

Section I
Notices of Development of Proposed Rules
and Negotiated Rulemaking

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICE

Division of Agricultural Environmental Services

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Licensed Pesticide Applicators and Dealers	5E-9
RULE TITLES:	RULE NOS.:
Pesticide Applicator Licenses	5E-9.019
Categories of Licensure for Pesticide Applicators	5E-9.021
Procedures for Pesticide Applicator Certification, Licensure, and License Renewal	5E-9.026
Procedures for Pesticide Dealer Licensure and License Renewal	5E-9.027
Procedures for Pesticide Applicator Recertification	5E-9.029
Pesticide Applicator Records	5E-9.032
Pesticide Aircraft Registration, Liability Insurance/Surety Bond, Security, Inspection, Storage, Recordkeeping, Area-of-Application Information, Transactions, and Forms	5E-9.036

PURPOSE AND EFFECT: The purpose of the rule amendment is to restrict the aerial category to commercial and public pesticide applicators; require aerial applicators who make pest management decisions to be licensed in all work-related categories; require pesticide certification exams to be given in English; delete the requirement for aerial applicators to file proof of insurance since it is now provided with each aircraft registered; clarify the affidavit and late fee requirements for pesticide applicator license renewal; reduce the number of continuing education units (CEUs) required for renewal of private applicator licenses from 8 to 4; harmonize terminology in reference to providers of CEU programs with terminology used by the Bureau of Entomology and Pest Control; modify the restricted use pesticide recordkeeping requirements to require a start and end time for each application; provide for the use of GPS coordinates or longitude/latitude points in pesticide applicator records to delineate treatment sites; specify the pesticide application records that must be maintained to meet the requirements of Section 487.081(6)(b), F.S., to qualify for exemption from proceedings by the Department of Environmental Protection; specify the length of time certificates of insurance must be maintained by aircraft registrants; update forms and addresses; add web site references; clarify confusing language; and correct inconsistencies within the rule chapter.

SUBJECT AREA TO BE ADDRESSED: Management of certification and training activities of Pesticide Applicators in the State.

SPECIFIC AUTHORITY: 487.0435, 487.046, 487.048, 487.049, 487.160, 570.07(23) FS.

LAW IMPLEMENTED: 487.0435, 487.044, 487.046, 487.048, 487.049, 487.160 FS.

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

TIME AND DATE: 9:00 a.m., May 24, 2004
PLACE: AES Conference Room, Florida Department of Agriculture and Consumer Services Complex, 3125 Conner Blvd., Bldg. 8, Tallahassee, FL 32399-1650

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Mr. Dale Dubberly, Chief, Bureau of Compliance Monitoring, Department of Agriculture and Consumer Services, Division of Agricultural Environmental Services, 3125 Conner Blvd., Bldg. 8. (L29), Tallahassee, Florida 32399-1650, (850)488-8731

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

5E-9.019 Pesticide Applicator Licenses.

(1) License types. Each individual licensed as a pesticide applicator must be licensed in one of three license types and must be licensed in a minimum of one primary category. License types are:

- ~~(1) License types.~~
- (a) through (c) No change.
- (2) Restrictions on license types.
 - (a) Aerial application. No license type is valid for aerial application of pesticides unless the license includes the aerial category. The aerial category is available only to commercial and public applicators.
 - (b) through (c) No change.

Specific Authority 487.0435, 570.07(23) FS. Law Implemented 487.0435 FS. History—New 6-9-94, Amended 7-2-95, 2-21-02, _____.

5E-9.021 Categories of Licensure for Pesticide Applicators.

- (1) Description of primary categories.
 - (a) through (p) No change.
 - (q) Category 11 – Aerial Application. This category is applicable to individuals who apply any pesticide from an aircraft. This category is valid for licensure of ~~private~~, public, and commercial applicators for treatment sites that may legally (according to product label direction) be treated by aerial application under Chapter 487, F.S.

(r) through (s) No change.

(2) No change.

(3) Requirements and restrictions on category licensure.

(a) Private applicators who apply restricted use pesticides by ground application must be licensed in Category 1C – Private Applicator Agricultural Pest Control. ~~Private applicators who apply pesticides aerially must be licensed in Category 11 – Aerial Application.~~ No other primary or secondary categories are available for licensure of private applicators.

(b) No change.

(c) Public and commercial applicators must be licensed in all primary and secondary categories applicable to the types of pesticide applications to be made. Exceptions: 1) Category 1C does not apply to public or commercial applicators; 2) Individuals licensed in Category 9 need not be licensed in Category 1D or 1E; 3) Aerial applicators who make no ground applications and no pest management decisions, but only apply pesticides aerially at the request of another party who has made the necessary determinations regarding pest management and pesticide application, do not need to be licensed in any category except Category 11. Aerial applicators who make determinations regarding pest management and pesticide application must be licensed in the aerial category and all other categories applicable to the treatment site(s).

Specific Authority 487.0435, 570.07(23) FS. Law Implemented 487.0435 FS. History—New 6-9-94, Amended 7-2-95, 9-24-98, 6-27-99, 2-21-02, _____.

5E-9.026 Procedures for Pesticide Applicator Certification, Licensure, and License Renewal.

(1) Certification. All individuals seeking pesticide applicator licensure shall demonstrate competency in the responsible use of pesticides by successfully completing the appropriate pesticide applicator examination(s) specified in this chapter for each classification of licensure. All examinations shall be written in the English language and administered by the department or its authorized agents as written, closed-book examinations. Examinations will not be translated into other languages orally, in writing, or in any other form. However, the department shall accommodate individuals seeking licensure in other languages through examination translation or other comparable examination procedures. Licensure based on examination in a language other than English will limit the use of pesticides requiring licensure to those products which bear or provide complete labels and labeling in the language in which examined. Examinations shall be undertaken and completed by the examinee without assistance from other individuals. The department shall set passing scores and determine if the certification standards have been met for the desired licensure. Examination scores shall be valid for 12 months after the date of examination.

(2) Licensure. If the certification standards have been met, the department shall provide the appropriate license application, form DACS-13312, Rev. 05/04, ~~DACS-130312~~ for a private applicator license, form DACS-13313, Rev. 05/04, ~~DACS-130313~~ for a public applicator license, or form DACS-13310, Rev. 05/04, ~~DACS-130310~~ for a commercial applicator license, to the individual. The following materials must be received by the department before a pesticide applicator license shall be issued: documentation of certification earned within the previous 12 months; completed application; completed designation of registered agent, form INHSE-30, Eff. 6/92, if applicable; copy of pilot's license proof of insurance or surety bond (aerial category licensure only); proof of age, if requested; and appropriate fee. License applicants may designate one or more authorized purchasing agents by submitting a completed Authorized Purchasing Agent Designation, DACS-13352, Rev. 05/04, along with the license application. Materials shall be submitted to the Pesticide Certification Office, P. O. Box 6710, Tallahassee, Florida 32314-6710. Pesticide applicator licenses shall expire at the end of the month no more than four (4) years from issue date.

(3) License Renewal. It shall be the responsibility of each licensee to renew the license at the time of expiration. Requests for renewal of pesticide applicator licenses shall be made by submitting to the department the following materials: a signed request for license renewal; documentation of recertification; completed designation of registered agent, form INHSE-30, Eff. 6/92, if applicable; proof of insurance or surety bond (aerial category licensure only); proof of age, if requested; and payment of the appropriate license fee. Materials shall be submitted to the Pesticide Certification Office at the above address and must be received no later than the license expiration date for the license to be renewed with continual licensure. If a license is renewed after it expires, the applicator must submit a notarized affidavit stating that no restricted use pesticides have been used since the license expired. If a license is renewed more than 60 days after it expires, a \$50 late fee is also required. A license that has been expired for more than one year may not be renewed. Renewed pesticide applicator licenses shall expire no more than four (4) years from the previous expiration date.

(4) Forms. The following forms are hereby incorporated by reference. Forms DACS-13312, Rev. 05/04 ~~DACS-130312~~, DACS-13310, Rev. 05/04 ~~DACS-130310~~, and DACS-13313, Rev. 05/04 ~~DACS-130313~~, and DACS-13352, Rev. 05/04 may be downloaded from the web site <http://www.safepesticideuse.com> or obtained from the Florida Department of Agriculture and Consumer Services, Pesticide Certification Office, 3125 Conner Boulevard, Building 8 (L29) ~~MD-1 (L33)~~, Tallahassee, Florida 32399-1650, telephone (850)~~488-3314 488-6838~~. Form INHSE-30, Eff. 6/92, may be

obtained from the Florida Department of State, Division of Corporations, 409 E. Gaines Street, Tallahassee, Florida 32399, telephone (850)487-6051.

(a) Application for Private Applicator License (DACS-13312, Rev. 05/04 ~~DACS-130312, Rev. 2/98~~), Florida Department of Agriculture and Consumer Services.

(b) Application for Public Applicator License (DACS-13313, Rev. 05/04 ~~DACS-130313, Rev. 2/98~~), Florida Department of Agriculture and Consumer Services.

(c) Application for Commercial Applicator License (DACS-13310, Rev. 05/04 ~~DACS-130310, Rev. 2/98~~), Florida Department of Agriculture and Consumer Services.

(d) Authorized Purchasing Agent Designation (DACS-13352), Rev. 05/04, Florida Department of Agriculture and Consumer Services.

(e) ~~(d)~~ Designation of Registered Agent and Registered Office for a Nonresident Restricted-Use Pesticides Licensee (INHSE-30, Eff. 6/92), Florida Department of State.

Specific Authority 487.0435, 487.046, 570.07(23) FS. Law Implemented 487.044, 487.046, 487.049 FS. History—New 6-9-94, Amended 7-2-95, 9-24-98, _____.

5E-9.027 Procedures for Pesticide Dealer Licensure and License Renewal.

(1) Licensure. Requests for pesticide dealer licensure shall be made by submitting a completed pesticide dealer license application, for DACS-13337, Rev. 05/04 ~~4/02~~, and the appropriate license fee to the Pesticide Certification Office, P. O. Box 6710, Tallahassee, Florida 32314-6710. Pesticide dealer licenses shall expire at the end of the month one (1) year from issue date.

(2) No change.

(3) Forms. The following form is hereby incorporated by reference: Application for Pesticide Dealer License (DACS-13337, Rev. 05/04 ~~4/02~~). This form may be downloaded from the web site <http://www.safepesticideuse.com> or obtained from the Florida Department of Agriculture and Consumer Services, Pesticide Certification Section, 3125 Conner Boulevard, Building 8 (L29), Tallahassee, Florida 32399-1650, telephone (850)488-3314.

Specific Authority 487.048(1), 570.07(23) FS. Law Implemented 487.048(1) FS. History—New 6-9-94, Amended 7-2-95, 9-24-98, 2-21-02, _____.

5E-9.029 Procedures for Pesticide Applicator Recertification.

(1) through (2) No change.

(3) Effective January 1, 2005, all applicators recertifying by means of CEUs must earn 4 CEUs approved for the general standards of pesticide use and safety (core material) plus the following number of CEUs approved for each specific license category to be renewed:

PRIMARY CATEGORIES	CEU'S REQUIRED
Category 1A1 – Agricultural Row Crop Pest Control	8
Category 1A2 – Agricultural Tree Crop Pest Control	8
Category 1B – Agricultural Animal Pest Control	4
Category 1C – Private Applicator Agricultural Pest Control	4 8
Category 1D – Soil and Greenhouse Fumigation	4
Category 1E – Raw Agricultural Commodity Fumigation	4
Category 2 – Forest Pest Control	8
Category 3 – Ornamental and Turf Pest Control	12
Category 4 – Seed Treatment	4
Category 5A – Aquatic Pest Control	16
Category 5B – Organotin Antifouling Paint Pest Control	4
Category 6 – Right-of-Way Pest Control	8
Category 7A – Wood Treatment	4
Category 7B – Chlorine Gas Infusion	4
Category 7C – Sewer Root Control	4
Category 9 – Regulatory Pest Control	12
Category 11 – Aerial Application	16
Category 20 – Regulatory Inspection and Sampling	4
Category 21 – Natural Areas Weed Management	16

SECONDARY CATEGORIES CEU'S
REQUIRED

Category 10 – Demonstration and Research 4
~~The Ornamental and Turf Pest Control and Aquatic Pest Control categories may be renewed with 8 CEU's until January 1, 2000.~~

(4) through (7) No change.

(8) CEU program approval. The department shall approve professional meetings or seminars for granting of continuing education units (CEUs) in pesticide use and safety through execution of an agreement between the department and the ~~education provider sponsoring organization~~ and provided the seminar or meeting and sponsor comply with the criteria set forth below. The agreement shall clearly stipulate the education provider's sponsoring organization's responsibilities and the department's authority to withhold credits for any seminar or meeting determined not to be in compliance with the approved criteria or the points specified in the agreement. Criteria for allocation of CEUs and procedures for program approval and granting of CEUs to individual licenses are specified below.

(9) CEU program criteria. The following specifications shall be met before a meeting or seminar shall be considered for approval:

(a) The ~~education provider sponsoring organization~~ shall submit a written or electronic request for approval to grant CEUs on form DACS-13326, Rev. 05/04 4/02, or in an electronic format prescribed by the department. The completed form or electronic request must be received by the department no later than two (2) weeks prior to the date of the program, unless a different time frame is approved by the department on a case by case basis, based on circumstances beyond the control of the ~~education provider sponsoring organization~~.

(b) A program agenda indicating the start time, duration, instructor or speaker, and description of each program segment for which CEU approval is requested shall be submitted with form DACS-13326, Rev. 05/04 4/02. The description of each program segment must be sufficient for verification of content and applicability.

(c) No change.

(d) Documentation attesting that the instructors or speakers possess the expertise required to impart the specified information to the attendees shall be submitted with form DACS-13326, Rev. 05/04 4/02.

(e) The ~~education provider or an authorized designee sponsoring organization~~ shall distribute an official record of attendance, form DACS-13325, Rev. 05/04 4/02, provided by the department, to each licensee in attendance and shall monitor attendance to ensure these records are accurate. The education provider or an authorized ~~A designee of the sponsoring organization~~ shall sign the record of attendance forms to verify each licensee's attendance.

(f) No change.

(10) No change.

(11) Procedure for determining CEUs.

(a) No change.

(b) A written or electronic copy of the program request ~~form~~ shall be returned to the ~~education provider sponsoring organization contact person~~ with notification of CEU credit approval.

(12) Procedure for granting CEUs to licensees.

(a) through (b) No change.

(c) The ~~education provider or an authorized designee contact person or program trainer~~ shall complete and sign the appropriate section of the record of attendance form to verify each licensee's attendance.

(d) through (f) No change.

(g) The licensee is responsible for ensuring that the CEUs required for license renewal are earned according to guidelines specified in this chapter. The licensee is also responsible for maintaining the completed record of attendance forms (form DACS-13325, Rev. 05/04 4/02) and submitting these records to the department at the time of request for license renewal.

(13) Forms. The following forms are hereby incorporated by reference. These forms may be downloaded from the web site <http://www.safepesticideuse.com> or obtained from the Florida Department of Agriculture and Consumer Services, Pesticide Certification Section, 3125 Conner Boulevard, Building 8 (L29), Tallahassee, Florida 32399-1650, telephone (850)488-3314.

(a) Request for Granting Continuing Education Units (CEUs) for Renewal of Pesticide Applicator Licenses and Certificates (DACs-13326, Rev. 05/04 4/02).

(b) Record of Attendance for Continuing Education Units (CEUs) (DACs-13325, Rev. 05/04 4/02).

Specific Authority 487.049, 570.07(23) FS. Law Implemented 487.049 FS. History—New 6-9-94, Amended 7-2-95, 9-24-98, 6-28-99, 2-21-02, _____.

5E-9.032 Pesticide Applicator Records.

(1) Licensed pesticide applicators shall maintain records relating to the application of all restricted use pesticides. Such records shall consist of the following information for each application:

(a) through (b) No change.

(c) Date, start time, and end time of treatment;

(d) Location of treatment site, which may be recorded using any of the following designations:

1. County, range, township, and section;

2. An identification system utilizing maps and/or written descriptions which accurately identify the location and distinguish the treatment site from other sites;

3. The identification system established by the United States Department of Agriculture found at 7 CFR 110, which utilizes maps and numbering system to identify field locations; ~~or~~

4. The legal property description; or

5. Global Positioning System (GPS) coordinates or longitude/latitude points that delineate the treated area.

(e) through (j) No change.

(2) through (10) No change.

(11) To meet the requirements of Section 487.081(6)(b), F.S., individuals must keep the same record information required in paragraph (1). Such records must be maintained in a manner accessible by department representatives and shall be maintained indefinitely by the property owner or leaseholder.

Specific Authority 487.160, 570.07(23) FS. Law Implemented 487.160 FS. History—New 6-9-94, Amended 7-2-95, 9-24-98, _____.

5E-9.036 Pesticide Aircraft Registration, Liability Insurance/Surety Bond, Security, Inspection, Storage, Recordkeeping, Area-of-Application Information, Transactions, and Forms.

(1) Registration. Each aircraft used for aerial application of any pesticide must be annually registered with the department with proof of insurance or surety bond. Application for registration shall be on form DACS-13354, Rev. 05/04

New 1/02, provided by the department. The completed registration form and proof of insurance or surety bond shall be submitted to the Pesticide Certification Office, 3125 Conner Boulevard, Blvd., Building Bldg. 8 (L29), Tallahassee, Florida 32399-1650. The registration form period shall be submitted to the Department on or before June 30 of each year and shall not exceed the time period covered by proof of insurance or surety bond.

(2) Proof of Insurance or Surety Bond. Proof of insurance or surety bond shall consist of:

(a) The deposit with the department of a surety bond in favor of any person or persons who may suffer damage or injury as the result of the aerial application of any pesticide made from the registered aircraft. Said surety bond shall be a minimum of \$100,000 and shall be executed by a corporate surety company authorized to conduct business in Florida. The department shall evaluate and determine the adequacy of all such bonds before acceptance. When the aircraft is removed from aerial application operation, a said bond shall be returned after a period of six months following date of notice of withdrawal, provided such withdrawal shall not release said surety from liability existing hereunder during the time of aerial application at the time of the effective date of such withdrawal; or

(b) The filing of a certificate of insurance, verifying insurance in an amount of not less than \$100,000 property damage and \$300,000 bodily injury coverage per occurrence, insuring the registered aircraft against liability for any damage, loss, or injury, including chemical drift or trespass, suffered by any person or persons, resulting from the aerial application of any pesticide made from the registered aircraft. A deductible clause of \$1,000 shall be acceptable. A current certificate of insurance must be filed with each initial and subsequent renewal registration. Current certificates of insurance or copies thereof shall be maintained in the aircraft registrant's possession from the date the aircraft is registered, ~~or until two~~ (2) years after the certificate expires or two (2) years after the registration is withdrawn.

(3) No change.

(4) Security. Each aircraft used for aerial application of any pesticide shall be secured when not in use. Secured storage shall include the aircraft being: within a locked building, locked in place securely, mechanically disabled from flying, or any other reasonable method which prevents or deters ~~would prevent or deter~~ theft or unauthorized use.

(5) Storage. All pesticides on the premises owned or controlled by any aerial applicator shall be stored and maintained in a manner such that they are not accessible to unauthorized persons. Secured storage shall include: fences with a minimum 6 feet height; door locks; valve locks; electronic security systems; disabling of mobile storage units; blocking of access, ingress or egress; or any other reasonable method which prevents or deters theft or unauthorized use.

fences with a minimum 6 feet height, door locks, valve locks, electronic security systems, disabling of mobile storage units, blocking of access, ingress or egress; or any other reasonable method to prevent or deter theft or unauthorized use. Buildings used to store pesticides must be of rigid construction so unauthorized entry can not be achieved without the use of heavy machinery or equipment. If a portable building is used for storage of pesticides, the building must be secured in place so it can not be towed or otherwise removed by unauthorized persons.

