

SUBJECT AREA TO BE ADDRESSED: Safety requirements for industrial radiography.

SPECIFIC AUTHORITY: 404.051, 404.061, 404.071, 404.081, 404.0141 FS.

LAW IMPLEMENTED: 404.022, 404.031, 404.051(1),(4),(6), (9),(10),(11), 404.061(2), 404.071, 404.081(1), 404.141, 404.20, 404.30 FS.

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

TIME AND DATE: 9:00 a.m., April 24, 2001

PLACE: 4042 Bald Cypress Way, Room 210J, Tallahassee, FL 32311

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: William A. Passetti, Chief, Bureau of Radiation Control, (850)245-4266

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

**DEPARTMENT OF CHILDREN AND FAMILY SERVICES**

**Family Safety and Preservation**

RULE TITLE: Healthy Families Florida

RULE NO.: 65C-23.002

PURPOSE AND EFFECT: This rule establishes requirements that Health Families Florida provide services designed to prevent or reduce out-of-wedlock births and to encourage the formation and maintenance of two parent families.

SUBJECT AREA TO BE ADDRESSED: Child Abuse Prevention.

SPECIFIC AUTHORITY: 414.158 FS.

LAW IMPLEMENTED: 414.158 FS.

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

TIME AND DATE: 9:00 a.m., April 20, 2001

PLACE: 1317 Winewood Blvd., Building 8, Room 232, Tallahassee, FL 32399

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Rae Hendlin, 1317 Winewood Blvd., Building 8, Tallahassee, FL 32399 or (850)921-1883

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

**WAGES HARDSHIP EXEMPTION AND PREVENTION SERVICES**

65C-23.002 Healthy Families Florida.

Health Families Florida will provide services designed to prevent or reduce out-of-wedlock births and to encourage the formation and maintenance of two parent families.

Specific Authority 414.158 FS. Law Implemented 414.158 FS. History—New

**Section II  
Proposed Rules**

**DEPARTMENT OF TRANSPORTATION**

RULE CHAPTER TITLE: Regulation of Overhanging Encroachments

RULE CHAPTER NO.: 14-43

RULE TITLE: Regulation of Overhanging Encroachments

RULE NO.: 14-43.001

PURPOSE AND EFFECT: The title is changed to “Regulation of Overhanging Encroachments” for Rule Chapter 14-43 and for Rule 14-43.001. The rule is reworded and restructured significantly from the August 3, 1999, amendment.

SUMMARY: Rule 14-43.001 is amended and the title of the rule is revised. This amendment also includes changes resulting from the rule development workshop, which was conducted on February 22, 2001.

SPECIFIC AUTHORITY: 334.044(2), 337.407 FS.

LAW IMPLEMENTED: 316.006, 316.0745, 316.077, 316.0775, 334.044, 335.02, 335.14, 337.29, 337.407, 338.237, 479.01, 479.107, 768.28 FS.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 2:00 p.m., May 3, 2001

PLACE: Fourth Floor Conference Room (Room 479), Near Right of Way, Haydon Burns Building, 605 Suwannee Street, Tallahassee, Florida

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

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

REGULATION OF OVERHANGING ENCROACHMENTS OVER STATE RIGHTS OF WAY

14-43.001 Regulation of Overhanging Encroachments Over State Rights of Way.

(1) Definitions.

(a) "Banner" means ~~a temporary encroachment in the form of~~ a length or sheet of cloth, fabric, plastic, or other flexible material bearing a message which may be either of the following:

1. "Pole Banner" means a banner which is located adjacent to the travel lanes of the roadway and is attached to an existing permanent support.

2. "Street Banner" means a banner which extends over the travel lanes of the roadway and is attached to one or more existing permanent supports.

(b) "Canopy" means a permanent or semi-permanent, on-premise roof-like encroachment or projection partially extending over the right of way.

(c) "Department" means the State of Florida Department of Transportation.

(d) "Governmental Entity" has the same meaning as provided in Section 11.45(1)(c), Florida Statutes.

(e) "Local Governmental Entity" has the same meaning as provided in Section 11.45(1)(d), Florida Statutes.

~~(f)(e) "Overhanging Encroachment Sign" for purposes of this rule means a sign, canopy, or banner, as these terms are herein defined, permanent encroachment in the nature of an on-premise advertising display pursuant to Section 479.16, Florida Statutes, which are placed along and extends over the state rights of way which are within municipalities, or which are of curb-and-gutter construction outside municipalities.~~

(g) "Sign" has the same meaning as provided in Section 479.01(14), Florida Statutes.

(2) Overhanging encroachments are prohibited on the Interstate Highway System. Overhanging encroachments shall be authorized, pursuant to Section 337.407, Florida Statutes, to be placed along and over state roads under the following conditions:

(a) No new supports may be located within state right of way.

(b) Any overhanging encroachment must be allowed by the affected local governmental entity.

(c) Any overhanging encroachment which interferes with Department construction must be adjusted or removed at the owner's expense.

(d) Overhanging encroachments may not obstruct the view of any traffic signal, traffic device, or official sign, nor in any way interfere with motorists' ability to safely operate their vehicles.

(e) Overhanging encroachments must comply with the setback or clearance requirements set forth in (3) and (4) below. The Department will notify the owner if the overhanging encroachment must be adjusted to meet setback or clearance requirements, and, upon failure of the owner to make such adjustment, it shall be removed by the Department. If the overhanging encroachment presents a safety hazard, the Department shall remove it and notify the owner of the removal.

(f) No overhanging encroachment may be erected or maintained which would interfere with the Department's maintenance, operation, or other use of a transportation facility.

(g) When an overhanging encroachment must be removed by the Department, the owner may reclaim it within 30 calendar days from the date of removal, upon payment of any costs incurred by the Department in removing the encroachment.

~~(3)(2) Overhanging Signs and Canopies. Overhanging Signs and canopies are prohibited along and over on limited access roadways rights of way. Signs and canopies Conditions under which overhanging signs or canopies may only be placed along adjacent to and over any other roads state rights of way within corporate limits of a municipality, or outside municipalities or where curb and gutter construction exists outside municipalities as authorized under Section 337.407, Florida Statutes, are in compliance with the following conditions:~~

(a) Where curb and gutter construction exists, ~~provided~~ the entire structure, including attachments and supports, ~~must~~ clears the sidewalk vertically by at least nine feet, ~~(2.7 meters)~~ and the outside edge of the structure ~~must be canopy or sign is~~ at least two feet ~~(0.6 meters)~~ behind a the vertical line extending upward from ~~through~~ the face of the curb, and the entire structure ~~must comply~~ with the Department's clear zone requirements set forth in Table 2.11.9 ~~2-12-1~~ Clear Zone Widths and Table 2.11.10 ~~2-12-2~~ Clear Zone Widths for Curved Alignments on Highways With Flush Shoulders (January 2000 ~~1998~~), incorporated herein by reference. Copies of these tables are available from the Maintenance Office of Right of Way, 605 Suwannee Street, MS 52 ~~22~~, Tallahassee, Florida 32399-0450.

(b) Within municipalities where there is no curb and gutter construction, ~~the entire structure provided the sign or canopy,~~ including attachments and supports, ~~may does~~ not extend more than six feet ~~(1.8 meters)~~ over the right of way; ~~may does~~ not

extend closer than 12 feet (3.7 meters) from the edge of the driving lane; ~~must have~~ has a vertical clearance of at least 10 feet (3 meters); and the entire structure must comply with the Department's clear zone requirements as set forth in Table 2.11.9 Clear Zone Widths and Table 2.11.10 Clear Zone Widths for Curved Alignments referenced in the tables identified and incorporated by reference in 14-43.001(2)(a) above.

~~(e) Where canopies or overhanging signs interfere with construction, they shall be adjusted or temporarily removed at the owner's expense.~~

~~(c)(d)~~ The design of said canopies or signs, or canopies as to bracing and attachments to buildings, shall be approved for safety features by the appropriate official of the governmental agency affected.

~~(d)(e)~~ No canopy or overhanging sign shall be erected away from the site of the business which it promotes advertises.

~~(f) No canopy or sign may be erected or maintained which would interfere with the Department's maintenance, operations, or other use of a transportation facility.~~

~~(e)(g)~~ Lighting of Overhanging signs and canopies shall conform to the requirements of ~~may be lighted, provided, however, the lighting is in compliance with~~ Ssection 479.11(5), Florida Statutes.

~~(h) If the Department determines that a canopy or overhanging sign is not erected safely or is not in compliance with the setback or clearance requirements, upon prior written notice by the Department, it must be adjusted by the owner to meet such requirements or it shall be removed by the Department. If the canopy or overhanging sign is removed, the Department shall deliver written notice to the owner. The notice shall advise the owner of the canopy or overhanging sign of his or her right to request an administrative proceeding pursuant to Chapter 120, Florida Statutes. If the canopy or overhanging sign presents a safety hazard, the Department shall remove it and provide written notice of such removal to the permittee.~~

~~(i) When a canopy or overhanging sign must be removed by the Department, the owner may reclaim the canopy or sign within 30 calendar days from the date of removal upon payment of any costs incurred by the Department in removing the canopy or sign.~~

~~(j) No new supports may be placed within state rights of way for purposes of supporting a canopy or overhanging sign.~~

~~(k) This rule shall not authorize the erection of any canopy or sign which is prohibited by the municipality, county, local zoning authority, or agency affected.~~

~~(4)(3)~~ Banners. Banners may only be placed along and over any state roads which are within municipalities, or which are of curb and gutter construction outside municipalities erected pursuant to a permit issued by the Department subject to a local government entity under the following conditions:

(a) The banner(s) must promote a public event which is sponsored by a local governmental entity. Written authorization for the placement of banners from the local governmental entity shall constitute sponsorship.

1. For purposes of this rule, "public event" means an event which is open to all members of the public. Fund-raising drives by non-profit organizations are considered public events.

2. For purposes of this rule, "sponsored" means written concurrence from the local governmental entity that the local governmental entity supports, endorses, and approves the event as having benefit to the general public.

~~(a) All banners for which permits are issued shall be erected in accordance with the Manual on Uniform Traffic Control Devices, which is incorporated by reference under Rule 14-15.010, F.A.C.~~

~~(b) Except as provided in 1. and 2. below, b~~Banners will be permitted for a period not to exceed 30 consecutive calendar days, ~~on dates set forth in the application. The display period shall not extend more than two days beyond the date of the event being promoted.~~ Banner permits ~~for the same event~~ shall not be renewed within 180 days.

~~1.(e)~~ Banner pPermits ~~for banners~~ may be issued for routinely recurring events, e.g., events occurring monthly or quarterly, unless otherwise provided in this rule, provided the banner is displayed for no more than three consecutive days per month. The permit duration shall be no more than 12 months.

2. Within the corporate limits of a municipality, banners promoting or identifying a specific area, location, or designation within the municipality may be displayed. In these instances, the local governmental entity must be the banner applicant, and no additional messages or advertisements may be displayed on the banners.

(c) Pole banners must be placed a minimum of 1,000 feet apart on the same side of the travel lane on all limited access facilities, and on non limited access facilities outside the corporate limits of a municipality.

1. The lowest point of the banner must be at least 14 1/2 feet above the pavement elevation;

2. The pole banner must be attached to a light standard or other such device which is permanently located in the right of way. Banners may not be attached to any utility pole.

~~(d) No banner may be erected or maintained which would interfere with the Department's maintenance, operation, or other use of a transportation facility.~~

~~(e) Any banner that interferes with construction shall be adjusted or removed at the owner's expense.~~

~~(f) No new supports may be placed within state rights of way for purposes of supporting a banner.~~

~~(g) The banner must advertise a public event which is sponsored or supported by a governmental entity.~~

(h) Banners may not obstruct the view of any traffic signal, traffic device, or official sign, nor in any way interfere with motorists' ability to safely operate their vehicles.

~~(d)(4)~~ Placement of banners on frangible light standards or other frangible devices will require a load rating analysis, signed and sealed by a registered professional engineer, certifying that the specific light standards or devices used to support the banners will handle the additional loadings placed on the structures by the banner and attachments, and will not to exceed the wind loading design requirements of the structure. Copies of load rating analyses previously submitted are acceptable for subsequent applications when all specifications are the same.

~~(e)~~ Banners may not be placed within 500 feet of a limited access interchange.

~~(f)~~ Street banners may only be placed on the right of way of non limited access roadways and must vertically clear the pavement by at least 18 feet. Street banners must be a minimum of 1,000 feet apart.

~~(j)~~ The following additional conditions apply to banners adjacent to or across non limited access roadways:

1. Pole banners must vertically clear any curb by at least nine feet (2.7 meters) and horizontally clear the curb face by at least two feet (0.6 meters). For non limited access roads where there is no curb and gutter, the banners and support structures must vertically clear the pavement by at least 10 feet (3 meters) and horizontally clear the pavement by at least 12 feet (3.7 meters):

2. Street banners must vertically clear the pavement by at least 17 feet (5.2 meters), and may not obstruct or obscure the view of any traffic signal, traffic device, or official sign.

~~(k)~~ In addition to the conditions identified in subsections (3)(a) through (i) above, the following conditions apply to the Interstate Highway System, Florida's Turnpike, and limited access roadways:

1. Pole banners will only be permitted for display for a duration not to exceed 60 consecutive days and only for events of national or international significance, provided the municipality has not hosted the event within the preceding 12 months. The following are examples of events for which pole banners may be permitted on the Interstate Highway System, Florida's Turnpike, and limited access roadways:

- a. The World Cup
- b. The Super Bowl
- e. The Stanley Cup
- d. The World Series
- e. Summit of the Americas
- f. The Olympic Games

2. The lowest point of the pole banner must be at least 10 feet (3 meters) above the pavement elevation;

3. The outside edge of the pole banner may be no closer than 12 feet (3.7 meters) from the edge of the driving lane; and

4. The pole banner must be attached to a light standard or other such device, which is permanently located in the right of way. No new support structures for pole banners may be placed in the right of way.

~~(5)(4)~~ Permit Issuance. Applications for an overhanging encroachment sign, canopy, or banners must be made in writing to the appropriate District Maintenance Office.

(a) Applications for permits for overhanging signs and canopies shall include:

1. The name and address of the applicant.
2. A sketch of the sign or canopy, drawn to scale, which includes the message, letterings, logos, or emblems.
3. A sketch of the specific location of the sign or canopy, including height, location of supports, proximity to utility poles, and the identification of the state highway where the sign or canopy will be located.

4. Sketches or specific descriptions of the method to be used to affix the sign or canopy to the support structure(s).

5. Proof of compliance with any applicable local governmental regulations.

~~(b)~~ Applications for permits for banners shall be made no later than 30 days and no earlier than 365 days prior to the requested installation date. The application Banner Permit Issuance. Applications for banners shall be on Application for Banner Permit, DOT Form 850-040-75, Rev. 01/01., incorporated herein by reference. Copies of Form 850-040-75 are available from the State Maintenance Engineer or any District Maintenance Engineer. The application shall include:

1. The name ~~and~~ address, and telephone number of the applicant. If the applicant is a business or governmental entity, the name of the contact person must be supplied that is sponsoring or supporting the event. For purposes of this rule, submission of an application for a permit for banners constitutes sponsorship or support for the event.

2. Identification of the event being promoted advertised and a description of the event.

3. A sketch or drawing of the banner(s), drawn to scale, which includes the entire message that will appear on the banner(s).

4. A sketch of the specific location of the banner(s), including height, location of supports, proximity to utility poles, and the identification of the state highway where the banner(s) will be located.

5. Sketches, photographs, or specific descriptions of the method to be used to affix the banner(s) to the support structure(s).

6. The beginning and ending dates of the event being promoted.

~~7.6.~~ The beginning and ending dates of the display period(s) requested.

~~8.7.~~ Proof of compliance with the requirements of subsection (4)(c) (3) and any local governmental regulations.

9. Written authorization from the local governmental entity granting permission to the applicant for the installation of the banners. No permit for the placement of banners shall be issued when the local governmental entity has an ordinance prohibiting their installation.

10. When the roadway requested for banner installation is under the ownership of an Expressway Authority, written authorization from the affected Expressway Authority granting permission to the applicant for the installation of the banners must be provided.

~~11.8. A~~ road rating analysis by a registered professional engineer, if required by subsection (3)(i). See (4)(d), above.

(c) Permits for banners will not be approved where a Department construction project is planned or ongoing during the requested display period.

~~(d)(e)~~ The Permittee shall agree as follows:

1. ~~To the extent provided by law, the Permittee shall indemnify, defend, and hold harmless the Department and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Permittee, its agents, or employees arising from activities associated with under this permit, except that neither the Permittee, its agents, or its employees will be liable under this provision for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Department or any of its officers, agents, or employees arising from activities under this permit.~~

2. ~~When the Department receives a notice of claim for damages that may have been caused by the Permittee in the performance of activities that arise under this permit, the Department will immediately forward the claim to the Permittee. The Permittee and the Department will evaluate the claim and report their findings to each other within 14 working days and will jointly discuss options in defending the claim. After reviewing the claim, the Department will determine whether to require the participation of the Permittee in the defense of the claim or to require that the Permittee defend the Department in such claim as described in this section. The Department's failure to promptly notify the Permittee of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by the Permittee. The Permittee shall bear all expenses of the Department in defense of the claim. The Department and the Permittee will each pay its own expenses for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all expenses at trial.~~

~~(e)(d)~~ If the application is denied, the Department shall provide a Notice of Administrative Hearing Rights to advise the applicant in writing of the denial and advise the applicant of his or her right to request an administrative proceeding pursuant to Chapter 120, Florida Statutes.

(6) Failure to comply with the provisions of this rule shall result in the issuance of a Notice of Intent to Revoke the permit, which shall include a Notice of Administrative Hearing Rights.

(7) Provision of any notice, denial, revocation, or Notice of Administrative Hearing Rights by the Department under this rule shall not constitute or create entitlement to an administrative hearing where such right does not otherwise exist.

Specific Authority 334.044(2), 337.407 FS. Law Implemented 316.006, 316.0745, 316.077, 316.0775, 334.044, 335.02, 335.14, 337.29, 337.407, 338.237, 479.01, 479.107, 768.28 FS. History—Amended 3-21-64, 5-9-70, 7-9-75, Formerly 14-43.01, Amended 8-3-99, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Kenneth Towcimak, Director, Office of Right of Way  
NAME OF SUPERVISOR OR PERSON WHO APPROVED  
THE PROPOSED RULE: Thomas F. Barry, Jr., P.E.,  
Secretary  
DATE PROPOSED RULE APPROVED BY AGENCY  
HEAD: March 20, 2001  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT  
PUBLISHED IN FAW: January 19, 2001

**PUBLIC SERVICE COMMISSION**

DOCKET NO. 001521-EU

RULE TITLE: Adequacy of Resources  
RULE NO.: 25-6.035

PURPOSE AND EFFECT: To clarify that the rule is intended to maintain equitable sharing of energy reserves rather than to set a prudent level of reserves for long-term planning or reliability purposes. References to Southeastern Reliability Council (SERC) standards are updated to Florida Reliability Coordinating Council (FRCC) standards.

SUMMARY: The amendment states that the purpose of the rule is to maintain equitable sharing of energy reserves, not to set a prudent level of reserves for long range planning or reliability purposes. The phrase "most severe single contingency" is amended to read "most severe single generating unit contingency". References to Southeastern Reliability Council (SERC) are updated to Florida Reliability Coordinating Council (FRCC). The phrase "utility's maximum demand" and word "demand" are replaced by "control area's peak hour net energy for load" and "peak hour net energy for load", respectively. The time in which operating reserves are required to be fully available is changed from "ten" to "fifteen" minutes.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement was prepared.

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

SPECIFIC AUTHORITY: 366.05(1) FS.  
 LAW IMPLEMENTED: 366.03, 366.04(2)(c),(5), 366.055 FS.  
 WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF RECORDS AND REPORTING, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.  
 IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:  
 TIME AND DATE: 9:30 a.m., April 20, 2001  
 PLACE: Room 152, Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida  
 THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Director of Appeals, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850)413-6245

THE FULL TEXT OF THE PROPOSED RULE IS:

25-6.035 Adequacy of Resources.

