IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE WILL BE ANNOUNCED IN THE NEXT FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Andy Rusnak, Department of Military Affairs, P. O. Box 1008, St. Augustine, FL 32085

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

Section II
Proposed Rules

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Plant Industry

RULE NOS.:	RULE TITLES:
5B-65.001	Purpose
5B-65.002	Definitions
5B-65.003	Wood Boring Pests and Wood Inhabiting Pests that are Harmful to Florida Agriculture, Landscape Plants, and Native Plants
5B-65.004	Plant Disease Pathogens Infecting Firewood and Unprocessed Wood Products
5B-65.005	Movement of Regulated Articles

PURPOSE AND EFFECT: The purpose of this rule is to prevent the introduction and spread of serious plant pests harbored in or infesting firewood and unprocessed wood products. This will affect the interstate and intrastate movement of firewood and unprocessed wood products that are not treated to eliminate the plant pests of concern in order to protect Florida's forests and other plant resources.

SUMMARY: The movement of commercial shipments of firewood, unprocessed wood products and other regulated articles into the state is prohibited unless the shipper has entered into a signed compliance agreement with the state of origin under a master permit that has been issued to the state of origin by the Director. With the exception of Miami-Dade County, locally produced or harvested firewood and unprocessed wood products are exempt from this rule provided they are not moved 50 miles from the distribution point.

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.

RULEMAKING AUTHORITY: 570.07(23), 581.031(1), (4), (5), (7) FS.

LAW IMPLEMENTED: 570.07(2), (13), 581.031(1), (4), (5), (6), (7), (9), (20) 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: Dr. Wayne Dixon, Assistant Director, Division of Plant Industry, Department of Agriculture and Consumer Services, P. O. Box 147100, Gainesville, FL 32614-7100

THE FULL TEXT OF THE PROPOSED RULES IS:

5B-65.001 Purpose.

The purpose of this rule chapter is to establish procedures to prevent the introduction of wood boring pests, wood inhabiting pests, and plant disease pathogens into the state, and prevent the spread of these pests within the state by regulating the movement of firewood and unprocessed wood products that can harbor wood boring and wood inhabiting pests and plant disease pathogens.

Rulemaking Authority 570.07(23), 581.031(1), (4), (5), (7) FS. Law Implemented 570.07(2), (13), 581.031(1), (4), (5), (6), (7), (9), (20) FS. History–New _____.

5B-65.002 Definitions.

For the purpose of this rule chapter, the definitions in Section 581.011, F.S., and the following definitions shall apply:

(1) Commercial Shipments. Shipments of regulated articles intended for public or private sale or distribution within the state.

(2) Compliance Agreement. An agreement, meeting the requirements of subsection 5B-65.005(1), F.A.C., between a shipper and the state of origin pursuant to the Master Permit of the state of origin.

(3) Firewood. Cut wood products intended for burning.

(4) Infected. Regulated articles found with plant disease pathogens.

(5) Infested. Regulated articles found with plant pests.

(6) Master Permit. A permit issued by the department to the state of origin allowing the movement of regulated articles into and within the state and specifying the conditions under which the regulated articles are allowed to be moved.

(7) Plant Disease Pathogen. Any organism that can infect plants and cause plant disease.

(8) Producers. Individuals or companies responsible for cutting, packing or distributing regulated articles into or within the state.

(9) Regulated Articles. Firewood or unprocessed wood products including palm products and cut Christmas trees.

(10) Shippers. Individuals or companies responsible for sending or transporting regulated articles into the state.

(11) Unprocessed wood products. Bark, trunks, limbs, stumps or other woody plant material that results from yard waste, tree trimming, tree removal including wood, incorporated into the construction of furniture, handicrafts, planting containers or other products that have not been treated, processed or finished to eliminate plant disease pathogens, wood boring pests, and wood inhabiting pests as defined in subsections 5B-65.002(7), (12), and (13), F.A.C.

(12) Wood boring pest. Any organism that physically bores into or through the woody part of a plant, including either the outer bark, the inner bark, and/or the stem wood.

(13) Wood inhabiting pest. Any organism that spends part of its life cycle within the woody part of a plant, including either the outer bark, the inner bark, and/or the stem wood.

Rulemaking Authority 570.07(23), 581.031(1), (4), (5), (7) FS. Law Implemented 570.07(2), (13), 581.031(1), (4), (5), (6), (7), (20) FS. History–New _____.

5B-65.003 Wood Boring Pests and Wood Inhabiting Pests that are Harmful to Florida Agriculture, Landscape Plants, and Native Plants.

The following wood boring and wood inhabiting pests are known to infest firewood and other unprocessed wood products and can be transported through the movement of these products to areas where they can infest and damage live host trees and other plants and are therefore considered to be a nuisance:

(1) *Agrilus planipennis*, emerald ash borer;

(2) *Anoplophora glabripennis*, Asian longhorned beetle;

(3) *Bursaphelenchus cocophilus*, red ring nematode;

(4) *Dinapate wrighti*, giant palm borer;

(5) *Hylurgus ligniperda*, red-haired pine bark beetle;

(6) *Hylurgops palliates*, exotic bark beetle;

(7) *Metamasius hemipterus*, silky cane weevil;

(8) *Orthotomicus erosus*, Mediterranean pine engraver beetle;

(9) *Rhynchophorus cruentatus*, palmetto weevil;

(10) *Rhynchophorus ferrugineus*, red palm weevil;

(11) *Rhynchophorus palmarum*, American palm weevil;

(12) *Scaphoideus luteolus*, whitebanded elm leafhopper;

(13) *Scolytus schevyrewi*, banded elm bark beetle;

(14) *Sirex noctilio*, Sirex woodwasp;

(15) *Tomicus piniperda*, pine shoot beetle;

(16) *Xyleborus glabratus*, redbay ambrosia beetle;

(17) *Xyleborus similis.*

Rulemaking Authority 570.07(23), 581.031(1), (4), (5), (7) FS. Law Implemented 570.07(2), (13), 581.031 (1), (4), (5), (6), (7), (20) FS. History–New _____.

5B-65.004 Plant Disease Pathogens Infecting Firewood and Unprocessed Wood Products.

Pathogens that cause the following plant diseases are known to infect firewood and unprocessed wood products and can be transported through the movement of these products to areas where they can infect and damage live host trees and other plants and are therefore considered to be a nuisance:

(1) *Nectria coccinea* var *fagiuata* and *N. galligena*, beech bark disease;

(2) *Discula destructiva*, dogwood anthracnose;

(3) *Ophlstoma ulmi* and *O. novo-ulmi*, Dutch elm disease;

(4) *Candiatus Phytoplasma ulmi*, elm yellows;

(5) *Raffaelea lauricola*, laurel wilt disease;

(6) *Ceratocystis fagacearum*, oak wilt disease;

(7) *Phytophthora ramorum*, sudden oak death.

Rulemaking Authority 570.07(23), 581.031(1), (4), (5), (7) FS. Law Implemented 570.07(2), (13), 581.031 (1), (4), (5), (6), (7), (20) FS. History–New _____.

5B-65.005 Movement of Regulated Articles.

(1) In order to prevent the introduction and spread of nuisance pests and diseases listed in Rules 5B-65.003 and 5B-65.004, F.A.C., the movement of commercial shipments of regulated articles into the state is prohibited except under a Master Permit (Master Permit For Wood Products, DACS-08444, 06/09) issued by the Department. Such permit will stipulate the conditions under which the regulated articles can be moved into the state. The Master Permit for Firewood and Unprocessed Wood Products, DACS-08444, 06/09, is incorporated herein by reference and may be obtained from the Division of Plant Industry, Bureau of Plant and Apiary Inspection, by writing to P. O. Box 147100, Gainesville, FL 32614-7100. The Master Permit will require all shippers of regulated articles to be under compliance with the state of origin's plant regulatory organization. A Compliance Agreement issued under a Master Permit shall indicate the requirements for inspections and/or treatments. Only heat, fumigation, or chemical treatments in accordance with the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine Treatment Manual (Rev. 09/2008), Treatment Schedules T312 – Oak Logs and Lumber and T314 – Logs and Firewood, shall be required in the compliance agreement. The Treatment Schedules are herein incorporated by reference and may be obtained from the following website: http://www.aphis.usda.gov/import_export/plants/manuals/ports/treatement.shtml.

(2) Any shipment of firewood or unprocessed wood products found infested or infected with a wood boring or wood inhabiting pest or plant disease pathogen listed in Rule 5B-65.003 or 5B-65.004, F.A.C., shall be quarantined and

returned to the shipper or producer or destroyed by the Department at the expense of the shipper. Infested or infected regulated articles will be placed under Stop Sale and Hold Order DACS-08016, Rev. 11/08. Commercial shipments entering the state through the Department's agricultural interdiction stations without certification of compliance with the Master Permit of the state of origin shall be issued a Report of Plant and Plant Material in Transit, DACS Form 08003, Rev. 06/09, and Report of Plant and Plant Material in Transit Addendum, DACS Form 08441, Rev. 06/09, for the official disposition of the plant material. DACS Form 08003, Rev. 06/09 and Form 08441, Rev. 06/09 are incorporated herein by reference and may be obtained from the Division of Plant Industry, Bureau of Plant and Apiary Inspection, by writing to P. O. Box 147100, Gainesville, FL 32614-7100. Non-commercial shipments entering the state through the Department's agricultural interdiction stations without certification will be allowed entry only when issued and accompanied by a Report of Non-Commercial (Homeowner) Plants or Firewood Without Certification in Transit from Other States DACS-08105, Rev. 06/09, issued at the station. DACS form 08105, Rev. 06/09, is incorporated herein by reference and may be obtained from the Division of Plant Industry, Bureau of Plant and Apiary Inspection, by writing to P. O. Box 147100, Gainesville, FL 32614-7100. Commercial shippers found in violation of the rule will be suspended from shipping under the master permit issued with the state of origin. The suspension shall remain in effect until the department of agriculture of the state of origin has notified the Division of Plant Industry in writing that the shipper is in compliance with all requirements for treatment of firewood or unprocessed wood products.

(3) The destruction or return of shipments in violation of this rule chapter shall be at the expense of the shipper.

(4) Prior to the intrastate movement of commercial shipments of firewood or unprocessed wood products, the owner of the articles must submit DACS 08459, Rev.06/09, Compliance Agreement for Firewood and Unprocessed Wood Products Movement Within the State of Florida to the Division of Plant Industry unless exempted in subsection (7). The form Compliance Agreement for Firewood and Unprocessed Wood Products Movement Within the State of Florida, DACS 08459, Rev.06/09, is incorporated herein by reference and may be obtained from the Division of Plant Industry, Bureau of Plant and Apiary Inspection, by writing to P. O. Box 147100, Gainesville, FL 32614-7100.

(5) The importation or movement of non-certified, commercial or non-commercial shipments of firewood or unprocessed wood products within or into the state is prohibited except as permitted in subsection (7).

(6) Cut Christmas trees may enter the state provided they are accompanied by a federal certificate required for movement from regulated areas of the United States or a certificate of inspection issued by the department of agriculture in the state of origin.

(7) Exemptions:

(a) Locally produced or harvested firewood and unprocessed wood products harvested or produced within a 50-mile radius of the distribution point and not moved more than 50-miles from the point of origin. No locally produced firewood outside Miami-Dade County may enter Miami-Dade County unless treated and certified in accordance with Rule 5B-65.005, F.A.C., by the Department.

(b) Primary and secondary forest products (including saw logs, saw timber, chip-n-saw, sawdust, veneer logs, pulpwood, and chips) transported for processing at pulp/paper mills, saw mills (including plywood plants), OSB plants, mulch plants, and biomass plants.

(c) Commercial shipments of processed mulch or processed wood chips for cooking destined for further distribution at retail outlets if the shipments are accompanied by proper bill of lading, proof of origin and any applicable federal certificates for shipments originating from a USDA-regulated area.

Rulemaking Authority 570.07(23), 581.031(1), (4), (5), (7) FS. Law Implemented 570.07(2), (13), 581.031(1), (4), (5), (6), (7), (9), (20) FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Richard Gaskalla, Director, Division of Plant Industry, Department of Agriculture and Consumer Services, P. O. Box 147100, Gainesville, FL 32614-7100

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Charles H. Bronson, Commissioner, Department of Agriculture and Consumer Services, The Capitol, 400 South Monroe Street, Tallahassee, FL 32399

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 8, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 17, 2009

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Agricultural Environmental Services

RULE NO.:	RULE TITLE:
5E-1.003	Labels or Tags

PURPOSE AND EFFECT: To update the revision dates for forms DACS-13220 and DACS-13203 to reflect the current form.

SUMMARY: The revision dates for forms DACS-13220 and DACS-13203 are being updated to reflect the current form.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will have an impact on small business. A SERC has been prepared by the agency.

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.

RULEMAKING AUTHORITY: 570.07(23), 576.181 FS.

LAW IMPLEMENTED: 576.021, 576.031, 576.181 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: Mr. Bruce Nicely, Chief, Bureau of Compliance Monitoring, 3125 Conner Boulevard, Building #8, Tallahassee, Florida 32399; (850)488-8731

THE FULL TEXT OF THE PROPOSED RULE IS:

5E-1.003 Labels or Tags.

(1) through (6) No change.

(7) REGISTRATION OF SPECIALTY FERTILIZER PRODUCTS. All specialty fertilizers to be sold within the state must be registered with the Bureau of Compliance Monitoring prior to any sale. Each product will be registered by filing the properly completed appropriate form with the Bureau. Only one form will be submitted for each product. Specialty fertilizer packaged, marketed, and distributed for home and garden use and packaged in quantities of forty-nine pounds or less (Specialty Fertilizer) will be registered upon the filing of properly completed Application for Specialty Fertilizer Registration, ~~(Fertilizer Form~~ DACS-13220, Rev. 07/09 ~~06/07)~~ and Application for Registration of Specialty Fertilizer, ~~(Fertilizer Form~~ DACS-13203, Rev. 06/08 ~~06/01), which is hereby incorporated by reference~~. ~~Copies may be obtained from the Division of Agricultural Environmental Services, Bureau of Compliance Monitoring, 3125 Conner Boulevard, Building 8, Tallahassee, Florida 32399-1650.~~

(8) LICENSEE.

(a) Any person whose name is on a fertilizer label and who guarantees the fertilizer must obtain a license prior to distribution of that fertilizer to a non-licensee.

(b) A license will be granted upon receipt of a properly executed Application for Fertilizer License, ~~(Fertilizer Form~~ DACS-13222, Rev. 5/03~~), which is hereby incorporated by reference~~. ~~Copies may be obtained from the Division of Agricultural Environmental Services, Bureau of Compliance Monitoring, 3125 Conner Boulevard, Building 8, Tallahassee, Florida 32399-1650.~~

(9) All forms and filing specifications contained in this rule are hereby adopted and incorporated by reference and may be obtained from the Florida Department of Agriculture and Consumer Services, Bureau of Compliance Monitoring, 3125 Conner Boulevard, Building 6, Tallahassee, Florida 32399-1650; (850)488-8731 or by visiting the Department's website at http://www.doacs.state.fl.us/onestop/aes/fertilizer.html#forms.

Rulemaking ~~Specific~~ Authority 570.07(23), 576.181 FS. Law Implemented 576.021, 576.031, 576.181, FS. History–Revised 1-23-67, Amended 10-22-68, 1-1-77, 3-27-77, Formerly 5E-1.03, Amended 8-3-93, 7-9-95, 10-25-98, 12-31-07, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mr. Anderson H. Rackley, Director

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 8, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 24, 2009

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Agricultural Environmental Services

RULE NO.: RULE TITLE:

5E-4.014 Seed Dealer Registration Fees

PURPOSE AND EFFECT: To provide a reference for the Application for Registration as a Seed Dealer (DACS-13204, Rev. 6/09), not previously referenced in rule language.

SUMMARY: The change will update Chapter 5E-4, F.A.C., to provide a reference to the form utilized for the registration of Seed Dealers.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will have an impact on small business. A SERC has been prepared by the agency.

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.

RULEMAKING AUTHORITY: 570.07(23), 578.11(2)(i) FS.

LAW IMPLEMENTED: 578.08(1) 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: Mr. Bruce Nicely, Chief of Bureau of Compliance Monitoring; 3125 Conner Boulevard, Building 8, Tallahassee, Florida 32399; (850)487-8731

THE FULL TEXT OF THE PROPOSED RULE IS:

5E-4.014 Seed Dealer Registration Fees.

(1) The Application for Registration as a Seed Dealer, DACS-13204, Rev. 6/09, shall be submitted annually for each place of business at which seed is sold, distributed for sale, offered for sale, exposed for sale, or handled for sale, and shall be accompanied by the applicable fee established in Section 578.08, F.S.

(2) All forms and filing specifications contained in this rule are hereby adopted and incorporated by reference and may be obtained from the Florida Department of Agriculture and Consumer Services, Bureau of Compliance Monitoring, 3125 Conner Boulevard, Building 8, Tallahassee, Florida 32399-1650 or by visiting the Department's website at http://www.doacs.state.fl.us/onestop/forms/.

Rulemaking Authority 570.07(23), 578.11(2)(i) FS. Law Implemented 578.08(1) FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mr. Anderson H. Rackley, Director

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Mr. Charles H. Bronson, Commissioner of Agriculture

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 11, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 24, 2009

DEPARTMENT OF COMMUNITY AFFAIRS

Florida Communities Trust

RULE NOS.:	RULE TITLES:
9K-8.005	Title Report and Evidence of Marketable Title
9K-8.007	Appraisal Procedures, Appraisal Report Requirements and Determination of Maximum Approved Purchase Price

PURPOSE AND EFFECT: To improve Florida Communities Trust's efficiency in administering Florida Forever Funds.

SUMMARY: To ensure the rules are user-friendly for the customers.

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.

RULEMAKING AUTHORITY: 380.507(11) FS.

LAW IMPLEMENTED: 259.105, 380.501-.515 FS.

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

DATE AND TIME: November 23, 2009, 1:30 p.m.

PLACE: Department of Community Affairs, Randall Kelley Training Center, Room 305, Sadowski Building, 2555 Shumard Oak 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 7 days before the workshop/meeting by contacting: Grant Gelhardt, Environmental Administrator, Florida Communities Trust, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, (850)922-1704. 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: Ken Reecy, Community Program Manager, Florida Communities Trust, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, (850)922-2207

THE FULL TEXT OF THE PROPOSED RULES IS:

9K-8.005 Title Report and Evidence of Marketable Title.

(1) No change.

(2) Evidence of Owner(s)' marketable title shall be provided to the Recipient(s) and the Trust prior to the conveyance of title. The Trust shall further be provided a Title Insurance Commitment in accordance with the Purchase Agreement. The Title Insurance Commitment shall be followed after conveyance by an owner's marketable title insurance policy (ALTA Form B) in favor of the Recipient or the Board of Trustees in accordance with the Recipient's election under Rule 9K-8.004, F.A.C. The Trust may ~~shall~~ be listed as a co-insured on the Title Insurance Commitment and title insurance policy. The Trust and Recipient may mutually agree to waive the requirement of evidence of marketable title for Acquisition of property assessed by the county property appraiser at $10,000 or less. Such waiver shall be based on such review of the title records as is reasonable under the circumstances that shows no apparent impediment to marketability or to management of the Project Site by the Recipient.

(3) No change.

Rulemaking ~~Specific~~ Authority 380.507(11) FS. Law Implemented 259.105, 380.501-.515 FS. History–New 5-27-01, Amended 5-20-02, 2-8-05, 2-19-07, _____.

9K-8.007 Appraisal Procedures, Appraisal Report Requirements and Determination of Maximum Approved Purchase Price.

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

(b) Appraisals of all properties ~~valued at or greater than $100,000~~ shall be reviewed by a review Appraiser who is employed by or under contract to the Trust. The review Appraiser must certify to the Trust that the Appraisals have been conducted substantially in accordance with this rule

chapter and with correct Appraisal standards and methods, and must certify the appraised value(s) of the subject real property. This certified value shall also be referred to as "the Maximum Approved Purchase Price." ~~Appraisals of properties valued at less than $100,000 may be approved and certified by the Trust.~~

(c) through 1. No change.

2. A third Appraisal shall be obtained if the two Appraisals differ significantly and cannot be rectified as in the above paragraph unless a decision is made by the Trust ~~party responsible for Acquisition activities~~ to negotiate an Acquisition price of no more than 120 percent of the lower of the two reviewed and approved Appraisals.

3. through (6) No change.

Rulemaking ~~Specific~~ Authority 380.507(11) FS. Law Implemented 259.105, 380.501-.515 FS. History–New 5-27-01, Amended 5-20-02, 2-8-05, 2-19-07, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ken Reecy, Community Program Manager, Florida Communities Trust, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, (850)922-2207

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Thomas G. Pelham, Secretary, Department of Community Affairs

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 12, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 19, 2009

DEPARTMENT OF TRANSPORTATION

RULE NO.:	RULE TITLE:
14-21.001	Bid Guaranty for Construction Contracts

PURPOSE AND EFFECT: Rule 14-21.001, F.A.C., is being repealed to reduce unnecessary rules, as bid guaranties are addressed in the individual contract specifications.

SUMMARY: Rule 14-21.001, 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.

RULEMAKING AUTHORITY: 334.044(2), 337.17 FS.

LAW IMPLEMENTED: 337.17 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: Deanna R. Hurt, Assistant General Counsel and 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:

14-21.001 Bid Guaranty for Construction Contracts.

Rulemaking ~~Specific~~ Authority 334.044(2), 337.17 FS. Law Implemented 337.17 FS. History–Amended 5-9-70, Formerly 14-7.01, Amended 7-9-75, Formerly 14-21.01, Amended 3-21-90, 8-11-05, Repealed _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Juanita P Moore, Manager, Contracts Administration Office

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 24, 2009

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."

STATE BOARD OF ADMINISTRATION

RULE NOS.:	RULE TITLES:
19-11.002	Beneficiary Designation for FRS Investment Plan
19-11.003	Distributions from FRS Investment Plan Accounts
19-11.004	Excessive Trading in the FRS Investment Plan
19-11.007	Second Election Enrollment Procedures for the FRS Retirement Programs
19-11.009	Reemployment with an FRS-covered Employer after Retirement

PURPOSE AND EFFECT: To adopt revised forms; to adopt one definition; to clarify certain procedures; and to reflect recent legislative changes pertaining to employment after retirement.

SUMMARY: To adopt revised forms; to adopt one definition; to clarify procedures pertaining to beneficiary designations, distributions from Investment Plan Accounts, and Second Election Enrollment forms; and to reflect recent legislative changes pertaining to reemployment after retirement.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that these rules will not have an impact on small business. A SERC has been prepared in an abundance of caution.

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.

RULEMAKING AUTHORITY: 121.4501(3)(c)4., (8)(a) FS.

LAW IMPLEMENTED: 121.021(29), (39), 121.091(8), (9), 121.4501(2), (3), (4), (8), (13), (14), (15), (20), 121.591, 121.77 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: Monday, November 16, 2009, 9:00 a.m. – 11:00 am.

PLACE: Hermitage Room, the Hermitage Centre, 1801 Hermitage Blvd., Tallahassee, Florida 32308

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: Cindy Morea, Office of Defined Contributions, SBA, 1801 Hermitage Blvd., Tallahassee, Florida 32308; (850)413-1491; cindy.moread@sbafla.com. 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: Ruth A. Smith, Assistant General Counsel, State Board of Administration, 1801 Hermitage Blvd., Tallahassee, Florida 32308; telephone (850)413-1182; ruth.smith@sbafla.com.

THE FULL TEXT OF THE PROPOSED RULES IS:

19-11.002 Beneficiary Designation for FRS Investment Plan.

(1) An FRS Investment Plan member may name a beneficiary to receive the benefits which may be payable in the event of the member's death. If the member does not name a beneficiary(ies) then the member's beneficiary(ies) will be those as described in Section 121.4501(20), F.S. which are: first, the spouse if he or she is still living after the member's death; second, living children, if the spouse is dead; third, the member's father or mother, if living; fourth, to the member's estate. This means that the spouse will receive the member's account balance if living; but if not, the children will receive the account balance, if living; but if not, the father or mother will receive the account balance, and if none of the people mentioned in this section are still living, the account balance will be paid to the member's estate.

(2) A designation of beneficiary shall only be effective after it has been received by the FRS Investment Plan Administrator. The most recent designation of beneficiary filed with the FRS Investment Plan Administrator shall replace any previous designation whether made before or after the member's termination of employment or retirement. The member should determine after the designation has been mailed that the form has arrived in the offices of the FRS Investment Plan Administrator. It is the responsibility of the member to ensure the beneficiary designation has been made. Beneficiary information can be reviewed every quarter on the member's quarterly statement.

(3) If the FRS Investment Plan member enrolls in the FRS Investment Plan using the EZ Retirement Plan Enrollment Form for Regular, Special Risk and Special Risk Administrative Support Class Employees, Form ELE-1-EZ, rev. 06/06, the General Retirement Plan Enrollment Form for Regular Special Risk and Special Risk Administrative Support Class Employees, Form ELE-1, rev. 10/06, which are adopted and incorporated by reference in subsection 19-11.006(4), F.A.C., or the 2nd Election EZ Retirement Plan Enrollment Form, Form ELE-2-EZ, rev. 12/06, or the 2nd Election Retirement Plan Enrollment Form, Form ELE-2, rev 12/06, which are adopted and incorporated by reference in Rule 19-11.007, F.A.C., the member has chosen the beneficiary designation contained in Section 121.4501(20), F.S. (See subsection (1), above.) Note that the statutory section provides that the member's spouse at the time of death shall be the member's beneficiary unless the deceased member had designated a different beneficiary after his or her most recent marriage. Therefore, if the member marries after designating a beneficiary ~~again~~, the member ~~he or she~~ must file an updated ~~another~~ beneficiary designation form ~~to ensure that the person he or she wants to be the beneficiary is named~~ if the member wishes to name someone else other than the spouse as a beneficiary. If the member does not file an updated beneficiary designation form, the member's spouse will be the beneficiary of the member's account. Example: John is married to Betty and has named her as his beneficiary. John divorces Betty and marries Carol. Carol will be John's beneficiary unless he files another beneficiary form and names, for example, his son, Bob. Pursuant to subsection (1), once the member is enrolled in the FRS Investment Plan, the member may change his beneficiary designation at any time.

(4) A member may name a beneficiary or beneficiaries at any time, as follows:

(a) A member may name a beneficiary or beneficiaries to receive the assets of the member's FRS Investment Plan account, either sequentially or jointly.

(b) A member may name as beneficiary any person, organization, trust, or his estate.

(c) A primary beneficiary is someone who will receive the member's funds from the FRS Investment Plan account, if that person is living at the death of the member. If there are more than one primary beneficiary, named with percentages of the funds, they will each receive their member-designated

percentages if they are still living at the death of the member. Example: if the member names his four sons, in equal shares (25% each), but two of the four sons die before their father, the other two living sons split the funds two ways, 50% each.

(d) A contingent beneficiary is one or more persons who are named, in case all primary beneficiaries die before the member. Naming a contingent beneficiary is optional. The member does not have to name anyone as a contingent beneficiary.

(e) Any such beneficiary designation may ~~shall~~ be made on Form IPBEN-1, rev. 09-0903, which is hereby adopted and incorporated by reference. This form is available in paper form and may be obtained by calling the toll-free MyFRS Financial Guidance Line at 1(866)446-9377, Monday through Friday, except holidays, 9:00 a.m. to 8:00 p.m. or by accessing the MyFRS.com website and clicking on "Resources" and then "Forms." The beneficiary designation form must be completed and received by the FRS Investment Plan Administrator before it becomes effective. Alternatively, a beneficiary may be designated electronically by logging on to MyFRS.com, clicking on "manage benefits," then clicking on "manage investments," and then clicking on "personal info."

(f) A member may change his beneficiary designation at any time by filing a new beneficiary designation form or by designating a new beneficiary electronically. There is no separate form for changes of beneficiary designation.

(5) If a member is married and names his spouse as a primary beneficiary, regardless of whether the percentage allocated to the spouse on the form is less than 100%, the member is not required to notify the spouse. However, if a member is married and names a primary beneficiary(ies) and the person(s) named is not the spouse of the member, then the member is required to notify the spouse that he or she is not a primary beneficiary of the proceeds of the member's FRS Investment Plan account(s). The spouse must acknowledge that he or she understands that he or she is not a primary beneficiary of the member's FRS Investment Plan account(s) by signing the beneficiary designation form, Form IPBEN-1, rev. 09-0903, in the appropriate place. If a married member fails to obtain the spouse's acknowledgment on the beneficiary designation form, then the member will be sent an Acknowledgement of Beneficiary Designation, reminding the member of the necessity of obtaining the spousal ackowledgement. The member can return this Acknowledgement of Beneficiary Designation with the spouse's signature which will provide the acknowledgement from the spouse that the spouse is aware that he or she is not the primary beneficiary of the member's FRS Investment Plan account(s). Alternatively, the spouse may provide the FRS Investment Plan Administrator with a notarized statement reflecting the spouse's understanding that the spouse is not the beneficiary of the member's FRS Investment Plan account(s).

(6)(a) An Alternate Payee may name a beneficiary to receive the benefits which may be payable in the event of the Alternate Payee's death at any time, as outlined in paragraphs (4)(a) through (f) above, once the Alternate Payee's account has been established by the FRS Investment Plan Administrator.

(b) If the Alternate Payee does not name a beneficiary(ies), then the Alternate Payee's beneficiary(ies) will be those as described in Section 121.4501(20)(a), F.S., which are: first, the spouse, if he or she is still living after the member's death; second, living children, if the spouse is dead; third, the member's father or mother, if living; fourth, to the member's estate. This means that the spouse will receive the member's account balance if living; but if not, the children will receive the account balance, if living; but if not, the father or mother will receive the account balance, and if none of the people mentioned in this paragraph are still living, the account balance will be paid to the Alternate Payee's estate.

(7)(a) If the deceased member has named a beneficiary but has not provided the beneficiary's social security number or address, or if the social security number is incorrect, then, after at least three unsuccessful attempts by the SBA or the FRS Investment Plan Administrator to contact the beneficiary, the FRS Investment Plan Administrator will advise the SBA and the account will not be distributed ~~issue a check payable to the beneficiary and hold the check for 180 days, at which time the check will be considered stale-dated~~.

(b) The FRS Investment Plan Administrator will, with the assistance of the SBA, at the time of notification of death ~~distribution~~, make a reasonable effort to obtain the beneficiary's Social Security Number or Taxpayer Identification Number, using available search tools, including the internet, LexisNexis Accurint, the Internal Revenue Service, and the Social Security Administration. Additionally, by calendar year-end of each~~, in the~~ year following the transfer to the Suspense Account, ~~distribution occurred,~~ the FRS Investment Plan Administrator will attempt to locate and obtain the Social Security Number or the Taxpayer Identification Number of the beneficiary~~, and, at least one time in the calendar year following the distribution death, to locate the beneficiary~~. ~~The Investment Plan Administrator will document for the Internal Revenue Service the efforts taken to locate the beneficiary's Social Security Number or Taxpayer Identification Number.~~

(c) If after one year from date of death no information is available to identify the beneficiary, the FRS Investment Plan Administrator will ~~Once 180 days have elapsed from the date the check was issued,~~ transfer the funds ~~shall be transferred~~ to the FRS Investment Plan Suspense ~~Stale-dated Check~~ Account, indicating the name of the deceased member and the name of the beneficiary. The transferred funds shall be invested in the FRS Select U.S. Treasury Inflation-Protected Securities Index Fund. The amount will be held in the FRS Investment Plan

Suspense ~~Stale-dated Check~~ Account until (1) the beneficiary contacts the FRS Investment Plan; or (2) another beneficiary requests consideration as the deceased's proper beneficiary; or, (3) at the end of 10 years in the Suspense ~~Stale-dated Check~~ Account, the amount is transferred to the FRS Investment Plan Forfeiture Account, where it is held indicating the name of the deceased member and the name of the beneficiary.

(d) Should the beneficiary be located and provides a social security number, a ~~the~~ check will be ~~re~~issued, with~~out~~ actual ~~interest or~~ earnings ~~due to the delay in payment~~, from the date of transfer from the member's account to the Suspense Account subject to applicable income tax withholding, which shall be paid to the tax authorities at the time of such payment to the beneficiary.

(8)(a) Pursuant to Federal guidelines, if the deceased member's account is to be paid to the member's estate but no Estate Identification Number is provided, the account will not be paid to the Estate until receipt of the Estate Identification Number. In the event that no Estate Identification Number is provided, ~~this circumstance, and in accordance with federal guidelines,~~ the FRS Investment Plan Administrator will transfer the deceased member's account to the Suspense Account indicating the name of the deceased member and the name of the beneficiary. If after 10 years after the date of death, the FRS Investment Plan Administrator has not received an Estate Identification Number, the deceased member's account will be transferred to the FRS Investment Plan Forfeiture Account where it will be held indicating the name of the deceased member. The transferred funds shall be invested in the FRS Select U.S. Treasury Inflation-Protected Securities Index Fund. ~~issue a check payable to the estate of the member and hold the check for 180 days, at which time the check will be considered stale-dated.~~

(b) The FRS Investment Plan Administrator will, at the time of the transfer to the Suspense Account ~~distribution~~, make a reasonable effort to obtain the Estate Identification Number. Additionally, by calendar year-end~~, in the~~ of each year following the transfer to the Suspense Account ~~distribution occurred~~, the FRS Investment Plan Administrator will attempt to locate and obtain the Estate Identification Number~~, and, at least one time in the calendar year following the distribution, to locate the Estate Identification Number. The Investment Plan Administrator will document for the Internal Revenue Service the efforts taken to obtain an Estate Identification Number~~.

(c) ~~Once 180 days have elapsed from the date the check was issued, the funds shall be transferred to the Stale-dated Check Account, indicating the name of the deceased member and the name of the estate.~~ The amount will be held in the FRS Investment Plan Suspense ~~Stale-dated Check~~ Account until (1) the member's estate representative contacts the FRS Investment Plan; or (2) a beneficiary requests consideration as the deceased's proper beneficiary; or, (3) at the end of 10 years in the Suspense ~~Stale-dated Check~~ Account, the amount is transferred to the FRS Investment Plan Forfeiture Account, where it is held indicating the name of the deceased member.

(d) Should the estate's representative subsequently provide an Estate Identification Number, a ~~the~~ check will be ~~re~~issued, with~~out~~ actual ~~interest or~~ earnings, from the date of transfer from the member's account to the Suspense Account while invested in the FRS Select U.S. Treasury Inflation-Protected Securities Index Fund ~~due to the delay in payment~~ subject to applicable income tax withholding, which shall be paid to the tax authorities at the time of such payment to the estate.

Rulemaking ~~Specific~~ Authority 121.4501(8) FS. Law Implemented 121.091(8), 121.4501(20), 121.591(3) FS. History–New 10-21-04, Amended 3-9-06, 11-26-07, 12-8-08, _____.

19-11.003 Distributions from FRS Investment Plan Accounts.

(1) through (2) No change.

(3) Distributions available after the member terminates FRS-covered employment.

(a) An FRS Investment Plan member shall not be entitled to a distribution from his account unless he has been terminated from all FRS-covered employment, including temporary, part-time, Other Personal Services (OPS) and any regularly established position with an FRS employer, for three (3) calendar months following the month of termination. Example: If a member terminates on May 15, the three calendar months are June, July, and August. Therefore, the member cannot request a distribution until September.

(b) If the member's termination date has not been submitted by the employer via the monthly payroll file within three (3) calandar months, the employee can complete and return the "Employment Termination Form," Form ETF-2, rev. 01/09. The termination form ~~is called Employment Termination Form," Form ETF-2, rev. 01/09 and~~ can be found on the MyFRS.com website. This form has instructions and a section for employer certification. Alternatively, the employer can log onto the employer page at MyFRS.com and go to Online Payroll and submit the termination date electronically.

(c)~~(b)~~ Upon the expiration of the three calendar months after termination, the member may request a distribution from the FRS Investment Plan Administrator, by calling the toll free MyFRS Financial Guidance Line at 1(866)446-9377, Option 4, or by logging on to the MyFRS.com website, accessing his or her personal account information, and then requesting the distribution through the online services.

(d)~~(c)~~ If a member has terminated employment from all FRS-covered employment for one calendar month and he has reached his normal retirement date, in accordance with Section 121.021(29), F.S., he may request a one-time distribution of up to 10 percent (10%) of his account balance. For example, if a

member terminates on May 15, the one calendar month is June. Therefore, the member can request a one-time distribution of up to 10 percent (10%) in July.

(e)~~(d)~~ A member who transfers to the Pension Plan from the Investment Plan and leaves a balance in the member's Investment Plan account is a member of the Pension Plan and, as such, the member cannot take a distribution of the surplus Investment Plan funds until he begins receiving his Pension Plan benefits.

(4) Distributions to beneficiaries on the death of a member.

(a) through (b) No change.

(c) On the death of a member, the beneficiary must file Form IP-DBF, "Death Benefit Information and Distribution Claim Form," rev. 0~~1~~9-09, which is hereby adopted and incorporated by reference, with the FRS Investment Plan Administrator, to receive benefits.

(5) Distributions to Alternate Payees as a result of a Qualified Domestic Relations Order (QDRO).

(a) Upon receipt of a QDRO from a court of competent jurisdiction, the named alternate payee may leave their account in the Plan or request a distribution from the account once the account has been established in the alternate payee's name as provided in the QDRO and the Alternate Payee has received their PIN.

(b) Upon receipt of the PIN, the alternate payee may request a distribution by calling the toll free MyFRS Financial Guidance Line at 1(866)446-9377, Option 4 or by logging on to MyFRS.com, go to "Manage My Benefits," "Manage Investments," accessing their personal account information, and then requesting the distribution through the online services.

(6) De Minimus Distributions

(a) If an inactive member's account balance is $1,000 or less, such amount may be subject to an automatic distribution. However, a distribution will not occur until the member has been terminated from all employment with FRS-covered employers for a minimum of six (6) calendar months.

(b) If the member meets the termination requirements and upon receiving notification of the automatic distribution, the distribution either will be made as a complete lump-sum liquidation of the account balance, subject to the provisions of the Internal Revenue Code, or if so instructed by the member, a lump-sum direct rollover distribution on the member's behalf paid directly to the custodian of an eligible retirement plan, as defined by the Internal Revenue Code. If a member rolls money into the Investment Plan from another qualified plan, which brings the account balance greater than $1,000, no automatic distribution will occur unless the balance should become $1,000.00 or less in the future.

(c) If such member returns to FRS-covered employment after receiving this automatic distribution, the member is not considered a reemployed retiree and will not be subject to any limitation applicable to such employees.

(7) Required Minimum Distributions ("RMD")

(a) Members, age 70½ or older, must begin taking an annual minimum distribution from their qualified plan accounts including 401(k), 457, 403(b) plans and IRA accounts if they have terminated employment. The amount of an RMD in any year is based on account balances as of December 31st of the prior year.

(b) The FRS Investment Plan Administrator will notify a member who is subject to an RMD distribution at the beginning of each calendar year. At the end of the calendar year in which the RMD was required to be paid, if the member has not met the RMD requirements, the FRS Investment Plan Administrator will initiate an automatic RMD to meet the mandatory required distribution amount. The member must have terminated all FRS covered employment in order for an RMD to be processed. Members have the right to defer the initial RMD to April of the year following the year in which the RMD was payable. Members can defer the initial RMD by calling the FRS Investment Plan Administrator by November 30.

(8)~~(5)~~ Distributions to non-spousal beneficiaries ~~who are not spouses~~.

(a) In accordance with Internal Revenue Service (IRS) rules, non-spousal beneficiary accounts cannot be held indefinitely in the FRS Investment Plan. The amount of time a non-spousal beneficiary has before benefits must commence are more restrictive than for a spousal beneficiary. The "required minimum distribution" is required by the Internal Revenue Service and spelled out in IRS Code Section 401(a)(9), requiring that if the beneficiary is not a spouse, the Investment Plan can hold the distribution for no more than 5 years from the date of the member's death.

(b) For a non-spousal beneficiary, there are two possibilities, depending upon whether payments from the account had commenced to the member before his or her death:

1. Where distributions have already begun to the member, but the member dies before his or her entire account has been distributed, the remaining portion of the account must be distributed at least as rapidly as under the method of distribution being used as of the date of the member's death.

2. If a member dies before the distribution of the member's account has begun, the entire account of the member must be distributed within 5 years after the death of the member, unless

a. The member's account will be distributed over the life of the designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and

b. Such distributions begin no later than 1 year after the date of the member's death.

(c) The non-spousal beneficiary must decide within 1 year of the date of death ~~if he or she wants~~ to take lifetime installment or annuity payouts; otherwise, the entire account balance must be distributed within 5 years.

(d) If the whole amount is not paid out during the required 5-year period, the remaining funds in the account will be paid in a lump sum to the non-spousal beneficiary.

(9)(~~6~~) Beneficiaries who are minors.

(a) A minor is a child under the age of 18. Section 744.301, F.S., allows for the natural guardian (surviving parent) to handle benefits to a minor child where that amount does not exceed $15,000, without court appointment, authority or bond.

(b) In all cases where a minor child or children are the beneficiary(ies) of the member, a copy of the birth certificate of all minor children shall be sent to the FRS Investment Plan Administrator, and shall be received prior to any payout, regardless of the amount. The purpose is to provide proof that the surviving parent is the natural guardian of the children. The FRS Investment Plan Administrator shall confirm that the surviving parent is providing the instructions for any payment arrangements being made.

(c) In all cases in which a minor is a beneficiary of an account balance which is greater than $15,000, the FRS Investment Plan Administrator shall place a hold on the account and advise the SBA of the situation and the SBA shall send instructions to the FRS Investment Plan Administrator for any additional action.

(d) If the individual responding to the correspondence sent by the Administrator and providing instructions for payout is not the surviving parent, the Administrator shall request the individual to provide a Court Order wherein a guardian has been appointed for the minor, prior to payout of any balance and the Administrator shall take directions only from the named guardian.

(e) If no instructions for payout are received, the Administrator shall notify the SBA and the SBA will contact the probate court with jurisdiction over the estate of the member to request direction on the disposition of the minor's interest in the account. Expenses shall be deducted from the member's account.

(10)(~~7~~) Invalid distributions.

(a) An "invalid distribution" is a distribution given to a member to which the member is not entitled.

(b) If a member or a former member of the FRS Investment Plan receives an invalid distribution, the member or former member is required to ~~shall~~ repay the entire invalid distribution within 90 days of the member's receipt of a final notification from the SBA. If the member fails to repay the invalid distribution, the employer is liable for the repayment of the invalid distribution even if the member signed a statement at the time the member was hired that no benefit had been received from the Plan.

1. If a member repays the entire distribution, the member's repayment will be deposited in his FRS Investment Plan account; he will be returned to the Investment Plan; and all future employer contributions will be deposited in the funds he has chosen.

2. If the employer repays the entire distribution, the repayment will be deposited in the Investment Plan Trust Fund and allocated to the Investment Plan's forfeiture account to offset plan expenses. The member will be returned to the Investment Plan; and all future employer contributions will be deposited in the funds the member has chosen.

3. If the member fails to repay the invalid distribution, the SBA will declare the member a "retiree" and will pursue the repayment of the invalid distribution pursuant to paragraph (b) above. As a "retiree," the member is subject to the restrictions of Section 121.122, F.S., which means that if the member is reemployed in the future with an FRS-covered employer, the member is not eligible for Special Risk membership, or for the Deferred Retirement Option Program, nor for disability benefits. Section 121.122, F.S., has other restrictions and should be read by the member with his or her particular situation in mind.

(c) The following are examples of scenarios that could result in invalid distributions. They are only examples and are not inclusive of all possible situations. Members and employers are encouraged to contact the FRS Investment Plan Administrator to discuss the particular situation.

1. Example 1: A member joined the FRS Investment Plan effective September 1, 2002. He terminated all employment from his FRS-covered employer on August 24, 2009 ~~2006~~. On December 15, 2009 ~~2006~~, he takes ~~took~~ a partial distribution from his Investment Plan account. However, he returned to FRS-covered employment on December 1, 2009 ~~2006~~. The member took an invalid distribution because he was working for an FRS-covered employer at the time he received the distribution. His payroll record reflected the August 24, 2009 ~~2006~~, termination date but did not yet reflect his rehire date. Therefore, because the payroll report is not required from the employer to the Division of Retirement until the 5th business day of the month following the end of the work-month, the FRS Investment Plan Administrator, which receives its information from the Division of Retirement, had no knowledge of his return to work in the middle of December, since the information would not have arrived until at least January 6. The member is asked at the time of the distribution whether he is employed or pending employment with an FRS covered employer. If it is determined that the member knew or reasonably knew the answer to this question was yes, the member has taken an invalid distribution.

2, Example 2: A member joined the FRS Investment Plan effective April 1, 2004. He terminates~~d~~ all FRS-covered employment on November 12, 2009 ~~2006~~. The member has not reached his normal retirement date. On March 1, 2010 ~~2007~~,

the member takes ~~took~~ a total distribution from his Investment Plan account. The member returnes~~d~~ to FRS-covered employment on April 15~~, 2007~~. The March 1, 2010 ~~2007~~ distribution is invalid since the member returned to work within ~~3~~6 calendar months of his retirement date.

3. Example 3: A member joined the FRS Investment Plan effective May 1, 2005. He terminates~~d~~ all FRS-covered employment on November 12, 2009 ~~2006~~. The member has reached his normal retirement date. On January 5, 2010 ~~2007~~, the member receives~~d~~ his one-time distribution of up to 10 percent from his Investment Plan account. The member returns~~ed~~ to FRS-covered employment on May ~~February~~ 15, 2010 ~~2007~~. The January 5, 2010 ~~2007~~ distribution is invalid since the member returned to work within 6 ~~1~~ calendar month~~s~~ of his retirement date.

Rulemaking Authority 121.4501(8)(a) FS. Law implemented 121.021(29), (39), 121.4501(20), 121.591, 121.77 FS. History–New 3-9-06, Amended 11-26-07, 5-19-09, _____.

19-11.004 Excessive Trading in the FRS Investment Plan.

(1) through (2) No change.

(3) Limitations.

(a) Regarding authorized foreign or global stock funds: After making a non-exempt transaction by transferring any portion of their account balance into an authorized foreign or global or stock fund, members are prohibited from completing a Roundtrip Trade in that fund for a minimum of 7 calendar days, using the convention of last-dollar-in and first-dollar-out for the roundtrip calculation.

(b) Regarding all authorized funds, except for money market funds:

1. Members who engage in Market Timing Trades in authorized funds will receive a warning letter sent by U.S. mail. The warning letter shall notify the member that excessive trades have been identified in his/her accounts and any additional violations will result in a direction letter.

2. Members who engage in Market Timing Trades in authorized funds and who have previously received a warning letter described in subparagraph 1., above, will be sent a direction letter delivered by courier. The direction letter shall require that the member shall not have access to automated online trade instructions for at least one full calendar month following the date of the direction letter. The member shall be required to conduct trades via telephone by contacting the Plan Administrator for at least one full calendar month.

3. Members who engage in Market Timing Trades and who have previously received a direction letter, as described in subparagraph 2., above, will be sent another direction letter, delivered by courier. This direction letter shall require that the member shall not have access to automated trade instructions for at least three full calendar months following the date of the direction letter. The member shall be required to conduct trades via telephone by contacting the Plan Administrator for at least three full calendar months+.

4. Members who engage in Market Timing Trades and who have previously received a direction letter as described in subparagraph 3., above, will be sent another direction letter, delivered by courier. The direction letter shall require that the member shall only be permitted to conduct trades via paper trading forms for at least three full calendar months following the date of the direction letter. The form to be used by the member in conducting the trades is the "Transfer Request Form, Excessive Fund Trading Violators," Form EFTPV-1, rev. 3/09, which hereby is adopted and incorporated by this reference. This form must be notarized and returned to the Office of Defined Contribution Programs, via US mail, certified\return receipt requested.

5. Members who engage in Market Timing Trades and who have previously received a direction letter as described in subparagraph 4., above, will be sent another direction letter, delivered by courier. The direction letter shall require that the member shall only be permitted to conduct trades via paper trading forms for at least twelve full calendar months following the date of the direction letter. The form to be used by the member in conducting the trades is the "Transfer Request Form, Excessive Fund Trading Violators," Form EFTPV-1, rev. 3/09, which hereby is adopted and incorporated by this reference. This form must be notarized and returned to the Office of Defined Contribution Programs, via US mail, certified\return receipt requested.

6. Members who engage in Market Timing Trades and who have previously received a direction letter as described in subparagraph 5., above, will be sent another direction letter, delivered by courier. The direction letter shall require that the member shall only be permitted to conduct trades via paper trading forms for the remainder of any time that any balance exists in the member's Investment Plan account following the date of the direction letter. The form to be used by the member in conducting the trades is the "Transfer Request Form, Excessive Fund Trading Violators," Form EFTPV-1, rev. 3/09, which hereby is adopted and incorporated by this reference. This form must be notarized and returned to the Office of Defined Contribution Programs, via US mail, certified\return receipt requested.

(c) If Member A receives a direction letter as described in subparagraph (3)(b)2., above, on November 15, Member A's access to automated online trade instructions shall be denied until January 1. "One full calendar month," in this context, means the full calendar month following the month in which the direction letter is received. The direction letter, in this example, was received in November. The "one full calendar month" is December. Therefore, access will not be resumed until January.

(4) through (5) No change.

Rulemaking ~~Specific~~ Authority 121.4501(8) FS. Law Implemented 121.4501(13), (14), (15) FS. History–New 10-21-04, Amended 3-9-06, 10-25-07, 12-8-08, _____.

19-11.007 Second Election Enrollment Procedures for the FRS Retirement Programs.

(1) No change.

(2) Definitions

(a) through (e) No change.

(f) "Electronic Means" shall mean an enrollment on the MyFRS.com website, by telephone or other technology as specified by the SBA in a subsequent amended rule.

(3) No change.

(4) Specific Procedures for the "2nd Election Retirement Plan Enrollment Form."

(a) through (j) No change.

(k) If the member submits a form that is incomplete, it will not be processed. An incomplete form is a form which is missing the name ~~and address and phone number~~ of the member, social security number~~s~~, plan selection, or signature~~s, or dates~~. The member will be required to resubmit a completed enrollment form ~~incomplete form will be returned to the member to add any missing information~~. If the form is incomplete only because the member has made no investment selection, the form will be processed and the member will be defaulted into the FRS Select Moderate Balanced Fund for investing his accumulated benefit obligation and all future contributions. Note that this default selection may be changed by the member at any time once the transfer has been made.

(5) Specific Procedures for the "2nd Election EZ Retirement Plan Enrollment Form."

(a) through (h) No change.

(i) If the member submits a form that is incomplete, it will not be processed. An incomplete form is a form which is missing the name ~~and address and phone number~~ of the member, social security number~~s~~, plan selection, or signature~~s, or dates~~. The member will be required to resubmit a completed enrollment form ~~incomplete form will be returned to the member to add any missing infomration~~.

(6) No change.

Rulemaking Authority 121.4501(8)(a) FS. Law Implemented 121.4501(3), (4), (8)(b)4., (15)(b), (20) FS. History–New 10-21-04, Amended 3-9-06, 10-25-07, 12-8-08, 5-19-09, _____.

19-11.009 Reemployment with an FRS-covered Employer after Retirement.

(1) Purpose: The purpose of this rule is to clarify the provisions regarding reemployment after retirement for FRS Investment Plan members. The limitations of this rule apply to reemployment in any capacity irrespective of the category of funds from which the member is compensated.

(2)(a) A member who has terminated FRS-covered employment and has taken a distribution from his Investment Plan account is considered a retiree, as of the date of the distribution, in accordance with Section 121.4501(2)(j), F.S. As a retiree, the former member shall not be reemployed with an FRS-covered employer until he has been retired for 12 months, except under certain limitations. Any retiree may return to employment with an FRS-covered employer after 12 calendar months of retirement and may take distributions from prior career benefits, even while reemployed. A retiree may work for any private employer or for any public employer who does not participate in the FRS without affecting his/her FRS retirement benefits.

(b) A member who is reemployed with an employer during the first six calendar months after retirement shall be deemed to not have retired. The distribution will be deemed an invalid distribution. The member shall be required to repay the entire invalid distribution within 90 days of the member's receipt of a final notification.

(c)~~(b)~~ There are exceptions to paragraph (2)(a) above. This paragraph does not contain an exhaustive list of all possible situations. Members who are not in exactly the same circumstances as described in this paragraph should call the toll-free MyFRS Financial Guidance Line at 1(866)446-9377, Option 1, to have their situations properly analyzed.

1. If reemployed prior to July 1, 2010, the following will apply:

a.~~1.~~ A member who has reached his normal retirement date, in accordance with Section 121.021(29), F.S., may return to FRS-covered employment after being retired for six ~~one~~ calendar month~~s~~. Six ~~One~~ calendar month~~s~~ means six ~~the~~ full calendar month~~s~~ following the month the member retired. For example, if a member retires in January, the six calendar months are February, March, April, May, June, and July. The retiree may return to employment in August. The retiree may return to employment in one of the excepted positions identified in Section 121.091(9)(b), F.S., and continue to take distributions from prior career benefits. If the retiree returns to work in a position that is not one of the exceptions allowed by law, he/she must suspend receipt of any remaining retirement benefits for the remainder of the 12 months after retirement.

b.~~2.~~ A member who has not reached his normal retirement date, in accordance with Section 121.021(29), F.S., can return to work in one of the excepted positions identified in Section 121.091(9)(b), F.S., FRS-covered employment after being retired for six ~~three~~ calendar months. Six ~~"Three~~ calendar months" means six ~~three~~ full calendar months following the month in which the member retired. For example, if a member retires in January, the six ~~three~~ calendar months are February, March, ~~and~~ April, May, June, and July. The retiree may return to employment in August ~~May~~ in one of the excepted positions identified in Section 121.091(9)(b), F.S., and continue to take distributions from prior career benefits. If the retiree returns to

work in a position that is not one of the exceptions allowed by law, he/she must suspend receipt of any remaining retirement benefits for the remainder of the 12 months after retirement.

2. If reemployed on or after July 1, 2010, a member may return to work in any position with an FRS-covered employer after being retired for six calendar months. Six calendar months means six full calendar months following the month the member retired. For example, if a member retires in January, the six calendar months are February, March, April, May, June, and July. The retiree may return to employment in August. The member must suspend receipt of any remaining retirement benefits for the remainder of the 12 calendar months after retirement. Effective July 1, 2010, there are no excepted positions. A member reemployed on or after July 1, 2010 will not be permitted to renew membership in the FRS.

(3) The Plan Choice Administrator must be informed whenever an FRS Investment Plan retiree returns to employment with an FRS-covered employer during the first 12 calendar months of retirement.

(4)(a) Any retiree employed in violation of the FRS Investment Plan reemployment limitations and an employer ~~any employing agency which knowingly~~ that employs or appoints such person are jointly and severally liable to the retirement trust fund for reimbursement of any benefits paid. ~~To avoid liability, such employing agency must have a written statement from the retiree that he or she is not retired from a state-administered retirement system.~~

(b) Liability will be imposed on the employer if such reimbursement is not received from the retiree, unless there is conclusive evidence to show the employer should not be liable.

(c) To assist the employer, a written statement should be obtained from a prospective employee. The written statement can be set forth on the "Certification Form," Form CERT, rev. 08/2009 and can be found on the MyFRS website. This form should be retained in the employee's personnel file.

(d) When a prospective employee signs the Certification Form, the employee is certifying that he or she has not retired from any State of Florida administered retirement plan nor concluded participation in the Deferred Retirement Option Program (DROP) within the past 12 months, or received an initial distribution or rollover from the FRS Investment Plan within the last 6 calendar months.

Rulemaking ~~Specific~~ Authority 121.4501(8)(a) FS. Law Implemented 121.021(29), (39), 121.091(9)(b), (c), 121.4501(2)(j), 121.591(1)(a)4. FS. History–New 11-26-07, Amended 12-8-08, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ron Poppell, Senior Officer, Defined Contributions Programs

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Trustees of the State Board of Administration

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 13, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 4, 2009

PUBLIC SERVICE COMMISSION

RULE NOS.:	RULE TITLES:
25-12.004	Definitions
25-12.005	Codes and Standards Adopted
25-12.008	New, Reconstructed or Converted Facilities
25-12.022	Requirements for Distribution System Valves
25-12.027	Welder Qualification
25-12.040	Leak Surveys, Procedures and Classification
25-12.041	Receiving of Gas Leak and Emergency Reports
25-12.080	General
25-12.084	Notice of Accidents and Outages
25-12.085	Written Annual Reports Required

PURPOSE AND EFFECT: Rule 25-12.004, F.A.C., Definitions – Amendment corrects zip code address for the Commission and updates the Pipeline Inspection, Protection, Enforcement, and Safety Act legal cite; Rule 25-12.005, F.A.C., Codes and Standards Adopted-The amendment adopts the most current three parts of the code of Federal Regulations 191, 192 and 199 that cover natural gas pipeline safety; Rule 25-12.008, F.A.C., New, Reconstructed or Converted Facilities-Amendment deletes the references to filed plans required by a repealed Rule 25-12.039, F.A.C.; Rule 25-12.022, F.A.C., Requirements for Distribution System Valves-The amendment clarifies the requirement is for sectionalizing valves only, not all valves. Also gives a distance exception for location of valves if they are physically impractical to install in areas like river crossing and closed interstate highways; Rule 25-12.027, F.A.C., Welder Qualification-Amendment updates the references to the current standard and code for welding on pipelines; Rule 25-12.040, F.A.C., Leak Surveys, Procedures and Classification-Amendment clarifies intent of rule that cleared gas leaks are repaired; Rule 25-12.041, F.A.C., Receiving of Gas Reports-Amendment adds clarifying language to title and deletes references to filed plans required by a repealed Rule 24-12.039, F.A.C.; Rule 25-12.084, F.A.C., Notice of Accidents and Outages-The amendment increases the dollar amount threshold requiring notification of the Commission of natural gas related accidents; Rule 25-12.085, F.A.C., Written Annual Reports Required-The amendment eliminates the requirement to file forms in triplicate, updates the identification reference to the required form, changes the submittal date to match federal requirements and eliminates a report not needed. Docket No. 090396-GU

SUMMARY: The rule changes describe the Commission's adoption of federal pipeline safety regulations, a welding standard as part Florida rules and an increase in the dollar amount for reporting accidents to the Commission. Various minor changes include adding clarifying language, deleting references to a repealed rule, correction of an address, changing of a date, updating a form number and reducing the number of copies filed for a required report and eliminate a report not needed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The rule changes describe the Commission's adoption of federal pipeline safety regulations, a welding standard as part Florida rules and an increase in the dollar amount for reporting accidents to the Commission. Various minor changes include adding clarifying language, deleting references to a repealed rule, correction of an address, changing of a date, updating a form number and reducing the number of copies filed for a required report and eliminate a report not needed.

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.

RULEMAKING AUTHORITY: 368.05(2), 350.127(2) FS.

LAW IMPLEMENTED: 368.03, 368.05(2) 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: Kathryn Cowdery, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850)413-6216, kcowdery@psc.state.fl.us

THE FULL TEXT OF THE PROPOSED RULES IS:

25-12.004 Definitions.

Definitions contained in codes or standards adopted by these rules are applicable to the rules and the adopted codes or standards with the following exceptions:

(1) "Commission". Unless a different intent clearly appears from the context, the word "Commission" shall mean the Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850~~0868~~, area code (850)413-6770.

(2) "Utility" or "Operator". Except where a different meaning clearly appears from the context, the word "Utility" or "Operator" shall be every person, corporation, partnership, association, public agency, municipality, cooperative gas district or other legal entity and their lessees, trustees, or receivers, now or hereafter owning, operating, managing or controlling any gas transmission or distribution facility transporting gas as defined herein and not specifically exempt from state jurisdiction by the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (PIPES Act), Pub. L. 109-468 (codified as amended at 49 U.S.C. §60101 (2006)). ~~Natural Gas Pipeline Safety Act of 1968, Public Law 90-481.~~

(3) through (4) No change.

(5) "Distribution System". As used in these rules shall mean any group of interconnected pipe and facilities operating at a hoop stress of less than 20 percent ~~%~~ specified minimum yield strength which transports gas from a common source of supply or storage facility to a customer.

(6) through (13) No change.

Rulemaking ~~Specific~~ Authority 368.05(2) FS. Law Implemented 368.03 FS. History–New 6-24-67, Amended 3-7-70, 11-14-70, 9-21-74, Repromulgated 10-7-75, Amended 10-2-84, Formerly 25-12.04, Amended 1-7-92, _____.

25-12.005 Codes and Standards Adopted.

The Minimum Federal Safety Standards and reporting requirements for pipeline facilities and transportation of gas prescribed by the Pipeline and Hazardous Materials Safety Administration ~~United States Department of Transportation~~ in 49 C.F.R. 191 and 192 (2008) as amended in 74 Fed. Reg. 2889-01 (January 16, 2009) ~~Parts 191 and 192 of Title 49, Code of Federal Regulations (CFR) as amended through January 1, 2001~~, are adopted as part of these rules. 49 C.F.R. ~~Part~~ 199 (2008), "Drug and Alcohol Testing," as amended in 74 Red. Reg. 2889-01 (January 16, 2009) ~~through January 1, 2001~~, is adopted to control drug use, by setting standards and requirements to apply to the testing and use of all emergency response personnel under the direct authority or control of a gas utility or pipeline operator, as well as all employees directly or indirectly employed by gas pipeline operators for the purpose of operation and maintenance and all employees directly or indirectly employed by intrastate gas distribution utilities for on-site construction of natural gas transporting pipeline facilities. Part 199 also is adopted to prescribe standards for use of employees who do not meet the requirements of the regulations.

Rulemaking ~~Specific~~ Authority 368.05(2), 350.127(2) FS. Law Implemented 368.03 FS. History–New 11-14-70, Amended 9-24-71, Revised 9-21-74, Amended 10-7-75, 11-30-82, 10-2-84, Formerly 25-12.05, Amended 8-8-89, 1-7-92, 5-13-99, 4-26-01, _____.

25-12.008 New, Reconstructed or Converted Facilities.

(1) No new or reconstructed system or portion thereof may be:

(a) No change.

(b) Placed in service until~~:~~

~~1.~~ t~~T~~he pipeline facilities have been inspected and found to comply with the construction specifications~~,~~ and

~~2.~~ Operating and M~~m~~aintenance P~~p~~lans ~~have been filed with the Commission~~.

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

(e) Establish the maximum allowable operating pressure no greater than the highest sustained operating pressure during the 5 years prior to conversion unless it was tested or uprated after July 1, 1970 in accordance with the Subparts J or K of 49 C.F.R. 192 (2008) ~~Part 192, Title 49, CFR after July 1, 1970~~.

(f) No change.

(g) Determine areas of active corrosion as required by 49 C.F.R. 192 (2008) ~~Part 192, Title 49, CFR~~ and these rules. Required cathodic protection must be accomplished within 1 year after the date of conversion except that buried steel tubing must be protected prior to placing the system into operation.

Rulemaking ~~Specific~~ Authority 368.05(2) FS. Law Implemented 368.05(2) FS. History–New 11-14-70, Revised 9-21-74, Amended 10-7-75, 10-2-84, Formerly 25-12.08, Amended _____..

25-12.022 Requirements for Distribution System Valves.

(1) Valves ahead of regulator stations – A valve shall be installed upstream of each regulator station for us in an emergency to stop the flow of gas. These valves are to be installed at a safe distance from the station, but no more than 500 feet from the regulator station. The distance for the valve location can be greater than 500 feet if physically impractical to install closer.

(2) through (4) No change.

(5) All the sectionalizing valves which may be necessary for the safe operation of the system must be inspected and maintenance performed to assure location, access and operating ability at intervals not exceeding 15 months but at least each calendar year.

Rulemaking ~~Specific~~ Authority 368.05(2) FS. Law Implemented 368.05(2) FS. History–New 9-21-74, Amended 10-7-75, 10-2-84, Formerly 25-12.22, Amended _____.

25-12.027 Welder Qualification.

(1) No welder shall make any pipeline weld unless the welder has qualified in accordance with Section 3 of American Petroleum Institute Standard 1104, Welding of Pipelines and Related Facilities ~~17th edition, 1988~~, 20th edition, October 2005 including Errata/Addendum July 2007 and Errata 2 (2008), ~~Section IX of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code 1977,~~ or ~~Sections 1, 2 & 3 of~~ Appendix C of 49 C.F.R. ~~the Code of Federal Regulations Part~~ 192 (2008), ~~as amended through December 27, 1989,~~ within the preceding 15 months, but at least once each calendar year.

(2) No change.

Rulemaking ~~Specific~~ Authority 350.127(2), 368.05(2) FS. Law Implemented 368.03 FS. History–New 1-7-92, Amended _____..

25-12.040 Leak Surveys, Procedures and Classification.

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

(c) "Grade 3 Leak" – a leak that is not a threat to persons and property and is not expected to become so. Above ground grade 3 leaks shall be repaired within 90 days from the date the leak was originally located unless the leak is upgraded or does not produce a positive leak indication when a soap and water solution, or its equivalent, is applied on suspected locations at operating pressure. Grade 3 leaks that are underground shall be reevaluated at least once every 6 months until repaired ~~cleared~~. The frequency of reevaluation shall be determined by the location and magnitude of the leak.

(3) No change.

Rulemaking ~~Specific~~ Authority 368.05(2) FS. Law Implemented 368.05(2) FS. History–New 9-21-74, Repromulgated 10-7-75, Amended 10-2-84, Formerly 25-12.40, Amended 1-7-92, _____..

25-12.041 Receiving of Gas Leak and Emergency Reports.

Each operator must provide a means of receiving and promptly responding to reported gas leaks and emergencies~~y~~ ~~calls~~ on a 24-hour per day basis. The procedure for accomplishing this requirement must be included in the operating and maintenance plan ~~filed with the Commission~~.

Rulemaking ~~Specific~~ Authority 368.05(2) FS. Law Implemented 368.05(2) FS. History–New 9-21-74, Repromulgated 10-7-75, Amended 10-2-84, Formerly 25-12.41, Amended _____.

25-12.080 General.

(1) No change.

(2) Nothing in these rules shall be construed to relieve any operator from responsibility to file reports or give notifications as required by the Pipeline and Hazardous Materials Safety Administration ~~Federal Department of Transportation~~.

Rulemaking ~~Specific~~ Authority 368.05(2) FS. Law Implemented 368.05(2) FS. History–New 11-14-70, Amended 9-21-74, Repromulgated 10-7-75, Amended 10-2-84, Formerly 25-12.80, Amended _____.

25-12.084 Notice of Accidents and Outages.

(1) through (c) No change.

(d) Caused estimated damage to the property of the operator, or others, or both, of a total of $10,000 ~~$2,500~~ or more; or

(e) In the judgment of the operator, was significant even though it did not meet the criteria of paragraph (a), (b), (c), or (d) of this subsection ~~paragraph~~.

(2) An operator need not give notice of an event that met only the criteria of paragraph ~~subsections~~ (b) or (c) of subsection (1) ~~this paragraph~~, if it occurred solely as a result of, or in connection with, planned or routine maintenance or construction.

(3)~~(2)~~ Each operator shall immediately report to the Commission any distribution system-related accident or failure which interrupts service to either 10 percent ~~%~~ or more of its meters or 500 or more meters.

Rulemaking ~~Specific~~ Authority 350.127(2), 368.05(2) FS. Law Implemented 368.03, 368.05(2) FS. History–New 9-21-74, Repromulgated 10-7-75, Amended 10-2-84, Formerly 25-12.84, Amended _____.

25-12.085 Written Annual Reports Required.

(1) Each operator of a distribution system shall submit an annual report ~~in triplicate~~ on Pipeline and Hazardous Materials Safety Administration ~~Department of Transportation~~ Form PHMSA ~~RSPA~~ F 7100.1-1 (12-05) for each distribution system. In the case of an operator who has more than one distribution system, a combined annual report must be submitted which includes all facilities operated within the State of Florida subject to the Commission's jurisdiction.

~~(a) Each distribution system.~~

~~(b) In the case of an operator who has more than one distribution system, a combined annual report must be submitted which includes all facilities operated within the State of Florida subject to the Commission's jurisdiction.~~

(2) Each operator of a distribution system shall, for facilities that operate at 20 percent or more of the specified minimum yield strength, or that are used to convey gas into or out of storage, submit an annual report~~s~~ for those facilities on Pipeline and Hazardous Materials Safety Administration ~~in triplicate on Department of Transportation~~ Form PHMSA ~~RSPA~~ F 7100.2-1 (12-05).

(3) Each operator of a transmission system ~~or a gathering system under Commission jurisdiction~~ shall submit an annual report~~s~~ on Pipeline and Hazardous Safety Administration ~~in triplicate on Department of Transportation~~ Form PHMSA ~~RSPA~~ F 7100.2-1 (12-05).

~~(4)~~ All the above reports must be submitted for the preceding calendar year so as to be received by the Commission no later than March 15th ~~February 10~~ of each year.

Rulemaking ~~Specific~~ Authority 350.127(2), 368.05(2) FS. Law Implemented 368.03, 368.05(2) FS. History–New 11-14-70, Amended 9-21-74, Repromulgated 10-7-75, Amended 10-2-84, Formerly 25-12.85, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Kathryn Cowdery, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850)413-6216

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 6, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Vol. 35, No. 22, June 5, 2009

PUBLIC SERVICE COMMISSION

RULE NOS.:	RULE TITLES:
25-24.516	Pay Telephone Operator Services
25-24.630	Rate and Billing Requirements

PURPOSE AND EFFECT: To amend the rules to implement changes made by the Legislature to Section 364.3376, Florida Statutes. Docket No. 060476-TL.

SUMMARY: The amendments remove the price caps for operator services and replace references to "tariffs" with "schedules."

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The amendments would not impose costs or confer benefits on the Commission. Companies providing operator services would have more flexibility to price operator services, but customers could face higher costs for those services.

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.

RULEMAKING AUTHORITY: 350.127(2) FS.

LAW IMPLEMENTED: 364.01, 364.3376, 364.03, 364.3375(4), (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 RULES IS: Richard C. Bellak, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850)413-6092, rbellak@psc.state.fl.us.

THE FULL TEXT OF THE PROPOSED RULES IS:

25-24.516 Pay Telephone Operator Services ~~Rate Caps~~.

~~(1) Rates charged any end user by a pay telephone provider, providing operator service within the pay telephone premises' equipment, shall not exceed the following:~~

~~(a) Local coin calls – the rate posted at the pay telephone station.~~

~~(b) Extended area service (EAS) coin calls – a rate equivalent to the local coin call rate.~~

~~(c) Extended calling scope (ECS) calls – the rate equivalent to the local coin rate.~~

~~(d) 0+ toll non-person-to-person – a maximum rate of $0.30 per minute, plus a $1.75 charge.~~

~~(e) 0+ toll person-to-person – a maximum rate of $.30 per minute, plus a $3.25 charge.~~

~~(f) 0+ non person to person local – a rate equivalent to the local coin rate, plus a $1.75 charge.~~

~~(g) 0+ person-to-person local – a rate equivalent to the local coin rate, plus a $3.25 charge.~~

~~(2)~~ A pay telephone provider shall not obtain services from an interexchange carrier or an operator service provider unless such carrier or provider has registered with or has obtained a certificate of public convenience and necessity from the Commission.

Rulemaking ~~Specific~~ Authority 350.127(2) FS. Law Implemented 364.03, 364.3375(4), (5), 364.3376 FS. History–New 9-5-95, Amended 2-1-99, 9-7-04, _____.

25-24.630 Rate and Billing Requirements.

(1) Services charged and billed to any end user by an operator services provider for an intrastate 0+ or 0- call made from a pay telephone or in a call aggregator context shall not exceed the rates in the company's published schedules. ~~a rate of $.30 per minute plus the applicable charges for the following types of telephone calls:~~

~~(a) A person-to-person call – a charge of $3.25;~~

~~(b) A call that is not a person-to-person call – a charge of $1.75.~~

(2) No change.

(3) An operator services provider shall require that its certificated or registered name appear on any telecommunications company's bill for regulated charges.

(4) through (5) No change.

(6) An operator services provider shall charge only for conversation time as rounded according to company published schedules ~~tariffs~~.

(7) An operator services provider shall not:

(a) through (b) No change.

(c) Bill for calls in increments greater than one minute except for pay telephone coin calls that may be in increments no greater than three minutes.

~~(d) Bill or collect a surcharge levied by any entity, either directly or through its billing agent, except Commission-approved charges for pay telephone providers.~~

Rulemaking ~~Specific~~ Authority 350.127(2) FS. Law Implemented 364.01, 364.3376 FS. History–New 9-6-93, Amended 2-1-9, 9-7-04, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ray Kennedy, Division of Regulatory Compliance, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850)413-6584

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 6, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 11, 2006, Vol. 32, No. 32 and December 12, 2008, Vol. 34, No. 50

WATER MANAGEMENT DISTRICTS

Northwest Florida Water Management District

RULE NOS.:	RULE TITLES:
40A-2.051	Exemptions
40A-2.101	Content of Application
40A-2.351	Transfer of Permits
40A-2.381	Limiting Conditions
40A-2.901	Forms

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to: reduce the permitting requirements for water users whose withdrawals pose minimal impact to the water resources, minimize non-potable demands on the potable water supplies, promote use of the lowest quality water suitable for the intended purpose; incorporate forms by reference in the appropriate section or subsection of the rule; and include statutory permit language.

SUMMARY: Rule 40A-2.051, F.A.C., Exemptions – Expand an existing exemption in rule that allows small withdrawals from shallow wells in coastal areas. The current exemption applies to Okaloosa, Walton and Bay counties. A similar exemption allows such withdrawals in Escambia and Santa Rosa Counties. The proposed change will allow such uses in Gulf and Franklin Counties.

Rule 40A-2.101, F.A.C., Content of Application – Distributes forms incorporated by reference into the appropriate subsections of the rule. That, per the current interpretation of subparagraph 120.55(1)(a)4., F.S., being the first subsection in which the form is referenced.

Rule 40A-2.351, F.A.C., Transfer of Permits – Distributes forms incorporated by reference into the appropriate subsections of the rule. That, per the current interpretation of subparagraph 120.55(1)(a)4., F.S., being the first subsection in which the form is referenced.

Rule 40A-2.381, F.A.C., Limiting Conditions – Distributes forms incorporated by reference into the appropriate subsections of the rule. That, per the current interpretation of subparagraph 120.55(1)(a)4., F.S., being the first subsection in which the form is referenced.

Rule 40A-2.901, F.A.C., Forms – Removes inclusive incorporation by reference of forms in the list and allows distribution into the appropriate subsections of the rule. That, per the current interpretation of subparagraph 120.55(1)(a)4., F.S., being the first subsection in which the form is referenced.

NWFWMD Form A2-E – Add the language required by current Florida Statute [373.116(3), 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.

RULEMAKING AUTHORITY: 373.044, 373.113, 373.171, 373.216, 373.219, 373.223 FS.

LAW IMPLEMENTED: 373.171, 373.216, 373.219, 373.223 FS.

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

DATE AND TIME: November 30, 2009, 1:25 p.m., ET

PLACE: Northwest Florida Water Management District Headquarters, Governing Board Room, 81 Water Management Drive, Midway, Florida (10 miles west of Tallahassee on U.S. Highway 90)

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 72 hours before the workshop/meeting by contacting: Jean Whitten, Division of Administration, at (850)539-5999. 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: Terri Peterson, Northwest Florida Water Management District, 152 Water Management Drive, Havana, Florida 32333-4711, (850)539-5999, fax (850)539-2693

THE FULL TEXT OF THE PROPOSED RULES IS:

40A-2.051 Exemptions.

(1) through (5) No change.

(6) An Individual Water Use Permit shall not be required for non-public supply shallow wells four (4) inches or smaller in diameter, withdrawing an annual daily average of 15,000 gallons or less of water from the shallow sand aquifer in the portion of Permit Area A found in the counties of Bay, Franklin, Gulf, Okaloosa, and Walton, and which do not penetrate any competent and continuous confining formation.

(7) through (10) No change.

Rulemaking ~~Specific~~ Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.171, 373.216, 373.219 FS. History–New 10-1-82; Amended 5-17-83, 3-1-84, 1-5-86, 8-1-89, 5-31-92, 11-2-92, 10-1-95, 7-1-98, 1-1-05, 2-27-06, _____.

40A-2.101 Content of Application.

(1) All Individual Water Use Permit applications shall include one original and one copy of the following:

(a) A completed District application appropriate for the specified use ~~Complete information as required on NWFWMD Form No. A2-A, A2-B, A2-C, or A2-D; all of which are incorporated by reference in Rule 40A-2.901, F.A.C.;~~ either:

1. Consumptive Use Permit Application for a Public Water Supply, NWFWMD Form No. A2-A, effective July 1, 1998;

2. Consumptive Use Permit Application for Agricultural, Aquaculture and Golf Course Water Uses, NWFWMD Form No. A2-B, effective July 1, 1998;

3. Consumptive Use Permit Application for Landscape Uses, NWFWMD Form No. A2-C, effective July 1, 1998; or

4. Consumptive Use Permit Application for Other Uses, NWFWMD Form No. A2-D, effective July 1, 1998.

These forms are hereby incorporated by reference and can be obtained from the District offices in Midway-Gadsden County, Crestview or Marianna or from the District's website.

(b) through (g) No change.

(2) A permit application shall be accompanied by the appropriate application fee identified in Rule 40A-2.201, F.A.C. Failure to provide the required fee shall result in the denial of the permit request.

Rulemaking ~~Specific~~ Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.109, 373.223, 373.229, 403.0877 FS. History–New 10-1-82; Amended 1-5-86, 5-31-92, 11-2-92, 11-1-93, 10-1-95, 7-1-98, _____.

40A-2.351 Transfer of Permits.

(1) An Individual Water Use Permit shall be transferred by the Executive Director at the request of the Permittee provided the source, use, and withdrawal amounts remain the same; ~~,~~ the request is made in writing on NWFWMD Form No. A2-F, (Request for Consumptive Use Permit Transfer, effective May 31, 1992) hereby incorporated by reference and available from the District offices in Midway-Gadsden County, Crestview or Marianna or from the District's website; and is accompanied by the required processing fee. All terms and conditions of the permit being transferred shall be binding on the transferee.

(2) No change.

Rulemaking ~~Specific~~ Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.109, 373.118, 373.216, 373.219 FS. History–New 10-1-82, Amended 5-31-92, 11-1-93, 10-1-95, _____.

40A-2.381 Limiting Conditions.

(1) No change.

(2) In addition to specific or special conditions stipulated by the Board, the terms and standard conditions enumerated in the District's permit document, NWFWMD Form No. A2-E, hereby incorporated by reference, are made part of all permits.

(3) If water use reporting is required, the permittee shall submit the data required on the form specified in the permit. Either:

(a) Annual Water Use Reporting Form, NWFWMD Form No. A2-G, effective July 1, 1998;

(b) Periodic Water Use Reporting Form, NWFWMD Form No. A2-H, effective July 1, 1998; or

(c) Water Use Summary Reporting Form, NWFWMD Form No. A2-I effective July 1, 1998.

These forms are hereby incorporated by reference and can be obtained from the District offices in Midway-Gadsden County, Crestview or Marianna or from the District's website.

Rulemaking ~~Specific~~ Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.216, 373.219, 373.223, 373.250, 373.042 FS. History–New 1-5-86, Amended 5-31-92, 10-1-95, _____.

40A-2.901 Forms.

(1) The following forms are used in the implementation of this Chapter ~~and are hereby incorporated by reference~~:

(a) through (d) No change.

(e) Individual Water Use Permit Document, NWFWMD Form No. A2-E, effective _____ ~~October 1, 1995~~.

(f) through (i) No change.

(2) These forms are available at the following District offices:

(a) through (c) No change.

Rulemaking ~~Specific~~ Authority 373.044, 373.171 FS. Law Implemented 373.116, 373.219, 373.229 FS. History–New 10-1-82, Amended 1-5-86, 8-1-89, 5-31-92, 10-1-95, 7-1-98, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Angela Chelette, Chief, Bureau of Ground Water Regulation

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Northwest Florida Water Management District Governing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 27, 2009

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

DEPARTMENT OF ELDER AFFAIRS

Long-Term Care Ombudsman Program

RULE NO.: RULE TITLE:

58L-1.008 Administrative Assessments

PURPOSE AND EFFECT: The purpose of the proposed rule is to develop procedures for administrative assessments in order to comply with Section 400.0071, F.S.

SUMMARY: The proposed rule addresses procedures for conducting administrative assessments, including an administrative assessment form incorporated by reference.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: This proposed rule will not have an impact on small employers as defined in Section 288.703, F.S.; therefore a statement of estimated regulatory costs has not been prepared. This proposed rule will not have an impact on small cities or counties as defined in Section 120.52, F.S.; therefore a statement of estimated regulatory costs has not been 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.

RULEMAKING AUTHORITY: 400.0071 FS.

LAW IMPLEMENTED: 400.0071, 400.0074 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: November 17, 2009, 10:00 a.m. – 11:00 a.m. EST

PLACE: Department of Elder Affairs, 4040 Esplanade Way, Conference Room 225F, Tallahassee, Florida 32399-7000

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 72 hours before the workshop/meeting by contacting: Jim Crochet, Department of Elder Affairs, Office of the General Counsel, 4040 Esplanade Way, Tallahassee, Florida 32399-7000; telephone: (850)414-2000; Email address: crochethj@elderaffairs.org. 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: Jim Crochet, Department of Elder Affairs, Office of the General Counsel, 4040 Esplanade Way, Tallahassee, Florida 32399-7000; telephone: (850)414-2000; Email address: crochethj@elderaffairs.org

THE TEXT OF THE PROPOSED RULE IS ALSO AVAILABLE ON THE WEBSITE LISTED BELOW, ALONG WITH THE ADMINISTRATIVE ASSESSMENT FORM INCORPORATED BY REFERENCE (DOEA FORM LTC09-002), UNDER THE HEADING ENTITLED "LONG-TERM CARE OMBUDSMAN PROGRAM, RULE CHAPTER 58L-1, F.A.C. http://elderaffairs.state.fl.us/english/rulemaking.php

THE FULL TEXT OF THE PROPOSED RULE IS:

58L-1.008 Administrative Assessments.

This rule outlines procedures for conducting administrative assessments of long-term care facilities.

(1) MINIMUM ASSESSMENT REQUIREMENT.

Pursuant to Section 400.0074, F.S., all long-term care facilities must have at least one onsite administrative assessment conducted annually. For purposes of this rule, the annual period shall be the federal reporting year, which is October 1 through September 30.

(2) ASSESSMENT ASSIGNMENTS.

(a) By October 1 of each year, the DOM, or designee, must assign all facilities within his or her district to individual members of the local council to conduct administrative assessments by September 30 of the following year.

(b) The DOM, or designee, must keep original completed assessment forms in the district office and forward copies to the facility administrator and the local Agency for Health Care Administration field office within 30 calendar days after review and approval.

(3) ADMINISTRATIVE ASSESSMENT PROCESS.

Administrative assessments may include observations, interviews with residents and other individuals, and review of facility records as permitted in Section 400.0081, F.S. The assessment must focus on factors affecting residents' rights, health, safety and welfare from residents' perspectives.

(4) ADMINISTRATIVE ASSESSMENT FORM.

The results of an administrative assessment must be recorded on the DOEA Form LTCOP-0002, 2009, Administrative Assessment, which is incorporated by reference and available from the Department of Elder Affairs, Office of the State Long-Term Care Ombudsman, 4040 Esplanade Way, Tallahassee, Florida 32399-7000. The form may also be obtained from the following website: http://elderaffairs.state.fl.us/english/ruleform/LTCOP-002.doc.

(5) OMBUDSMAN RESPONSIBILITY.

At the conclusion of the assessment, the ombudsman must do the following:

(a) Conduct an exit interview with the facility administrator, or designee, to discuss preliminary identified problems, if any; and provide an opportunity for the administrator, or designee, to submit written comments within 3 calendar days after the exit interview in order to be included as part of the assessment record. The ombudsman must inform the administrator, or designee, that an official report of the findings will be submitted after review and approval by the DOM, or designee, pursuant to subsection (6) of this rule.

(b) Document the agreed upon preliminary remedial actions and preliminary target dates for such action to be completed, if any problems are identified during the assessment.

1. Preliminary identified problems, preliminary remedial actions and preliminary target dates must be recorded on the assessment form referenced in subsection (4) of this rule, a copy of which must be provided to the facility administrator, or designee, during the exit interview.

2. The ombudsman must inform the administrator, or designee, that an official report of the identified problems, remedial actions and target dates will be submitted after review and final approval by the DOM, or designee, pursuant to subsection (6) of this rule.

(c) Submit the administrative assessment form and documentation to the DOM, or designee, within 14 calendar days.

(6) DOM RESPONSIBILITY.

(a) The DOM, or designee, must review and approve the administrative assessment after the ombudsman completes the form.

1. As required by Section 400.0075(1)(a), F.S., within 14 calendar days after the DOM, or designee, receives the assessment form from the ombudsman, he or she must submit a written summary of the assessment to the facility, including any changes to the preliminarily agreed upon identified problems, remedial actions and target dates determined at the exit conference.

2. The written summary shall be the official administrative assessment.

3. The facility may submit written comments regarding the summary to the DOM, or designee, within 7 calendar days from the date on the summary letter.

(7) UNRESOLVED PROBLEMS.

If problems identified during an assessment remain unresolved, the ombudsman, the district long-term care ombudsman council and the State Long-Term Ombudsman Council, in consultation with the State Ombudsman, shall proceed with actions pursuant to Section 400.0075, F.S.

Rulemaking Authority 400.0071 FS. Law Implemented 400.0071, 400.0074 FS. History–New .

NAME OF PERSON ORIGINATING PROPOSED RULE: Jim Crochet

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: E. Douglas Beach, Ph.D., Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 5, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 28, 2009

AGENCY FOR HEALTH CARE ADMINISTRATION

Certificate of Need

RULE NOS.:	RULE TITLES:
59C-1.008	Certificate of Need Application Procedures
59C-1.010	Certificate of Need Application Review Procedures
59C-1.012	Administrative Hearing Procedures
59C-1.013	Monitoring Procedures
59C-1.030	Criteria Used in Evaluation of Applications

PURPOSE AND EFFECT: This is a second public hearing on proposed Rules 59C-1.008, 59C-1.010, 59C-1.012, 59C-1.013 and 59C-1.030, F.A.C., related to General Hospital Applications for Certificate of Need. The proposed rules are updated to reflect statutory changes to the hospital application procedures currently defined in the listed rules in Chapter 59C-1, F.A.C.

SUMMARY: This hearing will consider changes to punctuation and grammar in subsections 59C-1.008(1) and (4), and paragraph 59C-1.010(2)(a), F.A.C.; the deletion of paragraph 59C-1.010(5)(e), F.A.C., the addition of the Batching Calendar cycles for 2010, 2011 and deletion of the Batching Calendar cycles for 2007, 2008 and the first two cycles of 2009; also consider the notices of change submitted since the December 2008 hearing.

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.

RULEMAKING AUTHORITY: 408.034(3), (6), 408.15(8) FS.

LAW IMPLEMENTED: 408.033, 408.035, 408.036, 408.037, 408.038, 408.039, 408.040(1), (2), 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: November 16, 2009, 1:00 p.m.

PLACE: Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Conference Room B, 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: Calvin J Vice, Sr., PhD at (850)488-8672. 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). 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: Calvin J Vice, Sr., PhD at (850)488-8672

THE FULL TEXT OF THE PROPOSED RULE IS:

59C-1.008 Certificate of Need Application Procedures.

(1) Letters of Intent and applications subject to comparative review shall be accepted in two batching cycles annually each for hospital beds and facilities and for other beds and programs, as specified in paragraph (g) of this subsection. The category "hospital beds and facilities" includes proposals for new hospital facilities, replacement hospital facilities if being replaced more than a mile away, ~~acute care beds pursuant to section 408.036(1)(g), F.S.,~~ the establishment of new neonatal level II and level III programs unless otherwise exempt pursuant to section 408.036(3)(l)~~(k)~~, F.S., and comprehensive medical rehabilitation beds unless otherwise exempt pursuant to section 408.036(3)(j)~~(i)~~, F.S., and except as provided in Section 408.037(2), F.S., for a general hospital. Unless otherwise directed by 408.037(2), F.S., general hospital applications shall conform to the schedules in this rule and will use all the application and schedules described in paragraph (1)(f). The category "other beds and programs" includes proposals for pediatric open heart surgery, pediatric cardiac catheterization, specialty burn units, organ transplantation, community nursing home projects, hospice programs, hospice inpatient facilities, and intermediate care facilities for the developmentally disabled.

(a) No change.

(b) The contents of the letter of intent shall be consistent with paragraph 408.039(2)(c), F.S., and must be a written communication with an original signature. The applicant is solely responsible for the content and clarity of the letter of intent. The agency shall not assume any facts not clearly stated. Applications should be submitted with one bound copy and one unbound print copy.

(c)1. through 4. No change.

5. Location refers to the health planning subdistricts adopted in Chapter 59C-2, F.A.C., in each program rule under this chapter, or the service districts. The applicant must indicate the subdistrict by name or number. ~~Nursing home A~~applicants must also give the name of the county where the proposed project will be located, as provided in Chapter 59C-2, F.A.C.

(d) through (e) No change.

(f) Certificate of Need Application Submission. An application for a certificate of need shall be submitted on AHCA Forms 3150-0001, March 2009 Application for a Certificate of Need, or 3150-0003, March 2009 Transfer of a Certificate of Need, ~~CON-1, July 2000~~, which include~~s~~ a Cover Page, Cover Page-TRN Schedules A ~~or A-Trn~~, B or B-TRN, C, D, D-1, 1 or 1-TRN, 2, 3, 4, 5, 6, 6A, 7, 7A, 7B, 8, 8A, 9, 10 or 10-TRN, 11~~-Trn~~, and 12-TRN, which are incorporated by reference herein. An application for a general hospital shall be submitted on AHCA Form 3150-0002, March 2009 Application for a General Hospital Certificate of Need which includes Schedules 11, A(H), B(H), C, D(H) in addition to a Cover (H) Page, which are incorporated by reference herein. Paper copies or copies on electronic media ~~A copy of~~ AHCA Forms 3150-0001, March 2009 Application for a Certificate of Need; AHCA Form 3150-0002, March 2009 Application for a General Hospital Certificate of Need; or AHCA Form 3150-0003, March 2009 Transfer of a Certificate of Need, ~~CON-1~~ and the Schedules may be obtained from:

Agency for Health Care Administration~~,~~

Certificate of Need

2727 Mahan Drive, Building 1, Mail Stop 28

Tallahassee, FL 32308.

~~An~~ Eelectronic versions of AHCA Forms 3150-0001, 3150-0002 and 3150-0003 ~~CON-1~~ and the Schedules are also available at http://ahca.myflorida.com/MCHQ/CON_FA/Application/index.shtml. ~~www.fdhc.state.fl.us~~

1. The application must be actually received by the agency by 5:00 p.m. local time on or before the application due date.

2. Applications for projects which exceed the proposed number of beds contained in the letter of intent shall not be deemed complete for review by the agency and shall be withdrawn from further review.

3. Applications may propose a lesser number of beds than that contained in the letter of intent.

(g) Applications Subject to Comparative Review-Batching Cycles. In order that applications pertaining to similar types of services or facilities affecting the same service district or subdistrict may be considered in relation to each other for purposes of comparative review, letters of intent and applications shall be received by the agency no later than dates prescribed in the following schedule:

~~Hospital Beds and Facilities~~
~~1st Batching Cycle – 2007~~

~~Summary Need Projections Published in F.A.W.~~	~~1-26-07~~
~~Letter of Intent Deadline~~	~~2-12-07~~
~~Application Deadline~~	~~3-14-07~~
~~Completeness Review Deadline~~	~~3-21-07~~
~~Application Omissions Deadline~~	~~4-18-07~~
~~Agency Initial Decision Deadline~~	~~6-15-07~~

~~Hospital Beds and Facilities~~
~~2nd Batching Cycle – 2007~~

~~Summary Need Projections Published in F.A.W.~~	~~7-27-07~~
~~Letter of Intent Deadline~~	~~8-13-07~~
~~Application Deadline~~	~~9-12-07~~
~~Completeness Review Deadline~~	~~9-19-07~~
~~Application Omissions Deadline~~	~~10-17-07~~
~~Agency Initial Decision Deadline~~	~~12-14-07~~

~~Hospital Beds and Facilities~~
~~1st Batching Cycle – 2008~~

~~Summary Need Projections Published in F.A.W.~~	~~1-25-08~~
~~Letter of Intent Deadline~~	~~2-11-08~~
~~Application Deadline~~	~~3-12-08~~
~~Completeness Review Deadline~~	~~3-19-08~~
~~Application Omissions Deadline~~	~~4-16-08~~
~~Agency Initial Decision Deadline~~	~~6-13-08~~

~~Hospital Beds and Facilities~~
~~2nd Batching Cycle – 2008~~

~~Summary Need Projections Published in F.A.W.~~	~~7-25-08~~
~~Letter of Intent Deadline~~	~~8-11-08~~
~~Application Deadline~~	~~9-10-08~~
~~Completeness Review Deadline~~	~~9-17-08~~
~~Application Omissions Deadline~~	~~10-15-08~~
~~Agency Initial Decision Deadline~~	~~12-12-08~~

~~Hospital Beds and Facilities~~
~~1st Batching Cycle – 2009~~

~~Summary Need Projections Published in F.A.W.~~	~~1-23-00~~
~~Letter of Intent Deadline~~	~~2-09-09~~
~~Application Deadline~~	~~3-11-09~~
~~Completeness Review Deadline~~	~~3-18-09~~
~~Application Omissions Deadline~~	~~4-15-09~~
~~Agency Initial Decision Deadline~~	~~6-12-09~~

Hospital Beds and Facilities
2nd Batching Cycle – 2009

Summary Need Projections Published in F.A.W.	7-24-09
Letter of Intent Deadline	8-10-09
Application Deadline	9-09-09
Completeness Review Deadline	9-16-09
Application Omissions Deadline	10-14-09
Agency Initial Decision Deadline	12-1~~0~~-09

Hospital Beds and Facilities
1st Batching Cycle – 2010

Summary Need Projections Published in F.A.W.	1-22-10
Letter of Intent Deadline	2-08-10
Application Deadline	3-10-10
Completeness Review Deadline	3-17-10
Application Omissions Deadline	4-14-10
Agency Initial Decision Deadline	6-11-10

Hospital Beds and Facilities
2nd Batching Cycle – 2010

Summary Need Projections Published in F.A.W.	7-23-10
Letter of Intent Deadline	8-09-10
Application Deadline	9-08-10
Completeness Review Deadline	9-15-10
Application Omissions Deadline	10-13-10
Agency Initial Decision Deadline	12-10-10

Hospital Beds and Facilities
1st Batching Cycle – 2011

Summary Need Projections Published in F.A.W.	1-21-11
Letter of Intent Deadline	2-07-11
Application Deadline	3-09-11
Completeness Review Deadline	3-16-11
Application Omissions Deadline	4-13-11
Agency Initial Decision Deadline	6-10-11

Hospital Beds and Facilities 2nd Batching Cycle – 2011	
Summary Need Projections Published in F.A.W.	7-22-11
Letter of Intent Deadline	8-08-11
Application Deadline	9-07-11
Completeness Review Deadline	9-14-11
Application Omissions Deadline	10-12-11
Agency Initial Decision Deadline	12-09-11

~~Other Beds and Programs 1st Batching Cycle – 2007~~	
~~Summary Need Projections Published in F.A.W.~~	~~4-06-07~~
~~Letter of Intent Deadline~~	~~4-23-07~~
~~Application Deadline~~	~~5-23-07~~
~~Completeness Review Deadline~~	~~5-30-07~~
~~Application Omissions Deadline~~	~~6-27-07~~
~~Agency Initial Decision Deadline~~	~~8-24-07~~

~~Other Beds and Programs 1st Batching Cycle – 2007~~	
~~Summary Need Projections Published in F.A.W.~~	~~4-06-07~~
~~Letter of Intent Deadline~~	~~4-23-07~~
~~Application Deadline~~	~~5-23-07~~
~~Completeness Review Deadline~~	~~5-30-07~~
~~Application Omissions Deadline~~	~~6-27-07~~
~~Agency Initial Decision Deadline~~	~~8-24-07~~

~~Other Beds and Programs 2nd Batching Cycle – 2007~~	
~~Summary Need Projections Published in F.A.W.~~	~~10-05-07~~
~~Letter of Intent Deadline~~	~~10-22-07~~
~~Application Deadline~~	~~11-21-07~~
~~Completeness Review Deadline~~	~~11-28-07~~
~~Application Omissions Deadline~~	~~12-26-07~~
~~Agency Initial Decision Deadline~~	~~2-22-08~~

~~Other Beds and Programs 1st Batching Cycle – 2008~~	
~~Summary Need Projections Published in F.A.W.~~	~~4-04-08~~
~~Letter of Intent Deadline~~	~~4-21-08~~
~~Application Deadline~~	~~5-21-08~~
~~Completeness Review Deadline~~	~~5-28-08~~
~~Applicant Omissions Deadline~~	~~6-25-08~~
~~Agency Initial Decision Deadline~~	~~8-22-08~~

~~Other Beds and Programs 2nd Batching Cycle – 2008~~	
~~Summary Need Projections Published in F.A.W.~~	~~10-03-08~~
~~Letter of Intent Deadline~~	~~10-20-08~~
~~Application Deadline~~	~~11-19-08~~
~~Completeness Review Deadline~~	~~11-26-08~~
~~Applicant Omissions Deadline~~	~~12-24-08~~
~~Agency Initial Decision Deadline~~	~~2-20-09~~

~~Other Beds and Programs 1st Batching Cycle – 2009~~	
~~Summary Need Projections Published in F.A.W.~~	~~4-03-09~~
~~Letter of Intent Deadline~~	~~4-20-09~~
~~Application Deadline~~	~~5-20-09~~
~~Completeness Review Deadline~~	~~5-27-09~~
~~Application Omissions Deadline~~	~~6-24-09~~
~~Agency Initial Decision Deadline~~	~~8-21-09~~

Other Beds and Programs 2nd Batching Cycle – 2009	
Summary Need Projections Published in F.A.W.	10-02-09
Letter of Intent Deadline	10-19-09
Application Deadline	11-18-09
Completeness Review Deadline	11-25-09
Application Omissions Deadline	12-23-09
Agency Initial Decision Deadline	2-19-10

Other Beds and Programs 1st Batching Cycle – 2010	
Summary Need Projections Published in F.A.W.	4-02-10
Letter of Intent Deadline	4-19-10
Application Deadline	5-19-10
Completeness Review Deadline	5-26-10
Application Omissions Deadline	6-23-10
Agency Initial Decision Deadline	8-20-10

Other Beds and Programs 2nd Batching Cycle – 2010	
Summary Need Projections Published in F.A.W.	10-01-10
Letter of Intent Deadline	10-18-10
Application Deadline	11-17-10
Completeness Review Deadline	11-24-10
Application Omissions Deadline	12-22-10
Agency Initial Decision Deadline	2-18-11

Other Beds and Programs 1st Batching Cycle – 2011	
Summary Need Projections Published in F.A.W.	4-01-11
Letter of Intent Deadline	4-18-11
Application Deadline	5-18-11
Completeness Review Deadline	5-25-11
Application Omissions Deadline	6-22-11
Agency Initial Decision Deadline	8-19-11

Other Beds and Programs
2nd Batching Cycle – 2011

Summary Need Projections Published in F.A.W.	9-30-11
Letter of Intent Deadline	10-17-11
Application Deadline	11-16-11
Completeness Review Deadline	11-23-11
Application Omissions Deadline	12-21-11
Agency Initial Decision Deadline	2-17-12

(h) through (j) No change.

(2) through (3) No change.

(4) Certificate of Need Application Contents. An application for a certificate of need shall contain the following items:

(a) All requirements set forth in sections 408.037(1), (2) and (3), ~~(2)~~ F.S.;

(b) The correct application fee;

(c) With respect to paragraph 408.037(1)(c), F.S., which requires an audited financial statement of the applicant the following provisions apply:

1. The audited financial statement of the applicant must be for the most current fiscal year. If the most recent fiscal year ended within 120 days prior to the application filing deadline and the audited financial statements are not yet available, then the prior fiscal year will be considered the most recent.

2. Existing health care facilities must provide audited financial statements for the two most recent consecutive fiscal years in accordance with subparagraph 1. above.

3. Only audited financial statements of the applicant will be accepted. Audited financial statements of any part of the applicant, including but not limited to subsidiaries, divisions, specific facilities or cost centers, will not qualify as an audit of the applicant. Nor shall the audited financial statements of the applicant's parent corporation qualify as an audit of the applicant.

(d) To comply with Section 408.037(1)(b)1., F.S., which requires a listing of all capital projects, the applicant shall provide the total approximate amount of anticipated expenditures for capital projects which meet the definition in subsection 59C-1.002(7), F.A.C., at the time of initial application submission, or state that there are none. An itemized list or grouping of capital projects is not required, although an applicant may choose to itemize or group its capital projects. The applicant shall also indicate the actual or proposed financial commitment to those projects, and include an assessment of the impact of those projects on the applicant's ability to provide the proposed project; and

(e) Responses to applicable questions contained in the application forms.

(5) No change.

Rulemaking ~~Specific~~ Authority 408.034(6), 408.15(8) FS. Law Implemented 408.033, 408.037, 408.038, 408.039 FS. History–New 1-1-77, Amended 11-1-77, 9-1-78, 6-5-79, 2-1-81, 4-1-82, 7-29-82, 9-6-84, Formerly 10-5.08, Amended 11-24-86, 3-2-87, 6-11-87, 11-17-87, 3-23-88, 5-30-90, 12-20-90, 1-31-91, 9-9-91, 5-12-92, 7-1-92, 8-10-92, Formerly 10-5.008, Amended 4-19-93, 6-23-94, 10-12-94, 10-18-95, 2-12-96, 7-18-96, 9-16-96, 11-4-97, 7-21-98, 12-12-00, 4-2-01, 1-10-02, 6-26-03, 12-13-04, 9-28-05, _____.

59C-1.010 Certificate of Need Application Review Procedures

(1) No change.

(2) General Provisions.

(a) Applications subject to comparative or expedited review shall be submitted to the agency on AHCA Form 3150-0001, March 2009 Application for a Certificate of Need; or 3150-0003, March 2009 Transfer of a Certificate of Need; or 3150-0002, March 2009 Application for a General Hospital Certificate of Need, ~~CON-1~~, as referenced in paragraph 59C-1.008(1)(f), F.A.C.

(b) through (c) No change.

(d) An application for a general hospital must meet the requirements of Sections 408.035(2) and 408.037 (2), F.S.

(3) through (7) No change.

Rulemaking ~~Specific~~ Authority 408.034(6)~~(5)~~, 408.15(8) FS. Law Implemented 408.033(1), 408.035(2), 408.036(2), 408.037(2), 408.039(3), (4), (5) FS. History–New 1-1-77, Amended 11-1-77, 9-1-78, 6-5-79, 4-25-80, 2-1-81, 3-31-82, 12-23-82, Formerly 10-5.10, Amended 11-24-86, 11-17-87, 3-23-88, 8-28-88, 1-31-91, 7-1-92, 7-14-92, Formerly 10-5.010, Amended 10-8-97, 12-12-00, 4-2-01, 6-23-05, _____.

59C-1.012 Administrative Hearing Procedures.

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

(e) The party appealing a final order that grants a general hospital certificate of need shall post a $1 million bond as directed in Section 408.039(6)(d), Florida Statutes. The bond must be made payable to the appellee or appellees and must reference the appealing party, the CON number being appealed, and the Division of Administrative Hearings (DOAH) case number. The bond needs to be sent to:

Agency for Health Care Administration
Attention: Agency Clerk
2727 Mahan Drive, MS #3
Tallahassee, Florida 32308

Rulemaking ~~Specific~~ Authority 408.034 (6), 408.15(8) FS. Law Implemented 408.039(5), 408.039(6) ~~120.57, 120.59~~ FS. History–New 1-1-77, Amended 9-1-78, 6-5-79, 10-23-79, 4-25-80, Formerly 10-5.12, Amended 11-24-86, 11-17-87, Formerly 10-5.012, Amended 12-14-92, _____.

59C-1.013 Monitoring Procedures.

(1) through (2) No change.

~~(3) Documentation. The following is a listing of all reports required for monitoring compliance with this rule and Rule 59C-1.018, F.A.C.~~

~~(a) Final Cost Report. The certificate of need holder shall file a Final Cost Report AHCA Form CON 3, Revised July 1997, incorporated by reference herein. A copy of Form CON 3 may be obtained from: Agency for Health Care Administration, Certificate of Need Office, Fort Knox Executive Center, 2727 Mahan Drive, Building 3, Tallahassee, FL 32308. The Final Cost Report must be received by the agency within 90 calendar days of submission of the Architect's Certificate of Final Payment, or upon commencement of the health services, whichever is applicable.~~

~~(b) Architect's Certificate of Final Payment. The certificate of need holder shall provide the agency, in writing, a completed and fully executed architect's certification of final payment, AIA Documents G702 and G703, May 83 incorporated by reference herein, or a suitable substitute. A substitute is suitable if it contains the following items:~~

~~1. A certification by the contractor or the architect of final payment which contains the original construction cost, any cost for change orders, and the total expenditures made or requested;~~

~~2. A certification by the architect that the project is complete and final payment has been made; and~~

~~3. An itemized sheet for direct construction costs which breaks down the expenditures by description of work.~~

~~The report must be received by the agency no later than 30 calendar days following the completion of construction as defined in the owner and contractor agreement, and final approval of the project by the agency.~~

(3)~~(4)~~ Reporting Requirements Subsequent to Licensure or Commencement of Services. All holders of a certificate of need that was issued predicated upon conditions expressed on the face of the certificate of need shall provide annual compliance reports to the agency. The reporting period shall be January 1 through December 31 of each year. The holder of a certificate of need who began operation after January 1 will report from the date operation began through December 31. The compliance report shall be submitted no later than April 1 of the subsequent year.

(a) The compliance report will contain information necessary for an assessment of compliance with conditions on the certificate of need, utilizing measures, such as a percentage of patient days, that are consistent with the stated condition. The following information shall be provided in the holder's annual compliance report:

1. The time period covered by the measures;

2. The measure for assessing compliance with each of the conditions identified and described on the face of the certificate of need;

3. The way in which the conditions were evaluated by applying the measures;

4. The data sources used to generate information about the conditions that were measured;

5. The person and position responsible for supplying the compliance report;

6. Any other information necessary for the agency to determine compliance with conditions; and,

7. If applicable, the reason or reasons, with supporting data, why the certificate of need holder was unable to meet the conditions set forth on the face of the certificate of need.

(b) A change in the licensee for a facility or service does not affect the obligation for that facility or service to continue to meet conditions imposed on a certificate of need and to provide annual condition compliance reports.

(c) Conditions imposed on a certificate of need may be modified consistent with Rule 59C-1.019, F.A.C.

(4)~~(5)~~ Violation of Certificate of Need Conditions. Health care providers found by the agency to be in noncompliance with conditions set forth in their certificate of need shall be fined as defined in Rule 59C-1.021, F.A.C.

Rulemaking ~~Specific~~ Authority 408.034(6)~~(5)~~, 408.15(8) FS. Law Implemented 408.040(1), (2), ~~(3)~~ FS. History–New 1-1-77, Amended 11-1-77, 9-1-78, 6-5-79, 2-1-81, 3-31-82, Formerly 10-5.13. Amended 11-24-86, 7-25-89, Formerly 10-5.013, Amended 10-18-95, 11-4-97, 12-12-00, _____.

59C-1.030 Criteria Used in the Evaluation of Applications.

In addition to criteria set forth in 408.035, F.S., the following criteria are used in the review of an application.

(1) For a new general hospital as defined in Section 395.002, F.S. and subparagraph 59A-3.252(1)(a)1. and 3., F.A.C. the criteria for evaluation are those found in Sections 408.035(2) and 408.037(2), F.S. ~~General Provisions (Reserved)~~

(2) No change.

Rulemaking ~~Specific~~ Authority 408.15(8), 408.034(3), (6)~~(5)~~ FS. Law Implemented 408.035, 408.037 FS. History–New 1-1-77, Amended 11-1-77, 6-5-79, 4-24-80, 2-1-81, 4-1-82, 11-9-82, 2-14-83, 4-7-83, 6-9-83, 6-10-83, 12-12-83, 3-5-84, 5-14-84, 7-16-84, 8-30-84, 10-15-84, 12-25-84, 4-9-85, Formerly 10-5.11, Amended 6-19-86, 11-24-86, 1-25-87, 3-2-87, 3-12-87, 8-11-87, 8-7-88, 8-28-88, 9-12-88, 4-19-89, 10-19-89, 5-30-90, 7-11-90, 8-6-90, 10-10-90, 12-23-90, Formerly 10-5.011(1)(a), (b), Formerly 10-5.030, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Calvin J. Vice, Sr., PhD

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Holly Benson

DATE PROPOSED RULE APPROVED BY AGENCY HEAD:

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 26, 2008

DEPARTMENT OF MANAGEMENT SERVICES

Agency for Workforce Innovation

RULE NOS.:	RULE TITLES:
60BB-3.0261	Definitions Relating to Extended Benefits
60BB-3.0262	How to Apply for Extended Benefits
60BB-3.0263	Diligent Work Search Requirements

PURPOSE AND EFFECT: The new rules set forth in this Notice of Development of Rulemaking implement the program for payment of extended unemployment compensation benefits authorized by Section 443.1117, Florida Statutes, and funded in accordance with the Federal-State Extended Unemployment Compensation Act of 1970 and the Assistance for Unemployed Workers and Struggling Families Act of 2009.

SUMMARY: The new rules define terms used in connection with the

Extended Benefits Program, provide definitions, describe notice and work search requirements, and inform individuals how to apply for Extended Benefits.

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.

RULEMAKING AUTHORITY: 443.1317(1)(b) FS.

LAW IMPLEMENTED: Sections 443.031, 443.036, 443.091, 443.101, 443.111, 443.1115, 443.1117, 443.151 FS.

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

DATE AND TIME: Friday, November 13, 2009, 2:30 p.m. EDT

PLACE: Agency For Workforce Innovation, Room B-049, 107 E. Madison Street, Tallahassee, Florida 32399-4128

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: John R. Perry, Assistant General Counsel, Agency for Workforce Innovation, Office of General Counsel, 107 East Madison Street, MSC #110, Tallahassee, Florida 32399-4128, (850)245-7150

THE FULL TEXT OF THE PROPOSED RULES IS:

60BB-3.0261 Definitions Relating to Extended Benefits

For the purposes of extended benefits payable under Section 443.1117, Florida Statutes, and Rules 60BB-3.0261 through 60BB-3.0263, F.A.C., the following definitions apply:

(1) Good job prospects: An individual has good job prospects if he or she has a definite return to work date within 4 weeks of the eligibility notices referred to in subsection 60BB-3.0263(2), F.A.C.

(2) Regular unemployment compensation: Benefits payable to an individual under Chapter 443, Florida Statutes, including benefits payable to federal civilian employees and to ex servicemembers under 5 U.S.C. ss. 8501-8525, other than emergency unemployment compensation, trade readjustment allowance, disaster unemployment assistance, and extended unemployment compensation under Sections 443.1115 and 443.117, Florida Statutes.

Rulemaking Authority 443.1317(1)(b) FS. Law Implemented 443.031, 443.036, 443.1115, 443.1117 FS. History–New_____.

60BB-3.0262 How to Apply for Extended Benefits.

(1) Initiating a Claim for Extended Benefits. The Agency will mail a Form AWI-UC310EB (8-09) (Application for Extended Benefits (EB)), which is hereby incorporated by reference into this rule, to all individuals who exhaust their available emergency unemployment compensation. This form will advise the recipient that the application for extended benefits may be filed using the form or by applying online at http://www.floridajobs.org. The Form AWI-UC310EB may be submitted by:

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

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

(2) Notice of Determination.

(a) Notice of the Agency's determination of an individual's eligibility or ineligibility for extended benefits will be mailed to the individual on a Form AWI-UCB11 EB (06/09) (Monetary Determination/Redetermination for Extended Benefits), which is hereby incorporated by reference into this rule, when the Agency.

1. Determines that the individual is eligible for extended benefits, or

2. Determines that the individual is ineligible for extended benefits because:

a. The individual has available credits remaining on a claim for regular benefits or emergency unemployment compensation; or

b. The individual's claim for extended benefits was previously made in relation to the wrong regular unemployment claim.

(b) Notice of the Agency's determination of an individual's eligibility or ineligibility for extended benefits will be mailed to the individual on a Form AWI-UCB11-I EB (10/09) (Extended Benefits Determination of Eligibility), which is hereby incorporated by reference into this rule, when the individual:

1. Has not exhausted his or her regular benefits or emergency unemployment compensation;

2. Did not exhaust his or her regular benefits or emergency unemployment compensation during his or her eligibility period;

3. Has rights to regular or extended benefits available or is potentially eligible for such benefits under the law of any state (which shall include Puerto Rico, the U.S. Virgin Islands, or the District of Columbia);

4. Is receiving compensation under the unemployment compensation law of Canada;

(c) Any notice mailed pursuant to this rule will be accompanied by an EB BRI (9/09) (Extended Benefits Benefit Rights Information), which is hereby incorporated by reference into this rule.

Rulemaking Authority 443.1317(1)(b) FS. Law Implemented 443.031, 443.091, 443.101, 443.111, 443.1115, 443.1117, 443.151 FS. History–New .

60BB-3.0263 Diligent Work Search Requirements.

(1) Claim Certification. Every two weeks, an individual determined to be eligible for extended benefits must report his or her work search activities. The individual may satisfy this requirement by reporting online at http://www.floridajobs.org/unemployment/EB/index.html, and clicking on the "Claim Your Weeks" icon, or by filing an AWI UCB-60EB (6/09) (Extended Benefit Weekly Claim Certification), which is hereby incorporated by reference into this rule, in the manner prescribed in paragraphs 60BB-3.0262(1)(a) and (b), F.A.C.

(2) Work Search Requirements. Except as provided in subsection (3) of this rule, any eligible individual must conduct at least two work search activities on separate days per week.

(3) Good Job Prospects. Individuals who have been determined to have good job prospects, as defined in subsection 60BB-3.0261(1), F.A.C.:

(a) Are not required to seek other employment, except as provided by subsection (4) of this rule.

(b) Must list in the Work Search Record portion of the report required in subsection (1) of this rule the name and address of the employer to which the individual expects to report to work, and the date such work is expected to begin.

(4) Additional Reporting Requirement for Individuals with Good Job Prospects. If, after four weeks of extended benefits, an individual determined to have good job prospects remains unemployed, the Agency will mail him or her an AWI Form UCB231EB (Rev. 6/09) (Unemployment Compensation Extended Benefits (EB) Eligibility Review Questionnaire), which is hereby incorporated by reference into this rule. The individual shall fill out and return this form within ten days of the mailing date, in the manner prescribed in paragraphs 60BB-3.0262(1)(a) and (b), F.A.C.

(5) Failure to Comply. Failure to comply with the requirements of this rule will result in the individual's disqualification from receiving extended benefits until:

(a) Four weeks have passed since the noncompliance, and

(b) The individual has earned wages that equal four times his or her weekly benefit amount.

Rulemaking Authority 443.1317(1)(b) FS. Law Implemented 443.031, 443.091, 443.101, 443.111, 443.1115, 443.1117 FS. History–New .

NAME OF PERSON ORIGINATING PROPOSED RULE: John R. Perry, Assistant General Counsel, Agency for Workforce Innovation

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Cynthia R. Lorenzo, Director, Agency for Workforce Innovation

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 13, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 11, 2009

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Regulatory Council of Community Association Managers

RULE NO.:	RULE TITLE:
61E14-4.001	Continuing Education Renewal Requirements

PURPOSE AND EFFECT: The rule amendment is proposed to improve licensee's continuing education by requiring at least ten (10) hours of the required continuing education be in an approved classroom setting. The proposed rule amendment also requires licensees who receive a license after January 1, 2010, who would otherwise be exempt from continuing education requirements until the September 2012 biennium, to take an annual legal update course.

SUMMARY: The rule amendment will require at least ten (10) of the required twenty (20) continuing education hours per biennial licensing period to be taken in an approved classroom setting. The rule amendment will also require licensees who receive a license after January 1, 2010, who would otherwise be exempt from continuing education requirements until the September 2012 biennium, to take an annual legal update course during years 2010 and 2011.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: A Statement of Estimated Regulatory Cost has been prepared and is available by contacting Anthony Spivey, Executive Director, at the address listed below. The following is a summary of the SERC:

• Approximately 11,000 Community Association Managers (CAM) and all licensed Community Association Managers renewing their licenses each biennium will be affected.

• The only costs to be incurred by the agency are rulemaking costs. No effect on state or local revenue is expected.

• No transactional costs are expected to be incurred by applicants or other entities by the proposed changes to the rule.

• Approximately 5,000 small businesses will be affected. No small county or city will be impacted by the 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.

RULEMAKING AUTHORITY: 455.2123, 455.2124, 468.4315(2), 468.4336, 468.4337 FS.

LAW IMPLEMENTED: 455.2123, 455.2124, 468.4336, 468.4337 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: Anthony Spivey, Executive Director, Regulatory Council of Community Managers, 1940 North Monroe Street, Tallahassee, Florida 32399-0762

THE FULL TEXT OF THE PROPOSED RULE IS:

61E14-4.001 Continuing Education Renewal Requirements.

Each hour shall consist of 50 minutes of student involvement in approved classroom, correspondence, interactive, distance education or internet courses which courses shall include the required hours at an approved update seminar. No license shall be renewed unless the licensee has completed the required continuing education during the preceding licensing period.

(1) All community association manager licensees must satisfactorily complete a minimum of 20 hours of continuing education, 10 hours of which must be in an approved classroom setting.

(2) Only continuing education courses approved by the Council shall be valid for purposes of licensee renewal.

(3) The 20 hours of continuing education shall be comprised of courses approved pursuant to Rule 61E14-4.003 ~~61-20.5082~~, F.A.C., in the following areas:

(a) 4 hours of legal update seminars. Licensees shall satisfactorily complete a 2-hour legal update seminar during each year of the biennial renewal period. The legal update seminars shall consist of instruction regarding changes to Chapters 455, 468, Part VIII, 617, 718, 719, 720 and 721, F.S., and other legislation, case law, Florida Administrative Code, arbitration cases, mediation cases, ethics and regulations impacting community association management. Licensees shall not be awarded continuing education credit for completing the same legal update seminar more than once even if the seminars were taken during different years.

(b) 4 hours of instruction on insurance and financial management topics relating to community association management.

(c) 4 hours of instruction on the operation of the community association's physical property.

(d) 4 hours of instruction on human resources topics relating to community association management. Human resources topics include, but are not limited to, disaster preparedness, employee relations, and communications skills for effectively dealing with residents and vendors.

(e) 4 hours of additional instruction in any area described in subsection ~~paragraph~~ (3)~~(b), (c) or (d)~~ of this rule or in any course or courses directly related to the management or administration of community associations approved pursuant to Rule 61E14-4.003, F.A.C.

(4) No licensee will receive credit, for purposes of meeting the continuing education requirement, for completing the same continuing education course more than once during two consecutive biennial renewal periods.

(5) Course instructors may receive continuing education credit hours in the amount of hours approved by the Council for licensees only once for each course taught by the instructor during two consecutive biennial renewal periods ~~every renewal period~~ for each approved course taught by the instructor.

(6) Anyone licensed for more than 24 months at renewal time will be required to have complied with the CE requirements set forth in subsection (1), above, prior to renewal. More than 24 months, means 24 months plus 1 day. Licensees licensed for 24 months or less at renewal time are exempt from compliance with the CE requirements set forth in subsection (1), above, until the end of the next renewal cycle. Beginning September 2010 all licensees licensed after January 1, 2010, must take the legal update courses required in paragraph (3)(a) every year, without regard to the exemption set forth in subsection (6).

~~(7) A licensee shall retain, and make available to the Department and its representatives upon request, continuing education course certificates of completion that comply with paragraph 61-6.015(4)(a), F.A.C., for three years following course completion.~~

~~(8) All licensees shall comply with all applicable provisions of subsections 61-6.015(2) and (3), F.A.C.~~

Rulemaking ~~Specific~~ Authority 455.2123, 455.2124, 468.4315(2), 468.4336, 468.4337 FS. Law Implemented 455.2123, 455.2124, 468.4336, 468.4337 FS. History–New 5-5-88, Amended 3-22-89, 2-5-91, 12-28-92, Formerly 7D-55.008, 61B-55.008, Amended 10-18-99, 3-13-00, 2-21-01, 7-21-03, 4-25-05, 2-28-07, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Regulatory Council of Community Association Managers

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Regulatory Council of Community Association Managers

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 5, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 22, 2009

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Regulatory Council of Community Association Managers

RULE NO.: RULE TITLE:
61E14-4.002 Continuing Education Provider Approval

PURPOSE AND EFFECT: The proposed rule updates the reference to the application forms required to become continuing education providers and updates cross references to portions of the Florida Administrative Code that have been renumbered. The rule amendment also requires that individual course records be maintained by the provider for an additional 24 months beyond the current requirements.

SUMMARY: The proposed rule updates the application forms that individuals who wish to become continuing education providers submit to the Council and updates cross references to portions of the Florida Administrative Code that have been renumbered. The rule amendment also requires that individual course records be maintained by the provider for an additional 24 months beyond the current requirements.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS:

• Seventy-one providers of continuing education will be affected.

• The only costs to be incurred are rulemaking costs. No effect on state or local revenue is expected.

• Minimal transactional costs will be incurred because the rule simply updates the application form required to submitted by applicants who wish to become continuing education requirements. Minimal storage costs will be incurred by applicants as the rule amendment also requires course providers to maintain individual course records for an additional 24 months.

• Approximately 1-99 small businesses will be affected by this 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.

RULEMAKING AUTHORITY: 468.4315(2), (3) FS.

LAW IMPLEMENTED: 455.2179, 468.4337 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: Anthony Spivey, Executive Director, Regulatory Council of Community Managers, 1940 North Monroe Street, Tallahassee, Florida 32399-0762

THE FULL TEXT OF THE PROPOSED RULE IS:

61E14-4.002 Continuing Education Provider Approval.

(1) A continuing education provider is a person or entity approved pursuant to this rule to conduct continuing education courses for community association managers.

(2) Entities or individuals who wish to become approved providers of continuing professional education shall make application to the Council, on Forms DBPR 0020-1 – Master Organization Application, and DBPR CAM-4302 – Continuing Education Provider and Course Approval Application, effective July 2007, copies of which may be obtained at the Department's website at http://www.myfloridalicense.com/dbpr/pro/cam/forms.html ~~BPR form 33-011, entitled, "COMMUNITY ASSOCIATION MANAGER'S CONTINUING EDUCATION PROVIDER APPROVAL APPLICATION", incorporated herein by reference and effective 11-1-00, which copies may be obtained from the Council~~.

(3) Each provider application shall contain the following information, and shall be accompanied by the following documentation and other information as required by the Council ~~BPR form 33-011~~:

(a) The name, address, telephone number, fax number, and e-mail address of a contact person who will fulfill the reporting and documentation requirements for provider approval. The provider shall notify the Council of any change of contact person within ten (10) days of the actual change.

(b) The identity and qualifications of all instructors who will be presenting courses during the period of providership. These qualifications at a minimum shall include instructional experience and:

1. A bachelor's degree and 2 years experience in the subject matter being taught; or

2. An associate's degree and 4 years experience in the subject matter being taught; or

3. Six years experience in the subject matter being taught.

Should additional instructors be added during the period of providership, the provider shall notify the Council in writing of the new instructor's qualifications at least 30 days prior to actually conducting the course.

(c) The appropriate continuing education provider application fee pursuant to subsection 61E14-3.001(13) ~~61-20.504(13)~~, F.A.C.

(4) Continuing education provider status shall be valid from the date of approval until May 31 of every odd numbered year. Providers may renew their provider status within 90 days of May 31 of the odd numbered year. Those seeking renewal of provider status must reapply in the same manner as set forth in subsection (2) and submit the appropriate renewal fee pursuant to subsection 61E14-3.001(14) ~~61-20.504(14)~~, F.A.C. Providers who fail to renew their provider status on a timely basis in accordance with this rule shall not offer or advertise a course as an approved course for continuing education. Renewal of provider status shall be for a two year period until

May 31 of the next odd numbered year. ~~Providers who are to expire June 30, 2002 shall have a new expiration date of May 31, 2003.~~

(5) Once approved, providers shall comply with the following requirements:

(a) When advertising approved courses, providers shall disclose the course approval number and the number of contact hours assigned by the Council and the course subject area. Providers shall not advertise courses as approved courses until they are actually approved by the Council.

(b) Providers shall maintain a system of recordkeeping which provides for storage of approved course offerings information.

(c) Records of individual courses shall be maintained by the provider for 6 ~~4~~ years and shall be available for inspection by the Council and the Department or the Department's designee.

(d) ~~Providers shall furnish each participant with an individual certificate of attendance complies with paragraph 61-6.015(4)(a), F.A.C.~~ An attendance record shall be maintained by the provider for 6 ~~4~~ years and shall be available for inspection by the Council and the Department or the Department's designee. Providers must electronically provide to the Department a list of attendees taking a course within five (5) business days of the completion of the course. For home study courses, the provider must electronically supply the list of those individuals successfully completing the course by the 5th of the month following the calendar month in which the provider received documentation and was able to determine the successful completion of the course by the individual. The list and a certificate of attendance provided to the participant shall include the provider's name, the name and license number of the attendee, the date the course was completed and course approval number and the total number of hours successfully completed in each type of continuing education credit granted as described in subsection 61E14.001(3), F.A.C. ~~each subject covered by the continuing education course.~~ If the instructor is receiving credit as set forth in subsection 61E14-4.001(5) ~~61-20.508(5)~~, F.A.C., the instructor shall be listed as an attendee with the same information required above. Providers shall maintain security of attendance records and certificates.

(e) All information or documentation, including electronic course rosters, submitted to the Council or the Department shall be submitted in a format acceptable to the Council and the Department. Failure to comply with the time and form requirements will result in disciplinary action taken against the provider. No provider may reapply for continuing education provider status until at least two (2) years have elapsed since the entry of the final order against the provider.

(f) Providers shall assure that sales presentations shall not be conducted during, immediately before or after the administration of any courses approved pursuant to this rule.

(6) A continuing education provider initially approved during the last 90 days prior to May 31 of an odd numbered year, shall not be required to reapply as a condition for renewing provider status.

(7) The Council shall deny continuing education provider status to any applicant who submits false, misleading or deceptive information or documentation to the Council.

(8) The Council retains the right and authority to audit ~~all~~ courses offered by any provider approved pursuant to this rule.

(9) The Council shall rescind the provider status or reject individual courses offered by a provider if the provider disseminates any false or misleading information in connection with the continuing education course, or if the provider or its instructor(s) failed to conform to and abide by the rules of the Council or the Department or are in violation of any of the provisions of Chapter 468, Part VIII or 455, F.S.

(10) The Council shall utilize expert groups or individuals as appropriate in implementing these rules.

Rulemaking ~~Specific~~ Authority 468.4315(2), (3) FS. Law Implemented 455.2179, 468.4337 FS. History–New 5-14-98, Amended 3-13-00, 2-5-01, 3-19-01, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Regulatory Council of Community Association Managers

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Regulatory Council of Community Association Managers

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 5, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 22, 2009

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Regulatory Council of Community Association Managers

RULE NO.:	RULE TITLE:
61E14-4.003	Continuing Education Course Approval

PURPOSE AND EFFECT: The amended rule updates the reference to the application forms required for continuing education course approval and updates cross references to portions of the Florida Administrative Code that have been renumbered.

SUMMARY: The amended rule updates the reference to the application forms required for continuing education course approval and updates cross references to portions of the Florida Administrative Code that have been renumbered.

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.

RULEMAKING AUTHORITY: 468.4315(2), 468.433 FS.

LAW IMPLEMENTED: 468.433, 468.4337 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: Anthony Spivey, Executive Director, Regulatory Council of Community Managers, 1940 North Monroe Street, Tallahassee, Florida 32399-0762

THE FULL TEXT OF THE PROPOSED RULE IS:

61E14-4.003 Continuing Education Course Approval.

(1) Continuing education courses shall be valid for purposes of the continuing education requirement only if such courses have been approved by the Council. The Council shall approve a course as a continuing education course for the purpose of this rule when the following requirements are met:

(a) ~~Written~~ A~~a~~pplication for course approval shall be received by the Council prior to the date the course is offered, on Forms DBPR 0020-1 – Master Organization Application, and DBPR CAM-4302 – Continuing Education Provider and Course Approval Application, effective July 2007, copies of which may be obtained at the Department's website at http://www.myfloridalicense.com/dbpr/pro/cam/forms.html ~~on BPR form 33-013, entitled "COMMUNITY ASSOCIATION MANAGER'S CONTINUING EDUCATION COURSE APPROVAL APPLICATION," incorporated herein by reference and effective 11-1-00, which copies may be obtained from the Council~~.

(b) A course outline is submitted to the Council, along with the application, which describes the course's content and subject matter. A course outline shall address the following:

1. Learner Objectives. Objectives shall describe expected learner outcomes, how learner outcomes will be evaluated, and describe how the objectives will be obtained. The objectives shall describe the content, teaching methodology and plan for evaluation.

2. Subject Matter. The content shall be specifically designed to meet the objectives and the stated level and learning needs of community association managers. Specifically, it shall address one or more of the subject areas outlined in subsection 61E14-4.001 ~~61-20.508~~(3), F.A.C.

3. Materials and Methods. It shall be demonstrated to the Council that:

a. Learning experiences and teaching methods are appropriate to achieve the objectives;

b. Time allotted for each activity shall be sufficient for the learner to meet the objectives;

c. Principles of adult education are utilized in determining teaching strategies and learning activities; and

d. Currency and accuracy of subject matter will be documented by references or bibliography.

4. Evaluation. Participants are given an opportunity to evaluate learning experiences, instructional methods, facilities and resources used for the course.

(c) A list of all instructors for the course, which shall include names, addresses, e-mail addresses and telephone numbers, shall accompany the course approval application.

(d) The course approval application must be accompanied by an approved provider number or the applicant must simultaneously apply for continuing education provider status pursuant to Rule 61E14-4.002 ~~61-20.5081~~, F.A.C.

(2) The course provider shall submit to the Council a sample continuing education course certificate of completion that complies with paragraph 61E14-4.002(5)(d) ~~61-6.015(4)(a)~~, F.A.C., that is given to each course participant if the participant completes the course. In addition to the information required by paragraph 61E14-4.002(5)(d) ~~61-6.015(4)(a)~~, F.A.C., the certificate shall ~~include, the course approval number, and the type of continuing education credit granted as described in subsection 61-20.508(3), F.A.C. The certificate shall~~ be provided to the course participant at the completion of the course. The certificate of completion shall contain, on its face, the following statement in capital letters in at least 12 point type:

IF YOU HAVE ANY CONCERNS THAT THE COURSE YOU HAVE JUST COMPLETED DID NOT MEET THE LEARNING OBJECTIVES SET OUT IN THE COURSE MATERIALS, DID NOT COVER THE SUBJECT MATTER OF THE COURSE, OR WAS A SALES PRESENTATION; PLEASE CONTACT THE COUNCIL'S OFFICE IN WRITING AT:

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, REGULATORY COUNCIL OF COMMUNITY ASSOCIATION MANAGERS, 1940 NORTH MONROE STREET, TALLAHASSEE, FLORIDA 32399-1040.

(3) Course approvals are valid for 24 months from the date of issuance. Providers must reapply for course approval within 90 days from the expiration of the 24 month period. Written application and course approval shall be in the same form as set forth in paragraph (1)(a) above. The Council shall be notified of any substantive changes made to approved courses during this period. Course approval shall be rescinded by the Council if such notification is not made or the changes fail to otherwise conform to this rule. Course approvals shall be automatically rescinded if the provider approval expires or is rescinded by disciplinary action or otherwise.

(4) Continuing education courses approved prior to the effective date of this rule remain valid for the purposes of fulfilling the continuing education requirement until the course approval expires.

Rulemaking ~~Specific~~ Authority 468.4315(2), 468.433 FS. Law 468.433, 468.4337 FS. History–New 3-13-00, Amended 2-5-01, 3-19-01, Formerly 61-20.5082, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Regulatory Council of Community Association Managers

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Regulatory Council of Community Association Managers

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 5, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 22, 2009

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Regulatory Council of Community Association Managers

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

PURPOSE AND EFFECT: The proposed amendment provides the application to be electronically filed, deletes the BPR form number, modifies the rule number referenced, and will revise the way on-site audits of training courses are conducted.

SUMMARY: The proposed rule amendment will provide the application to be electronically filed, delete the BPR form number, modify the rule number referenced and revise the way on-site audits of training courses are conducted.

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.

RULEMAKING AUTHORITY: 468.4315(2), 468.433(2)(d) FS.

LAW IMPLEMENTED: 468.433(2)(d) 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: Anthony Spivey, Executive Director, Regulatory Council of Community Managers, 1940 North Monroe Street, Tallahassee, Florida 32399-0762

THE FULL TEXT OF THE PROPOSED RULE IS:

61E14-4.005 Prelicensure Education Provider Approval.

(1) A prelicensure education provider is a person or entity approved pursuant to this rule to conduct prelicensure education courses for community association managers.

(2) Entities or individuals who wish to become approved providers of prelicensure education shall make application on Forms DBPR 0020-1 – Master Organization Application, and DBPR CAM-4302 – Prelicensure Provider Application, effective July 2007, copies of which may be obtained at the Department's website at http://www.myfloridalicense.com/dbpr/pro/cam/forms.html ~~on BPR form 33-012, entitled, "COMMUNITY ASSOCIATION MANAGER'S PRELICENSURE EDUCATION PROVIDER APPROVAL APPLICATION", incorporated herein by reference and effective 1-3-01, which copies may be obtained from the Council~~.

(3) Each provider application shall contain the following information, and shall be accompanied by the following documentation and other information as required ~~by BPR form 33-012, referenced above~~.

(a) The name, address, telephone number, fax number, and e-mail address of a contact person who will fulfill the reporting and documentation requirements for provider approval. The provider shall notify the Council of any change of contact person within ten (10) days of the actual change.

(b) The identity and qualifications of all instructors who will be presenting courses during the period of providership. These qualifications at a minimum shall include instructional experience and;

1. A bachelor's degree and 2 years experience in the subject matter being taught; or

2. An associate's degree and 4 years experience in the subject matter being taught; or

3. Six years experience in the subject matter being taught.

Should additional instructors be added during the period of providership, the provider shall notify the Council in writing of the new instructor's qualifications at least thirty (30) days prior to actually conducting the course.

(c) The appropriate prelicensure education provider application fee pursuant to subsection 61E14-3.001(15) ~~61-20.504(15)~~, F.A.C.

(d) A course outline which describes the course's content and subject matter. A course outline shall address the following:

1. Learner Objectives. Objectives shall describe expected learner outcomes, how learner outcomes will be evaluated, and describe how the objectives will be obtained. The objectives shall describe the content, teaching methodology and plan for evaluation.

2. Subject Matter. The content shall be specifically designed to meet the objectives and the stated level and learning needs of community association managers. Specifically, it shall address one or more of the subject areas outlined in subsection 61E14-1.001(2) ~~61-20.5011(2)~~, F.A.C.

3. Materials and Methods. It shall be demonstrated to the Council that:

a. Learning experiences and teaching methods are appropriate to achieve the objectives;

b. Time allotted for each activity shall be sufficient for the learner to meet the objectives;

c. Principles of adult education are utilized in determining teaching strategies and learning activities; and

d. Currency and accuracy of subject matter will be documented by references or bibliography.

4. Evaluation. Participants are given an opportunity to evaluate learning experiences, instructional methods, facilities and resources used for the course.

(4) Prelicensure education provider status shall be valid from the date of approval until May 31 of every even numbered year. Those seeking renewal of provider status must reapply on BPR form 33-012, referenced in subsection (2) above, to the Council and submit the appropriate renewal fee pursuant to subsection 61E14-3.001(16) ~~61-20.504(16)~~, F.A.C. Providers who fail to renew their provider status on a timely basis in accordance with this rule shall not offer or advertise a course as an approved course for prelicensure education.

(5) Once approved, providers shall comply with the following requirements:

(a) When advertising courses, providers shall disclose the number of hours assigned by the Council and the course subject area. Providers shall not advertise courses until they are actually approved by the Council.

(b) Providers shall maintain a system of record keeping which provides for storage of course offerings information.

(c) Records of individual courses shall be maintained by the provider for 4 years and shall be available for inspection by the Council.

(d) Providers shall furnish each participant with an individual certificate of attendance and completion of the course. A roster of participants shall be maintained by the provider for 4 years and shall be available for inspection by the Council. Providers shall maintain security of attendance records and certificates.

(e) The course provider shall submit to the Council a sample certificate of course completion that the course instructor shall provide each course participant if the participant completes the course. Such certificate shall include the course participant's name, the title of the course, prelicensure education category, date completed and number of hours. The certificate shall be provided to the course participant at the completion of the course. The certificate of course completion shall contain, on its face, the following statement in capital letters in at least 12 point type:

IF YOU HAVE ANY CONCERNS THAT THE COURSE YOU HAVE JUST COMPLETED DID NOT MEET THE LEARNING OBJECTIVES SET OUT IN THE COURSE MATERIALS, DID NOT COVER THE SUBJECT MATTER OF THE COURSE, OR WAS A SALES PRESENTATION; PLEASE CONTACT THE COUNCIL'S OFFICE IN WRITING AT: DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, REGULATORY COUNCIL OF COMMUNITY ASSOCIATION MANAGERS, 1940 NORTH MONROE STREET, TALLAHASSEE, FLORIDA 32399-1040.

(f) All information or documentation submitted to the Council or the Department shall be submitted in a format acceptable to the Council and the Department.

(g) Providers shall assure that sales presentations shall not be conducted, immediately before or after the administration of any courses pursuant to this rule.

(6) A prelicensure education provider initially approved during the last 90 days prior to May 31 of an even numbered year, shall not be required to reapply as a condition for renewing provider status.

(7) The Council shall deny prelicensure education provider status to any applicant who submits false, misleading or deceptive information or documentation to the Council.

(8) The Council retains the right and authority to audit ~~all~~ courses offered by any provider approved pursuant to this rule.

(a) The Department may, as needed, conduct on-site audits of training courses, which shall include:

1. Training course content;

2. Technical accuracy;

3. Instructor effectiveness; and

4. Course administration.

(b) Such audits may be conducted without advance notice if the Department has reasonable cause to believe that a violation of this rule or Chapter 468, Florida Statutes, has occurred.

(9) The Council shall rescind the provider status if the provider disseminates any false or misleading information in connection with the prelicensure education course, or if the provider or its instructor(s) failed to conform to and abide by the rules of the Council or are in violation of any of the provisions of Chapter 468, Part VIII or 455, F.S.

Rulemaking ~~Specific~~ Authority 468.4315(2), 468.433(2)(d) FS. Law Implemented 468.433(2)(d) FS. History–New 1-3-01, Formerly 60-20.510, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Regulatory Council of Community Association Managers

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Regulatory Council of Community Association Managers

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 5, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 22, 2009

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

DEPARTMENT OF HEALTH

Division of Medical Quality Assurance

RULE NOS.:	RULE TITLES:
64B-4.005	Pain Management Clinic Inspection Fee
64B-4.006	Pain Management Clinic Registration Requirements, Fees

PURPOSE AND EFFECT: To promulgate new rules related to the registration and inspection of pain management clinics.

SUMMARY: Rule 64B-4.005, F.A.C., sets an inspection fee of $1,500 regardless of the number of physicians located in the clinic and Rule 64B-4.006, F.A.C., specifies who must register a clinic. The medical director must ensure that participating physicians have read a pain standards rule and the registration fee is $145 plus a $5 unlicensed activity fee.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that these rules will have an impact on small business. A 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.

RULEMAKING AUTHORITY: 456.004, 458.309, 459.005 FS.

LAW IMPLEMENTED: 458.309(4), 459.005(3) FS.

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

THE FULL TEXT OF THE PROPOSED RULES IS:

64B-4.005 Pain Management Clinic Inspection Fee.

An inspection fee of $1,500 shall be paid annually for each location required to be inspected, pursuant to Rule 64B8-9.0132 or 64B15-14.0052, F.A.C. Each location will be assessed the above referenced fee at the time of inspection regardless of the number of physicians who share this location.

Rulemaking Authority 456.004, 458.309, 459.005 FS. Law Implemented 458.309(4), 459.005(3) FS. History–New ,

64B-4.006 Pain Management Clinic Registration Requirements, Fees.

(1) Registration Requirements.

(a) Every practice location prescribing or dispensing Schedule II-IV controlled substances as defined in Sections 458.309(3) and (4) and 459.005(2) and (3), F.S., must register and maintain a valid registration with the Department. To register with the Department, the medical director of a health care clinic licensed pursuant to Chapter 400, F.S., or if the clinic is not licensed pursuant to Chapter 395 or 400, F.S., the clinic's responsible physician who has an active, full, and unencumbered license issued pursuant to Chapter 458 or 459, F.S., must submit Application for Pain Management Clinic Registration, Form #DH-MQA 1219, effective 10/09, incorporated herein by reference. This form can be obtained from the Department of Health, Division of Medical Quality Assurance, at: 4052 Bald Cypress Way, Bin C01, Tallahassee, FL 32399 or on the Board of Medicine or Board of Osteopathic Medicine website, which can be accessed at: www.doh.state.fl.us/mqa.

(b) The medical director or the designated physician registering the clinic is required to agree to having read Rule 64B8-9.013, F.A.C., Standards for the Use of Controlled Substances for the Treatment of Pain, or Rule 64B15-14.009, F.A.C., Standards for Office Based Opioid Addiction Treatment, and that all physicians practicing in the clinic have been or will be provided with a copy of the rule prior to prescribing or dispensing controlled substance pain medications in the clinic.

(2) Fees.

(a) The registration fee shall be $145.00.

(b) An additional five dollar ($5.00) fee shall be added to the cost of registration to cover unlicensed activity, as required by Section 456.065(3), F.S.

Rulemaking Authority 456.004, 458.309, 459.005 FS. Law Implemented 458.309(4), 459.005(3) FS. History–New ,

NAME OF PERSON ORIGINATING PROPOSED RULE: Larry McPherson

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Ana M. Viamonte Ros, M.D. M.P.H.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 9, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 11, 2009

DEPARTMENT OF HEALTH

Board of Medicine

RULE NO.: RULE TITLE:
64B8-8.001 Disciplinary Guidelines

PURPOSE AND EFFECT: The proposed rule amendments are intended to set forth additional disciplinary guidelines for specific violations.

SUMMARY: The proposed rule amendments address recent additional violations with regard to disciplinary guidelines.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board has determined that the proposed rule amendments 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.

RULEMAKING 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) No change.

(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) through (uu) No change.			
(vv) Engaging in a pattern of practice when prescribing medicinal drugs or controlled substances which demonstrates a lack of reasonable skill or safety to patients. (456.072(1)(gg), F.S.)	(vv) 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.	(vv) 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.	
(ww)~~(vv)~~ 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)(hh)~~(gg)~~, F.S.)	(ww)~~(vv)~~ 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.	(ww)~~(vv)~~ 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.	
(xx) Being convicted of, or entering a plea of guilty or nolo contendere to any misdemeanor or felony, regardless of adjudication, under 18 USC s. 669, ss. 285-287, s. 371, s. 1001, s. 1035, s. 1341, s. 1343, s. 1347, s. 1349, or s. 1518, or 42 USC ss. 1320a-7b, relating to the Medicaid program. (456.072(1)(ii), F.S.)	(xx) Revocation and a fine of $10,000, or in the case of application for licensure, denial of license.		

(yy) Failing to remit the sum owed to the state for overpayment from the Medicaid program pursuant to a final order, judgment, or settlement. (456.072(1)(jj), F.S.)	(yy) From a letter of concern to probation, and a fine of $500 to $5,000.	(yy) From a reprimand to revocation, and a fine of $2,500 to $5,000.
(zz) Being terminated from the state Medicaid program, or any other state Medicaid program, or the federal Medicare program. (456.072(1)(kk), F.S.)	(zz) From a letter of concern to suspension, and a fine of $1,000 to $5,000.	(zz) From a reprimand to revocation, and a fine of $5,000 to $10,000.
(aaa) Being convicted of, or entering into a plea of guilty or nolo contendere to any misdemeanor or felony, regardless of adjudication, which relates to health care fraud. (456.072(1)(ll), F.S.)	(aaa) Revocation and a fine of $10,000, or in the case of application for licensure, denial of license.	

(3) through (7) No change.

Rulemaking ~~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: October 2, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 19, 2009

DEPARTMENT OF HEALTH

Board of Medicine

RULE NO.: RULE TITLE:
64B8-8.017 Citation Authority

PURPOSE AND EFFECT: The proposed rule amendments are intended to address the time frames for various citation penalties.

SUMMARY: The proposed rule amendments require several citation penalties to be documented within 60 days.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board has determined that the proposed rule amendments 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.

RULEMAKING AUTHORITY: 456.077, 458.309 FS.

LAW IMPLEMENTED: 456.072(2)(d), 456.077 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:

64B8-8.017 Citation Authority.

In lieu of the disciplinary procedures contained in Section 456.073, F.S., the offenses enumerated in this rule may be disciplined by the issuance of a citation. The citation shall include a requirement that the licensee correct the offense, if possible, within a specified period of time, impose whatever obligations will correct the offense, and impose the prescribed penalty.

(1) Pursuant to Section 456.077, F.S., the Board sets forth below those violations for which there is no substantial threat to the public health, safety, and welfare; or, if there is a substantial threat to the public health, safety, and welfare, such potential for harm has been removed prior to the issuance of the citation. Next to each violation is the penalty to be imposed. In addition to any administrative fine imposed, the Respondent may be required by the Department to pay the costs of investigation. The form to be used is specified in rules of the Department of Health.

(2) If the violation constitutes a substantial threat to the public health, safety, and welfare, such potential for harm must have been removed prior to issuance of the citation.

(3) The following violations with accompanying penalty may be disposed of by citation with the specified penalty:

VIOLATIONS	PENALTY
(a) CME violations. (Sections 458.321, 458.331(1)(g), (x), 456.072(1)(e), (s), F.S.)	Within 60 days ~~twelve months~~ of the date the citation is issued, Respondent must submit certified documentation of completion of all CME requirements for the period for which the citation was issued. Respondent's continuing education courses will be audited for the next two biennia to ensure compliance with renewal requirements; AND
1. through 5. No change.	
(b) Failure to comply with a CME audit. (Sections 456.072(1)(e), (s), F.S.)	$500 fine and compliance with the CME audit within 60 ~~10~~ days.
(c) through (h) No change.	
(i) Failure to update physician profile as required in Sections 456.039(3) and 458.319(1), F.S. (Section 456.039(3)(b), F.S.)	$1,000 fine; 3 hours CME in ethics within 60 days; and requirement that physician update the profile within 60 ~~30~~ days.
(j) Negligently making misleading or untrue statements on the physician profile.	$1,000 fine and 3 hours CME in ethics within 60 days.
(k) through (q) No change.	
(4) through (5) No change.	

Rulemaking ~~Specific~~ Authority 456.077, 458.309 FS. Law Implemented 456.072(2)(d), 456.077 FS. History–New 12-30-91, Formerly 21M-20.017, Amended 11-4-93, Formerly 61F6-20.017, Amended 8-23-95, Formerly 59R-8.017, Amended 4-7-99, 1-27-00, 1-31-02, 1-12-03, 7-27-04, 2-7-05, 1-4-06, 7-3-06, 1-16-08, _____.

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: October 2, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 4, 2009

DEPARTMENT OF HEALTH

Division of Family Health Services

RULE NO.:	RULE TITLE:
64F-12.011	Wholesale Distribution of Prescription Drugs – Exceptions and Specific Distributions Authorized

PURPOSE AND EFFECT: This rule section is being revised to facilitate the movement of prescription drugs by or on behalf of the Department of Health to community pharmacies to assist in protecting the public health from conditions that pose an imminent threat to public health. The rule will exempt such distributions from Florida prescription drug pedigree requirements.

SUMMARY: This rule provides an emergency medical reason that is exempt from the definition of wholesale distribution under Chapter 499 Part I, F.S. The exemption applies to transfers of prescription drugs by or on behalf of the Department of Health to a community pharmacy for dispensing to patients in need of emergency medical services, including protection from communicable diseases or providing protection from conditions that pose an imminent threat to public health.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The proposed changes will not impact small businesses, small counties, or small cities. There should be no transactional costs for any individual or entity related to this rule revision. There is no change to any fees, costs, monitoring or reporting currently required.

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.

RULEMAKING AUTHORITY: 499.003(53)(b), 499.012, 499.03, 499.05 FS.

LAW IMPLEMENTED: 499.003(53)(b), 499.012, 499.03, 499.05 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: Rebecca R. Poston, R. Ph., Director, Drugs, Devices and Cosmetics Program, 4052 Bald Cypress Way, Mail Bin #C-04, Tallahassee, Florida 32399

THE FULL TEXT OF THE PROPOSED RULE IS:

64F-12.011 Wholesale Distribution of Prescription Drugs – Exceptions and Specific Distributions Authorized.

(1) The exemption from the definition of wholesale distribution in Section 499.003(53)(b)2. ~~499.012(1)(a)2.b.~~, F.S., for "emergency medical reasons" includes:

(a) through (i) No change.

(j) Transfers of prescription drugs by or on behalf of the Department of Health to a community pharmacy authorized to purchase prescription drugs, for dispensing to persons in need of emergency medical services, including controlling communicable diseases or providing protection from unsafe conditions that pose an imminent threat to public health, provided that the community pharmacy returns un-dispensed prescription drugs in a manner and under the conditions specified in a written agreement with the Department of Health.

(2) through (4) No change.

Rulemaking ~~Specific~~ Authority 499.003(53)(b), 499.012, ~~499.014~~, 499.03, 499.05 FS. Law Implemented 499.003(53)(b), 499.012, ~~499.014~~, 499.03, 499.05 FS. History–New 7-1-96, Formerly 10D-45.0525, Amended 1-26-99, 4-17-01, 1-1-04, 10-4-07, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Rebecca Poston, R.PH.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Dr. Ana Viamonte Ros, State Surgeon General

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 14, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 9, 2009

DEPARTMENT OF HEALTH

Division of Family Health Services

RULE NO.:	RULE TITLE:
64F-12.012	Records of Drugs, Cosmetics and Devices

PURPOSE AND EFFECT: The Department proposes to revise the rule language regarding pedigree requirements to be compliant with Chapter 499 F.S. and to delete language that is no longer relevant to pedigrees because of statutory changes. The department proposes to amend the audit trail and pedigree requirements for wholesale distributions of prescription drugs, to the extent necessary to protect the public health safety and welfare.

SUMMARY: The rule revisions will provide an alternative to the present requirements for how financial information is included in required audit trail records for prescription drug distributions. It will require the recipient of a prescription drug to be included in the audit trail information. It clarifies that all audit trail information required by subsection 64F-12.012(2), and paragraph 64F-12.023(3)(a), F.A.C., be received by a reverse distributor or destruction establishment no later than the time when the prescription drugs described in the documents are received at the establishment. The rule expands the possible use of the direct purchase pedigree, while requiring more descriptive information on direct purchase pedigree documents that also reference prescription drugs that are not within the normal distribution chain. The rule clarifies that use of a wholesaler as the repository of a recipient's pedigree does not relieve the provider and recipient of a prescription drug in a wholesale distribution of a prescription drug to pass and receive a pedigree. The rule clarifies the emergency distributions exemption from the pedigree requirements that is currently in this rule section. The rule clarifies the time period for persons not required to be permitted, but regulated under Chapter 499, F.S., to provide records to the department or to the Florida Department of Law Enforcement. The rule provides that a Retail Pharmacy Drug Wholesale Distributor and a Restricted Drug Distributor-Health Care Entity are not required to keep distribution inventory stock separate from stock that is to be dispensed. The rule prohibits wholesale distribution records of a pharmacy from being commingled with patient related records in a manner that production of the wholesale distribution records to the Department would require the release of patient records or records that reveal the identity of a patient. The rule deletes language related to pedigree requirements that are no longer part of Chapter 499, 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.

RULEMAKING AUTHORITY: 499.003, 499.05, 499.0121 FS.

LAW IMPLEMENTED: 499.002, 499.01, 499.003, 499.005, 499.012, 499.0121, 499.028, 499.05, 499.051, 499.052, 499.06, 499.063, 499.064, 499.066, 499.067 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: Rebecca Poston, R.Ph., Executive Director, Board of Pharmacy-Drugs Devices and Cosmetics, 4052 Bald Cypress Way, Mail Bin C-04 Tallahassee, Florida 32399

THE FULL TEXT OF THE PROPOSED RULE IS:

64F-12.012 Records of Drugs, Cosmetics and Devices.

(1)(a) Records to document the movement of drugs, devices or cosmetics must provide a complete audit trail from a person's receipt or acquisition to sale or other disposition of the product or component. A complete audit trail includes records which document each transaction or step in the receipt, manufacture, shipping, transfer, or other steps in the channel of trade of that person, whether or not physical possession or handling of the product or component occurs. At a minimum, records shall consist of invoices from the supplier or source which documents acquisition of each product by the person and invoices of sale or other transfer by the person to the recipient. Retail sales transactions to the consumer of over-the-counter drugs, non-restricted devices, or cosmetics are exempt from the requirements of this rule. Additional recordkeeping is required for persons permitted by the department as further stated in this rule.

(b) A person engaged in the distribution of drugs, devices, or cosmetics is not required to maintain documentation from a common carrier that the designated recipient received the

product shipped; however, the person must obtain such documentation from the common carrier and make it available to the department upon specific request of the department.

(2) Any person engaged in the manufacture of prescription drugs, the wholesale distribution of prescription drugs, or otherwise receiving or distributing prescription drugs must maintain records as follows:

(a) For each step in the channel of trade, records containing the information required by Section 499.0121(6)(a), F.S., and the Florida permit or license number which authorizes the source to possess and transfer prescription drugs in or into Florida must appear on one document, except that, the financial documentation required by Section 499.0121(6)(a)5., F.S. does not have to be included on the same document so long as it is included on the invoice or other billing document for the transaction. For purposes of this paragraph a document, such as a packing slip or invoice, may consist of more than one page. The ~~the~~ name, physical address or location where the prescription drugs are, or are to be delivered, and the state license, permit or registration number for that location must also be included on the one document. ~~also If delivery of prescription drugs is made to a person other than the purchaser,~~

(b) The state permit or registration number of the purchaser or recipient may be omitted if the prescription drugs are exported; but a validated airway bill, bill of lading or other appropriate documentation must be maintained to evidence the exportation of the product.

(c) Invoices must reflect the amount billed per prescription drug product.

(d) Records to document the distribution of prescription drugs required by Section 499.0121(6), F.S., and this rule are to be created during the transaction (i.e., at the time of order, receipt, processing, picking or shipping) and not retroactively created.

(e) A pharmacy or other person authorized to possess prescription drugs that transfers prescription drugs to an establishment performing reverse distribution services or destruction activities must prepare or have prepared an inventory or other record of the prescription drugs so transferred prior to the prescription drugs leaving the premises. In addition to the name, address, and license number of the sender and the name, address, and license number of the receiving establishment, the record must include the elements set forth in paragraph 64F-12.023(3)(a), F.A.C. The records must be provided to and obtained by the receiving establishment at or before the time the establishment receives the prescription drugs.

(f)~~(e)~~ Inventory. A complete and accurate record of all stock of prescription drugs on hand must be made annually available by establishments permitted under Chapter 499, F.S. A physical inventory must be conducted at least annually unless perpetual inventory records are maintained, in which case the physical inventory may be conducted on a biennial basis. Significant inventory discrepancies must be investigated and handled in accordance with the written policies and procedures of the establishment. ~~In addition, no later than July 17, 2006, each wholesale distributor shall submit to the department an inventory of drugs it has on hand as of June 30, 2006.~~

~~(f) Inventory existing as of June 30, 2006. A wholesale distributor permitted under section 499.012, F.S. that has purchased a prescription drug on or before close of business June 30, 2006 without the pedigree required by section 499.0121(6)(f), F.S. may distribute such drug provided the wholesale distributor submits to the department an inventory of such drugs no later than July 17, 2006, conforming to paragraph (2)(e) above and provided further that such drugs are otherwise in compliance with the provisions of Sections 499.001 through 499.081, F.S. Inventories shall be submitted to the Department in written form, email, facsimile, or electronic media excluding a web page. The Department will consider the submittal to be a trade secret as defined by Section 812.081(1)(c), F.S., provided that the sending wholesale distributor complies with the requirements of subsections 64F-12.021(1) and (2), F.A.C.~~

(3) Pedigrees; Normal Distribution Chain Direct Purchase Pedigree; Comprehensive Pedigree. In order to satisfy the pedigree requirements in Section 499.01212(2), F.S., the appropriate one of the two pedigree documents defined in Section 499.01212(2), F.S., must be used. Those documents are the "Direct Purchase Pedigree" document, which is defined at Section 499.01212(2)(a), F.S., and the "Comprehensive Pedigree" document, which is defined at Section 499.01212(2)(b), F.S., and also contain the elements in the forms approved by the Department in this rule section.

(a) Normal Distribution Chain Direct Purchase Pedigree.

1. The direct purchase pedigree is the pedigree document defined in Section 499.01212(2), F.S. It is statement in written or electronic form, accurately confirming that the wholesale distributor or its wholly owned subsidiary who purchases and receives the specific unit of the prescription drug being distributed, purchased and received the specific unit of the prescription drug directly from the manufacturer of the drug. The direct purchase pedigree document can be used to satisfy the requirements of Section 499.01212(2), F.S., only if the wholesale distributor or wholly owned subsidiary distributes that specific unit of the prescription drug that it purchased and received directly from the manufacturer, to a chain pharmacy warehouse as described at Section 499.003(7), F.S., or to a person authorized by law to purchase prescription drugs for the purpose of administering or dispensing such drug ("purchaser") in one of two ways:

a. The subject wholesale distributor or wholly owned subsidiary distributes the prescription drug directly to the purchaser; or

b. The subject wholesale distributor or wholly owned subsidiary distributes the prescription drug indirectly to the purchaser through the use of no more than two intracompany transfers.

2. In order to qualify for use of the direct purchase pedigree the wholesale distributor and its wholly owned subsidiary who purchases and receives the specific unit of the prescription drug directly from the manufacturer must accurately provide the statement and information required by Section 499.01212(2)(a), F.S., on the pedigree document. The wholesale distributor and its wholly owned subsidiary shall maintain and make available to the department the records required by Section 499.01212(2)(a)1. through 4., F.S., as well as the records required by Section 499.0121(6), F.S., and this rule chapter.

3. The direct purchase pedigree shall be provided to every recipient of the prescription drug, except for a patient or consumer, who receives the specific unit of the prescription drug directly or indirectly from the wholesale distributor or its wholly owned subsidiary who purchases and receives the specific unit of the prescription drug directly from the manufacturer. In a wholesale distribution of a prescription drug, the direct purchase pedigree document shall not contain any reference to a prescription drug that is not eligible for use of the direct purchase pedigree to satisfy the requirements of Section 499.01212(2), F.S., unless the prescription drug not qualifying for distribution through use of the direct purchase pedigree is clearly identified on the pedigree document as not being distributed within the normal distribution chain. For all wholesale distributions of prescription drugs in or into this state, the direct purchase pedigree shall not be used unless all wholesale distributions of the drug meet the normal distribution chain definition at Section 499.003(33), F.S.

(b) Comprehensive Pedigree. The comprehensive pedigree is the pedigree described in Section 499.01212(2)(b), F.S., in this rule sub-section and in the forms adopted thereunder. For all wholesale distributions that require a pedigree pursuant to Section 499.01212(2)(b), F.S., the comprehensive pedigree must be used. The forms approved by the department for this pedigree are described below in this rule sub-section. They can be obtained by contacting the Drugs, Devices, and Cosmetics Program, 4052 Bald Cypress Way, Bin C-04, Tallahassee, FL 32399-3254 or telephone number (850)245-4292, or may be downloaded from the program's web site at www.doh.state.fl.us/pharmacy/drugs.

1. For the wholesale distribution of a prescription drug by a person who has not repackaged the drug that form is "Comprehensive Pedigree Paper (Distribution History of Prescription Drugs)", Form DH 2129, effective, July 2006 which is incorporated by reference herein, or an electronic record that contains all of the elements of Form DH 2129. A wholesale distributor who further distributes a repackaged prescription drug must include in the pedigree the information related to the repackaged drug contained in DH form 2135 or the electronic record that contains the elements of DH form 2135.

2. For every wholesale distribution of a prescription drug by a person who has repackaged the drug, the required form is "Comprehensive Pedigree Paper (Distribution History of Prescription Drugs)", DH Form 2135, effective July 2006, which is incorporated by reference herein, or an electronic record that contains all of the elements of Form DH 2135.

3. The comprehensive pedigree must include either the proprietary name or the generic name of the prescription drug with the name of the manufacturer, repackager, or distributor as reflected on the label of the product; dosage form; strength; container size; quantity by lot number; the name and address of each owner of the prescription drug that is required to be identified on the pedigree; the name and address of each location from which it was shipped if different from the owner's; and the transaction dates. The pedigree must clearly identify the invoice to which it relates; however, if an invoice number has not been generated at the time the pedigree is prepared then an alternate reference number that is easily traceable to the invoice number may be used.

(c) A copy of the pedigree must be maintained by each wholesale distributor required to prepare or furnish a pedigree and by each recipient. This copy may be maintained in an electronic medium that is readily available and easily accessible to the wholesale distributor required to prepare or furnish the pedigree; each recipient; and authorized federal, state, and local regulators or law enforcement. If a wholesale distributor serves as the repository of its customer's pedigree, the wholesale distributor must specify on the customer's invoice or other distribution document the method for immediately accessing all pedigrees associated with each prescription drug distributed and must enable access by the persons listed above for the duration of the applicable records retention period. No provision of this rule subsection shall be construed to relieve any wholesale distributor from any requirement imposed by any provision of Chapter 499, Part I, F.S., to provide the recipient of a prescription drug in a wholesale distribution with a complete and accurate pedigree paper in a timely manner. No provision of this rule sub-section shall be construed to relieve any recipient of a prescription drug in a wholesale distribution from any requirement imposed by any provision of Chapter 499, Part I, F.S., to receive a pedigree paper in a timely manner.

(d) Each comprehensive pedigree must contain a signature that meets the requirements of DH Form 2129 or 2135 as applicable. An electronic signature may be used on a pedigree.

(e) An electronic record must be easily readable or easily rendered in a readable format, and capable of being reproduced in a paper medium. Data on an electronic pedigree may be transmitted via the internet, data communications, a portable medium such as a CD-Rom or smart card or similar devices.

Additional information to the information required by these rules and Section 499.01212(2)(a) or (b), F.S., as applicable, may be provided on a pedigree so long as the additional information does not detract from or confuse the history of the distribution of the drug or fail to clearly specify each prescription drug identified on a direct purchase pedigree document that is not eligible for use of the direct purchase pedigree pursuant to the requirements of Sections 499.01212(2)(a), 499.003(33), F.S., and this rule section.

(f) Each person required by Section 499.01212, F.S., to receive a pedigree must maintain the pedigree. A copy of the pedigree paper provided to a wholesale distributor must be maintained by the wholesale distributor providing the pedigree paper. No provision of this rule sub section shall be construed to require any person who is exempted by Section 499.01212(3), F.S., to pass a pedigree.

(g) Returns.

1. When a distribution of a prescription drug by a wholesale distributor to an authorized recipient is the result of a mistake in ordering or shipment, the return of that shipment by the authorized recipient to the wholesale distributor need not be reflected in the pedigree paper. For purposes of this subparagraph, a mistake in ordering or shipment shall be deemed to have occurred if, within seven calendar days after the date of receipt of the original shipment:

a. The authorized recipient ships the specific unit of the prescription drug back to the wholesale distributor from which that specific unit was purchased; or

b. The authorized recipient transmits a documented communication to the wholesale distributor from which the prescription drug was purchased stating the authorized recipient's intent to return the shipment in accordance with the wholesale distributor's prescribed written policies and procedures and the wholesale distributor communicates authorization for return of the product.

2. Any returns to a wholesale distributor by an authorized recipient that are not within the scope of subparagraph 1. shall be reflected in the pedigree paper trail for any further distributions of the returned drug product to the extent required by Section 499.01212(2)(b), F.S.

3. An authorized recipient that returns a shipment to the wholesale distributor in accordance with subparagraph 1. or 2. shall verify by written declaration as set forth in Section 92.525(2), F.S., in a written document submitted with the returned product:

a. That the specific unit (exact unit) being returned was purchased from the receiving wholesale distributor (including the corresponding sales invoice number and the date of the sale from that wholesale distributor to the authorized recipient); and

b. that the product was or was not stored and shipped in accordance with the requirements of Section 499.0121, F.S., and the rules adopted thereunder while in the purchaser's custody and control.

c. The written declaration shall be printed or typed at the end of or immediately below the statements in sub-subparagraphs 3.a. and 3.b. and shall state: "Under penalties of perjury, I declare that I have read the foregoing and that the facts stated in it are true," followed by the signature of the person making the declaration.

(h) For purposes of Section 499.01212(2)(b), F.S., a manufacturer or repackager will have uniquely serialized an individual prescription drug unit when the unit contains an electronic product code that meets industry standards for that type of legend drug unit. The department will adopt the industry standards for each type of prescription drug unit when they are established. One pedigree record may be prepared for a group of serialized prescription drugs, provided the only unique characteristic for the pedigree is the serialization codes.

(i) If a manufacturer initiates an electronic pedigree and transmits this information to a wholesale distributor consistent with the standards in sub-subparagraph 64F-12.013(5)(d)1.f., F.A.C., and that wholesale distributor provides a pedigree to its customer consistent with the standards in sub-subparagraph 64F-12.013(5)(d)1.f., F.A.C., the wholesale distributor must transmit the pedigree information initiated by the manufacturer in the pedigree the wholesale distributor provides to its customer.

(j) A wholesale distributor that purchases multiple units of a prescription drug from a manufacturer in one transaction, but receives these units from multiple distribution sites of the manufacturer or on multiple dates from the manufacturer, may reference the first occurrence of receipt in pedigree papers the wholesale distributor prepares for subsequent wholesale distributions unless all applicable information is received from the manufacturer as set forth in paragraph (i) above.

(k) Emergency Distributions. Notwithstanding Section 499.01212(2), F.S. a wholesale distributor may distribute and a purchasing pharmacy, health care clinic establishment or health care practitioner authorized by law to purchase prescription drugs, may accept a prescription drug for which a pedigree that complies with Section 499.01212(2), F.S., is not available, when the prescription drug is required to treat a specific patient with an emergency medical condition as defined by Section 395.002(8)(a), F.S. The prescribing physician or a health care practitioner otherwise licensed to prescribe the drug shall supply a statement, to the supplying wholesale distributor stating that the emergency meets this rule paragraph's requirements. The supplying wholesale distributor must maintain such statement in compliance with the timeframes in Section 499.0121(6)(b), F.S. The supplying wholesale distributor must otherwise comply fully with all other applicable provisions of Sections 499.001 through 499.081, F.S., with respect to such drug. In addition, the supplying wholesale distributor must submit to the recipient within 14 calendar days of the emergency distribution a written

statement, invoices, or other documentation identifying all prior sales or distributions of the specific unit of the prescription drug that is the subject of this distribution.

~~(3) Pedigree Papers.~~

~~(a)1. The pedigree papers required by Sections 499.0121(6)(d), (e) and (f), F.S., must include either the proprietary name or the generic name with the name of the manufacturer, repackager, or distributor as reflected on the label of the product; dosage form; strength; container size; quantity by lot number; the name and address of each owner of the prescription drug that is required to be identified on the pedigree paper; the name and address of each location from which it was shipped if different from the owner's; and the transaction dates. The pedigree paper must clearly identify the invoice to which it relates; however, if an invoice number has not been generated at the time the pedigree is prepared then an alternate reference number that is easily traceable to the invoice number may be used.~~

~~2. A copy of the pedigree paper must be maintained by each wholesaler preparing a pedigree paper and by each recipient. This copy may be maintained in an electronic medium that is readily available and easily accessible to the wholesaler preparing the pedigree paper; each recipient; and authorized federal, state, and local regulators or law enforcement. If a wholesaler serves as the repository of its customer's pedigree, the wholesaler must specify on the customer's invoice or other distribution document the method for immediately accessing all pedigrees associated with each prescription drug distributed and must enable access by the persons listed above for the duration of the applicable records retention period.~~

~~(b) If a wholesale distributor uses the statement contained in Section 499.0121(6)(e)1.a.(II), F.S., "This establishment or a member of my affiliated group purchased the specific unit of the specified drug directly from the manufacturer" the wholesale distributor must provide to the department the names of all members of the affiliated group of which the wholesale distributor is a member and the affiliated group must provide records on prescription drug purchases by the members of the affiliated group not later than 48 hours after the department requests access to such records, regardless of the location where the records are stored.~~

~~(c) Beginning July 1, 2006, "Pedigree Paper (Distribution History of Prescription Drugs)," either Form DH 2129 effective July 2006, which is incorporated by reference herein, or an electronic record that contains all the elements of Form DH 2129 must be used to comply with the requirement in Section 499.0121(6)(f), F.S., for the distribution of a prescription drug. Beginning July 1, 2006, a repackager must use either "Prescription (legend) Drug Pedigree – Repackager" Form DH 2135 effective July 2006, which is incorporated by reference herein, or an electronic record that contains all the elements of Form DH 2135. A wholesaler that further distributes a repackaged prescription drug must include in the pedigree the information related to the repacked drug contained in Form DH 2135 or the electronic record that contains all the elements of Form DH 2135. These forms may be used prior to July 1, 2006, to comply with the pedigree paper requirements of Section 499.0121(6)(d) or (e), F.S., at the discretion of the wholesaler. An electronic signature may be used on a pedigree paper. An electronic record must be easily readable or easily rendered in a readable format, and capable of being reproduced in a paper medium. Data on an electronic pedigree may be transmitted via the internet, data communications, a portable medium such as a CD-Rom or smart card or similar devices. Additional information to that required by forms DH 2129 and DH 2135 may be included on a pedigree provided it does not detract from or confuse the history of the distribution of the drug.~~

~~(d) A copy of the pedigree paper must be maintained by each recipient. A copy of the pedigree paper provided to a wholesale distributor must be maintained by the wholesaler providing the pedigree paper.~~

~~(e) Effective March 1, 2004, a pedigree paper under Section 499.0121(6)(d), F.S., must trace a prescription drug back to the last authorized distributor of record. The department will maintain a database of authorized distributors of record on its web site at www.doh.state.fl.us/pharmacy/drugs. A prescription drug wholesaler that receives or prepares a pedigree paper under Section 499.0121(6)(d), F.S., and this chapter that traces the previous distributions of a prescription drug back to a prescription drug wholesaler that is not listed on the department's web site as an authorized distributor of record for the drug's manufacturer for the date in which the transaction occurred must maintain and have available for inspection documentation that supports the fact the prescription drug wholesaler is an authorized distributor of record in accordance with the criteria of Section 499.0121(6)(d)5.a., b., or c., F.S.~~

~~(f) Returns.~~

~~1. When a distribution of a prescription drug by a wholesaler to an authorized recipient is the result of a mistake in ordering or shipment, the return of that shipment by the authorized recipient to the wholesaler need not be reflected in the pedigree paper. For purposes of this subparagraph, a mistake in ordering or shipment shall be deemed to have occurred if, within seven calendar days after the date of receipt of the original shipment:~~

~~a. The authorized recipient ships the specific unit of the prescription drug back to the wholesaler from which that specific unit was purchased; or~~

~~b. The authorized recipient transmits a documented communication to the wholesaler from which the prescription drug was purchased stating the authorized recipient's intent to~~

~~return the shipment in accordance with the wholesaler's prescribed written policies and procedures and the wholesaler communicates authorization for return of the product.~~

~~2. Any returns to a wholesaler by an authorized recipient that are not within the scope of subparagraph 1. shall be reflected in the pedigree paper trail for any further distributions of the returned drug product to the extent required by Section 499.0121(6)(d), (e) or (f), F.S.~~

~~3. An authorized recipient that returns a shipment to the wholesaler in accordance with subparagraph 1. or 2. shall verify by written declaration as set forth in Section 92.525(2), F.S., a written document submitted with the returned product,~~

~~a. That the specific unit (exact unit) being returned was purchased from the receiving wholesaler (including the corresponding sales invoice number and the date of the sale from that wholesaler to the authorized recipient); and~~

~~b. That the product was or was not stored and shipped in accordance with the requirements of Section 499.0121, F.S., and the rules adopted thereunder while in the purchaser's custody and control.~~

~~c. The written declaration shall be printed or typed at the end of or immediately below the statements in sub-subparagraphs 3.a. and 3.b. and shall state: "Under penalties of perjury, I declare that I have read the foregoing and that the facts stated in it are true," followed by the signature of the person making the declaration.~~

~~(g) For purposes of Section 499.003(31)(b), F.S., a manufacturer or repackager will have uniquely serialized an individual legend drug unit when the unit contains an electronic product code that meets industry standards for that type of legend drug unit. The department will adopt the industry standards for each type of legend drug unit when they are established. One pedigree record may be prepared for a group of serialized legend drugs, provided the only unique characteristic for the pedigree is the serialization codes.~~

~~(h) If a manufacturer initiates an electronic pedigree and transmits this information to a wholesaler consistent with the standards in sub-subparagraph 64F-12.013(5)(d)1.f., F.A.C., (and that wholesaler provides a pedigree to its customer consistent with the standards in sub-subparagraph 64F-12.013(5)(d)1.f., F.A.C., the wholesaler must transmit the pedigree information initiated by the manufacturer in the pedigree the wholesaler provides to its customer.~~

~~(i) A wholesaler that purchases multiple units of a prescription drug from a manufacturer in one transaction, but receives these units from multiple distribution sites of the manufacturer or on multiple dates from the manufacturer, may reference the first occurrence of receipt in pedigree papers the wholesaler prepares for subsequent wholesale distributions unless all applicable information is received from the manufacturer as set forth in paragraph (h) above.~~

~~(j) A contract distributor for the manufacturer is deemed an agent of the manufacturer and therefore is not required under Section 499.0121(6)(f), F.S., to provide a pedigree paper upon distribution of the manufacturer's prescription drug provided the manufacturer retains title to the prescription drug and the contract distributor meets the requirements to be permitted under Chapter 499, F.S., as a non-resident prescription drug manufacturer based on its relationship with the manufacturer.~~

~~(k) Emergency Distributions. A wholesale distributor may distribute and a purchasing pharmacy or health care practitioner authorized by law to purchase prescription drugs may accept a prescription drug for which a pedigree that complies with Section 499.0121(6)(f), F.S., is not available, when the prescription drug is required immediately to treat a specific patient with a life threatening medical condition or a medical condition that will result in serious bodily harm. A pharmacist for the purchasing pharmacy, or the health care practitioner, shall supply a statement to the supplying wholesale distributor(s) that the emergency meets this rule paragraph's requirements and the supplying wholesale distributor(s) must maintain such statement in compliance with the timeframes in Section 499.0121(6)(b), F.S. The supplying wholesale distributor must otherwise comply fully with all other applicable provisions of Sections 499.001 through 499.081, F.S., with respect to such drug.~~

(4) Retailers of veterinary legend drugs or medical oxygen must also maintain a prescription or other order of an authorized practitioner evidencing the authority of the purchaser or recipient to receive the veterinary legend drug or medical oxygen. A veterinary legend drug retailer must have the prescription prior to delivery of the drug to the customer. In the case of a medical oxygen retailer, the prescription or order for medical oxygen must be in writing and in the possession of the retailer within 30 days of delivery of the drug to the patient. An order or prescription for veterinary legend drugs or medical oxygen does not constitute authority for the retailer to sell to the purchaser beyond 12 months from the date of the original sale.

(5) A copy of the Florida Drug and Cosmetic Act, Chapter 499, F.S., and Chapter 64F-12, F.A.C., Regulations for Drugs, Devices and Cosmetics, must be at the permitted establishment.

(6)(a) Records for permittees not physically located within the state may be maintained at a central location outside of the state but must be made available for inspection at a permitted establishment or at the department's address within 2 working days after a request for inspection.

(b) Records for permittees located in the state or persons located in Florida and required to be permitted under Chapter 499, F.S., may be stored by computer or other electronic means

at a central location inside or outside of the state, but must be readily available and immediately retrievable, i.e., subject to inspection at the permitted establishment during the inspection.

1. Records that are maintained at a central location within this state must be maintained at an establishment that is permitted pursuant to Sections 499.001-.081, F.S., in that person's name.

2. If not maintained at a central location, records must be maintained at the permitted location or, if not otherwise permitted, at the address reflected on the product registration.

3. A permitted establishment in Florida that maintains records at a location outside of the state must have a method, such as computerized access, to make records readily available and immediately retrievable. These records must also be made available at the permitted establishment for copying or reproducing within two working days after a request.

4. An establishment permitted at an address outside of the state must make records available for inspection within two working days after a request.

(c) Records for permittees may be copied or reproduced by the department or the Florida Department of Law Enforcement.

(d) If hard copies (originals or true copies) of required records are not maintained at the permitted establishment in Florida, the department or Florida Department of Law Enforcement must be able to review automated records for any and all records required to be maintained under Chapter 499, F.S., without requesting a specific source, recipient, product, date, etc.

(7) ~~Except as provided in Section 499.012(2)(e), F.S., and paragraph (3)(b) of this rule,~~ Rrecords of ~~other~~ persons not required to be permitted, but subject to regulation under Chapter 499, F.S., must be made available to the department or the Florida Department of Law Enforcement within five business days of the request for inspection, copying, or reproduction. This subsection shall not be construed to preempt or affect any other provision of law that requires records to be made available within a shorter period of time than required herein.

(8) Records involving drugs, devices, or cosmetics may be maintained by electronic methods, such as computers or imaging devices. Originals or true copies of required records documentation must be maintained by the person involved in the transaction, including brokers and agents. If electronic methods are used to maintain records related to prescription drugs and these methods do not maintain a true copy of the original record, such as the actual image of the original document, then the security system of the permittee must provide protection against tampering with computers or electronic records.

(9) Documentation provided to the department pursuant to an inspection may not be altered or defaced in any manner to obstruct or conceal any required or other information recorded on the document.

(10) All required records must be retained for a period of two years following disposition of the drug, device or cosmetic, or three years after the creation of the records, whichever period is longer; and must be available to the department for such period or as long as records are retained if longer. Records must be retained beyond the retention period if the person has been notified that an investigation or inspection has been initiated by the department and the investigation has not been completed when the mandatory retention period expires.

(11) Manufacturers shall maintain formulas of drugs and cosmetics, including all ingredients, and shall make these available to the department upon request, either during an inspection or by certified mail.

(12) An establishment permitted under Chapter 499, F.S., that shares a facility with another person or business shall keep all of its operational systems subject to Chapter 499, F.S., separate and distinct from the other person or business. A person permitted under Chapter 499, F.S., that also conducts other business activities not permitted under Chapter 499, F.S., shall keep all of its operational systems subject to Chapter 499, F.S., separate and distinct from the other business activities. For the purpose of this rule, those operational systems required to be kept separate and distinct shall mean all records, inventory, storage areas, repackaging operations, quarantine areas, and manufacturing operations, but this rule shall not require separate entrances to the establishment nor partitioning. A Retail Pharmacy Drug Wholesale Distributor or a Restricted Prescription Drug Distributor-Health Care Entity ~~Wholesaler~~ however, is not required to maintain its stock of prescription drugs which may be distributed through a wholesale transaction separate from the stock of prescription drugs which may be dispensed ~~by a retail pharmacy~~.

(13) An establishment permitted to purchase or possess prescription drugs that has no records or has not done any business under the permit that would require such records, shall upon request, provide to the department a written statement to that effect.

(14) The recordkeeping requirements of this subsection do not apply to the prescription dispensing records of a pharmacy or to the patient medical records of a licensed practitioner; however, such records may be required to be produced pursuant to a subpoena issued by the department under Section 499.002 ~~499.0053~~, F.S. Notwithstanding any other provision in this section to the contrary, a pharmacy that sells a prescription drug to any person other than the ultimate consumer of a given prescription drug, for each sales transaction, must establish and maintain the audit trail records that are described in paragraphs (2)(a), (b), (c), (d) of this subsection. The records must be maintained in a manner that the records can be inspected by and originals or copies provided to the Department without the record owner or record custodian having to provide or disclose to the Department information

that would reveal the name or identity of a patient or ultimate consumer, or provide the Department with a patient record within the meaning of Section 456.057, F.S. For purposes of this paragraph the term "ultimate consumer" means a human patient, or the owner of the animal for which a prescription drug intended for veterinary use is being sold.

(15) Charitable Donations of Prescription Drug. A physician or other authorized recipient donating prescription drugs, including prescription drug samples, pursuant to Section 499.012(1)(a)2.e., F.S., must prepare and maintain a donation record that includes at a minimum:

(a) The donor's name, address, telephone number, the practitioner's state license number, and D.E.A. number if a controlled substance is donated;

(b) The manufacturer, brand name, strength, and dosage form of the product; the quantity donated by lot number; and the expiration date of the product;

(c) The date of the donation;

(d) The name, address, and state license number that authorizes the possession of prescription drugs by the charitable organization, if applicable; and

(e) Within 48 hours of receipt, excluding holidays and weekends, the recipient charitable institution must provide a written receipt to the donor acknowledging receipt of the donated prescription drugs.

~~(16) Establishing an ongoing relationship pursuant to Sections 499.0121(6)(d)5.b. and c., F.S. A wholesale distributor that is not listed as an authorized distributor of record on the list submitted to the department by a prescription drug manufacturer may request the department add the wholesale distributor to the department's web site of authorized distributors of record for a drug manufacturer for purposes of the pedigree paper requirements of Section 499.0121(6)(d), F.S., that become effective March 1, 2004, provided that such wholesale distributor satisfies the requirements of paragraph (a) or (b) below.~~

~~(a) A wholesale distributor or its affiliated group must submit the information in subparagraphs 1. and 2. below to document eligibility for inclusion as an authorized distributor of record for a manufacturer of prescription drugs pursuant to Section 499.0121(6)(d)5.b., F.S. If the information submitted in subparagraphs 1. and 2. is based on the cumulative activity of an affiliated group, a wholesale distributor or its affiliated group must submit the information in subparagraph 3. below to document the eligibility of the individual wholesaler establishment that is a member of the affiliated group to be an authorized distributor of record for a manufacturer of prescription drugs pursuant to Section 499.0121(6)(d)5.b., F.S.~~

~~1. To document total annual prescription drug sales of $100 million or more submit either:~~

~~a. The most recent audited financial report that includes an Income Statement or Statement of Profit /Loss that indicates sales of prescription drugs of at least $100 million. (Note: the statement or notes in the audited financial report must clearly demonstrate the sales amount related to prescription drugs as opposed to other commodities), OR~~

~~b. A signed attestation from a certified public accountant that the establishment or affiliated group, if applicable, had total annual prescription drug sales of $100 million or more in the most recent fiscal year, OR~~

~~c. A computerized listing of prescription drug sales transactions during the period 10/1/02 – 9/30/03, or a 12-month period ending on the last day of the most recent calendar quarter, of at least $100 million. This report must be totaled. The detail should include the invoice number, invoice date, customer name, and total invoice amount related to prescription drugs. A statement must be provided that the report documents at least $100 million in prescription drug sales, excluding customer returns. and~~

~~2. For each manufacturer for whom the wholesaler claims authorized distributor of record status, submit both subparagraphs a.and b. to document that the wholesaler annually purchases not less than 90%, based on dollar volume, of all of its purchases of a manufacturer's prescription drug products directly from that manufacturer.~~

~~a. A computerized listing of all of a manufacturer's prescription drugs purchased by the wholesaler during the period 10/1/02 – 9/30/03, or a 12 month period ending on the last day of the most recent calendar quarter, regardless of the source of those prescription drugs. This report must be totaled. AND~~

~~b.i. A computerized listing of all purchases of a manufacturer's prescription drugs directly from the manufacturer during the same time period. This report must be totaled. The detail should include the invoice number, invoice date, and total invoice amount related to prescription drugs. A statement must be provided that the report documents at least 90% of the wholesaler's purchases of a manufacturer's prescription drug products directly from that manufacturer, excluding returns to the manufacturer. OR~~

~~ii. Copies of the manufacturer's sales invoices of prescription drugs to the wholesaler. An adding machine tape, or equivalent, must be included that lists each invoice, in order, and provides a total of all invoices submitted. A statement must be provided that the invoices document at least 90% of the wholesaler's purchases of a manufacturer's prescription drug products directly from that manufacturer, excluding returns to the manufacturer.~~

~~3. Each wholesaler establishment that applies to the department to be listed as an authorized distributor of record of a drug manufacturer based upon its affiliated group's ongoing relationship with the manufacturer, or the affiliated group on behalf of each wholesaler establishment, must submit the names and address of all member wholesaler establishments of the affiliated group. In addition, each wholesaler establishment must either:~~

~~a. Conduct its prescription drug wholesale activities under an establishment name that incorporates the same business name as the affiliated group upon which the eligibility criteria for the affiliated group was met, or~~

~~b. Hold a valid prescription drug wholesaler permit or out of state prescription drug wholesaler permit issued under Chapter 499, F.S.~~

~~(b) A wholesale distributor or its affiliated group must submit the information in subparagraphs 1. and 2. below to document eligibility for inclusion as an authorized distributor of record for a manufacturer of prescription drugs pursuant to Section 499.0121(6)(d)5.c., F.S.~~

~~1. To document total annual prescription drug sales of $100 million or more submit either:~~

~~a. The most recent audited financial report that includes an Income Statement or Statement of Profit /Loss that indicates sales of prescription drugs of at least $100 million. (Note: the statement or notes in the audited financial report must clearly demonstrate the sales amount related to prescription drugs as opposed to other commodities), OR~~

~~b. A signed attestation from a certified public accountant that the establishment or affiliated group, if applicable, had total annual prescription drug sales of $100 million or more in the most recent fiscal year, OR~~

~~c. A computerized listing of prescription drug sales transactions during the period 10/1/02 – 9/30/03, or a 12-month period based on the most recent calendar quarter, of at least $100 million. This report must be totaled. The detail should include the invoice number, invoice date, customer name, and total invoice amount related to prescription drugs. A statement must be provided that the report documents at least $100 million in prescription drug sales, excluding customer returns.~~

~~2. For each manufacturer for whom the wholesaler claims authorized distributor of record status, submit a., b., or c. to document that the wholesaler has a verifiable account number issued by the manufacturer and has made at least 12 purchases of prescription drugs directly from that manufacturer using the verifiable account number.~~

~~a. If the wholesaler is a member of an affiliated group and all purchases from that manufacturer are made at a central location for the wholesaler, copies of at least 12 invoices dated during the previous 12 months from the date the information is submitted, which invoices document purchases of prescription drugs, at least one unit of which on each invoice was not returned, under that central account number but shipped to the wholesaler's address for whom the authorized distributor of record status is claimed. A statement must be provided that the invoices document purchases of prescription drugs for the wholesaler for whom the authorized distributor of record status is claimed and that the wholesaler did not return to the manufacturer at least one unit of the prescription drugs on each invoice.~~

~~b. If the wholesaler is a member of an affiliated group and all purchases from that manufacturer are made at a central location and received at a central location for the wholesaler, copies of at least 12 invoices dated during the previous 12 months from the date the information was submitted, under the same account number which is clearly assigned to the wholesaler at the permitted address. Each invoice must document the purchase of prescription drugs, of which at least one unit identified on the invoice was not returned. A statement must be provided that the invoices document purchases of prescription drugs by that central location and that the central location or wholesaler for which the drugs were obtained did not return to the manufacturer at least one unit of the prescription drugs on each invoice, and that the central location shipped at least 12 times to the individual wholesaler for whom the authorized distributor of record status is claimed during the 12 months based on the fiscal year or designated timeframe.~~

~~c. For all other wholesale distributors, copies of at least 12 invoices dated during the previous 12 months from the date the information was submitted, under the same account number that is clearly assigned to the wholesaler at the permitted address. Each invoice must document the purchase of prescription drugs, of which at least one unit identified on the invoice was not returned. A statement must be provided that the invoices document purchases of prescription drugs by that wholesaler and that the wholesaler did not return to the manufacturer at least one unit of the prescription drugs on each invoice.~~

Rulemaking ~~Specific~~ Authority 499.003, 499.05, 499.0121~~, 499.0122, 499.013, 499.014, 499.052~~ FS. Law Implemented 499.002, 499.003, 499.005, 499.0051, 499.01, 499.012, 499.0121, ~~499.0122, 499.013, 499.014,~~ 499.028, ~~499.04, 499.041,~~ 499.05, 499.051, 499.052, 499.06, 499.063, 499.064, 499.066, 499.067 FS. History–New 1-1-77, Amended 12-12-82, 1-30-85, Formerly 10D-45.31, Amended 11-26-86, 2-4-93, 7-1-96, Formerly 10D-45.031, Amended 1-26-99, 4-17-01, 6-30-03, 10-7-03, 1-1-04, 1-29-04, 5-29-05, 1-19-06, 2-14-06, 8-6-06, 12-27-07, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Rebecca Poston, R.Ph.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Dr. Ana Viamonte Ros, State Surgeon General

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 9, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 2, 2009

DEPARTMENT OF HEALTH

Division of Family Health Services

RULE NO.: RULE TITLE:
64F-12.013 Prescription Drugs; Receipt, Storage and Security

PURPOSE AND EFFECT: This rule section is being updated in response to statutory changes made to Chapter 499 part I F.S. made by the 2008 Florida Legislature.

SUMMARY: This rule section will clarify authentication of pedigree requirements regarding medical convenience kits, revise the term "wholesaler" to "wholesale distributor" and clarify the direct purchase pedigree is for use within the normal distribution chain.

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.

RULEMAKING AUTHORITY: 499.0121(1), 499.05 FS.

LAW IMPLEMENTED: 499.002, 499.003, 499.004, 499.006, 499.007, 499.012, 499.0121, 499.01212, 499.028(6), 499.05, 499.052 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: Rebecca Poston, R.Ph., Executive Director, Board of Pharmacy-Drugs Devices and Cosmetics, 4052 Bald Cypress Way, Mail Bin #C04, Tallahassee, Florida 32399

THE FULL TEXT OF THE PROPOSED RULE IS:

64F-12.013 Prescription Drugs; Receipt, Storage and Security.

(1) Establishments in which prescription drugs are stored, manufactured, repackaged, kept, held, used, sold, stored, offered for sale, or exposed for sale, shall be secured against unauthorized entry or unauthorized access to prescription drugs when establishment personnel are not present.

(a) Establishments permitted under Chapter 499, F.S., that are authorized to take possession of prescription drugs, other than medical oxygen, must be secured by an alarm system which functionally and practically provides a deterrent to unauthorized entry to the establishment or the area where the prescription drugs are held or stored.

(b) Prescription medical oxygen may be stored outside in an area surrounded by a fenced enclosure with a lock which must be secure when authorized persons are not present. Other compressed medical gases must be stored in accordance with paragraph (a).

(2)(a) While not being used to make deliveries, a vehicle of a permittee containing prescription medical oxygen must be parked at the permitted establishment and either locked inside a fenced compound or secured by a vehicle alarm system. A vehicle containing prescription medical oxygen may only be parked at a residence temporarily while the vehicle is making deliveries or while "on call" for emergency deliveries.

(b) When a vehicle used for prescription drug wholesale distributions or for distributions subject to a restricted prescription drug distributor's permit contains prescription drugs and is not being used to make deliveries, it must be parked inside a building secured by an alarm system.

(c) A residence cannot be used to store any prescription drug which has not been dispensed, unless a natural person residing at that residence is licensed or otherwise authorized to possess prescription drugs.

(3)(a) The storage temperature definitions in the U.S.P. are incorporated by reference herein. If no storage and temperature requirements are set forth by the manufacturer in the labeling or in the U.S.P., prescription drugs other than compressed medical gases must be stored at controlled room temperature. Compressed medical gases, unless otherwise indicated, may be stored in a manner so that they are protected from freezing and are not stored at or near excessive heat or open flame.

(b) All establishments permitted under Chapter 499, F.S., that handle prescription drugs other than medical gases, must, in the absence of electronic monitoring devices, mount two thermometers in the immediate area of the stored prescription drugs. For purposes of this provision, immediate area of the stored prescription drugs is within six (6) feet of the prescription drugs in storage. One thermometer will be mounted in the warmest area of the stored prescription drugs and the other thermometer will be mounted in the coolest immediate area of the stored prescription drugs.

(c) A record must be maintained recording the date; time; thermometer one temperature; thermometer two temperature; and the initials of the person recording the data or reviewing the data if electronically monitored. This record and temperature reading must be recorded at least five (5) days each week with the temperature readings taken between 2:00 p.m. and 4:00 p.m. E.S.T. Alternate times may be approved by the department in writing. This record must be kept on file by the facility for at least two years.

(d) Facility requirements for the storage and handling of prescription drugs.

1. An applicant for an initial prescription drug wholesale distributor ~~wholesaler~~ permit must have a facility that is large enough to store the estimated quantity of prescription drugs the applicant intends to possess under its initial application to comply with the requirements of Section 499.0121(1), F.S. An applicant for renewal of a prescription drug wholesale distributor ~~wholesaler~~ permit must have a facility that is large enough for the ongoing operations of the wholesale distributor

establishment based on the prior year's volume of activity with prescription drugs, which may be modified for reasonable fluctuations in inventory management for the current year. These determinations will be based on the type of prescription drugs the applicant possesses, or intends to possess, considering the size of the containers as well as any other products the applicant possesses or intends to possess. Notwithstanding the contention that an applicant will distribute all prescription drugs the same day received, the facility must be large enough to accommodate prescription drugs as set forth herein in case the drugs are not distributed the same day received.

2. An applicant for an initial prescription drug wholesale distributor ~~wholesaler~~ permit must have a refrigeration capacity and freezer capacity large enough to store the estimated quantity of prescription drugs that might require refrigeration or freezing that the applicant intends to possess under its initial application to comply with the requirements of Sections 499.0121(1) and (3), F.S., and this rule. An applicant for renewal of a prescription drug wholesale distributor ~~wholesaler~~ permit must have a refrigeration capacity and freezer capacity that is large enough for the ongoing operations of the wholesale establishment based on the prior year's volume of activity with prescription drugs that required refrigeration or freezing, which may be modified for reasonable fluctuations in inventory management for the current year, to comply with the requirements of Sections 499.0121(1) and (3), F.S., and this rule. These determinations will be based on the type of prescription drugs the applicant possesses, or intends to possess, considering the size of the containers as well as any other products the applicant possesses or intends to possess that might require refrigeration or freezing. Notwithstanding the contention that an applicant will distribute all prescription drugs the same day received, the refrigeration and freezer capacity must be large enough to accommodate prescription drugs as set forth herein in case the drugs are not distributed the same day received.

(4) Quarantine.

(a) A quarantine section shall be clearly marked and designated separate and apart from any other place where drugs are stored so that products therein shall not be confused with usable products being held for sale. Any prescription drug stored outside the quarantine area is a product held for sale or other distribution.

(b) The requirement of Section 499.0121(5)(b), F.S., that prescription drugs must be quarantined if damage has occurred to the immediate or sealed outer or sealed secondary containers means: a prescription drug must be quarantined if obvious damage, determined by a visual inspection of the exterior of the product's packaging, has occurred to any part of the packaging that is or may be in direct contact with the dosage form of the drug or any additional part of the packaging which is provided to prevent adulteration of the drug in addition to "containing" the product.

(c) A person who handles both prescription drugs and over-the-counter drugs or medical devices may have one quarantine section; however, the storage requirements for prescription drugs must be followed.

(5) Examination of Prescription Drugs; Physical Product and Records.

(a)1. Every person receiving prescription drugs other than the consumer receiving dispensed prescription drugs pursuant to Chapter 465, F.S., has a duty to examine the product to prevent acceptance of prescription drugs that are unfit for distribution or use. The extent of the examination should be predicated on the conditions surrounding the transaction, including but not limited to any previous sales of the product, i.e., purchase and delivery is not direct from the manufacturer; the conditions of transport; and environmental conditions to which the product may have been subjected.

2. A wholesale distributor ~~wholesaler~~, chain pharmacy warehouse, or person authorized to administer or dispense a prescription drug that physically receives a prescription drug must verify that the prescription drug received matches the prescription drug identified on the corresponding pedigree. The corresponding pedigree document shall contain all of the required information described in Section~~s~~ 499.01212(2)(a) or (b), ~~499.003(31)(a) or (b)~~, F.S. as applicable, including the information required in the forms described in subsection 64F-12.012(3), F.A.C., for those distributions that are not eligible for the use of the direct purchase pedigree by being within the normal distribution chain.

(b) Upon receipt, each outside shipping container must be visually examined for identity and to prevent the acceptance of misbranded drugs, adulterated drugs or prescription drugs that are otherwise unfit for distribution. If visual examination of the shipping container or other conditions surrounding the transaction suggest possible misbranding or adulteration, the person has a duty to examine further the contents or conditions of sale.

(c) Prescription Drug Wholesale Distributors ~~Wholesalers~~ must employ personnel who can perform product examinations. Once the Prescription Drug Wholesale Distributor ~~Wholesaler~~ has inspected the shipped drugs and elected to accept them, the wholesale distributor ~~wholesalers~~ is responsible for the condition of the drugs. Until that time, the shipper or manufacturer remains responsible for delivering a prescription drug product in acceptable condition, unless responsibilities are modified by contract.

(d) Authentication.

1. A prescription drug wholesale distributor ~~wholesaler~~ may use any, all, or any combination of the following methods to authenticate each transaction on a pedigree paper and must maintain the corresponding documentation regarding the authentication for the method used:

a. Receipt of an invoice (or shipping document) from the seller to the purchaser, which may have the prices redacted. Documentation requirements include at a minimum a copy of the invoice or shipping document. If this method is used to authenticate a pedigree, the wholesale distributor ~~wholesaler~~ must review the document received for signs of tampering, incompleteness, or inconsistency with other invoices or shipping documents from that manufacturer or wholesale distributor ~~wholesaler~~, and must randomly verify the authenticity of the invoice or shipping document with the seller or shipping point reflected on that document using one of the methods in sub-subparagraph b., c., or d. below. Each wholesale distributor ~~wholesaler~~ shall establish and adhere to policies and procedures for the random verification of the authenticity of the invoices or shipping documents according to statistically valid standards.

b. Telephone call to the seller. Documentation requirements include a signed statement by the person placing the telephone call identifying the person's name and position title representing the seller who provides the information, the date the information was provided, and verification of the sales transaction between the parties, including verification of the date of the transaction and the quantity of prescription drugs involved in the transaction.

c. E-mail communication with the seller. Documentation requirements include a copy of the e-mail that identifies the person's name and position title representing the seller who provides the information, the date the information was provided, and verification of the sales transaction between the parties, including verification of the date of the transaction and the quantity of prescription drugs involved in the transaction.

d. Verification of the transaction per a web-based system established by the seller or an independent person that is secure from intentional or unintentional tampering or manipulation to conceal an accurate and complete history of the prescription drug transaction(s). Documentation requirements include a written representation from the seller or independent person that the seller or independent person, as applicable, is responsible for the information included on the web site and has adequate security on the information posted to prevent unauthorized tampering, manipulation, or modification of the information and a copy of the (dated) web site page that confirms the sales transaction between the parties, including the date of the transaction and the quantity of prescription drugs involved in the transaction.

e. Receipt of a legible and unaltered copy of a previous transaction's pedigree paper that had been signed under oath at the time of the previous transaction to support the transaction to which the pedigree paper relates. If this method is used to authenticate a pedigree, the wholesale distributor ~~wholesaler~~ must review the document received for signs of tampering, incompleteness, or inconsistency, and must randomly verify the authenticity of pedigrees using one of the methods in sub-subparagraph b., c., or d. above. Each wholesale distributor ~~wholesaler~~ shall establish and adhere to policies and procedures for the random verification of the authenticity of these copies of pedigrees according to statistically valid standards.

f. Receipt of a pedigree in an electronic form from an automated system that complies with this sub-subparagraph that was successfully opened and decrypted by an automated system that complies with this sub-subparagraph. In order to rely on receipt of an electronic pedigree without employing additional authentication methods as set forth in sub-subparagraphs a.-e.,

(I) The system used to digitally sign and electronically authenticate the electronic pedigree must at a minimum support the following digital signature standards or future revisions governed by the National Institute of Standard and Technology (NIST):

(A) FIPS 140-2 validated cryptographic module which is hereby adopted by reference,

(B) FIPS 186-2 validated digital signature system which is hereby adopted by reference,

(C) FIPS 180-2 validated hash function which is hereby adopted by reference,

(II) The system must employ controls to ensure the security and integrity of the private key so that it cannot be accessed by someone other than the certificate holder. At a minimum, the system must:

(A) Control the activation of the private key with an authentication mechanism,

(B) Employ a ten-minute inactivity time period after which the certificate holder must re-authenticate to access the private key,

(C) When the signing module is deactivated, clear the plain text private key from the system memory to prevent the unauthorized access to, or use of, the private key,

(III) The system must communicate with the Certification Authority directory, either each time authentication and validation steps in sub-subparagraph (IX) below occur or at least on a daily basis to download information to perform the authentication and validation which will occur on that day.

(IV) The system must have a time system that is within five minutes of the official NIST time source and date and time stamp any and all digital signatures.

(V) The system must archive digitally signed files unaltered, including the original hashes and reference to the public keys, in a manner that facilitates retrieval of the record consistent with the recordkeeping requirements.

(VI) The system must prevent issuance of an outgoing pedigree paper if the total quantity of prescription drugs distributed in all pedigrees exceeds the quantity of prescription drugs received in the corresponding incoming electronic pedigree.

(VII) The system must maintain a history file of any outgoing electronic pedigree that is subsequently voided or altered and notify the recipient that the pedigree sent to it was voided or altered.

(VIII) The system must maintain a history file of any incoming notification received pursuant to sub-sub-subparagraph (VII) above that a pedigree was voided or altered and prevent the issuance of an outgoing pedigree using a pedigree that was voided or altered.

(IX) The system must verify or perform the following:

(A) Each transaction on the electronic pedigree must be digitally signed using certificates issued through a public key infrastructure system authorized by the department.

(B) The electronic pedigree must contain each prior transaction digitally signed and unaltered, including the original hash and reference to the public key, with the new transaction information appended to the new document and the entire resulting pedigree digitally signed, including the resulting hash and reference to the public key.

(C) The system must check the certificate expiration date of each signed transaction and compare it against the date and time that the transaction was signed to determine that the certificate has not or had not expired at the time the record was signed.

(D) The system must check the digital signature for each signed transaction against the Certificate Authority's directory and the Certificate Revocation List and verify whether the certificate holder is or was authorized to sign electronic pedigrees at the time the transaction was signed.

(F) The system must require that all authentication and validation steps in the preceding paragraphs are carried out prior to allowing the acceptance of the transaction. The system should not allow the further processing of any transaction that has failed to pass any authentication or validation step.(E) The system must decrypt each digital signature for each signed transaction in the pedigree using each sender's public key and compare it against the message digest to determine that the record has not been altered since it was originally signed.

(X)(A) The manufacturer must initiate the pedigree; or, until such time as the manufacturer initiates a pedigree to the wholesale distributor ~~wholesaler~~, the wholesale distributor ~~wholesaler~~ that purchased the prescription drug from the manufacturer must imbed a copy of the sales invoice or the manufacturer's EDI transmission or Advance Ship Notice (ASN) that contains all required data elements for a complete audit trail as set forth in Rule 64F-12.012, F.A.C., related to that wholesale distributor's ~~wholesaler's~~ acquisition of the prescription drug from the manufacturer. Price information related to the transaction may be redacted from the imbedded copy of the sales invoice, the EDI transmission, or the ASN.

(B) If a pedigree complies with all provisions within sub-subparagraph f. except for sub-sub-sub-subparagraph (X)(A) above, then a prescription drug wholesale distributor ~~wholesaler~~ must use another method authorized by this rule to authenticate the distribution from the manufacturer to the first wholesale distributor ~~wholesaler~~. Subsequent distributions may be authenticated in accordance with sub-subparagraph f.

2. If a pedigree cannot be authenticated because of a clerical error, the pedigree must be corrected by the sender.

3. If a pedigree cannot be authenticated and the reason is other than a clerical error, or the reason cannot be satisfactorily ascertained based on preliminary investigation, the prescription drug for which the pedigree cannot be authenticated must be quarantined and the department notified within 3 business days.

4. A purchasing wholesale distributor ~~wholesaler~~ may use a written contract between the purchasing wholesale distributor ~~wholesaler~~ and its wholesale supplier, which is a primary wholesale distributor ~~wholesaler~~ as defined in Section 499.003 (36), ~~499.012(1)(d),~~ F.S., that requires that all prescription drugs distributed to the purchasing wholesale distributor ~~wholesaler~~ by the wholesale supplier must be purchased by the wholesale supplier from the manufacturer. If this method is used to authenticate a pedigree, the purchasing wholesale distributor ~~wholesaler~~ shall establish and adhere to policies and procedures for the random verification of the authenticity of the pedigrees that disclose the wholesale supplier ~~wholesaler~~ purchased the prescription drug from the manufacturer according to statistically valid standards.

5. The following persons in Florida that are authorized to purchase or possess prescription drugs are not required to authenticate a pedigree paper received from a person authorized by law to distribute prescription drugs to that person:

a. A licensed pharmacy, unless it is also permitted as a retail pharmacy drug wholesale distributor ~~wholesaler~~ and will engage in the wholesale distribution of that drug, or unless it is a member of an affiliated group, as that term is defined at Section 499.003(2), F.S., and will distribute a prescription drug to another member of its affiliated group, that the licensed pharmacy purchased or received directly from a prescription drug wholesale distributor or out of state prescription drug wholesale distributor ~~wholesaler~~ that is not also a member of its affiliated group ~~to another member of its affiliated group~~;

b. A medical practitioner; ~~or~~

c. A restricted prescription drug distributor – health care entity;~~.~~ or

d. A health care clinic establishment.

6. In order to authenticate pedigrees, a manufacturer of a prescription drug that is sold or distributed in Florida must make available upon request information relevant to authenticating a pedigree for that drug regardless of whether the prescription drug was sold directly by the manufacturer to a person in Florida.

7. Any wholesale distributor ~~wholesaler~~ or repackager required under Chapter 499, F.S., to receive a pedigree paper must authenticate the pedigree pursuant to Section 499.0121(4), F.S., notwithstanding the absence of a pedigree paper or authentication by persons in the distribution chain not subject to the requirements of Chapter 499, F.S.

8. Convenience Kits; A wholesale distributor is not required to open a sealed medical convenience kit to authenticate a pedigree paper for a prescription drug contained within the kit.

9. All wholesale distributors of prescription drugs, unless exempted in this rule section from the requirement to authenticate a pedigree, are required to authenticate the pedigree upon receipt of the prescription drug. The authentication requirement includes but its not limited to authentication of pedigree transactions involving prescription drugs included within a sealed medical convenience kit.

(6) Any establishment that is permitted as a prescription drug wholesale distributor ~~wholesaler~~ or repackager must notify the department in writing within three working days of discovery of a significant loss or theft of prescription drugs. Whether a loss or theft is significant is to be based on the prescription drug wholesale distributor's ~~wholesaler's~~ written policies and procedures that may take into account the actual quantity in relation to the type or size of the business; any pattern of losses or thefts; and local trends or other indicators of the diversion potential. Notification to the Drugs, Devices and Cosmetic Program may be made by facsimile to (850)413-6982 and must include at a minimum, identification of the permitted establishment reporting the loss or theft; a complete identification of the prescription drug(s) involved, including but not limited to the name of the manufacturer or distributor reflected on the label of the products, the dosage form, strength, container size, the quantity of each, the lot numbers if known; a brief description of the circumstances surrounding the theft or loss; and a contact person's name and telephone number to provide additional information.

(7) Due Diligence Inspection. With respect to the inspection required under Section 499.0121(13)~~(12)~~(e), F.S., a prescription drug wholesale distributor ~~wholesaler~~ may rely on a due diligence inspection performed by a person that is independent of both wholesale distributors ~~wholesalers~~ for purposes of the requirement in Section 499.0121(13)~~(12)~~(e), F.S.

Rulemaking ~~Specific~~ Authority 499.0121~~(1)~~, 499.05 FS. Law Implemented 499.002, 499.003, 499.004, 499.006, 499.007, 499.012, 499.0121, 499.01212, 499.028(6), 499.05, 499.052 FS. History–New 7-8-84, Amended 1-30-85, Formerly 10D-45.535, Amended 11-26-86, 7-1-96, Formerly 10D-45.0535, Amended 1-26-99, 4-17-01, 1-1-04, 1-19-06, 11-18-07, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Rebecca Poston, R.Ph.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Dr. Ana Viamonte Ros, State Surgeon General

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 9, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 2, 2009

FINANCIAL SERVICES COMMISSION

Securities

RULE NO.:	RULE TITLE:
69W-600.0021	Effect of Law Enforcement Records on Applications for Registration as Associated Persons

PURPOSE AND EFFECT: The proposed rule imposes disqualifying periods pursuant to which an applicant will be disqualified from eligibility for registration based upon criminal convictions, pleas of nolo contendere, or pleas of guilt, regardless of whether adjudication was withheld. The proposed rule applies to persons applying for registration as an associated person.

SUMMARY: The rule sets forth the policies of the Office of Financial Regulation with respect to processing registration applications for persons who have been found guilty of, or who have pled guilty or nolo contendere to, certain crimes. The rule makes a general classification of crimes into two classes: Class A and Class B. Class A crimes address felonies involving fraud, dishonesty or any other act of moral turpitude; and Class B crimes address misdemeanors involving those same issues. Under the proposed rule, the disqualification period for a Class A crime is 15 years. For Class B crimes, the disqualification period is 5 years. The rule provides that the disqualification period will be extended if the applicant has multiple Class A or B crimes, and it provides that mitigating factors may be considered to reduce disqualifying periods. The disqualifying periods established in the rule do not give an applicant a right to registration after any set period of time. Regardless of the expiration of any disqualifying period imposed by the rule, the burden to prove entitlement to registration remains on the applicant. Other factors related to the consideration of the applicant's criminal history are also addressed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: A statement of estimated regulatory cost has been prepared and may be obtained by contacting Pam Epting, Chief, Bureau of Regulatory Review, Office of

Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399-0375, (850)410-9500, pam.epting@flofr.com.

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.

RULEMAKING AUTHORITY: 517.1611(2) FS.

LAW IMPLEMENTED: 517.12, 517.161 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: Pam Epting, Chief, Bureau of Regulatory Review, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399-0375, (850)410-9500, pam.epting@flofr.com

THE FULL TEXT OF THE PROPOSED RULE IS:

69W-600.0021 Effect of Law Enforcement Records on Applications for Registration as Associated Persons.

(1) General Procedure Regarding Law Enforcement Records. As part of the application review process, the Office is required to consider an applicant's law enforcement record when deciding whether to approve an application for registration as an associated person. When conducting this review, the Office reviews the applicant's Form U-4 responses, criminal history information derived from the fingerprint check, and information from other resources such as the Financial Industry Regulatory Authority. In the event of a question regarding the applicant's criminal history, the Office may request additional information from the applicant to determine the status of a criminal event, the specific facts and circumstances surrounding a criminal event, or to address other issues determined relevant to the review of the law enforcement record. The Office will notify the applicant of any specific documents that it requires in order to complete its review. Documentation that is typically requested 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.

If the requested documentation cannot be obtained, the applicant shall submit evidence of that fact in order for the application to be deemed complete. 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.

(2) 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 on the Form U-4 is a material misrepresentation or material misstatement on the application and the application shall be denied pursuant to Section 517.161(1)(b), F.S.

(b) If the Office discovers the applicant's failure to disclose any part of a law enforcement record required to be disclosed on the Form U-4 after a registration has been granted, the Office will suspend or revoke each registration currently held by the applicant as follows:

1. Suspension for 12 months if, had the application been accurate, the application would have been granted, based on the statutes and rules applicable to the application at the time the Office granted registration.

2. Revocation if, had the application been accurate, the application would have been denied, based on the statutes and rules applicable to the application at the time the Office granted registration.

(3) Classification of Crimes.

(a) The Office makes a general classification of crimes into two classes: A and B, as listed in subsections (14) and (15), 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) For purposes of this rule, "trigger date" means the date on which an applicant was found guilty, or pled guilty, or pled nolo contendere to a crime.

(e) 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.

(4) Applicants with a Single Crime. The Office finds it necessary to implement the following standards for applicants whose law enforcement record includes a single crime, subject to the mitigating factors set forth in this rule before registration. All periods referenced in this rule run from the trigger date.

(a) Class A Crime. The applicant will not be granted a registration until 15 years have passed since the trigger date.

(b) Class B Crime. The applicant will not be granted registration until 5 years have passed since the trigger date.

(5) Applicants With Multiple Crimes.

(a) The Office construes Section 517.161, F.S., to require that an applicant whose law enforcement record includes multiple class "A" or "B" crimes, or any combination thereof, wait longer than those whose law enforcement record includes only a single crime before becoming eligible for registration in order to assure that such applicant'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 registration can safely be granted. Accordingly, where the applicant 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 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 based on the same act or transaction or on two (2) or more connected acts or transactions.

(6) Mitigating Factors.

(a) The disqualifying period for a Class "A" or "B" 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 of 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 registered as an associated person.

2. One year is deducted if restitution or settlement has been made for all crimes in which wherein 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 registration is allowed and one additional year shall be deducted if the Office agrees the facts have a mitigating effect on the registration decision.

(b) 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.

(7) 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 plea, e.g., 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 wherein 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) Subjective Factors. The Office finds that subjective factors involving state of mind have no mitigating weight.

(8) Effect of Pending Appeal in Criminal Proceedings; Reversal on Appeal.

(a) The Office interprets the statutory grounds for denial of registration 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 registration, 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 registration.

(9) Pre-Trial Intervention. The Office considers participation in a pre-trial intervention program to be a pending criminal enforcement action and will not grant registration to any 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 registration may be considered.

(10) 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, 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 an applicant will have a matter sealed or expunged after submitting his or her application, but before a registration decision is made by the Office. In such situations the Office policy is as follows:

1. If the applicant 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 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 517.161(1)(b), F.S.

(11) 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 prosse; 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.

(12) Imprisoned Persons and Community Supervision.

(a) Imprisonment. Notwithstanding any provision to the contrary in this rule, the Office shall not register any applicant under Chapter 517, F.S., while the applicant is imprisoned, under arrest, or serving a sentence for any crime. Further, the Office shall not register any applicant who has been released from imprisonment until the later of the period otherwise set out in these rules or five (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 five (5) years on good behavior, before registration can be granted without undue risk to the public welfare.

(b) Community Supervision. The Office shall not grant registration to any person who at the time of application or at any time during the pendency of the application is under supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of the courts, paroling authorities, correctional agencies, or other criminal justice agencies for any felony crime or any misdemeanor crime involving fraud, dishonest dealing, or moral turpitude.

(13) Effect of Disqualifying Periods. The disqualifying periods established in this rule do not give an applicant a right to registration after any set period of time. Regardless of the expiration of any disqualifying period imposed by these rules, the burden to prove entitlement to registration remains on the applicant.

(14) Class “A” Crimes include felonies involving an act of fraud, dishonesty, or a breach of trust, or money laundering, and the Office finds that such crimes constitute crimes of moral turpitude. The Office finds the following list of crimes are Class “A” crimes. 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.

(15) Class "B" Crimes include any misdemeanor that involves fraud, dishonest dealing or any other act of moral turpitude.

(16) 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; for example, the right of a defendant to a public trial, the right against self-incrimination, the right of notice of the charges, the right to confront witnesses, the right to call witnesses, and the right to counsel.

(17) Form U-4 is incorporated by reference in subsection 69W-301.002(7), F.A.C.

Rulemaking Authority 517.1611(2) FS. Law Implemented 517.12, 517.161 FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Pam Epting, Chief, Bureau of Regulatory Review, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399-0375, (850)410-9500, pam.epting@flofr.com

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Financial Services Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 13, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 21, 2009

Section III
Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF REVENUE

Miscellaneous Tax

RULE NO.:	RULE TITLE:
12B-8.003	Tax Statement; Overpayments

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 35, No. 37, September 18, 2009 issue of the Florida Administrative Weekly.

This rule adopts, by reference, Form DR-908, Insurance Premium Taxes and Fees Return for Calendar Year 2009, and Form DR-908N, Instructions for Preparing Form DR-908, Florida Insurance Premium Taxes and Fees Return.

The proposed changes to amend the statement on Page 3, under Schedule III (Credits Against the Premium Tax), to add a statement on Page 4, under Schedule IV (Computation of Salary Credit), and to amend the statement on Page 4, under Schedule V (Corporate Income, Emergency Excise, Salary and SFO Credit Limitation), of Form DR-908, have been withdrawn. When adopted, this statement will not be included on Page 4, under Schedule IV, and no changes will be made to the statement on Page 3, under Schedule III, or to the statement on Page 4, under Schedule V.

Form GT-600002 (Florida Insurance Premium Taxes and Fees Suggested Consolidated Corporate Income Tax Allocation Schedule), as referenced in the proposed changes to Form DR-908N, has been withdrawn. Form GT-600002 will not be used by the Department.

The following provision to the instructions on Page 7, for Schedule IV, Line 4. (Corporate Income Tax and Emergency Excise Tax Paid), and on Page 8, for Schedule V, Line 1. (Total Corporate Income Tax and Emergency Excise Tax Paid), and on Page 12, for Schedule XIV, Line 3. (Total Corporate Income Tax and Emergency Excise Tax), of Form DR-908N, has been withdrawn:

Attach a schedule showing the computation allocating the corporate income tax among the filers included in a Florida corporate income tax return. Form GT-600002 (Florida Insurance Premium Taxes and Fees Suggested Consolidated Corporate Income Tax Allocation Schedule), is included with