

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Optometry
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Optometry
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 17, 2008
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 21, 2008

DEPARTMENT OF FINANCIAL SERVICES

Division of State Fire Marshal

RULE NO.: 69A-64.005
RULE TITLE: Adjustments to Reflect Consumer Price Index

PURPOSE AND EFFECT: To adopt price level changes relating to firefighter death benefits in Section 112.191, Florida Statutes, for the year 2008-2009.

SUMMARY: Firefighter death benefits in Section 112.191, Florida Statutes are raised annually to reflect price level changes.

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

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

SPECIFIC AUTHORITY: 112.191 FS.

LAW IMPLEMENTED: 112.191 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: Monday, January 19, 2009, 10:00 a.m.

PLACE: Third Floor Conference Room, the Atrium Building, 325 John Knox Road, Tallahassee, Florida 32303

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Michael Bannister, Division of State Fire Marshal, Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-0340, phone: (850)413-3170; Fax: (850)922-1235

THE FULL TEXT OF THE PROPOSED RULE IS:

69A-64.005 Adjustments to Reflect Consumer Price Index.

(1) No change.

(2) The amounts payable for the period from July 1, 2008 through June 30, 2009, using the Consumer Price Index for all urban consumers published by the United States Department of Labor for March, 2008, which is the most recent month for which data is available as of the time of the adjustment, are:

(a) For those benefits paid or to be paid under paragraph (a) of subsection (2) of Section 112.191, F.S.: \$60,140.00

(b) For those benefits paid or to be paid under paragraph (b) of subsection (2) of Section 112.191, F.S.: \$60,140.00

(c) For those benefits paid or to be paid under paragraph (c) of subsection (2) of Section 112.191, F.S.: \$175,565.91

Specific Authority 112.191 FS. Law Implemented 112.191 FS. History--New 3-13-03, Amended 7-10-03, Formerly 4A-64.005, Amended 7-13-04, 6-30-05, 8-1-06, 4-7-08.

NAME OF PERSON ORIGINATING PROPOSED RULE: Michael Bannister, Division of State Fire Marshal, Department of Financial Services

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Alex Sink, Chief Financial Officer, State of Florida Department of Financial Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 9, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 24, 2008

Section III
Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF EDUCATION

State Board of Education

RULE NO.: 6A-6.03018
RULE TITLE: Special Programs for Students with Specific Learning Disabilities

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 34, No. 48, November 26, 2008 issue of the Florida Administrative Weekly.

The date of the State Board meeting to continue the hearing on this rule will be January 21, 2009, rather than January 20, 2009, as noticed.

DEPARTMENT OF COMMUNITY AFFAIRS

Division of Housing and Community Development

RULE NO.: 9B-3.047
RULE TITLE: State Building Code Adopted

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. 34, No. 46, November 14, 2008 issue of the Florida Administrative Weekly.

9B-3.047 State Building Code Adopted.

(1) The Florida Building Code, 2004 Edition, as updated by the Florida Building Commission on July 1, 2005, and as amended by the Commission on December 11, 2005, December 8, 2006, and May 21, 2007, incorporated herein by reference is hereby adopted as the building code for the State of Florida until February 28, 2009.

(2) Effective March 1, 2009, the Florida Building Code, 2007 edition, as updated by the Florida Building Commission, and as approved by the Commission on August 21, 2007, and amended by the Commission on December 10, 2008, incorporated herein by reference is hereby adopted as the building code for the State of Florida.

(3) Modifications and Amendments. All proposed modifications to the selected base codes and amendments to the Florida Building Code shall be submitted on the form adopted by reference in subsection 9B-3.050(4), F.A.C., that must be completed in full prior to submittal. The text of the proposed modification or amendment must be provided in legislative format, with underlining indicating where new language is added to the existing provisions and strikeout indicating where existing language is deleted. Copies of the form may be obtained by writing to the Codes and Standards Section, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100.

~~(4) PROPOSED EFFECTIVE DATE MARCH 1, 2009.~~

Specific Authority 553.73(1), (2), (6), (7) FS., Sections 21, 32, 33, 34, 36, 44, 46, 48, Chapter 2005-147, Laws of Florida, Section 1, Chapter 2006-65, Laws of Florida, Section 10, Chapter 2007-1, Laws of Florida, Section 1, Chapter 2006-65, Laws of Florida, Section 10, Chapter 2007-1, Laws of Florida, Section 1, Chapter 2006-65, Laws of Florida, Section 10, Chapter 2007-1, Laws of Florida, History--New 7-18-90, Amended 3-30-93, 10-17-93, 8-28-95, 9-24-96, 12-26-96, 4-27-97, 10-5-97, 10-14-97, 9-7-00, 11-28-00, 2-7-01, 12-16-01, 6-30-03, 4-3-05, 12-11-05, 12-8-06, 5-21-07, 10-1-08, ~~3-1-09~~.

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

Division of Driver Licenses

RULE NOS.:	RULE TITLES:
15A-7.006	Application; Operation in Interstate or Foreign Commerce; Certification Required; Medical Examination Required
15A-7.009	Issuance of Commercial Driver's License; Department; Duties
15A-7.010	Issuance of License; Department to Check Commercial Driver's License Information System
15A-7.017	Hazmat Endorsement Threat Assessment Program
15A-7.019	Third Party Testing Program

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. 34, No. 41, October 10, 2008 issue of the Florida Administrative Weekly.

15A-7.006 Application; Operation in Interstate or Foreign Commerce; Certification Required; Medical Examination Required; ~~Exceptions.~~

(1) Upon making application for a CDL, any applicant who operates or expects to operate a commercial motor vehicle in interstate or foreign commerce or any applicant otherwise subject to 49 Code of Federal Regulations Part 391 of the Federal Motor Carrier Safety Regulations, pursuant to Section 316.302(1) ~~322.08(4) and 322.59~~, F.S., shall certify that he or she meets the qualification requirements of Part 391.

(2) Upon application for a driver's license, applicants who drive interstate are subject to 49 Code of Federal Regulations Part 391 of the Federal Motor Carrier Safety Regulations. and will present to the department a valid medical examiner's certificate ~~required by Title 49 C.F.R. Part 391~~ issued not more than 2 years immediately preceding licensure.

Specific Authority ~~322.02(6)(a)~~ FS. Law Implemented 316.302(1), 322.01(24), 322.07(3)(a), 322.08(4), 322.59 FS.

15A-7.009 Issuance of Commercial Driver's License; Department; Duties.

Prior to the issuance of an original or renewal commercial driver's license or the reissuance of a commercial driver's license with a change of any classification, endorsement, restriction, or name change, the department shall:

(1) Check the driving record of the applicant as maintained by the department; and

(2) Electronically check ~~Contact~~ the Commercial Driver License Information System (CDLIS) to determine whether the applicant possesses a valid commercial driver's license issued by any other state, and whether such license or the applicant's privilege to operate commercial motor vehicle has been disqualified.

(3) Electronically check ~~Contact~~ the National Driver Register (NDR) to determine if the applicant has any open driver license suspensions, revocations or cancellations.

Specific Authority 322.02(63) FS. Law Implemented ~~322.17~~, 322.65 FS. History--New 4-7-91.

15A-7.010 Issuance of License; Department to Check ~~Notify~~ Commercial Driver's License Information System.

Prior to the issuance of an original or renewal commercial driver's license or the reissuance of a commercial driver's license with a change of any classification, endorsement, restriction, or name change, the department shall electronically check ~~notify~~ the Commercial Driver License Information

System (CDLIS) of the issuance and shall provide the applicant's name, social security number and any other required information to the operator of the system.

Specific Authority 322.02(6)(~~g~~) FS. Law Implemented ~~322.17~~; 322.65 FS.; 49 CFR 383.153(b)(2) History-New 4-7-91.

15A-7.017 Hazmat Endorsement Threat Assessment Program.

(1) All applicants for CDL hazardous materials (Hazmat) endorsements are required to undergo fingerprint-based background checks in accordance with the USA Patriot Act and federal regulations of the Transportation Security Administration, 49 CFR, Part 1572. Department policy and procedures for processing Hazmat applicants procedures conform to 49 CFR Part 1572 in all respects.

(2) Hazmat endorsements and the associated background check results obtained in other states are not transferable to Florida CDLs. All Hazmat applicants including applicants reciprocating an out of state Hazmat-endorsed CDL are required to pass a new Hazmat knowledge exam and a new background check. Applicants presenting Hazmat endorsed CDLs from other states in conjunction with application for a Florida CDL will receive a 90-day temporary Hazmat endorsement pending completion of this process. Florida CDLs issued to these applicants will display "Hazmat until (date of issuance + 90 days)".

(3) Hazardous materials knowledge test results older than 60 days prior to the date of application may not be used to meet the testing requirement for issuance of a Hazmat endorsement.

(4) In accordance with Section 322.18(2)(e), Florida Statutes, hazmat-endorsed CDLs are valid for a period of 4 years. Hazmat-endorsed CDLs may be renewed up to 12 months in advance of their expiration dates.

(5) In accordance with Section 322.21(1)(h), Florida Statutes, the application fee for a Hazmat endorsement is set at \$91. This fee applies in addition to other applicable issuance and endorsement fees established by Section 322.21, Florida Statutes

Specific Authority 322.02(6) FS. Law Implemented 322.18(2)(e), 322.21(1)(h)(~~g~~) FS.

15A-7.019 Third Party Testing Program.

(1) Commercial Driver License Third Party Administrators and Third Party Testers may be authorized by the Department to conduct driver license tests in accordance with Section 322.56, Florida Statutes.

(2) Commercial Driver License Third Party Administrators and Third Party Testers shall comply with all applicable rules established in this chapter.

(3) Commercial Driver License Third Party Administrators and Third Party Testers shall comply with contractual agreements, instructional manuals, approved

testing locations and routes, and similar written documents establishing policies, procedures, and recordkeeping requirements to maintain the integrity of the testing program.

(4) Electronic and written records created by Commercial Driver License Third Party Administrators and Third Party Testers are public records of the State of Florida, and are subject to applicable laws and penalties regarding falsification of such records. Acts that constitute falsification of third party testing records include, but are not limited to:

(a) Entry of information on CDL test score sheets (form HSMV 7183) that falsifies the parts of a test performed, the type of vehicle used, the test applicant's (driver's) performance, the time of a test or any of its parts, the identity of the applicant, or the identity of the person conducting the test;

(b) Entry of information in the Department's electronic test records that falsifies the parts of a test performed, the type of vehicle used, the test applicant's (driver's) performance, the time of a test or any of its parts, the identity of the applicant, or the identity of the person conducting the test. Use of the tester's login name and password to create an electronic test record is deemed an electronic signature affirming that the test was personally conducted and the results were entered by that tester.

(c) Withholding or destruction of information that falsifies the true record of test activity, such as not recording a test given but failed by the applicant.

Specific Authority 322.02(6) FS. Law Implemented 322.56 FS.

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

WATER MANAGEMENT DISTRICTS

Suwannee River Water Management District

RULE NOS.:	RULE TITLES:
40B-9.011	Policy and Purpose
40B-9.021	Definitions
40B-9.031	Selection of Lands – Five Year Plan
40B-9.041	Acquisition Procedures – Negotiations
40B-9.0411	Land Acquisition Procedures
40B-9.042	Inholding and Addition Property
40B-9.045	Acquisition Procedures – Condemnation
40B-9.0451	Land Condemnation Procedures
40B-9.051	Surveys
40B-9.061	Appraisals
40B-9.065	Disclosure of Beneficial Interest
40B-9.071	Use of Trust Fund

40B-9.081 Disposition of Surplus Land
 40B-9.111 Funding of the District Lands Management Program
 40B-9.121 Conceptual Management Plans for District Lands
 40B-9.122 Resource Management Plans for District Lands
 40B-9.123 Additional Definitions
 40B-9.124 Policy and Purpose
 40B-9.125 Scope and Applicability
 40B-9.126 Access to District Lands
 40B-9.131 Public Use of District Lands
 40B-9.1311 Public Use of District Lands: Allowed Activities
 40B-9.132 Public Vehicle Use
 40B-9.133 Possession and Use of Firearms, Archery Equipment, Trapping Devices and Free-running Hunting Dogs
 40B-9.134 Trespass after Notice
 40B-9.138 Other Prohibited Activities
 40B-9.1381 Prohibited Activities
 40B-9.141 Special Use Licenses
 40B-9.1411 Special Use Authorizations
 40B-9.142 Easements
 40B-9.145 Leases
 40B-9.151 Closure of District Lands
 40B-9.161 Violations
 40B-9.320 Conflicting Rules

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. 34, No. 50, December 12, 2008 issue of the Florida Administrative Weekly.

WATER MANAGEMENT LANDS ACQUISITION AND MANAGEMENT PROCEDURES

40B-9.011 Policy and Purpose.

(1) Under subsection 373.139(2), Florida Statutes, the Governing Board is authorized to acquire fee or less than fee title to real property, easements and other interests or rights therein, by purchase, gift, devise, lease, eminent domain, or otherwise for flood control, water storage, water management, conservation and protection of water resources, aquifer recharge, water resource and water supply development, and preservative of wetlands, streams and lakes. Part I of this chapter governs the acquisition of these interests in lands by the Suwannee River Water Management District.