(1) Each electric utility shall maintain sufficient generating capacity, supplemented by regularly available generating and non-generating resources, in order to meet all reasonable demands for service and provide a reasonable reserve for emergencies. Each electric utility shall also coordinate the sharing of energy reserves with other electric utilities in Peninsular Florida. To achieve an equitable sharing of energy reserves, Peninsular Florida utilities shall be required to maintain, at a minimum, a 15% planned reserve margin. The planned and operating reserve margin standards established herein are intended to maintain an equitable sharing of energy reserves, not to set a prudent level of reserves for long-term planning or reliability purposes. The planned reserve margin for each utility shall be calculated as follows:

$$RM = [(C - L)/L]*100 \text{ where;}$$

"RM" – Is defined as the utility's percent planned reserve margin;

"C" – Is defined as the aggregate sum of the rated dependable peak-hour capabilities of the resources that are expected to be available at the time of the utility's annual peak; and

"L" – Is defined as the expected firm peak load of the system for which reserves are required.

The following shall be utilized as the operating reserve standard for Peninsular Florida's utilities: operating reserves shall be maintained by the combined Peninsular Florida system at a value equal to or greater than the loss of generation that would result from the most severe single generating unit contingency. The operating reserves shall be allocated among the utilities in proportion to each control area's peak hour net energy for load ~~utility's maximum demand~~ for the preceding year, and the summer gross ~~Florida Southeastern Electric~~

Reliability Coordinating Council (~~FRCC SERC~~) capability of its largest unit or ownership share of a joint unit, whichever is greater. Fifty percent shall be allocated on the basis of peak hour net energy for load demand and fifty percent on the basis of the summer gross ~~FRCC SERC~~ capability of the largest unit. Operating reserves shall be fully available within ~~fifteen ten~~ minutes. At least 25% of the operating reserves shall be in the form of spinning reserves which are automatically responsive to a frequency deviation from normal.

(2) through (5) No change.

Specific Authority 366.05(1) FS. Law Implemented 366.03, 366.04(2)(c),(5), 366.055 FS. History--New 7-29-69, Formerly 25-6.35, Amended 9-5-96,

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Tom Ballinger

NAME OF SUPERVISOR OR PERSONS WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission  
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 13, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Vol. 26, No. 45, November 9, 2000

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of Records and Reporting, (850)413-6770, at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at 1(800)955-8771 (TDD).

**WATER MANAGEMENT DISTRICTS**

**South Florida Water Management District**

RULE TITLES:	RULE NOS.:
Publications Incorporated by Reference	40E-2.091
Conditions for Issuance of Permits	40E-2.301
Limiting Conditions	40E-2.381

PURPOSE AND EFFECT: The purpose and effect of the rule development is to establish criteria for conditions of permit issuance consistent with Rule 40E-8, F.A.C., regarding minimum flows and levels. The purpose is also to update citations to and modify the "Basis of Review for Water Use Permit Applications within the South Florida Water Management District – October 1997" to incorporate changes consistent with Rule 40E-8, F.A.C.

SUMMARY: Citations to the "Basis of Review for Water Use Permit Applications within the South Florida Water Management District – October 1997" are updated to reflect

the current revision date of the Basis of Review. The Basis is also changed to incorporate the definitions set forth in Chapter 40E-8, F.A.C. Evaluations for MFL water bodies subject to a recovery strategy are set forth, describing the criteria for permit renewals, and new or modified permits – direct and indirect withdrawals consistent with Chapter 40E-8, F.A.C. Evaluations for MFL water bodies subject to a prevention strategy are set forth, describing the criteria for permit renewals and new or modified permits consistent with Chapter 40E-8, F.A.C.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS:** Consumptive use permittees (including those owned or operated by local governments) in the Lower East Coast planning area, including the Lake Okeechobee Service area, and the Lower West Coast planning area, will be required to comply with rule criteria for permit renewals, new permits and permit modifications for allocations either directly or indirectly from MFL water bodies, depending upon the applicable recovery or prevention strategy for the subject MFL water body. Cost estimates for implementation of recovery and prevention strategies are laid out in the Lower East Coast Regional Water Supply Plan (May 2000) for the Everglades, Biscayne Aquifer, and Lake Okeechobee, and Caloosahatchee River and in the Lower West Coast Regional Water Supply Plan (April 2000) for the Caloosahatchee River and Lower West Coast Aquifer system. In general, the water management districts are primarily responsible for implementing "water resource development" as defined in Section 373.019(19), and consumptive users are primarily responsible for implementing "water supply development" options as defined in Section 373.019(21). Cost estimates for alternative sources identified in the regional water supply plans can be found in the description of "Water Supply Development Options". See pages 241-268 of the Lower East Coast Regional Supply Plan (May 2000) and pages 49-100 in the Lower West Coast Regional Water Supply Plan (April 2000). Cost estimates for implementation of "water resource development" projects are set forth in the Lower East Coast Regional Water Supply pages 272-328, and in the Lower West Coast Regional Water Supply Plan pages 105 to 140. In general, the MFL rules are designed to implement the "assurances" to existing water users approved by the Governing Board in the applicable regional water supply plans. The estimated Costs to the SFWMD for implementation of the MFL rules through regulatory programs are set forth in the chapters on "Recommendations" in the applicable regional water supply plan.

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

**SPECIFIC AUTHORITY:** 373.044, 373.113, 373.171 FS.

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

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

**TIME AND DATE:** 8:30 a.m., May 10, 2001

**PLACE:** South Florida Water Management District, B-1 Auditorium, 3301 Gun Club Road, West Palm Beach, FL 33406

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS:** For technical issues contact Scott Burns (internet: sburns@sfwmd.gov), or Cecile Ross (internet: cross@sfwmd.gov), telephone number 1(800)432-2045. For procedural issues contact: Julie Jennison (internet: jjenniso@sfwmd.gov), 1(800)432-2045, Ext. 6294 or (561)682-6294, South Florida Water Management District, Post Office Box 24680, West Palm Beach, FL 33416-4680.

Although Governing Board meetings, hearings and workshops are normally recorded, affected persons are advised that it may be necessary for them to ensure that a verbatim record of the proceeding is made, including testimony and evidence upon which any appeal is to be based.

Persons with disabilities or handicaps who need assistance may contact Tony Burns, District Clerk, (561)682-6206, at least two business days in advance to make appropriate arrangements.

**THE FULL TEXT OF THE PROPOSED RULES IS:**

40E-2.091 Publications Incorporated by Reference.

(1) The "Basis of Review for Water Use Permit Applications within the South Florida Water Management District – \_\_\_\_\_ ~~October 1997~~," is hereby published by reference and incorporated into this chapter.

(2) No change.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.042, 373.0421, 373.219, 373.223, 373.224, 373.229, 373.232, 373.233, 373.236, 373.239 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, \_\_\_\_\_.

40E-2.301 Conditions for Issuance of Permits.

(1) In order to obtain a permit, permit renewal, or permit modification under this chapter, an applicant must give reasonable assurances that the proposed water use at the time the permit application is deemed complete:

- (a) Will not cause significant saline water intrusion;
- (b) Will not adversely impact offsite land uses;
- (c) Will not cause adverse environmental impacts;
- (d) Will not cause pollution of the water resources;

(e) Is otherwise a reasonable-beneficial use as defined in subsection 373.019(4), Florida Statutes, with consideration given to the factors set forth in Rule 62-40.422, F.A.C. 17-40.401(2);

(f) Will not interfere with presently existing legal uses;

(g) Is in accordance with the Water Resource Implementation Rule State Water Policy on water transport pursuant to Rule ~~62-40.410, F.A.C.; 17-40.402;~~

(h) Makes use of a reclaimed water source unless the applicant, in any geographic location, demonstrates that its use is either not economically, environmentally or technically feasible; or in areas not designated as Critical Water Supply Problem Areas pursuant to Chapter 40E-23, F.A.C., the applicant demonstrates reclaimed water is not readily available;

(i) Meets the established minimum flows and levels and implementation provisions in Chapter 373, this Chapter and Chapter 40E-8; and

~~(j) Is~~ consistent with Sections 373.016, 373.036, Florida Statutes, and otherwise is consistent with the public interest as prescribed by Chapter 373 and this Chapter.

(2) In order to satisfy the conditions for permit issuance in subsection (1), the permit applicant must provide reasonable assurances that the criteria in the "Basis of Review for Water Use Permit Applications within the South Florida Water Management District – \_\_\_\_\_ ~~October 1997~~", incorporated by reference in Rule 40E-2.091(1), are met.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.023, ~~373.042, 373.0421, 373.185, 373.219, 373.223, 373.226, 373.236~~ FS. History—New 9-3-81, Formerly 16K-2.035(2), Amended 2-24-85, 1-4-93, 4-20-94, 7-11-96, 4-9-97, 12-10-97, \_\_\_\_\_.

40E-2.381 Limiting Conditions.

The Board shall impose on any permit granted under this part such reasonable standard and special permit conditions as are necessary to assure that the permitted use or withdrawal will be consistent with the overall objectives of the District, will not be harmful to the water resources of the District, is reasonable-beneficial, will not interfere with any presently existing legal uses, and is consistent with the public interest. Standard permit conditions in Section 5.1 of the “Basis of Review for Water Use Permit Applications within the South Florida Water Management District – \_\_\_\_\_ ~~October 1997~~, incorporated by reference in Rule 40E-2.091(1) shall be set forth in the permit. Special permit conditions, including those specified in Section 5.2 of the “Basis of Review for Water Use Permit Applications within the South Florida Water Management District – \_\_\_\_\_ ~~October 1997~~, shall be set forth in the permit.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented ~~373.042, 373.0421, 373.219~~(1) FS. History—New 9-3-81, Amended 2-24-85, 4-20-94, 7-11-96, 4-9-97, 12-10-97, \_\_\_\_\_.

(The following represents proposed changes to the document entitled “Basis of Review for Water Use Permit Applications within the South Florida Water Management District – October 1997” incorporated by reference in Rule 40E-2.091, F.A.C.)

The following changes are made to Chapter 1.0

1.8 Definitions

“Allocation Coefficient:” through “Xeriscape” No change.

The definitions set forth in Chapter 40E-8, FAC. shall be incorporated into the Basis of Review.

The following changes are made to Chapter 3.0:

Sections 3.0 through 3.8 No change.

3.9 Minimum Flows and Levels

Applications for consumptive use permits for water uses that directly or indirectly withdraw water from MFL water bodies must meet the criteria in this section, in addition to all other conditions for permit issuance in Chapters 40E-2 or 40E-20, as applicable. Applications that meet the criteria contained in this section are considered to comply with Rule 40E-2.301(1)(i), F.A.C. Consumptive use permit applications shall be reviewed based on the recovery or prevention strategy approved at the time of permit application review.

3.9.1 Evaluations for MFL Water Bodies Subject to a Recovery Strategy

Evaluations for direct or indirect withdrawals from MFL water bodies that are subject to a recovery strategy:

(1) Permit Renewals: A request for renewal of an existing permitted allocation, which directly or indirectly withdraws water from a MFL water body, shall meet the requirements of this section if:

(a) The impact of the withdrawal of water will be corrected through implementation of a recovery strategy; and

(b) The level of impacts from the allocation approved in the expiring permit are no greater under the requested renewal. If the level of certainty under the expiring permit is changed to a 1 in 10 year level of certainty by rule (e.g. a golf course irrigation level of certainty changed from a 1 in 5 to a 1 in 10 year level of drought) the levels of impact from the withdrawal of water under the expiring permit shall be normalized to a 1 in 10 drought level of certainty in order to evaluate the impact of the withdrawal of water.

(2) New or Modified Permits – Direct Withdrawals. A request for a new or increased permit allocation which directly withdraws water from a MFL water body, shall meet the requirements of this section, if:

(a) Sufficient additional water has been made available for the new or increased portion of the requested allocation via the certification of a component(s) of the recovery strategy, as certified by the District, as referenced in Rule 40E-8.421(1)(e), F.A.C. Water made available from a certified phase of a recovery strategy for new or increased uses will be allocated based on the criteria in the Basis of Review and Chapter 40E-2;  
or

(b) The request incorporates a District approved alternative measure or source that prevents additional impacts to the MFL water body from the new or increased portion of the requested allocation. An example of an acceptable



alternative measure is an aquifer storage and recovery system, which stores excess water during the wet season in order to minimize new or increased withdrawals during the dry season. The permit conditions shall require the District approved alternative measure or source to be operating or otherwise available concurrently with the new or increased use.

(3) New or Modified Permits – Indirect Withdrawals. A request for a new or increased permit allocation which indirectly withdraws water from a MFL water body, shall meet the requirements of this section, if the new or increased use is consistent with the recovery strategy as delineated in the applicable regional water supply plan.

3.9.2. Evaluations for MFL Water Bodies Subject to a Prevention Strategy

Evaluations for direct or indirect withdrawals from MFL water bodies that are subject to a prevention strategy:

(1) Permit Renewals – A request for renewal of an existing permitted allocation that directly or indirectly withdraws water from a MFL water body shall meet the requirements of this section if the level of impacts from the allocation approved in the expiring permit are no greater under the requested renewal. If the level of certainty under the expiring permit is changed to a 1 in 10 year level of certainty by rule (e.g. a golf course irrigation level of certainty changed from a 1 in 5 to a 1 in 10 year level of drought) the levels of impact from the withdrawal of water under the expiring permit shall be normalized to a 1 in 10 drought level of certainty in order to evaluate the impact of the withdrawal of water.

(2) New or Modified Permits – A request for a new or increased permit allocation that directly or indirectly withdraws water from a MFL water body, shall meet the requirements of this section if the request is consistent with the prevention strategy(ies) as delineated in the applicable regional water supply plan.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Wm. Scott Burns, Director, Water Use Regulation Department  
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Governing Board of the South Florida Water Management District  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 15, 2001  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 28, 2000, October 20, 2000, November 27, 2000, February 2, 2001 and February 16, 2001

**WATER MANAGEMENT DISTRICTS**

**South Florida Water Management District**

<b>RULE TITLES:</b>	<b>RULE NOS.:</b>
Purpose and General Provisions	40E-8.011
Definitions	40E-8.021
Minimum Flows and Levels: Surface Waters	40E-8.221
Minimum Levels: Aquifers	40E-8.231

Minimum Flows and Levels: Surface Waters	40E-8.321
Minimum Levels: Aquifers	40E-8.331
Prevention and Recovery Strategies	40E-8.421
Consumptive Use Permits	40E-8.431
Water Shortage	40E-8.441

**PURPOSE AND EFFECT:** The purpose and effect of the rule development is to establish minimum flows and levels by January, 2001 for Lake Okeechobee, the Everglades (which includes the freshwater regions of Everglades National Park, Water Conservation Areas, and the Holeyland and Rotenberger Wildlife Management Areas), the Biscayne Aquifer in Southeastern Florida, the Lower West Coast Aquifers, and the Caloosahatchee River, in accordance with Chapter 373, Florida Statutes.

**SUMMARY:** The proposed rule established Minimum Flows and Levels (“MFLs”) for the Everglades, the Caloosahatchee River, Lake Okeechobee, the Biscayne Aquifer and the Lower West Coast Aquifers to correct or prevent significant harm to the water resources and ecology of an area. The MFLs are established using best available information (peer reviewed) and will be reviewed no less than every 5 years. Review of the Caloosahatchee MFL will occur within a year of rule adoption, and the MFL modified as necessary. Resource protections standards in Chapter 373, F.S. are defined. The proposed rule distinguished between an MFL exceedance (falling below the MFL) and an MFL violation (falling below the MFL in excess of the allowable frequency). Recovery and prevention strategies for the subject areas are outlined. Consumptive use permitting and water shortage criteria are outlined. The Governing Board retains the ability to balance water supply, flood protection, natural resource protection and water quality protection goals in implementing the MFLs. The MFLs will become effective immediately upon adoption of the proposed rules. Implementation of recovery and prevention strategies will be phased in, as required by the regional water supply plan. In MFL Recovery Areas (the Everglades and the Caloosahatchee River) existing water use permits will not be revoked or modified by the District prior to expiration based on their impact on an MFL water body, unless an approved alternative source is concurrently provided to offset any reduction.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS:** Consumptive use permittees (including those owned or operated by local governments) in the Lower East Coast planning area, including the Lake Okeechobee Service area, and the Lower West Coast planning area, will be required to comply with rule criteria for permit renewals, new permits and permit modifications for allocations either directly or indirectly from MFL water bodies, depending upon the applicable recovery or prevention strategy for the subject MFL water body. Cost estimates for implementation of recovery and prevention strategies are laid out in the Lower East Coast Regional Water Supply Plan (May 2000) for the Everglades, Biscayne Aquifer, and Lake Okeechobee, and

Caloosahatchee River and in the Lower West Coast Regional Water Supply Plan (April 2000) for the Caloosahatchee River and Lower West Coast Aquifer system. In general, the water management districts are primarily responsible for implementing "water resource development" as defined in Section 373.019(19), and consumptive users are primarily responsible for implementing "water supply development" options as defined in Section 373.019(21). Cost estimates for alternative sources identified in the regional water supply plans can be found in the description of "Water Supply Development Options". See pages 241-268 of the Lower East Coast Regional Supply Plan (May 2000) and pages 49-100 in the Lower West Coast Regional Water Supply Plan (April 2000). Cost estimates for implementation of "water resource development" projects are set forth in the Lower East Coast Regional Water Supply pages 272-328, and in the Lower West Coast Regional Water Supply Plan pages 105 to 140. In general, the MFL rules are designed to implement the "assurances" to existing water users approved by the Governing Board in the applicable regional water supply plans. The estimated Costs to the SFWMD for implementation of the MFL rules through regulatory programs are set forth in the chapters on "Recommendations" in the applicable regional water supply plan.

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

SPECIFIC AUTHORITY: 373.042, 373.044, 373.113, 373.171 FS.

LAW IMPLEMENTED: 373.042, 373.0421 FS.

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

TIME AND DATE: 8:30 a.m., May 10, 2001

PLACE: South Florida Water Management District, B-1 Auditorium, 3301 Gun Club Road, West Palm Beach, FL 33406

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: For technical issues contact Scott Burns (internet: sburns@sfwmd.gov), or Cecile Ross (internet: cross@sfwmd.gov), telephone number 1(800)432-2045. For procedural issues contact: Julie Jennison (internet: jjenniso@sfwmd.gov), 1(800)432-2045, Ext. 6294 or (561)682-6294, South Florida Water Management District, Post Office Box 24680, West Palm Beach, FL 33416-4680

Although Governing Board meetings, hearings and workshops are normally recorded, affected persons are advised that it may be necessary for them to ensure that a verbatim record of the proceeding is made, including testimony and evidence upon which any appeal is to be based.

Persons with disabilities or handicaps who need assistance may contact Tony Burns, District Clerk, (561)682-6206, at least two business days in advance to make appropriate arrangements.

THE FULL TEXT OF THE PROPOSED RULES IS:

PART I: GENERAL

40E-8.011 Purpose and General Provisions.

(1) The purpose of this Chapter is:

(a) To establish minimum flows for specific surface watercourses and minimum water levels for specific surface waters and specific aquifers within the South Florida Water Management District, pursuant to Section 373.042, F.S.; and:

(b) To establish the rule framework for implementation of recovery and prevention strategies, developed pursuant to Section 373.0421, F.S.

(2) Minimum flows are established to identify where further withdrawals would cause significant harm to the water resources, or to the ecology of the area. Minimum levels are established to identify where further withdrawals would cause significant harm to the water resources of the area. Specific minimum flows and levels (MFLs) are established in this rule for specified priority water bodies that have been designated pursuant to Section 373.042(2), F.S.

(3) The MFL's established herein are based on existing best available information, and will be periodically reviewed, at least every five years, based on new information and changing water resource conditions. Revisions to established MFLs will be peer reviewed as required by Section 373.042, F.S., prior to rule adoption. The minimum flow criteria for the Caloosahatchee River in Rule 40E-8.221(2), F.A.C., shall be reviewed within one year of the effective date of this rule (month, year) and amended, as necessary, based on best available information.

(4) The recovery and prevention strategies set forth in Rule 40E-8.421, F.A.C., the consumptive use permitting procedures described in Rules 40E-2.301(1)(i), 40E-8.431, F.A.C. and Section 3.9 of the "Basis of Review for Water Use Permit Applications within the South Florida Water Management District – \_\_\_\_\_," and the water shortage plan implementation provisions specified in Rules 40E-8.441, 40E-21.531, and 40E-21.541, and Part III of Chapter 40E-22, F.A.C., (month, year) are inseparable components of the minimum flows and levels established in Rules 40E-8.321 and 40E-8.331, F.A.C. (month, year). If the rules cited above, as they pertain to a specified MFL water body, are found to be invalid, in whole or in part, such specified minimum flow(s) or level(s) in Rule 40E-8.321 or 40E-8.331, F.A.C., (including Lake Okeechobee, Everglades, Biscayne Aquifer, Lower West Coast Aquifers, Caloosahatchee River) (month, year) shall not be adopted, or if already in effect, shall not continue to be applied, until the District amends the subject rules, as

necessary to address the reason for invalidity consistent with the requirements of Section 373.0421, F.S. This section shall be triggered after a rule is found to be invalid pursuant to a final order issued under Section 120.56, F.S., and after appellate review remedies have been exhausted.

Specific Authority 373.044, 373.0831, 373.113, 373.119, 373.129, 373.136, 373.171 FS. Law Implemented 373.016, 373.036, 373.0361, 373.042, 373.0421, 373.175, 373.216, 373.219, 373.223, 373.246 FS. History—New

#### 40E-8.021 Definitions.

The terms set forth herein shall have the meanings ascribed to them, unless the context clearly indicates otherwise, and such meanings shall apply throughout the rules contained in this Chapter. The terms defined in Rule 40E-8.021, F.A.C. shall apply throughout the District's consumptive use permit rules. In the event of a conflict or difference between the definitions contained in Rule 40E-8.021, F.A.C. and the definitions set forth in other District rules, the definitions in this Rule 40E-8.021, F.A.C., shall control for purposes of this chapter.

(1) Biscayne Aquifer – means the highly permeable surficial strata (hydraulic conductivities generally greater than 500 ft/day) that occur within Monroe, Miami-Dade (excluding those portions of coastal Monroe and Miami-Dade counties that discharge groundwater into Florida and Biscayne Bays), eastern Broward, and portions of eastern Palm Beach counties.

(2) Caloosahatchee River – means the surface waters that flow through the S-79 structure, combined with tributary contributions below S-79 that collectively flow southwest to San Carlos Bay.

(3) C&SF Project – means the project for Central and Southern Florida authorized under the heading “CENTRAL AND SOUTHERN FLORIDA” in section 203 of the Flood Control Act of 1948 (62 Stat. 1176).

(4) CERP – means the Comprehensive Everglades Restoration Plan contained in the “Final Integrated Feasibility Report and Programmatic Environmental Impact Statement”, dated April 1, 1999, as modified by the Water Resources Development Act of 2000.

(5) Direct Withdrawal means:

(a) A ground water withdrawal that causes a water table drawdown greater than 0.1 feet, as determined using a model accepted by the District, at any location beneath the MFL surface water body or aquifer, up through a 1 in 10 year drought; or

(b) A surface water withdrawal from facilities physically located within the boundaries of a MFL surface water body.

(6) Everglades – means the lands and waters included within Water Conservation Areas, the Holeyland/Rotenberger wildlife management areas, and the freshwater portions of the Everglades National Park.

(7) Harm – means the temporary loss of water resource functions, as defined for consumptive use permitting in Chapter 40E-2, F.A.C., that results from a change in surface or ground water hydrology and takes a period of one to two years of average rainfall conditions to recover.

(8) Indirect Withdrawal – means the withdrawal of water from a water source for a consumptive use that receives surface water or ground water from a MFL water body or is tributary to a MFL water body.

(9) Lake Okeechobee – means the lands and waters contained within the perimeter of the Hoover Dike.

(10) LEC Plan – means the Lower East Coast Regional Water Supply Plan – May 2000, including all three volumes.

(11) Lower West Coast Aquifers – means the lower Tamiami aquifer, sandstone aquifer and the mid-Hawthorn aquifer that occur within Charlotte, Hendry, Glades, Lee and Collier counties.

(12) LWC Plan – means the Lower West Coast Regional Water Supply Plan – April 2000, including all three volumes.

(13) Minimum Flow – means a flow established by the District pursuant to Sections 373.042 and 373.0421, F.S., for a given water body and set forth in Parts II and III of this chapter, at which further withdrawals would be significantly harmful to the water resources or ecology of the area.

(14) Minimum Flow and Level Exceedance – means to fall below a minimum flow or level, which is established in Parts II and III of this chapter, for a duration greater than specified for the MFL water body.

(15) Minimum Flow and Level Violation – means to fall below a minimum flow or minimum level, which is established in Parts II and III of this chapter, for a duration and frequency greater than specified for the MFL water body. Unless otherwise specified herein, in determining the frequency with which water flows and levels fall below an established MFL for purposes of determining a MFL violation, a "year" means 365 days from the last day of the previous MFL exceedance.

(16) Minimum Level – means the level of groundwater in an aquifer or the level of surface water established by the District pursuant to Sections 373.042 and 373.0421, F.S., in Parts II and III of this chapter, at which further withdrawals would be significantly harmful to the water resources of the area.

(17) MFL Water Body – means any surface water, watercourse, or aquifer for which an MFL is established in Part II or III of this chapter.

(18) Operations – means activities taken by the District for the movement of surface water through works of the District pursuant to Chapter 373, F.S.

(19) Prevention Strategy(ies) – means the structural and non-structural actions approved by the District in regional water supply plans, pursuant to Section 373.0421, F.S., or by rule, for areas where MFLs are currently not violated, but are

projected to be violated within twenty (20) years of the establishment of the minimum flow or level, if said prevention strategies are not implemented.

(20) Recovery Strategy(ies) – means the structural and non-structural actions approved by the District in regional water supply plans, pursuant to Section 373.0421, F.S., or by rule, for areas where MFLs are currently violated.

(21) Regional Water Supply Plan – means a plan approved by the District pursuant to Section 373.0361, F.S.

(22) Serious Harm – means the long-term loss of water resource functions, as defined in Chapters 40E-21 and 40E-22, F.A.C., resulting from a change in surface or ground water hydrology.

(23) Significant Harm – means the temporary loss of water resource functions which result from a change in surface or ground water hydrology that take more than two years to recover, but which is considered less severe than serious harm. The specific water resource functions addressed by a MFL and the duration of the recovery period associated with significant harm are defined for each priority water body based on the MFL technical support document.

Specific Authority 373.044, 373.113, 373.119, 373.129, 373.136, 373.171 FS. Law Implemented 373.016, 373.036, 373.0361, 373.042, 373.0421, 373.175, 373.216, 373.219, 373.223, 373.246 FS. History—New

## PART II: MFL CRITERIA LOWER EAST COAST REGIONAL PLANNING AREA

### 40E-8.221 Minimum Flows and Levels: Surface Waters.

The MFLs contained in this Part identify the point at which further withdrawals would cause significant harm to the water resources, or ecology, of the area as applicable, pursuant to Sections 373.042 and 373.0421, F.S. It is the District's intent to correct or prevent the violation of these criteria through management of the water resources.

#### (1) Lake Okeechobee

An MFL violation occurs in Lake Okeechobee when an exceedance, as defined herein, occurs more than once every six years. An "exceedance" is a decline below 11 feet NGVD for more than 80, non-consecutive or consecutive, days, during an eighteen month period. The eighteen month period shall be initiated following the first day Lake Okeechobee falls below 11 feet NGVD, and shall not include more than one wet season, defined as May 31st through October 31st of any given calendar year.

#### (2) Caloosahatchee River

A minimum mean monthly flow of 300 CFS is necessary to maintain sufficient salinities at S-79 in order to prevent a MFL exceedance. A MFL exceedance occurs during a 365 day period, when: (a) a 30-day average salinity concentration exceeds 10 parts per thousand at the Ft. Myers salinity station (measured at 20% of the total river depth from the water surface at a location of latitude 263907.260, longitude 815209.296; or (b) a single, daily average salinity exceeds a concentration of 20 parts per thousand at the Ft. Myers salinity station. Exceedance of either subsection (a) or subsection (b), for two consecutive years is a violation of the MFL.

#### (3) Everglades

##### (a) Criteria for Peat-Forming Wetlands

Water levels within wetlands overlying organic peat soils within the water conservation areas, Rotenberger and Holey Land wildlife management areas, and Shark River Slough (Everglades National Park) shall not fall 1.0 feet or more below ground surface, as measured at a key gage, for one or more days during a period in which the water level has remained below ground for a minimum of 30 days, at specific return frequencies as specified in Table 1, below.

##### (b) Criteria for Marl-Forming Wetlands

Water levels within marl-forming wetlands that are located east and west of Shark River Slough, the Rocky Glades, and Taylor Slough within Everglades National Park, shall not fall 1.5 feet below ground surface, as measured at a key gage, for one or more days during a period in which the water level has remained below ground for a minimum of 90 days, at specific return frequencies for different areas, as identified in Table 1, below.

The MFL criteria listed in Table 1 are based on existing changes and structural alterations to the pre-drainage conditions of the Everglades. It is the District's intent through implementation of the LEC Plan and the CERP to achieve minimum hydropattern return frequencies that approximate CERP compatible pre-drainage conditions in the Everglades. As a result, as the existing structural changes and alterations are corrected, the MFL criteria contained herein will be modified through a rule amendment consistent with the LEC Plan and the CERP.

Specific Authority 373.044, 373.113, 373.119, 373.129, 373.136, 373.171 FS. Law Implemented 373.016, 373.036, 373.0361, 373.042, 373.0421, 373.175, 373.216, 373.219, 373.223, 373.246 FS. History—New

Table 1. Minimum water levels, duration and return frequencies for key water management gages located within the Everglades<sup>(1,2,3)</sup>

Area	Key Gage	Soil Type & MFL Criteria	Return Frequency (years) <sup>(3)-(4)</sup>
<u>WCA-1</u>	<u>1-7</u>	<u>Peat</u> <sup>(1)</sup>	<u>1 in 4</u>
<u>WCA-2A</u>	<u>2A-17</u>	<u>Peat</u>	<u>1 in 4</u>
<u>WCA-2B</u>	<u>2B-21</u>	<u>Peat</u>	<u>1 in 3</u>
<u>WCA-3A North</u>	<u>3A-NE</u>	<u>Peat</u>	<u>1 in 2</u>
<u>WCA-3A North</u>	<u>3A-NW</u>	<u>Peat</u>	<u>1 in 4</u>
<u>WCA-3A North</u>	<u>3A-2</u>	<u>Peat</u>	<u>1 in 4</u>
<u>WCA-3A North</u>	<u>3A-3</u>	<u>Peat</u>	<u>1 in 3</u>
<u>WCA-3A central</u>	<u>3A-4</u>	<u>Peat</u>	<u>1 in 4</u>
<u>WCA-3A South</u>	<u>3A-28</u>	<u>Peat</u>	<u>1 in 4</u>
<u>WCA-3B</u>	<u>3B-SE</u>	<u>Peat</u>	<u>1 in 7</u>
<u>Rotenberger WMA</u>	<u>Rotts</u>	<u>Peat</u>	<u>1 in 2</u>
<u>Holey Land WMA</u>	<u>HoleyG</u>	<u>Peat</u>	<u>1 in 3</u>
<u>NE Shark Slough</u>	<u>NESRS-2</u>	<u>Peat</u>	<u>1 in 10</u>
<u>Central Shark Slough</u>	<u>NP-33</u>	<u>Peat</u>	<u>1 in 10</u>
<u>Central Shark Slough</u>	<u>NP 36</u>	<u>Peat</u>	<u>1 in 7</u>
<u>Marl wetlands east of Shark Slough</u>	<u>NP-38</u>	<u>Marl</u> <sup>(2)</sup>	<u>1 in 3</u>
<u>Marl wetlands west of Shark Slough</u>	<u>NP-201</u> <u>G-620</u>	<u>Marl</u>	<u>1 in 5</u>
<u>Rockland marl marsh</u>	<u>G-1502</u>	<u>Marl</u>	<u>1 in 2</u>
<u>Taylor Slough</u>	<u>NP-67</u>	<u>Marl</u>	<u>1 in 2</u>

(1) = MFL Criteria for Peat-forming wetlands: Water levels within wetlands overlying organic peat soils within the water conservation areas, Rotenberger and Holeyland wildlife management areas, and Shark River Slough (Everglades National Park) shall not fall 1.0 feet or more below ground surface, as measured at a key gage, for one or more days during a period in which the water level has remained below ground for at least 30 days, at specific return frequencies shown above.

(2) = MFL Criteria for Marl-forming wetlands: Water levels within marl-forming wetlands that are located east and west of Shark River Slough, the Rocky Glades, and Taylor Slough within the Everglades National Park, shall not fall 1.5 ft. below ground surface, as measured at a key gage, for one or more days during a period in which the water level has remained below ground for at least 90 days, at specific return frequencies for different areas, as shown above.

(3) = Return frequencies were developed using version 3.7 of the South Florida Water Management Model (SFWMM) and are the same as those stated on page 168, Table 44 of the adopted LEC Regional Water Supply Plan ( May 2000).

(4) = MFL depth, duration and return frequencies are based on historic rainfall conditions for the 31 year period of record from 1965 to 1995.

40E-8.231 Minimum Levels: Aquifers.Biscayne Aquifer.

The minimum level for the Biscayne aquifer is the level that results in movement of the saltwater interface landward to the extent that ground water quality at an established withdrawal point is insufficient to serve as a water supply source. A MFL violation occurs when water levels within the aquifer produce this degree of saltwater movement at any point in time.

Specific Authority 373.044, 373.113, 373.119, 373.129, 373.136, 373.171 FS. Law Implemented 373.016, 373.036, 373.0361, 373.042, 373.0421, 373.175, 373.216, 373.219, 373.223, 373.246 FS. History—New

PART III: MFL CRITERIA FOR LOWER WEST COAST REGIONAL PLANNING AREA40E-8.321 Minimum Flows and Levels: Surface Waters.

The MFLs contained in this Part identify the point at which further withdrawals would cause significant harm to the water resources, or ecology, of the area, as applicable, pursuant to Sections 373.042 and 373.0421, F.S. It is the District's intent to correct or prevent the violation of these criteria through management of the water resources.

Specific Authority 373.044, 373.113, 373.119, 373.129, 373.136, 373.171 FS. Law Implemented 373.016, 373.036, 373.0361, 373.042, 373.0421, 373.175, 373.216, 373.219, 373.223, 373.246 FS. History—New

40E-8.331 Minimum Levels: Aquifers.

The minimum levels for the lower Tamiami aquifer, the Sandstone aquifer and the mid-Hawthorn aquifer shall equal the structural top of the aquifer. A violation of this criteria occurs when the water levels drop below the top of the upper most geologic strata that comprises the aquifer, at any point in time. Water level measurements that are made to monitor the conditions of the aquifers for the purpose of this rule, shall be located no closer than 50 feet from any existing pumping well.

Specific Authority 373.044, 373.113, 373.119, 373.129, 373.136, 373.171 FS. Law Implemented 373.016, 373.036, 373.0361, 373.042, 373.0421, 373.175, 373.216, 373.219, 373.223, 373.246 FS. History—New

PART IV: IMPLEMENTATION40E-8.421 Prevention and Recovery Strategies.

(1) At the time of adoption of this rule, the existing flow or level for certain specified water bodies is below, or within 20 years is projected to fall below, the applicable MFL. For this reason, Section 373.0361, F.S. requires regional water supply plans to contain recovery and prevention strategies, including water resource development and water supply development projects that are needed to achieve compliance with the MFLs during the planning period. The implementation of such projects will allow for the orderly replacement or enhancement of existing water sources with alternative supplies in order to provide sufficient water for all existing and projected reasonable-beneficial uses, consistent with Section 373.0421, F.S.

(a) MFLs and recovery and prevention strategies will be implemented in phases with consideration of the District's missions in managing water resources, including water supply, flood protection, environmental enhancement and water quality protection, as required by Section 373.016, F.S.

(b) MFLs are implemented to prevent significant harm to the water resources, and where applicable, the ecology, of the area due to further withdrawals (Sections 373.042 and 373.0421, F.S.). A consumptive use permitting program is implemented to prevent harm to the water resource (Section 373.219, F.S.). A water shortage program is implemented to prevent serious harm to the water resource (Sections 373.175 and 373.246, F.S.). Additionally, the protection of water resources will, in part, be achieved through the reservation of water for fish and wildlife or public health and safety (Section 373.223(3), F.S.). The conceptual model identifying the relationships between these water resource protection requirements is set forth in Figure I in this Part.

(c) The rules implementing water resource protection tools, including Chapters 40E-2, 40E-8, 40E-20, 40E-21, and 40E-22, F.A.C., identify the specific factors and conditions that will be applied and considered in implementing the conceptual model. Due to the extreme variations in water resource conditions, climatic conditions, hydrologic conditions, and economic considerations that will be faced when implementing these rules, it is critical to apply such criteria flexibly and to reserve for the governing board the ability to implement water resource protection and allocation programs considering all of the District's missions under Chapter 373, F.S., and to balance water supply, flood protection, resource protection and water quality protection needs. Implementation of the recovery and prevention strategies will be achieved in compliance with the assurances to consumptive users and to natural systems contained in the LEC Plan and the LWC Plan.

(d) The phasing and timetables for implementation of structural components in recovery and prevention strategies contained in approved regional water supply plans are found to meet the requirements in Section 373.0421(2), F.S., for the expeditious and practicable recovery of the MFLs.

(e) Upon completion of each phase of a recovery or prevention plan, as a requirement of the water resource development component in regional water supply plans, pursuant to Subsection 373.0361(2)(a), F.S., the District will certify the additional quantity, distribution and timing of delivery of water that is made available for the natural system and for consumptive use, from the construction and operation of such phase.

(f) In order to ensure that the actual and projected performance of prevention and recovery strategies approved in the regional waters supply plans is sufficient to meet water resource needs, including MFLs, and the existing and projected reasonable-beneficial uses, the District will implement a

process for updating recovery and prevention strategies on a periodic basis, based on new information and system performance. The performance of the recovery and prevention strategies in comparison to the performance projected in the regional water supply plans, will be assessed by the District for each recovery or prevention strategy phase. Based on the actual performance and new information obtained regarding the water resources, the District will review and revise, if necessary,

recovery and prevention strategies through the regional water supply plan update process every five years, or sooner, as required by Section 373.0361, F.S. At that time, the governing board will determine if rule modifications to the MFL or recovery and prevention strategies are necessary to continue to meet the requirements of Sections 373.042 and 373.0421, F.S.

Figure 1: Conceptual Relationship Among the Harm, Serious Harm and Significant Harm Standards

(2) The Everglades and the Caloosahatchee River

(a) As the effective date of this rule (month, year), the Everglades and Caloosahatchee River have experienced MFL violations. As a result, the LEC Plan and the LWC Plan contain approved recovery strategies, pursuant to Section 373.0421, F.S. Included in these recovery and prevention strategies is the CERP.

(b) MFLs for many areas within the Everglades and the Caloosahatchee River, served by the C&SF Project, will not be achieved immediately upon adoption of this rule largely because of the lack of adequate regional storage or ineffective water drainage and distribution infrastructure. Although not all locations within the Everglades are currently in violation of the proposed MFL, the Everglades, as a whole, is subject to a recovery strategy. The LEC Plan identifies the structural and non-structural remedies necessary for the recovery of MFL water bodies. These structural and non-structural remedies are also intended to restore the Everglades and the Caloosahatchee River above the MFLs, through programmatic authorities of the District. The projected long-term restoration of flows and levels in the Everglades resulting from implementation of the LEC Plan and the CERP is documented in the LEC Plan, and are intended to more closely approximate "pre-drainage" conditions. The planned components include implementing consumptive use and water shortage programs, removing

conveyance limitations, implementing revised C&SF Project operational programs, storing additional freshwater, reserving water for the protection of fish and wildlife, and developing alternative sources for water supply. These components will be implemented over the next 20 years, resulting in a phased restoration of the affected areas.

(c) The District, as the U.S. Army Corps of Engineers' local sponsor of the C&SF Project, is charged with implementing the CERP, in accordance with the Water Resources Development Act of 2000 (WRDA), Title VI entitled "Comprehensive Everglades Restoration," and in accordance with State law. Assurances regarding water availability for consumptive uses and protection of natural systems are set forth in WRDA, Chapter 373, CERP and the LEC Plan, which will be followed by the District in implementing this Chapter. Additional quantities of water for both consumptive uses and the natural systems made available from the CERP and other water resource development projects will be documented and protected on a project basis. For project components implemented under CERP, the additional quantity, distribution and timing of delivery of water that is made available for the natural system for consumptive use, will be identified consistent with purposes of the CERP. Under

State law, water reservations and water allocations to consumptive uses will be utilized to protect water availability for the intended purposes.

