

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

Section II Proposed Rules

DEPARTMENT OF COMMUNITY AFFAIRS

Florida Building Commission

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Florida Building Commission	
Operational Procedures	9B-3
RULE TITLES:	RULE NOS.:
Commission Organization and Operations	9B-3.004
Statewide Amendments to the Florida Building Code	9B-3.050
Local Amendments to the Florida Building Code	9B-3.051
Notice of Rights	9B-3.052

PURPOSE, EFFECT AND SUMMARY: The purpose and effect of the proposed rule is to provide for Commission organization and committee structure, voting requirements, procedures for processing statewide amendments to the Florida Building Code by the Commission and its technical advisory committees, and procedures for transmittal, review and incorporation of local amendments to the Florida Building Code.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None has been prepared by the Commission.

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: 553.73(3),(6), 553.76(1), 553.77(1)(a),(h) FS.

LAW IMPLEMENTED: 553.73(3),(6), 553.74, 553.75, 553.77(1)(h) FS.

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

TIME AND DATE: 8:50 a.m., August 28, 2001

PLACE: Rosen Plaza Hotel, 9700 International Drive, Orlando, Florida

Any person requiring special accommodation at the hearing because of a disability or physical impairment should contact Ila Jones, Community Program Administrator, Department of Community Affairs, 2555 Shumard Oak Boulevard, Sadowski Building, Tallahassee, Florida 32399-2100, (850)487-1824 at least seven days before the date of the hearing. If you are hearing or speech impaired, please contact the Department of Community Affairs using the Florida Dual Party Relay System which can be reached at 1(800)955-8770 (Voice) or 1(800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Ila Jones, Community Program Administrator, Department of Community Affairs, 2555 Shumard Oak Boulevard, Sadowski Building, Tallahassee, Florida 32399-2100, (850)487-1824

THE FULL TEXT OF THE PROPOSED RULES IS:

9B-3.004 Commission Organization and Operations.

(1) The Commission is headed by a Chairman who is appointed by the Governor.

(2) The Chairman presides over all Commission meetings, appoints Program Oversight Committees, Technical Advisory Committees and Ad Hoc Committees ~~subcommittees~~, serves as official spokesman for the Commission, and delegates staff and Committee assignments. The Chairman shall review the membership of Program Oversight and Technical Advisory Committees and reappoint or replace members annually.

(3) The Chairman may appoint a vice-chairman to act in his absence and appoints the chairman for all Program Oversight, Technical Advisory and Ad Hoc Committees, ~~for the purpose of expediting Commission functions, appoint subcommittees with specifically delegated responsibilities in any area of concern to the Commission.~~

(4) Program Oversight Committees shall be standing Committees composed of not less than five (5) members of the Florida Building Commission whose purpose/mission is to provide oversight of the programs the Legislature has assigned to the Commission.

~~(5)~~(4) Ad Hoc SubCommittees shall consist of members of the Florida Building Commission as appointed by the Chairman from time to time to whose purpose/mission is to conduct investigations within the areas for which they are created and report all findings along with recommendations to the Commission for action. Members serve until the Ad Hoc completes assigned task(s).

(6) The Chairman shall appoint members of the Commission and other interested parties as members of standing Technical Advisory Committees that reflect each of the technical sections of the Florida Building Code. Membership on each Committee shall be balanced to represent the interests of consumers, producers and a general interest category in conformance with ANSI consensus standards committee membership criteria for regulatory standards. The purpose/mission of the Committees is to review and advise the Commission regarding requests for declaratory statement, proposed amendments to the Florida Building Code pursuant to Rule 9B-3.050, and in other areas of interest to the Commission as delegated by the Chairman. Non-Commission members of the Committees will serve on a voluntary basis without compensation for travel or per diem.

(7) The Commission and all of its Committees (Ad Hoc Committees, Program Oversight Committees, and Technical Advisory Committees) shall make decisions only when a

quorum is present. A quorum shall be constituted by at least 51% of the appointed members being present (simple majority).

(8) The Commission and all of its Committees will utilize Robert's Rules of Order to make and approve motions.;

(9) Resolution of petitions for declaratory statement shall be resolved as provided in Chapter 120, F.S., and Chapter 28, F.A.C., upon a vote of the majority of Commissioners or Committee members present. Resolution of petitions for waiver of accessibility requirements shall be resolved as provided Chapter 9B-7, F.A.C.

(10) In all other matters, excepting procedural motions, a 75% supermajority voting requirement will supercede the normal voting requirements used in Robert's Rules of Order for decision making on all motions. The Commission and all of its Committees shall only consider motions to approve and not consider motions to deny. In addition, the Commission and all of its Committees shall utilize their adopted meeting guidelines for conduct during meetings.

(5) through (10) renumbered (11) through (16) No change.

Specific Authority 553.76(1), 553.77(1)(a) FS. Law Implemented 553.74, 553.75 FS. History--New 5-15-75, Amended 4-18-78, Formerly 9B-3.04, Amended _____.

9B-3.050 Statewide Amendments to the Florida Building Code.

(1) The Florida Building Commission may approve technical amendments to the Florida Building Code once each year if it finds that the amendment meets the following criteria:

(a) Has a reasonable and substantial connection with the health, safety and welfare of the general public.

(b) Strengthens or improves the Florida Building Code, or in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction.

(c) Does not discriminate against materials, products, methods or systems of construction of demonstrated capabilities.

(d) Does not degrade the effectiveness of the Florida Building Code. Furthermore, the Florida Building Commission may approve technical amendments to the code once each year to incorporate its own interpretations of the code which are embodied in its own opinions and declaratory statements.

(2) Definitions. As used in this rule, the following terms shall have the meaning indicated unless the context clearly requires a contrary definition:

(a) Amendment means an alteration to the adopted provisions of the Florida Building Code. Amendments shall include all alterations referenced in Rule 9B-3.050, F.A.C., whether adopted by the Commission for statewide or regional application; or the local authority having jurisdiction, referred to as local amendments. More specifically,

1. Technical amendment means an alteration to the prescriptive requirements or reference standards for construction adopted by the code;

2. Administrative amendment means an addition to or amendment of the requirements adopted by the code for enforcement of the prescriptive requirements or reference standards for construction adopted by the code;

(b) Strengthens means to make more stringent and provide for greater lifesafety;

(c) Improves means to make more responsive to the context of application; statewide, regional or local; on the basis of experience or newly presented information without compromising or decreasing lifesafety requirements.

(3) The Florida Building Commission shall update the Florida Building Code triennially. When updating the code, the Commission shall consider changes made by the adopting entity of any selected model code which forms the basis of the Florida Building Code, the Commission's own interpretations, declaratory statements, appellate decisions, and local technical amendments. The Commission may adopt the new edition or successor of the model codes, or any part thereof, no sooner than six months after such model code has been adopted by the adopting organization. When adopting the new edition or successor of the model codes, the fiscal impact statement required by subsection 9B-3.047(6), F.A.C., does not apply, unless an interested party requests one in writing.

(4) For the purpose of amending the Florida Building Code as provided in subsections (1) and (2), the yearly amendment cycle shall run from July 1 to June 30. Except as provided in subsection (2), each proposed amendment to the Florida Building Code shall be submitted by July 1 on the form adopted by, and include the information required by, subsection 9B-3.047(6), F.A.C., through the Building Code Information System at www.floridabuilding.org. Proposed amendments submitted after July 1 will not be considered in the current amendment cycle, but may be resubmitted for the following amendment cycle.

(5) Each proposed amendment will be heard first by the appropriate Technical Advisory Committee, which will consider the proposal and all documentation submitted therewith, and consider whether to recommend approval by a 75% vote. If the proposal fails to achieve a 75% favorable vote, it is forwarded to the Commission for action based upon the applicable criteria. The Committee may modify the proposed amendment if it provides the documentation required by subsection 9B-3.047(6), F.A.C. After modification, the Committee must then vote whether to recommend adoption as amended. If the proposed amendment as modified fails to achieve a 75% favorable vote, the proposal is forwarded to the Commission for action.

(6) The Commission shall publish each proposed amendment on its website at www.floridabuilding.org at least 45 days prior to its consideration by the appropriate Technical

Advisory Committee. This notice may run concurrently with the notice required by Section 120.54(2), F.S., and is not intended to extend the required rulemaking timeframes therein.

(7) The full Commission shall consider and vote upon each proposed amendment after consideration by at least one Technical Advisory Committee. The Commission may act on a consent agenda of those proposals which receive the required 75% vote at the Committee level deny the amendment. The Commission must take action on all proposed amendments regardless of the Committee’s recommendation. The decision of the Commission to approve a proposed amendment shall be by 75% vote. Those proposals failing to meet the vote requirement shall not be adopted. The Commission may modify a proposed amendment, provided that the form required by subsection 9B-3.047(6), F.A.C., is amended to reflect the modification and supporting documentation is submitted.

(8) The Commission shall publish each proposed amendment on its website at www.dca.state.fl.us/fhcd/fbc at least 45 days prior to its consideration by the full Commission. This notice may run concurrently with the notice required by Section 120.54(3), F.S., and is not intended to extend the required rulemaking timeframes therein.

(9) Each amendment approved for adoption by the Florida Building Commission on or before December 31 shall take effect on July 1 of the following year.

Specific Authority 553.73(3), (6) FS. Law Implemented 553.73(3), (6) FS. History–New _____.

9B-3.051 Local Amendments to the Florida Building Code.

(1) Local governments may adopt amendments to the Florida Building Code which meet the requirements of Section 553.73(4)(b), F.S.

(2) Within 30 days of adopting a local amendment, the local government shall transmit each amendment to the Commission utilizing the Building Code Information System available at www.floridabuilding.org. The Commission shall publish each such amendment on the Building Code Information System for access by the public.

(3) The Commission may review local technical amendments and issue nonbinding recommendations to the local government regarding the compliance of such amendments with the requirements of Section 553.73(4)(b), F.S. For purposes of this review, each amendment shall be considered first by the applicable Technical Advisory Committee which shall make a recommendation to the Commission regarding the compliance of the amendment with the applicable criteria. The nonbinding recommendation shall be issued in writing to the local government and shall be issued to the local government within thirty (30) days of the conclusion of the Commission meeting at which the recommendation is approved.

(4) When triennially updating the Florida Building Code, the Commission shall review each locally adopted technical amendment and determine whether the amendment meets the criteria listed in subsection 9B-3.050(1), F.A.C. For purposes of such determination, each amendment shall be referred to the applicable Technical Advisory Committee for review and recommendation to the full Commission. If the Commission determines that the amendment meets the criteria, the Commission may adopt the amendment into the Florida Building Code following the procedures established in subsection 9B-3.050(3)-(8), F.A.C. If the Commission determines that the amendment does not meet the criteria, the Commission shall rescind the amendment. Rescissions shall be in writing with written findings and shall be transmitted to the local government within 30 days of the conclusion of the meeting at which the Commission’s decision is voted upon.

Specific Authority 553.73(4)-(5) FS. Law Implemented 553.73(4)-(5) FS. History–New _____.

9B-3.052 Notice of Rights.

All decisions interpreting the Florida Building Code appealable to the Florida Building Commission shall include a notification of the right to appeal the decision to the Commission as required by Chapter 120, F.S., and Chapter 28-106, F.A.C.

Specific Authority 553.77(1)(h) FS. Law Implemented 553.77(1)(h) FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ila Jones, Community Program Administrator, Department of Community Affairs, 2555 Shumard Oak Boulevard, Sadowski Building, Tallahassee, Florida 32399-2100

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Shirley Collins, Director, Division of Housing and Community Development, Department of Community Affairs, 2555 Shumard Oak Boulevard, Sadowski Building, Tallahassee, Florida 32399-2100

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 24, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 22, 2001

DEPARTMENT OF COMMUNITY AFFAIRS

Florida Building Commission

RULE CHAPTER TITLE: Florida Building Commission: RULE CHAPTER NO.:

Operational Procedures 9B-3

RULE TITLE: State Building Code and Product Evaluation and Approval System Adopted RULE NO.:

9B-3.047

PURPOSE, EFFECT AND SUMMARY: To effectuate final preparation for implementation of the Florida Building Code, including revision of the Code to update sections which reflect rules of other agencies, implement substantive law changes

with which the Code conflicts and make editorial changes. In addition, the amendment adopts by reference the Florida Product Evaluation and Approval System which creates a system for demonstration that products, systems and methods of construction comply with the standards established by the Code.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None has been prepared by the Commission.

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: 553.73(1),(7), 553.842 FS.

LAW IMPLEMENTED: 553.72, 553.73(3),(7),(9), 553.842 FS.

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

TIME AND DATE: 8:30 a.m., August 28, 2001

PLACE: Rosen Plaza Hotel, 9700 International Drive, Orlando, Florida

Any person requiring special accommodation at the hearing because of a disability or physical impairment should contact Ila Jones, Community Program Administrator, Department of Community Affairs, 2555 Shumard Oak Boulevard, Sadowski Building, Tallahassee, Florida 32399-2100, (850)487-1824 at least seven days before the date of the hearing. If you are hearing or speech impaired, please contact the Department of Community Affairs using the Florida Dual Party Relay System which can be reached at 1(800)955-8770 (Voice) or 1(800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Ila Jones, Community Program Administrator, Department of Community Affairs, 2555 Shumard Oak Boulevard, Sadowski Building, Tallahassee, Florida 32399-2100, (850)487-1824

THE FULL TEXT OF THE PROPOSED RULE IS:

9B-3.047 State Building Code and Product Evaluation and Approval System Adopted.

(1) The Florida Building Code as revised by the Florida Building Commission on August 29th, 2001, is hereby adopted and incorporated by reference as the building code for the State of Florida.

~~(1) South Florida Building Code (Dade County), 1994 edition.~~

(2) The Florida Product Approval System as approved by the Florida Building Commission on August 29th, 2001, is hereby adopted and incorporated by reference. The Product Approval System shall establish procedures by which products,

systems and methods of construction demonstrate compliance with the Florida Building Code South Florida Building Code (Broward County), 1996 edition. Copies of the Florida Product Approval System may be obtained by writing to the Codes and Standards Section, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100.

~~(3) EPCOT Code, 1996 edition.~~

~~(4) One and Two Family Dwelling Code, 1995 edition excluding section 308.4.9 relating to safety glazing near swimming pools.~~

~~(5) Section 1606 of the Standard Building Code shall be the minimum wind load criteria used for the design of all one and two family dwellings. Compliance with the engineering design criteria contained in section 1606 may be achieved by using the Southern Building Code Congress International, Inc., Standard SSTD 10-97 for Hurricane Resistant Residential Construction, the Wood Products Promotion Council - High Wind Project, Guide to Wood Construction in High Wind Areas 1997 edition "the Builder's Guide", the Wood Frame Construction Manual for One and Two Family Dwellings, 1995 High Wind Edition, or the Guide to Concrete Masonry Residential Construction in High Wind Areas, the "Masonry Guide". The Builder's Guide implementation shall be limited to the construction and design of wood frame single story buildings with wind speed design parameters of 100 and 110 miles per hour. The Manual is limited to residential buildings of three stories or less, a mean roof height not exceeding 33 feet and wind speed design parameters between 90 and 120 miles per hour. The Masonry Guide is limited to residential buildings of one story with a maximum height not exceeding 25 feet and wind speed design parameters of 90, 100, and 110 miles per hour (fastest mile).~~

(3)(6) Modifications and Amendments. All proposed modifications to the selected base codes and amendments to the Florida Building Code shall be submitted on Form No. 2000-01, which the Commission hereby incorporates by reference, effective 11-28-00. Form No. 2000-01 must be completed in full prior to submittal. The text of the proposed modification or amendment must be provided on Form No. 2000-01 in legislative format, with underlining indicating where new language is added to the existing provisions and strikeout indicating where existing language is deleted. Copies of Form No. 2000-01 may be obtained by writing to the Codes and Standards Section, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100.

Specific Authority 553.73(1), (7), 553.842 FS. Law Implemented 553.72, 553.73(3), (7), (9), 553.842 FS. History—New 7-18-90, Amended 3-30-93, 10-17-93, 8-28-95, 9-24-96, 12-26-96, 4-27-97, 10-5-97, 10-14-97, 9-7-00, 11-28-00, 2-7-01, _____.

NOTE 1: The revision of the Florida Building Code referenced in paragraph 1 effects the following chapters of the Code in the manner indicated:

Volume Building:

Chapter 1, Administration

The following sections are amended in the Code:

101.4.2 (Building), 104.1.5 (Information required), 104.6.2 (Work commencing before permit issuance), 105.6 (Required inspection)

The following sections are added in the Code:

104.5.4 (Work starting before permit issuance)

Chapter 4, Special Occupancy

The following sections are amended in the Code:

419 (Hospitals and Intermediate Residential Treatment Facilities), 420 (Nursing Homes), 421 (Ambulatory Surgical Centers), 422 (Birthing Centers), 423 (State Requirements for Educational Facilities), 424 (Swimming Pools and Bathing Places), 425 (Public Lodging Establishments), 426 (Public Food Service Establishments), 427 (Crisis Stabilization Units), 428 (Manufactured Buildings), 429 (Boot Camps for Children), 433 (Adult Day Care), and 434 (Assisted Living Facilities), and 431 (Control of Radiation Hazards).

Chapter 9, Fire Protection Systems

The following section is deleted from the Code:

903.7.5 (Group R1-Residential Occupancy (Exception))

The following section is amended in the Code:

903.8.1 (automatic sprinkler system)

The following section is added in the Code:

904.3.5 (wet standpipe)

Chapter 10, Means of Egress

The following section is amended in the Code:

1003.2.7 (change in level)

Chapter 12, Interior Environment

The following section is amended in the Code:

1203.2.6 (ceiling height)

Chapter 13, Energy Efficiency

The following sections are amended in the Code:

610.1.A.3.5.2 (Air Handling Units), Appendix D Energy Code Compliance Forms

Chapter 15, Roof Assemblies and Rooftop Structures

The following section is amended in the Code:

1521.9 (roofing system)

Chapter 16, Structural Loads

The following section is deleted from the Code:

1611.2.3 (Awning structures)

The following sections are amended in the Code:

1606.1.4 (Protection of openings), 1626.1 Exception f (storage sheds)

Chapter 19, Concrete

The following section is amended in the Code:

1901.1.1 (Exception)

Chapter 23, Wood

The following section is deleted from the Code:

2319.17.2.1.1(2) (documents)

Chapter 30, Elevators and Conveying Systems is amended.

Chapter 31, Special Construction is amended.

Chapter 34, Existing Buildings

The following section is amended in the Code:

3401.1 (Exception), 3401.2.2.2 (reference), and 3401.5.3 (reference).

Reference Standards

Chapter 35, Reference Standards, of the Florida Building Code, Building; Chapter 7, Reference Standards, of the Florida Building Code, Fuel Gas; Chapter 14, Reference Standards, of the Florida Building Code, Plumbing; Chapter 15, Reference Standards, of the Florida Building Code, Mechanical. Reference Standards, Florida Building Code, are revised to provide for consistent numbering of the referenced standards throughout the Florida Building Code and for consistency with the referenced standards within the Florida Fire Prevention Code.

Index is amended for clarity.

Test Protocols for High Velocity Hurricane Zones

TAS 105

The following sections are amended in the Code:

8.3 and 9.2.1

TAS 301

The following sections are amended in the Code:

8.1

RAS 130

The following sections are amended in the Code:

1.1, 3.4, and 4.1

NOTE 2: The Florida Product Approval System adopted by reference in paragraph 2 above was noticed for rule development workshop under the title 9B-72, Product Approval, in the June 22, 2001, issue of Florida Administrative Weekly. The workshop was held as noticed. The Florida Building Commission voted to adopt the requirements of that system by reference herein rather than in a separate rule chapter.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ila Jones, Community Program Administrator, Department of Community Affairs, 2555 Shumard Oak Boulevard, Sadowski Building, Tallahassee, Florida 32399-2100

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Shirley Collins, Director, Division of Housing and Community Development, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 24, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 22, 2001

DEPARTMENT OF COMMUNITY AFFAIRS

Florida Building Commission

RULE CHAPTER TITLE: Florida Building Commission Building Code Training Program

RULE CHAPTER NO.: 9B-70

RULE TITLE: Building Code Training Program

RULE NO.: 9B-70.001

PURPOSE, EFFECT AND SUMMARY: To reflect the development of five technical courses focusing on issues of transition from the current codes to the Florida Building Code as part of the core training curriculum in addition to the initial basic core course which focuses on the administrative requirements of the Florida Building Code, and to provide those required to take a course two years from the date that the courses became available to complete the requirement. The amendment also provides for credit to be given to those who take more than one core course.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None has been published.

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: 553.841(2) FS.

LAW IMPLEMENTED: 553.841 FS.

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

TIME AND DATE: 8:20 a.m., August 28, 2001

PLACE: Rosen Plaza Hotel, 9700 International Drive, Orlando, Florida

Any person requiring special accommodation at the hearing because of a disability or physical impairment should contact Ila Jones, Community Program Administrator, Department of Community Affairs, 2555 Shumard Oak Boulevard, Sadowski Building, Tallahassee, Florida 32399-2100, (850)487-1824 at least seven days before the date of the hearing. If you are hearing or speech impaired, please contact the Department of Community Affairs using the Florida Dual Party Relay System which can be reached at 1(800)955-8770 (Voice) or 1(800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Ila Jones, Community Program Administrator, Department of Community Affairs, 2555 Shumard Oak Boulevard, Sadowski Building, Tallahassee, Florida 32399-2100, (850)487-1824

THE FULL TEXT OF THE PROPOSED RULE IS:

9B-70.001 Building Code Training Program.

The purpose of the Building Code Training Program is to educate licensed building department personnel, contractors, and design professionals through a required core curriculum courses or equivalency examination that addresses the Florida Building Code.

(1) The Core Curriculum Course:

(a) The Core curriculum is comprised of the Basic Core Course that emphasizes the administrative, enforcement and procedural aspects of the Florida Building Code and five (5) Technical Code Training courses that emphasize comparison between the existing codes and the Florida Building Code shall consist of one course that Licensees regulated under Chapters 468, Part XII, 481, and 489, Parts I and II, F.S., shall at a minimum be required to complete one course by June 1, 2003 or within two (2) years of initial certification or registration, whichever is later as a condition of renewal of their certificate or registration. Licensees regulated under Chapter 471, F.S., are required to complete one the core course curriculum only if the licensee actively participates in designing buildings, structures, or facilities covered by the Florida Building Code.

(b) Licensees ~~who complete the core curriculum~~ will receive four (4) hours of continuing education credit for each Core course completed.

(c) Licensees who hold more than one certificate or registration issued by a board and licensees regulated by more than one board will be required to complete one the core course one time.

(d) The core courses shall be delivered through customized instructor-led training at multiple sites, Internet, or CD-ROM supported interactive multimedia training materials.

(e) The Florida Building Commission shall assign a generic course numbers which must be used by all providers when reporting completion of the core courses by electronic means to the Department of Community Affairs and Department of Business and Professional Regulation.

(f) The core courses shall be effective until the adoption of the new edition of the Florida Building Code every third year, at which time the curriculum will be updated to reflect amendments and changes to the unified code. The licensee shall only be required to complete a the core course one time.

(2) Equivalency examination:

(a) The equivalency examination shall include and measure the same areas of competency covered in the Basic Core course. The equivalency examination will be updated every third year to reflect the new edition of the Florida Building Code.

(b) Passing the equivalency examination shall be considered equivalent to completing the Basic Ceore course and the licensee will receive four (4) hours of continuing education credit.

(c) through (e) No change.

(f) If the licensee does not pass the equivalency examination, and subsequently completes a the core course curriculum, the licensee shall be deemed to have met the requirements for license renewal and will receive four (4) hours of continuing education credit.

(3) The Florida Building Commission shall have the authority to contract for the purpose of administering the core courses and equivalency examination.

Specific Authority 553.841(2) FS. Law Implemented 553.841 FS. History—New 4-20-00, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ila Jones, Community Program Administrator, Department of Community Affairs, 2555 Shumard Oak Boulevard, Sadowski Building, Tallahassee, Florida 32399-2100

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Shirley Collins, Director, Division of Housing and Community Development, Department of Community Affairs, 2555 Shumard Oak Boulevard, Sadowski Building, Tallahassee, Florida 32399-2100

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DEPARTMENT OF COMMUNITY AFFAIRS

Florida Building Commission

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Product Approval	9B-72
RULE TITLES:	RULE NOS.:
Definitions	9B-72.010
Local Product Approval Generally	9B-72.030
Product Evaluation and Quality Assurance for Local Approval	9B-72.040
Product Approval by Local Jurisdiction	9B-72.050
Optional Statewide Approval Generally	9B-72.060
Product Evaluation and Quality Assurance for Optional Statewide Approval	9B-72.070
Product Validation by Approved Validation Entity for Optional Statewide Approval	9B-72.080
Product Approval by the Commission	9B-72.090
Approval of Product Evaluation Entities, Product Validation Entities, Testing Laboratories, Certification Agencies, and Quality Assurance Agencies and Accreditation Bodies	9B-72.100

Criteria for Certification of Independence 9B-72.110

List of Approved Product Evaluation Entities, Validation Entities, Testing Laboratories, Certification Agencies, and Quality Assurance Agencies 9B-72.120

Forms 9B-72.130

Revocation or Modification of Product Approvals and Entity Certifications 9B-72.160

Investigations 9B-72.170

Equivalence of Standards 9B-72.180

Reference Standards 9B-72.190

PURPOSE, EFFECT AND SUMMARY: To adopt, implement and produce an approved system for establishing methods by which construction products, materials, systems and methods are adopted for use in the State of Florida.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None has been prepared.

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

SPECIFIC AUTHORITY: 553.842(1),(9),(14),(15) FS.

LAW IMPLEMENTED: 553.842(1),(2),(5), (6),(8),(9), (14),(15) FS.

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

TIME AND DATE: 9:10 a.m., August 28, 2001

PLACE: Rosen Plaza Hotel, 9700 International Drive, Orlando, Florida

Any person requiring special accommodation at the hearing because of a disability or physical impairment should contact Ila Jones, Community Program Administrator, Department of Community Affairs, 2555 Shumard Oak Boulevard, Sadowski Building, Tallahassee, Florida 32399-2100, (850)487-1824 at least seven days before the date of the hearing. If you are hearing or speech impaired, please contact the Department of Community Affairs using the Florida Dual Party Relay System which can be reached at 1(800)955-8770 (Voice) or 1(800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Ila Jones, Community Program Administrator, Department of Community Affairs, 2555 Shumard Oak Boulevard, Sadowski Building, Tallahassee, Florida 32399-2100, (850)487-1824

THE FULL TEXT OF THE PROPOSED RULES IS:

9B-72.010 Definitions.

The following terms have the meanings indicated.

(1) Accreditation means a procedure by which a Commission approved body gives formal recognition that a body or person is competent to carry out specific tasks.

(2) Approved accreditation entity means a Commission approved, third party entity, which initially accredits and subsequently monitors, on a continuing basis, the competency and performance of an agency related to carrying out specific tasks.

(3) Approved certification agency means an organization approved by the Commission pursuant to Rule 9B-72.100(4), F.A.C., to certify products.

(4) Approved product evaluation entity means an organization recognized by Florida law or approved by the Commission pursuant to Rule 9B-72.100(1), F.A.C., to evaluate products, for compliance with the Code or intent of the Code or the standards referenced therein resulting in the issuance of an evaluation report.

(5) Approved testing laboratory means a laboratory approved by the Commission pursuant to Rule 9B-72.100(3), F.A.C., to test products for compliance with the standards specified in the Code.

(6) Approved quality assurance entity means an entity approved by the Commission pursuant to Rule 9B-72.100(5), F.A.C., to provide oversight and determine that the product or system is being manufactured or assembled, per the submitted description, test results, or calculations to establish continual product performance.

(7) Approved validation entity means a third party entity approved by the Commission pursuant to Rule 9B-72.100(2), F.A.C., which shall certify to the Commission the product's compliance with the standards specified in the Code or intent of the Code for use in statewide approval.

(8) Certification means the act of certifying.

(9) Certification mark means a protected mark, applied or issued under the rules of a certification system, indicating that confidence is provided that the relevant product, process or service is in compliance with a specific standard or other normative document.

(10) Certify means the act of providing a written statement or labeling or listing confirming that a standard or criteria is met.

(11) Code means the Florida Building Code.

(12) Commission means the Florida Building Commission.

(13) Comparative analysis means an engineering analysis that may be interpolation based on testing of a product.

(14) Evaluation means a comparison of product compliance by comparing against standards or intent of the Code by testing or comparative analysis or rational analysis or a combination thereof.

(15) Evaluation report means a report based upon testing or comparative or rational analysis, or a combination thereof, from an approved product evaluation entity or a professional engineer or architect licensed in this state indicating that the

product was evaluated to be in compliance with the intent of the Code and that the product is, for the purpose intended, at least equivalent to that required by the Code.

(16) Inspection means conformity evaluation to the applicable Code section by observation and judgement accompanied as appropriate by measurement, testing or gauging or any other appropriate method for determining compliance with the Code.

(17) Intent of the Code means required performance by the code where no standardized method for evaluating compliance by test; or comparative analysis or rational analysis; or a combination thereof is specified by the code.

(18) Labeled means devices, equipment or materials to which have been affixed a label, seal, symbol or other identifying mark of a nationally recognized testing laboratory, inspection agency or other organization concerned with product evaluation that maintains periodic inspection of the production of the above labeled items and by whose label the manufacturer attests to compliance with applicable nationally recognized standards.

(19) Listed means equipment or materials included in a list published by a nationally recognized testing laboratory, of production of listed equipment or materials, and whose listing states either that the equipment or material meets nationally recognized standards or has been tested and found suitable for use in a specified manner. The means for identifying listed equipment may vary for each testing laboratory, inspection agency or other organization concerned with product evaluation, some of which do not recognize equipment as listed unless it is also labeled. The building official should use the system employed by the listing organization to identify a listed product.

(20) Peer review means a documented review by a registered architect or licensed professional engineer of the work performed by another registered architect or professional engineer.

(21) Product means any product, system or method of construction.

(22) Product Approval:

(a) Local product approval means the acceptance of the product for local use after review, performed by the building official or designee, of the method used to demonstrate that the product complies with the Code, including the use of approved product evaluation entities, testing laboratories, quality assurance entities and certification agencies. Information that addresses the requirements of the Code and the product or material is suitable for use in the location and project where it is proposed must be verified. The issuance of a signed permit denotes approval of any product shown on the approved construction documents on which the permit is based. Approval may be by inspection of approved certification marks.

(b) Statewide product approval means the approval by the Commission for acceptance of a product on a statewide or regional basis consistent with that approval.

(23) Rational analysis means a standardized or non-standardized method by which a Florida Registered Architect or Florida Professional Engineer uses mathematical or scientific analysis to evaluate the behavior and to demonstrate that the product evaluated complies with the code for which the evaluation or engineering report is issued. Rational analysis shall be performed in accordance with well-established principles of mechanics and sound engineering practices.

(24) Scope of Accreditation means the specific test standards, calibration services or other functions for which the organization is accredited.

(25) Standard means a prescribed set of rules, conditions, or requirements concerning: definition of terms; classification of components; specification of materials, performance, or operation; delineation of procedures for measure the quantity or quality of materials, products, systems, services, or practices referenced in the Code.

(26) Standardized test means a specified technical procedure for performing a test.

(27) Structural means any part, material or assembly of a building or structure which affects the safety of such building or structure or which supports any dead or designed live load and the removal of which part, material or assembly could cause, or be expected to cause, all or any portion to collapse or to fail, or both.

(28) Test means a technical operation that consists of the determination of one or more characteristics of a given product, process or service according to a specified procedure.

(29) Test report means a report from an approved testing laboratory or approved certification agency, which provides performance data showing compliance to a referenced standard and identifies which products are covered by the report and limitations on the products use.

(30) Third party means an entity independent of the manufacturer (first Party) and the buyer (second party) certified in accordance with Rule 9B-72.110, F.A.C.

(31) Validation means determination of compliance pursuant to Rule 9B-72.050, F.A.C., for local approval and 9B-72.080 for statewide approval.

Specific Authority 553.842(1) FS. Law Implemented 553.842(1) FS. History—New

9B-72.030 Local Product Approval Generally.

Approval requires evaluation of product compliance with the Code by a method listed in Rule 9B-72.040, F.A.C., and validation of the evaluation as required by Rule 9B-72.080, F.A.C. Validation shall be by the authority having jurisdiction.

Specific Authority 553.842(1) FS. Law Implemented 553.842(5),(6),(8) FS. History—New

9B-72.040 Product Evaluation and Quality Assurance for Local Approval.

(1) Compliance can be demonstrated through one of the methods established in subsections 9B-72.040(2)-(4), F.A.C., except that panel walls, exterior doors, roofing, skylights, windows, shutters and structural components must be evaluated by either Rule 9B-72.040(3) or 9B-72.040(4), F.A.C.

(2) Method 1. Products, except as provided in Rule 9B-72.040(1), F.A.C., which are specifically addressed in the code through prescriptive provisions, may be approved for use in accordance with building plan and inspection process.

(3) Method 2. Products specifically addressed in the code through performance criteria and standardized testing or comparative or rational analysis methods, which cannot be approved through the plan review and inspection process, shall demonstrate compliance with the Code through one of the following:

(a) A certification mark or listing from an approved certification agency indicating in compliance with the Code.

(b) A test report from an approved testing laboratory, which identifies which products are covered by the test report and provides verifiable documentation indicating the product or material tested complies with the Code and the product is manufactured under a quality assurance program audited by an approved quality assurance entity.

(c) An evaluation report from an approved product evaluation entity that covers the subject product based upon testing or comparative or rational analysis, or a combination thereof and indicates that the product was evaluated to be in compliance with the intent of the Code and that the product is, for the purpose intended, at least equivalent to that required by the Code.

(d) An evaluation report from a Florida Registered Architect or a Florida Professional Engineer developed and signed and sealed, based upon testing or comparative or rational analysis, or a combination thereof and indicates that the product was evaluated to be in compliance with the intent of the Code and that the product is, for the purpose intended, at least equivalent to that required by the Code.

(4) Method 3. Products for which there are no specific standardized tests or comparative or rational analysis methods of evaluation established as required by the Code shall demonstrate compliance with the intent of the Code through one of the following:

(a) An evaluation report from an approved product evaluation entity based on testing or comparative or rational analysis or combination thereof, which provides verifiable documentation indicating the product complies with the Code and the product is manufactured under a quality assurance program audited by an approved quality assurance entity.

(b) An evaluation report from a Florida Registered Architect or a Florida Professional Engineer based on testing or comparative or rational analysis or combination thereof,

which provides verifiable documentation indicating the product complies with the Code and the product is manufactured under a quality assurance program audited by an approved quality assurance entity.

(5) Evaluation and Test Report and Certification Agency Documentation Requirements. All evaluation reports required in Rule 9B-72.040(3), (4), F.A.C., shall contain the information listed below. Design drawings submitted for permitting purposes are not an evaluation report and do not require this information.

(a) Name, address and phone number of the manufacturer, and the approved evaluation entity or approved testing laboratory.

(b) Statement of compliance with the appropriate section or standard of the Code.

(c) Description of the product, construction method or building system.

(d) Technical documentation supporting the compliance statement.

(e) Installation requirements.

(f) Limitations and conditions of use.

(g) Certification of independence in conformance with Rule 9B-72.110, F.A.C.

(h) Name, title and signature of person authorized to sign on behalf of entity or signature, registration number and seal in the case of architects and engineers.

(i) Copy of certification mark applied to products designating compliance with specific standards where such marks are used.

(j) Demonstration of listing of product where products are listed.

Specific Authority 553.842(1) FS. Law Implemented 553.842(5), (6), (8) FS. History—New _____.

9B-72.050 Product Approval by Local Jurisdiction.

Approval of a product for local use shall be performed by the building code official or his/her designee by verifying that the product complies with the Code in accordance with Rule 9B-72.040, F.A.C.

(1) The authority having jurisdiction shall validate the method of compliance pursuant to Rule 9B-72.030, F.A.C.

(2) Upon acceptance of required documentation pursuant to Rule 9B-72.030, F.A.C., the authority having jurisdiction may deem the product approved for use in accordance with its approval and limitation of use.

(3) Approval shall be valid until such time as the product changes significantly or the standards of the Code change or the approval is otherwise suspended or revoked.

Specific Authority 553.842(1) FS. Law Implemented 553.842(8) FS. History—New _____.

9B-72.060 Optional Statewide Approval Generally.

Statewide approval requires evaluation of product compliance with the Code by a method listed in Rule 9B-72.070, F.A.C., validation of the evaluation as required by Rule 9B-72.080, F.A.C., and approval per Rule 9B-72.090, F.A.C. Validation of compliance with the Code shall be performed by approved Validation Entities. Approval shall be performed by the Commission. All products used in construction covered by the Code shall comply with the provisions or standards contained therein or with the intent of the Code.

Specific Authority 553.842(1) FS. Law Implemented 553.842(6) FS. History—New _____.

9B-72.070 Product Evaluation and Quality Assurance for Optional Statewide Approval.

(1) Method 2. Products specifically addressed in the code through performance criteria and standardized testing or comparative or rational analysis methods, which cannot be approved through the plan review and inspection process, shall demonstrate compliance with the Code through one of the following:

(a) A certification mark or listing from an approved certification agency indicating in compliance with the Code.

(b) A test report from an approved testing laboratory, which identifies which products are covered by the test report and provides verifiable documentation indicating the product or material tested complies with the Code and the product is manufactured under a quality assurance program audited by an approved quality assurance entity.

(c) An evaluation report from an approved product evaluation entity that covers the subject product based upon testing or comparative or rational analysis, or a combination thereof and indicates that the product was evaluated to be in compliance with the intent of the Code and that the product is, for the purpose intended, at least equivalent to that required by the Code.

(d) An evaluation report from a Florida Registered Architect or a Florida Professional Engineer developed and signed and sealed, based upon testing or comparative or rational analysis, or a combination thereof and indicates that the product was evaluated to be in compliance with the intent of the Code and that the product is, for the purpose intended, at least equivalent to that required by the Code.

(2) Method 3. Products for which there are no specific standardized tests or comparative or rational analysis methods of evaluation established as required the Code shall demonstrate compliance with the intent of the Code through one of the following:

(a) An evaluation report from an approved product evaluation entity and provides verifiable documentation indicating the product complies with the Code and the product is manufactured under a quality assurance program audited by an approved quality assurance entity.

(b) An evaluation report from a Florida Registered Architect or a Florida Professional Engineer based on testing or comparative or rational analysis or combination thereof, which provides verifiable documentation indicating the product complies with the Code and the product is manufactured under a quality assurance program audited by an approved quality assurance entity.

(3) Evaluation and Test Report and Certification Agency Documentation Requirements. All reports and documentation required in Rule 9B-72.070(1)(a)-(d), F.A.C., and Rule 9B-72.070(2), F.A.C., shall contain the information listed below. Design drawings submitted for permitting purposes are not to be construed to be an evaluation report and do not require this information.

(a) Name, address and phone number of the manufacturer, evaluation entity, engineer or architect or testing laboratory.

(b) Statement of compliance with the appropriate section or standard of the Code.

(c) Description of the product, construction method or building system.

(d) Technical documentation supporting the compliance statement.

(e) Installation requirements.

(f) Limitations and conditions of use.

(g) Certification of independence in conformance with Rule 9B-72.110, F.A.C.

(h) Name, title and signature of person authorized to sign on behalf of entity or signature, registration number and seal in the case of architects and engineers.

(i) Copy of certification mark applied to products designating compliance with specific standards where such marks are used.

(j) Demonstration of listing of product where a product is listed.

Specific Authority 553.842(1) FS. Law Implemented 553.842(6) FS. History—New _____.

9B-72.080 Product Validation by Approved Validation Entity for Optional Statewide Approval.

Validation of compliance with the code shall be performed by approved validation entities through the following steps:

(1) Verification that the testing, evaluation and quality assurance requirements established by Rule 9B-72.070, F.A.C., are met and that all documentation is in order.

(2) Validation of the method of compliance pursuant to Rule 9B-72.080, F.A.C., using the validation checklist in Rule 9B-72.130(3), F.A.C.

(3) Certification to the Commission that the documentation submitted for the product indicates the product complies with the Code.

Specific Authority 553.842(1) FS. Law Implemented 553.842(1) FS. History—New _____.

9B-72.090 Product Approval by the Commission.

(1) Approval of a product for statewide use shall be performed by the Commission through the following steps:

(a) Product manufacturer or its designee (applicant) shall apply to the Commission for product approval by filing an application in accordance with Rule 9B-72.130(2), F.A.C., and submitting fees pursuant to Rule 9B-72.090(2), F.A.C. Application shall be made through the Building Codes Information System on the Internet and payment shall be by credit card.

(b) The applicant submits all documentation required and fees in accordance with Rule 9B-72.070, F.A.C. and Rule 9B-72.090(2), F.A.C., respectively.

(c) Upon Commission acceptance of the required documentation pursuant to Rule 9B-72.070, F.A.C., and validation entity's certification of compliance with the Code pursuant to Rule 9B-72.080, F.A.C., a Florida Certificate of Product Approval shall be issued indicating the product has been approved for use statewide in accordance with its approval and limitations of use.

(d) Approval shall be valid until such time as the product changes significantly or the standards of the Code change or the approval is otherwise suspended or revoked.

(2) Fees for optional statewide approval of products.

(a) Fee for approval, Fifty Dollars (\$50.00) per product.

(b) Fee for reinstatement after suspension, Fifty Dollars (\$50.00) per product, plus billable staff hours at Fifty Dollars (\$50.00) per hour, plus consultant fees.

(c) Fees for approval of evaluation entities, certification agencies, testing laboratories and validation entities: for first time approval, Five Hundred Dollars (\$500.00), annual renewal fee, One Hundred Dollars (\$100.00).

(3) Applications shall be made through the Building Codes Information System on the Internet and payment shall be by credit card.

Specific Authority 553.842(1) FS. Law Implemented 553.842(1) FS. History—New _____.

9B-72.100 Approval of Product Evaluation Entities, Product Validation Entities, Testing Laboratories, Certification Agencies, and Quality Assurance Agencies and Accreditation Bodies.

(1) Approved Product Evaluation Entities. Approval by the Commission is limited to the scope of accreditation established by approved accreditation entities.

(a) The following entities are recognized in Section 553.842(9)(a), F.S., as approved product evaluation entities:

1. The National Evaluation Service (NES).

2. The International Conference of Building Officials Evaluation Services (ICBO ES).

3. The Building Officials and Code Administrators International Evaluation Services (BOCA ESI).

4. The Southern Building Code Congress International Evaluation Services (PST ESI), and

5. The Miami-Dade County Building Code Compliance Office Product Control Division (MDCBCCOPCD).

(b) Architects and engineers licensed in this state are also approved to conduct product evaluation.

(c) Evaluation entities, other than architects and engineers registered in this state, shall apply to the Commission for approval as an evaluation entity by filing an application in accordance with Rule 9B-72.130(1), F.A.C., and submitting fees pursuant to Rule 9B-72.090(2), F.A.C.

(2) Approved Validation Entities.

(a) An entity shall be approved by the Commission as a validation entity if it is a Commission approved evaluation entity, testing laboratory or certification agency and it certifies to the Commission compliance with standards established by the Code. Architects and engineers licensed in this state are also approved to conduct validation for the optional statewide approval.

(b) An entity may be approved as a validation entity after applying to the Commission for approval. Applications must be submitted in accordance with Section 8 and fees submitted pursuant to section 14. Application shall be made through the Building Codes Information System on the Internet and payment shall be by credit card.

(c) Approvals shall be valid until such time as Commission approval requirements change, the entity no longer qualifies under current requirements or the approval is suspended or revoked.

(3) Approved Testing Laboratory Criteria. Approval by the Commission is limited to the scope of accreditation established by approved accreditation entities.

(a) An entity shall be approved by the Commission as an approved testing laboratory if it complies with one of the following. Approval shall be limited to those procedures listed on the certificate of accreditation or accreditation listing issued by the accreditation body.

1. Testing laboratories accredited by American Association for Laboratory Accreditation (A2LA) that meet the requirements of the International Organization for Standardization/International Electrotechnical Commission (ISO/IEC) Guide 17025: General Requirements for the Competence of Calibration and Testing Laboratories or equivalent as certified to the Commission by the accrediting entity.

2. Testing laboratories accredited by National Voluntary Laboratory Accreditation Program (NVLAP) that meet the requirements of ISO/IEC Guide 17025: General Requirements for the Competence of Calibration and Testing Laboratories or equivalent as certified to the Commission by the accrediting entity.

3. Testing laboratories accredited by approved product evaluation entities that meet the requirements of ISO/IEC Guide 17025: General Requirements for the Competence of Calibration and Testing Laboratories or equivalent as certified to the Commission by the accrediting entity.

4. Testing laboratories accredited by other approved accreditation bodies that meet the requirements of ISO/IEC Guide 17025: General Requirements for the Competence of Calibration and Testing Laboratories or equivalent as certified to the Commission by the accrediting entity.

(b) Testing laboratories shall apply to the Commission for approval by filing and application in accordance with Rule 9B-72.130(1), F.A.C., and submitting fees pursuant to Rule 9B-72.090(2), F.A.C.

(c) Approvals shall be valid until such time as Commission approval requirements change, the testing laboratory no longer qualifies under current requirements or the approval is suspended or revoked.

(4) Approved Certification Agency Criteria. Approval by the Commission is limited to the scope of accreditation established by approved accreditation entities.

(a) An entity shall be approved by the Commission as a certification agency if it complies with one of the following. Approval shall be limited to those procedures listed on the certificate of accreditation or accreditation listing issued by the accreditation body:

1. Certification Agencies accredited by ANSI that meet the requirements of ISO/IEC Guide 65: General Requirements for Bodies Operating Product Certification Systems or equivalent as certified by the accrediting entity.

2. Certification Agencies accredited by Approved Product Evaluation Entities that meet the requirements of ISO/IEC Guide 65: General Requirements for Bodies Operating Product Certification Systems or equivalent as certified by the accrediting entity.

3. Certification Agencies accredited by other approved accreditation bodies that meet the requirements of ISO/IEC Guide 65: General Requirements for Bodies Operating Product Certification Systems or equivalent as certified by the accrediting entity.

(b) Certification Agencies shall apply to the Commission for approval by filing an application as provided by Rule 9B-72.130(1), F.A.C., and submitting fees pursuant to Rule 9B-72.090(2), F.A.C.

(c) Approvals shall be valid until such time as Commission approval requirements change, the certification agency no longer qualifies under current requirements or the approval is suspended or revoked.

(5) Approved Quality Assurance Agency Criteria. Approval by the Commission is limited to the scope of accreditation established by approved accreditation entities.

(a) An entity shall be approved by the Commission as a quality assurance agency if it complies with one of the following. Approval shall be limited to those procedures listed on the certificate of accreditation issued by the accreditation body.

1. Quality assurance agencies accredited by approved product evaluation entities that meet the requirements of ISO/IEC Guide TR 17020: 1998, General Criteria for the Operation of Various Types of Bodies Performing Inspection or equivalent as certified by the accrediting entity.

2. Quality assurance agencies accredited by approved certification agencies that meet the requirements of ISO/IEC Guide TR 17020: 1998, General Criteria for the Operation of Various Types of Bodies Performing Inspection or equivalent as certified by the accrediting entity.

3. Quality assurance agencies accredited by other approved accreditation bodies that meet the requirements of ISO/IEC Guide TR 17020: 1998, General Criteria for the Operation of Various Types of Bodies Performing Inspection or equivalent as certified by the accrediting entity.

(b) Quality assurance agencies shall apply to the Commission for approval by filing an application in accordance with Rule 9B-72.130(1), F.A.C., and submitting fees pursuant to Rule 9B-72.090(2), F.A.C. Application shall be made through the Building Codes Information System on the Internet and payment shall be by credit card.

(c) Approvals shall be valid until such time as Commission approval requirements change, the quality assurance agency no longer qualifies under current requirements or the approval is suspended or revoked.

(6) Approved Accreditation Body Criteria.

(a) The following are recognized by the Commission as approved accreditation bodies for accrediting testing laboratories, certification programs and quality assurance program auditors/inspection bodies:

1. Bodies operating acceptance/accreditation programs for testing bodies pursuant to ISO/IEC Guide 58, Calibration and Testing Laboratory Accreditation Systems – General Requirements for Operation and Recognition.

2. Bodies operating acceptance/accreditation programs for certification programs pursuant to ISO/IEC Guide 61, General Requirements for Assessment and Accreditation of Certification/Registration Bodies.

3. Bodies operating acceptance/accreditation programs for quality assurance/inspection bodies pursuant to ISO/IEC Guide TR 17010: 1998, General Requirements for Bodies Providing Accreditation of Inspection Bodies.

(b) Where accrediting bodies utilize standards other than the ISO accreditation standards referenced in Rule 9B-72.100, F.A.C., they shall provide a certification to the Commission for approval pursuant to Rule 9B-72.180(2), F.A.C.

(c) Approvals shall be valid until such time as Commission approval requirements change, the accreditation body no longer qualifies under current requirements or the approval is suspended or revoked.

(d) A Commission approved accreditation body shall not perform the functions of a testing body.

Specific Authority 553.842(9) FS. Law Implemented 553.842(9) FS. History–New _____.

9B-72.110 Criteria for Certification of Independence.

A Florida registered architect or professional engineer as applicable or by an officer of the entity, agency or laboratory who is responsible for operation of said entity, agency or laboratory shall attest to and certify the following:

(1) The entity, agency or laboratory does not have, nor does it intend to acquire or will it acquire, a financial interest in any company manufacturing or distributing products tested or labeled by the agency.

(2) The entity, agency or laboratory is not owned, operated or controlled by any company manufacturing or distributing products it tests or labels.

(3) The Florida registered architect or professional engineer performing an evaluation report does not have nor will acquire, a financial interest in any company manufacturing or distributing products for which the reports are being issued.

(4) The Florida registered architect or professional engineer performing an evaluation report does not have nor will acquire, a financial interest in any other entity involved in the approval process of the product.

Specific Authority 553.842(1) FS. Law Implemented 553.842(1),(9) FS. History–New _____.

9B-72.120 List of Approved Product Evaluation Entities, Validation Entities, Testing Laboratories, Certification Agencies, and Quality Assurance Agencies.

The Commission shall make available a current list of approved product evaluation entities, testing laboratories, certification agencies, and quality assurance agencies on its web-site.

Specific Authority 553.842(14) FS. Law Implemented 553.842(14) FS. History–New _____.

9B-72.130 Forms.

The following forms are adopted for use in reference to the Product Evaluation and Approval System. Copies of these forms are available from the Department of Community Affairs, Codes and Standards Section, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399.

(1) Florida Building Commission, Application for Entity Approval.

(2) Florida Building Commission, Application for Statewide Product Approvals.

(3) Validation Checklist for Optional Statewide Approval.

Specific Authority 553.842(1) FS. Law Implemented 553.842(1) FS. History--New _____.

9B-72.160 Revocation or Modification of Product Approvals and Entity Certifications.

(1) Product Approval Revocation or Suspension.

(a) Any product approval shall be revoked or suspended for any of the following reasons:

1. Failure to maintain certification, evaluation reports or testing in good standing with a Commission approved entity which conducted the testing or comparative or rational analysis, or combination thereof on which the product approval is based.

2. Suspension or revocation of the certification, evaluation report or testing report issued by a Commission approved entity on which the approval is based, for just cause.

3. Failure to maintain quality assurance programs for the manufacture of the approved products as required by this document.

4. Failure to correct manufacturing deficiencies required to bring the product within specifications of the originally approved product or alternatively to demonstrate in a manner consistent with this document, that the product's performance complies with the standards established by the Code.

5. Advertising and sales of the product for uses not consistent with conditions or limitations of its approval.

6. Determination that the product was approved based on misrepresentations in the application for approval.

7. Failure of the manufacturer to cooperate with a Commission ordered investigation.

(b) The Commission may suspend the approval of any entity based on any provision of Rule 9B-72.160(1), F.A.C., until such time as the manufacturer demonstrates the product is currently in compliance with this document.

(c) The Commission shall initiate an investigation based on a written complaint containing substantial material evidence by any substantially affected party.

(d) The Commission shall clearly post the status of approved product approval, suspension or revocation on its web-site list of approved products and shall notify building code enforcement jurisdictions electronically when there is a change in status.

(2) Revocation or suspension of evaluation entity, certification agency, testing laboratory, validation entity or accreditation body approval.

(a) The Commission shall revoke or suspend the approval of any evaluation entity, certification agency, testing laboratory or validation entity other than those specifically identified in law for one or more of the following reasons:

1. Failure to maintain accreditation by a Commission approved accreditation body.

2. Suspension or revocation of accreditation by a Commission approved accreditation body for failure to meet Commission accreditation standards or equivalent pursuant to Rule 9B-72.100, F.A.C.

3. Determination by the Commission that any requirement set forward in this document has been violated.

4. Determination that the criteria for independence from any manufacturer set forth in Rule 9B-72.110, F.A.C., has been violated.

5. Determination that the entity is not independent pursuant to Rule 9B-72.110, F.A.C., of any competing manufacturer of the manufacturer to whom the entity provided services on which Florida jurisdictions' product approval is based.

6. An entity has misrepresented its accreditations or other material information on its application for approval.

7. Failure to conduct investigations of products authorized by Rule 9B-72.170, F.A.C.

(b) The Commission may revoke or suspend the approval of any approved accreditation body for failure to maintain accreditation programs which comply with Rule 9B-72.100(6), F.A.C., or any material misrepresentation of its independence or substantive information on its capabilities or policies and procedures and failure to cooperate in investigations of those it accredits.

(c) The Commission may suspend the approval of any evaluation entity, certification agency, testing laboratory, or validation entity based on Rule 9B-72.160(2), F.A.C., until such time as the entity demonstrates it is currently in compliance with said requirement.

(d) The Commission shall initiate an investigation based on a written complaint providing substantial material evidence provided by any substantially affected party.

(e) The Commission shall clearly post the status of approved evaluation entity, certification agency, testing laboratory, validation entity and accreditation body approval, suspension or revocation on its web-site list of approved entities.

Specific Authority 553.842(15) FS. Law Implemented 553.842(15) FS. History--New _____.

9B-72.170 Investigations.

(1) Investigation of approved product non-compliance.

(a) The Commission shall initiate an investigation of product non-compliance on the basis of a written complaint including substantial material evidence.

(b) Investigation of product deficiencies shall be conducted by the manufacturer's certification agency, evaluation entity or test laboratory and the validation entity which certified compliance with the code standards to the Commission.

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.

SPECIFIC AUTHORITY: 944.09 FS.

LAW IMPLEMENTED: 944.09 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Giselle Lysten Rivera, Office of the General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE FULL TEXT OF THE PROPOSED RULE IS:

33-302.106 Offender Travel.

(1) Officers are required to instruct each offender under the officer's supervision not to change his or her residence, or leave the county of residence, without first procuring the consent of the officer. In order for an offender to obtain permission to travel, the following conditions must exist:

(a) through (e) No change.

(f) ~~Monetary obligations are current when the travel requested is purely recreational in nature. However, Travel shall be denied for purely recreational purposes if the offender is not current with the court ordered or releasing authority imposed payment schedule or offender financial obligation agreement when there is any outstanding, court ordered victim restitution and the offender will expend monies in the course of travel.~~

(g) No change.

(2) An officer shall ~~discuss transfer the supervision of an offender's routine travel needs during the initial interview to determine whether the offender must travel daily, weekly, or monthly between counties due to the location of her or his residence and her or his employment site, school, medical needs, program, or other approved need who is travelling to a single judicial circuit in the state of Florida for more than 30 consecutive days. If the offender must travel across county lines to get to her or his employment site, school, program, doctor, or routine shopping, the officer will document this specific information in the electronic case notes and give the offender a blanket approval for this travel, provided the travel is verified and is not prohibited by the supervision orders. If the offender's residence or purpose of travel out of county changes, the blanket approval will be suspended until the offender's travel needs are revisited, reviewed, and approved. Any other travel out of county must be approved in advance.~~

(3) Inter-county travel in Florida approved for a visit of thirty days or less does not require a "Travel Permit." DC3-220, unless the offender is a sex offender or requires specific or additional instructions that must be written on a travel permit. Sex offenders require a travel permit for all out of county travel. If the offender is granted permission to travel and visit another county and subsequently requests an extension of the visit out of county, which will exceed thirty days, the officer will transfer the offender's supervision to the other county. Form DC3-220, Travel Permit, is hereby incorporated by reference. Copies of this form may be obtained from the Forms Control Administrator, Office of the General Counsel, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. The effective date of this form is _____.

(4) An officer shall transfer the supervision of an offender who is granted permission to travel and remain in another county outside of her or his county of residence in the State of Florida for more than thirty consecutive days.

(5)(3) An officer shall transfer the supervision of an offender who is travelling to a single other state, the District of Columbia, the Commonwealth of Puerto Rico or the Virgin Islands of the United States, for more than thirty 30 consecutive days. The transfer of supervision involves the forwarding of all pertinent supervision documents via the Bureau of Interstate Compact to the receiving location and the formal assumption of supervision of the offender by a probation or parole officer in the receiving location. The officer shall forward the following supervision documents, in triplicate, to the Bureau of Interstate Compact:

(a) Out of State Investigation Request, Form DC3-110;

(b) Application for Compact Services and Agreement to Return, Form DC3-122;

(c) Supervision orders; and,

(d) Pre-sentence or Post-sentence investigation, or offense report and arrest history.

(e) Form DC3-110, Out of State Investigation Request and Form DC3-122, Application for Compact Services and Agreement to Return, are hereby incorporated by reference. Copies of these forms can be obtained from the Forms Control Administrator, Office of the General Counsel, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. The effective date of these forms is _____.

(6)(a) When interstate travel is for the sole purpose of transfer to another state, the District of Columbia, the Commonwealth of Puerto Rico or the Virgin Islands of the United States, the offender must meet the other state's requirements and receive consent to travel from the Bureau of Interstate Compact Office before proceeding to that state.

(7)(b) In compact cases that meet emergency criteria, the officer must submit an Electronic Request for Emergency Reporting Instructions and Travel Permit, Form EF3-005 EF1-007, to the Bureau of Interstate Compact Office two days before the requested date of travel. This time frame does not

apply to offenders who already reside in the receiving state and who must return immediately after sentencing. Form ~~EF1-007~~ EF3-005 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, Office of the General Counsel, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. Requests for copies to be mailed must be accompanied by a self-addressed envelope. The effective date of this form is 3-22-00.

~~(8)(4)~~ In high profile and sex offender cases, the officer must review the Interstate Compact File Cabinet computer database or seek guidance from the Bureau of Interstate Compact Office to ensure that the offender meets and follows travel requirements for the state of destination before granting travel permission. Once the officer has verified and instructed the offender as to the requirements of the state of destination, a copy of the travel permit providing the offender's itinerary must be transmitted to the Bureau of Interstate Compact Office.

(9) The officer will obtain permission from the sentencing or releasing authority prior to granting permission to the community control offender for the right to travel out of state. A DC3-220 will be approved with a copy forwarded to the Bureau of Interstate Compact.

~~(10)(5)~~ No change.

Specific Authority 944.09 FS. Law Implemented 944.09 FS. History--New 3-21-00, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Shari Britton

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Michael W. Moore, Secretary, Department of Corrections

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 18, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 29, 2001

COMMISSION ON ETHICS

RULE TITLE: List of Forms and Instructions

RULE NO.: 34-7.010

PURPOSE AND EFFECT: The purpose of the proposed amendment is to adopt new forms CE Form 1X and CE Form 6X, which will be used to amend previously filed financial disclosures.

SUMMARY: Sections 112.3144(6) and 112.3145(9), Florida Statutes (2000), required the Commission to adopt rules and forms specifying how persons who file financial disclosure can amend their forms to report information not included in their forms as originally filed. These forms are being adopted to fulfill that mandate.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No statement of estimated regulatory costs has been prepared.

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

SPECIFIC AUTHORITY: Art. II, Sec. 8(f),(h), Fla. Const., 112.3144, 112.3145, 112.3147, 112.3215(13), 112.322(7),(10), 112.324 FS.

LAW IMPLEMENTED: Art. II, Sec. 8(a),(f),(h), Fla. Const., 112.313(9),(12), 112.3143, 112.3144, 112.3145, 112.3148, 112.3149, 112.3215 FS.

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

TIME AND DATE: 9:00 a.m., Thursday, September 6, 2001

PLACE: Committee Room A (Lower Level, Senate Office Building), Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Julia Cobb Costas, Staff Attorney

THE FULL TEXT OF THE PROPOSED RULE IS:

34-7.010 List of Forms and Instructions.

(1) The following forms and instructions are adopted by reference and are used by the Commission in its dealings with the public:

(a) through (s) No change.

(t) Form 1X, Amendment to Form 1 Statement of Financial Interests. To be used to amend a previously filed CE Form 1. Effective

(u) Form 6X, Amendment to Full and Public Disclosure of Financial Interests. To be used to amend a previously filed CE Form 6. Effective

(2) No change.

Specific Authority Art. II, Sec. 8(f),(h), Fla. Const., ~~112.3144, 112.3145, 112.3147, 112.3215(13), 112.322(7),(10), 112.324 FS., Chapters 2000-232, 2000-243, and 2000-258, L.O.F.~~ Law Implemented 112.313(9), (12), 112.3143, 112.3144, 112.3145, 112.3148, 112.3149, 112.3215 FS., Art. II, Sec. 8(a),(f),(h), Fla. Const., ~~Chapters 2000-232, 2000-243, and 2000-258, L.O.F.~~ History--New 4-11-76, Formerly 34-7.10 through 7.22, 8.10, Amended 2-23-77, 4-7-77, 5-17-77, 10-20-77, 2-25-79, 1-29-80, 4-29-81, 1-12-82, 3-25-82, 2-21-83, Formerly 34-7.10, Amended 7-10-88, 3-4-91, 10-6-91, 10-29-91, 12-22-91, 7-5-92, 10-15-92, 12-6-92, 11-10-93, 12-27-93, 11-21-94, 2-16-95, 12-26-95, 1-27-97, 1-1-98, 11-19-98, 12-28-99, 1-1-00, 12-4-00, 12-21-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Julia Cobb Costas, Staff Attorney

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Bonnie J. Williams, Executive Director

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 24, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 4, 2000

COMMISSION ON ETHICS

RULE CHAPTER TITLE: RULE CHAPTER NO.:
 Disclosure of Financial Interests 34-8

RULE TITLES: RULE NOS.:

**PART I FULL AND PUBLIC DISCLOSURE OF
 FINANCIAL INTERESTS (PURSUANT TO
 ART. II, SEC. 8, FLA. CONST.)**

General 34-8.001

General Rule for Filing Full and Public
 Disclosure of Financial Interests 34-8.002

Choosing to File Copy of Income Tax Return 34-8.007

Final Filing 34-8.008

Amended Filing 34-8.009

Penalties for Late Filing 34-8.010

Appeal of Statutory Fines: Hearings,
 Unusual Circumstances 34-8.015

**PART II STATEMENT OF FINANCIAL INTERESTS
 (PURSUANT TO SEC. 112.3145, FLA. STAT.)**

General Rules for Filing a Statement of
 Financial Interests 34-8.202

Final Filing 34-8.208

Amended Filing 34-8.209

Penalties for Late Filing 34-8.210

Appeal of Statutory Fines: Hearings,
 Unusual Circumstances 34-8.215

PURPOSE AND EFFECT: In implementing the provisions of Chapters 2000-243 and 2000-258, L.O.F., the Commission proposes to reorganize the rules in Chapter 34-8, F.A.C., and address the financial disclosure obligations of those public officials and employees who are required to file annual disclosure.

SUMMARY: The proposed amendments rename Chapter 34-8 to address all financial disclosure, not just full and public disclosure. New rules implement the automatic penalty provisions for late filing; provide an amendment process for previously filed disclosure; and address the final filing required within 60 days of leaving public office or employment. Existing rules are amended to provide for filing with the Commission on Ethics instead of the Secretary of State.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No statement of estimated regulatory costs has been prepared.

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

SPECIFIC AUTHORITY: Art. II, Sec. 8, Fla. Const., 112.3144, 112.3145, 112.3147, 112.322(9) FS.

LAW IMPLEMENTED: Art. II, Sec. 8, Fla. Const., 112.3144, 112.3145 FS.

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

TIME AND DATE: 9:00 a.m., Thursday, September 6, 2001

PLACE: Committee Room A (Lower Level, Senate Office Building), Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Julia Cobb Costas, Staff Attorney

THE FULL TEXT OF THE PROPOSED RULE IS:

~~**FILING FULL AND PUBLIC DISCLOSURE OF
 FINANCIAL INTERESTS PURSUANT TO ARTICLE II,
 SECTION 8, FLORIDA CONSTITUTION**~~

**PART I FULL AND PUBLIC DISCLOSURE OF
 FINANCIAL INTERESTS (PURSUANT TO ART. II, SEC. 8,
 FLA. CONST.)**

34-8.001 General.

The Commission on Ethics has the responsibility pursuant to Article II, Section 8(i)(~~h~~), Florida Constitution, to prescribe forms for disclosure of income sources and amounts and the rules under which such forms are to be filed, which rules shall include disclosure of secondary sources of income. In addition, the Commission is authorized by Section 112.3147, Florida Statutes, to prescribe forms required for use in making the disclosures required by Article II, Section 8, Florida Constitution, and by Section 112.322(10), Florida Statutes, to adopt rules interpreting the disclosures established by Article II, Section 8, Florida Constitution.

The forms for full and public disclosure shall be prescribed in accordance with the rules of this chapter and adopted by reference listed in Chapter 34-7, F.A.C.

Specific Authority Art. II, Section 8, Fla. Const., 112.3144, 112.3147, 112.322(9) FS. Law Implemented Art. II, Section 8, Fla. Const., 112.3144 FS. History—New 4-7-77, Formerly 34-8.01, Amended 8-7-94, _____.

34-8.002 General Rule for Filing Full and Public Disclosure of Financial Interests.

(1) Every person who, on or after January 4, 1977, holds an office specified in Rule 34-8.003, F.A.C., must file full and public disclosure of his or her financial interests with the Commission Secretary of State by July 1 of each year during which he or she is in office, and every person who held an office specified in Rule 34-8.003, F.A.C., on December 31st of a year must file full and public disclosure of his or her financial interests with the Commission by July 1 of the following year. Full and public disclosure of financial interests means filing a sworn statement showing net worth, assets and liabilities on the form prescribed by the Commission, CE Form 6, adopted by reference in Rule 34-7.010(1)(c), Florida Administrative Code, together with either a copy of the person's most recent federal income tax return, including all attachments, or the completed income disclosure portion of CE Form 6. A candidate for an elective office specified in Rule 34-8.003 or otherwise specified by law must file this information prior to or at the time he or she qualifies as a candidate.

(2) Except for disclosures filed as part of a candidate's qualifying papers, full and public disclosure under this rule must be filed no later than 5:00 p.m. on the due date. However, any disclosure that is postmarked by the United States Postal Service no later than midnight of the due date shall be deemed to have been filed in a timely manner. A certificate of mailing obtained from and dated by the United States Postal Service at the time of mailing, or a receipt from an established courier company which bears a date on or before the due date, shall also be proof of mailing in a timely manner.

(3) If the due date prescribed in the Constitution or by statute falls on a Saturday, Sunday, or legal holiday designated in Section 110.117, F.S., then the due date shall be extended to the next day which is not a Saturday, Sunday, or legal holiday designated in Section 110.117, F.S.

Specific Authority Art. II, Section 8, Fla. Const., 112.3144, 112.3147, 112.322(9) FS. Law Implemented Art. II, Section 8, Fla. Const., 112.3144 FS. History--New 4-7-77, Amended 10-3-84, Formerly 34-8.02, Amended 8-7-94, 7-2-00,_____.

34-8.007 Choosing to File Copy of Income Tax Return.

(1) No change.

(2) If a reporting official has filed a copy of his or her most recent federal income tax return with the Commission on Ethics Secretary of State in lieu of disclosing his or her sources of income pursuant to this chapter and that return is amended voluntarily, adjusted through I.R.S. examination or altered in any other way, the official shall file with the Commission Secretary of State a copy of such amended, adjusted or altered return following its filing with the I.R.S., using the form prescribed in Rule 34-8.009.

Specific Authority Art. II, Section 8, Fla. Const., 112.3144, 112.322(9) FS. Law Implemented Art. II, Section 8, Fla. Const. History--New 5-17-77, Formerly 34-8.07, Amended 8-7-94, 7-2-00,_____.

34-8.008 Final Filing.

(1) Each person who is required to file full and public disclosure of financial interests shall, within 60 days of leaving his or her public position, file with the Commission a final disclosure statement covering the period between January 1 of the year in which the person leaves and his or her last day in the position, unless he or she takes another position within that 60-day period which requires full and public disclosure. The final filing shall be on the form prescribed by the Commission, CE Form 6F, adopted by reference in Rule 34-7.010, F.A.C.

(2) If the due date prescribed for a final filing falls on a Saturday, Sunday, or legal holiday designated in Section 110.117, F.S., then the due date shall be extended to the next day which is not a Saturday, Sunday, or legal holiday designated in Section 110.117, F.S.

Specific Authority 112.3144, 112.3147, 112.322(9) FS. Law Implemented 112.3144(5) FS. History--New_____.

34-8.009 Amended Filing.

(1) A person may amend his or her full and public disclosure of financial interests to add to or modify the information reported on the form as originally filed at any time after filing the disclosure form. The amended filing shall be filed with the same office where the original form was filed and shall be on the form prescribed by the Commission, CE Form 6X, adopted by reference in Rule 34-7.010, F.A.C.

(2) If the amendment is the subject of a complaint filed against the reporting person, the Commission shall consider the timing of the amendment as a mitigating factor, as provided in Section 112.3144, F.S.

Specific Authority 112.3144(6), 112.3147, 112.322(9) FS. Law Implemented 112.3144(6) FS. History--New_____.

34-8.010 Penalties for Late Filing.

(1) Upon determining that a CE Form 6 has been filed after the due date or that the maximum fine has accrued, Commission staff shall send a notice by U.S. Mail notifying the delinquent person of the failure to timely file, of the amount of the payment due for the accrued fine, and of the person's right to appeal or dispute the fine as provided in Rule 34-8.015.

(2) The fine shall be \$25 per day for each late day, up to a maximum of \$1,500. Commission staff shall determine the amount of the fine due based upon the earliest of the following:

(a) When the CE Form 6 is actually received by the Commission;

(b) When the CE Form 6 is postmarked;

(c) When the certificate of mailing is dated; or

(d) When the receipt from an established courier company is dated.

(3) The fine must be paid within 30 days after the notice of payment due is transmitted, unless appeal is made to the Commission as provided in Rule 34-8.015. Commission staff shall deposit all fine moneys into the General Revenue Fund.

(4) Fines which are not waived by final order of the Commission and which remain unpaid more than 60 days after the notice of payment due is transmitted or which remain unpaid more than 60 days after the Commission renders a final order on the appeal will be referred to the Department of Banking and Finance for collection.

Specific Authority 112.3144, 112.322(9) FS. Law Implemented 112.3144 FS. History--New_____.

34-8.015 Appeal of Statutory Fines: Hearings, Unusual Circumstances.

(1) A person who chooses to appeal or dispute a fine imposed in accordance with Section 112.3144, F.S., shall file with the Commission a notice of appeal within 30 days of the date the notice of payment due is transmitted, setting out with specificity the unusual circumstances surrounding the failure to file by the due date. The notice of appeal may be accompanied

by any documentation or evidence supporting the claim, but must be received by the Commission no later than 30 days after the date the notice of payment due is transmitted.

(2) Failure to timely file a notice of appeal as described herein shall constitute a waiver of any such entitlement. A final order of waiver shall be promptly entered by the chair of the Commission without the necessity of any further action being taken by the Commission.

(3) A person who seeks a hearing before the Commission shall include in the notice of appeal a separate request for hearing. If no request for hearing is included in the notice of appeal, the Commission's determination shall be based on the notice and any supporting information and shall be final agency action. If a separate request for hearing is included in the notice, notice of hearing shall be provided and the Commission's determination after hearing shall be final agency action. Failure to appear in accordance with the notice of hearing shall constitute a waiver of such entitlement, and the Commission shall dispose of the case on the written record before it.

(4) "Unusual circumstances" means uncommon, rare or sudden events over which the reporting individual had no control and which directly result in the failure to act in accordance with the filing requirements. Circumstances which allow for time in which to take those steps necessary to assure compliance with the filing requirements shall be deemed not to constitute unusual circumstances.

Specific Authority 112.3144, 112.322(9) FS. Law Implemented 112.3144 FS. History--New _____.

PART II STATEMENT OF FINANCIAL INTERESTS (PURSUANT TO SEC. 112.3145, FLA. STAT.)

34-8.202 General Rules for Filing a Statement of Financial Interests.

(1) A person who was a local officer as defined in Section 112.3145, F.S., on December 31st of a year must file by July 1 of the following year a statement of financial interests on the form prescribed by the Commission, CE Form 1, adopted by reference in Rule 34-7.010, F.A.C., with the supervisor of elections in the county where he or she permanently resides, or, if the person does not permanently reside in Florida, with the supervisor of elections in the county of his or her agency's headquarters.

(2) A person who was a state officer or a specified state employee as defined in Section 112.3145, F.S., on December 31st of a year must file with the Commission by July 1 of the following year a statement of financial interests on the form prescribed by the Commission, CE Form 1, adopted by reference in Rule 34-7.010, F.A.C.

(3) A person who assumes a public position defined in Section 112.3145, F.S., as a state officer, specified state employee, or local officer must file within 30 days of taking that position a statement of financial interests on the form

prescribed by the Commission, CE Form 1, adopted by reference in Rule 34-7.010, F.A.C., provided that any person whose appointment is subject to confirmation by the Senate shall file prior to confirmation hearings or within 30 days from the date of appointment, whichever comes first. The disclosure statement of a state officer or specified state employee must be filed with the Commission. The disclosure statement of a local officer must be filed with the supervisor of elections in the county where he or she permanently resides, or, if the person does not permanently reside in Florida, with the supervisor of elections in the county of his or her agency's headquarters.

