

(o) Whether the individual or firm engaged in the misconduct at issue, notwithstanding prior direct notice from the Office, another regulatory authority or the firm’s staff, that the conduct may or will violate the provisions of Chapter 517, F.S.;

(p) Whether the individual or firm can demonstrate that the misconduct at issue was not reflective of their historical compliance record;

(q) Whether the individual’s or firm’s misconduct resulted in actual or potential financial or other gain or the value of such gain.

(r) The number, size and character of the transactions at issue;

(s) The age, financial status, and level of investment sophistication of the investor;

(t) Whether the violation is attributable to a principal, manager, supervisor or person exercising a similar function;

(u) The financial resources of the firm, nature of the firm’s business, the number of individuals registered with the firm, the level of trading activity of the firm, other entities the firm controls, is controlled by, or is under common control with;

(v) Whether the violation of the ground for disciplinary action is the result of an individual acting alone or the result of two or more persons acting in furtherance of an agreement, scheme or plan; and

(w) Other relevant, case-specific circumstances.

(6)(a) The fines imposed for violation of a ground for disciplinary action are up to \$2,000 for a level “A” fine, \$2,001 to \$5,000 for a level “B” fine, \$5,001 to \$7,500 for a level “C” fine and \$7,501 to \$10,000 for a level “D” fine. The mitigating and aggravating circumstances provided in subsection (5) may be applied to the fines imposed for violation of a ground for disciplinary action resulting in a range of fines of up to \$2,000 for a level “A” fine, \$2,001 to \$5,000 for a level “B” fine, \$5,001 to \$7,500 for a level “C” fine and \$7,501 to \$10,000 for a level “D” fine.

(b) A Notice of Noncompliance shall be a statement issued by the Office as described in Section 120.695, F.S. For the purpose of this rule, a Notice of Noncompliance is not considered an occurrence of a violation.

(c) A previous “occurrence” is the same or similar misconduct which was the subject of a Final Order entered by the Office prior to the acts or omissions which are the subject of the current action by the Office.

(7) The ranges for suspensions imposed by this rule are up to 5 days for an “A” level suspension; 6 to 30 days for a “B” level suspension; and, over 30 days for a “C” level suspension. A business day is defined as a day the major stock exchanges are open. Suspensions of 30 or fewer days are measured in business days while a suspension of 31 or more days is measured in calendar days. The mitigating and agravating circumstances provided in subsection (5) may be applied to the suspensions imposed for violation of a ground for disciplinary

action resulting in a range of suspension of up to 5 days for an “A” level suspension; 6 to 30 days for a “B” level suspension; and over 30 days for a “C” level suspension.

(8) In addition to the provisions of this rule, the Office may, when appropriate, seek civil remedies including the entry of an injunction, the appointment of a receiver by a court of competent jurisdiction, or any other remedy authorized by law.

Rulemaking Authority 517.1611(1) FS. Law Implemented 517.1611(1) FS. History–New _____.

Section II Proposed Rules

DEPARTMENT OF REVENUE

RULE NO.:	RULE TITLE:
12-13.004	Delegation of Authority to Determine Settlements or Compromises

PURPOSE AND EFFECT: Section 213.21(2), F.S., authorizes the Executive Director of the Department to designate positions within the Department that may enter into agreements with a taxpayer to settle or compromise the taxpayer’s liability for any tax, interest, or penalty assessed. The purpose of the proposed amendments to Rule 12-13.004, F.A.C. (Delegation of Authority to Determine Settlements or Compromises), is to update the rule to reflect the positions within the Department authorized to settle or compromise a taxpayer’s assessment.

SUMMARY: The proposed amendments to Rule 12-13.004, F.A.C. (Delegation of Authority to Determine Settlements or Compromises): (1) update the positions authorized by the Executive Director of the Department to settle or compromise a taxpayer’s assessment to reflect the current organizational structure of the General Tax Administration Program and Technical Assistance and Dispute Resolution; and (2) simplify the rule by providing these delegations of authority in a chart, for ease of reference.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: A statement of estimated regulatory costs has not been prepared by the agency. Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower-cost regulatory alternative, must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 213.06(1), 213.21(5) FS.

LAW IMPLEMENTED: 213.05, 213.21 FS.

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

DATE AND TIME: June 24, 2010, 9:00 a.m.

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

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any rulemaking proceeding before Technical Assistance and Dispute Resolution is asked to advise the Department at least 48 hours before such proceeding by contacting Sarah Wachman at (850)922-4830. Persons with hearing or speech impairments may contact the Department by using the Florida Relay Service, which can be reached at (800)955-8770 (Voice) and (800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Janet L. Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9407

12-13.004 Delegation of Authority to Determine Settlements or Compromises.

(1) through (2) No change.

(3) Cases in Protest. In cases involving a tax matter in protest ~~in Technical Assistance and Dispute Resolution~~, authority to settle and compromise is delegated as follows:

(a) through (b) No change.

(c) For compromise of the following amounts of tax, ~~or interest, or of \$125,000 each or less and of penalty in any amount,~~ to the Office Director of Technical Assistance and Dispute Resolution, ~~and the Program Director and Deputy Program Director within the General Tax Administration Program;~~

THE FULL TEXT OF THE PROPOSED RULE IS:

<u>Positions</u>	<u>Tax</u>	<u>Interest</u>	<u>Penalty</u>
<u>Technical Assistance and Dispute Resolution</u>			
<u>Director</u>	<u>\$125,000</u>	<u>\$125,000</u>	<u>Any Amount</u>
<u>Deputy Director</u>	<u>\$125,000</u>	<u>\$125,000</u>	<u>Any Amount</u>
<u>Revenue Program Administrators I and II</u>	<u>\$ 62,500</u>	<u>\$ 62,500</u>	<u>\$250,000</u>
<u>Senior Attorneys</u>	<u>\$ 12,500</u>	<u>\$ 12,500</u>	<u>\$ 75,000</u>
<u>Attorneys</u>	<u>\$ 12,500</u>	<u>\$ 12,500</u>	<u>\$ 75,000</u>
<u>Tax Law Specialists</u>	<u>\$ 12,500</u>	<u>\$ 12,500</u>	<u>\$ 75,000</u>
<u>Senior Tax Specialists</u>	<u>\$ 12,500</u>	<u>\$ 12,500</u>	<u>\$ 75,000</u>
<u>General Tax Administration Program</u>			
<u>Program Director</u>	<u>\$125,000</u>	<u>\$125,000</u>	<u>Any Amount</u>
<u>Deputy Program Director</u>	<u>\$125,000</u>	<u>\$125,000</u>	<u>Any Amount</u>
<u>Regional Managers</u>	<u>\$ 62,500</u>	<u>\$ 62,500</u>	<u>\$250,000</u>
<u>Service Center Managers</u>	<u>\$ 1,250</u>	<u>\$ 1,250</u>	<u>\$ 75,000</u>
<u>Tax Audit Supervisors</u>	<u>-0-</u>	<u>-0-</u>	<u>\$ 37,500</u>
<u>Tax Specialists</u>	<u>-0-</u>	<u>-0-</u>	<u>\$ 3,750</u>
<u>Revenue Specialist</u>	<u>-0-</u>	<u>-0-</u>	<u>\$ 3,750</u>
<u>Taxpayer Services Process</u>			
<u>Process Manager</u>	<u>\$ 62,500</u>	<u>\$ 62,500</u>	<u>\$250,000</u>
<u>Revenue Program Administrators</u>	<u>\$ 2,500</u>	<u>\$ 2,500</u>	<u>\$ 75,000</u>
<u>Tax Specialist Administrators</u>	<u>\$ 2,500</u>	<u>\$ 2,500</u>	<u>\$ 75,000</u>
<u>Revenue Administrators</u>	<u>\$ 2,500</u>	<u>\$ 2,500</u>	<u>\$ 75,000</u>
<u>Revenue Managers</u>	<u>\$ 1,250</u>	<u>\$ 1,250</u>	<u>\$ 12,500</u>
<u>Compliance Support Process</u>			
<u>Process Manager</u>	<u>\$ 62,500</u>	<u>\$ 62,500</u>	<u>\$250,000</u>
<u>Revenue Program Administrators</u>	<u>\$ 12,500</u>	<u>\$ 12,500</u>	<u>\$ 75,000</u>
<u>Tax Law Specialists</u>	<u>\$ 12,500</u>	<u>\$ 12,500</u>	<u>\$ 75,000</u>
<u>Senior Tax Specialists</u>	<u>\$ 12,500</u>	<u>\$ 12,500</u>	<u>\$ 75,000</u>
<u>Government Analysts II</u>	<u>\$ 12,500</u>	<u>\$ 12,500</u>	<u>\$ 75,000</u>

(d) For compromise of amounts of tax or interest of \$62,500 each or less and penalty of \$250,000 or less, to the Revenue Program Administrators I and II Technical Assistance and Dispute Resolution, and the Process Managers of the Taxpayer Services, Compliance Enforcement, and Compliance Support Processes.

(e) For compromise of amounts of tax or interest of \$12,500 each or less and of penalty of \$125,000 or less, to all Regional Managers of the Compliance Enforcement.

(f) For compromise of amounts of tax or interest of \$12,500 each or less and of penalty of \$75,000 or less, to the Senior Attorneys, Attorneys, Tax Law Specialists, and Senior Tax Specialists of Technical Assistance and Dispute Resolution, and the Revenue Program Administrators, Tax Law Specialists, Senior Tax Specialists and Government Analysts IIs of the Compliance Support Process.

(g) For compromise of amounts of tax or interest of \$2,500 each or less and of penalty of \$75,000 or less, to the Revenue Program Administrators II and Revenue Administrators III of the Taxpayer Services Process.

(h) For compromise of amounts of tax or interest of \$1,250 each or less and of penalty of \$75,000 or less, to the Service Center Managers of the Compliance Enforcement Process.

(i) For compromise of amounts of tax or interest of \$1,250 each or less and of penalty of \$12,500 or less, to the Tax Specialists I and II, the Revenue Managers of the Taxpayer Services Process, and the Revenue Managers of the Compliance Enforcement Process.

(j) For compromise of amounts of tax or interest of \$625 each or less and penalty of \$3,750 or less, to the Revenue Specialists I, II, and III of the Taxpayer Services Process.

(k) For compromise of penalty of \$75,000 or less, to the Revenue Program Administrators I and II of the Compliance Enforcement Process.

(l) For compromise of penalty of \$37,500 or less, to the Process Group Managers or Tax Audit Supervisor positions in the Compliance Enforcement Process.

(m) For compromise of penalty of \$12,500 or less, to the Tax Specialist Administrators of the Compliance Support Process.

(n) For compromise of penalty of \$12,500 or less, to the Tax Specialist II of the Program Director's Office within the General Tax Administration Program.

(o) For compromise of penalty of \$3,750 or less, to the Revenue Specialists I, II, and III of the Compliance Enforcement Process.

(4) Collection Cases. In cases involving a tax matter related to billings or assessments that which have been issued by or referred for collection to the Taxpayer Services Process, authority to settle and compromise is delegated as follows:

(a) through (b) No change.

(c) For compromise of the following amounts of tax, ~~or~~ interest, or of \$125,000 each or less and penalty in any amount, to the Program Director and Deputy Program Director of the General Tax Administration Program:-

<u>Positions</u>	<u>Tax</u>	<u>Interest</u>	<u>Penalty</u>
<u>General Tax Administration Program</u>			
<u>Program Director</u>	<u>\$125,000</u>	<u>\$125,000</u>	<u>Any Amount</u>
<u>Deputy Program Director</u>	<u>\$125,000</u>	<u>\$125,000</u>	<u>Any Amount</u>
<u>Regional Managers</u>	<u>\$ 62,500</u>	<u>\$ 62,500</u>	<u>\$250,000</u>
<u>Service Center Managers</u>	<u>\$ 1,250</u>	<u>\$ 1,250</u>	<u>\$ 75,000</u>
<u>Revenue Administrators</u>	<u>\$ 1,250</u>	<u>\$ 1,250</u>	<u>\$ 12,500</u>
<u>Tax Specialists</u>	<u>\$ 1,250</u>	<u>\$ 1,250</u>	<u>\$ 12,500</u>
<u>Tax Audit Supervisors</u>	<u>-0-</u>	<u>-0-</u>	<u>\$ 37,500</u>
<u>Revenue Specialists</u>	<u>-0-</u>	<u>-0-</u>	<u>\$ 3,750</u>
<u>Taxpayer Services Process</u>			
<u>Process Manager</u>	<u>\$ 62,500</u>	<u>\$ 62,500</u>	<u>\$250,000</u>
<u>Revenue Program Administrators</u>	<u>\$ 2,500</u>	<u>\$ 2,500</u>	<u>\$ 75,000</u>
<u>Revenue Administrators</u>	<u>\$ 2,500</u>	<u>\$ 2,500</u>	<u>\$ 75,000</u>
<u>Tax Specialist Administrators</u>	<u>\$ 2,500</u>	<u>\$ 2,500</u>	<u>\$ 75,000</u>
<u>Revenue Managers</u>	<u>\$ 1,250</u>	<u>\$ 1,250</u>	<u>\$ 12,500</u>
<u>Tax Specialists</u>	<u>-0-</u>	<u>-0-</u>	<u>\$ 12,500</u>
<u>Revenue Specialists</u>	<u>-0-</u>	<u>-0-</u>	<u>\$ 3,750</u>
<u>Compliance Support Process</u>			
<u>Process Manager</u>	<u>\$ 62,500</u>	<u>\$ 62,500</u>	<u>\$250,000</u>
<u>Revenue Program Administrators</u>	<u>\$ 12,500</u>	<u>\$ 12,500</u>	<u>\$ 75,000</u>

<u>Returns and Revenue Process</u>			
<u>Process Manager</u>	<u>\$ 62,500</u>	<u>\$ 62,500</u>	<u>\$250,000</u>
<u>Tax Specialist Administrators</u>	<u>\$ 2,500</u>	<u>\$ 2,500</u>	<u>\$ 75,000</u>
<u>Revenue Manager</u>	<u>\$ 1,250</u>	<u>\$ 1,250</u>	<u>\$ 12,500</u>
<u>Revenue Specialists</u>	<u>-0-</u>	<u>-0-</u>	<u>\$ 3,750</u>

(d) For compromise of amounts of tax or interest of \$62,500 each or less and penalty of \$250,000 or less, to the Process Managers of the Taxpayer Services, Compliance Enforcement, and Compliance Support Processes.

(e) For compromise of amounts of tax or interest of \$12,500 each or less and penalty of \$125,000 or less, to the Regional Managers of the Compliance Enforcement Process.

(f) For compromise of amounts of tax or interest of \$12,500 each or less and penalty of \$75,000 or less, to the Revenue Program Administrators I and II of the Compliance Support Process.