(3) Lake Okeechobee. The LEC Plan contains an approved prevention strategy for Lake Okeechobee pursuant to Section 373.0421, F.S. The prevention strategy consists of implementing the District's water shortage plan, including supply side management, as simulated in the LEC Plan, and constructing and operating water supply and resource development projects.

(4) Biscayne Aquifer. The LEC Plan contains an approved prevention strategy for the Biscayne Aquifer pursuant to Section 373.0421, F.S., which consists of the following:

(a) Maintain coastal canal stages at the minimum operation levels shown in Table J-2 of the LEC Plan;

(b) Apply conditions for permit issuance in Chapter 40E-2 or Chapter 40E-20, F.A.C., to prevent the harmful movement of saltwater intrusion up to a 1-in-10 year level of certainty;

(c) Maintain a ground water monitoring network and utilize data to initiate water shortage actions pursuant to Rule 40E-8.441, F.A.C. and Chapters 40E-21 and 40E-22, F.A.C.;

(d) Construct and operate water resource and water supply development projects; and,

(e) Conduct research in high risk areas to identify where the portions of the saltwater front is adjacent to existing and future potable water sources.

(5) Lower West Coast Aquifers. The LWC Plan identifies a prevention strategy for the LWC Aquifers, pursuant to Section 373.0421, F.S., as follows:

(a) Establish "no harm" maximum permissible levels for each aquifer (regulatory levels) for a 1-in-10 year level of certainty;

(b) Implement rule criteria to prevent harm through the consumptive use permitting process;

(c) Construct and operate water resource and supply development projects; and,

(d) Implement the water shortage plan in Chapter 40E-21, F.A.C., as needed to prevent serious harm during drought conditions in excess of a 1-in-10 year level of certainty.

Specific Authority 373.044, 373.0831, 373.113, 373.119, 373.129, 373.136, 373.171 FS. Law Implemented 373.016, 373.036, 373.0361, 373.042, 373.0421, 373.175, 373.216, 373.219, 373.223, 373.246 FS. History—New

#### 40E-8.431 Consumptive Use Permits.

(1) Consumptive use permit applications that propose to withdraw water directly or indirectly from a MFL water body, that meet the conditions for permit issuance in Part II of Chapter 373, F.S., (including implementing rules in this Chapter, Chapter 40E-2, the Water Use Basis of Review, and 40E-20, as applicable), and consistent with the approved recovery and prevention strategies under Section 373.0421,

F.S., will be permitted. Consumptive use permit applications will be reviewed based on the recovery and prevention strategy approved at the time of permit application review.

(2) An existing permit will not be subject to revocation or modification by the District, prior to permit expiration, based on its impact on a MFL water body, unless the District has determined in the regional water supply plan that the reasonable-beneficial use served by the existing permitted allocation can otherwise be met from new or alternative water sources available (in place and operational) concurrent with such revocation or modification.

(3) A permittee must comply with the requirements of Rules 40E-2.351, F.A.C., in order to obtain a permit transfer to a new permittee.

Specific Authority 373.044, 373.0831, 373.113, 373.119, 373.129, 373.136, 373.171 FS. Law Implemented 373.016, 373.036, 373.0361, 373.042, 373.0421, 373.175, 373.216, 373.219, 373.223, 373.246 FS. History—New

#### 40E-8.441 Water Shortage.

(1) Water shortage restrictions will be imposed as required by District rules, on the direct or indirect withdrawals from a MFL water body, if a MFL exceedance occurs or is projected to occur during climatic conditions more severe than a 1-in-10 year drought, to the extent consumptive uses contribute to such exceedance. Under these circumstances, the District will equitably distribute available supplies to prevent serious harm to the water resources, pursuant to Sections 373.175 and 373.246, F.S., and the District's Water Shortage Plan, Chapter 40E-21, F.A.C. The Water Shortage Plan utilizes a phased cutback approach with the severity of use restrictions increasing commensurate with increased potential for serious harm to the water resources.

(2) Water shortage restrictions will not be used in place of a component in an approved recovery plan to provide hydrologic benefits that are ultimately to be provided by such recovery strategy.

(3) MFL criteria will not be utilized to trigger water shortage restrictions during climatic conditions less severe than a 1 in 10 year level of drought.

(4) Water shortage restrictions will be implemented considering the factors in Chapter 40E-21, F.A.C., and this rule. In declaring a water shortage to protect a MFL water body, the governing board shall give consideration to:

(a) The level of drought;

(b) Whether the MFL criteria will be or is being exceeded due to direct or indirect withdrawals;

(c) The magnitude of the impact on the MFL water body, including water resource functions addressed by the MFL, from such withdrawals;

(d) The magnitude of the regional hydrologic improvements projected to be derived from the proposed cutbacks;



(e) Water management actions significantly contributing to the MFL exceedance; and

(f) The practicality of using other methods, such as deliveries of water from the regional system, to reduce MFL exceedances.

(5) The establishment and implementation of MFLs shall not limit the District's ability to impose water shortage restrictions pursuant to Sections 373.175 and 373.246, F.S., and the District's Water Shortage Plan, Chapter 40E-21, F.A.C., when water levels in a MFL water body are above an established MFL, nor shall it limit the District's ability to allow for the discharge or withdrawal of water from a MFL water body, when water levels are below an established MFL.

(6) Phase III water shortage restrictions may be imposed, consistent with the factors herein, when a MFL criteria exceedance or violation is imminent. Phase III or greater water shortage restrictions shall be implemented allowing for a shared adversity between continuing consumptive use and water resource needs.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.042, 373.0421, 373.175, 373.246 FS. History--New

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Wm. Scott Burns, Director, Water Use Regulation Department  
NAME OF SUPERVISOR OR PERSON WHO APPROVED  
THE PROPOSED RULE: Governing Board of the South  
Florida Water Management District  
DATE PROPOSED RULE APPROVED BY AGENCY  
HEAD: March 15, 2001  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT  
PUBLISHED IN FAW: July 28, 2000, October 20, 2000,  
November 27, 2000, February 2, 2001 and February 16, 2001

**WATER MANAGEMENT DISTRICTS**

**South Florida Water Management District**

RULE TITLES:	RULE NOS.:
Policy and Purpose	40E-20.011
Notice of Intent	40E-20.112
Conditions for Issuance of Authorization	40E-20.302
Limiting Conditions	40E-20.381

PURPOSE AND EFFECT: The purpose and effect of the rule development is to establish criteria for conditions for permit issuance consistent with Rule 40E-8, F.A.C., regarding minimum flows and levels. The purpose is also to update references to the "Basis of Review for Water Use Permit Applications within the South Florida Water Management District – October 1997".

SUMMARY: Citations to the "Basis of Review for Water Use Permit Applications within the South Florida Water Management District – October 1997" are updated to reflect the current revision date of the Basis of Review. The "Conditions for Issuance of Authorization" section regarding

general permit authorization is changed to be consistent with Chapter 40E-8, F.A.C. addressing water use activities that directly withdraw water from an MFL water body.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: Consumptive use permittees (including those owned or operated by local governments) in the Lower East Coast planning area, including the Lake Okeechobee Service area, and the Lower West Coast planning area, will be required to comply with rule criteria for permit renewals, new permits and permit modifications for allocations either directly or indirectly from MFL water bodies, depending upon the applicable recovery or prevention strategy for the subject MFL water body. Cost estimates for implementation of recovery and prevention strategies are laid out in the Lower East Coast Regional Water Supply Plan (May 2000) for the Everglades, Biscayne Aquifer, and Lake Okeechobee, and Caloosahatchee River and in the Lower West Coast Regional Water Supply Plan (April 2000) for the Caloosahatchee River and Lower West Coast Aquifer system. In general, the water management districts are primarily responsible for implementing "water resource development" as defined in Section 373.019(19), and consumptive users are primarily responsible for implementing "water supply development" options as defined in Section 373.019(21). Cost estimates for alternative sources identified in the regional water supply plans can be found in the description of "Water Supply Development Options". See pages 241-268 of the Lower East Coast Regional Supply Plan (May 2000) and pages 49-100 in the Lower West Coast Regional Water Supply Plan (April 2000). Cost estimates for implementation of "water resource development" projects are set forth in the Lower East Coast Regional Water Supply pages 272-328, and in the Lower West Coast Regional Water Supply Plan pages 105 to 140. In general, the MFL rules are designed to implement the "assurances" to existing water users approved by the Governing Board in the applicable regional water supply plans. The estimated Costs to the SFWMD for implementation of the MFL rules through regulatory programs are set forth in the chapters on "Recommendations" in the applicable regional water supply plan.

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

SPECIFIC AUTHORITY: 373.044, 373.113 FS.

LAW IMPLEMENTED: 373.042, 373.0421, 373.103, 373.118, 373.175, 373.246 FS.

A PUBLIC HEARING WILL BE HELD AT THE TIME, DATE AND PLACE LISTED BELOW.

TIME AND DATE: 8:30 a.m., May 10, 2001

PLACE: South Florida Water Management District, B-1 Auditorium, 3301 Gun Club Road, West Palm Beach, FL 33406

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: For technical issues contact Scott Burns (internet: sburns@sfwmd.gov), or Cecile Ross (internet: cross@sfwmd.), telephone number 1(800)432-2045. For procedural issues contact: Julie Jennison (internet: jjenniso@sfwmd.gov), 1(800)432-2045, Ext. 6294 or (561)682-6294, South Florida Water Management District, Post Office Box 24680, West Palm Beach, FL 33416-4680

Although Governing Board meetings, hearings and workshops are normally recorded, affected persons are advised that it may be necessary for them to ensure that a verbatim record of the proceeding is made, including testimony and evidence upon which any appeal is to be based.

Persons with disabilities or handicaps who need assistance may contact Tony Burns, District Clerk, (561)682-6206, at least two business days in advance to make appropriate arrangements.

THE FULL TEXT OF THE PROPOSED RULES IS:

40E-20.011 Policy and Purpose.

(1) No change.

(2) Water uses or withdrawals that meet the conditions for issuance of authorization for a general permit specified in Rule 40E-20.302 are presumed to meet the criteria in Section 373.223, Florida Statutes. Staff will recommend denial of general permit authorizations for water uses or withdrawals that do not meet the conditions for issuance of authorization. The District shall require an individual permit, or deny issuance of a general permit authorization, if the applicable conditions for issuance of authorization are insufficient to demonstrate that a particular proposed use or withdrawal meets the criteria in Section 373.223, Florida Statutes. Where applicable, criteria in the “Basis of Review for Water Use Permit Applications within the South Florida Water Management District – \_\_\_\_\_” incorporated by reference in Rule 40E-2.091, will be utilized to determine whether the conditions for issuance of authorization are satisfied.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.042, 373.0421, 373.103(4), 373.219 FS. History–New 9-3-81, Formerly 16K-2.032(4), 16K-3.031(4), Amended 4-20-94, 7-11-96, 4-9-97, 12-10-97, \_\_\_\_\_.

40E-20.112 Notice of Intent.

Except in those circumstances detailed in subsection (4), prior to commencement of any use or withdrawal of water authorized in this chapter the permittee shall file with the District, a written Notice of Intent to Use Water, form number 0645, Surface Water Management Permit Applications and/or Water Use Permit Applications, in addition to any other applicable Notice of Intent forms specified in this section for a requested general permit authorization. Authorized uses or withdrawals, in existence prior to January 29, 1979, are not required to file a Notice of Intent. However, in order to

continue such use or withdrawal beyond January 29, 1999, the appropriate Notice of Intent must be filed in order to receive a general permit prior to that date.

(1) No change.

(a) through (i) No change.

(j) a statement that all applicable conditions in Rule 40E-20.381 and Section 5 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, will be met.

(2) No change.

(a) through (k) No change.

(l) a statement that all applicable conditions in Rule 40E-20.381 and Section 5 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, will be met.

(m) No change.

(3) No change.

(a) through (i) No change.

(j) a statement that all applicable conditions in Rule 40E-20.381 and Section 5 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, will be met.

(4) No change.

Specific Authority 373.044, 373.113, 373.118 FS. Law Implemented 373.042, 373.0421, 373.103(4), 373.223, 373.229 FS. History–New 9-3-81, Formerly 16K-2.031(3), 16K-2.032(3), Amended 7-26-87, 11-21-89, 4-20-94, 7-11-96, 4-9-97, 12-10-97, 7-2-98, \_\_\_\_\_.

40E-20.302 Conditions for Issuance of Authorization.

To receive a general permit authorization, a person must provide reasonable assurances that the conditions for issuance of authorization are met. Applicable criteria in the “Basis of Review for Water Use Permit Applications within the South Florida Water Management District – \_\_\_\_\_” incorporated by reference in Rule 40E-2.091(1), shall be utilized by District Staff in determining whether applicable conditions for issuance of authorization will be met.

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

(c) Water use activities that directly withdraw water from a MFL water body that is subject to a recovery strategy shall not qualify for a general permit.

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

(d) Water use activities that directly withdraw water from a MFL water body that is subject to a recovery strategy shall not qualify for a general permit.

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

(c) Water use activities that directly withdraw water from a MFL water body that is subject to a recovery strategy shall not qualify for a general permit.

(4) Persons who use or withdraw water in conjunction with short-term dewatering operations or aquifer performance tests (APT) are authorized to do so provided the permittee provides reasonable assurances that the applicable conditions of subparagraph 40E-20.381 and Section 5 of the "Basis of Review for Water Use Permit Applications within the South Florida Water Management District – \_\_\_\_\_" incorporated by reference in subsection 40E-2.091(1), will be satisfied and provided the permittee satisfies all conditions below.

(a) No change.

Specific Authority 373.044, 373.113, 373.118 FS. Law Implemented 373.042, 373.0421, 373.103(4), 373.118, 373.219, 373.223 FS. History–New 9-3-81, Amended 12-1-82, Formerly, 16K-2.031(1), 16K-2.032(1)(b), Amended 2-24-85, 3-29-87, 7-26-87, 4-20-94, 7-11-96, 4-9-97, 12-10-97, \_\_\_\_\_.

**40E-20.381 Limiting Conditions.**

(1) The Board shall impose on any permit granted under this chapter such reasonable standard and special conditions as are necessary to assure that the permitted use or withdrawal will be consistent with the overall objectives of the District, will not be harmful to the water resources of the District, is reasonable-beneficial, will not interfere with any presently existing legal uses, and is consistent with the public interest. Standard permit conditions in Section 5 of the "Basis of Review for Water Use Permit Applications within the South Florida Water Management District – \_\_\_\_\_" incorporated by reference in subsection 40E-2.091(1) shall be in the permit. Special permit conditions, including those specified in Section 5.2 of the "Basis of Review for Water Use Permit Applications within the South Florida Water Management District – October 1997" shall be in the permit.

(2) No change.

Specific Authority 373.044, 373.113, 373.118, FS. Law Implemented 373.042, 373.0421, 373.118, 373.219, 373.223 FS. History–New 9-3-81, Formerly, 16K-2.031(2), 16K-2.032(2), Amended 2-24-85, 7-26-87, 4-20-94, 7-11-96, 4-9-97, 12-10-97, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Wm. Scott Burns, Director, Water Use Regulation Department  
NAME OF SUPERVISOR OR PERSON WHO APPROVED  
THE PROPOSED RULE: Governing Board of the South  
Florida Water Management District  
DATE PROPOSED RULE APPROVED BY AGENCY  
HEAD: March 15, 2001  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT  
PUBLISHED IN FAW: July 28, 2000, October 20, 2000,  
November 27, 2000, February 2, 2001 and February 16, 2001

**WATER MANAGEMENT DISTRICTS**

**South Florida Water Management District**

<b>RULE TITLES:</b>	<b>RULE NOS.:</b>
Definitions	40E-21.051
Evaluating Water Conditions	40E-21.221
Declaring a Water Shortage	40E-21.231

General Water Use Restrictions	40E-21.271
Phase I Severe Water Shortage	40E-21.521
Phase II Severe Water Shortage	40E-21.531
Phase III Extreme Water Shortage	40E-21.541

**PURPOSE AND EFFECT:** This rule implements MFL proposed for the Everglades, the Caloosahatchee River, Lake Okeechobee, the Biscayne Aquifer, and the Lower West Coast Aquifers through the water shortage plan.

**SUMMARY:** Water condition evaluations, water shortage restrictions, and declarations are modified to incorporate chapter 40E-8, F.A.C. provisions and specific phase cutbacks for uses in the Lake Okeechobee Service Area are included.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS:** Consumptive use permittees (including those owned or operated by local governments) in the Lower East Coast planning area, including the Lake Okeechobee Service area, and the Lower West Coast planning area, will be required to comply with rule criteria for permit renewals, new permits and permit modifications for allocations either directly or indirectly from MFL water bodies, depending upon the applicable recovery or prevention strategy for the subject MFL water body. Cost estimates for implementation of recovery and prevention strategies are laid out in the Lower East Coast Regional Water Supply Plan (May 2000) for the Everglades, Biscayne Aquifer, and Lake Okeechobee, and Caloosahatchee River) and in the Lower West Coast Regional Water Supply Plan (April 2000) for the Caloosahatchee River and Lower West Coast Aquifer system. In general, the water management districts are primarily responsible for implementing "water resource development" as defined in Section 373.019(19), and consumptive users are primarily responsible for implementing "water supply development" options as defined in Section 373.019(21). Cost estimates for alternative sources identified in the regional water supply plans can be found in the description of "Water Supply Development Options". See pages 241-268 of the Lower East Coast Regional Supply Plan (May 2000) and pages 49-100 in the Lower West Coast Regional Water Supply Plan (April 2000). Cost estimates for implementation of "water resource development" projects are set forth in the Lower East Coast Regional Water Supply pages 272-328, and in the Lower West Coast Regional Water Supply Plan pages 105 to 140. In general, the MFL rules are designed to implement the "assurances" to existing water users approved by the Governing Board in the applicable regional water supply plans. The estimated Costs to the SFWMD for implementation of the MFL rules through regulatory programs are set forth in the chapters on "Recommendations" in the applicable regional water supply plan.

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

SPECIFIC AUTHORITY: 373.044, 373.113 FS.  
 LAW IMPLEMENTED: 373.042, 373.0421, 373.103, 373.118, 373.175, 373.246 FS.  
 A PUBLIC HEARING WILL BE HELD AT THE TIME, DATE AND PLACE LISTED BELOW.  
 TIME AND DATE: 8:30 a.m., May 10, 2001  
 PLACE: South Florida Water Management District, B-1 Auditorium, 3301 Gun Club Road, West Palm Beach, FL 33406

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: For technical issues contact Scott Burns (internet: sburns@sfwmd.gov), or Cecile Ross (internet: cross@sfwmd.gov), telephone number 1(800)432-2045. For procedural issues contact: Julie Jennison (internet: jjenniso@sfwmd.gov), 1(800)432-2045, Ext. 6294 or (561)682-6294, South Florida Water Management District, Post Office Box 24680, West Palm Beach, FL 33416-4680

Although Governing Board meetings, hearings and workshops are normally recorded, affected persons are advised that it may be necessary for them to ensure that a verbatim record of the proceeding is made, including testimony and evidence upon which any appeal is to be based.

Persons with disabilities or handicaps who need assistance may contact Tony Burns, District Clerk, (561)682-6206, at least two business days in advance to make appropriate arrangements.

THE FULL TEXT OF THE PROPOSED RULES IS:

40E-21.051 Definitions.

The terms set forth herein shall have the meanings ascribed to them, unless the context clearly indicates otherwise, and such meanings shall apply throughout the rules contained in this Chapter. The definitions set forth in Rule 40E-8.021, F.A.C., shall be incorporated by reference into this Rule.

(1) through (24) No change.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.042, 373.0421, 373.175, 373.246 FS. History--New 5-31-82, Amended 1-26-86, 2-14-91, \_\_\_\_\_.

40E-21.221 Evaluating Water Conditions.

(1) through (2) No change.

(3) Current data shall be compared to historical data to determine whether estimated present and anticipated available water supply within any source class will be insufficient to meet the estimated present and anticipated demands of the users from the source class, or whether serious harm to the water resources can be expected. It shall be the policy of the District to seek the cooperation and assistance of state, county and municipal government officials in developing the historic and technical data used to periodically evaluate water conditions.

(a) through (c) No change.

(d) Evaluations under this rule shall consider established minimum flows and levels and associated rules regarding implementation of water shortage provisions contained in Chapters 40E-8 and 40E-22. Minimum flows and levels shall be implemented allowing for a shared adversity between consumptive uses and water resources, consistent with this Chapter, and Chapters 40E-8 and 40E-22.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.042, 373.0421, 373.175, 373.246 FS. History--New 5-31-82, Amended 1-26-86, \_\_\_\_\_.

40E-21.231 Declaring a Water Shortage.

(1) If in the opinion of the District there is a possibility that insufficient water will be available within a source class to meet the estimated present and anticipated user demands from that source, or to protect the water resource from serious harm, as determined by evaluating the factors in Rule 40E-21.221, the Board may declare a water shortage for the affected source class. When the affected source extends beyond the District's boundaries, the District shall coordinate water shortage declarations with the appropriate water management districts to the extent practicable.

(2) through (4) No change.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.042, 373.0421, 373.175, 373.246 FS. History--New 5-31-82, Amended 1-26-86, \_\_\_\_\_.

40E-21.271 General Water Use Restrictions.

(1) through (2) No change.

(3) Additional restrictions which may be considered include:

(a) through (c) No change.

(d) provisions designed to implement minimum flows and levels through water shortage rules in this Chapter, and Chapters 40E-8 and 40E-22.

(e) through (j) No change.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.042, 373.0421, 373.175, 373.246 FS. History--New 5-31-82, Amended 1-26-86, \_\_\_\_\_.

40E-21.521 Phase I Severe Water Shortage.

The following restrictions shall apply when a Phase II water shortage is declared by the District:

(1) Essential/Domestic/Utility/Commercial: No change.

(2) Agriculture.

(a)1. through 5. No change.

6. Withdrawals by each permitted user within the Lake Okeechobee Agricultural Service Area as described in Rule 40E-21.691(3), shall be limited to an amount that represents each user's share of the total allocation for agricultural irrigation made by the District from Lake Okeechobee (Lake) for that month and in that basin. The District's allocation determination for agricultural irrigation within the Lake Okeechobee Agricultural Service Area will be based on its evaluation of the supply capabilities of the source class, the

supply capabilities of other source classes available in the area, the needs of agriculture and other users in the area and the District's overall management strategy for handling the uncertainties of future climatological events. The share of the total agricultural irrigation allocation available to each user will be based on any prioritization among crops the District establishes based on irrigation efficiency, economic loss and equity considerations, and the acreage and quantity of withdrawals for which the user has been permitted. The District's allocation determination for agricultural irrigation within the Lake Okeechobee Agricultural Service Area will be based on the supply capacity of Lake Okeechobee assuming a June 1st lake stage of 10.5 feet NGVD.

(b) through (e) No change.

(3) through (4) No change.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.042, 373.0421, 373.175, 373.246 FS. History--New 5-31-82, Amended 1-26-86, 2-14-91, \_\_\_\_\_.

#### 40E-21.531 Phase II Severe Water Shortage.

The following restrictions shall apply when a Phase II water shortage is declared by the District:

(1) Essential/Domestic/Utility/Commercial: No change.

(2) Agriculture.

(a)1. through 5. No change.

6. Withdrawals by each permitted user within the Lake Okeechobee Agricultural Service Area as described in Rule 40E-21.691(3), shall be limited to an amount that represents each user's share of the total allocation for agricultural irrigation made by the District from Lake Okeechobee (Lake) for that month and in that basin. The District's allocation determination for agricultural irrigation within the Lake Okeechobee Agricultural Service Area will be based on its evaluation of the supply capabilities of the source class, the supply capabilities of other source classes available in the area, the needs of agriculture and other users in the area and the District's overall management strategy for handling the uncertainties of future climatological events. The share of the total agricultural irrigation allocation available to each user will be based on any prioritization among crops the District establishes based on irrigation efficiency, economic loss and equity considerations, and the acreage and quantity of withdrawals for which the user has been permitted. The District's allocation determination for agricultural irrigation within the Lake Okeechobee Agricultural Service Area will be based on the supply capacity of Lake Okeechobee assuming a June 1st lake stage of 10.5 feet NGVD.

(b) through (e) No change.

(3) through (4) No change.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.042, 373.0421, 373.175, 373.246 FS. History--New 5-31-82, Amended 1-26-86, 2-14-91, \_\_\_\_\_.

#### 40E-21.541 Phase III Extreme Water Shortage.

The following restrictions shall apply when a Phase III shortage is declared by the District.

(1) No change.

(2)(a)1. through 4. No change.

5. Withdrawals by each user from each source class in each month shall be limited to an amount that represents each user's share of the total allocation for agricultural irrigation made by the District from that source for that month and in that basin. The District's allocation determination for agricultural irrigation will be based on its evaluation of the supply capabilities of the source class, the supply capabilities of other source classes available in the area, the needs of agriculture and all other users in the area and the District's overall management strategy for handling the uncertainties of future climatological events. The share of the total agricultural irrigation allocation available to each user will be based on any prioritization among crops the District established based on irrigation efficiency, economic loss and equity considerations and the acreage and quantity of withdrawals for which the user has been permitted. The District's allocation determination for agricultural irrigation within the Lake Okeechobee Agricultural Service Area, as described in Rule 40E-21.691(3), will be based on the supply capacity of Lake Okeechobee as defined by the establishment of a temporary revised reference elevation.

(a) The short and long term harm to the water resources and economy associated with further reduction in Lake stage;

(b) The harm to the crops, and associated economic impacts, projected to result from the reduction or elimination of water supply; and

(c) The projected drought duration.

The day to day operational decisions associated with implementing the temporary revised reference elevation shall be delegated to staff in the Phase III water shortage order. The governing board will be updated on a monthly basis at a governing board or other public meeting of any changes to the temporary revised reference elevation.

6. No change.

(b) through (e) No change.

(3) through (4) No change.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.042, 373.0421, 373.175, 373.246 FS. History--New 5-31-82, Amended 1-26-86, 2-14-91, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
 Wm. Scott Burns, Director, Water Use Regulation Department  
 NAME OF SUPERVISOR OR PERSON WHO APPROVED  
 THE PROPOSED RULE: Governing Board of the South  
 Florida Water Management District  
 DATE PROPOSED RULE APPROVED BY AGENCY  
 HEAD: March 15, 2001  
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT  
 PUBLISHED IN FAW: July 28, 2000, October 20, 2000,  
 November 27, 2000, February 2, 2001 and February 16, 2001

**WATER MANAGEMENT DISTRICTS**

**South Florida Water Management District**

RULE TITLES:	RULE NOS.:
Policy and Purpose	40E-22.312
Lake Okeechobee Agricultural Area Boundary	40E-22.322
Water Shortage Triggers	40E-22.332

PURPOSE AND EFFECT: The purpose and effect of the rule development is to create a regional water shortage plan for Lake Okeechobee consistent with Chapter 40E-8, F.A.C. requirements.

SUMMARY: A regional water shortage plan is established for Lake Okeechobee consistent with Chapter 40E-8, F.A.C. Water levels within Lake Okeechobee that will be considered by the Governing Board in declaring a water shortage pursuant to Rule 40E-21.231, F.A.C. are identified. The rules in this section apply to the withdrawal of surface water from Lake Okeechobee and its connected canal system.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: Consumptive use permittees (including those owned or operated by local governments) in the Lower East Coast planning area, including the Lake Okeechobee Service area, and the Lower West Coast planning area, will be required to comply with rule criteria for permit renewals, new permits and permit modifications for allocations either directly or indirectly from MFL water bodies, depending upon the applicable recovery or prevention strategy for the subject MFL water body. Cost estimates for implementation of recovery and prevention strategies are laid out in the Lower East Coast Regional Water Supply Plan (May 2000) for the Everglades, Biscayne Aquifer, and Lake Okeechobee, and Caloosahatchee River and in the Lower West Coast Regional Water Supply Plan (April 2000) for the Caloosahatchee River

and Lower West Coast Aquifer system. In general, the water management districts are primarily responsible for implementing "water resource development" as defined in Section 373.019(19), and consumptive users are primarily responsible for implementing "water supply development" options as defined in Section 373.019(21). Cost estimates for alternative sources identified in the regional water supply plans can be found in the description of "Water Supply Development Options". See pages 241-268 of the Lower East Coast Regional Supply Plan (May 2000) and pages 49-100 in the Lower West Coast Regional Water Supply Plan (April 2000). Cost estimates for implementation of "water resource development" projects are set forth in the Lower East Coast Regional Water Supply pages 272-328, and in the Lower West Coast Regional Water Supply Plan pages 105 to 140. In general, the MFL rules are designed to implement the "assurances" to existing water users approved by the Governing Board in the applicable regional water supply plans. The estimated Costs to the SFWMD for implementation of the MFL rules through regulatory programs are set forth in the chapters on "Recommendations" in the applicable regional water supply plan.

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

SPECIFIC AUTHORITY: 373.042, 373.0421, 373.044, 373.113 FS.

LAW IMPLEMENTED: 373.042, 373.0421, 373.086, 373.103(4), 373.175, 373.246 FS.

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

TIME AND DATE: 8:30 a.m., May 10, 2001

PLACE: South Florida Water Management District, B-1 Auditorium, 3301 Gun Club Road, West Palm Beach, FL 33406

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: For technical issues contact Scott Burns (internet: sburns@sfwmd.gov), or Cecile Ross (internet: cross@sfwmd.), telephone number 1(800)432-2045. For procedural issues contact: Julie Jennison (internet: jjenniso@sfwmd.gov), 1(800)432-2045, Ext. 6294 or (561)682-6294, South Florida Water Management District, Post Office Box 24680, West Palm Beach, FL 33416-4680

Although Governing Board meetings, hearings and workshops are normally recorded, affected persons are advised that it may be necessary for them to ensure that a verbatim record of the proceeding is made, including testimony and evidence upon which any appeal is to be based.

Persons with disabilities or handicaps who need assistance may contact Tony Burns, District Clerk, (561)682-6206, at least two business days in advance to make appropriate arrangements.

THE FULL TEXT OF THE PROPOSED RULES IS:

40E-22.312 Policy and Purpose.

This section identifies water levels within Lake Okeechobee that will be considered by the Governing Board in declaring a water shortage pursuant to Rule 40E-21.231, F.A.C. The rules in this section apply to the withdrawal of surface water from Lake Okeechobee and its connected canal system as depicted on Figure 22-4.

Specific Authority 373.042, 373.0421, 373.044, 373.113 FS. Law Implemented 373.042, 373.0421, 373.086, 373.103(4), 373.175, 373.246 FS. History--New

40E-22.322 Lake Okeechobee Agricultural Area Boundary.

The boundaries that constitute the Lake Okeechobee Agricultural Area are described in Rule 40E-21.691(3), F.A.C.

Specific Authority 373.042, 373.0421, 373.044, 373.113 FS. Law Implemented 373.042, 373.0421, 373.086, 373.103(4), 373.175, 373.246 FS. History--New

40E-22.332 Water Shortage Triggers.

(1) Water shortage trigger levels for Lake Okeechobee are shown on Figure 22-4. When water levels within Lake Okeechobee fall below these trigger levels, the governing board may impose water shortage restrictions pursuant to Rule 40E-21.231, Rule 40E-8.441, and this Part. In considering declaring a water shortage, the governing board shall consider other factors evaluated in this Part and Rule 40E-21.221, F.A.C. along with these trigger levels.

(2)(a) When water levels within Lake Okeechobee fall within Zone "A" depicted on Figure 22-4, a Phase I water shortage may be declared within the service area, pursuant to Rule 40E-21.521, F.A.C.

(b) When water levels within Lake Okeechobee fall within "Zone A" area depicted on Figure 22-4, and can be expected to reach a June 1st lake stage of 10.5 feet NGVD, a Phase II water shortage may be declared within the service area pursuant to Rule 40E-21.531, F.A.C.

(c) When water levels within Lake Okeechobee fall below, or can be expected to fall below the June 1st lake stage of 10.5 feet NGVD, a Phase III or greater water shortage may be declared within the service area pursuant to Rule 40E-21.541, F.A.C.

Specific Authority 373.042, 373.0421, 373.044, 373.113 FS. Law Implemented 373.042, 373.0421, 373.086, 373.103(4), 373.175, 373.246 FS. History--New

Fig 22-4. Water Shortage Trigger Levels for Lake Okeechobee.

INSERT MAP



NAME OF PERSON ORIGINATING PROPOSED RULE:  
 Wm. Scott Burns, Director, Water Use Regulation Department  
 NAME OF SUPERVISOR OR PERSON WHO APPROVED  
 THE PROPOSED RULE: Governing Board of the South  
 Florida Water Management District  
 DATE PROPOSED RULE APPROVED BY AGENCY  
 HEAD: March 15, 2001  
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT  
 PUBLISHED IN FAW: July 28, 2000, October 20, 2000,  
 November 27, 2000, February 2, 2001 and February 16, 2001

**AGENCY FOR HEALTH CARE ADMINISTRATION**

**Division of Health Quality Assurance**

RULE TITLES:	RULE NOS.:
Definitions	59A-4.200
Gold Seal Award	59A-4.201
Quality of Care	59A-4.202
Financial Requirements	59A-4.203
Turnover Ratio	59A-4.204
The State Long Term Care Ombudsman Council Review	59A-4.205
Termination and Frequency of Review	59A-4.206

PURPOSE AND EFFECT: The Agency proposes to establish a rule consistent with provisions of s. 400.235(9), Florida Statutes, which became effective June 21, 2000. The legislation provides for development of rules regarding specific criteria involving the quality of care, turnover ratio, and substantiated findings by the State Long Term Care Ombudsman Council that relates to the Gold Seal Award.

SUMMARY: Specific criteria for the Gold Seal Award.  
 SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None prepared.

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

SPECIFIC AUTHORITY: 400.235 FS.  
 LAW IMPLEMENTED: 400.235(9) FS.

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

TIME AND DATE: 10:00 a.m., April 23, 2001  
 PLACE: Health Central Park of Winter Garden, 411 North Dillard Street, Winter Garden, FL 34787

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Richard Kelly, Agency for Health Care Administration, Long-Term Care Unit, 2727 Mahan Drive, Suite 228, Tallahassee, Florida 32308 or call (850)488-5861

THE FULL TEXT OF THE PROPOSED RULES IS:

59A-4.200 Definitions.

(1) Department means the Agency for Health Care Administration.

(2) Panel means the Panel on Excellence in Long Term Care.

(3) Parent company means an entity that owns, leases, or through any other device controls a group of two or more health care facilities or at least one health care facility and any other business. A related party management company is considered to be a parent company.

(4) Region means a geographical area of the state of Florida defined by a list of counties reflected by the department's 11 area offices. The regions are defined in the AHCA Gold Seal Scoring and Ranking Algorithm dated August 2000, which is incorporated by reference.

(5) Selected tags means a set of deficiency citations to reflect quality of care in nursing homes. The selected tags are listed in the AHCA Gold Seal Scoring and Ranking Algorithm dated August 2000, which is incorporated by reference.

Specific Authority 400.235 FS. Law Implemented 400.235(9) FS. History--New \_\_\_\_\_.

59A-4.201 Gold Seal Award.

In order to be considered for nomination for a Gold Seal Award, a nursing home licensee must submit to the department's Long Term Care Unit:

(1) A letter of nomination from the department, a nursing facility industry organization, a consumer, the State Long-Term Care Ombudsman Council, or a member of the community;

(2) A completed Application for Gold Seal Award (September 2000) which is incorporated by reference;

(3) The financial documentation required by Rule 59A-4.203; and

(4) The stable workforce documentation required by Rule 59A-4.204.

Specific Authority 400.235 FS. Law Implemented 400.235(9) FS. History--New \_\_\_\_\_.

59A-4.202 Quality of Care.

(1) The department shall determine how a Gold Seal nominated facility ranks relative to other facilities in the same region in the quality of care provided to residents.

(2) The department shall consider selected tags, which reflect quality of care, and shall also consider the severity and scope of the selected tags.

(a) For federally certified facilities, the selected tags are a subset of all possible deficiencies.

(b) For facilities that are not federally certified the text of all deficiencies shall be read to determine which if any of the cited deficiencies are equivalent to any of the selected tags.

(3) The department shall consider all such selected tags received by the facility in all surveys conducted over the most recently available 30-month period prior to the date of the Panel meeting. The date of each Panel meeting shall be published in the Florida Administrative Weekly. The most recently available 30-month period shall be defined as the period that ends on the last workday of the most recent calendar quarter prior to the relevant Panel meeting. For federally certified facilities, the above computations will reflect any changes resulting from the Informal Dispute Resolution process; in as much as the federal Health Care Financing Administration concurs, changes resulting from administrative or appellate proceedings will also be reflected, only if available at the time of the Gold Seal application.

(4) The department shall compute a score (hereafter referred to as the quality of care score), based on the selected tags, for all facilities in the applicant's region.

(5) The department shall score and rank facilities in accordance with the Gold Seal Scoring and Ranking Algorithm, dated August 2000, incorporated by reference herein.

(6) The facilities shall be ranked based on this quality of care score. The resulting rank will hereafter be referred to as the quality of care rank.

(7) To be considered further for a Gold Seal Award, the facility's quality of care rank must be in the top 25% of facilities in the applicant's region.

Specific Authority 400.235 FS. Law Implemented 400.235(9) FS. History—New \_\_\_\_\_.

#### 59A-4.203 Financial Requirements.

To be eligible for a Gold Seal designation, a facility must have been in operation for a minimum of 30 months prior to the date of application and must provide evidence of financial soundness and stability. To demonstrate 30 months of financial soundness and stability prior to the date of the application:

(1) Facilities shall submit certified public accountant (CPA) audited financial statements prepared in accordance with Generally Accepted Accounting Principles (GAAP) for the three consecutive years immediately preceding the date of application, including, but not limited to: a balance sheet, income statement and statement of cash flows and all relevant footnotes. CPA-reviewed financial statements may be submitted for facilities not associated with a parent company only if audited financial statements are not available. The CPA reviewed statements shall include all relevant footnotes. If CPA reviewed financial statements are provided, a statement of negative assurance must be provided by the CPA stating that there are no going concern issues. Each facility that is affiliated with a parent company must submit audited GAAP prepared financial statements regarding the individual recommended

facility and audited consolidated GAAP prepared financial statements regarding the facility's parent company. Each facility and parent company, where applicable, shall also submit a one-year set of pro-forma financial statements, including balance sheet, income statement and statement of cash flows. For a facility that is audited as part of a consolidated entity, the facility can satisfy the audit requirement by submitting the three most recent consecutive years of CPA audited consolidated financial statements if the statements break out the balance sheet, income statement, and statement of cash flows of the individual facility.

(2) Each facility and parent company must meet at least two of the three following financial soundness and stability thresholds listed below for at least two of three years of the statements, to include the most recent year submitted and the pro-forma statements. Otherwise, its facilities cannot be recommended for the Gold Seal Award except as described in (c) below.

(a) A positive current ratio of at least one (1). The current ratio is determined by dividing current liabilities into current assets. Current assets are those held for conversion within a year or less, such as cash, temporary investments, receivables, inventory, and prepaid expenses. Current liabilities are short-term debts and unearned revenues to be paid out of current assets within a year or less.

(b) A positive tangible net worth as determined by the balance sheet. This shall be determined as equity (total assets less total liabilities) net of intangible assets. An intangible asset is a capital asset having no physical existence, its value being dependent on the rights that possession confers upon the owner. Examples include goodwill and trademarks.

(c) A times interest earned ratio of at least 1.15 or 115 percent. This shall be determined by dividing interest expense into net income before deducting such interest and income tax. Net income is defined as revenues (receipts or earnings) less expenses (costs).

(3) If a facility or parent company can meet only one of the three financial ratios in (b) above for one of the two required years, the facility may be recommended for a Gold Seal Award only if the most recent CPA prepared financial statements provided for the facility and parent company, if applicable, are for a period ending within six months of the date of the application and these financial statements meet all three of the financial criteria set forth in (b) above.

(4) Neither the facility nor its parent company shall have been the subject of bankruptcy proceedings during the period beginning 30 months prior to the date of the application and ending on the date of the award of the Gold Seal.

Specific Authority 400.235 FS. Law Implemented 400.235(9) FS. History—New \_\_\_\_\_.

#### 59A-4.204 Turnover Ratio.

(1) An applicant for Gold Seal Award must meet at least one of the following to demonstrate a stable workforce:

(a) Have a turnover rate no greater than 85 percent for the most recent 12 month period ending on the last workday of the most recent calendar quarter prior to submission of an application. The turnover rate will be computed quarterly with the annual rate being the cumulative sum of the quarterly rates. The formula to determine the quarterly turnover rate will be the total number of separations experienced during the quarter divided by the total number of staff employed at the end of the period for which the rate is computed and expressed as a percent, or stated as:

$$\text{Quarterly Turnover Rate} = \frac{\text{\# of Separations}}{\text{\# Employees at End of Period}}$$

The turnover rate will include: certified nursing assistants, licensed nurses (registered nurses and licensed practical nurses), director of nursing and administrator, or

(b) Have a stability rate indicating that at least 50 percent of its staff have been employed at the facility for at least one year. This rate determines the percentage of staff that did not turnover. The stability rate will be calculated by dividing the number of employees that have been employed over 12 months by the total number of employees at the end of the 12-month period and expressed as a percent or stated as:

$$\text{Stability Rate} = \frac{\text{\# of Employees Employed in Excess of 12 months}}{\text{Total \# of Employees}}$$

The stability rate will include: certified nursing assistants, licensed nurses (registered nurses and licensed practical nurses), director of nursing and administrator.

(2) Each applicant for Gold Seal Award must submit evidence of an effective recruitment and retention program.

Specific Authority 400.235 FS. Law Implemented 400.235(9) FS. History--New \_\_\_\_\_.

59A-4.205 The State Long Term Care Ombudsman Council Review.

The State Long Term Care Ombudsman Council shall provide a profile of substantiated ombudsman program complaints against facilities applying for the Gold Seal award. Upon request, the State Long Term Care Ombudsman Council shall provide the findings of ombudsman program administrative inspections of facilities applying for the Gold Seal Award. One violation of the patients' rights tags, such as neglect or abuse, shall eliminate a facility from contention. The Panel on Excellence in Long Term Care shall make the final determination regarding whether the facility demonstrated an outstanding history in regard to substantiated Ombudsman complaints.

Specific Authority 400.235 FS. Law Implemented 400.235(9) FS. History--New \_\_\_\_\_.

59A-4.206 Termination and Frequency of Review.

(1) The occurrence of any one of the following events shall disqualify a nursing facility from continuing as a Gold Seal facility:

(a) The filing of a petition by or against the owner or its parent company under the Bankruptcy Code;

(b) Failure to participate in the required consumer satisfaction survey as prescribed by the department;

(c) The issuance of a Class I or Class II deficiency or the assignment of a conditional license.

(2) For federally certified facilities, if the disqualifying event is the issuance of a citation for a Class I or Class II deficiency or the assignment of a conditional license status, the Gold Seal Award shall be withdrawn only after the results of the federal Informal Dispute Resolution (IDR) process are considered, if an IDR is requested.

(3) The termination or correction of a disqualifying event does not cause the Gold Seal to be reinstated. The facility shall resubmit a complete application package and must meet all the conditions necessary to be awarded a Gold Seal.

(4) If a facility receives a Class I or Class II deficiency or is assigned a conditional license status while it is being considered for a Gold Seal Award by the panel, the application will be denied.

(5) Frequency of Review. A Gold Seal facility shall submit a complete renewal application every two years. The renewal application must be received by the department six months prior to the two-year anniversary of the Gold Seal designation.

Specific Authority 400.235 FS. Law Implemented 400.235(9) FS. History--New \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Richard F. Kelly, Health Services and Facilities Consultant,  
Managed Care and Health Quality

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Ruben J. King-Shaw, Jr., Secretary  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 19, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 31, 2000

**AGENCY FOR HEALTH CARE ADMINISTRATION**

**Division of Health Quality Assurance**

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Minimum Standards for Home Health Agencies	59A-8
RULE TITLES:	RULE NOS.:
Definitions	59A-8.002
Telephone Reporting	59A-8.0025
Licensure Requirements	59A-8.003
Licensure Procedures	59A-8.004
Geographic Service Area	59A-8.007
Scope of Services	59A-8.008
Denial, Suspension, Revocation of License and Imposition of Fines	59A-8.0086
Personnel	59A-8.0095

Personnel Policies	59A-8.0185
Acceptance of Patients or Clients	59A-8.020
Plan of Care	59A-8.0215
Services Provision Plan	59A-8.0218
Clinical Records	59A-8.022
Administration of Drugs and Biologicals	59A-8.024
Emergency Management Plans	59A-8.027

PURPOSE AND EFFECT: The purpose of this rule amendment is to update the rule, including rule reduction, language clarification, and minor changes to conform to changes in the Florida Statute.

SUMMARY: Due to changes in the Florida Statutes the proposed rule amendment includes rule reductions through deletion of entries related to the service provision plan, abuse registry, contracts, employment history, frequency of supervisory visits, and storage of records. The Service Provision Plan section is deleted entirely because it was deleted from the Florida Statutes. The Administration of Drugs and Biologicals section is deleted because the Agency for Health Care Administration no longer has rule writing authority in this area. Language is added or changed in such areas as emergency management, assessment of costs related to investigations, and home health aide competency test, among others.

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

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

SPECIFIC AUTHORITY: 400.461-.497, 400.512-.518 FS.

LAW IMPLEMENTED: 400.461-.497, 400.512-.518 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 10:00 a.m., Tuesday, April 24, 2001

PLACE: Agency for Health Care Administration, 2728 Mahan Drive, Building 3, Conference Room D, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Anne Menard, Agency for Health Care Administration, Home Care Unit, 2727 Mahan Drive, Bldg. 1, Room 207, Tallahassee, FL 32308, (850)414-6010

THE FULL TEXT OF THE PROPOSED RULES IS:

59A-8.002 Definitions.

(1) through (5) No change.

(6) "Change of ownership" means when a home health agency is purchased by a new corporation or partnership from the entity which currently holds the home health agency license. A one hundred percent stock purchase of the current corporate or partnership owner, or a change in the principals

principles in the existing corporation or partnership, does not constitute a change of ownership, if that corporation or partnership continues to be the owner of the home health agency. If a person or persons own the home health agency, rather than a corporation or partnership, a change of ownership takes place when those individual(s) sell the home health agency to other individual(s), or when the form of ownership changes from individual ownership to a business entity.

(7) through (10) No change.

(11) "Drop-off site" means any location in any county within the geographic service area of the main office, pursuant to Rule 59A-8.003(8)(7).

(12) "Emergency Management Plan" means a comprehensive plan developed by the home health agency describing how the agency will prepare for and respond in an emergency, pursuant to Rule 59A-8.027.

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

(16)(15) "Financial instability;" pursuant to s. 400.126(1)(d), F.S., means the home health agency cannot meet its financial obligation. Evidence such as the issuance of bad checks or an accumulation of delinquent bills shall constitute prima facie evidence that the ownership of the home health agency lacks the financial ability to operate. Evidence also includes the Medicare or Medicaid program's indications or determination of financial instability or fraudulent handling of government funds by the home health agency.

(16) through (29) renumbered (17) through (30) No change.

(31)(30) "Providing one service directly" means the agency must provide one service, in part, all of the service will be provided by direct employees except when an employee is documented to be on leave, for a period of not more than 6 months, and a temporary contracted staff person provides the services during the employee's absence.

(31) through (32) renumbered (32) through (33) No change.

(34)(33) "Satellite office" means a secondary office established in the same county as the main office, pursuant to Rule 59A-8.003(7)(6).

(34) "Service provision plan" means a plan to provide services which exclude nursing, therapy or dietitians/nutritionists, and which do not require a physician's treatment orders.

(35) No change.

(36) "Special needs patients," pursuant to s. 252.355, F.S., means those persons who have physical or mental conditions that require limited medical and nursing oversight during emergency evacuations. They are medically dependent individuals who are not acutely ill.

(37) “Special needs registry.” pursuant to s. 252.355, F.S., means a registry maintained by the local emergency management agency of persons who need assistance during evacuations and sheltering because of physical or mental handicaps.

(36) through (37) renumbered (38) through (39) No change.

Specific Authority 400.497 FS. Law Implemented 400.462, 400.487 FS. History—New 4-19-76, Formerly 10D-68.02, Amended 4-30-86, 8-10-88, 5-30-90, 5-27-92, Formerly 10D-68.002, Amended 10-27-94, 1-17-00, \_\_\_\_\_.

59A-8.0025 Telephone Reporting.

The Agency for Health Care Administration shall notify home health agencies 90 days prior to a change in the statewide toll free telephone number for the Department of Children and Family Services central abuse hotline registry. While employees are no longer required to complete abuse registry screening, the abuse hotline is still operational for reporting suspected abuse, neglect or exploitation. Home health agencies are required to notify patients of the abuse hotline toll free telephone number.

Specific Authority 400.497 FS. Law Implemented 400.497 FS. History—New 5-30-90, Formerly 10D-68.0025, Amended 10-27-94, 1-17-00, \_\_\_\_\_.

59A-8.003 Licensure Requirements.

(1) The issuance of an initial license shall be based upon compliance with Chapter 400, Part IV, F.S., and this rule as evidenced by a signed and notarized, complete and accurate home health agency application, as referenced in Rule 59A-8.004(1) form number AHCA 3110-1001, January, 2000, incorporated by reference, and the results of a survey conducted by the AHCA.

(2) An application for renewal of license must be submitted to AHCA at least 90 days prior to the date of expiration of the license, pursuant to s. 400.471(6), F.S. It is the responsibility of the home health agency to submit an application within the specified time frames whether or not they receive separate notification from AHCA of the impending expiration of the license. Home health agencies that apply for renewal of their licenses will be surveyed on a variable survey cycle, pursuant to s. 400.484, F.S., based on the extent of compliance on previous surveys with these rules and state laws. After two consecutive full surveys, home health agencies that had no class I, class II, or class III deficiencies, as defined in s. 400.484(2)(a)-(c), F.S., as a result of the surveys or a complaint survey, will be surveyed on an unannounced basis no later than every 36 months. Home health agencies that had no class I or class II deficiencies as defined in s. 400.484(2)(a) and (b), F.S., as a result of the previous survey or a complaint survey will be surveyed on an unannounced basis no later than a range of 12 18 to 36 24 months. Home health agencies that had a change of ownership since the previous survey, a complaint survey or other survey with a class I or class II deficiency citation, as defined in s.

400.484(2)(a)-(b)(e), F.S., will receive an unannounced survey no later than every 12 months. Area offices may do follow up surveys to check on correction of deficiencies at any time on an unannounced basis, prior to the next full survey cycle. An exit conference will be conducted to report the findings and to receive additional information or clarification concerning the survey.

(3) No change.

(a) No change.

(b) It is the responsibility of the home health agency to request exemption from state licensure surveys deemed status by writing to the AHCA Home Care Unit, submitting and showing documentation of accreditation by an approved accrediting organization and the most recent survey from the accrediting organization. In all situations the accredited home health agency must have documentation that the deemed status survey was conducted by the appropriate organization.

(c) ~~Home health agencies requesting deemed status must submit the annual licensure renewal application packet and required fees, along with the accrediting organization's survey report. The AHCA Home Care Unit will submit the survey report to the AHCA area office for review the request and approve or deny the request, notifying the appropriate AHCA field office determination as to whether the home health agency is in substantial compliance with state licensure requirements.~~

(d) ~~The AHCA area office will notify the home health agency of the determination of compliance or non-compliance with state licensure standards. For home health agencies not in compliance the area office may survey the home health agency or may prepare a statement of deficiencies based on a review of the accrediting organization's report.~~

(e) ~~Home health agencies not in compliance with licensure standards must submit a plan of correction to the AHCA area office within 10 calendar days of receipt of the statement of deficiencies. AHCA will review the Plan of Correction for approval or denial.~~

(d)(f) Home health agencies that receive an exemption in compliance will not be subject to an inspection by AHCA except under the following circumstances:

1. through 2. No change.

(4) No change.

(5) In addition to any other penalties imposed pursuant to this Rule, the agency may assess costs related to an investigation that results in a successful prosecution, pursuant to s. 400.484(3), F.S. The prosecution can be resolved by stipulation settlement or final hearing. The following costs may apply: travel costs related to the investigation; investigative time by AHCA's surveyor or surveyors including travel time; processing time by AHCA's professional staff and administrative support staff of Field Operations, and processing time for administrative support staff and professional staff of the AHCA Home Care Unit in

Tallahassee. The costs related to AHCA's professional staff and support staff will be determined according to the hourly rate of pay for those positions.

~~(6)(5)~~ An application package for a change of ownership shall be made on a form prescribed by AHCA, as referenced in Rule 59A-8.004(1) Application for Home Health Agency License, AHCA 3110-1001, Revised January, 2000.

(a) The buyer or lessee must make application to AHCA the agency for a new license at least 60 days before the date of the transfer of ownership as required by s. 400.471(7), F.S.

(b) through (c) No change.

(6) through (9) renumbered (7) through (10) No change.

(a) through (d) No change.

(e) Failure to be available or to respond, as defined in subsections (a) through (c) above Rule 59A-8.003(9)(a), (b) and (c), will result in a \$500 fine, pursuant to s. 400.474(1), F.S. A second incident will be grounds for denial or revocation of the agency license.

~~(11)(10)~~ No change.

Specific Authority 400.497 FS. Law Implemented 400.464, 400.741, 400.497, 400.471, 400.484 FS. History—New 4-19-76, Formerly 10D-68.03, Amended 4-30-86, 8-10-88, 5-30-90, 6-12-91, Formerly 10D-68.003, Amended 10-27-94, 2-1-97, 1-17-00.

59A-8.004 Licensure Procedure.

(1) An application for licensure, initial, change of ownership, or renewal, shall be made on a form prescribed by the AHCA, Home Health Agency Application for Licensure, form number, AHCA 3110-1001, Revised February, 2001 January, 2000, incorporated by reference. The form may be obtained through the Agency for Health Care Administration – Health Facility Regulation Compliance, Home Care Unit, 2727 Mahan Drive, Building 1, Room 200, Mail Stop 34, Tallahassee, Florida 32308.

(2) through (3) No change.

(4) For initial and change of ownership applications and name changes, an affidavit of fictitious name is required when the home health agency chooses to operate under a name other than the name of the partnership or corporation, pursuant to s. 865.09, F.S.

(5) For initial applications, including changes of ownership, the applicant must submit proof of financial ability to operate, pursuant to s. 400.471(3), F.S. The compliance is demonstrated by completion of schedules 1 through 7 of the home health agency application, as referenced in subsection (1) above.

~~(6)(4)~~ An applicant for renewal of licenses shall not be required to provide proof of financial ability to operate, unless the applicant has demonstrated financial inability to operate, as defined in 59A-8.002(16), F.A.C. If an agency has shown signs of financial instability in which case the AHCA shall require the applicant for renewal of license to provide proof of financial ability to operate, by submitting schedules 3 through 7 described in subsection (5) above.

~~(7)(5)~~ No change.

~~(8)(6)~~ New employees may work on probationary status, once they have submitted the documents described in subsections (9) or (10) below Rule 59A-8.004(7) or (8), pending a determination of compliance with minimum standards set forth in Chapter 435, F.S.

~~(9)(7)~~ Screening for good moral character for the administrator and the financial officer shall be in accordance with level 2 standards for screening set forth in s. 400.471(4), F.S.. The fingerprint card and the Florida Abuse Hotline Information System Background Check form, AHCA 3110-0003, for level 2 screening for the administrator and the financial officer can be obtained from, and should be submitted to, the Agency for Health Care Administration, Home Care Unit, 2727 Mahan Drive, Building 1, Room 200, Mail Stop 34, Tallahassee, Florida 32308.

~~(10)(8)~~ No change.

~~(a) Submission of the Florida Abuse Hotline Information System Background Check, AHCA form 3110-0003, July 1998, incorporated by reference, to the local DCF screening coordinator. The form may be obtained through the Agency for Health Care Administration – Health Facility Compliance, Home Care Unit, 2727 Mahan Drive, Building 1, Room 200, Tallahassee, Florida 32308. The cost of processing the screening request must be paid by the home health agency or the employee being screened. The check must accompany the screening request and made payable to the DCF.~~

~~(b) Submission of the Request for Level 1 Criminal History Check, AHCA form 3110-0002, June 1998, incorporated by reference. The FDLE form can be submitted either through AHCA's Background Screening Unit, directly to FDLE, or through a third party vendor. The address for submission to AHCA's Background Screening Unit is AHCA Background Screening Unit, Mail Stop 40, 2727 Mahan Drive, Tallahassee, FL 32308. The address for submission through FDLE is to the FDLE, Crime Information Bureau, Post Office Box 1489, Tallahassee, Florida 32302. The form may be obtained through the Agency for Health Care Administration – Health Facility Regulation Compliance, Home Care Unit, 2727 Mahan Drive, Building 1, Room 200, Mail Stop 34, Tallahassee, Florida 32308. The cost of processing the screening request must be paid by the home health agency or the employee being screened. The check must accompany the screening request and be made payable to the FDLE or to the home health agency's agent, if one is used for FDLE screening.~~

(11) Employees who have direct patient contact and are found to have a disqualifying offense cannot continue patient contact unless they obtain an exemption. Administrators and financial officers who have a disqualifying offense cannot continue in those positions unless they obtain an exemption. Exemptions can be requested as defined in s. 400.512(1), F.S.

Specific Authority 400.497 FS. Law Implemented 400.471, 400.512 FS. History—New 4-19-76, Formerly 10D-68.04, Amended 4-30-86, 8-10-88, 5-30-90, 6-12-91, 10-6-91, Formerly 10D-68.004, Amended 10-27-94, 2-1-97, 1-17-00,\_\_\_\_\_.

59A-8.007 Geographic Service Area.

(1) All home health agencies must apply for a geographic service area on their initial license application. Home health agencies may apply for a geographic service area which encompasses one or more of the counties within the specific AHCA area boundaries, pursuant to s. 408.032(5), F.S., and s. 400.497(7)(8), F.S., in which the main office is located provided that the license application includes a plan for:

- (a) through (b) No change.
- (2) through (3) No change.

Specific Authority 400.497 FS. Law Implemented 400.497 FS. History—New 10-27-94, Amended 1-17-00,\_\_\_\_\_.

59A-8.008 Scope of Services.

- (1) through (4) No change.

~~(5) Services provided by contract shall be through a written agreement between the home health agency requesting staff, herein referred to as the agency, and the company supplying staff, or the individual, herein referred to as the contractor. The contract must include the following:~~

- ~~(a) services to be provided,~~
  - ~~(b) designation that the agency is responsible for monitoring of services provided, in accordance with s. 400.487(5), F.S.,~~
  - ~~(c) designation of full responsibility of the agency over all contracted services,~~
  - ~~(d) charges for contracted services and designation of full responsibility for patient billing by the agency,~~
  - ~~(e) responsibility of the agency to retain and maintain all clinical records of patients served by the contracted staff,~~
  - ~~(f) evidence of liability and insurance coverage,~~
  - ~~(g) period of contract,~~
  - ~~(h) procedures for submitting clinical and progress notes,~~
- and
- ~~(i) date and signatures of appropriate parties.~~

- ~~(5)(6) No change.~~

~~(6)(7) If a home health agency occupies space within a licensed assisted living facility, and this space is not licensed as a home health agency, the home health agency must notify AHCA, in writing, whether the space is a satellite office or a drop-off site, as defined in Rule 59A-8.002, F.A.C.~~

Specific Authority 400.487, 400.497, 400.509 FS. Law Implemented 400.497 FS. History—New 10-27-94, Formerly 10D-68.08, Amended 4-30-86, 8-10-88, 5-30-90, Formerly 10D-68.008, Amended 10-27-94, 1-17-00,\_\_\_\_\_.

59A-8.0086 Denial, Suspension, Revocation of License and Imposition of Fines.

- (1) No change.
- (a) No change.

(b) if the applicant fails to screen all employees as required by this rule or employs persons who are disqualified from employment based on ~~abuse registry screening or~~ criminal record check, ~~or~~

(c) if the applicant fails to carry out its responsibilities for the care of patients as described in s. 400.487(5), F.S. ~~provide at least one service directly to patients for a period of six consecutive months,~~

- (d) through (e) No change.
- (2) through (4) No change.

Specific Authority 400.497 FS. Law Implemented 400.474, 400.481, 120 FS. History—New 10-27-94, Amended 1-17-00,\_\_\_\_\_.

59A-8.0095 Personnel.

- (1) through 1. No change.

~~2. Be knowledgeable of the statute and administrative rules of the AHCA and ensure compliance with them by the agency.~~

~~3. Be responsible for informing the employees about the home health statute and administrative rules and shall have copies available for their reference.~~

~~4. Be responsible for the maintenance and submission of such reports and records as required by the AHCA.~~

~~2.5. Designate, in writing, a direct employee or an individual covered under a management company contract to manage the home health agency or an employee leasing contract, pursuant to s. 468.520, F.S., that provides the agency with full control over all operational duties and responsibilities to serve as an on-site alternate administrator during absences of the administrator. This person will be available during designated business hours, when the administrator is not available. Available during designated business hours means being readily available on the premises or by telecommunications. During the absence of the administrator, the on-site alternate administrator will have the responsibility and authority for the daily operation of the agency. The alternate administrator must meet qualifications as stated in s. 400.462(1), F.S. 59A-8.0095(1)(a)1., of this rule.~~

~~6. Maintain a current organizational chart to show lines of authority to the patient level.~~

~~7. Assure the orientation of new staff, and opportunities for continuing education for the staff.~~

~~(b) If an individual serves as the administrator of more than one licensed agency, pursuant to s. 400.462(1), F.S., a designated alternate administrator must be available during designated business hours, at each additional agency who has the responsibility and authority for the daily operation of the agency. Available during designated business hours means being readily available on the premises or by telecommunications.~~

~~(b)(e) If an agency changes administrator or alternate administrator the agency shall notify AHCA Home Care Unit office in Tallahassee prior to or on the date of the change.~~

Notification shall consist of submission of the person's name, professional resume, professional license, if applicable, and a copy of the Affidavit of Good Moral Character. The administrator also must submit level 2 screening, pursuant to Rule 59A-8.004(9), or inform the Home Care Unit that level 2 screening was previously submitted.

(2) No change.

(a) No change.

1. meet the criteria as defined in s. 400.462(7), F.S.;

2. through (3) No change.

(a) A registered nurse shall be currently licensed in the state, pursuant to Chapter 464, F.S., and:

1. through (4) No change.

(a) A licensed practical nurse shall be currently licensed in the state, pursuant to Chapter 464, F.S., and provide nursing care assigned by and under the direction of a registered nurse who provides on-site supervision as needed, based upon the severity of patients medical condition and the nurse's training and experience. Supervisory visits will be documented in patient files. Provision shall be made in agency policies and procedures for annual evaluation of the LPN's performance of duties by the registered nurse.

(b) No change.

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

(b) Supervision of the home health aide and CNA by a registered nurse in the home will be in accordance with s. 400.487(3), F.S.. Home health agencies will need to obtain the patient's verbal permission to send a registered nurse into the home to conduct supervisory visits.

(b) through (c) renumbered (c) through (d) No change.

1. through 5. No change.

6. maintenance of a clean and; safe; ~~and healthy~~ environment;

7. recognition of emergencies and applicable follow-up within the home health aide scope of performance; knowledge of emergency procedures;

8. No change.

9. appropriate and safe techniques in personal hygiene and grooming, including bed bath, sponge, tub, or shower bath; shampoo, sink, tub, or bed; nail and skin care; oral hygiene; care of dentures;

10. safe transfer techniques, including use of appropriate equipment, and ambulation;

11. No change.

12. adequate nutrition and fluid intake;

~~13. the role of the aide in the home;~~

~~13,14.~~ cultural differences in families;

~~14,15.~~ food preparation and household chores; ~~management;~~

~~15,16.~~ No change.

~~16,17.~~ other ~~health-related~~ topics pertinent to home health aide services.

~~(e)(d)~~ If a home health aide successfully completes training through a vocational school approved by Florida's Department of Education, the individual must present to a home health agency a diploma issued by the vocational school. If the home health aide completes the his training through a home health agency, and wishes to be employed at another agency, the individual must present to the second home health agency documentation of successful completion of training as listed in Rule 59A-8.0095(5)(~~d~~)(~~e~~)1. through ~~16,17.~~

~~(f)(e)~~ No change.

~~(g)(f)~~ Home health training documentation issued by a home health agency on or after October 1, 1999 must contain language as listed in paragraph ~~(f)(e)~~ above.

~~(h)(g)~~ No change.

~~(i)(h)~~ A home health agency shall ensure that a certified nursing assistant has competency in the home health core curriculum listed in Rule 59A-8.0095(5)(~~d~~)(~~e~~)2. and 13. through ~~16,17.~~

~~(j)(i)~~ No change.

(k) A licensed home health agency may choose to administer the Home Health Aide Competency Test, form number AHCA form number 3110-1007, February, 2001, incorporated by reference, in lieu of the forty hours of training required in Rule 59A-8.0095(5)(d), F.A.C. This test is designed for home health agencies to determine competency of potential employees. This written and practical test can only be used by licensed-only agencies. Medicare and Medicaid home health agencies must follow the training requirements in 42 Code of Federal Regulations 484.

1. Home health agencies that choose to administer the test, must maintain documentation of the aide's successful passage of the competency test. However, if the home health aide does not pass the test, it is the decision of the home health agency giving the test as to whether the aide may take the test again. The home health agency may also provide training or arrange for training in the areas that were not passed on the test prior to the aide re-taking the test.

a. The Home Health Aide Competency Test, AHCA form number 3110-1007, February 2001, has two parts: a practical part in which competency is determined through observation of the performance of tasks and a written part with questions to answer. Successful passage of the test means the accurate performance of all 14 tasks on the practical part plus correctly answering 90 of the 104 questions on the written part.

b. Successful passage of the competency test alone does not permit a home health aide to assist with self-administration of medication as described in s. 400.488, F.S.. Any home health aide that will assist patients with self-administration of medications must have completed two hours of training on assistance with self-administered medication as required in 59A-8.0095(5)(c)16.



2. Any staff person of a home health agency may administer the written portion of the test, but the practical competency test must be administered and evaluated by a registered nurse or a licensed practical nurse under the supervision of a registered nurse. The staff person, registered nurse, or licensed practical nurse may also be responsible for grading the written test.

3. When a home health aide completes the competency test through the employing agency and wishes to be employed at another agency, the home health agency shall furnish documentation of successful passage of the test to the requesting agency pursuant to s. 400.497(1), F.S. Documentation of successful passage may be provided in a format established by the home health agency, except as prohibited in 59A-8.0095(5)(f)-(h), F.A.C., that specifies limitations on the manner in which a home health agency may describe home health aide training. The documentation, at minimum, should include the home health aide's name, address and social security number; the home health agency's name and address; date the test was passed; the signature of the person providing the documentation; and any other information necessary to document the aide's passage of the test.

(1)(+) Home health aides and CNA's must receive in-service training each calendar year, pursuant to s. 400.497(1), F.S. HIV educational requirements are listed in Rule 59A-8.0185(2)(b). Training must be provided to obtain and maintain a certificate in cardiopulmonary resuscitation. Medicare and Medicaid agencies should check federal regulations for additional in-service training requirements.

(m)(\*) No change.

1. through 6.d. No change.

(n)(+) In cases where a home health aide or a CNA will provide assistance with self-administered medications in accordance with s. 400.488, F.S., and paragraph (p)(\*) below, an assessment of the medications for which assistance is to be provided shall be conducted by a licensed health care professional to ensure the unlicensed caregiver provides assistance in accordance with their training and with the medication prescription.

(o) A licensed health care professional shall inform the patient, or the patient's caregiver, that the patient may receive assistance with self-administered medication by an unlicensed person. The patient, or the patient's caregiver, must give written consent for this arrangement, pursuant to s. 400.488(2), F.S.

(p)(\*) No change.

1. through 4. No change.

(q)(\*) No change.

(r)(+) CNA's who earn their certificate in another state may work as a home health aide in a home health agency in Florida if they present a copy of their current CNA certificate from that state. For CNA's, who have a certificate from out of

state and who want to obtain a Florida CNA certificate, they can ~~must~~ contact the Florida Certified Nursing Assistant office at the Department of Health to inquire about taking the written examination, pursuant s. 464.203, F.S., prior to working as a CNA in Florida, pursuant to s. 400.211, F.S.

(s) Home health aides who are trained in another state must provide ~~a copy of the course work and~~ documentation of course completion to the employing home health agency. Individuals who have graduated from an accredited school of nursing and are awaiting to take their boards for licensure in Florida, can work as a home health aide. Registered nurses and licensed practical nurses who can show proof they are licensed in another state, can work as a home health aide in Florida. ~~If the course work is equivalent to Florida's requirements, the home health agency may employ the home health aide. If the home health aide's course work does not meet Florida's requirements, the home health aide must be trained to the extent necessary to bring the training into compliance with Rule 59A-8.0095(5), prior to providing services in the patient's or client's home.~~

(6) No change.

(a) The physical therapist shall be currently licensed in the state, pursuant to Chapter 485, F.S., with at least 1 year of experience in physical therapy. The physical therapist assistant shall be currently licensed in the state, pursuant to Chapter 485, F.S., with at least 1 year of experience under the supervision of licensed physical therapist. Services provided by the physical therapist assistant will be provided under the general supervision of a licensed physical therapist and shall not exceed any of the duties outlined in this section. General supervision means the supervision of a physical therapist assistant shall not require on-site supervision by the physical therapist. The physical therapists shall be accessible at all times by two way communication, which enable the physical therapist to be readily available for consultation during the delivery of care.

(b) No change.

1. through 5. No change.

(7) Speech Pathologist. The speech pathologist shall be currently licensed in the state, pursuant to Chapter 468, F.S., and shall:

(a) through (d) No change.

(8) No change.

(a) The occupational therapist shall be currently licensed in the state, pursuant to Chapter 468, F.S., with one year of experience in occupational therapy and the occupational therapist assistant shall be currently licensed in the state, pursuant to Chapter 468, F.S., with one year of experience under the supervision of a licensed occupational therapist. Duties of the occupational therapist assistant shall be directed by the licensed occupational therapist and shall not exceed those outlined in this section.

(b) No change.

1. No change.

2. to guide the patient in ~~the his~~ use of therapeutic, creative and self-care activities for the purpose of improving function;

3. through (11) No change.

(a) The dietitian/nutritionist shall be currently licensed in this state, pursuant to Chapter 468, with at least 1 year of experience in dietetics and nutrition practice.

(b) No change.

1. through 4. No change.

(12) Homemakers and Companions ~~Utilized by Home Health Agencies.~~

(a) through (b) No change.

1. through 3. No change.

4. stabilize the client when walking, as needed, by holding the client's arm or hand;

5. through 7. No change.

(c) No change.

1. through 4. No change.

5. stabilize the client when walking, as needed, by holding the client's arm or hand;

6. through 7. No change.

Specific Authority 400.497 FS. Law Implemented 400.462, 400.471 400.487, 400.488, 400.497 FS. History--New 2-1-97, Amended 1-17-00,\_\_\_\_\_.

59A-8.0185 Personnel Policies.

(1) through (3) No change.

(4) The agency shall maintain a record of the employment or contractual history of all agency personnel, both employed or under contract, and shall make submission of such history a condition of employment or contract, ~~and shall verify the history unless through diligent efforts such verification is not possible. Diligent efforts shall involve at least two documented attempts to verify.~~

Specific Authority 400.497 FS. Law Implemented 400.471, 400.497 FS. History--New 10-27-94, Amended 1-17-00,\_\_\_\_\_.

59A-8.020 Acceptance of Patients or Clients.

(1) When a home health agency accepts a patient or client for service, there shall be a reasonable expectation that the services can be provided safely to the patient or client in his place of residence. The responsibility of the agency is to assure that the patient or client receives services as defined in a specific plan of care, for those patients receiving care under a physician's treatment orders, or in a written agreement, as described in subsection (3) below, for clients receiving care without a physician's orders. This responsibility includes assuring the patient receives a service provision plan, including all assigned visits.

(2) At the start of services a home health agency must establish a written agreement between the agency and the patient or client or the patient's or client's legal representative, including the information described in s. 400.487(1), F.S. This

written agreement must be signed and dated by a representative of the home health agency and the patient or client or the patient's or client's legal representative. A copy of the agreement must be given to the patient or client and the original must be placed in the patient's or client's file.

(3) The written agreement, as specified in subsection (2) above, shall serve as the home health agency's service provision plan, pursuant to s. 400.491(2), F.S., for clients who receive homemaker and companion services or home health aide services which do not require a physician's treatment order. The written agreement for these clients shall be maintained for one year after termination of services.

(4)(2) When the agency terminates services for a patient or client needing continuing home health care, as determined by the patient's physician, for patients receiving skilled care under a physician's treatment order, or as determined by the client patient or caregiver, for clients patients receiving care without a physician's treatment order under a service provision plan, a plan must be developed and a referral made by home health agency staff to another home health agency or service provider prior to termination. The patient or client must be notified in writing of the date of termination, the reason for termination, pursuant to s. 400.491, F.S., and the plan for continued services by the agency or service provider to which the patient or client has been referred, pursuant to s. 400.497(6)(7), F.S.. This requirement does not apply to patients paying through personal funds or private insurance who default on their contract through non-payment. The home health agency should provide social work assistance to patients to help them determine their eligibility for assistance from government funded programs if their private funds have been depleted or will be depleted.

Specific Authority 400.497 FS. Law Implemented 400.487 FS. History--New 4-19-76, Formerly 10D-68.20, Amended 4-30-86, 8-10-88, Formerly 10D-68.020, Amended 10-27-94, 1-17-00,\_\_\_\_\_.

59A-8.0215 Plan of Care.

(1) A plan of care shall be established in consultation with the physician, pursuant to s. 400.487, F.S., and the home health agency staff who are involved in providing the care and services required to carry out the physician's treatment orders. The plan must be included in the clinical record and available for review by all staff involved in providing care to the patient. The plan of care shall contain a list of individualized specific goals for each skilled discipline that provides patient care, with implementation plans addressing the level of staff who will provide care, the frequency of home visits to provide direct care and case management, ~~and the frequency of supervisory visits for staff providing direct care.~~

(2) Home health agency staff must follow the physician's treatment orders that are contained in the plan of care. If the orders cannot be followed and must be altered in some way, the patient's physician must be notified and must approve of

the change. Any verbal changes are put in writing and signed and dated with the date of receipt by the nurse or therapist who talked with the physician's office.

~~(2)~~(3) No change.

(a) through (c) No change.

Specific Authority 400.497 FS. Law Implemented 400.487 FS. History--New 10-27-94, Amended 1-17-00, Repealed.

#### 59A-8.0218 Service Provision Plan.

Specific Authority 400.497 FS. Law Implemented 400.487 FS. History--New 10-27-94, Amended 1-17-00, Repealed.

#### 59A-8.022 Clinical Records.

(1) A clinical record must be maintained for each patient receiving nursing or therapy services, ~~pursuant to s. 400.497(6), F.S.~~, that includes all the services provided directly by the employees of the home health agency and those provided by contracted individuals or agencies.

(2) through (4) No change.

~~(5) If a home health agency has a satellite office, either the main office will maintain the records for the patients served by the satellite office or the records will be maintained in the satellite office. In the event the main office does not maintain the patient records, these records shall be made available to AHCA representatives at the main office within 3 hours of the request. At a minimum, a listing of patients will be maintained in the office which does not maintain the records.~~

~~(5)~~(6) No change.

(a) No change.

(b) physician's verbal orders initiated by the physician prior to start of care and signed by the physician within ~~30~~ 24 days of start of care, ~~pursuant to s. 400.497(7), F.S.~~;

(c) through (h) No change.

1. through 4. No change.

(i) through (l) No change.

(6) The following applies to signatures in the clinical record:

(a) Facsimile Signatures. The plan of care or written order may be transmitted by facsimile machine. The home health agency is not required to have the original signature on file. However, the home health agency is responsible for obtaining original signatures if an issue surfaces that would require certification of an original signature.

(b) Alternative Signatures. Home health agencies that maintain patient records by computer rather than hard copy may use electronic signatures. However, all such entries must be appropriately authenticated and dated. Authentication must include signatures, written initials, or computer secure entry by a unique identifier of a primary author who has reviewed and approved the entry. The home health agency must have safeguards to prevent unauthorized access to the records and a process for reconstruction of the records in the event of a system breakdown.

Specific Authority 400.497 FS. Law Implemented 400.491, 400.494, 400.497 FS. History--New 4-19-76, Amended 2-2-77, Formerly 10D-68.22, Amended 4-30-86, 8-10-88, Formerly 10D-68.022, Amended 10-27-94, 1-17-00, Repealed.

#### 59A-8.024 Administration of Drugs and Biologicals.

Specific Authority 400.497 FS. Law Implemented 400.497 FS. History--New 4-19-76, Formerly 10D-68.24, Amended 4-30-86, 8-10-88, Formerly 10D-68.024, Amended 10-27-94, 1-17-00, Repealed.

#### 59A-8.027 Emergency Management Plans.

(1) Pursuant to s. 400.492, F.S., each home health agency shall prepare and maintain a written comprehensive emergency management plan, in accordance with the "Emergency Management Planning Criteria for Home Health Agencies," AHCA Form 3110-1006, February, 2001, incorporated by reference. This document is available from the Agency for Health Care Administration and shall be included as part of the home health agency's emergency management plan. The plan shall describe how the home health agency establishes and maintains an effective response to emergencies and disasters.

(2) Emergency management plans will be reviewed by the local County Health Department or by the Department of Health, pursuant to s. 400.497(8)(c),(d), F.S., in those counties where the Department of Health receives funding for such reviews, pursuant to s. 381.0303(7), F.S. The Agency for Health Care Administration will notify those agencies who will be required to submit their emergency management plans for review.

(3) The agency shall review its emergency management plan on an annual basis and make any substantive changes.

(4) Changes in the telephone numbers of those staff who are coordinating the agency's emergency response must be reported to the agency's county office of Emergency Management and to the local County Health Department. For agencies with multiple counties on their license, the changes must be reported to each County Health Department and each county Emergency Management office. The telephone numbers must include numbers where the coordinating staff can be contacted outside of the agency's regular office hours. All home health agencies must report these changes, whether their plan has been previously reviewed or not, as defined in subsection (2) above.

(5) When an agency goes through a change of ownership the new owner shall review its emergency management plan and make any substantive changes, including changes noted in subsection (4) above. Those agencies which previously have had their plans reviewed by the local County Health Department or by the Department of Health, as defined in subsection (2) above, will need to report any substantive changes to the reviewing entity.

(6) In the event of an emergency the agency shall implement the agency's emergency management plan in accordance with s. 400.492, F.S. Also, the agency must meet the following requirements:

(a) All staff who are designated to be involved in emergency measures must be informed of their duties and be responsible for implementing the emergency management plan.

(b) If telephone service is not available during an emergency, the agency shall have a contingency plan to support communication, pursuant to s. 400.492, F.S. A contingency plan may include cell phones, contact with a community based ham radio group, public announcements through radio or television stations, driving directly to the employee's or the patient's home, and, in medical emergency situations, contact with police or emergency rescue services.

(7) Home health agencies which are exempt from this requirement are listed in s. 400.497(8)(e), F.S.

(8) On admission, each home health agency shall, pursuant to s. 252.355, F.S., inform patients and patient caregivers of the agency's procedures during and immediately following an emergency and inform patients of the special needs registry maintained by their county Emergency Management office. The agency must document in the patient's file if the patient plans to evacuate or remain at home; if during the emergency the patient's caregiver can take responsibility for services normally provided by the agency; or if the agency needs to continue services to the patient.

(9) Upon eminent threat of an emergency or disaster the home health agency must contact those patients needing ongoing services and confirm each patient's plan during and immediately following an emergency.

(10) During emergency situations, when there is not a mandatory evacuation order issued by the local Emergency Management agency, some patients may decide not to evacuate and will stay in their homes. The home health agency must establish procedures, prior to the time of an emergency, which will delineate to what extent the agency will continue care during and immediately following an emergency. The agency shall also ascertain which patients remaining at home will need care from the home health agency and which patients have plans to receive care from their family or caregivers.

(11) If the agency at some point ceases operation, as defined in s. 400.492(3), F.S., the agency must inform those patients whose services will be discontinued during the emergency.

(12) Each home health agency is required to collect registration information for special needs patients who will need continuing care or services during a disaster or emergency, pursuant to s. 252.355, F.S. This registration information shall be submitted, when collected, to the county Emergency Management office, or on a periodic basis as determined by the agency's county Emergency Management office.

(13) Home health agency staff shall educate patients registered with the special needs registry that special needs shelters are an option of last resort and that services will not be equal to what they have received in their homes.

(14) The prioritized list of registered special needs patients maintained by the home health agency shall be kept current and shall include information as defined in s. 400.492(2), F.S. This list will assist home health agency staff during and immediately following an emergency which requires implementation of the emergency management plan. This list also shall be furnished to local County Health Departments and to the county Emergency Management office, upon request.

(15) The patient record for each person registered as a special needs patient shall include information as listed in s. 400.492(1), F.S.

