

Affordable Housing Guarantee Program, to specify how and when feasibility studies with respect to the guarantee fund will be conducted, to set forth additional eligibility criteria for guarantees of qualified obligations, to specify the submissions required to become a qualified lending institution whose obligations may be guaranteed, to provide for a good faith deposit to be paid to the Corporation in connection with proposed guarantees, and to provide for revised and additional mandatory contractual provisions in documents supporting qualified obligations.

SPECIFIC AUTHORITY: 420.507, 420.5092(4) FS.

LAW IMPLEMENTED: 420.5092 FS.

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

TIME AND DATE: 10:00 a.m., October 22, 2001

PLACE: Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301

Any person requiring special accommodation at this workshop because of a disability or physical impairment should contact Laurie Camp at the above address. If you are hearing or speech impaired, please use the Florida Dual Party Relay system which can be reached at 1(800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Junious Brown, Guarantee Program Administrator, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, (850)488-4197

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

Section II Proposed Rules

DEPARTMENT OF STATE

Division of Elections

RULE TITLE: RULE NO.:

Clear Indication of Voter's Choice 1S-2.027
on a Ballot

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to identify what is a clear indication of a voter's choice on a ballot as required by section 42, Chapter 2001-40, Laws of Florida.

SUMMARY: The rules provide a practical and uniform method of determining what is a clear indication of a voter's choice on a ballot in a recount situation.

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: 102.166(5)(b) FS.

LAW IMPLEMENTED: 102.166(5)(b) FS.

HEARINGS WILL BE HELD AT THE TIMES, DATES AND PLACES SHOWN BELOW:

TIME AND DATE: 9:00 a.m. – 12:00 p.m., October 29, 2001
PLACE: Rooms 18-3 and 18-4, Eighteenth Floor, Stephen C. Clark Center, 111 N. W. 1st Street, Miami, Florida 33128-1906

TIME AND DATE: 1:00 p.m. – 4:00 p.m., October 30, 2001
PLACE: 119 West Kaley Street, Orlando, Florida 32806

TIME AND DATE: 9:00 a.m. – 12:00 p.m., November 2, 2001
PLACE: Room 116, Knott Building, 415 West St. Augustine Street, Tallahassee, Florida 32399-0250

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Amy K. Tuck, Assistant General Counsel, Division of Elections, Department of State, Room 1801, The Capitol, Tallahassee, Florida 32399-0250, (850)488-1402

Pursuant to the Americans with Disabilities Act, persons needing special accommodations to participate in this meeting should contact Amy K. Tuck, (850)488-1402, at least three days in advance of the meeting.

THE FULL TEXT OF THE PROPOSED RULE IS:

1S-2.027 Clear Indication of Voter's Choice on a Ballot.

(1) The following are standards to determine voter intent in a manual recount as provided specifically by Section 102.166, Florida Statutes.

(2) The following are guidelines for determining on an optical scan voting system whether or not there is a clear indication on the ballot that the voter has made a definite choice:

(a) Ballots must be marked in pen or pencil.

(b) If a ballot is marked with a color or device that does not permit an accurate machine count, that vote shall count.

(c) If a voter circles the oval or arrow next to a candidate or issue, the vote for that candidate or issue shall count.

(d) If a voter circles or underlines the name of a candidate, the vote shall count for that candidate.

(e) If a voter circles or underlines the name of a party next to a candidate's name, the vote shall count for that candidate.

(f) If there is an "X," a check mark, a diagonal, horizontal or vertical mark, a plus sign, an asterisk, a star or any other mark that is substantially contained in the oval, touching the oval or arrow, or within the blank space between the head and tail of the arrow that clearly indicates the voter intended the oval or arrow to be marked, that vote shall count.

(g) If a voter marks more candidates than there are positions to be elected for that office, the votes for the candidates of that office shall not count.

(h) If a voter marks less candidates than there are offices, the votes for all of those candidates shall count.

(i) If a voter does not mark a candidate or issue, the votes for other candidates or issues on the same ballot that are validly marked shall be counted.

(j) If a voter attempts to correct the ballot in a way that is clearly evident in the space where the voter could indicate a ballot choice by completing the target area, and the voter has clearly and properly voted for another candidate or issue, the vote for the clearly and properly voted candidate or issue shall count.

(k) If a voter has indicated in a clear fashion that a mistake has been made and has attempted to correct it, by either an "X" or equivalent mark to cross out a choice, and the voter has clearly and properly voted for another candidate or issue the vote for the clearly and properly voted candidate or issue shall count.

(l) If the voter has made one or more stray marks that are clearly unrelated to the voter's intent to vote for a candidate or issue and the marks are visible in the read area of the ballot, the marks shall not invalidate the ballot.

(m) If the voter writes on the ballot in a way that interferes with the ability of the automatic tabulating equipment to correctly read the ballot, and the writing is clearly unrelated to the voter's intent to vote for a candidate or issue, the writings shall not invalidate the ballot.

(o) An otherwise valid vote cast for a write-in candidate should not be invalid if the voting position on the ballot marked "WRITE-IN CANDIDATE" for that office has not been marked by the marking device.

(p) A name written on the secrecy envelope or elsewhere on the ballot that is not the name of a qualified write-in candidate for that office or is otherwise invalid shall not be considered a write-in vote for the purposes of determining if an office has been overvoted.

(q) If a voter casts a vote on the ballot and also provides for a write-in candidate it shall be treated as follows:

1. If a voter casts a vote on a ballot and writes in the same candidate in the write-in area, the vote shall count for that candidate.

2. If a voter casts a vote on a ballot and writes in a different candidate in the write-in area, it shall be counted as an overvote with neither candidate getting credit for a vote.

3. If a voter writes in the name of a person who is not a qualified write-in candidate, it shall be treated as if the write-in area was left blank for all purposes.

(r) Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate must be disregarded in determining the validity of the ballot if it can reasonably be determined that the write-in vote is for a write-in candidate who has qualified for that office.

(s) Where Florida law requires that a candidate, such as that of Governor, must run on a tandem ticket for an office, the write-in of the last name of the candidate for Governor shall be sufficient to cast a write-in vote for the tandem office. This includes candidates for President and Vice-President, who have filed the oath for write-in candidates and a list of electors equal to the number of Senators and Representatives that Florida has in Congress. The write-in of the last name of the candidate for President shall be sufficient to cast a write-in ballot for this type of tandem office.

(t) If an absentee ballot is signed by the voter in a way that identifies the voter, the ballot shall count. However, the ballot must be duplicated to protect the integrity of the voter's ballot.

(3) The following are guidelines for determining, on a direct recording voting system, whether or not there is a clear indication on the ballot that the voter has made a definite choice:

(a) Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate must be disregarded in determining the validity of the ballot if it can reasonably be determined that the write-in vote is for a write-in candidate who has qualified for that office.

(b) Where Florida law requires that a candidate, such as that of Governor, must run on a tandem ticket for an office, the write-in of the last name of the candidate for Governor shall be sufficient to cast a write-in vote for the tandem office. This includes candidates for President and Vice-President, who have filed the oath for write-in candidates and a list of electors equal to the number of Senators and Representatives that Florida has in Congress. The write-in of the last name of the candidate for President shall be sufficient to cast a write-in ballot for this type of tandem office.

(c) If a voter fails to electronically cast their ballot after voting, that ballot shall be cancelled.

(4) This rule has an effective date of January 1, 2002.

Specific Authority 102.166(5)(b) FS. Law Implemented 102.166(5)(b) FS. History--New 1-1-02.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Amy K. Tuck, Assistant General Counsel

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Debby Kearney, General Counsel, Department of State

DATE OF PROPOSED RULE APPROVED BY AGENCY HEAD: September 26, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 18, 2001

DEPARTMENT OF STATE**Division of Elections**

RULE TITLE: RULE NO.:

Recount Procedures 1S-2.031

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to prescribe additional recount procedures for each certified voting system as required by section 42, Chapter 2001-40, Laws of Florida.

SUMMARY: Statutory law provides for recount procedures, but does not specifically address the various certified voting systems. These rules attempt to clarify the recount procedures to be followed in both a machine recount and a manual recount using each certified voting system.

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: 102.166(6)(c) FS.

LAW IMPLEMENTED: 102.166(6)(c) FS.

HEARINGS WILL BE HELD AT THE TIMES, DATES AND PLACES SHOWN BELOW:

TIME AND DATE: 9:00 a.m. – 12:00 p.m., October 29, 2001

PLACE: Rooms 18-3 and 18-4, Eighteenth Floor, Stephen C. Clark Center, 111 N.W. 1st Street, Miami, Florida 33128-1906

TIME AND DATE: 1:00 p.m. – 4:00 p.m., October 30, 2001

PLACE: 119 West Kaley Avenue, Orlando, Florida 32806

TIME AND DATE: 9:00 a.m. – 12:00 p.m., November 2, 2001

PLACE: Room 116, Knott Building, 415 West St. Augustine Street, Tallahassee, Florida 32399

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Amy K. Tuck, Assistant General Counsel, Division of Elections, Department of State, Room 1801, The Capitol, Tallahassee, Florida, 32399-0250, (850)488-1402

Pursuant to the Americans with Disabilities Act, persons needing special accommodations to participate in this meeting should contact Amy K. Tuck, (850)488-1402, at least three days in advance of the meeting.

THE FULL TEXT OF THE PROPOSED RULE IS:

1S-2.031 Recount Procedures.

(1) The following procedures apply to all offices and questions decided in all county, multicounty and statewide offices for machine recount procedures using optical scan voting systems:

(a) Ballots shall be locked and secured with limited access as designated by the Supervisor of Elections in the approved security procedures for each county.

(b) Prior to each election, the canvassing board shall meet and establish procedures for conducting the election and recount, including: security of ballots during the recount process; time and place of recount; public observance of recount; objections to ballot determinations; record of recount proceedings; and procedures for candidate and petitioner representatives.

(c) Each county canvassing board shall publicly notice the time and place of the machine recount as soon as is reasonably possible.

(d) Each county canvassing board shall notify the candidates or, in the case of a ballot question, the person designated to receive notice, as soon as is reasonably possible.

(e) Each county canvassing board shall notify the Secretary of State in writing detailing the candidate or question requiring a recount, the time and place of the recount, and the number of observers of the recount.

(f) Each candidate for the office in question or the person representing each side of a ballot question is entitled to witness the recount.

(g) Any machine recount is open to the general public. The public and the press must be admitted to an observation area that is outside the recount area to observe any proceedings. The Supervisor of Elections, with the approval of the canvassing board, shall designate this area.

(h) Although the recount is open to the general public, the public observers must not interfere or disturb the recount in any way. If the conduct or activities of the observers, media or public become unreasonable or impede the recount process, the recount shall stop until the situation is corrected.

(i) Each ballot shall be recounted by inserting each ballot through the optical scanner that has been programmed and tested according to statute.

(j) After the machine recount, a member of the canvassing board shall prepare the returns for each precinct in the same manner as the original returns are prepared.

(k) The board shall have the materials and equipment restored to their original secure condition and return the materials and equipment to the original custodian.

(l) After the recount is completed, the county canvassing board shall make and sign a statement as to the results of the recount.

(m) Transcripts of the machine recount shall be made available to the public within a reasonable time.

(n) All records of the recount shall detail, by precinct, the number of votes each candidate received, the number of rejected ballots and any other relevant information.

(2) The following procedures apply to all offices and questions decided in all county, multicounty and statewide offices for machine recount procedures using direct recording equipment systems:

(a) Prior to each election, the canvassing board shall meet and establish procedures for conducting the election and recount, including: time and place of recount; public observance of recount; record of recount proceedings; and procedures for candidate and petitioner representatives.

(b) Each county canvassing board shall publicly notice the time and place of the machine recount as soon as is reasonably possible.

(c) Each county canvassing board shall notify the candidates or, in the case of a ballot question, the person designated to receive notice, as soon as is reasonably possible.

(d) Each county canvassing board shall notify the Secretary of State in writing detailing the candidate or question requiring a recount, the time and place of the recount, and the number of observers of the recount.

(e) Each candidate for the office in question or the person representing each side of a ballot question is entitled to witness the recount.

(f) Any machine recount is open to the general public. The public and the press must be admitted to an observation area that is outside the recount area to observe any proceedings. The Supervisor of Elections, with the approval of the canvassing board, shall designate this area.