(4) Disclosure forms filed under (1) or (2), above, must be filed no later than 5:00 p.m. on the due date. However, any disclosure that is postmarked by the United States Postal Service no later than midnight of the due date shall be deemed to have been filed in a timely manner. A certificate of mailing obtained from and dated by the United States Postal Service at the time of mailing, or a receipt from an established courier company which bears a date on or before the due date, shall also be proof of mailing in a timely manner.

(5) If the due date prescribed by statute for a filing under (1), (2), or (3), above, falls on a Saturday, Sunday, or legal holiday designated in Section 110.117, F.S., then the due date shall be extended to the next day which is not a Saturday, Sunday, or legal holiday designated in Section 110.117, F.S.

(6) A candidate for an elective state or local office specified in Section 112.3145, F.S., must file with the officer before whom he or she qualifies a statement of financial interests on the form prescribed by the Commission, CE Form 1, adopted by reference in Rule 34-7.010, F.A.C., together with and at the same time he or she files qualifying papers as a candidate.

Specific Authority 112.3145, 112.3147, 112.322(9) FS. Law Implemented 112.3145 FS. History--New _____.

34-8.208 Final Filing.

(1) Each person who is required to file a statement of financial interests (CE Form 1) shall, within 60 days of leaving his or her public position, file a final statement covering the period between January 1 of the year in which the person leaves and his or her last day in the position, unless he or she takes another position within that 60 day period which requires filing either a statement of financial interests or full and public disclosure covering that disclosure period.

(2) The final filing shall be on the form prescribed by the Commission, CE Form 1F, adopted by reference in Rule 34-7.010, F.A.C.

(3) The final statement of financial interests of a state officer or specified state employee shall be filed with the Commission. The final statement of a local officer shall be filed with the supervisor of elections in the county where he or she permanently resides, or, if the person does not permanently reside in Florida, with the supervisor of elections in the county of his or her agency's headquarters.

(5) If the due date for a final filing falls on a Saturday, Sunday, or legal holiday designated in Section 110.117, F.S., then the due date shall be extended to the next day which is not a Saturday, Sunday, or legal holiday designated in Section 110.117, F.S.

Specific Authority 112.3147, 112.322(9) FS. Law Implemented 112.3145(2)(b) FS. History–New

34-8.209 Amended Filing.

(1) A person may amend his or her statement of financial interests to add to or modify the information reported on the form as originally filed at any time after filing the disclosure form. The amended statement shall be filed with the same office where the original form was filed and shall be made on the form prescribed by the Commission, CE Form 1X, adopted by reference in Rule 34-7.010, F.A.C.

(2) If the amendment is the subject of a complaint filed against the reporting person, the Commission shall consider the timing of the amendment as a mitigating factor, as provided in Section 112.3145, F.S.

Specific Authority 112.3145(9), 112.3147, 112.322(9) FS. Law Implemented 112.3145(9) FS. History–New

34-8.210 Penalties for Late Filing.

(1) Upon determining that a CE Form 1 has been filed after the due date or that the maximum fine has accrued, Commission staff shall send a notice by U.S. Mail notifying the delinquent person of the failure to timely file, of the amount of the payment due for the accrued fine, and of the person’s right to appeal or dispute the fine as provided in Rule 34-8.015.

(2) The fine shall be \$25 per day for each late day, up to a maximum of \$1,500. Commission staff shall determine the amount of the fine due based upon the earliest of the following:

(a) When the CE Form 1 is actually received by the Commission;

(b) When the CE Form 1 is postmarked;

(c) When the certificate of mailing is dated; or

(d) When the receipt from an established courier company is dated.

(3) The fine must be paid within 30 days after the notice of payment due is transmitted, unless appeal is made to the Commission as provided in Rule 34-8.015. Commission staff shall deposit all fine moneys into the General Revenue Fund.

(4) Fines which are not waived by final order of the Commission and which remain unpaid more than 60 days after the notice of payment due is transmitted or which remain unpaid more than 60 days after the Commission renders a final order on the appeal will be referred to the Department of Banking and Finance for collection.

Specific Authority 112.3145(6)(f), 112.322(9) FS. Law Implemented 112.3145 FS. History–New

34-8.215 Appeal of Statutory Fines: Hearings, Unusual Circumstances.

(1) A person who chooses to appeal or dispute a fine imposed in accordance with Section 112.3145, F.S., shall file with the Commission a notice of appeal within 30 days of the date the notice of payment due is transmitted, setting out with specificity the unusual circumstances surrounding the failure to file by the due date. The notice of appeal may be accompanied by any documentation or evidence supporting the claim, but must be received by the Commission no later than 30 days after the date the notice of payment due is transmitted.

(2) Failure to timely file a notice of appeal as described herein shall constitute a waiver of any such entitlement. A final order of waiver shall be promptly entered by the chair of the Commission without the necessity of any further action being taken by the Commission.

(3) A person desiring a hearing before the Commission shall include in the notice of appeal a separate request for hearing. If no request for hearing is included in the notice of appeal, the Commission’s determination shall be based on the notice and any supporting information and shall be final agency action. If a separate request for hearing is included in the notice, notice of hearing shall be provided and the Commission’s determination after hearing shall be final agency action. Failure to appear in accordance with the notice of hearing shall constitute a waiver of such entitlement, and the Commission shall dispose of the case on the written record before it.

(4) “Unusual circumstances” means uncommon, rare or sudden events over which the reporting individual had no control and which directly result in the failure to act in accordance with the filing requirements. Circumstances which allow for time in which to take those steps necessary to assure compliance with the filing requirements shall be deemed not to constitute unusual circumstances.

Specific Authority 112.3145(6)(f), 112.322(9) FS. Law Implemented 112.3145 FS. History–New

NAME OF PERSON ORIGINATING PROPOSED RULE:
Julia Cobb Costas, Staff Attorney

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Bonnie J. Williams, Executive Director

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 24, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 19, 2001

WATER MANAGEMENT DISTRICTS

Southwest Florida Water Management District

RULE CHAPTER TITLE: Individual Environmental Resource Permits
RULE CHAPTER NO.: 40D-4

RULE TITLES:
 Permits Required
 Publications and Agreements Incorporated
 by Reference
 General Conditions

RULE NOS.:
 40D-4.041
 40D-4.091
 40D-4.381

PURPOSE AND EFFECT: The proposed amendments will remove obsolete references to environmental resource permitting exemptions that the District previously repealed. The amendments will also accomplish the removal throughout the District's environmental resource permitting rules references to Chapter 40D-45, F.A.C., which the District is repealing.

SUMMARY: As a result of the repeal of the District's rule exemptions 40D-4.051(3),(4),(5), and (6), F.A.C., it is necessary to amend the District's rules to remove obsolete references to these exemptions. Subsections 40D-4.041(4), F.A.C., provides that a Standard General Permit for Minor Surface Water Management Systems is required for a system otherwise exempt from permitting under subsections 40D-4.051(4),(6),(7), or (8), F.A.C., under certain conditions. The amendment to 40D-4.041(4), F.A.C. will remove the reference to subsections (4) and (6). The amendment to Section H of the Environmental Resource Permit Application will remove the reference to two of the qualifying requirements to obtain a Standard General Permit for Minor Surface Water Management Systems. These two requirements are based upon a project qualifying for a permitting exemption under 40D-4.051(4) and (6), F.A.C., which have been repealed. This rulemaking will also accomplish the removal throughout the District's environmental resource permitting rules of references to Chapter 40D-45, F.A.C. The Governing Board initiated repeal of Chapter 40D-45, F.A.C., in January of 1996. In October 1999 the District listed Chapter 40D-45, F.A.C., in its entirety, as exceeding the District's rulemaking authority pursuant to Section 120.536, F.S. No authorizing legislation was passed by the 2000 Legislature and pursuant to Section 120.536, F.S., the District was required to begin proceedings to repeal Chapter 40D-45, F.A.C., by January 1, 2001. Staff are proceeding with the repeal of Chapter 40D-45, F.A.C., as required and the following amendments to the rules are necessary to remove obsolete references.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: A Statement of Estimated Regulatory Cost is not being prepared based on the District's determination that the proposed revisions to Rules 40D-4.041, 40D-4.091 and 40D-4.381, F.A.C., will not result in a substantial increase in the costs to affected parties and there will not be significant adverse effects on competition, employment, investment or productivity.

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, 373.046, 373.113, 373.118, 373.149, 373.171, 373.414 FS.

LAW IMPLEMENTED: 373.0361, 373.042, 373.114, 373.171, 373.403, 373.409, 373.413, 373.414, 373.416, 373.426, 373.427, 373.429, 373.441 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Karen E. West, Deputy General Counsel, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34609-6899, (352)796-7211, Extension 4651

THE FULL TEXT OF THE PROPOSED RULES IS:

40D-4.041 Permits Required.

(1) No change.

(2) The District issues the following types of Environmental Resource Permits:

(a) General permits for construction, alteration, operation, removal or abandonment of surface water management systems for projects which have, either singularly or cumulatively, minimal environmental impact.

(1) Standard general permits are issued pursuant to Chapters 40D-40 and 40D-45, F.A.C.

(2)(b)through (d) No change.

(3) No change.

(4) A Standard General Permit for Minor Surface Water Management Systems is required for a surface water management system, otherwise exempt from permitting under subsections 40D-4.051(4), ~~(6),(3)(7)~~ or ~~(4)(8)~~, unless the system is exempt by statute or rule from storm water quality regulation or has received storm water quality review and approval by the District or by a DEP permit, license or certification.

(5) Any dredging or filling in, on, or over surface waters of the State which is authorized by a general or individual permit issued under Chapters 40D-4, 40D-40, ~~40D-45~~ or 16J-4, F.A.C., as such Chapters existed prior to October 3, 1995, but which is not authorized by a permit or exemption under Chapter 62-312, F.A.C., as such Chapter existed prior to October 3, 1995, shall require an Environmental Resource Permit prior to the dredging or filling. However, such dredging or filling shall be exempt from the requirements of paragraphs 40D-4.301(1)(a) through (e) and (g) through (k).

(6) No change.

Specific Authority 373.044, 373.113, 373.118, 373.149, 373.171 FS. Law Implemented 373.413, 373.416, 373.426, 373.427 FS. History--Readopted 10-5-74, Amended 12-31-74, 9-4-77, 6-7-78, Formerly 16J-4.04, 16J-4.10(1),(2),(4), Amended 10-1-84, 3-1-88, 10-3-95, 7-23-96, 10-16-96, 4-17-97.

40D-4.091 Publications and Agreements Incorporated by Reference.

The following documents are hereby incorporated into this chapter and Chapters 40D-40 and 40D-400, F.A.C.:

(1) "Basis of Review for Environmental Resource Permit Applications within the Southwest Florida Water Management District, ~~June 12, 2001~~." This document is available from the District upon request.

(2) through (4) No change.

Specific Authority 373.044, 373.046, 373.113, 373.171, 373.414 FS. Law Implemented 373.0361, 373.114, 373.171, 373.403, 373.413, 373.414, 373.416, 373.429, 373.441 FS. History-New 4-2-87, Amended 3-1-88, 9-11-88, 10-1-88, 4-1-91, 11-16-92, 1-30-94, 10-3-95, 12-26-95, 5-26-96, 7-23-96, 4-17-97, 4-12-98, 7-2-98, 12-3-98, 7-28-99, 8-3-00, 9-20-00, 6-12-01, _____.

40D-4.381 General Conditions.

(1) No change.

(2) In addition to those general conditions set forth in subsection (1), the Governing Board may impose on any permit granted under this chapter and Chapters 40D-40 and ~~40D-45~~, F.A.C., such reasonable project-specific conditions as are necessary to assure that the permitted system will be consistent with the overall objectives of the District and will not be harmful to the water resources of the District.

Specific Authority 373.044, 373.113, 373.149, 373.171 FS. Law Implemented 373.042, 373.403, 373.409, 373.413, 373.414, 373.416, 373.426 FS. History-Readopted 10-5-74, Amended 12-31-74, 6-7-78, Formerly 16J-4.06(7), 16J-4.11, 16J-4.10(3), Amended 10-1-84, 3-1-88, 10-3-95, 10-16-96, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Karen E. West, Deputy General Counsel, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34609-6899, (352)796-7211, Extension 4651

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Governing Board of the Southwest Florida Water Management District

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 26, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 27, 2001

AGENCY FOR HEALTH CARE ADMINISTRATION

Certificate of Need

RULE TITLES: Projects Subject to Review 59C-1.004 Exemptions 59C-1.005

PURPOSE AND EFFECT: Section 15 of Chapter 2001-104 Laws of Florida creates an exemption from certificate of need (CON) review for a proposal to convert hospital based distinct part skilled nursing unit (SNU) beds to acute care beds. The proposed rule amendments reflect this change and establish requirements for the exemption.

SUMMARY: The proposed amendments implement a new exemption from CON review.

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: 408.15(8), 408.034(5) FS.

LAW IMPLEMENTED: 408.036(3) FS., Chapter 2001-104, Laws of Florida.

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

TIME AND DATE: 2:00 p.m., August 29, 2001

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Laura MacLafferty, Certificate of Need, 2727 Mahan Drive, Building 1, Tallahassee, Florida

THE FULL TEXT OF THE PROPOSED RULES IS:

59C-1.004 Projects Subject to Review.

(1) No change.

(2) Projects Subject to Expedited Review. Unless exempted under subsection 408.036(3), F.S., (The following projects are subject to expedited review, and will be reviewed in accordance with procedures set forth in subsection 59C-1.010(4), F.A.C.:

(a) through (f) No change.

Specific Authority 408.034(5), 408.15(8) FS. Law Implemented 408.036(1)(2) FS. History-New 1-1-77, Amended 11-1-77, 9-1-78, 6-5-79, 4-25-80, 2-1-81, Formerly 10-5.04, Amended 11-24-86, 11-17-87, 1-31-91, 1-1-92, Formerly 10-5.004, Amended 9-9-92, 1-9-95, 11-4-97, 12-12-00, _____.

59C-1.005 Exemptions.

(1) Request for Exemption. Certain projects are subject to exemption from certificate of need review pursuant to subsections 408.036(3) and 408.036(4), F.S., provided the conditions specified in this rule are met. To receive an exemption, the applicant shall file a request for exemption with the agency and provide documentation to justify the request. A request for exemption may be submitted at any time, and must be submitted to:

Agency for Health Care Administration
Certificate of Need
2727 Mahan Drive, Building 1
Tallahassee, Florida 32308

(2) General Requirements. In the case of any applicant applying for an exemption from certificate of need review, the request shall include:

(a) The type of exemption requested, with reference to the authorizing paragraph in s. 408.036(3), F.S. Except as provided in paragraphs (6)(a) or (b) of this rule, an exemption request must be limited to a single type of exemption.

(b) The name of the health care facility or hospice involved, and the name of the licensee. A request for exemption affecting an existing licensed health care facility or hospice must be submitted by the current licensee.

(c) The location of the project.

(d) The costs of the project.

(e) The gross square footage of the project, if applicable.

(f) The proposed licensed bed capacity of the health care facility, if applicable.

(g) A non-refundable fee of two hundred and fifty dollars (\$250) payable to the Agency for Health Care Administration in accordance with s. 408.036(4), F.S. Exemption requests shall not be accepted by the agency at the time of receipt unless accompanied by the \$250 fee. Checks that are returned by the bank for insufficient funds will be processed consistent with the procedures for expedited review applications specified in s. 59C-1.008(3)(c)1., F.A.C.

(h) The applicable project specific information required by subsection (6) of this rule.

(3) through (5) No change.

(6) Project Specific Exemption Requests. In addition to meeting the requirements of subsections (1) and (2) of this rule, requests for exemption of certain projects must meet the additional requirements specified below:

(a) through (h) No change.

(i)1. Conversion of skilled nursing beds to acute care beds. A request for exemption of a proposed conversion of hospital-based distinct part skilled nursing unit (SNU) beds to acute care beds shall certify that:

a. The conversion will utilize or modify physical space that exists at the time of the exemption request, without construction of new facilities.

b. The acute care beds will be located at the same premises as the SNU beds.

c. The conversion will not increase the total licensed bed capacity of the hospital.

2. An exemption granted under this paragraph is subject to the project monitoring requirements of s. 408.040(2)(a)-(c), F.S., and Rule 59C-1.013(2) and (3), F.A.C., including project progress reports, an 18-month validity period for the exemption, and the circumstances for extension of the validity period.

3. Beds authorized under this paragraph shall be inventoried as approved beds until the beds are licensed.

Specific Authority 408.034(5), 408.15(8) FS. Law Implemented 408.036(3), 408.036(4) FS. History—New 1-1-77, Amended 6-5-79, 2-1-81, Formerly 10-5.05, Amended 11-17-87, 3-23-88, 1-31-91, Formerly 10-5.005, Amended 7-13-98, 4-2-01,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Jeff Gregg, Chief, Health Facility Regulation

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Laura Branker, Acting Secretary, Agency for Health Care Administration

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 18, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 22, 2001

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Division of Pari-Mutuel Wagering

RULE TITLE: Pari-Mutuel Wagering Racing and Game Officials
RULE NO.: 61D-2.020

PURPOSE AND EFFECT: The purpose and effect of the proposed rule will be to interpret Florida Statutes which grant permitholders the authority to designate racing officials.

SUMMARY: This proposed rule implements Florida Statutes necessary to ensure the integrity of the industry.

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 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: 550.0251(3),(11), 550.105(2)(c), (4)(b),(9), 550.2415(13), 550.2625(2)(d) FS.

LAW IMPLEMENTED 550.0251, 550.09514, 550.105, 550.235, 550.2415, 550.2625 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 (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 10:00 a.m. – 4:00 p.m., August 28, 2001

PLACE: Florida Department of Business and Professional Regulation, Northwood Centre, Board Room, Room 130, 1940 N. Monroe Street, Tallahassee, Florida 32399

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Mary Polombo, Clerk, Division of Pari-Mutuel Wagering, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-1035

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this hearing is asked to advise the Department at least 5 calendar days before the hearing by contacting Mary Polombo, (850)413-0750. If you are hearing or speech impaired, please contact the agency using the Florida Dual Party Relay System by calling 1(800)955-8770 (Voice) or 1(800)955-8771 (TDD).

Written comments or suggestions on the proposed rule may be submitted to Mary Polombo, Clerk, Division of Pari-Mutuel Wagering, Department of Business and Professional

Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-1035, within 21 days of this notice for inclusion in the record of this proceeding.

THE FULL TEXT OF THE PROPOSED RULE IS:

61D-2.020 Pari-Mutuel Wagering Racing and Game Officials.

(1) Each licensed pari-mutuel wagering permitholder shall designate persons, ~~if required by the permitholder~~, for horse racing, harness racing, greyhound racing, or jai alai games, depending upon the type of permit held, for the following functions as racing or game officials:

- (1)(a) No change.
- (b) Harness Racing: authorized stewards, racing secretary, paddock judge, horse identifier, patrol judge, clerk of course, starter, timer, veterinarian, and chief of security.
- (c) through (2) No change.
- (3) No racing official shall have or maintain an ownership interest, direct or indirect, in any racing animal participating at any licensed meeting where he works or officiates.
- (4) through (6) No change.

(7) No jai alai court judge shall be under contract as an active player in a fronton in which that judge officiates. In event of an emergency, a temporary court judge shall be chosen by fronton management from the roster of active players and such appointment shall be reported in writing to the division judge.

Specific Authority ~~550.0251(3), (4), 550.105(2)(b)(e), (4)(b), (9), 550.2415(13), 550.2625(2)(d)~~ FS. Law Implemented 550.0251, ~~550.09514, 550.105, 550.235, 550.2415, 550.2625~~ FS. History--New 10-20-96, Amended 12-15-97, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Paul F. Kirsch, Director, Division of Pari-Mutuel Wagering
 NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Kim Binkley-Seyer, Secretary, Department of Business and Professional Regulation
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 23, 2001
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 22, 2000

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Division of Pari-Mutuel Wagering

RULE TITLE: Aggravating and Mitigating Circumstances RULE NO.: 61D-2.021

PURPOSE AND EFFECT: The purpose and effect of the proposed rule will be to delineate the factors to be considered for aggravation or mitigation of penalties in relation to discipline.

SUMMARY: This proposed rule implements Florida Statutes necessary to ensure consistency in the assessment of disciplinary penalties.

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

Any person who wishes to provide information regarding the statement of estimated 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: 550.0251(3), 550.2415(13) FS.

LAW IMPLEMENTED: 550.0251, 550.1155 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 (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 10:00 a.m. – 4:00 p.m., August 28, 2001

PLACE: Florida Department of Business and Professional Regulation, Northwood Centre, Board Room, Room 130, 1940 N. Monroe Street, Tallahassee, Florida 32399

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Mary Polombo, Clerk, Division of Pari-Mutuel Wagering, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-1035

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this hearing is asked to advise the Department at least 5 calendar days before the hearing by contacting Mary Polombo, (850)413-0750. If you are hearing or speech impaired, please contact the agency using the Florida Dual Party Relay System by calling 1(800)955-8770 (Voice) or 1(800)955-8771 (TDD).

Written comments or suggestions on the proposed rule may be submitted to Mary Polombo, Clerk, Division of Pari-Mutuel Wagering, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-1035, within 21 days of this notice for inclusion in the record of this proceeding.

THE FULL TEXT OF THE PROPOSED RULE IS:

61D-2.021 Aggravating and Mitigating Circumstances. Circumstances which may be considered for the purposes of mitigation or aggravation of any penalty shall include, but are not limited to, the following:

- (1) The severity of the offense.
- (2) The danger to the public and/or racing animals.
- (3) The number of repetitions of offenses.
- (4) The number of complaints filed against the licensee.
- (5) The length of time the licensee has practiced.
- (6) The deterrent effect of the penalty imposed.

(7) The effect of the penalty upon the licensee's livelihood.

(8) Any efforts at rehabilitation.

(9) Any other mitigating or aggravating circumstances.

Specific Authority 550.0251(3), 550.2415(13) FS. Law Implemented 550.0251, 550.1155 FS. History--New

NAME OF PERSON ORIGINATING PROPOSED RULE:
Paul F. Kirsch, Director, Division of Pari-Mutuel Wagering
NAME OF SUPERVISOR OR PERSON WHO APPROVED
THE PROPOSED RULE: Kim Binkley-Seyer, Secretary,
Department of Business and Professional Regulation
DATE PROPOSED RULE APPROVED BY AGENCY
HEAD: March 6, 2001
DATE NOTICE OF PROPOSED RULE DEVELOPMENT
PUBLISHED IN FAW: December 29, 2000

**DEPARTMENT OF BUSINESS AND PROFESSIONAL
REGULATION**

Division of Pari-Mutuel Wagering

RULE TITLE: Procedures for Sampling of Racing Animals
RULE NO.: 61D-6.005

PURPOSE AND EFFECT: The purpose and effect of the proposed rule will be to interpret Florida Statutes which authorize the Division to adopt rules for the sampling of racing animals.

SUMMARY: This proposed rule implements Florida Statutes necessary to establish procedures for sampling of racing animals.

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 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: 120.80(4)(a), 550.0251(3),(11), 550.2415(13) FS.

LAW IMPLEMENTED: 120.80(4)(a), 550.0251, 550.2415 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 (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 10:00 a.m. – 4:00 p.m., August 28, 2001
PLACE: Florida Department of Business and Professional Regulation, Northwood Centre, Board Room, Room 130, 1940 N. Monroe Street, Tallahassee, Florida 32399

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Mary Polombo, Clerk, Division of Pari-Mutuel Wagering, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-1035

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this hearing is asked to advise the Department at least 5 calendar days before the hearing by contacting Mary Polombo, (850)413-0750. If you are hearing or speech impaired, please contact the agency using the Florida Dual Party Relay System by calling 1(800)955-8770 (Voice) or 1(800)955-8771 (TDD).

Written comments or suggestions on the proposed rule may be submitted to Mary Polombo, Clerk, Division of Pari-Mutuel Wagering, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-1035, within 21 days of this notice for inclusion in the record of this proceeding.

THE FULL TEXT OF THE PROPOSED RULE IS:

61D-6.005 Procedures for Sampling of Racing Animals.

(1) The winner of every race and other such racing animal participants the stewards, judges, ~~or~~ division, or track veterinarian of the meeting designate, shall be sent immediately after the race to the detention enclosure for examination by the authorized representative of the division and for the taking of urine, blood or other such samples as shall be directed for the monitoring and detection of both permissible and impermissible substances. Blood specimens shall be taken only by a Florida licensed veterinarian (division or track) and witnessed by the racing animal's trainer of record, owner, or designee. Said veterinarian should attempt to attain up to six full 15-milliliter blood tubes from each horse sampled.

(2) through (3) No change.

(4) Only those persons stated in subsection ~~(3)~~(4) of this rule shall be admitted at any time to the detention enclosure except the division staff immediately in charge of such work, the stewards or judges, or such other persons as shall be authorized by the director or the division veterinarian.

(5) No change.