(2) Under paragraph 373.1391(1)(a), Florida Statutes, the Governing Board is charged with the responsibility to manage and maintain lands titled to the Suwannee River Water Management to ensure a balance between public access, general public recreational purposes, and restoration and protection of the lands' natural state and condition. Part II of

this chapter further governs the use of lands titled to the Suwannee River Water Management District. ~~The purpose of this rule is to implement the legislative intent expressed in Section 373.59, Florida Statutes, and therefore, to establish District policies and procedures regarding a five year plan for the selection of land, and provide procedures for the acquisition and management of land, title to which shall vest in the Suwannee River Water Management District. It is also the intent of these rules to provide uniform acquisition procedures in order to effectuate efficient legal methods in accordance with sound business practices.~~

(3) Lands titled to the District may be conveyed, sold, exchanged, leased, or released by the Governing Board as provided in Sections 373.056, 373.089 and 373.096, Florida Statutes.

(4) Consistent with the Legislature's directives, the District's policy is to manage and maintain District lands, to the extent practicable, to ensure a balance between restoration and protection of natural resources and public access and recreation.

(5) To further this policy, the land management and use provisions of Part II of this chapter are based upon the following priorities:

- (a) Water resource conservation and protection;
- (b) Environmental protection, with an emphasis on restoration and preservation of ecosystems; and
- (c) Compatible public recreation.

(6) It is further the policy of the District to make its lands accessible to persons with disabilities to the extent economically feasible and consistent with resource protection.

(7) This chapter is divided into two parts, Part I and Part II. Part I included Rule 40B-9.011 through Rule 40B-9.121, F.A.C., and pertains to land acquisition. Part II includes Rule 40B-9.123 through Rule 40B-9.320, F.A.C., and pertains to land management.

Specific Authority ~~373.016, 373.044, 373.056, 373.069, 373.0693, 373.073, 373.079, 373.083, 373.103, 373.113, 373.139, 373.171~~ FS. Law Implemented ~~373.103, 373.139, 373.59~~ FS. History--New 3-1-83, Amended _____.

40B-9.021 Definitions.

When used in this part, the term herein:

(1) "Acquisition plan" means the work plan adopted by the Governing Board that describes the District's land acquisition strategies.

(2) "Conservation easement" means a right of interest in real property which is appropriate to retaining land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition. A conservation easement restricts the underlying fee owner's use of the property consistent with the purpose of the easement. Conservation easements are

perpetual, undivided interests in property that run with the land. District conservation easements are governed by section 704.03, Florida Statutes.

(3) "Department" means the Florida Department of Environmental Protection or its successor agency or agencies.

~~(2) "Secretary" means the Secretary of the Florida Department of Environmental Protection.~~

~~(4)(3) "District" means the Suwannee River Water Management District, operating under the authority of Chapter 373, Florida Statutes.~~

(5) "District lands" means any fee simple interest or other interests in real property titled to the District.

(6) "District lease" means the granting of either an exclusive or non-exclusive use of or interest in District lands for a specified period of time.

(7) "Funding program" means the program established pursuant to Section 259.105, Florida Statutes, the Florida Forever Act.

(8) "Governing Board" means the governing board of the Suwannee River Water Management District.

~~(4) "Fund" means the Water Management Lands Trust Fund.~~

~~(5) "Plan" means the five year plan as adopted by the Governing Board of the Suwannee River Water Management District.~~

~~(6) "Project" means a parcel or parcels of land in a discrete unit of purchase.~~

~~(7) "Survey" means a certified survey signed by a licensed land surveyor authorized to practice surveying in the state of Florida.~~

~~(8) "Acquisition" means the reduction of the title to land to be acquired to fee, or in the discretion of the District such other legal interest necessary for water management, water supply and the conservation and protection of water resources.~~

~~(9) "Lands" means real property acquired by the District pursuant to Section 373.59, Florida Statutes.~~

~~(10) "Conceptual Management Plan" means the document discussing proposed management and use that is prepared prior to acquisition.~~

~~(11) "Resource Management Plan" is the document approved by the Governing Board that specifies management activities and authorized uses of the lands.~~

~~(12) "Public Use Guide" is the summary document that list specific public uses for the Lands authorized by the Governing Board that can be permitted by the District.~~

(9) "Management plan" means the District Land Management Plan adopted by the Governing Board that details the District's land management activities or other property specific land management plan adopted by the Governing Board.

(10) "Project" means a parcel or parcels of land in a discrete unit of purchase.

(11) "Public Use Guide" is a District publication approved by the Governing Board that specifies the authorized public uses of District lands and the conditions applicable to those uses.

(12) "Secretary" means the Secretary of the Florida Department of Environmental Protection or its successor agency or agencies.

(13) "Surplus lands" means those District-owned parcels that do not and are not expected to contribute significantly to the achievement of the District's acquisition objectives including the protection or enhancement of water resource benefits and effective and efficient land management.

Specific Authority 373.016, 373.044, ~~373.056, 373.069, 373.0693, 373.073, 373.079, 373.083, 373.103, 373.113, 373.139, 373.171, 373.59~~ FS. Law Implemented 259.01, 373.103, 373.139, 373.59 FS. History—New 3-1-83, Amended 4-1-93, _____.

40B-9.031 Selection of Lands – Five Year Plan.

~~(1) The District shall adopt a five year plan designating the areas of land to be acquired which shall be filed annually with the Legislature and the Secretary by January 15. Acquisition and management activity for the preceding fiscal year shall be included in five year plan.~~

~~(2) Prior to the adoption, amendment or modification of the five year plan, the District shall hold one or more public hearings.~~

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.103, 373.139, 373.59 FS. History—New 3-1-83, Amended 5-26-88, Repealed _____.

40B-9.041 Acquisition Procedures – Negotiations.

(1) *Bona fide* offers for sale. The District's land acquisition process is initiated when the District receives from an owner of real property a *bona fide* offer for sale to the District. A *bona fide* offer is one which includes: Upon determination of land requirements, descriptions and maps sufficient to identify the lands to be acquired shall be obtained.

(a) The county property appraiser's tax parcel identification number;

(b) An aerial map or other documentation upon which the property boundaries are shown or described;

(c) A copy of the deed showing the current owner of record for the property being offered;

(d) The owner's initial asking price for the property;

(e) Identification of any easements, deed restrictions, mineral interests, or other rights held by persons other than the fee title owner; and

(f) Identification of any existing purchase agreement, option contract, listing agreement, or any other agency arrangement or agreement entered into by the seller relating to the subject property.

(2) Criterial for evaluation of *bona fide* offers.

Upon receipt, District staff will evaluate all *bona fide* offers for sale of real property under the criteria contained within the District's land acquisition plan and provide a recommendation for disposition to the Governing Board. Ownership information shall be obtained and reviewed in order to determine the title to the land being acquired.

(3) Following Governing Board approval of a property for state priority funding, the following due diligence must be completed prior to a contract for sale:

(a) Evidence of good and sufficient fee title to the property in the seller must be provided by the seller to the District.

(b) The property owner must provide access to the District and its agents as needed to obtain an appraisal as required under paragraph 373.139(3)(c), Florida Statutes, and a Phase I environmental site assessment that addresses the federal Environmental Protection Agency standards in CFR Part 312, the state Department of Environmental Protection standards, and any other applicable environmental regulatory agency standards. The appraisal must be performed by a qualified appraiser who is registered, licensed, or certified under Part II, Chapter 475, Florida Statutes. The Phase I environmental site assessment must be performed by a qualified professional engineer, professional geologist or other environmental professional as the District deems appropriate. The District shall obtain at least one written appraisal pursuant to Rule 40B-9.061, F.A.C.

(4) Contracts for sale.

The Governing Board must adopt a purchase resolution which authorizes the Executive Director to execute a contract specifying the source of funds for the land to be acquired. The District shall attempt to acquire each parcel through voluntary negotiation prior to commencement of proceedings in eminent domain.

(5) All contracts to purchase shall be reduced to writing and shall be contingent upon approval by the Governing Board.

(6) The District shall attempt to negotiate the acquisition of desired parcels in accordance with the following procedure:

(a) The District shall contact each owner or authorized representative and negotiate the acquisition of the property.

(b) A "Negotiation Report" may be prepared and forwarded to Legal Counsel, which shall summarize such negotiations.

(c) In the event an offer is accepted, the District shall:

1. Arrange for the proper execution and recording of all necessary documents.

2. Request Legal Counsel to prepare a resolution requesting the Governing Board to approve the necessary funds pursuant to Chapter 62-402, F.A.C., if applicable.

(d) When a negotiated settlement cannot be readily attained, an authorized officer shall send a Memorandum to Legal Counsel which shall include:

1. A request for resolution to institute eminent domain proceedings.

2. Identification of parcels by title memorandum number.

3. Legal interest or estate sought for acquisition.

(5)(e) Donations of land to District.

The District may accept donations or gifts of real property interests land. In such event the provisions of this subsection shall be followed, except that the requirement for an appraisals may be waived upon concurrence of both the property landowner and the District.

(7) The District shall adhere to the provisions of Section 287.055, Florida Statutes, if applicable.

Specific Authority 373.044, 373.083, 373.139 373.113, 373.171 FS. Law Implemented 373.013, 373.139, 373.59 FS. History--New 3-1-83, Amended 5-26-88, _____.

40B-9.042 Inholding and Addition Property.

(1) The procedures in this section apply to offers of real property containing 40 acres or less.

(2) The District will consider purchasing parcels less than 40 acres in size if they are contiguous with existing District ownership and either:

(a) Provide additional protection for natural resources, or

(b) Improve the District's ability to manage its lands.

(3) In addition to qualifying under subsection 40B-9.042(2), F.A.C., above, the following conditions must be met:

(a) The fee owner of the property must control at least 50% of the mineral interests unless the outstanding royalty rights or interests are held by the State of Florida or the federal government;

(b) The property may not be subject to any current or future assessments by a homeowners association or other similar entity.

(c) The total asking price must be less than \$100,000.

(4) Upon determining that the offer meets the criteria and conditions in subsections 40B-9.042(2) and (3), F.A.C., above, Staff shall:

(a) Obtain a form or letter appraisal from the District's Land Acquisition Specialist or from an appraiser on the District's approved list; and

(b) Submit an offer at an amount not-to-exceed the appraised fair market value with an option approved by District legal counsel to the landowner.

(5) If the offer is accepted by the landowner, the District will conduct a public hearing at which the proposed purchase will be presented for Governing Board approval.

Specific Authority 373.044, 373.083, 373.139 FS. Law Implemented 373.013, 373.089, 373.139, 373.59 FS. History--New _____.

40B-9.045 Acquisition Procedures – Condemnation.

(1) ~~Eminent domain proceedings may only be used by the District to acquire real property for flood control and water storage or for curing title defects or encumbrances to real property owned by the District or to be acquired by the District from a willing seller. Proceedings in eminent domain shall not be commenced until authorized by the Governing Board.~~

(2) ~~Eminent domain proceedings brought by the District shall be conducted in accordance with the applicable provisions of Chapters 73 and 74, Florida Statutes, and Section 373.1961, Florida Statutes. The Governing Board may adopt a resolution authorizing the institution of eminent domain proceedings and which shall meet the requirements of Chapters 73 and 74, Florida Statutes, if applicable.~~

Specific Authority ~~373.026, 373.044, 373.056, 373.069, 373.0693, 373.073, 373.079, 373.083, 373.139, 373.103, 373.113, 373.171~~ FS. Law Implemented ~~373.013, 373.139, 373.1961, 373.59~~ FS. History–New 3-1-83, Amended _____.

40B-9.051 Surveys.

(1) ~~In order to determine the location, acreage and legal description of land to be acquired, the District shall obtain a survey.~~

(2) ~~Survey requirements may be waived in whole or in part by the District. In the event the survey requirements are waived in whole or part, the District shall then use the best available data in order to arrive at the boundaries and acreage of the land to be acquired.~~

(3) ~~All surveys shall meet the minimum technical standard for land surveying in the State of Florida as adopted by the Florida State Board of Land Surveyors.~~

Specific Authority ~~373.016, 373.044, 373.056, 373.069, 373.0693, 373.073, 373.079, 373.083, 373.103, 373.113, 373.171~~ FS. Law Implemented ~~373.103, 373.139, 373.59~~ FS. History–New 3-1-83, Repealed _____.

40B-9.061 Appraisals.

(1) ~~All lands to be acquired shall be appraised by at least one real estate appraiser, except as provided in paragraph 40B-9.041(6)(c), F.A.C., of this chapter.~~

(2) ~~Appraiser shall have no vested or fiduciary interest in the property to be appraised, except for the professional fee.~~

(3) ~~After a written contract between the District and the appraiser has been executed, the District shall transmit all pertinent data to the appraiser regarding the assignment.~~

Specific Authority ~~373.044, 373.113, 373.171~~ FS. Law Implemented ~~373.103, 373.139, 373.59~~ FS. History–New 3-1-83, Amended 5-26-88, Repealed _____.

40B-9.065 Disclosure of Beneficial Interest.

In all cases where fee title is ~~not~~ held in a representative capacity the name of the beneficial owner, the requirements of Section 286.23, Florida Statutes, must ~~will~~ be met.

Specific Authority ~~373.016, 373.044, 373.056, 373.069, 373.0693, 373.073, 373.079, 373.083, 373.139, 373.103, 373.113, 373.171~~ FS. Law Implemented ~~286.23, 373.103, 373.139, 373.59~~ FS. History–New 3-1-83, Amended _____.

40B-9.071 Use of Trust Fund.

(1) ~~For lands acquired by negotiation and purchase, the Governing Board shall request the Department to release the District's share of monies from the Fund by adopting a resolution which shall comply with Chapter 62-402, F.A.C.~~

(2) ~~For lands acquired by eminent domain, subsequent to the adoption of a resolution authorizing eminent domain proceedings, the Governing Board shall adopt a resolution pursuant to subsection (1) above, which in addition shall authorize the Executive Director or other staff officer to request monies from the Fund as follows:~~

(a) ~~A request from the District for the District's share of funds sufficient to pay the owner the amount specified in the final judgment or the stipulation and order.~~

(b) ~~A request from the District for the District's share of funds sufficient to pay the amount specified in the court's order or the stipulation and order for any costs and fees of the owner, whether incurred in the trial court or an appeal.~~

(c) ~~A request from the District for reimbursement of all the District's share of costs and fees incurred by the District associated with such acquisition.~~

(3) ~~The District shall request the Department to release funds specified in subsection (2) above of this section within a sufficient time to allow the District to comply with Section 73.111, Florida Statutes, or Section 74.071, Florida Statutes, and other laws as applicable.~~

Specific Authority ~~373.016, 373.044, 373.056, 373.069, 373.0693, 373.073, 373.079, 373.083, 373.103, 373.113, 373.171~~ FS. Law Implemented ~~373.103, 373.139, 373.59~~ FS. History–New 3-1-83, Repealed _____.

40B-9.081 Disposition of Surplus Land.

(1) ~~The District may sell or exchange District lands including those which have been acquired with funds from the Water Management District Trust Fund or in exchange for property which has been so acquired. District lands are considered surplus in accordance with Section 373.089, Florida Statutes, when:~~

(a) ~~They are not required for District or project purposes pursuant to Section 373.59, Florida Statutes;~~

(b) ~~They have no probable future utility in the land management program of the District; and~~

(c) ~~They have been declared surplus by the Governing Board.~~

(2) ~~All funds received from the sale of surplus lands acquired with Water Management District Trust Funds shall be used to purchase other lands meeting the criteria in Section 373.59, Florida Statutes.~~

~~(3) The District may convey land not required for its purposes to any governmental agency under such terms and conditions as the governing board may determine in accordance with Section 373.056, Florida Statutes.~~

~~(4) The District may retain or convey mineral rights on surplus lands in accordance with Section 270.11, Florida Statutes.~~

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 270.11, 373.103, 373.139, 373.59 FS. History—New 3-1-83, Amended 5-26-88, _____.

40B-9.111 Funding of the District Lands Management Program.

~~(1) Under Section 373.59(8), Florida Statutes, the District may use a specified portion of the Fund for management, maintenance and capital improvements for Lands acquired pursuant to Chapter 373.59, Florida Statutes.~~

~~(2) Pursuant to Chapter 62-402, F.A.C., all revenues derived from the use and management of the Lands are returned to the Fund or placed in an account to be used as specified in subsection (1).~~

~~(3) The Governing Board shall submit a formal resolution to the Department for funds needed either for reimbursement of expenditures of the District or to meet expected cash needs of the District for the management, maintenance or capital improvements to the Lands that will comply with Section 373.59(3), Florida Statutes.~~

~~(4) The District shall allocate a portion of its land management budget for payments in lieu of taxes to qualified counties pursuant to Section 373.59(13), Florida Statutes.~~

Specific Authority 373.016, 373.044, 373.59 FS. Law Implemented 373.1401, 373.59 FS. History—New 4-1-93, Repealed _____.

40B-9.121 Conceptual Management Plans for District Lands.

~~(1) A Conceptual Management Plan (CMP) shall be prepared by the District for all Lands prior to acquisition. Floodplain information; sensitive water resource or natural resource areas such as springs, wetlands and significant wildlife habitat; evidence of past abuse of the resource such as trash dumping, illegal hunting, cultural artifact collecting, wildfires; economic resources; continuing interests of the seller; historic public use; availability of similar public use resources; or other resources that are specific to a parcel shall be considered in developing the CMP.~~

~~(2) The CMP will be available for public review and comment at the public hearing for the proposed acquisition. Each public hearing will be noticed and advertised as required by Chapters 373 and 120, Florida Statutes.~~

~~(3) Upon approval of the CMP by the Governing Board and successful acquisition of the parcel, the CMP shall guide management and public use of the Land until the CMP is~~

~~incorporated into a Resource Management Plan (RMP). CMPs shall be available for review by the public during normal working hours at the District headquarters.~~

Specific Authority 373.016, 373.044, 373.59 FS. Law Implemented 373.59 FS. History—New 4-1-93, Repealed _____.

Part II

Land Management and Use

40B-9.122 Resource Management Plans for District Lands.

~~(1) The District shall develop or have developed Resource Management Plans (RMP) to guide the maintenance, improvement, restoration and use of the acquired Lands by the District, other agencies and the general public.~~

~~(2) The RMP will describe the parcel, including its location, external and internal access, resources embodied in or found on the parcel, and management and public use goals for the parcel. The RMP will be developed utilizing the following information resources as appropriate: surface and ground water resource data; aerial photography; field inspections; soils data; data available from sources regarding wildlife and habitat endangerment such as the Florida Natural Areas Inventory; and other data resources that are available to the District.~~

~~(3) The RMP will be considered for approval by the Governing Board during a public meeting, noticed pursuant to the requirements of Chapter 120, Florida Statutes. Upon approval of the RMP by the Governing Board, the RMP shall guide management and public use of the Land. RMPs are available for review by the public at the District headquarters.~~

Specific Authority 373.016, 373.044, 373.59 FS. Law Implemented 373.59 FS. History—New 4-1-93, Repealed _____.

40B-9.123 Additional Definitions.

When used in Part II of this chapter:

(1) "Access" means a point where the public can enter District lands by foot, horseback or non-motorized vehicles.

(2) "Aircraft" means any vehicle supported for flight in the air by buoyancy or by the dynamic action of air on its surfaces, including powered airplanes, gliders, and helicopters.

(3) "Boating" includes the use of any type of motorized or non-motorized vessel on water.

(4) "Commercial activity" means the sale or leasing, or offering for sale or lease, for profit any merchandise or service associated with the use of District lands including, but not limited to, providing guide services, vehicles or animals on District lands.

(5) "Camping" means to use a vehicle, tent, or other shelter, and/or to arrange bedding with the intent to stay overnight.

(6) "Concession" means the privilege to establish a commercial activity on District land.

(7) “District lands” means real property to which the Governing Board holds fee simple title.

(8) “Entrance” means a designated location or boundary where public motorized vehicle access to District lands is authorized.

(9) “Facility” or “Structure” means any object placed on District lands intended to be permanently attached to the land, or which would be considered a fixture under Florida Law.

(10) “Firearms and similar devices” means shotguns, rifles, muzzle loading guns, pistols, revolvers, air guns, gas guns, blow guns, bows, crossbows, spear guns, or any other device capable of mechanically propelling an arrow, spear, or other projectile.

(11) “Historic property” or “historic resource” means any prehistoric or historic district, site, building, object, or other real or personal property of historical, architectural, or archaeological value, or folklife resources. These properties or resources may include, but are not limited to, monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, sunken or abandoned ships, engineering works, treasure trove, artifacts, or other objects with intrinsic historic or archaeological value, or any part thereof, relating to history, government, and culture of the state.

(12) “Mobility-impaired person” means a person who is permanently physically disabled by being either paraplegic, hemiplegic, or quadriplegic, permanently dependent upon a wheelchair for ambulation or permanently required to use assisting aids to walk, or having had a complete single-leg amputation above the knee.

(13) “Motorized vehicle” means any vehicle which travels over land on wheels and is partially or completely powered by a motor, as well as animal-drawn carriages and buggies.

(14) “Paintball equipment” means paint balls, paintball guns, refillable gas tanks, paintball gun propellant canisters, paintball targets, and any other device associated with paintball activities.

(15) “Public road” means any road, path, land, or trail designated by name, number or map for public motorized vehicle access.

(16) “Public Use Guide” is a District publication approved by the Governing Board that specifies the authorized public uses of District lands and the conditions applicable to those uses.

(17) “Recreational site” means an improved or unimproved site established to facilitate recreational use by the public.

(18) “Resource-based recreational purpose” means any outdoor activity that depends on natural resources and includes, but is not limited to, fishing, hunting, horseback riding, bicycling, swimming, camping, hiking, boating, diving, wildlife viewing and other passive recreation.

(19) “Seasonal road” means a road open to public motor vehicle use for hunting or other particular uses during a specific time period, or which may be closed due to periodic site conditions.

(20) “Special Use Authorization” means the granting of a privilege to use District lands for a specified purpose and does not confer any property or possessory interest to the holder.

(21) “Survey” means a certified survey signed by a licensed land surveyor authorized to practice surveying in the State of Florida.

Specific Authority 373.044, 373.083, 373.1391 FS. Law Implemented 373.056, 373.096, 373.099, 373.1391, 373.1401 FS. History–New _____.

40B-9.125 Scope and Applicability.

(1) District lands shall be managed and maintained, to the extent practicable, in a manner that ensures a balance between public access, general public recreational purposes, and restoration and protection of their natural state and condition. Part II of this chapter establishes how District lands may be accessed by the public, the allowed recreational uses on District lands, the manner in which these uses may be exercised, and uses that are prohibited on District lands.

(2) District lands are open to the public for lawful resource-based recreational purposes except as otherwise conditioned, restricted or prohibited by this chapter or unless such use is inconsistent with the purposes for which the lands were acquired, as provided in the District land management plan.

(3) Nothing in this chapter shall prevent any other federal, state, or local agency, including but not limited to, the entity contractually responsible for managing District lands, from requiring compliance with its rules, regulations, and/or laws to the extent of such entity’s legal authority.

Specific Authority 373.044, 373.083, 373.1391 FS. Law Implemented 373.056, 373.096, 373.099, 373.1391, 373.1401 FS. History–New _____.

40B-9.126 Access to District Lands.

(1) District lands shall be open to the public during daytime hours only (one and one-half hour before sunrise to one and one-half hour after sunset) unless otherwise posted or authorized.

(2) Public motor vehicle access to District lands is only allowed at designated entrances.

(3) District lands may be accessed from any adjacent waterway or waterbody at any point, unless otherwise posted.

Specific Authority 373.044, 373.083, 373.1391 FS. Law Implemented 373.056, 373.096, 373.099, 373.1391, 373.1401 FS. History–New _____.

40B-9.131 Public Use of District Lands.

~~(1) The Lands shall be evaluated and the compatible public uses will be documented in the management plans. This evaluation will be based on the sensitivity of the Land to degradation, the need for specific public uses, the cost to the District to provide the public use, the ability of the District to reasonably assure public safety and other factors that may be applicable to the specific parcel.~~

~~(2) The District shall publish and make available to the public upon request a "Save Our Rivers Lands an informational "Public Use Guide" which summarizes allowed activities and use restrictions for each District property. The Public Use Guide, approved by the Governing Board on January 21, 1993, is hereby incorporated by reference. The Public Use Guide will be considered by the Governing Board at a public meeting advertised in accordance with Chapter 120, Florida Statutes. Copies of the District's Public Use Guide are available at from the District's headquarters and on its website: www.srwm.d.state.fl.us. Additionally, persons the public may apply for authorization of other public uses of District lands, as specified in Rule 40B-9.141, Florida Administrative Code F.A.C., "Special Use Authorizations Licenses.", of other public uses of the Lands. These applications will be reviewed by District staff using the criteria listed in subsection 40B-9.131(1), F.A.C.~~

~~(2)(3) Activities that are not authorized in this section, in the Public Use Guide, posted on the Land or specifically authorized under a Special Use Authorization or otherwise in writing by the District are expressly prohibited and subject to prosecution. The public is advised that Compliance with these rules does not preclude the need to also comply with State law and/or other applicable state and federal rules prevent the District's cooperating agencies, such as the Florida Game and Fresh Water Fish Commission, U.S. Department of Interior, Fish and Wildlife Service, Florida Department of Agriculture and Consumer Services and Florida Department of Natural Resources, from requiring compliance with other rules or laws to the fullest extent of their lawful authority.~~

~~(3) The following activities are allowed subject to any conditions and/or restrictions specified herein:~~

~~(a) Bicycling is allowed on all District lands open to the public unless restricted by signage.~~

~~(b) Boating for recreation is allowed on all District-owned waterways provided:~~

~~1. Boats launched from trailers must use boat ramps.~~

~~2. Boats must not be operated in a manner which could harm persons, plants, animals, or other natural resources. The District may prohibit or restrict boating in specific areas as needed to ensure public safety, resource protection, and protection of District facilities or equipment. These restrictions may include limitations on engine horsepower, speed, or vessel type and shall be specific to a water body. Areas closed to boating and boating restrictions shall be posted by signage.~~

(c) Camping is only allowed on District lands at approved locations and as permitted by a Special Use Authorization issued by the District under Rule 40B-9.141, Florida Administrative Code.

(d) Commercial activity on District lands may be allowed pursuant to prior written authorization in the form of an agreement or lease with the District. A person proposing any commercial activity on District lands must submit the following minimum information to the District:

1. Name and address of business;

2. Name and address of business owner or person responsible;

3. Type of activity to be conducted;

4. Statement justifying the need for the proposed commercial activity in order to facilitate public access and/or use of District lands for a resource-based recreational purpose;

5. Number of participants;

6. Dates and duration of the proposed activity; and

7. Signed statement committing to abide by all applicable District requirements.

Any proposed commercial activity that will exceed one year in duration, require exclusive use of an area of land, or result in monetary consideration to the District, may only occur under a lease agreement approved by the Governing Board.

The District will review the request for compatibility with the applicable land management plan and notify the applicant in writing. Requests to exclusively use a specific site that will impede the public's use or for uses that will degrade the property will be denied.

(e) Dogs are allowed on District lands provided they are on a leash or caged at all times unless consistent with authorized uses in state wildlife management areas and federal wildlife refuges or specifically authorized by the District through a Special Use Authorization issued under Rule 40B-9.141, Florida Administrative Code. Other types of domesticated animals, such as cats, are prohibited on District lands.

(f) Equestrian and other saddle animals, including those for use with noncommercial horse-drawn carriages and buggies, are allowed on all District lands on roads open to public motorized vehicles and all equestrian trails except where such use is specifically prohibited by signage. The person responsible for bringing a saddle animal onto District lands must have current, written proof of a negative Coggins test result.

(g) Fishing for recreation is allowed on District lands as authorized by the Florida Fish and Wildlife Conservation Commission, unless otherwise posted.

(h) Group recreational, educational or public service uses are allowed on all District lands open to the public provided a Special Use Authorization is issued by the District under Rule 40B-9.141, Florida Administrative Code.

(i) Hiking and other resource-based recreational purposes, such as photography, nature study, orienteering, are allowed on all District lands open to the public except where specifically prohibited by signage. For the purpose of this subsection, the term "hiking" includes jogging, wildlife viewing, or any other recreational activity where travel is by foot only and does not include another activity described in this chapter.

(j) Hunting for recreation is allowed in Florida wildlife management areas in accordance with applicable wildlife management area rules of the Florida Fish and Wildlife Conservation Commission, in United States national wildlife refuges subject to permit, and on District lands as designated and identified by signage. Public hunting areas on District lands must be approved by the Governing Board at a duly noticed public meeting. The District may allow hunting on lands not designated through a Special Use Authorization issued under Rule 40B-9.141, Florida Administrative Code.

(k) Motorized vehicle use is allowed on District lands on public use and seasonal roads and in other areas designated by signage. The use of motorized vehicles on District lands is subject to the following requirements:

1. All motorized vehicles must be licensed for use on Florida highways.

2. All motorized vehicle operators must be licensed as required by Florida law.

3. All motorized vehicle operators must comply with posted speed limits. If no speed limit is posted, the speed limit is 20 mph.

4. Under Section 316.192, Florida Statutes, driving a motorized vehicle in a willful and wanton disregard for the safety of persons or property is considered reckless driving. Pursuant to Section 316.1925, Florida Statutes, any person who drives a motorized vehicle shall drive in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic and all other attendant circumstances, so as not to endanger the life, limb or property of any person. Failure to drive in such a manner is punishable under Section 316.655, Florida Statutes.

5. Emergency motorized vehicles on District lands are not restricted to roads open to the public or to the 20 mph. or other posted speed limits.

(l) Picnicking is allowed on all District lands open to the public, unless otherwise posted.

(m) Research uses are allowed on all District lands provided a Special Use Authorization is issued by the District under Rule 40B-9.141, Florida Administrative Code, and further provided that if the proposed use will close or restrict public access, a contract or lease with the District is required.

(n) Swimming is allowed on District lands only in areas designated by signage.

Specific Authority 373.044, 373.083, 373.1391 373.59 FS. Law Implemented 373.056, 373.096, 373.099, 373.1401 373.59 FS. History-New 4-1-93, Amended _____.

40B-9.132 Public Vehicle Use.

~~(1) Only conventional motorized vehicles, licensed for use on Florida highways, may be operated on the Lands. The use of other motorized vehicles shall require a Special Use License, as specified in Rule 40B-9.141, F.A.C., from the District. Vehicles shall be operated by licensed operators.~~

~~(2) Motorized vehicles shall be operated by the public only on roads designated as open for public motor vehicles.~~

~~(3) Under Section 316.192, Florida Statutes, driving a vehicle in willful and wanton disregard for the safety of persons or property is reckless driving. Pursuant to Section 316.1925, Florida Statutes, any persons who drive vehicles on the Lands shall drive in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic and all other attendant circumstances, so as not to endanger the life, limb or property of any person. Failure to drive in such a manner is punishable under Section 316.655, Florida Statutes.~~

~~(4) Motorized vehicle operators shall comply with posted speed limits on the Lands. If no speed limit is posted, then the speed limit is 20 mph.~~

~~(5) Horse-drawn carriages and buggies are considered motorized vehicles for the purposes of this rule.~~

~~(6) Bicycles and horses are not considered to be vehicles for the purposes of this rule. Bicycling and horseback riding are permitted only on established roads and trails unless these uses are specifically posted as prohibited.~~

Specific Authority 373.044, 373.59 FS. Law Implemented 373.59 FS. History-New 4-1-93, Repealed _____.

40B-9.133 Possession and Use of Firearms, Archery Equipment, Trapping Devices and Free-running Hunting Dogs.

~~(1) Hunting, trapping, firearms, archery equipment, trapping devices and the releasing of free-running hunting dogs is prohibited on the Lands unless the Land is opened as a public hunting area and these uses are authorized in the specific public hunting area regulations.~~

~~(2) Public hunting areas on the Lands are administered by the District through agreements for services. If the Land is included in a public hunting area, it shall be posted as prescribed by Chapter 810, Florida Statutes. Upon request, the District shall provide reasonable information on the location and specific regulations for all public hunting areas on the Lands.~~

~~(3) Public hunting areas shall be established only with the approval of the Governing Board. Governing Board approval shall be given at a public meeting which shall be advertised as required by Chapter 120, Florida Statutes. The District shall enter into a management agreement with the entity to be responsible for managing public hunting on the Lands. These agreements are considered to be authorizations to remove designated game species. The agreements will be available at the District headquarters for review by the public.~~

~~(4) Under Section 810.09(2)(c), Florida Statutes, possession of a firearm on those Lands posted as closed to hunting is a third degree felony, punishable as provided in Section 775.082, 775.083, or 775.084, Florida Statutes.~~

Specific Authority 373.1401, 373.044, 373.59, 810.09 FS. Law Implemented 373.1401, 373.59, 810.09 FS. History--New 4-1-93, Amended 8-7-96, Repealed _____.

40B-9.134 Trespass after Notice.

~~Under Section 810.09(2)(b), Florida Statutes, any person who defies an order to leave the Lands, personally communicated to him by the District or other authorized persons, or who opens or circumvents any fence or closed gate is guilty of a misdemeanor of the first degree punishable as provided in Section 775.082 or 775.083, Florida Statutes.~~

Specific Authority 373.044, 373.59, 810.09 FS. Law Implemented 373.59, 810.09 FS. History--New 4-1-93, Repealed _____.

40B-9.138 Other Prohibited Activities.

~~The following other activities are prohibited on the Lands:~~

~~(1) The possession of alcoholic beverages.~~

~~(2) Littering or dumping of refuse.~~

~~(3) Vandalism, destruction or removal of posts, cables, chains, fencing, signs, or any other improvements, structures or property of the District.~~

~~(4) The removal of trees, animals, plant, soil or mineral matter, or cultural artifacts unless specifically authorized in a legal agreement with the District such as a timber cutting license or a Special Use License, as specified in Rule 40B-9.141, F.A.C.~~

Specific Authority 373.044, 373.59 FS. Law Implemented 373.59 FS. History--New 4-1-93, Repealed _____.

40B-9.1381 Prohibited Activities.

(1) The following activities are prohibited on District lands to the extent specified herein:

(a) Hunting or trapping animals, and releasing free-running dogs on District lands is prohibited except as provided in paragraph 40B-9.131(3)(h), F.A.C., above.

(b) The possession and/or use of alcoholic beverages on District land is prohibited.

(c) The disposal or discharge of any type of waste outside of designated waste collection facilities on District lands is prohibited.

(d) The disposal of oil, gasoline, or other hazardous substances on District lands is prohibited.

(e) Removing from or altering, destroying, or harming any animal, plant, soil, or mineral on District lands is prohibited, unless associated with:

1. District authorized research efforts;

2. Hunting and fishing activities specifically authorized under Part II of this chapter; or

3. District initiated removals associated with reforestation, control of exotic or nuisance species, timber harvests, or other land management activities.

(f) The introduction or release of any seed, plant or animal on District lands is prohibited unless pursuant to a District approved land management or restoration activity.

(g) Removal, alteration or destruction of historic resources on District lands is prohibited unless specifically authorized by the District through a Special Use Authorization issued under Rule 40B-9.141, Florida Administrative Code.

The District shall consult the Florida Department of State, Division of Historical Resources, prior to authorizing the removal, alteration or destruction of any archaeological or cultural resources on District lands. Any person who discovers historic resources on District lands shall immediately notify the District of such discovery.

(h) Scuba diving or the use of underwater breathing apparatus on District lands is prohibited unless specifically authorized by the District through a Special Use Authorization issued under Rule 40B-9.141, Florida Administrative Code. To receive a Special Use Authorization for scuba diving, in addition to meeting the criteria in Rule 40B-9.141, Florida Administrative Code, the applicant must provide reasonable assurances that the dive is for a scientific or investigative purpose and the person performing the dive is certified for the type of dive to be performed. A person issued a Special Use Authorization to perform a dive from District lands must submit a report upon completion of the dive informing the District of any scientific or historic evidence discovered during the dive.

(i) Taking off or landing aircraft on District lands is prohibited unless specifically authorized by the District through a Special Use Authorization issued under Rule 40B-9.141, Florida Administrative Code, or the result of a bona fide emergency.

(j) Use of all-terrain, off-road, or other motorized vehicles not licensed for Florida highway use on District lands is prohibited unless specifically authorized by the District through a Special Use Authorization issued under Rule 40B-9.141, Florida Administrative Code, unless associated with District authorized reforestation, exotic or nuisance species control, timber harvests, or other land management activities, or approved hunts managed by the Florida Fish and Wildlife Conservation Commission.

(k) The mooring of any boat on District lands for more than 24 consecutive hours is prohibited, unless otherwise indicated by signage.

(l) The destruction, removal or alteration of any District-owned facilities, vehicles or other property is prohibited. District-owned property includes, but is not limited to, water control structures, boardwalks, kiosks and other

recreational facilities, scientific study plots, photo points, transect lines, survey markers, buildings, towers, recorders, gauges, signs, gates, fences and monuments.

(m) The use of firearms, archery equipment, animal traps, or other similar devices on District lands is prohibited unless specifically authorized for:

1. Hunting activities as authorized under paragraph 40B-9.131(3)(h), F.A.C., above;

2. District initiated land management activities; or

3. A use specifically authorized by the District through a Special Use Authorization issued under Rule 40B-9.141, Florida Administrative Code.

The possession of firearms or other similar devices on District lands must comply with Chapter 790, Florida Statutes.

(n) The use of paintball guns, paintball markers, and any other paintball equipment on District lands is prohibited.

(o) The possession or discharge of any fireworks or explosives on District lands is prohibited unless specifically authorized by the District through a Special Use Authorization issued under Rule 40B-9.141, Florida Administrative Code.

(p) Distributing any handbills or circulars, or posting, placing or erecting any bills, notices, paper signs, advertising devices, or informational matter of any kind, excluding District or management agency notices, on District lands is prohibited.

(q) Igniting any fire on District lands is prohibited except for District authorized prescribed burns or fires specifically authorized by the District through a Special Use Authorization issued under Rule 40B-9.141, Florida Administrative Code.

(r) Constructing, erecting or maintaining any facility or any other structure of a permanent or semi-permanent nature on District lands is prohibited unless specifically authorized by the District through a Special Use Authorization issued under Rule 40B-9.141, Florida Administrative Code.

Any unauthorized facility or structure discovered on District lands shall be removed according to the following procedure:

1. Upon discovery of an unauthorized facility or structure, the District will post a notice on such facility or structure for a period of 14 days, informing the owner that such facility or structure is not authorized and that the owner must immediately remove such facility or structure.

2. If the owner of the unauthorized facility or structure fails to remove such facility or structure within 14 days after posting of the District notice, the District will remove such facility or structure from District lands or claim such facility or structure as District property.

The District may seek reimbursement of costs for removal of any unauthorized facility or structure from the owner of such facility or structure.

(s) Any use of District lands not authorized by Part II of this chapter is prohibited.

Specific Authority 373.044, 373.083, 373.1391 FS. Law Implemented 373.056, 373.096, 373.099, 373.1391, 373.1401 FS. History—New _____.

40B-9.141 Special Use Licenses.

(1) The public may apply for Special Use Licenses for public use and access, temporary ingress and egress and other purposes consistent with the Conceptual Management Plan, the approved Resource Management Plan or other Governing Board approved District policies. If the application is approved, then a Special Use License will be executed between the Applicant and District specifying the terms of the authorization. If the application is recommended for denial, a written notice will be sent to the applicant specifying the date and time of the public meeting when the Governing Board will consider the recommendation of a denial. The Governing Board shall then either grant the application with or without restrictions or deny the application and state the reason for denial.

(2) Any person receiving a denial may request a hearing by filing a written petition with the District within fourteen (14) days of the Governing Board's action. The hearing shall be conducted pursuant to Chapter 120, Florida Statutes.

(3) Members of the public who receive Special Use Licenses shall have the License in their possession while on the Lands. Failure to comply with the terms of the License is grounds for revocation and denial of future Licenses. Under Section 810.09, Florida Statutes, any person, who without being authorized or licensed, enters upon or remains in property as to which notice against entering or remaining has been given through communication commits the offense of trespass.

Specific Authority 373.044, 373.59 FS. Law Implemented 373.59 FS. History—New 4-1-93, Repealed _____.

40B-9.1411 Special Use Authorizations.

(1) Persons may apply for Special Use Authorizations for public uses of District lands not specifically authorized in Part II of this chapter, the District's Public Use Guide, and Rule 40B-9.131, Florida Administrative Code, provided the impacts from the requested use are consistent with the District's Land Management Plan, and other applicable District policies. If the application is approved, a Special Use Authorization will be issued specifying the terms of the Authorization. If the application is denied, the applicant may appear before the District's Governing Board at a regularly scheduled meeting.

(2) Persons who receive Special Use Authorizations must have the authorization in their possession at all times while on District lands. Failure to comply with the terms of the authorization is grounds for revocation of the authorization and denial of future authorizations.

(3) To receive a Special Use Authorization, the applicant must provide reasonable assurance that the requested use:

(a) Is natural resource-based;

- (b) Will not permanently alter District lands;
- (c) Is consistent with the management of the District lands involved;
- (d) Will not harm the environmental or historical resources of the District lands;
- (e) Will not cause unreasonable expense to the District;
- (f) Will not create a substantial risk of liability to the District;
- (g) Will not harm any dam, impoundment, works, water control structures, roads, or District owned facilities or equipment;
- (h) Will not interfere with District leased, licensed, or authorized uses of the land; and
- (i) Will not interfere with any other use allowed by Part II of this chapter.

The District shall impose upon any Special Use Authorization issued pursuant to this Chapter such reasonable conditions as are necessary to assure that the use or activity authorized will meet the criteria set forth in this chapter.

(5) The Governing Board hereby delegates to the Executive Director, Deputy Executive Director and Senior Land Resources Manager, the authority to issue, deny or revoke Special Use Authorizations pursuant to this section.

(6) Any person may apply for a Special Use Authorization according to the following procedure:

(a) Submit an oral or written request addressing the reasonable assurances required by this section to Suwannee River Water Management District Land Acquisition and Management Department at (386)362-1001 or (800)226-1066 (Florida only) or 9225 County Road 49, Live Oak, FL 32060, or complete a pre-approved authorization obtained from a District kiosk on the property.

(b) If the requested use will create a substantial risk of liability to the District, the applicant may mitigate by:

1. Providing proof of liability and property damage insurance naming the District as an additional insured party in an amount sufficient to cover the cost of the liability posed to the District; or

2. Providing waivers or releases of liability sufficient to eliminate the liability posed to the District.

(c) The application shall be reviewed by the Land Acquisition and Management Department for compliance with the criteria listed in this section and a recommendation regarding the application forwarded to the Deputy Executive Director.

(d) If the requested use satisfies all of the criteria set forth in this section, authorized District staff shall issue the Special Use Authorization.

(e) If the requested use does not meet the criteria set forth in this section, authorized District staff shall deny the Special Use Authorization application.

(7) Authorized District staff shall revoke a Special Use Authorization if the person authorized does not obtain all other required federal, state, or local approvals or permits prior to the start of any District authorized use.

Specific Authority 373.044, 373.083, 373.1391 FS. Law Implemented 373.056, 373.096, 373.099, 373.1359, 373.1391, 373.1401 FS. History—New _____.

40B-9.142 Easements.

(1) The granting of a license or easement for ingress and egress or other rights-of-way will be considered only when there exists a way of necessity as defined in Section 704.01 F.S., or it will benefit the general public.

(2) Where there is no associated clear way of necessity, the right requested must not conflict with the purposes for which the District lands were acquired. Prior to consideration, the following information must be submitted to the District:

(a) A map or aerial photograph at a scale of at least 1:24,000 showing the proposed route and, if applicable, an outline of the property to be benefited;

(b) A complete description of the route, including dimensions, and its intended use;

(c) A description of any practical alternative routes; and

(d) A copy of the deed by which the applicant acquired title to the property to be benefited, if applicable, and any evidence of a claim of right. If a right-of-way is granted, it shall be described and conveyed in the most limited form that meets the intended purpose.

(3) Easements may only be granted upon approval and execution by the Governing Board. The conveyance of any easement by the District shall require payment by the applicant of the fair market value as determined by any of the following:

(a) A real estate appraisal performed by a licensed real estate appraiser on the District's approved list or by the District's Staff Appraiser, or the fee value for bare land as documented in an acquisition appraisal and adjusted by an appropriate market index for the period since the District's acquisition; and

(b) Payment of any reasonable administrative, survey, and legal costs.

Specific Authority 373.044, 373.083, 373.1391 FS. Law Implemented 373.056, 373.085, 373.093, 373.099, 373.1391, 373.1401 FS. History—New _____.

40B-9.145 Leases.

(1) The District may grant a lease to use District land only when the purpose of the lease is consistent with the District's land management plan and in compliance with the requirements of Section 373.093, F.S. The scope of any lease to use District land shall be restricted to the minimum necessary to conduct the proposed activity. The lease shall include such terms and conditions as are considered to be in the best interest of the District.

(2) A person may request to lease District land by contacting the Suwannee River Water Management District, Land Acquisition and Management Department at (386)362-1001 or (800)226-1066 (Florida only) or 9225 County Road 49, Live Oak, FL 32060.

(3) The Governing Board hereby delegates to the Executive Director the authority to enter into leases of District land where:

(a) The use of District land proposed under the lease is specifically included in a Governing Board approved land management plan;

(b) The total estimated lease revenue is less than \$100,000; and

(c) The period of the lease does not exceed five years. Staff may request Governing Board for approval any proposed lease when staff determines that entering into the lease will provide significant public benefit.

(4) When required by Section 373.093, F.S., the District shall publish notice of its intent to grant a lease of District land in a newspaper in the county in which the land is situated.

(5) Any District lease in existence prior to [effective date of rule] shall remain in effect until it expires by its own terms or is cancelled or revoked. Thereafter, the use authorized by the existing District lease shall be subject to this section.

Specific Authority 373.044, 373.083, 373.1391 FS. Law Implemented 373.056, 373.085, 373.096, 373.099, 373.1391, 373.1401 FS. History–New _____.

40B-9.151 Closure of District Lands.

(1) District ~~The~~ Lands shall be closed to the public when such action is necessary to protect the water resources, natural resources and/or historic cultural resources of the Land. Such closure is not limited to, but may include those areas that are used for water resource development, water supply development or stormwater management projects, linear facilities, or sustainable agriculture or silviculture.

(2) ~~General~~ Public use of District ~~the~~ Lands is prohibited during ~~events such as~~ flooding, wildfire danger, timber harvesting, land management activities such as prescribed burns or construction, and or other events situations that are result in potentially dangerous conditions to the public or necessary to protect the property. The District shall provide notice to the public of such closures.

(3) District lands may be temporarily closed to the public use when necessary to conduct research, studies, or data collection approved or sponsored by the District. Temporary closure of District ~~the~~ Lands will be posted at all entrances to the affected Lands.

(4) The Governing Board hereby delegates to the Executive Director the authority to close District lands in accordance with this section.

Specific Authority ~~373.016,~~ 373.044, 373.083, 373.1391 ~~373.59~~ FS. Law Implemented 373.59 FS. History–New 4-1-93, Amended _____.

40B-9.161 Violations.

(1) Pursuant to ~~Under~~ Section 373.613, Florida Statutes, failure to comply with any ~~the~~ provisions of these rules is a misdemeanor of the second degree, punishable as provided in Section 775.082 or Section 775.083, Florida Statutes.

(2) The penalties specified identified in these rules are ~~in addition to and~~ cumulative ~~to~~ and do not supersede other legal remedies penalties or options available to District including civil remedies.

Specific Authority 373.044, 373.613 FS. Law Implemented 373.59, 373.613 FS. History–New 4-1-93, Amended _____.

40B-9.320 Conflicting Rules.

If an agency has entered into lease agreement with the District regarding specific District lands, the rules of that agency shall apply where in conflict with these rules. If the lease agreement does not address a specific use, or if the agency does not have rules addressing a specific use, then the District’s rules shall apply. In the absence of a lease agreement or specific language in a lease agreement, the District’s rules shall apply.

Specific Authority 373.044, 373.083, 373.1391 FS. Law Implemented 373.056, 373.096, 373.099, 373.1391, 373.1401 FS. History–New _____.

WATER MANAGEMENT DISTRICTS

St. Johns River Water Management District

RULE NOS.:	RULE TITLES:
40C-2.042	General Permit by Rule
40C-2.101	Publications Incorporated by Reference
40C-2.900	Forms and Instructions

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. 34, No. 43, October 24, 2008 issue of the Florida Administrative Weekly.

40C-2.042 General Permit by Rule.

(1) The Board hereby grants a general permit to each person located within the District to use, withdraw or divert water ~~from any source~~ to irrigate agricultural crops, nursery plants, cemeteries, golf courses, and recreational areas such as playgrounds, football, baseball, and soccer fields, provided the irrigation does not occur between the hours of 10:00 a.m. and 4:00 p.m. daily, and provided the amount of water used is limited to only that necessary for efficient utilization. Such water use shall be subject to the following exceptions:

(a) Irrigation using a micro-spray, micro-jet, ~~or~~ drip, or bubbler irrigation system is allowed anytime.

(b) The use of water for irrigation from a reclaimed water system is allowed anytime. For the purpose of this paragraph, a reclaimed water system includes systems in which the primary

source is reclaimed water, which may or may not be supplemented by water from another source during peak demand periods.

(c) The use of recycled water from wet detention treatment ponds for irrigation is allowed anytime provided the ponds are not augmented from any ground or off-site surface water, or public supply sources.

(b) through (k) renumbered (d) through (m) No change.

(2)(a) The Board hereby grants a general permit to each person located within the District to use, withdraw or divert water ~~from any source~~ for landscape irrigation, provided landscape irrigation occurs in accordance with the provisions of subsection 40C-2.042(2), F.A.C., and provided the amount of water used is limited to only that necessary for efficient utilization. For the purpose of this rule, "landscape irrigation" means the outside watering of plants in a landscape such as shrubbery, trees, lawns, grass, ground covers, plants, vines, gardens and other such flora that are situated in such diverse locations as residential areas, public, commercial, and industrial establishments, and public medians and rights-of-way, but it does not include agricultural crops, nursery plants, cemeteries, golf course greens, tees, fairways, primary roughs, and vegetation associated with recreational areas such as playgrounds, football, baseball and soccer fields. For the purpose of this rule, the terms "residential landscape irrigation" and "non-residential landscape irrigation" are defined in this paragraph (a) as follows. "Residential landscape irrigation" means the irrigation of landscape associated with any housing unit having sanitary and kitchen facilities designed to accommodate one or more residents, including multiple housing units and mobile homes. "Non-residential landscape irrigation" means the irrigation of landscape not included within the definition of "residential landscape irrigation," such as that associated with public, commercial and industrial property, including commercial or transient housing units, hotel and motel units, and public medians and rights-of-way. For the purpose of this rule, "address" means the "house number" of a physical location of a specific property. This excludes post office box numbers. If a lot number in a mobile home park or similar community is used by the U.S. Postal Services to determine a delivery location, the lot number shall be the property's address. An "even numbered address" means an address ending in the numbers 0, 2, 4, 6, 8 or letters A-M. An "odd numbered address" means an address ending in the numbers 1, 3, 5, 7, 9 or the letters N-Z.

1. When Daylight Savings Time is in effect, ~~from the second Sunday in March through the first Sunday in November,~~ landscape irrigation will occur in accordance with the following irrigation schedule:

a. through d. No change.

2. When Eastern Standard Time is in effect, ~~from the first Sunday in November to the second Sunday in March,~~ landscape irrigation shall occur only in accordance with the following irrigation schedule:

a. through d. No change.

3.a. Irrigation using a micro-spray, micro-jet, ~~or drip,~~ or bubbler irrigation system is allowed anytime at any time of day on any day.

b. through f. No change.

~~4. Although the use of reclaimed water for landscape irrigation is subject to the irrigation schedules set forth in subparagraphs 40C-2.042(2)(a)1. and 2., F.A.C., in those limited conditions described in this subparagraph 4., a person is authorized to irrigate landscape with reclaimed water on more than the 2 days specified in the schedule for Daylight Savings Time and on more than the 1 day specified in the schedule for Eastern Standard Time. This additional authorization is provided under certain conditions because some reclaimed water providers cannot feasibly operate their wastewater disposal systems currently unless they provide reclaimed water to their customers for use on a more continuous basis than what would occur under the day limitations in these irrigation schedules. Those persons who receive written notification from their reclaimed water provider that this condition exists are authorized to irrigate landscape with reclaimed water on those additional days specified in the notification. The additional authorization shall cease upon written notification that this condition no longer exists. During the period in which additional days of irrigation are authorized, the irrigation prohibition between 10:00 a.m. and 4:00 p.m., the irrigation volume limitation, and the 1 hour per zone limitation in the irrigation schedules shall continue to apply.~~

~~4.6. When reclaimed water is available, the use of a private irrigation well for landscape irrigation is not authorized under subsection 40C-2.042(2), F.A.C. Reclaimed water is deemed available when reclaimed water is provided by a utility through a point of service connection at the property boundary or on the property.~~

~~5.7. Any person who irrigates landscape with an automatic lawn sprinkler system installed after May 1, 1991, shall install, maintain and operate a rain sensor device or switch that overrides the irrigation system when adequate rainfall has occurred.~~

6. The use of water from a reclaimed water system is allowed anytime. For the purpose of this subparagraph, a reclaimed water system includes systems in which the primary source is reclaimed water, which may or may not be supplemented from another source during peak demand periods.

7. The use of recycled water from wet detention treatment ponds for irrigation is allowed anytime provided the ponds are not augmented from any ground or off-site surface water, or public supply sources.

(b) No change.

(c) A person proposing to use water for landscape irrigation where factors establish the need for irrigation to occur in a manner other than that authorized in subsection 40C-2.042(2), F.A.C., may submit an application for a Standard General Consumptive Use Permit pursuant to Chapter 40C-20, F.A.C., using form 40C-2-1082-2, pursuant to Chapter 40C-20, F.A.C. Standard General Consumptive Use Permit for Landscape Irrigation, form number 40C-2-1082-2, effective 3-8-09, is hereby incorporated by reference. This permit application is limited to including no more than 25 nearby properties within a common plan of development. If a development consists of more than one phase or section, the 25 properties must be located within a single phase or section. A person seeking authorization to irrigate more than 1 additional day than that authorized by subsection 40C-2.042(2), F.A.C., must apply for a Standard General Consumptive Use Permit pursuant to Chapter 40C-20, F.A.C., using form 40C-2-1082-1.

(3) through (7) No change.

(8) The Board hereby grants a general permit to each person located within the District to withdraw groundwater from a well solely to irrigate a total of one acre or less of landscape on contiguous property, provided the withdrawal does not meet or exceed any thresholds of paragraph 40C-2.041(1)(a)-(c), F.A.C. This permit is subject to all the provisions in paragraph 40C-2.042(2)(a), F.A.C. When reclaimed water is available, the use of a private irrigation well for landscape irrigation is not authorized under this subsection. Reclaimed water is deemed available when reclaimed water is provided by a utility through a point of service connection at the property boundary or on the property.

Specific Authority 373.044, 373.109, 373.113, 373.118, 373.171 FS. Law Implemented 373.019(6), 373.109, 373.118, 373.219, 373.223, 373.250, 373.609, 373.62 FS. History—New 7-23-91, Amended 1-7-99, 2-15-06, 3-8-09,_____.

40C-2.101 Publications Incorporated by Reference.

(1) through (2) No change.

Specific Authority 373.044, 373.113, 373.118, 373.171 FS. Law Implemented 373.073, 373.079,373.103, 373.109, 373.196, 373.219, 373.223, 373.229, 373.233, 373.236, 373.239, 373.250, 373.62 FS. History—New 1-1-83, Amended 5-31-84, Formerly 40C-2.101, 40C-2.0101, Amended 10-1-87, 1-1-89, 8-1-89, 10-4-89, 7-21-91, 7-23-91, 11-12-91, 9-16-92, 1-20-93, 12-6-93, 2-15-95, 7-10-95, 4-25-96, 10-2-96, 1-7-99, 2-9-99, 4-10-02, 2-15-06, 2-13-08, 8-12-08, 3-8-09,_____.

40C-2.900 Forms and Instructions.

(1) No change.

~~(2) Standard General Consumptive Use Permit for Landscape Irrigation Three Days Per Week, form number 40C-2-1082-2, effective 3-8-09, is hereby incorporated by reference.~~

(3) through (4) renumbered (2) through (3) No change.

**AGENCY FOR HEALTH CARE ADMINISTRATION
Medicaid**

RULE NO.: 59G-5.020
RULE TITLE: Provider Requirements

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 34, No. 41, October 10, 2008 issue of the Florida Administrative Weekly.

These changes are in response to comments received from the Joint Administrative Procedures Committee.

The rule incorporates by reference the Florida Medicaid Provider General Handbook, July 2008. The following revisions were made to the handbook.

Page 1-19 Managed Care Mandatory Assignment. We added the citations Sec. 1932. [42 U.S.C. ss.1369u-2](a)(2)(A)(iv) and (v) of the Social Security Act, which exempt foster care children and children in subsidized adoption arrangements from enrolling with a managed care provider.

Page 2-8 Enrollment on the Medicaid Fiscal Agent’s Web Portal. We corrected the Medicaid fiscal agent’s web portal address to read, “http://mymedicaid-florida.com.”

Page 2-23 Criminal History Check Exemption for Corporations. We deleted the policy permitting registered agents to submit their fingerprints instead of the corporation’s principles.

Page 2-30 Durable Medical Equipment Providers and Durable Medical Equipment Provider Surety Bond Exemptions. We added, “In accordance with Section 409.908(48)(b), F.S., effective January 1, 2009,” to the beginning of the first sentence.

Page 2-47 The Change of Ownership Process. We added to the beginning of the first sentence, second bullet, “At least sixty (60) days before the anticipated date of the change of ownership.” Also we changed “must” to “shall.” We revised the last sentence in bullet 4 to read, “Medicaid Provider Enrollment may make exceptions on a case-by-case basis in order to ensure that recipients have continuity of care, pursuant to Sections 409.907(9)(a) and 409.907(11), F.S.”

Page 3-17 CF-ES Form 2681. We deleted the reference to the Sep 2000 version on the form, because that version is now obsolete.

Page 3-19 CF-ES Form 2014. We deleted the reference to the Sep 2001 version on the form, because that version is now obsolete.

Page 4-10 How to Determine Medicaid’s Fee. We corrected the Medicaid fiscal agent’s web address.

Page 5-2 Reporting Suspected Abuse or to File a Complaint. After the web address, we added instructions to “Click on the link ‘Report Medicaid Abuse and Overpayment.’”

Page 5-4 Administrative Sanctions. We revised the section to read, “AHCA shall impose sanctions on providers in accordance with Section 409.913, F.S. and Rule 59G-9.070, F.A.C. Sanctions include the following: suspension from participation in the Medicaid Program; termination from participation in the Medicaid Program; imposition of fines; imposition of liens against provider assets; prepayment reviews of claims; comprehensive follow-up reviews; and corrective-action plans.”

AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid

RULE NO.:	RULE TITLE
59G-8.500	Cause of Disenrollment from Health Plans

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. 34, No. 41, October 10, 2008 issue of the Florida Administrative Weekly.

These changes are in response to comments received from the Joint Administrative Procedures Committee and during the public hearing process.

We changed the title of the rule to read, “Good Cause for Disenrollment from Health Plans.”

59G-8.500(1). We added the following definition for “no change period” to the rule, “The no change period is defined as the period of time during which a recipient cannot change plans without a good cause reason in accordance with 42 CFR 438.56(c).”

59G-8.500(2). We deleted “for” from the title so it reads, “Good Cause Reasons.”

59G-8.500(2)(a). We revised the paragraph to read, “The recipient moves out of the county, or the recipient’s address is incorrect and the recipient does not live in a county, where the health plan is authorized to provide services.”

59G-8.500(2)(b). We combined former rule paragraph (b), “The health care provider is no longer with the health plan,” with former rule paragraph (f), now paragraph (e). The revised paragraph (e) now reads, “The recipient has an active relationship with a health care provider who is not on the health plan’s network, but is in the network of another health plan; or the health care provider with whom the recipient has an active relationship is no longer with the health plan.”

Former paragraph 59G-8.500(2)(c) was renumbered (b).

Former paragraph 59G-8.500(2)(d) now (c). We revised the paragraph to read, “A marketing violation occurred with the individual recipient that is substantiated by the Agency for Health Care Administration, Bureau of Managed Health Care. The recipient must submit the allegation in writing to the Bureau of Managed Care, 2727 Mahan Drive, M.S. 26, Tallahassee, FL, 32308.”

Former paragraph 59G-8.500(2)(e) was renumbered (d).

Former paragraph 59G-8.500(2)(f) was renumbered (e).

Former paragraph 59G-8.500(2)(g) was renumbered (f).

Former paragraph 59G-8.500(2)(h) was renumbered (g).

Former paragraph 59G-8.500(2)(i) was renumbered (h).

Former paragraph 59G-8.500(2)(j) was renumbered (i).

Former paragraph 59G-8.500(2)(k) now (j). For clarification, we deleted the reference to 42 CFR 438.56(d)(2) and itemized each of the allowable good cause reasons in the rule. The paragraph now reads, “Poor quality of care;”

59G-8.500(2)(k) was revised to read, “Lack of access to services covered under the contract, including lack of access to medically-necessary specialty services;”

59G-8.500(2)(l) was revised to read, “The health plan makes inordinate or inappropriate changes of the recipient’s primary care provider (PCP);”

59G-8.500(2)(m) was revised to read, “An unreasonable delay or denial of service;”

We added paragraph 59G-8.500(2)(n), which reads, “Service access impairments due to significant changes in the geographic location of services;”

We added paragraph 59G-8.500(2)(o), which reads, “There is a lack of access to health plan providers experienced in dealing with the recipient’s health care needs; and”

We added 59G-8.500(2)(p), which reads, “Fraudulent enrollment.”

Former paragraph 59G-8.500(2)(l) was renumbered (q).

Former paragraph 59G-8.500(2)(m) was renumbered (r).

59G-8.500(3)(a)(b). We deleted these paragraphs, because the purpose of the rule is state good cause reasons.

Former paragraph 59G8.500(4) now (3). We rewrote this paragraph to read, “The Agency’s vendors shall mail a Disenrollment Denial Letter, AHCA/HSD Form #1, Eng., January 2009; Spanish version, AHCA/HSD Form #1Sp., January 2009; or Creole version, AHCA/HSD, Form #1C., January 2009, incorporated by reference, to recipients whose requests to disenroll from plans during the no change period are denied.”

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Construction Industry Licensing Board

RULE NO.:	RULE TITLE:
61G4-21.005	Payment of Claims

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 34, No. 7, February 15, 2008 issue of the Florida Administrative Weekly has been withdrawn.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notices for the Department of Environmental Protection between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

DEPARTMENT OF ENVIRONMENTAL PROTECTION

RULE NO.: 62-620.100
RULE TITLE: Scope/Applicability/References

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. 34, No. 43, October 24, 2008 issue of the Florida Administrative Weekly.

In addition to the below rule amendments, the department has made the following additional changes to the DEP Form 62-620.910(17): The DEP Form is now incorporated by reference in subparagraph 62-620.100(2)(o)1.b., F.A.C., and also includes the website address for submission of an electronic certification.

62-620.100 Scope/Applicability/References.

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

(o) Conditional exclusion for "no exposure" of industrial activities and materials to stormwater. Discharges composed entirely of stormwater are not stormwater discharges associated with industrial activity if there is "no exposure" of industrial materials and activities to precipitation and/or runoff, and the discharger satisfies the conditions in subparagraphs (o)1. through (o)3. of this section. "No exposure" means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to precipitation and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

1. Qualification. To qualify for this exclusion, the operator of the discharge must:

a. Provide a storm resistant shelter to protect industrial materials and activities from exposure to precipitation and runoff;

b. Submit to the Department a completed and signed Form 62-620.910(17), entitled "No Exposure Certification for Exclusion from NPDES Stormwater Permitting," effective _____, incorporated by reference and made part of this

chapter, certifying that there are no discharges of stormwater contaminated by exposure to industrial materials and activities from the entire facility, except as provided in subparagraph (o)2. of this section. This form may be obtained by writing the Department of Environmental Protection, NPDES Stormwater Notices Center, Mail Station #2510, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, or from the Department's website. The completed and signed Form 62-620.910(17), and certification fee as required by subparagraph 62-4.050(4)(d)3., F.A.C., must be submitted either by mail to: Department of Environmental Protection, NPDES Stormwater Notices Center, Mail Station #2510, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400; or electronically using the Department's Interactive Notice of Intent (iNOI) at <http://www.dep.state.fl.us/water/stormwater/npdes/>:

c. Renew the certification every 5 years on or before the expiration of each 5 year interval by filing a new completed and signed Form 62-620.910(17) effective _____, and certification fee as required by subparagraph 62-4.050(4)(d)3., F.A.C., either by mail to the Department of Environmental Protection, NPDES Stormwater Notices Center, Mail Station #2510, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400 or electronically using the Department's Interactive Notice of Intent (iNOI) at <http://www.dep.state.fl.us/water/stormwater/npdes/>:

d. Allow the Department or its agents to inspect the facility to determine compliance with the "no exposure" conditions; and

e. For facilities that discharge through a Municipal Separate Storm Sewer System (MS4), submit a copy of the certification of "no exposure" to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

2. Industrial materials and activities not requiring storm resistant shelter. To qualify for this exclusion, storm resistant shelter is not required for:

a. Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak ("Sealed" means banded or otherwise secured and without operational taps or valves);

b. Adequately maintained vehicles used in material handling; and

c. Final products, other than products that would be mobilized in stormwater discharge (e.g., rock salt).

3. Limitations. This conditional exclusion from stormwater permitting under this chapter and/or Chapter 62-621, F.A.C., is not available:

a. For stormwater discharges from construction activities;

b. For individual outfalls. The exclusion is available on a facility-wide basis only;

c. If circumstances change and industrial materials or activities become exposed to precipitation and/or runoff, the conditions for this exclusion no longer apply. In such cases, the discharge becomes subject to enforcement for un-permitted

discharge. Any conditionally excluded discharger who anticipates changes in circumstances should apply for and obtain permit authorization prior to the change of circumstances; and

d. Notwithstanding the provisions of this paragraph, the Department retains the authority to require permit authorization (and deny this exclusion) upon making a determination that the discharge causes or contributes to the violation of an applicable water quality standard, including designated uses.

(3) through (4) No change.

Specific Authority 403.061, 403.087, 403.0885 FS. Law Implemented 403.061, 403.087, 403.088, 403.0885 FS. History—New 11-29-94, Amended 12-24-96, 3-2-00, 10-22-00, 10-23-00, 6-1-01, 8-25-03, 12-8-03, 12-23-04, 2-7-06, 3-13-06, 6-19-06, 7-10-06, 10-16-07, 11-28-07,_____.

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE NO.: 64B16-26.2031
RULE TITLE: Licensure by Examination; Foreign Pharmacy Graduates

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. 34, No. 36, September 5, 2008 issue of the Florida Administrative Weekly.

The change is in response to written comments submitted by the staff of the Joint Administrative Procedures Committee. The changes are as follows:

1. Subsection (1) shall now read as follows:

(1) Submit an application for licensure by examination on board approved form DOH/MQA/PH100 (Rev.07/08), Foreign Graduate Pharmacist Examination Application and Instructions, which is hereby incorporated by reference, and which can be obtained from the Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3254, and must be accompanied with a non-refundable examination fee and an initial license fee set forth in Rules 64B16-26.1001 and 64B16-26.1002, F.A.C.

2. Subsection (3) shall now read as follows:

(3) For applications received at the Board of Pharmacy on or before June 30, 2009, the applicant must:

(a) Successfully pass the foreign pharmacy graduate equivalency examination which is given by the Foreign Pharmacy Graduate Equivalency Commission.

(b) Demonstrate proficiency in the use of English by passing the Test of English as a Foreign Language (TOEFL), which is administered by the Educational Testing Service, Inc., with a score of at least 500 for the pencil and paper test or 173 for the computer version and by passing the Test of Spoken English (TSE) with a score of 45 on the recalibrated TSE; or

(c) Demonstrate proficiency in the use of English by passing the Test of English as a Foreign Language Internet-based test (TOEFL ibt) with a scores of: Listening – 18; Reading – 21; Speaking – 26; and Writing – 24.

3. Subsection (4) shall now read as follows:

(4) For applications received at the Board of Pharmacy on or after July 1, 2009, the applicant must:

(a) Successfully pass the foreign pharmacy graduate equivalency examination which is given by the Foreign Pharmacy Graduate Equivalency Commission;

(b) Demonstrate proficiency in the use of English by passing the Test of English as a Foreign Language (TOEFL), which is administered by the Educational Testing Service, Inc., with a score of at least 550 for the pencil and paper test or 213 for the computer version and by passing the Test of Spoken English (TSE) with a score of 50 on the recalibrated TSE; or

(c) Demonstrate proficiency in the use of English by passing the Test of English as a Foreign Language Internet-based test (TOEFL ibt) with a scores of: Listening – 18; Reading – 21; Speaking – 26; and Writing – 24.

4. Subsection (5) shall now read as follows:

(5) Complete 2080 hours of supervised work activity, of which a minimum of 500 hours must be completed within the State of Florida. Such experience must be equivalent to that required in the internship program as set forth in Rule 64B16-26.2032, F.A.C. The work experience program including both the preceptor and the permittee must be approved by the Board of Pharmacy. Further, no program of supervised work activity shall be approved for any applicant until said applicant has obtained the specified passing scores on the TOEFL or the TOEFL ibt.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Rebecca Poston, Executive Director, Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3254

DEPARTMENT OF FINANCIAL SERVICES

Division of State Fire Marshal

RULE NOS.:	RULE TITLES:
69A-37.036	Determination of Moral Character
69A-37.039	Prescribed Forms for Training and Certification
69A-37.054	Out of State Training – Certificate of Compliance; Special Certificate of Compliance
69A-37.055	Minimum Curriculum Requirements for Training Firefighter Recruits or Firefighters
69A-37.056	Specifications for Certifiable Training
69A-37.058	Verification of Prescribed Training Hours

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. 34, No. 34, August 22, 2008 issue of the Florida Administrative Weekly.

The Notice of Change is published in accordance with subparagraph 120.54(3)(d)1., Florida Statutes.

69A-37.036 Determination of Moral Character.

(1) Applicants for a Certificate of Compliance as a firefighter shall submit fingerprints for the purpose of conducting a criminal background check. Determination of good moral character is required prior to certification as a firefighter pursuant to Sections 633.34(3)(4) and 633.35(2), F.S.

(2) The Bureau of Fire Standards and Training shall consider the results of the fingerprint procedure outlined in Section 633.34(3)(4) F.S., in making a determination as to the applicant's good moral character, and shall not certify anyone not meeting the conditions of Section 633.34, F.S.

Specific Authority 633.45(2)(a) FS. Law Implemented 633.34(3)(4), 633.35(2), 633.45(2)(a) FS. History—New 9-7-81, Formerly 4A-37.04, 4A-37.36, Amended 11-26-85, 1-3-90, 3-20-95, 12-10-01, Formerly 4A-37.036, Amended _____.

69A-37.039 Prescribed Forms for Training and Certification.

Specific Authority 633.45(2)(a) FS. Law Implemented 633.046, 633.34, 633.35, 633.38, 633.45, 633.101(1) FS. History—New 9-7-81, Formerly 4A-37.20, 4A-37.39, Amended 11-26-85, 1-3-90, 6-30-91, 3-20-95, Amended 9-13-98, 12-10-01, Formerly 4A-37.039.

69A-37.054 Out of State Training – Certificate of Compliance; Special Certificate of Compliance.

(1) Certificate of Compliance.

(b) The Bureau shall issue a certificate of compliance to any qualified person who:

1. successfully passes the written and practical examination as required by Rule 69A-37.056, F.A.C. This examination is given during February, May, September, and November and is administered only at the Florida State Fire College;

~~2. Passes the examination;~~

~~3.~~ Meets the other requirements of Section 633.35(2), F.S.; and

~~4.~~ Complies with the requirements of this section.

(2) Special Certificate of Compliance.

(b) Any person making application for a special certificate of compliance as the designated Administrative and Command Head of an organization must successfully pass the written examinations, submit all the documents, and meet all the requirements of this subsection, with the exception of the completion of the practical portion of the examination and the requirement of Rule

2. Complete a course of instruction of at least six hours presented by the Bureau which shall include:

c. The State Emergency Response Plan, and Florida Field Operations Guide, ~~and related documents and plans;~~

69A-37.055 Curriculum Requirements for Training Firefighter Recruits or Firefighters.

(1) No change.

(2) Curriculum requirements. The Bureau will develop and maintain an objective-based curriculum addressing the topics contained in this subsection. Such curriculum shall be available electronically through the Division of State Fire Marshal's website and by email upon request. The curriculum will list each topic area, the required hours, and the objectives. The curriculum will be maintained by the Bureau.

(a) Part I of the curriculum, consisting of 206 hours of knowledge and skill-based training, will include:

1. through 2. No change.

3. Incident Command ~~Federal Requirements for Part I.~~

~~a. National Incident Management System — NIMS 100 Self Study;~~

~~b. National Incident Management System — NIMS IS 700 Self Study;~~

4. Wildland Fire Fighting Florida-Specific Requirements.

~~a. Florida Incident Field Operations Guide (FOG);~~

~~5.b. Fire Department Terminology.~~

~~e. Apparatus and Company Familiarization.~~

~~6.d. Emergency Driving, Sections 316.126 and 316.2398, F.S.~~

~~7.e. Rule Chapter 69A-37, F.A.C.~~

~~f. Florida Division of Forestry NWCG S-190, Introduction to Wildland Fire Behavior.~~

~~g. Florida Division of Forestry NWCG S-130 Wildland Firefighter Training.~~

~~8.h. Physical Fitness Education.~~

~~9.i. Physical Fitness Training.~~

~~10.j. EMS First Responder – Current Certification as an emergency medical technician or paramedic, or successful completion of a USDOT first responder course will substitute for this area. Documentation of current certification or completion shall be submitted prior to completion of this curriculum.~~

~~11.k. Florida State Emergency Response Committee — Awareness and operational Level Hazardous Materials.~~

~~l. Florida State Emergency Response Committee — Operations Level Hazardous Materials.~~

~~12.m. Examinations: each portion of the outline shall be the subject of both a written and a performance test to obtain the best measure of learning.~~

~~13.n. Course Review.~~

(b) Part II of the curriculum, consisting of 192 hours of knowledge and skill-based training, which together with Part I totals 398 hours, will include:

1. No change.
2. Florida Specific Requirements
 - a. through c. No change.
 - d. ~~Florida Fire Chiefs~~ Statewide Emergency Response Plan
 - e. through m. No change.

69A-37.056 Specifications for Certifiable Training.

To be recognized for certification as a firefighter by the Bureau, training shall be obtained under the conditions specified herein. Satisfactory completion of the prescribed training, instruction, and standards in accordance with these specifications shall be certified by a designated instructor or member of the Bureau staff.

(1) Part I curriculum set forth in subsection 69A-37.055(2), F.A.C., taught independent of Part II curriculum set forth in paragraph 69A-37.055(2)(b), F.A.C., may be conducted through fire departments or facilities other than approved training centers, but must be compliant to or have access to all facilities, equipment, and instructors required for the delivery of the curriculum, in accordance with Rule 69A-37.060, F.A.C. Curriculum set forth in paragraph 69A-37.055(2)(a) and (b), F.A.C., taught as the Minimum Standards Course shall be taught at a facility approved pursuant to Rule 69A-37.060, F.A.C. Alternative delivery techniques including mentoring and/or blended learning (traditional classroom with computer based training must be approved by the Bureau and provide for verified complete compliance to the skill and knowledge objectives.

(6) ~~The knowledge and/or skill of~~ Each subject area within the Minimum Standards Course will be tested to validate the acquisition and application of relevant such knowledge and skill. All subject area and final tests, both written and practical, given during the Minimum Standards Course shall require maintenance of a percentage score of not less than 70% on each subject listed in the Minimum Standards Course. If a minimum score of 70% is not achieved on any test, the student shall be afforded a one-time make up examination to achieve the required 70%. Students not in compliance with the minimum score requirement shall be dropped from the course.

69A-37.058 Verification of Prescribed Training Hours.

(1) through (2) No change.

(3) ~~Form DFS-K4-1028 is incorporated by reference in subsection 69A-37.039(2), F.A.C., and can be obtained where indicated in subsection 69A-37.039(1), F.A.C.~~

~~(3)(4)~~ Proposed effective date January 1, 2009.

FINANCIAL SERVICES COMMISSION

OIR – Insurance Regulation

RULE NO.: 690-138.005
 RULE TITLE: Examination of Insurers
 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. 34, No. 40, October 3, 2008 issue of the Florida Administrative Weekly.

690-138.005(4)

(4) Section 624.316(2)(e), Florida Statutes, allows the Office to conduct examinations of an insurer by contracting for with the consent of the insurer utilizing the services of an independent Certified Public Accountant, an actuary, ~~or~~ a reinsurance specialist, an investment specialist, information technology specialist, or any combination of these individuals, as the particular circumstances of the examination require. An examination performed pursuant to this subsection must meet the requirements of subsection (1).

(a) ~~An~~ For purposes of this subsection, an actuary meeting the criteria established in Rule 690-138.043 or 690-170.031, F.A.C., will qualify to conduct an examination under this subsection.

(b)1. ~~A~~ For purposes of this subsection, a reinsurance specialist shall be qualified to conduct an examination under this subsection if that contractor person can demonstrate competency by education and experience to perform such an examination. Competency by education and experience shall be demonstrated if any one of the following is true:

a. An individual qualifies as an actuary pursuant to either Rule 690-138.043 or 690-170.031, F.A.C., and has at least one years' experience with the kind of reinsurance which will be the subject of the examination.

b. An individual has a bachelor's degree from an accredited college or university and four years of professional experience in insurance/reinsurance accounting or in reinsurance transactions. A master's degree from an accredited college or university in accounting, insurance, or risk management can substitute for one year of the required experience. Professional experience as described above can substitute on a year-for-year basis for the required education.

c. An individual is in good standing with the Society of Financial Examiners and is certified by that organization to be eligible to hold the title of Certified Financial Examiner.

2. In selecting a person as a reinsurance specialist the Office shall consider the individual's experience, knowledge, skill, and abilities as they relate to the needs of the examination to be performed. This consideration shall include the individual's experience with the kind of insurance which is the subject of the examination; knowledge of accounting principles, practices and procedures; ability to prepare financial statements to reflect the reinsurance transactions; ability to provide professional and technical assistance;

understanding of risk transfer as defined in the NAIC Examiners Handbook and the NAIC Accounting Practices and Procedures and Annual Statement Instruction Manuals, as adopted in Rule 690-137.001, F.A.C.; and the ability to evaluate claims experience, both reported and incurred but not reported, relevant to the type of insurance which is the subject of the examination.

~~(e) Regardless of education or experience, no independent certified public accountant, or actuary, or reinsurance specialist shall be qualified to conduct examinations under this subsection if such person:~~

~~1. Has been found guilty of, or has pleaded guilty or nolo contendere to, any felony or crime punishable by imprisonment of one year or more under the law of the United States or any state thereof or under the law of any other country, which involves moral turpitude, without regard to whether a judgement of conviction has been entered by the court having jurisdiction in such case; or~~

~~2. Has been found to have violated the insurance laws of this state with respect to any previous reports submitted to this Office; or~~

~~3. Has failed to detect or disclose material information in previous reports filed with this Office or other state officials having jurisdiction or regulatory authority in insurance matters or another state; or~~

~~4. Has performed any work for a regulated entity who has had delinquency proceedings initiated against it within three years after said work was performed without adequate explanation to the Office of how such work was not related to the cause of the delinquency proceedings; or~~

~~5. Is prohibited under Section 624.310, Florida Statutes, from engaging in insurance related activities in this state.~~

(c)1. An investment specialist shall be qualified to conduct an examination under this subsection if that contractor can demonstrate competency by education and experience to perform such an examination in that capacity. Competency by education and experience shall be demonstrated if any one of the following is true:

a. An individual has a bachelor's degree from an accredited college or university and four years of professional experience in the capacity for which the contractor is to perform. A master's degree from an accredited college or university in accounting, or finance can substitute for one year of the required experience. Professional experience as described above can substitute on a year-for-year basis for the required education.

b. An individual is in good standing with the Society of Financial Examiners and is certified by that organization to be eligible to hold the title of Certified Financial Examiner.

2. In selecting a person as an investment specialist the Office shall consider the individual's experience, knowledge, skill, and abilities as they relate to the needs of the examination to be performed.

~~(d) The agreement of the insurer to perform an examination under this subsection is not required if the Office reasonably suspects criminal misconduct on the part of the insurer.~~

(d)1. An information technology specialist shall be qualified to conduct an examination under this subsection if that contractor can demonstrate competency by education and experience to perform such an examination in that capacity. Competency by education and experience shall be demonstrated if the individual has a bachelor's degree from an accredited college or university and four years of professional experience in the capacity for which the contractor is to perform. A master's degree from an accredited college or university in information technology or a similar field can substitute for one year of the required experience. Professional experience as described above can substitute on a year-for-year basis for the required education.

2. In selecting a person as an information technology specialist the Office shall consider the individual's experience, knowledge, skill, and abilities as they relate to the needs of the examination to be performed.

~~(e)1. In the event that the Office and the insurer agree to conduct an examination utilizing the services of an independent Certified Public Accountant, an actuary, or a reinsurance specialist, or any combination of these, the Office shall submit a list of three firms in each of the specialties required by the particular circumstances of the examination to be performed (the term "firm" shall also include individuals) acceptable to the Office, from which the insurer shall select the firm or firms to conduct the examination.~~

~~2. The acceptability of a firm to the Office shall be determined based on consideration of the firm's professional competence, objectivity, and cost.~~

~~3. Consent of the insurer shall be demonstrated by written confirmation from an officer of that insurer which indicates agreement that an examination be performed by the firm, and acknowledgement that the firm is acceptable to the insurer.~~

~~4. All payments for an examination under this subsection shall be made directly to the firm in accordance with the rates and terms agreed to by the Office, the insurer, and the firm performing the examination.~~

(e) The firm selected by the office to perform the examination shall have no conflicts of interest that might affect its ability to independently perform its responsibilities on the examination.

(f) The rates charged to the insurer being examined under the contract shall be consistent with rates charged by other firms in a similar profession and shall be comparable with the rates charged for comparable examinations. The rates and terms shall be set forth in the contract. In the event that the examination is conducted without the consent of the insurer, pursuant to Section 624.316(2)(e), Florida Statutes, the insurer must pay all reasonable charges of the examining firm if the

~~examination finds impairment, insolvency (as that term is defined in Section 631.011, Florida Statutes), or criminal misconduct on the part of the insurer. In the event that the examination is conducted without the consent of the insurer and no impairment, insolvency, or criminal misconduct is found, then all reasonable charges of the examining firm shall be borne by the Office.~~

(g) Contractors may submit a curriculum vitae detailing their experience and qualifying credentials to the Office, as well as a proposed hourly rate for services to be performed. The acceptability of a contractor to the Office shall be determined based on consideration of the firm's professional competence, objectivity, and that the rates charged are consistent with rates charged by other firms in a similar profession providing comparable services. Once a contractor has been accepted by the Office, they will be placed on a list of eligible examination contractors.

(h) In selecting contractors to conduct a specific examination, the Office shall consider the contractor's experience, knowledge, skill, and abilities as they relate to the needs of the examination to be performed. This consideration shall include the contractor's experience with the kind of insurance which is the subject of the examination.

(i) After a contractor has been selected for a specific examination the Office shall enter into a contract with the contractor, detailing the scope of work for the engagement. The contract shall include a provision that the contractor has no conflict of interest that might affect its ability to independently perform its responsibilities.

(j) The contractor shall submit all requests for payment to the Office on a form prescribed by the contract.

(k) Upon receipt and review of the contractor's request for payment, the Office will invoice the insurer being examined and the insurer shall make payment to the Office pursuant to Section 624.316(2)(e)3., Florida Statutes and Section 624.320(2), Florida Statutes.

(l) Upon receipt of the payment from the insurer being examined, the Office will make payment to the contractor.

(m) Forms OIR-A1-1976, Professional Services Agreement for Non Employee Examination; OIR-A1-1977, Scope of Services Addendum to Professional Services Agreement for Non Employee Examination; and OIR-A1-1978, Amendment to Scope of Services Addendum, are incorporated and adopted herein as the contracts by which the contractors are retained.

(5) Section 624.316(2)(f)1., Florida Statutes, requires the examination of a domestic insurer once each year for any domestic insurer that has continuously held a Certificate of Authority for less than 3 years. For purposes of an examination under this subsection, the 3 years shall constitute the time period from the date the Certificate of Authority is granted through the following 3 full calendar years in which the insurer has been licensed. The examination must cover the preceding

fiscal year or the time period since the last examination. An insurer may not be required to pay more than \$25,000 to cover the costs of any one examination under this subsection, nor may an independent certified public account's audited report be substituted for the required examination.

(6) Section 624.320, Florida Statutes, requires each insurer examined by the Office, pursuant to Section 624.316, Florida Statutes, to pay the Office for the expenses of that examination, subject to the cap imposed by Section 624.316(2)(f)1.e., Florida Statutes.

(7) Pursuant to Section 624.316(2)(f)2., Florida Statutes, the Office may extend the examination period to a maximum of once every 5 years. If an insurer petitions the Office, prior to November 1 of the year preceding the year in which the examination is due, to extend an examination from a 3 year time period to 5 years, the Office will grant such an extension if the insurer affirmatively demonstrates the following: that the insurer has continuously held a Certificate of Authority without a change in ownership subject to Section 624.4245 or 628.461, Florida Statutes, for more than 15 years, and has demonstrated sufficient compliance, pursuant to Section 624.316(2)(f)3., Florida Statutes, for each of the years since the last examination. Petitions shall be directed to Property and Casualty Financial Oversight or Life and Health Financial Oversight, as appropriate for that insurer. An extension granted as a result of a petition to the Office will be effective for that examination period only and will have no effect on the schedule of subsequent examinations. Extensions granted shall not be construed as a waiver of the Office's authority under Section 624.316, Florida Statutes, to conduct specific target examinations as often as the Office determines is reasonable under the facts and circumstances of a particular insurer's situation.

Specific Authority 624.308(1), 624.316(2) FS. Law Implemented 624.307(1), 624.316, 624.3161, 624.320, 624.321(1), 624.424 FS. History—New 6-9-93, Amended 11-23-94, 4-4-99, Formerly 4-138.005, Amended _____.

FINANCIAL SERVICES COMMISSION

OIR – Insurance Regulation

RULE NOS.:	RULE TITLES:
69O-204.010	Purpose and Scope
69O-204.020	Definitions
69O-204.030	Forms Incorporated By Reference
69O-204.040	Prohibited Practices
69O-204.050	Anti-fraud

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. 34, No. 39, September 26, 2008 issue of the Florida Administrative Weekly.

VIATICAL SETTLEMENT PROVIDERS

69O-204.010 Purpose and Scope.

The purpose of this Rule Chapter is to implement the provisions of Chapter 626, Part X, Florida Statutes.

Specific Authority 626.9925 FS. Law Implemented 626.991 FS. History–New _____.

69O-204.020 Definitions.

In addition to the definitions in Section 626.9911, Florida Statutes, the following definitions apply to this regulation:

(1) “Control” or “effective control” as used in the Viatical Settlement Act and this rule chapter means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person.

(2) “Secondary market” means the assignment, transfer, sale, devise, or bequest of the death benefit or ownership of all or a portion of a viaticated life insurance policy or viaticated certificate of insurance.

Specific Authority 626.9925 FS. Law Implemented 626.9911(2), 626.9912(4), 626.9913(2), 626.9922(2), 626.9924, 626.9913(2) FS. History–New _____.

69O-204.030 Forms Incorporated By Reference.

(1) The following forms are incorporated by reference to implement the provisions of Chapter 626, Part X, Florida Statutes.

(a) Form OIR-A3-1288, Viatical Settlement Provider Annual Report (REV 11/08).

(b) Form OIR-C1-1294, Notice of Intent to Use a Related Provider Trust (REV 10/05).

(2) All of the above referenced forms are available from the Office’s website, <http://www.floir.com>, by clicking on “search” and entering the form number.

(3) All applications, annual report filings, forms submitted by licensees for approval and associated documentation shall be submitted electronically to <https://portal.fldfs.com>.

Specific Authority 626.9925 FS. Law Implemented 626.9912(3), 626.9913(2), 626.9921(3), 626.9921(4), 626.9928 FS. History–New _____.

69O-204.040 Prohibited Practices and Conflicts of Interest.

With respect to any viatical settlement contract or insurance policy, no viatical settlement provider knowingly may enter into a viatical settlement contract with a viator, if, in connection with such viatical settlement contract, anything of value will be paid to a viatical settlement broker that is controlling, controlled by, or under common control with such viatical settlement provider, financing entity or related provider trust that is involved in such viatical settlement contract.

Specific Authority 626.9925 FS. Law Implemented 626.9911(9), 626.9916(1), 626.9916(5) FS. History–New _____.

69O-204.050 Anti-Fraud.

Every licensed viatica settlement provider shall establish and maintain in accordance with the provisions of Section 626.9922, F.S.:

(1) Documentation of compliance with its anti-fraud plan and procedures filed in accordance with Section 626.99278, F.S.

(2) All documentation pertaining to resolved and unresolved material inconsistencies between medical records and insurance applications.

(3) Documentation pertaining to the mandatory reporting of possible fraudulent acts and prohibited practices set forth in Section 626.99275, F.S., to the Division of Insurance Fraud of the department.

Specific Authority 626.9925 FS. Law Implemented 626.99278, 626.9922, 626.99275 FS. History–New _____.

**Section IV
Emergency Rules**

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled “Official Notices.”

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notices for the Department of Environmental Protection between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled “Official Notices.”

**Section V
Petitions and Dispositions Regarding Rule
Variance or Waiver**

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled “Official Notices.”

STATE BOARD OF ADMINISTRATION

NOTICE IS HEREBY GIVEN THAT on December 12, 2008, the State Board of Administration of Florida has issued an order.