(g) For compromise of amounts of tax or interest of \$2,500 each or less and penalty of \$75,000 or less, to the Revenue Program Administrators II, Revenue Administrators III, and Tax Specialist Administrators of the Taxpayer Services Process.

(h) For compromise of amounts of tax or interest of \$1,250 each or less and penalty of \$75,000 or less, to the Service Center Managers of the Compliance Enforcement Process.

(i) For compromise of amounts of tax or interest of \$1,250 each or less and penalty of \$12,500 or less, to the Revenue Managers and Tax Specialists I and II of the Taxpayer Services Process and Revenue Managers of the Compliance Enforcement Process.

(j) For compromise of amounts of tax or interest of \$625 each or less and penalty of \$3,750 or less, to the Revenue Specialists I, II, and III of the Taxpayer Services Process.

(k) For compromise of penalty in amounts of \$75,000 or less, to all Revenue Program Administrators I and II of the Compliance Enforcement Process.

(l) For compromise of penalty in amounts of \$37,500 or less, to all the Process Group Managers of the Compliance Enforcement Process.

(m) For compromise of penalty in amounts of \$12,500 or less, to all Tax Specialist Administrators, Tax Audit Support Services Supervisors, Senior Tax Specialists (Case Processing and Contract Audits) of the Compliance Support Process.

(n) For compromise of penalty of \$12,500 or less, to the Tax Specialist II of the Program Director's Office within the General Tax Administration Program.

(o) For compromise of penalty in amounts of \$3,750 or less, to all Revenue Specialists I, II, and III of the Compliance Enforcement Process.

(p) Once an audit assessment has become final, the authority to compromise delegated pursuant to paragraphs (e) through (o) shall be limited to compromises based on doubt as to collectibility or reasonable cause based upon doubt as to collectibility.

(5) Audit Cases. In cases involving an audit of the taxpayer, or an audit conducted pursuant to a refund request, prior to initiation of litigation pursuant to Section 72.011, F.S., or expiration of the period for initiating same, or upon initial receipt of a protest involving penalty issues only, authority to settle and compromise is delegated as follows:

(a) through (b) No change.

(c) For compromise of the following amounts of tax, or interest, or of \$62,500 each or less and penalty of \$250,000 or less, to the General Tax Administration Program Process Managers of the Taxpayer Services, Compliance Enforcement, and Compliance Support Processes:

<u>Positions</u>	<u>Tax</u>	<u>Interest</u>	<u>Penalty</u>
<u>General Tax Administration Program</u>			
<u>Program Director</u>	<u>\$125,000</u>	<u>\$125,000</u>	<u>Any Amount</u>
<u>Deputy Program Director</u>	<u>\$125,000</u>	<u>\$125,000</u>	<u>Any Amount</u>
<u>Regional Managers</u>	<u>\$ 62,500</u>	<u>\$ 62,500</u>	<u>\$250,000</u>
<u>Service Center Managers</u>	<u>\$ 1,250</u>	<u>\$ 1,250</u>	<u>\$ 75,000</u>
<u>Revenue Administrators</u>	<u>\$ 1,250</u>	<u>\$ 1,250</u>	<u>\$ 12,500</u>
<u>Tax Audit Supervisors</u>	<u>-0-</u>	<u>-0-</u>	<u>\$ 37,500</u>
<u>Tax Specialists</u>	<u>-0-</u>	<u>-0-</u>	<u>\$ 3,750</u>
<u>Revenue Specialist</u>	<u>-0-</u>	<u>-0-</u>	<u>\$ 3,750</u>
<u>Taxpayer Services Process</u>			
<u>Process Manager</u>	<u>\$ 62,500</u>	<u>\$ 62,500</u>	<u>\$250,000</u>

<u>Compliance Support Process</u>			
<u>Process Manager</u>	<u>\$ 62,500</u>	<u>\$ 62,500</u>	<u>\$250,000</u>
<u>Revenue Program Administrators</u>	<u>\$ 12,500</u>	<u>\$ 12,500</u>	<u>\$ 75,000</u>
<u>Tax Law Specialists</u>	<u>\$ 1,250</u>	<u>\$ 1,250</u>	<u>\$ 37,500</u>
<u>Senior Tax Specialists</u>	<u>\$ 1,250</u>	<u>\$ 1,250</u>	<u>\$ 37,500</u>
<u>Government Analysts II</u>	<u>\$ 1,250</u>	<u>\$ 1,250</u>	<u>\$ 37,500</u>

(d) For compromise of amounts of tax or interest of \$12,500 each or less and penalty of \$125,000 or less, to the Regional Managers of the Compliance Enforcement Process.

(e) For compromise of amounts of tax or interest of \$12,500 each or less and penalty of \$75,000 or less, to the Revenue Program Administrators I and II of the Compliance Support Process.

(f) For compromise of amounts of tax or interest of \$1,250 each or less and penalty of \$75,000 or less, to the Service Center Managers of the Compliance Enforcement Process.

(g) For compromise of amounts of tax or interest of \$1,250 each or less and penalty of \$12,500 or less, to the Revenue Managers of the Compliance Enforcement Process.

(h) For compromise of amounts of penalty of \$75,000 or less, to all Revenue Program Administrators I and II of the Compliance Enforcement Process.

(i) For compromise of penalty in amounts of \$37,500 or less, to all Process Group Managers or Tax Audit Supervisor positions in the Compliance Enforcement Process.

(j) For compromise of amounts of tax or interest of \$1,250 each or less, and penalty in amounts of \$37,500 or less, to all Tax Specialist Administrators, Tax Law Specialists, Senior Tax Specialists, and Government Analysts II of the Compliance Support Process and Tax Specialists II within the General Tax Administration Program.

(k) For compromise of amounts of penalty of \$3,750 or less, to all Revenue Specialists I, II, and III of the Compliance Enforcement Process.

(6) Refund Cases. In cases involving refund requests that have not been referred for audit, prior to initiation of litigation pursuant to Section 72.011, F.S., or prior to expiration of the period for initiating same, authority to settle and compromise is delegated as follows to the Office of General Counsel and to the General Tax Administration Program:

<u>Positions</u>	<u>Tax</u>	<u>Interest</u>	<u>Penalty</u>
<u>Office of General Counsel</u>			
<u>General Counsel</u>	<u>\$250,000</u>	<u>Any Amount</u>	<u>Any Amount</u>
<u>Deputy General Counsel</u>	<u>\$250,000</u>	<u>Any Amount</u>	<u>Any Amount</u>
<u>General Tax Administration Program</u>			
<u>Program Director</u>	<u>-0-</u>	<u>-0-</u>	<u>Any Amount</u>
<u>Deputy Program Director</u>	<u>-0-</u>	<u>-0-</u>	<u>Any Amount</u>
<u>Refunds and Revenue Distribution Process</u>			
<u>Process Manager</u>	<u>-0-</u>	<u>-0-</u>	<u>\$100,000</u>
<u>Senior Tax Audit Administrator</u>	<u>-0-</u>	<u>-0-</u>	<u>\$ 30,000</u>
<u>Tax Audit Supervisors</u>	<u>-0-</u>	<u>-0-</u>	<u>\$ 15,000</u>

(a) For compromise of amounts of penalty of \$100,000 or less, to the Process Manager of the Refunds and Revenue Distribution Process.

(b) For compromise of amounts of penalty of \$30,000 or less, to the Senior Tax Audit Administrator in the Refunds and Revenue Distribution Process.

(c) For compromise of amounts of penalty of \$15,000 or less, to the Tax Audit Supervisors in the Refunds and Revenue Distribution Process.

(7) In all other circumstances not previously described in this rule, authority to settle and compromise tax in amounts of \$250,000 or less and interest and penalty in any amount is delegated to the Deputy Executive Directors, the General Counsel, and the Deputy General Counsel.

(8)(a) ~~When the Executive Director delegates~~ When the Executive Director delegates also shall have discretionary authority to delegate authority to settle and compromise to specific employees or positions that are not

provided in this rule, the delegation will be in writing, signed by the Executive Director, and will be on a temporary basis pursuant to the following circumstances:

1. The issue assigned to the employee exceeds the monetary amount the employee is currently authorized to settle or compromise pursuant to this rule ~~chapter~~; or

2. The employee has assumed the duties of another employee who has authority, or a higher authority, to settle or compromise tax, interest, and penalty, and refund requests.

(b) A temporary delegation of authority to any employee or position will ~~beyond that described herein shall be in writing, signed by the Executive Director, and shall~~ be for a specified time period of no more than 2 years.

(c) Such delegations cannot grant authority to compromise tax in excess of \$250,000.

(d) Copies of ~~any such~~ written delegations of authority are ~~shall be~~ maintained on file with the agency clerk in the Office of General Counsel.

Rulemaking Specific Authority 213.06(1), 213.21(5) FS. Law Implemented 213.05, 213.21 FS. History—New 5-23-89, Amended 8-10-92, 10-24-96, 10-2-01, 10-4-04, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Janet Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9407

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: The Governor and Cabinet

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 11, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Proposed Rule Development Workshop was published in the Florida Administrative Weekly on September 25, 2009 (Vol. 35, No. 38, pp. 4635-4636). A rule development workshop was conducted on October 13, 2009. No comments were received by the Department.

DEPARTMENT OF REVENUE

RULE NO.: 12-16.004
 RULE TITLE: Delegation of Authority

PURPOSE AND EFFECT: Section 213.23, F.S., authorizes the Executive Director of the Department to designate those positions within the Department that may enter into consent agreements with a taxpayer to extend the period during which an assessment may be issued or a claim for refund may be filed. The purpose of the proposed amendments to Rule 12-16.004, F.A.C., is to update the positions within the Department authorized to enter into consent agreements.

SUMMARY: The proposed amendments to Rule 12-16.004, F.A.C. (Delegation of Authority): (1) update the positions authorized by the Executive Director of the Department to enter into consent agreements with taxpayers to reflect the

current organizational structure of the General Tax Administration Program and Technical Assistance and Dispute Resolution; and (2) simplify the language used in the rule.

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: 213.06(1) FS.

LAW IMPLEMENTED: 213.23 FS.

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

DATE AND TIME: June 24, 2010, 9:00 a.m.

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

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Sarah Wachman at (850)922-4830. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Janet L. Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9407

THE FULL TEXT OF THE PROPOSED RULE IS:

12-16.004 Delegation of Authority.

(1) In addition to the statutory authority granted by Section 213.23, F.S., the Executive Director of the Department has authority to enter into consent agreements or extensions of consent agreements with taxpayers under authority granted by the Governor and Cabinet acting as the head of the Department. Cross Reference: Rule 12-3.007, F.A.C.

(2) The Executive Director of the Department hereby delegates authority to enter into consent agreements and extensions of consent agreements with taxpayers under Section 213.23, F.S., to the following designated positions in the Department:

(a) The Deputy Executive Director, the General Counsel, the Deputy General Counsel, and ~~the~~ an Assistant General Counsels.

(b) Within ~~the Office of~~ Technical Assistance and Dispute Resolution:

1. The Director and Deputy Director of Technical Assistance and Dispute Resolution; and

2. All Revenue Program Administrators, Senior Attorneys, Attorneys, Tax Law Specialists, and Senior Tax Specialists in the Office of Technical Assistance and Dispute Resolution;

(c) Within the General Tax Administration (GTA) Program:

~~1. The GTA Program Director and the Deputy Program Director in the Office of the Program Director.~~

~~1.2. Director's Office – The Program Director, Deputy Program Director, Process Manager of the Compliance Enforcement Process, and all Revenue Program Administrators, Regional Managers, Service Center Managers, Senior Revenue Consultants, Revenue Administrators II, Tax Audit Supervisors, Revenue Administrators, Senior Tax Specialists, Tax Law Specialists, Tax Audit Supervisors, Tax Auditors, Tax Specialists, and Revenue Specialists II and III.~~

~~2.3. Compliance Support Process – The Process Manager, and all Revenue Program Administrators, Tax Specialist Administrators, Tax Law Specialists, Government Analysts II, and Senior Tax Specialists, and Government Analysts II in the Compliance Support Process.~~

~~3.4. Taxpayer Services Process – The Process Manager, of the Taxpayer Services Process and all Revenue Program Administrators, Revenue Administrators, Revenue Managers and Tax Specialist Administrators, Revenue Managers, and Revenue Specialists in the Taxpayer Services Process.~~

~~4.5. Refunds and Distribution Process – The Process Manager of the Refunds and Distribution Process and all Revenue Program Administrators, and all Senior Tax Audit Administrators, Senior Tax Specialists, Tax Audit Supervisors, and Tax Auditors in the Refunds and Distribution Process.~~

~~5.6. When the Executive Director delegates has discretionary authority to delegate authority to enter into consent agreements to specific employees or positions that which are not provided enumerated in this rule, the these rules. However, a delegation of authority will to an employee or position beyond those described herein shall be in writing, signed by the Executive Director, and will shall be for a specified time period. The renewal of such Such delegations will also may be renewed in writing, signed by the Executive Director. Copies of any such written delegations of authority are shall be maintained on file with the agency clerk in the Office of General Counsel.~~

Rulemaking Specific Authority 213.06(1) FS. Law Implemented 213.23 FS. History–New 12-28-88, Amended 3-16-93, 12-2-03,

NAME OF PERSON ORIGINATING PROPOSED RULE:
Janet L. Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9407
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: The Governor and Cabinet

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 11, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Proposed Rule Development Workshop was published in the Florida Administrative Weekly on September 25, 2009 (Vol. 35, No. 38, p. 4636). A rule development workshop was conducted on October 13, 2009. No comments were received by the Department.

DEPARTMENT OF REVENUE

RULE NO.: 12-17.004
RULE TITLE: Delegation of Authority

PURPOSE AND EFFECT: Section 213.21(4), F.S., authorizes the Department to enter into agreements for scheduling payments of taxes, interest, and penalties. The Executive Director of the Department has designated positions within the Department that are delegated the authority to enter into such agreements in Rule 12-17.004, F.A.C. (Delegation of Authority). The purpose of the proposed amendments to Rule 12-17.004, F.A.C., is to update the rule to reflect the positions within the Department authorized to enter into agreements for scheduling payments of liabilities.

SUMMARY: The proposed amendments to Rule 12-17.004, F.A.C. (Delegation of Authority): (1) update the positions authorized by the Executive Director of the Department to enter into agreements for scheduling payments of liabilities to reflect the current organizational structure of the General Tax Administration Program and Technical Assistance and Dispute Resolution; and (2) simplify the language used in the rule.

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: 20.05(1)(e), 213.06(1), 213.21(5) FS.

LAW IMPLEMENTED: 213.21(4) FS.

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

DATE AND TIME: June 24, 2010, 9:00 a.m.

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

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Sarah Wachman at (850)922-4830. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Janet L. Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9407

THE FULL TEXT OF THE PROPOSED RULE IS:

12-17.004 Delegation of Authority.

(1) In addition to the statutory authority granted by Section 213.21(4), F.S., the Executive Director of the Department has authority to enter into agreements with taxpayers for scheduling payments of taxes, interest, ~~and penalties, and fees~~ under authority granted by the Governor and Cabinet as the head of the Department.

~~Cross Reference: Rule 12-3.007, F.A.C.~~

(2) The Executive Director of the Department hereby delegates authority to enter into stipulated time payment agreements with taxpayers under Section 213.21(4), F.S., to the Deputy Executive Director, the General Counsel, and the Deputy General Counsel, the Program Director, ~~and the Deputy Program Director, the Regional Managers, and the Service Center Managers~~ of the General Tax Administration Program of the Department, and:

(a) In cases where a tax matter is in litigation or in protest pursuant to Rule Chapter 12-6, F.A.C., to:

1. The Assistant General Counsels ~~of the Department;~~
2. The Director, the Deputy Director, and Revenue Program Administrators in Technical Assistance and Dispute Resolution;
3. The Process Manager, ~~Regional Managers, Service Center Managers,~~ and Revenue Program Administrators in the ~~Compliance Enforcement, Compliance Support Process and Taxpayer Services Processes,~~ and any additional positions designated in writing by the Executive Director or his or her designee.

4. The Process Manager, Revenue Program Administrators, and Revenue Administrators in the Taxpayer Services Process.

(b) In cases involving amounts assessed pursuant to an audit of the taxpayer, prior to initiation of litigation pursuant to Section 72.011, F.S., or expiration of the period for initiating same, to:

1. The ~~Process Manager, Regional Managers, Service Center Managers, Revenue Program Administrators, Tax Audit Supervisors, Revenue Administrators,~~ and Senior Revenue Administrators, Revenue Administrators in the Director's Office of the General Tax Administration Program, ~~and Revenue Managers of the Compliance Enforcement Process,~~ and any additional positions designated in writing by the Executive Director or his or her designee; and

2. The Process Manager, Revenue Program Administrators, ~~Tax Specialist Administrators,~~ Tax Law Specialists, Government Senior Management Analysts II, and Senior Tax Specialists in the Compliance Support Process ~~and any additional positions designated in writing by the Executive Director or his or her designee.~~

(c) In cases involving a billing or assessment issued by the General Tax Administration Program, to:

1. The ~~Process Manager, Regional Managers, Service Center Managers,~~ Revenue Program Administrators, Tax Audit Supervisors, Senior Revenue Administrators, and Revenue Administrators in the Director's Office and Revenue Managers in the Compliance Enforcement Process, ~~and any additional positions designated in writing by the Executive Director or his or her designee; and~~

2. The Process Manager, Revenue Program Administrators, Tax Specialist Administrator, Revenue Administrators, Revenue Managers, and Revenue Specialists Specialist IIIs, ~~and Tax Specialist Administrators~~ in the Taxpayer Services Process, ~~or any additional positions designated in writing by the Executive Director or his or her designee;~~

(d) ~~When the The~~ Executive Director delegates ~~has discretionary authority to delegate~~ authority to sign stipulated time payment agreements to specific employees or positions that which are not provided enumerated in this rule, the these rules. ~~However, a delegation of authority will to an employee or position beyond those described herein shall be in writing, signed by the Executive Director, and will and shall be for a specified time period. The renewal of such Such delegations will also may be renewed in writing, signed by the Executive Director. Copies of any such written delegations of authority are shall be maintained on file with the agency clerk in the Office of General Counsel.~~

Rulemaking Specific Authority 20.05(1)(e), 213.06(1), 213.21(5) FS. Law Implemented 213.21(4) FS. History—New 10-4-89, Amended 10-5-92, 8-17-94, 4-29-03, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Janet L. Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9407

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: The Governor and Cabinet

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 11, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Proposed Rule Development Workshop was published in the Florida Administrative Weekly on September 25, 2009 (Vol. 35, No. 38, pp. 4636-4637). A rule development workshop was conducted on October 13, 2009. No comments were received by the Department.

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE NO.: RULE TITLE:
 12A-19.021 Communications Services Tax
 Brackets

PURPOSE AND EFFECT: The purpose of the creation of Rule 12A-19.021, F.A.C. (Communications Services Tax Brackets), is to: (1) make available the tax amounts and brackets applicable to each taxable sale of communications services, as provided in Section 202.16(3), F.S.; and (2) provide that when the amount of tax due results in a fraction of a cent, the tax due must be rounded up to the next whole cent.

SUMMARY: The proposed creation of Rule 12A-19.021, F.A.C. (Communications Services Tax Brackets), provides that: (1) a Communications Services Tax Due Calculator is available on the Department’s website to make available the tax amounts and brackets applicable to each taxable sales of communications services; and (2) when the amount of tax due results in a fraction of a cent, the tax due must be rounded up to the next whole cent.

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: 202.26(3)(a) FS.

LAW IMPLEMENTED: 202.16(3) FS.

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

DATE AND TIME: June 24, 2010, 9:00 a.m.

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

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Sarah Wachman at (850)922-4830. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: French Brown, Deputy Director, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4746

THE FULL TEXT OF THE PROPOSED RULE IS:

12A-19.021 Communications Services Tax Brackets.

The Department has prepared, for public use, a Communications Services Tax Due Calculator that makes available the tax amounts and brackets applicable to each taxable sale such that the tax collected results in a tax rate no less than the rate imposed under Chapters 202 and 203, F.S. (the Florida communications services tax and the local communications services tax). When the amount of tax due results in a fraction of a cent, the tax due must be rounded up to the next whole cent. The Communications Services Tax Due Calculator may be found on the Department’s Internet site at www.myflorida.com/dor/taxes/cst.html. For additional assistance, contact Taxpayer Services at (800)352-3671. Persons with hearing or speech impairments may call the Department’s TDD at (800)367-8331 or (850)922-1115.

Rulemaking Authority 202.26(3)(a) FS. Law Implemented 202.16(3) FS. History—New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: French Brown, Deputy Director, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4746

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: The Governor and Cabinet

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 11, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Proposed Rule Development Workshop was published in the Florida Administrative Weekly on December 24, 2008 (Vol. 34, No. 52, pp. 6753-6754), regarding the proposed creation of Rule 12A-19.021, F.A.C. (Communications Services Tax Brackets). This notice advised the public that, if requested, a rule development workshop would be conducted on January 15, 2009. No request was received by the Department. No comments have been received by the Department.

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.”

PUBLIC SERVICE COMMISSION

RULE NO.: RULE TITLE:
 25-6.0424 Petition for Mid-Course Correction
PURPOSE AND EFFECT: Rule 25-6.0424, F.A.C., Petition for Mid-Course Correction, is adopted in order to comply with the specific language of Section 366.06(1), F.S., which requires that all applications for changes in rates shall be made to the Commission in writing under prescribed rules and regulations. Docket No. 100084-EI.

SUMMARY: Rule 25-6.0424, F.A.C., is adopted to codify the procedure for filing a petition for mid-course correction related to the fuel and purchased power cost recovery clauses.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will not have an impact on small businesses. 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: 350.127(2), 366.06(1) FS.

LAW IMPLEMENTED: 366.041, 366.05(1), 366.06(1), 366.076 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 G. W. 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 RULE IS:

25-6.0424 Petition for Mid-Course Correction.

(1) To request a mid-course correction to the fuel cost recovery or capacity cost recovery factors, a utility shall file a petition for mid-course correction which shall contain the following information:

(a) The estimated percentage of year-end over-recovery or under-recovery calculated using the estimated End-of-Period Total Net True-up divided by the current period's total actual and estimated Jurisdictional Fuel Revenue Applicable to Period. The estimated End-of-Period Total Net True-up consists of the difference between estimated and actual prior-period net true-ups, plus the estimated current-period monthly over/under-recoveries, plus the estimated current-period interest. The total actual and estimated Jurisdictional Fuel Revenue Applicable to Period consists of the best estimate of reprojected revenues for the period using the current cost recovery factor. The appropriate method to determine the over-recovery or under-recovery percentage for capacity costs is to make a similar percent calculation using up-to-date capacity cost recovery revenue and true-up amounts.

(b) The appropriate schedules from Form PSC/ECR 009-E (xx/xx) reflecting the estimated End-of-Period Total Net True-up based upon current cost recovery factors and revised fuel expenses. For a fuel mid-course correction, schedules E1 through E10 shall be filed. For a capacity mid-course correction, schedules E12-A through E12-E shall be filed. Form PSC/ECR 009-E (xx/xx), incorporated by reference in

this rule and entitled "Mid-Course Correction Schedules," may be obtained from the Commission's Division of Economic Regulation.

(2) In the event that the absolute value of the over-recovery or under-recovery either for fuel cost recovery or capacity cost recovery is 10 percent or greater, the utility shall promptly notify the Commission by letter delivered to the Director of the Division of Economic Regulation. The notification of a 10 percent or greater estimated over-recovery or under-recovery shall include a petition for mid-course correction to the fuel cost recovery or capacity cost recovery factors, or shall include an explanation of why a mid-course correction is not practical. This section in no way precludes a utility from requesting a mid-course correction prior to reaching the 10 percent threshold requiring Commission notification.

(3) When filing a petition for mid-course correction to the fuel cost recovery or capacity cost recovery factors, a utility shall file 10 copies of the petition with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and an electronic copy with the Director of the Division of Economic Regulation at ECR@psc.state.fl.us. The Director of the Division of Economic Regulation shall be the designee of the Commission for purposes of determining whether the utility has met the minimum filing requirements imposed by this rule.

Rulemaking Authority 350.127(2), 366.06(1) FS. Law Implemented 366.041, 366.05(1), 366.06(1), 366.076. History--New

NAME OF PERSON ORIGINATING PROPOSED RULE: Kathryn G. W. Cowdery, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850)413-6216, kcowdery@psc.state.fl.us

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 18, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Vol. 35, No. 50, December 18, 2009

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-204.003
RULE TITLE: Food Services – Standards of Operation

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to clarify the conditions under which an inmate may be removed from the vegan meal pattern.

SUMMARY: The proposed rule clarifies the conditions under which an inmate may be removed from the vegan meal pattern.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will not have an impact on small business. A SERC has not 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: 944.09 FS.

LAW IMPLEMENTED: 944.09 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: Kendra Lee Jowers, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE FULL TEXT OF THE PROPOSED RULE IS:

33-204.003 Food Services – Standards of Operation.

(1) through (3) No change.

(4) Vegan meal pattern. Inmates may choose the vegan (strict vegetarian) meal pattern by submitting Form DC6-236, Inmate Request, to the food service director at the facility where the inmate is housed. An inmate who is transferred to another facility shall be allowed to continue the vegan meal pattern at the new facility by showing the inmate request that was approved by the previous food service director until his request is approved by the new food service director. Form DC6-236 is incorporated by reference in Rule 33-103.019, F.A.C.

(a) ~~The following inmates~~ ~~Inmates on the vegan meal pattern who are observed eating from the regular menu~~ shall be ~~removed~~ immediately ~~removed~~ from the ~~vegan meal pattern menu~~.

- 1. Inmates observed eating from the regular menu;
- 2. Inmates observed eating the alternate entrée; and
- 3. Inmates who intentionally purchase, possess, or consume items from the canteen that contain any animal products or byproducts.

(b) Staff shall document the incident on Form DC6-210, Incident Report. Such inmates shall be ineligible to reapply for the vegan meal pattern for six months after involuntary removal.

~~(c)~~(b) An inmate who voluntarily requests to be removed from the vegan meal pattern may not reapply for the pattern for 30 days.

(5) through (6) No change.

Rulemaking Authority 944.09 FS. Law Implemented 944.09 FS. History–New 1-18-89, Amended 7-21-97, Formerly 33-30.003, Amended 8-9-00, 11-16-00, 10-2-01, 2-18-02, 7-2-03, 11-1-04, 2-27-05, 10-16-05, 1-17-06, 4-27-09, 3-3-10,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: George Sapp, Deputy Secretary of Institutions

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Walter McNeil, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 19, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 30, 2010

AGENCY FOR HEALTH CARE ADMINISTRATION

Health Facility and Agency Licensing

RULE NO.: 59A-1.004
RULE TITLE: Certification Procedure

PURPOSE AND EFFECT: The agency is proposing to amend the rule that incorporates the licensure application to reference application forms being created under Section 408.806, F.S., and proposed Chapter 59A-35, F.A.C.

SUMMARY: Revisions to the licensure applications that are incorporated by reference will be addressed. The Agency is adopting a licensure rule under Section 408.806, F.S., and this rule will be amended to align the requirements with those proposed in Chapter 59A-35, F.A.C.

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: 765.541(2), 408.819 FS.

LAW IMPLEMENTED: 765.541, 765.542, 765.544, 873.01, 408.806 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: July 14, 2010, 10:00 a.m.

PLACE: Agency for Health Care Administration, Building 3, Conference Room C, 2727 Mahan Drive, Tallahassee, FL 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: Dennis Hitchens, Laboratory Unit, 2727 Mahan Drive, Building 1, M.S. #32, Tallahassee FL 32308, (850)412-4377. 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: Dennis Hitchens, Laboratory Unit, 2727 Mahan Drive, Building 1, M.S. #32, Tallahassee FL 32308, (850)412-4377

THE FULL TEXT OF THE PROPOSED RULE IS:

59A-1.004 Certification Procedure.

(1) No person shall establish, operate, or maintain an OPO, tissue bank, or eye bank in this state without first being certified to operate by the AHCA. In addition, no OPO shall establish, operate or maintain an OPO without being designated as an OPO by the Secretary of the U.S. Department of Health and Human Services (HHS).

(2) Every OPO, tissue bank and eye bank engaged in procurement activities in Florida must not violate the provisions of Chapter 873, F.S., Sale of Anatomical Matter.

(3) A dentist or physician using tissue processed by a tissue bank, but who is not involved in the retrieval, processing and distribution of tissue, is not required to be certified pursuant to these rules. Funeral directors or direct disposers that retrieve eye tissue for an eye bank are exempt from the certification requirements under this subsection. A physician or OPO conducting the following activities in this state is exempt from state certification if:

(a) The organs are procured for an out-of-state patient who is listed on, or referred through, the United Network for Organ Sharing System; and

(b) The organs are procured through an agreement of an organ procurement organization certified by Florida.

(4) Application procedures. All persons contemplating procurement activities associated with an OPO, tissue bank, or eye bank shall submit to the AHCA a completed application, as specified in subsection 59A-35.060(1)(cc), F.A.C. AHCA Form 3140-2001-OCT-95, which is incorporated herein by reference and available from the Agency for Health Care Administration, Division of Health Quality Assurance, Ft. Knox Office Building, 2727 Mahan Drive, Tallahassee, Florida 32308. Application for certification shall be accompanied with a check or money order in the amount of \$1,000 for an OPO or tissue bank and \$500 for an eye bank. Such initial application fee is non-refundable and shall be made payable to the AHCA.

(5) Out-of-state OPOs, tissue banks and eye banks. No out-of-state OPO, tissue bank or eye bank may conduct procurement activities in Florida as defined in Chapter 381, F.S., without first obtaining certification. Existing out-of-state OPOs, tissue banks and eye banks conducting procurement activities in Florida shall submit an application for certification by October 1, 1996. Until October 1, 1996, out-of-state agencies currently engaged in procurement activities in Florida requesting certification shall be deemed to meet certification requirements until the AHCA acts to deny or grant the initial certification application. After October 1, 1996, upon receipt of an initial application from an out-of-state agency, the AHCA shall act to approve or deny the application request within 90 days, during which time deemed certification status does not exist.

(6) Site inspection. Upon receipt of a completed application, the AHCA shall conduct a site inspection or review the inspection report from an approved accreditation organization as specified in subsection 59A-1.009(2), F.A.C., to determine agency compliance with the standards.

(7) Certificate issuance. Agencies found in compliance with the standards shall be issued a certificate by the AHCA. Each certificate shall specifically state the certificate number, name of the agency, agency owner, city, county, state, type of agency, issue date of the certificate and expiration date of the certificate. A person having more than one agency, shall be issued a separate certificate for each agency. A certificate shall be posted in a conspicuous place on the certified premises, and copies of certificates shall be made available for inspection to all individuals.

(8) Mandatory certification exclusions. The AHCA shall not certify an individual or entity that has been convicted of a criminal offense related to the delivery of an item or service under Medicare or a state health care program, including the performance of management or administrative services relating to the delivery of items or services under any such program.

(9) Permissive certification exclusions.

(a) Circumstance for exclusion. The AHCA shall exclude an individual or entity convicted under federal or state law of a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.

1. In connection with the delivery of any health care item or service, including the performance of management or administrative services relating to the delivery of such items or services; or

2. With respect to any act or omission in a program operated by, or financed in whole or in part by, any federal state or local government agency.

(10) Conviction relating to controlled substances.

(a) Circumstance for exclusion. The AHCA shall not issue a certificate to an individual or entity convicted under federal or state law of a criminal offense relating to the unlawful manufacture, distribution, prescription or dispensing of a controlled substance, as defined under federal or state law.

(b) For purposes of this section, the definition of controlled substance will be the definition that applies to the law forming the basis for the conviction.

(11) Certification revocation or suspension.

(a) The AHCA shall exclude an individual or entity that has:

1. Had a license or certificate to provide health care revoked or suspended by any state licensing or certification authority, or has otherwise lost such a license or certificate (including the right to apply for or renew such a license or certificate), for reasons bearing on the individual's or entity's professional competence, professional performance or financial integrity; or

2. Has surrendered such a license or certificate while a formal disciplinary proceeding concerning the individual's or entity's professional competence, professional performance or financial integrity was pending before a state licensing or certifying authority.

(12) Exclusion of entities owned or controlled by sanctioned person.

(a) A person with a relationship with such entity has been convicted of a criminal offense as described in Sections 1128(a) and 1128(b)(1), (2) or (3) of Title XIX of the Social Security Act;

(b) Has had civil money penalties or assessments imposed under Section 1128A of Title XIX of the Social Security Act;

(c) Has been excluded from participation in Medicare or any of the state health care programs and such person or entity has:

1. A direct or indirect ownership interest (or any combination thereof) of 5 percent or more in the entity;

2. Is the owner of a whole or part interest in any mortgage, deed of trust, note or other obligation secured (in whole or in part) by the entity or any of the property or assets thereof, in which whole or part interest is equal to or exceeds 5 percent of the total property and assets of the entity;

3. Is an officer or director of the entity, if the entity is organized as a corporation;

4. Is a partner in the entity, if the entity is organized as a partnership;

5. Is an agent of the entity; or

6. Is a managing employee, i.e., an individual (including a general manager, business manager, administrator or director) who exercises operational or managerial control over the entity or part thereof, or directly or indirectly conducts the day-to-day operations of the entity or part thereof.

(d) For the purposes of this section, the term:

1. Indirect ownership interest includes an ownership interest through any other entities that ultimately have an ownership interest in the entity in issue. (For example, an individual has a 10 percent ownership interest in the entity at issue if he or she has a 20 percent ownership interest in a corporation that wholly owns a subsidiary that is a 50 percent owner of the entity in issue.)

2. Ownership interest means an interest in:

a. The capital, the stock or the profits of the entity; or

b. Any mortgage, deed, trust or note, or other obligation secured in whole or in part by the property or assets of the entity.

(13) A limited certificate may be issued to a tissue bank or eye bank certifying only those components of procurement which the bank has chosen to perform. A limited certificate shall be requested at the time that application is made as

specified in paragraph 59A-35.060(1)(cc), F.A.C. on AHCA Form 3140-2001-OCT-95, which is incorporated herein by reference.

(14) Expiration. A certificate, unless sooner suspended or revoked, shall automatically expire two years from date of issuance, and shall be renewable biennially upon application for renewal and payment of the assessment fee prescribed by these rules, provided that the applicant and agency meet the requirements established under this rule as determined by an on-site inspection in accordance with subsection 59A-1.004(6), F.A.C. Application for renewal of a certificate shall be made not less than 60 days prior to the expiration of a certificate as specified in paragraph 59A-35.060(1)(cc), F.A.C. on AHCA Form 3140-2001-OCT-95.

(15) Revocation of certification. An OPO, tissue bank or eye bank that submits or causes to be submitted an enrollment application that contains materially false or incorrect information shall have its certificate revoked.

(16) Each agency for which a certificate is requested shall be designated by a distinctive name, and the name shall not be changed without first notifying the AHCA in writing and receiving approval in writing. Duplication of existing agency names is prohibited.

(17) Each certificate shall be valid only for the person to whom it is issued and shall not be subject to sale, assignment, or other transfer, voluntary or involuntary, nor shall a certificate be valid for any premises other than that for which it was originally issued.

(18) A certified OPO, tissue bank or eye bank that proposes a change in procurement services (i.e., retrieval, processing, storage or distribution) shall notify the AHCA 30 days prior to that change in service. This notification shall include an explanation in the change of any aspect of the procurement process and how this change affects the agency's operations. Prior to the addition of services, the AHCA shall conduct an on-site visit to determine if the standards of this rule are met.

(19) An application for a certificate is required when the ownership of a certified agency has been transferred or assigned or when a lessee agrees to undertake or provide services to the extent that legal liability for operation of the agency rests with the lessee. The application for a certificate reflecting such change shall be made at least 60 days prior to the date of the sale, transfer, assignment, or lease.

(20) Each certificate shall be returned to the AHCA by the agency immediately upon change in ownership or classification, suspension, revocation or voluntary cessation of operations.

(21) A certificate holder shall notify the AHCA of impending closure of an agency 90 days prior to such closure. The agency shall be responsible for advising the AHCA as to the placement of inventory and disposition of records.

Rulemaking Authority 765.541(2), 408.819 FS. Law Implemented 765.541, 765.542, 765.544, 873.01, 408.806 FS. History—New 11-26-92, Amended 8-20-96, 6-19-08,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Dennis Hitchens
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Thomas W. Arnold
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 17, 2010
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 19, 2010

AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid

RULE NO.: 59G-4.160
RULE TITLE: Outpatient Hospital Services

PURPOSE AND EFFECT: The purpose of the proposed amendment to Rule 59G-4.160, F.A.C., is to incorporate by reference the revised Florida Medicaid Hospital Services Coverage and Limitations Handbook, January 2010. In accordance with SB 2006, Specific Appropriation 202, enacted by the 2009 Florida Legislature, the amendment will permit the Agency to cover Intrathecal Baclofen Pump (ITB) therapy for qualified candidates when the implantation services are rendered in the outpatient hospital setting. The amendment also includes additional dialysis revenue codes in the outpatient setting.

SUMMARY: The handbook has been revised to provide updated information on Appendix B with information on the ITB device and additional dialysis revenue codes.

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: 409.919 FS.
LAW IMPLEMENTED: 409.902, 409.905, 409.908, 409.9081, 409.912, 409.913 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: Monday, June 21, 2010, 10:00 a.m. – 11:30 a.m.

PLACE: Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Conference Room B, Tallahassee, Florida 32308-5407

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by

contacting: Princilla Jefferson at the Bureau of Medicaid Services, (850)412-4211. 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: Princilla Jefferson, Medicaid Services, 2727 Mahan Drive, Mail Stop 20, Tallahassee, Florida 32308-5407, e-mail: princilla.jefferson@ahca.myflorida.com

THE FULL TEXT OF THE PROPOSED RULE IS:

59G-4.160 Outpatient Hospital Services.

(1) No change.

(2) All hospital providers enrolled in the Medicaid program must comply with the provisions of the Florida Medicaid Hospital Services Coverage and Limitations Handbook, January 2010 ~~June 2005~~, incorporated by reference, and the Florida Medicaid Provider Reimbursement Handbook, UB-04 incorporated by reference in Rule 59G-4.003, F.A.C. Both handbooks are available from the Medicaid fiscal agent’s Web Portal at <http://mymedicaid-florida.com>. Click on Public Information for Providers, then on Provider Support, and then on Provider Handbooks. Paper copies of the handbooks may be obtained by calling the Provider Contact Center at (800)289-7799 and selecting Option 7.

Rulemaking Authority 409.919 FS. Law Implemented 409.902, 409.905, 409.908, 409.9081, 409.912, 409.913 FS. History—New 1-1-77, Revised 12-7-78, 1-18-82, Amended 7-1-83, 7-16-84, 7-1-85, 10-31-85, Formerly 10C-7.40, Amended 9-16-86, 2-28-89, 5-21-91, 5-13-92, 7-12-92, 1-5-93, 6-30-93, 7-20-93, 12-21-93, Formerly 10C-7.040, Amended 6-13-94, 12-27-94, 2-21-95, 9-11-95, 11-12-95, 2-20-96, 10-27-98, 5-12-99, 10-18-99, 3-22-01, 8-12-01, 2-25-03, 8-14-03, 11-28-04, 8-18-05, 1-10-06, 4-16-06, 2-25-09,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Princilla Jefferson

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Thomas W. Arnold

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 17, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 29, 2010

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Division of Hotels and Restaurants

RULE NO.: 61C-1.001
RULE TITLE: Definitions

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to revise the Food Code definition to adopt the 2009 U.S. Food and Drug Administration Food Code.

SUMMARY: The proposed rule amends the definition of Food Code to adopt the 2009 Food Code.

OTHER RULES INCORPORATING THIS RULE: None.

EFFECT ON THOSE OTHER RULES: N/A

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. The 2009 Food Code adds regulations related to allergens. Those new regulations will increase personnel costs by requiring extra training and specialized knowledge associated with preventing allergen cross-contamination. Any establishment not currently following allergen-related food safety practices may incur additional costs to change food-handling procedures. Regulatory costs are unknown at this time.

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: 509.032 FS.

LAW IMPLEMENTED: 509.032 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: Michelle Comingore, Operations Review Specialist, Division of Hotels and Restaurants, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-1011, telephone: (850)488-1133

THE FULL TEXT OF THE PROPOSED RULE IS:

61C-1.001 Definitions.

Except when otherwise defined in this rule, the definitions provided in paragraph 1-201.10(B), Food Code, 2009 ~~2001~~ Recommendations of the United States Public Health Service/Food and Drug Administration; ~~the 2001 Food Code Errata Sheet (August 23, 2001); and Supplement to the 2001 FDA Food Code (August 29, 2003)~~ shall apply to Chapters 61C-1, 61C-3 and 61C-4, F.A.C. In addition, the following definitions apply to Chapters 61C-1, 61C-3 and 61C-4, F.A.C.:

(1) through (13) No change.

(14) Food Code – This term as used in Chapters 61C-1, 61C-3, and 61C-4, F.A.C., means paragraph 1-201.10(B), Chapter 2, Chapter 3, Chapter 4, Chapter 5, Chapter 6, and Chapter 7 of the Food Code, 2009 ~~2001~~ Recommendations of the United States Public Health Service/Food and Drug Administration including Annex 3: Public Health Reasons/Administrative Guidelines; Annex 5: Conducting Risk-based Inspections HACCP Guidelines of the Food Code; ~~the 2001 Food Code Errata Sheet (August 23, 2002); and Supplement to the 2001 FDA Food Code (August 29, 2003)~~, herein adopted by reference. A copy of the Food Code, as adopted by the division, is available on the division's Internet website www.MyFloridaLicense.com/dbpr/hr. A copy of the

entire Food Code is available on the U.S. Food and Drug Administration Internet website. Printed copies of the entire Food Code are available through the National Technical Information Service, 5301 Shawnee Road, Alexandria, VA 22312 ~~5285 Port Royal Road, Springfield, VA 22161~~.

(15) through (29) No change.

Rulemaking Authority 509.032 FS. Law Implemented 509.032 FS. History—Amended 9-20-63, 3-21-64, 1-7-70, Revised 2-4-71, Amended 10-18-71, 11-17-73, 12-18-74, 12-5-82, Formerly 7C-1.01, Amended 9-10-89, 12-31-90, 2-27-92, 11-4-92, Formerly 7C-1.001, Amended 3-31-94, 10-9-95, 9-25-96, 1-1-98, 12-6-00, 2-27-05, 8-12-08,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Bill L. Veach, Director, Division of Hotels and Restaurants, Department of Business and Professional Regulation

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Charlie Liem, Interim Secretary, Department of Business and Professional Regulation

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 17, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 14, 2010

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Auctioneers

RULE NO.: RULE TITLE:

61G2-2.006 Reinstatement of Null & Void Licenses

PURPOSE AND EFFECT: The Board proposes this new rule to provide for reinstatement of null & void licenses and incorporate by reference the application form and adds the Board's website.

SUMMARY: The rule incorporates by reference the application form that will set forth the procedure for reinstatement of null & void licenses and add's the Board's website.

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: 455.271(6)(b), 468.384, 468.386 FS.

LAW IMPLEMENTED: 455.271(6)(b), 468.393 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: Tony Spivey, Executive Director, Board of Auctioneers, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G2-2.006 Reinstatement of Null & Void Licenses.

(1) Void auctioneer or auction business licenses resulting from a failure to timely renew are not reactivated; however, the Board has discretion to reinstate such licenses if it determines that the provisions of Section 455.271(6)(b), Florida Statutes, have been met.

(2) In order to request that the Board exercise its discretion, the holder of a void license must submit to the Board a completed application on form DBPR AU-4161, Application to Reinstate Null and Void License, dated November, 2009, which is hereby adopted and incorporated by reference. A copy of DBPR AU-4161 is available from the Board office at 1940 N. Monroe Street, Tallahassee, FL 32399 or on the Board's website at: <http://www.myfloridalicense.com/dbpr/pro/auct/forms.html>.

(3) The applicant shall provide the circumstances surrounding each failure to comply with timely renewal, and the steps taken by the applicant to comply with each renewal deadline. The applicant must demonstrate that an illness or other unusual hardship prevented timely renewal.

(4) The application must be accompanied by a non-refundable application fee of \$150.00, a renewal fee of \$150.00 for each renewal period when the applicant failed to renew his or her license which fee shall not exceed \$300.00, and an unlicensed activity fee plus a recovery fund fee of \$105.00 for each renewal period missed which fee shall not exceed \$210.00.

Rulemaking Authority 455.271(6)(b), 468.384, 468.386 FS. Law Implemented 455.271(6)(b), 468.393 FS. History—New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Auctioneers

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Auctioneers

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 12, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 2, 2010

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Veterinary Medicine

RULE NO.:	RULE TITLE:
61G18-15.0025	Minimum Standards for a Mobile Veterinary Practice for Agricultural Animals

PURPOSE AND EFFECT: The Board proposes to the rule amendment to add a requirement concerning the presence of controlled substances in the unit.

SUMMARY: A requirement concerning the presence of controlled substances in the unit will be added to the rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board determined the proposed rule will not have an impact on small business.

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

RULEMAKING AUTHORITY: 474.206, 474.215(6) FS.

LAW IMPLEMENTED: 474.215(6) 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: Juanita Chastain, Executive Director, Board of Veterinary Medicine, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G18-15.0025 Minimum Standards for a Mobile Veterinary Practice for Agricultural Animals.

The following minimum standards shall apply to mobile veterinary medical practices for agricultural animals:

(1) Mobile units utilized by veterinarians:

(a) No change.

(b) Shall contain the following:

1. through 3. No change.

4. If controlled substances are on the unit, a locking secure cabinet for storage and an accurate controlled substance log.

5.4. When surgery is to be performed, the following shall be maintained:

a. through d. No change.

(2) through (4) No change.

Rulemaking Specific Authority 474.206, 474.215(6) FS. Law Implemented 474.215(6) FS. History—New 7-4-95, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Veterinary Medicine

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Veterinary Medicine

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 2, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 19, 2010

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Florida Real Estate Appraisal Board

RULE NO.: 61J1-4.001
RULE TITLE: Education

PURPOSE AND EFFECT: The Board proposes to amend the rule to remove the language concerning the ability for teachers of appraisal courses to earn credit towards the classroom hour requirement.

SUMMARY: Language concerning the ability for teachers of appraisal courses to earn credit towards the classroom hour requirement will be removed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board has determined that the proposed rule will not have an impact on small business.

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

RULEMAKING AUTHORITY: 475.614 FS.

LAW IMPLEMENTED: 475.613, 475.615, 475.617 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: Thomas O’Bryant, Jr., Director, Division of Real Estate, 400 West Robinson Street, Hurston Building, North Tower, Suite N801, Orlando, Florida 32801

THE FULL TEXT OF THE PROPOSED RULE IS:

61J1-4.001 Education.

(1) through (5) No change.

~~(6) Credit towards the classroom hour requirement may also be satisfied by teaching appraisal courses. Registered trainee appraisers may not satisfy any requirement of this rule with any course they have instructed. The appraisal courses must cover substantially the same subject matter as the Board prescribed courses. Credit shall only be granted on a one-time basis for teaching a particular appraisal course and shall be limited to fifty percent (50%) of the classroom hour requirement per renewal cycle. The Board may request supportive documentation to ascertain course content and to verify the date(s), time, place and hours taught.~~

Rulemaking Authority 475.614 FS. Law Implemented 475.613, 475.615, 475.617 FS. History—New 10-15-91, Formerly 21VV-4.001, Amended 1-9-94, 3-10-98, 9-6-98, 10-10-99, 5-25-04, 5-15-05, 1-17-06, 2-6-07, 12-6-07, 3-24-09, 4-28-10, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Florida Real Estate Appraisal Board

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Real Estate Appraisal Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 30, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 30, 2010

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

DEPARTMENT OF HEALTH

Board of Acupuncture

RULE NO.: 64B1-4.0011
RULE TITLE: Documentation Necessary for Licensure Application

PURPOSE AND EFFECT: To make necessary changes to the application form and accompanying rule text and to update the website address.

SUMMARY: The proposed changes bring the rule into compliance with the new legislative requirements.

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: 457.104 FS.

LAW IMPLEMENTED: 457.105 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: Christy Robinson, Acting Executive Director, Board of Acupuncture/MQA, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3256

THE FULL TEXT OF THE PROPOSED RULE IS:

64B1-4.0011 Documentation Necessary for Licensure Application.

(1) A properly completed application shall be submitted on Department of Health Form Acupuncture Application for Licensure with Instructions, DH-MQA 1116, 12/09 03/09, adopted and incorporated herein by reference as this Board’s application and available on the web at www.doh.state.fl.us/mqa/acupunct. To complete the application attach the appropriate fees and supporting documents and submit it to the Board Office.

(2) through (3) No change.

Rulemaking Authority 457.104 FS. Law Implemented 456.048, 457.105 FS. History—New 2-18-98, Amended 10-11-04, 5-25-09, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Acupuncture
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Acupuncture
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 4, 2009
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 20, 2009

DEPARTMENT OF HEALTH

Board of Medicine

RULE NO.: 64B8-8.001
RULE TITLE: Disciplinary Guidelines
PURPOSE AND EFFECT: The proposed rule amendments are intended to set forth additional disciplinary guidelines for violation of the Board’s pain clinic rules.
SUMMARY: The proposed rule amendments address violations with regard to disciplinary guidelines as they relate to the Board’s pain clinic rules.
SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The Board prepared a Statement of Estimated Regulatory Costs (SERC) for this rule. Essentially, the rule will have a negative impact upon physicians who violate the Board’s requirements with regard to practicing in or registering of pain clinics. The costs involved will depend on the severity of the offense and whether the offense is a first time or repeated offense. The fines imposed for violations

range from \$5,000 to \$10,000, and other penalties include community service, probation, and suspension up to revocation of licensure.

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 (aaa) No change.			
<u>(bbb) A violation of Rule 64B8-9.0131, F.A.C.</u>	<u>(bbb) From probation for a term no less than two years, 100 hours of community service, and a fine of \$5,000.00 to \$10,000.00 to revocation.</u>	<u>(bbb) From suspension for a minimum of one year, to be followed by a term of probation, 200 hours of community service, and a \$10,000.00 fine to revocation.</u>	
<u>(ccc) A violation of Rule 64B8-9.0132, F.A.C.</u>	<u>(ccc) From probation for a term no less than one year, 50 hours of community service, and a fine of \$5,000.00 to \$10,000.00 to revocation.</u>	<u>(ccc) From suspension for a minimum of six months, to be followed by a term of probation, 100 hours of community service, and a \$10,000.00 fine to revocation.</u>	
(3) through (7) No change.			

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. 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, 2-18-09, 12-22-09, _____.

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: April 10, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 30, 2010

DEPARTMENT OF HEALTH

Board of Nursing

RULE NO.: 64B9-4.011 RULE TITLE: Dispensing Practitioners

PURPOSE AND EFFECT: The Board proposes this change to incorporate the appropriate form into this rule and add the Board’s website where form may be obtained.

SUMMARY: The rule incorporates by reference this form and adds the Board’s website.

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: 464.006 FS.

LAW IMPLEMENTED: 465.0276, 464.012(3), (4) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Joe R. Baker, Jr., Executive Director, Board of Nursing, 4052 Bald Cypress Way, Bin #C02, Tallahassee, Florida 32399

THE FULL TEXT OF THE PROPOSED RULE IS:

64B9-4.011 Dispensing Practitioners.

(1) Those ARNP’s whose protocols permit them to dispense medications for a fee as contemplated by Section 465.0276, F.S., must register with the Board of Nursing by submitting a completed Dispensing Application for ARNP’s, form number DH-MQA 1185, 3/09, and hereby incorporates by reference this form into the rule.

(2) No change.

Rulemaking Specific Authority 464.006 FS. Law Implemented 465.0276, 464.012(3), (4) FS. History—New 9-16-91, Formerly 21O-16.003, 61F7-4.011, 59S-4.011, Amended 5-14-07, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Nursing

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Nursing

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 9, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 30, 2010

DEPARTMENT OF HEALTH

Board of Optometry

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

PURPOSE AND EFFECT: The Board proposes the rule amendment to modify and incorporate by reference an updated application form.

SUMMARY: The rule updates the application form.

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

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

RULEMAKING AUTHORITY: 456.033, 463.006(1)(b), (2) FS.

LAW IMPLEMENTED: 456.013(7), 456.033, 463.006(1)(b), (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: Sharon Guilford, Acting Executive Director, Board of Optometry, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3257

THE FULL TEXT OF THE PROPOSED RULE IS:

64B13-4.004 Manner of Application.

(1) No change.

(2) All applications for examination shall be made on the form titled “Application for Optometry Examination” number DH-MQA 1128 (Revised 2/10 ~~6/09~~), which is hereby incorporated by reference and can be obtained from the board office or from the Board of Optometry’s website at: <http://www.doh.state.fl.us/mqa/optometry>. All applications for examination shall include the application fee as specified in subsection 64B13-6.001(7)(8), F.A.C., the department administrative cost as specified in Rule 64B13-1.016, examination fee as specified in subsection 64B13-6.001(1),

F.A.C., and the initial licensure fee as specified in subsection 64B13-6.001(1) ~~or (2)~~, F.A.C. No application shall be deemed complete which does not set forth all the information required by said forms and which fails to include all fees as set forth in this rule. Applications for licensure must be received by the Department at least 120 ~~60~~ days prior to the examination.

(3) No change.

Rulemaking Authority 456.033, 463.006(1)(b), (2) FS. Law Implemented 456.013(7), 456.033, 463.006(1)(b), (2) FS. History—New 11-13-79, Amended 4-17-80, Formerly 21Q-4.04, Amended 11-20-86, 4-19-89, 6-25-92, 6-6-93, Formerly 21Q-4.004, Amended 6-14-94, Formerly 61F8-4.004, Amended 3-21-95, 5-29-95, Formerly 59V-4.004, Amended 7-15-02, 11-3-03, 11-16-05, 10-30-08, 8-30-09,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Optometry
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Optometry
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 14, 2010
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 26, 2010

DEPARTMENT OF HEALTH

Board of Osteopathic Medicine

RULE NO.: 64B15-14.0076
RULE TITLE: Requirement for Osteopathic Physician Office Registration; Inspection or Accreditation

PURPOSE AND EFFECT: The proposed amendment is intended to clarify that the registration application to perform office surgery shall be submitted to the Department of Health rather than the Board.

SUMMARY: The proposed rule specifies that the physicians who provide office surgery shall be required submit the application to the Department rather than the Board.

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: 459.005(1), (2) FS.

LAW IMPLEMENTED: 456.069, 459.005(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: Christy Robinson, Acting Executive Director, Board of Osteopathic Medicine/MQA, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3256

THE FULL TEXT OF THE PROPOSED RULE IS:

64B15-14.0076 Requirement for Osteopathic Physician Office Registration; Inspection or Accreditation.

(1) Registration.

(a) Every Florida licensed osteopathic physician who holds an active Florida license and performs Level II surgical procedures in Florida with a maximum planned duration of five (5) minutes or longer or any Level III office surgery, as fully defined in Rule 64B15-14.007, F.A.C., shall register with the Department of Health ~~Board of Osteopathic Medicine on the following form which may be obtained from the Board office at 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3256 or by calling (850)245-4161; Florida Board of Osteopathic Medicine Office Surgery Registration Program, DH-MQA-1071, 1/03, effective 11/20/03.~~ It is the osteopathic physician’s responsibility to ensure that every office in which he or she performs Levels II or III surgical procedures as described above is registered, regardless of whether other physicians are practicing in the same office or whether the office is non-physician owned.

(b) through (d) No change.

(2) through (3) No change.

Rulemaking Authority 459.005(1), (2) FS. Law Implemented 456.069, 459.005(2) FS. History—New 2-12-02, Amended 11-20-03, 6-4-09,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Osteopathic Medicine
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Osteopathic Medicine
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 26, 2010
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 30, 2010

DEPARTMENT OF HEALTH

Board of Osteopathic Medicine

RULE NO.: 64B15-19.002
RULE TITLE: Violations and Penalties

PURPOSE AND EFFECT: The proposed rule amendments are intended to set forth the disciplinary guidelines for violations of the Board’s rules with regard to practicing in pain clinics.

SUMMARY: The proposed rule amendments address the disciplinary guidelines for violations of the rules with regard to practicing in pain clinics of violations with regard to the registration and inspection of pain clinics.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The Board prepared a Statement of Estimated Regulatory Costs (SERC) for this rule. Essentially, the rule will have a negative impact upon physicians who violate the Board’s requirements with regard to practicing in or registering of pain clinics. The costs involved will depend on the severity of the offense and whether the offense is a first time or repeated offense. The fines imposed for violations range from \$5,000 to \$10,000, and other penalties include probation, and suspension up to revocation of licensure.

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: 456.079, 459.015(5) FS.

LAW IMPLEMENTED: 456.072, 456.079, 456.50 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Christy Robinson, Acting Executive Director, Board of Osteopathic Medicine/MQA, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3256

THE FULL TEXT OF THE PROPOSED RULE IS:

64B15-19.002 Violations and Penalties.

In imposing discipline upon applicants and licensees, 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 statutory language is intended to provide a description of the violation and is not a complete statement of the violation; the complete statement may be found in the statutory provision cited directly under each violation description.

(1) through (62) No change.

