

Section I
Notices of Development of Proposed Rules
and Negotiated Rulemaking

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Standards

RULE NO.: 5F-13.001
 RULE TITLE: Guidelines for Imposing Administrative Penalties and Fines for Violations of Chapter 531, Florida Statutes

PURPOSE AND EFFECT: The purpose of Rule 5F-13.001, F.A.C., is to specify Departmental policies when imposing an administrative fine as described in Section 531.50, F.S. The effect is to have uniform imposition of administrative fines.

SUBJECT AREA TO BE ADDRESSED: Proposed Rule 5F-13.001, F.A.C., will specify guidelines when administrative fines are imposed pursuant to Section 531.50, F.S.

SPECIFIC AUTHORITY: 531.41(3) FS.

LAW IMPLEMENTED: 531.50(1) FS.

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

DATE AND TIME: Wednesday, May 31, 2006, 10:00 a.m.

PLACE: Bureau of Weights and Measures, Doyle Conner Laboratory Complex, 3125 Conner Boulevard, Bldg. #2, Room 206, Tallahassee, Florida 32399-1650

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Max Gray, Bureau Chief, Bureau of Weights and Measures, 3125 Conner Blvd., Bldg. #2, Tallahassee, FL 32399-1650, (850)488-9140

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

GUIDELINES FOR IMPOSING ADMINISTRATIVE PENALTIES AND FINES FOR VIOLATIONS OF CHAPTER 531, FLORIDA STATUTES

5F-13.001 Guidelines for Imposing Administrative Penalties and Fines for Violations of Chapter 531, Florida Statutes.

(1) These guidelines shall apply for each violation of Chapter 531, Florida Statutes, and Rules 5F-3.001, 5F-3.016, 5F-4.001, 5F-5.001, 5F-7.005, and 5F-12.001, Florida Administrative Code, for which administrative enforcement actions are imposed. Multiple violations of the same statute or rule identified during the same investigation will be consolidated in determining the appropriate penalty.

(2) For Weighing and/or Measuring Device Violations:

(a) The misuse of equipment, which results in inaccurate measure. This includes failure to deduct for packaging materials (tare) during a direct sale transaction; non-single draft vehicle weighing (split-weighing); manipulating a device during use to obtain incorrect weight or measure; tampering with adjustments of a device to obtain incorrect weight or measure; failure to reset a measuring device to zero before beginning a transaction which results in inaccurate measure in favor of the device user; and other such practices resulting in inaccurate measure. Penalties shall be assessed as follows:

1. First violation: Warning letter;

2. Second violation within 2 years: \$500 fine or the amount of the economic damages, whichever is greater, not to exceed \$2500 fine;

3. Third or subsequent violation within 2 years: an increase of \$500 over the previous fine amount or calculated economic damages, whichever is greater, not to exceed \$5000 fine.

(b) Majority of scales found in one location are off-zero balance in favor of the scale owner or operator. This applies only to locations with more than five (5) scales, and is in addition to violations in paragraph (2)(a) above:

1. First violation: Warning letter;

2. Second violation within 2 years: \$500 fine;

3. Third or subsequent violation within 2 years: \$1000 fine.

(c) Using a device for commercial purposes that has been ordered "Out of Service," prior to its being placed back into service and a "Placed in Service Report" submitted to the Bureau of Weights and Measures by an authorized, registered service agency or state inspector:

1. First violation: Warning letter;

2. Second violation within 2 years: \$1000 fine;

3. Third or subsequent violation within 2 years: \$2500 fine.

(d) Removing an "Out of Service" or "Condemned" tag without authorization:

1. First violation: Warning letter;

2. Second violation within 2 years: \$1000 fine;

3. Third or subsequent violation within 2 years: \$2500 fine.

(e) Authorized, registered repair service agency (under Chapter 5F-4, F.A.C.) returning a device back to commercial service that was placed "Out of Service" and that has not been properly corrected to comply with all state requirements. The registered repair agency shall be penalized as follows:

1. First violation: Warning letter;

2. Second violation within 2 years: \$100 fine;

3. Third and/or subsequent violation within 2 years: \$500 fine per violation.

(3) For Packaging and Labeling Violations:

