

Chapter 40E-63, F.A.C., are available online at www.sfwmd.gov or by contacting Carmela Bedregal, Section Leader, Everglades Regulation Division, South Florida Water Management District, P. O. Box 24680, West Palm Beach, FL 33416-4680, (800)432-2045, ext. 2737 or (561)682-2737, email: cbedrega@sfwmd.gov.

40E-63.400 Purpose and Policy.

(1) through (2) No change.

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

(a) No change.

(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 ~~phosphorus~~ discharges;

(c) To establish a BMP compliance verification 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 Performance Measure Compliance Methodology”, dated _____; and

(d) No change.

(4) No change.

(5) The BMP implementation requirements, performance measures and compliance methodology established in this part of Chapter 40E-63, F.A.C., pertain to phosphorus only. Should regulation of other nutrients or constituents be required to meet statutory requirements, including water quality standards, the District shall initiate rulemaking pursuant to Chapter 120, F.S.

~~(6)(5)~~ Unless otherwise provided by this part 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.

~~(7)(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.~~

~~(8)(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 paragraph subsection 40E-63.446(2)(a), 40E-62.404(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) ~~f~~, F.S., are met.

Rulemaking Authority 373.044, ~~373.083, 373.085, 373.086~~, 373.113, 373.4592 FS. Law Implemented 373.016, 373.085, 373.086, 373.451, 373.453, 373.4592(4)(f) FS. History–New 1-24-02, Amended _____.

40E-63.401 Scope of Program.

(1) through (4) No change.

Rulemaking Authority 373.044, ~~373.083, 373.085, 373.086~~, 373.113, 373.4592 FS. Law Implemented 373.016, 373.085, 373.086, 373.451, 373.453, 373.4592(4)(f) 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, as applicable.

(2) No change.

(3) “BMP equivalent point” means the numerical value assigned to a BMP as provided in Appendix B1 (incorporated by reference in subsection 40E-63.435(1), 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 were ~~are~~ based on expert review, technical publications, best professional judgment, and cooperative workshops with stakeholders.

(4) No change.

(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 ~~40E-63-438~~, F.A.C.

(6) through (12) No change.

(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-63.461(4) ~~40E-63.460(4)~~, F.A.C.

(14) through (15) No change.

(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 paragraph subsection 40E-63.446(2)(a), 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) No change.

Rulemaking Authority 373.044, ~~373.083, 373.085, 373.086~~, 373.113, 373.4592 FS. Law Implemented 373.016, 373.085, 373.086, 373.451, 373.453, 373.4592(4)(f) FS. History–New 1-24-02, Amended _____.

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

The documents listed in subsections (1) through ~~(9)(8)~~ are hereby incorporated throughout this part of Chapter 40E-63, F.A.C., 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) through (9) No change.

Rulemaking Authority 373.044, ~~373.083, 373.085, 373.086~~, 373.113, 373.4592, FS. Law Implemented 373.016, 373.085, 373.086, 373.451, 373.453, 373.4592(4)(f) 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 and applications for permits 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) No change.

Rulemaking Authority 373.044, ~~373.083, 373.085, 373.086~~, 373.113, 373.4592 FS. Law Implemented 373.016, 373.085, 373.086, 373.451, 373.453, 373.4592(4)(f) FS. History–New 1-24-02, Amended _____.

40E-63.415 No Notice General Permits.

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

(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 P₂O₅/1000 ft² per application, nor exceed 0.50 lbs P₂O₅/1000 ft² per year).

2. through 4. No change.

(2) through (4) No change.

(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 paragraph subsection 40E-63.446(2)(a), 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 Authority 373.044, ~~373.083, 373.085, 373.086~~, 373.113, 373.4592 FS. Law Implemented 373.016, 373.085, 373.086, 373.451, 373.453, 373.4592(4)(f) 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-63.461, 40E-63.460, F.A.C.

(2) No change.

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

Rulemaking Authority 373.044, ~~373.083, 373.085, 373.086~~, 373.113, 373.4592 FS. Law Implemented 373.016, 373.085, 373.086, 373.451, 373.453, 373.4592(4)(f) FS. History–New 1-24-02, Amended _____.

40E-63.430 General Permit Applications.

(1) No change.

(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, dated _____, and the

“Guidebook for Preparing an Application for a C-139 Basin Pollutant Source Control Permit” (“Guidebook”), dated _____, (incorporated by reference herein in subsection 40E-63.404(1), F.A.C.), or the equivalent electronic permitting application (e-permitting) tool, with all required supporting documentation. Copies of Form 1045 and the Guidebook 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.

(3) through (5) No change.

Rulemaking Authority 373.044, ~~373.083, 373.085, 373.086~~, 373.113, 373.4592 FS. Law Implemented 373.016, 373.085, 373.086, 373.451, 373.453, 373.4592(4)(f) FS. History–New 1-24-02, Amended _____.

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, BMP Description and Equivalent Points Reference Table”, dated _____, (incorporated by reference herein 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. A copy of Appendix B1 is 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.

(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-63.435(1), ~~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-63.461(3) and (4) ~~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) No change.

(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-63.430(2) ~~40E-63.404(2)~~, F.A.C.), on the form entitled “C-139 Basin Annual Report – Certification of BMP Implementation”.

(6) No change.

Rulemaking Authority 373.044, ~~373.083, 373.085, 373.086~~, 373.113, 373.4592 FS. Law Implemented 373.016, 373.085, 373.086, 373.451, 373.453, 373.4592(4)(f) FS. History–New _____,

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

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

(e) Technical basis for the reduction effectiveness of the proposed BMP. The applicant ~~shall~~ ~~may~~ be required to demonstrate effectiveness through a proposed monitoring program or through representative technical references including modeling approved by the District. If approved, the District will determine the appropriate BMP equivalent point credit consistent with Appendix B1 (incorporated by reference in subsection ~~40E-63.435(1)~~ ~~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 than using the standard approach.

The site assessment shall evaluate phosphorus imports and transport in discharges; current BMPs and implementation methods; other activities for which practices not covered under BMPs are not being implemented; (~~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) No change.

(a) through (c) No change.

(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-63.435(1)~~ ~~40E-63.404(3)~~, F.A.C.). Additional BMP equivalent points ~~will~~ ~~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 ~~will~~ ~~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 ~~373.016~~, 373.085, ~~373.086~~, ~~373.451~~, ~~373.453~~, 373.4592(4)(f) 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 ~~40E-63.461(3)~~ ~~40E-63.460(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~~ performance measure's target, as described in Appendix B2 (incorporated by reference in subsection ~~40E-63.446(1)~~, ~~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 section 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), 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 solely for failure to implement the early initiatives, however, ~~the District will deem the permittee cannot qualify with the conditions of paragraphs 40E-63.446(2)(b) and 40E-63.446(2)(c) unless unable to claim a deferral if:~~

1. The early BMPs are implemented,

~~2. Reporting and verification requirements for the voluntary early implementation projects are not met, as determined by the District, and~~

~~3. 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 373.016, 373.085, 373.086, 373.451, 373.453, 373.4592(4)(f) 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-63.430(2) 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-63.461(3) or (4) 40E-63.460(3) or (4), F.A.C., 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-63.446, 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) through (b) No change.

(3) Transfers: A permittee shall notify the District within ~~30~~ 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) through (c) No change.

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

Rulemaking Authority 373.044, ~~373.083, 373.085, 373.086, 373.113, 373.4592 FS. Law Implemented 373.016, 373.085, 373.086, 373.451, 373.453, 373.4592(4)(f) FS. History—New 1-24-02, Amended 6-20-07, _____.~~

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

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) No change.

(2) The permit is otherwise modified by enforcement actions pursuant to subsection ~~of~~ (40E-63.461(1) 40E-63.460(1), F.A.C.;

(3) through (7) No change.

Rulemaking Authority 373.044, ~~373.083, 373.085, 373.086~~, 373.113, 373.4592 FS. Law Implemented 373.016, 373.085, 373.086, 373.451, 373.453, 373.4592(4)(f) FS. History—New _____.

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

40E-63.443 Permit Application Processing Fees.

(1) through (4) No change.

Rulemaking Authority 373.016, 373.044, ~~373.083, 373.085, 373.086~~, 373.113, 373.4592, FS. Law Implemented 373.016, 373.085, 373.086, 373.109, 373.451, 373.453, 373.4592(4)(f) 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)(a) through (b) No change.

(c) 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. Failure to submit the report by February 1, will result in onsite verification of BMP implementation by District staff and 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 by April 30 of each year may 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 Permit and shall be subject to enforcement under subsection 40E-63.461(1) 40E-63.460(1), F.A.C. The new permit will include special conditions requiring that documentation certifying BMP implementation is submitted quarterly, at a minimum.

(d) through (e) No change.

(f) The permittee shall notify the District in writing within ~~30~~ 90 days of any transfer, sale or conveyance of land or works described in the permit.

(g) through (l) No change.

(m) 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) 40E-63.404(4), F.A.C.).

(n) through (p) No change.

(q) If the District determines that any permittee 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, or both, as applicable pursuant to Rules 40E-63.446 40E-63.450 and 40E-63.461 40E-63.460, F.A.C.

(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. Permittees will ~~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 ~~to~~ of receiving water and adjacent lands regulated by Chapter 373, F.S.

