

(b) The statutory nonrefundable application fee required by Section 494.0033, F.S., which shall be the fee for the biennial period beginning September 1 of each odd-numbered year or any part thereof;

(c) A completed fingerprint card accompanied by a \$23 nonrefundable processing fee; and

(d) Evidence that the applicant has completed the mortgage broker education requirements of subsection 494.0033(3), F.S.

(2) through (7) No change.

Specific Authority 215.405, 494.0011(2) FS. Law Implemented 120.60(1), 494.0033 FS. History—New 10-30-86, Amended 1-30-89, 5-23-89, 11-28-89, 10-1-91, 6-8-92, 6-3-93, 6-6-93, 4-25-94, 5-14-95, 9-3-95, 11-24-97, 8-22-99, 12-12-99, 12-11-03, Formerly 3D-40.031, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Pamela Epting, Bureau Chief, Bureau of Regulatory Review, 200 East Gaines Street, Fletcher Building, Tallahassee, Florida 32399-0375, (850)410-9805

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Don Saxon, Commissioner, Office of Financial Regulation

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 1, 2005

DATE NOTICE OR PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 11, 2005

Section III Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF LEGAL AFFAIRS

Florida Elections Commission

RULE NOS.:	RULE TITLES:
2B-1.0025	Complaints
2B-1.0027	Investigation of Complaints; Staff Recommendations; and Probable Cause Determinations
2B-1.003	Minor Violations
2B-1.004	Hearing Before the Commission
2B-1.0045	Award of Attorney's Fees
2B-1.005	Appeal of Fines Imposed by Filing Officers

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 30, No. 48 (Nov. 24, 2004) issue of the F.A.W. Form 001, Confidential Complaint, was also changed to obtain more information about the person named in the complaint and to make the form consistent with the rule changes.

2B-1.0025 Complaints.

(8) When the executive director determines that a complaint is legally insufficient, the complainant and the respondent shall be notified. The notice shall include the reason the complaint is legally insufficient and notify the complainant that he has 14 days to correct the stated ground of insufficiency. If the complainant ~~complaint~~ does not respond within 14 days, the executive director shall close the case. If the complainant responds but does not provide information that corrects the stated ground of insufficiency, the complainant and the respondent shall be notified of complainant's right to seek the Commission's review of the executive director's finding that the complaint is legally insufficient.

Specific Authority 106.26(1) FS. Law Implemented 105.071, 106.25 FS. History—New 2-17-91, Amended 11-14-93, 3-19-96, 8-19-96, Formerly 1D-1.0025, Amended 1-11-98, 1-2-02, 2-16-04, _____.

2B-1.0027 Investigation of Complaints; Staff Recommendations ~~Statements of Findings~~; and Probable Cause Determinations.

(1) If a complaint is legally sufficient, it shall be investigated by Commission staff. The staff shall ~~may~~ investigate all violations specifically alleged in the sworn complaint, ~~including the alleged violations listed on the complaint form and the alleged violations that arise from the facts set forth in the complaint.~~

(4) The staff of the Commission shall make a recommendation of whether ~~Considering the report of investigation and relevant documents or other evidence gathered during the investigation, the general counsel or an assistant general counsel, shall prepare a statement of findings. The statement of findings shall set forth sufficient facts revealed during the investigation to support a recommendation to the Commission that there is probable cause or no probable cause in each case to believe that the respondent violated a provision of The Florida Election Code over which the Commission has jurisdiction.~~

(5) All staff recommendations ~~statements of findings~~ shall be reviewed ~~and signed~~ by the executive director ~~and scheduled for review by the Commission.~~

(8) ~~At the probable cause hearing, The the Commission's determination of probable cause Commission shall be based upon review~~ the complaint, report of investigation, staff recommendations ~~statements of findings submitted by the executive director~~, any written statements submitted by the respondent, and any oral statements made at the probable cause hearing. After the hearing, the ~~The~~ Commission shall ~~then~~.

(c) Return the matter to Commission staff for additional investigation ~~or legal analysis.~~

(9) The Commission clerk shall send a copy of the Commission's order determining probable cause or no probable cause, ~~along with a copy of the statement of findings~~ to the complainant and the respondent.

(11) Any order of probable cause entered by the Commission shall advise the respondent of the right to a hearing pursuant to Chapter 120, Florida Statutes, and the provisions of Rule 2B-1.004, F.A.C., which allow the Commission to designate a Commissioner or Commissioners to hold hear formal and informal hearings involving disputed issues of material fact and hearings not involving disputed issues of material fact.

Specific Authority 104.271(2), 106.26(1) FS. Law Implemented 104.271(2), 106.25, 106.26 FS. History—New 1-12-99, Amended _____.

2B-1.003 Minor Violations.