(16) The home health agency is required to maintain in the home of the special needs patient a list of patient-specific medications, supplies and equipment required for continuing care and service should the patient be evacuated. The list must include the names of all medications, their dose, frequency, route, time of day and any special considerations for administration. The list must also include any allergies; the name of the patient's physician and the physician's phone number(s); the name, phone number and address of the patient's pharmacy. If the patient permits, the list can also include the patient's diagnosis.

Specific Authority 400.492, 400.497 FS. Law Implemented 400.492, 400.497 FS. History--New

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Anne Menard

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Ruben J. King-Shaw, Jr.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 21, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 27, 2000

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

DOCKET NO.: 01-22R

RULE CHAPTER TITLE: Permits  
RULE CHAPTER NO.: 62-4

RULE TITLE: Procedures to Obtain Permits and other  
RULE NO.: 62-4.050

PURPOSE, EFFECT AND SUMMARY: The Department of Environmental Protection is authorized by the U. S. Environmental Protection Agency to implement the National Pollutant Discharge Elimination System (NPDES) permitting program, in Florida, as required by the federal Clean Water

Act. On October 23, 2000, the Department adopted amendments to Chapter 62-620, F.A.C., to implement the stormwater element of the Department's EPA approved NPDES program. The provisions adopted implemented Phase I of the stormwater element as required by the Clean Water Act. Additional stormwater regulations have been published by EPA to effect Phase II of the stormwater element of the NPDES program, as required by the Clean Water Act, which ultimately must be incorporated into the state's NPDES program. The proposed rule modifies Rule 62-4.050(4)(d)3., F.A.C., to delete certain language and thereby more accurately incorporate the appropriate language to describe the "no exposure" conditional exclusion from NPDES stormwater permitting. This change is consistent with language as promulgated by EPA and is substantially identical to the federal regulation as set out in 40 CFR 122.26(g) (2000).

SPECIFIC AUTHORITY: 373.043, 373.418, 403.061, 403.087, 403.704(30) FS.

LAW IMPLEMENTED: 373.109, 373.309, 373.409, 373.413, 373.4135, 373.414(9), (11), (12)(a), (13), (14), (15), (16), 373.4145, 373.418, 373.421, 403.061, 403.087, 403.0877, 403.088, 403.722, 403.861(7) FS.

THIS RULEMAKING IS UNDERTAKEN PURSUANT TO SECTION 403.8055, F.S. SUBSTANTIALLY AFFECTED PERSONS MAY FILE OBJECTIONS WITH THE ENVIRONMENTAL REGULATION COMMISSION AT THE FOLLOWING ADDRESS: 3900 Commonwealth Boulevard, Mail Station 18, Tallahassee, Florida 32399-3000, Attention: Jackie McGorty. Objections must be received within 14 days of publication of this notice and must specify the portions of the proposed rule to which the person objects and the reason for the objection. Objections which are frivolous will not be considered sufficient to prohibit adoption of the rule as published.

WRITTEN COMMENTS: The Secretary of the Department of Environmental Protection will consider written comments received within 21 days of publication of this notice. Comments should be submitted to: Fred Noble, NPDES Stormwater Section, Mail Station 2500, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

THE FULL TEXT OF THE PROPOSED RULE IS:

62-4.050 Procedures to Obtain Permits and Other Authorizations; Applications.

(1) through (4)(d)2. No change.

3. No Exposure Certification for Exclusion from NPDES Stormwater Permitting under the Multi-Sector Generic Permit for stormwater discharge associated with industrial activity \$ 100

4. through (8) No change.

Specific Authority 373.043, 373.418, 403.061, 403.087, 403.704(30) FS. Law Implemented 373.109, 373.309, 373.409, 373.413, 373.4135, 373.414(9),(11), (12)(a),(13),(14),(15),(16), 373.4145, 373.418, 373.421, 403.061, 403.087, 403.0877, 403.088, 403.722, 403.861(7) FS. History—New 5-17-72, Amended 6-19-74, 7-8-82, Formerly 17-4.05, Amended 11-15-87, 8-31-88, 10-3-88, 4-4-89, 3-19-90, 6-11-90, 3-7-91, 3-18-91, 5-30-91, 10-30-91, 11-16-92, 12-21-92, 7-11-93, 2-2-94, 7-4-95, 12-15-98, 10-22-00,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mimi Drew, Director, Division of Water Resource Management, Department of Environmental Protection

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: David B. Struhs, Secretary, Department of Environmental Protection

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 21, 2001

DEPARTMENT OF ENVIRONMENTAL PROTECTION

DOCKET NOS.: 00-32R, 01-23R

RULE CHAPTER TITLE: Wastewater Facility and Activities

Permitting 62-620

RULE TITLE: Scope\Applicability\References

PURPOSE, EFFECT AND SUMMARY: The Department of Environmental Protection is authorized by the U. S. Environmental Protection Agency to implement the National Pollutant Discharge Elimination System (NPDES) permitting program, in Florida, as required by the federal Clean Water Act. On 23 October 2000, the Department adopted amendments to Chapter 62-620, F.A.C., to implement the stormwater element of the Department's EPA approved NPDES program. The provisions adopted implemented Phase I of the stormwater element as required by the Clean Water Act. Additional stormwater regulations have been published by EPA to effect Phase II of the stormwater element of the NPDES program, as required by the Clean Water Act, which ultimately must be incorporated into the state's NPDES program. The proposed rule incorporates the "no exposure" exclusion from NPDES stormwater permitting as promulgated by EPA and is substantially identical to the federal regulation as set out in 40CFR 122.26(g) (2000). Rule 62-620.100(3) incorporates by reference certain regulations and documents necessary to implement the NPDES program in Florida including The Department Guide to Permitting Wastewater Facilities or Activities Under Chapter 62-620, F.A.C., dated 10-23-00. The proposed rule updates the guide, as incorporated by reference, and incorporates the 2000 edition of the applicable federal rules as published in the Code of Federal Regulations (CFR).

RULE NO.: 62-620.100

SPECIFIC AUTHORITY: 403.061, 403.087 FS.

LAW IMPLEMENTED: 403.051, 403.061, 403.087, 403.088, 403.0885 FS.

THIS RULEMAKING IS UNDERTAKEN PURSUANT TO SECTION 403.8055, F.S. SUBSTANTIALLY AFFECTED PERSONS MAY FILE OBJECTIONS WITH THE ENVIRONMENTAL REGULATION COMMISSION AT THE FOLLOWING ADDRESS: 3900 Commonwealth Boulevard, Mail Station 18, Tallahassee, Florida 32399-3000, Attention: Jackie McGorty. Objections must be received within 14 days of publication of this notice and must specify the portions of the proposed rule to which the person objects and the reason for the objection. Objections which are frivolous will not be considered sufficient to prohibit adoption of the rule as published.

WRITTEN COMMENTS: The Secretary of the Department of Environmental Protection will consider written comments received within 21 days of publication of this notice. Comments should be submitted to: Fred Noble, NPDES Stormwater Section, Mail Station 2500, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

THE FULL TEXT OF THE PROPOSED RULE IS:

62-620.100 Scope\Applicability\References.

(1) through (2)(n) No change.

(o) Conditional exclusion for "no exposure" of industrial activities and materials to stormwater. Discharges composed entirely of stormwater are not stormwater discharges associated with industrial activity if there is "no exposure" of industrial materials and activities to precipitation and/or runoff, and the discharger satisfies the conditions in paragraphs (o)(1) through (o)(4) of this section. "No exposure" means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to precipitation and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

1. Qualification. To qualify for this exclusion, the operator of the discharge must:

a. Provide a storm resistant shelter to protect industrial materials and activities from exposure to precipitation and runoff;

b. Submit to the Department a completed and signed Form 62-620.910(17), F.A.C., entitled "No Exposure Certification for Exclusion from NPDES Stormwater Permitting," certifying that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in paragraph (o)(2) of this section. The completed and signed Form 62-620.910(17), and certification fee as required by Rule 62-4.050(4)(d)3., F.A.C., must be submitted to: Department of Environmental

Protection, NPDES Stormwater Notices Center, Mail Station #2510, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400;

c. Renew the certification every 5 years by filing a new completed and signed Form 62-620.910(17), and certification fee as required by Rule 62-4.050(4)(d)3., F.A.C., to the Department of Environmental Protection, NPDES Stormwater Notices Center, Mail Station #2510, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, upon the expiration of each 5 year interval.

d. Allow the Department or its agents to inspect the facility to determine compliance with the "no exposure" conditions; and,

e. For facilities that discharge through a Municipal Separate Storm Sewer System (MS4), submit a copy of the certification of "no exposure" to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

2. Industrial materials and activities not requiring storm resistant shelter. To qualify for this exclusion, storm resistant shelter is not required for:

a. Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak ("Sealed" means banded or otherwise secured and without operational taps or valves);

b. Adequately maintained vehicles used in material handling; and,

c. Final products, other than products that would be mobilized in stormwater discharge (e.g., rock salt).

3. Limitations. This conditional exclusion from stormwater permitting under this chapter and/or chapter 62-621 is not available:

a. for stormwater discharges from construction activities;

b. for individual outfalls. The exclusion is available on a facility wide basis only;

c. if circumstances change and industrial materials or activities become exposed to precipitation and/or runoff, the conditions for this exclusion no longer apply. In such cases, the discharge becomes subject to enforcement for un-permitted discharge. Any conditionally excluded discharger who anticipates changes in circumstances should apply for and obtain permit authorization prior to the change of circumstances; and,

d. Notwithstanding the provisions of this paragraph, the Department retains the authority to require permit authorization (and deny this exclusion) upon making a determination that the discharge causes or contributes to the violation of an applicable water quality standard, including designated uses.

(3) References. The Department adopts and incorporates by reference the following sections of Title 40 of the Code of Federal Regulations (CFR) revised as of July 1, 2000 ~~1999~~, and the Department Guide to Permitting Wastewater Facilities or Activities Under Chapter 62-620, F.A.C., dated \_\_\_\_\_

~~10-23-00~~. Copies of these documents may be obtained by writing the Department of Environmental Protection, Bureau of Water Facilities Regulation, 2600 Blair Stone Road, MS3535, Tallahassee, Florida 32399-2400.

- (a) through (q) No change.
- (4)(a) through (b) No change.

Specific Authority 403.061, 403.087 FS. Law Implemented 403.061, 403.087, 403.088, 403.0885 FS. History--New 11-29-94, Amended 12-24-96, 3-2-00, 10-22-00, 10-23-00,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Mimi Drew, Director, Division of Water Resource Management, Department of Environmental Protection

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: David B. Struhs, Secretary, Department of Environmental Protection

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 19, 2000 (00-32R), March 21, 2001 (01-23R)

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

DOCKET NO.: 01-24R

RULE CHAPTER TITLE: Wastewater Facility and Activities

RULE CHAPTER NO.:

Permitting 62-620

RULE TITLE: Forms and Instructions

RULE NO.: 62-620.910

PURPOSE, EFFECT AND SUMMARY: The Department of Environmental Protection has been authorized by the U. S. Environmental Protection Agency to implement the National Pollutant Discharge Elimination System (NPDES) permitting program, in Florida, as required by the federal Clean Water Act. The NPDES program is implemented through, among others, Chapter 62-620, F.A.C. Rule 62-620.910 incorporates by reference certain documents necessary to implement the NPDES program in Florida, as well as the state's domestic wastewater program, including Form 62-620.910(2) entitled Application Form 2A, Permit for Domestic Wastewater Treatment and Reuse or Disposal Facility, the latest version of which was published in 1994. The proposed rule incorporates by reference a new Application Form 2A, Permit for Domestic Wastewater Treatment and Reuse or Disposal Facility. Additionally, the rule amendments incorporate a new form, Form 62-620.910(17), entitled "No Exposure Certification for Exclusion from NPDES Stormwater Permitting." This form is necessary to implement the "no exposure" exclusion from NPDES permitting whereby one may not need an NPDES permit if it can be established stormwater falling upon a facility has "no exposure" to industrial activity.

SPECIFIC AUTHORITY: 403.061, 403.8055 FS.

LAW IMPLEMENTED: 403.051, 403.061, 403.087, 403.088, 403.0885 FS.

THIS RULEMAKING IS UNDERTAKEN PURSUANT TO SECTION 403.8055, F.S. SUBSTANTIALLY AFFECTED PERSONS MAY FILE OBJECTIONS WITH THE ENVIRONMENTAL REGULATION COMMISSION AT THE FOLLOWING ADDRESS: 3900 Commonwealth Boulevard, Mail Station 18, Tallahassee, Florida 32399-3000, Attention: Jackie McGorty. Objections must be received within 14 days of publication of this notice and must specify the portions of the proposed rule to which the person objects and the reason for the objection. Objections which are frivolous will not be considered sufficient to prohibit adoption of the rule as published.

WRITTEN COMMENTS: The Secretary of the Department of Environmental Protection will consider written comments received within 21 days of publication of this notice. Comments should be submitted, regarding Application Form 2A, to Lisa Wadsworth, Domestic Wastewater Section, Mail Station 3540, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400; or, as to the No Exposure Certification form, to Fred Noble, NPDES Stormwater Section, Mail Station 2500, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

THE FULL TEXT OF THE PROPOSED RULE IS:

62-620.910 Forms and Instructions.

The forms and instructions used by the Department for the wastewater facilities or activities permitting and compliance program are listed in this part. Copies of the forms and instructions may be obtained at the Department District Offices. The Department adopts and incorporates by reference in this section the following forms and instructions:

- (1) No change.
- (2) Application Form 2A, Permit for Domestic Wastewater Treatment and Reuse or Disposal Facility, effective ~~11-29-94~~.
- (3) through (16) No change.

(17) No Exposure Certification for Exclusion from NPDES Stormwater Permitting, effective \_\_\_\_\_.

Specific Authority 403.061, 403.8055 FS. Law Implemented 403.051, 403.061, 403.087, 403.088, 403.0885 FS. History--New 11-29-94, Amended 12-24-96, 10-23-00,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Mimi Drew, Director, Division of Water Resource Management, Department of Environmental Protection

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: David B. Struhs, Secretary, Department of Environmental Protection

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 21, 2001





**DEPARTMENT OF HEALTH**

**Board of Medicine**

RULE TITLE: Disciplinary Guidelines  
 RULE NO.: 64B8-55.001

PURPOSE AND EFFECT: The Board proposes to update the existing rules.

SUMMARY: This amendment addresses specific requirements for disciplinary guidelines.

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

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

SPECIFIC AUTHORITY: 456.072, 456.079, 478.52(4) FS.

LAW IMPLEMENTED: 456.072, 456.079, 478.52(4) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE NEXT AVAILABLE ISSUE OF THE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kaye Howerton, Executive Director, Electrolysis Council/MQA, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399

**THE FULL TEXT OF THE PROPOSED RULE IS:**

64B8-55.001 Disciplinary Guidelines.

(1) No change.

(2) Sexual misconduct in the delivery of electrolysis services is sexual behavior or involvement as defined in Section 456.063(1), Florida Statutes ~~with a client, or an immediate family member of a client, including verbal or physical behavior, which may reasonably be interpreted as intended for the sexual arousal or gratification of the Electrologist, the client, an immediate family member of the client, or any third party.~~

(3) Violations and Range of Penalties. In imposing discipline upon applicants and licensees in proceedings pursuant to Section 120.57(1) and 120.57(2), Florida Statutes, the Board shall act in accordance with the following disciplinary guidelines and shall impose a penalty within the range corresponding to the violations set forth below. The identification of offenses are descriptive only; the full language of each statutory provision cited must be consulted in order to determine the conduct included.

**VIOLATION**

(a) through (e) No change.  
 (f) Unprofessional conduct, failure to conform to acceptable standards. (478.52(1)(f), F.S., 456.072(3)(b), F.S. ~~455.624(3)(b), F.S.~~)

(g) through (q) No change.  
 (r) Inability to practice because of mental or physical condition or use of alcohol or controlled substances. (478.52(1)(r), F.S.) (456.072(1)(v), F.S.)

(t) through (kk) No change.  
(ll) Testing positive for a drug on employment drug screening (456.072(1)(z), F.S.)

**RECOMMENDED RANGE OF PENALTY**

(f)1. For first-time violation where no actual patient harm occurred, citation and \$250 fine. For first-time violation where actual patient harm occurred, from six months probation to revocation or denial, and an administrative fine from \$1,000 to \$2,500.

(f)2. After the first offense, from one year probation to revocation or denial, and an administrative fine from \$1,000 to \$5,000.

(r)1. From probation to denial or indefinite suspension until licensee is able to demonstrate the ability to practice with reasonable skill and safety followed by probation, and an administrative fine from \$250 to \$5,000.

(r)2. For a second offense, from indefinite suspension until licensee is able to demonstrate the ability to practice with reasonable skill and safety followed by probation to revocation, and an administrative fine from \$1,000 to \$5,000.

(ll)1. Probation to revocation or denial licensure, and administrative fine from \$250 to \$2,500.

(ll)2. After the first offense, probation to revocation, and administrative fine from \$2,500 to \$5,000.

(4) through (7) No change.

Specific Authority ~~456.072, 456.079, 455.624, 455.627~~, 478.52(4) FS. Law Implemented ~~456.072, 456.079, 455.624, 455.627~~, 478.52(4) FS. History—New 11-16-93, Formerly 61F6-80.001, Amended 1-2-95, Formerly 59R-55.001, Amended 2-9-98, 10-12-98, 3-1-00, 9-28-00.

NAME OF PERSON ORIGINATING PROPOSED RULE: Electrolysis Council  
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Medicine  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 5, 2000  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 16, 2001

**DEPARTMENT OF HEALTH  
Council of Licensed Midwifery**

RULE TITLE: Informed Consent  
RULE NO.: 64B24-7.005  
PURPOSE AND EFFECT: The Department of Health, Council of Licensed Midwifery has revised its Informed Consent for Licensed Midwifery Services form, and accordingly, proposes this rule amendment to properly incorporate this revision.

SUMMARY: Subsection (1) of Rule 64B24-7.005, FAC., is amended to properly incorporate by reference the amended Informed Consent for Licensed Midwifery Services form, DH-MQA 1047, revised 3/01.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: Has not been prepared regarding this proposed rule.

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

SPECIFIC AUTHORITY: 467.005 FS.  
LAW IMPLEMENTED: 467.014, 467.015(1)(a), 467.016 FS.  
A HEARING WILL BE HELD IF REQUESTED, AT A TIME, DATE AND PLACE, TO BE ANNOUNCED IN A LATER ISSUE OF THIS PUBLICATION.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this meeting, is asked to advise the agency at least 5 calendar days before the meeting by contacting: Letitia Morris, (850)245-4444, Ext. 3489. If you are hearing or speech impaired, please contact the agency by calling (850)245-4474.

All written material received by the Department within 21 days of the date of publication of this notice shall be made a part of the official record.

Section 286.0105, Florida Statutes, provides that, if a person decides to appeal any decision made by the department with respect to any matter considered at this hearing, they will need a record of proceedings, and for such purposes, they may need

to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Joe Baker, Executive Director, Council of Licensed Midwifery, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3256

THE FULL TEXT OF THE PROPOSED RULE IS:

64B24-7.005 Informed Consent.

(1) ~~The~~ licensed midwife shall obtain ~~upon acceptance of the patient her~~ a patient's consent for the provision of midwifery services. ~~Such and record that~~ consent shall be recorded on the Informed Consent for Licensed Midwifery Services, Form DH-MQA 1047, revised 3/01, which is hereby adopted and incorporated by reference ~~herein, effective 7-14-94~~, and can be obtained from the Council of Licensed Midwifery, 4052 Bald Cypress Way, BIN #C06 Department of Health, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-~~3256~~ 2204.

Specific Authority ~~455.521(5), 467.005~~ FS. Law Implemented 467.014, 467.015(1)(a), 467.016 FS. History—New 7-14-94, Formerly 61E8-7.005, 59DD-7.005, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Joe Baker, Executive Director, Council of Licensed Midwifery, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3256

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Joe Baker, Executive Director, Council of Licensed Midwifery, 4052 Bald Cypress Way, BIN #C06, Tallahassee, Florida 32399-3256

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 12, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 28, 2000

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

**AGENCY FOR HEALTH CARE ADMINISTRATION**

**Division of Managed Care and Health Quality**

RULE NO.: 59A-4.1075  
RULE TITLE: Medical Directors  
NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 26, No. 49, December 8, 2000, issue of the Florida Administrative Weekly.

Paragraph (1) No change.

Paragraph (2)(a):