

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Erica D. Glover, Assistant General Counsel, Department of Business and Professional Regulation, Northwood Centre, 1940 N. Monroe Street, Tallahassee, Florida 32399-2202
 THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

Section II Proposed Rules

DEPARTMENT OF INSURANCE

RULE TITLES:	RULE NOS.:
Small Group Health Rating Requirements Purpose	4-149.009
Applicability and Scope; Penalties	4-149.030
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Qualifying Previous and Qualifying Existing Coverages	4-149.032
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Marketing Communication Material and Marketing Guidelines	4-149.037
Small Employer Health Reinsurance Program Forms	4-149.038

PURPOSE, EFFECT AND SUMMARY: Changes are being made to address the following:

- Implementation of provisions recognizing alliances.
- Implementation of underwriting provisions in small group.
- Implementation of expanded family categories.
- Implementation of composite rating restriction and required tabular rating for groups less than 10.
- Implementation of semi-annual reporting requirement for underwriting considerations.
- Elimination of date specific provisions which have been in place since initial implementation of the rules in 1993 that provided certain phase-in provisions.
- Requirement that disclosure regarding quoting rates which have been adjusted due to underwriting.
- Prohibition of specific deceptive practices related to the quoting of health insurance rates.
- Interpretation of §627.6699(5)(a) to prohibit refusal to insure because of an employer's unwillingness to provide

information not necessary to establish eligibility pursuant to § 627.6699(3)(v).

- Deletion of provisions which have been identified that simply restate the statute with no additional clarification.
- Clarification of group eligibility standards.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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: 624.308(1), 626.9611, .9641, 627.4106(3),(5),(8), 627.6699(5)(i)3.a.,4.a., 627.6699(9)(b), (11)(b)3.a.,(13)(i),(15) FS.

LAW IMPLEMENTED: 624.418, 624.4211, 624.424(6), 626.9541, 626.9541(1)(b),(g)2.,(x)3., 627.401, 627.410, 627.410(7), 627.4106, 627.4106(3),(4),(7),(8), 627.411, 627.6699, 627.6699(3)(g),(v), (4)(a),(5)(a),(g)1., (i)3.a.,4.a., (6),(7),(10),(11),(12)(c),(e),(13),(b),(i) FS.

IF REQUESTED IN WRITING 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: 9:30 a.m., April 16, 2002

PLACE: Room 116, Larson Building, 200 East Gaines Street, Tallahassee, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this program, please advise the Department at least 5 calendar days before the program by contacting the person listed above.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Frank Dino, Bureau of Life and Health Forms and Rates, Division of Insurer Services, Department of Insurance, 200 East Gaines Street, Tallahassee, Florida 32399-0328, (850)413-5014

THE FULL TEXT OF THE PROPOSED RULES IS:

4-149.009 Small Group Health Rating Requirements.

Specific Authority 624.308(1), 627.4106(3),(5),(8), as amended in Section 118, Chapter 92-33, Laws of Florida. Law Implemented 627.410(7), 627.4106, 627.4106(3),(4),(7),(8) FS. History—New 6-10-92, Amended 3-1-93, Repealed

PART III SMALL EMPLOYER HEALTH CARE ACCESS

4-149.030 Purpose.

The purpose of these rules is to implement Section 627.6699, Florida Statutes ~~section 65 of Chapter 93-129, Laws of Florida,~~ pertaining to requirements of small employer group insurance, to promote the public interest, to promote the availability of small employer group insurance policies, to protect applicants for small employer group insurance from unfair or deceptive

sales or enrollment practices, to establish standards for small employer group insurance, to facilitate public understanding and comparison of small employer group insurance policies.

Specific Authority 624.308(1), 626.9641, 627.6699(15) FS. Law Implemented 626.9541, 627.401, 627.410, 627.411, 627.6699 FS. History—New 3-1-93, Amended 11-7-93, _____.

4-149.031 Applicability and Scope; Penalties.

(1) No change.

(2) The rules in this part shall apply to any health benefit plan, whether provided on a group or individual basis, which:

(a) Satisfies Section 627.6699(4)(a), Florida Statutes; ~~and:~~

(b) Provides coverage to one or more employees of a small employer located in this state, without regard to whether the policy or certificate was issued in this state; ~~and~~

~~(c) Is in effect on or after the effective date of Section 627.6699, Florida Statutes.~~

~~(3) A carrier which offers individual health insurance policies to one or more of the employees of a small employer shall be considered a small employer carrier and shall be subject to the provisions of Section 627.6699, Florida Statutes, and these rules with respect to that policy unless the policy is marketed directly to the individual employee, and the employer does not participate in the payment, collection, or distribution of premiums or facilitate the administration of the policy in any manner. The provisions of subsections (5) and (7) of Section 627.6699 (relating to guaranteed issue of coverage) shall apply with respect to the small employer if:~~

~~(a) The small employer has at least three eligible employees, and not more than 50 on or after January 1, 1994; and~~

~~(b) The small employer has at least one or two eligible employees and not more than 50, as of April 15, 1994.~~

~~(c) The small employer contributes directly or indirectly to payment or collection of premiums charged by the carrier or administration of the policy in any manner.~~

~~(4) Effective 1/1/94, Section 627.6699, Florida Statutes, includes groups of 26-50 employees in the definition of a small group. Carriers writing groups of this size but not fewer than 26 eligible employees which desire to continue marketing in this redefined small group area must apply for either risk assuming or reinsuring company status. Once authorized to sell to small groups, the carrier must make all applicable plans of insurance available to any small employer. Effective 1/1/94, a small employer is defined as a group of 1-50 eligible employees. The guaranteed issue requirement is effective for groups of 3-50 on 1/1/94. The guaranteed issue requirement is effective for groups of 1-2 on 4/15/94.~~

~~(3)(5) The Department shall impose penalties for non-compliance with the act or for abusive market conduct practices in accordance with Rule 4-142.011, F.A.C., upon its becoming effective. Such non-compliance or abusive market conduct practices are divided into three levels based on severity and intent.~~

(a) through (c) No change.

Specific Authority 624.308(1), 627.6699(15) FS. Law Implemented 624.418, 624.4211, 627.6699(4)(a),(5),(5)(g)1.,(7) FS. History—New 3-1-93, Amended 11-7-93, 4-23-95, _____.

4-149.032 Requirement to Insure Entire Groups.

(1) A small employer carrier which offers coverage to a small employer shall offer coverage to each eligible employee and to each of the dependents of the employees who elect coverage. The small employer carrier shall offer the same health benefit plans to each employee and dependent. ~~No dependent of an employee shall be covered unless the employee is also covered. If dependents are covered, the employee and the covered dependents shall be insured under the same health benefit plan.~~

(2) through (3) No change.

~~(4) Within 60 days following 1/1/94, each small employer carrier shall grant a 90-day open enrollment period to allow each employee or dependent whose coverage was refused or restricted for health reasons prior to 1/1/93 to come into his employer's program without restriction. The employee must have been employed on 12/31/92 and continuously employed through 4/1/93. The small employer carrier must notify each employer group subject to this open enrollment opportunity. There shall be no restrictions for pre-existing conditions for employees or dependents meeting the conditions in this subsection. An eligible employee who passes up this opportunity and subsequently wants to enroll will be considered a late enrollee.~~

~~(5) An annual open enrollment period must be offered to each small employer's employees and dependents on each anniversary of the employer's program. The enrollment period is for 30 days before the anniversary. Late enrollees shall not be excluded from these open enrollment periods. Late enrollees can be excluded from coverage for the period of time from the date of application until the first open enrollment date following the date of application. Any pre-existing condition period will date from the effective date of the coverage.~~

~~(6) New entrants to a group shall be accepted for coverage during their initial eligibility period by the small employer carrier without any restrictions or limitations on coverage related to the health status or claims experience of those employees or their dependents, except as permitted in section 627.6699(5)(h)2.~~

Specific Authority 624.308(1), 627.6699(15) FS. Law Implemented 627.6699(5),(12) FS. History—New 3-1-93, Amended 11-7-93, 4-23-95, _____.

4-149.034 Qualifying Previous and Qualifying Existing Coverages.

Specific Authority 624.308(1), 627.6699(15) FS. Law Implemented 627.6699(3),(3)(i),(5),(5)(g)1.,(h),(13)(b) FS. History—New 3-1-93, Amended 11-7-93, 4-23-95, Repealed _____.

4-149.037 Calculation of Premium Rates.

(1) This rule is applicable for all health benefit plans subject to Section 627.6699, Florida Statutes, and is in addition to Parts I and II New Issues.

~~(a) Other than the exception noted in (b), below, all small employer health plans shall be issued on a guaranteed issue basis. Riders may be added to the Standard Plan on an underwritten basis. However, all employees shall have the additional benefits and once the program is in place, new enrollees shall be added without evidence of insurability for the full benefit package of the program.~~

~~(b) The small employer carrier shall offer the standard and basic benefit plan in every sales situation. Carriers may also offer other health benefit plans to the small employer. All health benefit plans shall be offered and issued on a guaranteed issue basis except the benefits purchased through riders to the standard benefits plan, referenced in (1)(a), above.~~

~~(c) Effective January 1, 1994, premiums shall be calculated using modified community rating. Under this method, premiums can recognize only attained age, gender, family composition, geographical area, and tobacco usage. Geographical area must be recognized by county, not zip code.~~

~~(d) Premiums for plans in a given pool of insurance must recognize benefit, deductible, and copay differentials. As an example, if the Standard Plan is enriched by the addition of riders for a particular employer by 20%, then the premium shall be 20% higher than a Standard Plan issued to the same employer.~~

~~(e)1. Each small employer carrier may have one or more of the following pools:~~

- ~~a. Directly written indemnity business;~~
- ~~b. Indemnity business written through CHPA's;~~
- ~~c. Directly written HMO business;~~
- ~~d. HMO business written through CHPA's;~~
- ~~e. Directly written managed care business; and~~
- ~~f. Managed care business written through CHPA's.~~

~~2. For purposes of the rules in this part, indemnity business includes pure fee-for-service plans.~~

~~3. For purposes of this part, managed care business includes:~~

- ~~a. Preferred provider networks;~~
- ~~b. Exclusive provider networks; and~~
- ~~c. Other managed care arrangements which are not organized under chapter 641, Florida Statutes.~~

~~4. For rating purposes under the rules in this part, the experience for each benefit plan must be assigned to the appropriate one of the six pools in 1. above.~~

~~(f) Premiums for a particular employer shall be guaranteed for a year upon issue or renewal. Interim changes in rates can be made for changes in composition or benefits. Age changes between renewals are not considered to be changes in composition. Rate changes for new or terminating enrollees~~

~~shall be made at the rates in effect at the beginning of the rating period. Benefit changes requested by an employer can be made at anytime, at the option of the small employer carrier, at the rates then in effect or at the rates in effect at the beginning of the rating period. If current rates are used, the new premium shall be guaranteed for one year from the date of change in benefits. Benefit plans offered by a carrier on a guarantee issue basis are required to be made available to the employer on request at the annual renewal date. Such benefit plans must be made available without evidence of insurability and without any impact on pre-existing condition provisions.~~

~~(g) Affiliated Companies are treated as separate companies unless small group insurance business has been transferred between or among companies since January 1, 1992.~~

~~(2)(a) A premium schedule for a particular employer shall be guaranteed for one year on the employer's policy/certificate anniversary, except for a policy issued to an Alliance, as defined in Section 627.654, Florida Statutes, in which case the first year an employer obtains coverage, the employer may receive an increase on the policy anniversary which may be less than one year pursuant to Section 627.6699(6)(b)3., Florida Statutes.~~

~~(b) A group's rate shall not be changed due to employee age changes which occur during the period when a premium schedule is guaranteed.~~

~~(c) The rate applicable to new or terminating enrollees or any change in dependent status shall be made at the premium schedule in effect at the employer's policy/certificate anniversary.~~

~~Existing or Renewal Business:~~

~~(a) Business in force on December 31, 1993, shall be community rated upon its first renewal date in 1995. Such business for companies not issuing new business in 1994 shall be rated as described above for new issues, commencing in 1995. For companies issuing new business in 1994, business in force on December 31, 1993, and still in force on December 31, 1994, shall be included in the appropriate pool established for new issues in 1994 and rated at renewal in 1995 at the same rate as if it were new business and the renewal date were the issue date.~~

~~(b) Any business in force on December 31, 1993, which is renewed in 1995 shall be renewable from that point forward at the option of the employer.~~

~~(c) New employees added to existing groups in 1994 and thereafter shall be added on a guaranteed issue basis for the benefits program in force.~~

~~(3)(a) All contract forms issued pursuant to Section 627.6699, Florida Statutes, are subject to modified community rating and must be pooled together for all rating purposes, except that health maintenance organization plans need not be pooled with indemnity plans.~~

(b) Premiums for health benefit plans shall recognize benefit, deductible, and copay differentials. As an example, if the Standard Plan is enriched by the addition of riders for a particular employer by 20 percent, then the premium shall be 20 percent higher than a Standard Plan issued to the same employer.

~~For 1994, business in force as of December 31, 1993, shall be rated as described in Rule 4-149.009, including the definition of Affiliated Companies. However, Affiliated Company business need not be treated as the business of a single company in 1995 if intercompany business transfers have not occurred since January 1, 1992.~~

(4) Rate filing requirements – Modified Community Rating. Premium schedules for benefit plans offered to small employer groups shall be based solely on the following categories and factors of the employee, without regard to the nature of the employer group.

~~(a) Within each of the pools stated in (1)(c)1., only benefit differences can be used in determining modified community rates.~~

~~(b) In CHPA (community health purchasing alliance) versus out-of-CHPA differences must be justified. Expense differentials must be justified, and, if less, the differential must be reflected in higher loss ratios.~~

~~(c) When rates are initially changed or revised a complete actuarial memorandum must be included with the revised rates.~~

~~(d) Special programs such as Chamber of Commerce plans shall be allowed under the following criteria:~~

~~1. The Basic and Standard plans must be available and offered to all employers.~~

~~2. Lower rates are due to expense savings not special morbidity assumptions.~~

~~3. Expense savings are to be passed on to employers in the form of higher loss ratios.~~

~~4. The specific benefit plan under the special program must be made available to all employers not involved with the special program, but at a rate not including the expense savings of the special program.~~

~~(e) The Department will allow a substantiated monthly trend factor during 1994 for new business. Trend factors must be filed for approval each year in accordance with the requirements of Rule 4-149.003. Trend factors can be changed more frequently upon approval of a filing. Rate tables must be filed for approval, in accordance with the provisions of Rule 4-149.003, if increases greater than trend are needed. If additional increases are not needed, then the entire table of rates shall be refiled at the end of each year along with the trend factors for the next year and pool experience for the previous year.~~

~~(f) A special filing will be needed at the end of 1994, following a similar methodology to that used and approved initially, to establish new modified community rates for 1994, recognizing the inclusion in 1995 of the business in force on December 31, 1993, which is still in force at the end of 1994.~~

~~(g) Companies with in force business as of December 31, 1993, that are not going to issue new business in 1994, do not have to file modified community rates for use in 1994. Such companies must so inform the Department in writing. These companies will be required to file modified community rates for 1995, however.~~

~~(h) Rates are to be calculated and presented using the following rating categories for all benefit plans offered.~~

~~(a) Age Categories. Employee age shall be determined as of the date of issue and each subsequent renewal date thereafter as defined in the policy and certificate. If not explicitly defined in the contract, age shall be the attained age as of the date of issue or renewal of the certificate.~~

~~1.a. <30~~

~~2.b. 30 – 39~~

~~3.c. 40 – 49~~

~~4.d. 50 – 54~~

~~5.e. 55 – 59~~

~~6.f. 60 – 64~~

~~7.g. 65 & above – Medicare is Primary~~

~~8.h. 65 & above – Health Plan is Primary~~

~~(b) 1.2. Rating Categories~~

~~a. Employee – Male~~

~~b. Employee – Female~~

~~c. Employee – Male – Dependent Children~~

~~d. Employee – Female – Dependent Children~~

~~e. Employee – Spouse~~

~~f. Employee – Spouse – Dependent Children~~

~~2. Up to 3 optional dependent children categories are permitted: 1, 2, and 3 or more dependent children for companies for both the employee with family and the employee with dependent children categories.~~

~~3. At the option of the company, dependant only categories.~~

~~(c) 3. Area Factors by County~~

~~(d) 4. Tobacco Usage Factor (>1, base rates are for non-tobacco user)~~

~~(e) Effective date. The premium schedule may be adjusted based on a medical trend table, approved pursuant to Part I of this rule chapter, reflecting the period of time from the date the rate schedule is effective to the anniversary date of the new or renewing group for medical trend adjustment.~~

~~(5) Composite rating is permissible. However, the composite rate must be determined on a case-by-case basis in such a manner that its application to the insured group will reproduce the case rate calculated using the rates in the required format. The composite rate is to be calculated at issue~~

or at renewal only, and it is to be used throughout the following plan year for additions to and terminations from the group. Composite rating is allowed to accommodate past billing practices between a carrier and its employer groups. It is not an exception to (4)(e).

(5)(6) The minimum loss ratio is 65 percent.

(6)(7)(a)1.a. A small employer carrier may make up to a 15 percent adjustment in rates from the modified community rate schedule for claims experience, health status, or duration of coverage for a particular employer group from that otherwise determined from the tabular rate schedule determined above pursuant to Section 627.6699(6)(b)5., Florida Statutes.

b. A renewing group's rate schedule is limited to a maximum 10 percent adjustment from their prior rate for claims experience, health status, or duration of coverage for a particular employer group subject to a maximum 15 percent differential from the modified community rate pursuant to Section 627.6699(6)(b)5., Florida Statutes.

2. The objective criteria and standards for application of this rate adjustment shall be applicable to and used for all small employer groups on a non-discriminatory basis.

3. Such criteria and standards shall be filed for approval pursuant to Part I of this rule chapter.

4. A small employer carrier may require completion of an application including health questions, but shall not require claims experience of a new group as a condition of providing coverage.

5. Such adjustment shall be uniformly applied to the entire premium schedule.

(b) A small employer carrier may file rating factors to provide a credit to the approved tabular community rate schedule to reflect efficiencies in administrative and acquisition expenses based on the size of the small employer. Such factors shall be filed for approval pursuant to Part I of this rule chapter, and shall be used for all small employer groups on a non-discriminatory basis.

(c) If a small employer carrier makes adjustments to individual employer group rates based on the provisions of (a) or (b) above, the carrier shall provide experience in all rate filings including both the actual premiums charged and the premium which would have resulted had no adjustments been made and the tabular community rate schedule was used. Rate analysis and rate adjustments shall be based on the restated premium as though the tabular community rate schedule were used without adjustment.

(d) All carriers shall disclose to a group when, and to what degree, the rates quoted to the group have been modified from the modified community rate schedule in determining the rate for the group.

(e) Coverage available to an Alliance is subject to the provisions of Section 627.6699, Florida Statutes, and shall be available to the Alliance on a guaranteed issue basis. Any rate

adjustments made pursuant to (b) above shall be applied uniformly to all members of the Alliance and not on an individual employer basis. Rate adjustments pursuant to (a) above shall be determined and applied on an individual employer group basis.

~~Riders on Standard Plans:~~

~~(a) Additional benefit riders may be medically underwritten and offered upon approval by the Department pursuant to section 627.410, Florida Statutes.~~

~~(b) Riders may only be used to increase the benefits of the standard plan. The riders must provide benefits or services not offered by the standard plan. The additional premium for the rider must use the rating methodology of this rule and be actuarially equivalent to the additional covered service.~~

(7) Composite rating is permissible when it will reproduce the group premium determined as the sum of the individual tabular rates for each employee calculated at the time of any rate quote using the premium schedule approved by the Department pursuant to Part I of this rule chapter in the required format in subsection (4) above. A carrier may use composite rating only when it indicated in its filing the minimum number of enrollees required, which shall not be fewer than ten.

Specific Authority 624.308(1), 627.6699(15) FS. Law Implemented 627.410, 627.6699(6),(12)(e),(13),(13)(i) FS. History—New 3-1-93, Amended 11-7-93, 5-11-94, 4-23-95, _____.

4-149.038 Employee Health Care Access Act Annual and Quarterly Statement Reporting Requirement.

(1)(a) Pursuant to Section 627.6699, Florida Statutes, each carrier that provides health benefit plans in this state shall file, pursuant to paragraph 4-149.044(2)(b), with its 1992 annual statement and each year thereafter, on or before March 15 + for the preceding year ending December 31, Form DI4-1094, rev. 11/01 "Report of Gross Annual Premiums for Health Benefit Plans Issued in Florida" (10/92), which is hereby adopted in Rule 4-149.044, F.A.C. and incorporated by reference, providing information on health benefit plans written in this state.

(b) The filing shall be accompanied by an actuarial certification that the carrier is in compliance with the provisions of Section 627.6699(6), Florida Statutes, and that the rating methods of the carrier are actuarially sound. The actuary shall provide a detailed explanation if this certification is unable to be made. Effective for filing with the carrier's 1994 annual statement and each year thereafter, due on or before March 1 of each year, carriers shall use Form DI4-1094, "Report of Gross Annual Premiums and Plan Policy Exhibits for Health Benefit Plans Issued in Florida," rev. 7/93, which is hereby adopted and incorporated by reference. Copies of these forms may be obtained from and shall be submitted to: Bureau of Life and Health Insurer Solvency and Market Conduct, Division of Insurer Services, Department of Insurance, Larson Building, Tallahassee, FL 32399-0327.

(2) Annual Reports: The following reports shall be filed no later than March 15 of each year, and shall include experience for the previous calendar year:

(a) Business in force 12/31/93: The report for this block of business for 1994 and 1995 shall comply with Rule 4-149.009 and two additional items, below, shall be included. In total for all classes of business subject to the 20% test:

1. Average Premium per certificate
2. Average Number of certificates per group

(b) Business written in 1994:

1. No report required March 15, 1994.
2. The following information is to be submitted for each

Modified Community Rating Pool:

- a. Earned Premium
- b. Paid Claims
- c. Change in Claims Reserves
- d. Incurred Claims
- e. Loss Ratio
- f. Number of Groups
- g. Number of Certificates
- h. Average Premium per Certificate
- i. Average Number of Certificates per Group

3. The actuarial certification shall make specific reference to the Community Rating Pools.

(c) In 1996, all business issued and in force on 12/31/93 and still in force 12/31/94 shall be in one of the pools. The report shall follow the requirements established above for business written in 1994.

(2)(3) Quarterly Reports: Within ~~45~~ 30 days following each calendar quarter each small employer carrier shall file, pursuant to paragraph 4-149.044(2)(b), a report on Form ~~DI4-1117, rev. 3/02~~ ~~DI4-QER~~, "Florida Employee Health Care Access Act Enrollment Report," rev. 7/93, which is hereby adopted in Rule 4-149.044, F.A.C. and incorporated by reference. This form may be obtained from and shall be submitted to the Bureau of Life and Health Insurer Solvency and Market Conduct, Division of Insurer Services, Department of Insurance, Larson Building, Tallahassee, FL 32399-0327.

(3)(a) All small employer carriers utilizing rating adjustments pursuant to Rule 4-149.037(7), F.A.C., shall make semiannual reports of their experience. The semiannual reports shall reflect experience from January 1 through June 30 and from July 1 through December 31 of each year. The reports shall be filed with the Department, pursuant to paragraph 4-149.044(2)(b), F.A.C., within 45 days following the last day of the reporting period. The carrier shall report:

1. The average number of employer groups during the reporting period.
2. The average number of covered employees during the reporting period.
3. Actual earned premiums during the reporting period.

4. Premiums that would have resulted from charging the approved community rate, excluding administrative and acquisition credits.

5. Premiums that would have resulted from charging the approved community rate, including administrative and acquisition credits.

6. (4)-(5) Total administrative and acquisition credits.

7. (3)-(4) Total deviation due to claims, health and duration status.

8. (7)/(3) Percentage deviation of charged rate to community rate for claims, health and duration status.

(b) If (3)(a)8. above is 5 percent or more, the carrier shall limit the application of claim experience, health status, or duration adjustments to credits only effective no more than 60 days following the report date. This shall apply to all groups with original issue dates or anniversary dates for renewals on or after this 60 days. If a group was in process of application review and issuance, and would have received a surcharge, but the policy was not issued or renewed until after the 60 day period, the surcharge may not be applied.

(c) If the above report is not submitted by the date required, the carrier shall limit the application of claim experience, health status, or duration adjustments to credits only effective no more than 60 days following the due date. This shall apply to all groups with original issue dates or anniversary dates for renewals on or after this 60 days. If a group was in process of application review and issuance, and would have received a surcharge, but the policy was not issued or renewed until after the 60 day period, the surcharge may not be applied.

(d) A carrier that is limited to credits only, pursuant to (b) or (c) above, shall be limited to credits only until a subsequent reporting period demonstrating that (3)(a)8. above is less than 5 percent.

Specific Authority 627.6699(5)(i)3.a.4.a.(15) FS. Law Implemented 624.424(6), 627.6699(5)(i)3.a.4.a. FS. History-New 3-1-93, Amended 11-7-93.

4-149.039 Designation of Election to Become a Risk-Assuming or Reinsuring Carrier Under Section 627.6699, Florida Statutes, the Employee Health Care Access Act.

(1) A small employer carrier shall file, pursuant to paragraph 4-149.044(2)(b), a final designation of election to become either a risk-assuming carrier or a reinsuring carrier by October 31, 1993. This final election is binding for two years, from January 1, 1994, through December 31, 1995, after which an election shall be binding for a period of five years. using The small employer carrier desiring to be a risk-assuming carrier shall use Form DI4-1093, rev. 9/95, "State of Florida/Small Employer Carrier's Application to Become a Risk Assuming Carrier or a Reinsuring Carrier, As Required by Section 627.6699(9), Florida Statutes," rev. 8/93 which is hereby adopted in Rule 4-149.044, F.A.C and incorporated by reference.

(2) through (3) No change.

~~(4) Copies of the form may be obtained from and shall be submitted to the Bureau of Life and Health Insurer Solvency and Market Conduct, Division of Insurer Services, Department of Insurance, Larson Building, Tallahassee, FL 32399-0327.~~

~~Specific Authority 627.6699(15) FS. Law Implemented 627.6699(9),(10) FS. History—New 3-1-93, Amended 11-7-93,_____.~~

4-149.040 Change of Status of Small Employer Carrier’s Election to Become Risk-Assuming Carrier or Reinsuring Carrier.

~~(1) Any small employer carrier seeking to change the election made by the carrier under Section 627.6699(9)(a), Florida Statutes, to become either a risk-assuming carrier or a reinsuring carrier shall request a change of status, pursuant to paragraph 4-149.044(2)(b), on Form DI4-1095, rev. 8/93, “State of Florida/Small Employer Carrier’s Application to Modify Previous Election to Become a Risk Assuming or a Reinsuring Carrier, As Required by Section 627.6699(9), Florida Statutes,” rev. 8/93, which is hereby adopted in Rule 4-149.044, F.A.C. and incorporated by reference. Copies of the form may be obtained from and shall be submitted to the Bureau of Life and Health Insurer Solvency and Market Conduct, Division of Insurer Services, Department of Insurance, Larson Building, Tallahassee, FL 32399-0327.~~

(2) No change.

~~Specific Authority 627.6699(9)(b), (15) FS. Law Implemented 627.6699(9), (10), (11) FS. History—New 3-1-93, Amended 11-7-93,_____.~~

4-149.041 Marketing Communication Material and Marketing Guidelines.

(1) No change.

(2) Any insurer marketing small group health plans shall comply with the following guidelines.

(a) The small group health history or size shall not be used to direct the small group to a particular small group plan except as permitted by the provisions of Section 627.6699, Florida Statutes or to direct the small group in or out of the Community Health Purchasing Alliances (CHPA’s).

(b) 1. In determining eligibility for small group coverage an employer/employee income may not be used.

2. A carrier may request information and documentation to determine whether an individual qualifies as an active business that is eligible for coverage.

3. The following information, records, or documents documentation may be requested or considered in determining whether an employer meets the definition of small employer pursuant to Section 627.6699(3)(v), Florida Statutes. If the employer was: required by applicable law to maintain the information, record or documents or to file the document with a local, state or federal governmental agency or authority; maintains the information in the normal course of business; or was issued the information, records, or documents by a local, state, or deferral agency or authority eligibility:

1. through 15. renumbered a. through o. No change.

4.a. Refusal to insure an eligible small employer because of the employer’s refusal or unwillingness to provide information, records or documents which are not necessary to reasonably establish that the employer meets the definition of Section 627.6699(3)(v), Florida Statutes, violates Section 627.6699(5)(a), Florida Statutes.

b. Any statement that requires information not necessary for determining eligibility be provided for coverage to be issued shall constitute an unfair method of competition in violation of Section 626.9541(1)(b), Florida Statutes.

~~(e) Issuance of small group coverage may not be conditioned upon the purchase of other coverage, i.e. life, dental, etc.~~

~~(d) Employees over 65 years of age must be offered small group coverage. Any individual who is enrolled in a small group plan and is 65 years of age or older will have a two month period following termination of coverages in which to enroll in a medicare supplement plan on a guarantee issue basis by an insurer that offers a medicare supplement plan.~~

~~(e) Usual and customary charges, except for negotiated discounts, shall be the same inside and outside the CHPA.~~

(f) through (g) renumbered (d) through (e) No change.

(f) Pursuant to Section 626.9611, Florida Statutes, the Department identifies the following as being prohibited by Section 626.9541(1)(b), Florida Statutes, for a small employer carrier in reflecting any of the permitted rate adjustments in Rule 4-149.037(6), F.A.C.:

1. To quote a rate which does not reflect the actual characteristics of the individual group; or

2. Where necessary underwriting information has not been analyzed, to quote a rate other than the approved community rate with disclosure that the rate may be adjusted up or down to 15 percent for new groups or 10 percent for renewal groups.

~~Specific Authority 627.6699(13)(i),(15), 626.9611 FS. Law Implemented 626.9541(1)(b),(g)2.,(x)3., 627.6699(3)(g),(v),(5)(a),(7),(12),(c),(13),(13),(b) FS. History—New 3-1-93, Amended 11-7-93, 4-23-95,_____.~~

4-149.043 Small Employer Health Reinsurance Program.

(1) No change.

(2) Of the ~~{8}~~ additional members of the board, subsequently amended to 13 in the 2000 legislative session, five {5} shall be selected from individuals recommended by small employer carriers. Any small employer carrier wishing to do so may submit a list of recommended appointees to the commissioner either on its own behalf or through its trade organization. The list shall be submitted no later than October 29, 1993, and shall be sent to: Chief, Bureau of Life and Health Forms & Rates, Division of Insurer Services, Department of Insurance, Larson Building, Tallahassee, FL 32399-0328 or submitted electronically to lhfrbureau@doi.state.fl.us. The carrier or trade organization submitting the list shall include the following information about the persons it is recommending:

(a) through (d) No change.

Specific Authority 624.308(1), 627.6699(11)(b)3.a. FS. Law Implemented 627.6699(11) FS. History--New 11-7-93, Amended _____.

4-149.044 Forms.

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

(c) DI4-1093, rev. 9/95, State of Florida/Small Employer Carrier's Application to Become a Risk Assuming Carrier or a Reinsuring Carrier, As Required by Section 627.6699(9), Florida Statutes.

(a) DI4-1094, rev. 11/01, Report of Gross Annual Premium for Health Benefit Plans Issued in Florida.

(d) DI4-1095, rev. 8/93, State of Florida/Small Employer Carrier's Application to Modify Previous Election to Become a Risk Assuming or a Reinsuring Carrier, As Required by Section 627.6699(9), Florida Statutes.

(b) DI4-1117, rev. 3/02, Florida Employee Health Care Access Act Enrollment Report.

(2)(a) Copies of forms may be obtained from the Bureau of Life and Health Forms and Rates, Division of Insurer Services, Department of Insurance, 200 East Gaines Street, Tallahassee, FL 32399-0328. Forms are also available and may be printed from the Department's Website: www.doi.state.fl.us.

(b) Filings shall be submitted to the address in paragraph (a) above, or may be submitted electronically to lhfrbureau@doi.state.fl.us.

Specific Authority 624.308(1), 626.9641, 627.6699(15) FS. Law Implemented 626.9541, 627.401, 627.410, 627.411, 627.6699 FS. History--New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Frank Dino, Bureau of Life and Health Forms and Rates, Division of Insurer Services, Department of Insurance
 NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Rich Robleto, Chief, Bureau of Life and Health Forms and Rates, Division of Insurer Services, Department of Insurance
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 19, 2001
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 2, 2001

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Aquaculture

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Comprehensive Shellfish Control Code	5L-1
RULE TITLES:	RULE NOS.:
General Requirements and Intent	5L-1.001
Definitions	5L-1.002
Production and Market Standards	5L-1.004
Shellfish Processing Plant Certification License	5L-1.005
Compliance and Penalties	5L-1.006

Container Identification, Terminal Sale

Date; Prohibitions	5L-1.007
Shellfish Handling	5L-1.008
Shellfish Relaying	5L-1.009
Buildings and Facilities	5L-1.010
Equipment for Shellfish Processing	5L-1.011
Sanitary Operations	5L-1.012
Plant Operation	5L-1.013

PURPOSE AND EFFECT: These amendments propose to implement shellfish processing plant facility certification licenses and administrative fines; change the statutory authority for the code from Chapters 370 to 597, F.S.; adopt the National Shellfish Sanitation Program Guide For The Control Of Molluscan Shellfish Model Ordinance 1999; add, clarify, and renumber some of the definitions; add a section to allow the department to issue a stop-use order for unsanitary equipment; describe shellfish relaying for marine biotoxins and for public relay activities; further describe acceptable standards for lighting; require each certified dealer to have someone with adequate HACCP training, knowledge or experience to develop a HACCP plan; and replace the word should with shall in several sentences throughout the rule.

SUMMARY: The proposed amendments are to implement authority granted to the Department by the 2000 session of the Florida legislature, and approved by the Governor, to license or certify facilities used for processing oysters, clams, mussels, scallops, and crabs, and to levy an administrative fine up to \$1,000 per violation per day or to suspend or revoke such licenses or certificates upon satisfactory evidence of any violation of rules adopted pursuant to the newly created section 597.020, F.S. Additional amendments propose other miscellaneous changes to the rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: There is no anticipated regulatory cost.

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: 597.020 FS.

LAW IMPLEMENTED: 597.020, 597.010(15), 597.010(19) 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: 10:00 a.m. – 1:00 p.m., Monday, April 15, 2002

PLACE: 1203 Governors Square Boulevard, 5th Floor, Tallahassee, Florida

If accommodation for a disability is needed to participate in this activity, please notify John McDowell, Division of Aquaculture, (850)488-5471, at least seven days before the meeting.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Bobby Bickley, Division of Aquaculture, 1203 Governors Square Boulevard, 5th Floor, Tallahassee, Florida 32301, (850)488-5471

THE FULL TEXT OF THE PROPOSED RULES IS:

5L-1.001 General Requirements Purpose and Intent.

(1) A shellfish processing plant certification is required to operate any shellfish processing facility.

(2)(+) It is the intent of the Department to establish regulations and specifications to be known as the "Comprehensive Shellfish Control Code", relating to sanitary practices for the catching, handling, relaying, depuration, packaging, preserving and storing of shellfish products.

(3)(-) The Department, as a participant in the Interstate Shellfish Sanitation Conference, recognizes and endorses the following principles:

(a) Shellfish are a renewable, manageable natural and aquacultured resource of significant economic value to many coastal communities, and should be managed as carefully as are other natural resources such as forests, water, and agricultural lands.

(b) Shellfish culture and harvesting represents a beneficial use of water in the estuaries. This use should be recognized by local, state and federal agencies in planning and carrying out pollution prevention and abatement programs and in comprehensive planning for the use of these areas.

(c) The goals of the Interstate Shellfish Sanitation Conference are:

1. The continued safe use of this natural and aquacultured resource, and

2. Active encouragement of water quality programs which will preserve all possible coastal areas for this beneficial use.

(4)(-) The Department recognizes that the shellfish industry is subject to change as technological data becomes available; accordingly, it is the intent of the Department that the Comprehensive Shellfish Control Code be revised as necessary so that the technological data and industrial practices contained therein shall be consistent consonant with good health and safety practices.

(5)(4) The enforcement of the provisions of this code by the Department shall be coordinated with and be in conjunction with any and all other state, local and federal agencies exercising jurisdiction over the sanitary practices of the shellfish industry.

(6)(5) Adoption of Federal Regulations and Standards – To the extent not inconsistent with the rules herein, the following are hereby adopted as rules under the shellfish processors regulation, sSection 597.020 370.071, F.S.:

(a) The following parts of Title 21, Code of Federal Regulations: Those regulations, definitions, standards of sanitation, identity, quantity and fill of container, tolerances and exemptions from tolerances, and general regulations in the following:

1. Code of Federal Regulations, Title 21, Part 7 – Enforcement Policy, revised as of April 1, 2000;

2. Code of Federal Regulations, Title 21, Part 101 – Food Labeling, revised as of April 1, 2000;

3. Code of Federal Regulations, Title 21, Part 109 – Unavoidable Contaminants in Food for Human Consumption and Food Packaging Material, revised as of April 1, 2000;

4. Code of Federal Regulations, Title 21, Part 110 – Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food, revised as of April 1, 2000;

5. Code of Federal Regulations, Title 21, Part 123 – Fish and Fishery Products, revised as of April 1, 2000;

6. Code of Federal Regulations, Title 21, Part 161 – Fish and Shellfish, revised as of April 1, 2000;

7. Code of Federal Regulations, Title 21, Part 509 – Unavoidable Contaminants in Animal Food and Food Packaging Material, revised as of April 1, 2000.

(b) National Shellfish Sanitation Program, Guide for the Control of Molluscan Shellfish, provisions adopted:

(b)± The Purpose, the Definitions, and Chapters 1 through 13, and 15 of the "Model Ordinance 19997" of the National Shellfish Sanitation Program, Guide for the Control of Molluscan Shellfish published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration 19997, are hereby adopted by reference as a rule under Section 370.071, F.S., except for the following provisions:

1. a. Definition number (14)(d) Reshipper; and

2. b. Definition number (84)(8±) Reshipper; and

e. Chapter XIV Reshipping.

2. All provisions in the "Model Ordinance 1997" that are adopted herein by reference shall apply to all certified shellfish establishments regulated by the Florida Department of Agriculture and Consumer Services. Interested parties may obtain copies of this publication by contacting the U.S. Government Printing Office. Copies are available for examination at the Florida Department of Agriculture and Consumer Services, Division of Aquaculture, 1203 Governors Square Boulevard, 5th Floor, Tallahassee, Florida 32301.

Interested persons may obtain copies of the pertinent sections of the Codes of Federal Regulations referenced in paragraph (a) above below and by contacting the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Copies of the pertinent sections of the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Guide For The Control of Molluscan Shellfish referenced in paragraph (b)

~~above below~~ may be obtained by contacting the U. S. Government Printing Office from the department at 1203 Governors Square Boulevard, 5th Floor, Tallahassee, Florida 32301. Copies of all referenced documents are available for examination at the Florida Department of Agriculture and Consumer Services, Division of Aquaculture, 1203 Governors Square Boulevard, 5th Floor, Tallahassee, Florida 32301.

Specific Authority 597.020 FS. Law Implemented ~~597.020 370.074~~ FS. History—New 1-4-87, Amended 8-10-88, 7-9-89, 11-5-92, Formerly 16R-7.001, Amended 7-3-95, 2-6-97, 6-23-99, Formerly 62R-7.001, Amended 8-9-00.

5L-1.002 Definitions.

(1) Adulterated – any shellfish harvested from closed waters; any shellfish shucked, packed, or otherwise processed in a plant which has not been certified and licensed by the Department in accordance with the requirements of these rules; any shellfish contaminated as determined by microbiological ~~bacteriological~~ or other analysis; any shellfish consisting in whole or in part of any filthy, putrid or decomposed substance, or otherwise unfit for food; any shellfish prepared, packed, or held under unsanitary conditions where it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

(2) Alternative Processing – any processing done to shellfish which does not follow the time-temperature matrix as stated in subsection Rule 5L-1.008(5), F.A.C.

(3) Approved area – an area in which it is indicated by a sanitary survey or other monitoring program data that fecal material, pathogenic microorganisms, radio nuclides, harmful chemicals, and marine biotoxins are not present in dangerous concentrations.

(4) Certification period – the period of time between July 1 and June 30 of a year.

(5)(4) Certified shellfish dealer – a shell stock shipper, shucker-packer, repacker, or depuration processor who possesses a shellfish processing plant certification license from the Department. The certified shellfish dealer shall be held accountable for compliance with all laws, rules, and permits applicable to the shellfish business operation.

(6)(5) Closed area (closed waters) – a growing area where the harvesting of shellfish is not permitted. Closed areas include prohibited and unclassified areas as well as temporarily closed approved, conditionally approved, restricted, and conditionally restricted areas.

(7)(6) Code – the Comprehensive Shellfish Control Code, Chapter 5L-1, F.A.C.

(8)(7) Commercial harvester – a person that harvests with the intent to sell.

(9)(8) Conditionally approved area – an area in which it is indicated by a sanitary survey or other monitoring program data that the area is subjected to intermittent microbiological pollution and, under such conditions, is temporarily unsuitable as a source of shellfish for direct marketing. Such an area shall

be managed by an operating procedure that will assure that shellfish from the area are not harvested from waters not meeting approved area criteria.

(10)(9) Conditionally restricted area – an area in which it is indicated by a sanitary survey or other monitoring program data that the area is subjected to intermittent microbiological pollution and, under such conditions, is temporarily unsuitable as a source of shellfish for relaying or depuration. Such an area shall be managed by an operating procedure that will assure that shellfish from the area are not harvested from waters not meeting restricted area criteria.

(11) Corrective action plan – is a brief outline of the deficiency(ies) found during an inspection of a licensed facility with the corresponding rule deficiencies cited and the time frame in which the deficiency(ies) must be corrected.

(12)(10) Critical control point – a point, step, or procedure in a food process at which control can be applied, and a food safety hazard can as a result be prevented, eliminated, or reduced to acceptable levels.

(11) Critical limit – the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to prevent, eliminate, or reduce to an acceptable level the occurrence of the identified food safety hazard.

(13)(12) Critical deficiency – a condition or practice which results in the production of a product which is adulterated. A critical deficiency is not a minor violation.

(14) Critical limit – the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to prevent, eliminate, or reduce to an acceptable level the occurrence of the identified food safety hazard.

(15) Deficiency – a violation.

(16)(13) Department – the Department of Agriculture and Consumer Services.

(17)(14) Depuration processor (depuration plant; controlled purification plant) (DP) – a certified shellfish dealer a person who obtains shellstock from approved, conditionally approved, restricted or conditionally restricted growing area(s) and submits such shellstock to a Department approved controlled purification process as described in Chapter XV of the National Shellfish Sanitation Program Guide For the Control of Molluscan Shellfish Model Ordinance 1999 as incorporated herein under paragraph 5L-1.001(6)(b), F.A.C. The treatment process is designed to purge shellfish of bacterial and viral contamination to the extent that such shellfish are rendered safe for human consumption.

(18) Designated representative – In the absence of the plant supervisor or certified shellfish dealer the individual who supervises all activities associated with the operation of the certified shellfish dealer's plant. The designated representative shall be held accountable for compliance with all laws, rules, and permits applicable to the shellfish business operation.

~~(19)~~~~(15)~~ Emergency – any unusual incident resulting from natural or unnatural causes which endangers the health, safety, or resources of the state, including, but not limited to, a hurricane, storm, or red tide; petroleum spill; toxic substance discharge; inability of a sewage treatment plant to comply with permit conditions due to a breakdown of equipment, power outage, destruction by fire, wind, or by other cause.

~~(20)~~ Firm – a certified shellfish dealer who is a shell stock shipper, shucker-packer, repacker, or depuration processor who possesses a shellfish processing plant certification license from the Department.

~~(21)~~~~(16)~~ Food – any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption. Shellfish in the shell are considered food.

~~(22)~~~~(17)~~ Food contact surface – a surface of equipment or utensil which food normally comes into contact; or a surface of equipment or utensil from which food may drain, drip, or splash into food or onto a surface normally in contact with food.

~~(23)~~~~(18)~~ Food packaging materials – any material or container which food normally comes into contact.

~~(24)~~~~(19)~~ Food safety hazard – any biological, chemical, or physical property that may cause a food to be unsafe for human consumption.

~~(25)~~~~(20)~~ Free liquor – that liquid portion of a container that passes through a porous straining device when the contents (oyster or clam meats) of the container are drained.

~~(26)~~~~(21)~~ Growing area – an area in which market or seed shellfish are growing either naturally or artificially.

~~(27)~~~~(22)~~ HACCP – Hazard Analysis and Critical Control Points – A system of inspection, control, and monitoring measures initiated by a certified shellfish dealer to identify and control microbiological, chemical, or physical food safety hazards which are likely to occur in shellfish products produced by the firm.

~~(28)~~~~(23)~~ Harvester – a person engaged in the harvesting of shellfish.

~~(29)~~~~(24)~~ Health authority – the Department or its authorized representative.

~~(30)~~~~(25)~~ Heat shock – the process of subjecting molluscan shell stock to any form of heat treatment prior to shucking, including steam, hot water or dry heat, to facilitate removal of the meat from the shell without substantially altering the physical or organoleptic characteristics of the molluscan shellfish.

~~(31)~~~~(26)~~ High density aquaculture lease areas – legally-defined parcels that are surveyed and properly marked, describing and indicating corners and boundaries, that have been subdivided into individual aquaculture leases issued pursuant to Section 253.68, F.S., and paragraph 18-21.004(2)(1), F.A.C.

~~(32)~~~~(27)~~ ICWW – Intracoastal Waterway.

~~(33)~~~~(28)~~ Key deficiency – a condition or practice which may result in adulterated, or misbranded product. A Key deficiency is not a minor violation.

~~(34)~~~~(29)~~ Lot of shell stock – a single type of bulk shell stock or container of shell stock of no more than one day's harvest from a single harvest area gathered by one or more harvesters.

~~(35)~~~~(30)~~ Lot of shucked shellfish – a collection of containers of no more than one day's shucked product from a single harvest area produced under conditions as nearly uniform as possible, and designated by a common container code or marking.

~~(36)~~~~(31)~~ Lot wet storage/depuration – all shellfish from a single depuration or wet storage tank or series of tanks serviced by a common treatment system.

~~(37)~~~~(32)~~ Mechanical refrigeration – refrigeration provided by an electric compressor in a system where temperature can be adjusted with a thermostat and the unit will maintain a temperature of 45 degrees F or less.

~~(38)~~~~(32)~~ Misbranded – any shellfish product whose labeling is false or misleading; any shellfish product in package form unless it bears labeling including (1) the name and place of business of the manufacturer, packer, or distributor; (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; and (3) meets labeling requirements of the Department within this Chapter.

~~(39)~~~~(34)~~ NSSP Model Ordinance – the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, published by the U.S. Department of Health and Human Services, ~~which is hereby incorporated herein by reference except for Section 5L-1.001(5)(b)1., F.A.C.~~

~~(40)~~~~(35)~~ Other deficiency – a condition or practice that is not in accordance with rule requirements and is considered a minor deficiency but is not a key or critical deficiency.

~~(41)~~~~(36)~~ Pest – refers to any objectionable animals or insects, including, but not limited to, dogs, cats, birds, rodents, flies, and larvae.

~~(42)~~~~(37)~~ Plant supervisor – an individual, so designated in writing to the Department, who supervises all activities associated with the operation of the shellfish depuration plant. ~~Responsibilities include, but are not limited to, overseeing the proper handling of shellfish, maintenance of the treatment plant, assuring compliance with sampling schedules and resultant bacteriological and water quality standards, and the maintenance of accurate records.~~ The plant supervisor shall be held accountable for compliance with all laws, rules, and permits applicable to the shellfish business operation.

~~(43)~~~~(38)~~ Processing – is the handling, unloading, storing, transporting, shucking, freezing, preparing, changing into different market form, manufacturing, preserving, packing, or labeling of shellfish or shellfish products.

~~(44)~~~~(39)~~ Prohibited area – an area from which the taking of shellfish is not permitted.

~~(40)~~ Retail sale – sale to the ultimate consumer or to a person who will not resell the product.

~~(45)~~ Public Water System – a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least 60 days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any “special irrigation district.” A public water system is either a “community water system” or a “non-community water system.” See the Code of Federal Regulations (C.F.R.), title 40, part 141, section 2, revised as of July 1, 2000.

~~(46)~~~~(41)~~ Repacker/Repacking plant (RP) – a certified shellfish dealer, a person other than the original certified shucker-packer, who repacks shucked shellfish into other containers for distribution or sale. A repacker may also repack and ship shell stock. A repacker shall not shuck shellfish.

~~(47)~~ Repeat Critical deficiency – is the same “critical” deficiency that has been listed on the corrective action plans for the same facility during the most recent consecutive inspection.

~~(48)~~ Repeat Key deficiency – is the same “key” deficiency that has been listed on the corrective action plans for the same facility during the most recent consecutive inspection.

~~(49)~~ Repeat Other deficiency – is the same “other” deficiency that has been listed on the corrective action plans for the same facility during the most recent consecutive inspection.

~~(50)~~~~(42)~~ Restricted area – an area in which it is indicated by a sanitary survey or other monitoring program data that fecal material, pathogenic microorganisms, radio nuclides, harmful chemicals, and marine biotoxins are not present in dangerous concentrations such that shellfish harvested from such an area and subjected to a suitable and effective purification process are safe for human consumption.

~~(51)~~ Retail sale – sale to the ultimate consumer or to a person who will not resell the product.

~~(52)~~~~(43)~~ Sanitize – the effective bactericidal treatment of clean food contact surfaces of equipment and utensils by a process using only those safe sanitizing agents that have an available field test for strength and effectiveness, and is effective to yield a reduction of 5 logs, which is equal to a 99.999% reduction of representative disease microorganisms of public health importance. Such treatment shall not adversely affect the product and shall be safe for the consumer.

~~(53)~~~~(44)~~ Scheduled Depuration Process (SDP) – a process which places shellfish harvested from restricted or approved waters into a controlled aquatic environment selected by the processor as adequate to effectively reduce the level of bacteria and viruses in live shellfish.

~~(54)~~~~(45)~~ Scheduled Heat Shock Process (SHSP) – the process selected by the processor to heat shock a shellfish species in order to facilitate shucking without adversely affecting the microbial quality or altering the organoleptic characteristics of the species.

~~(55)~~~~(46)~~ Scheduled Wet Storage Process (SWSP) – a process which places shellfish harvested from approved waters in containers or floats in natural bodies of water or in tanks containing natural or synthetic seawater for product enhancement.

~~(56)~~~~(47)~~ Shellfish – all edible species of oysters, clams, and mussels, and whole or roe-on scallops either shucked or in the shell, fresh, or frozen.

~~(57)~~~~(48)~~ Shellfish Relaying – the transfer of shellfish from one water bottom to another water bottom which activity would otherwise be prohibited; or the transfer of shellfish from a restricted or conditionally restricted area or an area otherwise closed for the harvesting of shellfish to a certified depuration plant.

~~(58)~~~~(49)~~ Shellstock – shellfish which remain in their shells.

~~(59)~~~~(50)~~ Shellstock plant – any establishment or place where shell stock are washed and packed or otherwise prepared for sale or shipment.

~~(60)~~~~(51)~~ Shellstock shipper/Shellstock shipping plant (SS) – a certified shellfish dealer, a person who grows, harvests, buys, or repacks and sells shell stock. A shell stock shipper is not authorized to act as a shucker-packer or repacker. A shellstock shipper may also ship sealed containers of shucked shellfish.

~~(61)~~~~(52)~~ Shuck date – the date shucked shellfish are initially removed from their shells.

~~(62)~~~~(53)~~ Shucked shellfish – shellfish or parts thereof which have been removed from their shells.

~~(63)~~~~(54)~~ Shucker-packer/Shucker-packer plant (SP) – a certified shellfish dealer a person who shucks and packs shellfish and who may act as a shell stock shipper and/or repacker.

~~(64)~~~~(55)~~ Swing deficiency – a deficiency that could either be a “critical” or a “key” deficiency, or it could be either a “key” or an “other” deficiency, depending on the location, severity and circumstances.

~~(65)~~~~(56)~~ Terminal sale date – the last day freshly packed shellfish shall be offered for sale; that being no more than 14 calendar days subsequent to the date the product was shucked, or for oyster shell stock harvested from the Gulf of Mexico, no more than 14 days subsequent to the date shell stock was harvested.

~~(66)(57)~~ Time of Harvest – is defined as that time when shellfish are first removed from growing waters and placed on or in a manmade conveyance or other means of transport.

~~(67)(58)~~ Time of Refrigeration – is defined as the time when shellfish are first placed within an ambient environment of 45 degrees F or less.

~~(68)(59)~~ Unclassified area – an area for which no recent sanitary survey exists.

~~(69)(60)~~ UV – Ultraviolet.

(70) Violation and deficiency – are used interchangeably with in these rules. The meaning of both is that a facility is not in compliance with the rules governing their operation as outlined in Chapter 5L-1, F.A.C., “The Comprehensive Shellfish Control Code”.

(71) Warning letter – a warning letter includes a notice of non-compliance.

~~(72)(61)~~ Wet storage – the temporary storage of shellfish received from permitted or approved sources and intended for marketing, on privately-owned or leased bottom, in tanks containing seawater, or on floating facilities in natural bodies of water.

~~(73)(62)~~ Wholesale – any sale to any person other than the final ultimate consumer.

Specific Authority 597.020 570.07(23) FS. Law Implemented 597.020 370.074 FS. History–New 1-4-87, Amended 5-21-87, 8-10-88, 7-9-89, 11-5-92, 5-20-93, Formerly 16R-7.003, Amended 7-3-95, 5-8-96, 2-6-97, 6-23-99, Formerly 62R-7.003, Amended 8-9-00,_____.

5L-1.004 Production and Market Standards.

(1) Shellfish offered for sale at the wholesale market level shall be deemed to be “adulterated” as defined in subsection 5L-1.002(1), F.A.C. and section 500.10, F.S., and will be subject to rejection or seizure by the Department, when it exceeds the following bacteriological criteria. Fecal coliform density of not more than 230 MPN per 100 grams; and a 35° C plate count of not more than 500,000 per gram. ~~Any meat with counts exceeding these standards will be subject to rejection or seizure by the Department.~~

(2) Shucked and packed shellfish shall not contain more than 15% by volume of free liquor until the product reaches the consumer.

(3) No shucked shellfish shall be sold, offered for sale, processed, packed, or repacked after the terminal sale date.

(4) No frozen shellfish products shall be thawed to be processed or sold as fresh shellfish products. Thawed frozen shellfish shall be labeled as “previously frozen” in accordance with Rule Section 5L-1.007, F.A.C.

(5) Shellfish having undergone a depuration process shall not be released for sale prior to laboratory analysis and approval by the plant supervisor or representative. Shellfish shall not be released if the geometric mean of three samples exceeds a fecal coliform MPN of 45 per 100 grams of sample, or if any sample’s fecal coliform MPN exceeds 100 per 100 grams of sample.

(6) The use of the elevated temperature coliform plate count is authorized for the bacteriological evaluation of hard clams, *Mercenaria* spp. only from a depuration facility.

(7) Should the Department suspect contamination of shellfish by metallic ions and compounds, pesticides, detergents, radionuclides, marine toxins, or any toxic substance or adulterate, the Department shall require that shellfish meat be analyzed for such contaminants before suspect shellfish are released for sale.

(8) Shellfish or shellfish products determined to be adulterated, or misbranded shall be subject to recall by the certified shellfish dealer responsible for distribution of the products. For a first offense in a certification license year, the ~~Department~~ will apply mitigation measures if applicable. Mitigation measures include on-the-spot correction and reconditioning. For repeat violations, and where mitigation measures are not approved by the Department available, the ~~Department~~ shall issue an order to stop the sale or to condemn, and destroy, shellfish or shellfish containers found to be adulterated, misbranded, or found to be held in non-compliance with any of the provisions of this ~~Chapter~~. Reconditioning shall be a mitigation option only if the products will meet the safety standards of Rule 5L-1.004, F.A.C., and the labeling standards of Rule 5L-1.007, F.A.C. Stop sale, condemnation, or reconditioning of products or containers shall be based on individual conditions found during inspections and shall be conducted using a Seizure and Destruction Order Stop-Sale Notice, DACS Form 15001, Revision 05/01 7/2000. This form is herein incorporated by reference, and available for inspection at the Department’s offices located at 1203 Governors Square Boulevard, 5th Floor, Tallahassee, Florida 32301.

Specific Authority 597.020, 500.09 FS. Law Implemented 597.020, 500.10, 500.172 370.074 FS. History–New 1-4-87, Amended 8-10-88, 7-9-89, Formerly 16R-7.006, Amended 7-3-95, 5-8-96, 2-6-97, Formerly 62R-7.006, Amended 8-9-00,_____.

5L-1.005 Shellfish Processing Plant Certification License.

(1) Upon request, the Department shall provide an application form entitled Shellfish Processing Plant Certification License Application, Form Number DACS 15007, Revision 05/01 7/2000, herein incorporated by reference, and obtainable by writing the Department of Agriculture and Consumer Services, Division of Aquaculture, 1203 Governors Square Boulevard, 5th Floor, Tallahassee, Florida 32301. This completed application form is required necessary for certification or recertification licensing of shellfish establishments. The following information shall be requested on the application form:

- (a) The name and address of the firm, ~~corporation, or establishment~~;
- (b) The name and address of the legal entity that owns the establishment in (a) above ~~owner and operator~~;
- (c) Name of the registered agent;

(d) The name of the designated representative, person in charge, or plant supervisor that will officially represent the firm on site.

~~(e)~~ The plant classification; and

~~(f)~~ The type of product to be processed.

(2) Possession of a wholesale license to sell saltwater products issued under provisions of section 370.07, F.S., shall be required for certification licensing under this chapter. A copy of the current wholesale license to sell saltwater products shall be submitted with the Shellfish Processing Plant Certification License Application. A shellfish processing plant certification license number will be assigned by the Department upon receipt of a completed Shellfish Processing Plant Certification License Application. Upon receipt of a completed application, inspection of the physical facility will be conducted within 30 calendar days. Certification Licenses and numbers are not transferable; the establishment, not the operator is certified.

(3) If the water supply is not from a public water system, possession of satisfactory bacteriological water analysis results, which shall not equal or exceed two cfu (colony forming units) per 100 mls for total coliform bacteria on any consecutive samples, and shall not equal or exceed two cfu per 100 mls for fecal coliform or E. coli bacteria on any samples, shall be required for certification under this chapter. Analysis shall be from the source water, and an outlet location within the plant, and ice if any is used. The water shall be sampled and approved prior to use of the water supply, every six months while the water supply is in use, and immediately after the water supply has been repaired and disinfected. If the source is a public water system, only a sample from an outlet in the plant and ice if used, is required prior to certification. The water sample shall be taken and acceptable results provided to the Department within 90 days prior to certification. A copy of the current acceptable water analysis shall be submitted with the Shellfish Processing Plant Certification License Application. Certification is granted only to firms who meet the following inspection requirements: no "Critical" item deficiencies; not more than two (2) "Key" item deficiencies; and not more than three (3) "Other" item deficiencies. Failure of a certification inspection requires reapplication by the applicant. After successful inspection of the facility and the applicant's meeting the requirements of Rule 5L-1.005, F.A.C., a shellfish certification license, DACS Form 15002, revision 7/2000, will be issued. This form is herein incorporated by reference, and obtainable by writing the Department of Agriculture and Consumer Services, Division of Aquaculture, 1203 Governors Square Boulevard, 5th Floor, Tallahassee, Florida 32301. After a firm is certified, unannounced inspections using the DACS plant inspection forms 15009, revision 7/2000, and 15012, revision 7/2000 shall be conducted during periods of operation and at such frequency as necessary to assure that adequate operational and sanitary conditions are maintained. These

forms are herein incorporated by reference, and obtainable by writing the Department of Agriculture and Consumer Services, Division of Aquaculture, 1203 Governors Square Boulevard, 5th Floor, Tallahassee, Florida 32301. At the completion of each inspection, a copy of the completed inspection forms shall be issued to the plant supervisor or the plants designated representative.

(4) A shellfish processing plant certification license number will be assigned by the Department after receipt of a completed Shellfish Processing Plant Certification License Application. Upon receipt of a completed application an inspection of the physical facility will be conducted within 30 calendar days. Renewal certification—A dealer shall make application for certification renewal annually. The certification shall not be renewed for any dealer until the dealer has: eliminated any critical deficiencies and agreed to a compliance schedule which carries forward into the next certification period no more than 1 key and 2 other deficiencies identified in previous inspections; and addresses any new key or other deficiencies in a new or revised compliance schedule.

(5) Certification is granted only to firms who meet the following inspection requirements: the firm has no "Critical" item deficiencies, the firm does not have more than two (2) "Key" item deficiencies and the firm does not have more than three (3) "Other" item deficiencies. Failure of a certification inspection requires reapplication by the applicant. After successful inspection of the facility and the applicant's meeting the requirements of Rule 5L-1.005, F.A.C., a Shellfish Processing Certification License, DACS Form 15002, Revision 02/01, will be issued. After a firm is certified, unannounced inspections using the DACS plant inspection forms 15009, Revision 06/01, and 15012, Revision 06/01, shall be conducted during periods of operation and at such frequency as necessary to assure that adequate operational and sanitary conditions are maintained. These forms are herein incorporated by reference, and obtainable by writing the Department of Agriculture and Consumer Services, Division of Aquaculture, 1203 Governors Square Boulevard, 5th Floor, Tallahassee, Florida 32301. Upon completion of the initial inspection where the applicant has met the requirements for licensure, he/she will be given a corrective action plan by the Department, if there are any "key" or "other" deficiencies cited. The licensee must comply with the corrective action plan outlined on form DACS-15012 Revision 06/01, that is given to the certified dealer, plant supervisor or the designated representative of the plant at the end of the inspection. At the completion of each inspection, a copy of the completed inspection forms shall be issued to the plant supervisor or the plants designated representative. In the event that a licensed certified shellfish processing plant changes its name, changes owners, changes location, changes address, or changes classifications, a new application, DACS form 15007, revision

~~7/2000 must be completed and submitted to the department. The firm will be required to go through the complete certification process.~~

~~(6) Renewal certification – A dealer shall make application by completing the Shellfish Processing Plant Certification License Application form for certification renewal annually. The license year starts on July 1 and ends on June 30. The certification shall not be renewed for any dealer until the dealer has: eliminated any “Critical” deficiencies, does not have more than two (2) “Key” item deficiencies, and does not have more than three (3) “Other” item deficiencies. The application (Shellfish Processing Plant Certification License Application Form) for renewal must be received by the agency by April 1 to have an inspection for recertification for the next certification period of a shellfish processor prior to June 30. The application for renewal certification will be denied to any dealer not meeting the above. Possession of a wholesale license to sell saltwater products issued under provisions of Section 370.07, F.S., shall be required for certification licensing under this chapter.~~

~~(7) The Shellfish Processing Plant Certification License will be issued to a licensee at a specific location. The legal entity will be the licensee at that specific location as listed on the Shellfish Processing Plant Certification License. Possession of satisfactory bacteriological water analysis results, which shall not equal or exceed two cfu (colony forming units) per 100 mls for total coliform bacteria on any consecutive samples, and shall not equal or exceed two cfu per 100 mls for fecal coliform or E. coli bacteria on any samples, shall be required for certification under this chapter. Analysis shall be from the source water, and an outlet location within the plant, and ice if any is used. If the source is a public water supply, only a sample from an outlet in the plant and ice if used, is required. Samples shall be taken within 60 days prior to certification.~~

~~(8) One shellfish processing plant certification license shall be issued to a shellfish processing plant owner operating at a single location, regardless of whether the location may qualify for two or more licenses or permits.~~

~~(9) In the event that a licensed certified shellfish processing plant changes its name, changes owners, changes location, changes address, or changes classifications, a new application, DACS form 15007, Revision 05/01 must be completed and submitted to the Department. The firm will be required to go through the complete certification process.~~

~~(10)(8) Possession of a mechanically refrigeration unit that is cooled non-portable and is storage unit able to maintain an ambient temperature of 45° F or below and be of sufficient size to handle one day’s production shall be required for certification under this chapter.~~

~~(11)(9) Each applicant for a shellfish certification license shall have conducted a Hazard Analysis to determine whether there are food safety hazards that are~~

reasonably likely to occur for shellfish products produced at the location listed on DACS form 15007, ~~Revision 05/01~~ 7/2000 Shellfish Processing Plant Certification License Application. Each certified shellfish dealer shall have someone with adequate HACCP training, knowledge or experience to develop a HACCP plan, reassess and modify the HACCP plan and perform the records review. Each certified shellfish dealer shall prepare a written HACCP plan. The HACCP plan shall incorporate critical control points that will eliminate, prevent, or reduce to an acceptable level ~~control~~ the hazards identified in the hazard analysis. Critical control points shall have established critical limits for parameters to ensure when exceeded the dealer takes corrective actions. The HACCP plan shall include the procedures, and frequency thereof that will be used to monitor each of the critical control points to ensure compliance with the critical limits. The HACCP plan shall provide for a recordkeeping system that documents the monitoring of the critical control points. The records shall contain the actual values and observations obtained during monitoring. The plan shall be signed and dated by the owner or corporate officers of the firm at the time of its implementation, and after any modification. Each establishment shall develop or adopt acceptable sanitation monitoring records to meet the requirements in subsection 5L-1.013(12), F.A.C.

~~(12)(10)~~ Each owner or corporate officer who is a certified shellfish dealer shall verify that the HACCP plan is adequate to control food safety hazards that are reasonably likely to occur, and that the plan is being effectively implemented. Verification shall include at a minimum:

(a) Reassessment of the HACCP plan on an annual basis, or when changes occur that could affect the hazard analysis: and

(b) Ongoing verification including a review of any consumer complaints received by the processor to determine whether they relate to the performance of critical control points or reveal the existence of unidentified critical control points, or the calibration of process-monitoring instruments.

~~(13)(11)~~ All persons who commercially engage in purchasing shellfish from harvesters, shucking, packing, or repacking or transporting shellfish are subject to inspection and shall allow inspection by the Department or its duly authorized representatives during normal operating hours and any time there is shellfish processing, in order to determine compliance with sections of this rule. The Department shall inspect all licensed certified shellfish processing plants. Denial of access for such inspection will automatically institute agency administrative action for immediate suspension of the shellfish processing plant certification license.

~~(14)(12)~~ It is unlawful for persons to commercially engage in purchasing from harvesters, shucking, packing, or repacking shellfish without having complied with these rules and applied

for and obtained a shellfish processing plant certification license from the Department. ~~All certification licenses expire automatically on June 30 following date of issue.~~

~~(15)(13)~~ Upon issuance of a processing plant certification license, the Department shall notify the U.S. Food and Drug Administration of those certified shellfish dealers business name and certification license number be published in the Interstate Certified Shellfish Shippers List.

~~(16)(14)~~ The shellfish processing plant certification license shall be posted in a conspicuous location on the premises.

~~(17) No person shall attempt, by means of any threat or violence, to deter or prevent an agent of the Department from performing any duties imposed by law.~~

~~(18) All licensed certified shellfish processing plants shall maintain on the premises a current copy of this rule Chapter, 5L-1, Florida Administrative Code, entitled "The Comprehensive Shellfish Control Code" and a current copy of the "Model Ordinance" of the National Shellfish Sanitation Program, Guide for the Control of Molluscan Shellfish published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration.~~

Specific Authority 597.020 570.07(2) FS. Law Implemented 597.020 370.074 FS. History—New 1-4-87, Amended 8-10-88, Formerly 16R-7.007, Amended 7-3-95, 5-8-96, 2-6-97, 6-23-99, Formerly 62R-7.007, Amended 8-9-00, 7-1-02.

~~5L-1.006 Compliance and Penalties Suspension or Revocation of Shellfish Processing Plant Certification License, Routine or Emergency Action.~~

~~(1) The Department shall initiate enforcement action as follows:~~

~~(a) The Department shall inspect and re-inspect all licensed certified shellfish processing plants as necessary. The deficiency(ies) cited in an inspection report is not determined by the type of inspection being conducted. When a "Critical" deficiency is detected, operations affected by the critical deficiency will be suspended and the deficiency will be corrected during the inspection or the firm's certification license to operate shall be suspended as an immediate public health threat.~~

~~(b) At the completion of an inspection where the Department finds a deficiency (ies) at a facility, the Department will do a corrective action plan. The Department will solicit input from the certified shellfish dealer, plant supervisor or the designated representative. The consent and cooperation of the certified shellfish dealer, plant supervisor or the designated representative is not necessary for the creation of a corrective action plan by the Department nor will the lack of cooperation from the certified shellfish dealer, plant supervisor or the designated representative affect the plans' validity or requirement that the plan be implemented. A copy~~

of the inspection report (DACS 15009, Revision 06/01) and the corrective action plan (DACS 15012, Revision 06/01) will be given to one of the following individuals who is present in the facility at the time the inspection is concluded: the plant supervisor, the certified shellfish dealer, or the designated representative. The certified shellfish dealer, plant supervisor, and the designated representative shall comply with the corrective action plan as outlined on form DACS-15012 Revision 06/01 that is given to the certified shellfish dealer, plant supervisor or the designated representative of the plant at the end of the inspection. The certified shellfish dealer, plant supervisor, or the designated representative's failure to comply with the corrective action plan outlined on form DACS-15012 Revision 06/01 will lead to a fine, suspension, or revocation of the certified dealer's certificate. When "Key" item deficiencies, are cited in violation of Chapter 5L-1, F.A.C., the firm will be noticed that the firm's operation is in violation of sections of this Chapter. The firm's representative will be requested to provide the Department a commitment that the corrections will be made. When "Key" item deficiencies are cited, the Department may initiate a warning letter which will ask the firm to write a corrective action plan and list the corrective actions that will be taken or have been taken to ensure correction of the violations. Failure to make satisfactory corrective actions of "Key" item deficiencies within an agreed upon time period as specified in a corrective action plan, shall result in the issuance of a letter of intent to suspend the firm's certification license for a minimum period of seven (7) calendar days, and until corrections have been completed.

(c) If upon inspection of a facility by an employee of the Department it is determined that there are "Critical", "Key", or "Other" deficiency(ies) of the facility, the following schedule will be used by the Department with respect to the administrative actions to be taken:

Critical deficiency(ies)

When a "Critical" deficiency(ies) is detected, operations affected by the "Critical" deficiency will be suspended and the deficiency will be corrected during the inspection or the firm's certification license to operate shall be immediately suspended as a public health threat. If the certification license to operate is suspended, it will remain suspended until corrections are made and verified by Department inspection. Product affected by the "Critical" deficiency will be controlled to prevent contaminated or adulterated product from reaching consumers. The Department will mandate a recall of the product from the market by the certified shellfish dealer and notify necessary officials of the recall.

In addition to these actions the sanction to be imposed on a certified shellfish dealer upon the finding of repeat "critical" deficiency (ies), after the initial inspection that leads to the certificate being issued, will be as follows:

<u>Repeat "Critical" deficiency(ies)</u>	<u>The certified shellfish dealer will be fined \$500.00 per violation</u>
<u>2nd repeat "Critical" deficiency(ies)</u>	<u>The certified shellfish dealer will be fined \$1,000.00 per violation</u>
<u>3rd repeat "Critical" deficiency(ies)</u>	<u>The certified shellfish dealer will be suspended for 7 days</u>
<u>4th repeat "Critical" deficiency(ies)</u>	<u>The certified shellfish dealer license will be revoked for the remainder of the certification period.</u>

Key deficiency(ies)
The sanction to be imposed on a certified shellfish dealer upon the finding of repeat "Key" deficiency(ies), after the initial inspection that leads to the certificate being issued, will be as follows:

<u>Repeat "Key" deficiency(ies)</u>	<u>The certified shellfish dealer will be fined \$100.00 per violation</u>
<u>2nd repeat "Key" deficiency(ies)</u>	<u>The certified shellfish dealer will be fined \$200.00 per violation</u>
<u>3rd repeat "Key" deficiency(ies)</u>	<u>The certified shellfish dealer will be suspended for 7 days</u>
<u>4th repeat "Key" deficiency(ies)</u>	<u>The certified shellfish dealer will be suspended for 14 days</u>
<u>5th repeat "Key" deficiency(ies)</u>	<u>The certified shellfish dealer license will be revoked for the remainder of the certification period.</u>

Other deficiency(ies)
A warning letter will be sent to a certified shellfish dealer upon the finding of 5 or more "Other" deficiencies. The sanction to be imposed on a certified shellfish dealer upon the finding of repeat "Other" deficiency(ies) after the initial inspection that leads to the certificate being issued, will be as follows; after 5 or more "other" item deficiencies:

<u>Repeat "Other" deficiency(ies)</u>	<u>The certified shellfish dealer will be fined \$25.00 per violation</u>
<u>2nd repeat "Other" deficiency(ies)</u>	<u>The certified shellfish dealer will be fined \$50.00 per violation</u>
<u>3rd repeat "Other" deficiency(ies)</u>	<u>The certified shellfish dealer will be fined \$75.00 per violation</u>
<u>4th or subsequent repeat "Other" deficiency(ies)</u>	<u>The certified shellfish dealer will be fined \$100.00 per violation</u>

~~(e) Firm's which are found with four or more "Key" item deficiencies after initial suspension in any twelve month period, will be issued a letter of intent to suspend for a minimum period of fourteen (14) calendar days and until corrective actions have been completed.~~

~~(d) In those cases involving no fine, suspension or revocation, a warning letter will be sent to the certified dealer along with a notice of rights, which states that a dealer may contest the warning letter by requesting an administrative hearing to be conducted in accordance with sections 120.569 and 120.57, Florida Statutes, when the establishment has 3 or more "Key" item deficiencies cited in violation of Chapter 5L-1, F.A.C., or when an establishment has 2 "Key" item deficiencies and 3 "Other" item deficiencies cited in violation of Chapter 5L-1, F.A.C., or 1 "Key" item deficiency and 4 "Other" item deficiencies cited in violation of Chapter 5L-1, F.A.C. In cases involving the imposition of a fine the Department will forward an administrative complaint to the certified shellfish dealer, a proposed settlement offer and a statement of rights. In cases involving the imposition of a suspension or revocation of a certified shellfish dealer's license the Department will forward an administrative complaint, a statement of rights and a proposed settlement agreement to the certified shellfish dealer except when the Department has to immediately suspend a certification license because of an immediate public health threat. Payment of fines owed to the Department must be made within 22 days of the receipt by the certificate holder of the notice imposing the fine absent a request for a hearing on the matter pursuant to Chapter 120, Florida Statutes. Continued violation with four or more "Key" item deficiencies after a second suspension in any twelve month period, will result in revocation of the firm's certification license for the remainder of the certification year.~~

~~(e) A renewal of a firm's certificate will not be made if there are any unpaid fines with respect to prior certification periods. When "Other" item deficiencies are detected, the firm shall correct the deficiencies within an agreed upon time period as specified in a corrective action plan.~~

~~(f) Prior to suspending or revoking any certification license, the Department shall provide at least 21 days notice by certified mail or to the certification license holder, plant operator if different from the certification license holder, of the Department's intended action. The notice shall contain:~~

- ~~1. The specific facts or conduct which are relied upon to establish the violation;~~
- ~~2. The statutory provision or rule alleged to have been violated; and~~
- ~~3. A statement that the certification license holder has 21 days from receipt of the notice in which to file a petition requesting an administrative hearing pursuant to Section 120.57, F.S.~~

(2) The Department or its agents shall summarily suspend a certification license if it is determined that there is an immediate serious danger to the public health, safety, or welfare requiring such emergency action. The Department shall, at the time the emergency action is taken, initiate proceedings as provided in Section 120.60, F.S.

(3) Upon suspension or revocation of a certification license, the Department shall notify the U.S. Food and Drug Administration so that the dealer's business name and certification license number may be removed from the Interstate Certified Shellfish Shippers List. Upon reinstatement of the license, the Department shall notify the U.S. Food and Drug Administration so that the dealer's business name and certification license number may be reinstated on the Interstate Certified Shellfish Shippers List.

(4) When an employee of the Department finds, or has reason to believe, that any equipment which is located at a licensed facility is in violation of this chapter so as to be dangerous or unsanitary within the meaning of this chapter, an employee of the Department may issue and enforce a stop-sale, stop-use, removal, or hold order, which order gives notice that such equipment is, or is suspected of being, in violation and has been detained or embargoed and which order warns all persons not to remove, use, or dispose of such equipment by sale or otherwise until permission for removal, use, or disposal is given by the Department or the court. It is unlawful for any person to remove, use, or dispose of such detained or embargoed equipment by sale or otherwise without such permission.

(5) Settlement and Additional Enforcement Remedies. In determining the appropriate disciplinary penalty the Department will consider the compliance record of the violator. The provisions of this rule shall not be construed to limit the authority of the Department to enter into settlement with any party per section 120.57(4), Florida Statutes, or to prohibit additional administrative remedies or civil actions. Settlement agreements can provide for installment payments and costs for up to six months. The Department will enforce a failure to comply with a settlement agreement with the penalties and remedies provided in the settlement agreement or as authorized by law.

Specific Authority 597.020, 500.172, 500.121(1) FS. Law Implemented 597.020, 500.172, 500.121(1) 370.074 FS. History—New 1-4-87, Amended 8-10-88, 7-9-89, Formerly 16R-7.009, Amended 7-3-95, 2-6-97, Formerly 62R-7.009, Amended 8-9-00,_____.

5L-1.007 Container Identification, Terminal Sale Date; Prohibitions.

(1) Shucked shellfish container – The packer's or repacker's shellfish processing plant certification license number preceded by the state abbreviation must be embossed, imprinted, lithographed, or otherwise permanently and legibly recorded on the external body of containers or on the lid if the lid becomes an integral part of the container during the sealing

process (Example: FL-872-SP). Containers shall permanently indicate type of product, quantity, and name and address of packer, repacker, or distributor. Containers of fresh shellfish, with a capacity of less than 64 ounces, shall further clearly and permanently bear the terminal sale date, by the numerical month, day, and last digit of the year. Containers of fresh shellfish with a capacity of 64 ounces or more, bears the actual shucking date by numerical month, day, and last digit of the year, in that order (Example: 01015). Reusable bulk storage containers shall be identified with state of origin, harvest date, and shuck date. Containers of frozen or previously frozen shellfish shall further clearly and permanently bear the date of shucking by numerical month, day, and last digit of the year, in that order (Example: 02097). Previously frozen shucked shellfish shall also have the freeze date and the thaw date following the same format. The terminal sale date for previously frozen shucked shellfish will be calculated by adding the day of shucking plus amount of time under refrigeration if not frozen, and adding the days that the product has been held thawed. Repacked shellfish containers shall also bear an appropriate code identifying the original packer.

(2) Each commercial harvester or each certified shellfish dealer shall affix a durable, waterproof tag of minimal size – 2 5/8 by 5 1/4 inches – to each container of shellstock; for commercial harvesters this shall be done at each harvest location; for certified shellfish dealers this shall be done after final packing. In the case where a certified shellfish dealer is also the harvester, that dealer's tag may also be used as the harvester's tag.

(3) The commercial harvester's tag's shall contain legible waterproof indelible information arranged in the specific order as follows:

- (a) The harvester's saltwater product license number or aquaculture certificate number;
- (b) The date of harvesting;
- (c) The time of harvest;
- (d) The time of refrigeration, if applicable;
- (e) The identification of the harvest area using the four digit area number or name of the harvest area listed in Table 2, which is incorporated herein and appears at the end of this chapter, as well as the most precise identification within that area as practicable;
- (f) Common name of shellfish and quantity of shellfish;
- (g) The following statement will appear in bold capitalized type "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FOR 90 DAYS."

(4) Bulk tagging is allowed for those aquaculturists operating with an aquaculture certificate. A bulk tag, containing the information required in (3)(a)-(g), along with the name of the certified shellfish dealer which the product is consigned to, shall be completed at each harvest location.

(5) Bulk tagging, by a certified shellfish dealer, while washing, packing, during depuration, wet storing, ~~storage~~, staging and intrastate transport of shellfish is permissible up to final packaging only when the lot container (i.e., pallet), contains shellfish which are harvested on the same day, from the same harvest area, and have the same intended use (i.e., for halfshell consumption, for shucking, or for further processing), and is tagged as follows:

(a) The statement “All Shellfish containers in this lot have the same date and area of harvest, as well as the same intended use”,

(b) Harvest date,

(c) Harvest area,

(d) Original Dealer/Shipper identification,

(e) Number of units in this lot container.

(6) The dealer’s tag shall contain legible, waterproof, indelible information arranged in the specific order as follows:

(a) The shellfish shipper, shucker-packer, repacker, depurator, or distributors name, address, processing plant certification number;

(b) The original shipper’s certification number including the state abbreviation;

(c) The date of harvesting;

(d) The identification of the harvest area, and for Florida harvest areas the four digit code or name of the harvest area found in (3)(e) above;

(e) Common name of shellfish and quantity of shellfish; and

(f) The following statement will appear in bold capitalized type “THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FOR 90 DAYS.”

(g) For oyster shellstock harvested from the Gulf of Mexico, the terminal sale date as a numeric date depicting month, day, and last digit of the year, not to exceed 14 days after the harvest date, or the statement “Sell Within 14 days of the Harvest Date”.

(h) If shellstock exceeds the time limit for refrigeration found in subsection Chapter 5L-1.008(5)(6), F.A.C., the shellstock dealer tag shall be identified with the language “FOR SHUCKING ONLY BY A CERTIFIED DEALER”.

(i) For depuration processors, subsections (a), (d), (e), and (f) are required as well as the date of processing, and the depuration cycle number.

(j) For shellstock wet stored the following statement: “This product was wet stored on or at (Lease # or Facility certification number) from (date) to (date)”.

(7) Containers of treated shellfish from depuration facilities shall be tagged in accordance with item (6) in addition to the lot number and date shellfish were released from the treatment plant.

(8) Shellfish identification, out-of-state – No shellfish from sources outside of Florida shall be brought into the state for purpose of resale or public distribution unless the product bears evidence of certification from the state or nation of origin and certification is based on requirements similar to those outlined in this Chapter.

(9) In addition to the identification and labeling requirements of subsections (1) and (2), containers of fresh, frozen, previously frozen or repacked shellfish or containers of shellstock must indicate the state of origin of the shellfish, e.g., LA, MS, TX. For shellstock this requirement can be by (6)(a) and (b) above.

(10) Oyster shellstock and shucked oyster containers shall be labeled with the following statement: “CONSUMER INFORMATION There is a risk associated with consuming raw oysters. If you have chronic illness of the liver, stomach or blood or have immune disorders, you are at greater risk of serious illness from raw oysters and should eat oysters fully cooked. If unsure of your risk, consult a physician.”

(11) It shall be unlawful for any person, firm, corporation, wholesale or retail dealer to sell or offer for sale any fresh, ~~or previously frozen~~ shellfish after the terminal sale date has expired, or sell or offer for sale any fresh, frozen, or previously frozen shellfish not in compliance with any and all requirements of Chapter Rule 5L-1, F.A.C.

(12) Whoever knowingly or willfully alters or damages in any manner, or loans or transfers to another person any certification license number or shellfish tags, or any person who uses the certification license or shellfish tags, other than the person to whom they were issued, shall be in violation of this section and shall be subject to certification license suspension or revocation in addition to any other penalty for violation of Chapter Rule 5L-1, F.A.C.

Specific Authority 597.020 570.074(23) FS. Law Implemented 597.020 370.074 FS. History—New 1-4-87, Amended 5-21-87, 8-10-88, 7-9-89, 8-30-89, 5-6-93, 9-14-93, 8-21-94, Formerly 16R-7.010, Amended 9-1-95, 5-8-96, 2-6-97, 10-12-97, 2-12-98, 2-25-98, 7-1-98, 11-13-98, 12-28-98, 3-18-99, 7-1-99, Formerly 62R-7.010, Amended 6-19-00, 8-9-00,_____.

5L-1.008 Shellfish Handling.

(1) Wet storage shall be conducted upon execution of an agreement between a person, firm, or corporation possessing a shellfish processing plant certification license and the Department. Each agreement shall include the following provisions:

(a) The coordinates in Latitude and Longitude where the facility is to be located.

(b) A description of all facilities and equipment to be used to wet-store shellfish.

(c) A listing of the species to be wet-stored.

(d) If the wet storage facility is to be located upon or in waters of the state, the facility shall be marked and lighted so as not to be a hazard to navigation.

(e) If the wet storage facility is to be located on or in waters of the state, and is to be a manned structure, it shall be equipped with a U.S. Coast Guard approved Type III marine sanitation device; this device shall be maintained in working order and be used by all personnel for disposal of bodily wastes.

(f) All solid wastes shall be removed from the wet storage facility daily and disposed of in a shore-based receptacle.

(g) No anti-fouling paints or finishes shall be used on any portion of the wet storage facility.

(h) No shellfish shall be removed from a wet storage facility when the shellfish harvesting area in which such shellfish are stored is closed pursuant to ~~Rule Chapter~~ Rule Chapter 5L-1.003, F.A.C., or because of emergency conditions as defined by ~~Rule Chapter~~ Rule Chapter 5L-1.002, F.A.C.

(i) Should maintenance of the wet storage facility require that the facility be relocated, written notification shall be provided to the Department, by certified mail, a minimum of 10 working days prior to such relocation. All shellfish shall be removed from the facility prior to relocation.

(j) If wet storage is to be practiced using a shore-based facility, the applicable provisions of ~~Rules Sections~~ Rules Sections 5L-1.002, 5L-1.010, 5L-1.011, 5L-1.012, 5L-1.013, subsections 5L-1.015(2), (3), (4), (5), (6) and (7), and Rules 5L-1.017, and 5L-1.018, F.A.C., shall apply. All shore-based facilities shall employ ultraviolet light treatment of all incoming and recirculated seawater. All water quality measurements required by ~~Rule Section~~ Rule Section 5L-1.017, F.A.C., shall be documented and such data retained for inspection by the Department for a minimum of one year. ~~Paragraphs Rule~~ Paragraphs Rule 5L-1.008(1)(a), (b), (d), (e), (f), (h), and (i), F.A.C., shall not apply to a shore-based facility.

(k) The agreement shall be valid for no more than 1 year from the date it is signed by the Department.

(2) Boats and vehicles – Boats and vehicles used in harvesting or transporting shellfish shall be constructed, operated, and maintained, so as to protect the shellfish from contamination. Fuel tanks or other sources of contamination shall not be permitted to come into contact with shellfish. All boats used for commercial harvesting and handling shellfish shall be designed in such a way to prevent shellfish from coming in contact with any bilge water. No dogs or other animals or pets shall be allowed at any time on vessels or vehicles used to harvest or transport shellfish. No bodily wastes shall be discharged overboard from a harvest vessel. Shellstock harvested with commercial intent shall be protected by effective shading on harvest boats and vehicles to protect shellstock from exposure to sun, birds, and other adverse conditions. Shellfish shall be held under conditions which allows air circulation and promotes evaporative cooling.

(3) Boats engaged in harvesting or transporting shellfish shall have on board an approved Type III marine sanitation device, portable toilet or other sewage disposal receptacle. Portable toilets shall:

(a) Be constructed of high quality plastic that is durable, easy to clean and will not spill;

~~(b)(a)~~ Be used only for the purpose intended;

~~(c)(b)~~ Be secured while on board the vessel and located to prevent contamination of shellstock by spillage or leakage;

~~(d)(c)~~ Be emptied only into an appropriate sewage disposal system;

~~(e)(d)~~ Be cleaned before being returned to the boat; and

~~(f)(e)~~ Not be cleaned with equipment used for washing or processing food.

(4) Use of other receptacles for sewage disposal are approved if the receptacles are constructed of impervious, cleanable materials, have tight fitting lids, and meet the requirements of Section 5L-1.008(3)(a)-(e), F.A.C.

(5) Throughout the year, it is the harvesters responsibility that shellfish shall be harvested between sunrise and sunset as established by the U.S. Weather Service. During the months of November, December, January, February, and March, the harvester shall assure that shellfish shall be delivered refrigerated to a certified shellfish dealer by 10:00 pm of ~~within~~ the same day as harvest. During the months of April, May, and October, harvesters shall assure that oysters or clams shall be delivered refrigerated to a certified shellfish dealer within twelve (12) hours of the time of harvest, ~~or within the same day as harvest.~~ During the months of June, July, August, and September, the harvesters shall assure that oysters shall be delivered refrigerated to a certified shellfish dealer within six (6) hours of the time of harvest, ~~or within the same day as harvest, whichever is earlier.~~ During the months of June, July, August, and September, the harvester shall assure that clams shall be delivered refrigerated to a certified shellfish dealer within ten (10) hours of the time of harvest, or within the same day as harvest, whichever is earlier. All shellfish shall be delivered directly to a certified shellfish dealer possessing a shellfish processing plant certification license.

(6) Once received by a certified shellfish dealer, the shellstock lot shall be immediately processed and placed under temperature control and until sale to final consumer, the shellstock shall be maintained at an environmental temperature of 45° F or less and not be permitted to remain outside of temperature control for more than 2 hours cumulative at points of transfer within the processing plant such as loading docks or during processing except for the process described in paragraph 5L-1.013(3)(b), F.A.C.

(7) Shellfish leaving a certified shellfish dealer must be transported in an enclosed, refrigerated conveyance with doors closed securely. The refrigeration unit must be capable of maintaining an ambient temperature of 45 degrees F or less at all times.

Specific Authority 597.020 FS. Law Implemented 597.020 ~~370.074~~ FS. History—New 1-4-87, Amended 5-21-87, 8-10-88, 7-9-89, Formerly 16R-7.011, Amended 7-3-95, 2-6-97, 3-18-99, 6-23-99, Formerly 62R-7.011, Amended 8-9-00, _____.

5L-1.009 Shellfish Relaying.

(1) No person, firm, corporation, municipality, association, or other governmental body shall engage in shellfish relay operations without first obtaining a “Special Activity License to Relay Shellfish” from the Department.

(2) A Special Activity License to Relay Shellfish may be issued to any person, firm, corporation, municipality, or other governmental body or agency holding a shellfish lease, aquaculture lease, or owning or operating a depuration plant, and whose past record indicates that they can be bonded and are responsible to oversee and assure compliance with all rules and licenses. A Special Activity License to Relay Shellfish may be issued to an association when the Department has public funds appropriated for relaying shellfish to public areas.

(3) Anyone wishing to conduct shellfish relaying operations shall provide the Department, upon application form entitled “Application for A Special Activity License to Relay Shellfish”, Form Number DACS 15109, Revision 05/01 effective 7/2000, available from the Department of Agriculture and Consumer Services, 1203 Governors Square Boulevard, 5th Floor, Tallahassee, Florida 32301, and herein incorporated by reference, with the following information:

(a) Name, address, telephone number, and instructions for contacting person or persons responsible for relaying operations;

(b) Species of shellfish to be moved;

(c) Anticipated amount of shellfish to be moved;

(d) Method of harvesting, that is raking, tonging, treading, or diving;

(e) Areas from which shellfish will be moved;

(f) Areas to which shellfish will be moved;

(g) Method of transportation;

(h) Number of crews to be involved in the relay operation;

(i) The colors and design of flags to be used pursuant to Section 5L-1.009(4)(r), F.A.C.; and

(j) Laboratory secured for collection and laboratory analysis according to Rule 5L-1.009(4)(p), F.A.C., for shellfish leases and aquaculture leases and according to Rules 5L-1.016 and 5L-1.017, F.A.C. for depuration facilities.

(4) The Department, after reviewing the application and finding the plan in compliance with all applicable rules and regulations, and determining that the activity will not degrade, destroy or affect marine resources, shall issue a Special Activity License to Relay Shellfish within the general conditions set forth below:

(a) The Department is authorized to establish the effective date and expiration date of the “Special Activity License to Relay Shellfish”. In no case shall the expiration date be greater than one year from the effective date.

(b) Shellfish relaying shall be conducted only during daylight hours, commencing at official sunrise and ending at official sunset, as established by the U.S. Weather Service, except as defined by subparagraph subsection 5L-1.009(4)(n)5., F.A.C., under approved law enforcement, licensed security guard monitoring, or under the supervision of the Department. All persons involved in harvest, transport, and relaying shall comply with these rules and license conditions. Harvesters shall remain within the immediate control and observation of a monitor at all times. No more than 15 watercraft shall be under the supervision of a monitor at any time. The requirement for a monitor is not necessary when an association is conducting shellfish relaying to public areas in conjunction with Department supervision using public funds.

(c) All persons operating under a “Special Activity License to Relay Shellfish”, shall comply with all applicable shellfish rules, regulations, and specific license conditions listed on the “Special Activity License to Relay Shellfish”, under which he/she is operating.

(d) The licensee and person named as being responsible, shall be lawfully responsible for all activities conducted under the conditions of the “Special Activity License to Relay Shellfish” and applicable rules and regulations.

(e) The licensee must notify the local Marine Enforcement District Office of the Florida Fish and Wildlife Conservation Commission and the Department within twelve (12) hours by telephone and in writing by certified mail or hand delivery, within three days of any changes in ownership or person named as being responsible for the activities conducted under the conditions of the “Special Activity License to Relay Shellfish”.

(f) The Licensee shall use only Department approved monitors, as specified by subsection 5L-1.009(5), F.A.C., to supervise relay harvesting, relay transport operations, placement on permitted site, and completion of required relay reports.

(g) Approved monitors must have completed the Department monitor training course and have a current “Department Approved Monitor Identification Card” showing successful completion of the course.

(h) Approved monitors shall have in their possession and available for immediate inspection, a current “Department Approved Monitor Identification Card” and a valid picture identification card during relay operations, available for immediate inspection.

(i) Approved monitors shall have in their possession a complete copy of the valid “Special Activity License to Relay Shellfish”, including complete copies of all licenses of each licensee who participates in a relay crew when the relay crew is comprised of more than one licensee, available for immediate inspection during any phase of relay operation. The copy(ies) shall be supplied by the licensee(s) or person(s) named as being responsible.

(j) Harvesters shall harvest shellfish within one hundred yards of the approved monitor, and remain under the immediate supervision and unobstructed view of the approved monitor, except as described in subparagraph subsection 5L-1.009(4)(n)13., F.A.C.

(k) No more than fifteen (15) harvesters shall comprise one crew and not more than one crew shall be under the immediate supervision of an approved monitor, except as described in subparagraph subsection 5L-1.009(4)(n)3., F.A.C.

(l) Relay teams that are treading or using rakes and/or tongs shall remain at a distance greater than 100 yards from any diving relay team that is in operation.

(m) Seagrasses shall not be disturbed.

(n) If relay harvesting is to be conducted by divers, the following additional conditions shall apply:

1. Any harvester who wishes to engage in a diving operation shall be required to obtain an "Underwater Shellfish Harvester Certificate" from the Florida Marine Enforcement District Office of the Florida Fish and Wildlife Conservation Commission, in which geographic area the harvester works. No certificate shall be issued to any applicant with a conviction of harvesting in a restricted, conditionally restricted, prohibited, or unclassified area within one year prior to application. No certificate shall be issued to any applicant who is not a certified diver.

2. It shall be unlawful for a diver to harvest shellfish on a relay crew without an "Underwater Shellfish Harvester Certificate" issued by the Florida Marine Enforcement District Office in which geographic area harvesting occurs.

3. A diver relay crew shall not be comprised of more than five divers, and not more than one crew shall be under the immediate supervision of an approved monitor.

4. Diving shall be the only method used by a team. Other harvesting methods, such as raking or tonging from a vessel or treading, shall not be permitted by a team employing diving.

5. The use of self contained underwater breathing apparatus (SCUBA) is not permitted.

6. The air supply shall come from the surface and consist of an apparatus which is supported by flotation, and used by no more than two harvesters at a time.

7. The air line from the apparatus to each diver shall not exceed 150 feet in length.

8. A designated diver's apparatus must be tethered to the approved monitor's vessel to provide a means of communication. The designated diver will provide communication for the approved monitor to the other divers.

9. Diver down flags shall be utilized as prescribed by Section 861.065, F.S. In addition, each diver shall have a diver's down flag on any flotation device designating the diver's approximate location.

10. Flags, as required by paragraph subsection 5L-1.009(4)(r), F.A.C., shall be flown on the vessels and not on the flotation device used to support a compressor.

11. Each diver shall have in his possession, while in the water, a maximum of one container at any time. No other container of any type shall be allowed with the diver while in the water.

12. Harvesters shall remain within 100 yards of the approved monitor's vessel.

13. Relay teams shall remain more than 100 yards from any other relay team.

(o) Relayed shellfish shall be delivered directly to the designated license location on the same day of harvest. Diverting shellfish to any other source or location is prohibited.

(p) If shellfish are relayed to a lease in Approved or Conditionally Approved areas, they shall not be harvested without written permission from the Department. Permission will be granted only after a minimum of 15 days have elapsed to allow the shellfish to cleanse themselves, and this cleansing is verified by laboratory analysis. The fifteen days will commence when the Department receives the licensee's "Special Activity License to Relay Shellfish" for cancellation. The fifteen day period does not include days that shellfish harvesting areas have been temporarily closed to harvest. Laboratory analysis shall consist of a minimum of five samples (each sample to consist of a minimum of 12 individual shellfish), collected by an employee of a laboratory with a current ~~Department~~ certification letter or staff of the Department. Four samples are to be collected from four corners of the lease and one sample collected from approximately the center of the lease. High-density aquaculture lease areas will be treated as a single entity pursuant to subsection 5L-1.009(4)(s)3. and 8., F.A.C., for sampling. The Department will collect and analyze samples for shellfish relaying to public areas in conjunction with Department supervision using public funds. The laboratory must be certified by the Department State Laboratory Certification Officer pursuant to Guidance document A.11 of the National Shellfish Sanitation Program Model Ordinance and the Shellfish Laboratory Evaluation Checklist (1995), published by the U.S. Food and Drug Administration, which is hereby incorporated by reference and available for inspection at the Department's offices located at 1203 Governors Square Boulevard, 5th Floor, Tallahassee, Florida 32301. Laboratory analysis shall include approved methods for fecal coliform bacteria and standard plate count. The bacteriological quality of the relayed shellfish shall be equal to or better than shellfish of the same species harvested from nearby Approved or Conditionally Approved areas. If shellfish are being relayed due to marine biotoxins, laboratory analyses shall include mouse bioassays for toxin. The toxin level must be less than 20 mouse units. Aquacultured shellfish are the only shellfish allowed to be relayed due to marine biotoxins. Relaying for marine biotoxins is only allowed within the following four specific geographic regions of the state: (1) Escambia County through Jefferson County; (2)

Taylor County through Levy County; (3) Citrus County through Monroe County; (4) Dade County through Nassau County. Relaying due to marine biotoxins between these specific geographic regions is prohibited. The holder of the “Special Activity License to Relay Shellfish” must coordinate with the certified laboratory and other persons or agencies that these criteria are met and communicate this information to the Department. Upon verification that the criteria have been met the Department will issue the written permission in the form of a letter.

(q) Shellfish relaying from Florida waters to another state or country, or from the waters of another state or country to Florida waters or a licensed depuration plant, is prohibited.

(r) Persons engaged in relaying operations shall fly a flag on their vessel, the color of which was applied for and approved by the Department in the “Special Activity License to Relay Shellfish”. The flag will be a rigid flag, minimum size of 12 inches high by 18 inches wide. Only one color design will be approved for each license, except as provided in sub-subparagraphs subsection 5L-1.009(4)(s)4.a.-d., F.A.C. The flags will be free standing and identifiable from the air and the water. The vessel which contains the Department approved monitor will fly a flag of the same description as before described but differentiated by two, three (3) inch wide strips, of contrasting color to the flag, extending diagonally from corner to corner, forming an X. Individual flags shall be mounted such that the entire flag extends a minimum of 2 feet higher than the highest point on the craft.

(s) Special conditions shall apply to high-density aquaculture lease areas, to relaying and transport operations, laboratory sampling, and harvesting when more than one person or licensee participates on a relay crew composed of other persons or licensees from the same high-density aquaculture lease area.

1. The “Application for a Special Activity License to Relay Shellfish” pursuant to subsection 5L-1.009(3), F.A.C., shall incorporate the following additional information:

a. the description of the high-density aquaculture lease area, and

b. the description of the aquaculture lease in the high-density aquaculture lease area.

2. The Department shall establish an expiration date pursuant to paragraph subsection 5L-1.009(4)(a), F.A.C., which shall be the same for all applicants for Special Activity Licenses to Relay Shellfish who participate in relays to high-density aquaculture lease areas.

3. For a high-density aquaculture lease area to be considered as a single entity for laboratory sampling and harvesting, all relaying activity must be terminated by the designated expiration date. The number of participating licensees shall be determined by the number of applicants using the same expiration date and the number of participants is limited by the number of individual aquaculture leases

located in the high-density aquaculture lease area. When an expiration date has been established for relaying to a high-density aquaculture lease area, all applicants shall terminate relay activities on or before the established expiration date regardless of the effective date of the Special Activity License to Relay Shellfish; except when a single licensee surrenders the Special Activity License to Relay Shellfish for cancellation and harvests shellfish pursuant to paragraph subsection 5L-1.009(4)(p), F.A.C.

4. Persons or licensees participating on relay crews composed of other persons or licensees from the same high-density aquaculture lease area shall fly a flag on their vessel pursuant to paragraph subsection 5L-1.009(4)(r), F.A.C., except:

a. Only one color design will be approved for each high-density aquaculture lease area when relay crews are composed of more than one licensee.

b. Each vessel shall also fly a flag or banner, the color and design of which is designated and provided by the approved monitor.

c. The licensee shall maintain possession of the flag designated in the Special Activity License to Relay Shellfish.

d. The approved monitor shall maintain possession and have available the designated monitor flag and provide such flags or banners to all persons or licensees participating on relay crews under his/her immediate supervision during the days activity.

5. No more than 15 boats or licensees shall comprise a relay crew from the same high-density aquaculture lease area and not more than one crew shall be under the immediate supervision of an approved monitor, except as described in subparagraph subsection 5L-1.009(4)(n)3., F.A.C.

6. All participating licensees shall surrender their Special Activity License to Relay Shellfish to the Department for cancellation on the same date.

7. Shellfish relayed to high-density aquaculture lease areas in Approved or Conditionally Approved areas shall not be harvested without written permission from the Department pursuant to paragraph subsection 5L-1.009(4)(p), F.A.C., except the 15 days will commence when the Department receives all participating licensees’ “Special Activity License to Relay Shellfish” for cancellation.

8. High-density aquaculture lease areas will be treated as a single entity pursuant to subparagraph subsection 5L-1.009(4)(s)3., F.A.C., for laboratory sampling when all participating licensees have surrendered their Special Activity License to Relay Shellfish pursuant to subparagraph subsection 5L-1.009(4)(s)6., F.A.C. Laboratory analysis shall consist of a minimum of five samples (each sample to consist of a minimum of 12 individual shellfish), collected by an employee of a laboratory with a current Department certification letter or staff of the Department. Four samples are to be collected from individual aquaculture leases located most proximate to the

four corners of the high-density aquaculture lease area and one sample collected from an individual lease located near the center of the high-density aquaculture lease area.

9. Shellfish relayed under the provisions of paragraph subsection 5L-1.009(4)(s), F.A.C., shall not be harvested without written permission from the Department as defined in paragraph subsection 5L-1.009(4)(p), F.A.C., and permission to harvest by individual licensees shall be denied until all participating licensees receive written permission to harvest.

(5) Requirements for Department approved monitors include the following:

(a) Department approved monitors must be current "Certified Law Enforcement Officers" or licensed "Class D Security Guards" working for a licensed "Class B Security Agency", hired by a "Special Activity License to Relay Shellfish" licensee, or staff of the Department. Staff of the Department, who are not "Certified Law Enforcement Officers", shall monitor only relay operations directed and supervised by the Department during cooperative shellfish resource development programs. Staff of the Department shall monitor shellfish relays to licensed leases pursuant to paragraphs subsections 5L-1.009(4)(g)-(i), subsection 5L-1.009(5), and paragraph 5L-1.009(6)(b), F.A.C.

(b) Applicants shall not possess a current Shellfish License or upon application for training they must surrender their Shellfish License.

(c) It shall be unlawful for any approved monitor to be involved in any other activities within the commercial shellfish industry.

(d) Department approved monitor training will consist of a course developed and approved by the Florida Marine Enforcement and the Division of Aquaculture. The course shall cover the responsibilities of the approved monitor, shellfish laws, shellfish relay license rules, water classifications, health issues and other information deemed necessary by the Department. Training shall be conducted by Department personnel, as follows:

1. Initial training will consist of weekly courses for a period of two months if sufficient applicants apply to fill classes of twenty students. Applicants need to attend only one of the weekly courses.

2. A training course will be scheduled every six months.

3. Contracted licensed security agencies and licensees to relay shellfish will receive written notification of training dates and where the courses will be conducted.

4. An applicant who completes the course satisfactorily will be issued a "Department Approved Monitor Identification Card" in his or her name. The Identification Card will bear an expiration date that coincides with eligibility requirements established for a Department approved monitor. This identification card will expire on the expiration date printed on

the identification card, or in no case longer than one year from the date of issue. The identification card will be renewed only after satisfactory completion of the training course.

(e) A Department approved monitor whose identification card has expired may reapply and will be issued a new identification card with a new expiration date if he or she meets the eligibility requirements established for a Department approved monitor.

(6) Penalty for violation of Rule 5L-1.009, F.A.C.

~~(a) Any person who violates any of the provisions of this chapter, shall be subject to fine and imprisonment as provided in s. 370.021, F.S.~~

~~(a)(b)~~ An approved monitor's failure to supervise shellfish relay operations, complete required reports, and comply with the requirements of Rule 5L-1.009, F.A.C., and the "Special Activity License to Relay Shellfish", will result in the suspension of his authorization to act as a Department approved monitor.

~~(b)(e)~~ A diver, who is permitted by the Florida Marine Enforcement to harvest shellfish on a relay crew, will have his "Underwater Shellfish Harvester Certificate" suspended for any conviction of violating subparagraphs subsection 5L-1.009(4)(n)1.-15., F.A.C. The suspension will be for one year from the date of conviction.

~~(c)(d)~~ A "Special Activity License to Relay Shellfish" will be revoked for:

1. Any conviction for violation of diverting shellfish to any location other than specified on the license.

2. Any conviction for violation of depuration periods specified by law for relayed shellfish or sale of relayed shellfish prior to written authorization by the Division of Aquaculture.

3. Second conviction for violation of harvesting shellfish from any waters not approved by the license.

4. Four separate instances involving convictions for violations, other than subparagraphs subsection 5L-1.009(6)(d)1., 2., and 3., F.A.C., within any six month period.

~~(d)(e)~~ Pursuant to Section 120.60(7), F.S., prior to the entry of a final order revoking a "Special Activity License to Relay Shellfish", the Department will serve an administrative complaint which affords reasonable notice to the licensee of facts or conduct which warrant the intended action and the licensee is given an adequate opportunity to request a proceeding pursuant to Section 120.57, F.S.

~~(e)(f)~~ A "Special Activity License to Relay Shellfish" will be revoked for the following periods:

1. First revocation of license will be for a minimum of thirty days.

2. Second revocation of license will be for a minimum of sixty days and continue until such time the licensee can show to the satisfaction of the Department that corrective measures have been taken to control violations.

3. Third revocation of license will be permanent. No other "Special Activity License to Relay Shellfish" will be issued to a person, firm, corporation, municipality, or other governmental body holding a shellfish lease, aquaculture lease, or owning or operating a depuration plant whose "Special Activity License to Relay Shellfish" was revoked three times. After a six month period a new lease holder or owner or operator of a depuration plant must show to the satisfaction of the Department that corrective measures to control violations will be implemented prior to having an application considered.

~~(f)(g)~~ During periods of revocation no further "Special Activity License to Relay Shellfish" will be issued to a person, firm, corporation, municipality, or other governmental body holding a shellfish lease, aquaculture lease, or owning or operating a depuration plant who had their "Special Activity License to Relay Shellfish" revoked.

Specific Authority 597.020 FS. Law Implemented 597.010(15), 597.010(19), 597.020 370.074, 370.16(17) FS. History—New 1-4-87, Amended 5-21-87, 8-10-88, 7-9-89, 12-23-91, 4-21-93, 5-20-93, 6-9-94, Formerly 16R-7.012, Amended 1-1-98, Formerly 62R-7.012, Amended 8-9-00, _____.

5L-1.010 Buildings and Facilities.

(1) Plant construction and design. Plant buildings and structures shall be suitable in size, construction, and design to facilitate maintenance and sanitary operations for food manufacturing purposes. At a minimum for shellstock, depuration and on shore wet storage operations, the structure shall have a sealed roof and screened walls. At a minimum, shucker packer and repacker operators shall have a sealed roof, solid walls, and sealed flooring. The plant and facilities shall:

(a) Provide sufficient space for such placement of equipment and storage of materials as is necessary for the maintenance of sanitary operations and the production of safe food.

(b) Permit the taking of proper precautions to reduce the potential for contamination of food, food-contact surfaces, or food-packaging materials with microorganisms, chemicals, filth, or other extraneous material. The potential for contamination may be reduced by adequate food safety controls and operating practices or effective design, including the separation of operations in which contamination is likely to occur, by one or more of the following means: location, time, partition, air flow, enclosed systems, or other effective means.

(c) Be constructed in such a manner that floors, walls, and ceilings may be cleaned and kept clean and kept in good repair; that drip or condensate from fixtures, ducts and pipes does not contaminate food, food-contact surfaces, or food-packaging materials; and that aisles or working spaces are provided between equipment and walls and are of such width to permit employees to perform their duties and to protect against contaminating food or food-contact surfaces with clothing or personal contact.

(d) Provide at least 110 lux (10 foot candles) in walk in refrigeration units, dry food storage areas and single service storage areas; at least 220 lux (20 foot candles) at any handwashing lavatory, warewashing and equipment and utensil storage, and in toilet rooms; at least 540 lux (50 foot candles) at the surface where a food employee is working with food or equipment or utensils such as knives or grinders where employee safety is a factor. This is considered adequate lighting for ~~the~~ hand-washing areas, dressing and locker rooms, and toilet rooms and in all areas where food is examined, processed, or stored and where equipment or utensils are cleaned. Light bulbs shall be shielded, coated or otherwise shatter resistant in areas where there is exposed food, clean equipment and utensils or unwrapped single service and single-use articles. Shielded, coated or otherwise shatter resistant bulbs need not be used in areas used only for storing food in unopened packages if the integrity of the packages can not be affected by broken glass falling onto the packages and the packages are capable of being cleaned of debris from broken bulbs before the packages are opened, and provide safety-type light bulbs, fixtures, skylights, or other glass suspended over exposed food in any step of preparation or otherwise protect against food contamination in case of glass breakage.

(e) Provide adequate ventilation or control equipment to minimize air borne dust and particulates, odors and vapors in areas where they may contaminate food; and locate and operate fans and other air-blowing equipment in a manner that minimizes the potential for contaminating food, food-packaging materials, and food contact surfaces.

(f) Provide screening or other protection to prevent the entrance of pests.

(2) Grounds about a food plant under the control of the operator shall be kept in a condition that will protect against the contamination of food. The methods for maintenance of grounds include, but are not limited to:

(a) Storing equipment, removing litter and waste, and cutting weeds or grass within the immediate vicinity of the plant building or structures that may constitute an attractant, breeding place, or harborage for pests.

(b) Maintaining roads, yards, and parking lots so that they do not constitute a source of contamination in areas where food is exposed.

(c) Draining areas that may contribute contamination to food by seepage, foot-borne filth, or providing a breeding place for pests.

(d) Operating systems for waste treatment and disposal in such a manner that they do not constitute a source of contamination in areas where food is exposed. If the plant grounds are bordered by grounds not under the operator's control and not maintained in the manner described in paragraph (2)(a) through (c) of this section, care shall be

exercised in the plant by inspection, extermination, or other means to exclude pests, dirt, and filth that may be a source of food contamination.

(3) The water supply shall be sufficient for the operations intended. Any water that contacts food or food contact surfaces shall be safe and of sanitary quality. Running water at a suitable temperature of 110° F or above, and under pressure as needed, shall be provided in all areas where required for the processing of food, for the cleaning of equipment, utensils, and food-packaging materials, or for employee sanitary facilities. Sanitary quality shall be maintained by the following steps:

(a) In plants that are not on a public water system, routine microbiological monitoring shall be conducted on water, and ice used in the plant, at least once every six months by the operator of the certified processing plant. The sample collected shall be from a tap that provides water for use in processing shellfish. When treatment includes disinfection, a source water standard bacterial sample must also be collected on the same day.

(b) Microbiological results from testing shall not equal or exceed two cfu (colony forming units) per 100 mls for total coliform bacteria on any consecutive samples, and shall not equal or exceed two cfu per 100 mls for fecal coliform or *E. coli* bacteria on any samples.

(4) Plumbing shall be of size and design and installed and maintained to:

(a) Carry sufficient quantities of water to required locations throughout the plant.

(b) Convey sewage and liquid disposable waste from the plant.

(c) Avoid constituting a source of contamination to food, water supplies, equipment, or utensils or creating an unsanitary condition.

(d) Provide floor drainage in all areas where floors are subject to flooding-type cleaning.

(e) Provide that there is no backflow from, or cross-connection between, piping systems that discharge waste water or sewage and piping systems that carry water for food or food manufacturing.

(5) Sewage and all in-plant wastewater shall be discharged into a public sewage treatment system or other approved sewage treatment system in accordance with provisions of Chapter 64E-6, Florida Administrative Code.

(6) Each plant shall provide its employees with readily accessible toilet facilities. Compliance with this requirement shall be accomplished by:

(a) Maintaining the facilities in a sanitary condition.

(b) Keeping the facilities in good repair at all times.

(c) Providing self-closing doors.

(d) Providing doors that do not open into areas where food is exposed to airborne contamination, except where alternate means have been taken to protect against such contamination, such as double doors or positive air flow systems.

(e) Providing toilet tissue.

(7) Handwashing facilities shall be furnished and easily accessible, where persons handle food, food packaging materials, or food contact surfaces, and include the following:

(a) Running water at a minimum temperature of 110 degrees F.

(b) Where persons handle food, food packaging materials, or food contact surfaces, hand-sanitizing facilities shall be furnished.

(c) Effective hand-cleaning and sanitizing preparations.

(d) Sanitary towels or drying devices.

(e) Readily understandable signs directing employees handling exposed food, unprotected food-packaging materials, or food-contact surfaces, to wash and sanitize their hands prior to handling these items. These signs shall be posted in the processing room at all hand wash stations and in all other areas where employees may handle such food, materials, or surfaces.

(8) Refuse receptacles shall be constructed and maintained in a manner that protects against contamination of food. Rubbish and any offal shall be so conveyed, stored, and disposed of as to minimize the development of odor, minimize the potential for the waste becoming an attractant and harborage or breeding place for pest, and protect against contamination of food, food-contact surfaces, water supplies, and ground surfaces.

Specific Authority 597.020 FS. Law Implemented ~~597.020~~ ~~370.074~~ FS. History—New 1-4-87, Amended 5-21-87, 8-10-88, Formerly 16R-7.013, Amended 7-3-95, 2-6-97, Formerly 62R-7.013, Amended 8-9-00, _____.

5L-1.011 Equipment for Shellfish Processing.

(1) All plant equipment and utensils shall be so designed and of such material and workmanship as to be cleanable, and shall be properly maintained. The design, construction, and use of equipment and utensils shall preclude the adulteration of food with contaminants. All equipment shall be so installed and maintained as to facilitate the cleaning of the equipment and of all adjacent spaces. Food-contact surfaces shall be corrosion-resistant, made of nontoxic materials, and designed to withstand the environment of their intended use and the action of food, and, if applicable, cleaning compounds and sanitizing agents. Food-contact surfaces shall be maintained to protect food from being contaminated by any source.

(2) Seams on food-contact surfaces shall be smoothly bonded or maintained so as to minimize accumulation of food particles, dirt, and organic matter and thus minimize the opportunity for growth of microorganisms.

(3) Equipment that is used in the manufacturing or food-handling area and that does not come into contact with food shall be so constructed that it can be kept in a clean condition.

(4) Three compartment sinks shall be properly installed, maintained and provided with hot and cold running water to all three compartments in establishments required to wash, rinse and sanitize food contact surfaces. Signs shall be posted

indicating proper use of the three compartment sink. A three compartment sink shall be used for washing, rinsing and sanitizing food contact surfaces and shall not be used for hand washing.

(5) Each freezer and cold storage compartment used to store and hold shellfish shall be mechanically refrigerated, nonportable and shall be fitted with an indicating thermometer, temperature-measuring device, or temperature-recording device so installed as to show the temperature accurately within the compartment, and should be fitted with an automatic control for regulating temperature or with an automatic alarm system to indicate a significant temperature change.

(6) Compressed air or other gases mechanically introduced into food or used to clean food-contact surfaces or equipment shall be treated in such a way that food is not contaminated.

(7) Blowers – devices which use compressed air to circulate wash water around and through shucked shellfish shall be properly designed and constructed as to be easily dismantled for cleaning, examination, and repair.

(8) Blowing time – blowing time shall not exceed 15 minutes.

(9) Depuration tanks shall be designed to allow for good water circulation and prevent short-circuiting of the seawater. Tanks shall be designed so that scum and sludge, including shellfish feces and pseudo-feces, sand, and grit can be easily removed or flushed out. The bottom shall be sloped longitudinally at least 1/4 to 1/2 inch per foot toward the outlet end.

(10) To facilitate proper cleaning and sanitation, as well as proper treatment of shellfish, tanks shall be constructed from impervious, non-toxic, and inert materials. Coatings, when used, may include epoxy resins, powdered polyesters, vinyl bituminous water-tank paint, and paraffin. These coatings are not only for waterproofing but should provide a smooth, hard, non-porous surface to facilitate cleaning.

Specific Authority 597.020 FS. Law Implemented 597.020 370.074 FS. History—New 1-4-87, Amended 8-10-88, Formerly 16R-7.014, Amended 7-3-95, 5-8-96, 2-6-97, Formerly 62R-7.014, Amended 8-9-00,_____.

5L-1.012 Sanitary Operations.

(1) General maintenance. Buildings, fixtures, and other physical facilities of the plant shall be maintained and kept in a sanitary condition and shall be kept in repair sufficient to prevent food from becoming adulterated within the meaning of this rule. Cleaning and sanitizing of utensils and equipment shall be conducted in a manner that protects against contamination of food, food-contact surfaces, or food-packaging materials.

(2) Cleaning compounds used in cleaning procedures shall be free from undesirable microorganisms and shall be safe and adequate under the conditions of use. Compliance with this requirement may be verified by any effective means including

purchase of these substances under a supplier's guarantee or certification, or examination of these substances for contamination.

(3) Only sanitizing agents found in Title 21, Code of Federal Regulations, Section 178.1010, revised as of April 1, 2000, hereby incorporated by reference and available for inspection at the Department's offices located at 1203 Governors Square Boulevard, 5th Floor, Tallahassee, Florida 32301, will be used at recommended levels in shellfish processing plants.

(4) Toxic cleaning compounds, sanitizing agents, and pesticide chemicals shall be identified, held, used and stored in a manner that protects against contamination of food, food-contact surfaces, or food-packaging materials. Test kits that measure the concentration of sanitizing solutions shall be provided and used for verifying the proper sanitizing solution concentration.

(5) No pests shall be allowed in any area of a food plant. Effective measures shall be taken to exclude pests from the processing areas and to protect against the contamination of food on the premises by pests. The use of insecticides or rodenticides is permitted only under precautions and restrictions of product labeling.

(6) All food-contact surfaces, including utensils and food-contact surfaces of equipment, shall be cleaned as frequently as necessary to protect against contamination of food.

(7) Non-food contact surfaces of equipment used in the operation of food plants shall ~~should~~ be cleaned as frequently as necessary to protect against contamination of food.

(8) Single-service articles shall ~~should~~ be stored in appropriate containers and/or in a clean dry location where they are not exposed to splash, dust or other contamination. Single-service articles shall be handled, dispensed, used, and disposed of in a manner that protects against contamination of food or food-contact surfaces.

(9) Sanitizing agents shall be adequate and safe under conditions of use. Any facility, procedure, or machine is acceptable for cleaning and sanitizing equipment and utensils if it is established that the facility, procedure, or machine will routinely render equipment and utensils clean and sanitized.

(10) Cleaned and sanitized portable equipment with food-contact surfaces and utensils shall ~~should~~ be stored in a location and manner that protects food-contact surfaces from contamination.

(11) Any employee with a disease in the communicable stage which might be transmissible through food shall be excluded from working in any capacity in which the employee may come in contact with the shellfish or with food contact surfaces.

(a) The dealer shall require all employees to wash their hands thoroughly with soap and water and sanitize their hands in an adequate handwashing facility before starting work, after

each absence from the work station, after each work interruption and any time when their hands may have been soiled or contaminated.

(b) Where the same employee works in both the shucking and packing activities, the employee shall wash his hands thoroughly after entering the area.

(c) Any employee handling shucked shellfish shall be required to wear an effective hair restraint, remove any hand jewelry that cannot be sanitized and secured, wear finger cots or gloves if jewelry cannot be removed, wear clean outer garments which are rinsed or changed as necessary to be kept clean.

(d) In any area where shellfish are shucked or packed and in any area which is used for the cleaning or storage of utensils, the dealer shall not allow employees to store clothing or other personal belongings, eat or drink, spit and use tobacco in any form.

(12)(44) Each certified dealer shall monitor the conditions and practices during processing with sufficient frequency to ensure, at a minimum, conformance with those conditions and practices specified in ~~subsection Rules~~ 5L-1.005(7), paragraphs 5L-1.010(1)(a) and (b), subsections 5L-1.010(6) and (7), 5L-1.011(1), 5L-1.012(1)-(11), 5L-1.013(6), (7), and (8), and (9), and 5L-1.014(5), F.A.C.

Specific Authority 597.020 FS. Law Implemented ~~597.020 370.074~~ FS. History—New 1-4-87, Amended 8-10-88, Formerly 16R-7.015, Amended 7-3-95, Amended 2-6-97, 6-23-99, Formerly 62R-7.015, Amended 8-9-00, _____.

5L-1.013 Plant Operation.

(1) The plant shall operate in accordance with the HACCP plan designed and approved by the owner or corporate officers.

(2) Prior to acceptance of shellstock from a licensed harvester, certified shellfish dealer and/or certified aquaculturist, the certified shellfish dealer will ensure that shellstock are properly identified as specified in subsection Section 5L-1.007(3)(5), F.A.C., are clean, wholesome, and alive.

(3) Upon acceptance of shellstock from a licensed harvester, certified aquaculturist or certified shellfish dealer, the receiving certified shellfish dealer shall determine the appropriate use of the shellfish through examination of shellfish labeling as follows:

(a) Shellfish which fails to meet the requirements of subsection Section 5L-1.008(5), F.A.C., or is labeled in compliance with paragraph Section 5L-1.007(6)(h), F.A.C., shall only be used for shucking by a certified shellfish dealer, or shall undergo an alternative processing method to assure a safety level equivalent to product meeting subsection Section 5L-1.008(5), F.A.C.

(b) Tempering, as an alternative process shall consist of those methods which have demonstrated through verification studies that the process renders hard clams which are as safe as

hard clams meeting subsection Section 5L-1.008(5), F.A.C. Prior to initiating tempering a certified shellfish dealer shall have written approval from the Department. The certified shellfish dealer must provide the following:

1. A description of all facilities, equipment and methods to be used in the alternative process. This process must be included in the firm's HACCP plan.

2. The source of hard clams and the maximum capacity of hard clams to undergo the process at any one time.

3. The process to be followed shall not exceed 16 hours total time between hard clam harvest and refrigeration at 45 degrees F or less. Product harvest, processing, tempering and food storage at 45 degrees F or less must be scheduled to occur as a continuous procedure.

4. Upon initiation, the tempering process must have temperature control of 68 degrees F or less and be maintained until hard clams are placed into refrigeration of 45 degrees F or less.

5. If facilities, equipment or methods change, the Department must be notified.

(4) Shellfish shall be segregated by the certified shellfish dealer in accordance with its intended use as determined in paragraphs subsection (3)(a) and (b) above and identified per subsections Section 5L-1.007(5) or (6), F.A.C.

(5) Unidentified, adulterated, unwholesome, dead, or contaminated shellstock shall be discarded.

(6) Shucking of shellfish – Shellfish shall be shucked in a manner such that they are not subjected to possible contamination.

Only live shellfish shall be shucked.

(a) Shucked meats shall be delivered to the packing room within one hour.

(b) Shucked meats shall be thoroughly drained, cleaned as necessary, and packed promptly after delivery to the packing room. Packing operations shall be scheduled and conducted so as to chill all meats to an internal temperature of 45° F or less within two hours of delivery to the packing room. Shucked meats which are packed into containers having a capacity of more than one gallon shall be pre-chilled to 45° F or less prior to packing.

(7) Shucked shellfish shall be held and transported at temperatures of 45° F or less.

(8) Ice shall be manufactured from potable water in a commercial machine which has been properly installed and maintained without connections to nonpotable water sources.

(9) Ice shall be stored so as not to come into contact with non-clean surfaces and is handled in such a manner that it will not be contaminated.

(10) Records – Complete, legible, and accurate dated records of purchase and sale of all shellfish shall be kept by all shellfish establishments operating in the state. Records shall indicate:

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.

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: 10:00 a.m., April 15, 2002

PLACE: The Suwannee Room (Room 250), 605 Suwannee Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: James C. Myers, Administrative and Management Support Level IV, Florida Department of Transportation, Office of the General Counsel, 605 Suwannee Street, Mail Station 58, Tallahassee, Florida 32399-0458

THE FULL TEXT OF THE PROPOSED RULE IS:

14-85.004 Logo Sign Program.

(1) Definitions.

(a) "Annual Permit Renewal" means the process of requalifying businesses with existing permits to allow for continued participation in the program.

(b) "Business" means an attraction or a commercial establishment providing gas, food, lodging, or camping services from a single site at a qualified interchange.

(c) "Business Logo Sign" means a board mounted on the display panel of a logo structure showing the name, symbol, trademark, or combination thereof for a category of motorist services available at an interchange.

(d) "Category" means the motorist services of gas, food, lodging, ~~or camping, or attraction.~~

(e) "Combination Logo Structure" means a logo structure designed to display a combination of business logo signs in no more than three categories in the following configurations combinations:

1. 15' x 12' 4/2 or 2/4 two-category service combination, with business logo signs in each of the two categories placed together.

2. 15' x 12' 2/2/2 three-category service combination, with business logo signs in each of the three categories placed together.

3. 15' x 8' 2/1 two-category service combination, with business logo signs in each of the two categories placed together.

4. 15' x 12' 3/3 two-category service combination, with three business logo signs in each of the two categories placed together.

(f) "Crossroad" means a road intersecting the interstate highway to which access is provided by means of an interchange.

(g) "Display Panel" means the facing or surface of a logo structure to which business logo signs are affixed.

(h) "Double Exit Interchange" means an interchange configuration where, for a given direction of travel on the mainline, two exit ramps provide access to the crossroad, one for each direction of travel on the crossroad.

(i) "Exit Ramp" means the traffic lane or lanes at an interchange on an interstate highway leading from the mainline to the crossroad.

(j) "Full Size Logo Structure" means a mainline or ramp logo structure capable of displaying six business logo signs.

(k) "Half Size Logo Structure" means a mainline or ramp logo structure capable of displaying three business logo signs.

(l) "Initial Permit" means written authorization for the a permit to display of a new business logo sign.

(m) "Logo Structure" means the support columns and display panel upon which separate business logo signs may be displayed.

(n) "Mainline" means the traffic lanes of an Interstate highway intended for through travel.

(o) "Mainline Logo Structure" means those logo structures located along the mainline.

(p) "Prepared Food" means hot or deli style food prepared to order on site.

~~(q)(p)~~ "Program Administrator" means the contractor providing all services relating to the logo program pursuant to a contract under Section 479.261(4), Florida Statutes. ~~Pursuant to a contract dated December 30, 1996, Florida Logos, Inc., is the Program Administrator under this rule.~~

~~(r)(q)~~ "Ramp Logo Structure" means those logo structures located along an exit ramp.

~~(s)(r)~~ "Qualified Interchange" means an interchange that meets the requirements of Section (3) of this Rule.

~~(t)(s)~~ "Single Exit Interchange" means an interchange configuration where, for a given direction of travel on the mainline, one exit ramp provides access to the crossroad for both directions of travel on the crossroad.

~~(u)(t)~~ "Traffic Control Signs" means all signs, signals, markings, and devices placed on, over, or adjacent to a street or highway by authority of a public body or official having jurisdiction to regulate, warn, or guide motorists traffic.

(2) Responsibilities of Program Administrator and Department.

(a) Subject to paragraph (2)(b), the Program Administrator is responsible for administering all provisions of this Rule, including the receipt of applications and renewals and the issuance of notices. ~~Florida Logos, Inc., can be contacted at 4706 Capital Circle, S. W., Tallahassee, Florida 32310 or 1(888)608-0833.~~

(b) The Department is responsible for ~~final~~ interpretation of Section 479.261, Florida Statutes, and this Rule, and is responsible for all proceedings under Chapter 120, Florida Statutes.

(3) Qualification of Interchanges.

(a) All interchanges with logo structures erected or approved ~~as of~~ ~~on~~ May 23, 1996, are qualified.

(b) Additional interchanges on the Interstate highway system will be qualified when minimum sign spacing distance allows at least one logo structure on the mainline and one logo structure on the exit ramp in addition to all necessary traffic control signs for each direction of travel on the mainline.

(c) An interchange is qualified only when the interchange configuration ~~allows~~ ~~permits~~ a motorist to exit, ~~as well as~~ ~~and~~ reenter the Interstate highway and continue in the same direction of travel.

(d) Interchanges, including those with logo structures erected or approved ~~as of~~ ~~on~~ May 23, 1996, become unqualified when ~~either~~ the spacing requirements in (b) or the ~~configuration~~ requirement in (c), above, ~~is~~ ~~are~~ no longer met as a result of Department action pursuant to Section 479.261(6), Florida Statutes. The Department or the Program Administrator shall relocate or remove logo structures when ~~deemed~~ necessary ~~by the~~ ~~as a result of~~ Department, ~~action~~ pursuant to Section 479.261(6), Florida Statutes.

(4) Mainline Logo Structures.

(a) The number of logo structures along an approach to an interchange, regardless of the number of categories displayed, shall be limited to a maximum of four. Approaching the interchange, the successive order of logo categories that may be displayed in permissible combinations on the four logo structures shall be attraction, camping, lodging, food, and gas. No category shall appear on more than one ~~more than one~~ logo structure ~~will be provided for each category.~~ If spacing is unavailable on the ~~four~~ ~~for~~ logo structures for all ~~five~~ ~~four~~ categories in a permissible combination, category preference shall be given first in priority order to the categories of gas, then to food, lodging, and camping, and attraction, respectively.

(b) Combination logo structures shall be used when spacing is unavailable for separate structures for all business categories for which applications have been submitted. The configuration of the logo structures shall be determined by the priority order established in paragraph (4)(a) above, and the number of applicant businesses in each category which have been qualified for participation at the time the structure is erected. A "2/2/2" combination logo structure displaying two business logo signs in each of the three categories ("2/2/2") shall not be constructed at an interchange where more than two qualified gas or food businesses have applied, in order to preserve the priority of businesses which provide services in the categories of gas and food.

(c) ~~The size of the display panel of mainline logo structures for all categories shall be a rectangle 4,500 mm (15 feet) wide by 3,000 mm (10 feet) high for a full size mainline logo structure, 4,500 mm (15 feet) wide by 1,800 mm (six~~

~~feet) high for a half size logo structure, and 4,500 mm (15 feet) wide by either 3,600 mm (12 feet) or 2,400 mm (eight feet) high for a combination logo structure.~~

(5) Ramp Logo Structures.

(a) A business logo sign shall be permitted on exit ramp logo structures for each business logo sign permitted on mainline logo structures.

(b) If ~~space~~ ~~spacing~~ is unavailable for logo structures for ~~five~~ ~~all~~ ~~four~~ categories of service, preference shall be given in priority order to the categories of gas, food, lodging, ~~and~~ camping, ~~and~~ attraction.

(c) ~~The size of the display panel of ramp logo structures shall be 2,400 mm (eight feet) wide by 2,100 mm (seven feet) high for a full size ramp logo structure, 2,400 mm (eight feet) wide by 1,200 mm (four feet) high for a half size ramp logo structure, and 2,400 mm (eight feet) wide by 2,400 mm (eight feet) high for a combination ramp logo structure.~~

(6) Placement of Business Logo Signs on Logo Structures. The initial arrangement of business logo signs on each logo structure shall be from left-to-right, top-to-bottom, based upon the date of issuance of the permit. When a business logo sign is removed, the next business logo sign to be displayed will be placed in the location of the removed business logo sign.

(7) Business Logo Signs on Mainline Logo Structures.

(a) No more than six ~~The maximum number of~~ business logo signs shall be allowed on any logo structure. ~~of the four logo structure category types at any interchange is as follows:~~

1. GAS — 6.
2. FOOD — 6.
3. LODGING — 6.
4. CAMPING — 6.

(b) No more than a total of six business logo signs shall be allowed for any category.

~~(c)(b)~~ Business logo signs on mainline logo structures shall be constructed of metal and shall be, ~~200 mm (48 inches) wide and 900 mm (36 inches) high.~~ Letters shall be at least ~~250 mm (10 inches) high,~~ whether capital or lowercase. However, when only a ~~the~~ symbol or trademark is used on the logo sign alone for the logo, any legend on the symbol or trademark ~~it~~ shall be proportional to the size customarily used ~~on the symbol or trademark.~~

(8) Business Logo Signs on Ramp Logo Structures. Business logo signs on ramp logo structures shall be constructed of metal and shall be ~~600 mm (24 inches) wide and 450 mm (18 inches) high.~~ Letters shall be at least ~~6~~ ~~150 mm (six inches) high,~~ whether capital or lowercase. However, when only the symbol or trademark is used alone for the logo, any legend on it shall be proportional to the size customarily used on the symbol or trademark.

(9) Installation and Maintenance of Logo Structures and Signs. Except as provided herein, all logo structures and signs shall be installed and maintained in accordance with the

Manual on Uniform Traffic Control Devices which is incorporated by reference in 14-15.010, Florida Administrative Code; and Roadway and Traffic Design Standards, 1996 edition; and Standard Specifications for Road and Bridge Construction, 1996 edition, which are incorporated herein by reference. The Program Administrator shall remove, replace, or cover any business logo sign that no longer meets Department standards.

(10) Qualification of Businesses.

(a) To qualify for a business logo sign in any category, a business must meet all of the following conditions:

1. Hold all necessary licenses and permits to provide services required to qualify for the logo category being displayed;

2. Comply with laws concerning the provisions of public accommodations without regard to race, religion, color, age, sex, or national origin;

3. Provide on site, modern sanitary facilities and a telephone on-site for use by motorists;

4. Fall within a category set forth in subsections (10)(d) (e) through (h), (f) and meet the requirements applicable to that category, including distance from the qualifying interchange. The qualifying interchange, which will be measured from the point where the crossroad intersects with the centerline of the Interstate highway median, along the crossroad to the nearest entrance to the premises of the business; and

5. Be located on or visible from the crossroad so that a motorist can immediately discern the type of service provided. However, a EXCEPTION: A business which meets all other qualifications but is not located on or is not visible from the crossroad will be permitted to display a business logo sign subject to all of under the following conditions:

a. The business demonstrates that additional signs are adequate signing is in place which are adequate to direct the motorist to its location. Such signs signing shall be maintained at all times while the business logo sign is displayed.

b. Space is available to display the business logo sign on an existing logo structure.

c. Such A business which qualifies under the exception in paragraph 5 will be permitted to renew its business logo sign permit annually unless one or more approved qualified businesses that are visible from the crossroad have applied apply and are approved and no space is available on the logo structure. In such cases, the businesses qualified under this exception which are nearest the crossroad shall be approved for permit renewal.

(b) In addition to the qualifications for a Business Logo Sign in (10) (a), a business qualified in the categories of gas, food, or lodging, only, which is located between three and to six miles from the interchange will be granted a permit for a bBusiness l-Logo s-Sign if less than six permits have been issued for businesses within three miles of the interchange for that category. A permit for a business logo sign issued for a

business located between within three and to six miles of the interchange will not be renewed at the next billing date if after six businesses located within three miles of the interchange have been qualified for logo permits.

(c) A In addition to the qualifications for a Business Logo Sign in (10)(a) and (10)(b), a business shall qualify for a business logo sign in one direction only and at one half the standard annual permit fee if either of the following conditions are met:

1. The business is located at an interchange that serves one direction only.

2. The business is Businesses located at an interchange serving both directions, but the business can only serve motorists traveling in one direction, can only be signed in one direction because of the interchange configuration or because of sign spacing. A permit for a bBusiness l-Logo s-Sign issued to a business serving one direction only shall not be renewed at the next billing date after six businesses serving both directions have been qualified for logo permits.

(d) Gas.

1. To qualify for a business logo sign in the gas category, a the business must meet all of the following conditions:

a. Operate year round at least 16 hours per day, 360 days a year; However, a business that meets all other qualifications but maintains operating hours other than 16 hours per day will be permitted to display a business logo sign in the gas category if it meets all of the following conditions:

I. Space is available to display the business logo sign on an existing logo structure.

II. At least one business logo sign is displayed at the same interchange for businesses in the gas category operating year round at least 16 hours per day, 360 days a year.

III. The gas business with operating hours other than 16 hours per day must operate at least 12 continuous hours per day, 360 days a year.

b. Provide on-site vehicle services including, at a minimum: fuel, oil, water, and tire inflation;

c. Provide on-site restroom facilities and drinking water;

d. Provide tire repair service, either on-site or by contract; and

d.e. Be located within three miles of the interchange;

2. Any full service or self service gas business willing to provide gas pumping service to motorists with disabilities during the hours the business is open shall display the International Symbol of Accessibility for Access for the Handicapped (Symbol D9-56 Manual on Uniform Traffic Control Devices) on its business logo sign. The symbol shall be a minimum of 6 150 mm (six inches) wide by 6 150 mm (six inches) high tall and a maximum of 8 200 mm (eight inches) wide by 8 200 mm (eight inches) high tall for the mainline business logo. These dimensions shall be reduced by one half for corresponding ramp business logos signs. The symbol shall be located in the upper left hand corner of the business logo

and shall be positioned in such a way as to cause minimal interference with the artwork. Permitted Gas category businesses may apply to use this symbol on their business logo signs elect to participate at the next permit renewal date, A, or, in the case of a new participant, may elect to participate when with the first permit fee payment is submitted. Permit fees will be in accordance with 14-85.004(11)(b)3. and 14-85.004(11)(e)4. Following the approval of the initial or renewed application, the program administrator will fabricate and install the reflective metal construction symbols for two mainline signs and two ramp signs.

3. Gas category businesses interested in providing this service should contact the Program Administrator. In order to participate, a gas business shall meet all of the following conditions demonstrate that:

a. An attendant is on duty who that will pump gas for the motorist with disabilities without additional charge.

b. At least one gas pump is plainly identified with the International Symbol of Accessibility for Access for the Handicapped, and with an explanation of which identifies the method by which the driver can notify an attendant of the need for assistance without exiting the vehicle.

c. Following the approval of the initial or renewed application, the program administrator will fabricate and install the reflective metal construction symbols for two mainline signs and two ramp signs.

(e) Food. To qualify for a business logo sign in the food category, a business must meet all of the following conditions:

1. Be licensed in accordance with Chapter 500 or 509, Florida Statutes, and serve prepared food.

2. Be located within three miles of the interchange.

3. Not require a cover charge for admittance.

4. Maintain continuous operating hours from at least 7:00 a.m. to 10:00 p.m., at least (full service hours) 360 days a year. EXCEPTION: A business which meets all other qualifications, but maintains operating hours other than 7:00 a.m. to 10:00 p.m., (limited service hours) will be permitted to display a business logo sign in the food category so long as it meets all of under the following conditions:

a. Space is available to display the business logo sign on an existing logo structure.

b. At least one business logo sign is displayed at the same interchange for businesses in the food category with continuous operating hours from at least 7:00 a.m. to 10:00 p.m. full service hours.

c. The business must operate for at least six consecutive hours between 6:00 a.m. and 12:00 midnight, at least with limited service hours maintains continuous operating hours from 11:00 a.m. to 9:00 p.m. 360 days a year.

~~d. Businesses with limited service hours will not be permitted to renew their business logo sign permit when the logo structure for the food category is full and one or more applications is received from businesses offering full service hours except as follows:~~

~~I. The business may adjust its operating hours to provide full service hours and be allowed to renew its permit.~~

~~II. Denial of permit renewal will be limited to a sufficient number to provide space for approved applications from businesses offering full service hours.~~

~~III. Denial of permit renewal will be based upon the date of approval of the original application to display the business logo sign with the earliest date of approval being the first to be denied renewal.~~

5. If a food business is qualified, except for the fact that the business is only open six days a week, that business will be allowed to participate as a fully qualified business. The business must identify the day it is closed on the business logo sign, e.g., Closed Sunday. The legend must be located in the lower one third of the business logo sign. The letters must be at least 6 150 mm (six inches) high. The color of the letters must be in contrast to the color of the background.

(f) Lodging. To qualify for a business logo sign in the lodging category, the business must meet both of the following conditions:

1. Be licensed in accordance with Chapter 509, Florida Statutes,;

2. Be located within three miles of the interchange.

(g) Camping. To qualify for a business logo sign in the camping category the business must hold a permit under the provisions of Chapter 513, Florida Statutes, and must be located within fifteen 15 miles of the interchange.

(h) Attraction. To qualify for a business logo sign in the attraction category, a business must meet all of the following conditions:

1. Be open at least of 5 days a week for 52 weeks a year.

2. Charge admission for entry.

3. Have, as its principal focus, family-oriented entertainment or cultural, educational, recreational, scientific, or historical activities.

4. Be publicly recognized as a bona fide tourist destination.

5. Provide adequate parking.

6. Not be advertised or displayed on any other existing traffic control device such as a supplemental guide sign or overhead sign.

7. Be located within fifteen miles of the interchange.

(11) Permitting.

(a) Permit Period. All permits shall expire annually on December 31. However, initial permits approved after September 30, will expire December 31, of the year following approval.

(b) Permit Fees. Annual permit fees shall be \$1,000.00.

1. Payment of permit fees shall be by U.S. currency, postal money order, bank draft, cashier's check, personal check, or business check. ~~Cash will not be accepted.~~ If a personal or business check is not honored for any reason by the bank on which it is drawn, the application for which the fee was submitted will be denied. If an individual or company issues two or more checks to the Department or the Program Administrator which are not honored, no further personal or business checks will be accepted from that individual or company, regardless of whether restitution has been made on previous checks.

2. For an initial permit application, the permit fee will be prorated with 1/12 of the annual permit fee charged for each month or portion thereof remaining in the calendar year after the date of approval of the application. The fee for applications approved after September 30; will also include fees for the next calendar year.

3. For an initial permit application for a full service or self service gas business willing to provide gas pumping service to motorists with disabilities, the permit fee for the initial year of participation will be \$1,200. Subsequent annual permit renewals ~~fees~~ will be ~~at the rate of~~ \$1,000.

4. ~~Permits for the attraction category shall be awarded by the Department annually to the highest bidder. However, the fees shall not be less than the fees established for logo participants in other logo categories. Businesses seeking to be placed on the Department's qualified bidders list for the attraction category must submit a completed Logo Application for Attractions, Form Number FLI-163-1, Rev. 09/01, incorporated herein by reference to the address specified on the form. The Logo Application for Attractions, Form Number FLI-163-1, Rev. 09/01, may be obtained from the Program Administrator, Florida Logos, Inc., 4706 Capital Circle, S. W., Tallahassee, FL 32310. Applicants whose applications meet program requirements will be issued a PIN number and bidding instructions.~~

(c) Initial Permit Application. A business applying for a business logo sign must submit a completed Logo Application/Annual Permit Renewal, ~~Form Number FLI-163, Rev. 09/01~~ ~~09/98~~, incorporated herein by reference, to the address specified on the form. ~~The Logo Application/Annual Permit Renewal, Form Number FLI-163, Rev. 09/01, Forms~~ may be obtained from the ~~Program Administrator Florida Logos, Inc., 4706 Capital Circle, S. W., Tallahassee, FL 32310.~~

1. Completed applications will be approved or denied within 90 days of receipt. A written notice of the approval or denial will be furnished to the applicant.

2. Permit fees must be received by the Program Administrator within 30 days of the notification of permit approval.

3. After notification of approval of the application, the applicant shall be responsible for providing the Program Administrator with a business logo sign which meets the specifications provided herein.

4. The business logo sign will be affixed to the display panel by the Department or its agent within 30 days of receipt of the sign or the permit fee, whichever is later.

5. Whenever space is not available on a logo structure for a business logo sign, the Program Administrator shall review the application for distance pursuant to paragraph (10)(b) above, and for operating hours pursuant to subparagraph (10)(e)4., and will place the business on a waiting list in the priority order of the dates on which they were received. A notice will be provided to the business indicating its position on the waiting list. When space becomes available, notice will be provided to the business with the highest priority allowing the business 30 days within which to submit an application in accordance with this section.

~~6.a.~~ For all categories, applications received for businesses within three miles of an interchange have priority over businesses that are within three to six miles of an interchange.

~~b. Applications for food businesses that have full service operating hours (7:00 a.m. to 10:00 p.m.) have priority over food businesses that have limited service operating hours (11:00 a.m. to 9:00 p.m.).~~

(d) Priority of Applications.

1. Each permit holder that timely applies for renewal renews under this Rule will retain priority over other applicants, except when retaining priority would conflict with Section (10)(a)5.c. of this Rule.

2. Initial permit applications received after October 10, 1996, will be assigned priority based upon the date and time of receipt by ~~the Department or the Program Administrator.~~ The with the application received earliest will be given receiving the highest priority.

~~3. If more than one application for the same category and location are received on the same day, priority will be assigned on the basis of a random drawing. Each applicant involved in the drawing will be notified of the date, time, and place of the drawing.~~

~~3.4.~~ All processing of permit applications will be in order of assigned priority. A business that fails to submit an application within 30 days of notice that space has becomes available will be deemed to have withdrawn its application and must resubmit its application in order to be assigned priority, which will be based on date and time of receipt as an initial permit application.

~~4.5.~~ Acceptance of an application and assignment of processing priority does not constitute approval of an application. Approval or denial of applications will be granted after processing is complete.

(e) Annual Permit Renewal.

1. On or before November 1 of each year, the Program Administrator ~~may~~ will provide a Notice of Annual Permit Renewal to each holder of a valid permit. Failure of delivery to any permit holder will not excuse timely submission of the permit renewal application by the permit holder.

2. Each permit holder must submit a completed Logo Application/Annual Permit Renewal, form number FLI-163, Rev. 09/01 ~~09/98~~, to the Program Administrator. The Annual Permit Renewal must be postmarked no later than December 1.

3. The annual permit fee amount must be submitted with the Annual Permit Renewal.

~~4. For an annual renewal for a full service or self service gas business willing to provide gas pumping service to motorists with disabilities, the first year permit fee will be \$1,200. Subsequent annual permit renewals will be at the rate of \$1,000.~~

~~4.5.~~ Failure to submit the Annual Permit Renewal by December 1, will result in expiration of the permit and removal of the business logo sign from the display panel. Should the business subsequently reapply for a permit, such reapplication will be processed as an initial permit application in accordance with this section.

(12) Denial, revocation, suspension, voiding, or cancellation of permit.

(a) Denial. An application for a business logo permit will be denied if:

1. Space is not available;
 2. The business does not meet the eligibility requirements;
- or
3. The required fees are not submitted with the application.

(b) Revocation. A business's permit to participate in the logo program will be revoked if:

1. The business no longer meets the eligibility requirements outlined in this R~~R~~ule chapter and has not requested a suspension.

2. The business ~~willfully~~ made a false, deceptive, or fraudulent statement in its application or in any other information submitted to the Department or the Program Administrator ~~that was used to determine eligibility.~~

3. The business has modified or revised a business logo sign or logo structure without authorization by the Department or the Program Administrator.

(c) Suspension. A business logo permit will be suspended when the business notifies the Program Administrator that it is temporarily unable to provide the services required and requests suspension of the permit.

1. The maximum period of suspension shall be 90 days except in cases of national disaster or when substantial physical changes such as retrofitting of fuel tanks must be made to the business, in which case an additional 90 days will be granted by the Program Administrator upon receipt of

complete construction or engineering specifications for the physical changes and a construction schedule supporting the need for additional time.

2. The logo sign permit must remain in force, including payment of all fees, during the period of suspension.

3. The Program Administrator shall cover or remove the business logo sign until the business is again able to provide services.

4. If the circumstances requiring suspension of the permit are not resolved within the time frame in Section (12)(c)1., above, the Program Administrator shall revoke the business logo sign permit in accordance with (12)(b), above.

(d) Voiding. If the Department or the Program Administrator must ~~relocate~~ or remove logo structures pursuant to Section (3)(d), the Program Administrator shall void the business logo sign permit. The Program Administrator shall reimburse the business for the unexpired permit term, on a pro rata basis.

(e) Notice. In cases of denial, denial of renewal, revocation, or voiding, the Program Administrator shall provide a written notice to the applicant or permittee by certified mail. The notice shall contain a statement of the reason for the action and an explanation of the permittee's rights under Chapter 120, Florida Statutes.

1. Prior to revoking a logo permit, the Program Administrator shall issue a Notice of Noncompliance by certified mail. This notice shall state the noncompliance found and provide the following:

- a. The permittee shall have 30 days from receipt of the Notice of Noncompliance to correct the noncompliance.

- b. If corrective action is not accomplished within the 30-day period, the Program Administrator shall issue a notice of intent to revoke the permit.

2. The business logo sign shall be removed from the logo structure(s) after the revocation or denial action is final or after the final disposition of any request for an administrative proceeding pursuant to Chapter 120, Florida Statutes. The Program Administrator shall reimburse the business for the unexpired term of the business logo sign permit ~~term~~, on a pro rata basis.

(f) Cancellation. If a participant decides to no longer participate in the logo program, the participant must provide to the Program Administrator a written notice of its decision not to participate ~~intent to cancel~~. Upon receipt of the notice, ~~of intent to cancel~~ the Program Administrator will cancel the participant's permit and remove ~~take down~~ the participant's business logo sign.

(13) Variances and waivers. The Department will consider and act on petitions for variances to or waivers of the provisions of this rule chapter, in accordance with Sections 120.542 and 479.261(7), Florida Statutes, and Chapter 28-104, Florida Administrative Code.

(a) A variance will be granted under Section 479.261(7), Florida Statutes, when it is shown that such variance is necessary to serve the interest of the traveling public or when required to ensure equitable treatment of program participants. In the event of a conflict between these two considerations, the interests of the traveling public will prevail.

(b) When considering the standards of Section 120.542(2), Florida Statutes, the purposes of Section 479.261, Florida Statutes, will be achieved by other means if the variance or waiver serves the interest of the traveling public or ensures equitable treatment of program participants. In the event of a conflict between these two considerations, the interests of the traveling public will prevail.

Specific Authority 334.044(2) FS. Law Implemented 334.044(28), 479.261 FS. History—New 6-26-85, Formerly 14-85.04, Amended 3-20-91, 10-10-96, 12-31-96, 10-8-97, 5-25-99, 8-31-99, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Roger Eudy, Administrator, State Logo Program
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Thomas F. Barry, Jr., P.E., Secretary
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 13, 2002
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 8, 2002

DEPARTMENT OF CORRECTIONS

RULE TITLE: Inmate Property
RULE NO.: 33-602.201
PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to clarify the process for reporting claims of missing inmate property and to amend the list of items that inmates are allowed to purchase from the canteen.
SUMMARY: The proposed rule provides for notification of the institution rather than the regional office of action taken on claims of missing inmate property by the Department of Corrections Environmental, Health, Safety and Risk Management Office. The proposed rule also adds t-shirts, socks, white pajamas, panties and undershorts to the list of items which may be purchased from the canteen.
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 FS.
LAW IMPLEMENTED: 944.09 FS.
IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

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

33-602.201 Inmate Property.

(1) through (12) No change.

(13) Missing Inmate Property.

(a) through (c) No change.

(d) The Department of Corrections Environmental Health, Safety and Risk Management Office shall review and forward the claim to the Department of Insurance, Division of Risk Management, for review and reimbursement consideration. Form DC6-238, Report of Risk Management Claim for Inmate Property, shall be used to notify the ~~institution regional office~~ of action taken on the claim by the Department of Corrections Environmental Health, Safety and Risk Management Office.

(e) through (15) No change.

(16) Forms. The following forms referenced in this rule are hereby incorporated by reference. Copies of any of these forms are available from the Forms Control Administrator, Office of the General Counsel, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500.

(a) through (e) No change.

(f) DC6-238, Report of Risk Management Claim for Inmate Property, effective date _____ ~~September 12, 2001~~.

Specific Authority 944.09 FS. Law Implemented 944.09 FS. History—New 6-4-81, Formerly 33-3.025, Amended 11-3-87, 11-13-95, 5-20-96, 1-8-97, 6-1-97, 7-6-97, 10-15-97, 2-15-98, 3-16-98, 8-4-98, 12-7-98, Formerly 33-3.0025, Amended 11-21-00, 9-12-01, _____.

**APPENDIX ONE
PROPERTY LIST**

This list incorporates all property authorized to be possessed by inmates in all Department institutions and facilities except community correctional centers. Except for items specified below as “exemptions”, property received must be in compliance with this list. Inmates in possession of previously approved property which meets the description of property on the list shall be allowed to retain the property.

Definitions.

The “quantity” establishes a maximum possession limit. This does not mean that all state issue items will be issued to each inmate, or that the maximum number of items will be issued. Where there is a “value” indicated, the authorized item shall not exceed that value. The terms “canteen” and “state issue” refer to the sources from which property can be obtained after January 1, 1996. All items with the “canteen” designation shall be available in all institutional canteens or through canteen order. All canteen items are transferable between institutions. “State issue” means that the institution has the authority to

issue this item to inmates based upon the character of the institution, the location of the institution, the housing or work assignment of the inmate, or other factors related to institution or inmate needs. Institutions housing death row inmates shall make adjustments to this property list when possession of listed items by death row inmates would create a threat to the security of the institution.

Exemptions.

Inmates already in possession of the following previously approved items shall be allowed to retain the items until they are no longer serviceable, but shall not be allowed to replace them with like items.

- Clothing items of a different color than specified on the property list.
- Locks other than V68 series
- Plastic bowls, tumblers, cups and lids
- Pantyhose
- Nail clippers larger than 2-1/2"

AUTHORIZED PROPERTY LIST

CLOTHING

Quantity	Unit	Value	Articles
1	each		Athletic Bra (canteen – female only)
1	each		Belt (state issue)
4	each		Bras (state issue <u>or canteen</u> – female only)
1	each		Coat (state issue)
3	each		Dresses (state issue – female only)
1	pair		Gloves, work (state issue)
4	each		Handkerchief, cotton, white only (canteen)
1	each		Hats (state issue)
2	pair		Pajamas-long (light blue <u>or white</u> only) (state issue or canteen – <u>female only</u>)
7	each		Panties (state issue <u>or canteen</u> – female only)
3	each		Pants (state issue)
1	each		Raincoat – clear (state issue or canteen)
1	each		Robe (state issue – female only)
3	each		Shirt, outer (state issue)
4	each		Shirt, T-Shirt (state issue <u>or canteen</u>)
1	pair		Shoes, Athletic (canteen)
1	pair		Shoes, Work (state issue)
2	each		Shorts, athletic (navy blue) (canteen)
1	each		Shower cap, clear only (canteen)
1	pair		Shower slides (canteen)
3	each		Slips (state issue – female only)
6	pair		Socks (state issue <u>or canteen</u>)
1	each		Supporter, athletic (canteen)
2	each		Sweatshirts (gray only) (canteen order)

4	each	Undershorts (male only) (state issue <u>or canteen</u>)
2	each	Underwear, thermal (state issue or canteen)

PERSONAL ARTICLES No change.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Jerry Vaughan

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 5, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 8, 2002

DEPARTMENT OF CORRECTIONS

RULE TITLE: Inmate Telephone Use
RULE NO.: 33-602.205

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to revise current telephone procedures in order to provide for the use of a proposed new telephone system, to provide correct titles for staff with responsibilities related to inmate telephones, and to clarify terms used in conjunction with provision of inmate telephone services.

SUMMARY: The proposed rule provides for the use of a proposed new telephone system, corrects titles for staff with responsibilities related to inmate telephones, and clarifies terms used in conjunction with provision of inmate telephone services.

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 FS.

LAW IMPLEMENTED: 20.315, 944.09 FS.

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

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

33-602.205 Inmate Telephone Use.

(1) No change.

(2) Inmate telephone procedures will be conducted as follows:

(a) No change.

(b) The reception center classification staff shall compile the inmate calling list through use of Form DC6-223, in conjunction with the acquisition of the inmate visiting list. Form DC6-223 shall become part of the inmate's permanent file and shall accompany the inmate with each subsequent transfer. Form DC6-223 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, FL 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 2-7-00.

(c) An inmate shall be allowed to change his or her telephone list once every six months. Changes can be made more frequently for the following reasons only:

1. No change.
2. The inmate has married and wishes to add the name and ~~telephone~~ telephone number of the spouse. The inmate shall be responsible for providing documentation of the marriage before the list will be amended.
3. An inmate shall be allowed to update his or her telephone list when there is a change in telephone providers, an installation of updated equipment or software, or a repair to the equipment, if the department determines that an update of the telephone list would be more efficient in completing the change, installation, or repair.

(d) No change.

(e) Except for calls to attorneys as provided in (3)(a), or calls during family crisis as provided in (4), calls shall be limited to 15 ~~40~~ minutes. Calls to attorneys as provided in (3)(a) and calls in time of family crisis as provided in (4) shall be limited to the amount of time reasonably necessary to accomplish the purpose of the call.

(f) No change.

(g) All calls from the monitored ~~telephones~~ telephones shall be collect and shall contain a prompt which clearly identifies the call as coming from a Florida Department of Corrections institution.

1. No change.
2. The prompt shall clearly identify the caller on a prerecorded ~~message~~ message ~~eee~~ which is input at the time of the inmate's first call.
3. No change.
4. The system will detect conference calls or three-way calling activity and terminate the call when such activity is detected.

(h) through (i) No change.

(j) Wardens are authorized to designate additional staff who will be responsible for monitoring telephone calls and reviewing ~~records and recordings~~ records and recordings ~~recorded tapes~~ of monitored calls.

(k) ~~Records and Tape~~ recordings of monitored calls shall be kept in an area where staff access is controlled. ~~Records and recordings tapes~~ recordings of monitored calls shall be retained for a minimum of one year. Access to ~~tapes and~~ records and recordings shall be limited to the following persons:

1. No change.
2. ~~Director of Institutions Assistant Secretary for the Office of Security and Institutional Operations~~ Director of Institutions Assistant Secretary for the Office of Security and Institutional Operations or her or his designee;
3. Regional ~~d~~Directors;
4. through 6. No change.

(l) The department's contract manager for operations and wWardens shall ensure that the system is checked periodically to assess the integrity of all components of the system. If the notification system is not functioning properly, monitoring of the telephone calls shall immediately cease until the problem is corrected.

(3) Calls to attorneys.

(a) Inmates shall be allowed to make private telephone calls to attorneys upon presentation to the warden or his designee of evidence that the call is necessary. Such evidence shall be a letter from the attorney (transmission by FAX is acceptable) requesting the return call or a court order containing a deadline the inmate cannot meet if he must communicate by letter with the attorney. Except as authorized by warrant or order of court, telephone calls to attorneys made pursuant to this section shall not be monitored or electronically recorded. These calls will be placed on telephones designated for this purpose and shall be collect calls; there shall be at least one telephone at each institution that is not connected to the monitoring system for these calls.

(b) If an inmate requests to place his or her attorney's telephone number on his or her calling list, the attorney must provide written acknowledgment of the telephone procedures by completing Form DC6-214, Inclusion of Attorney on Inmate Telephone List and indicating that he or she understands that there are options available for private calls. The requesting inmate will be responsible for notifying the attorney and arranging for the correspondence to the institution. There will be no special provisions for these calls. They will be placed on regular inmate telephones, will be collect, subject to monitoring and recording, and limited to 15 ~~40~~ minutes. If the inmate and the attorney want to have non-monitored conversations, the procedures in (3)(a) must be followed. Form DC6-214, Inclusion of Attorney on Inmate Telephone List, is hereby incorporated by reference. A copy of this form is available from the Forms Control Administrator, Office of the General Counsel, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. The effective date of this form is _____.

(4) No change.

(5) Telephone privileges for inmates in Administrative or Disciplinary Confinement shall be in accordance with Rules 33-602.220 (Administrative Confinement) and 33-602.222 (Disciplinary Confinement) are not allowed telephone privileges except in cases of emergency or when necessary to insure the inmate's access to attorneys or courts, provided that in Disciplinary Confinement privileges will only be allowed when alternative means of access are not feasible.

(6) No change.

(7) All long distance calls shall be "collect" calls except:

(a) No change.

(b) Calls to courts when the inmate is required to participate in a telephone conference hearing. Institutional staff shall place a direct call to the court, using the most efficient and economical means available. If the department is involved as a party, the inmate's account shall not be charged for the cost of such call, unless it can be demonstrated that the hearing was scheduled at the inmate's request. In all other circumstances, the inmate's account shall be charged in full for such cost. The charge shall be based on the current SUNCOM telephone rate for State telephone calls.

(c) No change.

(8) through (13) No change.

(14) Prison Tips Hotline.

(a) A free speed-dial number will be available for dialing from any telephone designated for inmate use to report suspected criminal activity or crimes that occur inside or outside the institution.

(b) The inmate will not have to enter his or her personal identification number (PIN) to access the prison tips hotline.

(c) Calls to the prison tips hotline will be limited to three minutes and will be recorded and retained for one year.

Specific Authority 944.09 FS. Law Implemented 20.315, 944.09 FS. History—New 11-19-81, Formerly 33-3.125, Amended 11-21-86, 1-6-92, 3-24-97, 7-22-97, 12-21-98, Formerly 33-3.0125, Amended 2-7-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Jerry Vaughan

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 5, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 15, 2002

WATER MANAGEMENT DISTRICTS

Suwannee River Water Management District

RULE CHAPTER TITLE: Environmental Resource Permits RULE CHAPTER NO.: 40B-400

RULE TITLES: Exemptions RULE NOS.: 40B-400.051

Publications and Agreements Incorporated by Reference 40B-400.091

Limiting Conditions 40B-400.115

General Permit to the Department for Environmental Restoration or Enhancement 40B-400.485

PURPOSE AND EFFECT: The Joint Administrative Procedures Committee (JAPC) objected to certain language in various sections of Chapter 40B-400, F.A.C. The objections were based on rule vagueness and improper references or incorporations by reference. The purpose of the proposed amendments is to delete and/or revise the language objected to by JAPC.

SUMMARY: SRWMD is clarifying language pertaining to the following topics: conditions for permit issuance, waters approved for shellfish harvesting, innovative mitigation proposals, formal determinations and nonbinding determinations. Additionally, SRWMD is conforming various statutory and rule citations to the current rules and laws in effect.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 373.044, 373.046(4), 373.113, 373.118, 373.171, 373.415, 373.421(2), 373.461(3) FS.

LAW IMPLEMENTED: 373.046, 373.118, 373.413, 373.4135, 373.415, 373.416, 373.421(2)-(6), 373.426, 373.461(3) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Linda Welch, Suwannee River Water Management District Headquarters, 9225 County Road 49, Live Oak, Florida 32060, (386)362-1001

THE FULL TEXT OF THE PROPOSED RULES IS:

40B-400.051 Exemptions.

(1) No change.

(2) No permit shall be required under chapters 40B-4; or 40B-400, F.A.C., for the following activities:

(a) through (f) No change.

(g) The installation and repair of private docks, piers and recreational docking facilities, or piers and recreational docking facilities of local government entities when the local government entities' activities will not take place in any manatee habitat which structures have 1000 square feet or less of surface area over wetlands or other surface waters, or 500 square feet or less of surface area over wetlands or other surface waters which are Outstanding Florida Waters. This exemption shall include the construction and repair of structures above the dock area, such as gazebos and boat

shelters, provided such structures are not enclosed with walls and doors, are not used for living, commercial purposes, or storage of materials other than those associated with recreational use, and provided the structures do not exceed, together with the docking facility, the total area limitations above. To qualify for this exemption, any such structure:

- 1. through 4. No change.
- (h) through (t) No change.

(u) The construction or maintenance of culverted driveway or roadway crossings and bridges of artificial waterways, provided:

- 1. through 14. No change.

15. This exemption shall not apply to activities involving relocation or other alteration of all or part of the artificial waterway, or construction for other than the proposed culvert crossing, ~~except as exempted by chapter 373, F.S., or Rule 40B-4.1070, F.A.C.~~

- (v) No change.
- (3) through (5) No change.

Specific Authority 373.044, 373.113, 373.118 FS. Law Implemented 373.118, 373.413, 373.416, 373.426 FS. History--New 10-3-95, Amended.

40B-400.091 Publications and Agreements Incorporated by Reference.

The Governing Board hereby adopts by reference:

- (1) "Environmental Resource Permit Applicant's Handbook - February 2002".
- (2) No change.

Specific Authority 373.044, 373.046(4), 373.113, 373.118, 373.171, 373.415, 373.421(2), 373.461(3) FS. Law Implemented 373.046, 373.118, 373.413, 373.4135, 373.415, 373.416, 373.421(2)-(6), 373.426, 373.461(3) FS. History--New 10-3-95, Amended 12-3-98,

40B-400.115 Limiting Conditions.

(1) The following general conditions shall be a part of all permits issued pursuant to this chapter and chapter 40B-4, F.A.C., unless waived by the District upon a determination that the conditions are inapplicable to the activity authorized by the permit.

- (a) through (o) No change.
- (p) Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered specifically approved unless a specific condition of this permit or a formal determination under 40B-400.046, F.A.C., s. 373.421(2), F.S., provides otherwise.

- (q) through (t) No change.
- (2) In addition to those general conditions set forth in ss.

(1), the Governing Board shall impose on any permit granted under this chapter and chapter 40B-4, F.A.C., such reasonable project-specific conditions as are necessary to assure that the permitted system will meet the conditions for issuance in 40B-400.103 and 40B-400.104, F.A.C ~~not be inconsistent with the overall objectives of the District or be harmful to the water~~

~~resources of the District.~~ Upon receipt of notice of intended agency action, any substantially affected person shall have the right to request a hearing in accordance with ~~Rule 40B-1.511 and~~ Chapter 28-106.

Specific Authority 373.044, 373.113, 373.118 FS. Law Implemented 373.118, 373.413, 373.416, 373.426 FS. History--New 10-3-95, Amended.

40B-400.485 General Permit to the Department for Environmental Restoration or Enhancement.

- (1) No change.
- (2) In order to qualify for this general permit, the environmental restoration or enhancement project must comply with any one of the following procedures:

- (a) through (b) No change.
- (c) The project is wholly or partially funded by the Department through ~~the Pollution Recovery Trust Fund pursuant to s. 403.165, F.S., or~~ the Water Resources Restoration and Preservation Act pursuant to s. 403.0615, F.S.
- (3) No change.

Specific Authority 373.044, 373.113, 373.118 FS. Law Implemented 373.118, 373.413, 373.416, 373.426 FS. History--New 10-3-95, Amended.

ENVIRONMENTAL RESOURCE PERMIT APPLICANT'S HANDBOOK

(The following represents proposed amendments to sections 12.2.2.1, 12.2.4.3, 12.2.5, 12.3.1.8, 12.5.4, 12.5.5 and 12.5.6 of the document entitled "Suwannee River Water Management District Environmental Resource Permit Applicant's Handbook - February 2002.")

12.2.2.1 Compliance with ss. 12.2.2-12.2.3.7, 12.2.5-12.3.8 will not be required for regulated activities in isolated wetlands less than 0.5 acre in size, unless:

- (a) through (c) No change.
- (d) The District establishes that the wetland to be impacted is, or several such wetlands to be impacted are cumulatively, of more than minimal value to fish and wildlife based on the factors in subsection 12.2.2.3.

12.2.4.3 Additional Water Quality Considerations for Docking Facilities

Docking facilities, due to their nature, provide potential sources of pollutants to wetlands and other surface waters. To provide the required reasonable assurance that water quality standards will not be violated, the following factors must be addressed by an applicant proposing the construction of a new docking facility, or the expansion of or other alteration of an existing docking facility that has the potential to adversely affect water quality:

- (a) Hydrographic information or studies shall be required for docking facilities of greater than ten boat slips. Hydrographic information or studies also may be required for docking facilities of less than ten slips, dependent upon the site-specific features described in paragraph 12.2.4.3(b) below.

In all cases, the need for a hydrographic study, and the complexity of the study, will be dependent upon the specific project design and the specific features of the project site.

(b) No change.

(c) The level and type of hydrographic information or studies that will be required for the proposed docking facility will be determined based upon an analysis of site-specific characteristics. As compared to sites that flush in less than four days, sites where the flushing time is greater than four days generally will require additional, more complex levels of hydrographic studies or information to determine whether water quality standards can be expected to be violated by the facility. The degree and complexity of the hydrographic study will be dependent upon the types of considerations listed in paragraph 12.2.4.3-(b), including the potential for the facility, based on its design and location, to add pollutants to the receiving waters. Types of information that can be required include site-specific measurements of: waterway geometry, tidal amplitude, the periodicity of forces that drive water movement at the site and water tracer studies that document specific circulation patterns.

(d) through (i) No change.

12.2.5 Class II Waters; Waters Approved for Shellfish Harvesting.

The special value and importance of shellfish harvesting waters to Florida's economy as existing or potential sites of commercial and recreational shellfish harvesting and as a nursery area for fish and shellfish ~~shell fish~~ is recognized by the District. In accordance with paragraph 12.1.1(d), the District shall:

(a) through (b) No change.

(c) Deny a permit for a regulated activity that is located directly in Class II or Class III waters which are classified by ~~the Department~~ as approved, restricted, conditionally approved or conditionally restricted for shellfish harvesting. This provision shall not apply to ~~However, the District may issue permits or certifications for~~ maintenance dredging of navigational channels, the construction of shoreline protection structures, the installation of transmission and distribution lines for carrying potable water, electricity or communication cables in rights-of-way previously used for such lines, for clam and oyster culture, and for private, single family boat docks that meet the following criteria for installation in such waters:

1. through 7. No change.

12.3.1.8 Innovative mitigation proposals which deviate from the standard practices described in s. 12.3-12.3.6 may be proposed by an applicant; however, to receive District approval they must offset the adverse impacts to the functions identified in sections 12.2-12.2.8.2 caused by regulated activities ~~shall be considered on a case-by-case basis.~~ The donation of money is not considered to be an acceptable method of mitigation, unless cash payments are specified for use in a District or Department of Environmental Protection endorsed environmental preservation, enhancement or restoration project and the payments initiate a project or supplement an

ongoing project. The project or portion of the project funded by the donation of money must offset the impacts of the proposed system.

12.5.4 Duration.

The formal determination shall be binding for five years provided physical conditions on the property do not change so as to alter the wetlands and other surface waters during that period. Changes in surface water or wetland boundaries resulting from work authorized by a permit pursuant to Part IV, chapter 373, F.S., will not be considered as altering the boundary for the purposes of this subsection. ~~The Governing Board may revoke a formal determination upon a finding that the petitioner has submitted inaccurate information to the District.~~

12.5.5 Formal Determinations for Properties With an Existing Formal Determination.

Within 60 days prior to the expiration of a formal determination, the property owner, an entity that has the power of eminent domain, or any other person who has a legal or equitable interest in the property may petition for a new formal determination for the same parcel of property and such determination shall be issued, approving the same extent of surface waters and wetlands in the previous formal determination, as long as physical conditions on the property have not changed, other than changes which have been authorized by a permit pursuant to this part, so as to alter the boundaries of surface waters or wetlands and the methodology for determining the extent of surface waters and wetlands authorized by s. 373.421(1) has not been amended since the previous formal determination. ~~The application fee for such a subsequent petition shall be less than the application fee for the original determination.~~

12.5.6 Nonbinding Determinations.

The District may issue informal nonbinding pre-application determinations or otherwise initiate nonbinding determinations on its own initiative ~~as provided by law.~~

NAME OF PERSON ORIGINATING PROPOSED RULE:
David Still, Director, Department of Resource Management, 9225 CR 49, Live Oak, Florida 32060, (386)362-1001

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Suwannee River Water Management District Governing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 12, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 22, 2002

**AGENCY FOR HEALTH CARE ADMINISTRATION
Health Care Cost Containment Board**

RULE TITLES:	RULE NOS.:
Definitions	59E-5.101
Florida Hospital Uniform Reporting System (FHURS)	59E-5.102

Reporting Requirements 59E-5.103
 Prior Year Report Requirements 59E-5.201
 Notice of Violation or Deemed Not
 Filed and Response 59E-5.205
 Public Medical Assistance Trust
 Fund Assessments 59E-5.605

PURPOSE AND EFFECT: The Agency intends to establish and adopt procedures and specifications for the implementation of Section 16 of Chapter 2000-256, Laws of Florida. The rules are being amended to comply with the statutory provisions of Chapter 395.701(2)(b) and 395.701(6), F.S., and to provide an updated reporting mechanism to improve the efficiency and accuracy of financial data collection. To that end, the following changes will be made to the current FHURS Manual: In Chapter II, "Reporting Forms and Instructions" pages 2.45, 2.46, and 2.47 dated 8/89 will be deleted and replaced by pages 2.45, 2.46, 2.46a, and 2.47 dated 8/01. The FHURS Manual is incorporated by reference in Rule 59E-5.102, F.A.C.

A notice of proposed Rule development was published in the Florida Administrative Weekly (FAW) on August 4, 2000 and in accordance with the notice, a workshop was held on August 22, 2000. The proposed rule amendments were noticed in the FAW on January 26, 2001. A request for a public hearing was timely filed by the Florida Hospital Association (FHA). The requested hearing was held on March 9, 2001. Subsequent to the public hearing, the FHA timely filed a formal petition for an administrative hearing on the validity of the proposed rule amendments. Contemporaneous with the petition for administrative hearing, the FHA sought relief from the Legislature during the regular session on issues objected to in their petition for administrative hearing. The 2001 Legislature enacted language, which in essence rendered the objectionable rule section moot in CS/SB 1558. The Governor signed the legislation into law on June 19, 2001. A notice of withdrawal was published in FAW on July 6, 2001. The proposed rule amendments were revised in accordance with the statutory changes and published in the FAW on August 10, 2001. On August 30, 2001 the FHA requested a public hearing through its outside counsel. A notice of hearing was published in the FAW on September 14, 2001. The requested hearing was held on October 9, 2001. The proposed rule amendments were withdrawn by notice in the FAW on December 7, 2001, to revise language and incorporate the substantive comments of participants attending the public hearing.

SUMMARY: The 2000 Session of the Florida Legislature amended Chapter 395.701(2), F.S., to provide a reduced assessment percentage for outpatient hospital net revenues. Additionally, Chapter 395.701(6) provides for the exemption of Outpatient Radiation Therapy Revenues from assessment for the PMATF. The proposed changes being made to the Agency's Florida Hospital Uniform Reporting System are necessary to implement the changes required by Chapter 395.701(2)(b) and 395.701(6), F.S.

SUMMARY STATEMENT OF ESTIMATED REGULATORY COST: 1.) An estimated 248 acute care and specialty hospitals will be expected to comply with the amendments to Rules 59E-5.101, 102, 103, 201, 205, and 605. Of the 182 acute care hospitals, 76 are not for profit, 87 are proprietary, and 19 are local governmental. The remaining 66 hospitals are psychiatric, rehabilitation, and specialty hospitals. There should be no cost to individuals.

2.) There should be no additional cost to the Agency for Health Care Administration or to any agency of state or local government. The effect on state revenues has already been considered by the Legislature.

3.) Estimated costs consist of only the cost for each hospital in preparation time for the revised Form C-3a. Start up costs in the initial year are estimated to be 80 to 160 hours per hospital at approximately \$25.00 per hour. In succeeding years, these costs are expected to be between 40 to 80 hours per hospital at approximately \$25.00 per hour. Estimates of preparation time are generalized and are derived from industry sources, which may vary from hospital to hospital.

4.) No impact is anticipated on small businesses. Additionally, no effect on small local governmental entities is expected.

5.) A lower cost alternative was submitted by the Florida Hospital Association in the context of a public hearing held on March 9, 2001. The 2001 Legislature enacted language, which in essence adopted the lower cost alternative in CS/SB 1558. The Governor signed the legislation into law on June 19, 2001. The estimated costs in this statement approximate those in the lower cost alternative. At a public hearing held on October 9, 2001, The Florida Hospital Association through its general counsel questioned the need for additional regulatory cost in a time of general economic decline. These additional costs are mandated by the change in the statute, making necessary the gathering of additional information to implement the legislative intent.

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, 395.7015(5) FS.

LAW IMPLEMENTED: 395.701, 408.061, 395.7015 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: 10:00 a.m., April 16, 2002

PLACE: Agency For Health Care Administration, Conference Room C, Building 3, 2727 Mahan Drive, Tallahassee, Florida 32308

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Chris Augsburger, Regulatory Analyst Supervisor, Bureau of Health Facility Regulation/Financial Analysis, 2727 Mahan Drive, MS #28, Tallahassee, FL 32308-5403

THE FULL TEXT OF THE PROPOSED RULES IS:

59E-5.101 Definitions.

The definitions set forth in Section 408.032, F.S., and the following definitions shall apply to this Chapter, and to the Florida Hospital Uniform Reporting System (FHURS) Manual, unless otherwise specified:

(1) "Actual report" is the report of a hospital's actual financial and statistical data as required by the reporting forms contained in the FHURS Manual.

(2) "Adjusted admission" is the sum of acute admissions and intensive care admissions divided by the ratio of inpatient revenues generated from acute, intensive, ambulatory, and ancillary patient services to gross revenues, unless the hospital reports all sub-acute admissions in which case "adjusted admission" is the sum of sub-acute admissions divided by the ratio of total inpatient revenues to gross revenues.

(3) "Audited actual experience", "audited actual data", or "audited financial statements" means data contained within financial statements examined by an independent, Florida-licensed, certified public accountant in accordance with generally accepted auditing standards and including an opinion on the audited financial statements.

(4) "Change in hospital ownership" means that a majority of the ownership or the controlling interest of the hospital is transferred or assigned. A change in ownership includes, but is not limited to, the acquisition of the hospital by any person or other legal entity by any means; the leasing of the hospital when the lessee agrees to undertake or provide services at the hospital to the extent that legal liability for operation of the hospital rests with the lessee; conversion of the hospital's type or kind of business organization; the sale, acquisition, assignment or other voluntary or involuntary transfer of a majority of the ownership or the controlling interest of the hospital; merger of the hospital corporation into a new corporation; or consolidation of the hospital corporation with one or more corporations resulting in the creation of a new corporation.

(5) "Charity care patient" means a medically indigent patient whose charges are, in whole or in part, classified as "Charity/Uncompensated Care – Other" who meets the requirements of Account 5960, Chapter III, FHURS Manual and/or "Charity/Uncompensated Care – Hill Burton" who meets the requirements of Account 5950, Chapter III, FHURS Manual.

(6) "Chart of accounts" means the list of accounts, code numbers, definitions, standard units of measure and principles and concepts included in the FHURS Manual.

(7) "Day of admission" means the day on which a person is admitted to a hospital or sub-acute facility for bed occupancy for purposes of receiving inpatient hospital or sub-acute

services and counts as one inpatient day. If admission and discharge or death occur the same day, the day is considered a day of admission and counts as one inpatient day.

(8) "Executive staff members" means the Secretary, Executive Director and such other staff members as designated by the Secretary Executive Director.

(9) "FHURS Manual" means the Florida Hospital Uniform Reporting System Manual as adopted by the Agency Board and incorporated by reference in Rule 59E-5.102, F.A.C.

(10) "Financial statements" means a presentation of financial data, including accompanying notes, derived from accounting records and intended to communicate a hospital's economic resources or obligations at a point in time, or the changes therein for a period of time, and the results of operations for a period of time in accordance with generally accepted accounting principles.

(11) "Generally accepted accounting principles" (GAAP) means the term as defined in Rule 61H1-20.007, F.A.C., Department of Business and Professional Regulation, Board of Accountancy, accounting principles or standards generally accepted in the United States, as published by the American Institute of Certified Public Accountants, and Statements of Financial Accounting Standards and interpretations thereof as published by the Financial Accounting Standards Board and as may be amended by rule of the Department of Professional Regulation Board of Accountancy.

(12) "Generally accepted auditing standards" (GAAS) means the term as defined in Rule 61H1-20.008, F.A.C., Department of Business and Professional Regulation, Board of Accountancy generally accepted auditing standards adopted by the American Institute of Certified Public Accountants, together with interpretations thereof, as set forth in Statements on Auditing Standards as published by the American Institute of Certified Public Accountants and as may be amended by rule of the Department of Professional Regulation Board of Accountancy.

(13) "Gross patient services revenue" means the sum of daily hospital service charges, ambulatory service charges, ancillary service charges; including all charges for sub-acute services.

(14) "Gross operating revenue" means "Gross revenue" as that term is defined in Section 408.07(22) 407.002(12), F.S.

(15) "Hospital" means a health-care institution, as defined in Section 395.002(13)(a),(b)(6), F.S., and licensed pursuant to Chapter 395, F.S.

(16) "Inpatient Admission" means a person who has been admitted to a hospital for bed occupancy for purposes of receiving inpatient hospital services. An inpatient is a patient that is defined in Rule 59E-7.011(4), Agency for Health Care Administration. A person is considered an inpatient if formally admitted by the hospital as an inpatient by physician order with the expectation that the individual would remain at least overnight and occupy a bed.

(17) "Inpatient Revenues" means gross charges generated from the provision of hospital services to any patient admitted to the hospital as an inpatient. ~~When an individual is furnished outpatient services and is thereafter admitted as an inpatient of the same hospital before midnight of the next day, the outpatient charges are reported as inpatient revenue.~~

(18) "Net Inpatient Revenues" means inpatient revenues as defined in ss. (17) above, minus deductions from revenue for charges billed to inpatients.

~~(19)(18) "Net Operating Revenue" means "Net revenue" as that term is defined in Section 408.07(34), F.S. gross revenue minus deductions from revenue plus other operating revenue.~~

(20) "Net Outpatient Revenue" means outpatient revenue, as defined in ss. (24) below, minus deductions from revenue that are applicable to charges billed for outpatient services.

~~(21)(19) "Non-Operating Revenue" means revenue not directly related to the entity's ongoing or principal operations. Non-operating revenue may include unrestricted gifts, unrestricted income from endowment funds; gain on sale of hospital properties, and income and gains from investments of general funds.~~

(22) "Other Operating Revenue" means a class of revenues which are defined in Section 408.07(38), F.S.

(23) "Outpatient" means a person who receives a pre-admission assessment, a diagnostic procedure, or a therapeutic procedure at a hospital licensed under Chapter 395, F.S., who is not an inpatient admission, as defined in ss. (16) above.

(24) "Outpatient Revenue" means total charges for hospital services rendered to outpatients.

~~(25)(20) "Patient day" means a day, which begins at midnight and ends 24 hours later. The midnight-to-midnight method must be used even if the provider uses a different definition of a patient day for its statistical or other purposes. Whenever a patient occupies a bed in more than one patient care area in one day, the inpatient day should be counted only in the patient care area in which the patient was located at the census-taking hour. The day of admission will be counted as a full day; however, the day of discharge is not counted. A full day must be counted when a patient is admitted as an inpatient with the expectation of the patient remaining overnight and occupying a bed, but is discharged on the same day.~~

~~(26)(21) "Prior year report" means, collectively, the actual report and the corresponding financial statements with an audit report of an independent Florida-licensed certified public accountant for the same reporting period and including an opinion on the audited financial statements.~~

(27)(22) "Total net revenue" means the sum of net patient services revenue, other operating revenue, and non-operating revenue.

(28) "Total Net Patient Services Revenue" means gross patient service as defined in ss. (13) above, minus deductions from revenue as defined in Section 408.07(16), F.S.

~~(29)(23) "Total revenue" means the sum of gross patient services revenue, other operating revenue and non-operating revenue.~~

Specific Authority 408.15 FS., Ch. 88-394, Laws of Florida. Law Implemented 407.002, 408.061, 408.072, 408.08 FS. History--New 6-11-92, Formerly 10N-5.101, Amended _____.

59E-5.102 Florida Hospital Uniform Reporting System (FHURS).

(1) The Agency for Health Care Administration hereby adopts and establishes a uniform system for hospital reporting by adopting and incorporating by reference the Florida Hospital Uniform Reporting System (FHURS) Manual, Version 92-1, April 9, 1992. This manual, which includes reporting forms, has the force and effect of the Agency for Health Care Administration's rules.

(2) A copy of the FHURS Manual may be obtained, upon payment of the cost of reproduction, by writing to: The Agency for Health Care Administration, Supervisor of Financial Analysis, Bureau of Health Facility Regulation, Director of Public Information, 2727 Mahan Drive, Mail Stop #28, 325 John Knox Road, 301 The Atrium, Tallahassee, Florida 32308-5403 32303.

Specific Authority 408.15 FS. Law Implemented 408.061(2), 408.07(22) FS. History--New 6-11-92, Formerly 10N-5.102, Amended 2-24-94, _____.

59E-5.103 Reporting Requirements.

(1) Each hospital must comply with the reporting requirements set forth in Rule 59E-2.015, F.A.C.

(2) Each report or document must contain all information specified for that report or document in the FHURS Manual and shall be submitted on the forms and in the formats set forth in the FHURS Manual.

(3) Separate reports are required for each licensed hospital, regardless of ownership or operation.

(4) Extensions for filing a report may be sought pursuant to the provisions of Rule 59E-2.017, F.A.C. However, no extension may be granted for submitting corrections pursuant to Rules 59E-5.205, 59E-5.304, and 59E-5.317, F.A.C.

(5) Prior year reports shall be filed in compliance with the requirements of Rule 59E-5.201, F.A.C.

~~(6) Budget reports shall be filed in compliance with the requirements of Rule 59E-5.301.~~

~~(6)(7) Hospitals changing ownership must comply with the reporting requirements set forth in Rules 59E-5.202 and 59E-5.302 and must submit written notification of the ownership change within 30 days of the effective date of the change. The new owner shall submit the notification, which shall include:~~

- (a) Identification of the new owner;
- (b) The address of the new owner;

- (c) The status of the hospital's license;
- (d) The status of Medicaid and Medicare certification and identification of provider numbers; and
- (e) Such other information as may be necessary to identify the new owner;
- (f) The name of the hospital prior to and after the ownership change; and
- (g) Such other information as may be required by the Agency Board to identify the facility, its owner and to assure that all reporting requirements are met by the hospital.

~~(7)~~(8) Hospitals changing fiscal year end must comply with the reporting requirements set forth in Rules 59E-5.202 and 59E-5.302, F.A.C., and must submit written notification of the fiscal year end change within 30 days of such change. The notification shall include:

- (a) Identification of the hospital;
- (b) The previous fiscal year end;
- (c) The new fiscal year end; and
- (d) The reason for the change in fiscal year end.

~~(8)~~(9) Hospitals which are seeking licensure for the first time or which are seeking licensure for an existing hospital due to a change in ownership shall so notify the Agency Board within 30 days of the date that an application for a hospital license pursuant to Section 395.003, F.S., is filed.

Specific Authority 408.061, 408.15 FS., Ch. 88-394, Laws of Florida. Law Implemented 408.061, 408.072 FS. History—New 6-11-92, Formerly 10N-5.103, Amended _____.

59E-5.201 Prior Year Report Requirements.

(1) Each hospital shall submit to the Agency, not more than 120 days subsequent to the end of its fiscal year, its prior year report for the fiscal year then ended.

(2) The prior year report shall consist of the following:

(a) For hospital financial accounting periods ending subsequent to December 31, 1998, and with corresponding due dates beginning on April 30, 1999 and beyond, the actual report shall be submitted to the Agency using the computer software known as "FADES". The FADES software has been developed by the Agency for the purpose of electronically filing the actual report. The software is a *Visual Basic* template that reproduces the FHURS worksheets pursuant to 59E-5.103, F.A.C., of this chapter in an electronic format. The software also converts the worksheet data into a precisely designed file structure, which can be electronically processed through the Agency's computer system. Hospitals shall use the FADES software to keypunch the FHURS worksheet information and to transmit the data to the Agency. An installation diskette will be provided to hospitals prior to the due date of the 1999 report in a timely manner free of charge. Hospitals shall not use an alternative version of the software until such software is approved for use by the Agency. Hospitals shall not request approval for use of alternative software within 120 days prior to the report being due. The data produced from the FADES

application shall be returned to the Agency on a 3.5-inch computer diskette pursuant to the formatting requirements provided in Rule 59E-5.206, F.A.C.

(b) The 3.5-inch diskette shall be submitted with the following information on an externally affixed label.

1. "Hospital FHURS Report".
2. Hospital Name.
3. Hospital Number (8 digit format).
4. Reporting period.
5. "Submission Number" which represents a progressive count of the number of diskettes sent to the Agency for this report.
6. Name of contact person including area code and telephone number.

(c) FHURS "Worksheet A" on paper that contains the appropriate signatures by the Chief Executive Officer and Chief Financial Officer of the hospital;

(d) Two paper copies of the audited financial statements; and

(e) One paper copy of the Medicare cost report.

(3) Hospitals with fiscal years ending subsequent to July 1, 2000 shall submit for the year 2000 and 2001 reporting cycles only, one paper copy of worksheet C-3a (rev.). Worksheet C-3a (rev.) will be incorporated into the electronic reporting system for the 2002 reporting cycle. The electronic version of worksheet C-3a contained in the FADES filing of the hospital's actual report for the year 2000 and 2001 reporting cycles must also be completed.

~~(4)~~(3) The actual report shall be prepared for each hospital from the audited financial statements. Whenever an actual report is not in agreement with the corresponding audited financial statements, the hospital shall provide a reconciliation of the amounts presented in the audited financial statements to amounts reported in the actual report.

~~(5)~~(4) In the event a hospital's audited actual data is restated in accordance with generally accepted accounting principles, the hospital shall report the restatement to the Agency within 30 days of the issuance of the restatement.

Specific Authority 408.061 FS. Law Implemented 408.061, 408.08 FS. History—New 6-11-92, Formerly 10N-5.201, Amended 3-28-99, _____.

59E-5.205 Notice of Violation or Deemed Not Filed and Response.

(1) Once a report has been filed in accordance with Rule 59E-2.015 and Rule 59E-5.201, the Agency will review the report and determine if:

(a) It conforms to applicable statutory, rule and FHURS Manual requirements;

(b) The data are mathematically accurate, reasonable and verifiable.

(2) If the report does not conform to the above requirements, the report will be deemed "not accepted" and a notice of violation will be sent certified mail, or by other delivery service which provides proof of delivery, to the hospital.

(3) The notice shall clearly indicate the deficiencies found, the corrections or modifications necessary to make it complete or conforming or its data verifiable, as well as the time by which a corrected or modified report must be received by the Agency.

(4) A hospital shall have no fewer than 10 working days following receipt of the notice of violation or notice of deemed not filed to return the requested corrected or modified report to the Agency.

(5) Modifications or corrections to various accounts and worksheet cells shall be made by resubmitting the entire report using the FADES software and be re-transmitted via computer diskette using the formats pursuant to Rule 59E-5.206, F.A.C. The diskette shall be submitted with the following information on an externally affixed label.

- (a) "Corrections to Hospital FHURS Report."
- (b) Hospital Name.
- (c) Hospital Number (8-digit format).
- (d) Reporting period.

(e) "Submission Number" which represents a progressive count of the number of diskettes sent to the agency for this report. A cover letter shall be provided with the diskette outlining the contents of the corrections contained on the diskette.

~~(6) The Agency intends to provide for a transition period in the transmittal of corrections to actual reports. For financial accounting periods ending in calendar 1999 only, paper copies of FHURS Worksheet A-1, A-2, B-1, B-3, B-4, B-4a, C-1, C-2, C-3, C-4, C-5, C-6, C-7, and X-1 will be accepted for corrections. Corrections to FHURS worksheets not specifically identified in this paragraph must be submitted electronically using the FADES software. When a combination of corrections is necessary that includes both the noted and not noted worksheets in this paragraph, the FADES software must be used for all corrections for financial accounting periods ending after calendar 1999, no paper copies of corrected worksheets will be accepted.~~

(6) Actual reports must be properly formatted on a 3.5 inch diskette in accordance with Rule 59E-5.206, F.A.C., of this chapter and readable by Agency software, otherwise the report will be deemed not filed and the hospital will be subject to the penalties for late filing as prescribed in this chapter.

(7) Hospitals whose reports are deemed not filed resulting from an improperly formatted diskette will receive an edit report that will attempt to describe the formatting deficiencies in sufficient detail to initiate corrective action by the hospital.

Specific Authority 408.061, 408.15 FS. Law Implemented 408.061, 408.062, 408.08 FS. History--New 6-11-92, Formerly 10N-5.205, Amended 3-28-99,

59E-5.605 Public Medical Assistance Trust Fund Assessments.

(1) Within six months after the end of each hospital's fiscal year, the Agency's Bureau of Health Facility Regulation will certify to the Bureau of Finance and Accounting ~~the Board shall certify to the Department of Health and Rehabilitative Services (HRS)~~ the amount of each hospital's public medical assistance trust fund assessment.

(a) For hospitals with fiscal years ending subsequent to July 1, 2000 the amount certified shall be equal to 1.5 percent of the annual net inpatient revenue of each hospital, as reported in Column (7), line 19 of worksheet C-3a (rev.) and shall be equal to 1.0 percent of net outpatient revenue, as reported in Column (8), Line 21 of worksheet C-3a (rev.), based upon the prior year's actual data filed with the Agency Board. Net revenues for outpatient radiation therapy shall be excluded from the calculation of net outpatient revenue, as reported in Column (8), Line 21 of worksheet C-3a. (rev.)

(b) Assessment is based on the calculations in presented ss. (1)(a) above, and all payments made to the PMATF shall reflect those calculations.

(2) Each hospital shall be notified of the assessment amount being certified to the Bureau of Finance and Accounting HRS.

(3) Within 21 days of receipt of notification of the assessment amount, a hospital may request a hearing pursuant to Section 120.57, F.S.

(4) If a hearing is timely requested, the Agency Board shall certify to the Bureau of Finance and Accounting HRS an interim assessment amount which shall equal the assessment amount last certified to the Bureau of Finance and Accounting HRS. Upon resolution of the issues regarding certification, the proper assessment amount shall be certified. The assessment amount for the year shall not be affected by the issuance of an interim assessment.

(5) Initial assessments against new hospitals will be certified upon approval of the first Prior Year Report, the assessment shall be based upon calculations made in ss. (1)(a) above shall be paid at the time a hospital is licensed. The assessment shall be based on the hospital's projected net operating revenue during its first year of operation and until it's first Prior Year Report is accepted by the Board. Upon approval of the first Prior Year Report, the assessment shall be based upon actual net operating revenue as reflected in that report.

(6) In the event a hospital fails to file its Prior Year Report or the report is not accepted by the Agency Board, the quarterly assessment shall be based on the most recently filed Prior Year Report accepted by the Agency Board Upon

approval of the first Prior Year Report, the assessment shall be based upon actual net operating revenue as reflected in that report.

(7) If the data contained in the Prior Year Report is based upon a fiscal period of less than one calendar year, the data provided shall be annualized and the assessment will be calculated on an annualized basis.

(8) Assessments during the first year of operation under new ownership shall be based on the hospital's net operating revenue for the last fiscal year under previous ownership.

(9) Assessments are made against facilities, accordingly the amount of the assessment and liability for the assessment remains with the facility regardless of any change in ownership.

Specific Authority 408.15 FS., Chapter 00-256, Laws of Florida. Law Implemented 395.701(2)(a), 408.072 FS. History–New 6-11-92, Formerly 10N-5.606, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Christopher J. Augsburger, Regulatory Analyst Supervisor
 NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Jeffrey N. Gregg, Bureau Chief, Health Facility Regulation
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 8, 2002
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 4, 2000

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Pilot Commissioners

RULE TITLES:	RULE NOS.:
Initial Licensing Fee	61G14-14.002
Initial Certificate Fee	61G14-14.003
Biennial Fee	61G14-14.004
Unauthorized Practice Fee	61G14-14.0041

PURPOSE AND EFFECT: The purpose of this rule notice is to update the rule text by decreasing certain fees referenced in 61G14-14.002, 14.003, and 14.004. A new rule is being created to set forth the fee for unauthorized practice.

SUMMARY: The Board of Pilot Commissioners has determined that certain fees in Rule 61G14-14.002, 14.003 and 14.004 should be decreased and a new rule, numbered 61G14-14.0041, which will set forth a fee of \$5.00 to be assessed for engaging in the practice of piloting.

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: 310.185, 455.213(2) FS., Chapter 94-119, Laws of Florida.

LAW IMPLEMENTED: 310.061, 310.071, 310.121, 455.213(2), 455.2281 FS., Chapter 94-119, Laws of Florida.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Anthony Spivey, Executive Director, Board of Pilot Commissioners, Northwood Centre, 1940 N. Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULES IS:

61G14-14.002 Initial Licensing Fee.

(1) The license fee for those persons who are initially licensed as state pilots during the first year of the biennial licensure period shall be \$195.00 ~~\$200.00~~.

(2) The license fee for those persons who are initially licensed as state pilots during the second year of the biennial licensure period shall be \$95.00 ~~\$100.00~~.

Specific Authority 310.185, 455.213(2) FS. Law Implemented 310.121, 455.213(2) FS. History–New 2-10-82, Formerly 21SS-6.04, 21SS-6.004, 21SS-14.002, Amended.

61G14-14.003 Initial Certificate Fee.

(1) No change.

(2) The certification fee for those persons who are certificated as deputy pilots during the first year of the biennial licensure period shall be \$95.00 ~~\$100.00~~, except as provided in (1), above.

(3) The certification fee for those persons who are initially certificated as deputy pilots during the second year of the biennial licensure period shall be \$45.00 ~~\$50.00~~, except as provided in (1), above.

Specific Authority 310.185(1), 455.213(2) FS., Chapter 94-119, Laws of Florida. Law Implemented 310.071, 310.121, 455.213(2) FS., Chapter 94-119, Laws of Florida. History–New 2-10-82, Formerly 21SS-6.05, Amended 2-25-91, Formerly 21SS-6.005, 21SS-14.003, Amended 9-27-94, Amended.

61G14-14.004 Biennial Fee.

Each licensed state shall pay a biennial license fee of \$195.00 ~~\$200.00~~; provided that those state licensed pilots who have qualified to be cross licensed for one or more additional ports in accordance with the provisions and stated purpose of F.S. 310.061 and Rule 61G14-11.008, F.A.C., shall not be required to pay additional biennial fees for the certificates issued authorizing service in the additional ports. Each certificated deputy pilot shall pay a biennial certification fee of \$95.00 ~~\$100.00~~.

Specific Authority 310.185 FS. Law Implemented 310.121, 310.061 FS. History–New 2-15-76, Amended 1-19-77, 5-4-77, 12-7-78, Formerly 21SS-6.01, Amended 2-25-91, Formerly 21SS-6.001, 21SS-14.003, Amended.

61G14-14.0041 Unauthorized Practice Fee.

As provided in subsection 455.2281, Florida Statutes, the fee for enforcement of the laws prohibiting the unauthorized practice of engaging in the practice of piloting shall be \$5.00 per biennium for initial licensure or certification and subsequent renewals, in addition to any other fees associated with licensure or certification.

Specific Authority 310.185 FS. Law Implemented 455.2281 FS. History—New

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Pilot Commissioners
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Pilot Commissioners
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 28, 2002
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 22, 2002

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Florida Real Estate Appraisal Board

RULE TITLE: Correspondence Courses for Hardship Cases
RULE NO.: 61J1-4.006
PURPOSE AND EFFECT: The purpose of this proposed rulemaking is to repeal the above referenced rule because it is no longer necessary and possibly lacks statutory authority.
SUMMARY: Repeals rule relating to distance education and correspondence courses for real estate appraisers when there is a hardship case.
SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Regulatory Costs was prepared.
Any person who wishes to provide information regarding the Statement of Estimated Regulatory Costs, or 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: 475.614 FS.
LAW IMPLEMENTED: 475.611(1)(l), 475.613(2), 475.624 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Lori Crawford, Deputy Clerk, Division of Real Estate, Office of the Florida Real Estate Appraisal Board, 400 West Robinson Street, Suite 301, North Tower, Orlando, Florida 32801

THE FULL TEXT OF THE PROPOSED RULE IS:

61J1-4.006 Correspondence Courses for Hardship Cases.

Specific Authority 475.614 FS. Law Implemented 475.615(2) FS. History—New 10-15-91, Formerly 21VV-4.006, Amended 4-14-98, Repealed

NAME OF PERSON ORIGINATING PROPOSED RULE:
Florida Real Estate Appraisal Board
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Florida Real Estate Appraisal Board
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 3, 2001 (The action taken to effectuate the adoption of the proposed rule was procedurally flawed and begins anew)

DEPARTMENT OF HEALTH

Board of Chiropractic Medicine

RULE TITLE: Application Fee
RULE NO.: 64B2-12.002
PURPOSE AND EFFECT: The Board proposes to delete a portion of the existing rule.
SUMMARY: The Board determined that it is necessary to delete the fees for the licensure exam and for acupuncture certification.
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 provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 460.405, 460.406(1) FS.
LAW IMPLEMENTED: 460.406 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Joe Baker, Jr., Executive Director, Board of Chiropractic Medicine, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3259

THE FULL TEXT OF THE PROPOSED RULE IS:

~~64B2-12.002 Application Fee and Licensure and Certification Examination Fees.~~

~~(1) The application fee shall be one hundred dollars (\$100.00), which shall be nonrefundable.~~

~~(2) The examination fee for the licensure examination taken in one administration period shall be five hundred dollars (\$500.00). The examination fee for the Acupuncture Certification Examination shall be seventy five dollars (\$75.00).~~

Specific Authority 460.405, 460.406(1) FS. Law Implemented 460.406 FS. History—New 1-10-80, Formerly 21D-12.02, Amended 2-24-86, 5-10-87, 4-19-89, 10-9-90, 10-15-92, Formerly 21D-12.002, 61F2-12.002, 59N-12.002, Amended 1-18-98, 6-7-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Chiropractic Medicine
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Chiropractic Medicine
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 7, 2001
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 1, 2002

DEPARTMENT OF HEALTH

Board of Athletic Training

RULE TITLE: Licensure Requirements
RULE NO.: 64B33-2.001
PURPOSE AND EFFECT: The Board proposes to add a new rule with regards to Licensure Requirements.

SUMMARY: The Board determined that an amendment to the rule was required because of statutory 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 provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 456.013(7),(9), 468.705, 468.707 FS.

LAW IMPLEMENTED: 456.013(7), 468.707 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Sue Foster, Executive Director, Board of Athletic Training, 4052 Bald Cypress Way, Bin #C08, Tallahassee, Florida 32399-3258

THE FULL TEXT OF THE PROPOSED RULE IS:

64B33-2.001 Licensure Requirements.

All candidates for licensure shall pay the application fee and shall submit a completed DOH form DOH-AT-001 entitled “STATE OF FLORIDA EXAMINATION APPLICATION FOR LICENSURE AS AN ATHLETIC TRAINER” incorporated herein by reference and effective 1/19/96, to the Department.

The application can be obtained by writing the Department of Health, Board of Athletic Training, 4052 Bald Cypress Way, Bin #C08, Tallahassee, Florida 32399-3258.

(1) through (2) No change.

(3) Effective July 1, 2001 all applicants for initial or renewal of initial license shall submit to the Board proof of completion of a two (2) hour continuing education course

relating to the prevention of medical errors. The 2-hour course shall count toward the total number of continuing education hours required for license renewal. The course must be approved by the Board and shall include a study of root-cause analysis, error reduction and prevention, and patient safety. The address of the Board of Athletic Training is 4052 Bald Cypress Way, BIN #C08, Tallahassee, FL 32399-3258.

Specific Authority 456.013(7),(9), 468.705, 468.707 FS. Law Implemented 456.013(7), 468.707 FS. History—New 5-29-96, Formerly 61-25.002, 64B30-25.002, Amended 8-22-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Athletic Training
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Athletic Training
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 30, 2001
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 15, 2002

DEPARTMENT OF HEALTH

Board of Athletic Training

RULE TITLE: Disciplinary Guidelines
RULE NO.: 64B33-5.001
PURPOSE AND EFFECT: The Board proposes to add a new rule with regards to Disciplinary Guidelines.

SUMMARY: The Board determined the penalty for the violation(s) that one would be subject to when found guilty of an offense.

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 provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 456.072, 468.705, 468.719 FS.

LAW IMPLEMENTED: 456.072, 468.719 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Sue Foster, Executive Director, Board of Athletic Training, 4052 Bald Cypress Way, Bin #C08, Tallahassee, Florida 32399-3258

THE FULL TEXT OF THE PROPOSED RULE IS:

64B33-5.001 Disciplinary Guidelines.

(1) The Board provides within this rule disciplinary guidelines which shall be imposed upon applicants or licensees whom it regulates under Chapter 468, Part XIII, Florida Statutes. The purpose of this rule is to notify applicants and licensees of the ranges of penalties which will routinely be imposed unless the Board finds it necessary to deviate from the

guidelines for the stated reasons given within this rule. The ranges of penalties provided below are based upon a single count violation of each provision listed; multiple counts of the violated provisions or a combination of the violations may result in a higher penalty than that for a single, isolated violation. Each range includes the lowest and highest penalty and all penalties falling between. The purposes of the imposition of discipline are to punish the applicants or licensees for violations and to deter them from future violations; to offer opportunities for rehabilitation, when appropriate; and to deter other applicants or licensees from violations.

(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.

(3) When the Board finds an applicant or licensee whom it regulates under Chapter 468, Part XIII, F.S., has committed any of the acts set forth in section 468.719, F.S., it shall issue a final order imposing appropriate penalties within the ranges recommended in the following disciplinary guidelines:

VIOLATIONS	RECOMMENDED PENALTIES		
	First Offense	Second Offense	Third Offense
(a) <u>Failing to include the athletic trainer's name and license number in any advertising, including, but not limited to, business cards and letterhead, related to the practice of athletic training. Advertising shall not include clothing or other novelty items.</u>	(a) <u>From a letter of concern to probation of the license, and an administrative fine ranging from \$250.00 to \$500.00, or refusal to certify an application for licensure.</u>	(a) <u>From probation to suspension of the license, and an administrative fine ranging from \$500.00 to \$750.00, or refusal to certify an application for licensure.</u>	(a) <u>From suspension to revocation of the license, and an administrative fine ranging from \$750.00 to \$1,000.00, or refusal to certify an application for licensure.</u>
(b) <u>Committing incompetency or misconduct in the practice of athletic training.</u>	(b) <u>From reprimand to probation of the license, and an administrative fine ranging from \$500.00 to \$750.00, or refusal to certify an application for licensure.</u>	(b) <u>From probation to suspension of the license, and an administrative fine ranging from \$750.00 to \$1,000.00, or refusal to certify an application for licensure.</u>	(b) <u>From suspension to revocation of the license, and an administrative fine ranging from \$1,000.00 to \$1,500.00, or refusal to certify an application for licensure.</u>
(c) <u>Committing fraud or deceit in the practice of athletic training.</u>	(c) <u>From reprimand to revocation of the license, and an administrative fine ranging from \$500.00 to \$750.00, or refusal to certify an application for licensure. If the violation is fraud or false or fraudulent representation, the fine shall be \$10,000.00.</u>	(c) <u>From probation to revocation of the license, and an administrative fine ranging from \$750.00 to \$1,000.00, or refusal to certify an application for licensure. If the violation is fraud or false or fraudulent representation, the fine shall be \$10,000.00.</u>	(c) <u>From suspension to revocation of the license, and an administrative fine ranging from \$1,000.00 to \$1,500.00, or refusal to certify an application for licensure. If the violation is fraud or false or fraudulent representation, the fine shall be \$10,000.00.</u>
(d) <u>Committing negligence, gross negligence, or repeated negligence in the practice of athletic training.</u>	(d) <u>From reprimand to revocation of the license, and an administrative fine ranging from \$1,000.00 to \$2,500.00, or refusal to certify an application for licensure.</u>	(d) <u>From probation to revocation of the license, and an administrative fine ranging from \$2,500.00 to \$5,000.00, or refusal to certify an application for licensure.</u>	(d) <u>From suspension to revocation of the license, and an administrative fine ranging from \$5,000.00 to \$10,000.00, or refusal to certify an application for licensure.</u>

<u>(e) While practicing athletic training, being unable to practice athletic training with reasonable skill and safety to athletes by reason of illness or use of alcohol or drugs or as a result of any mental or physical condition.</u>	<u>(e) From reprimand to suspension of the license, and an administrative fine ranging from \$1,000.00 to \$2,500.00, or refusal to certify an application for licensure.</u>	<u>(e) From suspension to revocation of the license, and an administrative fine ranging from \$2,500.00 to \$5,000.00, or refusal to certify an application for licensure.</u>	<u>(e) From revocation of the license, and an administrative fine ranging from \$5,000.00 to \$10,000.00, or refusal to certify an application for licensure.</u>
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(4) When the Board finds an applicant or licensee whom it regulates under Chapter 468, Part XIII, F.S., has violated 468.719(1)(a), F.S., by violating any of the following Board

rules, it shall issue a final order imposing appropriate penalties within the ranges recommended in the following disciplinary guidelines:

VIOLATIONS	RECOMMENDED PENALTIES		
	First Offense	Second Offense	Third Offense
<u>(a) Failure to comply with subsection 64B33-2.003(6), F.A.C., which requires the licensee to comply with the Department's random audit of the licensee's continuing education records.</u>	<u>(a) From a letter of concern to reprimand of the license, and an administrative fine ranging from \$250.00 to \$500.00, or refusal to certify an application for licensure.</u>	<u>(a) From reprimand to suspension of the license, and an administrative fine ranging from \$750.00 to \$1,000.00, or refusal to certify an application for licensure.</u>	<u>(a) From reprimand to revocation of license, and an administrative fine ranging from \$1,000.00 to \$2,500.00, or refusal to certify an application for licensure.</u>
<u>(b) Failure to practice under a written protocol as required by subsection 64B33-4.001(1), F.A.C.</u>	<u>(b) From a letter of concern to reprimand of the license, and an administrative fine ranging from \$500.00 to \$1,000.00, or refusal to certify an application for licensure.</u>	<u>(b) From reprimand to suspension of the license, and an administrative fine ranging from \$1,000.00 to \$2,500.00, or refusal to certify an application for licensure.</u>	<u>(b) From suspension to revocation of license, and an administrative fine ranging from \$2,500.00 to \$5,000.00, or refusal to certify an application for licensure.</u>
<u>(c) Failure to develop a protocol, review the protocol prior to licensure renewal date, or failure to make protocol available upon request as required by subsection 64B33-4.001(2), F.A.C.</u>	<u>(c) From a letter of concern to reprimand of the license, and an administrative fine ranging from \$500.00 to \$1,000.00, or refusal to certify an application for licensure.</u>	<u>(c) From reprimand to suspension of the license, and an administrative fine ranging from \$1,000.00 to \$2,500.00, or refusal to certify an application for licensure.</u>	<u>(c) From suspension to revocation of license, and an administrative fine ranging from \$2,500.00 to \$5,000.00, or refusal to certify an application for licensure.</u>

(5) When the Board finds an applicant or licensee whom it regulates under Chapter 468, Part XIII, F.S., has violated 456.072, F.S., by violating any of the following provisions, it

shall issue a final order imposing appropriate penalties within the ranges recommended in the following disciplinary guidelines:

VIOLATIONS	RECOMMENDED PENALTIES		
	First Offense	Second Offense	Third Offense
<u>(a) Making misleading, deceptive, or fraudulent representations in or related to the practice of athletic training. (456.072(1)(a), F.S.)</u>	<u>(a) From reprimand to suspension of the license, and an administrative fine ranging from \$250.00 to \$1,000.00, or refusal to certify an application for licensure. If the violation is fraud or false or fraudulent representation, the fine shall be \$10,000.00.</u>	<u>(a) From reprimand to revocation of the license, and an administrative fine ranging from \$1,000.00 to \$3,000.00, or refusal to certify an application for licensure. If the violation is fraud or false or fraudulent representation, the fine shall be \$10,000.00.</u>	<u>(a) From suspension to revocation of license, and an administrative fine ranging from \$3,000.00 to \$5,000.00, or refusal to certify an application for licensure. If the violation is fraud or false or fraudulent representation, the fine shall be \$10,000.00.</u>

<p><u>(b) Failing to comply with the educational course requirements for human immunodeficiency virus and acquired immune deficiency syndrome. (456.072(1)(e), F.S.)</u></p>	<p><u>(b) From letter of concern to reprimand of the license, and an administrative fine ranging from \$250.00 to \$500.00, or refusal to certify an application for licensure.</u></p>	<p><u>(b) From reprimand to suspension of the license, and an administrative fine ranging from \$500.00 to \$750.00, or refusal to certify an application for licensure.</u></p>	<p><u>(b) From suspension to revocation of license, and an administrative fine ranging from \$750.00 to \$1,000.00, or refusal to certify an application for licensure.</u></p>
<p><u>(c) Having been found liable in a civil proceeding for knowingly filing a false report or complaint with the department against another licensee. (456.072(1)(g), F.S.)</u></p>	<p><u>(c) From reprimand to suspension of the license, and an administrative fine ranging from \$1,000.00 to \$2,500.00, or refusal to certify an application for licensure. If the violation is fraud or false or fraudulent representation, the fine shall be \$10,000.00.</u></p>	<p><u>(c) From reprimand to revocation of the license, and an administrative fine ranging from \$2,500.00 to \$5,000.00, or refusal to certify an application for licensure. If the violation is fraud or false or fraudulent representation, the fine shall be \$10,000.00.</u></p>	<p><u>(c) From suspension to revocation of license, and an administrative fine ranging from \$5,000.00 to \$10,000.00, or refusal to certify an application for licensure. If the violation is fraud or false or fraudulent representation, the fine shall be \$10,000.00.</u></p>
<p><u>(d) Aiding, assisting, procuring, employing, or advising any unlicensed person or entity to practice athletic training contrary to Chapters 468, Part XIII and 456, Florida Statutes, or the rules of the department or the board. (456.072(1)(j), F.S.)</u></p>	<p><u>(d) From reprimand to suspension of the license, and an administrative fine ranging from \$250.00 to \$1,000.00, or refusal to certify an application for licensure. If the violation is fraud or false or fraudulent representation, the fine shall be \$10,000.00.</u></p>	<p><u>(d) From reprimand to revocation of the license, and an administrative fine ranging from \$1,000.00 to \$5,000.00, or refusal to certify an application for licensure. If the violation is fraud or false or fraudulent representation, the fine shall be \$10,000.00.</u></p>	<p><u>(d) From suspension to revocation of license, and an administrative fine ranging from \$5,000.00 to \$10,000.00, or refusal to certify an application for licensure. If the violation is fraud or false or fraudulent representation, the fine shall be \$10,000.00.</u></p>
<p><u>(e) Failure to perform any statutory or legal obligation placed upon a licensee. (456.072(1)(k), F.S.)</u></p>	<p><u>(e) From letter of concern to suspension of the license, and an administrative fine ranging from \$250.00 to \$1,000.00, or refusal to certify an application for licensure. If the violation is fraud or false or fraudulent representation, the fine shall be \$10,000.00.</u></p>	<p><u>(e) From reprimand to revocation of the license, and an administrative fine ranging from \$1,000.00 to \$5,000.00, or refusal to certify an application for licensure. If the violation is fraud or false or fraudulent representation, the fine shall be \$10,000.00.</u></p>	<p><u>(e) From suspension to revocation of license, and an administrative fine ranging from \$5,000.00 to \$10,000.00, or refusal to certify an application for licensure. If the violation is fraud or false or fraudulent representation, the fine shall be \$10,000.00.</u></p>
<p><u>(f) Making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession. (456.072(1)(m), F.S.)</u></p>	<p><u>(f) From reprimand to suspension of the license, and an administrative fine ranging from \$250.00 to \$1,000.00, or refusal to certify an application for licensure. If the violation is fraud or false or fraudulent representation, the fine shall be \$10,000.00.</u></p>	<p><u>(f) From reprimand to revocation of the license, without the ability to reapply, and an administrative fine ranging from \$1,000.00 to \$5,000.00, or refusal to certify an application for licensure. If the violation is fraud or false or fraudulent representation, the fine shall be \$10,000.00.</u></p>	<p><u>(f) From suspension to revocation of license, without the ability to reapply, and an administrative fine ranging from \$5,000.00 to \$10,000.00, or refusal to certify an application for licensure. If the violation is fraud or false or fraudulent representation, the fine shall be \$10,000.00.</u></p>
<p><u>(g) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities the licensee knows, or has reason to know, the licensee is not competent to perform. (456.072(1)(o), F.S.)</u></p>	<p><u>(g) From reprimand to suspension of the license, and an administrative fine ranging from \$250.00 to \$1,000.00, or refusal to certify an application for licensure.</u></p>	<p><u>(g) From reprimand to revocation of the license, and an administrative fine ranging from \$1,000.00 to \$5,000.00, or refusal to certify an application for licensure.</u></p>	<p><u>(g) From suspension to revocation of license, and an administrative fine ranging from \$5,000.00 to \$10,000.00, or refusal to certify an application for licensure.</u></p>

<p><u>(h) Delegating or contracting for the performance of professional responsibilities by a person when the licensee delegating or contracting for performance of such responsibilities knows, or has reason to know, such person is not qualified by training, experience, and authorization when required to perform them.</u> (456.072(1)(p), F.S.)</p>	<p><u>(h) From reprimand to suspension of the license, and an administrative fine ranging from \$500.00 to \$2,500.00, or refusal to certify an application for licensure.</u></p>	<p><u>(h) From reprimand to revocation of the license, and an administrative fine ranging from \$2,500.00 to \$5,000.00, or refusal to certify an application for licensure.</u></p>	<p><u>(h) From suspension to revocation of license, and an administrative fine ranging from \$5,000.00 to \$10,000.00, or refusal to certify an application for licensure.</u></p>
<p><u>(i) Improperly interfering with an investigation or inspection authorized by statute, or with any disciplinary proceeding.</u> (456.072(1)(r), F.S.)</p>	<p><u>(i) From letter of concern to suspension of the license, and an administrative fine ranging from \$1,000.00 to \$2,500.00, or refusal to certify an application for licensure.</u></p>	<p><u>(i) From reprimand to revocation of the license, and an administrative fine ranging from \$2,500.00 to \$5,000.00, or refusal to certify an application for licensure.</u></p>	<p><u>(i) From suspension to revocation of license, and an administrative fine ranging from \$5,000.00 to \$10,000.00, or refusal to certify an application for licensure.</u></p>
<p><u>(j) Engaging or attempting to engage a patient or client in verbal or physical sexual activity. For the purposes of this section, a patient or client shall be presumed to be incapable of giving free, full, and informed consent to verbal or physical sexual activity.</u> (456.072(1)(u), F.S.)</p>	<p><u>(j) From reprimand to suspension of the license, and an administrative fine ranging from \$1,000.00 to \$4,000.00, or refusal to certify an application for licensure.</u></p>	<p><u>(j) From reprimand to revocation of the license, and an administrative fine ranging from \$4,000.00 to \$7,000.00, or refusal to certify an application for licensure.</u></p>	<p><u>(j) From suspension to revocation of license, and an administrative fine ranging from \$7,000.00 to \$10,000.00, or refusal to certify an application for licensure.</u></p>
<p><u>(k) Failing to report to the board, or the department if there is no board, in writing within 30 days after the licensee has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction.</u> (456.072(1)(w), F.S.)</p>	<p><u>(k) From letter of concern to suspension of the license, and an administrative fine ranging from \$1,000.00 to \$5,000.00, or refusal to certify an application for licensure.</u></p>	<p><u>(k) From reprimand to revocation of the license, and an administrative fine ranging from \$5,000.00 to \$7,000.00, or refusal to certify an application for licensure.</u></p>	<p><u>(k) From suspension to revocation of license, and an administrative fine ranging from \$7,000.00 to \$10,000.00, or refusal to certify an application for licensure.</u></p>

Specific Authority 456.072, 468.705, 468.719 FS. Law Implemented 456.072, 468.719 FS. History—New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Athletic Training
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Athletic Training
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 30, 2001
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 15, 2002

DEPARTMENT OF HEALTH

Board of Athletic Training

RULE TITLE: Mitigating and Aggravating Circumstances
RULE NO.: 64B33-5.002
PURPOSE AND EFFECT: The Board proposes to add a new rule with regards to Mitigating and Aggravating Circumstances.
SUMMARY: The Board determined that guidelines were required for factors that could be argued as mitigation or aggravation of disciplinary penalty.
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 provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 456.072, 456.079, 468.705, 468.719 FS.

LAW IMPLEMENTED: 456.072, 456.079, 468.719 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Sue Foster, Executive Director, Board of Athletic Training, 4052 Bald Cypress Way, Bin #C08, Tallahassee, Florida 32399-3258

THE FULL TEXT OF THE PROPOSED RULE IS:

64B33-5.002 Mitigating and Aggravating Circumstances.

Based upon consideration of aggravating or mitigating factors, present in an individual case, the Board may deviate from the penalties recommended in paragraphs (3) through (5) of rule 64B33-5.001, FAC. If mitigating factors are present, the administrative fine may be reduced and a less severe action, such as a reprimand or probation, taken against the licensee from the range of actions given in the disciplinary guidelines. If aggravating factors are present, the maximum administrative fine may be imposed and more severe action, such as suspension or revocation, taken against the licensee from the range of actions given in the disciplinary guidelines. The Board shall consider as aggravating or mitigating factors the following:

- (1) The danger to the public;
- (2) The length of time since the violation;
- (3) The number of times the licensee has been previously disciplined by the Board;
- (4) The length of time licensee has practiced;
- (5) The actual damage, physical or otherwise, caused by the violation;
- (6) The deterrent effect of the penalty imposed;
- (7) The effect of the penalty upon the licensee's livelihood;
- (8) Any effort of rehabilitation by the licensee;
- (9) The actual knowledge of the licensee pertaining to the violation;
- (10) Attempts by licensee to correct or stop violation or refusal by licensee to correct or stop violation;
- (11) Related violations against licensee in another state including findings of guilt or innocence, penalties imposed and penalties served;
- (12) Actual negligence of the licensee pertaining to any violation;
- (13) Penalties imposed for related offenses under subsections (3) through (5) above;

(14) Any other relevant mitigating or aggravating factor under the circumstances.

Specific Authority 456.072, 456.079, 468.705, 468.719 FS. Law Implemented 456.072, 456.079, 468.719 FS. History--New

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Athletic Training

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 30, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 15, 2002

DEPARTMENT OF HEALTH

Board of Athletic Training

RULE TITLE: Citations RULE NO.: 64B33-5.003

PURPOSE AND EFFECT: The Board proposes to add a new rule with regards to Citations.

SUMMARY: The Board determined that certain violations could be resolved by citation and sets forth such violations and penalty in the 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 provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 456.077, 468.705, 468.719 FS.

LAW IMPLEMENTED: 456.077, 468.705, 468.719 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Sue Foster, Executive Director, Board of Athletic Training, 4052 Bald Cypress Way, Bin #C08, Tallahassee, Florida 32399-3258

THE FULL TEXT OF THE PROPOSED RULE IS:

64B33-5.003 Citations.

(1) Definition. As used in this rule:

(a) "Citation" means an instrument which meets the requirements set forth in s. 456.077, F.S., and which is served upon a subject for the purpose of assessing a penalty in an amount established by this rule:

(b) "Subject" means the licensee alleged to have committed a violation designated in this rule.

(2) In lieu of the disciplinary procedures contained in s. 456.073, F.S., the Department is hereby authorized to dispose of any violation designated herein by issuing a citation to the subject within six months after the filing of the complaint which is the basis for the citation.

(3) Citations shall be issued for first offense violations only.

(4) The Board hereby designates the following as citation violations, which shall result in the indicated penalty:

(a) Failing to complete the continuing education requirements prescribed in s. 468.711(2), F.S. and the rules promulgated thereto: \$25.00 per continuing education hour plus proof of completing the continuing education within three months;

(b) Failing to include the athletic trainer's name and license number in any advertising, including, but not limited to, business cards and letterhead, related to the practice of athletic training pursuant to 468.719(1)(b), F.S.: \$50.00;

(c) Failure to notify the Department of a change in the licensee's current mailing address as required by Section 456.035, F.S.: \$50.00.

(d) Practice on an inactive license for less than four months: \$100.00 for each month or fraction thereof;

(5) If the subject does not dispute the matter in the citation in writing within 30 days after the citation is served by personal service or within 30 days after receipt by certified mail, the citation shall become a final order of the Board of Athletic Training. The subject has 30 days from the date the citation becomes a final order to pay the fine and costs. All fines and costs are to be made payable to "Board of Athletic Training - Citation."

(6) Prior to issuance of the citation, the investigator must confirm that the violation has been corrected or is in the process of being corrected. If the violation is a substantial threat to the public health, safety and welfare, such potential for harm must be removed prior to issuance of the citation.

(7) Once the citation becomes a final order, the citation and complaint become a public record pursuant to Chapter 119, F.S., unless otherwise exempt from the provisions of Chapter 119, F.S.

Specific Authority 456.077, 468.705, 468.719 FS. Law Implemented 456.077, 468.705, 468.719 FS. History-New

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Athletic Training
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Athletic Training
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 30, 2001
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 15, 2002

DEPARTMENT OF HEALTH

Board of Athletic Training

RULE TITLE: Reasonable Time to Pay Fines, Costs and Assessments
RULE NO.: 64B33-5.004

PURPOSE AND EFFECT: The Board proposes to add a new rule with regards to Reasonable Time to Pay Fines, Costs and Assessments.

SUMMARY: The Board determined that 30 days was a reasonable time to pay fines and costs associated with disciplinary action.

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 provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 456.072(4), 468.705 FS.

LAW IMPLEMENTED: 456.072(4), 468.705 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Sue Foster, Executive Director, Board of Athletic Training, 4052 Bald Cypress Way, Bin #C08, Tallahassee, Florida 32399-3258

THE FULL TEXT OF THE PROPOSED RULE IS:

64B33-5.004 Reasonable Time to Pay Fines, Costs and Assessments.

Pursuant to Section 456.072(4), F.S., a reasonable time within which to pay any fines, costs and assessments imposed by the Board shall be thirty (30) days unless a longer time period is set forth in the disciplinary order imposing the fines, costs or assessments.

Specific Authority 456.072(4), 468.705 FS. Law Implemented 468.705, 456.072(4) FS. History-New

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Athletic Training
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Athletic Training
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 30, 2001
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 15, 2002