

64E-6.0182 Coordinated Permitting. Chapter 28-20, F.A.C., and the Memorandum Of Understanding (MOU) between Monroe County, the Department of Community Affairs, the Department of Environmental Protection, and the Department of Health, including the Monroe County Health Department, dated July 25, 1997, are herein incorporated by reference, and is available by contacting the department. Chapter 28-20, F.A.C., and the MOU establish a permit allocation system for development and a coordinated permit review process. Chapter 28-20, F.A.C., and the MOU prohibit new system construction permits to serve new residential development that would allow development in excess of the number of permits that Monroe County may issue under its policy.

Rulemaking Specific Authority 381.0011(4), (13), 381.006, 381.0065(3)(a), (4)(k) FS., Chg. 99-395, LOF. Law Implemented ~~154.01, 381.0011(4), 381.006(7), 381.0065, 386.00655, 386.01, 386.03,~~ 386.041 FS., Ch. 99-395, LOF. History—New 3-3-98, 3-22-00, Repromulgated.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Substance Abuse Program

RULE NOS.:	RULE TITLES:
65D-31.001	Applicability
65D-31.002	Definitions
65D-31.003	Managing Entity Qualifications
65D-31.004	Functions of Managing Entities
65D-31.005	Managing Entity Policies Requiring Departmental Approval
65D-31.006	Department’s Responsibilities

PURPOSE AND EFFECT: To further specify the essential elements, functions and authority of managing entities based on specifications of Section 394.9082, F.S. To clarify the authority residing with the department and the managing entities. To develop specifications needed to measure both DCF’s performance and that of managing entities.

SUBJECT AREA TO BE ADDRESSED: Definition of the role, functions, essential elements, activities, and authority of managing entities.

RULEMAKING AUTHORITY: 394.9082 FS.

LAW IMPLEMENTED: 394.9082 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: TBD

PLACE: TBD

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Gloria C. Henderson, 1317 Winewood Boulevard, Building 6, Room 235, Tallahassee, FL 32399-0700, (850)413-9068

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

**Section II
Proposed Rules**

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Agricultural Environmental Services

RULE NOS.:	RULE TITLES:
5E-14.110	Fumigation Requirements – Notices
5E-14.111	Fumigation Requirements – Application; Restrictions and Precautions

PURPOSE AND EFFECT: To provide electronic submission of required 24 hour prior notice of structural fumigations to the Department and to clarify and delineate precautionary language directing fumigator’s to visually inspect and secure the space between adjacent buildings.

SUMMARY: The proposed rule will change existing rules and policies by providing pest control fumigators the ability to meet the 24 hour notification requirement through a Department maintained website/database and improving the Department’s capability and efficiency to regulate pest control through the use of technological web-based applications. The proposed change will also clarify and delineate precautionary language directing fumigators to inspect and secure the space between adjacent buildings and update an outdated pest control practice while maintaining appropriate safety and precautionary pest control practices.

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 that states there is no financial impact to 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: 482.051 FS.

LAW IMPLEMENTED: 482.051(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 RULES IS: Mr. Michael J. Page, Chief of Bureau of Entomology and Pest Control; 1203 Governors Square Boulevard, Tallahassee, Florida 32301; (850)921-4177

THE FULL TEXT OF THE PROPOSED RULES IS:

5E-14.110 Fumigation Requirements – Notices.

(1) Each licensee, before performing general fumigation, shall notify the department at least twenty four (24) hours in advance of the fumigation period ~~in advance notify in writing the department inspector having jurisdiction over the location where the fumigation operation is to be performed.~~ Notification shall be made utilizing the department’s electronic fumigation notification website <http://app1.flaes.org/fumigation> or by submitting by facsimile, a completed ~~on~~ DACS Form 13667, Notification of Fumigation, Rev. 04/10 05/08, which is hereby adopted and incorporated by reference and available from the department’s website at <http://www.doacs.state.fl.us/onestop/aes/pestcont.html>. ~~Such notices shall be received by the department inspector at least twenty four (24) hours in advance of the fumigation period.~~ The notice shall state the following:

- ~~(a)(1)~~ Company name and business location address.
- ~~(b)(2)~~ Accepted common or trade name and active ingredients of fumigant to be used.
- ~~(c)(3)~~ Name of certified operator in charge ~~and/or his~~ the designated certified operator(s) or special fumigation identification card holder(s) for the fumigation, together with her or his day and night telephone numbers.
- ~~(d)(4)~~ Location (address), county, and type of structure (single family residential, multi-unit, single family, business commercial, or other) to be fumigated.
- ~~(e)(5)~~ Date of fumigation.

~~(2)(6)~~ Any change(s) in information required in ~~written~~ notices by this regulation shall be reported via the electronic submission website <http://app1.flaes.org/fumigation> or in writing via facsimile in advance of the fumigation period.

(a) Exceptions: In authentic and verifiable emergencies only, when twenty-four (24) hours advance notification is not possible, advance electronic submission via <http://app1.flaes.org/fumigation> telephone or facsimile notice shall be given ~~and.~~

~~(b)~~ This ~~such~~ notice shall be immediately followed by written confirmation stating the required information. The written confirmation may be made by electronic mail to becpfumigation@doacs.state.fl.us.

(3) A licensee that performs chamber or vault fumigations on the premises of the licensee’s licensed business location shall notify the department annually in writing. Information required in the written notification shall include the type of chamber being used on the property (such as shipping containers, trucks, PODS, tarpaulin areas, etc.) and the days of the week and hours during which these fumigations may be performed during the year of notification. The licensee shall provide the department at least 24 hours notice of any changes in the days of the week and hours during which fumigations may be performed.

(4) All forms and filing specifications contained in this rule are hereby adopted and incorporated by reference and may be obtained from the Florida Department of Agriculture and Consumer Services, Bureau of Entomology and Pest Control, 1203 Governors Square Boulevard, Suite 300, Tallahassee, Florida 32301-2961, (850)921-4177 or by visiting the Department’s website at <http://www.doacs.state.fl.us/onestop/aes/pestcont.html>.

Rulemaking Specific Authority 482.051 FS. Law Implemented 482.051(4) FS. History–New 1-1-77, Amended 6-27-79, 6-22-83, 10-25-90, Formerly 10D-55.110, Amended 7-5-95, 9-17-08,_____.

5E-14.111 Fumigation Requirements – Application; Restrictions and Precautions.

(1) through (4) No change.

(5) Fumigation of structures shall be performed in strict accordance with the registered label and labeling directions and precautions for the intended use and type of structure, provided there is sufficient distance along the entire length of the passageway between the structure(s) to be fumigated and all adjacent occupied structure(s) to allow visible inspection, with or without egress, for connected structures as defined in subsection 5E-14.102(17), F.A.C., and inspection for and sealing of exterior openings, such as vents, windows, etc. that require sealing for adequate fumigant confinement permit comfortable, free and reasonable passage for the crewmen to work; for the certified operator or his special fumigation identification card holder to make tests along the passageway for escaping gas with gas detecting equipment and otherwise. If these requirements cannot be met, the fumigation shall not be performed unless the adjacent structure(s) is vacated.

(6) through (7) No change.

Rulemaking Specific Authority 482.051 FS. Law Implemented 482.051(1), 482.152, 482.241 FS. History–New 1-1-77, Amended 6-27-79, 6-22-83, Formerly 10D-55.111, Amended 8-11-93, 9-17-08,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Mr. Anderson H. Rackley, Director of Agricultural Environmental Services

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 15, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 22, 2010

DEPARTMENT OF EDUCATION

State Board of Education

RULE NO.: 6A-1.09401 RULE TITLE: Student Performance Standards

PURPOSE AND EFFECT: The purpose of this rule amendment is to adopt the Next Generation Common Core State Standards for Reading and Language Arts and Mathematics in accordance with Section 1003.41, Florida Statutes. The effect is to ensure that Florida's curriculum standards remain current and relevant.

SUMMARY: This rule is amended to adopt the Next Generation Common Core State Standards in Reading and Language Arts and Mathematics.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: None.

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: 1001.02(1), 1003.41 FS.

LAW IMPLEMENTED: 1003.41 FS.

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

DATE AND TIME: July 27, 2010, 10:00 a.m.

PLACE: Conference Call #: 1(888)808-6959, Code: 4617163

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Todd Clark, Chief, Bureau of Curriculum and Instruction, Department of Education, 325 West Gaines Street, Room 432, Tallahassee, FL 32399, (850)245-0764

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-1.09401 Student Performance Standards.

(1) Standards to benchmark student achievement serve as guides to best practices for local curriculum designers to help schools implement school improvement strategies to raise student achievement. Beginning with the ~~2013-2014~~ ~~2007-2008~~ school year, the reading and language arts benchmarked standards for reading and language arts referenced below in paragraph (1)(a), describe what students should know and be able to do at grade level progression for kindergarten to grade 8 and in grade bands for grade levels 9-10 and 11-12. Beginning with the 2013-2014 school year, the mathematics benchmarked standards for mathematics referenced below in paragraph (1)(b) describe what students should know and be able to do at grade level progression from kindergarten to grade 8 and for each of the mathematics content areas of: Number and Quantity, Algebra, Functions, Modeling, Statistics and Probability, and Geometry for grades 9-12. Beginning with the 2008-2009 school year, the ~~mathematics and science benchmarked standards for mathematics and science referenced below in paragraphs (1)(b) and (c), describe what students should know and be able to do at grade level progression from kindergarten to grade 8 and for each of the mathematics content areas of: algebra, calculus, discrete mathematics, financial literacy, geometry, probability,~~

~~statistics, and trigonometry, and each of the science content areas of: earth and space science, life science, physical science, and nature of science for grades 9-12. Beginning with 2009-2010, the health, physical education, and social studies benchmarked standards describe what students should know and be able to do at ten progression levels (grades K, 1, 2, 3, 4, 5, 6, 7, 8, 9-12). The benchmarked standards in paragraphs (1)(e)-(f) of this rule describe what students should know and be able to do at four progression levels (grades Pre-K-2, 3-5, 6-8, 9-12) in the subjects of the arts and foreign languages. The access points contained in either the Next Generation Sunshine State Standards or the Sunshine State Standards provide access to the general education curriculum for students with significant cognitive disabilities. Public schools shall provide appropriate instruction to assist students in the achievement of these standards or the Sunshine State Standards for Special Diploma as appropriate. These standards, benchmarks, and access points are contained in the following publications which are hereby incorporated by reference and made a part of this rule.~~

- (a) ~~Next Generation Common Core Sunshine State Standards – Reading and Language Arts, 2010 July 2007,~~
- (b) ~~Next Generation Common Core Sunshine State Standards – Mathematics, 2010 2008,~~
- (c) Sunshine State Standards – Science, 2008,
- (d) Next Generation Sunshine State Standards – Social Studies, 2009,
- (e) Sunshine State Standards – Foreign Languages, 1996,
- (f) Sunshine State Standards – The Arts, 1996,
- (g) Next Generation Sunshine State Standards – Health, 2009,
- (h) Next Generation Sunshine State Standards – Physical Education, 2009, and
- (i) Sunshine State Standards for Special Diploma, 1999.

Copies of these publications may be obtained from the Division of Public Schools, Department of Education, 325 West Gaines St., Tallahassee, Florida 32399-0400.

(2) through (4) No change.

Rulemaking Authority 1001.02 FS. Law Implemented 1001.03, 1003.41 FS. History—New 6-18-96, Amended 9-28-99, 3-1-07, 7-25-07, 11-25-07, 4-14-08, 9-22-08, 2-1-09, 1-6-10,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Dr. Frances Haithcock, Chancellor, Division of Public Schools
 NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Dr. Eric J. Smith, Commissioner of Education
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 21, 2010
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 14, 2010

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

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

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-602.210
RULE TITLE: Use of Force

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to clarify the procedures for reporting and recording use of force incidents and to amend Form DC4-711A for clarity.

SUMMARY: The proposed rule clarifies the procedures for reporting and recording use of force incidents and amends Form DC4-711A for clarity.

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: 776.07, 944.09, 944.35 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:

33-602.210 Use of Force.

(1) through (4) No change.

(5) Physical force shall be employed only as a last resort when it reasonably appears that other alternatives are not feasible to control the situation and will not be used solely in response to verbal abuse that does not rise to a level of a disturbance. When the use of force is justified, only that amount and type of force that reasonably appears necessary to accomplish the authorized objective shall be used. Utilization of the custodial touch, with the hand firmly grasped around the inmate's triceps or elbow, during internal transport of restrained inmates shall not be considered a use of force when the transport hold is for the safety of the inmate and resistance is not met.

(a) through (7) No change.

(8) The warden or, in his absence, the duty warden will be consulted and give ~~her or his~~ permission prior to use of physical force. In spontaneous use of force incidents when circumstances do not permit prior approval, the warden or, in his absence, the duty warden will be notified immediately following any use of force incident. Whenever force is authorized, the employee who was responsible for making the decision to use force pursuant to subsection (2) shall prepare, date and sign Form DC6-232, Authorization for Use of Force Report, either during, or immediately after, the tour of duty when force was used. If the authorization for force is given after normal working hours, the person authorizing the force shall complete and sign Form DC6-232 within one working day (Monday through Friday) following the incident. Form DC6-232 is incorporated by reference in subsection ~~(29)~~~~(25)~~ of this rule.

(9) Whenever force is used the employee initially using force shall complete Form DC6-230, Institutions Report of Force Used. ~~The, and the~~ completed form shall include a detailed written report of force used providing exact circumstances leading to the use of force (i.e., who, what, when, where, how, and why), the officer's personal behavior in the use of force, specific information regarding the type, brand, and amount of any chemical agents used (number and length of bursts), as well as the dispenser and method of disbursement. If more than one employee was involved in the initial use of force, the highest ranking official involved or the most senior employee shall complete the report. Each additional employee involved in the use of force who agrees with the facts and circumstances as reported on Form DC6-230 Section I shall prepare Form DC6-231, Institutions Report of Force Used Staff Supplement. The report shall describe in detail the type and amount of force used by him or her. Each employee shall individually write his or her own report, then submit the completed report to the clerical personnel designated by the warden to type all the reports onto one form to be signed by each employee. Any additional employee who does not agree with the facts and circumstances as reported in Form DC6-230 Section I shall prepare a separate Form DC6-230, Institutions Report of Force Used. Forms DC6-230 and DC6-231 are incorporated by reference in subsection ~~(29)~~~~(25)~~ of this rule.

(10) No change.

(11) The warden or acting warden shall immediately conduct a preliminary review of the video tape(s) and all associated reports for signs of excessive force or procedural deviation. If signs of excessive force or procedural deviation are noted by the warden or assigned inspector, she or he will notify the Office of the Inspector General directly, so that there is no undue delay in initiating an investigation. The warden shall then appoint a staff member of equal or higher rank than those involved in the use of force to collect all pertinent information and required documentation. This information will include the reports of all involved staff and the statements of

staff witnesses, inmate witnesses, the inmate subject, and the completed Form DC1-813, Use of Force File Checklist. Form DC1-813 is incorporated by reference in subsection (29) of this rule. All inmate statements (subject and witnesses) shall be made in writing using Form DC6-112C, Witness Statement. Form DC6-112C is incorporated by reference in Rule 33-601.313, F.A.C. All employees who witness but do not participate in the use of force shall complete, Form DC6-210, Incident Report. Form DC6-210 is incorporated by reference in subsection (29) of this rule. This process will be completed within 5 working days (Monday through Friday). The warden shall review the information and note any inappropriate actions. The warden shall review Form DC1-813, Use of Force File Checklist and shall forward the videotape(s) and associated reports on the use of force and the warden's review to the institutional inspector within five working days. The warden shall keep a copy of the completed Form DC6-230 pending the response from the Office of the Inspector General. The institutional inspector will ensure that all documentation is complete, note any preliminary finding, including anything missing from the documentation and the reason why, complete the appropriate sections on Form DC1-813, and then will forward all materials to the Use of Force Unit within the Office of the Inspector General (OIG) within 5 working days. The Use of Force Unit within the OIG, following its review, will either approve the use of force action or disapprove it. If necessary, it will be referred for investigation before final approval or disapproval. If the Use of Force Unit finds that the use of force was appropriate, the OIG's written determination of the appropriateness of the force used and the reasons therefor, shall be forwarded to the circuit administrator or warden upon completion of the review. If the Use of Force Unit finds that the use of force was inappropriate, the OIG shall conduct a complete investigation into the incident and forward the findings of fact to the appropriate regional director. The OIG shall also advise the warden in writing of the reason for the disapproval so that the warden can take any needed corrective action. If employee disciplinary action appears warranted, the warden shall prepare Form DC6-296, Disapproved Use of Force/Disposition Report, and forward the materials to the ~~service center~~ employee relations supervisor in the servicing personnel office. Form DC6-296 is incorporated by reference in subsection (29) of this rule. The warden shall document all corrective action taken. Copies of the employee's report, the warden's summary and the inspector general's review and determination shall be kept in the inmate's file. Form DC2-802, Use of Force Log, shall be placed in every employee's personnel file. This form will be maintained by the servicing personnel office and shall contain a record of every report of use of force and staff supplement completed by the employee. The warden or his designee shall be responsible for submitting accurate information to the personnel office in order to maintain Form DC2-802. Any use of force reports

completed prior to April 15, 1998 shall remain in the file. Form DC2-802 is incorporated by reference in subsection (29) of this rule.

(12) Based on the use of force review data system, the Inspector General will notify the warden and regional director of any officer involved in eight or more use of force incidents in an eighteen month period. The regional director will review the circumstances for possible reassignment.

(13) Any incident that necessitates the drafting of Form DC6-230, Institutions Report of Force Used, will be reported to the Emergency Action Center (EAC). The following information will be provided to the EAC the:

(a) Name of the institution at which the incident occurred,

(b) Name of staff members reporting to the emergency action center,

(c) Name of the inmate(s) involved,

(d) Names of staff members involved,

(e) Category of force used as determined by subsection (14) below,

(f) Injuries to staff members, and

(g) Injuries to inmates.

(14) The applicable category of or reason for the use of force shall be determined by the warden or shift supervisor based on whether the force was used to:

(a) Defend her/himself or another against an inmate using unlawful force;

(b) Prevent the escape from a state correctional institution or facility of an inmate or aid in the recapture of an escaped inmate;

(c) Prevent the escape of an inmate during transporting or while outside a correctional institution or facility;

(d) Prevent damage to property;

(e) Quell a disturbance;

(f) Overcome an inmate's physical resistance to a lawful command;

(g) Prevent an inmate from inflicting further injury to her/himself (suicide attempt);

(h) Restrain the inmate when ordered to allow medical treatment; or

(i) Complete a cell extraction.

(15) The designation of multiple categories of or reasons for use of force may be required depending on the use of force incident. Additional information that is reportable to the emergency action center that may accompany a use of force, such as battery of a law enforcement officer or escape, shall also be reported.

~~(16)~~(12) Any employee who witnesses, or has reasonable cause to suspect, that an inmate has been unlawfully abused shall immediately prepare, date and sign Form DC6-210, Incident Report, pursuant to Section 944.35(3)(d), F.S., specifically describing the nature of the force used, the location and time of the incident and the persons involved. The report

shall be delivered to the inspector general of the department with a copy delivered to the warden of the institution. The inspector general shall conduct an appropriate investigation and, if probable cause exists that a crime has been committed, notify the state attorney in the circuit in which the institution is located.

~~(17)(13)~~ Force or restraint may be used to administer medical treatment when ordered by a physician or clinical associate, and only when treatment is necessary to protect the health of other persons, as in the case of contagious and venereal diseases, or when treatment is offered in satisfaction of a duty to protect the inmate against self-inflicted injury or death. The physician or clinical associate shall prepare Form DC6-232, Authorization for Use of Force Report, documenting the reasons that force or restraint was authorized. The physician's or clinical associate's report shall be attached to Form DC6-230, Institutions Report of Force Used, when actual force is used, or Form DC6-210, Incident Report, when restraints are applied without the use of force as described above. In each instance a DC4-701C, Emergency Room Record, shall be completed in its entirety with applicable data, or the letters N/A used to indicate not applicable. Form DC4-708, Diagram of Injury, shall also be completed in its entirety with applicable data, or the letters N/A used to indicate not applicable. In each case, the examination shall be complete and result in a clear statement by the medical provider that there is or is not an injury, and the record shall provide sufficient documentation to support that conclusion. In all cases where physical force is used to manage an inmate, the inmate and any employee who is involved will be required to receive a medical examination or will sign Form DC4-711A, Refusal of Health Care Services, declining the examination. In those cases where an injury is claimed but not substantiated by medical examination, the statement by the medical provider shall indicate this, and the documentation shall be sufficient to support that no injury was found upon examination. Forms DC4-711A, DC4-701C and DC4-708 are incorporated by reference in subsection ~~(29)(25)~~ of this rule. When the use of four-point or five-point psychiatric restraints is authorized and the inmate does not offer resistance to the application of the restraints, the completion of Form DC6-230, Institutions Report of Force Used, or Form DC6-231, Institutions Report of Force Used Staff Supplement, will not be required. In these situations, where there is no resistance to the application of psychiatric restraints, the application of the restraints will be videotaped and Form DC6-210, Incident Report, will be completed. The videotape, the completed Incident Report, and the completed Form DC6-232, Authorization for Use of Force Report, will be forwarded to the warden or acting warden for review within one working day. The warden will forward the videotape and associated reports to the institutional inspector within five working days. The institutional inspector will ensure that all documentation is complete and will forward all materials to the Office of the Inspector General, as outlined in

subsection (11) above, for review. If at any time prior to or during the application of the psychiatric restraints the inmate offers resistance to the application, the steps outlined in subsection (9) above will be followed.

(14) through (15) renumbered (18) through (19) No change.

~~(20)(16)~~ Use of EIDs. EIDs shall not be used on anyone other than an inmate during an authorized use of force.

(a) through (e) No change.

(f) When in a close management or confinement setting, prior to utilizing EIDs, the officer shall review Form DC4-650B, Risk Assessment for the Use of Chemical Restraint Agents and Electronic Immobilization Devices, to determine whether the inmate has a medical condition which may be exacerbated by use of EIDs. If no form is available, and where time and circumstances permit, medical staff shall be consulted to determine if the inmate has any medical condition that would make the use of an EID dangerous to that inmate's health. Form DC4-650B is incorporated by reference in subsection ~~(29)(25)~~ of this rule.

(g) No change.

(h) As soon as possible following each use of an EID, the inmate shall be afforded medical examination and treatment. Medical staff shall, upon completing the medical examination, make a mental health referral for each inmate who is classified S-2 or S-3 on the health profile. The referral shall be made by completing Form DC4-529, Staff Request/Referral, and sending it to mental health staff. Form DC4-529 is incorporated by reference in subsection ~~(29)(25)~~ of this rule. Mental health staff shall evaluate the inmate not later than the next working day to determine whether a higher level of mental health care (isolation management, transitional, or crisis stabilization) is indicated. For the purposes of this rule, the following definitions shall apply:

1. through (m) No change.

~~(21)(17)~~ Use of Chemical Agents. Chemical agents shall not be used on anyone other than an inmate during an authorized use of force.

(a) through (b) No change.

(c) In controlled situations when time constraints are not an issue, chemical agents can only be used if authorized by the warden or, in his or her absence, the duty warden. Additionally, in accordance with paragraph ~~(1)(4)~~ below, certified correctional staff will be pre-authorized to administer chemical agents in instances where chemical agents must be used for intervention in self-defense, i.e., when the officer believes that he or she is in imminent threat of bodily harm or that the use of chemical agents will prevent injury to other staff, visitors, volunteers or inmates.

(d) through (j) No change.

(k) Chemical agents shall be stored in the main arsenal. A small amount of chemical agents may be stored in secure locations such as the control room mini-arsenal or the officer's

station in confinement and close management units until its use is authorized. Each stored chemical agent dispenser will be numbered. Form DC6-216, Chemical Agent Accountability Log, will be kept in all areas in which chemical agents are stored and will be utilized to record the weight of each numbered chemical agent dispenser prior to issue and again when it is returned to the secure inventory storage area. The weighing process will be conducted and a verifying entry will be made in the log, including the signature of the shift supervisor authorizing the use of the chemical agent. The chief of security shall monitor the canister weights following each use of chemical agents to ensure the amounts used are consistent with that expected by reviewing and initialing Form DC6-216. Form DC6-216 is incorporated by reference in subsection ~~(29)(25)~~ of this rule.

(1) Issuance of chemical agents.

1. No change.

2. Certified officers assigned to major institutions and posted to internal security, recreation field, shift supervisor posts, or designated as "A" team response members are authorized by the Secretary to be issued one MK-9, or equivalent, dispenser of OC in addition to the dispenser issued in accordance with subparagraph ~~(21)(1)1. (17)(4)1.~~ These officers are authorized to administer the chemical agents listed in this subparagraph in spontaneous disturbance situations involving multiple inmates in locations where large numbers of inmates are present, such as recreation fields, canteen, and meal lines. This option shall only be utilized in disturbance situations rising to the level of inmate involvement where this enhanced option is deemed necessary and shall not be used indoors.

3. The chemical agent dispenser shall be securely encased and attached to the officer's belt. Each chemical agent dispenser will be secured within a pouch or to a holstering device by a numbered, breakable seal. Form DC6-213, Individual Chemical Agent Dispenser Accountability Log, will be utilized to document the name of the officer to whom each dispenser is assigned as well as the seal number on the dispenser she or he received. Form DC6-213 is incorporated by reference into subsection ~~(29)(25)~~ of this rule. Upon receiving the dispenser and pouch, the officer will examine the safety seal to ensure that it is intact. If the seal is broken, the Shift Supervisor will be notified immediately and Form DC6-210, Incident Report, will be written. The arsenal sergeant shall maintain a master inventory of all individual chemical agent dispensers complete with the weight of the dispenser at the time the original seal is attached. Whenever a dispenser is returned with a broken seal, the arsenal sergeant shall document the weight of the dispenser on Form DC6-216, Chemical Agent Accountability Log, and attach a new seal. Any discrepancies in the weight of the dispenser will be reported to the chief of security, and Form DC6-210, Incident Report, shall be completed.

(r) Upon request, appropriate health services staff shall provide the following completed forms to Department inspectors or legal staff: Form DC4-701C, Use of Force Exam; Form DC4-708, Diagram of Injury; and Form DC4-701, Chronological Record of Health Care. Form DC4-701 is incorporated by reference in subsection ~~(29)(25)~~ of this rule.

(m) through (q) No change.

(18) through (19) renumbered (22) through (23) No change.

~~(24)(20)~~ Pepperball Launching System (PLS). The PLS shall be used primarily by restricted labor squad supervisors and exercise officers for designated confinement, close management, maximum management, and death row populations. The PLS is intended for the dispersal of chemical agents in situations where the use of aerosol type agents would not be effective due to weather conditions or when their use could subject the officer or uninvolved inmates to injury. The PLS shall only be employed by officers trained in their use and effects.

(a) through (f) No change.

(g) All subsequent reports, medical requirements and reviews required for the use of chemical agents as outlined in subsection ~~(21)(47)~~ above shall be completed after the use of the PLS.

(h) No change.

(21) through (24) renumbered (25) through (29) No change.

~~(30)(25)~~ The following forms are hereby incorporated by reference. Copies of these forms are available from the Forms Control Administrator, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500.

(a) DC1-813, Use of Force File Checklist, effective September 18, 2006.

(b) DC2-802, Use of Force Log, effective February 7, 2000.

(c) DC4-529, Staff Request/Referral, effective January 6, 2009.

(d) DC4-701C, Emergency Room Record, effective October 4, 2007.

(e) DC4-708, Diagram of Injury, effective October 4, 2007.

(f) DC4-711A, Refusal of Health Care Services, effective ~~January 6, 2009.~~

(g) DC6-210, Incident Report, effective March 3, 2008.

(h) DC6-213, Individual Chemical Agent Dispenser Accountability Log, effective September 18, 2006.

(i) DC6-216, Chemical Agent Accountability Log, effective July 25, 2002.

(j) DC6-230, Institutions Report of Force Used, effective August 25, 2003.

(k) DC6-231, Institutions Report of Force Used Staff Supplement, effective August 25, 2003.

(l) DC6-232, Authorization for Use of Force Report, effective July 25, 2002.

(m) DC6-296, Disapproved Use of Force/Disposition Report, effective July 25, 2002.

(n) DC4-650B, Risk Assessment for the Use of Chemical Restraint Agents and Electronic Immobilization Devices, effective August 4, 2008.

(o) DC4-701, Chronological Record of Health Care, effective 4-8-10.

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

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: May 24, 2010
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 4, 2010

WATER MANAGEMENT DISTRICTS

South Florida Water Management District

RULE NOS.:	RULE TITLES:
40E-63.400	Purpose and Policy
40E-63.401	Scope of Program
40E-63.402	Definitions
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40E-63.406	Delegation
40E-63.415	No Notice General Permits
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40E-63.438	Early Implementation of Water Quality Improvement Activities
40E-63.439	Permit Modifications, Transfers and Renewals
40E-63.440	General Permit Application Requirements in the C-139 Basin
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40E-63.443	Permit Application Processing Fees

40E-63.444	Limiting Conditions for General Permits in the C-139 Basin
40E-63.446	C-139 Basin Compliance
40E-63.450	Individual Permit Application Requirements in the C-139 Basin
40E-63.452	Basis for Issuance of Individual Permits in the C-139 Basin
40E-63.454	Limiting Conditions for Individual Permits in the C-139 Basin
40E-63.456	Optional Discharge Monitoring Program
40E-63.458	Limiting Conditions for the Optional Discharge Monitoring Program
40E-63.460	C-139 Basin Compliance
40E-63.461	C-139 Basin Permit Compliance
40E-63.462	Permit Basin Discharge Monitoring Program
40E-63.464	Limiting Conditions for the Permit Basin Discharge Monitoring Program
40E-63.470	C-139 Basin Works of the District Permit Compliance

PURPOSE AND EFFECT: Pursuant to paragraph 40E-63.460(3)(d), F.A.C., the South Florida Water Management District is required to revise Part IV of Chapter 40E-63, F.A.C., to ensure that the objectives of the Everglades Forever Act, Section 373.4592(4)(f)5., F.S., are met if the District determines that the C-139 Basin has not achieved the rule-required phosphorus levels for the fourth time. The C-139 Basin has been out of compliance for at least four water years.