(t) through (u) No change.

Rulemaking Authority 373.044, ~~373.083, 373.085, 373.086~~, 373.113, 373.4592 FS. Law Implemented 373.016, 373.085, 373.086, 373.423, 373.451, 373.453, 373.4592(4)(f) 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, C-139 Basin Performance Measure Methodology”, dated _____, Appendix B2.1 “FORTTRAN Program for Calculating C-139 Basin Flows and Phosphorus Loads”, and Appendix B2.2 “Flow Computation Methods Used to Calculate C-139 Basin Flows” (incorporated by reference herein 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. Copies A copy of Appendix B2, B2.1 and B2.2 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.

(2) If the C-139 Basin is out of compliance, water quality improvement activities will be required for permit basins except in the following situations: 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, Permittee Annual Phosphorus Load Determination Based on Sub-basin Monitoring and the Permit Basin Discharge Monitoring Program”, dated _____, and “Appendix B3.2, Criteria for Required Phosphorus Reductions”, dated _____, both of which are incorporated by reference herein. Copies of Appendices B3.1 and B3.2 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 (~~incorporated by reference in subsection 40E-63.404(7), F.A.C.~~).

(b) District approved early BMPs, as described in ~~paragraph subsection 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 (~~this provision applies, 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 subsection 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 (~~this provision applies, 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-63.461(6) 40E-63.460(6), F.A.C.~~, (~~this provision applies providing deferral~~ to the lands where the determination applies), or

(e) No change.

(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.

(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 ~~paragraph subsection 40E-63.446(2)(a) 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 paragraph 40E-63.446(2)(a) 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 based upon performance measure results (Appendix B2, incorporated by reference in subsection ~~40E-63.446(1) 40E-63.404(4), F.A.C.~~), and the sub-basin and permit basin performance results (Appendix B3.1, incorporated by reference in ~~paragraph subsection 40E-63.446(2)(a) 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 ~~paragraph subsection 40E-63.446(2)(a) 40E-63.404(8), F.A.C.~~). These actions are described in subsection ~~40E-63.461(2) 40E-63.460(2), F.A.C.~~

(7) In accordance with Appendix B2 (incorporated by reference in subsection ~~40E-63.446(1) 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 ~~373.016, 373.085, 373.086, 373.451, 373.453, 373.4592(4)(f) FS.~~ History–New _____.

See Rule 40E-63.4610, F.A.C.

40E-63.461 C-139 Basin Permit Compliance.

(1) No change.

(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-63.446 40E-63.450, F.A.C., the permittee shall propose water quality improvement activities in accordance with the following:

(a) No change.

(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-63.461(3) 40E-63.460(3), F.A.C.~~, or a verification plan in accordance with subsection 40E-63.461(4) 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 ~~paragraph subsection 40E-63.446(2)(a) 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, will ~~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) No change.

(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-63.435(1) ~~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:

a. No change.

b. 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 indentified when a site-assessment is completed pursuant to subsection 40E-63.437(2), F.A.C.

c. No change.

(c) through (d) No change.

(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) through (c) No change.

(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) No change.

(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-63.461(2) and (3) ~~40E-63.460(2) and (3)~~, F.A.C., to either:

a. through b. No change.

(5) No change.

(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 paragraph subsection 40E-63.446(2)(a) ~~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-63.446(1) ~~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 flow collection under a discharge monitoring program, the District may consider requests or 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. through e. No change.

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 paragraph subsection 40E-63.446(2)(a) ~~40E-63.404(8)~~, F.A.C.).

Rulemaking Authority 373.044, ~~373.083, 373.085~~, 373.113, 373.4592 FS. Law Implemented 373.016, 373.085, 373.086, 373.451, 373.453, 373.4592(4)(f) FS. History—New 1-24-02, Amended _____.

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-63.444(1)(r)~~ 40E-63.449(1)(r), subsection 40E-63.461(4) ~~40E-63.460(4)~~ or 40E-63.461(6), ~~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-63.461(6), ~~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-63.446(1) ~~40E-63.460(6)~~, F.A.C.); and

(b) Compliance with permit conditions in accordance with Rule ~~40E-63.464~~ 40E-63.444, F.A.C.

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

(a) No change.

(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 ~~paragraph subsection~~ 40E-63.462(2)(d) ~~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) No change.

(d) Other site specific information required by Appendix B3.1, (incorporated by reference in ~~paragraph subsection~~ 40E-63.446(2)(a) ~~40E-63.404(7)~~, F.A.C.).

Rulemaking Authority 373.044, ~~373.083, 373.085, 373.086~~, 373.113, 373.4592 FS. Law Implemented 373.016, 373.085, 373.086, 373.451, 373.453, 373.4592(4)(f) 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 a modified ~~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) through (12) No change.

Rulemaking Authority 373.044, ~~373.083, 373.085, 373.086~~, 373.113, 373.4592 FS. Law Implemented 373.016, 373.085, 373.086, 373.451, 373.453, 373.4592(4)(f) FS. History—New 1-24-02, Formerly 40E-63.458, Amended _____.

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

AGENCY FOR HEALTH CARE ADMINISTRATION

Cost Management and Control

RULE NOS.:	RULE TITLES:
59B-9.034	Reporting Instructions
59B-9.038	Ambulatory Data Elements, Codes and Standards

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 36, No. 35, September 3, 2010 issue of the Florida Administrative Weekly.

The correction is in response to written comments submitted by the staff of the Joint Administrative Procedures Committee on September 10, 2010 to correct subsection numbering.

59B-9.034 Reporting Instructions.

(1) Ambulatory Surgical centers shall report data for:

(a) through (c) No change.

(d) Report one record for each visit, except pre-operation visits may be combined with the record of the associated ambulatory surgery visit. See subsection 59B-9.031(11), F.A.C.

Proposed Effective Date 7-1-2011

Rulemaking Authority 408.15(8) FS. Law Implemented 408.061, 408.062, 408.063, 408.07, 408.08, 408.15(11) FS. History—New 1-1-10, Amended 7-1-11.

Editorial note: see former Rule 59B-9.011.

The correction is in response to written comments submitted by the staff of the Joint Administrative Procedures Committee on September 10, 2010 to properly code.

59B-9.038 Ambulatory Data Elements, Codes and Standards.

(1) No change.

(2) Patient Control Number. An alpha-numeric code containing standard letters or numbers assigned by the facility as a unique identifier for each record submitted in the reporting period to facilitate retrieval of individual's account of services (accounts receivable) containing the financial billing records and any postings of payment. The 'Patient Control Number' is defined as 'Record id' in the schema. Up to twenty four (24) characters. ~~A required field.~~ Duplicate patient control numbers are not permitted. The facility must maintain a key list to locate actual records upon request by AHCA. A required field.

(3) through (9) No change.

(10) Patient Country Code. The country code of residence. A two (2) digit upper case alpha code from the Code for Representation of Names of Countries, ISO 3166 or latest release. ~~A required entry for type of service "2".~~ Use 99 where the country of residence is unknown, or where efforts to obtain the information have been unsuccessful. ~~or if type of service is "1".~~ A required entry for type of service "2".

(11) No change.

(12) Source or Point of Origin of Admission. No change.

(a) 01 – Non-health care facility point source of origin – The patient presented to this facility for outpatient services. Includes patients coming from home, ~~physician office~~ or workplace. ~~The patient presents to this facility with an order from a physician for services or seeks scheduled services for which an order is not required. Includes non-emergent self-referrals.~~

(b) 02 – Clinic or Physician's Office. The patient presented was referred to this facility for outpatient services from a clinic or physician's office or referenced diagnostic procedures.

(c) through (e) No change.

~~(f) 07 – Emergency Room. The patient received unscheduled services in this facility's emergency department and discharged without an inpatient admission. Includes self-referrals in emergency situations that require immediate medical attention. Excludes patients who came to the emergency room from another health care facility.~~

(g) through (k) renumbered (f) through (j) No change.

(13) No change.

(14) Principal Diagnosis Code. The code representing the diagnosis chiefly responsible for the services performed during the visit. Must contain a valid ICD-9-CM ~~or ICD-10-CM~~ diagnosis code if type of service is "1" indicating ambulatory surgery. Must contain a valid ICD-9-CM ~~or ICD-10-CM~~ diagnosis code if type of service is "2" indicating an

emergency department visit unless patient status is "07" indicating that the patient left against medical advice or discontinued care. A blank field is permitted if type of service is "2" and patient status is "07." If not space filled, must contain a valid ICD-9-CM diagnosis code ~~or valid ICD-10-CM diagnosis code~~ for the reporting period. A diagnosis code cannot be used more than once as a principal or other diagnosis for each visit reported. The code must be entered with a decimal point that is included in the valid code and without use of a zero or zeros that are not included in the valid code. Alpha characters must be in upper case.

(15) Other Diagnosis Code (1), Other Diagnosis (2), Other Diagnosis (3), Other Diagnosis (4), Other Diagnosis (5), Other Diagnosis (6), Other Diagnosis (7), Other Diagnosis (8), Other Diagnosis (9). A code representing a diagnosis related to the services provided during the visit. If no principal diagnosis code is reported, another diagnosis code must not be reported unless the patient discharge status is "07" indicating that the patient left against medical advice or discontinued care. No more than nine other diagnosis codes may be reported. Less than nine entries is permitted. If not space filled, must contain a valid ICD-9-CM code ~~or valid ICD-10-CM code~~ for the reporting period. A diagnosis code cannot be used more than once as a principal or other diagnosis for each visit reported. The code must be entered with use of a decimal point that is included in the valid code and without use of a zero or zeros that are not included in the valid code. Alpha characters must be in upper case.

