

69A-53.0054 State Fire Marshal Nursing Home Loan Guarantee Program: Eligibility and Coordination of Construction with Loan Requirements.

(1) Upon receipt of a conditionally approved application from the State Fire Marshal, the Division of Treasury will present the application to a lender under contract with the Department of Financial Services to provide loans under the State Fire Marshal Nursing Home Loan Guarantee Program. Approval of an individual loan with an individual nursing home owner is at the discretion of the individual lender.

(2) Upon final approval of the loan by the lender and of the fire protection system by the State Fire Marshal, a limited loan guarantee document will be presented to the lender. The State's limited loan guarantee will provide for a guarantee of no more than 50 percent of the principal sum loaned by the financial institution. The guarantee will not cover late fees, accelerated interest, or other charges assessed as a result of the default of the nursing home owner.

(3) As some installations may be complex and lengthy, a draw program may be required. In such a case, a draw schedule and retainage requirement will be established by the lender.

Specific Authority 633.01(1), 633.022(1), 633.0245(11) FS. Law Implemented 633.022(4), 633.024, 633.0245 FS. History--New _____.

**Section II
Proposed Rules**

DEPARTMENT OF EDUCATION

State Board of Education

RULE TITLE: Florida Comprehensive Assessment Test Requirements

RULE NO.: 6A-1.09422

PURPOSE AND EFFECT: The purpose of this rule amendment is to add the science grade-level scale scores for each achievement level as part of the student achievement testing program known as the Florida Comprehensive Assessment Test (FCAT). The effect will be to permit student academic performance in science to be reported in achievement levels, providing a better understanding of individual student strengths or needs, as well as summaries of performance for use in educational accountability.

SUMMARY: This rule is amended to specify score ranges that define five achievement levels for the science portion of the FCAT for grades 5, 8, and 11.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 1001.02, 1008.22(10) FS.

LAW IMPLEMENTED: 1001.02, 1001.11, 1008.22, 1008.25, 1008.33 FS.

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

TIME AND DATE: 8:30 a.m., February 21, 2006

PLACE: University of Miami, Coral Gables, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Dr. Cornelia Orr, Director, Assessment and School Performance, 325 W. Gaines Street, Suite 414, Tallahassee, Florida 32399, (850)245-0513

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-1.09422 Florida Comprehensive Assessment Test Requirements.

(1) through (2) No change.

(3) The FCAT shall be administered as follows:

(a) All eligible students in grades three through ten shall take the reading and mathematics tests. All eligible students in grades four, eight, and ten shall take the writing test. All eligible students in grades five, eight, and ~~eleven~~ ~~ten~~ shall take the science test.

(b) through (e) No change.

(4) No change.

(5) The total scores on FCAT Reading, ~~and~~ Mathematics, and Science, are also reported on an achievement-level scale. The total scores that correspond to each achievement level are shown in the following paragraphs.

(a) Beginning with the effective date of this rule, until changes are recommended by the Commissioner of Education to the State Board of Education, the achievement levels for Reading and Mathematics in the first phase of implementation (step 1) shall be as shown in the following tables.

Reading grade-level scale scores (100 to 500) for each achievement level – step 1:

Grade Level	Level 1	Level 2	Level 3	Level 4	Level 5
3	100-258	259-283	284-331	332-393	394-500
4	100-274	275-298	299-338	339-385	386-500
5	100-255	256-285	286-330	331-383	384-500
6	100-264	265-295	296-338	339-386	387-500
7	100-266	267-299	300-343	344-388	389-500
8	100-270	271-309	310-349	350-393	394-500
9	100-284	285-321	322-353	354-381	382-500
10	100-286	287-326	327-354	355-371	372-500

Reading developmental scale scores (86 to 3008) for each achievement level – step 1:

Grade	Level 1	Level 2	Level 3	Level 4	Level 5
3	86-1045	1046-1197	1198-1488	1489-1865	1866-2514
4	295-1314	1315-1455	1456-1689	1690-1964	1965-2638
5	474-1341	1342-1509	1510-1761	1762-2058	2059-2713
6	539-1449	1450-1621	1622-1859	1860-2125	2126-2758
7	671-1541	1542-1714	1715-1944	1945-2180	2181-2767
8	886-1695	1696-1881	1882-2072	2073-2281	2282-2790
9	772-1771	1772-1971	1972-2145	2146-2297	2298-2943
10	844-1851	1852-2067	2068-2218	2219-2310	2311-3008

Mathematics grade level scale scores (100 to 500) for each achievement level – step 1:

Grade	Level 1	Level 2	Level 3	Level 4	Level 5
3	100-252	253-293	294-345	346-397	398-500
4	100-259	260-297	298-346	347-393	394-500
5	100-287	288-325	326-354	355-394	395-500
6	100-282	283-314	315-353	354-390	391-500
7	100-274	275-305	306-343	344-378	379-500
8	100-279	280-309	310-346	347-370	371-500
9	100-260	261-295	296-331	332-366	367-500
10	100-286	287-314	315-339	340-374	375-500

Mathematics developmental scale scores (375 to 2709) for each achievement level – step 1:

Grade	Level 1	Level 2	Level 3	Level 4	Level 5
3	375-1078	1079-1268	1269-1508	1509-1749	1750-2225
4	581-1276	1277-1443	1444-1657	1658-1862	1863-2330
5	569-1451	1452-1631	1632-1768	1769-1956	1957-2456
6	770-1553	1554-1691	1692-1859	1860-2018	2019-2492
7	958-1660	1661-1785	1786-1938	1939-2079	2080-2572
8	1025-1732	1733-1850	1851-1997	1998-2091	2092-2605
9	1238-1781	1782-1900	1901-2022	2023-2141	2142-2596
10	1068-1831	1832-1946	1947-2049	2050-2192	2193-2709

(b) The Commissioner of Education will review FCAT performance data after each test administration and make a recommendation to the State Board of Education about future implementation of the Reading and Mathematics step 2 achievement levels shown in the following tables.

Reading grade-level scale scores (100 to 500) for each achievement level – step 2:

Grade	Level 1	Level 2	Level 3	Level 4	Level 5
3	100-271	272-296	297-344	345-406	407-500
4	100-287	288-311	312-351	352-398	399-500
5	100-268	269-298	299-343	344-396	397-500
6	100-277	278-308	309-351	352-399	400-500
7	100-279	280-312	313-356	357-401	402-500
8	100-283	284-322	323-362	363-406	407-500
9	100-297	298-334	335-366	367-394	395-500
10	100-299	300-339	340-367	368-384	385-500

Reading developmental scale scores (86 to 3008) for each achievement level – step 2:

Grade	Level 1	Level 2	Level 3	Level 4	Level 5
3	86-1129	1130-1281	1282-1572	1573-1949	1950-2514
4	295-1395	1396-1536	1537-1770	1771-2046	2047-2638
5	474-1419	1420-1587	1588-1839	1840-2135	2136-2713
6	539-1525	1526-1697	1698-1936	1937-2202	2203-2758
7	671-1613	1614-1786	1787-2017	2018-2252	2253-2767
8	886-1761	1762-1947	1948-2137	2138-2347	2348-2790
9	772-1846	1847-2046	2047-2220	2221-2372	2373-2943
10	844-1925	1926-2142	2143-2293	2294-2385	2386-3008

Mathematics scale scores (100 to 500) for each achievement level – step 2:

Grade	Level 1	Level 2	Level 3	Level 4	Level 5
3	100-265	266-306	307-358	359-410	411-500
4	100-272	273-310	311-359	360-406	407-500
5	100-300	301-338	339-367	368-407	408-500
6	100-295	296-327	328-366	367-403	404-500
7	100-287	288-318	319-356	357-391	392-500
8	100-292	293-322	323-359	360-383	384-500
9	100-273	274-308	309-344	345-379	380-500
10	100-299	300-327	328-352	353-387	388-500

Mathematics developmental scale scores (375 to 2709) for each achievement level – step 2:

Grade	Level 1	Level 2	Level 3	Level 4	Level 5
3	375-1142	1143-1331	1332-1572	1573-1812	1813-2225
4	581-1337	1338-1503	1504-1717	1718-1923	1924-2330
5	569-1516	1517-1696	1697-1833	1834-2021	2022-2456
6	770-1613	1614-1750	1751-1918	1919-2078	2079-2492
7	958-1715	1716-1840	1841-1994	1995-2135	2136-2572
8	1025-1786	1787-1905	1906-2051	2052-2146	2147-2605
9	1238-1828	1829-1947	1948-2069	2070-2188	2189-2596
10	1068-1888	1889-2003	2004-2105	2106-2249	2250-2709

(c) Beginning with the effective date of this rule, the achievement levels for Science shall be as shown in the following table.

Science grade-level scale scores (100 to 500) for each achievement level:

Grade	Level 1	Level 2	Level 3	Level 4	Level 5
5	<u>100-272</u>	<u>273-322</u>	<u>323-376</u>	<u>377-416</u>	<u>417-500</u>
8	<u>100-269</u>	<u>270-324</u>	<u>325-386</u>	<u>387-431</u>	<u>432-500</u>
11	<u>100-278</u>	<u>279-323</u>	<u>324-379</u>	<u>380-424</u>	<u>425-500</u>

Specific Authority 1001.02, 1008.22 FS. Law Implemented 1001.02, 1001.11, 1008.22, 1008.25, 1008.33 FS. History—New 1-24-99, Amended 10-7-01, 1-22-02, 12-23-03, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Dr. Cornelia Orr, Director, Assessment and School Performance

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Hanna Skandera, Deputy Commissioner for Accountability, Research, and Measurement

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 6, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 21, 2005

DEPARTMENT OF EDUCATION

State Board of Education

RULE TITLE: RULE NO.:

Implementation of Florida's System of 6A-1.09981
 School Improvement and
 Accountability

PURPOSE AND EFFECT: This rule is amended to incorporate science as a seventh component to the school grading system and to amend the points required to receive an A, B, C, D, or F. The effect is a rule which includes science in the school grade calculation for 2006-2007.

SUMMARY: This rule amends the number of points required to earn an A, B, C, D, or F grade to accommodate the inclusion of science as the seventh component.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 1001.02, 1008.22, 1008.33, 1008.345 FS.

LAW IMPLEMENTED: 1000.03, 1001.42, 1003.63, 1008.33, 1008.34, 1008.345, 1008.36 FS.

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

TIME AND DATE: 8:30 a.m., February 21, 2006

PLACE: University of Miami, Coral Gables, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Christy Hovanetz-Lassila, Director, Evaluation and Reporting, Department of Education, 325 West Gaines Street, Tallahassee, Florida 32399-0400

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-1.09981 Implementation of Florida's System of School Improvement and Accountability.

(1) through (2) No change.

(3) Reporting Student Achievement Data for School Accountability. Student achievement data shall be reported for all students in a school as specified by Section 1008.22, Florida Statutes. Each year reports of achievement data for all students shall be prepared for each school, the district, and the state. For the purpose of assigning school performance grades, each school's aggregate achievement data shall be based on:

(a) The scores of all students enrolled in standard curriculum courses including the scores of students who are speech impaired, gifted, hospital homebound, and Limited English Proficient (LEP) students who have been in an English for Speakers of Other Languages (ESOL) program for more than two (2) years.

(b) All students, regardless of disability or limited English proficiency classification, with valid FCAT assessment scores in reading in both the current year and the previous year are included in paragraphs (6)(e), (f), and (g), regarding the determination of student learning gains, of this rule. In addition, the inclusion of these students will be applied to subparagraph (1)(a)4., regarding the percent tested.

~~(c)(b)~~ In addition, only the scores of those students who are enrolled in the second period and the third period full-time equivalent student membership survey as specified in Rule 6A-1.0451, F.A.C., shall be included.

~~(d)(e)~~ The Commissioner is authorized to designate a single school performance grade for schools that serve multiple levels: elementary and/or middle and/or high school grade levels.

~~(e)(d)~~ The Commissioner will issue guidelines regarding which school types shall receive school performance grades. The accountability contact person, as specified in subsection (9) of this rule, is responsible for verifying that each school is appropriately classified by type before the issuance of school grades. The Commissioner shall periodically review the criteria for including students in the calculation of School Performance Grades, including students in alternative and Department of Juvenile Justice facilities.

(4) No change.

(5) Criteria for Designating School Performance Grades. School performance grades shall be designated in the summer of each year and shall be based on a combination of the following three components, as specified in Section 1008.34(3), Florida Statutes:

(a) Student achievement scores, aggregated for each school, which indicate the percent of eligible students who score at or above FCAT Achievement Level 3 in reading and math and the percent of students who score "3.5" "3" or higher averaged with the percent who score "3.5" or higher on the FCAT writing assessment;

(b) through (c) No change.

(6) Procedures for Calculating School Performance Grades. The overall Performance Grade of A, B, C, D or F for school years 2001-2002 and thereafter, as designated in Section 1008.34(2), Florida Statutes, shall be based on the sum of the following six (6) school grade point elements:

(a) One (1) point for each percent of students who score at or above FCAT Achievement Level 3 in reading;

(b) One (1) point for each percent of students who score at or above FCAT Achievement Level 3 in mathematics;

(c) One (1) point for each percent of students who score "3.5" "3" or higher averaged with the percent who score "3.5" or higher on the FCAT writing assessment;

(d) through (f) No change.

(7) School Performance Grading Scale. The School Performance Grade shall be based on the sum of the six (6) grade point elements as defined in paragraphs (6)(a) through

(f) of this rule and shall be scaled to reflect school performance, learning gains and improvement of the lowest twenty-five (25) percent beginning with the 2001-2002 school year, as required by Section 1008.34(1), Florida Statutes. In addition to the requirements in subsection (5) of this rule for minimum percent of students tested, the following scale shall be applied:

- (a) At least ~~455~~ 440 school grade points shall be required for a School Performance Grade of A.
- (b) At least ~~425~~ 380 school grade points shall be required for a School Performance Grade of B.
- (c) At least ~~365~~ 320 school grade points shall be required for a School Performance Grade of C.
- (d) At least ~~325~~ 280 school grade points shall be required for a School Performance Grade of D.

(e) If a school accumulates fewer than 280 school grade points, it shall be assigned a School Performance Grade of F.

(8) Planned System Enhancements. As indicated in this subsection, planned enhancements will occur in Florida's System of School Improvement and Accountability. The Commissioner of Education will periodically recommend additional changes to the system to the State Board of Education as necessary to ensure that continuous improvements are made in the educational programs of the state.

(a) The points earned for writing defined in paragraph (6)(c) of this rule will be based on the percent of students who score "~~4.0~~" "~~3.5~~" or higher on the FCAT writing assessment for School Performance Grades determined in 2006-07 and beyond ~~2004-05 and 2005-06. For the School Performance Grades determined in 2006-07 and beyond, the points earned for writing defined in paragraph (6)(c) of this rule will be based on the percent of students who score "4" or higher on the FCAT writing assessment.~~

~~(b) Beginning with the performance grades to be issued in 2004-05, the students eligible to be included in the system, described in paragraph (3)(a) of this rule, will be expanded to include all students, regardless of disability or limited English proficiency classification, with valid FCAT assessment scores in reading in both the current year and the previous year. Inclusion of these students will be applied to paragraph (1)(a)4., regarding the percent tested, and to paragraphs (6)(d), (e) and (f), regarding the determination of student learning gains, of this rule.~~

~~(b)(e)~~ Science will be added as an additional category of performance beginning in 2006-07. For this category of achievement, schools will earn one (1) point for each percent of students who score at or above Achievement Level 3, proficient, as will be recommended by committees of educators and approved by the State Board of Education during 2005-06.

(9) through (15) No change.

Specific Authority 1001.02, 1008.22, 1008.33, 1008.345 FS. Law Implemented 1000.03, 1001.42, 1003.63, 1008.33, 1008.34, 1008.345, 1008.36 FS. History--New 10-11-93, Amended 12-19-95, 3-3-97, 1-24-99, 2-2-00, 2-11-02, 12-23-03, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Dr. Christy Hovanetz-Lassila, Director, Evaluation and Reporting
 NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Hanna Skandera, Deputy Commissioner for Accountability, Research, and Measurement
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 10, 2006
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 9, 2005

DEPARTMENT OF EDUCATION

Education Practices Commission

RULE TITLE: Instructional Personnel Assessment Systems
 RULE NO.: 6B-4.010

PURPOSE AND EFFECT: This rule is amended to bring the rule into compliance with statutory references from school code revisions of 2002, which included requirements for assessment systems to allow for compensation based upon performance.

SUMMARY: This rule sets forth the requirements and implementation of the approval process for district instructional personnel assessment systems as prescribed by Section 1012.34, F.S.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: Section 1012.34 FS.

LAW IMPLEMENTED: Sections 1012.34, 1012.22 FS.

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

TIME AND DATE: 8:30 a.m., February 21, 2006

PLACE: University of Miami, Coral Gables, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Pam Stewart, Deputy Chancellor, K-12 Public Schools, Department of Education, 325 West Gaines Street, Tallahassee, Florida 32399-0400

THE FULL TEXT OF THE PROPOSED RULE IS:

6B-4.010 Instructional Personnel Assessment Systems.

(1) Submission Process.

(a) By April 3, 2006, and every second Monday in January thereafter ~~Each school district shall submit its the~~ instructional personnel assessment system to ~~the Division of Professional Educators~~ of the Department for approval pursuant to Section 1012.34, 231.29, Florida Statutes.

