

PURPOSE AND EFFECT: The purpose of the proposed rule development effort is to establish regulations for Commission managed shooting ranges in calendar year 2010 that would address public safety, access, and activities. The effect of the proposed rule will be to enable the agency to better manage public use of Commission managed shooting ranges.

SUBJECT AREA TO BE ADDRESSED: Subject areas covered in the proposed rule include requirements for access, activities, and public safety on Commission managed shooting ranges.

RULEMAKING AUTHORITY: Art. IV, Sec. 9, Florida Constitution; 375.313, 379.2223 FS.

LAW IMPLEMENTED: Art. IV, Sec. 9, Florida Constitution; 375.313, 379.2223 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Michael Yaun, Deputy 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.

DEPARTMENT OF FINANCIAL SERVICES

Division of State Fire Marshal

<p>RULE NO.: 69A-62.004</p>	<p>RULE TITLE: Uniform Minimum Firefighter Employment Standards: Presence of Toxic Substances; Notice to Fire Departments</p>
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PURPOSE AND EFFECT: The purpose of the rule amendment is to allow flexibility in maintaining current notices of toxic substances in the workplace, without the need for constant rule amendment.

SUBJECT AREA TO BE ADDRESSED: Toxic substances in firefighter workplace.

RULEMAKING AUTHORITY: 633.01(1), 633.808 FS.

LAW IMPLEMENTED: 633.45(1)(a), 633.807, 633.821 FS.

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

DATE AND TIME: Thursday, January 21, 2010, 10:00 a.m., or as soon thereafter as the Florida Fire Standards and Training Council meeting is adjourned

PLACE: Ocean Center in Daytona Beach, 101 North Atlantic Ave., Daytona Beach, FL 32118

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Charles Brush, (352)369-2836. 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 DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Charles Brush, Safety Program Manager, Bureau of Fire Standards and Training, Division of State Fire Marshal; phone: (352)369-2836

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

**Section II
Proposed Rules**

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

Division of Driver Licenses

RULE NOS.:	RULE TITLES:
15A-11.001	Definitions
15A-11.002	General Regulations
15A-11.003	CDS License Application and Renewal
15A-11.004	Offices and Instruction Facilities
15A-11.0045	Program of Instruction and Requirements
15A-11.005	CDS Records Retention
15A-11.006	Driving Instruction Contracts
15A-11.007	CDS Instruction Vehicles
15A-11.008	Soliciting and Advertising
15A-11.009	CDS Instructor Certificate Application and Renewal
15A-11.0095	Agent Identification Cards
15A-11.010	Commercial Truck Driver Schools
15A-11.011	CTDS Instructor Certificate Application and Renewal
15A-11.012	CTDS Instruction Vehicles
15A-11.013	Cancellation or Suspension of CDS License, CDS, CTDS Instructor's Certification or Agent's Card
15A-11.014	Grounds for Cancellation and Suspension Matrix
15A-11.015	Forms

PURPOSE AND EFFECT: A new rule is proposed to regulate business and their instructors that teach people to drive motor vehicles. Truck driving schools are regulated elsewhere;

however, the rule also provides guidance for truck instructor certification and for registering vehicles used in truck driving schools.

SUMMARY: The rule provides guidance for licensure of a business (school) and their instructors, including registration of vehicles used to teach students how to drive behind-the-wheel. Similar provisions apply to truck driving schools instructors and the vehicles those schools use.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will have an impact on small business. A SERC has been prepared by the agency.

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.

RULEMAKING AUTHORITY: 488.02 FS.

LAW IMPLEMENTED: 488 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: Monday, January 4, 2010, 9:00 a.m.

PLACE: Department of Highway Safety and Motor Vehicles, Auditorium, 2900 Apalachee Parkway, Tallahassee, Florida 32399

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Mike McGlockton, Bureau of Driver Education and DUI Programs, 2900 Apalachee Parkway, Room B-214, Tallahassee, FL 32399-0500, (850)617-2534

THE FULL TEXT OF THE PROPOSED RULES IS:

15A-11.001 Definitions.

(1) Agent – A person who holds a valid identification card issued by the Department, pursuant to Chapter 488, Florida Statutes, indicating the individual is an agent for the CDS, or CTDS, and is authorized by the school to solicit on its behalf.

(2) Commercial Driving School (CDS) – A school licensed by the Department pursuant to Chapter 488, Florida Statutes, which is authorized to engage in driving instruction.

(3) Commercial Driving School License – A license issued to a school by the Department pursuant to Chapter 488, Florida Statutes, indicating that the school is authorized to engage in driving instruction.

(4) Commercial Motor Vehicle Driver Instructor Training Course (CMV-DITC) – A 32-hour Teaching Commercial Motor Vehicle Driver and Traffic Safety Education Course.

(5) Commercial Truck Driving School (CTDS) – A school licensed by the CIE pursuant to Chapter 1005, Florida Statutes, which is authorized to engage in commercial motor vehicle driving instruction.

(6) Commission for Independent Education (CIE) – The Commission for Independent Education established by Chapter 1005, F.S.

(7) Department – The Department of Highway Safety and Motor Vehicles.

(8) Driver Instructor Training Course (DITC) – A 32-hour Teaching Motor Vehicle Driver and Traffic Safety Education Course.

(9) Driver Performance Analysis System (DPAS) – The driver performance test that a potential instructor must pass to be temporarily certified to instruct commercial motor vehicle or motor vehicle driving instructions.

(10) Driving Instruction – Any activity for compensation related to on the road or classroom driving education.

(11) Driving Instruction Contract – A written agreement between a CDS and each of its students to provide driving instruction.

(12) Driver License Office – A driver licensing facility operated by or under the authority of the Division of Driver Licenses or local Tax Collector.

(13) Immediate Family Member – A person’s spouse, parents, grandparents, brothers, sisters and children, and parents, grandparents, brothers, sisters and children of the spouse.

(14) Instructor – A person who holds a valid instructor certificate and engages in driving instruction on behalf of a commercial driving school licensed by the Department or the CIE.

(15) Instructor Certificate – An instructor certificate issued to an individual instructor by the Department, pursuant to Chapter 488, Florida Statutes, indicating the individual is an instructor for a specific commercial driving school or commercial truck driving school.

(16) Owner – The person or corporation who has the controlling financial interest of the CDS.

(17) School Vehicle – A motor vehicle used by the CDS or CTDS to engage in driving instruction

(18) Solicitation – A request or offer directly or indirectly, to a person for driving instruction services or enrollment of a student in a CDS or CTDS.

(19) Student – A person who receives driving instruction from a CDS or CTDS.

(20) Temporary Instructor Certificate – A temporary certificate issued by the Department based on satisfactory completion of the DPAS test.

(21) Vehicle Registration – A vehicle owned or leased by the CDS or CTDS that is registered with the department to provide driving instructions.

Rulemaking Authority 488.02 FS. Law Implemented 488.01 FS. History–New _____.

15A-11.002 General Regulations.

(1) No employee of the Department or immediate family member of a Department employee shall be connected in any capacity with any CDS or CTDS in accordance with Section 112.313(7), Florida Statutes.

(2) A CDS shall not indicate that its program is in any way endorsed by the Department, except to say that it is "licensed."

(3) A CDS shall not utilize advertising that indicates, in any way, the school can issue or guarantee the issuance of a driver license or imply that the CDS can in any way influence the Department in the issuance of a driver license, or imply preferential or advantageous treatment from the Department can be obtained.

(4) The CDS must notify the Department in writing within ten (10) days of any change in the school owner's name, the school owner's address, the school's name, or the school's principal place of business address or telephone number.

(5) A duplicate school license or vehicle registration may be issued to a school by submitting a request to the Department on a completed form HSMV 77074S, which is available as provided in Rule 15A-11.014, F.A.C. An affidavit stating that the original document was physically destroyed or lost must accompany the form HSMV 77074S. The fee for issuance of a duplicate certificate shall be two dollars (\$2).

(6) A CDS shall sufficiently train its students that do not have a Class "E" driver license to better enable students to safely operate a motor vehicle. The Department may require performance evaluations of a CDS, if the Department determines the school's driving instruction does not meet this standard.

Rulemaking Authority 488.02 FS. Law Implemented 488.01 FS. History—New _____.

15A-11.003 CDS License Application and Renewal.

(1) The Department oversees and licenses all CDS, except CTDS licensed by the CIE. All private (non-public) CTDS are required to be licensed pursuant to chapter 1005. No person, group, organization, institution, business entity, or corporate entity may engage in the business of operating a driver's school without first obtaining a license from the Department or from CIE pursuant to Chapter 1005, F.S.

(2) All owners or all officers or partners, desiring to engage in the business of conducting a CDS shall, prior to engaging in such business, secure a License from the Department in the manner prescribed by these rules. Prior to the license being issued, all driving instructors employed by the school must be at least 21 years of age and have successfully completed one of the following:

(a) A Department approved 32 hour DITC in driver education, or the equivalent.

(b) A Department approved DPAS examination for a temporary instructor certificate.

(3) Before any license is issued, an application shall be made in writing on form HSMV77074S, which is available as provided in Rule 15A-11.014, F.A.C., and provide the following:

(a) A driving record from previous state of residence, if a Florida resident for less than one (1) year.

(b) A complete Florida Department of Law Enforcement (FDLE) background check on each owner, partner or officer of the school. Each FDLE background check must have been issued within one year of the date of the school application.

(c) If the applicant has been a Florida resident for less than one (1) year, in addition to the FDLE background check, a complete criminal background check from the previous state of residence must accompany the application and must be issued within one year of the date of the school application.

(d) Conviction of a crime within the last 7 years shall not automatically bar any applicant or licensee from obtaining or continuing a certification. The Department shall consider the type of crime committed, the relevancy to the driver training industry, and the length of time since the conviction, in accordance with Section 112.01(1)(b), F.S.

(4) Every application for a license must be accompanied by a non-refundable application fee of fifty dollars (\$50) along with a license fee of two hundred dollars (\$200) and shall be paid by money order, certified check or company check, to the Department.

(5) Each original license shall be valid for a period of one year from the date of issuance.

(6) The license shall not be transferable in the event of a change of school ownership. Application for a new license shall be made by the new owner and the old license and all instructor certificates previously issued shall be surrendered to the Department before a license will be issued to the new owner. Additionally, if the school is a previously licensed CTDS, a copy of the new CIE license must be furnished to the Department.

(7) Before granting approval, the Department may conduct an investigation of the applicant. As a part of its investigation, the Department shall determine if there are any complaints pending against the company being purchased or the owner or owners proposed to operate the purchased driver school.

(8) The license must be conspicuously displayed in the Licensee's principal, and each additional, place of business at all times.

(9) The CDS or CTDS shall agree to permit the Department and its representatives to inspect the school, its public facilities, equipment and records that are required to be maintained in the operation of the school.

(10) The CDS or CTDS shall notify the Department in writing within ten (10) days of any change in the address or employment of the owner, partner, officer, or driving instructor of any CDS or CTDS. Failure to inform the Department of any

changes shall be grounds for the Department to issue an order to suspend or cancel the school's license. In cases involving a CTDS the Department shall notify CIE of the change.

(11) Application for renewal of a CDS license shall be made at least forty-five (45) days prior to the certificate's expiration date on form number HSMV 77074S, which is available as provided in Rule 15A-11.014, F.A.C., and accompanied by a fee of one hundred dollars (\$100) payable to the Department by money order, personal check, certified check or company check. The renewal period for a CDS license is one year. Owners who permit their license to expire shall not be permitted to operate their school and shall have to apply for a new license as set forth above.

Rulemaking Authority 488.02 FS. Law Implemented 488.01 FS. History--New _____.

15A-11.004 Offices and Instruction Facilities.

(1) A CDS shall operate from an office in the following manner:

(a) It must establish and maintain a principal place of business in the State of Florida which shall not be connected to any residence. A CDS must establish and maintain a permanent mailing address.

(b) It shall ensure that its principal place of business is safe and meets all requirements of state and federal law and local ordinances.

(c) No CDS facility shall be established within 300 feet of any government building or portion thereof used for the purpose of conducting driver license examinations.

(d) It must permit the Department to inspect its meeting facilities upon reasonable notice. A CDS must permit the Department to inspect its classrooms, offices, vehicles, and records at the discretion of the Department.

(e) All classroom facilities must have a minimum of 200 square feet of space or 20 feet of space per student, whichever is greater.

(f) When a CDS advertises or lists a different phone or address, other than the main office, it shall be necessary to establish an additional office in this location.

(2) No CDS shall use, or conduct any business under a name without the approval of the Department. The school shall not use the word "State" in any part of the school name.

(3) Additional offices.

(a) A CDS desiring to open an additional office shall notify the Department in writing and provide proof of ownership, occupancy, or lease of such location. The Department shall be notified and the new location must be approved. The license must be conspicuously displayed in each additional place of business at all times.

(b) Each additional office shall be equipped to and shall perform substantially the same services as the principal place of business. If an additional office is discontinued, the additional office license shall be surrendered to the Department.

(c) Where the owner of a CDS desires to conduct business in an additional office under an adopted name and the additional office is to be located a county other than that in which the principal place of business is located, the owner must submit with his application, a certificate of adopted business name registered with the Department of State.

Rulemaking Authority 488.02 FS. Law Implemented 488.01 FS. History--New _____.

15A-11.045 Program of Instruction and Requirements.

(1) A CDS shall make available theoretical or practical instruction.

(2) Theoretical instruction shall include subject matter relating to rules and regulations of the road, safe driving practices, pedestrian safety and the driver's responsibility.

(3) Practical instruction shall include a minimum of two hours of driving providing demonstration of and actual instruction in stopping, starting, shifting, turning, backing, parking and steering in a dual controlled vehicle which meets the Department's requirements.

(4) No CDS or CTDS instructor, employee or agent shall be permitted to use the driving route, on or off the premises of any driver license examining office during the hours when driving tests are being conducted. Violation of this section may be grounds for cancellation or suspension.

(5) No CDS or CTDS instructor, employee or agent shall accompany any student into a driver license examining office to assist the student during the actual taking of a driver's license examination. Violation of this section may be grounds for cancellation or suspension.

(6) All instructors shall ascertain, before giving driving instruction, that the student possesses a valid learner's permit issued by the Department or another jurisdiction for the purpose of learning to drive.

Rulemaking Authority 488.02 FS. Law Implemented 488.01 FS. History--New _____.

15A-11.005 CDS Records Retention.

(1) Every CDS shall maintain a permanent file, or computerized database setting forth the name, address, contract number and terms of payment, with respect to every person giving lessons, lectures, tutoring, instruction of any kind, or any other services relating to instructions in the operation of a motor vehicle. The file shall also contain records showing the date, type, and duration of all lessons, lectures, tutoring and instructions including the name of the instructor giving such lessons and the tag number, make and model of vehicle used to conduct the road test.

(2) A record of all receipts and disbursements for the last three (3) years.

(3) A duplicate copy of every contract entered between the school and every person taking lessons, lectures, tutoring and instructions relating to the operation of a motor vehicle. The original contract shall be given to the student taking instructions and a duplicate thereof shall be retained by the school.

Rulemaking Authority 488.02 FS. Law Implemented 488.01 FS. History--New _____.

15A-11.006 Driving Instruction Contracts.

(1) Contracts between the school and students shall be executed in duplicate with the student receiving the original.

(2) A standard contract is hereby adopted including the terminology to be used with a space provided for the advertisement of the school. All driving instruction contracts issued by a CDS shall use the terminology outlined on form HSMV77072S, which is available as provided in Rule 15A-11.014, F.A.C.

Rulemaking Authority 488.02 FS. Law Implemented 488.01 FS. History--New _____.

15A-11.007 CDS Instruction Vehicles.

(1) No vehicle shall be used for instruction unless it has been registered with the Department. The registration shall be carried in the vehicle at all times while driving instructions are being given. When a vehicle is no longer being used by a school, the school shall notify the Department in writing within ten (10) days.

(2) The school must complete the vehicle section of the school application form HSMV77074S or the vehicle registration form HSMV77071S, which are available as provided in Rule 15A-11.014, F.A.C.

The owner shall file with the Department evidence of insurance with a company authorized to do business in this state. The driving school shall furnish evidence of such insurance coverage in the form of a certificate from the carrier, which shall stipulate that the Department shall be notified when the policy expires or if it is cancelled, and shall include make, model, and vehicle identification number. This insurance certificate must reflect the school name as the insured. The insurance certificate must list the Department as the certificate holder.

(3) A CDS must exhibit, on all motor vehicles registered by the Department, a sign identifying the name of the school. This identification may be painted on the front, side or rear of the motor vehicle in at least 2 inch letters. If the identification is not painted on the rear of the motor vehicle, a portable sign with at least 2 inch letters shall be attached securely to the rear bumper or to the top of the motor vehicle so as to be visible from the rear.

(4) Every motor vehicle used for practical driver training shall be registered by the Department unless the student has signed a waiver to use their personal vehicle.

(5) A CDS may provide the option for a student to use their personal vehicle for driving instruction. The Instructor must conduct an inspection of the vehicle and verify that the vehicle has valid registration and insurance coverage. The inspection of the vehicle includes verification that the following items are operable: windshield wipers, glass (clear view from the front, sides and back), horn, rearview mirror, directional signals, head lights, tail lights, brakes lights, brakes, valid license plate, emergency brake, steering wheel (no more than 3" play), tires (that are not bald), and muffler exhaust system firmly attached to the vehicle.

(6) Each school shall be required to pay a non-refundable fee of fifteen dollars (\$15) payable to the Department by money order, company check or certified check for each motor vehicle being registered. The vehicle registration shall be valid for one year from the date of approval.

(7) Each school must pay the Department a non-refundable fee of ten dollars (\$10) for each motor vehicle registration being renewed. The vehicle registration shall be valid for one year from the date of approval.

Rulemaking Authority 488.02 FS. Law Implemented 488.05 FS. History--New _____.

15A-11.008 Soliciting and Advertising.

(1) A school shall not use any name other than its licensed name for advertising or publicity purposes, nor shall a school advertise or imply that it is "supervised", "recommended" or "endorsed" by the Department. The CDS shall not use the word "STATE" in any part of the school name. Violation of this section may be grounds for cancellation or suspension.

(2) An owner, instructor, agent or employee of a driving school shall not give the impression to a student that upon completion of their course, they will guarantee the securing of a driver license to operate a motor vehicle.

(3) No CDS or CTDS instructor, agent or employee shall solicit business on the premises rented, leased or owned by the Department, including parking lots adjoining driver license examining offices or parking lots used by driver license applicants.

(4) No person shall solicit or act in behalf of any CDS or CTDS without displaying upon request, a valid agent's identification card or instructor certification issued to such agent by the Department.

(5) School advertisements appearing in publications published outside the county in which the school is located shall specify the address of the school. Violation of this section may be grounds for cancellation or suspension.

Rulemaking Authority 488.02 FS. Law Implemented 488.02 FS. History--New _____.

15A-11.009 CDS Instructor Certificate Application and Renewal.

(1) No person shall perform any instructional duties for any CDS or CDTs unless such person meets the qualifications for instructors as herein provided. All instructional personnel must submit an application and possess a valid instructor's certificate issued by the Department, which shall be carried in the instructional vehicle at all times while driving instructions are being given.

(2) Instructor qualifications.

(a) Every instructor in a school shall be at least twenty-one (21) years of age.

(b) Every instructor shall have a valid Class E driver license before making application for an instructor's certificate.

(c) Every instructor must maintain, during any consecutive three year period, a driving record which does not include more than three (3) chargeable motor vehicle crashes or violations as defined in Chapter 316, F.S. Any traffic or other violation resulting in suspension or revocation of the driving privilege will automatically cause the suspension of the instructor's certificate.

(d) An instructor shall not have any physical or mental impediments that prohibit the instructor from satisfactorily providing driving instruction.

(3) All applications for an instructor's certificate must be answered completely on form number HSMV 77073S, which is available as provided in Rule 15A-11.014, F.A.C., and accompanied by a notarized statement from the owner (unless the owner is making application) of the school listing the person's name in full, his address, and that said person is or will be employed by the school.

(4) A CDS Instructor must submit a driving record from previous state of residence, if Florida resident for less than one (1) year.

(5) If the applicant has been a Florida resident for less than one (1) year, in addition to the FDLE background check, a complete criminal background check from the previous state of residence must accompany the application and must have been issued within one year of the date of the instructor application. Conviction of a crime within the last 7 years shall not automatically bar any applicant or licensee from obtaining or continuing a certification. The Department shall consider the type of crime committed, the relevancy to the driver training industry, and the length of time since the conviction in accordance with Section 112.01(1)(b), F.S.

(6) All instructors shall have successfully completed a 32 hour DITC in driver education or the equivalent approved by the Department prior to the instructor's certificate being issued. Documentation of such training shall accompany the application.

(7) Temporary Instructor's Certificate.

(a) In the event no 32 hour DITC is available, the Department shall issue the instructor a temporary certificate based on satisfactory completion of the DPAS test. The temporary certificate shall be valid until the next 32 hour DITC is offered and shall authorize the instructor to perform practical instructional duties only during this period for a school licensed by the Department. The temporary certificate shall be valid for a maximum of six (6) months from the date of issuance. The Department shall not issue any extensions of the six month term limit, unless written proof of the extenuating circumstance is provided and approved by the Department. The Department shall issue only one, six-month temporary certificate per instructor candidate.

(b) Temporary certificate holders shall be required to take a 32 hour DITC in driver education approved by the Department. Upon successful completion of this course and upon meeting all other instructor qualifications set out by these rules and by Chapter 488, F.S., the Department shall issue to the applicant a regular instructor's certificate. Failure to complete the required 32 hour DITC will result in the cancellation of the temporary instructor's certificate.

(8) CDS instructor's certificates shall be valid for a period of one year from their date of issuance and shall be renewed yearly by applying to the Department on form HSMV77073S at least forty-five (45) days prior to the certificate's expiration date.

(9) Each original instructor application shall be accompanied by a non-refundable fee of twenty-five dollars (\$25) payable to the Department by money order, certified check or company check. The renewal application shall be accompanied by a non-refundable fee of ten dollars (\$10) payable to the Department.

(10) All instructors shall be required to attend an eight (8) hour Driver Instructor Refresher Course every five (5) years.

Rulemaking Authority 488.02 FS. Law Implemented 488.04 FS. History—New _____.

15A-11.0095 Agent Identification Cards.

Upon application to the Department, an agent shall be issued a card identifying him as an agent of a particular driving school to be used while acting on behalf of the school, if he is otherwise in compliance with these rules. Each original application shall be accompanied by a non-refundable fee of twenty-five dollars (\$25) payable to the Department by money order, certified check, or company check. The fee for the renewal application shall be accompanied by a fee of ten dollars (\$10) payable to the Department as set forth above. The card shall be valid for a period of one year from its date of issuance and shall be renewed by applying to the Department upon the proper form not later than 45 days prior to the expiration date of the card.

Rulemaking Authority 488.02 FS. Law Implemented 488.04 FS. History—New _____.

15A-11.010 Commercial Truck Driver Schools.

All CTDS shall be required to be licensed pursuant to chapter 1005 F.S., and additionally shall be subject to the provisions of Sections 488.04 and 488.05, F.S. No person, group, organization, institution, business entity, or corporate entity may engage in the business of operating a CTDS without first obtaining a license thereof from the Commission for Independent Education pursuant to Chapter 1005, F.S.

Rulemaking Authority 488.02 FS. Law Implemented 488.01 FS. History--New _____.

15A-11.011 CTDS Instructor Certificate Application and Renewal.

(1) No person shall perform any instructional duties for any CTDS licensed under section 1005 F.S. unless such person shall meet the qualifications for instructors as herein provided. All instructional personnel must submit an application and possess a valid instructor's certificate issued by the Department, which shall be carried with the instructor at all times while driving instructions are being given.

(2) Instructor qualifications:

(a) Every instructor in a CTDS shall be at least twenty-one (21) years of age.

(b) Every instructor shall have a valid Class A CDL license before making application for an instructor's certificate.

(c) Every instructor must maintain, during the most recent consecutive three year period, a driving record which does not include more than three (3) chargeable motor vehicle crashes or violations as defined in Chapter 316, F.S. Any violation, resulting in suspension or revocation of the driving privilege will automatically cause the suspension of the instructor's certificate.

(d) Every instructor shall have a minimum of three years of driving experience as a Class A CDL driver prior to application for an instructor's license.

(e) An instructor shall not have any physical or mental impediments that prohibit the instructor from satisfactorily providing driving instruction.

(3) All applications for a CTDS instructor's certificate must be answered completely on form number HSMV 77073S, which is available as provided in Rule 15A-11.014, F.A.C., and meet all the above qualifications and provide a notarized statement from the owner (unless the owner is making application) of the school listing the person's name in full, his address, and that said person is or will be employed by the school.

(4) A CTDS Instructor must submit a driving record from previous state of residence, if Florida resident for less than one (1) year.

(5) If the applicant has been a Florida resident for less than one (1) year, in addition to the FDLE background check, a complete criminal background check from the previous state of residence must accompany the application and must have been

issued within one year of the date of the instructor application. Conviction of a crime within the last 7 years shall not automatically bar any applicant or licensee from obtaining or continuing a certification. The Department shall consider the type of crime committed, the relevancy to the driver training industry, and the length of time since the conviction in accordance with Section 112.01(1)(b), F.S.

(6) All CTDS instructors shall have successfully completed a 32 hour CMV-DITC in driver education or the equivalent approved by the Department prior to the instructor's certificate being issued. Documentation of such training shall accompany the application.

(7) Temporary Instructor's Certificate.

Prior to acceptance of a Temporary Instructors Certificate the school must verify that the instructor meets the qualification of an instructor as indicated above.

(a) In the event, no 32 hour CMV-DITC is available, the Department shall issue the instructor a temporary certificate based on satisfactory completion of the DPAS test. The temporary certificate shall be valid until the next 32 hour CMV-DITC is offered and shall authorize the instructor to perform practical instructional duties only during this period for a school licensed by the Department. The temporary certificate shall be valid for a maximum of six (6) months from the date of issuance. The Department shall not issue any extensions of the six month term limit, unless written proof of the extenuating circumstance is provided and approved by the Department. The Department shall issue only one, six-month temporary certificate per instructor candidate.

(b) Temporary certificate holders shall be required to take a 32 hour CMV-DITC in driver education approved by the Department. Upon successful completion of this course and upon meeting all other instructor qualifications set out by Chapter 488 or 1005, F.S., the Department shall issue to the applicant a regular instructor's certificate. Failure to complete the required 32 hour CMV-DITC will result in the cancellation of the temporary instructor's certificate.

(8) CTDS instructor's certificates shall be valid for a period of one year from their date of issuance and shall be renewed yearly by applying to the Department on the prescribed form at least forty-five (45) days prior to the certificate's expiration date.

(9) Each original instructor application shall be accompanied by a non-refundable fee of twenty-five (\$25) dollars payable to the Department by money order, or certified check. The renewal application shall be accompanied by a non-refundable fee of ten dollars (\$10) payable to the Department as set forth above.

(10) All instructors shall be required to attend an eight (8) hour CMV-Driver Instructor Refresher Course every five (5) years.

Rulemaking Authority 488.02 FS. Law Implemented 488.04 FS. History--New _____.

15A-11.012 CTDS Instruction Vehicles.

(1) No vehicle shall be used for instruction unless it has been issued a federally approved safety inspection and a motor vehicle registration by the Department. The safety inspection and vehicle registration must be carried in the vehicle at all times while driving instructions are being given. When a vehicle is no longer being used by a school, the school shall give the Department written notice of this fact.

(2) To be issued a motor vehicle registration, the school must submit the vehicle registration form HSMV77071S, which is available as provided in Rule 15A-11.014, F.A.C., and comply with the following:

(a) The owner shall file with the Department evidence of insurance with a company authorized to do business in this state. The driving school shall furnish evidence of such insurance coverage in the form of a certificate from the carrier, which shall stipulate that the Department shall be notified when the policy expires or if it is cancelled, and shall include make, model, and vehicle identification number. This insurance certificate must reflect the school name as the insured. The insurance certificate must list the Department as the certificate holder.

(b) Every motor vehicle used for truck driver training shall be owned or leased by the school.

(c) Every motor vehicle used for truck driver training shall be registered by the Department.

(3) The driving school must exhibit, on all motor vehicles registered by the Department, a sign identifying the name of the school licensed by the Commission for Independent Education. This identification may be painted on the front, side or rear of the truck and/or trailer in at least 2 inch letters. If the identification is not painted on the rear of the motor vehicle, a portable sign with at least 2 inch letters shall be attached securely to the rear bumper or to the top of the motor vehicle so as to be visible from the rear.

(4) Each school shall be required to pay a non-refundable fee of fifteen dollars (\$15) payable to the Department by money order, or certified check for each motor vehicle being registered. The vehicle registration shall be valid for one year from the date of approval.

(5) Each school must pay to the Department, a non-refundable fee of ten dollars (\$10) for each motor vehicle registration being renewed. The vehicle registration shall be valid for one year from the date of approval.

Rulemaking Authority 488.02 FS. Law Implemented 488.05 FS. History—New _____.

15A-11.013 Cancellation or Suspension of CDS License, CDS, CTDS Instructor's Certificate or Agent's Card.

(1) Any license, certificate or agents identification card may be cancelled, or suspended by the Department for the purpose of enforcing the safety requirements essential to the purpose of Chapter 488, F.S. The Department shall determine whether to cancel, or suspend based on the severity and

frequency of the act or acts committed. Such acts or conditions that warrant cancellation or include, but are not limited to, the following:

(a) The violation of any provision of Chapter 488, F.S., or of any of the rules and regulations of the Department.

(b) The conviction of a felony, or any crime involving violence, dishonesty, deceit, indecency, or immoral conduct. The conviction of such a crime shall result in the permanent cancellation of the license, certificate, or identification card.

(c) The conviction of possession or distribution of illegal alcohol or a Chapter 893, F.S., controlled substance.

(d) The use of alcoholic liquors, morphine, cocaine, or other drugs having similar effects, on the premises of the driver training school or driver license office.

(e) Mental incompetence.

(f) The failure or refusal of a certified instructor, agent or licensed owner or the officers or partners thereof to produce his license, certificate or identification card when requested to do so either by prospective students, student or official of the Department.

(g) The employment of instructors, teachers or agents who have not been approved and certified or issued identification cards by the Department, or giving driving instruction without being certified by the Department.

(h) The instruction of students contrary to the restrictions imposed on the students' driver's licenses.

(i) The unauthorized possession of application forms or questionnaires used by the Department or its agents in conducting driver's license examinations.

(j) Driver License suspended twice (2) for violating Section 324, 318.18, or 322.27(3)(a)-(c), F.S.

(k) Agreeing to fraudulently supply or aid in supplying any person with a driver's license or identification card.

(1) CDS or CTDS instructor's driver license revoked for DUI or suspended for habitual traffic offender.

(2) Acts or conditions that warrant suspension include, but are not limited to, the following:

(a) The failure or refusal of the owner or the officers or partners thereof to permit the Department or its representatives to inspect the school or class, or the motor vehicles used to teach its students or to give full information pertaining to any or all items contained in an application form or to its program.

(b) The failure of the owner or the officers or partners thereof to maintain adequate standards of instruction or to secure the services of qualified instructors or to secure the use of equipment sufficient to maintain the school or classes.

(c) The failure to immediately advise the Department of a change in the school's ownership.

(d) Solicitation of business within 300 feet of the property rented, leased or owned by the Department, including parking lots adjoining driver license examining offices or parking lots used by driver license applicants.

(3) The Department may take emergency suspension or revocation action, without preliminary hearing whenever any school or instructor has knowingly been involved in assisting anyone to obtain a driver's license fraudulently or otherwise acted in a manner whereby an immediate danger to the public safety would result by delaying such suspension or revocation action as outlined in Section 120.60, F.S.

(4) Prior to any Departmental action against a driver training school license, instructors certificate or agent's identification card, an administrative hearing shall be offered by the Department and held by the Bureau of Administrative Reviews office to allow the school owner or instructor to show cause why action should not be taken, except as provided in emergency suspension action as outlined in Section 120.60, F.S.

(5) Any applicant for a license, certificate or agents identification card who is denied, suspended or revoked by the Department in accordance with this rule may re-apply for consideration three years after the date of such denial, suspension or revocation.

(6) The Department shall notify CIE if negative action is taken against a truck driver training school or its instructors. If any of the above acts or conditions involve the owner, or any stockholder, officer or partner thereof the school's license may be cancelled or suspended. If they involve an instructor, the certification may be cancelled or suspended.

Rulemaking Authority 488.02 FS. Law Implemented 488.06 FS. History—New _____.

15A-11.014 Grounds for Cancellation or Suspension Matrix.

<u>Violation</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>3rd or Subsequent Offense</u>
<u>Wrongful solicitation</u> <u>15A-11.013(2)(d)</u>	<u>Warning Letter to School & Instructor.</u>	<u>90 Day Suspension to Certificate Cancellation</u>	<u>Cancellation letter to school & Instructor. BDE records offense. 21 Day appeal process starts</u>
<u>Giving instructions without proper license or certification</u> <u>15A-11.013(1)(g)</u>	<u>Certificate Cancellation. Letter sent to School and Instructor. 21 Day appeal process starts</u>	<u>If no appeal, memo sent to DL offices notifying of cancellation</u>	<u>N/A</u>
<u>Use of alcohol or controlled substance on CDS or DL property</u> <u>15A-11.013(1)(d)</u>	<u>Certificate Cancellation. Letter sent to School and Instructor. 21 Day appeal process starts</u>	<u>If no appeal, memo sent to DL offices notifying of cancellation</u>	<u>N/A</u>
<u>Driver license suspended twice for violating F.S. 324, 318.18, 322.27(3)(a)-(c)</u> <u>15A-11.013(1)(j)</u>	<u>Certificate Cancellation. Letter sent to School and Instructor. 21 Day appeal process starts</u>	<u>If no appeal, memo sent to DL offices notifying of cancellation</u>	<u>N/A</u>
<u>Conviction of Felony or Misdemeanor</u> <u>15A-11.013(1)(b)</u>	<u>Certificate Cancellation. Letter sent to School and Instructor. 21 Day appeal process starts</u>	<u>If no appeal, memo sent to DL offices notifying of cancellation</u>	<u>N/A</u>
<u>Fraudulently assisting or supplying a person with a driver license</u> <u>15A-11.013(1)(k)</u>	<u>Certificate Cancellation. Letter sent to School and Instructor. 21 Day appeal process starts</u>	<u>If no appeal, memo sent to DL offices notifying of cancellation</u>	<u>N/A</u>
<u>Driver license revoked for DUI or suspended for habitual traffic offender</u> <u>15A-11.013(1)(l)</u>	<u>Certificate Cancellation. Letter sent to School and Instructor. 21 Day appeal process starts</u>	<u>If no appeal, memo sent to DL offices notifying of cancellation</u>	<u>N/A</u>
<u>CDS giving instruction on DL exam route during business hours</u> <u>15A-11.045(4)</u>	<u>Warning letter to School & Instructor.</u>	<u>30 Day suspension</u>	<u>90 Day Suspension to Certificate Cancellation</u>
<u>CDS instructor assisting a student taking an actual driver license examination</u> <u>15A-11.045(5)</u>	<u>Warning letter to School & Instructor.</u>	<u>Certificate Cancellation. Letter sent to School and Instructor. 21 Day appeal process starts</u>	<u>N/A</u>

Rulemaking Authority 488.02 FS. Law Implemented 488.01 FS. History–New _____.

15A-11.015 Forms.

The forms identified by this rule are listed below by number, title, and effective date. Each form is incorporated by reference. Copies may be obtained by contacting the DUI Programs Section, Neil Kirkman Building, Tallahassee, Florida 32399-0571. The following forms are available via our website at <http://www.flhsmv.gov/ddl/comschool.html>.

(1) Driver Training School Application Form, HSMV Form 77074S (Rev. 11/08).

(2) Instructor/Agent Application Form, HSMV Form 77073S (Rev. 11/08).

(3) Vehicle Registration Application Form, HSMV Form 77071S (Rev. 11/08).

(4) Student Contract Form, HSMV Form 77072S (Rev. 11/08).

Rulemaking Authority 488.02 FS. Law Implemented 488.01 FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Mike McGlockton

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Julie Jones, Executive Director

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 17, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 26, 2008

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."

FLORIDA PAROLE COMMISSION

RULE NO.: 23-15.015 RULE TITLE: Indexing of Orders

PURPOSE AND EFFECT: The Commission proposes to amend a current rule to update it to conform to current practices and procedures.

SUMMARY: The change updates the list of orders which are indexed by the Commission. Additionally, an obsolete position is removed and updated with the current office title.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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.

RULEMAKING AUTHORITY: 120.533(2), 947.07 FS.

LAW IMPLEMENTED: 120.53(1)(a), 947.071 FS.

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

DATE AND TIME: January 7, 2010, 9:00 a.m.

PLACE: Florida Parole Commission, 2601 Blair Stone Road, Bldg C., Hearing Room A, Tallahassee, FL 32399

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 7 days before the workshop/meeting by contacting: Sarah J. Rumph, General Counsel, 2601 Blair Stone Road, Bldg. C, Tallahassee, Florida 32399. 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: Sarah J. Rumph, General Counsel, 2601 Blair Stone Road, Bldg. C, Tallahassee, Florida 32399

THE FULL TEXT OF THE PROPOSED RULE IS:

23-15.015 Indexing of Orders.

(1) through (3) No change.

(4) Numbering of Final Orders.

(a) No change.

(b) The applicable order category shall be added as a suffix succeeding the agency designation prefix and two-part number. The order categories are as follows:

PG – Parole Granted

PR – Parole Revoked

PSR – Parole Supervision Revoked

PST – Parole Supervision Terminated

PTE – Parole Terminated Early

PER – Parole Extraordinary Review

CRR – Conditional Release Revoked

CRSR – Conditional Release Supervision Restored

CRST – Conditional Release Supervision Terminated

CRSE – Conditional Release Supervision Terminated

Early

CTRLR – Control Release Revoked

CTRLSR – Control Release Restored

CTRLST – Control Release Supervision Terminated

CTRLTE – Control Release Supervision Terminated Early

ARR – Addiction Recovery Supervision Revoked

ARSR – Addiction Recovery Supervision Restored

ARST – Addiction Recovery Supervision Terminated

ARSTE – Addiction Recovery Supervision Terminated

Early

CMRI – Conditional Medical Release Imposed

CMRR – Conditional Medical Release Revoked

CMRSR – Conditional Medical Release Restored

CMRST – Conditional Medical Release Terminated

- (c) No change.
- (5) System for Indexing Final Orders.
- (a) through (b) No change.