(2) The following violations are minor violations so long as the requirements of subsection (1) of this rule have been met:

(b) Section 106.023, Florida Statutes, failure of a candidate to file a statement with the filing officer that says he or she has read and understands the requirements of Chapter 106, within ten days after filing his or her appointment of campaign treasurer and designation of campaign depository ~~form~~. A fine of \$100 shall be imposed for each violation.

Specific Authority 106.26(12) FS. Law Implemented 106.26(12) FS. History—New 1-11-99, Amended 2-14-00, 1-2-02, _____.

2B-1.004 Hearings Before the Commission.

(1) If a respondent who is entitled to a ~~formal~~ hearing involving disputed issues of material fact does not elect to proceed before the Division of Administrative Hearings, and the Commission does not refer the case to Division of Administrative Hearings, the executive director shall schedule the ~~formal~~ hearing before the Commission.

(2) At the time the hearing is scheduled, the Chairman shall issue a pre-hearing order form, Pre-hearing Order, FEC 002, effective _____, which is hereby adopted and incorporated by reference. The order shall require the parties to file a joint pre-hearing statement at least five working days before the scheduled hearing date. The pre-hearing order shall provide the date of the hearing and the date the pre-hearing statement must be filed. The pre-hearing order shall require the parties to confer and file a joint pre-hearing statement that provides the following information:

(b) A stipulation by the parties setting forth:

5. An estimate of the time that each party believes shall be necessary to present the ~~formal~~ hearing to the Commission.

(5) When necessary to secure the just, speedy, and inexpensive determination of a case, the Chairman shall direct that one or more Commissioners hear any ~~formal~~ hearing involving disputed issues of material fact, any, informal hearing not involving disputed issues of material fact, or any dispositive motion hearing.

(a) Designation of the specific Commissioner or Commissioners to ~~hold hear~~ a ~~formal~~ hearing involving disputed issues of material fact, informal hearing not involving disputed issues of material fact, or dispositive motion hearing shall be made only by a majority of the Commissioners voting.

(c) The designated Commissioner or Commissioners shall hear the evidence and argument presented by the parties during a ~~formal~~ hearing involving disputed issues of material fact, a informal hearing not involving disputed issues of material fact, or a dispositive motion hearing.

(6) Upon the Commission's determination of the outcome of a case after a ~~formal~~ hearing involving disputed issues of material fact or after reviewing the report of the designated Commissioner or Commissioners, the Commission's counsel shall prepare a proposed final order.

Specific Authority 106.24(5), 106.26 FS. Law Implemented 106.24(5), 106.26 FS. History—New 1-11-99, Amended 1-2-02, _____.

2B-1.0045 Award of Attorney's Fees.

(1) If the Commission determines that a complainant has filed a complaint against a respondent with a malicious intent to injure the reputation of such respondent by filing the complaint with knowledge that the complaint contains one or more false allegations or with reckless disregard for whether the complaint contains false allegations of fact material to a violation Chapter 104 or 106, the complainant shall be liable for costs and reasonable attorney's fees incurred in the defense of the ~~complaint~~ complainant, including the costs and reasonable attorney's fees incurred in proving entitlement to and the amount of costs and fees.

(3) At a ~~an informal~~ hearing, the Commission shall determine whether the petition contains sufficient facts and grounds to support a claim for cost and attorney's fees. If the petition does not contain sufficient facts and grounds to support such a claim, the Commission shall dismiss the petition. If the petition contains sufficient facts and grounds to support such a claim, the Commission shall order a ~~formal~~ hearing involving disputed issues of material fact be held before the Commission or a Commissioner or Commissioners designated by the Commission, or refer the petition to the Division of Administrative Hearings for a ~~formal~~ hearing.

Specific Authority 106.24(5), 106.26 FS. Law Implemented 106.26(5) FS. History—New _____.

2B-1.005 Appeal of Fines Imposed by Filing Officers.

(4) The Commission shall uphold the fine imposed by the filing officer unless the appealing party presents credible evidence that the report was timely filed or credible evidence that there were unusual or other ~~such~~ circumstances beyond the control of the candidate or committee that caused the report to be filed late. Credible evidence is evidence that is from a credible source and is so natural, reasonable and probable as to make it easy to believe. The Commission shall give greater

weight to a written statement that is certified to have been made under oath in the presence of a notary or other person authorized by law to administer oaths.

Specific Authority Ch. 97-13, Sec. 52, Laws of Florida. Law Implemented 106.04(8), 106.07(8) FS. History—New 9-14-86, Amended 10-19-86, Formerly 1D-1.005, Amended 1-12-98, _____.

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 CORRECTIONS

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

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 30, No. 43, October 22, 2004, and Vol. 31, No. 2, January 14, 2005, Florida Administrative Weekly, has been withdrawn.

