SUBJECT AREA TO BE ADDRESSED: The recreational harvest of red snapper in state waters of the Gulf of Mexico.

SPECIFIC AUTHORITY: Article IV, Section 9, Florida Constitution.

LAW IMPLEMENTED: Article IV, Section 9, Florida Constitution.

A HEARING ON THE PROPOSED RULE AMENDMENTS WILL BE HELD IN CONJUNCTION WITH THE COMMISSION'S PUBLIC MEETING AT A TIME, DATE AND PLACE TO BE ANNOUNCED LATER IN THIS PUBLICATION.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop meeting, is asked to advise the agency at least 5 calendar days before the workshop / meeting by contacting Andrena Knicely at (850)487-1406. If you are hearing or speech impaired, please contact the agency by calling (850)488-9542.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: James V. Antista, General Counsel, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

Section II
Proposed Rules

DEPARTMENT OF STATE

Division of Historical Resources

RULE TITLE: RULE NO.:
Florida Folklife Apprenticeship Program 1P-1.009

PURPOSE AND EFFECT: The purpose of the proposed rule is to establish guidelines and application materials for the Florida Folklife Apprenticeship Program.

SUMMARY: The rule provides for guidelines and application materials for the Florida Folklife Apprenticeship Program.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory cost has been prepared.

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

SPECIFIC AUTHORITY: 267.16(2), 267.16(5) FS.

LAW IMPLEMENTED: 267.16(1), 267.161(2) FS.

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

TIME AND DATE: 10:00 a.m., November 29, 1999

PLACE: Conference Room, 3rd Floor, R. A. Gray Building, 500 S. Bronough Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Tina Bucuvalas, Department of State, Bureau of Historic Preservation, Division of Historical Resources, R.A. Gray Building, 500 S. Bronough Street, Tallahassee, FL

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring a special accommodations to participate in this workshop is asked to advise the agency at least 48 hours before the workshop by contacting Tina Bucuvalas at (850)487-2333. If you are hearing or speech impaired, please contact the agency by calling (850)922-9606 or sending an email message to tbucuvalas@mail.dos.state.fl.us.

THE FULL TEXT OF THE PROPOSED RULE IS:

1P-1.009 Florida Folklife Apprenticeship Program.

Florida Folklife Apprenticeship Program. The purpose of the Florida Folklife Apprenticeship Program of the Department of State is to preserve and promote Florida's cultural heritage by providing an opportunity for master folk artists to share their technical skills and cultural knowledge with apprentices who will carry forward these traditions. General information, application instructions, deadlines, application forms and methods of selection are set forth in the Florida Folklife Apprenticeship Guidelines and Application, which is herein incorporated by reference (Form #HR3E23).

Specific Authority 267.16(2), 267.16(5) FS. Law Implemented 267.16(1), 267.161(2) FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Tina Bucuvalas, Bureau of Historic Preservation, Division of Historical Resources

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: George Percy, Director, Division of Historical Resources

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 20, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 17, 1999

DEPARTMENT OF EDUCATION

State Board of Community Colleges

RULE TITLES:	RULE NOS.:
Establishment of the State Board of Community Colleges	6H-1.014
Committees	6H-1.015
Documents	6H-1.016
Meetings and Workshops	6H-1.020
Agenda	6H-1.021
Rulemaking	6H-1.031
Division of Community Colleges	6H-1.032

PURPOSE AND EFFECT: The purpose is to delete the rules. The effect will be the elimination of rules from the Florida Administrative Code that are no longer necessary.

SUMMARY: Recent amendments to Chapter 120, F.S., require that agencies review all rules and report to the Legislature any rules which exceed statutory authority. The Joint Administrative Procedures Committee has recommended that the procedural rules for operation of the State Board of Community Colleges not be adopted as rules; therefore, the rules are repealed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 120.54(5), 240.311 FS.

LAW IMPLEMENTED: 120.54(5), 240.311 FS.

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

TIME AND DATE: 8:30 a.m., January 14, 2000

PLACE: St. Petersburg Junior College, St. Petersburg, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Sydney H. McKenzie III, General Counsel, State Board of Community Colleges, Division of Community Colleges, 1314 Turlington Building, 325 W. Gaines St., Tallahassee, Florida 32399-0400

THE FULL TEXT OF THE PROPOSED RULES IS:

6H-1.014 Establishment of the State Board of Community Colleges.

Specific Authority 120.53(1), 240.305, 240.307, 240.309 FS. Law Implemented 120.53(1), 240.305, 240.307, 240.309 FS. History–New 2-27-84, Formerly 6H-1.14, Repealed _____.

6H-1.015 Committees.

Specific Authority 240.309(1) FS. Law Implemented 120.53(1), 240.309(1) FS. History–New 2-27-84, Amended 1-7-85, Formerly 6H-1.15, Amended 3-9-87, 7-4-88, 3-8-89, 7-19-94, Repealed _____.

6H-1.016 Documents.

Specific Authority 120.53(1), 240.309 FS. Law Implemented 120.53(1)(2), 240.309 FS. History–New 2-27-84, Formerly 6H-1.16, Repealed _____.

6H-1.020 Meetings and Workshops.

Specific Authority 120.53(1), 240.309 FS. Law Implemented 120.53(1), 240.309 FS. History–New 2-27-84, Formerly 6H-1.20, Repealed _____.

6H-1.021 Agenda.

Specific Authority 120.53(1), 240.309 FS. Law Implemented 120.53(1), 240.309 FS. History–New 2-27-84, Formerly 6H-1.21, Repealed_____.

6H-1.031 Rulemaking.

Specific Authority 120.53(1), 240.311 FS. Law Implemented 120.53(1), 120.565, 240.311 FS. History–New 2-27-84, Formerly 6H-1.31, Repealed _____.

6H-1.032 Division of Community Colleges.

Specific Authority 120.53(1), 240.309 FS. Law Implemented 120.53(1), 240.309, 240.311 FS. History–New 2-27-84, Formerly 6H-1.32, Repealed _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Sydney H. McKenzie, III, General Counsel, State Board of Community Colleges

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: J. David Armstrong, Jr., Executive Director, Community College System

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 3, 1999

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE TITLE: RULE NO.:

Sales to or by Contractors Who Repair, Alter, Improve and Construct Real Property 12A-1.051

PURPOSE AND EFFECT: The proposed substantial rewording of Rule 12A-1.051, F.A.C., is needed to incorporate statutory changes to Chapter 212, F.S., made by the 1998 Legislature; to remove provisions that are inconsistent with those statutory changes; to reorganize and restructure the rule to make it easier for the reader to locate relevant provisions; to eliminate obsolete provisions; to address certain recurring issues that are not currently addressed in the rule; and to incorporate judicial interpretations of the relevant statutes and of the current rule.

SUMMARY: The proposed substantial rewording of Rule 12A-1.051, F.A.C., identifies factors that determine whether a transaction involves an improvement to real property or a sale of tangible personal property, explains how real property contractors determine the proper sales and use taxation of items they purchase or fabricate to use in performing contracts, provides guidance concerning the proper tax treatment when contracts involve both real property and tangible personal property, discusses certain industry-specific statutory provisions, and clarifies the application of the governing general principles to specific common situations.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: Since the amendment of these rule provisions does not implement any new administrative program or procedure, no new regulatory costs are being created. Therefore, no statement of estimated regulatory costs has been prepared.

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

SPECIFIC AUTHORITY: 212.17(6), 212.18(2), 213.06(1) FS.

LAW IMPLEMENTED: 212.02(4),(7),(16),(20),(21), 212.06(1),(14), 212.07(1),(8), 212.08(6), 212.14(5), 212.183 FS.

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

TIME AND DATE: 10:00 a.m., November 30, 1999

PLACE: Auditorium, R. A. Gray Building, 500 S. Bronough Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Linda W. Bridges, Tax Law Specialist, Technical Assistance and Dispute Resolution, Post Office Box 7443, Tallahassee, Florida 32314-7443; telephone number (850)922-9412

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any persons requiring special accommodations to participate in any proceeding before the Technical Assistance and Dispute Resolution Office is asked to advise the Department at least five (5) calendar days before such proceeding by contacting Jamie Phillips at (850)488-0717. If you are hearing or speech impaired, please contact the Department by calling 1(800)367-TDD1, 1(800)367-8331.

THE FULL TEXT OF THE PROPOSED RULE IS:

(Substantial Rewording of Rule 12A-1.051 follows. See Florida Administrative Code for present Text.)

12A-1.051 Sales to or by Contractors Who Repair, Alter, Improve and Construct Real Property.

(1) Scope of the rule. This rule governs the taxability of the purchase, sale, or use of tangible personal property by contractors and subcontractors who purchase, acquire, or manufacture materials and supplies for use in the performance of real property contracts other than public works contracts performed for governmental entities, which are governed by the provisions of Rule 12A-1.094, F.A.C. If a real property project involves multiple subcontractors, each subcontractor is responsible for paying, accruing, collecting, and remitting tax on his subcontract in accordance with this rule.

(2) Definitions. For purposes of this rule, the following terms have the following meanings:

(a) "Fabricated cost" means the cost to a real property contractor of fabricated items, as defined in the following paragraph. The elements of cost included in fabricated cost are set forth in Rule 12A-1.043, F.A.C. Fabricated cost does not include the cost of transporting fabricated items from the contractor's plant to the job site or the cost of labor at the job site where the fabricated items are incorporated into the real property improvement.

(b) "Fabricated items" means items contractors manufacture, produce, process, compound, or fabricate for their own use in performing contracts for improvements to real property. The term applies only to items the contractor manufactures, produces, processes, compounds, or fabricates at a plant or shop maintained by the contractor. For this purpose, a temporary facility established at a job site that is used exclusively in connection with performing a contract for a real property improvement at that job site is not considered to be a plant or shop maintained by the contractor.

(c)1. "Fixture" means an item that is an accessory to a building, other structure, or to land, that retains its separate identity upon installation, but that is permanently attached to the realty. Fixtures include such items as wired lighting, kitchen or bathroom sinks, furnaces, central air conditioning units, elevators or escalators, or built-in cabinets, counters, or lockers.

2. In order for an item to be considered a fixture, it is not necessary that the owner of the item also own the real property to which the item is attached. A retained title provision in a sales contract or in an agreement that is designated as a lease but is in substance a conditional sales contract is not determinative of whether the item involved is or is not a fixture. Similarly, the fact that a lessee or licensee of real property rather than the lessor/owner enters into a contract for an item to be permanently attached to the real property does not prevent that item from being classified as a fixture.

3. The determination whether an item is a fixture depends upon review of all the facts and circumstances of each situation. Among the relevant factors that determine whether a particular item is a fixture are the following:

a. The method of attachment. Items that are screwed or bolted in place, buried underground, installed behind walls, or joined directly to a structure's plumbing or wiring systems are likely to be classified as fixtures. Attachment in such a manner that removal is impossible without causing substantial damage to the underlying realty indicates that an item is a fixture.

b. Intent of the property holder in having the item attached. If the property holder who causes an item to be attached to realty intends that the item will remain in place for an extended or indefinite period of time, that item is more likely to be a fixture. That intent may be determined by reviewing all of the property holder's actions in regard to the item, including how the item is treated for purposes of ad valorem and income tax purposes. For example, if a property owner reports the value of the item for purposes of ad valorem taxation of the realty and depreciates the item for tax and financial accounting purposes as real property, that indicates an intent that the property is permanently attached as a fixture.

c. Real property law. If an interest in an item arises upon acquiring title to the land or building, the item is more likely to be considered a fixture. For example, if the seller of real property would be expected to leave an item behind when vacating the premises for a new owner without the contract specifically requiring that it be left, that item is likely to be classified as a fixture.

d. Customization. If items are custom designed or custom assembled to be attached in a particular space, they are more likely to be classified as fixtures. Customization indicates intent that the items are to remain in place following installation.

e. Permits and licensing. If installation of an item requires a construction permit or licensing of the contractor under statutes or regulations governing the building trades, that item is more likely to be regarded as a fixture.

f. Legal agreements. The terms of any purchase agreement, deed, lease, or other legal document pertaining specifically to an item may be relevant in determining whether that item is a fixture of real property.

The foregoing list of factors relevant to determining whether an item is a fixture is intended to be illustrative only. Additional factors may exist in any particular case, and the weight to be given to the factors will also vary in each case.

4. The term "fixture" does not include the following items, whether or not such items are attached to real property in a permanent manner:

a. Trade fixtures.

b. Titled property.

c. Machinery or equipment.

(d) "Improvement to real property" or "real property improvement" includes the activities of building, erecting, constructing, altering, improving, repairing, or maintaining real property.

(e)1. "Machinery or equipment" means and includes property that:

a. is intended to be used in manufacturing, producing, compounding, processing, fabricating, packaging, moving, or otherwise handling personal property for sale or other commercial use, in the performance of commercial services, or for other purposes not related to a building or other fixed real property improvement; and

b. may, on account of its nature, be attached to the real property but which does not lose its identity as a particular piece of machinery and equipment.

2. "Machinery or equipment" generally does not include junction boxes, switches, conduits, wiring, valves, pipes, and tubing incorporated into the electrical, cabling, plumbing, or other structural systems of fixed works, buildings, or other structures, whether or not such items are used solely or partially in connection with the operation of machinery and equipment.

3. "Machinery or equipment" serves a particular commercial activity that is carried on at a location rather than serving general uses of land or a structure. Examples of machinery or equipment include conveyor systems, printing presses, drill presses, or lathes. Examples of items that are not machinery or equipment because they are integrated into the structure or realty and retain their usefulness no matter what activity is carried on at the site include heating and air conditioning system components or water heaters. Any property that would qualify for exemption as machinery or equipment under section 212.08(5), Florida Statutes, or any other provision of Chapter 212, Florida Statutes, is considered to be machinery or equipment for purposes of this rule. In the case of property used in the production of electrical or steam energy, any item that would qualify as exempt machinery or equipment under section 212.08(5)(c), Florida Statutes, is considered to be machinery or equipment for purposes of this rule.

(f) "Manufacture, produce, compound, process, or fabricate" means:

1. to convert or condition tangible personal property by changing the form, composition, quality, or character of the property;

2. to make, build, create, produce, or assemble components or items of tangible personal property in a new or different manner;

3. to physically apply materials and labor necessary to modify or change the characteristics of tangible personal property.

The terms do not include activities that do not result in any change in the character or quality of tangible personal property. For example, a repair or restoration of property to return it to its original state and level of functionality is not included within the defined activities.

(g) "Real property" means land, improvements to land, and fixtures. It is synonymous with the terms "realty" and "real estate."

(h)1."Real property contract" means an agreement, oral or written, whether on a lump sum, time and materials, cost plus, guaranteed price, or any other basis, to:

a. Erect, construct, alter, repair, or maintain any building, other structure, road, project, development, or other real property improvement;

b. Excavate, grade, or perform site preparation for a building, other structure, road, project, development, or other real property improvement; or

c. Furnish and install tangible personal property that becomes a part of or is directly wired or plumbed into the central heating system, central air conditioning system, electrical system, plumbing system, or other structural system that requires installation of wires, ducts, conduits, pipes, vents, or similar components that are embedded in or securely affixed to the land or a structure thereon.

2. The term "real property contract" does not include:

a. A contract for the sale or for the sale and installation of tangible personal property such as machinery and equipment; or

b. a contract to furnish tangible personal property that will be installed or affixed in such a way as to become a fixture or improvement to real property if the person furnishing the property has not also contracted to affix or install it.

3. A contract is a real property contract if described in subparagraph 1. above, whether or not such agreement also involves providing property or services that would not be considered improvements to real property. See subsection (8) of this rule for discussion of such contracts.

4. A contract contains the terms of the agreement between the contractor and the owner (or other interest holder) of the real property and is entered into in advance of any work being undertaken. A proposal prepared by a contractor prior to entering an agreement is not a contract. Statements, invoices, or other billings submitted after work has begun are not contracts. For example, a developer solicits bids on the plumbing work for a project. A contractor prepares a proposal that lists all the materials anticipated to be necessary, with unit pricing, labor costs, and a markup based on a percentage of the total material and labor costs. The developer accepts the proposal. The parties enter into an agreement that requires the contractor to provide all the materials and labor necessary to supply the plumbing system for the project for a single lump sum price. When the work is completed, the contractor sends an invoice for the lump sum amount that shows a breakdown into materials and labor. Neither the proposal nor the invoice is a contract under which the developer agrees to pay separately for materials and labor. They are documents prepared by the contractor to explain or justify the price. The contract is the agreement between the parties that an entire installed plumbing system will be provided for a single lump sum.

(i) "Titled property" means property that must be registered, licensed, titled, or documented by this state or by the United States, such as airplanes, boats, and motor vehicles. A houseboat, even if permanently docked and used as a primary residence, is not real property. Mobile homes are titled property unless they are assessed for ad valorem tax purposes as real property. Owners may report mobile homes as real property and have them assessed as such for ad valorem tax purposes. These mobile homes are issued special decals. Classification of a mobile home as personal property by a seller or a lender does not prohibit the owner of the mobile home from having the property assessed as real property. A mobile home that is issued a real property decal is treated as real property for purposes of this rule.

(j) "Trade fixtures" means items that are attached to real property by the operator of a trade or business that occupies the premises and are useful solely in connection with or to facilitate that trade or business, rather than serving functions integral to general use of land or a building. For example, the operator of a bakery has a special glass display counter installed for displaying cookies and doughnuts. The counter would not be useful to a different type of retail business because of the shelving configuration and materials used. The counter is bolted to the floor. The counter is a trade fixture and not a fixture of the realty. If the bakery has a sign installed to identify the location by name of the business, that sign is a trade fixture. If the same bakery operator has built-in storage shelving installed in a supply room or overhead lighting installed in the shop area, those items are not trade fixtures because the shelving and lighting are equally functional for any subsequent user of the premises.

(3) Classification of contracts by pricing. The taxability of purchases and sales by real property contractors is determined by the pricing arrangement in the contract. Contracts generally fall into one of the following categories:

(a) Lump sum contracts. These are contracts in which a contractor or subcontractor agrees to furnish materials and supplies and necessary services for a single stated lump sum price.

(b) Cost plus or fixed fee contracts. These are contracts in which the contractor or subcontractor agrees to furnish the materials and supplies and necessary services in exchange for reimbursement of costs plus a fee that is fixed in advance or calculated as a percentage of the costs.

(c) Upset or guaranteed price contracts. These are contracts in which the contractor or subcontractor agrees to furnish materials and supplies and necessary services based on costs plus fees but with an upset or guaranteed maximum price which may not be exceeded.

(d) Retail sale plus installation contracts. These are contracts for improvements to real property in which the contractor or subcontractor agrees to sell specifically described and itemized materials and supplies at an agreed price or at the regular retail price and to complete the work either for an additional agreed price or on the basis of time consumed. In order for a contract to fit in this category, all the materials that will be incorporated into the work must be itemized and priced in the contract before work begins. If a contract itemizes some materials but does not itemize other materials that will be incorporated into the work, the contract is not included in this category. Because the sale of the materials is a separable transaction from the installation, the purchaser must assume title to and risk of loss of the materials and supplies as they are delivered, rather than accepting title only to the completed work. The contractor may remain liable for negligence in handling and installing the items.

(e) Time and materials contracts. These are contracts in which the contractor or subcontractor agrees to furnish materials and supplies and necessary services for a price that will be calculated as the sum of the contractor's cost or a marked up cost for materials to be used plus an amount for services to be based on the time spent performing the contract. These contracts are similar to cost plus or fixed fee contracts, because the final price to the property holder will be determined based on the cost of performance. A time and materials contract may or may not also have a guaranteed or upset price clause. Time and materials contracts differ from contracts described in paragraph (d), because the materials are

not completely identified, itemized, and priced in the contract in advance and because the property owner is contracting for a finished job rather than the purchase of materials.

(4) General rule of taxability of real property contractors. Contractors are the ultimate consumers of materials and supplies they use to perform real property contracts and must pay tax on their costs of those materials and supplies, unless the contractor has entered a retail sale plus installation contract. Contractors performing only contracts described in paragraphs (3)(a),(b),(c), or (e) do not resell the tangible personal property used to the real property owner but instead use the property themselves to provide the completed real property improvement. Such contractors should pay tax to their suppliers on all purchases. They should also pay tax on all materials they fabricate for their own use in performing such contracts, as discussed in subsection (10). They should charge no tax to their customers, regardless of whether they itemize charges for materials and labor in their proposals or invoices, because they are not engaged in selling tangible personal property. Such contractors should not register as dealers unless they are required to remit tax on the fabricated cost of items they fabricate to use in performing contracts.

(5) Rule for (3)(d) contractors. Contractors who perform retail sale plus installation contracts described in paragraph (3)(d), do sell tangible personal property. They should register as dealers and provide resale certificates for materials that are itemized and resold under paragraph (3)(d) contracts. They should not provide resale certificates for items that they use themselves rather than reselling, such as hand tools, shop equipment, or office supplies. They must charge their customers tax on the price paid for tangible personal property, unless a valid exemption certificate is provided, but not on the charges for installation labor.

(6) Sales of tangible personal property. Contractors, manufacturers, or dealers who sell and install items of tangible personal property, including those enumerated in Rule 12A-1.016, F.A.C., must collect tax on the full selling price, including any installation or other charges, even though such charges may be separately stated. The items listed in Rule 12A-1.016, F.A.C., are tangible personal property even after installation, and their sale with installation is not classified as a real property contract. Contractors, manufacturers, or dealers who sell property over-the-counter without performing installation services must collect tax on the full sales price of such items, even through those items will become improvements to real property upon installation by the purchaser. At the point at which they are sold in over-the-counter transactions, those items are tangible personal property.

(7) Repairs to machinery and equipment. Any owner or lessee that engages another to make repairs to or perform maintenance services on machinery and equipment that, because of its size, configuration, method of attachment, or other characteristics, has the appearance of real property, must inform the service provider that the machinery or equipment is tangible personal property. Unless the repair is exempt from taxation under Chapter 212, F.S., the owner or lessee should pay sales tax on the full price of the repair or maintenance to any service provider that is a registered dealer. If the service provider ordinarily operates as a real property contractor and is not a registered dealer, the owner or lessee must remit tax on the full price of the repair or maintenance directly to the state.

(8) Mixed contracts. A real property contract may also include materials and labor that are not real property improvements. A contract that includes both real property work and tangible personal property is referred to in this subsection as a mixed contract. A mixed contract is not the same as a contract described in paragraph (3)(d) of this rule. Paragraph (3)(d) deals with a real property contract in which the contractor separately itemizes and prices all the materials that will be incorporated as part of the real property. A mixed contract is one that involves a real property improvement, maintenance, or repair and also involves providing tangible personal property that remains tangible personal property and does not become part of the real property. In the case of a mixed contract, taxability depends upon the predominant nature of the work performed under the contract and upon the contract terms.

(a) If the predominant nature of a mixed contract is a contract for real property improvements, taxability will be determined as if the contract were entirely for real property. For example, a residential developer routinely provides some items of tangible personal property, such as free standing appliances, with new homes sold under cost-plus contracts. The predominant nature of the contract is for a dwelling. The developer should pay sales or use tax on the appliances. A contractor constructs a factory under a turnkey contract that includes providing and installing machinery and equipment that is not exempt from sales and use tax. The contract is predominantly for a factory, a real property improvement, and the contractor should pay use tax on the cost of the machinery and equipment. No tax is collected from the property owner in either case, even though some tangible personal property is included in the project.

(b) If the predominant nature of a mixed contract is a contract for tangible personal property, taxability of the contract will be determined as if the contract were entirely for tangible personal property. For example, a vendor of a mechanical conveyor system for a warehouse provides reinforced concrete foundations and embeds steel plates in the concrete to permit installation of the equipment by bolting it to the plates. The contract is predominantly for the sale of equipment. The contractor should buy the equipment, concrete, and steel plates using a resale certificate and charge tax on the full price charged to the customer.

(c) The determination of the predominant nature of a contract will depend upon the facts and circumstances of each case. Consideration will be given to the description of the project and the responsibilities of the contractor as set forth in the contract. Consideration will also be given to the relative cost of performance of the real property and tangible personal property components of the contract.

(d) If a mixed contract clearly allocates the contract price among the various elements of the contract, and such allocation is bona fide and reasonable in terms of the costs of materials and nature of the work to be performed, taxation will be in accordance with the allocation. For example, a residential developer builds and sells a home on a cost plus basis, but the contract provides separately stated prices for the sale and installation of certain optional free standing appliances that are tangible personal property and are not classified as real property fixtures. The contractor may purchase those appliances using a resale certificate and charge sales tax on the price paid for the appliances, including installation, by the home buyer. The contractor is responsible for paying tax on all the materials that are included in the cost plus price of the home, other than the separately itemized appliances. Similarly, a manufacturer who sells and installs a mechanical conveyor system in a warehouse could state a separate charge in the contract for providing reinforced concrete with embedded steel plates in the warehouse floor to support the conveyor. The conveyor system is machinery or equipment and is therefore tangible personal property. The concrete and plates would be considered a real property improvement. The contractor should pay tax on the materials used for the real property part of the contract and not charge tax to the customer on the related charge. The customer should pay tax on the rest of the contract price allocable to the conveyor machinery itself.

(e) This subsection does not affect any exemption provided in Chapter 212, F.S., for machinery or equipment that may be claimed by a contractor based on a temporary tax exemption permit, affidavit, or other authorized certification by the owner of real property. For example, purchases of certain equipment for generating electrical power or of certain machinery for manufacturing tangible personal property for sale are exempt from sales and use taxes. In order for the property owner to receive the benefit of these exemptions, it has been specifically provided that contractors who purchase and install the exempt items may claim the exemption based on the property owner's providing the required documentation of entitlement. The guidelines on mixed contracts are not intended to impact these exemptions. In the case of a mixed contract that is treated as a real property contract, the contractor is still entitled to purchase the qualified equipment or machinery tax-exempt. In the case of a mixed contract treated as a sale of tangible personal property, the contractor would purchase the equipment or machinery using a resale certificate and accept the property owner's authorized documentation of exemption in lieu of charging tax on the subsequent sale of the equipment or machinery to the property owner.

(9) Dual operators. Some contractors both use materials themselves in the performance of contracts and resell materials either in over-the-counter sales or under contracts described in paragraph (3)(d). Those contractors should register as dealers. When they purchase materials that they may either use themselves or that they may resell, they may issue a resale certificate. Florida tax should be remitted when a subsequent event determines the appropriate taxation of the materials. If the materials are subsequently resold, tax should be collected from the buyer and remitted to the state. If the materials are used by the contractor, use tax should be paid to the State instead.

(10) Use tax on fabrication costs. Contractors may maintain shops, plants, or similar facilities where they manufacture, produce, compound, process, or fabricate items for their own use in performing contracts. Contractors are required to pay use tax on the fabricated cost of those items. The elements that must be included in the taxable cost of such items are set forth in Rule 12A-1.043, F.A.C. In the case of real property contractors, the taxable cost of an item manufactured, produced, compounded, processed, or fabricated for use in performing a contract does not include labor that occurs at the job site where the item will be incorporated into a real property improvement or transportation from the plant where an item was fabricated to the job site. Examples of real property contractors who are subject to tax under this subsection include cabinet contractors who build custom cabinets in their shops, roofing contractors who operate tile plants, or heating/air conditioning/ventilation contractors who maintain sheetmetal shops for making ductwork. Real property contractors that are required to remit use tax on fabricated items must register as dealers for purposes of remitting such tax if they are not already registered as dual operators.

(11) Percent of contract price method.

(a) The Department is authorized to adopt rules that establish an elective percent of contract price method for calculating use tax obligations of real property contractors that manufacture, produce, compound, process, or fabricate tangible personal property for their own use in performing contracts. For example, a rule could be adopted to provide that cabinet makers that build cabinets at their own shops and install them could elect to pay use tax on a certain percentage of the contract price paid by the real property holder, rather than keeping track of the elements of taxable cost of the fabricated cabinets.

(b) In order to initiate a rulemaking project to adopt the percent of contract price method for an industry group, the Department must receive a petition from the majority of the members of the group or from a statewide association representing the group. The petition must be accompanied by a

proposal setting forth the percent of contract price the group believes should be adopted in the rule and by sufficient information and documentation to establish that the proposed percentage is based on a reasonable estimate of average taxable costs incurred by members of the petitioning group. The industry group may propose and the Department may in appropriate cases establish alternative percentages for members of the group who are registered dealers and do not pay tax on purchases of direct materials that are incorporated into fabricated items and for members of the group who pay sales tax on those purchases. The Department will consider the information supplied with the petition, as well as any other relevant information that is available. Petitions should be submitted to Department of Revenue, Technical Assistance and Dispute Resolution, Post Office Box 7443, Tallahassee, Florida 32314-7443.

(c) The Department may review rules adopted at the petition of industry groups and amend them to adjust the percentage to insure it continues to reflect a reasonable estimate of taxable costs for that industry group. The percentage of contract price established in a rule described in this subsection can not be amended during the first five years after its adoption. After that time, the Department may review and amend the rule, but all such reviews must be at least five years apart. In conducting a review, the Department will consider any information submitted by the industry group affected, as well as any other available information.

(d) If the Department adopts a percent of contract price rule for an industry group, members of that group may elect to apply the method on a contract-by-contract basis or to apply it to all contracts in any period by timely accruing and remitting tax using the method. Timely accrual and remittance means accrual as of the time invoices are issued based on applying the established percentage to the amount invoiced to calculate the taxable cost and remittance with a timely filed return filed in the reporting period immediately after the accrual (i.e., in the month following the issuance of the invoice and accrual of the tax for a contractor who is required to file on the regular monthly schedule). The contractor must maintain records to document the timely accrual and payment of the tax on each contract for which the method is used.

(e) Application of the established percentage to the contract price is intended to capture the taxable cost of fabricated items used in performing the contract. If the contractor pays sales tax on purchases of materials incorporated into the fabricated items, the use tax due on the fabricated cost under the percent of contract method should be reduced to reflect the tax already paid on those materials. For example, a real property contractor who fabricates some of the items used in performing contracts is entitled by rule to use a 50% of contract price method to compute use tax on fabricated cost. The contractor agrees to fabricate and install items for a lump sum price of $10,000. The contractor pays sales tax on all purchases of materials and supplies. The cost of materials incorporated into the fabricated items for the contract is $3,000, on which the contractor has already paid $180 ($3,000 x 6%) in sales tax to the supplier. Those materials costs on which tax has already been paid are subtracted from the taxable percentage of the contract price before calculating the use tax due on the finished item. The use tax to be accrued and remitted under the percent of contract method is $120 (50% of $10,000 = $5,000 - $3,000 = $2,000 x 6% = $120).

(f) Use of the percent of contract price method applies only to the use tax owed on fabricated items. Other taxes may also be owed in connection with performance of a contract. For example, a real property contractor who fabricates some of the items used in performing contracts is entitled by rule to use a 50% of contract price method to compute use tax on fabricated cost. The contractor agrees to fabricate items, install those items, and supply materials and labor for on-site work that does not require shop fabrication. The contract is for a lump sum price of $10,000. The contractor also makes over-the-counter sales. He is therefore a registered dealer and buys all the materials involved using a resale certificate. The cost of materials used for the on-site work is $1000. Use tax must be remitted on 50% of the contract price for the fabricated items and on $1,000 for the on-site materials. The total tax owed is $360 ($5,000 + $1,000 = $6,000 x 6% = $360).

(g) The percent of contract price method involves an alternative way to calculate the use tax owed and alternative timing for accrual and payment of tax. It does not change the nature of the tax liability. The tax involved is still a use tax on fabricated cost. It is not a tax on the income earned from contracts. Election of the method, therefore, does not affect the jurisdiction where the tax is owed. Tax is owed in the jurisdiction where fabrication occurs, not in the jurisdiction where the contract is performed. For example, if a real property contractor purchases materials and fabricates items in Florida for a contract, taxable fabrication has occurred in Florida and tax is owed to Florida. Subsequent transportation of the item to another state for installation does not make the fabrication exempt from Florida use tax.

(12) Asphalt contractors. Contractors that manufacture asphalt for their own use in the performance of improving real property must calculate the tax on that asphalt based on the sum of the following:

(a) the cost of materials that become a component part or that are an ingredient of the finished asphalt multiplied by 6%; plus

(b) the costs of transportation of such components and ingredients to the plant site multiplied by 6%; plus

(c) an indexed tax per ton representing all other costs associated with the manufacture of the asphalt.

If sales tax has been paid on the purchase of materials or transportation in (a) or (b) above, the cost of such materials or transportation is not included in computing the total use tax

due. The indexed tax is computed based on the "materials and components for construction" series of the producer price index, as calculated and published by the United States Department of Labor, Bureau of Statistics. The indexed tax is revised annually, effective each July 1. The Department is responsible for publishing the new rate each year in time to permit timely accruals and payment of use tax by asphalt contractors.

(13) Use tax on rock, shell, fill dirt, or similar materials. A real property contractor is taxable on the cost of rock, shell, fill dirt, or similar materials the contractor uses to perform a real property contract for another person.

(a) If the contractor acquires the materials from a location the contractor owns or leases, the contractor must remit use tax based on one of the following methods:

1. the fair retail market value, which means either the price the contractor would have to pay on the open market or the price at which the contractor would sell the materials to third parties; or

2. the cost of the land plus all costs of clearing, excavating, and loading the materials, including labor, power, blasting, and similar costs.

(b) If the contractor purchases the materials and as part of the agreement excavates and removes them from the seller's land (including state-owned submerged land), the taxable cost is the purchase price paid to the seller plus all the costs incurred by the contractor in clearing, excavating, and removing the materials, including labor.

(c) A contractor on a road project owes no tax on borrow materials that are provided at no charge by the Department of Transportation, including materials extracted from pits that are provided at no charge by that department.

(14) Mobile homes. A contractor who makes improvements or repairs to a mobile home is required to ascertain the status of that home as real property or as tangible personal property to determine how tax should be paid. If the mobile home has a real property decal, the contract should be treated as a real property contract. In that case, the contractor generally will be subject to tax on the materials used, and the customer will pay no tax. If the mobile home does not have a real property decal, improvements or repairs are generally treated as contracts to improve or repair tangible personal property. The contractor should charge tax on the full price paid by the customer, including charges for labor. In that case, the contractor is not subject to tax on the materials that are incorporated into and become a part of the improvement or repair of the mobile home. Upon initial installation of a mobile home, classification is dependent on the method of installation and whether title to the land and the mobile home are held by the same person. See Rule 12A-1.007, F.A.C., for further discussion on the taxation of contracts involving mobile homes.

(15) Contracts performed for nongovernmental tax-exempt entities. Contractors who perform lump sum, cost-plus, guaranteed price, or time and materials contracts for nongovernmental entities that are exempt from sales taxes, such as private schools, hospitals, or churches, are taxable on materials the contractor purchases for use in performing those contracts. Such contractors are not permitted to use the consumer's certificate of exemption issued to the exempt entity in order to purchase materials for the contract exempt from taxes. The entity's exempt status is not relevant, because it applies only to sales of tangible personal property to the entity, not to the contractor. The contractor, not the exempt entity, is the taxable consumer of the materials the contractor purchases to use in performing that contract. The fact that an exempt entity will bear the economic burden of the taxes paid by the contractor in the form of a higher contract price does not change the contractor's tax liabilities.

(16) Subdivision and similar improvements.

(a) Subdivision owners and developers or their contractors are subject to tax on purchases of materials for use in the construction of streets, roadways, water distribution systems, sewers, and similar improvements that the owner or developer subsequently transfers to a municipality or other governmental unit. These transfers are not donations or sales of tangible personal property to a governmental unit.

(b) If a municipality or other governmental unit purchases and installs water mains and distribution pipes for a property owner, including a subdivision developer, under an arrangement whereby the municipality retains ownership, possession, and control of the mains and pipes, but recovers all or part of its cost from the property owner through the collection of an installation charge, such installation charge is equivalent to an assessment for benefits. It is not taxable.

(17) Specific activities classified as real property contracts. Contractors who are engaged in the following activities are generally considered to be real property contractors, although any particular job may be determined not to involve an improvement to real property:

(a) Awning installation;

(b) Block, brick, and stone masonry;

(c) Bridge construction;

(d) Burglar and fire alarm system installation;

(e) Cabinetry (built-in only);

(f) Carpentry;

(g) Carpeting installed with tacks, glue, or other permanent means and serving as the finished floor;

(h) Cement and concrete work;

(i) Closet system installation;

(j) Dock, pier, seawall, and similar construction, maintenance, or repair;

(k) Door and window installation or on-site repair;

(l) Driveway installation or repair;

(m) Electrical system installation and repairs, including structural wiring and cabling, meter boxes, switches, receptacles, wall plates, and similar items;

(n) Elevator and escalator installation and maintenance;

(o) Fencing and gates installation intended for permanent use;

(p) Flooring;

(q) Foundations;

(r) Glass and mirror installation if installed in a permanent manner;

(s) Heating, ventilating, and air conditioning system work;

(t) Insulation of structures or structural components;

(u) Iron work, such as railings, banisters, and stairs, incorporated into buildings;

(v) Landscaping work, including walls, walkways, permanent structures such as greenhouses, arbors, or gazebos, and permanent plantings such as trees, perennial shrubs, and lawns;

(w) Lathing;

(x) Painting of buildings, decks, and other real property structures;

(y) Paving and surfacing work, including driveways, parking lots, patios, roadwork, and sidewalks;

(z) Plastering;

(aa) Plumbing work;

(bb) Radio and telephone transmission towers;

(cc) Roofing work;

(dd) Septic tank installation or maintenance;

(ee) Sheetmetal/ductwork;

(ff) Siding installation;

(gg) Site work, including clearing, grading, demolition, and excavation;

(hh) Signs that are permanently attached to realty and are not excluded as trade fixtures;

(ii) Solar systems;

(jj) Sprinkler system installation for lawn and garden irrigation or for fire prevention;

(kk) Stucco;

(ll) Structural steel and concrete installation;

(mm) Swimming pool installation, including accessories and parts that are permanently attached or are plumbed or wired into plumbing or electrical systems;

(nn) Tile work;

(oo) Utility poles and lines installation and maintenance;

(pp) Wallpaper installation;

(qq) Water, sewer, and drainage systems;

(rr) Waterproofing of structures, decks, driveways, and other real property components; and

(ss) Well drilling and installation.

(18) Specific activities not classified as real property contracts. The sale, installation, maintenance, or repair of the following items is not considered to be a real property contract.

(a) Area rugs and carpets;

(b) Art work (paintings, statuary);

(c) Cabinets and shelving (freestanding);

(d) Computer system components;

(e) Drapes, curtains, blinds, shades, etc.;

(f) Entertainment system (e.g., stereo systems, home theater systems) components;

(g) Furniture;

(h) Household appliances (unless built in and directly wired);

(i) Lawn markers;

(j) Mail boxes;

(k) Mirrors (freestanding);

(l) Radio and television antennas;

(m) Sprinkler systems for lawns or gardens if made up of unburied hoses or tubing and movable sprinkler heads;

(n) Stepping stones;

(o) Telecommunications system components;

(p) Television satellite dishes;

(q) Temporary fencing and gates (e.g., for construction sites); and

(r) Window air conditioning units.

(19) Cross references

(a) For partial exemption of tax on the cost of asphalt manufactured for one's own use in performing contracts for governmental entities, see s. 212.06(1)(c), F.S.

(b) For exemption of charges for repairs of industrial machinery and equipment, see s. 212.08(7)(zz), F.S.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(4),(7),(16),~~(15),~~(19),~~(20),~~(21), 212.06(1), 212.06(14), 212.07(1),(8), 212.08(6), 212.14(5), 212.183 FS. History–Revised 10-7-68, 1-7-70, 6-16-72, Amended 2-3-80, 3-27-80, 6-3-80, 8-26-81, 11-15-82, 6-11-85, Formerly 12A-1.51, Amended 1-2-89, 8-10-92, 7-27-99, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Linda W. Bridges, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, Post Office Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9412

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Charles Strausser, Revenue Program Administrator II, Technical Assistance and Dispute Resolution, P. O. 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4726

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 18, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: The proposed substantial rewording of Rule 12A-1.051, F.A.C., Sales to or by Contractors Who Repair, Alter, Improve and Construct Real Property, was

noticed for a first Rule Development Workshop in the Florida Administrative Weekly on May 28, 1999 (Vol. 25, No. 21, pp. 2499-2507). The first rule development workshop was held on June 14, 1999, in the Auditorium of the R. A. Gray Building, 500 South Bronough Street, Tallahassee, Florida. The proposed substantial rewording of Rule 12A-1.051, F.A.C., Sales to or by Contractors Who Repair, Alter, Improve and Construct Real Property, was noticed for a second Rule Development Workshop in the Florida Administrative Weekly on July 16, 1999 (Vol. 25, No. 28, pp. 3177-3185). The second rule development workshop was held on August 4, 1999, in the Auditorium of the R. A. Gray Building, 500 South Bronough Street, Tallahassee, Florida. Comments received at both workshops are incorporated into the proposed substantial rewording.

DEPARTMENT OF CORRECTIONS

RULE TITLE: RULE NO.:
Admissible Reading Material 33-501.401

PURPOSE AND EFFECT: The proposed rule is needed in order to clarify provisions related to handling of rejected publications. The effect of the proposed rule is to set forth guidelines for the handling of impounded materials pending review and for the confiscation of rejected materials found in inmates' property.

SUMMARY: The proposed rule sets forth guidelines for the handling of impounded materials pending review and for the confiscation of rejected materials found in inmates' property.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 944.09, 944.11 FS.

LAW IMPLEMENTED: 944.11 FS.

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

TIME AND DATE: 9:00 a.m., November 30, 1999

PLACE: Law Library Conference Room, Room B-404, 2601 Blair Stone Road, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Perri King Dale, Office of the General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE FULL TEXT OF THE PROPOSED RULE IS:

33-501.401 Admissible Reading Material.

(1) The provisions of this section shall apply to all publications, including, books, novels, educational reference and correspondence study materials, religious materials, legal materials, newspapers, magazines, brochures, flyers and catalogues, and any other printed materials addressed to a specific inmate or found in the personal property of an inmate.

(2) Inmates shall be permitted to receive and possess publications per terms and conditions established in this rule unless ~~except when~~ the publication is found to be detrimental to the security, order or disciplinary or rehabilitative interests of any institution of the department, or any privately operated institution under contract with the department, or when it is determined that the publication might facilitate criminal activity. Publications shall be rejected when one of the following criteria is met:

(a) It depicts or describes procedures for the construction of or use of weapons, ammunition, bombs, chemical agents, or incendiary devices;

(b) It depicts, encourages, or describes methods of escape from correctional facilities or contains blueprints, drawings or similar descriptions of Department of Corrections facilities or institutions, or includes road maps that can facilitate escape from correctional facilities;

(c) It depicts or describes procedures for the brewing of alcoholic beverages, or the manufacture of drugs or other intoxicants;

(d) It is written in code;

(e) It depicts, describes or encourages activities which may lead to the use of physical violence or group disruption;

(f) It encourages or instructs in the commission of criminal activity;

(g) It is dangerously inflammatory in that it advocates or encourages riot, insurrection, disruption of the institution, violation of department or institution rules~~, the violation of which would present a serious threat to the security, order or rehabilitative objectives of the institution or the safety of any person~~;

(h) It threatens physical harm, blackmail or extortion;

(i) It pictorially depicts sexual conduct ~~as defined by s. 847.001, F.S.,~~ as follows:

1. Actual or simulated sexual intercourse;

2. Sexual bestiality;

3. Masturbation;

4. Sadomasochistic abuse;

5. Actual contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast;

6. Any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed.

(j) It pictorially depicts ~~presents~~ nudity or a lewd exhibition of the genitals in such a way as to create the appearance that sexual conduct is imminent, i.e., display of contact or intended contact with a person's unclothed genitals, pubic area, buttocks or female breasts orally, digitally or by foreign object, or display of sexual organs in an aroused state.

(k) It otherwise presents a threat to the security, order or rehabilitative objectives of the correctional system or the safety of any person.

(3) A subscription to a periodical publication cannot be totally rejected by the institution, but each issue of the subscription shall be reviewed separately and impoundment or rejection shall be based on the criteria established in subsection (2).

(4) Incoming publications previously rejected by the literature review committee.

(a) An incoming publication that has previously been rejected by the department's literature review committee due to inclusion of subject matter held to be inadmissible per the criteria established in subsection (2) shall not be reviewed again unless the publisher presents proof to the literature review committee that it has been revised and in the revision process the material resulting in the original rejection has been removed. When a rejected publication is received at an institution, it shall be impounded and shall not be issued to inmates. The warden or designee shall notify the inmate in writing within 15 calendar days of receipt that the publication has been rejected by the department's literature review committee and cannot be received. The notice shall also advise the inmate that he or she has 30 days to make arrangements to have the rejected publication picked up by an approved visitor or sent to a relative or friend or the sender at the inmate's expense, or the institution will destroy it. The 30 day limit shall not include any time that a grievance appeal is pending provided that the inmate has provided the warden with the written notice required in (7)(b) of this rule. The actual date that the notice is mailed to the publisher or sender shall be documented by date stamp on the copies provided to the publisher or sender and the institution's copy. For purposes of this subsection, the warden's "designee" may include the mailroom supervisor. A rejection notice shall address only one publication; if a single mailing notice includes more than one rejected publication, separate rejection notices shall be prepared for each.

(b) A list of books and individual issues of periodicals that have been rejected by the department's literature review committee shall be maintained in the institution mail room ~~and shall not be required to be reviewed again unless the book or periodical issue has been revised and in the revision process the material resulting in the original rejection has been removed~~.

(5) Incoming publications that have not been previously rejected by the literature review committee.

(a) The warden or designee shall impound and not issue to inmates ~~reject~~ any publication which he or she finds to be inadmissible pursuant to the criteria in subsection (2) within 15 calendar days of receipt of the publication at the institution. If only a portion of a publication meets one of the criteria for rejection established in subsection (2), the entire publication shall be impounded ~~rejected~~. For the purposes of approving the impoundment ~~rejection~~ of publications, the warden's "designee" shall be limited to the assistant warden or chief of a work camp, road prison, or forestry camp.

(b) The warden or designee shall advise the inmate in writing of the specific reasons for the impoundment ~~rejection~~ within 15 calendar days of receipt of the publication at the institution and shall provide two copies of the impoundment notice to the inmate. The warden or designee of the institution that originated the impoundment shall also provide a copy of the notice to the publisher or sender ~~with a copy of the rejection notice~~. The actual date that the ~~rejection~~ notice is mailed to the publisher or sender shall be documented by date stamp on the copies provided to the publisher or sender and the institution's copy. An impoundment notice shall only address one publication; if a single mailing or package includes more than one publication and more than one are determined to be inadmissible, separate impoundment notices shall be prepared for each.

(c) The inmate shall be informed that the impounded or rejected publication shall be held at the institution for 30 days, and that he or she must make arrangements to have it picked up by an approved visitor or sent to a relative or friend or the sender at the inmate's expense. The inmate shall also be advised that if the material is not picked up or mailed out within 30 days, the institution shall ~~discard or~~ destroy it. The 30 day limit shall not include any time that a grievance appeal is pending provided that the inmate has provided the warden with the written notice required in (7)~~(6)~~(b) of this rule. However, if the inmate fails to provide the warden with written notice of his or her appeal within 15 days of the impoundment or rejection, the institution shall not be required to store the publication beyond 30 days.

(d) The impoundment of a publication by a warden or authorized designee of any correctional facility of the department shall result in that publication being impounded at all correctional facilities until such time as the literature review committee reviews the action. Inmates at other institutions who also receive the impounded publication shall be provided a written notice explaining that it has been impounded pending review for admissibility; the notice shall also detail the specific

reasons why the publication was impounded. For purposes of this subsection, the warden's "designee" may include the mailroom supervisor.

(e)~~(d)~~ Due to the necessity of securing outside translation assistance, the time frames for review of admissible reading material specified in this section shall not apply to foreign language publications.

(6) Admissible Reading Material in an Inmate's Property.

(a) The review criteria established in subsection (2) of this rule also apply to publications found in an inmate's personal property. If correctional staff find a publication that has been rejected by the department, the publication shall be impounded and DC Form DC6-220, Inmate Impounded Personal Property List, shall be completed as required by rules 33-602.201 and 33-602.203. The inmate shall be provided with two copies of the completed DC Form DC6-220. Form DC6-220 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, Office of the General Counsel, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. Requests for forms to be mailed must be accompanied by a self-addressed stamped envelope. The effective date of this form is _____.

(b) If correctional staff believe that a publication found in an inmate's personal property is inadmissible per section (2) of this rule, it shall be impounded and DC Form DC6-220, Inmate Impounded Personal Property List, shall be completed as required by rules 33-602.201 and 33-602.203. The publication shall then be forwarded to the warden or his or her designee for review. The Warden or warden's designee shall review the publication within 15 days of impoundment. If the publication is found to be inadmissible, the warden or warden's designee shall prepare an impoundment notice that advises the inmate of the specific reasons for the impoundment. The impoundment notice shall only address one publication; if more than one publication is determined to be inadmissible, separate impoundment notices shall be prepared for each. The inmate shall be provided with two copies of the impoundment notice.

(7)~~(6)~~ Inmates may appeal the impoundment or rejection of reading material through use of the inmate grievance procedure, chapter 33-103, Florida Administrative Code. When publications are impounded or rejected pursuant to the criteria established in this rule, inmates shall ~~may~~ bypass the informal and formal institutional level of review, and file grievances direct to the office of the secretary.

(a) If the inmate decides to appeal the impoundment or rejection to the office of the secretary, he or she shall file the appeal within 15 calendar days of the impoundment or rejection and must include a copy of the impoundment or rejection notice with the appeal. The inmate shall identify the grievance as being related to admissible reading material by writing the words "Admissible Reading Material" at the top of the grievance. Only one impounded or rejected publication shall be addressed in the appeal.

(b) If the inmate intends to appeal the impoundment or rejection decision and wishes to have the order to dispose of the publication within 30 days stayed while the appeal is proceeding, the inmate must provide written notice to the warden on form DC6-236 ~~DC3-005~~, Inmate Request, that he or she intends to appeal the impoundment or rejection to the office of the secretary. The written notice must be filed within 15 calendar days of the impoundment or rejection, and shall include a statement that the inmate intends to appeal the impoundment or rejection of admissible reading material and must specifically identify the publications on which the appeal is to be based. Form DC6-236 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, Office of the General Counsel, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. Requests for forms to be mailed must be accompanied by a self-addressed stamped envelope. The effective date of this form is _____.

(c) If the inmate fails to file within 15 calendar days, fails to provide the impoundment or rejection notice as an attachment to his or her appeal, fails to provide a copy of DC Form DC6-220 as an atachment to his or her appeal when appealing the impoundment of rejected publications found in the inmate's property, addresses more than one impounded or rejected publication or in any other way violates the grievance procedure as described in chapter 33-103, his or her appeal shall be returned without response to the issue raised.

(d) If the inmate's appeal is denied, he or she shall have 30 days to make arrangements to have the publication picked up by an approved visitor, relative or friend, or pay to have the publication sent to one of these approved individuals or to the sender. If the publication is not picked up or mailed out within 30 days, the institution shall ~~discard or~~ destroy it.

(8)~~(7)~~ Literature Review Committee.

(a) There shall be a literature review committee to act as the final reviewing authority for appeals regarding reading material impounded or rejected pursuant to criteria established in this rule. The committee shall be composed of:

1. Chief of bureau of security operations or designee;

2. Chief of bureau of inmate grievance appeals or designee;

3. Library services administrator or designee;

(b) The library services administrator or designee shall be designated chairman of the literature review committee and shall be responsible for coordinating all activities of the committee.

(c) Upon receipt of impoundment notices from correctional facilities or inmate appeals, the library services administrator or designee shall schedule a meeting of the literature review committee to review institutional decisions to impound publications and inmate ~~the~~ appeals within ~~thirty (~~30~~)~~ days of receipt. The literature review committee shall meet at least once every month if impoundment notices or appeals

have been received. The committee shall review the inmate's appeal, or, in the case of institutional impoundment decisions, the rule authority and reasons for the impoundment cited on the notice, the portions of the publication that have been cited as cause for impoundment ~~rejected as inadmissible~~, and any other specific material relating to the decision to impound the publication or the inmate's appeal ~~rejection~~. The committee shall affirm or overturn the impoundment decision, or approve or deny the appeal based upon the criteria set forth in this rule. Decisions shall be by majority vote. The decision of the committee shall be final.

(d) Decisions relating to the review of impounded or rejected publications shall be communicated to all institutions of the department and all privately operated institutions under contract with the department. When an impoundment decision is overturned, institutions shall issue the publication to all affected inmates as soon as possible. Decisions relating to grievance appeals shall be communicated to t~~T~~he chief of the bureau of inmate grievance appeals or designee who shall then approve or deny the grievance based upon the committee's decision ~~of the literature review committee~~.

(9)~~(8)~~(a) The publisher, wholesale or mail order distributor, bookstore or sender may obtain an independent review of the warden's decision to impound a publication by writing to the library services administrator at 2601 Blair Stone Road, Tallahassee, Florida 32399-2500 within 15 days following receipt of the notice of impoundment or rejection by the warden. The request for review must be accompanied by:

1. A copy of the impoundment or ~~warden's~~ rejection notice; and

2. A copy of the impounded or rejected publication. ~~The name and the DC number of the inmate that the rejected material was addressed to; and~~

~~3. The name of the institution at which the rejection occurred.~~

(b) The library services administrator shall forward this information to the literature review committee for review. If the appeal is approved, the publisher, wholesale or mail order distributor, bookstore or sender shall be notified of the decision. The decision shall also be communicated to all institutions of the department, and all privately operated institutions under contract with the department.

(10)~~(9)~~(a) Inmates may subscribe to no more than one daily or weekly general circulation newspaper and four other periodicals, except as otherwise provided in rules 33-601.801-601.813;

(b) No inmate shall be allowed to receive or keep more than one copy of any volume, issue or edition of any book, periodical or other publication. For example, an inmate will be allowed to keep the January and February 1994 issues of a specific magazine, but will not be allowed to keep two copies of the January 1994 issue. No inmate shall be issued admissible reading material if he or she can not store it in his or her personal living area without creating a fire, safety, or sanitation hazard. Effective July 1, 1998, inmates shall be limited to no more than 4 singles issues of a periodical or newspaper title. Inmates shall be allowed to order single issues of periodicals and newspapers from publishers' wholesale or mail-order distributors and bookstores in lieu of purchasing subscriptions; however, inmates shall still be limited to possession of not more than four issues of a single general circulation newspaper title, and not more than four issues of any single periodical title (maximum of four titles, including those received by subscription).

(c) Inmates subscribe to periodicals or other reading materials at their own risk and expense. Inmates will not be reimbursed by the Department of Corrections for materials which are rejected.

(d) Except as otherwise provided in rules 33-601.801-601.813, effective July 1, 1998, inmates shall be limited to the possession of 4 books. Religious testaments~~,~~ and law books not in the institution's law library collection~~,~~ shall not be counted against this limit. Religious testaments include sacred texts, prayer books and devotionals.

(11)~~(10)~~ Due to security concerns, inmates at Florida State Prison Main Unit or in death row or close management status in any institution shall not be allowed to receive hard-bound books. However, if a book is unavailable in soft-cover and no alternatives exist to allow access to the book, the inmate may receive the book only after the hard cover has been removed. The inmate shall make the decision whether to return the book to the sender or to receive the admissible portions after the institution has excised the hard cover, and the inmate may appeal an institution's determination that the hard cover must be excised or returned. The institution shall not take any action to excise the hard cover or return the book to sender until the inmate's appeal is concluded or the time for appeal has passed. Documentation of the inmate agreeing to the removal of the hard cover shall be obtained prior to removal of the cover. This documentation shall at a minimum be filed in the inmate file. If the inmate does not agree or does not provide documentation that he or she wishes to have the cover removed, the publication shall be returned to the publisher or sender.

(12)~~(11)~~ Books, periodicals or other publications shall be sent directly from the publishers, wholesale or mail order distributors or bookstores to the inmate unless otherwise authorized by the warden.

(13)~~(12)~~ Books, periodicals or other publications forwarded to inmates must be sent through the United States Postal Service. Materials received from other sources shall be returned to the sender with a notice explaining the reason for the rejection.

(14)~~(13)~~(a) Publications and training materials selected for use in authorized programs of the Department, or in private correctional institutions operated under contract with the Department, PRIDE or the Corrections Medical Authority shall

be reviewed by the department head or person designated by the warden to ensure that the subject matter contained therein is admissible and does not meet any of the criteria for inadmissibility in subsection (2).

(b) Institutions shall permit inmates to enroll in correspondence study programs provided that the subject matter of course materials is not inadmissible pursuant to the criteria stated in subsection (2). The warden shall designate one or more department heads to screen and approve all materials received pursuant to participation in correspondence study programs. Upon delivery to the institution, course or training materials shall be forwarded to the department head that approved the request for inspection prior to delivery to the inmate.

~~(14) Inmates shall be prohibited from removing any pictures or other portions from books or publications. Such alteration will cause the entire book or publication to be deemed contraband and will subject the inmate to disciplinary action.~~

(15) Inmates shall be prohibited from posting or otherwise displaying any pictures or portions of books or publications. Such activity will subject the inmate to disciplinary action and will cause the posted or displayed material to be confiscated as contraband.

Specific Authority 944.09, 944.11 FS. Law Implemented 944.11 FS. History–New 10-8-76, Formerly 33-3.12, Amended 3-3-81, 9-24-81, 6-9-87, 3-11-91, 12-17-91, 3-30-94, 11-2-94, 5-10-98, 10-20-98, Formerly 33-3.012, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Richard Nimer

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Michael W. Moore

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 11, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 17, 1999

DEPARTMENT OF CORRECTIONS

RULE TITLES:	RULE NOS.:
Searches of Inmates	33-602.204
Inmate Substance Abuse Testing	33-602.2045

PURPOSE AND EFFECT: The purpose of the proposed rules is to clarify and simplify the Department's inmate drug testing procedures. The effect of the proposed rules is to provide for easier reading by placing all provisions related to inmate drug testing in a separate inmate drug testing rule, and to provide detailed procedures for handling specific issues related to collection of urine samples.

SUMMARY: A separate inmate drug testing rule is created which provides detailed procedures for collection and testing of urine samples.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 944.09, 944.472, 944.473 FS.

LAW IMPLEMENTED: 944.09, 944.472, 944.473 FS.

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

TIME AND DATE: 9:00 a.m., November 23, 1999

PLACE: Law Library Conference Room, Room B-404, 2601 Blair Stone Road, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Perri King Dale, Office of the General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE FULL TEXT OF THE PROPOSED RULES IS:

33-602.204 Searches of Inmates.

Searches of inmates will be conducted to control the introduction and movement of contraband as well as to prevent escapes. These searches are to be made with discretion.

(1) through (3) No change.

~~(4) Random Substance Abuse Testing.~~

~~(a) Random substance abuse testing of inmates through urinalysis is authorized pursuant to s. 944.473, F.S.~~

~~(b) Definitions.~~

~~1. Random Selection – a process of selection which utilizes a computerized random selection model to obtain a sample of inmates to be tested for drugs and alcohol. Every inmate in the custody of the department has an equal chance of being selected.~~

~~2. Collector – a correctional officer designated by the warden or officer in charge to collect urine samples and who has been trained in the proper procedures for collection and maintenance of the chain of evidence.~~

~~3. Tester – a correctional officer who has been designated by the warden or officer in charge of the facility to test urine samples and who has been trained and certified by the contractor as competent to operate the urinalysis testing equipment.~~

~~4. Contractor – the vendor responsible, by contract, for provision and maintenance of testing equipment, and training regarding operation of testing equipment.~~

~~5. Random List – the randomly selected sample of inmates to be tested for drugs and alcohol.~~

~~(c) Institutions and facilities shall, on no less than a monthly basis, receive a list of the names and numbers of inmates generated through random selection for substance abuse testing. The Office of Security and Institutional Management shall generate the random list and electronically~~

transmit the random list to the warden of each major institution or the Major of each regional community facility. Each time an inmate's name appears on the random list, he or she shall be tested regardless of whether or not he or she has been previously tested.

(d) Procedure.

1. Responsibility. The Office of Security and Institutional Management shall be responsible for generating the random sample list of inmates to be tested and providing for the transmission of the list to the wardens of major institutions and the majors of regional community facilities. The wardens and majors shall be responsible for the development of local procedures to ensure the security of the list and the ensuing collection, transport of samples for testing, documentation, and, at designated testing sites, the testing process.

2. Chain of evidence.

a. At a minimum, the chain of evidence documentation of the collection process must include collector identification, initials by both the inmate and the collector, and date and time of collection.

b. The collector must document any unusual observations regarding the behavior of the inmate and the nature of any specimen on the chain of evidence form, DC4-621, during the collection process.

c. All urine specimens collected must be properly labeled and sealed with tamper-evident tape upon collection and must be accompanied by a properly completed chain of evidence form. One form can be used to accompany multiple urine specimens collected and transported together.

d. The collector, upon receiving an inmate's urine specimen, will enter the inmate's DC number and collection date and time in the designated spaces. The collector will instruct each inmate to place his or her initials on the chain of evidence form to verify that his or her specimen was collected, that the specimen labeling information was correct, and that the specimen was securely sealed in the inmate's presence.

e. If an inmate is unable or unwilling to enter his or her initials on the chain of evidence form, the collector will make a notation in the comment section of the chain of evidence form and leave the space blank. The collector will not under any circumstances sign the chain of evidence form for an inmate.

f. The collector will total the number of urine specimens collected during the collection procedure and place this number in the designated space which is located at the bottom of the chain of evidence form.

g. The collector will enter his or her name on the "to" line and fill in the spaces for the date and time the collection process was completed.

h. If the collector transfers the custody of the urine specimens to another person, the collector will sign his or her name on the "from" line and the person who is receiving the urine samples will sign on the "to" line and fill in the spaces for the date and time the transfer was completed. This procedure will continue until the tester enters his or her name on the "to" line.

i. If the collector transfers the custody of urine specimens to temporary refrigerated storage, the collector will sign his or her name on the "from" line and enter "refrigerated storage" on the "to" line and fill in the spaces for the date and time the transfer was completed. When the specimens are removed from refrigerated storage the person receiving the specimens will enter "refrigerated storage" on the "from" line, and enter the date and time of removal.

j. The name on the "from" line will always be the person who is relinquishing control of the urine specimens, while the name on the "to" space will always be the person who is receiving the urine specimens, or refrigerated storage.

k. An entry shall be made on the chain of evidence form, DC4-621, each time the urine specimens are transferred to the custody of another individual.

3. Collection of urine specimens.

a. All collections shall be performed under direct observation, where the collector directly observes the voiding of urine into the specimen cup. Direct observation may also be accomplished through use of mirrors strategically mounted in the collection rest room.

b. Under no circumstances is direct observation by a collector of the opposite sex from the inmate allowed.

c. Collector must ensure that there is a positive inmate identification. The collector shall identify the inmate who has been selected for testing by sight, name, and DC number prior to collecting a urine specimen.

d. The collector shall search the inmate to ensure that the inmate is not concealing any substances or materials which could be used to alter or substitute the inmate's urine specimen. If any such substances or materials are found, a disciplinary report will be issued.

e. The collector shall instruct the inmate to wash his or her hands thoroughly with soap and water prior to collecting the inmate's urine specimen.

f. The collector shall give each inmate a closed specimen cup with an identification label containing the inmate's name and DC number prior to collecting the inmate's urine specimen. The collector shall ensure that the inmate acknowledges his or her correct identity information on the label of the specimen cup.

g. Any unusual behavior of the inmate or unusual appearance of the specimen provided shall be noted in the comment section of the chain of evidence form, DC4-621.

h. An inmate who indicates a claimed inability to provide an adequate urine specimen shall be detained in the presence of the collector or other designated person for a period not to exceed 1 hour to provide an adequate specimen. During that time, the inmate shall be allowed to consume one cup (8 oz.) of water or other beverage every 1/2 hour, not to exceed a total of

2 cups during this time period. If after the 1 hour period an inmate still fails to submit a valid adequate urine specimen, the inmate shall be considered to have refused to provide a urine specimen and a disciplinary report shall be prepared in accordance with rules 33-601.301-601.314. The collector shall note such failure to provide a specimen on the chain of evidence form, DC4-621.

i. Any attempt by an inmate to provide other than a fresh, unsubstituted, unadulterated or undiluted specimen will be viewed as a test refusal in violation of department rules and a disciplinary report will be issued.

j. After the inmate has voided a urine specimen into the cup, the collector shall direct the inmate to close the cup tightly before placing the cup into the collector's custody.

k. The collector shall visually inspect all urine specimens placed in his or her custody to ensure that it is a valid, fresh, unadulterated, undiluted urine specimen. Urine specimens which are discovered to be obviously altered (i.e., cold, having an unusual color, containing foreign objects), will not be accepted as valid specimens. A suspect urine specimen will be discarded and the inmate will be required to submit another urine specimen. If the inmate cannot submit a urine specimen, then the procedure outlined in i. above for a claimed inability to provide a urine specimen shall apply.

l. If a urine specimen contains blood or appears to contain blood, the inmate who produced the specimen shall be referred immediately to medical for evaluation. If no valid reason exists for having blood in the specimen, the inmate will be required to provide another urine specimen. If the inmate cannot submit a urine specimen, then the procedure outlined in i. above for a claimed inability to provide a urine specimen shall apply.

m. Upon receipt of the urine specimen which has been securely closed by the inmate, the collector shall attach a tamper-evident security label across the lid of the sample cup under the inmate's observation and shall instruct the inmate to place his or her initials on the chain of evidence form verifying that the urine specimen was collected and sealed under the inmate's observation and that the specimen cup identification is correct.

n. The urine specimens should be transferred on the day of collection. If extraordinary circumstances prevent the transfer of the urine specimens, then all specimens shall be refrigerated in a secure location pending transfer. If refrigeration is not available, then an ice pack shall be stored in the container with the urine specimens pending transfer to the testing facility.

4. Testing of urine specimens.

a. Only testing personnel who have successfully completed training as provided by the contractor regarding proper procedures in operating and maintaining the testing instrument and ensuring the accuracy of test results are authorized to test urine specimens.

b. Testing personnel shall examine each specimen prior to testing to ensure that the tamper-evident seal is intact and that the specimen labeling and the chain of evidence form, DC4-621, is in proper order. Any discrepancies shall be recorded. In the event that the tamper-evident seal is damaged or the chain of evidence form is not accurate or complete, the tester shall not test those urine specimens.

c. Any specimens found to be positive upon initial testing shall be retested at the department testing facility that day with a fresh sample of the specimen prior to reporting test results. Specimens testing negative on the retest shall be reported as negative.

d. When a urine specimen's initial test results are positive, the tester shall follow the following procedures:

i. After double-checking the positive specimen's identity, the tester shall pipette a second urine sample from the original urine specimen cup and conduct the urinalysis testing procedure again, testing each positive specimen only for those drugs found positive on the initial test. Batch runs of several initial positive specimens are authorized.

ii. If a specimen's results are negative on repeat testing, the tester shall document the test results on the random sample list and chain of custody form and dispose of the urine specimen and specimen cup.

iii. If the urine specimen's test results are again positive on repeat testing, the tester shall document the test results as positive on the random list and substance abuse list and chain of custody form.

5. On-site testing of urine specimens. Community correctional centers are authorized to conduct on-site testing of urine specimens in lieu of transporting specimens to testing facilities for initial testing.

a. Collection procedures. Collectors shall follow collection procedures in (4)(d)3.a. through l.

b. Testing procedures. All on-site testing procedures shall be conducted in the presence of the inmate in accordance with the manufacturer's protocols.

i. After the collector has taken a sample of urine from the specimen cup for the test, the inmate shall be directed to close the cup tightly.

ii. After the collector has followed the steps specified in the manufacturer's protocols, the collector shall record the test results on the chain of evidence form.

c. Negative test results. The collector shall inform the inmate of the negative test results of the on-site test. The collector shall record all negative test results on the chain of evidence form and dispose of the remaining specimen, specimen cup and test device. All chain of custody forms shall be retained in accordance with state law and rules governing the retention of records.

d. Positive test results. The collector shall inform the inmate of the positive test results of the on-site test. The collector shall record the positive test results on the chain of

~~custody form and prepare the urine specimen for transfer to the designated testing facility in accordance with (4)(d)3.m. and n. for a verification urine drug test. Inmates with positive test results on the initial test shall immediately be placed in administrative confinement until a second test is conducted pursuant to (4)(d)4. and results are obtained.~~

~~(e) Forms. Form DC4-621 is hereby incorporated by reference. Copies of this form may be obtained from any institution or from the Office of Security and Institutional Management, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. If forms are to be mailed, the request must be accompanied by a self-addressed, stamped envelope.~~
~~The effective date of this form is March 24, 1997.~~

~~(5) For Cause Testing.~~

~~(a) Inmates suspected of involvement with drugs or alcohol shall be subject to for cause testing upon order of the warden, the major of the community facility, or their designees. An inmate can be tested for a minimum of two drugs on a for cause basis.~~

~~(b) For-cause drug testing means drug testing based on a belief that an inmate is using or has used drugs or alcohol based on specific facts and reasonable inferences drawn from those facts in light of experience. Such facts and inferences shall be based upon:~~

~~1. Observable phenomena such as direct observation of drug or alcohol use or of the physical symptoms or manifestations of being under the influence of drugs or alcohol (such as slurred or incoherent speech, erratic or violent behavior, uneven gait, or other behaviors or physical symptoms unusual for the inmate based on the staff member's knowledge of the inmate).~~

~~2. Evidence that the inmate has tampered with or attempted to tamper with a drug test.~~

~~3. Evidence or intelligence reports determined to be of a reliable basis that an inmate has used, possessed, sold, solicited or transferred drugs or alcohol.~~

~~(c) When for cause testing is ordered, an incident report shall be prepared including:~~

~~1. Dates and times of reported drug-related events;~~

~~2. Rationale leading to the request for testing; and~~

~~3. The two drugs or more recommended for testing.~~

~~(d) The senior correctional officer on duty shall be notified that the staff member has a suspicious inmate who meets the for cause drug testing criteria. The senior correctional officer shall ensure that an incident report is prepared. The incident report shall contain all pertinent information concerning the inmate which prompted the request for testing, to include any supporting evidence.~~

~~(e) A copy of the incident report shall be attached to the chain of evidence form and both documents shall be immediately forwarded to the testing facility.~~

~~(f) The collector shall denote "C" for "for cause" testing on the lid of the urine specimen cup for identification purposes.~~

~~(g) Record keeping. Each testing facility shall keep all records pertaining to the testing program. This includes chain of evidence documentation, hard copy instrument printouts of calibration and testing, results of performance on proficiency test specimens, results of performance on inspections, and instrument and other equipment maintenance records. All records shall be kept in accordance with state law and rules regarding retention of records.~~

Specific Authority 944.09, 944.473 FS. Law Implemented 944.09, 944.472, 944.473, 944.47 FS. History–New 4-8-81, Formerly 33-3.065, Amended 7-3-85, 11-2-86, 6-2-94, 1-25-96, 3-24-97, 9-9-97, 12-15-98, Formerly 33-3.0065, Amended _____.

33-602.2045 Inmate Substance Abuse Testing.

The Bureau of Security and Institutional Operations shall be responsible for the development and implementation of the department's substance abuse testing program.

(1) Definitions.

(a) Random Selection – A computerized random selection model utilized to obtain a sample of inmates to be tested for drugs or alcohol. Every inmate in the custody of the department has an equal chance of being selected.

(b) Collector – a correctional officer who has been trained and certified by certified testing personnel or by other personnel who have been certified on the proper procedures for collecting, handling, and disposing of urine specimens, and on the procedures for completing the chain of evidence form.

(c) Tester – a correctional officer who has been trained and certified as competent by the contractor or a master trainer to operate the drug testing equipment, and to review and certify test results.

(d) Random List – the randomly selected sample of inmates to be tested for drugs or alcohol.

(e) Chain of evidence form – the form used to document the identity and integrity of an inmate's specimen from time of collection, through specimen transport, testing, and reporting of results. Form DC6-217 is used for this purpose.

(f) Test refusal – failure on the part of an inmate to fully comply with the department's substance abuse testing procedures, which includes failing to provide a valid urine specimen, attempting to alter his or her urine specimen with adulterants, and using substitute urine in makeshift devices or objects.

(2) The Department of Corrections conducts the following types of inmate substance abuse testing:

(a) For-Cause or Reasonable Suspicion Testing.

1. Inmates suspected of involvement with drugs or alcohol shall be subject to for-cause testing upon order of the warden, the major of the community facility, or their designees. An inmate can be tested for a minimum of three drugs on a for-cause basis.

2. For-cause drug testing means drug testing based on a belief that an inmate is using or has used drugs or alcohol based on specific facts and reasonable inferences drawn from those facts in light of experience. Such facts and inferences shall be based upon:

a. Observable phenomena such as direct observation of drug or alcohol use or of the physical symptoms or manifestations of being under the influence of drugs or alcohol (such as slurred or incoherent speech, erratic or violent behavior, uneven gait, or other behaviors or physical symptoms unusual for the inmate based on the staff member's knowledge of the inmate).

b. Evidence that the inmate has tampered with or attempted to tamper with a urine specimen.

c. Evidence or intelligence reports determined to be of a reliable basis that an inmate has used, possessed, sold, solicited or transferred drugs or alcohol.

3. When for-cause testing is ordered, an incident report shall be prepared including:

a. Dates and times of reported drug-related events;

b. Rationale leading to the request for testing.

4. The senior correctional officer on duty shall be notified that the staff member has identified a suspicious inmate who meets the for-cause drug testing criteria. The highest ranking correctional officer shall ensure that an incident report is prepared. The incident report shall contain all pertinent information concerning the inmate which prompted the request for testing, to include any supporting evidence.

5. Upon approval of the warden or major or their designees, collection and testing procedures shall be conducted immediately pursuant to this rule.

6. A copy of the incident report shall be attached to the chain of evidence form and both documents shall be immediately forwarded to the testing facility.

(b) Random Substance Abuse Testing. All correctional facilities shall receive on a weekly basis a list of the names and DC numbers of inmates generated through random selection for substance abuse testing. The list will be electronically transmitted from the Offender Base Information System to the secure printer of the warden of each major institution and to the major of each community correctional center. Each time an inmate's name appears on the random list, he or she shall be tested regardless of whether or not he or she has been previously tested.

(c) Substance Abuse Program Testing. Inmates participating in substance abuse programs will be subject to substance abuse testing as a condition of the program.

(3) Procedures.

(a) Chain of evidence.

1. At a minimum, the chain of evidence form, DC6-217, must include offender and collector identification, initials by both the inmate and the collector, date and time of collection, and type of test (i.e., random, for-cause or substance abuse treatment program).

2. The chain of evidence form, DC6-217 allows for any comments by the collector regarding any unusual observations. Any failure by the inmate to cooperate with the collection process, and the unusual nature(e.g., discolored urine or urine containing foreign objects) of any specimen provided shall be noted.

3. The collector shall ensure that all collected urine specimens are properly labeled and sealed with a security evidence label. The collector shall also ensure that the chain of evidence form for all collected urine specimens is completed in accordance with procedures. One form can be used to accompany multiple urine specimens collected and transported together.

4. If an inmate is unable or unwilling to enter his or her initials on the chain of evidence form, the collector will make a notation in the comment section of the chain of evidence form and leave the space blank. The collector will not under any circumstances sign the chain of evidence form for an inmate.

5. An entry shall be made on the chain of evidence form, DC4-621, each time the urine specimens are transferred to the custody of another individual.

(b) Specimen Collection Procedures.

1. The collector shall ensure that all urine specimens are collected in accordance with procedures. All collections shall be performed under direct observation, where the collector directly observes the voiding of urine into the specimen cup. Direct observation may also be accomplished through use of mirrors strategically mounted in the collection rest room.

2. Under no circumstances is direct observation by a collector of the opposite sex from the inmate allowed.

3. The collector shall ensure that there is positive inmate identification prior to collecting the inmate's urine specimen. Sight, name, DC number, and examination of picture identification card shall provide positive identification of the inmate selected for drug testing.

4. The collector shall search the inmate to ensure that the inmate is not concealing any substances or materials which could be used to alter or substitute his or her urine specimen. If any such substances or materials are found, the inmate will be charged with refusing to submit to a substance abuse test.

5. If an inmate attempts to alter his or her urine specimen during the collection process through the use of adulterants or substitute urine, the inmate will be charged with refusing to submit to substance abuse testing.

6. The collector shall give each inmate a closed specimen cup with an identification label containing the inmate's name and DC number prior to collecting the inmate's urine

specimen. The collector shall ensure that the inmate acknowledges his or her correct identity information on the label of the specimen cup.

7. The inmate is expected to provide a minimum of 30 ml of urine. If the inmate provides less than this amount, the collector shall again attempt to collect an adequate specimen. If the inmate cannot immediately submit another urine specimen, then the procedure outlined in 8. below for a claimed inability to provide a urine specimen shall apply.

8. An inmate who indicates a claimed inability to provide an adequate urine specimen shall be detained in the presence of the collector or other designated person for a period not to exceed 1 hour to provide an adequate specimen. During that time, the inmate shall be allowed to consume one cup (8 oz.) of water or other beverage every 1/2 hour, not to exceed a total of 2 cups during this time period. If after the 1 hour period an inmate still fails to submit a valid adequate urine specimen, the inmate shall be considered to have refused to provide a urine specimen and a disciplinary report shall be prepared in accordance with rules 33-601.301-601.314. The collector shall note such failure to provide a specimen on the chain of evidence form, DC4-621. If an inmate claims an inability to urinate due to a "bashful bladder" condition, procedures set forth in (3)(c) shall apply.

9. After the inmate has voided a urine specimen into the cup, the collector shall direct the inmate to close the cup tightly before placing the cup into the collector's custody.

10. The collector shall visually inspect all urine specimens placed in his or her custody to ensure that a valid, fresh, unadulterated urine specimen was provided. Urine specimens which are discovered to be obviously altered (e.g., discolored or containing foreign objects), will not be accepted as valid specimens. A suspect urine specimen will be discarded and the inmate will be required to submit another urine specimen. If the inmate cannot submit a urine specimen, then the procedure outlined above for a claimed inability to provide a urine specimen shall apply.

11. If a urine specimen contains blood or appears to contain blood, the inmate who produced the specimen shall be referred immediately to medical for evaluation. If no valid reason exists for having blood in the specimen, the inmate will be required to provide another urine specimen. If the inmate cannot submit a urine specimen, then the procedure outlined above for a claimed inability to provide a urine specimen shall apply.

12. Once the urine specimen has been securely closed by the inmate, the collector shall attach a security evidence label across the lid of the sample cup under the inmate's observation. The collector shall instruct the inmate to place his or her initials on the chain of evidence form verifying that the urine specimen was collected and sealed under the inmate's observation and that the specimen cup identification is correct.

(c) "Bashful bladder" procedure. Upon notification from an inmate that he is unable to urinate due to "bashful bladder", the officer shall verify with medical staff that the inmate possesses a specific medical condition or is taking medication which inhibits the inmate from urinating within the designated time frame. Upon receiving such verification, the inmate shall be given the opportunity to provide a urine specimen under the following conditions:

1. The inmate shall be informed that he or she will be placed in a holding cell until he or she can provide a valid urine specimen. The inmate shall be issued a hospital or other type privacy gown during the time that he or she is housed in the holding cell.

2. The inmate shall remove the contents of his or her pockets, and his or her shirt, shoes, pants and hat. The inmate shall be thoroughly searched prior to entering the holding cell to prevent him or her from using any adulterants such as bleach or cleanser to alter his or her urine specimen.

3. The collector shall give the inmate a closed specimen cup with an identification label containing the inmate's name and DC number. The collecting officer shall ensure that the inmate acknowledges his or her correct identity information on the label of the specimen cup.

4. The inmate shall be allowed to consume one cup (8 oz.) of water or other beverage every ½ hour, not to exceed a total of two cups during the time spent in the holding cell.

5. A physical check shall be made on the inmate once every 30 minutes to see if he or she has provided a valid urine specimen.

6. Upon receipt of the urine specimen that has been securely closed by the inmate, the collector shall attach a security evidence label across the lid of the sample cup under the inmate's observation. The inmate shall be instructed to place his or her initials on the chain of evidence form verifying that the urine specimen was collected and that the specimen cup identification is correct.

(d) Testing of urine specimens.

1. Only certified testing personnel are authorized to operate the drug testing equipment.

2. Certified testers shall examine each specimen prior to testing to ensure that the security evidence label is intact and that the specimen labeling and the chain of evidence form, DC6-217, is in proper order. In the event that the tamper-evident seal is damaged or the chain of evidence form is incomplete, the tester shall not test those urine specimens.

3. Any specimens found to be positive upon initial testing shall be re-tested at the department testing facility that day with a fresh aliquot of the specimen prior to reporting test results. Specimens testing negative on the retest shall be reported as negative.

4. When a urine specimen's initial test results are positive the tester shall follow the following procedures:

a. After double-checking the positive specimen's identity, the tester shall pipette a second urine sample from the original urine specimen cup and conduct the urinalysis testing procedure again, testing each positive specimen only for those drugs found positive on the initial test. Batch runs of several initial positive specimens are authorized.

b. If a specimen's results are negative on repeat testing, the tester shall document the test results on the random sample list and chain of custody form and dispose of the urine specimen and specimen cup.

c. If the urine specimen's test results are again positive on repeat testing, the tester shall document the test results as positive on the random list and substance abuse list and chain of custody form.

(e) On-site testing of urine specimens. Community correctional centers are authorized to conduct on-site testing of urine specimens in lieu of transporting specimens to testing facilities for initial testing.

1. Specimen collection procedures. Collectors shall follow collection procedures in (3)(b), with the exception that a security evidence label shall not be placed on the lid of the cup unless the specimen is found to be positive.

2. Testing procedures. All on-site testing procedures shall be conducted in the presence of the inmate in accordance with the manufacturer's protocols.

a. After the collector has taken a sample of urine from the specimen cup for the test, the inmate shall be directed to close the cup tightly.

b. After the collector has followed the steps specified in the manufacturer's protocols, the collector shall record the test results on the chain of evidence form.

3. Negative test results. The collector shall inform the inmate of the negative test results of the on-site test. The collector shall record all negative test results on the chain of evidence form and dispose of the remaining specimen, specimen cup and test device. All chain of custody forms shall be retained in accordance with state law and rules governing the retention of records.

4. Positive test results. The collector shall inform the inmate of the positive test results of the on-site test. The collector shall record the positive test results on the chain of custody form and prepare the urine specimen for transfer to the designated testing facility in accordance with (3)(b) for a verification urine drug test. Inmates with positive test results on the initial test shall immediately be placed in administrative confinement pending investigation until a second test is conducted pursuant to (3)(d) and results are obtained.

5. All correctional facilities shall maintain a record of all reasonable suspicion substance abuse tests conducted. This record shall be maintained by the correctional officer chief. Form DC6-237, Reasonable Suspicion Testing Tracking Form, shall be utilized for this purpose.

(f) Record keeping. Each testing facility shall keep all records pertaining to the testing program. This includes chain of evidence documentation, hard copy instrument printouts of calibration and testing, results of performance on proficiency test specimens, results of performance on inspections, and instrument and other equipment maintenance records. All records shall be kept in accordance with state law and rules regarding retention of records.

(g) Forms. The following forms referenced in this rule are hereby incorporated by reference. Copies of these forms may be obtained from the Forms Control Administrator, Office of the General Counsel, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. If forms are to be mailed, the request must be accompanied by a self-addressed, stamped envelope.

1. Form DC6-217, Chain of Evidence, effective date _____.

2. Form DC6-237, Reasonable Suspicion Testing Tracking Form, effective date _____.

Specific Authority 944.09, 944.472, 944.473 FS. Law Implemented 944.09, 944.472, 944.473 FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Stan Czerniak

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Michael W. Moore

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 11, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 17, 1999

DEPARTMENT OF THE LOTTERY

RULE TITLE: RULE NO.:
Procedures 53-19.003

PURPOSE, EFFECT AND SUMMARY: The rule amendment clarifies the disciplinary action for employees who qualify as a candidate for, or holds, public office without obtaining prior approval.

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

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

SPECIFIC AUTHORITY: 24.105(10)(j) FS.

LAW IMPLEMENTED: 24.105(20)(d) FS.

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

TIME AND DATE: 9:00 a.m., November 24, 1999

PLACE: Department of the Lottery, Office of the General Counsel, 250 Marriott Drive, Tallahassee, Florida 32399-4011

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Diane D. Schmidt, Office of the General Counsel, Capitol Complex, Tallahassee, Florida 32399-4011, (850)487-7724

THE FULL TEXT OF THE PROPOSED RULE IS:

53-19.003 Procedures.

(1) through (5) No change.

(6) An employee who qualifies as a candidate for, or holds, public office without obtaining prior approval in accordance with Section 53-19.003, F.A.C., shall be subject to disciplinary action up to and including termination ~~shall be ineligible for continued employment with the Lottery and shall be deemed to have resigned employment from the Lottery~~.

Specific Authority 24.105(10)(j) FS. Law Implemented 24.105(20)(d) FS. History–New 2-25-93, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Diane D. Schmidt, Office of the General Counsel

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Kenneth H. Hart, Jr. General Counsel

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 20, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 1, 1999

AGENCY FOR HEALTH CARE ADMINISTRATION

Cost Management and Control

RULE TITLES:	RULE NOS.:
Reporting Instructions	59B-9.015
Manual Submission of Data	59B-9.021

PURPOSE AND EFFECT: The proposed rule amendments add options for the reporting of data electronically using new technology and eliminate options not used or rarely used.

SUMMARY: The proposed rule amendments add provisions for CD-ROM submission and the use of the Internet by ambulatory centers to send ambulatory patient data to the agency. The proposed rule amendments eliminate the requirement that the number of diskettes used to submit data must be eight diskettes or fewer for each report. Multi-facility data tapes will no longer be accepted. The proposed rule amendments reorganize the text of rule 59B-9.015.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None prepared.

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

SPECIFIC AUTHORITY: 408.15(8) FS.

LAW IMPLEMENTED: 408.061, 408.062, 408.063 FS.

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

TIME AND DATE: 1:00 p.m., November 30, 1999

PLACE: Agency for Health Care Administration, Building 3, First Floor Conference Room, 2727 Mahan Drive, Tallahassee, Florida 32308

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Jerry Mayer, Director, State Center for Health Statistics, Building 3, 2727 Mahan Drive, Tallahassee, Florida 32308

THE FULL TEXT OF THE PROPOSED RULES IS:

59B-9.015 Reporting Instructions.

(1) Ambulatory centers shall submit ambulatory patient data according to ~~the AHCA Ambulatory Patient Data Rule Format described in~~ Rules 59B-9.018, 59B-9.019, and 59B-9.020, F.A.C.

(2) Ambulatory centers shall report data for all non-emergency room ambulatory or outpatient visits in which the following services are provided:

(a) Surgery services to which the following ~~included in the~~ Current Procedural Terminology (CPT) codes are assigned: CPT codes 10000 through 69999 and 93500 through 93599 ~~Code Book~~. Codes must be valid in the current or the immediately preceding year's code book to be accepted~~: CPT codes 10000 through 69999 and 93500 through 93599~~.

(b) Radiological services listed in the Current Procedural Terminology (CPT) codes 77000 through 77999.

(3) Ambulatory centers shall report one record for each patient per visit. If more than one visit for the same patient occurs on the same date, report one record which includes all required data for all visits of that patient to the ambulatory center occurring on that date. If more than one visit occurs on different dates by the same patient, report one record for each date of visit, unless the dates of visits are directly associated to the service. See 59B-9.013(5), F.A.C.

(4) Ambulatory centers shall report all services provided to an ambulatory surgical, cardiac catheterization or radiation therapy patient using CPT or the Health Care Financing Administration Common Procedure Coding System (HCPCS) codes.

~~(5) Licensed short-term acute care hospitals shall report data for all ambulatory or outpatient visits in which the following services are provided:~~

~~(a) Non-emergency room surgical services to which the following Current Procedural Terminology (CPT) codes are assigned. CPT codes must be valid in the current or immediately preceding year's code book to be accepted: CPT codes 10000 through 69999 and 93500 through 93599.~~

~~(b) Radiological services as listed in the Current Procedural Terminology (CPT) codes 77000 through 77999 (i.e.: Radiation Oncology).~~

(5) Beginning with the report of patient visits occurring between January 1 and March 31, 2000, inclusive, and thereafter, ambulatory centers shall submit ambulatory patient data reports to agency using one of the following methods described in (a) or in (b) below:

(a) Internet Transmission. The Internet address established for receipt of ambulatory patient data is www.fdhc.state.fl.us. Reports sent to the Internet address shall be electronically transmitted with the ambulatory data in a text (ASCII) file. The file shall contain a complete set of ambulatory patient data for the calendar quarter. Each record of the text file must be terminated with a carriage return (hex '0D') and line feed mark (hex '0A'). The data in the text file shall contain the same data elements and codes, the same record layout and meet the same data standards required for tapes or diskettes mailed to the agency as described in Rules 59B-9.018, 59B-9.019 and 59B-9.020.

(b)~~(6)~~ Tapes, CD-ROM or diskettes shall be sent to the agency's mailing address: Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, Florida 32308. Attention: State Center for Health Statistics. Electronic media ~~Tape/Diskette~~ specifications are:

1.~~(a)~~ Tape:

a.~~1.~~ Density – 1600 or 6250 BPI, 9 track

b.~~2.~~ Collating Sequence – EBCDIC or ASCII

c.~~3.~~ Record Length – 400 Characters, Fixed

d.~~4.~~ Blocking – Unblocked

e.~~5.~~ Labeling – No Label

~~6. Multiple files can be submitted on one tape.~~

2.~~(b)~~ Diskette and CD-ROM:

a.~~1.~~ MS-DOS formatted

b.~~2.~~ PC Text File (ASCII)

c.~~3.~~ Record Length: – Header Record – 400 Characters, Ambulatory Data Record – 400 Characters, ~~Fixed~~ Trailer Record – 400 Characters~~, Fixed.~~ Carriage return and line feed are not included in the stated record length ~~counts~~.

d.~~4.~~ Type: 3.5" diskette, 1.4MB, hd; or CD-ROM ~~L120 diskette, 120MB~~.

e.~~5.~~ FILENAME: (e.g., AS10QYY.TXT) The 5th position shall ~~should~~ contain the quarter (1-4) and the 6th and 7th position contain the year. TXT indicates a text file.

f.~~(7)~~ Each record must be terminated with a carriage return of hex '0~~O~~D' and line feed mark of hex '0~~O~~A'.

g.~~(8) A maximum of eight (8) diskettes is acceptable for each data set or file.~~ Only one (1) file per diskette set or CD-ROM is allowable. Data requiring more than one diskette shall have the same internal file name. Data requiring more than one (1) diskette shall ~~should~~ be externally labeled 1 of x, 2 of x, etc. (x = total number of diskettes).

(6)~~(9)~~ Ambulatory centers ~~shall~~ submitting tapes or diskettes, shall affix ~~with~~ the following external identification, or for CD-ROM, use a standard CD-ROM external label with the following information ~~affixed~~:

(a) Ambulatory center name

(b) AHCA center identification in the AHCA ~~eight (8) digit~~ format

(c) Reporting period

(d) Number of records excluding the header record and the trailer record

(e) Tape Density: 1600/6250 BPI

(f) Tape Collating Sequence

(g) Diskette or CD-ROM Filename as in Rule 59B-9.015, F.A.C., above.

~~(h) Diskette Capacity: 1.4MB or 120MB~~

(h)~~(i)~~ The description: "AMBULATORY PATIENT DATA"

Specific Authority 408.15(8) FS. Law Implemented 408.061, 408.062, 408.063 FS. History–New 9-6-93, Formerly 59B-7.015, Amended 6-29-95, 12-28-98, _____.

59B-9.021 Manual Submission of Data.

~~Each facility or entity shall submit to the Agency data for the reporting period on diskette or computer tape media,~~ F~~f~~acilities having more than 199 reportable visits and fewer than 300 reportable visits in a quarter shall ~~may~~ submit ~~the~~ ambulatory patient data using either form AHCA-2000-MIS-13, or according to the requirements in Rule 59B-9.015 ~~diskette or computer tape media~~.

(1) Form AHCA-2000-MIS-13, may be obtained from the Agency for Health Care Administration, Ambulatory Patient Data Section, 2727 Mahan Drive, Fort Knox Building #3, Tallahassee, Florida 32308-5403.

~~(2) All ambulatory centers submitting data in compliance with Rules 59B-9.010 through 59B-9.021, F.A.C., shall certify that the data submitted for each reporting period are accurate and complete. Certification is via form APD1.~~

(2)~~(3)~~ Form AHCA-2000-MIS-13 is titled "Ambulatory Patient Detail Reporting Form". The effective date of the form is July 1, 1995. Form AHCA-2000-MIS-13 is incorporated by reference.

Specific Authority 408.15(8) FS. Law Implemented ~~408.006(5),~~ 408.061 FS. History–New 9-6-93, Formerly 59B-7.021, Amended 6-29-95, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Jerry Mayer, Director, State Center for Health Statistics

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Ruben J. King-Shaw, Jr., Director, Agency for Health Care Administration

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 19, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 3, 1999

AGENCY FOR HEALTH CARE ADMINISTRATION

Health Care Cost Containment Board

RULE TITLE: RULE NO.:
Reporting Instructions 59E-7.012

PURPOSE AND EFFECT: The proposed rule amendments add options for the reporting of data electronically using new technology and eliminate options not used or rarely used.

SUMMARY: The proposed rule amendment adds provisions for CD-ROM submission and the use of the Internet by acute care hospitals and short-term psychiatric hospitals to send inpatient discharge data to the agency. The proposed rule amendments eliminate the requirement that the number of diskettes used to submit data must be four diskettes or fewer for each report. Multi-facility tapes will no longer be accepted. The proposed rule amendments provide that extensions shall be requested by the hospital's data contact and eliminate duplicative precertification requirements. The proposed rule amendments reorganize the text of rule 59E-7.012.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None prepared.

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

SPECIFIC AUTHORITY: 408.061(1)(e), 408.15(8) FS.

LAW IMPLEMENTED: 408.061, 408.08(1), 408.08(2), 408.15(11) FS.

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

TIME AND DATE: 10:00 a.m., November 30, 1999

PLACE: Agency for Health Care Administration, Building 3, First Floor Conference Room, 2727 Mahan Drive, Tallahassee, Florida 32308

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Jerry Mayer, Director, State Center for Health Statistics, Building 3, 2727 Mahan Drive, Tallahassee, Florida 32308

THE FULL TEXT OF THE PROPOSED RULE IS:

59E-7.012 Reporting Procedures.

(1) All acute care hospitals and all short term psychiatric hospitals (hereinafter referred to as "hospital/hospitals"), in operation for all or any of the reporting periods described in Rule 59E-7.012(2) below, shall submit hospital inpatient discharge data in a format consistent with requirements of Rules 59E-7.011 through 59E-7.016 to the Agency following the provisions of this Rule, commencing with discharges for the 1st quarter 1997 (01/01/97 – 03/31/97).

(2) For purposes of submission of hospital inpatient discharge data, hospital shall be any hospital in the following groups as set out in the Florida Hospital Uniform Reporting System Manual: Groups 1 through 9, 12 through 17, and any new hospital assigned to these groups as defined in 59E-7.012. Additionally, long-term psychiatric hospitals, Group 13 in the Florida Hospital Uniform Reporting Manual, are required to submit aggregated data following the format and context as presented in the Psychiatric Reporting Format AHCA PSY III dated 9/12/88 and herein incorporated by reference.

(3) Each premises shall report separately, as set forth in Rules 59E-7.012 and 59E-7.014, F.A.C. ~~Multi-facility tapes may be submitted provided all records are identifiable to a premises and there is a listing attached that identifies each premises, their AHCA number and a contact person.~~

(4) Upon notification by the AHCA Agency staff, all hospitals shall provide access to all required information from the medical records and billing documents underlying and documenting the hospital inpatient discharge reports submitted, as well as other inpatient related documentation deemed necessary to conduct successful inpatient data audits of hospital data, regardless of reporting format. No inpatient discharge records that ~~which~~ support inpatient discharge data are exempt from disclosure to AHCA for audit purposes.

(5) All hospitals reporting their inpatient discharge data ~~using the Discharge Data Tape/Diskette Format pursuant to Rule 59E-7.014~~ shall report according to the following schedule commencing with 1st quarter data 1997 (01/01/97 – 03/31/97):

(a) Each report submitted for the 1st quarter covering inpatient discharges occurring between January 1 and March 31, inclusive, of each year, shall be submitted no later than June 1 of the calendar year during which the discharge occurred. This is considered to be the first quarter, regardless of the hospital's fiscal year.

(b) Each report submitted for the 2nd quarter covering inpatient discharges occurring between April 1 and June 30, inclusive, of each year, shall be submitted no later than September 1 of the calendar year during which the discharge occurred. This is considered to be the second quarter, regardless of the hospital's fiscal year.

(c) Each report submitted for the 3rd quarter covering inpatient discharges occurring between July 1 and September 30, inclusive, or each year, shall be submitted no later than December 1 of the calendar year during which the discharge occurred. This is considered to be the third quarter, regardless of the hospital's fiscal year.

(d) Each report submitted for the 4th quarter covering inpatient discharges occurring between October 1 and December 31, inclusive, of each year, shall be submitted no later than March 1 of the calendar year following the year in which the discharge occurred. This is considered to be the fourth quarter, regardless of the hospital's fiscal year.

~~(6) Hospitals must certify each calendar quarter's data at the time the report is submitted. This certification of data is pursuant to Rule 59E-7.012(12). Extensions to this period may be granted pursuant to 59E-7.012(7).~~

(6)~~(7)~~ Extensions to the initial submission due date will be granted by the Administrator, Hospital Data Collection Section of the Agency staff, for a maximum of 30 days from the initial submission due date in response to a written request signed by the hospital's data contact ~~Chief Executive Officer~~. The request must be received prior to the initial submission due date and the delay must be due to unforeseen and unforeseeable factors beyond the control of the reporting hospital. These factors must be specified in the written request for the extension along with documentation of efforts undertaken to meet the filing requirements. Extensions shall not ~~cannot~~ be granted verbally.

(7)~~(8)~~ Failure to file the report on or before the due date without an extension, and failure to correct a report which has been filed but contains errors or deficiencies within 10 working days from notification of errors or deficiencies, is punishable by fine pursuant to Rule 59E-7.013.

(8)~~(9)~~ Beginning with the inpatient data report for the 1st Quarter of the year 2000 (January 1, 2000 through March 31, 2000), reporting facilities shall submit inpatient discharge reports in one of the following formats. ~~The following instructions apply to hospitals reporting in the Discharge Data Tape/Diskette Format pursuant to Rule 59E-7.014 Discharge Data Reports~~:

(a) Tapes, CD-ROM or Diskettes shall be sent to the agency's mailing address: Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, Florida 32308. Attention: State Center for Health Statistics. Refer to the Data Elements and Formatting Requirements 59E-7.014. Electronic media specifications are:

1. 9-Track Tape:

a. IBM label or nonlabel tapes

b. Density 1600 or 6250 BPI

c. Collating sequence: EBCDIC or ASCII

d. Record Format: Header Record-480 characters, Inpatient Discharge Record-480 characters, Trailer Record-480 characters.

2. Diskette and CD-ROM:

a. Format-MS-DOS text file (ASCII)

b. Type-3.5" (1.44mb) diskette or CD-ROM

c. A header record must accompany each data set and must be placed as the first record on the first diskette of the data set. Each record must be terminated with a carriage return (hex '0D') and line feed mark (hex '0A').

d. Record length: Header Record-480 characters, Inpatient Discharge Record-480 characters, Trailer Record-480 characters. Carriage return and line feeds are not included in the stated record length.

e. Only one file per diskette set or CD-ROM is allowable. Data requiring more than one diskette shall be externally labeled 1 of n, 2 of n, etc.

f. Data reported quarterly shall follow the format: ddddqyy.txt where dddd=data type; q=reporting quarter (1-4); yy=year. EXAMPLE: PD10394.TXT.

g. Data requiring more than one diskette must have the same internal file name.

h. Compressed, backup, or PKZIP files are not acceptable.

3. Tapes or diskettes shall be submitted with the following information on an externally affixed label, or for CD-ROM, use a standard CD-ROM external label with the following information:

a. "HOSPITAL INPATIENT DISCHARGE DATA"

b. Hospital Name: (As on file at AHCA)

c. Hospital Number: (In the AHCA format)

d. Reporting Period for Discharges

e. Number of Records excluding the Header and Trailer records

f. Tape Density: 1600 or 6250 BPI

g. File Format: (TAPES) EBCDIC or (DISKETTES) ASCII

h. Filename: Data reported on diskettes or CD-ROM shall be reported in the following format: ddddqyy.txt where dddd=data type; q=quarter (1-4); yy=year FILENAME EXAMPLE: PD10394.TXT

i. IBM Labeled tapes require the label identifier (name)

~~(a) Submit AHCA Discharge Data Reports according to the AHCA Discharge Data Tape/Diskette Data Set only (refer to the Data Elements and Formatting Requirements 59E-7.014(1)(a), (b) and (c)).~~

(b) Internet Transmission: The Internet address for the receipt of inpatient data reports is: www.fdhc.state.fl.us. Internet transmission specifications are:

1. The file shall contain a complete set of inpatient discharge data for the reporting quarter.

2. Reports submitted to the Internet address shall be electronically transmitted with the inpatient data in a text (ASCII) file. Each record of the text file must be terminated with a carriage return (hex '0D') and line feed mark (hex '0A').

3. The data in the text file shall comply with the formatting requirements specified in Rules 59E-7.014 and 59E-7.016.

(c)~~(b)~~ All acute, intensive care~~,~~ and short term psychiatric live discharges and deaths including newborn live discharges and deaths shall ~~should~~ be reported.

~~(c) Tape/Diskette specifications are:~~

~~1. 9-Track Tape:~~

~~a. IBM label or nonlabel tapes.~~

~~b. Density 1600 or 6250 BPI.~~

~~c. Collating sequence — EBCDIC or ASCII.~~

~~d. Record Format — Fixed length records.~~

~~e. Record Length: Header Record — 480 characters, Inpatient Discharge Record — 480 Characters, Trailer Record — 480 Characters.~~

~~f. All merging of hospital inpatient discharge data documentation, on discharge data tapes or diskettes, is the hospital's responsibility.~~

~~2. Diskette:~~

~~a. Format — MS-DOS text file (ASCII).~~

~~b. Diskette type — 3.5" (1.44 mb) or 5.25" (1.2 mb) ds/hd.~~

~~c. A header record must accompany each data set and must be placed as the first records on the first diskette of the data set. Each record must be terminated with a carriage return (hex '0D') and line feed mark (hex '0A').~~

~~d. Record length: Header Record — 480 characters, Inpatient Discharge Record — 480 characters, Trailer Record — 480 characters; Fixed. Carriage return and line feed are not included in the record counts.~~

~~e. A maximum of 4 diskettes (approximately 12,000 records) is acceptable for each data set or file. Only one file per diskette set is allowable. A data set or file that requires more than 4 diskettes must be submitted by tape. Data requiring more than one diskette should be externally labeled 1 of n, 2 of n, etc., where n is the total number of diskettes.~~

~~f. Data reported quarterly should follow the following format: ddddqyy.txt. dddd=data type; q=quarter (1-4); yy=year. EXAMPLE PD10394.TXT.~~

~~g. Data requiring more than one diskette must have the same internal file name.~~

~~h. Compressed, backup, or PKZIP files are not acceptable.~~

~~(d) Tapes or diskettes shall be submitted with the following information on an externally affixed label:~~

~~1. "HOSPITAL INPATIENT DISCHARGE DATA"~~

~~2. Hospital Name: (As on file at AHCA)~~

~~3. Hospital Number: (In the AHCA 6 digit format)~~

~~4. Reporting Period for discharges.~~

~~5. Number of Records excluding the Header and Trailer records.~~

~~6. Tape Density: 1600/6250 BPI~~

~~7. File Format: (TAPES) EBCDIC or ASCII, (DISKETTES) ASCII.~~

~~8. Filename: Data reported on diskettes should be reported in the following format: ddddqyy.txt~~

~~dddd = data type~~

~~q = quarter (1-4)~~

~~yy = year~~

~~FILENAME EXAMPLE: PD10394.TXT~~

~~9. IBM Labeled tapes require the label identifier (name)~~

(d)~~(e)~~ Submit one record per inpatient discharge, to include all newborn admissions, transfers and deaths.

(9)~~(10)~~ All hospitals submitting data in compliance with Rules 59E-7.011 through 59E-7.014 shall certify that the data submitted for each quarter is accurate, complete, and verifiable using Certification Form for Inpatient Discharge Data, AHCA Form 4200-0002, dated 10/93 and incorporated by reference. AHCA Form 4200-0002 can be obtained from the Agency's office at the Agency for Health Care Administration, State Center for Health Statistics, Hospital Patient Data Section, 2727 Mahan Drive, Building 3, Tallahassee, Florida 32308.

~~(11) Upon each initial submission and subsequent resubmission, both the Chief Executive Officer and Chief Financial Officer or designee shall certify in writing that a complete review was performed to assure that all data submitted is accurate, complete, and verifiable.~~

(10)~~(12)~~ Each hospital must precertify each calendar quarter's data at the time that the data is submitted pursuant to ~~Rule 59E-7.012(5)(a) through (d).~~ Hospitals not certified within six (6) calendar months following the last day of the reporting quarter shall be subject to penalties pursuant to Rule 59E-7.013. Extensions to this six (6) month period will not be granted.

(11)~~(13)~~ Changes ~~and/~~or corrections to hospital data will be accepted from hospitals to improve their data quality for a period of eighteen (18) months following the initial submission of data. Any changes to a hospital's data after this eighteen-month period shall be subject to penalties pursuant to Rule 59E-7.013.

Specific Authority 408.061(1)(e), 408.15(8) FS. Law Implemented 408.061, 408.08(1), 408.08(2)~~(13)~~, 408.15(11) FS. History–New 12-15-96, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Jerry Mayer, Director, State Center for Health Statistics

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Ruben J. King-Shaw, Jr., Director, Agency for Health Care Administration

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 19, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 3, 1999

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Construction Industry Licensing Board

RULE TITLE: RULE NO.:
List of Approved Forms; Incorporated 61G4-12.006

PURPOSE AND EFFECT: The purpose is to incorporate a new form pursuant 489.118, Florida Statutes.

SUMMARY: To incorporate a list of approved forms which are utilized by the Board in its dealing with the public.

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

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

SPECIFIC AUTHORITY: 489.108 FS.

LAW IMPLEMENTED: 120.52(15), 489.108, 489.115, 489.118, 489.119, 489.1195 FS.

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

TIME AND DATE: 9:00 a.m., Monday, November 22, 1999

PLACE: Room 324, Collins Building, 107 W. Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Rodney Hurst, Executive Director, Construction Industry Licensing Board, 7960 Arlington Expressway, Suite 300, Jacksonville, Florida 32211-7467

THE FULL TEXT OF THE PROPOSED RULE IS:

61G4-12.006 List of Approved Forms; Incorporation.

The following forms used by the Board in its dealings with the public are hereby adopted and incorporated by reference, and can be obtained from the Board at the following address:

Florida Construction Industry Licensing Board

7960 Arlington Expressway

Suite 300

Jacksonville, Florida 32211-7467

(1) through (6) No change.

(7) Application for Certification of Registered Contractor Form, DBPR/CILB/032/9-95.

Specific Authority 489.108 FS. Law Implemented 120.52(15), 489.108, 489.115, 489.118, 489.119, 489.1195 FS. History–New 1-6-80, Formerly 21E-12.06, Amended 1-1-89, Formerly 21E-12.006, Amended 1-4-94, 2-24-94, 11-23-95, 2-6-96, 7-22-96, 11-25-97, 8-2-98, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Construction Industry Licensing Board

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Construction Industry Licensing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 10, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 24, 1999

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Construction Industry Licensing Board

RULE TITLE: RULE NO.:

Fees 61G4-12.009

PURPOSE AND EFFECT: The purpose is to amend this rule to notify applicants that pursuant to 489.111, Florida Statutes that the application fee for certification of a registered contractor shall be $100.

SUMMARY: Applicants are notified of the application fee of certification of a registered contractor would be $100.

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

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

SPECIFIC AUTHORITY: 455.213(2), 455.217(2), 455.219(1), 455.271(8), 489.108, 489.118 FS.

LAW IMPLEMENTED: 120.07(1)(a), 455.213(2), 455.217(2), 455.219(1), 455.271(7), (8), 489.109 FS.

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

TIME AND DATE: 9:00 a.m., Monday, November 22, 1999

PLACE: Room 324, Collins Building, 107 W. Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Rodney Hurst, Executive Director, Construction Industry Licensing Board, 7960 Arlington Expressway, Suite 300, Jacksonville, Florida 32211-7467

THE FULL TEXT OF THE PROPOSED RULE IS:

61G4-12.009 Fees.

The following fees are prescribed by the Board:

(1) through (12) No change.

(13) The application fee for certification of a registered contractor pursuant to 489.118, F.S., shall be $100.

Specific Authority 455.213(2), 455.217(2), 455.219(1), 455.271(8), 489.108, 489.118 FS. Law Implemented 119.07(1)(a), 455.213(2), 455.217(2), 455.219(1), 455.271(7), (8), 489.109 FS. History–New 10-1-79, Formerly 21E-12.01, Amended 1-6-80, 12-16-80, 3-15-81, 5-31-81, 11-14-82, 4-3-84, Formerly 21E-12.09, Amended 2-4-87, 1-26-88, 6-21-88, 9-19-88, 4-18-89, 5-23-89, 8-23-89, 5-29-90, 3-20-91, 12-21-92, 1-28-93, 7-14-93, Formerly 21E-12.009, Amended 7-18-94, 6-27-95, 8-29-95, 9-18-96, 2-4-98, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Construction Industry Licensing Board

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Construction Industry Licensing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 10, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 24, 1999

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Construction Industry Licensing Board

RULE TITLE: RULE NO.:

Certification of Registered Contractors 61G4-15.030

PURPOSE AND EFFECT: The Board proposes to promulgate a new rule entitled “Certification of Registered Contractors”.

SUMMARY: This rule is to insert an additional rule.

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

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

SPECIFIC AUTHORITY: 489.108, 489.118 FS.

LAW IMPLEMENTED: 489.118 FS.

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

TIME AND DATE: 9:00 a.m., Monday, November 22, 1999

PLACE: Room 324, Collins Building, 107 W. Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Rodney Hurst, Executive Director, Construction Industry Licensing Board, 7960 Arlington Expressway, Suite 300, Jacksonville, Florida 32211-7467

THE FULL TEXT OF THE PROPOSED RULE IS:

61G4-15.030 Certification of Registered Contractors.

(1) Any registered contractor who wishes to become a certified contractor in the appropriate category pursuant to the "grandfathering" provisions of Section 489.118, F.S., shall submit a completed "Application for Certification of Registered Contractors" (CILB Form # 032).

For the purposes of this section the following terms are defined as follows:

(a) A valid registered license is one in which the registered contractor's certificate of competency is registered with the Board and a State Registration Number is issued.

(b) A substantially similar examination is one which is written and proctored and which covers content and reference materials appropriate for the licensure category for which it is administered. The determination of appropriate content will be made by comparing the content outline and reference list for the examination to that used for the current state certification examination for the same license category.

For Division I categories, the examination must include, at a minimum, a two hour business and financial management section and a six hour trade knowledge section. For Division II categories, the examination must include, at a minimum, a two hour business and financial management section and a three hour trade knowledge section.

(c) Experience – Five years licensed and state registered; the experience need not be consecutive.

(d) Discipline, for purposes of Section 489.118(4), F.S., is defined as action taken by any local enforcement body and action taken by the Board against the licensee.

(2) Building code administrators and inspectors who hold a registered construction license or licenses may also apply for certification under the "grandfathering" provisions of Section 489.118, F.S. In order to be eligible such inspector or administrator must have five years experience as an inspector in the category sought, or, if an administrator, must have five years experience with oversight in the category sought, at the time of application. The five years of experience may be a combination of experience under the registered construction license and experience under the inspector or administrator license.

(3) If a registered contractor did not successfully pass a written, proctored examination in order to receive the registered license, he or she may be considered for certification under this rule if he or she successfully passes an examination substantially similar to the examination required for certified licensure such as those produced by the National Assessment Institute, Block and Associates, or NAI/Block prior to application.

Specific Authority 489.108, 489.118 FS. Law Implemented 489.118 FS. History–New .

NAME OF PERSON ORIGINATING PROPOSED RULE: Construction Industry Licensing Board

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Construction Industry Licensing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 10, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 24, 1999

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Construction Industry Licensing Board

RULE TITLE: RULE NO.:

Continuing Education Requirements for Certificateholders and Registrants 61G4-18.001

PURPOSE AND EFFECT: The proposed amendment shall grant a maximum of four hours of continuing education credit to any licensee who serves as a member of a technical advisory committee to the Florida Building Code Commission.

SUMMARY: To grant continuing education credit to licensees who are members of a technical advisory committee to the Florida Building Code Commission.

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

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

SPECIFIC AUTHORITY: 455.213(7), 489.108 FS.

LAW IMPLEMENTED: 489.105(14), 489.115, 489.116 FS.

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

TIME AND DATE: 9:00 a.m., Monday, November 22, 1999

PLACE: Room 324, Collins Building, 107 W. Gaines Street, Tallahassee, FL

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Rodney Hurst, Executive Director, Construction Industry Licensing Board, 7960 Arlington Expressway, Suite 300, Jacksonville, Florida 32211-7467

THE FULL TEXT OF THE PROPOSED RULE IS:

61G4-18.001 Continuing Education Requirements for Certificateholders and Registrants.

(1) through (3) No change.

(4) The Board shall grant a maximum of four (4) hours of continuing education credit, on an hour for hour basis, to any licensee who participates as member of any technical advisory committee to the Florida Building Code Commission within the Department of Community Affairs

(5)~~(4)~~ No change.

Specific Authority 455.213(7), 489.108 FS. Law Implemented 489.105(14), 489.115, 489.116 FS. History–New 12-2-93, Amended 5-19-94, 8-16-94, 10-12-94, 1-18-95, 2-4-98, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Construction Industry Licensing Board

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Construction Industry Licensing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 10, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 16, 1999

DEPARTMENT OF HEALTH

Board of Massage Therapy

RULE TITLE: RULE NO.:

Colonic Irrigation Application Deadline 64B7-25.0011

PURPOSE AND EFFECT: The purpose of the amendment is to increase the time for an applicant to have his or her application in the Board office from "thirty days" to "45 days" prior to colonic irrigation examination and reexamination, as requested by the Department of Health testing services.

SUMMARY: This rule increases the time from thirty to 45 days in which an applicant must have a completed application for examination/reexamination to the board office prior to taking the colonic irrigation test.

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

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

SPECIFIC AUTHORITY: 480.041(4)(b) FS.

LAW IMPLEMENTED: 480.041(4)(b) FS.

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

TIME AND DATE: 9:00 a.m., November 23, 1999

PLACE: Northwood Centre, 2639 North Monroe Street, Suite 60, Tallahassee, FL

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Bill Buckhalt, Executive Director, Board of Massage Therapy, 2020 Capital Circle, S. E., Bin #C06, Tallahassee, FL 32399-3256

THE FULL TEXT OF THE PROPOSED RULE IS:

64B7-25.0011 Colonic Irrigation Application Deadline.

An applicant for the colonic irrigation examination or for re-examination must file in the Board office a complete application, including proof of completion of an approved course of study or an apprenticeship at least 45 ~~thirty~~ days prior to the examination date. The examination or re-examination fee must accompany the application.

Specific Authority 480.041(4)(b) FS. Law Implemented 480.041(4)(b) FS. History–New 11-25-80, Amended 7-12-82, Formerly 21L-25.011, Amended 3-12-90, Formerly 21L-25.0011, Amended 9-30-93, 9-15-94, 7-2-96, Formerly 61G11-25.0011, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Massage Therapy

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Massage Therapy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 16, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 10, 1999

DEPARTMENT OF HEALTH

Board of Massage Therapy

RULE TITLE: RULE NO.:

HIV/AIDS Course Required for Initial Licensure 64B7-25.0012

PURPOSE AND EFFECT: Is to delete Cosmetology and Barbers' Boards which are not within the Department of Health.

SUMMARY: This rule deletes the final statement "...or by the Cosmetology and Barbers' Board," because these boards are not under the Department of Health.

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

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

SPECIFIC AUTHORITY: 455.607(5) FS.

LAW IMPLEMENTED: 455.607(4) FS.

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

TIME AND DATE: 9:00 a.m., November 23, 1999

PLACE: Northwood Centre, 1940 North Monroe, Ste. 60, Tallahassee, FL

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Bill Buckhalt, Executive Director, Board of Massage Therapy/MQA, 2020 Capital Circle, S. E., Bin #C09, Tallahassee, Florida 32399-3259

THE FULL TEXT OF THE PROPOSED RULE IS:

64B7-25.0012 HIV/AIDS Course Required for Initial Licensure.

As a condition to granting an initial license, the applicant is required to complete a 3-hour educational course approved by the Board on human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS). Courses that have received Board approval are sponsored by: the Department of Health, Division of Health Quality Assurance, the American Red Cross, or directly by the Board~~, Board~~ approved massage schools ~~or by the Cosmetology and Barbers' Board~~.

Specific Authority 455.607(5) FS. Law Implemented 455.607(4) FS. History–New 9-15-94, Formerly 61G11-25.0012, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Massage Therapy

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Massage Therapy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 16, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 10, 1999

DEPARTMENT OF HEALTH

Board of Massage Therapy

RULE TITLES:	RULE NOS.:
Licensure of Massage Establishments	64B7-26.002
Periodic Inspections	64B7-26.005

PURPOSE AND EFFECT: The purpose of the amendment to Rule 64B7-26.002 is to delete references to the fictitious name filing requirements because licensees under the Department of Health are exempt. The purpose of the amendment to Rule 64B7-26.005 is to mandate at least yearly inspections.

SUMMARY: These rules setforth licensure requirements and criteria for mandatory yearly inspections of licensed massage establishments.

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

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

SPECIFIC AUTHORITY: 480.043(7),(9) FS.

LAW IMPLEMENTED: 480.043(1),(2),(7),(9) FS.

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

TIME AND DATE: 9:00 a.m., November 23, 1999

PLACE: Northwood Centre, 2639 North Monroe Street, Suite 60, Tallahassee, FL

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Bill Buckhalt, Executive Director, Board of Massage Therapy/MQA, 2020 Capital Circle, S. E., Bin #C06, Tallahassee, Tallahassee, Florida 32399-3256

THE FULL TEXT OF THE PROPOSED RULES IS:

64B7-26.002 Licensure of Massage Establishments.

(1) through (2) No change.

(3) An owner may operate an establishment under a name other than the name of the owner, provided such name is submitted to the Board on the application for licensure~~, including the fictitious name registration number pursuant to Section 865.09, Florida Statutes~~. Any advertisement by the establishment of massage therapy must include the business name, and must comply with Rule 64B7-33.001.

(4) No change.

Specific Authority 480.043(2),(7),(9) FS. Law Implemented 480.043(1),(2),(7),(9) FS. History–New 11-27-79, Formerly 21L-26.02, Amended 1-7-86, Formerly 21L-26.002, Amended 3-9-95, 9-25-95, Formerly 61G11-26.002, Amended 7-16-98, _____.

64B7-26.005 Periodic Inspections.

The Department shall ~~may~~ make periodic inspections of all massage establishments licensed in this state no less than once each year. Such inspection shall include, but not be limited to, whether the establishment is in compliance with Rule 64B7-26.003 governing the establishment's operation facilities, personnel, safety, sanitary requirements, and a review of existing insurance coverage.

Specific Authority 480.043(2),(9) FS. Law Implemented 480.043 FS. History–New 11-27-79, Formerly 21L-26.05, Amended 4-30-87, Formerly 21L-26.005, 61G11-26.005, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Massage Therapy

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Massage Therapy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 16, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 10, 1999

DEPARTMENT OF HEALTH

Board of Massage Therapy

RULE TITLE:	RULE NO.:
Display of Licenses	64B7-28.008

PURPOSE AND EFFECT: The purpose of the amendment to Rule 64B7-28.008 is to delete references to provisional licenses, which were deleted from § 480.041 F.S.

SUMMARY: This amendment deletes references to provisional licenses in conformity with § 480.041 F.S.

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

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

SPECIFIC AUTHORITY: 480.035(7), 480.043(1),(2) FS.

LAW IMPLEMENTED: 480.043(1),(2) FS.

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

TIME AND DATE:9:00 a.m., November 23, 1999

PLACE: Northwood Centre, 1940 North Monroe, Suite 60, Tallahassee, FL

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Bill Buckhalt, Executive Director, Board of Massage Therapy/MQA, 2020 Capital Circle, S. E., Bin #C06, Tallahassee, Florida 32399-3256

THE FULL TEXT OF THE PROPOSED RULE IS:

64B7-28.008 Display of Licenses.

(1) No change.

(2) Each apprentice ~~or provisional licensee~~ shall conspicuously display his or her apprentice certificate ~~or provisional license approval~~ issued by the Board office, in the establishment for which it has been issued.

(3) No change.

Specific Authority 480.035(7), 480.043(1),(2) FS. Law Implemented 480.043(1),(2) FS. History–New 4-21-86, Formerly 21L-28.008, 61G11-28.008, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Massage Therapy

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: William Buckhalt, Executive Director

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 16, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 10, 1999

DEPARTMENT OF HEALTH

Board of Massage Therapy

RULE TITLES:	RULE NOS.:
Disciplinary Guidelines	64B7-30.002
Probable Cause Panel	64B7-30.007

PURPOSE AND EFFECT: The purpose of the amendment to proposed Rule 64B7-30.002 is to delete references to "provisional licensee" and bring the Rule in conformity with the statute." The purpose of proposed Rule 64B7-30.007 is to establish a probable cause panel pursuant to statute.

SUMMARY: The rule amendment to 64B7-30.002 deletes "provisional licensee" to conform with the statute; and the new rule 64B7-30.007 establishes a probable cause panel.

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

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

SPECIFIC AUTHORITY: 455.621(4), 455.627(1),(3),(4), 480.035(7) FS.

LAW IMPLEMENTED: 455.627(1),(3), 480.041, 480.046, 480.047 FS.

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

TIME AND DATE: 9:00 a.m., November 23, 1999

PLACE: Northwood Centre, 2639 North Monroe Street, Suite 60, Tallahassee, FL

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Bill Buckhalt, Executive Director, Board of Massage, 2020 Capital Circle, Southeast, BIN #C06, Tallahassee, Florida 32399-3256

THE FULL TEXT OF THE PROPOSED RULES IS:

64B7-30.002 Disciplinary Guidelines.

(1) When the Board finds that an applicant, apprentice, ~~provisional licensee~~ or licensee whom it regulates under Chapter 480, Florida Statutes, has committed any of the acts set forth in Sections 480.047 and 455.624, Florida Statutes, it shall issue a final order imposing appropriate penalties within the ranges recommended in the following disciplinary guidelines:

(a) through (u) No change.

(2) through (8) No change.

Specific Authority 455.621(4), 455.627(1),(3),(4), 480.035(7) FS. Law Implemented 455.621(4), 455.627(1),(3),(4), 480.041, 480.046, 480.047 FS. History–New 3-26-87, Formerly 21L-30.002, Amended 9-30-93, 12-12-93, 8-16-94, 10-1-95, 2-5-96, 5-12-96, 5-29-97, Formerly 61G11-30.002, Amended 2-18-98, 11-4-98, _____.

64B7-30.007 Probable Cause Panel.

The determination of probable cause shall be made by the probable cause panel of the board. The probable cause panel shall consist of two members, and may include a former board member. The chair of the board shall appoint the panel members.

Specific Authority 455.621(4) Law Implemented 455.621(4) History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Massage Therapy

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Massage Therapy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 16, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 10, 1999

DEPARTMENT OF HEALTH

Board of Massage Therapy

RULE TITLE: RULE NO.:

Colonic Irrigation 64B7-31.001

PURPOSE AND EFFECT: The Board proposes to amend this rule by deleting provisional licensee in order to conform the rule to § 480.041, Florida Statutes.

SUMMARY: The Board finds it necessary to amend the rule so that it conforms with § 480.041, Florida Statutes.

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

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

SPECIFIC AUTHORITY: 480.035(7), 480.041(4) FS.

LAW IMPLEMENTED: 480.032, 480.033, 480.041(4) FS.

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

TIME AND DATE: 9:00 a.m., November 23, 1999

PLACE: Northwood Centre, 2639 North Monroe Street, Tallahassee, FL 32399

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Bill Buckhalt, Executive Director, Board of Massage Therapy/MQA, 2020 Capital Circle, S. E., Bin #C06, Tallahassee, Florida 32399-3256

THE FULL TEXT OF THE PROPOSED RULE IS:

64B7-31.001 Colonic Irrigation.

(1) No change.

(2) Prior to the practice of colonic irrigation, any licensed massage therapist, or apprentice ~~or provisional licensee~~ shall be required to present certification to the Board of successful completion of examination by a Board approved massage school after completion of a supervised classroom course of study in colonic irrigation or in the case of a duly authorized apprenticeship training program, evidence of having completed 100 hours of colonic irrigation training, including a minimum of 45 hours of clinical practicum with a minimum of 20 treatments given.

(3) Prior to the practice of colonic irrigation, any licensed massage therapist, or apprentice ~~or provisional licensee~~ shall be required to successfully complete and pass the colonic irrigation examination administered by the Department of Health.

Specific Authority 480.035(7), 480.041(4) FS. Law Implemented 480.032, 480.033, 480.041(4) FS. History–New 12-18-84, Formerly 21L-31.01, Amended 1-30-90, 2-13-91, Formerly 21L-31.001, 61G11-31.001, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Massage Therapy

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Massage Therapy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 16, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 10, 1999

DEPARTMENT OF HEALTH

Board of Medicine

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

PURPOSE AND EFFECT: The proposed rule amendments are intended to add additional violations, increase fines, and add new statutory citations to the rule in response to recent statutory changes.

SUMMARY: The proposed rule amendments increase administrative fines, and set forth additional violations with regard to the disciplinary guidelines. Additionally, the rule amendments provide additional statutory citations in response to recent statutory changes.

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

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

SPECIFIC AUTHORITY: 458.331(5), 458.309, 455.627 FS.

LAW IMPLEMENTED: 458.331(5), 455.624, 455.627 FS.

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

TIME AND DATE: 4:00 p.m., or as soon thereafter as can be heard, December 4, 1999

PLACE: Tampa Airport Marriott, Tampa International Airport, Tampa, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Tanya Williams, Executive Director, Board of Medicine/MQA, 2020 Capital Circle, S. E., Bin #C03, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

64B8-8.001 Disciplinary Guidelines.

(1) No change.

(2) Violations and Range of Penalties. In imposing discipline upon applicants and licensees, in proceedings pursuant to Section 120.57(1) and 120.57(2), Florida Statutes, the Board shall act in accordance with the following disciplinary guidelines and shall impose a penalty within the range corresponding to the violations set forth below. The verbal identification of offenses are descriptive only; the full language of each statutory provision cited must be consulted in order to determine the conduct included.

VIOLATION	RECOMMENDED RANGE OF PENALTY
(a) Attempting to obtain a license or certificate by bribery, fraud or through an error of the Department or the Board (458.331(1)(a), F.S.) (455.624(1)(h), F.S.)	(a) From denial or revocation of license with ability to reapply upon payment of $5,000.00 ~~$1,000.00~~ fine to denial of license without ability to reapply, or permanent revocation.
(b) Action taken against license by another jurisdiction. (458.331(1)(b), F.S.); (455.564 (1)(h), F.S.)	(b) From imposition of discipline comparable to the discipline which would have been imposed if the substantive violation had occurred in Florida to suspension or denial of the license until the license is unencumbered in the jurisdiction in which disciplinary action was originally taken, and an administrative fine ranging from $1,000.00 ~~$250.00~~ to $5,000.00.
1. Action taken against license by another jurisdiction involving Medicare or Medicaid fraud in dollar amounts in excess of $5,000.00.	1. Revocation or in the case of application for licensure, denial of licensure.
2. Action taken against license by another jurisdiction involving Medicare or Medicaid fraud in dollar amounts of $5,000.00 or less.	2. A $10,000.00 ~~$5,000.00~~ administrative fine, and suspension of the license, followed by a period of probation.
(c) Guilty of crime directly relating to practice or ability to practice. (458.331(1)(c), F.S.); (455.624(1)(c), F.S.)	(c) From probation to revocation or denial of the license and an administrative fine ranging from $1,000.00 ~~$250.00~~ to $10,000.00 ~~$5,000.00~~.
1. Involving a crime directly related to Medicare or Medicaid fraud in dollar amounts in excess of $5,000.00.	1. Revocation or in the case of application for licensure, denial of licensure.
2. Involving a crime directly related to Medicare or Medicaid fraud in dollar amounts of $5,000.00 or less.	2. A $10,000.00 ~~$5,000.00~~ administrative fine, compliance with any criminal probation, a reprimand and suspension of the license, followed by a period of probation.
(d) False, deceptive, or misleading advertising. (458.331(1)(d), F.S.)	(d) From reprimand to one (1) year suspension or denial, and an administrative fine from $1,000.00 ~~$500.00~~ to $5,000.00.
(e) Failure to report another licensee in violation. (458.331(1)(e), F.S.) (455.624(1)(i), F.S.)	(e) From a reprimand to probation or denial, and an administrative fine from $1,000.00 ~~$250.00~~ to $5,000.00.
(f) Aiding unlicensed practice. (458.331(1)(f), F.S.) (455.624(1)(j), F.S.)	(f) From probation to revocation or denial, and an administrative fine from $1,000.00 ~~$250.00~~ to $10,000.00 ~~$5,000.00~~.
(g) Failure to perform legal obligation. (458.331(1)(g), F.S.) (455.624(1)(k), F.S.)	(g) For any offense not specifically listed herein, based upon the severity of the offense and the potential for patient harm, from ~~From~~ a reprimand to revocation or denial and an administrative fine from $1,000.00 ~~$250.00~~ to $10,000.00 ~~$5,000.00~~.
1. Failing to register a laser device. (455.624(1)(d), F.S.)	1. If the device is an approved device, from an administrative fine of $1,000.00 to $5,000.00; if the device is not approved, from an administrative fine from $5,000.00 to a suspension or denial and an administrative fine of $10,000.00.

2. Continuing medical education (CME) violations. (455.624(1)(e), F.S.) (455.624(1)(s), F.S.)	2. Within twelve months of the date of the filing of the final order, the licensee must submit certified documentation of completion of all CME requirements for the period for which the citation was issued; prior to renewing the license for the next biennium, Respondent must document compliance with the CME requirements for the relevant period; AND:
a. Failure to document required HIV/AIDS and related infections of TB CME.	a. An administrative fine of $500.00 to $1,000.00.
b. Failure to document required domestic violence CME.	b. An administrative fine of $500.00 to $1,000.00.
c. Failure to document required HIV/AIDS and related infections of TB and failure to document domestic violence CME.	c. An administrative fine of $1000.00 to $2,000.00.
3. Failure to comply with the requirements of ss. 381.026 and 381.0261, F.S., to provide patients with information about patient rights. (455.624(1)(t), F.S.)	3. Administrative fine of up to $100.00 for the second and subsequent nonwillful violations; and an administrative fine from $250.00 to $500.00 for the second and subsequent willful violations with each intentional and willfull violation a separate violation subject to said fine.
4. Failing to comply with the requirements for profiling and credentialing. (455.624(1) (v), F.S.); (458.319, F.S.); (458.565, F.S.)	
a. Involving a violation of any provision of Chapter 455, Part II, F.S., for failing to comply with the requirements for profiling and credentialing, by failing to timely provide pdated information, on a profile, credentialing, or initial or renewal licensure application.	a. If the licensee complies within six (6) months of the violation, then an administrative fine of up to $2,000.00; if compliance after six (6) months, an administrative fine of up $5,000.00 and a reprimand.
b. Involving violations of any provision of Chapter 455, Part II, F.S., for making misleading, untrue, deceptive, or fraudulent representations on a profile, credentialing, or initial or renewal licensure application.	b. Referral to State Attorney for prosecution pursuant to Sections 455.631 and 455.634, F.S., and from suspension and a reprimand and a $5,000.00 administrative fine to revocation or denial.
5. Failing to report to the board within 30 days after the licensee has been convicted of a crime in any jurisdiction. Convictions prior to the enactment of this section must be reported in writing to the board, on or before October 1, 1999. (455.624(1)(w), F.S.)	5. From an administrative fine of $2,000.00 to a fine of $5,000.00 and a reprimand or denial without the ability to reapply.
6. Failing to comply with obligations regarding ownership and control of medical records, patient records; report or copies of records to be furnished. (455.667, F.S.) (458.331(1)(m), F.S.)	6. From a reprimand to denial or two (2) years suspension followed by probation and an administrative fine from $1,000.00 to $5,000.00.
7. Failing to maintain confidentiality of communication between a patient and a psychiatrist, (455.671, F.S.)	7. From a $5,000.00 administrative fine and a reprimand to suspension and a $10,000.00 administrative fine or denial.
8. Failing to report final disposition of professional liability claims and actions, (455.697, F.S.)	8. If the licensee complies within six (6) months of the violation then an administrative fine of up to to $2,000.00; if compliance after six (6) months, an administrative fine of up to $5,000.00 and a reprimand.
9. Failing to disclose financial interest to patient. (455.701, F.S.)	9. From an administrative fine of $1,000.00 to a reprimand and an administrative fine of $5,000.00.

(h) Filing a false report or failing to file a report as required. (458.331(1)(h), F.S.) (455.624(1)(l), F.S.)	(h) From one (1) year probation to revocation or denial, and an administrative fine from $1,000.00 ~~$250.00~~ to $10,000.00 ~~$5,000.00~~.
1. Involving Medicare or Medicaid fraud in dollar amounts in excess of $5,000.00.	1. Revocation or in the case of application for licensure, denial of licensure.
2. Involving Medicare or Medicaid fraud in dollar amounts of $5,000.00 or less.	2. A $10,000.00 ~~$5,000.00~~ administrative fine, suspension of the license, followed by a period of probation.
(i) Kickbacks or split fee arrangements. (458.331(1)(i), F.S.)	(i) From six (6) months suspension to revocation or denial, and an administrative fine from $1,000.00 ~~$250.00~~ to $10,000.00 ~~$5,000.00~~.
(j) Exercising influence to engage patient in sex. (458.331(1)(j), F.S.); (458.329, F.S.) 455.624(1)(u), F.S.)	(j) From one (1) year suspension and a reprimand and an administrative fine of $5,000.00 to revocation or denial, and an administrative fine of $10,000.00 ~~from $250.00 to $5,000.00~~.
(k) Deceptive, untrue, or fraudulent representations in the practice of medicine. (458.331(1)(k), F.S.) (455.624(a),(m), F.S.)	(k) From probation to revocation and ~~or~~ denial, and an administrative fine from $1,000.00 ~~$250.00~~ to $10,000.00 ~~$5,000.00~~.
1. Deceptive, untrue, or fraudulent representations in the practice of medicine involving Medicare or Medicaid fraud in dollar amounts in excess of $5,000.00.	1. Revocation or in the case of application for licensure, denial of licensure.
2. Deceptive, untrue, or fraudulent representations in the practice of medicine involving Medicare or Medicaid fraud in dollar amounts of $5,000.00 or less.	2. A $10,000.00 ~~$5,000.00~~ administrative fine, suspension of the license, followed by a period of probation.
(l) Improper solicitation of patients. (458.331(1)(l), F.S.)	(l) From one (1) year suspension to revocation or denial, and an administrative fine from $1,000.00 ~~$250.00~~ to $10,000.00 ~~$5,000.00~~.
(m) Failure to keep legible written medical records. (458.331(1)(m), F.S.)	(m) From a reprimand to denial or two (2) years suspension followed by probation, and an administrative fine from $1,000.00 ~~$250.00~~ to $10,000.00 ~~$5,000.00~~.
1. Failure to keep legible written medical records that is related to Medicare or Medicaid fraud in dollar amounts in excess of $5,000.00.	1. Revocation or in the case of application for licensure, denial of licensure.
2. Failure to keep legible written medical records that is related to Medicare or Medicaid fraud in dollar amounts of $5,000.00 or less.	2. A $10,000.00 ~~$5,000.00~~ administrative fine, suspension of the license, followed by a period of probation.
(n) Exercising influence on patient for financial gain. (458.331(1)(n), F.S.) (455.624(1)(n), F.S.)	(n) From probation to denial or two (2) years suspension, and an administrative fine from $5,000.00 ~~$250.00~~ to $10,000.00 ~~$5,000.00~~.
(o) Improper advertising of pharmacy. (458.331(1)(o), F.S.)	(o) From a reprimand and $250.00 fine to one (1) year probation, and an administrative fine from $250.00 to $5,000.00.
(p) Performing professional services not authorized by patient. (458.331(1)(p), F.S.)	(p) From a reprimand to denial or two (2) years suspension, and an administrative fine from $1,000.00 ~~$250.00~~ to $10,000.00 ~~$5,000.00~~.
(q) Inappropriate or excessive prescribing. (458.331(1)(q), F.S.)	(q) From one (1) year probation to revocation or denial, and an administrative fine from $1,000.00 ~~$250.00~~ to $10,000.00 ~~$5,000.00~~.