(6) Transactions. Any person who buys, sells, rents, leases, or transfers ownership ~~purchase, sale, rental, leasing, or transfer of ownership~~ of an aircraft that is registered or required to be registered with the department pursuant to subsection (1) above shall report the transaction be transmitted to the department within 24 hours of the transaction using one of the following forms: ~~on~~ (1) Report of Aircraft Transaction, Form DACS-13355, Rev. 05/04; (2) Ownership Declaration and Sales and Use Tax Report on Aircraft, Form DR-42A, Rev. 03/02; or (3) Aircraft Bill of Sale, Form AC 8050-2 (09/92). ~~(1) Florida Department of Revenue form DR 42 Rev 06/99 Ownership Declaration and Sales and Use Tax Report on Aircraft or (2) Aircraft Bill of Sale Form AC 8050 2 (09/92) or (3) Report of Aircraft Transaction Form DACS 13355, New 1/02 within 24 hours of the transaction.~~

(7) Recordkeeping. Aerial applicators shall maintain records relating to the application of each pesticide during a declared emergency. Such records generated during the emergency shall be retained for a period of two (2) years and shall be maintained in a manner that is accessible by the department upon request. Records shall consist of the following information for each application:

(a) Name, FDACS pesticide applicator license number, and FAA license number of the licensee responsible for the pesticide application;

(b) Date, start time and end time of treatment;

(c) Location of treatment site, which may be recorded using any of the following designations:

1. County, range, township and section;

2. An identification system utilizing maps and/or written descriptions which accurately identify the location and distinguish the treatment site from other sites;

3. The legal property description; or

4. Global Positioning Satellite (GPS) coordinates or Longitude/Latitude points which delineate the treated area; ~~area.~~

(d) Name of the person requesting or authorizing the application; ~~application.~~

(e) Aircraft manufacturer, make and model; ~~model.~~

(f) FAA aircraft registration number; and

(g) Originating airport/airstrip ~~airports/airstrip.~~

(8) Area-of-Application Information. The information listed in (7)(a) through (7)(g) is required only when a declaration of an Executive Order pursuant to the emergency powers granted to the Governor or the Commissioner of Agriculture is made, declaring an emergency in the State of Florida. Such information shall be provided and filed with the department ~~Department~~ in a manner determined by the department.

(9) Forms. The following forms are hereby incorporated by reference. These forms may be downloaded from the web site <http://www.safepesticideuse.com> or obtained from the Florida Department of Agriculture and Consumer Services, Pesticide Certification Office, 3125 Conner Boulevard, Building 8 (L29), Tallahassee, Florida 32399-1650, telephone (850)488-3314.

(a) Application for Aircraft Registration (DACS-13354), Rev. 05/04, Florida Department of Agriculture and Consumer Services New 01/02.

(b) Ownership Declaration and Sales and Use Tax Report on Aircraft (DR-42A DR-42), Rev. 03/02 06/99, Florida Department of Revenue.

(c) Aircraft Bill of Sale, Sale AC Form AC 8050-2 (09/92), U.S. Department of Transportation, Federal Aviation Administration.

(d) Report of Aircraft Transaction (DACS-13355), Rev. 05/04, Florida Department of Agriculture and Consumer Services New 1/02.

(10) Upon written request by an authorized department representative, an aircraft registrant a licensed aerial applicator who has aerial insurance as the selected form of financial responsibility shall make available the certificates of insurance or copies thereof required to be maintained under this rule for period of time when aerial applications are made and shall permit the authorized representative to copy of photograph the documents. The original documents shall be maintained by the aircraft registrant applicator.

Specific Authority 487.046, 570.07(23) FS., Chapter 2001-360, Laws of Florida. Law Implemented 487.046 FS., Chapter 2001-360, Laws of Florida. History—New 6-9-94, Amended 7-2-95, 9-24-98, 6-9-02, _____.

DEPARTMENT OF REVENUE

RULE TITLE:

RULE NO.:

Department Personnel Disciplinary Procedures and Standards

12-3.011

PURPOSE AND EFFECT: The purpose of the proposed repeal of subsection (8) of this rule is to eliminate personnel procedures that are redundant of the Department of Management Services personnel procedures contained in Rule 60L-36.005, F.A.C. The effect of this proposed repeal is to ensure that the Department complies with the uniform rule provisions.

SUBJECT AREA TO BE ADDRESSED: The subject area addressed by the proposed repeal of subsection (8) of Rule 12-3.011, F.A.C., is the disciplinary action standards used by this agency.

SPECIFIC AUTHORITY: 213.06(1), 409.2557(3) FS.

LAW IMPLEMENTED: 20.21(2)(a), 110.201(2) FS.

A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 10:00 a.m., May 17, 2004

PLACE: Room 435, Carlton Building, 501 S. Calhoun Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Larry Green, Rules and Policy Administrative Process, Department of Revenue, 501 S. Calhoun Street, Room 104, Carlton Building, Tallahassee, Florida 32399-0100, (850)922-4830, e-mail: greenl@dor.state.fl.us

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in this workshop is asked to advise the Department at least 48 hours before the workshop by contacting: Larry Green, (850)922-4830. If you are hearing or speech impaired, please contact the Department by using the Florida Relay Service, 1(800)955-8770 (Voice) and 1(800)955-8771 (TDD).

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

12-3.011 Department Personnel Disciplinary Procedures and Standards.

(1) through (7) No change.

~~(8) Disciplinary Action Standards.~~

~~(a) Attendance, Leave, and Performance of Duty;~~

~~1. Absence Without Authorized Leave. Employees shall obtain approval from their immediate supervisor prior to any absence from work. In the case of an illness or emergency where an employee must be absent prior to receiving approval from his or her immediate supervisor, employees shall notify their immediate supervisor and explain the circumstances necessitating their absence at the earliest possible time after becoming aware of the illness or emergency. Employees shall state the circumstances or situation necessitating their absence from work in a truthful manner, and no employee shall fail or refuse to report to work on any day for which an employee requested authorized leave, but such request was denied. Failure to report to work or leave work within two (2) hours of the beginning or ending of the workday or which exceeds the lunch or break periods for more than two (2) hours, all without approval.~~

~~a. First Occurrence~~

Oral Reprimand to Dismissal

~~b. Second Occurrence~~

Suspension to Dismissal

~~e. Third Occurrence~~

Dismissal

2. Confidentiality. No employee shall disclose to anyone, or use, any information that is not available to the general public that was obtained as a result of employment with the Department. Employees shall not access or review any specific tax or Child Support Enforcement account or information for any non-official purpose. No employee may use or disclose information obtained as a result of employment with the Department if it would place the employee or recipient in an advantageous position over the general public and thus constitute a violation of the public trust. Examples of violations of this standard include disclosing the existence of an audit or investigation, or audit or investigative techniques and strategies, to anyone, including the subject taxpayer or client, outside of the official lines of communication. Such information may be included in an official form, officially recognized conference, or correspondence by the employee assigned to an investigation or audit or who subsequently reviewed it.

- a. First Occurrence Suspension to Dismissal
- b. Second Occurrence Dismissal

3. Excessive Absenteeism. Repeated absences on the day preceding or following the employee's regular days off, repeated absences on the same day of each week or month, or that otherwise establishes a pattern of absenteeism shall be considered excessive, regardless of whether such absences were authorized by an immediate supervisor based on the employee's reported illness or emergency. Employees shall not deplete their accrued hours of leave or take leave in excess of their leave balance without approval from their supervisor.

- a. First Occurrence Oral to Written Reprimand
- b. Second Occurrence Suspension to Dismissal
- c. Third Occurrence Dismissal

4. Insubordination. No employee shall refuse or fail to comply with a reasonable order, request for information, request for cooperation, or work assignment given by an immediate or higher level supervisor.

- a. First Occurrence Written Reprimand to Dismissal
- b. Second Occurrence Suspension to Dismissal
- c. Third Occurrence Dismissal

5. Leaving Work Station/Area Without Authorization. While at work, employees shall not leave their assigned work station/area or duty assignment without being properly relieved or without getting prior permission from an appropriate supervisor.

- a. First Occurrence Oral Reprimand to Dismissal
- b. Second Occurrence Suspension to Dismissal
- c. Third Occurrence Dismissal

6. Loafing. Employees shall remain productive while performing their assigned duties or tasks during work hours, and shall not be idle, waste time, engage in idle talk or gossip.

- a. First Occurrence Oral Reprimand to Dismissal
- b. Second Occurrence Suspension to Dismissal
- c. Third Occurrence Dismissal

7. Negligence. Employees shall be disciplined for committing any act that is considered negligent as described herein. Negligence is the failure to use ordinary or reasonable care in, or the omission of or inattention to, the performance of assigned duties and responsibilities. Negligence is synonymous with carelessness and signifies lack of care, caution, attention, diligence or discretion and may include the loss of State property and equipment. Any action that results in a violation or nonobservance of a work rule, policy, procedure, law or assigned duty may subject an employee to discipline for negligence pursuant to this rule.

- a. First Occurrence Written Reprimand to Dismissal
- b. Second Occurrence Suspension to Dismissal
- c. Third Occurrence Dismissal

8. Personal Business. Employees shall not conduct personal business during work hours.

- a. First Occurrence Oral Reprimand to Dismissal
- b. Second Occurrence Suspension to Dismissal
- c. Third Occurrence Dismissal

9. Political Activities. With regard to participation in, or furtherance of any political campaign, no such activity shall take place while an employee is on duty and the Department adopts Rule 60K-13, F.A.C., and incorporates same by reference.

- a. First Occurrence Oral Reprimand to Dismissal
- b. Second Occurrence Suspension to Dismissal
- c. Third Occurrence Dismissal

10. Safety Practices. Employees shall adhere to or follow established safety rules or procedures while at work, including using proper safety equipment where appropriate.

- a. First Occurrence Written Reprimand to Dismissal
- b. Second Occurrence Suspension to Dismissal
- c. Third Occurrence Dismissal

11. Sleeping or Inattentiveness on Duty. Employees shall remain awake or sufficiently alert to perform assigned duties during work hours.

- a. First Occurrence Written Reprimand to Dismissal
- b. Second Occurrence Suspension to Dismissal
- c. Third Occurrence Dismissal

12. Solicitation/Distribution. The Department adopts Rules 60H-6 and 60L-24, F.A.C., and incorporates same by reference.

- a. First Occurrence Oral Reprimand to Dismissal
- b. Second Occurrence Suspension to Dismissal
- c. Third Occurrence Dismissal

13. Striking or Related Concerted Activity. No employee shall engage in any concerted action involving refusal or failure of employees to report for duty; the concerted absence of employees from their positions; the concerted stoppage of work by employees; the concerted abstinence in whole or in part by any group of employees from the full and faithful performance of the duties of employment with a public employer for the purpose of inducing, influencing, condoning, or coercing a change in the terms and conditions of employment or the rights, privileges, or obligations of public employment, or participate in a deliberate and concerted course of conduct which adversely affects the services of the public employer; the concerted failure of employees to report to work after the expiration of a collective bargaining agreement; or in picketing in furtherance of a work stoppage.

- a. First Occurrence Suspension to Dismissal
- b. Second Occurrence Dismissal

14. Suspension or Revocation of Driver's License. Employees who drive vehicles to perform their job duties and responsibilities shall report any suspension or revocation of their driver's license to an appropriate supervisor within three (3) workdays of the order of suspension or revocation.

- a. First Occurrence Oral Reprimand to Dismissal
- b. Second Occurrence Suspension to Dismissal
- c. Third Occurrence Dismissal

15. Tardiness/Leaving Early. Employees shall timely report to work, return to work after a lunch or break periods and leave work at their scheduled time unless authorization is obtained from their immediate supervisor. The failure to timely report to work, return to work, or to leave work early three or more times within 30 calendar days shall be disciplined as tardiness/leaving early.

- a. First Occurrence Oral to Written Reprimand
- b. Second Occurrence Suspension to Dismissal
- c. Third Occurrence Dismissal

(b) Child Support and Taxpayer Obligation.

1. Violation of State or Federal Tax Law. No employee shall fail or refuse to fully comply with any State or Federal tax filing or record keeping requirement, or fail or refuse to pay taxes assessed when due under any State or Federal tax laws and rules.

- a. First Occurrence Written Reprimand to Dismissal
- b. Second Occurrence Dismissal

2. Failure of Employee to Maintain Child Support Obligation. No employee shall fail or refuse to fully comply with any court order involving child support.

- a. First Occurrence Written Reprimand to Dismissal
- b. Second Occurrence Dismissal

(c) Workplace Conduct, Behavior, and Activities.

1. Abuse or Harassment of Other Employees. No employee shall utter any derogatory, disparaging, derisive, or other belittling or insulting verbal remark, or make any similar physical gesture, which is intended to, or can be construed to, insult, denigrate, malign, or besmirch another employee based on his or her gender, race, religious affiliation, national origin, age, marital status, or disability, and which is offensive and objectionable to the recipient, regardless of whether the recipient files a complaint.

- a. First Occurrence Oral Reprimand to Dismissal
- b. Second Occurrence Suspension to Dismissal
- c. Third Occurrence Dismissal

2. Alcohol or Drug Use.

a. Prohibited at Workplace. No employee shall possess, use, sell, transfer, or distribute alcohol, controlled substances or chemicals, illegal or unauthorized prescription or non-prescription drugs, or narcotics while on duty or during work hours. Neither shall any employee report to work while using, or under the influence of alcohol, controlled substance, or illegal or unauthorized prescription or non-prescription drugs or narcotics.

- I. First Occurrence Suspension to Dismissal
- II. Second Occurrence Dismissal

b. Policy on Abuse of Alcohol and Drugs. By resolution dated July 17, 1993, the Governor and Cabinet declared that alcoholism shall be recognized as a health problem and treated as such, with no attempt to hide the diagnosis or disease. An employee who drinks, consumes, or uses alcohol or drugs to the extent that his or her work performance is affected or impaired, has an alcohol or substance abuse problem. Therefore, employees who exhibit evidence of an alcohol or substance abuse problem, regardless of whether the employee has violated the above provision regarding possession, use, and sale of alcohol and controlled substances or chemicals while on duty and during work hours, shall be referred to the Employee Assistance Program for counseling and rehabilitation. Employees who fail or refuse to recognize that they have an alcohol or drug use problem, who fail or refuse to cooperate with prescribed treatment program(s), or are unruly or commit a breach of peace while under the influence of alcohol or drugs shall be disciplined as follows.

- I. First Occurrence Written Reprimand to Dismissal
- II. Second Occurrence Suspension to Dismissal
- III. Third Occurrence Dismissal

3. ~~Conduct Unbecoming a Public Employee. No employee shall engage in any conduct which adversely affects the morale or efficiency of the Department or the Department's ability to carry out its assigned mission, or which has a tendency to destroy public respect or confidence in the Department, in its employees, or in the operation of Departmental services. Nor shall any employee engage in any act or activity, on the job or connected with the job, which violates accepted standards of decency or morality or which violates generally accepted standards of conduct or conduct, whether on or off the job, that adversely affects the employee's effectiveness within the Department, or his or her ability to continue to perform his or her job. Conduct unbecoming a public employee includes any action or conduct that brings discredit to the Department.~~

- a. ~~First Occurrence~~ ~~Written Reprimand to Dismissal~~
- b. ~~Second Occurrence~~ ~~Suspension to Dismissal~~
- e. ~~Third Occurrence~~ ~~Dismissal~~

4. ~~Discourteous or Rude Conduct Toward the Public. Employees shall be disciplined for committing any act which is discourteous or rude to the public.~~

- a. ~~First Occurrence~~ ~~Written Reprimand to Dismissal~~
- b. ~~Second Occurrence~~ ~~Suspension to Dismissal~~
- e. ~~Third Occurrence~~ ~~Dismissal~~

5. ~~Disruptive Conduct.~~

~~a. Employees shall be disciplined for committing any behavior or act that interferes with the employee's performance of duty or the ability of others to perform their work. Disruptive conduct includes speaking loudly, rudely, or contemptuously to co-workers, supervisors or others; slamming office doors or drawers; throwing objects; banging on walls or doors; or otherwise causing a disturbance which is detrimental to the work environment. Abusive language to any employee or supervisor, or openly making or publishing false, vicious, or malicious statements concerning other employees or supervisors shall be considered disruptive conduct.~~

~~b. Any outward challenge of supervisory criticism such as abusive, hostile or disrespectful conduct; any showing of contempt for, threat, intimidation, harassment, coercion, or any act which indicates an intent to flout authority that is directed at or about an employee's supervisor is also disruptive conduct subject to discipline.~~

- a. ~~First Occurrence~~ ~~Oral Reprimand to Dismissal~~
- b. ~~Second Occurrence~~ ~~Suspension to Dismissal~~
- e. ~~Third Occurrence~~ ~~Dismissal~~

6. ~~Falsification of Records or Statements. No employee shall misrepresent, falsify or omit any facts in any record required to be submitted to the Department, or otherwise provide fraudulent or misleading information to the Department. Records include, but are not limited to Employment Applications; Employee Attendance and Leave Reports; Criminal Record Check Forms; Travel Vouchers;~~

~~Requests for Reimbursements; questions, answers, or results of any educational course or training program undertaken by the employee, whether required or voluntary; and other records of, made, or received by the Department of Revenue and the State of Florida.~~

- a. ~~First Occurrence~~ ~~Written Reprimand to Dismissal~~
- b. ~~Second Occurrence~~ ~~Dismissal~~

7. ~~Fighting. No employee shall assault or batter another person while on the job. Injury, or risk of injury, to any employee shall increase the severity of the disciplinary action.~~

- a. ~~First Occurrence~~ ~~Written Reprimand to Dismissal~~
- b. ~~Second Occurrence~~ ~~Dismissal~~

8. ~~Filing a False Complaint or Grievance. No employee shall file any complaint or grievance regarding another employee with the knowledge that the information contained in the complaint or grievance is untrue or unfounded.~~

- a. ~~First Occurrence~~ ~~Oral Reprimand to Dismissal~~
- b. ~~Second Occurrence~~ ~~Suspension to Dismissal~~
- e. ~~Third Occurrence~~ ~~Dismissal~~

9. ~~Gambling. No employee shall take, make, or receive any bet or wager upon the result of any trial, contest, casualty or contingent event, while on the job.~~

- a. ~~First Occurrence~~ ~~Written Reprimand to Dismissal~~
- b. ~~Second Occurrence~~ ~~Suspension to Dismissal~~
- e. ~~Third Occurrence~~ ~~Dismissal~~

10. ~~Horseplay. Employees shall be disciplined for committing any act, which is horseplay as described herein. Horseplay is any non-work-related activity that is intended to be mischievous or prankish, but not malicious. Injury, or risk of injury, to any employee shall increase the severity of the disciplinary action.~~

- a. ~~First Occurrence~~ ~~Oral Reprimand to Dismissal~~
- b. ~~Second Occurrence~~ ~~Suspension to Dismissal~~
- e. ~~Third Occurrence~~ ~~Dismissal~~

11. ~~Identification as Department Employee. Employees may only identify themselves as an employee of the Department for official purposes, except for personal identification and verification purposes, and not for the purpose of providing a testimonial or advertisement, or on behalf of a commercial enterprise, charity, or other similar endeavor.~~

- a. ~~First Occurrence~~ ~~Oral Reprimand to Dismissal~~
- b. ~~Second Occurrence~~ ~~Suspension to Dismissal~~
- e. ~~Third Occurrence~~ ~~Dismissal~~

12. ~~Interfering in an Investigation. No employee shall interfere with any Department investigation by: failing or refusing to appear, cooperate, or answer any question or questions; failing or refusing to provide requested information or cooperate in an investigation, or to completely and~~

accurately answer questions in an internal investigation; or failing or refusing to give truthful information. This includes any attempt to interfere with an investigation by: lying, or providing any oral or written statements that are inaccurate, incorrect, incomplete or misleading; a material omission; coercion of witnesses or parties; withholding or destroying evidence or any other material facts or tangible items that would be relevant to the investigation. An investigation includes any criminal or administrative investigation by a law enforcement agency, or any administrative investigation by the Department pursuant to its duties and responsibilities.

- a. First Occurrence Written Reprimand to Dismissal
- b. Second Occurrence Suspension to Dismissal
- c. Third Occurrence Dismissal

~~13. Offensive, Profane, Abusive, or Threatening Language. No employee shall use any language that is offensive, profane, threatening, or abusive regardless of whether such language is directed toward a supervisor, another State employee, the public, or no one in particular. This standard prohibits swearing, profanity, obscenities, and other foul language that is inappropriate for the workplace.~~

- a. First Occurrence Written Reprimand to Dismissal
- b. Second Occurrence Suspension to Dismissal
- c. Third Occurrence Dismissal

~~14. Sabotage. No employee shall participate in any act of destruction or attempted destruction of State property, equipment, materials, records, or files which is directed towards undermining Departmental operations or the effectiveness of other employees. Neither shall any employee introduce fraudulent records into a computer system, equipment or facility, or otherwise alter or destroy any Department computerized information or files.~~

- a. First Occurrence Suspension to Dismissal
- b. Second Occurrence Dismissal

~~15. Sexual Harassment. No employee shall perform, express, or exhibit any unwelcome sexual advances, request for sexual favors, or other verbal or physical conduct of a sexual nature when:~~

- a. Submission to such conduct is made, whether explicitly or implicitly, a term or condition of employment;
- b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals; or
- e. When such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. This also includes retaliation, filing a false complaint, or failure of a supervisor to report sexual

harassment, and any other violation of Department Policy Statement 1141-3, Sexual Harassment, which is incorporated by reference. The Department also adopts and incorporates by reference Rule 60L-28, F.A.C., Uniform Rules on Sexual Harassment:

- I. First Occurrence Written Reprimand to Dismissal
- II. Second Occurrence Suspension to Dismissal
- III. Third Occurrence Dismissal

~~16. Signatures. No employee shall, without express delegated authority, place, direct the placing, or falsely represent to another person, what purports to be the signature of another person on any form, document, paper, letter, memorandum or other written instrument made or received by the Department in connection with the transaction of its official business.~~

- a. First Occurrence Written Reprimand to Dismissal
- b. Second Occurrence Suspension to Dismissal
- c. Third Occurrence Dismissal

~~17. Use of State Property and Equipment. No employee shall use any State property or equipment for any reason other than for official State business without proper authorization. Employees shall not abuse or misuse, damage or destroy any State property or equipment. This includes failure to adequately secure or care for State property, and any improper and/or careless use, abuse, or misuse of State property or equipment including State rental vehicles. State property includes any computers, networks and equipment owned or leased to the State.~~

- a. First Occurrence Oral Reprimand to Dismissal
- b. Second Occurrence Suspension to Dismissal
- c. Third Occurrence Dismissal

~~18. Theft or Stealing. No employee shall take or use any materials, records, files, currency, or property of the Department, the State, other employees, or the public, without proper authorization.~~

- a. First Occurrence Suspension to Dismissal
- b. Second Occurrence Dismissal

~~19. Weapon. No employee shall brandish, threaten to use, or improperly display a weapon or firearm. "Weapon" means any device or instrument which is designed, redesigned, used or intended to be used for offensive or defensive purposes, the destruction of life or the infliction of bodily injury, including firearms, knives, bombs, explosives, mace and pepper gas, and/or other dangerous chemicals or instruments.~~

- a. First Occurrence Suspension to Dismissal
- b. Second Occurrence Dismissal

~~(d) Outside Employment and Activities, Gifts, and Conflicts of Interest.~~

1. Conflict of Interest. Employees have an obligation to scrupulously avoid the potential conflicts of interest which may exist in their employment and have a duty to disclose and report promptly the existence or possible existence of a conflict of interest to the agency head or designee. Employees shall:

a. Not accept or agree to accept any form of compensation or consideration other than salary from the Department except for authorized or sanctioned awards, for:

I. Any services rendered as part of their job with the Department of Revenue;

II. Any part in a proceeding, contract, claim, controversy, change, or other matter in which the Department or any governmental agency regulated by the Department is directly or indirectly interested.

b. Not participate in any business being transacted with the Department by any private concern in which the employee, spouse, or minor children have a financial or beneficial interest.

c. Not act as an agent, attorney, accountant, bookkeeper, factor, or representative in any tax or child support matter before any governmental, judicial or quasi-judicial body when doing so creates a conflict of interest or the appearance of a conflict of interest.

d. Not directly or indirectly solicit, accept, or agree to accept for the employee, another person, or entity anything of value to influence the employee in the performance of the job.

e. Not infer or allow to be inferred representation of the Department of Revenue in any situation, which is not related to official duties.

f. Not show through word or action any preferential attitude or treatment to any person, group, or other entity in the performance of official duties.

g. Not refer a taxpayer or child support custodial or noncustodial parent to an attorney, accountant, tax practitioner, or firm specifically by name or implication in connection with any official business involving the Department of Revenue.

h. Request from their supervisors the transfer from their case load of any case which involves a family member, close friend, or any person or entity with whom that person has some personal or financial involvement.

- I. First Occurrence Suspension to Dismissal
- II. Second Occurrence Dismissal

2. Gifts and Gratuities from Outside Sources.

a. General Limitation. Employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person or entity which:

I. Has or is seeking to obtain contractual or other business or financial relations with the Department of Revenue;

II. Conducts business or other activities which are regulated or monitored by the Department of Revenue, except as permitted by this section such that it creates a conflict of interest or the appearance of a conflict of interest; or

III. Has interests that may be, or give the reasonable impression of being, substantially affected by the performance or nonperformance of the employee's official duties.

b. Exceptions:

I. Gifts or gratuities from an obvious family member or personal relationship, when the circumstances make it clear that those relationships, rather than the business or the persons concerned, are the motivating factors behind any gift or gratuity;

II. Food, refreshments, lodging, and other travel expenses on nonrecurring occasions from various civic and professional organizations for participation in meetings, workshops and seminars for educational, informational and other similar purposes;

III. Loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans, automobile loans, personal loans, etc.;

IV. Unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal value;

V. An award or gift of nominal value for a speech, participation in a conference, or some public contribution or achievement given by a charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organization.

VI. Reimbursement, in cash or in kind, for travel, subsistence and other expenses incidental to attendance at meetings, provided such attendance and reimbursement is approved by the Executive Director or the Executive Director's designee, in accordance with the criteria provided in Section 112.061, F.S. An employee on official business may not be reimbursed, and payment may not be made on his or her behalf, for excessive (e.g., reimbursement which exceeds actual cost) personal living expenses, gifts, entertainment, travel or other benefits. At no time will an employee accept reimbursement from both the state and another source for the same expenses:

- (A) First Occurrence Oral Reprimand to Dismissal
- (B) Second Occurrence Suspension to Dismissal
- (C) Third Occurrence Dismissal

3. Outside Employment, Contracts and Business Activity.

a. Generally. Because of the sensitive nature of the mission of the Department of Revenue and the importance of maintaining the public's trust in the agency's integrity, there are some restrictions related to outside employment of the

Department's personnel. The Department hereby adopts and incorporates by reference Rules 60K-2.016 and 60K-15, F.A.C. See also Ch. 112, Part III, F.S. The Department requires an employee to obtain approval before accepting any outside employment or similar responsibilities. Outside employment shall be denied whenever its nature creates a conflict of interest with the employee's duties in the Department of Revenue or creates the appearance of such a conflict.

b. ~~Activities Which Do Not Require Prior Notice:~~

~~I. Membership and uncompensated services (including holding of office) in civic, scout, religious, educational, fraternal, social, community, veterans, or charitable organizations. Bookkeeping services provided to such organizations require prior written approval;~~

~~II. Services as a notary public or equivalent position in another state;~~

~~III. Rental of employee owned property, real or personal, to the extent such property is not rented to the State of Florida or any agency or subdivision thereof, or the lessee is not a subject of the employee's official duties;~~

~~IV. Minor services and odd jobs for friends, relatives, or neighbors, including a wide variety of activities; repair or maintenance work such as painting, yard work, carpentry, or services such as baby sitting and car pools involving payment for transportation;~~

~~V. Temporary (thirty days or less) assistance in a family enterprise, in the event of an emergency, such as the death or serious illness/accident to a member of the family engaged in that business;~~

~~VI. However, no employee shall, without appropriate disclaimer stating the employee does not speak for the Department, take an active part or become an advocate on behalf of a professional society in any conflict of interest between such society and the Department of Revenue.~~

e. ~~Outside Legal or Accounting Practice Prohibitions:~~

~~I. No outside legal or accounting practice is permitted which is in violation of Chapter 112, Part III, F.S. Specifically, employees are prohibited from receiving compensation from or acting as agent or attorney for anyone having a substantial interest in any particular matter in which the Department is a party or has a direct and substantial adverse interest.~~

~~II. Managerial employees are prohibited from engaging in outside legal or accounting practices for which they receive compensation.~~

~~III. Employees who hold Attorney and Senior Attorney positions shall not engage in the outside practice of law except Pro Bono activities through the Tallahassee Bar Association or North Florida Legal Services or similar pro bono programs. In no event shall an employee holding an Attorney or Senior Attorney position appear in court as an attorney on behalf of a private client for a fee. No state equipment or supplies can be utilized to fulfill Pro Bono activities. All approved pro bono activities must be performed off duty.~~

~~IV. The employee must give written notice of outside legal or accounting practice to the Executive Director or the Executive Director's designee.~~

~~d. Outside Legal or Accounting Practices Exceptions. An employee may:~~

~~I. Render uncompensated legal or accounting service to family members, provided the service is not a conflict of interest and does not include representation of family members before the Department of Revenue, a state administrative agency or in the courts of the State where the State is a party.~~

~~II. During off duty hours with or without compensation, exercise a power of attorney, act as trustee, guardian, conservator, executor, administrator and/or act as a resident agent for immediate family members (employee's brothers or sisters and step brothers or sisters, parents, step parents, spouse, children, and step children) unless prohibited by Chapter 112, Part III, F.S.~~

~~III. With written notice to the Executive Director or the Executive Director's designee, during off duty hours with or without compensation; exercise a power of attorney, act as trustee, guardian, conservator, executor, administrator and/or act as a resident agent for other relatives as defined in Section 112.3135, F.S.~~

~~IV. Not act as bookkeeper or accountant without compensation, for a civic, scout, religious, educational, fraternal, social, community, veterans, and/or charitable organization, whenever doing so creates a conflict of interest with the employee's duties in the Department of Revenue or creates the appearance of such a conflict.~~

- ~~(A) First Occurrence Suspension to Dismissal~~
- ~~(B) Second Occurrence Dismissal~~

~~4. Personal Relationships with Taxpayers or Clients. Employees shall promptly disclose or report to their supervisor the existence or potential for any conflict of interest posed by any relationship or friendship between the employee and a taxpayer/client, or employee thereof. Employees shall request a reassignment of any case that involves a family member, close friend, or any person or entity with whom they have some personal or financial involvement.~~

- ~~a. First Occurrence Written Reprimand to Dismissal~~
- ~~b. Second Occurrence Suspension to Dismissal~~
- ~~c. Third Occurrence Dismissal~~

~~5. Speeches and Publications. Employees acting in their official capacities must be authorized to perform speeches, or prepare, or provide material for publication before communicating about the official operations or policies of the Department. Any employee who is authorized to perform a speech or prepare or provide materials for publication which supports official operations or policies of the Department, shall not accept any fee, salary, honorarium, or other compensation for such services in violation of Section 110.209, F.S., and Rule 60K-2.018, F.A.C., which rule is hereby adopted and~~

incorporated by reference. This standard does not prohibit reimbursement for transaction, travel, accommodation, or meal expenses:

- a. First Occurrence Oral Reprimand to Dismissal
- b. Second Occurrence Suspension to Dismissal
- e. Third Occurrence Dismissal

6. Tax, Child Support Enforcement Practices. Except for work done for "relatives" as defined in Section 112.3135(1)(e), F.S., no employee shall perform, provide, or agree, whenever its nature would be considered a conflict of interest with the employee's duties in the Department of Revenue or would give the appearance of a conflict with the employee's duties to:

a. Appear on behalf of any taxpayer or Child Support Enforcement client as an attorney, agent, or representative before any state, federal, or local government agency, in any action involving a tax matter or Child Support Enforcement matter;

b. Prepare any State or Federal tax returns, reports, declarations or documents, or otherwise engage in accounting, use, analysis or interpretation of any financial records for consideration, or sign as a paid preparer on any such tax document for compensation, gift, or favor;

e. Prepare any Child Support Enforcement client reports, declarations or documents for consideration, or advise any Child Support enforcement clients in any matter in which the Child Support Enforcement client seeks support or relief from the Department, contrary to Department rule, policy or procedure; or

d. Advertise, or hold oneself out as an attorney, or act as attorney in the private sector while employed with the Department.

- I. First Occurrence Written Reprimand to Dismissal
- II. Second Occurrence Suspension to Dismissal
- III. Third Occurrence Dismissal

7. Outside Employment as an Appraiser. Outside employment as an appraiser or consultant performing appraisal duties for a city, county or town or other political subdivision of the State is prohibited.

- a. First Occurrence Written Reprimand to Dismissal
- b. Second Occurrence Suspension to Dismissal
- e. Third Occurrence Dismissal

(e) Criminal Charges or Conviction.

1. Prompt Reporting of Arrest and/or Charge for First Degree Misdemeanor or Felony. An employee arrested or charged with violation of any criminal law which is punishable by imprisonment for more than 60 days, and/or fines of more

than \$500, shall provide a written report describing the charges to the Inspector General, within 3 work days of the date of arrest or charges filed.

- a. First Occurrence Oral Reprimand to Dismissal
- b. Second Occurrence Suspension to Dismissal

2. Prompt Reporting of Final Order/Disposition for First Degree Misdemeanor or Felony. An employee arrested or charged with violation of any criminal law which is punishable by imprisonment for more than 60 days, and/or fines of more than \$500, shall provide the Inspector General with a copy of the final order/disposition entered in such cause within 3 work days of such order/disposition being entered.

- a. First Occurrence Oral Reprimand to Dismissal
- b. Second Occurrence Suspension to Dismissal

3. Failure to Perform Work Duties as a Result of any Arrest, Charge, or Conviction of Criminal Offenses. An employee who is arrested, charged, or convicted for any violation of any law or ordinance, except minor traffic violations, for which fines or bond forfeiture does not exceed \$300, which arrest, charge, or conviction adversely affects the employee's credibility, results in the employee's failure, inability, or refusal to perform assigned work duties, or otherwise adversely affects the Department's ability to carry out its assigned mission, in any manner, shall be disciplined pursuant to this rule.

- a. First Occurrence Oral Reprimand to Dismissal
- b. Second Occurrence Suspension to Dismissal

(f) Other Violations of Law, Rules, Policies or Procedures. Employees shall abide by all State of Florida Statutes and rules, and Department of Revenue rules, policies, procedures, and directives. Disciplinary action under this standard may be administered for, including but not limited to: divulging confidential information; outside business activity; dual employment or moonlighting without permission; misuse of position; conflicts of interest; giving or accepting a bribe; discrimination in employment or illegal campaigning.

- 1. First Occurrence Oral Reprimand to Dismissal
- 2. Second Occurrence Suspension to Dismissal
- 3. Third Occurrence Dismissal

Specific Authority 213.06(1), 409.2557(3) FS. Law Implemented 20.21(2)(a), 110.201(2), 110.227 FS. History--New 7-27-99, Amended _____.

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Pursuant to Chapter 2003-145, Laws of Florida, all notices for the Board of Trustees of the Internal Improvement Trust Fund are published on the Internet at the Department of Environmental Protection's home page at <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Florida Mobile Home Relocation Corporation

RULE TITLES: RULE NOS.:
 Claims Procedures 61M-1.002
 Approved Forms 61M-1.003
 PURPOSE AND EFFECT: Modify claims procedures and forms for relocation and abandonment claims to reflect changes to statute.

SUBJECT AREA TO BE ADDRESSED: Claims Procedures and Approved Forms.

SPECIFIC AUTHORITY: 723.0611(3) FS.

LAW IMPLEMENTED: 723.0611, 723.0612 FS.

A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m., Wednesday, May 12, 2004, at the meeting of the Board

PLACE: Shady Lane Oaks, 15777 Bolesta Road, Clearwater, Florida 33760

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Cari L. Roth, General Counsel, Bryant Miller & Olive, 201 South Monroe Street, Suite 500, Tallahassee, Florida 32301, (850)222-8611

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

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Pursuant to Chapter 2003-145, Laws of Florida, all notices for the Department of Environmental Protection are published on the Internet at the Department of Environmental Protection's home page at <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

DEPARTMENT OF HEALTH

Board of Osteopathic Medicine

RULE TITLE: RULE NO.:
 Standards for the Use of Controlled Substances for the Treatment of Pain 64B15-14.005

PURPOSE AND EFFECT: The Board intends to review its current rule and conduct a rule development workshop to determine appropriate changes to the rule.

SUBJECT AREA TO BE ADDRESSED: Appropriate standards for the use of controlled substances for the treatment of pain.

SPECIFIC AUTHORITY: 459.005(1) FS.

LAW IMPLEMENTED: 459.003(3), 459.015(1)(g), (x) FS.

A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 12:00 noon, May 14, 2004

PLACE: The Omni Jacksonville Hotel, 245 Water Street, Jacksonville, Florida 32202

Any person requiring a special accommodation at this hearing because of a disability or physical impairment should contact the Board's Executive Director at least five calendar days prior to the hearing. If you are hearing or speech impaired, please contact the Board office using the Florida Dual Party Relay System, 1(800)955-8770 (Voice) and 1(800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Pamela King, Executive Director, Board of Osteopathic Medicine/MQA, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3253

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

FLORIDA HOUSING FINANCE CORPORATION

RULE TITLES	RULE NOS.:
Purpose and Intent	67-50.001
Definitions	67-50.005
Fees	67-50.010
Notice of Funding Availability (NOFA)	67-50.020
General Program Eligible Activities	67-50.030
General Program Restrictions	67-50.040
HAP Program Restrictions	67-50.050
HOME Program Restrictions	67-50.060
Application and Selection Procedures	67-50.070
Credit Underwriting Procedures	67-50.080
Disbursement of Funds, Draw Requests, and Loan Servicing	67-50.090
Compliance and Monitoring	67-50.100

PURPOSE AND EFFECT: The purpose of this Rule Chapter is to establish the procedures by which the Corporation shall:

(1) Administer the Application process, determine loan amounts, and service loans to Developers for the construction of affordable housing under the Florida Homeownership Assistance Program (HAP)/Construction Loan Program and provide purchase assistance to Eligible Homebuyers under the HAP Permanent Loan Program, authorized by Sections 420.507 and 420.5088, Florida Statutes (F.S.); and

(2) Administer the Application process, determine loan amounts, and service loans to Developers for the construction of affordable housing and provide purchase assistance to Eligible Homebuyers under the HOME Investment Partnerships (HOME) Homeownership Loan Program, authorized by Section 420.5089, F.S and HUD regulations, 24 CFR § 92, which is adopted and incorporated into this Rule chapter by reference.

SUBJECT AREA TO BE ADDRESSED: The Rule Development Workshop will be held to receive comments and suggestions from interested persons relative to program requirements as specified in Rule Chapter 67-50, Florida Administrative Code.

A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: Wednesday, 1:00 p.m. – 4:00 p.m., May 19, 2004

PLACE: Florida Housing Finance Corporation, Seltzer Conference Room, 227 North Bronough Street, Tallahassee, FL 32301, Tel: (850)488-4197

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Bridget Warring, Homeownership Loan Program Manager, Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, (850)488-4197.

Any person requiring special accommodation at this hearing because of a disability or physical impairment should contact Shirley Alfsen 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)955-8770 (Voice) or 1(800)955-9771 (TDD).

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE BY CONTACTING MS. ALFSEN.

FISH AND WILDLIFE CONSERVATION COMMISSION

Marine Fisheries

RULE CHAPTER TITLE: Local Laws

RULE TITLE: Prohibition on Take of Puffer Fish in Volusia, Brevard, Indian River, St. Lucie, and Martin Counties

RULE NO.: 68B-3.007

PURPOSE AND EFFECT: The purpose of this rule development effort is to make permanent an executive order of the Fish and Wildlife Conservation Commission prohibiting the take of puffer fish in state waters of the east coast from Volusia County southward through Martin County. This action is based on known and verified occurrences of severe illnesses caused by the consumption of puffers. The effect of this effort will be to protect the health Floridians and visitors.