(6) All specimens taken by or under direction of the division veterinarian or other authorized representative of the division shall be delivered to the ~~division's~~ laboratory under contract with the division for official analysis. Each specimen shall be marked by number and date and also bear any information essential for its proper analysis; however, the identity of the racing animal from which the specimen was taken or the identity of its owner, trainer, jockey, stable, or kennel shall not be revealed to the ~~division's~~ laboratory staff until official analysis of the specimen is complete.

(7) The division veterinarian or division investigator is authorized to take samples of any legend or proprietary drugs, medications, medicinal compounds (natural or synthetic) or other materials which are found in the stable area, kennel compound or elsewhere on race tracks, or in the possession of any person participating in or connected with racing, including

veterinarians and trainers, and which are suspected of containing improper legend or proprietary drugs, medications, medicinal compounds (natural or synthetic) or other materials which are illegal or impermissible under these rules and which could affect the racing condition of a horse or racing greyhound in a race. Such legend or proprietary drugs, medications, medicinal compounds (natural or synthetic) or other materials shall be delivered to the ~~division's~~ laboratory under contract with the division for analysis under the same conditions as are prescribed in this rule for the analysis of other biological samples.

(8) The division may proceed when other evidence exists that an illegal or impermissible legend or proprietary drug, medication, or medicinal compound (natural or synthetic) may have been administered to a racing animal. Otherwise, no action shall be taken unless and until the ~~division~~ laboratory under contract with the division has properly identified the legend or proprietary drug, medication, or medicinal compound (natural or synthetic) in a sample or specimen collected pursuant to this chapter.

(9) Any licensee who threatens to or interferes with, or fails to allow the taking of urine, blood or other specimens authorized by Chapter 550, Florida Statutes, is subject to suspension by the stewards or judges of the meeting and to action by the division. The stewards or judges shall refer any such incident to the division for review.

Specific Authority 120.80(4)(a), 550.0251(3), ~~(4)~~, 550.2415(8)(e), ~~(9)(c)~~, (13) FS. Law Implemented 120.80(4)(a), 550.0251, 550.1155, 550.2415 FS. History—New 10-20-96, Amended 12-15-97, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Paul F. Kirsch, Director, Division of Pari-Mutuel Wagering
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Kim Binkley-Seyer, Secretary, Department of Business and Professional Regulation
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 23, 2001
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 9, 2001

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Funeral Directors and Embalmers

RULE TITLE: Requirement for Instruction on Human Immunodeficiency Virus, Acquired Immune Deficiency Syndrome and Communicable Diseases
RULE NO.: 61G8-32.007

PURPOSE AND EFFECT: The Board proposes to review this rule to determine if amendments are necessary.

SUMMARY: The rule amendments are for the purpose of updating the educational courses to one hour.

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: 455.2226(7), 470.006, 470.007, 470.008, 470.009, 470.011, 470.015, 470.016, 470.017, 470.018 FS.

LAW IMPLEMENTED: 455.2226, 455.219(2), 470.0006, 470.007, 470.008, 470.009, 470.011, 470.015, 470.016, 470.017, 470.018 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: Sherry Landrum, Executive Director, Board of Funeral Directors and Embalmers, Northwood Centre, 1940 N. Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G8-32.007 Requirement for Instruction on Human Immunodeficiency Virus, Acquired Immune Deficiency Syndrome and Communicable Diseases.

- (1) through (2) No change.
- (3) To receive the Board's approval, such educational courses shall be, at a minimum, one ~~two~~ hours in length and shall consist of:
 - (a) Education on the transmission, infection control procedures, and prevention of HIV and AIDS;
 - (b) Special emphasis on precautions to be used in handling and transporting dead human bodies, handling and disposal of body fluids and tissues removed during embalming, and procedures to be used in sterilizing implements and equipment used in embalmings;
 - (c) Discussion of current Florida law on HIV and AIDS.
 - (d) Communicable diseases including transmission, sterilization techniques and risk education methods in the practice of professional services.
- (4) through (10) No change.

Specific Authority 470.005, 455.2226(7), 470.006, 470.007, 470.008, 470.009, 470.011, 470.015, 470.016, 470.017, 470.018 FS. Law Implemented 455.2226, 455.219(2), 470.006, 470.007, 470.008, 470.009, 470.011, 470.015, 470.016, 470.017, 470.018 FS. History—New 3-19-92, Amended 6-17-92, Formerly 21J-32.007, Amended 5-1-95, 10-29-97, 8-8-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Funeral Directors and Embalmers

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Funeral Directors and Embalmers

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 9, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED FAW: June 29, 2001

DEPARTMENT OF HEALTH

Board of Occupational Therapy

RULE TITLE: Attendance at Board Meetings
 RULE NO.: 64B11-1.001
 PURPOSE AND EFFECT: The Board proposes to define unexcused absences.

SUMMARY: The rule requires attendance at Board meetings and sets forth the criteria for an excused absence.

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

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

SPECIFIC AUTHORITY: 456.011(4) FS.

LAW IMPLEMENTED: 456.011(4) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT A TIME, DATE AND PLACE TO BE PUBLISHED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kaye Howerton, Executive Director, Board of Occupational Therapy, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B11-1.001 Attendance at Board Meetings.

(1) Board members shall attend all regularly scheduled Board meetings unless prevented from doing so by reason of court order, subpoena, business with a court with the sole prerogative of setting the date of such business, death of a family member, illness of the Board member, or illness of the member's immediate family, or other similar extenuating circumstances.

(2) No Board member may be absent from three consecutive regularly scheduled Board meetings unless the absence is excused for one of the reasons stated in section (1) of this rule. Other absences constitute unexcused absences for the purpose of declaring a vacancy on the Board. An otherwise excused absence is not excused if the Board member fails to notify the Board office of the impending absence prior to the regularly scheduled Board meeting at which the absence will occur unless the failure to notify is the result of emergency circumstances that would reasonably tend to preclude timely notification.

Specific Authority 456.011(4) FS. Law Implemented 456.011(4) FS. History—
 New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Occupational Therapy

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 18, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 15, 2001

DEPARTMENT OF HEALTH

Board of Occupational Therapy

RULE TITLE: Other Business Involving the Board
 RULE NO.: 64B11-1.002
 PURPOSE AND EFFECT: The Board proposes to define other business involving the Board for the purpose of Board member compensation.

SUMMARY: The Board is fulfilling the requirement that it determine the business-related activities for which compensation shall be paid to the Board members.

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

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

SPECIFIC AUTHORITY: 456.011(4) FS.

LAW IMPLEMENTED: 456.011(4) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT A TIME, DATE AND PLACE TO BE PUBLISHED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kaye Howerton, Board Executive Director, Board of Occupational Therapy, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B11-1.002 Other Business Involving the Board.

For purposes of Board member compensation pursuant to Section 456.011(4), Florida Statutes, "other business involving the Board" does not include telephone conference calls that last less than four hours, but otherwise is defined to include:

(1) Board meetings;

(2) Meetings of committees of the Board;

(3) Meetings of a Board member with staff or with a member or members of other regulatory boards at the request of the Board or the Department.

(4) Probable cause panel meetings;

(5) Attendance at legislative workshops or committee meetings at the request of the Board or Department;

(6) Attendance at meetings of National and State Associations as an authorized representative of the Board;

(7) Attendance at continuing education programs for the purpose of auditing a Board approved provider when such attendance has been approved by the Board;

(8) Attendance at any function relating to Board business and authorized by the Board or Department.

Specific Authority 456.011(4) FS. Law Implemented 456.011(4) FS. History--New

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Occupational Therapy
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Occupational Therapy
DATE PROPOSED RULE APPROVED BY THE AGENCY HEAD: June 18, 2001
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 15, 2001

DEPARTMENT OF HEALTH

Board of Occupational Therapy

RULE TITLE: Address of Licensee
PURPOSE AND EFFECT: The Board proposes to define the requirement that the licensees must provide their address of record.
SUMMARY: Address of licensee is defined to include current place of practice if different from the current mailing address.
SUMMARY OF STATEMENT OF ESTIMATED REGULATORY: No Statement of Estimated Regulatory Cost was prepared.

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

SPECIFIC AUTHORITY: 456.035 FS.
LAW IMPLEMENTED: 456.035 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT A TIME, DATE AND PLACE TO BE PUBLISHED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kaye Howerton, Executive Director, Board of Occupational Therapy, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B11-4.007 Address of Licensee.

Each person holding a license issued pursuant to Part III of Chapter 468, Florida Statutes, must maintain on file with the Board a current mailing address at which any notice required by law may be served by the Department, the Board, or its agents, and the address of the current place of practice if different from the current mailing address. The licensee shall notify the Board in writing of any change of address within 60 days, whether or not within this state.

Specific Authority 456.035 FS. Law Implemented 456.035 FS. History--New

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Occupational Therapy
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Occupational Therapy
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 18, 2001
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 15, 2001

DEPARTMENT OF HEALTH

Board of Osteopathic Medicine

RULE TITLE: Physician Assistant Certification Renewal
PURPOSE AND EFFECT: The purpose of the rule amendments is to update the rule text with regard to the requirements necessary for certification renewal.
SUMMARY: The Board is amending this rule to update the requirements for physician assistants who wish to renew their certification.

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: 456.031, 456.033, 459.005 FS.
LAW IMPLEMENTED: 456.031, 456.044, 459.022(7)(b),(c) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Karen Eaton, Executive Director, Board of Osteopathic Medicine/MQA, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3256

THE FULL TEXT OF THE PROPOSED RULE IS:

64B15-6.0035 Physician Assistant Certification Renewal.

- (1) No change.
- (2) Requirements for Renewal.
 - (a) through (c) No change.

(d) Submission of proof of completion of the HIV/AIDS education requirement set forth in Section 456.033, F.S. In lieu of completing the HIV/AIDS education requirement, licensees are permitted to substitute a course in end-of-life care and palliative health care, provided the licensee has completed the HIV/AIDS education requirement in the immediately preceding biennium.

(e) Submission of proof of completion of the domestic violence education requirement set forth in Section 456.031, F.S. In lieu of completing the domestic violence course, licensees are permitted to substitute a course in end-of-life care and palliative health care, provided the licensee has completed the domestic violence requirement in the immediately preceding biennium.

- (3) through (5) No change.

Specific Authority 456.031, 456.033, 459.005 FS. Law Implemented 456.031, 456.044, 459.022(7)(b),(c) FS. History—New 10-28-87, Amended 4-21-88, 1-3-93, Formerly 21R-6.0035, Amended 11-4-93, 3-29-94, Formerly 61F9-6.0035, 59W-6.0035, Amended 6-7-98, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:

Board of Osteopathic Medicine

NAME OF SUPERVISOR OR PERSON WHO APPROVED

THE PROPOSED RULE: Board of Osteopathic Medicine

DATE PROPOSED RULE APPROVED BY AGENCY

HEAD: June 8, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT

PUBLISHED IN FAW: March 30, 2001

DEPARTMENT OF HEALTH

Board of Osteopathic Medicine

RULE TITLES:

Standards of Practice for Surgery

Standard of Care for Office Surgery

RULE NOS.:

64B15-14.006

64B15-14.007

PURPOSE AND EFFECT: The Board is creating two new rules, one will address the standards of practice for surgery and the other new rule will address the standard of care for office surgery.

SUMMARY: The Board finds it necessary to promulgate two new rules. The first new rule, entitled “Standards of Practice for Surgery”, will set forth the standards and the responsibilities of the licensed doctor of medicine or osteopathic physician who is to perform surgery. The second rule, entitled “Standard of Care for Office Surgery”, will set forth the definitions, the general requirements for office surgery, the different levels of surgery, the appropriate training

required, the proper equipment and supplies required at the facility where the surgery will be performed, and the appropriate assistance of other personnel required.

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: 459.005, 459.015(1)(z), 459.026 FS.

LAW IMPLEMENTED: 459.015(1)(g),(x),(z),(aa), 459.026, 459.331(1)(x),(aa) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Karen Eaton, Executive Director, Board of Osteopathic Medicine/MQA, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3256

THE FULL TEXT OF THE PROPOSED RULES IS:

64B15-14.006 Standards of Practice for Surgery.

The Board of Osteopathic Medicine interprets the standard of care requirement of Section 459.015(1)(x), Florida Statutes, and the delegation of duties restrictions of Section 459.015(1)(aa), Florida Statutes, with regard to surgery as follows:

(1) The ultimate responsibility for diagnosing medical and surgical problems is that of the licensed allopathic or osteopathic physician who is to perform the surgery. In addition, it is the responsibility of the operating surgeon or an equivalently trained allopathic or osteopathic physician practicing within a Board approved postgraduate training program to explain the procedure to and obtain the informed consent of the patient. It is not necessary, however, that the operating surgeon obtain or witness the signature of the patient on the written form evidencing informed consent.

(2) Management of postsurgical care is the responsibility of the operating surgeon.

(3) The operating surgeon can delegate discretionary postoperative activities to equivalently trained licensed allopathic or osteopathic physician practicing within Board approved postgraduate training programs. Delegation to any health care practitioner is permitted only if the other practitioner is supervised by the operating surgeon or an equivalently trained licensed allopathic or osteopathic physician or a physician practicing within a Board approved postgraduate training program.

(4) The rule shall have no application to anesthesia-related activities performed in accordance with Florida law.

Specific Authority 459.005 FS. Law Implemented 459.331(1)(x),(aa) FS. History—New

64B15-14.007 Standard of Care for Office Surgery.

NOTHING IN THIS RULE RELIEVES THE SURGEON OF THE RESPONSIBILITY FOR MAKING THE MEDICAL DETERMINATION THAT THE OFFICE IS AN APPROPRIATE FORUM FOR THE PARTICULAR PROCEDURE(S) TO BE PERFORMED ON THE PARTICULAR PATIENT.

(1) Definitions.

(a) Surgery. For the purpose of this rule, surgery is defined as any operative procedure, including the use of lasers, performed upon the body of a living human being for the purposes of preserving health, diagnosing or curing disease, repairing injury, correcting deformity or defects, prolonging life, relieving suffering or any elective procedure for aesthetic, reconstructive or cosmetic purposes, to include, but not be limited to: incision or curettage of tissue or an organ; suture or other repair of tissue or organ, including a closed as well as an open reduction of a fracture; extraction of tissue including premature extraction of the products of conception from the uterus; insertion of natural or artificial implants; or an endoscopic procedure with use of local or general anesthetic.

(b) Surgeon. For the purpose of this rule, surgeon is defined as a licensed osteopathic physician performing any procedure included within the definition of surgery.

(c) Equipment. For the purpose of this rule, implicit within the use of the term of equipment is the requirement that the specific item named must meet current performance standards.

(d) Office surgery. For the purpose of this rule office surgery is defined as surgery which is performed outside a hospital, an ambulatory surgical center, abortion clinic, or other medical facility licensed by the Department of Health, the Agency for Health Care Administration, or a successor agency. Office surgical procedures shall not be of a type that generally result in blood loss of more than ten percent of estimated blood volume in a patient with a normal hemoglobin; require major or prolonged intracranial, intrathoracic, abdominal, or major joint replacement procedures, except for laparoscopic procedures; directly involve major blood vessels; or are generally emergent or life threatening in nature.

(2) General Requirements for Office Surgery.

(a) For all surgical procedures, the level of sterilization shall meet current OSHA requirements.

(b) The surgeon must examine the patient immediately before the surgery to evaluate the risk of anesthesia and of the surgical procedure to be performed. The surgeon must maintain complete records of each surgical procedure, as set forth in Rule 64B15-15.004, F.A.C., including anesthesia records, when applicable and the records shall contain written

informed consent from the patient reflecting the patient's knowledge of identified risks, consent to the procedure, type of anesthesia and anesthesia provider, and that a choice of anesthesia provider exists, i.e., anesthesiologist, another appropriately trained physician as provided in this rule, certified registered nurse anesthetist, or physician assistant qualified as set forth in Rule 64B15-6.010(2)(b)6., F.A.C.

(c) The requirement set forth in subsection (2)(b) above for written informed consent is not necessary for minor Level I procedures limited to the skin and mucosa.

(d) The surgeon must maintain a log of all Level II and Level III surgical procedures performed, which must include a confidential patient identifier, the type of procedure, the type of anesthesia used, the duration of the procedure, the type of post-operative care, and any adverse incidents, as identified in Section 459.026, F.S. The log and all surgical records shall be provided to investigators of the Department of Health upon request.

(e) In any liposuction procedure, the surgeon is responsible for determining the appropriate amount of supernatant fat to be removed from a particular patient. A maximum of 4000cc supernatant fat may be removed by liposuction in the office setting. A maximum of 50mg/kg of Lidocaine can be injected for tumescent liposuction in the office setting.

(f) For elective cosmetic and plastic surgery procedures performed in a physician's office, the maximum planned duration of all surgical procedures combined must not exceed 8 hours. Except for elective cosmetic and plastic surgery, the surgeon shall not keep patients past midnight in a physician's office. For elective cosmetic and plastic surgical procedures, the patient must be discharged within 24 hours of presenting to the office for surgery; an overnight stay is permitted in the office provided the total time the patient is at the office does not exceed 23 hours and 59 minutes including the surgery time. An overnight stay in a physician's office for elective cosmetic and plastic surgery shall be strictly limited to the physician's office. If the patient has not recovered sufficiently to be safely discharged within the timeframes set forth, the patient must be transferred to a hospital for continued post-operative care.

(g) The surgeon must assure that the post-operative care arrangements made for the patient are adequate to the procedure being performed as set forth in Rule 64B15-14.006, F.A.C. Management of post-surgical care is the responsibility of the operating surgeon and may be delegated only as set forth in Rule 64B15-14.006(3), F.A.C. If there is an overnight stay at the office in relation to any surgical procedure:

1. The office must provide at least two (2) monitors, one of these monitors must be certified in Advanced Cardiac Life Support (ACLS), and maintain a monitor to patient ratio of at least 1 monitor to 2 patients. Once the surgeon has signed a timed and dated discharge order, the office may provide only one monitor to monitor the patient. The monitor must be

certified in Advanced Cardiac Life Support. The full and current crash cart required below must be present in the office and immediately accessible for the monitors.

2. The surgeon must be reachable by telephone and readily available to return to the office if needed. For purposes of this subsection, "readily available" means capable of returning to the office within 15 minutes of receiving a call.

(h) A policy and procedure manual must be maintained in the office, updated annually, and implemented. The policy and procedure manual must contain the following: duties and responsibilities of all personnel, quality assessment and improvement systems comparable to those required by Rule 59A-5.019; cleaning and infection control, and emergency procedures. This applies only to physician offices at which Level II and Level III procedures are performed.

(i) The surgeon shall report to the Department of Health any adverse incidents that occur within the office surgical setting. This report shall be made within 15 days after the occurrence of an incident as required by Section 497.026, F.S.

(j) A sign must be prominently posted in the office which states that the office is a doctor's office regulated pursuant to the rules of the Board of Osteopathic Medicine as set forth in Rule Chapter 64B15, F.A.C. This notice must also appear prominently within the required patient informed consent.

(3) Level I Office Surgery.

(a) Scope. Level I office surgery includes the following:

1. Minor procedures such as excision of skin lesions, moles, warts, cysts, lipomas and repair of lacerations or surgery limited to the skin and subcutaneous tissue performed under topical or local anesthesia not involving drug-induced alteration of consciousness other than minimal pre-operative tranquilization of the patient.

2. Liposuction involving the removal of less than 4000cc supernatant fat is permitted.

3. Incision and drainage of superficial abscesses, limited endoscopies such as proctoscopies, skin biopsies, arthrocentesis, thoracentesis, paracentesis, dilation of urethra, cysto-scopic procedures, and closed reduction of simple fractures or small joint dislocations (i.e., finger and toe joints).

4. Pre-operative medications not required or used other than minimal pre-operative tranquilization of the patient; anesthesia is local, topical, or none. No drug-induced alteration of consciousness other than minimal pre-operative tranquilization of the patient is permitted in Level I Office Surgery.

5. Chances of complication requiring hospitalization are remote.

(b) Standards for Level I Office Surgery.

1. Training Required. Surgeon's continuing medical education should include: proper dosages; management of toxicity or hypersensitivity to regional anesthetic drugs. Basic Life Support Certification is recommended but not required.

2. Equipment and Supplies Required. Oxygen, positive pressure ventilation device, Epinephrine (or other vasopressor), Corticoids, Antihistamine and Atropine if any anesthesia is used.

3. Assistance of Other Personnel Required. No other assistance is required, unless the specific surgical procedure being performed requires an assistant.

(4) Level II Office Surgery.

(a) Scope.

1. Level II Office Surgery is that in which peri-operative medication and sedation are used intravenously, intramuscularly, or rectally, thus making intra and post-operative monitoring necessary. Such procedures shall include, but not be limited to: hemorrhoidectomy, hernia repair, reduction of simple fractures, large joint dislocations, breast biopsies, colonoscopy, and liposuction involving the removal of up to 4000cc supernatant fat.

2. Level II Office Surgery includes any surgery in which the patient is placed in a state which allows the patient to tolerate unpleasant procedures while maintaining adequate cardiorespiratory function and the ability to respond purposefully to verbal command and/or tactile stimulation. Patients whose only response is reflex withdrawal from a painful stimulus are sedated to a greater degree than encompassed by this definition.

(b) Standards for Level II Office Surgery.

1. Training Required. The surgeon must be able to document satisfactory completion of training such as Board certification or Board eligibility by a Board approved by the American Osteopathic Association, the American Board of Medical Specialties, the Accreditation Council on Graduate Medical Education or any other board approved by the Board of Osteopathic Medicine or must be able to establish comparable background, training, and experience. The surgeon and one assistant must be currently certified in Basic Life Support and the surgeon and at least one assistant must be currently certified in Advanced Cardiac Life Support or have a qualified anesthesia provider practicing within the scope of the provider's license manage the anesthesia.

2. Equipment and Supplies Required.

a. Full and current crash cart at the location the anesthetizing is being carried out. The crash cart must include, at a minimum, the following resuscitative medications:

I. Adrenalin (epinephrine) 1:10,000 dilution; 10ml

II. Adrenalin (epinephrine) 1:1000 dilution; 1ml

III. Atropine 0.1mg/ml; 5ml

IV. Benadryl (diphenhydramine)

V. Calcium chloride 10%; 10ml

VI. Dextrose 50%

VII. Dilantin (phenytoin)

VIII. Dopamine

IX. Heparin

X. Inderal (propranolol)

XI. Isuprel

XII. Lanoxin (digoxin)

XIII. Lasix (furosemide)

XIV. Xylocaine (lidocaine)

XV. Magnesium sulfate 50%

XVI. Narcan (naloxone)

XVII. Pronestyl (procainamide)

XVIII. Sodium bicarbonate 50mEq/50ml

XIX. Solu-medrol (methylprednisolone)

XX. Verapamil hydrochloride

XXI. Mazicon

b. Suction devices, endotracheal tubes, laryngoscopes, etc.

c. Positive pressure ventilation device (e.g., Ambu) plus oxygen supply.

d. Double tourniquet for the Bier block procedure.

e. Monitors for blood pressure/EKG/Oxygen saturation.

f. Emergency intubation equipment.

g. Adequate operating room lighting.

h. Emergency power source able to produce adequate power to run required equipment for a minimum of two (2) hours.

i. Appropriate sterilization equipment.

j. IV solution and IV equipment.

3. Assistance of Other Personnel Required. The surgeon must be assisted by a qualified anesthesia provider as follows: An Anesthesiologist, Certified Registered Nurse Anesthetist, or Physician Assistant qualified as set forth in Rule 64B15-6.010(2)(b)6., F.A.C., or a registered nurse may be utilized to assist with the anesthesia, if the surgeon is ACLS certified. An assisting anesthesia provider cannot function in any other capacity during the procedure. If additional assistance is required by the specific procedure or patient circumstances, such assistance must be provided by a physician, osteopathic physician, registered nurse, licensed practical nurse, or operating room technician. A physician licensed under Chapter 458 or 459, a licensed physician assistant, a licensed registered nurse with post-anesthesia care unit experience or the equivalent, credentialed in Advanced Cardiac Life Support or, in the case of pediatric patients, Pediatric Advanced Life Support, must be available to monitor the patient in the recovery room until the patient is recovered from anesthesia.

(5) Level IIA Office Surgery.

(a) Scope. Level IIA office surgeries are those Level II office surgeries with a maximum planned duration of 5 minutes or less and in which chances of complications requiring hospitalization are remote.

(b) Standards for Level IIA Office Surgery.

1. The standards set forth in 64B15-14.006(4), must be met except for the requirements set forth in Section 64B15-14.006(4)(b)4., regarding assistance of other personnel.

2. Assistance of Other Personnel Required. During the procedure, the surgeon must be assisted by a physician or physician assistant who is licensed pursuant to Chapter 458 or 459, F.S., or by a licensed registered nurse or a licensed practical nurse. Additional assistance may be required by specific procedure or patient circumstances. Following the procedure, a physician or physician assistant who is licensed pursuant to Chapter 458 or 459, F.S., or a licensed registered nurse must be available to monitor the patient in the recovery room until the patient is recovered from anesthesia. The monitor must be certified in Advanced Cardiac Life Support, or, in the case of pediatric patients, Pediatric Advanced Life Support.

(6) Level III Office Surgery.

(a) Scope.

1. Level III Office Surgery is that surgery which involves, or reasonably should require, the use of a general anesthesia or major conduction anesthesia and pre-operative sedation. This includes the use of:

a. Intravenous sedation beyond that defined for Level II office surgery;

b. General Anesthesia: loss of consciousness and loss of vital reflexes with probable requirement of external support of pulmonary or cardiac functions; or

c. Major Conduction anesthesia.

2. Only patients classified under the American Society of Anesthesiologist's (ASA) risk classification criteria as Class I, II, or III are appropriate candidates for Level III office surgery. For ASA Class III patients, the surgeon must document in the patient's record the justification and precautions that make the office an appropriate forum for the particular procedure to be performed.

(b) Standards for Level III Office Surgery. In addition to the standards for Level II Office Surgery, the surgeon must comply with the following:

1. Training Required.

a. The surgeon must be able to document satisfactory completion of training such as Board certification or Board eligibility by a Board approved by the American Osteopathic Association, the American Board of Medical Specialties, the Accreditation Council on Graduate Medical Education or any other board approved by the Board of Osteopathic Medicine or must be able to demonstrate to the accrediting organization or to the Department comparable background, training and experience. In addition, the surgeon must have knowledge of the principles of general anesthesia.

b. The surgeon and one assistant must be currently certified in Basic Life Support and the surgeon or at least one assistant must be currently certified in Advanced Cardiac Life Support.

2. Emergency procedures related to serious anesthesia complications should be formulated, periodically reviewed, practiced, updated, and posted in a conspicuous location.

3. Equipment and Supplies Required.

a. Equipment, medication, including at least 36 ampules of dantrolene on site, and monitored post-anesthesia recovery must be available in the office.

b. The office, in terms of general preparation, equipment, and supplies, must be comparable to a free standing ambulatory surgical center, including, but not limited to, recovery capability, and must have provisions for proper recordkeeping.

c. Blood pressure monitoring equipment; EKG; end tidal CO2 monitor; pulse oximeter, precordial or esophageal stethoscope, emergency intubation equipment and a temperature monitoring device.

d. Table capable of trendelenburg and other positions necessary to facilitate the surgical procedure.

e. IV solutions and IV equipment.

4. Assistance of Other Personnel Required. An Anesthesiologist, Certified Registered Nurse Anesthetist, or Physician Assistant qualified as set forth in Rule 64B15-6.010(2)(c)6., Florida Administrative Code, must administer the general or regional anesthesia and an M.D., D.O., Registered Nurse, Licensed Practical Nurse, Physician Assistant, or Operating Room Technician must assist with the surgery. The anesthesia provider cannot function in any other capacity during the procedure. A physician licensed under chapter 458 or 459, a licensed physician assistant, or a licensed registered nurse with post-anesthesia care unit experience or the equivalent, and credentialed in Advanced Cardiac Life Support, or in the case of pediatric patients, Pediatric Advanced Life Support, must be available to monitor the patient in the recovery room until the patient has recovered from anesthesia.

Specific Authority 459.005(1), 459.015(1)(z), 459.026 FS. Law Implemented 459.015(1)(g),(x),(z),(aa), 459.026 FS. History—New

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Osteopathic Medicine
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Osteopathic Medicine
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 8, 2001
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 27, 2001

DEPARTMENT OF HEALTH

Board of Osteopathic Medicine

RULE TITLE: Standards for Telemedicine Practice
PURPOSE AND EFFECT: The Board proposes to create a new rule which will set forth the standards for telemedicine practice.

RULE NO.: 64B15-14.008

SUMMARY: The Board is promulgating a new rule which will set forth rule text which describes the instances in which an osteopathic physician shall not provide treatment recommendations or a prescription via electronic or other means unless certain elements have been met.

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: 459.005, 459.015(1)(z) FS.

LAW IMPLEMENTED: 459.015(1)(x), (t) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Karen Eaton, Executive Director, Board of Osteopathic Medicine/MQA, 4052 Bald Cypress Way, Bin # C06, Tallahassee, Florida 32399-3256

THE FULL TEXT OF THE PROPOSED RULE IS:

64B15-14.008 Standards for Telemedicine Practice.

(1) Prescribing medications based solely on an electronic medical questionnaire constitutes the failure to practice osteopathic medicine with that level of care, skill, and treatment which is recognized by reasonably prudent osteopathic physicians as being acceptable under similar conditions and circumstances, as well as prescribing legend drugs other than in the course of an osteopathic physician's professional practice. Such practice shall constitute grounds for disciplinary action pursuant to §§459.015(1)(x) and (t), F.S.

(2) Osteopathic Physicians shall not provide treatment recommendations, including issuing a prescription, via electronic or other means, unless the following elements have been met:

(a) a documented patient evaluation, including history and physical examination, adequate to establish the diagnosis for which any drug is prescribed.

(b) sufficient dialogue between the osteopathic physician and the patient regarding treatment options and the risks and benefits of treatment.

(c) maintenance of contemporaneous medical records meeting the requirements of Rule 64B15-15.004.

(3) The provisions of this rule are not applicable in an emergency situation. For purposes of this rule an emergency situation means those situations in which the prescribing physician determines that the immediate administration of the medication is necessary for the proper treatment of the patient.

and that it is not reasonably possible for the prescribing physician to comply with the provision of this rule prior to providing such prescription.

(4) The provisions of this rule shall not be construed to prohibit patient care in consultation with another physician who has an ongoing relationship with the patient, and who has agreed to supervise the patient's treatment, including the use of any prescribed medications, nor on-call or cross-coverage situations in which the physician has access to patient records.

Specific Authority 459.005, 459.015(1)(z) FS. Law Implemented 459.015(1)(x), (t) FS. History—New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Osteopathic Medicine
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Osteopathic Medicine
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 8, 2001
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 27, 2001

DEPARTMENT OF HEALTH

Board of Osteopathic Medicine

RULE TITLE: Medicinal Drugs Which May be Ordered by Pharmacists

RULE NO.: 64B15-18.003

PURPOSE AND EFFECT: The purpose of the rule amendment is to update the medicinal drugs which may be ordered by pharmacists.

SUMMARY: The Board proposes to amend this rule to update the list of medicinal drugs which may be ordered for patients above the age of 6 years old.

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: 465.186(2) FS.

LAW IMPLEMENTED: 465.186 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Karen Eaton, Executive Director, Board of Osteopathic Medicine/MQA, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3256

THE FULL TEXT OF THE PROPOSED RULE IS:

64B15-18.003 Medicinal Drugs Which May be Ordered by Pharmacists.

A Pharmacist may dispense from the following formulary, subject to the stated conditions:

(1) through (6) No change.

(7) Antihistamines and decongestants. The following, including their salts, either as a single ingredient product or in combination including nasal decongestants, may be ordered for patients above (6) years of age:

(a) through (b) No change.

(c) Loratadine (maximum 14 days supply only) Clemastine—1.34 mg.

(d) No change.

(e) Azelastine Chlorpheniramine

(f) through (g) No change.

(h) Fexofenadine Triprolidine

The patient should be warned that antihistamines should not be used by patients with bronchial asthma or other lower respiratory symptoms, glaucoma, cardiovascular disorders, hypertension, prostate conditions and urinary retention. Antihistamines shall be labeled to advise of drowsiness side effects and caution against use with alcohol or other depressants.

(i) Pseudoephedrine

(j) Phenylpropanolamine

(k) through (o) relettered (i) through (m) No change.

Oral decongestants shall not be ordered for use by patients with coronary artery disease, angina, hyperthyroidism, diabetes, glaucoma, prostate conditions, hypertension, or patients currently using monoamine oxidase inhibitors.

(8) through (14) No change.

Specific Authority 465.186(2) FS. Law Implemented 465.186 FS. History—New 5-1-86, Formerly 21R-18.003, 61F9-18.003, 59W-18.003, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Osteopathic Medicine

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 8, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 11, 2001

DEPARTMENT OF HEALTH

Board of Osteopathic Medicine

RULE TITLE: Fluoride Containing Products

RULE NO.: 64B15-18.004

PURPOSE AND EFFECT: The purpose of the rule amendments is to update the rule text with regard the dosage schedule.

SUMMARY: The Board proposes to amend the rule text to update the dosage schedule for the oral usage of fluoride.

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: 465.186(2) FS.

LAW IMPLEMENTED: 465.186 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Karen Eaton, Executive Director, Board of Osteopathic Medicine/MQA, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3256

THE FULL TEXT OF THE PROPOSED RULE IS:

64B15-18.004 Fluoride Containing Products.

Oral medicinal drug products containing fluoride may be ordered by pharmacists for their patients who do not have fluoride supplement in their drinking water, pursuant to the following limitations:

- (1) through (2) No change.
- (3) If the fluoride content is less than 0.5 ppm then the following dosage schedule for oral usage shall be followed:-
 - (a)1. For ages 0 – 6 months
 - a. Less than 0.3 ppm in water – no supplementation
 - b. 0.3 – 0.6 ppm in water – no supplementation
 - c. 0.6 ppm in water – no supplementation
 - 2. For ages 6 months – 3 years
 - a. Less than 0.3 ppm in water – supplement with 0.25 mg. F/day
 - b. 0.3 – 0.6 ppm in water – no supplementation
 - c. 0.6 ppm in water – no supplementation
 - 3. For ages 3 – 6 years
 - a. less than 0.3 ppm in water – supplement with 0.5 mg. F/day
 - b. 0.3 – 0.6 ppm in water – supplement with 0.25 mg. F/day
 - c. 0.6 ppm in water – no supplementation
 - 4. For ages 6 – 16 years
 - a. Less than 0.3 ppm in water – supplement with 1.00 mg. F/day
 - b. 0.3 – 0.6 ppm in water – supplement with 0.5 mg. F/day
 - c. 0.6 ppm in water – no supplementation

Age in years	less than 0.2 ppm in water	0.2-0.5 ppm in water	0.5 ppm in water
0-2	0.25 mg F/day	0	No supplementation
2-3	0.5 mg F/day	0.25 mg F/day	No supplementation
3-13	1.00 mg F/day	0.5 mg F/day	No supplementation

(b) through (c) No change.

Specific Authority 465.186(2) FS. Law Implemented 465.186 FS. History—New 5-1-86, Formerly 21R-18.004, 61F9-18.004, 59W-18.004, Amended

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Osteopathic Medicine

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 8, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 29, 2001

FISH AND WILDLIFE CONSERVATION COMMISSION

Freshwater Fish and Wildlife

RULE TITLE: Quota Permits; Antlerless Deer Permits; Special-Opportunity Permits

RULE NO.: 68A-15.005

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to reincorporate a revised list for quota and special-opportunity permits.

SUMMARY: The proposed changes would reincorporate a new reference list for quota hunt permits. The new list has been revised to increase hunter quotas on the Osceola Wildlife Management Area (WMA) to provide additional hunting opportunities on 71,502 acres of recently acquired, state-owned lands including the 15,236-acre Sandlin Bay addition (owned by the Suwannee River Water Management District) and the 56,266-acre John M. Bethea State Forest (Division of Forestry, lead manager). The quota for the general gun hunt (first 9 days) would be increased from 2,400 to 3,100 reflecting an increase of 51,424 acres for still hunting (total still hunt acreage will be 190,344). The quota for the general gun dog hunt (first 9 days) would be increased from 550 to 750 reflecting an increase of 20,078 acres for dog hunting (total dog hunting acreage will be 76,039).

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: It is estimated that the proposed action will cost the agency approximately \$167 for administrative preparation and \$38 for legal advertising. No other significant economic impacts are expected.

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

LAW IMPLEMENTED: Art. IV, Sec. 9, Fla. Const.

A HEARING ON THE PROPOSED RULE WILL BE HELD AT THE TIME, DATES AND PLACE SHOWN BELOW:

TIME AND DATES: 8:30 a.m. each day, September 5-7, 2001

PLACE: Amelia Island Plantation, Highway A1A South, Amelia Island, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE AND ECONOMIC STATEMENT IS: James Antista, General Counsel, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68A-15.005 Quota Permits; Antlerless Deer Permits; Special-Opportunity Permits.

(1) No change.

(2) The maximum number of quota and special-opportunity permits to be issued for each wildlife management area, fish management area, or wildlife and environmental area shall be maintained on a list titled "Quota and special-opportunity permits," effective November 1, 2001 ~~August 1, 2001~~, incorporated herein by reference and kept by the Commission at its headquarters office and regional offices.

(3) through (4) No change.

PROPOSED EFFECTIVE DATE NOVEMBER 1, 2001.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 8-1-79, Amended 5-19-80, 6-22-80, 12-29-80, 6-4-81, 8-4-81, 6-21-82, 7-29-82, 7-1-83, 7-5-84, 7-1-85, 9-19-85, Formerly 39-15.05, Amended 5-7-86, 6-10-86, 5-10-87, 6-8-87, 10-8-87, 4-13-88, 6-7-88, 7-1-89, 7-1-90, 9-1-90, 7-1-91, 7-2-91, 7-1-92, 8-23-92, 7-1-93, 7-1-94, 3-30-95, 6-20-95, 8-15-95, 4-1-96, 6-27-96, 9-15-96, 10-20-96, 6-1-97, 8-7-97, 11-23-97, 7-1-98, 7-2-98, 8-11-98, 12-28-98, 5-13-99, Formerly 39-15.005, Amended 12-9-99, 4-30-00, 7-1-01, 8-1-01, 11-1-01.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mr. Timothy A. Breault

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Dr. Allan L. Egbert, Executive Director

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 18, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 22, 2000

FISH AND WILDLIFE CONSERVATION COMMISSION

Freshwater Fish and Wildlife

RULE TITLE:	RULE NO.:
Specific Regulations for Type I Wildlife Management Areas – North Central Region	68A-15.062

PURPOSE AND EFFECT: The purpose of the proposed changes are to prohibit certain activities (consumption of intoxicating beverages, possession of dogs, and nighttime public access) on the Weeki Wachee portion of the Chassahowitzka Wildlife Management Area (WMA), and to expand the Osceola WMA to include the John M. Bethea State Forest (formerly known as the Pinhook addition). The effect of the proposed changes would be to resolve public safety problems on the Chassahowitzka WMA and expand public hunting opportunities on the Osceola WMA.

SUMMARY: Chassahowitzka WMA: The proposed rule would prohibit dogs and the possession or consumption of intoxicating beverages on that portion of the WMA south of County Road 550 commonly known as the Weeki Wachee River tract. Public access would be restricted to daytime hours (from sunrise to sunset).

Osceola WMA: The proposed rule would redefine the eastern dog hunt area to include an additional 20,084 acres (please refer to the proposed rule language for the specific description). Camping would be permitted on that portion of the area designated and posted as State Forest lands (56,266 acres) throughout the year only at designated sites and only by permit from the Division of Forestry. Taking of wildlife by use of a gun on or from the rights-of-way of County Road 127 and State Road 2 would be prohibited as provided by Rule 68A-4.008, F.A.C.. Vehicles would be restricted to specific named and numbered roads on those lands added to the eastern dog hunt area and those lands added to the WMA for still hunting (please refer to the proposed rule language for specific roads).

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: It is estimated that the proposed action will cost the agency approximately \$475 for administrative preparation and \$285 for legal advertising. No other significant economic impacts are expected.

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

LAW IMPLEMENTED: Art. IV, Sec. 9, Fla. Const.

A HEARING ON THE PROPOSED RULE WILL BE HELD AT THE TIME, DATES AND PLACE SHOWN BELOW:

TIME AND DATES: 8:30 a.m. each day, September 5-7, 2001

PLACE: Amelia Island Plantation, Highway A1A South, Amelia Island, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE AND ECONOMIC STATEMENT IS: James Antista, General Counsel, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68A-15.062 Specific Regulations for Type I Wildlife Management Areas – North Central Region.

(1) through (5) No change.

(6) Osceola Wildlife Management Area.

(a) through (b) No change.

(c) Camping: ~~Throughout year but (only on designated campsites during general gun season); on that portion of the area designated and posted as National Forest lands. On that portion of the area designated and posted as State Forest lands, camping is permitted throughout the year only at designated sites and only by permit from the Division of Forestry.~~

(d) General regulations:

1. The western dog hunt area includes that portion of the area bounded on the west by Forest Service Road 237; on the south by Forest Service Road 263 and County Road 250; on the east by Forest Service Roads 233, 232, 262, 214, 272 and 270; and on the north by the National Forest Service boundary to the junction with Forest Service Road 237. The eastern dog hunt area includes those lands bounded by the following roads and survey lines: Begin at the intersection of County Road 125 and the northern boundary of the National Forest, proceed south on County Road 125 to the eastern boundary of the National Forest, then south and west along the National Forest boundary to County Road 229, then north along County Roads 229 and 250, then west along Forest Service Road 232, then northwest along Forest Service Road 235 until it becomes Forest Road 39, then generally north along Forest Road 39, then northwest along Forest Road 46, then west along Forest Road 36, then north and eventually east along Forest Road 41, then east on Forest Road 28, then east along Forest Roads 9 and 4, then northwest and northeast along Forest Road 5A, then northwest along Forest Road 5 until it becomes Forest Service Road 297, then along Forest Service Road 297 to Forest Service Road 295, then northwest and eventually northeast along Forest Service Road 295 to the junction with Forest Service Road 295A, then southeast along 295A until it becomes Forest Road 19 and junctions with Forest Road 8, then northeast along Forest Road 8 to the junction of Eddy Grade, then south along Eddy Grade to the junction of Forest Road 3, then west along Forest Road 3, southwest, west, and then south along Forest Road 4, the southeast along Forest Road 24 until it intersects the northern boundary of Section 5, Township 1 South, Range 20 East, then east along the Base Line to the Northeast corner of the Northwest 1/4 of Section 3, Township 1 South, Range 20 East, then south along the east boundary of the West 1/2 of Section 3, Township 1 South, Range 20 East to the southwest corner of the North 1/2 of the Northeast 1/4 of Section 10, Township 1 South, Range 20 East, then east back to the beginning point of County Road 125. The eastern dog hunt area includes that portion of the area bounded on the north by the National Forest Service boundary; on the west by Forest Service Road 235 and eastward on Forest

~~Service Road 232 and County Roads 250 and 229; and on the south and east by the National Forest Service property line to the intersection with County Road 125 and then along County Road 125 to the beginning point on the National Forest Service boundary.~~ Except for these areas, the possession or use of dogs other than bird dogs or retrievers is prohibited. However, leashed or caged dogs may be kept at the East Tower, Sandhill and West Tower hunt camps during the general gun season.

2. through 3. No change.

4. Taking of wildlife by use of a gun on or from the rights-of-way of Interstate 10, County Roads 250, 250A, 229, 127 and 125, ~~and~~ Forest Service Road 236 (between U.S. 90 and C.R. 250), ~~and State Road 2~~ is prohibited as provided by Rule 68A-4.008, F.A.C.

5. Vehicles shall be restricted to numbered roads ~~appearing on the hunt map~~ during the periods November 1 through January 15 in that portion of the still hunt area south of Interstate 10 and east of Forest Road 236, and August 1 through January 15 in that portion of the western dog hunt area north of Forest Road 262. Vehicles shall be restricted to numbered roads on those lands lying north and northeast of Forest Service Road 200, west of Forest Service Road 255, north of Forest Service Road 232, north of Forest Service Road 212, and north of Forest Service Road 212-A in Baker County; and those lands lying north of Forest Road 36 in Columbia County.

6. through 8. No change.

9. No person shall transport dogs, other than bird dogs or retrievers, through the still hunt area to the western dog hunt area except on Forest Road 285; on Forest Road 263; on Forest Road 262 east from US 441; on Forest Road 233 north from County Road 250; ~~and~~ on Forest Road 233 east from US 441 to its juncture with Forest Road 237 and then north on Forest Road 237 to the boundary of the dog hunt area, and on Forest Road 232 west from the east dog hunt area.

(7) through (27) No change.

(28) Chassahowitzka Wildlife Management Area.

(a) through (c) No change.

(d) General regulations:

1. Dogs are prohibited south of County Road 550. Hunting with dogs other than retrievers or bird dogs is prohibited west of the Main grade, on the U.S. Fish and Wildlife Service portion of the property and east of the Swamp grade. Dogs with a shoulder height greater than 17 inches are prohibited in that portion of the area lying east of the Main grade and west of the Swamp grade.

2. through 7. No change.

8. The possession or consumption of intoxicating beverages is prohibited south of County Road 550.

9. Public access is prohibited from sunset to sunrise south of County Road 550.

10. This rule shall become effective November 10, 2001.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const., 375.313 FS, History--New 6-21-82, Amended 7-1-83, 11-17-83, 7-5-84, 7-1-85, 2-16-86, 5-7-86, 6-10-86, 11-27-86, 5-10-87, 5-1-88, 6-7-88, 7-1-89, 8-17-89, 7-1-90, 9-1-90, 7-1-91, 7-2-91, 7-1-92, 7-2-92, 8-23-92, 10-22-92, 7-1-93, 7-1-94, 2-9-95, 7-1-95, 7-1-96, 9-15-96, 6-1-97, 7-1-98, 7-2-98, 7-1-99, Formerly 39-15.062, Amended 12-9-99, 7-1-00, 7-1-01, 11-10-01.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mr. Timothy A. Breault
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Dr. Allan L. Egbert
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 18, 2001
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 22, 2000

FISH AND WILDLIFE CONSERVATION COMMISSION

Freshwater Fish and Wildlife

RULE TITLE: Specific Fish Management Area Regulations
PURPOSE AND EFFECT: The proposed rule would open to public fishing and establish fishing, angler access, and boating regulations for Eagle Lake Fish Management Area, Hamilton County and Alligator Lake Fish Management Area, Columbia County. Proposed rules are designed to effectively manage public use of freshwater fisheries resources to provide additional fishing areas and fishing opportunities for freshwater anglers.

RULE NO.: 68A-20.005

SUMMARY: The proposed rule opens Eagle Lake Fish Management Area, Hamilton County and establishes public access, boating regulations, and public use regulations. The proposed rule opens Alligator Lake Fish Management Area and prohibits fishing in Ponderosa Pond, a small pond in the Alligator Lake Fish Management Area, to fishing except for permitted events.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: It is estimated that the proposed action will cost the agency \$72 for advertising, and \$800 for signs and brochures.

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: Art. IV, Sec. 9, Fla. Const.
LAW IMPLEMENTED: Art. IV, Sec. 9, Fla. Const.

A HEARING ON THE PROPOSED RULE WILL BE HELD AT THE TIME, DATES AND PLACE SHOWN BELOW:
TIME AND DATES: 8:30 a.m. each day, September 5-7, 2001
PLACE: Amelia Island Plantation, Highway A1A South, Amelia Island, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE AND ECONOMIC STATEMENT IS: James Antista, General Counsel, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

- 68A-20.005 Specific Fish Management Area Regulations.
 - (1) No change.
 - (2) North Central Region:
 - (a) through (h) No change.
 - (i) Eagle Lake, Hamilton County
 - 1. The use of boats propelled by gasoline motors is prohibited.
 - 2. Access prohibited from 30 minutes after sunset until 30 minutes before sunrise.
 - 3. Swimming and possession of firearms is prohibited.
 - (j) Alligator Lake, Columbia County: fishing is prohibited in Ponderosa Pond except by permit issued pursuant to subsection 68A-9.002(1), F.A.C.
 - (3) through (5) No change.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History--New 8-1-79, Amended 2-19-80, 5-19-80, 6-4-81, 9-28-81, 6-21-82, 7-1-83, 11-17-83, 7-1-84, 7-1-85, Formerly 39-20.05, Amended 2-27-86, 6-1-86, 5-10-87, 4-13-88, 7-1-89, 7-1-90, 4-11-91, 7-1-91, 7-2-92, 8-23-92, 4-20-93, 7-1-94, 8-15-95, 10-23-95, 4-1-96, 2-16-97, 6-1-97, 6-29-97, 1-1-98, 7-1-98, 11-2-98, Formerly 39-20.005, Amended 4-30-00, 7-1-00, 10-10-00, 4-1-01, 7-1-01,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Darrell L. Scovell
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Dr. Allan L. Egbert
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 10, 2001
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 6, 2001

FISH AND WILDLIFE CONSERVATION COMMISSION

Marine Fisheries

RULE CHAPTER TITLE: Stone Crabs
RULE TITLE: Gear, Trap Construction, Commercial Trap Marking Requirements, Trap Working Regulations, Trap Transfer
RULE NO.: 68B-13.008

PURPOSE AND EFFECT: The purpose of this proposed rule amendment is to authorize use of up to four different stone crab endorsements on a single vessel provided that all holders of those endorsements are related as "immediate family" as defined in Rule 68B-13.0015(2)(k), F.A.C. The effect of this proposed rule will be to facilitate cooperative fishing efforts established within family groups.

SUMMARY: Paragraph (4)(c) of Rule 68B-13.008, F.A.C., is amended to allow up to four different stone crab endorsements to be fished simultaneously from one appropriately marked vessel provided that all individuals holding the endorsements are related to each other. Persons fishing more than two endorsements from one vessel must obtain a permit from the Division of Marine Fisheries.

A STATEMENT OF ESTIMATED REGULATORY COST HAS NOT BEEN PREPARED REGARDING THESE PROPOSED RULES.

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

SPECIFIC AUTHORITY: Article IV, Section 9, Florida Constitution.

LAW IMPLEMENTED: Article IV, Section 9, Florida Constitution.

THE FISH AND WILDLIFE CONSERVATION COMMISSION WILL CONDUCT A PUBLIC RULEMAKING HEARING ON THE PROPOSED RULES DURING ITS REGULAR MEETING AT THE TIME, DATES AND PLACE SHOWN BELOW:

TIME AND DATES: 8:30 a.m. – 5:00 p.m., each day September 5-7, 2001

PLACE: Amelia Island Plantation, Highway A1A South, Amelia Island, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 calendar days before the workshop/meeting by contacting Cindy Hoffman, ADA Coordinator, at (850)488-6411. If you are hearing or speech impaired, please contact the agency by calling (850)488-9542.

All written material received by the Commission 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 COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT THIS HEARING, HE WILL NEED A RECORD OF PROCEEDINGS, AND FOR SUCH PURPOSES, HE 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: James V. Antista, General Counsel, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68B-13.008 Gear, Trap Construction, Commercial Trap Marking Requirements, Trap Working Regulations, Trap Transfer.

(1) through (3) No change.

(4) TRAP-WORKING REGULATIONS.

(c)1. During any time of the year when it is legal to transport stone crab traps, a harvester may obtain permission from the Division of Law Enforcement to allow another person to transport, deploy, pull or retrieve his or her traps. Permission may be granted upon receipt of a written statement signed by both the commercial harvester seeking to have his or her traps pulled and the person designated to pull the traps. Such written statement shall contain the following:

a.1. The reason the harvester needs to have his or her traps pulled;

b.2. The numbers of the saltwater products license and stone crab endorsement of both, the harvester seeking to have the traps pulled and the person who will be pulling the traps;

c.3. The buoy colors of the harvester seeking such permission;

d.4. The name and number of the vessel to be used by the person who will be pulling the traps;

e.5. The general locations of the pulling activity of the vessel to be engaged in pulling the traps; and

f.6. The dates the other person will be transporting, deploying, pulling or retrieving the traps.

Permission to pull traps in this manner shall be obtained daily by telephone from the Division of Law Enforcement for a maximum of 5 days without renewal or extension of the request. Permission to have traps pulled by another person for a longer period of time, must be based on extraordinary circumstances such as severe personal or family illness or accident or major equipment problem, and shall be obtained through petition to the Division of Law Enforcement on Commission Form DMF-SL3030 (07-01) (Stone Crab Trap Pulling Petition), herein incorporated by reference, and will be granted upon such conditions as the division deems appropriate for the protection of the resource. It shall be the responsibility of the commercial harvester, or a member of the harvester's immediate family, to petition the division. The petition shall include a complete description of the extraordinary circumstances with corroborating documentation, the amount of additional time requested, the number of traps to be pulled, and a signed statement from the other person, attesting to his/her willingness and ability to pull these traps during this time period as well as an awareness of all rules governing the stone crab fishery. If the person designated to pull the petitioner's traps does not possess a Saltwater Products License with restricted species and stone crab endorsements, the petitioner, as the license holder of record must possess a

vessel Saltwater Products License and shall be held accountable for the designee’s compliance with all regulations governing the stone crab fishery.

2. Up to and including four (4) stone crab endorsements may be worked from a single appropriately marked vessel provided that:

a. All endorsement holders are related to each other as “immediate family” as defined in paragraph (2)(k) of Rule 68B-13.0015; and

b. Persons wishing to use more than two endorsements on a single vessel, as authorized in paragraph (3)(a) of this rule, shall annually obtain a permit from the Division of Marine Fisheries. Application for said permit shall be on Commission Form DMF-SL3035(10/01), incorporated herein by reference.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art.IV, Sec. 9, Fla. Const. History–New 7-1-00, Amended 7-22-01, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Allan L. Egbert, Ph.D., Executive Director, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 23, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 27, 2001

FISH AND WILDLIFE CONSERVATION COMMISSION

Marine Fisheries

RULE CHAPTER TITLE: Oysters

RULE TITLE: Oyster Size Limit RULE NO.: 68B-27.015

PURPOSE AND EFFECT: The purpose of this rule amendment is to specify that the existing size limits on oysters will apply to oysters possessed in or on the waters of the state through landing. The actual size limit, with the current tolerances for attached or unattached undersize oysters, is not being changed. The effect of this rule amendment should be to allow for the market-based grading of oysters by size in oyster processing facilities for shipment to wholesalers or retailers.

SUMMARY: Subsection (1) of Rule 68B-27.015, F.A.C., is amended to restrict application of the minimum size possession limit on oysters to possession while in or on the waters of the state through actual landing. Paragraphs (3)(a) and (b) of the rule are amended to restrict application of the tolerances for attached and unattached undersize oysters on the same basis. A new subsection (4) is added to the rule to define the term “land” for purposes of the rule.

A STATEMENT OF ESTIMATED REGULATORY COST HAS NOT BEEN PREPARED REGARDING THESE PROPOSED RULES.

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

SPECIFIC AUTHORITY: Article IV, Section 9, Florida Constitution.

LAW IMPLEMENTED: Article IV, Section 9, Florida Constitution.

THE FISH AND WILDLIFE CONSERVATION COMMISSION WILL CONDUCT A PUBLIC RULEMAKING HEARING ON THE PROPOSED RULES DURING ITS REGULAR MEETING AT THE TIME, DATES AND PLACE SHOWN BELOW:

TIME AND DATES: 8:30 a.m. – 5:00 p.m. each day, September 5-7, 2001

PLACE: Amelia Island Plantation, Highway A1A South, Amelia Island, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 calendar days before the workshop/meeting by contacting Cindy Hoffman, ADA Coordinator, at (850)488-6411. If you are hearing or speech impaired, please contact the agency by calling (850)488-9542.

All written material received by the Commission 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 COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT THIS HEARING, HE WILL NEED A RECORD OF PROCEEDINGS, AND FOR SUCH PURPOSES, HE 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: James V. Antista, General Counsel, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68B-27.015 Oyster Size Limit.

(1) Except as provided in subsection (3) of this rule, no person shall harvest, ~~sell, exchange, barter, or~~ possess while in or on the waters of the state, or land, any oyster less than three (3) inches in greatest dimension. Oysters which are three (3) inches or more in greatest dimension shall be legal size.

(2) Each person harvesting oysters from the waters of this state shall cull such oysters, unless otherwise provided in this chapter, or unless otherwise permitted by the Department for the purpose of planting or relaying as provided by law.

(3) Tolerances. There shall be two types of tolerances allowed with regard to the size of oysters harvested in or on waters of the state.

(a) Tolerance for Attached Oysters. In instances in which culled oysters less than three (3) inches in greatest dimension are attached to legal size oysters such that to separate them would destroy either oyster, a person may harvest, ~~sell, exchange, barter, or possess~~ while in or on the waters of the state, and land such undersize attached oysters provided that such oysters number no more than 15% of the oysters in any bag or equivalent container. The legal size oysters to which the undersize oysters are attached shall be counted separately from the attached oysters.

(b) Tolerance for Individual, Unattached Oysters. A person may harvest, ~~sell, exchange, barter, or possess~~ while in or on the waters of the state, and land oysters less than three (3) inches in greatest dimension, provided, that such oysters number no more than 5% of the oysters in any bag or equivalent container.

(4) For purposes of this rule, the term "land" means the physical act of bringing harvested oysters ashore.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History--New 3-10-91, Formerly 46-27.015, Amended

NAME OF PERSON ORIGINATING PROPOSED RULE:
Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Allan L. Egbert, Ph.D., Executive Director, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 24, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 27, 2001

FISH AND WILDLIFE CONSERVATION COMMISSION

Marine Fisheries

RULE CHAPTER TITLE: Mullet

RULE TITLE: Definitions
RULE NO.: 68B-39.002

PURPOSE AND EFFECT: The purpose of this rule amendment is to shorten the length of the weekend closure on the commercial harvest of mullet by 16 hours each weekend between July 1 through January 31 each year. Commercial harvesters have requested this relaxation of the rules that govern mullet harvest. The effect of this rule amendment

should be to give commercial mullet harvesters additional valuable fishing opportunities during the time of year when mullet harvest is most efficient and profitable.

SUMMARY: Subsection (9) of Rule 68B-39.002, F.A.C., is amended to change the definition of the term "weekend", to shorten the period covered by the term to 12:01 a.m. Saturday to 12:01 a.m. the following Monday.

A STATEMENT OF ESTIMATED REGULATORY COST HAS NOT BEEN PREPARED REGARDING THESE PROPOSED RULES.

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

SPECIFIC AUTHORITY: Article IV, Section 9, Florida Constitution.

LAW IMPLEMENTED: Article IV, Section 9, Florida Constitution.

THE FISH AND WILDLIFE CONSERVATION COMMISSION WILL CONDUCT A PUBLIC RULEMAKING HEARING ON THE PROPOSED RULES DURING ITS REGULAR MEETING AT THE TIME, DATES AND PLACE SHOWN BELOW:

TIME AND DATES: 8:30 a.m. – 5:00 p.m. each day, September 5-7, 2001

PLACE: Amelia Island Plantation, Highway A1A South, Amelia Island, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 calendar days before the workshop/meeting by contacting Cindy Hoffman, ADA Coordinator, at (850)488-6411. If you are hearing or speech impaired, please contact the agency by calling (850)488-9542.

All written material received by the Commission 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 COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT THIS HEARING, HE WILL NEED A RECORD OF PROCEEDINGS, AND FOR SUCH PURPOSES, HE 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: James V. Antista, General Counsel, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68B-39.002 Definitions.

As used in this rule chapter:

(1) through (8) No change.

(9) "Weekend" means that portion of a week commencing at 12:01 a.m. 4:00 p.m. on Saturday Friday and ending at 12:01 8:00 a.m. the following Monday.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History--New 10-19-89, Amended 10-1-90, 11-16-93, 7-15-96, 3-3-97, 1-1-98, Formerly 46-39.002, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Allan L. Egbert, Ph.D., Executive Director, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

DATE PROPOSED RULE APPROVED BY AGENECY HEAD: May 24, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 27, 2001

FISH AND WILDLIFE CONSERVATION COMMISSION

Marine Fisheries

RULE CHAPTER TITLE: Marine Life

RULE TITLE: Purpose and Intent; Designation of Restricted

RULE NO.:

Species; Definition of "Marine Life Species" 68B-42.001

PURPOSE AND EFFECT: The purpose of this rule amendment is to except the ocean triggerfish (Canthidermis sufflamen) from operation of the chapter and to correct the scientific reference to the family of triggerfishes to which the chapter is supposed to apply. The effect of this rule amendment will be to allow the harvest of the ocean triggerfish as a food item and clarify those species in the Family that should be considered part of the ornamental tropical fish trade.

SUMMARY: In paragraph (2)(bb) of Rule 68B-42.001, F.A.C., the listing of the filefishes/triggerfishes to which the rule chapter applies is amended to correct the Family name to "Balistidae", correct the scientific name of the gray triggerfish for purposes of exception, and to include an additional exception for the ocean triggerfish (Canthidermis sufflamen).

A STATEMENT OF ESTIMATED REGULATORY COST HAS NOT BEEN PREPARED REGARDING THESE PROPOSED RULES.

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

SPECIFIC AUTHORITY: Article IV, Section 9, Florida Constitution.

LAW IMPLEMENTED: Article IV, Section 9, Florida Constitution.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF PUBLICATION OF THIS NOTICE, A HEARING ON THE PROPOSED RULES WILL BE HELD BY THE COMMISSION DURING ITS REGULAR MEETING, AT THE TIME, DATES AND PLACE SHOWN BELOW:

TIME AND DATES: 8:30 a.m. - 5:00 p.m. each day, September 5-7, 2001

PLACE: Amelia Island Plantation, Highway A1A, South, Amelia Island, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 calendar days before the workshop/meeting by contacting Cindy Hoffman, ADA Coordinator at (850)488-6411. If you are hearing or speech impaired, please contact the agency by calling (850)488-9542.

All written material received by the Commission 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 commission with respect to any matter considered at this hearing, he will need a record of proceedings, and for such purposes, he 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: James V. Antista, General Counsel, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68B-42.001 Purpose and Intent; Designation of Restricted Species; Definition of "Marine Life Species".

(1) No change.

(2) The following fish species, as they occur in waters of the state and in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, are hereby designated as restricted species pursuant to Section 370.01(20), Florida Statutes:

(bb) Filefish/triggerfish - Any species of the Family Balistidae Balistes, except gray triggerfish, Balistes Balistidae capriciscus and ocean triggerfish, Canthidermis sufflamen.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History--New 1-1-91, Amended 7-1-92, 1-1-95, 6-1-99, Formerly 46-42.001, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
 Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600
 NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Allan L. Egbert, Ph.D., Executive Director, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 24, 2001
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 27, 2001

FISH AND WILDLIFE CONSERVATION COMMISSION

Division of Law Enforcement

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Uniform Waterway Markers in Florida Waters	68D-23
RULE TITLES:	RULE NOS.:
Placement of Regulatory Markers in Waters of the State	68D-23.003
Intent	68D-23.101
Scope	68D-23.102
Definitions	68D-23.103
Placement of Markers	68D-23.104
Criteria for Approval	68D-23.105
Permit Conditions	68D-23.106
Federal System Adopted	68D-23.107
Specifications for Markers	68D-23.108
Additional Specifications for Information and Regulatory Markers	68D-23.109
Inspection and Certification	68D-23.110
Enforcement	68D-23.111
Exemptions	68D-24.112

PURPOSE AND EFFECT: This rulemaking action clarifies the procedures and sets forth the policies regarding the placement of markers in, on, and over Florida’s waters and the shores thereof. It will provide for uniformity in design, construction and coloring of markers so that all vessel operators may more readily recognize, identify and distinguish between authorized markers and unlawfully placed markers. It will also provide a means by which the FWC Division of Law Enforcement and its officers and all other law enforcement officers charged with the enforcement of this chapter may determine with reasonable certainty which boating restricted areas are lawfully established and marked. This rule provides a grace period until December 31, 2003, during which time all markers must be brought into conformity with the provisions of chapter 327, Florida Statutes, this chapter, and Part 62 of Title 33 of the Code of Federal Regulations which is adopted by reference. The rule provides for the removal of all nonconforming markers after that date. Finally, the rule adopts by reference the United States Coast Guard’s administration

and technical manuals for implementing the United States Aids to Navigation System. The effect of this action will be a reduction in the number of unnecessary waterway markers, the implementation of a truly uniform system of waterway marking, a simplification in the application process, and a reduction in the time and effort needed to secure appropriate permits to place markers necessary for safety and navigation.

SUMMARY: This notice of proposed rulemaking supersedes and replaces the notice of proposed rulemaking that was published in the January 26, 2001, issue of the FAW on pages 377 through 385 as amended by the notice of change that was published in the May 11, 2001, issue of the FAW on pages 2345 through 2351. All changes are in response to testimony at a public hearing held in Tallahassee on February 22, 2001, a public meeting of the Commission held in Palm Beach Gardens on May 24-26, 2001, a public meeting of the Boating Advisory Council held in West Palm Beach on June 21, 2001, and written comments timely received.

This rule repeals Section 68D-23.003, F.A.C. and reenacts the substance of its provisions as Section 68D-23.103, F.A.C. The rule provides additional definitions for specific types of markers and for terms used in applications for permits to place markers.

This rule provides for uniformity in design and construction of markers and provides a means by which law enforcement officers may identify lawfully placed markers. It adopts by reference federal requirements and specification concerning waterway markers and provides a grace period during which time all markers must be brought into conformity. This rule also provides for the removal of all unpermitted or otherwise nonconforming markers after that grace period.

This rule formally establishes the policies, criteria, and procedures for the application for permits to place waterway markers, particularly regulatory markers. It formally exempts private aids to navigation established in concurrent state/federal waters from further permitting if they have received a Coast Guard permit.

SUMMARY OF THE STATEMENT OF ESTIMATED REGULATORY COST: The Commission believes that the adoption of this rule will have minimal, if any, economic impact. Much of what the rule does is clarify and codify existing procedures. By clarifying these procedures, thus reducing confusion, miscommunications, and the resultant requests for additional information or guidance, this rule will provide a nonquantifiable savings to this agency and to applicants for permits. This rule does not impose a permit application fee.

The requirement imposed by this rule on persons placing markers to inspect the markers every three years so as to insure that the markers are properly maintained and in serviceable condition is identical to the federal inspection requirement for Class-II aids to navigation, “markers located in waters used by

general navigation.” Moreover, the economic impact of this requirement is negligible when compared to the hazard posed by unserviceable or improperly maintained markers.

There is no expected impact on competition or the open market for employment. Small businesses will not be affected. This estimate is based on the experiences of this agency and its predecessor agencies, the Departments of Natural Resources and Environmental Protection, in administering this program.

Three alternatives with lesser costs have been proposed. The first is to waive permitting for markers permitted by DEP or by the Army Corps of Engineers so as to eliminate duplicated efforts. As DEP exempts from permitting any markers that are permitted under this rule (i.e., the complained of redundant permitting does not exist) and as DEP is to have no responsibility for boating safety, this proposal will not achieve the objectives of the statute. The Army Corps of Engineers authorizes all waterway markers conforming to Coast Guard standards under a “nationwide permit” issued pursuant to Section 10 of the Rivers and Harbors Act of 1899 (i.e., the complained of redundant permitting does not exist). As the Corps permits many different types of structures that could support markers (e.g.: a dock, a bollard, a piling, a seawall, etc.), if the rule were to be changed as requested, the owner of any Corps permitted structure could at whim attach to it any waterway marker without further review or permitting. By exempting from review and permitting all markers placed on Corps permitted structures, the statutory objectives of uniformity and safety would be defeated.

The next proposal was to eliminate the triennial self-inspection provision. This provision is identical to the inspection provision under federal regulations pertaining to the United States Aids to Navigation system. For most such permittees, the burden will be minimal. The rule has been changed from its original draft to allow a less burdensome requirement to be specified in the permits for Inland Navigation Districts as the Districts are required by statute to place and maintain thousands of manatee protection regulatory markers.

Finally, it was suggested that the hold-harmless agreement, as it pertained to governmental entities, was inappropriate and overly burdensome. Attorney General Opinion 00-02 was submitted in support of this suggestion. The rule as presently drafted does not impose this requirement on governmental entities.

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: 327.40, 327.41 FS.

LAW IMPLEMENTED: 327.22, 327.40, 327.41, 327.46, 327.60, 370.12 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD BY THE COMMISSION AT ITS REGULAR MEETING AT THE TIME, DATES AND PLACE SHOWN BELOW:

TIME AND DATES: 8:30 a.m. – 5:00 p.m. each day, September 5-7, 2001

PLACE: Amelia Island Plantation, 3000 First Coast Highway, Amelia Island, Florida 32034

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Captain Alan S. Richard, Coordinator, Boating Safety and Waterway Management, Division of Law Enforcement, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, FL 32399-1600

THE FULL TEXT OF THE PROPOSED RULES IS:

68D-23.003 Placement of Regulatory Markers in Waters of the State.

Specific Authority 327.40 FS. Law Implemented 327.40 FS. History—New 10-21-80, Formerly 16N-23.03, 16N-23.003, Formerly 62N-23.003, Repealed

68D-23.101 Intent.

(1) It is the intent of this chapter:

(a) To provide for uniformity in design, construction and coloring of markers so that all vessel operators may readily recognize, identify and distinguish between authorized markers and unlawfully placed markers;

(b) To provide a means by which the Division and its officers and all other law enforcement officers charged with the enforcement of this chapter may determine with reasonable certainty which boating restricted areas are lawfully established and marked;

(c) To provide a grace period until December 31, 2003, during which time all markers shall be brought into conformity with the provisions of Chapter 327, Florida Statutes, this chapter, and Part 62 of Title 33 of the Code of Federal Regulations, and to provide for the removal of all nonconforming markers after that date; and

(d) To insure that regulatory markers noticing boating restricted areas created pursuant to Sections 327.22, 327.60 and 370.12, Florida Statutes, are authorized only for the purposes of protecting human life and limb, vessel traffic safety and maritime property, and manatees.

(2) It is further the intent of this chapter that no boating restricted area be established, continued in effect, or enforced for the purpose of noise abatement or for the protection of shoreline, shore-based structures, or upland property from vessel wake or shoreline wash. As provided in Section 327.33(2), Florida Statutes, “vessel wake and shoreline wash resulting from the reasonable and prudent operation of a vessel shall, absent negligence, not constitute damage or endangerment to property.” The wake resulting from the

reasonable and prudent operation of a vessel is a force which should be anticipated by the owners of property adjacent to the navigable waters of this state.

(3) The Division will not issue any permit authorizing the placement of regulatory markers for:

(a) Ordinances that apply within the Florida Intracoastal Waterway, in violation of Section 327.60(2), Florida Statutes;

(b) Ordinances adopted pursuant to Section 370.12(2)(c), Florida Statutes, until such ordinances have been reviewed and approved by the commission, and provided that such ordinances do not apply within the marked navigation channel of the Florida Intracoastal Waterway nor to the waters within 100 feet of said channel;

(c) Ordinances that discriminate against personal watercraft, in violation of Section 327.60(1), Florida Statutes;

(d) Ordinances regulating the anchoring of non-live-aboard vessels in navigation, in violation of Section 327.60(2), Florida Statutes.

(4) Where conflicting speed or operational restrictions are established by law or pursuant to law, the more restrictive shall be posted and shall apply.

(5) Regulatory markers placed pursuant to a permit issued as provided herein shall be prima facie evidence of the boundaries of boating restricted areas and the speed or operational restrictions imposed therein.

Specific Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History—New

68D-23.102 Scope.

The provisions of this chapter prescribe the procedures by which the Division permits and regulates the placement of markers in, on, and over the waters of this state and the shores thereof. This chapter also provides for the design, construction, characteristics and coloring of all markers placed in, on, and over the waters of this state and the shores thereof by adopting by reference the United States Aids to Navigation System, Part 62 of Title 33 of the Code of Federal Regulations.

Specific Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History—New

68D-23.103 Definitions.

(1) For purposes of this chapter and Chapters 68C-22 and 68D-24, the following definitions shall apply:

(a) “Aid to navigation” means any device external to a vessel intended to assist a navigator to determine position or safe course, or to warn of dangers or obstructions to navigation.

(b) “Information marker” means a device external to a vessel intended to provide the mariner with information concerning matters other than dangers or obstructions to navigation, or regulatory matters.

(c) “Regulatory marker” means a device used to alert the mariner to various warnings or regulatory matters such as horsepower, speed, or wake restrictions.

(d) “Mooring buoy” means a device that is permanently secured to the bottom of a body of water and to which a vessel may be secured when not underway.

(e) “Buoy” means any device designed to float which is anchored in the waters of the state and which is used to convey a message or carry a sign.

(f) “Sign” means an object which displays a message and which is attached to another object such as a piling, buoy, structure, or the land itself.

(g) “Symbol” means the orange geometric shape displayed on an information or regulatory marker. The meanings associated with the orange geometric shapes are as follows:

1. A vertical open-faced diamond signifies danger;

2. A vertical diamond shape having a cross centered within indicates that all vessels or certain classes of vessels are excluded from the marked area;

3. A circular shape indicates that certain operating restrictions are in effect within the marked area; and,

4. A square or rectangular shape will contain directions or instructions lettered within the shape.

(h) “Display area” means the area on an information marker or regulatory marker within which the symbol is displayed.

(i) “Boating restricted area” means an area of the waters of the state within which the operation of vessels is subject to specified restrictions or from which vessels are excluded.

(j) “Shore” means that area of land immediately adjacent or contiguous to the waters of the state such that a sign or marker erected thereon is readily visible to the operator of a vessel who might reasonably believe that the sign or marker displays navigational, regulatory or other information relevant to the operation of the vessel.

(k) “Florida Intracoastal Waterway” means:

1. All waters within the right-of-way of the Atlantic Intracoastal Waterway, the Georgia state line north of Fernandina to Miami; the Port Canaveral lock and canal to the Atlantic Intracoastal Waterway; the Atlantic Intracoastal Waterway, Miami to Key West; the Okeechobee Waterway Route 1 across Lake Okeechobee; the Gulf Intracoastal Waterway, Anclote to Fort Myers; the Gulf Intracoastal Waterway, Carrabelle to Tampa Bay; the Gulf Intracoastal Waterway, Carrabelle to Anclote open bay section (using the Gulf of Mexico); and the Gulf Intracoastal Waterway, Carrabelle to the Alabama state line west of Pensacola; and,

2. All waters from shoreline to shoreline within the Okeechobee Waterway, Stuart to Fort Myers, not including Route 1 across Lake Okeechobee; the St. Johns River, Jacksonville to Sanford; and, the Apalachicola, Chattahoochee, and Flint Rivers in Florida.

(l) “Uniform State Waterway Marking System” means the system of aids to navigation, information markers, regulatory markers, and mooring buoys, as specified in Part 66 of Title 33 of the Code of Federal Regulations.

(m) “United States Aids to Navigation System” means the system of aids to navigation, information markers, regulatory markers, and mooring buoys, as specified in Part 62 of Title 33 of the Code of Federal Regulations.

(n) “Private Aid to Navigation” means an aid to navigation the establishment of which is authorized by a permit issued by the United States Coast Guard pursuant to Part 66 of Title 33 of the Code of Federal Regulations.

(o) “Maritime property” means vessels and their engines, tackle, gear, equipment, appurtenances, furnishings, cargoes, stores, personal property then on board belonging to the vessels’ occupants, and such other similar property as is consistent with the general maritime law of the United States. This definition does not include littoral or riparian property, the shores thereof, seawalls, docks, wharfs, or other property intentionally and permanently attached to the shore.

(2) When used on markers, the terms:

(a) “Idle Speed No Wake” and “Idle Speed” may be used interchangeably and mean that a vessel must proceed at a speed no greater than that which will maintain steerageway and headway. At no time is any vessel required to proceed so slowly that the operator is unable to maintain control over the vessel or any other vessel or object that it has under tow.

(b) “Slow Speed” and “Slow Speed Minimum Wake” may be used interchangeably and mean that a vessel must be fully off plane and completely settled into the water. The vessel must then proceed at a speed which is reasonable and prudent under the prevailing circumstances so as to avoid the creation of an excessive wake or other hazardous condition which endangers or is likely to endanger other vessels or other persons using the waterway. A vessel that is:

1. Operating on plane is not proceeding at this speed;

2. In the process of coming off plane and settling into the water or coming up onto plane is not proceeding at this speed;

3. Operating at a speed that creates a wake which unreasonably or unnecessarily endangers other vessels or other persons using the waterway, or is likely to do so, is not proceeding at this speed;

4. Completely off plane and which has fully settled into the water and is proceeding at a reasonable and prudent speed with little or no wake is proceeding at this speed.

“Slow Speed” and “Slow Speed Minimum Wake” are the preferred terms. “Slow Down Minimum Wake” markers may continue to be used for restricted areas authorized prior to January 1, 2001, except when such a restricted area is contiguous to an Idle Speed No Wake boating restricted area.

(c) “Caution zone” means an area presenting a significant risk of navigational hazard, an area frequently inhabited by manatees on a somewhat regular basis, or other area similarly requiring that vessels be operated with particular alertness and caution so as to avoid endangering life, limb, vessel traffic safety or maritime property, or manatees.

(d) “Vessel exclusion zone” means an area from which all vessels or certain classes of vessels are excluded. Examples include:

1. “No Vessels” or “Swim Area” – All vessels of any type are prohibited from entering the marked area.

2. “No Motorized Vessels” or “No Motorboats” or “Motorboats Prohibited” – All vessels equipped with any mechanical means of propulsion are prohibited from entering the marked area, even if the mechanical means of propulsion is not in use.

3. “No Power-driven Vessels” – All vessels equipped with any mechanical means of propulsion are prohibited from entering the marked area unless the mechanical means of propulsion is not in use and, if possible to do so, is tilted or raised out of the water.

4. “No Internal Combustion Motors” – All vessels equipped with internal combustion motors (e.g.: gasoline or diesel motors) for propulsion are prohibited from entering the marked area, even if the motor is not in use.

5. “Manually Propelled Vessels Only” – All vessels other than those propelled by oars, paddles, or poles are prohibited from entering the marked area. Vessels equipped with mechanical means of propulsion may enter the marked area only if the mechanical means of propulsion is not in use and, if possible to do so, is tilted or raised out of the water.

6. “No Entry Area” – All vessels and all persons, either in vessels or swimming, diving, or wading, are prohibited from entering the marked area.

(e) “Miles per hour” and “MPH” mean speed made good over the bottom measured in statute miles. A specific number will be posted in conjunction with “miles per hour” or “MPH” and is the maximum speed at which a vessel may lawfully be operated within the marked area. Although it is the intention of the Commission to allow those vessels capable of attaining a planing configuration at posted numerical speed limit to do so, this posted speed limit shall not be construed as permitting the reckless or careless operation of a vessel, in violation of Section 327.33, Florida Statutes, or authorizing any vessel to travel at an unsafe speed, in violation of navigation rule 6 as adopted pursuant to Section 327.33, Florida Statutes, by reason of:

1. Having an elevated bow which restricts visibility, or

2. Producing an excessive wake or other hazardous condition which endangers or is likely to endanger other vessels, other persons using the waterway, or natural resources of the state.

(f) “Wake,” when used in conjunction with a numerical size limit, means all changes in the vertical height of the water’s surface caused by the passage of a vessel including, but not limited to, a vessel’s bow wave, stern wake, and propeller wash, measured from the ambient tide level to the crest of the vessel’s wake at a distance of not less than 25 feet from the vessel.

(g) "Holiday" means:

1. New Year's Day.
2. Birthdays of Martin Luther King, Jr., the third Monday in January.
3. Memorial Day.
4. Independence Day, the Fourth of July.
5. Labor Day.
6. Columbus Day.
7. Veterans' Day, November 11.
8. Thanksgiving Day.
9. Friday after Thanksgiving.
10. Christmas Day.
11. If any of these holidays falls on Saturday, the preceding Friday shall be observed as a holiday. If any of these holidays falls on Sunday, the following Monday shall be observed as a holiday.

(3) The division may authorize the use of other terminology on regulatory markers if the message is clear, unambiguous, and accurately describes a lawfully imposed restriction.

Specific Authority 327.40, 327.41, 327.46, 370.12 FS. Law Implemented 327.40, 327.41, 327.46, 370.12 FS. History—New

68D-23.104 Placement of Markers.

(1) No person, municipality, county or other governmental entity shall place, cause to be placed, or maintain in place any marker in, on or over the waters of the state or the shores thereof without a permit from the division.

(2) Any person, municipality, county, or other governmental entity desiring to place a marker shall make application to the division on the Florida Uniform Waterway Marker Application form, FWC/DLE 153(01/2001), which is adopted and incorporated herein by reference. Application forms may be obtained by submitting a request to: Fish and Wildlife Conservation Commission, Division of Law Enforcement, Office of Boating Safety and Waterway Management, 620 South Meridian Street, Tallahassee, Florida 32399-1600. Each application must include:

(a) A scale drawing no larger than 8 1/2 inches by 11 inches, reproducible on standard office photocopying equipment, showing the approximate placement of the proposed markers with each proposed marker labeled to correspond to the list required below. If the application is for regulatory markers, the drawing must also depict the exact boundaries of the proposed boating restricted area.

(b) A list of the markers proposed, labeled to correspond to the drawing required above.

(c) A statement of the specifications for the markers proposed, including:

1. A description giving each marker's size, shape, color, height above mean high water, and number, letter or message;
2. A description of the type, size, shape, and material used for any structure which will support the markers;

3. A statement of the color, characteristic, height above mean high water, intensity, and nominal range of any light which will be placed on the markers;

4. A statement of the type signal (whistle, horn, bell, etc.) and characteristic for any audible fog signal.

5. The latitude and longitude expressed in degrees, minutes, and seconds or degrees and decimal minutes of the location where each marker will be placed.

(d) A statement of the purpose for placing the proposed markers. If the application is for regulatory markers, this statement must include the purpose for regulating vessel operation and a statement of the facts and circumstances justifying the establishment of the restriction on speed or operation.

(e) A statement listing the names or titles of the individuals responsible for the placement and maintenance of the markers along with an address and a contact telephone number for each individual.

(f) If the application is for regulatory markers, the applicant must enclose therewith proof of the lawful imposition of restrictions on the speed or operation of vessels for which the regulatory markers are requested, as follows:

1. A copy of an ordinance adopted pursuant to Section 327.22, Florida Statutes, which imposes the restriction only upon vessels resident within the county or municipality imposing the restriction; or

2. A copy of an ordinance adopted pursuant to Section 327.60, Florida Statutes, which imposes the restriction for reasons of vessel traffic safety or public safety; or

3. A copy of an ordinance adopted by a county or municipality and approved by the commission pursuant to paragraph 370.12(2)(o), Florida Statutes, which imposes the restriction for reasons of manatee protection; or

4. A copy of the statute, special act, rule, regulation, order, or other instrument which imposes the restriction for reasons other than public safety or manatee protection, and a statement of the specific authority under which the restriction is imposed.

(3) Upon receipt of all statements and other documents specified above, the division will:

(a) Determine whether or not there exists a conflict with the provisions of Chapter 327, Florida Statutes, or any amendments thereto or regulations thereunder, for ordinances adopted pursuant to Section 327.60, Florida Statutes.

(b) Forward the request to the Bureau of Protected Species Management for review and approval pursuant to paragraph 370.12(2)(o), Florida Statutes, for ordinances adopted thereunder.

(c) For regulatory markers, determine whether or not the markers as proposed would clearly mark the area as a boating restricted area and adequately notice mariners of the restrictions imposed on vessel speed or operation.

(d) Determine whether or not the placement of the proposed markers in the proposed locations would create an unreasonable hazard to navigation.

(e) Determine whether the proposed markers conform to the United States Aids to Navigation System.

(4) The division may consult, coordinate, or cooperate with any other governmental entity having concurrent jurisdiction over the waters for which the permit is requested.

(5) After obtaining the requested permit, the applicant must install, inspect, maintain, and remove the permitted marker at its own expense and as directed by the division.

Specific Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History—New

68D-23.105 Criteria for Approval of Regulatory Markers.

(1) The division shall find a valid vessel traffic safety or public safety purpose is presented for ordinances adopted pursuant to Section 327.60, Florida Statutes, under the following facts and circumstances:

(a) For an Idle Speed-No Wake boating restricted area, if the area is:

1. Within 500 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways more than 300 feet wide and within 300 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways not exceeding 300 feet wide.

2. Within 500 feet of fuel pumps or dispensers at any marine fueling facility which sells motor fuel to the general boating public on waterways more than 300 feet wide and within 300 feet of the fuel pumps or dispensers at any licensed terminal facility which sells motor fuel to the general boating public on waterways not exceeding 300 feet wide.

3. Inside or within 300 feet of any lock structure.

4. An area where boating accident reports, uniform boating citations, vessel traffic studies, or other creditable data demonstrate a high risk of collision or where any significant vessel wake would be likely to endanger life, limb, vessel traffic safety or maritime property.

(b) For a Slow Speed Minimum Wake boating restricted area if the area is:

1. Within 300 feet of any bridge fender system.

2. Within 300 feet of any bridge span presenting a vertical clearance of less than 25 feet or a horizontal clearance of less than 100 feet.

3. Within 300 feet of a confluence of water bodies presenting a blind corner, a bend in a narrow channel or fairway, or such other area where an intervening obstruction to visibility may obscure other vessels or other users of the waterway.

4. Subject to unsafe levels of vessel traffic congestion.

5. Subject to hazardous water levels or currents, or containing other navigational hazards.

6. An area that accident reports, uniform boating citations, vessel traffic studies, or other creditable data demonstrate to present a significant risk of collision or a significant threat to public safety.

(c) For a numerical speed limit boating restricted area if the area is:

1. Subject to unsafe levels of vessel traffic.

2. Subject to hazardous water levels or currents or containing other navigational hazards.

3. An area that accident reports, uniform boating citations, vessel traffic studies, or other creditable data demonstrate to present a risk of collision or a risk to public safety.

4. An area within which a proposed numerical speed limit is less restrictive than the speed limit in place for the surrounding area if hazardous tides or currents require that vessels operate faster than the surrounding speed limit in order to properly maintain maneuvering ability and headway or if the geographic configuration of the area and levels of vessel traffic density indicate that higher speeds do not pose a threat to life, limb, property, or manatees. Any dispute concerning the threat to manatees shall be resolved as provided in paragraph 370.12(2)(o), Florida Statutes.

(d) For vessel exclusion zones if the area is:

1. Designated as a public bathing beach or swim area.

2. Reserved exclusively as a canoe trail or otherwise limited to vessels under oars or under sail.

3. Reserved exclusively for a particular activity and user group separation must be imposed to protect the safety of those participating in such activity.

(e) For other boating restricted areas (caution zone, no skiing, no parasailing, one-way vessel traffic, etc.) if the area is one that accident reports, uniform boating citations, vessel traffic studies, or other creditable data demonstrate to present a risk to vessel traffic safety or public safety.

(2)(a) An ordinance for the protection of manatees, adopted pursuant to paragraph 370.12(2)(o), Florida Statutes, must be reviewed and approved by the commission before any regulatory marker implementing such an ordinance may be installed. Any disagreement on the provisions of such an ordinance shall be resolved as provided in said paragraph.

(b) In order to avoid a duplicate review and approval process, the division shall defer to the findings of the commission. Therefore, upon the review of such an ordinance and the commission's approval of the ordinance upon a finding that manatees are frequently sighted, that manatees can be generally assumed to inhabit the area periodically or continuously, and that the restrictions imposed are justified and necessary for the protection of manatees or their habitat, the division shall find a valid manatee safety purpose is presented.

Specific Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41, 370.12 FS. History—New

68D-23.106 Permit Conditions.

(1) All permits issued pursuant to this chapter are subject to the following conditions:

(a) Placement of these markers must be as requested in the application. Any deviation will require that the applicant apply to have the permit amended.

(b) The applicant must display the permit number on each marker and the ordinance number, municipal code section number, or rule number (etc.) on each regulatory marker. These numbers must be displayed in black, block characters approximately one inch in height.

1. The permit number must be displayed in the lower left corner on the face of each regulatory marker. The ordinance number, municipal code section number, or rule number (etc.) must be displayed in the lower right corner on the face of each regulatory marker.

2. All markers other than regulatory markers must display the permit number. This display shall be placed at any location on the marker where it can easily be read, including the reverse side of a sign, provided that it does not interfere with the message of the marker.

(c) Upon completion of the installation of markers, the applicant must notify the division in writing within 10 working days. If the latitude and longitude of each marker, as installed, is different from that listed in the application, this notification must include the correct latitude and longitude in degrees, minutes, and seconds.

(d) All markers must be maintained in proper condition at all times. A discrepancy exists whenever a marker is not exactly as described in the approved application or is destroyed, damaged, moved, or is otherwise unserviceable or not watching properly. The applicant must immediately report any discrepancy in the marker to the division by telephone, telefacsimile or other similarly rapid means of communication. Unless the applicant's permit expressly provides for a longer period, the applicant must correct any discrepancy within not more than 30 days and must notify the division when the correction is accomplished.

(e) Authorization by the division for the placement of a marker does not authorize any invasion of private rights, nor grant any exclusive privileges, nor does it obviate the necessity of complying with any other federal, state or local laws or regulations.

(f) All permits issued pursuant to this chapter are contingent upon the consent of and, if necessary, the issuance of appropriate permits by the United States Army Corps of Engineers authorizing the placement of structures for the support of the proposed markers. Consent may be by nationwide permit, regional permit, letter permit, authorization letter, statement of no objection, or other similar means.

(g) All permits issued pursuant to this chapter are contingent upon the consent of and, if necessary, the issuance of appropriate permits by the United States Coast Guard

authorizing the establishment of private aids to navigation pursuant to Part 66 of Title 33 of the Code of Federal Regulations.

(h) All permits issued pursuant to this chapter authorizing the placement of markers, buoys, or signs on submerged lands, or other property or structure not owned by the applicant are contingent upon the applicant receiving the written consent of the owner of the submerged lands, other property, or structure to the placement of said signs and providing a copy of such consent to the division.

(i) By accepting any permit and placing the markers authorized therein, the applicant other than a governmental entity, to the extent authorized by law, agrees and promises to hold harmless the State of Florida and its agencies, employees, agents, or successors from fault with respect to any claim or claims arising from alleged negligence in the placement, maintenance, operation and removal of any and all markers placed by applicants pursuant to such permits. The applicant other than a governmental entity further agrees to indemnify the State of Florida for any and all legal fees and costs incurred in defense of any suit brought against the State as a result of alleged negligence by applicant in the placement, maintenance, operation or removal of the markers.

(j) Applicants for permits to place regulatory markers or the governmental entities establishing the rules, ordinances, or other actions imposing the regulations must provide for the enforcement of operating restrictions noticed by said markers.

Specific Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History--New _____.

68D-23.107 Federal System Adopted.

(1) The following are adopted and incorporated by reference:

(a) The United States Aids to Navigation System, Part 62 of Title 33 of the Code of Federal Regulations;

(b) The United States Coast Guard Aids to Navigation – Administration Manual (Comdtinst M16500.7);

(c) The United States Coast Guard Aids to Navigation – Technical Manual (Comdtinst M16500.3A).

(2) All markers and mooring buoys placed or maintained in, on or over the waters of the state or the shores thereof shall conform to the United States Aids to Navigation System.

(a) Until December 31, 2003, channel markers and obstruction markers conforming to the Uniform State Waterway Marking System may continue to be used on waters of this state that are not navigable waters of the United States.

(b) No person, municipality, county or other governmental entity shall place any new marker or replace any existing marker unless such new or replacement marker or mooring buoy conforms to the United States Aids to Navigation System and all other provisions of this chapter.

(c) On or before December 31, 2003, all markers in, on or over the waters of the state or the shores thereof shall be brought into conformity with the United States Aids to Navigation System and all other provisions of this chapter, or removed from the waters or shores of the state.

(d) After December 31, 2003, no person, municipality, county, or other governmental entity shall place, maintain, or permit to remain in, on or over the waters of the state or shores thereof any nonconforming marker.

(e) After December 31, 2003, all nonconforming markers in place in, on, or over the waters of the state or shores thereof shall be declared a nuisance. The division and its officers and all other law enforcement officers charged with the enforcement of Chapter 327, Florida Statutes, shall have the authority to remove or cause the removal of any such nonconforming marker.

Specific Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History—New _____.

68D-23.108 Specifications for Markers.

(1) A marker placed in, on or over the waters of the state or shores thereof may be displayed as a buoy bearing letters, numbers or a symbol on its surface, or as a sign mounted on a buoy, piling or other structure, or as a sign on the shore.

(2) Buoyed signs and markers must extend not less than 36 inches above the surface of the water. A sign suspended above the water must have a minimum of 25 feet clearance from the mean high water mark to the bottom of the sign.

(3) A buoy whose sole purpose is to carry a sign above it shall be marked with three horizontal bands of international orange alternating with two horizontal bands of white, each band placed completely around the circumference of the buoy and occupying approximately one-fifth of the total area of the buoy's surface above the waterline. All markers shall be made of materials which will retain, despite exposure to weather and other elements, their color, shape, legibility and position.

(4) All letters on green or black backgrounds shall be white. All letters and numerals on red or white backgrounds shall be black, except that white retroreflective letters and numerals may be used on a red background. All letters and numerals shall be of block characters of good proportion, spaced in a manner which will provide maximum legibility and of a size proportionate to the size of the marker.

(5) Retroreflective materials shall be used for all displays on markers that are required to be international orange. Retroreflective materials may be used for any other portion of a marker.

Specific Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History—New _____.

68D-23.109 Additional Specifications for Information and Regulatory Markers.

(1) All information and regulatory markers shall be white in color and shall display international orange symbols.

(2) When a buoy is used as an information or regulatory marker, it shall be white with horizontal bands of international orange placed completely around the circumference of the buoy. One band shall be at the top of the buoy body, the second band shall be placed just above the waterline so that both international orange bands are clearly visible to approaching vessels. The international orange bands shall be not less than two inches in width. The display area shall be that portion of the buoy body between the bands and shall be white. Symbols shall be centered between the international orange bands. Only a cylindrical buoy may be used. The buoy shall have a diameter of not less than nine inches.

(3) When a sign is used for an information or regulatory marker it shall be square or rectangular. It shall be white with an international orange border. The display area shall be that portion of the sign within the border. Symbols shall be centered within the display area. The size of the sign shall be appropriate to the size of the waterway where the sign is located and the nature of the vessels transiting the waterway, however, no such sign shall be smaller than three feet by three feet.

(4) Specifications for Display of Symbols.

(a) The thickness of the international orange line used to draw the borders and the symbols shall be not less than 2 inches.

(b) The height of the symbol shall be at least half and not more than two-thirds the height of the display area.

(c) The sides of the diamond shape shall slope at a thirty to forty-five degree angle from the vertical on a plane surface. Appropriate adjustments for curvature shall be made when applied to a cylindrical surface.

(d) In addition to the permit number required to be displayed under paragraph 68D-23.106(7), F.A.C., every regulatory marker shall display the number of the statute, special act, rule, ordinance, or other governmental action that created the boating restricted area or other operating restriction, and the name of the municipality, county or other governmental agency which placed and maintains the marker. This number and name shall be displayed in characters not less than one inch in height and shall be placed in the lower right hand corner of the display area on each sign, and at any location on each buoy where it can easily be read, provided that it shall not interfere with the message of the marker.

Specific Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History—New _____.

68D-23.110 Inspection and Certification.

(1) Each person holding a permit to place and maintain one or more markers must inspect all markers for which the permit was issued and report such inspection to the division triennially, beginning 36 months from the date the permit was issued or 36 months after this rule becomes effective.

whichever comes later. The report must be submitted at least thirty but not more than ninety days prior to expiration of the three-year period.

(2) The required report shall consist of the following:

(a) The name of the permit holder and permit number;

(b) The name of the person or persons currently responsible for the placement and maintenance of the markers; and,

(c) A statement certifying that the markers placed pursuant to the permit have been inspected during the ninety days preceding the statement and that:

1. The markers are properly maintained and in serviceable condition,

2. The markers conform to the requirements of this chapter,

3. The markers are still properly on station, and

4. The date or dates on which the markers were inspected.

(3) Failure to inspect a marker and to report the results of the inspection to the division during the specified time period shall be grounds for rescinding the permit authorizing placement of the marker and for removing or ordering the removal of the marker.

Specific Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41, 370.12 FS. History—New _____.

68D-23.111 Enforcement.

This chapter shall be enforced by the division and its officers, and any other authorized law enforcement officer as provided in Section 327.70, Florida Statutes, all of whom shall have the authority to remove or cause the removal of any marker found to be in violation of this chapter.

Specific Authority 327.40, 327.41 FS. Law Implemented 327.22, 327.40, 327.41, 327.46, 327.70, 370.12 FS. History—New _____.

68D-23.112 Exemptions.

(1) Nothing herein shall apply to the United States Government or its agencies, nor to any aid to navigation, marker, mooring buoy, or other similar device placed thereby.

(2) Persons establishing private aids to navigation other than regulatory markers and mooring buoys on waters of concurrent state/federal jurisdiction pursuant to the provisions of 33 CFR § 66.01 shall submit to the division a copy of their United States Coast Guard permit (CG-2554) in lieu of the materials required under 68D-23.104. Upon receipt by this division of said copy of their permit, such private aids to navigation shall be exempt from further permitting and need not display a permit number.

(3) Regulatory markers authorized by the former Florida Department of Natural Resources prior to January 1, 1988, are exempt until December 31, 2003, from the requirement that they display a permit number. After that date, every regulatory marker without a permit number, in place in, on or over the waters of the state or shores thereof shall be declared a

nuisance. The division and its officers and all other law enforcement officers charged with the enforcement of chapter 327, Florida Statutes, shall have the authority to remove or cause the removal of any unpermitted regulatory marker. Markers authorized prior to January 1, 1988, for which no permit number was assigned shall be issued a permit number upon receipt by the division of the following:

(a) A copy of the correspondence authorizing placement of said markers;

(b) A statement of the specifications for the markers, including:

1. A list of the markers;

2. A description giving each marker's size and message, and

3. The latitude and longitude coordinates in degrees-minutes-seconds of the location of each marker;

4. A statement that the markers have been inspected during the ninety days preceding the instant request and that:

a. The markers are properly maintained and in serviceable condition,

b. The markers conform to the requirements of this chapter,

c. The markers are still properly on station, and

d. The date or dates on which the markers were inspected.

(4) The inspection and certification requirements in rule 68D-23.110 shall not apply to markers maintained by an Inland Navigation District pursuant to s. 374.997, F.S., but shall instead be specified in each permit.

(5) The restrictions displayed on regulatory markers shall not apply:

(a) In the case of an emergency;

(b) To law enforcement patrol vessels or firefighting vessels; or,

(c) To any rescue vessel owned or operated by a governmental entity.

Specific Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41, 327.46, 370.12 FS. History—New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Captain Alan S. Richard, Coordinator, Office of Boating Safety and Waterway Management, Division of Law Enforcement, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Colonel Robert Edwards, Director, Division of Law Enforcement, Fish and Wildlife Conservation Commission, Tallahassee, Florida 32399-1600

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 8, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 22, 2000