

PURPOSE AND EFFECT: To establish procedures by which the Office monitors, verifies, and assures compliance with Section 215.555(6)(b), F.S.

SUBJECT AREA TO BE ADDRESSED: Florida Hurricane Catastrophe Fund Emergency Assessments.

SPECIFIC AUTHORITY: 215.555(6)(b), 624.308(1) FS.

LAW IMPLEMENTED: 215.555(6)(b) FS.

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

DATE AND TIME: May 22, 2006, 2:00 p.m.

PLACE: Room 116, Larson Building, 200 East Gaines Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Carol McBrier, Office of the Deputy Commissioner (Property and Casualty), Office of Insurance Regulation, E-mail: carol.mcbrayer@fldfs.com.

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 above.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT WILL BE AVAILABLE SEVEN DAYS PRIOR TO THE WORKSHOP AT NO CHARGE FROM THE CONTACT PERSON.

## Section II Proposed Rules

### DEPARTMENT OF STATE

#### Division of Library and Information Services

RULE NO.: 1B-11.004  
RULE TITLE: Use of Archives

PURPOSE AND EFFECT: The purpose of this change is to establish new hours for the use of the Archives.

SUMMARY: Rules regarding the Use of Archives.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No statement of estimated 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: 257.14, 257.35(7) FS.

LAW IMPLEMENTED: 257.35(1) 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: Gerard Clark, Program Manager, 500 South Bronough Street, Tallahassee, Florida 32399-0250, (850)245-6639

THE FULL TEXT OF THE PROPOSED RULE IS:

1B-11.004 Use of Archives.

(1) No change.

(2) Location of records and hours of opening:

(a) No change.

(b) Except for holidays and at other such times as specified in writing by the Director ~~and posted on the Division's website and posted by the State Archivist~~ the archives and donated historical materials are available for use from 9:00 a.m. to 4:30 p.m. 8:00 a.m. to 5:00 p.m., Monday through Friday. Records may be made available at other times as authorized by the ~~Director State Archivist~~.

(3) through (5) No change.

Specific Authority 257.14, 257.35(7) FS. Law Implemented 257.35(1) FS. History—New 4-11-76, Amended 9-6-78, 9-15-82, Formerly 1A-11.04, 1A-11.004, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Gerard Clark, Program Manager

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Judith Ring, Director

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 26, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 14, 2006

### DEPARTMENT OF EDUCATION

#### Commission for Independent Education

RULE NO.: 6E-2.004  
RULE TITLE: Standards and Procedures for Licensure

PURPOSE AND EFFECT: The Board proposes the amendment to the rule to clarify when a postsecondary educational institution shall provide a compiled financial statement and controlling principles.

SUMMARY: This rule is being amended to clarify which institutions have to submit what type of financial statement.

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

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

SPECIFIC AUTHORITY: 1005.22(1)(e), 1005.31(2), (3), 1005.34, 1005.39 FS.

LAW IMPLEMENTED: 1005.04, 1005.31, 1005.33(1), 1005.34, 1005.39 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: Samuel Ferguson, Executive Director, Commission for Independent Education, 325 West Gaines Street, Suite 1414, Tallahassee, Florida 32399-0400

THE FULL TEXT OF THE PROPOSED RULE IS:

6E-2.004 Standards and Procedures for Licensure.

(1) through (5) No change.

(6) Standard 6: Finances. All institutions must demonstrate that the financial structure of the institution is sound, with resources sufficient for the proposed operations of the institution and the discharge of its obligations to the students. To demonstrate this, the school shall provide the following:

(a)1. No change.

2. Annual License. Extended Annual License, or Annual Review:

a. Licensed nondegree schools shall provide annually a review or audit, prepared in accordance with Generally Accepted Accounting Principles by an independent certified public accountant, Licensed colleges and universities shall provide annually an audit, prepared in accordance with Generally Accepted Accounting Principles by an independent certified public accountant. This annual financial statement shall demonstrate that the current assets of the institution exceed the current liabilities, and that there was a positive net working capital and a profit or surplus for the prior year. If an institution does not meet the above requirements, the Commission shall require an explanation of the financial condition of the institution including a financial improvement plan or teach-out plan or form of surety guaranteeing that the resources are sufficient to protect the current students. If the Commission determines that the institution does not have sufficient resources, it shall take actions up to and including revocation of licensure.

b. If an independent postsecondary educational institution earns less than \$100,000 gross tuition revenue per the institution's fiscal year, the institution shall provide both a compiled financial statement of the institution and of the controlling principles. The financial statement shall be compiled, reviewed, or audited by an independent certified public accountant. These statements must demonstrate sufficient resources to ensure appropriate institutional development.

3. through 4. No change.

(b) through (12) No change.

Specific Authority 1005.22(1)(e), 1005.31(2), (3), 1005.34, 1005.39 FS. Law Implemented 1005.04, 1005.31, 1005.33(1), 1005.34, 1005.39 FS. History—Promulgated 12-5-74, Formerly 6E-3.01(1), Readopted 11-11-75, Amended 3-7-77, 5-7-79, 10-13-83, Formerly 6E-2.04, Amended 11-27-88, 11-29-79, 12-10-90, 10-19-93, 4-2-96, 4-11-00, 1-7-03, 4-5-04, 5-24-04, 5-18-05,\_\_\_\_\_

## 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."

## PUBLIC SERVICE COMMISSION

DOCKET NO. 060121-EI

RULE NOS.:

25-6.022

25-6.052

25-6.056

25-6.058

25-6.059

25-6.060

25-6.103

RULE TITLES:

Record of Metering Devices and Metering Device Test

Accuracy Requirements and Test Plans for Metering Devices

Metering Device Test Plans

Determination of Average Meter

Registration Error

Meter Test by Request

Meter Test – Referee

Adjustment of Bills for Meter Error

PURPOSE AND EFFECT: To clarify the rules in regard to test record retention requirements, meter testing requirements, etc.; update the rules to reflect the most current code requirements and to reflect inflation; add methodologies for determining meter error and calculating refunds/backbills; delete unnecessary rule language; and to make grammatical and technical changes.

SUMMARY: Rule 25-6.022, F.A.C., is amended to clarify the retention requirements for test records; Rule 25-6.052, F.A.C., is amended to include definitions, reflect the most current version of the Code for Electricity Metering, and delete unnecessary rule language; Rule 25-6.056, F.A.C., is amended to clarify that all meters in the same class must have the same amperage and voltage and to delete unnecessary language; Rule 25-6.058, F.A.C., is amended to specify the entity responsible for selecting the method for determining the average registration error, and to add a methodology for determining meter registration error; Rule 25-6.059, F.A.C., is amended to change the deposit requirement for meter tests, to reflect the most current version of the Code for Electricity Metering, to clarify the responsibility for costs associated with third party meter testing, to clarify accuracy test retention requirements; Rule 25-6.060, F.A.C., is amended to clarify accuracy test retention requirements; Rule 25-6.103, F.A.C., is amended to include a methodology for determining billing

demand for purposes of calculating refunds/backbills, to clarify the term for backbilling, to clarify the methodology for determining refunds/backbills for non-registering and damaged meters, and to delete unnecessary language.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The SERC concluded that there should be no negative impact on regulated utilities, the agency, small businesses, cities, or counties. These entities should benefit as the amendments make the rules clearer.

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: 366.05(1) FS.

LAW IMPLEMENTED: 366.03, 366.041(1), 366.05(1), (3), (4), (5), 366.06(1), 366.04(2)(f) FS.

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

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 RULES IS: Samantha Cibula, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850)413-6202

THE FULL TEXT OF THE PROPOSED RULES IS:

25-6.022 Record of Metering Devices and Metering Device Tests.

(1) For all types of utility-performed tests, a test record shall be made whenever a unit of metering equipment is tested, but need not be retained after the equipment is again tested unless the test is made in accordance with Rule 25-6.059 or Rule 25-6.060, F.A.C. When equipment accuracy testing is required under Rule 25-6.059 or Rule 25-6.060, F.A.C., any record of accuracy testing for disputed equipment that is on file at the time the customer request is made under Rule 25-6.059 or Rule 25-6.060, F.A.C., must be retained until the dispute is resolved. The record shall show information to identify the unit and its location; equipment with which the unit is associated; the date of the test; reason for the test; readings before and after the test; if the meter creeps, a statement as to the rate of creeping; a statement of the "as found" accuracy; indications showing that all required checks have been made; a statement of repairs made, if any; and identification of the person making the test. The completion of each test will signify the "as left" accuracy falls within the required limits specified in Rule 25-6.052, F.A.C., unless the meter is to be retired.

(2) No change.

(3) Records of Test for Incoming Purchases. Regardless whether the newly purchased metering equipment is tested under a Random Sampling Plan approved pursuant to Rule 25-6.056, F.A.C., each utility shall maintain and make available to the Commission for each purchase of new meters and associated devices made during the calendar or fiscal year, the following information:

(a) through (h) No change.

(4) No change.

(a) Type of equipment, including manufacturer, model number, and any features that which are currently used to classify the units tested into a population of units for in-service tests;

(b) through (i) No change.

Specific Authority 366.05(1) FS. Law Implemented 366.05(1), (3), 366.04(2)(f) FS. History—Amended 7-29-69, Formerly 25-6.22, Amended 5-19-97, \_\_\_\_\_.

25-6.052 Accuracy Requirements and Test Procedures Plans for and Accuracies of Consumption Metering Devices.

(1) Definitions.

(a) "Electronic Meter." Any meter that measures electric demand or energy and displays registration using electronic components only.

(b) "Mechanical Meter." Any meter that measures electric demand or energy and displays registration using mechanical components rather than electronic or solid-state components.

(c) "Lagged Demand (or Thermal Demand) Meter." Any meter that indicates demand by means of thermal or mechanical devices having an approximately exponential response.

(d) "Registration Error." The variation in kilowatts or kilowatt-hours from the true value measured by a standard or reference device.

(e) "Meter Type." A combination of design and construction that forms a unique method of measurement of the consumption of electricity. For example, electromechanical, thermal, solid state, hybrid, etc.

(2)(4) Accuracy Requirements for Watthour Meters. The performance of an in-service watthour meter shall be acceptable when the meter does not creep and the average registration error does not exceed plus or minus two percent. ~~percentage registration is not more than 102 percent nor less than 98 percent, calculated~~ Meter registration error shall be determined in accordance with subsection Rule 25-6.058(1), F.A.C.

(3)(2) Accuracy Requirements for Demand Meters and Registers.

(a) The performance of a mechanical or lagged demand meter or register shall be acceptable when the ~~error of~~ registration error does not exceed four percent in terms of full-scale value, ~~when tested~~ at any point between 25 percent

and 100 percent of full-scale value. Meter registration error shall be determined in accordance with paragraph 25-6.058(2)(a), F.A.C.

(b) The performance of an electronic demand meter or register shall be acceptable when the ~~error of registration error~~ does not exceed two percent of reading, ~~when tested~~ at any point between 10 percent and 100 percent of full scale value test amperes. Meter registration error shall be determined in accordance with paragraph 25-6.058(2)(b), F.A.C.

(c) No change.

~~(4)(3)~~ Meter Equipment Test Procedures.

(a) No change.

(b) Watthour meters and associated devices shall be tested for accuracy and adjusted in accordance with American National Standard for Electric Meters, Code for Electricity Metering (ANSI C12.1 – 2001 ~~1995~~), which is incorporated herein by reference.

(c) Electronic ~~Totally solid state~~ meters that compute demand from watthour meter registration and programmed demand algorithms shall be tested and adjusted in accordance with ANSI C12.1 – 2001 ~~1995~~. Demand registration need not be tested, provided the meter has been inspected to contain the correct demand algorithm whenever watthour registration is tested.

~~(5)(4)~~ Test Plans ~~Procedures~~.

(a) Each utility shall submit its test plan ~~procedures~~ for review and approval for all types of metering equipment, including:

1. through 7. No change.

(b) Test plans ~~procedures~~ shall contain the following for each type of metering device covered:

1. through 5. No change.

(c) Any changes to a previously approved test plan ~~procedure~~ must be submitted to the Commission's Division of Economic Regulation for approval. Adding a meter type to a previously approved test plan ~~procedure~~ is a change that which requires approval.

(d) Review of Proposed Test Plans ~~Procedures~~. Except where a utility has requested a formal ruling by the Commission, the Division of Economic Regulation shall within 90 days after submission review each utility's proposed test plan ~~procedures~~ to determine whether it satisfies the ~~they satisfy~~ the criteria set forth in paragraphs ~~(5)(4)(a)~~ and (b) above and shall notify the utility in writing of its decision accepting or rejecting the proposed plan ~~procedures~~. If a proposed plan ~~procedure~~ is rejected, the written notice of rejection shall state clearly the reasons for rejecting the proposed plan ~~procedure~~. If a utility's proposed plan ~~procedure~~ is rejected, the utility shall submit a revised plan ~~procedure~~ to the Commission within 60 days after receiving the notice of rejection. Where a utility has requested staff review of its plan ~~procedures~~ and a plan ~~procedure~~ has been rejected, the utility may petition the Commission for approval of the plan

~~procedure. If a utility has not submitted a satisfactory procedure within six months following the submission of the initially proposed procedure, the Commission may prescribe by order a procedure for the utility.~~

Specific Authority 366.05(1) FS. Law Implemented 366.05(3) FS. History—Amended 7-29-69, Formerly 25-6.52, Amended 5-19-97, \_\_\_\_\_.

25-6.056 Metering Device Test Plans.

(1) No change.

(2) All metering device tests shall be retained in accordance with ~~by the utility and made available to the Commission pursuant to~~ Rule 25-6.022, F.A.C.

(3) New instrument transformers shall be tested in accordance with subsection (5) of this rule ~~before initial installation~~. Instrument transformers that ~~which~~ have been removed from service shall be tested prior to reinstallation if the reason for removal, physical appearance, or record of performance gives cause to doubt its reliability.

(4) All metering equipment listed in paragraph 25-6.052~~(5)(4)~~(a), F.A.C., shall be tested:

(a) Before initial and each successive installation, either by the utility or the manufacturer, with the exception of units of metering equipment that ~~which~~ are statistically sample tested by the utility under an approved Random Sampling Plan; and

(4)(b) through (5)(c) No change.

(6) Within each population specified in an approved sampling plan or periodic test plan of mechanical or lagged demand meters, or other metering devices for which acceptability is stated in terms of full-scale value, each device shall have the same class amperage and class voltage.

~~(7)(6)~~ In-Service Testing.

(a) No change.

(b) In-service metering devices that ~~which~~ are not included in an approved Random Sampling Plan shall be tested periodically. The periodic testing schedule for equipment not included in an approved Random Sampling Plan must be approved by the Commission.

~~(8)(7)~~ Random Sampling Plans Submitted for Approval.

~~(a) Commission approved Random Sampling Plans may be used to accept or reject shipments of newly purchased equipment and to estimate the average accuracy of equipment in service.~~

~~(a)(b)~~ Random Sampling Plans published by the United States Department of Defense or by The American Society for Quality Control, or any other sampling plans that ~~which~~ have been approved by the Commission prior to the effective date of this rule need not be re-approved for the types of equipment for which they were approved.

~~(b)(c)~~ Each Random Sampling Plan submitted for approval shall include, at a minimum, the following information:

1. through 3. No change.

~~(c)(d)~~ No change.

~~(9)(8)~~ No change.

~~(10)(9)~~ Approval of Sampling Plans and In-Service Testing Schedules. All utilities subject to this rule shall submit to the Commission's Division of Economic Regulation a proposed Random Sampling Plan for each population of metering devices for which it intends to use a random sampling plan for acceptance testing or for in-service testing, and a proposed periodic testing schedule for each population of metering devices for which it does not submit a proposed in-service random sampling plan. Sampling plans and in-service testing schedules must be reviewed and approved pursuant to subsection (11) of this rule prior to their use.

~~(11)(10)~~ Review of Proposed Test Plan. As used in this subsection, the word "plan" includes periodic testing schedules as well as Random Sampling Plans. Except where a utility has requested a formal ruling by the Commission, the Division of Economic Regulation shall within 90 days after submission review each utility's plan to determine whether it satisfies the criteria set forth in subsections ~~(8)(7)~~ and ~~(9)(8)~~ above and shall notify the utility in writing of its decision accepting or rejecting the proposed plan. If a proposed plan is rejected, the written notice of rejection shall state clearly the reasons for rejecting the proposed plan. If a utility's proposed plan is rejected, the utility shall submit a revised plan to the Commission within 60 days after receiving the notice of rejection. Where a utility has requested staff review of its plan and the plan has been rejected, the utility may petition the Commission for approval of the initially proposed plan. ~~If a utility has not submitted a satisfactory plan within six months following the submission of the initially proposed plan, the Commission may prescribe by order a plan for the utility.~~

Specific Authority 366.05(1) FS. Law Implemented 366.05(3) FS. History—New 7-29-69, Amended 4-13-80, Formerly 25-6.56, Amended 5-19-97, \_\_\_\_\_.

#### 25-6.058 Determination of Average Meter Registration Error.

~~Whenever a metering installation is tested and found to exceed the accuracy limits, the average error shall be determined in one of the following ways:~~

##### (1) Average Meter Registration Error for Watthour Registers.

~~(a)(1)~~ If the metering installation is used to measure a load which has practically constant characteristics, such as a street-lighting load, the meter shall be tested under similar conditions of load and the registration error accuracy of the meter "as found" shall be considered as the average meter error accuracy.

~~(b)(2)~~ If a single-phase metering installation is used on a varying load, the average registration error shall be determined ~~by in~~ one of the following methods. ~~ways~~: The utility shall select the method that best fits the customer's usage pattern.

~~1.(a)~~ No change.

~~2.(b)~~ No change.

~~3.(c)~~ A single point, when calculating the error of an electronic a totally solid state meter, and the single point is an accurate representation of the error over the load range of the meter.

~~(c)(3)~~ If a polyphase metering installation is used on a varying load, the average registration error shall be determined ~~by in~~ one of the following methods. ~~ways~~: The utility shall select the method that best fits the customer's usage pattern.

~~1.(a)~~ No change.

~~2.(b)~~ A single point, when calculating the error of an electronic a totally solid state meter, and the single point is an accurate representation of the error over the load range of the meter.

##### (2) Average Meter Registration Error for Demand Registers.

(a) For mechanical or lagged demand meters, registration error shall be determined by testing the meter at both 40 percent and 80 percent of its full-scale value, as read on the reference or standard meter, or as near to these two points as practicable. The following two formulas shall be used to estimate the kilowatt error of the meter at 25 percent of full scale and at 100 percent of full scale:

$$E_{25} = [E_{80} - E_{40}] / [R_{80} - R_{40}] * [R_{25} - R_{40}] + E_{40}$$

$$E_{100} = [E_{80} - E_{40}] / [R_{80} - R_{40}] * [R_{100} - R_{40}] + E_{40}$$

where:

R<sub>25</sub> and R<sub>100</sub> denote the kilowatt readings on the reference meter at 25 percent and 100 percent of the full scale value of the meter being tested, respectively;

R<sub>40</sub> and R<sub>80</sub> denote the kilowatt readings on the reference meter at 40 percent and 80 percent of the full scale value of the meter being tested, respectively;

E<sub>40</sub> is the difference in kilowatts between the reference reading (R<sub>40</sub>) and the reading on the meter being tested;

E<sub>80</sub> is the difference in kilowatts between the reference reading (R<sub>80</sub>) and the reading on the meter being tested;

E<sub>25</sub> is the estimated kilowatt error corresponding to R<sub>25</sub>; and

E<sub>100</sub> is the estimated kilowatt error corresponding to R<sub>100</sub>.

The greater of these two estimated kilowatt errors, E<sub>25</sub> or E<sub>100</sub>, shall be expressed as a percentage of the full-scale value of the meter being tested to determine if the meter meets the accuracy requirement of paragraph 25-6.052(3)(a), F.A.C.

(b) For electronic demand meters, demand registration need not be separately tested provided the meter has been inspected to contain the correct demand algorithm whenever watthour registration is tested.

Specific Authority 366.05(1) FS. Law Implemented 366.05(3) FS. History--New 7-29-69, Formerly 25-6.58, Amended 5-19-97, \_\_\_\_\_.

25-6.059 Meter Test by Request.

(1) No change.

(2) Should any customer request a meter test more frequently than provided for in subsection (1) of this rule, the utility may require a deposit to defray costs of testing, such deposit not to exceed one hundred dollars (\$100.00) fifteen dollars (\$15.00) for each test. If the meter is found to be running fast in excess of the allowable limit the deposit shall be refunded, but if the meter is below the allowable limit, the deposit may be retained by the utility as a service charge for conducting the test.

(3) No change.

(4) At the request of the customer, the utility shall make arrangements for a meter test to be conducted by an independent meter testing facility of the customer's choosing. The customer shall be responsible for negotiating and paying to the independent meter testing facility any fee charged for such a test. Such independent meter testing facilities shall, at a minimum, conform to the requirements of the American National Standard for Electric Metering, Code for Electricity Metering, Seventh Edition (ANSI C12.1 2001 ~~1982~~), which is incorporated herein by reference. Where appropriate, the meter may be field tested. The customer shall be responsible for all the costs incurred by the utility related to associated with a meter test by an independent ~~meter~~ testing facility. The utility shall provide a detailed estimate of ~~such~~ the utility expects to incur related to the meter test and may require payment of such costs prior to the actual meter test. The customer shall provide to the utility a detailed estimate of charges from the independent testing facility for the meter test prior to the actual test. If the meter is found to be running fast in excess of the limits established by these rules, any payment collected by the utility related to the meter test such costs shall be refunded, but if the meter is found to be within the allowable limits established by these rules, the utility may retain any payments collected by the utility related to the meter test the costs.

(5) No change.

(6) For equipment tested under this rule, any previous accuracy test result on record at the time the meter test is requested must be retained in accordance with Rule 25-6.022, F.A.C.

Specific Authority 366.05(1) FS. Law Implemented 366.05(4), (5), 366.05(3) FS. History--New 7-29-69, Amended 10-11-83, Formerly 25-6.59, Amended \_\_\_\_\_.

25-6.060 Meter Test – Referee.

(1) through (3) No change.

(4) For equipment tested under this rule, any previous accuracy test result on record at the time the meter test is requested must be retained in accordance with Rule 25-6.022, F.A.C.

Specific Authority 366.05(1) FS. Law Implemented 366.05(3) FS. History--New 7-29-69, Formerly 25-6.60, Amended \_\_\_\_\_.

25-6.103 Adjustment of Bills for Meter Error.

(1) For mechanical or lagged demand meters, the error at the customer's average billing demand over the refund period shall be used to determine the amount to refund or backbill the customer. This error shall be determined by testing the meter at both 40 percent and 80 percent of meter full scale value, as read on the standard or reference meter, or as near to these two points as is practicable. The following formula shall be used to estimate the kilowatt error of the meter at the customer's average billing demand:

$$E_{avg} = [E_{80} - E_{40}] / [M_{80} - M_{40}] * [M_{avg} - M_{40}] + E_{40}$$

where:

M<sub>avg</sub> denotes the customer's average billing demand over the refund period;

M<sub>40</sub> and M<sub>80</sub> denote the kilowatt readings on the meter being tested when the reference meter is at 40 percent and 80 percent of the full-scale value of the meter being tested, respectively;

E<sub>40</sub> and E<sub>80</sub> denote the kilowatt errors on the meter being tested corresponding to M<sub>40</sub> and M<sub>80</sub>, respectively; and

E<sub>avg</sub> denotes the estimated kilowatt error at the customer's average billing demand.

The kilowatt error so determined, E<sub>avg</sub>, shall be expressed as a percentage, P, of the reference meter reading corresponding to the average billing demand. This percentage shall be used to determine the corrected billing demand for each month of the refund period. A correction factor, C.F., will be applied to the original billing demand for each month in the refund/backbill period to determine the corrected billing demand for each month as follows:

C.F. \* Original Billing Demand = Corrected Billing Demand

where:

$$C.F. = [1/(1+P)]$$

and P is the percentage error of E<sub>avg</sub> relative to the reference meter reading corresponding to the average billing demand over the refund/backbill period.

(2) For watthour and electronic demand meters, the percentage error to be used for refunds and backbills shall be the same percentage calculated when tested for watthour registration as set forth in subsection 25-6.058(1) and paragraph 25-6.058(2)(b), F.A.C., respectively. A correction factor, C.F., will be applied to the original billing

demand/energy for each month in the refund/backbill period to determine the corrected billing demand/energy for each month as follows:

C.F. \* Original Billing Demand/Energy = Corrected Billing Demand/Energy

where:

C.F. = [1/(1+P)]

and P is the percentage error calculated according to subsection 25-6.058(1), F.A.C., for watthour meters and paragraph 25-6.058(2)(b), F.A.C., for electronic demand meters.

(3)(4) Over-registering Fast meters. Whenever a meter tested is found to have an error in excess of the plus tolerance allowed in Rule 25-6.052, F.A.C., the utility shall refund to the customer the amount billed in error as determined by subsection (1) or subsection (2) of this rule ~~Rule 25-6.058, F.A.C., for one half the period since the last test, said one half period shall not exceed twelve (12) months; except that if it can be shown that the error was due to some cause, the date of which can be fixed, the overcharges shall be computed back to but not beyond such date based upon available records. The refund shall not include any part of any minimum charge.~~

(4)(2) Under-registering Slow meters.

(a) Except as provided by this paragraph, A utility may backbill in the event that a meter is found to be under-registering slow, non-registering or partially registering. A utility may not backbill for any period greater than twelve (12) months from the date it notifies a customer that his or her meter is slow, non-registering or partially registering. If it can be ascertained that the meter was under-registering slow, non-registering or partially registering for less than twelve (12) months prior to notification, then the utility may backbill only for the lesser period of time. In any event, the customer may extend the payments of the backbill over the same amount of time for which the utility issued the backbill. Nothing in this subsection shall be construed to limit the application of Rule 25-6.104, F.A.C., or prohibit a utility from backbilling for four years pursuant to subsection (5) of this rule.

(b) Nothing in paragraph (4)(a) of this rule shall be construed to limit the application of Rule 25-6.104, F.A.C., or prohibit a utility from backbilling for four years pursuant to subsection (7) of this rule.

(c)(b) Whenever a meter is tested and not subject to Rule 25-6.104 or subsection 25-6.105(5), F.A.C., and is found to have an error in excess the minus tolerance allowed by Rule 25-6.052, F.A.C., the utility may bill the customer an amount equal to the unbilled error as determined by subsection (1) or subsection (2) of this rule. Rule 25-6.058, F.A.C., in accordance with this subsection. In order to determine the amount of undercharge, the recorded consumption shall be adjusted using the amount of error found by the meter to determine the correct consumption and the customer's bills in question shall be recalculated and computed to the actual bills

~~rendered.~~ If the utility has required a deposit for a meter test as permitted under subsection (2) of Rule 25-6.059(2), F.A.C., the customer may be billed only for that portion of the unbilled error which is in excess of the deposit retained by the utility.

(5)(e) In the event of a non-registering meter or a meter for which the test results are inconclusive partially registering meter, unless the provisions of subsection (3) of this rule apply, the utility may bill the customer on an estimate based on previous bills for similar usage or on other sources of available data provided.

(3) It shall be understood that when a meter is found to be in error in excess of the prescribed limits, the figure to be used for calculating the amount of refund or charge in subsection (1) or paragraph (2)(b) above shall be that percentage of error as determined by the test.

(6)(4) No change.

(7)(5) No change.

Specific Authority 366.05(1) FS. Law Implemented 366.03, 366.041(1), 366.05(1), (3), (4), 366.06(1) FS. History—New 7-29-69, Amended 4-13-80, 5-3-82, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Sid Matlock

NAME OF SUPERVISOR OR PERSONS WHO APPROVED  
THE PROPOSED RULE: Florida Public Service Commission  
DATE PROPOSED RULE APPROVED BY AGENCY  
HEAD: April 18, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT  
PUBLISHED IN FAW: Vol. 31, No. 34, August 26, 2005

## DEPARTMENT OF CORRECTIONS

RULE NO.: 33-602.210  
RULE TITLE: Use of Force

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to: clarify the requirements and procedures for administration of chemical agents; clarify the requirements for investigation of use of force incidents; and correct form titles and ensure consistency between forms and rule.

