

disability occurred, and thereafter the duties of any occupation for which the insured is reasonably fitted by education, training or experience.

2. This paragraph shall not apply to lump sum disability coverage.

Specific Authority 624.308(1), 627.678 FS. Law Implemented 624.307(1), 627.678, 627.6785, 627.682 FS. History—New 5-9-82, Formerly 4-7.11, Amended 6-11-91, Formerly 4-7.011, Amended 2-11-03, Formerly 4-163.011, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Gerry Smith, Division of Life and Health, Office of Insurance Regulation, E-mail gerry.smith@fldfs.com

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: The Financial Services Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 28, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 22, 2008

### Section III Notices of Changes, Corrections and Withdrawals

**DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

**Division of Agricultural Environmental Services**

RULE NO.: 5E-14.142  
 RULE TITLE: Responsibilities and Duties – Records, Reports, Advertising, Applications

**NOTICE OF CHANGE**

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 34, No. 29, July 18, 2008 issue of the Florida Administrative Weekly.

5E-14.142 Responsibilities and Duties – Records, Reports, Advertising, Applications.

(1) through (4) No change.

(5) Business license application: In accordance with Section 482.071(1), F.S., the following information shall be submitted on, attached to, and made a part of the Department’s pest control business license application form, DACS 13605, Pest Control Business License Application, Rev. 09/08 ~~3/02~~, which is hereby adopted and incorporated by reference and is available on the department’s website under the header “Forms” at <http://www.doacs.state.fl.us/onestop/aes/pestcont.html>.

(a) through (i) No change.

(6) through (8) No change.

Specific Authority 482.051 FS. Law Implemented 482.021(21), 482.061, 482.071, 482.091, 482.111(5), (9), 482.161(1)(g), (h), 482.226(1), (6) FS. History—New 1-1-77, Amended 6-27-79, 6-22-83, 1-20-87, 10-25-90, Formerly 10D-55.142, Amended 8-11-93, 5-28-98, 4-29-02, 4-17-03, 6-2-04, 6-1-06, 7-23-08, 9-17-08, 9-17-08, \_\_\_\_\_.

**DEPARTMENT OF COMMUNITY AFFAIRS**

**Division of Housing and Community Development**

RULE NO.: 9B-13.0041  
 RULE TITLE: Thermal Efficiency Standards Adopted

**NOTICE OF CHANGE**

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 34, No. 31, August 1, 2008 issue of the Florida Administrative Weekly.

The Commission voted to further modify the proposed reference document building on the change published in Vol. 34, No. 31, August 1, 2008 issue of the Florida Administrative Weekly, realigning criteria of Chapter 13 of the Florida Building Code, Building, and Chapter 11 of the Florida Building Code, Residential, to fit within the revised code structure created by the Commission at its May, 2008, meeting in its effort to make the energy code provisions 15 percent more stringent than the energy provisions previously in effect. Changes include the following:

1. The commercial building compliance method B was expanded to cover building renovations, replacement of mechanical building systems, change of occupancy type for older buildings, shell buildings at first permit, and limited and special use buildings. Also, a new Form 400B-08 was adopted for this method.

2. Changes such as adding omitted references to appendices, adding omitted scoping criteria, options and figures from the 2004 code, fixing minimum duct R-values on tables, fixing a gas water heater minimum to reflect the national standard, making definitions and code text internally consistent, incorporating a code clarification into the code and general cleanup are made to resolve conflicts within the updated code.

3. Updates were made to the computer programs EnergyGauge Summit Fla/Com and EnergyGauge USA Fla/Res (2008) to make them 15 percent more stringent than the 2007 code and to add or delete provisions to make them consistent with relevant energy provisions of the Florida Building Code.

9B-13.0041 Thermal Efficiency Standards Adopted.

Proposed Effective Date March 1, 2009 ~~December 31, 2008~~.

(1) The Florida Energy Efficiency Code for Building Construction, 2007 Edition (the Code), is hereby adopted by reference. The Florida Building Commission shall revise, update and maintain the Code.

(2) A copy of the above referenced Code as amended has been filed with these rules with the Secretary of State. The Code is also available for reference and inspection at the Department offices in Tallahassee, Division of Housing and Community Development, 2555 Shumard Oak Blvd., Tallahassee, Florida 32399-2100.

Specific Authority 553.901 FS. Law Implemented 553.901, 553.903 FS. History—New 12-10-96, Amended 10-19-97, 1-19-98, 12-27-98, 9-12-00, ~~3-1-09~~ ~~4-31-08~~.

**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:  
33-602.210                    Use of Force

**NOTICE OF CHANGE**

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 34, No. 41, October 10, 2008 issue of the Florida Administrative Weekly.

33-602.210 Use of Force.

- (1) through (15) no change.
- (16) Use of Chemical Agents.
- (a) through (k) No change.
- (l) Issuance of chemical agents.
- 1. No change.

2. Certified officers assigned to major institutions and posted to internal security, recreation field, shift supervisor posts, or designated as "A" team response members are authorized by the Secretary to be issued one ~~twelve to thirteen~~ ~~ounce~~ MK-9, or equivalent, fogger type dispenser of OC in addition to the dispenser issued in accordance with subparagraph (16)(l)1. These officers are authorized to administer the chemical agents listed in this subparagraph in spontaneous disturbance situations involving multiple inmates in locations where large numbers of inmates are present, such as recreation fields, canteen, and meal lines. This option shall only be utilized in disturbance situations rising to the level of inmate involvement where this enhanced option is deemed necessary and shall not be used indoors.

- 3. No change.
- (m) through (q) No change.

(17) Specialty Impact Munitions. Specialty impact munitions shall be used primarily by the department's rapid response teams and correctional emergency response teams during riots and disturbances. They are intended as a less lethal

alternative to the use of deadly force. Specialty impact munitions shall only be employed by officers trained in their use and effects.

- (a) no change.
- (b) The following specialty impact munitions have been approved for use by the department:
  - 1. 37-mm rubber ball pellet rounds,
  - 2. 12 gauge rubber ball pellet rounds,
  - 3. 37-mm wooden baton rounds,
  - 4. 40-mm direct impact – OC marking rounds.
- (c) through (h) No change.
- (18) through (22) No change.

Specific Authority 944.09 FS. Law Implemented 776.07, 944.09, 944.35 FS. History—New 4-8-81, Amended 10-10-83, 9-28-85, Formerly 33-3.066, Amended 3-26-86, 11-21-86, 4-21-93, 7-26-93, 11-2-94, 2-12-97, 11-8-98, Formerly 33-3.0066, Amended 10-6-99, 2-7-00, 7-25-02, 8-25-03, 2-25-04, 11-7-04, 4-17-05, 8-1-05, 3-2-06, 9-18-06, 10-4-07, 3-3-08, 8-4-08,\_\_\_\_\_.

**AGENCY FOR HEALTH CARE ADMINISTRATION**

**Medicaid**

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

**NOTICE OF CHANGE**

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 34, No. 40, October 3, 2008 issue of the Florida Administrative Weekly.

Based upon comments received at the public hearing held on October 28, 2008, the Agency is making the following change to the proposed rule:

In the Title XIX Inpatient Hospital Reimbursement Plan, Sections I.J, II.F. and IV H.3, the language "For cost reports received on or after October 1, 2003" and the word "these" will not be deleted from the rule language and will be retained in the rule language in current form.

**AGENCY FOR HEALTH CARE ADMINISTRATION**

**Medicaid**

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

**NOTICE OF CHANGE**

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 34, No. 40, October 3, 2008 issue of the Florida Administrative Weekly.

Based upon comments received at the public hearing held on October 28, 2008, the Agency is making the following change to the proposed rule:

In the Title XIX Outpatient Hospital Reimbursement Plan, Sections I.K, II.F. and IV G.3, the language “For cost reports received on or after October 1, 2003” and the word “these” will not be deleted from the rule language and will be retained in the rule language in current form.

**DEPARTMENT OF MANAGEMENT SERVICES**

**Personnel Management System**

RULE NO.: 60L-33.004  
RULE TITLE: Workforce Reduction and Employee Transition

**NOTICE OF CHANGE**

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 34, No. 34, August 22, 2008 issue of the Florida Administrative Weekly.

As a result of comments received at the public hearing held on October 31, 2008, the following changes have been made to the rule:

60L-33.004 Workforce Reduction and Employee Transition

- (1) through (2)(c) No change.
- (d) Assess employees.
  - 1. through No change.

2. If the layoff affects any other career service employee, develop assessment procedures ~~which shall base employee retention~~ on objective measures that include ~~the following considerations:~~ comparative merit, demonstrated skills, experience and length of service in the State Personnel System. In determining which employees to retain, ~~the primary retention considerations should be the employees’ job performance, the job related skills possessed by employees and~~ consider which employees will best enable the agency to advance its mission; ~~in this context, consider how each employee fares with respect to the following factors: commitment, cooperation, excellence, fairness, honesty/integrity, initiative, respect, and teamwork. An employee’s experience and length of service in the State Personnel System shall also receive consideration for employee retention and may be used in those instances where employees receive equal assessments.~~

- (3) through (7) No change.

Specific Authority 110.1055, 110.201(1), 110.227(2) FS. Law Implemented 110.201, 110.227 FS. History–New 1-1-02, Amended 4-3-03,\_\_\_\_\_.

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**Construction Industry Licensing Board**

RULE NO.: 61G4-12.009  
RULE TITLE: Fees

**NOTICE OF CORRECTION**

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 34, No. 33, August 15, 2008 issue of the Florida Administrative Weekly.

Notice is hereby given that the following correction has been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 34, No. 33, of the August 15, 2008, issue of the Florida Administrative Weekly. The correction is in response to concerns by the Joint Administrative Procedures Committee in a letter dated September 29, 2008 and to correct the publication date of the rule development. No Statement of Costs was prepared. The correction is as follows:

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 28, 2008

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: G. W. Harrell, Executive Director, Construction Licensing Board, P. O. Box 5257, Tallahassee, Florida 32314-5257

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**Florida Real Estate Commission**

RULE NO.: 61J2-5.014  
RULE TITLE: Registration of Corporation

**NOTICE OF WITHDRAWAL**

Notice is hereby given that the above rule, as noticed in Vol. 32, No. 14, April 7, 2006 issue of the Florida Administrative Weekly has been withdrawn.

**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.”

**FINANCIAL SERVICES COMMISSION**

**OIR – Insurance Regulation**

RULE NOS.:	RULE TITLES:
69O-204.010	Purpose and Scope
69O-204.020	Definitions
69O-204.030	Forms Incorporated By Reference
69O-204.040	Prohibited Practices
69O-204.050	Anti-fraud

**NOTICE OF CORRECTION**

The notice of proposed rulemaking for this rule incorrectly identified the agency head which approved this notice. The correct identity is the Financial Services Commission, the agency head, for rulemaking, of the Office of Insurance Regulation.

**DEPARTMENT OF FINANCIAL SERVICES****Securities**

RULE NO.: 69W-600.0133  
 RULE TITLE: Use of Senior – Specific  
 Certifications and Professional  
 Designations by Associated  
 Persons and Investment Advisers

**NOTICE OF CHANGE**

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 34, No. 39, September 26, 2008 issue of the Florida Administrative Weekly.

The rule has been changed to address concerns raised by the Joint Administrative Procedures Committee. In summary, the changes include removing the word “reasonable” from subparagraphs 2., 3., and 4. of paragraph 69W-600.0133(1)(d). In addition, the rule is clarified to indicate that Rule 69W-600.0133, F.A.C., is based on the model rule of the North American Securities Administrators Association (NASAA) regarding the use of senior-specific certifications and professional designations.

69W-600.0133 Use of Senior – Specific Certifications and Professional Designations by Associated Persons and Investment Advisers.

(1) The use of a senior specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be a dishonest and unethical business practice in the securities industry in violation of Section 517.161(1)(d) or 517.161(1)(h), F.S., by an associated person of a dealer or investment adviser. The prohibited use of such certifications or professional designation includes, but is not limited to, the following:

(a) Use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(b) Use of a nonexistent or self-conferred certification or professional designation;

(c) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and

(d) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

1. Is primarily engaged in the business of instruction in sales and/or marketing;

2. Does not have standards or procedures for assuring the competency of its designees or certificants;

3. Does not have standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

4. Does not have continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

(2) There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of paragraph (1)(d) above when the organization has been accredited by:

(a) The American National Standards Institute; or

(b) The National Commission for Certifying Agencies; or

(c) An organization that is on the United States Department of Education’s list entitled “Accrediting Agencies Recognized for Title IV Purposes” and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

(3) In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(a) Use of one or more words such as “senior,” “retirement,” “elder,” or like words, combined with one or more words such as “certified,” “registered,” “chartered,” “adviser,” “specialist,” “consultant,” “planner,” or like words, in the name of the certification or professional designation; and

(b) The manner in which those words are combined.

(4) For purposes of this rule, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

(a) Indicates seniority or standing within the organization; or

(b) Specifies an individual’s area of specialization within the organization.

For purposes of this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates brokers, dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940, 15 U.S.C. ss. 80a-2, 80a-3 (2006). The cited sections of the Investment Company Act of 1940 are hereby incorporated by reference.

(5) Nothing in this rule shall limit the Office of Financial Regulation’s authority to enforce existing law.

(6) This rule is based on the model rule adopted on March 20, 2008, by the North American Securities Administrators Association (NASAA) regarding the use of senior-specific certifications and professional designations. The NASAA model rule is hereby by incorporated by reference.

(7) All materials incorporated by reference in this rule may be obtained by writing to: Office of Financial Regulation, 200 East Gaines Street, Tallahassee, Florida 32399-0375

Specific Authority 517.03(1), 517.1215(2), 517.1217 FS. Law Implemented 517.1215(2), 517.1217, 517.161 FS. History—New

## Section IV Emergency Rules

### **BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND**

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

### **DEPARTMENT OF ENVIRONMENTAL PROTECTION**

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

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

### **DEPARTMENT OF LAW ENFORCEMENT**

NOTICE IS HEREBY GIVEN THAT on October 30, 2008, the Criminal Justice Standards and Training Commission has issued an order.

The CJSTC has granted, with modifications, the request for waiver of subsection 11B-27.00212(14), F.A.C., by Camile Araujo, Miami Dade Police Department and the Metropolitan Police Institute. Petitioner has requested that the Commission waive the requirement that a person complete firearms qualification by June 30, 2008, and delete the “break-in-service” in the petitioner’s record for failure to complete the firearms qualification on time. Petitioner suffered a life-threatening injury in the line of duty and is physically unable to complete the requirement at this time. Notice of the receipt of Petitioner’s request was published in the Florida Administrative Weekly, Vol. 34, No. 39, September 26, 2008. The Commission granted the requested waiver with modifications. The Commission has granted the Petitioner two

additional years to meet firearms qualification. Upon submission of proof of completion of firearms qualification by Petitioner’s employer within the two-year window, Commission staff shall remove Petitioner’s break-in-service from the Petitioner’s officer record.

A copy of the Order may be obtained by contacting: Grace A. Jaye, Assistant General Counsel, Florida Department of Law Enforcement, P. O. Box 1489, Tallahassee, FL 32302, (850)410-7676.

NOTICE IS HEREBY GIVEN THAT on October 30, 2008, the Criminal Justice Standards and Training Commission has issued an order.

The CJSTC has granted, with modifications, the request for waiver of subsection 11B-27.00212(14), F.A.C., by Paula Boyd, Miami Dade Police Department, and the Metropolitan Police Institute. Petitioner has requested that the Commission waive the requirement that a person complete firearms qualification by June 30, 2008, and delete the “break-in-service” in the petitioner’s record for failure to complete the firearms qualification on time. Petitioner suffered injuries in the line of duty and is physically unable to complete the requirement at this time. Notice of the receipt of Petitioner’s request was published in the Florida Administrative Weekly, Vol. 34, No. 39, September 26, 2008. The Commission granted the requested waiver with modifications. The Commission has granted the Petitioner two additional years to meet firearms qualification. Upon submission of proof of completion of firearms qualification by Petitioner’s employer within the two-year window, Commission staff shall remove Petitioner’s break-in-service from the Petitioner’s officer record.

A copy of the Order may be obtained by contacting: Grace A. Jaye, Assistant General Counsel, Florida Department of Law Enforcement, P. O. Box 1489, Tallahassee, FL 32302, (850)410-7676.

NOTICE IS HEREBY GIVEN THAT on October 30, 2008, the Criminal Justice Standards and Training Commission has issued an order.

Petitioner Bobby J. Lingold requested a waiver of subsection 11B-27.002(4), F.A.C., which requires officers to become employed within four years of beginning basic recruit training. Petitioner requested an additional year to obtain employment in law enforcement. Notice of the receipt of Petitioner’s request was published in the Florida Administrative Weekly, Vol. 34, No. 44, October 31, 2008. The Commission denied the requested waiver because the Petitioner did not present any evidence that he was affected by the rule in any manner differently than others who are subject to the rule. The application of the rule in Petitioner’s case would not violate the principles of fairness.