(a) For packages that are packaged or that have the net contents determined at a location other than the retail store where tested, and that are found to contain less than declared net contents when tested using procedures adopted in Rule 5F-3.016, F.A.C.:

1. First violation: Warning letter;

2. Second violation within 2 years: \$500 fine or calculated economic damages, whichever is greater, up to a maximum \$2500 fine. "Calculated economic damages" equals the value of packages (price/package) times the average amount of shortage (% shortage per package) times the number of packages in lot(s);

3. Third or subsequent violation within 2 years: an increase of \$500 over the previous fine amount or calculated economic damages not to exceed \$5000 maximum. "Calculated economic damages" equals the value of packages (price/package) multiplied by the average amount of shortage (% shortage per package) multiplied by the number of packages in lot(s).

(b) For packages that are packaged or have the net contents determined on the premises of the retail store location where the packages are tested or purchased, and that are found to contain less than the declared net contents when tested using procedures adopted in Rule 5F-3.016, F.A.C.:

1. First violation at a particular retail location: Warning letter;

2. Second violation within 2 years at the same retail location: \$500 fine or calculated economic damages, whichever is greater, not to exceed \$2500 fine. "Calculated economic damages" equals the value of packages (price/package) multiplied by the average amount of shortage (% shortage per package) multiplied by the number of packages in lot(s);

3. Third or subsequent violation within 2 years at the same retail location: an increase of \$500 over the previous fine amount or calculated economic damages, whichever is greater, not to exceed \$5000 fine. "Calculated economic damages" equals the value of packages (price/package) multiplied by the average amount of shortage (% shortage per package) multiplied by the number of packages in lot(s).

(c) For packages that are packaged or that have the net contents determined at a location other than the retail store where tested, and are found with labeling not in compliance with the requirements of Chapter 531, Florida Statutes, Rule 5F-3.001, F.A.C., or Rule 5F-7.005, F.A.C. (other than net contents information that results in packages being found short measure as prescribed in paragraph 5F-13.001(3)(a) or (3)(b)), F.A.C.:

1. First violation: Warning letter;

2. Second violation within 2 years: \$500 fine;

3. Third or subsequent violation within 2 years: an increase of \$500 over the previous fine amount, not to exceed \$5,000.

(d) For packages that are packaged or have the net contents determined on the premises of the retail store location where the packages are tested or purchased, and that are found with labeling not in compliance with the requirements of Chapter 531, Florida Statutes, Rule 5F-3.001, F.A.C., or Rule 5F-7.005, F.A.C. (other than net contents information that results in packages being found short measure as prescribed in paragraph 5F-13.001(3)(a) or (3)(b)), F.A.C.:

1. First violation at a particular retail location: Warning letter;

2. Second violation within 2 years at the same retail location: \$500 fine;

3. Third or subsequent violation within 2 years at the same retail location: an increase of \$500 over the previous fine amount, but not to exceed \$5,000.

(e) Selling, or removing from premises, items under Stop-Sale Order without proper authorization:

1. First violation: \$500 fine or 25% of total retail value of packages (up to \$1000), whichever is greater;

2. Second violation within 2 years: \$1000 fine or 50% of total retail value of packages (up to \$2500), whichever is greater;

3. Third or subsequent violation within 2 years: total retail value of packages or \$5000 fine, whichever is less.

(4) For Price Verification/Pricing Accuracy Violations:

(a) A particular business location that fails price verification examination performed using procedures adopted in Rule 5F-12.001, F.A.C. and has more than 2% overcharges on the failed test:

1. First violation at a particular business location: Warning Letter;

2. Second violation within 2 years at the same business location: \$500 fine;

3. Third or subsequent violation within 2 years at the same business location: an increase of \$500 over the previous fine amount, but not to exceed \$5000 maximum.

(b) Selling items that were identified as overcharges and ordered off-sale for not being corrected during a Price Verification Examination, prior to the items being corrected and released for sale by a state inspector or official:

1. First violation: \$500 fine;

2. Second violation within 2 years: \$1000 fine;

3. Third or subsequent violation within 2 years: \$5000 fine.

(5) For Bulk Sales Documentation Violations:

(a) Failure to provide delivery ticket as required in Section 531.46, F.S.:

1. First violation: Warning letter;

2. Second violation within 2 years: \$500 fine;

3. Third or subsequent violation within 2 years: \$1000 fine.

(6) Impeding, obstructing or hindering Department employee during performance of Department duties:

- 1. First violation: \$1000 fine;
- 2. Second violation within 2 years: \$2500 fine;
- 3. Third or subsequent violation within 2 years: \$5000 fine.

(7) For Other Violations of Chapter 531, Florida Statutes:

(a) Violations not specifically addressed in subsections 5F-13.001(1) through (6), F.A.C., that result in non-compliance with Chapter 531, Florida Statutes, will be assessed a warning letter or fine according to whether it is a first violation, a second violation within two years of the first violation, or a third or subsequent violation within two years of the first violation, the potential harm caused, the amount of money in which the violator benefited by non-compliance, and the compliance record of the violator. First occurrence fines shall not exceed \$1000; second occurrence fines shall not exceed \$2500; and in subsequent occurrences the fines shall not exceed \$5000.

(b) Any violations of Chapter 531, Florida Statutes, committed willingly or knowingly, including those covered in subsections 5F-13.001(1) through (6), F.A.C., will be assessed the maximum fines authorized in Section 531.50(1), Florida Statutes.

(c) A violator's failure to respond to an administrative complaint may result in a waiver of rights to a hearing and the Department may enter a Final Order imposing fines equal to twice the amount imposed in the administrative complaint, not to exceed the maximum amount allowed by law, for each violation.

Specific Authority 531.41(3) FS. Law Implemented 531.50(1) FS. History--New _____.

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Pursuant to Chapter 2003-145, Laws of Florida, all notices for the Board of Trustees of the Internal Improvement Trust Fund are published on the Internet at the Department of Environmental Protection's home page at <http://www.dep.state.fl.us/> under the link or button titled "Official Notices.

DEPARTMENT OF CORRECTIONS

RULE NOS.:	RULE TITLES:
33-602.220	Administrative Confinement
33-602.222	Disciplinary Confinement

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to allow routine 30 minute checks to be entered on the Housing Unit Log rather than the Inspection of Housing Record. This prevents the Inspection of Housing Record from becoming cluttered with routine checks, making it more difficult to monitor other required visits and inspections.

SUBJECT AREA TO BE ADDRESSED: Visits to administrative and disciplinary confinement.

SPECIFIC AUTHORITY: 944.09 FS.

LAW IMPLEMENTED: 20.315. 944.09, 945.04 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Dorothy M. Ridgway, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

33-602.220 Administrative Confinement.

(1) through (6) No change.

(7) Visits to Administrative Confinement. The following staff members shall be required to officially inspect and tour the administrative confinement unit. All visits by staff, other than the 30 minute checks described in paragraph (a) below, shall be documented on the Inspection of Special Housing Record, Form DC6-228. Form DC6-228 is incorporated by reference in subsection (11) of this rule. The staff member shall also document his or her visit on the Daily Record of Segregation, Form DC6-229, if any discussion of significance, action or behavior of the inmate occurs or any important information is obtained which may have an influence or effect on the status of confinement. These visits shall be conducted at a minimum of:

(a) At least every 30 minutes by a correctional officer, but on an irregular schedule. These checks shall be documented on Form DC6-209, Housing Unit Log. Form DC6-209 is hereby incorporated by reference in subsection (11) of this rule.

(b) through (h) No change.

(8) through (11) No change.

Specific Authority 944.09 FS. Law Implemented 20.315, 944.09, 945.04 FS. History--New 4-7-81, Amended 6-23-83, 3-12-84, Formerly 33-3.081, Amended 4-22-87, 8-27-87, 7-10-90, 12-4-90, 3-24-97, 4-26-98, 10-5-98, Formerly 33-3.0081, Amended 2-12-01, 2-5-02, 1-19-03, 4-1-04, 3-5-06, _____.

33-602.222 Disciplinary Confinement.

(1) through (6) No change.

(7) Visits to Disciplinary Confinement.

(a) The following staff members shall be required to officially inspect and tour the disciplinary confinement unit. All visits by staff, other than the 30 minute checks described in subparagraph 1. below, shall be documented on the Inspection of Special Housing Record Form DC6-228. Form DC6-228 is incorporated in subsection 33-602.220(11)(10), F.A.C. The staff member shall also document his or her visit on the Daily Record of Segregation Form DC6-229, if any discussion of significance, action or behavior of the inmate, or any other

important information is obtained which may have an influence or effect on the status of confinement. These visits shall be conducted a minimum of:

1. Every 30 minutes by a correctional officer, but on an irregular schedule. These checks shall be documented on Form DC6-209, Housing Unit Log. Form DC6-209 is incorporated by reference in Rule 33-602.220, F.A.C.

- 2. through 10. No change.
- (b) through (14) No change.

Specific Authority 944.09 FS. Law Implemented 20.315, 944.09 FS. History--New 3-12-84, Formerly 33-3.084, Amended 7-10-90, 4-28-96, 12-7-97, 3-23-99, Formerly 33-3.0084, Amended 2-12-01, 2-15-02, 4-1-04, 1-16-06,_____.

AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid

RULE NO.: 59G-4.110
 RULE TITLE: Hearing Services

PURPOSE AND EFFECT: The purpose of the proposed rule amendment is to incorporate by reference the revised Florida Medicaid Hearing Services Coverage and Limitations Handbook, July 2006. The coverage and limitations handbook revisions include policy clarifications, updated billing information, and the policy that Medicaid reimburses for only one cochlear implant in either ear. The effect will be to incorporate by reference in the rule the Florida Medicaid Hearing Services Coverage and Limitations Handbook, July 2006.

SUBJECT AREA TO BE ADDRESSED: Hearing Services.

SPECIFIC AUTHORITY: 409.919 FS.

LAW IMPLEMENTED: 409.906, 409.907, 409.908 FS.

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

DATE AND TIME: Tuesday, May 30, 2006, 9:00 a.m.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Jason Ottinger, Agency for Health Care Administration, Bureau of Medicaid Services, 2727 Mahan Drive, MS 20, Tallahassee, Florida 32308, (850)922-7314

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

59G-4.110 Hearing Services.

(1) No change.

(2) All physicians, audiologists and hearing aid specialists enrolled in the Medicaid program must be in compliance with the provisions of the Florida Medicaid Hearing Services Coverage and Limitations Handbook, July 2006, January 2004,

~~updated January 2005-1 and January 2005-2,~~ which is incorporated by reference, and the Florida Medicaid Provider Reimbursement Handbook, CMS-1500, which is incorporated by reference in Rule 59G-4.001, F.A.C. Both handbooks are available from the Medicaid fiscal agent's website at http://floridamedicaid.acs-inc.com agent. Click on Provider Support, and then on Handbooks. Paper copies of the handbooks may be obtained by calling Provider Inquiry at (800)377-8216.

Specific Authority 409.919 FS. Law Implemented 409.906, 409.907, 409.908 FS. History--New 8-3-80, Amended 7-21-83, Formerly 10C-7.522, Amended 4-13-93, Formerly 10C-7.0522, Amended 12-21-97, 10-13-98, 5-7-00, 7-5-01, 2-20-03, 8-5-03, 7-27-04, 7-26-05, 8-18-05,_____.

AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid

RULE NO.: 59G-13.082
 RULE TITLE: Developmental Disabilities Waiver Services Procedure Codes

PURPOSE AND EFFECT: The purpose of this rule is to incorporate by reference the Developmental Disabilities Home and Community-Based Services Waiver Procedure Codes and Maximum Fees, November 2003. The effect will be to incorporate by reference the Developmental Disabilities Home and Community-Based Services Waiver Procedure Codes and Maximum Fees, November 2003.

SUBJECT AREA TO BE ADDRESSED: Developmental Disabilities Waiver Services Procedure Codes.

SPECIFIC AUTHORITY: 409.919 FS.

LAW IMPLEMENTED: 409.906, 409.908 FS.

IF REQUESTED IN WRITING WITHIN 14 DAYS BY AN AFFECTED PERSON AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW.

DATE AND TIME: Tuesday, May 30, 2006, 10:30 a.m.

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

THE PERSON TO BE CONTACTED REGARDING THE RULE DEVELOPMENT IS: Pam Kyllonen, Medicaid Services, 2727 Mahan Drive, Mail Stop 20, Tallahassee, Florida 32308-5407, (850)414-9756

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

59G-13.081 Developmental Disabilities Waiver Services Procedure Codes.

(1) This rule applies to all developmental disabilities waiver services providers enrolled in the Medicaid program.

(2) All developmental disabilities waiver services providers enrolled in the Medicaid program must be in compliance with the Developmental Disabilities Home and Community-Based Services Waiver Procedure Codes and Maximum Fees, November 2003, which is incorporated by reference. The Developmental Disabilities Home and Community-Based Services Waiver Procedure Codes and Maximum Fees are available from the Medicaid fiscal agent or the Agency for Health Care Administration, Bureau of Medicaid Services, 2727 Mahan Drive, M.S. 20, Tallahassee, Florida 32308.

Specific Authority 409.919 FS. Law Implemented 409.906, 409.908 FS. History—New _____.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Pursuant to Chapter 2003-145, Laws of Florida, all notices for the Department of Environmental Protection are published on the Internet at the Department of Environmental Protection’s home page at <http://www.dep.state.fl.us/> under the link or button titled “Official Notices.”

**Section II
Proposed Rules**

DEPARTMENT OF TRANSPORTATION

RULE CHAPTER NO.: RULE CHAPTER TITLE:
14-96 State Highway System Connection Permits

RULE NOS.: RULE TITLES:
14-96.0011 Forms
14-96.007 Application Submittal, Review, Approval and Conditions
14-96.011 Modification of Connections

PURPOSE AND EFFECT: Four of the incorporated forms are being amended to update the notice of hearing rights.

Title	Form Number	Date
Driveway/Connection Application – Category A	850-040-14	09/02
Driveway/Connection Application for All Categories	850-040-15	04/03
Receipt of Connection Application and Fee (or Waiver of Fee)	850-040-16	04/03
Record of Waived Requirements for All Categories	850-040-17	09/02
Driveway Connection Permit for All Categories	850-040-18	06/06 04/03
Record Drawings Report by Permittee’s Professional Engineer	850-040-19	09/02
Security Instrument Receipt	850-040-20	04/93
State Highway Access Connection Completeness Review	850-040-21	11/94
Applicant Time Extension Form	850-040-22	04/93
Proposed State Highway Access Driveway/Connection Notice of Intent to Deny Permit	850-040-23	06/06 09/02
Proposed State Highway Access Connection Notice of Intent to Issue Permit	850-040-24	06/06 09/02
Violation and Notice to Show Cause	850-040-26	06/06 09/02

These forms are available from the Department of Transportation’s local area Maintenance Office, District Office, Urban Area Office, or Central Office at 605 Suwannee Street, Mail Station 19, Tallahassee, Florida 32399-0450.

SUMMARY: The notice of hearing rights is being updated on four forms, which are incorporated by reference under Rule 14-96.0011, F.A.C., and referred to within the text of other rules in Rule Chapter 14-96, F.A.C.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Costs has been prepared.

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

SPECIFIC AUTHORITY: 334.044(2), 334.044(28), 335.182(2) FS.

LAW IMPLEMENTED: 334.044(14), 334.044(28), 335.18-.187 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: James C. Myers, Clerk of Agency Proceedings, 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 RULES IS:

14-96.0011 Forms.

The following forms shall be used in the connection application administrative process and are incorporated by reference and made a part of the rules of the Department:

Specific Authority 334.044(2), 334.044(28), 335.182(2) FS. Law Implemented 334.044(14), 334.044(28), 335.18-.187 FS. History—New 4-18-90, Amended 7-16-95, 6-24-99, 1-28-03, 12-28-03, _____.