(g) Although the recount is open to the general public, the public observers must not interfere or disturb the recount in any way. If the conduct or activities of the observers, media or public become unreasonable or impede the recount process, the recount shall stop until the situation is corrected.

(h) The machine recount shall be conducted by regenerating the totals.

(i) After the machine recount, a member of the canvassing board shall prepare the returns for each precinct in the same manner as the original returns are prepared.

(j) The board shall have the materials and equipment restored to their original secure condition and return the materials and equipment to the original custodian.

(k) After the recount is completed, the county canvassing board shall make and sign a statement as to the results of the recount.

(l) Transcripts of the machine recount shall be made available to the public within a reasonable time.

(3) The following procedures apply to all offices and questions decided in all county, multicounty and statewide offices for manual recount procedures using optical scan voting systems:

(a) Each county canvassing board shall publicly notice the time and place of the manual recount as soon as is reasonably possible.

(b) Each county canvassing board shall notify the candidates or, in the case of a ballot question, the person designated to receive notice, as soon as is reasonably possible.

(c) Each county canvassing board shall notify the Secretary of State in writing detailing the candidate or question requiring a recount, the time and place of the recount, and the number of observers of the recount.

(d) Each candidate for the office in question or the person representing each side of a ballot question is entitled to witness the recount.

(e) Any manual recount is open to the general public. The public and the press must be admitted to an observation area that is outside the recount area to observe any proceedings. The Supervisor of Elections, with the approval of the canvassing board, shall designate this area.

(f) Although the recount is open to the general public, the public observers must not interfere or disturb the recount in any way. If the conduct or activities of the observers, media or public become unreasonable or impede the recount process, the recount shall stop until the situation is corrected.

(g) Before the ballots are counted, the canvassing board shall review rules and statutes governing voter intent as specified in Rule 1S-2.2027, F.A.C.

(h) Any ballots that are objected to or challenged shall be set aside with a notation of the precinct number, the unique identifier number, how the ballot was counted, the reasoning behind the challenge, and the name of the person bringing the challenge.

(i) The board shall have the materials and equipment restored to their original secure condition and return the materials and equipment to the original custodian.

(j) After the recount is completed, the county canvassing board shall make and sign a statement as to the results of the recount.

(k) Transcripts of the manual recount shall be made available to the public within a reasonable time.

(l) All records of the recount shall detail the number of votes each candidate received, the number of rejected ballots and any other relevant information.

(4) The following procedures apply to all offices and questions decided in all county, multicounty and statewide offices for manual recount procedures using direct recording equipment voting systems:

(a) Each county canvassing board shall publicly notice the time and place of the manual recount as soon as is reasonably possible.

(b) Each county canvassing board shall notify the candidates or, in the case of a ballot question, the person designated to receive notice, as soon as is reasonably possible.

(c) Each county canvassing board shall notify the Secretary of State in writing detailing the candidate or question requiring a recount, the time and place of the recount, and the number of observers of the recount.

(d) Each candidate for the office in question or the person representing each side of a ballot question is entitled to witness the recount.

(e) Any manual recount is open to the general public. The public and the press must be admitted to an observation area that is outside the recount area to observe any proceedings. The Supervisor of Elections, with the approval of the canvassing board, shall designate this area.

(f) Although the recount is open to the general public, the public observers must not interfere or disturb the recount in any way. If the conduct or activities of the observers, media or public become unreasonable or impede the recount process, the recount shall stop until the situation is corrected.

(g) Before the ballots are counted, the canvassing board shall review rules and statutes governing voter intent as specified in Rule 1S-2.2027, F.A.C.

(h) Any ballots that are objected to or challenged shall be set aside with a notation of the precinct number, the unique identifier number, how the ballot was counted, the reasoning behind the challenge, and the name of the person bringing the challenge.

(i) A manual recount shall be conducted by printing out or exporting the ballot image files and counting these files manually.

(j) The board shall have the materials and equipment restored to their original secure condition and return the materials and equipment to the original custodian.

(k) After the recount is completed, the county canvassing board shall make and sign a statement as to the results of the recount.

(l) Transcripts of the manual recount shall be made available to the public within a reasonable time.

(m) All records of the recount shall detail the number of votes each candidate received, the number of rejected ballots and any other relevant information.

(5) This rule has an effective date of January 1, 2002.

Specific Authority 102.166 FS. Law Implemented 102.166 FS. History—New 1-1-02.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Amy K. Tuck, Assistant General Counsel

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Debby Kearney, General Counsel, Department of State

DATE OF PROPOSED RULE APPROVED BY AGENCY HEAD: September 26, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 18, 2001

DEPARTMENT OF BANKING AND FINANCE

Division of Securities and Finance

RULE TITLES:	RULE NOS.:
Curriculum for Mortgage Broker Pre-Licensing Classroom Education	3D-40.026
Mortgage Broker Pre-Licensing Education Requirement	3D-40.027

Continuing Education Requirements for Mortgage Brokers, Loan Originators and Principal Representative	3D-40.0271
Permit for Mortgage Business School	3D-40.028
Mortgage Business Schools Prohibited Practices and Advertising/Publicity	3D-40.0281
Mortgage Business School Permit Renewal Accreditation Process for Mortgage Business School	3D-40.029
Disciplinary Guidelines for Mortgage Business Schools	3D-40.030
Mortgage Broker License Renewal and Reactivation	3D-40.033
Application Procedure for Mortgage Brokerage Business License	3D-40.043
Application Procedure for Change in Ownership or Control of Savings Clause Mortgage Lender	3D-40.051
Examination Fees	3D-40.100
Principal Brokers	3D-40.150
Branch Brokers	3D-40.160
Application Procedure for Mortgage Lender License	3D-40.165
Application Procedure for Correspondent Mortgage Lender License	3D-40.200
Principal Representative	3D-40.220
PURPOSE AND EFFECT: The purpose of the proposed amendments and new rules is to implement legislative changes to Chapter 494, Florida Statutes, made by Chapter 2001-228, Laws of Florida, that will take effect on October 1, 2001, and to make other changes to the existing rules.	3D-40.242

SUMMARY: The amendments to Rules 3D-40.026, .027, .028, .0281, .029, .030, .033 substitute the term “mortgage business school” for “mortgage broker school;” update the application and renewal forms; set forth prohibited practices for mortgage business schools; and make other technical changes. Proposed Rule 3D-40.0271 sets forth the continuing education requirements for mortgage brokers, loan originators and principal representatives. The amendments to Rules 3D-40.043, .052, .100, .150, .160, .165, .200, and .220 update the application and renewal forms for mortgage brokers and lenders; require compliance with the continuing education requirements of Section 494.00295, F.S.; defines the term “actively engaged in a mortgage-related business;” and make other technical changes. Proposed Rule 3D-40.242 sets forth the requirements and procedures for designating a principal representative.

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: 494.0011(2), 494.0029, 494.00295(3), 494.0033(3), 494.034(2), 494.035, 494.0061, 494.0062 FS.

LAW IMPLEMENTED: 494.0016, 494.0025, 494.0029, 494.00295, 494.0033, 494.0034, 494.0035, 494.0041, 494.0061, 494.0062, 494.0064, 494.0065, 494.0067 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 30, 2001

PLACE: Room 547, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Bob Tedcastle, Financial Administrator, Room 550, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida 32399-0350, (850)410-9500

THE FULL TEXT OF THE PROPOSED RULE IS:

3D-40.026 Curriculum for Mortgage Broker Pre-licensing Classroom Education.

Section 494.0033, F.S. Florida Statutes, requires any person applying for a mortgage brokerage license after July 1, 1992, to have completed twenty-four (24) hours of classroom education prior to becoming licensed. The curriculum for the education shall cover primary and subordinated financing transactions, the provisions of Chapter 494, F.S., and Chapter 3D-40, F.A.C., laws and rules of ss. 494.001—494.0077, Florida Statutes, federal statutes which apply to the financing of real estate, current and accepted mortgage principles and technical information basic to the mortgage broker profession, and shall include the following:

- (1) through (11) No change.

Specific Authority 494.0011(2), 494.0033(3) FS. Law Implemented 494.0033 FS. History—New 7-2-92, Amended 5-19-96,_____.

3D-40.027 Mortgage Broker Pre-licensing Education Requirement.

(1) Effective July 5, 1992, persons desiring to become licensed as a mortgage broker pursuant to Section ~~§~~ 494.0033, F.S., shall satisfactorily complete twenty-four (24) hours of classroom study on primary and subordinated financing transactions and the provisions of Chapter 494, F.S., and Chapter 3D-40, F.A.C. laws and rules of ss. 494.001—494.0077, F.S. The course of study shall include the curriculum for mortgage broker classroom education in Rule 3D-40.026, F.A.C.

(2) Qualifying hours may be obtained by attendance at a duly permitted and accredited Mortgage Business Brokerage School or an accredited college, university, community college, or area vocational-technical school in this State which offers the twenty-four (24) hour mortgage brokerage training course. Any ~~individual person or~~ school offering qualifying hours must include the curriculum for mortgage broker classroom education, Rule 3D-40.026, F.A.C., and the provisions of Chapter 494, F.S., and Chapter 3D-40, F.A.C., laws and rules of ss. 494.001—494.0077, F.S., as the basis for course study.

(3) For the purpose of this rule “School” means any duly permitted and accredited Mortgage Business Brokerage School and any accredited college, university, community college or area vocational-technical school in this State, which offers the twenty-four (24) hour mortgage brokerage training course as a condition precedent to licensure as a mortgage broker. Such course shall ~~to~~ include the curriculum described in Rule 3D-40.026, F.A.C.

(4) Within five (5) days of completion of each twenty-four (24) hour mortgage broker course, the school shall submit to the Department a typed list of all students who successfully completed the course. In lieu of the typed list, the school may submit the list on a 3.5" diskette, ~~or~~ by e-mail, or by accessing the Department’s website at www.dbf.state.fl.us. The list shall include the full name of the student, the social security number of each student, the school’s name, the school’s license number, and the completion date. Each mortgage business school shall maintain student completion records for at least three (3) years from the completion dates.

(5) An instructor of a school who teaches a pre-licensing course that teaches the 24 hours of pre-licensing education may use the course toward the satisfactory completion of the pre-licensing education requirement.

Specific Authority 494.0011(2), 494.0016 FS. Law Implemented 494.0016, 494.00295, 494.0033 FS. History—New 7-5-92, Amended 11-5-95, 11-24-97, 8-22-99,_____.

3D-40.0271 Continuing Education Requirements for Mortgage Brokers, Loan Originators, and Principal Representatives.

(1) Effective October 1, 2001, all persons licensed as a mortgage broker shall satisfactorily complete fourteen (14) hours of professional education (“continuing education”) covering primary and subordinate financing transactions and appropriate laws and regulations governing such transactions. The course of study shall include at least four (4) hours on the laws in Chapter 494, F.S., and the rules in Chapter 3D-40, F.A.C.

(2) Effective October 1, 2002, the principal representative, loan originators, and associates of a mortgage lender, correspondent mortgage lender, or mortgage lender pursuant to the savings clause shall satisfactorily complete fourteen (14) hours of professional continuing education covering primary

and subordinate financing transactions and appropriate laws and regulations governing such transactions. The course of study shall include at least four (4) hours on the laws in Chapter 494, F.S., and the rules in Chapter 3D-40, F.A.C.

(3) Qualifying hours may be obtained by attendance at a duly permitted and accredited Mortgage Business School or an accredited college, university, community college, or area vocational-technical school in this State which offers the fourteen (14) hour continuing education course(s). Qualifying hours of at least 4 hours may be obtained by attending training courses covering the provisions of Chapter 494, F.S., and Chapter 3D-40, F.A.C., that are conducted by the Department or its Regional Offices.

(4) For the purpose of this rule, the following definitions will apply:

(a) "Hour" shall mean 60 minutes of class time, of which 50 minutes shall be instruction, with a maximum of 10 minutes of break per hour.

(b) "School" shall mean any duly permitted and accredited Mortgage Business School and any accredited college, university, community college, or area vocational-technical school in this State, which offers the fourteen (14) hour continuing education course.

(c) "Student" shall mean all persons licensed as a mortgage broker, the principal representative, and loan originators of a mortgage lender, correspondent mortgage lender, or mortgage lender pursuant to the savings clause.

(d) "Good Cause" means an incident or occurrence which is beyond the control of the student and which prevents attendance. Examples of good cause include, but are not limited to, disabling accident, illness, call to military duty, or declared national emergency.

(5) The fourteen (14) hours of continuing education can be taken in one or more courses by one or more schools.

(6) Schools shall not issue certificates of completion to students who do not attend or complete the scheduled hours for any continuing education course.

(a) Schools shall be responsible for determining that the student attending or completing the continuing education course is the actual person scheduled to complete the class or session.

(b) At the discretion of the school, students may miss a class or session and attend a make-up class or session to complete the attendance requirements upon showing good cause.

(c) The school may hold makeup classes or sessions to accommodate the student.

(7) An instructor of a school who teaches a continuing education course may use the course toward the satisfactory completion of the continuing education requirement.

(8) Neither students nor instructors may earn continuing education credit for attending or instructing at any subsequent offering of the same continuing education course during any two (2) year period.

(9) The continuing education requirements are waived for the license renewal of the mortgage broker, for the biennial license period in which the individual became licensed as a mortgage broker.

(10) The continuing education requirements for the principal representative are waived for the license renewal of the mortgage lender, correspondent mortgage lender, or mortgage lender pursuant to the savings clause, for the biennial license period in which the principal representative completes the 24 hours of classroom education in accordance with Rule 3D-40.027, F.A.C., and also passed a written test in accordance with Rule 3D-40.025, F.A.C., in order to qualify to be designated as a principal representative.

(11) The continuing education courses may be offered through classroom instruction, electronic transmission ("Internet"), or distance education ("correspondence course").

(12) The continuing education courses taught by using the Internet and correspondence courses shall have:

(a) Course subject matter, assignment work, scholastic standards and other related requirements substantially similar to the course offered by classroom instruction, having due regard however, to the different methods of presentation.

(b) Shall provide students with instructions on how to contact an instructor to answer inquiries. The school shall also disclose to the student when the instructor will be available, however the instructor shall respond within 2 business days to the student's inquiries.

(c) When the course is in the form of a video tape or CD-Rom, the presentation must be of a quality that permits the student to view and listen to the presentation without interfering with the learning process.

(13) Within five (5) days of completion of each continuing education course, the school shall submit to the student a certificate of completion indicating successful completion of the course, and the number of hours that course consisted of. The schools are not to submit copies of the continuing education requirement certificates to the Department. Each mortgage business school shall maintain all student course completion records for at least three (3) years from the completion dates.

Specific Authority 494.0011(2), 494.00295(3) FS. Law Implemented 494.0016, 494.0029, 494.00295, 494.0034, 494.0064, 494.0067 FS. History—New

3D-40.028 Permit for Mortgage Business Brokerage School.

(1) Application Process. Each person, school, or institution desiring to obtain a permit for a Mortgage Business Brokerage School shall apply to the Department by submitting the following:

(a) ~~A~~ ~~a~~ completed Application for Mortgage Business Brokerage School Permit, Form DBF-MBS-101, revised 10/01 8-22-99, which is hereby incorporated by reference and available by mail from the Department of Banking and Finance, Division of Securities and Finance, 101 East Gaines Street, Suite 550, Fletcher Building, Tallahassee, Florida 32399-0350.

(b) ~~A~~ ~~a~~ non-refundable application fee of \$500 which shall be the permit fee for the annual period beginning October 1 of each year or any part thereof.

(c) ~~A~~ ~~a~~ \$400 non-refundable accreditation fee which shall be for the annual period beginning October 1 of each year or any part thereof.

(2) Request for Additional Information. Any request for additional information will be made by the Department within thirty (30) days after receipt of the application by the Department. The additional information must be received by the Department within thirty (30) days from the date of the request. Failure to respond to the request shall be construed by the Department as grounds for denial for failure to complete the application, and the application shall be denied pursuant to Subsection 120.60(1), F.S.

(3) Refunds. If the application is withdrawn or denied, the application fee is non-refundable. The accreditation fee shall be refunded when the application is withdrawn prior to a decision being rendered by the Department by mutual consent.

(4) No change.

(5) Valid Period of Permit. Upon approval of an application, a permit will be issued for the remainder of the annual license period, which ends each September 30th. The permit will be valid for this period unless the Department takes administrative action against it or unless the permit is terminated by the holder.

Specific Authority 494.0011(2), 494.0029(1),(3)(b) ~~494.00311~~ FS. Law Implemented 120.60(1), 494.0029 ~~494.00311~~ FS. History—New 11-5-95, Amended 8-22-99,_____.

3D-40.0281 Mortgage Business Brokerage Schools Prohibited Practices and Advertising/Publicity.

(1) The following practices are prohibited from being used in any publicity or advertising done by mortgage business brokerage schools and will be considered a violation of Subsections 494.0029(3)(c) and (d) Chapter 494.00311(3)(e) and (d), F.S.:

(a) Making making any reference or comparison to another school (named or unnamed).

(b) Any any type of guarantee of non-measurable outcomes, such as, but not limited to, “satisfaction guaranteed”.

(c) Any any claim to being the only, largest, best, less expensive, or other such comparison.

(d) Any any claim or reference as to a mortgage-brokerage school’s knowledge of the State of Florida Mortgage Broker Test questions and answers.

(2) For the purpose of this rule, any publicity or advertising shall include:

(a) Any any written material, including but not limited to, study guides, business cards, flyers, pamphlets, and correspondence.

(b) Any any electronic media, including but not limited to, video and audio tapes, cassettes, or disks.

(c) Any any oral presentation, including but not limited to, speeches and telephone conversations.

(3) Pass/Fail Ratio as used in Subsection 494.0029(3)(f), F.S., Chapter 494.00311(3)(f), shall be defined as any reference to how a student or any group of students performed on the State Mortgage Broker Examination. No reference shall be made to any comparative superlatives such as, but not limited to, “excellent passing ratio” or “better than average results.”

(4) The following additional practices of mortgage business schools are prohibited:

(a) Misrepresenting any material fact furnished to the Department.

(b) Failing to conduct classes or sessions for the total required hours.

(c) Allowing a proxy to complete the pre-licensing or continuing education course(s).

(d) Falsifying any pre-licensing or continuing education course completion record or other document related to the course.

(e) Offering to teach a pre-licensing or continuing education course without first being permitted as a mortgage business school.

Specific Authority 494.0011(2) FS. Law Implemented 494.0025(~~5~~), 494.0029, 494.00295 ~~494.00311(3)~~ FS. History—New 8-14-97, Amended_____.

3D-40.029 Mortgage Business Brokerage School Permit Renewal.

(1) Each active Mortgage Business Brokerage School permit shall be renewed for the annual period beginning October 1 of each year upon submission of the following:

(a) ~~A~~ ~~a~~ permit renewal fee of \$500 and a completed renewal form, Form DBF-MBS-202, Mortgage Business Brokerage School Renewal Form, revised 10/01 8-22-99, which is hereby incorporated by reference and available by mail from the Department of Banking and Finance, Division of Securities and Finance, 101 East Gaines Street, Suite 550, Fletcher Building, Tallahassee, Florida 32399-0350; and

(b) ~~A~~ ~~a~~ recertification accreditation fee of \$400 for the school.

(2) No change.

Specific Authority 494.0011(2), 494.0029 ~~494.00311~~ (1), (3)(b) FS. Law Implemented 494.0029 ~~494.00311~~ FS. History—New 11-5-95, Amended 8-22-99,_____.

3D-40.030 Accreditation Process for a Mortgage Business Brokerage School.

(1) Section 494.0029 ~~494.00311~~, F.S., authorizes the Department to evaluate each school by an accreditation process to determine compliance and competency of mortgage business brokerage schools and to recertify each school on an annual basis.

(2) The basis for accreditation of mortgage business schools that offer the 24-hour mortgage broker pre-licensing course and the professional education ("continuing education") will consist of the following evaluation criteria:

- (a) Minimum adherence to the required curriculum.
- (b) Quality and substance of course outline, workbooks ~~workloads~~ and study guide available to student from school.
- (c) Reference material, library and training manuals available for non-classroom study.
- (d) Training and visual aids equipment utilized in classroom.
- (e) Instructor's ability to convey subject matter.
- (f) Classroom and review procedures.
- (g) Student interviews (post-course).
- (h) Compliance with American Disabilities Act.
- (i) Physical classroom facilities.
- (j) Compliance with Florida Statutes and Administrative Rules.

(3) The basis for accreditation of mortgage business schools that only offer the 14-hour professional education ("continuing education") will consist of the following evaluation criteria:

(a) Compliance with Florida Statutes and Administrative Rules.

(b) Compliance with American Disabilities Act.

(4)(2) The accreditation process will be conducted by the Department or its designee during the license year by one or more of the following methods:

- (a) Pre-arranged on-site interview with owners and/or management;
- (b) Visitation with no prior notice to observe instructor during classroom session;
- (c) Questionnaires and/or personal interviews with current and former students;
- (d) Questionnaires completed by owners and/or management;
- (e) Written correspondence from prior students/student complaints;
- (f) Compliance with Florida Statutes and Administrative Rules.

Specific Authority 494.0011(2) FS. Law Implemented 494.0029 ~~494.00311~~ FS. History--New 11-5-95, Amended 8-22-99, _____.

3D-40.033 Disciplinary Guidelines for Mortgage Business Brokerage Schools.

Each permitted and accredited mortgage business brokerage school which violates any provision of Chapter 494, F.S., Florida Statutes, or which fails to achieve minimum standards in the accreditation process described in Rule 3D-40.030, F.A.C., shall be subject to the following disciplinary guidelines:

(1) Failure to achieve minimum standards of accreditation shall result in any of the following penalties:

- (a) ~~R~~reprimand,
- (b) ~~S~~suspension,
- (c) ~~R~~evocation, and/or
- (d) ~~P~~robation.

(2) The probation shall be for such period of time and subject to such conditions as the Department may specify.

Specific Authority 494.0011(2), 494.0029 ~~494.00311~~ FS. Law Implemented 494.0029, 494.0041 ~~494.00311~~ FS. History--New 11-5-95, Amended _____.

3D-40.043 Mortgage Broker License Renewal and Reactivation.

(1) Each active mortgage broker license shall be renewed for the biennial period beginning September 1 of each odd-numbered year upon submission of the statutory renewal fee required by Section 494.0034, F.S., certification of compliance with the continuing education requirements of Section 494.00295, F.S., and a completed renewal form. Form DBF-MB-103, Mortgage Broker License Renewal and Reactivation Form, revised 10/01 ~~10/99~~, is hereby incorporated by reference and available by mail from the Department of Banking and Finance, Division of Securities and Finance, 101 East Gaines Street, Tallahassee, Florida 32399-0350.

(2) A mortgage broker license that is not renewed as required in subsection (1) prior to September 1 of the renewal year shall revert from active to inactive status. An inactive license may be reactivated within two (2) years after becoming inactive upon payment of the statutory renewal and reactivation fees required by Section 494.0034, F.S., certification of compliance with the continuing education requirements of Section 494.00295, F.S., and submission of a completed reactivation form. If August 31 of the year is on a Saturday, Sunday, or legal holiday pursuant to Section 110.117, F.S., then the renewals received on the next business day will be considered timely received.

(3) No change.

(4) The Department shall not renew or reactivate a mortgage broker license if the minimum continuing education requirements are not satisfied prior to the renewal or reactivation.

(5) The licensee is responsible for maintaining copies of the certificate of completion for all continuing education courses completed and shall supply them to the Department upon request.

Specific Authority 494.0011(2), 494.0034(2) FS. Law Implemented 494.00295, 494.0034 FS. History—New 11-2-86, Amended 6-23-91, 11-12-91, 9-3-95, 12-12-99, 2-5-01,_____.

3D-40.051 Application Procedure for Mortgage Brokerage Business License.

(1) Each person desiring to obtain licensure as a mortgage brokerage business shall apply to the Department by submitting the following:

(a) A completed Application for Licensure as a Mortgage Brokerage Business, Form DBF-MB-201, revised 10/01 ~~10/99~~, which is hereby incorporated by reference and available by mail from the Department of Banking and Finance, Division of Securities and Finance, 101 East Gaines Street, Tallahassee, Florida 32399-0350;

(b) The statutory, non-refundable application fee required by Section 494.0031, F.S., which shall be the fee for the biennial period beginning September 1 of each even-numbered year or any part thereof.

(c) Evidence that the applicant's designated principal broker has been actively licensed as a mortgage broker pursuant to Section 494.0033, F.S., for at least one year, or has demonstrated to the satisfaction of the Department that the designated principal broker has been actively engaged in a mortgage-related business for at least one year.

(d) For the purpose of this rule, examples of "actively engaged in a mortgage-related business" shall include, but are not limited to, the following positions that are engaged in the origination, underwriting, closing, and servicing of mortgage loans: loan originator, loan underwriter, officer, or director of a mortgage lender or correspondent mortgage lender; mortgage loan officer of a financial institution; mortgage broker in another state; loan closer for a title insurance company or agency; loan representative, loan underwriter, officer, or director of a private mortgage insurance company; and regulator that is directly responsible for the examination, investigation, or regulation of mortgage companies from this state, another state, or a federal government agency.

(2) Each ultimate equitable owner of 10% or greater interest, the chief executive officer and each director of an entity applying for licensure as a mortgage brokerage business, shall submit a completed fingerprint card and Biographical Summary, Form MBB-BIO-1 (revised 10/99), to the Department along with a \$15 nonrefundable processing fee. Form MBB-BIO-1 is hereby incorporated by reference and available by mail from the Department of Banking and Finance, Division of Securities and Finance, 101 East Gaines Street, Tallahassee, Florida 32399-0350.

(a) Any entity that is a wholly-owned subsidiary of a state or federally approved financial institution is exempt from the provisions of subsection (2).

(b) For purposes of this rule, "chief executive officer" means the person primarily responsible for the operation of the business, and a "financial institution" means a state or federal association, bank, trust company, international bank agency, or credit union.

(c) If the individual owner, director, or chief executive officer holds an active mortgage broker's license with the Department, they are exempt from the provisions of subsection (2).

(d) If an entity holds an active license under Chapter 494, F.S., with the Department, it is exempt from the provisions of subsection (2) this rule when it applies for a different type of license, unless there has been a change of control of 50% or more of the ownership interest since the time its initial license was approved by the Department.

(e) Any claim to any of the above exemptions shall be supported by attaching evidence of the exemption with the application for license.

(3) through (8) No change.

Specific Authority 215.405, 494.0011(2) FS. Law Implemented 494.0031, 494.0035 FS. History—New 10-30-86, Amended 1-30-89, 11-28-89, 10-1-91, 6-6-93, 5-14-95, 7-14-96, 11-24-97, 8-22-99, 12-12-99,_____.

3D-40.100 Application Procedure for Change in Ownership or Control of Saving Clause Mortgage Lender.

(1) Each person who seeks to obtain a controlling ownership or voting interest in a mortgage lender licensed pursuant to the saving clause shall apply to the Department by submitting the following:

(a) A completed application for Change in Ownership or Control of Saving Clause Mortgage Lender, Form DBF-MLST, revised 10/01 ~~10/99~~, which is hereby incorporated by reference and available by mail from the Department of Banking and Finance, Division of Securities and Finance, 101 East Gaines Street, Tallahassee, Florida 32399-0350;

(b) A non-refundable application fee of \$500, which shall be the fee for the biennial period beginning September 1 of each even-numbered year or any part thereof;

(c) Audited financial statements documenting a minimum net worth of \$25,000 as of the applicant's most recent fiscal year end. If the application is submitted within three (3) months of the most recent fiscal year end and an audited statement from the most recent fiscal year is not available, then an audited statement from the previous fiscal year end is acceptable.

(d) Designate a principal representative who shall exercise control of the licensee's business. Beginning October 1, 2001, the principal representative must have completed 24 hours of classroom education in accordance with Rule 3D-40.027, F.A.C., and must also have passed a written test in accordance

with Rule 3D-40.025, F.A.C., prior to the application being approved. If the designated principal representative holds an active mortgage broker license with the Department and was licensed as a mortgage broker on or after July 1, 1992, he or she will have satisfied the 24-hour classroom education and testing requirements of this section.

(2) Each ultimate equitable owner of 10% or greater interest, the chief executive officer and each director of an entity applying for licensure as a mortgage lender licensed pursuant to the savings clause, shall submit a completed fingerprint card and Biographical Summary, Form ML-BIO-1 (revised 10/99), to the Department along with a \$15 nonrefundable processing fee. Form ML-BIO-1 is hereby incorporated by reference and available by mail from the Department of Banking and Finance, Division of Securities and Finance, 101 East Gaines Street, Tallahassee, Florida 32399-0350.

(a) Any entity that is a wholly-owned subsidiary of a state or federally approved financial institution is exempt from the provisions of subsection (2).

(b) For purposes of this rule, "chief executive officer" means the person primarily responsible for the overall activities of the business, and a "financial institution" means a state or federal association, bank, trust company, international bank agency, or credit union.

(c) If the individual owner, director, or chief executive officer holds an active mortgage broker's license with the Department, he or she are exempt from the provisions of subsection (2).

(d) If an entity holds an active license under Chapter 494, F.S., with the Department, it is exempt from the provisions of subsection (2) when it applies for a different type of license, unless there has been a change of control of 50% or more of the ownership since the time its initial license was approved by the Department.

(e) Any claim to any of the above exemptions shall be supported by attaching evidence of the exemption with the application for license.

(3)(2) Request for Additional Information. Any request for additional information will be made by the Department within thirty (30) days after receipt of the application by the Department. The additional information must be received by the Department within ninety (90) forty-five (45) days from the date of the request. Failure to respond to the request within ninety (90) forty-five (45) days from the date of request shall be construed by the Department as grounds for denial for failure to complete the application and the application shall be denied pursuant to Subsection 120.60(1), F.S.

(3) through (6) renumbered (4) through (7) No change.

Specific Authority 494.0011(2) FS. Law Implemented 494.0061(1), 494.0065 FS. History--New 8-24-93, Amended 9-3-95, 8-22-99, 12-12-99, _____.

3D-40.150 Out of State Examination Costs Fees.

(1) ~~The Department shall charge \$250.00 per eight hour day for each examiner engaged in an examination of a mortgage brokerage business, mortgage lender, or correspondent mortgage lender. The Department may not charge more than \$500 in examination fees per biennial period to any one mortgage brokerage business, mortgage lender or correspondent mortgage lender. Such examination fees shall be calculated on an hourly basis and shall be rounded to the nearest hour. For examinations conducted out of state travel, the licensee shall pay the travel expense and per diem subsistence allowance provided for state employees in Section 112.062, F.S.~~

(2) ~~For the purpose of this rule, "biennial period" means the two year period beginning September 1 of each even numbered year.~~

Specific Authority 494.0011(2), 494.0012(3) FS. Law Implemented 494.0012(3) FS. History--New 10-1-91, Amended 8-24-99, _____.

3D-40.160 Principal Brokers.

(1) Each mortgage brokerage business shall designate a licensed mortgage broker as the principal broker and the individual designated shall accept responsibility by completing the Principal Broker Designation, Form DBF-MB-PB, effective ~~10/91 October 7, 1991~~, which is hereby incorporated by reference and available by mail from the Department of Banking and Finance, Division of Securities and Finance, 101 East Gaines Street, Tallahassee, Florida 32399-0350.

(2) Upon any change of principal broker, the licensee and the newly designated principal broker shall complete the Principal Broker Designation, Form DBF-MB-PB ~~(effective 10/91)~~. Form DBF-MB-PB shall be maintained at the principal office of the mortgage brokerage business, and a copy shall be mailed to the Department at the above address or electronically transmitted to the Department's website at www.dbf.state.fl.us on the Internet within thirty (30) days of said designation or change in designation. Anyone being designated as a principal broker on or after October 1, 2001, must have been actively licensed as a mortgage broker pursuant to Section 494.0033, F.S., for at least one year, or has demonstrated to the satisfaction of the Department that the designated principal broker has been actively engaged in a mortgage-related business for at least one year, as defined in Rule 3D-40.051, F.A.C.

(3) No change.

(4) Each principal broker shall notify the Department of Banking and Finance, Division of Securities and Finance, Attention: Licensing Section, 101 East Gaines Street, Tallahassee, Florida 32399-0350 in writing, within thirty (30) days, of the termination of principal broker status.

Specific Authority 494.0011(2), 494.0035 FS. Law Implemented 120.695, 494.0011(2), 494.0016, 494.0035 FS. History--New 10-7-91, Amended 7-25-96, 12-12-99, _____.

3D-40.165 Branch Brokers.

(1) Each mortgage brokerage business shall designate a licensed mortgage broker as the branch broker of the branch office, and the individual shall accept such responsibility by completing the Branch Broker Designation Form, Form DBF-MB-BB (effective 10/91), which is hereby incorporated by reference and available by mail from the Department of Banking and Finance, Division of Securities and Finance, 101 East Gaines Street, Tallahassee, Florida 32399-0350.

(2) Upon any change of Branch Broker, the licensee and the newly designated branch broker shall complete the Branch Broker Designation, Form DBF-MB-BB. Form DBF-MB-BB shall be maintained at the applicable branch office of the mortgage brokerage business, and a copy shall be mailed to the Department at the above address or electronically transmitted to the Department's website at www.dbf.state.fl.us on the Internet within thirty (30) days of said designation or change in designation.

(3) through (4) No change.

Specific Authority 494.0011(2), 494.0035(2) FS. Law Implemented 120.695, 494.0011(2), 494.0016, 494.0035(2) FS. History--New 10-7-91, Amended 7-26-96, 12-19-99, _____.

3D-40.200 Application Procedure for Mortgage Lender License.

(1) Each corporation, general partnership, limited partnership, limited liability company, or other lawful entity desiring to obtain licensure as a mortgage lender shall apply to the Department by submitting the following:

(a) A completed Application for Licensure as a Mortgage Lender, Form DBF-ML-222, revised 10/01 ~~40/99~~, which is hereby incorporated by reference and available by mail from the Department of Banking and Finance, Division of Securities and Finance, 101 East Gaines Street, Tallahassee, Florida 32399-0350;

(b) The statutory, non-refundable fee required by Section 494.0061, F.S., which shall be the fee for the biennial period beginning September 1 of each even-numbered year or any part thereof;

(c) Audited financial statements documenting a minimum net worth of \$250,000 as of the applicant's most recent fiscal year end. If the application is submitted within three (3) months of the most recent fiscal year end and an audited statement from the most recent fiscal year is not available, an audited statement from the previous fiscal year end is acceptable;

(d) A surety bond, issued by a bonding company or insurance company authorized to do business in this State, in the amount of \$10,000; and submitted on Form DBF-ML-444, Mortgage Brokerage and Mortgage Lending Act Surety Bond, effective 10-1-91, which is hereby incorporated by reference and available by mail from the Department of Banking and Finance, Division of Securities and Finance, 101 East Gaines Street, Tallahassee, Florida 32399-0350.

(e) Designate a principal representative who shall exercise control of the licensee's business. Beginning October 2, 2001, the principal representative must have completed 24 hours of classroom education in accordance with Rule 3D-40.027, F.A.C., and must also have passed a written test in accordance with Rule 3D-40.025, F.A.C., prior to the application being approved. If the designated principal representative holds an active mortgage broker license with the Department and was licensed as a mortgage broker on or after July 1, 1992, he or she will have satisfied the 24-hour classroom education and testing requirements of this section.

(2) Each ultimate equitable owner of 10% or greater interest, the chief executive officer and each director of an entity applying for licensure as a mortgage lender, shall submit a completed fingerprint card and Biographical Summary, Form ML-BIO-1 (revised 10/99), to the Department along with a \$15 nonrefundable processing fee. Form ML-BIO-1 is hereby incorporated by reference and available by mail from the Department of Banking and Finance, Division of Securities and Finance, 101 East Gaines Street, Tallahassee, Florida 32399-0350.

(a) Any entity that is a wholly-owned subsidiary of a state or federally approved financial institution is exempt from the provisions of subsection (2).

(b) For purposes of this rule, "chief executive officer" means the person primarily responsible for the overall activities operation of the business, and a "financial institution" means a state or federal association, bank, trust company, international bank agency, or credit union.