AGENCY FOR HEALTH CARE ADMINISTRATION Hospital and Nursing Home Reporting Systems and Other Provisions Relating to Hospitals

RULE NO.:	RULE TITLE:
59E-5.102	Florida Hospital Uniform Reporting System (FHURS)

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 30 No. 51, December 17, 2004, Florida Administrative Weekly has been withdrawn.

DEPARTMENT OF MANAGEMENT SERVICES

Division of Facilities Management

RULE CHAPTER NO.:	RULE CHAPTER TITLE:
60H-9	Lease or Sublease of State-Owned Property for E911 System Wireless Communication Facility

RULE NOS.:	RULE TITLES:
60H-9.001	Definitions
60H-9.002	Intent
60H-9.003	Properties Acquired for State Rights-of-Way and Transportation Purposes Excluded
60H-9.004	Requests for Location and Determination
60H-9.005	Negotiation of Lease Agreement

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in the Vol. 30, No. 51, December 17, 2004 and corrected in Vol. 31, No. 1, January 7, 2005, issues of the Florida Administrative Weekly:

60H-9.001 Definitions.

(1) For purposes of this rule chapter, each of these words shall have the following meaning:

(a) Agency – An official, officer, commission, authority, council, committee, department, division, bureau, board, section, or other unit or entity of the executive or judicial branch of state government.

(b) Available – A decision that State-owned Property may be used for the placement of a Wireless Communication Facility, based on a determination that placement meets the evaluation requirements of the Owner Agency and Managing Agency.

(c) Department – Department of Management Services

(d) Determination of Availability – A process for assessing an identified State-owned Property for placement of a Wireless Communication Facility. A Determination of Availability consists of a Provider's proposal for placement and the Owner and Managing Agency's evaluation that the placement is in the best interest of the State, is consistent with the current and future use of the State-owned Property and balances the Agencies' mission with the public need for a reliable E911 System.

(e) Division of State Lands – Florida Department of Environmental Protection, Division of State Lands.

(f) E911 – The designation for a wireless enhanced 911 system or wireless enhanced 911 service that is an emergency telephone system or service that provides a subscriber with wireless 911 service and, in addition, directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated, or as otherwise provided in the State plan under Section 365.171(4), Florida Statutes, and that provides for automatic number identification and automatic location-identification features in accordance with requirements of the Order.

(g) Lease Agreement – An agreement that is negotiated and executed by the Department as set forth in Rule 60H-9.005, F.A.C., under which a Provider leases or subleases State-owned Property directly from the Managing Agency if a lease agreement is in effect or the Owner Agency, for the installation of a Wireless Communications Facility.

(h) Managing Agency – An Agency with exclusive lease agreement or other proprietary authorization from the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida or other Owner Agency to occupy and manage a particular State-owned Property.

(i) Order – Federal Communications Commission orders referenced in Section 365.172 (3)(m), Florida Statutes.

(j) Owner Agency – A state entity vested with title to State-owned Property.

(k) Owner Representative – The agency serving as title-holder, managing entity or agency employee with oversight responsibilities regarding State-owned real estate.

(l) Preliminary Determination of Availability – Initial site evaluation by the Provider for viability of a specific site and suitability by the Owner Agency and Managing Agency before proceeding with the Availability assessment.

(m) Provider – A private person or entity who is subject to the requirements of an Order and provides E911 Service in this state.

(n) Request For Locations – A Provider's written request to the Department to locate an E911 Service on state-owned land or buildings in a defined area within the state.

(o) Service – Commercial mobile radio service as defined in Section 365.172(3)(s), Florida Statutes.

(p) State-owned Property – Real or personal property, structures or buildings, the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida or any agency (as defined in Section 255.502(3), Florida Statutes), except those properties for which the Department of Transportation serves as the owner-representative, on behalf of the Owner Agency, excluded as set forth in Rule 60H-9.003, F.A.C. for State-owned Property acquired for transportation purposes.

(q) Viable – A determination by a Provider that a specific state-owned property is acceptable for their needs as a site to place a tower with antenna or antenna on an existing state-owned structure.

(r) Wireless Communication Antenna Support Structure – A structure, including related equipment, intended to support wireless communication equipment used in the provision of Service. Wireless Communication Antenna Support Structures are generally described as either monopole (freestanding), lattice (self-supporting), guyed (anchored with guy wires or cables) or camouflaged (disguised so as to not appear to be an antenna support structure).

(s) Wireless Communication Antenna – A device designed to transmit or receive communications authorized by the Federal Communications Commission (FCC).

(t) Wireless Communication Facility – Any equipment or facility used to provide E911 Service, including Wireless Communication Antenna, Wireless Communication Antenna Support Structure, accessory equipment enclosures, and ancillary cabling, brackets, and other such ancillary equipment.

(2) Other terms shall have their commonly understood meaning.

Specific Authority 365.172(11)(e) FS. Law Implemented 365.172(3) FS.

60H-9.002 Intent.

The State of Florida supports the use of State-owned Property for the siting of Wireless Communication Facilities for the purpose of supporting the E911 Systems. The siting of such facilities entails a balanced approach between the ability of providers to locate wireless facilities necessary to comply with E911 System requirements using the Provider's own network and the Availability of State-owned Property as determined by current and future use of land, local government requirements, agency functions, and public welfare goals. Co-location of more than one antenna per tower is encouraged where there are multiple antennae or structure siting requests for the same location. The process to lease State-owned Property for a Wireless Communication Facility shall be a three-step process consisting of the Preliminary Determination of Availability, the Final Determination of Availability, and the negotiated and, if agreed, the execution of the ~~Lease~~ Agreement.

Specific Authority 365.172(11)(e) FS. Law Implemented 365.172(3) FS.

60H-9.003 Properties Acquired for State Rights-of-Way and Transportation Purposes Excluded.

This chapter shall not include property for which the Florida Department of Transportation serves as the owner-representative, on behalf of an Owner Agency, for State-owned Property acquired for state rights-of-way and for transportation purposes for which leases are granted pursuant to Section 337.251, Florida Statutes.

Specific Authority 365.172(11)(e) FS. Law Implemented 365.172(3) FS.

60H-9.004 Requests for Locations and Determination of Availability.

(1) Overview. The Department will negotiate leases between the Providers and Owner Agencies or subleases between the Providers and Managing Agencies (if the State-owned Property is under an existing lease agreement) for the installation of Wireless Communications Facilities following a Determination of Availability by the Division of State Lands (acting as agent for the Owner Agency, the Board of Trustees of the Internal Improvement Trust Fund) or other Owner Agency, as well as from the Managing Agency when applicable, as described below.

(2) All Owner and Managing Agencies of State-owned Property shall provide contact information to the Department and the Department shall advise Providers of the appropriate contact information. A Provider shall initially submit a Request for Locations to the Department which, in turn, shall forward the request to the Owner Agency and Managing Agency with responsibility for the subject property. All Managing Agencies that perform as the owner-representative, on behalf of an Owner Agency, for real property not excluded as set forth in Rule 60H-9.003, F.A.C., acquired for

~~transportation purposes~~ shall provide a contact individual to the Department. Contact information and the Request for Locations shall be submitted to:

Department of Management Services
Facilities Program Director
Division of Facilities Management and Building Construction
4050 Esplanade Way
Building 4030, Suite 380
Tallahassee, Florida 32399-0950

(3) Provider shall communicate with the Managing Agency, followed by communication with the Owner Agency, to discuss the availability of the subject State-owned Property for the requested placement of a Wireless Communication Facility. If requested by the Provider, a physical site review shall be scheduled to determine if the site is viable for placement of a Wireless Communications Facility.

(4) Once a Provider has located a viable site, the Preliminary Determination of Availability process begins, which involves the Provider, Owner Agency and Managing Agency. The Provider shall submit a written request for Preliminary Determination of Availability to the Managing Agency, Owner Agency and the Department Facilities Program. The Department shall accept, on a first come, first served basis, the written request for Preliminary Determination of Availability. The request for Preliminary Determination of Availability shall contain sufficient basic evaluation information as follows:

(a) Information regarding the business of Provider, including services provided, qualification as a legal entity to transact business in Florida, and required governmental entity licenses;

(b) Location of the proposed site with general description,

(c) Type of proposed Wireless Communication Facility including a sketch of proposed project with placement on the premises;

(d) Build out size of any proposed antenna support structure;

(e) Proposed Project schedule;

(f) Letter from the Owner Agency and the Managing Agency acknowledging the potential of the proposed site.

(5) If more than one request for Preliminary Determination of Availability is filed for the same State-owned Property, applications for the same general type of facility (e.g. two applications for a Wireless Communication Antenna Support Structure or two applications for the placement of Antennas on the same building) in the same general location on the Property; shall be processed on a first come, first served basis, as determined by the date a completed request for Preliminary Determination of Availability is received by the Department Facilities Program.

(6) After review of the Provider's request pursuant to section (4) above, the Owner Agency and Managing Agency shall make a Preliminary Determination within sixty (60) days as to whether the State-owned Property is potentially available as a site for the proposed Wireless Communication Facility. Such determination shall be based on the following evaluation criteria:

(a) Whether the placement and operation of the proposed wireless communications facility will interfere with the current or planned future use of the State-owned Property;

(b) Whether the placement and operation of the proposed Wireless Communications Facility will compromise or negatively impact the operation, security, or function of the agency currently managing the State-owned Property; and

(c) Whether the placement and operation of the proposed Wireless Communications Facility is in the best interest of the State, balancing the benefits of the Owner and Managing Agency's mission, safety of the public and the benefits of reliable E911 Service.

(7) If the Preliminary Determination of Availability by the Owner Agency is that the property is Available, but the Managing Agency makes a Preliminary Determination of Availability that the property is not available, the Provider may request a meeting with the Managing Agency to seek to change the Preliminary Determination. After such meeting, if the Preliminary Determination by the Managing Agency is not changed, the request shall be considered denied.

(8) If the Preliminary Determination by the Owner Agency is that the property is not available, the Preliminary Determination of Availability request shall be considered denied.

(9) If the Preliminary Determination by the Owner Agency and Managing Agency is that the State-owned Property is Available, the Provider shall submit the following additional documentation at its own expense to the Owner Agency and Managing Agency for a Final Determination of Availability:-

(a) Construction Drawings must contain:

1. A scaled site plan of the proposed leased or subleased premises clearly indicating the location, type, cross-section and height of the proposed Wireless Communication Facility, on-site land uses, adjacent land uses, proposed means of access, setbacks from property lines, and parking;

2. Time frame for building the proposed facility;

3. Other information applicable to the proposed lease or sublease premises and the subject structure, including the following: grading of the property; sanitary and storm sewers requirements; paving and retaining walls; water; gas and electric distribution systems; and extra-ordinary excavation or foundations; and

4. A description of the status of compliance or the ability to comply with the requirements of this section and all applicable federal, state, or local laws, ordinances, and

regulations, including applicable Federal Communications Commission (FCC) and Federal Aviation Administration (FAA) regulations; and

5. For proposed Wireless Communication Antenna Support Structures or portions of the facility to be placed on the ground:

a. A signed and sealed boundary or field survey of the proposed lease or sublease premises on which the support structure and equipment will be located, with legal description of the property proposed to be leased or subleased, which also indicates access to adjacent roadways, and

b. Elevation drawings of the proposed Communication Antenna Support Structure and any other structures associated with the proposed Wireless Communication Facility,

c. A landscape plan of the proposed leased or subleased premises showing specific landscape materials.

d. Method of fencing, and finished color and, if applicable, the method of camouflage and illumination.

(b) For proposed Wireless Communication Antenna Support Structures, a ~~notarized~~ statement by Provider as to whether construction of the Antenna Support Structure will accommodate the co-location of additional antennas for future users.

(c) A signed and sealed document completed by an engineer licensed to perform engineering services in the State that all applicable structural requirements will be met.

(d) A ~~notarized~~ statement by the Provider that the Wireless Communication Facility will provide E911 Service.

(10) Subsequent to the provision of the above-required documentation the Owner Agency and Managing Agency will conduct an initial review of Provider's information for sufficiency. The Managing Agency shall ~~review the Lease Agreement~~ and provide any security, access, or other site-specific language necessary to protect the interests of the Managing Agency for inclusion in the ~~Lease Agreement~~. The Owner Agency and the Managing Agency will inform Provider of the need for any additional information, review and reporting requirements necessary due to statutory, legal, or internal requirements.

(11) The Owner Agency and Managing Agency will each provide written notification to Provider of the agency's Final Determination regarding the property's availability.

Specific Authority 365.172(11)(e) FS. Law Implemented 365.172(3) FS.

60H-9.005 Negotiation of Lease Agreement.

(1) After the Provider obtains written notification of ~~Preliminary Final~~ Determination from the Owner Agency and Managing Agency that the identified property is Available, the Provider shall submit to the Department a written request to initiate the review of the ~~Lease Agreement~~ and to initiate for negotiations of the lease fee. Copies of the request shall be sent to the Owner Agency and the Managing Agency. Such request shall attach the proposed ~~Lease Agreement~~ for the identified

State-owned Property including any additional language requested by the Managing Agency regarding security, access or other site-specific issues necessary to protect the Managing Agency's interests and copies of the ~~Preliminary Final~~ Determination documents. The process of negotiating the terms and conditions of the lease agreement shall be done simultaneously with the preparation by the Provider of those materials required to be submitted to the Owner Agency and Managing Agency pursuant to subsection 60H-9.004(9), F.A.C.

(2) Upon receiving a proposed ~~Lease Agreement~~ with written notification(s) of Final Determination, the Department shall review for sufficiency, identify missing information required of the Provider and enter into negotiations with the Provider when the ~~Lease Agreement~~ is completed. Upon notification by the Department of incomplete documentation to ~~negotiate~~ execute a Lease Agreement, the Provider shall have ~~90~~ 45 days to complete the remaining requirements as defined by the Department in accordance with Rule Chapter 60H-9, F.A.C. A completed proposed ~~Lease Agreement~~ shall address conditions and technical specifications, as described below. The date and time of receipt of the written request for Preliminary Determination of Availability by the Department will determine the order of review of each specific site for the ~~Lease Agreement~~.

(3) When the proposed lease agreement request is found to be complete, copies of the completed request shall be provided to the Owner Agency and the Managing Agency. The Owner Agency and the Managing Agency shall provide to the Department any objections to the proposed lease agreement within thirty (30) days of receipt of such notice. Any objections by the Owner Agency or Managing Agency shall be considered in lease agreement negotiations by the Department. Objections shall be provided by registered mail to:

Department of Management Services
Facilities Program Director
Division of Facilities Management and Building
Construction

4050 Esplanade Way
Building 4030, Suite 380
Tallahassee, Florida 32399-0950

~~(4)(3)~~ The Department shall negotiate each proposed ~~Lease Agreement~~ as follows:

(a) All leases or subleases for use of telecommunication facilities on State owned Property not excluded as set forth in Rule 60H-9.003, F.A.C. ~~acquired for purposes shall be on a Lease Agreement~~ approved by the Department. The Department's approval must be obtained in accordance with this rule chapter for each lease agreement pursuant to Section 365.172(11)(e), Florida Statutes, for all State-owned property not excluded as set forth in Rule 60H-9.003, F.A.C.

(b) Lease agreements shall take into account the specific site, the type of facility proposed, and the technical and leasing requirements of the proposing Provider, as well as any additional language required by the Managing Agency regarding security, access or other site-specific issues necessary to protect the Managing Agency's interests. The Lease Agreement shall address terms and conditions and technical specifications, including the following subjects, as applicable under the facts pertaining to each proposed location requirements:

1. Definition of the lease type as to land for a tower, building rooftop or collocation on existing vertical structure;
2. The parties to the agreement Access rights for the Provider to the State-owned Property;
3. Description of the real property or structures being leased to the Provider Defined time for terms and any extended terms of the Lease Agreement;
4. Notice requirements, including addresses Defined requirements for any fees and payments under the Lease Agreement, including clearly defined rental terms and fees;
5. Description of easements for access rights and utilities for the Provider to the State-owned Property; Requirements that the Provider is responsible for payment of all required taxes, obtaining all required permits, and providing a Project Manager to coordinate with all government entities.
6. Defined time for terms and any extended terms of for assignment and subleasing under the Lease Agreement;
7. Termination provisions Defined terms and conditions for subleasing or licensing tower space for collocation of other Providers' equipment;
8. Defined rRequirements for any fees and payments under the lease agreement, including clearly defined rental terms, rent escalation amounts and other necessary fees installation, maintenance and repairs of installed equipment by the Provider;
9. Provider requirements for payment of all required taxes, obtaining all required permits, and providing a Project Manager to coordinate with all government entities A Statement regarding compliance with the regulatory requirements of all regulatory agencies;
10. Defined terms for assignment and subleasing under the Lease Agreement A Statement defining ownership of real property;
11. Defined terms and conditions for subleasing or licensing tower space for collocation of other Providers' equipment Requirements for notification for approval of all material modification of the facilities on leased property and associated additional rent;
12. Requirements for installation, maintenance and repairs of installed equipment by the Provider Requirements for collocation of additional wireless communication equipment and services;

13. A statement regarding compliance with regulatory requirements of all regulatory agencies Requirements for equipment removal at termination of lease agreement or abandonment and restoration of property;

14. A statement defining ownership of real and personal property Requirements for entry by Sublessor to subleased property and fire and casualty damage responsibilities;

15. Requirements for notification for approval of all material modification of the facilities on leased property and the potential for additional rent for security and subcontractor or subcontractor agent access;

16. Requirements for collocation of additional wireless communication equipment and services covering asbestos containment and performance bonds;

17. Requirements for equipment removal at termination of lease agreement or abandonment and restoration of property covering compliance with Chapter 119, the Florida Public Records Act;

18. Requirements for entry by Sublessor to subleased property and fire and casualty damage responsibilities for dispute resolution;

19. Requirements for security and subcontractor or subcontractor agent access insurance, general liability, Workers' Compensation, commercial auto liability and owner's contractor coverage, with no provisions for waiver;

20. Requirements regarding asbestos containment A statement that the Provider will indemnify the parties for any claims arising out of the lease or sublease;

21. Requirements for tower removal performance bonds covering default and termination;

22. Requirements regarding compliance with Chapter 119, F.S., the Florida Public Records Act covering maintenance, lighting, marking, inspection, utilities, environmental conditions, waiver of liens, and force majeure;

23. Requirements for dispute resolution A site plan of the leased property, diagrams of proposed tower or installation of antenna, survey of leased property and technical specifications of the proposal;

24. Requirements for the prevention of radio frequency interference by the parties A copy of any lease agreement on the property currently in place, including leases with the Board of Trustees of the Internal Improvement Trust Fund; and

25. Requirements for insurance, general liability, Workers' Compensation, commercial auto liability and owner's contractor coverage; Signatures required to execute the Lease Agreement.

Department of Management Services
Facilities Program

Division of Facilities Management and Building
Construction

4050 Esplanade Way

Building 4030, Suite 380

Tallahassee, Florida 32399-0950

26. Requirements for indemnification by the Provider arising out of the lease or sublease, and assistance of investigation;

27. Requirements regarding default under the lease agreement, cure provisions, remedies upon default, and termination of the lease agreement;

28. General requirements covering authority of the parties, permitting, governing law, severability, commencement and effective dates;

29. Requirements for maintenance and repairs of the facilities of the Provider;

30. Requirements for tower lighting, marking, and signage;

31. Requirements for inspection of the property and buildings and other necessary due diligence activities by the Provider;

32. Requirements for utility service to service Provider's facilities;

33. Conditions precedent and subsequent for all required governmental approvals by Provider, and continued technical compatibility, and termination rights associated therewith;

34. Rights of the parties upon sale of the underlying property;

35. A description of environmental conditions of the underlying property or building and responsibilities for remediation of environmental conditions;

36. Condemnation provisions;

37. Casualty provisions;

38. Waiver of liens and rights of Provider to finance or collateralize its facilities;

39. Covenant of quiet enjoyment in favor of Provider;

40. Recording provision;

41. Successors in interest;

42. Force majeure;

43. Proper exhibits, including a site plan of the leased property, diagrams of proposed tower or antenna installation, survey of the leased property and technical specifications of the proposal;

44. A copy of any lease agreement on the property currently in place, including leases with the Board of Trustees of the Internal Improvement Trust Fund; and

45. Signatures of the parties required to execute the lease agreement.

(b) ~~Lease Agreements shall be submitted in writing to the Director, with copies to the Owner Agency and Managing Agency and state with reasonable particularity why the change or addition is necessary and in the best interest of the State. The Owner Agency and/or Managing Agency shall provide to the Department any objections to the request for change within thirty (30) days of receipt of such notice. Notice shall be provided to by registered mail to:~~

Department of Management Services
Facilities Program Director
Division of Facilities Management
and Building Construction
4050 Esplanade Way
Building 4030, Suite 380
Tallahassee, Florida 32399-0950

~~(e) The Department's approval must be obtained in accordance with this rule chapter for each Lease Agreement pursuant to Section 365.172(11)(e), F.S., for all State-owned property not purchased for transportation purposes.~~

~~(c)(d)~~ The Department, or its designated representative, shall negotiate reasonable fees for leasing State-owned property that reflect the market rate for the type of facility or geographic location of the property. Rental rate will be derived from use of set rate schedules, and other reasonable means of determining fair market value for the specific location and placement in question and as described in subsection ~~(5)(4)~~ below. Distribution of Lease Agreement proceeds between the Owner Agency and Managing Agency shall be defined in and pursuant to the Lease Agreement. In cases of a Lease Agreement between a Provider and an Owner Agency, the Owner Agency shall receive 100% of the proceeds.

~~(d)(e)~~ If agreement is reached, the Department will circulate the negotiated Lease Agreement among the Owner Agency, Managing Agency and Provider for final signature and execution.

~~(5)(4)~~ If the Department and the Provider are unable to negotiate a satisfactory lease or sublease rental rate, the parties may mutually agree on the selection of a licensed appraiser to assist in minimizing differences between the parties. The appraisal shall be non-binding and the expense of said appraiser shall be borne solely by the Provider. The Appraiser shall conduct an appraisal study to establish the fair market rate for use of the Property based upon the geographic area and type of Wireless Communication Facility, which is the subject of the lease or sublease. If the parties are unable to negotiate a satisfactory lease or sublease, whether an appraisal is conducted or not, negotiations shall be terminated. DMS will then undertake negotiations based on a first-come, first-served basis with the next Provider, who has filed a written request for Preliminary Determination of Availability and thereafter, if necessary, with the next Providers.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: John Owen, Senior Management Analyst II, Facilities Management and Building Construction, 4030 Esplanade Way, Suite 360, Tallahassee, Florida 32399-0950, (850)488-0439, Suncom 278-3239, e-mail: owenj@dms.state.fl.us

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**Barbers' Board**

RULE NOS.:	RULE TITLES:
61G3-16.0010	Examination for Barber Licensure
61G3-16.007	Examination for Restricted Licensure

NOTICE OF WITHDRAWAL

Notice is hereby given that the above proposed rule, as noticed in Vol. 31, No. 2, January 14, 2005, Florida Administrative Weekly has been withdrawn.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**Florida Real Estate Appraisal Board**

RULE NO.:	RULE TITLE:
61J1-4.001	Education Requirements

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 30, No. 37, of the September 10, 2004, issue of the Florida Administrative Weekly. The change is in response to written comments submitted by the staff of the Joint Administrative Procedures Committee (JAPC). The Board, at its meeting held on February 7, 2005, voted to make changes to the rule to address the JAPC concerns.

The changes are as follows:

1. In subsection (8), add the word "or" between the words "colleges and community." Also, change "and" to "or" between "commissions, and proprietary"
2. In subsection (10), add the phrase "as of January 29, 2004," between "Writing Guidelines, and incorporated."

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Liz Vieira, Executive Director, Division of Real Estate, 400 West Robinson Street, Hurston Building, North Tower, Suite N801, Orlando, Florida 32801

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**Florida Real Estate Appraisal Board**

RULE NO.:	RULE TITLE:
61J1-4.003	Continuing Education

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 30, No. 37, of the September 10, 2004, issue of the Florida Administrative Weekly. The change is in response to written comments submitted by the staff of the Joint Administrative Procedures Committee (JAPC). The Board, at its meeting held on February 7, 2005, voted to make changes to the rule to address the JAPC concerns.

The changes are as follows:

1. Subsection (4)(d) shall read: The examination shall comply with the Item Writing Guidelines as of January 29, 2004, incorporated herein by reference.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Liz Vieira, Executive Director, Division of Real Estate, 400 West Robinson Street, Hurston Building, North Tower, Suite N801, Orlando, Florida 32801

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**Florida Real Estate Commission**

RULE NO.:	RULE TITLE:
61J2-2.029	Examination Areas of Competency

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 30, No. 35, August 27, 2004, Florida Administrative Weekly has been withdrawn.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**Florida Real Estate Commission**

RULE NO.:	RULE TITLE:
61J2-5.018	Vacancies in Office

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 29, No. 44, October 31, 2003, Florida Administrative Weekly has been withdrawn.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**Florida Real Estate Commission**

RULE NO.:	RULE TITLE:
61J2-5.019	Responsibility for Registration Status

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 29, No. 44, October 31, 2003, Florida Administrative Weekly has been withdrawn.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**Florida Real Estate Commission**

RULE NO.:	RULE TITLE:
61J2-5.020	Execution of Papers by Corporation

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 29, No. 44, October 31, 2003, Florida Administrative Weekly has been withdrawn.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Florida Real Estate Commission

RULE NO.: 61J2-6.006
 RULE TITLE: Employment by More than One Entity

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 29, No. 44, October 31, 2003, Florida Administrative Weekly has been withdrawn.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Florida Real Estate Commission

RULE NO.: 61J2-14.012
 RULE TITLE: Broker's Records

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 29, No. 44, October 31, 2003, Florida Administrative Weekly has been withdrawn.

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 FINANCIAL SERVICES

Division of Risk Management

RULE NO.: 69H-2.004
 RULE TITLE: Certificate of Coverage

SECOND NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed Rule 69H-2.004, F.A.C., in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 30, No. 50, December 10, 2004, of the Florida Administrative Weekly, with the first Notice of Change having been published in Vol. 31, No. 6, February 11, 2005, of the Florida Administrative Weekly. These changes are being made to address concerns expressed by the Joint Administrative Procedures Committee.

The text of form 864A in Section V has been modified to read: V. Deductibles

"The Fund will reduce the payments for property damage to the insured by any applicable deductible amount when the law enforcement officer is determined to be at fault in causing property damage to the insured motor vehicle."

"Any proceedings to appeal the determination of fault will be pursued with the employing agency."

"The Fund will adjust the deductible amount at the beginning of each fiscal year, upon consultation with the state agencies that employ the covered law enforcement officers. The amount of the deductible shall not exceed \$500 per incident."

The remainder of the rule reads as previously published.

**Section IV
 Emergency Rules**

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 THE LOTTERY

RULE TITLE: Instant Game Number 583, LOTS OF LUCK
 RULE NO.: 53ER05-32

SUMMARY OF THE RULE: This emergency rule describes Instant Game Number 583, "LOTS OF LUCK," for which the Department of the Lottery will start selling tickets on a date to be determined by the Secretary of the Department. The rule sets forth the specifics of the game; determination of prizewinners; estimated odds of winning, value and number of prizes in the game.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Faith L. Schneider, Legal Analyst, Department of the Lottery, 250 Marriott Drive, Tallahassee, Florida 32399-4011

THE FULL TEXT OF THE EMERGENCY RULE IS:

53ER05-32 Instant Game Number 583, LOTS OF LUCK.

(1) Name of Game. Instant Game Number 583, "LOTS OF LUCK"

(2) Price. LOTS OF LUCK lottery tickets sell for \$1.00 per ticket.

(3) LOTS OF LUCK lottery tickets shall have a series of numbers in Machine Readable Code (or bar code) on the back of the ticket, along with a Void If Removed Number under the latex area on the ticket. To be a valid winning LOTS OF LUCK lottery ticket, the ticket must meet the requirements of subsection 53ER05-27(11), F.A.C. In the event a dispute arises as to the validity of any LOTS OF LUCK lottery ticket, or as to the prize amount, the Void If Removed Number under the latex shall prevail over the bar code.