SUBJECT AREA TO BE ADDRESSED: Violations of wildlife law or rules in other Wildlife Violators Compact states resulting in suspension or revocation of recreational licenses, which license actions, will be honored by the Fish and Wildlife Conservation Commission.

SPECIFIC AUTHORITY: Art. IV, Sec. 9, Fla. Const.

LAW IMPLEMENTED: Art. IV, Sec. 9, Fla. Const. 372.8311, F.S.

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, IF AVAILABLE, IS: James V. Antista, General Counsel, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)487-1764

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

Section II
Proposed Rules

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

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

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:
33-208.403 Random Drug Testing of Employees

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to expand the current random drug testing program to include other specified positions in addition to certified officers, provide a review process for employees whose positions have been designated as subject to random testing, provide for on-site presumptive testing with a confirmation process follow-up for presumptive positive results, clarify situations that will be considered to be a failed drug test, permit employees who are not in test-designated positions, but volunteer for testing to withdraw from volunteer status prior to testing, and include specific consequences for positive test results.

SUMMARY: Amends the rule to expand the current random drug testing program to include employees in other specified positions in addition to certified offices, provide a review process for employees whose positions have been designated as subject to random testing, provide for on-site presumptive testing with confirmation process follow-up for presumptive positive results, clarify that the failure to cooperate with testing requirements will be considered to be a failed drug test, permit employees who are not in test-designated positions, but volunteer for testing to withdraw from volunteer status prior to testing, and include specific consequences for positive test results.

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 cost, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of the notice.

SPECIFIC AUTHORITY: 944.09, 944.474 FS.

LAW IMPLEMENTED: 112.0455, 944.09, 944.474 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: Dorothy M. Ridgway, Office of the General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE FULL TEXT OF THE PROPOSED RULE IS:

33-208.403 Random Drug Testing of Employees.

(1) Definitions.

(a) Authorizing ~~Authorized~~ Individual – The person designated by the Chief of Personnel to interact with an employee regarding the drug testing program.

(b) Chain of Custody – The procedures used to account for the integrity of each ~~urine~~ specimen by tracking its handling and storage from the point of specimen collection to final disposition.

(c) Contact Person – the employees designated by the Chief of Personnel to interact with the laboratory and Medical Review Officer and coordinate the drug testing program ~~regarding drug test results~~.

(d) No change.

(e) Random Drug Test – A drug test conducted based on a computer generated random sampling ~~in positions identified as being subject to random testing,~~ administered for the purposes of detecting ~~determining~~ the presence of drugs, controlled substances, including anabolic steroids, or their metabolites.

(f) Random Test Designated Position – An employee is in a random test designated position, and thus is required to submit to random testing, if the employee:

1. Has job duties that require or allow the employee to carry a firearm;

2. Possesses law enforcement powers;

3. Has job duties involving regular unsupervised access to and direct contact with inmates or offenders under community supervision;

4. Has job duties involving unsupervised access to controlled substances;

5. Operates dangerous instrumentalities such as vehicles;

6. Provides health care and psychological care to inmates;

7. Provides direct services to inmates;

8. Has access to investigations of criminal allegations and the ability to alter the investigation;

9. Has the ability to alter information in databases, computer systems, or records relating to inmates or offenders under community supervision; or

10. Is in any position, including a supervisory or management position, in which a drug impairment could constitute an immediate and direct threat to public health or safety.

~~(f) Test refusal – failure on the part of a randomly selected employee to fully comply with the Department's random drug testing procedures. This includes refusal to sign required forms, refusal to provide specimens for testing, failing to report to the collection site within required time frames, failing to provide a valid specimen, attempting to alter the specimen with adulterants, and using substitute specimens in makeshift devices or objects.~~

(2) Only employees in random test designated positions, including employees required to maintain certification under Sections 943.13 and 943.135, F.S., shall be subject to mandatory random drug testing. Employees who are not in test designated positions will be included in the random drug testing pool only if such employees choose to voluntarily participate in the random testing program. An employee may seek review of the determination that he or she is working in a test designated position within 14 days of notification of test designation or, subsequently, within 14 days of a change in the employee's job duties.

(a) To seek review, the employee shall submit a letter of explanation based upon the criteria in paragraph (1)(f) of this rule to the Chief, Bureau of Personnel.

(b) Additional review of position duties will be conducted by the Bureau of Personnel and the Office of the General Counsel and will include information provided in the employee's request as well as any other information obtained during the review.

(c) A written response from the Bureau of Personnel will be provided to the employee once a determination is made on the appeal.

(3) The Department ~~Bureau of Research and Data Analysis~~ shall generate random lists of individual positions subject to testing.

(a) The Department ~~Bureau of Personnel~~ shall disburse the list to the authorizinged individuals during each random testing period.

(b) through (c) No change.

(d) Listed employees shall not be excused from random drug testing unless they are on approved leave of absence, ~~or~~ out of town on department business, or it is determined that the employee was listed in error. If the employee returns to his or her assigned worksite in time for the test to be rescheduled and completed within the prescribed deadline, the authorizinged individual shall ensure testing is ~~rescheduled and~~ completed.

(e) No change.

(4) Off-Site Testing and Confirmation Process. Once an employee is randomly selected ~~and scheduled for a test~~, the authorizinged individual shall:

(a) through (b) No change.

(c) Provide the employee with a written notice and consent for testing form that advises the employee that he or she has been randomly selected for testing, and that he or she has 24 hours to complete the test. ~~If the employee refuses to sign, the employee will be considered to have refused to submit to testing. The authorized individual shall notify the servicing personnel office, and the employee shall be advised in writing that he is subject to disciplinary action up to and including dismissal for refusal to submit to testing.~~

(5) No change.

~~(6) If the employee does not report to the collection site within the specified time frame, or as directed on the written notice, the employee will be considered to have refused to submit to drug testing. The employee shall be advised in writing by the servicing personnel office that he is subject to disciplinary action for failure to report to the collection site unless the employee presents sufficient justification for failure to appear. Issues that will be considered include the timely notification to the employee, timely processing by the lab, and transportation issues.~~

(6)~~(7)~~ The employee shall remain at the collection site until able to produce a sufficient specimen unless the employee advises that a medical condition has caused the inability to produce a sufficient specimen. If the employee cannot produce a sufficient specimen quantity, the collection site staff shall contact the authorizinged individual. The employee shall provide a doctor's statement to the authorizinged individual within 3 business days attesting to the medical condition. If the current random testing period has not expired, the employee will be given another notice that he or she has 24 hours to complete the test and will be required to report again for testing.

(7)~~(8)~~ If an employee's test results show the specimen to be adulterated, the employee will be considered to have failed the test.

(8) If the employee fails or refuses to cooperate in any way with the drug testing process as outlined in subsections (4) through (6), including completing and signing required paperwork; failing to report to the collection site within the specified time frame; failing to follow proper collection site

protocols; failing to provide a specimen without a doctor's statement as specified in subsection (6); using a substitute specimen; or providing a specimen determined to be adulterated, the authorizing individual shall notify the servicing personnel office, and the employee shall be advised in writing that he is subject to disciplinary action up to and including dismissal for refusal to submit to testing. Refusal to submit to drug testing is considered to be a failed drug test. Employees who are not in test-designated positions, but have volunteered for testing, are permitted to withdraw from their volunteer status at any point prior to the actual submission of a specimen and such withdrawal shall not be considered to be a failed drug test.

(9) No change.

(10) If the test results are positive, the specimen ~~sample~~ will be retested by the laboratory for confirmation.

(11) All employees with a positive confirmed drug test shall be contacted by the Medical Review Officer within 3 days of receipt of the results from the laboratory and offered the opportunity to produce valid documentation of lawful ingestion of the identified controlled substance. The Medical Review Officer may also request consent to review the employee's medical records to assist in evaluating the test results. The employee shall have 15 days from the date of contact by the Medical Review Officer to present valid documentation of lawful intake of the identified controlled substance from ~~that provides a legitimate explanation for~~ the positive test results.

(12) If the Medical Review Officer cannot contact the employee within 3 days, the Medical Review Officer shall request that the contact person direct the employee to contact the Medical Review Officer. If the employee does not contact the Medical Review Officer within 2 days from the request to the employee by the contact person, the Medical Review Officer shall report the test results as positive, which is considered to be a failed drug test.

(13) In the case of positive test results for which the employee did not or could not provide valid documentation of lawful intake of the identified controlled substance ~~a legitimate explanation~~, the employee shall be notified in writing of the positive test results and the consequences of the results. Depending upon the employee's position and the surrounding circumstances, possible consequences include:

(a) Referral to an employee assistance program;

(b) Immediate removal from his or her position to a position in another class;

(c) Immediate placement in paid or unpaid leave status;

(d) Disciplinary action up to and including dismissal; and

(e) Notification to the Criminal Justice Standards and Training Commission for possible decertification.

(f) Notification to any other relevant licensing or certification board for possible action.

~~The employee shall be immediately removed from his position in accordance with the department's dismissal process and the Criminal Justice Standards and Training Commission shall be notified.~~

(14) In the event of collection site or laboratory error, ~~If~~ the Medical Review Officer will report~~s~~ the test results as cancelled~~, it shall be considered collection site or lab error~~ and a re-test shall be scheduled immediately. The employee shall be given no more than 24 hours notice for the re-test. If a re-test cannot be conducted prior to the deadline for the random testing period, the authorizing individual ~~Regional Personnel Officer~~ shall provide an explanation to the Chief of Personnel.

(15) through (16) No change.

~~(17) Within 5 days of the completion of random testing, the authorized individual shall submit to the Bureau of Personnel the names of the employees not tested and the reason the test was not completed, with the attendance and leave reports or travel reimbursement requests attached for any employee unavailable for the test.~~

(17)~~(18)~~ The following appeal process shall be available to an employee who wants to appeal a positive confirmed drug test.

(a) through (b) No change.

(18) On-Site Presumptive Testing with Confirmation Process Follow-up for Presumptive Positives. If on-site presumptive testing is employed, the authorizing individual shall:

(a) Ensure administration of presumptive testing using an oral fluid device or other non-invasive process;

(b) Refer employees with presumptive positive results to off-site testing in accordance with subsection (4) of this rule.

(19) All information, interviews, statements, memoranda, and drug test results, written or otherwise, received or produced as a result of the drug testing program shall be confidential.

Specific Authority 944.09, 944.474 FS. Law Implemented 112.0455, 944.09, 944.474 FS. History–New 9-11-05, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ralph Kiessig, Deputy Director of Administration

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Hieteenthia "Tina" Hayes, Acting Deputy Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 24, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 26, 2006

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:
33-602.101 Care of Inmates

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to amend the rule to incorporate Form NI1-0071, Inmate Health and Comfort Items-Issuance, and provide that inmate health and comfort items shall be provided in accordance with the guidelines in the form.

SUMMARY: Amends the rule to incorporate form NI1-0071, Inmate Health and Comfort Items-Issuance, and to provide that inmate health and comfort items shall be provided in accordance with the guidelines in the form.

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 cost, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of the notice.

SPECIFIC AUTHORITY: 944.09, 945.215 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: Sherry Toothman, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE FULL TEXT OF THE PROPOSED RULE IS:

33-602.101 Care of Inmates.

(1) through (10) No change.

(11) Inmate health and comfort items shall be provided in accordance with the guidelines in the Inmate Health and Comfort Items – Issuance, Form NI1-0071. Form NI1-0071, Inmate Health and Comfort Items – Issuance, is hereby incorporated by reference. A copy of this form is available from the Forms Control Administrator, Research, Planning and Support Services, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. The effective date of this form is _____.

Specific Authority 944.09, 945.215 FS. Law Implemented 944.09 FS. History–New 10-8-76, Formerly 33-3.02, Amended 4-19-79, 4-24-80, 1-9-85, 11-3-87, 9-16-88, 7-23-89, 8-27-91, 3-30-94, 11-14-95, 6-2-99, Formerly 33-3.002, Amended 11-21-00, 1-25-01, 1-19-03, 9-23-03, 3-5-06,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: George Sapp, Assistant Secretary of Institutions

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Tina Hayes, Acting Deputy Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 23, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 7, 2006

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:
33-602.201 Inmate Property

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to modify Form DC6-220, Inmate Impounded Personal Property List, to clarify that the original copy of the form shall be forwarded to the inmate property file, rather than the institutional inmate file.

SUMMARY: The proposed rule modifies Form DC6-220, Inmate Impounded Personal Property List, to clarify that the original copy of the form shall be forwarded to the inmate property file, rather than the institutional inmate file.

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 cost, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of the 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: Sherry Toothman, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE FULL TEXT OF THE PROPOSED RULE IS:

33-602.201 Inmate Property**.**

(1) through (16) No change.

(17) 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, Research, Planning and Support Services, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500.

(a) No change.

(b) Form DC6-220, Inmate Impounded Personal Property List, effective date _____ ~~2-12-01~~.

(c) through (i) No change.

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, 5-16-02, 7-8-03, 8-18-04, 1-25-05,_____.

APPENDIX ONE
PROPERTY LIST

No change.

NAME OF PERSON ORIGINATING PROPOSED RULE: James Upchurch, Chief of Security Operations

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: George Sapp, Assistant Secretary of Institutions

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 23, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 7, 2006

AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid

RULE NO.:	RULE TITLE:
59G-6.020	Payment Methodology for Inpatient Hospital Services

PURPOSE AND EFFECT: The purpose of the proposed rule is to incorporate changes to the Florida Title XIX Inpatient Hospital Reimbursement Plan (the Plan) payment methodology, effective July 1, 2006. In compliance with House Bill 5001, 2006-07 General Appropriations Act, Specific Appropriations 213, 214, 245, 246 and the 2006-07 Health Care Implementing Bill, House Bill 5007, the Florida Title XIX Inpatient Hospital Reimbursement Plan will be amended as follows:

HOSPITAL INPATIENT SERVICES

1. $59,233,070 is provided to eliminate the inpatient reimbursement ceilings for hospitals whose charity care and Medicaid days, as a percentage of total adjusted hospital days, equal or exceed 11 percent. For any public hospital that does not qualify for the elimination of the inpatient ceilings under this section or any other section, the public hospital shall be exempt from the inpatient reimbursement ceilings contingent on the public hospital or local governmental entity providing the required state match. The Agency shall use the average of the 2000, 2001 and 2002 audited DSH data available as of March 1, 2006. In the event the Agency does not have the prescribed three years of audited DSH data for a hospital, the Agency shall use the average of the audited DSH data for 2000, 2001 and 2002 that are available.

2. $3,270,205 is provided to eliminate the inpatient reimbursement ceilings for hospitals that have a minimum of ten licensed Level II Neonatal Intensive Care Beds and are located in Trauma Services Area 2.

3. $86,544,883 is provided to eliminate the inpatient hospital reimbursement ceilings for hospitals whose Medicaid days as a percentage of total hospital days exceed 7.3 percent, and are designated or provisional trauma centers. This provision shall apply to all hospitals that are a designated or provisional trauma centers on July 1, 2006 and any hospitals that become a designated or provisional trauma center during State Fiscal Year 2006-2007. The Agency shall use the average of the 2000, 2001 and 2002 audited DSH data available as of March 1, 2006. In the event the Agency does not have the prescribed three years of audited DSH data for a hospital, the Agency shall use the average of the audited DSH data for 2000, 2001 and 2002 that are available.

4. $9,932,000 is provided to make Medicaid payments to hospitals. These payments shall be used to pay approved liver transplant facilities a global fee for providing transplant services to Medicaid recipients.

5. $246,408,972 is provided to eliminate the inpatient reimbursement ceilings for teaching, specialty, Community Hospital Education Program hospitals and Level III Neonatal Intensive Care Units that have a minimum of three of the following designated tertiary services as regulated under the certificate of need program: pediatric bone marrow transplantation, pediatric open heart surgery, pediatric cardiac catheterization and pediatric heart transplantation.

6. Effective July 1, 2006, in accordance with the approved Medicaid Reform Section 1115 Demonstration, Special Terms and Conditions 100(b), the current inpatient supplemental payment upper payment limit (UPL) program is terminated.

7. Effective July 1, 2006, in accordance with the approved Medicaid Reform Section 1115 Demonstration, Special Terms and Conditions 100(c), the inpatient hospital payments for Medicaid eligibles will be limited to Medicaid cost as defined in the CMS 2552-96.

8. All references to Data Resources Incorporated (DRI) have added the phrase “or its successor” in order to account for future name changes of the company.

9. The reference to the definition section of the Inpatient Hospital Reimbursement Plan found in Section V. Methods, A.3. has been corrected to be Section XII.

DISPROPORTIONATE SHARE (DSH) HOSPITALS

1. $141,124,815 is provided for payments to regular DSH.

2. $60,000,000 is provided for payments to Graduate Medical Education (GME) hospitals.

3. $60,998,691 is provided for payments to mental health DSH.

4. $2,444,444 is provided for payments to specialty DSH.

5. The minimum number of Medicaid days for non-state government owned or operated hospitals has been reduced from 3,300 days to 3,100 days.

SUMMARY: The proposed rule change to rule number 59G-6.020 incorporates revisions to the Florida Title XIX Inpatient Hospital Reimbursement Plan. The rule seeks to amend the Title XIX Inpatient Hospital Reimbursement Plan to be in compliance with the 2006-07 General Appropriations Act, the 2006-07 Health Care Implementing Bill, and the Medicaid Reform Section 1115 Demonstration.

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

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

SPECIFIC AUTHORITY: 409.919 FS.

LAW IMPLEMENTED: 409.908 FS.

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

DATE AND TIME: September 7, 2006, 10:00 a.m.

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

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 2 days before the workshop/meeting by contacting: Edwin Stephens, Medicaid Program Analysis, 2727 Mahan Drive, Mail Stop 21, Tallahassee, Florida 32308. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Edwin Stephens, Medicaid Program Analysis, 2727 Mahan Drive, Mail Stop 21, Tallahassee, Florida. 32308

THE FULL TEXT OF THE PROPOSED RULE IS:

59G-6.020 Payment Methodology for Inpatient Hospital Services.

Reimbursement to participating inpatient hospitals for services provided shall be in accord with the Florida Title XIX Inpatient Hospital Reimbursement Plan, Version XXX ~~XIX~~, Effective Date _____ ~~April 19, 2006~~ and incorporated herein by reference. A copy of the Plan as revised may be obtained by writing to the Office of the Deputy Secretary for Medicaid, Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Mail Stop 8, Tallahassee, Florida 32308.

Specific Authority 409.919 FS. Law Implemented 409.908, 409.9117 FS. History–New 10-31-85, Formerly 10C-7.391, Amended 10-1-86, 1-10-89, 11-19-89, 3-26-90, 8-14-90, 9-30-90, 9-16-91, 4-6-92, 11-30-92, 6-30-93, Formerly 10C-7.0391, Amended 4-10-94, 8-15-94, 1-11-95, 5-13-96, 7-1-96, 12-2-96, 11-30-97, 9-16-98, 11-10-99, 9-20-00, 3-31-02, 1-8-03, 7-3-03, 2-1-04, 2-16-04, 2-17-04, 8-10-04, 10-12-04, 4-19-06, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mr. Edwin Stephens

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Mr. Thomas W. Arnold

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 23, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 2, 2006

AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid

RULE NO.:	RULE TITLE:
59G-6.030	Payment Methodology for Outpatient Hospital Services

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to incorporate changes to the Florida Title XIX Outpatient Hospital Reimbursement plan (the Plan) payment methodology, effective July 1, 2006, to provide the following changes in compliance with the 2006-07 General Appropriations Act, House Bill 5001, Specific Appropriation 217.

1. $7,704,802 is provided to eliminate the outpatient reimbursement ceilings for hospitals whose charity care and Medicaid days as a percentage of total adjusted hospital days equals or exceeds 11 percent. For any public hospital that does not qualify for the elimination of the outpatient ceilings under this section, the public hospital shall be exempt from the outpatient reimbursement ceilings contingent on the public hospital or local governmental entity providing the required state match. The Agency shall use the average of the 2000, 2001 and 2002 audited DSH data available as of March 1, 2006. In the event the agency does not have the prescribed three years of audited DSH data for a hospital, the agency shall use the average of the audited DSH data for 2000, 2001 and 2002 that are available.

2. $387,284 is provided to eliminate the outpatient reimbursement ceilings for hospitals that have a minimum of ten licensed Level II Neonatal Intensive Care Beds and are located in Trauma Services Area 2.

3. $11,223,355 is provided to eliminate the outpatient reimbursement ceilings for hospitals whose Medicaid days, as a percentage of total hospital days, exceed 7.3 percent, and are designated or provisional trauma centers. This provision shall apply to all hospitals that are designated or provisional trauma centers on July 1, 2006 or become a designated or provisional trauma center during State Fiscal Year 2006-2007. The agency shall use the average of the 2000, 2001 and 2002 audited DSH data available as of March 1, 2006. In the event the agency does not have the prescribed three years of audited DSH data for a hospital, the agency shall use the average of the audited DSH data for 2000, 2001 and 2002 that are available.

SUMMARY: The proposed rule change to Rule 59G-6.030, F.A.C., incorporates revisions to the Florida Title XIX Outpatient Hospital Reimbursement Plan. The rule change is in accordance with the 2006-07 General Appropriations Act, House Bill 5001, Specific Appropriation 217.

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

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

SPECIFIC AUTHORITY: 409.919 FS.

LAW IMPLEMENTED: 409.908 FS.

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

DATE AND TIME: September 7, 2006, 11:00 a.m.

PLACE: 2727 Fort Knox Boulevard, Building 3, Conference Room C, Tallahassee, Florida 32308

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 2 days before the workshop/meeting by contacting: Edwin Stephens, Medicaid Program Analysis, Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Room 2149A, Mail Stop 21, Tallahassee, Florida 32308. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Edwin Stephens, Medicaid Program Analysis, Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Room 2149A, Mail Stop 21, Tallahassee, Florida 32308

THE FULL TEXT OF THE PROPOSED RULE IS:

59G-6.030 Payment Methodology for Outpatient Hospital Services.

Reimbursement to participating outpatient hospitals for services provided shall be in accordance with the Florida Title XIX Outpatient Hospital Reimbursement Plan, Version XV ~~XIV~~ Effective date: _____~~April 19, 2006~~, and incorporated herein by reference. A copy of the Plan as revised may be obtained by writing to the Office of the Deputy Secretary for Medicaid, Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Mail Stop 8, Tallahassee, Florida 32308.

Specific Authority 409.919 FS. Law Implemented 409.908 FS. History–New 10-31-85, Amended 12-31-85, Formerly 10C-7.401, Amended 10-1-86, 3-26-90, 9-30-90, 10-13-91, 7-1-93, Formerly 10C-7.0401, Amended 4-10-94, 9-18-96, 9-6-99, 9-20-00, 12-6-01, 11-10-02, 2-16-04, 10-12-04, 7-4-05, 4-19-06, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Edwin Stephens

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Thomas W. Arnold

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 23, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 2, 2006

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Professional Engineers

RULE NO.:	RULE TITLE:
61G15-22.0105	Standard for Laws and Rules Course Providers

PURPOSE AND EFFECT: Purpose and effect is to set standards for continuing education courses on Florida laws and rules governing the practice of engineering.

SUMMARY: Standards for continuing education courses on Florida laws and rules governing the practice of engineering are established.

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 regulatory cost alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 455.213(6), 455.2178, 455.2179, 471.008, 471.017(3), 471.019 FS.

LAW IMPLEMENTED: 455.213(6), 455.2177, 455.2178, 455.2179, 471.008, 471.017(3), 471.019 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: Paul Martin, Executive Director, Board of Professional Engineers, 2507 Callaway Road, Suite 200, Tallahassee, Florida 32301

THE FULL TEXT OF THE PROPOSED RULE IS:

61G15-22.0105 Standard for Laws and Rules Course Providers.

Each course provider approved by the Board to conduct courses in Florida Laws and rules must meet the requirements of Rule 61G15-22.011, F.A.C., and submit the documentation of the following:

(1) Course materials; and

(2) Course content that includes

(a) Rules adopted, amended or repealed during the immediately preceding biennium;

(b) Changes to Chapters 455 and 471, F.S. made by the legislature during the preceding biennium;

(c) Case law concerning Chapter 471, F.S.;

(d) A list of resources used to develop the course content;

(e) Application of the provisions of Chapter 471, F.S., to individual disciplinary cases and unlicensed practice cases during the immediately preceding biennium.

(3) Qualifications of the instructor(s), including a curriculum vitae of the instructor(s), which must demonstrate knowledge of the subject matter and one of the following:

(a) Licensure as a professional engineer;

(b) Licensure as an attorney in the State of Florida.

(4) A provider making application to offer interactive distance learning must also submit documents indicating the following:

(a) The means by which the course will demonstrate the ability to interact between the student and course provider by providing answers to inquiries within two business days. The interaction must promote student involvement, and demonstrate that the course measures learning and addresses comprehension of content at regular intervals;

(b) The means by which the course provider is able to monitor student enrollment, participation and course completion;

(c) The means by which the course provider will be able to satisfactorily demonstrate that stated course hours are consistent with the actual hours spent by each student to complete the course;

(d) The means by which the provider will assure qualified instructor(s) will be available to answer questions and provide students with necessary support during the duration of the course; and

(e) That the student will be required to complete a statement that indicates that he/she personally completed each module/session of instruction.

Specific Authority 455.213(6), 455.2178, 455.2179, 471.008, 471.017(3), 471.019 FS. Law Implemented 455.213(6), 455.2177, 455.2178, 455.2179, 471.008, 471.017(3), 471.019 FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Professional Engineers

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 14, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 20, 2005

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Professional Surveyors and Mappers

RULE NO.: RULE TITLE:

61G17-9.004 Citations

PURPOSE AND EFFECT: The Florida Board of Professional Surveyors and Mappers is amending Rule 61G17-9.004, F.A.C., to revise what disciplinary offenses may be resolved by citations and also revising the amount of money that may be imposed as citation fines.

SUMMARY: The Florida Board of Professional Surveyors and Mappers is removing a first time violation of Chapter 61G17-6, F.A.C. as a citation offense and is increasing the amount of money that may be imposed as a citation 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 to provide a proposal for a lower regulatory cost alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 472.008, 455.224 FS.

LAW IMPLEMENTED: 455.224 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: Rick Morrison, Executive Director, Board of Professional Surveyors and Mappers, 1940 North Monroe Street, Tallahassee, Florida 32399-0767

THE FULL TEXT OF THE PROPOSED RULE IS:

61G17-9.004 Citations.

The offenses enumerated in this rule may be disciplined by the issuance of a citation by the Department of Business and Professional Regulation. The citation shall impose the prescribed fine, and the Department may impose the costs of the investigation. If the citation option is accepted by the licensee, the offense will not be brought to the attention of the probable cause panel of the Board.

~~(1) A licensee's first time violation of Rule Chapter 61G17-6, may result in a citation so long as the violation or violations do not rise to the level of incompetence or negligence. If a citation is issued, the licensee must pay a fine of $100 per violation.~~

(1)~~(2)~~ A licensee's first time violation of the prohibition against false, fraudulent, deceptive or misleading advertising may result in a citation. If a citation is issued, the licensee must pay a fine of $500.00 ~~$250~~.

(2)~~(3)~~ A licensee's first time violation of the prohibition against practicing on a delinquent or inactive license may result in a citation if the licensee fails to correct the violation in response to a notice of noncompliance. If a citation is issued, the licensee must pay a fine of $1,000.00 ~~$500~~.

(3)~~(4)~~ A business entity's first time failure to notify the Board within one (1) month of any changes in the business entity's location of offices, its licensed surveyor and mapper in residence, or the names of its principal, along with proof to demonstrate the change in principal, may result in a citation if the licensee fails to correct the violation in response to a notice of noncompliance. If a citation is issued, the business entity must pay a fine of $500.

Specific Authority 472.008, 455.224 FS. Law Implemented 455.224 FS. History–New 1-16-92, Formerly 21HH-9.004, Amended 2-20-96, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Professional Surveyors and Mappers

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Professional Surveyors and Mappers

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 12, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 7, 2006

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Florida Real Estate Appraisal Board

RULE NO.: RULE TITLE:

61J1-3.001 Application by Individuals

PURPOSE AND EFFECT: The Florida Real Estate Appraisal Board is adopting rules to implement the electronic fingerprint requirement of Section 475.615(3) of the Florida Statutes which became effective on July 1, 2006.

SUMMARY: The Florida Real Estate Appraisal Board's amendments to Rule 61J1-3.001, F.A.C., implement changes to Section 475.615(3) of the Florida Statutes by requiring all applicants for appraisal licensure to submit electronic fingerprints, requiring applicants to have fingerprints taken by a DBPR approved vendor, and requiring DBPR vendors to submit the applicant's fingerprints to the Florida Department of Law Enforcement.

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 cost, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of the notice.

SPECIFIC AUTHORITY: 475.614 FS.

LAW IMPLEMENTED: 475.613, 475.615, 475.617, 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: Michael E. Murphy, Director, Division of Real Estate, 400 West Robinson Street, Hurston Building, North Tower, Suite N801, Orlando, Florida 32801

THE FULL TEXT OF THE PROPOSED RULE IS:

61J1-3.001 Application by Individuals.

(1) An applicant for registration, or certification as an appraiser shall submit an application is such a manner as provided by the Department.

(a) Beginning July 1, 2006, every person applying for any real estate appraiser certification or registration must provide fingerprints in electronic format along with his or her application for real estate appraiser certification or registration.

(b) Every person applying for any real estate appraiser certification or registration must have his or her fingerprints taken electronically be a Department of Business and Professional Regulation approved electronic fingerprint service provider or vendor. The Department of Business and Professional Regulation shall maintain a list of approved electronic fingerprint service providers and vendors.

(c) The Department of Business and Professional Regulation approved electronic fingerprint service providers and vendors shall be responsible for submitting each applicant's electronic fingerprints to the Florida Department of Law Enforcement for purposes of processing the fingerprint card to determine if the applicant has a criminal history record.

(2) through (7) No change.

Specific Authority 475.614, 475.615 FS. Law Implemented 475.613, 475.615, 475.617, 475.624 FS. History–New 10-15-91, Formerly 21VV-3.001, Amended 10-29-98, 1-7-99, 2-21-02, 5-25-04, 1-8-06, _____.

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: June 5, 2006

DATE NOTICE OR PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 23, 2006

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

DEPARTMENT OF ENVIRONMENTAL PROTECTION

RULE NOS.:	RULE TITLES:
62-303.100	Scope and Intent
62-303.200	Definitions
62-303.300	Methodology to Develop the Planning List
62-303.310	Evaluation of Aquatic Life Use Support
62-303.320	Aquatic Life-Based Water Quality Criteria Assessment
62-303.330	Biological Assessment
62-303.340	Toxicity
62-303.350	Interpretation of Narrative Nutrient Criteria
62-303.352	Nutrients in Lakes
62-303.353	Nutrients in Estuaries and Open Coastal Waters
62-303.360	Primary Contact and Recreation Use Support
62-303.370	Fish and Shellfish Consumption Use Support
62-303.380	Drinking Water Use Support and Protection of Human Health
62-303.400	Methodology to Develop the Verified List
62-303.420	Aquatic Life-Based Water Quality Criteria Assessment
62-303.430	Biological Impairment
62-303.440	Toxicity
62-303.450	Interpretation of Narrative Nutrient Criteria
62-303.460	Primary Contact and Recreation Use Support
62-303.470	Fish and Shellfish Consumption Use Support
62-303.480	Drinking Water Use Support and Protection of Human Health
62-303.500	Prioritization
62-303.700	Listing Cycle
62-303.710	Format of Verified List and Verified List Approval
62-303.720	Delisting Procedure

PURPOSE AND EFFECT: The purpose of the proposed revisions is to allow Chapter 62-303, F.A.C., to be re-adopted as a change to Florida's water quality standards. While the rule will be re-adopted as a change to standards, the revisions clarify that the rule is intended to evaluate attainment of water quality standards and any thresholds for impairment used in the rule apply solely for purposes of assessment and listing under sections 303(d) and 305(b) of the Clean Water Act.

SUMMARY: Substantive revisions to the rule include: 1) new text providing a different assessment methodology for exceedances of water quality criteria for synthetic organics and pesticides, 2) new text allowing the Department to use data older than ten years if it can be demonstrated to be representative of current conditions, 3) revisions to provisions related to sample representativeness, including changing the averaging period from seven to four days and deleting the requirement for data from three different seasons, 4) new text providing an assessment methodology for the daily average Dissolved Oxygen criterion for predominantly marine waters, 5) changing the requirements for data quality assessment elements to better track the requirements of Chapter 62-160, F.A.C., 6) deletion of the provisions related to assessment of toxicity test data, 7) new text describing how annual average chlorophyll a and Trophic State Index values will be calculated, 8) new text providing an assessment methodology for monthly average coliform water quality criteria, 9) revisions to the provisions related to assessment of shellfish harvesting classification information, and 10) new text allowing the Department to waive the minimum sample size requirement if the data provide overwhelming evidence of impairment.

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

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

SPECIFIC AUTHORITY: 403.061, 403.067 FS.

LAW IMPLEMENTED: 403.021(11), 403.062, 403.067 FS.

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

DATE AND TIME: August 31, 2006, 9:00 a.m.

PLACE: Department of Environmental Protection, 3900 Commonwealth Blvd., Conference Room A, Tallahassee, FL

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Pat Waters (850)245-8449. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Daryll Joyner, 2600 Blair Stone Rd, MS 3555, Tallahassee, FL 32399-2400, (850)245-8431

THE FULL TEXT OF THE PROPOSED RULES IS:

PART I GENERAL

62-303.100 Scope and Intent.

(1) This chapter establishes a methodology to identify surface waters of the state that will be included on the state's planning list of waters that will be assessed pursuant to Sections 403.067(2) and (3), Florida Statutes (F.S.). It also establishes a methodology to identify impaired waters based on representative data that will be included on the state's verified list of impaired waters, for which the Department will calculate Total Maximum Daily Loads (TMDLs), pursuant to subsection 403.067(4), F.S., and which will be submitted to the United States Environmental Protection Agency (EPA) pursuant to paragraph 303(d)(1) of the Clean Water Act (CWA).

(2) Subsection 303(d) of the CWA and Section 403.067, F.S., describe impaired waters as those not meeting applicable water quality standards, which is a broad term that includes designated uses, water quality criteria, the Florida antidegradation policy, and moderating provisions. However, as recognized when the water quality standards were adopted, many water bodies naturally do not meet one or more established water quality criteria at all times, even though they meet their designated use. ~~Data on exceedances of water quality criteria will provide critical information about the status of assessed waters, but it is the intent of this chapter to only list waters on the verified list that are impaired due to point source or nonpoint source pollutant discharges.~~ It is not the intent of this chapter to include waters that do not meet otherwise applicable water quality criteria solely due to natural conditions or physical alterations of the water body not related to pollutants. Similarly, it is not the intent of this chapter to include waters where designated uses are being met and where water quality criteria exceedances are limited to those parameters for which permitted mixing zones or other moderating provisions (such as site-specific alternative criteria) are in effect. Waters that do not meet otherwise applicable water quality standards due to natural conditions or to pollution not related to pollutants shall be noted in the state's water quality assessment prepared under subsection 305(b) of the CWA [305(b) Report].

(3) This chapter is intended to ~~interpret existing water quality criteria and~~ evaluate attainment of water quality standards ~~established designated uses~~ as set forth in Chapter 62-302, F.A.C., for the purposes of identifying water bodies or segments for which TMDLs will be established. It is ~~not~~ the intent of this chapter to establish requirements that would apply solely for purposes of assessment and listing under CWA sections 303(d) and 305(b). However, it is not the intent of this chapter ~~new water quality criteria or standards, or~~ to establish requirements for ~~determine the applicability of existing criteria under~~ other purposes under ~~provisions of~~ Florida law. In cases where this chapter relies on numeric indicators of ambient water quality as part of the methodology for determining whether existing narrative criteria are being met, these numeric values are intended to be used only in the context of developing a planning list and identifying an impaired water pursuant to this chapter. As such, exceedances of these numeric values shall not, by themselves, constitute violations of Department rules that would warrant enforcement action.

(4) Nothing in this rule is intended to limit any actions by federal, state, or local agencies, affected persons, or citizens pursuant to other rules or regulations.

(5) Pursuant to Section 403.067, F.S., impaired waters shall not be listed on the verified list if reasonable assurance is provided that, as a result of existing or proposed technology-based effluent limitations and other pollution control programs under local, state, or federal authority, they will attain water quality standards in the future and reasonable progress towards attainment of water quality standards will be made by the time the next 303(d) list is scheduled to be submitted to EPA.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.021(11), 403.062, 403.067 FS. History–New 6-10-02, Amended _____.

62-303.200 Definitions.

As used in this chapter:

(1) "Bioassessment" shall mean a BioRecon, Lake Condititon Index, or Stream Condition Index.

(2)~~(1)~~ "BioRecon" shall mean a biological evaluation ~~assessment~~ conducted in accordance with standard operating procedures (SOPs) FT 3000, FS 7410, and LT 7100, as promulgated in Chapter 62-160, F.A.C. ~~following the procedures outlined in "Protocols for Conducting a Biological Reconnaissance in Florida Streams," Florida Department of Environmental Protection, March 13, 1995, which is incorporated by reference.~~

(3)~~(2)~~ "Clean techniques" shall mean those applicable field sampling procedures and analytical methods referenced in "Method 1669: Sampling Ambient Water for Trace Metals at EPA Water Quality Criteria Levels, July 1996, USEPA, Office of Water, Engineering and Analysis Division, Washington, D.C.," which is incorporated by reference.

(4)~~(3)~~ "Department" or "DEP" shall mean the Florida Department of Environmental Protection.

(5)~~(4)~~ "Designated use" shall mean the present and future most beneficial use of a body of water as designated by the Environmental Regulation Commission by means of the classification system contained in Chapter 62-302, F.A.C.

(6)~~(5)~~ "Estuary" shall mean predominantly marine regions of interaction between rivers and nearshore ocean waters, where tidal action and river flow mix fresh and salt water. Such areas include bays, mouths of rivers, and lagoons.

(7)~~(6)~~ "Impaired water" shall mean a water body or water body segment that does not meet its applicable water quality standards as set forth in Chapters 62-302 and 62-4, F.A.C., as

determined by the methodology in Part III of this chapter, due in whole or in part to discharges of pollutants from point or nonpoint sources.

(8)~~(7)~~ "Lake Condition Index" shall mean the benthic macroinvertebrate component of a biological evaluation ~~assessment~~ conducted following the procedures outlined in "Development of Lake Condition Indexes (LCI) for Florida," Florida Department of Environmental Protection, July, 2000, which is incorporated by reference.

(9)~~(8)~~ "Natural background" shall mean the condition of waters in the absence of man-induced alterations based on the best scientific information available to the Department. The establishment of natural background for an altered waterbody may be based upon a similar unaltered waterbody or on historical pre-alteration data.

(10)~~(9)~~ "Nuisance species" shall mean species of flora or fauna whose noxious characteristics or presence in sufficient number, biomass, or areal extent may reasonably be expected to prevent, or unreasonably interfere with, a designated use of those waters.

(11) "Open coastal waters" shall mean all gulf or ocean waters that are not classified as estuaries or open ocean waters.

(12) "Open ocean waters" means all surface waters extending seaward from the most seaward natural 90-foot (15-fathom) isobath. Contour lines may be determined from National Oceanic and Atmospheric Administration Charts.

(13)~~(10)~~ "Physical alterations" shall mean human-induced changes to the physical structure of the water body.

(14)~~(11)~~ "Planning list" shall mean the list of surface waters or segments for which assessments will be conducted to evaluate whether the water is impaired and a TMDL is needed, as provided in Section 403.067(2), F.S.

(15)~~(12)~~ "Pollutant" shall be as defined in subsection 502(6) of the CWA. Characteristics of a discharge, including dissolved oxygen, pH, or temperature, shall also be defined as pollutants if they result or may result in the potentially harmful alteration of downstream waters.

(16)~~(13)~~ "Pollution" shall be as defined in subsection 502(19) of the CWA and Section 403.031(2), F.S.

(17)~~(14)~~ "Predominantly marine waters" shall mean surface waters in which the chloride concentration at the surface is greater than or equal to 1,500 milligrams per liter.

(18) "Reference water" means a waterbody that exhibits a range of physical, chemical and biological characteristics approximating the natural background conditions of the same, or similar, type of waterbody within an ecologically similar region. A reference water may representative of the water quality and structure and function of biological communities of natural background conditions even if there is evidence of limited human disturbance in the waterbody or watershed, as long as anthropogenic sources do not produce a significant measurable or predicted effect on the parameter of concern in the waterbody.

(19)~~(15)~~ "Secretary" shall mean the Secretary of the Florida Department of Environmental Protection.

(20)~~(16)~~ "Spill" shall mean a short-term, unpermitted discharge to surface waters, not to include sanitary sewer overflows or chronic discharges from leaking wastewater collection systems.

(21)~~(17)~~ "Stream" shall mean a free-flowing, predominantly fresh surface water in a defined channel, and includes rivers, creeks, branches, canals, freshwater sloughs, and other similar water bodies.

(22)~~(18)~~ "Stream Condition Index" shall mean a biological evaluation ~~assessment~~ conducted in accordance with SOPs FT 3000, FS 7420, and LT 7200, as promulgated in Chapter 62-160, F.A.C. ~~following the procedures outlined in "Development of the Stream Condition Index (SCI) for Florida," Florida Department of Environmental Protection, May, 1996, which is incorporated by reference.~~

(23)~~(19)~~ "Surface water" means those waters of the State upon the surface of the earth to their landward extent, whether contained in bounds created naturally or artificially or diffused. Water from natural springs shall be classified as surface water when it exits from the spring onto the earth's surface.

(24)~~(20)~~ "Total maximum daily load" (TMDL) for an impaired water body or water body segment shall mean the sum of the individual wasteload allocations for point sources and the load allocations for nonpoint sources and natural background. Prior to determining individual wasteload allocations and load allocations, the maximum amount of a pollutant that a water body or water segment can assimilate from all sources without exceeding water quality standards must first be calculated. A TMDL shall include either an implicit or explicit margin of safety and a consideration of seasonal variations.

(25) "Trophic State Index" or "TSI" means the trophic state index for lakes, which is based on lake chlorophyll a, Total Nitrogen, and Total Phosphorus levels, and is calculated following the procedures outlined on pages 86 and 87 of the State's 1996 305(b) report, which are incorporated by reference.

(26)~~(21)~~ "Verified list" shall mean the list of impaired water bodies or segments for which TMDLs will be calculated, as provided in subsection 403.067(4), F.S., and which will be submitted to EPA pursuant to paragraph 303(d)(1) of the CWA.

(27)~~(22)~~ "Water quality criteria" shall mean elements of State water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports the present and future most beneficial uses.

(28)~~(23)~~ "Water quality standards" shall mean standards composed of designated present and future most beneficial uses (classification of waters), the numerical and narrative criteria applied to the specific water uses or classification, the Florida antidegradation policy, and the moderating provisions

(mixing zones, site-specific alternative criteria, and exemptions) contained in Chapter 62-302, F.A.C., and in Chapter 62-4, F.A.C., adopted pursuant to Chapter 403, F.S.

(29)~~(24)~~ "Water segment" shall mean a portion of a water body that the Department will assess and evaluate for purposes of determining whether a TMDL will be required. Water segments previously evaluated as part of the Department's 1998 305(b) Report are depicted in the map titled "Water Segments of Florida," which is incorporated by reference.

(30)~~(25)~~ "Waters" shall be those surface waters described in Section 403.031(13), Florida Statutes.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Amended _____.

PART II THE PLANNING LIST

62-303.300 Methodology to Develop the Planning List.

(1) This part establishes a methodology for developing a planning list of waters to be assessed pursuant to subsections 403.067(2) and (3), F.S. ~~A waterbody shall be placed on the planning list if it fails to meet the minimum criteria for surface waters established in Rule 62-302.500, F.A.C.; any of its designated uses, as described in this part; or applicable water quality criteria, as described in this part. It should be noted that water quality criteria are designed to protect either aquatic life use support, which is addressed in sections 62-303.310-353, or to protect human health, which is addressed in sections 62-303.360-380.~~

(2) Waters on the list of water segments submitted to EPA in 1998 that do not meet the data sufficiency requirements for the planning list shall nevertheless be included in the state's initial planning list developed pursuant to this rule.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Amended _____.

62-303.310 Evaluation of Aquatic Life Use Support.

A Class I, II, or III water shall be placed on the planning list for assessment of aquatic life use support (propagation and maintenance of a healthy, well-balanced population of fish and wildlife) if, based on sufficient quality and quantity of data, it:

(1) Exceeds applicable aquatic life-based thresholds ~~water quality criteria~~ as outlined in Rule 62-303.320, F.A.C.

(2) Does not meet biological assessment thresholds for its water body type as outlined in Rule 62-303.330, F.A.C., or

~~(3) Is acutely or chronically toxic as outlined in Rule 62-303.340, F.A.C., or~~

(3)~~(4)~~ Exceeds nutrient thresholds as outlined in Rule 62-303.350, F.A.C.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Amended _____.

62-303.320 ~~Exceedances of~~ Aquatic Life-Based Water Quality Criteria Assessment.

(1) Water segments shall be placed on the planning list if, using objective and credible data, as defined by the requirements specified in this section, the number of samples that do not meet ~~exceedances of~~ an applicable water quality criterion due to pollutant discharges is greater than or equal to the number listed in Table 1 for the given sample size. For sample sizes up to 500, waters are placed on the planning list when ~~This table provides the number of exceedances that indicate a minimum of a~~ 10% or more of the samples do not meet the applicable criteria ~~exceedance frequency~~ with a minimum of an 80% confidence level using a binomial distribution. For sample sizes greater than 500, the Department shall calculate the number of samples not meeting the criterion that are needed for the given sample size using the binomial distribution.

Table 1: Planning List

Minimum number of samples not meeting an applicable water quality criterion ~~measured exceedances~~ needed to put a water on the ~~P~~planning list with at least 80% confidence ~~that the actual exceedance rate is greater than or equal to ten percent~~.

Sample sizes		Are listed if they have at least this # of samples that do not meet a criterion ~~exceedances~~	Sample sizes		Are listed if they have at least this # of samples that do not meet a criterion ~~exceedances~~
From	To		From	To	
10	15	3	256	264	31
16	23	4	265	273	32
24	31	5	274	282	33
32	39	6	283	292	34
40	47	7	293	301	35
48	56	8	302	310	36
57	65	9	311	320	37
66	73	10	321	329	38
74	82	11	330	338	39
83	91	12	339	348	40
92	100	13	349	357	41
101	109	14	358	367	42
110	118	15	368	376	43
119	126	16	377	385	44
127	136	17	386	395	45
137	145	18	396	404	46
146	154	19	405	414	47
155	163	20	415	423	48
164	172	21	424	432	49
173	181	22	433	442	50
182	190	23	443	451	51
191	199	24	452	461	52
200	208	25	462	470	53

209	218	26
219	227	27
228	236	28
237	245	29
246	255	30

471	480	54
481	489	55
490	499	56
500	500	57

(2) The Department's Florida ~~U.S. Environmental Protection Agency's~~ Storage and Retrieval (FLASTORET) database, or its successors, shall be the primary source of data used for determining whether samples do not meet water quality criteria ~~exceedances~~. As required by subsection 62-40.540(3), F.A.C., the Department, other state agencies, the Water Management Districts, and local governments collecting surface water quality data in Florida shall enter the data into FLASTORET within one year of collection. Other sampling entities that want to ensure their data will be considered for evaluation should ensure their data are entered into FLASTORET. The Department shall consider data submitted to the Department from other sources and databases if the data meet the sufficiency and data quality requirements of this section.

(3) Unless information presented to the Department demonstrates otherwise, ~~When determining water quality criteria exceedances,~~ data older than ten years at the time the water segment is proposed for listing on the planning list are not representative of current conditions and shall not be used to develop planning lists, except to evaluate historical trends in chlorophyll a or TSIs. Any determinations by the Department to use data older than 10 years shall be documented, and the documentation shall include the basis for the decision. Further, more recent data shall take precedence over older data if:

(a) The newer data indicate a change in water quality and this change is related to changes in pollutant loading to the watershed or improved pollution control mechanisms in the watershed contributing to the assessed area, or

(b) The Department determines that the older data do not meet the data quality requirements of this section or are no longer representative of the water quality of the segment.

The Department shall note for the record that the older data were excluded and provide details about why the older data were excluded.

(4) To place a water segment on the planning list ~~be assessed for water quality criteria exceedances~~ using Table 1, a water segment shall have a minimum of ten~~, temporally independent~~ samples for the ten-year period, with at least five temporally independent samples. To be treated as a~~n~~ temporally independent sample, samples ~~from a given station~~ shall be at least one week apart, regardless whether the samples are collected at different locations within the segment.

(a) Samples collected at the same location less than four ~~seven~~ days apart shall be considered as one sample, with the median value used to represent the sampling period. However, if any of the individual dissolved oxygen (DO) values are less than 1.5 mg/l or, for other parameters, individual values exceed acutely toxic levels as listed in Table 2, then the worst-case value shall be used to represent the sampling period. The worst-case value is the minimum value for DO ~~dissolved oxygen~~, both the minimum and maximum for pH, or the maximum value for other parameters. However, when DO data are available from diel or depth profile studies, the lower tenth percentile value shall be used to represent worst-case conditions for comparison against the minimum criteria.

(b) ~~For the purposes of this chapter,~~ S~~s~~amples collected within 200 meters of each other will be considered the same station or location, unless there is a tributary, an outfall, or significant change in the hydrography of the water.

(c) Samples collected ~~Data~~ from different stations within a water segment shall be assessed ~~treated~~ as separate samples even if collected at the same time. ~~However, there shall be at least five independent sampling events during the ten year assessment period, with at least one sampling event conducted in three of the four seasons of the calendar year. For the purposes of this chapter, the four seasons shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.~~

Table 2. Acutely Toxic Levels for Parameters with Aquatic Life-Based Criteria

Parameter	Units	Freshwater Value	Marine Value
Aldrin	ug/L	3	1.3
Aluminum	ug/L	750	N/A
Arsenic	ug/L	340	69
Cadmium	ug/L	exp((1.0166*(lnH))-3.924)	40
Chlordane	ug/L	2.4	0.09
Chlorine	ug/L	19	13
Chromium III	ug/L	exp((0.8190(lnH))+3.7256)	N/A
Chromium VI	ug/L	16	1100
Copper	ug/L	exp((0.9422*(lnH))-1.700)	5.8
Cyanide	ug/L	22	1
DDT	ug/L	1.1	0.13
Dieldrin	ug/L	0.24	0.71
Endosulfan	ug/L	0.22	0.034
Endrin	ug/L	0.086	0.037
Heptachlor	ug/L	0.52	0.053
Lead	ug/L	exp((1.273(lnH))-1.460)	221
Lindane	ug/L	0.95	0.16
Nickel	ug/L	exp((0.8460(lnH))+2.255)	75
Parathion	ug/L	0.065	N/A
Pentachlorophenol	ug/L	exp(1.005(pH)-4.869)	13
Selenium	ug/L	N/A	290
Silver	ug/L	exp((1.72(lnH))-6.59)	2.2
Toxaphene	ug/L	0.73	0.21
Zinc	ug/L	exp((0.8473(lnH))+0.884)	95

(5) For predominantly marine waters, the Department shall evaluate both the minimum allowable DO of 4.0 mg/l and the daily average DO criterion of 5.0 mg/l using Table 1. At least four temporally independent samples are required to calculate the daily average for any given day. For DO, temporally independent shall be defined as at least 4 hours apart. If there are sufficient data to determine daily averages for more than one day within a four-day period, the Department shall use the median value of the daily averages to represent the sampling period.

(6)~~(5)~~ Notwithstanding the requirements of subsection (4), water segments shall be included on the planning list if:

(a) There are less than ten samples for the segment, but there are three or more temporally independent samples that do not meet ~~exceedances of~~ an applicable water quality criterion, or

(b) There are more than one exceedance of an acute toxicity-based water quality criterion listed in Rule 62-302.530, F.A.C., or a water quality criterion for a synthetic organic compound or synthetic pesticide in any three year period.

(7)~~(6)~~ Values that exceed possible physical or chemical measurement constraints (pH greater than 14, for example) or that represent data transcription errors shall be excluded from the assessment. Outliers identified through statistical procedures shall be evaluated to determine whether they represent valid measures of water quality. If the Department determines that they are not valid, they shall be excluded from the assessment. However, the Department shall note for the record that the data were excluded and explain why they were excluded.

(8)~~(7)~~ The Department shall consider all readily available water quality data. ~~However, to be used to determine water quality exceedances,~~

~~(a) Data shall be~~ collected and analyzed in accordance with Chapter 62-160, F.A.C.~~, and~~

~~(b) For data collected after one year from the effective date of this rule,~~ If requested, the sampling agency must provide to the Department~~, either directly or through entry into FLASTORET,~~ all of the data quality assessment elements listed in Table 2 of the Department's Guidance Document "Data Quality Assessment Elements for Identification of Impaired Surface Waters" (DEP EAS 01-01, April 2001), which is incorporated by reference.

(9)~~(8)~~ For the assessment ~~To be used to determine exceedances~~ of metals criteria,

(a) Surface water data for mercury shall be collected and analyzed using clean sampling and analytical techniques, and

(b) The corresponding hardness value shall be required for ~~to determine exceedances of~~ freshwater metals criteria that are hardness dependent.~~, and~~ ~~I~~if the ambient hardness value is less than 25 mg/L as $CaCO_3$, then a hardness value of 25 will be used to calculate the criteria. If data are not used due to sampling or analytical techniques or because hardness data were not available, the Department shall note for the record that data were excluded and explain why they were excluded.

(10)~~(9)~~ Surface water data with values below the applicable practical quantification limit (PQL) or method detection limit (MDL) shall be assessed in accordance with subsections 62-4.246(6)(b)-(d) and (8), F.A.C.

(a) If sampling entities want to ensure that their data will be considered for evaluation, they should review the Department's list of approved MDLs and PQLs developed pursuant to Rule 62-4.246, F.A.C., and, if available, use approved analytical methods with MDLs below the applicable water quality criteria. If there are no approved methods with MDLs below a criterion, then the method with the lowest MDL should be used. Analytical results listed as below detection or below the MDL shall not be used for developing planning lists if the MDL was above the criteria and there were, at the time of sample collection, approved analytical methods with MDLs below the criteria on the Department's list of approved MDLs and PQLs.

(b) If appropriate analytical methods were used, then data with values below the applicable MDL will be deemed to meet the applicable water quality criterion and data with values between the MDL and PQL will be deemed to be equal to the MDL.

(11)~~(10)~~ It should be noted that the data requirements of this rule constitute the minimum data set needed to assess a water segment for impairment. Agencies or groups designing monitoring networks are encouraged to consult with the Department to determine the sample design appropriate for their specific monitoring goals.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Amended _____.

62-303.330 Biological Assessment.

(1) Biological data must meet the requirements of subsections (3) and (8)~~(7)~~ in Rule 62-303.320, F.A.C.

(2) Bioassessments used to assess streams and lakes under this rule shall include BioRecons, Stream Condition Indices (SCIs), and the benthic macroinvertebrate component of the Lake Condition Index (LCI), which only applies to clear lakes with a color less than 20 platinum cobalt units. Because these bioassessment procedures require specific training and expertise, persons conducting the bioassessments must comply with the quality assurance requirements of Chapter 62-160, F.A.C., attend at least eight hours of Department sanctioned field training, and pass a Department sanctioned field audit that verifies the sampler follows the applicable SOPs in Chapter 62-160, F.A.C., before their bioassessment data will be considered valid for use under this rule.

(3) Water segments with at least one failed bioassessment or one failure of the biological integrity standard, subsection 62-302.530(11), shall be included on the planning list for assessment of aquatic life use support.

(a) In streams, the bioassessment shall ~~can~~ be either an SCI or a BioRecon. Failure of a bioassessment for streams consists of a "poor" or "very poor" rating on the Stream Condition Index, or a "fail" rating ~~not meeting the minimum thresholds established for all three metrics (taxa richness, Ephemeroptera/Plecoptera/Tricoptera Index, and Florida Index)~~ on the BioRecon.

(b) Failure for lakes consists of a "poor" or "very poor" rating on the Lake Condition Index.

(4) Other information relevant to the biological integrity of the water segment, including toxicity tests and information about alterations in the type, nature, or function of a waterbody, shall also be considered when assessing ~~determining whether~~ aquatic life use support ~~has been maintained~~.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Amended _____.

62-303.340 Toxicity.

~~(1) All toxicity tests used to place a water segment on a planning list shall be based on surface water samples in the receiving water body and shall be conducted and evaluated in accordance with Chapter 62-160, F.A.C., and subsections 62-302.200(1) and (4), F.A.C., respectively.~~

~~(2) Water segments with two samples indicating acute toxicity within a twelve month period shall be placed on the planning list. Samples must be collected at least two weeks apart over a twelve month period, some time during the ten years preceding the assessment.~~

~~(3) Water segments with two samples indicating chronic toxicity within a twelve month period shall be placed on the planning list. Samples must be collected at least two weeks apart, some time during the ten years preceding the assessment.~~

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Repealed _____.

62-303.350 Interpretation of Narrative Nutrient Criteria.

(1) Trophic state indices (TSIs) and annual mean chlorophyll a values shall be the primary means for assessing whether a water should be assessed further for nutrient impairment. Other information indicating an imbalance in flora or fauna due to nutrient enrichment, including, but not limited to, algal blooms, excessive macrophyte growth, decrease in the distribution (either in density or areal coverage) of seagrasses or other submerged aquatic vegetation, changes in algal species richness, and excessive diel oxygen swings, shall also be considered.

(2) To be used to determine whether a waterbody should be assessed further for nutrient enrichment,

(a) Data must meet the requirements of subsections (2)-(4), (7)~~(6)~~ and (8)~~(7)~~ in Rule 62-303.320, F.A.C.

(b) At least one sample from each season shall be required in any given year to calculate a Trophic State Index (TSI) or an annual mean chlorophyll a value for that year (for the purposes of this chapter, the four seasons shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, October 1 through December 31), ~~and~~

(c) If there are multiple chlorophyll a or TSI values within a season, the average value for that season shall be calculated from the individual values and the four quarterly values shall be averaged to calculate the annual mean for that calendar year,

(d) For data collected after the effective date of this rule, individual TSI values shall only be calculated when the nitrogen, phosphorus, and chlorophyll data were collected at the same time and location,

(e) If there are insufficient data used to calculate a TSI or an annual mean chlorophyll a value in the planning period, but there are data from at least four consecutive seasons, the mean TSI or mean chlorophyll a value for the consecutive seasons shall be used to assess the waterbody,

(f)~~(c)~~ There must be an annual means from at least four years, when evaluating the charge in TSI overtime pursuant to subsection 62-303.352(3), F.A.C., and

(g) To be assessed under this rule, chlorophyll a data collected after the effective date of this rule shall be corrected chlorophyll a, except for data used to establish historical chlorophyll a levels. Corrected chlorophyll a is the calculated concentration of chlorophyll a remaining after the chlorophyll degradation product, phaeophytin a, has been subtracted from the uncorrected chlorophyll a measurement.

(3) When comparing changes in chlorophyll a or TSI values to historical levels, historical levels shall be based on the lowest five-year average for the period of record. To calculate a five-year average, there must be annual means from at least three years of the five-year period.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Amended _____.

62-303.352 Nutrients in Lakes.

For the purposes of evaluating nutrient enrichment in lakes, TSIs shall be calculated based on the procedures outlined on pages 86 and 87 of the State's 1996 305(b) report, which are incorporated by reference. Lakes or lake segments shall be included on the planning list for nutrients if:

(1) For lakes with a mean color greater than 40 platinum cobalt units, the annual mean TSI for the lake exceeds 60, unless paleolimnological information indicates the lake was naturally greater than 60, or

(2) For lakes with a mean color less than or equal to 40 platinum cobalt units, the annual mean TSI for the lake exceeds 40, unless paleolimnological information indicates the lake was naturally greater than 40, or

(3) For any lake, data indicate that annual mean TSIs have increased over the assessment period, as indicated by a positive slope in the means plotted versus time, or the annual mean TSI has increased by more than 10 units over historical values. When evaluating the slope of mean TSIs over time, the Department shall require at least a 5 unit increase in TSI over the assessment period and use a Mann's one-sided, upper-tail test for trend, as described in Nonparametric Statistical Methods by M. Hollander and D. Wolfe (1999 ed.), pages 376 and 724 (which are incorporated by reference), with a 95% confidence level.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Amended _____.

62-303.353 Nutrients in Estuaries and Open Coastal Waters.

Estuaries, ~~or~~ estuary segments, or open coastal waters shall be included on the planning list for nutrients if their annual mean chlorophyll a for any year is greater than 11 ug/l or if data indicate annual mean chlorophyll a values have increased by more than 50% over historical values for at least two consecutive years.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Amended _____.

62-303.360 Primary Contact and Recreation Use Support.

(1) A Class I, II, or III water shall be placed on the planning list for evaluating primary contact and recreation use support if:

(a) There is a sufficient number of samples from t~~T~~he water segment that do~~es~~ not meet the applicable water quality criteria for bacteriological quality based on the methodology described in Rule 62-303.320, F.A.C., or

(b) The water segment includes a bathing area that was closed by a local health Department or county government for more than one week or more than once during a calendar year based on bacteriological data, or

(c) The water segment includes a bathing area for which a local health Department or county government has issued closures, advisories, or warnings totaling 21 days or more during a calendar year based on bacteriological data, or

(d) The water segment includes a bathing area that was closed or had advisories or warnings for more than 12 weeks during a calendar year based on previous bacteriological data or on derived relationships between bacteria levels and rainfall or flow, or~~.~~

(e) The water segment includes a sampling location that has two or more monthly average values above the monthly average fecal coliform or enterococci criterion during the planning period. To calculate a monthly average value for a sampling location, which shall be calculated as a geometric mean, there shall be at least ten samples collected within that month, with at least one sample from each full week of the month.

(2) When evaluating a water segment for bacteriological quality under subparagraph (1)(a), the criterion used for fecal coliforms shall be that the Most Probable Number (MPN) or Membrane Filter (MF) shall not exceed 400 counts per 100 ml.

(3)~~(2)~~ For data collected after August 1, 2000, the Florida Department of Health (DoH) database shall be the primary source of data used for determining bathing area closures.

(4)~~(3)~~ Advisories, warnings, and closures based on red tides, rip tides, ~~sewage spills,~~ sharks, ~~and medical wastes,~~ hurricanes, or short-term releases ~~other factors not related to chronic discharges~~ of pollutants, such as sewage spills that have been repaired and medical wastes, shall not be included when assessing recreation use support. However, the Department shall note for the record that data were excluded and explain why they were excluded.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Amended _____.

62-303.370 Fish and Shellfish Consumption Use Support.

A Class I, II, or III water shall be placed on the planning list for fish and shellfish consumption if:

(1) There is a sufficient number of samples from the water segment that do~~es~~ not meet the applicable Class II water quality criteria for bacteriological quality based on the methodology described in Rule 62-303.320, F.A.C., or

(2) There is either a limited or no consumption fish consumption advisory, issued by the DoH, or other authorized governmental entity, in effect for the water segment, or

(3) For Class II waters, the water segment includes an area that has been classified ~~approved for shellfish harvesting~~ by the Shellfish Evaluation and Assessment Section (SEAS) ~~Program,~~ in one of the following shellfish harvesting classifications: ~~but which has been downgraded from its initial harvesting classification to a more restrictive classification. Changes in harvesting classification from prohibited to unclassified do not constitute a downgrade in classification.~~

(a) Restricted or conditionally restricted,

(b) Conditionally approved, excluding any areas for which SEAS identified only wildlife as the potential source of bacteriological contamination for the shellfish harvesting area, or

(c) Prohibited, unless the prohibited classification is precautionary and not based on water quality data.

(4) For Class II waters, the water segment includes a sampling location that has a median fecal coliform MPN value that exceeds 14 counts per 100 ml for the planning period. To calculate a median value for a sampling location, there shall be at least 10 samples collected during the planning period.

(5) When evaluating a water segment for bacteriological quality under subsection (1), the criterion used for fecal coliform shall be that the MPN or MF shall not exceed 43 counts per 100 ml.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Amended _____.

62-303.380 Drinking Water Use Support and Protection of Human Health.

(1) A Class I water shall be placed on the planning list for drinking water use support if:

(a) There is a sufficient number of samples from the water segment that does not meet the applicable Class I water quality criteria based on the methodology described in section 62-303.320, or

(b) A public water system demonstrates to the Department that either:

1. Treatment costs to meet applicable drinking water criteria have increased by at least 25% to treat contaminants that exceed Class I criteria or to treat blue-green algae or other nuisance algae in the source water, or

2. The system has changed to an alternative supply because of additional costs that would be required to treat their surface water source.

(c) The water segment includes a sampling location that has two or more monthly average values above the monthly average fecal coliform criterion during the planning period. To calculate a monthly average value for a sampling location, there shall be at least five samples collected within that month, with at least one sample from each full week of the month.

(2)~~(c)~~ When determining increased treatment costs described in paragraph (b), costs due solely to new, more stringent drinking water requirements, inflation, or increases in costs of materials shall not be included.

(3)~~(2)~~ A water shall be placed on the planning list for assessment of the threat to human health if:

(a) For human health-based criteria expressed as maximums, the water segment does not meet the applicable criteria based on the methodology described in Rule 62-303.320, F.A.C., or

(b) For human health-based criteria expressed as annual averages, the annual average concentration for any year of the assessment period exceeds the criteria. To be used to determine whether a water should be assessed further for human-health impacts, data must meet the requirements of subsections (2), (3), (6), and (7) in Rule 62-303.320, F.A.C.

(4) When evaluating a water segment for bacteriological quality under paragraph (1)(a), the criterion used for fecal coliforms shall be that the MPN or MF shall not exceed 400 counts per 100 ml.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Amended _____.

PART III THE VERIFIED LIST

62-303.400 Methodology to Develop the Verified List.

(1) Waters shall be verified as being impaired if they meet the requirements for the planning list in Part II and the additional requirements of Rules 62-303.420-.480, F.A.C. A water body that fails to meet the minimum criteria for surface waters established in Rule 62-302.500, F.A.C.; any of its designated uses, as described in this part; or applicable water quality criteria, as described in this part, shall be determined to be impaired.

(2) Additional data and information collected after the development of the planning list will be considered when assessing waters on the planning list, provided it meets the requirements of this chapter. In cases where additional data are needed for waters on the planning list to meet the data sufficiency requirements for the verified list, it is the Department's goal to collect this additional data as part of its watershed management approach, with the data collected during either the same cycle that the water is initially listed on the planning list (within 1 year) or during the subsequent cycle (six years).

(3) Unless information presented to the Department demonstrates otherwise, data ~~Except for data used to evaluate historical trends in chlorophyll a or TSIs, the Department shall not use data that are~~ more than 7.5 years old at the time the water segment is proposed for listing on the verified list are not representative of current conditions and shall not be used except to evaluate historical trends in chlorophyll a or TSIs. Any determinations by the Department to use data older than 7.5 years shall be documented, and the documentation shall include the basis for the decision.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Amended _____.

62-303.420 ~~Exceedances of~~ Aquatic Life-Based Water Quality Criteria Assessment.

(1) The Department shall reexamine the data used in rule 62-303.320 to determine whether ~~exceedances of~~ water quality criteria are met.

(a) If values exceeding the criteria ~~the exceedances~~ are not due to pollutant discharges ~~and reflect either physical alterations of the water body that cannot be abated~~ or reflect natural background conditions, the water shall not be listed on the verified list. In such cases, the Department shall note for the record why the water was not listed and provide the basis for its determination that the exceedances were not due to pollutant discharges.

(b) If the Department has information suggesting ~~cannot clearly establish~~ that the values not meeting the criterion ~~exceedances~~ are due to natural background conditions, including information about the in-stream concentrations of TN, TP, and BOD relative to comparable reference waters for waterbodies with values below the DO criterion, ~~or physical~~

~~alterations of the water body but the Department believes the exceedances are not due to pollutant discharges,~~ it is the Department's intent to support that conclusion ~~determine whether aquatic life use support is impaired~~ through the use of bioassessment procedures referenced in Rule 62-303.330, F.A.C. The water-body or segment shall not be included on the verified list for the parameter of concern if two or more independent bioassessments are conducted and no failures are reported. To be treated as independent bioassessments, they must be conducted at least two months apart, within the assessed segment downstream of where the samples were measured, and after the samples were measured.

(2) If the water was listed on the planning list and there were insufficient data from the last five years preceding the planning list assessment to meet the data distribution requirements of subsection 303.320(4), F.A.C., and to meet a minimum sample size for verification of twenty samples, additional data will be collected as needed to provide a minimum sample size of twenty. Once these additional data are collected, the Department shall re-evaluate the data using the approach outlined in subsection 62-303.320(1), F.A.C., but using Table 3 ~~2~~, and place waters on the verified list when ~~which provides the number of exceedances that indicate a minimum of a~~ 10% or more of the samples do not meet the applicable criteria, ~~exceedance frequency~~ with a minimum of a 90% confidence level using a binomial distribution. The Department shall limit the analysis to data collected during the five years preceding the planning list assessment and the additional data collected pursuant to this paragraph. For sample sizes greater than 500, the Department shall calculate the number of samples not meeting the criterion that are needed for the given sample size using the binomial distribution.

Table 3~~2~~: Verified List

Minimum number of samples not meeting an applicable water quality criterion ~~measured exceedances~~ needed to put a water on the Verified list with at least 90% confidence ~~that the actual exceedance rate is greater than or equal to ten percent~~.

Sample sizes		Are listed if they have at least this # of samples that do not meet a criterion ~~exceedances~~	Sample sizes		Are listed if they have at least this # of samples that do not meet a criterion ~~exceedances~~
From	To		From	To	
20	25	5	254	262	33
26	32	6	263	270	34
33	40	7	271	279	35
41	47	8	280	288	36
48	55	9	289	297	37
56	63	10	298	306	38
64	71	11	307	315	39
72	79	12	316	324	40
80	88	13	325	333	41
89	96	14	334	343	42
97	104	15	344	352	43
105	113	16	353	361	44
114	121	17	362	370	45
122	130	18	371	379	46
131	138	19	380	388	47
139	147	20	389	397	48
148	156	21	398	406	49
157	164	22	407	415	50
165	173	23	416	424	51
174	182	24	425	434	52
183	191	25	435	443	53
192	199	26	444	452	54
200	208	27	453	461	55
209	217	28	462	470	56
218	226	29	471	479	57
227	235	30	480	489	58
236	244	31	490	498	59
245	253	32	499	500	60

(3) If the water was placed on the planning list based on worst case values used to represent multiple samples taken during a four ~~seven~~ day period, the Department shall evaluate whether the worst case value should be excluded from the analysis pursuant to subsections (4) and (5). If the worst case value should not be used, the Department shall then re-evaluate the data following the methodology in subsection 62-303.420(2), F.A.C., using the more representative worst case value or, if all valid values are below acutely toxic levels, the median value.

(4) If the water was listed on the planning list based on samples that do not meet ~~exceedances of~~ water quality criteria for metals, the metals data shall be excluded if it is ~~validated to~~ determined that ~~whether~~ the quality assurance requirements of subsection 62-303.320(8)~~(7)~~, F.A.C., were not ~~are~~ met or that ~~and whether~~ the sample was not ~~both~~ collected and analyzed using clean techniques, if the use of clean techniques is appropriate. ~~If any data cannot be validated,~~ T~~t~~he Department shall re-evaluate the remaining valid data using the methodology in subsection 62-303.420(2), F.A.C., excluding any data that cannot be validated.

(5) Values that exceed possible physical or chemical measurement constraints (pH greater than 14, for example) or that represent data transcription errors, outliers the Department determines are not valid measures of water quality, water quality criteria exceedances due solely to violations of specific effluent limitations contained in state permits authorizing discharges to surface waters, water quality criteria exceedances within permitted mixing zones for those parameters for which the mixing zones are in effect, and water quality data collected following contaminant spills, discharges due to upsets or bypasses from permitted facilities, or rainfall in excess of the

25-year, 24-hour storm, shall be excluded from the assessment. However, the Department shall note for the record that the data were excluded and explain why they were excluded.

(6) Once the additional data review is completed pursuant to paragraphs (1) through (5), the Department shall re-evaluate the data and shall include waters on the verified list that meet the criteria in subsection 62-303.420(2) or paragraph 62-303.320(6)~~(5)~~(b), F.A.C.

(7) Notwithstanding the requirements of subsection (2), water segments shall also be included on the verified list if, based on representative data collected and analyzed in accordance with Chapter 62-160, F.A.C.:

(a) There are less than twenty samples, but there are five or more samples that do not meet an applicable water quality criterion based on data from at least five temporally independent sampling events, or

(b) Scientifically credible and compelling information regarding the magnitude, frequency, or duration of samples that do not meet an applicable water quality criterion that provides overwhelming evidence of impairment. Any determinations to list waters based on this provision shall be documented, and the documentation shall include the basis for the decision.

(c) For any water chemistry data used to list waters under this paragraph, the Department shall include in the administrative record all of the applicable data quality assessment elements listed in Table 2 of the Department's Guidance Document "Data Quality Assessment Elements for Identification of Impaired Surface Waters" (DEP EAS 01-01, April 2001).

Specific Authority 403.061, 403.067 FS. Law Implemented 403.021(11), 403.062, 403.067 FS. History–New 6-10-02, Amended _____.

62-303.430 Biological Impairment.

(1) All bioassessments used to list a water on the verified list shall be conducted in accordance with Chapter 62-160, F.A.C., including Department-approved Standard Operating Procedures. To be used for placing waters on the verified list, any bioassessments conducted before the adoption of applicable SOPs for such bioassessments as part of Chapter 62-160, F.A.C., shall substantially comply with the subsequent SOPs.

(2) If the water was listed on the planning list based on bioassessment results, the water shall be determined to be biologically impaired if there were two or more failed bioassessments within the five years preceding the planning list assessment. If there were less than two failed bioassessments during the last five years preceding the planning list assessment, the Department will conduct an additional bioassessment. If the previous failed bioassessment was a BioRecon, then an SCI will be conducted. Failure of this additional bioassessment shall constitute verification that the water is biologically impaired.

(3) If the water was listed on the planning list based on other information specified in subsection 62-303.330(4), F.A.C., indicating biological impairment, the Department will conduct a bioassessment in the water segment, conducted in accordance with the methodology in Rule 62-303.330, F.A.C., to verify whether the water is impaired. For streams, the bioassessment shall be an SCI. Failure of this bioassessment shall constitute verification that the water is biologically impaired.

(4) Following verification that a waterbody is biologically impaired, a water shall be included on the verified list for biological impairment if:

(a) There are water quality data reasonably demonstrating the particular pollutant(s) causing the impairment and the concentration of the pollutant(s); and

(b) One of the following demonstrations is made:

1. If there is a numeric criterion for the specified pollutant(s) in Chapter 62-302, F.A.C., but the criterion is met, an identification of the specific factors that reasonably demonstrate why the numeric criterion is not adequate to protect water quality and how the specific pollutant is causing the impairment, or

2. If there is not a numeric criterion for the specified pollutant(s) in Chapter 62-302, F.A.C., an identification of the specific factors that reasonably demonstrate how the particular pollutant(s) are associated with the observed biological effect.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Amended _____.

62-303.440 Toxicity.

~~(1) A water segment shall be verified as impaired due to surface water toxicity in the receiving water body if:~~

~~(a) The water segment was listed on the planning list based on acute toxicity data, or~~

~~(b) The water segment was listed on the planning list based on chronic toxicity data and the impairment is confirmed with a failed bioassessment that was conducted within six months of a failed chronic toxicity test. For streams, the bioassessment shall be an SCI.~~

~~(2) Following verification that a water is impaired due to toxicity, a water shall be included on the verified list if the requirements of subsection 62-303.430(4), F.A.C., are met.~~

~~(3) Toxicity data collected following contaminant spills, discharges due to upsets or bypasses from permitted facilities, or rainfall in excess of the 25-year, 24-hour storm, shall be excluded from the assessment. However, the Department shall note for the record that the data were excluded and explain why they were excluded.~~

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Repealed _____.

62-303.450 Interpretation of Narrative Nutrient Criteria.

(1) A water shall be placed on the verified list for impairment due to nutrients if there are sufficient data from the last five years preceding the planning list assessment, combined with historical data (if needed to establish historical chlorophyll a levels or historical TSIs), to meet the data sufficiency requirements of subsection 62-303.350(2), F.A.C. If there are insufficient data, additional data shall be collected as needed to meet the requirements. Once these additional data are collected, the Department shall determine if there is sufficient information to develop a site-specific threshold that better reflects conditions beyond which an imbalance in flora or fauna occurs in the water segment. If there is sufficient information, the Department shall re-evaluate the data using the site-specific thresholds. If there is insufficient information, the Department shall re-evaluate the data using the thresholds provided in Rules 62-303.351-.353, F.A.C., for streams, lakes, and estuaries, respectively, or alternative, site-specific thresholds that more accurately reflect conditions beyond which an imbalance in flora or fauna occurs in the water segment. In any case, the Department shall limit its analysis to the use of data collected during the five years preceding the planning list assessment and the additional data collected in the second phase. If alternative thresholds are used for the analysis, the Department shall provide the thresholds for the record and document how the alternative threshold better represents conditions beyond which an imbalance in flora or fauna is expected to occur.

(2) If the water was listed on the planning list for nutrient enrichment based on other information indicating an imbalance in flora or fauna, as provided in subsection 62-303.350(1), F.A.C., the Department shall verify the imbalance before placing the water on the verified list for impairment due to nutrients and shall provide documentation supporting the imbalance in flora or fauna.

(3) The thresholds for nutrient impairment used under this section are not required to be used during development of wasteload allocations or TMDLs.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Amended _____.

62-303.460 Primary Contact and Recreation Use Support.

(1) The Department shall review the data used by the DoH as the basis for bathing area closures, advisories or warnings and verify that the values exceeded the applicable DoH thresholds and the data meet the requirements of Chapter 62-160, F.A.C. If the segment is listed on the planning list based on bathing area closures, advisories, or warnings issued by a local health department or county government, closures, advisories, or warnings based on red tides, rip tides, sewer line breaks, sharks, medical wastes, hurricanes, or other factors not related to chronic discharges of pollutants shall not be included when verifying primary contact and recreation use support. The Department shall then re-evaluate the remaining data using the methodology in paragraph 62-303.360(1)(c), F.A.C. Water segments that meet the criteria in paragraph 62-303.360(1)(c), F.A.C., shall be included on the verified list.

(2) If the water segment was listed on the planning list due to samples that do not meet ~~exceedances of~~ water quality criteria for bacteriological quality, the Department shall, to the extent practical, evaluate the source of bacteriological contamination and shall verify that the impairment is due to chronic discharges of human-induced bacteriological pollutants before listing the water segment on the verified list. The Department shall take into account the proximity of municipal stormwater outfalls, septic tanks, and domestic wastewater facilities when evaluating potential sources of bacteriological pollutants. For water segments that contain municipal stormwater outfalls, the impairment documented for the segment shall be presumed to be due, at least in part, to chronic discharges of bacteriological pollutants. The Department shall then re-evaluate the data using the methodology in subsection 62-303.320(1), F.A.C., excluding any values that are elevated solely due to wildlife, or for enterococci in coastal recreational waters, adjusting the values based on the human health-related risk factors for wildlife-based enterococci upon meeting the relevant requirements of 40 CFR 131.41(c) (2).

(3) Water segments shall be included on the verified list if:

(a) The number of samples that do not meet the applicable bacteriological water quality criteria that are not stated as monthly averages ~~they~~ meet the requirements in subsection 62-303.420(6), F.A.C., or

(b) There are two or more exceedances of a bacteriological water quality criterion expressed as a monthly average during a calendar year or more than four exceedances of a monthly average criterion over the verified period.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Amended _____.

62-303.470 Fish and Shellfish Consumption Use Support.

(1) In order to be used under this part, the Department shall review the data used by the DoH as the basis for fish consumption advisories and determine whether it meets the following requirements:

(a) The advisory is based on the statistical evaluation of fish tissue data from at least twelve fish collected from the specific water segment or water body to be listed,

(b) ~~Starting one year from the effective date of this rule,~~ the data are collected in accordance with DEP SOP FS6000 (General Biological Tissue Sampling) and FS6200 (Finfish Tissue Sampling), which are incorporated by reference, the sampling entity has established Data Quality Objectives (DQOs) for the sampling, and the data meet the DQOs~~. Data~~

~~collected before one year from the effective date of this rule shall substantially comply with the listed SOPs and any subsequently developed DQOs~~, and~~.~~

(c) There are sufficient data or other information from within the last 7.5 years that would ~~to~~ support the continuation of the advisory. The Department shall document any decision to list waters with advisories older that 7.5 years, including the data supporting the continuation of the advisory or information demonstrating that older data are representative of current conditions.

~~(2) If the segment is listed on the planning list based on fish consumption advisories, waters with fish consumption advisories for pollutants that are no longer legally allowed to be used or discharged shall not be placed on the verified list because the TMDL will be zero for the pollutant.~~

(2)~~(3)~~ Waters with advisories determined to meet the requirements of this section or waters where scientifically credible and compelling information meeting the requirements of Chapter 62-160, F.A.C., indicates the applicable human health-based water quality criteria are not met shall be listed on the verified list. Any determinations to list waters based on this provision shall be documented, and the documentation shall include the basis for the decision.

(3) Class II waters shall be included on the verified list for coliform impairment if, following review of the available data as described in subsection 62-303.460(2), F.A.C.

(a) The number of samples that do not meet the applicable single-sample criteria meet the requirement in subsection 62-303.420(6), F.A.C., or

(b) The water segment includes a sampling location that has a median fecal coliform MPN value that exceeds 14 counts per 100 ml for the verified period. To calculate a median value for a sampling location, there shall be at least 20 samples collected during the verified period.

(4) Waters that qualify for placement on the planning list based on shellfish harvesting classification information shall be verified as impaired for fecal coliforms.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Amended _____.

62-303.480 Drinking Water Use Support and Protection of Human Health.

If the water segment was listed on the planning list due to exceedances of a human health-based water quality criterion and there were insufficient data from the last five years preceding the planning list assessment to meet the data sufficiency requirements of Section 303.320(4), F.S., additional data will be collected as needed to meet the requirements. Once these additional data are collected, the Department shall re-evaluate the data using the methodology in subsection 62-303.380(2), F.A.C., and limit the analysis to data collected during the five years preceding the planning list assessment, ~~and~~ the additional data collected pursuant to this paragraph (not to include data older than 7.5 years), and data older than 7.5 years if it is demonstrated to be representative of current conditions. Any determinations to use older data shall be documented by the Department, and the documentation shall provide the basis for the decision. For this analysis, the Department shall exclude any data meeting the requirements of subsection 62-303.420(5), F.A.C. The following water segments shall be listed on the verified list:

(1) For human health-based criteria expressed as maximums, water segments that meet the requirements in subsection 62-303.420(7)~~(6)~~, F.A.C., or

(2) For human health-based criteria expressed as annual averages, water segments that have an annual average that exceeds the applicable criterion.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Amended _____.

62-303.500 Prioritization.

(1) When establishing the TMDL development schedule for water segments on the verified list of impaired waters, the Department shall prioritize impaired water segments according to the severity of the impairment and the designated uses of the segment, taking into account the most serious water quality problems; most valuable and threatened resources; and risk to human health and aquatic life. Impaired waters shall be prioritized as high, medium, or low priority.

(2) The following waters shall be designated high priority:

(a) Water segments where the impairment poses a threat to potable water supplies or to human health.

(b) Water segments where the impairment is due to a pollutant regulated by the CWA and the pollutant has contributed to the decline or extirpation of a federally listed threatened or endangered species, as indicated in the Federal Register listing the species.

(3) The following waters shall be designated low priority:

(a) Water segments that are listed before 2010 due to fish consumption advisories for mercury (due to the current insufficient understanding of mercury cycling in the environment).

(b) Man-made canals, urban drainage ditches, and other artificial water segments that are listed only due to exceedances of the dissolved oxygen criteria.

(c) Water segments that were not on a planning list of impaired waters, but which were identified as impaired during the second phase of the watershed management approach and were included in the verified list, unless the segment meets the criteria in subsection (2) for high priority.

(4) All segments not designated high or low priority shall be medium priority and shall be prioritized based on the following factors:

(a) The presence of Outstanding Florida Waters.

(b) The presence of water segments that fail to meet more than one designated use.

(c) The presence of water segments ~~that exceed an applicable water quality criterion or alternative threshold~~ with ~~a~~ greater than twenty-five percent of the samples not meeting an applicable water quality criterion or alternative threshold ~~exceedance frequency~~ with a minimum of a 90 percent confidence level.

(d) The presence of water segments that exceed more than one applicable water quality criteria.

(e) Administrative needs of the TMDL program, including meeting a TMDL development schedule agreed to with EPA, basin priorities related to following the Department's watershed management approach, and the number of administratively continued permits in the basin.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Amended_____.

62-303.700 Listing Cycle.

~~(1)~~ The Department shall, to the extent practical, develop basin-specific verified lists of impaired waters as part of its watershed management approach, which rotates through the State's surface water basins on a five-year cycle. At the end of the first phase of the cycle, which is designed to develop a preliminary assessment of the basin, the Department shall update the planning list for the basin and shall include the planning list in the status report for the basin, which will be noticed to interested parties in the basin. If the specific pollutant causing the impairment in a particular water segment is not known at the time the planning list is prepared, the list shall provide the basis for including the water segment on the planning list. In these cases, the pollutant and concentration causing the impairment shall be identified before the water segment is included on the verified list to be adopted by Secretarial Order. During the second phase of the cycle, which is designed to collect additional data on waters in the basin, interested parties shall be provided the opportunity to work with the Department to collect additional water quality data. Alternatively, interested parties may develop proposed water pollution control mechanisms that may affect the final verified list adopted by the Secretary at the end of the second phase. To ensure that data or information will be considered in the preliminary basin assessment, it must be submitted to the Department or entered into FLASTORET or, if applicable, the DoH database no later than September 30 during the year of the assessment.

~~(2) Within a year of the effective date of this rule, the Department shall also prepare a planning list for the entire state.~~

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Amended_____.

62-303.710 Format of Verified List and Verified List Approval.

(1) The Department shall follow the methodology established in this chapter to develop basin-specific verified lists of impaired water segments. The verified list shall specify the pollutant or pollutants causing the impairment and the concentration of the pollutant(s) causing the impairment. If the water segment is listed based on numeric water quality criteria ~~exceedances~~, then the verified list shall provide the applicable criteria. However, if the listing is based on narrative or biological criteria, or impairment of other designated uses, and the water quality criteria are met, the list shall specify the concentration of the pollutant relative to the water quality criteria and explain why the numerical criterion is not adequate.

(2) Segments impaired for pollutants that are no longer legally allowed to be used or discharged shall not be placed on the verified list because the TMDL will be zero for the pollutant.

(3)~~(2)~~ For waters impaired for ~~with exceedances of the~~ dissolved oxygen ~~criteria~~, the Department shall identify the pollutants causing or contributing to the impairment ~~exceedances~~ and list both the pollutant and dissolved oxygen on the verified list.

(4)~~(3)~~ For waters impaired by nutrients, the Department shall identify whether nitrogen or phosphorus, or both, are the limiting nutrients for the verified period, and specify the limiting nutrient(s) in the verified list.

(5)~~(4)~~ The verified list shall also include the priority and the schedule for TMDL development established for the water segment, as required by federal regulations.

(6)~~(5)~~ The verified list shall also note any waters that are being removed from the current planning list and any previous verified list for the basin.

(7)~~(6)~~ The verified basin-specific 303(d) list shall be approved by order of the Secretary.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Amended_____.

PART IV MISCELLANEOUS PROVISIONS

62-303.720 Delisting Procedure.

(1) Waters on planning lists developed under this Chapter that are verified to not be impaired during development of the verified list shall be removed from the State's planning list. Once a water segment is verified to not be impaired pursuant to Part III of this chapter, the data used to place the water on the planning list shall not be the sole basis for listing that water segment on future planning lists.

(2) Water segments shall be removed from the State's verified list only after completion of a TMDL for all pollutants causing impairment of the segment or upon demonstration that the water meets the water quality standard that was previously established as not being met.

(a) For waters listed due to failure to meet aquatic life use support based on water quality criteria ~~exceedances~~ or due to threats to human health based on ~~exceedances of~~ single sample water quality criteria, the water shall be delisted when:

1. The number of samples that do not meet ~~exceedances of~~ an applicable water quality criterion due to pollutant discharges is less than or equal to the number listed in Table 4 ~~3~~ for the given sample size, with a minimum sample size of 30. Waters shall be delisted when ~~This table provides the number of exceedances that indicate a maximum of a~~ 10% or less of the samples do not meet the applicable criterion ~~exceedance frequency~~ with a minimum of a 90% confidence level using a binomial distribution, or

2. Following implementation of pollution control activities that are expected to be sufficient to result in attainment of applicable water quality standards, evaluation of new data indicates the water no longer meets the criteria for listing established in Rule 62-303.420, F.A.C., or

3. Following demonstration that the water was inappropriately listed due to flaws in the original analysis, evaluation of available data indicates the water does not meet the criteria for listing established in Rule 62-303.420, F.A.C. New data evaluated under subparagraph 62-303.720(2)(a)1., F.A.C., must meet the following requirements:

a. They must include samples collected during similar conditions (same seasons and general flow conditions) that the data previously used to determine impairment were collected, with no more than 50% of the samples collected in any one quarter,

b. The sample size must be a minimum of 30 samples, and

c. The data must meet the requirements of subsections 62-303.320(4), (6) and (7), F.A.C.

(b) For waters listed due to failure to meet aquatic life use support based on biological data, the water shall be delisted when the segment passes two independent follow-up bioassessments and there have been no failed bioassessments for at least one year. The follow-up tests must meet the following requirements:

1. For streams, the new data may be two BioRecons or any combination of BioRecons and SCIs.

2. The bioassessments must be conducted during similar conditions (same seasons and general flow conditions) under which the previous bioassessments used to determine impairment were collected.

3. The data must meet the requirements of subsections 62-303.330(1) and (2), F.A.C.

~~(c) For waters listed due to failure to meet aquatic life use support based on toxicity data, the water shall be delisted when the segment passes two independent follow-up toxicity tests and there have been no failed toxicity tests for at least one year. The follow-up tests must meet the following requirements:~~

~~1. The tests must be conducted using the same test protocols and during similar conditions (same seasons and general flow conditions) under which the previous test used to determine impairment were collected.~~

~~2. The data must meet the requirements of subsection 62-303.340(1), F.A.C., and the time requirements of subsection 62-303.340(2) or (3), F.A.C.~~

(c)~~(d)~~ For waters listed due to fish consumption advisories, the water shall be delisted following the lifting of the advisory or when data complying with paragraphs 62-303.470(1)(a) and (b), F.A.C., demonstrate that the continuation of the advisory is no longer appropriate.

(d)~~(e)~~ For waters listed due to their ~~changes in~~ shellfish bed management classification, the water shall be delisted upon reclassification of the shellfish harvesting area to approved, or for conditionally approved areas, when the only source identified by SEAS for the harvesting area is wildlife ~~its original or higher harvesting classification. Reclassification of a water from prohibited to unclassified does not constitute a higher classification~~.

(e)~~(f)~~ For waters listed due to bathing area closure or advisory data, the water shall be delisted if the bathing area does not meet the listing thresholds in subsection 62-303.360(1), F.A.C., for five consecutive years.

(f)~~(g)~~ For waters listed based on impacts to potable water supplies, the water shall be delisted when applicable water quality criteria are met as defined in paragraph 62-303.380(1)(a), F.A.C., and when the causes resulting in higher treatment costs have been ameliorated.

(g) For waters listed based on a monthly average or median water quality criteria for bacteriological quality, the water shall be delisted when the criteria are met for three consecutive years. For waters listed based on a monthly average criterion, there shall be sufficient data available to calculate monthly average values for at least the same seasons in which the exceedances occurred.

(h) For waters listed based on ~~exceedance of~~ a human health-based annual average criterion, the water shall be delisted when the annual average concentration is less than the criterion for three consecutive years.

(i) For waters listed based on nutrient impairment, the water shall be delisted if it does not meet the listing thresholds in Rule 62-303.450, F.A.C., for three consecutive years.

(j) For any listed water, the water shall be delisted if, following a change in approved analytical procedures, criteria, or water quality standards, evaluation of available data indicates the water no longer meets the applicable criteria for listing.

(k) For waters listed based on paragraph 62-303.420(7)(b) or subsection 62-303.470(3), F.A.C., the water shall be delisted if the Department determines the water is no longer impaired, based on scientifically credible and compelling information comparable in quantity and quality to the information used to

make the initial listing decision. Any determinations to delist waters based on this provision shall be documented, and the documentation shall include the basis for the decision.

Table 4 ~~3~~. Delisting

Maximum number of samples that do not meet an applicable water quality criterion ~~measured exceedances~~ allowable to DELIST with at least 90% confidence ~~that the actual exceedance rate is less than ten percent~~.		
Sample sizes		Maximum # of samples not meeting a criterion ~~exceedances~~ allowable for delisting
From	To	
30	37	0
38	51	1
52	64	2
65	77	3
78	90	4
91	103	5
104	115	6
116	127	7
128	139	8
140	151	9
152	163	10
164	174	11
175	186	12
187	198	13
199	209	14
210	221	15
222	232	16
233	244	17
245	255	18
256	266	19
267	278	20

Sample sizes		Maximum # of samples not meeting a criterion ~~exceedances~~ allowable for delisting
From	To	
279	289	21
290	300	22
301	311	23
312	323	24
324	334	25
335	345	26
346	356	27
357	367	28
368	378	29
379	389	30
390	401	31
402	412	32
413	423	33
424	434	34
435	445	35
446	456	36
457	467	37
468	478	38
479	489	39
490	500	40

(3) Any delisting of waters from the verified list shall be approved by order of the Secretary at such time as the requirements of this section are met.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Jerry Brooks, Deputy Director Of Water Resource Management

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Mike Sole, Deputy Secretary of Regulatory Programs

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 25, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 1, 2005

DEPARTMENT OF HEALTH

Board of Acupuncture

RULE NO.: RULE TITLE:
64B1-9.007 Advertising

PURPOSE AND EFFECT: To give notice of permitted methods of advertising, and to address advertising violations.

SUMMARY: Provides for permitted methods of advertising and addresses advertising violations.

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 regulatory cost alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 456.072, 457.104, 457.109 FS.

LAW IMPLEMENTED: 456.072(1)(a), (m), 457.109(1)(d), (e), (k) 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: Pamela E. King, Executive Director, Board of Acupuncture, 4052 Bald Cypress Way, Bin C06, Tallahassee, Florida 32399

THE FULL TEXT OF THE PROPOSED RULE IS:

64B1-9.007 Advertising.