SUBJECT AREA TO BE ADDRESSED: Take of puffer fish in Volusia, Brevard, Indian River, St. Lucie, and Martin Counties.

SPECIFIC AUTHORITY: Art. IV, Sec. 9, Florida Constitution.

LAW IMPLEMENTED: Art. IV, Sec. 9, Florida Constitution.

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

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 calendar days before the workshop/meeting

by contacting: Cindy Hoffman, ADA Coordinator, (850)488-6411. If you are hearing or speech impaired, please contact the agency by calling (850)488-9542.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: James V. Antista, General Counsel, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)487-1764

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

68B-3.007 Prohibition on Take of Puffer Fish in Volusia, Brevard, Indian River, St. Lucie, and Martin Counties.

In the waters of Volusia, Brevard, Indian River, St. Lucie, and Martin Counties, the take of fish commonly known as puffers, Genus *Sphoeroides*, is prohibited.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History--New

FISH AND WILDLIFE CONSERVATION COMMISSION

Marine Fisheries

RULE CHAPTER TITLE: Gear Specifications and Prohibited Gear

RULE TITLES: Gear Definitions

RULE NOS.: 68B-4.002

Prohibition of Trap Pullers on Recreational and Certain Commercial Vessels

68B-4.019

PURPOSE AND EFFECT: The purpose of this rule development effort is to assure that only commercial vessels engaged in the legal harvest of marine life by the use of traps will have a trap puller aboard. The effect of this effort should be to reduce opportunities for trap robbing, which is a felony.

SUBJECT AREA TO BE ADDRESSED: Trap Pullers.

SPECIFIC AUTHORITY: Art. IV, Sec. 9, Florida Constitution.

LAW IMPLEMENTED: Art. IV, Sec. 9, Florida Constitution.

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

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: James V. Antista, General Counsel, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)487-1764

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

68B-4.002 Gear Definitions.

As used in Title 68B, F.A.C., unless otherwise defined:

(1) through (14) No change.

(15) "Trap puller" means any mechanical device used to retrieve or capable of retrieving a trap used to harvest marine life. An anchor winch at or near the bow of a vessel is not considered a trap puller.

(15) through (17) renumbered (16) through (18) No change.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Art. X, Sec. 16, Fla. Const. History--New 1-1-89, Amended 11-26-92, 1-1-97, 4-27-98, Formerly 46-4.002, Amended 12-2-99.

68B-4.019 Prohibition of Trap Pullers on Recreational and Certain Commercial Vessels.

No person shall operate any vessel with a trap puller aboard unless such vessel is operated commercially pursuant to a vessel saltwater products license with either a lobster trap endorsement, stone crab trap endorsement, blue crab trap endorsement, sea bass trap endorsement, or a federal fish trap endorsement. This prohibition shall not apply to a person operating a vessel with a trap puller aboard who has been granted an accommodation by the Commission under the Americans With Disabilities Act to possess and use such gear.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Art. X, Sec. 16, Fla. Const. History--New

FISH AND WILDLIFE CONSERVATION COMMISSION

Marine Fisheries

RULE CHAPTER TITLE: Stone Crabs

RULE TITLES:

RULE NOS.:

Gear, Trap Construction, Commercial Trap Marking Requirements, Trap Working Regulations, Trap Transfer

68B-13.008

Stone Crab Trap Limitation Program

68B-13.010

PURPOSE AND EFFECT: The purpose of this rule development effort is to implement recommendations of the Stone Crab Advisory Board to make a technical change in the specifications for orientation of degradable panels, allow the voluntary surrender of trap certificates, and expand the time window for transfer of certificates each year. The effect will be to give stone crab trappers more options for degradable panels and encourage the retirement and transfer of certificates, the key component of passive trap reduction.

SUBJECT AREA TO BE ADDRESSED: Stone Crab Commercial Harvest and Trap Limitation Program.

SPECIFIC AUTHORITY: Art. IV, Sec. 9, Florida Constitution.

LAW IMPLEMENTED: Art. IV, Sec. 9, Florida Constitution.

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

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: James V. Antista, General Counsel, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)487-1764

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

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

(1) No change.

(2) TRAP CONSTRUCTION. No person, firm, or corporation shall transport on the water, fish with, or cause to be fished with, set, or placed, in the harvest of stone crabs, any trap which does not meet the following requirements:

(a) through (b) No change.

(c)1. The throat or entrance to all wood and plastic traps shall be located on the top horizontal section of the trap. If the throat is longer in one dimension, the throat size in the longer dimension shall not exceed 5 1/2 inches and in the shorter dimension shall not exceed 3 1/2 inches. If the throat is round, the throat size shall not exceed 5 inches in diameter.

2. Each throat (entrance) in any wire trap used to harvest stone crabs shall be horizontally oriented. The width of the opening where the throat meets the vertical wall of the trap and the opening of the throat at its farthest point from the vertical wall, inside the trap, shall be greater than the height of any such opening. No such throat shall extend farther than 6 inches into the inside of any trap, measured from where the throat opening meets the vertical wall of the trap to the throat opening at its farthest point from the vertical wall, inside the trap.

3. Each wire trap used to harvest stone crabs shall have at least three unobstructed escape rings installed on a vertical outer surface, each with a minimum diameter of 2 3/8 inches. One such escape ring shall be located on a vertical outer surface adjacent to each crab retaining chamber.

4. Each plastic or wire trap used to harvest stone crabs shall have a degradable panel.

a. A plastic trap shall be considered to have a degradable panel if it contains at least one sidewall with a rectangular opening no smaller in either dimension than that of the throat. This opening must be obstructed with a cypress or untreated pine slat or slats no thicker than 3/4 inch. When the slat degrades, the opening in the sidewall of the trap will no longer be obstructed.

b. A wire trap shall be considered to have a degradable panel if one of the following methods is used in construction of the trap:

(I) The trap lid tie-down strap is secured to the trap at one end by a single loop of untreated jute twine. The trap lid must be secured so that when the jute degrades, the lid will no longer be securely closed.

(II) The trap lid tie-down strap is secured to the trap at one end with a corrodible loop composed of non-coated steel wire measuring 24 gauge or thinner. The trap lid must be secured so that when the loop degrades, the lid will no longer be securely closed.

(III) The trap lid tie-down strap is secured to the trap at one end by an untreated pine dowel no larger than 2 inches in length by 3/8 inch in diameter. The trap lid must be secured so that when the dowel degrades, the lid will no longer be securely closed.

(IV) The trap contains at least one sidewall with a ~~vertical~~ rectangular opening no smaller in either dimension than 6 inches in height by 3 inches in width. This opening must be laced, sewn, or otherwise obstructed by a single length of untreated jute twine knotted only at each end and not tied or looped more than once around a single mesh bar. When the jute degrades, the opening in the sidewall of the trap will no longer be obstructed.

(V) The trap contains at least one sidewall with a ~~vertical~~ rectangular opening no smaller in either dimension than 6 inches in height by 3 inches in width. This opening must be obstructed with an untreated pine slat or slats no thicker than 3/8 inch. When the slat degrades, the opening in the sidewall of the trap will no longer be obstructed.

(VI) The trap contains at least one sidewall with a ~~vertical~~ rectangular opening no smaller in either dimension than 6 inches in height by 3 inches in width. The opening may either be laced, sewn, or otherwise obstructed by non-coated steel wire measuring 24 gauge or thinner or be obstructed with a panel of ferrous single-dipped galvanized wire mesh made of 24 gauge or thinner wire. When the wire or wire mesh degrades, the opening in the sidewall of the trap will no longer be obstructed.

(VII) The trap contains at least one sidewall with a ~~vertical~~ rectangular opening no smaller in either dimension than 6 inches in height by 3 inches in width. The opening may be

obstructed with a rectangular panel made of any material, fastened to the trap at each of the four corners of the rectangle by rings made of non-coated 24 gauge or thinner wire or single strands of untreated jute twine. When the corner fasteners degrade, the panel will fall away and the opening in the sidewall of the trap will no longer be obstructed.

(3) through (5) No change.

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

68B-13.010 Stone Crab Trap Limitation Program.

(1) No change.

(2) CERTIFICATES AND TRAP TAGS. Each holder of a stone crab trap endorsement must have a certificate on record for each stone crab trap used or possessed in or on the water. In addition, attached to each trap shall be a tag, issued annually by the Commission, which corresponds to a valid certificate.

(a) Certificates.

1. through 13. No change.

14. After the 2002/2003 fishing year, the fees for unpaid certificates will accumulate each year a certificate holder fails to pay his or her annual certificate fee. Partial payment of accumulated certificate fees will not be accepted. However, any number of certificates may be permanently surrendered by the certificate holder at any time by completing Commission Form DMF-SL0500 (7-04), incorporated herein by reference. In the event a holder's annual certificate fee is not paid for a period of 3 years, the certificates shall be considered abandoned and permanently removed from the pool of available certificates. All prior certificate fees must be paid in order to keep certificates current and avoid a declaration of abandonment.

(b) through (e) No change.

(3) CERTIFICATE TRANSFERABILITY AND PASSIVE REDUCTION. After initial issuance, trap certificates are transferable on a market basis and may be transferred for a fair market value agreed upon between the transferor and transferee.

(a) Transfer window. Trap certificates shall only be transferred from the trap certificate account of one person to the account of another during the period ~~June 15 August 1~~ through March 1 each year. However, requests to transfer trap certificates received after February 15 may not be completed during the current season if all required information and fees are not also received at that time.

(b) through (k) No change.

(4) through (7) No change.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art IV, Sec. 9, Fla. Const. History--New 7-1-00, Amended 7-22-01, 6-2-02, 7-1-03, _____.

FISH AND WILDLIFE CONSERVATION COMMISSION

Marine Fisheries

RULE CHAPTER TITLE: Reef Fish

RULE TITLE:

RULE NO.:

Commercial Harvest Requirements;

Licenses, Season Closures,

Bag and Trip Limits

68B-14.0045

PURPOSE AND EFFECT: The purpose of this rule development effort is to implement a closure period in the Gulf of Mexico beyond three miles from shore for black sea bass traps, to coincide with an identical closure for the state's other trap fisheries. The effect of this effort should be to discourage the stockpiling of stone crabs in such traps prior to the stone crab season and allow removal of lost or derelict traps.

SUBJECT AREA TO BE ADDRESSED: Black sea bass traps.

SPECIFIC AUTHORITY: Art. IV, Sec. 9, Florida Constitution.

LAW IMPLEMENTED: Art. IV, Sec. 9, Florida Constitution.

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

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: James V. Antista, General Counsel, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)487-1764

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

68B-14.0045 Commercial Harvest Requirements; Licenses, Season Closures, Bag and Trip Limits.

(1) No change.

(2) Season Closures.

(a) through (g) No change.

(h) During the period beginning September 20 and continuing through October 4 of each year, no black sea bass trap as defined in Section 370.1105(1)(c), Florida Statutes, and in paragraph 68B-14.005(1)(b), F.A.C., shall be placed in state waters of the Gulf of Mexico seaward of three nautical miles from shore, north of Latitude 27° North.

(3) No change.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 2-1-90, Amended 12-31-92, 10-18-93, 3-1-94, 6-15-95, 1-1-96, 11-27-96, 12-31-98, 3-1-99, Formerly 46-14.0045, Amended 1-1-00, 3-6-00, 1-1-01, 3-1-01, 6-1-01, 1-1-03,_____.

FISH AND WILDLIFE CONSERVATION COMMISSION

Marine Fisheries

RULE CHAPTER TITLE: Spiny Lobster (Crawfish) and Slipper Lobster

RULE TITLE:

RULE NO.:

Commercial Requirements; Appeals

68B-24.0055

PURPOSE AND EFFECT: The purpose of this rule development effort is to expand the time window for transfer of lobster trap certificates each year, as recommended by the Stone Crab Appeals Board and in conjunction with an identical change for stone crabs. The effect of this effort will be to allow lobster trap harvesters 6-7 more weeks to accomplish transfers. SUBJECT AREA TO BE ADDRESSED: Spiny lobster trap certificate transfers.

SPECIFIC AUTHORITY: Art. IV, Sec. 9, Florida Constitution.

LAW IMPLEMENTED: Art. IV, Sec. 9, Florida Constitution.

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

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: James V. Antista, General Counsel, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)487-1764

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

68B-24.0055 Commercial Requirements; Appeals.

(1) No change.

(2) Beginning in the 2004-2005 fishing season, in addition to a valid saltwater products license with a restricted species endorsement and a valid crawfish endorsement, a commercial dive permit is required to harvest spiny lobster in commercial quantities by diving. This permit will be in the form of the letter D being added to the end of the existing crawfish number. Application for issuance of a commercial dive permit shall be made on a form provided by the Commission (Form DMF-SL0610(4-04), Commercial Dive Permit Application), incorporated herein by reference.

(a) The applicant must have documented commercial dive lobster landings pursuant to Commission trip ticket records generated under the provisions of Rule Chapter 68E-5, F.A.C., during the license year July 1, 2000 through June 30, 2001, July 1, 2001 through June 30, 2002, or during the license year July 1, 2002 through June 30, 2003.

(b) Commercial dive permits will not be issued to or renewed for applicants who own one or more lobster trap certificates. Trap certificates may only be transferred during the period June 15 August 1 to March 1 each year. An applicant who is otherwise eligible to receive a commercial dive permit in 2004-2005 but holds lobster trap certificates after March 1, 2004, may receive a commercial dive permit if the commission is directed in writing to deactivate his/her lobster trap certificate account. Failure on the part of such an applicant to obtain the commercial dive permit for the 2004-2005 season is a waiver of eligibility for the dive permit until such a time that the commission authorizes issuance of new commercial dive permits.

(c) through (f) No change.

(3) through (5) No change.

Specific Authority Art IV, Sec. 9, Fla. Const. Law Implemented Art IV, Sec. 9, Fla. Const. History—New 7-1-01, Amended 7-7-03, 4-1-04, _____.

FISH AND WILDLIFE CONSERVATION COMMISSION

Marine Fisheries

RULE CHAPTER TITLE: Blue Crab

RULE TITLES:	RULE NOS.:
Definitions	68B-45.002
Other Prohibitions	68B-45.006

PURPOSE AND EFFECT: The purpose of this rule development effort is to expand the area in the Gulf of Mexico closed to blue crab harvest by trap during the period from September 20 through October 4 each year to include all state waters of the Gulf of Mexico seaward of three nautical miles from shore. The effect of this change should be to discourage the stockpiling of stone crabs in such traps prior to the stone crab season and allow removal of lost or derelict traps.

SUBJECT AREA TO BE ADDRESSED: Blue crab traps in the Gulf of Mexico.

SPECIFIC AUTHORITY: Art. IV, Sec. 9, Florida Constitution.

LAW IMPLEMENTED: Art. IV, Sec. 9, Florida Constitution.

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

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 calendar days before the workshop/meeting

by contacting: Cindy Hoffman, ADA Coordinator, (850)488-6411. If you are hearing or speech impaired, please contact the agency by calling (850)488-9542.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: James V. Antista, General Counsel, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)487-1764

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

68B-45.002 Definitions.

As used in this rule chapter:

(1) through (5) No change.

(6) “Gulf Seasonal Closure Region” means all state waters of the Gulf of Mexico seaward of three nautical miles from shore and north and west of latitude 29 degrees, 17 minutes, and 02 seconds North (from the south bank of the mouth of the Suwannee River to near channel marker 21 westward to the outer limits of state waters).

(6) through (8) renumbered (7) through (9) No change.

~~(9) “Northwest Seasonal Closure Region” means all state waters of the Gulf of Mexico seaward of three nautical miles and north and west of latitude 29 degrees, 17 minutes, and 02 seconds North (from the south bank of the mouth of the Suwannee River to near channel marker 21 westward to the outer limits of state waters).~~

(10) through (13) No change.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 12-14-93, Amended 6-1-94, 10-4-95, Formerly 46-45.002, Amended 7-1-03, _____.

68B-45.006 Other Prohibitions.

(1) through (2) No change.

(3) In the Gulf Northwest Seasonal Closure Region, no blue crab trap, including any trap used to harvest peeler crabs, may be placed in the water, fished, or soaked during the period beginning September 20 and continuing through October 4 each year.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 12-14-93, Formerly 46-45.006, Amended 7-1-03, _____.

FISH AND WILDLIFE CONSERVATION COMMISSION

Marine Resources

RULE CHAPTER TITLE: Spiny Lobster Trap Certificate Program

RULE TITLES:	RULE NOS.:
Definitions	68E-18.002
Transfer of Certificates	68E-18.005

PURPOSE AND EFFECT: The purpose of this rule development effort is to expand the time window for transfer of lobster trap certificates each year, as recommended by the

Stone Crab Appeals Board and in conjunction with changes to Rule Chapter 68B-24, F.A.C., and an identical change for stone crabs. The effect of this effort will be to allow lobster trap harvesters 6-7 more weeks to accomplish transfers.

SUBJECT AREA TO BE ADDRESSED: Transfer time window for the spiny lobster trap certificate program.

SPECIFIC AUTHORITY: Art. IV, Sec. 9, Florida Constitution.

LAW IMPLEMENTED: Art. IV, Sec. 9, Florida Constitution.

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

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: James V. Antista, General Counsel, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)487-1764

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

68E-18.002 Definitions.

(1) through (18) No change.

(19) "Transfer period" means that period of time when individuals holding trap certificates can transfer their certificates to another individual's certificate allocation. The transfer time shall begin June 15 be coincident with the first placement of traps for the regular lobster season (currently August 1) and ~~end ending~~ midnight March 1.

(20) through (21) No change.

Specific Authority Art IV, Sec. 9, Fla. Const. Law Implemented Art IV, Sec. 9, Fla. Const. History--New 5-16-95, Formerly 62R-18.002, Amended 7-1-01, 4-11-04, _____.

68E-18.005 Transfer of Certificates.

(1) Trap certificates shall only be transferred by the Commission during the June 15-March 1 ~~August 1-March 1~~ transfer period designated in Rule 68E-18.002, F.A.C.

(2) through (10) No change.

Specific Authority Art IV, Sec. 9, Fla. Const. Law Implemented Art IV, Sec. 9, Fla. Const. History--New 5-16-95, Amended 4-7-99, Formerly 62R-18.005, Amended 7-1-01, _____.

Section II Proposed Rules

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Food Safety

RULE TITLE:

RULE NO.:

General Requirements for the Manufacturing, Processing, Packing Holding and Retailing of Foods

5K-4.004

PURPOSE AND EFFECT: The purpose of Rule 5K-4.004, F.A.C., is to promote food safety, and to notify consumers, food retailers, wholesalers or transporters, regarding health and safety concerns of consuming or selling dietary supplements containing ephedrine alkaloids.

SUMMARY: This is a rule stating clearly that dietary supplements containing ephedrine alkaloids present an unreasonable risk of illness or injury under conditions of use as suggested on the labeling, and are therefore determined to be adulterated under Chapter 500 of the Florida Statutes. This is a rule that very closely mimics a Federal rule recently promulgated by the FDA; the primary difference being that it references appropriate sections in Florida law rather than Federal law for the guidelines for adulteration. Risk from Ephedra consumption has been considered extensively by the FDA, with published reports of over 150 deaths associated with its use, and the Department believes it is a substance that should not be allowed in dietary supplements or any other foods.

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

Any person who wishes to provide a proposal for a lower cost alternative must do so within 21 days of this notice.

SPECIFIC AUTHORITY: 500.09, 500.12, 570.07(23) FS.

LAW IMPLEMENTED: 500.09, 500.12(2)(b) FS.

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

TIME AND DATE: 10:00 a.m., May 27, 2004

PLACE: George Eyster Auditorium, 3125 Conner Blvd., Tallahassee, Florida, (850)488-3951

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Dr. J. D. Warren, Department of Agriculture and Consumer Services, Room 185, 3125 Conner Blvd., Tallahassee, Florida 32399-1650