(63) A violation of Rule 64B15.14.0051, F.A.C.		
FIRST OFFENSE:	<u>probation for a term no less than two (2) years and a \$5,000 fine</u>	<u>revocation</u>
SECOND OFFENSE:	<u>suspension for a minimum of one (1) year to be followed by a term of probation and a \$10, 000 fine</u>	<u>revocation</u>
(64) A violation of Rule 64B15-14.0052, F.A.C.		
FIRST OFFENSE:	<u>probation for a term no less than one (1) year and a \$5,000 fine</u>	<u>revocation</u>
SECOND OFFENSE:	<u>suspension for a minimum of six months to be followed by a term of probation and a \$10,000 fine</u>	<u>revocation</u>

Rulemaking Authority 456.079, 459.015(5) FS. Law Implemented 456.072, 456.079, 456.50 FS. History–New 9-30-87, Amended 10-28-91, 1-12-93, Formerly 21R-19.002, 61F9-19.002, 59W-19.002, Amended 2-2-98, 2-11-01, 6-7-01, 2-26-02, 12-7-05, 11-14-06, 11-27-06, 5-10-10,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Osteopathic Medicine

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Osteopathic Medicine

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 6, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 2, 2010

FISH AND WILDLIFE CONSERVATION COMMISSION

Vessel Registration and Boating Safety

RULE NOS.: 68D-18.004, 68D-18.005
RULE TITLES: Special Purpose Marker Buoys, Restricted Areas

PURPOSE AND EFFECT: The rules have been rendered obsolete due to statutory changes due to the passage of Chapter 2009-86 (CS/CS/HB/1423), Laws of Florida, which modified Section 327.46, Florida Statutes, and will alleviate duplicate language currently proposed within Chapter 68D-21, F.A.C., (Approval of Local Ordinances Establishing Boating Restricted Areas) and amendments to Chapter 68D-23 (Uniform Waterway Markers in Florida Waters).

SUMMARY: Rule 68D-18.004, F.A.C., required that special purpose marker buoys shall be a certain shape and size to mark special marine events and established a requirement to make such a request that is similar as waterway markers permitted pursuant to Chapter 68D-23 and Rule 68D-18.005, F.A.C., prohibited the placement of regulatory markers in or over the Florida Intracoastal Waterway without a permit from the Division of Law Enforcement and required such requests to be made by application and accompanying documentation.

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 not 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: 327.04, 327.40, 327.41 FS.

LAW IMPLEMENTED: 327.40, 327.41 FS.

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

DATES AND TIME: June 23-24, 2010, 8:30 a.m. – 5:00 p.m., each day

PLACE: Orlando Marriott Lake Mary, 1501 International Parkway, Lake Mary, FL 32746

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: ADA Coordinator, at (850)488-6411. 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: Captain Richard Moore, Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, Boating and Waterways Section, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)488-5600, richard.moore@myfwc.com

THE FULL TEXT OF THE PROPOSED RULES IS:

68D-18.004 Special Purpose Marker Buoys.

Specific Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS., ch. 72-55, Laws of Florida. History—New 10-20-72, Readopted 9-30-75, Formerly 16B-18.04, 16N-18.04, 16N-18.004, 62N-18.004, Repealed.

68D-18.005 Restricted Areas.

Specific Authority 327.04, 327.40, 341.41 FS. Law Implemented 327.40, 327.41 FS., ch. 72-55, Laws of Florida. History—New 10-20-72, Readopted 9-30-75, Formerly 16B-18.05, 16N-18.05, 16N-18.005, 62N-18.005, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE: Colonel Jim Brown, Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, 620 South Meridian Street, Tallahassee, Florida 32399-1600

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Fish and Wildlife Conservation Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 28, 2010

FISH AND WILDLIFE CONSERVATION COMMISSION

Vessel Registration and Boating Safety

RULE NOS.:	RULE TITLES:
68D-21.001	Requirements for Applications
68D-21.002	Procedures for Reviewing Applications
68D-21.003	Procedures for Providing for Public Notice and Participation
68D-21.004	Criteria for Approval of Ordinances Adopted Pursuant to Section 327.46(1)(c), Florida Statutes

PURPOSE AND EFFECT: The purpose of this rule adoption is to implement waterway management changes resulting from the passage of Chapter 2009-86 (CS/CS/HB/1423), Laws of Florida, which modified Section 327.46, Florida Statutes, as it relates to the review and approval of local boating ordinances. The rule establishes the process for the review and approval of municipal and county ordinances establishing boating restricted areas in compliance with the statutory changes as well as procedures for public notice and participation.

SUMMARY: The rule establishes the process for the review and approval by the Commission of municipal and county ordinances establishing boating restricted areas to insure compliance with the statutory changes as well as procedures for public notice and participation.

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 not 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: 327.04, 327.302, 327.46 FS.

LAW IMPLEMENTED: 327.302, 327.46 FS.

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

DATES AND TIME: June 23-24, 2010, 8:30 a.m. – 5:00 p.m., each day

PLACE: Orlando Marriott Lake Mary, 1501 International Parkway, Lake Mary, FL 32746

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: ADA Coordinator, at (850)488-6411. 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: Captain Richard Moore, Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, Boating and Waterways Section, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)488-5600, richard.moore@myfwc.com

THE FULL TEXT OF THE PROPOSED RULES IS:

68D-21.001 Requirements for Applications.

(1) Approval by the Florida Fish and Wildlife Conservation Commission is not required for ordinances adopted pursuant to paragraph 327.46(1)(b), Florida Statutes Regulatory markers necessary for implementing those

ordinances must be permitted as required in Sections 327.40 and 327.41, Florida Statutes, and as provided in Chapter 68D-23, F.A.C.

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

(3) Each application must include:

(a) The name of the applicant municipality or county.

(b) The name, mailing address, telephone number, and any email address or facsimile number of the applicant's:

1. Primary contact person; and
2. Attorney or qualified representative.

(c) A certified copy of the adopted ordinance for which approval is sought. A county or municipality may submit a draft ordinance for review and approval. Approval, if granted, is conditioned upon the draft ordinance being adopted without amendment and does not become effective until a certified copy of the ordinance as adopted is received by the Boating and Waterways Section. If the draft ordinance is amended, approval of the draft ordinance will be rescinded and the ordinance as adopted will be reviewed.

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

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

1. The jurisdictional boundaries of the municipality or county enacting the ordinance and, for county ordinances, the jurisdictional boundaries of any municipality in which a boating-restricted area is located.

2. The exact boundaries of each boating-restricted area established by the ordinance and the restrictions on vessel operation imposed within each boating-restricted area.

3. Any other known boating-restricted area (federal, state, county, other municipality, etc.) located within 2,500 feet of any boating-restricted area established by the ordinance.

4. The location of any of the following within a proposed boating-restricted area or used as a basis for establishing a boating restricted area, identified with a label or legend as to whether or not it is available for use by the general public:

a. Any boat ramp, hoist, marine railway, or other launching or landing facility.

b. Any fuel pump or dispenser at any marine fueling facility or licensed terminal facility.

c. Any lock structure.

d. Any designated public bathing beach or swim area.

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

a. Any bridge, including any bridge fender system, if present.

b. Any dam, spillway, or flood control structure.

c. Any confluence of water bodies presenting a blind corner.

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

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

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

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

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

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

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

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

1. The governing body of the county or municipality in which the boating-restricted area is located.

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

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

(g) A summary of the facts and circumstances the applicant contends justifies the establishment of the restriction on speed or operation and a list of the evidence in support of that contention the applicant desires for the agency to review.

(h) An appendix containing all evidence listed in paragraph (g) above, except that the appendix need not include the following:

1. Copies of Boating Accident Reports or Boating Accident Investigation Reports if those reports are identified by law enforcement agency case number and provided in a list. If the Boating and Waterways Section does not have a copy on file of one or more such reports, it will request that the applicant supplement the application appendix with copies of those reports.

2. Copies of Florida Uniform Boating Citations if identified by citation number in a list. If one or more citations are not already entered into the ArrestNet Database maintained by the Field Services Section, the Boating and Waterways Section will request the applicant to supplement the application appendix with copies of those citations.

(i) Proof that the applicant has at its own cost published, as provided by Sections 50.011-.031, Florida Statutes, once a week for 2 consecutive weeks, a notice of the application in a newspaper of general circulation in the area(s) affected by the ordinance. The notices must be published at least 7 days, but not more than 30 days, before the application is submitted.

(j) The signature of the applicant's attorney or qualified representative.

(k) The date the application is submitted.

(4) Complete applications may be submitted:

(a) By mail or in person to the Fish and Wildlife Conservation Commission, Boating and Waterways Section, 620 South Meridian Street, Tallahassee, FL 32399-1600; or

(b) As a Portable Document Format (.pdf) file attached to an email addressed to waterway.management@myfwc.com.

(5) The Boating and Waterways Section will not process partial or incomplete applications.

Rulemaking Authority 327.04, 327.46 FS. Law Implemented 327.46 FS. History--New _____.

68D-21.002 Procedures for Reviewing Applications.

(1) Upon receipt of all statements and other documents specified above, the Boating and Waterways Section will determine whether or not the application is complete.

(a) If the application is not substantially complete or has not been completed substantially correctly, the Boating and Waterways Section will within 30 days of receipt return it to the applicant with a statement of the items that are missing or that must be corrected.

(b) If the application is substantially complete and only minor additions or corrections are required, the Boating and Waterways Section will within 30 days following receipt notify the applicant of the apparent errors or omissions and request the required additional or corrected information. If the requested additional or corrected information is not received within 30 days, the Boating and Waterways Section will return the application to the applicant with a statement of the items that are missing or that must be corrected.

(2) Within 30 days following receipt of a completed application, the Boating and Waterways Section will provide notice of such receipt:

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

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

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

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

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

1. For municipal ordinances, in consultation and coordination with the governing body of the county in which the boating-restricted area is located;

2. For county ordinances, in consultation and coordination with the governing body of each municipality in which a boating-restricted area is located unless all boating-restricted areas are located in unincorporated portions of the county;

3. For boating-restricted area on navigable waters of the United States, in consultation and coordination with the United States Coast Guard and the United States Army Corps of Engineers.

If the required consultation and coordination has not taken place, the application will be denied. This paragraph shall not be construed to require an applicant to wait indefinitely for a response to a request for consultation and coordination. If a municipality or county has made such a request for consultation and coordination in writing and has not received a response within 30 days, the Boating and Waterways Section will, if requested, attempt to facilitate such consultation and coordination. If a response is still not forthcoming, the Boating and Waterways Section will conclude that the municipality, county, or federal agency to whom the request was addressed has no objection to the proposed ordinance and no further consultation or coordination will be required.

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

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

1. Review all written public comments received within 21 days following the publication in the Florida Administrative Weekly of the notice of receipt of a complete application and all testimony, evidence, and exhibits presented at a public hearing if one was requested;

2. Review all comments provided by the United States Coast Guard and the United States Army Corps of Engineers received prior to the determination.

3. Conduct a public hearing within the applicant's jurisdiction if a written request for such a hearing is received within 21 days following the publication in the Florida Administrative Weekly of the notice of receipt of the application.

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

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

2. No ordinance establishing a boating restricted area will be approved for the purpose of noise abatement or for the protection of shoreline, shore-based structures, or upland property from vessel wake or shoreline wash. As provided in Section 327.33(2), Florida Statutes, "vessel wake and shoreline wash resulting from the reasonable and prudent operation of a vessel shall, absent negligence, not constitute damage or endangerment to property." The wake resulting from the reasonable and prudent operation of a vessel is a force which should be anticipated by the owners of property adjacent to the navigable waters of this state.

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

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

Rulemaking Authority 327.04, 327.46 FS. Law Implemented 327.46 FS. History—New _____.

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

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

(2) Public Participation.

(a) Members of the public may provide written comments, recommendations, requests, inquiries, or other correspondence to the Boating and Waterways Section at 620 South Meridian Street, Tallahassee, FL 32399-1600; or by email at waterway.management@myfwc.com. Any attachments to emails must be in one or more of the following file formats, as appropriate: Microsoft Word Document (.doc or .docx); Rich Text File (.rtf); Portable Document Format (.pdf); Joint Photographic Experts Group format (.jpg or .jpeg); or Tagged Image File Format (.tif or .tiff).

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

1. Testify at the hearing or Commission meeting;

2. Submit relevant and material exhibits to the record of the proceeding.

Rulemaking Authority 327.04, 327.46 FS. Law Implemented 327.46 FS. History—New _____.

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

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

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

(a) A blind corner is presented where an intervening obstruction to visibility prevents the operator of a vessel on one of the water bodies from seeing a vessel on the other water body at a distance of 300 feet or less from the confluence.

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

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

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

(a) Subject to hazardous water levels or currents if:

1. The boating-restricted area established in the ordinance is active and enforceable only when the water levels are at or above flood stage on a river gauge operated or reported by the National Weather Service's River Forecast Center (<http://www.srh.noaa.gov/serfc/>) or at the equivalent level on a river gauge operated or reported by the United States Geological Survey's National Water Information System (<http://waterdata.usgs.gov/fl/nwis/rt>) and the specific gauge and flood stage water level is specified in the ordinance.

2. The United States Coast Pilot (<http://www.nauticalcharts.noaa.gov/nsd/cpdownload.htm>) identifies the area as being subject to hazardous tides or currents.

3. A navigation chart published by the National Oceanic and Atmospheric Administration's National Ocean Service (<http://www.nauticalcharts.noaa.gov/>) identifies the area as being subject to hazardous tides or currents.

4. Creditable data demonstrate that the area is subject to water levels or currents that endanger vessels operating in the area or the occupants of such vessels.

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

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

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

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

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

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

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

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

iii. Medical records, including EMS and medical examiner reports, if they document death or injuries as a result of a boating accident and specify the nature and location of the boating accident;

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

c. A vessel traffic study if the conclusions of the study are, as determined by the Boating and Waterways Section, based upon sufficient facts or data, are the product of reliable principles and methods, and if the study has applied the principles and methods reliably to the facts or data considered. In assessing the creditability of a vessel traffic study, the following factors (as applicable) shall be among those considered:

i. Whether the study's methodology can be or has been tested (i.e., whether the study's methodology can be challenged in some objective sense, or whether it is instead simply a subjective, conclusory approach that cannot reasonably be assessed for reliability);

ii. Whether the study's methodology has been subject to peer review and publication;

iii. The known or potential rate of error of the study’s methodology;

iv. The existence and maintenance of standards and controls; and

v. Whether the methodology has been generally accepted in the scientific community.

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

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

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

1. As a canoe trail or otherwise limited to vessels under oars or under sail if:

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

b. Imposition of the restriction will not unreasonably or unnecessarily endanger navigation or interfere with the use of a navigation channel that is lawfully marked with lateral aids to navigation.

2. For a particular specified activity (e.g.: sailing instruction, marine research, water skiing, personal watercraft use, sailboard use, etc.) if the applicant demonstrates by competent substantial evidence how certain classes of vessels (including all vessels if appropriate under the prevailing circumstances) endanger or are likely to endanger those participating in the specified activity and that the specified classes of vessels must be excluded from the area in order to adequately protect the safety of those participating in the specified activity.

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

(a) Florida Boating Accident Investigation Report, form FWCDLE 146 (10/08), and Florida Boating Accident Report Self Report, form FWCDLE 146C (12/06), supplied by the commission as provided in Section 327.302, Florida Statutes. These forms may be obtained from the Boating and Waterways Section, 620 South Meridian Street, Tallahassee, FL 32399-1600.

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

(c) United States Coast Guard Report of Marine Casualty, Injury or Death, form CG-2692 (Rev. 06/04), as provided in 46 C.F.R. § 4.05-10. This form may be obtained from the Coast Guard Sector Office, Coast Guard Marine Inspection Office or Coast Guard Group Office nearest the scene of the marine casualty, or from Commander, USCG Seventh District, Brickell Plaza Federal Building, 909 S.E. 1st Avenue, Miami, FL 33131-3050, or downloaded at http://www.uscg.mil/forms/CG/CG_2692.pdf.

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

NAME OF PERSON ORIGINATING PROPOSED RULE: Colonel Jim Brown, Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, 620 South Meridian Street, Tallahassee, Florida 32399-1600

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Fish and Wildlife Conservation Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 28, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 25, 2009

FISH AND WILDLIFE CONSERVATION COMMISSION

Vessel Registration and Boating Safety

RULE NOS.:	RULE TITLES:
68D-23.101	Intent
68D-23.102	Scope
68D-23.103	Definitions
68D-23.104	Permits Required; Application for Permits
68D-23.105	Criteria for Approval of Markers
68D-23.106	Marker Placement Requirements
68D-23.107	Federal System Adopted
68D-23.108	Specifications for Markers
68D-23.109	Additional Specifications for Information and Regulatory Markers
68D-23.110	Inspections and Certification
68D-23.111	Enforcement
68D-23.112	Exemptions

PURPOSE AND EFFECT: The purpose of the rule amendments is to implement waterway management changes resulting from the passage of Chapter 2009-86

(CS/CS/HB/1423), Laws of Florida, which modified Sections 327.40, 327.41, and 327.46, Florida Statutes, as it relates to the establishment of boating restricted areas.

SUMMARY: The rule amendments will provide consistency with the proposed adoption of Chapter 68D-21, F.A.C. and repeal of Chapter 68D-18, F.A.C. to implement waterway management issues as a result of the statutory changes to Sections 327.40, 327.41, and 327.46, Florida Statutes. In addition, the rule amendments are intended to further clarify information that needs to be submitted with a uniform waterway marker permit application and municipal or county ordinance review, update United States Coast Guard referenced material as it relates to Aids to Navigation, provide definitions, and clarify exemptions to permitting and designate agency contact.

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 not 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: 327.04, 327.40, 327.41, 327.46, 379.2431 FS.

LAW IMPLEMENTED: 327.22, 327.40, 327.41, 327.46, 327.60, 327.70, 327.71, 379.2431 FS.

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

DATES AND TIME: June 23-24, 2010, 8:30 a.m. – 5:00 p.m., each day

PLACE: Orlando Marriott Lake Mary, 1501 International Parkway, Lake Mary, FL 32746

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: ADA Coordinator, at (850)488-6411. 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: Captain Richard Moore, Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, Boating and Waterways Section, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)488-5600, richard.moore@myfwc.com.

THE FULL TEXT OF THE PROPOSED RULES IS:

68D-23.101 Intent.

(1) through (2) No change.

(a) No change.

(b) To provide a means by which the Fish and Wildlife Conservation Commission Division and its officers and all other law enforcement officers charged with the enforcement of this chapter may determine with reasonable certainty which boating restricted areas are lawfully established and marked;

(c) To insure that regulatory markers noticing boating restricted areas created pursuant to Sections 327.46 and 379.2431 ~~327.22, 327.60 and 370.12~~, F.S., are authorized only for the purposes of protecting human life and limb, vessel traffic safety and maritime property, and manatees.

(3) No change.

(4) The Fish and Wildlife Conservation Commission Division will not issue any permit authorizing the placement of regulatory markers implementing municipal or county ordinances that for:

(a) ~~Are in violation of Section 327.60, F.S.; Ordinances that apply within the Florida Intracoastal Waterway, in violation of Section 327.60(2), F.S.;~~

(b) Establish boating-restricted areas pursuant to Section 327.46(1)(c), F.S., until such ordinances have been reviewed and approved by the Boating and Waterways Section in accordance with Chapter 68D-21, Florida Administrative Code; Ordinances adopted pursuant to Section 370.12(2)(p), F.S., until such ordinances have been reviewed and approved by the commission, and provided that such ordinances do not apply within the marked navigation channel of the Florida Intracoastal Waterway nor to the waters within 100 feet of said channel;

(c) Regulate vessel speed or operation for manatee protection purposes pursuant to Section 379.2431(2)(p), F.S., until such ordinances have been reviewed and approved by the commission, coordinated through the Imperiled Species Management Section, and provided that such ordinances do not apply within the marked navigation channel of the Florida Intracoastal Waterway nor to the waters within 100 feet of said channel; Ordinances that Discriminate against personal watercraft, in violation of Section 327.60(1), F.S.;

(d) ~~Ordinances that Discriminate against airboats, unless adopted by a two-thirds vote of the governing body enacting such ordinance, as provided in Section 327.60(1), F.S.~~

(e) ~~Ordinances regulating the anchoring of non live aboard vessels in navigation, in violation of Sections 327.60(2), F.S., when such vessels are outside the marked boundaries of mooring fields permitted as provided in Section 327.40, F.S., and this rule.~~

(5) No change.

(6) Regulatory markers placed and maintained pursuant to a permit issued as provided herein shall be prima facie evidence of the boundaries of boating-restricted areas and the speed or operational restrictions imposed therein.

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

68D-23.102 Scope.

The provisions of this chapter prescribe the procedures by which the Division of Law Enforcement's Boating and Waterways Section permits and regulates the placement of markers in, on, and over the waters of this state and the shores thereof. This chapter also provides for the design, ~~construction~~, characteristics and coloring, construction, placement, and maintenance of all markers placed in, on, and over the waters of this state and the shores thereof by adopting by reference the United States Aids to Navigation System, Part 62 of Title 33 of the Code of Federal Regulations, and the United States Coast Guard's manuals pertaining to aids to navigation and other waterway markers.

Rulemaking Specific Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History—New 12-23-01, Amended.

68D-23.103 Definitions.

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

(a) through (b) No change.

(c) "Regulatory marker" means a device used to alert the mariner to various ~~warnings~~ or regulatory matters such as horsepower, speed, ~~or~~ wake, or entry restrictions.

(d) "Special mark" means a marker not primarily intended to assist safe navigation, but to indicate special areas or features referred to in charts or other nautical publications. They may be used, for example, to mark anchorages, mooring fields, park boundaries, cable or pipeline areas, marine events, etc.

(e) ~~(d)~~ "Mooring buoy" means a device that is permanently secured to the bottom of a body of water and to which a vessel may be secured when not underway.

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

(g) ~~(f)~~ "Sign" means an object which displays a message and which is attached to another object such as a piling, buoy, structure, or the land itself.

(h) ~~(g)~~ "Symbol" means the orange geometric shape displayed on a danger, ~~an~~ information, or regulatory marker. The meanings associated with the orange geometric shapes are as follows:

1. through 4. No change.

(i) ~~(h)~~ "Display area" means the area on an information marker or regulatory marker within which the symbol is displayed.

(j) ~~(i)~~ "Boating-restricted area" means an area of the waters of the state within which the operation of vessels is subject to specified restrictions or from which vessels are excluded.

(k) ~~(j)~~ "Shore" means that area of land immediately adjacent or contiguous to the waters of the state such that a sign or marker erected thereon is readily visible to the operator of a

vessel who might reasonably believe that the sign or marker displays navigational, regulatory or other information relevant to the operation of the vessel.

(l) ~~(k)~~ "Florida Intracoastal Waterway" means:

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

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

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

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

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

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

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

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

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

(2) When used on markers, the terms:

(a) No change.

(b) “Slow Speed” and “Slow Speed Minimum Wake” may be used interchangeably and mean that a vessel must be fully off plane and completely settled into the water. The vessel must then proceed at a speed which is reasonable and prudent under the prevailing circumstances so as to avoid the creation of an excessive wake or other hazardous condition which endangers or is likely to endanger other vessels or other persons using the waterway. At no time is any vessel required to proceed so slowly that the operator is unable to maintain control over the vessel or any other vessel or object that it has under tow. A vessel that is:

1. through 4. No change.

(c) No change.

(d) “No Power-driven Vessels” – All vessels equipped with any mechanical means of propulsion must turn off the mechanical means of propulsion and, if possible to do so, tilt or raise the mechanical means of propulsion out of the water. The use of any motor, including an electric motor, is prohibited.

(e) No change.

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

1. through 4. No change.

(g) No change.

(h) “Wake,” only when used in conjunction with a numerical size limit, means all changes in the vertical height of the water’s surface caused by the passage of a vessel including, but not limited to, a vessel’s bow wave, stern wake, and propeller wash, measured from the ambient tide level to the crest of the vessel’s wake at a distance of not less than 25 feet from the vessel.

(i) No change.

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

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

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

68D-23.104 Permits Required; Application for Permits Placement of Markers.

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

(2) Any person, municipality, county, or other governmental entity desiring to place a marker shall apply to the Boating and Waterways Section on the Florida Uniform Waterway Marker Application form, FWCDLE 153 (04/2010), which is adopted and incorporated herein by reference. Application forms may be obtained by submitting a request to: Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, Boating and Waterways Section, 620 South Meridian Street, Tallahassee, Florida 32399-1600 or by downloading the application from the Commission website at: http://www.myfwc.com/RECREATION/boat_waterways_index.htm. Each application must include:

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

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

2. If the application is for the following information markers the drawing must also depict:

a. The location of the danger, hazard to navigation, or obstruction if the application is for a danger marker, isolated danger mark, or inland waters obstruction mark, the drawing must also depict.

b. Water depths within and adjacent to the area being marked if the application is for lateral marks, preferred channel marks, or safe water marks.

c. The location and boundaries of the anchorage, mooring field, park, cable or pipeline area, marine event, or other special area or feature for which the markers are proposed if the application is for special marks.

3. If the application is for mooring buoys of any type, the drawing must also depict the watch circle and water depth for each mooring and any channels or fairways within 500 feet of the proposed mooring buoys.

(b) A list of the markers proposed, labeled to correspond to the drawing(s) required above.

(c) A statement of the specifications for the markers proposed, including:

1. A description giving the type, size, shape, color, material, height above mean high water for each marker sign or buoy, and the number, letter or message displayed thereon;

2. A description of the type, size, and material used for:

a. Any structure which will support a marker sign;

b. Any anchor, anchoring system, chain, tether, rode, or other ground tackle which will secure a marker buoy, including a mooring buoy, to the bottom;

3. A statement of the color, characteristic, height above mean high water, intensity, and nominal range of any light which will be placed on the markers;

4. A statement of the type signal (whistle, horn, bell, etc.) and characteristic for any audible signal.

5. The latitude and longitude of the location where each marker will be placed, expressed in degrees and decimal minutes and referenced to the WGS-84 datum.

(d) A statement of the purpose for placing the proposed markers.

1. If the application is for regulatory markers, this statement must include the purpose for regulating or restricting vessel speed or operation in sufficient detail to permit the Boating and Waterways Section to ascertain whether there are a proper number of markers proposed to be installed in proper locations so that the boating public is given adequate notice of the regulation or restriction on vessel speed or operation.

2. If the application is for a danger marker, isolated danger mark, or inland obstruction mark, this statement must include a description of the danger, hazard to navigation, or obstruction in sufficient detail to permit the Boating and Waterways Section to ascertain whether there are a proper number of markers proposed to be installed in proper locations so that the boating public is given adequate notice of the danger, hazard to navigation, or obstruction.

3. If the application is for lateral marks, preferred channel marks, or safe water marks, this statement must include a description of the channel, fairway, or other area of safe water in sufficient detail to permit the Boating and Waterways Section to ascertain whether there are a proper number of markers proposed to be installed in proper locations so that the boating public is given adequate notice of channel, preferred channel, fairway, or safe water area.

4. If the application is for mooring buoys, this statement must include the following:

a. A statement of the type, maximum overall length, and maximum draft of vessels that will be allowed to moor at each buoy.

b. An estimate of the average daily weekday traffic and average daily weekend and holiday traffic that will be arriving or departing the proposed moorings.

c. A description of any navigation channels or fairways within 500 feet of the proposed mooring buoys and a description of nature and volume of vessel traffic within such channels or fairways.

d. A description of any upland amenities that will be provided to vessels moored at the proposed mooring buoys.

e. A list of any rules, regulations, requirements, or prohibitions that will be imposed on vessels moored at the proposed mooring buoys.

f. A statement of whether the area in which the mooring buoys are proposed to be located has been designated by the United States Coast Guard as a special anchorage area (i.e., vessels moored there will not need to display anchor lights) or whether the applicant intends to seek such a designation.

g. A statement of whether the mooring buoys will be managed together as a mooring field and, if so, whether the applicant intends to seek the adoption of an ordinance prohibiting anchoring within the marked boundaries of the mooring field. This information must be provided in sufficient detail to permit the Boating and Waterways Section to ascertain whether the placement of mooring buoys and the mooring of vessels at the proposed locations may be safely accomplished and whether the mooring of vessels at the proposed locations will unreasonably or unnecessarily constitute a navigational hazard or otherwise obstruct, impede, or interfere with the navigation of other vessels.

5. If the application is for special marks, this statement must include a description of the anchorage, mooring field, park, cable or pipeline area, marine event, or other special area or feature for which the markers are proposed in sufficient detail to permit the Boating and Waterways Section to ascertain whether there are a proper number of markers proposed to be installed in proper locations so that the boating public is given adequate notice of the area's or feature's nature, location, and boundaries.

(e) A list of the names or titles of the individuals responsible for the placement and maintenance of the markers along with an address and a contact telephone number for each individual.

(f) If the application is for regulatory markers, the applicant must include proof of the lawful imposition of a regulation or restriction on the speed or operation of vessels for which the regulatory markers are proposed, as follows:

1. For regulatory markers to implement boating-restricted areas established by a municipal or county ordinance:

a. A copy of an ordinance adopted pursuant to Section 327.46(1)(b), F.S., which imposes the restriction for reasons of vessel traffic safety or public safety; or

b. A copy of an ordinance approved by the commission pursuant to paragraph 327.46(1)(c), F.S.; or

c. A copy of an ordinance approved by the commission pursuant to paragraph 379.2431(2)(p), F.S., such approval shall be coordinated through the commission's Imperiled Species Management Section.

2. For all other regulatory markers, a copy of the statute, special act, rule, regulation, order, or other instrument which imposes the regulation or restriction and a statement of the specific authority under which the restriction is imposed.

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

(Substantial rewording of Rule 68D-23.105 follows. See Florida Administrative Code for present text.)

68D-23.105 Criteria for Approval of Regulatory Markers.

(1) Upon receipt of a completed application, the Boating and Waterways Section will determine:

(a) For all markers, whether or not:

1. The proposed markers conform to the United States Aids to Navigation System and this chapter.

2. The proposed markers, if placed in the proposed locations, would create an unreasonable hazard to navigation.

(b) For regulatory markers only, determine whether or not:

1. The markers as proposed would clearly mark the location in which the regulation or restriction is in effect and adequately notice mariners of the regulation or restriction imposed on vessel speed or operation.

2. The regulation or restriction to be implemented by the proposed markers and the message to be displayed thereon are supported by statute, special act, rule, ordinance, or other enactment or order.

(c) For danger markers, isolated danger marks, or inland obstruction marks only, whether or not the danger, hazard to navigation, or obstruction actually exists and, if so, whether or not there are a proper number of markers proposed to be installed in proper locations so that mariners are given adequate notice of the danger, hazard to navigation, or obstruction.

(d) For lateral marks, preferred channel marks, or safe water marks only, whether or not there are a proper number of markers proposed to be installed in proper locations so that the boating public is given adequate notice of channel, preferred channel, fairway, or safe water area.

(e) For mooring buoys only, whether the placement of mooring buoys and the mooring of vessel at the proposed locations may be safely accomplished and whether the mooring of vessels at the proposed locations will unreasonably or unnecessarily constitute a navigational hazard or otherwise obstruct, impede, or interfere with the navigation of other vessels.

(f) For special marks only, whether or not there are a proper number of markers proposed to be installed in proper locations so that the boating public is given adequate notice of the area's or feature's nature, location, and boundaries.

(2) The Boating and Waterways Section is authorized to consult, coordinate, or cooperate with any other governmental entity having concurrent jurisdiction over the waters for which the permit is applied.

Rulemaking Specific Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41, 379.2431 FS. History—New 12-23-01, Amended _____.

68D-23.106 Marker Placement ~~Requirements~~ Conditions.

(1) All persons placing or maintaining in place any markers must comply with the following requirements and all permits issued pursuant to this chapter are subject to the following conditions:

(a) Placement of these markers must be exactly as requested in the application. Any deviation will require that the permittee applicant apply to have the permit amended.

(b) The permittee applicant must display the permit number (except as provided below) on each marker and the ordinance number, code section number, statute number, regulation or rule number (etc.) on each regulatory marker. These numbers must be displayed in black, block characters approximately one inch in height.

1. through 2. No change.

3. ~~Information~~ Informational markers placed by counties, municipalities, or other governmental entities on inland lakes and their associated canals are exempt from permitting under this rule. Such markers, if not permitted, must display in lieu of a permit number, the name of the county, municipality, or other governmental entity that placed the marker.

(c) Upon completion of the installation of markers, the permittee applicant must notify the Boating and Waterways Section in writing within 30 days. If the latitude and longitude of each marker, as installed, is different from that listed in the application, this notification must include the correct latitude and longitude in degrees and decimal minutes as referenced to the WGS-84 installed and the datum along with a request for the permit to be amended in which the coordinates are expressed.

(d) All markers must be maintained in proper condition at all times. A discrepancy exists whenever a marker is not exactly as described in the approved application or is destroyed, damaged, moved, or is otherwise unserviceable or not watching properly. The permittee applicant must immediately report any discrepancy in the marker to the Boating and Waterways Section by telephone, telefacsimile or other similarly rapid means of communication. The permittee Unless the applicant's permit expressly provides for a longer period, the applicant must correct any discrepancy within not more than 30 days and must notify the Boating and Waterways Section when the correction is accomplished.

(e) ~~A permit Authorization by the division~~ for the placement of a marker does not authorize any invasion of private rights, nor grant any exclusive privileges, nor does it obviate the necessity of complying with any other federal, state or local laws or regulations.

(f) through (g) No change.

(h) It is unlawful to place markers, buoys, or signs on submerged lands, or other property or structure not owned by the person or governmental entity placing them without first receiving the written consent of the owner of the submerged lands, other property, or structure to the placement of said markers, buoys, or signs. For markers, buoys, or signs placed pursuant to a permit issued under this rule, the permit is contingent upon the permittee applicant providing a copy of such consent to the Boating and Waterways Section.

(i) By accepting any permit and placing the markers authorized therein, the permittee applicant ~~other than a governmental entity~~, to the extent authorized by law, agrees and promises to hold harmless the State of Florida and its agencies, employees, agents, or successors from fault with respect to any claim or claims arising from alleged negligence in the placement, maintenance, operation and removal of any and all markers placed by the permittee applicants pursuant to such permits. The permittee applicant ~~other than a governmental entity~~ further agrees to indemnify the State of Florida for any and all legal fees and costs incurred in defense of any suit brought against the State as a result of alleged negligence by the permittee applicant in the placement, maintenance, operation or removal of the markers.

~~(j) Applicants for permits to place regulatory markers or the governmental entities establishing the rules, ordinances, or other actions imposing the regulations must provide for the enforcement of operating restrictions noticed by said markers.~~

(2) Additional requirements conditions for regulatory markers.

(a) No change.

(b) If the regulatory instrument supporting a regulatory marker is amended or if it is repealed, rescinded, revoked, or otherwise becomes a nullity, the permit holder must within 30 days notify the Boating and Waterways Section of the change and must also:

1. In the case of an amendment to the regulatory instrument, ~~the file an~~ and amended permit application showing the markers that will be removed, replaced, modified, or added in order to implement the amendment to the regulatory instrument.

2. No change.

(c) Applicants for permits to place regulatory markers or the governmental entities establishing the rules, ordinances, or other actions imposing the regulations must provide for the enforcement of regulations or operating restrictions noticed by said markers. The issuance of a permit authorizing the placement of regulatory markers does not obligate the Fish and

Wildlife Conservation Commission or its officers to enforce the regulations or operating restrictions noticed by said markers.

(3) After obtaining the requested permit, the permittee must install, inspect, maintain, and remove the permitted marker at its own expense and as directed by the Boating and Waterways Section.

(4) Discontinuance and removal. Any permitted waterway marker may be discontinued and removed by the permittee owner after 30 days notice to the Boating and Waterways Section. Upon completion of the removal of the marker, the permittee must notify the Boating and Waterways Section in writing within 30 days.

(5) The division and its officers and all other law enforcement officers charged with the enforcement of Chapter 327, F.S., have the authority to remove or cause the removal of any marker found in violation of the requirements conditions imposed under this section or conditions otherwise imposed in the permit authorizing the placement of the marker if the violation is not corrected within 30 days following notification of the permittee of the violation.

Rulemaking Specific Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41, 327.70 FS. History-New 12-23-01, Amended 10-5-06,_____.

68D-23.107 Federal System Adopted.

(1) The following are adopted and incorporated by reference ~~as they existed on December 23, 2001:~~

(a) The United States Aids to Navigation System, Part 62 of Title 33 of the Code of Federal Regulations (April 1, 2010);

(b) The United States Coast Guard Aids to Navigation Manual – Administration (COMDTINST Manual Comdtinst M16500.7A, March 2, 2005);

(c) The United States Coast Guard Aids to Navigation Manual – Technical Manual (COMDTINST Comdtinst M16500.3A, February 11, 2005);

(d) The United States Coast Guard Aids to Navigation Manual – Structures (COMDTINST M16500.25, November 7, 2005).

(2) No change.

(a) Any marker ~~All markers~~ in, on or over the waters of the state or the shores thereof that does not must conform to the United States Aids to Navigation System and all ~~other~~ provisions of this chapter, must be brought into conformity or be removed from the waters or shores of the state.

(b) through (c) No change.

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

68D-23.108 Specifications for Markers.

(1) through (4) No change.

(5) Retroreflective materials ~~must~~ ~~shall~~ be used for all displays on markers that are required to be international orange and as otherwise required in the United States Coast Guard Aids to Navigation Manual – Technical (COMDTINST Manual – Comdtinst M16500.3A). The white background dayboard film material for all information, danger, exclusion, and regulatory signs installed or replaced after July 1, 2006, shall be retroreflective. Retroreflective materials may be used for any other portion of a marker.

(6) No change.

(7) All buoys other than mooring buoys must be attached to the water body ~~waterbody~~ bottom using anchors, sinkers, chains, shackles, swivels, and bridles that meet or exceed the specifications in the United States Coast Guard Aids to Navigation Manual – Technical (COMDTINST Manual – Comdtinst M16500.3A).

(8) Mooring buoys are white cylindrical or spherical with a blue band located near the top of the buoy. All mooring buoys must be attached to the water body ~~waterbody~~ bottom using anchors, ~~sinkers~~, chains, shackles, and swivels, and must be equipped with pennants; that are of sufficient size, strength, and holding power for their intended purpose. Anchors or anchoring systems for mooring buoys must embed in the water body bottom. The use of a sinker (a weight, usually metal or concrete, that rests on the bottom without embedding) to anchor a mooring buoy is prohibited.

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

68D-23.109 Additional Specifications for Information and Regulatory Markers.

(1) through (4) No change.

Rulemaking Specific Authority 327.04, 327.40, 327.41, FS. Law Implemented 327.40, 327.41 FS. History–New 12-23-01, Amended 10-5-06.

68D-23.110 Inspections and Certification.

(1) Each person holding a permit to place and maintain one or more markers must inspect all markers for which the permit was issued triennially (every three years).

(2) No change.

(3) The permit holder must maintain the inspection documentation until it is replaced by a subsequent inspection and documentation. The inspection documentation must be available for inspection by any law enforcement officer during the permittee's normal business hours. Failure to inspect a marker and to maintain documentation of the results of the inspection during the specified time period is grounds for rescinding the permit authorizing placement of the marker and for removing or ordering the removal of the marker.

(4) No change.

(a) No change.

~~(b)(e)~~ A dayboard or buoy must be replaced if any of the deteriorations noted above is observed or, if for any reason, it cannot function as intended (including significant fading or other discoloration) until the next regularly scheduled inspection. Onsite repairs are permitted if they do not interfere with or detract from the intended signal function of the marker.

(5) Within 5 business days following the completion of the triennial inspection, the permittee must notify the Boating and Waterways Section that the inspection has been performed and whether or not any markers were determined to be discrepant. All discrepancies documented during an inspection must be reported to the Boating and Waterways Section and corrected within 30 days, as provided in paragraph 68D-23.106(1)(d), F.A.C.

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

68D-23.111 Enforcement.

This chapter shall be enforced by the division and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other ~~authorized~~ law enforcement officer as defined in Section 943.10, F.S., as provided in Section 327.70, F.S., all of whom shall have the authority to remove or cause the removal of any marker found to be in violation of this chapter.

Rulemaking Specific Authority 327.40, 327.41 FS. Law Implemented 327.22, 327.40, 327.41, 327.46, 327.60, 327.70, 379.2431 FS. History–New 12-23-01, Amended _____.

68D-23.112 Exemptions.

(1) through (2) No change.

(3) ~~Except as provided in subparagraph 68D-23.106(1)(b)3., F.A.C.,~~ Every regulatory marker without a properly displayed permit number, in place in, on or over the waters of the state or shores thereof is declared a nuisance. The division and its officers and all other law enforcement officers charged with the enforcement of Chapter 327, F.S., have the authority to remove or cause the removal of any unpermitted regulatory marker. Markers authorized by the former Florida Department of Natural Resources prior to January 1, 1988, for which no permit number was assigned shall be issued a permit number upon receipt by the Boating and Waterways Section of the following:

(a) through (b) No change.

(4) Counties, municipalities and other government entities are exempt from permitting under this Chapter only when placing information markers on inland lakes and their associated canals. However, nothing herein shall prevent counties, municipalities or other governmental entities from choosing to voluntarily apply for waterway marker permits for such information markers. Markers placed by local governments on inland lakes and their associated canals.

~~(a) The placement of information or danger markers by counties, municipalities, or other governmental entities, in, on, or over the waters or shores of inland lakes and their associated canals is exempt from permitting under this section and such markers need not display any permit number. These markers include, but are not limited to, those providing information or warnings concerning: ends of boat ramps, no swimming, swimming area, lake names, canal names, trash receptacles, public health notices, underwater hazards, regulatory matters, emergencies, and special events.~~

~~(b) These markers, with the exception of swimming area and special event markers, must be placed on land or within 50 feet from the ordinary high water line.~~

~~(c) This exception from the permitting requirement does not relieve any county, municipality, or other governmental entity from compliance with any other state or federal rule, regulation, or law.~~

~~(d) The Commission finds that federal law imposes less restrictive requirements than provided herein on the placement of markers indicating the ends of boat ramps, no swimming, swimming area, lake name, trash receptacle, public health notice, canal, emergency, and other similar markers directed to persons on land, swimmers, and other persons using the waters of this state who are not the operators or occupants of vessels. Such markers were not considered waterway markers prior to June 13, 2005, and were not subject to the provisions of this rule or Section 327.40, F.S., prior to that date. The Commission temporarily exempts such markers from the provisions of this rule and Section 327.40, F.S. This temporary exemption shall expire and this paragraph shall stand repealed on December 31, 2006, unless repromulgated.~~

(5) No change.

~~Rulemaking Specific Authority 327.04, 327.40, 327.41, 327.71 FS. Law Implemented 327.40, 327.41, 327.46, 327.71, 379.2431 FS. History—New 12-23-01, Amended 10-5-06,_____.~~

NAME OF PERSON ORIGINATING PROPOSED RULE:
Colonel Jim Brown, Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, 620 South Meridian Street, Tallahassee, Florida 32399-1600

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Fish and Wildlife Conservation Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 28, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 13, 2009

Section III Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF LEGAL AFFAIRS

Division of Victim Services and Criminal Justice Programs

RULE NO.: 2A-8.005
RULE TITLE: Adjustments to Reflect Consumer Price Index

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 36, No. 19, May 14, 2010 issue of the Florida Administrative Weekly.

The correction is as follows:

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Bill McCollum, Attorney General.

This correction does not affect the substance of the rule.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Rick Nuss, Chief, Bureau of Criminal Justice Programs, Department of Legal Affairs, PL-01, The Capitol, Tallahassee, Florida 32399-1050

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Plant Industry

RULE NO.: 5B-65.005
RULE TITLE: Movement of Regulated Articles

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 36, No. 20, May 21, 2010 issue of the Florida Administrative Weekly.

5B-65.005 Movement of Regulated Articles.

(1) No change.

(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. 2/10 ~~H/08~~. DACS Form 08016, Rev. 2/10 is hereby incorporated 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 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. 5/10 ~~06/09~~, and ~~Report of Plant and Plant Material in Transit~~