(1) Advertising by persons licensed or certified under Chapter 457, Florida Statutes, is permitted so long as the information disseminated is in no way false, deceptive, or misleading and so long as the information does not claim that acupuncture is useful in curing any disease. Any advertisement or advertising shall be deemed false, deceptive, or misleading if it:

(a) Contains a misrepresentation of facts; or

(b) Makes only a partial disclosure of relevant facts; or

(c) Creates false or unjustified expectations of beneficial assistance; or

(d) Contains any representations or claims, as to which the person making the claims does not intend to perform; or

(e) Contains any other representation, statement, or claim which misleads or deceives; or

(f) Fails to conspicuously identify the licensee by name in the advertisement.

(2) As used in the rules of this board, the terms "advertisement" and "advertising" shall mean any statements, oral or written, disseminated to or before the public or any portion thereof, with the intent of furthering the purpose, either directly or indirectly, of selling professional services, or offering to perform professional services, or inducing members of the public to enter into any obligation relating to such professional services.

(3) It shall not be considered false, deceptive, or misleading for any persons licensed or certified under chapter 457, Florida Statutes, to use the following initials or terms:

(a) L.Ac.;

(b) R.Ac.;

(c) A.P.;

(d) D.O.M.;

(e) Licensed Acupuncturist;

(f) Registered Acupuncturist;

(g) Acupuncture Physician; and

(h) Doctor of Oriental Medicine

(4) Any licensee who advertises through an agent or through a referral service shall be held responsible for the content of such advertising and shall ensure that the advertising complies with this Rule and Chapter 457, Florida Statutes.

Specific Authority 456.072, 457.104, 457.109 FS. Law Implemented 456.072(1)(a), (m), 457.109(1)(d), (e), (k) FS. History–New .

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Acupuncture

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 23, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 7, 2006

DEPARTMENT OF HEALTH

Board of Dentistry

RULE NO.: RULE TITLE:
64B5-13.0046 Citation Authority

PURPOSE AND EFFECT: The Board proposes the rule amendment to update the rule and clarify citation authority for violations and penalties.

SUMMARY: The proposed rule amendment is to update the rule and clarify citation authority for violations and penalties.

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: 456.077, 466.004(4) FS.

LAW IMPLEMENTED: 456.072(3)(a), 456.077 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 Dentistry/MQA, 4052 Bald Cypress Way, Bin #C08, Tallahassee, Florida 32399-3258

THE FULL TEXT OF THE PROPOSED RULE IS:

64B5-13.0046 Citation Authority.

(1) Pursuant to Section 456.077, F.S. (2000), the Board sets forth below those violations for which there is no substantial threat to the public health, safety, and welfare; or, if there is a substantial threat to the public health, safety, and welfare, such potential for harm has been removed prior to the issuance of the citation and the appropriate penalties for specific violations. In addition to the penalty, the costs of the investigation and prosecution shall be assessed pursuant to Section 456.072(2), F.S. ~~as determined by rules of the Department of Health. The form to be used for the issuance of the citation shall be set forth in rules of the Department of Health.~~ The following subsections indicate those violations which may be disposed by citation, with the accompanying penalty.

(2) Violation of Section 466.026(1)(a), and/or 466.028(1)(aa), F.S., by practicing for a period of 2-6 months without an active license. The penalty for a dentist shall be a $1,000.00 fine to be in addition to any reactivation fee, and completion within 6 months of 4 hours of continuing education in risk management. Said continuing education to be in compliance with Rule Chapter 64B-12, F.A.C., and in addition

to any continuing education required for biennial renewal of licensure. The penalty for dental hygienist shall be a $250.00 administrative fine.

(3) a first time violation of Sections 466.028(1)(i) and/or 466.028(1)(a)~~(aa)~~, F.S., and/or subsection 64B5-12.013(1) or (2), F.A.C., by renewing a license without completing the required continuing education credits. The penalty for a dentist shall be an administrative fine of $100.00 ~~$150.00~~ per hour not completed as required~~,~~ and completion of all continuing education hours that were not completed~~, and completion of one additional hour of continuing education for each hour not completed or completed late~~. Said continuing education shall be in compliance with Rule Chapter 64B5-12, F.A.C., and shall not count toward any continuing education required for the bienneum in which it is completed. ~~and shall be in addition to and not count toward any continuing education required for the biennial renewal of licensure.~~ Furthermore, the licensee shall submit proof of completion of all required continuing education under this rule to the Board office no later than 12 months from the date of the citation. The penalty for a dental hygienist shall be an administrative fine of $25.00 ~~$35.00~~ per hour not completed as required, and completion of all continuing education hours that were not completed~~, and completion of one additional hour of continuing education for each hour not completed or completed late~~. Said continuing education shall be in compliance with Rule Chapter 64B5-12, F.A.C., and shall not count toward any continuing education required for the biennium in which it is completed ~~and shall be in addition to and not count toward any continuing education required for biennial renewal of licensure~~. Furthermore, the licensee shall submit proof of completion of all required continuing education under this rule to the Board office no later than 12 months from the date of citation.

(4)(a) though (j) No change.

(5)(a) through (c) No change.

(d) Violation of subsection 64B5-4.003(5), F.A.C., by providing an advertisement for free or discounted services which does not comply with the requirements of Section 456.062 ~~455.664~~, F.S., and/or clearly identify the dates that free, discounted or reduced free services will be available.

(6)(a) through (c) No change.

(7) The penalty for a violation of Rule Chapter 64B5-4, F.A.C., as enumerated above is ~~are~~ as follows; first offense will result in $250.00 fine ~~and reprimand~~; second offense will result in a $1,000.00 fine, reprimand and four (4) hour continuing education in ethics. Violations occurring subsequent to the second offense of the same rule or statute shall require the procedures of Section 456.073, F.S., to be followed.

(8) No change.

(9) Violation of subsection 466.028(1)(ll)~~(aa)~~, F.S., by violation of Section 456.035(1), F.S., which requires licensees to notify the Board of change of address. Failure to comply will result in a $250.00 fine.

(10) through (11) No change.

(12) Except for violations of Rule Chapter 64B5-4, F.A.C., as stated above, t~~T~~he procedures described herein apply only for an initial offense of the alleged violation. Subsequent violation(s) of the same rule or statute shall require the procedures of Section 456.073, F.S., to be followed. In addition, should an initial offense for which a citation could be issued occur in conjunction with violations not described herein, then the procedures of Section 456.073, F.S., shall apply.

(13) Citations are to be served upon the subject either by personal service or by certified mail, restricted delivery ~~return receipt~~, to the last known business or residence address of the subject.

(14) 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 the " Board of Dentistry – Citations" and sent to the Department of Health in Tallahassee. A copy of the citation shall accompany the payment of the fine or costs.

(15) If the subject ~~licensee~~ rejects the Department of Health's offer of the citation ~~or the licensee fails to comply with the penalty~~ then the procedures of Section 456.073, F.S., shall apply to the original charge. In cases where the subject ~~licensee~~ fails to comply with the penalty, ~~both the original charge and~~ a complaint for violation fo Section 456.072(1)(q), F.S., shall be filed and investigated. ~~A charge of violating Section 466.027(1)(i), F.S., shall be brought before the probable cause panel pursuant to Section 456.073, F.S.~~

~~(16) The Department of Health shall, at the end of each calendar quarter, submit a report to the Board of the citations issued which report shall contain the name of the subject, the violation, fine imposed, whether the subject complied with the citation upon it becoming a final order, and the number of subjects who chose to follow the procedures of Section 456.073, F.S.~~

Specific Authority 456.077, 466.004 FS. Law Implemented 456.072(3)(a), 456.077 FS. History–New 12-24-91, Formerly 21G-13.0046, Amended 11-22-93, Formerly 61F5-13.0046, 59Q-13.0046, Amended 7-19-01, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Dentistry

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 21, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 26, 2006

DEPARTMENT OF HEALTH

Board of Dentistry

RULE NO.: RULE TITLE:
64B5-17.006 Work Order Forms

PURPOSE AND EFFECT: The Board proposes the rule amendment to update the information necessary for completion of approved work order forms.

SUMMARY: The proposed rule amendment will update the information necessary for completion of approved work order forms.

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: 466.021 FS.

LAW IMPLEMENTED: 466.021 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 Dentistry/MQA, 4052 Bald Cypress Way, Bin #C08, Tallahassee, Florida 32399-3258

THE FULL TEXT OF THE PROPOSED RULE IS:

64B5-17.006 Work Order Forms.

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

(f) Signature of the licensed dentist, which may be an electronic signature.

~~(2) Work order forms must be sequentially numbered duplicate forms.~~

~~(3) Work order forms are non-transferrable.~~

(2)~~(4)~~ Copies of work order forms must be maintained, either on paper or stored electronically in an encrypted data base, by the dentist for a period of four (4) ~~two (2)~~ years.

Specific Authority 466.021 FS. Law Implemented 466.021 FS. History–New 12-21-99, Amended 3-23-06, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Dentistry

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 21, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 26, 2006

DEPARTMENT OF HEALTH

Council of Licensed Midwifery

RULE NO.: RULE TITLE:
64B24-8.002 Disciplinary Action and Guidelines

PURPOSE AND EFFECT: To update the rule.

SUMMARY: This rule sets forth the guidelines for disciplining midwife licensees for violations of Sections 467.203(1) and 456.072(1), Florida Statutes. It removes outdated provisions.

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: 456.004(5), 467.005 FS.

LAW IMPLEMENTED: 456.079, 467.203 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: Pamela King, Executive Director, Council of Licensed Midwifery, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3256

THE FULL TEXT OF THE PROPOSED RULE IS:

64B24-8.002 Disciplinary Action and Guidelines.

(1) The department shall take into consideration the following factors in determining the appropriate disciplinary action to be imposed:

~~(a) The severity of the offense;~~

(a)~~(b)~~ The danger to the public;

(b)~~(c)~~ The number of repetitions of offenses;

(c)~~(d)~~ The length of time since date of violation;

(d)~~(e)~~ The number of disciplinary actions taken against the licensee;

(e)~~(f)~~ The length of time licensee has practiced;

(f)~~(g)~~ The actual damage, physical or otherwise, to the patient;

(g)~~(h)~~ The deterrent effect of the penalty imposed;

(h)~~(i)~~ Any efforts for rehabilitation;

(i)~~(j)~~ Any other mitigating or aggravating circumstances.

(2) Except as provided in (1), the department shall discipline violations within the following specified range of penalty guidelines inclusive of the lessor and intermediate penalties set forth in Section 456.072(2), F.S., which fall within the identified range. ~~The following acts shall be grounds for disciplinary action as set forth in this rule:~~ For all persons subject to this rule, conditions of probation including having to work under a preceptor may be required during the period of probation, which is either the maximum penalty imposed or

follows a period of suspension of license. For applicants, all offenses listed herein are sufficient for refusal to certify an application for licensure. In addition to any other discipline imposed, the department shall assess the actual costs related to the investigation and prosecution of a case. In addition to or in lieu of any guideline penalties provided herein, if the violation is for fraud or making a false or fraudulent representation, the department shall impose a fine of $10,000 per count or offense.

(a) Section 467.203(1)(a) or 456.072(1)(h), F.S.: Procuring, attempting to procure, or renewing a license to practice midwifery by bribery, by fraudulent misrepresentation, or through an error of the department.

Obtain license by bribery – from a minimum fine of $500 and/or up to two years of probation to a maximum of revocation. For a subsequent offense, revocation;

Obtain license by fraudulent misrepresentation – from six months probation and a fine of $10,000 to a maximum of revocation and a fine of $10,000. For a subsequent offense, a fine of $10,000 and revocation;

Obtain license by Department error – from a minimum letter of concern and/or a fine of $250, up to a maximum of suspension of license for one year, followed by two years of probation, and a fine of $1,000. For a subsequent offense, from a minimum fine of $5,000 to revocation of license;

(b) Section 467.203(1)(b) or 456.072(1)(f), F.S.: Having a license to practice midwifery revoked, suspended, or otherwise acted against, including being denied licensure, by the licensing authority of another state, territory, or country – action consistent with the disciplinary guidelines for the offense that would have been taken had the violation occurred in Florida with consideration of the penalty imposed by the other jurisdiction. For a subsequent offense, action consistent with the disciplinary guidelines for a repeat offense had the violation occurred in Florida with consideration of the penalty imposed by the other jurisdiction.

(c) Section 467.203(1)(c) or 456.072(1)(c), F.S.: Being convicted or found guilty, regardless of adjudication, in any jurisdiction of a crime which directly relates to the practice of midwifery or to the ability to practice midwifery. A plea of nolo contendere shall be considered a conviction for purposes of this provision – misdemeanor: from a minimum fine of $600 and six months probation, up to a fine of $3,000 and one year's suspension with conditions followed by two years probation; felony: from a minimum of a fine of $1,500 and two years probation, up to a fine of $10,000 and revocation. After the first offense, from a minimum of one year of probation, up to a maximum fine of $10,000 and revocation of license;

(d) Section 467.203(1)(d) or 456.072(1)(a) (g) or (l), F.S.: Making or filing a false report or record, which the licensee knows to be false; intentionally or negligently failing to file a report or record required by State or federal law; or willfully impeding or obstructing such filing or inducing another to do so. Such reports or records shall include only those which are signed in the midwife's capacity as a licensed midwife.

Negligent filing of false report – from a minimum fine of $500, up to a maximum of one year probation and a fine of $2,500. For a second offense, a minimum fine of $1,000 and a reprimand to a maximum fine of $3,000 and two years suspension. After the second offense, up to a maximum fine of $5,000 and/or revocation;

Willful filing of false report, impeding, or inducing another to file false report – from a minimum fine of $2,000 and/or suspension of license for three months, followed by six months of probation, up to a maximum of revocation of license. After the first offense, up to a maximum fine of $10,000 and/or revocation.

(e) Section 467.203(1)(e) or 456.072(1)(m), F.S.: Advertising falsely, misleadingly, or deceptively – from a minimum fine of $500 and a letter of concern up to a maximum fine of $10,000 and/or three months suspension of license. For a subsequent offense, a fine of up to $10,000 and/or one year suspension to the maximum $10,000 fine and revocation;

(f) Section 467.203(1)(f), F.S.: Engaging in unprofessional conduct, which includes, but is not limited to, any departure from, or the failure to conform to, the standards of practice of midwifery as established by the department, in which case actual injury need not be established – from a reprimand and minimum fine of $250 to suspension of license for up to three years and/or a fine of $3,000. For a second offense, from two years probation and a minimum fine of $500 to revocation and/or a fine of up to $10,000. After the second offense, revocation and a fine of up to $10,000.

(g) Section 467.203(1)(g) or 456.072(1)(y), F.S.: Being unable to practice midwifery with reasonable skill and safety to patients by reason of illness; drunkenness; or use of drugs, narcotics, chemicals, or other materials or as a result of any mental or physical condition. A midwife affected under this paragraph shall, at reasonable intervals, be afforded an opportunity to demonstrate the ability to resume the competent practice of midwifery with reasonable skill and safety – from three years of probation and referral for a PRN evaluation, up to a maximum of suspension of license for one year, followed by up to five years of probation. For a subsequent offense, from a fine of up to $1,500, referral for a PRN evaluation, and two years of probation to a maximum fine of $5,000 and/or revocation;

(h) Section 467.203(1)(h) or 456.072(1)(i), F.S.: Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department – from a minimum letter of concern and/or a fine of $250, up to a maximum fine of $750 and/or six months of probation. After the first offense, a minimum of six months of probation and a fine of $800 to a maximum fine of $5,000 and/or revocation;

(i) Section 467.203(1)(i) or 456.072(1)(q), F.S.: Violating ~~Willfully or repeatedly violating~~ any ~~provision of this chapter, any rule of the department, or any~~ lawful order of the department previously entered in a disciplinary proceeding or failing to comply with a lawfully issued subpoena of the department – from a minimum fine of $500 and a letter of concern, up to a maximum fine of $10,000 and/or revocation. For a subsequent offense, from a minimum fine of $1,500 and/or two years of probation up to a maximum fine of $10,000 and/or revocation of license;

(j) Section 467.203(1)(j) or 456.072(1)(b) or (cc), F.S.: Violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto – from a minimum fine of $500 and/or a letter of concern up to a maximum fine of $5,000 and/or suspension of license for two years followed by two years of probation. For a second offense, from a minimum fine of $1,500 and/or two years of probation up to a maximum fine of $7,500 and/or revocation of license. After the second offense, from a minimum fine of $3,000 and/or six months of suspension followed by one year of probation up to a maximum fine of $10,000 and/or revocation;

~~(k)~~(j) Section 456.072(1)(j) or (p), F.S.: Knowingly or willfully allowing a midwifery student to practice midwifery without a preceptor present, except in an emergency or aiding, assisting, procuring, employing, or advising any unlicensed person or entity to practice a profession contrary to the chapter regulating the profession or the applicable rules – from a minimum fine of $750 and/or six months of probation, up to a maximum fine of $2,500 and suspension of license for three years, followed by up to three years of probation. For a subsequent offense, from a minimum fine of $1,000 and/or suspension of license for one year followed by two years of probation up to a maximum fine of $7,500 and/or revocation;

~~(k) Using the title "midwife", "licensed midwife" or any other title or designation which implies that a person is licensed to practice midwifery, unless such a person is duly licensed as provided in this chapter or in Chapter 464, Florida Statutes.~~

~~(l) Knowingly concealing information relating to the enforcement of this chapter or rules adopted pursuant thereto.~~

(l) Section 456.072(1)(k), F.S.: Failing to perform any statutory or legal obligation placed upon a licensee – from a minimum fine of $250 and a letter of concern, up to a maximum fine of $3,000 and/or up to two years of suspension followed by two years of probation;

(m) Section 456.072(1)(o), F.S.: 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 – from a minimum fine of $500 and/or one year of probation, up to a maximum of suspension of license for three years followed by probation and a fine of $3,000. For a subsequent offense, up to a maximum fine of $10,000 and/or revocation;

(n) Section 456.072(1)(r), F.S.: Improperly interfering with an investigation or inspection authorized by statute, or with any disciplinary proceeding – from a minimum fine of $500 and/or one year of probation up to a maximum fine of $3,000 and/or up to suspension for two years followed by two years probation. For a subsequent offense, a minimum fine of $1,000 up to a maximum fine of $10,000 and/or revocation;

(o) Section 456.072(1)(u), F.S.: Engaging or attempting to engage in sexual misconduct – from a reprimand and/or a PRN referral for evaluation, up to a maximum fine of $10,000 and/or revocation. For a subsequent offense, from a minimum fine of $1,000, referral to PRN for evaluation, and suspension for up to three years followed by probation for three years up to a maximum fine of $10,000 and revocation;

(p) Section 456.072(1)(w), F.S.: Failing to report to the department 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 – from a minimum fine of $500 and/or a letter of concern, up to a maximum fine of $2,000 and or six months suspension followed by one year of probation. For a subsequent offense, a fine of up to $3,000 and/or probation for one year up to suspension of license for two years followed by two years of probation;

(q) Section 456.072(1)(aa), F.S.: Performing or attempting to perform health care services on the wrong patient, a wrong-site procedure, a wrong procedure, or an unauthorized procedure or a procedure that is medically unnecessary or otherwise unrelated to the patient's diagnosis or medical condition including the preparation of the patient – from a minimum fine of $500 and one year of probation to a maximum fine of $1,500 and one year suspension of the license followed by two years of probation. For a subsequent offense, from a fine of up to $5,000 to revocation;

(r) Section 456.072(1)(bb), F.S.: Leaving a foreign body in a patient, such as a sponge, clamp, forceps, surgical needle, or other paraphernalia commonly used in examination or other diagnostic procedures – from a minimum fine of $500 and one year of probation to a maximum fine of $1,500 and one year suspension of the license followed by two years of probation. For a subsequent offense, from a fine of up to $5,000 to revocation;

(s) Section 456.072(1)(gg), F.S.: Being terminated from a treatment program for impaired practitioners, which is overseen by an impaired practitioner consultant for failure to comply, without good cause, with the terms of the monitoring or treatment contract entered into by the licensee, or for not successfully completing any drug or alcohol treatment program – from a minimum fine of $300 and a stayed suspension with advocacy and demonstration of a current signed contract with PRN to a maximum fine of $2,000 and revocation of license. For a subsequent offense, a fine of up to $3,000 and suspension

for two years and until the subject demonstrates to the department the ability to practice with skill and safety followed by three years probation to revocation.

~~(3) When the department finds any person guilty of any of the grounds set forth in Section 467.203, Florida Statutes, it may enter an order imposing one or more of the following penalties:~~

~~(a) Revocation;~~

~~(b) Suspension of a license not to exceed 60 days;~~

~~(c) Imposition of administrative fine not to exceed $1000 for each count or separate offense:~~

~~1. If an applicant for licensure by endorsement has worked as a midwife in Florida prior to applying for licensure in Florida.~~

~~2. If an applicant for reactivation has worked while on inactive status.~~

~~(d) Issuance of a reprimand;~~

~~(e) Placing the midwife on probation for a period of time subject to such conditions as the department may specify;~~

~~(f) Requiring the midwife to submit to one or more of the following requirements:~~

~~1. Requiring the midwife to submit to treatment.~~

~~2. Requiring the midwife to attend continuing education courses.~~

~~3. Requiring the midwife to submit to reexamination, and to work under the supervision of a preceptor as defined in subsection 64B24-4.001(12), F.A.C.~~

~~(4) The following guidelines shall be used for the disposition of disciplinary cases involving specific types of violations:~~

~~(a) For failure to submit, upon request, to the department any reports relating to the practice of midwifery. For a first offense, a reprimand and a fine up to $100 per offense; as a second offense, probation and a fine up to $200; and as a third offense, suspension and a fine up to $500 per offense; or any combination thereof.~~

~~(b) For intentional misrepresentation of facts regarding:~~

~~1. Reports of patient care.~~

~~2. Patient records.~~

~~3. Informed consent forms.~~

~~4. Birth certificates.~~

~~5. Emergency treatment.~~

~~6. Any information on an application for licensure or renewal. For a first offense, a reprimand, a fine up to $100, and probation or suspension; as a second offense, probation or revocation and a fine up to $200; and as a third offense, revocation and a fine up to $500 per offense; or any combination thereof.~~

~~(c) For violations related to standards of practice regarding:~~

~~1. Accepting patients at risk without consultation pursuant to subsections 64B24-7.004(1) and (2), F.A.C.~~

~~2. Administering medications or treatment not permitted by rule or law.~~

~~3. Any act of negligence or departure from standards of practice established by law or rule.~~

~~4. Permitting unlicensed persons to practice midwifery as defined under Section 467.003(8), Florida Statutes, except in an emergency or unless the licensed midwife is precepting a student enrolled in an approved midwifery program. For a first offense, a reprimand, a fine up to $200, probation or suspension; for a second offense, probation and a fine up to $400 per offense, a requirement to work under the supervision of a preceptor during probationary period until deemed safe to practice alone or revocation, or any combination thereof; for a third offense, a fine up to $1000 and revocation.~~

~~(d) Failure to report any person known to be in violation of the midwifery act or rules, or false, deceptive, or misleading advertising: For a first offense, a reprimand and a fine up to $200 per offense; as a second offense, probation or suspension and a fine up to $400 per offense, or any combination thereof; as a third offense, a fine up to $1000 and revocation.~~

~~(e) Procuring or renewing a license through fraud will include a penalty of denial of license and a fine up to $1000.~~

~~(f) Non-compliance with the rules of Public Health and Maternal-Infant Hygiene:~~

~~1. Failure to use eye prophylaxis or to indicate reason for same pursuant to paragraph 64B24-7.009(1)(f), F.A.C.~~

~~2. Failure to file certificates of live birth with the local registrar pursuant to subsection 64B24-7.009(9), F.A.C.~~

~~3. Failure to inform parents of infant metabolic screening as required in subsection 64B24-7.009(8), F.A.C. For a first offense, a reprimand and a fine up to $100 per offense; for a second offense, probation and a fine up to $200 per offense; for a third offense, suspension or revocation and a fine up to $500 per offense.~~

~~(g) For violations related to standards for training by Midwifery Schools: For a first offense, a reprimand with a corrective action plan to be implemented within 90 days and a penalty of $50 for each day such violation continues without correction; as a second offense, failure to take corrective action will result in suspension of training activities and a fine of $100 for each day such violation continues; as a third offense, repeat violations will result in permanent cessation of training activities and a fine not to exceed $1000.~~

Specific Authority 456.004(5), 467.005 FS. Law Implemented 456.079, ~~467.201,~~ 467.203 FS. History–New 7-14-94, Formerly 61E8-8.002, 59DD-8.002, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Pamela King

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Lucy Gee

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 9, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 30, 2006

DEPARTMENT OF HEALTH

Division of Environmental Health

RULE NOS.:	RULE TITLES:
64E-5.101	Definitions
64E-5.204	Types of Licenses
64E-5.206	General Licenses – Radioactive Material Other Than Source Material
64E-5.210	Special Requirements for a Specific License to Manufacture, Assemble, Repair or Distribute Commodities, Products or Devices Which Contain Radioactive Material
64E-5.213	Specific Terms and Conditions of License
64E-5.304	Occupational Dose Limits for Adults
64E-5.318	Use of Process or Other Engineering Controls
64E-5.319	Use of Individual Respiratory Protection Equipment
64E-5.427	Leak Testing, Repairing, Tagging, Opening, Modifying, and Replacing Sealed Sources and Devices
64E-5.429	Source Movement Logs, Daily Survey Reports, and Individual Dosimeter Logs
64E-5.434	Training, Testing, Certification, and Audits
64E-5.440	Records
64E-5.441	Reporting Requirements
64E-5.1104	Leak Testing of Sealed Sources
64E-5.1107	Design, Performance and Certification Criteria for Sealed Sources Used in Downhole Operations
64E-5.11071	Uranium Sinker Bars
64E-5.11072	Energy Compensation Source
64E-5.11073	Tritium Neutron Generator Target Source
64E-5.1112	Personnel Monitoring
64E-5.1119	Notification of Incidents, Abandonment and Lost Sources
64E-5.1311	Storage, Security and Transportation Precautions
64E-5.1502	Transportation of Radioactive Material

PURPOSE, EFFECT AND SUMMARY: All changes described herein are needed to comply with the requirements of Florida's agreement state compact with the U.S. Nuclear Regulatory Commission (NRC). As an agreement state, Florida's regulations governing the possession and use of radioactive materials must be identical to the NRC's regulations for federal radioactive materials licensees. The proposed rule specifies requirements for registration of general licenses; requirements for manufacturer or distributors of generally licensed devices; changes in the way shallow dose equivalent is calculated; revises the use of individual respiratory protection equipment which limit intake of radioactive materials; regulations of very large sources of radiation used in industrial radiography; requirements for well loggers; increase the controls needed to prevent unauthorized removal of portable gauges containing radioactive materials; and requirements on following the U.S. Department of Transportation regulations specified in 49 Code of Federal Regulations.

SPECIFIC AUTHORITY: 404.022, 404.042, 404.051, 404.061, 404.071, 404.081, 404.141, 404.20 FS.

LAW IMPLEMENTED: 404.022(1)(2), 404.031, 404.051(1),(4),(6),(9),(11), 404.061(2),(3), 404.071(1),(3), 404.081(1),(2), 404.141, 404.20(1),(2),(3),(4),(7),(8) FS.

THIS RULEMAKING IS UNDERTAKEN PURSUANT TO SECTION 120.54(6), F.S. WRITTEN COMMENTS MAY BE SUBMITTED WITHIN 14 DAYS OF THE DATE OF THIS NOTICE TO: William A. Passetti, Bureau of Radiation Control, Bin C21, 4052 Bald Cypress Way, Tallahassee, FL 32399-1741

SUBSTANTIALLY AFFECTED PERSONS MAY WITHIN 14 DAYS OF THE DATE OF THIS NOTICE, FILE AN OBJECTION TO THIS RULEMAKING WITH THE AGENCY. THE OBJECTION SHALL SPECIFY THE PORTIONS OF THE PROPOSED RULE TO WHICH THE PERSON OBJECTS AND THE SPECIFIC REASONS FOR THE OBJECTION.

THE FULL TEXT OF THE PROPOSED RULES IS:

PART I GENERAL PROVISIONS

64E-5.101 Definitions.

As used in these rules, these terms have the definitions set forth below. Additional definitions used only in a certain part are defined in that respective part.

(1) through (133) No change.

(134) "Shallow dose equivalent" (H_s), which applies to the external exposure of the skin <u>of the whole body</u> or <u>the skin of</u> an extremity, means the dose equivalent at a tissue depth of 0.007 centimeter (7 mg/cm^2) ~~averaged over an area of 1 square centimeter~~.

(135) No change.

~~(136) "Shielded room radiography" means industrial radiography conducted in a room so shielded that radiation levels at every location on the exterior meet the limitations specified in Part III.~~

(137) through (180) renumbered (136) through (179) No change.

(180) "Assigned protection factor" or "APF" means the expected workplace level of respiratory protection provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can be estimated by dividing the ambient airborne concentration by the APF.

(181) "Atmosphere-supplying respirator" means a respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere and includes supplied-air respirators and self-contained breathing apparatus units.

(182) "Energy compensation source" or "ECS" means a small sealed source with an activity not exceeding 100 microcuries (3.7 MBq) used within a logging tool or other tool components to provide a reference standard to maintain the tool's calibration when in use.

(183) "Fit factor" means a quantitative estimate of the fit of a particular respirator to a specific individual and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

(184) "Fit test" means the use of a protocol to evaluate qualitatively or quantitatively the fit of a respirator on an individual.

(185) "Self-contained breathing apparatus" or "SCBA" means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

(186) "Supplied-air respirator" or "air-line respirator" means an atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

(187) "Tritium neutron generator target source" means a tritium source used within a neutron generator tube to produce neutrons for use in well logging applications.

(188) "User seal check" or "fit check" means an action conducted by the respirator user to determine if the respirator is seated to the face properly. Examples include negative pressure check, positive pressure check, irritant smoke check, and isoamyl acetate check.

(189) Annual or Annually means an interval not to exceed 12 months.

(190) Semiannual or Semiannually means an interval not to exceed six months.

(191) Daily means an interval not to exceed a consecutive 24 hour period or once every calendar day worked.

Specific Authority 404.042, 404.051, 404.061 FS. Law Implemented 404.051 FS. History–New 7-17-85, Amended 4-4-89, 5-12-93, 1-1-94, 5-15-96, Formerly 10D-91.102, Amended 5-18-98, 10-8-00, 8-6-01, 9-11-01, 12-19-01, _____.

PART II LICENSING OF RADIOACTIVE MATERIALS
SUBPART A LICENSE TYPES AND FEES

64E-5.204 Types of Licenses.

Licenses for radioactive materials are of two types: general and specific.

(1) Some general licenses provided in this part may be effective without the filing of applications with the Department or the issuance of licensing documents to the particular persons, although the filing of a certificate with the Department for general licenses pursuant to subsection 64E-5.206(7) or (8), F.A.C., shall be required of the particular general licensee prior to the receipt of radioactive material and the Department requires registration of certain general licenses described in subsection 64E-5.206(4), F.A.C. The payment of a fee is also required by all persons possessing general licensed material described in paragraph (1)(c), below. The general licensee is subject to all other applicable portions of these regulations and any limitations of the general license.

(a) through (2)(e) No change.

Specific Authority 404.051, 404.061, 404.131 FS. Law Implemented 404.031, 404.051(1), (4), (10), 404.061, 404.081(1), 404.141 FS. History–New 7-17-85, Amended 9-9-90, 8-25-91, 5-12-93, 11-6-94, Formerly 10D-91.304, Amended 5-18-98, _____.

SUBPART B GENERAL LICENSES

64E-5.206 General Licenses – Radioactive Material Other Than Source Material.

(1) through (3) No change.

(4) Certain Measuring, Gauging and Controlling Devices.

(a) No change.

(b)1. The general license in (4)(a), above, applies only to radioactive material contained in devices which have been manufactured and labeled in accordance with the specifications contained in a specific license issued by the Department pursuant to subsection 64E-5.210(4), F.A.C., or in accordance with the specifications contained in a specific license issued by the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State, which authorizes distribution of devices to persons granted a general license by the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State. Regulations under the Federal Food, Drug, and Cosmetic Act authorizing the use of radioactive control devices in food production require certain additional labeling thereon which is found in Section 179.21 of 21 C.F.R. Part 179.

2. The devices must have been received from one of the specific licenses described in (b)1., above or through a transfer made under subparagraph 6E-5.206(4)(c)8., F.A.C.

(c) Any person who owns, receives, acquires, possesses, uses, or transfers radioactive material in a device pursuant to the general license in paragraph (4)(a), above;

(1) through (4) No change.

5. Upon the occurrence of a failure of or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the on-off mechanism or indicator, or upon the detection of 0.005 microcurie (185 Bq) or more removable radioactive material, shall immediately suspend operation of the device until it has been repaired by the manufacturer or other person holding an applicable specific license from the Department, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State to repair such devices, or disposed of by transfer to a person authorized by an applicable specific license to receive the radioactive material contained in the device and, within 30 days, furnish to the Department a report containing a brief deion of the event and the remedial action taken; and in the case of removable radioactive materials or failure of or damage to a source likely to result in contamination of the premises or the environment, a plan for ensuring the premise and environment are acceptable for unrestricted use using the criteria described in Rule 64E-5.222, F.A.C.

(6) No change.

7. Except as provided in subparagraph (4)(c)8., below, shall transfer or dispose of the device containing radioactive material only by transfer to a specific licensee of the Department, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State, whose specific license authorizes him to receive the device, and within 30 days after transfer of a device to a specific licensee, shall furnish to the Department a report containing identification of the device by manufacturer's or initial transferor's name and model number and serial number, ~~and~~ the name, ~~and~~ address, license number, where applicable, of the person receiving the device, and the date of the transfer; ~~No report is required if the device is transferred to the specific licensee in order to obtain a replacement device;~~

8. Shall transfer the device to another general licensee only:

a. Where the device remains in use at a particular location. In such case the transferor shall give the transferee a copy of this section, a copy of Rules 64E-5.103, 64E-5.328, and 64E-5.329, F.A.C., ~~regulation~~ and any safety documents identified in the label on the device and within 30 days of the transfer, report to the Department the manufacturer's or initial transferor's name and model number and serial number of device transferred, the transferor's name and mailing address for the location of use ~~of the transferee~~, and the name, title, and phone number of the responsible individual identified by the transferee in accordance with paragraph 64E-5.206(4)(c) and subsection (11), F.A.C., to have knowledge of and authority to take actions to ensure compliance with these regulations ~~or position of an individual who may constitute a point of contact between the Department and the transferee~~; or

b. Where the device is held in storage in the original shipping container at its intended location of use prior to initial use by a general licensee; and

(9) No change.

10. Shall be required to obtain written Department authorization before transferring the device to any other specific license not specifically identified in paragraph 64E-5.206(4)(c) and subsection (7), F.A.C. The Department authorization is granted provided the specific license identifies the device.

11. Shall appoint an individual responsible for having knowledge of the appropriate regulations and requirements and the authority for taking required actions to comply with appropriate regulations and requirements. The general licensee, through this individual, shall ensure the day-to-day compliance with the appropriate regulations and requirements. This appointment does not relieve the general licensee of any of its responsibility in the regard.

12.a. Shall register, in accordance with sub-subparagraphs 64E-5.206(4)(c)12.b., and 64E-5.206(4)(c)12.c., F.A.C., all devices except exit signs containing tritium. Each address for a location of use as described in sub-subparagraph 64E-5.206(4)(c)12.c.(IV), F.A.C., represents a separate general license and requires a separate registration.

b. Shall annually register with the Department the possession of a device meeting the criteria in sub-subparagraph 64E-5.206(4)(c)12.a., F.A.C. Registration must be done by verifying, correcting or adding to the information provided in a request for registration received from the Department. The registration information must be submitted to the Department within 30 days of the date of the request for registration or as otherwise indicated in the request. In addition, the general licensee holding devices that meet the criteria of sub-subparagraph 64E-5.206(4)(c)12.a., F.A.C., is subject to the bankruptcy notification requirements in subsection 64E-5.213(3), F.A.C.

c. Shall provide the following information and any other information requested by the Department:

(I) Name and mailing address of the general licensee;

(II) For each device, the manufacturer's name or initial transferor name, model number, serial number, the radioisotope and activity as identified on the label;

(III) Name, title, and telephone number of the responsible person designated a representative of the general licensee under paragraph 64E-5.206(4)(c) and subsection (11), F.A.C.;

(IV) Address or location at which the device(s) are used or stored. For portable devices, the address of the primary place of storage;

(V) Certification by the responsible representative of the general licensee that the information concerning the devices(s) have been verified through a physical inventory and checking the label information; and

(VI) Certification by the responsible representative of the general licensee that they are aware of the requirements of the general license.

d. Persons generally licensed by other Agreement States, Licensing States, or the U.S. Nuclear Regulatory Commission with respect to devices meeting the criteria in 10 CFR 31.5(c)(13)(i) are not subject to registration requirements if the devices are used in areas subject to the Department jurisdiction for less than 180 days in any calendar year. The Department will not request registration from such licensees.

13. Shall report to the Department changes in the general licensee name and the mailing address for each location or use within 30 days of the effective date of the change. For a portable device, a report of address change is required for a change in the device's primary place of storage.

14. May not hold devices that are not in use longer than 2 years. If the devices with shutters are not being used, the shutters must be locked in the closed position. The testing required by subparagraph 64E-5.206(4)(c)2., F.A.C., need not be performed during the period of storage only. However, when devices are put back into service or transferred to another person, and have not been tested within the required test interval, they must be tested before use. Devices kept in standby for future use are excluded from the two year time limit if the general licensee performs physical inventories at intervals not to exceed three months while they are in standby.

(d) through (10) No change.

Specific Authority 404.051, 404.061, 404.071, 404.081 FS. Law Implemented 404.022, 404.051(1), (4), (6), (8), (9), (10), (11), 404.061(2), 404.071(1), (3), 404.081(1), 404.141 FS. History–New 7-17-85, Amended 4-4-89, 1-1-94, Formerly 10D-91.306, Amended _____.

SUBPART C SPECIFIC LICENSES

64E-5.210 Special Requirements for a Specific License to Manufacture, Assemble, Repair or Distribute Commodities, Products or Devices which Contain Radioactive Material.

(1) through (3) No change.

(4) Licensing the Manufacture and Distribution of Devices to General Licensees Under subsection 64E-5.206(4), F.A.C.

(a) An application for a specific license to manufacture or distribute devices containing radioactive material, excluding special nuclear material, to persons possessing a general license under subsection 64E-5.206(4), F.A.C., or equivalent regulations of the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State will be approved if:

(1) through (3) No change.

4. Each device having a separable source housing that provides the primary shielding for the source also bears, on the source housing, a durable label containing the device model number and serial number, the radioisotope and quantity, the words "Caution Radioactive Materials," the radiation symbol described in Rule 64E-5.322, F.A.C., the name of the manufacturer or initial distributor.

5. Each device containing at least 10 millicuries (370 MBq) of cesium-137, 0.1 millicuries (3.7 MBq) of strontium-90, 1 millicurie (37 MBq) of cobalt-60, or 1 millicurie (37 MBq) of americium-241 or any other element with atomic numbers greater than 92, based on the activity indicated on the label, must bear a permanent label affixed to the source housing if separable, or the device if the source housing is not separable, that includes the words "Caution Radioactive Materials," and if practical, the radiation symbol described in Rule 64E-5.322, F.A.C. Example of a permanent label include labels that are embossed, etched, stamped or engraved to the source housing or device as applicable.

(b) through (c) No change.

(d) If a device containing radioactive material is transferred for use under the general license described in subsection 64E-5.206(4), F.A.C., each person that is licensed under subsection 64E-5.210(4), F.A.C., shall provide the information specified in this section to each person to whom a device is to be transferred. This information must be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information must also be provided to the intended user prior to the initial transfer to the intermediate person. The required information includes the following:

1. A copy of the general license contained in subsection 64E-5.206(4), subparagraph 64E-5.206(4)(c)2.,3. and 4. or 64E-5.206(4)(c)12., F.A.C., do not apply to the particular device, those paragraphs may be omitted;

2. A copy of Rules 64E-5.103, 64E-5.328, and 64E-5.329, F.A.C.;

3. A list of services that can only be performed by a specific licensee;

4. Information on acceptable disposal options including costs of disposal; and

5. An indication that department policy is to issue high civil penalties for improper disposal.

~~(d) Each person licensed under subsection 64E-5.210(4), F.A.C., to distribute devices to persons under a general license shall:~~

~~1. Furnish a copy of the general license contained in subsection 64E-5.206(4), F.A.C., to each person to whom he directly or through an intermediate person transfers radioactive material in a device for use pursuant to the general license contained in subsection 64E-5.206(4), F.A.C.;~~

~~2. Furnish a copy of the general license contained in the U.S. Nuclear Regulatory Commission's, Agreement State's, or Licensing State's regulation equivalent to subsection 64E-5.206(4), F.A.C., or alternatively, furnish a copy of the general license contained in subsection 64E-5.206(4), F.A.C., to each person to whom he directly or through an intermediate~~

~~person transfers radioactive material in a device for use pursuant to the general license of the U.S. Nuclear Regulatory Commission, the Agreement State, or the Licensing State. If a copy of the general license in subsection 64E-5.206(4), F.A.C., is furnished to such a person, it shall be accompanied by a note explaining that the use of the device is regulated by the U.S. Nuclear Regulatory Commission, Agreement State, or Licensing State under requirements substantially the same as those in subsection 64E-5.206(4), F.A.C.;~~

~~3. Report to the Department all transfers of such devices to persons for use under the general license in subsection 64E-5.206(4), F.A.C. Such report shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the Department and the general licensee, the type and model number of device transferred and the quantity and type of radioactive material contained in the device. If one or more intermediate persons will temporarily possess the device at the intended place of use prior to its possession by the user, the report shall include identification of each intermediate person by name, address, contact, and relationship to the intended user. If no transfers have been made to general licensees subsection 64E-5.206(4), F.A.C., during the reporting period, the report shall so indicate. The report shall cover each calendar quarter and shall be filed within 30 days thereafter;~~

~~4. Furnish reports to other agencies.~~

~~a. Report to the U.S. Nuclear Regulatory Commission all transfers of such devices to persons for use under the U.S. Nuclear Regulatory Commission general license in Section 31.5 of 10 CFR Part 31.~~

~~b. Report to the responsible state agency all transfers of devices manufactured and distributed to persons for use under a general license in that State's regulations equivalent to subsection 64E-5.206(4), F.A.C.~~

~~c. Such reports shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the Department and the general licensee, the type and model of the device transferred, and the quantity and type of radioactive material contained in the device. If one or more intermediate persons will temporarily possess the device at the intended place of use prior to its possession by the user, the report shall include identification of each intermediate person by name, address, contact and relationship to the intended user. The report shall be submitted within 30 days after the end of the calendar quarter in which such a device is transferred to the general licensee.~~

~~d. If no transfers have been made to U.S. Nuclear Regulatory Commission licensees during the reporting period, this information shall be reported to the U.S. Nuclear Regulatory Commission.~~

~~e. If no transfers have been made to general licensees within a particular state during the reporting period, this information shall be reported to the responsible state agency upon request of that agency; and~~

~~5. Keep records showing the name, address and the point of contact for each general licensee to whom he directly or through an intermediate person transfers radioactive material in devices for use pursuant to the general license provided in subsection 64E-5.206(4), F.A.C., or equivalent regulations of the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State. The records shall show the date of each transfer, the radionuclide and the quantity of radioactivity in each device transferred, the identity of any intermediate person and compliance with the report requirements of this section.~~

(e) If a device containing radioactive material is transferred for use under an equivalent general license of an Agreement State or the U.S. Nuclear Regulatory Commission, each person that is licensed under subsection 64E-5.210(4), F.A.C., shall provide the information specified in this section to each person to whom a device is to be transferred. This information must be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information must also be provided to the intended user prior to the initial transfer to the intermediate person. The required information includes the following:

1. A copy of the Agreement States or U.S. Nuclear Regulatory Commission equivalent to Rules 64E-5.103, 64E-5.328, and 64E-5.329, F.A.C. If a copy of the U.S. Nuclear Regulatory Commission regulations is provided to a prospective general licensee in lieu of the Agreement States regulations, it shall be accompanied by a note explaining that the use of the device is regulated by the Agreement State. If certain parts of the regulations do not apply to the particular device, those regulations may be omitted;

2. A list of services that can only be performed by a specific licensee;

3. Information on acceptable disposal options including costs of disposal; and

4. The name or title, address, and phone number of the contact at the Agreement State regulatory agency or U.S. Nuclear Regulatory Commission, as applicable, from which additional information may be obtained.

(g) Each device that is transferred must meet the labeling requirements in subparagraphs 64E-5.210(4)(d)3. through 5., F.A.C.

(h) If a notification of bankruptcy has been made under subsection 64E-5.213(3), F.A.C., or the license is to be terminated, each person licensed under subsection 64E-5.210(4), F.A.C., shall provide, upon request, to the Department, U.S. Nuclear Regulatory Commission and to any appropriate Agreement State, records of final disposition required under paragraph 64E-5.210(4)(k), F.A.C.

(i) Each person licensed under subsection 64E-5.210(4), F.A.C., shall comply with the following reporting and record keeping requirements.

1. Report all transfers of devices to persons for use under the general license described in subsection 64E-5.206(4), F.A.C., and all receipts of devices from persons licensed under subsection 64E-5.206(4), F.A.C., to the Department. This report must be submitted at intervals not to exceed 3 months and contain all of the information described in "Transfers of Industrial Devices Report 10/2003" herein incorporated by reference.

2. This report must be clear and legible and contain the following data:

a. The identity of each general licensee by name and mailing address for the location of use; if no mailing address for the location of use, an alternative address for the general licensee shall be submitted along with information on the actual location of use;

b. The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

c. The date of transfer;

d. The type, model number, and serial number of the device transferred; and

e. The quantity and type of radioactive materials contained in the device.

3. If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must include the same information for both the intended user and each intermediate person and clearly designate the intermediate person(s).

4. For devices received from a subsection 64E-5.206(4), F.A.C., general licensee, the report must include the identity of the general licensee by name and address, the type, model number, and serial numbers of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

5. If the licensee makes changes to the device possessed by a subsection 64E-5.206(4), F.A.C., general licensee, such that the label must be changed to update required information, this report must identify the general licensee, the device, and the changes to information on the device label.

6. The report must clearly identify the specific licensee submitting the report and include the licenses number of the specific licensee.

7. If no transfers have been made to or from persons generally licensed under subsection 64E-5.206(4), F.A.C., during the reporting period, the report must so indicate.

(i) Each person licensed under subsection 64E-5.210(4), F.A.C., shall comply with the following additional reporting and record keeping requirements for transfers and receipt of devices to Agreement States.

1. Report all transfers of devices to persons for use under the general license in an Agreement State that are equivalent to subsection 64E-5.206(4), F.A.C., and all receipts of devices from persons licensed under a general license in Agreement State jurisdiction to the responsible Agreement State agency. This report must contain all of the information described in "Transfers of Industrial Devices Report 10/2003."

2. The report must be clear and legible and contain the following data:

a. The identity of each general licensee by name and mailing address for the location of use; if no mailing address for the location of use, an alternative address for the general licensee shall be submitted along with information on the actual location of use;

b. The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

c. The date of transfer;

d. The type, model number, and serial number of the device transferred; and

e. The quantity and type of radioactive materials contained in the device.

3. If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must include the same information for both the intended user and each intermediate person and clearly designate the intermediate person(s).

4. For devices received from a general licensee, the report must include the identity of the general licensee by name and address, the type, model number, and serial numbers of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

5. If the licensee makes changes to the device possessed by a general licensee, such that the label must be changed to update required information, this report must identify the general licensee, the device, and the changes to information on the device label.

6. The report must clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

7. If no transfers have been made to or from a particular Agreement State during the reporting period, this information shall be reported to the responsible Agreement State agency upon request of the agency.

8. The report must cover each calendar quarter and must be filed within 30 days of the end of the calendar quarter and must clearly indicate the period covered by the report.

(k) The persons shall maintain all information concerning transfers and receipts of devices that supports the reports required by subsection 64E-5.210(4), F.A.C. Records and reports described in subsection 64E-5.210(4), F.A.C., shall be maintained for inspection by the Department for a period of 3 years following the date of the recorded event.

(5) through (14) No change.

Specific Authority 404.051, 404.061, 404.071, 404.081, 404.141 FS. Law Implemented 404.022, 404.051(1), (4), (6), (9), (10), (11), 404.061(2), 404.081(1), 404.141 FS. History–New 7-17-85, Amended 8-25-91, 5-12-93, 1-1-94, 5-15-96, Formerly 10D-91.311, Amended 8-6-01, _____.

64E-5.213 Specific Terms and Conditions of License.

(1) through (2) No change.

(3)(a) Each specific or general licensee shall notify the Department in writing immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (Bankruptcy) of the United States Code (U.S.C.) by or against:

1. The licensee;

2. An entity, as that term is defined in 11 U.S.C. 101(14), controlling the licensee or listing the license or licensee as property of the estate; or

3. An affiliate, as that term is defined in 11 U.S.C. 101(2), of the licensee.

(b) This notification shall indicate the bankruptcy court in which the petition for bankruptcy was filed and the date of the filing of the petition for bankruptcy.

(4) through (8) No change.

Specific Authority 404.051, 404.061, 404.141 FS. Law Implemented 404.051(1), (4), 404.061(2), (3), 404.081(1), 404.141 FS. History–New 7-17-85, Amended 4-4-89, 5-12-93, 8-29-94, Formerly 10D-91.314, Amended 5-18-98, _____.

PART III STANDARDS FOR PROTECTION AGAINST RADIATION

SUBPART C OCCUPATIONAL DOSE LIMITS

64E-5.304 Occupational Dose Limits for Adults

(1) The licensee or registrant shall control the occupational dose to individual adults, except for planned special exposures as specified in Rule 64E-5.309, F.A.C., to the following dose limits:

(a) through (2) No change.

(b) The annual limits to the lens of the eye, to the skin of the whole body, and to the skin of the extremities which are:

1. A lens dose equivalent of 15 rem (0.15 sievert), and

2. A shallow dose equivalent of 50 rem (0.5 sievert) to the skin of the whole body or to skin of any extremity.

(2) No change.

(3) The assigned deep dose equivalent must ~~and shallow dose equivalent shall~~ be for the part ~~portion~~ of the body receiving the highest exposure. The assigned shallow dose equivalent must be the dose averaged over the contiguous 10 square centimeters of skin receiving the highest exposure. The deep dose equivalent, lens dose equivalent and shallow dose equivalent may ~~can~~ be assessed from surveys or other radiation measurements to demonstrate compliance with the occupational dose limits if the individual monitoring device was not in the region of highest potential exposure or the results of individual monitoring are unavailable.

(4) through (6) No change.

Specific Authority 404.051, 404.081 FS. Law Implemented 404.022, 404.051(1), (4), 404.081 FS. History–New 1-1-94, Formerly 10D-91.435, Amended 10-8-00, _____.

SUBPART G RESPIRATORY PROTECTION AND CONTROLS TO RESTRICT INTERNAL EXPOSURE IN RESTRICTED AREAS

64E-5.318 Use of Process or Other Engineering Controls.

The licensee shall use to the extent practical ~~practicable~~ process or other engineering controls such as containment, decontamination, or ventilation to control the concentrations of radioactive material in air.

(1) When it is not practical ~~practicable~~ to apply process or other engineering controls to control the concentrations of radioactive material in the air to values below those that define an airborne radioactivity area, the licensee shall, consistent with maintaining the total effective dose equivalent ALARA, increase monitoring and limit intakes by one or more of the following means:

(a)~~(1)~~ Control of access;

(b)~~(2)~~ Limitation of exposure time;

(c)~~(3)~~ Use of respiratory protection equipment; or

(d)~~(4)~~ Other controls.

(2) If the licensee performs an ALARA analysis to determine whether or not to use respirators, the licensee can consider safety factors other than radiological factors. The licensee also should consider the impact of respirator use on workers' industrial health and safety.

Specific Authority 404.051 FS. Law Implemented 404.022, 404.051(1), (4) FS. History–New 1-1-94, Amended 5-15-96, Formerly 10D-91.450, Amended _____.

64E-5.319 Use of Individual Respiratory Protection Equipment.

(1) If the licensee uses respiratory protection equipment to limit intakes as specified in Rule 64E-5.318, F.A.C.:

(a) The licensee shall use only respiratory protection equipment that is tested and certified ~~or had certification extended~~ by the National Institute for Occupational Safety and Health ~~and the Mine Safety and Health Administration,~~ except as provided in paragraph 64E-5.319(1)(b), F.A.C.

(b) If the licensee wishes to use equipment that has not been tested or certified by the National Institute for Occupational Safety and Health ~~and the Mine Safety and~~

~~Health Administration, has not had certification extended by the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration,~~ or for which there is no schedule for testing or certification, the licensee shall submit an application for authorized use of that equipment, including evidence ~~a demonstration by testing or a demonstration on the basis of reliable test information~~ that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use demonstrated by testing or on the basis of reliable test information.

(c) The licensee shall implement and maintain a respiratory protection program that includes:

1. Air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate doses ~~exposures~~;

2. Surveys and bioassays as needed to evaluate actual intakes;

3. Testing of respirators for operability including user seal checks for face sealing devices and functional checks for other devices immediately before ~~prior to~~ each use;

4. Written procedures regarding ~~selection, fitting, issuance, maintenance, and testing of respirators, including testing for operability immediately prior to each use;~~ supervision and training of respirator users ~~personnel~~; monitoring, including air sampling and bioassays; fit testing; respirator selection; breathing air quality; inventory and control; storage, issuance, maintenance, repair, testing, and quality assurance of respiratory protection equipment; limitations on periods of respirator use and relief from respirator use; and recordkeeping; ~~and~~

5. Determination by a physician before ~~prior to~~ initial fitting of face sealing respirators, before the first field use of non-face sealing respirators, and every 12 months thereafter or periodically at a frequency determined by a physician that the individual user is medically fit to use ~~the~~ respiratory protection equipment; and

6. Fit testing before the first field use of tight fitting face-sealing respirators and periodically thereafter at a frequency not to exceed 1 year with fit factor ≥ 10 times the APF for negative pressure devices and a fit factor ≥ 500 for any positive pressure, continuous flow, and pressure-demand devices. Fit testing shall be performed with the facepiece operating in the negative pressure mode.

~~(d) The licensee shall issue a written policy statement on respirator usage covering:~~

~~1. The use of process or other engineering controls instead of respirators;~~

~~2. The routine, nonroutine, and emergency use of respirators; and~~

~~3. The length of periods of respirator use and relief from respirator use.~~

(d)~~(e)~~ The licensee shall advise each respirator user that the user can leave the area at any time for relief from respirator use in the event of equipment malfunction, physical or psychological distress, procedural or communication failure, significant deterioration of operating conditions, or any other conditions that might require such relief.

(e) The licensee also shall consider limitations appropriate to the type and mode of use. When selecting respiratory devices, the licensee shall provide for vision correction, adequate communication, low temperature work environments, and the concurrent use of other safety or radiological protection equipment. The licensee shall use equipment in such a way as not to interfere with the proper operation of the respirator.

(f) Standby rescue persons are required whenever one-piece atmosphere-supplying suits or any combination of supplied-air respiratory protection device and personnel protective equipment are used from which an unaided individual would have difficulty extricating himself or herself. Standby persons shall be equipped with respiratory protection devices or other apparatus appropriate for the potential hazards. The standby rescue persons shall observe or otherwise maintain continuous communication with the workers through visual, voice, signal line, telephone, radio, or other suitable means and be available immediately to assist them in case of a failure of the air supply or for any other reason that requires relief from distress. A sufficient number of standby rescue persons shall be available immediately to assist all users of this type of equipment and to provide effective emergency rescue if needed.

(g) Atmosphere-supplying respirators shall be supplied with respirable air of grade D quality or better as defined by the Compressed Gas Association in publication G-7.1, "Commodity Specification for Air," 1997, which is herein incorporated by reference and, available from the Compressed Gas Association, Inc., and included in the regulations of the Occupational Safety and Health Administration. Grade D quality air criteria include:

1. Oxygen content (v/v) of 19.5 – 23.5%;

2. Condensed hydrocarbon content of 5 milligrams per cubic meter of air or less;

3. Carbon monoxide content of 10 ppm or less;

4. Carbon dioxide content of 1,000 ppm or less; and

5. Lack of noticeable odor.

(h) The licensee shall ensure that no objects, materials, or substances such as facial hair, or any conditions that interfere with the face-to-facepiece seal or valve function and that are under the control of the respirator wearer are between the skin of the wearer's face and the sealing surface of a tight-fitting respirator facepiece.

~~(f) The licensee shall use respiratory protection equipment within the equipment manufacturer's expressed limitations for type and mode of use and shall provide proper visual, communication, and other special capabilities such as adequate skin protection when needed.~~

(2) When estimating the dose to ~~exposure of~~ individuals from ~~to~~ airborne radioactive materials, the concentration of radioactive material in the air that is inhaled when respirators are worn is assumed initially to be the ambient concentration in air without respiratory protection divided by the assigned protection factor. If the dose later is found to be greater than the estimated dose, the corrected value shall be used. If the dose later is found to be less than the estimated dose, the corrected value can be used. ~~licensee can make allowance for respiratory protection equipment used to limit intakes as specified in Rule 64E 5.318, F.A.C., if the following conditions, in addition to those in subsection 64E 5.319(1), F.A.C., are satisfied~~:

(a) Licensees shall take actions to limit doses to individuals from intakes of airborne radioactive materials to maintain total effective dose equivalent ALARA, which could include using process or other engineering controls and limiting the use of respiratory protection equipment. ~~The licensee selects respiratory protection equipment that provides a protection factor specified in State of Florida Office of Radiation Control Protection Factors for Respirators, July 1993, which is herein incorporated by reference and which is available from the department, greater than the multiple by which peak concentrations of airborne radioactive materials in the working area are expected to exceed the values specified in State of Florida Office of Radiation Control ALIs, DACs, and Effluent Concentrations, July 1993, Table I, Column 3. However, if the selection of respiratory protection equipment with a protection factor greater than the peak concentration is inconsistent with the goal specified in Rule 64E-5.318, F.A.C., of keeping the total effective dose equivalent ALARA, the licensee can select respiratory protection equipment with a lower protection factor if such a selection would result in a total effective dose equivalent that is ALARA. The concentration of radioactive material in the air that is inhaled when respirators are worn can be initially estimated by dividing the average concentration in air during each period of uninterrupted use by the protection factor. If the exposure is later found to be greater than initially estimated, the corrected value shall be used; if the exposure is later found to be less than initially estimated, the corrected value can be used.~~

(b) The licensee shall obtain authorization from the Department before using assigned ~~assigning respiratory~~ protection factors in excess of those specified in State of Florida Bureau ~~Office~~ of Radiation Control Protection Factors for Respirators, May 2006 ~~July 1993~~. The Department can authorize a licensee to use higher protection factors on receipt of an application that:

1. Describes the situation for which a need exists for higher protection factors; and

2. Demonstrates that the respiratory protection equipment provides these higher protection factors under the proposed conditions of use.

~~(3) In an emergency the licensee shall use as emergency equipment only respiratory protection equipment that has been specifically certified or had certification extended for emergency use by the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration.~~

~~(4) The licensee shall notify the Department in writing at least 30 days before the date that respiratory protection equipment is first used as specified in either subsections 64E-5.319(1) or (2), F.A.C.~~

Specific Authority 404.051, 404.081 FS. Law Implemented 404.051(1), (4), 404.081 FS. History–New 1-1-94, Formerly 10D-91.452, Amended 5-18-98, _____.

PART IV RADIATION SAFETY REQUIREMENTS FOR LICENSEES AND REGISTRANTS FOR INDUSTRIAL RADIOGRAPHIC OPERATIONS

SUBPART A EQUIPMENT CONTROL

64E-5.427 Leak Testing, Repairing, Tagging, Opening, Modifying, and Replacing Sealed Sources and Devices.

(1) through (3) No change.

(4) Leak testing as specified in subsections 64E-5.427(2) and (3), F.A.C., shall be capable of detecting the presence of 0.005 microcurie (185 Bq) of removable contamination on the test sample. The wipe sample shall be taken from the nearest accessible point to the sealed source where ~~when~~ contamination could accumulate.

(5) If any test conducted pursuant to this section reveals the presence of 0.005 microcurie (185 Bq) or more of removable radioactive material, the licensee immediately shall withdraw the equipment from use and cause it to be decontaminated and repaired or disposed of in accordance with Rule 64E-5.1303, F.A.C., and the applicable sections of rules contained in Parts III and XV of Chapter 64E-5, F.A.C. If DU leak testing reveals the presence of 0.005 microcurie (185 Bq) or more of removable DU contamination, the exposure device shall be removed from use until an evaluation of the wear on the S-tube has been made. If the evaluation reveals that the S-tube is worn through, the device shall not be used. The licensee shall file a report with the department describing the equipment involved, the test results, and the corrective action taken within 5 days after obtaining results of the test.

Specific Authority 404.051 FS. Law Implemented 404.022, 404.051(1), (4), (6) FS. History–New 9-11-01, Amended _____.

64E-5.429 Source Movement Logs, Daily Survey Reports, and Individual Dosimeter Logs.

(1) Each time a radiation source is removed from storage, the licensee or registrant shall complete and maintain source movement logs for each radiation source with the following information, as applicable:

(a) The locations where used, the names of the jobs or clients, and the dates of use including the dates removed and returned to storage.

(b) through (d) No change.

(e) The identity and signature or initials of the radiographer to whom the radiation source has been assigned.

(2) through (3) No change.

Specific Authority 404.051 FS. Law Implemented 404.022, 404.051(1), (4), 404.081(1) FS. History–New 9-11-01, Amended _____.

SUBPART B RADIATION SAFETY REQUIREMENTS

64E-5.434 Training, Testing, Certification, and Audits.

(1) No change.

(2) Licensees and registrants can allow individuals who have completed the training and testing specified in paragraphs 64E-5.434(2)(a)-(d), F.A.C., below, to perform industrial radiography for 12 months after the effective date of these rules. The licensee or registrant shall not permit any individual to act as a radiographer until such individual:

(a) through (c) No change.

(d) Successfully completes a closed-book, written examination on the subjects outlined in subsection 64E-5.434(6), ~~Rule 64E-5.434(4),~~ F.A.C., and a practical examination to demonstrate competence in the use of the licensee's or registrant's radiographic and safety equipment; and

(e) through (6) No change.

(7) Each licensee or registrant shall provide 8 hours of refresher annual radiation safety training to all radiographic personnel, which can be conducted in multiple sessions.

(8) through (9) No change.

Specific Authority 404.051, 404.061 FS. Law Implemented 404.022, 404.051(1), (4), 404.061(2) FS. History–New 9-11-01, Amended _____.

SUBPART C PRECAUTIONARY PROCEDURES IN RADIOGRAPHIC OPERATIONS

64E-5.440 Records.

(1) Each licensee or registrant shall maintain the following records for 3 years after the event at the location specified in Rule 64E-5.432, F.A.C., for inspection by the department:

(a) through (g) No change.

(h) Records showing receipts and transfers of sealed sources and devices using DU for shielding, including the date, the name of the individual making the record, radionuclide, number of curies (becquerels) or mass, manufacturer, model, and serial number of each sealed source and device, as appropriate;~~.~~

(i) Records of annual ALARA audits specified in paragraph 64E-5.432(4)(c), F.A.C.

(2) Each licensee or registrant shall maintain the following records until the Department terminates the license or registration requiring the record:

(a) through (f) No change.

(g) Personnel monitoring badge records from the accredited NVLAP processor as specified in subsection 64E-5.437(2), F.A.C.; ~~Records of annual ALARA audits specified in paragraph 64E-5.432(3)(c), F.A.C.;~~ and

(h) Operating and emergency procedures. Licensees shall retain superseded material for 3 years after making changes to operating or emergency procedures.

(3) No change.

Specific Authority 404.051 FS. Law Implemented 404.022, 404.051(1), (4), 404.081(1), 404.20 FS. History–New 9-11-01, Amended _____.

64E-5.441 Reporting Requirements

(1) In addition to the reporting requirements specified in rules contained in Chapter 64E-5, Parts III, and IX, F.A.C., and other sections of this part, each licensee shall provide a written report to the department within 30 days of the occurrence of any of the incidents involving radiographic equipment described below. Such reports shall be mailed to the Bureau of Radiation Control, Radioactive Materials Section, Bin C21, 4052 Bald Cypress Way, Tallahassee, Florida 32399-1741 for incidents involving radioactive materials or to the Bureau of Radiation Control, Radiation Machine Section, P. O. Box 210, Jacksonville, Florida 32231 for incidents involving radiation machines.

(a) through (3) No change.

Specific Authority 404.051 FS. Law Implemented 404.022, 404.051(1), (4), 404.081(1) FS. History–New 9-11-01, Amended _____.

PART XI RADIATION SAFETY REQUIREMENTS FOR WIRELINE SERVICE OPERATIONS AND SUBSURFACE TRACER STUDIES

SUBPART A EQUIPMENT CONTROL

64E-5.1104 Leak Testing of Sealed Sources.

(1) No change.

(2) Method of testing. Tests for leakage shall be performed only by persons specifically authorized to perform such tests by the Department, the U.S. Nuclear Regulatory Commission, an Agreement State, or a licensing state using a leak test kit or method approved by the department, the U.S. Nuclear Regulatory Commission, an Agreement State, or a Licensing State. The test sample shall be taken from the nearest accessible point to the sealed source where ~~surface of the~~

~~source, source holder, or from the surface of the device in which the source is stored or mounted and on which~~ contamination might ~~be expected to~~ accumulate. The test sample shall be analyzed for radioactive contamination, and the analysis shall be capable of detecting the presence of 0.005 microcurie (185 Bq) of radioactive material on the test sample.

(3) Test frequency. ~~Interval of Testing.~~

(a) Each sealed source except an energy compensation source or ECS containing radioactive material shall be tested at intervals not to exceed 6 months. In the absence of a certificate from a transferor indicating that a test has been made within the 6 months before ~~prior to~~ the transfer, the sealed source shall not be used ~~put into use~~ until tested. If, for any reason, it is suspected that a sealed source may be leaking, it shall be removed from service immediately and tested for leakage as soon as practical.

(b) Each ECS that is not exempt from testing as specified in subsection 64E-5.1104(5), F.A.C., below, shall be tested at intervals not to exceed 3 years. In the absence of a certificate from a transferor that a test has been made within the 3 years before transfer, the ECS shall not be used until tested.

(4) Removal of Leaking or Contaminated Sources from service. If the test specified in subsection (3), above, reveals the presence of 0.005 microcurie (185 Bq) or more of removable radioactive material ~~leakage or contamination~~, the licensee shall remove ~~immediately withdraw~~ the sealed source from service immediately ~~use~~ and shall cause it to be decontaminated, repaired, or disposed of by a person licensed by the department, the U.S. Nuclear Regulatory Commission, an Agreement State, or a Licensing State to perform these functions ~~in accordance with these regulations~~. The licensee shall check the equipment associated with the leaking source for radioactive contamination, and if contaminated, have it decontaminated or disposed of by a person licensed by the department, the U.S. Nuclear Regulatory Commission, an Agreement State or a licensing state to perform these functions ~~in accordance with these regulations~~. A report describing the equipment involved, the test results, any contamination which resulted from the leaking source, and corrective action taken shall be filed with the Department within 5 days of receiving the test results.

(5) Exemptions. The following sources are exempted from the periodic leak test requirements of subsections 64E-5.1104(1) through (4), F.A.C.:

(a) through (e) No change.

Specific Authority 404.022, 404.051(1), (4), 404.061, 404.081(1) FS. Law Implemented 404.022, 404.051(1), (5), 404.061(2), 404.081 FS. History–New 4-4-89, Formerly 10D-91.12051 Amended _____.

64E-5.1107 Design, Performance and Certification Criteria for Sealed Sources Used in Downhole Operations.

(1) A licensee can use a sealed source in well logging applications if: ~~Each sealed source, except those containing radioactive material in gaseous form, used in downhole operations and manufactured after June 30, 1982, shall be certified at the time of manufacture, to meet the following minimum criteria:~~

(a) The sealed source i~~I~~s ~~of~~ doubly encapsulated ~~construction~~;

(b) The sealed source c~~C~~ontains radioactive material whose chemical and physical forms are as insoluble and nondispersible as practical; and

(c) The sealed source meets the requirements specified in (2), (3), or (4), below. ~~Has individually passed external pressure testing to at least 24,656 pounds per square inch absolute (170 MN per m2).~~

(2) A licensee can use a sealed source manufactured on or before July 14, 1989, in well logging applications if it meets the requirements of USASI N5.10 – 1968, "Classification of Sealed Radioactive Sources", which is herein incorporated by reference and available from the Department, or the requirements specified in subsections (3) and (4), below. ~~Sealed sources, except those containing radioactive material in gaseous form, manufactured prior to June 30, 1982, and acquired after that date, in the absence of a certificate from a transferor certifying that an individual sealed source meets the requirements of (1)(a) and (b), above, shall not be put into use until such determinations and testing according to (1)(c), above, have been performed.~~

(3) A licensee can use a sealed source manufactured after July 14, 1989, in well logging applications if it meets the oil-well logging requirements specified in ANSI/HPS N43.6 – 1997, "Sealed Radioactive Sources – Classification", which is herein incorporated by reference and available from the Department. ~~Certification documents shall be maintained for inspection by the Department for a period of 2 years after source disposal. If the source is abandoned downhole, the certification documents shall be maintained for 100 years.~~

(4) A licensee can use a sealed source manufactured after July 14, 1989, in well logging applications if:

(a) The sealed source's prototype has been tested and found to maintain its integrity after each of the following tests:

1. Temperature. The test source is held at -40° C for 20 minutes, 600° C for 1 hour, and then subjected to a thermal shock test with a temperature drop from 600° C to 20° C within 15 seconds.

2. Impact test. A 5 kg steel hammer 2.5 cm in diameter is dropped from a height of 1 m onto the test source.

3. Vibration test. The test source is subjected to a vibration from 25 Hz to 500 Hz at 5 g amplitude for 30 minutes.

4. Puncture test. A 1 gram hammer and 0.3 cm diameter pin is dropped from a height of 1 m onto the test source.

5. Pressure test. The test source is subjected to an external pressure of 24,600 pounds per square inch absolute (1.695 x 10^7 pascals).

(5) The requirements of subsection (1) through (4), above, do not apply to sealed sources that contain licensed material in gaseous form.

(6) The requirements of subsections (1) through (4), above, do not apply to ECSs. ECSs shall be registered with the department as specified in subsection 64E-5.210(14), F.A.C., the U.S. Nuclear Regulatory Commission, an Agreement State, or a Licensing State.

Specific Authority 404.051, 404.061, 404.071, 404.081 FS. Law Implemented 404.022, 404.051(1), (4), (6), 404.061(2), 404.071(1), 404.081(1) FS. History–New 7-17-85, Formerly 10D-91.1208, Amended _____.

64E-5.11071 Uranium sinker bars.

The licensee can use a uranium sinker bar in well logging applications only if it is legibly impressed with the words "CAUTION – RADIOACTIVE – DEPLETED URANIUM" and "NOTIFY CIVIL AUTHORITIES (OR COMPANY NAME) IF FOUND.

Specific Authority 404.051, 404.061, 404.071, 404.081 FS. Law Implemented 404.022, 404.051(1), (4), (6), 404.061(2), 404.071(1), 404.081(1) FS. History–New _____.

64E-5.11072 Energy Compensation Source.

The licensee can use an ECS that is contained within a logging tool or other tool components only if the ECS contains 100 microcuries (3.7 MBq) or less of licensed material.

(1) For well logging applications with a surface casing for protecting fresh water aquifers, use of the ECS is subject only to the requirements specified in Rules 64E-5.1104, 64E-5.1107, and 64E-5.1106, F.A.C., above.

(2) For well logging applications without a surface casing for protecting fresh water aquifers, use of the ECS is subject only to the requirements specified in Rules 64E-5.1101, 64E-1104, 64E-5.1105, 64E-5.1106, 64E-5.1119(5), and 64E-5.343 through 64E-5.349, F.A.C.

Specific Authority 404.051, 404.061, 404.071, 404.081 FS. Law Implemented 404.022, 404.051(1), (4), (6), 404.061(2), 404.071(1), 404.081(1) FS. History–New _____.

64E-5.11073 Tritium Neutron Generator Target Source.

(1) Use of a tritium neutron generator target source containing quantities not exceeding 30 curies (1,110 MBq) and in a well with a surface casing to protect fresh water aquifers is not subject to the requirements specified in Rules 64E-5.1101, 64E-5.1107, 64E-5.1119(5), and 64E-5.343 through 64E-5.349, F.A.C.

(2) Use of a tritium neutron generator target source containing more than 30 curies (1,110 MBq) or in a well without a surface casing to protect fresh water aquifers is not subject to the requirements specified in Rule 64E-5.1107, F.A.C.

Specific Authority 404.051, 404.061, 404.071, 404.081 FS. Law Implemented 404.022, 404.051(1), (4), (6), 404.061(2), 404.071(1), 404.081(1) FS. History–New _____.

SUBPART B REQUIREMENTS FOR PERSONNEL SAFETY

64E-5.1112 Personnel Monitoring.

No licensee or registrant shall permit any individual to act as a logging supervisor or to assist in the use of sources of radiation unless such individual wears a film badge, optically stimulated luminescent device (OSLD), or a thermoluminescent dosimeter (TLD) that is processed and evaluated by an accredited NVLAP processor. Each film badge, OSLD, or TLD shall be assigned to and worn by only one individual. Film badges shall be replaced at least monthly and OSLDs and TLDs shall be replaced at least quarterly. Each film badge, OSLD, and TLD shall be processed promptly after replacement. The licensee shall retain records of personnel dosimeters and bioassay results until the Department terminates each pertinent license or registration requiring the records.

Specific Authority 404.051, 404.061, 404.081 FS. Law Implemented 404.022, 404.051(1), (4), 404.061(2), 404.081(1), (2) FS. History–New 7-17-85, Amended 5-15-96, Formerly 10D-91.1213, Amended 10-8-00, _____.

SUBPART E NOTIFICATION

64E-5.1119 Notification of Incidents, Abandonment and Lost Sources.

(1) through (2) No change.

(3) When it becomes apparent that efforts to recover the radioactive source will not be successful, the licensee shall:

(a) No change.

(b) Notify the Department by telephone of ~~or telegraph, giving~~ the circumstances that resulted in the inability to retrieve the source and obtain the Department's approval to implement abandonment procedures or notify the Department that the licensee implemented abandonment before receiving Department approval because the licensee believed there was an immediate threat to public health and safety ~~of the loss, and request approval of the proposed abandonment procedures~~; and

(c) File a written report with the Department within 30 days of the abandonment, setting forth the following information:

(1) through (6) No change.;

7. Depth of the well; ~~and~~

8. Information contained on the permanent identification plaque; and

9. The immediate threat to public health and safety that justified abandonment before Department approval as specified in paragraph (3)(b), above; and

(d) Develop and implement a means to prevent inadvertent intrusion on the source unless the source is not accessible to any subsequent drilling operations.

(4) Whenever a sealed source containing radioactive material is abandoned downhole, the licensee shall provide a permanent plaque, as described below, for posting the well or well-bore at the surface of the well unless the mounting of the plaque is not practical. The size of the plaque shall be at least 7 inches (17 cm) square and 1/8 inch (3 mm) thick. This plaque shall:

(a) Be constructed of long-lasting material, such as stainless steel, brass, bronze, or monel, and

(b) through (5) No change.

Specific Authority 404.051, 404.061, 404.081 FS. Law Implemented 404.022, 404.051(1), (4), (6), 404.061(2), 404.081(1) FS. History–New 7-17-85, Formerly 10D-91.1220, Amended _____.

PART XIII RADIATION SAFETY REQUIREMENTS FOR POSSESSION AND USE OF SEALED OR UNSEALED SOUCES OF RADIOACTIVE MATERIALS

SUBPART B REQUIREMENTS FOR THE POSSESSION AND USE OF SEALED SOURCES IN PORTABLE DEVIDES

64E-5.1311 Storage, Security and Transportation Precautions

(1) No change.

(2) All portable gauge licensees must comply with either paragraph (2)(a) or (2)(b) below. Effective January 1, 2007, portable gauge licensees must comply only with paragraph (2)(b).

(a) Sealed sources must have a minimum of two locks between the device and the public when being transported or stored.

(b) Each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

(3) through (4) No change.

Specific Authority 404.022, 404.042, 404.051, 404.061, 404.071, 404.081 FS. Law Implemented 404.022, 404.042, 404.051(1), (4), (6), (9), (10), 404.061(2), (3), 404.071(1), 404.081(1) FS. History–New 5-12-93, Formerly 10D-91.1412, Amended _____.

PART XV TRANSPORTATION OF RADIOACTIVE MATERIAL

SUBPART A

64E-5.1502 Transportation of Radioactive Material.

(1) No change.

(2) Each licensee who transports radioactive material outside of the confines of his facility or other place of use, or who offers radioactive material to a carrier for transport shall:

(a) Comply with the current applicable requirements, appropriate to the mode of transport, of 49 CFR Parts 171-173, 177, 383, and 390-397. ~~dated 10-1-97, which are herein incorporated by reference and which are available from the department;~~

(b) through (c) No change.

Specific Authority 404.051, 404.061, 404.141, 404.20 FS. Law Implemented 404.22, 404.051(1), (4), (6), (11), 404.061(2), 404.141, 404.20(1) FS. History–New 7-17-85, Formerly 10D-91.2003, Amended 10-8-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: William A. Passetti

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Lisa Conti

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 14, 2006

FISH AND WILDLIFE CONSERVATION COMMISSION

Manatees

RULE NO.:	RULE TITLE:
68C-22.027	Duval County and Associated County (Parts of Clay and St. Johns) Zones

PURPOSE AND EFFECT: The purpose of the proposed rulemaking action is to amend the Commission's manatee protection zones in the downtown Jacksonville area (i.e., between the Fuller Warren Bridge and Reddie Point) to make the zones identical to the existing federal manatee protection zones as amended by the United States Fish and Wildlife Service in April 2005. The effect of the action would be to slightly expand and otherwise revise the Commission's existing Slow Speed zones and add 25 MPH zones in two areas that are currently unregulated by the Commission's rule. No changes would be made to any existing zones outside of the downtown Jacksonville area. It should be noted that the changes in the downtown area would not result in any additional on-water regulation that does not already exist pursuant to the federal zones. This action is being proposed after considering recommendations and comments made by the Duval County Local Rule Review Committee that was formed by the city of Jacksonville pursuant to Section 370.12(2)(f), F.S.

SUMMARY: The Commission's zones in the downtown Jacksonville area would be revised as follows: [1] the width of the Slow Speed buffer along the eastern shoreline of the St. Johns River between Reddie Point and the Hart Bridge would be expanded to 1,000 feet, and a 25 MPH zone would be added between this buffer and the existing 300-foot buffer along the

western shoreline; [2] a 300-foot Slow Speed buffer would be added along the western shoreline of Exchange Island; [3] the Slow Speed zone east and south of Exchange Island would be changed to a shore-to-shore Slow Speed zone that includes slightly more area at the mouth of the Arlington River; [4] the area between the Hart Bridge and the Main Street Bridge would be changed to a shore-to-shore Slow Speed zone with speeds up to 25 MPH allowed in the marked channel of the Florida Intracoastal Waterway; and [5] the area between the Main Street Bridge and the Fuller Warren Bridge would be changed to a shore-to-shore Slow Speed zone that includes the marked channel of the Florida Intracoastal Waterway. No changes would be made to any existing zones outside of the downtown Jacksonville area.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Regulatory Costs (SERC) has been prepared.

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

SPECIFIC AUTHORITY: 370.12(2)(n) FS.

LAW IMPLEMENTED: 370.12(2)(d), (k), (n) FS.

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

DATE AND TIME: Wednesday, September 20, 2006, 6:00 p.m.

PLACE: City Council Chambers, First Floor, City Hall at St. James, 117 West Duval Street, Jacksonville, Florida

THE FINAL PUBLIC HEARING WILL BE HELD BY THE COMMISSION AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATES AND TIME: December 6-7, 2006, To Be Announced,

PLACE: Key Largo, Florida – Specific location yet to be determined

Another notice will be published in the F.A.W. to confirm the date of the final hearing and to provide the location information. The Commission's agenda for this meeting will indicate the specific day when this item is scheduled to be addressed.

If accommodation for a disability is needed to participate in any of the above hearings, please notify the contact person listed below at least five days before the hearing.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Mr. Scott Calleson, Florida Fish and Wildlife Conservation Commission, Imperiled Species Management Section, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68C-22.027 Duval County and Associated County (Parts of Clay and St. Johns) Zones.

(1) The Commission hereby designates the waters within Duval County, Clay County, and St. Johns County, as described below, as areas where manatee sightings are frequent and where the best available information supports the conclusion ~~it can be assumed~~ that manatees inhabit these areas on a regular or ~~,~~ periodic ~~or continuous~~ basis. ~~The Commission has further determined that a likelihood of threat to manatees exists in these waters as a result of manatees and motorboats using the same areas.~~ The primary purpose of this rule is to protect manatees from harmful collisions with motorboats and from harassment by regulating the speed and operation of motorboats within these designated areas. A secondary purpose is to protect manatee habitat. ~~This rule will also provide additional habitat protection.~~ In consideration of balancing the rights of fishers, boaters, and water skiers to use the waters of the state for recreational and commercial purposes (as applicable under Section 370.12(2)(k), F.S.), with the need to provide manatee protection, the Commission has examined the need for limited lanes, corridors, or unregulated areas that allow higher speeds through or within regulated areas. Such lanes, corridors, or areas are provided in those locations where the Commission determined that they are consistent with manatee protection needs. All of the zones set forth below are in effect year-round and, unless otherwise stated, all zones exclude all associated waterways (tributaries, lakes, creeks, coves, bends, backwaters, canals, basins, etc.) unless explicitly included.

(a) SLOW SPEED ~~ZONE~~, SHORE-TO-SHORE

1. through 2. No change.

3. St. Johns River, Main Street Bridge to Fuller Warren Bridge Area – All waters of the St. Johns River and associated waterways west (upriver) of the Main Street Bridge and north (downriver) of the Fuller Warren Bridge;

4.~~3.~~ No change.

(b) SLOW SPEED ~~SHORELINE BUFFER ZONE~~

1. through 3. No change.

4. St. Johns River, Reddie Point to Hart ~~Fuller Warren~~ Bridge Area – Those waters described below, excluding the federally-marked Florida Intracoastal Waterway channel:

a. Within 300 feet of the general contour of the western (and northern) shoreline of the St. Johns River, south (upriver) of a line that runs from the easternmost point of Sandfly Point (approximate latitude 30°23'10" North, approximate longitude 81°38'03" West) to the northernmost point of Reddie Point (approximate latitude 30°23'22" North, approximate longitude 81°37'13" West) and north and east (downriver) of the Hart ~~Fuller Warren~~ Bridge, including all associated waterways and all waters of Long Branch Creek easterly of the Buffalo Avenue/Wigmore Street Bridge;

b. Within 1,000 ~~900~~ feet of the general contour of the eastern shoreline of the St. Johns River, south (upriver) of a line that runs from the easternmost point of Sandfly Point (approximate latitude 30°23'10" North, approximate longitude 81°38'03" West) to the northernmost point of Reddie Point (approximate latitude 30°23'22" North, approximate longitude 81°37'13" West) and north (downriver) of the Hart Bridge, including all associated waterways, and all waters east of Exchange Island and a line that bears 250° from the southernmost point of Exchange Island (approximate latitude 30°19'18" North, approximate longitude 81°37'05" West) and west of a line that bears 73° from a point (approximate latitude 30°18'53" North, approximate longitude 81°36'43" West) on the southern shoreline of the Arlington River at the mouth of Little Pottsburg Creek; and also including those waters within 300 feet of the general contour of the western shoreline of Exchange Island ~~a line that bears 90° from a point (approximate latitude 30°19'57" North, approximate longitude 81°36'54" West) in the river located 900 feet from the eastern shoreline of the river, and; all waters of the river east of a line that runs from said point to the northernmost point of Exchange Island (approximate latitude 30°19'50" North, approximate longitude 81°36'55" West)~~;

~~c. Within 300 feet of the general contour of the eastern shoreline of the St. Johns River, south of a line that bears 90° from the northernmost point of Exchange Island (approximate latitude 30°19'50" North, approximate longitude 81°36'55" West) and north of a line that bears 90° from a point (approximate latitude 30°19'19" North, approximate longitude 81°36'59" West) on the eastern shoreline of Exchange Island;~~

5.~~d.~~ St. Johns River, Hart Bridge to Main Street Bridge Area – All waters of the St. Johns River and associated waterways ~~Within 600 feet of the general contour of the southern (eastern) shoreline of the St. Johns River, west of a line that bears 180° from the southernmost point of Exchange Island (approximate latitude 30°19'18" North, approximate longitude 81°37'05" West) and north and east of the Fuller Warren Bridge~~, including all waters of Miller Creek north of the Atlantic Boulevard (State Road 10) Bridge, west (upriver) of the Hart Bridge and east (downriver) of the Main Street Bridge, except in the marked channel of the Florida Intracoastal Waterway as designated in subparagraph (1)(c)2. ~~and; all waters of the St. Johns River and the Arlington River east and south of a line that runs from the waterward end of the southern terminus of the 300-foot buffer described in sub subparagraph (1)(b)4.c. to the waterward end of the eastern terminus of the 600-foot buffer described in this paragraph, and west and north of a line that bears approximately 225° from the southernmost tip of a peninsula on the northern side of the Arlington River (approximate latitude 30°19'07" North, approximate longitude 81°36'38" West) to a point on the southern side of the Arlington River, east of Empire Point (approximate latitude 30°18'57" North, approximate longitude 81°36'47" West)~~;

5. through 10. renumbered 6. through 11. No change.

(c) 25 MPH

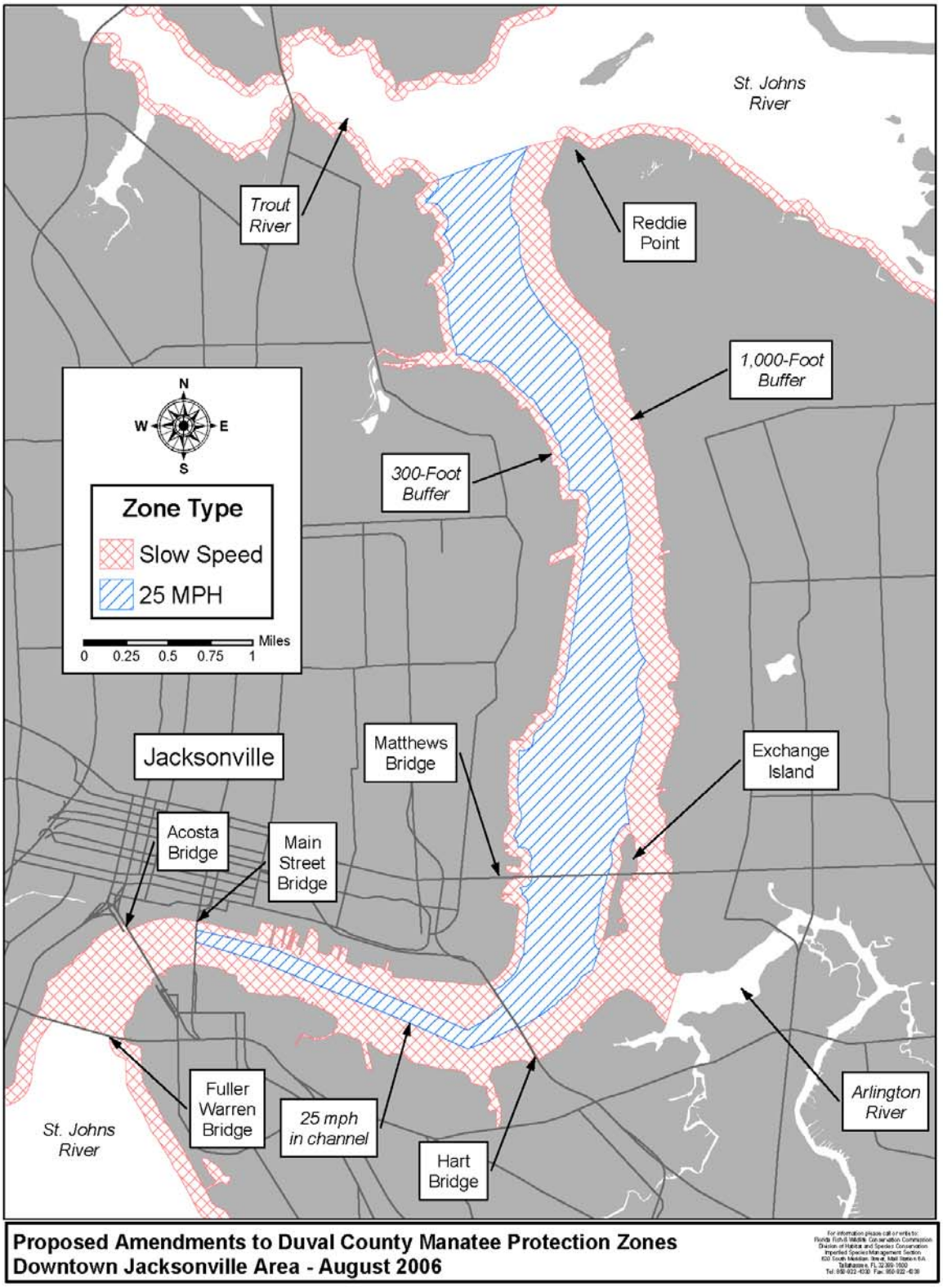
1. St. Johns River, Reddie Point to Hart Bridge Area – All waters of the St. Johns River outside of the Slow Speed areas designated in subparagraph (1)(b)4.;

2. St. Johns River, Hart Bridge to Main Street Bridge Area – All waters in the marked channel of the Florida Intracoastal Waterway west (upriver) of the Hart Bridge and east (downriver) of the Main Street Bridge.

(2) The width of the variable-width shoreline buffer referenced in subparagraphs (1)(b)6.~~5.~~, 9.~~8.~~, 10.~~9.~~, and 11.~~10.~~, above is as follows: The buffer includes at a minimum all waters within 500 feet of the general contour of the shoreline. Where there are docks that extend out farther than 300 feet into the waterway, the buffer extends out beyond the 500-foot line to include all waters shoreward of a line that runs 200 feet beyond and parallel to the dock line. For the purposes of this rule, the dock line shall be defined as a line that runs between the ends of successive docks.

(3) No change.

(4) The amendments to Rule 68C-22.027, F.A.C., as approved by the Commission on [insert approval date], shall take effect as soon as the regulatory markers are posted.


St. Johns River
Trout River
Reddie Point
1,000-Foot Buffer
300-Foot Buffer
N
W
E
S
Zone Type
Slow Speed
25 MPH
Miles
0 0.25 0.5 0.75 1
Jacksonville
Matthews Bridge
Exchange Island
Acosta Bridge
Main Street Bridge
Fuller Warren Bridge
25 mph in channel
Hart Bridge
St. Johns River
Arlington River
Proposed Amendments to Duval County Manatee Protection Zones
Downtown Jacksonville Area - August 2006

Specific Authority 370.12(2)(m) FS. Law Implemented 370.12(2)(d),(m) FS. History–New 12-22-92, Amended 6-16-93, Formerly 16N-22.027, 62N-22.027, Amended 8-1-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mr. Tim Breault, Director of the Division of Habitat and Species Conservation

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: The Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 7, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 26, 2006

Section III
Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Plant Industry

RULE NO.:	RULE TITLE:
5B-2.010	Special Inspection and Certification Fee

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 32, No. 15, April 14, 2006, Florida Administrative Weekly, has been withdrawn.

DEPARTMENT OF REVENUE

RULE NOS.:	RULE TITLES:
12-18.003	Amount and Payment of Compensation
12-18.004	Submission of Information and Claims for Compensation

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made in accordance with subparagraph 120.54(3)(d)1., F.S., to the proposed amendments to Rule 12-18.004, F.A.C., published in Vol. 32, No. 2, pp. 78-80, January 13, 2006, issue of the Florida Administrative Weekly.

In response to written comments received from the Joint Administrative Procedures Committee, dated February 7, 2006, regarding Form DR-55, Application for Compensation for Tax Information, paragraph (a) of subsection (3) of Rule 12-18.004, F.A.C., Submission of Information and Claims for Compensation, has been changed, so that, when adopted, that paragraph will read as follows:

(3)(a) The Department designates Form DR-55, Application for compensation for Tax Information, as the form to be used by claimants for this purpose. Form DR-155, Application for Compensation for Tax Information (R. 08/06 ~~12/02~~), is hereby incorporated, by reference, in this rule.

In addition, changes will be made to Form DR-55, Application for compensation for Tax Information, to remove the requirement that an applicant certify that they are 18 years of age or older, to correct the reference to the "Florida Department of Banking & Finance" to the "Florida Department of Financial Services," and to remove the requirement that the applicant "provide as much information as they know." Technical changes will also be made to the form.

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE NO.:	RULE TITLE:
12A-17.005	Public Use Forms

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 32, No. 2, pp. 85-86, January 13, 2006, issue of the Florida Administrative Weekly has been withdrawn.

DEPARTMENT OF REVENUE

Corporate, Estate and Intangible Tax

RULE NO.:	RULE TITLE:
12C-2.0115	Public Use Forms

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made in accordance with subparagraph 120.54(3)(d)1., F.S., to the proposed amendments to Rule 12C-2.0115 F.A.C. (Public Use Forms), published in Vol. 32, No. 2, pp. 122-123, January 13, 2006, issue of the Florida Administrative Weekly. A Notice of Change was published in Vol. 32, No. 5, p. 479, February 3, 2006, issue of the Florida Administrative Weekly,

In response to written comments received from the Joint Administrative Procedures Committee, changes to Forms DR-350111 and DR-350618 will be adopted, by reference, in the proposed amendments to Rule 12C-2.0115, F.A.C. Rule 12C-2.0115, has been changed, so that, when adopted, subsection (10) and subsection (13) will read:

Form Number	Title	Effective Date
(10) DR-350111	Intangible Tax Self-Audit Worksheet-_____ (R. 06/06 ~~12/04~~)	___ ~~06/05~~
(13) DR-350618	Stockbroker Instructions and Specifications for Reporting Information or ~~on~~ Magnetic Media ~~for Year Ending 12/31/04~~ (R. 01/06 ~~01/05~~)	___ ~~06/05~~