(c) If the individual owner, director, or chief executive officer holds an active mortgage broker's license with the Department, they are exempt from the provisions of subsection (2).

(d) If an entity holds an active license under Chapter 494, F.S., with the Department, it is exempt from the provisions of subsection (2) this rule when it applies for a different type of license, unless there has been a change of control of 50% or more of the ownership since the time its initial license was approved by the Department.

(e) Any claim to any of the above exemptions shall be supported by attaching evidence of the exemption with the application for license.

(3) Request for Additional Information. Any request for additional information will be made by the Department within thirty (30) days after receipt of the application by the Department. The additional information must be received by the Department within ninety (90) ~~forty-five (45)~~ days from the date of the request. Failure to respond to the request within ninety (90) ~~forty-five (45)~~ days from the date of request shall be construed by the Department as grounds for denial for failure to complete the application and the application shall be denied pursuant to Subsection 120.60(1), F.S.

(4) through (8) No change.

Specific Authority 215.405, 494.0011(2), 494.0061(3) FS. Law Implemented 494.0061(3) FS. History—New 10-1-91, Amended 6-6-93, 5-14-95, 9-3-95, 11-5-95, 7-14-96, 11-24-97, 8-22-99, 12-12-99, _____.

3D-40.220 Application Procedure for Correspondent Mortgage Lender License.

(1) Each corporation, general partnership, limited partnership, limited liability company, or other lawful entity desiring to obtain licensure as a correspondent mortgage lender shall apply to the Department by submitting the following:

(a) A completed Application for Licensure as a Correspondent Mortgage Lender, Form DBF-CL-333, revised 10/01 ~~10/99~~, which is hereby incorporated by reference and available by mail from the Department of Banking and Finance, Division of Securities and Finance, 101 East Gaines Street, Tallahassee, Florida 32399-0350;

(b) The statutory, non-refundable fee required by Section 494.0062, F.S., which shall be the fee for the biennial period beginning September 1 of each even-numbered year or any part thereof;

(c) Audited financial statements documenting a minimum net worth of \$25,000 as of the applicant's most recent fiscal year end. If the application is submitted within three (3) months of the most recent fiscal year end and an audited statement from the most recent fiscal year is not available, an audited statement from the previous fiscal year end is acceptable;

(d) A surety bond, issued by a bonding company or insurance company authorized to do business in this State, in the amount of \$10,000; and submitted on Form DBF-ML-444, Mortgage Brokerage and Mortgage Lending Act Surety Bond, effective 10-1-91, which is hereby incorporated by reference and available by mail from the Department of Banking and Finance, Division of Securities and Finance, 101 East Gaines Street, Tallahassee, Florida 32399-0350.

(e) Designate a principal representative who shall exercise control of the licensee's business. Beginning October 2, 2001, the principal representative must have completed 24 hours of classroom education in accordance with Rule 3D-40.027, F.A.C., and must also have passed a written test in accordance with Rule 3D-40.025, F.A.C., prior to the application being approved. If the designated principal representative holds an active mortgage broker license with the Department and was licensed as a mortgage broker on or after July 1, 1992, he or she will have satisfied the 24-hour classroom education and testing requirements of this section.

(2) Each ultimate equitable owner of 10% or greater interest, the chief executive officer and each director of an entity applying for licensure as a correspondent mortgage lender, shall submit a completed fingerprint card and Biographical Summary, Form CL-BIO-1 (revised 10/99), to the Department along with a \$15 nonrefundable processing fee. Form CL-BIO-1 is hereby incorporated by reference and

available by mail from the Department of Banking and Finance, Division of Securities and Finance, 101 East Gaines Street, Tallahassee, Florida 32399-0350.

(a) Any entity that is a wholly-owned subsidiary of a state or federally approved financial institution is exempt from the provisions of subsection (2).

(b) For purposes of this rule, "chief executive officer" means the person primarily responsible for the overall activities operation of the business, and a "financial institution" means a state or federal association, bank, trust company, international bank agency, or credit union.

(c) If the individual owner, director, or chief executive officer holds an active mortgage broker's license with the Department, they are exempt from the provisions of subsection (2).

(d) If an entity holds an active license under Chapter 494, F.S., with the Department, it is exempt from the provisions of subsection (2) this rule when it applies for a different type of license, unless there has been a change of control of 50% or more of the ownership since the time its initial license was approved by the Department.

(e) Any claim to any of the above exemptions shall be supported by attaching evidence of the exemption with the application for license.

(3) Request for Additional Information. Any request for additional information will be made by the Department within thirty (30) days after receipt of the application by the Department. The additional information must be received by the Department within ninety (90) forty-five (45) days from the date of the request. Failure to respond within ninety (90) forty-five (45) days from the date of request shall be construed by the Department as grounds for denial for failure to complete the application and the application shall be denied pursuant to Subsection 120.60(1), F.S.

(4) through (8) No change.

Specific Authority 215.405, 494.0011(2), 494.0062(3) FS. Law Implemented 494.0062(3) FS. History—New 10-1-91, Amended 6-6-93, 5-14-95, 9-3-95, 11-5-95, 7-14-96, 11-24-97, 8-22-99, 12-12-99, _____.

3D-40.242 Principal Representative.

(1) Effective October 1, 2001, each mortgage lender, correspondent mortgage lender, and mortgage lender pursuant to the saving clause shall designate a principal representative who operates and exercises control over the business and the individual so designated shall accept responsibility by completing the Principal Representative Designation, Form DBF-ML/CL-PR, effective 10/01, which is hereby incorporated by reference and available by mail from the Department of Banking and Finance, Division of Securities and Finance, 101 East Gaines Street, Tallahassee, Florida 32399-0350.

(2) Upon any change of principal representative, the licensee and the newly designated principal representative shall complete the Principal Representative Designation, Form

DBF-ML/CL-PR. Form DBF-ML/CL-PR shall be maintained at the principal office of the mortgage lender, correspondent mortgage lender, or mortgage lender pursuant to the saving clause, and a copy shall be mailed to the Department at the above address or electronically transmitted to the Department's website at www.dbf.state.fl.us on the Internet within thirty (30) days of said designation or change in designation.

(3) Anyone being designated as a principal representative or any change in the principal representative after October 1, 2001, must submit evidence that he or she has been actively licensed as a mortgage broker pursuant to Section 494.0033, F.S., or has completed 24 hours of classroom education in accordance with Rule 3D-40.027, F.A.C., and has passed a written test in accordance with Rule 3D-40.025, F.A.C. If the newly designated principal representative does not currently have an active mortgage broker license in this state that was issued on or after July 1, 1992, he or she will have 90 days from the date that he or she is designated as the principal representative to complete the educational and testing requirements of this section.

(4) The penalty for failure to maintain Form DBF-ML/CL-PR shall be the issuance of a "notice of noncompliance" for a first offense. Any subsequent finding of a violation of this rule during an examination or investigation shall be a fine of \$500. In cases where the failure to maintain Form DBF-ML/CL-PR is intentional, the penalty shall be a fine of \$5,000.

(5) Each principal representative shall notify the Department of Banking and Finance, Division of Securities and Finance, 101 East Gaines Street, Tallahassee, Florida 32399-0350 in writing, within thirty (30) days, of the termination of his or her principal representative status.

Specific Authority 494.0011(2) FS, Law Implemented 120.695, 494.001(29), 494.0061, 494.0062, 494.0067 FS, History--New

NAME OF PERSON ORIGINATING PROPOSED RULE:
Bob Tedcastle, Financial Administrator, Division of Securities and Finance

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 14, 2001

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

DEPARTMENT OF CORRECTIONS

RULE TITLE: Institutional Mail
RULE NO.: 33-210.104

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to ensure the confidentiality of substance abuse records received through the mail at correctional institutions and to provide for the handling of contract vendor mail received at correctional institutions.

SUMMARY: The proposed rule requires that institutional mail containing substance abuse records be marked confidential and be opened only by the classification supervisor or his designee; mail addressed to contract vendors is to be opened by a contract vendor's employee in the presence of mailroom staff.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 944.09 FS.

LAW IMPLEMENTED: 944.09 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: 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:

33-210.104 Institutional Mail.

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

(d) Only the classification supervisor or his or her designee will open mail marked "Substance Abuse Records – Confidential" in the mail room. The classification supervisor or his or her designee will ensure that the confidentiality of any substance abuser records contained in inmate records that arrive through the mail is maintained in accordance with 42 C.F.R. Part II; Chapter 397, Florida Statutes; and Chapter 65D-30, F.A.C. The name of the inmate or inmates whose records are contained therein will not be identified on the envelope.

(e) Mail addressed to contract vendors will be opened by a contract vendor's employee in the mailroom in the presence of mailroom staff.

(3) through (4) No change.

Specific Authority 944.09 FS, Law Implemented 944.09 FS, History--New 12-7-98, Formerly 33-3.0054, 33-602.404, Amended

NAME OF PERSON ORIGINATING PROPOSED RULE:
David Stewart

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Michael W. Moore

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 19, 2001

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

DEPARTMENT OF CORRECTIONS

RULE TITLE: Correctional Probation Officers Carrying Firearms
 RULE NO.: 33-302.104

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to clarify procedures related to correctional probation officers obtaining authorization to carry firearms.

SUMMARY: The proposed rule corrects staff titles associated with community corrections, clarifies the firearm authorization and qualification process, provides for the use of a new form, and deletes unnecessary or repetitive language.

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: 20.315, 120.53(1)(a), 790.06, 944.09 FS.

LAW IMPLEMENTED: 20.315, 120.53(1)(a), 790.06, 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:

33-302.104 Correctional Probation Officers Carrying Firearms.

(1) Intent and Purpose. ~~The purpose of this rule is in order to promote the personal safety of the certified correctional probation officer engaged in field supervision and investigation of assigned offenders. The, it is the intent of the Department of Corrections to formulate procedures governing the authorization for officers to carry a firearm is for defensive purposes while on duty.~~

(2) Definitions.

(a) through (d) No change.

(e) Reviewing authority, for the purpose of this rule, refers to staff who are authorized to review and approve requests to carry firearms, issue Firearm Qualification and Authorization, DC3-223, maintain lists of staff under their supervision who have been authorized to carry a firearm, and permanently remove or temporarily suspend authorization for staff to carry a firearm.

1. No change.

2. Regional Directors of ~~Regional~~ Community Corrections are the reviewing authority for Circuit Administrators and Deputy Regional ~~the Assistant to the~~ Directors of Regional Community Corrections.

3. The Deputy Assistant Secretary of Community Corrections or the Assistant Secretary of Community Corrections is the reviewing authority for the Regional Directors of ~~Regional~~ Community Corrections.

(3) Authorization Procedures.

(a) No change.

(b) Any correctional probation officer who elects to carry a firearm while on duty shall complete Form DC3-226, Request for Authorization to Carry a Firearm on Duty, and submit it for such authorization through the circuit administrator. Form DC3-226, Request for Authorization to Carry a Firearm on Duty, is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, Office of the General Counsel, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. ~~Requests for copies to be mailed must be accompanied by a self-addressed stamped envelope.~~ The effective date of this form is March 4, 2001. Any circuit administrator or deputy to the director of regional community corrections who elects to carry a firearm while on duty shall make application utilizing Form DC3-226 to the director of regional community corrections. A regional director of ~~regional~~ community corrections who elects to carry a firearm while on duty shall make application utilizing Form DC3-226 to the deputy regional director ~~assistant secretary~~ of community corrections. The written application shall contain documentation that the individual has complied with the training and qualification requirements set forth in paragraph (c) below. The application shall also contain a statement that the officer has read and understands Rule 33-302.104 and 33-209.103, F.A.C.

(c) through (d) No change.

(e) Upon review of the application, the documentation of training and qualification pursuant to Rule 33-209.103, F.A.C., and after completing a Florida Crime Information Center/National Crime Information Center ~~an~~ (FCIC/NCIC) check on the firearm by serial number and an FCIC check has been completed on the applicant to determine if there is a domestic violence injunction that would disqualify the applicant from possessing a firearm if convicted of domestic violence, the reviewing authority shall approve the request within 10 working days and shall issue a Firearms Qualification and Authorization Card, Form DC3-223, which establishes that the officer has been authorized to carry a firearm. Each reviewing authority shall maintain a list of all staff under their supervision who have been authorized to carry firearms. Form DC3-224, Firearm Authorization List, will be used for this purpose. Form DC3-224 is hereby incorporated by reference. A copy of this form may be obtained from the Forms Control Administrator, Office of the General Counsel,

2601 Blair Stone Road, Tallahassee, Florida 32399-2500. The effective date of this form is March 4, 2001. A copy of the application (Form DC3-226), documentation of qualification (Form DC3-240), firearms authorization card (Form DC3-223), and receipt or affidavit of ownership shall be placed in the employee's personnel file. Subsequent re-qualification documentation (Form DC3-241) will also be placed in the employee's personnel file.

(f) The firearms authorization card, Form DC3-223, shall expire one year from the date of ~~initial~~ firearms card issuance unless written documentation of re-qualification is submitted to the authorizing entity prior to the expiration of the firearms card. The officer shall be required to successfully re-qualify each year thereafter pursuant to Rule 33-209.103, F.A.C., and this rule in order to remain qualified to carry a firearm. All correctional probation officers shall be provided the opportunity to prepare for annual firearms re-qualification by participating in re-qualification firearms training. A correctional probation officer who declines the opportunity to participate in re-qualification firearms training shall sign a statement indicating that the opportunity was provided and was declined. Form DC2-902, Refusal of Re-qualification Firearms Training, shall be used for this purpose. Form DC2-902 is hereby incorporated by reference. A copy of the form is available from the Forms Control Administrator, Office of the General Counsel, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. The effective date of this form is March 4, 2001.

(g) Re-qualification must occur ~~within 90 days~~ prior to the employee's firearm card expiration date. Upon re-qualification, the firearms instructor will complete the Firearm Re-qualification Certificate, Form DC3-241, with the re-qualification score, and will sign the form as the trainer. The officer will certify that the firearm referenced on this form is the firearm used in the course of his or her duties and that he or she uses only authorized ammunition, and shall return the form to the reviewing authority for issuance of a new Firearms Qualification and Authorization Card, Form DC3-223. An FCIC/NCIC check shall be conducted during the re-qualification process. The new firearm card will be issued effective the date of re-qualification. The DC3-223 will expire with an expiration date one year from the expiration date of requalification the previous firearm card.

(h) No change.

(i) A correctional probation officer who fails to complete firearm re-qualification after remedial training has been provided, and who wishes to renew authorization to carry a firearm, must re-attend and successfully complete department approved basic recruit firearm qualification training at the officer's own expense.

(j) A correctional probation officer who does not re-qualify prior to the date of expiration of the firearm card shall not be permitted to carry a firearm while on duty, except for firearm training purposes and must surrender the firearms

card immediately. The officer shall have one year from the date the firearm card expired to successfully re-qualify to continue to carry a firearm. If the officer successfully re-qualifies, after the card expires, a new firearm card will be issued with an expiration date one year from the date of re-qualification. If the officer does not successfully re-qualify within that year, the officer will be required to re-attend and successfully complete department approved basic recruit firearm qualification training at his or her own expense if he or she wishes to carry a firearm.

(k) The officer shall immediately notify his or her immediate supervisor in the case of theft or loss of the authorized firearm. The officer ~~or supervisor~~ shall notify local law enforcement agencies and the Florida Department of Law Enforcement in writing of the theft or loss and provide a copy to the supervisor to ensure the notification has been made as required. A Community Corrections Incident Report, Form DC3-225, An Inspector General's Office Electronic Mail E-Form shall be prepared by the officer any time a loss or theft occurs and shall be submitted to his or her immediate supervisor within 24 hours. The supervisor shall forward Form DC3-225 to the circuit administrator, who shall complete a MINS report. Form DC3-225 is hereby incorporated by reference. A copy of this form is available from the Forms Control Administrator, Office of the General Counsel, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. The effective date of this form is _____.

(4) through (8) No change.

(9) Removal of Authorization to Carry a Firearm.

(a) The reviewing authority circuit administrator shall ~~have the authority to~~ permanently remove or ~~to~~ temporarily suspend the authorization to carry a firearm for a correctional probation officer, ~~a correctional probation supervisor or circuit deputy administrator if:~~

1. ~~The~~ correctional probation officer has exhibited behavior which indicates that the carrying of a firearm by this officer could present a threat to the security of other staff officers, offenders, or the general public, ~~or~~

2. ~~The~~ correctional probation officer has demonstrated an inability to properly care, maintain, handle or secure the firearm. ~~The regional director of community corrections shall have this same authority with regard to a circuit administrator or assistant to the regional director of community corrections. The deputy director of community corrections shall have the same authority with regard to a regional director of community corrections. The regional director of community corrections shall be notified each time a decision is made to remove an officer's authorization to carry a firearm.~~

3. ~~The~~ correctional probation ~~An~~ officer is found to have been negligent by failure to comply with those standards and procedures provided in the training required by Chapter 33-209, F.A.C., and the standards set forth in this rule in the case of loss or theft of the firearm while on duty shall have the

authorization to carry the firearm removed and shall be subject to disciplinary action in accordance with Chapter 33-208, F.A.C.

~~4.(e) The correctional probation Should an officer fails to complete re-qualification, or the reviewing authority shall immediately suspend the officer's authorization to carry a firearm and secure the officer's authorization card. Upon successful completion of re-qualification attempts and re-qualification pursuant to Chapter 33-209, F.A.C., the officer shall have his or her authorization reinstated.~~

5. The correctional probation officer notifies the department of physical or pharmacological conditions that could affect his or her ability to carry a firearm or other weapon safely.

(10) Care and Maintenance of Firearm.

(a) through (c) No change.

(d) Each officer shall ensure that the firearm is properly stored and secured when not being worn so that it is not accessible to unauthorized persons. ~~When at home, the officer shall secure it in a manner as to limit access in compliance with s. 790.174, F.S.~~

(e) No change.

(11) Costs. Unless otherwise appropriated by the Legislature, or as specified in this rule, the all costs of the firearms, ammunition, training, licensing and other associated matters shall be borne by the employee.

Specific Authority 20.315, 120.53(1)(a), 790.06, 944.09 FS. Law Implemented 20.315, 120.53(1)(a), 790.06, 944.09 FS. History--New 5-28-86, Amended 7-7-92, 12-20-92, 3-30-94, 9-27-94, 12-19-94, 3-8-95, 2-15-98, Formerly 33-24.013, Amended 3-4-01, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Tina Hayes

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Michael W. Moore

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 27, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 10, 2001

DEPARTMENT OF CORRECTIONS

RULE TITLE: Special Management Meal

RULE NO.: 33-602.223

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to clarify when inmates may be placed on the special management meal and to clarify the procedure for placement on this status.

SUMMARY: The proposed rule adds misuse of food and spitting at staff to the list of behaviors for which inmates may be placed on special management meal status.

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: 20.315, 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:

33-602.223 Special Management Meal.

(1) through (2) No change.

(3) Inmates in any confinement status may be placed on the special management meal for creating a security problem by any of the following acts:

(a) The throwing or misuse of food, beverage, food utensils, food tray, or human waste products, or spitting at staff;

(b) through (c) No change.

(4) Placement on the Special Management Meal.

(a) When any employee observes inmate behavior that he believes meets the criteria for application of the special management meal, the employee shall prepare Form DC6-218, Special Management Meal Report, and forward the report to the chief of security for review. Form DC6-218, Special Management Meal Report, is hereby incorporated by reference. A copy of this form may be obtained from the Forms Control Administrator, Office of the General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500. ~~If forms are to be mailed, a self-addressed stamped envelope must accompany the request.~~ The effective date of this form is 8-1-00.

(b) If the chief of security determines that the behavior cannot be corrected through routine counseling or by established disciplinary procedures, a discussion shall take place at the inmate's cell between the inmate, the officer in charge, and the reporting officer, if needed. The officer in charge shall complete the discussion section of the report. The Special Management Meal Report shall document the reasons for recommending the special management meal and shall include a summary of the inmate's comments or objections. When an inmate has been recommended for placement on the special management meal, the chief health officer or his designee ~~other designated health care staff member~~ shall indicate on the Special Management Meal Report whether there is any medical reason that would prohibit placing the inmate on special management meal status. When there is a

medical problem, the chief health officer or ~~his designee~~ ~~other designated medical staff member~~ shall determine whether the inmate can be placed on the special management meal or whether an alternative special meal can be prescribed. No inmate shall be placed on special management meal status without medical concurrence approval. The chief of security shall then forward the report to the warden for approval.

(c) No change.

(5) Canteen privileges authorized by Rules 33-602.220(8)(n), F.A.C., and 33-601.800 33-601.803(3)(f), F.A.C., for inmates in administrative confinement and close management status shall be suspended for the duration of the period that an inmate is on special management meal status.

(6) The chief of security and a designated clinical health care person shall visit each inmate on special management meal status on a daily basis, except in case of riot or other institutional emergency. The shift supervisor shall act as the chief of security's designee and shall conduct the daily visit in the chief's absence. The purpose of the daily visit is to follow the inmate's progress while on the special management meal and to determine when the inmate should be removed from the special management meal status.

(7) An inmate may be removed from special management meal status at any time based on:

(a) No change.

(b) Medical reasons as determined by the chief health officer or his designee ~~other designated health care staff~~.

(8) No change.

Specific Authority 20.315, 944.09 FS. Law Implemented 20.315, 944.09 FS. History--New 1-12-88, Amended 3-4-92, 5-27-97, 11-25-98, Formerly 33-3.0085, Amended 8-1-00, _____.

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 19, 2001
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 31, 2001

DEPARTMENT OF LABOR AND EMPLOYMENT SECURITY

Division of Workers' Compensation

RULE TITLE: Benefits and Administration Trust Fund

RULE NO.:

Penalties Improper Filing Practices 38F-24.0231

PURPOSE AND EFFECT: Subsections (1)(b) and (1)(c) are being deleted because they exceed the Department's rulemaking authority. Chapter 99-379, Laws of Florida, required each agency to submit to the Legislature by October 1, 1999 a list of all rules that exceeded the rulemaking authority permitted by s. 120.536(1), F.S. These subsections were submitted on said list.

SUMMARY: The subsections being deleted dealt with penalties to be imposed for improper filing of Form DWC-1a, Wage Statement, or other forms or reports as required by Rule Chapter 38F-3, F.A.C.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding a 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: 440.13(11)(b), 440.591 FS.

LAW IMPLEMENTED: 440.13(11)(b), 440.185(9), 440.20(8)(a) 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: Nancy Staff Terrel, Senior Attorney, (850)488-9370

THE FULL TEXT OF THE PROPOSED RULE IS:

38F-24.0231 Benefits and Administration Trust Fund Penalties Improper Filing Practices.

(1) Failure to timely file legible and complete forms, reports, or documents as required by Chapter 440, Florida Statutes, Rule Chapter 38F-3, or other Division rules implementing Chapter 440, shall subject the party required to file such form, report, or document to assessment by the Division of a civil penalty. For purposes of this rule, a form, report or document is timely filed when it is postmarked and mailed prepaid prior to the expiration of the time periods prescribed in this rule. Penalties shall be assessed as follows:

(a) No change.

~~(b) DWC-1a, Wage Statement. Employers shall be penalized \$10 for each day that each DWC-1a is not timely filed with the carrier, not to exceed \$100 for each DWC-1a untimely filed.~~

~~(c) Other Forms or Reports. A penalty for the untimely filing of other forms or reports which are required to be filed with the Division pursuant to Rule Chapter 38F-3 shall be assessed in a total amount for all untimely filings, and shall be based on the following filing performance percentages:~~

Percentage	Audit	Re-Audit
85% through 100%	\$0	\$0
80% through 84.99%	\$250	\$500
75% through 79.99%	\$750	\$1,000
70% through 74.99%	\$1,000	\$1,250
60% through 69.99%	\$1,500	\$1,750
50% through 59.99%	\$2,000	\$2,250
0% through 49.99%	\$2,500	\$2,750

(2) through (6) No change.

Specific Authority 440.13(11)(b), 440.591 FS. Law Implemented 440.13(11)(b), 440.185(9), 440.20(8)(a) FS. History—New 8-29-94, Amended 5-14-95, 6-4-97, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Nancy Staff Terrel, Senior Attorney
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: James L. Delaney, Chief, Bureau of Monitoring and Audit
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 1999
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 21, 2001, Vol. 27, No. 38

DEPARTMENT OF LABOR AND EMPLOYMENT SECURITY

Division of Workers' Compensation

RULE TITLES: Filing and Service of the Verified Petition to be Relieved of Costs and Verified Petition of Indigency
RULE NOS.: 38F-68.001
38F-68.006

PURPOSE AND EFFECT: As a result of Chapter Law 2001-91, Laws of Florida, effective October 1, 2001 the Division of Workers' Compensation no longer has the explicit power to maintain these rules. Therefore, these rules are being repealed as they exceed the Division's rulemaking authority.

SUMMARY: These rules set forth the requirements for properly filing petitions for indigency and to be relieved of costs of the record on appeal, and incorporated the financial affidavit used in said petitions.

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: 440.25(5)(b) FS.

LAW IMPLEMENTED: 440.271, 440.25(5)(b) 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 NOTICED IN A FUTURE ISSUE OF THE F.A.W.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Nancy Staff Terrel, Senior Attorney, (850)488-9370

THE FULL TEXT OF THE PROPOSED RULES IS:

38F-68.001 Filing and Service of the Verified Petition to be Relieved of Costs and Verified Petition of Indigency.

Specific Authority 440.25(5)(b) FS. Law Implemented 440.271, 440.25(5)(b) FS. History—New 6-29-94, Repealed.

38F-68.006 Financial Affidavit.

Specific Authority 440.25(5)(b) FS. Law Implemented 440.271, 440.25(5)(b) FS. History—New 6-29-94, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Nancy Staff Terrel, Senior Attorney
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Margaret R. Young, Director, Division of Workers' Compensation
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 18, 2001

AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid

RULE TITLE: Visual Services
RULE NO.: 59G-4.340

PURPOSE AND EFFECT: The purpose of the proposed rule amendment is to incorporate by reference the revised Florida Medicaid Visual Services Coverage and Limitations Handbook, May 2001. The effect will be to incorporate by reference in the rule the current Florida Medicaid Visual Services Coverage and Limitations Handbook, May 2001.

SUMMARY: The purpose of the rule is to incorporate by reference the revised Florida Medicaid Visual Services Coverage and Limitations Handbook, May 2001.

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

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

SPECIFIC AUTHORITY: 409.919 FS.

LAW IMPLEMENTED: 409.906, 409.908 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 NO HEARING IS REQUESTED, THIS HEARING WILL NOT BE HELD.)

TIME AND DATE: 9:00 a.m., October 31, 2001

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Debra H. Marshall, Agency for Health Care Administration, Medicaid Program Development, 2727 Mahan Drive, Mail Stop 20, Tallahassee, Florida 32308, (850)922-7354

THE FULL TEXT OF THE PROPOSED RULE IS:

59G-4.340 Visual Services.

(1) No change.

(2) All visual services practitioners enrolled in the Medicaid program must be in compliance with the provisions of the Florida Medicaid Visual Services Coverage and Limitations Handbook, May 2001 ~~January 2000~~, which is incorporated by reference, and the Florida Medicaid Provider Reimbursement Handbook, HCFA-1500 and Child Health Check-Up 221, which is incorporated by reference in Rule 59G-5.020, F.A.C. Both handbooks are available from the Medicaid fiscal agent.

Specific Authority 409.919 FS. Law Implemented 409.906, 409.908 FS. History—New 7-30-80, Formerly 10C-7.521, Amended 4-20-93, 8-25-93, Formerly 10C-7.0521, Amended 12-21-97, 10-13-98, 6-10-99, 4-23-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Debra H. Marshall
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Rhonda Medows
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 26, 2001
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 29, 2001

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Funeral Directors and Embalmers

RULE TITLE: Continuing Education for License Renewal
RULE NO.: 61G8-17.0034
PURPOSE AND EFFECT: The board proposes to amend the existing rule by updating the rule text.

SUMMARY: The rule amendments are for the purpose of updating continuing education provider 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: 455.2226, 470.0005(1), 470.015(1), 470.018 FS.

LAW IMPLEMENTED: 455.2124, 455.2226, 470.015, 470.018 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Sherry Landrum, Executive Director, Board of Funeral Directors and Embalmers, Northwood Centre, 1940 N. Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G8-17.0034 Continuing Education for License Renewal.

(1) through (5) No change.

(6) Compliance with this rule will be monitored by the Department pursuant to its Rule 61-6.015, F.A.C. Failure to meet the continuing education requirements shall render the license/registration ineligible for renewal and the license/registration shall become delinquent.

Specific Authority 455.2226, 470.005(1), 470.015(1), 470.018 FS. Law Implemented 455.2124, 455.2226, 470.015, 470.018 FS. History—New 4-10-94 Amended 3-14-95, 7-25-95, 9-25-95, 9-25-97, 11-11-99, 11-20-00, 6-24-01, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Funeral Directors and Embalmers
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Funeral Directors and Embalmers
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 15, 2001
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 24, 2001

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Funeral Directors and Embalmers

RULE TITLE: Continuing Education Provider Requirements
RULE NO.: 61G8-17.0041
PURPOSE AND EFFECT: The board proposes to amend the existing rule by updating the rule text.

SUMMARY: The rule amendments are for the purpose of updating continuing education provider 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: 470.005(1), 455.213(7),(8) FS.

LAW IMPLEMENTED: 455.213 (7),(8) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Sherry Landrum, Executive Director, Board of Funeral Directors and Embalmers, Northwood Centre, 1940 N. Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G8-17.0041 Continuing Education Provider Requirements.

(1) through (3) No change.

(4) The continuing Education provider must submit to the Board; ~~in writing, notice of any substantial changes in the information provided in the initial request for provider approval. This notification must be made within 30 days following the date the change is effective.~~

(a) Written notice of any substantial changes in the information provided in the initial request for course approval. This notification must be made within 30 days following the date the change is effective, and

(b) Electronic documents as required by Department Rule 61-6.015, F.A.C.

(5) through (9) No change.

Specific Authority 455.213(7),(8), 470.005(1) FS. Law Implemented 455.213(7),(8) FS. History--New 4-10-94, Amended 1-25-95, 3-14-95, 7-25-95, 9-25-95, 6-24-01, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:

Board of Funeral Directors and Embalmers

NAME OF SUPERVISOR OR PERSON WHO APPROVED

THE PROPOSED RULE: Board of Funeral Directors and Embalmers

DATE PROPOSED RULE APPROVED BY AGENCY

HEAD: February 8, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT

PUBLISHED IN FAW: February 9, 2001

DEPARTMENT OF HEALTH

Board of Dentistry

RULE TITLE: RULE NO.:

Advertising and Soliciting by Dentists 64B5-4.002

PURPOSE AND EFFECT: The Board proposes to amend this rule to update the rule text with regard to advertising.

SUMMARY: The Board is amending this rule by adding a new subsection (3)(g) with regard to advertising of the removal of mercury amalgam for the purpose of curing or preventing diseases.

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: 466.004(4), 466.019 FS.

LAW IMPLEMENTED: 466.019, 466.028(1)(d) FS.

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

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

THE FULL TEXT OF THE PROPOSED RULE IS:

64B5-4.002 Advertising and Soliciting by Dentists.

(1) through (2) No change.

(3) No dentist shall disseminate or cause the dissemination of any advertisement or advertising which is in any way fraudulent, false, deceptive, or misleading in form or content. Additionally, no dentist shall disseminate or cause the dissemination of any advertisement or advertising which:

(a) through (f) No change.

(g) Is intended or is likely to appeal primarily to a layperson's fears. For example, it is false, fraudulent and misleading as well as likely to appeal primarily to a layperson's fears for a dentist to advertise removal of mercury amalgam fillings or restorations for the alleged purpose of curing, preventing or diagnosing systemic diseases. It is false, fraudulent and misleading and likely to appeal primarily to a layperson's fears because recommending or performing the removal of amalgam restorations based upon the dentist's representation that removal has the capacity to diagnose, cure or alleviate diseases, infections or other conditions is not based upon accepted scientific knowledge or research.

(4) through (6) No change.

Specific Authority 466.004(4), 466.019 FS. Law Implemented 466.019, 466.028(1)(d) FS. History--New 7-7-87, Amended 1-11-89, 10-29-90, 4-24-91, 7-14-92, Formerly 21G-4.002, Amended 3-30-94, Formerly 61F5-4.002, 59Q-4.002, Amended 5-20-01, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:

Board of Dentistry

NAME OF SUPERVISOR OR PERSON WHO APPROVED

THE PROPOSED RULE: Board of Dentistry

DATE PROPOSED RULE APPROVED BY AGENCY

HEAD: August 18, 2001

DATE NOTICE OF PROPOSED RULE DEVELOPMENT

PUBLISHED IN FAW: July 27, 2001

DEPARTMENT OF HEALTH

Board of Dentistry

RULE TITLE: RULE NO.:

Standards for Approved Providers 64B5-12.0175

PURPOSE AND EFFECT: The Board proposes to amend this rule to update the rule with regard to the standards for approved providers.

SUMMARY: The Board is amending this rule to add new rule text to inform instructors who have had their licenses revoked, suspended or acted upon, they will be disqualified from becoming an approved provider.

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: 466.004(4), 466.014 FS.

LAW IMPLEMENTED: 466.0135, 466.014 FS.

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

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

THE FULL TEXT OF THE PROPOSED RULE IS:

64B5-12.0175 Standards for Approved Providers.

Approved continuing professional education providers and providers authorized pursuant to Rule 64B5-12.013(3)(b), F.A.C., shall comply with the following requirements:

(1) No change.

(2) Instructors shall be adequately qualified by training, experience or licensure to teach specified courses. Because domestic violence courses must contain information specifically appropriate for, directly pertinent to, and useful in, dentistry, all domestic violence instructors shall be familiar with dental injuries indicative of domestic violence, reporting obligations under Florida and federal law, and incidence statistics in the dental profession. Instructors who have had a professional license revoked, suspended, or otherwise acted against, in Florida or in another jurisdiction, may be disqualified. In making this determination, the Board shall examine the date, nature and number of disciplinary actions.

(3) through (10) No change.

Specific Authority 466.004(4), 466.014 FS. Law Implemented 466.0135, 466.014 FS. History--New 1-18-89, Amended 7-9-90, Formerly 21G-12.0175, 61F5-12.0175, 59Q-12.0175, Amended 10-3-99, 10-29-00,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Dentistry

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

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

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 10, 2001

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Economic Self-Sufficiency Program

RULE TITLE: Legal Immigrant's Temporary Income Bridge Program
RULE NO.: 65A-1.630

PURPOSE AND EFFECT: This rule is being repealed because the state funded and administered food stamp program that it implemented and for which it set policy requirements has been discontinued.

SUMMARY: The department is repealing a rule that reflects a state food stamp program no longer in existence.

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: 414.45 FS.

LAW IMPLEMENTED: 414.39 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 29, 2001

PLACE: 1317 Winewood Boulevard, Building 3, Room 455, Tallahassee, Florida 32399-0700

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Audrey Mitchell, Program Administrator, Policy Support Unit, 1317 Winewood Boulevard, Building 3, Room 421, Tallahassee, Florida 32399-0700, Telephone (850)488-3090

THE FULL TEXT OF THE PROPOSED RULE IS:

65A-1.630 Legal Immigrant's Temporary Income Bridge Program.

Specific Authority 414.45 FS. Law Implemented 414.39 FS., Ch. 97.259, s. 10, Laws of Fla. History--New 2-23-98, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE: Rodney McInnis, Operations Review Specialist

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Audrey Mitchell, Program Administrator, Public Assistance Policy

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

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Economic Self-Sufficiency Services Program

RULE TITLE: Overpayment and Benefit Recovery
RULE NO.: 65A-1.900

PURPOSE AND EFFECT: This proposed rule amendment changes program policies used in benefit recovery. Changes are made in statutory and federal regulation citations and in forms incorporated by reference.

SUMMARY: The proposed rule amendment provides for: corrected Florida Statute citations; clarification of extreme hardship policy; clarification of the time frame considered as refusal to repay following notification of overpayment; expansion of federal regulations applicable to notification and method of repayment; clarification of persons from whom recovery will be made; citing federal regulations as the basis for maximum food stamp program repayment of overpayment; allowing child support credits to be applied to overpayments at the request of the absent parent or the recipient; a claims compromise policy; clarification of Treasury Offset Program policies; and, incorporating various forms by reference.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: A statement of estimated regulatory cost was not prepared for this rule.

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

SPECIFIC AUTHORITY: 414.41, 414.45 FS.

LAW IMPLEMENTED: 24.115(4), 414.31, 414.41 FS.

IF REQUESTED WITHIN 21 DAYS 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: 1:00 p.m., October 29, 2001

PLACE: 1317 Winewood Boulevard, Building 3, Room 100, Tallahassee, Florida 32399-0700

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: John Bowman, Acting Coordinator for Special Programs, 1317 Winewood Boulevard, Building 3, Room 417, Tallahassee, Florida 32399-0700, Telephone (850)921-5549

THE FULL TEXT OF THE PROPOSED RULE IS:

65A-1.900 Overpayment and Benefit Recovery.

The purpose of this section is to define the administrative policies applicable to the establishment and recovery of overpayment in the public assistance programs.

(1) Administrative Definitions Applicable to Overpayment and Benefit Recovery.

(a) No change.

(b) Intentional Program Violation: Intentional Program Violation (~~IPV~~) or fraud error is defined pursuant to Section ~~414.39~~ ~~409.39~~, F.S., 7 CFR 273.16, and 45 CFR 235.110.

(c) through (d) No change.

(e) Refusal to Repay: Refusal to repay occurs when the person responsible for repayment has:

1. Received notification of the overpayment or request for repayment agreement as specified in subsection ~~(8)(7)~~ of this section and subsequently:

a. Fails to comply with the time frames as set forth in paragraph ~~(8)(7)(d)~~;

b. through c. No change.

2. Received written notification of a failure to comply with the terms of a repayment agreement and subsequently:

a. Fails to contact the department within ten ~~working~~ days for food stamp Intentional Program Violation, 20 days for food stamp Inadvertent Household Error, or 30 days for food stamp Agency Error and all public assistance errors including those for the Refugee Assistance and Optional State Supplementation Programs from the date of such notification; or

b. No change.

(f) Notification: Notification for purposes of this section is defined as any correspondence from the department that advises an individual of the status of an overpayment. Such notification shall be in compliance with 7 CFR, 273.18 or 45 CFR 235.110 as appropriate.

(g) Extreme hardship: Extreme hardship policy applies only to cash assistance agency errors. Extreme hardship occurs when basic maintenance needs exceed income. Basic maintenance needs are those items required for survival, including food, shelter, clothing, medical expenses, transportation, and personal and household incidentals.

1. through 5. No change.

(2) Persons Responsible for Repayment of Overpayment.

(a) AFDC and ~~temporary~~ cash assistance overpayments shall be recovered from the participant as that term is defined ~~assistance groups specified in 414.0252, F.S. 45 CFR 233.20(a)(13), as amended;~~

(b) Food stamp overpayments shall be recovered from the following:

1. Individuals ~~The assistance groups~~ specified in 7 CFR 273.18, ~~as amended;~~ and

2. ~~In the case of an IPV determination made prior to May 21, 1986, the household containing the majority of the household members who received the overpayment.~~

(c) Medicaid overpayments shall be recovered as required in s. 414.41, F.S. from the individual on whose behalf such benefits were paid, the legal guardian of such individual at the time the overpayment occurred, the parent of a minor child, or the overpaid provider.

(3) Monthly Repayment Amounts.

(a) Monthly repayment amounts of all AFDC and ~~temporary~~ cash assistance overpayments shall include the following provisions:

1. through 2. No change.

(b) Monthly repayment amounts of all food stamp overpayments shall be determined in accordance with 7 CFR 273.18, ~~except for agency error repayments. Agency error repayments will be required in accordance with section 844, Public Law 104-193.~~

- (c) No change.
- (4) Method of Repayment.

(a) The methods of repayment of cash assistance overpayment shall be as follows:

- 1. No change.

2. Through application of child support credit. Child support credit exists when child support collected and retained by the department during any month in which overpayment occurred exceeds the amount of AFDC or ~~temporary~~ cash assistance to which the assistance group was entitled for that month after computation of the overpayment has been completed. The excess amount of child support may, if requested by absent parent or recipient, will be credited as repayment and the amount owed by the person responsible for repayment will be reduced by that amount. In addition, all or part of the overpayment claim can be satisfied should the absent parent of an overpaid assistance group repay to the department all AFDC or ~~temporary~~ cash assistance benefits received on behalf of the overpaid assistance group. Child support credit is not applicable to Refugee Assistance Program RAP overpayments.

(b) The method of repayment of a food stamp overpayment shall be as specified in 7 CFR 273.18, ~~except when the repayment is for agency error. Agency error repayments will be required in accordance with section 844, Public Law 104-193.~~

- (c) No change.
- (5) No change.

(6) Compromising Food Stamp Claims. Effective August 1, 2001, a food stamp claim or any portion of a food stamp claim may be compromised if the department can determine that a household's economic circumstance dictate that the claim will not be paid in three years. The department reserves the right to approve or not approve the compromise. Default of a compromise or repayment agreement by the client occurs when one scheduled payment is missed.

~~(7)(6)~~ Computation of Overpayment.

- (a) through (b) No change.

~~(8)(7)~~ Notification of Overpayment. The persons responsible for repayment of overpayment must be notified in writing that overpayment exists and that they are required, by law, to repay the entire amount pursuant to s. 414.41, F.S.

- (a) through (c) No change.

(d) The assistance group or persons that receive such notification will have 30 calendar days in which to contact the department before being considered to have refused to repay, except for food stamp recipients the period to contact the department shall be as specified in 7CFR 273.18(d).

~~1. For those persons notified via regular mail, the time in which to contact the department stated in paragraph (7)(d) above begins five days after the notification is mailed.~~

~~2. For those persons notified via certified mail, the time stated in paragraph (7)(d) above begins the day after the date indicated on the return receipt as the date of delivery or refusal of the notification, or the day after certified hand delivery of the notification.~~

~~(9)(8)~~ Determination of Intentional Program Violation.

(a) Pursuant to ss. 414.39 and 414.41, F.S., when the department has information that an individual participant has committed fraud, the department will refer the case to the Division of Public Assistance Fraud (DPAF) for investigation. In cases where the department determines that an individual participant has committed fraud in the cash assistance or food stamp programs, the department will pursue a determination of Intentional Program Violation (IPV) through either court action, administrative disqualification hearing (~~ADH~~), or both, where permitted by 7 CFR 273.16, or 45 CFR 235.110. The department will pursue a determination of IPV through court action in instances where the department determines that an individual participant has committed fraud in the Medicaid program.

- (b) No change.

~~(10)(9)~~ Treasury Offset Program Internal Revenue Service Tax Refund Intercept.

(a) The department will refer individuals who owe past-due, legally enforceable federal food stamp overpayment debts to the United States Department of the Treasury, ~~via the United States Department of Agriculture,~~ for purposes of collection of such debt through offset against federal payments income tax refunds pursuant to 26 U.S.C. 6402. Referral of individuals owing such debt will be completed in accordance with procedures and criteria contained in 26 CFR Part 301 et seq., and 31 CFR Part 5 Subpart C et seq., as provided for in 7 CFR Part 3 Subpart 3.82, ~~and FNS Notice 17B: 56 FR 41325-31, August 20, 1991.~~

(b) A past-due, legally enforceable debt exists when an individual in receipt of overpayment as defined in s. 414.41, F.S. ~~statute~~ and subparagraph (1)(b) of this rule is at least 180 days three months delinquent in repayment of such overpayment, and which overpayment has not been discharged through administrative or legal action.

- (c) No change.

- 1. No change.

2. Unless repaid within 180 60 days from the date on the notification the debt will be referred to the United States Department of the Treasury IRS for offset against any refund of federal tax due that individual, and

- 3. No change.

- (d) through (e) No change.

~~(11)(10)~~ The following notices, hereby incorporated by reference, ~~are can~~ be used by the department in the process of establishing and recovering overpayment: ~~CF-ES 3042, Dec 96, Notice of Overpayment (cash) (automated notice); Notice of Overpayment (food stamps) (automated notice); Notice of Overpayment (Medicaid) (automated notice); Post-Fair Hearing Demand Letter (cash) (automated notice); Post-Fair Hearing Demand Letter (food stamps) (automated notice); Post-Fair Hearing Demand Letter (Medicaid) (automated notice); EBT Voluntary Repayment Agreement (automated notice); Notice of Hardship Decision (automated notice); Confirmation of Repayment Agreement (automated notice); Overissuance CF-ES 3057, Aug 2001 Mar 98, Information Concerning Administrative Disqualification Hearings; Notice of Cash Disqualification – temporary and permanent (Waiver) (automated notice); Notice of Cash Disqualification (ADH) (automated notice); Notice of Cash Disqualification – temporary and permanent (DCA) (automated notice); Notice of Cash Disqualification (court) (automated notice); Notice of Food Stamp Disqualification (ADH) (automated notice); Notice of Food Stamp Disqualification – temporary and permanent (DCA) (automated notice); Notice of Food Stamp Disqualification – temporary and permanent (Waiver) (automated notice); Notice of Food Stamp Disqualification (court) (automated notice); CF-ES Form 3400, Aug. 83, Request for Additional Information; CF-ES 3402, Oct 98, Overpayment, Overissuance, Fraud and Recoupment AFDC Repayment Agreement; CF-ES Form 3410, Aug. 2001 Mar. 98, Waiver of Administrative Disqualification Hearing; CF-ES Form 3410A, Aug. 2001 Mar. 98, Waiver of Administrative Disqualification Hearing; and, CF-ES Form 3414, Aug. 99, Disqualification Consent Agreement; and two demand letters used in food stamp collection due to inadvertent household error and intentional program violation.~~ Each of these forms listed as incorporated by reference may be obtained without cost from any Benefit Recovery office or by written request to the Economic Self-Sufficiency Program Office, 1317 Winewood Boulevard, Tallahassee, Florida 32399-0700.

Specific Authority 414.41, 414.45 FS. Law Implemented 24.115(4), 414.31, 414.41 FS. History–New 7-21-92, Amended 1-5-93, 9-5-93, Formerly 10C-1.900, Amended 7-9-98, 4-3-00,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Lynda Bergstrom, Government Operations Consultant II, and
Rodney McInnis, Operations Review Specialist
NAME OF SUPERVISOR OR PERSON WHO APPROVED
THE PROPOSED RULE: John Bowman, Acting Coordinator
for Special Programs
DATE PROPOSED RULE APPROVED BY AGENCY
HEAD: September 25, 2001
DATE NOTICE OF PROPOSED RULE DEVELOPMENT
PUBLISHED IN FAW: June 15, 2001

Section III Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF INSURANCE

Division of State Fire Marshal

RULE NO.:	RULE TITLE:
4A-2.024	Construction Materials Mining Activities

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. 23, June 8, 2001, of the Florida Administrative Weekly. These changes are being made to address concerns expressed

The rule has been changed to read as follows:

4A-2.024 Construction Materials Mining Activities.

(1) Scope.

(a) This section implements Section 552.30, Florida Statutes, which gives the State Fire Marshal sole and exclusive authority to promulgate standards, limits, and regulations regarding the use of explosives in conjunction with the extraction of limestone and sand by any person or company primarily engaged in commercial mining of limestone and sand suitable for production of construction aggregates, sand, cement, and road base materials and Section 552.211, Florida Statutes, which allows the State Fire Marshal to restrict the quantity and use of explosives at any location within the state where such explosive is likely to cause injury to life or property.

(b) Any person or company not primarily engaged in commercial mining of limestone and sand suitable for production of construction aggregates, sand, cement, and road base materials remains subject to the provisions of Section 552.25, Florida Statutes.

(c) Nothing in this section is intended to supersede the requirements of Chapter 552, Florida Statutes, or other sections in this rule chapter.

(2) Definitions. As used in this rule:

(a) “Blasting site” is a location within a mining area at which explosive charges are set.

(b) “Independent seismologist” is an individual whose function includes vibration and air overpressure measurement and the analysis and evaluation of their effects upon structures.

1. A seismologist under this subsection will not be considered “independent” if the seismologist is an employee of:

a. The mining permit holder, blaster, or user; or

b. Any entity subject to regulation under Section 552.30, Florida Statutes.