examine or investigate a licensee or its authorized vendor.	Fine: C Suspension Revocation	N/A	N/A
(9)	560.111(1)(d)	Engaging in acts that violate 18 U.S.C. s. 1956., 31 U.S.C. s. 5324, or any law or rule of another state or the United States relating to a money services business, deferred presentment provider, or usury which may cause the denial or revocation of a money services business or deferred presentment provider or its equivalent.	Fine: C Revocation	N/A	N/A
(10)	560.111(1)(e)	Filing with the Office, signing as a duly authorized representative, or delivering or disclose to the Office any books and records known to be fraudulent or false as to any material matter.	Fine: C Revocation	N/A	N/A
(11)	560.111(1)(f)	Placing among a money services business any note, obligation, or security that the money services business or its authorized vendor does not own or is known to be fraudulent or otherwise worthless or to represent to the Office that these documents are known to be fraudulent or otherwise worthless.	Fine: C Revocation	N/A	N/A
(12)	560.114 (1)(a)	Failure to comply with any order of the Office or any written agreement entered into with the Office.	Fine Code: B Suspension Revocation	Fine: C Suspension Revocation	Fine: C Revocation
(13)	560.114(1)(b)	Fraud, misrepresentation, deceit, or gross negligence in any transaction by a money services business, regardless of reliance thereon by, or damage to, a customer.	Fine: C Suspension Revocation	Fine: C Revocation	N/A

(14)	560.114(1)(c)	<u>Fraudulent misrepresentation, circumvention, or concealment of any matter that must be stated or furnished to a customer pursuant to the chapter, regardless of reliance thereon by, or damage to, such customer.</u>	Fine: C Revocation	N/A	N/A
(15)	560.114(1)(d)	<u>False, deceptive, or misleading advertising.</u>	Fine: C Suspension	Fine: C Suspension Revocation	Fine: Suspension Revocation
(16)	560.114(1)(e)	<u>Failure to maintain, preserve, keep available for examination, and produce all books, accounts, files, or other documents required by the chapter.</u>	Fine: A Suspension	Fine: B Suspension Revocation	Fine: C Suspension Revocation
(17)	560.114(1)(f)	<u>Refusing to allow the examination or inspection of books, accounts, files, or other documents by the Office pursuant to the chapter or to comply with a subpoena issued by the Office.</u>	Fine: B Suspension Revocation	Fine: C Revocation	Revocation
(18)	560.114(1)(g)	<u>Failure to pay a judgment recovered in any court by a claimant in an action arising out of a money transmission transaction within 30 days after the judgment became final.</u>	Fine: A Suspension	Fine: B Suspension	Fine: C Revocation
(19)	560.114(1)(h)	<u>Engaging in acts prohibited under 560.111.</u>	Fine: C Revocation	N/A	N/A
(20)	560.114(1)(i)	<u>Insolvency</u>	Fine: A Suspension Revocation	Fine: B Suspension Revocation	Fine: C Suspension Revocation
(21)	560.114(1)(j)	<u>Failure to remove an affiliated party after the Office has issued and served a final order setting forth a finding that the affiliated party has violated a provision of the chapter.</u>	Fine: A Suspension Revocation	Fine: B Suspension Revocation	Fine: C Suspension Revocation
(22)	560.114(1)(k)	<u>Making a material misstatement, misrepresentation, or omission in an application, amendment, or appointment of an authorized vendor.</u>	Fine: A Suspension Revocation	Fine: B Suspension Revocation	Fine: C Suspension Revocation
(23)	560.114(1)(l)	<u>Committing any act that results in a license, or its equivalent, to practice any profession or occupation, being denied, suspended, revoked, or otherwise acted against by a licensing authority in any jurisdiction.</u>	Fine: A Suspension Revocation	Fine: B Suspension Revocation	Fine: C Suspension Revocation

(24)	560.114(1)(m)	<u>Being the subject of final agency action or its equivalent, issued by an appropriate regulator, for engaging in unlicensed money services business or deferred presentment provider activity in any jurisdiction.</u>	Fine: C	Fine: C Suspension	Fine: C Suspension
(25)	560.114(1)(n)	<u>Committing any act resulting in a license or its equivalent to practice any profession or occupation being denied, suspended, revoked, or otherwise acted against by a licensing authority in any jurisdiction for a violation of 18 U.S.C. s. 1956, 18 U.S.C. s. 1957, and 18 U.S.C. s. 1960, 31 U.S.C. s. 5324, or any law or rule of another state or the United States relating to a money services business, deferred presentment provider, or usury.</u>	Fine: C Suspension Revocation	Fine: C Suspension Revocation	Fine: C Suspension Revocation
(26)	560.114(1)(o)	<u>Having been convicted of, or entered a plea of guilty or nolo contendere to any felony or crime punishable by imprisonment of 1 year or more under the law of any state of the United States which involves fraud, moral turpitude, or dishonest dealing, regardless of adjudication.</u>	Fine: C Revocation	N/A	N/A
(27)	560.114(1)(p)	<u>Having been convicted of, or entered a plea of guilty or nolo contendere to a crime under 18 U.S.C. s. 1956 or 31 U.S.C. s.5324 regardless of adjudication.</u>	Fine: C Revocation	N/A	N/A
(28)	560.114(1)(q)	<u>Having been convicted of, or entered a plea of guilty or nolo contendere to misappropriation, conversion, or unlawful withholding of moneys belonging to others, regardless of adjudication.</u>	Fine: C Revocation	N/A	N/A
(29)	560.114(1)(r)	<u>Failure to inform the Office within 30 days after having pled guilty or nolo contendere to, or being convicted of, any felony or crime punishable by imprisonment of 1 year or more under the law of any state or the US, or any crime involving fraud, moral turpitude, or dishonest dealing.</u>	Fine: B	Fine: C Revocation	N/A

(30)	560.114(1)(s)	<u>Aiding, assisting, procuring, advising, or abetting any person in violating a provision of this chapter or any order or rule of the Office or Commission.</u>	Fine: B Suspension Revocation	Fine: C Suspension Revocation	N/A
(31)	560.114(1)(t)	<u>Failure to pay any fee, charge, or cost imposed or assessed under the chapter.</u>	Fine: A Suspension	Fine: B Suspension	Fine: C Revocation
(32)	560.114(1)(u)	<u>Failure to pay a fine assessed by the Office within 30 days after the due date as stated in the final order.</u>	Fine Code: B Suspension Revocation	Fine: C Revocation	Fine: C Revocation
(33)	560.114(1)(v)	<u>Failure to pay any judgment entered by any court within 30 days after the judgment becomes final.</u>	Fine: A Suspension	Fine: B Suspension	Fine: C Suspension
(34)	560.114(1)(x)	<u>Payment to the Office for a license or other fee, charge, cost, or fine with a check or electronic transmission of funds that is dishonored by the applicant's or licensee's financial institution.</u>	Fine: A Suspension	Fine: B Suspension	Fine: C Revocation
(35)	560.114(1)(y)	<u>Violations of 31 C.F.R. ss. 103.20, 103.22, 102.23, 103.27, 103.28, 103.29, 103.33, 103.37, 103.41, and 103.125, and United States Treasury Interpretative Release 2004-1. Note: For purposes of the application of this violation, the distinct federal codes referenced shall be treated as separate violations and penalties shall be applied separately for each code violation cited.</u>	Fine: B Suspension Revocation	Fine: C Suspension Revocation	Fine: C Suspension Revocation
(36)	560.114(1)(z)	<u>Engaging in any practice or conduct that creates the likelihood of material loss, insolvency, or dissipation of assets of a MSB or otherwise materially prejudices the interests of its customers.</u>	Fine: C Suspension Revocation	Fine: C Suspension Revocation	Fine: C Suspension Revocation
(37)	560.114(2)	<u>Immediate Suspension for failure to provide required records upon written request.</u>	Fine: A Suspension	Fine: B Suspension	Fine: C Suspension
(38)	560.118(1)	<u>Failure to file annual financial audit reports with the Office pursuant to this Chapter 560, F.S. or related rules.</u>	Fine: C Revocation if later than 90 days from due date	Fine: C Revocation if later than 90 days from due date	Fine: C Revocation if later than 90 days from due date
(39)	560.118(2)	<u>Failure to submit quarterly reports to the Office in the format specified by rule.</u>	Fine: A Suspension	Fine: B Suspension	Fine: C Suspension Revocation

(40)	560.123(3)	Failure to maintain a record of every transaction, which occurs in this state that involves currency greater than \$10,000, in one or in aggregate in one day, and involves the proceeds of unlawful activity or is designed to evade reporting requirements of s. 560.123, F.S. or Chapter 896, F.S.	Fine: C Revocation	N/A	N/A
(41)	560.123(3)(c)	Failure to file a currency transaction report for every transaction noted in s. 560.123(3), F.S.	Fine: A Suspension Revocation	Fine: B Suspension Revocation	Fine: C Suspension Revocation
(42)	560.123(4)	Failure to comply with the money laundering, enforcement, and reporting provisions of s. 655.50, F.S. involving currency transactions and payment instruments, and Chapter 896, F.S., concerning offenses relating to financial transactions.	Fine: A Suspension Revocation	Fine: B Suspension Revocation	Fine: C Suspension Revocation
(43)	560.1235(1)	Failure to comply with all state and federal laws and rules relating to money laundering, including several chapters from 31 C.F.R. 103.	Fine: A Suspension Revocation	Fine: B Suspension Revocation	Fine: C Suspension Revocation
(44)	560.1235(2)	Failure to maintain, review, and update an anti-money laundering program.	Fine: A Suspension Revocation	Fine: B Suspension Revocation	Fine: C Suspension Revocation
(45)	560.1235(3)	Failure to comply with United States Treasury Interpretive Release 2004-1.	Fine: B Suspension Revocation	Fine: B Suspension Revocation	Fine: C Suspension Revocation
(46)	560.126(1)(a)	Failure to provide the Office notice within 30 days after occurrence of a bankruptcy filing	Fine: C Suspension	Fine: C Suspension	Fine: C Suspension
(47)	560.126(1)(b)	Failure to provide the Office notice within 30 days after occurrence of the commencement of an administrative or judicial suspension, revocation, or denial of a license from any other state in the United States.	Fine: A Suspension	Fine: B Suspension	Fine: C Suspension
(48)	560.126(1)(c)	Failure to provide the office notice within 30 days after occurrence of a felony indictment relating to a money services business or deferred presentment provider involving the licensee, a vendor, or affiliated party. Note: Any licensee suspended under this provision shall be suspended until a final disposition has been reached by the court for the case defined in the suspension order. Any rights to appeal with not be considered in the application of this section.	Fine: B Suspension	Fine: C Suspension	Fine: C Suspension

(49)	560.126(1)(d)	Failure to provide the office notice within 30 days after occurrence of a felony conviction, guilty plea, or plea of nolo contendere, regardless of adjudication, of a licensee, vendor, or affiliated party.	Revocation	Revocation	Revocation
(50)	560.126(1)(e)	Failure to provide the office notice within 30 days after occurrence of an interruption of any corporate surety bond required.	Fine: B Suspension	Fine: B Suspension	Fine: C Suspension
(51)	560.126(1)(g)	Failure to provide the office notice of the notification by law enforcement or prosecutorial agency that the licensee or vendor is under criminal investigation.	Fine: B Suspension	Fine: C Suspension	Fine: C Revocation.
(52)	560.126(2)	Failure to report to Office any change in application or renewal information within 30 days of the change.	Fine: A	Fine: B	Fine: C Suspension
(53)	560.126(3)	Failure to report any change in ownership, control, or responsible persons of the licensee.	Fine: A	Fine: B	Fine: C Suspension
(54)	560.128(1)	Failure to provide each customer with a toll-free number or the office's toll-free number and address for consumer contact.	Fine: A	Fine: A	Fine: B
(55)	560.208(4)	Failure to place assets that are the property of a customer in a segregated account in a federally insured institution or the failure to maintain separate accounts for operating capital and the clearing of customer funds.	Fine: B	Fine: C Suspension	Fine: C Revocation
(56)	560.208(5)	Failure to ensure that money transmitted is available to the beneficiary within 10 business days after receipt.	Fine: B	Fine: C	Fine: C Suspension
(57)	560.208(6)	Failure to immediately upon receipt of currency or payment instrument provide a confirmation or sequence number to the customer verbally, by paper, or electronically.	Fine: A	Fine: C	Fine: C Suspension
(58)	560.2085(1)	Failure to notify the Office within 60 days after a vendor commences or terminates licensed activity.	Fine: A	Fine: B	Fine: C Suspension
(59)	560.2085(2)	Failure to enter into a written contract with an authorized vendor, signed by the licensee and the authorized vendor.	Fine: A	Fine: B	Fine: C Suspension

(60)	<u>560.2085(2)(a)</u>	<u>The vendor contract must set forth the nature and scope of the relationship between the licensee and the vendor, including rights and responsibilities of the parties</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C Suspension</u>
(61)	<u>560.2085(2)(b)</u>	<u>Failure to enter into a written contract that includes requirements of s. 560.2085(2)(b)(1-8), F.S.</u>	<u>Fine: A</u>	<u>Fine: B Suspension</u>	<u>Fine: C Suspension</u>
(62)	<u>560.2085(3)</u>	<u>Failure to develop and implement written policies and procedures to monitor compliance with applicable state and federal law by a licensee's authorized vendors.</u>	<u>Fine: B</u>	<u>Fine: B</u>	<u>Fine: C Suspension</u>
(63)	<u>560.209(1)</u>	<u>Failure to maintain at all times net worth of at least \$100,000 plus and additional \$10,000 for each location up to \$2 million. Note: Suspension will be ordered until adequate net worth has been obtained and accepted by the Office</u>	<u>Fine: B Suspension Revocation</u>	<u>Fine: B Suspension Revocation</u>	<u>Fine: C Suspension Revocation</u>
(64)	<u>560.209(2)</u>	<u>Failure to obtain an annual financial audit report and submit it to the Office within 120 days after the end of the licensee's fiscal year end.</u>	<u>Fine: B Suspension Revocation</u>	<u>Fine: B Suspension Revocation</u>	<u>Fine: C Suspension Revocation</u>
(65)	<u>560.209(3)(a-b)</u>	<u>Failure to provide and pledge to the Office a surety bond not less than \$50,000 or more than \$2 million.</u>	<u>Fine: C Revocation</u>	<u>N/A</u>	<u>N/A</u>
(66)	<u>560.209(3)(c)</u>	<u>Canceling a surety bond without written notice to the Office by registered mail or a canceling a bond within 30 days after receipt by the Office of the written notice. Note: Suspension will be ordered until adequate surety device has been obtained and accepted by the Office</u>	<u>Fine: C Suspension</u>	<u>Fine: C Suspension</u>	<u>Fine: C Suspension</u>
(67)	<u>560.209(3)(e)</u>	<u>Failure to furnish a new or additional surety bond so that the total or aggregate principal sum of the bond equals the required bond according to the chapter.</u>	<u>Fine: C Suspension</u>	<u>Fine: C Suspension</u>	<u>Fine: C Suspension</u>
(68)	<u>560.209(4)(a-b)</u>	<u>Failure to deposit collateral cash, securities, or alternative security devices as provided by rule in at least the amount of a required bond.</u>	<u>Fine: C Suspension</u>	<u>Fine: C Suspension</u>	<u>Fine: C Suspension</u>

(69)	560.209(4)(c)	<u>Failure to pledge collateral cash, securities, or alternative security devices as provided by rule to the Office or failure to maintain collateral cash, securities, or alternative security devices in an insured financial institution to secure the same obligations as a bond.</u>	Fine: C Suspension	Fine: C Suspension	Fine: C Suspension
(70)	560.210(1)	<u>Failure to possess, at all times, permissible investments with an aggregate market value of at least the aggregate face amount of all outstanding money transmissions and payment instruments issued or sold by the licensee or authorized vendor in the United States.</u>	Fine: B	Fine: B Suspension	Fine: C Revocation
(71)	560.211(1)	<u>Failure to maintain all records required to be kept by Section 560.211, F.S. for 5 years.</u>	Fine: B Suspension	Fine: B Suspension	Fine: C Revocation
(72)	560.211(1)(a)	<u>Failure to maintain a daily record of payment instruments sold and money transmitted.</u>	Fine: B Suspension	Fine: B Suspension	Fine: C Revocation
(73)	560.211(1)(b)	<u>Failure to maintain a general ledger containing all asset, liability, capital, income, and expense accounts, which must be posted at least monthly.</u>	Fine: B Suspension	Fine: B Suspension	Fine: C Revocation
(74)	560.211(1)(c)	<u>Failure to maintain daily settlement records received from authorized vendors.</u>	Fine: B Suspension	Fine: B Suspension	Fine: C Revocation
(75)	560.211(1)(d)	<u>Failure to maintain monthly financial institution statements and reconciliation records.</u>	Fine: B Suspension	Fine: B Suspension	Fine: C Revocation
(76)	560.211(1)(e)	<u>Failure to maintain records of outstanding payment instruments and money transmitted.</u>	Fine: B Suspension	Fine: B Suspension	Fine: C Revocation
(77)	560.211(1)(f)	<u>Failure to maintain records of each payment instrument paid and money transmission delivered.</u>	Fine: B Suspension	Fine: B Suspension	Fine: C Revocation
(78)	560.211(1)(g)	<u>Failure to maintain a list of the names and addresses of all of the licensee's authorized vendors.</u>	Fine: B Suspension	Fine: B Suspension	Fine: C Revocation
(79)	560.211(1)(h)	<u>Failure to maintain records that document the establishment, monitoring, and termination of relationships with authorized vendors and foreign affiliates.</u>	Fine: B Suspension	Fine: B Suspension	Fine: C Revocation
(80)	560.211(1)(i)	<u>Failure to maintain any records, as prescribed by rule, designed to detect and prevent money laundering.</u>	Fine: B Suspension	Fine: B Suspension	Fine: C Revocation



(81)	<u>560.213</u>	<u>Failure of each payment instrument sold or issued by a licensee, directly or through its authorized vendor, to bear the name of the licensee, and any other information as may be required by rule, clearly imprinted thereon.</u>	<u>Fine: B Suspension</u>	<u>Fine: B Suspension</u>	<u>Fine: C Revocation</u>
(82)	<u>560.303(3)</u>	<u>Charging fees in excess of those provided by s. 560.309, F.S. by a person exempt from licensure under Chapter 560 part III.</u>	<u>Fine: A Restitution</u>	<u>Fine: B Restitution Suspension</u>	<u>Fine: C Revocation</u>
(83)	<u>560.309(1)</u>	<u>Failure to transact business under Chapter 560, part III, F.S. under the legal name under which the person is licensed.</u>	<u>Fine: B</u>	<u>Fine: B Suspension</u>	<u>Fine: C Revocation</u>
(84)	<u>560.309(2)</u>	<u>Failure to endorse a payment instrument that is accepted or cashed by the licensee using the legal name under which the licensee is licensed.</u>	<u>Fine: B Suspension</u>	<u>Fine: C Revocation</u>	<u>N/A</u>
(85)	<u>560.309(3)</u>	<u>Failure to deposit payment instruments into a commercial account at a federally insured financial institution or sell payment instruments within 5 business days after the acceptance of the payment instrument.</u>	<u>Fine: B</u>	<u>Fine: B Suspension</u>	<u>Fine: C Revocation</u>
(86)	<u>560.309(4)</u>	<u>Accepting or cashing multiple payment instruments from a person who is not the original payee, unless the person is licensed to cash payment instruments pursuant to Chapter 560 part III and all payment instruments accepted are endorsed with the legal name of the person.</u>	<u>Fine: B Suspension</u>	<u>Fine: C Revocation</u>	<u>N/A</u>
(87)	<u>560.309(5)</u>	<u>Failure to report all suspicious activity to the office in accordance with the criteria set forth in 31 C.F.R. s. 103.20.</u>	<u>Fine: B</u>	<u>Fine: B Suspension</u>	<u>Fine: C Revocation</u>
(88)	<u>560.309(6)</u>	<u>Failure to equip each location of a licensee where checks are cashed with a security camera system that is capable of recording and retrieving an image in order to assist in identifying and apprehending an offender unless the licensee has installed a bulletproof or bullet-resistant partition or enclosure in the area where checks are cashed.</u>	<u>Fine: B</u>	<u>Fine: B Suspension</u>	<u>Fine: C Revocation</u>

(89)	560.309(7)	Failure to post a notice listing the charges for cashing payment instruments.	Fine: A	Fine: B Suspension	Fine: C Revocation
(90)	560.309(8)(a)	Charged fees, except otherwise provided by s. 560.309, F.S., and exclusive of the direct costs of verification in excess of 5 percent of the face amount of the payment instrument, or \$5, whichever is greater.	Fine: A Restitution	Fine: B Restitution Suspension	Fine: C Restitution Revocation
(91)	560.309(8)(b)	Charged fees, except otherwise provided by s. 560.309, F.S., and exclusive of the direct costs of verification in excess of 3 percent of the face amount of the payment instrument, or \$5, whichever is greater for a payment instrument that is any kind of state public assistance or federal social security benefit payable to the bearer of the payment instrument.	Fine: A Restitution	Fine: B Restitution Suspension	Fine: C Restitution Revocation
(92)	560.309(8)(c)	Charged fees, except otherwise provided by s. 560.309, F.S., and exclusive of the direct costs of verification in excess of 10 percent of the face amount for personal checks or money orders, or \$5, whichever is greater.	Fine: C Restitution	Fine: C Restitution Suspension	Fine: C Restitution Revocation
(93)	560.309(9)	Assessed the cost of collections, other than fees for insufficient funds provided by law, without judgment from a court of competent jurisdiction.	Fine: A Restitution	Fine: B Restitution Suspension	Fine: C Restitution Revocation
(94)	560.309(10)	Failed to comply with the provisions of s. 68.065, F.S., and failed to comply with the prohibitions against harassment or abuse, false or misleading representations, and unfair practices in the Fair Debt Collections Act, U.S.C. ss. 1692d, 1692d, 1962f.	Fine: B Suspension	Fine: C C Suspension	Fine: C Revocation
(95)	560.310(1)(a)	Failed to maintain customer files on all customers who cash corporate or third-party payment instruments exceeding \$1,000.	Fine: B Suspension	Fine: C Suspension	Fine: C Revocation

(96)	560.310(1)(b)(1)	Failed to maintain a copy of the personal identification as used as identification as presented by the customer for a payment instrument accepted having a face value of \$1,000 or more.	Fine: B Suspension	Fine: C Suspension	Fine: C Revocation
(97)	560.310(1)(b)(2)	Failed to maintain a thumbprint of the customer, taken by the licensee, for a payment instrument accepted having a face value of \$1,000 or more.	Fine: B Suspension	Fine: C Suspension	Fine: C Revocation
(98)	560.310(1)(c)	Failed to maintain an electronic payment instrument log which reports aggregate payment instruments whose total cashed is greater than \$1,000.	Fine: B Suspension	Fine: C Suspension	Fine: C Revocation
(99)	460.404(1)	Failed to document each deferred presentment transaction in a written agreement signed by the deferred presentment provider and the drawer.	Fine: B	Fine: C Suspension	Fine: C Revocation
(100)	560.404(2)	Each deferred presentment transaction agreement failed to be executed on the day the deferred presentment provider furnishes currency or a payment instrument to the drawer.	Fine: A	Fine: B Suspension	Fine: C Suspension
(101)	560.404(3)(a)	Each deferred presentment transaction agreement failed to contain the name or trade name, address, and telephone number of the deferred presentment provider and the name and title of the person who signs the agreement on behalf of the provider.	Fine: A	Fine: B Suspension	Fine: C Suspension
(102)	560.404(3)(b)	Each deferred presentment transaction agreement failed to contain the date the deferred presentment transaction was made.	Fine: A	Fine: B Suspension	Fine: C Suspension
(103)	560.404(3)(c)	Each deferred presentment agreement failed to contain the amount of the drawer's check.	Fine: A	Fine: B Suspension	Fine: C Suspension
(104)	560.404(3)(d)	Each deferred presentment agreement failed to contain the length of the deferment period.	Fine: A	Fine: B Suspension	Fine: C Suspension
(105)	560.404(3)(e)	Each deferred presentment agreement failed to contain the last day of the deferment period.	Fine: A	Fine: B Suspension	Fine: C Suspension
(106)	560.404(3)(f)	Each deferred presentment agreement failed to contain the address and telephone number of the office.	Fine: A	Fine: B Suspension	Fine: C Suspension

(107)	560.404(3)(g)	Each deferred presentment agreement failed to contain a clear description of the drawer's payment obligations under the deferred presentment transaction.	Fine: A	Fine: B Suspension	Fine: C Suspension
(108)	560.404(3)(h)	Each deferred presentment agreement failed to contain the transaction number assigned by the office's database.	Fine: A	Fine: B Suspension	Fine: C Suspension
(109)	560.404(4)	Failed to furnish a copy of the deferred presentment transaction agreement to the drawer.	Fine: A	Fine: B Suspension	Fine: C Suspension
(110)	560.404(5)	Accepting a check for a deferred presentment transaction where the face amount of the check taken exceeds \$500 exclusive of the fees allowed under Part IV of Chapter 560,F.S.	Fine: A	Fine: B Suspension	Fine: C Suspension
(111)	560.404(6)	Charging fees that exceed 10 percent of the currency or payment instrument provided for a deferred presentment transaction.	Fine: A Restitution	Fine: B Restitution Suspension	Fine: C Restitution Revocation
(112)	560.404(7)	Collecting the fees authorized for a deferred presentment transaction before the drawer's check is presented or redeemed.	Fine: A	Fine: B Suspension	Fine: C Suspension
(113)	560.404(8)	Accepting a deferred presentment transaction for a term longer than 31 days or less than 7 days.	Fine: A	Fine: B Suspension	Fine: C Suspension
(114)	560.404(9)	Requiring a drawer to provide additional security or guaranty for a deferred presentment transaction.	Fine: A	Fine: B Suspension	Fine: C Suspension
(115)	560.404(10)(a)	Including a hold harmless clause in a deferred presentment agreement.	Fine: A	Fine: B Suspension	Fine: C Suspension
(116)	560.404(10)(b)	Including a confession of judgment clause in a deferred presentment agreement.	Fine: A	Fine: B Suspension	Fine: C Suspension
(117)	560.404(10)(c)	Including an assignment of or order for a payment of wages or other compensation for services in a deferred presentment agreement.	Fine: A	Fine: B Suspension	Fine: C Suspension
(118)	560.404(10)(d)	Including a provision in which the drawer agrees not to assert any claim or defense arising out of the agreement in a deferred presentment agreement.	Fine: A	Fine: B Suspension	Fine: C Suspension
(119)	560.404(10)(e)	Including a waiver of any provision of Chapter 560, Part IV, F.S in a deferred presentment agreement.	Fine: A	Fine: B Suspension	Fine: C Suspension

(120)	560.404(11)	A deferred presentment provider shall immediately provide the drawer with the full amount of any check to be held, less only the fee allowed by Chapter 560, Part IV, F.S.	Fine: B	Fine: C Suspension	Fine: C Revocation
(121)	560.404(12)	Holding a deferred presentment agreement or a drawer's check that is altered, the date is deleted, or fails to bear the same date for a deferred presentment transaction.	Fine: A	Fine: B Suspension	Fine: C Suspension
(122)	560.404(13)	Failure to ensure that each deferred presentment transaction complies with the disclosure requirements of 12 C.F.R., part 226, relating to the federal Truth-in-Lending Act, and Regulation Z of the Board of Governors of the Federal Reserve Board.	Fine: A	Fine: B Suspension	Fine: C Suspension
(123)	560.404(14)	Accepting or holding an undated check or a check dated on a date other than the date on which the deferred presentment provider agreed to hold the check and signed the deferred presentment transaction agreement.	Fine: A	Fine: B Suspension	Fine: C Suspension
(124)	560.404(15)	Failure to hold the drawer's check for the agreed number of days, unless the drawer chose to redeem the check before the presentment date.	Fine: A	Fine: B Suspension	Fine: C Suspension
(125)	560.404(16)	Charging an additional fee for issuing or cashing a deferred presentment provider's payment instrument, if licensed under Part II of Chapter 560, F.S.	Fine: B Restitution	Fine: B Restitution Suspension	Fine: B Restitution Revocation
(126)	560.404(17)	Requiring a drawer to accept a payment instrument issued by the licensee in lieu of currency in a deferred presentment transaction.	Fine: A	Fine: B Suspension	Fine: C Suspension
(127)	560.404(18)	Engaging in the rollover of a deferred presentment agreement. Redeeming, extending, or otherwise consolidating a deferred presentment agreement with the proceeds of another deferred presentment transaction made by the same deferred presentment provider or an affiliate.	Fine: B Restitution of any fees received for each subsequent rollover	Fine: B Restitution of any fees received for each subsequent rollover Suspension	Fine: C Restitution of any fees received for each subsequent rollover Revocation

(128)	560.404(19)	<u>Entering into a deferred presentment transaction with a drawer who has an outstanding deferred presentment transaction with that provider or with any other deferred presentment provider, or with a person whose previous deferred presentment transaction with that provider or with any other provider has been terminated for less than 24 hours.</u>	Fine: B <u>Restitution of any fees received for each subsequent rollover</u>	Fine: B <u>Restitution of any fees received for each subsequent rollover</u> <u>Suspension</u>	Fine: C <u>Restitution of any fees received for each subsequent rollover</u> <u>Revocation</u>
(129)	560.404(19)(a)	<u>Failure to verify whether the deferred presentment provider or an affiliate has an outstanding deferred presentment transaction with a particular person or has terminated a transaction with that person within the previous 24 hours.</u>	Fine: B <u>Restitution of any fees received for each subsequent rollover</u>	Fine: B <u>Restitution of any fees received for each subsequent rollover</u> <u>Suspension</u>	Fine: C <u>Restitution of any fees received for each subsequent rollover</u> <u>Revocation</u>
(130)	560.404(19)(b)	<u>Failure to access the office's database and verify whether any other deferred presentment provider has an outstanding deferred presentment transaction with a particular person or has terminated a transaction with that person within the previous 24 hours.</u>	Fine: B <u>Restitution of any fees received for each subsequent rollover</u>	Fine: B <u>Restitution of any fees received for each subsequent rollover</u> <u>Suspension</u>	Fine: C <u>Restitution of any fees received for each subsequent rollover</u> <u>Revocation</u>
(131)	560.404(20)	<u>Failure to provide the notice defined in s. 560.404(20), F.S., in a prominent place on each deferred presentment agreement in at least 14-point type in substantially the form provided by the chapter and must obtain the signature of the drawer where indicated.</u>	Fine: A	Fine: B	Fine: C <u>Suspension</u>
(132)	560.404(21)	<u>Presenting a drawer's check if the drawer informs the provider in person that the drawer cannot redeem or pay in full in cash the amount due and owing the deferred presentment provider or charging an additional fee or penalty by virtue of any misrepresentation made by the drawer as to the sufficiency of funds in the drawer's account.</u>	Fine: A <u>Restitution</u>	Fine: B <u>Restitution</u> <u>Suspension</u>	Fine: C <u>Restitution</u> <u>Revocation</u>

(133)	560.404(22)	Failure to provide a grace period extending the term of an agreement for an additional 60 days after the original termination date, without any additional charge if by the end of the deferment period, the drawer informs the deferred presentment provider in person that the drawer cannot redeem or pay in full in cash the amount due and owing.	Fine: B Restitution	Fine: C Restitution Suspension	Fine: C Restitution Revocation
(134)	560.404(22)(a)	Failure to comply with and adhere to, including depositing the drawer's check before the end of the 60-day grace period, a repayment plan that a drawer agrees to comply with and adhere to, which was approved by a credit counseling agency. Discouraging a drawer from using the 60-day grace period.	Fine: B Restitution	Fine: C Restitution Suspension	Fine: C Restitution Revocation
(135)	560.404(22)(b)(1)	Failure to provide verbal notice of the availability of the 60-day grace period consistent with the written notice in s. 560.404(20), F.S.	Fine: A	Fine: B	Fine: C Suspension
(136)	560.404(22)(b)(2)	Failure to provide a drawer a list of approved consumer credit counseling agencies prepared by the office.	Fine: A	Fine: B	Fine: C Suspension
(137)	560.404(22)(b)(3)	Failure to provide a drawer the written notice in 560.404(22)(b)(3) in at least 14-point type in substantially the form in the section detailing the drawer's rights under the 60-day grace period.	Fine: A	Fine: B	Fine: C Suspension
(138)	560.404(22)(c)	Failure to pay one-half of the drawer's fee for a deferred presentment agreement to the consumer credit counseling agency if a drawer completes an approved payment plan.	Fine: A	Fine: B	Fine: C Suspension

(139)	560.404(23)	Failure to submit data, including but not limited to the drawer's name, social security number or employment authorization, alien number, address, driver's license number, amount of the transaction, date of transaction, the date that the transaction is closed, and such additional information as is required by rule before entering into each deferred presentment transaction in order to verify whether any deferred presentment transactions are outstanding for a particular person.	Fine: A	Fine: B Suspension	Fine: C Suspension
(140)	560.404(24)	Accepting more than one check or authorization to initiate more than one automated clearinghouse transaction to collect on a deferred presentment transaction for a single deferred presentment transaction.	Fine: A	Fine: B	Fine: C Suspension
(141)	560.405(1)	Presenting a drawer's check before the end of the deferment period, as reflected in the deferred presentment transaction agreement.	Fine: A	Fine: B	Fine: C Suspension
(142)	560.405(2)	Failure to endorse a drawer's check with the name under which the deferred presentment provider is doing business before the deferred presentment provider presents the drawer's check.	Fine: A	Fine: B	Fine: C Suspension
(143)	560.405(3)	Failure to return a drawer's check, upon redemption, and provide a signed, dated receipt showing that the drawer's check has been redeemed.	Fine: A	Fine: B	Fine: C Suspension
(144)	560.406(1)	Sending or collecting on collection notices containing references to treble damages and criminal prosecution used for the collection of worthless check in a deferred presentment transaction.	Fine: A	Fine: B Suspension	Fine: C Revocation



(145)	560.406(2)	Failure to comply with the prohibitions against harassment or abuse, false or misleading representations, and unfair practices that are contained in the Fair Debt Collections Practices Act, 15 U.S.C. ss. 1692d, 1692e, 1692f.	Fine: B Suspension	Fine: C Suspension	Fine: C Revocation
(146)	560.406(3)	Assessing the cost of collection, other than charges for insufficient funds as allowed by law, without a judgment from a court of competent jurisdiction for a deferred presentment transaction.	Fine: A Restitution	Fine: B Restitution Suspension	Fine: C Restitution Revocation

(147) In accordance with this rule:

(a) Depending on the severity and repetition of specific violations, the Office may impose an administrative fine, suspension of a license, or revocation of a license or any combination thereof;

(b) The Office may impose a cease and desist order in conjunction with and in addition to any of the designated sanctions set forth in this rule when appropriate under the circumstances;

(c) Notwithstanding this rule, the Office may, when appropriate, enter orders of removal or prohibition or orders denying applications, and may seek the entry of an injunction and appointment of a receiver by a court of competent jurisdiction; and

(d) The Office will consider the licensee’s disciplinary history for the past five years in determining an appropriate penalty, and may impose a more severe penalty when the disciplinary history includes past violations.

(148) In accordance with Section 560.1141(3), F.S., when sufficient evidence is available, the Office shall consider the following circumstances in determining a penalty within the range of penalties provided in this rule and may impose a penalty that deviates from the range of penalties herein as a result of such circumstances:

(a) Whether the violation rate is less than 5% when compared to the overall sample size reviewed;

(b) The degree of harm to the customers or the public;

(c) The disciplinary history of the licensee;

(d) Whether the licensee detected and voluntarily instituted corrective responses or measures to avoid the recurrence of a violation prior to detection and intervention by the Office;

(e) Whether the licensee’s violation was the result of willful misconduct or recklessness;

(f) Whether at the time of the violation, the licensee had developed and implemented reasonable supervisory, operational or technical procedures, or controls to avoid the violation;

(g) Where the violation is attributable to an individual officer, director, responsible person, or authorized vendor, whether the licensee removed or otherwise disciplined the individual prior to detection and intervention by the Office;

(h) Whether the licensee attempted to conceal the violation or mislead or deceive the Office;

(i) The length of time over which the licensee engaged in the violations;

(j) Whether the licensee engaged in numerous violations or a pattern of misconduct;

(k) The number, size and character of the transactions in question;

(l) Whether the licensee provided substantial assistance to the Office in its examination or investigation of the underlying misconduct;

(m) Other relevant, case-specific circumstances.

(149) The list of violations cited in this rule is intended to be comprehensive, but the omission of a violation from the list does not preclude the Office from taking any action authorized by Section 560.114, F.S.

(150) The ranges for administrative fines imposed by this rule are \$1,000 – \$3,500 for an “A” level fine; \$3,500 – \$7,500 for a “B” level fine; and \$7,500 – \$10,000 for a “C” level fine.

Specific Authority 560.105, 560.1141 FS. Law Implemented 560.109, 560.110, 560.111, 560.114, 560.1141, 560.118, 560.123, 560.1235, 560.125, 560.126, 560.128, 560.204, 560.208, 560.2085, 560.209, 560.210, 560.211, 560.213, 560.303, 560.309, 560.310, 560.403, 560.404, 560.405, 560.406 FS. History–New \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Mike Ramsden, Chief, Money Transmitter Regulation, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399, (850)410-9805, mike.ramsden@flofr.com

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Financial Services Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 9, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 27, 2008

## FINANCIAL SERVICES COMMISSION

### Finance

RULE NO.:	RULE TITLE:
69V-560.1021	Effect of Law Enforcement Records on Applications for Money Services Business Licensure

PURPOSE AND EFFECT: The rules set forth the policies of the Office of Financial Regulation with respect to processing license applications for persons who have been found guilty of, or who have pled guilty or nolo contendere to, certain crimes. The policies will address applications for licensure as money services businesses, which include money transmitters, payment instrument sellers, foreign currency exchangers, check cashers, and deferred presentment providers.

SUMMARY: The rules forth the policies of the Office of Financial Regulation with respect to processing license applications for persons who have been found guilty of, or who have pled guilty or nolo contendere to, certain crimes. The policies address applications for licensure as money services businesses. An applicant is not eligible for licensure until 15 years have elapsed, if a "relevant person" of the applicant has been found guilty of, or has pled guilty or nolo contendere to, a Class "A" crime. Class A crimes under the rule include felonies involving financially related or white collar crime, or crimes involving violence. The Office finds that such crimes involve an act of fraud, dishonest dealing, moral turpitude, misappropriation, conversion, or unlawful withholding of moneys belong to others (e.g. fraud, perjury, money laundering, armed robbery, extortion, murder, rape, etc.) An applicant is not eligible for licensure until 7 years have elapsed, if a "relevant person" of the applicant has been found guilty of, or has pled guilty or nolo contendere to, a Class "B" crime. Class B crimes include all felonies that involve any other act of fraud, dishonest dealing, moral turpitude, misappropriation, conversion, or unlawful withholding of moneys belonging to others, regardless of adjudication, and are not Class "A" crimes. An applicant is not eligible for licensure until 5 years have elapsed, if a "relevant person" of the applicant has been found guilty of, or has pled guilty or nolo contendere to, a Class "C" crime. Class "C" Crimes include any misdemeanor that involves misappropriation, conversion,

or unlawful withholding or moneys belonging to others, regardless of adjudication. "Relevant persons" means each officer, director, responsible person, compliance officer, or controlling shareholder of the money services business applicant, and any other person who has a controlling interest in the money services business applicant. If the applicant is a natural person, he or she is the relevant person under the rule. The rule provides for factors that may lengthen or shorten the time periods discussed above, but in no event shall any mitigation result in less than a seven (7) disqualifying period where the underlying crime committed was a felony.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 560.105 FS.

LAW IMPLEMENTED: 112.011, 560.114, 560.140, 560.141 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Terry Straub, Director, Division of Finance, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399, (850)410-9805, terry.straub@flofr.com

THE FULL TEXT OF THE PROPOSED RULE IS:

69V-560.1021 Effect of Law Enforcement Records on Applications for Money Services Business Licensure.

(1) Definitions. For purposes of this rule:

(a) "Relevant persons" means each officer, director, responsible person, compliance officer, or controlling shareholder of the money services business applicant, and any other person who has a controlling interest in the money services business applicant as provided in Section 560.127, F.S. If the applicant is a natural person, he or she is the relevant person under this rule.

(b) "Trigger date" means the date on which an applicant was found guilty, or pled guilty, or pled nolo contendere to a crime.

(2) General Procedure Regarding Law Enforcement Records. At the time of submitting a Money Services Business Application, the applicant shall disclose on the application form any pending criminal charges and all criminal matters in which a relevant person has pled guilty or nolo contendere to, or has been convicted or found guilty, regardless of whether adjudication was withheld, of any crime. In addition, the applicant shall supply the Office with required documentation

for each relevant person, as specified in this rule, relating to: 1) all criminal matters in which the relevant person has pled guilty or nolo contendere to, or has been convicted or found guilty, regardless of whether adjudication was withheld, of a class "A", "B", or "C" crime as described in this rule, 2) any pending criminal charges for a relevant person relating to a class "A", "B", or "C" crime as described in this rule, or 3) shall supply evidence that such documentation cannot be obtained. Evidence that documentation cannot be obtained shall consist of a certified or sworn written statement on the letterhead of the agency that would be the custodian of the documents, signed by a representative of that agency, stating that they have no record of such matter, or that the record is lost or was damaged or destroyed, or otherwise stating why the document cannot be produced. The required documentation must be legible. Required documentation includes:

(a) A copy of the police arrest affidavit, arrest report or similar document.

(b) A certified copy of the charges.

(c) A certified copy of the plea, judgment, and sentence where applicable.

(d) A certified copy of an order of entry into pre-trial intervention, and the order of termination of pre-trial intervention showing dismissal of charges where applicable.

(e) A certified copy of an order of termination of probation or supervised release, if applicable.

(3) Effect of Failure to Fully Disclose Law Enforcement Record on Application.

(a) The omission of any part of a law enforcement record required to be disclosed pursuant to subsection (2) is a material misrepresentation or material misstatement on the application and the application shall be denied pursuant to Section 560.114(1)(k), Florida Statutes.

(b) Notwithstanding paragraph (3)(a), the Office shall not deny an application for failure to provide documentation listed in subsection (2) when the crime is not a class "A", "B", or "C" crime and the applicant has disclosed the crime on the application form.

(c) If the Office discovers the applicant's failure to disclose after a license has been granted, the Office will suspend or revoke each license currently held by the applicant as follows:

1. Suspension for 12 months if, had the license application been accurate, the application would have been granted, based on the statutes and licensing rules applicable to the application at the time the Office issued the license, and the documentation in the applicant's file at the time the Office issued the license.

2. Revocation if, had the license application been accurate, the application would have been denied, based on the statutes and licensing rules applicable to the application at the time the Office issued the license.

(4) Classification of Crimes.

(a) The Office makes a general classification of crimes into three classes: A, B and C, as listed in subsections (16), (17) and (18) of this rule.

(b) These classifications reflect the Office's evaluation of various crimes in terms of moral turpitude and the seriousness of the crime as such factors relate to the prospective threat to public welfare typically posed by a person who would commit such a crime.

(c) The names or descriptions of crimes, as set out in the classification of crimes, are intended to serve only as generic names or descriptions of crimes and shall not be read as legal titles of crimes, or as limiting the included crimes to crimes bearing the exact name or description stated.

(d) A charge in the nature of attempt or intent to commit a crime, or conspiracy to commit a crime, is classified the same as the crime itself.

(5) Effect on Licensure of Commitment of Single Crime. The Office finds it necessary to implement the following standards for applicants with relevant persons whose law enforcement record includes a single crime, subject to the mitigating factors set forth elsewhere in this rule before licensure. All disqualifying periods referenced in this rule run from the trigger date.

(a) Class A Crime. The applicant will not be granted a license until 15 years have passed since the trigger date.

(b) Class B Crime. The applicant will not be granted a license until 7 years have passed since the trigger date.

(c) Class C Crime. The applicant will not be granted licensure until 5 years have passed since the trigger date.

(6) Relevant Persons With Multiple Crimes.

(a) The Office construes Section 560.114(1)(o), (p), and (q), Florida Statutes, to require that an applicant with relevant persons whose law enforcement record includes multiple class "A", "B" or C crimes, or any combination thereof, wait longer than those whose law enforcement record includes only a single crime before becoming eligible for licensure in order to assure that such relevant person's greater inability or unwillingness to abide by the law has been overcome. Therefore, the Office finds it necessary that a longer disqualifying period be utilized in such instances, before licensure can safely be granted. Accordingly, where the relevant person has been found guilty or pled guilty or pled nolo contendere to more than one crime, the Office shall add 5 years to the disqualifying period for each additional crime.

(b) The additional periods are added to the basic disqualifying period for the one most serious crime, and the combined total disqualifying period then runs from the trigger date of the most recent crime.

(c) Classification as "Single Crime" versus "Multiple Crimes." For purposes of this rule, two (2) or more offenses are considered a single crime if they are triable in the same court and are based on the same act or transaction or on two (2) or more connected acts or transactions.

(7) Mitigating Factors.

(a) The disqualifying period for a crime or crimes shall be shortened upon proof of one or more of the following factors. Where more than one factor is present the applicant is entitled to add together all the applicable mitigation amounts and deduct that total from the usual disqualifying period, provided that an applicant shall not be permitted an aggregate mitigation of more than three (3) years for the following factors:

1. One year is deducted if the probation officer or prosecuting attorney in the most recent crime states in a signed writing that the probation officer or prosecuting attorney believes the applicant would pose no significant threat to public welfare if licensed as a money services business.

2. One year is deducted if restitution or settlement has been made for all crimes in which restitution or settlement was ordered by the court, and proof of such restitution or settlement is shown in official court documents or as verified in a signed writing by the prosecuting attorney or probation officer.

3. One year will be deducted if the applicant was under age 21 when the crime was committed and there is only one crime in the applicant's law enforcement record.

4. One year is deducted if the applicant furnishes proof that the applicant was at the time of the crime addicted to drugs or suffering active alcoholism. The proof must be accompanied by a written letter from a properly licensed doctor, psychologist, or therapist licensed by a duly constituted state licensing body stating that the licensed person has examined or treated the applicant and that in his or her professional opinion the addiction or alcoholism is currently in remission and has been in remission for the previous 12 months. The professional opinion shall be dated within 45 days of the time of application.

5. Other Mitigating Factors. An applicant is permitted to submit any other evidence of facts that the applicant believes should decrease the disqualifying period before licensure is allowed and one additional year shall be deducted if the Office agrees the facts have a mitigating effect on the licensure decision.

(b) In no event shall the aggregate mitigation result in less than a seven (7) year disqualifying period where the underlying crime committed was a felony.

(c) The burden is upon the applicant to establish these mitigating factors. Where the mitigating factor relates to or requires evidence of government agency or court action, it must be proved by a certified true copy of the agency or court document.

(8) Circumstances Not Constituting Mitigation. The Office finds that no mitigating weight exists, and none will be given, for the following factors:

(a) Type of Plea. The Office draws no distinction among types of pleas, i.e., found guilty; pled guilty; pled nolo contendere.

(b) Collateral Attack on Criminal Proceedings. The Office will not allow or give any weight to an attempt to re-litigate, impeach, or collaterally attack judicial criminal proceedings or their results in which the applicant was found guilty or pled guilty or nolo contendere. Thus the Office will not hear or consider arguments such as: the criminal proceedings were unfair; the judge was biased; the witnesses or prosecutor lied or acted improperly; the defendant only pled guilty due to financial or mental stress; the defendant was temporarily insane at the time of the crime; or the defendant had ineffective counsel.

(c) The Office finds that subjective factors involving state of mind have no mitigating weight.

(9) Effect of Pending Appeal in Criminal Proceedings: Reversal on Appeal.

(a) The Office interprets the statutory grounds for denial of licensure as arising immediately upon a finding of guilt, or a plea of guilty or nolo contendere, regardless of whether an appeal is or is not allowed to be taken. The Office will not wait for the outcome of an appeal to deny licensure, unless a Florida court specifically stays the Office's adverse action.

(b) If on appeal the conviction is reversed, the Office shall immediately drop the said crime as grounds for denial of license.

(10) Pre-Trial Intervention. The Office considers participation in a pre-trial intervention program to be a pending criminal enforcement action and will not grant licensure to any applicant with a relevant person who at time of application is participating in a pre-trial intervention program. The Office finds it necessary to the public welfare to wait until the pre-trial intervention is successfully completed before licensure may be considered.

(11) Effect of Sealing or Expunging of Criminal Record.

(a) An applicant is not required to disclose or acknowledge, and is permitted in fact to affirmatively deny, any arrest or criminal proceeding for a relevant person, the record of which has been legally and properly expunged or sealed by order of a court of competent jurisdiction prior to the time of application, and such denial or failure to disclose is not grounds for adverse action by the Office.

(b) Matters Sealed or Expunged Subsequent to Application. Occasionally a relevant person will have a matter sealed or expunged after the applicant submits an application, but before a licensing decision is made by the Office. In such situations the Office policy is as follows:

1. If the applicant's relevant person properly revealed the matter on the application, and thereafter has the record sealed or expunged, the Office will not consider the matter in the application decision.

2. However, if the applicant's relevant person did not reveal the matter on the application and the matter had not been sealed or expunged at the time of making the application, the Office will construe the failure to disclose the matter on the

application as a material misrepresentation or material misstatement, and the application shall be denied pursuant to Section 560.114(1)(k), Florida Statutes.

(12) Effect of Restoration of Civil Rights.

(a) An applicant's relevant person must disclose crimes even where civil rights have been restored.

(b) If a relevant person's civil rights have been restored, the crimes will be evaluated in the application process consistent with Section 112.011 and Chapter 560, Florida Statutes, and the rules promulgated thereunder.

(c) The burden is upon the applicant to prove the restoration of their civil rights.

(13) Effect of Varying Terminology.

(a) With regard to the following six subparagraphs, the Office treats each phrase in a particular subparagraph as having the same effect as the other phrases in that same subparagraph:

1. Adjudicated guilty; convicted.

2. Found guilty; entered a finding of guilt.

3. Pled guilty; entered a plea of guilty; admitted guilt; admitted the charges.

4. Nolo contendere; no contest; did not contest; did not deny; no denial.

5. Adjudication of guilt withheld; adjudication withheld; no adjudication entered; entry of findings withheld; no official record to be entered; judgment withheld; judgment not entered.

6. Nolle prosequere; nolle prosequi; charges withdrawn; charges dismissed; charges dropped.

(b) In all other instances the Office will look to the substantive meaning of the terminology used in the context in which it was used under the law of the jurisdiction where it was used.

(14) Imprisoned Persons and Community Supervision.

(a) Imprisonment. Notwithstanding any provision to the contrary in this rule, the Office shall not license any applicant under Chapter 560, Florida Statutes, while any relevant person of the applicant is imprisoned or serving a sentence for any crime. Further, the Office shall not license any applicant with a relevant person who has been released from imprisonment until the later of the period otherwise set out in these rules or 5 years after the date of release. The Office finds it necessary that the person be released from imprisonment and thereafter demonstrate an ability to abide by the law by passage of at least 5 years on good behavior, before licensure can be granted without undue risk to the public welfare.

(b) Community Supervision. The Office shall not grant licensure to any person who at the time of application or at any time during the pendency of the application is serving term on community supervision for any felony crime involving fraud, dishonest dealing, moral turpitude, misappropriation, conversion, or unlawful withholding of moneys belonging to others; or any misdemeanor crime involving misappropriation, conversion, or unlawful withholding of moneys belonging to

others. The Office shall not substantively consider an application until the applicant has successfully completed his or her probationary term.

(15) Effect of Disqualifying Periods. The disqualifying periods established in this rule do not give an applicant a right to licensure after any set period of time. Regardless of the expiration of any disqualifying period imposed by these rules, the burden to prove entitlement to licensure remains on the applicant.

(16) Class "A" Crimes include the following felonies involving financially related or white collar crime, or crimes involving violence, and the Office finds that such crimes involve an act of fraud, dishonest dealing, moral turpitude, misappropriation, conversion, or unlawful withholding of moneys belong to others regardless of adjudication. This list is representative only and shall not be construed to constitute a complete or exclusive list of all crimes that are Class "A" crimes. Crimes similar to the crimes on this list may also be considered Class "A" crimes, and no inference should be drawn from the absence of any crime from this list.

(a) Any type of fraud, including but not limited to Fraud, Postal Fraud, Wire Fraud, Securities Fraud, Welfare Fraud, Defrauding the Government, Credit Card Fraud, Defrauding an Innkeeper, Passing worthless check(s) with intent to defraud.

(b) Perjury.

(c) Armed robbery.

(d) Robbery.

(e) Extortion.

(f) Bribery.

(g) Embezzlement.

(h) Grand theft.

(i) Larceny.

(j) Burglary.

(k) Breaking and entering.

(l) Identity Theft.

(m) Any type of forgery or uttering a forged instrument.

(n) Misuse of public office.

(o) Racketeering.

(p) Buying, receiving, concealing, possessing or otherwise dealing in stolen property.

(q) Treason against the United States, or a state, district, or territory thereof.

(r) Altering public documents.

(s) Witness tampering.

(t) Tax evasion.

(u) Impersonating or attempting to impersonate a law enforcement officer.

(v) Money laundering.

(w) Murder in all degrees.

(x) Arson.

(y) Sale, importation, or distribution of controlled substances (drugs); or possession for sale, importation or distribution.

(z) Aggravated Assault (e.g., as with a deadly weapon).

(aa) Aggravated Battery (e.g., as with a deadly weapon).

(bb) Rape.

(cc) Sexually molesting any minor.

(dd) Sexual battery.

(ee) Battery of or threatening a law enforcement officer or public official in the performance of his/her duties.

(ff) Kidnapping.

(17) Class "B" Crimes include all felonies that involve any other act of fraud, dishonest dealing, moral turpitude, misappropriation, conversion, or unlawful withholding of moneys belonging to others, regardless of adjudication, and are not Class "A" crimes.

(18) Class "C" Crimes include any misdemeanor that involves misappropriation, conversion, or unlawful withholding or moneys belonging to others, regardless of adjudication.

(19) Foreign Law Enforcement Records. If a law enforcement record includes convictions, charges, or arrests outside the United States, the Office shall consider the following factors to reduce, eliminate, or apply a disqualifying period:

(a) Whether the crime in the criminal record would be a crime under the laws of the United States or any state within the United States;

(b) The degree of penalty associated with the same or similar crimes in the United States; and

(c) The extent to which the foreign justice system provided safeguards similar to those provided criminal defendants under the Constitution of the United States.

Specific Authority 560.105 FS. Law Implemented 112.011, 560.114, 560.140, 560.141 FS. History--New \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Terry Straub, Director, Division of Finance, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399, (850)410-9805, terry.straub@flofr.com

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Financial Services Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 9, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 26, 2008

**FINANCIAL SERVICES COMMISSION**

**Securities**

RULE NO.:

69W-500.018

RULE TITLE:

Exemption for the Offer or Sale of a Single-Share Stock Certificate as a Gift

PURPOSE AND EFFECT: To provide an exemption from securities registration requirements for single-share stock certificates that are framed, and offered or sold as gifts.

SUMMARY: Provides an exemption from securities registration requirements for single-share stock certificates that are framed, and offered or sold as gifts.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 517.03(1), 517.061(19) FS.

LAW IMPLEMENTED: 517.061(19) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Andrea Moreland, Office of Financial Regulation, The Fletcher Building, Suite 118, 200 E. Gaines Street, Tallahassee, FL 32399-0370, (850)410-9601

THE FULL TEXT OF THE PROPOSED RULE IS:

69W-500.018 Exemption for the Offer or Sale of a Single-Share Stock Certificate as a Gift.

(1) For the purposes of this rule, the term "single-share stock certificate retailer" means a person or business entity engaged in the business of framing or mounting single-share stock certificates for retail sale to purchasers as gifts, decorations, or novelty items. The term "single-share stock certificate retailer" also includes the employees of the person or business entity.

(2) The offer or sale of a single-share stock certificate by a single-share stock certificate retailer is subject to the registration requirements of Sections 517.07 and 517.12(1), F.S.; however, because the dollar amount of the securities involved in these transactions is small and the character of the offering is limited, the Office finds that the application of the registration requirements of Sections 517.07 and 517.12(1), F.S., to these transactions is not necessary for the public interest or for the protection of the investors, if conducted in accordance with this rule.

(3) Any single-share stock certificate retailer that claims entitlement to the exemption provided under this rule bears the burden of proving such entitlement in any proceeding brought under Chapter 517, F.S.

(4) In order for an offer or sale of a single-share stock certificate by a single-share stock certificate retailer to qualify for an exemption from the registration requirements of Sections 517.07 and 517.12(1), F.S., the offer or sale must comport with all of the following requirements:

(a) The single-share stock certificate retailer purchases the shares of stock through a registered dealer;

(b) The single-share stock certificate retailer markets, offers and sells the single-share stock certificate as a gift, decoration, or novelty item;

(c) The single-share stock certificate is mounted, matted, or framed;

(d) Each framed single-share stock certificate represents one share of stock in the underlying company;

(e) The single-share stock certificate retailer does not offer the single-share stock certificate for investment purposes;

(f) The single-share stock certificate retailer does not offer investment advice;

(g) The single-share stock certificate retailer does not directly or indirectly promote itself as a dealer;

(h) The single-share stock certificate retailer is not paid compensation solely for the single-share purchase transaction by the single-share stock certificate retailer;

(i) The single-share purchase transaction by the single-share stock certificate retailer and the transfer of ownership of the single-share certificate to the purchaser is completed within sixty (60) days after the purchase of the stock by the single-share stock certificate retailer; and

(j) The offer and sale of the share by the single-share stock certificate retailer is not made for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of Chapter 517, F.S.

(5) Nothing in this rule shall limit the Office's authority to enforce existing law.

Specific Authority 517.03(1), 517.061(19) FS. Law Implemented 516.061(19), 517.171 FS. History—New \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
 Bill Reilly, Bureau Chief, Bureau of Securities Regulation  
 NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Financial Services Commission  
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 9, 2008  
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 7, 2007

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

#### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

##### Division of Agricultural Environmental Services

RULE NOS.:	RULE TITLES:
5E-14.117	Application for Examination for Pest Control Operator's Certificate and Special Identification Card
5E-14.1421	Identification Card – Training Verification

#### 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. 34, No. 14, April 4, 2008 issue of the Florida Administrative Weekly.

5E-14.117 Application for Examination for Pest Control Operator's Certificate and Special Identification Card.

(1) An applicant for examination for a pest control operator's certificate and special identification card shall complete and submit the following: Application for examination shall be on Forms DACS 13627 Rev. 03/08, 13607 Rev. 01/08, and 13653 Rev. 03/08, Rev. 3/02, which are incorporated by reference and obtained from the Department and shall also include a passport type and quality, full-face photograph of the applicant at least one and one-half inches by one and one-half inches in size.

(a) DACS 13607, Pest Control Examination Application, Rev. 05/08.

(b) DACS 13627, Employment Service, Rev. 08/08.

(c) DACS 13653, Documented Pesticide Application for Certification Exam Qualification, Rev. 09/08.

(d) A passport type and quality, full-face photograph of the applicant at least one and one-half inches by one and one-half inches in size.

The above referenced forms are hereby adopted and incorporated by reference and available on the Department's website at <http://www.doacs.state.fl.us/onestop/aes/pestcont.html>.

(2) through (9) No change.

(10) Prior to application for examination, an The applicant for examination for Termite/Wood Destroying Organism Pest Control, Lawn and Ornamental Pest Control, or General Household Pest Control certification must participate in shall have participated in within this state and under the supervision of a certified operator, a minimum of 45 15 jobs in Florida under the supervision of a certified operator in each category that the applicant seeks certification. An applicant for the Fumigation certification and a Special Identification Card must