(b) Each submission shall include documentation to substantiate that the school district has met the requirements and conditions for approval of for instructional personnel assessment systems pursuant to Section 1012.34, 231.29, Florida Statutes, and this rule have been met.

(c) The assessment system shall be reviewed by the Department for inclusion of the following:

1. Criteria for annually evaluating the professional performance of all instructional personnel primarily on the basis of learning gains made by students assigned to their classroom pursuant to Section 1012.34(3), Florida Statutes, and Assessment criteria that include, at a minimum, indicators that relate to the areas of competence specified in Section 231.29(3)(a), Florida Statutes.

2. Additional criteria for annually evaluating the professional performance of all instructional personnel listed in Section 1012.34, Florida Statutes, and the Florida Educator Accomplished Practices as prescribed in Rule 6A-5.065, FAC., in a manner consistent with subsection (4) of this rule.

~~3.2.~~ A statement of district procedures describing reflecting methods and criteria used annually to designate, document, and differentiate unsatisfactory, satisfactory, and outstanding performance levels and all calculations used to assess instructional personnel, the results of which must:-

a. Differentiate or comparatively rank the performance of all instructional personnel in the district as calculated primarily based on student learning gains in accordance with the criteria listed in subsection (4) of this rule, which performance assessment is to be determinative of a portion of each individual's regular salary compensation as provided in Section 1012.22, Florida Statutes, and

b. Designate outstanding performers in accordance with requirements listed in subsection (4) of this rule.

~~4.3.~~ Copies of assessment data collection procedures, instruments, and forms.

~~5.4.~~ A statement of the use of assessment data for instructional personnel contract decisions.

6. A professional Education Competence Demonstration System pursuant to Section 1012.56(7), Florida Statutes, based primarily on the Educator Accomplished Practices to allow beginning teachers to meet certification requirements.

(2) ~~Initial~~ Review Process. The Department of Education shall review and evaluate the performance assessment systems for compliance with the requirements and conditions of Section 1012.34, 231.29, Florida Statutes, and shall prepare and send to each school district a written notice that identifies those any specific deficiencies of the system. Upon request from a school district, the Department shall provide assistance to the district for the purpose of bringing the system into compliance as quickly as possible.

(3) Approval Process. The Department of Education shall send written notification to the school district superintendent of the status of the school district's instructional personnel assessment system. The status designation shall be as follows:

(a) Approved. An instructional personnel assessment system shall be designated approved if all requirements and conditions for instructional personnel assessment systems are met pursuant to Section 1012.34 231.29, Florida Statutes, and the provisions of this rule are met.

(b) Conditionally Approved. An instructional personnel assessment system shall be designated conditionally approved if the school district's assessment system fails to satisfy one or more of the requirements and conditions for instructional personnel assessment systems pursuant to Section 1012.34, 231.29, Florida Statutes, and the provisions of this rule. The school district's system designated as conditionally approved shall be revised so that it is in full compliance with all requirements and conditions for instructional personnel assessment systems pursuant to Section 1012.34, 231.29, Florida Statutes, and the provisions of this rule within the time period specified by the Department, and resubmitted to the Department for review and approval.

(c) Disapproved. A school district's system designated as conditionally approved shall be designated as disapproved if the requirements and conditions for instructional personnel assessment systems pursuant to Section 1012.34 231.29, Florida Statutes, and the provisions of this rule are not met within the time period specified by the Department in the written notice grating the conditionally approved status of the system.

(d) Assessment systems submitted for approval for the 2007-2008 school year and after must be compliant with all provisions of this rule. Assessment systems submitted for approval for the 2006-2007 school year must be compliant with all provisions, except those criteria described in paragraph (4)(b) of this rule.

(4) Criteria for Evaluating Professional Performance. The annual assessment procedures adopted by a school district shall allow it annually to differentiate or comparatively rank the performance of each individual for the purposes of assessment and compensation. The criteria for evaluating professional performance shall be as follows:

(a) For individual evaluation of instructional personnel teaching state assessed subjects as described in Section 1008.22, Florida Statutes:

1. Professional performance must be measured on the basis of performance gains on the state assessment by students assigned to the individual's classroom, except that a district may determine unsatisfactory performance for an individual who is subject to discipline based upon additional criteria listed in Section 1012.34, Florida Statutes, and the Educator Accomplished Practices.

2. Instructional personnel, without needing to apply or take any additional action, shall be identified as having demonstrated outstanding performance if, based on their students' performance improvements on the statewide assessment, a teacher is determined by the Department to rank in the top 10 percent of elementary, middle, or high school instructional personnel statewide. The Department annually shall provide statewide results of individual performance to local school districts no later than thirty (30) days after the school grades are released. A district may designate as outstanding additional instructional personnel if the designation is based upon student performance criteria and no application or other documentation is required to qualify.

(b) For evaluation of individual instructional personnel that do not teach state assessed subjects:

1. Professional performance must be measured on the basis of improved performance on local assessments by students assigned to the individual's classroom, except that a district may determine unsatisfactory performance for an individual who is subject to discipline based upon additional criteria listed in Section 1012.34, Florida Statutes, and the Educator Accomplished Practices.

2. Each district's assessment of instructional personnel performance shall be based upon reliable external measures of student learning gains or achievement, including, but not limited to:

a. Standardized exams such as advanced placement, International Baccalaureate, and others;

b. Industry certification exams;

c. Exams that have been developed by the district, a consortium of districts, or a professional organization that meet the psychometric standards of reliability and validity and are administered by external evaluators; or

d. Other measures of performance, excluding teacher-assigned grades or classroom-level tests shall not be used to determine outstanding performance. Portfolios may only be used to determine outstanding performance for teachers of special education students.

3. The professional performance assessment results shall be calculated in a manner sufficient to allow the district both to comparatively rank instructional personnel in paragraph (4)(b) of this rule both for the purpose of determining the performance pay component of their regular salary compensation and the purpose of identifying the top 10 percent of elementary, middle, and high school instructional personnel district-wide as having demonstrated outstanding performance.

(5)(4) Modifications to an Instructional Personnel Assessment System. If a school board makes substantive modifications to an approved school district instructional personnel assessment system, the modified system shall be submitted to the Department of Education for review and approval pursuant to this rule.

Specific Authority 1001.02, 1012.34 229-053, 231-29 FS. Law Implemented 1012.22(1)(c), 1012.34 230.23(5)(e), 231-29 FS. History—New 6-19-01, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Kathy Hebda, Department of Education, Division of K-12 Education

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Pam Stewart, Deputy Chancellor Educator Quality, Department of Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 10, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 14, 2005

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."

STATE BOARD OF ADMINISTRATION

Florida Prepaid College Board

RULE TITLE: Qualified Individuals

RULE NO.: 19B-8.001

PURPOSE AND EFFECT: To change the rule requirement for substitution of beneficiaries in the Florida Prepaid College program to allow a change of beneficiary after a portion of the account benefits have been utilized by another qualified beneficiary.

SUMMARY: This rule change is being made to change the requirements for substitution of beneficiaries in the Prepaid College Program.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None prepared.

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

SPECIFIC AUTHORITY: 1009.971(1),(4),(6) FS.

LAW IMPLEMENTED: 1009.98(4) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 2:00 p.m., February 13, 2006

PLACE: Suite 210, Hermitage Building, 1801 Hermitage Boulevard, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Thomas J. Wallace, Executive Director, 1801 Hermitage Boulevard, Suite 210, Tallahassee, Florida 32308, (850)488-8514

THE FULL TEXT OF THE PROPOSED RULE IS:

19B-8.001 Qualified Individuals.

Except when an advance ~~payment purchase~~ contract is established by a purchaser functioning in a custodial capacity, a purchaser may change the qualified beneficiary to any member of the family of the then-current qualified beneficiary, at any time, by submitting a written, notarized request signed by the purchaser directing the Board to change the qualified beneficiary for the contract. "Member of the family" means the same as that term is defined in s. 529 of the Internal Revenue Code. The substitute beneficiary must meet the residency requirement of a qualified beneficiary at the time of substitution. The contract purchaser will be required to sign and notarize any request to substitute beneficiaries on an advance payment contract. ~~The substitution must be made prior to the qualified beneficiary using benefits at a postsecondary institution.~~

Specific Authority 1009.971(1),(4),(6) FS. Law Implemented 1009.98(4) FS. History--New 3-29-89, Formerly 4G-8.001, Amended 12-5-93, 6-20-96, 8-18-97, 12-16-97, 3-24-99, 2-8-00, 10-9-01, 12-28-03,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Florida Prepaid College Board
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Florida Prepaid College Board
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 8, 2005
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 22, 2005

AGENCY FOR HEALTH CARE ADMINISTRATION
Division of Health Quality Assurance

RULE TITLES: Spontaneous Fetal Demise
PURPOSE AND EFFECT: The Agency proposes to adopt Rule 59A-3.281, F.A.C., consistent with provisions of Section 383.33625, F.S. The statute provides for adoption of rules to develop forms to be used by health care facilities to be used for notifications and elections by patients.

SUMMARY: The proposed rule establishes procedures and a form to be used by health care facilities to provide notification to a mother of the options available for the disposition of fetal remains in the event of a spontaneous fetal demise occurring after a gestation period of less than 20 completed weeks.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None Prepared.

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

SPECIFIC AUTHORITY: 383.33625(6) FS.
LAW IMPLEMENTED: 383.33625(6) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 10:00 a.m., February 10, 2006
PLACE: Agency for Health Care Administration, 2727 Mahan Drive, Building #3, Conference Room B, Tallahassee, FL 32308

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Bill McCort, Bureau of Health Facility Regulation, 2727 Mahan Drive, Tallahassee, Florida, (850)487-0641

THE FULL TEXT OF THE PROPOSED RULE IS:

59A-3.281 Spontaneous Fetal Demise.

When a spontaneous fetal demise occurs after a gestation of less than 20 completed weeks, the health care facility identified in Section 383.33625(4), F.S., shall follow the provisions of that section and shall provide AHCA Form 3100-0006, which is incorporated by reference, to the mother for her completion. A copy of the signed and completed form shall be retained in the mother's birth center file and shall be available for review by the Agency or Department of Health.

Specific Authority 383.33625(6) FS. Law Implemented 383.33625 FS. History--New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Bill McCort, Bureau of Health Facility Regulatory, Division of Health Quality Assurance
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Alan Levine, Secretary
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 10, 2005
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 3, 2005

AGENCY FOR HEALTH CARE ADMINISTRATION
Medicaid

RULE TITLE: Medicaid Provider Reimbursement Schedule
PURPOSE AND EFFECT: The amendment to Rule 59G-4.002, F.A.C., incorporates by reference the Florida Medicaid Provider Reimbursement Schedule, January 2006. The reimbursement schedule contains the procedure codes and maximum fees that are effective January 2006 for the following provider types whose fees are based on a resource-based relative value scale: advanced registered nurse practitioner, birth center, chiropractic, dental, hearing, independent laboratory, licensed midwife, optometric, outpatient hospital laboratory, physician, physician assistant, podiatry, portable x-ray, registered nurse first assistant, and visual. The effect will be to incorporate the Florida Medicaid Provider Reimbursement Schedule, January 2006, in rule.

SUMMARY: The amendment to Rule 59G-4.002, F.A.C., will incorporate by reference the Florida Medicaid Provider Reimbursement Schedule, January 2006. The effect will be to incorporate the Florida Medicaid Provider Reimbursement Schedule, January 2006, in rule.

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

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

SPECIFIC AUTHORITY: 409.919 FS.

LAW IMPLEMENTED: 409.905, 409.906, 409.908 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 2:00 p.m., Monday, February 13, 2006

PLACE: Agency for Health Care Administration, 2727 Mahan Drive, Building #3, Conference Room B, Tallahassee, Florida
 THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Jason Ottinger, Bureau of Medicaid Services, 2727 Mahan Drive, Mail Stop 20, Tallahassee, Florida 32308, (850)922-7314

THE FULL TEXT OF THE PROPOSED RULE IS:

59G-4.002 Medicaid Provider Reimbursement Schedule.

Medicaid providers who provide the following services and their billing agents who submit claims on behalf of an enrolled Medicaid provider must be in compliance with the provisions of the Florida Medicaid Provider Reimbursement Schedule, January ~~2006~~ ~~2005~~, updated April 2005: advanced registered nurse practitioner, birth center, chiropractic, dental, hearing, independent laboratory, licensed midwife, optometric, outpatient hospital laboratory, physician, physician assistant, podiatry, portable x-ray, registered nurse first assistant, and visual.

Specific Authority 409.919 FS. Law Implemented 409.905, 409.906, 409.908 FS. History—New 8-18-05, Amended 11-30-05, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
 Jason Ottinger

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Alan Levine, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 11, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 21, 2005

AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid

RULE TITLE: Inpatient Mental Health and Tuberculosis Hospital Services
 RULE NO.: 59G-4.165

PURPOSE AND EFFECT: Rule 59G-4.165, F.A.C., Inpatient Mental Health and Tuberculosis Hospital Services, is obsolete. Medicaid does not have a tuberculosis hospital program, and the policies that pertain to state mental health hospitals that provide long term inpatient mental health services to Medicaid recipients age 65 and older are being incorporated in a new rule, Rule 59G-4.300, F.A.C.

The effect will be to repeal Rule 59G-4.165, F.A.C., Inpatient Mental Health and Tuberculosis Hospital Services.

SUMMARY: The purpose of this rule amendment is to repeal Rule 59G-4.165, F.A.C., Inpatient Mental Health and Tuberculosis Hospital Services.

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

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

SPECIFIC AUTHORITY: 409.919 FS.

LAW IMPLEMENTED: 409.905(5), 409.906(18), 409.908, 409.913(5)(e), 409.913(8)(h) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 1:00 p.m., Monday, February 13, 2006

PLACE: Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Conference Room B, Tallahassee, Florida
 THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Alisha Bradley-Nelson, Medicaid Services, 2727 Mahan Drive, Building 3, Mail Stop 20, Tallahassee, Florida 32308-5407, (850)487-3028

THE FULL TEXT OF THE PROPOSED RULE IS:

59G-4.165 Inpatient Mental Health and Tuberculosis Hospital Services.

Specific Authority 409.919 FS. Law Implemented 409.905(5), 409.906(18), 409.908, 409.913(5)(e), 409.913(8)(h) FS. History—New 1-1-77, Revised 10-1-77, Amended 3-10-83, Formerly 10C-7.46, Amended 5-26-93, Formerly 10C-7.046, Repealed _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
 Alisha Bradley-Nelson
 NAME OF SUPERVISOR OR PERSON WHO APPROVED
 THE PROPOSED RULE: Alan Levine, Secretary
 DATE PROPOSED RULE APPROVED BY AGENCY
 HEAD: January 11, 2006
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT
 PUBLISHED IN FAW: October 7, 2005

AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid

RULE TITLE: State Mental Health Hospital Services
 RULE NO.: 59G-4.300
 PURPOSE AND EFFECT: The purpose of this rule is to incorporate by reference the Florida Medicaid State Mental Health Hospital Services Coverage and Limitations Handbook, September 2005. The revised handbook contains changes required by the Health Insurance Portability and Accountability Act (HIPAA). The effect will be to incorporate by reference in the rule the revised Florida Medicaid State Mental Health Hospital Services Coverage and Limitations Handbook.

SUMMARY: The purpose of this rule is to incorporate by reference the Florida Medicaid State Mental Health Hospital Services Coverage and Limitations Handbook, September 2005. The effect will be to incorporate by reference in the rule the revised Florida Medicaid State Mental Health Hospital Services Coverage and Limitations Handbook.

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

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

SPECIFIC AUTHORITY: 409.919 FS.

LAW IMPLEMENTED: 409.905, 409.908 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 1:00 p.m., Monday, February 13, 2006

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Alisha Bradley-Nelson, Medicaid Services, 2727 Mahan Drive, Building 3, Mail Stop 20, Tallahassee, Florida 32308-5407, (850)487-3028

THE FULL TEXT OF THE PROPOSED RULE IS:

59G-4.300 State Mental Health Hospital Services.

(1) This rule applies to state mental health hospitals that provide long term inpatient mental health services to Medicaid recipients age 65 and older who meet the Medicaid Institutional Care Program eligibility requirements.

(2) All state mental hospitals that provide long term inpatient mental health services to Medicaid recipients age 65 and older who meet the Medicaid Institutional Care Program eligibility requirements must be in compliance with the provisions of the Florida Medicaid State Mental Health Hospital Services Coverage and Limitations Handbook, September 2005, incorporated by reference, and the Florida Medicaid Provider Reimbursement Handbook, Institutional 021, which is incorporated in Rule 59G-4.200, F.A.C. Both handbooks are available from the Medicaid fiscal agent.

Specific Authority 409.919 FS. Law Implemented 409.905, 409.908 FS. History—New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
 Alisha Bradley-Nelson
 NAME OF SUPERVISOR OR PERSON WHO APPROVED
 THE PROPOSED RULE: Alan Levine, Secretary
 DATE PROPOSED RULE APPROVED BY AGENCY
 HEAD: January 11, 2006
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT
 PUBLISHED IN FAW: October 7, 2005

AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid

RULE TITLE: Medicaid Contracts for Prepaid Health Plans
 RULE NO.: 59G-8.100

PURPOSE AND EFFECT: The purpose of the proposed amendment is to incorporate changes to the Payment Methodology for Participating Medicaid Managed Health Care Plans, effective July 1, 2005, to provide the following changes based on the 2005-06 General Appropriations Act, Specific Appropriations 225, 226, Senate Bill 838, Section 20, and Section 409.9124, F.S.

1. Section B (4): Discount Factor (D) – equals the percentage of the projected payment limit that is allocated to each service area as referenced in Table 2.
2. Section B (6) Payment Limit (PL) – means the projected cost for HMO covered services in a Medicaid fee-for-service system, including MediPass costs and fee-for-service costs attributable to recipients enrolled for a portion of a year in a managed care plan or waiver program, but excluding the fee paid to primary care physicians for MediPass enrollees, actual expenditures for

children enrolled for reimbursement under the CMS program, and other excluded groups as described in Section 10.3 of the HMO contracts. The final capitation rate paid to HMOs is calculated as a percentage of the PL by taking into consideration age and gender factors, service area, other discount factors, and eligibility category expenditures. Pursuant to 42 CFR 438.6, the final capitation rates must be actuarially sound. Medicaid payment for a defined scope of services to be furnished to a defined number of recipients may not exceed the cost to the agency of providing those same services on a fee-for-service basis to an actuarially equivalent population group.

Section 409.9124, F.S., limits the projected weighted rate on a per member per month basis to the per member per month rate adopted by the Florida Legislature.

3. Section B (7) Service Categories or HMO Capitation Categories mean:
Hospital/ Medical Services – all HMO covered services not falling into the three other HMO capitation categories specified in subparagraph 5.b., c., and d. These include: hospital inpatient, hospital outpatient, physician services, prescribed medicine, lab and x-ray, family planning, home health services, EPSDT Screening, child vision, child hearing, nurse practitioner, birthing center, rural health services, physical therapy, speech therapy, occupational therapy, respiratory therapy, clinic, physician assistant, dialysis center services, and Medicare dual eligible crossover expenditures.
4. Section C (1): AP – equals amount paid for HMO covered services rendered under the MediPass program, minority networks, Emergency Room Diversion and other related projects, and the standard Medicaid fee-for-service system for SFY 1 and SFY 2 the most recent two years available for eligibility groups, age and gender bands, and service areas equivalent to the managed care population.
5. Section C (1): IBNR – equals an estimated percentage of the total amount of claims incurred during the applicable fiscal year that have not yet been submitted to the Agency for Health Care Administration (agency). This calculation is based upon an evaluation of SFY 1. As the expenditures in each SFY of the base include the 12 months of the referenced year (months 1-12) plus the following 6 months (months 13-18), the evaluation for the period of claims incurred but not reported includes claims paid from 19-30 months after the beginning of SFY 1. This evaluation is determined statewide and includes all covered service categories.
6. Section C (1): TPL – equals third party liability recovery adjustments, which is the Agency’s estimated percentage of third party liability recovery based on the average of the actual amounts recovered for SFY 1 and SFY 2.

7. Section C (2): Step 1

Eligibility Group	Age/Gender Bands (age in years unless otherwise noted)	
TANF/AFDC	Months 0-2	14-20 Female
	Months 3-11	21-54 Male
	1-5	21-54 Female
	6-13	55 and over
	14-20 Male	
SSI – no Medicare	Months 0-2	14-20
	Months 3-11	21-54
	1- 5	55 and over
	6-13	
SSI Medicare Part A and B	Under 65	65 and over
SSI Medicare Part B only	All ages combined	

8. Section C: Step 4

IBNR Claims: A certain percentage of claims are paid after each year’s data is summarized. The agency summarizes each state fiscal year of data six months after it ends. The IBNR adjustment reflects an estimate of the claims that will be paid after December 31, for SFY 2 incurred but not reported claims. The estimated claims amount is added to the expenditures for combined SFY 1 and SFY 2 to reflect the total fee-for-service costs.

9. Section C: Step 4

Third Party Liability (TPL) Adjustment: The claims data does not include all of the TPL recoveries realized by the agency. Based on an average of SFY 1 and SFY 2 TPL data, the SFY 4 cost estimates are adjusted downward to reflect the TPL recoveries. This adjustment includes only those recoveries that are not already reflected in the claims data. The TPL adjustment factors are calculated separately for each eligibility category, and may vary annually.

10. Section E: TA – the trend adjustment necessary to remain within Section 409.9124, F.S. The final weighted rate for all eligibility groups shall not exceed the per member per month amount adopted by the Florida Legislature.

SUMMARY: The proposed amendment to Rule 59G-8.100, F.A.C., revises the Payment Methodology for Participating Medicaid Managed Health Care Plans, as incorporated into Rule 59G-8.100, F.A.C., by reference.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: A statement of estimated regulatory cost has not been prepared.

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

SPECIFIC AUTHORITY: 409.9124, 409.919 FS.
 LAW IMPLEMENTED: 409.9124(1) FS.
 IF REQUESTED IN WRITING WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):
 TIME AND DATE: 10:00 a.m., February 14, 2006
 PLACE: Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Conference Room B, Tallahassee, FL 32308
 THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Edwin Stephens, Medicaid Program Analysis, Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Room 2149A, Mail Stop 21, Tallahassee, Florida 32308, (850)414-2759

THE FULL TEXT OF THE PROPOSED RULE IS:

- 59G-8.100 Medicaid Contracts for Prepaid Health Plans.
 - (1) through (16) No change.
 - (17) Payment Methodology for Covered Services. Capitation payment rates are calculated annually by the agency based on historical fee-for-service expenditures adjusted forward to the contract period. The agency shall not pay more for a defined scope of services to a defined number of enrollees under a capitation arrangement than the projected cost of providing those same services on a fee-for-service basis. The payment methodology, entitled "Agency for Health Care Administration, Payment Methodology for Participating Medicaid Managed Health Care Plans", July 2005⁴ is incorporated herein by reference.
 - (18) through (24) No change.

Specific Authority 409.9124, 409.919 FS. Law Implemented 409.9124(1) FS. History—New 3-9-81, Amended 7-9-84, Formerly 10C-7.524, Amended 4-5-89, Formerly 10C-7.0524, Amended 8-4-02, 1-23-05,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mr. Robert Butler
 NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Mr. Robert Butler
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 9, 2006
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 5, 2005

AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid

RULE TITLE: Aged and Disabled Adult Waiver Services
 RULE NO.: 59G-13.030
 PURPOSE AND EFFECT: The purpose of this rule is to incorporate by reference the Florida Medicaid Aged and Disabled Adult Waiver Services Coverage and Limitations Handbook, Update August 2005. The handbook was updated to clarify the following policies. Adult companion providers and homemanager and homemaker providers may be

individual homemakers or homemaker and companion agencies. Only homemaking and companion agencies must be registered with the Agency for Health Care Administration (AHCA), Division of Health Quality Assurance (HQA), in accordance with Chapter 400, F.S. Homemakers, sitters and companions are not registered by AHCA to provide respite services. Additional information was added to the reimbursements per unit and maximum limits on the Aged and Disabled Adult Waiver Services Procedure Codes and Fee Schedule. The reimbursements and limits were not changed, but reworded to clarify the policy. The effect will be to incorporate by reference update August 2005 to the Florida Medicaid Aged and Disabled Adult Waiver Services Coverage and Limitations Handbook in rule.

SUMMARY: The purpose of this rule is to incorporate by reference update August 2005 to the Florida Medicaid Aged and Disabled Adult Waiver Services Coverage and Limitations Handbook, March 2004.

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

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

SPECIFIC AUTHORITY: 409.919 FS.
 LAW IMPLEMENTED: 409.906, 409.907, 409.908, 409.912 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):
 TIME AND DATE: 1:00 p.m., Tuesday, February 14, 2006
 PLACE: Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Conference Room B, Tallahassee, Florida
 THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Carol Schultz, Medicaid Services, 2727 Mahan Drive, Building 3, Mail Stop 20, Tallahassee, Florida 32308-5407, (850)922-7349

THE FULL TEXT OF THE PROPOSED RULE IS:

- 59G-13.030 Aged and Disabled Adult Waiver Services.
 - (1) No change.
 - (2) All aged and disabled adult waiver services providers enrolled in the Medicaid program must be in compliance with the Florida Medicaid Aged and Disabled Adult Waiver Services Coverage and Limitations Handbook, March 2004, updated August 2005, incorporated by reference, and the Florida Medicaid Provider Reimbursement Handbook, Non-Institutional 081 which is incorporated by reference in Rule 59G-13.001, F.A.C. Both handbooks are available from the Medicaid fiscal agent.

(3) No change.

Specific Authority 409.919 FS. Law Implemented 409.906, 409.907, 409.908, 409.912 FS. History—New 6-1-05, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Carol Schultz

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Alan Levine

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 11, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 7, 2005

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

RULE TITLE: Approved General Forms
RULE NO.: 61-6.022

PURPOSE AND EFFECT: This rule incorporates Department-wide application forms utilized in licensing, licensure renewal, and licensure discipline.

SUMMARY: The rule will adopt and incorporate by reference master forms utilized by the Department, its Divisions, and the regulatory boards, for licensing, licensure renewal, and licensure discipline.

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

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

SPECIFIC AUTHORITY: 455.213(1) FS.

LAW IMPLEMENTED: 455.203, 455.213 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Gail Scott-Hill, Assistant General Counsel, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-2202

THE FULL TEXT OF THE PROPOSED RULE IS:

61-6.022 Approved General Forms.

The following is a list of the forms utilized by Department divisions and regulatory boards for purposes of licensing, licensure renewal, and licensure discipline. These forms can be obtained from the Department at 1940 North Monroe Street, Tallahassee, Florida 32399-0756, or by calling (850)487-1395.

(1) Master Individual Application, DBPR 0010 (three pages).

(2) Master Organizational Application, DBPR 0020 (one page).

(3) Attestation Statement, DBPR 0030 (one page).

(4) Officers and Directors, DBPR 0040 (two pages).

(5) Explanatory Information for Background Questions, DBPR 0050 (two pages).

(6) General Explanatory Description, DBPR 0060 (one page).

(7) Uniform Complaint Form, DBPR 0070 (four pages).

(8) Request for Address or Name Change, DBPR 0080 (one page)

(9) Duplicate License Request, DBPR 0090 (one page).

(10) Request for Release of Information and Authorization to Release Information, DBPR 0100 (two pages).

(11) Smoking Complaint Form, DBPR 0110 (one page).

Specific Authority 455.213(1) FS. Law Implemented 455.203, 455.213 FS. History—New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Gail Scott-Hill, Assistant General Counsel, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-2202

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Simone Marsteller, Secretary, Department of Business and Professional Regulation

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 5, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 16, 2005

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

RULE TITLE: Approved Forms for the Division of Real Estate
RULE NO.: 61-6.023

PURPOSE AND EFFECT: This rule incorporates Division of Real Estate forms utilized in licensing, licensure renewal, and licensure discipline.

SUMMARY: The rule will adopt and incorporate by reference the Division of Real Estate forms used for the above purposes.

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

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

SPECIFIC AUTHORITY: 120.52(15), 455.213, 475.17, 475.612 FS.

LAW IMPLEMENTED: 455.217, 475.15, 475.161, 475.17, 475.175, 475.180, 475.181, 475.182, 475.183, 475.215, 475.22, 475.23, 475.24, 475.25, 475.451, 475.5108, 475.612, 475.615, 475.616, 475.617, 475.6175, 475.618, 475.619, 475.620, 475.6221, 475.623, 475.627, 475.630, 475.631 FS.

IF REQUESTED IN WRITING WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW. THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Gail Scott-Hill, Assistant General Counsel, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-2202

THE FULL TEXT OF THE PROPOSED RULE IS:

61-6.023 Approved Forms for the Division of Real Estate. The following forms are approved by the Department of Business and Professional Regulation for the Division of Real Estate's use in licensing, licensure renewal, and licensure discipline, and are hereby adopted and incorporated by reference into these rules. A copy of these forms may be obtained by writing to the Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-0756 or calling (850)487-1395.

- (1) Application Requirements, DBPR RE-2000 (two pages).
- (2) Real Estate Background Questions, DBPR RE-2010 (one page).
- (3) Appraiser Background Questions, DBPR FREAB-2015 (one page).
- (4) Non-Resident Temporary Appraisal Practice Permit, DBPR FREAB-2020 (one page).
- (5) Real Estate Instructor Permit Qualifications, DBPR RE-2030 (one page).
- (6) Appraiser Instructor Permit Qualifications, DBPR FREAB-2040 (one page).
- (7) Request for Change of Status, DBPR RE-2050 (one page).
- (8) Request for Change of Status, Registered Trainee Appraiser, DBPR FREAB-2060 (one page).
- (9) Request for Change of Status, Licensed or Certified Appraiser, DBPR FREAB-2065 (one page).
- (10) Request for School/Instructor Change of Status, DBPR RE-2070 (two pages).
- (11) Request for Instructor Evaluation, DBPR RE-2080 (one page).
- (12) Request for Course Evaluation, DBPR FREAB-2090 (one page).
- (13) Instructions for completing "DBPR FREAB-2090 Request for Course Evaluation", DBPR FREAB-2091 (one page).
- (14) Request for Course Evaluation, DBPR RE-2095 (one page).
- (15) Instructions for completing "DBPR RE-2095 Request for Course Evaluation", DBPR RE-2096 (one page).

- (16) Application for Additional Locations, DBPR RE-2100 (two pages).
- (17) Uniform Complaint Form – Real Estate, DBPR RE-2200 (three pages).
- (18) Instruction for completing "DBPR RE-2200 Uniform Complaint Form", DBPR RE-2201 (one page).
- (19) Appraisal Experience Log, DBPR FREAB-2300 (one page).
- (20) Instructions for completing "DBPR FREAB-2300 Appraisal Experience Log", DBPR RE-2301 (one page).
- (21) Irrevocable Consent to Service, DBPR RE-2400 (one page).
- (22) Request to Revert to Real Estate Salesperson Status, DBPR RE-2500 (one page).
- (23) Educational Provider Application, DBPR RE-2564 (one page).
- (24) Application Information for Real Estate Sales Associates and Brokers, DBPR RE-2600 (three pages).
- (25) Application Information for Real Estate Corporation, DBPR RE-2610 (two pages).
- (26) Real Estate Education Information Sheet, DBPR RE-2620 (six pages).
- (27) Real Estate (FREC) Education Requirements, DBPR RE-2630 (two pages).
- (28) Application Information for Real Estate Appraiser Instructors, DBPR FREAB-2700 (two pages).
- (29) Appraisal Education Checklist, DBPR FREAB-2710 (three pages).
- (30) Application Information for Real Estate Appraisers, DBPR FREAB-2720 (three pages).
- (31) Division of Real Estate (FREAB & FREC) Provider Information, DBPR RE/FREAB-2800 (three pages).
- (32) Florida Real Estate Commission & Florida Real Estate Appraiser Board Instructors, FREC and FREAB Education Credits, DBPR RE/FREAB-2810 (one page).

Specific Authority 455.213, 475.17, 475.612 FS. Law Implemented 455.217, 475.15, 475.161, 475.17, 475.175, 475.180, 475.181, 475.182, 475.183, 475.215, 475.22, 475.23, 475.24, 475.25, 475.451, 475.5108, 475.612, 475.615, 475.616, 475.617, 475.6175, 475.618, 475.619, 475.620, 475.6221, 475.623, 475.627, 475.630, 475.631 FS. History—New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Gail Scott-Hill, Assistant General Counsel, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-2202

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Simone Marsteller, Secretary, Department of Business and Professional Regulation

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 5, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 9, 2005

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Christina Norman, Assistant Attorney, Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, Office of the General Counsel, 1940 North Monroe Street, Suite 42, Tallahassee, Florida 32399, (850)487-2563

THE FULL TEXT OF THE PROPOSED RULES IS:

PART I
CIGARETTE TAX DIVISION RULES

61A-10.001 Definitions, Cigarette.

Commencing July 1, 1973, the term "cigarette" means any roll for smoking made wholly, or in part, of tobacco regardless of the substance of which the wrapper is made, and excepting there from only those rolls of tobacco in which all of the tobacco therein is fully naturally fermented and/or weighs more than 3 pounds per thousand.

(1) "Cigarette Distributing Agent" also known as "CDA" means a "distributing agent" as defined in Section 210.01(14), Florida Statutes. For tobacco to be fully naturally fermented it must meet the following criteria:

(a) The tobacco must be air-cured as opposed to flue-cured, and

(b) The fermentation of the tobacco must be a separate, distinct and identifiable step in the total process of taking tobacco from its raw, natural state to its final manufactured state. Fermentation must be a separate step in and of itself, not included in and separate from all other steps in the total process, including, for example, such other steps as curing, aging, storing or re-dying in which some fermentation may take place.

(2) "Bill of Lading" means a receipt given by a carrier for goods accepted for transportation. The fermentation process referred to above means a vigorous, controlled process involving tobacco containing a relatively high moisture content and marked by large natural temperature increases generated by the fermenting tobacco as distinguished, for example, from the gentle largely uncontrolled aging process. In addition, generally fermentation takes 4 to 8 weeks with the tobacco fermented in bulk reaching a temperature of 120° F or more in an atmosphere of 60-90% relative humidity. The chemical changes that take place will substantially eliminate the carbohydrates (sugar and starch) and reduce the alkaloid content and evolves carbon dioxide and ammonia. Further, for the fermentation to be natural, there can be no artificial heat or chemical applied either during the fermentation process itself or prior thereto in order to induce fermentation. Fermentation generally continues until there is no longer any significant rise in temperature in the fermenting tobacco itself in order for the tobacco to be fully fermented.

(3) "Stamping Agent" means an "agent" as defined in Section 210.01(9), Florida Statutes.

(4) "Audit" means the process of examining and verifying the records stock and equipment of manufacturers, importers, distributing agents, wholesale dealers, stamping agents, and retail dealers licensed by the Division.

Specific Authority 210.10 564-H FS. Law Implemented 210.01(4), 210.085, 210.09, 210.15 FS. History—Amended 9-17-73, Repromulgated 12-19-74, Formerly 7A-10.01, 7A-10.001, Amended _____.

61A-10.002 ~~Excise Tax Stamps, Definition and Sale of.~~

(1) "Hand" stamps shall include all excise tax stamps affixed to packages of cigarettes through a water application process. The Division may sell such stamps only to qualified wholesalers in individual units or multiples thereof, including the cost of printing, handling and shipping such stamps.

(1)(2) "Heat transfer" stamps shall include all excise tax stamps affixed to packages of cigarettes through a mechanical heat application process. Such stamps will be sold only to stamping agents wholesalers who have been given permission by the Division to use such stamps to evidence payment of taxes and the Division may sell such stamps in individual units of 1 roll or multiples thereof including the cost of printing, handling and shipping such stamps.

(2) Any such stamps purchased by a stamping agent may not be transferred or sold to any entity including other stamping agents; however, such stamps may be returned to the Division for credit or refund as specified in Rule 61A-10.008, Florida Administrative Code.

(3) Stamping agents shall requisition stamps using DBPR form AB&T 4000A-006, Requisition and Invoice for Cigarette Tax Stamps incorporated herein by reference and effective (_____). Each stamping agent purchasing tax stamps shall file with the Division DBPR form AB&T 4000A-040, Cigarette Stamp Signature Card, incorporated herein by reference and effective (_____), listing employees authorized to requisition and receive tax stamps. Stamps will not be delivered to unauthorized individuals.

Specific Authority 210.10 FS. Law Implemented 210.05(2) FS. History—New 12-19-74, Amended 10-8-81, 8-29-84, Formerly 7A-10.02, 7A-10.002, Amended _____.

61A-10.0021 Stamping Agent – Requirements.

The Division may authorize a wholesale dealer as a stamping agent to affix stamps to packages of cigarettes provided the dealer furnishes the Division with:

(1) An irrevocable letter of credit, certificate of deposit, unconditional guarantee contract, or a surety bond, issued by a solvent surety company within this state, equal to 110% of estimated monthly stamp liability, but not less than \$2,000, as required in Sections 210.05 and 210.08, Florida Statutes.

(a) Surety amounts will be reviewed every 6 months to verify compliance with this Rule. The surety amount will be based on the highest month's total liability.

(b) Liability for stamp purchases shall not exceed the surety amount.

(c) Stamping agents will provide the Division with a continuation certificate of the surety when the stamping agent pays their surety premium.

(d) If a surety instrument is cancelled, the stamping agent must cease operation.

(2) A letter from manufacturers and importers stating that they will ship to the applicant direct.

(3) A letter from the wholesale dealer requesting to be a stamping agent.

(4) If licensed as a stamping agent by another state, authorization from that state to purchase and affix that state's tax indicia within the State of Florida.

Specific Authority 210.10 FS. Law Implemented 210.01, 210.05, 210.08, 210.15, 210.40 History-New _____

61A-10.0022 Cigarette Distributing Agent – Requirements.

Any entity permitted as a cigarette distributing agent may not own or sell cigarettes. All product movement by the cigarette distributing agent is to be initiated by manufacturer or importer of the cigarettes who shall remain the owner of such cigarettes. A cigarette distributing agent may not be appointed as a stamping agent.

Specific Authority 210.10 FS. Law Implemented 210.01, 210.05, 210.085, 210.15 History-New _____

61A-10.005 Excise Tax, Imposition and Exemption.

The cigarette excise tax is imposed upon the sale, receipt, purchase, possession, handling, consumption, distribution and use of cigarettes in Florida, except as follows:

(1) Cigarettes sold at post exchanges, ship service stores, ship stores, and slop chests when such agencies are operated under regulations of the Armed Forces of the United States or the United States Coast Guard or NASA on Armed Forces Reservations or other Federal Bases and Exchanges in Florida or on ships of the Armed Force Merchant Marines of the United States, may be sold without the payment of the Florida excise tax to members of the Armed Services of the United States only; tax exempt sales may not be made by such agencies to anyone other than members of the Armed Services of the United States and cigarettes sold to other persons must be properly stamped and Florida excise tax due thereon paid.

(2) Cigarettes sold or given by charitable organizations to bona fide patients in regularly established veterans hospitals in Florida or inmates of a federal prison, for personal use or consumption of such patients or inmates, are exempt from the Florida excise tax; cigarettes sold or given to anyone other than a bona fide patient in such hospitals or other personal use of such patients or inmates of a federal prison, must be properly stamped and the Florida excise tax due thereon paid.

(3) Each wholesaler dealer or cigarette distributing agent ~~wholesale dealer~~ handling any such tax-free cigarettes shall attach to their his monthly report a copy of the invoice or sales slip substantiating any such tax-free sale. The invoice or sales

slip must be signed by a person authorized to receive such tax-free cigarettes. The name of any person authorized to receive and sign for such tax-free cigarettes must be submitted by the commanding officer of the military installation, hospital, or prison to the Bureau of Auditing office of the Division District Auditor of the District of the Division of Beverage wherein such military installation is situated.

Specific Authority 210.10(4) FS. Law Implemented U.S.C. Const. Art. VI cl. 2; 4 U.S.C. § 107; 14 U.S.C. §§ 1, 2; 42 U.S.C. §§ 2451, 2472; 210.03, 210.04(4)(a),(b), 210.05, 210.09, 210.11 FS. History-Repromulgated 12-19-74, Amended 3-1-76, Formerly 7A-10.05, 7A-10.005, Amended _____

61A-10.006 ~~Excise Tax~~ Stamps, Method of Affixing.

(1) The ~~excise tax~~ stamps affixed to packages of cigarettes for the purpose of evidencing payment of the excise tax due thereon must be placed on the bottom of the package of such cigarettes in such a manner that the stamps ~~or imprints~~ are clearly visible, legible and complete.

(2) Wholesale dealers within this state must affix or cause to be affixed such stamps within 10 calendar days of receipt of the cigarettes. All stamps affixed to packages containing fifty or more cigarettes must be placed on the packages in a manner so that such stamps will be destroyed when the packages are opened.

(3) Wholesale dealers within this state may not maintain stocks of unstamped cigarettes unless that part is identified for sale or distribution outside this state or intended as tax exempt sales as defined in Section 210.04(4), Florida Statutes. Such unstamped stock must be maintained separately and apart from stamped cigarettes.

(4) Wholesale dealers from outside the state must affix Florida tax stamps prior to shipping cigarettes into this state.

Specific Authority 210.10(4) FS. Law Implemented 210.04, 210.05, 210.06 FS. History-Repromulgated 12-19-74, Amended 3-1-76, Formerly 7A-10.06, Amended 3-15-90, 7-9-91, 1-7-92, Formerly 7A-10.006, Amended _____

61A-10.007 ~~Excise Tax~~ Stamps, Limitation of Use.

Stamping agents ~~Agents and wholesalers~~ are prohibited from affixing ~~excise tax~~ stamps to any packages of cigarettes not actually owned by such stamping agents ~~or wholesalers~~ unless written permission for such action is received from the Division.

Specific Authority 210.10(4) FS. Law Implemented 210.06, 210.05 FS. History-Repromulgated 12-19-74, Formerly 7A-10.07, 7A-10.007, Amended _____

61A-10.008 Refunds.

(1) No refund or credit will be made for ~~excise tax~~ stamps affixed to packages of cigarettes shipped from a wholesaler ~~dealer~~ to a manufacturer or importer unless such wholesale dealer furnishes the Division with an original affidavit issued by the manufacturer or importer acknowledging the receipt of the cigarettes evidentiary proof of such shipment is submitted by the wholesaler to the Division. Such an affidavit must be submitted with a completed DBPR form AB&T 4000A-004,

Application for Refund or Credit of Cigarette Stamps, incorporated herein by reference and effective (_____). The cancellation of cigarette tax stamps already affixed to damaged or unsaleable packages of cigarettes will be performed by the dealer or his authorized personnel and witnessed by agents or auditors of the Division of Beverage. An affidavit will be provided by the Division of Beverage agent or auditor for the amount of stamps cancelled and the dealer will apply for refund on forms prescribed by the Division for that purpose. Only upon receipt of a such affidavits properly executed application will the Division make such refunds or credits. Applications for refunds or credits and supporting affidavits must be filed with the Division within nine ~~three~~ months from the dates the shipments of such cigarettes were made as set forth in the affidavit.

(2) Unused stamps will be redeemed by the Division only in full rolls or partial rolls that can be re-sold to another stamping agent. It will be necessary to segregate unsaleable packages of stamped cigarettes according to stamp color since different discount rates will apply.

(3) Stamps misapplied to packages or stamps that become unusable may be destroyed by authorized employees of the Division and a credit or refund issued upon the submission of a completed DBPR form AB&T 4000A-004. Out of state stamping agents with misapplied Florida stamps must submit a sworn affidavit for misapplied or unusable stamps.

Specific Authority 210.10(4) FS. Law Implemented 210.11 FS. History—Amended 8-25-66, Repromulgated 12-19-74, Formerly 7A-10.08, 7A-10.008, Amended _____.

61A-10.009 Sample Packages of Cigarettes.

The Division may, in its discretion, authorize manufacturers and importers to distribute in the state sample packages of cigarettes containing not less than two (2) nor more than twenty (20) cigarettes without affixing any ~~excise tax~~ stamps; provided, the tax due on such sample cigarettes must be paid to the Division by the manufacturer or importer on or before the ~~tenth~~ (10th) calendar day of each month for all sample cigarettes distributed during the previous month. Reports shall be made on DBPR form AB&T 4000A-245, Manufacturer's and Importer's Report for Distribution of Samples, incorporated herein by reference and effective (_____). The manufacturer or importer shall submit to the Division, along with the report and payment of the excise tax, invoices covering all shipments of sample cigarettes for the preceding month. In those cases where the 10th calendar day falls on a Saturday, Sunday, or a legal holiday, reports and remittances shall be accepted as timely filed if postmarked or delivered to the Division on the following business day which is neither a Saturday, Sunday or legal holiday. As used in this rule, legal holiday means those days as designated in Section 110.117, Florida Statutes, and Federal holidays. Reports and payments covering sample cigarettes must be submitted to the Division at the central office in Tallahassee.

(1) The individual package of sample cigarettes must bear the words “COMPLIMENTARY – NOT FOR SALE – ALL APPLICABLE STATE TAXES HAVE BEEN PAID” or a similar statement which would indicate such cigarettes are not to be sold and that the taxes upon such cigarettes have been paid. The printing of such words shall be of contrasting colors and easily read upon the package.

(2) Sample packages of twenties ~~twenty's~~ (20's) may be sent directly to individuals, such as stockholders, retired or former employees and as a result of customer's complaints; provided, the manufacturer is able to produce evidence of the address where such quantities of sample packages of twenties ~~twenty's~~ (20's) were delivered. The volume of sample cigarettes to any one residence shall not exceed ~~three~~ (3) cartons or six hundred (600) cigarettes.

(3) Where sample packages of twenties ~~twenty's~~ (20's) and/or packages of lesser amounts made to resemble packages of twenties ~~twenty's~~ are distributed at random by representatives of the manufacturer or by any other persons hired by the manufacturer for distributional or promotional purposes, the manufacturer shall notify the Division in writing at a minimum of fifteen (15) calendar days prior to the beginning of the distributional or promotional date of such quantities, brands, and locations to be sampled.

(4) Sample packages containing twenty cigarettes which move through commercial channels to the consumer, such as “Buy one, get one free” or “Buy a carton, get two packs free” promotion, must have a Florida stamp affixed to the free goods by a qualified stamping agent.

Specific Authority 210.10(4) FS. Law Implemented 210.04(9), 210.09 FS. History—Repromulgated 12-19-74, Amended 3-1-76, 7-19-82, Formerly 7A-10.09, 7A-10.009, Amended _____.

61A-10.0091 Manufacturer's and Importer's Reporting Requirements.

Each manufacturer or importer shipping or causing to be shipped cigarettes into this state shall report such shipments to the Division on or before the 10th calendar day of each month for the previous month's shipments. Reports shall be made on the following DBPR forms:

(1) AB&T 4000A-250, Instate Cigarette Manufacturer's Report;

(2) ABT4000A-251, Out of State Cigarette Manufacturer's Report;

(3) ABT4000A-255, Instate Cigarette Importer's Receipt Report; and

(4) ABT4000A-256, Out of State Cigarette Importer's Report.

In those cases where the 10th calendar day falls on a Saturday, Sunday, or a legal holiday, monthly reports shall be accepted as timely filed if postmarked or delivered to the Division on the following business day which is neither a Saturday, Sunday or

legal holiday. As used in this rule, legal holiday means those days as designated in Section 110.117, Florida Statutes, and Federal holidays.

Specific Authority 210.10 FS. Law Implemented 210.09 FS. History—New

61A-10.010 Sales, Passenger Railroads and Other Carriers.

Railroads, passenger vessels, and airlines and other operators of dining cars, club cars, or pullman cars are permitted to sell unstamped cigarettes to bona fide travelers while in transit; provided, however, such firm must report all such sales for the previous month to the Division at the central office in Tallahassee on or before the tenth calendar day of each month. Such reports must be on DBPR form AB&T 4000A-220, Passenger Carrier Cigarette Report, incorporated herein by reference and effective () forms prescribed by the Division for that purpose and shall show all sales for the previous calendar month. A remittance for the amount of excise tax due the State on such sales must be submitted with the report. In those cases where the 10th calendar day falls on a Saturday, Sunday, or a legal holiday, reports shall be accepted as timely filed if postmarked or delivered to the Division on the following business day which is neither a Saturday, Sunday or legal holiday. As used in this rule, legal holiday means those days as designated in Section 110.117, Florida Statutes, and Federal holidays.

Specific Authority 210.10(4) FS. Law Implemented 210.09(2) FS. History—Repromulgated 12-19-74, Formerly 7A-10.10, 7A-10.010, Amended

61A-10.011 Cigarette Wholesale Dealers, Monthly Reports.

(1) Cigarette wholesalers dealers, cigarette distributing agents, and exporters vending machine operators shall maintain complete and accurate records of all purchases and sales of cigarettes within or without the State. On or before the 10th calendar tenth day of each month, such wholesalers dealers, cigarette distributing agents, and exporters vending machine operators shall report to the Division, on forms prescribed for that purpose, all such purchases and sales of cigarettes for the preceding month. Monthly reports shall be made on the appropriate and applicable forms which are incorporated herein by reference and effective (); DBPR form AB&T 4000A-200 Cigarette Distributing Agent's Report, DBPR form AB&T 4000A-205 Taxable Cigarette Wholesale Dealers Report, DBPR form AB&T 4000A-210 Cigarette Exporters Report, DBPR form AB&T 4000A-225 Tax Paid Cigarette Wholesale Dealers Report, or DBPR form AB&T 4000A-235 Common Carrier Monthly Report. Such reports shall be prepared in triplicate; the original and one copy of the report shall be filed with the District Auditor of the District of the Division of Beverage wherein the wholesaler's dealer's, cigarette distributing agent's, or exporter's vending

machine operator's place of business is located. The third copy of the report shall be maintained by the wholesaler dealer, cigarette wholesale dealer or exporter vending machine operator and kept as part of their his accounting records for a period of three years.

In those cases where the 10th calendar day falls on a Saturday, Sunday, or a legal holiday, monthly reports shall be accepted as timely filed if postmarked or delivered to the Division on the following business day which is neither a Saturday, Sunday or legal holiday. As used in this rule, legal holiday means those days as designated in Section 110.117, Florida Statutes, and Federal holidays.

(2) If the Division determines that any amount of gross tax is due from the monthly reports, the Division shall notify the permit holder in writing by personal delivery or U.S. Mail, stating that the permit holder has 10 calendar days from the receipt of written notification in which to correct the report and payment amount. If the permit holder does not correct the report and payment within the allotted time, the Division will assess the amount due together with interest and penalties and initiate administrative proceedings.

Specific Authority 210.09, 210.10(4) FS. Law Implemented 210.01, 210.09(2),(3), 210.13 FS. History—Repromulgated 12-19-74, Formerly 7A-10.11, 7A-10.011, Amended

61A-10.0111 Cigarette Audit.

(1) The term audit is defined in Rule 61A-10.001, F.A.C.

(2) When the Division performs an audit on the permit holder, it shall determine the amount of tax due for the audited period. If the Division determines that any amount of additional gross tax is due, it shall notify the permit holder in writing by personal delivery or U.S. Mail, stating that the permit holder has 10 calendar days from the receipt of written notification in which to provide additional information to the Division. If the permit holder does not correct the audit finding and make payment within the allotted time, the Division will assess the proper amount due together with interest and penalties and initiate administrative proceedings according to Rule 61A-10.027, F.A.C.

(3) To determine whether the accounting records of the permit holder are reasonably accurate, the Division may use the formula of beginning inventory plus purchases for the period, less tax exempt sales, less ending inventory, to ascertain taxable sales for the period. Adjustments made to this formula will be based on factual and substantiated evidence. The results of the formula will represent sales transactions as defined in Section 210.01(3), Florida Statutes, for the period under review.

Specific Authority 210.09, 210.10 FS. Law Implemented 210.01, 210.09, 210.13 FS. History—New

61A-10.0112 Required Documentation for Imported Cigarettes.

Importers must maintain the following documentation and provide it to the Division upon request:

(1) A copy of the importers permit issued by the Internal Revenue Service;

(2) A copy of the U.S. Customs form for the cigarettes showing tax information required by the federal taxing authorities; and

(3) A certified document demonstrating compliance with federal labeling regulations and ingredient reporting.

Specific Authority 210.10 FS. Law Implemented 210.09, 210.185 FS. History—New _____.

61A-10.012 Manufacturers' and Importers' Representatives, Reports and Responsibilities.

Manufacturers' and importers' representatives are considered an extension of their respective manufacturer or importer.

(1) Manufacturers' and importers' representatives may only sell or distribute cigarettes to a wholesale dealer or importer; however, the Division has the discretion to authorize manufacturers' and importers' representatives to distribute free sample packages of cigarettes consistent with Rule 61A-10.009, F.A.C. Manufacturers' representatives are required to submit the same monthly report as are cigarette wholesalers. Manufacturers' representatives are responsible for all activities of their subordinate personnel insofar as these activities concern the sale, purchase, distribution and handling of cigarettes. A violation of any of the Florida laws concerning cigarettes by a manufacturer's representative or any of his subordinate personnel shall be sufficient grounds for the division to prohibit such person from acting in the capacity of a manufacturer's representative.

(2) Manufacturers and Importers shall report their respective representatives' activities as part of their required reports as specified in Rule 61A-10.0091, F.A.C. Exceptions to this rule and to Rule 61A-10.013, Florida Administrative Code, shall be granted upon written request to the division. Upon approval of an exception, the manufacturers' representatives will not be required to personally submit monthly reports to the division. The wholesale dealer who records and reports the manufacturers' representatives' retail sales is responsible as the agent for the manufacturers' representatives for the accurate reporting of all cigarettes to retailers by county sales to the division. Exceptions will not be granted absent a written commitment from each wholesaler providing cigarettes to manufacturers' representatives to the effect that reporting which would otherwise be required of the manufacturer's representative will be made by the wholesaler. The permittee must notify the division of revocation of any agreement regarding monthly reporting of sales by manufacturers' representatives, at least 30 days prior to the effective date of the revocation.

Specific Authority 210.10(+) FS. Law Implemented 210.01(+6), 210.085, 210.09 FS. History—Repromulgated 12-19-74, Formerly 7A-10.12, Amended 1-24-91, 8-28-91, Formerly 7A-10.012, Amended _____.

61A-10.013 Transactions, Wholesalers Dealers, and Manufacturers' and Importers' Representatives.

(1) Cigarette transactions between manufacturers' and/or importers' representatives and qualified wholesalers dealer are to be reported individually. It will be the responsibility of each wholesaler and manufacturer's and importer's representative to issue individual sales slips for all such transactions.

(2) Any wholesaler dealer making sales to or purchases from a manufacturer's or importer's representative must list on the his monthly report the name and permit number of the manufacturer's or importer's representative making the purchase or sale, permit number and the name of the manufacturer or importer on whose behalf the manufacturer's representative is acting. Each such sale or purchase is to be reported separately.

Specific Authority 210.10(+) FS. Law Implemented 210.09(2), 210.01(+6) FS. History—Repromulgated 12-19-74, Amended 2-1-76, Formerly 7A-10.13, 7A-10.013, Amended _____.

61A-10.014 Wholesalers Dealers, Purchase for Resale Prohibited.

Cigarette wholesalers dealers and vending machine operators are prohibited from purchasing cigarettes from retail cigarette dealers for the purpose of resale; provided, however, that cigarettes may be returned to a wholesaler's dealer's inventory by retailers dealers if such returns are reported on the wholesaler's dealer's monthly report.

Specific Authority 210.10(+) FS. Law Implemented 210.15(+)(+) FS. History—Repromulgated 12-19-74, Formerly 7A-10.14, 7A-10.014, Amended _____.

61A-10.015 Transfer, Unstamped Cigarettes.

Specific Authority 210.10(1) FS. Law Implemented 210.06(1) FS. History—Repromulgated 12-19-74, Amended 3-1-76, Formerly 7A-10.15, Amended 3-15-90, Formerly 7A-10.015, Repealed _____.

61A-10.016 Manufacturer, Importer, Wholesaler Dealer, Cigarette Wholesale Dealer or Exporter, Permit Changes.

Specific Authority 210.10(1) FS. Law Implemented 210.15(7) FS. History—Repromulgated 12-19-74, Amended 3-1-76, Formerly 7A-10.16, 7A-10.016, Repealed _____.

61A-10.017 Direct Drop Shipments, Prohibition, Exception, and Excise Taxes.

(1) No manufacturer or importer may ship cigarettes directly to any retail dealer in the State of Florida; and no wholesaler dealer may place orders with a manufacturer or importer for a direct drop shipment of cigarettes to a retail dealer.

(2) Whenever cigarettes are shipped by a vendor from outside the state directly to individual consumers in Florida, the out-of-state vendor has a responsibility to provide information to the Division as required by the Jenkins Act, Title 15, Chapter 10A, Section 376, United States Code. Any

person selling or transferring cigarettes for profit in interstate commerce to other than a wholesale dealer must first report to the Division their intent to sell into Florida by providing their name and trade name, and the address of their places of business. By the 10th calendar day of each month the person must report to the Division all sales or transfers of cigarettes shipped into Florida by providing a memorandum or copy of the invoice covering each and every shipment made during the previous calendar month, and including the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

In those cases where the 10th calendar day falls on a Saturday, Sunday, or a legal holiday, reports shall be accepted as timely filed if postmarked or delivered to the Division on the following business day which is neither a Saturday, Sunday or legal holiday. As used in this rule, legal holiday means those days as designated in Section 110.117, Florida Statutes, and Federal holidays.

(3) Any person in possession of any cigarettes upon which a tax is imposed and upon which that tax has not been paid is personally liable for the amount of tax imposed. Whenever cigarettes are shipped from an out-of-state vendor to an individual consumer in Florida, the person receiving the cigarettes is responsible for the tax on the cigarettes and the payment of the tax to the state. DBPR Form AB&T 4000A-215, Individual Cigarette And/Or Tobacco Product Excise Tax Report, incorporated herein by reference and effective () is used to report such cigarettes and for payment of the applicable excise taxes due to the Division.

Specific Authority 210.10(4) FS. Law Implemented 210.02(6), 210.085 FS. History—Repromulgated 12-19-74, Formerly 7A-10.17, 7A-10.017, Amended _____.

61A-10.018 Invoices or Daily Sales Tickets, Cigarette Sales to Retail Dealers.

(1) Cigarette wholesalers ~~dealers and vending machine operators~~ are required to keep sales tickets or invoices covering all sales of cigarettes to retail dealers.

~~(2) Cigarettes placed into a vending machine owned by a vending machine operator holding a cigarette wholesale dealer permit shall not be subject to the provisions of this section.~~

~~(2)(3) Invoices of cigarette sales by wholesale dealers to retail tobacco products dealers must include:~~

~~(a) Seller's business name, address, and cigarette wholesale dealer's state wholesale dealer's permit number;~~

~~(b) Invoice number;~~

~~(c)(b) Purchaser's business name;~~

~~(d)(e) Purchaser's name (individual, partnership, or corporation);~~

~~(e)(d) Business address of purchaser, including county name or numeric code as found in the retail tobacco products dealer state permit number, and required under Sections 218.215, 218.23, 218.245, 218.25, and 218.26, Florida Statutes;~~

~~(f)(e) Retail tobacco products dealer state permit number;~~

~~(g)(f) Date of delivery;~~

~~(h)(g) Number of packages or cartons of each brand sold or delivered; and~~

~~(i)(h) If products other than cigarettes are located on an invoice to the retailer ~~dealer~~, cigarettes shall be listed following one another in uninterrupted order.~~

~~(3)(4) Invoices which include both cigarettes and other tobacco products must meet the minimum requirements set forth in this rule and Rule 61A-10.053 61A-10.0181, F.A.C.~~

Specific Authority 210.10(4) FS. Law Implemented 210.09(4)(a), 210.20, 210.60, 218.215, 218.23, 218.245, 218.25, 218.26, 569.007 FS. History—Repromulgated 12-19-74, Amended 3-1-76, Formerly 7A-10.18, 7A-10.018, Amended 12-20-94, _____.

61A-10.0181 Invoices, Other Tobacco Products Sales to Retail Dealers.

Specific Authority 210.10(1) FS. Law Implemented 210.09(4)(a), 210.60, 218.215, 218.23, 218.245, 218.25, 218.26, 569.007 FS. History—Repromulgated 12-19-74, Amended 3-1-76, Formerly 7A-10.18, 7A-10.018, Amended 12-20-94, Repealed _____.

61A-10.020 Vending Machines, Permits and Restrictions.

~~(1) Vending machines may only be operated by retail dealers. Each machine dispensing or vending cigarettes must display at all times at least one package in each column of cigarettes therein which shall be arranged so that the cigarette excise tax stamps or meter imprints thereon are clearly and directly visible from the outside of the machine.~~

~~(2) Vending machine operators must possess a Florida retail dealer permit issued by the Division.~~

~~This permit shall cover the vending machine operator's primary business location as well as registered vending machines owned or operated by the vending machine operator. The premises on which a vending machine is located or placed must also possess a Florida retail dealer permit issued by the Division.~~

~~(3) Each vending machine dispensing cigarettes must be registered with the Division and have affixed thereto an identification sticker, DBPR form AB&T 4000A-008, Cigarette Vending Machine Identification, incorporated herein by reference and effective (), furnished by the Division.~~

~~(4)(2) No vending machines dispensing cigarettes may sell or offer for sale other products which are labeled or packaged in such a manner to resemble, represent or have a tendency to misrepresent cigarette products being sold or offered for sale unless notice is clearly provided that the product being dispensed is not a cigarette product. Notice is sufficient if displayed on or adjacent to the individual lever depressed or extended by the consumer to receive the product.~~

Specific Authority 210.10(1), 569.009 FS. Law Implemented 210.01, 210.07(4), 210.085, 569.003 FS. History—Amended 10-20-72, Repromulgated 12-19-74, Amended 3-1-76, Formerly 7A-10.20, Amended 1-16-89, Formerly 7A-10.020, Amended _____.

61A-10.021 Vending Machines, Reports Sales and Returns.

Vending machine operators are required to furnish the Division, DBPR form AB&T 4000A-240 Monthly Changes of Vending Machine Locations, incorporated herein by reference and effective () and DBPR form AB&T 4000A-241 Annual Schedule of Vending Machine Locations, incorporated herein by reference and effective (), on July 1st of each year. All wholesalers who operate cigarette vending machines are required to report all cigarettes placed in vending machines, including those placed in the machine during the initial installation of the machine, as cigarettes sold, if any cigarettes are removed from a vending machine, the packages of cigarettes removed shall be returned to the wholesaler's regular inventory and must be reported on Page 12, Line 4 of the wholesaler's monthly report as cigarettes previously sold. On Page 12, Schedule C, of the report the wholesaler must report the number of packages of cigarettes so returned indicating county area, and the name of each county area from which such returns were made must be listed on Schedule C, reflecting the number of packages of cigarettes returned from each.

Specific Authority 210.10(1) FS. Law Implemented 210.09(2),(4)(a) FS. History—Repromulgated 12-19-74, Amended 3-1-76, Formerly 7A-10.21, 7A-10.021, Amended _____.

61A-10.026 Sale of Stamped, Untaxed Cigarettes by Stamping Agents or Wholesale Dealers to Indians for Retail Sale, Reporting.

(1) Stamping agents or wholesale dealers may sell stamped but untaxed cigarettes only to Federally recognized the Seminole Indian Tribes or to an enrolled member thereof exclusively for retail sale on Federally recognized Seminole Indian Reservations or trust lands when such cigarettes have Division approved stamps affixed are stamped with meter imprint and ink or water applied stamp designated and approved by the Division. Federal recognized Indian Tribes are those Indian tribes published in the Federal Register of the Department of the Interior, Bureau of Indian Affairs. For purposes of this section, stamped but untaxed cigarettes will be referred to as "Indian cigarettes."

(2) Indian cigarettes Such cigarettes stamped but untaxed cigarettes may be sold only to a retail business exclusively owned and operated by a Federally recognized the Seminole Indian Tribe or an enrolled member thereof for retail sale exclusively by such Tribe or member on Seminole Reservation or trust lands.

(3) Each designated stamping agent or wholesaler selling any such stamped but untaxed cigarettes to a Federally recognized the Seminole Indian Tribe or to an enrolled member thereof shall obtain and provide to the Division the following report and records:

(a) The invoice or sales slip substantiating any such tax-free sale ~~which invoice or sales slip~~ shall be attached to the monthly report. The invoice or sales slip must be signed by a person authorized to receive such stamped but untaxed cigarettes.

(b) The name of any person authorized to receive and sign for such tax-free cigarettes shall be submitted by the designated stamping agent ~~or wholesaler~~ to the Division, District Auditor of the District of the Division of Alcoholic Beverages and Tobacco wherein the Seminole Indian Reservation or trust lands involved are located prior to any sale;

(c) A written statement which sets forth all persons or entities holding a direct or indirect interest in the retail business, located on Indian Reservations or trust lands, purchasing Indian cigarettes such cigarettes and all persons or entities entitled to share in any profits or income of the retail business purchasing such cigarettes. This statement shall be obtained prior to any sales of stamped but untaxed cigarettes to any retail business located on Indian Seminole Reservations or trust lands ~~and shall be amended by similar Indian interest or entitlement to share in profits or income. Any changes in interest or entitlement to share of profits or income shall be reported to the Division.~~ Such statements shall be kept on file for a period of three years and shall be available for inspection and review by the Division.

(4) All inventories of cigarettes bearing stamps meter imprints which are to be sold to a Federally recognized Indian Tribe or an enrolled member thereof for sale on Seminole Indian Reservations or trust lands must be kept segregated in a separate and secure bonded area of the wholesaler's dealer's warehouse so as not to allow the commingling of taxed cigarettes bearing stamps meter imprints with untaxed cigarettes bearing stamps meter imprints. Also, A log of all receipts and withdrawals must be maintained for the secured area by the stamping agent.

(5) No stamping agent ~~or wholesaler~~ shall be authorized to receive ~~from any retailer, wholesaler, Indian outlet, or manufacturer's representative~~ any Indian cigarettes which have been spoiled, damaged, or become stale ~~for any reason~~ unless such stamping agent wholesaler has originally applied the stamp metering imprints to the Indian cigarettes.

(6) All stamping agents ~~or wholesalers~~ who apply stamps to cigarettes must separate taxable cigarettes from meter imprints to taxable cigarettes and nontaxable Indian cigarettes must separate each of said classification of cigarettes prior to any witnessing by a Division of Alcoholic Beverages and Tobacco representative of such cigarettes for cancellation of cigarettes tax stamps by the Division, meter impressions or stamp india. Since there is no tax paid there can be no refund of tax for spoiled, damaged, or stale Indian cigarettes.

(7) Any stamping agent or wholesaler purchasing cigarettes for resale to the Seminole Indian Tribe or an enrolled member thereof on Seminole Indian Reservation or trust lands from other than a manufacturer of cigarettes licensed by the federal government must submit with their monthly cigarette report, a certified copy of the monthly report prepared by the shipper of such cigarettes into the State of Florida, which is required to be submitted to the taxing authority in the state in which the shipper is located.

(7)(8) Any sales of stamped but untaxed cigarettes by a stamping agent or wholesaler not in strict conformity with the provisions of this rule shall be deemed a taxable sale and such stamping agent or wholesaler shall be liable for payment of such taxes.

Specific Authority 210.09, 210.10(1), 210.11 FS. Law Implemented U.S.C. Const. Art. I § 8, cl. 3, U.S.C. Const. Art. VI cl. 2, 25 U.S.C. §§ 261-264; 210.05(5), 210.09(2) FS. History—New 10-14-79, Formerly 7A-10.26, Amended 12-31-85, Formerly 7A-10.026, Amended _____.

61A-10.027 Interest on Excise Tax; Due Dates.

(1) Excise taxes on cigarettes assessed pursuant to the accounting records and returns of the stamping agent ~~seller or dealer~~ are due not later than the 10th calendar day of the month following the calendar month in which the taxes were incurred. Interest on taxes assessed shall accrue from that date.

(2) Excise taxes on cigarettes owed by a stamping agent ~~seller or dealer~~ which are assessed as a result of a ~~D~~ivision audit shall become due not later than the 10th calendar day of the month following the calendar month in which the ~~D~~ivision determines the taxes were incurred. Interest on taxes assessed shall accrue from that date.

(3) Excise taxes on cigarettes owed by a stamping agent ~~seller or dealer~~ which are assessed as a result of a ~~D~~ivision audit under circumstances where the ~~D~~ivision is unable to allocate the taxes to any particular month shall be due not later than the 10th calendar day of the month following the calendar month which the ~~D~~ivision makes its assessment. Interest on taxes owed shall accrue from that date.

(4) In those cases where the 10th calendar day falls on a Saturday, Sunday, or a legal holiday, remittances shall be accepted as timely filed if postmarked or delivered to the Division on the following business day which is neither a Saturday, Sunday or legal holiday. As used in this rule, legal holiday means those days as designated in Section 110.117, Florida Statutes, and Federal holidays.

Specific Authority 210.10 FS. Law Implemented 210.02(6) FS. History—New 10-31-89, Formerly 7A-10.027, Amended _____.

61A-10.031 New Off Premise Storage of Unstamped Cigarettes.

Specific Authority 210.10(1) FS. Law Implemented 210.09 FS. History—New 3-15-90, Formerly 7A-10/031, Repealed _____.

PART II

Tobacco Products Division Rules

61A-10.050 Definitions.

“Tobacco Products Wholesale Dealer” also known as “TWD” means a “distributor” as defined in Section 210.25(4), Florida Statutes.

Specific Authority 210.75 FS. Law Implemented 210.01, 210.25 FS. History—New _____.

61A-10.051 Excise Tax Exemption, Reports.

Excise taxes imposed by Section 210.30, Florida Statutes, shall not apply to the following:

(1) Tobacco products sold at post exchanges, ship service stores, ship stores, slop chests, or other outlets to members of the armed services of the United States when such establishments are operated under the regulations of the Army, Navy, or Air Force of the United States, or the United States Coast Guard or NASA on such reservations in this state; however, it is unlawful for anyone, including members of the armed services of the United States, to purchase such tax-exempt tobacco products for resale within the State of Florida.

(2) Tobacco products shipped directly from the manufacturer or importer to facilities operated by the Federal Bureau of Prisons, located on lands solely owned by the United States government, for consumption by such inmates. Manufacturers or importers shipping such tobacco must notify the Division each month of the facility name and the quantity of tobacco products shipped.

(3) Each tobacco products wholesale dealer selling such tax-free tobacco products shall attach to the monthly report a copy of the invoice substantiating such tax-free sale. The invoice must be signed by a person authorized to receive such tax-free tobacco products. The name of any person authorized to receive and sign for such tax-free tobacco products must be submitted by the commanding officer of the military installation to the auditor supervisor for the district of the Division where the military installation is located.

Specific Authority 210.55, 210.75 FS. Law Implemented U.S.C. Const. Art. VI cl. 2; 4 U.S.C. § 107; 14 U.S.C. §§ 1, 2; 42 U.S.C. §§ 2451, 2472; 210.30 FS. History—New _____.

61A-10.052 Monthly Reports, Required.

(1) Licensed tobacco products wholesale dealers and manufacturers, both inside and outside this state shall keep complete and accurate records and make full and complete reports reflecting the detail of all transactions on the appropriate and applicable forms furnished by the Division, incorporated herein by reference and effective (____); DBPR form AB&T 4000A-300 In-State Tobacco Products Wholesale Dealer’s Report, DBPR form AB&T 4000A-305 Out-Of-State Tobacco Products Wholesale Dealer’s Report, and DBPR form AB&T 4000A-310 Tobacco Products Manufacturer’s and Importer’s Report.

(2) Such required reports and remittances shall be deemed to be filed in a timely manner and qualify the tobacco products wholesale dealer for collection allowances under Section 210.55, Florida Statutes, when the report and remittance are received by the Division on or before the 10th calendar day of the month following the month being reported. In those cases where the 10th calendar day falls on a Saturday, Sunday, or a legal holiday, monthly reports and remittances shall be accepted as timely filed if postmarked or delivered to the Division on the following business day which is neither a Saturday, Sunday or legal holiday. As used in this rule, legal holiday means those days as designated in Section 110.117, Florida Statutes, and Federal holidays.

(3) Mail containing the monthly report or the excise tax remittance must bear a date mark stamp affixed by the U.S. Postal Service, or other established businesses engaged in the delivery of mail, to authenticate the mailing date. Postage meters owned, leased or operated by the tobacco products wholesale dealer or manufacturer shall not serve as proof of mailing date without supporting affidavits, letters or records by the tobacco products wholesale dealer or manufacturer that the reports were placed in the U.S. Mail, or other established businesses engaged in the delivery of mail, on or before the 10th calendar day of the month.

(4) Failure of the tobacco products wholesale dealer to report and remit excise taxes as required shall cause the tobacco products wholesale dealer to be deemed delinquent and to forfeit all rights and privileges of collection allowances authorized by Chapter 210, Florida Statutes.

(5) If reports are physically delivered to the Division after the 10th calendar day of the month for reasons beyond the tobacco products wholesale dealer's control, the Division may consider affidavits and other supporting documentation in determining whether or not an exception should be made to approve the collection allowance.

(6) Tobacco products wholesale dealers receiving tobacco products from manufacturers shall be required to furnish the Division with a list of shipments received each month on forms provided by the Division. Manufacturers shipping tobacco products to Florida tobacco products wholesale dealers shall be required to furnish the Division with a list of shipments made each month on forms provided by the Division.

(7) The Division may authorize manufacturers to distribute sample packages of tobacco products within the state and provide tobacco products to employees and stockholders; provided, such samples and gifts are reported on DBPR form AB&T 4000A-245, Manufacturer's and Importer's Report for Distribution of Samples, incorporated herein by reference and effective (), furnished by the Division. The report shall be

remitted to the Division along with any applicable excise tax payment on or before the 10th calendar day of each month for samples or gifts distributed during the previous month.

(8) If the Division determines that any amount of gross tax is due from the taxpayer, the Division shall notify the taxpayer in writing by personal delivery or U.S. Mail, stating that the taxpayer has 10 calendar days from the receipt of written notification in which to correct the report. If the taxpayer does not correct the report within the allotted time then the Division will notify the taxpayer in writing by personal delivery or U.S. Mail, that it intends to assess the amount due together with interest, penalties, disallowance of discount, and initiate administrative proceedings.

(9) When the Division performs an audit on the taxpayer, it shall determine the tax due. If the Division determines that any amount of gross tax is due from the taxpayer, it shall notify the taxpayer in writing, stating that the taxpayer has 10 calendar days from the receipt of written notification in which to provide the Division with additional information. After 10 calendar days, the Division will notify the taxpayer in writing, that it intends to assess the proper amount due together with interest, penalties, disallowance of discount, and initiate administrative proceedings.

Specific Authority 210.55, 210.75 FS. Law Implemented 210.55, 210.60 FS. History—New _____.

61A-10.053 Records Maintenance.

Every manufacturer, tobacco products wholesale dealer and retailer must preserve all books, records, sales/purchase invoices, and other documents as required by Section 210.60, Florida Statutes. Such records shall be preserved for a period of 3 years. Records may be maintained on optical storage/retrieval systems capable of being viewed, retrieved and reproduced upon request by the Division.

Specific Authority 210.75 FS. Law Implemented 210.60 FS. History—New _____.

61A-10.054 Invoices, Tobacco Products Sales to Retailers.

(1) Tobacco products wholesale dealers are required to keep sales tickets or invoices covering all sales of tobacco products to retailers. Invoices of tobacco products sales by tobacco products wholesale dealers to retailers shall include:

(a) Tobacco products wholesale dealer's name, address, and state permit number;

(b) Invoice number;

(c) Purchaser's business name;

(d) Purchaser's name (individual, partnership, or corporation);

(e) Purchaser's business address;

(f) Retailer's state permit number;

(g) Date of delivery;

(h) Number of units of each brand of tobacco products, wholesale price per unit, and discount per unit sold to the retailer;

(i) If items other than tobacco products are listed on the invoice to the retailer, tobacco products shall be listed following one another in uninterrupted order; and

(j) In addition to the above requirements, an out of state tobacco products wholesale dealer licensed by the state of Florida shall list discounts separate and apart from the wholesale price of each unit. All discounts and free units attached to units being sold shall not reduce the unit wholesale price for tax purposes.

(2) Invoices which include both cigarettes and other tobacco products must meet the minimum requirements set forth in this rule and Rule 61A-10.018, F.A.C.

Specific Authority 210.75 FS. Law Implemented 210.25, 210.60 FS. History—New _____.

61A-10.055 Excise Tax Refunds.

(1) To receive a refund or credit for tobacco products upon which the excise tax has been paid and the products have been subsequently transferred to an out-of-state location, or returned to a manufacturer or importer, or been destroyed, the tobacco products wholesale dealer must provide the following documentation to the Division.

(a) Tobacco products shipped back to a manufacturer or importer must have an affidavit or credit memo from the manufacturer or importer stating that they have received the tobacco products.

(b) Tobacco products sold to tobacco products wholesale dealers, retailers, or consumers located outside of the state of Florida must have a sales invoice listing the quantity and type of tobacco products sold as well as the name, address, and telephone number of the out-of-state destination.

(c) Destroyed tobacco products must be witnessed by an agent of the Division and a copy of the signed destruction form must be provided to the Division.

(2) The amount of the tax reduction can be taken on the DBPR Form AB&T 4000A-300, Instate Tobacco Products Wholesale dealer's Report incorporated herein by reference and effective (_____), by reporting the transaction on the appropriate details page of the report.

(3) In lieu of taking the deduction on the monthly report, the tobacco products wholesale dealer can request that the Division pay the refund or credit back to them.

Specific Authority 210.75 FS. Law Implemented, 210.25, 210.67 FS. History—New _____.

PART III CIGARETTE AND TOBACCO PRODUCTS PERMIT RULES

61A-10.080 Application for Cigarette Permit, Manufacturer or Importer.

(1) In order to be permitted as a manufacturer or importer, or to make changes to an existing manufacturer or importer permit, a completed application must be submitted to and approved by the Division. A completed application shall consist of the following:

(a) Properly executed application on form, DBPR ABT-6024 Application for Wholesale Cigarette Permit, incorporated herein by reference and effective (____);

(b) Payment of the permit fee of \$100;

(c) A copy of a Federal permit to manufacture or import cigarettes; and

(d) If the location for any permit is in the state, the applicant must submit to the Division a sketch of the premises along with a right of occupancy for the location.

(2) A separate and complete application must be made for each place of business located within this state. Absent such a place of business in this state a permit is required for wherever its principal place of business is located.

(3) Permits remain in effect until July 1st following their issuance, or until suspended or revoked by the Division, or until surrendered by the permit holder.

(4) Prior to the expiration of the permit, the Department of Business and Professional Regulation will send permittees a renewal notice. The permittee shall comply with the terms of the renewal notice and submit a renewal fee of \$100 prior to June 30th of each year. It is the permittee's responsibility to timely renew a permit. Failure to receive the renewal notice from the Department of Business and Professional Regulation shall not excuse a permittee from penalties associated with late renewal.

(5) The Division shall assess delinquent renewal penalties on permit holders who fail to timely renew their permits. The Division will use the postmark date as evidence of delinquency. Any renewal postmarked after the due date will be considered delinquent and must pay the applicable delinquent renewal penalty in addition to the renewal fee to the Division prior to the permit being renewed. A penalty of \$20 will be assessed for each month or part of a month of such delinquency. Any permit not renewed within 60 days of its expiration shall be cancelled by the Division, unless the permit is involved in litigation. Furthermore, the Division may renew a permit after the 60 days for good and sufficient cause.

(6) A manufacturer or importer permit may not be transferred to a new owner.

(7) The Division may allow a permit to be moved to another location. To request that a permit be moved, a permit holder must follow the procedure set out in paragraph 61A-10.084(1)(b), F.A.C.

(8) If requested and upon application for a permit, the Division shall issue an initial temporary permit to any new applicant who has filed a complete application which does not on its face provide for denying a permit. The initial temporary permit will be valid for up to 90 days and may be extended by the Division for up to an additional 90 days. If the applicant is denied a permit, the initial temporary permit will cease to be valid on that date. The initial temporary permit fee is \$100, which is separate from the permit fee and which shall be submitted to the Division upon request of the initial temporary permit.

Specific Authority 210.10, 210.15 FS, Law Implemented 210.15, 210.151, 210.1605 FS, History--New _____.

61A-10.081 Application for Cigarette Permit, Wholesale Dealer, Exporter, or Cigarette Distributing Agent.

(1) In order to be permitted as a wholesale dealer, exporter, or cigarette distributing agent, or to make changes to an existing wholesale dealer permit, exporter permit, or cigarette distributing agent permit, a completed application must be submitted to and approved by the Division. A completed application shall consist of the following:

(a) Properly executed application on form, DBPR ABT-6024 Application for Wholesale Cigarette Permit, incorporated herein by reference and effective (_____);

(b) A set of fingerprints for each applicant and for any person or persons interested directly or indirectly with the applicant in the business for which the permit is being sought. When making changes to an existing permit, fingerprints will only be required for new applicants and for any new person or new persons interested directly or indirectly with the business for which the permit is changed;

(c) Payment of the permit fee of \$100; and

(d) If the location for any permit is in the state, the applicant must submit to the Division a sketch of the premises along with a right of occupancy for the location.

(2) A separate and complete application must be made for each place of business located within this state. Absent such a place of business in this state a permit is required for wherever its principal place of business is located.

(3) Permits remain in effect until July 1st following their issuance, or until suspended or revoked by the Division, or until surrendered by the permit holder.

(4) Prior to the expiration of the permit, the Department of Business and Professional Regulation will send permittees a renewal notice. The permittee shall comply with the terms of the renewal notice and submit a renewal fee of \$100 prior to June 30th of each year. It is the permittee's responsibility to timely renew a permit. Failure to receive the renewal notice

from the Department of Business and Professional Regulation shall not excuse a permittee from penalties associated with late renewal.

(5) The Division shall assess delinquent renewal penalties on permit holders who fail to timely renew their permits. The Division will use the postmark date as evidence of delinquency. Any renewal postmarked after the due date will be considered delinquent and must pay the applicable delinquent renewal penalty in addition to the renewal fee to the Division prior to the permit being renewed. A penalty of \$20 will be assessed for each month or part of a month of such delinquency. Any permit not renewed within 60 days of its expiration shall be cancelled by the Division, unless the permit is involved in litigation. Furthermore, the Division may renew a permit after the 60 days for good and sufficient cause.

(6) A wholesale dealer permit, exporter permit, or cigarette distributing agent permit may not be transferred to a new owner.

(7) The Division may allow a permit to be moved to another location. To request that a permit be moved, a permit holder must follow the procedure set out in paragraph 61A-10.084(1)(b), F.A.C.

(8) If requested and upon application for a permit, the Division shall issue an initial temporary permit to any new applicant who has filed a complete application which does not on its face provide for denying a permit. The initial temporary permit will be valid for up to 90 days and may be extended by the Division for up to an additional 90 days. If the applicant is denied a permit, the initial temporary permit will cease to be valid on that date. The initial temporary permit fee is \$100, which is separate from the permit fee and which shall be submitted to the Division upon request of the initial temporary permit.

Specific Authority 210.10, 210.15 FS, Law Implemented 210.01, 210.15, 210.151, 210.1605 FS, History--New _____.

61A-10.082 Application for a Tobacco Products Wholesale Dealer Permit.

(1) A tobacco products wholesale dealer permit is required by any entity acting as a distributor as defined in subsection 61A-10.050(2), F.A.C. and Section 210.25(4), Florida Statutes 2005.

(2) In order to be permitted as a tobacco products wholesale dealer, or to make changes to an existing permit, a completed application must be submitted to and approved by the Division. A completed application shall consist of the following:

(a) Properly executed application on form, DBPR ABT-6005 Application for Tobacco Products Wholesale Dealer's Permit, incorporated herein by reference and effective (_____).

(b) Payment of the permit fee of \$25.

(c) If the location for any permit is in the state, the applicant must submit to the Division a sketch of the premises along with a right of occupancy for the location.

(d) Submission of a surety bond issued by a surety company authorized to do business in Florida in the amount of no less than \$1,000. The Division shall have discretion in requiring a larger bond amount if the minimum is insufficient to fully protect the state.

(3) A separate and complete application must be made for each place of business the distributor proposes to engage in business. The applicant may provide the Division with one bond in an amount determined by the Division for all applications made by the distributor.

(4) The permit shall expire on June 30th of each year. The Department of Business and Professional Regulation will send out renewal notices to permittees prior to the expiration of the permit. The permittee shall comply with the terms of the renewal notice and submit the renewal fee of \$25 prior to July 1st of each year. It is the permittee's responsibility to timely renew a permit. Failure to receive the renewal notice from the Department of Business and Professional Regulation shall not excuse a permittee from penalties associated with late renewal.

(5) The Division shall assess delinquent renewal penalties on permit holders who fail to timely renew their permits. The Division will use the postmark date as evidence of delinquency. Any renewal postmarked after the due date will be considered delinquent and must pay the applicable delinquent renewal penalty in addition to the renewal fee to the Division prior to the permit being renewed. A penalty of \$20 will be assessed for each month or part of a month of such delinquency. Any permit not renewed within 60 days of its expiration shall be cancelled by the Division, unless the permit is involved in litigation. Furthermore, the Division may renew a permit after the 60 days for good and sufficient cause.

(6) A tobacco products wholesale dealer's permit may not be transferred to a new owner. An attempt to transfer the permit will result in automatic expiration.

(7) If requested and upon application for a permit, the Division shall issue an initial temporary permit to any new applicant who has filed a complete application which does not on its face provide reason for denying a permit. The initial temporary permit will be valid for up to 90 days and may be extended by the Division for up to an additional 90 days. If the applicant is denied a permit, the initial temporary permit will cease to be valid on that date. The initial temporary permit fee is \$25, which is separate from the permanent permit fee and which shall be submitted to the Division upon request of the initial temporary permit.

Specific Authority 210.75 FS. Law Implemented 210.25, 210.35, 210.40, 210.405, 210.45, 210.51 FS. History—New _____.

61A-10.083 Application for Retail Tobacco Products Dealer Permit.

(1) For this section the term retail tobacco products dealer shall refer to the definition provided by Section 569.002(4), Florida Statutes. For this section the term tobacco products shall refer to the definition provided by Section 569.002(6), Florida Statutes. A tobacco products retail dealer permit is required to sell cigarettes and tobacco products at retail.

(2) In order to be permitted as a retail dealer, or to make changes to an existing tobacco products retail dealer permit, the applicant or permit holder must do one of the following:

(a) Retail dealers only interested in applying for a retail dealer tobacco products permit must submit form DBPR ABT-6028, Application for Retail Tobacco Products Dealer Permit, incorporated herein by reference and effective (____); or:

(b) Retail dealers interested in applying for both a tobacco products permit and an alcoholic beverage license simultaneously must complete and submit form DBPR ABT 6001, Application for Alcoholic Beverage License and Tobacco Permit, as referenced in Rule 61A-5.700, F.A.C.; or

(c) Retail dealers interested in applying for multiple permits or to make changes thereto must complete and submit form DBPR ABT 6028 Application for Retail Tobacco Products Dealer Permit, incorporated herein by reference and effective (____).

(3) The fee for a new tobacco products retail dealer permit shall be \$50.

(a) For applicants applying under paragraph (1)(a) of this rule, the \$50 fee must be paid when the application is submitted to the Division.

(b) Applicants applying under paragraph (1)(b) of this rule must submit the \$50 fee once the application has been approved by the Division. The Division will notify the applicant of their approval and will invoice the applicant for the cigarette and tobacco products retail dealer permit.

(4) The terms "place of business", "place", "the premises", "location", "single location" and "permitted premises" are synonymous. Place of business is defined as rooms where tobacco products are stored or sold or kept for the purpose of sale or consumption.

(a) Where sales of tobacco products are conducted through a vending machine, the premises shall include the place where the vending machine is located and any such vending machine including the area within the unobstructed line of sight of the dealer, or the dealer's agent or employee responsible for preventing sales to persons under 18 years of age.

(b) Where sales of tobacco products are conducted from a cart or person moving about, the place of business and/or the premises shall include any such conveyance.

(c) A theme park complex, a hotel or resort complex, a stadium, an airport facility and the like will be considered a "single location" when all buildings or structures are owned, managed, controlled or operated under one business name and are situated on the same tract or plot of land that is not separated by a public street or highway.

(d) Itinerant stores, industrial caterers, trains, steamships and similar vehicles and vessels may be permitted for the retail sale of cigarette and tobacco products with the vehicle or vessel being designated as the place of business. In any such case, the location address shall be the office or homeport address in this state where the vehicle or vessel is domiciled.

(5)(a) The permit year for a retail tobacco products dealer permit shall be from January 15 through the following January 15 of each year and shall not be pro rated except as follows:

(b) The permit year for a retail tobacco products dealer permit shall be changed in order that the alcoholic beverage license and the tobacco permit may be renewed simultaneously. A person who is both an alcoholic beverage licensee and a retail tobacco products dealer permit holder will have a permit year commensurate with the alcoholic beverage license year. The retail tobacco products dealer permit will be renewed at a charge of \$50 and the permit year shall commensurate with the license year of the alcoholic beverage license which is either April 1 through March 31 or October 1 through September 30 as specified by county.

(6) A cigarette and tobacco products retail dealer permit may not be transferred to a new owner.

(7) The Division shall issue at the request of the applicant a temporary retail tobacco products permit whenever an applicant is also filing a temporary alcoholic beverage license of any kind. There shall be no fee for the issuance of the temporary retail tobacco products dealer permit.

(8) If a permit is lost or destroyed, a retail tobacco products permit holder may apply to the Division for the issuance of a duplicate permit. This request shall be in the form of an affidavit advising that the permit has been lost or destroyed and shall be accompanied by payment of a \$15 fee.

(9) Prior to the expiration of the permit, the Department of Business and Professional Regulation will send permittees a renewal notice. The permittee shall comply with the terms of the renewal notice and submit a renewal fee of \$50 prior to the permit expiration date. It is the permittee's responsibility to timely renew a permit. Failure to receive the renewal notice from the Department of Business and Professional Regulation shall not excuse a permittee from penalties associated with late renewal.

(10) The Division shall assess delinquent renewal penalties on permit holders who fail to timely renew their permits. The Division will use the postmark date as evidence of delinquency. Any renewal postmarked after the due date will

be considered delinquent and must pay the applicable delinquent renewal penalty in addition to the renewal fee to the Division prior to the permit being renewed. A penalty of \$5 will be assessed for each month or part of a month of such delinquency.

Specific Authority 569.009 FS. Law Implemented 569.002, 569.003 FS. History--New _____.

61A-10.084 Permit Changes.

(1) Any permittee desiring to make a change in the business name and/or the location of the place of business must secure a supplemental permit reflecting the new business name and/or location prior to initiating the change. Application for such supplemental permits must be made to the Division on the appropriate forms.

(a) To request a change of business name or change of mailing address, a permittee must complete and submit DBPR form ABT-6009 Change of Business Name or Change of Mailing Address Application, incorporated herein by reference and effective (_____), to the Division.

(b) To make changes to a permit not covered by paragraph (a), the permittee shall submit a complete application to the Division as specified in Rules 61A-10.080, 61A-10.081, and 61A-10.082, F.A.C.

(2) Any wholesale dealer, distributing agent, or exporter desiring to make any changes in business name and/or location must furnish the Division with satisfactory evidence that the bond covering the wholesale dealer's, distributing agent's or exporter's business has been properly changed to reflect the new business name and/or place of business.

Specific Authority 210.10 FS. Law Implemented 210.15 FS. History--New _____.

61A-10.085 Duplicate License Request.

Any permittee desiring to replace a lost or destroyed permit, may make a request to the Division for the issuance of a duplicate permit. This request shall be in the form of an affidavit advising that the permit has been lost or destroyed.

Specific Authority 20.165, 120.536, 210.10, 455.2035, 569.009 FS. Law Implemented 210.15, 455.219, 569.003 FS. History--New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Marie Carpenter, Auditing Bureau Chief, Division of Alcoholic Beverages and Tobacco, 1940 North Monroe Street, Suite 42, Tallahassee, Florida 32399, (850)488-3227

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Pat Wilson Parmer, Division Director, Alcoholic Beverages and Tobacco

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 22, 2005

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 2, 2005

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Architecture and Interior Design

RULE TITLE: RULE NO.:
 Procedures for Signing and Sealing
 Electronically Transmitted Plans,
 Specifications, Reports or
 Other Documents 61G1-16.005

PURPOSE AND EFFECT: The Board proposes to create this rule to specify the procedures for signing and sealing electronically transmitted plans, specifications, reports, or other documents.

SUMMARY: The rule specifies the procedures for signing and sealing electronically transmitted plans, specifications, reports, or other documents.

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

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

SPECIFIC AUTHORITY: 481.2055, 481.221(2),(3) FS.

LAW IMPLEMENTED: 481.221(2),(3) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Juanita Chastain, Executive Director, Board of Architecture and Interior Design, 1940 North Monroe Street, Tallahassee, Florida 32399-0783

THE FULL TEXT OF THE PROPOSED RULE IS:

61G1-16.005 Procedures for Signing and Sealing Electronically Transmitted Plans, Specifications, Reports or Other Documents.

(1) Information stored in electronic files representing plans, specifications, plans, reports, or other documents which must be sealed under the provisions of Chapter 481, F.S., shall be signed, dated and sealed by the architect or interior designer in responsible charge.

(2) Electronic files may be signed and sealed by creating a "signature" file that contains the architect's or interior designer's name and license number, a brief overall description of the documents, and a list of the electronic files to be sealed. Each file in the list shall be identified by its file name utilizing relative Uniform Resource Locators (URL) syntax described in the Internet Architecture Board's Request for Comments (RFC) 1738, December 1994, which is hereby adopted and incorporated by reference by the Board and can be obtained from the Internet Website: ftp://ftp.isi.edu/in_notes/rfc1738.txt. Each file shall have an authentication code defined as an

SHA_1 message digest described in Federal Information Processing Standard Publication 180_1 "Secure Hash Standard." 1995 April 17, which is hereby adopted and incorporated by reference by the Board and can be obtained from the Internet Website: http://www.itl.nist.gov/fipspubs/fip180_1.htm. A report shall be created that contains the architect's or interior designer's license number, a brief overall description of the documents in question and the authentication code of the signature file. This report shall be printed and manually signed, dated, and sealed by the architect or interior designer in responsible charge. The signature file is defined as sealed if its authentication code matches the authentication code on the printed, manually signed, dated and sealed report. Each electronic file listed in a sealed signature file is defined as sealed if the listed authentication code matches the file's computed authentication code.

Specific Authority 481.2055, 481.221(2),(3) FS. Law Implemented 481.221(2),(3) FS. History--New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Architecture and Interior Design

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Architecture and Interior Design

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 29, 2005

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 23, 2005

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Construction Industry Licensing Board

RULE TITLE: RULE NO.:
 Written Examination for Swimming
 Pool Specialty Contractors 61G4-16.0021

PURPOSE AND EFFECT: The proposed new rule is intended to describe written examinations for Swimming Pool Specialty Contractors.

SUMMARY: The proposed new rule provides content of written examinations for Swimming Pool Specialty Contractors.

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

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

SPECIFIC AUTHORITY: 120.53, 455.217(1), 489.113(6), 489.115(5) FS.

LAW IMPLEMENTED: 455.217(1), 489.113(6), 489.115(5) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Tim Vaccaro, Executive Director, Construction Industry Licensing Board, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G4-16.0021 Written Examination for Swimming Pool Specialty Contractors.

(1) The examination for licensure for any category of swimming pool specialty contractor as specified in Rule 61G4-15.032, F.A.C., shall consist of a written examination or until January 1, 2008, a practical examination. The written examination shall test the applicant's ability to perform the scope of work for the category of swimming pool specialty contractor for which the applicant applied.

(2) Requirements for all written Swimming Pool Specialty Contractor Examinations. Each examination must test the following areas:

(a) 15% Reading, understanding, and interpreting scaled pool construction plans and surveys.

(b) 5% Understanding and complying with job-site safety requirements.

(c) 5% Handling and properly disposing of hazardous materials.

(d) 5% Recognizing the tools required to do the job and exhibit the ability to properly use those tools.

(3) Additional test areas for each category of swimming pool specialty contractor examination are as follows:

(a) Swimming Pool Layout Specialty Contractors. The examination for swimming pool layout specialty contractors shall evaluate the following areas:

1. 8% Accurate location of a base line or center line of the pool with reference to fixed objects shown on the layout plan.

2. 8% Lay out of pool, including proper leveling techniques for the shell to plus or minus 1/4th inch and verifying the calculations to accommodate the coping or deck edge trim, finished deck elevation and existing patios, floors, and landscape.

3. 5% Verifying lay out calculations to accommodate anticipated water runoff (drainage).

4. 5% Understanding effective methods of managing ground water (dewatering).

5. 8% Understanding excavation in accordance with plans and specifications and back up methods in the event of a cave in.

6. 8% Placing and stabilizing forms.

7. 8% Piping, fittings and proper solvent weld procedures.

8. 15% Understanding the installation of structural steel in accordance with the plan and code requirements.

(a) 5% Modification of bond beam steel.

(b) Swimming Pool Structural Specialty Contractor. The examination for swimming pool structural specialty contractors shall evaluate the following areas:

1. 10% Use of guide wires or piano wire.

2. 5% Proper use of concrete pump and air compressor for installation of pneumatically applied concrete.

3. 10% Inspection of forms, wall fittings, drains, light niches, steel placement.

4. 10% The properties of concrete, including slump and the use of samples.

5. 15% Proper use of gunite or shotcrete placement on pool walls and floors, including finishing techniques.

6. 10% Knowledge of dimensional requirements for features such as steps and benches.

7. 10% The ability to read and understand manufacturer's installation instructions for fiberglass and/or vinyl liner pool structures.

(c) Examination for Swimming Pool Excavation Specialty Contractor. The examination for swimming pool excavation specialty contractor shall evaluate the following areas:

1. 5% Site preparation.

2. 10% effective methods of managing ground water (dewatering).

3. 10% Operation of excavation machines.

4. 20% Angle of repose and shoring requirements.

5. 10% Understanding of different soil conditions.

6. 5% Proper placement of excavated materials.

7. 10% Backfill and compact of fill material.

(d) Examination for Swimming Pool Trim Specialty Contractor. The examination for swimming pool trim specialty contractors shall evaluate the following areas:

1. 5% Preparation and use of "brown coat" or "parge" mix.

2. 15% Methods of setting a vertical waterline tile job with horizontal alignment of plus or minus 1/8 inch.

3. 10% Proper installation procedures for tile and water features per manufacturer's instructions, including step edge tile.

4. 15% Leveling the top of the beam(s) to plus or minus 1/8 inch.

5. 10% Use of bullnose brick as the pool coping, including miter joints in the coping.

6. 5% Custom grout color.

7. 5% Proper cleaning of tile and coping to remove masonry stains.

8. 5% Understand effective methods of managing ground water (dewatering).

(e) Examination for Swimming Pool Decking Specialty Contractor. The examination for swimming pool decking specialty contractors shall evaluate the following areas:

1. 5% Operation of an under-pool dewatering system.

2. 5% Layout of deck, including verification of angles and deck dimensions.

3. 5% Calculations to accommodate anticipated water runoff (drainage). And installation of a deck drainage system.

4. 5% Understanding of backfill and compaction procedures for sub-deck materials.

5. 5% Understanding the properties of concrete and calculation of the amount of concrete required for the job.

6. 5% Understanding proper elevation and pitch requirements to insure proper drainage.

7. 5% Understanding accurate angles and locate pin points.

8. 5% Understanding reinforcement requirements for concrete.

9. 10% Proper placement and finishing procedures for concrete.

10. 5% Understanding of thermal expansion and contraction of concrete and methods to accommodate it.

11. 5% Removal and disposition of concrete forms and forming materials.

12. 5% Setting anchors, ladders, and handrails.

13. 5% Pressurized piping procedures and maintenance.

(f) Examination for Swimming Pool Piping Specialty Contractor. The examination for swimming pool piping specialty contractors shall evaluate the following areas:

1. 10% Swimming pool piping plan.

2. 15% Proper handling and solvent welding of PVC.

3. 10% Understanding of the different applications for different solvent weld cements.

4. 10% Proper testing and pressurization procedures for pool piping systems.

5. 25% Proper installation procedures for pool piping, circulation, sanitation, filtration, hydraulics and venting and related equipment in accordance with manufacturer's instructions.

(g) Examination for Swimming Pool Finishes Specialty Contractor. The practical examination for swimming pool finishes specialty contractors shall evaluate the following areas:

1. 10% Operation of under-pool dewatering systems.

2. 10% Proper shell preparation.

3. 5% Installing and repairing step or underwater bench trim tile.

4. 15% Plaster mixtures, including admixtures.

5. 20% Proper application of finish to a swimming pool structure.

6. 10% Demonstrate an understanding of application and filling procedures per manufacturer's instructions to insure a clean smooth finish and a watertight condition.

(4) The score necessary to achieve a passing grade on any swimming pool specialty contractors examination shall be no less than seventy (70) percent out of one hundred (100) percent of the total possible points on the examination.

Specific Authority 120.53, 455.217(1), 489.113(6), 489.115(5) FS. Law Implemented 120.53, 455.217(1), 489.113(6), 489.115(5) FS. History--New

NAME OF PERSON ORIGINATING PROPOSED RULE:
Construction Industry Licensing Board

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Construction Industry Licensing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 11, 2005

DATE NOTICED OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 2, 2005; The rule number, in the notice of proposed rule development, was originally published as 61G4-16.002

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Accountancy

RULE TITLE: Notification of Address Change

RULE NO.: 61H1-26.005

PURPOSE AND EFFECT: The Board proposes the rule amendment to clarify the licensee's responsibility regarding address changes with the Board office.

SUMMARY: The rule amendment clarifies the licensee's responsibility for updating address changes with the Board office.

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

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

SPECIFIC AUTHORITY: 473.304 FS.

LAW IMPLEMENTED: 473.304 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: John Johnson, Executive Director, Board of Accountancy/MQA, 240 N.W. 76th Dr., Suite A, Gainesville, Florida 32607

THE FULL TEXT OF THE PROPOSED RULE IS:

61H1-26.005 Notification of Address Change.

(1) through (2) No change.

(3) ~~It is~~ If the licensee's responsibility to verify ~~does not receive written confirmation~~ that the Board's records have been updated. ~~If the records have not been updated, it is the responsibility of~~ changed then the licensee is put on notice that the Board did not receive the change notice and it is the licensee's responsibility to send another notice.

Specific Authority 473.304 FS. Law Implemented 473.304 FS. History--New 12-2-92, Formerly 21A-26.005, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Accountancy

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 7, 2005

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 10, 2005

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Accountancy

RULE TITLE: College or University Requirements

RULE NO.: 61H1-27.001

PURPOSE AND EFFECT: The Board proposes the rule amendment to change the name of the agency regulating the accredited school or college from the Florida State Board of Independent Colleges and Universities to the Commission for Independent Education; amendment adds Ireland to a list of countries for approval for its college or university accounting programs.

SUMMARY: The name of the regulating agency will be changed from the Florida State Board of Independent Colleges and Universities to the Commission for Independent Education; Ireland will be added to a list of countries for approval of its accounting programs.

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

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

SPECIFIC AUTHORITY: 473.304, 473.306 FS.

LAW IMPLEMENTED: 473.306 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: John Johnson, Executive Director, Board of Accountancy/MQA, 240 N. W. 76th Dr., Suite A, Gainesville, Florida 32607

THE FULL TEXT OF THE PROPOSED RULE IS:

61H1-27.001 College or University Requirements

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

(g) Association of Independent Colleges and Schools.

After August 2, 1992, the Association of Independent Colleges and Schools (AICS) will no longer be deemed an acceptable accrediting agency, unless the college or school accredited by the AICS is regulated by the Commission for Independent Education (CIE) ~~Florida State Board of Independent Colleges and Universities (FSBICU)~~ and exempted from licensure by the CIE ~~FSBICU~~ under the provisions of Section 1005.22, F.S.

(h) Canadian, Mexican, Ireland and Australian academic accounting programs approved by the provincial education bodies or the equivalent educational accreditation body for that country.

(2) through (5)(b) No change.

Specific Authority 473.304, 473.306 FS. Law Implemented 473.306 FS. History--New 12-4-79, Amended 2-3-81, 3-21-84, 10-28-85, Formerly 21A-27.01, Amended 4-8-86, 9-1-87, 8-25-88, 12-28-89, 3-29-90, Formerly 21A-27.001, Amended 1-11-95, 5-11-03, 3-21-05, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Accountancy

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 7, 2005

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 28, 2005

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Accountancy

RULE TITLE: Fees

RULE NO.: 61H1-31.001

PURPOSE AND EFFECT: The Board proposes the rule amendment to delete the language regarding examination fee refundability.

SUMMARY: When an applicant is found to be ineligible to sit for the examination, the fee for the examination is no longer refundable.

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

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

SPECIFIC AUTHORITY: 455.213(2), 455.219(4), 455.271, 473.305, 473.312 FS.

LAW IMPLEMENTED: 119.07, 455.219(4), 455.271, 473.305, 473.312, 473.313 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: John Johnson, Executive Director, Board of Accountancy/MQA, 240 N. W. 76th Dr., Suite A, Gainesville, Florida 32607

THE FULL TEXT OF THE PROPOSED RULE IS:

61H1-31.001 Fees.

(1) through (7) No change.

~~(8) The fee for the examination is refundable in the amount of fifty dollars (\$50.00) per part if the applicant is found to be ineligible to sit for the examination.~~

~~(8)(9)~~ For fees relating to the Foreign Language Examination refer to Section 455.11, F.S.

~~(9)(10)~~ The scan sheet for the Laws and Rules Examination must be postmarked or completed on-line by or on December 31. No Laws and Rules Examination scan sheet will be accepted if it is postmarked or completed on-line after December 31.

~~(10)(11)~~ The CPE reporting form must be postmarked by or on July 15. If it is postmarked or completed on-line after July 15 but by or on December 31, a \$50 delinquency fee will be imposed by the Board. No CPE reporting form will be accepted if it is postmarked or completed on-line after December 31.

~~(11)(12)~~ Duplicate licensee fee – If a licensee requests a duplicate license, the Board will issue the duplicate if the request is made in writing and is accompanied by a payment of \$25.

Specific Authority 455.213(2), 455.219(4), 455.271, 473.305, 475.312 FS. Law Implemented 119.07, 455.219(4), 455.271, 473.305, 473.312, 473.313 FS. History—New 12-4-79, Amended 2-3-81, 3-4-82, 11-6-83, 3-29-84, Formerly 21A-31.01, Amended 6-4-86, 9-16-87, 2-1-88, 8-30-88, 2-6-89, 12-18-89, 12-28-89, 8-16-90, 4-8-92, 12-2-92, Formerly 21A-31.001, Amended 11-4-93, 2-14-95, 11-3-97, 6-22-98, 10-28-98, 7-15-99, 4-3-02, 1-27-04, 1-31-05, 7-14-05.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Accountancy

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 7, 2005

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 28, 2005

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 State Fire Marshal

RULE CHAPTER TITLE: Firefighter Employment Standards

RULE CHAPTER NO.: 69A-62

RULE TITLE: General Guidelines for Firefighter

RULE NO.:

Employer Comprehensive Safety and Health Programs

69A-62.021

PURPOSE AND EFFECT: All fire departments must have a safety and health program in place. Fire departments found to be in violation of any part of the rules pertaining to firefighter safety must also have a remediation plan, in addition to the safety and health program.

SUMMARY: Fire departments must have safety and health programs and remediation plans must be in place for fire departments in violation of any part of the firefighter safety and health rules.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Regulatory Costs was prepared.

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

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW. IF A HEARING IS NOT REQUESTED, NO HEARING WILL BE HELD.

TIME AND DATE: 9:00 a.m., February 13, 2006

PLACE: Conference Room, 3rd Floor, The Atrium, 325 John Knox Road, Tallahassee, Florida 32303

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Gabriel Mazzeo, Attorney, Division of State Fire Marshal, 200 East Gaines Street, Tallahassee, Florida 32399-0342, (850)413-3688

Pursuant to the provisions of the Americans with Disabilities Act and Section 286.26, Florida Statutes, any person requiring special accommodations to participate in this program, please advise the Department at least 48 hours before the program by contacting: Carla Graham, (850)413-3724.

THE FULL TEXT OF THE PROPOSED RULE IS:

69A-62.021 General Guidelines for Firefighter Employer Comprehensive Safety and Health Programs.

The following are the guidelines for a Firefighter Employer Comprehensive Safety and Health Program. These guidelines shall be used by all firefighter employers ~~that are notified by the division that they have a high frequency or severity of workers' compensation claims to prepare their Firefighter Employer Comprehensive Safety and Health Remediation Plan.~~

(1) through (7) No change.

Specific Authority 633.821 FS. Law Implemented 633.821 FS. History--New 9-6-04, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Dave Casey, Chief, Bureau of Fire Standards and Training, Florida State Fire College, 11655 N. W. Gainesville Road, Ocala, Florida, (352)369-2800

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Randall Napoli, Director, Division of State Fire Marshal, Department of Financial Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 28, 2005

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 23, 2005

FINANCIAL SERVICES COMMISSION

Office of Insurance Regulation

RULE TITLES: Calculation of Premium Rates
Employee Health Care Access Act

RULE NOS.: 690-149.037

Statement Reporting Requirement 690-149.038

PURPOSE, EFFECT AND SUMMARY: The proposed rules: (1) require insurers to submit small group rate filings to the Office of Insurance Regulation that comply with the revised maximum 5-year age bands; (2) clarify experience to be included in the biennial reporting requirements regarding the underwriting impact of using +/- 15% in the small group market; and (3) specify how appropriate COBRA rates should be determined.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: None.

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

SPECIFIC AUTHORITY: 624.308(1), 627.6699(5)(i)4., (6),(16), 627.9175 FS.

LAW IMPLEMENTED: 624.424(6), 627.410, 627.6692, 627.6699, 627.9175 FS.

IF REQUESTED IN WRITING WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 9:30 a.m., February 13, 2006

PLACE: Room 142, Larson Building, 200 East Gaines Street, Tallahassee, Florida

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Frank Dino, Life and Health Product Review, Office of Insurance Regulation, e-mail: Frank.Dino@fldfs.com

THE FULL TEXT OF THE PROPOSED RULE IS:

690-149.037 Calculation of Premium Rates.

(1) through (3) No change.

(4) Rate filing requirements –

(a) Modified Community Rating. Premium schedules for benefit plans offered to small employer groups shall be based solely on the following categories and factors applicable to eligible ~~of the~~ employees, without regard to the nature of the employer group.

1.(a) Age Factors Categories. Employee age shall be determined as of the date of issue and each subsequent renewal date thereafter as defined in the policy and certificate. If not explicitly defined in the contract, age shall be the attained age as of the date of issue or renewal of the certificate.

a. Age Categories Effective Prior to October 1, 2006.

(I) < 30 years of age

(II) 30-39 years of age

(III) 40-49 years of age

(IV) 50-54 years of age

(V) 55-59 years of age

(VI) 60-64 years of age

(VII) 65 & above years of age – Medicare is Primary

(VIII) 65 & above years of age – Health Plan is Primary

b. Age Categories Effective On or After October 1, 2006.

(I) < 24 years of age

(II) 25-29 years of age

(III) 30-34 years of age

(IV) 35-39 years of age

- (V) 40-44 years of age
- (VI) 45-49 years of age
- (VII) 50-54 years of age
- (VIII) 55-59 years of age
- (IX) 60-64 years of age
- (X) 65 & above years of age – Medicare is Primary
- (XI) 65 & above years of age – Health Plan is Primary

c. The rate for the age 65 & above – Medicare is Primary category shall be applicable when both employee and spouse are enrolled in Medicare. If one is enrolled and one is not, regardless of which spouse is the employee, the rate charged shall be adjusted to reflect the reduction of exposure due to the fact that one spouse is enrolled in Medicare. The rate shall be determined assuming that one individual is enrolled in Medicare. The rate for the individual enrolled in Medicare will be isolated, multiplied by the Medicare is Primary to the Health Plan is Primary ratio, and then added back to the portion of the rate that is not Medicare primary. Samples of illustrative calculations are as follows and other combinations should be calculated in a similar manner:

(I) For employee + spouse coverage where Medicare is the primary coverage for the spouse – The difference between the employee + spouse rate where the Health plan is primary and the employee only rate where the Health Plan is Primary shall be determined. This value shall reflect the implied spouse rate. This implied spouse rate shall be multiplied by the ratio of the Medicare is Primary rate divided by the Health Plan is Primary rate. This resulting rate shall be added to the employee only rate.

(II) For family coverage – The difference between the family rate and the employee + dependent rate shall be determined. This difference shall reflect the implied spouse rate. This implied spouse rate shall be multiplied by the ratio of the Medicare is Primary rate divided by the Health Plan is Primary rate. This resulting rate shall be added to the employee + dependent only rate.

- 1. < 30
- 2. 30-39
- 3. 40-49
- 4. 50-54
- 5. 55-59
- 6. 60-64
- 7. 65 & above – Medicare is Primary
- 8. 65 & above – Health Plan is Primary

2.(b)1. Gender/Family Composition Factors. Rating Categories

- a. Gender/Family Composition Categories.
- (I)a. Employee – Male
 - (II)b. Employee – Female
 - (III)e. Employee – Male – Dependent Children

- (IV)d. Employee – Female – Dependent Children
- (V)e. Employee – Spouse
- (VI)f. Employee – Spouse – Dependent Children

b2. For both the employee with spouse plus dependent children category and the employee with dependent children category, companies may include up to three 3 optional dependent children categories are permitted: 1, 2 and 3 or more dependent children for companies for both the employee with family and the employee with dependent children categories.

c.3. At the option of the company, dependent only categories.

4. The rate required by subparagraph (4)(a)7. above shall be applicable when both employee and spouse are enrolled in Medicare. If one is enrolled and one is not, regardless of which spouse is the employee, the rate charged shall be adjusted to reflect the reduction of exposure due to the fact that one spouse is enrolled in Medicare. The rate shall be determined assuming that one individual is enrolled in Medicare. The rate for the individual enrolled in Medicare will be isolated, multiplied by the Medicare primary to Medicare secondary ratio, and then added back to the portion of the rate that is not Medicare primary. A sample illustrative calculation follows; other combinations should be calculated in a similar manner:

a. For employee + spouse coverage where the spouse is Medicare primary – The difference between the employee + spouse Medicare secondary rate and the employee only Medicare secondary rate shall be determined. This shall reflect the implied spouse rate. This implied spouse rate shall be multiplied by the ratio of the Medicare primary rate divided by the Health plan primary rate. This resulting rate shall be added to the employee only rate.

b. For family coverage – The difference between the family rate and the employee + dependent rate shall be determined. This shall reflect the implied spouse rate. This implied spouse rate shall be multiplied by the ratio of the Medicare primary rate divided by the Health plan primary rate. This resulting rate shall be added to the employee + dependent only rate.

3.(e) Area Factors by County.

4.(d) Tobacco Usage Factor (>1, base rates are for non-tobacco user).

5.(e) Effective Date and Trend Adjustment Factor. The premium schedule may be adjusted based on a medical trend table, approved pursuant to Part I of this rule chapter, reflecting the period of time from the date the rate schedule is effective to the anniversary date of the new or renewing group for medical trend adjustment.

(b) CARES. Small group standard and basic product rates must be filed on a 2-50 life basis using the Rate Collection Systems (CARES).

(5) through (7) No change.

(8) Calculation of COBRA Rates. The premium paid for continuation of coverage may not exceed 115 percent of the group rate for groups that consist of fewer than 20 employees as permitted by Section 627.6692(5)(f), F.S., and 102 percent for groups with 20 or more employees as provided by Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C.A. § 1162(2005). The additional rate indicated above, i.e., 15 percent and 2 percent shall be hereinafter referred to as the applicable load.

(a) Qualified beneficiaries, as defined in Section 627.6692(4)(f), F.S., electing continuation of coverage shall be charged the group rate applicable to the qualified beneficiary on the day before the qualifying event, as increased by the applicable load. Whenever the small employer group's rates change, generally on the group's anniversary, the rate subsequently charged to the qualified beneficiary for the continuation of coverage will be based on the small employer group's rate which the qualified beneficiary would have been charged if the qualified beneficiary had remained within the group. If the qualified beneficiary electing continuation of coverage is a spouse or dependent of the covered employee, and the covered employee remains in the group, the rate charged to the covered employee shall be adjusted to reflect the reduction of risk exposure to the company, e.g., the group's rate applicable after the demographic change. The rate charged for the spouse or dependent shall be isolated from the group's rate and multiplied by a factor, not to exceed one plus the applicable load, to determine the COBRA rate. Samples of illustrative calculations are as follows and other combinations should be calculated in a similar manner:

1. For employee + dependent coverage when the dependent is electing continuation of coverage, the difference between the employee + dependent rate and the employee only rate shall be determined. This difference shall then be divided by the average number of dependents used by the carrier in developing the rate schedule. This value shall reflect the implied single dependent rate. To determine the COBRA rate, the implied dependent rate shall be multiplied by a factor that does not exceed the applicable load. The employee shall be charged the group employee only rate.

2. For family coverage where the dependent is electing continuation of coverage, the difference between the family rate and the employee + spouse only rate shall be determined. This difference shall then be divided by the average number of dependents used by the carrier in developing the rate schedule. This value shall reflect the implied-single dependent rate. To determine the COBRA rate, the implied single dependent rate shall be multiplied by a factor that does not exceed the applicable load. The employee shall be charged the group rate applicable to the remaining covered lives in the group, e.g., if the remaining covered lives are the employee, spouse and

another dependent, then the family rate would be charged. If the remaining covered lives are only the employee and spouse, then the employee + spouse rate would be charged.

3. If a small employer carrier uses optional dependent children categories as provided by sub-subparagraph (4)(a)2.b. above, the dependent rate shall be directly determined by calculating the difference between the two family tier rates, e.g., a rate with two dependents minus the rate with one dependent shall determine the single dependent rate.

(b) COBRA rates do not need to be filed unless the small employer carrier seeks to utilize a different rating methodology other than the one described above.

Specific Authority 624.308(1), 624.424(1)(c), 627.6699(16) FS. Law Implemented 627.410, 627.6692, 627.6699(3),(6),(12)(e),(13)(i) FS. History—New 3-1-93, Amended 11-7-93, 5-11-94, 4-23-95, 8-4-02, 6-19-03, Formerly 4-149.037, Amended _____

690-149.038 Employee Health Care Access Act Statement Reporting Requirement.

(1) through (2) No change.

(3)(a)1. All small employer carriers utilizing rating adjustments pursuant to subsection 690-149.037(6), F.A.C., shall make semiannual reports that reflect their experience from January 1 through June 30 and from July 1 through December 31 of each year. The reports shall be filed with the Office, pursuant to paragraph 690-149.044(2)(b), F.A.C., within 45 days following the last day of the reporting period using Form OIR-B2-1575, "Small Employer Group Underwriting Experience Report Form" adopted in Rule 690-149.044, F.A.C.

2. The experience of any group category that is not subject to underwriting, such as 1-life groups, shall not be included in the report.

(b) through (d) No change.

Specific Authority 627.6699(5)(i)4.,(6),(16), 627.9175 FS. Law Implemented 624.424(6), 627.6699, 627.6699(5)(i),(6)(b)5.,(8)(b), 627.9175 FS. History—New 3-1-93, Amended 11-7-93, 8-4-02, 6-19-03, Formerly 4-149.038, Amended 5-18-04, 3-24-05, 9-15-05, _____

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DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 23, 2005

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 14, 2005