(c) ~~Release Services The Agency Planning and Information Officer~~ shall index all final orders. On a weekly basis, staff designated by the ~~Release Services Parole Grant Section~~ and Revocation Sections shall provide ~~the Agency Planning and Information Officer~~ with a copy of each final order to be indexed, relevant to their particular functional area. In addition, ~~staff designated by the General Counsel~~ shall ~~retain~~ provide the ~~Agency Planning and Information Officer~~ with a copy of all stipulations, agreed settlements and consent orders, which are required to be listed, but not indexed.

- (6) No change.
- (7) Plan and Procedures for Public Access.
- (a) No change.

(b) ~~Release Services The Agency Planning and Information Officer~~ shall assist the public in obtaining information and access to agency final orders.

(c) ~~Release Services The Agency Planning and Information Officer~~ shall maintain a file of indexed final orders, the subject-matter index and a list of non-indexed final orders. Upon request, ~~Release Services the Agency Planning and Information Officer~~ shall retrieve the final order(s) requested and make the order(s) available for public inspection or copying, at no more than cost.

- (d) No change.

Rulemaking Specific Authority 120.533, 947.07 FS. Law Implemented 120.53(2)(a)1-5., 947.071 FS., Chapter 91-30, S10, Laws of Florida. History–New 1-26-93, Amended 1-5-94,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Sarah Rumph, General Counsel

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Chairman Frederick Dunphy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 18, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 2, 2009

FLORIDA PAROLE COMMISSION

RULE NOS.:	RULE TITLES:
23-20.002	Scope of Responsibility
23-20.007	Procedures

PURPOSE AND EFFECT: The Commission proposes to amend a current rule to remove obsolete position titles.

SUMMARY: The change clarifies that only parole-eligible inmates are eligible for the mutual participation program as well as update position titles, replacing obsolete titles with correct title.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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.

RULEMAKING AUTHORITY: 947.07, 947.135, 947.20 FS.

LAW IMPLEMENTED: 947.135 FS.

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

DATE AND TIME: January 7, 2010, 9:00 a.m.

PLACE: Florida Parole Commission, 2601 Blair Stone Road, Bldg C., Hearing Room A, Tallahassee, FL 32399

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 7 days before the workshop/meeting by contacting: Sarah J. Rumph, General Counsel, 2601 Blair Stone Road, Bldg. C, Tallahassee, Florida 32399. 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: Sarah J. Rumph, General Counsel, 2601 Blair Stone Road, Bldg. C, Tallahassee, Florida 32399

THE FULL TEXT OF THE PROPOSED RULES IS:

23-20.002 Scope of Responsibility.

(1) through (3) No change.

(4) The ~~Release Services Mutual Participation Program~~ Administrator will be provided with an opportunity to review the agreement and may provide input prior to the agendaed action by the Commission.

(5) through (8) No change.

Rulemaking Specific Authority 947.07, 947.135, 947.20 FS. Law Implemented 947.135 FS. History–New 9-10-81, Formerly 23-20.02, Amended 1-26-93,_____.

23-20.007 Procedures.

(1) through (3) No change.

(4) Once the conditions are agreed upon by the representatives of the Department, the Commission, and the inmate, the agreement should be prepared at the institution, if possible, signed by all participants, subject to review and approval by the ~~Warden Superintendent~~; and if approved, forwarded by the Commission representative to the Commission with notification to the ~~Release Services Mutual Participation Program~~ Administrator.

(5) The Release Services Mutual Participation Program Administrator will be provided with an opportunity to review all agreements at the same time they are submitted to the Commission and may provide input prior to the agendaed action by the Commission.

(6) Upon approval by the Commission, the representative of the Commission and the Department and the inmate shall be informed in writing and the agreement shall be in force. The original copy of the agreement shall be retained and placed in the Department's Offender Record with copies to the Commission representative, the Department representative, the Release Services Mutual Participation Program Administrator, and the inmate.

(7) Renegotiation or Cancellation: Should the negotiated agreement not be approved by the Commission, the inmate, Commission's representative, the Release Services Mutual Participation Program Administrator shall be notified in writing of the reasons for rejection. A proposed agreement may be returned to the negotiating team for possible renegotiation. Agreements may also be cancelled and submitted to the negotiation team for new negotiations when:

(a) through (b) No change.

(8) Monitoring:

(a) through (b) No change.

(c) If the agreement conditions have not been satisfactorily met, the inmate or the Department or Commission representatives may recommend continuance, cancellation or renegotiation of the agreement. Recommendations made by the representatives should be prepared at the institution, if possible, signed by all participants subject to review and approval by the Warden Superintendent; and if approved, then forwarded to the Commission with notification to the Release Services Mutual Participation Program Administrator. The Release Services Mutual Participation Program Administrator will be provided with an opportunity to review all recommendations at the same time they are submitted to the Commission and may provide input prior to the agendaed action by the Commission. The Commission shall make the final decision on the agreement and notify the representative of the Commission, the Department, the inmate, and Release Services Mutual Participation Program Administrator of the final action. Final Commission action shall take place prior to the proposed parole date. Review of the conditions under parole supervision will be the responsibility of the parole supervisor in accordance with Statutes. Additionally, the Commission and the Department shall jointly monitor the total program in order to prepare yearly reports as well as provide evaluation for future program direction.

(9) through (11) No change.

Rulemaking Specific Authority 947.07, 947.135, 947.20 FS. Law Implemented 947.135 FS. History--New 9-10-81, Amended 10-1-82, Formerly 23-20.07, Amended 1-26-93, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Sarah Rumph, General Counsel

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Chairman Frederick Dunphy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 18, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 23, 2009

FLORIDA PAROLE COMMISSION

RULE NO.: 23-20.003 RULE TITLE: Criteria for Program Eligibility

PURPOSE AND EFFECT: The Commission proposes to amend a current rule to clarify eligibility requirements for the mutual participation program.

SUMMARY: The change clarifies that only parole-eligible inmates are eligible for the mutual participation program.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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.

RULEMAKING AUTHORITY: 947.07, 947.135(3)(b), 947.20 FS.

LAW IMPLEMENTED: 947.135 FS.

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

DATE AND TIME: January 7, 2010, 9:00 a.m.

PLACE: Florida Parole Commission, 2601 Blair Stone Road, Bldg C., Hearing Room A, Tallahassee, FL 32399

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 7 days before the workshop/meeting by contacting: Sarah J. Rumph, General Counsel, 2601 Blair Stone Road, Bldg. C, Tallahassee, Florida 32399. 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: Sarah J. Rumph, General Counsel, 2601 Blair Stone Road, Bldg. C, Tallahassee, Florida 32399

THE FULL TEXT OF THE PROPOSED RULE IS:

23-20.003 Criteria for Program Eligibility.

All parole eligible inmates within the Department shall be eligible for consideration for participation in the Mutual Participation Program provided:

(1) through (3) No change.

Rulemaking Specific Authority 947.07, 947.135, 947.20 FS. Law Implemented 947.135 FS. History—New 9-10-81, Amended 10-1-82, 8-1-83, Formerly 23-20.03, Amended 1-26-93,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Sarah Rumph, General Counsel
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Chairman Frederick Dunphy
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 18, 2009
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 23, 2009

FLORIDA PAROLE COMMISSION

RULE NO.: 23-21.001
RULE TITLE: General
PURPOSE AND EFFECT: The Commission proposes to delete reference a non-existent type of supervision.
SUMMARY: The proposed change deletes reference to a form of supervision that does not exist by statute.
SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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.
RULEMAKING AUTHORITY: 120.53, 947.1405, 947.06, 947.07, 947.20 FS.

LAW IMPLEMENTED: 947.06 FS.
A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:
DATE AND TIME: January 7, 2010, 9:00 a.m.
PLACE: Florida Parole Commission, 2601 Blair Stone Road, Bldg C., Hearing Room A, Tallahassee, FL 32399
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 7 days before the workshop/meeting by contacting: Sarah J. Rumph, General Counsel, 2601 Blair Stone Road, Bldg. C, Tallahassee, Florida 32399. 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: Sarah J. Rumph, General Counsel, 2601 Blair Stone Road, Bldg. C, Tallahassee, Florida 32399

THE FULL TEXT OF THE PROPOSED RULE IS:

23-21.001 General.

(1) The Commission shall be known as the Florida Parole Commission and Control Release Authority. There is no right to parole or control release in the State of Florida. Pursuant to

Article IV, Section 8, Florida Constitution, the Commission may grant paroles or conditional releases to persons under sentence for crimes who are eligible for consideration. The Commission can also, as the Control Release Authority, establish control release dates for statutorily eligible inmates. The Commission can also require periods of supervision in conjunction with any release ordered by the Commission including Conditional Medical Release. The Commission may rescind an unexecuted order granting parole, and may revoke paroles, conditional releases, control releases, ~~compulsory conditional releases~~, addiction recovery or conditional medical releases based upon violation of any of the specified conditions of release.

(2) No change.

Rulemaking Specific Authority 120.53, 947.06, 947.07, 947.20, 960.001(1)(d)3. FS. Law Implemented 120.53, 947.23, 947.06, 960.001 FS. History—New 9-10-81, Formerly 23-21.01, Amended 1-26-93, 1-5-94, 8-16-94, 8-17-06,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Sarah Rumph, General Counsel
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Chairman Frederick Dunphy
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 18, 2009
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 30, 2009

FLORIDA PAROLE COMMISSION

RULE NOS.:	RULE TITLES:
23-21.006	Initial Interview Procedure
23-21.007	Salient Factor Scoring
23-21.0165	Conditions of Parole
23-21.019	Parole Rescission
23-21.021	Warrant and Arrest
23-21.022	Revocation of Parole; Preliminary Hearings; Final Hearings

PURPOSE AND EFFECT: The Commission proposes to update rules to conform to current practices and procedures, deleting obsolete practices and procedures and standardizing to conform to other types of Commission supervision.
SUMMARY: The proposed changes clarify current practices and procedures in regards to determining eligibility for parole and scoring for parole eligibility. It also conforms the standard conditions of parole supervision to other forms of supervision. The hearing and revocation procedures are also updated to clarify current practice and conform to other forms of supervision.
SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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.

RULEMAKING AUTHORITY: 947.07, 947.071, 947.165, 947.20 FS.

LAW IMPLEMENTED: 947.04, 947.06, 947.071; 947.13, 947.16, 947.165, 947.168, 947.172, 947.173, 947.174, 947.1745, 947.1746, 947.1747, 947.18, 947.19, 947.21, 947.22, 947.23, 947.24 FS.

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

DATE AND TIME: January 7, 2010, 9:00 a.m.

PLACE: Florida Parole Commission, 2601 Blair Stone Road, Bldg C., Hearing Room A, Tallahassee, FL 32399

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 7 days before the workshop/meeting by contacting: Sarah J. Rumph, General Counsel, 2601 Blair Stone Road, Bldg. C, Tallahassee, Florida 32399. 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: Sarah J. Rumph, General Counsel, 2601 Blair Stone Road, Bldg. C, Tallahassee, Florida 32399

THE FULL TEXT OF THE PROPOSED RULES IS:

23-21.006 Initial Interview Procedure.

(1) through (2) No change.

(a) through (b) No change.

(c) In the event an inmate is scheduled for an initial or subsequent interview and is not in the Department's custody at that time, the examiner shall prepare a transaction sheet reflecting same and the case shall be rescheduled for the appropriate interview within 90 days. If the inmate is in another jurisdiction (state or federal) and is not serving a Florida sentence, the interview shall be conducted upon the inmate's return to the Department's custody.

(d) No change.

(3) through (8) No change.

(9) No change.

(a) No change.

(b) For inmates subject to incarceration as a condition of probation, the following matters shall be determined:

1. Is the inmate confined solely as the result of a commitment where his incarceration is a condition of probation? If the answer is yes, the inmate shall be advised that he is not eligible for consideration for parole. If the answer is no, then

2. Where the inmate has multiple commitments, at least one of which is a concurrent commitment where his current incarceration is a condition of probation, and at least one of which is a non-probationary commitment which will expire subsequent to the expiration of the condition of incarceration, the inmate shall not be ineligible for parole on that account, but shall have a presumptive parole release date established beyond the expiration date of the condition of probation.

3. Where the inmate has multiple commitments, at least one of which is a consecutive commitment where his incarceration is a condition of probation, the inmate shall be eligible shall not be ineligible for parole to the incarceration portion of his probation on that account.

(c) No change.

(10) through (15) No change.

Rulemaking Specific Authority 947.07 FS. Law Implemented 947.002, 947.16, 947.165, 947.172 FS. History—New 9-10-81, Amended 10-1-82, 8-1-83, Formerly 23-21.06, Amended 1-26-93, 1-5-94, 8-17-06,_____.

23-21.007 Salient Factor Scoring.

Salient factors (1) through (6) shall be calculated on the inmate's entire criminal record, including the present offense of conviction.

(1) through (3) No change.

(4) AGE AT OFFENSE WHICH LED TO THE FIRST INCARCERATION:

17 Years or younger	=	2 Points
18-25 Years	=	1 Point
26 Years or older	=	0 Points

(a) through (d) No change.

(e) For the purposes of this item, if the inmate was placed on probation which later was revoked, use the age of the inmate on the date of the behavior leading to revocation. Do not use the age of the defendant at the time of the offense which led to the probation or the date of the revocation.

(f) through (g) No change.

(5) No change.

(6) NUMBER OF PRIOR ESCAPE CONVICTIONS:

One or more prior escape conviction(s)	=	1 Point
No prior escape conviction	=	0 Points

(a) No change.

(b) Score 0 if the inmate has no prior escape conviction.

(c) More than one escape conviction shall be considered a negative indicant of parole prognosis and may be used as an aggravating factor.

(7) BURGLARY OR BREAKING AND ENTERING AS THE PRESENT OFFENSE OF CONVICTION:

	Present Offense of Conviction includes a conviction for burglary or breaking and entering	=	1 Point
	Otherwise	=	0 Points

(a) No change.

(b) Score 0 if the present offense of conviction ~~does is~~ not include a burglary or breaking and entering. Do not point convictions for entering without breaking, attempted burglary, attempted breaking and entering or possession of burglary tools.

(c) through (d) No change.

Rulemaking Specific Authority 947.07, 947.165 FS. Law Implemented 947.002, 947.13, 947.165 FS. History–New 9-10-81, Amended 10-1-82, 8-1-83, 7-1-84, Formerly 23-21.07, Amended 1-26-93, 1-5-94, 8-17-06, 12-30-08,_____.

23-21.0165 Conditions of Parole.

(1) The following are the Standard Conditions of Parole:

(a) Condition 1 – Promptly upon being released on parole, I shall proceed to my planned place of residence, _____, where I shall reside. Immediately upon my arrival, I shall report in person to the probation and parole office in _____ County, Florida, as instructed by the release officer, on _____ at _____. If no specific date/time is given, I shall report within 72 hours of my release by personal visit to the parole supervisor under whose supervision I am to be paroled. The parole supervisor’s address is: _____.

(b) No change.

(c) Condition 3 – I shall submit a full and truthful report to my parole officer ~~before the fifth day~~ of each month in writing on the forms provided ~~or~~ in person as directed by my parole supervisor.

(d) Condition 4 – I shall not:

1. Use or possess alcohol or intoxicants of any kind.
2. Use or possess narcotics, drugs, or marijuana unless prescribed by a physician.
3. Enter any business establishment whose primary purpose is the sale/consumption of alcoholic beverages.

(e) Condition 5 – I shall not knowingly associate with any person(s) who is engaging in any criminal activity, a criminal gang member, or person(s) associated with criminal gang members.

(f) through (k) No change.

(l) Condition 12 – I shall execute and provide authorizations to release records to my parole supervisor and the Commission so my progress and participation in required programs can be monitored and documented.

(2) through (4) No change.

(5) A panel of no fewer than two Commissioners has authority to cause a review of the progress of a parolee, or the Department of Corrections may make recommendations to the Commission whether to modify the reporting schedule or further modify the terms and conditions of parole. A panel of no fewer than two Commissioners shall discharge from parole, relieve from making further reports or permit the parolee to leave the country upon determining that such action is in the best interest of the parolee and of society. Such cases shall be docketed before the panel of commissioners, if available, that initially set the terms and conditions of conditional release.

(6) A panel of no fewer than two (2) commissioners shall review the progress of each person who has been placed on parole after two years of supervision in the community and not less often than biennially thereafter. Such reviews must include consideration of whether to modify the reporting schedule, thereby authorizing the person under supervision to submit reports quarterly, semi-annually, or annually. In the event the Commission elects to place a parolee on quarterly, semi-annually or annual reporting, the following definitions will be applicable:

(a) Quarterly reporting – one personal contact required every three (3) months.

(b) Semi-annual reporting – one personal contact required every six (6) months.

(c) Annual reporting – one personal contact required every twelve (12) months.

(7) The panel may give specific instructions reflecting whether the personal contact is to take place in a formal setting or in the setting to be determined by the parole supervisor.

(8) Such modification shall not impose new or different terms or conditions of parole more restrictive than was stated in the original certificate.

Rulemaking Specific Authority 947.07, 947.20 FS. Law Implemented 947.1747, 947.20, 947.23 FS. History–New 8-1-83, Formerly 23-21.165, Amended 1-26-93, 1-5-94, 8-17-06,_____.

23-21.019 Parole Rescission.

(1) Any Commissioner has authority to postpone any inmate’s effective parole release date based on the criteria set forth in subsections 23-21.015(12) ~~and 23-21.016(2)~~, F.A.C.

(a) through (b) No change.

(2) through (5) No change.

Rulemaking Specific Authority 947.07 FS. Law Implemented 947.13, 947.1745 FS. History–New 9-10-81, Amended 10-1-82, 8-1-83, Formerly 23-21.19, Amended 1-26-93, 1-5-94, 8-17-06,_____.

23-21.021 Warrant and Arrest.

(1) through (3) No change.

(4) Should a warrant be issued, such will be transmitted to the requesting agency for appropriate service or filing. The warrant information will be entered into the Florida Crime Information Center and National Crime Information Center

databases, unless the alleged parole violator is in custody in Florida. The Commission has the authority to pursue extradition of alleged violators from other jurisdictions.

(5) Should a warrant be issued, and a dismissal of the warrant is requested, the signing Commissioner or Chair is authorized to dismiss the warrant for good cause or a Commissioner may docket the warrant dismissal request for consideration by the full Commission.

(6) Emergency Warrants.

(a) An emergency warrant can be issued by a Commissioner or any Commission representative duly authorized by the Chair when the Commission receives notification from an arresting agency that a parolee has been arrested and charged with a new felony offense and there is no outstanding Commission warrant for the parolee.

(b) The decision to issue an emergency warrant shall be based on evidence which indicates reasonable grounds to believe a parolee violated the conditions of parole. The issuance of an emergency warrant is discretionary.

(c) Should an emergency warrant be issued, such will be transmitted to the detaining agency for appropriate service or filing. Alleged violators of parole will be entered into the Florida Crime Information Center and National Crime Information Center, unless in custody. The Commission has authority to pursue extradition of alleged violators from other jurisdictions.

(d) Should an emergency warrant be issued and a dismissal of the emergency warrant is requested by the revocations administrator or his designee, the signing Commissioner, without the approval of the Chair, or Commission representative authorized to execute warrants, with the approval of the Chair, is authorized to dismiss the warrant for good cause.

Rulemaking Specific Authority 947.07, 947.22 FS. Law Implemented 947.22, 947.23 FS. History—New 9-10-81, Amended 7-1-84, Formerly 23-21.21, Amended 1-26-93, 1-5-94, 8-17-06,_____.

23-21.022 Revocation of Parole; Preliminary Hearings; Final Hearings.

(1) Preliminary Hearing. Within 30 days of service ~~or filing~~ of the Commission's warrant in this State, an alleged parole violator will be provided a preliminary hearing. The purpose of the preliminary hearing is to determine if there is probable cause that a violation of parole has occurred.

(2) through (4) No change.

(5) Prior to the preliminary hearing, the parolee may elect to waive such hearing, provided such waiver is executed in writing before a Commissioner or duly authorized representative of the Commission, and follows a full explanation of all rights, procedures, and possible consequences. The parolee may withdraw the waiver by submitting a written request which waives all time constraints. The waiver withdrawal request must be appropriately witnessed, and postmarked within 14 days after the execution

of the waiver. Upon receipt of a timely waiver withdrawal request, a preliminary hearing shall be convened after appropriate notice.

(6) The parolee may also request postponement of the preliminary hearing, until such time as any pending criminal charges that are listed on the Commission's warrant or notice of hearing have been resolved. The granting of a postponement on behalf of the parolee shall waive all time constraints and shall postpone disposition of all violations until notification is received by the Commission that the pending criminal charges have been resolved or the parolee elects to proceed with or waive the preliminary hearing such postponement and the reasons thereof being reflected in the record. Should the parolee fail to contact the Commission and request a hearing upon the disposition of local charges resulting in a sentence to incarceration, the parolee has waived his right to a preliminary hearing.

(7) The parolee may request that the preliminary hearing be continued upon showing of cause. The request for continuance shall be submitted to the person conducting the hearing in writing prior to convening the hearing, provided that the reasons for the request are outlined with specificity. The granting of a continuance on behalf of the parolee shall waive all time constraints. If a preliminary hearing has been convened, such may be continued on the motion of the parolee, the Commission or duly authorized representative of the Commission, provided the record reflects a good cause for such continuance.

(8) If there is a judicial order of incompetency, a written psychiatric or psychological determination of incompetency, or a commitment to a mental institution in the 90 days prior to the violation then an attorney shall be appointed. Once an attorney is appointed for questions of competency or if a previously appointed/retained attorney raises competency issues, then evidence of mental competency/incompetency shall be gathered and forwarded to the Commission for review. Once received by the Commission, the case shall be docketed. At the Commission meeting, the Commission may either order the violation process proceed, that the violation process be placed in abeyance, or such other order as it considers proper.

(9)(6) At least 7 days prior to the preliminary hearing, the parolee shall be informed in writing of the date, time, and location of the hearing. The parolee shall also be informed in this notice of the charges which are to be considered at the hearing and the notice shall contain all rights regarding the hearing as heretofore stated.

(10)(7) The Commission representative who is responsible for holding the preliminary hearing shall have the authority to administer oaths to all witnesses. The Commission representative is responsible for the conduct of the hearing, evaluation of evidence presented and shall make findings based on such evidence with respect to the issue of probable cause. Following all testimony, the Commission representatives shall announce, verbally, the findings regarding

probable cause issues and shall promptly provide a written statement of the findings to the parolee within 30 days following the hearing.

~~(11)(8)~~ Following the hearing, the Commission representative shall prepare a written summary of the hearing. The written summary, which will include recommendations for further Commission action, shall be transmitted to the Commission for action. The written summary shall also contain any mitigating circumstances which are brought to light as a result of the proceeding and a statement on realistic alternatives to further incarceration, if any.

~~(12)(9)~~ Upon receipt of the preliminary hearing summary, the Commission shall review same and make a further decision with respect to possible restoration to parole or discharge from further supervision or the return of the parolee for a final revocation hearing.

~~(13)(10)~~ Any parolee who has been arrested pursuant to a Commission warrant may request and shall be provided a hearing on the matter of release on recognizance regarding the Commission warrant. Such hearing may be held by a Commission representative, who shall provide the Commission with a written report regarding the hearing after which the Commission shall make a decision and inform the parolee. A Commissioner is authorized to order a parolee released on his recognizance. However, the parolee must sign a written statement agreeing:

(a) through (c) No change.

(d) That his release on recognizance is subject to review and approval by the Commission or the Commissioner who executed the warrant, or the Chair in his absence, ~~and that should his release on recognizance be disapproved, the parolee must surrender himself for return to custody pending disposition of the alleged violation. Failure to surrender shall result in the rearrest of the parolee.~~

~~(14)(11)~~ If the Commission decides to conduct a final revocation hearing, ~~an order shall be entered to that effect. A notice of that order shall be served upon the sheriff of the county in which the alleged parole violator is being detained.~~ The Commission or a Commission representative may request the immediate transfer of the alleged violator to an appropriate Department facility. The final revocation hearing shall be noticed and convened within 60 days of receipt of written notification from the Department of the return of the alleged violator to the custody of the Department. If the alleged violator is already in the custody of the Department from another jurisdiction, or has been released on recognition, or the Commission has elected not to have the violator transferred to the Department, the final revocation hearing shall be noticed and convened within 60 days of the preliminary hearing, or the waiver of that hearing.

~~(15)(12)~~ Final Hearing. The parolee shall be informed, in writing, at least 14 days prior to the final revocation hearing of the date, time and location of such hearing. The notice of the

hearing shall contain the charges of violation and shall contain a list of the rights the parolee shall be afforded for such hearing as follows:

(a) through (e) No change.

~~(16)(13)~~ Any final hearing can be waived by the parolee after an explanation of all rights and possible consequences of waiver. The waiver shall be in writing and ~~shall~~ shall ~~can~~ be executed before a member of the Commission or the Commission's designated representative. The parolee may withdraw the waiver by submitting a written request which waives all time constraints executing a withdrawal of waiver form and forwarding to the Commission headquarters. The waiver withdrawal request must be appropriately witnessed and postmarked within 14 days after the execution of the waiver. ~~The withdrawal of waiver form and instructions regarding its use shall be provided to the parolee at the time of the execution of the waiver.~~ Upon receipt of a timely ~~the~~ withdrawal of waiver form, a final revocation hearing shall be convened after appropriate notice. ~~Such hearing shall be conducted in accordance with these rules.~~

~~(17)(14)~~ The parolee is entitled to request that his final revocation hearing be postponed or continued, upon a showing of good cause. The request for postponement or continuance may be submitted to the Parole Examiner or Commission, in writing, prior to the convening of the hearing, provided that the reasons for the request are outlined with specificity. In the event that the final hearing has been convened, such may be postponed or continued beyond 60 days provided the record reflects good cause for such continuance.

~~(18)(15)~~ The final revocation hearing is a two-part hearing with the first emphasis being placed on the factual determination as to whether or not violations have occurred. The second part of the final revocation hearing is the determination of whether or not the parole should be revoked. In reaching such a determination, the Commission shall consider all mitigating circumstances which were made known at the time of the hearing and shall consider alternatives other than reincarceration prior to making a final determination.

~~(19)(16)~~ During the course of a final revocation hearing, the person or persons conducting the hearing may entertain any arguments of counsel or the parolee, or other such matters. The person or persons conducting the hearing may elect to rule on such matters during the course of the hearing or may elect to withhold ruling pending consultation with Commission counsel or individual staff members. Arguments of counsel of a legal nature must be reduced to writing. If possible, written legal arguments should be presented prior to final revocation hearings. If the person conducting the hearing elects not to address arguments of counsel or the parolee during the course of the hearing, such shall be made known to the interested parties. In the event a decision is made during the course of the final revocation hearing, such decision shall be reflected in the record, and then reviewed by the Commission. Pursuant to the

United States Supreme Court's decision in *Pennsylvania Board of Probation & Parole v. Scott*, 524 U.S. 357 (1998), the Commission may consider evidence that has been excluded in a criminal proceeding as the result of the application of the federal exclusionary rule.

~~(20)(17)~~ Subpoenas and subpoenas duces tecum for the parolee and State shall be issued by the Commission's duly authorized representative on behalf of the State or the parolee for both the preliminary and final revocation hearings. The Commission, a Commissioner or a duly authorized representative of the Commission may decline a request to subpoena a witness whose testimony is found to be cumulative, irrelevant or nonprobative. The party requesting the subpoenas shall furnish to the Commission, a Commissioner or a duly authorized representative of the Commission the names and addresses of his proposed witnesses at least 14 days prior to the hearing date.

~~(21)(18)~~ At both the preliminary and final revocation hearing, the accused violator may waive representation by an attorney, provided the waiver is reflected clearly in writing or in the record of the proceeding. Should the accused desire, retained counsel may represent the parolee at both hearings. In the event the parolee desires counsel and has not retained such, the following procedure shall apply:

(a) No change.

(b) If it is concluded that the parolee is unable to secure retained counsel by reason of indigency or other valid reasons, then the Commission shall proceed to determine if the parolee is eligible for appointed ~~attempt to secure~~ counsel pursuant to the guidelines of *Gagnon v. Scarpelli*, 411 U.S. 778 (1973) at 790. If a request for counsel is denied ~~refused~~, the grounds for ~~refusal~~ denial shall be stated succinctly in the record. *Gagnon, supra*, at 790-791.

~~(22)(19)~~ The person or persons conducting the hearing may elect to receive information following the revocation hearing provided the parolee agrees to the receipt of such information outside of the context of the hearing and that such agreement is reflected clearly in the record.

~~(23)(20)~~ Based on evidence presented at the hearing, the person or persons conducting the hearing shall make findings of fact regarding the alleged violations, and report that to the Commission. The Commission may enter an order revoking the parole, reinstating the parolee to supervision, or enter such other order as deemed appropriate by the Commission. When, based on the findings of the person or persons conducting the hearing, the Commission finds that the parolee has committed one or more violations, the Commission may elect to order the parolee returned to supervision with a new term not to exceed statutorily prescribed limits and may elect to establish new conditions of the parole provided the parolee agrees to each term and condition. In any event, the Commission shall make a decision in an open meeting within 45 days following the revocation hearing. Prompt notification of the decision shall be

provided to the parolee and his defense attorney, unless such notification is waived by the parolee. If the decision of the Commission is to revoke, the order entered shall contain the evidence relied upon and the reasons for the revocation.

~~(24)(21)~~ Upon a finding that the parolee did commit one or more violations, the Commission may order the parolee placed in a community control program. Placement in community control shall be utilized by the Commission, in its judgment, for parole violators who are not suitable for restoration to standard supervision and would, therefore, be revoked if not for the alternative of community control placement. When ordering such placement in community control, the Commission shall specify:

(a) through (f) No change.

~~(25)(22)~~ Release on Own Recognizance:

(a) At a scheduled final revocation hearing, a Commissioner can place an alleged parole violator on ROR when the final hearing is postponed or continued.

(b) During the final revocation hearing, a Commissioner may place the parolee charged with violation on ROR when:

1. The parolee was on ROR prior to the convening of the final revocation hearing.

2. Insufficient evidence is produced to sustain any violation of parole.

3. Upon finding that the parolee did violate one or more conditions of parole, the hearing officer announces his intention to recommend action other than revocation of parole.

(c) Subsequent to the final revocation hearing in which there was a finding that the parolee did violate one or more conditions of parole, the hearing officer can recommend the parole violator be placed on ROR upon receipt of pertinent favorable information. Violations of the conditions of release can cause an order to revoke the ROR to be executed by a Commissioner when reliable information is received of violation of release on recognizance. Such order shall be sufficient to cause the arrest and return of the parolee to custody.

~~(26)(23)~~ Violation of the conditions of parole for grounds other than for a new conviction: An inmate who is found guilty for a violation of the conditions of his parole on grounds other than for the commission of a new felony or misdemeanor offense may be reinstated to parole, discharged from parole or revoked. The following information should be considered in making that determination:

(a) through (b) No change.

(c) The parolee's behavior demonstrates the inability or unwillingness of the parolee to conform to minimum parole restraints so as to prevent successful completion of the Court imposed sentence outside of actual confinement. Any parole violation leading to revocation is the manifestation that the parolee's record during confinement was NOT good. These

inmates will be scheduled for interview to determine whether or not they are eligible for consideration for parole within 6 months of the revocation.

~~(27)~~(24) Should the Commission decide to revoke the parole, the parolee shall be entitled to all credit for time spent in custody prior to the revocation hearing for all charges that appear on the warrant and/or notice of hearing. Time spent in other jurisdictions as a result of intervening sentences shall be considered by the Commission. The Commission shall consider the credit for time served on parole in each case. The actual award of such credit is discretionary with the Commission. Credit for time served on parole shall be reflected in the Commission's order.

~~(28)~~(25) If the Commission's decision is to revoke the parole, the parolee ~~or releasee~~ shall be scheduled for an interview by a Commission representative within six months from the date the Commission's order revoking parole. The purpose of this interview shall be to formulate a recommendation to the Commission for the setting of a presumptive parole release date consistent with appropriate statutory requirements and Commission policies and practices as reflected in these rules. Should the parolee have received a prison commitment, a presumptive parole release date shall be established according to appropriate statutory requirements and Commission practices and policies as reflected in these rules regarding newly sentenced inmates.

Rulemaking Specific Authority 947.07 FS. Law Implemented 947.23, FS. History--New 9-10-81, Amended 10-1-82, 7-1-84, Formerly 23-21.22, Amended 5-10-87, 1-26-93, 1-5-94, 8-17-06, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Sarah Rumph, General Counsel
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Chairman Frederick Dunphy
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 18, 2009
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 23, 2009

FLORIDA PAROLE COMMISSION

RULE NOS.: RULE TITLES:
23-22.011 Notice of Release by Control Release
23-22.015 Control Release Forms

PURPOSE AND EFFECT: The Commission proposes to update rules to conform to current practices and procedures, deleting obsolete rules and standardizing to conform to other types of Commission supervision.

SUMMARY: The proposed changes conforms the standard conditions of control release supervision to other forms of supervision. The hearing and revocation procedures are also updated to clarify current practice and conform to other forms of supervision.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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.

RULEMAKING AUTHORITY: 947.07, 947.146, 947.20 FS.
LAW IMPLEMENTED: 947.141, 947.146, 947.147 FS.

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

DATE AND TIME: January 7, 2010, 9:00 a.m.

PLACE: Florida Parole Commission, 2601 Blair Stone Road, Bldg C., Hearing Room A, Tallahassee, FL 32399

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 7 days before the workshop/meeting by contacting: Sarah J. Rumph, General Counsel, 2601 Blair Stone Road, Bldg. C, Tallahassee, Florida 32399. 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: Sarah J. Rumph, General Counsel, 2601 Blair Stone Road, Bldg. C, Tallahassee, Florida 32399

THE FULL TEXT OF THE PROPOSED RULES IS:

23-22.011 Notice of Release by Control Release.

Rulemaking Specific Authority 947.07, 947.146(7)(h), 947.20 FS. Law Implemented 947.146 FS. History--New 9-1-90, Repealed _____.

23-22.015 Control Release Forms.

Rulemaking Specific Authority 947.146(6)(i), 947.07, 947.20 FS. Law Implemented 947.146, 120.53 FS. History--New 9-1-90, Amended 8-24-92, 1-5-94, Repealed _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Sarah Rumph, General Counsel

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Chairman Frederick Dunphy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 18, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 23, 2009

FLORIDA PAROLE COMMISSION

RULE NOS.: RULE TITLES:
 23-22.013 Control Release Supervision
 23-22.014 Revocation of Control Release

PURPOSE AND EFFECT: The Commission proposes to update rules to conform to current practices and procedures, deleting obsolete rules and standardizing to conform to other types of Commission supervision.

SUMMARY: The proposed changes conforms the standard conditions of control release supervision to other forms of supervision. The hearing and revocation procedures are also updated to clarify current practice and conform to other forms of supervision.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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.

RULEMAKING AUTHORITY: 947.07, 947.146, 947.20 FS.

LAW IMPLEMENTED: 947.141, 947.146, 947.147 FS.

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

DATE AND TIME: January 7, 2010, 9:00 a.m.
 PLACE: Florida Parole Commission, 2601 Blair Stone Road, Bldg C., Hearing Room A, Tallahassee, FL 32399

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THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Sarah J. Rumph, General Counsel, 2601 Blair Stone Road, Bldg. C, Tallahassee, Florida 32399

THE FULL TEXT OF THE PROPOSED RULES IS:

23-22.013 Control Release Supervision.

(1) through (3) No change.

(4) All persons placed solely on control release supervision shall initially be subject to the standard conditions of control release:

(a) The standard conditions of control release shall include the following:

1. I shall, promptly upon being released on control release, proceed to my planned place of residence identified on page one. I shall report in person to the probation and parole office in _____ County, Florida, as instructed by my release officer on

_____ at _____ . If no specific report/time is given, I shall report within 72 hours of my release within three working days to my supervision office at the address provided in this agreement, reporting by personal visit to my control release officer under whose supervision I am to be placed. I shall continue to report as directed.

2. No change.

3. I shall submit a full and truthful report to my control release officer ~~before the fifth day of each month~~ in writing on the forms provided in person ~~or~~ as directed by my control release officer.

4. I shall not:

a. Use or possess alcohol or intoxicants of any kind, ~~to excess,~~

b. Use or possess narcotics, drugs, or marijuana unless prescribed by a physician.

c. Enter any business establishment whose primary purpose is the sale/consumption of alcoholic beverages.

5. I shall not knowingly associate with any person(s) who is engaging in any criminal activity, a criminal gang member, or person(s) associated with criminal gang members.

6. through 7. No change.

8. I shall:

a. No change.

b. Waive extradition ~~back~~ to the State of Florida if I am wanted for return as an alleged control release violator,

c. through d. No change.

9. through 11. No change.

12. I agree to pay any court ordered payments such as child support and restitution. ~~cost of supervision and rehabilitation as calculated and assessed by the Department of Corrections as provided and required in Section 948.09, Florida Statutes.~~

13. I shall execute and provide authorizations to release records to my control release officer and the Commission so that my progress and participation in required programs can be monitored and documented.

(b) No change.

(5) through (6) No change.

(7) A panel of no fewer than two Commissioners has authority to cause a review of the progress of a control releasee, or the Department of Corrections may make recommendations to the Commission whether to modify the reporting schedule or further modify the terms and conditions of control release. A panel of no fewer than two Commissioners shall discharge from control release, relieve from making further reports or permit the releasee to leave the country upon determining that such action is in the best interest of the control releasee and of society. Such cases shall be docketed before the panel of commissioners, if available, that initially set the terms and conditions of control release.

(8) A panel of no fewer than two Commissioners shall review the progress of each person who has been placed on control release after 2 years of supervision and not less often than biennially thereafter. Such reviews must include consideration of whether to modify the reporting schedule, thereby authorizing the person under supervision to submit reports quarterly, semi-annually, or annually. In the event the Commission elects to place a control releasee on quarterly, semi-annually or annual reporting, the following definitions will be applicable:

(a) Quarterly reporting – one personal contact required every three (3) months.

(b) Semi-annual reporting – one personal contact required every six (6) months.

(c) Annual reporting – one personal contact required every twelve (12) months.

(9) The panel may give specific instructions reflecting whether the personal contact is to take place in a formal setting or in the setting to be determined by the control release supervisor. (10) Such modification shall not impose new or different terms or conditions of control release more restrictive than was stated in the original certificate.

(10) Such modification shall not impose new or different terms or conditions of control release more restrictive than was stated in the original certificate.

Rulemaking Specific Authority 947.146(6)(i), 947.07, 947.20 FS. Law Implemented 947.146 FS. History–New 9-1-90, Amended 8-24-92, 1-5-94,_____.

23-22.014 Revocation of Control Release.

(1) Warrants.

(a) No change.

(b) All warrant requests will be reviewed by staff for sufficiency of information and if found sufficient, staff shall submit either:

1. ~~Submit~~ the warrant to a Commissioner or Commissioners for a decision, ~~or~~

2. ~~If approved by the revocations administrator or his designee, docket the warrant request for a decision by a panel of no fewer than two Commissioners rather than placing the request before a single Commissioner.~~

(c) through (d) No change.

(e) Should a warrant be issued, such will be transmitted to the requesting agency for appropriate service or filing. Alleged violators of control release will be entered into the Florida Crime Information Center and National Crime Information Center databases, unless in custody. The Commission has authority to pursue extradition of alleged violators from other jurisdictions.

(f) Should a warrant be issued and a dismissal of the warrant is requested ~~by the Revocation Administrator or his designee~~, the signing Commissioner or Chair is authorized to dismiss the warrant for good cause.

(2) No change.

(3) Release on Recognizance.

(a) ~~The Commission, or a Commissioner or a duly authorized representative of the Commission~~ may at any time during the violation process, release a control releasee on recognizance bond, conditioned upon the control releasee's appearance at any hearings noticed by the Commission or until further order of the Commission. ~~However, any release on recognizance bond authorized by a hearing officer who is not a Commissioner, shall be with the approval of the revocation administrator or his designee.~~

(b) through (d) No change.

(4) Control Release Violation Hearing.

(a) through (b) No change.

(c) Any control release violation hearing may be waived by the control releasee after an explanation of the consequences of a waiver. The waiver shall be in writing and shall be executed before a Commissioner or duly authorized representative of the Commission. The control releasee may withdraw the waiver by submitting a written request which waives all time constraints. The waiver withdrawal request must be appropriately witnessed, and postmarked received at the Commission headquarters within 14 days after the execution of the waiver. Upon receipt of a timely ~~the~~ waiver withdrawal request, a control release violation hearing shall be convened after appropriate notice.

(d) No change.

(e) If there is a judicial order of incompetency, a written psychiatric or psychological determination of incompetency, or a commitment to a mental institution in the 90 days prior to the violation then an attorney shall be appointed. Once an attorney is appointed for questions of competency or if a previously appointed/retained attorney raises competency issues, then evidence of mental competency/incompetency shall be gathered and forwarded to the Commission for review. Once received by the Commission, the case shall be docketed. At the Commission meeting, the Commission may either order the violation process proceed, that the violation process be placed in abeyance, or such other order as it considers proper.

(f)(e) The control release violation hearing shall be convened within 45 days of receipt of written notification from the Department of Corrections that the alleged violator has been returned to the custody of the Department from another jurisdiction.

(g)(f) Subpoenas and subpoenas duces tecum for the control releasee and the Commission shall be issued by a Commissioner or duly authorized representative of the Commission on behalf of the State or the control releasee. The Commission, a Commissioner or a duly authorized representative of the Commission may decline a request to subpoena a witness whose testimony is found to be cumulative, irrelevant or nonprobative. The party requesting the subpoenas shall furnish to the Commission, a Commissioner or a duly

authorized representative of the Commission the names and addresses of his proposed witnesses at least 14 days prior to the hearing date.

(h)(g) At the hearing, the accused violator may waive representation by an attorney, provided the waiver is reflected clearly in writing or in the record of the proceeding. Should the control releasee desire, retained counsel may represent the control releasee at the hearing. In the event the control releasee desires counsel and has not retained one, the following procedure shall apply:

1. through 2. No change.

(i)(h) During a control release violation hearing, the hearing officer may entertain arguments of counsel or the control releasee. The hearing officer may elect to rule on such matters during the course of the hearing or may elect to withhold ruling pending consultation with counsel or staff. Arguments of counsel of a legal nature must be reduced to writing, and, if possible, presented prior to the hearing.

(j)(i) Based on evidence presented at the violation hearing, or received by stipulation, the hearing officer shall make findings of fact regarding the alleged violations, with a written recommendation to the Commission.

(k)(j) When the Commission finds that the control releasee has committed one or more violations, the Commission shall cause an order to be entered, attested to by the agency clerk or his designee, revoking, modifying or terminating the control release, or restoring the control releasee to supervision. Notification by copy of the Commission order shall be provided to the control releasee. If the decision of the Commission is to revoke, the order entered shall contain the evidence relied upon and the reasons for the revocation.

(l)(k) The hearing officer conducting the hearing may elect to receive information following the violation hearing if the control releasee stipulates to the receipt of such information and such stipulation is reflected in the record.

(m)(l) When a panel of no fewer than two (2) ~~Commissioners~~ ~~commissioners~~ revokes control release, the control releasee shall be entitled to credit for time spent in custody prior to the violation hearing for all charges that appear on the warrant and/or notice of hearing, as decided by the panel ~~prior to the violation hearing~~. Time spent in another jurisdiction as a result of intervening sentence(s) shall be considered. Credit for time in custody shall be reflected in the order of revocation of control release.

(n) The Commission shall consider the credit for time served on control release in each case. The actual award of such credit is discretionary with the Commission. Credit for time served on control release shall be reflected in the Commission's order.

(o) Pursuant to the United States Supreme Court's decision in Pennsylvania Board of Probation & Parole v. Scott, 524 U.S. 357 (1998), the Commission may consider evidence that has been excluded in a criminal proceeding as the result of the application of the federal exclusionary rule.

(p)(n) When a panel of no fewer than two (2) ~~Commissioners~~ ~~commissioners~~ revokes control release, the control releasee shall be scheduled for an evaluation by Commission staff following notification by the Department that the inmate has been received, provided that the releasee is statutorily eligible.

Rulemaking Specific Authority 947.07, 947.146(7)(h), 947.20 FS. Law Implemented 120.53, 947.146 FS. History--New 9-1-90, Amended 4-20-94, 1-5-94,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Sarah Rumph, General Counsel
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Chairman Frederick Dunphy
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 18, 2009
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 23, 2009

FLORIDA PAROLE COMMISSION

RULE NOS.:	RULE TITLES:
23-23.006	Conditional Release Definitions
23-23.007	Victim Information
23-23.008	Conditional Release Evaluation Procedure
23-23.010	Conditional Release Supervision
23-23.011	Revocation of Conditional Release

PURPOSE AND EFFECT: The Commission proposes to update rules to conform to current practices and procedures, deleting obsolete rules, practices and procedures, and standardizing to conform to other types of Commission supervision.

SUMMARY: The proposed changes conforms the standard conditions of conditional release supervision to other forms of supervision. The hearing and revocation procedures are also updated to clarify current practice and conform to other forms of supervision.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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.

RULEMAKING AUTHORITY: 947.06, 947.07, 947.1405, 947.20 FS.

LAW IMPLEMENTED: 947.1405; 947.141 FS.

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

DATE AND TIME: January 7, 2010, 9:00 a.m.

PLACE: Florida Parole Commission, 2601 Blair Stone Road, Bldg C, Hearing Room A, Tallahassee, FL 32399

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 7 days before the workshop/meeting by contacting: Sarah J. Rumph, General Counsel, 2601 Blair Stone Road, Bldg. C, Tallahassee, Florida 32399. 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: Sarah J. Rumph, General Counsel, 2601 Blair Stone Road, Bldg. C, Tallahassee, Florida 32399

THE FULL TEXT OF THE PROPOSED RULES IS:

23-23.006 Conditional Release Definitions.

(1) Chair – is the Chair of the Florida Parole Commission.

(2) Conditional Release – means the release of:

(a) Any inmate who is convicted of a crime committed on or after October 1, 1988, but prior to October 1, 1989; and

1. Which crime is contained in category 1, 2, 3, or 4 of Rule 3.701 and Rule 3.988, Florida Rules of Criminal Procedure, and who has served at least one prior felony commitment at a state or federal correctional institution; or

2. Is sentenced as a habitual or violent habitual offender pursuant to Section 775.084, Florida Statutes F.S.; and upon reaching the tentative release date as established by the Department of Corrections, will be released under supervision subject to specified terms and conditions established by the Commission for such release.

(b) Or an inmate who is convicted of a crime committed on or after October 1, 1989; and

1. Which crime is contained in category 1, 2, 3, or 4 of Rule 3.701 and Rule 3.988, Florida Rules of Criminal Procedure, and who has served at least one prior felony commitment at a state or federal correctional institution; or

2. Is sentenced as a habitual or violent habitual offender pursuant to Section 775.084, Florida Statutes, and upon reaching the tentative release date or provisional release date, whichever is earlier, established by the Department of Corrections, will be released under supervision subject to specified terms and conditions established by the Commission for such release. ~~In the event any inmate placed on conditional release supervision is also subject to probation or community control, the inmate will be determined to be ineligible for conditional release supervision and the Department of Corrections shall supervise such person according to the conditions imposed by the court.~~

(3) through (9) No change.

(10) Parole Examiner – for purposes of these rules, means an employee of the Florida Parole Commission who performs the following conditional release functions:

~~(a) Conducts interviews of eligible inmates committed to the Department of Corrections and submits the case material with a professional case analysis and recommendation to the Commission;~~

~~(a)(b) Conducts violation hearings and makes findings of fact and recommendations to the Commission;~~

~~(c) Conducts investigations regarding restitution or reparation and other relevant consequences of the offense.~~

~~(b)(d) Performs other related duties as assigned by the Chair.~~

(11)(a) Felony Commitment – means an the incarceration served in this state, any other state, or federal institution portion of a prison sentence for a felony offense. resulting from a Uniform Commitment to Custody of the Department of Corrections or the incarceration portion of a prison sentence for a felony offense served in any other state or federal correctional institution.

(b) Prior Felony Commitment – means any felony commitment served prior to a subsequent felony commitment ~~even though both may have resulted from the same criminal offense.~~

(12) through (19) No change.

Rulemaking Specific Authority 947.07, 947.1405(9) FS. Law Implemented 947.1405(2)(a) FS. History–New 10-20-91, Amended 1-5-94, 5-29-02,_____.

23-23.007 Victim Information.

~~(1) The Directors of Parole Grant and Field Services/Revocations shall cause an investigation to determine the following:~~

~~(a) The amount of reparation or restitution.~~

~~(b) The consequences of the offense as reported by the aggrieved party.~~

~~(c) The aggrieved party's fear of the inmate or concerns about the release of the inmate.~~

~~(2) The Commission shall provide to the aggrieved party information regarding the manner in which notice of any developments concerning the status of the inmate during the term of conditional release may be requested.~~

~~(1)(3) The Commission shall provide the opportunity to victims to have input into the Commission decisions:~~

~~(a) through (b) No change.~~

Rulemaking Specific Authority 947.06, 947.07, 947.20 FS. Law Implemented 947.1405, 947.141 FS. History–New 10-20-91, Amended 1-5-94,_____.

23-23.008 Conditional Release Evaluation Procedure.

(1) Within 180 days prior to an inmate's Tentative Release Date or Provisional Release Date PRD whichever is earlier, as established by the Department of Corrections, the Department Director of Field Services/Revocations shall cause a Hearing Examiner to review the inmate's program participation, disciplinary record, psychological and medical records, and any other information pertinent to the pending release. The Department shall and to interview the inmate for conditional release. The Hearing Examiner shall interview the inmate and shall request the inmate to present his/her conditional release plan. The Department shall gather and compile information necessary for the Commission to make the determinations set forth in Sections 947.1405(3) and (5), Florida Statutes. At the close of the conditional release interview, the inmate shall be requested to sign an acknowledgment of presence at the conditional release interview.

(2) The Hearing Examiner shall reduce his findings regarding the inmate's conditional release interview to writing and forward those findings to the Commission.

(2)(3) Within 60 days from the receipt of the interview, of the examiner's findings, a panel of no fewer than two Commissioners shall review the recommendations of the Department, and such other information as it deems relevant, and conducts a review of the inmate's record for the purpose of establishing the terms and conditions of the conditional release. The Commission imposes any special conditions it considers warranted shall review the material and the conditional release date as scheduled by the Department, and shall establish the terms and conditions of such release.

Rulemaking Specific Authority 947.07, 947.20 FS. Law Implemented 947.1405 FS. History—New 10-20-91, Amended 8-18-98, _____.

23-23.010 Conditional Release Supervision.

(1) Prior to an inmate being released by conditional release, the Commission shall determine the terms and conditions of supervision which shall include the cost of supervision.

(2) Florida felony probation/community control will substitute for conditional release supervision for all conditional release eligible offenses occurring before July 1, 2001. This applies to cases involving split sentences, as well as to cases involving probation/community control relating to an offense that is not part of the current sentence structure, regardless of the offense date of the unrelated sentence. For conditional release eligible offenses occurring on or after July 1, 2001, conditional release supervision will defer to and run concurrent with the Florida felony probation/community control supervision upon the offender's release. Section 947.1405(2), F.S., provides that the Department of Corrections shall supervise the offender according to the conditions imposed by the court and the Commission shall defer to such supervision. Upon expiration of the court imposed supervision, the offender will be subject to the conditions of conditional release

supervision until the maximum period of conditional release supervision expires. If an inmate has received a term of probation or community control supervision to be served after release from incarceration, he is not eligible for conditional release supervision.

(3) through (4) No change.

(5) All persons placed solely on conditional release supervision shall initially be subject to the standard conditions of conditional release upon their release from incarceration.

(a) The standard conditions of conditional release shall be the following:

1. Promptly upon being released on Conditional Release, you will proceed to your planned place of residence identified on page one. You shall report in person to the probation and parole office in _____ County, Florida, as instructed by the release officer, on _____ at _____, (address), where you will reside. If no specific report date/time is given, you shall report within 72 hours of your release. Immediately upon your arrival, you will report by personal visit to the Conditional Release Supervisor under whose supervision you are to be released. The Conditional Release Supervisor's name and address is:

2. No change.

3. You shall submit a full and truthful report to your Conditional Release Supervisor before the fifth of each month in writing on the forms provided or in person, as directed by your Conditional Release Supervisor.

4. You shall not:

a. Use or possess alcohol or intoxicants of any kind to excess,

b. Use or possess narcotics, drugs, or marijuana unless prescribed by a physician.

c. Enter any business establishment whose primary purpose is the sale/consumption of alcoholic beverages.

5. You shall not knowingly associate with any person(s) who is engaging in any criminal activity, a criminal gang member, or person(s) associated with criminal gang members.

6. through 7. No change.

8. You shall:

a. No change

b. Waive extradition back to the State of Florida if you are wanted for return as an alleged conditional release violator,

c. through d. No change.

9. through 11. No change.

12. I agree to pay any court ordered payments such as child support, restitution, or civil liens resulting from restitution orders cost of supervision and rehabilitation as calculated and assessed by the Department of Corrections as provided and required in Section 948.09, Florida Statutes.

13. You shall execute and provide authorizations to release records to your Conditional Release Supervisor and the Commission so that your progress and participation in required programs can be monitored and documented.

(b) ~~Standard conditions of conditional release for a person found to be a sexual predator shall also include:~~

1. ~~Promptly, upon being released on conditional release, you shall, within 48 hours after entering the county of permanent or temporary residence, register as a sexual predator with the Department of Law Enforcement and, once registered, must notify the Department of any change in permanent or temporary residence within 48 hours after arrival at the new place of permanent or temporary residence.~~

2. ~~Your failure to register or be registered or your failure, after registration, to provide required notification of location, shall be in violation of the conditions of your supervised release.~~

(b)(e) ~~In addition to these standard conditions, the Commission shall require such special conditions of conditional release supervision as it deems necessary, which may include restitution.~~

(6) through (8) No change.

(9) The panel may ~~shall~~ give specific instructions reflecting whether the personal contact is to take place in a formal setting or in the setting to be determined by the conditional release supervisor parole officer. ~~The Commission shall also give specific instructions establishing the method of payment of cost of supervision.~~

(10) No change.

Rulemaking Specific Authority 947.07, 947.20 FS. Law Implemented 947.1405, 947.141 FS. History—New 10-20-91, Amended 1-5-94,_____.

23-23.011 Revocation of Conditional Release.

(1) Warrants.

(a) A warrant for the arrest of a conditional releasee shall be executed only by a Commissioner, except in the case of an emergency warrant as provided in subsection (2) herein. The decision to issue a warrant shall be based on evidence which indicates reasonable grounds to believe a releasee has violated a condition of conditional release. The issuance of a warrant is discretionary. In the case of a sexual predator, the warrant is not discretionary and must be issued, pursuant to Section 947.141(1), Florida Statutes, provided reasonable grounds exist that a violation has occurred.

(b) All warrant requests will be reviewed by staff for sufficiency of information and if found sufficient, staff shall submit either: 1. ~~Submit~~ the warrant request to a Commissioner for a decision regarding issuance of a warrant.

2. ~~If approved by the revocations administrator or his designee, docket the warrant request for a decision by a panel of no fewer than two Commissioners rather than placing the request before a single Commissioner.~~

(c) through (d) No change.

(e) Should a warrant be issued, such will be transmitted to the requesting agency for appropriate service or filing. Alleged violators of conditional release will be entered into the Florida

Crime Information Center and National Crime Information Center databases, unless in custody. The Commission has authority to pursue extradition of alleged violators from other jurisdictions.

(f) Should a warrant be issued, and a dismissal of the warrant is requested ~~by the Revocation Administrator or his designee~~, the signing Commissioner or Chair is authorized to dismiss the warrant for good cause or have the dismissal request placed on the docket before a panel of no fewer than two (2) Commissioners for a decision.

(2) No change.

(3) Release on Recognizance.

(a) The Commission, or a Commissioner ~~or a duly authorized representative of the Commission~~ may, at any time during the violation process, release a conditional releasee on recognizance bond, conditioned upon the conditional releasee's appearance at any hearings noticed by the Commission or until further order of the Commission. ~~However, any release on recognizance bond authorized by a hearing officer who is not a Commissioner, shall be with the approval of the revocation administrator or his designee.~~

(b) through (d) No change.

(4) Conditional Release Violation Hearing.

(a) through (b) No change.

(c) Any conditional release violation hearing may be waived by the conditional releasee after an explanation of the consequences of a waiver. The waiver shall be in writing and shall be executed before a Commissioner or duly authorized representative of the Commission. The conditional releasee may withdraw the waiver by submitting a written request which waives all time constraints. The waiver withdrawal request must be appropriately witnessed, and postmarked received at the Commission headquarters within 14 days after the execution of the waiver. Upon receipt of a timely ~~the~~ waiver withdrawal request, a conditional release violation hearing shall be convened after appropriate notice.

(d) The conditional releasee is entitled to request that his conditional release violation hearing be postponed until such time as any pending criminal charges that are listed on the Commission's warrant or notice of hearing have been resolved or upon a showing of good cause. The request for postponement or continuance may be submitted to the person conducting the hearing in writing prior to convening the hearing, provided that the reasons for the request are outlined with specificity. The granting of a continuance or postponement on behalf of the conditional releasee constitutes a waiver by the conditional releasee of all time constraints, ~~and~~ any requirement for a local hearing, and shall postpone disposition of the violations until notification is received by the Commission that the pending criminal charges have been resolved or the Releasee elects to proceed with or waive the hearing. If there are also pending technical violations, the granting of the postponement also postpones disposition of the

technical violations until such time as the criminal charges are resolved. In the event that the conditional release violation hearing has been convened, such may be postponed or continued beyond 45 days as provided by statute, on the motion of the conditional releasee, the Commission or duly authorized representative of the Commission, provided the record reflects a good cause reason for such continuance or postponement.

(e) If there is a judicial order of incompetency, a written psychiatric or psychological determination of incompetency, or a commitment to a mental institution in the 90 days prior to the violation then an attorney shall be appointed. Once an attorney is appointed for questions of competency or if a previously appointed/retained attorney raises competency issues, then evidence of mental competency/incompetency shall be gathered and forwarded to the Commission for review. Once received by the Commission, the case shall be docketed. At the Commission meeting, the Commission may either order the violation process proceed, that the violation process be placed in abeyance, or such other order as it considers proper.

(f)(e) The conditional release violation hearing shall be convened within 45 days of receipt of written notification from the Department of Corrections that the alleged violator has been returned to the custody of the Department from another jurisdiction.

(g)(f) Subpoenas and subpoenas duces tecum for the conditional releasee and the Commission shall be issued by a Commissioner or duly authorized representative of the Commission on behalf of the State or the conditional releasee. The Commission, a Commissioner or a duly authorized representative of the Commission will decline a request to subpoena a witness whose testimony is found to be cumulative, irrelevant or nonprobative. The party requesting the subpoenas shall furnish to the Commission, a Commissioner or a duly authorized representative of the Commission the names and addresses of his proposed witnesses at least 14 days prior to the hearing date.

(h)(g) At the hearing, the accused violator may waive representation by an attorney, provided the waiver is reflected clearly in writing or in the record of the proceeding. Should the conditional releasee desire, retained counsel may represent the conditional releasee at the hearing. In the event the conditional releasee desires counsel and has not retained one, the following procedure shall apply:

1. The person conducting the hearing shall determine the conditional releasee's financial ability to retain private counsel. When the person conducting the hearing determines a conditional releasee has the ability to retain private counsel, reasonable time shall be permitted for the conditional releasee to secure counsel, if the conditional releasee so desires.

2. If the person conducting the hearing concludes the conditional releasee is unable to secure counsel by reason of indigency, the person conducting the hearing shall then proceed to determine if the conditional releasee is eligible for

appointed counsel as provided in the guidelines outlined in *Gagnon v. Scarpelli*, 411 U. S. 778 (1973). If a request for counsel is denied, the grounds for the denial shall be stated in the record.

(i)(h) During a conditional release violation hearing, the person conducting the hearing has authority to entertain arguments of counsel or the conditional releasee. The person conducting the hearing has authority to elect to rule on such matters during the course of the hearing or may elect to withhold ruling pending consultation with counsel or staff. Arguments of counsel of a legal nature must be reduced to writing, and, if possible, presented prior to the hearing.

(j)(i) Based on evidence presented at the violation hearing, or received by stipulation, the person conducting the hearing shall make findings of fact regarding the alleged violations, with a written recommendation to the Commission. When the Commission finds that the conditional releasee has committed one or more violations, the Commission shall within a reasonable time enter an order revoking the conditional release, restoring the conditional releasee to supervision or such other order as deemed appropriate. Notification by copy of the Commission order shall be provided to the conditional releasee. If the decision of the Commission is to revoke, the order entered shall contain the evidence relied upon and the reasons for the revocation.

(k)(j) The person conducting the hearing has authority to elect to receive information following the violation hearing if the conditional releasee stipulates to the receipt of such information and such stipulation is reflected in the record.

(l)(k) When a panel of no fewer than two (2) ~~Commissioners~~ ~~commissioners~~ revokes conditional release, the conditional releasee shall be entitled to credit for time spent in custody prior to the violation hearing for all charges that appear on the warrant and/or notice of hearing. Time spent in another jurisdiction as a result of intervening sentence(s) shall be considered. Credit for time in custody as decided by the panel shall be reflected in the order of revocation of conditional release.

(m) The Commission shall consider the credit for time served on conditional release in each case. The actual award of such credit is discretionary with the Commission. Credit for time served on conditional release shall be reflected in the Commission's order.

(n) Pursuant to the United States Supreme Court's decision in *Pennsylvania Board of Probation & Parole v. Scott*, 524 U.S. 357 (1998), the Commission may consider evidence that has been excluded in a criminal proceeding as the result of the application of the federal exclusionary rule.

Rulemaking Specific Authority 947.07, 947.20 FS. Law Implemented 947.1405, 947.141 FS. History—New 10-20-91, Amended 1-5-94, 4-20-94,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Sarah Rumph, General Counsel
NAME OF AGENCY HEAD WHO APPROVED THE
PROPOSED RULE: Chairman Frederick Dunphy
DATE PROPOSED RULE APPROVED BY AGENCY
HEAD: November 18, 2009
DATE NOTICE OF PROPOSED RULE DEVELOPMENT
PUBLISHED IN FAW: October 23, 2009

FLORIDA PAROLE COMMISSION

RULE NOS.:	RULE TITLES:
23-23.009	Notice of Release by Conditional Release
23-23.012	Conditional Release Forms

PURPOSE AND EFFECT: The Commission proposes to update rules to conform to current practices and procedures, deleting obsolete rules, practices and procedures, and standardizing to conform to other types of Commission supervision.

SUMMARY: The proposed changes conforms the standard conditions of conditional release supervision to other forms of supervision. The hearing and revocation procedures are also updated to clarify current practice and conform to other forms of supervision.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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.

RULEMAKING AUTHORITY: 947.06, 947.07, 947.1405, 947.20 FS.

LAW IMPLEMENTED: 947.1405, 947.141 FS.

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

DATE AND TIME: January 7, 2010, 9:00 a.m.

PLACE: Florida Parole Commission, 2601 Blair Stone Road, Bldg C., Hearing Room A, Tallahassee, FL 32399

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 7 days before the workshop/meeting by contacting: Sarah J. Rumph, General Counsel, 2601 Blair Stone Road, Bldg. C, Tallahassee, Florida 32399. 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: Sarah J. Rumph, General Counsel, 2601 Blair Stone Road, Bldg. C, Tallahassee, Florida 32399

THE FULL TEXT OF THE PROPOSED RULES IS:

23-23.009 Notice of Release by Conditional Release.

Rulemaking Specific Authority 947.07, 947.20 FS. Law Implemented 947.1405 FS. History--New 10-20-91, Repealed.

23-23.012 Conditional Release Forms.

Rulemaking Specific Authority 947.07, 947.20 FS. Law Implemented 947.1405, 947.141 FS. History--New 10-20-91, Amended 1-5-94, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Sarah Rumph, General Counsel

NAME OF AGENCY HEAD WHO APPROVED THE
PROPOSED RULE: Chairman Frederick Dunphy

DATE PROPOSED RULE APPROVED BY AGENCY
HEAD: November 18, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT
PUBLISHED IN FAW: October 23, 2009

FLORIDA PAROLE COMMISSION

RULE NOS.:	RULE TITLES:
23-24.020	Conditional Medical Release Eligibility
23-24.030	Conditions of Conditional Medical Release
23-24.050	Revocation of Conditional Medical Release

PURPOSE AND EFFECT: The Commission proposes to update rules to conform to current practices and procedures, deleting obsolete rules and standardizing to conform to other types of Commission supervision.

SUMMARY: The proposed changes conforms the standard conditions of conditional medical release supervision to other forms of supervision. The hearing and revocation procedures are also updated to clarify current practice and conform to other forms of supervision.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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.

RULEMAKING AUTHORITY: 947.07, 947.149 FS.

LAW IMPLEMENTED: 947.141, 947.149 FS.

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

DATE AND TIME: January 7, 2010, 9:00 a.m.

PLACE: Florida Parole Commission, 2601 Blair Stone Road, Bldg C, Hearing Room A, Tallahassee, FL 32399

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 7 days before the workshop/meeting by

contacting: Sarah J. Rumph, General Counsel, 2601 Blair Stone Road, Bldg. C, Tallahassee, Florida 32399. 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: Sarah J. Rumph, General Counsel, 2601 Blair Stone Road, Bldg. C, Tallahassee, Florida 32399

THE FULL TEXT OF THE PROPOSED RULES IS:

23-24.020 Conditional Medical Release Eligibility.

(1) No change.

(2) The referral shall be directed to Release Services ~~the Director of Parole Grant~~ who may will docket the case before the Commission. A decision will be made by a majority of the quorum present and voting.

(3) No change.

(4) ~~If Subsequent to the Commission's establishment of an inmate's conditional medical release date, and prior to the actual release, the Director of Parole Grant shall provide written notice to the original sentencing judge, the state attorney, the original arresting law enforcement agency and the sheriff of the county within the State of Florida to which the inmate is to be released. Unless otherwise requested by the victim or the personal representative of the victim, notification shall be provided to the victim or personal representative of the victim of any hearing where the release of the inmate on conditional medical release is considered prior to the inmate's release, if the name and address of such victim or representative of the victim is known by has been furnished to the Commission.~~

Rulemaking Specific Authority 947.06, 947.07 FS. Law Implemented 947.149 FS. History--New 1-5-94, Amended _____.

23-24.030 Conditions of Conditional Medical Release.

All persons placed on conditional medical release supervision shall be subject to the standard conditions of conditional medical release.

(1) The following are the standard conditions of conditional medical release:

(a) Promptly upon being released on conditional medical release, I shall proceed to my planned place of residence _____, where I shall reside. Immediately upon my arrival, I, or my personal representative, shall report by mail, telephone or personal visit as instructed by my release officer to the Conditional Medical Release Supervisor under whose supervision I am to be released. If no specific report date/time is given, I or my personal representative shall report within 72 hours of my release. The conditional medical release supervisor's name and address is:

(b) I, or my personal representative, shall secure the permission of my conditional medical release officer before:

1. I change my residence ~~or employment,~~
2. I leave the county of my residence or the state,
3. I post bail or accept pretrial release if I am arrested for a felony.

(c) I, or my personal representative, shall submit a full and truthful report to my conditional medical release officer ~~before the fifth day of~~ each month in writing on the forms provided ~~or~~ in person as directed by my conditonal medical release supervisor.

(d) I shall not:

1. Use or possess alcohol or intoxicants of any kind. ~~to excess;~~
2. Use or possess narcotics, drugs or marijuana unless prescribed by a physician.
3. Enter any business establishment whose primary purpose is the sale/consumption of alcoholic beverages.

(e) I shall not knowingly associate with any person(s) who is engaging in any criminal activity, a criminal gang member, or person(s) associated with criminal gang members.

(f) through (k) No change.

(l) ~~I shall execute and provide authorizations to release records to my conditional medical release supervisor and the Commission so my progress can be monitored and documented. I agree to authorize and provide medical evaluations to the Commission not less often than _____.~~

(m) No change.

(2) No change.

(3) There shall be no right of review of the terms and conditions of conditional medical release as determined by the Commission.

(4) Such modification shall not impose new or different terms or conditions of conditional medical release more restrictive than was stated in the original certificate.

Rulemaking Specific Authority 947.07, 947.149 FS. Law Implemented 947.149 FS. History--New 1-5-94, Amended _____.

23-24.050 Revocation of Conditional Medical Release.

The revocation process for conditional medical release shall be initiated either by order of the Commission or by issuance of a warrant. Any hearing will be conducted in accordance with 947.141, F.S. Revocation hearings pursuant to order of the Commission, shall be initiated when the Commission does not intend to require the releasee to be taken into custody prior to the hearing. Revocation proceedings pursuant to warrant shall be initiated when the Commission believes that the conditional medical releasee should be returned to custody prior to the hearing being convened.

(1) Order For Revocation Hearing.

- (a) A Commission order requiring a revocation hearing for a conditional medical releasee shall be authorized by the Commission, a Commissioner or a panel of no fewer than two (2) Commissioners. The decision to issue an order is

discretionary and shall be based on information which indicates reasonable grounds to believe that the medical or physical condition of the medical releasee has improved to the extent that he would no longer be eligible for conditional medical release. The order shall specify whether the revocation hearing shall be held locally or at a Department ~~department~~ of Corrections ~~corrections~~ facility. Failure of a conditional medical releasee to comply with such order shall constitute grounds for issuance of a warrant.

(b) Reports reflecting improved medical or physical condition of the conditional medical releasee to the extent that he would no longer be eligible for conditional medical release will be reviewed by staff for sufficiency of information and if found sufficient, staff shall submit either:

1. ~~Submit~~ a draft order with supporting information to a Commissioner for a decision, ~~or~~;

2. ~~If approved by the revocation administrator or his designee, docket the information and draft order for a decision by a panel of no fewer than two (2) Commissioners.~~

(c) through (d) No change.

(2) Conditional Medical Release Revocation Hearing pursuant to Commission Order.

(a) No change.

(b) The conditional medical releasee shall be informed, in writing, at least 14 days prior to the conditional medical release revocation hearing of the date, time and location of the hearing. The notice of hearing shall include the reason for the hearing and a list of the releasee's rights, as follows:

1. through 2. No change.

3. The opportunity to receive, prior to the hearing, the disclosure of evidence that will be presented at the conditional medical control ~~control~~ release violation hearing.

4. through 5. No change.

(c) Any conditional medical release revocation hearing can be waived by the conditional medical releasee after an explanation of the consequences of a waiver. The waiver shall be in writing and shall be executed before a Commissioner or duly authorized representative of the Commission. The conditional medical releasee can withdraw the waiver by submitting a written request which waives all time constraints. The waiver withdrawal request must be appropriately witnessed, and postmarked ~~received at the Commission headquarters~~ within 14 days after the execution of the waiver. Upon receipt of a timely ~~the~~ waiver withdrawal request, a conditional medical release revocation hearing shall be convened after appropriate notice.

(d) through (e) No change.

(f) No change.

1. No change.

2. If the hearing officer concludes the conditional medical releasee is unable to secure counsel by reason of indigency, the hearing officer shall then proceed to determine if the

conditional medical releasee is eligible for appointed counsel as provided in the guidelines outlined in *Gagnon v. Scarpelli*, 411 U.S. 778 (1973) ~~as provided by law~~. If a request for counsel is denied, the grounds for the denial shall be stated in the record.

(g) through (k) No change.

(3) Conditional Medical Release Warrants.

(a) No change.

(b) All warrant requests will be reviewed by staff for sufficiency of information and if found sufficient, staff shall submit either:

1. ~~Submit~~ the warrant to a Commissioner or Commissioners for a decision, ~~or~~

2. ~~If approved by the revocations administrator or his designee, docket the warrant request for a decision by a panel of no fewer than two Commissioners rather than placing the request before a single Commissioner.~~

(c) through (d) No change.

(e) Should a warrant be issued, such will be transmitted to the requesting agency for service or filing. Alleged violators of conditional medical release will be entered into the Florida Crime Information Center and National Crime Information Center databases, unless in custody. The Commission has authority to pursue extradition of alleged violators from other jurisdictions.

(f) No change.

(4) Emergency Warrants.

(a) through (d) No change.

(a) The Commission or a Commissioner ~~or a duly authorized representative of the Commission~~ can at any time during the violation process, release a conditional medical releasee on recognizance bond, conditioned upon the conditional medical releasee's appearance at any hearings noticed by the Commission or until further order of the Commission. ~~However, any release on recognizance bond authorized by a hearing officer who is not a Commissioner, shall be with the approval of the revocation administrator or his designee.~~

(b) through (d) No change.

(6) Conditional Medical Release Violation Hearing pursuant to Commission Warrant.

(a) through (b) No change.

1. through 2. No change.

3. The opportunity to receive, prior to the hearing, the disclosure of evidence that will be presented at the conditional medical control ~~control~~ release violation hearing.

4. through 5. No change.

(c) Any conditional medical release violation hearing can be waived by the conditional medical releasee after an explanation of the consequences of a waiver. The waiver shall be in writing and shall be executed before a Commissioner or duly authorized representative of the Commission. The

conditional medical releasee can withdraw the waiver by submitting a written request which waives all time constraints. The waiver withdrawal request must be appropriately witnessed, and postmarked received at the Commission headquarters within 14 days after the execution of the waiver. Upon receipt of a timely the waiver withdrawal request, a conditional medical release violation hearing shall be convened after appropriate notice.

(d) No change.

(e) If there is a judicial order of incompetency, a written psychiatric or psychological determination of incompetency, or a commitment to a mental institution in the 90 days prior to the violation then an attorney shall be appointed. Once an attorney is appointed for questions of competency or if a previously appointed/retained attorney raises competency issues, then evidence of mental competency/incompetency shall be gathered and forwarded to the Commission for review. Once received by the Commission, the case shall be docketed. At the Commission meeting, the Commission may either order the violation process proceed, that the violation process be placed in abeyance, or such other order as it considers proper-

~~(f)(e)~~ The conditional medical release violation hearing shall be convened within 45 days of receipt of written notification from the Department of Corrections that the alleged violator has been returned to the custody of the Department from another jurisdiction.

~~(g)(f)~~ Subpoenas and subpoenas duces tecum for the conditional medical releasee and the Commission shall be issued by a Commissioner or duly authorized representative of the Commission on behalf of the State or the conditional medical releasee. The Commission, a Commissioner or a duly authorized representative of the Commission has authority to decline a request to subpoena a witness whose testimony is found to be cumulative, irrelevant or non-probative. The party requesting the subpoenas shall furnish to the Commission, a Commissioner or a duly authorized representative of the Commission the names and addresses of his proposed witnesses at least 14 days prior to the hearing date.

~~(h)(g)~~ At the hearing, the releasee can waive representation by an attorney, provided the waiver is reflected clearly in writing or in the record of the proceeding. Should the conditional medical releasee desire, retained counsel can represent the conditional medical releasee at the hearing. In the event the conditional medical releasee desires counsel and has not retained one, the following procedure shall apply:

1. No change.

2. If the hearing officer concludes the conditional medical releasee is unable to secure counsel by reason of indigency, the hearing officer shall then proceed to determine if the conditional medical releasee is eligible for appointed counsel as provided in the guidelines outlined in *Gagnon v. Scarpelli*, 411 U.S. 778 (1973) ~~as provided by law~~. If a request for counsel is denied, the grounds for the denial shall be stated in the record.

~~(i)(h)~~ During a conditional medical release violation hearing, the hearing officer can entertain arguments of counsel or the conditional medical releasee. The hearing officer shall rule on such matters during the course of the hearing or elect to withhold ruling pending consultation with counsel or staff. Arguments of counsel of a legal nature must be reduced to writing, and, if possible, presented prior to the hearing.

~~(j)(i)~~ Based on evidence presented at the violation hearing, or received by stipulation, the hearing officer shall make findings of fact regarding the alleged violations, with a written recommendation to the Commission. When the Commission finds that the conditional medical releasee has committed one or more violations, the Commission shall within a reasonable time enter an order revoking the conditional medical release, restoring the conditional medical releasee to supervision or such other order as deemed appropriate. Notification by copy of the Commission order shall be provided to the conditional medical releasee. If the decision of the Commission is to revoke, the order entered shall contain the evidence relied upon and the reasons for the revocation.

~~(k)(j)~~ The hearing officer conducting the hearing can elect to receive information following the violation hearing if the conditional medical releasee stipulates to the receipt of such information and such stipulation is reflected in the record.

(l) Pursuant to the United States Supreme Court's decision in *Pennsylvania Board of Probation & Parole v. Scott*, 524 U.S. 357 (1998), the Commission may consider evidence that has been excluded in a criminal proceeding as the result of the application of the federal exclusionary rule.

~~(m)(k)~~ When the Commission revokes conditional medical release; for reasons of other than medical improvement, the conditional medical releasee shall ~~not~~ be entitled to credit for time served on conditional medical release.

(n) When the Commission revokes conditional medical release, for reasons other than medical improvement, the conditional medical releasee shall be entitled to credit for time spent in custody prior to the violation hearing for all charges that appear on the warrant and/or notice of hearing. Time spent in another jurisdiction as a result of intervening sentence(s) shall be considered. Credit for time in custody shall be reflected in the order of revocation of conditional medical release.

~~(o)(m)~~ When the Commission revokes conditional medical release, the conditional medical releasee shall be scheduled for an evaluation by Commission staff to determine eligibility for parole or any other release program administered by the Commission.

Rulemaking Specific Authority 947.07, 947.149 FS. Law Implemented 947.149 FS. History--New 1-5-94, Amended 4-20-94.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Sarah Rumph, General Counsel
NAME OF AGENCY HEAD WHO APPROVED THE
PROPOSED RULE: Chairman Frederick Dunphy
DATE PROPOSED RULE APPROVED BY AGENCY
HEAD: November 18, 2009
DATE NOTICE OF PROPOSED RULE DEVELOPMENT
PUBLISHED IN FAW: October 23, 2009

FLORIDA PAROLE COMMISSION

RULE NO.: 23-24.060
RULE TITLE: Conditional Medical Release Forms

PURPOSE AND EFFECT: The Commission proposes to update rules to conform to current practices and procedures, deleting obsolete rules and standardizing to conform to other types of Commission supervision.

SUMMARY: The proposed changes conforms the standard conditions of conditional medical release supervision to other forms of supervision. The hearing and revocation procedures are also updated to clarify current practice and conform to other forms of supervision.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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.

RULEMAKING AUTHORITY: 947.07, 947.149 FS.

LAW IMPLEMENTED: 947.141, 947.149 FS.

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

DATE AND TIME: January 7, 2010, 9:00 a.m.

PLACE: Florida Parole Commission, 2601 Blair Stone Road, Bldg C, Hearing Room A, Tallahassee, FL 32399

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 7 days before the workshop/meeting by contacting: Sarah J. Rumph, General Counsel, 2601 Blair Stone Road, Bldg. C, Tallahassee, Florida 32399. 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: Sarah J. Rumph, General Counsel, 2601 Blair Stone Road, Bldg. C, Tallahassee, Florida 32399

THE FULL TEXT OF THE PROPOSED RULE IS:

23-24.060 Conditional Medical Release Forms.

Rulemaking Specific Authority 947.07, 947.149 FS. Law Implemented 947.149 FS. History–New 1-5-94, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Sarah Rumph, General Counsel
NAME OF AGENCY HEAD WHO APPROVED THE
PROPOSED RULE: Chairman Frederick Dunphy
DATE PROPOSED RULE APPROVED BY AGENCY
HEAD: November 18, 2009
DATE NOTICE OF PROPOSED RULE DEVELOPMENT
PUBLISHED IN FAW: October 23, 2009

FLORIDA PAROLE COMMISSION

RULE NOS.: 23-25.002, 23-25.005
RULE TITLES: Definitions, Revocation of Addiction Recovery Supervision

PURPOSE AND EFFECT: The Commission proposes to update rules to conform to current practices and procedures, standardizing to conform to other types of Commission supervision.

SUMMARY: The proposed changes conforms the standard conditions of Addiction Recovery supervision to other forms of supervision. The hearing and revocation procedures are also updated to clarify current practice and conform to other forms of supervision.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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.

RULEMAKING AUTHORITY: 944.4731 FS.

LAW IMPLEMENTED: 944.4731, 947.141 FS.

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

DATE AND TIME: January 7, 2010, 9:00 a.m.

PLACE: Florida Parole Commission, 2601 Blair Stone Road, Bldg C., Hearing Room A, Tallahassee, FL 32399

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 7 days before the workshop/meeting by contacting: Sarah J. Rumph, General Counsel, 2601 Blair Stone Road, Bldg. C, Tallahassee, Florida 32399. 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: Sarah J. Rumph, General Counsel, 2601 Blair Stone Road, Bldg. C, Tallahassee, Florida 32399

THE FULL TEXT OF THE PROPOSED RULES IS:

23-25.002 Definitions.

(1) through (11) No change.

(12) Standard Conditions of Supervision means conditions which will be required of every releasee as standard practice and procedure of the Commission. – include the following:

~~(a) Promptly upon being released on addiction recovery supervision, you will proceed to (address) _____, where you will reside. Within 3 days of your release, you will report by personal visit to the Addiction Recovery Supervisor under whose supervision you are to be released.~~

~~(b) You shall secure the permission of your Addiction Recovery Supervisor before:~~

- ~~1. You change your residence or employment;~~
- ~~2. You leave the county of your residence or the state;~~
- ~~3. You post bail or accept pretrial release if you are arrested for a felony.~~

~~(c) You shall submit a full and truthful report to your Addiction Recovery Supervisor before the fifth day of each month in writing on the forms provided or in person.~~

~~(d) You shall not:~~

- ~~1. Use alcohol or intoxicants of any kind.~~
- ~~2. Use or possess narcotics, drugs or marijuana unless prescribed by a physician.~~

~~(e) You shall not knowingly associate with any person who is engaging in any criminal activity.~~

~~(f) You shall secure the permission of your Addiction Recovery Supervisor before you own, carry, or have in your constructive possession a knife or any other weapon.~~

~~(g) You shall obey all laws, ordinances and statutory conditions of addiction recovery supervision.~~

~~(h) You shall:~~

~~1. Submit to a search by an Addiction Recovery Supervisor of your person, residence or automobile;~~

~~2. Waive extradition back to the state of Florida if you are wanted for return as an alleged addiction recovery supervision violator;~~

~~3. Permit your Addiction Recovery Supervisor to visit you at your residence, employment or elsewhere;~~

~~4. Promptly and truthfully answer all questions and follow instructions asked or given to you by your Addiction Recovery Supervisor or the Commission.~~

~~(i) You understand that you are to remain on addiction recovery supervision until released therefrom by expiration or by Commission order.~~

~~(j) During your addiction recovery supervision term, you shall submit to random testing as directed by your supervising officer or the professional staff of any treatment center or residential program where treatment is being received to determine the presence or use of alcohol or controlled substances pursuant to Section 877.111 or Chapter 893, F.S.~~

~~(k) During your addiction recovery supervision term, you shall submit and pay for urinalysis testing to identify alcohol and/or drug usage and understand that your failure to make such payment or participate as defined under this condition of your addiction recovery supervision will be considered grounds for revocation of addiction recovery supervision by the Parole Commission.~~

~~(l) You shall pay cost of supervision and rehabilitation as calculated and assessed by the Department of Corrections as provided and required in Section 948.09, F.S., and any court ordered payments such as child support and restitution.~~

~~(m) You shall participate and be supervised under drug offender probation pursuant to Section 948.001(4), F.S.~~

~~(n) You shall not enter any business establishment whose primary purpose is the sale/consumption of alcoholic beverages.~~

~~(o) You shall execute and present to your Addiction Recovery Supervisor all necessary authorizations to release records to your Addiction Recovery Supervisor and the Commission so that your progress and participation in required programs can be monitored and documented.~~

~~(p) If you are accepted into a substance abuse transition housing program, you shall comply with the terms and conditions of that program, including payment of fees to defray the cost of your participation.~~

~~(q) You must participate in (Alcoholics Anonymous or Narcotics Anonymous) and attend meetings as directed by your Addiction Recovery Supervisor.~~

~~(13) Tentative Release Date means the projected release date computed by the Department of Corrections based upon length of sentence reduced by applicable gain time.~~

~~(14) through (15) renumbered (13) through (14) No change.~~

Rulemaking Specific Authority 944.4731(8) FS. Law Implemented 944.4731, 947.141 FS. History–New 2-10-03, Amended _____.

23-25.005 Revocation of Addiction Recovery Supervision.

(1) Warrants.

(a) through (c) No change.

(d) A request for a warrant shall be denied only by a Commissioner or the Commission and the reasons for denial shall be provided to the requestor, except in the case of an emergency warrant.

(e)(d) If staff submits a warrant request to a Commissioner for a review, the reviewing Commissioner shall execute the warrant, deny the warrant, or have the warrant request placed before a panel of no fewer than two (2) Commissioners for a decision. Should a warrant be issued, such will be transmitted to the requesting agency for appropriate service or filing. Alleged violators of addiction recovery supervision will be entered into the Florida Crime Information Center and the

~~National Crime Information Center, unless in custody. The Commission has authority to pursue extradition of alleged violators from other jurisdictions.~~

~~(f)(e)~~ Should a warrant be issued and a dismissal of the warrant is requested, the signing Commissioner or Chair is authorized to dismiss the warrant for good cause.

(2) through (3) No change.

(4) Addiction Recovery Supervision Violation Hearing.

(a) through (b) No change.

(c) Any Violation hearing may be waived by the Releasee after an explanation of the consequences of a waiver. The waiver shall be in writing and shall be executed before a Commissioner or duly authorized representative of the Commission. The Releasee may withdraw the waiver by submitting a written request which waives all time constraints. The waiver withdrawal request must be appropriately witnessed, and postmarked within 14 days after the execution of the waiver. Upon receipt of a timely ~~the~~ waiver withdrawal request, a violation hearing shall be convened after appropriate notice.

(d) through (e) No change.

(f) If there is a judicial order of incompetency, a written psychiatric or psychological determination of incompetency, or a commitment to a mental institution in the 90 days prior to the violation then an attorney shall be appointed. Once an attorney is appointed for questions of competency or if a previously appointed/retained attorney raises competency issues, then evidence of mental competency/incompetency shall be gathered and forwarded to the Commission for review. Once received by the Commission, the case shall be docketed. At the Commission meeting, the Commission may either order the violation process proceed, that the violation process be placed in abeyance, or such other order as it considers proper.

~~(g)(f)~~ Subpoenas and subpoenas duces tecum for the Releasee and the Commission shall be issued by a Commissioner or a duly authorized representative of the Commission on behalf of the State or the Releasee. The Commission, a Commissioner or a duly authorized representative of the Commission will decline a request to subpoena a witness whose testimony is found to be cumulative, irrelevant or non-probative. The party requesting the subpoenas shall furnish to the Commission, a Commissioner or a duly authorized representative of the Commission the names and addresses of his proposed witnesses at least 14 days prior to the hearing date.

~~(h)(g)~~ At the hearing, the Releasee may waive representation by an attorney, provided the waiver is reflected clearly in writing or in the record of the proceeding. Should the Releasee desire, retained counsel may represent the Releasee at the hearing. If the Releasee desires counsel and has not retained one, the following procedure shall apply:

1. through 2. No change.

~~(i)(h)~~ During the violation hearing, the person conducting the hearing has authority to entertain arguments of counsel or the Releasee. The person conducting the hearing has authority to elect to rule on such matters during the course of the violation hearing or may elect to withhold ruling pending consultation with counsel or staff. Arguments of counsel of a legal nature must be reduced to writing, and, if possible, presented prior to the violation hearing.

~~(j)(i)~~ Based on evidence presented at the violation hearing, or received by stipulation, the person conducting the hearing shall make findings of fact regarding the alleged violations, with a written recommendation to the Commission. When the Commission finds that the Releasee has committed one or more violations, the Commission shall enter an order revoking the addiction recovery supervision, restoring the Releasee to supervision or such an order as deemed appropriate. Notification by copy of the Commission order shall be provided to the Releasee. If the decision of the Commission is to revoke, the order entered shall contain the condition(s) that have been violated and the evidence relied upon.

~~(k)(j)~~ The person conducting the hearing has authority to elect to receive information following the violation hearing if the Releasee stipulates to the receipt of such information and such stipulation is reflected in the record.

~~(l)(k)~~ When a panel of no fewer than ~~that~~ two Commissioners revokes addiction recovery supervision, the Releasee shall be entitled to credit for time spent in custody on all charges appearing on the Commission's warrant and/or notice of hearing prior to the violation hearing. Time spent in another jurisdiction as a result of intervening sentences shall be considered. Credit for time in custody as decided by the panel shall be reflected in the order of revocation of addiction recovery supervision.

(m) The Commission shall consider the credit for time served on addiction recovery supervision in each case. The actual award of such credit is discretionary with the Commission. Credit for time served on addiction recovery supervision shall be reflected in the Commission's order.

~~(n)(m)~~ Pursuant to the United States Supreme Court's decision in Pennsylvania Board of Probation & Parole v. Scott, 524 U.S. 357 (1998), the Commission may consider evidence that has been excluded in a criminal proceeding as the result of the application of the federal exclusionary rule.

Rulemaking Specific Authority 944.4731(8) FS. Law Implemented 944.4731, 947.141 FS. History--New 2-10-03, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Sarah J. Rumph, General Counsel
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Chairman Frederick Dunphy
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 18, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT
 PUBLISHED IN FAW: October 23, 2009

FLORIDA PAROLE COMMISSION

RULE NO.: 23-25.004
 RULE TITLE: Addiction Recovery Supervision

PURPOSE AND EFFECT: The Commission proposes to update rules to conform to current practices and procedures, standardizing to conform to other types of Commission supervision.

SUMMARY: The proposed changes conforms the standard conditions of Addiction Recovery supervision to other forms of supervision.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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.

RULEMAKING AUTHORITY: 944.4731 FS.

LAW IMPLEMENTED: 944.4731, 947.141 FS.

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

DATE AND TIME: January 7, 2010, 9:00 a.m.

PLACE: Florida Parole Commission, 2601 Blair Stone Road, Bldg C., Hearing Room A, Tallahassee, FL 32399

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 7 days before the workshop/meeting by contacting: Sarah J. Rumph, General Counsel, 2601 Blair Stone Road, Bldg. C, Tallahassee, Florida 32399. 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: Sarah J. Rumph, General Counsel, 2601 Blair Stone Road, Bldg. C, Tallahassee, Florida 32399

THE FULL TEXT OF THE PROPOSED RULE IS:

23-25.004 Addiction Recovery Supervision.

(1) through (4) No change.

(5) All Eligible Offenders placed on addiction recovery supervision shall be initially subject to Standard Conditions of Supervision upon their release from incarceration. In addition to the Standard Conditions of Supervision, Eligible Offenders shall be subject to such special conditions of supervision as the Commission deems necessary from its review of the record. The standard conditions of supervision shall include the following:

(a) Promptly upon being released on addiction recovery supervision, you will proceed to your planned place of residence identified on page one. You shall report in person to the probation and parole office located in _____ County, Florida, as instructed by the release officer, on _____ at _____. If no specific report date/time is given, you shall report with 72 hours of your release.

(b) You shall secure the permission of your Addiction Recovery Supervisor before:

1. You change your residence or employment.
2. You leave the county of your residence or the state.
3. You post bail or accept pretrial release if you are arrested for a felony.

(c) You shall submit a full and truthful report to your Addiction Recovery Supervisor each month in writing on the forms provided in person as directed by your Addiction Recovery Supervisor.

(d) You shall not:

1. Use or possess alcohol or intoxicants of any kind.
2. Use or possess narcotics, drugs or marijuana unless prescribed by a physician.
3. Enter any business establishment whose primary purpose is the sale/consumption of alcoholic beverages.

(e) You shall not knowingly associate with any person(s) who is engaging in any criminal activity, a criminal gang member, or person(s) associated with criminal gang members.

(f) You shall secure the permission of your Addiction Recovery Supervisor before you own, carry, or have in your constructive possession a knife or any other weapon.

(g) You shall obey all laws, ordinances and statutory conditions of addiction recovery supervision.

(h) You shall:

1. Submit to a search by an Addiction Recovery Supervisor of your person, residence or automobile.
2. Waive extradition back to the state of Florida if you are wanted for return as an alleged addiction recovery supervision violator.
3. Permit your Addiction Recovery Supervisor to visit you at your residence, employment or elsewhere.

4. Promptly and truthfully answer all questions and follow instructions asked or given to you by your Addiction Recovery Supervisor or the Commission.

(i) You understand that you are to remain on addiction recovery supervision until released therefrom by expiration or by Commission order.

(j) During your addiction recovery supervision term, you shall submit to random testing as directed by your supervising officer or the professional staff of any treatment center or residential program where treatment is being received to determine the presence or use of alcohol or controlled substances pursuant to Section 877.111 or Chapter 893, F.S.

(k) During your addiction recovery supervision term, you shall submit and pay for urinalysis testing to identify alcohol and/or drug usage and understand that your failure to make such payment or participate as defined under this condition of your addiction recovery supervision will be considered grounds for revocation of addiction recovery supervision by the Parole Commission.

(l) You shall pay any court ordered payments such as child support and restitution.

(m) You shall participate and be supervised under drug offender probation pursuant to Section 948.001(4), F.S.

(n) You shall execute and present to your Addiction Recovery Supervisor all necessary authorizations to release records to your Addiction Recovery Supervisor and the Commission so that your progress and participation in required programs can be monitored and documented.

(o) If you are accepted into a substance-abuse-transition housing program, you shall comply with the terms and conditions of that program, including payment of fees to defray the cost of your participation.

(p) You must participate in (Alcoholics Anonymous or Narcotics Anonymous) and attend meetings as directed by your Addiction Recovery Supervisor.

(6) Offenders shall have no right to administrative review of the term and conditions of addiction recovery supervision as determined by the Commission.

(7) A panel of no fewer than two Commissioners has authority to cause a review of the progress of an addiction recovery releasee, or the Department of Corrections may make recommendations to the Commission whether to modify the reporting schedule or further modify the terms and conditions of addiction recovery supervision. A panel of no fewer than two Commissioners shall discharge from addiction recovery supervision, relieve from making further reports or permit the releasee to leave the country upon determining that such action is in the best interest of the addiction recovery releasee and of society. Such cases shall be docketed before the panel of commissioners, if available, that initially set the terms and conditions of addiction recovery supervision.

(8) A panel of no fewer than two (2) commissioners shall review the progress of each person who has been placed on addiction recovery supervision after two years of supervision in the community and not less often than biennially thereafter. Such reviews must include consideration of whether to modify the reporting schedule, thereby authorizing the person under supervision to submit reports quarterly, semi-annually, or annually. In the event the Commission elects to place an addiction recovery releasee on quarterly, semi-annually or annual reporting, the following definitions will be applicable:

(a) Quarterly reporting – one personal contact required every three (3) months.

(b) Semi-annual reporting – one personal contact required every six (6) months.

(c) Annual reporting – one personal contact required every twelve (12) months.

(9) The panel may give specific instructions reflecting whether the personal contact is to take place in a formal setting or in the setting to be determined by the addiction recovery supervisor.

(10) Such modification shall not impose new or different terms or conditions of addiction recovery supervision more restrictive than was stated in the original certificate.

Rulemaking Specific Authority 944.4731(8) FS. Law Implemented 944.4731, 947.141 FS. History--New 2-10-03, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Sarah Rumph, General Counsel

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Chairman Frederick Dunphy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 18, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 30, 2009

PUBLIC SERVICE COMMISSION

RULE NOS.:	RULE TITLES:
25-22.103	Orders Indexed
25-22.1035	Official Reporter for Final Orders
25-22.105	Electronic Database of Orders and Other Records
25-22.107	Plan for Making Orders Available to the Public

PURPOSE AND EFFECT: To amend the rules to make the Commission's Web site the official reporter for final orders to provide free and timely access to final orders. Docket No. 090502-OT

SUMMARY: The rule revisions would place the Commission in the role of being its own Official Reporter. This would be implemented through the Commission's Web site which provides an electronic database of the Commission's orders. This would take place January 1, 2010, with prior orders being located in the FPSC Reporter, published by FALR. Rule 25-22.103, F.A.C., Orders Indexed, is repealed because there is no need for orders to be "indexed" when an electronic database is used instead; Rule 25-22.1035, F.A.C., Designation of Official Reporter, is amended to make the Commission's Web site the Official Reporter from January 2010 forward; Rule 25-22.107, F.A.C., Plan for Making Orders Available to the Public, is amended to state that copies of orders are maintained electronically at the Commission's Web site; Rule 25-22.105, F.A.C., System for Indexing Orders, is amended to refer to the Commission's electronic database on the Commission's Web site. The amendments also refer to the advanced search feature of orders.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The Statement of Estimated Regulatory Costs notes that there should be no incremental costs for the Commission because the electronic data base currently exists and is available to the public. There would be benefits in saving staff time to reproduce and mail the orders to the publisher and the associated reproduction and mailing costs. Also, customers, utilities and business entities would know that Commission orders are available online and may obtain access to the orders without subscribing to a publication.

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.

RULEMAKING AUTHORITY: 120.53(2), 120.532, 120.533 FS.

LAW IMPLEMENTED: 120.52(2), 120.53(2)-(4) FS.

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

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: Office of Commission Clerk, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850)413-6770. 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: Cindy Miller, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850)413-6082

THE FULL TEXT OF THE PROPOSED RULES IS:

25-22.103 Orders Indexed.

~~All Commission orders shall be indexed.~~

Rulemaking Specific Authority 120.533 FS. Law Implemented 120.53(2)(a)3., (2)(d) FS. History–New 9-24-92, Amended 12-27-94, Repealed _____.

25-22.1035 Official Reporter for Final Orders Designation of Official Reporter.

The official reporter of the Florida Public Service Commission shall be its Website www.psc.state.fl.us/dockets/cms, effective January 1, 2010 the Florida Public Service Commission Reporter (FPSCR), published by FALR, Inc. The official reporter shall index orders of the Commission as required by Rule 25-22.103, F.A.C. The Florida Public Service Commission Reporter (FPSCR) published by FALR will remain the designated official reporter for final orders from January 1981 to December 31, 2009, and shall publish the

~~index and all orders.~~ The Florida Public Service Commission Reporter is found at some county law libraries and is available by subscription at the offices of FALR, Inc., P. O. Box 385, Gainesville, FL 32602. A copy of the Florida Public Service Commission Reporter is also available for public inspection at the Office of Commission Clerk.

Rulemaking Specific Authority 120.532, 120.533 FS. Law Implemented 120.53(2)(a)3., 120.53(2)(d), 120.53(4)(a) FS. History–New 12-27-94, Amended _____.

25-22.105 Electronic Database of Orders and Other Records System for Indexing Orders.

(1) The Commission's electronic database The index shall be available from the Commission's Web site located at www.psc.state.fl.us/dockets/cms and alphabetically arranged by main subject headings representing major categories of the Commission's regulatory jurisdiction and taken from the Florida Statutes index, when applicable. The applicable titles of citations of the Florida Statutes construed within the final order may determine the main subject headings and subheadings in the index. The index shall show the main subject headings in all capital letters, flush left on the page, followed by relevant subheadings which shall be initial caps and lower case letters indented. Subheadings and sub-subheadings shall reflect increasingly specific areas or subjects addressed in Commission orders and may be taken from the text of the Florida Statutes construed. Subheadings and sub-subheadings at equal indentations shall also be alphabetized. The FPSCR citation to orders shall be listed sequentially in an indentation immediately below the applicable sub or sub-subheading. Cross references shall be used to direct the user to subject headings which contain the relevant information. The database shall include the ability to electronically search dockets by docket number, docket title, and document number. The ability to search by rRelated key words (specific words, terms, and phrases) and common and colloquial words shall be available from the "advanced search" feature on the main search page of the Commission's Web site at <http://www.floridapsc.com/search>. Orders within this database may be searched using logical search terms that are in common usage, that are also contained within the text of the final orders, or by descriptive information about the order that may not be specifically contained in the order. From the Category drop-down selection on the "advanced search" feature for Orders, the search may optionally be further restricted listed and cross referenced to the appropriate main subject headings. New subject headings will be added when necessary.

(2) Information shall be added to the Commission's Web site within 24 hours of the issuance of the document by the Office of Commission Clerk. The index shall be cumulative for at least one calendar year and shall be updated and made available to the public at least quarterly.

Rulemaking Specific Authority 120.533(1)(f) FS. Law Implemented 120.53(2)-(4) FS. History–New 9-24-92, Amended 12-27-94, _____.

25-22.107 Plan for Making Orders and Index Available to the Public.

(1) The Commission shall make orders accessible and available to the public by sequentially numbering and maintaining all orders.

(2) The Office of Commission Clerk shall assist the public in obtaining information pertaining to Commission orders and may be contacted at (850)413-6770 or at Clerk@psc.state.fl.us. Questions may also be faxed to (850)413-7118.

(3) Copies of orders, ~~in numerical order, and a copy of the Commission’s official reporter~~ shall be maintained in the ~~offices of the Office of Commission Clerk and electronically at the Commission’s Web site, www.psc.state.fl.us/dockets/cms.~~

Rulemaking Specific Authority 120.53(2), (8) FS. Law Implemented 120.52(2) FS. History–New 9-24-92, Amended 12-27-94, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Cindy Miller, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850)413-6082

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 1, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Vol. 35, No. 42, October 23, 2009

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-108.101 RULE TITLE: Inmate Substance Abuse Testing

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to: remove reference to Form DC1-826, Inmate Scannable Drug Testing Control Card, as the form is being eliminated; provide that female inmates shall not be subject to testing while they are menstruating; clarify the procedure for retesting inmates who are found to have blood in their urine upon initial testing; and clarify the requisite training and certification for testers.

SUMMARY: The proposed rule is amended to: eliminate reference to Form DC1-826, Inmate Scannable Drug Testing Control Card, as the form will no longer be used; clarify that female inmates shall not be subject to testing while they are menstruating; clarify the procedure for retesting inmates who are found to have blood in their urine upon initial testing; clarify the training and certification required of testers.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will not have an impact on small business. A SERC has not been prepared by the agency.

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.

RULEMAKING AUTHORITY: 944.09, 944.472, 944.473 FS. LAW IMPLEMENTED: 944.09, 944.472, 944.473 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Perri King Dale, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE FULL TEXT OF THE PROPOSED RULE IS:

33-108.101 Inmate Substance Abuse Testing.

(1) Definitions.

(a) Random Selection – a ~~A~~ computerized random selection model utilized to obtain a sample of inmates to be tested for drugs or alcohol.

(b) Tester – a correctional officer who has been ~~trained and certified as competent by the manufacturer of the onsite testing device and trained by~~ ~~or~~ certified training personnel, affiliated with the department, on the proper procedures for collecting urine specimens, including the completion and maintenance of the Chain of Custody Form, the handling and disposing of urine specimens, and the administration and interpretation of the on-site testing device. All testing personnel must be approved by the Office of the Inspector General. The Chain of Custody Form is incorporated by reference in paragraph (3)(h) of this rule.

(c) through (d) No change.

(e) Test refusal – failure on the part of an inmate to fully comply with the department’s substance abuse testing procedures, which includes failing to provide a valid urine specimen, attempting to alter ~~a his or her~~ urine specimen with adulterants, as established by an on-site specimen adulteration testing product, and using substitute urine in makeshift devices or objects. Any inmate who refuses to comply with the testing process or fails to provide a valid specimen, within the specified time frames ~~of this rule as stipulated in subparagraphs (3)(b)8. and (3)(b)10.,~~ shall be given a disciplinary report in accordance with Rules 33-601.301-.314, F.A.C.

(f) No change.

(g) Confirmation Testing – testing conducted by an outside contract laboratory using gas chromatography coupled with mass spectrometry (GC/MS) when on-site results of a test are positive and the inmate refuses to sign Form DC1-824, an Affidavit for Admission of Drug Use, Form DC1-824. Form DC1-824 is incorporated by reference in paragraph (3)(h) of this rule.

(h) No change.

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

(a) For-Cause or Reasonable Suspicion Testing.

1. Inmates suspected of involvement with drugs or alcohol shall be subject to for-cause testing upon order of the warden, ~~the or duty warden of the institution, or the correctional officer chief of the facility, a or their~~ designees of one the above individuals, or the Office of the Inspector General. An inmate should only be tested for a maximum of four drugs on a for-cause basis, unless extenuating circumstances exist. For-cause tests will only be conducted on inmates who meet the criteria outlined in subparagraphs ~~sub-subparagraph~~ 2.a. through c. below.

2. No change.

3. When for-cause testing is ordered, an incident report shall be prepared including the dates and times of reported drug-related events and the rationale leading to the request for testing:

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

~~b. Rationale leading to the request for testing.~~

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

5. Upon approval of the warden, duty warden, correctional officer chief, ~~or their~~ designees, or the Office of the Inspector General, collection and testing procedures shall be conducted immediately pursuant to this rule.

6. A copy of Form DC6-210, ~~the Incident Report, Form DC6-210,~~ shall be attached to the facility's copy of the Chain of Custody Form for positive specimens sent to the laboratory for confirmation testing. Form DC6-210 is incorporated in Rule 33-602.210, F.A.C. ~~The Chain of Custody Form is incorporated by reference in paragraph (3)(h) of this rule.~~

(b) Random Substance Abuse Testing. All correctional facilities shall receive on a weekly basis a list of the names and DC numbers of inmates generated through random selection for substance abuse testing. The list will be electronically transmitted from the department's electronic database Offender Base Information System to the secure printer of the warden of each major institution or the correctional officer chief of the correctional facility. Any facility that does not have a secure printer will have ~~its their~~ respective list printed to a secure printer at another facility as designated by the warden of the institution or correctional officer chief of the facility. The list is considered confidential and shall not be disseminated to inmates or non-essential staff members prior to testing. Each time an inmate's name appears on the random list, he or she shall be tested regardless of whether or not he or she has been previously tested.

(c) No change.

(3) Procedures.

(a) Chain of Custody.

1. At a minimum, the Chain of Custody Form must include inmate and tester identification, initialed by both the inmate and the tester, date and time of collection, type of test (i.e., random, for-cause or substance abuse program participation), and identification of all individuals who had custody of the specimen from the time of collection until the specimen was prepared for shipment to the laboratory. Once the outside laboratory receives the specimen, it will become the laboratory's responsibility to maintain a chain of custody throughout the testing process.

2. The Chain of Custody Form, allows for ~~any~~ comments by the tester regarding any unusual observations. Any failure by the inmate to cooperate with the collection process, and ~~any~~ the unusual nature (e.g., discolored urine or urine containing foreign objects) of ~~a any~~ specimen provided shall be noted.

3. The tester shall ensure that all collected urine specimens, being sent to a designated outside laboratory for confirmation testing, are properly labeled and sealed with a security label as provided on the Chain of Custody Form. The tester shall also ensure that the Chain of Custody Form for all collected urine specimens is completed in accordance with department procedures.

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

(b) Specimen Collection Procedures.

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

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

3. A female inmate shall not be required to provide a urine specimen during her menstrual cycle.

~~4.3.~~ The tester shall ensure that there is positive inmate identification prior to collecting the inmate's urine specimen. Sight, name, DC number, and examination of an inmate's picture identification card shall provide positive identification of the inmate selected for drug testing.

~~5.4.~~ The tester shall search the inmate to ensure that the inmate is not concealing any substances or materials that could be used to alter or substitute his or her urine specimen. If any such substances or materials are found, the inmate will be charged with refusing to submit to a substance abuse test.

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

6. No change.

7. The inmate is expected to provide a minimum of 30 ml of urine. If the inmate provides less than this amount, the tester shall again attempt to collect an adequate specimen. If the inmate cannot immediately provide an adequate ~~submit another urine~~ specimen, then the procedure outlined in subparagraph (3)(b)8. ~~8. below for a claimed inability to provide a urine specimen~~ shall apply.

8. An inmate who has not provided an adulterated urine specimen and who claims an ~~indicates a claimed~~ inability to provide an adequate urine specimen shall be detained in the presence of the tester or other designated person for a period not to exceed 1 hour to provide an adequate specimen. During that time, the inmate shall be allowed to consume one cup (8 oz.) of water or other beverage every 1/2 hour, not to exceed a total of 2 cups during this time period, and Form DC1-823, an Acknowledgement of Beverage Form, DC1-823, ~~an Acknowledgement of Beverage Form,~~ shall be completed. Form DC1-823 DCI 823, Acknowledgement of Beverage Form, is incorporated by reference in paragraph (3)(h) of this rule. If after the 1 hour period an inmate still fails to submit a valid adequate urine specimen, the inmate shall be considered to have refused to provide a urine specimen and a disciplinary report shall be prepared in accordance with Rules 33-601.301-.314, F.A.C. ~~If an inmate claims an inability to urinate, the procedures set forth in paragraph (3)(d) shall apply.~~

9. After the inmate has voided a urine specimen into the cup, the tester will visually inspect the urine specimen to make sure that ~~it the specimen~~ appears to be valid and unadulterated. If the tester suspects that the specimen has been adulterated based upon observation, experience, or prior training, the tester will utilize the on-site specimen adulteration testing product in front of the inmate following the manufacturer's testing protocols. If a positive result is received on the on-site specimen adulteration testing product indicating that the urine specimen was adulterated, the ~~adulterated~~ specimen will not be accepted as a valid specimen and will be discarded. The inmate will be required to submit a valid and unadulterated specimen pursuant to. ~~If the inmate cannot submit a valid and unadulterated specimen, then the procedure outlined below in subparagraph (3)(b)10. below (3)(b)10. shall apply.~~

10. Inmates who have adulterated their urine specimen by ingesting substances, as established by the on-site specimen adulteration testing product, shall be detained in the presence of the tester or placed in a dry cell "dry cell" for a period not to exceed one hour. During that time, the inmate shall not be allowed to consume any water or other beverage. If after the one hour period an inmate still fails to submit an unadulterated valid urine specimen, the inmate shall be considered to have

refused to provide a urine specimen and a disciplinary report shall be prepared in accordance with Rules 33-601.301-.314, F.A.C.

11. No change.

12. If a urine specimen contains blood or appears to contain blood, the inmate who produced the specimen shall be referred immediately to the medical department for evaluation. If no valid reason exists for having blood in the specimen, the inmate will be required to provide another urine specimen. If the inmate cannot submit a urine specimen, the inmate shall be detained in the presence of the tester or other designated person for a period not to exceed 1 hour to provide an adequate specimen. During that time, the inmate shall be allowed to consume one cup (8 oz.) of water or other beverage every 1/2 hour, not to exceed a total of 2 cups during this time period, and Form DC1-823, Acknowledgement of Beverage Form, shall be completed. If after the 1 hour period an inmate still fails to submit a valid adequate urine specimen, the inmate shall be considered to have refused to provide a urine specimen and a disciplinary report shall be prepared in accordance with Rules 33-601.301-.314, F.A.C then the procedure outlined above for a claimed inability to provide a urine specimen shall apply.

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

1. No change.

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

3. No change.

4. The inmate shall be allowed to consume one cup (8 oz.) of water or other beverage every 1/2 hour, not to exceed a total of two cups during the time spent in the dry cell, and Form DC1-823, an Acknowledgement of Beverage Form, DC1-823, shall be completed.

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

6. Upon receipt of the urine specimen the tester shall visually inspect the urine specimen to ensure it appears valid and unadulterated, and the procedures outlined in paragraph (3)(e) subparagraph (3)(e)1. ~~for the testing of urine specimens~~ shall be followed.

7. through (d) No change.

(e) Testing of urine specimens.

1. Only certified testing personnel are authorized to utilize the on-site testing equipment. For every on-site test conducted, regardless of purpose, the results shall be entered into the department's electronic database. ~~Inmate Scannable Drug Testing Control Card shall be filled out. The Inmate Scannable Drug Testing Control Card, DC1-826 is incorporated in paragraph (3)(h) of this rule.~~

2. through 4. No change.

5. Negative test results. The tester shall inform the inmate of the negative test results of the on-site testing device. The tester shall record all negative test results on the department's electronic database. ~~Inmate Scannable Drug Testing Control Card and the OBIS printout.~~ The tester will then dispose of the remaining specimen, specimen cup and testing device. All forms shall be retained in accordance with state law and rules governing the retention of records.

6. Positive test results. The tester shall inform the inmate of the positive results of the on-site testing device. The inmate will then be given the opportunity to sign Form DC1-824, an Affidavit for Admission of Drug Use, ~~DC1-824. Form DC1-824, Affidavit for Admission of Drug Use, is incorporated by reference in paragraph (3)(h) of this rule.~~

a. If the inmate chooses to sign Form DC1-824 the Affidavit for Admission of Drug Use, DC1-824, the testing officer shall complete the affidavit form and have the inmate swear to its content, with the officer witnessing the inmate's signature. The inmate will be placed into administrative confinement and a disciplinary report shall be written. The signed Form DC1-824 Affidavit for Admission of Drug Use, DC1-824, will be attached to the disciplinary report to be used as evidence in the disciplinary report hearing.

b. The testing officer shall indicate will complete the Inmate Scannable Drug Testing Control Card indicating the positive results of the on-site testing device in the department's electronic database.

c. If the inmate does not sign Form the Affidavit for Admission of Drug Use, DC1-824, the following steps shall be taken:

i. through iv. No change.

7. Once received from the outside laboratory, the confirmation testing results will be entered into the department's electronic database ~~onto the respective Inmate Scannable Drug Testing Control Card.~~ If the confirmation testing results are positive, a copy of the results will be attached to the disciplinary report for use as evidence during the disciplinary hearing.

(f) Other on-site testing device procedures.

1. Due to product limitations, it may become necessary to utilize other noninvasive on-site testing devices for alcohol testing. In such instances, the certified tester will utilize the on-site testing device in the presence of the inmate following the manufacturer's testing protocols. If the initial result of the on-site testing device is positive, and the inmate declines to

sign Form DC1-824, the Affidavit for Admission of Drug Use, Form DC1-824, then a urine specimen will be obtained from the inmate and sent to a designated outside laboratory for confirmation testing, in accordance with the procedures outlined in paragraph (3)(b), specimen collection procedures, and paragraph (3)(e), testing of urine specimens.

2. All correctional facilities shall maintain a record of all reasonable suspicion substance abuse tests conducted. This record shall be maintained by the correctional officer chief or his designee. Form DC1-827, Reasonable Suspicion Testing Tracking Form, shall be utilized for this purpose. Form DC1-827, ~~Reasonable Suspicion Testing Tracking Form,~~ is incorporated by reference in paragraph (3)(h) of this rule.

(g) No change.

(h) Forms. The following forms referenced in this rule are hereby incorporated by reference. Copies of these forms, unless otherwise indicated, may be obtained from the Forms Control Administrator, ~~Office of Research, Planning and Support Services,~~ 2601 Blair Stone Road, Tallahassee, Florida 32399-2500.

1. Form DC1-823, Acknowledgement of Beverage, effective date February 5, 2001.

2. Form DC1-824, Affidavit for Admission of Drug Use, effective date February 5, 2001.

3. Chain of Custody, effective date February 5, 2001, is a vendor form that may be obtained directly from the vendor or through the Office of the Inspector General, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500.

~~4. Form DC1-826, Inmate Scannable Drug Testing Control Card, effective date February 5, 2001, may be obtained directly from the vendor or through the Office of the Inspector General, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500.~~

~~4.5.~~ Form DC1-827, Reasonable Suspicion Testing Tracking Form, effective date February 19, 2007.

Rulemaking Authority 944.09, 944.472, 944.473 FS. Law Implemented 944.09, 944.472, 944.473 FS. History—New 2-8-00, Amended 2-5-01, Formerly 33-602.2045, Amended 7-2-02, 2-19-07, 7-29-08, 8-26-09, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Walt Murphree, Deputy Inspector General

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Walter A. McNeil, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 23, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 6, 2009

DEPARTMENT OF CORRECTIONS

<p>RULE NOS.:</p> <p>33-204.002</p> <p>33-204.003</p>	<p>RULE TITLES:</p> <p>Food Services – Definitions</p> <p>Food Services – Standards of Operation</p>
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PURPOSE AND EFFECT: The purpose and effect of the proposed rulemaking is to amend Rule 33-204.002, F.A.C., to clarify the definitions of “vegan meal pattern” and “alternate entrée” and to amend Rule 33-204.003, F.A.C., to clarify the circumstances under which an inmate may be removed from the vegan meal pattern.

SUMMARY: The proposed rules are amended to clarify the definitions of “vegan meal pattern” and “alternate entrée” and to clarify the circumstances under which an inmate may be removed from the vegan meal pattern.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that these rules will not have an impact on small business. A SERC has not been prepared by the agency.

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.

RULEMAKING 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 RULES IS: Perri King Dale, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE FULL TEXT OF THE PROPOSED RULES IS:

33-204.002 Food Services – Definitions.

For the purposes of this chapter:

(1) “Master menu” means the menu ~~that which~~ is designed to be served at all facilities to provide uniformity in items served to each inmate. The master menu shall be planned under the direction of the department’s master menu committee, and certified nutritionally adequate as determined by a licensed registered dietitian employed by the department.

(2) No change.

(3) “Alternate entree” means the substitute non-meat entree offered at meals ~~and the vegan (total vegetarian) meal pattern. Inmates shall be given a choice of the regular or non-meat entree. Inmates may choose one or the other, but not both. Inmates committed to the vegan meal pattern exclude themselves from this choice.~~

(4) No change.

(5) “Vegan meal pattern” refers to a meal pattern that excludes all animal byproducts. Inmates who wish to be on the vegan meal pattern must submit Form DC6-236. Inmate

Request, to the food service director at the facility where the inmate is housed. Form DC6-236 is incorporated by reference in Rule 33-103.019, F.A.C. Inmates who choose the vegan meal pattern shall not be permitted to eat from the regular menu or choose the alternate entrée and are subject to removal from the pattern pursuant to Rule 33-204.002, F.A.C.

Rulemaking Specific Authority 944.09 FS. Law Implemented 944.09 FS. History–New 1-18-89, Amended 7-21-97, Formerly 33-30.002, Amended 8-9-00, 11-16-00, 10-2-01, 2-18-02, 7-2-03, 11-1-04,_____.

33-204.003 Food Services – Standards of Operation.

(1) No change.

(2) Confinement.

(a) All inmates in confinement shall receive normal institutional meals as are available to the general population, except that if any item on the normal menu or any food utensil might create a security problem in the confinement area, then another item of comparable quality or other appropriate utensils shall be substituted. Substitutions shall be documented on Form DC6-209, the Housing Unit Log, DC6-209 and Form DC6-210, Incident Report, DC6-210. Form Forms DC6-209 is incorporated by reference in Rule 33-601.800. Form and DC6-210 is have been previously incorporated by reference in Rule 33- 602.210 33-602.220, F.A.C.

(b) through (3) No change.

(4) Vegan meal pattern. Inmates may choose the vegan (strict vegetarian) meal pattern by submitting Form DC6-236, Inmate Request, to the food service director at the facility where the inmate is housed. An inmate who is transferred to another facility shall be allowed to continue the vegan meal pattern at the new facility by showing the inmate request that was approved by the previous food service director until his request is approved by the new food service director. Form DC6-236 is incorporated by reference in Rule 33-103.019, F.A.C.

(a) Inmates on the vegan meal pattern who are observed eating from the regular menu shall be immediately removed from the vegan menu. Staff shall document the incident on Form DC6-210, Incident Report. Such inmates shall be ineligible to reapply for the vegan meal pattern for six months after involuntary removal.

(b) An inmate who voluntarily requests to be removed from the vegan meal pattern may not reapply for the pattern for 30 days.

(5)(4) Therapeutic Diets. Therapeutic diets for medical or dental reasons shall be provided as ordered by a Department of Corrections credentialed physician, clinical associate (physicians assistant, advanced registered nurse practitioner) or dentist. All orders for therapeutic diets shall be in writing. Non-standard therapeutic diets shall be approved by the public health nutrition program manager and the regional medical executive director. Therapeutic diets shall be served for a

maximum of 90 days. Diets extending for periods longer than 90 days shall require a new diet order from the attending Department of Corrections credentialed physician, clinical associate (physicians assistant or advanced registered nurse practitioner) or dentist. Diet prescription orders must be received in food services prior to the expiration of the current prescription to avoid interruption of the therapeutic diet. The Public Health Nutrition Program Manager and the Public Health Consultants shall be available for consultation by health and food service personnel regarding therapeutic diets.

~~(6)(5) Religious Diets. The alternate entrée and the program is designed to provide meal options for inmates whose religions require a pork free, lacto-ovo or lacto-vegetarian diet. The vegan (strict vegetarian) meal pattern provides meal options for the religious requirements of inmates whose religions require a pork-free, lacto-ovo, lacto-vegetarian, or vegan diet who choose to avoid all animal products. Inmates requesting the vegan meal pattern shall submit an Inmate Request, Form DC6 236, to the food service director at the facility where the inmate is currently housed. An inmate who is transferred to another facility shall be allowed to continue the vegan meal pattern at the new facility by showing the inmate request that was approved by the previous food service director until his request is approved by the new food service director. Form DC6 236 is incorporated by reference in Rule 33-103.019, F.A.C.~~

Rulemaking Authority 944.09 FS. Law Implemented 944.09 FS. History—New 1-18-89, Amended 7-21-97, Formerly 33-30.003, Amended 8-9-00, 11-16-00, 10-2-01, 2-18-02, 7-2-03, 11-1-04, 2-27-05, 10-16-05, 1-17-06, 4-27-09, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Wendel Whitehurst, Deputy Secretary of Institutions
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Walter A. McNeil, Secretary
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 23, 2009
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 25, 2009

WATER MANAGEMENT DISTRICTS

South Florida Water Management District

RULE NO.: 40E-2.091
RULE TITLE: Publications Incorporated by Reference

PURPOSE AND EFFECT: To assure water necessary for the protection of fish and wildlife in the North Fork of the St. Lucie River as part of the Comprehensive Everglades Restoration Plan for the Indian River Lagoon-South project.

SUMMARY: The proposed rule amendments establish criteria to implement a water reservation for the North Fork of the St. Lucie River to protect Comprehensive Everglades Restoration Plan project water needed for protection of fish and wildlife

within the North Fork of the St. Lucie River. The proposed amendments also make changes to clarify that rules pertaining to the water reservation for the Picayune Strand and Fakahatchee Estuary are found in a specific section of Chapter 40E-10, and that rules pertaining to the water reservation for the North Fork of the St. Lucie Estuary are found in a separate section of Chapter 40E-10, F.A.C.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: A Statement of Estimated Regulatory Costs (SERC) has been prepared in support of rule making for a water reservation for the North Fork of the St. Lucie River. This reservation of water is prospective in nature, meaning that the water to be regulated is not available until certain antecedent conditions occur. This fact impacts the outcome of the analysis required by the SERC as summarized below. This SERC has been prepared in accordance with the requirements of Section 120.541(2), F.S. Following are each of the statutory requirements that are required to be evaluated and a summary of the conclusions reached:

(a) A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

This proposed rule will be applicable to all water use types regulated under District consumptive use and general permit rules (40E-2 and 20 F.A.C.) seeking to use surface water that contributes to the dry season flows over the Gordy Road Structure once any one or all of the Comprehensive Everglades Restoration Plan’s C-23/C-24 North and South Reservoirs and STA Project are operational. The use types affected by this rule include dewatering, golf course irrigation, agricultural irrigation, nursery irrigation, water livestock, landscape irrigation, commercial industrial use, public water supply, aquaculture, power generation and recreational water use.

It is not possible to fully identify the number of individuals or entities that ultimately will have to comply with the proposed rule at this time because the water to be reserved will become available in the future when project components are determined to be operational. The SERC does identify the number of presently existing legal users that are likely required to have to comply with the rule at page 10 of the SERC.

(b) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

Because the proposed rules do not contain any requirements that will result in the need for new or additional permit analysis, impose any new or additional conditions on use, or otherwise restrict the allocation of surface or groundwater until the Governing Board determines that any or all project component(s) are operational and new rules and criteria are effective, there are no increased costs associated with the

implement or enforcement of this proposed rule to the District, presently existing legal users, permit applicants or other state or local government agencies.

(c) A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this paragraph, "transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, and the cost of monitoring and reporting.

Because the proposed rules do not contain any requirements that will result in the need for new or additional permit analysis, impose any new or additional conditions on use, or otherwise restrict the allocation of surface or groundwater until the Governing Board determines that any or all project component(s) are operational and new rules and criteria are effective, there are no specific requirements that would result in the need for an individual or entity to incur transactional costs.

(d) An analysis of the impact on small businesses as defined by Section 288.703, F.S., and an analysis of the impact on small counties and small cities as defined by Section 120.52, F.S.

Because the proposed rules do not contain any requirements that will result in the need for new or additional permit analysis, impose any new or additional conditions on use, or otherwise restrict the allocation of surface or groundwater until the Governing Board determines that any or all project component(s) are operational and new rules and criteria are effective, there are no specific requirements that would impact a small business, small county or small city.

(e) Any additional information that the agency determines may be useful.

No additional information was determined to be necessary.

(f) In the statement or revised statement, whichever applies, a description of any good faith written proposal submitted under paragraph (1)(a) and either a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

None received to date. In the event a lower cost alternative is submitted, this SERC will be amended to address the alternatives.

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.

RULEMAKING AUTHORITY: 373.044, 373.113, 373.118, 373.171 FS.

LAW IMPLEMENTED: 373.042, 373.0421, 373.109, 373.196, 373.219, 373.223, 373.224, 373.229, 373.232, 373.233, 373.236, 373.239, 373.250 FS.

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

DATE AND TIME: January 14, 2010, 9:00 a.m.

PLACE: Village of Key Biscayne, Village Chambers, 88 West McIntyre Street, Key Biscayne, FL 33149

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: South Florida Water Management District Clerk, (800)432-2045, ext. 2087 or (561)682-2087. 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: Scott Burns, Chief Scientist, South Florida Water Management District, P. O. Box 24680, West Palm Beach, FL 33416, (800)432-2045, ext 6544 or (561)682-6544, email: sburns@sfwmd.gov, Beth Lewis, Senior Specialist Attorney, South Florida Water Management District, P. O. Box 24680, West Palm Beach, FL 33416, (800)432-2045, ext 6343 or (561)682-6343, email: belewis@sfwmd.gov, Brenda Mills, Lead Planner, South Florida Water Management District, P. O. Box 24680, West Palm Beach, FL 33416, (800)432-2045, ext 6536 or (561)682-6536, email: bmills@sfwmd.gov. For procedural questions contact Jan Sluth, Paralegal, South Florida Water Management District, P. O. Box 24680, West Palm Beach, FL 33416, (800)432-2045, ext 6299 or (561)682-6299, email: jsluth@sfwmd.gov.

THE FULL TEXT OF THE PROPOSED RULE IS:

40E-2.091 Publications Incorporated by Reference.

The "Basis of Review for Water Use Permit Applications within the South Florida Water Management District – _____ July 2, 2009," is hereby published by reference and incorporated into this chapter. A current version of this document is available upon request.

Rulemaking Authority 373.044, 373.113, 373.118, 373.171 FS. Law Implemented 373.042, 373.0421, 373.109, 373.196, 373.219, 373.223, 373.224, 373.229, 373.232, 373.233, 373.236, 373.239, 373.250 FS. History—New 9-3-81, Formerly 16K-2.035(1), Amended 2-24-85, 11-21-89, 1-4-93, 4-20-94, 11-26-95, 7-11-96, 4-9-97, 12-10-97, 9-10-01, 12-19-01, 8-1-02, 6-9-03, 8-31-03, 4-23-07, 9-13-07, 2-13-08, 10-14-08, 7-2-09, _____.

(The following amendments are to the Basis of Review for Water Use Permit Applications within the South Florida Water Management District, incorporated by reference in Rule 40E-2.091, F.A.C.)

3.11.2 North Fork of the St. Lucie River

The North Fork of the St. Lucie River water reservation, as stated in Rule 40E-10.051, F.A.C., protects Comprehensive Everglades Restoration Plan project water needed for

protection of fish and wildlife within the North Fork of the St. Lucie River. Applications deemed complete prior to the conditions identified in subsection 40E-10.051(1), F.A.C., and which otherwise satisfy the requirements of Chapter 40E-2 or Chapter 40E-20, as applicable, are determined not to use the water reserved pursuant to Rule 40E-10.051, F.A.C.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Scott Burns, Chief Scientist

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: South Florida Water Management District Governing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 13, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 10, 2009

WATER MANAGEMENT DISTRICTS

South Florida Water Management District

RULE NOS.:	RULE TITLES:
40E-10.021	Definitions
40E-10.031	Water Reservations Implementation
40E-10.041	Water Reservation Areas: Lower West Coast Planning Area
40E-10.051	Water Reservation Areas: Upper East Coast Planning Area

PURPOSE AND EFFECT: To assure water necessary for the protection of fish and wildlife in the North Fork of the St. Lucie River as part of the Comprehensive Everglades Restoration Plan for the Indian River Lagoon-South project.

SUMMARY: The proposed rule amendments establish criteria to implement a water reservation for the North Fork of the St. Lucie River to protect Comprehensive Everglades Restoration Plan project water needed for protection of fish and wildlife within the North Fork of the St. Lucie River. The proposed amendments also make changes to clarify that rules pertaining to the water reservation for the Picayune Strand and Fakahatchee Estuary are found in a specific section of Chapter 40E-10, and that rules pertaining to the water reservation for the North Fork of the St. Lucie Estuary are found in a separate section of Chapter 40E-10, F.A.C.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: A Statement of Estimated Regulatory Costs (SERC) has been prepared in support of rule making for a water reservation for the North Fork of the St. Lucie River. This reservation of water is prospective in nature, meaning that the water to be regulated is not available until certain antecedent conditions occur. This fact impacts the outcome of the analysis required by the SERC as summarized below. This SERC has been prepared in accordance with the requirements of Section 120.541(2), F.S. Following are each of the statutory requirements that are required to be evaluated and a summary of the conclusions reached:

(a) A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

This proposed rule will be applicable to all water use types regulated under District consumptive use and general permit rules (40E-2 and 20 F.A.C.) seeking to use surface water that contributes to the dry season flows over the Gordy Road Structure once any one or all of the Comprehensive Everglades Restoration Plan’s C-23/C-24 North and South Reservoirs and STA Project are operational. The use types affected by this rule include dewatering, golf course irrigation, agricultural irrigation, nursery irrigation, water livestock, landscape irrigation, commercial industrial use, public water supply, aquaculture, power generation and recreational water use.

It is not possible to fully identify the number of individuals or entities that ultimately will have to comply with the proposed rule at this time because the water to be reserved will become available in the future when project components are determined to be operational. The SERC does identify the number of presently existing legal users that are likely required to have to comply with the rule at page 10 of the SERC.

(b) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

Because the proposed rules do not contain any requirements that will result in the need for new or additional permit analysis, impose any new or additional conditions on use, or otherwise restrict the allocation of surface or groundwater until the Governing Board determines that any or all project component(s) are operational and new rules and criteria are effective, there are no increased costs associated with the implement or enforcement of this proposed rule to the District, presently existing legal users, permit applicants or other state or local government agencies.

(c) A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this paragraph, “transactional costs” are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, and the cost of monitoring and reporting.

Because the proposed rules do not contain any requirements that will result in the need for new or additional permit analysis, impose any new or additional conditions on use, or otherwise restrict the allocation of surface or groundwater until the Governing Board determines that any or all project component(s) are operational and new rules and criteria are

effective, there are no specific requirements that would result in the need for an individual or entity to incur transactional costs.

(d) An analysis of the impact on small businesses as defined by Section 288.703, F.S., and an analysis of the impact on small counties and small cities as defined by Section 120.52, F.S.

Because the proposed rules do not contain any requirements that will result in the need for new or additional permit analysis, impose any new or additional conditions on use, or otherwise restrict the allocation of surface or groundwater until the Governing Board determines that any or all project component(s) are operational and new rules and criteria are effective, there are no specific requirements that would impact a small business, small county or small city.

(e) Any additional information that the agency determines may be useful. No additional information was determined to be necessary.

(f) In the statement or revised statement, whichever applies, a description of any good faith written proposal submitted under paragraph (1)(a) and either a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

None received to date. In the event a lower cost alternative is submitted, this SERC will be amended to address the alternatives.

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.

RULEMAKING AUTHORITY: 373.044, 373.113, 373.17 FS. LAW IMPLEMENTED: 373.016, 373.026, 373.036, 373.1501, 373.1502, 373.219, 373.223, 373.4592, 373.4595, 373.470 FS.

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

DATE AND TIME: January 14, 2010, 9:00 a.m.

PLACE: Village of Key Biscayne, Village Chambers, 88 West McIntyre Street, Key Biscayne, FL 33149

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: South Florida Water Management District Clerk, (800)432-2045, next. 2087 or (561)682-2087. 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: Scott Burns, Chief Scientist, South Florida Water Management District, P. O. Box 24680, West Palm Beach, FL 33416, (800)432-2045, next 6544 or (561)682-6544, email: sburns@sfwmd.gov, Beth Lewis,

Senior Specialist Attorney, South Florida Water Management District, P. O. Box 24680, West Palm Beach, FL 33416, (800)432-2045, ext 6343 or (561)682-6343, email: belewis@sfwmd.gov, Brenda Mills, Lead Planner, South Florida Water Management District, P. O. Box 24680, West Palm Beach, FL 33416, (800)432-2045, ext 6536 or (561)682-6536, email: bmills@sfwmd.gov. For procedural questions contact Jan Sluth, Paralegal, South Florida Water Management District, P. O. Box 24680, West Palm Beach, FL 33416, (800)432-2045, ext 6299 or (561)682-6299, email: jsluth@sfwmd.gov

THE FULL TEXT OF THE PROPOSED RULES IS:

40E-10.021 Definitions.

(1) through (2) No change.

(3) North Fork of the St. Lucie River – The area that extends from the Gordy Road structure (state plane coordinates, x851212.831, y1116105.7470), to the confluence of the North Fork of the St. Lucie River and the C-24 canal (state plane coordinates, x873,712.20, y1064,390.41) as depicted in Appendix 3, Figure 3-1.

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.016, 373.026, 373.036, 373.1501, 373.1502, 373.219, 373.223, 373.4592, 373.4595, 373.470 FS. History—New 7-2-09, Amended.

40E-10.031 Water Reservations Implementation.

(1) No change.

~~(2) Reservations contained in Rule 40E-10.041, F.A.C., shall be reviewed in light of changed conditions or new information by 2014.~~

(2) Water reserved for the protection of fish and wildlife contained within the Picayune Strand and Fakahatchee Estuary is defined in subsections 40E-10.041(1)-(2), F.A.C.

(3) Water reserved for the protection of fish and wildlife contained within the North Fork of the St. Lucie River is defined in subsection 40E-10.051(1), F.A.C.

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.016, 373.026, 373.036, 373.1501, 373.1502, 373.219, 373.223, 373.4592, 373.4595, 373.470 FS. History—New 7-2-09, Amended.

40E-10.041 Water Reservation Areas: Lower West Coast Planning Area.

(1) through (2) No change.

(3) Reservations contained in this section shall be reviewed in light of changed conditions or new information by December 31, 2014.

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.016, 373.026, 373.036, 373.1501, 373.1502, 373.219, 373.223, 373.4592, 373.4595, 373.470 FS. History—New 7-2-09, Amended.

40E-10.051 Water Reservation Areas: Upper East Coast Planning Area.

(1) North Fork of the St. Lucie River, as defined in subsection 40E-10.021(3), F.A.C.:

(2) Surface waters up to and including the mean monthly flow of 130 cubic feet per second flowing over the Gordy Road Structure from November 1st through May 31st; see Appendix 3, Figure 3-2; are reserved from allocation. The water reserved under this Rule will be available for fish and wildlife upon formal determination of the Governing Board, pursuant to state and federal law, that any one or all of the Comprehensive Everglades Restoration Plan's C-23/C-24 North and South Reservoirs and STA Project are operational.

(3) Reservations contained in this Rule and the criteria contained in subsection 3.11.2 of the "Basis of Review for Water Use Permit Applications within the South Florida Water Management District," incorporated by reference in Rule 40E-2.091, F.A.C., shall be revised pursuant to Section 373.223(4), F.S., in light of changed conditions or new information and concurrent with the approval specified in paragraph (1)(a), above.

Notwithstanding the above, presently existing legal uses for the duration of a permit existing on [effective date] are determined to be not contrary to the public interest pursuant to Section 373.223(4), F.S.

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.016, 373.026, 373.036, 373.1501, 373.1502, 373.219, 373.223, 373.4592, 373.4595, 373.470 FS. History—New _____.

APPENDIX 1 TO CHAPTER 40E-10

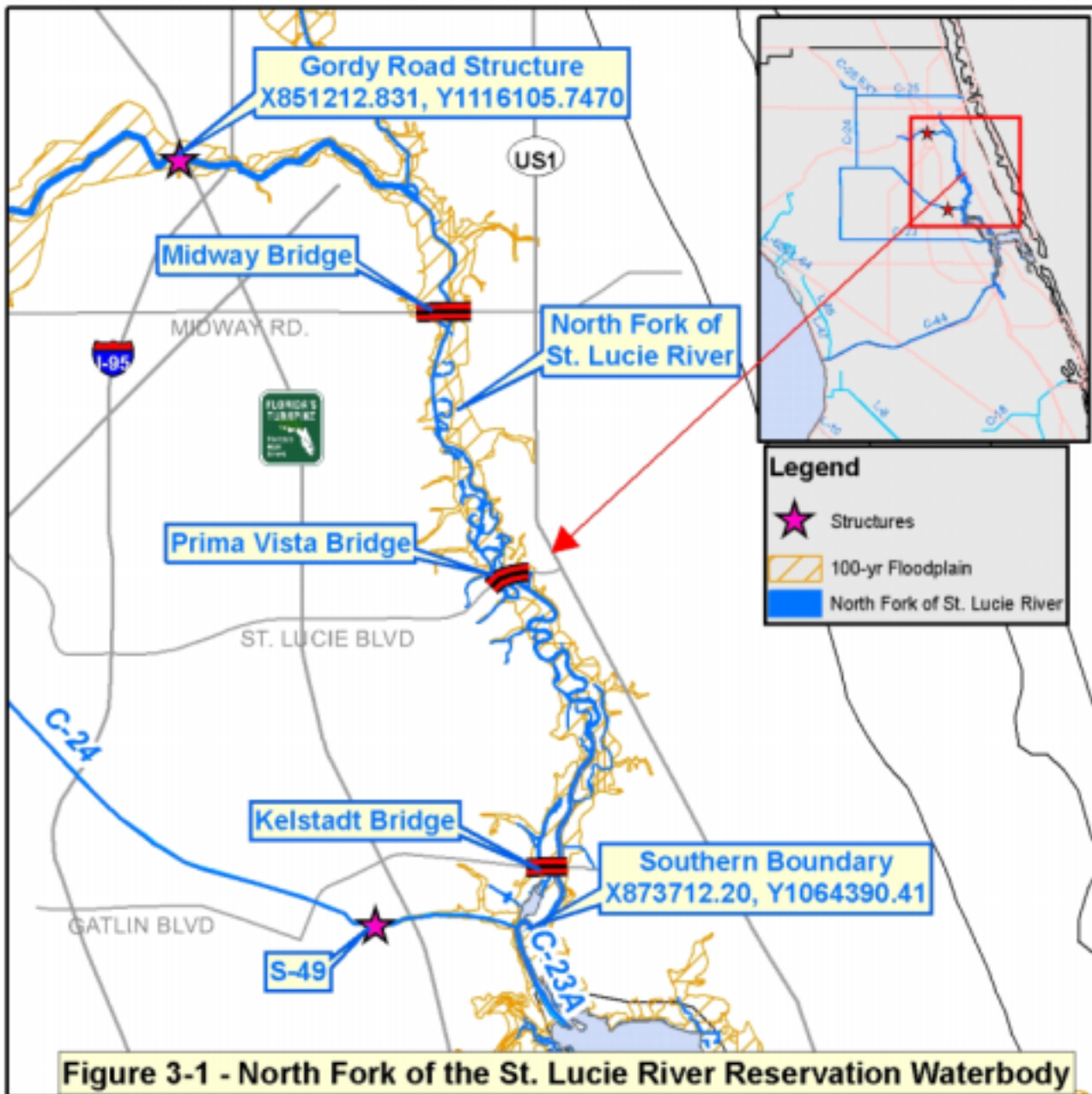
No change.

APPENDIX 2 TO CHAPTER 40E-10

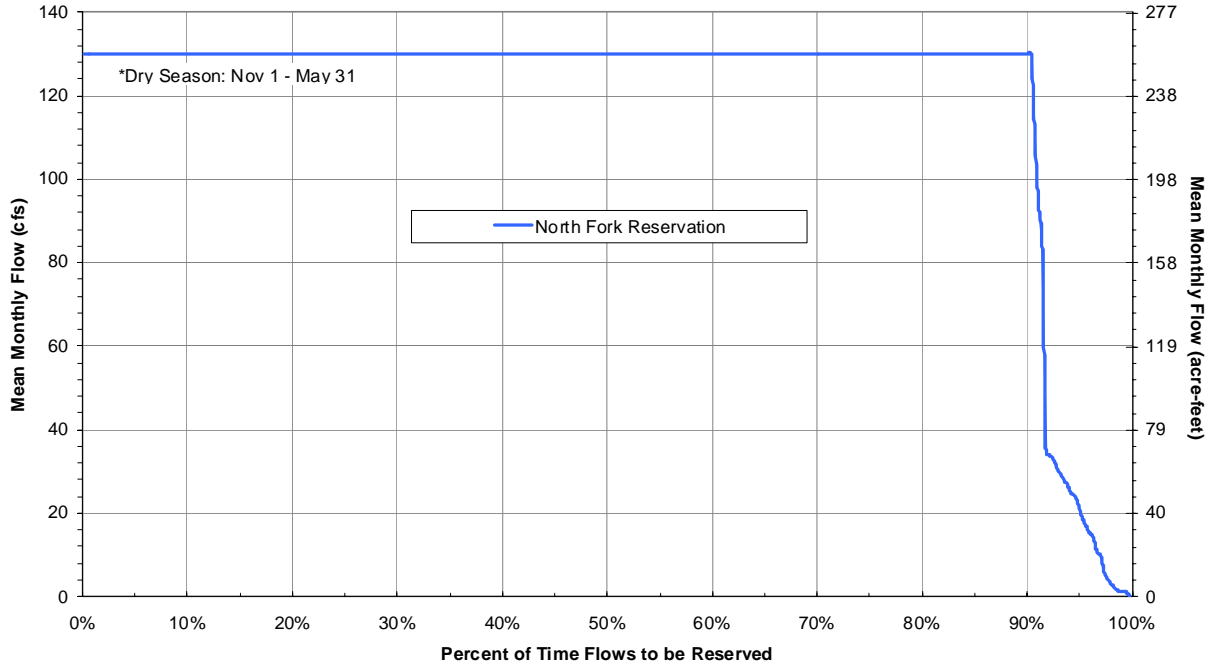
Figures

Figures 1, 2, 3.A through 3.C, 4.A through 4.C, 5.A through 5.C, 6.A through 6.C, 7.A through 7.C, 8.A through 8.C, 9.A through 9.C, 10.A through 10.C No change.

Appendix 3: Upper East Coast Reservation Water Bodies



Volume Reservation: Mean Monthly Flows to be Reserved for Protection of Fish & Wildlife of the North Fork via Ten Mile Creek - *Dry Season (Nov 1 - May 31)



NAME OF PERSON ORIGINATING PROPOSED RULE:
 Scott Burns, Chief Scientist
 NAME OF AGENCY HEAD WHO APPROVED THE
 PROPOSED RULE: South Florida Water Management District
 Governing Board
 DATE PROPOSED RULE APPROVED BY AGENCY
 HEAD: November 13, 2009
 DATE NOTICES OF PROPOSED RULE DEVELOPMENT
 PUBLISHED IN FAW: April 10, 2009 and October 16, 2009

WATER MANAGEMENT DISTRICTS

South Florida Water Management District

RULE NO.: RULE TITLE:
 40E-20.091 Publications Incorporated by
 Reference

PURPOSE AND EFFECT: To assure water necessary for the protection of fish and wildlife in the North Fork of the St. Lucie River as part of the Comprehensive Everglades Restoration Plan for the Indian River Lagoon-South project.

SUMMARY: The proposed rule amendments include a water reservation for the North Fork of the St. Lucie River to protect Comprehensive Everglades Restoration Plan project water needed for protection of fish and wildlife within the North Fork of the St. Lucie River.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: A Statement of Estimated Regulatory Costs (SERC) has been prepared in support of rule making for a water reservation for the North Fork of the St. Lucie River. This reservation of water is prospective in nature, meaning that the water to be regulated is not available until certain antecedent conditions occur. This fact impacts the outcome of the analysis required by the SERC as summarized below. This SERC has been prepared in accordance with the requirements of Section 120.541(2), F.S. Following are each of the statutory requirements that are required to be evaluated and a summary of the conclusions reached:

(a) A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

This proposed rule will be applicable to all water use types regulated under District consumptive use and general permit rules (40E-2 and 20 F.A.C.) seeking to use surface water that contributes to the dry season flows over the Gordy Road Structure once any one or all of the Comprehensive Everglades Restoration Plan’s C-23/C-24 North and South Reservoirs and STA Project are operational. The use types affected by this rule include dewatering, golf course irrigation, agricultural irrigation, nursery irrigation, water livestock, landscape irrigation, commercial industrial use, public water supply, aquaculture, power generation and recreational water use.

It is not possible to fully identify the number of individuals or entities that ultimately will have to comply with the proposed rule at this time because the water to be reserved will become available in the future when project components are determined to be operational. The SERC does identify the number of presently existing legal users that are likely required to have to comply with the rule at page 10 of the SERC.

(b) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

Because the proposed rules do not contain any requirements that will result in the need for new or additional permit analysis, impose any new or additional conditions on use, or otherwise restrict the allocation of surface or groundwater until the Governing Board determines that any or all project component(s) are operational and new rules and criteria are effective, there are no increased costs associated with the implement or enforcement of this proposed rule to the District, presently existing legal users, permit applicants or other state or local government agencies.

(c) A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this paragraph, “transactional costs” are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, and the cost of monitoring and reporting.

Because the proposed rules do not contain any requirements that will result in the need for new or additional permit analysis, impose any new or additional conditions on use, or otherwise restrict the allocation of surface or groundwater until the Governing Board determines that any or all project component(s) are operational and new rules and criteria are effective, there are no specific requirements that would result in the need for an individual or entity to incur transactional costs.

(d) An analysis of the impact on small businesses as defined by Section 288.703, F.S., and an analysis of the impact on small counties and small cities as defined by Section 120.52, F.S.

Because the proposed rules do not contain any requirements that will result in the need for new or additional permit analysis, impose any new or additional conditions on use, or otherwise restrict the allocation of surface or groundwater until the Governing Board determines that any or all project component(s) are operational and new rules and criteria are effective, there are no specific requirements that would impact a small business, small county or small city.

(e) Any additional information that the agency determines may be useful. No additional information was determined to be necessary.

(f) In the statement or revised statement, whichever applies, a description of any good faith written proposal submitted under paragraph (1)(a) and either a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

None received to date. In the event a lower cost alternative is submitted, this SERC will be amended to address the alternatives.

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.

RULEMAKING AUTHORITY: 373.044, 373.113, 373.118, 373.171 FS.

LAW IMPLEMENTED: 373.042, 373.0421, 373.109, 373.196, 373.219, 373.223, 373.224, 373.229, 373.232, 373.233, 373.235, 373.239, 373.250 FS.

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

DATE AND TIME: January 14, 2010, 9:00 a.m.

PLACE: Village of Key Biscayne, Village Chambers, 88 West McIntyre Street, Key Biscayne, FL 33149

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: South Florida Water Management District Clerk, (800)432-2045, ext. 2087 or (561)682-2087. 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: Scott Burns, Scientist Chief, South Florida Water Management District, P. O. Box 24680, West Palm Beach, FL 33416, (800)432-2045, ext 6544 or (561)682-6544, email: sburns@sfwmd.gov, Beth Lewis, Senior Specialist Attorney, South Florida Water Management District, P. O. Box 24680, West Palm Beach, FL 33416, (800)432-2045, ext 6343 or (561)682-6343, email: belewis@sfwmd.gov, Brenda Mills, Planner-Lead, South Florida Water Management District, P. O. Box 24680, West Palm Beach, FL 33416, (800)432-2045, ext 6536 or (561)682-6536, email: bmills@sfwmd.gov. For procedural questions contact Jan Sluth, Paralegal, South Florida Water Management District, P. O. Box 24680, West Palm Beach, FL 33416, (800)432-2045, ext 6299 or (561)682-6299, email: jsluth@sfwmd.gov.

THE FULL TEXT OF THE PROPOSED RULE IS:

40E-20.091 Publications Incorporated by Reference.

The “Basis of Review for Water Use Permit Applications within the South Florida Water Management District – _____ July 2, 2009,” is hereby published by reference and incorporated into this chapter. A current version of this document is available upon request.

Rulemaking Authority 373.044, 373.113, 373.118, 373.171 FS. Law Implemented 373.042, 373.0421, 373.109, 373.196, 373.219, 373.223, 373.224, 373.229, 373.232, 373.233, 373.236, 373.239, 373.250 FS. History–New 9-3-81, Formerly 16K-2.035(1), Amended 2-24-85, 11-21-89, 1-4-93, 4-20-94, 11-26-95, 7-11-96, 4-9-97, 12-10-97, 9-10-01, 12-19-01, 8-1-02, 6-9-03, 8-31-03, 4-23-07, 9-13-07, 2-13-08, 10-14-08, 7-2-09,_____.

(See Notice of Rule 40E-2.091, F.A.C., within this publication, for proposed new section 3.11.2 of the Basis of Review for Water Use Permit Applications within the South Florida Water Management District, incorporated by reference in Rules 40E-2.091 and 40E-20.091, F.A.C.)

NAME OF PERSON ORIGINATING PROPOSED RULE: Scott Burns, Scientist Chief

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: South Florida Water Management District Governing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 13, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 10, 2009

DEPARTMENT OF ELDER AFFAIRS

Federal Aging Programs

RULE NOS.:	RULE TITLES:
58A-5.0131	Definitions
58A-5.016	License Requirements
58A-5.0181	Admission Procedures, Appropriateness of Placement and Continued Residency Criteria
58A-5.0182	Resident Care Standards
58A-5.0183	Do Not Resuscitate Orders (DNROs)
58A-5.0185	Medication Practices
58A-5.019	Staffing Standards
58A-5.0191	Staff Training Requirements and Competency Test
58A-5.023	Physical Plant Standards
58A-5.025	Resident Contracts
58A-5.033	Administrative Enforcement

PURPOSE AND EFFECT: The purpose and effect of the proposed rule amendments is to: include an additional requirement for determining continued residency resulting in amendments to AHCA Form 1823, which is incorporated by reference; include changes to resident care standards as it pertains to third party services; provide work schedules for direct care staff upon request by residents and their representatives; amend medication practices, specifically in

regards to over the counter medications; include changes to staff training requirements, specifically in regards to HIV/AIDS, pursuant to statutory changes to Section 381.0035, F.S., additional training for direct care staff in facilities holding a limited mental health license, and establishing the minimum score for successful completion of the core training competency exam; amend the physical plant standards to coincide with the Florida Building Code, 2007 Edition; and Chapter 633, F.S., Fire Prevention and Control; include changes to the resident contract, specifically notification that the resident must be assessed for admission as well as for continued residency, and statements regarding self-administration, assistance with self-administration and administration of medications, including over-the-counter medications, in resident contracts or written statement of house rules; amend language to stress that facilities must take appropriate action to assist, if necessary, in facilitating the provision of services for residents in facilities holding standard, extended congregate care, limited nursing services and limited mental health licenses; and deletion of the use of a temporary license under administrative enforcement. The purpose and effect of a new rule is to address procedures for do not resuscitate orders.

SUMMARY: Additional requirement for determining continued residency; changes to AHCA Form 1823, which is incorporated by reference; changes to resident care standards as in pertains to third party services; provision of the work schedule for direct care staff for residents or representatives; amendments to medication practices, specifically in regards to over-the-counter medications; changes to staff training requirements, specifically HIV/AIDS, additional training for direct care staff in facilities holding a limited mental health license and establishing a minimum score for the core training examination; amendments to the physical plant standards to coincide with the Florida Building Code, 2007 Edition, and Chapter 633, F.S., Fire Prevention and Control; notification that the resident must be assessed for admission as well as for continued residency, requiring use of AHCA Form 1823 for the latter determination; requirement regarding the facility's policies and procedures for self-administration, assistance with self-administration and administration of medications, including over-the-counter medications, to be included in resident contracts; amendment to stress that facilities must take appropriate action to assist, if necessary, in facilitating the provision of services for residents in facilities holding standard, extended congregate care, limited nursing services and limited mental health licenses; deletion of the use of a temporary license; and procedures for do not resuscitate orders.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: Amendments to proposed subsections 58A-5.0181(4) and 58A-5.0191(9), F.A.C., will have an impact on small business as defined in Section 288.703, F.S. Pursuant to Section 120.54(3)(a)1., F.S., the department's statement of estimated regulatory costs is

provided. Under subsection 58A-5.0181(4), F.A.C., the amount is determined to be an approximate cost of \$50.00 for a reassessment of a resident's continued residency in a facility, including a physical examination, every three years or after a significant change. Under subsection 58A-5.0191(9), F.A.C., the estimated cost is an biennial expense of \$100.00 for continuing education training in mental health diagnoses and treatments, or a minimal cost if in-service training is provided, for all direct care staff employed in facilities holding a limited mental health license.

The amendments to the proposed rules will not have an impact on small cities or counties as defined in Section 120.52, F.S. Therefore, a statement of estimated regulatory costs has not been prepared in regards to small cities or counties.

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.

RULEMAKING AUTHORITY: 429.15, 429.178, 429.23, 429.24, 429.255, 429.26, 429.275, 429.41, 429.42, 429.52 FS.

LAW IMPLEMENTED: 429.02, 429.04, 429.075, 429.12, 429.14, 429.15, 429.17, 429.176, 429.178, 429.19, 429.24, 429.255, 429.256, 429.23, 429.26, 429.27, 429.275, 429.28, 429.34, 429.41, 429.42, 429.44, 429.445, 429.47, 429.52 FS.

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

DATE AND TIME: January 7, 2010, 9:30 a.m. – 12:00 Noon EST

PLACE: Department of Elder Affairs, 4040 Esplanade Way, Conference Room 225F, Tallahassee, Florida 32399-7000

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 72 hours before the workshop/meeting by contacting: Jim Crochet, Department of Elder Affairs, Office of the General Counsel, 4040 Esplanade Way, Tallahassee, FL 32399-7000; telephone (859)414-2113; Email address: crochethj@elderaffairs.org. 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: Jim Crochet, Department of Elder Affairs, Office of the General Counsel, 4040 Esplanade Way, Tallahassee, FL 32399-7000; telephone (859)414-2113; Email address: crochethj@elderaffairs.org

THE TEXT OF THE PROPOSED RULE AND AHCA FORM 1823, INCORPORATED BY REFERENCE, CAN BE FOUND ON THE WEBSITE BELOW UNDER THE HEADING ENTITLED "ASSISTED LIVING FACILITIES, RULE CHAPTER 58A-5, F.A.C." <http://elderaffairs.state.fl.us/english/rulemaking.php>

THE FULL TEXT OF THE PROPOSED RULES IS:

58A-5.0131 Definitions.

In addition to the terms defined in Section 429.02, F.S., the following definitions are applicable in this rule chapter:

(1) through (34) No change.

~~(35) "Temporary license" means a license issued by Agency for Health Care Administration to an assisted living facility that supersedes and temporarily replaces the current license and remains in place pending the final disposition of a proceeding involving the suspension or revocation of an assisted living facility license.~~

(36) through (37) renumbered (35) through (36) No change.

Rulemaking Specific Authority 429.23, 429.41 FS. Law Implemented 429.02, 429.07, 429.075, 429.11, 429.14, 429.178, 429.19, 429.255, 429.23, 429.28, 429.41, 429.47, 429.52 FS. History—New 9-30-92, Formerly 10A-5.0131, Amended 10-30-95, 6-2-96, 4-20-98, 10-17-99, 1-9-02, 7-30-06,_____.

58A-5.016 License Requirements.

(1) SERVICE PROHIBITION. An ALF may not hold itself out to the public as providing any service other than a service for which it is licensed to provide.

(2) LICENSE TRANSFER PROHIBITION. Licenses are not transferable. Whenever a facility is sold or ownership is transferred, including leasing, the transferor and transferee must comply with the provisions of Section 429.41, F.S., and the transferee must submit a change of ownership license application pursuant to Rule 58A-5.014, F.A.C.

(3) CHANGE IN USE OF SPACE REQUIRING CENTRAL OFFICE APPROVAL. A change in the use of space that increases or decreases a facility's capacity shall not be made without prior approval from the Agency Central Office. Approval shall be based on the compliance with the physical plant standards provided in Rule 58A-5.023, F.A.C., as well as documentation of compliance with applicable fire safety and sanitation requirements as referenced in Rule 58A-5.0161, F.A.C.

(4) CHANGE IN USE OF SPACE REQUIRING FIELD OFFICE APPROVAL. A change in the use of space that involves converting an area to resident use, which has not previously been inspected for such use, shall not be made without prior approval from the Agency Field Office. Approval shall be based on the compliance with the physical plant standards provided in Rule 58A-5.023, F.A.C., as well as documentation of compliance with applicable fire safety and sanitation standards as referenced in Rule 58A-5.0161, F.A.C.

(5) CONTIGUOUS PROPERTY. If a facility consists of more than one building, all buildings included under a single license must be on contiguous property. "Contiguous property" means property under the same ownership separated by no more than a two-lane street that traverses the property. A licensed location may be expanded to include additional contiguous property with the approval of the agency to ensure continued compliance with the requirements and standards of Part III, Chapter 400, F.S., and this rule chapter.

(6) PROOF OF INSPECTIONS. A copy of the annual fire safety and sanitation inspections described in Rule 58A-5.0161, F.A.C., shall be submitted annually to the Agency Central Office. The annual inspections shall be submitted no later than 30 calendar days after the inspections. Failure to comply with this requirement may result in administrative action pursuant to Section 429.14, F.S., and Rule 58A-5.033, F.A.C.

(7) MEDICAID WAIVER RESIDENTS. Upon request, the facility administrator or designee must identify Medicaid waiver residents to the agency and the department for monitoring purposes authorized by state and federal laws.

(8) THIRD PARTY SERVICES.

(a) In instances when residents require services from a third party provider, the facility administrator or designee must take action to assist, if necessary, in facilitating the provision of those services and coordinate with the provider to meet the specific service goals. These actions must be documented in the resident's record.

(b) In instances when residents or their representatives arrange for third party services that are not included in the documents listed in paragraph (a) of this subsection, the facility administrator or designee, when requested by residents or representatives, must take action to assist, if necessary, in facilitating the provision of those services and coordinate with the provider to meet the specific service goals. These actions must be documented in the resident's record.

Rulemaking Specific Authority 429.41 FS. Law Implemented 429.07, 429.11, 429.12, 429.41, 429.44, 429.445 FS. History—New 5-15-81, Amended 1-6-82, 9-17-84, Formerly 10A-5.16, Amended 6-21-88, 9-30-92, Formerly 10A-5.016, Amended 10-30-95, 10-17-99, 7-30-06,_____.

58A-5.0181 ~~Residency Criteria and Admission Procedures.~~ Appropriateness of Placement and Continued Residency Criteria.

(1) No change.

(2) HEALTH ASSESSMENT.

(a) The medical examination report must be completed within 60 calendar days prior to the individual's admission to a facility pursuant to Section 429.26(4), F.S. The report must be based on a face-to-face examination and must shall address the following:

1. through 6. No change.

7. A statement on the day of the examination by that, in the opinion of the licensed health care provider examining physician or ARNP, on the day the examination is conducted, that the individual's needs can be met in an assisted living facility; and

8. The date of the examination and the name, signature, address, phone number and license number of the examining licensed health care provider physician or ARNP. The medical examination may be conducted by a currently licensed health care provider physician or ARNP from another state.

(b) Medical examinations completed after the resident's admission ~~of the resident~~ to the facility must be completed within 30 calendar days of the admission date ~~of admission~~ and must be recorded on AHCA Form 1823, the Resident Health Assessment For Assisted Living Facilities and Adult Family-Care Homes, AHCA Form 1823, 2010. ~~The form January 2006, which is hereby incorporated by reference.~~ A faxed copy of the completed form is acceptable. A copy of AHCA Form 1823 may be obtained from the Agency Central Office or its website at: www.fdhc.state.fl.us/MCHO/Long Term Care/Assisted living/pdf/AHCA Form 1823% Jan 2006 .pdf. ~~The form must be completed as follows: Previous versions of this form completed up to six (6) months after 7-30-06 are acceptable.~~

1. The resident's licensed health care provider must complete all of the required information in Sections 1, Health Assessment, and 2, Self-Care and General Oversight Assessment, based on a face-to-face examination.

a. Items on the form that may have been omitted by the licensed health care provider during the face-to-face examination do not necessarily require an additional face-to-face examination for completion.

b. The facility may obtain the omitted information either verbally or in writing from the licensed health care provider.

c. Omitted information received verbally must be documented in the resident's record, including the name of the licensed health care provider, the name of the facility staff recording the information and the date the information was provided.

2. The facility administrator, or designee, must complete Section 3 of the form, Services Offered or Arranged by the Facility, except for residents receiving:

a. Extended congregate care (ECC) services in facilities holding an ECC license;

b. Services under community living support plans in facilities holding limited mental health licenses;

c. Medicaid assistive care services; and

d. Medicaid waiver services.

(c) through (g) No change.

(3) ADMISSION PACKAGE.

(a) The facility shall make available to potential residents a written statement(s), which includes the following information listed below. A copy of the facility resident contract or facility brochure containing all the required information shall meet this requirement.;

1. through 10. No change.

11. A statement of the facility policy concerning Do Not Resuscitate Orders pursuant to Section 429.255, F.S., and Rule 58A-5.0183, F.A.C., and Advance Directives pursuant to Chapter 765, F.S.

12. through 14. No change.

(b) Prior to or at the time of admission, the resident, responsible party, guardian, or attorney in fact, if applicable, shall be provided with the following:

1. No change.

2. A copy of the facility statement described in paragraph (a) of this subsection if one has not already been provided;

3. through 4. No change.

(c) No change.

(4) CONTINUED RESIDENCY. Except as follows in paragraphs (a) through (e) of this subsection, cCriteria for continued residency in a facility holding a standard, limited nursing services, or limited mental health license shall be the same as the criteria for admission, except as follows: A determination of the appropriateness of a resident's continued residency must be completed at least every 3 years after the initial assessment, or after a significant change, whichever comes first. A significant change is defined in Rule 58A-5.0131, F.A.C. The facility must make the determination of continued residency using AHCA Form 1823, which is incorporated by reference in paragraph (2)(b) of this rule. The form must be completed in accordance with that paragraph. After the effective date of this rule, providers shall have up to 12 months to comply with this requirement. except as follows:

(a) through (e) No change.

(5) No change.

Rulemaking Specific Authority 429.07, 429.26, 429.41 FS. Law Implemented 429.02, 429.07, 429.075, 429.26, 429.41 FS. History-- New 9-17-84, Formerly 10A-5.181, Amended 10-20-86, 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.0181, Amended 10-30-95, 6-2-96, 10-17-99, 7-30-06, 10-9-06, _____.

58A-5.0182 Resident Care Standards.

An assisted living facility shall provide care and services appropriate to the needs of residents accepted for admission to the facility.

(1) through (6) No change.

(7) THIRD PARTY SERVICES. Nothing in this rule chapter is intended to prohibit a resident or the resident's representative from independently arranging, contracting, and paying for services provided by a third party of the resident's choice, including a licensed home health agency or private nurse, or receiving services through an out-patient clinic, provided the resident meets the criteria for continued residency and the resident complies with the facility's policy relating to the delivery of services in the facility by third parties. The facility's policies must ~~may~~ require the third party to coordinate with the facility regarding the resident's condition and the services being provided pursuant to subsection (8) of Rule 58A-5.016, F.A.C. Pursuant to subsection (6) of this rule, the facility shall provide the resident with the facility's policy regarding the provision of services to residents by non-facility staff.

(8) through (9) No change.

Rulemaking Specific Authority 429.02, 429.41 FS. Law Implemented 429.02, 429.255, 429.256, 429.26, 429.28, 429.41 FS. History—New 9-17-84, Formerly 10A-5.182, Amended 10-20-86, 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.0182, Amended 10-30-95, 4-20-98, 11-2-98, 10-17-99, 7-30-06, 10-9-06, _____.

58A-5.0183 Do Not Resuscitate Orders (DNROs).

(1) POLICIES AND PROCEDURES.

(a) Each assisted living facility (ALF) must have written policies and procedures, which delineate its position with respect to state laws and rules relative to DNROs. The policies and procedures shall not condition treatment or admission upon whether or not the individual has executed or waived a DNRO. The ALF must provide the following to each resident, or resident's representative, at the time of admission:

1. A copy of Form SCHS-4-2006, "Health Care Advance Directives – The Patient's Right to Decide," April 2006, or with a copy of some other substantially similar document, which incorporates information regarding advance directives included in Chapter 765, F.S. Form SCHS-4-2006 is available from the Agency for Health Care Administration, 2727 Mahan Drive, Mail Stop 34, Tallahassee, FL 32308, or the agency's Web site at: http://ahca.myflorida.com/MCHQ/HealthFacilityRegulation/HCAdvanceDirectives/docs/adv_dir.pdf; and

2. Written information concerning the ALF's policies regarding DNROs; and

3. Information about how to obtain DH Form 1896, Florida Do Not Resuscitate Order Form, incorporated by reference in Rule 64J-2.018, F.A.C.

(b) There must be documentation in the resident's record indicating whether or not he or she has executed a DNRO. If a DNRO has been executed, a copy of that document must be made a part of the resident's record. If the ALF does not receive a copy of a resident's executed DNRO, the ALF must document in the resident's record that it has requested a copy.

(2) LICENSE REVOCATION. An ALF shall be subject to revocation of its license pursuant to Section 408.815, F.S., if, as a condition of treatment or admission, it requires an individual to execute or waive a DNRO.

(3) DNRO PROCEDURES. Pursuant to Section 429.255, F.S., an ALF must honor a properly executed DNRO as follows:

(a) In the event a resident experiences cardiopulmonary distress, staff trained in cardiopulmonary resuscitation (CPR), or a licensed health care provider present in the facility, may withhold cardiopulmonary resuscitation.

(b) In the event a resident is receiving hospice services and experiences cardiopulmonary distress, facility staff must immediately contact the hospice. The hospice procedures shall take precedence over those of the assisted living facility.

(c) If a facility has a written policy not to honor a properly executed DNRO, the facility must make this fact clearly known in writing to the resident, or legal representative, at the

time of admission and in its contract with the resident. The facility must also inform the resident, or legal representative, in writing at the time of admission and in its contract with such resident that the facility will administer CPR until the "911" contact person arrives. This must be documented in the resident's record. In such a facility, when a resident, who has a properly executed DNRO, experiences cardiopulmonary distress, staff must immediately contact "911."

1. A trained staff member must administer CPR until emergency services arrive.

2. Once emergency services arrive, the facility must present the properly executed DNRO to the "911" contact person.

3. Cardiopulmonary resuscitation may then be withheld or withdrawn by the "911" contact person pursuant to Section 401.45, F.S.

(4) LIABILITY. Pursuant to Section 429.255, F.S., ALF providers shall not be subject to criminal prosecution or civil liability, nor be considered to have engaged in negligent or unprofessional conduct, for following the procedures set forth in subsection (3) of this rule, which involves withholding or withdrawing cardiopulmonary resuscitation pursuant to a Do Not Resuscitate Order and rules adopted by the department.

Rulemaking Authority 429.255 FS. Law Implemented 429.255 FS. History—New _____.

58A-5.0185 Medication Practices.

Pursuant to Sections 429.255 and 429.256, F.S., and this rule, facilities holding a standard, limited mental health, extended congregate care, or limited nursing services license may assist with the self-administration or administration of medications to residents in a facility. A resident may not be compelled to take medications but may be counseled in accordance with this rule.

(1) through (7) No change.

(8) OVER THE COUNTER (OTC) MEDICATIONS. For purposes of this subsection, the term OTC includes, but is not limited to, OTC medications, vitamins, nutritional supplements and nutraceuticals.

(a) No change.

(b) ~~When centrally stored, OTC medications Non-prescription over the counter drugs, including those prescribed by a licensed health care provider when centrally stored, must shall~~ be labeled with the resident's name. ~~In addition, and~~ the manufacturer's label with directions for use, or the licensed health care provider's order with directions for use, ~~must shall~~ be kept with the medication. ~~No other labeling requirements are necessary nor should be required.~~

(c) ~~Residents or their representatives may purchase OTC medications from an establishment of their choice. When an over the counter medication is prescribed by a health care provider, the medication becomes a prescription medication and shall be managed in accordance with prescription medication under this rule.~~

(d) A facility cannot require a licensed health care provider's order for all OTC medications as part of its policies and procedures when a resident self-administers his or her own medications, or when staff provides assistance with self-administration or administration of medications. However, in the event staff becomes concerned over a resident's health, safety and welfare regarding OTC medications that may be contraindicated when taken with one another or in combination with prescribed medications, the following shall apply:

1. Staff must bring the issue to the attention of the resident, or representative, the resident's licensed health care provider and the administrator. This action must be documented in the resident's record. The resident's licensed health care provider shall make the determination as to whether the OTC medication is:

a. Contraindicated and should be discontinued; or

b. Can be taken as directed; or

c. Can be taken with other directions for use.

2. The facility must document the health care provider's directives and keep a copy of the health care provider's written order, if applicable, in the resident's record.

(e) The facility must include the provisions in this subsection in resident contracts or house rules pursuant to Rule 58A-5.025, F.A.C.

Rulemaking Specific Authority 429.256, 429.41 FS. Law Implemented 429.255, 429.256, 429.41 FS. History--New 10-17-99, Amended 7-30-06,_____.

58A-5.019 Staffing Standards.

(1) through (3) No change.

(4) STAFFING STANDARDS.

(a) Minimum staffing:

1. through 2. No change.

3. In facilities with 17 or more residents, there shall be at least one staff member awake at all hours of the day and night.

4. through 8. No change.

(b) No change.

(c) The facility must ~~shall~~ maintain a written work schedule which reflects its ~~the facility's~~ 24-hour staffing pattern for a given time period. Upon request, the facility must make the work schedules for direct care staff available to residents or representatives.

(d) through (f) No change.

Rulemaking Specific Authority 429.41, 429.52, 429.275 FS. Law Implemented 429.02, 429.04, 429.174, 429.176, 429.19, 429.24, 429.255, 429.26, 429.275, 429.41, 429.52 FS. History--New 5-14-81, Amended 1-6-82, 9-17-84, Formerly 10A-5.19, Amended 10-20-86, 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.019, Amended 10-30-95, 4-20-98, 11-2-98, 10-17-99, 7-30-06,_____.

58A-5.0191 Staff Training Requirements and Competency Test.

(1) ASSISTED LIVING FACILITY CORE TRAINING REQUIREMENTS AND COMPETENCY TEST.

(a) No change.

(b) Administrators and managers must successfully complete the assisted living facility core training requirements within 3 months from the date of becoming a facility administrator or manager. Successful completion of the core training requirements includes passing the competency test. The minimum passing score for the competency test is 75%. Administrators who have attended core training prior to July 1, 1997, and managers who attended the core training program prior to April 20, 1998, shall not be required to take the competency test. Administrators licensed as nursing home administrators in accordance with Part II of Chapter 468, F.S., are exempt from this requirement.

(c) through (e) No change.

(2) No change.

(3) HUMAN IMMUNODEFICIENCY VIRUS/ACQUIRED IMMUNE DEFICIENCY SYNDROME (HIV/AIDS). Pursuant to Section 381.0035, F.S., all facility employees, with the exception of employees subject to the requirements of Section 456.033, F.S., must complete biennially, a one-time continuing education course on HIV and AIDS, including the topics prescribed in the Section 381.0035, F.S. New facility staff must obtain the an initial training on HIV/AIDS within 30 days of employment, unless the new staff person previously completed the initial training and has maintained the biennial continuing education requirement. Documentation of compliance must be maintained in accordance with subsection (12)(41) of this rule.

(4) through (7) No change.

(8) LIMITED MENTAL HEALTH TRAINING. Pursuant to Section 429.075, F.S., the administrator, manager, and staff in direct contact with mental health residents in a facility with a limited mental health license must receive a minimum of 6 hours training provided or approved by the Department of Children and Family Services within 6 months of the facility's receiving a limited mental health license or within 6 months of employment in a facility holding a limited mental health license. Staff in "direct contact" means direct care staff and staff whose duties take them into resident living areas and require them to interact with mental health residents on a daily basis. The term does not include maintenance, food service, or administrative staff if such staff have only incidental contact with mental health residents.

(a) Pursuant to Section 429.075, F.S., the administrator, managers and staff, who have direct contact with mental health residents in a licensed limited mental health facility, must receive the following training:

1. A minimum of 6 hours of specialized training in working with individuals with mental health diagnoses.

a. The training must be provided or approved by the Department of Children and Families and must be taken within 6 months of the facility's receiving a limited mental health license or within 6 months of employment in a limited mental health facility.

b. Staff in "direct contact" means direct care staff and staff whose duties take them into resident living areas and require them to interact with mental health residents on a daily basis. The term does not include maintenance, food service or administrative staff, if such staff have only incidental contact with mental health residents.

c. Training received under this subparagraph may count once for 6 of the 12 hours of continuing education required for administrators and managers pursuant to Section 429.52(4), F.S., and subsection (1) of this rule.

2. A minimum of 3 hours of continuing education or in-service training biennially thereafter in subjects dealing with one or more of the following topics:

a. Mental health diagnoses; and

b. Mental health treatment such as mental health needs, services, behaviors and appropriate interventions; resident progress in achieving treatment goals; how to recognize changes in the resident's status or condition that may affect other services received or may require intervention; and crisis services and the Baker Act procedures.

c. For administrators and managers, this requirement will satisfy 3 of the 12 hours of continuing education required biennially pursuant to Section 429.52(4), F.S., and subsection (1) of this rule.

d. Administrators, managers and direct contact staff affected by this requirement shall have up to 6 months after the effective date of this rule to meet the continuing education or in-service training requirement.

~~(b)(a)~~ Administrators, managers and staff receiving this training do not have to repeat the initial this training should they change employers provided they present the employee provides a copy of their the employee's training certificate to the employee's current employer for retention in the facility's personnel files. They must also ensure that copies of the continuing education training certificates, pursuant to subparagraph 2. of this subsection, are retained in their personnel files.

~~(b)~~ Training received under this subsection may count once for 6 of the 12 hours of continuing education required for administrators and managers under subsection (1) of this rule.

(9) ALZHEIMER'S DISEASE AND RELATED DISORDERS ("ADRD") TRAINING REQUIREMENTS. Facilities which advertise that they provide special care for persons with ADRD, or who maintain secured areas as described in Chapter 4, Section 434.4.6 of the Florida Building Code, as adopted in Rule 9B-3.047, F.A.C., Florida Building Code Adopted Rule 58A 5.023, F.A.C., must ensure that facility staff receive the following training.

(a) through (h) No change.

(10) No change.

(11) DO NOT RESUSITATE ORDERS TRAINING REQUIREMENT.

(a) Currently employed facility administrators, managers, direct care staff and staff involved in resident admissions must attend training in the facility's policies and procedures regarding DNROs within 30 days after the effective date of this rule.

(b) Newly hired facility administrators, managers, direct care staff and staff involved in resident admissions must attend training in the facility's policy and procedures regarding DNROs within 30 days after employment.

(c) Training shall consist of the information included in Rule 58A-5.0183, F.A.C.

~~(12)~~(11) No change.

Rulemaking Specific Authority 429.178, 429.41, 429.52 FS. Law Implemented 429.07, 429.075, 429.178, 429.41, 429.52 FS. History--New 9-30-92, Formerly 10A-5.0191, Amended 10-30-95, 6-2-96, 4-20-98, 11-2-98, 10-17-99, 7-5-05, 7-30-06, 10-9-06, 7-1-08, _____.

(Substantial rewording of Rule 58A-5.023 follows. See Florida Administrative Code for present text.)

58A-5.023 Physical Plant Standards.

(1) NEW FACILITIES.

(a) Newly Constructed Facilities.

Newly constructed facilities that are to be licensed as assisted living facilities and any subsequent additions, modifications, alterations, renovations or refurbishing of such facilities must comply with the following standards:

1. Chapter 4, Section 434, of the Florida Building Code, as adopted in Rule 9B-3.047, F.A.C., Florida Building Code Adopted; and

2. Section 633.022, F.S., Uniform Firesafety Standards, and Rule Chapter 69A-40, F.A.C., The Uniform Fire Safety Standards for Assisted Living Facilities.

(b) New Facilities in Converted Buildings.

Existing structures not previously licensed as assisted living facilities that are to be converted to assisted living facilities and any subsequent additions, modifications, alterations, renovations or refurbishing of such facilities must comply with the following standards:

1. Chapter 4, Section 434, of the Building Code, as adopted in Rule 9B-3.047, F.A.C., Florida Building Code Adopted; and

2. Section 633.022, F.S., Uniform Firesafety Standards, and Rule Chapter 69A-40, F.A.C., The Uniform Fire Safety Standards for Assisted Living Facilities.

(2) EXISTING FACILITIES.

(a) An assisted living facility that was initially licensed prior to the effective date of this rule must comply with the rule or building code in effect at the time of initial licensure, except that any part of the facility included in additions, modifications, alterations, refurbishing, renovations or reconstruction must comply with the currently adopted codes and standards referenced in subsection (1) of this rule.

(b) A facility undergoing change of ownership shall be considered an existing facility for purposes of this rule.

(4) OTHER REQUIREMENTS.

(a) All facilities must:

1. Provide a safe living environment pursuant to Section 429.28(1)(a), F.S.; and

2. Must be maintained free of hazards; and

3. Must ensure that all existing architectural, mechanical, electrical and structural systems and appurtenances are maintained in good working order.

(b) Pursuant to Section 429.27, F.S., residents shall be given the option of using their own belongings as space permits. When the facility supplies the furnishings, each resident bedroom or sleeping area must have at least the following furnishings:

1. A clean, comfortable bed with a mattress no less than 36 inches wide and 72 inches long, with the top surface of the mattress a comfortable height to ensure easy access by the resident;

2. A closet or wardrobe space for hanging clothes;

3. A dresser, chest or other furniture designed for storage of personal effects;

4. A table, bedside lamp or floor lamp, and waste basket; and

5. A comfortable chair, if requested.

(b) The facility must maintain master or duplicate keys to resident bedrooms to be used in the event of an emergency.

(c) Residents who use portable bedside commodes must be provided with privacy during use.

(d) Facilities must make available linens and personal laundry services for residents who require such services. Linens provided by a facility shall be free of tears, stains and not be threadbare.

(5) FACILITIES WITH 16 OR FEWER RESIDENTS:

Pursuant to Section 429.41, F.S., facilities with 16 or fewer residents are not required to maintain an accessible telephone in each building where residents reside, maintain written staff job descriptions, have awake night staff, or maintain standardized recipes as provided in paragraphs 58A-5.0182(6)(g), 58A-5.019(2)(e), 58A-5.019(4)(a), and 58A-5.020(2)(b), F.A.C., respectively.

Rulemaking Specific Authority 429.41 FS. Law Implemented 404.056, 429.27, 429.41 FS. History–New 5-14-81, Amended 1-6-82, 5-19-83, 9-17-84, Formerly 10A-5.23, Amended 10-20-86, 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.023, Amended 10-30-95, 6-2-96, 10-17-99, 7-30-06,_____.

58A-5.025 Resident Contracts.

(1) Pursuant to Section 429.24, F.S., prior to or at the time of admission, each resident or the residents legal representative, shall, prior to or at the time of admission, execute a contract with the facility, which contains the following provisions:

(a) through (j) No change.

(k) A provision that residents must be assessed upon admission pursuant to subsection (2) of Rule 58A-5.0181, F.A.C., and periodically thereafter pursuant to subsection (4) of that rule.

(l) The facility's policies and procedures for self-administration, assistance with self-administration and administration of medications, if applicable, pursuant to Rule 58A-5.0185, F.A.C. This also includes requirements for over-the-counter medications pursuant to subsection (8) of that rule.

(m) If a facility has a policy not to honor a properly executed DNRO, the facility must inform the resident, or legal representative, in writing of the policy pursuant to paragraph (3)(c) of Rule 58A-5.0183, F.A.C.

(2) through (3) No change.

Rulemaking Specific Authority 429.24, 429.41 FS. Law Implemented 429.24, 429.41 FS. History–New 10-17-99, Amended 7-30-06,_____.

58A-5.033 Administrative Enforcement.

Facility staff shall cooperate with Agency personnel during surveys, complaint investigations, monitoring visits, implementation of correction plans, license application and renewal procedures and other activities necessary to ensure compliance with Part I of Chapter 429, F.S., and this rule chapter.

(1) through (6) No change.

~~(7) TEMPORARY LICENSE. Temporary licenses as defined in subsection 58A-5.0131(37), F.A.C., may be issued by the Agency upon the initiation of any proceeding pursuant to Section 429.14(8), F.S.~~

Rulemaking Specific Authority 429.15, 429.23, 429.41, 429.42 FS. Law Implemented 429.07, 429.08, 429.11, 429.12, 429.14, 429.15, 429.17, 429.19, ~~429.12~~, 429.23, 429.27, 429.28, 429.34, 429.41, 429.42 FS. History–New 9-30-92, Formerly 10A-5.033, Amended 10-30-95, 10-17-99, 1-9-02, 7-30-06,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Jim Crochet

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: E. Douglas Beach, Ph.D., Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 17, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 12, 2008

DEPARTMENT OF ELDER AFFAIRS

Federal Aging Programs

RULE NOS.:	RULE TITLES:
58A-14.002	Definitions
58A-14.003	License Application, Renewal and Conditional Licenses
58A-14.004	License Requirements
58A-14.0061	Admission Procedures, Appropriateness of Placement and Continued Residency Requirements
58A-14.008	Staff Qualifications, Responsibilities and Training

PURPOSE AND EFFECT: The purpose and effect of the proposed rule amendments are as follows: include additional definitions; require the provider to produce documentation that he or she resides in the adult family-care home (AFCH) as a condition of licensure; prohibit a change of ownership of an AFCH; require posting of specific information; include an additional requirement for determining continued residency and changes to the resident assessment form; and clarify the staffing requirements regarding communicable diseases, including tuberculosis.

SUMMARY: Additional definitions of “person” or “persons,” and “reside” or “resides”; requirement that the AFCH provider must provide proof that her or she lives in the home; prohibition of a change of ownership for an AFCH; posting of specific information in the AFCH; determination of continued residency and revision of the resident assessment form; and clarification of staffing requirements regarding communicable diseases, including tuberculosis.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The amendment to proposed Rule 58A-14.0061, F.A.C., will have an impact on small business as defined in Section 288.703, F.S. Pursuant to Section 120.54(3)(a)1., F.S., the department’s statement of estimated regulatory costs is provided. Under this rule, the amount is determined to be an approximate cost of \$50.00 for a reassessment of a resident’s continued residency in an adult family-care home, including a physical examination, every three years or after a significant change.

The amendments to the proposed rules will not have an impact on small cities or counties as defined in Section 120.52, F.S. Therefore, a statement of estimated regulatory costs has not been prepared in regards to small cities or counties.

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.

RULEMAKING AUTHORITY: 429.67, 429.69, 429.71, 429.73, 429.75 FS.

LAW IMPLEMENTED: 429.65, 429.67, 429.71, 429.73, 429.75, 429.83, 429.85 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: January 7, 2010, 2:00 p.m. – 3:00 p.m. EST.

PLACE: Department of Elder Affairs, 4040 Esplanade Way, Conference Room 225F, Tallahassee, FL 32399-7000

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 72 hours before the workshop/meeting by contacting: Jim Crochet, Department of Elder Affairs, Office of the General Counsel, 4040 Esplanade Way, Tallahassee, Florida 32399-7000; telephone number: (850)414-2113; Email address: crochethj@elderaffairs.org. 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: Jim Crochet, Department of Elder Affairs, Office of the General Counsel, 4040 Esplanade Way, Tallahassee, Florida 32399-7000; telephone number: (850)414-2113; Email address: crochethj@elderaffairs.org

THE TEXT OF THE PROPOSED RULE IS ALSO AVAILABLE ON THE WEBSITE LISTED BELOW UNDER THE HEADING ENTITLED “ADULT-FAMILY CARE HOMES, RULE CHAPTER 58A-14, F.A.C.” AHCA FORM 1823, REFERENCED IN RULE 58A-14.0061, F.A.C., CAN BE LOCATED ON THE SAME WEBSITE UNDER THE HEADING “ASSISTED LIVING FACILITIES, RULE CHAPTER 58A-5, F.A.C.” <http://elderaffairs.state.fl.us/english/rulemaking.php>

THE FULL TEXT OF THE PROPOSED RULES IS:

58A-14.002 Definitions.

The following terms or phrases are defined in Section 429.65, F.S., and are applicable to this rule chapter: activities of daily living (ADLs), adult family-care home (AFCH), agency (AHCA), aging in place, appropriate placement, chemical restraint, department, disabled adult, frail elder, personal services or personal care, provider, relative, relief person, and resident. Additional definitions applicable to this rule chapter are as follows:

(1) through (14) No change.

(15) “Person” means solely the licensee to whom the agency has issued the AFCH license.

(15) through (16) renumbered (16) through (17) No change.

(18) “Reside” or “resides” means the licensee or applicant lives in the AFCH as a primary residence. For purposes of this rule chapter, any two of the following documents, which

include the name of the licensee or applicant and the AFCH address, are accepted by the agency as proof that the licensee or applicant physically lives in the AFCH:

- (a) Homestead exemption documentation; or
- (b) Lease or rental agreement accompanied by a corresponding utility bill and telephone bill; or
- (c) Personal identification issued by a state or federal agency.

(17) through (19) renumbered (19) through (21) No change.

Rulemaking Specific Authority 429.67, 429.73 FS. Law Implemented 429.65, 429.67, 429.71, 429.73 FS. History—New 5-14-86, Amended 2-2-95, Formerly 10A-14.002, Amended 9-19-96, 6-6-99,_____.

58A-14.003 License Application, Renewal and Conditional Licenses.

(1) LICENSE APPLICATION.

(a) Any individual desiring to obtain an initial license to operate an adult family care home shall file an Adult Family Care Home License application, AHCA Form 3180-1022, January 2006, which is incorporated by reference and may be obtained from the Assisted Living Unit, Agency for Health Care Administration, 2727 Mahan Drive, Mail Stop 30, Tallahassee, Florida 32308-5402, phone (850)487-2515. The completed application must be signed by the applicant, notarized, and submitted to the Assisted Living Unit at the address cited above. The application shall be accompanied by the following:

- 1. through 8. No change.
- 9. Documentation that the provider resides in the adult family-care home pursuant to Section 429.67(2), F.S., and subsection (18) of Rule 58A-14.002, F.A.C.

(b) through (d) No change.

(2) LICENSE RENEWAL.

- (a) No change.
- (b) In addition to AHCA Form 3180-1022, all applicants for license renewal shall provide the following:

1. through 3. No change.

4. Documentation pursuant to subparagraph (1)(a)9. of this rule.

- (c) No change.
- (3) through (4) No change.

Rulemaking Specific Authority 429.67, 429.69, 429.71, 429.73 FS. Law Implemented 429.67, 429.69, 429.71, 429.73 FS. History—New 5-14-86, Amended 2-2-95, Formerly 10A-14.003, Amended 9-19-96, 3-25-98, 6-6-99, 1-1-04, 7-30-06,_____.

58A-14.004 License Requirements.

(1) LICENSE TIMEFRAME. Except for conditional licenses, all AFCH licenses shall be effective for 2 + years from the date of issuance.

(2) LICENSE CONDITIONS. A license to operate an AFCH is not transferable and is valid only for the provider named, the capacity stated, and the premises described on the license. A change of ownership is prohibited.

(3) VOLUNTARY CLOSURE. The licensed provider shall give at least 60 days written notice of any intent to voluntarily close a currently licensed AFCH to the AHCA Assisted Living Unit, each residents or resident's representative, and case managers of OSS recipients, ~~of any intent to voluntarily close or sell a currently licensed AFCH.~~

(4) through (5) No change.

(6) POSTING OF INFORMATION. For the purpose of a resident's' ability to lodge complaints, the AFCH licensee or designee must post the addresses and toll-free telephone numbers for the following entities in full view in a common area accessible to all residents:

- (a) District Long-Term Care Ombudsman Council;
- (b) Advocacy Center for Persons with Disabilities;
- (c) Florida Local Advocacy Council;
- (d) Agency Consumer Hotline; and
- (e) Florida Abuse Hotline.

Rulemaking Specific Authority 429.67, 429.73 FS. Law Implemented 429.67, 429.73, 429.83 FS. History—New 5-14-86, Amended 2-2-95, Formerly 10A-14.004, Amended 9-19-96, 6-6-99,_____.

58A-14.0061 Admission Procedures, and Appropriateness of Placement and Continued Residency Requirements.

(1) No change.

(2) HEALTH ASSESSMENT. ~~Prior to admission to an AFCH, the individual must be examined by a health care provider using AHCA Form 3110 1023 (AFCH 1110) 01/08, Resident Health Assessment for Adult Family Care Homes (AFCH), January 2008, which is incorporated by reference, and available from the Agency for Health Care Administration, 2727 Mahan Drive, Mail Stop 30, Tallahassee, FL 32308. The form may also be obtained from the agency's Web site at http://ahca.myflorida.com/MCHQ/Long_Term_Care/Assisted_living/afe/Res_Health_Assmnt.pdf.~~

(a) Prior to admission to an AFCH, the individual must have a face-to-face examination conducted by a licensed health care provider using AHCA Form 1823, Resident Assessment for Assisted Living Facilities and Adult Family-Care Homes. The form is incorporated by reference in Rule 58A-5.0181, F.A.C. The form must be completed as follows:

1. A licensed health care provider must complete Sections 1, Health Assessment, and 2, Self-Care and General Oversight Assessment; and

2. The AFCH provider or designee must complete 3, Services Offered or Arranged by the Facility, except for residents receiving Medicaid assistive care services or Medicaid Waiver Services.

(b) Every three years thereafter, or after a significant change, as defined in subsection (4) of Rule 58A-14.007, F.A.C., the resident must have a face-to-face examination conducted by a licensed health care provider using the form referenced in paragraph (a) of this subsection. The form must be completed as required in that paragraph. After the effective date of this rule, providers shall have up to 6 months to comply with this requirement.

~~(3) HOUSE RULES AND COMPLAINT PROCEDURES. Prior to, or at the time of admission a copy of the AFCH house rules, the Resident's Bill of Rights established under Section 429.85, F.S., the name, address, and telephone number of the district long term care ombudsman council and the Florida Abuse Hotline, and the procedure for making complaints to the ombudsman council and the abuse registry must be provided to the resident or the resident's representative.~~

(a) Prior to, or at the time of admission, the AFCH must provide the resident or representative with the following:

1. A copy of the AFCH house rules;
2. The Resident's Bill of Rights established under Section 429.85, F.S.;
3. Written information referenced in subsection (6) of Rule 58A-14.004, F.A.C., and the procedure for making complaints to these entities.

(b) Additionally, the provider or designee must make the resident or representative aware of the location of the documents posted pursuant to subsection (6) of Rule 58A-14.004, F.A.C.

- (4) through (5) No change.
- (6) CONTINUED RESIDENCY.

(a) The criteria for continued residency shall be the same as the criteria for admission, including a face-to-face examination conducted by a licensed health care provider pursuant to subsection (2) of this rule, with the following exceptions that:

- 1. through 3. No change.
- (b) through (c) No change.
- (7) No change.

~~Rulemaking Specific Authority 429.73 FS. Law Implemented 429.65, 429.73, 429.85 FS. History-New 2-2-95, Formerly 10A-14.0061, Amended 9-19-96, 6-6-99, 1-1-04, 4-29-08, _____.~~

58A-14.008 Staff Qualifications, Responsibilities and Training.

(1) MINIMUM STAFF REQUIREMENTS.

(a) The provider, all staff, each relief person; and all adult household members must submit a statement from a licensed health care provider that he or she is free from apparent signs and symptoms of communicable diseases, including tuberculosis. The statement must be based on an examination conducted within the last six months prior to employment, that the person is free from apparent signs and symptoms of

~~communicable diseases including tuberculosis. Annually thereafter, the individual must submit documentation from a licensed health care provider that he or she is free from tuberculosis. Freedom from tuberculosis must be documented on an annual basis. An exception is that an individual Persons with a positive tuberculosis test must submit a physician's statement from a licensed health care provider that he or she the person does not constitute a risk of communicating tuberculosis.~~

- (b) through (c) No change.
- (2) through (4) No change.

~~Rulemaking Specific Authority 429.67, 429.73, 429.75 FS. Law Implemented 429.67, 429.73, 429.75 FS. History-New 2-2-95, Formerly 10A-14.008, Amended 9-19-96, 6-6-99, 1-1-04, 7-30-06, _____.~~

NAME OF PERSON ORIGINATING PROPOSED RULE:
Jim Crochet

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: E. Douglas Beach, Ph.D., Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 17, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 12, 2009

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Barbers' Board

RULE NO.: 61G3-16.0010
RULE TITLE: Examination for Barber Licensure
PURPOSE AND EFFECT: The purpose of this notice is to review for possible changes to bring the rule into compliance with the legislature requirement.

SUMMARY: The purpose of this notice is to review for possible changes to bring the rule into compliance with the legislature requirement.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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.

RULEMAKING AUTHORITY: 455.217(1)(b), (c), 476.064(4), 476.114(2), 476.134 FS.

LAW IMPLEMENTED: 455.217(1)(b), (c), 476.114(2), 476.134 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: Robyn Barineau, Executive Director, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G3-16.0010 Examination for Barber Licensure.

(1) The examination for licensure to practice barbering shall consist of ~~two parts~~, a written examination ~~and a practical examination~~. Applicants for a license to practice barbering must achieve a passing grade on ~~both portions~~ of the examination to be eligible for a license to practice barbering. An applicant who has completed all requirements for examination and paid the fee specified in Rule 61G3-20.002, F.A.C., will be admitted to the examination for licensure.

(2) The following subjects will be tested on the written examination consisting of seventy-five questions and will be weighted approximately as designated:

Category	Weight
(a) Florida Laws and Rules	25%
(b) Safety, Sanitation and Sterilization	30%
(c) Hair Structure and Chemistry	10%
(d) Hair Cutting and Hair Styling	10%
(e) Shampooing	5%
(f) Chemical Procedures (Permanent Waving, Coloring and Bleaching, Hair Relaxing and Curling)	10 15%
(g) Shaving, Beard and Mustache Trimming	5%

(3) ~~The practical portion of the examination for licensure shall test the applicant's ability to perform the barbering services authorized by a license to practice barbering. The practical examination shall have a maximum time limit of 1 1/4 hours. All applicants will provide their own model for the practical exam and will be required to shampoo the model's hair and perform a taper haircut to satisfy the practical portion of the examination. The areas to be tested and the relative weights are as follows:~~

Grading Area	Relative Weight
(a) Haircut	45
(b) Shampoo	5
(c) Safety and Sanitation	50

(4) ~~The grade sheet for the practical examination will contain spaces for comments by the grading examiner. The areas of comment shall be drawn from the following criteria:~~

~~(a) Haircut:~~

- ~~1. The top is even and without holes;~~
- ~~2. The top blends with the sides and back;~~
- ~~3. The front outline is even;~~
- ~~4. The haircut is proportional;~~
- ~~5. The sides and the back are without holes or steps;~~
- ~~6. The sides blend with the back;~~

- ~~7. The sideburns are equal in length;~~
- ~~8. The outlines are even;~~
- ~~9. The sideburns, outline, and neckline are clean shaven;~~
- ~~10. The model's skin was not cut or nicked during the haircut;~~
- ~~11. The neckline is properly tapered.~~
- ~~(b) Shampoo: After the shampoo, the model's hair and scalp were clean and free of shampoo.~~
- ~~(c) Safety and Sanitation:~~
 - ~~1. The candidate used the proper draping for the shampoo;~~
 - ~~2. The candidate used the proper protection on the shampoo bowl;~~
 - ~~3. The candidate properly stored clean and dirty linen during the shampoo;~~
 - ~~4. The candidate washed his or her hands before beginning work on the model;~~
 - ~~5. The candidate used the proper draping for the haircut;~~
 - ~~6. The candidate properly stored clean and dirty linen during the haircut;~~
 - ~~7. The candidate placed tools in the sanitizer before and after each use during the haircut;~~
 - ~~8. The candidate used all of the tools in a safe manner and without any blood contact during the haircut;~~
- ~~(5) Failure of the examinee to complete the services required in a particular category tested in the practical portion of the examination shall result in the examinee losing the possible points assigned to that area.~~

(3)(6) The score necessary to achieve a passing grade shall be no less than seventy five (75) percent out of one hundred (100) percent (based on the average of the examiners' scores) on the practical examination and seventy five (75) percent out of one hundred (100) percent on the written examination. In rounding percentages, any percentage which is point five (.5) or above shall be rounded up to the next whole number. Percentages less than point five (.5) shall be rounded down to the next whole number.

Rulemaking Specific Authority 455.217(1)(b), (c), 476.064(4), 476.114(2), 476.134 FS. Law Implemented 455.217(1)(b), (c), 476.114(2), 476.134 FS. History—New 11-12-00, Amended 11-27-02, 4-26-04, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Barbers' Board

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Barbers' Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 9, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 30, 2009

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Barbers' Board

RULE NO.: 61G3-16.002
 RULE TITLE: Reexamination

PURPOSE AND EFFECT: The purpose of this notice is to review for possible changes to bring the rule into compliance with the legislature requirement.

SUMMARY: The purpose of this notice is to review for possible changes to bring the rule into compliance with the legislature requirement.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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.

RULEMAKING AUTHORITY: 455.217(2), 476.064(4), 476.114(3) FS.

LAW IMPLEMENTED: 455.217(2), 476.114(3) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Robyn Barineau, Executive Director, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G3-16.002 Reexamination.

(1) An applicant who fails the state examination for licensure in whole or in part shall be required to pay the reexamination fee as set forth in Rule 61G3-20.002, F.A.C.

~~(2) An applicant shall be required to retake only the portion of the examination on which he or she failed to achieve a passing grade. However, A~~ an applicant must pass both portions of the examination within a one year period from the date of the first licensure examination attempt at either part in order to qualify for licensure.

~~(3) An applicant who fails the practical portion of the examination may apply to the Department to retake the practical portion of the examination at least 30 days prior to the next administration date, provided that the applicant pays the reexamination fee as set forth in Rule 61G3-20.002, F.A.C.~~

~~(3)(4)~~ An applicant who fails the written portion of the examination may apply to the Department to retake the written portion of the examination by providing an application and paying the reexamination fee as set forth in Rule 61G3-20.002, F.A.C.

Rulemaking Specific Authority 455.217(2), 476.064(4), 476.114(3) FS. Law Implemented 455.217(2), 476.114(3) FS. History–New 7-16-80, Amended 4-6-82, 4-21-83, Formerly 21C-16.02, Amended 11-12-87, Formerly 21C-16.002, Amended 11-12-00,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Barbers' Board

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Barbers' Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 9, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 30, 2009

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Barbers' Board

RULE NO.: 61G3-16.005
 RULE TITLE: Endorsement

PURPOSE AND EFFECT: The purpose of this notice is to review for possible changes to bring the rule into compliance with the legislature requirement.

SUMMARY: The purpose of this notice is to review for possible changes to bring the rule into compliance with the legislature requirement.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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.

RULEMAKING AUTHORITY: 476.064(4), 476.144(5) FS.

LAW IMPLEMENTED: 476.144(5) 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: Robyn Barineau, Executive Director, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G3-16.005 Endorsement.

The Department of Business and Professional Regulation shall issue a license by endorsement to a person who:

(1) Makes application and pays to the Department the fee specified in Rule 61G3-20.002, F.A.C.;

(2) Demonstrates that he or she possesses a current active license in another state or country;

(3) Demonstrates that he or she has satisfactorily completed a written and a practical examination comparable to or more stringent than the examination given by the Department;

(4) Demonstrates that he or she has completed:

(a) 1,200 hours of schooling in a program similar to, comparable to or more stringent than that required of Florida students and, at a minimum, covering the subjects of Safety, Sanitation and Sterilization, Hair Structure and Chemistry, Hair Cutting, Shampooing, Chemical Services, and Shaving as specified by the Barbers' Board; or

(b) An apprenticeship program of 1,200 hours; or

(c) A combination thereof.

(5) Certifies that he or she has read and understood and will abide by Chapters 455 and 476, F.S., and Chapter 61G3, F.A.C.

(6) For purposes of demonstrating that the applicant has met the requirements of subsections (2), (3) and (4) above, the applicant must provide the Board with an education evaluation conducted by a credential evaluation service that is a member of the National Association of Credential Evaluation Services.

Rulemaking Specific Authority 476.064(4), 476.144(5) FS. Law Implemented 476.144(5) FS. History—New 10-14-85, Formerly 21C-16.05, Amended 6-1-87, 11-12-87, 7-4-90, 12-23-90, 1-26-93, Formerly 21C-16.005, Amended 11-30-93, 5-3-06, 5-31-07,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Barbers' Board

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Barbers' Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 9, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 30, 2009

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Barbers' Board

RULE NO.: 61G3-16.007 RULE TITLE: Examination for Restricted Licensure

PURPOSE AND EFFECT: The purpose of this notice is to review for possible changes to bring the rule into compliance with the legislature requirement.

SUMMARY: The purpose of this notice is to review for possible changes to bring the rule into compliance with the legislature requirement.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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.

RULEMAKING AUTHORITY: 455.217, 476.064(4), 476.134, 476.144 FS.

LAW IMPLEMENTED: 455.217, 476.134, 476.144 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: Robyn Barineau, Executive Director, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G3-16.007 Examination for Restricted Licensure.

(1) The examination for restricted licensure to practice barbering shall consist of ~~two parts~~, a written exam ~~and a practical exam~~. Applicants for a restricted license to practice barbering must achieve a passing grade on ~~both portions~~ of the examination to be eligible for a restricted license to practice barbering.

(2) The ~~written portion~~ of the examination for restricted licensure shall cover the laws and rules which govern the practice of barbering in Florida.

(3) ~~The practical portion of the examination for restricted licensure shall test the applicant's ability to perform the barbering services authorized by a restricted license to practice barbering. The practical examination for licensure shall have a maximum time limit of 1 1/4 hours. All applicants will provide their own model for the practical exam and will be required to shampoo the model's hair and perform a taper haircut to satisfy the practical portion of the examination. The areas to be tested and the relative weights are as follows:~~

GRADING AREA	RELATIVE WEIGHT
Haircut	45%
Shampoo	5%
Safety and Sanitation	50%

~~The grade sheet for the practical examination will contain spaces for comments by the grading examiner. The areas for comment shall be drawn from the following grading criteria:~~

(a) ~~Haircut:~~

- ~~1. The top is even and without holes;~~
- ~~2. The top blends with the sides and back;~~
- ~~3. The front outline is even;~~
- ~~4. The haircut is proportional;~~
- ~~5. The sides and the back are without holes or steps;~~
- ~~6. The sides blend with the back;~~
- ~~7. The sideburns are equal in length;~~
- ~~8. The outlines are even;~~
- ~~9. The sideburns, outline, and neckline are clean shaven;~~
- ~~10. The model's skin was not cut or nicked during the haircut;~~
- ~~11. The neckline is properly tapered.~~

(b) ~~Shampoo: After the shampoo, the model's hair and scalp were clean and free of shampoo.~~

(c) ~~Safety and Sanitation:~~

- ~~1. The candidate used the proper draping for the shampoo;~~
- ~~2. The candidate used the proper protection on the shampoo bowl;~~
- ~~3. The candidate properly stored clean and dirty linen during the shampoo;~~
- ~~4. The candidate washed his or her hands before beginning work on the model;~~
- ~~5. The candidate used the proper draping for the haircut;~~
- ~~6. The candidate properly stored clean and dirty linen during the haircut;~~
- ~~7. The candidate placed tools in the sanitizer before and after each use;~~
- ~~8. The candidate used all tools in a safe manner and without any blood contact during the haircut;~~

~~(4) Failure of the examinee to complete the services required in a particular category tested in the practical examination shall result in the examinee losing the possible points assigned to that area.~~

~~(3)(5) The score necessary to achieve a passing grade on the written portion of the restricted licensure examination shall be no less than seventy-five (75) percent out of one hundred (100) percent of the total possible points on the written examination. The score necessary to achieve a passing grade on the practical portion of the restricted licensure examination shall be no less than seventy-five (75) percent (based on the average of the examiners' scores) out of one hundred (100) percent of the total possible points on the practical examination. All examiner's scores will be averaged before any percentages are rounded according to the formula stated below. In rounding percentages, any percentage which is point five (.5) or above shall be rounded up to the next whole number. Percentages less than point five (.5) shall be rounded down to the next whole number.~~

Rulemaking Specific Authority 455.217, 476.064(4), 476.134, 476.144 FS. Law Implemented 455.217, 476.134, 476.144 FS. History--New 11-12-87, Amended 3-22-92, 1-26-93, Formerly 21C-16.007, Amended 9-15-94, 12-9-98, 11-27-02, 4-26-04, 8-1-05,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Barbers' Board

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Barbers' Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 9, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 30, 2009

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Barbers' Board

RULE NO.: 61G3-16.008
RULE TITLE: Manner of Application

PURPOSE AND EFFECT: The purpose of this notice is to review for possible changes to bring the rule into compliance with the legislature requirement.

SUMMARY: The purpose of this notice is to review for possible changes to bring the rule into compliance with the legislature requirement.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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.

RULEMAKING AUTHORITY: 455.2228, 476.064(4) FS.

LAW IMPLEMENTED: 455.2228 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: Robyn Barineau, Executive Director, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G3-16.008 Manner of Application.

Every person desiring to be examined for either full or restricted licensure as a barber shall apply to the Department in writing upon forms prepared and furnished by the Department and pay an examination fee as required by Rule 61G3-20.002, F.A.C.

(1) The applicant must present with the application two (2) 2" x 2" photographs taken within the past twelve (12) months and evidence of completion of barber training as defined in Chapter 476, F.S.

~~(2) Completed applications received later than thirty (30) days prior to the next available practical exam shall automatically be scheduled for the following available practical examination. The Department shall notify the applicant fourteen (14) days prior to the practical examination if the applicant is eligible to take the practical examination. A professional testing service. Qualified outside testing vendor shall notify applicants of their eligibility for a written examination within five (5) working days after receipt of Board notification of the applicant's eligibility.~~

(3) Applicants for an unrestricted license who have completed one thousand (1,000) actual school hours or more but less than one thousand two hundred (1,200) actual school hours are required to have the school or program attended certify on that portion of the application so designated that said applicant has completed the stated number of hours, the required services as established by Rule 61G3-16.001, F.A.C., and is competent to sit for the licensure examination.

Rulemaking Specific Authority 455.2228, 476.064(4) FS. Law Implemented 455.2228 FS. History–New 11-12-87, Formerly 21C-16.008, Amended 8-11-98, 11-12-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Barbers’ Board

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Barbers’ Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 9, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 30, 2009

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Barbers’ Board

RULE NO.: 61G3-16.010
RULE TITLE: Supervised Practice Exception

PURPOSE AND EFFECT: The purpose of this notice is to review for possible changes to bring the rule into compliance with the legislature requirement.

SUMMARY: The purpose of this notice is to review for possible changes to bring the rule into compliance with the legislature requirement.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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.

RULEMAKING AUTHORITY: 455.217, 476.064(4), 476.124, 476.144(7), 475.184(2), (10) FS.

LAW IMPLEMENTED: 455.217, 476.144(7), 475.184(2), (10) 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: Robyn Barineau, Executive Director, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G3-16.010 Supervised Practice Exception.

(1) Following the completion of ~~both the written and practical portions~~ of the first licensing examination by an applicant for licensure as a barber by examination who has completed the barber training required by Chapter 476, F.S. and Rule 61G3-16.001, F.A.C, the applicant is eligible to practice as a barber and perform barbering services temporarily in a current, actively licensed barbershop under the following conditions:

(a) In the event an applicant obtains a passing scores on the examination on the first attempt of ~~both the written and practical portions of the examination~~, the applicant shall be eligible, prior to having the application acted on by the Board, to practice in a licensed barbershop, provided that the applicant post the examination ~~results for both portions of the examination~~ at the work station with a recent photograph affixed thereto.

(b) In the event that the applicant fails to obtain a passing score on ~~either or both of the written or practical portion~~ of the examination on the first attempt, the applicant shall not be eligible to practice under this rule until the applicant:

1. Applies to the Department for authorization to retake ~~the failed portion(s)~~ of the examination; and

2. Presents the holder of the license for the barbershop a copy of both the reexamination application and the examination scheduling authorization letter from the department or the qualified outside testing vendor.

3. Upon completion of these conditions, the applicant is eligible to practice in a licensed barbershop subject to the provisions of paragraph (c) referenced below, provided that the applicant posts the examination results ~~for both portions of the examination~~ at the work station with a recent photograph affixed thereto. The applicant must discontinue practicing when 180 days have passed from the date ~~the written or practical portion~~ of the first examination ~~was taken, whichever portion was taken earlier~~, if reexamination has not yet been completed. Under no circumstances shall the applicant be eligible to practice prior to having applied for reexamination and having obtained the examination scheduling authorization letter from the department or the qualified outside testing vendor.

(c) All barbering services performed by the applicant under this exception shall be performed under the supervision of a licensed barber. “Under the supervision of a licensed barber” shall mean that an individual who then holds a current, active Florida license as a barber shall be physically present at all times when the applicant is performing barbering services.

(2) In the event an applicant, who previously failed ~~either or both portions~~ of the examination on the first attempt, fails to obtain a passing score on ~~either or both portions~~ of the second licensure examination, the applicant is no longer eligible to practice as a barber under this exception and must immediately discontinue practicing barbering services until the applicant has been issued a license to practice by the Department.

Rulemaking Specific Authority 455.217, 476.064(4), 476.124, 476.144(7), 476.184(2), (10) FS. Law Implemented 455.217, 476.144(7), 476.184(2), (10) FS. History–New 12-9-98, Amended 11-12-00, 12-29-08, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Barbers’ Board

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Barbers’ Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 9, 2009
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 30, 2009

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Barbers' Board

RULE NO.: 61G3-20.002
 RULE TITLE: Application Fee for Licensure Through Examination or Endorsement and Reexamination Fees

PURPOSE AND EFFECT: The purpose of this notice is to review for possible changes to bring the rule into compliance with the legislature requirement.

SUMMARY: The purpose of this notice is to review for possible changes to bring the rule into compliance with the legislature requirement.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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.

RULEMAKING AUTHORITY: 455.213(1), 455.2171, 476.064(4), 476.192 FS.

LAW IMPLEMENTED: 455.2171, 476.192 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: Robyn Barineau, Executive Director, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G3-20.002 Application Fee for Licensure Through Examination or Endorsement and Reexamination Fees.

(1) The application fee for licensure by means of endorsement or examination and reexamination for barbers shall be as follows:

Method of Licensure:	Application Fee:
(a) Endorsement	The application fee for licensure by endorsement shall be one hundred and fifty dollars (\$150.00). All fees shall be payable to the Department.
(b) Examination and Reexamination	
1. Practical Portion	The application fee for both the examination and reexamination for the practical portion shall be seventy five dollars (\$75.00). All fees shall be

	payable to the Department.
2. Written portion	The application fee for both the examination and reexamination for the written portion shall be seventy five dollars (\$75.00). One hundred, fifty dollars and zero cents (\$150.00). Sixty one dollars and fifty cents (\$61.50) of both the examination and reexamination application fee for the written portion of the examination shall be paid to the Department and thirteen dollars and fifty cents (\$13.50) shall be paid to the professional testing service.

(2) The application fee for licensure by means of examination and reexamination for restricted barbers shall be as follows:

Method of Licensure:	Application Fee:
(a) Examination and Reexamination	
1. Practical Portion	The application fee for both the examination and reexamination for the practical portion shall be seventy five dollars (\$75.00). All fees shall be payable to the Department.
2. Written Portion	The application fee for both the examination and reexamination for the written portion shall be. One hundred, fifty dollars and zero cents (\$150.00) seventy five dollars (\$75.00). Seventy dollars and fifty cents (\$70.50) of both the examination and the reexamination application fee for the written portion of the examination shall be paid to the Department and four dollars and fifty cents (\$4.50) shall be paid to the professional testing service.

(3) Applicants for licensure as a barber or restricted barber shall pay both the original licensure fee set forth in Rule 61G3-20.014, F.A.C., and the applicable part of the examination or reexamination application fee specified in subsections (1) and (2) above.

(a) All fees payable to the Department shall be paid at the time the applicant submits his or her application for licensure by endorsement, examination or reexamination.

(b) All parts of the examination or reexamination application fee payable to a qualified outside testing vendor professional testing service shall be paid to that service upon notification that the applicant's application for licensure by examination or reexamination has been approved.

(c) In the event that a qualified outside testing vendor professional testing service is not used for examination or reexamination, all fees shall be paid to the Department.

Rulemaking Specific Authority 455.213(1), 455.2171, 476.064(4), 476.192 FS. Law Implemented 455.2171, 476.192 FS. History--New 7-16-80, Amended 6-30-83, 10-17-85, Formerly 21C-20.02, Amended 12-15-87, 5-11-88, Formerly 21C-20.002, Amended 9-21-94, 11-6-00, 2-19-04, 8-8-04, 1-1-06,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Barbers' Board
 NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Barbers' Board
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 9, 2009
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 30, 2009

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Barbers' Board

RULE NO.: 61G3-20.0075
 RULE TITLE: Examination Review Fee
 PURPOSE AND EFFECT: The purpose of this notice is to review for possible changes to bring the rule into compliance with the legislature requirement.

SUMMARY: The purpose of this notice is to review for possible changes to bring the rule into compliance with the legislature requirement.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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.

RULEMAKING AUTHORITY: 455.217(2), 455.2171 FS.

LAW IMPLEMENTED: 455.217, 455.2171 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: Robyn Barineau, Executive Director, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G3-20.0075 Examination Review Fee.

The fee for an ~~written~~ examination review shall be thirty dollars (\$30.00) payable to a qualified outside testing vendor ~~professional testing service~~ when the ~~written~~ examination is conducted by the professional testing service pursuant to Section 455.2171, F.S. ~~The fee for obtaining copies of practical grade sheets shall be ten dollars (\$10.00) payable to the Department.~~ In the event that a qualified outside testing vendor ~~professional testing service~~ is not used for examination or reexamination, all fees shall be paid to the Department.

Rulemaking Specific Authority 455.217(2), 455.2171 FS. Law Implemented 455.217, 455.2171 FS. History--New 7-4-90, Formerly 21C-20.0075, Amended 11-6-00,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Barbers' Board
 NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Barbers' Board
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 9, 2009
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 30, 2009

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Cosmetology

RULE NO.: 61G5-32.001
 RULE TITLE: Continuing Education
 PURPOSE AND EFFECT: The proposed rule amendment requires that providers include publication dates for all reference and source materials in continuing education courses.
 SUMMARY: The proposed rule amendment requires that providers include publication dates for all reference and source materials in continuing education courses, to assure that the most up to date materials are presented to students.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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.

RULEMAKING AUTHORITY: 455.2179, 455.2228, 477.016, 477.019(7) FS.

LAW IMPLEMENTED: 455.2179, 455.2228, 477.019(8) 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: Robyn Barineau, Executive Director, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G5-32.001 Continuing Education.

(1) through (6) No change.

(7)(a) through (b) No change.

(c)1. through 2. No change.

3. A course outline which includes the subjects, topics, and subtopics to be presented in the course and a narrative summary of all areas to be covered in each subject, topic and subtopic, and a list of all reference and source materials including the publication sate for each;

Rulemaking Specific Authority 455.2178, 455.2179, 455.219(3), 455.2228, 477.016, 477.019(7) FS. Law Implemented 455.2178, 455.2179, 455.219(3), 455.2228, 477.019(7) FS. History–New 3-25-99, Amended 2-28-00, 7-27-00, 7-29-01, 7-1-02, 12-6-06, 3-10-08,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Cosmetology Board
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Cosmetology Board
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 12, 2009
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 9, 2009

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Accountancy

RULE NO.: 61H1-20.001
RULE TITLE: Types of Certified Public Accountants and Firms

PURPOSE AND EFFECT: The Board proposes the rule amendment in order to define “office.”

SUMMARY: “Office” will be defined.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board determined the proposed rule will not have an impact on small business.

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.

RULEMAKING AUTHORITY: 473.304 FS.

LAW IMPLEMENTED: 455.271, 473.3101, 473.3141 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: Voloria Kelly, Division Director, Board of Accountancy, 240 N.W. 76th Dr., Suite A, Gainesville, Florida 32607

THE FULL TEXT OF THE PROPOSED RULE IS:

61H1-20.001 Types of Certified Public Accountants and Firms.

(1) through (7) No change.

(8) Except as to a certified public accountant employed by a Florida firm, “office” shall be deemed and construed to mean a place in which public accounting is conducted or any place for which the physical address is identified in advertising. As to a certified public accountant employed by a Florida firm, “office” shall mean his/her designated address of record.

Rulemaking Authority 473.304 FS. Law Implemented 455.271, 473.3101, 473.3141 FS. History–New 12-4-79, Formerly 21A-20.01, Amended 10-20-86, Formerly 21A-20.001, Amended 8-13-06, 11-03-09,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Accountancy
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Accountancy
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 15, 2009
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 6, 2009

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 HEALTH

Board of Hearing Aid Specialists

RULE NO.: 64B6-8.003
RULE TITLE: Trainee Stages, Minimum Training Requirements, and Training Programs

PURPOSE AND EFFECT: The amendments make it clear that Stage 1 needs to be completed before Stage 2 and adds responsibilities for sponsors to report at any time the program is terminated.

SUMMARY: To clarify that Stage 1 should be completed before moving to any other stages and to require training sponsors to complete a form if the program is terminated at any time.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board determined that small businesses would not be affected by this rule.

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.

RULEMAKING AUTHORITY: 484.044, 484.0445(1) FS.

LAW IMPLEMENTED: 484.0445, 484.045 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 Hearing Aid Specialists, 4052 Bald Cypress Way, Bin # C08, Tallahassee, Florida 32399-3258

THE FULL TEXT OF THE PROPOSED RULE IS:

64B6-8.003 Trainee Stages, Minimum Training Requirements, and Training Programs.

(1) A training program shall be a minimum of six months in length and shall be divided into four stages. Following the completion of Stage I, the ~~The~~ trainee shall be in a training for the dispensing of hearing aids program for a minimum of twenty (20) hours each week, and shall be under the direct supervision of the sponsor at all times when performing the functions of a hearing aid specialist. The training program shall be divided into four (4) stages:

(a) Stage I: During this Stage, the trainee shall complete the International Hearing Society Home Study Course and shall submit proof of passing the home study course final examination. If the trainee passes the home study course final examination but fails the licensure examination, he or she will not have to repeat the home study course prior to the next available licensure examination.

(b) Stage II – 1 month: During this Stage, the trainee may perform audiometric tests, and make ear mold impressions and modifications, but the sponsor or hearing aid specialist designated by the sponsor shall be physically present, in the same room at all times when the trainee is performing these functions. The trainee may not recommend the selection of a hearing aid, dispense a hearing aid, or counsel a client.

(c) Stage III – 2 months: During this Stage the trainee may perform all tasks in Stage II, recommend the selection of a hearing aid, and counsel a client, but the trainee shall be under the direct supervision of the sponsor or hearing aid specialist designated by the sponsor. The trainee may not deliver a hearing aid.

(d) Stage IV – 3 months: During this Stage the trainee may perform all the tasks in Stages II and III and deliver hearing aids, but the sponsor or hearing aid specialist designated by the sponsor shall be physically present in the same room at the time a hearing aid is delivered to the client, and the receipt required by Section 484.051, F.S., must have the signature and license number of the sponsor or hearing aid specialist designated by the sponsor.

(2) It shall be the responsibility of the sponsor to provide instruction and guidance, in order to adequately prepare trainees for practice as a hearing aid specialist. Training received by a trainee during the training program must consist of training in the following subject areas:

(a) Part II, Chapter 484, Florida Statutes, and Rule Chapter 64B6, F.A.C.

(b) Physics of Sound.

(c) Anatomy of the Outer, Middle and Inner Ear.

(d) Hearing Disorders:

1. Conductive Hearing Loss: Diseases of the Ear.

2. Sensori-Neural Hearing Loss.

3. Mixed Hearing Loss.

4. Central Deafness Hearing Loss.

5. Psychological Hearing Loss.

(e) Criteria for Medical Referral.

(f) Pure Tone Audiometry.

(g) Masking and its Application when utilized with Pure Tone Audiometry: Rationals; Methods; Techniques.

(h) Speech Audiometry.

(i) Masking and its Application when utilized with Speech Audiometry.

(j) Sound Field Testing.

(k) Audiogram Analysis and Interpretation.

(l) Proper Ear/Ears Selection; Hearing Instrument Selection: (Evaluating Fitting Criteria).

(m) Cros/Bi-Cros: Rationale and its Application.

(n) Hearing Aid Measurements.

(o) Interpretation of Hearing Instruments Specification Data.

(p) Impression Technique.

(q) Earmolds; Shell Design; and their Effect on Frequency Response.

(r) Types of Hearing Instruments; Major Components; Function.

(s) Clients Counseling and Delivery as it pertains to Hearing Aid usage and care for optimum performance.

(3) The sponsor shall file a complete Training Program Sponsor Report with the Board ~~at the end of each trainee's training program~~; this report shall be filed no later than 30 days after the ~~completion~~ termination of the program or termination of the sponsorship, whichever occurs first. The report shall set forth the number of hours of training in each subject which has been provided. The report must also set forth the educational and training objectives and hours set by the sponsor for the trainees. ~~The report shall be made on the~~ Training Program Sponsor Report Form, Form 1159 (revised 4/09), hereby adopted and incorporated by reference, ~~and~~ can be obtained from the Board of Hearing Aid Specialists' website at <http://www.doh.state.fl.us/mqa/HearingAid/>. Failure to comply with the requirements of this rule may subject the sponsor to discipline.

(4) The training program shall begin at the date of Department certification, unless the Board certifies another date.

(5) Upon completion of the training program, the trainee shall take the first available licensure examination. A trainee may continue to function as a trainee until she or he has received the results of the licensure examination, provided that failure of the sponsor to file the complete report required herein will preclude the trainee from engaging in acts which constitute hearing aid dispensing until such time as the complete report is filed. Until the complete report is filed, the trainee is not eligible to complete the first available licensure examination. Upon receipt of the examination results a trainee that passes the examination may continue in Stage IV under the

direct supervision of his or her sponsor until they have applied and received their license or up to ninety (90) days whichever comes first, pursuant to subsection 64B6-3.001(2), F.A.C. Payment of the fee and all other licensing requirements required by this rule shall be met within ninety (90) days of notification of licensure eligibility, or the eligibility certification becomes null and void and the person must reapply for licensure.

(6) A trainee who fails the licensure examination must immediately stop functioning as a trainee upon receipt of the examination results. However, a trainee may continue one time in Stage IV of the training program by submitting to the Board within 10 days of receiving the examination results a Training Program Continuation Request (Form DH-MQA 1160, Revised 10/08) and hereby adopted and incorporated by reference, and can be obtained from the Board of Hearing Aid Specialists' website at <http://www.doh.state.fl.us/mqa/HearingAid/> and taking the next available examination. A trainee who fails the licensure examination and does not submit a Training Program Continuation Request to the Board within 10 days of receiving the examination results may repeat the training program one time by meeting the criteria in Rule 64B6-8.002, F.A.C., and taking the next available examination.

(7) Failure to sit for or receive a passing score on the next scheduled licensure examination for which he or she qualifies will result in termination of trainee status and the ability to further perform services as a trainee within seven days of the ~~posting mailing~~ of the examination results, but does not preclude submitting another application for examination as provided in Rules 64B6-2.003 and 64B6-2.005, F.A.C.

Rulemaking Authority 484.044, 484.0445(1) FS. Law Implemented 484.0445, 484.045 FS. History--New 2-12-84, Formerly 21JJ-8.03, Amended 8-12-87, 10-1-90, 1-28-91, 4-23-91, 8-19-91, Amended 3-18-93, Formerly 21JJ-8.003, Amended 4-21-94, Formerly 61G9-8.003, Amended 7-11-02, 2-19-03, 8-31-06, 6-11-09, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Hearing Aid Specialists
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Hearing Aid Specialists
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 13, 2009
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 30, 2009

DEPARTMENT OF HEALTH

Board of Medicine

RULE NO.: 64B8-44.005
RULE TITLE: Citations

PURPOSE AND EFFECT: The proposed rule amendment will be to change the language so that continuing education and fines are due at the same time.

SUMMARY: The proposed rule amendment will require licensees to complete continuing education and pay fines, or face a possible citation.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: A Statement of Estimated Regulatory Cost was prepared. There are more than 3500 licensed dietitians/nutritionists and less than 200 nutrition counselors in the State of Florida that would be impacted by the rule amendment. The proposal would affect these practitioners only in requiring that continuing education and fines where applicable, will be due at the same time. No additional transactional costs will be incurred by these practitioners. The agency will not incur any additional costs.

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.

RULEMAKING AUTHORITY: 456.077, 468.507 FS.

LAW IMPLEMENTED: 456.077, 468.517, 468.518 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: Allen Hall, Executive Director, Dietetics and Nutrition Council/MQA, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B8-44.005 Citations.

(1) through (4)(e)1. No change.

2. Licensee must submit full payment of the fine and costs within three months of the date the citation was issued.

3.2. Licensee must provide proof of completion of the deficient hours within three (3) months 90 days of the date the citation was issued filed.

(f) Failure to respond timely to a continuing education audit – a fine of \$100, and licensee must provide proof of compliance with continuing education requirements within one (1) month 30 days of the date the citation was issued filed.

(g) Failure to timely pay required fees and fines – a fine of \$100.

(h) Failure to comply with advertising requirements – a fine of \$100.

(i) Failure to display signs, licenses, and permits – a fine of \$100.

~~(4)(5)~~ In addition to the penalties established in this rule, the Department may recover the costs of investigation in accordance with its rules. When the Department intends to assess the costs of investigation, the penalty specified in the citation shall be the sum of the penalty established by this rule plus the Department's cost of investigation.

(5)(6) If the subject disputes any matter contained in the citation, within thirty days after service, the Department shall follow the procedure set forth in Section 456.073, F.S. Otherwise, the citation shall become a final order of the Board.

Rulemaking Authority 456.077, 468.507 FS. Law Implemented 456.077, 468.517, 468.518 FS. History—New 1-1-92, Formerly 21M-50.005, 61F6-50.005, 59R-44.005, Amended 9-26-01, 3-25-02, 7-17-05, 4-10-06, 7-8-09, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Dietetics and Nutrition Council

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Medicine

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 18, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 9, 2009

DEPARTMENT OF HEALTH

Board of Medicine

RULE NO.: 64B8-45.001 RULE TITLE: General Requirements

PURPOSE AND EFFECT: The Board proposes the rule amendment to reconsider maximum number of home study hours.

SUMMARY: The proposed rule amendment will increase the number of hours of approved home study continuing education.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: A Statement of Estimated Regulatory Cost was prepared. The rule amendment would increase the number of hours of approved home study continuing education credit a licensee is allowed to obtain per biennial toward the renewal of licensure from fifteen to twenty. The Board determined that no licensee would be affected by the rule amendment because licensees are not required to obtain continuing education through home study. The only costs incur as a result of the rule amendment will be to the agency during rule making process.

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.

RULEMAKING AUTHORITY: 456.013(7), (8), (9), 468.507 FS.

LAW IMPLEMENTED: 456.013(7), (8), (9), 468.514, 468.515 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: Allen Hall, Executive Director, Dietetics and Nutrition Council/MQA, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B8-45.001 General Requirements.

(1) As a condition of biennial licensure renewal all licensees shall complete a minimum of thirty hours of continuing education in dietetics and nutrition practice within the twenty-four (24) month period prior to the expiration date of the license, of which no more than ten (10) hours may be in management, risk management, personal growth, and educational techniques. Up to twenty (20) ~~fifteen (15)~~ hours of credit shall be accepted per biennium for approved home study courses. Those persons certified for licensure in the second half of the biennium are exempt from the continuing education requirements for that biennium. One hour of continuing education equals a minimum of fifty minutes of instruction.

(2) through (7) No change.

Rulemaking Authority 456.013(7), (8), (9), 468.507 FS. Law Implemented 456.013(7), (8), (9), 468.514, 468.515 FS. History—New 12-5-90, Amended 1-1-92, 9-24-92, 5-6-93, Formerly 21M-51.001, Amended 9-28-93, Formerly 61F6-51.001, Amended 1-2-95, 11-12-95, Formerly 59R-45.001, Amended 9-26-01, 3-4-02, 3-24-03, 4-30-06, 7-8-09, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Dietetics and Nutrition Council

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Medicine

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 18, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 17, 2009

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE NO.: 64B16-26.203 RULE TITLE: Licensure by Examination; Application

PURPOSE AND EFFECT: The Board proposes the rule amendment in order to clarify requirements and to incorporate a form by reference.

SUMMARY: Requirements will be clarified and a form will be incorporated in the rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board determined the proposed rule will not have an impact on small business.

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.

RULEMAKING AUTHORITY: 456.033, 465.005, 465.007 FS.

LAW IMPLEMENTED: 456.013(1), 456.025(3), 456.033, 465.007, 465.022 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: Rebecca R. Poston, Executive Director, Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3254

THE FULL TEXT OF THE PROPOSED RULE IS:

64B16-26.203 Licensure by Examination; Application.

Applicants who are at least 18 years of age and a recipient of a degree from a school or college of pharmacy accredited by an accrediting agency recognized and approved by the United States Office of Education may apply to take the licensure examination.

(1) All applications for licensure by examination must be made on board approved form DOH/MQA/PH101, Pharmacist Examination Application for U.S. and Puerto Rico Graduates and Instructions, (Rev 09/09 7/08), ~~Application for Pharmacist Examination~~, which is hereby incorporated by reference, and which can be obtained from the Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3254, or (850)488-0595 to request an application or download the application form the board's website at <http://www.doh.state.fl.us/mqa/pharmacy>. The application ~~and~~ must be accompanied with a non-refundable examination fee and an initial license fee set forth in Rules 64B16-26.1001 and 64B16-26.1002, F.A.C.

(2) The applicant must submit proof of having met the following requirements:

(a) No change.

(b) Completion of a board approved course not less than 2 hours on medication errors that covers the study of root-cause analysis, error reduction and prevention, and patient safety. For those applicants who apply within one year following receipt of their pharmacy degree, completed academic course work on medication errors will be accepted by the Board as an educational course under this section, provided such course work is no less than 2 contact hours and that it covers the study of root-cause analysis, error reduction and prevention, and patient safety, as evidenced by a letter attesting to subject matter covered from the Dean of the University.

(3) through (4) No change.

Rulemaking Authority 456.033, 465.005, 465.007 FS. Law Implemented 456.013(1), (7), 456.025(3), 456.033, 465.007, 465.022 FS. History—New 10-17-79, Formerly 21S-12.04, 21S-12.004, Amended 7-31-91, 10-14-91, Formerly 21S-26.203, 61F10-26.203, Amended 7-1-97, Formerly 59X-26.203, Amended 8-17-99, 10-15-01, 1-2-02, 1-12-03, 1-11-05, 2-18-08, 5-26-09, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Pharmacy

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Pharmacy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 12, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 17, 2009

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE NO.: 64B16-26.2031
 RULE TITLE: Licensure by Examination; Foreign Pharmacy Graduates

PURPOSE AND EFFECT: The Board proposes the rule amendment in order to clarify requirements and to incorporate a form by reference.

SUMMARY: Requirements will be clarified and a form will be incorporated in the rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board determined the proposed rule will not have an impact on small business.

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.

RULEMAKING AUTHORITY: 465.005, 465.007 FS.

LAW IMPLEMENTED: 465.007 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: Rebecca R. Poston, Executive Director, Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

64B16-26.2031 Licensure by Examination; Foreign Pharmacy Graduates.

In order for a foreign pharmacy graduate to be admitted to the professional licensure examination, the applicant must be a graduate of a four year undergraduate pharmacy program at a school or college outside the United States and have completed an internship program approved by the Board.

(1) ~~All~~ Submit an applications for licensure by examination must be made on form DOH-MQA PH103, Foreign Graduate Pharmacist Examination Application For Foreign Graduates and Instructions, (Rev. 09/09), which is hereby incorporated by reference, ~~and which can be obtained from~~ Contact the Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3254, or (850)488-0595 to request an application or download the application form the board's website at http://www.doh.state.fl.us/mqa/pharmacy. The application ~~and~~ must be accompanied with a non-refundable examination fee and an initial license fee set forth in Rules 64B16-26.1001 and 64B16-26.1002, F.A.C.

(2) Be a graduate of a four year undergraduate pharmacy program at a school or college outside the United States and have completed an internship program approved by the board.

~~(a)(3)~~ For applications received at the Board of Pharmacy on or before June 30, 2009, the applicant must:

~~1.(a)~~ Successfully pass the foreign pharmacy graduate equivalency examination which is given by the Foreign Pharmacy Graduate Equivalency Commission with a minimum score of 75%.

~~2.(b)~~ Demonstrate proficiency in the use of English by passing the Test of English as a Foreign Language (TOEFL), which is administered by the Educational Testing Service, Inc., with a score of at least 500 for the pencil and paper test or 173 for the computer version and by passing the Test of Spoken English (TSE) with a score of 45 on the recalibrated TSE; or

~~3.(c)~~ Demonstrate proficiency in the use of English by passing the Test of English as a Foreign Language Internet-based test (TOEFL ibt) with scores of: Listening – 18; Reading – 21; Speaking – 26; and Writing – 24.

~~(b)(4)~~ For applications received at the Board of Pharmacy on or after July 1, 2009, the applicant must:

~~1.(a)~~ Successfully pass the foreign pharmacy graduate equivalency examination which is given by the Foreign Pharmacy Graduate Equivalency Commission with a minimum score of 75%;

~~2.(b)~~ Demonstrate proficiency in the use of English by passing the Test of English as a Foreign Language (TOEFL), which is administered by the Educational Testing Service, Inc., with a score of at least 550 for the pencil and paper test or 213 for the computer version and by passing the Test of Spoken English (TSE) with a score of 50 on the recalibrated TSE; or

~~3.(c)~~ Demonstrate proficiency in the use of English by passing the Test of English as a Foreign Language Internet-based test (TOEFL ibt) with scores of: Listening – 18; Reading – 21; Speaking – 26; and Writing – 24.

~~(2)(5)~~ Complete 2080 hours of supervised work activity, of which a minimum of 500 hours must be completed within the State of Florida. Such experience must be equivalent to that required in the internship program as set forth in Rule 64B16-26.2033, F.A.C. The work experience program including both the preceptor and the permittee must be

approved by the Board of Pharmacy. ~~The work experience shall be documented on form DOH-MQA PH1153 (Rev. 03/09), Foreign Graduate Intern Work Activity Manual, which is hereby incorporated by reference, and which can be obtained from the Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3254.~~ Further, no program of supervised work activity shall be approved for any applicant until said applicant has obtained the specified passing scores on the Foreign Pharmacy Graduate Equivalency Examination TOEFL or the TOEFL ibt.

(3) Completion of a Board approved course not less than 2 hours on medication errors that covers the study of root-cause analysis, error reduction and prevention, and patient safety. For applicants who apply within one year following receipt of their pharmacy degree, completed academic course work on medication errors will be accepted by the Board as an educational course under this section, provided such course work is no less that 2 contact hours and that it covers the study of root-cause analysis, error reduction and prevention, and patient safety as evidence by a letter attesting to subject matter covered from the Dean of the University.

Rulemaking Authority 465.005, 465.007 FS. Law Implemented 465.007 FS. History—New 1-11-05, Amended 8-8-07, 6-10-09, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Pharmacy

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Pharmacy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 12, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 17, 2009

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE NO.:
64B16-26.2032

RULE TITLE:
Pharmacy Intern Registration
Internship Requirements (U.S.
Pharmacy Students/Graduates)

PURPOSE AND EFFECT: The Board proposes the rule amendment in order to clarify requirements and to incorporate a form by reference.

SUMMARY: Requirements will be clarified and a form will be incorporated in the rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board determined the proposed rule will not have an impact on small business.

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.

RULEMAKING AUTHORITY: 465.005 FS.
 LAW IMPLEMENTED: 465.003(12), 465.007, 465.0075 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: Rebecca R. Poston, Executive Director, Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3254

THE FULL TEXT OF THE PROPOSED RULE IS:

64B16-26.2032 Pharmacy Intern Registration Licensure by Examination; Internship Requirements (U.S. Pharmacy Students/Graduates).

A U.S. pharmacy student or graduate is required to be registered with the Department of Health as an intern before being employed as an intern in a pharmacy in Florida.

(1) All applications for registration must be made on form DH-MQA 104, Pharmacy Intern Application for U.S. Pharmacy Students/Graduates and Instructions, (Rev 09/09), which is hereby incorporated by reference. Contact the Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3254, or (850)488-0595 to request an application or download the application from the board's website at <http://www.doh.state.fl.us/mqa/pharmacy>.

(2) An applicant for a pharmacy intern registration must submit proof of:

(a) Enrollment in an intern program at an accredited college or school of pharmacy; or

(b) Graduation from an accredited college or school of pharmacy.

(3) Upon the receipt of proof satisfactory to the Board that the intern applicant meets the requirement of either paragraph (2)(a) or (2)(b), unless there exists good cause for the Board's refusal to certify an applicant as set forth in Section 365.013, F.S., the Board shall certify the applicant to the Department for registration as an intern.

(4) No intern shall perform any acts relating to the filing, compounding, or dispensing of medicinal drugs unless it is done under the direct and immediate personal supervision of a person actively licensed to practice pharmacy in this state.

~~(5)(1)~~ No change.

~~(6)(2)~~ An internship program at an accredited college or school of pharmacy shall assure that community or institutional pharmacies utilized for the obtaining of internship experience meet the following minimum requirements:

(a) through (e) No change.

~~(7)(3)~~ The program shall assure that all preceptors meet the following requirements:

(a) through (e) No change.

~~(8)(4)~~ In the event a program meets all the requirements set forth in subsection (2) of this rule, except for prior approval by the Florida Board of Pharmacy, any applicant submitting it for the purpose of qualifying for licensure by examination must show in addition to successful completion of the internship:

(a) through (c) No change.

(5) through (11) renumbered (9) through (15) No change.

Rulemaking Specific Authority 465.005 FS. Law Implemented 465.003(12), 465.007, 465.0075 FS. History–New 4-1-07, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Pharmacy

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Pharmacy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 12, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 17, 2009

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE NO.: RULE TITLE:

64B16-26.300 Consultant Pharmacist Licensure

PURPOSE AND EFFECT: The Board proposes the rule amendment in order to incorporate a form by reference and make other technical changes.

SUMMARY: A form will be incorporated in the rule and technical changes to the rule text will be made.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board determined the proposed rule will not have an impact on small business.

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.

RULEMAKING AUTHORITY: 465.005, 465.0125 FS.

LAW IMPLEMENTED: 465.0125 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: Rebecca R. Poston, Executive Director, Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

64B16-26.300 Consultant Pharmacist Licensure.

(1) No change.

(2) Application for consultant pharmacist licensure shall be made on form DOH-MQA 1109, 02/09, Consultant Pharmacist Application and Information, (2/09), which is hereby incorporated by reference. Contact the Board of Pharmacy at 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3254, or (850)488-0595 to request an application or download the application from the board's website at www.doh.state.fl.us/mqa/pharmacy. The application shall be accompanied by a non-refundable applicaion fee.

(3)~~(2)~~ In order to be licensed as a consultant pharmacist, a person must meet the following requirements:

(a) through (b) No change.

(c) Successfully complete a period of assessment and evaluation under the supervision of a preceptor within one (1) year of completion of the course set forth in paragraph (b) above. This period of assessment and evaluation shall be completed over no more than three (3) consecutive months and shall include at least 40 hours of training in the following practice areas, 60% of which shall occur on-site at an institution that holds a pharmacy permit. The training shall include:

<u>Minimum Skills Required</u>	<u>Percent of Time</u>	<u>Hours</u>
Minimum of 40 Hours in Maximum of Three Months		
1. Regimen review, documentation and communication.	60%	24
a. Demonstrate ability to carry out process and understand documentation functions.		
b. Understand and perform drug regimen review. Communicate findings to appropriate individuals or groups.		
c. The <u>applicant Consultant pharmacist</u> is responsible for learning other skills needed to perform in his/her type of facility where he/she is or will be the consultant Pharmacist of Record.		
2. Facility review.	20%	8
Demonstrate areas that should be evaluated, documentation, and reporting procedures.		
3. Committee and Reports.	5%	2
Review quarterly Quality of Care Committee minutes and preparation and delivery of pharmacist quarterly report.		
4. Policy and Procedures.	5%	2
Preparation, review, updating Policy and Methods.		
5. Principles of formulary management.	5%	2
Demonstrate ability to manage formulary.		
6. Professional Relationships.	5%	2
Knowledge and interaction of facility administration and professional staff.		

(4)~~(3)~~ In order to act as a preceptor, a person shall:

(a) through (d) No change.

(5)~~(4)~~ Upon completion of the requirements set forth above, the applicant's preceptor shall confirm that the applicant's assessment and evaluation have met the

requirements and that the applicant has successfully completed all required assignments under the preceptor's guidance and supervision.

(6)~~(5)~~ After licensure a consultant pharmacist's license shall be renewed biennially upon payment of the fee set forth in Rule 64B16-26.1003, F.A.C., and upon completing twenty-four (24) hours of board approved continuing education based upon the provisions of Rule 64B16-26.302, F.A.C.

(7)~~(6)~~ The number of hours earned in recertification programs by a consultant pharmacist, if applied to the twenty-four (24) hours required for consultant pharmacist license renewal, may not be used toward the thirty (30) hours of continued professional pharmaceutical education credits as set forth in Rule 64B16-26.103, F.A.C.

(8)~~(7)~~ An applicant who applies for a consultant pharmacist license after the effective date of this rule shall be required to complete the assessment and evaluation required in paragraph (3)~~(2)~~(c) prior to being licensed as a consultant pharmacist.

Rulemaking Specific Authority 465.005, 465.0125 FS. Law Implemented 465.0125 FS. History--New 5-19-72, Revised 4-19-74, Repromulgated 12-18-74, Amended 10-17-79, 4-8-80, 7-29-81, 7-1-83, 4-10-84, 4-30-85, Formerly 21S-1.26, 21S-1.026, Amended 7-31-91, 10-14-91, Formerly 21S-26.300, 61F10-26.300, Amended 9-19-94, 3-28-95, 3-10-96, Formerly 59X-26.300, Amended 5-22-01, 5-5-05, 11-29-06,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Pharmacy

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Pharmacy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 10, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 16, 2009

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE NO.: 64B16-29.002 RULE TITLE: General Requirements

PURPOSE AND EFFECT: The Board proposes the rule amendment in order to reference an application.

SUMMARY: An updated application will be referenced in the rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board determined the proposed rule will not have an impact on small business.

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.

RULEMAKING AUTHORITY: 465.005, 828.055 FS.

LAW IMPLEMENTED: 828.055 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: Rebecca R. Poston, Executive Director, Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

64B16-29.002 General Requirements.

(1) Application for an Animal Control Shelter Pharmacy permit shall be made on Board of Pharmacy approved form DOH-MQA/PH/107 "Animal Control Pharmacy Permit Application and Information," effective October 2009, which is incorporated by reference. To obtain an application, contact the Board of Pharmacy at 4052 Bald Cypress Way, Bin #C04, Tallahassee, FL 32399-3254, or (850)488-0595, or download the application from the board's website at http://www.doh.state.fl.us/mqa/pharmacy. The applicant shall apply to the Department of Health for Modified Class II Institutional Pharmacy Permit.

- (a) through (b) No change.
(2) through (6) No change.

Rulemaking Specific Authority 465.005, 828.055 FS. Law Implemented 828.055 FS. History--New 10-17-79, Formerly 21S-14.02, Amended 4-24-88, Formerly 21S-14.002, Amended 10-1-92, Formerly 21S-29.002, Amended 7-18-94, Formerly 61F10-29.002, 59X-29.002, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Pharmacy

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Pharmacy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 16, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 13, 2009

DEPARTMENT OF HEALTH

School Psychology

RULE NO.: 64B21-500.002
RULE TITLE: Application Form Required for Licensure

PURPOSE AND EFFECT: To update, reorganize, and add questions to the licensure application in accordance with legislation passed during the 2009 Session.

SUMMARY: This rule incorporates the revised application form including questions required by Section 456.0635(2), Florida Statutes.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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.

RULEMAKING AUTHORITY: 490.015 FS.

LAW IMPLEMENTED: 490.005(2), 490.006 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: Allen Hall, Executive Director, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3250

THE FULL TEXT OF THE PROPOSED RULE IS:

64B21-500.002 Application Form Required for Licensure.

Any person desiring a license to practice school psychology either through endorsement or by examination shall apply to the Department of Health. The application shall be made on incorporated by reference form DH-MQA 1067, (11/09) (2/09) Application for School Psychology Licensure, which can be obtained from the Department of Health, 4052 Bald Cypress Way, Bin C05, Tallahassee, Florida 32399-3255 or at http://www.doh.state.fl.us/mqa/schoolpsych.

Rulemaking Authority 490.015 FS. Law Implemented 490.005(2), 490.006 FS. History--New 4-13-82, Amended 2-11-85, Formerly 21U-500.02, Amended 6-21-92, Formerly 21U-500.002, 61E9-500.002, Amended 11-13-02, 5-13-09, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Allen Hall

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Ana M. Viamonte Ros, M.D. M.P.H.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 30, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 18, 2009

DEPARTMENT OF HEALTH

Optical Establishments

RULE NO.: 64B29-1.001
RULE TITLE: Optical Establishment Registration

PURPOSE AND EFFECT: To update, reorganize, and add questions to the permit application in accordance with legislation passed during the 2009 Session.

SUMMARY: This rule incorporates the revised application form including questions required by Section 456.0635(2), Florida Statutes.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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.

RULEMAKING AUTHORITY: 456.004, 456.037, 456.072, 484.007(3), 484.013(4), 484.014(4) FS.

LAW IMPLEMENTED: 456.004(1), (5), 456.025(7), 456.072, 484.007(3), 484.013(4), 484.014(4) 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, 4052 Bald Cypress Way, Bin #C08, Tallahassee, Florida 32399-3258

THE FULL TEXT OF THE PROPOSED RULE IS:

64B29-1.001 Optical Establishment Registration.

(1) Except as provided in Section 484.018, F.S., every person desiring to operate an optical establishment in this state must submit a completed MQA Form # OE-001, Application for Optical Establishment Permit, effective November 2009, ~~October 1, 1996~~ incorporated herein by reference, which can be obtained from the Board of Opticianry, 4052 Bald Cypress Way, Bin #C08, Tallahassee, Florida 32399-3258, or at www.doh.state.fl.us/mqa/optionary to the Department of Health along with a non-refundable application fee of \$100.00.

(2) through (5) No change.

Rulemaking Specific Authority 456.004, 456.037, 456.072, 484.007(3), 484.013(4), 484.014(4) FS. Law Implemented 456.004(1), (5), 456.025(7), 456.072, 484.007(3), 484.013(4), 484.014(4) FS. History—New 11-25-96, Formerly 59EE-1.001, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Sue Foster

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Ana M. Viamonte Ros, M.D. M.P.H.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 30, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 11, 2009

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Economic Self-Sufficiency Program

RULE NO.: 65A-2.032
 RULE TITLE: Optional State Supplementation Eligibility Criteria

PURPOSE AND EFFECT: The proposed rule amends language regarding the referral of residents who receive Optional State Supplementation.

SUMMARY: The language in the proposed rule refers residents who receive Optional State Supplementation to adult family care homes and provides the resident with an adult family care home referral notice.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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.

RULEMAKING AUTHORITY: 409.212(7) FS.

LAW IMPLEMENTED: 409.212, 429.67(8) 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: January 5, 2010, 2:30 p.m.

PLACE: 1317 Winewood Boulevard, Building 3, Room 455, Tallahassee, FL 32399

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Pat Whitford, Economic Self-Sufficiency Services, Telephone (850)410-3479

THE FULL TEXT OF THE PROPOSED RULE IS:

65A-2.032 Optional State Supplementation Eligibility Criteria.

(1) An eligible individual must be age 65 or older, or age 18 or older and blind or disabled as defined by Title XVI of the Social Security Act. Federal disability criteria are found at 20 C.F.R. § 416.20 CFR 416.

(2) No change.

(3) An eligible individual must be a United States citizen or a qualified non-citizen as defined in 8 U.S.C. § 1641(b) & USC s. 1641(b).

(4) An eligible individual must have income within standards established by the Department department in subsection 65A-2.036(3), F.A.C.

(5) No change.

(6) An individual must apply for and seek a determination of eligibility for all other monetary benefits for which they may be entitled or otherwise potentially eligible as required by federal regulation 20 C.F.R. § 416.210 20 CFR s. 416.210 for the SSI program and by federal regulation 42 C.F.R. § 435.608 42 CFR s. 435.608 for the Medicaid program.

(7) An eligible individual must be living in a licensed Assisted Living Facility (as defined in Section 429.02(5) 400.402, F.S.); a licensed Adult Family Care Home (as defined in Section 429.65(2) 400.618, F.S.); or, a licensed Mental Health Residential Treatment Facility (as defined in Section 394.67(22) 394.875, F.S.). Additionally, the facility must meet

the individual’s needs based on objective medical and social evaluations and care plans, in accordance with Chapter 58A-5, 58A-14 or 65E-4, F.A.C., respectively.

(8) Pursuant to Section 429.67(8), F.S., the Department of Children and Families will refer residents who receive Optional State Supplementation to adult family care homes by providing the resident with the CF-ES 2202, PDF 08/2009, Adult Family Care Home Referral Notice (incorporated by reference).

~~(9)(8)~~ When appropriated Optional State Supplementation funding is insufficient to meet fiscal demands, a proportional reduction will be applied to Optional State Supplementation payments, but shall not affect maintenance of effort required per ~~s. 1618~~ of the Social Security Act § 1618.

(10) Copies of the form incorporated by reference in this rule are available from the ACCESS Florida Headquarters Office at 1317 Winewood Boulevard, Tallahassee, Florida 32399-0700 or on the Department’s web site at <http://www.dcf.state.fl.us/DCFForms/Search/DCFFormSearch.aspx>.

Rulemaking Specific Authority 409.212(7) FS. Law Implemented 409.212, 429.67(8) FS. History–New 1-1-77, Amended 9-29-81, 10-31-83, Formerly 10C-2.32, Amended 9-30-86, Formerly 10C-2.032, Amended 12-16-01, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Nathan Lewis
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: George H. Sheldon
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 19, 2009
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 2, 2009

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Agency for Persons with Disabilities

RULE NOS.:	RULE TITLES:
65G-4.0021	Tier Waivers
65G-4.0022	Tier One Waiver
65G-4.0023	Tier Two Waiver
65G-4.0024	Tier Three Waiver
65G-4.0025	Tier Four Waiver

PURPOSE AND EFFECT: To comply with Section 393.0661(3), F.S., requiring the Agency to implement a four-tiered waiver system to serve clients with developmental disabilities.

SUMMARY: Section 393.0661(3), F.S. requires that the agency shall assign all clients receiving waiver services through a developmental disabilities waiver to a tier based on a

valid assessment instrument, client characteristics, and other appropriate assessment methods. These rules will implement that requirement.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: There are approximately 50,000 individuals who may be affected by this new rule. This number includes individuals who (1) have qualified for services under the Developmental Disabilities Waiver System and are on the Waitlist and (2) those who are receiving services under the Waiver.

The Agency for Persons with Disabilities will incur an estimated cost of \$2,823,731.00 to implement this rule. These costs will cover Contracted Professional Services, Other Personal Services, and Expense. The implementation of this rule will not impose a cost on another state agency or local government entity and will not affect state or local revenues.

No Transactional costs have been identified.

The Agency determined the proposed rule will not have an impact on small business or any small county.

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.

RULEMAKING AUTHORITY: 393.0661(3) FS.

LAW IMPLEMENTED: 393.0661(3) FS.

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

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 7 days before the workshop/meeting by contacting: Celeste Sanders, Agency for Persons with Disabilities, 4030 Esplanade Way, Suite 380, Tallahassee, Florida 32399, (850)922-0371. 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: Celeste Sanders, Agency for Persons with Disabilities, 4030 Esplanade Way, Suite 380, Tallahassee, Florida 32399, (850)922-0371

THE FULL TEXT OF THE PROPOSED RULES IS:

65G-4.0021 Tier Waivers.

(1) The Agency for Persons with Disabilities will assign clients of home and community-based waiver services for persons with developmental disabilities to one of the four Tier Waivers created by Section 393.0661, F.S. The Agency will determine the Tier Waiver for which each client is eligible and assign the client to that waiver based on the developmental disabilities waiver criteria and limitations contained in the

following provisions: Sections 409.906(13) and 393.0661, F.S.; and Rules 59G-13.080 and 59G-13.083, F.A.C. These criteria include:

(a) The client's needs in functional, medical, and behavioral areas, as reflected in the client's approved cost plan.

(b) The client's cost plan as developed through Agency evaluation of client characteristics, the Agency approved assessment process, support planning information, and the Agency's prior service authorization process.

(c) The services listed below in paragraph (5), when authorized in an approved cost plan, shall be key indicators of a tier assignment because they directly reflect the level of medical, adaptive or behavioral needs of a client.

(d) The client needs considered in tier assignments are only those services approved through the prior service authorization process to be medically necessary:

(e) The client's current living setting; and

(f) The availability of supports and services from other sources, including Medicaid state plan and other federal, state and local programs as well as natural and community supports.

(2) As part of the assessment process, the Individual Cost Guidelines (ICG) and the Questionnaire for Situational Information 4.0 (QSI) are hereby adopted by the Agency as valid and reliable assessment instruments. The ICG and the QSI are available at: <http://apd.myflorida.com/waiver/psi-version-4.pdf>, or <http://apd.myflorida.com/waiver/>. The ICG is only valid for tier assignments through December 31, 2009. The QSI is valid in all other instances.

(3) The services described by the Developmental Disabilities Waiver Services Coverage and Limitations Handbook, July 2007 (available at: [http://portal.flmmis.com/FLPublic/Portals/0/StaticContent/Public/HANDBOOKS/CL_08_070701_Waiver_DevSev_ver1%203%20\(2\).pdf](http://portal.flmmis.com/FLPublic/Portals/0/StaticContent/Public/HANDBOOKS/CL_08_070701_Waiver_DevSev_ver1%203%20(2).pdf) or <http://apd.myflorida.com/waiver/> (hereinafter referred to as the "DD Handbook"), adopted by Rule 59G-13.083, F.A.C. and incorporated herein by reference, are available to clients of the Developmental Disabilities Waiver (hereinafter called "the Tier One Waiver"), the Developmental Disabilities Tier Two Waiver (hereinafter called "the Tier Two Waiver"), and Developmental Disabilities Tier Three Waiver (hereinafter called "the Tier Three Waiver"). The following services described in the DD Handbook are available to clients assigned to the Tier Four Waiver (presently known as The Family and Supported Living Waiver):

(a) Adult Day Training;

(b) Behavior Analysis;

(c) Behavior Assistance;

(d) Consumable Medical Supplies;

(e) Durable Medical Equipment;

(f) Environmental Accessibility Adaptations;

(g) In-Home Support Service;

(h) Personal Emergency Response System;

(i) Respite Care;

(j) Support Coordination;

(k) Supported Employment;

(l) Supported Living Coaching; and

(m) Transportation.

(4) For all Tiers the client must utilize all available State Plan Medicaid services including, but not limited to, personal care assistance, therapies, medical services, and nursing services, that duplicate the waiver services proposed for the client; the client must also utilize all services available through other state and federal programs and any private benefits available to the client. A client shall not be provided waiver services that duplicate available State Plan Medicaid Services including, but not limited to, personal care assistance, therapies, medical services, and nursing services.

(5) The Agency will review a client's tier eligibility when a client has a significant change in circumstance or condition that impacts on the client's health, safety, or welfare or when a change in the client's plan of care is required to avoid institutionalization. The information identifying and documenting a significant change in circumstance or condition that necessitates additional or different services must be submitted by the client's Waiver Support Coordinator to the appropriate Agency Area office for determination.

(6) The following services, if approved through the Agency's prior authorization process, will be used as the basis for making a tier assignment or determining whether a tier change is required:

(a) Personal Care Assistance;

(b) Behavior Analysis;

(c) Behavior Assistance;

(d) Supported Living Coaching;

(e) In-home Supports;

(f) Skilled, Residential or Private Duty Nursing Services;

(g) Intensive Behavioral Residential Habilitation Services;

(h) Behavior Focus Residential Habilitation Services at the moderate or above level of support;

(i) Behavior Focus Residential Habilitation Services at the minimal level of support;

(j) Standard Residential Habilitation at the extensive 1, or higher, level of support;

(k) Standard Residential Habilitation at the moderate level of support;

(l) Live-in Residential Habilitation;

(m) Special Medical Home Care;

(n) Occupational Therapy;

(o) Physical Therapy;

(p) Speech Therapy;

(q) Respiratory Therapy;

(r) Specialized Mental Health Services; or

(s) ADT at the 1:1 ratio.

(7) In determining tier level assignment for clients with behavioral needs, the Agency may consider less costly services not listed in paragraph (5) for those clients who choose less costly services to address a documented behavioral need.

Rulemaking Authority 393.0661(3) FS. Law Implemented 393.0661(3) FS. History–New _____.

65G-4.0022 Tier One Waiver.

(1) The Tier One Waiver is limited to clients that the Agency has determined meet at least one of the following criteria:

(a) The client’s needs for medical or adaptive services are intense and cannot be met in Tiers Two, Three, and Four and are essential for avoiding institutionalization, or

(b) The client possesses behavioral problems that are exceptional in intensity, duration, or frequency with resulting service needs that cannot be met in Tiers Two, Three, and Four, and the client presents a substantial risk of harm to themselves or others.

(2) Tier One shall include, but is not limited to clients who are authorized by the Agency to receive the following services which are defined in the DD Handbook:

(a) 180 hours or more of intensive Personal Care Assistance;

(b) Supported Living Coaching and In-home Supports, in combination with any of the following additional services: Physical Therapy, Occupational Therapy, Respiratory Therapy or Behavior Analysis;

(c) Behavior analysis and Behavior Assistance services of sixty or more hours per month, if living in the family home; or

(d) Four or more hours of continuous Nursing Services.

(3) Clients living in a licensed residential facility receiving any of the following services, defined in Rule 59G-13.084, F.A.C., shall be assigned to the Tier One Waiver:

(a) Intensive Behavioral Residential Habilitation services;

(b) Behavior Focus Residential Habilitation services at the moderate or above level of support; or

(c) Standard Residential Habilitation at the extensive 1, or higher, level of support; or

(d) Special Medical Home Care, as defined in the DD Handbook.

(4) Needs for services described in subsections (2) and (3) that can be met through the Tier Two, Tier Three, or Tier Four Waivers are not “services” or “service needs” that support assignment to the Tier One Waiver.

Rulemaking Authority 393.0661(3) FS. Law Implemented 393.0661(3) FS. History–New _____.

65G-4.0023 Tier Two Waiver.

The total budget in a cost plan year for each Tier Two Waiver client shall not exceed \$55,000. The Tier Two Waiver is limited to clients who meet the following criteria:

(1) The client’s service needs include placement in a licensed residential facility and authorization for a moderate level of support for standard residential habilitation services or a minimal level of support for behavior focus residential habilitation services as defined in the DD Handbook; or

(2) The client is in supported living and is authorized to receive more than six hours a day of in-home support services. Supported living and in-home support services are defined in the DD Handbook.

Rulemaking Authority 393.0661(3) FS. Law Implemented 393.0661(3) FS. History–New _____.

65G-4.0024 Tier Three Waiver.

The total budget in a cost plan year for each Tier Three Waiver client shall not exceed \$35,000. A client must meet at least one of the following criteria for assignment to the Tier Three Waiver:

(1) The client resides in a licensed residential facility and is not eligible for the Tier One Waiver or the Tier Two Waiver; or

(2) The client resides in their own home, is authorized by the Agency to receive in-home support services and is not eligible for the Tier One Waiver or the Tier Two Waiver and the need for these services cannot be met in Tier Four; or

(3) The client is authorized by the Agency to receive personal care assistance services at the standard or moderate level of support as defined in the DD Handbook.

(4) The client is authorized by the Agency to receive Skilled or Private Duty Nursing Services and is not eligible for the Tier One Waiver or the Tier Two Waiver; or

(5) The client is authorized by the Agency to receive services of a behavior analyst and/or a behavior assistant and the need for these services cannot be met in Tier Four.

(6) The client is authorized by the agency to receive the combined services of a behavior analyst and/or a behavior assistant for more than 60 hours per month and is not eligible for the Tier One Waiver or the Tier Two Waiver.

(7) The client is authorized by the agency to receive at least one of the following services:

(a) Occupational Therapy;

(b) Physical Therapy;

(c) Speech Therapy; or

(d) Respiratory Therapy.

(8) All services described in this rule are defined in the DD Handbook.

Rulemaking Authority 393.0661(3) FS. Law Implemented 393.0661(3) FS. History–New _____.

65G-4.0025 Tier Four Waiver.

(1) The total budget in a cost plan year for each Tier Four Waiver client shall not exceed \$14,792 per year.

(2) Clients who are not eligible for assignment to the Tier One Waiver, the Tier Two Waiver, or the Tier Three Waiver shall be assigned to the Tier Four Waiver:

Rulemaking Authority 393.0661(3) FS. Law Implemented 393.0661(3) FS. History—New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Celeste Sanders, Agency for Persons with Disabilities, 4030 Esplanade Way, Suite 380, Tallahassee, Florida 32399, (850)922-0371

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Jim DeBeaugrine, Director, Agency for Persons with Disabilities, 4030 Esplanade Way, Tallahassee, Florida 32399

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 2, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 25, 2009

Section III Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF TRANSPORTATION

RULE NOS.:	RULE TITLES:
14-26.0041	Definitions and Terms
14-26.00411	Procedure for Issuance of Permits
14-26.0042	Exemption from Permit Requirements
14-26.00425	Criteria for Issuance of Permits
14-26.0043	Multi-State Travel
14-26.0044	Interstate Movements
14-26.0051	Criteria for Issuance of Permits (Transferred to 14-26.00425)
14-26.006	Procedure for Issuance of Road Use Permits (Transferred to 14-26.00411)
14-26.007	Liability of Permittee
14-26.008	Schedule of Fees
14-26.009	Exemptions from Fee Requirement
14-26.0091	Tire Requirements
14-26.010	Weight Limitations
14-26.011	Waiver of Axle Limitations
14-26.012	Movement Conditions and Restrictions
14-26.013	Permits to Move Buildings
14-26.01311	Permits to Move Sealed Containerized Loads
14-26.014	Non-Compliance
14-26.015	Penalties

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 35, No. 34, August 28, 2009 issue of the Florida Administrative Weekly.

The Proposed Rules for Rule Chapter 14-26, F.A.C., did not contain some of the language to be stricken from the rules language. The published rule did, however, contain all new proposed language. The complete rule language, including language to be stricken is published below.

14-26.0041 Definitions and Terms.

All terms in this rule chapter shall have the same meaning as defined in Section 316.003, F.S., except that “Department” shall refer to the Department of Transportation. Additionally, the following terms are defined: As used in this Rule Chapter, the following terms shall have the following meanings:

(1) “Applicant” means a person or entity requesting a permit. “Agricultural” means pertaining to, or dealing with husbandry, agriculture, or farm, including horticulture, floriculture, dairying, poultry, livestock, and other commodities with a situs of production upon the farm.

(2) “Axle Spacing Measurements” means the measurement between the centers of the axles as measured from center-to-center of wheel hubs.

(3) “Escort” means a person authorized in the manner prescribed in subsection 14-26.012(3), F.A.C., to perform accompanying duties for overweight or overdimensional vehicles. “Blanket Permit” means the same as “Multi Trip Permit.”

~~(4) “Daytime Hours” is as defined by Section 316.003(7), F.S. Movement is prohibited at any time when visibility is impaired due to smoke, fog, rain, or visibility is less than 1,000 feet.~~

~~(5) “Department’s Permit Office” means the Permit Section State Maintenance Office, Florida Department of Transportation, with offices located in Tallahassee, Florida. Mailing address is:~~

~~Florida Department of Transportation
Permit Section
605 Suwannee Street, M.S. 62
Tallahassee, Florida 32399 0450.~~

~~(6) “Emergency Move” means movement is necessary anytime life or property is in danger, requiring immediate response.~~

~~(4)(7) “Escort Vehicles” means a separate vehicle independent of the permitted vehicle, equipped with a working, amber warning light device located on top of the escort vehicle, and operated by a qualified escort, law enforcement escort, or any combination shown in Rule 14-26.012, F.A.C.~~

~~(5)(8) “Excluding Weekends and Holidays” means movement on Saturday and Sunday is limited to the period of time beginning one-half hour before sunrise and ending at~~