(16) Evaluation and Management Code (1), Evaluation and Management Code (2), Evaluation and Management Code (3), Evaluation and Management Code (4), Evaluation and Management Code (5). A code representative of the patient acuity level for the services provided. If type of service is "2", must contain a valid Evaluation and Management (EM) Code range 99281-99285; 99288; 99291-99292; and G0380-G0384, even if the only service provided to a registered patient is triage or screening. If patient discharge status is "07" meaning the patient left against medical advice or discontinued care, or where a visit occurs resulting in zero charges, enter default code 99999 to indicate that the patient was not evaluated by a physician. No more than five EM codes may be reported. Less than five entries is permitted. Ambulatory surgical centers, type of service "1", should not report Evaluation and Management codes. A required field.

(17) through (39) No change.

(40) Patient Visit Ending Date. The date at the end of the patient's visit. A ten (10) character field in the format YYYY-MM-DD where MM represents the numbered months of the year from 1 to 12, DD represents numbered days of the month from 1 to 31, and YYYY represents the year in four digits. Patient visit ending date must equal or follow the patient visit beginning date. Patient visit ending date must occur within the calendar quarter included in the data report. ~~A blank~~

field is not permitted unless type of service is "2" indicating an emergency department visit and patient status is "07" indicating the patient left against medical advice or discontinued care.

(41) through (42) No change.

(43) Patient's Reason for Visit ICD-CM Code (Admitting Diagnosis). The code representing the patient's chief complaint or stated reason for seeking care in the Emergency Department. Must contain a valid ICD-9-CM code ~~or valid ICD-10-CM code~~ for the reporting period if type of service is "2" indicating an emergency department visit.

If not space filled, must contain a valid ICD-9-CM ~~or ICD-10-CM~~ diagnosis code. The code must be entered with use of a decimal point that is included in the valid code and without use of a zero or zeros that are not included in the valid code. Space fill if type of service is "1" indicating ambulatory surgery. Alpha characters must be in upper case.

(44) Principal ICD-CM Procedure Code. The code representing the procedure or service most related to the principal diagnosis. A blank field is permitted if type of service is "1" indicating ambulatory surgery. A blank or no entry is permitted consistent with the records of the reporting entity if type of service is "2" indicating an emergency department visit. Must contain a valid ICD-9-CM ~~or ICD-10-CM~~ procedure code for the reporting period. The code must be entered with use of a decimal point that is included in the valid code and without use of a zero or zeros that are not included in the valid code. Space fill if type of service is "1" indicating ambulatory surgery. Alpha characters must be in upper case.

(45) Other ICD-CM Procedure Code (1), Other ICD-CM Procedure Code (2), Other ICD-CM Procedure Code (3), Other ICD-CM Procedure Code (4) – A code representing a procedure or service provided during the visit. If no principal ICD-CM procedure is reported, another ICD-CM procedure code must not be reported unless the patient status is "07" indicating the patient left against medical advice or discontinued care. No more than four other ICD-CM procedure codes may be reported. A blank or no entry is permitted if type of service is "1." Less than four or no entry is permitted if type of service is "2." Must be a valid ICD-9-CM ~~or ICD-10-CM~~ procedure code for the reporting period. The code must be entered with use of a decimal point that is included in the valid code and without use of a zero or zeros that are not included in the valid code.

(46) External Cause of Injury Code. External Cause of Injury Code (1), External Cause of Injury Code (2) and External Cause of Injury Code (3). A code representing circumstances or conditions as the cause of the injury, poisoning or other adverse effects recorded as a diagnosis. Assign the appropriate E-code for all initial encounters or treatments, but not for subsequent occurrences. A Place of Occurrence E-code (E849.X) should be included to describe where the event occurred if documented in the patient medical

history. No more than three (3) external cause of injury codes may be reported. Less than three (3) or no entry is permitted. If not space filled, must be a valid ICD-9-CM ~~or ICD-10-CM~~ cause of injury code for the reporting period. An external cause of injury code cannot be used more than once for each encounter reported. The code must be entered with use of a decimal point that is included in the valid code and without use of a zero or zeros that are not included in the valid code. Alpha characters must be in upper case.

(47) No change.

(48) Patient Status. –

(a) through (h) No change.

(i) 21 – Discharged or transferred to court/law enforcement.

(i) through (p) renumbered (j) through (q) No change.

(49) No change.

Rulemaking Authority 408.15(8) FS. Law Implemented 408.061, 408.062, 408.063 FS. History–New 1-1-10, Amended _____.

Editorial note: see former Rule 59B-9.018.

AGENCY FOR HEALTH CARE ADMINISTRATION
Hospital and Nursing Home Reporting Systems and Other Provisions Relating to Hospitals

RULE NO.:

RULE TITLE:

59E-7.028

Inpatient Data Elements, Codes and Standards

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 36, No. 35, September 3, 2010 issue of the Florida Administrative Weekly.

The change is in response to written comments submitted by the staff of the Joint Administrative Procedures Committee on September 10, 2010 to properly code. In addition, subsection 59E-7.028(64) has been changed from Special Indicator Code to Condition Code upon comment from industry members.

59E-7.028 Inpatient Data Elements, Codes and Standards.

(1) No change.

(2) Patient Control Number. An alpha-numeric code containing standard letters or numbers assigned by the facility as a unique identifier for each record submitted in the reporting period to facilitate retrieval of the individual's account of services (accounts receivable) containing the financial billing records and any postings of payment. The 'Patient Control Number' is defined as 'Record id' in the schema. Up to twenty four (24) characters. Duplicate patient control numbers are not permitted. A required field. The hospital must maintain a key list to locate actual records upon request by AHCA.

(3) through (12) No change.

(13) Source or Point of Origin for Admission. No change.

(a) 01 – Non-health care facility point source of origin. The patient was admitted to this facility ~~upon an order of a physician~~. Includes a patient coming from home, ~~physician office~~ or workplace.

(b) 02 – Clinic or Physician's Office. The patient was admitted to this facility from a clinic or physician's office ~~as a transfer or referral from a freestanding or non-freestanding clinic~~.

(c) through (e) No change.

~~(f) 07 – Emergency Room. The patient was admitted to this facility after receiving services in this facility's emergency department. Excludes patients who came to the emergency room from another health care facility.~~

(g) through (k) renumbered (f) through (j) No change.

(4) Codes required for newborn admissions (Priority of Admission=4):

(l) through (m) renumbered (k) through (l) No change.

(14) through (17) No change.

(18) Patient Discharge Status.

(a) through (h) No change.

(i) 21 – Discharged or transferred to court/law enforcement.

(i) through (p) renumbered (j) through (q) No change.

(19) No change.

(20) Principal Diagnosis Code. The code representing the diagnosis established, after study, to be chiefly responsible for occasioning the admission. Principal diagnosis code must contain a valid ICD-9-CM ~~or ICD-10-CM~~ code for the reporting period. A diagnosis code cannot be used more than once as a principal or other diagnosis for each hospitalization reported. The code must be entered with a decimal point that is included in the valid code and without use of a zero or zeros that are not included in the valid code. A required entry. Alpha characters must be in upper case.

(21) Other Diagnosis Code (1), Other Diagnosis Code (2), Other Diagnosis Code (3), Other Diagnosis Code (4), Other Diagnosis Code (5), Other Diagnosis Code (6), Other Diagnosis Code (7), Other Diagnosis Code (8), Other Diagnosis Code (9), Other Diagnosis Code (10), Other Diagnosis Code (11), Other Diagnosis Code (12), Other Diagnosis Code (13), Other Diagnosis Code (14), Other Diagnosis Code (15), Other Diagnosis Code (16), Other Diagnosis Code (17), Other Diagnosis Code (18), Other Diagnosis Code (19), Other Diagnosis Code (20), Other Diagnosis Code (21), Other Diagnosis Code (22), Other Diagnosis Code (23), Other Diagnosis Code (24), Other Diagnosis Code (25), Other Diagnosis Code (26), Other Diagnosis Code (27), Other Diagnosis Code (28), Other Diagnosis Code (29), and Other Diagnosis Code (30). A code representing a condition that is related to the services provided during the hospitalization excluding external cause of injury codes. Report external cause of injury codes as described in

paragraph (61) below. No more than thirty (30) other diagnosis codes may be reported. Less than thirty (30) entries is permitted. If an Other Diagnosis Code is reported, a valid Principal Diagnosis code must be reported. Must contain a valid ICD-9-CM code ~~or valid ICD-10-CM code~~ for the reporting period. An Other Diagnosis Code cannot be used more than once as a principal or other diagnosis for each hospitalization reported. The code must be entered with use of a decimal point that is included in the valid code and without use of a zero or zeros that are not included in the valid code. Alpha characters must be in upper case.

(22) No change.

(23) Principal Procedure Code. The code representing the procedure most related to the principal diagnosis. No entry is permitted consistent with the records of the reporting entity. Must contain a valid ICD-9-CM ~~or ICD-10-CM~~ procedure code for the reporting period. If a principal procedure date is reported, a valid principal procedure code must be reported. The code must be entered with use of a decimal point that is included in the valid code and without use of a zero or zeros that are not included in the valid code.

(24) Principal Procedure Date. The date when the principal procedure was performed. If a principal procedure is reported, a principal procedure date must be reported. No entry is permitted if no principal procedure is reported. A ten (10)-character field in the format YYYY-MM-DD where MM represents the numbered months of the year from 01 to 12, DD represents numbered days of the month from 01 to 31, and YYYY represents the year in four (4) digits. The principal procedure date must be less than seven (7) ~~four (4)~~ days prior to the admission date and not later than the discharge date.

(25) Other Procedure Code (1), Other Procedure Code (2), Other Procedure Code (3), Other Procedure Code (4), Other Procedure Code (5), Other Procedure Code (6), Other Procedure Code (7), Other Procedure Code (8), Other Procedure Code (9), Other Procedure Code (10), Other Procedure Code (11), Other Procedure Code (12), Other Procedure Code (13), Other Procedure Code (14), Other Procedure Code (15), Other Procedure Code (16), Other Procedure Code (17), Other Procedure Code (18), Other Procedure Code (19), Other Procedure Code (20), Other Procedure Code (21), Other Procedure Code (22), Other Procedure Code (23), Other Procedure Code (24), Other Procedure Code (25), Other Procedure Code (26), Other Procedure Code (27), Other Procedure Code (28), Other Procedure Code (29) and Other Procedure Code (30). A code representing a procedure provided during the hospitalization. If a principal procedure is not reported, an Other Procedure Code must not be reported. No more than thirty (30) other procedure codes may be reported. Less than thirty (30) or no entry is permitted. Must be a valid ICD-9-CM ~~or ICD-10-CM~~ procedure code for the reporting period. The code must be

entered with use of a decimal point that is included in the valid code and without use of a zero or zeros that are not included in the valid code.

(26) Other Procedure Code Date (1), Other Procedure Code Date (2), Other Procedure Code Date (3), Other Procedure Code Date (4), Other Procedure Code Date (5), Other Procedure Code Date (6), Other Procedure Code Date (7), Other Procedure Code Date (8), Other Procedure Code Date (9), Other Procedure Code Date (10), Other Procedure Code Date (11), Other Procedure Code Date (12), Other Procedure Code Date (13), Other Procedure Code Date (14), Other Procedure Code Date (15), Other Procedure Code Date (16), Other Procedure Code Date (17), Other Procedure Code Date (18), Other Procedure Code Date (19), Other Procedure Code Date (20), Other Procedure Code Date (21), Other Procedure Code Date (22), Other Procedure Code Date (23), Other Procedure Code Date (24), Other Procedure Code Date (25), Other Procedure Code Date (26), Other Procedure Code Date (27), Other Procedure Code Date (28), Other Procedure Code Date (29) and Other Procedure Code Date (30). The date when the procedure was performed. A required entry if a corresponding procedure code (26), (1) through (30) is reported. A ten (10) character field in the format YYYY-MM-DD where MM represents the numbered months of the year from 01 to 12, DD represents numbered days of the month from 01 to 31, and YYYY represents the year in four (4) digits. The procedure date must be less than ~~seven (7)~~ ~~four (4)~~ days prior to the admission date and not later than the discharge date.

(27) through (29) No change.

(30) Operating or Performing Practitioner National Provider Identification (NPI). A unique ten (10) character identification number assigned to a provider who had primary responsibility for the Principal Procedure performed. A required identification number for providers in the U.S. or its territories and providers not in U.S. or its territories upon mandated HIPAA NPI implementation date. For military physicians, medical residents, or individuals not required to obtain a NPI number, use 9999999999. No entry is permitted if no principal procedure is reported.

(31) No change.

(32) Other Operating or Performing Practitioner National Provider Identification (NPI). A unique ten (10) character identification number assigned to a provider who assisted the operating or performing practitioner or performed a secondary procedure who had primary responsibility for the Principal Procedure. A required identification number for providers in the U.S. or its territories and providers not in U.S. or its territories upon mandated HIPAA NPI implementation date. For military physicians, medical residents, or individuals not required to obtain a NPI number, use 9999999999. No entry is permitted if no principal procedure is reported.

(33) No change.

(34) Nursery Level I Charges. Accommodation charges for well-baby care services which include sub-ventilation care, intravenous feedings and gavage to neonates. Report charges for revenue code 170 and 171, or 179 if applicable, as used in the UB-04. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report zero (0) if there are no Nursery Charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(35) Nursery Level II Charges. Accommodation charges for services which include provision of ventilator services. Report charges for revenue code 172, or 179 if applicable, as used in the UB-04. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report zero (0) if there are no Level II Nursery Charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(36) Nursery Level III Charges. Accommodation charges for services which include continuous cardiopulmonary support services, complex pediatric surgery, neonatal cardiovascular surgery, pediatric neurology and neurosurgery, and pediatric cardiac catheterization. Report charges for revenue code 173, 174, or 179 if applicable, ~~(Level III)~~, as used in the UB-04. Report in dollars rounded to the nearest whole dollar, without dollar signs or commas, excluding cents. Report zero (0) if there are no Level III Nursery Charges. Negative amounts are not permitted unless verified separately by the reporting entity. A required entry.

(37) through (58) No change.

(59) Infant Linkage Identifier. The social security number of the patient's birth mother where the patient is less than two (2) years of age. A nine (9) digit field to facilitate retrieval of individual case records, to be used to link infant and mother records, and for medical research. Reporting 777777777 for the mother's SSN is acceptable for those patients where efforts to obtain the mother's SSN have been unsuccessful or the mother is known to be from a country other than the United States. Infants in the custody of the State of Florida or adoptions, use 333333333 if the birth mother's SSN is not available. A required field for patients whose age is less than two (2) years of age at admission. Zero fill ~~No entry is permitted~~ if the patient is two (2) years of age or older. A required entry.

(60) Admitting Diagnosis. The diagnosis provided by the admitting physician at the time of admission which describes the patient's condition upon admission or purpose of admission. Must contain a valid ICD-9-CM code ~~or valid ICD-10-CM code~~ for the reporting period. The code must be entered with use of a decimal point that is included in the valid code and without use of a zero or zeros that are not included in the valid code. A required entry. Alpha characters must be in upper case.

(61) External Cause of Injury Code (1), External Cause of Injury Code (2) and External Cause of Injury Code (3). A code representing circumstances or conditions as the cause of the injury, poisoning, or other adverse effects recorded as a diagnosis. Assign appropriate E-codes for all initial encounters or treatments, but not for subsequent occurrences. A Place of Occurrence E-code (E849.X) should be included to describe where the event occurred if documented in the patient medical history. No more than three (3) external cause of injury codes may be reported. Must be a valid ICD-9-CM ~~or ICD-10-CM~~ cause of injury code for the reporting period. An external cause of injury code cannot be used more than once for each hospitalization reported. The code must be entered with use of a decimal point that is included in the valid code and without use of a zero or zeros that are not included in the valid code. Alpha characters must be in upper case.

(62) through (63) No change.

(64) Condition Code. A two-character code that describes patients admitted to the inpatient facility after receiving treatment in the facility's emergency department. Do not use this code for patients admitted to the hospital through the ED when the registration department is closed. Report using the two-character indicator code 'P7'. Otherwise zero fill using "00." A required field.

~~(65)~~(64) No change.

Rulemaking Authority 408.061(1)(e), 408.15(8) FS. Law Implemented 408.061, 408.062, 408.063 FS. History—New 1-1-10, Amended.

Editorial note: see former Rule 59E-7.014.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Division of Florida Condominiums, Timeshares and Mobile Homes

RULE NO.: RULE TITLE:
61B-20.005 Educational Resolution

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 36, No. 26, July 2, 2010 issue of the Florida Administrative Weekly.

Subsection 61B-20.005(1)(a) is changed 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 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, will lead to enforcement resolution ~~may result in the division proceeding with enforcement resolution~~. The Warning Letter shall not be considered final agency action.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Division of Florida Condominiums, Timeshares and Mobile Homes

RULE NO.: RULE TITLE:
61B-21.002 Educational Resolution

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 36, No. 26, July 2, 2010 issue of the Florida Administrative Weekly.

Subsection 61B-21.002(3)(a) is changed 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 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, will ~~may~~ lead to enforcement resolution. The Warning Letter shall not be considered final agency action.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Pilot Commissioners

RULE NO.: RULE TITLE:
61G14-19.001 Percentage of Gross Pilotage Assessed

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 36, No. 29, of the July 23, 2010, issue of the Florida Administrative Weekly. The correction is as follows:

The effective date of the rule was incorrectly stated as October 1, 2010. The language should read: THIS RULE SHALL TAKE EFFECT NOVEMBER 1, 2010.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Robyn Barineau, Executive Director, Board of Pilot Commissioners, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

DEPARTMENT OF HEALTH

Board of Nursing Home Administrators

RULE NO.:	RULE TITLE:
64B10-11.012	Notification of Change of Address or Employing Facility

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 35, No. 38, September 25, 2009 issue of the Florida Administrative Weekly.

The correction amends the "DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW" to read correctly as August 7, 2009.

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

DEPARTMENT OF HEALTH

Board of Osteopathic Medicine

RULE NOS.:	RULE TITLES:
64B15-14.0051	Standards of Practice for Physicians Practicing in Pain Management Clinics
64B15-14.0052	Requirement for Pain Management Clinic Registration; Inspection or Accreditation

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 36, No. 16, April 23, 2010 issue of the Florida Administrative Weekly.

The Board held public hearings on these rules on June 18, 2010; on August 20, 2010; and on September 13, 2010. The Board, at its meetings on August 20, 2010, and September 13, 2010 voted to make the following changes to the rules in response to comments received at the public hearings, and in response to written comments submitted by the staff of the Joint Administrative Procedures Committee (JAPC). The changes are as follows:

For Rule 64B15-14.0051

1. The preamble to the rule shall now read: "THIS RULE IS APPLICABLE TO PHYSICIANS PRACTICING IN PRIVATELY OWNED PAIN MANAGEMENT CLINICS THAT ARE REQUIRED TO BE REGISTERED PURSUANT TO SECTION 459.0137, F.S., WHO PRIMARILY ENGAGE IN THE TREATMENT OF PAIN BY PRESCRIBING OR DISPENSING CONTROLLED SUBSTANCE MEDICATIONS."

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

3. Paragraph (1)(d) of the rule shall be deleted in its entirety.

4. Paragraph (1)(e) shall be renumbered as (1)(d) and the word "currently" shall be deleted.

5. Paragraph (1)(f) shall be renumbered as (1)(e).

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

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

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

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

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

pain management physician, or an addiction specialist, the physician does not need to refer the patient for further consultation. If the physician suspects diversion, then the patient shall be discharged and all results of testing and actions taken by the physician shall be documented in the patient's medical record."

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

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

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

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

"(m) Data Collection and Reporting.

1. Reporting of adverse incidents. The Designated Physician for each pain-management clinic shall report all adverse incidents to the Department of Health as set forth in Section 459.026, Florida Statutes.

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

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

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

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

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

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

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

(n) Training Requirements. Effective July 1, 2012, physicians who have not met the qualifications set forth in subparagraphs 1. through 6., below, shall have successfully completed a pain medicine fellowship that is accredited by the Accreditation Council for Graduate Medical Education (ACGME) or the American Osteopathic Association (AOA) or a pain medicine residency that is accredited by ACGME or the AOA. Prior to July 1, 2012, physicians prescribing or dispensing controlled substance medications in pain-management clinics registered pursuant to Section 459.0137(1), Florida Statutes, must meet one of the following qualifications:

1. Board certification by a specialty board recognized by the American Board of Medical Specialties (ABMS) and holds a sub-specialty certification in pain medicine; or a Certificate of Added Qualification in Pain Management by the American Osteopathic Association;

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

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

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

b. Successful completion of a residency program in family practice, internal medicine, or orthopedics approved by the AOA; or

c. Current Certificate of Added Qualification approved by the AOA in hospice, palliative medicine or geriatric medicine.

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

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

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

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

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

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

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

f. Evidenced-based non-pharmacological pain treatments;

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

h. Appropriate progress note keeping;

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

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

k. Risk management; and

l. Medical ethics.

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

7. Upon completion of the 40 hours of CME set forth above, physicians qualifying under 6. above, must also document the completion of 15 hours of in-person, live participatory AMA Category I or AOA Category IA CME in pain management for every year the physician is practicing pain management.

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

17. The Rulemaking Authority citation shall be changed to Section 459.0137(4), F.S., and the Law Implemented citation shall be changed to 459.0137, F.S.

For Rule 64B15-14.0052:

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

2. In paragraph (1)(a), the reference to Section 459.005(4) and (5), Florida Statutes, shall be changed to 459.0137(1), Florida Statutes.

3. Paragraph (1)(c) shall be changed to read as follows:

“(c) The Designated Physician must notify the Board within 10 calendar days, in writing, of any changes to the registration information, including the termination of his or her employment with the pain management clinic.”

4. Paragraph (2)(d) shall be changed to read as follows:

“(d) The inspector(s) shall determine compliance with the requirements of Rule 64B15-14.0051, F.A.C. This shall include review of a random selection of patient records for patients who are treated for pain, selected by the inspector(s) for each physician practicing in the clinic or who has practiced in the clinic during the past six months.”

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

6. The Rulemaking Authority citation shall be changed to Section 459.0137(4), F.S., and the Law Implemented citation shall be changed to 459.0137, F.S.

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

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE NO.: 64B16-30.001
 RULE TITLE: Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 35, No. 39, October 2, 2009 issue of the Florida Administrative Weekly.

The correction is as follows:

The Notice of Change which published on July 2, 2010, in Vol. 36, No. 26 of the Florida Administrative Weekly incorrectly stated, “The change is in response to written comments submitted by the staff of the Joint Administrative Procedures Committee.” It should have read, “The change is in response to written comments submitted by the staff of the Joint Administrative Procedures Committee and by a vote of the Board at the June 8, 2010 board meeting.”

This correction does not affect the substance of the Notice of Change published on July 2, 2010.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Rebecca Poston, Executive Director, Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3254.

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE NO.: 64B16-30.001
 RULE TITLE: Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances

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. 39, October 2, 2009 issue of the Florida Administrative Weekly.

The changes are in response to written comments submitted by the staff of the Joint Administrative Procedures Committee. The changes are as follows:

1. Sub-subparagraph (2)(e)1.h. shall now read as follows:

h. Failure to notify the board of or not to have a prescription department manager or consultant pharmacist.		
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2. Sub-subparagraph (2)(k)1.j. shall now read as follows:

j. Practicing nuclear pharmacy without being licensed as a nuclear pharmacist (Section 64B16-26.303, F.A.C.)	\$500 per month up to \$5000 fine (fine based upon the length of time the person is practicing without being licensed as a nuclear pharmacist)	Revocation
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THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Rebecca Poston, Executive Director, Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3254

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE NO.: 64B16-30.003
 RULE TITLE: Citations

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 35, No. 39, October 2, 2009 issue of the Florida Administrative Weekly.

The correction is as follows:

The Notice of Change which published on July 2, 2010, in Vol. 36, No. 26 of the Florida Administrative Weekly incorrectly stated, "The change is in response to written comments submitted by the staff of the Joint Administrative Procedures Committee." It should have read, "The change is in response to a vote of the Board at the June 8, 2010 board meeting."

This correction does not affect the substance of the Notice of Change published on July 2, 2010.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Rebecca Poston, Executive Director, Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3254

FISH AND WILDLIFE CONSERVATION COMMISSION

Freshwater Fish and Wildlife

RULE NO.: 68A-1.004
 RULE TITLE: Definitions

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 36, No. 30, July 30, 2010 issue of the Florida Administrative Weekly.

(1) through (9) No change.

~~(10) Archery season—The calendar period during which certain game may be taken only by the use of a bow or crossbow when authorized by Commission rules.~~

(11) through (26) renumbered (10) through (25) No change.

~~(27) Crossbow season—The calendar period in a zone during which certain game may be taken only by the use of a bow or crossbow when authorized by Commission rules.~~

(28) through (49) renumbered (26) through (47) No change.

~~(50) Muzzleloading gun season—The calendar period in a zone during which certain game may be taken only by the use of a bow, crossbow, or muzzleloading gun when authorized by Commission rules.~~

(51) through (99) renumbered (48) through (96) No change.

FISH AND WILDLIFE CONSERVATION COMMISSION

Freshwater Fish and Wildlife

RULE NO.: 68A-6.003
 RULE TITLE: Facility and Structural Caging Requirement for Class I, II and III Wildlife

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 36, No. 12, March 26, 2010 issue of the Florida Administrative Weekly.

Proposed amendment to Rule 68A-6.003 has been changed to include the following modified subsection:

(2) In order to assure public safety, the facilities for the housing of Class I and Class II wildlife shall meet the requirements of this rule. Compliance with these requirements is a necessary condition for licensure. For the purposes of this rule, a "facility" means the site at which Class I or Class II wildlife are ~~permanently~~ kept or exhibited, except for those locations where the standard caging requirements are exempted under Rules 68A-6.0041 and 68A-6.005, F.A.C. Upon receipt of an initial application regarding Class I or Class II wildlife, the Florida Fish and Wildlife Conservation Commission shall notify the county or municipality wherein the proposed facility is to be located of a pending application. Current licensees that desire to expand their inventory to include a family of Class I or Class II species not previously authorized at their facility location shall comply with the requirements herein. Requests to upgrade wildlife classification authorizations shall be considered initial applications for license purposes. Applicants shall complete and submit a Facility Location Information form, FWCDLE 616IV(09-10), which is adopted and incorporated herein by reference. Forms may be obtained by submitting a request to: Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, 620 South Meridian Street, Tallahassee, Florida 32399-1600, or at www.myfwc.com/permits. Facilities housing Class I or Class II

wildlife must meet local building codes and valid local zoning requirements. The county or municipality wherein the facility is to be located has 25 days, from receipt of the notification from the Florida Fish and Wildlife Conservation Commission of a pending application regarding Class I or Class II wildlife, in which to determine whether the facility is in compliance with local building codes and zoning requirements. If the county or municipality determines that applicant is not in compliance with local building codes and zoning requirements, the applicant must provide proof, including but not limited to, written documentation from a local government entity or a court of competent jurisdiction, to the Florida Fish and Wildlife Conservation Commission indicating that the conflict between the applicant and the county or municipality has been resolved in favor of the applicant before the Florida Fish and Wildlife Conservation Commission will consider the application complete. If the county or municipality fails to notify the Florida Fish and Wildlife Conservation Commission of its determination of compliance in a manner prescribed by the agency within 25 days, the Florida Fish and Wildlife Conservation Commission will deem the application in compliance with local building codes and zoning requirements.

- (a) through (b) No change.
- (c) 1. through 4. No change.

5. Zoning:

Facilities housing the following Class I wildlife may not be located on property within an area zoned solely for residential use. Changes in zoning subsequent to the issuance of the license or permit shall not be disqualifying provided the license is maintained in a current and valid status.

- a. Primates (all listed species)
- b. Cats (all listed species)
- e. Bears (family *Ursidae*)
- d. Elephants (family *Elephantidae*)
- e. Rhinoceros (family *Rhinocerotidae*)
- f. Hippopotamuses (family *Hippopotamidae*)
- g. Cape Buffalo and Gaur (family *Bovidae*)
- h. Hyenas and Aardwolf (family *Hyaenidae*)

- (d) through (e) No change.

(f) The above facility requirements relating to land area, buffer zones, and perimeter fencing, shall be effective January 1, 2008, but shall not apply to those facilities licensed to possess captive wildlife species prior to that date. After January 1, 2008, those licensees that desire to expand their inventory to include a family of Class I or Class II species not previously authorized at their facility location shall comply with the requirements here in. Requests to upgrade wildlife classification authorizations shall be considered new applications for license purposes.

No other changes were made to the rule amendments as proposed.

FISH AND WILDLIFE CONSERVATION COMMISSION

Freshwater Fish and Wildlife

RULE NO.: 68A-12.002 RULE TITLE: General Methods of Taking Game; Prohibitions

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 36, No. 30, July 30, 2010 issue of the Florida Administrative Weekly.

- (1) through (2) No change.
- (3) Game birds, crows or game mammals may be taken with any of the following:
 - (a) No change.
 - (b) Rifle or pistol.
 - 1. through 5. No change.

6. The take of game specified, except migratory birds, for any muzzleloading gun season with any gun other than a bow, crossbow or muzzleloading gun is prohibited except this subparagraph shall not limit the methods of take of game specified for any coinciding season during any special muzzleloading gun season.

- (c) Falcon.
- (d) Bow or crossbow.
- 1. through 3. No change.

4. The take of game specified, except migratory birds, for any archery season with any gun other than a bow or crossbow is prohibited during any special archery season except this subparagraph shall not limit the methods of take of game specified for any coinciding season.

5. The take of game specified, except migratory birds, for any crossbow season with any gun other than a bow or crossbow is prohibited except this subparagraph shall not limit the methods of take of game specified for any coinciding season during any special crossbow season.

- (e) No change.
- (4) through (9) No change.

FISH AND WILDLIFE CONSERVATION COMMISSION

Freshwater Fish and Wildlife

RULE NO.: 68A-15.004 RULE TITLE: General Regulations Relating to Wildlife Management Areas

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 36, No. 30, July 30, 2010 issue of the Florida Administrative Weekly.

Proposed amendment to Rule 68A-15.004 has been changed to include the following paragraph:

(6)(f) Taking wild turkey with firearms other than shotguns using number 2 or smaller diameter shot during the spring turkey season is prohibited except that muzzleloading rifles are not prohibited for taking wild turkey on Joe Budd and Raiford Wildlife Management Areas.

No other changes were made to the rule amendments as proposed.

FISH AND WILDLIFE CONSERVATION COMMISSION

Freshwater Fish and Wildlife

RULE NO.: 68A-15.006
 RULE TITLE: Regulations Relating to Miscellaneous Areas
 NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 36, No. 30, July 30, 2010 issue of the Florida Administrative Weekly.

- (1) No change.
- (2) Kissimmee River Public Use Area.
- (a) Open season:
 - 1. Non-migratory game – Zonal seasons established under Rule 68A-13.004, F.A.C., except that open season for rabbit shall be during the zonal squirrel season only and crossbow season shall be the last 5 days of the zonal crossbow season only.
 - 2. through 4. No change.
 - (b) No change.
 - (c) General regulations:
 - 1. Taking wildlife with guns shall be prohibited in the marshes and uplands except during the period beginning on the opening day of rail season established in Rule 68A-13.008, F.A.C., and ending on the closing day of spring turkey season established in Rule 68A-13.004, F.A.C. Taking wildlife with centerfire rifles is prohibited. ~~Taking wildlife with crossbows is prohibited during the archery season.~~ The marshes shall be those lands outside the Kissimmee River channel, the C-38 canal, and the Istokpoga canal. In posted archery/muzzleloading gun areas, only bows may be used during the zonal archery season, only muzzleloading guns may be used during the zonal muzzleloading gun season, only bows may be used during the antlered deer season, and only bows and muzzleloading guns may be used during other established seasons. The possession of guns shall be prohibited in the marshes and uplands in the northern portion of Bluff Hammock lying in the west 1/2 of Section 26 and the east 1/2 of Section 27, Township 34 South, Range 31 East, which are posted as closed to possession of guns.

- 2. through 10. No change.
- (3) No change.
- (4) Kissimmee Chain of Lakes Area.

- (a) Open season:
 - 1. Non-migratory game – During Zonal seasons established under Rule 68A-13.004, F.A.C., except deer and turkey shall only be taken during those seasons established for Zone B and crossbow season shall be the last 5 days of the Zone B crossbow season only.
 - 2. through 3. No change.
 - (b) No change.
 - (c) General regulations:
 - 1. through 15. No change.
 - ~~16. Taking wildlife with crossbows is prohibited during the archery season.~~

FISH AND WILDLIFE CONSERVATION COMMISSION

Freshwater Fish and Wildlife

RULE NO.: 68A-17.004
 RULE TITLE: General Regulations Relating to Wildlife and Environmental Areas
 NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 36, No. 30, July 30, 2010 issue of the Florida Administrative Weekly.

Proposed amendment to Rule 68A-17.004 has been changed to include the following paragraph:

(6)(e) Taking wild turkey with firearms other than shotguns using number 2 or smaller diameter shot during the spring turkey season is prohibited except that muzzleloading rifles are not prohibited for taking wild turkey on Santa Fe Swamp Wildlife and Environmental Area.

No other changes were made to the rule amendments as proposed.

FISH AND WILDLIFE CONSERVATION COMMISSION

Freshwater Fish and Wildlife

RULE NOS.:	RULE TITLES:
68A-27.0001	Purpose and Intent
68A-27.001	Definitions
68A-27.0012	Procedures for Listing and Removing Species from Florida’s Endangered and Threatened Species List
68A-27.003	Florida Endangered and Threatened Species; Prohibitions
68A-27.005	Designation of Species of Special Concern; Prohibitions; Permits
68A-27.007	Permits and Authorizations for the Take of Florida Endangered and Threatened Species

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 36, No. 2, January 15, 2010 issue of the Florida Administrative Weekly.

68A-27.0001 Purpose and Intent.

(1) The purpose and intent of this rule chapter, in concert with an objective that lawful nature-based recreational activities may be managed to be compatible with such species protection measures, is to conserve or improve the status of endangered and threatened species in Florida to effectively reduce the risk of extinction through the use of a science-informed process that is objective and quantifiable, that accurately identifies endangered and threatened species that are in need of special actions to prevent further imperilment, that identifies a framework for developing management strategies and interventions to reduce threats causing imperilment, and that will prevent species from being threatened to such an extent that they become regulated and managed under the federal Endangered Species Act of 1973, as amended, 16 U.S.C. §1531 et seq.

(2) No change.

(3) ~~The protections of~~ This rule chapter is shall not intended to preclude prohibit lawful hunting, fishing, boating or other nature-based recreational uses, even if activities when those activities result in the mere annoyance or disturbance of Florida Endangered or and Threatened Species, when such uses are conducted in a manner that does not constitute take as defined in Rule 68A-27.001, F.A.C.

(4) through (5) No change.

68A-27.001 Definitions.

When used in this rule chapter, the terms and phrases listed below have the meaning provided:

(1) Florida Endangered and Threatened Species – species of fish or wild animal life, subspecies or isolated populations of species or subspecies, whether vertebrate or invertebrate, that are native to Florida which are endangered and threatened under Commission rule as either: (a) Federally-designated Endangered and Threatened species by virtue of designation as endangered or threatened by the United States Departments of Interior or Commerce under the Endangered Species Act, 16 U.S.C. § 1531, et seq. and rules thereto or (b) as a State-designated Threatened species. Florida Endangered and Threatened species retain their status regardless of subsequent changes in scientific nomenclature or subsequent identification of species or subspecies within the species listed.

(2) No change.

(3) State-designated Threatened Species – As designated by the Commission, species of fish or wild animal life, subspecies, or isolated population of a species or subspecies, whether vertebrate or invertebrate, that are native to Florida and are classified as Threatened as determined by paragraph

(a), (b), (c), (d), or (e) below in accordance with Rule 68A-27.0012, F.A.C. The designation of a species as threatened shall include all subspecies unless stated otherwise in Commission rule.

(a) Reduction in population size based on any of the following:

1. No change.

2. An observed, estimated, inferred or suspected population size reduction of at least 30% over the last 10 years or three generations, whichever is the longer, where the reduction or its causes may not have ceased or may not be understood or may not be reversible, based on (and specifying) any of ~~sub-subparagraph~~ (a)1.a. to (a)1.e.; above.

3. A population size reduction of at least 30%, projected or suspected to be met within the next 10 years or three generations, whichever is the longer (up to a maximum of 100 years), based on (and specifying) any of ~~sub-subparagraph~~ (a)1.b. to (a)1.e.; above.

4. An observed, estimated, inferred, projected or suspected population size reduction of at least 30% over any 10 year or three generation period, whichever is longer (up to a maximum of 100 years in the future), where the time period must include both the past and the future, and where the reduction or its causes may not have ceased or may not be understood or may not be reversible, based on (and specifying) any of ~~sub-subparagraph~~ (a)1.a. to (a)1.e.; above.

(b) Geographic range in the form of either ~~subparagraph~~ (b)1. {extent of occurrence} or (b)2. {area of occupancy} or both:

1. Extent of occurrence estimated to be less than 20,000 square kilometers (7,722 square miles), and estimates indicating at least two of a–c:

a. through c. No change.

2. Area of occupancy estimated to be less than 2,000 square kilometers (772 square miles), and estimates indicating at least two of a–c:

a. through c. No change.

(c) Population size estimated to number fewer than 10,000 mature individuals and either:

1. An estimated continuing decline of at least 10% within 10 years or three generations, whichever is longer, (up to a maximum of 100 years in the future); or

2. A continuing decline, observed, projected, or inferred, in numbers of mature individuals and at least one of the following (a–b-):

a. through b. No change.

(d) through (e) No change.

(4) Take – to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in such conduct. The term “harm” in the definition of take means an act which actually kills or injures fish or wildlife. Such act ~~shall~~ include significant habitat modification or degradation

where it ~~acts that~~ actually kills ~~kill~~ or injures ~~injure~~ wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. The term "harass" in the definition of take means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by: ~~"Harass" shall include annoying it to such an extent as to fish or wildlife only if the annoyance creates the likelihood of injury by~~ significantly ~~disrupt~~ ~~disrupting~~ normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering.

(5) No change.

(6) Management plan – a document ~~approved~~ ~~created or adopted~~ by the Commission with the purpose of providing guidance for the management of the species. The intent of management plans is to provide guidance to conserve species so that their status improves and the species can be removed from the Florida Endangered and Threatened Species list as well as to provide guidance to conserve the species so that they will not again need to be listed. It ~~may~~ ~~shall~~ be a comprehensive, single-species management plan; ~~or a document involving~~ a multi-species plan; ~~or a document referencing applicable~~ ~~indicating the specified rule or rules;~~ or a ~~document referencing~~ ~~reference to~~ a federal recovery plan that will be used for guidance in the management of the species. The management plan shall address biological status; identify measurable conservation objectives, including a time frame; identify any exempt activities if appropriate; identify conservation actions; identify incentives if appropriate; recommend rules for species if warranted; identify permitting standards for incidental and intentional take to be established in rule; consider and evaluate ~~address~~ anticipated economic, ecological, and social impacts of implementing or not implementing the management plan including a projection of costs of implementing the management plan and identification of the funding sources for the costs as determined through involvement of affected stakeholders and public input; and include a revision schedule; ~~and include a revision schedule.~~ For data deficient species, management plans may consist of an acknowledgement that insufficient data exist to develop and implement species management and these plans may simply identify research needed to determine species status and management needs.

(7) through (10) No change.

68A-27.0012 Procedures for Listing and Removing Species from Florida's Endangered and Threatened Species List.

(1) Federally-designated Endangered and Threatened Species. Species which are native to Florida and which are designated as Endangered or Threatened under the Federal Endangered Species Act (ESA), 15 U.S.C. § 1531 et seq. and rules thereto will be listed by the Commission as a Florida Endangered and Threatened Species by virtue of the federal designation. If a species native to Florida is added or

reclassified under the ESA, the species shall be so listed or reclassified in the Florida Endangered and Threatened Species rule pursuant to the notice provisions of ~~Subsection~~ ~~Section~~ 120.54(6), F.S., relating to adoption of federal standards. Before species that have been removed from the ESA are removed from the Florida Endangered and Threatened Species rule, they shall receive a biological status review according to subparagraph (2)(c)2.; to determine if the species warrants listing as a state-designated species. Prior to any species being removed from the Florida Endangered and Threatened Species list, the Commission shall develop a management plan that is intended to maintain or enhance the conservation of that species.

(2) State-designated Threatened Species.

(a) ~~Except as provided~~ ~~Notwithstanding the provisions contained in this subsection (1) above,~~ these procedures shall not ~~apply~~ ~~be applied~~ to the following species:

1. Federally-designated Endangered and Threatened species, ~~except when those species are scheduled to be removed from the federal list,~~

2. Species not native to Florida,

3. Harvested species that are monitored through periodic stock assessments or other techniques and are the subject of any rule in Title 68, F.A.C., that allows harvest.

4. Species whose occurrence in Florida is only accidental.

(b) Requesting the evaluation of a species for listing or removal from the State-designated Threatened species list.

1. through 2. No change.

3. Incomplete species evaluation requests, including requests which do not include or reference the best scientific and commercial data available, will be returned to the requestor with insufficiencies clearly noted in writing. Corrected species evaluation requests may be resubmitted for consideration outside the submission time period identified in 1. above if resubmitted within 30 days of being returned. Corrected species evaluation requests resubmitted more than 30 days after being returned must be submitted within the time period identified in ~~subparagraph 1.;~~ above.

4. through 5. No change.

(c) ~~Determining when changes in if listing status are is~~ warranted.

1. through 2. No change.

(d) through (e) No change.

(3) Criteria for removal from the State-designated Threatened species list are as follows:

(a) Species listed as State-designated Threatened species as of the effective date of this rule: Management plans will be developed for the species listed in this rule and the species will be evaluated under the listing criteria in subsection 68A-27.001(3), F.A.C. After a biological status review is conducted and a management plan is approved, the Commission will decide whether a species should remain listed

when the species is ~~Species that are~~ determined to be data deficient pursuant to the Guidelines for Using the IUCN Red List Categories and Criteria shall not be removed from the State-designated Threatened species list.

(b) All State-designated Threatened species listed after the effective date of this rule: Individuals may submit species evaluation requests for removing species from the list as described in the species evaluation request process in ~~paragraph~~ (2)(b). Species shall be removed from the State-designated Threatened species list if they do not meet any of the criteria in Rule 68A-27.001, F.A.C., in accordance with the Guidelines for Using the IUCN Red List Categories and Criteria.

(4) No change.

68A-27.003 Florida Endangered and Threatened Species; Prohibitions.

(1) Federally-designated Endangered and Threatened species:-

(a) through (b) No change.

(c) Fish:

1. Gulf sturgeon (*Acipenser oxyrinchus* [=oxyrhynchus] *desotoi*)(T),

2. through 4. No change.

(d) No change.

(e) Reptiles:

1. American alligator (*Alligator mississippiensis*)(T[S/A]); Listed only because of similarity of appearance to the American crocodile,

2. through 5. No change.

6. Green sea turtle ~~seaturtle~~ (*Chelonia mydas*)(E),

7. Hawksbill sea turtle ~~seaturtle~~ (*Eretmochelys imbricata*)(E),

8. Kemp's ridley sea turtle ~~seaturtle~~ (*Lepidochelys kempii*)(E),

9. Leatherback sea turtle ~~seaturtle~~ (*Dermochelys coriacea*)(E),

10. Loggerhead sea turtle ~~seaturtle~~ (*Caretta caretta*)(T),

11. No change.

(f) Birds:

1. No change.

2. Bachman's wood warbler (*Vermivora bachmanii*)(E),

3. through 8. No change.

9. Kirtland's wood warbler (*Dendroica kirtlandii*)(E),

10. through 12. No change.

13. Whooping crane (*Grus americana*)(XNE); Listed as experimental population in Florida,

14. No change.

(g) Mammals:

1. through 4. No change.

5. West Indian Florida manatee (*Trichechus manatus latirostris*)(E),

6. through 11. No change.

12. Key deer (*Odocoileus virginianus clavium*)(E). No person shall feed Key deer (~~*Odocoileus virginianus clavium*~~) by hand or by placing any food that serves to attract such species,

13. through 14. No change.

15. Lower Keys marsh rabbit (*Sylvilagus palustris hefneri*)(E),

16. through 20. No change.

~~21. Silver rice rat (*Oryzomys argentatus*)(E);~~

22. through 24. renumbered 21. through 23. No change.

(h) through (j) No change.