SUMMARY: The proposed rule amendments require landowners whose water management systems discharge into Works of the District within the C-139 Basin, as described in the rule, to implement best management practices (BMPs) to reduce and control phosphorus discharges from the basin. The BMPs will take into account site-specific conditions, potential phosphorus sources, primary phosphorus species, and transport mechanisms based on available data. This will ensure a thorough and consistent approach to implementation and maintenance. The proposed amendments also enhance the compliance methodology to more accurately reflect the conditions in the C-139 Basin, and if required, establish remedial actions if the basin does not achieve compliance with the phosphorus performance measures in the future.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: A Statement of Estimated Regulatory Costs (SERC) has been prepared in support to the revisions to Part IV and Appendix B of Chapter 40E-63, F.A.C., and is available on the District's website at www.sfwmd.gov or by contacting one of the persons listed in the contact section below. The draft SERC has been prepared in accordance with the requirements of Section 120.541(2), F.S. A summary of the conclusions reached is presented below:

(a) The rule amendments provide No Notice General Permits (NNGP) to owners of land parcels that implement basic BMPs and that are not part of a central drainage system, are inactive, or are less than 40 acres. These BMPs are not expected to incur in significant costs. Costs are likely to be zero or nominal (e.g., soil and/or plant tissue test).

(b) For permittees with General permits, the implementation costs of the BMP Plan will vary based on the current level of implementation. Permittees who have judiciously implemented BMPs will be least impacted by the proposed rule in terms of transactional costs. Also, many of the BMPs that permittees will be required to implement as a result of the proposed rule may already be required under other rules, or fully or partially implemented as standard operating procedure for the agricultural operation.

(c) In the event the C-139 Basin is determined by the District to be out-of-compliance, permittees may incur costs to develop a plan of proposed water quality improvement activities and implement these activities. The magnitude of cost will depend on the percentage (%) total phosphorus reduction required from each permittee. The estimated transactional costs associated with each proposed rule revision are provided in Section 4.0 of the SERC.

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: 373.044, 373.083, 373.085, 373.086, 373.113, 373.4592 FS.

LAW IMPLEMENTED: 373.085, 373.4592 FS.

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

DATE AND TIME: August 12, 2010, 9:00 a.m.

PLACE: South Florida Water Management District, B-1 Auditorium, 3301 Gun Club Road, West Palm Beach, FL 33406

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: South Florida Water Management District Clerk, (800)432-2087 or (561)682-2087. 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: Carmela Bedregal, Engineer Supervisor, Everglades Regulation Division, South Florida Water Management District, P. O. Box 24680, West Palm Beach, FL 33416, (800)432-2045, ext 2737 or (561)682-2737, email: cbedrega@sfwmd.gov. For procedural questions contact Jan Sluth, Paralegal, South Florida Water Management

District, P. O. Box 24680, West Palm Beach, FL 33416, (800)432-2045, ext 6299 or (561)682-6299, email: jsluth@sfwmd.gov.

Copies of the materials incorporated by reference in Rule 40E-63.404, F.A.C., are available online at www.sfwmd.gov or by contacting either of the persons listed herein.

THE FULL TEXT OF THE PROPOSED RULES IS:

40E-63.400 Purpose and Policy.

(1) This part of Chapter 40E-63, F.A.C., Program implements requirements of the Everglades Forever Act (EFA), Sections 373.4592(4)(f)5. and 6., F.S., for the C-139 Basin, and also provides a regulatory process for landowners whose water management systems connect with and make use of the canals, structures and other Works of the District within the C-139 Basin, in accordance with Section 373.085, F.S.

(2) Since water quality monitoring data from the C-139 Basin demonstrate that the landowners within the C-139 Basin have collectively exceeded historical the annual phosphorus loading levels of phosphorus of 28.7 metric tons, landowners are required to implement a best management practices (BMP) program for reduction of phosphorus in discharges that is consistent with the land uses within the basin.

(3) The objectives of this part of Chapter 40E-63, F.A.C., BMP program are as follows:

(a) To implement and continuously improve through adaptive management immediately require initial implementation of a BMP program, including modifications to existing water management systems, for reducing and controlling phosphorus discharges from the C-139 Basin (~~later in this Chapter referred to as Level I~~);

(b) To provide a water quality monitoring program, performance measures and a compliance methodology to evaluate the effectiveness of the BMP program in reducing phosphorus discharges; ~~for determining whether additional measures will be required of landowners (later in this Chapter referred to as Levels II through IV); and~~

(c) To establish a BMP compliance verification an inspection and enforcement program to ensure that phosphorus discharges from the basin do not exceed historic levels, based upon water quality monitoring data from the period October 1, 1978 to September 30, 1988, in accordance with Chapter 40E-63, F.A.C., Appendix B2, "C-139 Basin Compliance Methodology", dated October 2004; and

(d) To develop and conduct research and demonstration projects to improve and confirm the effectiveness of BMPs for reducing phosphorus and other constituents that are not being significantly improved by either Stormwater Treatment Areas (STAs) or BMPs.

(4) This part of Chapter 40E-63, F.A.C., Program requires landowners to reduce phosphorus discharges from the C-139 Basin, and in conjunction with the Stormwater Treatment

Areas (STAs), especially ~~STA-5~~, provides a sound basis for the State of Florida's long-term improvement ~~cleanup~~ and restoration objectives for the Everglades. It is recognized that achieving phosphorus and other water quality standards will involve an adaptive management approach, whereby best available information and technology are used to identify and implement incremental BMP improvement activities for further phosphorus reduction and water quality improvements, if needed.

~~(5) Except as otherwise provided in this chapter, the permittees within the C-139 Basin shall not be required to implement any additional water quality improvement measures before December 31, 2006, in accordance with the EFA, Section 373.4592(4)(f)3., F.S.~~

~~(5)(6) Unless otherwise provided by this part IV of Chapter 40E-63, F.A.C., nothing herein shall be construed to modify any existing state water quality standards, nor to otherwise restrict the authority granted to the District pursuant to Chapter 373, F.S.~~

(6) Section 403.067(7)(c)2., F.S., authorizes the Florida Department of Agriculture and Consumer Services (FDACS) to develop and adopt BMPs by rule and assist with their implementation.

(7) The District's sub-basin monitoring and maintenance program for data collection, performance measure assessment, and determination of when water quality improvement activities are required, as described in paragraphs 40E-63.446(2), (3)(a), (3)(e), and (4), F.A.C., and Appendices B3.1 and B3.2 (which are incorporated by reference in subsections 40E-63.404(7) and (8), F.A.C.), and are an inseparable component of this part of Chapter 40E-63, F.A.C., for ensuring that landowners are responsible for their proportional share of phosphorus load discharged from the C-139 Basin. If these provisions are declared invalid, the District shall initiate rulemaking pursuant to Chapter 120, F.S., to revise this part of Chapter 40E-63, F.A.C., to ensure that the proportional share objectives of the EFA, Section 373.4592(4)(f)3., F.S., are met.

Rulemaking Specific Authority 373.044, 373.083, 373.085, 373.086, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History--New 1-24-02, Amended _____.

40E-63.401 Scope of Program.

(1) For the purposes of this part of Chapter 40E-63, F.A.C., rule, the Works of the District for the C-139 Basin include water control structures, right-of-ways, canals, and other water resources that the South Florida Water Management District owns, operates and controls, and that have been specifically named as Works of the District pursuant to Sections 373.085 and 373.086, F.S. Works of the District for the C-139 Basin including G-96, G-134, G-135, include

G-136, G-150, G-151, G-152, G-406, G-342A, G-342B, G-342C, G-342D, L-1 Canal, L-2 Canal, L-3 Canal (north of G-406), and their open channel connections.

(2) Unless expressly exempted, all lands within the C-139 Basin are users of the Works of the District within the C-139 Basin, and as such must be granted a No Notice General Permit pursuant to the provisions of Rule 40E-63.415, F.A.C., or must obtain a General ~~or Individual~~ Permit pursuant to the provisions of Rule ~~40E-63.430 40E-63.440 or 40E-63.450~~, F.A.C., ~~respectively~~. The rules shall apply to existing and new discharges releases of water to Works of the District within the C-139 Basin.

(3) Landowners in the C-139 Basin share responsibility for achieving phosphorus load limitations in the basin. The compliance program, as established in this part of Chapter 40E-63, F.A.C., ensures that landowners are responsible for their proportional share of phosphorus load discharged from the C-139 Basin based upon their proportional share of acreage to the total C-139 Basin acreage.

(4) Permits issued under this part of Chapter 40E-63, F.A.C., do not eliminate or alter other applicable permit requirements for discharges that impact other water bodies, basins, or Works of the District, nor do they affect the permit requirements of other District regulatory programs.

Rulemaking Specific Authority 373.044, 373.083, 373.085, 373.086, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History--New 1-24-02, Amended _____.

(Substantial rewording of Rule 40E-63.402 follows. See Florida Administrative Code for present text.)

40E-63.402 Definitions.

(1) "Best Management Practice (BMP)" means a practice or combination of practices determined by the District, in cooperation with the Department of Environmental Protection (Department) and FDACS, based on research, field testing, and expert review, to be the most effective and practicable on-location means, including economical and technological considerations, of improving water quality in agricultural and urban discharges to a level that balances water quality improvements, and agricultural productivity.

(2) "BMP Plan" means a combination of BMPs that meets, but is not limited to, the requirements of Rules 40E-63.435 and 40E-63.437, F.A.C., as determined by the District.

(3) "BMP equivalent point" means the numerical value assigned to a BMP as provided in Appendix B1 (incorporated by reference in subsection 40E-63.404(3), F.A.C.). The points are used for regulatory permit review to ensure a comparable level of effort in BMP implementation among permittees. The points are an indication of relative BMP effectiveness. The points are based on expert review, technical publications, best professional judgment, and cooperative workshops with stakeholders.

(4) “C-139 Basin” means those lands described in the EFA, Section 373.4592(16), F.S. or lands outside those boundaries which discharge to the C-139 Basin or to the canals or structures described in subsection 40E-63.401(1), F.A.C.

(5) “Demonstration project” means an investigation based on technical information to evaluate the feasibility and effectiveness of best management practices techniques offering phosphorus reduction and financial benefits. Criteria to be considered by the District for review are described in subsection 40E-63.437(3) and Rule 40E-63-438, F.A.C.

(6) “Discharge” means any surface water runoff generated by rainfall, irrigation, or seepage flowing off-site from a land area. Runoff may occur through a structure (pump or gravity) or may flow as uncontrolled discharge from a land area.

(7) “Nutrient control practices” means a category of BMPs that minimizes nutrient input and the movement of nutrients off-site by efficient and controlled application of nutrients (e.g., organic and chemical fertilizers, soil amendments, and residuals.)

(8) “Parcel” means a contiguous land area identified in the county tax rolls under common ownership.

(9) “Particulate matter and sediment control practices” means a category of BMPs that minimizes the movement off-site of nutrients in particulate matter and sediments by controlling the amount of eroded soil and plant matter in discharges.

(10) “Permit basin” means a parcel or group of parcels served by one or more discharge structures that collectively represent all of the discharge from that area of land. A permit may have one or more permit basins. The boundaries of a permit basin are determined by the District based on available hydrologic data to define, to the extent practicable, the land area discharging to each sub-basin.

(11) “Structure” means a structural device or hydrologic feature (e.g. pump, culvert, open connection, land surface grading, ditch) that water flows through or across and is ultimately discharged/directed from a permit basin to a receiving water body.

(12) “Sub-basin” is an area of land determined by the District to represent all discharges to District monitoring locations based upon hydrologic mapping, and permittee submitted information, as represented in Appendix B3.1 “Permittee Annual Phosphorus Load Determination Based on Sub-basin Monitoring and the Permit Basin Discharge Monitoring Program”, dated _____.

(13) “Verification plan” means a water quality monitoring program to verify the expected effectiveness of a BMP Plan or proposed water quality improvement activities in accordance with subsection 40E-63.460(4), F.A.C.

(14) “Water management practices” means a category of BMPs that minimizes the quantity and improves the quality of off-site discharges which carry nutrients downstream. BMPs for water management include discharge and irrigation management practices to reduce runoff.

(15) “Water management system” means the collection of devices, improvements or natural systems whereby surface waters are conveyed, controlled, impounded, or obstructed. For water management systems serving multiple entities, dams, impoundments, reservoirs and their structures and canals are referred to as the common facilities.

(16) “Water quality improvement activities” means a combination of modifications to a BMP Plan proposed by a permittee to meet the required total phosphorus reduction requirements of Appendix B3.2.(incorporated by reference in subsection 40E-63.404(8), F.A.C.). Improvement activities may include revising implementation methods to increase the effectiveness of existing BMPs or implementing additional BMPs.

(17) “Water year” or “WY” means the 12-month period beginning on May 1 and ending on the following April 30.

Rulemaking Specific Authority 373.044, 373.083, 373.085, 373.086, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History--New 1-24-02, Amended _____.

40E-63.404 Incorporation of Forms, Instructions and References.

The documents listed in subsections (1) through (8) are hereby incorporated by reference, and are available on the District’s website (www.sfwmd.gov), or from the District’s Clerk’s Office at 3301 Gun Club Road, West Palm Beach, FL 33406, (561)686-8800, upon request.

(1) South Florida Water Management District Form 1045, ~~January 2002, entitled, “Application For a C-139 Basin Pollutant Source Control Works Of The District Permit” dated _____ and “Guidebook for Preparing an Application for a C-139 Basin Pollutant Source Control Works of the District Permit”, dated January 2002 (“Guidebook”).~~

(2) “Guidebook for Preparing an Application for a C-139 Basin Pollutant Source Control Permit” (“Guidebook”), dated _____.

(3)(2) “Appendix B1 – BMP Description and Equivalent Points Reference Table”, dated _____ January 2002.

(4)(3) “Appendix B2 – C-139 Basin Performance Measure Compliance Methodology”, dated _____ January 2002, and setting forth the compliance methodology the District will follow for the C-139 Basin with regard to the applicable phosphorus load limitation.

(5)(4) “Appendix B2.1 – FORTRAN Program for Calculating C-139 Basin Flows and Phosphorus Loads”, dated _____ January 2002.

~~(6)(5)~~ “Appendix B2.2 – Flow Computation Methods Used to Calculate C-139 Basin Flows”, dated _____ January 2002, providing applicable mathematical methods for calculating flow rates through water management structures.

~~(7)(6)~~ “Appendix B3.1 – Permittee Annual Phosphorus Load Determination Based on Sub-basin Monitoring and the Optional Permit Basin Discharge Monitoring Plan Program”, dated _____ January 2002, setting forth the procedures the District will follow to calculate a permittee’s proportional share of phosphorus load in order to determine eligibility for release from implementation of additional BMPs when the permittee has elected to implement the optional discharge monitoring plan and the C-139 Basin is out of compliance.

~~(8)~~ “Appendix B3.2 – Criteria for Required Phosphorus Reductions”, dated _____.

~~(9)~~ “Flow Calibration Guidelines Developed in Support of Chapter 40E-63, F.A.C., Everglades BMP Permit Program”, amended July 24, 1997.

~~(7)~~ The documents listed in subsections (1) through (6) are hereby incorporated by reference, are published by the District, and are available on the District’s website (www.sfwmd.gov) or from the District at 3301 Gun Club Road, West Palm Beach, FL 33406, (561)686-8800, upon request.

Rulemaking Specific Authority 373.044, 373.083, 373.085, 373.086, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History–New 1-24-02, Amended _____.

40E-63.406 Delegation.

(1) The Governing Board delegates to and appoints the Executive Director and his or her designated agents to review and take final action on BMP Plan pre-approvals, applications to modify or transfer existing Individual Permits and all applications for General pPermits issued under Chapter 40E-63, F.A.C., including the addition of special conditions as necessary to implement the requirements of Chapter 40E-63, F.A.C., and the Everglades Forever Act, Section 373.4592, F.S., and other applicable provisions of Chapters 373 and 403, F.S., except when the staff recommendation is for denial of such applications.

(2) All recommendations for denial of applications and all other applications regarding Individual Permits (new or renewals) shall be considered by the Governing Board.

Rulemaking Specific Authority 373.044, 373.083, 373.085, 373.086, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History–New 1-24-02, Amended _____.

40E-63.415 No Notice General Permits.

(1) No Notice General Permits for Use of Works of the District within the C-139 Basin are hereby granted to the landowners of permittees for the surface water system operating permit for parcels of land that connect to or make use of the Works of the District within the C-139 Basin, subject to the requirements of this part IV of this Chapter 40E-63, F.A.C.,

including paragraphs 40E-63.444(1)(d), (g), (h) (i), (j), (l), (m), (r), (s), (t), and (u), 40E-63.444(1)(e), (f), (g), and (i); F.A.C., and the conditions specified below:

(a) The parcel land is not part of the common facilities of a water management system as defined in subsection 40E-63.402(15), F.A.C., of water control districts or drainage districts pursuant to Chapter 298, F.S., or any other entity operating a central drainage system already permitted under Chapter 373, F.S. subject to the agricultural privilege tax, pursuant to the EPA, Section 373.4592(7)(a), F.S.; and

(b) The parcels are inactive, or add up to less than 40 acres under the same ownership. “Inactive” means land parcels that are not used for agriculture, urban, commercial, industrial or other development, as determined by the District. It also includes lands in their undeveloped native state (unless used as pastures). Lands may be determined by the District as temporarily inactive if they are not operated or are vacant due to changes in ownership or land use. The District’s determination applies only to the requirements of this part of Chapter 40E-63, F.A.C. The land is served by a properly permitted and operated surface water management system (Environmental Resource Program, ERP, or Surface Water Management Permit, SWM).

(c) The following BMPs are implemented by the landowner, lessees, and operators, if applicable, and the property must be made available for inspection by District staff or other delegated agents within 14 days after written notice:

1. Phosphorus is only applied to correct phosphorus deficiencies based on soil testing or tissue testing, or for turf and landscape areas, phosphorus is only applied to meet initial establishment and growth needs (fertilizer composition less than 2% for an application rate not to exceed 0.25 lbs P_2O_5 /1000 ft² per application, nor exceed 0.50 lbs P_2O_5 /1000 ft² per year.

2. Fertilizer or other soil amendments containing phosphorus are not applied within 10 feet of any pond, stream, lake, water course, or any designated wetland.

3. Spill prevention practices for nutrients are implemented; and

4. Runoff is managed in accordance with surface water or environmental resource permits, if applicable.

(2) No Notice General Permits for Use of Works of the District within the C-139 Basin granted upon adoption of this part IV of Chapter 40E-63, F.A.C., this remain effective for 5 year periods and shall be automatically renewed unless the District notifies a permittee in writing that the permit is revoked.

(3) No Notice General Permits granted upon adoption of this part of Chapter 40E-63, F.A.C., do not relieve the permittee of the responsibility to comply with all other laws or regulations applicable to the use of or discharges from the parcel. In the event the C-139 Basin is determined to be out of

compliance a fourth time, in accordance with Appendix B2 of Chapter 40E-63, F.A.C., the District shall revoke the No Notice General Permit and initiate rulemaking pursuant to Chapter 120, F.S., to revise this Chapter to ensure that the objectives of the EFA, Section 373.4592(4)(f)5., F.S., are met. Notification shall be by certified mail.

(4) Landowners meeting the foregoing shall not be obligated to submit a permit application or application fee.

(5) Notwithstanding the foregoing, the District shall require the submission of applications for General Permits from No Notice General Permit holders if the District determines that the property exceeds its proportional share of phosphorus loading based on representative water quality data for the property, as determined in Appendix B3.1.(incorporated by reference in subsection 40E-63.404(7), F.A.C.). Notice of the requirement shall be provided to parcel owners in writing. Applications for new General Permits shall be submitted to the District within 45 days from the date of the notice.

Rulemaking Specific Authority 373.044, 373.083, 373.085, 373.086, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History—New 1-24-02, Amended _____.

40E-63.420 BMP Plan Pre-approvals.

(1) For entities required to obtain a General Permit, a BMP Plan shall be submitted to the District within 30 days after the effective date of this part of Chapter 40E-63, F.A.C. Failure to provide a complete BMP Plan within 30 days from the effective date of this part of Chapter 40E-63, F.A.C., shall not justify a corresponding delay for full implementation of the approved BMP Plan as described in subsection 40E-63.420(2), F.A.C., and will result in enforcement action pursuant to Rule 40E-63.460, F.A.C. In order to begin BMP implementation immediately, the proposed plan for the initial BMPs shall be submitted by the permittee for written pre-approval from the District. This will allow the permittee to initiate implementation of the approved BMP plan prior to the completion of the administrative review and processing of the permit application.

(2) The approved BMP Plan shall be fully implemented within 90 days of the effective date of this part of Chapter 40E-63, F.A.C., unless the District authorizes a different implementation schedule. A Level I BMP Plan, as described in Appendices B1 and B2, shall be submitted to the District for approval within 30 days of the effective date of Part IV of this Chapter. Failure to provide a complete Level I plan within the 30 days shall not justify a corresponding delay for full implementation of the plan and will result in enforcement action pursuant to Rule 40E-63.470, F.A.C.

(3) In order to assure that the schedule mandated by subsection 40E-63.420(2), F.A.C., is met, the District may pre-approve a BMP Plan by letter, as long as the BMP Plan is complete and meets the criteria required under Rule 40E-63.435 or 40E-63.437, F.A.C., as applicable. The District

will attempt to make a final determination on the BMP Plan within 10 days of receipt of a complete plan and the applicant shall begin implementation in accordance with the approved implementation schedule. The District shall make a final determination on the Level I BMP Plan within 10 days of receipt of a complete plan.

(4) Implementation of Level I BMPs shall be initiated within 45 days and fully implemented within 90 days of the effective date of Part IV of this Chapter.

Rulemaking Specific Authority 373.044, 373.083, 373.085, 373.086, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History—New 1-24-02, Amended _____.

40E-63.430 General Permit Applications.

(1) A General Permit is required for parcels of land that connect to or make use of the Works of the District within the C-139 Basin that have not been issued a waiver pursuant to Rule 40E-63.410, F.A.C., or do not qualify for a No Notice General Permit pursuant to Rule 40E-63.415, F.A.C. Applications for Works of the District Permits, including General Permits pursuant to Rule 40E-63.440, F.A.C., and Individual Permits pursuant to Rule 40E-63.450, F.A.C., shall be submitted to the District within 45 days of the effective date of this Part IV of Chapter 40E-63, F.A.C., and shall be made using Form 1045.

(2) Within 45 days after the effective date of this part of Chapter 40E-63, F.A.C., applications for new General Permits or General Permit Renewals shall be submitted to the District. Applicants shall use Form 1045 (incorporated by reference in subsection 40E-63.404(1), F.A.C.), or the equivalent electronic permitting application (e-permitting) tool, with all required supporting documentation.

(3)(2) Landowners, lessees and/or operators of a parcel or parcels may submit applications for General Permits as an applicant or co-applicant. Works of the District Permits. A lessee or operator may submit an application provided the lease (or equivalent contract) is for no less than five years, is in writing, and reasonable assurance is provided that the lessee/operator has the legal and financial capability of implementing and complying with the BMP Plan and other permit conditions.

(4)(3) All General or Individual Permit applications shall include the following:

(a) Date, signature, title and authority of the person, persons or entity submitting the application;

(b) For each applicant, information that demonstrates that the applicant possesses the legal and financial authority and ability to carry out all acts necessary to implement the terms and conditions of the permit, including, at a minimum:

1. For individual applicants, recorded deeds, contracts, leases, property tax record of ownership, or other evidence of ownership or authority are required.

2. For co-applicants, a description of the legally responsible entity or cooperating group of entities together with copies of documents demonstrating its legal authority, such as enabling legislation and articles of incorporation; completed and signed Certificates of Participation indicating the individual applicant's consent and intent to participate in the General Permit; and written contracts or agreements with co-applicants indicating their consent and agreement to comply with the permit and specifying the terms of participation, where applicable.

~~(c)(a)~~ A clear delineation of the boundaries area and acreage contained in the permit application, including a map which is correlated with a list of all parcel owners and corresponding county tax identification numbers, and operators or lessees associated with the acreage contained in the application. The delineation should also include drainage features depicting the permit basin, general direction of flow, inflow points, and discharge points off-site for delineation of permit basins, as defined in subsection 40E-63.402(10), F.A.C., operators, and lessees with tributary discharge water and county tax identification numbers.

~~(b)~~ Copies of existing contracts, agreements, or equivalent regarding use or operation of the property or control structure between the entity responsible for operation and the parcel owners included in the application, where applicable.

~~(d)(e)~~ A list of all existing and pending District permits for the application area and their status.

(e) A BMP Plan.

(f) For General Permit applications encompassing water management systems or portions thereof that serve multiple entities, an executed legally binding written agreement or contract between the owners, operators, and or users of the system, as applicable, regarding construction, use, maintenance and operational criteria, and BMP implementation requirements for the system shall be provided. Specifically, the written agreement or contract shall identify the entities and their authority and responsibility for use and operation of the system (e.g. a shared canal or off-site discharge structure).

(d) A completed copy of Form 1045, entitled "Application for a C-139 Basin Works of the District Permit".

(e) All of the information necessary to satisfy the Basis for Issuance, including information as specified in the application Form 1045 and the Guidebook.

~~(5)(4)~~ If activities proposed in the permit application submitted pursuant to Part IV of this part of Chapter 40E-63, F.A.C., rule will affect water management systems or activities regulated pursuant to other rules (e.g. Surface Water Management, Environmental Resource Permit, Consumptive Water Use, Well Construction, Right-of-Way, or Lake Okeechobee SWIM), then the Applicant shall also submit applications for new permits or modifications to existing permits, as appropriate.

Rulemaking Specific Authority 373.044, 373.083, 373.085, 373.086, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History--New 1-24-02, Amended _____.

40E-63.432 Permit Modifications, Transfers and Renewals.

Rulemaking Specific Authority 373.044, 373.083, 373.085, 373.086, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History--New 1-24-02, Amended 6-20-07, Repealed _____.

40E-63.434 Permit Duration.

Rulemaking Specific Authority 373.044, 373.083, 373.085, 373.086, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History--New 1-24-02, Amended 6-20-07, Repealed _____.

40E-63.435 BMP Plans.

In order to obtain a General Permit, applicants shall submit a BMP Plan that includes a multi-level approach to implementation and operation including the following: for each crop or land use within each permit basin. A BMP Plan shall take into account site-specific conditions, potential phosphorus sources, primary phosphorus species, and transport mechanisms based on available data; and ensure that a thorough approach to implementation and maintenance will be implemented. If a water management system is shared by multiple operating entities, each entity shall submit a separate BMP Plan for their land but the water management operational plan shall be consistent. The BMP Plan shall include the following:

(1) A description of a BMP Plan, including specific methods for implementation and maintenance, based on the BMPs described in Appendix B1 (incorporated by reference in subsection 40E-63.404(3), F.A.C.). To ensure that approved BMP plans have a comparable level of effort among permittees, the BMP Plan shall propose a minimum of 35 BMP equivalent points.

(2) Of the 35 BMP equivalent points, a minimum of 20 BMP equivalent points shall meet the following criteria:

(a) A minimum of 10 BMP equivalent points in nutrient control practices.

(b) A minimum of 5 BMP equivalent points in water management practices.

(c) A minimum of 5 BMP equivalent points in particulate matter and sediment control practices Pasture management BMPs, as described in Appendix B1 (incorporated by reference in subsection 40E-63.404(3), F.A.C.), can provide equivalent points towards this category, if applicable.

(3) If at the time a BMP Plan is proposed for approval, the District has previously determined the C-139 Basin to be out compliance, and the permit basin has an approved BMP Plan including water quality improvement activities, the proposed BMP Plan shall include continuation of the approved BMP Plan and water quality improvement activities; or propose an equivalent alternative for District consideration. The applicant

shall provide reasonable assurance that the alternative contains the equivalent or greater phosphorus reduction effectiveness of the approved BMP Plan and water quality improvement activities. The proposal must provide the basis that the BMP Plan and water quality improvement activities would have met the criteria indicated in subsections 40E-63.460(3) and (4), F.A.C., as applicable, for the years when the C-139 Basin was determined by the District to be out of compliance and water quality improvement activities were required.

(4) An education and training program for the management and operation staff responsible for implementing and monitoring the approved BMP Plan. The training may be provided in-house or arranged by the permittee or other educational resources.

(5) A description of records and documentation to be maintained on-site or at a suitable location that is readily available for District review. The records and documentation shall be sufficient to verify BMP implementation, maintenance, and training, as described in the post-permit compliance section, Appendix C of the Guidebook (incorporated by reference in subsection 40E-63.404(2), F.A.C.), on the form entitled "C-139 Basin Annual Report – Certification of BMP Implementation".

(6) A proposed implementation schedule. Except for BMP Plans required immediately upon amendment of this part of Chapter 40E-63, F.A.C., as described in Rule 40E-63.420, F.A.C., implementation of new BMPs shall be completed within 90 days after the date of District approval. Alternate implementation schedules may be considered by the District if the applicant demonstrates through reasonable assurance that an equivalent level of phosphorus source control is provided.

Rulemaking Authority 373.044, 373.083, 373.085, 373.086, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History–New

See 40E-63.442, F.A.C.

40E-63.436 Permit Application Processing Fees.

Rulemaking Specific Authority 373.044, 373.083, 373.085, 373.086, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History–New 1-24-02, Repealed

40E-63.437 Alternative BMP Plans.

Applicants who propose to satisfy the water quality requirements of this part of Chapter 40E-63, F.A.C., by employing a BMP Plan other than those described in subsections 40E-63.435(1) and (2), F.A.C., may seek approval for an equivalent alternative through the District permit process. The applicant shall provide reasonable assurance, through the information required below and the requirements indicated in subsections 40E-63.435 (4), (5), and (6), F.A.C., that the alternative contains the equivalent or greater phosphorus reduction effectiveness of a 35-point BMP plan. A BMP Plan shall take into account site-specific conditions,

potential phosphorus sources, primary phosphorus species, and transport mechanisms; and ensure that a thorough approach to implementation and maintenance will be implemented. In order to seek approval of an alternative BMP Plan, applicants must submit the information specified for the applicable alternative as part of the permit application process.

(1) Alternative Type BMP. If an application proposes BMPs not listed in Appendix B1 (incorporated by reference in subsection 40E-63.404(3), F.A.C.), as required in subsection 40E-63.435(1), F.A.C., the application shall also include the following information for District approval:

(a) A description of the best management practice rationale for the BMP selected;

(b) A detailed explanation of the proposed BMP;

(c) A schedule for implementation of the BMP;

(d) Sample documentation of the BMP implementation, how the BMP will be verified;

(e) Technical basis for the reduction effectiveness of the proposed BMP. The applicant may be required to demonstrate effectiveness through a proposed monitoring program or through representative technical references. If approved, the District will determine the appropriate BMP equivalent point credit consistent with Appendix B1 (incorporated by reference in subsection 40E-63.404(3), F.A.C.).

(2) Alternative BMP Points per Category. If the BMP Plan does not meet the minimum number of equivalent points per BMP category as required in subsection 40E-63.435(2), F.A.C., the application shall include a site assessment demonstrating that an alternative BMP Plan will provide an equivalent or greater reduction effectiveness using the standard approach.

The site assessment shall evaluate phosphorus imports and transport in discharges; current BMPs and implementation methods; other practices not covered under BMPs (e.g., grazing, irrigation, nutrient and water management); and representative water quality and soil data. Water quality data that can be used for the assessment include those available from the District sub-basin or synoptic (grab) monitoring programs, or properly collected grab samples using field kits of adequate precision by the applicant.

(3) Alternative BMP Demonstration Project. If a demonstration project is proposed to meet the BMP implementation requirements of subsection 40E-63.435(1) or (2), F.A.C., a proposed project scope of work shall be submitted for District review and approval based on the following criteria:

(a) The scope of eligible projects shall include, at a minimum, the demonstration or research hypothesis, a description of implementation, the technical basis and scientific methods that will be employed, the performance indicators that will be measured such as water quality, water quantity, soil testing, or as applicable, the progress and final

reports that will be produced to verify progress and results, and a schedule that details the beginning date, critical milestones and ending date of the project.

(b) The 35 BMP equivalent point requirement shall be met in the permit basin where the project is proposed. The proposed demonstration shall account for no more than 20 BMP equivalent points as approved by the District. The remaining 15 BMP equivalent points shall include 10 BMP equivalent points in the nutrient control practices category and 5 BMP equivalent points in the water management practices category.

(c) The proposed BMP equivalent points for the demonstration project will only be considered for the period of project implementation, the permit basin where the project is located, and for the crops or land uses to which the project applies.

(d) BMP equivalent points shall be initially determined by the District prior to issuance of a permit based on the BMP equivalent points established in Appendix B1 (incorporated by reference in subsection 40E-63.404(3), F.A.C.). Additional BMP equivalent points may be approved by the District, if the applicant provides reasonable assurance through plans, test results, water quality data or other information, that the BMP project will demonstrate improvement in phosphorus removal efficiency in comparison to standard BMP implementation methods.

(e) Once the demonstration project is complete and a final report is submitted in accordance with the approved scope, the permittee shall submit a Letter Modification application requesting that the approved BMP Plan be modified to incorporate the BMP or water quality improvement activity if the District determines that they were successfully developed under the project. The application shall include the information described under Rules 40E-63.430, 40E-63.435, and 40E-63.437, F.A.C., as applicable, and shall describe how the report recommendations for BMP implementation will apply to the applicable crops or land uses for District review. The District shall review the BMP equivalent points initially assigned and may adjust them based on the reported phosphorus reduction levels and approved methods for implementation of the proposed BMP or water quality improvement activity. If the permittee decides that the BMP resulting from the demonstration project is not to be proposed for continued implementation, the permittee is required to submit a permit modification proposing a BMP Plan, as described in Rule 40E-63.435 or 40E-63.437, F.A.C., as applicable. The application for modification of the approved BMP Plan shall be submitted no later than 30 days after the project completion date pursuant to the District-approved scope.

Rulemaking Authority 373.044, 373.083, 373.085, 373.086, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History—New

40E-63.438 Early Implementation of Water Quality Improvement Activities.

An applicant may request approval for early implementation by opting to submit a proposal for voluntary implementation of additional BMPs (early BMPs), or a voluntary demonstration project that includes a BMP performance verification plan. Based on this early implementation, applicants may qualify for deferral from water quality improvement activities if the C-139 Basin is determined out of compliance in the future. Applicants electing these approaches must submit for District review the following:

(1) Either proposal shall be submitted together with an application for a new permit, permit renewal, or as a Letter Modification.

(a) For optional early BMPs the application shall provide information for meeting the criteria below:

1. A description of the BMP or group of BMPs (early BMPs) that are proposed in addition to those required by rule at the time of application (Rule 40E-63.435 or subsection 40-63E.460(3), F.A.C., as applicable). The proposal shall include the specific methods for implementation and maintenance of the early BMPs.

2. The proposal shall provide reasonable assurance through technical documentation, and the requirements indicated in subsections 40E-63.435(4) and (5), F.A.C., that the combined effect of the optional early BMPs and rule-required BMPs will ensure a phosphorus loading reduction for the identified permit basin or parcels sufficient for the C-139 Basin to consistently achieve compliance with the Target, as described in Appendix B2 (incorporated by reference in subsection 40E-63.404(4), F.A.C.). The District will review whether the proposed loading reduction levels would be conducive to meeting the Target Unit Area Load (UAL) based on the most recent five years of water quality data.

3. The proposal shall include an implementation schedule. To qualify for deferral, District-approved early BMPs shall be fully implemented during the water year for which the deferral can be applied.

(b) For voluntary demonstration projects, the application shall propose a BMP or water quality improvement measure demonstration project that meets the following:

1. Complies with the criteria described under paragraph 40E-63.437(3)(a), F.A.C..

2. Projects estimated phosphorus reductions based on available technical references, and

3. Proposes a verification plan through a Permit Discharge Monitoring Program to confirm and quantify the estimated phosphorus reductions. The verification plan shall meet the criteria described in subsection 40E-63.460(4), F.A.C.

(2) Upon District approval of the voluntary early BMP implementation project or demonstration project with a verification plan, the permittee will be subject to the BMP reporting and verification requirements of this Chapter for

those voluntary initiatives, as described in permit conditions. Permittees cannot be deemed out of compliance for failure to implement the early initiatives, however, the District will deem the permittee unable to claim a deferral if:

1. Reporting and verification requirements for the voluntary early implementation projects are not met, as determined by the District.

2. The permittee is not in compliance with the BMP Plan required by the permit.

(3) Early implementation plans that are approved to provide deferral from additional water quality improvement activities for a water year shall become permit requirements and lose their optional status.

Rulemaking Authority 373.044, 373.083, 373.085, 373.086, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History—New

40E-63.439 Permit Modifications, Transfers and Renewals.

(1) Applicants for permit modifications, transfers and renewals must use the appropriate Sections of Form 1045 (incorporated by reference in subsection 40E-63.404(1), F.A.C.), or equivalent electronic permitting application (e-permitting) tool.

(2) Modifications and Letter Modifications: Letter modifications are applicable for requesting approval for demonstration or verification plan projects for phosphorus reduction under Rule 40E-63.437, F.A.C., for early implementation of water quality improvement activities under Rule 40E-63.438, F.A.C., for implementing or modifying a voluntary Permit Basin Discharge Monitoring Program under Rule 40E-63.462, F.A.C., and for water quality improvement activities in accordance with subsection 40E-63.460(3) or (4), F.A.C. Applications for modifications are applicable to any other changes except for clerical changes as indicated in subsection 40E-63.443(3), F.A.C.

A permittee may apply for a modification or a letter modification to an existing General Permit issued under this part of Chapter 40E-63, F.A.C., unless the permit has expired or has been otherwise revoked or suspended. An application for modification or letter modification will not be processed as a complete application if the permit is not in compliance with applicable permit conditions, unless the permit modification is required to bring the permit into compliance. Modifications and letter modifications will be evaluated based on the criteria in effect at the time that the application to modify is submitted. Applications for permit modifications and letter modifications shall be subject to the following requirements and limitations:

(a) Applications to modify an existing permit shall contain the same information required in a new application, as applicable, and shall identify the portion of the existing authorization for which the modification is requested.

(b) Modifications to existing permits are acknowledged and approved by letter with an accompanying Permit Review Summary (Staff Report) from the District through correspondence to the permittee.

(3) Transfers: A permittee shall notify the District within 90 days after any transfer, sale or conveyance of land or works permitted under this part of Chapter 40E-63, F.A.C., to allow time for processing the application. The permittee remains responsible for the requirements of the permit until the permit is transferred or closed at the request of the permit holder at the time the property is sold. A permittee or transferee may apply for a permit transfer, conveying responsibility for permit compliance. If an application for permit transfer is not received within 90 days after the sale or conveyance of the property, the permit will become nontransferable and the transferee will be required to apply for a new permit. Permit transfers shall be subject to the following requirements and limitations:

(a) A permit may only be transferred if the land practice, total acreage, and approved BMP Plan remain the same and the permittee is in compliance with all conditions of the permit.

(b) All conditions of the existing permit will remain applicable to the new permittee.

(c) Any other changes or additions will require a permit modification in accordance with subsection 40E-63.439(2), F.A.C.

(4) Renewal: A permittee shall apply for a permit renewal prior to the expiration of an existing permit, subject to the following requirements and limitations:

(a) Applications for renewals must contain all information required for new applications and will be evaluated based on the criteria in effect at the time the application is filed.

(b) If the permittee allows the permit to expire prior to applying for a permit renewal, an application for a new permit shall be required.

Rulemaking Authority 373.044, 373.083, 373.085, 373.086, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History—New

See Rule 40E-63.432, F.A.C.

40E-63.440 General Permit Application Requirements in the C-139 Basin.

Rulemaking Specific Authority 373.044, 373.083, 373.085, 373.086, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History—New 1-24-02, Repealed

40E-63.441 Permit Duration.

Pursuant to the EFA, Section 373.4592(4)(f)2., F.S., permit renewals issued pursuant to this part of Chapter 40E-63, F.A.C., are valid for a 5-year term, beginning 90 days after the effective date of this rule amendment. Subsequent permit renewals are effective for 5-year renewal cycles from the previous expiration date, unless:

(1) The permit is automatically inactivated at the expiration of the permittee's lease or contract (where the permittee is the lessee or equivalent) that authorized the permittee to control operations (and permit compliance) on the permitted land; or

(2) The permit is otherwise modified by enforcement actions pursuant to subsection 40E-63.460(1), F.A.C.; or

(3) The permit is otherwise renewed pursuant to subsection 40E-63.439(2), F.A.C.; or

(4) A permit application for a new permit or a permit renewal has been filed by a permittee on a timely basis prior to the expiration date of a previously-issued permit, and the District has not completed review of the application, in which case the previously-issued permit will remain effective until final agency action is taken by the District on the application; or

(5) A new permit has been issued within one year of the permit renewal cycle begin date. In that case, the new permit duration will be greater than five years, but no more than six years to align its expiration date with the expiration date of the basin's five-year renewal cycle.

(6) Permit duration will not be affected by permit transfers or modifications of any kind.

(7) All previously issued permits shall expire 90 days after the effective date of this part of Chapter 40E-63, F.A.C., unless a permit application for renewal or for a new permit has been received by the District within that period.

Rulemaking Authority 373.044, 373.083, 373.085, 373.086, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History--New _____.

See Rule 40E-63.434, F.A.C.

40E-63.442 Basis for Issuance of General Permits in the C-139 Basin.

Rulemaking Specific Authority 373.044, 373.083, 373.085, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History--New 1-24-02, Repealed _____.

40E-63.443 Permit Application Processing Fees.

(1) The following permit application processing fees shall be paid to the District at the time the permit applications are filed.

Permit Type	New	Renewal	Modification	Letter Modification	Transfer
General Permit	\$250	\$250	\$100	\$0	\$100

(2) Without the proper fee, the application shall be considered incomplete and will result in denial of the application if the fee is not paid upon notice.

(3) Notwithstanding the table above, no fees shall be charged for clerical modifications that do not alter the approved BMP Plan or monitoring requirements of the underlying permit.

(4) In cases where more than one permit application type applies, the application shall be submitted as the permit type with the higher application fee.

Rulemaking Authority 373.044, 373.083, 373.085, 373.086, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History--New _____.

See Rule 40E-63.436, F.A.C.

40E-63.444 Limiting Conditions for General Permits in the C-139 Basin.

(1) All of the following standard limiting conditions (a) through (u) shall be attached to all General Permits:

(a) The permittee shall implement all elements and requirements of the approved BMP Plan according to schedule, including documentation of implementation, operation, and rationale where applicable. At no time shall BMP implementation be less than the required 35 BMP equivalent points using the criteria in Rule 40E-63.435 or 40E-63.437, F.A.C., as applicable ~~15 points in the Level I Plan requirements.~~

(b) Each applicant to which a General Permit is issued is a co-permittee and is jointly and severally liable for implementing the requirements of the General Permit. This includes non-compliance with permit conditions caused by lessees or operators that are not co-permittees.

~~(c)~~(b) The permittee shall submit to the District an annual report certifying BMP implementation in accordance with the permit. The report is due February 1 of each year. ~~The first report is due February 1, 2003, and annually thereafter.~~ Failure to submit the report by February 1, will result in onsite verification of BMP implementation by District staff ~~and~~ ~~or~~ the requirement for the permittee to submit a detailed report documenting implementation of each BMP in the approved BMP Plan for the previous calendar year. Failure to submit the required annual report provide documentation of BMP implementation by April 30 of each year may will result in revocation of the General Permit. The notification will be sent by certified mail and indicate that the permit will be revoked within 30 days after the date of the certified mailing unless the annual report is received within those 30 days. If the permit is revoked, the permittee shall be required to apply for a new General Individual Permit and shall be subject to enforcement under subsection 40E-63.460(1) ~~40E-63.470(1)~~, F.A.C. The new permit will include special conditions requiring that documentation certifying BMP implementation is submitted quarterly, at a minimum.

~~(d)~~(e) The permittee shall allow District staff and designated agents reasonable access to the permitted property at any time to verify compliance with the rule and the permit. Since it is not possible to predict precisely when discharges will occur or problems will arise resulting in the need for a site visit, the District may not be able to provide a lengthy period of notice to the designated person in advance of a visit. However,

at a minimum, the District will provide notice at least 24 hours prior to a site visit for verifying best management practice installation and operation.

~~(d) The permittee shall notify the District in writing within 30 days of any:~~

~~1. Significant change in land practice, as described in subsection 40E-63.402(6), F.A.C.; or~~

~~2. Change in the approved BMP Plan for the permitted parcel; or~~

~~3. Transfer, sale or conveyance of land or works described in the permit.~~

(e) The permittee shall notify the District in writing within 30 days after any changes in permit basin acreage.

(f) The permittee shall notify the District in writing within 90 days of any transfer, sale or conveyance of land or works described in the permit.

~~(g)(e)~~ This permit does not relieve the permittee of the responsibility to comply with all other laws or regulations applicable to the use of or discharges from the parcel.

~~(h)(f)~~ The permit does not convey to the permittee any property right or any rights or privileges other than those specified in the permit.

~~(i)(g)~~ This permit does not relieve the permittee from liability from harm or injury to human health or welfare; animal, plant or aquatic life; or property.

~~(j)(h)~~ The surface water management and monitoring system must be effectively operated and maintained in accordance with the Environmental Resource/Surface Water Management Permit. Any changes in drainage, land use or operations not identified previously that could affect the surface water management system BMP Plan or water quality of the discharge, must be reported in writing in advance to the District to determine if an Environmental Resource/Surface Water Management Permit is required.

(k) If not previously authorized by a District permit under this part of Chapter 40E-63, F.A.C., the permittee shall submit a permit modification application 30 days in advance of conducting any:

1. Changes in BMPs; or

2. Changes in land practice affecting the approved BMP Plan; or

3. Changes in water management that may affect the Sub-basin Monitoring Program (e.g., resulting from completing Environmental Resource/Surface Water Management Permit authorized water management system changes).

(l)(i) The permitted discharge shall not otherwise be harmful, or adversely affect proper use and operation of the Works of the District.

~~(m)(j)~~ The C-139 Basin is required to achieve compliance with the phosphorus load limitation requirement and performance measures as specified in Appendix B2 (incorporated by reference in subsection 40E-63.404(4), F.A.C.).

(n) Legal entities or groups of cooperating owners or operators (co-permittees) responsible for implementing a General Permit shall remain legally and financially capable of performing their responsibilities required by the permits issued pursuant to this section.

(o) Within 30 days of issuance of the permit, as of the effective date of the amendments to this part of Chapter 40E-63, F.A.C., for lessees that are not co-applicants, the permittee shall provide written certification that the lessees have received a copy of the permit and agree to implement the BMP Plan and be bound by the terms and conditions of the permit, including any amendments thereto.

(p) For leases executed after the effective date of the amendments to this part of Chapter 40E-63, F.A.C. (in which the lessee is not a co-applicant), within 30 days of its date of execution, the permittee shall provide written certification by the lessee or a copy of the lease indicating the lessee's agreement to implement the BMP Plan and be bound by the terms and conditions of the permit, including any amendments thereto.

~~(q)(2) If in the event that~~ the District determines that any ~~permittee participant~~ in a General Permit is not complying with the specific terms and conditions of the General Permit, or the water quality performance measures (including proportional share, in accordance with Chapter 40E-63, F.A.C.), the District will institute enforcement or corrective proceedings against the permittee, any co-permittees, Permit holder, the landowner, or both, as applicable pursuant to Rules 40E-63.450 and 40E-63.460 and 40E-63.470, F.A.C. ~~If additional specific conditions become necessary, the District shall also require the Permit holder to apply for an Individual Permit.~~

(r) Authorizations from other agencies for disposal or application of wastewater residuals (biosolids), animal manure, solid waste, fill material, or other materials containing phosphorus within the C-139 Basin, shall not relieve permittees from complying with the provisions of this Rule. Water quality monitoring data may be required by the District to demonstrate no potential impacts on phosphorus loading.

(s) The permitted discharge shall not cause adverse water quality impacts of receiving water and adjacent lands regulated by Chapter 373, F.S.

(t) The permitted discharge shall not cause adverse environmental impacts.

(u) The permitted discharge shall be consistent with State Water Policy, Chapter 62-40, F.A.C.

(2) General permits shall be subject to other reasonable conditions as necessary to assure that proposed BMP and Permit Discharge Monitoring Plans meet the conditions for issuance in Rules 40E-63.435, 40E-63.437 and 40E-63.462, F.A.C.

Rulemaking Specific Authority 373.044, 373.083, 373.085, 373.086, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History--New 1-24-02, Amended _____.

40E-63.446 C-139 Basin Compliance.

(1) If the C-139 Basin is determined to not meet the performance measures developed in accordance with Appendix B2 (incorporated by reference in subsection 40E-63.404(4), F.A.C.), the basin as a whole will be deemed out of compliance with the water quality requirements of this part of Chapter 40E-63, F.A.C.

(2) If the C-139 Basin is out of compliance, water quality improvement activities will be required for permit basins to achieve their proportional share of the basin-wide loading phosphorus load, as indicated in Appendices B3.1, and B3.2 (incorporated by reference in subsections 40E-63.404(7) and (8), F.A.C.). Exceptions are provided below in subsection (3).

(3) Upon the effective date of the amendments to this part of Chapter 40E-63, F.A.C., the first water year of compliance determination for which water quality improvement activities can be required is WY2013. The requirement for water quality improvement activities in a permit basin will be deferred for one water year if the District determines that one or more of following conditions exist.

(a) The permit basin is located in a sub-basin that is determined to not exceed its proportional share of the basin-wide loading based on District-collected data for the sub-basin or, if applicable, its Permit Basin Discharge Monitoring Program results are determined not to exceed the proportional share in accordance with Appendix B3.1 (incorporated by reference in subsection 40E-63.404(7), F.A.C.).

(b) District approved early BMPs, as described in paragraph 40E-63.438(1)(a), F.A.C., were fully implemented in the permit basin during a water year that was used to deem the C-139 Basin out of compliance, providing deferral only to the parcels where the early BMPs apply.

(c) A District approved demonstration project including a verification plan, as described in paragraph 40E-63.438(1)(b), F.A.C., was conducted within the permit basin during a water year that was used to deem the basin out of compliance, providing deferral only to the land uses or crops to which the project applies.

(d) The permit basin, or portion thereof, has been issued and meets the conditions of a determination of impracticability as described in subsection 40E-63.460(6), F.A.C., providing deferral to the lands where the determination applies, or

(e) The performance measure determination includes the permit basin UAL from either of the two water years immediately following a water year for which the permit basin was required to implement water quality improvement activities.

(4) If the C-139 Basin is deemed out of compliance, the District will evaluate BMP program performance at the sub-basin level in accordance with Appendix B3.1 (incorporated by reference in subsection 40E-63.404(7), F.A.C.).

(5) The District will determine annual phosphorus discharge performance for permit basins that have an individual discharge monitoring plan in accordance with Appendix B3.1 (incorporated by reference in subsection 40E-63.404(7), F.A.C.).

(6) The District will provide written notice to the C-139 Basin permittees on the C-139 Basin compliance results (Appendix B2, incorporated by reference in subsection 40E-63.404(4), F.A.C.), and the sub-basin and permit basin performance results (Appendix B3.1, incorporated by reference in subsection 40E-63.404(7), F.A.C.) and whether water quality improvement activities are required. The District shall attempt to transmit the written notices by August of each year. The notices shall describe permittees' required actions for proposing water quality improvement activities based on these assessments including required total phosphorus reduction levels in accordance with Appendix B3.2 (incorporated by reference in subsection 40E-63.404(8), F.A.C.). These actions are described in subsection 40E-63.460(2), F.A.C.

(7) In accordance with Appendix B2 (incorporated by reference in subsection 40E-63.404(4), F.A.C.), the District shall continue collecting monitoring data from the C-139 Basin for the purpose of determining compliance.

Rulemaking Authority 373.044, 373.083, 373.085, 373.086, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History--New _____.

See Rule 40E-63.460, F.A.C.

40E-63.450 Individual Permit Application Requirements in the C-139 Basin.

Rulemaking Specific Authority 373.044, 373.083, 373.085, 373.086, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History--New 1-24-02, Repealed _____.

40E-63.452 Basis for Issuance of Individual Permits in the C-139 Basin.

Rulemaking Specific Authority 373.044, 373.083, 373.085, 373.086, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History--New 1-24-02, Repealed _____.

40E-63.454 Limiting Conditions for Individual Permits in the C-139 Basin.

Rulemaking Specific Authority 373.044, 373.083, 373.085, 373.086, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History--New 1-24-02, Repealed _____.

40E-63.456 Optional Discharge Monitoring Program.

Rulemaking Specific Authority 373.044, 373.083, 373.085, 373.086, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History--New 1-24-02, Repealed _____.

40E-63.458 Limiting Conditions for the Optional Discharge Monitoring Program.

Rulemaking Specific Authority 373.044, 373.083, 373.085, 373.086, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History--New 1-24-02, Repealed _____.

40E-63.460 C-139 Basin Compliance.

Rulemaking Specific Authority 373.044, 373.083, 373.085, 373.086, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History--New 1-24-02, Repealed _____.

40E-63.461 C-139 Basin Permit Compliance.

The District is authorized to seek any enforcement or corrective action available under Florida law for permittees out of compliance with the provisions of this Chapter, pursuant to Chapter 373, F.S., and rules adopted thereunder.

(1) If an individual permittee is determined to be out of compliance with permit conditions the following applies:

(a) The District shall begin reviewing "permit compliance" with BMP implementation, documentation, and operation by permittees in the C-139 Basin immediately upon the effective date of this part of Chapter 40E-63, F.A.C.

(b) All permittees who are not in compliance with their permit are subject to notification and enforcement actions by the District.

(c) All permittees who receive notice of non-compliance with their permit from the District must submit to the District, within 10 business days of receipt of the notice, a plan and schedule for achieving permit compliance within 60 days after transmittal of the District notice.

(d) Compliance with the permit includes timely submittal and implementation of any additional water quality improvement activities if required by rule. Delay by permittees in fulfilling the BMP implementation requirements will not extend the timeline for determining the need for additional water quality improvement activities at the sub-basin or permit basin level.

(2) If the C-139 Basin is determined to be out of compliance with the water quality requirements of this part of Chapter 40E-63, F.A.C., pursuant to Rule 40E-63.450, F.A.C., the permittee shall propose water quality improvement activities in accordance with the following:

(a) The permittee shall submit a letter modification application for the District's consideration, within 120 days of the District's transmittal of the notice that the C-139 Basin is not in compliance. The submittal shall include the section entitled "Water Quality Improvement Activities" of Form 1045 dated _____.

(b) The submittal shall include a proposal for water quality improvement activities along with the estimated phosphorus reductions to be achieved in accordance with subsection 40E-63.460(3), F.A.C., or a verification plan in accordance with subsection 40E-63.460(4), F.A.C. The phosphorus reductions shall be the minimum levels necessary to meet the permit basin's proportional share of required total phosphorus reductions as determined by the District (Appendices B3.1 and B3.2, incorporated by reference in subsections 40E-63.404(7) and (8), F.A.C.). The proposal shall include a schedule to ensure that full implementation of an approved BMP Plan incorporating any proposed water quality improvement activities is in effect as soon as feasible and no later than April 30 following the District's transmittal of the notice that the C-139 Basin is not in compliance, unless otherwise approved by the District. An alternate implementation schedule, may be approved by the District with justification based on the scope of the proposed activities. A permittee shall be required to implement intermediate water quality improvement activities or BMPs, as applicable, if an alternate implementation schedule is approved.

(3) All proposals for water quality improvement activities shall meet the following criteria for District review and approval:

(a) Include a detailed description of the proposed improvements to the approved BMP Plan in comparison to the current implementation practices. The basis for the proposed BMP improvements shall consider pre-improvement conditions (e.g., current levels of BMP implementation, pre-BMP improvement water quality data) and the parameters affecting BMP performance and total phosphorus load (site-specific conditions, phosphorus speciation, flow). If the proposal includes implementation of additional BMPs not listed in Appendix B1 (incorporated by reference in subsection 40E-63.404(3), F.A.C.), the proposal shall also include the information indicated in subsection 40E-63.437(1), F.A.C. Note that in contrast with BMP Plans, additional improvements to an approved BMP Plan do not need to be proposed for each land use or crop within a permit basin if it is demonstrated that focus on selected land uses, crops, or acreage will be sufficient to achieve the required total phosphorus reduction of the basin wide load.

(b) Indicate the expected range of percent total phosphorus removal efficiency resulting from the proposal as follows:

1. The expected or assumed range of percent total phosphorus removal efficiency shall equal or exceed the percent required total phosphorus reduction applicable to the permit basin.

2. The expected or assumed total phosphorus removal efficiency shall be based on data from the most current representative technical references including peer reviewed or published BMP research and demonstration projects, with

consideration of permit basin specific conditions such as identified when a site-assessment is completed pursuant to subsection 40E-63.437(2), F.A.C.

3. Each proposal shall include a detailed description of the technical basis and copies of documents as applicable. All proposed total phosphorus reductions shall be based on scientific studies, calibrated models, or data collection representative of the C-139 Basin for District approval.

(c) If the permittee is unable to demonstrate that the required total phosphorus reductions can be achieved in accordance with paragraph (b) above, a verification plan shall be required.

(d) If the proposal includes a verification plan, it shall meet the criteria for approval described below. The proposal and monitoring plan shall aim to demonstrate the ability to achieve the total phosphorus reduction levels that would be necessary to meet the overall required total phosphorus reduction levels.

(4) If a permittee selects to or is required to conduct a monitoring program to confirm that required total phosphorus reductions will be achieved, a permittee shall propose a verification plan in addition to the proposal for improvements to an approved BMP Plan or water quality improvement activities. All verification plan proposals shall meet the following criteria for District review and approval:

(a) The description of who will be responsible for project implementation.

(b) The proposed reporting procedures during and at completion of the project.

(c) A Final report at completion that describes how the recommendations for BMP implementation will be applicable to the crops or land uses to meet the required total phosphorus reduction.

(d) The tools that will be used to verify total phosphorus reduction levels such as water quality and quantity monitoring to determine total phosphorus loading pre- and post-BMP improvement and to estimate total phosphorus reduction efficiency. Total phosphorus and phosphorus speciation data collected at the District sub-basin monitoring locations may serve as representative monitoring.

(e) The parameters under which total phosphorus reduction levels will be measured and verified so that findings are repeatable and applicable within the C-139 Basin conditions (climatic conditions, soils, geology, etc.).

(f) A schedule not to exceed three calendar years from the date of District approval of the proposal. Once the confirmatory verification is completed and a final report is submitted in accordance with the approved scope, the permittee shall either submit a Letter Modification application in accordance with Rule 40E-63.439, F.A.C., and subsections 40E-63.460(2) and (3), F.A.C., to either:

a. modify the approved BMP Plan to incorporate changes based on the final report recommendations for the District's consideration, or

b. propose other water quality improvement activities consistent with the requirements of this rule.

(5) The District shall repeat the procedures specified in Rule 40E-63.446, F.A.C., above as many times as required to achieve C-139 Basin compliance, and seek corrective action as appropriate against entities within the C-139 Basin, as applicable.

(6) Permittees may elect to demonstrate that water quality improvement activities are impracticable. Any such request for determination of impracticability must be submitted to the District under a permit modification application. For the District to consider the application for approval, the submittal shall:

(a) Specify all of the BMPs and activities that were implemented previously and provide evidence to show that no additional BMPs and activities or refinements for the reduction of phosphorus can be reasonably accomplished at the site or sites of operation.

(b) Propose the expected amount of phosphorus discharge in comparison to the C-139 Basin's phosphorus load targets and limits, calculated in accordance with Appendices B3.1 and B3.2 (incorporated by reference in subsections 40E-63.404(7) and (8), F.A.C.), for the range of historic rainfall conditions in accordance with Appendix B2 (incorporated by reference in subsection 40E-63.404(4), F.A.C.). No increasing trend in phosphorus from the property, as determined by the District, will be allowed under any scenario. The District will review the proposed performance level in reference to available representative historic data.

(c) Propose a discharge monitoring plan in accordance with Rule 40E-63.462, F.A.C., to verify that the proposed performance level is met. In the event that the farm configuration is not conducive to a discharge monitoring program, the District may consider requests for the use of alternate representative locations or monitoring for concentration only. Upon District approval of the monitoring plan, special limiting conditions (such as applicable conditions from Rule 40E-63.464, F.A.C.) will be incorporated in the permit.

(d) Such requests shall apply only to the permit basin or portion thereof (e.g., land use, crop or acreage) which demonstrated further activities are impracticable.

(e) The District shall send a copy of each such request to the Department of Environmental Protection.

(f) Determinations of impracticability will be valid until the next permit renewal cycle. Permittees shall re-apply for a permit in accordance with Rule 40E-63.439, F.A.C. A previously permitted impracticability status shall not be automatically renewed. The District will review each request as a new request. All requests shall be reviewed to verify that

there have been no increasing trends in phosphorus discharges in the previous 5 years and that the proposed levels of BMP implementation are in accordance with improved BMP implementation techniques based on the latest technical information, as described in Appendix B3.2 (incorporated by reference in subsection 40E-63.404(8), F.A.C.).

Rulemaking Authority 373.044, 373.083, 373.085, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History—New _____.

See Rule 40E-63.470, F.A.C.

40E-63.462 Permit Basin Discharge Monitoring Program.

(1) In addition to implementing an approved BMP Plan, permittees may elect or be required to participate in a discharge monitoring program pursuant to Rules 40E-63.437, 40E-63.438, paragraph 40E-63.449(1)(r), subsection 40E-63.460(4) or 40E-63.460(6), F.A.C., and be subject to:

(a) For permittees electing a discharge monitoring program or permittees required to implement a monitoring program pursuant to subsection 40E-63.460(6), F.A.C.: alternative, site-specific evaluations of compliance with phosphorus load targets and limits for the areas represented by the monitoring plan when the C-139 Basin is collectively determined to be out of compliance in accordance with Chapter 40E-63, F.A.C., Appendix B2 (incorporated by reference in subsection 40E-63.404(4), F.A.C.); and

(b) Compliance with permit conditions in accordance with Rule 40E-63.444, F.A.C.

(2) To implement a discharge monitoring program, permittees must submit a permit application with the following information:

(a) An acceptable discharge (quantity and quality) monitoring plan that provides reasonable assurance that annual water discharge and total phosphorus load are accurately documented.

(b) All flow quantity discharge from the property shall be calculated using a proposed method by a Florida-Registered Professional Engineer in a flow calibration report approved by the District. A calibration report shall be required for each pump, culvert or other discharge structure. Uncontrolled off-site discharges, such as overland sheet flow, shall also be quantified in the report. Each calibration report shall contain, at a minimum: data collection methodology, instrumentation and procedures; the actual field data collected; the basis for the full operating range represented by the data; the methodology for development of the calibration equation; operational information needed to calculate flow with a temporary backup methodology to be used if the primary equipment becomes inoperable; and the final calibration equation and primary method for calculating the flow. A plan that includes the items specified in the “Flow Calibration Guidelines Developed in Support of Chapter 40E-63, F.A.C. Everglades BMP Permit Program” (incorporated by reference in subsection

40E-63.404(9), F.A.C.), generally provides reasonable assurance that methods to measure water quantity will be reasonably accurate, however, other alternatives may be proposed by the applicant and authorized by the District;

(c) A schedule to install equipment and implement the monitoring plan no later than 30 days after issuance of the permit; and

(d) Other site specific information required by Appendix B3.1 (incorporated by reference in subsection 40E-63.404(7), F.A.C.).

Rulemaking Authority 373.044, 373.083, 373.085, 373.086, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History—New _____.

See Rule 40E-63.456, F.A.C.

40E-63.464 Limiting Conditions for the Permit Basin Discharge Monitoring Program.

For those applicants proposing to implement the Permit Basin Discharge Monitoring Program, the District-approved monitoring plan will be incorporated into an amended General Permit and the following limiting conditions shall be met in addition to the conditions indicated in Rule 40E-63.444, F.A.C. These limiting conditions will be attached to the General Permit.

(1) The discharge (quantity and quality) monitoring plan shall provide reasonable assurance that the annual water discharge and total phosphorus load are accurately documented.

(2) The approved discharge monitoring plan shall be incorporated by reference and made part of this permit;

(3) The equipment shall be installed and the monitoring shall start no later than 30 days after the permit issuance date. Within 60 days after the permit issuance date, the permittee shall contact the District to verify that installation of the monitoring equipment is complete and to schedule an inspection;

(4) The permittee shall implement the discharge monitoring plan in accordance with the permit and shall submit to the District any proposed modification of the plan by submitting an application to modify the permit for review and approval prior to implementation.

(5) The location of sample collection shall be such that water sampled is representative of all water from the monitored area that discharges off-site.

(6) All water quality sample collection, preservation, handling, transport, and chain-of-custody documentation shall be conducted in accordance with an approved Comprehensive Quality Assurance Plan as specified in the approved discharge monitoring plan. All laboratory analyses shall be conducted by a laboratory with proper certification for the specified parameter (e.g. phosphorus);

(7) In the event that water quality automatic sampling equipment becomes inoperable for any reason, grab samples shall be temporarily taken on a daily basis during flow events and composited for a maximum of 14 days for total phosphorus analysis. Reasonable effort must be made to render the automatic sampling equipment operable within 14 days;

(8) Monitoring conditions may be reduced or adjusted upon submission of data and/or studies that provide the basis for such, reasonably demonstrating that equivalent data will be obtained with the reduction or adjustment in monitoring;

(9) The District will provide at least one week notice to the permittee of the intent to conduct a quality assurance field audit of the sampling collection procedures;

(10) The water quantity and quality data shall be submitted to the District no later than 60 days from the last day of the sampling period being reported. Water quantity and quality data shall be submitted to the District in an approved electronic format on a monthly basis.

(11) All flow quantity discharged from the property shall be calculated using a method proposed by a Florida-registered Professional Engineer in a Calibration Report approved by the District. A Calibration Report shall be required for each pump, culvert or other discharge structure. The report shall also quantified uncontrolled off-site discharges, such as overland sheet flow. Each Calibration Report shall contain, at a minimum: data collection methodology, instrumentation and procedures; the actual field data collected; the basis for the full operating range represented by the data; the methodology for development of the calibration equation; operational information needed to calculate flow with a temporary backup methodology to be used if the primary equipment becomes inoperable; and the final calibration equation and primary method for calculating the flow. Any modification to the approved calibration shall require an application to modify the existing permit.

(12) During periods of off-site discharge, water quality composite samples shall be collected by automatic sampler, preserved, and the composite sample shall be: a) removed from the sample collection site and delivered to the laboratory no later than 21 days from the time the first individual sample was taken and, b) analyzed for total phosphorus no later than 28 days from the time the first individual sample was taken.

Rulemaking Authority 373.044, 373.083, 373.085, 373.086, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History—New _____.

See Rule 40E-63.458, F.A.C.

40E-63.470 C-139 Basin Works of the District Permit Compliance.

Rulemaking Specific Authority 373.044, 373.083, 373.085, 373.113, 373.4592 FS. Law Implemented 373.085, 373.4592 FS. History—New 1-24-02, Repealed _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Pamela Wade, Division Director, Everglades Regulation Division

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 10, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 12, 2010

AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid

RULE NOS.:

RULE TITLES:

59G-11.001

Purpose

59G-11.002

Definitions

59G-11.003

Agency Certification Process and Requirements

59G-11.004

Revocation of a 211 Number

PURPOSE AND EFFECT: Repeal of an obsolete Rule

SUMMARY: Section 408.918, Florida Statutes was amended in 2009 to transfer regulatory responsibility for the Florida 211 Network Provider Certification Program to the private sector. This action made Rules 59G-11.001, .002, .003, and .004, Florida Administrative Code obsolete.

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

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

RULEMAKING AUTHORITY: 408.918 FS.

LAW IMPLEMENTED: 408.918 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Stephen Bradley at (850)412-4675, or by emailing Stephen.Bradley@ahca.myflorida.com

THE FULL TEXT OF THE PROPOSED RULES IS:

59G-11.001 Purpose.

Rulemaking Specific Authority 408.918 FS. Law Implemented 408.918 FS. History—New 4-24-03, Repealed _____.

59G-11.002 Definitions.

Rulemaking Specific Authority 408.918 FS. Law Implemented 408.918 FS. History—New 4-24-03, Repealed _____.

59G-11.003 Agency Certification Process and Requirements.

Rulemaking Specific Authority 408.918 FS. Law Implemented 408.918 FS. History–New 4-24-03, Repealed.

59G-11.004 Revocation of a 211 Number.

Rulemaking Specific Authority 408.918 FS. Law Implemented 408.918 FS. History–New 4-24-03, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE: Stephen Bradley

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Deborah McNamara

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

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

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Division of Florida Condominiums, Timeshares and Mobile Homes

RULE NOS.:	RULE TITLES:
61B-20.004	Definitions and Purpose
61B-20.005	Educational Resolution
61B-20.006	Enforcement Resolution and Penalty Guidelines

PURPOSE AND EFFECT: The amendments are intended to make the condominium developer resolution guidelines consistent with the 2009 revised legislation affecting the division’s jurisdiction and the experience gained in applying the rules since their adoption in 1998.

SUMMARY: The amendments clarify the definition of an accepted complaint; who has standing to file a complaint; provide point values for calculating aggravating and mitigating factors; change the beginning range of penalties to a set point; re-word descriptions for clarity; increase some minor violations to major violations; add new statutory citations to the list of described violations; remove some statutory citations from the list of described violations; and increase the penalties for violations.

Other rules incorporating these rules: 61B-21.001 and 61B-41.002, F.A.C. The amendments to these rules will have no significant impact on the referenced rules.

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: 718.301, 718.501 FS.

LAW IMPLEMENTED: 455.2273, 718.301, 718.501 FS.

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

DATE AND TIME: July 28, 2010, 9:00 a.m.

PLACE: The Northwood Centre, Suite 16, Conference Room, 1940 N. Monroe 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: Sharon A. Malloy, Senior Management Analyst II at (850)488-1631. 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: Sharon A. Malloy, Senior Management Analyst II, Division of Florida Condominiums, Timeshares, and Mobile Homes, 1940 North Monroe Street, Tallahassee, Florida 32399-1030, (850)488-1631

THE FULL TEXT OF THE PROPOSED RULES IS:

61B-20.004 Definitions and Purpose.

(1) Definitions. For the purposes of this rule chapter Rules 61B-20.004, 61B-20.005 and 62B-20.006, F.A.C., the following definitions shall apply:

(a) “Accepted complaint” means a complaint received by the division from someone with standing to file a complaint, which addresses containing sufficient documentation and addressing a subject within the jurisdiction of the division under, pursuant to Section 718.501(1), F.S., and which meets the following criteria:

1. It must allege a violation of Chapter 718, F.S., or the division’s rules;

2. It must contain a plain statement of specific facts upon which the complainant bases the allegation that a violation of Chapter 718, F.S., or a rule occurred. A complaint that merely recites the statutes or is based on mere suspicion or speculation, without a plain statement of facts clearly describing what is alleged to have occurred, will not be accepted; and

3. It must contain sufficient evidentiary documentation to support the complaint. A complaint received by the division that fails to meet the above criteria will be returned to the complainant with an explanation as to why it was not accepted and suggestions as to how the complaint may be made acceptable, and resubmitted.

(b) “Affirmative or corrective action” means putting remedial procedures in place to ensure that the violation does not recur, making any injured person whole as to the harm suffered in relation to the violation, or taking any other appropriate measures to redress the harm caused.

(c) “Alleged repeated violation” means the same or substantially similar recurring violation cited in an accepted complaint received by the division within two years from the resolution of a previous complaint regarding the same or substantially similar violation. A violation is a repeated violation if the same alleged statutory or rule violation was charged in an arbitration in which an enforceable order of an arbitrator was entered finding it a violation, or if the division entered a final enforceable order finding it a violation.

(d)(e) “Bad check” means any worthless check, draft, or order of payment identified under Section 68.065, F.S.

(e)(f) “Developer” for purposes of these guidelines, shall have the same meaning as stated in Section 718.103(16), F.S.

(2) Purpose.

(a) The purpose of the ~~penalty resolution~~ guidelines is to implement the division’s responsibility to ensure compliance with the provisions of Chapter 718, F.S., and the division’s administrative rules. For those statutory or rule violations identified as minor in these rules, the division will first and foremost attempt to seek compliance through an educational resolution. For repeated statutory or rule violations, where the violations have not been corrected or otherwise resolved by the developer, or for violations identified as major in these rules, the division will seek statutory or rule compliance through an enforcement resolution. The guidelines detail the educational and enforcement procedures the division will use to seek statutory or rule compliance. The guidelines are also intended to implement the division’s statutory authority to give reasonable and meaningful notice to persons regulated by Chapter 718, F.S., and the administrative rules of the range of penalties that normally will be imposed if an enforcement resolution is taken by the division. Finally, the rules are intended, pursuant to statutory mandate, to distinguish between minor and major violations based upon the potential harm that the violation may cause.

(b)(3) The division shall apply these penalty guidelines against the developer pursuant to the division’s authority in Section 718.301(5), F.S. Therefore, the developer is responsible for the cost of affirmative or corrective action, or assessed penalties imposed under these guidelines for violations that occurred prior to turnover, regardless of whether turnover has since occurred. The developer shall not pass the cost of such affirmative or corrective action or penalties on to the unit owners.

(c)(4) These penalty guidelines are adopted under promulgated pursuant to the division’s authority in Section 718.501(1)(d), (f), and ~~(m)(k)~~, F.S. These rules do not preclude the division from imposing affirmative or corrective action under Sections pursuant to Section 718.501(1)(d)2, and (r), F.S. Nothing in these rules shall limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, settlement agreement, or consent order. Rules 61B-20.004, 61B-20.005, and 61B-20.006, F.A.C., are

necessary to ~~explain~~ explicate the division’s education and enforcement ~~policies~~ policy. These rules are not intended to cover, or be applied to, willful and knowing violations of Chapter 718, F.S., or the administrative rules by an officer or association board member, pursuant to Section 718.501(1)(d) 4., F.S. Such violations shall be strictly governed by the provisions of Section 718.501(1)(d) 4., F.S. These rules are not intended to cover, or be applied to violations of Chapter 718, F.S., or the administrative rules by a unit owner controlled association. Such violations shall be strictly governed by the provisions of Chapter 61B-21, F.A.C.

Rulemaking Specific Authority 718.301, 718.501(1)(d)4., (f) FS. Law Implemented 718.301, 718.501(1)(d)4. FS. History–New 6-4-98, Amended _____.

61B-20.005 Educational Resolution.

(1) An initial accepted complaint, directed at a developer and involving a possible violation identified as minor in these guidelines, will be resolved as follows:

(a) If, based on the complaint, the division has reasonable cause to believe that a statutory or rule violation may have occurred, a Warning Letter will be sent to the developer. The Warning Letter will give the developer 14 calendar 15 business days in which to address, correct, or dispute the violation. The Warning Letter will identify the violation, and provide a contact telephone number and an investigator’s name so that the developer may contact the division for educational assistance or an educational conference in obtaining compliance. However, it is solely the responsibility of the developer to take action, when applicable, to achieve statutory or rule compliance. Failure to respond to a Warning Letter, or take affirmative or corrective action as requested by the division, may result in the division proceeding with enforcement resolution will lead to further investigation. The Warning Letter shall not be considered final agency action.

(b) If the division proceeds with enforcement resolution by issuing a notice to show cause, the division will notify the developer of its right to a hearing under Chapter 120, F.S.

(c) The division will notify the complainant of the ~~educational~~ resolution of the complaint, or if applicable, alternative dispute resolution options.

Rulemaking Specific Authority 718.501(1)(d)4., (f) FS. Law Implemented 718.501(1)(d)4., (k) FS. History–New 6-4-98, Amended _____.

61B-20.006 Enforcement Resolution and Penalty Guidelines Civil Penalties.

(1) The division will seek compliance through ~~an~~ enforcement resolution for major violations or repeated minor violations, or for the failure to correct or address a violation or provide unit owner redress as requested by the division, or for a major violation. If the division seeks compliance through enforcement, the division will issue a notice to show cause and notify the developer of its right to a hearing under Chapter 120,

F.S. These guidelines list aggravating and mitigating factors that will ~~reduce or increase the listed penalty amounts within the specified range and those circumstances that justify a departure from the guideline range.~~ No aggravating factors will be applied to increase a penalty for a single violation above the statutory maximum of \$5,000. The guidelines in this rule chapter are based upon a single count violation of each provision listed. Multiple counts of the violated provision or a combination of the listed violations will be added together to determine an overall total penalty. Nothing in this rule chapter ~~these rules~~ shall limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, settlement agreement, or consent order. Nothing in this rule chapter shall limit the division's ability to seek judicial enforcement and remedies through the courts.

- (2) General Provisions.
- (a) No change.

(b) Violations Included. This rule chapter applies to all statutory and rule violations subject to a penalty authorized by Chapter 718, F.S. An enforceable arbitration order or consent order finding a statutory or rule violation constitutes a violation for purposes of this rule chapter and shall count as a violation when determining whether a violation has been repeated.

(c) through (d) No change.

(3) Aggravating and Mitigating Factors. The division will consider aggravating and mitigating factors in determining penalties for both minor and major violations listed in this rule section. The factors ~~are not necessarily listed in order of importance, and they~~ shall be applied against each single count of the listed violation.

(a) Aggravating Factors:

<u>No.</u>	<u>Description</u>	<u>Value</u>
1.	Filing or causing to be filed any materially incorrect document in response to any division request or subpoena.	<u>3</u>
2.	Financial loss to parties or persons affected by the violation.	<u>3</u>
3.	Financial gain to parties or persons responsible for who perpetrated the violation.	<u>3</u>
4.	The same violation was committed after a Notice of Deficiency was issued.	
4,5.	The disciplinary history of the developer, including such actions resulting in <u>enforcement as detailed in Rule 61B-20.006, F.A.C., or Section 718.501, F.S.</u> settlement or pending resolution.	<u>2</u>
5,6.	<u>Substantial</u> The violation caused substantial harm, or has potential to cause substantial harm caused to unit owners condominium residents or other persons or entities.	<u>2</u>
7.	Undue delay in initiating or completing, or failure to take affirmative or corrective action after the developer received the division's written notifications of the violation.	
6,8.	The violation had occurred for a long period of time.	<u>2</u>
7,9.	The violation was repeated within <u>2 years</u> a short period of time.	<u>2</u>
8,10.	The developer impeded the division's investigation or authority.	<u>1</u>
11.	The investigation involved the issuance of a notice to show cause, or other proceeding.	

(b) Mitigating Factors:

<u>No.</u>	<u>Description</u>	<u>Value</u>
1.	Reliance on written professional or expert counsel and advice.	
1,2.	<u>The violation or harm was related to a natural or manmade disaster(s). Acts of God or nature.</u>	<u>3</u>
2.	<u>Financial hardship to respondent.</u>	<u>3</u>
3.	The violation caused no harm to <u>unit owners condominium residents</u> or other persons or <u>entities.</u>	<u>3</u>
4.	<u>The violation occurred despite reliance on written professional or expert counsel and advice.</u>	<u>2</u>
5,4.	The developer took affirmative or corrective action before it received the division's written notification of the violation.	<u>2</u>
6,5.	The developer expeditiously took affirmative or corrective action after it received the division's written notification of the violation.	<u>1</u>
7,6.	The developer cooperated with the division during the investigation.	<u>1</u>
7.	The investigation was concluded through consent proceedings.	

(c) Application. When applying aggravating or mitigating factors, the value of each applicable factor shall be multiplied by one tenth (1/10) of the specified penalty for the violation. In the case of a mitigating factor, the resulting product shall be subtracted from the specified penalty. In the case of an aggravating factor, the resulting product shall be added to the specified penalty. However, the maximum calculated penalty

for a single violation may not exceed \$5,000, and the minimum calculated penalty for a single violation shall not be less than one tenth (1/10) of the specified penalty for that violation. For example: if the specified penalty for a violation were \$1,000, and the developer had relied on written professional or expert counsel and advice, then two tenths would be subtracted in mitigation, and the resulting penalty would be \$800.

(4) through (6) No change.

(7) Penalties.

(a) Minor Violations. The following violations shall be considered minor due to their lower potential for public consumer harm. If an enforcement resolution is utilized, the division shall impose a civil penalty of \$7.50 ~~between \$1 and \$5~~, per unit, for each minor violation. The total penalty or per unit penalty will be assessed ~~beginning with the middle of the specified range and~~ adjusted either up or down based upon any accepted aggravating or mitigating factors submitted with

documentation that demonstrates the factors. ~~An occurrence of six or more aggravating factors or five or more mitigating factors will result in a penalty being assessed outside of the specified range.~~ The total minimum penalty to be assessed shall be calculated according to these guidelines or \$500, whichever amount is greater. In Finally, ~~in~~ no event shall a penalty of more than \$5,000 be imposed for a single violation. The following are identified as minor violations:

<u>No.</u> <u>1.</u>	Category <u>Assessments</u>	Statute or Rule Cite <u>718.116(8), F.S.</u>	Description of Conduct/Violation <u>Failure to provide or timely provide a certificate stating assessments owed by the unit.</u>
<u>2.</u>	Board	718.110(1)(b), F.S. 718.112(2)(h)2., F.S.	<u>Proposed amendment to declaration failed to contain full text showing underlined or strikethrough language; etc.</u> Failure of amendment to declaration or bylaws to contain full text showing underlined or language; etc.
<u>3.</u>	<u>Board</u>	<u>718.112(2)(h)2., F.S.</u>	<u>Proposed amendment to bylaws failed to contain full text showing underlined or strikethrough language; etc.</u>
<u>4.</u>	Board Board	718.111(1)(a), F.S. 718.111(1)(b), F.S.	<u>Failure to obtain or maintain corporate status of association.</u> Improper use of secret ballots, or use of proxy, by board members at a board meeting.
<u>5.</u>	Board	718.112(2)(a)2., F.S.	Failure to provide a timely or substantive response to a written inquiry received by certified mail.
<u>6.</u>	Board	718.112(2)(b)1., F.S.	<u>Action taken at unit owner meeting without quorum.</u> Improper quorum at unit owner meeting.
<u>7.</u>	Board	718.112(2)(b)2., F.S. 718.112(2)(c), F.S. 61B-23.002(9), F.A.C.	<u>Failure of proxy to contain required elements.</u> Failure to properly notice and conduct board of administration or committee meetings; <u>Notice notice</u> failed to indicate assessment would be considered; <u>Failure failure</u> to maintain affidavit by person who gave notice of special assessment meeting; <u>Failure failure</u> to ratify emergency action at next meeting; <u>Failure failure</u> to adopt a rule regarding posting of notices; <u>Failure failure</u> to notice meeting; <u>Non-emergency</u> action taken at board meeting, not on agenda; No meeting agenda; Failure to allow unit owners to speak at meeting or speech is limited <u>with unreasonable restrictions</u> to less than three minutes.
<u>8.</u>	Board	718.112(2)(d)2., F.S.	Failure to provide notice of the annual meeting not less than 14 days prior to the meeting. Failure to include agenda. Failure to maintain affidavit by person who gave notice of annual meeting. Failure to adopt a rule designating a specific place for posting notice of unit owner meetings.
<u>9.</u>	Board	718.112(2)(d)4., F.S.	<u>Permitting unit owner action by written agreement without express documentary or statutory authority.</u> Failure to hold a unit owner meeting to obtain unit owners' approval when written agreements are not authorized.
	Board	718.112(2)(i), F.S.	Failure to have the authority in the documents when levying transfer fees or security deposits.
	Board	718.113(5), F.S.	Failure to comply with hurricane shutter requirements.
	Board	718.116(3), F.S.	Failure to have the authority in the documents when levying late fees.
<u>10.</u>	Board	718.3026(1), F.S.	Failure to obtain competitive bids on contracts that exceed five percent of the association's budget.

	Board	718.303(3), F.S.	Failure to have the authority in the documents when levying fines.
	Board	61B-23.001(2), F.A.C.	Failure to provide proper notice of fines.
11.	Board	718.112(2)(b)5., F.S.	Failure to allow unit owners to attend board or committee meetings.
	Board	61B-23.001(4), F.A.C.	Failure to provide a speaker phone for board or committee meetings held by teleconference.
12.	Board	718.112(2)(c), F.S.	Failure to employ a licensed manager when licensure is required.
	Board	61B-23.002(10), F.A.C.	Not allowing a unit owner to tape record or video tape meetings.
	Board	61B-23.0021(1)(d)2., F.A.C.	Failure to permit a unit owner to tape record or video tape meetings.
13.	Budgets	718.112(2)(e), F.S.	Failure to fill vacancy properly.
	Budgets	718.112(2)(f)1., F.S.	Failure to timely notice budget meeting. Failure to timely deliver proposed budget. Failure of board to call a unit owners' meeting to consider alternate budget.
14.	Budgets	718.504(21)(c), F.S.	Failure to include applicable line items in proposed budget.
15.	Budgets	718.112(2)(f)1., F.S.	Failure to include a schedule of limited common element expenses in budget. Failure to show limited common element expenses in proposed budget.
16.	Budgets	61B-22.003(5), F.A.C.	Failure to disclose the beginning and ending dates of the period covered by the proposed budget.
17.	Budgets	61B-22.003(1)(b), F.A.C.	Failure to disclose periodic assessments for each unit type in the proposed budget.
	Budgets	61B-22.003(1)(c), F.A.C.	Failure to disclose periodic assessments for each unit type in the proposed budget.
	Budgets	61B-22.003(1)(d), F.A.C.	Failure to propose full reserve funding in proposed budget.
	Budgets	61B-22.003(1)(e), (f), (g), F.A.C.	Failure to provide for funding of one or more reserve fund categories in the proposed budget
	Budgets	61B-22.005(1), F.A.C.	Failure to prepare a separate budget for each condominium operated by the association. Failure to provide the required separate proposed budget for each condominium operated by the association.
18.	Development	61B-22.003(4)(a), F.A.C.	Failure to prepare a separate budget for each condominium operated by the association. Failure to provide the required separate proposed budget for each condominium operated by the association.
19.	Development	61B-23.003(6), F.A.C.	Developer failed to keep a copy of the receipt for delivery of association records upon transfer of control.
20.	Development	61B-23.003(5), F.A.C.	Developer failed to file name and address of first non-developer board member.
21.	Development	718.301(4)(a)1., F.S.	Failure to deliver a copy of the declaration and all amendments thereto upon transfer of association control.
22.	Development	718.301(4)(a)2., F.S.	Failure to deliver a copy of the articles of incorporation and all amendments upon transfer of association control.
23.	Development	718.301(4)(a)3., F.S.	Failure to deliver a copy of the bylaws and all amendments thereto upon transfer of association control.
24.	Development	718.301(4)(a)5., F.S.	Failure to deliver a copy of any house rules upon transfer of association control.
25.	Development	718.301(4)(b), F.S.	Failure to deliver resignations of officers and board members upon transfer of association control.
26.	Development	718.301(4)(i), F.S.	Failure to deliver copies of certificates of occupancy for the condominium property upon transfer of association control.
27.	Development	718.301(4)(j), F.S.	Failure to deliver copies of permits upon transfer of association control.
28.	Development	718.301(4)(l), F.S.	Failure to deliver a copy of the unit owner roster upon transfer of association control.
	Elections	718.112(2)(d)3., F.S.	Improper nomination procedures in election.
	Elections	61B-23.0021(3), F.A.C.	Including candidate who did not submit timely notice of candidacy.
	Elections	718.112(2)(d)3., F.S.	Including candidate who did not submit timely notice of candidacy.
	Elections	61B-23.0021(5), F.A.C.	Failure to provide candidate a receipt for written notice of intent to be a candidate.
	Elections	61B-23.0021(6), F.A.C.	Failure to provide candidate a receipt for written notice of intent to be a candidate.
28.	Elections	61B-23.0021(8), (10), F.A.C.	Counting ballots not cast in inner and outer envelopes. Failure to provide space for name, <u>unit number</u> , and signature on outer envelope.

	Elections	61B-23.0021(10)(c), F.A.C.	Failure to timely hold runoff election.
<u>29.</u>	<u>Elections</u>	<u>61B-23.0021(9), F.A.C.</u>	<u>Ballot does not list candidates alphabetically.</u>
<u>30.</u>	<u>Elections</u>	<u>61B-23.0021(10)(b), F.A.C.</u>	<u>Improper verification of outer envelopes.</u>
<u>31.</u>	Records	718.111(1)(b), F.S.	Failure of minutes to reflect how board members voted at board meeting. Failure to record a vote or an abstention in the minutes for each board member present at the board meeting.
<u>32.</u>	Records	718.111(12)(a)2., F.S.	Failure to maintain a copy of recorded declaration and amendments.
<u>33.</u>	Records	718.111(12)(a)3., F.S.	Failure to maintain a copy of recorded bylaws and amendments.
<u>34.</u>	Records	718.111(12)(a)4., F.S.	Failure to maintain a certified copy of articles of incorporation and amendments.
<u>35.</u>	Records	718.111(12)(a)7., F.S.	Failure to maintain a current, <u>complete</u> unit owner roster. Failure of roster to include all elements.
<u>36.</u>	Records	718.111(12)(a)14., F.S.	Failure to maintain or annually update the question and answer sheet.
<u>37.</u>	Records	61B-23.002(7)(a), F.A.C. 718.111(12)(a)15., F.S.	Failure to maintain other association records related to the operation of the association.
<u>38.</u>	Records Records	718.111(12)(b),(c), F.S. 61B-22.003(3), F.A.C.	Failure to provide access to records. <u>Failure to reflect adoption of budget in meeting minutes.</u> Failure of budget meeting minutes to reflect adoption of the proposed budget.
	Records	61B-23.003(6), F.A.C.	Failure to maintain a copy of the receipt for delivery of association records upon transfer of control.
<u>39.</u>	Reporting Reporting	718.111(13), F.S. 61B-22.006(3)(a) <u>6.5.</u> , F.A.C.	Failure to timely provide the annual financial report. <u>Failure to disclose the manner by which reserve items were estimated and/or the date the estimates were last made in the annual financial statements or turnover audit.</u> Failure to disclose in the year end financial statements the manner by which reserve items were estimated and/or the date the estimates were last made.
	Reporting	61B-22.006(3)(b),(c), F.A.C.	Improper disclosure in the year end financial statements of method of allocating revenues and expenses. Improper special assessment disclosures in the year end financial statements.
<u>40.</u>	Reporting	61B-22.006(3)(b), F.A.C.	<u>Failure to disclose the method of allocating income and expenses in the annual financial statements or turnover audit.</u>
	Reporting	61B-22.006(3)(d), F.A.C.	Improper disclosure in the year end financial statements of revenues and expenses related to limited common elements.
	Reporting	61B-22.006(4), F.A.C.	Improper multi-condominium reserve fund disclosures in the year end financial statements. Multi-condominium revenues, expenses, and changes in fund balance not shown for each condominium in the year end financial statements. Disclosure of multi-condominium revenues/expenses for the association not specific to a condominium, is omitted, or is incomplete in the year end financial statements.
<u>41.</u>	Reporting	61B-22.006(5), F.A.C.	<u>Failure to show developer assessments separately from other assessment revenues in the annual financial report (statements).</u>
	Reporting	61B-22.006(3)(a), F.A.C.	Failure to show developer assessments separately from non-developer owners in the year end financial statements or annual financial report.
	Reporting	61B-22.006(6)(b), F.A.C.	Failure to include the required reserve fund disclosures in the annual financial report.
	Reporting	61B-22.006(6)(b), F.A.C.	Improper disclosure of receipts and expenditures in the annual financial report in a multi-condominium association.
	Reporting	61B-22.0062(2)(b), F.A.C.	Failure to include in the turnover financial statements a statement of total cash payments made by the developer to the association.

(b) Major Violations. The following violations shall be considered major due to their increased potential for public consumer harm. If an enforcement resolution is utilized, the penalty will be assessed beginning with the middle of the specified range and adjusted either up or down based upon any

accepted aggravating or mitigating factors submitted with documentation that demonstrates the factors. ~~An occurrence of six or more aggravating factors or five or more mitigating factors will result in a penalty being assessed outside of the specified range.~~ The total minimum penalty to be assessed

shall be calculated according to these guidelines or \$500, whichever amount is greater. ~~In Finally,~~ in no event shall a penalty of more than \$5,000 be imposed for a single violation. The penalties are set forth in levels categories 1, 2, and 3, for each violation as follows:

~~Level Category 1: \$30 \$10—\$18~~ per unit.
~~Level Category 2: \$75 \$20—\$50~~ per unit.
~~Level Category 3: \$400 \$100—\$300~~ for each unit offered/created; deposit or contract.

No.	Category	Statute or Rule Cite	Description of Conduct/Violation	Suggested Penalty Level
1.	Accounting Records	718.111(12)(a)11F.S. 61B-22.002, F.A.C.	Insufficient or incomplete accounting records. Insufficient detail in the accounting records. Failure to maintain sufficient accounting records.	2
<u>2.</u>	<u>Accounting Records</u>	<u>718.111(12)(a)11., FS.</u>	<u>Failure to maintain separate accounting records for each condominium.</u>	<u>2</u>
3.	Assessing	718.112(2)(g), FS.	Assessments not sufficient to meet expenses. Failure to assess at sufficient amounts.	1
<u>4.</u>	<u>Assessing</u>	<u>718.112(2)(g), F.S.</u>	<u>Collecting assessments less frequently than quarterly</u>	<u>1</u>
5.	Assessing	718.115(2), F.S.	Assessments not based upon the shares stated in the declaration of condominium. Failure to assess based upon proportionate share or as stated in the declaration of condominium.	2
<u>6.</u>	<u>Assessing</u>	<u>718.115(4), F.S.</u>	<u>Assessments not properly apportioned among multiple condominiums.</u>	<u>2</u>
<u>7.</u>	<u>Assessing</u>	<u>718.116(3), F.S.</u>	<u>Failure to charge interest on past-due assessments.</u>	<u>1</u>
<u>8.</u>	<u>Assessing</u>	<u>718.116(4), (9), F.S.</u>	<u>Developer or other owner improperly excused from paying assessments. Failure by developer to pay assessments or to pay in timely manner.</u>	<u>2</u>
<u>9.</u>	<u>Board Board</u>	<u>718.110, 718.112, F.S. 718.106(3), F.S.</u>	<u>Failure to follow method of amendment. Unit owner denied access to unit or to common elements.</u>	<u>2</u> <u>1</u>
<u>10.</u>	<u>Board</u>	<u>718.123(1), F.S.</u>	<u>Improperly amending the declaration of condominium.</u>	<u>2</u>
<u>11.</u>	<u>Board</u>	<u>718.110, F.S. 718.111(1)(b), F.S.</u>	<u>Improper use of secret ballots, or use of proxies, by board members at a board meeting.</u>	<u>1</u>
<u>12.</u>	<u>Board</u>	<u>718.111(4), F.S.</u>	<u>Improper use fee.</u>	<u>1</u>
<u>13.</u>	<u>Board</u>	<u>718.111(7)(a), F.S.</u>	<u>Mortgaging or conveying association property without unit-owner approval.</u>	<u>2</u>
<u>14.</u>	<u>Board</u>	<u>718.111(11), F.S.</u>	<u>Failure to exercise best effort to insure the common elements and association property.</u>	<u>2</u>
<u>15.</u>	<u>Board</u>	<u>718.111(11)(h)(4), F.S.</u>	<u>Failure to maintain adequate fidelity bonding.</u>	<u>2</u>
<u>16.</u>	<u>Board</u>	<u>718.112(2)(b)2., F.S.</u>	<u>Improper use of general proxies. Use of non-conforming limited proxies.</u>	<u>1</u>
<u>17.</u>	<u>Board</u>	<u>718.112(2)(h), F.S.</u>	<u>Improperly amending the association bylaws.</u>	<u>2</u>
<u>18.</u>	<u>Board</u>	<u>718.112(2)(a)1., F.S.</u>	<u>Compensating officers or members of the board without documentary authority. Improper compensation of officers or directors.</u>	<u>1</u>
<u>19.</u>	<u>Board</u>	<u>718.112(2)(d)1., F.S.</u>	<u>Allowing ineligible person to serve on the board.</u>	<u>2</u>
<u>20.</u>	<u>Board</u>	<u>718.112(2)(d)1., F.S.</u>	<u>Failure to hold annual meeting.</u>	<u>2</u>
<u>21.</u>	<u>Board</u>	<u>718.112(2)(d)8., F.S. 61B-23.0021(1)(d)2., F.A.C.</u>	<u>Improperly filling a vacancy of an unexpired term on the board.</u>	<u>1</u>
<u>22.</u>	<u>Board</u>	<u>718.112(2)(j), F.S.</u>	<u>Improper removal of board member.</u>	<u>1</u>
<u>23.</u>	<u>Board</u>	<u>718.112(2)(i), F.S.</u>	<u>Improperly requiring transfer fees or security deposits. Requiring excessive transfer fees or security deposits.</u>	<u>1</u>
<u>24.</u>	<u>Board</u>	<u>718.113(1), F.S.</u>	<u>Failure to maintain common elements.</u>	<u>1</u>
<u>25.</u>	<u>Board</u>	<u>718.113(2), F.S.</u>	<u>Material alteration without unit-owner approval where required.</u>	<u>1</u>
<u>26.</u>	<u>Board</u>	<u>718.113(5), F.S.</u>	<u>Failure to adopt hurricane shutter specifications. Failure to approve hurricane shutters that meet specifications.</u>	<u>1</u>

<u>27.</u>	<u>Board</u>	<u>718.116(3), F.S.</u>	<u>Levying late fees without documentary authority.</u>	<u>1</u>
<u>28.</u>	<u>Board</u>	<u>718.303(3), F.S.</u>	<u>Imposing fines without documentary authority. Imposing fines without proper notice and hearing. Imposing excessive fines.</u>	<u>1</u>
	<u>Board</u>	<u>718.501(2)(a), F.S.</u>	<u>Failure to pay annual fees to the division.</u>	<u>2</u>
<u>29.</u>	<u>Board</u>	<u>718.112(c), F.S.</u>	<u>Excluding unit owners from board or committee meetings.</u>	<u>1</u>
		<u>61B-23.001(2), F.A.C.</u>		
<u>30.</u>	<u>Board</u>	<u>61B-23.001(4), F.A.C.</u>	<u>Employing an unlicensed manager when licensure is required.</u>	<u>2</u>
<u>31.</u>	<u>Budgets</u>	<u>718.112(2)(e), F.S.</u>	<u>Failure to propose/adopt budget for a given year.</u>	<u>2</u>
<u>32.</u>	<u>Budgets</u>	<u>61B-22.003(4)(a), F.A.C.</u>	<u>Failure to prepare a separate budget for each condominium operated by the association as well as for the association.</u>	<u>1</u>
<u>33.</u>	<u>Budgets</u>	<u>718.112(2)(e)2.c., F.S.</u>	<u>Developer increased assessments more than 115% without approval.</u>	<u>1</u>
<u>34.</u>	<u>Budgets</u>	<u>61B-22.003(1)(d), F.A.C.</u>	<u>Failure to provide for full funding of reserves in proposed budget.</u>	<u>1</u>
<u>35.</u>	<u>Budgets</u>	<u>61B-22.003(1)(e), (f), (g), F.A.C.</u>	<u>Failure to include reserve schedule in the proposed budget.</u>	<u>1</u>
<u>36.</u>	<u>Budgets</u>	<u>61B-22.003(1)(e), (f), (g), F.A.C.</u>	<u>Failure to include a required reserve item in proposed budget.</u>	<u>1</u>
		<u>61B-22.005(1), F.A.C.</u>		
<u>37.</u>	<u>Budgets</u>	<u>718.112(2)(f)2., F.S.</u>	<u>Improper calculation of reserve requirements.</u>	<u>1</u>
		<u>61B-22.005(3), (5), F.A.C.</u>		
<u>38.</u>	<u>Commingle</u>	<u>718.111(14), F.S.</u>	<u>Commingling association funds with non-association funds.</u>	<u>2</u>
<u>39.</u>	<u>Commingle</u>	<u>718.111(14), F.S.</u>	<u>Association funds deposited in account not in association's name.</u>	<u>1</u>
<u>40.</u>	<u>Commingle</u>	<u>718.111(14), F.S.</u>	<u>Commingling reserve funds with operating funds.</u>	<u>1</u>
		<u>61B-22.005(2), F.A.C.</u>		
<u>41.</u>	<u>Common Expenses</u>	<u>718.103(9), F.S.</u>	<u>Using association funds for other than common expenses.</u>	<u>2</u>
		<u>718.115(1), F.S.</u>		
	<u>Converter Reserves</u>	<u>61B-23.003(3), F.A.C.</u>	<u>Failure to calculate converter reserves properly.</u>	<u>2</u>
	<u>Converter Reserves</u>	<u>718.618(1), F.S.</u>		
	<u>Converter Reserves</u>	<u>61B-24.007, F.A.C.</u>	<u>Failure to fund converter reserves in a timely manner.</u>	<u>2</u>
	<u>Converter Reserves</u>	<u>718.618(2)(a), F.S.</u>		
<u>42.</u>	<u>Converter Reserves</u>	<u>718.618(3)(b), F.S.</u>	<u>Improper use of converter reserves.</u>	<u>1</u>
	<u>Converter Reserves</u>	<u>61B-22.003(1)(e)5., F.A.C.</u>	<u>Failure to include converter reserve disclosures in the proposed budget, year-end financial statements, or annual financial report.</u>	<u>4</u>
	<u>Converter Reserves</u>	<u>61B-22.006(3)(a)6., F.A.C.</u>		
		<u>61B-22.006(6)(e), F.A.C.</u>		
<u>43.</u>	<u>Development</u>	<u>718.202(1), F.S.</u>	<u>Developer using alternative assurance, such as a Letter of Credit or Surety Bond, in lieu of escrow account, without prior approval of the director.</u>	<u>3</u>
		<u>61B-17.009(1), F.A.C.</u>		
	<u>Development</u>	<u>718.202(1) or (6), F.S.</u>	<u>Failure to establish an escrow account or place funds therein.</u>	<u>3</u>
<u>44.</u>	<u>Development</u>	<u>718.202(1), F.S.</u>	<u>Failure to place purchase deposits in escrow.</u>	<u>3</u>
<u>45.</u>	<u>Development</u>	<u>718.202(6), F.S.</u>	<u>Failure to place reservation deposits in escrow.</u>	<u>3</u>
<u>46.</u>	<u>Development</u>	<u>718.301(1), (2), (4), F.S.</u>	<u>Failure to transfer association control.</u>	<u>2</u>
<u>47.</u>	<u>Development</u>	<u>718.301(4)(a)4., F.S.</u>	<u>Failure to deliver the minute books upon transfer of association control.</u>	<u>2</u>

48.	<u>Development</u>	<u>718.301(4)(c), F.S.</u>	<u>Failure to deliver the financial records (other than the audit) within 90 days of transfer of association control.</u>	<u>2</u>
49.	<u>Development</u>	<u>718.301(4)(d), F.S.</u>	<u>Failure to deliver the association funds upon transfer of association control.</u>	<u>2</u>
50.	<u>Development</u>	<u>718.301(4)(e), F.S.</u>	<u>Failure to deliver all tangible personal property of the association upon transfer of association control.</u>	<u>2</u>
51.	<u>Development</u>	<u>718.301(4)(f), F.S.</u>	<u>Failure to deliver the plans, specifications and affidavit upon transfer of association control.</u>	<u>1</u>
52.	<u>Development</u>	<u>718.301(4)(g), F.S.</u>	<u>Failure to deliver the list of contractors upon transfer of association control.</u>	<u>1</u>
53.	<u>Development</u>	<u>718.301(4)(h), F.S.</u>	<u>Failure to deliver copies of insurance policies upon transfer of association control.</u>	<u>1</u>
54.	<u>Development</u>	<u>718.301(4)(k), F.S.</u>	<u>Failure to deliver copies of all warranties upon transfer of association control.</u>	<u>1</u>
55.	<u>Development</u>	<u>718.301(4)(m), F.S.</u>	<u>Failure to deliver copies of all leases to which the association is a party upon transfer of association control.</u>	<u>1</u>
56.	<u>Development</u>	<u>718.301(4)(n), (o), F.S.</u>	<u>Failure to deliver copies of all contracts involving the association upon transfer of association control.</u>	<u>1</u>
57.	<u>Development</u>	<u>718.403(1), F.S.</u>	<u>Continuing to develop phases after expiration of phase deadline.</u>	<u>3</u>
	<u>Development</u>	<u>718.403(1),(2), F.S.</u>	<u>Failure to follow proper method to amend documents to alter phase development plan.</u>	<u>3</u>
		<u>61B-17.003(9), F.A.C.</u>		
58.	<u>Development</u>	<u>718.403(1), (2), F.S.</u>	<u>Improperly amending declaration to provide for phased development.</u>	<u>2</u>
59.	<u>Development</u>	<u>61B-17.003, F.A.C.</u>	<u>Improperly amending declaration to alter phased development plan.</u>	<u>2</u>
60.	<u>Development</u>	<u>718.502(2)(a), F.S.</u> <u>61B-17.001(1)(b), F.A.C.</u>	<u>Accepting reservation deposits prior to filing reservation program with the division. Accepting deposits prior to filing reservation and escrow agreements with the division.</u>	<u>3</u>
61.	<u>Development</u>	<u>718.502(2)(a), F.S.</u> <u>61B-17.001(1)(a), F.A.C.</u>	<u>Offering sales contracts prior to initial filing with division and acceptance for form.</u>	<u>3</u>
62.	<u>Development</u>	<u>718.502(3), F.S.</u>	<u>Failure to file amendments to documents previously filed with the division.</u>	<u>1</u>
63.	<u>Development</u>	<u>61B-17.006(2), F.A.C.</u> <u>718.503(1), (3), F.S.</u> <u>718.618(10), F.S.</u>	<u>Using sales contracts without required disclosures.</u>	<u>3</u>
		<u>61B-18.001(10), F.A.C.</u>		
64.	<u>Development</u>	<u>718.503(1)(b), (3), F.S.</u>	<u>Failure to allow purchaser to rescind contract upon receipt of timely notice from purchaser. provide documents to purchasers.</u>	<u>3</u>
65.	<u>Development</u>	<u>718.503(3), F.S.</u>	<u>Closing on sales of units prior to the division's approval of the filing with division and acceptance for content.</u>	<u>3</u>
		<u>61B-17.001(6), F.A.C.</u>		
66.	<u>Development</u>	<u>61B-17.001(3), F.A.C.</u>	<u>Failure to provide recording information to the division.</u>	<u>1</u>
67.	<u>Development</u>	<u>718.502(3), F.S.</u>	<u>Offering sales contracts on units within a phase prior to filing phase documents with the division.</u>	<u>3</u>
		<u>61B-17.003(3), F.A.C.</u>		
68.	<u>Development</u>	<u>718.504(10), F.S.</u> <u>61B-18.008(4), F.A.C.</u>	<u>Rental program not disclosed in prospectus or amendment.</u>	<u>1</u>
69.	<u>Elections</u>	<u>718.112(2)(d), F.S.</u> <u>718.301(1), (2), F.S.</u> <u>61B-23.0021(2), F.A.C.</u>	<u>Failure to hold election to permit participation on board by non-developer owners. Failure to permit participation on board by non-developer owners after 15 percent of units have been sold.</u>	<u>2</u>
70.	<u>Elections</u>	<u>718.112(2)(d)3., F.S.,</u> <u>61B-23.0021(3), F.A.C.</u>	<u>Improper nomination procedures in election.</u>	<u>2</u>

71.	Elections	718.112(2)(d)3., F.S. 61B-23.0021(4), F.A.C.	Failure to provide, or timely provide, first notice of election.	2+
72.	<u>Elections</u>	<u>61B-23.0021(6), F.A.C.</u>	<u>Failure to provide candidate a receipt for written notice of candidacy.</u>	1
73.	<u>Elections</u>	<u>61B-23.0021(8), F.A.C.</u>	<u>Second notice of election included comments by board about candidates.</u>	2
74.	<u>Elections</u>	<u>718.301(2), F.S.</u>	<u>Failure to provide, or timely provide, first notice of turnover election.</u>	2
75.	Elections	718.112(2)(d)3., F.S. 61B-23.0021(7), (8), F.A.C.	Failure to provide, or timely provide, second notice of election or omitting materials such as ballots, envelopes, and candidate information sheets.	2+
76.	<u>Elections</u>	<u>61B-23.0021(8), F.A.C.</u>	<u>Voters allowed to rescind or change their previously cast ballots.</u>	1
77.	<u>Elections</u>	<u>718.112(2)(d)3., F.S.; 61B-23.0021(7); F.A.C.</u>	<u>Association altered or edited candidate information sheets.</u>	2
78.	<u>Elections</u>	<u>61B-23.0021(2), F.A.C.</u>	<u>Election not held at time and place of annual meeting.</u>	1
79.	Elections	718.112(2)(d)3., F.S.	Failure to use ballots or voting machines.	2
80.	<u>Elections</u>	<u>718.112(2)(d)3., F.S.; 61B-23.0021(5), F.A.C.</u>	<u>Ballot included candidate who did not submit timely notice of candidacy.</u>	2
81.	<u>Elections</u>	<u>61B-23.0021(7), F.A.C.</u>	<u>Distributing candidate information sheets consisting of more than one page.</u>	1
82.	<u>Elections</u>	<u>61B-23.0021(10)(a), F.A.C.</u>	<u>Inner envelopes not placed in separate receptacle before being opened.</u>	2
83.	Elections	718.112(2)(d)3., F.S. 61B-23.0021(9), F.A.C.	Failure to include all timely submitted names of eligible candidates on the ballot.	2+
84.	<u>Elections</u>	<u>61B-23.0021(9), F.A.C.</u>	<u>Ballots not uniform. Ballots identify voter. Ballot contained space for write-in candidate.</u>	2
85.	<u>Elections</u>	<u>61B-23.0021(10), F.A.C.</u>	<u>Outer envelopes not checked against list of eligible voters.</u>	1
86.	Elections	61B-23.0021(10)(a), (b), F.A.C.	Counting ineligible ballots. Not counting ballots in the presence of unit owners.	1
87.	<u>Elections</u>	<u>61B-23.0021(10), F.A.C.</u>	<u>Failure to count properly cast ballots.</u>	1
88.	<u>Elections</u>	<u>61B-23.0021(10), F.A.C.</u>	<u>Outer envelopes opened prior to election meeting. Outer envelopes not opened in presence of unit owners.</u>	2
89.	<u>Elections</u>	<u>61B-23.0021(10)(a), F.A.C.</u>	<u>Not counting ballots in the presence of unit owners.</u>	2
90.	<u>Elections</u>	<u>61B-23.0021(10)(a), F.A.C.</u>	<u>Ballots not counted by impartial committee.</u>	1
91.	<u>Elections</u>	<u>61B-23.0021(10)(b), F.A.C.</u>	<u>Failure to notice meeting to verify outer envelope information.</u>	1
92.	Elections	61B-23.0021(10)(c), F.A.C.	Failure to hold <u>or timely hold</u> runoff election.	2
93.	Elections	61B-23.003(7)(f), F.A.C.	<u>Developer improperly voted for a majority of the board.</u> Improperly permitting a developer to vote for a majority of the board.	2
94.	<u>Elections</u>	<u>61B-23.0021(10)(a), F.A.C.</u>	<u>No blank ballots available at election meeting.</u>	2
95.	Final Order	718.501(1)(d)64., F.S.	Failure to comply with final order of the division.	2
96.	Guarantee	718.116(9), F.S. 61B-22.004(1), F.A.C.	Guarantee not properly established.	2

97.	Guarantee	718.116(9)(a), F.S. 61B-22.004(3), F.A.C.	Improperly assessing unit owners.	2
98.	Guarantee	718.116(9)(a), F.S. 61B-22.004(4)(5), F.A.C.	Failure to advance sufficient cash. Guarantee deficit not funded.	2
99.	<u>Guarantee</u>	<u>718.116(9)(b), F.S.</u> <u>61B-22.004(4), F.A.C.</u>	<u>Expending capital contributions or special assessment funds during guarantee period.</u>	<u>2</u>
100.	Guarantee	61B-22.004(2), F.A.C.	Guarantee period unclear/not specified, not properly extended.	2
	Guarantee	61B-22.004(4)(a), F.A.C.	Not providing sufficient cash/resources to provide payment on a timely basis of all common expenses including full funding of reserves.	2
	Guarantee	61B-22.004(4)(b), F.A.C.	Amount owed by the guarantor for the guarantee period not properly calculated.	2
		61B-22.004(5), F.A.C.		
101.	Records	718.111(12)(a)12., F.S.	Failure to maintain election or voting materials for one year.	1
102.	Records	718.111(12)(a)6., F.S.	Failure to maintain minutes of meetings.	1
103.	Records	718.111(12)(a)8., F.S.	Failure to maintain a copy of a current insurance policy.	1
104.	Records	718.111(12)(a)9., F.S.	Failure to maintain copy of management agreement or other contract under which the association has obligations.	1
105.	Records	718.111(12)(a)10. F.S.	Failure to maintain bills of sale or transfer.	1
106.	Records	718.111(12)(a)13. F.S.	Failure to maintain rental records.	1
107.	Records	718.111(12)(c), F.S.	Requiring a unit owner to pay a fee for access to association records.	1
		718.115(1)(a), F.S.		
108.	Records	718.111(12)(b), F.S.	Failure to maintain records within Florida.	2
109.	Records	718.111(12)(b), (c), F.S.	Failure to provide access to records. Failure to allow copying of records.	1
	Records	718.301(4), F.S.	Failure to deliver one or more association records upon transfer of association control.	2
110.	Reporting	718.111(13), F.S.	Failure to provide, or timely provide, the annual financial report or statements.	2
	Reporting	718.111(13), F.S.	Failure to provide year end financial statements in a timely manner.	4
	Reporting	718.111(13), F.S.	Failure to provide year end financial statements.	2
111.	Reporting	718.111(13)(d), F.S.	Prior to turnover of control of the association, developer was included in vote to lower reporting waive audit requirement after the first two years of operation.	2
	Reporting	718.301(4)(e), F.S.	Failure to provide turnover financial statements in a timely manner.	4
	Reporting	718.301(4)(e), F.S.	Failure to provide turnover financial statements. Turnover financial statements not audited. Failure of turnover financial statements to cover entire period.	2
112.	Reporting	61B-22.0062(1), F.A.C. 718.301(4)(c), F.S.	Failure to provide, or timely provide, turnover financial statements. Turnover financial statements not audited.	2
		61B-22.0062(1), F.A.C.	Failure of turnover financial statements to cover entire period of control.	
113.	Reporting	61B-22.0062(2)(b), F.A.C.	Failure to state the total cash payments made by the developer to the association in the turnover audit.	1
114.	Reporting	61B-22.006(1), F.A.C.	Failure to prepare annual/turnover year-end financial statements using fund accounting. Failure to prepare annual/turnover year-end financial statements on accrual basis.	1
115.	Reporting	61B-22.006(1), F.A.C.	Failure to prepare annual/turnover year-end financial statements in accordance with Generally Accepted Accounting Principles (GAAP). Failure to have reviewed or audited annual/turnover year-end financial statements prepared by a Florida-licensed CPA.	2

116.	Reporting	61B-22.006(2), F.A.C.	Failure to include one or more components of the <u>annual/turnover year-end</u> financial statements (incomplete).	1
117.	Reporting	61B-22.006(3)(a)1.- <u>6.</u> , (6), F.A.C.	Failure to make significant reserve fund disclosures in <u>annual/turnover year-end</u> financial statements <u>or annual financial report or annual financial report.</u>	1
118.	Reporting	61B-22.006(4), F.A.C.	Failure to include reserve fund disclosures and/or revenues, expenses, and changes in fund balances for each condominium and the association in the <u>annual financial statements.</u>	1
119.	Reporting	61B-22.006(3)(a)7 <u>6.</u> , (6), F.A.C.	Failure to include converter-reserve disclosures in the <u>annual financial statements or annual financial report.</u>	1
120.	Reporting	61B-22.006(4), F.A.C.	Failure to include reserve fund disclosures and/or revenues, expenses, and changes in fund balances for each condominium and the association in the <u>annual financial statements of a multi-condominium association.</u>	1
121.	Reporting	61B-22.006(3)(c), (6)(c), F.A.C.	Failure to include the special assessments disclosures in the <u>annual financial statements or annual financial report.</u>	1
122.	Reporting	61B-22.006(6)(e), F.A.C.	Failure to separately present revenues and expenses for each condominium and the association in the <u>annual financial report of a multi-condominium association.</u>	1
	Reporting	61B-22.006(3)(e), F.A.C.; 61B-22.0062(2)(d), F.A.C.	Guarantee disclosures incomplete in, or missing from, turnover financial statements or year end financial statements.	4
123.	Reporting	61B-22.006(3)(e), F.A.C.	<u>Guarantee disclosures incomplete in, or missing from, annual financial statements.</u>	1
124.	Reporting	61B-22.0062(2)(d), F.A.C.	<u>Guarantee disclosures incomplete in, or missing from, turnover financial statements.</u>	2
125.	Reporting	61B-22.004(5), F.A.C.	<u>Improper calculation of guarantor's final obligation.</u>	2
	Reporting	61B-22.006(6)(a),(b), F.A.C; 718.111(13)(b), F.S.	Failure to prepare the annual financial report on a cash basis. Failure to include in the annual financial report specified receipt or expenditure line items, or disclosures on limited common elements.	4
126.	Reporting	718.111(13)(b), F.S.; 61B-22.006(6)(a), F.A.C.	<u>Annual financial report not prepared on a cash basis.</u>	1
127.	Reporting	718.111(13)(b)3., F.S.	<u>Annual financial report does not include specified receipt or expenditure items.</u>	1
128.	Reporting	61B-22.006(3)(d), (6)(d), F.A.C.	<u>Annual/turnover financial statements or annual financial report do not disclose revenues and expenses related to limited common elements.</u>	1
	Reporting	718.111(13)(d), F.S.	Providing lower level of reporting for year-end financial statements than required.	2
129.	Reporting	718.111(13)(a), F.S.	<u>Providing lower level of annual financial reporting than required based on number of units and annual revenues.</u>	2
130.	Reporting	61B-22.0062(2), F.A.C.	<u>Turnover Failure of turnover financial statements fail to present revenues and expenses for each fiscal year and interim period.</u>	2
131.	Reporting	61B-22.0062(2)(a)-(c), F.A.C.	<u>Turnover financial statements fail to include required disclosures omit disclosure of common expenses paid by the developer.</u>	12
	Reserves	718.112(2)(f)2., F.S.; 61B-22.005(3), F.A.C.	<u>Failure to calculate reserve funds properly.</u>	4
132.	Reserves	718.112(2)(f)2., F.S.; 61B-22.005(6), F.A.C.	Failure to fund reserves in a timely manner. Failure to fully fund reserves.	1

<u>133.</u>	Reserves	718.112(2)(f)2., F.S. 61B-22.005(6), (8), F.A.C.	Failure to follow proper method to waive or reduce reserve funding.	1
<u>134.</u>	Reserves	718.112(2)(f)2., F.S.	Prior to turnover of control of the association, developer included in vote to waive/reduce reserve funding after first two years of operation.	1
<u>135.</u>	Reserves	718.112(2)(f)3., F.S. 61B-22.005(7), F.A.C.	<u>Using reserve funds for other purposes without proper unit owner approval. Failure to obtain unit owner approval prior to using reserve funds for other purposes.</u>	2
<u>136.</u>	Special Assessment	718.116(10), F.S.	<u>Using special assessment funds for other purposes. Failure to use special assessment funds for intended purposes.</u>	1
<u>137.</u>	Special Assessment	718.116(10), F.S.	<u>Special assessment notice does not state purpose of assessment.</u>	1

Rulemaking Specific Authority 718.501(1)(d)4., (f) FS. Law Implemented 718.301, 718.501(1)(d)4. FS. History—New 6-4-98, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Michael Cochran, Director, Division of Florida Condominiums, Timeshares, and Mobile Homes, 1940 North Monroe Street, Tallahassee, Florida 32399-1030
 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: June 21, 2010
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 28, 2009

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Division of Florida Condominiums, Timeshares and Mobile Homes

RULE NOS.:	RULE TITLES:
61B-21.001	Definitions and Purpose
61B-21.002	Educational Resolution
61B-21.003	Enforcement Resolution and Penalty Guidelines

PURPOSE AND EFFECT: The amendments are intended to make the condominium association resolution guidelines consistent with the 2009 revised legislation affecting the division’s jurisdiction and the experience gained in applying the rules since their adoption in 1998.

SUMMARY: The amendments clarify the definition of an accepted complaint; who has standing to file a complaint; provide point values for calculating aggravating and mitigating factors; change the beginning range of penalties to a set point; re-word descriptions for clarity; increase some minor violations to major violations; add new statutory citations to the list of described violations; remove some statutory citations from the list of described violations; and increase the penalties for violations.

Other rules incorporating these rules: 61B-41.002, F.A.C. The amendments to these rules will have no significant impact on the referenced 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: 718.301, 718.501 FS.
 LAW IMPLEMENTED: 455.2273, 718.501 FS.

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

DATE AND TIME: July 28, 2010, 9:00 a.m.
 PLACE: The Northwood Centre, Suite 16, Conference Room, 1940 N. Monroe 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: Sharon A. Malloy, Senior Management Analyst II at (850)488-1631. 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: Sharon A. Malloy, Senior Management Analyst II, Division of Florida Condominiums, Timeshares, and Mobile Homes, 1940 North Monroe Street, Tallahassee, Florida 32399-1030, (850)488-1631

THE FULL TEXT OF THE PROPOSED RULES IS:

61B-21.001 Definitions and Purpose.

(1) Definitions. For the purposes of this rule chapter, the following definitions shall apply:

(a) “Accepted complaint” means a complaint received by the division from someone with standing to file a complaint, which addresses containing sufficient documentation and

~~addressing~~ a subject within the jurisdiction of the division, ~~under pursuant to~~ Section 718.501(1), F.S., and which meets the following criteria:

1. It must allege a violation of Chapter 718, F.S., or the division's rules;

2. It must contain a plain statement of specific facts upon which the complainant bases the allegation that a violation of Chapter 718, F.S. or a rule occurred. A complaint that merely recites the statutes or is based on mere suspicion or speculation, without a plain statement of facts clearly describing what is alleged to have occurred, will not be accepted; and

3. It must contain sufficient evidentiary documentation to support the complaint. A complaint received by the division that fails to meet the above criteria will be returned to the complainant with an explanation as to why it was not accepted with suggestions as to how the complaint may be made acceptable, and resubmitted.

(b) No change.

(c) "Alleged repeated violation" means ~~any accepted complaint for~~ the same or substantially similar recurring violation cited in an accepted complaint ~~conducted~~ received by the division within two years from the resolution of a previous complaint regarding the same or substantially similar violation ~~that conducted~~. A violation is a repeated violation if the same alleged statutory or rule violation was charged in an arbitration in which an enforceable order of an arbitrator was entered finding it a violation, or if the division entered a final enforceable order finding it a violation.

(d) through (e) No change.

(f) "Jurisdiction" means that the division has complete authority to investigate complaints and enforce compliance with the provisions of Chapter 718, F.S., with respect to associations that are still under developer control and complaints against developers involving improper turnover or failure to turnover, under Section 718.301, F.S. However, under subsection 718.501(1), F.S., after turnover has occurred, the division shall only have authority to investigate complaints related to financial issues, elections, and unit owner access to association records under subsection 718.111(12), F.S. Issues related to access to records include association maintenance of records. A financial issue means an alleged violation that involves accounting records, including the maintenance or accuracy thereof; assessments, including the amount of the assessments and the process by which assessments are imposed; budgets, including the budget preparation and adoption process; reserves including the amounts and the use of such reserves for their proper purpose; financial reporting; and use of association funds.

(2) Purpose. The purpose of the ~~penalty resolution~~ guidelines is to implement the division's responsibility to ensure compliance with the provisions of Chapter 718, F.S., and the division's administrative rules. The division recognizes

that unit owner controlled associations are comprised of volunteer members who, in most circumstances, are lay people without specialized knowledge of the complex statutory and administrative rule structure of Chapter 718, F.S. Based upon this understanding, the division, as set forth in these rules, will first and foremost attempt to seek statutory and rule compliance through an educational resolution. For repeated statutory or rule violations, where the violations have not been corrected or otherwise resolved by the association, the division will seek statutory or rule compliance through an enforcement resolution. The guidelines are also intended to implement the division's statutory authority to give reasonable and meaningful notice to persons regulated by Chapter 718, F.S., and the administrative rules of the range of penalties that normally will be imposed if an enforcement resolution is taken by the division. Finally, the rules are intended, pursuant to statutory mandate, to distinguish between minor and major violations based upon the potential harm that the violation may cause.

(3) These penalty guidelines are adopted under ~~promulgated pursuant to~~ the division's authority in Section 718.501(1)(d), ~~and (f), and (m),~~ F.S. This rule chapter does not preclude the division from imposing affirmative or corrective action under Sections ~~pursuant to Section~~ 718.501(1)(d)2, ~~and (r),~~ F.S. Nothing in this rule chapter shall limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, settlement agreement, or consent order. Rules 61B-21.001, and 61B-21.002, and 61B-21.003, F.A.C., are necessary to explain ~~explicate~~ the division's education and enforcement ~~policies~~ policy. ~~This rule chapter is not intended to cover, or be applied to, willful and knowing violations of Chapter 718, F.S., or the administrative rules by an officer or association board member, pursuant to Section 718.501(1)(d)4., F.S. Such violations shall be strictly governed by the provisions of Section 718.501(1)(d)4., F.S. These rules are~~ This rule chapter is not intended to cover, or be applied to, violations of Chapter 718, F.S., or the administrative rules by a condominium developer as defined by Section 718.103(16), F.S. Such violations shall be strictly governed by the provisions of Rules 61B-20.004, 61B-20.005, and 61B-20.006, F.A.C., and Section 718.301(5), F.S.

Rulemaking Specific Authority ~~718.501(1)(d)4., (f)~~ FS. Law Implemented ~~718.501(1)(d)4.~~ FS. History--New 6-4-98, Amended _____.

61B-21.002 Educational Resolution.

(1) through (2) No change.

(3) Alleged Repeated Minor Violations. A subsequent accepted complaint directed at the same association involving a possible violation identified as minor in these guidelines, will be resolved as follows:

(a) If, based on the complaint, the division has reasonable cause to believe that a statutory or rule violation may have occurred, a Warning Letter will be sent to the association. The

Warning Letter will give the association 14 calendar days a ~~reasonable period of time~~ in which to address, correct, or dispute the violation. The Warning Letter will identify the violation, and provide a contact telephone number and an investigator's name so that the association may contact the division for educational assistance or an educational conference in obtaining compliance. However, it is solely the responsibility of the association to take action, when applicable, to achieve statutory or rule compliance. Failure to respond to a Warning Letter, or take affirmative or corrective action as requested by the division, may ~~will~~ lead to enforcement resolution ~~further investigation~~. The Warning Letter shall not be considered final agency action.

(b) If the division, through enforcement resolution, issues a notice to show cause, the division will notify the association of its right to a hearing under Chapter 120, F.S.

(c) The division will notify the complainant of the ~~educational~~ resolution of the complaint, or if applicable, alternative dispute resolution options.

(4) Alleged Major Violations. An initial accepted complaint, directed at an association and involving a possible violation identified as major in these guidelines, will be resolved as follows:

(a) If based on the complaint, the division has reasonable cause to believe that a statutory or rule violation may have occurred, a Warning Letter will be sent to the association. The Warning Letter will give the association 14 calendar days a ~~reasonable period of time~~ in which to address, correct, or dispute the violation. The Warning Letter will identify the violation, and provide a contact telephone number and an investigator's name so that the association may contact the division for educational assistance or an educational conference in obtaining compliance. However, it is solely the responsibility of the association to take action, when applicable, to achieve statutory or rule compliance. Failure to respond to a Warning Letter, or take affirmative or corrective action as requested by the division, may ~~will~~ lead to enforcement resolution ~~further investigation~~. The Warning Letter shall not be considered final agency action.

(b) If the division, through enforcement resolution, issues a notice to show cause, the division will notify the association of its right to a hearing under Chapter 120, F.S.

(c) The division will notify the complainant of the ~~educational~~ resolution of the complaint, or if applicable, alternative dispute resolution options.

Rulemaking Specific Authority 718.501(1)(d)~~6,4~~, (f) FS. Law Implemented 718.501(1)(a), (d)~~6,4~~, (j)~~4~~ FS. History--New 6-4-98, Amended _____.

61B-21.003 Enforcement Resolution and Penalty Guidelines ~~Civil Penalties~~.

(1) The division will seek compliance through ~~an enforcement resolution~~ for major violations or repeated minor ~~or major~~ violations, or for the failure to correct or address a violation or provide unit owner redress as requested by the division. If the division seeks compliance through enforcement, the division will issue a notice to show cause and notify the association of its right to a hearing under Chapter 120, F.S. These guidelines list aggravating and mitigating factors that will ~~reduce or increase the listed penalty amounts within the specified range and those circumstances that justify a departure from the guideline range~~. No aggravating factors will be applied to increase a penalty for a single violation above the statutory maximum of \$5,000. The guidelines in this rule chapter are based upon a single count violation of each provision listed. Multiple counts of the violated provision or a combination of the listed violations will be added together to determine an overall total penalty. Nothing in this rule chapter shall limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, settlement agreement, or consent order. Nothing in this rule chapter shall limit the division's ability to seek judicial enforcement and remedies through the courts.

(2) General Provisions.

(a) No change.

(b) Violations Included. This rule chapter applies to all statutory and rule violations subject to a penalty authorized by Chapter 718, F.S. An enforceable arbitration order or consent order finding a statutory or rule violation constitutes a violation for purposes of this rule chapter and shall count as a violation when determining whether a violation has been repeated.

(c) through (d) No change.

(3) Aggravating and Mitigating Factors. The division will consider aggravating and mitigating factors in determining penalties for both minor and major violations listed in this rule chapter. The factors ~~are not necessarily listed in order of importance, and they~~ shall be applied against each single count of the listed violation.

(a) Aggravating factors:

<u>No.</u>	<u>Description</u>	<u>Value</u>
1.	Filing or causing to be filed any materially incorrect document in response to any division request or subpoena.	<u>3</u>
2.	Financial loss to parties or persons affected by the violation.	<u>3</u>
3.	Financial gain to parties or persons responsible for who perpetrated the violation	<u>3</u>
4.	The disciplinary history of the association, including <u>actions</u> such action resulting in an enforcement resolution as detailed in Rule 61B-21.003, F.A.C., or Section 718.501, F.S.	<u>2</u>
5.	<u>Substantial</u> The violation caused substantial harm caused, or has potential to cause substantial harm, to <u>unit owners</u> condominium residents or other persons <u>or entities</u> .	<u>2</u>

- 6. Undue delay in initiating or completing, or failure to take, affirmative or corrective action after the association received the division's written notifications of the violation.
- 6.7. The violation had occurred for a long period of time. 2
- 7.8. The violation was repeated within 2 years a short period of time. 2
- 8.9. The association impeded the division's investigation or authority. 1
- 10. The investigation involved the issuance of a notice to show cause or other proceeding.

(b) Mitigating factors:

<u>No.</u>	<u>Description</u>	<u>Value</u>
1.	Whether current members of the association board have sought and received educational training, other than information provided pursuant to Rule 61B-21.002, F.A.C., on the requirements of Chapter 718, F.S., within the past two years.	
2.	Reliance on written professional or expert counsel and advice.	
1.3.	The violation or harm was related to a natural or manmade disaster(s). Acts of God or nature.	<u>3</u>
2.	Financial hardship to respondent.	<u>3</u>
3.4.	The violation caused no harm to unit owners condominium residents or other persons or entities.	<u>3</u>
4.	The violation occurred despite reliance on written professional or expert counsel and advice.	<u>2</u>
5.	The association took affirmative or corrective action before it received the division's written notification of the violation.	<u>2</u>
6.	The association expeditiously took affirmative or corrective action after it received the division's written notification of the violation.	<u>1</u>
7.	The association cooperated with the division during the investigation.	<u>1</u>
8.	The investigation was concluded through consent proceedings.	

(c) Application. When applying aggravating or mitigating factors, the value of each applicable factor shall be multiplied by one tenth (1/10) of the specified penalty for the violation. In the case of a mitigating factor, the resulting product shall be subtracted from the specified penalty. In the case of an aggravating factor, the resulting product shall be added to the specified penalty. However, the maximum calculated penalty for a single violation may not exceed \$5,000, and the minimum calculated penalty for a single violation shall not be less than one tenth (1/10) of the specified penalty for that violation. For example: if the specified penalty for a violation were \$1,000, and the association had relied on written professional or expert counsel and advice, then two tenths would be subtracted in mitigation and the resulting penalty would be \$800.

- (4) through (6) No change.
- (7) Penalties.

(a) Minor Violations. The following violations shall be considered minor due to their lower potential for public consumer harm. If an enforcement resolution is utilized, the division shall impose a civil penalty of \$2.50 between \$1 and \$5, per unit, for each minor violation. The total penalty will be assessed beginning with the middle of the specified range and adjusted either up or down based upon any accepted aggravating or mitigating factors submitted with documentation that demonstrates the factors. An occurrence of six or more aggravating factors or five or more mitigating factors will result in a penalty being assessed outside of the specified range. The total minimum penalty to be assessed shall be calculated according to these guidelines or \$100, whichever amount is greater. In Finally, in no event shall a penalty of more than \$2,500 be imposed for a single violation. The following are identified as minor violations:

<u>No.</u>	<u>Category</u>	<u>Statute or Rule Cite</u>	<u>Description of Conduct/Violation</u>
1.	<u>Assessments</u>	<u>718.116(8), F.S.</u>	<u>Failure to provide or timely provide a certificate stating assessments owed by the unit.</u>
	Board	718.110(1)(b), FS. 718.112(2)(h)2., F.S.	Failure of amendment to declaration or bylaws to contain full text showing underlined or language, etc.
	Board	718.111(1)(a), F.S.	Failure to maintain corporate status of association.
	Board	718.111(1)(b), F.S.	Improper use of secret ballot, or use of proxy, by board members at a board meeting.
	Board	718.112(2)(a)2., F.S.	Failure to provide a timely or substantive response to a written inquiry received by certified mail.
	Board	718.112(2)(b)1., F.S.	Improper quorum at unit owner meeting.
	Board	718.112(2)(b)2., F.S.	Failure of proxy to contain required elements.

<u>2.</u>	Board	718.112(2)(c), F.S. 61B-23.002(9), F.A.C.	Failure to properly notice and conduct board of administration or committee meetings.; Notice notice failed to indicate assessment would be considered.; Failure failure to maintain affidavit by person who gave notice of special assessment meeting.; Failure failure to ratify emergency action at next meeting; failure to adopt a rule regarding posting of notices; Failure failure to notice meeting.; non-emergency action taken at board meeting, not on agenda; no meeting agenda; failure to allow unit owners to speak at meeting or speech is limited to less than three minutes.
	Board	718.112(2)(d)2., F.S.	Failure to provide notice of the annual meeting not less than 14 days prior to the meeting. Failure to include agenda. Failure to maintain affidavit by person who gave notice of annual meeting. Failure to adopt a rule designating a specific place for posting notice of unit owner meetings.
	Board	718.112(2)(d)4., F.S.	Failure to hold a unit owner meeting to obtain unit owners' approval when written agreements are not authorized.
	Board	718.112(2)(i), F.S.	Failure to have the authority in the documents when levying transfer fees or security deposits.
	Board	718.113(5), F.S.	Failure to comply with hurricane shutter requirements.
	Board	718.116(3), F.S.	Failure to have the authority in the documents when levying late fees.
<u>3.</u>	Board	718.3026(1), F.S.	Failure to obtain competitive bids on contracts that exceed five percent of the association's budget.
	Board	718.303(3), F.S.	Failure to have the authority in the documents when levying fines. Failure to provide proper notice of fines.
	Board	61B-23.001(2), F.A.C.	Failure to allow unit owners to attend board or committee meetings.
	Board	718.112(2)(b)5., F.S.	Failure to provide a speaker phone for board or committee meetings held by teleconference.
	Board	61B-23.001(4), F.A.C.	Failure to employ a licensed manager when licensure is required.
	Board	61B-23.002(10), F.A.C.	Failure to permit a unit owner to tape record or video tape meetings.
	Board	61B-23.0021(1)(d), F.A.C. 718.112(2)(D)(8), F.S.	Failure to fill vacancy properly.
<u>4.</u>	Budgets	718.112(2)(e), F.S.	Failure to timely notice budget meeting. Failure to timely deliver proposed budget. Failure of board to call a unit owners' meeting to consider alternate budget.
	Budgets	718.112(2)(f)1., F.S.	Failure to include applicable line items in proposed budget.
<u>5.</u>	Budgets	718.112(2)(f)1., F.S. 61B-22.003(5), F.A.C.	Failure to include a schedule of limited common element expenses in budget. Failure to show limited common element expenses in proposed budget.
<u>6.</u>	Budgets	61B-22.003(1)(b), F.A.C.	Failure to disclose the beginning and ending dates of the period covered by the proposed budget.
<u>7.</u>	Budgets	61B-22.003(1)(c), F.A.C.	Failure to disclose periodic assessments for each unit type in the proposed budget.
	Budgets	61B-22.003(1)(d), F.A.C.	Failure to propose full reserve funding in proposed budget.
	Budgets	61B-22.003(1)(e), (f), (g), F.A.C.	Failure to provide for funding of one or more reserve fund categories in the proposed budget
	Budgets	61B-22.005(1), F.A.C.	Failure to provide the required separate proposed budget for each condominium operated by the association.
	Budgets	61B-22.003(4)(a), F.A.C.	Improper nomination procedures in election.
	Elections	718.112(2)(d)3., F.S. 61B-23.0021(3), F.A.C.	

	Elections	718.112(2)(d)3., F.S. 61B-23.0021(5), F.A.C.	Including candidate who did not submit timely notice of candidacy.
	Elections	61B-23.0021(6), F.A.C.	Failure to provide candidate a receipt for written notice of intent to be a candidate.
8.	Elections	61B-23.0021(8), (10), F.A.C.	Counting ballots not cast in inner and outer envelopes. Failure to provide space for name, <u>unit number</u>, and signature on outer envelope.
	Elections	61B-23.0021(10)(e), F.A.C.	Failure to timely hold runoff election.
9.	Elections	61B-23.0021(9), F.A.C.	<u>Ballot does not list candidates alphabetically.</u>
10.	Elections	61B-23.0021(10)(b), F.A.C.	<u>Outer envelope information verified before the date of the election.</u>
	Records	718.111(1)(b), F.S.	Failure of minutes to reflect how board members voted at board meeting. Failure to record a vote or an abstention in the minutes for each board member present at the board meeting.
11.	Records	718.111(12)(a)2., F.S.	Failure to maintain a copy of recorded declaration and amendments.
12.	Records	718.111(12)(a)3., F.S.	Failure to maintain a copy of recorded bylaws and amendments.
13.	Records	718.111(12)(a)4., F.S.	Failure to maintain a certified copy of articles of incorporation and amendments.
14.	Records	718.111(12)(a)7., F.S.	Failure to maintain a current, <u>complete</u> unit owner roster. Failure of roster to include all elements.
15.	Records	718.111(12)(a)14., F.S. 61B-23.002(7)(a), F.A.C.	Failure to maintain or annually update the question and answer sheet.
16.	Records	718.111(12)(a)15., F.S.	Failure to maintain other association records related to the operation of the association.
	Records	718.111(12)(b),(c), F.S.	Failure to provide access to records.
	Records	61B-22.003(3), F.A.C.	Failure of budget meeting minutes to reflect adoption of the proposed budget.
17.	Records	61B-23.003(6), F.A.C.	Failure to maintain copy of the receipt for delivery of association records <u>by the developer upon transfer of control.</u>
18.	Reporting	718.111(13), F.S. 61B-22.006(3)(a)5., <u>6.</u> , F.A.C.	Failure to timely provide the annual financial report. <u>Failure to disclose the amount required to fully fund each reserve account as of the end of the fiscal period covered by the annual financial statements; and the manner by which reserve items were estimated and/or the date the estimates were last made in the annual financial statements or turnover audit.</u> Failure to disclose in the year end financial statements the manner by which reserve items were estimated and/or the date the estimates were last made.
19.	Reporting	61B-22.006(3)(b),(e), F.A.C.	Failure to disclose <u>Improper disclosure in the year end financial statements</u> of method of allocating <u>income</u> revenues and expenses <u>in the annual financial statements or turnover audit.</u> Improper special assessment disclosures in the year end financial statements.
	Reporting	61B-22.006(3)(d), F.A.C.	Improper disclosure in the year end financial statements of revenues and expenses related to limited common elements.
	Reporting	61B-22.006(4), F.A.C.	Improper multi condominium reserve fund disclosures in the year end financial statements. Multi condominium revenues, expenses, and changes in fund balance not shown for each condominium in the year end financial statements. Disclosure of multi condominium revenues/expenses for the association not specific to a condominium, is omitted, or is incomplete in the year end financial statements.
20.	Reporting	61B-22.006(5), F.A.C.	<u>Failure to show developer assessments separately from other assessment revenues in the annual financial report (statement).</u>

Reporting	61B-22.006(3)(a), F.A.C.	Failure to include the required reserve fund disclosures in the annual financial report.
Reporting	61B-22.006(6)(b), F.A.C.	Improper disclosure of receipts and expenditures in the annual financial report in a multi-condominium association.

(b) Major Violations. The following violations shall be considered major due to their increased potential for public harm. If an enforcement resolution is utilized, the penalty will be assessed beginning with the middle of the specified range and adjusted either up or down based upon any accepted aggravating or mitigating factors submitted with documentation that demonstrates the factors. An occurrence of six or more aggravating factors or five or more mitigating factors will result in a penalty being assessed outside of the specified range. The total minimum penalty to be assessed

shall be calculated according to these guidelines or \$100, whichever amount is greater. ~~In Finally, in~~ no event shall a penalty of more than \$5,000 be imposed for a single violation. The penalties are set forth in levels categories 1 and 2, for each violation as follows:

- Level Category 1: \$8 \$6—\$10 per unit.
- Level Category 2: \$16 \$12—\$20 per unit.

<u>No.</u>	<u>Category</u>	<u>Statute or Rule Cite</u>	<u>Description of Conduct/Violation</u>	<u>Suggested Penalty Level</u>
<u>1.</u>	<u>Accounting Records</u>	<u>718.111(12)(a)11., F.S. 61B-22.002, F.A.C.</u>	<u>Insufficient or incomplete accounting records. Insufficient detail in the accounting records. Failure to maintain sufficient accounting records.</u>	<u>2</u>
<u>2.</u>	<u>Accounting Records</u>	<u>718.111(12)(a)11., F.S.</u>	<u>Failure to maintain separate accounting records for each condominium.</u>	<u>2</u>
<u>3.</u>	<u>Assessing</u>	<u>718.112(2)(g), F.S.</u>	<u>Assessments not sufficient to meet expenses. Failure to assess at sufficient amounts.</u>	<u>1</u>
<u>4.</u>	<u>Assessing</u>	<u>718.112(2)(g), F.S.</u>	<u>Collecting assessments less frequently than quarterly.</u>	<u>1</u>
<u>5.</u>	<u>Assessing</u>	<u>718.115(2), F.S.</u>	<u>Assessments not based upon the shares stated in the declaration of condominium. Failure to assess based upon proportionate share or as stated in the declaration of condominium.</u>	<u>2</u>
<u>6.</u>	<u>Assessing</u>	<u>718.115(4), F.S.</u>	<u>Assessments not properly apportioned among multiple condominiums.</u>	<u>2</u>
<u>7.</u>	<u>Assessing</u>	<u>718.116(3), F.S.</u>	<u>Failure to charge interest on past-due assessments.</u>	<u>1</u>
<u>8.</u>	<u>Assessing</u>	<u>718.116(9), F.S.</u>	<u>Developer or other owner improperly excused from paying assessments.</u>	<u>2</u>
	<u>Board</u>	<u>718.110, F.S.</u>	<u>Failure to follow method of amendment.</u>	<u>2</u>
<u>9.</u>	<u>Board</u>	<u>718.112, F.S. 718.110(4), F.S.</u>	<u>Improperly amending the declaration of condominium to change the proportion or percentage by which the unit owner shares the common expenses of the condominium and owns the common surplus of the condominium.</u>	<u>2</u>
<u>10.</u>	<u>Board</u>	<u>718.111(4), F.S.</u>	<u>Improper use fee.</u>	<u>1</u>
<u>11.</u>	<u>Board</u>	<u>718.111(7)(a), F.S.</u>	<u>Mortgaging or conveying association property without unit-owner approval.</u>	<u>2</u>
<u>12.</u>	<u>Board</u>	<u>718.111(11), F.S.</u>	<u>Failure to exercise best efforts to insure the common elements and association property.</u>	<u>2</u>
<u>13.</u>	<u>Board</u>	<u>718.111(11)(h), F.S.</u>	<u>Failure to maintain adequate fidelity bonding for all persons who control or distribute association funds.</u>	<u>2</u>
<u>14.</u>	<u>Board</u>	<u>718.112(2)(a)1., F.S.</u>	<u>Compensating officers or members of the board without documentary authority. Improper compensation of officers or directors.</u>	<u>1</u>
<u>15.</u>	<u>Board</u>	<u>718.112(2)(b)2., F.S.</u>	<u>Improper use of general proxies. Use of non-conforming limited proxies regarding voting on financial issues.</u>	<u>1</u>
	<u>Board</u>	<u>718.112(2)(d)1., F.S.</u>	<u>Failure to hold annual meeting.</u>	<u>2</u>

<u>16.</u>	<u>Board</u>	<u>718.112(2)(j), F.S.</u>	<u>Improper removal of board member.</u>	<u>1</u>
<u>17.</u>	<u>Board</u>	<u>718.112(2)(i), F.S.</u>	<u>Improperly requiring transfer fees or security deposits. Requiring excessive transfer fees or security deposits.</u>	<u>1</u>
<u>18.</u>	<u>Board</u>	<u>718.116(3), F.S.</u>	<u>Levying late fees without documentary authority.</u>	<u>1</u>
<u>19.</u>	<u>Board</u>	<u>718.303(3), F.S.</u>	<u>Imposing fines without documentary authority. Imposing fines without proper notice and hearing. Imposing excessive fines.</u>	<u>1</u>
<u>20.</u>	<u>Board</u>	<u>718.112(2)(d)1., F.S.</u>	<u>Allowing ineligible person to serve on board of administration.</u>	<u>1</u>
<u>21.</u>	<u>Board</u>	<u>718.112(2)(d)8., F.S.</u>	<u>Improperly filling a vacancy of an unexpired term on the board.</u>	<u>1</u>
<u>22.</u>	<u>Board</u>	<u>718.501(2)(a), F.S.</u>	<u>Failure to pay annual fees to the division.</u>	<u>2</u>
<u>23.</u>	<u>Budgets</u>	<u>718.112(2)(e), F.S.</u>	<u>Failure to propose/adopt budget for a given year.</u>	<u>2</u>
<u>23.</u>	<u>Budgets</u>	<u>61B-22.003(4)(a), F.A.C.</u>	<u>Failure to prepare a separate budget for each condominium operated by the association as well as for the association.</u>	<u>1</u>
<u>24.</u>	<u>Budgets</u>	<u>61B-22.003(1)(e), (f), (g), F.A.C.</u>	<u>Failure to include reserve schedule in the proposed budget. Failure to disclose converter-reserve funding.</u>	<u>1</u>
<u>25.</u>	<u>Budgets</u>	<u>718.112(2)(f)2., F.S.</u>	<u>Improper calculation of reserve requirements.</u>	<u>1</u>
<u>26.</u>	<u>Commingle</u>	<u>61B-22.005(3),(5) F.A.C.</u>		
<u>26.</u>	<u>Commingle</u>	<u>718.111(14), F.S.</u>	<u>Commingle association funds with non-association funds.</u>	<u>2</u>
<u>27.</u>	<u>Commingle</u>	<u>718.111(14), F.S.</u>	<u>Commingle reserve funds with operating funds.</u>	<u>1</u>
<u>28.</u>	<u>Common Expenses</u>	<u>61B-22.005(2), F.A.C.</u>		
<u>28.</u>	<u>Common Expenses</u>	<u>718.103(9), 718.115(1), F.S., 61B-23.003(3), F.A.C.</u>	<u>Using association funds for other than common expenses.</u>	<u>2</u>
<u>29.</u>	<u>Converter Reserves</u>	<u>718.618(3)(b), F.S.</u>	<u>Improper use of converter reserves.</u>	<u>1</u>
<u>29.</u>	<u>Converter Reserves</u>	<u>61B-22.003(1)(e)5., F.A.C.</u>	<u>Failure to include converter reserve disclosures in the proposed budget, year-end financial statements, or annual financial report.</u>	<u>4</u>
<u>29.</u>	<u>Converter Reserves</u>	<u>61B-22.006(3)(a)6., F.A.C.</u>		
<u>30.</u>	<u>Elections</u>	<u>718.112(2)(d), F.S.</u>	<u>Failure to hold election.</u>	<u>2</u>
<u>31.</u>	<u>Elections</u>	<u>61B-23.0021(2), F.A.C.</u>		
<u>31.</u>	<u>Elections</u>	<u>718.112(2)(d)3., F.S.</u>	<u>Failure to use ballots or voting machines.</u>	<u>2</u>
<u>32.</u>	<u>Elections</u>	<u>718.112(2)(d)3., F.S.</u>	<u>Failure to provide, or timely provide, first notice of election.</u>	<u>24</u>
<u>33.</u>	<u>Elections</u>	<u>61B-23.0021(4), F.A.C.</u>		
<u>33.</u>	<u>Elections</u>	<u>718.112(2)(d)3., F.S.</u>	<u>Improper nomination procedures in election.</u>	<u>2</u>
<u>34.</u>	<u>Elections</u>	<u>61B-23.0021(3), F.A.C.</u>		
<u>34.</u>	<u>Elections</u>	<u>61B-23.0021(2), F.S.</u>	<u>Election not held at time and place of annual meeting.</u>	<u>1</u>
<u>35.</u>	<u>Elections</u>	<u>61B-23.0021(6), F.A.C.</u>	<u>Failure to provide candidate with a receipt for written notice of candidacy.</u>	<u>1</u>
<u>36.</u>	<u>Elections</u>	<u>718.112(2)(d)3., F.S.</u>	<u>Failure to provide, or timely provide, second notice of election or omitting materials such as ballots, envelopes, and candidate information sheets.</u>	<u>24</u>
<u>37.</u>	<u>Elections</u>	<u>61B-23.0021(7), (8), F.A.C.</u>		
<u>37.</u>	<u>Elections</u>	<u>718.112(2)(d)3., F.S.</u>	<u>Ballot included candidate who did not submit timely notice of candidacy.</u>	<u>2</u>
<u>38.</u>	<u>Elections</u>	<u>61B-23.0021(5), F.A.C.</u>		
<u>38.</u>	<u>Elections</u>	<u>61B-23.0021(7), F.A.C.</u>	<u>Distributing candidate information sheets consisting of more than one page.</u>	<u>1</u>
<u>39.</u>	<u>Elections</u>	<u>61B-23.0021(8), F.A.C.</u>	<u>Voters allowed to rescind or change their previously cast ballots.</u>	<u>1</u>

40.	<u>Elections</u>	<u>61B-23.0021(8), F.A.C.</u>	<u>Second notice of election included comments by board about candidates.</u>	<u>2</u>
41.	<u>Elections</u>	<u>61B-23.0021(10)(a), F.A.C.</u>	<u>Ballots not counted by impartial committee.</u>	<u>1</u>
42.	<u>Elections</u>	<u>718.112(2)(d)3., F.S.; 61B-23.0021(7), F.A.C.</u>	<u>Association altered or edited candidate-information sheets.</u>	<u>2</u>
43.	<u>Elections</u>	<u>61B-23.0021(10)(a), F.A.C.</u>	<u>Inner envelopes not placed in separate receptacle before being opened.</u>	<u>2</u>
44.	<u>Elections</u>	<u>718.112(2)(d)3., F.S. 61B-23.0021(9), F.A.C.</u>	<u>Failure to include all timely submitted names of eligible candidates on the ballot.</u>	<u>2+</u>
45.	<u>Elections</u>	<u>61B-23.0021(9), F.A.C.</u>	<u>Ballots not uniform. Ballots identify voter. Ballot contained space for write-in candidate.</u>	<u>2</u>
46.	<u>Elections</u>	<u>61B-23.0021(10), F.A.C.</u>	<u>Outer envelopes not checked against list of eligible voters.</u>	<u>1</u>
47.	<u>Elections</u>	<u>61B-23.0021(10)(a), (b), F.A.C.</u>	<u>Counting ineligible ballots. Not counting ballots in the presence of unit owners.</u>	<u>1</u>
48.	<u>Elections</u>	<u>61B-23.0021(10), F.A.C.</u>	<u>Failure to count properly cast ballots.</u>	<u>1</u>
49.	<u>Elections</u>	<u>61B-23.0021(10), F.A.C.</u>	<u>Outer envelopes opened prior to election meeting. Outer envelopes not opened in presence of unit owners.</u>	<u>2</u>
50.	<u>Elections</u>	<u>61B-23.0021(10)(a), F.A.C.</u>	<u>Not counting ballots in the presence of unit owners.</u>	<u>2</u>
51.	<u>Elections</u>	<u>61B-23.0021(10)(b), F.A.C.</u>	<u>Failure to notice meeting to verify outer envelope information.</u>	<u>1</u>
52.	<u>Elections</u>	<u>61B-23.0021(10)(c), F.A.C.</u>	<u>Failure to hold or timely hold runoff election.</u>	<u>2</u>
53.	<u>Elections</u>	<u>61B-23.003(7)(f), F.A.C.</u>	<u>Improperly permitting a developer to vote for a majority of the board.</u>	<u>2</u>
54.	<u>Elections</u>	<u>61B-23.0021(10)(a), F.A.C.</u>	<u>No blank ballots available at election meeting.</u>	<u>2</u>
55.	<u>Final Order</u>	<u>718.501(1)(d)6., F.S.</u>	<u>Failure to comply with final order of the division.</u>	<u>2</u>
56.	<u>Records</u>	<u>718.111(12)(a)6., F.S.</u>	<u>Failure to maintain minutes of meetings.</u>	<u>1</u>
57.	<u>Records</u>	<u>718.111(12)(a)8., F.S.</u>	<u>Failure to maintain a copy of a current insurance policy.</u>	<u>1</u>
58.	<u>Records</u>	<u>718.111(12)(a)9., F.S.</u>	<u>Failure to maintain copy of management agreement or other contract under which the association has obligations.</u>	<u>1</u>
59.	<u>Records</u>	<u>718.111(12)(a)10., F.S.</u>	<u>Failure to maintain bills of sale or transfer.</u>	<u>1</u>
60.	<u>Records</u>	<u>718.111(12)(a)12., F.S.</u>	<u>Failure to maintain election or voting materials for one year.</u>	<u>1</u>
61.	<u>Records</u>	<u>718.111(12)(a)13., F.S.</u>	<u>Failure to maintain rental records.</u>	<u>1</u>
62.	<u>Records</u>	<u>718.111(12)(c), F.S. 718.115(1)(a), F.S.</u>	<u>Requiring a unit owner to pay a fee for access to association records.</u>	<u>1</u>
63.	<u>Records</u>	<u>718.111(12)(b), F.S.</u>	<u>Failure to maintain records within Florida.</u>	<u>2</u>
64.	<u>Records</u>	<u>718.111(12)(b), (c), F.S.</u>	<u>Failure to provide access to records. Failure to allow copying of records.</u>	<u>1</u>
65.	<u>Reporting</u>	<u>718.111(13), F.S.</u>	<u>Failure to provide, or timely provide, the annual financial report or statements.</u>	<u>2</u>
	<u>Reporting</u>	<u>718.111(13), F.S. 61B-22.006(7)(b), F.A.C.</u>	<u>Failure to provide year-end financial statements in a timely manner.</u>	<u>4</u>
	<u>Reporting</u>	<u>718.111(13), F.S.</u>	<u>Failure to provide year-end financial statements.</u>	<u>2</u>
66.	<u>Reporting</u>	<u>61B-22.006(1), F.A.C.</u>	<u>Failure to prepare annual year-end financial statements using fund accounting. Failure to prepare annual year-end financial statements on accrual basis.</u>	<u>1</u>

67.	Reporting	61B-22.006(1), F.A.C.	Failure to prepare <u>annual year-end</u> financial statements in accordance with Generally Accepted Accounting Principles (GAAP). Failure to have reviewed or audited <u>annual year-end</u> financial statements prepared by a Florida-licensed CPA.	2
68.	Reporting	61B-22.006(2), F.A.C.	Failure to include one or more components of the <u>annual year-end</u> financial statements (incomplete).	1
69.	Reporting	61B-22.006(3)(a)1.-6., (6), F.A.C.	Failure to make significant reserve fund disclosures in <u>annual year-end</u> financial statements or annual financial report.	1
70.	Reporting	61B-22.006(3)(a)7.,(6), F.A.C.	Failure to include <u>converter reserve disclosures in the annual financial statements or annual financial report.</u>	1
71.	Reporting	61B-22.006(4), F.A.C.	<u>Failure to include reserve fund disclosures and/or revenues, expenses, and changes in fund balances for each condominium and the association in the annual financial statements of a multi-condominium association.</u>	1
72.	Reporting	61B-22.006(3)(c), F.A.C.	<u>Failure to include the special assessments disclosures in the annual financial statements or annual financial report.</u>	1
73.	Reporting	61B-22.006(6)(e), F.A.C.	<u>Failure to separately present revenues and expenses for each condominium and the association in the annual financial report of a multi-condominium association.</u>	1
74.	Reporting	61B-22.006(3)(e), F.A.C.	<u>Guarantee disclosures incomplete in, or missing from, annual financial statements.</u>	1
75.	Reporting Reporting	61B-22.004(5), F.A.C. 61B-22.006(6)(a),(b), F.A.C.	<u>Improper calculation of guarantor's final obligation.</u> <u>Failure to prepare the annual financial report on a cash basis. Failure to include in the annual financial report specified receipt or expenditure line items, or disclosures on limited common elements.</u>	2 4
76.	Reporting	718.111(13)(b), F.S. 61B-22.006(6)(a), F.A.C.	<u>Annual financial report not prepared on a cash basis.</u>	1
77.	Reporting	718.111(13)(b)3., F.S.	<u>Annual financial report does not include specified receipt or expenditure items.</u>	1
78.	Reporting	61B-22.006(3)(d), (6)(d), F.A.C.	<u>Annual financial statements or annual financial report does not disclose revenues and expenses related to limited common elements.</u>	1
79.	Reporting	718.111(13)(a)(4), F.S.	Providing lower level of annual financial reporting than required <u>based on the number of units and annual revenues.</u>	2
	Reserves	718.112(2)(f)2., F.S. 61B-22.005(3), F.A.C.	<u>Failure to calculate reserve funds properly.</u>	4
80.	Reserves	718.112(2)(f)2., F.S.	Failure to fund reserves in a timely manner. Failure to fully fund reserves.	1
81.	Reserves	61B-22.005(6), F.A.C. 718.112(2)(f)2., F.S. 61B-22.005(6), (8), F.A.C.	Failure to follow proper method to waive or reduce reserve funding.	1
82.	Reserves	718.112(2)(f)3., F.S. 61B-22.005(7), F.A.C.	<u>Using reserve funds for other purposes without proper unit owner approval. Failure to obtain unit owner approval prior to using reserve funds for other purposes.</u>	2

83.	Special Assessment	718.116(10), F.S.	<u>Using special assessment funds for other purposes.</u> Failure to use special assessment funds for intended purposes.	1
84.	<u>Special Assessment</u>	<u>718.116(10), F.S.</u>	Special assessment notice does not state purpose of assessment.	<u>1</u>

Rulemaking Specific Authority 718.501(1)(d)4., ~~(f)~~ FS. Law Implemented 718.501(1)(d) FS. History–New 6-4-98, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Michael Cochran, Director, Division of Florida Condominiums, Timeshares, and Mobile Homes, 1940 North Monroe Street, Tallahassee, Florida 32399-1030
 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: June 21, 2010
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 28, 2009

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Florida Real Estate Appraisal Board

RULE NO.: 61J1-8.001
 RULE TITLE: Citation Authority

PURPOSE AND EFFECT: The Board proposes to amend the rule to add a violation and fine as required by Section 455.227(1)(t), F.S., for failure to timely report a criminal conviction, or being found guilty or pleading nolo contendere to a crime.

SUMMARY: A fine and violation will be added to the rule.
 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: 455.224, 455.275, 475.622(1), 475.6221(1), 475.624(14), (18) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: 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:

61J1-8.001 Citation Authority.

(1) Pursuant to Section 455.224, F.S. ~~(1991)~~, the board sets forth below those violations for which there is no substantial threat to the public health, safety, and welfare; or, if there is a substantial threat to the public health, safety, and welfare, such potential for harm has been removed prior to the issuance of the citation. Next to each violation is the fine to be imposed.

(2) The following violations with accompanying fine may be disposed of by citation:

(a) Section 475.624(4), F.S. – has violated any of the provisions of Chapter 455 or 475, Part II, F.S., by –

1. through 9. No change.	
<u>10. Failure to timely report being convicted or found guilty of, or entering a plea of nolo contendere or guilty to, regardless of adjudication, a crime in any jurisdiction (up to 30 days late) as required by Section 455.227(1)(t), F.S.</u>	<u>\$300.00</u>
(3) through (5) No change.	

Rulemaking Specific Authority 475.614 FS. Law Implemented 455.224, 455.275, 475.622(1), 475.6221(1), 475.624(14), (18) FS. History–New 12-4-91, Amended 4-21-92, Formerly 21VV-8.001, Amended 8-8-93, 5-14-95, 3-26-96, 7-23-96, 7-10-97, 11-11-97, 11-20-05, 12-4-06, 11-25-07, _____.

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: June 8, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 5, 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 FINANCIAL SERVICES

Division of State Fire Marshal

RULE NO.: 69A-51.060
 RULE TITLE: Requirements for New Installations

PURPOSE AND EFFECT: To remedy a potential conflict within the rule and the referenced adopted boiler code by removing language related to the pressure gage dial range referencing the maximum allowable working pressure, and to harmonize language between the rule and adopted boiler code by changing the term “Steam gauge” to “Pressure gage” within the rule.

SUMMARY: The amendment changes the term “Steam gauge” to “Pressure gage.”

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: 554.103 FS.

LAW IMPLEMENTED: 554.103, 554.104, 554.105, 554.106, 554.107 FS.

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

DATE AND TIME: Tuesday, July 27, 2010, 10:00 a.m.

PLACE: Third Floor Conference Room, The Atrium, 325 John Knox Road, Tallahassee, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Mike Burns, Boiler Chief, (850)413-3614, Mike.Burns@myfloridacfo.com. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Mike Burns, Boiler Chief, (850)413-3614, Mike.Burns@myfloridacfo.com

THE FULL TEXT OF THE PROPOSED RULE IS:

69A-51.060 Requirements for New Installations.

The provisions of this part shall apply to new installations of power boilers, high pressure high temperature hot water boilers, low pressure heating and hot water supply boilers located in places of public assembly.

- (1) through (2) No change.
- (3) Power boilers.
- (a) through (1) No change

(1) Pressure gages. Boiler pressure gages shall conform to the requirements of the A.S.M.E. Boiler and Pressure Vessel Code and to the National Board Inspection Code, adopted herein. Steam gauges.

~~1. Each steam boiler shall have a steam gauge with a dial range not less than 1 1/2 times the maximum allowable working pressure, connected to the steam space or to the steam connection to the water column. The steam gauge shall be connected to a siphon or to an equivalent device of sufficient capacity to develop and maintain a water seal which will prevent steam from entering the gauge tube.~~

~~2. Steam gauges to steam boilers pressure gages shall conform to the requirements of the A.S.M.E. Boiler and Pressure Vessel Code and to the National Board Inspection Code, as adopted herein.~~

(m) through (o) No change.

(4) No change.

Rulemaking Specific Authority 554.103 FS. Law Implemented 554.103, 554.104, 554.105, 554.106, 554.107 FS. History–New 2-27-89, Amended 10-23-00, Formerly 4A-51.060, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mike Burns, Boiler Chief

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Alex Sink

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 20, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 28, 2010

DEPARTMENT OF FINANCIAL SERVICES

Division of Insurance Agents and Agency Services

RULE NOS.:	RULE TITLES:
69B-220.001	Licensure of Emergency Adjusters
69B-220.051	Conduct of Public Adjusters and Public Adjuster Apprentices
69B-220.201	Ethical Requirements for All Adjusters

PURPOSE AND EFFECT: The purpose of the proposed amendments is to update the rules and incorporate recent legislative changes to Part VI of Chapter 626, F.S.

SUMMARY: The proposed amendments to Rule 69B-220.001, F.A.C., define when an “emergency” exists and provide the procedures to obtain an online emergency adjuster license from the Department. The proposed changes to Rule 69B-220.051, F.A.C., clarify the responsibilities and requirements of public adjusters and public adjuster apprentices, specify the terms and conditions of contracts, require the license number on advertisements, and prescribe practices to ensure fair dealing between public adjusters and claimants. The proposed changes to Rule 69B-220.201, F.A.C., update the code of ethics for all adjusters, clarify the ethical responsibilities and requirements of all adjusters, and provide special requirements for public adjusters.

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

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

RULEMAKING AUTHORITY: 624.308(1), 626.878, 626.9611(1) FS.

LAW IMPLEMENTED: 624.307(1), 624.501(12), 626.015, 626.112, 626.611, 626.621, 626.852(2), 626.854, 626.8541, 626.855, 626.856, 626.858, 626.8584, 626.859, 626.864, 626.865(2), 626.8695(4), 626.8698, 626.870, 626.8736, 626.874, 626.877, 626.878, 626.8795, 626.8796, 626.9521, 626.9541(1)(b), (i) FS.

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

DATE AND TIME: July 30, 2010, 10:00 a.m.

PLACE: Room 116, Larson Building, 200 E. Gaines 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 5 days before the workshop/meeting by contacting: Eric Purvis (850)413-5659 or Eric.Purvis@myfloridacfo.com. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Eric Purvis, Financial Administrator, Division of Insurance Agent and Agency Services, Room 412C, Larson Building, 200 E. Gaines Street, Tallahassee, FL 32399-0320, (850)413-5659 or Eric.Purvis@myfloridacfo.com

THE FULL TEXT OF THE PROPOSED RULES IS:

69B-220.001 ~~Pre-Qualification and~~ Licensure of Emergency Adjusters.

(1) Purpose. This rule sets forth Department policy and procedure for licensure of emergency ~~company adjusters and emergency independent adjusters under Section 626.874, Florida Statutes.~~

(2) Scope. Each emergency is unique and the terms, conditions, and other provisions of emergency licensure for particular emergencies must often be tailored by emergency rule to the scope and nature of the particular emergency. This rule sets out what are essentially default licensure provisions which are effective for emergency adjuster licensure unless and to the extent the Department office issues emergency rules

modifying, supplementing, or replacing this rule. Where not expressly modified or replaced by emergency rule regarding a particular emergency, the provisions of this rule shall apply.

(3) Definitions. For purposes of this rule, the following definitions shall apply:

(a) "Department" means the Department of Financial Services.

(b) "Licensed adjuster" ~~means those and similar terms, refer to and include only~~ persons currently licensed in good standing by the Department as a company employee adjuster or independent adjuster, whether the licensure ~~is~~ be permanent resident licensure, permanent nonresident licensure or emergency licensure pursuant to this rule, and whether limited licensure or unlimited licensure. The terms does not include persons licensed as public adjusters or public adjuster apprentices by the Department or persons licensed as any type of adjuster or public adjuster by states other than the State of Florida.

(c) "Emergency" and "Catastrophe." These two terms as used in Section 626.874, Florida Statutes, are synonymous, and no separate treatment is afforded catastrophe over emergency adjusters.

(d) "Emergency adjuster" means a person who is not a licensed adjuster with the Department but who has been designated and certified to the Department by an insurer, an independent resident adjuster, or a licensed general lines agent as qualified to adjust claims, losses, or damages under policies or contracts of insurance issued by such insurer in the event of a catastrophe or emergency when used in this rule without further specification, includes emergency company adjusters and emergency independent adjusters.

(e) "Unlicensed persons" ~~as used in this rule means and refers to persons who are not currently licensed in good standing by the department as an adjuster.~~

(4) General Provisions Applicable to All Emergency Adjusters.

(a) ~~Declaration of Emergency;~~ Determination that Emergency Exists.

~~1. The department does not issue proclamations or other formal declarations of emergency. Instead, any person believing that an emergency exists and desiring licensure under Section 626.874, Florida Statutes, shall apply or cause application to be made to the department for such licensure.~~

~~1.2. For purposes of Section 626.874, Florida Statutes, an emergency or catastrophe exists when, due to a specific, infrequent, and sudden natural or manmade disaster or phenomenon, that has occurred or is imminent, there are have arisen losses or anticipated losses to insured Florida property in Florida that are covered by insurance, and the losses are or likely will be so numerous and severe that resolution of claims related to such covered property losses may will not occur expeditiously without the licensing of emergency adjusters due to the magnitude of the catastrophic damage.~~

2.3. When the Department determines that an emergency or catastrophe exists or is likely to occur, it shall make available on its website the online emergency adjuster license application. A failure of claims to be resolved expeditiously shall exist upon an insurer's filing with the department a written statement that one of the following conditions exists:

a. ~~The insurer expects to incur at least 500 claims as a result of the event; or~~

b. ~~The magnitude of the event is expected to generate twice the mean number of claims for one month for the affected area.~~

(b) Online applications ~~Requests~~ for emergency adjuster licensure ~~as an independent adjuster~~ must be accompanied by a statement from an insurer, an independent adjusting firm, a licensed independent resident adjuster, or a licensed general lines agent certifying that the emergency adjuster applicant is qualified to act as an adjuster.

(5) Procedures for Licensing and Appointment of Emergency Adjusters; Responsibilities of Appointing Entity.

(a) All Florida-licensed insurers, independent adjusting firms, independent adjusters, and general lines agents, shall use the following procedures to utilize emergency ~~company or independent~~ adjusters. The entities or persons listed in the preceding sentence may immediately and without advance paperwork to this Department, engage and cause commencement of catastrophe adjusting work for themselves, by any persons, whether on their staff, or hired by them, or engaged by them as independent contractors or as employees of a contractor engaged by them, although the person is not currently licensed as an adjuster in Florida, if the Florida-licensed insurer, independent adjusting firm, independent adjuster or general lines agent utilizing these persons as emergency or catastrophe adjusters determines that these persons are qualified to do such adjusting work and provides these persons with proof of authority to represent the insurer. These persons shall present the proof of authority and a photo ID upon demand by the insured or the insured's representative. A person is not qualified to adjust claims for any entity or person who utilizes computer software program(s) in the adjusting process, unless the person has received training in and is capable of correctly utilizing the program(s). Within 7 calendar days after adjusting work has begun, the appropriate official must electronically complete and submit to the Department the Emergency Adjuster Application, "Initial Application for Adjuster License," Form number DFS-H2-495, Rev. 1/2010 ~~7/2006~~, which is hereby ~~adopted and~~ incorporated by reference. All applications shall be submitted through the Department's website at www.myfloridacfo.com/Agents ~~https://aalf.fldfs.com/common/com_index.asp~~. Applicable fees shall be submitted by electronic payment at the time of submission of an online application.

1. The insurance company ~~representative~~, independent adjusting firm, independent adjuster or general lines agent who submits the online application certifies that the emergency adjuster applicant is qualified, thereby appointing ~~appoints~~ the emergency adjuster applicant to represent that company, independent adjusting firm, independent adjuster or general lines agent. ~~The; and once the license is issued, the appointing person or entity is bound by the acts of the emergency adjuster applicant as in the case of any regular licensed (non-temporary or non-catastrophic) adjuster licensed pursuant to Chapter 626, Florida Statutes, appointed by that company, independent adjusting firm, independent adjuster or general lines agent.~~ This responsibility continues until the appointing entity, appointing person or emergency adjuster licensee notifies the Department through the online appointment system, or the emergency adjuster licensee notifies the Department through the online application process, that the appointing entity, appointing person or emergency adjuster licensee desires to terminate the appointment.

2. The insurance company, independent adjusting firm, independent adjuster or general lines agent who certifies to the Department that the emergency adjuster applicant is qualified, is responsible for assuring, by due diligence inquiry, that the emergency adjuster applicant is in fact qualified to adjust claims, has received training in and is capable of correctly utilizing any computer software program(s) utilized by the appointing entity or person to adjust claims, and is of good and honest character.

(b) There is an affirmative duty on the insurance company, independent adjusting firm, independent adjuster or general lines agent, who certifies to the Department that the emergency adjuster applicant is qualified, to provide continuing and significant supervision of the emergency adjuster applicant after licensure.

(c) Emergency adjuster licenses are valid for 180 days from the date of issuance of the emergency license, unless a shorter period of time is specified in the license as issued. Because emergency licensure is an extraordinary deviation from regular licensing procedures, it is Department policy to specify, as the duration of emergency licensure, the shortest possible time in each particular emergency.

(6) Procedures for Extension of an Emergency Adjuster License. The Department shall grant an extension of emergency adjuster licensure if it determines the conditions set forth in subparagraph (4)(a) ~~1.2.~~ of this rule still exist. Each extension will last for a period of up to an additional 180 days.

(a) To apply for an extension of licensure as an emergency ~~company or independent~~ adjuster, the entity requesting a license extension shall electronically complete and submit to the Department the Emergency Adjuster Extension Application, Form DFS-H2-2022, Eff. 1/2010, which is hereby incorporated by reference an application for the extension on the Department's website at www.fldfs.com. All applications

for an extension shall be submitted through the Department's website at www.myfloridacfo.com/Agents. Applicable fees shall be submitted by electronic payment at the time of submission of an online application for the extension.

(b) Only the licensure type and class that the licensee holds at the time of application for extension shall ~~may~~ be extended.

(c) "Temporary Licenses." The provisions of Section 626.872, Florida Statutes, regarding "Temporary Licenses" are not applicable to licensing persons temporarily for catastrophe or emergency situations.

(d) Emergency-Related Losses Only. Licensure as an emergency adjuster shall ~~may~~ be used only for adjustment of losses directly resulting from the emergency regarding which the license was issued.

(e) Natural Persons Only. The Department issues emergency adjuster licenses only to natural persons.

~~(f) Address and Website for the Department. Unless a different address is specified herein, any notice or other item to be provided to the department, shall be addressed as follows: Bureau of Licensing, Department of Financial Services, 200 East Gaines Street, Tallahassee, FL 32399-0319. The department's website address is www.fldfs.com.~~

~~(f)(g) Administrative and Civil Jurisdiction. By obtaining a license as an emergency adjuster, the licensee agrees that:~~

1. The licensee is subject to all the disciplinary provisions and penalties of the Florida Insurance Code and the administrative procedures set forth in the Florida Statutes for the routine processing of such charges;

2. The licensee is subject to the jurisdiction of the courts of Florida concerning civil liability for all acts in any way related to the licensee's activities under licensure in Florida;

3. Jurisdiction for acts committed prior to licensure or while licensed continues after the emergency licensure expires or is terminated;

4. If after the license ~~licensure~~ expires or is terminated, the Department has reason to believe there was a violation of any provision of the Florida Insurance Code or Chapter 69B, Florida Administrative Code ~~these rules~~ by the former licensee while licensed, the Department may file ~~is not precluded from filing~~ administrative action against the former licensee, ~~and from serving the charges by certified mail to the licensee, or by publication of notice of action in the legal notices section of a newspaper of general circulation in or near the city or county of permanent residence or place of business as shown on the licensee's application for emergency licensure if certified mail service is unsuccessful;~~

~~5. The licensee or former licensee will respond to and defend the charges in Florida, or be defaulted;~~

~~6. The licensee or former licensee will not assert lack of jurisdiction; and~~

~~7. The licensee or former licensee believes that the preceding provisions satisfy minimum due process requirements of all state and federal constitutions.~~

~~(g)(h) By the act of obtaining licensure as an emergency adjuster, a nonresident licensee irrevocably designates the Chief Financial Officer, and his or her successors in office, as the licensee's attorney to receive agent for service of all process in any way related to the licensee's activities as an emergency adjuster.~~

Rulemaking Specific Authority 624.308(1) FS. Law Implemented 624.307(1), 624.501(12), ~~(5), 624.501(13), 624.501(15), 626.015, 626.112, 626.621, 626.171, 626.855, 626.856, 626.858, 626.8584, 626.859, 626.870, 626.8732, 626.8734, 626.8736, 626.874~~ 837-06 FS. History—New 2-25-93, Amended 8-18-94, 1-7-97, 10-20-97, 1-9-03, Formerly 4-220.001, Amended 9-3-06, _____.

69B-220.051 Conduct of Public Adjusters and Public Adjuster Apprentices.

(1) Purpose and Scope. This rule sets forth Department policy as to certain matters generally affecting public adjusters and public adjuster apprentices. Emergency adjuster license procedures are contained in Rule 69B-220.001, F.A.C. Procedures regarding application for licensure are not dealt with in this rule. Ethical requirements for all types of adjusters are contained in Rule 69B-220.201, F.A.C. provisions are not dealt with in this rule.

(2) Definitions. The following definitions shall apply for purposes of this rule.

(a) "Compensation" or "remuneration" means anything of value, whether received directly or indirectly, in payment for services performed.

(b) "Department" means Florida Department of Financial Services.

~~(c) "Financial Interest" means direct or indirect ownership.~~

~~(c)(d) "Licensed public adjuster" and "licensed public adjuster apprentice," hereinafter referred to as "public adjuster," means those refer to and include only persons currently licensed in good standing by the Department as public adjusters and as public adjuster apprentices, whether the licensure is resident licensure under Sections 626.865 and 626.8541, Florida Statutes, or nonresident licensure under Section 626.8732, Florida Statutes. The phrase does not include persons licensed as public adjusters by other states but not by the State of Florida.~~

~~(d)(e) "Unlicensed persons," means those as used in this rule, means and refers to persons who are not currently licensed and appointed in good standing by the Department as resident or nonresident public adjusters.~~

(e) "Supplemental claim" or "reopened claim" means a claim that seeks additional payment from an insurer for property damage caused by the same occurrence for which a claim was previously filed by the insured and settled or considered to be paid in full by an insurer.

(3) Communications Concerning Public Adjuster Services.

(a) Solicitation. The solicitation of public adjusting business for compensation is deemed to be a material part of the business of public adjusting and, therefore, requires licensure as a public adjuster under the laws of Florida and the rules of the Department, and shall be engaged in only by persons licensed by the Department as public adjusters. Unlicensed persons shall not engage in such activity even under the supervision of a licensed public adjuster. The phrase "solicitation of public adjusting business" ~~and similar phrases as used in this rule~~ means, for compensation, initiating contact with any person, whether in person, by mail, by telephone, by brochure, by advertisement, or otherwise, and therein seeking, causing, urging, advising, or attempting:

1. To have any person enter into any agreement engaging the services of a public adjuster ~~in any capacity~~; or

2. To have any person describe the benefits, terms or services of a public adjuster; or

~~3. To have any person subsequently speak or meet with a licensed public adjuster for the purpose of engaging the services of a public adjuster in any capacity or for the purpose of being advised by a public adjuster in any regard.~~

(b) A public adjuster, public adjusting firm or public adjuster apprentice:

1. May not directly or indirectly through any other person or entity, initiate contact or engage in face-to-face or telephonic solicitation or enter into a contract with any insured or claimant under an insurance policy until at least 48 hours after the occurrence of an event that may be the subject of a claim under the insurance policy.

2. May enter into a contract with an insured or claimant under an insurance policy within 48 hours after the occurrence of an event if the insured or claimant initiates contact with the public adjuster, public adjusting firm or public adjuster apprentice.

3. May initiate contact and solicit business within the 48-hour period of time by means of mail, email or other advertising to the general public, as well as door hangers and other such written flyers left on the damaged property, provided that no further solicitation activity is undertaken by the public adjuster at that time. It is the intent of this provision that the claimant may initiate contact with the public adjuster at a later time in response to such written communications, but the claimant shall not be subjected to face-to-face or telephonic solicitation conduct initiated by the public adjuster prior to the expiration of 48 hours after the occurrence of an event that may become the subject of a claim under under an insurance policy.

~~(c)~~ Answering Telephone Calls. The answering of incoming telephone calls by unlicensed persons, at the place of business of a public adjuster, is not violative of this rule so long as the unlicensed persons engage in purely administrative

matters and not in judgment, ~~or~~ interpretation or solicitation with regard to any insurance contract, public adjuster contract, claim, or potential claim.

(4) Advertising.

(a) As with all forms of advertising concerning the business of insurance, public adjusters shall not falsely inform or advertise as set forth in Section 626.9541(1)(b), Florida Statutes, as well as any other section within the Florida Insurance Code that relates to advertising.

~~(b) Only Licensed Adjusters to Advertise.~~ No individual person or entity, with the intent of performing public adjusting services, shall in any way advertise public adjusting services as a public adjuster in this state, unless such individual person or entity is licensed as a public adjuster, public adjusting firm or is a member of the Florida Bar.

(c) Advertisements to Show Licensee's Full Name and License Number. Any advertisement by a public adjuster shall legibly state the full name and license number, as specified in Department records, of the public adjuster who has caused the advertisement to appear. Where a public adjusting firm containing multiple licensed public adjusters is causing the advertisement to appear, the public adjusting firm shall designate one of said licensees whose full name and license number, as specified in Department records, shall appear in the advertisement.

1. Print and Website Advertisements. In print and website advertisements the public adjuster's full name and license number, as specified in Department records, shall be in typeface no smaller than the typeface of the main body of text in the advertisement. Print advertisements include newspapers, magazines, flyers, brochures, business cards, adhesive and magnetic publication, and similar printed materials. If the material is already printed when this rule takes effect, the required public adjuster's full name and license number shall be added by means of rubber stamp, adhesive label, or other means.

2. Television Advertisements. In television advertisements the public adjuster's full name and license number, as specified in Department records, shall be made to appear on the screen for a period reasonably calculated to allow a viewer to write the name and license number down.

3. Radio Advertisements. In radio advertisements, the public adjuster's full name and license number, as specified in Department records, shall be read during the advertisement, and at a speed reasonably calculated to allow an average listener to note the name of the licensee as it appears on his or her licensure.

(d) Responsibility of Advertising Licensee. The licensed adjuster whose name and license number appears in the advertisement is responsible for personally reviewing the content of the advertisement and assuring that the

advertisement complies with the rules of the Department and the Florida Insurance Code and is in all regards fair, accurate, and in no way untruthful, deceptive or misleading.

(5) It is an affirmative duty of every primary public adjuster, as defined in Section 626.8695, Florida Statutes, to supervise their business affairs and their staff to ensure to the extent it is within the primary public adjuster's supervision or control power that the Florida Insurance Code and Rule Chapter 69B-220, F.A.C., are not violated.

(6) Required Contract Terms. In addition to the contract terms required by Sections 626.854 and 626.8796, Florida Statutes, public ~~Public~~ adjusters shall ensure that all contracts for their services contain the following terms:

(a) The contract shall legibly state the full name, as specified in Department records, of the public adjuster signing the contract.

(b) All public adjuster contracts shall show the public adjuster's:

1. Permanent business address and phone number; and
2. Florida Department license number.

(c) The contract shall show:

1. The insured's full name, and street address, home phone number, business phone number, email address and any other current contact information;

2. Address of loss;

3. A brief description of the loss to include the date, cause and damage;

4. The insured's insurance company name and policy number, if available.

(d) The contract shall show the date the contract with the public adjuster was actually signed by the insured or claimant.

(e)1. The full compensation to the public adjuster shall be stated in the contract.

2. If the compensation is based on a share of the insurance settlement, the exact percentage shall be specified.

3. Any costs to be reimbursed to the public adjuster out of the proceeds shall be specified in either the contract or an addendum to the contract, which shall be signed and dated by the parties.

4. The contract shall contain the following language with a check box to indicate which provision applies to the contract and the insured or claimant shall place his or her initials by the box that is checked:

Claim during a state of emergency:

This contract is subject to Florida law that prohibits a public adjuster from charging, agreeing to, or accepting any compensation, payment, commission, fee, or other thing of value in excess of 10% of the amount of insurance claim payments by the insurer for claims based on events that are the subject of a declaration of a state of emergency by the Governor.

Regular non-emergency claim:

This contract is subject to Florida law that prohibits a public adjuster from charging, agreeing to, or accepting any compensation, payment, commission, fee, or other thing of value in excess of 20% of the amount of all insurance claim payments made by the insurer for this claim.

Reopened claim or supplemental claim:

This is a contract to reopen a claim or file a supplemental claim. It is subject to Florida law that prohibits a public adjuster from charging or accepting any money or other thing of value based on previous payments made to you by the insurer for the same cause of loss. However, if fees under this contract are based on a percentage of claim payments obtained through the work of the public adjuster after entering into this contract, Florida law does not limit the percentage that can be charged.

(f) The Department's toll free Consumer Assistance Helpline telephone number (1(877)MY-FL-CFO or 1(877)693-5236).

(7) All contracts for public adjuster services must be in writing. The contract must be signed by the public adjuster who solicited the contract. A copy of the completed contract shall be provided to the insured or claimant at the time he or she signs the contract.

(8) No public adjuster shall may settle a claim unless the terms and conditions of settlement are approved in writing and dated by the insured.

(9) If a contract between a public adjuster and an insured contains a statement that it is for the purpose of filing a supplemental claim or reopened claim when in fact the claim does not meet the definition of supplemental claim or reopened claim set forth in this rule, the public adjuster shall be subject to the fee restrictions set forth in Section 626.854(11)(b), F.S.

(10) A complete and unaltered copy of each executed contract and addendum for public adjuster services with the insured must be provided to the insured's insurance company within thirty (30) days of execution.

(11) Required disclosure: A legible copy of the full text of Rule 69B-220.051, F.A.C., entitled "Conduct of Public Adjusters and Public Adjuster Apprentices," Rule 69B-220.201, F.A.C., entitled "Ethical Requirements for All Adjusters" and any Department emergency rule then in effect, shall be attached to the signed and dated public adjuster contract that is provided to the insured or claimant. These copies shall be dated and signed by the insured or claimant.

Rulemaking Specific Authority 624.308(1), 626.878, 626.9611(1) FS. Law Implemented 624.307(1), 626.112(1)(a), (3), 626.611, 626.852(2), 626.854, 626.8541, 626.865(2), 626.8695(4), 626.878, 626.8795, 626.8796, 626.874, 626.9541(1)(b), (i) FS. History—New 4-26-94, Amended 12-18-01, Formerly 4-220.051, Amended 3-27-05, 9-3-06, _____.

69B-220.201 Ethical Requirements for All Adjusters.

(1) Definitions. The following definitions shall apply for purposes of this rule:

(a) "Adjuster," when used without further specification, includes all types and classes of insurance adjusters, (company employee, independent, and public), subject to Chapter 626, Florida Statutes, regardless of whether resident or nonresident, and whether permanent, temporary, or emergency licensees.

(b) "Client" ~~includes both clients and potential clients; and~~ means any person who ~~consults with or hires~~ or employs an adjuster to provide adjusting services.

(c) "Department" means the Florida Department of Financial Services.

(d) "Person" includes natural persons and legal entities.

(2) Violation.

(a) Violation of any provision of this rule shall constitute grounds for administrative action against the licensee.

(b) A breach of any provision of this rule constitutes an unfair claims settlement practice.

(3) Code of Ethics. The work of adjusting insurance claims engages the public trust. An adjuster shall put the duty for fair and honest treatment of the claimant above the adjuster's own interests in every instance. The following are standards of conduct that define ethical behavior, and shall constitute a code of ethics that shall be binding on all adjusters:

~~(a) An adjuster shall not directly or indirectly refer or steer any claimant needing repairs or other services in connection with a loss to any person with whom the adjuster has an undisclosed financial interest, or who will or is reasonably anticipated to provide the adjuster any direct or indirect compensation for the referral or for any resulting business.~~

~~(a)(b)~~ An adjuster shall treat all claimants equally.

1. An adjuster shall not provide favored treatment to any claimant.

2. An adjuster shall adjust all claims strictly in accordance with the insurance contract.

~~(b)(e)~~ An adjuster shall not approach investigations, adjustments, and settlements in a manner prejudicial to the insured.

~~(c)(d)~~ An adjuster shall make truthful and unbiased reports of the facts after making a complete investigation.

~~(d)(e)~~ An adjuster shall handle every adjustment and settlement with honesty and integrity, and allow a fair adjustment or settlement to all parties without any remuneration to himself except that to which he is legally entitled.

~~(e)(f)~~ An adjuster, upon undertaking the handling of a claim, shall act with dispatch and due diligence in achieving a proper disposition of the claim. The lack of dispatch and due diligence shall include the failure of the adjuster to perform

services for the client, or where the adjuster engages in a pattern of neglect which causes or could potentially cause injury to the client.

(f) The adjuster shall respond with specific information to a written or electronic request for claims status from a party to the insurance policy or the party's designated representative, in no less than fifteen (15) days from the date of the request and shall document the file accordingly.

(g) An adjuster shall promptly report to the Department any conduct by any licensed insurance representative of this state which violates any provision of the Florida Insurance Code or Department rule or order.

(h) An adjuster shall exercise extraordinary care when dealing with ~~elderly~~ clients 65 years of age and older to assure that they are not disadvantaged in their claims transactions by failing memory or impaired cognitive processes.

(i) An adjuster shall not negotiate or effect settlement directly or indirectly with any third-party claimant represented by an attorney, if the adjuster has knowledge of such representation, except with the consent of the attorney. For purposes of this subsection, the term "third-party claimant" does not include the insured or the insured's resident relatives.

(j) An adjuster is permitted to interview any witness, or prospective witness, without the consent of opposing counsel or party. In doing so, however, the adjuster shall scrupulously avoid any suggestion calculated to induce a witness to suppress or deviate from the truth, or in any degree affect the witness's appearance or testimony during deposition or at the trial. If any witness making or giving a signed or recorded statement so requests, the witness shall be given a copy of the statement.

(k) An adjuster shall not advise a claimant to refrain from seeking legal advice, nor advise against the retention of counsel or the employment of a public adjuster to protect the claimant's interest.

(l) An adjuster shall not attempt to negotiate with or obtain any statement from a claimant or witness at a time that the claimant or witness is, or would reasonably be expected to be, in shock or serious mental or emotional distress as a result of physical, mental, or emotional trauma associated with a loss. The adjuster shall not conclude a settlement when the settlement would be disadvantageous to, or to the detriment of, a claimant who is in the traumatic or distressed state described above.

~~(m) An adjuster shall not knowingly fail to~~ advise a claimant of the claimant's claim rights in accordance with the terms and conditions of the contract and of the existence of applicable laws of this state. An adjuster shall exercise care not to engage in the unlicensed practice of law as prescribed by the Florida Bar.

(n) A company employee adjuster or independent adjuster shall not draft special releases called for by the unusual circumstances of any settlement or otherwise draft any form of release, unless advance written approval by the insurer can be

demonstrated to the Department. Except as provided above, a company employee adjuster or independent adjuster is permitted only to fill in the blanks in a release form approved by the insurer they represent.

(o) An adjuster shall not undertake the adjustment of any claim concerning which the adjuster is not currently competent and knowledgeable as to the terms and conditions of the insurance coverage, or which otherwise exceeds the adjuster's current expertise.

~~(p) No person shall, as a public adjuster, represent any person or entity whose claim the adjuster has previously adjusted while acting as an adjuster representing any insurer or independent adjusting firm.~~ No person shall, as a company employee adjuster or independent adjuster, represent him or herself or any insurer or independent adjusting firm against any person or entity that the adjuster previously represented as a public adjuster.

~~(q) A public adjuster shall not represent or imply to any client or potential client that insurers, company adjusters, or independent adjusters routinely attempt to, or do in fact, deprive claimants of their full rights under an insurance policy.~~ No insurer, independent adjuster, or company employee adjuster shall represent or imply to any claimant that public adjusters are unscrupulous, or that engaging a public adjuster will delay or have other adverse effect upon the settlement of a claim.

~~(r) No public adjuster, while so licensed in the Department's records, may represent or act as a company adjuster, independent adjuster, or general lines agent.~~

~~(r)(s)~~ A company employee adjuster, independent adjuster, attorney, investigator, or other persons acting on behalf of an insurer that needs access to an insured or claimant or to the insured property that is the subject of a claim shall provide at least 48 hours notice to the insured, ~~or claimant,~~ public adjuster or legal representative prior to scheduling a meeting with the claimant or an on-site inspection of the insured property. The insured or claimant may deny access to the property if this notice has not been provided. The insured or claimant may waive this 48 hour notice.

(s) The adjuster shall ensure that if a contractor, architect, engineer, or other professional is used in formulating estimates or otherwise participates in the adjustment of the claim, the individual shall be licensed by the Florida Department of Business and Professional Regulation, if so required by law.

(4) Public Adjusters, Other Ethical Constraints. In addition to the considerations set out above for adjusters, the following ethical considerations are specific to public adjusters and shall be binding upon public adjusters:

(a) A public adjuster shall advise the insured ~~or~~ and claimant in writing on or before entering into the public adjuster contract ~~advance~~ of the insured or claimant's right of

counsel, and choice thereof, to represent the insured or claimant, and that such choice is to be made solely by the insured or claimant.

(b) The public adjuster shall notify the insured or claimant in advance of the name and contact information ~~location~~ of any proposed contractor, architect, engineer, or similar professional, before any bid or proposal by any of these persons may be used by the public adjuster in adjusting the insurance claim ~~estimating the loss or negotiating settlement~~. The insured or claimant may exercise veto power of any of these persons, in which case that person shall not be used in estimating costs.

~~(c) The public adjuster shall ensure that if a contractor, architect, engineer, or other professional is used in formulating estimates or otherwise participates in the adjustment of the claim, the professional shall be licensed by the Florida Department of Business and Professional Regulation.~~

~~(c)(d)~~ A public adjuster shall not prevent, or attempt to dissuade or prevent, a claimant from speaking privately with the insurer, company employee adjuster, ~~or~~ independent adjuster, attorney, or any other person, regarding the settlement of the claim.

~~(e) A public adjuster shall not acquire any interest in salvaged property, except with the written consent and permission of the insured.~~

~~(d)(f)~~ A public adjuster shall not accept referrals of business from any person with whom the public adjuster may conduct business where there is any form or manner of agreement to compensate the person, whether directly or indirectly, for referring business to the public adjuster. Except as between licensed public adjusters, no public adjuster, public adjuster apprentice or any other person or entity shall compensate any person, whether directly or indirectly, for the principal purpose of referring business to ~~a~~ the public adjuster ~~or public adjusting firm~~.

~~(g) A public adjuster's contract with a client shall be revocable or cancellable by the insured or claimant, without penalty or obligation, for at least 3 business days after the contract is executed. The public adjuster shall disclose to the insured that the insured has the right to cancel with prompt notice within the revocation period. If the insured elects to cancel the contract, prompt notice shall be provided to the adjuster. Nothing in the provision shall be construed to prevent an insured from pursuing any civil remedy after the 3-day cancellation period.~~

~~(e)(h)~~ A public adjuster shall not enter into a contract or accept a power of attorney which vests in the public adjuster the effective authority to choose the persons who shall estimate damages, perform testing, or perform repair work, except if the contract or power of attorney is prepared or approved by the insured's attorney.

~~(f)(i)~~ A public adjuster shall ensure that all contracts for the public adjuster's services are in writing and set forth all terms and conditions of the engagement, including the terms required by subsection 69B-220.051(6), F.A.C., or as otherwise required by law.

~~(j)~~ A public adjuster shall not restrict or prevent an insurer, company adjuster, independent adjuster, attorney, investigator, or other person acting on behalf of the insurer from having reasonable access at reasonable times to an insured or claimant or to the insured property that is the subject of a claim.

~~(5) Public Adjusters, Ethical Constraints During State of Emergency.~~ In addition to considerations set forth above, the following ethical considerations shall apply to public adjusters in the event that the Governor of the State of Florida issues an Executive Order, by virtue of the authority vested in Article IV, Section 1(a) of the Florida Constitution and by the Florida Emergency Management Act, as amended, and all other applicable laws, declaring that a state of emergency exists in the State of Florida:

~~(g)(a)~~ No public adjuster or public adjusting firm shall require, demand, charge or accept any fee, retainer, compensation, commission, deposit, or other thing of value, prior to receipt by the insured or claimant of a payment on the claim by the insurer. No public adjuster or public adjusting firm shall accept any form of payment or remuneration for adjusting services that have not been performed.

~~(b)~~ As to any one insured or claimant, no public adjuster shall charge, agree to, or accept as compensation or reimbursement any payment, commission, fee, or other thing of value equal to more than ten percent of the amount of any insurance settlement or claim payment.

~~(h)(e)~~ No public adjuster shall enter into any contract, agreement or other arrangement with any person, including an attorney, building contractor, architect, appraiser or repairman, by which the person would enter into an agreement to assist a claimant or insured on an insurance claim, utilize the services of the adjuster to carry out the agreement and pay the adjuster an amount that would exceed the limitation of the adjuster's compensation or reimbursement as provided in Section 626.854(11), Florida Statutes paragraph (b) above.

~~(d)~~ This subsection applies to all claims that arise out of the events that created the State of Emergency, whether or not the adjusting contract was entered into while the State of Emergency was in effect and whether or not a claim is settled while the State of Emergency is in effect.

(i) A public adjuster shall not represent to any client or potential client that insurers, company employee adjusters, or independent adjusters attempt to, or do in fact, deprive claimants of their full rights under an insurance policy.

(j) No public adjuster, while so licensed in the Department's records, may represent or act as or be appointed as a company employee adjuster or independent adjuster. A public adjuster may hold a general lines agent license.

However, no public adjuster, while so licensed in the Department's records, may represent or act as both a public adjuster and a general lines agent for the same insurance claim.

(k) A public adjuster shall not restrict or prevent an insurer, company employee adjuster, independent adjuster, attorney, investigator, or other person acting on behalf of the insurer from having reasonable access at reasonable times to an insured or claimant or to the insured property that is the subject of a claim.

(l) No person shall, as a public adjuster, represent any person or entity whose claim the adjuster has previously adjusted while acting as an adjuster representing any insurer or independent adjusting firm.

(m) If the appraisal clause in an insured's insurance policy has been triggered, a public adjuster or public adjusting firm that has entered into a public adjusting contract with the insured or claimant shall not charge an appraisal fee or otherwise receive direct or indirect compensation or remuneration in addition to the statutory compensation limit for the public adjuster contract for acting as the insured's or claimant's appraiser.

Rulemaking Specific Authority 624.308(1), 626.878, 626.9611(1) FS. Law Implemented 624.307(1), 626.015(1), 626.611, 626.621, 626.854, 626.8541, 626.858, 626.859, 626.864, 626.865(2), 626.8695, 626.8698, 626.877, 626.878, 626.8795, 626.9521, 626.9541(1)(i) FS. History--New 6-2-93, Amended 12-18-01, Formerly 4-220.201, Amended 3-27-05, 9-3-06, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Eric Purvis, Financial Administrator, Division of Insurance Agent and Agency Services

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Alex Sink, Chief Financial Officer, Department of Financial Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 20, 2010

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

FINANCIAL SERVICES COMMISSION

OIR – Insurance Regulation

RULE NO.: 69O-137.001
 RULE TITLE: Annual and Quarterly Reporting Requirements

PURPOSE AND EFFECT: This rule is being amended to adopt the 2010 NAIC Quarterly Statement Instructions and also adopts the 2010 NAIC accounting practices and procedures manual.

SUMMARY: Section 624.424, Florida Statutes, requires insurers to file quarterly and annual financial reports with the Office of Insurance Regulation and allows the Office to enact rules setting the standards for those reports. By adopting the current versions of these NAIC instructions and manuals, the Office is establishing up-to-date, uniform standards for annual

and quarterly reports which will provide the information necessary for the Office to evaluate insurers' financial conditions.

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: 624.308(1), 624.424(1) FS.

LAW IMPLEMENTED: 624.424(1) FS.

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

DATE AND TIME: July 27, 2010, 9:30 a.m.

PLACE: 142 Larson Building, 200 East Gaines 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 5 days before the workshop/meeting by contacting: Kerry Krantz, Bureau of Life and Health, Office of Insurance Regulation, E-mail kerry.krantz@flor.com. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kerry Krantz, Bureau of Life and Health, Office of Insurance Regulation, E-mail kerry.krantz@flor.com

THE FULL TEXT OF THE PROPOSED RULE IS:

690-137.001 Annual and Quarterly Reporting Requirements.

(1) through (3) No change.

(4) Manuals Adopted

(a) Annual statements shall be prepared in accordance with the following manuals, which are hereby adopted and incorporated by reference:

1. The NAIC's Annual Statement Instructions, Property and Casualty, 2010 2009;

2. The NAIC's Annual Statement Instructions, Life, Accident and Health, 2010 2009;

3. The NAIC's Annual Statement Instructions, Health, 2010 2009;

4. The NAIC's Annual Statement Instructions, Title, 2010 2009; and

5. The NAIC's Accounting Practices and Procedures Manual, as of March 2010 2009.

(b) Quarterly statements shall be prepared in accordance with the following manuals, which are hereby adopted and incorporated by reference:

1. The NAIC's Quarterly Statement Instructions, Property and Casualty, 2010 2009;

2. The NAIC's Quarterly Statement Instructions, Life, Accident and Health, 2010 2009;

3. The NAIC's Quarterly Statement Instructions, Health, 2010 2009;

4. The NAIC's Quarterly Statement Instructions, Title, 2010 2009; and

5. The NAIC's Accounting Practices and Procedures Manual, as of March 2010 2009.

(c) No change.

Rulemaking Specific Authority 624.308(1), 624.424(1) FS. Law Implemented: 624.424(1) FS. History—New 3-31-92, Amended 8-24-93, 4-9-95, 4-9-97, 4-4-99, 11-30-99, 2-11-01, 4-5-01, 12-4-01, 12-25-01, 8-18-02, 7-27-03, Formerly 4-137.001, Amended 1-6-05, 9-15-05, 1-25-07, 3-16-08, 3-4-09, 1-4-10, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Kerry Krantz, Bureau of Life and Health, Office of Insurance Regulation, E-mail kerry.krantz@flor.com

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: The Financial Services Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 8, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 12, 2010

FINANCIAL SERVICES COMMISSION

OIR – Insurance Regulation

RULE NO.: 690-138.001

RULE TITLE: NAIC Financial Condition Examiners Handbook Adopted

PURPOSE AND EFFECT: This rule is being amended to adopt the 2010 NAIC Financial Condition Examiners Handbook. The current rule adopted the 2009 version.

SUMMARY: Section 624.316, Florida Statutes, requires the Office to examine insurer's financial condition, using generally accepted accounting procedures. This statute also allows the Office to adopt the NAIC Financial Condition Examiners Handbook to facilitate these exams. By adopting the newest version of the handbook, this rule ensures that the procedures used by the Office to examine insurers are the current generally accepted accounting practices.

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: 624.308(1), 624.316(1)(c) FS.
LAW IMPLEMENTED: 624.316(1)(c) FS.

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

DATE AND TIME: July 27, 2010, 9:30 a.m.
PLACE: 142 Larson Building, 200 East Gaines 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 5 days before the workshop/meeting by contacting: Kerry Krantz, Bureau of Life and Health, Office of Insurance Regulation, E-mail kerry.krantz@flor.com. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kerry Krantz, Bureau of Life and Health, Office of Insurance Regulation, E-mail kerry.krantz@flor.com

THE FULL TEXT OF THE PROPOSED RULE IS:

690-138.001 NAIC Financial Condition Examiners Handbook Adopted.

~~(1)(a) The National Association of Insurance Commissioners Financial Condition Examiners Handbook (2006) is hereby adopted and incorporated by reference.~~

~~(1)(b) The National Association of Insurance Commissioners Financial Condition Examiners Handbook 2010 2009 is hereby adopted and incorporated by reference.~~

(2) through (3) No change.

~~Rulemaking Specific Authority 624.308(1), 624.316(1)(c) FS. Law Implemented 624.316(1)(c) FS. History--New 3-30-92, Amended 4-9-97, 4-4-99, 11-30-99, 2-11-01, 12-25-01, 8-18-02, 7-27-03, Formerly 4-138.001, Amended 1-6-05, 9-15-05, 1-25-07, 3-16-08, 3-4-09, 1-4-10, _____.~~

NAME OF PERSON ORIGINATING PROPOSED RULE: Kerry Krantz, Bureau of Life and Health, Office of Insurance Regulation, E-mail kerry.krantz@flor.com

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: The Financial Services Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 8, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 12, 2010

Section III Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF EDUCATION

State Board of Education

RULE NO.: 6A-1.099811
RULE TITLE: Differentiated Accountability State System of School Improvement

NOTICE OF CHANGE

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

6A-1.099811 Differentiated Accountability State System of School Improvement.

The purpose of this rule is to set forth the Differentiated Accountability State System of School Improvement, to set forth the framework for categorizing how well schools are meeting Adequate Yearly Progress criteria, to define the level of assistance provided to schools, and to identify the support systems and strategies to be implemented by schools and districts.

(1) Definitions. The following definitions shall be used in this rule:

(a) "Adequate Yearly Progress" or "AYP" means that the AYP criteria for demonstrating progress toward state proficiency goals were met by each subgroup.

(b) "Annual goals" or "state proficiency goals" means the annual targets for the percent of students who meet grade level proficiency in reading and mathematics as established in "Adequate Yearly Progress Benchmarks in Florida" of the 2009 Guide to Calculating Adequate Yearly Progress (AYP), Technical Assistance Paper dated June 2009, which is hereby adopted by reference and made part of this rule and accessible at <http://schoolgrades.fldoe.org/pdf/0809/2009AYPTAP.pdf>. Proficiency on the FCAT is attained at scoring level 3 or higher in reading and mathematics on a 5-level range. Proficiency on the Florida Alternate Assessment is attained at scoring level 4 or higher on a 9-level range.

(c) "AYP Count" means the value assigned to a school that did not achieve AYP for two (2) consecutive years, starting from the 2002-03 school year. The school is assigned a value of one (1) AYP count if the school failed to make AYP for two (2) consecutive years and increases by one (1) for each year that the school fails to achieve AYP.

(d) "Benchmark Baseline Assessment" means a diagnostic assessment given at the beginning of the year to evaluate students' strengths and weaknesses on grade-level skills in reading, mathematics, science, and writing.