(r) Prescribing or dispensing of a scheduled drug by the physician to himself. (458.331(1)(r), F.S.)	(r) From one (1) year probation to revocation or denial, and an administrative fine from $1,000.00 ~~$250.00~~ to $5,000.00.
(s) Inability to practice medicine with skill and safety. (458.331(1)(s), F.S.)	(s) From probation to denial or indefinite suspension until licensee is able to demonstrate ability to practice with reasonable skill and safety followed by probation, and an administrative fine from $1,000.00 ~~$250.00~~ to $5,000.00.
(t) Gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances. (458.331(1)(t), F.S.)	(t) From two (2) years probation to revocation or denial, and an administrative fine from $1,000.00 ~~$250.00~~ to $10,000.00 ~~$5,000.00~~.
1. Gross Malpractice	1. From one (1) year suspension followed by three (3) years probation to revocation or denial, and an administrative fine from ~~$250.00~~ $1,000.00 to ~~$5,000.00~~ $10,000.00 and licensee shall be subject to reexamination.
2. Repeated Malpractice	2. From three (3) years probation to revocation or denial, and an administrative fine from $1,000.00 ~~$250.00~~ to $10,000.00 ~~$5,000.00~~ and licensee shall be subject to reexamination.
3. Failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent physician as being acceptable under similar conditions and circumstances.	3. From two (2) years probation to revocation or denial, and an to administrative fine from $1,000.00 ~~$250.00~~ to $10,000 ~~$5,000.00~~.
(u) Performing of experimental treatment without informed consent. (458.331(1)(u), F.S.)	(u) From one (1) year suspension to revocation or denial, and an administrative fine from $1,000.00 ~~$250.00~~ to $10,000.00 ~~$5,000.00~~.
(v) Practicing beyond scope permitted. (458.331(1)(v), F.S.) (455.624(1)(o), F.S.).	(v) From two (2) years suspension to revocation or denial, and an administrative fine from $1,000.00 ~~$250.00~~ to $10,000.00 ~~$5,000.00~~.
(w) Delegation of professional responsibilities to unqualified person. (458.331(1)(w), F.S.) (455.624(1)(p), F.S.).	(w) From one (1) year probation to denial or five (5) years suspension followed by probation, and an administrative fine from $1,000.00 ~~$250.00~~ to $10,000 ~~$5,000.00~~.
(x)1. Violation of law, rule, ~~order,~~ or failure to comply with subpoena. (458.331(1)(x), F.S.) 455.624(1)(b),(q), F.S.).	(x)1. From a reprimand to revocation or denial, and an administrative fine from $1,000.00 ~~$250.00~~ to $10,000.00 ~~$5,000.00~~.
2. Violation of an order of the Board.	2. Reprimand and an administrative fine from $5,000.00 to $10,000.00 and probation.
(y) Conspiring to restrict another from lawfully advertising services. (458.331(1)(y), F.S.)	(y) A reprimand and an administrative fine ranging from $1,000.00 ~~$250.00~~ to $5,000.00.
(z) Aiding an unlawful abortion. (458.331(1)(z), F.S.)	(z) From one (1) year suspension to revocation or denial, and an administrative fine from $1,000.00 ~~$250.00~~ to $10,000.00 ~~$5,000.00~~.
(aa) Presigning prescription forms. (458.331(1)(aa), F.S.)	(aa) From a reprimand to two (2) years probation, and an administrative fine from $1,000.00 ~~$250.00~~ to $5,000.00.
(bb) Prescribing a Schedule II substance for office use. (458.331(1)(bb), F.S.)	(bb) From a reprimand to probation with CME in pharmacology, and an administrative fine from $1,000.00 ~~$250.00~~ to $5,000.00.

(cc) Improper prescribing of Schedule II amphetamine or sympathomimetic amine drug. (458.331(1)(cc), F.S.)	(cc) From probation to denial or two (2) years suspension followed by probation, and an administrative fine from $1,000.00 ~~$250.00~~ to $10,000 ~~$5,000.00~~.
(dd) Failure to adequately supervise assisting personnel. (458.331(1)(dd), F.S.)	(dd) From probation to denial or two (2) years suspension followed by probation, and an administrative fine from $1,000.00 ~~$250.00~~ to $5,000.00.
(ee) Improper use of substances for muscle building or enhancement of athletic performance. (458.331(1)(ee), F.S.)	(ee) From one (1) year suspension to revocation or denial, and an administrative fine from $1,000.00 ~~$250.00~~ to $5,000.00.
(ff) Use of amygdalin (laetrile). (458.331(1)(ff), F.S.)	(ff) From one (1) year suspension to revocation or denial, and an administrative fine from $1,000.00 ~~$250.00~~ to $10,000.00 ~~$5,000.00~~.
(gg) Misrepresenting or concealing a material fact (458.331(1)~~(gg)(hh),~~ F.S.)	(gg) From denial or revocation of license with ability to reapply upon payment of $1,000.00 fine to denial of license without ability to reapply.
(hh) Improperly interfering with an investigation or a disciplinary proceeding (458.331(1)~~(hh)(ii),~~ F.S.) 455.624(1)(r), F.S.).	(hh) From denial or revocation of license with ability to reapply upon payment of $1,000.00 fine to denial of license without ability to reapply.
(ii) Failing to report any licensee in violation who practices in a hospital or an H.M.O.; or failing to report any person in violation of Chapter 455, Part II, F.S. ~~M.D. or D.O.~~ (458.331(1)(ii)~~(jj)~~F.S.) (455.624(1)(i), F.S.)	(ii) From a reprimand to probation or denial and an administrative fine from $1,000.00 ~~$250.00~~ to $5,000.00.
(jj) Providing written medical opinion without reasonable investigation. (458.331(1)(jj)~~(kk)~~, F.S.)	(jj) From denial or revocation of license with ability to reapply upon payment of $1,000.00 fine to denial of license without ability to reapply.
(kk) Failure to report disciplinary action by another jurisdiction. (458.331(1)(kk)~~(ll)~~, F.S.)	(kk) From an administrative fine of $2,000.00 to a fine of $5,000.00 and a reprimand to denial or revocation of license with ability to reapply upon payment of $1,000.00 fine to denial or revocation of license with license without ability to reapply.
(ll) Improper holding oneself out as a specialist. (458.331(1)(ll), F.S.)	(ll) From reprimand to one year suspension or denial and an administrative fine from $500 to $5,000.00.
(mm) Improper use of information about accident victims for commercial or any other solicitation of the people involved in such accidents. (455.624(x), F.S.)	(mm) From an administrative fine of $1,000.00 to a fine of $5,000.00, reprimand and probation.
(nn) Theft or reproduction of an examination. (455.577, F.S.)	(nn) Revocation or denial without ability to reapply.
(oo) Violation of Patient Self Referral Act (455.654, FS.)	(oo) In addition to any civil penalty imposed pursuant to s. 455.654, for each separate violation, from an administrative of $5,000.00 to an administrative fine of $10,000.00.

(3) No change.

(4) It is the intent of the Board to notify applicants and licensees whom it regulates under Chapter 458, F.S., of the seriousness with which the Board deals with sexual misconduct in or related to the practice of medicine. In particular, the Board has identified those situations in which the sexual misconduct is predatory in its character because of the particular powerlessness or vulnerability of the patient, or because of the licensee's history or manipulation of the physician/patient relationship. Therefore, it is the policy of the Board, where any one of the following aggravating conditions are present in a sexual misconduct case, to consider revocation as an appropriate penalty:

(a) Where controlled substances have been prescribed, dispensed or administered inappropriately or excessively, or not in the course of the physician's professional practice, or not in the patient's best interests.

(b) Where the relationship between the licensee and the patient involved psychiatric or psychological diagnosis or treatment.

(c) Where the patient was under the influence of mind altering drugs or anesthesia at the time of any one incident of sexual misconduct.

(d) Where the licensee is under suspension or probation at the time of the incident.

(e) Where the licensee has any prior action taken against the authority to practice their profession by any authority, or a conviction in any jurisdiction, regardless of adjudication, relating to sexual misconduct, in appropriate relationships with patients, or sex-related crimes.

(f) Where the patient is physically or mentally handicapped at the time of the incident.

(g) Where the patient is a minor at the time of the incident.

(h) Where the patient is an alien, whether legal or illegal; or a recipient of federal or state health care benefits, or state family aid at the time of the incident.

(i) Where the patient has a history of child sexual abuse, domestic violence, or sexual dysfunction, which history is known to the licensee at the time of the sexual misconduct.

(5)~~(4)~~ No change.

(6)~~(5)~~ No change.

(7)~~(6)~~ No Change.

Specific Authority 458.331(5), 458.309, 455.627 FS. Law Implemented 458.331(5), 455.624, 455.627 FS. History–New 12-5-79, Formerly 21M-20.01, Amended 1-11-87, 6-20-90, Formerly 21M-20.001, Amended 11-4-93, Formerly 61F6-20.001, Amended 6-24-96, 12-22-96, Formerly 59R-8.001, Amended 5-14-98, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Rules Committee, Board of Medicine

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Medicine

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 8, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 30, 1999

DEPARTMENT OF HEALTH

Board of Medicine

RULE TITLE: RULE NO.:
Formulary 64B8-30.008

PURPOSE AND EFFECT: The proposed rule amendment is intended to incorporate additional drugs into the P.A. formulary.

SUMMARY: The proposed rule amendment makes additions appropriate to the P.A. formulary.

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

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

SPECIFIC AUTHORITY: 458.309, 458.347(4)(f)3. FS.

LAW IMPLEMENTED: 458.347(4)(e), (f) FS.

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

TIME AND DATE: 4:00 p.m., or as soon thereafter as can be heard, December 4, 1999

PLACE: Tampa Airport Marriott, Tampa International Airport, Tampa, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Tanya Williams, Executive Director, Board of Medicine/MQA, 2020 Capital Circle, S. E., Bin #C03, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

64B8-30.008 Formulary.

THE APPROVED FORMULARY FOR THE WRITING OF PRESCRIPTIONS BY PHYSICIAN ASSISTANTS APPROVED TO PRESCRIBE MEDICINAL DRUGS UNDER THE PROVISIONS OF SECTIONS 458.347(4)(e) AND 459.022(4)(e), FLORIDA STATUTES:

(1) through (2) No change.

(3) Formulary.

(a) No change.

(b) Subject to the requirements of this subsection, Sections 458.347 and 459.022, F.S., and the rules enacted thereunder, only the following drugs may be delegated by a Supervising Physician to a Physician Assistant to prescribe. Medicinal drugs not specifically included in this formulary are excluded. Excluded medicinal drugs may not be prescribed, regardless of whether they are in a pure form or in combination with a drug included in this formulary.

1. through 31. No change.
32. Amprenavir
33. through 38. ~~32. through 37.~~ No change.
39. Atropine/Scopolamine/Hyoscyamine/Phenobarbital
40. through 84. ~~38. through 82.~~ No change.
85. Candesartan Cilexetil
86.~~83.~~ Cantharidin
87. Capsaicin
88. through 102. ~~84. through 98.~~ No change.
103. Celecoxib
104. through 123. ~~99. through 118.~~ No change.
124. Cilostazol
125. through 128. ~~119. through 122.~~ No change.
129. Citalopram
130. through 184. ~~123. through 177.~~ No change.
185. Dihydroergotamine Mesylate
186. through 202. ~~178. through 194.~~ No change.
203. Efavirenz
204. through 235. ~~195. through 226.~~ No change.
236. Fenofibrate
237. through 328. ~~227. through 318.~~ No change.
329. Levalbuterol
330. through 414. ~~319. through 403.~~ No change.
415. Nicotine
416. through 441. ~~404. through 429.~~ No change.
442. Orlistat
443. through 482. ~~430. through 469.~~ No change.
483. Polyethylene Glycol
484. through 530. ~~470. through 516.~~ No change.
531. Rizatriptan Benzoate
532. Rofecoxib
533. Rosiglitazone Maleate
534. through 543. ~~517. through 526.~~ No change.
544. Sildenafil Citrate
545. through 573. ~~527. through 555.~~ No change.
574. Synthetic Conjugated Estrongens, A
575. ~~556.~~Tamsulosin HCl
576. ~~557.~~ Tazarotene
577. Telmisartan
578. through 588. ~~558. through 568.~~ No change.
589. Tiagabine
590. through 638. ~~569. through 617.~~ No change.

Specific Authority 458.309, 458.347(4)(f)3. FS. Law Implemented 458.347(4)(e), (f) FS. History–New 3-12-94, Formerly 61F6-17.0038, Amended 11-30-94, 2-22-95, 1-24-96, 11-13-96, 3-26-97, Formerly 59R-30.008, Amended 11-26-97, 1-11-99, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Formulary Committee, Board of Medicine

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Medicine

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 7, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 24, 1999

DEPARTMENT OF HEALTH

Board of Speech-Language Pathology and Audiology

RULE TITLE: RULE NO.:
Professional Employment Experience 64B20-2.004

PURPOSE AND EFFECT: Rule 64B20-2.004 is being amended to update the rule text with regard to professional employment experience.

SUMMARY: The Board is amending Rule 64B20-2.004 to include new rule text which will prevent applicants from duplicating documentation that would otherwise be included in proof of meeting/exceeding the educational academic requirements.

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

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

SPECIFIC AUTHORITY: 468.1135(4) FS.

LAW IMPLEMENTED: 468.1165 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Sue Foster, Executive Director, Board of Speech-Language Pathology and Audiology/MQA, 2020 Capital Circle, S. E., Bin #C08, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

64B20-2.004 Professional Employment Experience.

Every applicant for licensure as a speech-language pathologist or audiologist with a doctoral degree who meets the requirements of Section 468.1155, F.S. and can demonstrate experience in the doctoral program is exempt from this requirement. Every applicant for licensure as a speech-language pathologist or audiologist with a masters degree shall demonstrate to the Board, prior to licensure, nine (9) months of full-time professional employment or the equivalent in part-time professional employment, pertinent to the license being sought.

(1) During the nine (9) months of professional employment required by Section 468.1165, F.S., the monitoring licensee shall evaluate the provisional licensee

each one-third of the provisional period separately, and shall record the evaluation on Form SPA-2B, Supplementary Evaluations for Each One-Third of the Professional Employment Experience, which is incorporated by reference herein, will be effective March 25, 1991, and a copy can be obtained from the Board office. ~~of Speech-Language Pathology and Audiology, Department of Health, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-0782.~~ These evaluations shall be included with the final supervisory report, Form SPA-2C, Supervisory Report for Provisional Licensees, which is incorporated by reference herein, will be effective March 25, 1991, and a copy can be obtained from the Board office. ~~of Speech-Language Pathology and Audiology, Department of Health, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-0782.~~ All evaluation forms as well as the final supervisory report shall be submitted to the Department within thirty (30) days of the completion of the professional employment experience. For the purpose of this section, 9 months of full-time professional employment is equivalent to 30 hours per week for 36 weeks. For purposes of this section, part-time professional employment is equivalent to a minimum of 15 hours per week for 72 weeks.

(2) through (3) No change.

Specific Authority 468.1135(4) FS. Law Implemented 468.1165 FS. History–New 3-14-91, Formerly 21LL-2.004, 61F14-2.004, Amended 9-26-95, Formerly 59BB-2.004, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Speech-Language Pathology and Audiology

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Speech-Language Pathology and Audiology

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 30, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 27, 1999

DEPARTMENT OF HEALTH

Board of Speech-Language Pathology and Audiology

RULE TITLE:	RULE NO.:
Duplicate License Fee	64B20-3.011

PURPOSE AND EFFECT: The Board proposes to amend this rule to update the rule text.

SUMMARY: The Board has determined that it is necessary to amend this rule to include language which states that the fee for a duplicate wall certificate shall be $25.00.

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

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

SPECIFIC AUTHORITY: 455.587(6), 468.1145(1) FS.

LAW IMPLEMENTED: 455.587(6) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Sue Foster, Executive Director, Board of Speech-Language Pathology and Audiology/MQA, 2020 Capital Circle, S. E., Bin #C08, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

64B20-3.011 Duplicate License Fee.

(1) The fee for a duplicate license shall be $25.00.

(2) The fee for a duplicate wall certificate shall be $25.00.

Specific Authority 455.587(6), 468.1145(1) FS. Law Implemented 455.587(6) FS. History–New 8-21-91, Formerly 21LL-3.011, 61F14-3.011, 59BB-3.011, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Speech-Language Pathology and Audiology

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Speech-Language Pathology and Audiology

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 30, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 27, 1999

DEPARTMENT OF HEALTH

Board of Speech-Language Pathology and Audiology

RULE TITLES:	RULE NOS.:
Continuing Education as a Condition for Renewal or Reactivation	64B20-6.001
Standards for Approval of Continuing Education Activities and Providers	64B20-6.002

PURPOSE AND EFFECT: The Board proposes to amend Rule 64B20-6.001 by deleting certain rule text. The Board finds it necessary to amend Rule 64B20-6.002 to require that the number assigned and approved by the Board office shall appear on all continuing education course announcements and certificates of course completion.

SUMMARY: The Board proposes to amend Rule 64B20-6.001 by deleting certain rule text which will eliminate the limit a licensee's self directed continuing education hours to reflect the trend toward alternative education methods such as computer interactive, satellite, and other technological means of delivery. The Board finds it necessary to amend Rule 64B20-6.002 to include language which requires the number assigned and approved by the Board office shall appear on all

continuing education course announcements and certificates of course completion. In addition, unnecessary language contained in subsection (1)(h) is also being deleted.

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

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

SPECIFIC AUTHORITY: 455.564, 468.1135(4)(a), 468.1195(1),(3), 468.1205(1) FS.

LAW IMPLEMENTED: 468.1195(1),(3), 468.1205(1) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Sue Foster, Executive Director, Board of Speech-Language Pathology and Audiology/MQA, 2020 Capital Circle, S. E., Bin #C08, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULES IS:

64B20-6.001 Continuing Education as a Condition for Renewal or Reactivation.

(1) As a condition of the biennial renewal of an active status license, the licensee shall attend and certify attending 30 credit hours, per biennium, of Board approved continuing education, twenty (20) of which shall be clinically related as defined in 64B20-6.002(5). Those licensed as both audiologists and speech-language pathologists shall attend and certify attending 50 credit hours, per biennium, of Board approved continuing education, forty (40) hours of which shall be clinically related, twenty (20) in each specialty. ~~Unless otherwise allowed by the Board for an emergency or hardship case, a maximum of ten hours of continuing education may be earned through Board approved, licensee/assistant-directed continuing education activities as defined in 64B20-6.002(6).~~

(2) through (15) No change.

Specific Authority 468.1135(4)(a), 468.1195(1),(3), 468.1205(1) FS. Law Implemented 468.1195(1),(3), 468.1205(1) FS. History–New 3-14-91, Amended 8-11-91, 5-28-92, 2-24-93, Formerly 21LL-6.001, Amended 1-31-94, 7-5-94, Formerly 61F14-6.001, Amended 3-28-95, 10-1-95, 11-20-95, 4-1-96, Formerly 59BB-6.001, Amended 7-7-98, _____.

64B20-6.002 Standards for Approval of Continuing Education Activities and Providers.

(1) Any institution, organization, agency or individual may apply to the Board for approval to provide a continuing education activity by making application at least sixty (60) days prior to the course offering on form CEA-3, effective 3-28-95, entitled Institution, Organization or Agency or Individual Application for Prior Approval of a Continuing Education Activity, which is incorporated by reference herein, and payment of a fee as specified in 64B20-3.017. Form CEA-3 may be obtained from the Board of Speech-Language Pathology and Audiology, Department of Health, 1940 North Monroe Street, Tallahassee, Florida 32399-0778. If the Board grants approval of a continuing education activity, then the Board office shall issue the applicant an approved program number that shall be valid for the biennium which coincides with the biennial licensure cycle. This number shall appear on all continuing education course announcements and certificates of course completion. Upon receipt of a complete application and payment of the application fee, the Board shall approve a continuing education activity which meets the following criteria:

(a) through (g) No change.

(h) For the purposes of these rules one continuing education hour is defined as a 60-minute clock hour. ~~in which there is no less than 50 minutes of uninterrupted instruction.~~

(2) through (7) No change.

Specific Authority 455.564, 468.1135(4), 468.1195(3) FS. Law Implemented 468.1195 FS. History–New 3-14-91, Formerly 21LL-6.002, Amended 9-20-93, Formerly 61F14-6.002, Amended 3-28-95, 10-1-95, Formerly 59BB-6.002, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Speech-Language Pathology and Audiology

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Speech-Language Pathology and Audiology

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 30, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 27, 1999

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Economic Self-Sufficiency Program

RULE TITLES:	RULE NOS.:
Legal Base	65A-33.001
Definitions	65A-33.003
Eligibility Factors Other Than Income	65A-33.004
Determination of Eligibility Based On Income	65A-33.005
Income	65A-33.006
Verification	65A-33.007
Program Administration	65A-33.008
Type and Amount of Assistance	65A-33.011

PURPOSE AND EFFECT: These proposed rule amendments will correct statutory, technical and rule content deficiencies. The amendments are the result of a rule review conducted to specifically identify and correct any rule deficiencies. The proposed amendments also will reflect a changed administrative and service delivery structure for this program.

SUMMARY: These proposed amendments will accomplish the following: delete existing purpose statements; delete definitions that have been placed in statute subsequent to promulgation of these rules; correct citation of other rules in the body of the rule(s); remove eligibility requirements regarding a pregnant woman; remove statements regarding household housing emergencies that are redundant of statute, clarify good cause requirements in relation to voluntary termination or a strike, clarify criteria in relation to ability to avoid the specified emergencies; remove a statement that assistance to meet the emergency must be secured; reflect a change from local level, walk-in application processing to central processing of mail-in applications with appropriate form revisions; make social security numbers required for the applicant and all household members; and, reflect hearings in accordance with standard department procedures rather than expedited procedures.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: A statement of estimated regulatory costs was not prepared for these proposed rule amendments.

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

SPECIFIC AUTHORITY: 414.45 FS.

LAW IMPLEMENTED: 414.16 FS.

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

TIME AND DATE: 10:00 a.m., November 22, 1999

PLACE: Building 3, Room 414, 1317 Winewood Boulevard, Tallahassee, FL 32399-0700

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Wilbur Williams, Coordinator for Special Programs, 1317 Winewood Boulevard, Building 3, Room 412J, Tallahassee, Florida 32399-0700, Telephone (850)921-6959

THE FULL TEXT OF THE PROPOSED RULES IS:

65A-33.001 ~~Purpose and~~ Legal Base.

~~(1) The purpose of the Emergency Financial Assistance for Housing Program is to prevent family displacement, breakdown, or hardship due to homelessness, or the immediate threat thereof, by assisting eligible low-income families who are totally without shelter or who are in imminent danger of becoming homeless due to external factors, such as unemployment or other loss of income, personal or family-life crises, or the shortage of low-income housing, meet the cost of the housing emergency.~~

(1)~~(2)~~ No change.

~~(3) This program will be operational provisional to and to the extent that, state and federal funding is authorized and appropriated.~~

1Specific Authority 414.45 FS. Law Implemented 414.16 FS. History–New 3-13-88, Formerly 10C-33.001, Amended _____.

65A-33.003 Definitions.

The following terms shall have the following meanings, except where the context clearly indicates a different meaning:

~~(1) "Department" means the Department of Children and Family Services.~~

(1)~~(2)~~ No change.

~~(3) "Homeless" means having a nighttime residence:~~

~~(a) In a public or private emergency shelter, such as an armory, school, church, government building, or where a temporary voucher is provided by a public or private agency, in a hotel, apartment, or boarding home.~~

~~(b) On the streets or under a bridge or aqueduct, in a park, subway, bus terminal, railroad station, airport, abandoned building, or vehicle, or in any other public or private space that is not designed for shelter.~~

~~(4) "Child" means an individual under the age of 18.~~

~~(5) "Specified relative" or "specified relationship" means a person in one of the following groups:~~

~~(a) Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great.~~

~~(b) Stepfather, stepmother, stepbrother, and stepsister.~~

~~(c) Person who legally adopts a child or the child's parent as well as the natural and legally adopted children of such person, and other relatives of the adoptive parents in accordance with state law.~~

~~(d) Spouses of any persons named in the above groups even after the marriage is terminated by death or divorce.~~

~~(e) A pregnant woman.~~

~~(6) "Household" means the child and the child's caretaker or a pregnant woman, and all other individuals, whether related or unrelated, who are living together with the child and caretaker or with the pregnant woman as one economic unit.~~

(2)~~(7)~~ "Liquid assets" means all of a person's negotiable property that is or can be converted into cash in one working day. Liquid assets include items such as savings accounts, checking accounts, cash and checks regardless of the source, money orders, certificates of deposit and government ~~savings~~ bonds. Liquid assets do not include items such as automobiles, furniture or real estate.

~~(8) "Ability to avoid the emergency" means that the applicant experienced unusual circumstances which gave rise to the housing emergency for which he/she could not have planned or avoided with his/her available income and resources.~~

Specific Authority 414.45 FS. Law Implemented 414.16 FS. History–New 3-13-88, Amended 7-15-93, Formerly 10C-33.003, Amended _____.

65A-33.004 Eligibility Factors Other Than Income.

~~(1) The household requesting assistance must contain a child as defined in 65A-33.003(4) or a pregnant woman.~~

~~(2) The child must be living with a family member specified relative, as defined in 65A-33.004(5), at the time of application or have lived with a specified relative within the 6 months prior to the month of application, in a place of residence maintained by the relative as a home.~~

(1)~~(3)~~ No change.

(2)~~(4)~~ No change.

(3)~~(5) The household must have a housing emergency. The term "a household with a housing emergency" is synonymous with"~~ A~~a~~ family is also considered in an emergency situation~~."~~ ~~A housing emergency is considered to exist~~ when a~~:~~

~~(a) The household is totally without shelter, or,~~

~~(b) Faces the loss of shelter due to any of the following:~~

~~1. Nonpayment of rent or mortgage which resulted in legal notice of impending eviction or foreclosure;~~

~~2. A household disaster, such as fire, flood, or other incident which renders the home uninhabitable;~~

~~3. A~~ natural disaster, such as a tornado or hurricane, ~~which~~ renders the home uninhabitable, but is not a presidentially declared disaster.

(4)~~(6) The household is ineligible if a loss of income which resulted in the housing emergency was the result of a strike or voluntary termination of employment, unless good cause is determined to exist for the voluntary termination.~~

(a) The determination of whether or not good cause exists for striking or voluntary termination of employment is made by the department's eligibility worker assigned to the case, with the concurrence of the unit supervisor.

(b) Reasons for a finding of good cause for voluntary termination of employment are:

1. through 7. No change.

(5)~~(7) The household must not have liquid assets, which are or can be made available, in sufficient amount to meet or exceed the emergency housing need.~~ The liquid assets of all household members, except for recipients of Supplemental Security Income, are considered.

(6)~~(8)~~ In order to determine if ~~that~~ the applicant ~~could or~~ could ~~not~~ have ~~planned for or~~ avoided the ~~crisis which caused his/her housing~~ emergency, a management review will be conducted by the department's eligibility worker ~~during the face-to-face client interview~~. As part of the management review, all ~~the client's~~ bills and income for the three month's prior to the application month, as well as available assets, will be reviewed ~~totaled~~. ~~It will be noted which ones have been paid and if any were paid by vendor payment.~~ If the amount of bills exceeds total income, the applicant must explain the reason or situation that caused the housing emergency and provide proof of the crisis.

(a) No change.

~~(a)1. The applicant was responsible for too many bills and just ran out of money before housing payment was due and could not pay it. Bills that the applicant is responsible for shall include: rent or mortgage; water, garbage, sewage; electricity; fuel oil or gas; dependent care; medical; burial; vehicle payments and repairs; vehicle costs such as gas, oil, or insurance; other transportation costs such as bus, taxi, etc.; loan payments; alimony or child support payments; school expenses and supplies; food and additional household supplies; insurance payments; maintenance fee for school or work clothing; post-secondary education tuition; and telephone.~~

1.~~2.~~The applicant experienced unusual circumstances that were unavoidable or unforeseen ~~which resulted in a decrease in income or created an additional added expense(s)~~, such as:

a. Emergencies ~~Crisis situations~~ caused by tornado, flood, fire, accident, illness, medical or dental needs, or death, and there was no other means to meet the emergency.

b. ~~Unemployment or~~ L~~l~~oss of employment or income, not due to voluntarily quitting a job or voluntarily decreasing available work hours.

c. Emergencies ~~Crisis~~ due to car repairs; broken air conditioners or heaters; leaky roofs; stopped up plumbing or septic tank; or the need to repair ~~for or mechanical failure of~~ an appliance, such as a refrigerator, stove, fan, or hot water heater.

(b) No change.

1. Emergencies ~~Crisis~~ created because money that could have been used to pay for rent, and therefore could have averted the crisis, was used to purchase or pay bills on gifts or other non-essential household expenses or unreasonable expenses.

~~2. Crisis created by using money for other than a reasonable expense or caused by circumstances for which there is not a good explanation, i.e., gambling, drugs, etc.~~

(7)~~(9) The household must not have been able to avoid the crisis which caused the housing emergency or rent arrearages. The housing emergency must not have resulted from the mishandling of available income or resources by the household.~~

(a) No change.

(b) If the eligibility worker accepts the explanation and documentation of the cause of the housing emergency following the management review, eligibility can be determined. If not, the case must be denied.

~~1.~~ If total income exceeds the amount of paid bills, and the difference ~~between them~~ is enough to solve the housing emergency, the applicant has the income to pay the rent or mortgage and does not have a bonafide housing emergency. The case is not eligible and must be denied.

~~2. If the amount of bills exceeds total income, the applicant must explain the reason or situation that caused the housing emergency and provide proof of the crisis.~~

~~3. If the amount of paid bills exceeds the total reported income, and the source of the income to pay the bills was not explained, the case must be denied. If the source(s) is explained, i.e., vendor payment, loan, gift, etc., or previously unreported income, count the income toward the management/ eligibility review.~~

Specific Authority 414.45 FS. Law Implemented 414.16 FS. History–New 3-13-88, Amended 7-15-93, Formerly 10C-33.004, Amended .

65A-33.005 Determination of Eligibility Based on Income.

~~(1) The income of all household members except recipients of Supplemental Security Income is considered in determining eligibility.~~

(1)~~(2)~~ All monthly income received during the month of application is considered.

(2)~~(3)~~ The total income, after applicable exclusions, of all household members ~~except Supplemental Security Income recipients~~ is rounded to the nearest whole dollar and then is compared to ~~Chart One of~~ the WAGES ~~AFDC Consolidated~~ Need Standard~~s by~~ for the household size ~~as shown in 10C-1.103,~~ to determine whether the household is eligible on the factor of income.

(3)~~(4)~~ A household whose adjusted income equals or is less than the ~~Chart One AFDC~~ WAGES ~~Consolidated~~ Need Standard corresponding to the household's size is income eligible. A household whose income exceeds the standard is ineligible.

Specific Authority 414.45 FS. Law Implemented 414.16 FS. History–New 3-13-88, Formerly 10C-33.005, Formerly 65A-33.005, Amended .

65A-33.006 Income.

(1) Income is gross cash received at regular intervals. Both earned and non-earned income are considered. The total income received by household members during the month of application minus exclusions specified in (2) is counted as adjusted income.

(a) through (b) No change.

~~(c) The amount deducted from Social Security and Railroad Retirement benefits for the premium for Medicare is counted as part of the gross amount of income.~~

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

(g) The pro rata portion of income from interest, dividends, mortgages or commissions which is received ~~during the month of application but which accrued for a prior month~~.

(h) through (i) No change.

Specific Authority 414.45 FS. Law Implemented 414.16 FS. History–New 3-13-88, Formerly 10C-33.006, Formerly 65A-33.006, Amended .

65A-33.007 Verification.

(1) through (3) No change.

~~(4) Verification of the pregnancy of the caretaker relative must be provided when there is no eligible child in the home except when the caretaker relative's condition is obvious. A written or verbal statement from a medical professional confirming the pregnancy is acceptable verification.~~

(5) through (6)(c) renumbered (4) through (5)(c) No change.

~~(6)(d) If the applicant is facing eviction, the applicant must provide his most recent rent receipt if he received one. In the absence of a rent receipt, a collateral contact with the landlord or landlord's representative must be made to verify eviction and the amount owing.~~

(d)~~(e)~~ In instances of inaccurate or questionable information, a collateral contact with the county property appraiser's office should be made to verify that the landlord issuing the eviction notice is also the owner of the property. If the landlord is not the same as the one named on the eviction notice, a collateral contact must be made with the person who signed the notice.

(6)~~(7)~~ At the discretion of the department's eligibility worker, t~~T~~he applicant will ~~must~~ provide verification of all costs which will be incurred in resolving the housing emergency.

(7)~~(8)~~ The applicant must present proof of his present living address, e.g., a utility bill or a rent receipt.

(8)~~(9)~~ The applicant must present proof of ~~that he did not have the~~ "inability to ~~plan for or~~ avoid the emergency ~~crisis~~." This would include proof of the ~~crisis which caused the housing~~ emergency and proof that the emergency was caused by factors beyond the applicant's ~~outside of his/her~~ control.

(a) Acceptable types of proof ~~verification would~~ include:

1. A written statement from an employer when the emergency ~~crisis situation~~ was caused by loss or decrease of income;

2. A receipt or bill marked "paid" from: a vendor who provided a service or repair, delivery or installation of an appliance;~~,~~ a vendor who provided or repaired a roof, plumbing, septic tank, or heater/air conditioner;~~,~~ or a person who provided a primary means of transportation if needed for work;

3. A receipt or a written statement from a vendor that goods or services were provided to the applicant to meet an emergency ~~crisis~~ caused by tornado, flood, fire, accident, illness, medical or dental need, or a death, etc.

(8)~~(9)~~(b) Failure of the applicant to supply requested information without good cause or to meet required deadlines to establish that ~~he did not have the ability to plan for or avoid~~ the emergency was unavoidable will necessitate that the case be found ineligible, and the case will be denied. ~~1.~~ Good cause will be determined on a case-by-case basis by the department's eligibility ~~case~~ worker~~'s supervisor~~.

~~2. Prior to a "good cause" determination by the supervisor, the worker must have exhausted all collateral contacts to prove the reason for the applicant's housing emergency, i.e., through vendors, employers, friends or family of the applicant, etc.~~

~~(c) The worker must fully record the management review and the resulting eligibility determination on the worksheet.~~

Specific Authority 414.45 FS. Law Implemented 414.16 FS. History–New 3-13-88, Amended 4-2-91, 7-15-93, Formerly 10C-33.007, Amended _____.

65A-33.008 Program Administration.

(1) The program will be operated on a statewide basis by ~~through the district offices of~~ the department.

(2) No change.

(3) All individuals have the right to apply for assistance and have a determination of eligibility, and if eligible, the amount of assistance, made available without discrimination as to race, color, sex, age, handicap, religion, national origin, or political belief.

(4) Applications for assistance under the chapter must be made on the CF~~HRS~~-ES Form 2682, May 99 ~~Feb 93~~, Application for Emergency Financial Assistance for Housing, which is incorporated by reference.

(5) No change.

(6) Applications for Emergency Financial Assistance for Housing ~~will be accepted only at~~ must be mailed to a centralized location~~s~~ designated by the department ~~each district~~. Applicants will be informed of this ~~the designated~~ centralized location~~s~~ when inquiring about the program at district ~~department~~ economic self-sufficiency services offices or at other accessible local sites where applications and program information is made available. Applications for assistance will be accepted only at the centralized location.

(7) All applications will be date-stamped with the date received and accepted by the centralized department ~~a designated HRS~~ office.

(8) The application date is the date the application form is received and date-stamped at the centralized ~~a designated~~ location. The application date establishes the month for which eligibility is determined and priority in handling.

(9) No change.

~~(10) A face-to-face interview with the applicant is required at a department economic services office.~~

~~(a) The interview will be scheduled by the department and held on the application date, when possible, but no later than 2 working days after the application date.~~

~~(b) If the applicant fails to come to the interview or to contact the department to arrange another appointment to be held within 1 working day of the missed appointment, the application will be denied.~~

~~(c) The applicant must provide proof of identification. If the applicant has no identification through loss or other circumstances, a collateral contact with a nonrelative must be completed to verify the identification of the applicant.~~

~~(d) If identification cannot be verified after all possibilities have been exhausted and the applicant has cooperated to the best of his ability, the Economic Self-Sufficiency Services Program Manager, Program Supervisor, or Program Analyst have the discretion to decide on a case-by-case basis whether or not to accept the individual worker's recommendation and the applicant's written statement of identification.~~

(11) No change.

(a) The applicant will be informed ~~orally and~~ in writing and, if possible, by telephone ~~at the interview~~ what additional information is required. A~~n~~ CF~~HRS~~ES Form 2685 ~~2695~~, May 99 ~~Feb 93~~, Request for Information, which is incorporated by reference, will be used when requesting further information from the applicant.

(b) The applicant will be given a deadline of 10 ~~3~~ working days to provide the necessary information.

(c) No change.

(d) The application will be denied if the required information is not provided within 2 ~~1~~ working day~~s~~ following the deadline or extended deadline date.

(12) A decision will be made on the application within 3 ~~1~~ working day~~s~~ following receipt of all necessary information or expiration of the deadline for provision of information.

(13) Each applicant will be sent, when possible, a written notice of approval or denial. Applicants with no fixed mailing address should ~~must~~ contact the department's office to arrange pick up of the notice at a designated location. Notice will be given on the CF~~HRS~~-ES Form 2684, May 99 ~~Feb 93~~, Notice of Disposition, which is incorporated by reference.

(14) Where determined appropriate by the department's eligibility worker, written notice of application approval, or denial will be accompanied by letters referring applicants to local community resources available to assist them with their particular needs.

(15)~~(14)~~ Emergency assistance payments will be made through a departmental ~~district or regional~~ revolving fund. See 65A-33.011 for the rule on type and amount of assistance.

(16)~~(15)~~ The revolving fund check will be made available to the landlord for each eligible applicant as quickly as possible following issuance. The department ~~Each district or regional financial office~~ will determine a feasible, expeditious method of handling and issuing these checks. Absent circumstances beyond the control of the department, the check will be mailed ~~available~~ to the landlord ~~vendor~~ no later than 5 ~~3~~ working days following the date eligibility is established. ~~The vendor or his representative may choose to pick up the check at the office or have the check mailed.~~ Circumstances beyond the control of

the department include: the check is lost in the mail; postal employees go on strike; a natural disaster occurs; money is not put into the revolving fund; or there is a power failure.

(a) Prior to receipt of the check, the landlord ~~vendor~~ or his representative must sign a~~n~~ CF~~HRS~~-ES Form 2698, May 99 ~~Feb 93~~, Vendor/Security Deposit Payment Agreement, which is incorporated by reference.

~~(16) An eligible household is limited to receipt of assistance during one period of 30 consecutive days in any 12 consecutive months.~~

(17) An applicant who is dissatisfied with the action taken on the household's application has the right to request a hearing to be conducted by the department's Office of Appeal Hearings pursuant to the provisions of Ch. 65-2, FAC. ~~The request must be submitted to the District's local office in which the application for assistance was filed.~~

~~(a) In lieu of a hearing conducted by the Office of Appeal Hearings, the applicant may elect to request an expedited hearing to be conducted by a designated hearing officer for the District in which the application was filed. The Department shall inform applicants orally or in writing of the opportunity to request an expedited hearing and the differences between an expedited and regular hearing. The applicant or his/her authorized representative shall file the request for an expedited hearing within 3 days of the date the applicant received the notice of the action taken to deny the application, exclusive of mailing. The request shall be made, in writing or orally, at the District local office in which the application for assistance was filed.~~

~~1. A written request by the applicant for a hearing shall state the reason for dissatisfaction, be signed and dated by the applicant, and entered in the applicant's case record by the District worker. Hearing requests made orally by the applicant shall be recorded, signed and dated by the District worker, and filed in the applicant's case record.~~

~~2. All verbal instructions given to the applicant regarding hearings by the District worker are to be put in writing, signed and dated, and given or mailed to the applicant, with a copy filed in the applicant's case folder.~~

~~(b) Expedited hearings shall conform with the procedural requirements set forth in F.A.C. 65-2, Part VI, except as modified herein. The applicant's request for an expedited hearing shall be deemed a waiver of his/her right to a hearing under F.A.C. 65-2, Part VI, to the extent necessary to initiate and conduct an expedited hearing.~~

~~(c) The procedure for conducting an expedited hearing is as follows:~~

~~1. On the date the request is made or received, or if not practicable, on the following business day, the District local office shall:~~

~~a. Contact the Office of Appeal Hearings and request the assignment of a case number;~~

~~b. Contact the designated hearing officer and schedule a hearing to be held within 5 days of the date the expedited hearing is requested;~~

~~c. Schedule a supervisory review of the application to be conducted within 3 days of the date of the hearing request at which the applicant or his/her authorized representative must attend. The supervisory review shall be conducted by an EFAHP supervisor. It shall be conducted by telephone if the applicant requests a telephone hearing. If the applicant or his/her authorized representative fails to attend the supervisory review without good cause and a favorable decision cannot be issued based on the file, the applicant's request for an expedited hearing shall be cancelled and the case shall be referred to the Office of Appeal Hearings for a regularly scheduled hearing pursuant to F.A.C. 65-2; and~~

~~d. Provide the applicant or his/her authorized representative, verbally first and then followed up with a written notice, of the time and date and place of the expedited hearing and the time and date and place of the supervisory review, as well as the opportunity to request that the supervisory review be conducted by telephone. This notice shall be provided at the time the hearing is requested, to the extent practicable. Otherwise, a written notice shall be mailed within two working days from the date the expedited hearing is requested.~~

~~2. Within 3 days of the hearing, the designated hearing officer shall issue the Final Order.~~

~~3. The original Final Order, together with the recording of the hearing and all exhibits, shall be preserved and transferred to the Office of Appeal Hearings for permanent storage.~~

~~4. If the applicant or his/her authorized representative fails to attend the expedited hearing at the time, place and date specified without good cause or without first giving written or oral notice to the District local office of his/her intention not to attend the hearing, the designated hearing officer's authority to issue a final order shall not be affected.~~

~~5. If the applicant or his/her authorized representative give notice orally or in writing of an intention not to attend the expedited hearing prior to the date of the hearing regardless of whether good cause exists, the expedited hearing shall be cancelled and the applicant's case shall be forwarded to the Office of Appeal Hearings, where a hearing will be held in accordance with the hearing requirements of F.A.C. 65-2, Part VI.~~

~~6. Circumstances beyond the applicant's control shall constitute the sole grounds for good cause for failure to attend the supervisory review or hearing or to give notice as required under this rule.~~

(18) No change.

(19) All forms may be obtained from the Economic Self-Sufficiency Services Program Office, ~~Benefit Recovery and~~ Special Programs Unit, 1317 Winewood Boulevard, Building 3~~6~~, Room 412 ~~460~~, Tallahassee, Florida 32399-0700.

(20) Disclosure of social security numbers (SSN) for the applicant and all household members is required ~~voluntary and will not affect eligibility if not provided~~. Social security numbers are used to identify household members and to verify that assistance has not been received more than one time in the twelve month period prior to the month of the current application. The SSN for the applicant becomes the case number. ~~In the absence of a SSN for any household member, a pseudo-social security number will be assigned to that individual in order to assist in case management.~~

Specific Authority 414.45 FS. Law Implemented 414.16 FS. History–New 3-13-88, Amended 4-2-91, 7-15-93, Formerly 10C-33.008, Amended _____.

65A-33.011 Type and Amount of Assistance.

(1) through (3) No change.

(4) When the minimum assistance needed by the eligible household to avoid eviction or foreclosure exceeds the $400 limit, the household must indicate exactly how the excess cost will be paid prior to assistance being granted. ~~Assistance will not be granted for rent or mortgage payments to prevent eviction or foreclosure unless the total minimum amount needed to prevent eviction or foreclosure can be secured.~~ In such situations, assistance can be granted to pay for alternate housing for the eligible household.

(5) Payment will be made in the form of a one-party check made payable to the landlord, mortgage holder or vendor for all eligible payments. The vendor or his representative will be required to sign a Vendor/Security Deposit Payment Agreement, CF~~HRS~~-ES Form 2698, (incorporated by reference in rule 65A-33.008, FAC) prior to receiving the check.

Specific Authority 414.45 FS. Law Implemented 414.16 FS. History–New 3-13-88, Amended 4-2-91, 7-15-93, Formerly 10C-33.011, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Rodney McInnis

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Audrey Mitchell, Program Administrator, Public Assistance Policy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 12, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN THE FAW: April 30, 1999

Section III
Notices of Changes, Corrections and Withdrawals

PUBLIC SERVICE COMMISSION

DOCKET NO. 960258-WS

RULE NO.:	RULE TITLE:
25-30.431	Used and Useful Consideration

NOTICE OF CHANGE

Notice is hereby given that the following change have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 23, No. 27, July 3, 1997, issue of the Florida Administrative Weekly:

25-30.431 Used and Useful Consideration ~~Margin Reserve~~.

(1) ~~"Margin reserve" is defined as the amount of plant capacity needed to preserve and protect the ability of utility facilities to serve existing and future customers in an economically feasible manner that will preclude a deterioration in quality of service and prevent adverse environmental and health effects.~~

~~(2) "Margin reserve period" is defined as the time period needed to install the next economically feasible increment of plant capacity.~~

~~(3) Margin reserve is an acknowledged component of the used and useful rate base determination that when requested and justified shall be included in rate cases filed pursuant to section 367.081, Florida Statutes.~~

~~(4)~~ ~~Unless otherwise justified, the margin reserve period for water source and treatment facilities and wastewater treatment and effluent disposal facilities will be 18 months.~~ In determining whether property is needed to serve customers more than five full years after the end of the test period as provided by section 367.081(2)(a)2.c., Florida Statutes (1999) ~~another margin reserve period is justified~~, the Commission shall consider the rate of growth in the number of equivalent residential connections (ERCs); the time needed to meet the guidelines of the Department of Environmental Protection (DEP) for planning, designing, and construction of plant expansion; and the technical and economic options available for sizing increments of plant expansion.