(k) Mollusks:

1. Chipola slabshell (mussel) (*Elliptio chiplolaensis*)(T),

2. Fat threeridge ~~three-ridge~~ (mussel) (*Amblema neislerii*)(E),

3. Gulf moccasinshell (mussel) (*Medionidus penicillatus*)(E),

4. Ochlockonee moccasinshell (mussel) (*Medionidus simpsonianus*)(E),

5. Oval pigtoe (mussel) (*Pleurobema pyriforme*)(E),

6. Purple bankclimber (mussel) (*Elliptioideus sloatianus*)(T),

7. Shinyrayed pocketbook (mussel) (*Lampsilis subangulata*)(E),

8. Stock Island tree snail (*Orthalicus reses*) [~~not incl. nesodryas~~](T).

(2) State-designated Threatened species:-

(a) through (c) No change.

(d) Reptiles:

1. Florida brownsnake ~~brown snake~~ (*Storeria victa*); lower Keys population only,

2. No change.

3. Gopher tortoise- (*Gopherus polyphemus*). The Gopher tortoise (~~*Gopherus polyphemus*~~) shall be afforded the protective provisions specified in this paragraph. No person shall take, attempt to take, pursue, hunt, harass, capture, possess, sell or transport any gopher tortoise or parts thereof or their eggs, or molest, damage, or destroy gopher tortoise burrows, except as authorized by Commission permit or when complying with Commission approved guidelines for specific actions which may impact gopher tortoises and their burrows. A gopher tortoise burrow is a tunnel with a cross-section that closely approximates the shape of a gopher tortoise. Permits will be issued based upon whether issuance would further management plan goals and objectives.

4. through 7. No change.

(e) through (g) No change.

(h) Insects:

Miami blue butterfly (*Cyclargus* [~~=*Hemiargus*~~]-*thomasi bethunebakeri*). The Miami blue butterfly (~~*Cyclargus* [~~=*Hemiargus*~~]-*thomasi bethunebakeri*~~), shall be afforded the

protective provisions specified in this subsection. No person shall take, harm, harass, possess, sell, or transport any Miami blue butterfly (~~*Cyclargus*~~ [~~= *Hemiargus*~~] ~~*thomasi bethunebakeri*~~), or parts thereof or their eggs, larvae or pupae except as authorized by permit from the executive director. Permits will be issued based upon whether issuance would further management plan goals and objectives.

68A-27.005 Designation of Species of Special Concern; Prohibitions; Permits.

(1) During the moratorium created in subsection 68A-27.0012(4), F.A.C. Management plans will be developed for the species listed in this rule and the species will be evaluated under the listing criteria in subsection 68A-27.001(3), F.A.C., for listing as a State-designated Threatened species. If the Commission determines that the species warrants listing as a State-designated Threatened species, final Commission action on the listing shall include removing reference to the species from this rule. If the species evaluation demonstrates the species does not qualify for listing as a State-designated Threatened species, the Commission will remove the species from this rule upon completion of a management plan. After a biological status review is conducted and a management plan is approved, the Commission will decide whether a species should remain listed when the species is ~~Species that are~~ determined to be data deficient pursuant to the Guidelines for Using the IUCN Red List Categories and Criteria ~~shall not be removed from the Species of Special Concern list.~~

(2) No change.

68A-27.007 Permits and Authorizations for the Take of Florida Endangered and Threatened Species.

(1) Permit requirements for the taking of Federally-designated Endangered and Threatened Species: The purpose of this subsection is to eliminate the need for both federal and state permits for take and incidental take of Federally-designated Endangered and Threatened Species. Activities that result in take or incidental take of Federally-designated Endangered and Threatened Species do not require a permit from the Commission when authorized by the U.S. Fish and Wildlife Service or the National Oceanic and Atmospheric Administration's National Marine Fisheries Service pursuant to 16 U.S.C. Section 1539, or other authorization provided by 16 U.S.C. Section 1536. The Commission permit or other authorization will only be issued to take or incidentally take Federally-designated Endangered and Threatened Species if specifically authorized under a written agreement or regulatory delegation by the U.S. Fish and Wildlife Service or the National Oceanic and Atmospheric Administration's National Marine Fisheries Service provided that the issuance shall not be inconsistent with federal law. The incidental take of a Federally-designated Endangered and Threatened Species that results from activities which the U.S. Fish and Wildlife Service or the National Oceanic and

Atmospheric Administration's National Marine Fisheries Service has determined in writing does not require a permit under 16 U.S.C. Section 1539, or other authorization provided by 16 U.S.C. 1536 does not require a permit under this section and is not prohibited under Rule 68A-27.003, F.A.C.

(2) The permit requirements for the taking of a State-designated Threatened species are as follows:

(a) Intentional take: The Commission may issue permits authorizing intentional take of Florida State-designated Threatened species for scientific or conservation purposes which will benefit the survival potential of the species except for species that have a permitting standard for intentional take in Rule 68A-27.003, F.A.C., and then that standard will apply. For purposes of this rule, a scientific or conservation purpose shall mean activities that further the conservation or survival of the species, including collection of scientific data needed for conservation or management of the species. The following factors shall be considered in determining whether there is a scientific or conservation purpose which will benefit the survival potential of the species;

(b) Incidental take: The Commission may issue permits authorizing incidental take of State-designated Threatened species upon a conclusion that the following permitting standards have been met: the standards for species when contained in Rule 68A-27.003, F.A.C., take precedence; for blackmouth shiner, striped mud turtle, Florida mastiff bat, and pillar coral, a permit may be issued if the permitted activity clearly enhances the survival potential of the species; for activities and all proposed mitigation will provide an overall other State-designated Threatened species, the permit may be issued when there is a scientific or conservation benefit and only upon a showing by the applicant that the permitted activity will not have a for the species and no negative impact on the survival potential of the species. Factors which shall be considered in determining whether a permit may be granted are:

1. through 7. No change.

(c) ~~Land management activities that benefit wildlife or agriculture, as defined in Section 570.02, Florida Statutes, conducted in accordance with Department of Agriculture and Consumer Service's adopted best management practices and that are not inconsistent with Management Plans for species as defined in this rule chapter are authorized and do not require a permit authorizing incidental take despite any other provision of this section.~~

(d) Agriculture, as defined in Section 570.02, Florida Statutes, conducted in accordance with best management practices (BMPs) adopted by the Department of Agriculture and Consumer Service pursuant to Section 403.067 and Section 597.004, Florida Statutes, is authorized and does not require a permit authorizing incidental take despite any other provision of this section. The Commission will work cooperatively with the Florida Department of Agriculture and

Consumer Services, landowners, and other stakeholders to legislatively authorize, develop, and adopt BMPs to protect wildlife species within three years of the effective date of these rules.

(e)(4) Wildlands fire suppression actions necessary to ensure public safety during emergency circumstances, including but not limited to, setting counterfires, removing fences and other obstacles, digging trenches, cutting firelines, or using water from public and private sources are authorized and do not require a permit authorizing incidental take despite any other provision of this section, unless specified in management plans for species as defined in this rule chapter.

(f)(e) Take of a marine organism as defined in Chapter 68B-8, F.A.C., and life identified as a Florida Endangered and Threatened Species will be permitted pursuant to the provisions of Chapter 68B-8, F.A.C.

No other changes were made to the rule amendments as proposed.

**DEPARTMENT OF FINANCIAL SERVICES
Division of Insurance Agents and Agency Services**

RULE NO.: 69B-220.001
RULE TITLE: Pre-Qualification and Licensure of
Emergency Adjusters
NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 36, No. 26, July 2, 2010 issue of the Florida Administrative Weekly.

- (1) through (5) No change.
- (6) (a) through (e) No change.
- (f) 1. through 3. No change.

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 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 adjuster if certified mail service is unsuccessful.

The remainder of the rule remains as published on July 2, 2010.

**Section IV
Emergency Rules**

**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 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."

**Section V
Petitions and Dispositions Regarding Rule
Variance or Waiver**

**DEPARTMENT OF AGRICULTURE AND CONSUMER
SERVICES**

NOTICE IS HEREBY GIVEN THAT on September 7, 2010, the Department of Agriculture and Consumer Services, received a petition for Variance or Waiver from Charles J. DeGrange, Vice President of The Windsor at Bay Colony Condominium Association. The Petition requests a permanent variance or waiver from subsection 5F-11.002(1), F.A.C., which adopts the standards of the National Fire Protection Association for gas appliances and gas piping as published in NFPA No. 54, American National Standard National Fuel Gas Code (2006). The specific section of NFPA 54 for which the variance would apply is Section 7.9.2.2, NFPA 54, National Fuel Gas Code, 2006 (formerly, Section 3.10.2, NFPA 54, National Fuel Gas Code, 1996).

A copy of the Petition for Variance or Waiver may be obtained by contacting: Lisa M. Bassett, Chief, Bureau of Liquefied Petroleum Gas Inspection, 3125 Conner Boulevard, Suite N, Tallahassee, Florida 32399-1650 or by calling Lisa M. Bassett at (850)921-8001.

The Department of Agriculture and Consumer Services will accept comments concerning this petition for 14 days from the date of publication of this Notice. To be considered, the comments must be received by the end of business on the 14th day at the: Department of Agriculture and Consumer Services, Bureau of Liquefied Petroleum Gas Inspection, 3125 Conner Boulevard, Suite N, Tallahassee, Florida 32399-1650, Attn.: Lisa M. Bassett, Chief, Bureau of LP Gas Inspection.