SUMMARY: When chemical agents are administered to resolve situations in which the inmate is creating a disturbance in his cell, the proposed rule requires that videotaping initiated after final exposure to chemical agents shall continue until the inmate is showered, examined by medical, and returned to a secure cell. Inmate refusals to shower must also be videotaped. The proposed rule requires that in cases in which the Inspector General finds that a use of force was inappropriate, the Inspector General must conduct a complete investigation of the incident before issuing final approval or disapproval. The title of Form DC6-213 is amended to reflect that it is an 'accountability' log, and the form is amended to reflect the use of numbered security seals. The proposed rule and Form DC1-813 are amended to clarify the requirement that designated staff provide a written explanation in cases where

the staff member is unavailable to supervise the administration of chemical agents. Form DC4-711A is amended to delete 'affidavit' from the title as the form is not an affidavit, and the form is amended to clarify the physician's confirmation of his awareness that the inmate has refused treatment.

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

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

SPECIFIC AUTHORITY: 944.09 FS.

LAW IMPLEMENTED: 20.315, 776.07, 944.09, 944.35 FS.

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

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

THE FULL TEXT OF THE PROPOSED RULE IS:

33-602.210 Use of Force.

(1) through (3) No change.

(4) Physical force shall be employed only as a last resort when it reasonably appears that other alternatives are not feasible to control the situation and will not be used solely in response to verbal abuse that does not rise to a level of a disturbance. When the use of force is justified, only that amount and type of force that reasonably appears necessary to accomplish the authorized objective shall be used. All authorized use of force incidents will be videorecorded in their entirety, except that videotaping the administration of chemical agents is not required for use on an inmate creating a disturbance in his or her cell when the officer is attempting to resolve the situation without extracting the inmate from the cell. Videotaping will be initiated after the final exposure to chemical agents and will continue from this point until the decontaminating shower is provided and the medical examination is completed and the inmate is returned to a secure cell. Should the inmate refuse the shower for decontamination purposes or the medical examination, both the staff providing the opportunity in each case and the inmate's responses will be recorded if cell extraction or other uses of force are necessary. All spontaneous use of force incidents will be videotaped from the point the video camera operator arrives at the scene. Videotaping shall continue uninterrupted until the incident is under control, the involved inmate is escorted to medical, and the inmate is subsequently returned to secure housing. Videotaping of post use of force medical exams shall be done in such a manner as to provide the privacy needed for the exam. If it is necessary to transport the inmate to an outside

facility for treatment or to another department facility for secure housing purposes, videotaping shall continue until the inmate is loaded and secured in the transport vehicle.

(5) through (9) No change.

(10) The warden or acting warden shall immediately conduct a preliminary review of the video tape(s) and all associated reports for signs of excessive force or procedural deviation. If signs of excessive force or procedural deviation are noted by the warden or assigned inspector, she or he will notify the Office of the Inspector General directly, so that there is no undue delay in initiating an investigation. The warden shall then appoint a staff member of equal or higher rank than those involved in the use of force to collect all pertinent information and required documentation. This information will include the reports of all involved staff and the statements of staff witnesses, inmate witnesses, the inmate subject, and the completed Use of Force File Checklist, Form DC1-813. All inmate statements (subject and witnesses) shall be made in writing using the Witness Statement, Form DC6-112C. Form DC6-112C is incorporated by reference in Rule 33-601.313, F.A.C. All employees who witness but do not participate in the use of force shall complete an Incident Report, Form DC6-210. Form DC6-210 is incorporated by reference in subsection (22) of this rule. This process will be completed within 5 working days (Monday through Friday). The warden shall review the information and note any inappropriate actions. The warden shall review the Use of Force File Checklist, Form DC1-813, and shall forward the videotape(s) and associated reports on the use of force and the warden's review to the institutional inspector within five working days. Form DC1-813 is incorporated by reference in subsection (22) of this rule. The institutional inspector will ensure that all documentation is complete and will forward all materials to the Use of Force Unit within the Office of the Inspector General (OIG) within 5 working days. The OIG, following its review, will either approve the use of force action or disapprove it. If the OIG finds that the use of force was inappropriate, the OIG shall conduct a complete investigation into the incident necessary, it will be referred for investigation before final approval or disapproval. If disapproved, the OIG shall advise the warden in writing of the reason for the disapproval so that the warden can take any needed corrective action. If employee disciplinary action appears warranted, the warden shall forward the materials to the service center employee relations supervisor. Form DC6-296, Disapproved Use of Force/Disposition Report, shall be used for this purpose. Form DC6-296 is incorporated by reference in subsection (22) of this rule. The warden shall document all corrective action taken. Copies of the employee's report, the warden's summary and the inspector general's review and determination shall be kept in the inmate's file. A Use of Force Log, Form DC2-802, shall be placed in every employee's personnel file. This form will be maintained by the servicing personnel office and shall contain a record of every report of use of force and staff supplement completed by the



employee. The warden or his or her designee shall be responsible for submitting accurate information to the personnel office in order to maintain the DC2-802. Any use of force reports completed prior to April 15, 1998 shall also remain in the file. Form DC2-802, Use of Force Log, is incorporated by reference in subsection (22) of this rule.

(11) No change.

(12) Force or restraint may be used to administer medical treatment when ordered by a physician or clinical associate, and only when treatment is necessary to protect the health of other persons, as in the case of contagious and venereal diseases, or when treatment is offered in satisfaction of a duty to protect the inmate against self-inflicted injury or death. The physician or clinical associate shall prepare a report documenting the reasons that force or restraint was authorized. Form DC6-232, Authorization for Use of Force Report, shall be used for this purpose. The physician's or clinical associate's report shall be attached to the Institutions Report of Force Used when actual force is used, or the Incident Report, Form DC6-210, in cases when restraints are applied without the use of force as described above. In each instance a DC4-701C, Emergency Room Record, shall be completed in its entirety with applicable data, or the letters N/A used to indicate not applicable. Form DC4-708, Diagram of Injury, shall also be completed in its entirety with applicable data, or the letters N/A used to indicate not applicable. In each case, the examination shall be complete and result in a clear statement by the medical provider that there is or is not an injury, and the record shall provide sufficient documentation to support that conclusion. In all cases where physical force is used to manage an inmate, the inmate and any employee who is involved will be required to receive a medical examination or will sign a Refusal of Health Care Services Affidavit, Form DC4-711A, declining the examination. In those cases where an injury is claimed but not substantiated by medical examination, the statement by the medical provider shall indicate this, and the documentation shall be sufficient to support that no injury was found upon examination. Forms DC4-711A, DC4-701C and DC4-708 are incorporated by reference in subsection (22) of this rule. When the use of four-point or five-point psychiatric restraints is authorized and the inmate does not offer resistance to the application of the restraints, the completion of an Institutions Report of Force Used, Form DC6-230, or an Institutions Report of Force Used Staff Supplement, Form DC6-231, will not be required. In these situations, where there is no resistance to the application of psychiatric restraints, the application of the restraints will be videotaped and an Incident Report, Form DC6-210, will be completed. The videotape, the completed Incident Report, and the completed Authorization for Use of Force Report, Form DC6-232, will be forwarded to the warden or acting warden for review within one working day. The warden will forward the videotape and associated reports to the institutional inspector within five working days. The institutional inspector will ensure that all documentation is

complete and will forward all materials to the Office of the Inspector General, as outlined in subsection (10) above, for review. If at any time prior to or during the application of the psychiatric restraints the inmate offers resistance to the application, the steps outlined in subsection (8) above will be followed.

(13) through (15) No change.

(16) Use of Chemical Agents.

(a) through (j) No change.

(k) Chemical agents shall be stored in the main arsenal. A small amount of chemical agents may be stored in secure locations such as the control room mini-arsenal or the officer's station in confinement and close management units until its use is authorized. Each stored chemical agent dispenser will be numbered. The Chemical Agent Accountability Log, Form DC6-216, will be kept in all areas in which chemical agents are stored and will be utilized to record the weight of each numbered chemical agent dispenser prior to issue and again when it is returned to the secure inventory storage area. The weighing process will be conducted and a verifying entry will be made in the log, including the signature of the shift supervisor authorizing the use of the chemical agent. The chief of security shall monitor the canister weights following each use of chemical agents to ensure the amounts used are consistent with that expected by reviewing and initialing the Chemical Agent Accountability Log, Form DC6-216. Form DC6-216 is incorporated by reference in subsection (22) of this rule. Staff designated by the Secretary of the Department shall be issued one three or four ounce dispenser of OC pepper spray, with marking dye, after being properly trained in chemical agent utilization. The chemical agent dispenser shall be securely encased and attached to the officer's belt. Each MK-4 chemical agent dispenser will be secured within a pouch by a numbered, breakable seal. Form DC6-213, Individual Chemical Agent Dispenser Accountability Log, will be utilized to document the name of the officer to whom each dispenser is assigned as well as the seal number on the dispenser she or he received. Upon receiving the dispenser and pouch, the officer will examine the safety seal to ensure that it is intact. If the seal is broken, the Shift Supervisor will be notified immediately and an Incident Report, Form DC6-210, will be written. Forms DC6-210 and DC6-213 are incorporated by reference in subsection (22) of this rule. The arsenal sergeant shall maintain a mastery inventory of all individual chemical agent dispensers complete with the weight of the dispenser at the time the original seal is attached. Whenever a dispenser is returned with a broken seal, the arsenal sergeant shall document the weight of the dispenser on the Form DC6-216 and attach a new seal.

(l) No change.

(m) Procedure for the use of chemical agents on disruptive inmates under controlled conditions:

1. through 2. No change.

3. Prior to using chemical agents, the inmate again shall be counseled with by the shift supervisor concerning his behavior.

a. through e. No change.

f. Except in cases of extreme emergency as determined by the warden or duty warden, the confinement or close management lieutenant or the shift supervisor shall counsel with, issue the final order, and be present during the administering of chemical agents. If the shift supervisor, confinement or close management lieutenant is unavailable, he ~~the shift supervisor~~ shall provide a written explanation as to why he was not available to supervise the administration of chemical agents.

(n) through (p) No change.

(17) through (21) No change.

(22) The following forms are hereby incorporated by reference. Copies of these forms are available from the Forms Control Administrator, Office of Research, Planning and Support Services, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500.

(a) DC1-813, Use of Force File Checklist, effective April 17, 2005.

(b) through (e) No change.

(f) DC4-711A, Refusal of Health Care Services Affidavit, effective November 7, 2004.

(g) No change.

(h) DC6-213, Individual Chemical Agent Dispenser Accountability Log, effective February 7, 2000.

(i) through (n) No change.

Specific Authority 944.09 FS. Law Implemented 20.315, 776.07, 944.09, 944.35 FS. History--New 4-8-81, Amended 10-10-83, 9-28-85, Formerly 33-3.066, Amended 3-26-86, 11-21-86, 4-21-93, 7-26-93, 11-2-94, 2-12-97, 11-8-98, Formerly 33-3.0066, Amended 10-6-99, 2-7-00, 7-25-02, 8-25-03, 2-25-04, 11-7-04, 4-17-05, 8-1-05, 3-2-06, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
George Sapp, Assistant Secretary of Institutions

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Laura Bedard, Ph.D., Deputy Secretary of Department of Corrections

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 14, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 7, 2006

## WATER MANAGEMENT DISTRICTS

### South Florida Water Management District

RULE NOS.:	RULE TITLES:
40E-1.021	Definitions
40E-1.5095	Publication of Notice of Agency Decision or Intended Agency Decision
40E-1.511	Point of Entry into Proceedings

40E-1.603

Application Procedures for Conceptual Approval, Individual and General Permits

40E-1.6058

Publication and Requests for Notification of Permit Applications or Notices of Intent

40E-1.6065

Consideration of Intended Agency Decision on Permit Applications

40E-1.6105

Notification of Transfer of Interest in Real Property

40E-1.6107

Transfer of Environmental Resource, Surface Water Management or Water Use Permit

40E-1.615

Coordinated Agency Review Procedures for the Florida Keys Area of Critical State Concern

PURPOSE AND EFFECT: The proposed amendments incorporate provisions to allow for noticing, delivery and receipt of documents through electronic media.

SUMMARY: The proposed rules set forth definitions describing the electronic terminology used throughout the District's rules, and provide for electronic noticing, electronic filings, electronic receipt and/or electronic transmission by the District.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: A Statement of Estimated Regulatory Cost has not been prepared based on the District's determination that the proposed revisions will not result in a substantial increase in the costs to affected parties and there will not be significant adverse effects on competition, employment, investment or productivity.

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: 120.53, 120.53(1), 120.54(5), 373.044, 373.113, 373.4136, 380.051, 668.003, 668.004, 668.50 FS.

LAW IMPLEMENTED: 120.53, 120.53(1), 120.54(5), 120.569, 120.57, 120.60, 120.60(3), 373.083, 373.107, 373.109, 373.113, 373.116, 373.146, 373.171, 373.229, 373.309, 373.413, 373.4135, 373.4136, 373.416, 373.417, 373.421, 373.422, 373.426, 373.427, 373.429, 373.436, 380.051, 668.003, 668.004, 668.50 FS.

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

DATE AND TIME: June 14, 2006, 9:00 a.m.

PLACE: South Florida Water Management District Headquarters, B-1 Auditorium, 3301 Gun Club Road, West Palm Beach, Florida 33406

Although Governing Board meetings, hearings and workshops are normally recorded, affected persons are advised that it may be necessary for them to ensure that a verbatim record of the

proceeding is made, including the testimony and evidence upon which any appeal is to be based. Persons with disabilities or handicaps who need assistance may contact the South Florida Water Management District Clerk's Office, at (561)682-6436 at least two business days in advance to make appropriate arrangements.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Ronda Wise, South Florida Water Management District, Post Office Box 24680, West Palm Beach, FL 33416-4680, telephone 1(800)432-2045, extension 6500 or (561)682-6500 (internet: [rwise@sfwmd.gov](mailto:rwise@sfwmd.gov)). For procedural questions, Jan Sluth, Paralegal, South Florida Water Management District, Post Office Box 24680, West Palm Beach, FL 33416-4680, telephone 1(800)432-2045, extension 6299, or (561)682-6299 (internet: [jsluth@sfwmd.gov](mailto:jsluth@sfwmd.gov)).

THE FULL TEXT OF THE PROPOSED RULES IS:

#### 40E-1.021 Definitions.

When used in this chapter, Chapters 40E-4, Chapters 40E-40, 40E-41, 40E-61, and 40E-400, F.A.C.:

(1) "e-Permitting website" means the District's website address for e-Permitting at <http://my.sfwmd.gov/ePermitting>.

(2) "Electronic filing" means filing or submission of an Environmental Resource, Surface Water Management Permit or Consumptive Use Permit Application; Response to Request for Additional Information; or Request for Permit Transfer at the District's e-Permitting website. Electronic filing is governed by the provisions of Chapter 668, F.S. If the applicant or sender of electronic data inhibits the ability of the District to store or print the electronic data, it shall not be considered filed with or received by the District. Filings received by the District after 5:00 p.m. shall be deemed filed on the next regular business day.

(3) "Electronic mail" means an electronic or computer file that is transmitted between two or more telecommunications devices; computers; computer networks, regardless of whether the network is a local, regional, or global network; or electronic devices capable of receiving electronic messages, regardless of whether the message is converted to hard copy format after receipt, viewed upon transmission, or stored for later retrieval. Electronic mail received after 5:00 p.m. shall be deemed received on the next regular business day.

(4) "Electronic record" means information that is stored in an electronic medium and is retrievable in a perceivable form, including public records as defined in Section 119.011, Florida Statutes.

(5) "Electronic signature" means an electronic sound, symbol, or process attached to an electronic record and executed or adopted by a person with the intent to sign the record.

PROPOSED EFFECTIVE DATE: October 1, 2006.

Specific Authority 373.044, 373.113, 668.003, 668.004, 668.50 FS. Law Implemented 668.003, 668.004, 668.50 FS. History—New 10-1-06.

40E-1.5095 Publication of Notice of Agency Decision or Intended Agency Decision.

In cases where a project is determined to be of heightened public concern, or where there is the likelihood of a request for an administrative hearing, where the proposed activity is potentially harmful to the water resources of the District or contrary to the overall objectives of Chapter 373, F.S., as outlined in Section 373.016, F.S., or if objection(s) to the application has been received, the District shall publish, or require the permit applicant to publish notice of agency decision or intended agency decision in the Florida Administrative Weekly or newspapers of general circulation in the area affected by such decisions as required by Chapter 50, F.S., and shall post notice and send by regular United States mail or electronic mail copies of its notice to applicants and interested groups. Such publication may be used as evidence of constructive and sufficient notice.

PROPOSED EFFECTIVE DATE: October 1, 2006.

Specific Authority 120.54(5), 373.044, 373.113, 668.003, 668.004, 668.50 FS. Law Implemented 120.54(5), 120.569, 120.57, 373.146, 373.413, 668.003, 668.004, 668.50 FS. History—New 7-2-98, Amended 6-12-00, 10-1-06.

40E-1.511 Point of Entry into Proceedings.

Procedures regarding point of entry into proceedings determining substantial interests and mediation are set forth in the Uniform Rules of Procedure Rule 28-106.111, F.A.C. The following exceptions are applied in combination with the applicable Uniform Rules of Procedure.

(1)(a) "Receipt of written notice of agency decision" as set forth in Rule 28-106.111, F.A.C., means receipt of either written notice through regular United States mail, electronic mail, or posting that the District has or intends to take final agency action, or publication of notice that the District has or intends to take final agency action.

(b) No change.

(2) through (3) No change.

PROPOSED EFFECTIVE DATE: October 1, 2006.

Specific Authority 120.54(5), 373.044, 373.113, 668.003, 668.004, 668.50 FS. Law Implemented 120.54(5), 120.569, 120.57, 120.60, 373.146, 373.413, 373.427, 668.003, 668.004, 668.50 FS. History—New 9-3-81, Amended 7-26-87, 5-11-93, 10-3-95, 7-2-98, 6-12-00, 10-1-06.

40E-1.603 Application Procedures for Conceptual Approval, Individual and General Permits.

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

(2) No change.

(3)(a) through (d) No change.

(e) Noticed general permits under Chapter 40E-400, F.A.C., may be utilized by the applicant 30 days after the District receives the notice of intent, unless a notice that the project does not qualify for the noticed general permit is sent by regular United States mail or electronic mail ~~mailed~~ by the District within 30 days, in accordance with Rule 40E-400.211, F.A.C. If notice that the proposed project does not qualify for the noticed general permit is sent by regular United States mail or electronic mail ~~mailed~~ by the District to the applicant, the review process under subsection (1) shall be initiated or the applicant shall be required to apply for the appropriate permit if the requested activity is not covered by the noticed general permit rule.

PROPOSED EFFECTIVE DATE: October 1, 2006.

Specific Authority 120.53(1), 373.044, 373.113, 668.003, 668.004, 668.50 FS. Law Implemented 120.60, 373.107, 373.109, 373.116, 373.229, 373.417, 373.421, 373.422, 668.003, 668.004, 668.50 FS. History--New 9-3-81, Formerly 16K-1.08(1)-(8), Amended 7-1-86, 7-26-87, 11-21-89, 5-11-93, 10-3-95, 4-1-96, 7-2-98, 6-12-00, 10-1-06.

40E-1.6058 Publication and Requests for Notification of Permit Applications or Notices of Intent.

(1) ~~Written~~ Notice of Receipt of Permit Application or Notice of Intent.

(a) Persons who wish to be notified in writing or by electronic mail of any permit application or notice of intent which affects a designated geographic area shall notify the District in writing or by electronic mail, and shall specify their area of interest by county. Requests must be renewed every 6 months. The District shall provide ~~written~~ notice in writing or by electronic mail of receipt of application or notice of intent to all persons who have filed in the preceding 6 months a written or electronic request for notification of any application or notice of intent affecting the designated geographic area in which the proposed activity is to occur.

(b) ~~Notices of intent for general permits shall be posted in the District Service Center responsible for reviewing the notice of intent.~~

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

(3) No change.

(4) Persons who wish to be advised of the proposed agency action regarding a particular permit application shall file a written or electronic request for further notice within 14 days of receipt of the notice of application.

(5) The governing board may charge a subscription fee for information requested in accordance with this section to any person who has filed a written or electronic request for notification of any pending applications, pursuant to Rule 40E-1.125, F.A.C.

PROPOSED EFFECTIVE DATE: October 1, 2006.

Specific Authority 373.044, 373.113, 668.003, 668.004, 668.50 FS. Law Implemented 120.53(1), 120.60(3), 668.003, 668.004, 668.50 FS. History--New 10-3-95, Amended 7-2-98, 6-12-00, 10-1-06.

40E-1.6065 Consideration of Intended Agency Decision on Permit Applications.

(1) No change.

(2) The Governing Board shall consider the application for a conceptual approval, individual environmental resource, individual surface water management, or individual water use permit application at its next available regularly scheduled regulatory meeting following the mailing or electronic mailing of notice of intended agency decision, unless an administrative hearing is requested and granted pursuant to Section 120.569, F.S.

(3) No change.

(4) Because the Governing Board may take a final agency action which materially differs from the noticed intended agency action, applicants and other interested persons should be prepared to defend their position regarding the permit application when it is considered by the Governing Board. If the Governing Board takes final agency action which materially differs from the intended agency decision, the District shall mail by regular United States mail or electronic mail a notice of the final agency action to all persons who were notified of the intended agency decision.

PROPOSED EFFECTIVE DATE: October 1, 2006.

Specific Authority 120.53(1), 373.044, 373.113, 668.003, 668.004, 668.50 FS. Law Implemented 120.60, 373.107, 373.109, 373.116, 668.003, 668.004, 668.50 FS. History--New 7-2-98, Amended 6-12-00, 10-1-06.

40E-1.6105 Notification of Transfer of Interest in Real Property.

Within 30 days of any transfer of interest or control of the real property at which any permitted facility, system, consumptive use, or activity is located, the permittee must notify the District, in writing or electronically at the District's e-Permitting website, of the transfer giving the name and address of the new owner or person in control and providing a copy of the instrument effectuating the transfer. Notification of a transfer shall not constitute a permit transfer pursuant to Rule 40E-1.6107, F.A.C.

PROPOSED EFFECTIVE DATE: October 1, 2006.

Specific Authority 373.044, 373.113, 668.003, 668.004, 668.50 FS. Law Implemented 373.083, 373.171, 373.309, 373.416, 373.426, 373.429, 373.436, 668.003, 668.004, 668.50 FS. History--New 5-11-93, Amended 10-1-06.

40E-1.6107 Transfer of Environmental Resource, Surface Water Management or Water Use Permit.

(1) To transfer an environmental resource, surface water management, or water use permit, the permittee, in addition to satisfying the applicable provisions in Rules 40E-2.351 and 40E-4.351, F.A.C., must provide information required in Rule 40E-1.6105, F.A.C., and file a together with a written statement from the proposed transferee in writing or at the District's e-Permitting website that it has reviewed the District

permit and project design and will be bound by all terms and conditions of the permit, including all compliance requirements, for the duration of the permit.

(2) through (4) No change.

PROPOSED EFFECTIVE DATE: October 1, 2006.

Specific Authority 120.53(1), 373.044, 373.113, 668.003, 668.004, 668.50 FS. Law Implemented 373.083, 373.171, 373.309, 373.416, 373.426, 373.429, 373.436, 668.003, 668.004, 668.50 FS. History--New 5-11-93, Amended 10-3-95, 10-1-06.

40E-1.615 Coordinated Agency Review Procedures for the Florida Keys Area of Critical State Concern.

(1) No change.

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

(3)(a) through (c) No change.

(d) If the applicant waives the time limits required by Chapter 120 and Section 380.051, F.S., as set forth in Rule 9J-19.007, F.A.C., the District shall delay initiation of substantive review until ~~written~~ notice is received by electronic mail at the District's e-Permitting website or in writing from the Permit Coordinator indicating that substantive review should begin, as provided in subsection 9J-19.007(3) (Coordination of Time for Sufficiency Review), F.A.C. If the applicant does not waive the time limits, the District shall begin substantive review when the Coordinated Review Application is complete.

PROPOSED EFFECTIVE DATE: October 1, 2006.

Specific Authority 373.044, 373.113, 380.051, 668.003, 668.004, 668.50 FS. Law Implemented 380.051, 668.003, 668.004, 668.50 FS. History--New 9-22-87, Amended 10-3-95, 10-1-06.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Robert M. Brown, Director, Environmental Resource Regulation Division

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: South Florida Water Management District Governing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 8, 2006

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

## WATER MANAGEMENT DISTRICTS

### South Florida Water Management District

RULE NOS.:	RULE TITLES:
40E-4.021	Definitions
40E-4.091	Publications, Rules and Interagency Agreements Incorporated by Reference
40E-4.101	Content of Permit Applications
40E-4.321	Duration of Permits
40E-4.381	General Conditions

PURPOSE AND EFFECT: The proposed amendments incorporate provisions to allow for noticing, delivery and receipt of documents through electronic media.

SUMMARY: The proposed rules set forth definitions describing the electronic terminology used throughout the District's rules, and provide for electronic noticing, electronic filings, electronic receipt and/or electronic transmission by the District.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: A Statement of Estimated Regulatory Cost has not been prepared based on the District's determination that the proposed revisions will not result in a substantial increase in the costs to affected parties and there will not be significant adverse effects on competition, employment, investment or productivity.

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: 373.016, 373.044, 373.103(8), 373.113, 373.171, 373.413, 373.441, 668.003, 668.004, 668.50 FS.

LAW IMPLEMENTED: 373.016, 373.019, 373.116, 373.117, 373.229, 373.403-443, 668.50, 704.06, 668.003, 668.004, 668.50 FS.

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

DATE AND TIME: June 14, 2006, 9:00 a.m.

PLACE: South Florida Water Management District Headquarters, B-1 Auditorium, 3301 Gun Club Road, West Palm Beach, Florida 33406

Although Governing Board meetings, hearings and workshops are normally recorded, affected persons are advised that it may be necessary for them to ensure that a verbatim record of the proceeding is made, including the testimony and evidence upon which any appeal is to be based. Persons with disabilities or handicaps who need assistance may contact the South Florida Water Management District Clerk's Office, at (561)682-6436 at least two business days in advance to make appropriate arrangements.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Ronda Wise, South Florida Water Management District, Post Office Box 24680, West Palm Beach, FL 33416-4680, telephone 1(800)432-2045, extension 6500 or (561)682-6500 (internet: [rwise@sfwmd.gov](mailto:rwise@sfwmd.gov)). For procedural questions, Jan Sluth, Paralegal, South Florida Water Management District, Post Office Box 24680, West Palm Beach, FL 33416-4680, telephone 1(800)432-2045, extension 6299, or (561)682-6299 (internet: [jsluth@sfwmd.gov](mailto:jsluth@sfwmd.gov)).

THE FULL TEXT OF THE PROPOSED RULES IS:

40E-4.021 Definitions.

When used in this chapter, Chapters 40E-1, 40E-40, 40E-41 and 40E-400, F.A.C.:

(1) through (11) No change.

(12) “e-Permitting website” means the District’s website address for e-Permitting at <http://my.sfwmd.gov/ePermitting>.

(13) “Electronic filing” means filing or submission of an Environmental Resource, Surface Water Management Permit or Consumptive Use Permit Application; Response to Request for Additional Information; or Request for Permit Transfer at the District’s e-Permitting website. Electronic filing is governed by the provisions of Chapter 668, F.S. If the applicant or sender of electronic data inhibits the ability of the District to store or print the electronic data, it shall not be considered filed with or received by the District. Filings received by the District after 5:00 p.m. shall be deemed filed on the next regular business day.

(14) “Electronic mail” means an electronic or computer file that is transmitted between two or more telecommunications devices; computers; computer networks, regardless of whether the network is a local, regional, or global network; or electronic devices capable of receiving electronic messages, regardless of whether the message is converted to hard copy format after receipt, viewed upon transmission, or stored for later retrieval. Electronic mail received after 5:00 p.m. shall be deemed received on the next regular business day.

(15) “Electronic record” means information that is stored in an electronic medium and is retrievable in a perceivable form, including public records as defined in Section 119.011, Florida Statutes.

(16) “Electronic signature” means an electronic sound, symbol, or process attached to an electronic record and executed or adopted by a person with the intent to sign the record.

(17)(12) “Embedment” means the placement of transmission or distribution lines, pipes or cables into the bottoms of waters of the State by minimal displacement of bottom material and without the creation of a trench, or trough, through the use of techniques such as plowing-in, weighing -in, or non-trenching jets.

(18)(13) “Endangered species” means those animal species which are listed as endangered in Rule 68A-27.003, F.A.C., and those plant species which are listed in 50 Code of Federal Regulations 17.12, when such plants are found to be located in a wetland or other surface water.

(19)(14) “Entrenchment” means the placement of transmission or distribution lines, pipes or cables into the bottoms of waters of the State by the creation of a defined trench, or trough, through the use of such devices as clamshells, dredges, trenching jets, or other devices which produce similar results.

(20)(15) “Environmental resource permit” means a conceptual approval, individual or general permit for a surface water management system issued pursuant to Part IV, Chapter 373, F.S. Environmental resource permit also means a conceptual or individual permit for the establishment and operation of a mitigation bank.

(21)(16) “Estuary” means a semi-enclosed, naturally existing coastal body of water which has a free connection with the open sea and within which seawater is measurably diluted with fresh water derived from riverine systems.

(22)(17) “Filling” means the deposition, by any means, of materials in surface waters or wetlands, as delineated by Section 373.4211, F.S.

(23)(18) “General Permit” means a no notice, noticed or standard general environmental resource permit issued by District staff. However, staff recommendations for denial of noticed or standard general permit applications shall be considered by the Governing Board.

(24)(19) “Impoundment” means any lake, reservoir, pond, or other containment of surface water occupying a bed or depression in the earth’s surface and having a discernible shoreline.

(25)(20) “Incidental site activities” means those certain site activities in uplands which may be conducted in conjunction with the work proposed in an environmental resource permit application such as: land clearing in uplands; minimal earthwork, lake construction; road subgrade construction; foundation construction; utility installation; fence installation; construction trailer installation; unconnected drainage facility construction; or other similar activities.

(26)(21) “Individual Permit” means an environmental resource permit issued by the District Governing Board.

(27)(22) “Isolated Wetland” means any wetland without a direct hydrologic connection to a lake, stream, estuary, or marine water.

(28)(23) “Lagoon” means a naturally existing coastal zone depression which is below mean high water and which has permanent or ephemeral communications with the sea, but which is protected from the sea by some type of naturally existing barrier.

(29)(24) “Listed Species” means those animal species which are endangered, threatened or of special concern and are listed in Rules 68A-27.003, 68A-27.004 and 68A-27.005, F.A.C., and those plant species listed in 50 Code of Federal Regulations 17.12.

(30)(25) “Maintenance” or “Repairs” means remedial work of a nature as may affect the safety of any dam, impoundment, reservoir, or appurtenant work or works, but excludes routine custodial maintenance.

(31)(26) “Operation Permit” means a permit issued by the District authorizing the operation and maintenance of a surface water management system in accordance with the terms and conditions of the permit.

~~(32)(27)~~ “Other Surface Waters” means surface waters as described and delineated pursuant to Rule 62-340.600, F.A.C., as ratified by Section 373.4211, F.S., other than wetlands.

~~(33)~~ “Posting” means placing notice on the District’s website or on one of the District’s official posting bulletin boards.

~~(34)(28)~~ “Riprap” means a sustaining wall made to reduce the force of waves and to protect the shore from erosion and consists of unconsolidated boulders, rocks, or clean concrete rubble with no exposed reinforcing rods or similar protrusions.

~~(35)(29)~~ “Species of Special Concern” means those animal species listed in Rule 68A-27.005, F.A.C.

~~(36)(30)~~ “State Water Quality Standards” means water quality standards adopted pursuant to Chapter 403, F.S.

~~(37)(31)~~ “Stormwater Management System” means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over drainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system.

~~(38)(32)~~ “Surface Water Management Permit” means a permit issued pursuant to Chapter 40E-4 or 40E-40, F.A.C., prior to October 3, 1995, or that is grandfathered pursuant to Sections 373.414(11)-(16), F.S.

~~(39)(33)~~ “Surface Water Management System” or “System” means a stormwater management system, dam, impoundment, reservoir, appurtenant work or works, or any combination thereof. The terms “surface water management system” or “system” includes areas of dredging or filling as defined by Section 373.403(13) and (14), F.S., respectively.

~~(40)(34)~~ “Threatened Species” means those animal species listed in Rule 68A-27.004, F.A.C., and those plant species which are listed as threatened in 50 Code of Federal Regulations 17.12.

~~(41)(35)~~ “Total Land Area” means land holdings under common ownership which are contiguous or land holdings which are served by common surface water management facilities.

~~(42)(36)~~ “Vertical Seawall” is a seawall the waterward face of which is at a slope greater than 75 degrees to the horizontal. A seawall with sloping riprap covering the waterward face to the mean high water line shall not be considered a vertical seawall.

~~(43)(37)~~ “Watershed” means the land area which contributes to the flow of water into a receiving body of water.

~~(44)(38)~~ “Wetlands” means those areas that are inundated or saturated by surface water or ground water at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Soils present in wetlands generally are classified as hydric or alluvial, or possess

characteristics that are associated with reducing soil conditions. The prevalent vegetation in wetlands generally consists of facultative or obligate hydrophytic macrophytes that are typically adapted to areas having soil conditions described above. These species, due to morphological, physiological or reproductive adaptation, have the ability to grow, reproduce, or persist in aquatic environments or anaerobic soil conditions. Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps and other similar areas. Florida wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto. The landward extent of wetlands is delineated pursuant to Rules 62-340.100 through 62-340.550, F.A.C., as ratified by Section 373.4211, F.S.

~~(45)(39)~~ “Wetland Resource Permit” means a permit issued pursuant to Chapter 62-312, F.A.C., prior to October 3, 1995, or that is grandfathered pursuant to Sections 373.414(11)-(16), F.S.

~~(46)(40)~~ “Works” means all artificial structures, including but not limited to ditches, canals, conduits, channels, culverts, pipes, and other construction that connects to, draws water from, drains water into, or is placed in or across the waters in the state.

PROPOSED EFFECTIVE DATE: October 1, 2006.

Specific Authority 373.044, 373.113, 668.003, 668.004, 668.50 FS. Law Implemented 373.019, 373.403-.443, 403.031, 668.003, 668.004, 668.50, 704.06 FS. History—New 9-3-81, Amended 1-31-82, 12-1-82, Formerly 16K-1.05(1), Amended 7-1-86, 4-20-94, 10-3-95, 4-1-96, 10-1-06.

40E-4.091 Publications, Rules and Interagency Agreements Incorporated by Reference.

(1) The following publications, rules and interagency agreements are incorporated by reference into this chapter, Chapters 40E-40, 40E-41 and 40E-400, F.A.C.:

(a) “Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District – 2-12-06”.

(b) through (k) No change.

(2) No change.

PROPOSED EFFECTIVE DATE: October 1, 2006.

Specific Authority 373.044, 373.103(8), 373.113, 373.171, 373.413, 373.441, 668.003, 668.004, 668.50 FS. Law Implemented 373.413, 373.4135, 373.4137, 373.414, 373.4142, 373.416, 373.418, 373.421, 373.426, 373.441, 668.003, 668.004, 668.50 FS. History—New 9-3-81, Amended 1-31-82, 12-1-82, Formerly 16K-4.035(1), Amended 5-1-86, 7-1-86, 3-24-87, 4-14-87, 4-21-88, 11-21-89, 11-15-92, 1-23-94, 4-20-94, 10-3-95, 1-7-97, 12-3-98, 5-28-00, 8-16-00, 1-17-01, 7-19-01, 6-26-02, 6-26-02, 4-6-03, 4-14-03, 9-16-03, 12-7-04, 10-1-06.

40E-4.101 Content of Permit Applications.

(1) Applications for permits required by this chapter shall be filed with the District Service Center which will review the application as set forth in Rule 40E-1.6025, F.A.C., or filed electronically at the District's e-Permitting website. The application shall contain:

(a) No change.

(b) One original and four copies of Joint Water Management District/Department of Environmental Protection/U.S. Army Corps of Engineers Environmental Resource Permit Application Form No. 0971 and five copies of drawings, calculations, environmental information, and engineering details sufficient to define the nature, scope, intent and functioning of the work proposed. This information must include at a minimum: flood protection, water quality, environmental impacts, proposed mitigation, water supply, and water conservation elements. Applicants who file an application electronically are not required to submit copies.

(2) through (4) No change.

PROPOSED EFFECTIVE DATE: October 1, 2006.

Specific Authority 373.016, 373.044, 373.113, 373.171, 668.003, 668.004, 668.50 FS. Law Implemented 373.016, 373.117, 373.413, 373.416, 373.426, 668.003, 668.004, 668.50 FS. History—New 9-3-81, Amended 1-31-82, 12-1-82, Formerly 16K-4.03(2), 16K-4.07(2), 16K-4.09(2), Amended 7-1-86, 11-21-89, 4-20-94, 10-3-95, 5-28-00, 4-14-03, 8-14-03, 10-1-06.

40E-4.321 Duration of Permits.

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

(2)(a) Unless prescribed by special permit condition, permits expire automatically according to the timeframes indicated in this rule. If application for extension is made by electronic mail at the District's e-Permitting website or in writing pursuant to subsection (3), the permit shall remain in full force and effect until:

1. The Governing Board takes action on an application for extension of an individual permit, or

2. Staff takes action on an application for extension of a standard general permit.

(b) No change.

(3) through (7) No change.

PROPOSED EFFECTIVE DATE: October 1, 2006.

Specific Authority 373.044, 373.113, 668.003, 668.004, 668.50 FS. Law Implemented 373.413, 373.416, 373.419, 373.426, 668.003, 668.004, 668.50 FS. History—New 9-3-81, Amended 1-31-82, 12-1-82, Formerly 16K-4.07(4), Amended 7-1-86, 4-20-94, 10-3-95, 5-28-00, 10-1-06.

40E-4.381 General Conditions.

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

(g) The operation phase of this permit shall not become effective: until the permittee has complied with the requirements of condition (f) above, has submitted a Request for Conversion of Environmental Resource/Surface Water

Management Permit from Construction Phase to Operation Phase and Transfer of Permit to the Operating Entity Form No. 0920, incorporated by reference in Rule 40E-1.659, F.A.C.; the District determines the system to be in compliance with the permitted plans and specifications; and the entity approved by the District in accordance with Sections 9.0 and 10.0 of the "Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District ~~—April 2003,~~" accepts responsibility for operation and maintenance of the system. The permit shall not be transferred to such approved operation and maintenance entity until the operation phase of the permit becomes effective. Following inspection and approval of the permitted system by the District, the permittee shall initiate transfer of the permit to the approved responsible operating entity if different from the permittee. Until the permit is transferred pursuant to Rule 40E-1.6107, F.A.C., the permittee shall be liable for compliance with the terms of the permit.

(h) No change.

(i) For those systems that will be operated or maintained by an entity that will require an easement or deed restriction in order to enable that entity to operate or maintain the system in conformance with this permit, such easement or deed restriction must be recorded in the public records and submitted to the District along with any other final operation and maintenance documents required by Sections 9.0 and 10.0 of the "Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District ~~—April 2003,~~" prior to lot or unit sales or prior to the completion of the system, whichever occurs first. Other documents concerning the establishment and authority of the operating entity must be filed with the Secretary of State where appropriate. For those systems which are proposed to be maintained by the county or municipal entities, final operation and maintenance documents must be received by the District when maintenance and operation of the system is accepted by the local government entity. Failure to submit the appropriate final documents will result in the permittee remaining liable for carrying out maintenance and operation of the permitted system and any other permit conditions.

(j) Should any other regulatory agency require changes to the permitted system, the permittee shall notify the District by electronic mail at the District's e-Permitting website or in writing of the changes prior to implementation so that a determination can be made whether a permit modification is required.

(k) through (o) No change.

(p) The permittee shall notify the District by electronic mail at the District's e-Permitting website or in writing within 30 days of any sale, conveyance, or other transfer of ownership or control of a permitted system or the real property on which the permitted system is located. All transfers of ownership or transfers of a permit are subject to the requirements of Rules



40E-1.6105 and 40E-1.6107, F.A.C. The permittee transferring the permit shall remain liable for corrective actions that may be required as a result of any violations prior to the sale, conveyance or other transfer of the system.

(q) through (r) No change.

(s) The permittee shall immediately notify the District by electronic mail at the District's e-Permitting website or in writing of any previously submitted information that is later discovered to be inaccurate.

(2) No change.

**PROPOSED EFFECTIVE DATE:** October 1, 2006.

Specific Authority 373.044, 373.113, 373.171, 668.003, 668.004, 668.50 FS. Law Implemented 373.116, 373.229, 373.413, 373.416, 373.421, 373.422, 373.426, 668.003, 668.004, 668.50 FS. History—New 9-3-81, Amended 1-31-82, 12-1-82, Formerly 16K-4.07(3), 16K-4.38, Amended 7-1-86, 4-20-94, 10-3-95, 1-7-97, 4-14-03, 9-16-03, 10-1-06.

(The following represents proposed changes to the document entitled "Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District – December 7, 2004" incorporated by reference in Rule 40E-4.091, F.A.C.) 4.3.9.3

(a) through (b) No change.

(c) Melaleuca eradication plans shall be submitted to the appropriate District Service Center serving the area in which the activity is proposed as designated in Rule 40E-1.6025, F.A.C., and shall be accompanied by the information required in subsection 4.3.9.

1. District staff shall notify the applicant in writing via regular United States mail or electronic mail of its proposed recommendation that the Governing Board approve or deny the eradication plan. This notification shall occur within sixty (60) days following receipt of a completed eradication plan. If staff's recommendation is for approval, the District shall also simultaneously forward a draft stewardship agreement to the applicant for review, approval and execution.

2. No change.

3. The applicant shall be notified of the date and time of this meeting – or any subsequent meeting if final agency action is not taken – via regular United States mail or electronic mail to be received by the applicant at least 7 days in advance of the Governing Board meeting.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Robert M. Brown, Director, Environmental Resource Regulation Division

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: South Florida Water Management District Governing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 8, 2006

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

## WATER MANAGEMENT DISTRICTS

### South Florida Water Management District

RULE NOS.:	RULE TITLES:
40E-61.020	Scope of Part I
40E-61.031	Implementation
40E-61.042	General Permits for Use of Works of the District Within the Lake Okeechobee Basin
40E-61.321	Duration of Permits
40E-61.381	Limiting Conditions

PURPOSE AND EFFECT: The proposed amendments incorporate provisions to allow for noticing, delivery and receipt of documents through electronic media.

SUMMARY: The proposed rules set forth definitions describing the electronic terminology used throughout the District's rules, and provide for electronic noticing, electronic filings, electronic receipt and/or electronic transmission by the District.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: A Statement of Estimated Regulatory Cost has not been prepared based on the District's determination that the proposed revisions will not result in a substantial increase in the costs to affected parties and there will not be significant adverse effects on competition, employment, investment or productivity.

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: 373.044, 373.113, 373.118, 668.003, 668.004, 668.50 FS.

LAW IMPLEMENTED: 373.016, 373.085, 373.086, 373.451, 373.453, 373.4595, 668.003, 668.004, 668.50 FS.

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

DATE AND TIME: June 14, 2006, 9:00 a.m.

PLACE: South Florida Water Management District Headquarters, B-1 Auditorium, 3301 Gun Club Road, West Palm Beach, Florida 33406

Although Governing Board meetings, hearings and workshops are normally recorded, affected persons are advised that it may be necessary for them to ensure that a verbatim record of the proceeding is made, including the testimony and evidence upon which any appeal is to be based. Persons with disabilities or handicaps who need assistance may contact the South Florida Water Management District Clerk's Office, at (561)682-6436 at least two business days in advance to make appropriate arrangements.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Ronda Wise, South Florida Water Management District, Post Office Box 24680, West Palm Beach, FL 33416-4680, telephone 1(800)432-2045, extension 6500 or (561)682-6500 (internet: [rwise@sfwmd.gov](mailto:rwise@sfwmd.gov)). For

procedural questions, Jan Sluth, Paralegal, South Florida Water Management District, Post Office Box 24680, West Palm Beach, FL 33416-4680, telephone 1(800)432-2045, extension 6299, or (561)682-6299 (internet: jsluth@sfwmd.gov).

THE FULL TEXT OF THE PROPOSED RULES IS:

PART I LAKE OKEECHOBEE DRAINAGE BASIN

40E-61.020 Scope of Part I.

(1) through (4) No change.

(5) In this rule chapter the "Works of the District Within The Lake Okeechobee Drainage Basin" are specifically named. These include canals, water control structures, rights-of-way, lakes and streams and other water resources which the South Florida Water Management District owns, has accepted responsibility for, or has specifically named. All lands within the Lake Okeechobee Drainage basin are presumed to be users of the Works of the District Within the Lake Okeechobee Drainage Basin, and as such, must comply with the provisions of this rule chapter. Any owner of a parcel of land in the Basin, unless exempt, must obtain a General Permit or an Individual Permit, and comply with applicable water quality performance limitations.

(a) The District reserves the right to modify the limitations (including assimilative coefficient) in this rule as applied to one or more parcels of land if the District obtains or is presented with evidence that the limitations applicable to the parcels are insufficient to properly control the discharge of phosphorus to Lake Okeechobee, so that the District's ability to fulfill its responsibility to improve and protect the water quality of Lake Okeechobee is threatened. If the District obtains or is presented evidence that the soil types and other factors influencing an assimilative coefficient are generally the same within the southern portion of the East Caloosahatchee Basin tributary to S-77, the Board may extend the assimilative coefficient to all areas of the Basin with common soil types and other factors influencing assimilative capacity. Modifications shall be based upon competent substantial evidence. Affected landowners shall be notified of any proposed modifications by publication of Notice of Rulemaking, by electronic mail, or in writing by certified mail and be provided an opportunity to request a proceeding pursuant to section 120.57, Florida Statutes.

(b) No change.

(6) through (7) No change.

PROPOSED EFFECTIVE DATE: October 1, 2006.

Specific Authority 373.044, 373.113, 668.003, 668.004, 668.50 FS. Law Implemented 373.016, 373.085, 373.086, 373.451, 373.453, 373.4595, 668.003, 668.004, 668.50 FS. History--New 11-1-89, Amended 10-1-06.

40E-61.031 Implementation.

(1) through (2) No change.

(3) The District shall adjust the dates specified in subsection (2) above when monitoring data or other circumstances indicate that other specific action may be necessary to protect the water quality of Lake Okeechobee. The District shall provide notice of adjusted application dates; by electronic mail, or in writing; by certified mail to the affected parcel owners.

(4) through (6) No change.

PROPOSED EFFECTIVE DATE: October 1, 2006.

Specific Authority 373.044, 373.113, 668.003, 668.004, 668.50 FS. Law Implemented 373.085, 373.086, 373.451, 373.453, 373.4595, 668.003, 668.004, 668.50 FS. History--New 11-1-89, Amended 10-1-06.

40E-61.042 General Permits for Use of Works of the District Within the Lake Okeechobee Basin.

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

(c) No Notice of Intent is required unless the District's monitoring program or other data indicates that discharge from a parcel or sub-basin is not in compliance with the applicable discharge concentration limitation. The total phosphorus concentration exceedance values specified in Table 40E-61-2 and procedures described in paragraph 40E-61.381(2)(b), F.A.C., shall be used in evaluating whether the discharge from a parcel or sub-basin exceeds the allowable concentration. A Notice of Intent pursuant to paragraph 40E-61.042(2)(b), F.A.C., below or an application for an Individual Permit pursuant to paragraph 40E-61.041(2)(a), F.A.C., shall be required for parcels or sub-basins not in compliance. Notice of the requirements shall be provided to sub-basins by Notice of Rulemaking or to individual parcel owners by electronic mail or in writing by certified mail.

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

(d) Limiting Conditions:

1. If requested by the District by electronic mail or in writing by certified mail, the permittee shall provide the monitoring data described in Rule 40E-61.381(2)(a), F.A.C.

2. through 3. No change.

PROPOSED EFFECTIVE DATE: October 1, 2006.

Specific Authority 373.044, 373.113, 373.118, 668.003, 668.004, 668.50 FS. Law Implemented 373.016, 373.085, 373.086, 373.451, 373.453, 373.4595, 668.003, 668.004, 668.50 FS. History--New 11-1-89, Amended 10-1-06.

40E-61.321 Duration of Permits.

(1) Unless revoked or otherwise modified, the duration of an individual permit or general permit issued pursuant to this chapter is three years from the date of issuance. These permits are extended automatically for another three year period, unless the District advises the permittee by electronic mail or in writing at least 90 days prior to the expiration date that the permit will not be automatically extended. Permits not

automatically extended expire three years from the date of issuance unless an application for a renewal is filed (Rule 40E-61.101, F.A.C.).

(2) General permits remain effective until this rule section is amended or the District notifies a permittee by electronic mail or in writing by certified mail pursuant to paragraph 40E-61.042(1)(c) or subparagraph 40E-61.042(2)(d)2. that the permit is revoked.

(3) No change.

PROPOSED EFFECTIVE DATE: October 1, 2006.

Specific Authority 373.044, 373.113, 668.003, 668.004, 668.50 FS. Law Implemented 373.451, 373.453, 373.4595, 668.003, 668.004, 668.50 FS. History--New 11-1-89, Amended 1-1-97, 10-1-06.

40E-61.381 Limiting Conditions.

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

(b) Off-site phosphorus discharge shall not exceed the applicable Off-site Total Phosphorus Discharge Concentration or other limitation specified in the permit.

1. The District may use the criteria in Table 40E-61-2, in addition to other available information and data, to evaluate whether the off-site phosphorus discharge from the parcel exceeds the limitation specified in the permit. If the offsite discharge from the parcel exceeds the criteria specified in Table 40E-61-2, there is greater than a 50% probability that the applicable annual off-site phosphorus concentration limitation will be exceeded. If the limitations on Table 40E-61-2 are exceeded, the District shall immediately notify the permittee by electronic mail or in writing and request that additional measures be taken to ensure that compliance with limitations is maintained.

2. Permittees shall be allowed a reasonable period of time to institute the additional measures. The District shall determine the additional time allowed to institute the measures and demonstrate compliance by electronic mail or in writing as an addendum to the permit.

3. No change.

(c) through (d) No change.

(e) The permittee shall notify the District by electronic mail at the District's e-Permitting website or in writing when any significant change in land use is made on the permitted parcel. The discharge from the parcel shall comply with the applicable Off-site Total Phosphorus Discharge Concentration or other limitation specified in the permit notwithstanding any change in land use.

(f) through (j) No change.

(k) The drainage and monitoring systems must be effectively operated and maintained, and any changes in drainage, land use or operations that could affect validity or interpretation of monitoring data must be reported by electronic mail at the District's e-Permitting website or in writing to the District.

(l) through (o) No change.

PROPOSED EFFECTIVE DATE: October 1, 2006.

Specific Authority 373.044, 373.113, 668.003, 668.004, 668.50 FS. Law Implemented 373.016, 373.085, 373.086, 373.451, 373.453, 373.4595, 668.003, 668.004, 668.50 FS. History--New 11-1-89, Amended 10-1-06.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Robert M. Brown, Director, Environmental Resource Regulation Division

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: South Florida Water Management District Governing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 8, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 24, 2006

## **WATER MANAGEMENT DISTRICTS**

### **South Florida Water Management District**

RULE NOS.:	RULE TITLES:
40E-400.211	Processing Procedures for Noticed General Permits

40E-400.475	General Permit for Minor Activities
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PURPOSE AND EFFECT: The proposed amendments incorporate provisions to allow for noticing, delivery and receipt of documents through electronic media.

SUMMARY: The proposed rules provide for electronic receipt and/or transmission by the District, electronic filings, electronic mail and electronic notices.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: A Statement of Estimated Regulatory Cost has not been prepared based on the District's determination that the proposed revisions will not result in a substantial increase in the costs to affected parties and there will not be significant adverse effects on competition, employment, investment or productivity.

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: 373.044, 373.113, 373.118, 668.003, 668.004, 668.50 FS.

LAW IMPLEMENTED: 373.109, 373.118, 373.413, 373.416, 373.426, 668.003, 668.004, 668.50 FS.

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

DATE AND TIME: June 14, 2006, 9:00 a.m.

PLACE: South Florida Water Management District Headquarters, B-1 Auditorium, 3301 Gun Club Road, West Palm Beach, Florida 33406

Although Governing Board meetings, hearings and workshops are normally recorded, affected persons are advised that it may be necessary for them to ensure that a verbatim record of the

proceeding is made, including the testimony and evidence upon which any appeal is to be based. Persons with disabilities or handicaps who need assistance may contact the South Florida Water Management District Clerk's Office, at (561)682-6436 at least two business days in advance to make appropriate arrangements.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Ronda Wise, South Florida Water Management District, Post Office Box 24680, West Palm Beach, FL 33416-4680, telephone 1(800)432-2045, extension 6500 or (561)682-6500 (internet: [rwise@sfwmd.gov](mailto:rwise@sfwmd.gov)). For procedural questions, Jan Sluth, Paralegal, South Florida Water Management District, Post Office Box 24680, West Palm Beach, FL 33416-4680, telephone 1(800)432-2045, extension 6299, or (561)682-6299 (internet: [jsluth@sfwmd.gov](mailto:jsluth@sfwmd.gov)).

#### THE FULL TEXT OF THE PROPOSED RULES IS:

40E-400.211 Processing Procedures for Noticed General Permits.

(1) through (2) No change.

(3) If the District determines that the system does not qualify for a noticed general permit, the District shall so notify the applicant by regular United States mailing or electronic mail ~~a notification~~ within 30 days of receiving Form No. 0980. For the purposes of this subsection, District mailing or electronic mailing of notification shall be deemed to occur when the notice is sent electronically or is properly addressed, stamped, and deposited in the United States mail, and the postmark date shall be the date of mailing. When the District notifies the applicant that the system does not qualify for a noticed general permit due to an error or omission in the original notice to the District, the applicant shall have 60 days from the date of the notification to amend the notice to use the general permit and submit additional information to correct such error or omission. If the applicant amends the notice to use a noticed general permit and submits additional information correcting the error or omission within the 60 day time limit, no additional application fee will be required for the noticed general permit. If the District does not mail the notice informing the applicant that the system does not qualify for a noticed general permit within 30 days of receipt of the original notice to use the general permit, or receipt of amended notice to use the general permit, the applicant may conduct the activity authorized by the noticed general permit, except as otherwise provided in Rules 40E-400.475 and 40E-400.500, F.A.C.

(4) through (9) No change.

(10) At the time that the District has received the notice of intent, it will provide public notice that the notice of intent has been filed. Such public notice shall be sent by regular United States mail or electronic mail to those people who have previously filed a written or electronic request for notification of pending applications within the affected area. The notice of

intent for a noticed general permit shall be posted in the District Service Center responsible for reviewing the notice of intent.

PROPOSED EFFECTIVE DATE: October 1, 2006.

Specific Authority 373.044, 373.113, 373.118, 668.003, 668.004, 668.50 FS. Law Implemented 373.109, 373.118, 373.413, 373.416, 373.426, 668.003, 668.004, 668.50 FS. History--New 10-3-95, Amended 7-2-98, 10-1-06.

40E-400.475 General Permit for Minor Activities.

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

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

(3) Persons wishing to qualify for this general permit must file a written or electronic request at the District's e-Permitting website, describing the proposed activities and providing plans and other information necessary to evaluate the potential for adverse impacts from the proposed activities. Any persons proposing a system described in paragraph (1)(f) above, shall submit tax parcel information or other documentation, sufficient to establish that the property is not part of a tract of land that was divided into two or more parcels after July 1, 1994. The District will provide ~~written~~ notification in writing or by electronic mail to the applicant whether the proposed activity qualifies for this general permit within 30 days of submittal of the written or electronic request. The proposed activity may not commence until the District has provided ~~written~~ notice in writing or by electronic mail that the applicant qualifies for the general permit.

(4) through (6) No change.

PROPOSED EFFECTIVE DATE: October 1, 2006.

Specific Authority 373.044, 373.113, 373.118, 668.003, 668.004, 668.50 FS. Law Implemented 373.118, 373.413, 373.416, 373.426, 668.003, 668.004, 668.50 FS. History--New 10-3-95, Amended 10-1-06.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Robert M. Brown, Director, Environmental Resource Regulation Division

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: South Florida Water Management District Governing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 14, 2006

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

#### DEPARTMENT OF ELDER AFFAIRS

##### Aging and Assisted Living Programs

RULE CHAPTER NO.: RULE CHAPTER TITLE:

58A-5 Assisted Living Facilities

RULE NOS.: RULE TITLES:

58A-5.0131 Definitions

58A-5.014 License Application, Change of Ownership, and Provisional Licenses

58A-5.015	License Renewal and Conditional License
58A-5.016	License Requirements
58A-5.0181	Residency Criteria and Admission Procedures
58A-5.0182	Resident Care Standards
58A-5.0185	Medication Practices
58A-5.019	Staffing Standards
58A-5.0191	Staff Training Requirements and Competency Test
58A-5.023	Physical Plant Standards
58A-5.024	Records
58A-5.0241	Adverse Incident Report
58A-5.025	Resident Contracts
58A-5.026	Emergency Management
58A-5.029	Limited Mental Health
58A-5.030	Extended Congregate Care Services
58A-5.031	Limited Nursing Services
58A-5.033	Administrative Enforcement

PURPOSE AND EFFECT: The proposed amendments effect Rules 58A-5.0131, 58A-5.014, 58A-5.015, 58A-5.016, 58A-5.0181, 58A-5.0182, 58A-5.0185, 58A-5.019, 58A-5.0191, 58A-5.023, 58A-5.024, 58A-5.0241, 58A-5.025, 58A-5.026, 58A-5.029, 58A-5.030, 58A-5.031, and 58A-5.033, F.A.C. The proposed rule amendments will update and delete obsolete forms and applications; update and delete obsolete references to organizations and programs; provide definitions; conform the proposed rules to changes in Sections 400.419, 400.417, 400.452, F.S.; and will clarify and revise rule requirements relating to the noticed rule titles. The proposed amendments were developed in consultation with the Agency for Health Care Administration.

SUMMARY: The proposed rule amendments address changes in assisted living facility definitions; license application, change of ownership and provisional licenses; license renewal and conditional licenses; licensing criteria; residency criteria and admission procedures; resident care standards; medication practices; staffing standards; staff training requirements and competency test; physical plant standards; records; adverse incident reports; resident contracts; emergency management; limited mental health; extended congregate care services; limited nursing services; and administrative enforcement.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No statement of estimated 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 alternate must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 400.4256, 400.402, 400.407, 400.415, 400.4178, 400.423, 400.424, 400.426, 400.427, 400.4275, 400.441, 400.442, 400.452 FS.

LAW IMPLEMENTED: 394.4574, 400.402, 400.404, 400.407, 400.4075, 400.408, 400.411, 400.412, 400.414, 400.415, 400.417, 400.4174, 400.4176, 400.4178, 400.419, 400.42, 400.423, 400.424, 400.4255, 400.4256, 400.426, 400.427, 400.4275, 400.428, 400.431, 400.434, 400.435, 400.441, 400.442, 400.444, 400.4445, 400.447, 400.452, 404.056, 409.912 FS.

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

DATE AND TIME: To Be Announced

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Jim Crochet, Office of the General Counsel, Department of Elder Affairs, 4040 Esplanade Way, Tallahassee, Florida 32399-7000, telephone (850)414-2000. Email Address: [crochethj@elderaffairs.org](mailto:crochethj@elderaffairs.org).

THE FULL TEXT OF THE PROPOSED RULES IS:

#### 58A-5.0131 Definitions.

~~In addition to the following terms are defined in Section 400.402, F.S., and are applicable to this rule chapter: activities of daily living (ADLs), administrator, agency (AHCA), aging in place or age in place, applicant, assisted living facility (ALF), chemical restraint, community living support plan, cooperative agreement, department (DOEA), emergency, extended congregate care (ECC), guardian, limited nursing services (LNS), managed risk, mental health resident, personal services, physical restraint, relative, resident, resident's representative or designee, service plan, shared responsibility, supervision, supplemental security income, supportive services, and twenty four hour nursing supervision. the following Additional definitions are applicable in this rule chapter are as follows:~~

(1) No change.

(2) "Agency Central Office or AHCA Central Office" means the Agency for Health Care Administration (also referred to as "Agency"), Assisted Living Unit (ALU), ~~Agency for Health Care Administration~~ located at 227 N. Bronough Street, Room 7100, Tallahassee, FL. The mailing address for the Assisted Living Unit is 2727 Mahan Drive, Mail Stop 30, Tallahassee, FL, 32308-5403, and ~~the ALU~~ telephone number is (850)487-2515.

(3) No change.

(4) "Assistance with activities of daily living" (ADLs) means individual assistance with the following:

(a) through (e) No change.

(f) Toileting through Assisting the resident to the bathroom, helping to undress, positioning on the commode, and helping with related personal hygiene, including assistance

with changing an adult brief. Assistance with toileting includes assistance with the routine emptying of a catheter or colostomy bag.

(5) through (12) No change.

~~(13) "DOEA Assisted Living Program" means the Assisted Living Program, Department of Elder Affairs, 4040 Esplanade Way, Tallahassee, Florida 32399-7000. The telephone number of the program is (850) 414-2309.~~

(14) through (28) renumbered (13) through (27) No change.

~~(28)(29) "Owner" means the person, partnership, association or corporation, which owns or leases the facility, and is licensed by the Agency AHCA whether licensed or not. The term does not include a person, partnership, association, or corporation which contracts only to manage or operate the facility. When the person, partnership, association or corporation who owns the facility's physical plant has leased it to another, but retains significant control over the day to day operations of the facility, such person is an owner of the facility.~~

(30) through (36) renumbered (29) through (35) No change.

(36) "Third Party" means any person or business entity providing services to residents who is not staff of the facility.

(37) No change.

Specific Authority 400.423, 400.441 FS. Law Implemented 400.402, 400.407, 400.4075, 400.411, 400.414, 400.4178, 400.419, 400.4255, 400.423, 400.428, 400.441, 400.447, 400.452 FS. History—New 9-30-92, Formerly 10A-5.0131, Amended 10-30-95, 6-2-96, 4-20-98, 10-17-99, 1-9-02, \_\_\_\_\_.

58A-5.014 License Application, Change of Ownership, and Provisional Licenses.

(1) LICENSE APPLICATION. An applicant for a standard assisted living facility (ALF) license, or a limited mental health (LMH), extended congregate care (ECC), or limited nursing services (LNS) license may obtain a license application package from the Agency AHCA Central Office.

(a) The completed application shall be signed, under oath, by an owner (or corporate officer if the owner is a corporation), the administrator, or an individual designated in writing by an owner or corporate officer, who is at least 18 years old. The application shall and include the following:

1. The Assisted Living Facilities (ALF) License Application, AHCA Form 3110-1008, January 2006 March 1999, and the Assisted Living Facility Licensure Application Addendum, AHCA Form 3110-1016, January 2006, which are is incorporated by reference and can be obtained from the Agency Central Office, with all requested information provided as specified in Section 400.411(3), F.S.

2. through 7. No change.

8. Documentation of a satisfactory fire safety ~~firesafety~~ inspection conducted by the local authority having jurisdiction over fire safety or by the State Fire Marshall.

9. No change.

10. For each person specified in Section 400.4174(1), F.S.:

~~a. A signed Florida Abuse Hotline Information System Background Check, AHCA Form 3110-0003, July 1998, which is incorporated by reference;~~

~~a.b.~~ A set of fingerprints obtained from the nearest available local law enforcement agency on the fingerprint card provided by the Agency; and

~~b.e.~~ A check or money order to cover the cost of screening.

11. In lieu of the requirements of subparagraph 10., the following may be substituted: proof of compliance with the Level 2 background screening requirements of Section 435.04, F.S., conducted within the last five (5) years pursuant to a facility or professional license requirement of the Agency AHCA or the Department of Health, a copy of the professional or facility license, and an affidavit of current compliance with Level 2 background screening standards, may be substituted; ~~For owners, administrators, and financial officers of continuing care retirement communities, proof of compliance with the background screening requirements of Rule 4-193.060, F.A.C., conducted within the last five (5) years, plus signed AHCA Form 3110-0003, may be substituted.~~

12. through 14. No change.

(b) If the Agency Central Office delivers a letter notifying the applicant of apparent errors or omissions in the application, then the applicant must respond with the required information no later than twenty-one (21) days from the date of the Agency's one omission letter. If the required information is not received by the Agency within the twenty-one (21) day timeframe, the Agency shall deem the application incomplete and shall issue a notice of intent to deny the application.

~~(c)(b)~~ An applicant for a limited mental health, extended congregate care, or limited nursing services license must concurrently apply for, or hold, a standard license and comply, in addition, with the applicable requirements of Rules 58A-5.029, 58A-5.030, and 58A-5.031, F.A.C., respectively. These specialty licenses ~~A limited mental health, extended congregate care, or limited nursing license~~ shall only be issued to a facility holding a standard license.

~~(d)(c)~~ The application shall be submitted to the Agency AHCA Central Office and be accompanied by a license fee in the form of a check or money order payable to the State of Florida. The license fee shall be in accordance with Section 400.407, F.S.

1. through 3. No change.

~~(e)(d)~~ Upon submission of all documentation required under this subsection and fees, and notification to the Agency Field area Office that the applicant is ready for survey, the Field agency area Office shall conduct a survey of the facility in accordance with Section 400.428(3), F.S.



## (2) CHANGE OF OWNERSHIP (CHOW).

(a) No change.

(b) Completed applications shall be filed with the Agency by the transferee at least 60 days before the date of transfer of ownership as required by Section 400.412, F.S., and must include the information and fees required under subsection (1) of this rule. An application package for a change of ownership of a currently licensed facility is available from the Agency AHCA Ceentral Oeffice.

(c) through (d) No change.

(e) Failure to apply for a change of ownership of a licensed facility as required by Section 400.412, F.S., shall result in a fine ~~set and~~ levied by the Agency pursuant to Section 400.419, F.S. ~~This is also applicable to individual owners who incorporate and do not report the incorporation to the agency.~~

(f) No change.

(g) If applicable, the transferor shall comply with Section 408.831(2), F.S., prior to Agency approval of the change of ownership application.

(3) through (4) No change.

Specific Authority 400.407, 400.441 FS. Law Implemented 400.402, 400.404, 400.407, 400.408, 400.411, 400.412, 400.4174, 400.427, 400.4275, 400.441, 400.444, 400.4445, 400.447 FS. History–New 5-14-81, Amended 1-6-82, 5-19-83, 9-17-84, Formerly 10A-5.14, Amended 10-20-86, 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.014, Amended 10-30-95, 4-20-98, 10-17-99, \_\_\_\_\_.

## 58A-5.015 License Renewal and Conditional Licenses.

(1) LICENSE RENEWAL. Every two years, the Agency Central Office shall provide a Applications for license renewal ~~shall be, either electronically or by mail, ed biennially by the AHCA central office to the licensees~~ no less than 120 days prior to the expiration of the current license. Applications shall be postmarked or hand delivered to the Agency a minimum of 90 days prior to the expiration date appearing on the currently held license. Failure to file a timely application shall result in a late fee charged to the facility as described in Section 400.417, F.S.

(a) All applicants for renewal of a license shall submit the following:

1. An Assisted Living Facilities (ALF) License Application, AHCA Form 3110-1008, January 2006 ~~March 1999~~ and the Assisted Living Facility Licensure Application Addendum, AHCA Form 3110-1016, January 2006, completed as required under Rule 58A-5.014, F.A.C.

(b) If the Agency Central Office delivers a letter notifying the applicant of apparent errors or omissions in the application, then the applicant must respond with the required information no later than twenty-one (21) days from the date of the Agency's one omission letter. If the required information is not

received by the Agency within the twenty-one (21) day time frame, the Agency shall deem the application incomplete and shall issue a notice of intent to deny the application.

(~~c~~)(b) Applicants for renewal of a license shall not be required to provide proof of financial ability to operate unless the facility or any other facility owned or operated in whole or part by the same owner or business entity has demonstrated financial instability as described in Rule 58A-5.021, F.A.C.

(~~d~~)(e) Applicants for renewal of licenses shall remit license fees as required by Section 400.407, F.S., and Rule 58A-5.014, F.A.C. With respect to the fee per bed required for a standard license, the number of OSS recipients claimed shall be the average number per month residing in the facility during the previous license period. An additional per bed charge shall be added to the bed fee for facilities whose average number of OSS residents per month was less than the number of beds designated for OSS recipients during the previous license period.

(2) through (3) No change.

Specific Authority 400.441 FS. Law Implemented 400.402, 400.404, 400.407, 400.411, 400.414, 400.417, 400.4174, 400.427, 400.4275, 400.441, 400.447 FS. History–New 10-17-99, Amended \_\_\_\_\_.

## 58A-5.016 License Requirements.

(1) through (2) No change.

(3) A change in the use of space that increases or decreases a facility's capacity shall not be made without prior approval from the Agency AHCA Ceentral Oeffice. Approval shall be based on the compliance with the physical plant standards provided in Rule 58A-5.023, F.A.C., as well as documentation of compliance with applicable fire safety ~~firesafety~~ and sanitation requirements as referenced in Rule 58A-5.0161, F.A.C.

(4) A change in the use of space that involves converting an area to resident use ~~an area~~, which has not previously been inspected for such use, shall not be made without prior approval from the Agency Field AHCA area Oeffice. Approval shall be based on the compliance with the physical plant standards provided in Rule 58A-5.023, F.A.C., as well as documentation of compliance with applicable fire safety and sanitation standards as referenced in Rule 58A-5.0161, F.A.C.

(5) No change.

(6) A copy of the annual fire safety and sanitation inspections described in Rule 58A-5.0161, F.A.C., shall be submitted annually to the Agency Central Office. The annual inspections shall be submitted no later than 30 calendar days after the inspections. Failure to comply with this requirement may result in administrative action pursuant to Section 400.414, F.S., and Rule 58A-5.033, F.A.C.

Specific Authority 400.441 FS. Law Implemented 400.407, 400.411, 400.412, 400.441, 400.444, 400.4445 FS. History–New 5-15-81, Amended 1-6-82, 9-17-84, Formerly 10A-5.16, Amended 6-21-88, 9-30-92, Formerly 10A-5.016, Amended 10-30-95, 10-17-99, \_\_\_\_\_.

58A-5.0181 Residency Criteria and Admission Procedures.

(1) ADMISSION CRITERIA. An individual must meet the following minimum criteria in order to be admitted to a facility holding a standard, limited nursing or limited mental health license.

(a) through (i) No change.

(j) Not have any stage 3 or 4 pressure sores. A resident requiring care of a stage 2 pressure sore, may be admitted provided that:

1. through 2. No change.

3. If the resident's condition fails to improve within 30 days, as documented by a licensed nurse or physician, the resident shall be discharged from the facility.

(k) Not require any of the following nursing services:

1. Oral, ~~or~~ nasopharyngeal, or tracheotomy suctioning;

2. through 3. No change.

4. Intermittent positive pressure breathing therapy; or

~~5. Skilled rehabilitative services as described in Rule 59G-4.290; or~~

5.6. Treatment of surgical incisions or wounds, unless the surgical incision or wound and the condition which caused it have been stabilized and a plan of care developed.

(l) No change.

(m) Not require skilled rehabilitative services as described in Rule 59G-4.290, F.A.C.

(n)(m) Have been determined by the facility administrator to be appropriate for admission to the facility by the facility administrator. The administrator shall base the ~~his/her~~ decision on:

1. through 2. No change.

3. The ability of the facility to meet the uniform fire safety standards for assisted living facilities established under Section 400.441, F.S., and Rule Chapter 694A-40, F.A.C.

(o)(n) Resident admission criteria for facilities holding an extended congregate care license are described in Rule 58A-5.030, F.A.C.

(2) HEALTH ASSESSMENT.

(a) The medical examination report completed w~~Within 60 days prior to the individual's residents admission to a facility pursuant to Section 400.426(4), F.S. but no later than 30 days after admission, the individual shall be examined by a physician or advanced registered nurse practitioner who shall provide the administrator with a medical examination report, or a copy of the report, shall which addresses the following:~~

1. through 8. No change.

(b) Medical examinations completed after the admission of the resident to the facility must be completed within 30 days of the date of admission and conducted up to 30 days after the resident's admission to the facility must be recorded on the Resident Health Assessment For Assisted Living Facilities (ALF), AHCA DOEA Form 1823, January 2006 dated March

1999, which is incorporated by reference. A faxed copy of the completed form is acceptable. A copy of AHCA DOEA Form 1823 may be obtained from the Agency Central Office or its website at <http://ahca.myflorida.com> ~~DOEA Assisted Living Program~~. Previous versions of this form completed up to six (6) months after (effective date of rule 10-17-99) are acceptable.

(c) Any information required by paragraph (a) that is not contained in the medical examination report conducted prior to the individual's admission to the facility must be obtained by the administrator within 30 days after admission using AHCA Form 1823.

(d)(e) Medical examinations of residents placed by the department, by the Department of Children and Family Services, or by an agency under contract with either department must be conducted within 30 days before placement in the facility and recorded on AHCA DOEA Form 1823 as described in paragraph (b).

~~(d) Any information required by paragraph (a) that is not contained in the medical examination report conducted prior to the individual's admission to the facility must be obtained by the administrator within 30 days after admission using DOEA Form 1823.~~

(e) through (g) No change.

(3) ADMISSION PACKAGE.

(a) The facility shall make available to potential residents a written statement or statements which includes the following information. A facility promotional brochure ~~prepared by the facility~~ or a copy of the facility resident contract form ~~used by the facility which containings~~ all of the required information shall meet this requirement:

1. through 10. No change.

11. A statement of the facility policy concerning Do Not Resuscitate Orders pursuant to Section 400.4255, F.S., and Advance Directives pursuant to Chapter 765, F.S.

12.44. If the facility also has an extended congregate care program, the ECC program's residency criteria, and a description of the additional personal, supportive, and nursing services provided by the program; additional costs; and any limitations, if any, on where ECC residents must reside based on the policies and procedures described in Rule 58A-5.030, F.A.C.; and

13.12. If the facility advertises that it provides special care for persons with Alzheimer's disease or related disorders, a written description of those special services as required under Section 400.4177, F.S.

(b) through (c) No change.

(4) CONTINUED RESIDENCY. Criteria for continued residency in a facility holding a standard, limited nursing services, or limited mental health license shall be the same as the criteria for admission, except as follows:

(a) No change.



(b) A resident requiring care of a stage 2 pressure sore; may be retained provided that:

1. through 2. No change.

3. If the resident's condition fails to improve within 30 days, as documented by a licensed nurse or physician, the resident shall be discharged from the facility.

(c) through (e) No change.

(5) DISCHARGE. If the resident no longer meets the criteria for continued residency, or the facility is unable to meet the resident's needs, as determined by the facility administrator or health care provider, the resident shall be discharged in accordance with Sections ~~400.426(8) and~~ 400.428(1), F.S.

Specific Authority 400.407, 400.426, 400.441 FS. Law Implemented 400.402, 400.407, 400.4075, 400.426, 400.441 FS. History—New 9-17-84 Formerly 10A-5.181, Amended 10-20-86, 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.0181, Amended 10-30-95, 6-2-96, 10-17-99, \_\_\_\_\_.

#### 58A-5.0182 Resident Care Standards.

An assisted living facility shall provide care and services appropriate to the needs of residents accepted for admission to the facility.

(1) SUPERVISION. Facilities shall offer personal supervision, as appropriate for each resident, including the following:

(a) through (d) No change.

(e) A written record, updated as needed, of any significant changes as defined in subsection 58A-5.0131(33), F.A.C., in the resident's normal appearance or state of health, any illnesses which resulted in medical attention, major incidents, changes in the method of medication administration, or other changes which resulted in the provision of additional services.

(2) SOCIAL AND LEISURE ACTIVITIES. Residents shall be encouraged to participate in social, recreational, educational and other activities within the facility and the community.

(a) through (b) No change.

(c) Scheduled activities shall be available at least six (6) 5 days a week for a total of not less than twelve (12) 40 hours per week. Watching television shall not be considered an activity for the purpose of meeting the twelve (12) 40 hours per week of scheduled activities unless the television program is a special one-time event of special interest to residents of the facility. A facility whose residents choose to attend day programs conducted at adult day care centers, senior centers, mental health centers, or other day programs may count those attendance hours towards the required twelve (12) hours per week of scheduled activities. An activities calendar shall be posted in common areas where residents normally congregate.

(d) If residents assist in planning a special activity such as an outing, seasonal festivity, or an excursion, up to three (3) hours may be counted toward the required activity time.

(3) through (4) No change.

(5) NURSING SERVICES.

(a) Pursuant to Section 400.4255, F.S., the facility may employ or contract with a nurse to:

1. No change.

2. Manage ~~weekly~~ pill-organizers and administer medications as described under Rule 58A-5.0185, F.A.C.;

3. through 4. No change.

(b) No change.

(6) RESIDENT RIGHTS AND FACILITY PROCEDURES.

(a) A copy of the Resident Bill of Rights as described ~~prescribed~~ in Section 400.428, F.S., or summary provided by the Long-Term Care Ombudsman Council shall be posted in full view in a freely accessible resident area, and included in the admission package provided pursuant to Rule 58A-5.0181, F.A.C.

(b) No change.

(c) The address and telephone number for lodging complaints against a facility or facility staff shall be posted in full view in a common area accessible to all residents. The addresses and telephone numbers are: with the District Long-Term Care Ombudsman Council, 1(888)831-0404; the Advocacy Center for Persons with Disabilities, 1(800)342-0823; the Florida Local Advocacy Council, 1(800)342-0825; Human Rights Advocacy Committee and the Agency Consumer Hotline: 1(888)419-3456 area office, shall be posted in full view in a common area accessible to all residents.

(d) through (f) No change.

(g) The facility shall provide residents with convenient access to a telephone to facilitate the resident's right to unrestricted and private communication, pursuant to Section 400.428(1)(d), F.S. communicate on a private basis. The facility shall not prohibit unidentified telephone calls to residents. For facilities with a licensed capacity of 17 or more residents in which residents do not have private telephones, there shall be, at a minimum, an accessible telephone on in each floor of each building where residents reside.

(h) No change.

(7) through (8) No change.

Specific Authority 400.402, 400.441 FS. Law Implemented 400.402, 400.4255, 400.4256, 400.426, 400.428, 400.441 FS. History—New 9-17-84, Formerly 10A-5.182, Amended 10-20-86, 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.0182, Amended 10-30-95, 4-20-98, 11-2-98, 10-17-99, \_\_\_\_\_.

#### 58A-5.0185 Medication Practices.

Pursuant to Sections 400.4255 and 400.4256, F.S., and this rule, facilities holding a standard, limited mental health, extended congregate care, or limited nursing services license may assist with the self-administration or administration of

medications to residents in a facility. A resident may not be compelled to take medications but may be counseled in accordance with this rule.

(1) SELF ADMINISTERED MEDICATIONS.

(a) No change.

(b) If facility staff note deviations which could reasonably be attributed to the improper self-administration of medication, staff shall consult with the resident concerning any problems the resident may be experiencing with the medications; ~~the need to notify the resident's health care provider, or to permit the facility to aid the resident through the use of a pill organizer, provide assistance with self-administration of medications, or administer medications if such services are offered by the facility. The facility shall contact the resident's health care provider when observable health care changes occur that may be attributed to the resident's medications. The facility shall document such contacts in the resident's record.~~

(2) WEEKLY PILL ORGANIZERS.

(a) ~~A nurse may manage a weekly pill organizer for residents who self-administer. A "weekly pill organizer" means a container which is designed to hold solid doses of medication and is divided according to day and time increments not to exceed 7 days.~~

~~1. The nurse shall manage the pill organizer in the following manner:~~

~~a. Obtain the labeled medication container from the storage area or the resident;~~

~~b. Transfer the medication from the original container into a pill organizer, labeled with the resident's name, according to the day and time increments as prescribed; and~~

~~c. Return the medication container to the storage area or resident.~~

~~2. The nurse is responsible for instructing the resident with respect to the proper use of the pill organizer.~~

~~(b) A resident who self-administers medications may use a pill organizer.~~

~~(c) A nurse may manage a pill organizer to be used only by residents who self-administer medications. The nurse is responsible for instructing the resident in the proper use of the pill organizer. The nurse shall manage the pill organizer in the following manner:~~

~~1. Obtain the labeled medication container from the storage area or the resident;~~

~~2. Transfer the medication from the original container into a pill organizer, labeled with the resident's name, according to the day and time increments as prescribed;~~

~~3. Return the medication container to the storage area or resident; and~~

~~4. Document the date and time the pill organizer was filled in the resident's record.~~

~~(d)(b)~~ If there is a determination that the resident is not taking medications as prescribed after the medicinal benefits are explained, it shall be noted in the resident's record and the facility shall consult with the resident concerning providing assistance with self-administration; or the administration of medications if such services are offered by the facility. The facility shall contact the resident's health care provider regarding questions, concerns, or observations relating to the resident's medications. Such communication shall be documented in the resident's record.

(3) ASSISTANCE WITH SELF-ADMINISTRATION.

(a) No change.

(b) Assistance with self-administration of medication includes verbally prompting a resident to take medications as prescribed, retrieving and opening a properly labeled medication container, and providing assistance as specified in Section 400.4256(3), F.S. In order to facilitate assistance with self-administration, staff may prepare and make available such items as water, juice, cups, and spoons, etc., as needed by residents. Staff may also return unused doses to the medication container. Medication, which appears to have been contaminated, shall not be returned to the container.

(c) No change.

(d) When a resident who receives assistance with medication is away from the facility and from facility staff, the following options are available to enable the resident to take medication as prescribed:

1. through 2. No change.

3. The medication may be transferred to a ~~weekly~~ pill organizer pursuant to the requirements of subsection (2), and given to the resident, ~~or~~ a friend, or family member upon leaving the facility, with this fact noted in the resident's medication record; or

4. No change.

(e) Pursuant to Section 400.4256(4)(h), F.S., the term "competent resident" means that the resident is cognizant of when a medication is required and understands the purpose for taking the medication.

(f) Pursuant to Section 400.4256(4)(i), F.S., the terms "judgment" and "discretion" mean interpreting vital signs and evaluating or assessing a resident's condition.

(4) MEDICATION ADMINISTRATION.

(a) No change.

(b) Unusual reactions or a significant change in the resident's health or behavior shall be documented in the resident's record and reported immediately to the resident's health care provider. The contact with the health care provider shall also be documented in the resident's record.

(c) No change.

(d) A facility which performs clinical laboratory tests for residents, including blood glucose testing, must be in compliance with the federal Clinical Laboratory Improvement

Amendments of 1988 (CLIA) and Part I of Chapter 483, F.S. A valid copy of the State Clinical Laboratory License and the CLIA Certificate ~~A copy of the state license or a Certificate of Exemption~~ must be maintained in the facility. A state license or CLIA certificate ~~of exemption~~ is not required if ~~the residents~~ performs the test themselves ~~himself/herself~~ or if a third party ~~assist residents in performing the test~~ the test is performed by a third party. The facility is not required to maintain a State Clinical Laboratory License or a CLIA Certificate if facility staff assist residents in performing clinical laboratory testing with the residents' own equipment. Information about the State Clinical Laboratory License and CLIA Certificate ~~laboratory licensing~~ is available from the Clinical Laboratory Licensure Unit, Agency for Health Care Administration, 2727 Mahan Drive, Mail Stop 32, Tallahassee, FL 32308; telephone (850)487-3109.

#### (5) MEDICATION RECORDS.

(a) For residents who use a ~~weekly~~ pill organizer managed under subsection (2), the facility shall keep either the original labeled medication container; or a medication listing with the prescription number, the name and address of the issuing pharmacy, the health care provider's name, the resident's name, the date dispensed, the name and strength of the drug, and the directions for use.

(b) ~~For residents who receive assistance with self-administration or medication administration,~~ The facility shall maintain a daily up-to-date, medication observation record (MOR) for each resident who receives assistance with self-administration of medications or medication administration. A MOR must include the name of the resident and any known allergies the resident may have; the name of the resident's health care provider, the health care provider's telephone number; the name, strength, and directions for use of each medication ~~prescribed, its strength, and directions for use;~~ and a chart for recording each time the medication is taken, any missed dosages, refusals to take medication as prescribed, or medication errors. The MOR must be immediately updated each time the medication is offered or administered.

(c) No change.

#### (6) MEDICATION STORAGE AND DISPOSAL.

(a) In order to accommodate the needs and preferences of residents and to encourage residents to remain as independent as possible, ~~a residents~~ may keep their ~~his/her~~ medications, both prescription and over-the-counter, in their possession on his/her person both on or off the facility premises; or in their ~~his/her~~ rooms or apartments, which must be kept locked when the residents are ~~is~~ absent, unless the medication is in a secure place within the rooms or apartments; or in some other secure place which is out of sight of other residents. However, both prescription and over-the-counter medications for a residents shall be centrally stored if:

1. No change.

2. The resident requests central storage. The facility shall maintain a list of all medications being stored pursuant to such a request;

3. through 6. No change.

(b) through (f) No change.

#### (7) MEDICATION LABELING AND ORDERS.

(a) No prescription drug shall be kept or administered by the facility, including assistance with self-administration of medication, unless it is properly labeled and dispensed in accordance with Chapters 465 and 499, F.S., and Rule 64B16-28.108, F.A.C. If a customized patient medication package is prepared for a resident, and separated into individual medicinal drug containers, then the following information must be recorded on each individual container:

1. The resident's name; and

2. Identification of each medicinal drug product in the container.

(b) Except with respect to the use of ~~weekly~~ pill organizers as described in subsection (2), no person other than a pharmacist may transfer medications from one storage container to another.

(c) through (e) No change.

(f) The facility shall make every reasonable effort to ensure that prescriptions for residents who receive assistance with self-administration of medication or medication administration are filled or refilled in a timely manner.

(g) Pursuant to Section 465.0276(5), F.S., and Rule 64F-12.006, F.A.C., sample or complimentary prescription drugs that are dispensed by a health care provider, must be kept in their original manufacturer's packaging, which shall also include the practitioner's name, the resident's name for whom they were dispensed, and the date they were dispensed. If the sample or complimentary prescription drugs are not dispensed in the manufacturer's labeled package, they shall be kept in a container that bears a label containing the following:

1. Practitioner's name;

2. Resident's name;

3. Date dispensed;

4. Name and strength of the drug;

5. Directions for use; and

6. Expiration date.

(h) Pursuant to Section 465.0276(2)(c), F.S., before dispensing any sample or complimentary prescription drug, the resident's health care provider shall provide the resident with a written prescription, or a fax copy of such order.

(8) No change.

Specific Authority 400.4256, 400.441 FS. Law Implemented 400.4255, 400.4256, 400.441 FS. History--New 10-17-99, Amended

58A-5.019 Staffing Standards.

(1) ADMINISTRATORS. Every facility shall be under the supervision of an administrator who is responsible for the operation and maintenance of the facility including the management of all staff and the provision of adequate care to all residents as required by Part III of Chapter 400, F.S., and this rule chapter.

(a) through (b) No change.

(c) Pursuant to Section 400.4176, F.S., facility owners shall notify both the Agency AHCA Field Area Office and Agency AHCA Central Office within ten (10) days of a change in a facility administrator on the Notification of Change of Administrator, using AHCA Form 3180-1006, January 2006 March 1999, which is incorporated by reference and may be obtained from the Agency Central Office. The Agency AHCA Central Office shall conduct a background screening check on the new administrator in accordance with Section 400.4174, F.S., and Rule 58A-5.014, F.A.C.

(2) No change.

(3) BACKGROUND SCREENING.

(a) All staff, who are hired on or after October 1, 1998, to provide personal services to residents, must be screened in accordance with Section 400.4174, F.S., and meet the screening standards of Section 435.03, F.S. A packet containing background screening forms and instructions may be obtained from the Agency AHCA Background Screening Unit, 2727 Mahan Drive, Tallahassee, FL 32308; telephone (850)410-3400. Within ten (10) days of an individual's employment the employee's starting work, the facility shall submit the following to the Agency Background Screening Unit AHCA central office:

1. A completed Level 1 Criminal History Request Check, AHCA Form 3110-0002, July 2005 June 1998, which is incorporated by reference and may be obtained in the screening packet referenced in paragraph (3)(a) of this rule; and

2. A signed Florida Abuse Hotline Information System Background Check, AHCA Form 3110-0003, July 1998; and

2.3. A check to cover the cost of screening.

(b) No change.

(c) Staff with the following documentation in their personnel records shall be considered to have met the required screening requirement:

1. A copy of their current professional license which required Level 1 background screening as a condition of licensing, proof that a criminal history screening has and abuse registry check have been conducted, and an affidavit of current compliance with Section 435.03, F.S.;

2. Proof of continuous employment in an occupation which requires Level 1 screening without a break in employment that exceeds 180 days, and proof that a criminal history screening and abuse registry check has been conducted within the previous two (2) years; or

3. No change.

(4) STAFFING STANDARDS

(a) through (c) No change.

(d) The facility shall be required to provide staff immediately when the Agency determines that the requirements of paragraph (a) are not met. The facility shall also be required to immediately increase staff above the minimum levels established in paragraph (a) if the Agency determines that adequate supervision and care are not being provided to residents, resident care standards described in Rule 58A-5.0182, F.A.C., are not being met, or that the facility is failing to meet the terms of residents' contracts. The Agency shall consult with the facility administrator and residents regarding any determination that additional staff is required.

1. through 2. No change.

3. Based on recommendations of the local fire safety authority with jurisdiction over fire safety, the Agency may require additional staff when the facility fails to meet the fire safety fire safety standards described in, Section 400.441, F.S., and Rule Chapter 694A-40, F.A.C., until such time as the local fire safety fire safety authority informs the Agency that fire safety fire safety requirements are being met.

(e) through (f) No change.

Specific Authority 400.441, 400.452, 400.4275 FS. Law Implemented 400.402, 400.404, 400.4174, 400.4176, 400.419, 400.424, 400.4255, 400.426, 400.4275, 400.441, 400.452 FS. History-New 5-14-81, Amended 1-6-82, 9-17-84, Formerly 10A-5.19, Amended 10-20-86, 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.019, Amended 10-30-95, 4-20-98, 11-2-98, 10-17-99, \_\_\_\_\_.

58A-5.0191 Staff Training Requirements and Competency Test.

(1) through (8) No change.

(9) ALZHEIMER'S DISEASE AND RELATED DISORDERS ("ADRD") TRAINING REQUIREMENTS. Facilities which advertise that they provide special care for persons with AD RD, or who maintain secured areas as described in Rule 58A-5.023, F.A.C., must ensure that facility staff receive the following training:

(a) through (e) No change.

(f) Facility staff who have only incidental contact with residents with AD RD must receive general written information provided by the facility on interacting with such residents, as required under Section 400.4178, F.S., within three (3) months of employment. Facility staff who are already employed prior to April 20, 1998 shall have 6 months from that date to receive this information. "Incidental contact" means all staff who neither provide direct care nor are in regular contact with such residents.

(g) through (h) No change.

Specific Authority 400.407, 400.4178, 400.441, 400.452 FS. Law Implemented 400.407, 400.4075, 400.4178, 400.441, 400.452 FS. History-New 9-30-02, Formerly 10A-5.0191, Amended 10-30-95, 6-2-96, 4-20-98, 11-2-98, 10-17-99, 7-5-05, \_\_\_\_\_.

## 58A-5.023 Physical Plant Standards.

(1) through (3) No change.

(4) BEDROOMS. Residents shall be given the option of choosing their own roommate or roommates if possible.

(a) through (f) No change.

(g) The facility shall maintain master or duplicate keys to resident bedrooms to be used in the event of an emergency.

(5) BATHROOMS.

(a) No change.

(b) Each bathroom shall have a door in working order to ensure ~~assure~~ privacy. The entry door to bathrooms with a single toilet shall have a lock that the resident can operate which is operable from the inside ~~by the resident~~ with no key needed. A non-locking door shall be permitted if the resident's safety would otherwise be jeopardized. The facility shall maintain master or duplicate keys to resident bathrooms to be used in the event of an emergency.

(c) through (e) No change.

(6) through (8) No change.

Specific Authority 400.441 FS. Law Implemented 400.427, 400.441, 404.056 FS. History--New 5-14-81, Amended 1-6-82, 5-19-83, 9-17-84, Formerly 10A-5.23, Amended 10-20-86, 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.023, Amended 10-30-95, 6-2-96, 10-17-99,\_\_\_\_\_.

## 58A-5.024 Records.

The facility shall maintain the following written records in a form, place and system ordinarily employed in good business practice and accessible to Department of Elder Affairs ~~department~~ and Agency staff.

(1) FACILITY RECORDS. Facility records include:

(a) through (l) No change.

(m) All fire safety ~~fire safety~~ inspection reports issued by the local authority or the State Fire Marshall pursuant to Section 400.441, F.S., and Rule Chapter 694A-40, F.A.C., issued within the last two (2) years.

(n) through (p) No change.

(2) No change.

(3) RESIDENT RECORDS. Resident records shall be maintained on the premises and include:

(a) through (g) No change.

(h) For facilities which manage a weekly pill organizer, assist with self-administration of medications or administer medications for a resident, the required medication records maintained pursuant to Rule 58A-5.0185, F.A.C.

(i) through (q) No change.

(4) No change.

Specific Authority 400.441, 400.4275 FS. Law Implemented 400.407, 400.4075, 400.424, 400.427, 400.4275, 400.428, 400.435, 400.441 FS. History--New 5-14-81, Amended 1-6-82, 5-19-83, 9-17-84, Formerly 10A-5.24, Amended 10-20-86, 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.024, Amended 10-30-95, 4-20-98, 11-2-98, 10-17-99,\_\_\_\_\_.

## 58A-5.0241 Adverse Incident Report.

(1) INITIAL ADVERSE INCIDENT REPORT. The preliminary adverse incident report required by Section 400.423(3), F.S., must be submitted within one (1) business day after the incident on AHCA Form 3180-1024, Assisted Living Facility Initial Adverse Incident Report through 1 Day, January 2006, and incorporated by reference. The form shall be submitted via electronic mail to [fdau\\_email@ahca.myflorida.com](mailto:fdau_email@ahca.myflorida.com); on-line at [www.fdhc.state.fl.us/reporting/index.shtml](http://www.fdhc.state.fl.us/reporting/index.shtml); by facsimile to (850)922-2217; or by U.S. Mail to AHCA, Facility Data Analysis Unit, 2727 Mahan Drive, Mail Stop 47, Tallahassee, Florida, 32308, telephone (850)922-6089. AHCA Form 3180-1024 is available from the Facility Data Analysis Unit at the address stated above. The Initial Adverse Incident Report is in addition to, and does not replace, other reporting requirements specified in Florida Statutes. Each facility licensed under Part III of Chapter 400, F.S., shall submit a preliminary report of each adverse incident by completing an Assisted Living Facility Initial Adverse Incident Report through 1 Day, DOEA Form 3180-1024, revised dated October 2001, which is incorporated by reference, available through the Agency for Health Care Administration at the address listed below, and mailing the form to the Agency for Health Care Administration, Facility Data Analysis Unit, 2727 Mahan Dr., MS 47, Tallahassee, Florida 32308, telephone (850)414-6936. Each facility must comply with report timeframe and transmission requirements specified in Section 400.423(3), F.S. The Initial Adverse Incident Report is in addition to and does not replace other reporting requirements specified in Florida Statutes. If an adverse incident has not occurred within the facility, no report is required.

(2) FULL ADVERSE INCIDENT REPORT. For each adverse incident reported under subsection (1) above, the facility shall submit a full report within fifteen (15) days of the incident. The full report shall be submitted on AHCA Form 3180-1025, Assisted Living Facility Full Adverse Incident Report – 15 Day, dated January 2006, and incorporated by reference. The methods for obtaining and submitting the form are set forth in subsection (1) of this rule. Each facility that has submitted a preliminary report by completing DOEA Form 3180-1024 shall submit a full report of each adverse incident by completing an Assisted Living Facility Complete Adverse Incident Report through 15 Day, DOEA Form 3180-1025, dated October 2001, which is incorporated by reference, available through the Agency for Health Care Administration as indicated in subsection (1) above, and mailing the form to the Agency for Health Care Administration, Facility Data Analysis Unit, at the address and telephone number indicated in subsection (1) above. Each facility must comply with report time frame and transmission requirements specified in Section 400.423(4), F.S.

Specific Authority 400.423 FS. Law Implemented 400.423 FS. History--New 1-9-02, Amended.

58A-5.025 Resident Contracts.

(1) Pursuant to Section 400.424, F.S., each resident or the resident's legal representative, shall, prior to or at the time of admission, execute a contract with the facility which contains the following provisions:

- (a) No change.
- (b) The ~~base~~ daily, weekly, or monthly rate.
- (c) through (j) No change.
- (2) through (3) No change.

Specific Authority 400.424, 400.427, 400.441 FS. Law Implemented 440.424, 400.427, 400.441 FS. History--New 10-17-99, Amended.

58A-5.026 Emergency Management.

(1) through (4) No change.

(5) EMERGENCY SHELTER. In the event a state of emergency has been declared and the facility is not required to evacuate the premises, the facility may provide emergency shelter above the facility's licensed capacity provided the following conditions are met:

(a) through (b) No change.

(c) The facility reports the over capacity and conditions causing it to the Agency Field area Office within forty-eight (48) hours or as soon as practical. As an alternative, the facility may report to the Agency Central Office ~~AHCA Assisted Living Unit in Tallahassee~~ at (850)487-2515. If the facility will continue to be over capacity after the declared emergency ends, the Agency shall review requests for excess capacity ~~and may approve the excess capacity~~ on a case-by-case basis.

(d) No change.

Specific Authority 400.441 FS. Law Implemented 400.441 FS. History--New 10-17-99, Amended.

58A-5.029 Limited Mental Health.

(1) LICENSE APPLICATION.

(a) Any facility intending to admit three or more mental health residents must ~~complete a Limited Mental Health License Application, AHCA Form 3180-1023, September 1998, which is incorporated by reference, available from AHCA, and obtain a limited mental health license from the Agency in accordance with Rule 58A-5.014, F.A.C., and Section 400.4075, F.S., prior to accepting the third mental health resident. The application shall be signed by the applicant, notarized, and include a statement certifying that specified staff have completed or will complete the limited mental health training course described under Rule 58A-5.0191, F.A.C.~~

(b) No change.

(2) RECORDS.

(a) through (b) No change.

(c) Resident records for mental health residents in a facility with a limited mental health license must include the following:

1. through 2. No change.

3. A Community Living Support Plan.

a. Each mental health resident and the resident's mental health case manager shall, in consultation with the facility administrator, prepare a plan within 30 days of the resident's admission to the facility or within 30 days after receiving the appropriate placement assessment under paragraph (c), whichever is later, which:

(i) through (iv) No change.

(v) Includes a description of other services to be provided or arranged by the facility;

(vi)(v) Includes a list of factors pertinent to the care, safety, and welfare of the mental health resident and a description of the signs and symptoms particular to the resident that indicate the immediate need for professional mental health services;

(vii)(vi) Is in writing and signed by the mental health resident, the resident's mental health case manager, and the ALF administrator or manager designee and a copy placed in the resident's file. If the resident refuses to sign the plan, the resident's mental health case manager shall add a statement that the resident was asked but refused to sign the plan;

(viii)(vii) Is updated at least annually;

(ix)(viii) May include the Cooperative Agreement described in subparagraph 4. If included, the mental health care provider must also sign the plan; and

(x)(ix) Must be available for inspection to those who have a lawful basis for reviewing the document.

b. No change.

4. No change.

(3) No change.

Specific Authority 400.441 FS. Law Implemented 394.4574, 400.402, 400.4075, 400.426, 400.441, 409.912 FS. History--New 8-15-90, Amended 9-30-92, Formerly 10A-5.029, Repromulgated 10-30-95, Amended 6-2-96, 11-2-98, \_\_\_\_\_.

58A-5.030 Extended Congregate Care Services.

(1) through (2) No change.

(3) PHYSICAL SITE REQUIREMENTS: Each extended congregate care facility shall provide a homelike physical environment which promotes resident privacy and independence including:

(a) No change.

(b) A bathroom, with a toilet, sink, and bathtub or shower, which is shared by a maximum of four (4) other residents for a maximum ratio of four (4) residents to one (1) bathroom. A centrally located hydro massage bathtub may substitute for the bathtub or shower in two of the bathrooms. The entry door to the bathroom shall have a lock which is operable from the

~~inside by the resident with no key needed. The resident's service plan may allow for a non-locking bathroom door if the resident's safety would otherwise be jeopardized.~~

1. A centrally located hydro-massage bathtub may substitute for the bathtub or shower and be considered equivalent to two bathrooms, increasing the resident to bathroom ratio from four (4) to one (1) to eight (8) to one (1). The substitution of a centrally located hydro-massage bathtub for a bathtub or shower that increases the resident to bathroom ratio above four (4) to one (1) may occur only once in a facility. The one time substitution of a centrally located hydro-massage bathtub does not preclude the installation of multiple hydro-massage bathtubs in the facility. The limitation applies only to the one-time reduction in the total number of bathrooms in the facility.

2. The entry door to the bathroom shall have a lock that the resident can operate from the inside with no key needed. The resident's service plan may allow for a non-locking bathroom door if the resident's safety would otherwise be jeopardized.

(4) through (10) No change.

Specific Authority 400.407, 400.441 FS. Law Implemented 400.402, 400.407, 400.426, 400.428, 400.441 FS. History--New 9-30-92, Formerly 10A-5.030, Amended 10-30-95, 6-2-96, 4-20-98, 11-2-98, 10-17-99, \_\_\_\_\_.

#### 58A-5.031 Limited Nursing Services.

Any facility intending to provide limited nursing services as described in subsection (1) must meet the license requirements specified in Section 400.407, F.S., and obtain a license from the Agency in accordance with Rule 58A-5.014, F.A.C.

(1) NURSING SERVICES. A facility with a limited nursing license may provide the following nursing services in addition to any nursing service permitted under a standard license pursuant to Section 400.4255, F.S.

(a) through (m) No change.

(n) Assisting, applying, caring for and monitoring the application of anti-embolism stockings or hosiery as prescribed by the health care provider and in accordance with the manufacturers' guidelines.

(o) Administration and regulation of portable oxygen.

(p) Applying, caring for and monitoring a transcutaneous electric nerve stimulator (TENS).

(q) Catheter, colostomy, ileostomy care and maintenance.

(2) through (3) No change.

Specific Authority 400.402, 400.441 FS. Law Implemented 400.402, 400.407, 400.4255, 400.426, 400.441 FS. History--New 9-30-92, Formerly 10A-5.031, Amended 10-30-95, 10-17-99, \_\_\_\_\_.

#### 58A-5.033 Administrative Enforcement.

Facility staff shall cooperate with Agency personnel during surveys, complaint investigations, monitoring visits, implementation of correction plans, license application and

renewal procedures and other activities necessary to ensure compliance with Part III of Chapter 400, F.S., and this rule chapter.

(1) through (2) No change.

(3) SURVEY DEFICIENCY.

(a) Prior to or in conjunction with a notice of violation issued pursuant to Section 400.419 and Chapter 120, F.S., the ~~Agency~~ shall issue a statement of deficiency for Class I, II, III, and IV ~~and unclassified~~ violations which are observed by ~~Agency~~ personnel during any inspection of the facility. The deficiency statement shall be issued within ~~ten (10)~~ working days of the ~~Agency's~~ inspection and shall include:

1. through 5. No change.

(b) through (c) No change.

(4) No change.

(5) ADMINISTRATIVE SANCTIONS. Administrative fines shall be imposed for class I ~~and class II~~ violations, or class ~~II~~, III, or IV violations which are not corrected within the time frame set by the ~~Agency~~, and for repeat class ~~II or~~ III violations, as set forth in Section 400.419, F.S.

(a) The Agency shall notify facilities of the imposition of sanctions, their right to appeal the sanctions, the remedies available, and the time limit for requesting such remedies as provided under Chapter 120, F.S., and Part II of Chapter 59-1, F.A.C. The agency shall impose a fine for unclassified violations which do not meet the criteria for either a Class I, II, III, or IV violation as provided under Section 400.419, F.S., but which are not trivial or are uncorrected. Unclassified violations include, but are not limited to, the following violations:

1. Exceeding licensed capacity except under emergency circumstances as permitted under Rule 58A-5.026, F.A.C.;

2. Providing services beyond the scope of the license;

3. Violation of a moratorium imposed pursuant to this rule;  
or

4. A prohibited solicitation by an agent, employee, owner, or representative of the facility as provided in Section 400.42, F.S.

(b) No change.

~~(e) Facilities shall be notified by the agency of the imposition of sanctions, their right to appeal the imposition of sanctions, the remedies available, and the time limit for requesting such remedies as provided under Chapter 120, F.S., and Part II of Chapter 59-1, F.A.C.~~

(6) MORATORIUMS.

(a) No change.

(b) The appropriate Agency Field Office shall notify the facility via telephone and written notification on the same day that a moratorium is being placed on admissions into the facility. The facility shall be notified of the placing of a moratorium by a telephone call from the appropriate agency area office. The effective date of the moratorium shall be the

date the facility receives a verbal and written notification is received by the facility from the Field area Office. The notice shall and which contains the following information:

1. through 3. No change.

4. Directions to contact the appropriate Field area Office when the conditions have been corrected so that an appraisal survey can be conducted; and

5. No change.

(c) through (e) No change.

(7) No change.

Specific Authority 400.415, 400.423, 400.441, 400.442 FS. Law Implemented 400.407, 400.408, 400.411, 400.412, 400.414, 400.415, 400.417, 400.419, 400.42, 400.423, 400.427, 400.428, 400.431, 400.434, 400.441, 400.442 FS. History—New 9-30-92, Formerly 10A-5.033, Amended 10-30-95, 10-17-99, 1-9-02,\_\_\_\_\_.

## AGENCY FOR HEALTH CARE ADMINISTRATION

### Medicaid

RULE NO.:

RULE TITLE:

59G-4.200

Nursing Facility Services

PURPOSE AND EFFECT: The purpose of this rule amendment is to incorporate by reference an erratum to the July 2004 update to the Florida Medicaid Nursing Facility Services Coverage and Limitations Handbook. The erratum allows physicians to delegate all nursing facility patient visits to a physician assistant, nurse practitioner, or clinical nurse specialist. Prior policy required the physician to personally make every other visit. This change was made to bring Medicaid policy in compliance with Medicare policy. The effect will be to incorporate by reference in the rule the erratum to July 2004 update to the Florida Medicaid Nursing Facility Services Coverage and Limitations Handbook.

SUMMARY: The purpose of this rule amendment is to incorporate by reference the erratum to the July 2004 update to the Florida Medicaid Nursing Facility Services Coverage and Limitations Handbook.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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: 400 Part II, 409.902, 409.905, 409.908 FS.

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

DATE AND TIME: Tuesday, May 30, 2006, 2:00 p.m.

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-4.200 Nursing Facility Services.

(1) No change.

(2) All participating nursing facility providers must comply with the provisions of the Florida Medicaid Nursing Facility Services Coverage and Limitations Handbook, October 2003, updated July 2004, erratum to the July 2004 update, and the corresponding Florida Medicaid Provider Reimbursement Handbook, Institutional 021, October 2003, which are incorporated by reference. Both handbooks are available from the Medicaid fiscal agent.

(3) No change.

Specific Authority 409.919 FS. Law Implemented Chapter 400 Part II, 409.902, 409.905, 409.908 FS. History—New 1-1-77, Amended 6-13-77, 10-1-77, 1-1-78, 2-1-78, 12-28-78, 2-14-80, 4-5-83, 1-1-84, 8-29-84, 9-1-84, 9-5-84, 7-1-85, Formerly 10C-7.48, Amended 8-19-86, 6-1-89, 7-2-90, 6-4-92, 8-5-92, 11-2-92, 7-20-93, Formerly 10C-7.048, Amended 11-28-95, 5-9-99, 10-15-00, 10-4-01, 2-10-04, 9-28-04, 8-31-05,\_\_\_\_\_.

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: April 20, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 20, 2006

## DEPARTMENT OF MANAGEMENT SERVICES

### Division of Retirement

RULE NO.:

RULE TITLE:

60S-1.005

Special Risk Class; Legislative Intent and Procedures

PURPOSE AND EFFECT: The purpose of the proposed rule is to define the term “primary duties and responsibilities” as used to determine eligibility to participate in the Special Risk Class. Under the provisions of Sections 121.031 and 121.0515, Florida Statutes, employees who meet the requirements are allowed to participation in the Special Risk Class.

SUMMARY: The rule addresses eligibility to participate in the Retirement System’s Special Risk Class. The proposed rule amendment addresses the meaning of the term “primary duties and responsibilities,” as used to describe the job requirements and functions necessary for participation in the Special Risk Class.



SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No statement of Estimated Regulatory Costs has been prepared.

Any person who wishes to provide information regarding the statement of estimated 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: 121.031, 121.0515 FS.

LAW IMPLEMENTED: 121.021(15), 121.0515 FS.

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

DATE AND TIME: Monday, June 5, 2006, 10:00 a.m. – 12:00 Noon

PLACE: The Department of Management Services, Room 101 (Lobby), 4050 Esplanade Way, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Garry Green, Administrator, Division of Retirement, Department of Management Services, P. O. Box 9000, Tallahassee, Florida 32315-9000, (850)488-5706

THE FULL TEXT OF THE PROPOSED RULE IS:

60S-1.005 Special Risk Class; Legislative Intent and Procedures.

(1) Legislative Intent. – In creating the special risk class of membership within the Florida Retirement System, it is the intent and purpose of the Legislature to recognize that persons employed in certain categories of law enforcement, firefighting, criminal detention, and emergency medical care positions are required as one of the essential functions of their positions to perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity, and that such persons, because of diminishing physical and mental faculties may find that they are not able, without risk to the health and safety of themselves, the public, or their co-workers, to continue performing such duties and thus enjoy the full career and retirement benefits enjoyed by persons employed in other positions, and that, if such persons find it necessary, due to the physical and mental limitations of their age, to retire at an earlier age and usually with less service, they will suffer an economic deprivation therefrom. Therefore, as a means of recognizing the peculiar and special problems of this class of employees, it is the intent and purpose of the Legislature to establish a class of retirement membership that awards more retirement credit per year of service than that awarded to other employees; nothing contained herein shall require ineligibility for special risk membership upon reaching age 55.

(2) Eligibility. Any member who is employed as a law enforcement officer, a firefighter, a correctional officer, or an emergency medical technician or paramedic who meets the

criteria as set forth in Rule 60S-1.0051, 60S-1.0052, 60S-1.0053, or 60S-1.00535, F.A.C., shall be eligible for approval for special risk membership as provided in this section. Whenever the term “primary duties and responsibilities” is used in Rule 60S-1.0051, 60S-1.0052, 60S-1.0053, or 60S-1.00535, F.A.C., it means those duties of a position that:

(a) Are essential and prevalent for the position and are the basic reasons for the existence of the position;

(b) Occupy a substantial portion of the member’s working time; and

(c) Are assigned on a regular and recurring basis. Duties and responsibilities that are of an emergency, incidental, or temporary nature are not “primary duties and responsibilities.”

Specific Authority 121.031, 121.0515 FS. Law Implemented 121.021(15), 121.0515, 121.23 FS. History–New 1-1-72, Amended 10-20-72, 12-31-74, 8-9-76, 1-16-77, 10-2-78, 1-19-82, 9-9-82, 11-6-84, 4-17-85, Formerly 22B-1.05, Amended 2-7-89, 11-14-91, Formerly 22B-1.005, Amended 1-25-94, 9-17-03, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Garry Green, Administrator, Division of Retirement, Department of Management Services, P. O. Box 9000, Tallahassee, Florida 32315-9000, at (850)488-5706

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Sarabeth Snuggs, Director Division of Retirement, Department of Management Services, P. O. Box 9000, Tallahassee, Florida 32315-9000, at (850)488-5706

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

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 3, 2006

Pursuant to the American Disabilities Act, persons needing special accommodations to participate in the rule hearing should advise the Department of Management Services at least two (2) calendar days before the workshop, by contacting Garry Green, at (850)414-6349.

## DEPARTMENT OF MANAGEMENT SERVICES

### State Technology Office

RULE NO.:	RULE TITLE:
60DD-1.003	Rural County Grant and Medium County Loans

PURPOSE AND EFFECT: The purpose of the rule is to implement statutory changes and clarify existing board practices. The effect of the rule will be to create current rule language and clarify existing board practices.

SUMMARY: The rule creates current rule language and clarifies existing board practices.

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

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

SPECIFIC AUTHORITY: 365.172(6)(a)12., 365.173(2)(c), 365.172(6)(a)3. FS.

LAW IMPLEMENTED: 365.173(2)(c), 365.172(6)(a)3. FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: John C. Ford, Chair, State of Florida Wireless 911 Board, 4030 Esplanade Way, Suite 235M, Tallahassee, Florida 32399-0950

THE FULL TEXT OF THE PROPOSED RULE IS:

60DD-1.003 Rural County Grant and Medium County Loans.

The Wireless 911 Rural County Grant and medium County Loan program provides grants to rural counties and no-interest loans to medium counties for the purpose of assisting counties with the Phase II upgrades of Enhanced 911 systems. The Wireless 911 Board can institute this grant and loan program with service provider disbursement funds that have not been requested by submitted sworn invoices as provided in Section 365.172(6)(a)(3), F.S. Funds will be returned to the Services Provider portion of the Wireless 911 Fund through a delay in changing the percentage distribution formula

(1) Eligibility. Any county with a population of fewer than 75,000 as defined by Section 365.172(3)(y), F.S. is eligible to apply for a grant. Medium counties with a population of 75,000 or more but less than 750,000 as defined by Section 365.172(3)(q), F.S. are eligible to apply for a no-interest loan. Population levels are determined per the most recently published Florida Association of Counties' Directory. The county must be currently assessing the full \$0.50/month wireline fee provided in Section 365.171(13)(a)1., F.S.

(2) General conditions.

(a) Each county applying for Rural County Grant and Medium County Loan funds shall complete and submit W Form 2A. "Application for the Wireless 911 Rural County Grant and Medium County Loans Program." Effective 6/30/2005, which is incorporated herein by reference and which may be obtained from the Wireless 911 Board office at the following address:

ATTN: Administrative Assistant  
4050 Esplanade Way  
Building 4030 – Suite 335V  
Tallahassee, Florida 32399-0950.

The applicant must provide the original grant application postmarked or delivered to the Boards Office on or before September 1, 2005

(b) Application for grants or loans for each item over \$25,000 must be accompanied by at least three written competitive quotes. The Wireless 911 Board will compare the three quotes to any existing state contract in order to determine appropriate funding. Sole source funding will be considered on a case-by-case basis. Justification and documentation for sole-source funding must be provided with this application.

(c) Priorities for awarding of grants and loans will be determined by the Board. The grant and loan priority list is provided in Appendix I of the grant and loan application.

(d) No grant or loan money will be awarded to be used for the purpose of funding salary requests or paying call-takers' salaries.

(e) Replacement of items necessary to maintain E911 (including Phase II) will be funded as part of this grant and loan program. These items are available to rural counties through the Rural County Grant program.

(f) Two or more rural counties may apply for a joint grant, but each county must complete and submit W Form 2A as request and indicated.

(g) Grant and loan funds shall be deposited in a bank account maintained by the grantee county, and each grant and loan shall be assigned a unique accounting code designation for deposits, disbursements, and expenditures. All Wireless 911 Rural County Grant and Medium County Loan funds in the account shall be accounted for separately from other grantee funds. Grant and loan funds, including accrued interest, may be used only between the beginning and ending dates of the grant, unless an extension is requested and authorized by the Wireless 911 Board.

(h) Counties must submit quarterly reports to the Wireless 911 Board, summarizing the expenditures and activities of the grant and loan funds. The reports are due 30 days after the end of the reporting period, which ends March 31, June 30, September 30, and December 31. In lieu of submitting a signed quarterly Grant Budget/Expenditure Report form, the updated form can be e-mailed to the Board's administrative/technical staff. A final report must be submitted to the Wireless 911 Board no more than 45 days after completion of the grant or loan, detailing the activities, expenditures of the funds, and the ways in which the needs identified in the grant and loan application were met. The final report must be accompanied by supporting documentation.

(i) Grant and loan funds are no transferable to any other entity. If equipment purchased using grant and loan funds is sold or transferred within three (3) years of the end of the grant and loan period, the grantee county must return the grant and loan funds to the Wireless 911 Board on a pro-rata basis.

(j) The Wireless 911 Board will adjust the funds awarded to a county based upon eligibility of requested items, institutional knowledge of Board member, published quotes, increased effectiveness of grant and loan funds, minimum allowable specifications for performing the needed 911 function, or other documented factors.

(3) The medium county loans are no interest loans that shall be automatically paid back from the County's monthly distribution of proceeds from the Wireless Fee as specified in Section 365.173(2)(a), F.S., unless repayment by another method is approved by the Board. Medium counties applying for the loan shall provide demonstrable hardship information and include their proposed repayment timeframe as part of the grant and loan application.

(4) The Rural County Grant and Medium County Loan program will operate on the following schedule:

Counties submit applications: by September 1

Wireless 911 Board evaluates applications: September – October

Board votes on application at regularly scheduled meetings: October – November

Board sends notification of award: before November 30.

Specific Authority 365.172(6)(a)12., 365.173(2)(c), 365.172(6)(a)3, F.S. Law Implemented 365.173(2)(c), 365.172(6)(a)3, F.S. History—New\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Wireless 911 Board

NAME OF SUPERVISOR OR PERSON WHO APPROVED  
THE PROPOSED RULE: Wireless 911 Board

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

DATE NOTICE OF PROPOSED RULE DEVELOPMENT  
PUBLISHED IN FAW: August 12, 2005

## **DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

### **Division of Florida Land Sales, Condominiums, and Mobile Homes**

RULE NO.:	RULE TITLE:
61B-23.0021	Regular Elections; Vacancies Caused by Expiration of Term, Resignations, Death; Election Monitors

PURPOSE AND EFFECT: Rule 61B-23.0021, F.A.C., in conjunction with Section 718.112(2)(d)3., F.S., provides procedures for the conduct of condominium association elections. These procedures include, but are not limited to, providing notice of the date of the election by mail or delivery not less than 60 days before a scheduled election; providing candidate information sheets to eligible voters; and providing that written ballots shall contain the name of each eligible candidate. This rule amendment proposes that the association's

failure to follow any of these three mandated procedures shall render any election so held null and void. These election errors are fundamental in nature, and the failure to provide adequate notice of an election, the failure to include candidate information sheets, and the failure of an association to place all the names of all eligible names on the ballot implicate the statutory right to vote as well as the right to run for office. Providing this rule will offer guidance to associations who commit these and other errors and will permit an association to cancel an election where fundamental pre-election error has occurred, thereby saving the time and expense of going forward with a void election.

Note that these rule amendments will re-adopt rule provisions previously included in Rule 61B-23.0021, F.A.C., but deleted in order to reduce the overall quantity of rules existing in this area.

SUMMARY: This rule amendment proposal addresses instances in which a condominium association election may be held null and void.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No statement of estimated 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: 718.112(2)(d)3., 718.501(1)(f), 718.5012(9) FS.

LAW IMPLEMENTED: 718.112, 718.301, 718.5012(9) FS.

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

DATE AND TIME: May 30, 2005, 9:00 a.m.

PLACE: Conference Room Suite 16, The Northwood Centre, 1940 N. Monroe Street, Tallahassee, Florida

THOSE PERSONS WHO CANNOT ATTEND IN PERSON MAY SUBMIT THEIR COMMENTS IN WRITING TO: Sharon A. Malloy, Senior Management Analyst II, Division of Florida Land Sales, Condominiums and Mobile Homes, 1940 North Monroe Street, Tallahassee, Florida 32399-1030

WITHIN 21 DAYS OF THIS NOTICE WRITTEN COMMENTS RECEIVED AFTER THE HEARING MAY NOT BE CONSIDERED.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/hearing/meeting is asked to advise the agency at least 48 hours before the workshop/hearing/meeting by contacting: Sharon A. Malloy, Senior Management Analyst II at (850)488-1631. If you are hearing or speech impaired, please contact the agency by calling 1(800)955-8771.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Sharon A. Malloy, Senior Management Analyst II, Division of Florida Land Sales, Condominiums and Mobile Homes, 1940 North Monroe Street, Tallahassee, Florida 32311-1030, (850)488-1631

THE FULL TEXT OF THE PROPOSED RULE IS:

61B-23.0021 Regular Elections; Vacancies Caused by Expiration of Term, Resignations, Death; Election Monitors.

(1) through (3) No change.

(4) The first notice of the date of the election, which is required to be mailed or delivered not less than 60 days before a scheduled election, must contain the name and correct mailing address of the association. The failure to mail or deliver to the eligible voters at the addresses indicated in the official records the first notice of the date of the election not less than 60 days before a scheduled election shall render any election so held null and void.

(5) through (6) No change.

(7) Upon the timely request of a candidate as set forth in this paragraph, the association shall include, with the second notice of election described in subsection (8) below, a copy of an information sheet which may describe the candidate's background, education, and qualifications as well as other factors deemed relevant by the candidate. The information contained therein shall not exceed one side of the sheet which shall be no larger than 8 1/2 inches by 11 inches. Any candidate desiring the association to mail or personally deliver copies of an information sheet to the eligible voters must furnish the information sheet to the association not less than 35 days before the election. If two or more candidates consent in writing, the association may consolidate into a single side of a page the candidate information sheets submitted by those candidates. The failure of an association to mail or personally deliver a copy of a timely delivered information sheet of each eligible candidate to the eligible voters shall render any election so held null and void. No association shall edit, alter, or otherwise modify the content of the information sheet. The original copy provided by the candidate shall become part of the official records of the association.

(8) No change.

(9) The written ballot shall indicate in alphabetical order by surname, each and every unit owner or other eligible person who desires to be a candidate for the board of administration and who gave written notice to the association not less than 40 days before a scheduled election, unless such person has, prior to the mailing of the ballot, withdrawn his candidacy in writing. The failure of the written ballot to indicate the name of each eligible person shall render any election so held null and void. No ballot shall indicate which candidates are incumbents on the board. No write-in candidates shall be permitted. No ballot shall provide a space for the signature of or any other means of identifying a voter. Except where all voting interests

in a condominium are not entitled to one whole vote, (fractional voting), or where all voting interests are not entitled to vote for every candidate (class voting), all ballot forms utilized by a condominium association, whether those mailed to voters or those cast at a meeting, shall be uniform in color and appearance. In the case of fractional voting, all ballot forms utilized for each fractional vote shall be uniform in color and appearance. And in class voting situations, within each separate class of voting interests all ballot forms shall be uniform in color and appearance.

(10) through (14) No change.

Specific Authority 718.112(2)(d)3., 718.501(1)(f), 718.5012(9) FS. Law Implemented 718.112, 718.301, 718.5012(9) FS. History—New 1-23-92, Amended 12-20-92, Formerly 7D-23.0021, Amended 8-24-94, 12-20-95, 1-19-97, 4-14-99, 2-19-01, 12-23-02, 8-7-05, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Michael Cochran, Director of Florida Land Sales, Condominiums and Mobile Homes, 1940 North Monroe Street, Tallahassee, Florida 32399-1030

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 20, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 24, 2006

## DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

### Construction Industry Licensing Board

RULE NO.:

RULE TITLE:

61G4-16.0031

Practical Examination for Swimming Pool Specialty Contractors

PURPOSE AND EFFECT: The Board proposes to change procedures for filing examination results.

SUMMARY: The Board proposes to change procedures for filing examination results.

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

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

SPECIFIC AUTHORITY 255.217(1), 489.108, 489.133(6) FS. LAW IMPLEMENTED: 289.115, 455.217(1), 489.109, 489.113(6) 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:

61G4-16.0031 Practical Examination for Swimming Pool Specialty Contractors.

(1) through (2) No change.

(3) Examiners for Practical Examinations. The practical examination shall be given by an examiner who is a contractor licensed pursuant to Sections 489.105(3)(j)-(k), F.S., and whose scope of work includes the category of swimming pool specialty contractor to be tested.

(a) through (g) No change.

(h) The practical examiner shall have the responsibility of notifying, in writing on a form prescribed by the department, the must agree to notify the department, by written or electronic transmission to the Department's Bureau of Education and Testing, of the pending administration of any practical examination not less than 24 hours prior to the examination. The department shall have the responsibility of notifying an applicant of the scores received applicant's score on the practical examination.

(i) The practical examiner must maintain all records of the applicant's examination and scores for 2 years, agree to notify the department, by written or electronic transmission to the Department's Bureau of Education and Testing, of the results of any administration of any practical examination not more than 48 hours after the practical examination was completed.

(j) The applicant shall provide the Department with the written result of the examination with the application for swimming pool specialty contractor's license. The practical examiner must agree to hold the department harmless for any accident or injury resulting from the administration of any practical examination.

(k)(+) The practical examiner must agree to hold the department harmless for any accident or injury resulting from the administration of any practical examination.

(4) through (12) No change.

Specific Authority 255.217(1), 489.108, 489.133(6) FS. Law Implemented 289.115, 455.217(1), 489.109, 489.113(6) FS. History—New 2-16-06, Amended.

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: April 14, 2006

DATE NOTICED OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 31, 2006

## DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

### Board of Veterinary Medicine

RULE NO.: 61G18-30.001 RULE TITLE: Disciplinary Guidelines

PURPOSE AND EFFECT: The purpose of the rule is to make changes to the rule to update current language, and clarify existing board practices. The effect of the rule will be to update current language, and clarify existing board practices.

SUMMARY: The rule updates current language, and clarifies existing board practices.

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

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

SPECIFIC AUTHORITY: 455.2273(1), 474.206 FS.

LAW IMPLEMENTED: 455.2273, 455.2281, 474.213, 474.214 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED FOR THE BOARD'S NEXT MEETING AND WILL BE ANNOUNCED IN THE FAW.

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

THE FULL TEXT OF THE PROPOSED RULE IS:

61G18-30.001 Disciplinary Guidelines.

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

(w) Practicing veterinary medicine The usual action of the Board at a location for which a valid shall be to impose a penalty premise permit has not been issued of a thousand dollars when required under Section (\$1,000.00) administrative fine 474.215, F.S. and to require remedial education. The Board shall also

require that a premise permit be obtained or the Department shall be requested to issue a Cease and Desist Order.

Specific Authority 455.2273(1), 474.206 FS. Law Implemented 455.2273, 455.2281, 474.213, 474.214 FS. History—New 12-8-86, Amended 5-27-91, Formerly 21X-30.001, Amended 8-18-94, 5-13-96, 2-18-01, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Board of Veterinary Medicine  
NAME OF SUPERVISOR OR PERSON WHO APPROVED  
THE PROPOSED RULE: Board of Veterinary Medicine  
DATE PROPOSED RULE APPROVED BY AGENCY  
HEAD: December 6, 2005  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT  
PUBLISHED IN FAW: October 21, 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 HEALTH

##### Board of Acupuncture

RULE NO.: 64B1-3.001 RULE TITLE: Definitions  
PURPOSE AND EFFECT: To provide accurate definitions.  
SUMMARY: Definitions.  
SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.  
Any person who wishes to provide information regarding the statement of estimated costs, or to provide a proposal for a lower regulatory cost alternative must do so in writing within 21 days of this notice.  
SPECIFIC AUTHORITY: 457.102, 457.104 FS.  
LAW IMPLEMENTED: 457.102 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: Pamela E. King, Executive Director, Board of Acupuncture, 4052 Bald Cypress Way, Bin C06, Tallahassee, Florida 32399

THE FULL TEXT OF THE PROPOSED RULE IS:

64B1-3.001 Definitions.

(1) through (5) No change.

(6) Acupuncture physician means any person that uses a specific and distinct method of diagnosis and treatment based on the principles of oriental medicine certified as provided in this chapter to practice acupuncture as a primary health care provider.

Specific Authority 457.102, 457.104 FS. Law Implemented 457.102 FS. History—New 8-13-84, Amended 9-19-84, Formerly 21AA-3.01, Amended 12-14-87, 9-3-89, 5-30-91, 1-26-92, 2-27-92, Formerly 21AA-3.001, 61F1-3.001, 59M-3.001, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Board of Acupuncture  
NAME OF SUPERVISOR OR PERSON WHO APPROVED  
THE PROPOSED RULE: Board of Acupuncture  
DATE PROPOSED RULE APPROVED BY AGENCY  
HEAD: March 20, 2006  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT  
PUBLISHED IN FAW: March 31, 2006

#### DEPARTMENT OF HEALTH

##### Board of Acupuncture

RULE NO.: 64B1-9.005 RULE TITLE: Descriptive Terms for Advertising  
PURPOSE AND EFFECT: To address permitted advertising terms.  
SUMMARY: Advertising terms.  
SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.  
Any person who wishes to provide information regarding the statement of estimated costs, or to provide a proposal for a lower regulatory cost alternative must do so in writing within 21 days of this notice.  
SPECIFIC AUTHORITY: 456.072, 457.104, 457.109, 457.116(1)(b) FS.  
LAW IMPLEMENTED: 456.072, 457.109, 457.116(1)(b) 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: Pamela E. King, Executive Director, Board of Acupuncture, 4052 Bald Cypress Way, Bin C06, Tallahassee, Florida 32399

THE FULL TEXT OF THE PROPOSED RULE IS:

64B1-9.005 Descriptive Terms for Advertising Definitions.

In order to distinguish from other professions and to ensure public safety the following are permitted terms for use in advertising As used in Section 457.116(1)(b), F.S., the following terms shall mean:

- (1) L.Ac. – Licensed Acupuncturist.
- (2) R.Ac. – Registered Acupuncturist.
- (3) A.P. – Acupuncture Physician.
- (4) D.O.M. – Doctor of Oriental Medicine.

Specific Authority 456.072, 457.104, 457.109, 457.116(1)(b) FS. Law Implemented 456.072, 457.109, 457.116(1)(b) FS. History—New 4-25-00, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Board of Acupuncture  
NAME OF SUPERVISOR OR PERSON WHO APPROVED  
THE PROPOSED RULE: Board of Acupuncture  
DATE PROPOSED RULE APPROVED BY AGENCY  
HEAD: March 20, 2006  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT  
PUBLISHED IN FAW: March 31, 2006

## DEPARTMENT OF HEALTH

### Board of Dentistry

RULE NO.: 64B5-14.001      RULE TITLE: Definitions  
PURPOSE AND EFFECT: The Board proposes the rule amendment to provide a definition of child for purposes of administering anesthesia to a child under this rule chapter.  
SUMMARY: The rule amendment defines a child for purposes of administration of anesthesia as an individual under 18 years of age and any patient that has a mental or physical impairment that substantially limits one or more major life activities.  
SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.  
Any person who wishes to provide information regarding the statement of estimated costs, or to provide a proposal for a lower regulatory cost alternative must do so in writing within 21 days of this notice.  
SPECIFIC AUTHORITY: 466.004(4), 466.017(3) FS.  
LAW IMPLEMENTED: 466.017(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: Sue Foster, Executive Director, Board of Dentistry/MQA, 4052 Bald Cypress Way, Bin #C08, Tallahassee, Florida 32399-3258

THE FULL TEXT OF THE PROPOSED RULE IS:

64B5-14.001 Definitions.

(1) through (4) No change.

(5) Pediatric Conscious Sedation – A depressed level of consciousness produced by the administration of pharmacologic substances, that retains a child patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command. This modality includes administration of medication via all parenteral routes; that is intravenous, intramuscular, subcutaneous, submucosal, or inhalation, and all enteral routes; that is oral, rectal, or transmucosal. The drugs, doses, and techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. For the purposes of this chapter, a child is defined as

an individual under 18 years of age, or any person who has special needs, which means having a physical or mental impairment that substantially limits one or more major life activities weighing 60 lbs. or less.

(6) through (11) No change.

Specific Authority 466.004(4), 466.017(3) FS. Law Implemented 466.017(3) FS. History--New 1-31-80, Amended 4-7-86, Formerly 21G-14.01, Amended 12-31-86, 6-1-87, 9-1-87, 2-1-93, Formerly 21G-14.001, Amended 12-20-93, Formerly 61F5-14.001, Amended 8-8-96, Formerly 59Q-14.001, Amended 3-9-03, 11-4-03.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Sue Foster  
NAME OF SUPERVISOR OR PERSON WHO APPROVED  
THE PROPOSED RULE: Board of Dentistry  
DATE PROPOSED RULE APPROVED BY AGENCY  
HEAD: September 9, 2005  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT  
PUBLISHED IN FAW: January 27, 2006

## DEPARTMENT OF HEALTH

### Board of Medicine

RULE NO.: 64B8-54.0022      RULE TITLE: Applying for an Active License After Period of Inactivity or Retirement  
PURPOSE AND EFFECT: Pursuant to statute, this rule is promulgated to set forth the requirement for applying for an active license when the license has been inactive or retired for a period of time.  
SUMMARY: This rule is promulgated to set forth the requirement for applying for an active license when the license has been inactive or retired for a period of time.  
SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.  
Any person who wishes to provide information regarding the statement of estimated costs, or to provide a proposal for a lower regulatory cost alternative must do so in writing within 21 days of this notice.  
SPECIFIC AUTHORITY: 456.036(1), (15), 478.43(1), (4), 478.45(1)(e) FS.  
LAW IMPLEMENTED: 456.036(10), 478.45(1)(e), 478.47 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: Susie Love, Executive Director, Electrolysis Council, Board of Medicine/MQA, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B8-54.0022 Applying for an Active License After Period of Inactivity or Retirement.

Any person applying for an active status license who has been on retired status for 5 years or more, or, if licensed elsewhere, has not been active in practicing as an electrologist during the past 5 years shall, as a condition of licensure, demonstrate that he or she is able to practice with the care and skill sufficient to protect the health, safety and welfare of the public by:

(1) If inactive for 7 years, retake examination.

(2) If inactive for more than 9 years, in addition to complying with subsection (1) take 2 hours of CE in HIV and Blood Borne Disease and 2 hours in Medical Errors.

Specific Authority 456.036(1), (15), 478.43(1), (4), 478.45(1)(e) FS. Law Implemented 456.036(10), 478.45(1)(e), 478.47 FS. History—New\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Electrolysis Council

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 8, 2006

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

**DEPARTMENT OF HEALTH****Board of Medicine**

RULE NO.: 64B8-55.001  
RULE TITLE: Disciplinary Guidelines

PURPOSE AND EFFECT: The Board proposes to amend this rule to set forth violations and penalties for being terminated from or failing to successfully complete a impaired practitioners treatment program.

## Violation

(s) Being terminated from or failing to successfully complete an impaired practitioners treatment program.

(s) through (nn) renumbered (t) through (oo) No change.

(4) through (7) No change.

SUMMARY: The proposed rule amendment is to set forth violations and penalties for being terminated from or failing to successfully complete a impaired practitioners treatment program.

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

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

SPECIFIC AUTHORITY: 456.072, 456.073, 478.52(4) FS.

LAW IMPLEMENTED: 456.072, 456.073, 478.52(4) 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: Susie Love, Executive Director, Electrolysis Council/MQA, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B8-55.001 Disciplinary Guidelines

(1) through (3)(r) No change.

## Recommended Range of Penalty

(s)1. First Offense – Minimum stayed Suspension and Probation for a period of 1 year with a fine of \$500.00 to a Maximum of Suspension or denial of license until successful completion or receipt of a Written Confirmation from the program that further treatment is neither required nor indicated followed by a 1 year probation and a fine of \$1,000.00.

(s)2. Subsequent Offenses – Minimum Suspension for 3 years or until licensee is able to demonstrate to the Board the ability to practice with reasonable skill and safety, whichever is longer and a fine of \$1,000.00 to a Maximum of revocation or denial of license and a \$2,000.00 fine.



Specific Authority 456.072, 456.079, 478.52(4) FS. Law Implemented 456.072, 456.073, 456.079, 478.52(4), FS. History—New 11-16-93, Formerly 61F6-80.001, Amended 1-2-95, Formerly 59R-55.001, Amended 2-9-98, 10-12-98, 3-1-00, 9-28-00, 5-30-01, 8-8-01, 10-8-02, 7-8-03,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Electrolysis Council

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 8, 2006

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

## DEPARTMENT OF HEALTH

### Board of Medicine

RULE NO.: 64B8-56.002  
RULE TITLE: Equipment and Devices; Protocols for Laser and Light-Based Devices

PURPOSE AND EFFECT: The Board proposes the amendment to the rule to address post electrolysis licensure training to utilize laser equipment.

SUMMARY: The amendment to the rule is to address post electrolysis licensure training to utilize laser equipment.

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

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

SPECIFIC AUTHORITY: 478.43 FS.

LAW IMPLEMENTED: 458.331(1)(v), 458.348(3), 478.42(5), 478.43(4) 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: Susie Love, Executive Director, Electrolysis Council, Board of Medicine, 4052 Bald Cypress Way, Bin # C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B8-56.002 Equipment and Devices; Protocols for Laser and Light-Based Devices.

(1) No change.

(2) Licensed electrologists may not use laser and light-based hair removal or reduction devices unless they:

(a) Have completed a post licensure education training course in laser and light-based hair removal or reduction approved by the Council pursuant to Rule 64B8-52.004, F.A.C.;

(b) through (d) No change.

(3) through (6) No change.

Specific Authority 478.43 FS. Law Implemented 458.331(1)(v), 458.348(3), 478.42(5), 478.43(4) FS. History—New 9-12-01, Amended 2-28-02,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Electrolysis Council

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 8, 2006

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

## DEPARTMENT OF HEALTH

### Board of Physical Therapy Practice

RULE NO.: 64B17-3.002  
RULE TITLE: Licensure Examination Subjects and Passing Score; Additional Requirements After Third Failure; Florida Jurisprudence Examination

PURPOSE AND EFFECT: The Board proposes the rule amendment to change the score required for passing the National Physical Therapy Examination.

SUMMARY: The score required for passing the National Physical Therapy Examination will be changed.

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

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

SPECIFIC AUTHORITY: 456.017, 486.025, 486.051 FS.  
LAW IMPLEMENTED: 456.017, 486.051 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: Susan Love, Executive Director, Board of Physical Therapy Practice/MQA, 4052 Bald Cypress Way, Bin # C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B17-3.002 Licensure Examination Subjects and Passing Score; Additional Requirements After Third Failure; Florida Jurisprudence Examination.

(1) No change.

(1) No change.

(2) In order to achieve a passing score on the examination, an applicant must obtain a score equal to or greater than the scaled score of 600 recommended by the Federation of State Boards of Physical Therapy.

(3) through (6) No change.

Specific Authority 456.017, 486.025, 486.051 FS. Law Implemented 456.017, 486.051 FS. History--New 8-6-84, Formerly 21M-7.26, Amended 5-18-86, Formerly 21M-7.026, 21MM-3.004, 61G11-3.004, Amended 4-21-02, 11-11-02, 11-1-04, 12-5-04, 4-9-06, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Board of Physical Therapy Practice

NAME OF SUPERVISOR OR PERSON WHO APPROVED  
THE PROPOSED RULE: Board of Physical Therapy Practice  
DATE PROPOSED RULE APPROVED BY AGENCY  
HEAD: August 5, 2005

DATE NOTICE OF PROPOSED RULE DEVELOPMENT  
PUBLISHED IN FAW: April 7, 2006

### **FISH AND WILDLIFE CONSERVATION COMMISSION**

RULE NO.: 68-1.001	RULE TITLE: Adoption of Uniform Rules of Procedure; Due Process Procedures; Subject Matter Index; Official Reporter
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PURPOSE AND EFFECT: The purpose of this proposed new rule is to place existing Florida Fish and Wildlife Conservation Commission procedural provisions currently located in Rules 68A-2.009 and 68A-2.013, F.A.C., into a single rule in a new rule chapter clearly designated to apply to the entire agency. This effort is being done in conjunction with the repeal of obsolete rules in Rule Chapter 68A-2, F.A.C., and the transfer of certain rules (Rules 68A-2.014 and 68A-2.015, F.A.C.) intact from that chapter to new Rule Chapter 68-1, F.A.C. The effect of this rule will be to make the procedural rules more readily available to the public.

SUMMARY: The new rule will consolidate the Commission's procedural rules in a new chapter designated for the entire agency and will incorporate the Commission's existing due process procedures into the procedural rule.

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

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

SPECIFIC AUTHORITY: Article IV, Section 9, Florida Constitution

LAW IMPLEMENTED: Article IV, Section 9, Florida Constitution

THE FISH AND WILDLIFE CONSERVATION COMMISSION WILL CONDUCT A PUBLIC RULEMAKING HEARING ON THE PROPOSED RULE DURING THE REGULAR MEETING OF THE COMMISSION TO BE HELD AT THE DATES, TIME AND PLACE SHOWN BELOW:

DATES AND TIME: Each day, June 7-8, 2006, 8:30 a.m. – 5:00 p.m.

PLACE: Marriott West Palm Beach, 1001 Okeechobee Blvd., West Palm Beach, Florida 33401

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

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

THE FULL TEXT OF THE PROPOSED RULE IS:

68-1.001 Adoption of Uniform Rules of Procedure; Due Process Procedures; Subject Matter Index; Official Reporter.

(1) The Uniform Rules of Procedure, Chapter 28, Florida Administrative Code, shall be the procedural rules of the Fish and Wildlife Conservation Commission.

(2) The due process procedures adopted by the Commission on July 7, 1999, are incorporated herein by reference.

(3) The Commission designates Florida Administrative Law Reports (FALR) as its official reporter for purposes of publishing and indexing by subject matter all Commission orders rendered pursuant to exercise of authority granted to the Commission by state statute.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const., 120.54(5) 120.53(2) FS. History--New

NAME OF PERSON ORIGINATING PROPOSED RULE:  
James V. Antista, General Counsel

NAME OF SUPERVISOR OR PERSON WHO APPROVED  
THE PROPOSED RULE: Fish and Wildlife Conservation  
Commission

DATE PROPOSED RULE APPROVED BY AGENCY  
HEAD: February 1, 2006

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

BE ADVISED THAT THESE PROPOSED RULES MAY BE FILED FOR ADOPTION AS SOON AS POSSIBLE FOLLOWING THE COMMISSION MEETING AT WHICH THEY ARE CONSIDERED IF THE RULES ARE NOT CHANGED. IF CHANGED, THE RULES MAY BE FILED AS SOON AS POSSIBLE AFTER PUBLICATION OF A NOTICE OF CHANGE IN THE FAW.

#### **FISH AND WILDLIFE CONSERVATION COMMISSION**

RULE NO.: 68-1.004  
RULE TITLE: Standards

PURPOSE AND EFFECT: The proposed rule is a procedural rule which establishes standards to guide the Fish and Wildlife Conservation Commission rulemaking relating to fishing and hunting. The standards are based upon, but not the same as, standards created for the Marine Fisheries Commission in Section 370.025, F.S. The proposed standards will apply to all FWC rules relating to hunting and saltwater and freshwater fishing promulgated after the effective date of the standards.

SUMMARY: The standards for rulemaking will help FWC fulfill its mission to manage fish and wildlife resources of the state for their long-term benefit and for the benefit of people. The standards include: FWC shall use the best information available; Biological basis for rulemaking shall include use of stock assessments, management plans, biological surveys and other science-based information. The process of rulemaking shall be fair and equitable for all the people of the state. Rules relating to harvest of fish and wildlife shall be consistent with optimum sustainable populations and populations shall, when practicable, will be managed as a biological unit. When applicable, federal management plans, management by other states or interstate commissions should be considered.

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

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

SPECIFIC AUTHORITY: Article IV, Section 9, Florida Constitution

LAW IMPLEMENTED: Article IV, Section 9, Florida Constitution

THE FISH AND WILDLIFE CONSERVATION COMMISSION WILL CONDUCT A PUBLIC RULEMAKING HEARING ON THE PROPOSED RULES DURING THE REGULAR MEETING OF THE COMMISSION TO BE HELD AT THE DATES, TIME AND PLACE SHOWN BELOW:

DATES AND TIME: Each day, June 7-8, 2006, 8:30 a.m. – 5:00 p.m.

PLACE: Marriott West Palm Beach, 1001 Okeechobee Boulevard, West Palm Beach, Florida 33401

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

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

THE FULL TEXT OF THE PROPOSED RULE IS:

##### 68-1.004 Standards.

The Fish and Wildlife Conservation Commission adopts the following standards to guide rulemaking relating to hunting and fishing:

(1) The paramount objective of rulemaking relating to hunting and fishing shall be the management of the fish and wildlife resources of this state for their long-term well-being and for the benefit of all the people.

(2) Rulemaking shall be based upon the best information available, including biological, sociological, economic, cultural, historical and other information deemed relevant by the Commission.

(3) The biological basis for rulemaking should include but not be limited to stock assessments, biological surveys, management plans, or other science-based studies or information.

(4) With respect to harvested populations, rulemaking should permit reasonable means and quantities of harvest, consistent with optimum sustainable populations. Optimum sustainable populations shall mean the highest degree of population productivity within available habitat to sustain fish and wildlife for the long term use or enjoyment of all the people.

(5) When possible and practicable, populations will be managed as a biological unit. A biological unit shall mean a species or subspecies of fish or wildlife within their dependent habitat or ecosystem.

(6) Conservation and management decisions shall be derived through processes which are fair and accessible to all the people of the state and which are consistent with the procedures in Rule 68-1.001, F.A.C.

(7) When applicable, federal fish and wildlife management plans and management plans of other states or interstate commissions should be considered when developing state hunting and fishing rules.

(8) This rule shall apply to rules and rule amendments relating to hunting and fishing proposed after July 1, 2006. In each final public hearing for such rules and rule amendments, a statement regarding compliance with this rule shall be made part of the official rulemaking record.

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

NAME OF PERSON ORIGINATING PROPOSED RULE:  
James Antista, General Counsel

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Mr. Kenneth D. Haddad, Executive Director

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 1, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 21, 2006

BE ADVISED THAT THESE PROPOSED RULES MAY BE FILED FOR ADOPTION AS SOON AS POSSIBLE FOLLOWING THE COMMISSION MEETING AT WHICH THEY ARE CONSIDERED IF THE RULES ARE NOT CHANGED. IF CHANGED, THE RULES MAY BE FILED AS SOON AS POSSIBLE AFTER PUBLICATION OF A NOTICE OF CHANGE IN THE FAW.

## **FISH AND WILDLIFE CONSERVATION COMMISSION**

### **Freshwater Fish and Wildlife**

RULE NOS.	RULE TITLES:
68A-2.004	General Description of Agency Organization and Operations
68A-2.005	General Information Concerning Agency
68A-2.009	Adoption of Uniform Rules of Procedure
68A-2.013	Subject Matter Index; Official Reporter

PURPOSE AND EFFECT: The purpose of this proposed rulemaking is to repeal obsolete rules relating to the Game and Fresh Water Fish Commission (Rules 68A-2.004 and 68A-2.005, F.A.C.) and two rules whose substance is being subsumed by proposed new Rule 68-1.001, F.A.C. (Rules 68A-2.009 and 68A-2.013, F.A.C.). Other rules currently in Chapter 68A-2, F.A.C. (Rules 68A-2.014 and 68A-2.015, F.A.C.) will be transferred the new Chapter 68-1, General Provisions. The effect of these rule repeals will be to reduce confusion resulting from having rules pertaining to a defunct agency.

SUMMARY: The following rules are repealed:

1. Rule 68A-2.004, F.A.C., provided a general description of the organization and operations of the Florida Game and Freshwater Fish Commission (GFC).

2. Rule 68A-2.005, F.A.C., provided general information concerning the GFC.

3. Rule 68A-2.009, F.A.C., adopted Chapter 28, F.A.C., as procedural rules for the Fish and Wildlife Conservation Commission (FWC), and is being replaced by Rule 68-1.001, F.A.C.

4. Rule 68A-2.013, F.A.C., designated the official reporter for the FWC, and is being replaced by Rule 68-1.001.

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

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

SPECIFIC AUTHORITY: Article IV, Section 9, Florida Constitution

LAW IMPLEMENTED: Article IV, Section 9, Florida Constitution

THE FISH AND WILDLIFE CONSERVATION COMMISSION WILL CONDUCT A PUBLIC RULEMAKING HEARING ON THE PROPOSED RULES DURING THE REGULAR MEETING OF THE COMMISSION TO BE HELD AT THE DATES, TIME AND PLACE SHOWN BELOW:

DATES AND TIME: June 7-8, 2006, 8:30 a.m. – 5:00 p.m., each day

PLACE: Marriott West Palm Beach, 1001 Okeechobee Blvd., West Palm Beach, Florida 33401

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

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

THE FULL TEXT OF THE PROPOSED RULES IS:

68A-2.004 General Description of Agency Organization and Operations.

Specific Authority 120.53(1)(a) FS. Law Implemented 120.52(10), 120.53(1)(a) FS. History—New 8-1-79, Formerly 39-2.04, Amended 12-23-87, Formerly 39-2.004, Repealed.

68A-2.005 General Information Concerning Agency.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented 120.525 FS. History--New 8-1-79, Formerly 39-2.05, 39-2.005, Amended 5-1-01, Repealed

68A-2.009 Adoption of Uniform Rules of Procedure.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const., 120.54(5) FS. History--New 8-1-79, Formerly 39-2.09, Amended 10-28-97, Formerly 39-2.009, Repealed

68A-2.013 Subject Matter Index; Official Reporter.

Specific Authority 120.53(4) FS. Law Implemented 120.53(2)(b), (c), (4) FS. History--New 12-23-87, Formerly 39-2.013, Repealed

NAME OF PERSON ORIGINATING PROPOSED RULE:  
James V. Antista, General Counsel

NAME OF SUPERVISOR OR PERSON WHO APPROVED  
THE PROPOSED RULE: Mr. Kenneth D. Haddad, Executive  
Director

DATE PROPOSED RULE APPROVED BY AGENCY  
HEAD: February 1, 2006

BE ADVISED THAT THESE PROPOSED RULES MAY BE  
FILED FOR ADOPTION AS SOON AS POSSIBLE  
FOLLOWING THE COMMISSION MEETING AT WHICH  
THEY ARE CONSIDERED IF THE RULES ARE NOT  
CHANGED. IF CHANGED, THE RULES MAY BE FILED  
AS SOON AS POSSIBLE AFTER PUBLICATION OF A  
NOTICE OF CHANGE IN THE FAW.

**FISH AND WILDLIFE CONSERVATION  
COMMISSION**

**Freshwater Fish and Wildlife**

RULE NO.:	RULE TITLE:
68A-9.007	Special-use Permits; Short-term Use Permits; Fees; Special-Opportunity Hunting and Fishing

PURPOSE AND EFFECT: The purpose of the proposed rule changes is to establish Florida Fish and Wildlife Conservation Commission (FWC) short-term use permits and fees for Tosohatchee Wildlife Management Area (WMA) to provide for a management authority transition from the Department of Environmental Protection to the Fish and Wildlife Conservation Commission. Currently, all access fees are collected by the Florida Department of Environmental Protection. Consideration of these rules for final adoption will be contingent upon a final decision by the state to proceed with this transfer of lead management authority.

SUMMARY: The proposed rule changes would establish public access fees for Tosohatchee WMA as follows: \$3 per vehicle for a daily-use permit for all outdoor recreational activities (including camping) other than hunting; \$1 for a daily-use permit for bicyclists and pedestrians; and \$50 for a daily-use permit for groups of 25 or more people. The

proposed rule would further establish that a daily-use permit would not be required for persons participating in Commission-sponsored meetings or activities. A daily-use permit would not be required for persons using the Florida Trail for recreational hiking. A daily-use permit would not be required for persons exempt from management area permit requirements by Section 372.562, F.S. A daily-use permit would not be required for the spouse or dependent children of persons in possession of a management area permit while traveling in the same vehicle or in the company of the permit holder.

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

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

SPECIFIC AUTHORITY: Article IV, Section 9, Florida Constitution

LAW IMPLEMENTED: Article IV, Section 9, Florida Constitution; 372.57 FS.

THE FISH AND WILDLIFE CONSERVATION COMMISSION WILL CONDUCT A PUBLIC RULEMAKING HEARING ON THE PROPOSED RULES DURING THE REGULAR MEETING OF THE COMMISSION TO BE HELD AT THE DATES, TIME AND PLACE SHOWN BELOW:

DATES AND TIME: June 7-8, 2006, 8:30 a.m. – 5:00 p.m., each day

PLACE: Marriott West Palm Beach, 1001 Okeechobee Boulevard, West Palm Beach, FL.

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

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

THE FULL TEXT OF THE PROPOSED RULE IS:

68A-9.007 Special-use Permits; Short-term Use Permits; Fees; Special-Opportunity Hunting and Fishing.  
Special-use permits, short-term use permits, and fees for such permits are hereby established as follows:

(1) through (3) No change.

(4) The Commission establishes short-term permits and fees as follows:

(a) through (b) No change.

(c) Tosohatchee WMA

1. A daily-use permit for all outdoor recreational activities (including camping) other than hunting is \$3 per vehicle.

2. For bicyclists and pedestrians, a daily-use permit is \$1.

3. For groups of 25 or more people, a daily-use permit is \$50.

4. A daily-use permit shall not be required for persons participating in Commission-sponsored meetings or activities.

5. A daily-use permit shall not be required for persons using the Florida Trail for recreational hiking.

6. A daily-use permit shall not be required for persons exempt from management area permit requirements by Section 372.562, F.S.

7. A daily-use permit shall not be required for the spouse or dependent children of persons in possession of a management area permit while traveling in the same vehicle or in the company of the permit holder.

PROPOSED EFFECTIVE DATE: August 1, 2006.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const., 372.57 FS. History—New 9-15-96, Amended 1-9-97, 6-1-97, 4-12-98, 4-15-99, Formerly 39-9.007, Amended 7-1-00, 5-13-02, 7-1-06, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Mr. Nick Wiley, Director, Division of Hunting and Game Management

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Mr. Kenneth D. Haddad, Executive Director

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 26, 2006

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

## **FISH AND WILDLIFE CONSERVATION COMMISSION**

### **Freshwater Fish and Wildlife**

RULE NO.:	RULE TITLE:
68A-15.065	Specific Regulations for Wildlife Management Areas – Northeast Region

PURPOSE AND EFFECT: The purpose of the proposed rule changes is to revise specific area regulations on Tosohatchee Wildlife Management Area (WMA) in the Northeast Region to provide for a management authority transition from the Department of Environmental Protection to the Fish and Wildlife Conservation Commission. Consideration of these rules for final adoption will be contingent upon a final decision by the state to proceed with this transfer of lead management authority.

SUMMARY: The proposed amendment to subsection (11) of Rule 68A-15.065, F.A.C., would revise specific area regulations for Tosohatchee WMA in the Northeast Region. The proposed rule change would specify that tent camping is allowed at designated campsites during periods closed to hunting, and allow public access on the area from 8:00 a.m. until sunset during periods closed to hunting, unless camping at designated campsites.

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

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

SPECIFIC AUTHORITY: Article IV, Section 9, Florida Constitution; 372.121, 375.313 FS.

LAW IMPLEMENTED: Article IV, Section 9, Florida Constitution; 372.121, 375.313 FS.

THE FISH AND WILDLIFE CONSERVATION COMMISSION WILL CONDUCT A PUBLIC RULEMAKING HEARING ON THE PROPOSED RULES DURING THE REGULAR MEETING OF THE COMMISSION TO BE HELD AT THE DATES, TIME AND PLACE SHOWN BELOW:

DATES AND TIME: June 7-8, 2006, 8:30 a.m. – 5:00 p.m., each day

PLACE: Marriott West Palm Beach, 1001 Okeechobee Boulevard, West Palm Beach, FL

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

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

THE FULL TEXT OF THE PROPOSED RULE IS:

68A-15.065 Specific Regulations for Wildlife Management Areas – Northeast Region.

(1) through (10) No change.

(11) Tosohatchee Wildlife Management Area.

(a) through (b) No change.

(c) Camping: Allowed ~~Permitted only~~ at the designated through-trail campsites along the Florida Trail throughout the year. Tent camping is allowed during periods closed to hunting at designated campsites by permit only.

(d) General regulations:

1. Public access during periods closed to hunting shall be from 8:00 a.m. to sunset unless camping at designated campsites.

2.4- A quota permit shall be required for every hunter entering the area, except during the general gun-hog season when a quota permit will be required for each group of two hunters. During the general gun-hog season only the hunter possessing the quota permit may possess a gun.

3.2- Hunters shall check in and out at a check station when entering and exiting the area and shall check all game taken.

4.3- Vehicles may be operated only on named or numbered roads and may be parked only at designated parking areas.

5.4- Airboats, tracked vehicles and all-terrain vehicles are prohibited. Horses and motorcycles are prohibited during periods when the area is open to hunting.

6.5- Handguns are prohibited. The possession of centerfire rifles is prohibited during the spring turkey season.

7.6- Hunting with dogs is prohibited except that dogs may be used during the general gun-hog hunts. During general gun-hog hunts no more than 3 dogs per quota permit are permitted.

8.7- Taking of wildlife by use of a gun on or from rights-of-way of all paved roads is prohibited as provided by Rule 68A-4.008, F.A.C.

(12) through (34) No change.

PROPOSED EFFECTIVE DATE: August 1, 2006.

Specific Authority Art. IV, Sec. 9, Fla. Const., 372.121, 375.313 FS. Law Implemented Art. IV, Sec. 9, Fla. Const., 372.121, 375.313 FS. History—New 6-21-82, Amended 6-29-82, 7-1-83, 7-5-84, 10-1-84, 7-1-85, 5-7-86, 5-10-87, 5-1-88, 7-1-89, 12-19-89, 7-1-90, 7-1-91, 7-2-91, 7-2-92, 7-1-93, 7-1-94, 7-1-95, 7-1-96, 9-15-96, 6-1-97, 7-1-98, 7-2-98, 8-11-98, 12-28-98, 7-1-99, Formerly 39-15.065, Amended 12-20-99, 7-1-00, 12-26-00, 7-1-01, 6-2-02, 7-28-02, 5-1-03, 7-1-03, 10-12-03, 7-1-04, 7-1-05, 7-1-06, 8-1-06.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Mr. Nick Wiley, Director, Division of Hunting and Game Management

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Mr. Kenneth D. Haddad, Executive Director

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 26, 2006

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

## **FISH AND WILDLIFE CONSERVATION COMMISSION**

RULE NOS.:

68B-1.001

68B-1.002

RULE TITLES:

Organization

General Course and Method of Operations; Meetings; Workshops; Methods for the Public to Obtain Information

68B-1.003

68B-1.004

68B-1.005

68B-1.006

68B-1.007

68B-1.008

68B-1.009

Notice of Commission Meetings and Workshops; Agenda; Minutes

Rulemaking; Adoption Procedures

Declaratory Statements

Proceedings to Determine Substantial Interests of a Party

Official Reporter

Delegations by Governor and Cabinet

Statutes Affecting Commission

PURPOSE AND EFFECT: The purpose of this rulemaking is to repeal an obsolete chapter of rules that were applicable to the Marine Fisheries Commission, which became defunct upon the creation of the Fish and Wildlife Conservation Commission. The effect of these repeals will be to eliminate what might be considered a confusing set of organizational and procedural rules applying to an agency that no longer exists.

SUMMARY: The following rules are repealed:

1. Rule 68B-1.001, F.A.C., described the organization of the Marine Fisheries Commission (MFC).

2. Rule 68B-1.002, F.A.C., described the general course and method of operation of the MFC, its meetings and workshops, and means of public contact.

3. Rule 68B-1.003, F.A.C., stated requirements for notices of MFC meetings and workshops, and preparation of agendas and minutes.

4. Rule 68B-1.004, F.A.C., provided procedures to be followed by the MFC in rulemaking.

5. Rule 68B-1.005, F. A.C., provided procedures to be followed by persons requesting a declaratory statement.

6. Rule 68B-1.006, F.A.C., provided guidance regarding MFC proceedings to determine the substantial interests of a party.

7. Rule 68B-1.007, F.A.C., designated the official reporter of the MFC.

8. Rule 68B-1.008, F.A.C., listed delegations of authority from the Governor and Cabinet to the MFC.

9. Rule 68B-1.009, F.A.C., listed statutes affecting the MFC.

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

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

SPECIFIC AUTHORITY: Article IV, Section 9, Florida Constitution

LAW IMPLEMENTED: Article IV, Section 9, Florida Constitution

THE FISH AND WILDLIFE CONSERVATION COMMISSION WILL CONDUCT A PUBLIC RULEMAKING HEARING ON THE PROPOSED RULES

DURING THE REGULAR MEETING OF THE COMMISSION TO BE HELD AT THE DATES, TIME AND PLACE SHOWN BELOW:

DATES AND TIME: June 7-8, 2006, 8:30 a.m. – 5:00 p.m., each day

PLACE: Marriott West Palm Beach, 1001, Okeechobee Blvd., West Palm Beach, Florida 33401

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

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

THE FULL TEXT OF THE PROPOSED RULES IS:

**68B-1.001 Organization.**

Specific Authority 120.53(1), 370.027(2) FS. Law Implemented 120.53(1), 370.026-.029 FS. History–New 11-25-85, Amended 3-15-87, 8-25-92, Formerly 46-1.001, Repealed.

**68B-1.002 General Course and Method of Operations; Meetings; Workshops; Methods for the Public to Obtain Information.**

Specific Authority 120.53(1), 370.027(3)(a) FS. Law Implemented 119.07, 120.53(1), 286.011, 370.025–.027 FS. History–New 11-25-85, Formerly 46-1.002, Repealed.

**68B-1.003 Notice of Commission Meetings and Workshops; Agenda; Minutes.**

Specific Authority 120.53(1), (6), 370.027(3)(a) FS. Law Implemented 120.53(1), (6), 120.54(9), 286.0105 FS. History–New 11-25-85, Amended 3-15-87, Formerly 46-1.003, Repealed.

**68B-1.004 Rulemaking; Adoption Procedures.**

Specific Authority 120.53(1), 370.027(3)(a) FS. Law Implemented 120.53(1), 120.54, 370.025, 370.027 FS, Chapter 83-134, Laws of Florida, as amended by Chapter 84-121, Laws of Florida. History–New 11-25-85, Amended 3-15-87, 8-25-92, 6-17-93, Formerly 46-1.004, Repealed.

**68B-1.005 Declaratory Statements.**

Specific Authority 120.53(1), 370.027(3)(a) FS. Law Implemented 120.53, 120.565 FS. History–New 11-25-85, Formerly 46-1.005, Repealed.

**68B-1.006 Proceedings to Determine Substantial Interests of a Party.**

Specific Authority 120.53(1), 370.027(3)(a) FS. Law Implemented 120.53(1), 120.57 FS. History–New 11-25-85, Formerly 46-1.006, Repealed.

**68B-1.007 Official Reporter.**

Specific Authority 120.53(4), 370.027(3)(a) FS. Law Implemented 120.53(4) FS. History–New 11-25-85, Formerly 46-1.007, Repealed.

**68B-1.008 Delegations by Governor and Cabinet.**

Specific Authority 120.53, 370.027(3)(a) FS. Law Implemented 20.05, 120.53 FS. History–New 11-25-85, Formerly 46-1.008, Repealed.

**68B-1.009 Statutes Affecting Commission.**

Specific Authority 120.53(1), 370.027(3)(a) FS. Law Implemented 120.53(1) FS. History–New 11-25-85, Formerly 46-1.009, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE:

James V. Antista, General Counsel

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Mr. Kenneth D. Haddad, Executive Director

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 1, 2006

BE ADVISED THAT THESE PROPOSED RULES MAY BE FILED FOR ADOPTION AS SOON AS POSSIBLE FOLLOWING THE COMMISSION MEETING AT WHICH THEY ARE CONSIDERED IF THE RULES ARE NOT CHANGED. IF CHANGED, THE RULES MAY BE FILED AS SOON AS POSSIBLE AFTER PUBLICATION OF A NOTICE OF CHANGE IN THE FAW.

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Marine Fisheries**

RULE NO.: RULE TITLE:

68B-21.005 Size Limits

PURPOSE AND EFFECT: The purpose of this rule amendment is to shift the slot limit for snook by adding one inch to both the minimum and maximum size limit. The effect of this rule would be to adjust the slot limit of snook to assure that the soon-to-be-implemented measurement clarification for the species does not negatively impact stock abundance.

SUMMARY: The size limit for snook in subsection (1) of Rule 68B-21.005, F.A.C. will be increased by 1 inch at both ends of the slot, resulting in a slot of 27 to 35 inches in order to compensate for any deleterious effects of the soon-to-be-implemented measurement clarification on snook stocks.



**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS:** No statement of estimated 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:** Article IV, Section 9, Florida Constitution

**LAW IMPLEMENTED:** Article IV, Section 9, Florida Constitution

**THE FISH AND WILDLIFE CONSERVATION COMMISSION WILL CONDUCT A PUBLIC RULEMAKING HEARING ON THE PROPOSED RULES DURING THE REGULAR MEETING OF THE COMMISSION TO BE HELD AT THE DATES, TIME AND PLACE SHOWN BELOW:**

**DATES AND TIME:** June 7-8, 2006, 8:30 a.m. – 5:00 p.m. each day

**PLACE:** Marriott West Palm Beach, 1001 Okeechobee Boulevard, West Palm Beach, FL 33401

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

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

**THE FULL TEXT OF THE PROPOSED RULE IS:**

68B-21.005 Size Limits.

(1) It is unlawful for any person, firm or corporation to kill, harvest or possess any snook that measures less than 27 ~~26~~ inches or greater than 35 ~~34~~ inches in total length.

(2) No change.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 7-23-85, Amended 7-9-87, 3-1-94, 12-31-98, Formerly 46-21.005, Amended 7-1-06, \_\_\_\_\_.

**NAME OF PERSON ORIGINATING PROPOSED RULE:** Mr. Mark Robson

**NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE:** Mr. Kenneth D. Haddad, Executive Director

**DATE PROPOSED RULE APPROVED BY AGENCY HEAD:** April 6, 2006

**DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW:** April 28, 2006

BE ADVISED THAT THESE PROPOSED RULES MAY BE FILED FOR ADOPTION AS SOON AS POSSIBLE FOLLOWING THE COMMISSION MEETING AT WHICH THEY ARE CONSIDERED IF THE RULES ARE NOT CHANGED. IF CHANGED, THE RULES MAY BE FILED AS SOON AS POSSIBLE AFTER PUBLICATION OF A NOTICE OF CHANGE IN THE FAW.

## **FISH AND WILDLIFE CONSERVATION COMMISSION**

### **Division of Law Enforcement**

<b>RULE NOS.:</b>	<b>RULE TITLES:</b>
68D-23.101	Intent
68D-23.103	Definitions
68D-23.104	Placement of Markers
68D-23.106	Marker Placement Conditions
68D-23.107	Federal System Adopted
68D-23.108	Specifications for Markers
68D-23.109	Additional Specifications for Information and Regulatory Markers
68D-23.110	Inspections and Certification
68D-23.112	Exemptions

**PURPOSE AND EFFECT:** The proposed changes to rules within this chapter are to: (1) correct and update statutory cross-references that have been changed since the current rule was promulgated in 2001; (2) improve clarity and consistency of language and definitions; (3) remove or revise obsolete provisions and cross-references; and (4) respond to requests for revisions received from stakeholders and from other governmental entities. The anticipated effects include the relaxation of certain reporting requirements and other reductions to the regulatory burden on permittees where possible. Other anticipated effects include the provision to applicants of greater flexibility in the size of and messages displayed on waterway regulatory and information markers.

**SUMMARY:** These rule amendments: Clarify the Commission's intent to conform to applicable federal regulations and international conventions; clarify and rearrange existing definitions and provide two definitions for "inland lake," "associated canal," and "in writing"; implement certain exemptions for governmental entities and clarify that these entities may voluntarily continue to apply for and obtain marker permits; clarify permitting procedures; establish general marker permit conditions in rule; eliminate obsolete deadlines; provide more complete installation details in conformance with U.S. Coast Guard technical requirements; provide specifications for marker inspection and eliminate the current inspection reporting requirement in favor of a record retention requirement; implement the provisions of Chapter 2005-217, Laws of Florida.

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

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

SPECIFIC AUTHORITY: 327.04, 327.40, 327.41, 327.71 FS.

LAW IMPLEMENTED: 327.40, 327.41, 327.46, 327.71, 370.12 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE REGULAR MEETING OF THE FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION AT THE DATES, TIME AND PLACE SHOWN BELOW:

DATES AND TIME: June 7-8, 2006, 8:30 a.m. – 5:00 p.m., each day

PLACE: Marriott West Palm Beach, 1001 Okeechobee Boulevard, West Palm Beach, Florida 33401

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to attend this hearing is asked to advise the agency at least 5 calendar days before the meeting by contacting the Agency ADA Coordinator at (850)488-6411. If you are hearing or speech impaired, please contact the agency by calling (800)955-8771 (TDD) or (850)488-9542, within the Tallahassee area.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Captain Alan Richard, Assistant General Counsel, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399, (850)487-1764

THE FULL TEXT OF THE PROPOSED RULES IS:

68D-23.101 Intent.

(1) This Chapter is consistent and conforms to 33 C.F.R. 62.21 – The navigable waters of the United States and non-navigable State waters after December 31, 2003, are marked to assist navigation using the United States Aids to Navigation System, a system consistent with the International Association of Lighthouse Authorities (IALA) Maritime Buoyage System. The IALA Maritime Buoyage System is followed by most of the world’s maritime nations and will improve maritime safety by encouraging conformity with buoyage systems used worldwide.

~~(2)~~(1) It is the intent of this chapter:

(a) To provide for uniformity in design, construction and coloring of markers so that all vessel operators may readily recognize, identify and distinguish between authorized markers and unlawfully placed markers;

(b) To provide a means by which the division and its officers and all other law enforcement officers charged with the enforcement of this chapter may determine with reasonable certainty which boating restricted areas are lawfully established and marked;

~~(c) To provide a grace period until December 31, 2003, during which time all markers shall be brought into conformity with the provisions of Chapter 327, F.S., this chapter, and Part 62 of Title 33 of the Code of Federal Regulations, and to provide for the removal of all nonconforming markers after that date; and-~~

~~(c)~~(d) To ensure that regulatory markers noticing boating restricted areas created pursuant to Sections ~~327.22~~, 327.60 and 370.12, F.S., are authorized only for the purposes of protecting human life and limb, vessel traffic safety and maritime property, and manatees.

(2) through (5) renumbered (3) through (6) No change.

Specific Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History–New 12-23-01, Amended.

68D-23.103 Definitions.

(1) For purposes of this chapter and Chapters 68C-22 and 68D-24, F.A.C., the following definitions shall apply:

(a) through (o) No change.

(p) “Inland lake” means a naturally occurring or man-made fresh water lake or pond. The term does not include reservoirs, impoundments, or any portion of the Florida Intracoastal Waterway.

(q) “Associated canal” means a man-made canal that is directly attached to an inland lake and that does not connect to other waters or that connects only to another inland lake. The term does not include any portion of a state or federally funded navigation project or any portion of the Florida Intracoastal Waterway.

(r) “In writing” means any written or printed form of communication and includes electronic mail, files transferred as attachments to electronic mail, and telefacsimiles.

(2) When used on markers, the terms:

(a) through (c) No change.

(d) “No Power-driven Vessels” – All vessels equipped with any mechanical means of propulsion must turn off the mechanical means of propulsion and, if possible to do so, tilt or raise the mechanical means of propulsion out of the water.

(e) “No Internal Combustion Motors” or “No Motor Zone” – All vessels equipped with internal combustion motors (e.g.: gasoline or diesel motors) for propulsion must turn off the internal combustion motor and, if possible to do so, tilt or raise the internal combustion motor out of the water. The use of electric motors is not prohibited.

~~(f)~~(d) “Vessel exclusion zone” means an area from which all vessels or certain classes of vessels are excluded. The following list includes the most common examples of vessel exclusion zones. Whenever the following messages are

displayed on vessel exclusion zone markers, they have the meaning provided. Other messages on vessel exclusion zone markers are permissible, so long as the markers display language that accurately describes the vessels or classes of vessel that are excluded from the area. All vessel exclusion zones must be marked with the crossed-diamond symbol as specified in paragraph (1)(g)2., above. Examples include:

1. "No Vessels" or "Swim Area" – All vessels of any type are prohibited from entering the marked area.

2. "No Motorized Vessels" or "No Motorboats" or "Motorboats Prohibited" – All vessels equipped with any mechanical means of propulsion are prohibited from entering the marked area, even if the mechanical means of propulsion is not in use.

~~3. "No Power-driven Vessels" – All vessels equipped with any mechanical means of propulsion are prohibited from entering the marked area unless the mechanical means of propulsion is not in use and, if possible to do so, is tilted or raised out of the water.~~

~~4. "No Internal Combustion Motors" All vessels equipped with internal combustion motors (e.g.: gasoline or diesel motors) for propulsion are prohibited from entering the marked area, even if the motor is not in use.~~

3.5. "Manually Propelled Vessels Only" – All vessels other than those propelled by oars, paddles, or poles are prohibited from entering the marked area. Vessels equipped with sails or a mechanical means of propulsion may enter the marked area only if the sails or mechanical means of propulsion are is not in use and, if possible to do so, the mechanical means of propulsion is tilted or raised out of the water.

~~4.6. "No Entry Area" – All vessels and all persons, either in vessels or swimming, diving, or wading, are prohibited from entering the marked area.~~

(e) through (f) renumbered (g) through (h) No change.

~~(i)(g)~~ "Holiday" means:

1. New Year's Day.

2. Birthday of Martin Luther King, Jr., the third Monday in January.

3. Memorial Day.

4. Independence Day, the Fourth of July.

5. Labor Day.

6. Columbus Day.

7. Veterans' Day, November 11.

8. Thanksgiving Day.

9. Friday after Thanksgiving.

10. Christmas Day.

~~4.4. If any of these holidays falls on Saturday, the preceding Friday shall be observed as a holiday. If any of these holidays falls on Sunday, the following Monday shall be observed as a holiday.~~

(3) No change.

Specific Authority 327.04, 327.40, 327.41, 327.46, 370.12 FS. Law Implemented 327.40, 327.41, 327.46, 370.12 FS. History--New 12-23-01, Amended.

#### 68D-23.104 Placement of Markers.

(1) (a) Except as provided below, no person, municipality, county, or other governmental entity shall place, cause to be placed, or maintain in place any marker in, on or over the waters of the state or shores thereof without a permit from this division.

(b) Counties, municipalities and other government entities are exempt from permitting under this rule when placing:

1. Swimming Area Markers or Special Event Markers on inland lakes and their associated canals.

2. Informational markers other than Swimming Area Markers or Special Event Markers, when placed on the shores of inland lakes and their associated canals or on such waters within fifty feet (50') of the ordinary high water line.

(c) Nothing herein shall prevent counties, municipalities or other governmental entities from choosing to voluntarily apply for waterway marker permits.

(2) Any person, municipality, county, or other governmental entity desiring to place a marker must ~~shall~~ make application to the division on the Florida Uniform Waterway Marker Application form, FWC/DLE 153 (01/2006 ~~2004~~), which is adopted and incorporated herein by reference. Application forms may be obtained by submitting a request to: Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, Boating and Waterways Section, 620 South Meridian Street, Tallahassee, Florida 32399-1600 or download the application from the Commission website at: <http://www.myfwc.com/boating/waterways/index.htm>. Each application must include:

(a) A scale drawing no larger than 8 1/2 inches by 11 inches, reproducible on standard office photocopying equipment, showing the approximate placement of the proposed markers with each proposed marker labeled to correspond to the list required below. If the application is for regulatory markers, the drawing must also depict the exact boundaries of the proposed boating restricted area.

(b) A list of the markers proposed, labeled to correspond to the drawing required above.

(c) A statement of the specifications for the markers proposed, including:

1. A description giving the type, each marker's size, shape, color, material, height above mean high water for each marker sign or buoy, and the number, letter or message displayed thereon;

2. A description of the type, size, ~~shape~~, and material used for:

a. Any structure which will support a the markers sign,

b. Any anchor, anchoring system, chain, tether, rode, or other ground tackle which will secure a marker buoy, including a mooring buoy, to the bottom;

3. A statement of the color, characteristic, height above mean high water, intensity, and nominal range of any light which will be placed on the markers;

4. A statement of the type signal (whistle, horn, bell, etc.) and characteristic for any audible fog signal.

5. The latitude and longitude expressed in ~~degrees, minutes, and seconds~~ or degrees and decimal minutes of the location where each marker will be placed, and the datum in which the coordinates are expressed (WSG-84, NAD-83, etc.).

(d) A statement of the purpose for placing the proposed markers. If the application is for regulatory markers, this statement must include the purpose for regulating vessel operation and a statement of the facts and circumstances justifying the establishment of the restriction on speed or operation.

(e) A statement listing the names or titles of the individuals responsible for the placement and maintenance of the markers along with an address and a contact telephone number for each individual.

(f) If the application is for regulatory markers, the applicant must enclose therewith proof of the lawful imposition of restrictions on the speed or operation of vessels for which the regulatory markers are requested, as follows:

1. A copy of an ordinance adopted pursuant to Section 327.22, F.S., which imposes the restriction only upon vessels resident within the county or municipality imposing the restriction; or

2. A copy of an ordinance adopted pursuant to Section 327.60, F.S., which imposes the restriction for reasons of vessel traffic safety or public safety; or

3. A copy of an ordinance adopted by a county or municipality and approved by the Commission pursuant to paragraph 370.12(2)(p), F.S., which imposes the restriction for reasons of manatee protection; or

4. A copy of the statute, special act, rule, regulation, order, or other instrument which imposes the restriction for reasons other than public safety or manatee protection, and a statement of the specific authority under which the restriction is imposed.

(3) Upon receipt of all statements and other documents specified above, the division will:

(a) Determine whether:

1. The proposed markers conform to the United States Aids to Navigation System and this chapter; and

2. The proposed markers and any support structures or moorings conform to the United States Coast Guard Aids to Navigation – Technical Manual (Comdtinst M16500.3A).

(b) Determine whether or not the placement of the proposed markers in the proposed locations would create an unreasonable hazard to navigation.

(c) For danger markers only, determine whether or not the markers as proposed would clearly mark the hazard or danger and adequately notice mariners of the hazard or danger.

(d) For regulatory markers only:

1. Determine whether or not the markers as proposed would clearly mark the area as a boating restricted area and adequately notice mariners of the restriction imposed on vessel speed or operation.

2. Based on the authority under which the restriction is imposed:

a. Determine whether or not the restriction applies only to vessels resident in the ordaining municipality or county, for ordinance adopted pursuant to Section 327.22, F.S.; or

b. Determine whether or not there exists a conflict with the provisions of Chapter 327, F.S., or any amendments thereto or regulations thereunder, for ordinances adopted pursuant to Section 327.60, F.S.; or

c. Forward the request to the Imperiled Species Management Section for review and approval pursuant to paragraph 370.12(2)(o), F.S., for ordinances adopted thereunder; or

d. For all other regulatory markers, determine whether or not the restriction to be implemented by the proposed markers is supported by statute, special act, rule, ordinance, or other enactment or order.

~~(a) Determine whether or not there exists a conflict with the provisions of Chapter 327, F.S., or any amendments thereto or regulations thereunder, for ordinances adopted pursuant to Section 327.60, F.S.~~

~~(b) Forward the request to the Bureau of Protected Species Management for review and approval pursuant to paragraph 370.12(2)(o), F.S., for ordinances adopted thereunder.~~

~~(c) For regulatory markers, determine whether or not the markers as proposed would clearly mark the area as a boating restricted area and adequately notice mariners of the restrictions imposed on vessel speed or operation.~~

~~(d) Determine whether or not the placement of the proposed markers in the proposed locations would create an unreasonable hazard to navigation.~~

~~(e) Determine whether the proposed markers conform to the United States Aids to Navigation System.~~

(4) through (5) No change.

(6) Discontinuance and removal. Any permitted waterway marker may be discontinued and removed by the owner after 30 days notice to the Boating and Waterways Section. Upon completion of the removal of the marker, the applicant must notify the Boating and Waterways Section in writing within 30 working days.

Specific Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History–New 12-23-01, Amended \_\_\_\_\_.

68D-23.106 Marker Placement Permit Conditions.

(1) All markers must comply with the following requirements and all permits issued pursuant to this chapter are subject to the following requirements as permit conditions:

(a) Placement of these markers must be as requested in the application. Any deviation will require that the applicant apply to have the permit amended.

(b) The applicant must display the permit number (except as provided below) on each marker and the ordinance number, ~~municipal~~ code section number, statute number, regulation or rule number, (etc.) on each regulatory marker. These numbers must be displayed in black, block characters approximately one inch in height.

1. On all regulatory markers, the permit number must be displayed in the lower left corner on the face of each regulatory marker. The ordinance number, ~~municipal~~ code section number, statute number, regulation or rule number, (etc.) must be displayed in the lower right corner on the face of each regulatory marker.

2. On all markers other than regulatory markers, the permit number must be displayed on the marker must display. This display shall be placed at any location on the marker where it can easily be read, including the reverse side of a sign, provided that it does not interfere with the message of the marker.

3. Informational markers placed by counties, municipalities, or other governmental entities on inland lakes and their associated canals are exempt from permitting under this rule. Such markers, if not permitted, must display in lieu of a permit number, the name of the county, municipality, or other governmental entity that placed the marker.

(c) Upon completion of the installation of markers, the applicant must notify the Boating and Waterways Section division in writing within 30 40 working days. If the latitude and longitude of each marker, as installed, is different from that listed in the application, this notification must include the correct latitude and longitude in degrees and decimal minutes as installed and the datum in which the coordinates are expressed, minutes, and seconds.

(d) All markers must be maintained in proper condition at all times. A discrepancy exists whenever a marker is not exactly as described in the approved application or is destroyed, damaged, moved, or is otherwise unserviceable or not watching properly. The applicant must immediately report any discrepancy in the marker to the Boating and Waterways Section division by telephone, telefacsimile or other similarly rapid means of communication. Unless the applicant's permit expressly provides for a longer period, the applicant must correct any discrepancy within not more than 30 days and must notify the Boating and Waterways Section division when the correction is accomplished.

(e) Authorization by the division for the placement of a marker does not authorize any invasion of private rights, nor grant any exclusive privileges, nor does it obviate the necessity of complying with any other federal, state or local laws or regulations.

(f) All permits issued pursuant to this chapter are contingent upon the consent of and, if necessary, the issuance of appropriate permits by the United States Army Corps of Engineers authorizing the placement of structures for the support of the proposed markers. Consent may be by nationwide permit, regional permit, letter permit, authorization letter, statement of no objection, or other similar means.

(g) All permits issued pursuant to this chapter are contingent upon the consent of and, if necessary, the issuance of appropriate permits by the United States Coast Guard authorizing the establishment of private aids to navigation pursuant to Part 66 of Title 33 of the Code of Federal Regulations.

(h) It is unlawful to place ~~All permits issued pursuant to this chapter authorizing the placement of markers, buoys, or signs on submerged lands, or other property or structure not owned by the person or governmental entity placing them without first applicant are contingent upon the applicant receiving the written consent of the owner of the submerged lands, other property, or structure to the placement of said markers, buoys, or signs. For markers, buoys, or signs placed pursuant to a permit issued under this rule, the permit is contingent upon the applicant and~~ providing a copy of such consent to the Boating and Waterways Section division.

(i) By accepting any permit and placing the markers authorized therein, the applicant other than a governmental entity, to the extent authorized by law, agrees and promises to hold harmless the State of Florida and its agencies, employees, agents, or successors from fault with respect to any claim or claims arising from alleged negligence in the placement, maintenance, operation and removal of any and all markers placed by applicants pursuant to such permits. The applicant other than a governmental entity further agrees to indemnify the State of Florida for any and all legal fees and costs incurred in defense of any suit brought against the State as a result of alleged negligence by applicant in the placement, maintenance, operation or removal of the markers.

(j) Applicants for permits to place regulatory markers or the governmental entities establishing the rules, ordinances, or other actions imposing the regulations must provide for the enforcement of operating restrictions noticed by said markers.

(2) Additional conditions for regulatory markers.

(a) All regulatory markers must be supported by a statute, special act, rule, regulation, ordinance, order, or other similar regulatory instrument which imposes the restriction displayed on the marker.

(b) If the regulatory instrument supporting a regulatory marker is amended or if it is repealed, rescinded, revoked, or otherwise becomes a nullity, the permit holder must within 30 days notify the Boating and Waterways Section of the change and must also:

1. In the case of an amendment to the regulatory instrument, the file an amended permit application showing the markers that will be removed, replaced, modified, or added in order to implement the amendment to the regulatory instrument.

2. In the case of the repeal, rescission, revocation, or other nullification of the regulatory instrument, remove from the waters of this state and the shores thereof all regulatory markers implementing that regulatory instrument.

(3) The division and its officers and all other law enforcement officers charged with the enforcement of Chapter 327, F.S., have the authority to remove or cause the removal of any marker found in violation of the conditions imposed under this section or otherwise imposed in the permit authorizing the placement of the marker if the violation is not corrected within 30 days following notification of the permittee of the violation. For just cause shown, one or more 30 day extensions may be granted for the permittee to correct the violations.

Specific Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History—New 12-23-01, Amended \_\_\_\_\_.

68D-23.107 Federal System Adopted.

(1) The following are adopted and incorporated by reference:

(a) The United States Aids to Navigation System, Part 62 of Title 33 of the Code of Federal Regulations;

(b) The United States Coast Guard Aids to Navigation – Administration Manual (Comdtinst M16500.7);

(c) The United States Coast Guard Aids to Navigation – Technical Manual (Comdtinst M16500.3A).

(2) All markers, including and mooring buoys, placed or maintained in, on or over the waters of the state or the shores thereof must shall conform to the United States Aids to Navigation System.

~~(a) Until December 31, 2003, channel markers and obstruction markers conforming to the Uniform State Waterway Marking System may continue to be used on waters of this state that are not navigable waters of the United States.~~

~~(b) No person, municipality, county or other governmental entity shall place any new marker or replace any existing marker unless such new or replacement marker or mooring buoy conforms to the United States Aids to Navigation System and all other provisions of this chapter.~~

~~(c) On or before December 31, 2003, All markers in, on, or over the waters of the state or the shores thereof must conform to shall be brought into conformity with the United~~

States Aids to Navigation System and all other provisions of this chapter, or be removed from the waters or shores of the state.

~~(b)(d) After December 31, 2003, No person, municipality, county, or other governmental entity shall place, maintain, or permit to remain in, on or over the waters of the state or shores thereof any nonconforming marker.~~

~~(c)(e) After December 31, 2003, All nonconforming markers in place in, on, or over the waters of the state or shores thereof are shall be declared a nuisance. The division and its officers and all other law enforcement officers charged with the enforcement of Chapter 327, F.S., shall have the authority to remove or cause the removal of any such nonconforming marker.~~

Specific Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History—New 12-23-01, Amended \_\_\_\_\_.

68D-23.108 Specifications for Markers.

(1) through (4) No change.

(5) Retroreflective materials shall be used for all displays on markers that are required to be international orange and as otherwise required in the United States Coast Guard Aids to Navigation – Technical Manual (Comdtinst M16500.3A). The white background dayboard film material for all information, danger, exclusion, and regulatory signs installed or replaced after July 1, 2006, shall be retroreflective. Retroreflective materials may be used for any other portion of a marker.

(6) Every pile used in waters of this state to support signs for waterway marking purposes must have two bands of white tape placed around it. The bands of tape must be placed separately around each pile for dolphins, clusters, and other structures using multiple piles for support. The tape must be 6 inches wide and made of self-adhesive (pressure sensitive), diamond-grade, white, retroreflective material. The top of the first band must be placed 6” from the bottom of the sign; the top of the second band must be placed 8” from the bottom of the first band. The tape must be installed with a minimum overlap of 1 inch over the entire 6” width of the band. On wooden piles, the tape must be additionally secured using not less than 4 stainless steel, 1-inch staples driven through the area of the overlap. If the tape becomes delaminated, cracked, checked, weathered, or abraded so as to have a dull or roughened surface, it must be replaced. Any existing tape must be removed before applying the replacement tape.

(7) All buoys other than mooring buoys must be attached to the waterbody bottom using anchors, sinkers, chain, shackles, swivels, and bridles that meet or exceed the specifications in the United States Coast Guard Aids to Navigation – Technical Manual (Comdtinst M16500.3A).

(8) Mooring buoys are white cylindrical or spherical with a blue band located near the top of the buoy. All mooring buoys must be attached to the waterbody bottom using

anchors, sinkers, chain, shackles, swivels, and must be equipped with pennants, that are of sufficient size, strength, and holding power for their intended purpose.

Specific Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History—New 12-23-01, Amended \_\_\_\_\_.

68D-23.109 Additional Specifications for Information and Regulatory Markers.

(1) through (2) No change.

(3) When a sign is used for an information or regulatory marker it must shall be square or rectangular. It must shall be white with an international orange border. The display area is shall be that portion of the sign within the border. Symbols must shall be centered within the display area. The size of the sign must shall be appropriate to the size of the waterway where the sign is located and the nature of the vessels transiting the waterway; however, no such sign shall be smaller than three feet by three feet.

(4) No change.

Specific Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History—New 12-23-01, Amended \_\_\_\_\_.

68D-23.110 Inspections and Certification.

(1) Each person holding a permit to place and maintain one or more markers must inspect all markers for which the permit was issued and report such inspection to the division triennially, beginning 36 months from the date the permit was issued or 36 months after this rule becomes effective, whichever comes later. The report must be submitted at least thirty but not more than ninety days prior to expiration of the three-year period.

(2) The required inspection must be documented in writing and must include report shall consist of the following:

(a) The name of the permit holder and permit number of the markers being inspected;

(b) The name of the person or persons currently responsible for the placement and maintenance of the markers; and

(c) A photograph of each marker taken in close enough proximity to legibly show all symbols, borders, and letters and numbers, including the text of any message, the permit number, and the ordinance number, code section number, statute number, regulation or rule number, (etc.). For marker installations with two or more signs, a sufficient number of photographs must be taken to legibly show the information on each sign. Digital photography is acceptable for this purpose. Photographs must be labeled with the location of the marker depicted and the date the photograph was taken.

(d) A statement certifying that the markers placed pursuant to the permit have been inspected during the ninety days preceding the statement and that:

1. The markers are properly maintained and in serviceable condition;—

2. The markers conform to the requirements of this chapter;—

3. The markers are still properly on station;— and

4. The date or dates on which the markers were inspected.

(3) The permit holder must maintain the inspection documentation until it is replaced by a subsequent inspection and documentation. Failure to inspect a marker and to maintain documentation of report the results of the inspection to the division during the specified time period is shall be grounds for rescinding the permit authorizing placement of the marker and for removing or ordering the removal of the marker.

(4) Dayboard and buoy surfaces and dayboard backing materials will deteriorate because of the effects of weathering. Wind, rain, freezing temperatures, and sunlight cause delamination (separation), cracking, peeling, and fading. Attention must be given to these conditions during inspections. (a) Markers will be considered discrepant under the following guidelines:

1. Backing materials. Delamination of the plies on a plywood dayboard backing must not effect more than 25 percent of the surface area. Any warpage must not visibly detract from the signal or message presented to the mariner. The backing must not be softened or otherwise deteriorated around the mounting points to a degree that the board could come loose in a storm typical for the area in which the marker is placed.

2. Elastomeric films, numerals, letters, symbols, and borders. Delamination of films and retroreflective markings on dayboards and buoys must not affect more than 10 percent of the surface of the material. Films and retroreflective markings must not be cracked, checked, weathered, or abraded so as to have a dull or roughened surface. Peeling of the film or markings from the dayboard or buoy must not affect more than 10 percent of the surface area. Letters, numerals, symbols, and borders must not be faded or weathered so as to visibly detract from the signal or message presented to the mariner.

(c) A dayboard or buoy must be replaced if any of the deteriorations noted above is observed or, if for any reason, it cannot function as intended (including significant fading or other discoloration) until the next regularly scheduled inspection. Onsite repairs are permitted if they do not interfere with or detract from the intended signal function of the marker.

(5) All discrepancies documented during an inspection must be reported to the Boating and Waterways Section and corrected within 30 days, as provided in paragraph 68D-23.106(1)(d), F.A.C.

Specific Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41, 370.12 FS. History—New 12-23-01, Amended \_\_\_\_\_.

68D-23.112 Exemptions.

(1) Nothing herein shall apply to the United States Government or its agencies, nor to any aid to navigation, marker, mooring buoy, or other similar device placed thereby.

(2) Persons establishing private aids to navigation other than regulatory markers and mooring buoys on waters of concurrent state/federal jurisdiction pursuant to the provisions of 33 CFR § 66.01 may ~~shall~~ submit to the Boating and Waterways Section ~~division~~ a copy of their United States Coast Guard permit (CG-2554) in lieu of the materials required under Rule 68D-23.104, F.A.C. Upon receipt by this section ~~division~~ of said copy of their permit, such private aids to navigation are ~~shall be~~ exempt from further permitting and need not display a permit number.

(3) Except as provided in subparagraph 68D-23.106(1)(b)3., F.A.C., ~~Regulatory markers authorized by the former Florida Department of Natural Resources prior to January 1, 1988, are exempt until December 31, 2003, from the requirement that they display a permit number. After that date,~~ every regulatory marker without a permit number, in place in, on or over the waters of the state or shores thereof is ~~shall be~~ declared a nuisance. The division and its officers and all other law enforcement officers charged with the enforcement of Chapter 327, F.S., ~~shall~~ have the authority to remove or cause the removal of any unpermitted regulatory marker. Markers authorized by the former Florida Department of Natural Resources prior to January 1, 1988, for which no permit number was assigned shall be issued a permit number upon receipt by the Boating and Waterways Section ~~division~~ of the following:

(a) A copy of the correspondence authorizing placement of said markers;

(b) A statement of the specifications for the markers, including:

1. A list of the markers;

2. A description giving each marker's ~~markers~~ size and message, and

3. The latitude and longitude coordinates in degrees and decimal minutes ~~degrees-minutes-seconds~~ of the location of each marker and the datum in which those coordinates are expressed;

4. A statement that the markers have been inspected during the ninety days preceding the instant request and that:

a. The markers are properly maintained and in serviceable condition;:-

b. The markers conform to the requirements of this chapter;:-

c. The markers are still properly on station;:- and

d. The date or dates on which the markers were inspected.

(4) Markers placed by local governments on inland lakes and their associated canals. The inspection and certification requirements in Rule 68D-23.110, F.A.C., shall not apply to markers maintained by an Inland Navigation District pursuant to Section 374.997, F.S., but shall instead be specified in each permit.

(a) The placement of information or danger markers by counties, municipalities, or other governmental entities, in, on, or over the waters or shores of inland lakes and their associated canals is exempt from permitting under this section and such markers need not display any permit number. These markers include, but are not limited to, those providing information or warnings concerning: ends of boat ramps, no swimming, swimming area, lake names, canal names, trash receptacles, public health notices, underwater hazards, regulatory matters, emergencies, and special events.

(b) These markers, with the exception of swimming area and special event markers, must be placed on land or within 50 feet from the ordinary high-water line.

(c) This exception from the permitting requirement does not relieve any county, municipality, or other governmental entity from compliance with any other state or federal rule, regulation, or law.

(d) The Commission finds that federal law imposes less restrictive requirements than provided herein on the placement of markers indicating the ends of boat ramps, no swimming, swimming area, lake name, trash receptacle, public health notice, canal, emergency, and other similar markers directed to persons on land, swimmers, and other persons using the waters of this state who are not the operators or occupants of vessels. Such markers were not considered waterway markers prior to June 13, 2005, and were not subject to the provisions of this rule or Section 327.40, F.S., prior to that date. The Commission temporarily exempts such markers from the provisions of this rule and Section 327.40, F.S. This temporary exemption shall expire and this paragraph shall stand repealed on December 31, 2006, unless repromulgated.

(5) The restrictions displayed on regulatory markers shall not apply:

(a) In the case of an emergency;

(b) To law enforcement patrol vessels or firefighting vessels; or

(c) To any rescue vessel owned or operated by a governmental entity.

Specific Authority 327.04, 327.40, 327.41, 327.71 FS. Law Implemented 327.40, 327.41, 327.46, 327.71, 370.12 FS. History--New 12-23-01, Amended \_\_\_\_\_.



NAME OF PERSON ORIGINATING PROPOSED RULE:  
Ms. Tara Alford, Management Analyst, Boating and Waterways Section, Division of Law Enforcement, (850)410-0656, extension 17169, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Colonel Julie Jones, Director, Division of Law Enforcement, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 2, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 23, 2004

### Section III Notices of Changes, Corrections and Withdrawals

#### 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."

#### COMMISSION ON ETHICS

RULE CHAPTER NO.:	RULE CHAPTER TITLE:
34-12	Executive Branch Lobbyist Registration
RULE NOS.:	RULE TITLES:
34-12.020	Definitions
34-12.400	Compensation Reporting Requirements
34-12.405	Penalties for Late Filing
34-12.407	Appeal of Statutory Fines; Hearings, Unusual Circumstances

#### NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 32, No. 12, March 24, 2006 issue of the Florida Administrative Weekly.

Rule 34-12.020(7) "Lobbying firm" means a business entity, including an individual contract lobbyist, that receives or becomes entitled to receive any compensation for the purpose of lobbying, where any partner, owner, officer, or employee of the business is a lobbyist. An association, a governmental entity, a corporation, or other business entity that

does not derive compensation from principals for lobbying is not a "lobbying firm," and neither are its employee-lobbyists considered to be a "lobbying firm."

Rule 34-12.400(4) Compensation provided or owed for lobbying activities as defined in subsection 34-12.020(6) and as described in Rule 34-12.160, F.A.C., should be reported. Compensation provided or owed for activities that are excluded, as provided in Rules 34-12.110, 34-12.120, and 34-12.130, F.A.C., and as described in Rule 34-12.170, F.A.C., is not required to be reported.

(4) through (7) renumbered (5) through (8) No change.

Rule 34-12.405(1) Upon determining that a Quarterly Compensation Report is late, the person designated to review the timeliness of reports shall immediately notify the lobbying firm of its failure to timely file the report and that a fine is being assessed for each late day. The fine shall be \$50 per day per report for each late day up to a maximum of \$5,000 per late report.

Rule 34-12.407(1) A lobbying firm wishing to appeal or dispute a fine imposed in accordance with Section 112.3215(5)(e)5. ~~112.3215(5)(f)~~, Florida Statutes, shall file with the Commission on Ethics a notice of appeal within 30 days of the date the notice of payment due is transmitted by the lobbyist registration office, setting out with specificity the unusual circumstances surrounding the failure to file on the designated due date. The notice of appeal may be accompanied by any documentation or evidence supporting the claim.

#### AGENCY FOR HEALTH CARE ADMINISTRATION

##### Health Facilities and Agency Licensing

RULE NOS.:	RULE TITLES:
59A-18.002	Definitions
59A-18.004	Licensure Requirements, Procedures and Fees
59A-18.005	Registration Policies
59A-18.0081	Certified Nursing Assistant and Home Health Aide
59A-18.017	Supplemental Staffing for Health Care Facilities
59A-18.018	Emergency Management Plans

#### NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule referenced above in accordance with subparagraph 120.54(3)(d)1., Florida Statutes, published in the Vol. 32, No. 6, February 10, 2006, issue of the Florida Administrative Weekly. The changes are made to address comments received from the Joint Administrative Procedures Committee.

The changes are as follows:

59A-18.002 Definitions.

When used in this rule, unless the context otherwise requires, the term: