

(2) The following disciplinary guidelines shall be followed by the board in imposing disciplinary penalties upon licensees and permittees for violation of the below mentioned statutes and rules:

VIOLATION	PENALTY RANGE	
	MINIMUM	MAXIMUM
(a) through (n) No change.		
(o) Violating 456.072, F.S.		
1. Making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession.	\$2,500 fine and one (1) year probation	\$5,000 fine and suspension
2. No change.		
3. Being convicted or found guilty of, or entering a plea of <u>guilty or nolo contendere</u> to, regardless of adjudication a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.	Misdemeanor: \$1,000 fine Felony: \$3,000 fine and one (1) year probation	\$5,000 fine and one (1) year suspension Revocation
4. through 11. No change.		
12. Making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession.	\$10,000 \$3,000 fine and two (2) years probation	\$10,000 \$5,000 fine and one (1) year suspension
13. through 17. No change.		
18. <u>Failing to report to the board in writing within 30 days after the licensee has been convicted or found guilty or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction.</u>	<u>\$1,000 fine</u>	<u>\$2,500 fine and one (1) year probation</u>
19. <u>Testing positive for any drug, as defined in s. 112.0455 on any confirmed preemployment or employer ordered drug screening when the</u>	<u>\$2,500 fine and two (2) year probation</u>	<u>\$5,000 fine and one (1) year suspension</u>

practitioner does not have a lawful prescription and legitimate medical reason for using such drug.

(3) through (4) No change.

Specific Authority 456.072, 456.079, 465.005 FS. Law Implemented 456.072, 456.079 FS. History--New 3-1-87, Amended 5-11-88, Formerly 21S-17.001, 21S-30.001, 61F10-30.001, Amended 6-26-95, 1-30-96, Formerly 59X-30.001, Amended 12-3-97, 11-15-98, 5-3-00, _____.

Section II Proposed Rules

DEPARTMENT OF BANKING AND FINANCE

Division of Securities and Finance

RULE TITLES:	RULE NOS.:
Records to be Maintained by Deferred Presentment Providers	3C-560.707
Verification Fee	3C-560.801
Minimum Disclosure	3C-560.802
Payment Method	3C-560.804
Scope	3C-560.901
Definitions	3C-560.902
Deferred Presentment Transactions	3C-560.903
Transaction Agreement Disclosures and Requirements	3C-560.904
Transaction Fees	3C-560.905
Consumer Credit Counseling Services	3C-560.906

PURPOSE AND EFFECT: The purpose of the proposed amendments and new rules is to implement the provisions of Chapter 2001-119, Laws of Florida, regarding the deferred presentment industry, which takes effect on October 1, 2001.

SUMMARY: Rule 3C-560.707, F.A.C., sets forth the records to be kept by a deferred presentment provider. Rules 3C-560.801, .802, and .804, F.A.C., are amended to include deferred presentment providers. Rule 3C-560.901, F.A.C., sets forth the scope of Part IX of Chapter 3C-560, F.A.C. Rule 3C-560.902, F.A.C., sets forth definitions. Rule 3C-560.903, F.A.C., defines when a transaction is considered to be terminated and states when the twenty-four (24) hour waiting period begins. Rule 3C-560.904, F.A.C., identifies the provisions that shall be included in a deferred presentment transaction agreement as well as those provisions that are prohibited. Rule 3C-560.905, F.A.C., sets forth the fees that are allowed by Part IV of Chapter 560, F.S. Rule 3C-560.906, F.A.C., sets forth the requirements for consumer credit counseling services and the criteria for inclusion on the Department's list of approved consumer credit counseling agencies.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory cost 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: 560.105(3), 560.404(23) FS.

LAW IMPLEMENTED: 560.404, 560.407 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: 10:30 a.m., October 23, 2001

PLACE: Room G16C, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Rick White, Financial Administrator, or Mike Ramsden, Financial Examiner/Analyst II, Room 550, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida 32399-0350, (850)410-9805

THE FULL TEXT OF THE PROPOSED RULES IS:

3C-560.707 Records to be Maintained by Deferred Presentment Providers.

(1) Every deferred presentment provider shall maintain the following records at a location in this state which has been designated to the Department:

(a) A copy of each personal check accepted for each deferred presentment transaction.

(b) A copy of each transaction agreement between the deferred presentment provider and the drawer that meets the requirements of Rule 3C-560.904, F.A.C.

(c) If applicable, a copy of each document relating to any consumer credit counseling services provided for each drawer including:

1. A signed and dated notice from the drawer that he or she is unable cover the check or to repay the provider on or before the last day of the deferment period, and that he or she agrees to complete consumer credit counseling and comply with a repayment agreement approved by a consumer credit counseling agency;

2. All correspondence received from or sent to the drawer or the consumer credit counseling agency chosen by the drawer; and

3. A copy of the drawer's repayment plan approved by the consumer credit counseling agency including records that substantiate the drawer's compliance with such agreement.

(d) Records relating to all returned personal checks that shall include, if applicable, the following:

1. The date the personal check was returned to the provider;

2. The name and address of the drawer;

3. The check number of the personal check;

4. The dollar amount of the personal check;

5. The date of deposit by the provider;

6. The NSF fees imposed, if applicable, on each drawer;

7. The date on which collection is made from the drawer; and

8. A description of the method by which collection was ultimately achieved.

(e) A daily summary of the business activities including the following documents:

1. Bank deposit receipts;

2. Copies of checks and withdrawal receipts evidencing withdrawal of funds from accounts maintained by the provider; and

3. A daily cash reconciliation summarizing each day's activities and reconciling cash on hand at the close of business.

(f) Bank statements of the provider received and maintained, no less often than monthly, for all accounts from which the provider operates. A complete legible copy of the provider's bank statement will be accepted if the original bank statement is not available.

(g) A copy of the drawer's written authorization to electronically debit the drawer's account if the provider intends to make use of such practice.

(h) The copy of the drawer's personal check shall constitute compliance with the requirements of subparagraphs (d)1. through 4. of this rule. The provider may include the reasonable cost of such copy as part of the verification fee allowed pursuant to Rule 3C-560.801, F.A.C., if such fee is charged to that drawer.

(i) A copy of the drawer's verifiable means of identification and any other documentation the provider collects in order to verify the drawer's identity.

(2) The records referenced in subsection (1) above may be maintained by the provider in accordance with the provisions of Section 560.407(4), F.S.

Specific Authority 560.105(3), 560.404(23) FS. Law Implemented 560.404, 560.407 FS. History—New

3C-560.801 Verification Fee.

(1) In addition to the fees established in Section 560.309(4), F.S., a check casher or deferred presentment provider may collect the direct costs associated with verifying a payment instrument holder's identity, residence, employment, credit history, account status, or other necessary information, including the verification of a drawer's status on the Department's administered database for deferred presentment transactions prior to cashing the payment instrument or accepting a personal check in connection with a deferred presentment transaction. Such verification fee shall be collected only when verification is conducted ~~required~~ and shall not exceed \$5.00 per transaction. For example, a check casher shall not charge a drawer more than one (1) verification

fee per diem, regardless of whether the check casher is cashing or has cashed more than one (1) of the drawer's payment instruments that day.

(2) It is the responsibility of the registrant to document that verification fees are based upon the actual costs associated with such verification.

Specific Authority 560.105(3), 560.404(23) FS. Law Implemented 560.309(4), 560.404(6) FS. History--New 9-24-97, Amended _____.

3C-560.802 Minimum Disclosure.

(1) Every check casher and deferred presentment provider must continuously post in a conspicuous place a clearly legible schedule of fees charged in every location and mobile unit.

(2) The term "conspicuous place" is defined herein as a place which is reasonably calculated to impart the information to the public.

Specific Authority 560.105(3), 560.404(23) FS. Law Implemented 560.302(1), 560.309 FS. History--New 9-24-97, Amended 12-30-98, _____.

3C-560.804 Payment Method.

(1) Payment shall be made immediately in currency for every payment instrument received by a person engaging in the activities of a check casher.

(2) For purposes of this chapter, "currency" shall have the meaning defined in Section 560.103(6), F.S.

(3) Each deferred presentment provider shall immediately provide the drawer with currency for the full amount of his or her personal check to be held by the provider, less only the fees authorized by Section 560.404, F.S. Only deferred presentment providers that are Part II registrants may provide a payment instrument in lieu of currency; however, such a provider shall not require a drawer to accept a payment instrument in lieu of currency.

Specific Authority 560.105(3), 560.404(23) FS. Law Implemented 560.302(1), 560.309, 560.404 FS. History--New 9-24-97, Amended _____.

PART IX

DEFERRED PRESENTMENT TRANSACTIONS

3C-560.901 Scope.

This section contains the specific requirements for deferred presentment providers with respect to the procedures employed to accomplish a deferred presentment transaction.

Specific Authority 560.105(3), 560.404(23) FS. Law Implemented 560.404 FS. History--New _____.

3C-560.902 Definitions.

(1) The term "provider" means a deferred presentment provider as defined by Section 560.402(5), F.S.

(2) The term "close of business" means the time of day that a provider ceases operations for that calendar day.

Specific Authority 560.105(3), 560.404(23) FS. Law Implemented 560.402, 560.404 FS. History--New _____.

3C-560.903 Deferred Presentment Transactions.

(1) For purposes of determining when a deferred presentment transaction is considered to be terminated, a provider shall be deemed to have evidence that a check has cleared at such time as the check has been deposited into the provider's account at the provider's financial institution.

(2) For purposes of determining the beginning time of the twenty-four (24) hour waiting period referenced in Section 560.404(19), F.S., one of the following conditions shall be met:

(a) When the personal check that is the subject of the deferred presentment transaction is redeemed by the drawer with payment in cash for the full face amount of the check, the twenty-four (24) hour waiting period shall commence when the cash has been received by the provider;

(b) When the deferred presentment provider deposits the drawer's personal check that is the subject of the deferred presentment transaction, the twenty-four (24) hour waiting period shall begin at such time as the provider reasonably determines, but no earlier than the provider's close of business on the last day of the deferral period.

(c) When the drawer has informed the provider that he or she will be unable to make payment as agreed, the date and time will begin when the drawer makes final payment to the provider and the obligation of the drawer has been settled either pursuant to a repayment plan approved by a consumer credit counseling agency or any other method of collection available to the provider under Chapter 560, F.S.

Specific Authority 560.105(3), 560.404(23) FS. Law Implemented 560.404 FS. History--New _____.

3C-560.904 Transaction Agreement Disclosures and Requirements.

(1)(a) Each deferred presentment transaction agreement must contain the following:

1. The drawer's identification information including name, address, social security or alien registration number, and if provided, the drawer's driver's license number;

2. The name or trade name, registration number, address, and telephone number of the deferred presentment provider and the name and title of the person who signs the agreement on behalf of the deferred presentment provider;

3. The date the deferred presentment transaction was executed;

4. The face amount of the drawer's personal check;

5. The length of the deferral period (in days);

6. The last day of the deferral period.

7. The time of day on the last day of the deferral period for the drawer to either redeem his or her check or request the grace period. Such time shall be the close of business for that calendar day;

8. The address and toll-free telephone number of the Department;

9. A clear description of the drawer’s payment obligations under the deferred presentment transaction;

10. The disclosure notice required by Section 560.404(20), F.S.;

11. The transaction number assigned by the Department’s database. This provision shall become effective on March 1, 2002;

12. The amount of currency or the amount of any payment instrument provided to the drawer;

13. A listing of all fees charged to the drawer categorized by fee type (i.e., 10% transaction fee and verification fee);

14. The disclosures required by Section 560.404(13), F.S.;

15. The drawer’s written signature and date of execution which shall be done in the presence of the provider or an authorized employee of the provider; and

16. The provider or its authorized employee’s written signature and date of execution.

(b) If the deferred presentment provider (Part II registrants only) intends to provide the drawer with a payment instrument in lieu of currency, the agreement shall also contain the drawer’s acknowledgment that he or she has consented to accept the provider’s payment instrument in lieu of currency. Such acknowledgment shall clearly state that it is the drawer’s choice to obtain such payment instrument, and that the provider may not require a drawer to accept a payment instrument in lieu of currency. This acknowledgment shall be separately initialed by the drawer;

(c) If the provider intends to electronically debit the drawer’s account to collect the funds, the agreement shall also contain the drawer’s authorization to the provider permitting the electronic debit of the drawer’s account. This authorization shall be provided in a separate section of the transaction agreement, in not less than 8 point type, and must be initialed by the drawer. Providers must still adhere to all provisions of Part IV of Chapter 560, F.S., regarding the drawer’s payment options under such part;

(2) The transaction agreement may not include any of the following:

(a) A hold harmless clause;

(b) A confession of judgment clause;

(c) Any assignment of or order for payment of wages or other compensation for services;

(d) A provision in which the drawer agrees not to assert any claim or defense arising out of the agreement;

(e) A waiver of any provision of Part IV of Chapter 560, F.S.;

(f) Any representation from the drawer as to the sufficiency of funds regarding any past deferred presentment transactions;

(g) Any statement regarding criminal prosecution with respect to the agreement; and

(h) Any language regarding additional fees or penalties imposed on the drawer as a result of the agreement.

(3)(a) Upon being given notice by a drawer in person that he or she will not be able to cover the check or pay the full amount owed to the deferred presentment provider in accordance with the agreement, every provider shall verbally advise the drawer of the availability of the sixty (60) day grace period. A provider shall provide the drawer with the written notice required by Section 560.404(22)(b)3., F.S. Such notice shall be executed and dated by both the drawer and an authorized employee of the registrant.

(b) The provider shall attach a free copy of the Department’s list of approved consumer credit counseling agencies including the toll-free telephone number of the Department.

Specific Authority 560.105(3), 560.404(23) FS. Law Implemented 560.404 FS. History—New _____.

3C-560.905 Transaction Fees.

(1) The transaction fee for a deferred presentment transaction shall be limited to ten percent (10%) of the amount of currency or payment instrument provided to the drawer. A deferred presentment provider may also charge a verification fee in accordance with Rule 3C-560.801, F.A.C. An example of the computation of the maximum fees allowed by the code in a transaction where the drawer is seeking an advance of \$500 would be as follows:

(a) \$500 advanced to the drawer;

(b) a \$50 fee (\$500 X 10%); and

(c) up to \$5 for the direct costs associated with verification of the drawer’s identity and/or employment.

In this example, the provider would provide currency or a payment instrument (Part II registrants) in the amount of \$500 to the drawer, and the drawer would provide a personal check in the amount of between \$550-\$555 depending upon the exact amount of the direct costs of verification, if any, assessed by the provider with respect to this drawer. Unless a drawer has met the requirements for an automatic grace period, the drawer would be required to either redeem his or her personal check in cash (face amount of the check) or the provider would on the due date or a reasonable time thereafter present such personal check to the a financial institution for payment.

(2) Under no circumstances may the deferred presentment provider collect transaction fees from a drawer at the inception of a transaction. A provider shall not collect verification fees from the drawer at the inception of a deferred presentment transaction. All fees with respect to a deferred presentment transaction shall be collected at such time as the drawer redeems his or her personal check or the provider presents the drawer’s personal check for payment.

(3) A deferred presentment provider shall not charge, impose, or add any other fees upon a drawer. Examples of such unauthorized fees include, but are not limited to, such items as initial application fees, drawer setup fees, etc.

(4) Under no circumstances shall a provider require that a drawer purchase any other products or services as a condition of the deferred presentment transaction.

Specific Authority 560.105(3), 560.404(23) FS. Law Implemented 560.404 FS. History—New _____.

3C-560.906 Consumer Credit Counseling Services.

(1) The Department shall publish a list of all consumer credit counseling agencies by October 1 of each calendar year. The Department will accept requests from consumer credit counseling agencies to be included on the list on an ongoing basis and may periodically republish the list at its discretion. If the Department makes a decision to publish the list more often, the updated list shall be sent to the primary business address of each deferred presentment provider. The provider will then be responsible for making and distributing such additional copies to all branch locations offering deferred presentment transactions.

(2) The method of publication shall be via the Department's website (www.dbf.state.fl.us).

(3) Every deferred presentment provider shall maintain a copy of the Department's list of approved consumer credit counseling agencies and shall provide access to such list, free of charge, to any drawer making a request.

(4) The Department will consider the following criteria in determining whether a consumer credit counseling agency shall be included on the Department's list:

(a) Whether the organization is a nonprofit consumer credit counseling agency;

(b) Whether the agency provides services to Florida residents either in person, by telephone, or through the Internet;

(c) Whether the agency has provided the Department all of the required information including name, addresses and telephone numbers of all locations, Internet address if counseling is provided over the Internet, and counties served;

(d) Whether the agency has agreed to provide such services to drawers for the fees set forth in Part IV of Chapter 560, F.S.; and

(e) Whether the agency has agreed to provide deferred presentment providers with copies of all correspondence and agreements required to assist the drawers.

(5) Upon being retained by a drawer to provide consumer credit counseling services, the agency shall immediately prepare and send to the deferred presentment provider a copy of an engagement letter. A facsimile or electronic copy of the engagement letter shall be sufficient for purposes of establishing that the drawer has met the requirement to provide notice of making an appointment with a consumer credit

counseling agency within seven (7) days after the end of the deferment period to a deferred presentment provider. Such letter shall state at a minimum that the agency has been retained by the drawer and that it shall complete counseling and provide a copy of the repayment agreement to the deferred presentment provider within sixty (60) days after the end of the deferred presentment agreement.

(6) It shall not be necessary for a drawer to complete the repayment plan established by the consumer credit counseling agency within the sixty (60) day grace period. If the drawer completes counseling, enters into a contractual repayment plan, and remains in compliance with the terms of the repayment plan, he or she shall have until the end of the repayment plan to pay the deferred presentment provider. Drawers on a repayment plan who miss a scheduled payment are not in compliance, but evidence of a missed payment shall be obtained from the consumer credit counseling agency in writing, or by facsimile or electronic copy, prior to a deferred presentment provider instituting collection procedures.

(7) The consumer credit counseling agency shall send a copy of the repayment plan, postmarked not later than the 60th day after the end of the deferment period, to the deferred presentment provider. A facsimile or electronic copy shall be sent to the provider if the repayment plan is agreed to within the last week (7 days) of the grace period to ensure that the provider is aware of the drawer's compliance with the terms of the grace period. A repayment plan should be based upon each drawer's individual financial needs as assessed by the consumer credit counseling agency. A consumer credit counseling agency shall not reduce the amount owing on a deferred presentment agreement without the express written consent of the deferred presentment provider.

(8) The consumer credit counseling agency shall complete counseling with the drawer within sixty (60) days of the end of the deferment period and shall complete a proposed repayment plan for the drawer no later than such date. The counseling agency shall exercise its discretion in arriving at the terms of the repayment plan and is not required to negotiate or get the approval of the deferred presentment provider with respect to the terms of such repayment plan. Payments on such repayment plans may be made directly to the deferred presentment provider or to the consumer credit counseling agency depending upon the normal business practices of the counseling agency. Any payment made in full, in accordance with the terms of the repayment agreement, by a drawer to a consumer credit counseling agency shall be considered paid to the deferred presentment provider as of that date. The consumer credit counseling agency shall forward all such payments to the deferred presentment provider within ten (10) business days. Under no circumstances shall a consumer credit counseling agency hold or aggregate any such payments unless they have obtained the express written consent of the deferred presentment provider.

(9) With respect to the fees allowable by a consumer credit counseling agency for the performance of such counseling services, the agency may:

(a) Collect a fee, not to exceed one-half of the drawer's fee for the deferred presentment agreement from the deferred presentment provider; and

(b) Structure repayment plans such that the last payment made by the drawer on such plan is retained as its fee for providing such counseling services.

Specific Authority 560.105(3), 560.404(23) FS. Law Implemented 560.404 FS. History--New

NAME OF PERSON ORIGINATING PROPOSED RULE:
Mike Ramsden

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Don Saxon, Director, Division of Securities and Finance

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 10, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 17, 2001

DEPARTMENT OF INSURANCE

RULE TITLE: Annual and Quarterly Reporting Requirements

RULE NO.: 4-137.001

PURPOSE, EFFECT AND SUMMARY: The amendment would allow companies to submit financial filings to the NAIC via the Internet. The NAIC has established the capability to receive such filings via the Internet, and would like to provide that option for insurers.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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: 624.308(1) FS.

LAW IMPLEMENTED: 624.307(1), 624.424(1) FS.

IF REQUESTED IN WRITING 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: 9:30 a.m., October 23, 2001

PLACE: Room 143, Larson Building, 200 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Bob Norris, Financial Administrator, Bureau of Life and Health Insurer Solvency, Division of Insurer Services, Department of Insurance, 200 East Gaines Street, Tallahassee, Florida 32399-0329, phone (850)413-5054

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this program, please advise the Department at least 5 calendar days before the program by contacting the person listed above.

THE FULL TEXT OF THE PROPOSED RULE IS:

4-137.001 Annual and Quarterly Reporting Requirements.

(1) through (2) No change.

(3) Manual and Automated Reporting.

(a) Annual and quarterly statements in manual form shall be identical to those filed in accordance with paragraph (b) below, and shall be filed with the Department in accordance with subsection (2), above.

(b) 1. Each insurer shall submit its annual and quarterly statement information in computer readable ~~form~~ format using the diskette medium or other computer readable format compatible with the electronic data processing system specified in (c) below.

2. Diskettes or information in a computer-readable format shall not be submitted to the Department.

3. Annual and quarterly statements in diskette form or other computer readable format shall be sent or transmitted electronically to the National Association of Insurance Commissioners, 120 West 12th Street, Suite 1100, Kansas City, Missouri 64105. The envelope shall be marked to indicate that diskettes are enclosed if that medium is used.

(c) 1. The National Association of Insurance Commissioners Annual Statement Diskette Filing Specifications or electronic transmission filing specifications are hereby adopted and incorporated by reference.

2. A copy of these specifications may be obtained from the National Association of Insurance Commissioners, at the address in paragraph (b), above.

3. These specifications may be inspected during regular business hours at the ~~Bureau of Data Control~~, Division of Insurer Services, Department of Insurance, ~~6th Floor~~, Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0300.

(4) No change.

Specific Authority 624.307, 624.308(1) FS. Law Implemented 624.307(1), 624.424(1) FS. History--New 3-31-92, Amended 8-24-93, 4-9-95, 4-9-97.

NAME OF PERSON ORIGINATING PROPOSED RULE: Bob Norris, Bureau of Life and Health Insurer Solvency, Division of Insurer Services, Department of Insurance

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Tom Streukens, Bureau Chief, Bureau of Life and Health Insurer Solvency, Department of Insurance

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 9, 2001
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 31, 2001

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Aquaculture

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Comprehensive Shellfish Control Code	5L-1
RULE TITLES:	RULE NOS.:
General Requirements and Intent	5L-1.001
Definitions	5L-1.002
Production and Market Standards	5L-1.004
Shellfish Processing Plant Certification	
License and Fees	5L-1.005
Compliance and Penalties	5L-1.006
Container Identification, Terminal Sale	
Date; Prohibitions	5L-1.007
Shellfish Handling	5L-1.008
Shellfish Relaying	5L-1.009
Buildings and Facilities	5L-1.010
Equipment for Shellfish Processing	5L-1.011
Sanitary Operations	5L-1.012
Plant Operation	5L-1.013

PURPOSE AND EFFECT: These amendments propose to implement shellfish processing plant facility certification license and fees, and administrative fines; change the statutory authority for the code from Ch. 370, F.S. to Ch. 597, F.S.; adopt the National Shellfish Sanitation Program Guide For The Control of Molluscan Shellfish Model Ordinance 1999; add, clarify, and renumber some of the definitions; add a section to allow the department to issue a stop-use order for unsanitary equipment; describe shellfish relaying for marine biotoxins and for public relay activities; further describe acceptable standards for lighting; require each certified dealer to have someone with adequate HACCP training, knowledge or experience to develop a HACCP plan; and replace the word should with shall in several sentences throughout the rule.

SUMMARY: The proposed amendments are to implement authority granted to the Department by the 2000 session of the Florida legislature, and approved by the Governor, to license or certify, for a fee determined by rule, facilities used for processing oysters, clams, mussels, scallops, and crabs, and to levy an administrative fine up to \$1,000 per violation per day or to suspend or revoke such licenses or certificates upon satisfactory evidence of any violation of rules adopted pursuant to the newly created Section 597.020, F.S. Additional amendments propose other miscellaneous changes to the rule. Amendments to Section 5L-1.005, F.S., are proposed to

become effective on July 1, 2002. Amendments to Section 5L-1.006, F.S., are proposed to become effective on January 1, 2002.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: There is no anticipated regulatory cost.

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: 597.020 FS.

LAW IMPLEMENTED: 597.020, 597.010(15), 597.010(19) FS.

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

TIME AND DATE: 10:00 a.m. – 1:00 p.m., Monday, October 22, 2001

PLACE: 1203 Governors Square Boulevard, 5th Floor, Tallahassee, Florida

If accommodation for a disability is needed to participate in this activity, please notify John McDowell, Division of Aquaculture, (850)488-5471, at least seven days before the meeting.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Bobby Bickley, Division of Aquaculture, 1203 Governors Square Boulevard, 5th Floor, Tallahassee, Florida 32301, Phone (850)488-5471

THE FULL TEXT OF THE PROPOSED RULES IS:

5L-1.001 General Requirements Purpose and Intent.

(1) A shellfish processing plant certification is required to operate any shellfish processing facility.

(2)(+) It is the intent of the Department to establish regulations and specifications to be known as the “Comprehensive Shellfish Control Code”, relating to sanitary practices for the catching, handling, relaying, depuration, packaging, preserving and storing of shellfish products.

(3)(-) The Department, as a participant in the Interstate Shellfish Sanitation Conference, recognizes and endorses the following principles:

(a) Shellfish are a renewable, manageable natural resource of significant economic value to many coastal communities, and should be managed as carefully as are other natural resources such as forests, water, and agricultural lands.

(b) Shellfish culture and harvesting represents a beneficial use of water in the estuaries. This use should be recognized by state and federal agencies in planning and carrying out pollution prevention and abatement programs and in comprehensive planning for the use of these areas.

(c) The goals of the Interstate Shellfish Sanitation Conference are: 1. the continued safe use of this natural resource, and 2. active encouragement of water quality programs which will preserve all possible coastal areas for this beneficial use.

~~(4)~~(3) The Department recognizes that the shellfish industry is subject to change as technological data becomes available; accordingly, it is the intent of the Department that the Comprehensive Shellfish Control Code be revised as necessary so that the technological data and industrial practices contained therein shall be consistent consonant with good health and safety practices.

~~(5)~~(4) The enforcement of the provisions of this code by the Department shall be coordinated with and be in conjunction with any and all other state, local and federal agencies exercising jurisdiction over the sanitary practices of the shellfish industry.

~~(6)~~(5) Adoption of Federal Regulations and Standards – To the extent not inconsistent with the rules herein. ~~(The following are hereby adopted as rules under the shellfish processors regulation, sSection 597.020 370.071, F.S.:~~

(a) The following parts of Title 21, Code of Federal Regulations: Those regulations, definitions, standards of sanitation, identity, quantity and fill of container, tolerances and exemptions from tolerances, and general regulations in the following.

1. ~~Code of Federal Regulations, Title 21, Part 7 – Enforcement Policy;~~
2. ~~Code of Federal Regulations, Title 21, Part 101 – Food Labeling;~~
3. ~~Code of Federal Regulations, Title 21, Part 109 – Unavoidable Contaminants in Food for Human Consumption and Food Packaging Material;~~
4. ~~Code of Federal Regulations, Title 21, Part 110 – Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food;~~
5. ~~Code of Federal Regulations, Title 21, Part 123 – Fish and Fishery Products;~~
6. ~~Code of Federal Regulations, Title 21, Part 161 – Fish and Shellfish;~~
7. ~~Code of Federal Regulations, Title 21, Part 509 – Unavoidable Contaminants in Animal Food and Food Packaging Material.~~

~~(b) National Shellfish Sanitation Program, Guide for the Control of Molluscan Shellfish, provisions adopted:~~

~~(b)†.~~ The Purpose, the Definitions, and Chapters 1 through 13, and 15 of the “Model Ordinance 19997” of the National Shellfish Sanitation Program, Guide for the Control of Molluscan Shellfish published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration 19927, are hereby adopted by reference as a rule under Section 370.071, F.S., except for the following provisions:

- ~~1.a.~~ Definition number (14)(d) Reshipper; and
- ~~2.b.~~ Definition number ~~(84)(81)~~ Reshipper; and
- ~~e.~~ Chapter XIV Reshipping.

~~2. All provisions in the “Model Ordinance 1997” that are adopted herein by reference shall apply to all certified shellfish establishments regulated by the Florida Department of Agriculture and Consumer Services. Interested parties may obtain copies of this publication by contacting the U.S. Government Printing Office. Copies are available for examination at the Florida Department of Agriculture and Consumer Services, Division of Aquaculture, 1203 Governors Square Boulevard, 5th Floor, Tallahassee, Florida 32301.~~

Interested persons may obtain copies of the pertinent sections of the Codes of Federal Regulations referenced in paragraph (a) above below and by contacting the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Copies of the pertinent sections of the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Guide For The Control of Molluscan Shellfish referenced in paragraph (b) above below may be obtained by contacting the U.S. Government Printing Office from the department at 1203 Governors Square Boulevard, 5th Floor, Tallahassee, Florida 32301. Copies of all referenced documents are available for examination at the Florida Department of Agriculture and Consumer Services, Division of Aquaculture, 1203 Governors Square Boulevard, 5th Floor, Tallahassee, Florida 32301.

Specific Authority 597.020 FS. Law Implemented ~~597.020 370.071~~ FS. History—New 1-4-87, Amended 8-10-88, 7-9-89, 11-5-92, Formerly 16R-7.001, Amended 7-3-95, 2-6-97, 6-23-99, Formerly 62R-7.001, Amended 8-9-00,_____.

5L-1.002 Definitions.

(1) Adulterated – any shellfish harvested from closed waters; any shellfish shucked, packed, or otherwise processed in a plant which has not been certified and licensed by the Department in accordance with the requirements of these rules; any shellfish contaminated as determined by microbiological bacteriological or other analysis; any shellfish consisting in whole or in part of any filthy, putrid or decomposed substance, or otherwise unfit for food; any shellfish prepared, packed, or held under unsanitary conditions where it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

(2) Alternative Processing – any processing done to shellfish which does not follow the time-temperature matrix as stated in subsection Rule 5L-1.008(5), F.A.C.

(3) Approved area – an area in which it is indicated by a sanitary survey or other monitoring program data that fecal material, pathogenic microorganisms, radio nuclides, harmful chemicals, and marine biotoxins are not present in dangerous concentrations.

(4) Certification period – the period of time between July 1 and June 30 of a year.

~~(5)~~(4) Certified shellfish dealer – a shell stock shipper, shucker-packer, repacker, or depuration processor who possesses a shellfish processing plant certification license from the Department. Responsibilities include, but are not limited to, overseeing the proper handling of shellfish or maintenance of the treatment plant, assuring compliance with sampling schedules and resultant microbiological and water quality standards, and the maintenance of accurate records. The certified shellfish dealer shall be held accountable for compliance with all laws, rules, and permits applicable to business operation.

~~(6)~~(5) Closed area (closed waters) – a growing area where the harvesting of shellfish is not permitted. Closed areas include prohibited and unclassified areas as well as temporarily closed approved, conditionally approved, restricted, and conditionally restricted areas.

~~(7)~~(6) Code – the Comprehensive Shellfish Control Code, Chapter 5L-1, F.A.C.

~~(8)~~(7) Commercial harvester – a person that harvests with the intent to sell.

~~(9)~~(8) Conditionally approved area – an area in which it is indicated by a sanitary survey or other monitoring program data that the area is subjected to intermittent microbiological pollution and, under such conditions, is temporarily unsuitable as a source of shellfish for direct marketing. Such an area shall be managed by an operating procedure that will assure that shellfish from the area are not harvested from waters not meeting approved area criteria.

~~(10)~~(9) Conditionally restricted area – an area in which it is indicated by a sanitary survey or other monitoring program data that the area is subjected to intermittent microbiological pollution and, under such conditions, is temporarily unsuitable as a source of shellfish for relaying or depuration. Such an area shall be managed by an operating procedure that will assure that shellfish from the area are not harvested from waters not meeting restricted area criteria.

~~(11)~~(8) Corrective action plan – is a brief outline of the deficiency(ies) found during an inspection of a licensed facility with the corresponding rule deficiencies cited and the time frame in which the deficiency(ies) must be corrected.

~~(12)~~(10) Critical control point – a point, step, or procedure in a food process at which control can be applied, and a food safety hazard can as a result be prevented, eliminated, or reduced to acceptable levels.

~~(11) Critical limit – the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to prevent, eliminate, or reduce to an acceptable level the occurrence of the identified food safety hazard.~~

~~(13)~~(12) Critical deficiency – a condition or practice which results in the production of a product which is adulterated. A critical deficiency is not a minor violation.

~~(14) Critical limit – the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to prevent, eliminate, or reduce to an acceptable level the occurrence of the identified food safety hazard.~~

~~(15) Deficiency – a violation.~~

~~(16)~~(13) Department – the Department of Agriculture and Consumer Services.

~~(17)~~(14) Depuration processor (depuration plant; controlled purification plant) (DP) – certified shellfish dealer a person who obtains shell stock from approved, conditionally approved, restricted or conditionally restricted growing area(s) and submits such shell stock to ~~a~~ Department approved controlled purification process. The treatment process is designed to purge shellfish of bacterial and viral contamination to the extent that such shellfish are rendered safe for human consumption.

~~(18) Designated representative – In the absence of the plant supervisor or certified shellfish dealer the individual who supervises all activities associated with the operation of the certified shellfish dealer's plant. Responsibilities include, but are not limited to, overseeing the proper handling of shellfish, maintenance of the treatment plant, assuring compliance with sampling schedules and resultant microbiological and water quality standards, and the maintenance of accurate records. The designated representative shall be held accountable for compliance with all laws, rules, and permits applicable to business operation.~~

~~(19)~~(15) Emergency – any unusual incident resulting from natural or unnatural causes which endangers the health, safety, or resources of the state, including, but not limited to, a hurricane, storm, or red tide; petroleum spill; toxic substance discharge; inability of a sewage treatment plant to comply with permit conditions due to a breakdown of equipment, power outage, destruction by fire, wind, or by other cause.

~~(20) Firm – a certified shellfish dealer who is a shell stock shipper, shucker-packer, repacker, or depuration processor who possesses a shellfish processing plant certification license from the Department.~~

~~(21)~~(16) Food – any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

~~(22)~~(17) Food contact surface – a surface of equipment or utensil which food normally comes into contact; or a surface of equipment or utensil from which food may drain, drip, or splash into food or onto a surface normally in contact with food.

~~(23)~~(18) Food packaging materials – any material or container which food normally comes into contact.

~~(24)~~(19) Food safety hazard – any biological, chemical, or physical property that may cause a food to be unsafe for human consumption.

~~(25)(20)~~ Free liquor – that liquid portion of a container that passes through a porous straining device when the contents (oyster meats) of the container are drained.

~~(26)(21)~~ Growing area – an area in which market or seed shellfish are growing either naturally or artificially.

~~(27)(22)~~ HACCP – Hazard Analysis and Critical Control Points – A system of inspection, control, and monitoring measures initiated by a certified shellfish dealer to identify and control microbiological, chemical, or physical food safety hazards which are likely to occur in shellfish products produced by the firm.

~~(28)(23)~~ Harvester – a person engaged in the harvesting of shellfish.

~~(29)(24)~~ Health authority – the Department or its authorized representative.

~~(30)(25)~~ Heat shock – the process of subjecting molluscan shell stock to any form of heat treatment prior to shucking, including steam, hot water or dry heat, to facilitate removal of the meat from the shell without substantially altering the physical or organoleptic characteristics of the molluscan shellfish.

~~(31)(26)~~ High density aquaculture lease areas – legally-defined parcels that are surveyed and properly marked, describing and indicating corners and boundaries, that have been subdivided into individual aquaculture leases issued pursuant to Section 253.68, F.S., and paragraph Rule 18-21.004(2)(1), F.A.C.

~~(32)(27)~~ ICWW – Intracoastal Waterway.

~~(33)(28)~~ Key deficiency – a condition or practice which may result in adulterated, or misbranded product. A Key deficiency is not a minor violation.

~~(34)(29)~~ Lot of shell stock – a single type of bulk shell stock or container of shell stock of no more than one day's harvest from a single harvest area gathered by one or more harvesters.

~~(35)(30)~~ Lot of shucked shellfish – a collection of containers of no more than one day's shucked product from a single harvest area produced under conditions as nearly uniform as possible, and designated by a common container code or marking.

~~(36)(31)~~ Lot wet storage/depuration – all shellfish from a single depuration or wet storage tank or series of tanks serviced by a common treatment system.

~~(37)(32)~~ Mechanical refrigeration – refrigeration provided by an electric compressor in a system where temperature can be adjusted with a thermostat and the unit will maintain a temperature of 45 degrees F or less.

~~(38)(32)~~ Misbranded – any shellfish product whose labeling is false or misleading; any shellfish product in package form unless it bears labeling including (1) the name and place of business of the manufacturer, packer, or distributor; (2) an accurate statement of the quantity of the

contents in terms of weight, measure, or numerical count; and (3) meets labeling requirements of the Department within this Chapter.

~~(39)(34)~~ NSSP Model Ordinance – the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, published by the U.S. Department of Health and Human Services, ~~which is hereby incorporated herein by reference except for Section 5L 1.001(5)(b)1., F.A.C.~~

~~(40)(35)~~ Other deficiency – a condition or practice that is not in accordance with rule requirements and is considered a minor deficiency but is not a key or critical deficiency.

~~(41)(36)~~ Pest – refers to any objectionable animals or insects, including, but not limited to, birds, rodents, flies, and larvae.

~~(42)(37)~~ Plant supervisor – an individual, so designated in writing to the Department, who supervises all activities associated with the operation of the shellfish depuration plant. Responsibilities include, but are not limited to, overseeing the proper handling of shellfish, maintenance of the treatment plant, assuring compliance with sampling schedules and resultant microbiological bacteriological and water quality standards, and the maintenance of accurate records. The plant supervisor shall be held accountable for compliance with all laws, rules, and permits applicable to business operation.

~~(43)(38)~~ Processing – is the handling, unloading, storing, transporting, shucking, freezing, preparing, changing into different market form, manufacturing, preserving, packing, or labeling of shellfish or shellfish products.

~~(44)(39)~~ Prohibited area – an area from which the taking of shellfish is not permitted.

~~(40) Retail sale – sale to the ultimate consumer or to a person who will not resell the product.~~

~~(45) Public Water System – a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least 60 days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any “special irrigation district.” A public water system is either a “community water system” or a “non-community water system.” See the Code of Federal Regulations (C.F.R.), title 40, part 141, section 2.~~

~~(46)(41) Repacker/Repacking plant (RP) – a certified shellfish dealer, a person other than the original certified shucker-packer, who repacks shucked shellfish into other containers for distribution or sale. A repacker may also repack and ship shell stock. A repacker shall not shuck shellfish.~~

(47) Repeat Critical deficiency – is the same “critical” deficiency that has been listed on the corrective action plans for the same facility during the most recent consecutive inspection.

(48) Repeat Key deficiency – is the same “key” deficiency that has been listed on the corrective action plans for the same facility during the most recent consecutive inspection.

(49) Repeat Other deficiency – is the same “other” deficiency that has been listed on the corrective action plans for the same facility during the most recent consecutive inspection.

(50)(42) Restricted area – an area in which it is indicated by a sanitary survey or other monitoring program data that fecal material, pathogenic microorganisms, radio nuclides, harmful chemicals, and marine biotoxins are not present in dangerous concentrations such that shellfish harvested from such an area and subjected to a suitable and effective purification process are safe for human consumption.

(51) Retail sale – sale to the ultimate consumer or to a person who will not resell the product.

(52)(43) Sanitize – the effective bactericidal treatment of clean food contact surfaces of equipment and utensils by a process using only those safe sanitizing agents that have an available field test for strength and effectiveness, and is effective to yield a reduction of 5 logs, which is equal to a 99.999% reduction of representative disease microorganisms of public health importance. Such treatment shall not adversely affect the product and shall be safe for the consumer.

(53)(44) Scheduled Depuration Process (SDP) – a process which places shellfish harvested from restricted or approved waters into a controlled aquatic environment selected by the processor as adequate to effectively reduce the level of bacteria and viruses in live shellfish.

(54)(45) Scheduled Heat Shock Process (SHSP) – the process selected by the processor to heat shock a shellfish species in order to facilitate shucking without adversely affecting the microbial quality or altering the organoleptic characteristics of the species.

(55)(46) Scheduled Wet Storage Process (SWSP) – a process which places shellfish harvested from approved waters in containers or floats in natural bodies of water or in tanks containing natural or synthetic seawater for product enhancement.

(56)(47) Shellfish – all edible species of oysters, clams, and mussels, and whole or roe-on scallops either shucked or in the shell, fresh, or frozen.

(57)(48) Shellfish Relaying – the transfer of shellfish from one water bottom to another water bottom which activity would otherwise be prohibited; or the transfer of shellfish from a restricted or conditionally restricted area or an area otherwise closed for the harvesting of shellfish to a certified depuration plant.

(58)(49) Shellstock – shellfish which remain in their shells.

(59)(50) Shellstock plant – any establishment or place where shell stock are washed and packed or otherwise prepared for sale or shipment.

(60)(51) Shellstock shipper/Shellstock shipping plant (SS) – a certified shellfish dealer, a person who grows, harvests, buys, or repacks and sells shell stock. A shell stock shipper is not authorized to act as a shucker-packer or repacker. A shellstock shipper may also ship sealed containers of shucked shellfish.

(61)(52) Shuck date – the date shucked shellfish are initially removed from their shells.

(62)(53) Shucked shellfish – shellfish or parts thereof which have been removed from their shells.

(63)(54) Shucker-packer/Shucker-packer plant (SP) – a certified shellfish dealer a person who shucks and packs shellfish and who may act as a shell stock shipper and/or repacker.

(64)(55) Swing deficiency – a deficiency that could either be a “critical” or a “key” deficiency, or it could be either a “key” or an “other” deficiency, depending on the location, severity and circumstances.

(65)(56) Terminal sale date – the last day freshly packed shellfish shall be offered for sale; that being no more than 14 calendar days subsequent to the date the product was shucked, or for oyster shell stock harvested from the Gulf of Mexico, no more than 14 days subsequent to the date shell stock was harvested.

(66)(57) Time of Harvest – is defined as that time when shellfish are first removed from growing waters and placed on or in a manmade conveyance or other means of transport.

(67)(58) Time of Refrigeration – is defined as the time when shellfish are first placed within an ambient environment of 45 degrees F or less.

(68)(59) Unclassified area – an area for which no recent sanitary survey exists.

(69)(60) UV – Ultraviolet.

(70) Violation and deficiency – are used interchangeably with in these rules. The meaning of both is that a facility is not in compliance with the rules governing their operation as outlined in Chapter 5L-1, F.A.C., “The Comprehensive Shellfish Control Code”.

(71) Warning letter – a warning letter includes a notice of non-compliance.

(72)(61) Wet storage – the temporary storage of shellfish received from permitted or approved sources and intended for marketing, on privately-owned or leased bottom, in tanks containing seawater, or on floating facilities in natural bodies of water.

(73)(62) Wholesale – any sale to any person other than the final ultimate consumer.

Specific Authority 597.020 ~~570.07(23)~~ FS. Law Implemented 597.020 ~~370.074~~ FS. History--New 1-4-87, Amended 5-21-87, 8-10-88, 7-9-89, 11-5-92, 5-20-93, Formerly 16R-7.003, Amended 7-3-95, 5-8-96, 2-6-97, 6-23-99, Formerly 62R-7.003, Amended 8-9-00.

5L-1.004 Production and Market Standards.

(1) Shellfish offered for sale at the wholesale market level shall not exceed the following bacteriological criteria. Fecal coliform density of not more than 230 MPN per 100 grams; and a 35° C plate count of not more than 500,000 per gram. Any meat with counts exceeding these standards will be subject to rejection or seizure by the Department.

(2) Shucked and packed shellfish shall not contain more than 15% by volume of free liquor until the product reaches the consumer.

(3) No shucked shellfish shall be sold, offered for sale, processed, packed, or repacked after the terminal sale date.

(4) No frozen shellfish products shall be thawed to be processed or sold as fresh shellfish products. Thawed frozen shellfish shall be labeled as "previously frozen" in accordance with Rule Section 5L-1.007, F.A.C.

(5) Shellfish having undergone a depuration process shall not be released for sale prior to laboratory analysis and approval by the plant supervisor or representative. Shellfish shall not be released if the geometric mean of three samples exceeds a fecal coliform MPN of 45 per 100 grams of sample, or if any sample's fecal coliform MPN exceeds 100 per 100 grams of sample.

(6) The use of the elevated temperature coliform plate count is authorized for the bacteriological evaluation of hard clams, Mercenaria spp. only from a depuration facility.

(7) Should the Department suspect contamination of shellfish by metallic ions and compounds, pesticides, detergents, radionuclides, marine toxins, or any toxic substance or adulterate, the Department shall require that shellfish meat be analyzed for such contaminants before suspect shellfish are released for sale.

(8) Shellfish or shellfish products determined to be adulterated, or misbranded shall be subject to recall by the certified shellfish dealer responsible for distribution of the products. For a first offense in a certification license year, the Department will apply mitigation measures if applicable. Mitigation measures include on-the-spot correction and reconditioning. For repeat violations, and where mitigation measures are not approved by the Department available, the Department shall issue an order to stop the sale or to condemn, and destroy, shellfish or shellfish containers found to be adulterated, misbranded, or found to be held in non-compliance with any of the provisions of this Chapter. Reconditioning shall be a mitigation option only if the products will meet the safety standards of Rule 5L-1.004, F.A.C., and the labeling standards of Rule 5L-1.007, F.A.C. Stop sale, condemnation, or reconditioning of products or containers shall be based on individual conditions found during inspections and shall be conducted using a Seizure and

Destruction Order Stop Sale Notice, DACS Form 15001, Revision 05/01 7/2000. This form is herein incorporated by reference, and available for inspection at the Department's offices located at 1203 Governors Square Boulevard, 5th Floor, Tallahassee, Florida 32301.

Specific Authority 597.020 FS. Law Implemented 597.020 ~~370.074~~ FS. History--New 1-4-87, Amended 8-10-88, 7-9-89, Formerly 16R-7.006, Amended 7-3-95, 5-8-96, 2-6-97, Formerly 62R-7.006, Amended 8-9-00.

5L-1.005 Shellfish Processing Plant Certification License and Fees.

(1) Upon request, the Department shall provide an application form entitled Shellfish Processing Plant Certification License Application, Form Number DACS 15007, Revision 05/01 7/2000, herein incorporated by reference, and obtainable by writing the Department of Agriculture and Consumer Services, Division of Aquaculture, 1203 Governors Square Boulevard, 5th Floor, Tallahassee, Florida 32301. This completed application form is required necessary for certification licensing of shellfish establishments. The following information shall be requested on the application form:

(a) The name and address of the firm, corporation, or establishment;

(b) The name and address of the legal entity that owns the establishment in (a) above owner and operator;

(c) Name of the registered agent;

(d) The name of the designated representative, person in charge, or plant supervisor that will officially represent the firm on site.

(e)(e) The plant classification; and

(f)(d) The type of product to be processed.

(2) Possession of a wholesale license to sell saltwater products issued under provisions of Section 370.07, F.S., shall be required for certification licensing under this chapter. A copy of the current wholesale or retail license to sell saltwater products shall be submitted with the Shellfish Processing Plant Certification License Application. A shellfish processing plant certification license number will be assigned by the Department upon receipt of a completed Shellfish Processing Plant Certification License Application. Upon receipt of a completed application, inspection of the physical facility will be conducted within 30 calendar days. Certification Licenses and numbers are not transferable; the establishment, not the operator is certified.

(3) If the water supply is not from a public water system, possession of satisfactory bacteriological water analysis results, which shall not equal or exceed two cfu (colony forming units) per 100 mls for total coliform bacteria on any consecutive samples, and shall not equal or exceed two cfu per 100 mls for fecal coliform or E. coli bacteria on any samples, shall be required for certification under this chapter. Analysis shall be from the source water, and an outlet location within

the plant, and ice if any is used. The water shall be sampled and approved prior to use of the water supply, every six months while the water supply is in use, and after the water supply has been repaired and disinfected. If the source is a public water system, only a sample from an outlet in the plant and ice if used, is required prior to certification. The water sample shall be taken and acceptable results provided to the Department within 90 days prior to certification. A copy of the current acceptable water analysis shall be submitted with the Shellfish Processing Plant Certification License Application. Certification is granted only to firms who meet the following inspection requirements: no "Critical" item deficiencies; not more than two (2) "Key" item deficiencies; and not more than three (3) "Other" item deficiencies. Failure of a certification inspection requires reapplication by the applicant. After successful inspection of the facility and the applicant's meeting the requirements of Rule 5L-1.005, F.A.C., a shellfish certification license, DACS Form 15002, revision 7/2000, will be issued. This form is herein incorporated by reference, and obtainable by writing the Department of Agriculture and Consumer Services, Division of Aquaculture, 1203 Governors Square Boulevard, 5th Floor, Tallahassee, Florida 32301. After a firm is certified, unannounced inspections using the DACS plant inspection forms 15009, revision 7/2000, and 15012, revision 7/2000 shall be conducted during periods of operation and at such frequency as necessary to assure that adequate operational and sanitary conditions are maintained. These forms are herein incorporated by reference, and obtainable by writing the Department of Agriculture and Consumer Services, Division of Aquaculture, 1203 Governors Square Boulevard, 5th Floor, Tallahassee, Florida 32301. At the completion of each inspection, a copy of the completed inspection forms shall be issued to the plant supervisor or the plants designated representative.

(4) A shellfish processing plant certification license number will be assigned by the Department after receipt of a completed Shellfish Processing Plant Certification License Application with the nonrefundable license fee. Fees charged to new shellfish processing plant certification license applicants shall be the entire applicable fee when the completed application is submitted for the intended initial operation of the plant is between July 1 through December 31 of the certification period and shall be half of the applicable fee when the application is submitted for the intended initial operation of the plant is between January 1 through June 30 for that certification period. Upon receipt of a completed application with the nonrefundable license fee, an inspection of the physical facility will be conducted within 30 calendar days. Renewal certification — A dealer shall make application for certification renewal annually. The certification shall not be renewed for any dealer until the dealer has: eliminated any critical deficiencies and agreed to a compliance schedule which carries forward into the next certification period no

more than 1 key and 2 other deficiencies identified in previous inspections; and addresses any new key or other deficiencies in a new or revised compliance schedule.

(5) Certification is granted only to firms who meet the following inspection requirements: the firm has no "Critical" item deficiencies, the firm does not have more than two (2) "Key" item deficiencies and the firm does not have more than three (3) "Other" item deficiencies. Failure of a certification inspection requires reapplication by the applicant but does not require an additional nonrefundable license fee within the certification period for that specific location. After successful inspection of the facility and the applicant's meeting the requirements of Rule 5L-1.005, F.A.C., a Shellfish Processing Certification License, DACS Form 15002, Revision 02/01, will be issued. After a firm is certified, unannounced inspections using the DACS plant inspection forms 15009, Revision 06/01, and 15012, Revision 06/01, shall be conducted during periods of operation and at such frequency as necessary to assure that adequate operational and sanitary conditions are maintained. These forms are herein incorporated by reference, and obtainable by writing the Department of Agriculture and Consumer Services, Division of Aquaculture, 1203 Governors Square Boulevard, 5th Floor, Tallahassee, Florida 32301. Upon completion of the initial inspection where the applicant has met the requirements for licensure, he/she will be given a corrective action plan by the Department, if there are any "key" or "other" deficiencies cited. The licensee must comply with the corrective action plan outlined on form DACS-15012 Revision 06/01, that is given to the certified dealer, plant supervisor or the designated representative of the plant at the end of the inspection. At the completion of each inspection, a copy of the completed inspection forms shall be issued to the plant supervisor or the plants designated representative. In the event that a licensed certified shellfish processing plant changes its name, changes owners, changes location, changes address, or changes classifications, a new application, DACS form 15007, revision 7/2000 must be completed and submitted to the department. The firm will be required to go through the complete certification process.

(6) Renewal certification — A dealer shall make application for certification renewal annually. The license year starts on July 1 and ends on June 30. The certification shall not be renewed for any dealer until the dealer has: eliminated any "Critical" deficiencies, does not have more than two (2) "Key" item deficiencies, and does not have more than three (3) "Other" item deficiencies. The application for renewal plus the nonrefundable license fee must be received by the agency by April 1 to have an inspection for recertification for the next certification period of a shellfish processor prior to June 30. The license fee will be effective starting certification for July 1, 2002. The application for renewal certification will be denied to any dealer not meeting the above. Possession of a

~~wholesale license to sell saltwater products issued under provisions of Section 370.07, F.S., shall be required for certification licensing under this chapter.~~

~~(7) The Shellfish Processing Plant Certification License will be issued to a licensee at a specific location. The legal entity will be the licensee at that specific location as listed on the Shellfish Processing Plant Certification License. Possession of satisfactory bacteriological water analysis results, which shall not equal or exceed two cfu (colony forming units) per 100 mls for total coliform bacteria on any consecutive samples, and shall not equal or exceed two cfu per 100 mls for fecal coliform or E. coli bacteria on any samples, shall be required for certification under this chapter. Analysis shall be from the source water, and an outlet location within the plant, and ice if any is used. If the source is a public water supply, only a sample from an outlet in the plant and ice if used, is required. Samples shall be taken within 60 days prior to certification.~~

~~(8) One shellfish processing plant certification license shall be issued and a fee shall be charged to a shellfish processing plant owner operating at a single location, regardless of whether the location may qualify for two or more licenses or permits. However, the shellfish processing plant certification license does exempt that single location from the requirement of having a food permit issued by the Department's Division of Food Safety.~~

~~(9) The following schedule of charges is established for each type of shellfish processing plant certification license.~~

~~(a) Depuration processing plant – this type of establishment is designated as DP. This type facility will be inspected at least monthly as required by the National Shellfish Sanitation Program Model Ordinance. The license fee for this type facility is \$600.00 annually.~~

~~(b) Repacking plant – this type of establishment is designated as RP. This type facility will be inspected at least quarterly as required by the National Shellfish Sanitation Program Model Ordinance. The license fee for this type facility is \$300.00 annually.~~

~~(c) Shucker-packer plant – this type of establishment is designated as SP. This type facility will be inspected at least quarterly as required by the National Shellfish Sanitation Program Model Ordinance. The license fee for this type facility is \$300.00 annually.~~

~~(d) Shellstock shipping plant – this type of establishment is designated as SS. This type facility will be inspected at least every six months as required by the National Shellfish Sanitation Program Model Ordinance. The license fee for this type facility is \$150.00 annually.~~

~~(10) In the event that a licensed certified shellfish processing plant changes its name, changes owners, changes location, changes address, or changes classifications, a new application, DACS form 15007, Revision 05/01 must be~~

completed and submitted with the nonrefundable license fee to the Department. The firm will be required to go through the complete certification process.

~~(11) The nonrefundable license fee must be submitted by check or money order made payable to the Florida Department of Agriculture and Consumer Services, P. O. Box 6700, Tallahassee, Florida 32314-6700. The fees will be deposited in the General Inspection Trust Fund.~~

~~(12)(8) Possession of a mechanically refrigeration unit that is cooled non-portable and is storage unit able to maintain an ambient temperature of 45° F or below and be of sufficient size to handle one day's production shall be required for certification under this chapter.~~

~~(13)(9) Each applicant for a shellfish certification license shall have conducted a Hazard Analysis to determine whether there are food safety hazards that are reasonably likely to occur for shellfish products produced at the location listed on DACS form 15007, Revision 05/01 7/2000 Shellfish Processing Plant Certification License Application. Each certified shellfish dealer shall have someone with adequate HACCP training, knowledge or experience to develop a HACCP plan, reassess and modify the HACCP plan and perform the records review. Each certified shellfish dealer shall prepare a written HACCP plan. The HACCP plan shall incorporate critical control points that will eliminate, prevent, or reduce to an acceptable level control the hazards identified in the hazard analysis. Critical control points shall have established critical limits for parameters to ensure when exceeded the dealer takes corrective actions. The HACCP plan shall include the procedures, and frequency thereof that will be used to monitor each of the critical control points to ensure compliance with the critical limits. The HACCP plan shall provide for a recordkeeping system that documents the monitoring of the critical control points. The records shall contain the actual values and observations obtained during monitoring. The plan shall be signed and dated by the owner or corporate officers of the firm at the time of its implementation, and after any modification. Each establishment shall develop or adopt acceptable sanitation monitoring records to meet the requirements in subsection 5L-1.013(12), F.A.C.~~

~~(14)(40) Each owner or corporate officer who is a certified shellfish dealer shall verify that the HACCP plan is adequate to control food safety hazards that are reasonably likely to occur, and that the plan is being effectively implemented. Verification shall include at a minimum:~~

~~(a) Reassessment of the HACCP plan on an annual basis, or when changes occur that could affect the hazard analysis; and~~

~~(b) Ongoing verification including a review of any consumer complaints received by the processor to determine whether they relate to the performance of critical control points or reveal the existence of unidentified critical control points, or the calibration of process-monitoring instruments.~~

~~(15)(14)~~ All persons who commercially engage in purchasing shellfish from harvesters, shucking, packing, or repacking or transporting shellfish are subject to inspection and shall allow inspection by the Department or its duly authorized representatives during normal operating hours and any time there is shellfish processing, in order to determine compliance with sections of this rule. The Department shall inspect all licensed certified shellfish processing plants. Denial of access for such inspection will automatically institute agency administrative action for immediate suspension or revocation of the shellfish processing plant certification license.

~~(16)(12)~~ It is unlawful for persons to commercially engage in purchasing from harvesters, shucking, packing, or repacking shellfish without having complied with these rules and applied for and obtained a shellfish processing plant certification license from the Department. All certification licenses expire automatically on June 30 following date of issue.

~~(17)(13)~~ Upon issuance of a processing plant certification license, the Department shall notify the U.S. Food and Drug Administration of those certified shellfish dealers business name and certification license number be published in the Interstate Certified Shellfish Shippers List.

~~(18)(14)~~ The shellfish processing plant certification license shall be posted in a conspicuous location on the premises.

(19) No person shall attempt, by means of any threat or violence, to deter or prevent an agent of the Department from performing any duties imposed by law.

(20) All licensed certified shellfish processing plants shall maintain on the premises a current copy of this Rule Chapter, 5L-1, F.A.C., entitled "The Comprehensive Shellfish Control Code" and a current copy of the "Model Ordinance" of the National Shellfish Sanitation Program, Guide for the Control of Molluscan Shellfish published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration.

"PROPOSED EFFECTIVE DATE: JULY 1, 2002."

Specific Authority ~~597.020 570.07(2)~~ FS. Law Implemented ~~597.020 370.071~~ FS. History—New 1-4-87, Amended 8-10-88, Formerly 16R-7.007, Amended 7-3-95, 5-8-96, 2-6-97, 6-23-99, Formerly 62R-7.007, Amended 8-9-00, 7-1-02.

5L-1.006 Compliance and Penalties ~~Suspension or Revocation of Shellfish Processing Plant Certification License, Routine or Emergency Action.~~

(1) The Department shall initiate enforcement action as follows:

(a) The Department shall inspect and re-inspect all licensed certified shellfish processing plants as necessary. The deficiency(ies) cited in an inspection report is not determined by the type of inspection being conducted. When a "Critical" deficiency is detected, operations affected by the critical deficiency will be suspended and the deficiency will be

~~corrected during the inspection or the firm's certification license to operate shall be suspended as an immediate public health threat.~~

(b) At the completion of an inspection where the Department finds a deficiency(ies) at a facility, the Department will do a corrective action plan. The Department will solicit input from the certified shellfish dealer, plant supervisor or the designated representative. The consent and cooperation of the certified shellfish dealer, plant supervisor or the designated representative is not necessary for the creation of a corrective action plan by the Department nor will the lack of cooperation from the certified shellfish dealer, plant supervisor or the designated representative effect the plans' validity or requirement that the plan be implemented. A copy of the inspection report (DACS 15009, Revision 06/01) and the corrective action plan (DACS 15012, Revision 06/01) will be given to one of the following individuals who is present in the facility at the time the inspection is concluded: the plant supervisor, the certified shellfish dealer, or the designated representative. The certified shellfish dealer, plant supervisor, and the designated representative shall comply with the corrective action plan as outlined on form DACS-15012 Revision 06/01 that is given to the certified shellfish dealer, plant supervisor or the designated representative of the plant at the end of the inspection. The certified shellfish dealer, plant supervisor, or the designated representative's failure to comply with the corrective action plan outlined on form DACS-15012 Revision 06/01 will lead to a fine, suspension, or revocation of the certified dealer's certificate. When "Key" item deficiencies, are cited in violation of Chapter 5L 1, F.A.C., the firm will be noticed that the firm's operation is in violation of sections of this Chapter. The firm's representative will be requested to provide the Department a commitment that the corrections will be made. When "Key" item deficiencies are cited, the Department may initiate a warning letter which will ask the firm to write a corrective action plan and list the corrective actions that will be taken or have been taken to ensure correction of the violations. Failure to make satisfactory corrective actions of "Key" item deficiencies within an agreed upon time period as specified in a corrective action plan, shall result in the issuance of a letter of intent to suspend the firm's certification license for a minimum period of seven (7) calendar days, and until corrections have been completed.

(c) If upon inspection of a facility by an employee of the Department it is determined that there are "Critical", "Key", or "Other" deficiency(ies) of the facility, the following schedule will be used by the Department with respect to the administrative actions to be taken:

Critical deficiency(ies)

When a "Critical" deficiency(ies) is detected, operations affected by the "Critical" deficiency will be suspended and the deficiency will be corrected during the inspection or the firm's certification license to operate shall be immediately suspended

as a public health threat. If the certification license to operate is suspended, it will remain suspended until corrections are made and verified by Department inspection. Product affected by the "Critical" deficiency will be controlled to prevent contaminated or adulterated product from reaching consumers. The Department will mandate a recall of the product from the market by the certified shellfish dealer and notify necessary officials of the recall.

In addition to these actions the following administrative penalty schedule will apply:

<u>Repeat "Critical" deficiency(ies)</u>	<u>The certified shellfish dealer will be fined \$500.00 per violation</u>
<u>2nd repeat "Critical" deficiency(ies)</u>	<u>The certified shellfish dealer will be fined \$1,000.00 per violation</u>
<u>3rd repeat "Critical" deficiency(ies)</u>	<u>The certified shellfish dealer will be suspended for 7 days</u>
<u>4th repeat "Critical" deficiency(ies)</u>	<u>The certified shellfish dealer license will be revoked for the remainder of the certification period.</u>

Key deficiency(ies)

The sanction to be imposed on a certificate holder upon the finding of repeat "Key" deficiency(ies), after the initial inspection that leads to the certificate being issued, will be as follows:

<u>Repeat "Key" deficiency(ies)</u>	<u>The certified shellfish dealer will be fined \$100.00 per violation</u>
<u>2nd repeat "Key" deficiency(ies)</u>	<u>The certified shellfish dealer will be fined \$200.00 per violation</u>
<u>3rd repeat "Key" deficiency(ies)</u>	<u>The certified shellfish dealer will be suspended for 7 days</u>
<u>4th repeat "Key" deficiency(ies)</u>	<u>The certified shellfish dealer will be suspended for 14 days</u>
<u>5th repeat "Key" deficiency(ies)</u>	<u>The certified shellfish dealer license will be revoked for the remainder of the certification period.</u>

Other deficiency(ies)

A warning letter will be sent to a certificate holder upon the finding of 5 or more "Other" deficiencies. The sanction to be imposed on a certificate holder upon the finding of repeat "Other" deficiency(ies) after the inspection that finds 5 or more "Other" item deficiencies, will be as follows:

<u>Repeat "Other" deficiency(ies)</u>	<u>The certified shellfish dealer will be fined \$25.00 per violation</u>
<u>2nd repeat "Other" deficiency(ies)</u>	<u>The certified shellfish dealer will be fined \$50.00 per violation</u>
<u>3rd repeat "Other" deficiency(ies)</u>	<u>The certified shellfish dealer will be fined \$75.00 per violation</u>
<u>4th or subsequent repeat "Other" deficiency(ies)</u>	<u>The certified shellfish dealer will be fined \$100.00 per violation</u>

(e) Firm's which are found with four or more "Key" item deficiencies after initial suspension in any twelve month period, will be issued a letter of intent to suspend for a minimum period of fourteen (14) calendar days and until corrective actions have been completed.

(d) In those cases involving no fine, suspension or revocation, a warning letter will be sent to the certified dealer along with a statement of rights when the establishment has 3 or more "Key" item deficiencies cited in violation of Chapter 5L-1, F.A.C., or when an establishment has 2 "Key" item deficiencies and 3 "Other" item deficiencies cited in violation of Chapter 5L-1, F.A.C., or 1 "Key" item deficiency and 4 "Other" item deficiencies cited in violation of Chapter 5L-1, F.A.C. In cases involving the imposition of a fine the Department will forward an administrative complaint to the certified shellfish dealer, a proposed settlement offer and a statement of rights. In cases involving the imposition of a suspension or revocation of a certified shellfish dealer's license the Department will forward an administrative complaint, a statement of rights and a proposed settlement agreement to the certified shellfish dealer except when the Department has to immediately suspend a certification license because of an immediate public health threat. Payment of fines owed to the Department must be made within 22 days of the receipt by the certificate holder of the notice imposing the fine absent a request for a hearing on the matter pursuant to Chapter 120, Florida Statutes. Continued violation with four or more "Key" item deficiencies after a second suspension in any twelve month period, will result in revocation of the firm's certification license for the remainder of the certification year.

(e) A renewal of a firm's certificate will not be made if there are any unpaid fines with respect to prior certification periods. When "Other" item deficiencies are detected, the firm shall correct the deficiencies within an agreed upon time period as specified in a corrective action plan.

(f) Prior to suspending or revoking any certification license, the Department shall provide at least 21 days notice by certified mail or to the certification license holder, plant operator if different from the certification license holder, of the Department's intended action. The notice shall contain:

1. ~~The specific facts or conduct which are relied upon to establish the violation;~~

2. ~~The statutory provision or rule alleged to have been violated; and~~

3. ~~A statement that the certification license holder has 21 days from receipt of the notice in which to file a petition requesting an administrative hearing pursuant to Section 120.57, F.S.~~

(2) The Department or its agents shall summarily suspend a certification license if it is determined that there is an immediate serious danger to the public health, safety, or welfare requiring such emergency action. The Department shall, at the time the emergency action is taken, initiate proceedings as provided in Section 120.60, F.S.

(3) Upon suspension or revocation of a certification license, the Department shall notify the U.S. Food and Drug Administration so that the dealer's business name and certification license number may be removed from the Interstate Certified Shellfish Shippers List. Upon reinstatement of the license, the Department shall notify the U.S. Food and Drug Administration so that the dealer's business name and certification license number may be reinstated on the Interstate Certified Shellfish Shippers List.

(4) When an employee of the Department finds, or has reason to believe, that any equipment which is located at a licensed facility is in violation of this chapter so as to be dangerous or unsanitary within the meaning of this chapter, an employee of the Department may issue and enforce a stop-sale, stop-use, removal, or hold order, which order gives notice that such equipment is, or is suspected of being, in violation and has been detained or embargoed and which order warns all persons not to remove, use, or dispose of such equipment by sale or otherwise until permission for removal, use, or disposal is given by the Department or the court. It is unlawful for any person to remove, use, or dispose of such detained or embargoed equipment by sale or otherwise without such permission.

(5) Settlement and Additional Enforcement Remedies. In determining the appropriate disciplinary penalty the Department will consider the compliance record of the violator. The provisions of this rule shall not be construed to limit the authority of the Department to enter into settlement with any party per section 120.57(4), Florida Statutes, or to prohibit additional administrative remedies or civil actions. Settlement agreements can provide for installment payments and costs for up to six months. The Department will enforce a failure to comply with a settlement agreement with the penalties and remedies provided in the settlement agreement or as authorized by law.

(6) All fines collected under this rule will be used by the Department for education of people who work in the shellfish industry.

(7) The fines outlined in this section will become effective on January 1, 2002.

“PROPOSED EFFECTIVE DATE: JANUARY 1, 2002.”

Specific Authority 597.020 FS. Law Implemented ~~597.020~~ ~~370.074~~ FS. History—New 1-4-87, Amended 8-10-88, 7-9-89, Formerly 16R-7.009, Amended 7-3-95, 2-6-97, Formerly 62R-7.009, Amended 8-9-00, ~~7-1-02~~.

5L-1.007 Container Identification, Terminal Sale Date; Prohibitions.

(1) Shucked shellfish container – The packer's or repacker's shellfish processing plant certification license number preceded by the state abbreviation must be embossed, imprinted, lithographed, or otherwise permanently and legibly recorded on the external body of containers or on the lid if the lid becomes an integral part of the container during the sealing process (Example: FL-872-SP). Containers shall permanently indicate type of product, quantity, and name and address of packer, repacker, or distributor. Containers of fresh shellfish, with a capacity of less than 64 ounces, shall further clearly and permanently bear the terminal sale date, by the numerical month, day, and last digit of the year. Containers of fresh shellfish with a capacity of 64 ounces or more, bears the actual shucking date by numerical month, day, and last digit of the year, in that order (Example: 01015). Reusable bulk storage containers shall be identified with state of origin, harvest date, and shuck date. Containers of frozen or previously frozen shellfish shall further clearly and permanently bear the date of shucking by numerical month, day, and last digit of the year, in that order (Example: 02097). Previously frozen shucked shellfish shall also have the freeze date and the thaw date following the same format. The terminal sale date for previously frozen shucked shellfish will be calculated by adding the day of shucking plus amount of time under refrigeration if not frozen, and adding the days that the product has been held thawed. Repacked shellfish containers shall also bear an appropriate code identifying the original packer.

(2) Each commercial harvester or each certified shellfish dealer shall affix a durable, waterproof tag of minimal size – 2 5/8 by 5 1/4 inches – to each container of shellstock; for commercial harvesters this shall be done at each harvest location; for certified shellfish dealers this shall be done after final packing. In the case where a certified shellfish dealer is also the harvester, that dealer's tag may also be used as the harvester's tag.

(3) The commercial harvester's tag's shall contain legible waterproof information arranged in the specific order as follows:

- (a) The harvester's saltwater product license number or aquaculture certificate number;
- (b) The date of harvesting;
- (c) The time of harvest;
- (d) The time of refrigeration, if applicable;

(e) The identification of the harvest area using the four digit area number or name of the harvest area listed in Table 2, which is incorporated herein and appears at the end of this chapter, as well as the most precise identification within that area as practicable;

(f) Common name of shellfish and quantity of shellfish;

(g) The following statement will appear in bold capitalized type "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FOR 90 DAYS."

(4) Bulk tagging is allowed for those aquaculturists operating with an aquaculture certificate. A bulk tag, containing the information required in (3)(a)-(g), along with the name of the certified shellfish dealer which the product is consigned to, shall be completed at each harvest location.

(5) Bulk tagging, by a certified shellfish dealer, while washing, packing, depuration, wet storage, staging and intrastate transport of shellfish is permissible up to final packaging only when the lot container (i.e., pallet), contains shellfish which are harvested on the same day, from the same harvest area, and have the same intended use (i.e., for halfshell consumption, for shucking, or for further processing), and is tagged as follows:

(a) The statement "All Shellfish containers in this lot have the same date and area of harvest, as well as the same intended use",

(b) Harvest date,

(c) Harvest area,

(d) Original Dealer/Shipper identification,

(e) Number of units in this lot container.

(6) The dealer's tag shall contain legible and indelible information arranged in the specific order as follows:

(a) The shellfish shipper, shucker-packer, repacker, depurator, or distributors name, address, processing plant certification number;

(b) The original shipper's certification number including the state abbreviation;

(c) The date of harvesting;

(d) The identification of the harvest area, and for Florida harvest areas the four digit code or name of the harvest area found in (3)(e) above;

(e) Common name of shellfish and quantity of shellfish; and

(f) The following statement will appear in bold capitalized type "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FOR 90 DAYS."

(g) For oyster shellstock harvested from the Gulf of Mexico, the terminal sale date as a numeric date depicting month, day, and last digit of the year, not to exceed 14 days after the harvest date, or the statement "Sell Within 14 days of the Harvest Date".

(h) If shellstock exceeds the time limit for refrigeration found in subsection Chapter 5L-1.008(5),(6), F.A.C., the shellstock dealer tag shall be identified with the language "FOR SHUCKING ONLY BY A CERTIFIED DEALER".

(i) For depuration processors, paragraphs subsections (a), (d), (e), and (f) are required as well as the date of processing, and the depuration cycle number.

(j) For shellstock wet stored the following statement: "This product was wet stored on or at (Lease # or Facility certification number) from (date) to (date)".

(7) Containers of treated shellfish from depuration facilities shall be tagged in accordance with item (6) in addition to the lot number and date shellfish were released from the treatment plant.

(8) Shellfish identification, out-of-state – No shellfish from sources outside of Florida shall be brought into the state for purpose of resale or public distribution unless the product bears evidence of certification from the state or nation of origin and certification is based on requirements similar to those outlined in this Chapter.

(9) In addition to the identification and labeling requirements of subsections (1) and (2), containers of fresh, frozen, previously frozen or repacked shellfish or containers of shellstock must indicate the state of origin of the shellfish, e.g., LA, MS, TX. For shellstock this requirement can be by (6)(a) and (b) above.

(10) Oyster shellstock and shucked oyster containers shall be labeled with the following statement: "CONSUMER INFORMATION There is a risk associated with consuming raw oysters. If you have chronic illness of the liver, stomach or blood or have immune disorders, you are at greater risk of serious illness from raw oysters and should eat oysters fully cooked. If unsure of your risk, consult a physician."

(11) It shall be unlawful for any person, firm, corporation, wholesale or retail dealer to sell or offer for sale any fresh, ~~or previously frozen~~ shellfish after the terminal sale date has expired, or sell or offer for sale any fresh, frozen, or previously frozen shellfish not in compliance with any and all requirements of Chapter Rule 5L-1, F.A.C.

(12) Whoever knowingly or willfully alters or damages in any manner, or loans or transfers to another person any certification license number or shellfish tags, or any person who uses the certification license or shellfish tags, other than the person to whom they were issued, shall be in violation of this section and shall be subject to certification license suspension or revocation in addition to any other penalty for violation of Chapter Rule 5L-1, F.A.C.

Specific Authority 597.020 570.071(23) FS. Law Implemented 597.020 370.071 FS. History—New 1-4-87, Amended 5-21-87, 8-10-88, 7-9-89, 8-30-89, 5-6-93, 9-14-93, 8-21-94, Formerly 16R-7.010, Amended 9-1-95, 5-8-96, 2-6-97, 10-12-97, 2-12-98, 2-25-98, 7-1-98, 11-13-98, 12-28-98, 3-18-99, 7-1-99, Formerly 62R-7.010, Amended 6-19-00, 8-9-00, _____.

5L-1.008 Shellfish Handling.

(1) Wet storage shall be conducted upon execution of an agreement between a person, firm, or corporation possessing a shellfish processing plant certification license and the Department. Each agreement shall include the following provisions:

(a) The coordinates in Latitude and Longitude where the facility is to be located.

(b) A description of all facilities and equipment to be used to wet-store shellfish.

(c) A listing of the species to be wet-stored.

(d) If the wet storage facility is to be located upon or in waters of the state, the facility shall be marked and lighted so as not to be a hazard to navigation.

(e) If the wet storage facility is to be located on or in waters of the state, and is to be a manned structure, it shall be equipped with a U.S. Coast Guard approved Type III marine sanitation device; this device shall be maintained in working order and be used by all personnel for disposal of bodily wastes.

(f) All solid wastes shall be removed from the wet storage facility daily and disposed of in a shore-based receptacle.

(g) No anti-fouling paints or finishes shall be used on any portion of the wet storage facility.

(h) No shellfish shall be removed from a wet storage facility when the shellfish harvesting area in which such shellfish are stored is closed pursuant to Rule Chapter 5L-1.003, F.A.C., or because of emergency conditions as defined by Rule Chapter 5L-1.002, F.A.C.

(i) Should maintenance of the wet storage facility require that the facility be relocated, written notification shall be provided to the Department, by certified mail, a minimum of 10 working days prior to such relocation. All shellfish shall be removed from the facility prior to relocation.

(j) If wet storage is to be practiced using a shore-based facility, the applicable provisions of Rules Sections 5L-1.002, 5L-1.010, 5L-1.011, 5L-1.012, 5L-1.013, subsections 5L-1.015(2), (3), (4), (5), (6) and (7), and Rules 5L-1.017, and 5L-1.018, F.A.C., shall apply. All shore-based facilities shall employ ultraviolet light treatment of all incoming and recirculated seawater. All water quality measurements required by Rule Section 5L-1.017, F.A.C., shall be documented and such data retained for inspection by the Department for a minimum of one year. Paragraphs Rule 5L-1.008(1)(a), (b), (d), (e), (f), (h), and (i), F.A.C., shall not apply to a shore-based facility.

(k) The agreement shall be valid for no more than 1 year from the date it is signed by the Department.

(2) Boats and vehicles – Boats and vehicles used in harvesting or transporting shellfish shall be constructed, operated, and maintained, so as to protect the shellfish from contamination. Fuel tanks or other sources of contamination shall not be permitted to come into contact with shellfish. All

boats used for commercial harvesting and handling shellfish shall be designed in such a way to prevent shellfish from coming in contact with any bilge water. No dogs or other animals shall be allowed at any time on vessels or vehicles used to harvest or transport shellfish. No bodily wastes shall be discharged overboard from a harvest vessel. Shellstock harvested with commercial intent shall be protected by effective shading on harvest boats and vehicles to protect shellstock from exposure to sun, birds, and other adverse conditions. Shellfish shall be held under conditions which allows air circulation and promotes evaporative cooling.

(3) Boats engaged in harvesting or transporting shellfish shall have on board an approved Type III marine sanitation device, portable toilet or other sewage disposal receptacle. Portable toilets shall:

(a) Be constructed of high quality plastic that is durable, easy to clean and will not spill;

(b)~~(a)~~ Be used only for the purpose intended;

(c)~~(b)~~ Be secured while on board the vessel and located to prevent contamination of shellstock by spillage or leakage;

(d)~~(c)~~ Be emptied only into an appropriate sewage disposal system;

(e)~~(d)~~ Be cleaned before being returned to the boat; and

(f)~~(e)~~ Not be cleaned with equipment used for washing or processing food.

(4) Use of other receptacles for sewage disposal are approved if the receptacles are constructed of impervious, cleanable materials, have tight fitting lids, and meet the requirements of paragraphs Section 5L-1.008(3)(a)-(e), F.A.C.

(5) Throughout the year, shellfish shall be harvested between sunrise and sunset as established by the U.S. Weather Service. During the months of November, December, January, February, and March, shellfish shall be refrigerated within the same day as harvest. During the months of April, May, and October, oysters or clams shall be refrigerated within twelve (12) hours of the time of harvest, or within the same day as harvest. During the months of June, July, August, and September, oysters shall be refrigerated within six (6) hours of the time of harvest, or within the same day as harvest, whichever is earlier. During the months of June, July, August, and September, clams shall be refrigerated within ten (10) hours of the time of harvest, or within the same day as harvest, whichever is earlier. All shellfish shall be delivered directly to a certified shellfish dealer possessing a shellfish processing plant certification license.

(6) Once received by a certified shellfish dealer, the shellstock lot shall be immediately processed and placed under temperature control and until sale to final consumer, the shellstock shall be maintained at an environmental temperature of 45° F or less and not be permitted to remain outside of temperature control for more than 2 hours at points of transfer such as loading docks or in the plant during processing except for the process described in paragraph 5L-1.013(3)(b), F.A.C.

Specific Authority 597.020 FS. Law Implemented ~~597.020~~ ~~370.074~~ FS. History—New 1-4-87, Amended 5-21-87, 8-10-88, 7-9-89, Formerly 16R-7.011, Amended 7-3-95, 2-6-97, 3-18-99, 6-23-99, Formerly 62R-7.011, Amended 8-9-00.

5L-1.009 Shellfish Relaying.

(1) No person, firm, corporation, municipality, association, or other governmental body shall engage in shellfish relay operations without first obtaining a “Special Activity License to Relay Shellfish” from the Department.

(2) A Special Activity License to Relay Shellfish may be issued to any person, firm, corporation, municipality, or other governmental body or agency holding a shellfish lease, aquaculture lease, or owning or operating a depuration plant, and whose past record indicates that they can be bonded and are responsible to oversee and assure compliance with all rules and licenses. A Special Activity License to Relay Shellfish may be issued to an association when the Department has public funds appropriated for relaying shellfish to public areas.

(3) Anyone wishing to conduct shellfish relaying operations shall provide the Department, upon application form entitled “Application for A Special Activity License to Relay Shellfish”, Form Number DACS 15109, Revision effective 05/01 7/2000, available from the Department of Agriculture and Consumer Services, 1203 Governors Square Boulevard, 5th Floor, Tallahassee, Florida 32301, and herein incorporated by reference, with the following information:

(a) Name, address, telephone number, and instructions for contacting person or persons responsible for relaying operations;

(b) Species of shellfish to be moved;

(c) Anticipated amount of shellfish to be moved;

(d) Method of harvesting, that is raking, tonging, treading, or diving;

(e) Areas from which shellfish will be moved;

(f) Areas to which shellfish will be moved;

(g) Method of transportation;

(h) Number of crews to be involved in the relay operation;

(i) The colors and design of flags to be used pursuant to paragraph Section 5L-1.009(4)(r), F.A.C.; and

(j) Laboratory secured for collection and laboratory analysis according to paragraph Rule 5L-1.009(4)(p), F.A.C., for shellfish leases and aquaculture leases and according to Rules 5L-1.016 and 5L-1.017, F.A.C., for depuration facilities.

(4) The Department, after reviewing the application and finding the plan in compliance with all applicable rules and regulations, and determining that the activity will not degrade, destroy or affect marine resources, shall issue a Special Activity License to Relay Shellfish within the general conditions set forth below:

(a) The Department is authorized to establish the effective date and expiration date of the “Special Activity License to Relay Shellfish”. In no case shall the expiration date be greater than one year from the effective date.

(b) Shellfish relaying shall be conducted only during daylight hours, commencing at official sunrise and ending at official sunset, as established by the U.S. Weather Service, except as defined by subparagraph subsection 5L-1.009(4)(n)5., F.A.C., under approved law enforcement, licensed security guard monitoring, or under the supervision of the Department. All persons involved in harvest, transport, and relaying shall comply with these rules and license conditions. Harvesters shall remain within the immediate control and observation of a monitor at all times. No more than 15 watercraft shall be under the supervision of a monitor at any time. The requirement for a monitor is not necessary when an association is conducting shellfish relaying to public areas in conjunction with Department supervision using public funds.

(c) All persons operating under a “Special Activity License to Relay Shellfish”, shall comply with all applicable shellfish rules, regulations, and specific license conditions listed on the “Special Activity License to Relay Shellfish”, under which he/she is operating.

(d) The licensee and person named as being responsible, shall be lawfully responsible for all activities conducted under the conditions of the “Special Activity License to Relay Shellfish” and applicable rules and regulations.

(e) The licensee must notify the local Marine Enforcement District Office and the Department within twelve (12) hours by telephone and in writing by certified mail or hand delivery, within three days of any changes in ownership or person named as being responsible for the activities conducted under the conditions of the “Special Activity License to Relay Shellfish”.

(f) The Licensee shall use only Department approved monitors, as specified by subsection 5L-1.009(5), F.A.C., to supervise relay harvesting, relay transport operations, placement on permitted site, and completion of required relay reports.

(g) Approved monitors must have completed the Department monitor training course and have a current “Department Approved Monitor Identification Card” showing successful completion of the course.

(h) Approved monitors shall have in their possession and available for immediate inspection, a current “Department Approved Monitor Identification Card” and a valid picture identification card during relay operations, available for immediate inspection.

(i) Approved monitors shall have in their possession a complete copy of the valid “Special Activity License to Relay Shellfish”, including complete copies of all licenses of each licensee who participates in a relay crew when the relay crew is comprised of more than one licensee, available for immediate inspection during any phase of relay operation. The copy(ies) shall be supplied by the licensee(s) or person(s) named as being responsible.

(j) Harvesters shall harvest shellfish within one hundred yards of the approved monitor, and remain under the immediate supervision and unobstructed view of the approved monitor, except as described in subparagraph subsection 5L-1.009(4)(n)13., F.A.C.

(k) No more than fifteen (15) harvesters shall comprise one crew and not more than one crew shall be under the immediate supervision of an approved monitor, except as described in subparagraph subsection 5L-1.009(4)(n)3., F.A.C.

(l) Relay teams that are treading or using rakes and/or tongs shall remain at a distance greater than 100 yards from any diving relay team that is in operation.

(m) Seagrasses shall not be disturbed.

(n) If relay harvesting is to be conducted by divers, the following additional conditions shall apply:

1. Any harvester who wishes to engage in a diving operation shall be required to obtain an "Underwater Shellfish Harvester Certificate" from the Florida Marine Enforcement District Office in which geographic area the harvester works. No certificate shall be issued to any applicant with a conviction of harvesting in a restricted, conditionally restricted, prohibited, or unclassified area within one year prior to application. No certificate shall be issued to any applicant who is not a certified diver.

2. It shall be unlawful for a diver to harvest shellfish on a relay crew without an "Underwater Shellfish Harvester Certificate" issued by the Florida Marine Enforcement District Office in which geographic area harvesting occurs.

3. A diver relay crew shall not be comprised of more than five divers, and not more than one crew shall be under the immediate supervision of an approved monitor.

4. Diving shall be the only method used by a team. Other harvesting methods, such as raking or tonging from a vessel or treading, shall not be permitted by a team employing diving.

5. The use of self contained underwater breathing apparatus (SCUBA) is not permitted.

6. The air supply shall come from the surface and consist of an apparatus which is supported by flotation, and used by no more than two harvesters at a time.

7. The air line from the apparatus to each diver shall not exceed 150 feet in length.

8. A designated diver's apparatus must be tethered to the approved monitor's vessel to provide a means of communication. The designated diver will provide communication for the approved monitor to the other divers.

9. Diver down flags shall be utilized as prescribed by Section 861.065, F.S. In addition, each diver shall have a diver's down flag on any flotation device designating the diver's approximate location.

10. Flags, as required by paragraph subsection 5L-1.009(4)(r)., F.A.C., shall be flown on the vessels and not on the flotation device used to support a compressor.

11. Each diver shall have in his possession, while in the water, a maximum of one container at any time. No other container of any type shall be allowed with the diver while in the water.

12. Harvesters shall remain within 100 yards of the approved monitor's vessel.

13. Relay teams shall remain more than 100 yards from any other relay team.

(o) Relayed shellfish shall be delivered directly to the designated license location on the same day of harvest. Diverting shellfish to any other source or location is prohibited.

(p) If shellfish are relayed to a lease in Approved or Conditionally Approved areas, they shall not be harvested without written permission from the Department. Permission will be granted only after a minimum of 15 days have elapsed to allow the shellfish to cleanse themselves, and this cleansing is verified by laboratory analysis. The fifteen days will commence when the Department receives the licensee's "Special Activity License to Relay Shellfish" for cancellation. The fifteen day period does not include days that shellfish harvesting areas have been temporarily closed to harvest. Laboratory analysis shall consist of a minimum of five samples (each sample to consist of a minimum of 12 individual shellfish), collected by an employee of a laboratory with a current Department certification letter or staff of the Department. Four samples are to be collected from four corners of the lease and one sample collected from approximately the center of the lease. High-density aquaculture lease areas will be treated as a single entity pursuant to subparagraphs subsection 5L-1.009(4)(s)3. and 8., F.A.C., for sampling. The Department will collect and analyze samples for shellfish relaying to public areas in conjunction with Department supervision using public funds. The laboratory must be certified by the Department State Laboratory Certification Officer pursuant to Guidance document A.11 of the National Shellfish Sanitation Program Model Ordinance and the Shellfish Laboratory Evaluation Checklist (1995), published by the U.S. Food and Drug Administration, which is hereby incorporated by reference and available for inspection at the Department's offices located at 1203 Governors Square Boulevard, 5th Floor, Tallahassee, Florida 32301. Laboratory analysis shall include approved methods for fecal coliform bacteria and standard plate count. The bacteriological quality of the relayed shellfish shall be equal to or better than shellfish of the same species harvested from nearby Approved or Conditionally Approved areas. If shellfish are being relayed due to marine biotoxins, laboratory analyses shall include mouse bioassays for toxin. The toxin level must be less than 20 mouse units. Aquacultured shellfish are the only shellfish allowed to be relayed due to marine biotoxins. Relaying for marine biotoxins is only allowed within the following four specific geographic regions of the state: (1) Escambia County through Jefferson County; (2)

Taylor County through Levy County; (3) Citrus County through Monroe County; (4) Dade County through Nassau County. Relaying due to marine biotoxins between these specific geographic regions is prohibited. The holder of the “Special Activity License to Relay Shellfish” must coordinate with the certified laboratory and other persons or agencies that these criteria are met and communicate this information to the Department. Upon verification that the criteria have been met the Department will issue the written permission in the form of a letter.

(q) Shellfish relaying from Florida waters to another state or country, or from the waters of another state or country to Florida waters or a licensed depuration plant, is prohibited.

(r) Persons engaged in relaying operations shall fly a flag on their vessel, the color of which was applied for and approved by the Department in the “Special Activity License to Relay Shellfish”. The flag will be a rigid flag, minimum size of 12 inches high by 18 inches wide. Only one color design will be approved for each license, except as provided in sub-subparagraphs subsection 5L-1.009(4)(s)4.a.-d., F.A.C. The flags will be free standing and identifiable from the air and the water. The vessel which contains the Department approved monitor will fly a flag of the same description as before described but differentiated by two, three (3) inch wide strips, of contrasting color to the flag, extending diagonally from corner to corner, forming an X. Individual flags shall be mounted such that the entire flag extends a minimum of 2 feet higher than the highest point on the craft.

(s) Special conditions shall apply to high-density aquaculture lease areas, to relaying and transport operations, laboratory sampling, and harvesting when more than one person or licensee participates on a relay crew composed of other persons or licensees from the same high-density aquaculture lease area.

1. The “Application for a Special Activity License to Relay Shellfish” pursuant to subsection 5L-1.009(3), F.A.C., shall incorporate the following additional information:

a. ~~T~~he description of the high-density aquaculture lease area, and

b. ~~T~~he description of the aquaculture lease in the high-density aquaculture lease area.

2. The Department shall establish an expiration date pursuant to paragraph subsection 5L-1.009(4)(a), F.A.C., which shall be the same for all applicants for Special Activity Licenses to Relay Shellfish who participate in relays to high-density aquaculture lease areas.

3. For a high-density aquaculture lease area to be considered as a single entity for laboratory sampling and harvesting, all relaying activity must be terminated by the designated expiration date. The number of participating licensees shall be determined by the number of applicants using the same expiration date and the number of participants is limited by the number of individual aquaculture leases

located in the high-density aquaculture lease area. When an expiration date has been established for relaying to a high-density aquaculture lease area, all applicants shall terminate relay activities on or before the established expiration date regardless of the effective date of the Special Activity License to Relay Shellfish; except when a single licensee surrenders the Special Activity License to Relay Shellfish for cancellation and harvests shellfish pursuant to paragraph subsection 5L-1.009(4)(p), F.A.C.

4. Persons or licensees participating on relay crews composed of other persons or licensees from the same high-density aquaculture lease area shall fly a flag on their vessel pursuant to paragraph subsection 5L-1.009(4)(r), F.A.C., except:

a. Only one color design will be approved for each high-density aquaculture lease area when relay crews are composed of more than one licensee.

b. Each vessel shall also fly a flag or banner, the color and design of which is designated and provided by the approved monitor.

c. The licensee shall maintain possession of the flag designated in the Special Activity License to Relay Shellfish.

d. The approved monitor shall maintain possession and have available the designated monitor flag and provide such flags or banners to all persons or licensees participating on relay crews under his/her immediate supervision during the days activity.

5. No more than 15 boats or licensees shall comprise a relay crew from the same high-density aquaculture lease area and not more than one crew shall be under the immediate supervision of an approved monitor, except as described in subparagraph subsection 5L-1.009(4)(n)3., F.A.C.

6. All participating licensees shall surrender their Special Activity License to Relay Shellfish to the Department for cancellation on the same date.

7. Shellfish relayed to high-density aquaculture lease areas in Approved or Conditionally Approved areas shall not be harvested without written permission from the Department pursuant to paragraph subsection 5L-1.009(4)(p), F.A.C., except the 15 days will commence when the Department receives all participating licensees’ “Special Activity License to Relay Shellfish” for cancellation.

8. High-density aquaculture lease areas will be treated as a single entity pursuant to subparagraph subsection 5L-1.009(4)(s)3., F.A.C., for laboratory sampling when all participating licensees have surrendered their Special Activity License to Relay Shellfish pursuant to subparagraph subsection 5L-1.009(4)(s)6., F.A.C. Laboratory analysis shall consist of a minimum of five samples (each sample to consist of a minimum of 12 individual shellfish), collected by an employee of a laboratory with a current Department certification letter or staff of the Department. Four samples are to be collected from individual aquaculture leases located most proximate to the

four corners of the high-density aquaculture lease area and one sample collected from an individual lease located near the center of the high-density aquaculture lease area.

9. Shellfish relayed under the provisions of paragraph subsection 5L-1.009(4)(s), F.A.C., shall not be harvested without written permission from the Department as defined in paragraph subsection 5L-1.009(4)(p), F.A.C., and permission to harvest by individual licensees shall be denied until all participating licensees receive written permission to harvest.

(5) Requirements for Department approved monitors include the following:

(a) Department approved monitors must be current "Certified Law Enforcement Officers" or licensed "Class D Security Guards" working for a licensed "Class B Security Agency", hired by a "Special Activity License to Relay Shellfish" licensee, or staff of the Department. Staff of the Department, who are not "Certified Law Enforcement Officers", shall monitor only relay operations directed and supervised by the Department during cooperative shellfish resource development programs. Staff of the Department shall monitor shellfish relays to licensed leases pursuant to paragraphs subsections 5L-1.009(4)(g)-(i), subsection 5L-1.009(5), and paragraph 5L-1.009(6)(b), F.A.C.

(b) Applicants shall not possess a current Shellfish License or upon application for training they must surrender their Shellfish License.

(c) It shall be unlawful for any approved monitor to be involved in any other activities within the commercial shellfish industry.

(d) Department approved monitor training will consist of a course developed and approved by the Florida Marine Enforcement and the Division of Aquaculture. The course shall cover the responsibilities of the approved monitor, shellfish laws, shellfish relay license rules, water classifications, health issues and other information deemed necessary by the Department. Training shall be conducted by Department personnel, as follows:

1. Initial training will consist of weekly courses for a period of two months if sufficient applicants apply to fill classes of twenty students. Applicants need to attend only one of the weekly courses.

2. A training course will be scheduled every six months.

3. Contracted licensed security agencies and licensees to relay shellfish will receive written notification of training dates and where the courses will be conducted.

4. An applicant who completes the course satisfactorily will be issued a "Department Approved Monitor Identification Card" in his or her name. The Identification Card will bear an expiration date that coincides with eligibility requirements established for a Department approved monitor. This identification card will expire on the expiration date printed on

the identification card, or in no case longer than one year from the date of issue. The identification card will be renewed only after satisfactory completion of the training course.

(e) A Department approved monitor whose identification card has expired may reapply and will be issued a new identification card with a new expiration date if he or she meets the eligibility requirements established for a Department approved monitor.

(6) Penalty for violation of Rule 5L-1.009, F.A.C.

(a) Any person who violates any of the provisions of this chapter, shall be subject to fine and imprisonment as provided in Section 370.021, F.S.

(b) An approved monitor's failure to supervise shellfish relay operations, complete required reports, and comply with the requirements of Rule 5L-1.009, F.A.C., and the "Special Activity License to Relay Shellfish", will result in the suspension of his authorization to act as a Department approved monitor.

(c) A diver, who is permitted by the Florida Marine Enforcement to harvest shellfish on a relay crew, will have his "Underwater Shellfish Harvester Certificate" suspended for any conviction of violating subparagraphs subsection 5L-1.009(4)(n)1.-15., F.A.C. The suspension will be for one year from the date of conviction.

(d) A "Special Activity License to Relay Shellfish" will be revoked for:

1. Any conviction for violation of diverting shellfish to any location other than specified on the license.

2. Any conviction for violation of depuration periods specified by law for relayed shellfish or sale of relayed shellfish prior to written authorization by the Division of Aquaculture.

3. Second conviction for violation of harvesting shellfish from any waters not approved by the license.

4. Four separate instances involving convictions for violations, other than subparagraphs subsection 5L-1.009(6)(d)1., 2., and 3., F.A.C., within any six month period.

(e) Pursuant to Section 120.60(7), F.S., prior to the entry of a final order revoking a "Special Activity License to Relay Shellfish", the Department will serve an administrative complaint which affords reasonable notice to the licensee of facts or conduct which warrant the intended action and the licensee is given an adequate opportunity to request a proceeding pursuant to Section 120.57, F.S.

(f) A "Special Activity License to Relay Shellfish" will be revoked for the following periods:

1. First revocation of license will be for a minimum of thirty days.

2. Second revocation of license will be for a minimum of sixty days and continue until such time the licensee can show to the satisfaction of the Department that corrective measures have been taken to control violations.

3. Third revocation of license will be permanent. No other "Special Activity License to Relay Shellfish" will be issued to a person, firm, corporation, municipality, or other governmental body holding a shellfish lease, aquaculture lease, or owning or operating a depuration plant whose "Special Activity License to Relay Shellfish" was revoked three times. After a six month period a new lease holder or owner or operator of a depuration plant must show to the satisfaction of the Department that corrective measures to control violations will be implemented prior to having an application considered.

(g) During periods of revocation no further "Special Activity License to Relay Shellfish" will be issued to a person, firm, corporation, municipality, or other governmental body holding a shellfish lease, aquaculture lease, or owning or operating a depuration plant who had their "Special Activity License to Relay Shellfish" revoked.

Specific Authority 597.020 FS. Law Implemented 597.010(15), 597.010(19), 597.020 370.071, 370.16(47) FS. History—New 1-4-87, Amended 5-21-87, 8-10-88, 7-9-89, 12-23-91, 4-21-93, 5-20-93, 6-9-94, Formerly 16R-7.012, Amended 1-1-98, Formerly 62R-7.012, Amended 8-9-00, _____

5L-1.010 Buildings and Facilities.

(1) Plant construction and design. Plant buildings and structures shall be suitable in size, construction, and design to facilitate maintenance and sanitary operations for food manufacturing purposes. The plant and facilities shall:

(a) Provide sufficient space for such placement of equipment and storage of materials as is necessary for the maintenance of sanitary operations and the production of safe food.

(b) Permit the taking of proper precautions to reduce the potential for contamination of food, food-contact surfaces, or food-packaging materials with microorganisms, chemicals, filth, or other extraneous material. The potential for contamination may be reduced by adequate food safety controls and operating practices or effective design, including the separation of operations in which contamination is likely to occur, by one or more of the following means: location, time, partition, air flow, enclosed systems, or other effective means.

(c) Be constructed in such a manner that floors, walls, and ceilings may be cleaned and kept clean and kept in good repair; that drip or condensate from fixtures, ducts and pipes does not contaminate food, food-contact surfaces, or food-packaging materials; and that aisles or working spaces are provided between equipment and walls and are of such width to permit employees to perform their duties and to protect against contaminating food or food-contact surfaces with clothing or personal contact.

(d) Provide at least 110 lux (10 foot candles) in walk in refrigeration units, dry food storage areas and single service storage areas; at least 220 lux (20 foot candles) at any handwashing lavatory, warewashing and equipment and utensil storage, and in toilet rooms; at least 540 lux (50 foot candles) at the surface where a food employee is working with food or

equipment or utensils such as knives or grinders where employee safety is a factor. This is considered adequate lighting for in hand-washing areas, dressing and locker rooms, and toilet rooms and in all areas where food is examined, processed, or stored and where equipment or utensils are cleaned. Light bulbs shall be shielded, coated or otherwise shatter resistant in areas where there is exposed food, clean equipment and utensils or unwrapped single service and single-use articles. Shielded, coated or otherwise shatter resistant bulbs need not be used in areas used only for storing food in unopened packages if the integrity of the packages can not be affected by broken glass falling onto the packages and the packages are capable of being cleaned of debris from broken bulbs before the packages are opened and provide safety-type light bulbs, fixtures, skylights, or other glass suspended over exposed food in any step of preparation or otherwise protect against food contamination in case of glass breakage.

(e) Provide adequate ventilation or control equipment to minimize air borne dust and particulates, odors and vapors in areas where they may contaminate food; and locate and operate fans and other air-blowing equipment in a manner that minimizes the potential for contaminating food, food-packaging materials, and food contact surfaces.

(f) Provide screening or other protection to prevent the entrance of pests.

(2) Grounds about a food plant under the control of the operator shall be kept in a condition that will protect against the contamination of food. The methods for maintenance of grounds include, but are not limited to:

(a) Storing equipment, removing litter and waste, and cutting weeds or grass within the immediate vicinity of the plant building or structures that may constitute an attractant, breeding place, or harborage for pests.

(b) Maintaining roads, yards, and parking lots so that they do not constitute a source of contamination in areas where food is exposed.

(c) Draining areas that may contribute contamination to food by seepage, foot-borne filth, or providing a breeding place for pests.

(d) Operating systems for waste treatment and disposal in such a manner that they do not constitute a source of contamination in areas where food is exposed. If the plant grounds are bordered by grounds not under the operator's control and not maintained in the manner described in paragraphs (2)(a) through (c) of this section, care shall be exercised in the plant by inspection, extermination, or other means to exclude pests, dirt, and filth that may be a source of food contamination.

(3) The water supply shall be sufficient for the operations intended. Any water that contacts food or food contact surfaces shall be safe and of sanitary quality. Running water at a suitable temperature of 110° F or above, and under pressure as

needed, shall be provided in all areas where required for the processing of food, for the cleaning of equipment, utensils, and food-packaging materials, or for employee sanitary facilities. Sanitary quality shall be maintained by the following steps:

(a) In plants that are not on a public water system, routine microbiological monitoring shall be conducted on water, and ice used in the plant, at least once every six months by the operator of the certified processing plant. The sample collected shall be from a tap that provides water for use in processing shellfish. When treatment includes disinfection, a source water standard bacterial sample must also be collected on the same day.

(b) Microbiological results from testing shall not equal or exceed two cfu (colony forming units) per 100 mls for total coliform bacteria on any consecutive samples, and shall not equal or exceed two cfu per 100 mls for fecal coliform or E. coli bacteria on any samples.

(4) Plumbing shall be of size and design and installed and maintained to:

(a) Carry sufficient quantities of water to required locations throughout the plant.

(b) Convey sewage and liquid disposable waste from the plant.

(c) Avoid constituting a source of contamination to food, water supplies, equipment, or utensils or creating an unsanitary condition.

(d) Provide floor drainage in all areas where floors are subject to flooding-type cleaning.

(e) Provide that there is no backflow from, or cross-connection between, piping systems that discharge waste water or sewage and piping systems that carry water for food or food manufacturing.

(5) Sewage and all in-plant wastewater shall be discharged into a public sewage treatment system or other approved sewage treatment system in accordance with provisions of Chapter 64E-6, F.A.C. Florida Administrative Code.

(6) Each plant shall provide its employees with readily accessible toilet facilities. Compliance with this requirement shall be accomplished by:

(a) Maintaining the facilities in a sanitary condition.

(b) Keeping the facilities in good repair at all times.

(c) Providing self-closing doors.

(d) Providing doors that do not open into areas where food is exposed to airborne contamination, except where alternate means have been taken to protect against such contamination, such as double doors or positive air flow systems.

(e) Providing toilet tissue.

(7) Handwashing facilities shall be furnished and easily accessible, where persons handle food, food packaging materials, or food contact surfaces, and include the following:

(a) Running water at a minimum temperature of 110 degrees F.

(b) Where persons handle food, food packaging materials, or food contact surfaces, hand-sanitizing facilities shall be furnished.

(c) Effective hand-cleaning and sanitizing preparations.

(d) Sanitary towels or drying devices.

(e) Readily understandable signs directing employees handling exposed food, unprotected food-packaging materials, or food-contact surfaces, to wash and sanitize their hands prior to handling these items. These signs shall be posted in the processing room at all hand wash stations and in all other areas where employees may handle such food, materials, or surfaces.

(8) Refuse receptacles shall be constructed and maintained in a manner that protects against contamination of food. Rubbish and any offal shall be so conveyed, stored, and disposed of as to minimize the development of odor, minimize the potential for the waste becoming an attractant and harborage or breeding place for pest, and protect against contamination of food, food-contact surfaces, water supplies, and ground surfaces.

Specific Authority 597.020 FS. Law Implemented ~~597.020~~ ~~370.074~~ FS. History—New 1-4-87, Amended 5-21-87, 8-10-88, Formerly 16R-7.013, Amended 7-3-95, 2-6-97, Formerly 62R-7.013, Amended 8-9-00, _____.

5L-1.011 Equipment for Shellfish Processing.

(1) All plant equipment and utensils shall be so designed and of such material and workmanship as to be cleanable, and shall be properly maintained. The design, construction, and use of equipment and utensils shall preclude the adulteration of food with contaminants. All equipment shall be so installed and maintained as to facilitate the cleaning of the equipment and of all adjacent spaces. Food-contact surfaces shall be corrosion-resistant, made of nontoxic materials, and designed to withstand the environment of their intended use and the action of food, and, if applicable, cleaning compounds and sanitizing agents. Food-contact surfaces shall be maintained to protect food from being contaminated by any source.

(2) Seams on food-contact surfaces shall be smoothly bonded or maintained so as to minimize accumulation of food particles, dirt, and organic matter and thus minimize the opportunity for growth of microorganisms.

(3) Equipment that is used in the manufacturing or food-handling area and that does not come into contact with food shall be so constructed that it can be kept in a clean condition.

(4) Three compartment sinks shall be properly installed, maintained and provided with hot and cold running water to all three compartments in establishments required to wash, rinse and sanitize food contact surfaces. Signs shall be posted indicating proper use of the three compartment sink. A three compartment sink shall be used for washing, rinsing and sanitizing food contact surfaces and shall not be used for hand washing.

(5) Each freezer and cold storage compartment used to store and hold shellfish shall be mechanically refrigerated, nonportable and shall be fitted with an indicating thermometer, temperature-measuring device, or temperature-recording device so installed as to show the temperature accurately within the compartment, and should be fitted with an automatic control for regulating temperature or with an automatic alarm system to indicate a significant temperature change.

(6) Compressed air or other gases mechanically introduced into food or used to clean food-contact surfaces or equipment shall be treated in such a way that food is not contaminated.

(7) Blowers – devices which use compressed air to circulate wash water around and through shucked shellfish shall be properly designed and constructed as to be easily dismantled for cleaning, examination, and repair.

(8) Blowing time – blowing time shall not exceed 15 minutes.

(9) Depuration tanks shall be designed to allow for good water circulation and prevent short-circuiting of the seawater. Tanks shall be designed so that scum and sludge, including shellfish feces and pseudo-feces, sand, and grit can be easily removed or flushed out. The bottom shall be sloped longitudinally at least 1/4 to 1/2 inch per foot toward the outlet end.

(10) To facilitate proper cleaning and sanitation, as well as proper treatment of shellfish, tanks shall be constructed from impervious, non-toxic, and inert materials. Coatings, when used, may include epoxy resins, powdered polyesters, vinyl bituminous water-tank paint, and paraffin. These coatings are not only for waterproofing but should provide a smooth, hard, non-porous surface to facilitate cleaning.

Specific Authority 597.020 FS. Law Implemented ~~597.020 370.071~~ FS. History–New 1-4-87, Amended 8-10-88, Formerly 16R-7.014, Amended 7-3-95, 5-8-96, 2-6-97, Formerly 62R-7.014, Amended 8-9-00.

5L-1.012 Sanitary Operations.

(1) General maintenance. Buildings, fixtures, and other physical facilities of the plant shall be maintained and kept in a sanitary condition and shall be kept in repair sufficient to prevent food from becoming adulterated within the meaning of this rule. Cleaning and sanitizing of utensils and equipment shall be conducted in a manner that protects against contamination of food, food-contact surfaces, or food-packaging materials.

(2) Cleaning compounds used in cleaning procedures shall be free from undesirable microorganisms and shall be safe and adequate under the conditions of use. Compliance with this requirement may be verified by any effective means including purchase of these substances under a supplier's guarantee or certification, or examination of these substances for contamination.

(3) Only sanitizing agents found in Title 21, Code of Federal Regulations, Section 178.1010, hereby incorporated by reference and available for inspection at the Department's

offices located at 1203 Governors Square Boulevard, 5th Floor, Tallahassee, Florida 32301, will be used at recommended levels in shellfish processing plants.

(4) Toxic cleaning compounds, sanitizing agents, and pesticide chemicals shall be identified, held, used and stored in a manner that protects against contamination of food, food-contact surfaces, or food-packaging materials. Test kits that measure the concentration of sanitizing solutions shall be provided and used for verifying the proper sanitizing solution concentration.

(5) No pests shall be allowed in any area of a food plant. Effective measures shall be taken to exclude pests from the processing areas and to protect against the contamination of food on the premises by pests. The use of insecticides or rodenticides is permitted only under precautions and restrictions of product labeling.

(6) All food-contact surfaces, including utensils and food-contact surfaces of equipment, shall be cleaned as frequently as necessary to protect against contamination of food.

(7) Non-food contact surfaces of equipment used in the operation of food plants ~~shall should~~ be cleaned as frequently as necessary to protect against contamination of food.

(8) Single-service articles ~~shall should~~ be stored in appropriate containers and/or in a clean dry location where they are not exposed to splash, dust or other contamination. Single-service articles shall be handled, dispensed, used, and disposed of in a manner that protects against contamination of food or food-contact surfaces.

(9) Sanitizing agents shall be adequate and safe under conditions of use. Any facility, procedure, or machine is acceptable for cleaning and sanitizing equipment and utensils if it is established that the facility, procedure, or machine will routinely render equipment and utensils clean and sanitized.

(10) Cleaned and sanitized portable equipment with food-contact surfaces and utensils ~~shall should~~ be stored in a location and manner that protects food-contact surfaces from contamination.

(11) Any employee with a disease in the communicable stage which might be transmissible through food shall be excluded from working in any capacity in which the employee may come in contact with the shellfish or with food contact surfaces.

(a) The dealer shall require all employees to wash their hands thoroughly with soap and water and sanitize their hands in an adequate handwashing facility before starting work, after each absence from the work station, after each work interruption and any time when their hands may have been soiled or contaminated.

(b) Where the same employee works in both the shucking and packing activities, the employee shall wash his hands thoroughly after entering the area.

(c) Any employee handling shucked shellfish shall be required to wear an effective hair restraint, remove any hand jewelry that cannot be sanitized and secured, wear finger cots or gloves if jewelry cannot be removed, wear clean outer garments which are rinsed or changed as necessary to be kept clean.

(d) In any area where shellfish are shucked or packed and in any area which is used for the cleaning or storage of utensils, the dealer shall not allow employees to store clothing or other personal belongings, eat or drink, spit and use tobacco in any form.

~~(12)~~(14) Each certified dealer shall monitor the conditions and practices during processing with sufficient frequency to ensure, at a minimum, conformance with those conditions and practices specified in subsection Rules 5L-1.005(7), paragraphs 5L-1.010(1)(a) and (b), subsections 5L-1.010(6) and (7), 5L-1.011(1), 5L-1.012(1)-(11)(40), 5L-1.013(6), (7), and (8), and (9), and 5L-1.014(5), F.A.C.

Specific Authority 597.020 FS. Law Implemented ~~597.020~~ ~~370.074~~ FS. History—New 1-4-87, Amended 8-10-88, Formerly 16R-7.015, Amended 7-3-95, Amended 2-6-97, 6-23-99, Formerly 62R-7.015, Amended 8-9-00.

5L-1.013 Plant Operation.

(1) The plant shall operate in accordance with the HACCP plan designed and approved by the owner or corporate officers.

(2) Prior to acceptance of shellstock from a licensed harvester, certified shellfish dealer and/or certified aquaculturist, the certified shellfish dealer will ensure that shellstock are properly identified as specified in subsection Section 5L-1.007(3)(5), F.A.C., are clean, wholesome, and alive.

(3) Upon acceptance of shellstock from a licensed harvester, certified aquaculturist or certified shellfish dealer, the receiving certified shellfish dealer shall determine the appropriate use of the shellfish through examination of shellfish labeling as follows:

(a) Shellfish which fails to meet the requirements of subsection Section 5L-1.008(5), F.A.C., or is labeled in compliance with paragraph Section 5L-1.007(6)(h), F.A.C., shall only be used for shucking by a certified shellfish dealer, or shall undergo an alternative processing method to assure a safety level equivalent to product meeting subsection Section 5L-1.008(5), F.A.C.

(b) Tempering, as an alternative process shall consist of those methods which have demonstrated through verification studies that the process renders hard clams which are as safe as hard clams meeting subsection Section 5L-1.008(5), F.A.C. Prior to initiating tempering a certified shellfish dealer shall have written approval from the Department. The certified shellfish dealer must provide the following:

1. A description of all facilities, equipment and methods to be used in the alternative process. This process must be included in the firm's HACCP plan.

2. The source of hard clams and the maximum capacity of hard clams to undergo the process at any one time.

3. The process to be followed shall not exceed 16 hours total time between hard clam harvest and refrigeration at 45 degrees F or less. Product harvest, processing, tempering and food storage at 45 degrees F or less must be scheduled to occur as a continuous procedure.

4. Upon initiation, the tempering process must have temperature control of 68 degrees F or less and be maintained until hard clams are placed into refrigeration of 45 degrees F or less.

5. If facilities, equipment or methods change, the Department must be notified.

(4) Shellfish shall be segregated by the certified shellfish dealer in accordance with its intended use as determined in paragraphs subsection (3)(a) and (b) above and identified per subsections Section 5L-1.007(5) or (6), F.A.C.

(5) Unidentified, adulterated, unwholesome, dead, or contaminated shellstock shall be discarded.

(6) Shucking of shellfish – Shellfish shall be shucked in a manner such that they are not subjected to possible contamination. Only live shellfish shall be shucked.

(a) Shucked meats shall be delivered to the packing room within one hour.

(b) Shucked meats shall be thoroughly drained, cleaned as necessary, and packed promptly after delivery to the packing room. Packing operations shall be scheduled and conducted so as to chill all meats to an internal temperature of 45° F or less within two hours of delivery to the packing room. Shucked meats which are packed into containers having a capacity of more than one gallon shall be pre-chilled to 45° F or less prior to packing.

(7) Shucked shellfish shall be held and transported at temperatures of 45° F or less.

(8) Ice shall be manufactured from potable water in a commercial machine which has been properly installed and maintained without connections to nonpotable water sources.

(9) Ice shall be stored so as not to come into contact with non-clean surfaces and is handled in such a manner that it will not be contaminated.

(10) Records – Complete, legible, and accurate dated records of purchase and sale of all shellfish shall be kept by all shellfish establishments operating in the state. Records shall indicate:

- (a) From whom shellfish were purchased;
- (b) Areas from which shellstock were harvested;
- (c) State from which shucked shellfish were harvested;
- (d) Harvesting date;
- (e) The date of receipt by the processor;
- (f) Names and addresses of persons to whom shellfish were sold; and
- (g) Date sold.

(h) Records shall remain on file for not less than one year and shall be made available for inspection and copying by Department personnel during plant inspections.

(i) Production records shall be maintained for shucked meats which provide the amount of shellstock used, the harvest area, harvest date of the shellstock, and the amount of shucked meats produced.

(j) Production records shall be maintained for shellstock which provides for the amount of shellstock used, the harvest area, harvest date, harvest state, and the units of shellstock produces.

(k) Records covering purchases and sales of frozen or previously frozen shellfish ~~shall should~~ be retained for at least two years or for a period of time that exceeds the shelf-life of the product.

(l) Records for shellfish lots having completed a depuration or wet storage treatment process shall include:

1. Counties from which shellfish were harvested;
2. Name or location of harvesting areas;
3. Relaying permit numbers, if applicable;
4. Date received in plant;
5. Date released from the plant;
6. Date and time of initiation of treatment;
7. Date and time of termination of treatment;
8. Ending UV unit meter readings;
9. Number of hours treated; and
10. All laboratory results as specified.

(11) Monitoring records of HACCP plan critical control points shall be maintained and reviewed at least weekly as specified in the firm's HACCP plan. Records shall be reviewed to ensure that the records are complete and to verify that they document values that are within the critical limits. The review shall occur within one week of the day that the records are made. The reviewed records shall be signed and dated by an individual who is in a supervisory position in the firm and is knowledgeable of HACCP.

(12) Sanitation monitoring records shall be maintained ~~and reviewed~~ for those conditions identified in subsection Rule 5L-1.012(11), F.A.C., per the schedule of the activity, e.g. daily, weekly, monthly.

(13) Whenever a deviation from a critical limit occurs, a certified shellfish dealer shall take corrective action either by following a corrective action that is appropriate for the particular deviation, or by segregating and holding the affected product until a review can determine the acceptability of the affected product for distribution. Corrective actions include, when necessary, reconditioning, seizure, or destruction of affected product to ensure that no product enters commerce that is either injurious to health or is other wise adulterated as a result of the deviation. Corrective action also include, when necessary, correcting the cause of the deviation. All corrective actions shall be documented in writing.

(14) Responsibility – It shall be the duty and responsibility of each owner, manager, and operator of a shellfish plant to insure that all regulations pertaining thereto are strictly adhered to and that only safe, wholesome, unadulterated shellfish shall be produced. It shall be his or her duty and responsibility to see that the plant is properly supervised at all times and all shellfish can be identified, whether shellstock or shucked shellfish, to insure that they were harvested from approved growing waters and that they have been handled and processed in a sanitary manner.

Specific Authority 597.020 FS. Law Implemented 597.020 ~~370.071~~ FS. History--New 1-4-87, Amended 5-21-87, 8-10-88, Formerly 16R-7.016, Amended 7-3-95, 5-8-96, 2-6-97, 6-23-99, Formerly 62R-7.016, Amended 8-9-00,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Bobby Bickley
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Sherman Wilhelm, Director, Division of Aquaculture
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 31, 2001
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 22, 2000

EXECUTIVE OFFICE OF THE GOVERNOR

Office of Tourism, Trade and Economic Development

RULE TITLES:	RULE NOS.:
Purpose and Scope	27M-1.001
General Policy	27M-1.002
Definitions	27M-1.003
Planning and Approving Travel	27M-1.004
Special Conditions of Travel	27M-1.005
Rates of Payment	27M-1.006
Transportation	27M-1.007
Incidental Expenses	27M-1.008
Advance Travel	27M-1.009
Special Provisions for Educational Conferences and Conventions	27M-1.010
Entertainment Expenses	27M-1.011
Operational and Promotional Advances	27M-1.012
Complimentary Goods and Services	27M-1.013
Receipts	27M-1.014
Exemption from State Contract Rates	27M-1.015

PURPOSE, EFFECT AND SUMMARY: To promulgate travel and entertainment expense rules for the Office of Film and Entertainment, Florida Film Advisory Council, and clients. The proposed rules set the guidelines for travel expenses when traveling on official business for the Office of Film and Entertainment and if an exemption to the rules applies. The proposed rules address expenses for domestic and foreign travel.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None has been prepared by the Office of Tourism, Trade, and Economic Development.

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: 288.1253(2) FS.

LAW IMPLEMENTED: 288.1253, 112.061(2)(e) 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., October 22, 2001

PLACE: Office of Tourism, Trade, and Economic Development, Suite 2001, The Capitol, Tallahassee, FL 32399-0001

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Marla Gillman, Office of Tourism, Trade and Economic Development, Suite 2001, Tallahassee, FL 32399-2901

THE FULL TEXT OF THE PROPOSED RULES IS:

27M-1.001 Purpose and Scope.

These rules establish the policies and procedures governing actual travel and entertainment expenses for the Office of Film and Entertainment.

Specific Authority 288.1253(2) FS. Law Implemented 288.1253 FS. History--New

27M-1.002 General Policy.

(1) Employees and non-employees traveling on official business are expected to exercise the same care in incurring official expenses that any prudent person exercises when traveling on personal business.

(2) It is the responsibility of the traveler to be familiar with these rules and be knowledgeable of the reimbursement expenses.

(3) It is the general policy of the Office of Tourism, Trade, and Economic Development to reimburse employee's travel and entertainment expenses on a reasonable and actual basis, subject to any limitations provided for in this rule.

Specific Authority 288.1253(2) FS. Law Implemented 288.1253 FS. History--New

27M-1.003 Definitions.

(1) Agency Head. Agency head means the Director of the Office of Tourism, Trade, and Economic Development for the purpose of Chapter 27M-1, F.A.C.

(2) Authorized Person. Authorized person is defined as:

(a) A person other than a public officer or employee as defined herein, whether elected or commissioned or not, who is authorized by the agency head to incur travel expenses in the performance of official duties.

(b) A person who is called upon by an agency to contribute time and services as consultant or adviser.

(c) A person who is a candidate for an executive or professional position.

(3) Business Client. Any person, other than a state official or state employee, who receives the services of, or is the subject of solicitation by, representatives of the Office of Film and Entertainment in connection with the performance of its statutory duties, including purchasers or prospective purchasers of Florida products; persons or representatives of firms considering or being solicited for investment in the state; persons or representatives of firms considering or being solicited for location, relocation, and expansion of a business within the state; and industry representatives, national or international government officials or location scouts, production agents, investors, and other persons connected with the film and entertainment industry.

(4) Common Carrier. Common carrier includes train, bus, commercial airline operating scheduled flights, or rental vehicle firm.

(5) Designee. Designee means the Commissioner of Film and Entertainment or an Office of Film and Entertainment employee who has been given written authorization by the Director of the Office of Tourism, Trade, and Economic Development to sign Form RG-OFC2 (Office of Film and Entertainment, Authorization to Incur Travel Expense) approving travel, Form RG-OFC3 (Office of Film and Entertainment, Voucher for Reimbursement of Travel Expenses), Form RG-OFC4 (Office of Film and Entertainment, Reimbursement for Expenses Other Than Travel) and Form RG-OFC1 (Office of Film and Entertainment, Application for Advance on Travel Expense). The foregoing forms are effective as of January 2001 and are incorporated by reference herein. Copies may be obtained by writing to Deputy Director, Office of Film and Entertainment, The Capitol, Suite 2001, Tallahassee, Florida 32399-0001.

(6) Entertainment Expenses. The actual, necessary, and reasonable costs of providing hospitality for business clients or guests, which costs are defined and prescribed as hereinafter set forth.

(7) Fiscal Office. For the purposes of Chapter 27M-1, F.A.C., fiscal office refers to the Fiscal Office of the Executive Office of the Governor.

(8) Foreign Travel. Travel outside the 50 United States and its possessions.

(9) Guest. A person, other than a state official or state employee, authorized by the agency head or his/her designee to receive the hospitality of the Office of Film and Entertainment in connection with the performance of its statutory duties. This

term shall include a spouse of a state officer or employee when it is necessary in order to perform statutory duties of the Office of Film and Entertainment while with or traveling to or from meeting with other guests or business clients pursuant to appropriate approval granted in accordance with these rules.

(10) Office. Office means the Office of Film and Entertainment for the purpose of Chapter 27M-1, F.A.C.

(11) Official Headquarters. The official headquarters of a person located in the field shall be the city or town nearest to the area where the majority of his/her work is performed, or such other city, town or area as is designated by the agency head and Commissioner of Film and Entertainment, provided that in all cases such designation must be in the best interests of the Office of Film and Entertainment and not for the convenience of the person.

(12) Public Officer or Employee. The Governor, the Lieutenant Governor, security staff of the Governor or Lieutenant Governor, the Commissioner of Film and Entertainment, or staff of the Office of Film and Entertainment, i.e. an individual who is filling a regular full-time authorized position or an OPS position in the Office of Film and Entertainment.

(13) Transportation Expense. The cost incurred by the traveler in getting from point of origin to destination and return, via common carrier, charter vehicle, privately owned vehicle, or state-owned aircraft.

(14) Travel Day. The travel day shall be a calendar day (midnight to midnight) consisting of four quarters of six hours each.

(15) Travel Expenses. The actual, necessary, and reasonable costs of transportation, meals, lodging, and incidental expenses normally incurred by a traveler, which costs are defined and prescribed as hereinafter set forth.

(16) Travel Period. The travel period is the period of time between the time of departure on official business and time of return from official business.

Specific Authority 288.1253(2) FS. Law Implemented 288.1253 FS. History--New _____.

27M-1.004 Planning and Approving Travel.

(1) Travel Authorization. The agency head may delegate the authority to approve travel to a designee with such restrictions as deemed necessary. The delegation of authority cannot be re-delegated by a designee.

(2) Request for Travel Authorization. Each Office officer and employee shall complete Form RG-OFC2, incorporated by reference herein, and have it approved and signed by the agency head or his/her appropriate designee for all proposed travel.

Specific Authority 288.1253(2) FS. Law Implemented 288.1253 FS. History--New _____.

27M-1.005 Special Conditions of Travel.

(1) Travel by Officer and Public Officer, and Employee or Public Employee other than the Office. The agency head or his/her appropriate designee may authorize travel by public officers or employees, as defined in Section 112.061(2)(c),(d), F.S., serving temporarily on behalf of the Office when such travel expenses will be paid by the Office in excess of rates set forth in Section 112.061, F.S. This will not preclude such public officers or employees from providing reimbursement to the Office to the extent allowable under rates set forth in Section 112.061, F.S.

(2) Travel of Authorized Persons. The agency head or his/her designee may approve travel by authorized persons who are called upon to contribute time and services as consultants or advisers when such travel is on behalf of the Office. In such instances, complete explanation and justification must be shown on or attached to Form RG-OFC3, incorporated by reference herein. Travel expenses for authorized persons shall adhere to the same rates and guidelines as those for state officers and employees except that the letters NSE (non-state employee) will be used along with the Social Security number on Form RG-OFC3. In instances when such information is specifically exempted from disclosure by law, each invoice and/or voucher shall contain the letters NSE (non-state employee) on Form RG-OFC3 along with a statement of confidentiality and be properly referenced to the file (by number or otherwise) where the authorized persons information is available, as required by Section 288.075, F.S.

(3) Travel of Business Clients or Guests. Travel expenses incurred by the Office on behalf of a business client or authorized guest shall be paid directly to third party vendors when possible. When this is not possible, reimbursement will be to the person incurring the expense (either business client, guest, or accompanying the Office employee, if applicable) provided substantiating receipts are submitted with the appropriate reimbursement vouchers. However, when state officers, employees, or authorized persons are only accompanying a spouse of such officer, employee, or authorized person, then the rates prescribed in Rule 27M-1.006(2), F.A.C., shall apply to such officer, employee, authorized person, spouse, or any combination thereof. The identity of business clients or guests shall be disclosed on all vouchers authorizing disbursement of public funds pursuant to these rules, except when such information is specifically exempted from disclosure by law. If this exemption applies, each invoice and/or voucher shall contain a statement of confidentiality and be properly referenced to the file (by number or otherwise) where the client and/or guest information is available.

(4) Travel for Employment Interviews. Upon prior written approval of the agency head or his/her designee, candidates for executive or professional positions with the Office will be allowed travel and transportation expenses.

Specific Authority 288.1253(2) FS. Law Implemented 288.1253 FS. History--New

27M-1.006 Rates of Payment.

(1)(a) Lodging. The traveler will be reimbursed for the cost of a single occupancy hotel room, receipt required for travel, which requires overnight absence from official headquarters. The traveler is to be reimbursed in accordance with the guidelines established in Section 112.061, F.S., and Executive Office of the Governor guidelines, incorporated by reference herein. Copies of these guidelines may be obtained by writing to Deputy Director, Office of Film and Entertainment, The Capitol, Suite 2001, Tallahassee, Florida 32399-0001.

(b) In the event that no hotel rooms are available under the rate guidelines in the Executive Office of the Governor travel guidelines for a particular city, the traveler will be reimbursed for the actual cost of a single occupancy hotel room at a rate not to exceed \$100 per night unless justified by the traveler in writing. A receipt is required for travel requiring an overnight absence from official headquarters.

(2) Actual Meal Expense.

(a) The traveler will be reimbursed for meal expense at the rate set forth below:

	<u>Domestic</u>	<u>Departure</u>	<u>/</u>	<u>Return</u>
<u>Meals</u>	<u>Travel</u>	<u>Before</u>	<u>/</u>	<u>After</u>
<u>Breakfast</u>	<u>\$3.00</u>	<u>6:00 am.</u>	<u>=</u>	<u>8:00 am.</u>
<u>Lunch</u>	<u>\$6.00</u>	<u>12:00 p.m.</u>	<u>=</u>	<u>2:00 pm.</u>
<u>Dinner</u>	<u>\$12.00</u>	<u>6:00 pm.</u>	<u>=</u>	<u>8:00 pm.</u>

(b) The authorized meal amounts may be reduced in writing by the Film Commissioner due to budgetary restraints, inflationary pressures, or personnel abuse.

(c) The amounts set forth above in (a) will be aggregated for each day's travel. The times for departure and return are merely determinative of the meals allowed for portions of travel of less than one calendar day. All reimbursement for meals shall be substantiated by paid receipts, which identify the restaurant. If no receipt can be produced, reasons shall be specified in writing to accompany Form RG-OFC3, incorporated by reference herein. Waiter tips in excess of twenty percent (20%) will not be reimbursed, unless a larger amount is automatically included as part of the bill.

(d) Expenditure Amounts. Limitations on expenditure amounts set forth above are applicable only to state officers and state employees when not accompanied by a business client or authorized guest. In addition, any meal expenditure to be reimbursed while with a business client or guest, received

complimentary or paid for by state funds in some other manner (through registration or banquet) may not be included in arriving at the day's aggregate limitations.

(3) Subsistence Allowance. The traveler may elect to receive a Subsistence Allowance, in accordance with the following:

(a) In lieu of the above actual meal expense, the traveler may elect to receive a subsistence allowance as provided in Section 112.061(6), F.S. However, the request for reimbursement shall be made in accordance with applicable provisions of Chapter 3A-42, F.A.C. No one shall be reimbursed for any meal included in a registration fee paid for by the State or when paid for by the State in some other manner. Example: An employee claiming reimbursement for a meal for which they are already requesting reimbursement on Form RG-OFC4, incorporated by reference herein.

(b) Expenditure Amounts. Limitations on expenditure amounts set forth in subsection (2)(a) of this rule and Section 112.061(6), Florida Statutes, are applicable only to state officers and state employees when not accompanied by a business client or authorized guest. A traveler may exceed the rates provided in subsection (2)(a) of this rule and Section 112.061(6), Florida Statutes, when the state employee pays for his/her meal and that of the business client or guest. In addition, any meal expenditure to be reimbursed while with a business client or guest or paid for by state funds in some other manner (i.e., through registration or banquet), may not be included in arriving at the day's aggregate limitations.

(c) The traveler must make the election on the travel authorization, subject to approval of the agency head, or his/her designee, as to which method of meal reimbursement they elect. Once the election is made, the traveler cannot elect the alternate method, nor can they alternate the methods of reimbursement for the duration of the trip.

(4) Reimbursement for Foreign Travel.

(a) Authorized travelers traveling in a foreign country shall claim the rates as specified in the U.S. Department of State Office of Allowances's monthly federal publication "Per Diem Allowances for Travel in Foreign Areas", found on the Internet at www.state.gov/m/a/als/prdm/2001/, incorporated by reference herein. A foreign traveler must also comply with "Standardized Regulations (Government Civilians, Foreign Areas)" (DSSR 000-960), found on the Internet at www.state.gov/m/a/als/index.cfm?id=1843 and incorporated by reference herein.

(b) Lodging. The maximum amount of lodging a traveler shall be reimbursed for is found in the monthly publication "Per Diem Allowances for Travel in Foreign Areas." A traveler must submit all receipts for lodging for reimbursement. The rates are determined by what foreign city or country the traveler is in.

(c) Per Diem Breakdown. Per diem breakdowns for meals and incidental expenses (MI&E Rate) for foreign travel are to be in accordance with Appendix B, Chapter 301 – Federal Travel Regulations, found on the Internet at policyworks.gov/org/main/mt/homepage/mtt/FTR/ch301tc.html and incorporated by reference herein. The standard used in this appendix is to allocate 15%, 25% and 40% of the total MI&E Rate from the publication “Per Diem Allowances for Travel in Foreign Areas” to breakfast, lunch, and dinner, respectively. The remainder of the MI&E Rate is the incidental expense allowance. The MI&E Rate is determined by what foreign city or country the traveler is in. In the event that the traveler spends over the incidental expense allowance for a particular city or country, the traveler may claim reimbursement for incidental expenses in accordance with Rules 27M-1.008(1)(a)-(i), F.A.C., and deduct the incidental expense allowances.

(d) Rates for foreign travel shall not begin until the date and time of arrival in the foreign country from the United States and shall terminate on the date and time of departure from the foreign country to the United States. In the event the traveler travels within the United States prior to arriving in a foreign country, the traveler shall use the reimbursement guidelines as defined in Rule 27M-1.006, F.A.C.

(e) If a hotel room is included in a registration fee paid to attend a function, or otherwise paid for by the State, the traveler shall not claim reimbursement for the expense of the room.

(f) If a meal is included in a registration fee paid to attend a function in a foreign country, or otherwise paid for by the State, the allowance for that meal shall be deducted from the MI&E Rate for that particular calendar day.

(5) Authorized travelers, including consultants and persons who have been authorized to travel for the Office, in foreign countries are subject to the same provisions of this regulation.

Specific Authority 288.1253(2) FS. Law Implemented 288.1253 FS. History—New _____.

27M-1.007 Transportation.

(1) Route of Travel. All travel must be by a usually traveled route. When a person travels by an indirect route for his/her own convenience, any extra costs shall be borne by the traveler and reimbursement for expenses shall be based only on such charges as would have been incurred had a usually traveled route been used.

(2) Method of Travel.

(a) General Requirements. The agency head or his/her designee shall designate the most efficient and economical method of travel (state-owned aircraft, privately-owned vehicle, or common carrier). The following conditions shall be considered:

1. The nature of business;

2. The most efficient and economical means of travel (Considering time of the traveler, cost of transportation, and other travel expenses required); and

3. The number of persons making the trip and the amount of equipment or material to be transported.

(b) Commercial Air Travel.

1. Commercial air travel will be by the most economical class (tourist or coach class). Travel by first class is at the discretion of the agency head, or his/her designee, when no other economical class is available, in accordance with Comptroller’s Memorandum Number 02 for Fiscal Year 1999-2000, incorporated by reference herein and a copy of which may be obtained at www.dbf.state.fl.us/aadir/cm990002.html. If travel is by first class, the traveler must submit with Form RG-OFC3, incorporated by reference herein, a letter from the agency head verifying approval of first class travel and describing the circumstances of said travel. First class air travel is authorized for employees, guests, or authorized persons when actually traveling with business clients. The name of the business client or the project number must be provided in a statement on the travel voucher.

2. All unused portions of airline tickets will be attached to the appropriate Form RG-OFC3, which will be forwarded to the fiscal office.

3. Group charges may be made, provided each traveler has his/her own ticket.

4. All ticket receipts will be forwarded to the fiscal office and attached to the appropriate Form RG-OFC3.

5. In all travel involving air travel charged to the Office, Form RG-OFC3 shall be submitted no later than one week (7 days) after travel is performed, regardless of whether or not reimbursement is due to traveler.

6. An employee using state credit cards to purchase airline tickets, rental vehicles, or any other form of transportation for solely personal business, paid directly by the Office, will be subject to disciplinary action. The Office has the authority to issue state credit cards to full-time employees.

7. An employee traveling on official state business, and wishing to alter travel plans for personal business or pleasure, must pay any additional cost of transportation directly to the commercial carrier at the time of purchase, and will not charge such additional transportation to the Office.

(c) State-owned Aircraft. When state-owned aircraft are used, the agency will be billed in accordance with the prevailing rates established by the Department of Management Services.

(d) Car Rental.

1. State contractor for rental vehicles. State contractor vehicles will be rented when available. Use of rental vehicles provided by other companies may be used if one of the following circumstances exists:

a. No state contract rental vehicles are available; or

b. The net rate, including primary insurance coverage, payment of the collision damage waiver, and the cost of fuel, of other rental vehicles is less than the state contractor contract rate.

2. An explanation for the use of other rental vehicles other than state contractor rental vehicles must appear in writing on Form RG-OFC3 that relates to the corresponding trip.

3. Compact class B vehicles shall be rented except when the number of passengers and materials transported make use of a compact class vehicle impractical or the conditions under which the vehicle is rented dictate the use of a more practical vehicle, i.e. transporting business clients or state officials. If other than a compact class B vehicle is used, an explanation must be placed on Form RG-OFC3 justifying usage of the larger vehicle.

4. In instances where vehicles are rented and charged to the Office, regardless of whether reimbursement is due the traveler, a Form RG-OFC3 will be completed and processed through regular channels to the fiscal office no later than one week (7 days) after travel is performed.

5. Rental vehicles should be used only when the anticipated cost of using a taxi will exceed the cost of the rental vehicle.

6. State employees are not authorized to secure personal accident insurance offered by the vendor at state expense, but may secure the coverage by personally making payment at the time of rental.

(e) Private Vehicle. The use of privately-owned vehicles for official travel in lieu of common carriers will be authorized if more economical. When travel is performed by privately owned vehicle, the traveler shall be entitled to a mileage allowance equal to that provided for in Section 112.061(7), F.S.

1. All mileage shall be shown from point of origin to point of destination and when possible shall be computed on the basis of the official state road map published by the Department of Transportation. In addition, time of departure and time of return must be shown on Form RG-OFC3.

2. When an individual is in travel status, vicinity mileage necessary for conduct of official business is allowable, but must be shown as a separate item on the expense voucher. Mileage is allowed from office or home (whichever is less) to the airport when performing authorized travel. Within the Capitol center in Tallahassee, sixteen (16) miles round trip is allowable. Field Office managers in areas outside Tallahassee are responsible for establishing the office/home to airport distances, if applicable, and advising the Fiscal Office of these distances.

3. Vicinity mileage to conduct official business in the local area of the employee's official headquarters will be reimbursed in an amount equal to the rate provided for in Section 112.061(7), F.S., when authorized by the agency head or

his/her designee. Request for reimbursement for such vicinity mileage must be submitted with a separately executed Form RG-OFC2 and expense voucher Form RG-OFC3.

(g) Chartered Vehicle. The agency head or his/her designee when necessary, or where it is of fiscal advantage to the Office, will authorize transportation by chartered vehicle when traveling on official business. Limousines will only be authorized when transporting the Governor, Lieutenant Governor, or a business client.

(h) Complimentary Travel.

1. No traveler shall be allowed either mileage or transportation expense when gratuitously transported by another person or when transported by another traveler who is entitled to mileage or transportation expense. However, the traveler should still show how and with whom he/she traveled.

2. A traveler on a private aircraft shall be reimbursed the actual amount charged and paid for the traveler's fare for such transportation up to the cost of a commercial airline ticket for the same flight, even though the owner or pilot of such aircraft is also entitled to transportation expense for the same flight.

Specific Authority 288.1253(2) FS. Law Implemented 288.1253 FS. History--New

27M-1.008 Incidental Expenses.

The following supporting information shall be required and maintained at the agency with Form RG-OFC3, incorporated by reference herein, when the traveler is claiming reimbursement for incidental travel expenses to include those authorized by Section 112.061(8)(a), F.S.:

(1) Taxis and Airport Limousines. Receipts are required for all fares in excess of \$25 on a per fare basis. Tips paid to taxi drivers should not exceed 15% of the fare. In countries where a language barrier may exist, reimbursement may be made without receipts provided that an additional certification is provided the traveler attaches that the expense was actually incurred to the travel voucher.

(2) Receipts for storage, parking fees, or tolls in excess of \$25. Such fees shall not be allowed on a weekly or monthly basis for privately owned automobiles unless it can be established that such method results in savings to the State.

(3) State Business Communication Expenses. Telephone / Telegraph / Fax / Telex / Cellular / Satellite and Internet charges. When traveling, such charges shall be charged to a corporate, personal, or telephone credit card, when possible. A statement claiming the communications were for official state business shall be provided on voucher. Non-business expenses are not reimbursable.

(4) General Business Expenses. These include the use of computers, printers, copy machines, and scanners.

(5) Registration Fees. Registration fees for a convention or conference to which the traveler is authorized to attend are allowed.

(6) Passport and Visa Fees. Actual cost to obtain passports and visas required for official travel will be reimbursed upon presentation of receipts.

(7) Laundry and Pressing. When travel extends past seven (7) days, the traveler will be reimbursed for the actual laundry, dry cleaning, and pressing if such expenses are necessarily incurred to complete the remaining official business portion of the trip. The traveler shall submit, with Form RG-OFC3 a receipt and a statement of justification that the expenses are necessarily incurred.

(8) Tips and Portage. Upon certification by the traveler that the expenses claimed were actually, necessarily, and reasonably incurred, reimbursement will be made when transporting state materials or when accompanying a business client or guest. This does not apply to tips paid pursuant to Rule 27M-1.006(2), F.A.C. Mandatory valet parking charges are reimbursable when not with a business client, up to \$1.00 per occasion, incurred in the performance of public business.

(9) Other incidental travel expenses. Other incidental travel expenses will be reimbursed upon certification by the traveler that the expenses claimed were actually, necessarily, and reasonably incurred as set forth in Rules 3A-42.010(3), (4), and (5), F.A.C.

Specific Authority 288.1253(2) FS. Law Implemented 288.1253 FS. History—New

27M-1.009 Advance Travel.

(1) The following guidelines must be followed when travel advancements are required:

(a) The travel advance may not exceed more than eighty percent (80%) of the estimated cost of meals, lodging, mileage, and incidental expenses that will ultimately be reimbursed to the traveler. However, estimated costs for common carrier and rental car charges that will be billed directly to the State (i.e., credit card charges, flite-checks, one-time travel orders, or tickets charged through travel agencies) shall not be included in the travel advance calculation.

(b) The traveler requesting a travel advance shall complete Form RG-OFC1, incorporated by reference herein. This form shall be properly executed, scheduled for payment, and received by the fiscal office in ample time to process the form and receive a state warrant from the State Comptroller prior to departure. Travel advances shall not be requested earlier than ten (10) business days before the travel period begins without written justification of circumstances that necessitate an exception to this restriction. Travel advances will not be issued for less than \$100.00. A travel advance cannot be issued if a previous advance is still outstanding.

(c) When the travel period has ended, the traveler shall submit within one week (7 days) Form RG-OFC3, incorporated by reference herein, showing the actual travel performed. The agency shall then process the completed Form RG-OFC3 in the following manner:

1. Funds Due Traveler. If a traveler is entitled to additional funds for a travel period, the agency shall be required to deduct on the face of Form RG-OFC3 any travel advance made for the travel period and include the Comptroller's voucher number, date, and warrant number relating to the payment. In addition, a copy of Form RG-OFC1 which requested the travel advance shall be attached to Form RG-OFC3 as documentation.

2. Funds Due to the State. If a traveler was advanced funds in excess of the travel expenses allowed for a particular travel period, the traveler shall include a check for the amount of the difference, including as documentation the executed Form RG-OFC3 with Form RG-OFC1 attached.

(2) Travel advances made pursuant to this section will be limited to full-time employees and OPS employees.

Specific Authority 288.1253(2) FS. Law Implemented 288.1253 FS. History—New

27M-1.010 Special Provisions for Educational Conferences and Conventions.

In addition to the requirements for regular travel, the following information and provisions apply to conference and convention travel:

(1) Benefits Accrued. A statement of the benefits accruing to the State of Florida by virtue of such travel will be included on Form RG-OFC2 and Form RG-OFC3, incorporated by reference herein.

(2) Justification. Justification for the particular employee to attend the conference or convention will be included on the Form RG-OFC2 in the statement of benefits accruing to the state.

(3) Agenda. A copy of the program or agenda for the conference or convention will be attached to Form RG-OFC2. If the program or agenda is not available prior to the travel, it will be attached to the Form RG-OFC3 at the time the voucher is submitted for reimbursement. If an agenda was not printed for the event, a certification must appear on the travel voucher, stating, "an agenda was not printed for this event."

(4) Purpose of Conference. Before conference or convention travel will be approved, it must meet each of the following criteria:

(a) The main purpose of the convention or conference is in connection with the official business of the Office and is directly related to the statutory duties and responsibilities of the Office.

(b) The conference or convention will provide a direct educational benefit supporting the official duties of the employee.

(c) The duties of the employee seeking to attend such meeting are compatible with the objectives of the particular conference or convention.

Specific Authority 288.1253(2) FS. Law Implemented 288.1253 FS. History—New

27M-1.011 Entertainment Expenses.

(1) Entertainment expenses are allowable for promotional items and services required to provide hospitality for business clients and authorized guests as set forth below:

(a) Hospitality in the form of tangible items, i.e., tie tacks, medallions, non-consumable objects, will be purchased by the Office in accordance with applicable purchasing requirements of the Executive Office of the Governor and made available for distribution in accordance with administrative directives.

(b) Hospitality in the form of recreational activities should be acquired through normal purchasing procedures when possible. When this is not possible, reimbursement will be made to the Office employee requesting reimbursement provided that the claim for reimbursement accompanied by receipt is submitted on Form RG-OFC4, incorporated by reference herein.

(c) Hospitality in the form of consumable items should also be acquired through normal purchasing procedures when possible. When this is not possible, reimbursement will be made to the Office employee requesting reimbursement in the manner set forth in (b) above.

(2) Entertainment expenses of state officers, state employees, and authorized persons are allowable only when in the presence of or physically accompanying a business client or authorized guest. Additionally, no state officer or state employee may receive hospitality in the form of tangible items as enumerated in (a) above, unless that officer or employee pays for the item. Any state officer or state employee receiving gifts from an authorized guest, business client, or other private non-family source is expected to comply with applicable requirements of Part III, Section 112.061, F.S., relating to public disclosure.

Specific Authority 288.1253(2) FS. Law Implemented 288.1253 FS. History--New

27M-1.012 Operational and Promotional Advances.

Advances of this nature will only be made upon a showing by the employee that items to be paid for cannot be charged to the Office by normal purchasing procedures. Any settlement of promotional or operational advancements must be made within fifteen (15) days after the expenditure is incurred, or if the advancement is made in connection with travel, within one week (7 days) after completion of the travel.

Specific Authority 288.1253(2) FS. Law Implemented 288.1253 FS. History--New

27M-1.013 Complimentary Goods and Services.

The Office, its employees, and representatives may accept and use complimentary travel, accommodations, meeting space, meals, equipment, transportation, and any other goods or services necessary for or beneficial to the performance of the Office's duties and purposes, so long as such acceptance or use is not in conflict with Part III, Section 112.061, F.S. All goods or services accepted by the Office or its employees shall be

accompanied by receipts, vouchers, or proof of the actual value of the complimentary assistance that shall include an attached statement that the complimentary assistance was actually incurred as necessary in the performance of official duties of the Office. The Office shall maintain record of same along with all other office records.

Specific Authority 288.1253(2) FS. Law Implemented 288.1253 FS. History--New

27M-1.014 Receipts.

While receipts are required for most reimbursement pursuant to these rules, it is recognized that circumstances may arise, i.e. language barriers, loss of receipts, or unavailability of same, which require some alternate procedure for documentation of reimbursable expenses. In those isolated situations, documentation stating reason for non-existence or loss, along with the date the debt was incurred, amount of receipt, issuer, and reason for incurring receipt must be completed by the traveler and included on Form RG-OFC3, incorporated by reference herein. Should additional details or information be required by The Executive Office of the Governor administrative personnel or officials of the State Comptroller's Office, the additional information is to likewise be presented on Form RG-OFC3, and labeled "amended" by the traveler. The provisions of this section will not normally apply to reimbursement for hotel accommodations.

Specific Authority 288.1253(2) FS. Law Implemented 288.1253 FS. History--New

27M-1.015 Exemption from State Contract Rates.

In the event that an employee or officer of the Office receives a quote for travel expenses less than what the traveler would pay using the State of Florida contract rates, the Office is exempted from using the contract rates. This exemption applies to hotel accommodations, airfare, or rental vehicles. Explanation of the lower rates shall be provided by the traveler on Form RG-OFC2 and Form RG-OFC3, incorporated by reference herein.

Specific Authority 288.1253(2) FS. Law Implemented 288.1253 FS. History--New

NAME OF PERSON ORIGINATING PROPOSED RULE: Robert Grimm, Deputy Director, Office of Film and Entertainment, Suite 14, Bloxham Building Tallahassee, Florida 32399-0001

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Rebecca Mattingly, Commissioner of Film and Entertainment, Suite 14, Bloxham Building, Tallahassee, Florida 32399-0001

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

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 3, 2001 (originally published as 27A-1)

DEPARTMENT OF CORRECTIONS

RULE TITLE: Administrative Confinement
 RULE NO.: 33-602.220

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to clarify procedures relating to placement of inmates in administrative confinement and conditions of confinement for inmates assigned to this status.

SUMMARY: The proposed rule provides procedures for weighing inmates assigned to administrative confinement status, specifies items which cannot be possessed by administrative confinement inmates for security reasons, clarifies the time period for review when items of property are removed for safety and security reasons, clarifies formal assessment and record-keeping procedures, deletes unnecessary language, and clarifies staff rotation requirements in confinement areas.

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: 20.315, 944.09, 945.04 FS.

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

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

THE FULL TEXT OF THE PROPOSED RULE IS:

33-602.220 Administrative Confinement.

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

(b) When a decision is made to place an inmate in administrative confinement, the reason for such placement shall be explained to the inmate and the inmate shall be given an opportunity to present verbal comments on the matter. The inmate shall also be allowed to submit a written statement. Prior to placing the inmate in administrative confinement, the inmate shall be given a pre-confinement health assessment to include a physical and mental health evaluation that shall be documented in the health care record. When an official places an inmate in administrative confinement, this action shall be documented on a Report of Administrative Confinement, Form DC6-233a, including the reasons for the action and a summary of the inmate's comments. Form DC6-233a is incorporated by reference in ~~(11)(10)~~ of this rule. The heading and Section I shall be completed by the official who placed the inmate in administrative confinement. Inmates shall be weighed upon admission to administrative the confinement, at least once a

week while in administrative confinement, and upon leaving administrative confinement unit. Inmates confined for 30 days or more shall be weighed after 30 days and weekly thereafter. The weight of the inmate shall be recorded on Form DC6-229, Daily Record of Segregation. Form DC6-229 is incorporated by reference in ~~(11)(10)~~ of this rule. This section shall fully state the circumstances surrounding and reasons for placing the inmate in administrative confinement. The reason shall correspond with one of the reasons for placement stated in subsection (3) of this rule. Once Section I has been completed, the official who placed the inmate in administrative confinement shall sign Section I and forward the report to classification prior to the end of his or her shift or workday. Any written statements provided by the inmate shall be attached to the form.

(c) The Institutional Classification Team shall review inmates in administrative confinement within 72 hours. The only exception to being reviewed ~~seen~~ within 72 hours is when the ICT cannot complete its review within the allotted timeframe due to a holiday. If the review cannot be completed within 72 hours, the action of the senior correctional officer shall be reviewed within 72 hours by the duty warden, documented on the DC6-229, Daily Record of Segregation, and evaluated within 5 days by the ICT. Inmates placed into administrative confinement shall not be released from this status until approved by the ICT. The classification supervisor shall be responsible for ensuring that the ICT docket is prepared. The ICT Chairperson is responsible for scheduling the ICT hearing date and time. All Reports of Administrative Confinement, DC6-233, shall be completed the same day an inmate is placed into confinement and forwarded to the institutional classification unit to be placed on the docket. The ICT shall review inmates for release. During this review the ICT shall consider pending disciplinary hearings and other pending issues or actions. If an inmate has been held in administrative confinement pending a disciplinary hearing and the decision is not to impose disciplinary confinement as a part of the disciplinary action, the disciplinary team or hearing officer shall notify the confinement supervisor who shall coordinate the release of the inmate from administrative confinement. If the confinement supervisor discovers other pending issues or actions, the ICT shall be required to immediately review the case. In the event it is necessary to release an inmate from administrative confinement during weekends or holidays the duty warden is authorized to approve the release immediately.

(3) Reasons for Placement in Administrative Confinement with time limits. Placement of an inmate in administrative confinement is authorized for the following reasons:

(a) No change.

(b) Outside charges are pending against the inmate and the presence of the inmate in the general population would present a danger to the security or order of the institution. A senior

correctional officer or above shall have the authority to place an inmate in administrative confinement for this reason. The length of time spent in administrative confinement for this reason shall not exceed 20 working days. If it appears that an inmate should continue to be segregated from the general population beyond 20 working days, close management procedures shall be initiated pursuant to Rule 33-601.800, F.A.C., rules 33-601.801 through 601.813 and shall be completed within seven working days.

(c) Inmates shall be placed in administrative confinement pending review of the inmate's request for protection from other inmates, (Rule 33-602.221, F.A.C.). The inmate shall be placed in administrative confinement by a senior correctional officer when the inmate presents a signed written statement alleging that the inmate fears for his safety from other inmates, and that the inmate feels there is no other reasonable alternative open to him. A senior correctional officer shall place an inmate in administrative confinement, pending review for protective management, based on evidence that such a review is necessary and the senior correctional officer determines that no other reasonable alternative is available. The inmate shall be encouraged to provide information and otherwise cooperate with the investigation of the matter. The protective management process, including the ICT's action, shall be completed within 15 working days from the initial confinement of the inmate.

1. The Institutional Classification Team (ICT) shall initiate an investigation to gather information. A member of the ICT shall complete the heading and section IA of the DC6-234, Report of Protective Management. Form DC6-234 is incorporated by reference in (11)(40) of this rule. The committee member shall utilize the documentation in the DC6-233a, Report of Administrative Confinement, for the information necessary to complete this portion of the report. The report shall then be forwarded to the investigative official assigned to investigate the reasons for protection. The investigator shall complete Section IB of the report and return it to the ICT.

2. If the inmate submits a request for release in writing at any time during the ICT review process, the area housing supervisor shall provide the inmate with a Form DC6-203, Protection Waiver/Appeal Decision Form. Form DC6-203 is incorporated by reference in (11)(40) of this rule. The inmate shall complete Form DC6-203 and return it to the area housing supervisor for submission to the ICT along with the inmate's written request. ~~The ICT shall review the inmate's request and place the inmate on the docket. The ICT shall interview the inmate and submit their recommendation along with the DC6-203 and any other documentation to the SCO for final consideration. The SCO review and decision shall be conducted during the next routine on-site visit.~~

3. Once the investigation is complete, the ICT shall interview the inmate to determine whether the inmate has a legitimate, verifiable need for protection. The ICT shall review all documentation available concerning the need for protection to include any written statements submitted by the inmate. If applicable, the inmate's written request for release and the DC6-203 will also be reviewed. The ICT shall document its findings and recommendations on the Report of Protective Management, Form DC6-234. The following elements shall be considered in determining whether protective management is necessary:

a. through g. No change.

4. The ICT shall make recommendations concerning protective management based on the facts within 15 working days from the date of initial confinement. ~~Whether~~ If the ICT ~~recommends protective management or not determines that protection is necessary,~~ the inmate shall remain in administrative confinement at that facility pending review by the SCO. ~~The review action shall be documented on the Report of Protective Management, DC6-234. In the event the ICT determines that protection is not appropriate, the inmate shall remain in administrative confinement and~~ The DC6-234 shall be forwarded to the State Classification Office along with team findings, and recommendations and all other related documentation. The State Classification Office shall approve, disapprove or return for additional information the recommendation of the Institutional Classification Team.

5. The State Classification Office (SCO) shall determine within five working days whether protection is necessary based upon the investigation and any follow-up he deems appropriate. The SCO shall approve or disapprove placement of the inmate in protective management. The SCO's decision shall also be documented on the Report of Protective Management, Form DC6-234, and this report shall be returned to the institution. If the SCO determines that a need for protection exists, he shall indicate in the Report of Protective Management that the inmate shall be placed in a protective management unit or transferred, whichever is appropriate. If a decision is made to transfer the inmate, the inmate shall be kept in administrative confinement until the transfer is completed. Transfers for protection needs shall be effected within five working days. SCO members are authorized to approve ~~make~~ transfers. If the SCO determines that protective management is not necessary, the inmate may appeal this decision directly to the Office of the Secretary pursuant to Rules 33-103.007 and 33-103.011, F.A.C. The inmate shall be notified of the SCO's decision by the ICT and this notification shall be documented on the Report of Protective Management, DC6-234. At the time of notification, the inmate shall be asked if he wants to appeal the decision. The inmate's decision on whether or not to appeal shall be documented on DC6-203, Protection

Waiver/Appeal Decision Form. The inmate shall remain in administrative confinement until the appeal process is complete.

6. No change.

(d) No change.

(e) An investigation, evaluation for change of status or transfer is pending and the presence of the inmate in the general population might interfere with that investigation or present a danger to the inmate, other inmates, or to the security and order of the institution. An investigating officer shall have the authority to request that the senior correctional officer place the inmate in administrative confinement for this reason and the length of time spent in this status shall not exceed 15 working days unless one 10 day extension is granted by the ICT. This extension shall be documented on the Daily Record of Segregation, DC6-229. If it is necessary to continue the inmate's confinement beyond this first extension, written authorization must be obtained from the SCO for a 30 day extension. This authorization shall be attached to the DC6-229. The SCO shall have the authority to authorize one ~~an~~ additional 30 day extension as necessary. Examples of circumstances for placing an inmate in administrative confinement for this reason include:

1. No change.

2. Special review against other inmates, disciplinary, program change or management transfer. Transfers for this reason shall be given priority.

3. through 4. No change.

(f) through (4)(b) No change.

(c) Prior to placement of an individual in an administrative confinement cell, it shall be thoroughly inspected to ensure that it is in proper order and the inmate housed in that cell shall then be held responsible for the condition of the cell. Form DC6-221, Cell Inspection, shall be used for this purpose. Form DC6-221 is incorporated by reference in ~~(11)(40)~~ of this rule.

(d) No change.

(5) Conditions and Privileges.

(a) through (b) No change.

(c) Personal Property – Inmates shall be allowed to retain the same personal property as is permitted general population inmates unless there is a indication of a security problem, in which case removal or denial of any item shall be documented on Form DC6-229. An Inmate Impounded Personal Property List, Form DC6-220, designating what personal items were removed, shall be completed by security staff and signed by the inmate. The original will be placed in the inmate's property file and a copy of the form will be given to the inmate. Form DC6-220 is incorporated by reference in Rule 33-602.201, F.A.C ~~(40) of this rule~~. All property retained by the inmate must fit into the storage area provided.

(d) No change.

(e) Personal Hygiene – Inmates in administrative confinement shall meet the same standards in regard to personal hygiene as required of the general inmate population.

1. No change.

2. Male inmates shall be required to shave at least three times per week. The possession and use of shaving powder in administrative confinement is prohibited. An inmate housed in administrative confinement who is medically exempt from using shaving razors will be clipper-shaved at least three times per week.

3. Hair care shall be the same as that provided to and required of the general population inmates.

(f) through (h) No change.

(i) Visiting – All visits for inmates in administrative confinement must be approved in advance by the ICT or warden. Requests for inmates in administrative confinement to visit shall be in writing to the ICT. Those inmates who are a threat to the security of the institution shall be denied visiting privileges. Attorney-client visits shall be in accordance with R#rule 33-601.711, F.A.C. and shall not be restricted except on evidence that the visit would be a threat to security and order. The warden or his or her designee must approve all visits in advance.

(j) through (m) No change.

(n) Reading materials – Reading materials, including scriptural and devotional materials and books that are in compliance with admissibility requirements in R#rule 33-501.401, F.A.C. shall be permitted for those inmates in administrative confinement units unless there is an indication of a threat to the safety, security or sanitation of the institution. If it is determined that there is a safety, security or sanitation risk, the items will be removed. Such removal of reading materials shall be documented on Form DC6-229 in accordance with ~~(9)(8)~~(c) of this rule. An inmate who receives services from the Bureau of Braille and Talking Book Library shall be allowed to have his or her tape player and devotional and scriptural materials and any other books on tape that are in compliance with admissibility requirements in R#rule 33-501.401, F.A.C.

(o) through (p) No change.

(q) If items of clothing, bedding or property are removed in order to prevent the inmate from inflicting injury to himself or herself or others or to prevent destruction of property or equipment, staff shall re-assess the need for continued restriction every 72 hours thereafter. The warden, based on this assessment, will make the final determination on the continued denial or return of the items. The items will be returned to the inmate when no further behavior or threat of behavior of the type leading to the restriction has occurred.

(6) Restraint and Escort Requirements.

(a) Prior to opening any cell for any purpose, including exercise, medical or disciplinary call-outs, telephone calls, recreation, and visits, all inmates in the cell shall be handcuffed

behind their backs, unless documented medical conditions require that an inmate be handcuffed in front. In such cases, waist chains will be used in addition to the handcuffs and escort officers shall be particularly vigilant.

(b) through (e) No change.

~~(f) The following staff members shall be required to officially inspect and tour the administrative confinement unit. All visits by staff shall be documented on the Inspection of Special Housing Record, Form DC6-228. The staff member shall also document his or her visit on the Daily Record of Segregation, Form DC6-229, if any discussion of significance, action or behavior of the inmate occurs or any important information is obtained which may have an influence or effect on the status of confinement. These visits shall be conducted at a minimum of:~~

~~1. At least every 30 minutes by a correctional officer, but on an irregular schedule.~~

~~2. Daily by the area housing supervisor.~~

~~3. Daily by the officer in charge on duty for all shifts except in case of riot or other institutional emergency.~~

~~4. Weekly by the Chief of Security (when on duty at the facility) except in case of riot or other institutional emergency.~~

~~5. Daily by a clinical health care person.~~

~~6. Weekly by the chaplain. More frequent visits shall be made upon request of the inmate if the chaplain's schedule permits.~~

~~7. Weekly by the warden and assistant wardens.~~

~~8. At least once a week by a classification officer.~~

~~9. At least once a month by a member of the Institutional Classification Team to ensure that the inmate's welfare is properly provided for, and to determine the time and method of release or any program changes.~~

~~(f)(g)~~ Any inmate who has demonstrated behavior that is or could be harmful to himself or herself shall be designated as a special risk inmate. If the inmate demonstrates bizarre, mentally disordered, or self-destructive behavior, the medical department shall be immediately contacted to determine if special watch or suicide watch procedures shall be initiated. Suicidal inmates shall be removed to a designated area where a correctional officer or health care staff provides observation. Visual checks shall be made in accordance with medical protocols or at least every 30 minutes and shall be documented on Form DC4-650, Observation Checklist, until the inmate is no longer considered a special risk inmate. All actions taken by staff with regard to special risk inmates shall be documented on Form DC6-229 and followed with an Incident Report, Form DC6-210. Form DC6-210 is incorporated by reference in Rule 33-602.210, F.A.C. Form DC4-650 is incorporated by reference in ~~(11)(10)~~ of this rule.

(7) Visits to Administrative Confinement. The following staff members shall be required to officially inspect and tour the administrative confinement unit. All visits by staff shall be documented on the Inspection of Special Housing Record,

Form DC6-228. The staff member shall also document his or her visit on the Daily Record of Segregation, Form DC6-229, if any discussion of significance, action or behavior of the inmate occurs or any important information is obtained which may have an influence or effect on the status of confinement. These visits shall be conducted at a minimum of:

(a) At least every 30 minutes by a correctional officer, but on an irregular schedule.

(b) Daily by the area housing supervisor.

(c) Daily by the officer-in-charge on duty for all shifts except in case of riot or other institutional emergency.

(d) Weekly by the Chief of Security (when on duty at the facility) except in case of riot or other institutional emergency.

(e) Daily by a clinical health care person.

(f) Weekly by the chaplain. More frequent visits shall be made upon request of the inmate if the chaplain's schedule permits.

(g) Weekly by the warden and assistant wardens.

(h) At least once a week by a classification officer.

~~(8)(7)~~ Review of Administrative Confinement.

(a) No change.

(b) Any inmate assigned to administrative confinement for more than 30 days shall be given a psychological screening assessment by a mental health professional to determine his or her mental condition. The assessment shall include a personal interview if determined necessary by mental health staff. All such assessments shall be documented in the mental health record. The psychologist or psychological specialist shall prepare a report to the ICT regarding the results of the assessment with recommendations. The ICT shall then make a decision regarding continuation of confinement. All ~~Any~~ recommendations by the psychologist or psychologist specialist ~~that the inmate be released from administrative confinement~~ shall be forwarded by the ICT to the SCO. If the decision is to continue confinement, a psychological screening assessment shall be completed at least every 90-day period.

(c) If an inmate is confined for more than 30 days, the ICT shall interview the inmate and shall prepare a formal assessment and evaluation report after every 30 day period the inmate remains in administrative confinement. Such reports may be in a brief paragraph form detailing the basis for confinement, what has transpired since the last report, the decision concerning continued confinement and the basis for that decision.

(d) No change.

~~(9)(8)~~ Administrative Confinement Records.

(a) No change.

(b) A Daily Record of Segregation, Form DC6-229, shall be maintained in the housing area for one week, then forwarded to the ICT for review, and then forwarded to classification for filing in the institutional inmate record for each inmate as long as he is in administrative confinement. The

DC6-229 shall be utilized to document any activity such as cell searches, items removed, showers, recreation, haircuts and shaves and also unusual occurrences such as refusal to come out of a cell or refusal to eat. If items that inmates in administrative confinement are not prohibited from possessing are denied or removed from the inmate, the shift officer-in-charge or the confinement lieutenant must approve the action initially. The central office ADA coordinator shall be contacted within 24 hours if any item is removed that would be considered an auxiliary aid or device that ensures a disabled inmate an equal opportunity as a non-disabled inmate. The items denied or removed shall be documented on Form DC6-229 and the Chief of Security shall make the final decision in regard to the appropriateness of that action no later than the next working day following the action. The supervising officer shall make a notation of any unusual occurrences or changes in the inmate's behavior and any action taken. Changes in housing location or any other special action shall also be noted. The DC6-229 shall be maintained in the housing area for one week, at which time the form shall be forwarded to the ICT for review. Once reviewed, these forms shall be forwarded to classification to be filed in the institutional inmate record.

(c) An Inspection of Special Housing Record, Form DC6-228, shall be maintained in each administrative confinement area. Each staff person shall sign such record when entering and leaving the confinement area. Prior to leaving the confinement area, each staff member shall indicate any specific problems including any inmate who requires special attention. Upon completion, the DC6-228 shall be maintained in the housing area and forwarded to the Chief of Security on a weekly basis where it shall be maintained on file pursuant to the current retention schedule. Form DC6-228 is incorporated by reference in ~~(11)(10)~~ of this rule.

~~(10)(9)~~ Staffing Issues.

(a) Officers assigned to a confinement unit shall be reviewed at least rotated to another assignment every 18 months by the chief of security to determine whether a rotation is necessary for a period of at least one year. The chief of security shall review personnel records, to include performance appraisals, incident reports, use of force reports, and any other documentation relevant to the officer's assignment and job performance; interview the officer and officers' supervisors for the period of review; and shall make a recommendation to the warden as to the necessity of a rotation. The warden shall review the recommendation, request additional information if necessary, and make the final determination as to whether the officer continues in the current assignment or is rotated to another assignment. Any officer assigned to a confinement post shall be authorized a minimum period of five days annual leave or a five day assignment to a less stressful post every six months.

(b) No change.

~~(11)(10)~~ Forms. The following forms referenced in this rule are hereby incorporated by reference. A copy of any of these forms may be obtained from the Forms Control Administrator, Office of the General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500.

(a) through (g) No change.

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

Specific Authority 944.09 FS. Law Implemented 20.315, 944.09, 945.04 FS. History--New 4-7-81, Amended 6-23-83, 3-12-84, Formerly 33-3.081, Amended 4-22-87, 8-27-87, 7-10-90, 12-4-90, 3-24-97, 4-26-98, 10-5-98, Formerly 33-3.0081, Amended 2-12-01,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:

Jerry Vaughan

NAME OF SUPERVISOR OR PERSON WHO APPROVED

THE PROPOSED RULE: Michael W. Moore

DATE PROPOSED RULE APPROVED BY AGENCY

HEAD: September 13, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT

PUBLISHED IN FAW: August 24, 2001

DEPARTMENT OF CORRECTIONS

RULE TITLE:

Disciplinary Confinement

RULE NO.:

33-602.222

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to clarify procedures relating to placement of inmates in disciplinary confinement and conditions of confinement for inmates assigned to this status.

SUMMARY: The proposed rule specifies items which cannot be possessed by disciplinary confinement inmates for security reasons, clarifies the time period for review when items of property are removed for safety and security reasons, specifies restraint requirements when opening cell doors in disciplinary confinement, clarifies formal assessment and record-keeping procedures, deletes unnecessary language, and clarifies staff rotation requirements in confinement areas.

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: 20.315, 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: Perri King Dale, Office of the General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE FULL TEXT OF THE PROPOSED RULE IS:

33-602.222 Disciplinary Confinement.

(1) through (4)(b) No change.

(c) Personal Property. Inmates in confinement shall be allowed to retain stamps, eyeglasses, hearing aids, personal watches, and rings unless there is an indication of a security problem. If removal of any item in the inmate's possession is determined necessary, the correctional staff shall document their actions on the DC6-229, Daily Record of Segregation, which shall be approved by the chief of security. The correctional staff shall issue the inmate a receipt for her or his confiscated items by completing the Inmate Impounded Personal Property List, Form DC6-220. Form DC6-220 is incorporated by reference in Rule 33-602.220(10). Inmates in disciplinary confinement shall not possess any products that contain baby oil, mineral oil, cocoa butter, or alcohol.

(d) No change.

(e) Personal Hygiene. Inmates in disciplinary confinement shall meet the following standards in regards to personal hygiene as required of the general inmate population:

1. No change.

2. Male inmates shall be required to shave at least three times per week. The possession and use of shaving powder in disciplinary confinement is prohibited. An inmate housed in disciplinary confinement who is medically exempt from using shaving razors will be clipper-shaved at least three times per week.

3. No change.

(f) through (q) No change.

(r) If items of clothing, bedding or property are removed in order to prevent the inmate from inflicting injury to himself or herself or others or to prevent destruction of property or equipment, staff shall re-assess the need for continued restriction every 72 hours thereafter. The warden, based on this assessment, will make the final determination on the continued denial or return of the items. The items will be returned to the inmate when no further behavior or threat of behavior of the type leading to the restriction has occurred.

(5) No change.

(6) Restraint and Escort Requirements.

(a) Prior to opening a cell door for any reason, including exercise, medical or disciplinary call-outs, telephone calls, recreation, and visits, all inmates in the cell shall be handcuffed behind their backs, unless documented medical conditions require that an inmate be handcuffed in front. In such cases, waist chains will be used in addition to the handcuffs and escort officers shall be particularly vigilant.

(b) through (e) No change.

(7) Visits to Disciplinary Confinement.

(a) The following staff members shall be required to officially inspect and tour the disciplinary confinement unit. All visits by staff shall be documented on the Inspection of

Special Housing Record DC6-228. Form DC6-228 is incorporated in Rule 33-602.220(10). The staff member shall also document his or her visit on the Daily Record of Segregation DC6-229, if any discussion of significance, action or behavior of the inmate, or any other important information is obtained which may have an influence or effect on the status of confinement. These visits shall be conducted a minimum of:

1. through 9. No change.

10. The SCO will visit ~~review~~ every inmate housed in disciplinary confinement longer than ninety consecutive days as frequently as necessary to ensure that the inmate's welfare is provided for and to determine if the inmate should be released. A list of inmates meeting the above criteria shall be provided to the SCO by the ICT at the facility.

(b) through (8)(a) No change.

(b) Any inmate assigned to disciplinary confinement for more than 30 days shall be given a psychological screening assessment by a mental health professional to determine the inmate's mental condition. The assessment shall include a personal interview if deemed necessary by the mental health professional. The psychologist or psychological specialist shall prepare a report to the ICT regarding the results of the assessment with recommendations. The ICT shall then make a decision regarding continuation of confinement. All ~~Any~~ recommendations by the psychologist or psychologist specialist ~~that the inmate be released from disciplinary confinement~~ shall be forwarded by the ICT to the SCO. If the decision is to continue confinement, a psychological screening assessment shall be completed at least every 90-day period.

(c) If an inmate is housed for more than 30 days, the ICT shall interview the inmate and prepare a formal assessment and evaluation report after each consecutive thirty day period in disciplinary confinement. Such reports may be in a brief paragraph form detailing the basis for confinement, what has transpired since the last report, the decision concerning continued disciplinary confinement, and the basis for that decision.

(d) The SCO shall review all reports prepared by the ICT and the psychologist or psychological specialist concerning the inmate's disciplinary confinement at the next on-site visit, and may interview the inmate before determining the final disposition of the inmate's disciplinary confinement.

(e) The confinement housing supervisor is authorized to have an inmate released from disciplinary confinement upon completion of his disciplinary confinement time, unless the ICT has determined that a need exists to modify the inmate's status to administrative ~~disciplinary~~ confinement.

(9) Daily Record of Segregation.

(a) A Daily Record of Segregation, Form DC6-229, shall be maintained in the housing area for one week, then forwarded to the ICT for review, and then forwarded to classification for filing in the institutional inmate record ~~for each inmate as long as he is in confinement.~~

1.7.2 Basin Expiration Dates

The expiration dates for Individual Irrigation Use Class Water Use Permits for projects located within the identified basins are extended as follows:

<u>Upper East Coast</u>	<u>June 15, 2003</u>
<u>Lower West Coast</u>	<u>June 15, 2004</u>
<u>Lower East Coast</u>	<u>December 15, 2005</u>
<u>Kissimmee</u>	<u>June 15, 2007</u>

In addition, these following basin expiration dates will be applied to used for the processing of individual irrigation use class water use permits issued or modified under this rule. For projects crossing multiple basin boundaries, the expiration date for the permit shall be the date associated with the basin containing the majority of the irrigated acreage. The basins are shown in Figure 1-1 and contain the Surface Water Use Basins, as described in Rule 40E-21.631, F.A.C., listed below.

Upper East Coast: Northwest Loxahatchee River, Northwest Martin County, St. Lucie Agricultural Area, West Coastal Martin County, North Coastal Martin County, Stuart Peninsula, South Coastal Martin County, Interior Martin County, Port St. Lucie, and Coastal St. Lucie County.

Lower West Coast: Caloosahatchee River Basin Watershed – North, Caloosahatchee River Basin Watershed – South, Coastal Collier County, Fakahatchee North, Fakahatchee South, and Big Cypress Preserve.

Lower East Coast: South Dade, Water Conservation Areas/Everglades National Park, Water Conservation Area No. 3, Water Conservation Area No. 2, Water Conservation Area No. 1/West Palm Beach Canal, Everglades Agricultural Area, Interior Palm Beach County, M Canal, North Palm Beach County, C-18, Loxahatchee River, St. Lucie River, Lakeshore Perimeter, South Hendry County/L-28 Gap, and Caloosahatchee River.

Kissimmee: Taylor Creek/Nubbin Slough, Kissimmee River Valley, Upper Chain of Lakes, West Chain of Lakes, Indian Prairie, and Fisheating Creek.

Lower West Coast Basin

The expiration date for Individual Irrigation Use Class Water Use Permits for projects located within the Lower West Coast Basin is extended to either December 15, 2001 or a date the District shall specify in rules adopted to implement the

~~District’s Lower West Coast Water Supply Plan, whichever date establishes the shorter permit duration. The District shall provide notice to Individual Irrigation Use Class Water Use Permit holders of the expiration date of their permits within 30 days after the effective date of the rules adopted to implement the Lower West Coast Water Supply Plan. However, no Individual Irrigation Use Class Water Use Permit will expire prior to December 15, 1998. Notice shall be made by mail and by publication in a newspaper of general circulation in the affected area.~~

Lake Okeechobee, Palm Beach County, Broward County, and Dade/Monroe Basins

~~The expiration date for Individual Irrigation Use Class Water Use Permits for projects located within the Lake Okeechobee, Palm Beach County, Broward County, and Dade/Monroe basins is extended to either December 15, 2001 or a date the District shall specify in rules adopted to implement the District’s Lower East Coast Water Supply Plan. The District shall provide notice to Individual Irrigation Use Class Water Use Permit holders of the expiration date of their permits within 30 days after the effective date of the rules adopted to implement the Lower East Coast Water Supply Plan. However, no Individual Irrigation Use Class Water Use Permit will expire prior to December 15, 1999. Notice shall be made by mail and by publication in a newspaper of general circulation in the affected area.~~

Upper East Coast and Kissimmee Basins

~~The expiration date for Individual Irrigation Use Class Water Use Permits for projects located within the Upper East Coast and Kissimmee basins is extended to either December 15, 2001 or a date the District shall specify in rules adopted to implement the District’s Upper East Coast and Kissimmee Basin Water Supply Plans. The District shall provide notice to Individual Irrigation Use Class Water Use Permit holders of the expiration date of their permits within 30 days after the effective date of the rules adopted to implement these Water Supply Plans. However, no Individual Irrigation Use Class Water Use Permit will expire prior to December 15, 1998. Notice shall be made by mail and by publication in a newspaper of general circulation in the affected area.~~

INSERT MAP
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NAME OF PERSON ORIGINATING PROPOSED RULE: Wm. Scott Burns, Director, Water Use Regulation Department
NAME OF PERSON OR SUPERVISOR WHO APPROVED THE PROPOSED RULE: Governing Board of the South Florida Water Management District
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 13, 2001
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 3, 2001

DEPARTMENT OF THE LOTTERY

RULE TITLE: General Provisions
RULE NO.: 53-20.001
PURPOSE AND EFFECT: The purpose of the proposed rule amendment is to update the specific positions that compose the Executive Management Service.
SUMMARY: The proposed rule amendment updates the specific positions that compose the Executive Management Service.
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: 24.105(10)(j) FS.
LAW IMPLEMENTED: 24.105(20)(d) 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: 9:00 a.m., October 24, 2001
PLACE: Department of the Lottery, Office of the General Counsel, 250 Marriott Drive, Tallahassee, Florida 32399-4011
THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Diane D. Schmidt, Office of the General Counsel, Capitol Complex, Tallahassee, Florida 32399-4011, (850)487-7724

THE FULL TEXT OF THE PROPOSED RULE IS:

- 53-20.001 General Provisions.
(1) No change.
(2) The Executive Management Service is composed of the Secretary, Deputy Secretary, Chief of Staff, Assistant Secretaries, Directors, District Managers, General Counsel, and the Inspector General/Chief Internal Auditor.
(3) through (6) No change.

Specific Authority 24.105(10)(j) FS. Law Implemented 24.105(20)(d) FS. History--New 2-22-93, Amended 3-12-00,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Diane D. Schmidt, Office of the General Counsel
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Kenneth H. Hart, Jr., General Counsel
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 9, 2001
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 24, 2001

DEPARTMENT OF HEALTH

Board of Medicine
RULE TITLE: Notices
RULE NO.: 64B8-1.006
PURPOSE AND EFFECT: The proposed rule amendment is intended to implement a new change pursuant to section 456.035, Florida Statutes, with regard to electronic notification of change of address.
SUMMARY: The proposed rule amendment clarifies notification requirements.
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: 458.309 FS.
LAW IMPLEMENTED: 456.035(1), 458.319(5) 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., October 24, 2001
PLACE: Room 324, Collins Building, 107 W. Gaines Street, Tallahassee, FL
THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Tanya Williams, Executive Director, Board of Medicine/MQA, 4052 Bald Cypress Way, Bin # C03, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

- 64B8-1.006 Notices.
In addition to the requirements of Section 458.319(3), Florida Statutes, each person holding a license issued pursuant to Chapter 458, Florida Statutes, must maintain on file with the Board of Medicine the current address at which any notice required by law may be served by the Board or its agent. Within 60 days of changing this address, whether or not within this state, the licensee shall notify the Board in writing of the

new address at which the licensee may be served with notices or other documents. The written notification to the Board may be made electronically.

Specific Authority 458.309 FS. Law Implemented 456.035(1), 458.319(5) FS. History--New 2-21-93, Formerly 21M-18.018, 61F6-18.018, Amended 12-22-96, Formerly 59R-1.018, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Rules Committee, Board of Medicine

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 4, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 31, 2001

DEPARTMENT OF HEALTH

Board of Medicine

RULE TITLE: List of Approved Forms; Incorporation

RULE NO.: 64B8-1.007

PURPOSE AND EFFECT: The proposed rule amendment is intended to incorporate a revised incident reporting form into the rule relating to forms.

SUMMARY: The proposed rule amendment incorporates a revised form into the rule.

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: 120.55(1)(a),(4), 456.013, 456.036(5), 456.048(1), 458.309, 458.311, 458.3124(6), 458.313(4), 458.3145, 458.315(2), 458.320(8), 458.321(2), 458.347(13), 458.351(6) FS.

LAW IMPLEMENTED: 456.013, 456.035, 456.036, 456.048, 456.073, 458.309, 458.311, 458.3124, 458.313, 458.3145, 458.315, 458.316, 458.317, 458.319, 458.320, 458.321, 458.345, 458.347, 458.351 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., October 24, 2001

PLACE: Room 324, Collins Building, 107 W. Gaines Street, Tallahassee, FL

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Tanya Williams, Executive Director, Board of Medicine/MQA, 4052 Bald Cypress Way, Bin # C03, Tallahassee, Florida 32399-3253.

THE FULL TEXT OF THE PROPOSED RULE IS:

64B8-1.007 List of Approved Forms; Incorporation.

The following forms used by the Board in its dealings with the public are listed as follows and are hereby adopted and incorporated by reference, and can be obtained from the Board office by writing to the Board of Medicine, 4052 Bald Cypress Way, Bin #C03, Tallahassee, Florida 32399-1753, or by telephoning (850)245-4131:

(1) through (15) No change.

(16) DH-MQA 1030, entitled "Physician Office Adverse Incident Report," (9/01) ~~(2/00)~~.

(17) through (23) No change.

Specific Authority 120.55(1)(a),(4), 456.013, 456.036(5), 456.048(1), 458.309, 458.311, 458.3124(6), 458.313(4), 458.3145, 458.315(2), 458.320(8), 458.321(2), 458.347(13), 458.351(6) FS. Law Implemented 456.013, 456.035, 456.036, 456.048, 456.073, 458.309, 458.311, 458.3124, 458.313, 458.3145, 458.315, 458.316, 458.317, 458.319, 458.320, 458.321, 458.345, 458.347, 458.351 FS. History--New 4-17-01, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Rules Committee, Board of Medicine

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 4, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 31, 2001

DEPARTMENT OF HEALTH

Board of Medicine

RULE TITLES: Application, Certification, Registration, and Licensure Fees

RULE NOS.:

64B8-3.002

Inactive and Delinquent Status Fees 64B8-3.004

PURPOSE AND EFFECT: The proposed the rule amendments are intended to increase the fee for licensure by examination, to implement a fee for converting from inactive to limited license, and to incorporate an increase in the initial licensure fees and inactive and delinquent fees.

SUMMARY: The proposed rule amendments raise fees for licensure by examination, initial licensure fees and fees for inactive and delinquent status. In addition, the rule also implements a fee for converting from inactive to limited license.

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: 456.013, 456.025, 456.036, 458.309, 458.311, 458.313, 458.3135, 458.3145, 458.315, 458.316, 458.3165, 458.317, 458.345, 458.347 FS.

LAW IMPLEMENTED: 456.013, 456.025, 456.036, 458.311, 458.3115, 458.3124, 458.313, 458.3135, 458.3145, 458.315, 458.316, 458.3165, 458.317, 458.345, 458.347 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., October 24, 2001

PLACE: Room 324, Collins Building, 107 W. Gaines Street, Tallahassee, FL

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Tanya Williams, Executive Director, Board of Medicine/MQA, 4052 Bald Cypress Way, Bin #C03, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULES IS:

64B8-3.002 Application, Certification, Registration, and Licensure Fees.

The following fees are prescribed by the Board:

(1) through (4) No change.

(5) The application fee for a person desiring to be licensed as a physician by examination, as provided in Sections 458.311, 458.3115 and 458.3124, F.S., shall be \$460.00 ~~\$410.00~~.

(6) The initial certification fee for any person who is issued a temporary certificate to practice in areas of critical need, public health certificate, public psychiatry certificate, or medical faculty certificate and the initial license fee for a person who is issued a license to practice as a physician as provided in Section 458.311, 458.3115 or 458.3124, F.S., or Section 458.313, F.S.; or a limited license as provided in Section 458.317, F.S., shall be \$385.00 ~~\$350.00~~ with the following exceptions:

(a) through (d) No change.

(7) through (8) No change.

Specific Authority 456.013, 456.025, 458.309, 458.311, 458.313, 458.3135, 458.3145, 458.315, 458.316, 458.3165, 458.317, 458.345, 458.347 FS. Law Implemented 456.013, 456.025, 458.311, 458.3115, 458.3124, 458.313, 458.3135, 458.3145, 458.315, 458.316, 458.317, 458.345, 458.347, 456.036, 458.3145, 458.316, 458.3165, 458.345 FS. History--New 12-5-79, Amended 11-10-82, 8-11-85, 10-24-85, Formerly 21M-19.02, Amended 12-4-86, 11-3-87, 7-4-88, 10-23-89, 11-12-89, 11-11-90, 1-16-91, 1-9-92, 2-10-92, 9-7-92, Formerly 21M-19.002, Amended 9-21-93, Formerly 61F6-19.002, Amended 2-13-95, 2-20-96, 6-24-96, Formerly 59R-3.002, Amended 6-7-98, 8-11-98, 11-22-98, 12-14-99, 1-31-01, _____.

64B8-3.004 Inactive and Delinquent Status Fees.

(1) The fees for individuals holding a medical license, a temporary certificate to practice in areas of critical need, or a limited license shall be:

(a) The fee for an inactive status license shall be \$385.00 ~~\$350.00~~. The fee for inactive status for a resident shall be \$200.00.

(b) No change.

(c) The fee for delinquent status as set forth in Subsection 456.036(7), F.S., shall be \$385.00 ~~\$350.00~~. The fee for delinquent status for a resident shall be \$200.00.

(d) No change.

(e) The fee for reactivation of an inactive license for the purpose of converting the license to a limited license pursuant to Section 458.317(4), F.S., shall be \$25.00.

(2) No change.

Specific Authority 458.309, 456.036 FS. Law Implemented 456.036, 458.3145, 458.316, 458.3165, 458.345 FS. History--New 2-13-95, Amended 10-10-95, 12-18-95, Formerly 59R-3.004, Amended 8-11-98, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Rules Committee, Board of Medicine

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 8, 2001 and August 4, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 27, 2001 and August 31, 2001

DEPARTMENT OF HEALTH

Board of Medicine

RULE TITLE: Applications
 RULE NO.: 64B8-4.009

PURPOSE AND EFFECT: The Board proposed rule amendment is intended to incorporate the requirements for initial licensure with regard to educational requirements in the rule which covers applications for licensure.

SUMMARY: The proposed rule amendment addresses the requirements for education in the rule which covers applications for licensure.

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: 120.53, 456.031, 456.033, 458.309, 458.311 FS.

LAW IMPLEMENTED: 120.53, 456.031, 456.033, 458.311, 458.3124, 458.313, 458.3145, 458.315, 458.316, 458.3165, 458.317 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., October 24, 2001
PLACE: Room 324, Collins Building, 107 W. Gaines Street, Tallahassee, FL
THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Tanya Williams, Executive Director, Board of Medicine/MQA, 4052 Bald Cypress Way, Bin #C03, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

64B8-4.009 Applications.

(1) through (7) No change.

(8) The applicant must submit notarized statements attesting to the following:

(a) Completion of three hours of all Category I, American Medical Association Continuing Medical Education which includes the topics of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome: the disease and its spectrum of clinical manifestations; epidemiology of the disease; related infections including TB; treatment, counseling, and prevention; transmission from healthcare worker to patient and patient to healthcare worker; universal precautions and isolation techniques; and legal issues related to the disease. If the applicant has not already completed the required continuing medical education, upon submission of an affidavit of good cause, the applicant will be allowed six months to complete this requirement.

(b) Completion of one hour of continuing medical education on domestic violence which includes information on the number of patients in that professional's practice who are likely to be victims of domestic violence and the number who are likely to be perpetrators of domestic violence, screening procedures for determining whether a patient has any history of being either a victim or a perpetrator of domestic violence, and instruction on how to provide such patients with information on, or how to refer such patients to, resources in the local community, such as domestic violence centers and other advocacy groups, that provide legal aid, shelter, victim counseling, batterer counseling, or child protection services, and which is approved by any state or federal government agency, or nationally affiliated professional association, or any provider of Category I or II American Medical Association Continuing Medical Education. Home study courses approved by the above agencies will be acceptable. If the applicant has not already completed the required continuing medical education, upon submission of an affidavit of good cause, the applicant will be allowed six months to complete this requirement.

(c) Completion of two hours of continuing medical education relating to prevention of medical errors which includes a study of root cause analysis, error reduction and prevention, and patient safety, and which is approved by any state or federal government agency, or nationally affiliated professional association, or any provider of Category I or II

American Medical Association Continuing Medical Education. One hour of a two hour course which is provided by a facility licensed pursuant to Chapter 395, F.S. for its employees may be used to partially meet this requirement.

(8) through (9) renumbered (9) through (10) No change.

Specific Authority 120.53, ~~456.031, 456.033~~, 458.309, 458.311 FS. Law Implemented 120.53, ~~456.031, 456.033~~, 458.311, 458.312, 458.313, 458.314, 458.315, 458.316, 458.316, 458.317 FS. History--New 3-31-80, Amended 12-4-85, Formerly 21M-22.09, Amended 9-7-88, 3-13-89, 1-1-92, 2-21-93, Formerly 21M-22.009, Amended 11-4-93, Formerly 61F6-22.009, Amended 11-15-94, 2-15-96, Formerly 59R-4.009, Amended 7-10-01.

NAME OF PERSON ORIGINATING PROPOSED RULE: Rules Committee, Board of Medicine
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Medicine
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 4, 2001
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 31, 2001

DEPARTMENT OF HEALTH

Board of Medicine

RULE TITLES: Notice of Noncompliance
Citation Authority
PURPOSE AND EFFECT: The proposed rule amendments are intended to address notices of noncompliance with regard to delinquent licensure status and to set forth additional violations for which a citation is deemed appropriate.

RULE NOS.: 64B8-8.011
64B8-8.017

SUMMARY: The proposed rule amendments provide clarification with regard to delinquent licensure status and set forth additional violations the Board deems appropriate for issuance of citations.

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: 456.073(3), 456.077, 458.309 FS.

LAW IMPLEMENTED: 456.073(3), 456.077 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., October 24, 2001
PLACE: Room 324, Collins Building, 107 W. Gaines Street, Tallahassee, FL
THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Tanya Williams, Executive Director, Board of Medicine/MQA, 4052 Bald Cypress Way, Bin #C03, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULES IS:

64B8-8.011 Notice of Noncompliance.

(1) through (2) No change.

(3) The following violations are those for which the board authorizes the Agency to issue a notice of noncompliance.

(a) through (b) No change.

(c) Violating any of the following provisions of chapter 458, as prohibited by Section 458.331(1)(x), Florida Statutes:

1. Section 458.327, Florida Statutes, which provides for criminal penalties for the practice of medicine without an active license. A notice of noncompliance would be issued for this violation only if the subject of the investigation met the following criteria: the subject must be the holder of a license to practice medicine at all time material to the matter; that license is otherwise in good standing; and that license must be renewed and placed in an active status within 90 days of ~~becoming delinquent reverting to inactive status based on failure to renew the license.~~ If the license was ~~delinquent in an inactive status~~ for more than 90 days and the individual continued to practice, then the matter would proceed under the other provisions of Section 456.073, Florida Statutes.

2. No change.

Specific Authority 456.073(3), 458.309 FS. Law Implemented 456.073(3) FS. History—New 11-15-90, Formerly 21M-20.011, 61F6-20.011, 59R-8.011, Amended 1-27-00,_____.

64B8-8.017 Citation Authority.

(1) through (2) No change.

(3) The following violations with accompanying penalty may be disposed of by citation with the specified penalty:

VIOLATIONS PENALTY

(a) CME violations (Sections 458.321, 458.331(1)(g), (x), 456.072(1)(e), (s), F.S.) Within twelve months of the date the citation is issued, Respondent must submit certified documentation of completion of all CME requirements for the period for which the citation was issued; prior to renewing the license for the next biennium, Respondent must document compliance with the CME requirements for the relevant period; AND

1. Failure to document required HIV/AIDS and related infections of TB CME. \$500 fine

2. Failure to document required domestic violence CME. \$500 fine

3. Failure to document required medical errors CME. \$500 fine

~~4.3.~~ Failure to document required HIV/AIDS and related infections of TB and failure to document domestic violence and medical errors CME. \$1000 fine

~~5.4.~~ Documentation of some, but not all, 40 hours of required CME for license renewal. \$50 fine for each hour not documented.

(b) through (d) No change.

(e) Failure to provide medical records of only one patient or excessively charging copying fees for patient records (64B8-10.003, F.A.C.) \$500 fine and reimbursement of excessive fees charged.

(Sections 458.331(1)(g), 456.057).

(f) No change.

(g) False, deceptive or misleading advertising. (Section 458.331(1)(d), F.S.)

1. Advertising violations other than those included in Rule 64B8-8.011(3)(a)1., F.A.C. \$500 fine

2. Advertising or holding oneself out as a board-certified specialist, if not qualified under Section 458.3312, F.S. (Section 458.331(1)(II), F.S.) \$500 fine

(h) Failure to update physician profile as required in Sections 456.039(3) and 457.319(1), F.S. (Sections 456.039(3)(b), F.S.) \$1000 fine and 3 hours CME in ethics

(i) Failure to notify the Board in writing within 30 days if action as defined in Section 458.331(1)(b), F.S., has been taken against one's license to practice medicine in another state, territory, or county if that action was based on action taken by the Florida Board of Medicine \$1000 fine

(j) Failure to comply with Sections 381.0261, F.S., by failing to inform patients of the address and telephone number of the agency responsible for responding to patient complaints or failure to make available a summary of rights to patients. (Sections 458.331(1)(g) and 456.072(1)(k), F.S.)

1. For non-willful violations \$100 fine

2. For willful violataions \$500 fine

(k) First time failure to pay fine or costs imposed by Board Order (failure to pay citation will result in an administrative complaint). 10% of the fine and/or costs imposed, fine and costs.

(4) through (7) No change.

Specific Authority 458.309, 456.077 FS. Law Implemented 456.077 FS. History--New 12-30-91, Formerly 21M-20.017, Amended 11-4-93, Formerly 61F6-20.017, Amended 8-23-95, Formerly 59R-8.017, Amended 4-7-99, 1-27-00,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Rules Committee, Board of Medicine

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 4, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 31, 2001

DEPARTMENT OF HEALTH

Board of Medicine

RULE TITLE: Standards for Telemedicine RULE NO.: 64B8-9.014

PURPOSE AND EFFECT: The proposed rule to is intended to address appropriate electronic prescribing practice for physicians.

SUMMARY: The proposed rule amendment sets forth criteria for appropriate electronic prescribing practice for physicians.

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: 458.309, 458.331(1)(v) FS.

LAW IMPLEMENTED: 458.331(1)(q),(v) 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., October 24, 2001

PLACE: Room 324, Collins Building, 107 W. Gaines Street, Tallahassee, FL

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Tanya Williams, Executive Director, Board of Medicine/MQA, 4052 Bald Cypress Way, Bin #C03, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

64B8-9.014 Standards for Telemedicine Prescribing Practice.

(1) Prescribing medications based solely on an electronic medical questionnaire constitutes the failure to practice medicine with that level of care, skill, and treatment which is recognized by reasonably prudent physicians as being acceptable under similar conditions and circumstances, as well as prescribing legend drugs other than in the course of an physician's professional practice. Such practice shall constitute grounds for disciplinary action pursuant to Section 458.331(1)(q) and (t), F.S.

(2) 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 physician and the patient regarding treatment options and the risks and benefits of treatment.

(c) Maintenance of contemporaneous medical records meeting the requirements of Section 458.331(1)(m), F.S.

(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 458.309, 458.331(1)(v) FS. Law Implemented 458.331(1)(q),(v) FS. History-New

NAME OF PERSON ORIGINATING PROPOSED RULE:
Rules Committee, Board of Medicine
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Medicine
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 4, 2001
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 31, 2001

DEPARTMENT OF HEALTH

Board of Medicine

RULE TITLES:	RULE NOS.:
Requirements for Reactivation of an Inactive License	64B8-13.004
Continuing Education for Biennial Renewal	64B8-13.005
HIV/AIDS Education or End-of-Life Care and Palliative Health Care Education	64B8-13.006

PURPOSE AND EFFECT: The proposed amendment to Rule 64B8-13.004, F.A.C., is intended to clarify the requirements for licensure reactivation pursuant to Section 458.317, F.A.C. The proposed amendments to Rule 64B8-13.005, F.A.C., are intended to clarify required continuing educational courses for biennial licensure renewal. Rule 64B8-13.006, F.A.C., is being repealed since its content has been incorporated in the proposed amendments to Rules 64B8-4.009 and 64B8-13.005, F.A.C.

SUMMARY: The proposed amendment to Rule 64B8-13.004, F.A.C., clarifies the requirements for licensure reactivation pursuant to Section 458.317, F.S. The proposed amendments to Rule 64B8-13.005, F.A.C., set forth required continuing educational courses for biennial licensure renewal. Rule

64B8-13.006, F.A.C., is being repealed since its content has been incorporated in the proposed amendments to Rules 64B8-4.009 and 64B8-13.005, F.A.C.

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: 456.013(6), 456.031(4), 458.309, 458.321(1), 458.317, 458.319 FS.

LAW IMPLEMENTED: 456.013(5),(6), 456.031(1)(a),(3), 458.321(1), 458.317, 458.319(4) 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., October 24, 2001
PLACE: Room 324, Collins Building, 107 W. Gaines Street, Tallahassee, FL
THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Tanya Williams, Executive Director, Board of Medicine/MQA, 4052 Bald Cypress Way, Bin #C03, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULES IS:

64B8-13.004 Requirements for Reactivation of an Inactive License.

An inactive license shall be reactivated upon demonstration that the licensee has paid the reactivation fee set forth in Rule 64B8-3.004, F.A.C., and has complied with the following requirements:

- (1) No change.
- (2) ~~Any~~ ~~However,~~ ~~any~~ physician whose license has been inactive for more than two consecutive biennial licensure cycles and who has not practiced for 2 out of the previous 4 years in another jurisdiction ~~may shall~~ be required to appear before the Credentials Committee of the Board and establish the ability to practice with the care and skill sufficient to protect the health, safety, and welfare of the public. At the time of such appearance, the physician must:
 - (a) through (e) No change.

(3) Any physician reactivating his or her license for the purpose of converting the license to a limited license pursuant to Section 458.317, F.S., whose license has been inactive for more than two consecutive biennial licensure cycles and who has not practiced for 2 of the previous 4 years in another jurisdiction, shall be required to:

- (a) Demonstrate compliance with paragraph (1) above;

(b) Demonstrate compliance with the financial responsibility requirements of subsection 458.320, F.S., and Rule 64B8-12, F.A.C.:

(c) Demonstrate compliance with subsection 456.033, F.S., and Rule 64B8-13.006, F.A.C.:

(d) Practice under supervision for a period of six (6) months.

(4)(3) No change.

Specific Authority 458.309, 458.321(1), 458.317 FS. Law Implemented 458.321(1), 458.317 FS. History--New 2-3-82, Formerly 21M-28.01, Amended 1-1-92, Formerly 21M-28.001, 61F6-28.001, Amended 3-1-95, Formerly 59R-13.004, Amended.

64B8-13.005 Continuing Education for Biennial Renewal.

(1) Every physician licensed pursuant to Chapter 458, Florida Statutes, shall be required to complete 40 hours of continuing medical education courses approved by the Board in the 24 months preceding each biennial renewal period as established by the Department Agency.

(a) For licensees who are renewing a medical license for the first time at least 1 of such continuing medical education hours required for renewal shall concern risk management.

(b) For all licensees no more and no less than one hour shall consist of training in domestic violence which includes information on the number of patients in that professional's practice who are likely to be victims of domestic violence and the number who are likely to be perpetrators of domestic violence, screening procedures for determining whether a patient has any history of being either a victim or a perpetrator of domestic violence, and instruction on how to provide such patients with information on, or how to refer such patients to, resources in the local community, such as domestic violence centers and other advocacy groups, that provide legal aid, shelter, victim counseling, batterer counseling, or child protection services, and which is approved by any state or federal government agency, or nationally affiliated professional association, or any provider of Category I or II American Medical Association Continuing Medical Education. Home study courses approved by the above agencies will be acceptable as required by s. 456.031(1)(a), F.S., and described in subsection (10) of this rule. Notwithstanding the foregoing, a physician may complete continuing education on end-of-life care and palliative health care in lieu of continuing education in domestic violence, if that physician has completed the domestic violence continuing education in the immediately preceding biennium. This allows for end-of-life care and palliative health care continuing education to substitute for domestic violence continuing education in alternate bienniums.

(c) For all licensees one hour of Category I American Medical Association Continuing Medical Education which includes the topics of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome; the modes of transmission, including transmission from healthcare worker to patient and patient to healthcare worker; infection control

procedures, including universal precautions; epidemiology of the disease; related infections including TB; clinical management; prevention; and current Florida law on AIDS and its impact on testing, confidentiality of test results, and treatment of patients. Any hours of said CME may also be counted toward the CME license renewal requirement. In order for a course to count as meeting this requirement, licensees practicing in Florida must clearly demonstrate that the course includes Florida law on HIV/AIDS and its impact on testing, confidentiality of test results, and treatment of patients. Only Category I hours shall be accepted.

(d) Notwithstanding the provisions of subsections (a) and (b), above, a physician may complete continuing education on end-of-life care and palliative health care in lieu of continuing education in HIV/AIDS or domestic violence, if that physician has completed the HIV/AIDS or domestic violence continuing education in the immediately preceding biennium. This allows for end-of-life care and palliative health care continuing education to substitute for HIV/AIDS or domestic violence continuing education in alternate biennia.

(e) Completion of two hours of continuing medical education relating to prevention of medical errors which includes a study of root cause analysis, error reduction and prevention, and patient safety, and which is approved by any state or federal government agency, or nationally affiliated professional association, or any provider of Category I or II American Medical Association Continuing Medical Education. One hour of a two hour course which is provided by a facility licensed pursuant to Chapter 395, F.S., for its employees may be used to partially meet this requirement.

(2) through (9) No change.

(10) Upon request by the Board or Department, the licensee must submit satisfactory documentation of compliance with the requirements set forth above. ~~To receive credit for the required training on domestic violence, as set forth in subsection (1) of this rule, the licensee shall complete a course on domestic violence as set forth in s. 456.031(1)(a), F.S., and which is approved by any state or federal government agency, or nationally affiliated professional association, or any provider of Category I or II American Medical Association Continuing Medical Education. Home study courses approved by the above agencies will be acceptable for license renewal.~~

Specific Authority 458.309, 456.013(6), 456.031(4), 458.319 FS. Law Implemented 456.013(5),(6), 456.031(1)(a),(3), 458.319(4) FS. History--New 9-7-86, Amended 11-17-87, 11-15-88, 1-31-90, 9-15-92, Formerly 21M-28.002, Amended 12-5-93, Formerly 61F6-28.002, Amended 3-1-95, 1-3-96, 1-26-97, Formerly 59R-13.005, Amended 5-18-99, 2-7-01, _____.

64B8-13.006 HIV/AIDS Education or End-of-Life Care and Palliative Health Care Education.

Specific Authority 458.309, 458.319(4) FS. Law Implemented 456.033, 458.319(4) FS. History--New 11-15-88, Amended 1-1-92, 9-15-92, Formerly 21M-28.005, 61F6-28.005, Amended 5-7-96, 1-26-97, Formerly 59R-13.006, Amended 10-26-99, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE: Rules Committee, Board of Medicine
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Medicine
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 8, 2001 and August 4, 2001
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 27, 2001 and August 31, 2001

DEPARTMENT OF HEALTH

Board of Occupational Therapy Practice

RULE TITLES: FEES; APPLICATION; FEES; INITIAL LICENSE; FEES; RENEWAL OF LICENSE
RULE NOS.: 64B11-2.003; 64B11-2.008; 64B11-2.009

PURPOSE AND EFFECT: The Board proposes to raise fees so that they are closer to the actual costs for initial licensing and renewal of licensure.

SUMMARY: The Board is raising the fees for Application, Initial License and Renewal of License to comply with the current cost for obtaining these licenses.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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: 456.013(2), 468.204, 468.221 FS.
LAW IMPLEMENTED: 456.013(2), 468.209(1), 468.221 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 RULES IS: Kaye Howerton, Board Executive Director, Board of Occupational Therapy Practice, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULES IS:

64B11-2.003 Fees; Application.

Each applicant for licensure shall pay an application fee in the amount of \$200.00 \$100.00 in the form of a check or money order payable to the Department of Health. This fee is nonrefundable and may not be used for more than one year from the original submission of the application. After one year from the date of the original submission of an application, a new application and new fee shall be required from any applicant who desires to be considered for licensure. The fee for any reapplication shall be the sum of \$100.00 payable in the same manner as above.

Specific Authority 468.221, 468.204 FS. Law Implemented 468.209(1), 468.221 FS. History--New 4-28-76, Amended 9-9-85, Formerly 21M-13.07, Amended 6-29-89, Formerly 21M-13.007, 61F6-13.007, 59R-61.007, Amended

64B11-2.008 Fees; Initial License.

Each applicant for occupational therapist licensure shall submit an initial licensure fee in the amount of \$75 \$50 to the Department. The initial licensure fee shall be submitted with the application fee set forth in Rule 64B11-2.001, F.A.C. A check or money order shall be payable to the order of the Department of Health.

Specific Authority 456.013(2), 468.204, 468.221 FS. Law Implemented 456.013(2), 468.221 FS. History--New 4-28-76, Amended 8-9-76, 11-15-78, 9-9-85, Formerly 21M-13.08, Amended 6-9-89, Formerly 21M-13.008, 61F6-13.008, 59R-61.008, Amended 12-20-98,

64B11-2.009 Fees; Renewal of License.

Each licensed occupational therapist shall submit a biennial fee of \$150.00 \$50.00 by check or money order made payable to the order of the Department of Health. no later than January 31 of each biennial period.

Specific Authority 468.204, 468.221 FS. Law Implemented 468.221 FS. History--New 4-28-76, Amended 8-9-76, 11-15-78, 9-9-85, Formerly 1M-13.09, Amended 6-29-89, 7-23-91, Formerly 21M-13.009, 61F6-13.009, 59R-61.009, Amended

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Occupational Therapy Practice

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

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

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 3, 2001

FISH AND WILDLIFE CONSERVATION COMMISSION

Marine Fisheries

RULE CHAPTER TITLE: Miscellaneous
RULE TITLE: DIVERS; FISH FEEDING PROHIBITED; PROHIBITION
RULE NO.: 68B-5.005

PURPOSE AND EFFECT: The purpose of this proposed new rule is to prohibit the practice of the introduction of food or other substances by divers to feed or attract marine species, whether by persons offering their services for hire to patrons for interactive dive experiences or by private individuals. The Fish and Wildlife Conservation Commission has found that such practices may disrupt or have the potential to disrupt marine animal behavior to the extent that it may threaten public safety. The effect of this effort should be to reduce to the greatest extent possible any such disruption of the behavior of such species vis-a-vis humans, particularly with respect to larger predators, such as sharks.

SUMMARY: Subsection (1) of proposed new Rule 68B-5.005 prohibits the practice of fish feeding. Subsection (2) prohibits the operation of any vessel for hire for the purpose of carrying passengers to any site to observe fish feeding. Subsection (3) of the rule defines the terms "diver" and "fish feeding." The proposed effective date for this new rule is January 1, 2002.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: The proposed rule would ban the feeding marine wildlife such as sharks, rays, and other marine fishes, by divers for the purposes of aggregating fishes. Marine life feeding directly associates people with food, potentially creating user conflicts and adversely affecting the behavior of marine wildlife. Two local coastal governments have regulated the activity based on public safety concerns and several have requested the FWC prohibit the activity.

The proposal would apply to all divers in Florida state waters. There are four commercial dive boat operators in the state that conduct feeding dives for a fee. While the activity has created user conflicts, other for-hire dive boat operators have stated they follow the feeding dive excursions to take advantage of the activity. By following feeding dive excursions, for-hire vessels do not need additional crew members, which are necessary during feeding dives. Testimony to the Commission also indicates that private boat dive trips and individuals on for-hire dive trips sometimes offer food to various fish species to attract and aggregate them.

There are an estimated 500 for-hire vessels in the Southeast Florida region (Palm Beach, Broward, Dade, and Monroe counties). These resulted in 3.7 million passenger days in 2000, of which 53% were for fishing, 23% were for scuba diving, and 24% were for snorkeling. Based on preliminary operator profiles, the four commercial dive operators who conduct feeding trips conduct one or two trips per week while also conducting 13-20 nonfeeding dive trips per vessel. Using a \$44/person/trip charge and an average of 15 passengers per trip, business losses range from \$660 to \$1,320 per week per business. These losses assume that the divers do not elect to take a nonfeeding dive trip and so may overstate potential losses. These losses do not include incidental retail purchases of dive equipment, clothing, or additional air refills. Fee losses may account for 7% to 14% of fee-based revenues. Therefore, the proposed rule would affect small businesses. The rule may affect employment levels of these small businesses. The rule should not affect the costs or revenues of small cities or small counties. The rule would not create additional paperwork or reporting requirements.

Agency implementation costs were considered in development of the rule. Those costs included costs to conduct hearings, workshops, for promulgation, and for enforcement. The largest cost item will be for enforcement. A ban on the activity would eliminate the ability to advertise for the commercial activity. Enforcement of the proposed rule, or any rule alternative,

would require both general law enforcement observation activities and use of a dive unit. Currently, such a unit does not exist.

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 AT THE TIME, DATES AND PLACE SHOWN BELOW:

TIME AND DATES: 8:30 a.m. – 5:00 p.m., each day, October 31, 2001 – November 2, 2001

PLACE: Westin Beach Resort, U.S. Highway 1, Mile Marker 97, Bayside, Key Largo, 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-5.005 Divers: Fish Feeding Prohibited; Prohibition of Fish Feeding for Hire: Definitions.

(1) No diver shall engage in the practice of fish feeding.

(2) No person shall operate any vessel for hire for the purpose of carrying passengers to any site in the saltwaters of the state to engage in fish feeding or to allow such passengers to observe fish feeding.

(3) For purposes of this rule:

(a) "Diver" means any person who is wholly or partially submerged in the water, and is equipped with a face mask, face mask and snorkel, or underwater breathing apparatus.

(b) "Fish feeding" means the introduction of any food or other substance into the water by a diver for the purpose of feeding or attracting marine species, except for the purpose of harvesting such marine species as otherwise allowed by rules of the Fish and Wildlife Conservation Commission.

PROPOSED EFFECTIVE DATE: January 1, 2002.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 1-1-02.

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: September 6, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 21, 2001

FISH AND WILDLIFE CONSERVATION COMMISSION

Marine Fisheries

RULE CHAPTER TITLE: Snook

RULE TITLES:	RULE NOS.:
Definitions	68B-21.0015
Seasons	68B-21.004
Bag and Possession Limits	68B-21.006

PURPOSE AND EFFECT: The purpose of these rule amendments is to implement special measures to immediately reduce fishing mortality on snook in the Gulf of Mexico and in the Florida Keys. Such mortality is a result of excessive and growing fishing pressure on the species, arguably the most popular gamefish in Florida, particularly in the Southwest Florida area. The Fish and Wildlife Conservation Commission has found that the appropriate special measures include a geographically-specific reduction of the daily bag and possession limit to a single fish and an expansion of the closed season on the species in this area to include the month of May. The effect of these measures should be to reduce the fishing mortality on snook in Southwest Florida and improve the spawning potential of the species to the level set by the Commission as the goal for a healthy stock.

SUMMARY: Rule 68B-21.0015, F.A.C., is amended to include a new definition of the term "land", a term used in amendments proposed later in the chapter. Subsection (1) of the rule is also amended to correct a typographical error made in a prior rulemaking.

Rule 68B-21.004, F.A.C., is amended to add the month of May as an additional month of harvest closure for snook on the Florida Gulf coast and in the Florida Keys south of the Dade-Monroe County Line. Rule 68B-21.006, F.A.C., is amended to retain the current 2-fish bag and possession limit for the Atlantic coast north of Monroe County in a new subsection (1); create a new one-fish bag limit for snook in the remainder of the state in new subsection (2); and to prohibit the possession or landing of snook harvested in the Atlantic area in the region with the lower bag limit specified in subsection (2). All these rule amendments are proposed to be effective January 1, 2002.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: The proposed rule would reduce the current bag limit from two to one fish per person per day and close the month of May to harvest on the west coast of Florida from the Dade-Monroe county line. The current rule would remain in effect on the east coast. Action was requested by anglers and guides concerned about harvest levels on the west coast. Stock assessment data supports the need for additional limits on harvest. Three workshops were held in Naples, Ft. Myers, and St. Petersburg; the majority of people attending the workshops favored the proposed management options.

During 2000, there were 1,381,603 fishing trips that targeted or caught at least one snook on the west coast of Florida. On 43,123, or 3 percent of those trips, snook were harvested. Thus, a large number of trips catch-and-release snook, both due to regulatory limits such as catching undersized fish, and due to the sport fishing ethic that is prevalent in the fishery.

The proposed rule will alter angler behavior on the 19, 205 fishing trips that either exceed a one-fish bag limit or harvest during May. Persons affected include anglers, guides, and recreational support services. Average private boat saltwater fishing trip costs total \$72. Loss of business revenues, or transactional costs, are reported to be small based on testimony from fishing guides. Target trips during closed seasons are prevalent in the snook fishery. Thirty-eight percent of trips in 2000 occurred during the existing closed seasons. The rule may affect small businesses, but will not affect small counties' or small cities' costs or revenues, and will not create reporting or paperwork requirements. Agency implementation costs include those for promulgation, workshops, hearings, and enforcement.

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, October 31, 2001 – November 2, 2001

PLACE: Westin Beach Resort, U.S. Highway 1, Mile Marker 97, Bayside, Key Largo, 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, (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 RULES 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 RULES IS:

68B-21.0015 Definitions.

(1) "Harvest" means the catching or taking of a fish by any means whatsoever, followed by a reduction of such fish to possession. Fish that are caught but immediately returned to the water free, alive, and unharmed are not harvested. In addition, temporary possession of a fish for the purpose of measuring it to determine compliance with the minimum size requirement of this chapter shall not constitute ~~constitute~~ harvesting such fish, provided that it is measured immediately after taking, and immediately returned to the water free, alive, and unharmed if undersize.

(2) "Land", when used in connection with the harvest of a fish, means the physical act of bringing the harvested fish ashore.

(3)(2) "Snook" means unless the context requires otherwise, any fish of the genus *Centropomus*, or any part thereof.

(4)(3) "Spearing" means the catching or taking of a fish by bow hunting, gigging, spearfishing, or by any device used to capture a fish by piercing the body. Spearing does not include the catching or taking of a fish by a hook with hook and line gear or by snagging (snatch hooking).

PROPOSED EFFECTIVE DATE: January 1, 2002.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History--New 7-9-87, Amended 1-1-98, Formerly 46-21.0015, Amended 1-1-02.

68B-21.004 Seasons.

(1) No person, firm or corporation shall kill, harvest or have in its possession, regardless of where taken, any snook during the following closed periods, in the indicated areas:

(a) Statewide, during the period beginning December 15 of each year and continuing through January 31 of the following year, ~~and~~

(b) In all state waters of the Atlantic Ocean north and east of the Dade-Monroe County Line, during the months of June, July or August,

(c) In all state waters of the Atlantic Ocean south and west of the Dade-Monroe County Line and in all state waters of the Gulf of Mexico, during the months of May, June, July, or August.

(2) Exceptions to the closed seasons established by this rule shall only be granted, ~~except~~ by special permit issued by the Commission pursuant to Section 370.10(2), Florida Statutes, for experimental, scientific, or exhibitional purposes.

PROPOSED EFFECTIVE DATE: January 1, 2002.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History--New 7-23-85, Amended 7-9-87, 3-1-94, Formerly 46-21.004, Amended 1-1-02.

68B-21.006 Bag and Possession Limits.

(1) In all state waters of the Atlantic Ocean north and east of the Dade-Monroe County Line, no person, firm or corporation shall kill or harvest more than two snook per day during the open season, nor possess more than two snook at any time during the open season.

(2) In all state waters of the Atlantic Ocean south and west of the Dade-Monroe County Line and in all state waters of the Gulf of Mexico, no person, firm, or corporation shall kill or harvest more than one snook per day during the open season, nor possess more than one snook at any time during the open season.

(3) On any vessel licensed to carry customers wherein a fee is paid, either directly or indirectly, for the purpose of taking or attempting to take marine fish, the applicable bag and possession limit specified in this rule shall not extend to the operator of such vessel or any person employed as a crewman of such vessel.

(4) No person harvesting snook pursuant to subsection (1) shall possess or land such snook in the area specified in subsection (2).

PROPOSED EFFECTIVE DATE: January 1, 2002.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History--New 7-23-85, Amended 3-1-94, 12-31-98, Formerly 46-21.006, Amended 1-1-02.

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: September 7, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 21, 2001

Section III Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF INSURANCE

Division of State Fire Marshal

RULE CHAPTER NO.: 4A-3
RULE CHAPTER TITLE: Fire Prevention – General Provisions

RULE NO.: 4A-3.012
RULE TITLE: Standards of the National Fire Protection Association Adopted
SECOND NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rules in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 27, No. 12, March 23, 2001 edition of the Florida Administrative Weekly.

THE FULL TEXT OF THE PROPOSED RULE IS:

4A-3.012 Standards of the National Fire Protection Association Adopted.

- (1) No change except:
NFPA 8502 – 1999, Standard for the Prevention of Furnace Explosions/Implosions in Multiple Burner Boilers,

and:
The portions of 49 Code of Federal Regulations, Parts 100-177 which are referenced in Compressed Gas Association CGA C-1 – 1996, Methods for Hydrostatic Testing of Compressed Gas Cylinders, Compressed Gas Association CGA C-6 – 1993, Standards for Visual Inspection of Steel Compressed Gas Cylinders, Seventh Edition, Reaffirmed 1995, Compressed Gas

Association CGA C-6.1 – 1995, Standards for Visual Inspection of High Pressure Aluminum Compressed Gas Cylinders, and Compressed Gas Association CGA C-6.3 – 1999 Guidelines for Visual Inspection and Requalification of Low Pressure Aluminum Compressed Gas Cylinders, Second Edition, and which pertain to low pressure and high pressure cylinders

49 Code of Federal Regulations, Parts 100-177 The portions of 29 Code of Federal Regulations, Parts 1900-1910 which are referenced in Compressed Gas Association CGA C-1 – 1996, Methods for Hydrostatic Testing of Compressed Gas Cylinders, Compressed Gas Association CGA C-6 – 1993, Standards for Visual Inspection of Steel Compressed Gas Cylinders, Seventh Edition, Reaffirmed 1995, Compressed Gas Association CGA C-6.1 – 1995, Standards for Visual Inspection of High Pressure Aluminum Compressed Gas Cylinders, and Compressed Gas Association CGA C-6.3 – 1999 Guidelines for Visual Inspection and Requalification of Low Pressure Aluminum Compressed Gas Cylinders, Second Edition

29 Code of Federal Regulations, Parts 1900-1910 Compressed Gas Association CGA C-1 – 1996, Methods for Hydrostatic Testing of Compressed Gas Cylinders Compressed Gas Association CGA C-6 – 1993, Standards for Visual Inspection of Steel Compressed Gas Cylinders, Seventh Edition, Reaffirmed 1995

Compressed Gas Association CGA C-6.1 – 1995, Standards for Visual Inspection of High Pressure Aluminum Compressed Gas Cylinders

Compressed Gas Association CGA C-6.3 – 1999, Guidelines for Visual Inspection and Requalification of Low Pressure Aluminum Compressed Gas Cylinders, Second Edition CGA, C-1, C-6, C-6.1, C-6.3

(5) The Code of Federal Regulations and the Compressed Gas Association (CGA) documents ~~CGA~~ incorporated by reference in this rule are available for public inspection during regular business hours at the Division currently located on the third floor (Room 326) of the Atrium Building, 325 John Knox Road, Tallahassee, Florida.

Specific Authority 633.01(1), 633.022 FS. Law Implemented 633.01, 633.022 FS. History--New 5-14-86, Amended 2-12-87, 4-8-90, 10-30-91, 4-3-95,

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-302.111
RULE TITLE: Early Termination of Supervision
NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 27, No. 29, July 20, 2001 issue of the Florida Administrative Weekly: