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

DATE AND TIME: Monday, September 21, 2009, 9:00 a.m.

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

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Lesley Mendelson, (850)413-3604. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Lesley Mendelson, (850)413-3604. A copy is posted on the Division's website at http://www.fldfs.com/SFM/

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

DEPARTMENT OF FINANCIAL SERVICES

Division of Accounting and Auditing

RULE NO.:	RULE TITLE:
69I-20.041	Unclaimed Property Reporting Instructions

PURPOSE AND EFFECT: Proposed Rule 69I-20.041, F.A.C., creates an unclaimed property reporting manual for use by holders. The manual contains information that Holders will need to properly report unclaimed property to the Department.

SUBJECT AREA TO BE ADDRESSED: The subject area to be addressed is the reporting of unclaimed property pursuant to Section 717.117, Florida Statutes.

RULEMAKING AUTHORITY: 717.117(1), 717.138 FS.

LAW IMPLEMENTED: 717.101, 717.102, 717.103, 717.1035, 717.104, 717.1045, 717.105, 717.106, 717.107, 717.1071, 717.108, 717.109, 717.1101, 717.111, 717.112, 717.113, 717.115, 717.116, 717.117, 717.119, 717.129, 717.1311, 717.134 FS.

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

DATE AND TIME: Wednesday, September 30, 2009, 1:30 p.m.

PLACE: Suite B 105, The Fletcher Building, 101 E. Gaines St., Tallahassee, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Paul C. Stadler, Jr., (850)413-3010. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Paul C. Stadler, Jr., Assistant General Counsel, Department of Financial Services, 200 E. Gaines St., Tallahassee, Florida 32399-4247, (850)413-3010

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

Section II
Proposed Rules

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Standards

RULE NOS.:	RULE TITLES:
5F-2.001	Standards
5F-2.002	Disposition of Below Standard Gasoline, Kerosene, Diesel Fuel Oils No. 1-D and 2-D, and Fuel Oils No. 1 and No. 2, and Alternative Fuels
5F-2.003	Registration and Identification
5F-2.005	Inaccurate Measuring Devices
5F-2.006	Inspection Identification Stickers
5F-2.014	Adoption of the General Code and the Codes of Liquid-Measuring Devices, Liquefied Petroleum Gas and Anhydrous Ammonia Liquid-Measuring Devices, Hydrocarbon Gas Vapor-Measuring Devices, Vehicle-Tank Meters, and Vehicle Tanks Used as Measures of

National Institute of Standards and Technology Handbook 44 and Meter Sealing Requirements

5F-2.016 Guidelines for Imposing Administrative Penalties

PURPOSE AND EFFECT: 1. Update ASTM International standards for gasoline, kerosene, diesel fuel oils, fuel oils, fuel ethanol, and biodiesel. Also, incorporate new ASTM International standards for biodiesel blends (with diesel fuel oils) for concentrations from 6% to 20%.

2. Establish a minimum octane rating requirement of 87 for gasoline, which includes gasoline-ethanol blends, sold, distributed, offered for sale or offered for distribution at retail gas stations.

3. Establish a minimum motor octane number requirement of 82 for gasoline, which includes gasoline-ethanol blends, with an octane rating of 87 or higher.

4. Establish a temporary lower minimum vapor pressure requirement for E85 Fuel Ethanol classes permitted for sale in Florida, expiring on November 30, 2010, for Class I Type E85 fuels and on April 30, 2011, for Class II Type E85 Fuels. Currently, such blends have difficulty meeting the requirements set forth in the ASTM International Designation for E85 Fuel Ethanol, which is approximately 12 years old (that particular specification). This change is only temporary and is expected to remain in effect only until such time that ASTM International addresses the situation in their specifications.

5. Amend language to reduce the maximum amount of water permissible in storage tanks containing ethanol and biodiesel fuels and their respective blended products from two inches to one quarter inch.

6. Reference and list all forms used in the stopping of sale of substandard fuel and subsequent release of said fuel after proper remedy; disposition of all listed fuel types; the removal of improperly labeled devices from service; the removal of inaccurate measuring devices from service; the removal from service of devices without inspection stickers; the removal from service of devices not maintained properly (in violation of NIST Handbook 44); and the removal of improperly functioning measuring devices from service.

7. Clarify the disposition of gasoline, kerosene, diesel fuel, fuel oils and alternative fuels. Including the disposition of biodiesel blends (with diesel fuel oils) with a flash point less than the standard, but greater than 100 °F (making it consistent with the existing disposition for diesel fuel oils of the same characteristics). And the disposition of biodiesel and biodiesel blends (with diesel fuel oils and fuel oils) above the ultra-low (S15) sulfur standard, but less than 35 ppm (making it consistent with the existing disposition for diesel fuel oils of the same characteristics).

8. Remove the prohibition for penalty from the discovery of water and/or suspended matter in referenced motor fuels and to transfer references for penalty prohibitions for specified violations to the penalty matrix section.

9. Amend penalties for vapor pressure violations over 11.0 psi, from June 1 through September 15 of each calendar year. Violations above the applicable standard, but less than and including 11.0 psi will still be subject to Stop Sale Order, but without penalty.

10. Provide instructions to terminal suppliers, wholesalers, and importers filling out the required DACS Form #03202 titled "Gasoline and Oil Inspection Affidavit and Inspection Fee Report."

11. Update references to 16 CFR Federal labeling requirements.

12. Further clarify ethanol dispenser labeling requirements.

13. Amend to existing labeling language for M85 Fuel Methanol products to more clearly and conspicuously notify consumers that methanol blended products are not necessarily compatible with all flex fuel vehicles.

14. Provide instructions and requirements to persons and service agencies wishing to register with the Department as authorized meter mechanics, able to repair and/or adjust the accuracy of petroleum fuel measuring devices in this state.

15. Adopt the 2009 version of the National Institute of Standards and Technology (NIST) Handbook 44.

16. Specify the time period in which the Department must be notified after the installation of a petroleum fuel measuring device.

17. Revise the penalty matrix.

SUMMARY: The proposed Chapter 5F-2, F.A.C., establishes minimum octane rating requirements for gasoline sold, distributed, offered for sale or offered for distribution at retail gas stations; establishes a minimum motor octane number for gasoline with an octane rating of 87 or higher; is amended to reflect an anticipated lowering by ASTM International of the minimum vapor pressure requirement for all classes of E85 fuel ethanol permissible for sale in Florida; is amended to reduce the maximum amount of water permissible in storage tanks containing ethanol and biodiesel fuels and their respective blended products from two inches to one quarter inch; is amended to clarify disposition of gasoline, kerosene, diesel fuel, fuel oils and alternative fuels and modify the disposition of such fuels resulting from proposed changes herein. Also, clarify and transfer references for penalty prohibitions for specified violations to Rule 5F-2.016, F.A.C.; is amended to remove the prohibition for penalty from the discovery of water and/or suspended matter in referenced fuels; is amended to only warrant penalties for vapor pressure violations over 11.0 psi, from June 1 through September 15 of each calendar year; is amended to reference forms used when fuel types in this section are found to be substandard; is amended to reference forms used in the disposition of all listed

fuel types in this section; is amended to reference forms used in the discovery of improperly labeled petroleum fueling devices; is amended to reference forms used in the removal of inaccurate measuring devices, devices without inspection stickers, and improperly functioning measuring devices from service; is amended to describe the requirements for manufacturers, terminal suppliers, wholesalers, and importers of petroleum fuel distributing and/or selling petroleum fuel in this state and the party responsible for submitting the petroleum inspection fee; is amended to further clarify ethanol dispenser labeling requirements; is amended to add labeling language to M85 fuel methanol products to more clearly and conspicuously notify consumers that methanol blended products are not necessarily compatible with all flex fuel vehicles; is amended to describe the process and requirements for individuals wishing to register with the Department as a meter mechanic; adopts the current version of the National Institute of Standards and Technology (NIST) Handbook 44; establishes requirements for persons or service agencies installing new petroleum measuring devices to notify the Department within ten (10) days of installation; is amended to state that the Department may revoke or suspend a registration issued under Chapter 525, F.S., as a means of penalty for violations of the laws and rules adopted by the Department; is amended to update and enhance the fine matrix for violations of Chapter 525, F.S.; update the ASTM International fuel quality specification designations for gasoline, diesel fuels, fuel oils, and biodiesel; adopt by reference newly published standards for biodiesel blends (with diesel fuel) for concentrations of 6% to 20% biodiesel.

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.

RULEMAKING AUTHORITY: 525.14, 531.40, 531.41, 570.07 FS.

LAW IMPLEMENTED: 525.01, 525.035, 525.037, 525.07, 525.09, 525.14, 525.16, 531.40 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, September 28, 2009, 8:00 a.m. – 12:00 noon

PLACE: Florida Department of Agriculture and Consumer Services, Eyster Auditorium, 3125 Conner Blvd., Tallahassee, FL 32399

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 24 hours before the workshop/meeting by contacting: Matthew D. Curran, Ph.D., Bureau Chief, 3125 Conner Blvd., L-1, Tallahassee, FL 32399, (850)488-9740. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Matthew D. Curran, Ph.D., Bureau Chief, 3125 Conner Blvd., L-1, Tallahassee, FL 32399, (850)488-9740

THE FULL TEXT OF THE PROPOSED RULES IS:

5F-2.001 Standards.

(1) No change.

(a) Standards. All gasoline shall conform to the chemical and physical standards for gasoline as set forth in ASTM International Designation ~~designation~~ D 4814-09a ~~4814-07b~~, "Standard Specification for Automotive Spark-Ignition Engine Fuel," with the following exceptions, providing that the base gasoline used under the exceptions conforms to the chemical and physical standards for gasoline as set forth in ASTM International Designation ~~designation~~ D 4814-09a ~~4814-07b~~:

1. Vapor Pressure Class Requirements: Gasoline containing one (1) through ten (10) percent ethanol by volume shall be allowed a 1.0 psi increase to the applicable vapor pressure class maximum from September 16 through May 31 (not applicable for gasoline/ethanol blend tankage at refineries, importers, pipelines, and terminals for the month of May). From June 1 (May 1 for gasoline/ethanol blend tankage at refineries, importers, pipelines, and terminals) through September 15, gasoline blends containing ethanol shall conform to the vapor pressure class requirements and are entitled to the permissible increases provided by the Environmental Protection Agency (EPA) and outlined in ASTM International Designation ~~designation~~ D 4814-09a ~~4814-07b~~, "Standard Specification for Automotive Spark-Ignition Engine Fuel."

2. No change.

3. Vapor Lock Protection Class Requirements: Gasoline containing nine (9) through ten (10) percent ethanol by volume shall be allowed a minimum test temperature for a vapor-liquid ratio of twenty (20) for the following vapor lock protection classes: ~~listed below.~~

a. Class 3: 113 °F

b. Class 4: 107 °F

(b) Analysis. For purposes of inspection and testing, laboratory analyses shall be conducted using the methods recognized by ASTM International Designation ~~designation~~ D 4814-09a ~~4814-07b~~, "Standard Specification for Automotive Spark-Ignition Engine Fuel."

(c) No person shall sell or offer for sale gasoline in this state that does not comply with the following requirements:

1. The total ethanol content of gasoline shall not exceed ten percent (10% ~~10.0%~~), by volume;

2. The total methanol and co-solvents content of gasoline shall not exceed ten percent (10% ~~10.0%~~), by volume;

3. The total methyl tertiary butyl ether (MTBE) content of gasoline shall not exceed fifteen percent (15% ~~15.0%~~), by volume;

4. The total ethanol and methyl tertiary butyl ether (MTBE) content of gasoline shall not exceed twelve percent (12% ~~12.0%~~), by volume.

(d) All gasoline sold or distributed at retail, or offered for sale or distribution at retail shall have an octane rating ((R+M)/2) of at least 87.

(e) All gasoline with an octane rating ((R+M)/2) of 87 or higher shall have a motor octane number (MON) of at least 82.

(2) No change.

(a) Standards. All kerosene No. 1-K and No. 2-K shall conform to the chemical and physical standards for kerosene No. 1-K and No. 2-K as set forth in ASTM International Designation ~~designation~~ D 3699-08 ~~3699-07~~, "Standard Specification for Kerosine."

(b) Analysis. For purposes of inspection and testing, laboratory analyses shall be conducted using the methods recognized by ASTM International Designation ~~designation~~ D 3699-08 ~~3699-07~~, "Standard Specification for Kerosine."

(3) No change.

(a) Standards. All diesel fuel oils No. 1-D and No. 2-D shall conform to the chemical and physical standards for diesel fuel oils No. 1-D and No. 2-D as set forth in ASTM International Designation ~~designation~~ D 975-09a ~~975-07b~~, "Standard Specification for Diesel Fuel Oils."

(b) Analysis. For purposes of inspection and testing, laboratory analyses shall be conducted using the methods recognized by ASTM International Designation ~~designation~~ D 975-09a ~~975-07b~~, "Standard Specification for Diesel Fuel Oils."

(4) No change.

(a) Standards. All fuel oils No. 1 and No. 2 shall conform to the chemical and physical standards for fuel oils No. 1 and No. 2 as set forth in ASTM International Designation ~~designation~~ D 396-09 ~~396-08~~, "Standard Specification for Fuel Oils."

(b) Analysis. For purposes of inspection and testing, laboratory analyses shall be conducted using the methods recognized by ASTM International Designation ~~designation~~ D 396-09 ~~396-08~~, "Standard Specification for Fuel Oils."

(5) Alternative Fuels.

(a)~~1.~~ Denatured Ethanol. ~~Methanol, denatured ethanol, or other alcohols;~~

~~2. Denatured Ethanol.~~

1.~~a.~~ Standards. All denatured fuel ethanol shall conform to the chemical and physical standards for denatured fuel ethanol as set forth in the ASTM International Designation ~~designation~~ D 4806-09 ~~4806-07a~~, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel."

2.~~b.~~ Analysis. For purposes of inspection and testing, laboratory analyses shall be conducted using the methods recognized by the ASTM International Designation ~~designation~~ D 4806-09 ~~4806-07a~~, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel."

(b) Methanol, or Other Alcohols.

(c) Mixtures containing nominally 85% by volume of methanol, denatured ethanol, or other alcohols with gasoline or other fuels, or such other percentage, determined acceptable in the specifications for such mixtures as adopted in this section to provide for requirements relating to cold start, safety, or vehicle functions:

1. No change.

a. Standards. All E85 Fuel Ethanol shall conform to the chemical and physical standards for E85 Fuel Ethanol as set forth in the ASTM International Designation ~~designation~~ D 5798-09b ~~5798-07~~, "Standard Specification for Fuel Ethanol (Ed75-Ed85) for Automotive Spark-Ignition Engines" and shall conform to the end-point distillation temperature requirements for gasoline, as defined in subsection 5F-2.001(1), F.A.C. with the following exceptions ~~addition~~:

~~All E85 fuel Ethanol shall conform to the end-point distillation temperature requirements for gasoline, as defined in subsection 5F-2.001(1), F.A.C.~~

(i) E85 Fuel Ethanol of Class 1 Type shall have a minimum vapor pressure limit of 4.5 psi. This provision shall expire on November 30, 2010.

(ii) E85 Fuel Ethanol of Class 2 Type shall have a minimum vapor pressure limit of 5.0 psi. This provision shall expire on April 30, 2011.

b. Analysis. For purposes of inspection and testing, laboratory analyses shall be conducted using the methods recognized by the ASTM International Designation ~~designation~~ D 5798-09b ~~5798-07~~, "Standard Specification for Fuel Ethanol (Ed75-Ed85) for Automotive Spark-Ignition Engines."

2. No change.

a. Standards. All M85 Fuel Methanol shall conform to the chemical and physical standards for Fuel Methanol as set forth in the ASTM International Designation ~~designation~~ D 5797-07, "Standard Specification for M85 Fuel Methanol (M70-M85) for Automotive Spark-Ignition Engines" with the following addition: All M85 Fuel Methanol shall conform to the end-point distillation temperature requirements for gasoline, as defined in subsection 5F-2.001(1), F.A.C.

b. Analysis. For purposes of inspection and testing, laboratory analyses shall be conducted using the methods recognized by the ASTM International Designation ~~designation~~ D 5797-07, "Standard Specification for M85 Fuel Methanol (M70-M85) for Automotive Spark-Ignition Engines."

(d)~~(c)~~ Fuels, other than alcohol, derived from biological materials:

1. No change.

a. Standards. Biodiesel and B99 shall meet the specifications set forth by ASTM International Designation ~~designation~~ D 6751-09 ~~6751-07b~~, "Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels."

b. Analysis. For purposes of inspection and testing, laboratory analyses shall be conducted using the methods recognized by the ASTM International Designation ~~designation~~ D 6751-09 ~~6751-07b~~, "Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels."

2. No change.

a. Standards. Biodiesel blends containing diesel fuel shall meet the specifications set forth by ASTM International Designation ~~designation~~ D 7467-09a ~~975-07b~~, "Standard Specification for Diesel Fuel Oil~~s~~, Biodiesel Blend (B6 to B20)."

b. Standards. Biodiesel blends containing fuel oil shall meet the specifications set forth by ASTM International Designation ~~designation~~ D 396-09 ~~396-08~~, "Standard Specification for Fuel Oils."

c. Analysis. For purposes of inspection and testing biodiesel blends containing diesel fuel, laboratory analyses shall be conducted using the methods recognized by the ASTM International Designation ~~designation~~ D 7467-09a ~~975-07b~~ "Standard Specification for Diesel Fuel Oil~~s~~, Biodiesel Blend (B6 to B20)."

d. Analysis. For purposes of inspection and testing biodiesel blends containing fuel oil, laboratory analyses shall be conducted using the methods recognized by the ASTM International Designation ~~designation~~ D 396-09 ~~396-08~~, "Standard Specification for Fuel Oils."

(6) Water in ~~Retail~~ Storage Tanks.

(a) Water in storage tanks containing products, with the exception of products listed in paragraph (6)(b), enumerated in this rule ~~section and from which products are sold at retail~~ shall not exceed two inches in depth when measured from the bottom of the tank.

(b) Water in storage tanks containg gasoline blended with one (1) or more percent ethanol, by volume; E85; M85; biodiesel; or biodiesel blends containing more than five (5) percent biodiesel, by volume, shall not exceed one quarter inch in depth when measured from the bottom of the tank.

(7) In accordance with Section 525.035, Florida Statutes, any petroleum fuel that fails to meet applicable labeling requirements, as adopted in this rule, shall be placed under Stop Sale Order by the Department using DACS Form 03206, Stop Sale Order, Rev. 1/09, and the measuring devices and storage tanks of said product shall be sealed by the Department with DACS Form 03537, Warning Tag, Rev. 1/09, prohibiting the sale of the petroleum fuel. The petroleum fuel shall be released by the Department from the Stop Sale Order in accordance with Section 525.035, Florida Statutes, using DACS Form 03209, Release, Rev. 1/09. The documents referenced in this subsection are hereby adopted and incorporated by reference and can be viewed by visiting http://www.doacs.state.fl.us/onestop/std/petinsp.html.

(8) In accordance with Section 525.037, Florida Statutes, any petroleum fuel that fails to meet applicable standards, as adopted in this rule, shall be placed under Stop Sale Order by the Department using DACS Form 03206, Stop Sale Order, Rev. 1/09, and the measuring devices and storage tanks of said petroleum fuel shall be sealed by the Department with DACS Form 03537, Warning Tag, Rev. 1/09, prohibiting the sale of the petroleum fuel. The petroleum fuel shall be released by the Department from the Stop Sale Order in accordance with s. 525.037, Florida Statutes, using DACS Form 03209, Release, Rev. 1/09. The documents referenced in this subsection are hereby adopted and incorporated by reference and can be viewed by visiting http://www.doacs.state.fl.us/onestop/std/petinsp.html.

(9) Materials. The following materials are hereby incorporated by reference. Copies of these publications may be obtained from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, or http://www.astm.org and are also available for public inspection during regular business hours at the Florida Department of Agriculture and Consumer Services, Division of Standards, 3125 Conner Boulevard, Tallahassee, FL 32399-1650.

(a) ASTM International Designation ~~designation~~ D 4814-09a ~~4814-07b~~, "Standard Specification for Automotive Spark-Ignition Engine Fuel."

(b) ASTM International Designation ~~designation~~ D 3699-08 ~~3699-07~~, "Standard Specification for Kerosine."

(c) ASTM International Designation ~~designation~~ D 975-09a ~~975-07b~~, "Standard Specification for Diesel Fuel Oils."

(d) ASTM International Designation ~~designation~~ D 396-09 ~~396-08~~, "Standard Specification for Fuel Oils".

(e) ASTM International Designation ~~designation~~ D 4806-09 ~~4806-07a~~, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel."

(f) ASTM International Designation ~~designation~~ D 5798-09b ~~5798-07~~, "Standard Specification for Fuel Ethanol (Ed75-Ed85) for Automotive Spark-Ignition Engines."

(g) ASTM International Designation ~~designation~~ D 5797-07, "Standard Specification for M85 Fuel Methanol (M70-M85) for Automotive Spark-Ignition Engines."

(h) ASTM International Designation ~~designation~~ D 6751-09 ~~6751-07b~~, "Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels."

(i) ASTM International Designation D 7467-09a "Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20)."

Rulemaking ~~Specific~~ Authority ~~525.037,~~ 525.14, 570.07(23) FS. Law Implemented 525.01, 525.035, 525.037, 525.14 FS. History–Amended 1-15-68, 7-1-71, 7-1-73, 12-1-73, 11-16-74, 2-13-80, 5-3-83, Formerly 5F-2.01, Amended 5-3-90, 8-13-92, 11-29-94, 11-13-97, 12-9-98, 8-3-99, 7-31-00, 9-3-01, 8-15-02, 6-29-03, 6-21-04, 4-18-05, 6-1-06, 5-6-08, _____.

5F-2.002 Disposition of Below Standard Gasoline, Kerosene, Diesel Fuel Oils No. 1-D and No. 2-D, and Fuel Oils No. 1 and No. 2, and Alternative Fuels.

(1) Gasoline ~~GASOLINE~~. All gasoline witheld from sale to the public under the provisions of this section shall be dispositioned in accordance with the procedures in subsections (5) and (6).

(a) Gasoline found not in compliance ~~below the standard~~ by reason of containing water, sediment, or suspended matter ~~shall be withheld from sale to the public by the Department of Agriculture and Consumer Services until brought up to standard~~.

(b) Gasoline with ~~found below standard because of~~ an octane rating difference of more than one (1.0), but not more than two (2.0) from the octane rating ((R+M)/2)~~,~~ displayed on the dispenser ~~shall be withheld from sale to the public until it meets or exceeds the octane rating ((R+M)/2) displayed on the dispenser. If the product meets the specifications for a lesser grade of gasoline, it may be labeled as the lesser grade and released for sale to the public~~.

(c) Gasoline blended with ethanol found to have an ethanol content of more than one (1.0) percent by volume, but not more than three (3.0) percent by volume, above or below the posted ethanol content displayed on the dispenser ~~shall be withheld from sale to the public until it has been brought up to standard or relabeled appropriately~~. No concentration shall be permitted to be less than one (1.0) percent by volume ethanol if the product is labeled as containing ethanol according to the requirements in subsection 5F-2.003(7), F.A.C.

(d) Gasoline found not in compliance ~~below standard~~ because of a silver corrosion rating of two (2) ~~shall be withheld from sale to the public until it conforms to the silver corrosion standard for gasoline~~ as set forth in ASTM International Designation ~~designation~~ D 4814-09a ~~4814-07b~~, "Standard Specification for Automotive Spark-Ignition Engine Fuel~~,~~." ~~or is replaced with a suitable product that conforms to the silver corrosion standard for gasoline as set forth in ASTM International designation D 4814-07b, "Standard Specification for Automotive Spark-Ignition Engine Fuel."~~

(e) Gasoline found not in compliance from June 1 through September 15 because of a vapor pressure of up to and including 11.0 psi as set forth in ASTM International Designation D 4814-09a, "Standard Specification for Automotive Spark-Ignition Engine Fuel." ~~Gasoline not meeting specifications stated in ASTM International D 4814-07b, "Standard Specification for Automotive Spark-Ignition Engine Fuel" for reasons other than those enumerated in paragraphs (1)(a), (b), (c) or (d) shall be subject to penalties provided in Section 525.16, F.S. These penalties are specified in Rule 5F-2.016, F.A.C.~~

(2) Kerosene ~~KEROSENE~~. All kerosene witheld from sale to the public under the provisions of this section shall be dispositioned in accordance with the procedures in subsections (5) and (6).

(a) Kerosene found not in compliance ~~below standard~~ by reason of containing water, sediment, or suspended matter~~, or failing to meet the standard for color shall not have an assessment levied, by the Department, but shall be withheld from sale to the public until brought up to standard~~.

(b) Kerosene found not in compliance by reason of color. ~~Kerosene not meeting specifications stated in ASTM International D 3699-07, "Standard Specification for Kerosine" for reasons other than those enumerated in paragraph (2)(a) shall be subject to penalties provided in Section 525.16, F.S. These penalties are specified in Rule 5F-2.016, F.A.C.~~

(3) Diesel Fuel Oils No. 1-D and No. 2-D, and Fuel Oils No. 1 and No. 2. All Diesel Fuel Oils No. 1-D and No. 2-D, and Fuel Oils No. 1 and No. 2 witheld from sale to the public under the provisions of this section shall be dispositioned in accordance with the procedures in subsections (5) and (6). ~~DIESEL FUEL OILS No. 1-D AND No. 2-D, AND FUEL OILS No. 1 AND No. 2.~~

(a) All Diesel fuel oils and fuel oils found not in compliance ~~below standard~~ by reason of containing ~~excessive amounts of~~ water, ~~and~~ sediment, or suspended matter ~~shall not have an assessment levied but shall be withheld from sale to the public until they are brought up to standard~~.

(b) Diesel fuel oils No. 2-D found not in compliance with ~~below~~ the flash point standard, but above ~~not below~~ 100°F~~, shall not have an assessment levied but shall be withheld from sale to the public until brought up to standard~~.

(c) Diesel fuel oils No. 1-D and No. 2-D found not in compliance with ~~above~~ the ultra-low (S15) sulfur standard, but equal to or below 35 ppm sulfur ~~shall not have an assessment levied, but shall be withheld from sale to the public until brought up to standard or relabeled appropriately~~.

~~(d) Diesel fuel oils No. 1-D and No. 2-D, and fuel oils No. 1 and No. 2 not meeting specifications stated in ASTM International D-975-07b, "Standard Specification for Diesel Fuel Oils" and ASTM International D-396-08, "Standard Specification for Fuel Oils", respectively for reasons other than those enumerated in paragraphs (3)(a), (b) or (c) shall be subject to the penalties as provided in Section 525.16, F.S. These penalties are specified in Rule 5F-2.016, F.A.C.~~

(4) Alternative Fuels ~~ALTERNATIVE FUELS~~. All alternative fuels witheld from sale to the public under the provisions of this section shall be dispositioned in accordance with the procedures in subsections (5) and (6).

(a) Alternative Fuels found not in compliance by reason of containing water, sediment, or suspended matter ~~below standard shall be withheld from sale to the public until brought up to standard~~.

(b) A biodiesel blend found to have a biodiesel content of more than two (2.0) percent by volume, but not more than five (5.0) percent by volume, above or below the posted biodiesel content displayed on the dispenser ~~shall be withheld from sale to the public until it has been brought up to standard or relabeled appropriately~~.

(c) A biodiesel blend (with No. 2-D diesel fuel oil) found not in compliance with the flash point standard, but above 100°F.

(d) Biodiesel and biodiesel blends found not in compliance with the ultra-low (S15) sulfur standard, but equal to or below 35 ppm sulfur.

~~(e) Alternative Fuels found below standard for reasons other than those enumerated in paragraph (4)(b) shall be subject to the penalties as provided in Section 525.16, F.S. These penalties are specified in Rule 5F-2.016, F.A.C.~~

(5) In accordance with Section 525.035, Florida Statutes, any petroleum fuel that fails to meet applicable labeling requirements, as adopted in this rule, shall be placed under Stop Sale Order by the Department using DACS Form 03206, Stop Sale Order, Rev. 1/09, and the measuring devices and storage tanks of said product shall be sealed by the Department with DACS Form 03537, Warning Tag, Rev. 1/09, prohibiting the sale of the petroleum fuel. The petroleum fuel shall be released by the Department from the Stop Sale Order in accordance with Section 525.035, Florida Statutes, using DACS Form 03209, Release, Rev. 1/09. The documents referenced in this subsection are hereby adopted and incorporated by reference and can be viewed by visiting http://www.doacs.state.fl.us/onestop/std/petinsp.html.

(6) In accordance with Section 525.037, Florida Statutes, any petroleum fuel that fails to meet applicable standards, as adopted in this rule, shall be placed under Stop Sale Order by the Department using DACS Form 03206, Stop Sale Order, Rev. 1/09, and the measuring devices and storage tanks of said petroleum fuel shall be sealed by the Department with DACS Form 03537, Warning Tag, Rev. 1/09, prohibiting the sale of the petroleum fuel. The petroleum fuel shall be released by the Department from the Stop Sale Order in accordance with Section 525.037, Florida Statutes, using DACS Form 03209, Release, Rev. 1/09. The documents referenced in this subsection are hereby adopted and incorporated by reference and can be viewed by visiting http://www.doacs.state.fl.us/onestop/std/petinsp.html.

Rulemaking ~~Specific~~ Authority ~~525.037,~~ 525.14, 570.07(23) ~~525.16~~ FS. Law Implemented 525.035, 525.037, 525.16 FS. History–Amended 7-1-71, 7-1-73, Repromulgated 12-31-74, Amended 2-13-80, Formerly 5F-2.02, Amended 5-3-90, 8-13-92, 1-24-93, 11-29-94, 6-1-06, 5-6-08,_____.

5F-2.003 Registration and Identification.

(1) All terminal suppliers, importers, and wholesalers registered with the Florida Department of Revenue and manufacturers shall submit DACS Form 03202, Gasoline and Oil Inspection Affadavit and Inspection Report, Rev. 8/09, to the Department before selling or offering for sale any pertroleum fuel in this state. The applicant shall also list all manufacturers, terminal suppliers, wholesalers, and/or importers of the petroleum fuel to be sold and establish responsibility for payment of the inspection fee pursuant to Section 525.09, Florida Statutes. The applicant must also identify themselves as a manufacturer, terminal supplier, wholesaler, or importer as defined below. ~~The Department of Agriculture and Consumer Services will furnish on request Form DACS-03202E for making statements and affidavits required in Section 525.01, F.S. Form DACS-03202E is effective 11-29-94, (Rev. 6/01) and is hereby adopted and incorporated by reference herein.~~ This ~~The~~ form is hereby adopted and incorporated by reference and may be obtained ~~by writing or visiting the Department of Agriculture and Consumer Services, Division of Standards, Bureau of Petroleum Inspection, 3125 Conner Boulevard, Tallahassee, Florida 32399-1650 or~~ at http://www.doacs.state.fl.us/onestop/std/petinsp.html. http://www.doacs.state.fl.us/onestop/forms/03202.pdf.

(a) A "manufacturer" is any company or business entity producing petroleum fuel.

(b) A "terminal supplier" for purposes of this rule chapter means any position holder that has been licensed by the Department of Revenue as a terminal supplier, that has met the requirements of Sections 206.05 and 206.90, Florida Statutes, and that is registered under the Internal Revenue Code (26 USC 4101) for transactions involving the bulk storage and transfer of taxable motor or diesel fuels.

(c) A "wholesaler" for purposes of this rule chapter means any person who holds a valid wholesaler of taxable fuel license issued by the Florida Department of Revenue as a wholesaler as defined in Section 206.01(4), Florida Statutes.

(d) An "importer" for purposes of this rule chapter means any person that has met the requirements of Section 206.051, Florida Statutes, and is licensed by the Department of Revenue

to import motor fuel or diesel fuel upon which no pre-collection of tax has occurred, other than through bulk transfer, into this state by common carrier or company-owned trucks.

(2) Every retail gasoline dispenser shall have the octane rating of the gasoline being sold therefrom conspicuously and firmly posted in a manner conforming with 16 CFR Part 306.12 (2008), ~~16 Code of Federal Regulations Part 306 (1-1-07 Edition)~~ which is hereby adopted by reference. Copies of this publication may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, or at http://www.gpoaccess.gov/index.html.

(3) through (6) No change.

(7)(a) All gasoline kept, offered, or exposed for sale, or sold, at retail, containing at least one percent but no more than 10% by volume of ethanol, methanol, or a combination shall be identified as "contains 10% or less ethanol" or "contains 1-10% ethanol," "contains 10% or less methanol" or "contains 1-10% methanol," or "contains 10% or less ethanol/methanol" or "contains 1-10% ethanol/methanol", or other definitive equivalent statement declaring the presence of methanol, ethanol, or combination on the upper fifty percent of the dispenser front panel in a position clear and conspicuous from the driver's position, in a type at least 1/2 inch in height and 1/16 inch stroke (width of type). Gasoline kept, offered, or exposed for sale, or sold, at retail, containing specifically ten percent by volume of ethanol may be identified as "E10" and "contains ethanol" or other definitive equivalent statement declaring the presence of ethanol on the upper fifty percent of the dispenser fron panel in a position clear and conspicuous from the driver's position, in a type at least 1/2 inch in height and 1/16 inch stroke (width of type).

(b) Labels placed on any multi-product dispensers must be placed in a position and contain wording so as to clearly and conspicuously identify the presence of ethanol in all such products that contain ethanol. Such labels and placement must not be in such a manner that may suggest products not blended with ethanol contain ethanol. This may be accomplished by use of the words "all gasoline" on the label; specifically identify each product that contains ethanol through language or by arrangement of labels on the dispenser; or through other such clear and conspicuous means.

(8) All alternative fuel kept, offered, or exposed for sale, or sold, at retail that contains more than 10% ethanol, methanol or other alcohol shall be identified by a name indicating the amount and type(s) of ethanol, methanol or other alcohol in the fuel and shall be labeled as such on the vertical surface of each dispenser housing in a manner conforming with the layout, type size and setting, color, and label protection requirements of 16 CFR Part 306.12 (2008), ~~16 Code of Federal Regulations, Part 306.12 (1-1-07 Edition)~~. Copies of this publication may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, or at http://www.gpoaccess.gov/index.html.

(a) No change.

(b) Methanol mixed with gasoline and containing a methanol content of nominally 80%-85% shall be identified as "M85 Fuel Methanol" and "For Flex Fuel Vehicles Only." Such fuels shall also contain a label on the vertical surface of each dispenser housing on each side that has measure and price meters and located on the upper fifty percent of the dispenser front panel in a type at least 1/2 inch in height and 1/16 inch stroke (width of type) that reads as follows:

THIS PRODUCT CONTAINS METHANOL AND MAY NOT BE SUITABLE FOR USE IN ALL FLEX-FUEL VEHICLES. CONSULT WITH YOUR ENGINE MANUFACTURER OR OWNER'S MANUAL BEFORE USE.

(9) through (11) No change.

(12) In accordance with Section 525.035, Florida Statutes, any petroleum fuel that fails to meet applicable labeling requirements, as adopted in this rule, shall be placed under Stop Sale Order by the Department using DACS Form 03206, Stop Sale Order, Rev. 1/09, and the measuring devices and storage tanks of said product shall be sealed by the Department with DACS Form 03537, Warning Tag, Rev. 1/09, prohibiting the sale of the petroleum fuel. The petroleum fuel shall be released by the Department from the Stop Sale Order in accordance with Section 525.035, Florida Statutes, using DACS Form 03209, Release, Rev. 1/09.

(13) In accordance with Section 525.037, Florida Statutes, any petroleum fuel that fails to meet applicable standards, as adopted in this rule, shall be placed under Stop Sale Order by the Department using DACS Form 03206, Stop Sale Order, Rev. 1/09, and the measuring devices and storage tanks of said petroleum fuel shall be sealed by the Department with DACS Form 03537, Warning Tag, Rev. 1/09, prohibiting the sale of the petroleum fuel. The petroleum fuel shall be released by the Department from the Stop Sale Order in accordance with Section 525.037, Florida Statutes, using DACS Form 03209, Release, Rev. 1/09.

Rulemaking ~~Specific~~ Authority 525.14, 570.07(23) ~~526.09~~ FS. Law Implemented 525.01, 525.035, 525.037, 525.09, 525.14~~, 526.01(1), (3)~~ FS. History–Amended 12-31-74, 2-13-80, 5-3-83, 4-22-85, Formerly 5F-2.03, Amended 11-28-89, 1-24-93, 11-24-94, 6-1-06, 5-6-08, _____.

5F-2.005 Inaccurate Measuring Devices.

(1) through (2) No change.

(3) If any petroleum fuel measuring device is found to be overregistering fuel in excess of the specifications and tolerances established by the department in Rule 5F-2.014, F.A.C., the device shall be placed out-of-service by the Department with DACS Form 03538, Out of Service, Rev. 1/09, and prohibited from further use. Such measuring devices

placed out-of-service for inaccuracy shall be rendered inoperative either by removal or by the locking of working parts with lead and wire seal and shall not be put back in service without reinspection or the written consent of the department.

(4) If three or more petroleum fuel measuring devices at any petroleum retail facility are each found to be overregistering fuel in excess of 25 cubic inches, the devices shall be placed out-of-service by the Department with DACS Form 03538, Out of Service, Rev. 1/09, and prohibited from further use. The nozzles of such petroleum measuring devices placed out-of-service for inaccuracy shall be covered with a red plastic bag and the measuring devices shall be rendered inoperative either by the removal or by the locking of working parts with lead and wire seal. The measuring devices shall not be put back in service without reinspection or the written consent of the department.

(5) All persons or service agencies that repair or install petroleum fuel measuring devices must register with the department on DACS Form 03320, Application for Registration of Service Agencies, Rev. 3/09, and DACS Form 03556, Application for Registration – Authorized Meter Mechanic, Rev. 1/09. Any such registered person or sevice agency must immediately notify the department at (850)487-2634 or by fax at (850)488-7239, after any repairs and/or adjustments to any petroleum measuring devices have been made. In order to make application for registration as an authorized meter mechanic you must:

(a) Maintain a test measure of appropriate size according to the National Instituate of Standards and Technology (NIST) Handbook 44, as adopted in subsection 5F-2.014(1), F.A.C., that has been calibrated with standards traceable to NIST, pursuant to Section 525.07(9), Florida Statutes.

(b) Use a sealing iron bearing the registered mechanics name or initials that are on file with the Department.

(c) Have proof of at least one year of experience working as a meter mechanic. If such applicant does not possess one year of experience working as a meter mechanic, the applicant may work for a service agency that repairs or installs petroleum fuel measuring devices that is currently registered with the Department.

(d) Annually apply in person at the Florida Department of Agriculture and Consumer Services, Division of Standards, 3125 Conner Blvd., Tallahassee, FL 32399, or at an annual clinic hosted by the Department, to participate in review of current rules and regulations. Annual clinic schedules for retail, high-volume, and liquefied petroleum gas meters may be obtained by contacting the Department at (850)487-2634.

(6) The department forms referenced in this subsection are hereby adopted and incorporated by reference and can be viewed by visiting http://www.doacs.state.fl.us/onestop/ std/petinsp.html.

(7) In accordance with Section 525.07, Florida Statutes, any measuring device that fails to meet applicable requirements, as adopted in this rule, shall be placed out of service by the Department using DACS Form 03538, Out of Service, Rev. 1/09, prohibiting the use of the measuring device. Upon conformance with the applicable requirement, the Out of Service tag shall be removed from the measuring device. The documents referenced in this subsection are hereby adopted and incorporated by reference and can be viewed by visiting http://www.doacs.state.fl.us/onestop/ std/petinsp.html.

Rulemaking ~~Specific~~ Authority ~~525.07,~~ 525.14, 570.07(23) FS. Law Implemented 525.07 FS. History–Amended 7-1-74, Repromulgated 12-31-74, 5-3-83, Formerly 5F-2.05, Amended 11-29-94, 5-6-08,_____.

5F-2.006 Inspection Identification Stickers.

(1) It shall be the duty of inspectors to affix a sticker to each petroleum measuring device, signifying that the device is inspected by the Department of Agriculture and Consumer Services and that the device owner is responsible for its proper use and maintenance. Stickers shall be placed at such a point upon measuring device where they may be easily read by the public but not at a point where they will interfere with other descriptive material on the device such as figures, lettering or words. It shall be a violation of this section for any person, unless authorized by the Department ~~Commissioner~~, to remove, deface, conceal or in any way obliterate or change this official sticker after it has been affixed by an inspector.

(2) Any measuring device that fails to meet applicable requirements, as adopted in this rule, shall be placed out of service by the Department using DACS Form 03539, Out of Service, Rev. 3/09, prohibiting the use of the measuring device. Upon conformance with the applicable requirement, the Out of Service tag shall be removed from the measuring device. The documents referenced in this subsection are hereby adopted and incorporated by reference and can be viewed by visiting http://www.doacs.state.fl.us/onestop/ std/petinsp.html.

Rulemaking ~~Specific~~ Authority 525.14, 570.07(23) ~~525.07~~ FS. Law Implemented 525.07 FS. History–Repromulgated 12-31-74, Formerly 5F-2.06,_____.

5F-2.014 Adoption of the General Code and the Codes of Liquid-Measuring Devices, Liquefied Petroleum Gas and Anhydrous Ammonia Liquid-Measuring Devices, Hydrocarbon Gas Vapor-Measuring Devices, Vehicle-Tank Meters, and Vehicle Tanks Used as Measures of National Institute of Standards and Technology Handbook 44 Meter Sealing Requirements.

(1) The general code and the codes of liquid-measuring devices, liquefied petroleum gas and anhydrous ammonia liquid-measuring devices, hydrocarbon gas vapor-measuring devices, vehicle-tank meters, and vehicle tanks used as measures relating to specifications, tolerances, and other technical requirements for commercial weighing and

measuring devices, contained in National Institute of Standards and Technology Handbook 44, 2009 ~~2007~~ Edition, published by U.S. Department of Commerce are hereby adopted and incorporated by reference as rules of the Department of Agriculture and Consumer Services. Copies may be obtained ~~from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 or~~ at http://ts.nist.gov/WeightsAndMeasures/pubs.cfm#Handbooks ~~http://ts.nist.gov~~.

(2) All operating petroleum fuel measuring devices must be sealed with an appropriate security seal in such a manner that the metering adjustment cannot be changed without breaking the seal. An appropriate security seal is one which has been applied by the Department or a person who is registered with the Department as a meter mechanic and bears the name ~~of the company or the name~~ or initials of the registered meter mechanic.

(3) Any registered person or agency that has installed a petroleum fuel measuring device must report the existence of the petroleum device to the department at (850)487-2634 or by fax at (850)488-7239, within twenty-four (24) hours after installation using DACS Form 03219, Placed in Service Report, Rev. 1/09.

(4) Any measuring device that fails to meet applicable requirements, as adopted in subsection (1) or (2) of this section, shall be placed out of service by the Department using DACS Form 03539, Out of Service, Rev. 3/09, prohibiting the use of the measuring device. Upon conformance with the applicable requirement, the Out of Service tag shall be removed from the measuring device. The documents referenced in this subsection are hereby adopted and incorporated by reference and can be viewed by visiting http://www.doacs.state.fl.us/onestop/std/petinsp.html.

Rulemaking ~~Specific~~ Authority 525.14, 531.40, 531.41(3), 570.07(23) FS. Law Implemented 525.07, 531.40 FS. History–New 1-1-74, Amended 7-1-74, Repromulgated 12-31-74, Amended 4-18-75, 1-25-76, 1-17-77, 2-15-79, 6-4-80, 4-5-81, 5-2-82, 6-30-83, 7-15-84, 8-11-85, Formerly 5F-2.14, Amended 7-7-86, 4-5-87, 4-27-88, 5-31-89, 8-21-90, 8-5-91, 12-10-92, 11-29-94, 11-13-97, 12-9-98, 8-3-99, 7-31-00, 9-3-01, 8-15-02, 6-29-03, 6-21-04, 6-1-06, 5-6-08, _____.

(Substantial rewording of Rule 5F-2.016. See Florida Administrative Code for present text.)

5F-2.016 Guidelines for Imposing Administrative Penalties.

(1) This rule sets forth the guidelines the department will follow in imposing the penalties authorized under Chapter 525, Florida Statutes. The purpose of the guidelines is to give notice of the range of penalties, which normally will be imposed for a single violation. These guidelines list aggravating and mitigating factors that, if present, will reduce or increase penalties to be imposed. No aggravating factors will be applied to increase a fine imposed for a single violation above the statutory maximum of $1,000 per violation for a first-time offender or $5,000 per violation for second-time or subsequent offender, or for a willful violation. The guidelines in this rule chapter are based upon a single count violation of each provision listed. Multiple counts of the violated provision or a combination of the listed violations will be added together to determine an overall total penalty and will be grounds for enhancement of penalties.

(2) The department will enforce compliance with Chapter 525, Florida Statutes, and this rule chapter by issuing an administrative complaint, stop sale order, and/or notice of noncompliance for violations of Chapter 525, Florida Statutes, and this rule chapter.

(3) Nothing in this chapter shall limit the ability of the department to informally dispose of administrative actions by settlement agreement, consent order, or other lawful means.

(4) Rule Not All-Inclusive. This rule contains illustrative violations. It does not, and is not intended to encompass all possible violations of statute or department rule that might be committed by any person. The absence of any violation from this rule chapter shall in no way be construed to indicate that the violation does not cause harm to the public or is not subject to a penalty. In any instance where the violation is not listed in this rule chapter, the penalty will be determined by consideration of:

1. The closest analogous violation, if any, that is listed in this rule; and

2. The mitigating or aggravating factors listed in this rule.

(5) Aggravating and Mitigating Factors. The department will consider aggravating and mitigating factors in determining penalties for violations of Chapter 525, Florida Statutes, and this rule chapter. The factors shall be applied against each single count of the listed violation.

(a) Aggravating Factors:

1. The violation caused or has the potential to cause harm to a person or property and the degree or extent of such harm.

2. The violation endangered the public safety or welfare.

3. Previous violations for the same or a similar offense that resulted in enforcement action.

4. The length of time the business has been in operation and the violation history over the past three years.

5. The violation existed for an extended period of time.

6. The violation was repeated within a short period of time.

7. The violator impeded, or otherwise failed to cooperate with, the department's inspection and/or investigation.

8. Previous disciplinary action against the violator in this or any other jurisdiction and the deterrent effect of the penalty imposed.

9. Undue delay in initiating or completing, or failure to take, affirmative or corrective action after receipt of the stop sale order or notice of non-compliance for the violation.

10. Whether the violation resulted from negligence or an intentional act.

11. The cost of enforcement action.

12. The number of other violations proven in the same proceeding.

13. The benefit to the violator.

(b) Mitigating Factors:

1. Any documented efforts by the violator at rehabilitation.

2. Whether intentional actions of another party prevented the violator from complying with the applicable laws or rules.

3. Financial hardship.

4. Acts of God or nature that impairs the ability of the violator to comply with Chapter 525, Florida Statutes, or Chapter 5F-2, Florida Administrative Code.

5. The violation has a low risk of, or did not result in, harm to the public health, safety, or welfare.

6. The violator expeditiously took affirmative or corrective action after it received written notification of the violation, including costs incurred by the violator for rectifying any damage or harm to consumers vehicles and/or property.

7. The number and seriousness of the counts in the administrative complaint.

8. The disciplinary history of the person committing the violation.

9. If a repeat violation, whether three years has passed since the prior violation.

(6) The provisions of this rule chapter shall not be construed so as to prohibit or limit any other civil action or criminal prosecution that may be brought.

(7) In addition to the penalties established in this rule, the department reserves the right to seek to recover any other costs, penalties, attorney's fees, court costs, service fees, collection costs, and damages allowed by law. Additionally, the department reserves the right to seek to recover any costs, penalties, attorney's fees, court costs, service fees, collection costs, and costs resulting from a payment that is returned for insufficient funds to the department.

(8) Penalties.

(a) Notice of Noncompliance. Any department investigation or inspection which reveals violations listed in this subsection of this rule chapter in which the department determines that the violator was unaware of the rule or unclear as to how to comply with it will result in the issuance of a notice of noncompliance as the department's first response to the violation. For the purposes of this rule, the following violations shall result in the issuance of a notice of noncompliance:

1. Violations to subsection 5F-2.014(1), F.A.C., where the violation has a low potential for causing economic or physical harm to a person; adversely affecting the public health, safety, or welfare; or creating a significant threat of such harm, if left uncorrected.

2. Violations to Rule 5F-7.005, F.A.C., pertaining to petroleum products and applications, where the violation has a low potential for causing economic or physical harm to a person; adversely affecting the public health, safety, or welfare; or creating a significant threat of such harm, if left uncorrected.

3. Misrepresentation of the price of petroleum fuel on a display, a violation of Section 531.44, F.S.

4. Violations of subsection 5F-2.005(2), F.A.C.

5. Violations of subsection 5F-2.014(3), F.A.C.

(b) Minor Violations. A violation of Chapter 525, Florida Statutes, or this rule chapter is a minor violation if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm. Minor violations shall result in the issuance of a stop sale order, or the device removed from service as specified below. For the purposes of this rule, the following violations shall be considered minor violations:

1. Violations of subsection 5F-2.001(6), F.A.C.

2. Violations of paragraph 5F-2.002(1)(b), (c), (d), or (e), F.A.C.

3. Violations of paragraph 5F-2.002(2)(b), F.A.C.

4. Violations of paragraph 5F-2.002(3)(b) or (c), F.A.C.

5. Violations of paragraph 5F-2.002(4)(b), (c), or (d), F.A.C.

6. Violations of paragraph 5F-2.003(7)(b), F.A.C.

7. The following violations shall result in the removal of affected equipment from service.

a. Indicator inoperable or unreadable.

b. Indicator advancing when the device is activated.

c. Air eliminator missing or inoperable.

d. Inoperative interlock.

e. Indicator movement without nozzle activation.

f. Meter over-registering more than six cubic inches.

g. Incorrect indicator.

h. Operating a meter without an appropriate security seal or improperly sealed.

i. Leaking swivel.

j. Exposed electrical wires.

k. Leaking filter.

l. Leaking impact valves.

m. Leaking vapor pump.

n. Leaking nozzle.

o. Impact valve inoperable.

p. Leaking meter.

q. Incorrect dispenser type for product being dispensed.

r. Leaking dispenser hose.

s. Violations of subsection 5F-2.005(3) or (4), F.A.C.

t. Violations of subsection 5F-2.006(1), F.A.C.

u. Any violations to subsection 5F-2.014(1), F.A.C., where the device and/or equipment is required to be immediately removed from service due to the potential for causing

economic or physical harm to a person; due to the potential for adversely affecting the public health, safety, or welfare; or due to the potential to create a significant threat of such harm, if left uncorrected.

v. Any violations to Rule 5F-7.005, F.A.C., pertaining to petroleum products and applications, where the device and/or equipment is required to be immediately removed from service due to the potential for causing economic or physical harm to a person; due to the potential for adversely affecting the public health, safety, or welfare; or due to the potential to create a significant threat of such harm, if left uncorrected.

(c) Major Violations. A violation of a Chapter 525, Florida Statutes, or this rule chapter is a major violation if it results in economic or physical harm to a person or adversely affects the public health, safety, or welfare or creates a significant threat of such harm. Major violations shall result in the issuance of a stop sale order and imposition of an administrative fine of $500 per violation, for first-time offenders, and $2,500 per violation, for second-time or repeat offenders, as outlined in Section 525.16(1)(b), F.S. Aggravating factors, as defined in paragraph (5)(a) of this section, shall warrant the adjustment of the fine upward and mitigating factors, as defined in paragraph (5)(b) of this section, shall warrant the adjustment of the fine downward, but no fine shall exceed the statutory maxima as outlined in Section 525.16(1)(a), F.S. For the purposes of this rule, the following violations shall be considered major violations:

1. Failure to meet the volatility requirements for gasoline blended with ethanol as specified in subparagraph 5F-2.001(1)(a)1., 2., or 3., F.A.C.

2. Failure to meet the vapor pressure requirements for gasoline (including gasoline blended with oxygenates); including, if greater than 11.0 psi from the time period June 1, through September 15.

3. Failure to meet the minimum anti-knock index (AKI) or octane rating requirements for gasoline (including gasoline blended with oxygenates); specifically, gasoline found to be more than two (2) less than the posted rating.

4. Violations of paragraph 5F-2.001(1)(c), (d), or (e), F.A.C.

5. Failure to match the posted ethanol content for gasoline blended with ethanol; specifically, when the ethanol content is found to be more than three (3.0) percent by volume from the posted ethanol content (percentage by volume).

6. Failure to meet the silver corrosion standard for gasoline (including gasoline blended with oxygenates); specifically, when the rating is greater than two (2).

7. Failure to meet the flash point requirements for No. 2 diesel fuels and biodiesel blends (with No. 2 diesel fuels); specifically, when the flash point is found to be less than 100 °F.

8. Failure to meet the sulfur requirements for ultra-low sulfur diesel (ULSD) fuels and biodiesel blends (with ULSD fuels); specifically, when the sulfur content is found to be greater than 35 ppm.

9. Violations of sub-subparagraphs 5F-2.001(5)(c)1.a.(i) and (ii), F.A.C.

10. Violations of subparagraph 5F-2.001(5)(d)2., F.A.C., pertaining to the maximum biodiesel content allowed in biodiesel blends (with diesel fuels or fuel oils).

11. Failure to match the posted biodiesel content for biodiesel blends (with diesel fuels or fuel oils); specifically, when the biodiesel content is found to be more than five (5.0) percent by volume from the posted biodiesel content (percentage by volume).

12. Any fuel found below standard by reason of containing water, sediment, and/or suspended matter.

13. Failure to meet any other requirements listed in the standards for gasoline (including gasoline blended with oxygenates), as incorporated through the adopted version of ASTM International Designation D 4814 in paragraph 5F-2.001(1)(a), F.A.C., not already listed is this section.

14. Failure to meet any other requirements listed in the standards for kerosene (kerosine), as incorporated through the adopted version of ASTM International Designation D 3699 in paragraph 5F-2.001(2)(a), F.A.C., not already listed in this section.

15. Failure to meet any other requirements listed in the standards for diesel fuel oils No. 1-D and No. 2-D, as incorporated through the adopted version of ASTM International Designation D 975 in paragraph 5F-2.001(3)(a), F.A.C., not already listed in this section.

16. Failure to meet any other requirements listed in the standards for fuel oils No. 1 and No. 2, as incorporated through the adopted version of ASTM International Designation D 396 in paragraph 5F-2.001(4)(a), F.A.C., not already listed in this section.

17. Failure to meet any requirements listed in the standards for denatured fuel ethanol, as incorporated through the adopted version of ASTM International Designation D 4806 in subparagraph 5F-2.001(5)(a)1., F.A.C.

18. Failure to meet any other requirements listed in the standards for E85 Fuel Ethanol, as incorporated through the adopted version of ASTM International Designation D 5798 in sub-subparagraph 5F-2.001(5)(c)1.a., F.A.C., not already listed in this section.

19. Failure to meet any other requirements listed in the standards for M85 Fuel Methanol, as incorporated through the adopted version of ASTM International Designation D 5797 in sub-subparagraph 5F-2.001(5)(c)2.a., F.A.C., not already listed in this section.

20. Failure to meet any requirements listed in the standards for biodiesel fuel blend stock (or biodiesel), as incorporated through the adopted version of ASTM International Designation D 6751 in sub-subparagraph 5F-2.001(5)(d)1.a., F.A.C.

21. Failure to meet any other requirements listed in the standards for biodiesel blends (with diesel fuel), as incorporated through the adopted version of ASTM International Designation D 7467 in sub-subparagraph 5F-2.001(5)(d)2.a., F.A.C., not already listed in this section.

22. Failure to meet any other requirements listed in the standards for biodiesel blends (with fuel oil), as incorporated through the adopted version of ASTM International Designation D 396 in sub-subparagraph 5F-2.001(5)(d)2.b., F.A.C., not already listed in this section.

23. Violations of paragraph 5F-2.003(7)(a), F.A.C.

24. Violations of subsection 5F-2.005(5), F.A.C.

25. Violations of subsection 5F-2.014(2), F.A.C.

26. Failure to correct violations of law, rule, or adopted sections of NIST Handbook 44 or NIST Handbook 130 (pertaining to petroleum measuring devices, as adopted in Rule 5F-7.005, F.A.C.) within the time period specified in a notice of non-compliance.

(d) Willful Violations.

1. Any willful and intentional violation of Chapter 525, Florida Statutes, or this rule chapter or of any requirement or standard adopted pursuant thereto, not otherwise included in this section shall result in the imposition of an administrative fine of up to $5,000 per violation.

2. Any willful and intentional violation of a stop sale order; the conditions stipulated on a release; or a notice of noncompliance.

(9) Resolution of Violations, Settlement, and Additional Enforcement Remedies.

(a) The department and person charged with a violation may agree to resolve violations prior to an administrative hearing, or enter into settlement pursuant to Section 120.57(4), Florida Statutes. The penalties addressed in this rule chapter shall not be construed to limit the authority of the department to resolve violations prior to or after initiation of any administrative action or to settle with any party. The department shall utilize all available remedies to ensure compliance including administrative action, civil actions, settlements, and referrals for criminal prosecution. The department shall enforce a failure to comply with an agreement to resolve violations or a settlement agreement with the penalties and remedies provided in the agreement and as authorized by Chapter 120 or Chapter 525, Florida Statutes.

(b) Failure to respond to an administrative complaint shall result in the entry of a Default Final Order against the violator or entity responsible for the violation. The department shall impose administrative fines in a Default Final Order equal to the maximum amount as allowable under Section 525.16(1)(a), Florida Statutes.

(c) A failure to comply with either a Final Order or a Default Final Order of the department shall result in any applicable registration revocation and an administrative fine equal to the maximum amount as allowable under Section 525.16(1)(a), Florida Statutes. Additional penalties shall be sought through the enforcement of the order in circuit court.

Rulemaking ~~Specific~~ Authority 525.14, 570.07(23) FS. Law Implemented 525.16 FS. History–New 2-24-00, Amended 7-30-02, 6-1-06, 5-6-08, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Izzy Rommes, Director, Division of Standards

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Commissioner Charles H. Bronson

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 25, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 6, 2009

DEPARTMENT OF REVENUE

Property Tax Oversight Program

RULE NOS.:	RULE TITLES:
12D-9.001	Taxpayer Rights in Value Adjustment Board Proceedings
12D-9.002	Informal Conference Procedures
12D-9.003	Definitions
12D-9.004	Composition of the Value Adjustment Board
12D-9.005	Duties of the Board
12D-9.006	Clerk of the Value Adjustment Board
12D-9.007	Role of the Clerk of the Value Adjustment Board
12D-9.008	Appointment of Legal Counsel to the Value Adjustment Board
12D-9.009	Role of Legal Counsel to the Board
12D-9.010	Appointment of Special Magistrates to the Value Adjustment Board
12D-9.011	Role of Special Magistrates to the Value Adjustment Board
12D-9.012	Training of Special Magistrates, Value Adjustment Board Members and Legal Counsel
12D-9.013	Organizational Meeting of the Value Adjustment Board
12D-9.014	Prehearing Checklist
12D-9.015	Petition; Form and Filing Fee
12D-9.016	Filing and Service
12D-9.017	Ex Parte Communication Prohibition
12D-9.018	Representation of the Taxpayer
12D-9.019	Scheduling and Notice of a Hearing

12D-9.020	Exchange of Evidence
12D-9.021	Withdrawn or Settled Petitions; Petitions Acknowledged as Correct
12D-9.022	Disqualification or Recusal of Special Magistrates or Board Members
12D-9.023	Hearings Before Board or Special Magistrates
12D-9.024	Procedures for Commencement of a Hearing
12D-9.025	Procedures for Conducting a Hearing; Presentation of Evidence; Testimony of Witnesses
12D-9.026	Procedures for Conducting a Hearing by Electronic Media
12D-9.027	Process of Administrative Review
12D-9.028	Petitions on Transfer of "Portability" Assessment Difference
12D-9.029	Procedures for Remanding Just Value or Classified Use Value Assessments
12D-9.030	Recommended Decisions
12D-9.031	Consideration and Adoption of Recommended Decisions of Special Magistrates by Value Adjustment Boards in Administrative Reviews
12D-9.032	Final Decisions
12D-9.033	Further Judicial Proceedings
12D-9.034	Record of the Proceeding
12D-9.035	Duty of Clerk to Prepare and Transmit Record
12D-9.036	Procedures for Petitions on Denials of Tax Deferrals
12D-9.037	Certification of Assessment Rolls
12D-9.038	Public Notice of Findings and Results of Value Adjustment Board

PURPOSE AND EFFECT: The purpose of these proposed rules is to establish uniform procedures for hearings before value adjustment boards and their special magistrates, and to consider uniform forms related to these procedures. The effect of these proposed rules is that taxpayers who petition property tax matters to Value Adjustment Boards have access to comprehensive information about the procedures that govern the hearing of their petitions.

SUMMARY: a) Proposed Rule 12D-9.001, Florida Administrative Code (F.A.C.), enumerates the specific rights regarding value adjustment board (the board) procedures that are granted by law to taxpayers; b) Proposed Rule 12D-9.002, F.A.C., discusses how a taxpayer can request to meet with the property appraiser about an assessment; c) Proposed Rule 12D-9.003, F.A.C., defines words and terms used through the rules; d) Proposed Rule 12D-9.004, F.A.C., establishes criteria and procedures for membership on the board; e) Proposed Rule 12D-9.005, F.A.C., discusses duties of the board regarding holding meetings, sessions of the board, proper noticing of meetings, and maintaining administrative and staff independence from property appraiser and tax collector offices; f) Proposed Rule 12D-9.006, F.A.C., identifies who must serve as clerk of the Value Adjustment Board; g) Proposed Rule 12D-9.007, F.A.C., explains the duties that are performed by the clerk of the board; h) Proposed Rule 12D-9.008, F.A.C., discusses procedures regarding the appointment of legal counsel to help the board; i) Proposed Rule 12D-9.009, F.A.C., explains the role that legal counsel has regarding advising the board; j) Proposed Rule 12D-9.010, F.A.C., specifies the appointment, qualifications, and training of special magistrates; k) Proposed Rule 12D-9.011, F.A.C., includes procedures regarding the role of special magistrates to act on behalf of the board for the taking of testimony and conducting orderly and fair proceedings, and issue recommended decisions on petitions; l) Proposed Rule 12D-9.012, F.A.C., discusses how the Department of Revenue provides training for special magistrates, board members, and legal counsel to the board; m) Proposed Rule 12D-9.013, F.A.C., details when and how the organizational meeting is to be held and what matters to discuss; n) Proposed Rule 12D-9.014, F.A.C., provides that requirements in Chapter 194, F.S., must be met before the clerk can schedule hearings; o) Proposed Rule 12D-9.015, F.A.C., adopts a petition form to be used by petitioners for requesting a hearing before a value adjustment board, specifies procedures for timely or untimely submission of such petition, filing fees, and explains how to establish good cause for considering a late-filed petition; p) Proposed Rule 12D-9.016, F.A.C., defines what constitutes the "filing" of documents, explains how documents other than the petition are filed, and how copies are provided to all parties; q) Proposed Rule 12D-9.017, F.A.C., specifies procedures regarding ex parte communications; r) Proposed Rule 12D-9.018, F.A.C., discusses the right of a taxpayer to be represented by an agent or attorney; s) Proposed Rule 12D-9.019, F.A.C., establishes procedures regarding the scheduling of hearings and rescheduled hearings, and notification to all parties regarding such scheduling; t) Proposed Rule 12D-9.020, F.A.C., contains procedures for the exchange of evidence between the petitioner and the property appraiser; u) Proposed Rule 12D-9.021, F.A.C., specifies procedures for handling withdrawn or settled petitions; v) Proposed Rule 12D-9.022 F.A.C., provides procedures for the disqualification or recusal of special magistrates; w) Proposed Rule 12D-9.023, F.A.C., establishes how a hearing is controlled and provides for ensuring that parties are given adequate time for their petition; x) Proposed Rule 12D-9.024, F.A.C., explains procedures for determining at a hearing if a petition is contested or uncontested, how to handle the failure of a petitioner or the property appraiser to appear at a scheduled hearing, and the content of a required opening statement that must be made by the board or the board's special

magistrate; y) Proposed Rule 12D-9.025, F.A.C., discusses procedures for handling evidence during the hearing, the testimony of witnesses, and how, with the agreement of all parties, a party can be given additional time to collect and provide additional information; z) Proposed Rule 12D-9.026, F.A.C., contains procedures for holding a hearing using electronic media, if agreed to by all parties; aa) Proposed Rule 12D-9.027, F.A.C., outlines steps for considering evidence, developing conclusions and producing written decisions for valuations; bb) Proposed Rule 12D-9.028, F.A.C., explains procedures for a taxpayer to file a petition asking the board to review a denial of assessment limitation difference transfers or the amount of such transfer; cc) Proposed Rule 12D-9.029, F.A.C., establishes procedures for a board or special magistrate to send the property appraiser a request to review a just value assessment or a classified use valuation that is the subject of a petition based on specific conditions, including the procedures used by the property appraiser to review the request, time frames for the review, duties of the board clerk, and the scheduling of a continuation hearing if requested by a petitioner; dd) Proposed Rule 12D-9.030, F.A.C., discusses requirements concerning the recommended decisions of special magistrates; ee) Proposed Rule 12D-9.031, F.A.C., specifies the procedures that boards must follow when considering the recommended decisions of their special magistrates; ff) Proposed Rule 12D-9.032, F.A.C., contains procedures regarding the issuance of final decisions by boards on petitions, including procedures about documenting the basis for the final decision; gg) Proposed Rule 12D-9.033, F.A.C., provides that further proceedings after a board issues a final decision, and the timing of such further proceedings, are governed by specific statutes; hh) Proposed Rule 12D-9.034, F.A.C., discusses requirements about establishing records of hearings; ii) Proposed Rule 12D-9.035, F.A.C., specifies the responsibilities of board clerks regarding the preparation and transmission of board records in instances where there is circuit court review under Section 194.036, Florida Statutes; jj) Proposed Rule 12D-9.036, F.A.C., states that the procedures for handling petitions about denials of requests to participate in the tax deferral program are the same procedures contained in this rule chapter for the handling of denials of exemptions; kk) Proposed Rule 12D-9.037, F.A.C., establishes procedures for value adjustment boards to certify that the board met all requirements of applicable statutes and the Department's rules, including the form and timing of such certification and what entities receive a copy; and, ll) Proposed Rule 12D-9.038, F.A.C., directs the clerk of the board to publish an advertisement in a newspaper of general circulation informing the public of the findings and results of the board after it has heard all petitions, complaints, appeals, and disputes.

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.

RULEMAKING AUTHORITY: 193.092, 194.011(5), (6), 194.034, 195.027(1), 213.06(1) FS.

LAW IMPLEMENTED: 28.12, 50, 192.001, 192.0105, 193.074, 193.092, 193.122, 193.155, 194.011, 194.013, 194.015, 194.032, 194.034, 194.035, 194.036, 194.037, 194.171, 194.301, 195.002, 195.022, 195.027, 195.096, 196.011, 196.151, 196.193, 196.194, 197.122, 197.253, 197.301, 197.3041, 197.3047, 197.3073, 197.3079, 200.069, 213.05, 286.0105, 286.011, 475.611, Ch. 475, Part I and II FS., AGO 2002-058, AGO 2008-055, AGO 2008-056.

A HEARING WILL BE HELD AT THE DATES, TIMES AND PLACE SHOWN BELOW:

DATES AND TIMES: October 9, 2009, 9:00 a.m. – 5:00 p.m. or upon adjournment; if necessary, a second hearing will be held on October 19, 2009, 9:00 a.m. – 5:00 p.m. or upon adjournment. If the October 19, 2009 hearing is not necessary, notification of cancellation will be sent to interested parties and posted to the PTO Internet site at http://dor.myflorida.com/dor/property/vabwb/vabws.html.

PLACE: Training Room D, Building C-1, Taxworld, 5050 W. Tennessee Street, Tallahassee, Florida. The public can also participate in the hearing through a simultaneous electronic broadcast of this event by the Department of Revenue using WebEx, digital video production, and conference calling technology. The requirements to participate are access to the Internet and a phone. The public can participate in this electronic hearing by accessing the broadcast from their home or office.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Janice Forrester at (850)922-7945. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Janice Forrester, Tax Law Specialist, Property Tax Oversight Program, Department of Revenue, P.O. Box 3000, Tallahassee, Florida 32315-3000, telephone (850)922-7945, ForrestJ@dor.state.fl.us.

THE FULL TEXT OF THE PROPOSED RULES IS:

PART I TAXPAYER RIGHTS; INFORMAL CONFERENCE PROCEDURES; COMPOSITION OF THE VALUE ADJUSTMENT BOARD; APPOINTMENT OF THE CLERK; APPOINTMENT OF LEGAL COUNSEL TO THE BOARD; APPOINTMENT OF SPECIAL MAGISTRATES

12D-9.001 Taxpayer Rights in Value Adjustment Board Proceedings.

(1) Taxpayers are granted specific rights by Florida law concerning value adjustment board procedures.

(2) These rights include:

(a) The right to be notified of the assessment of each taxable item of property in accordance with the notice provisions set out in Florida Statutes for notices of proposed property taxes;

(b) The right to request an informal conference with the property appraiser regarding the correctness of the assessment or to petition for administrative or judicial review of property assessments. An informal conference with the property appraiser is not a prerequisite to filing a petition for administrative review or an action for judicial review;

(c) The right to file a petition on a form provided by the county that is substantially the same as the form prescribed by the department or to file a petition on the form provided by the department for this purpose;

(d) The right to state on the petition the approximate time anticipated by the taxpayer to present and argue his or her petition before the board;

(e) The right to be sent prior notice of the date for the hearing of the taxpayer's petition by the value adjustment board and the right to the hearing within a reasonable time of the scheduled hearing;

(f) The right to request and be granted a change in the hearing date as described in this chapter;

(g) The right to be notified of the date of certification of the county's tax rolls and to be sent a property record card if requested;

(h) The right to represent himself or herself or to be represented by an attorney or an agent;

(i) The right to have evidence presented and considered at a public hearing;

(j) The right to have witnesses sworn and cross-examined and to examine individuals employed by the board who present testimony;

(k) The right to be sent a timely written decision by the value adjustment board containing findings of fact and conclusions of law and reasons for upholding or overturning the determination of the property appraiser or tax collector;

(l) The right to advertised notice of all board actions, including appropriate narrative and column descriptions, in brief and nontechnical language;

(m) The right to bring an action in circuit court to appeal a value adjustment board valuation decision or decision to disapprove a classification, exemption, portability assessment difference transfer, or to deny a tax deferral or to impose a tax penalty;

(n) The right to have federal tax information, ad valorem tax returns, social security numbers, all financial records produced by the taxpayer and other confidential taxpayer information, kept confidential;

(o) The right to limiting the property appraiser's access to a taxpayer's records to only those instances in which it is determined that such records are necessary to determine either the classification or the value of taxable nonhomestead property;

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 192.0105, 193.074, 194.011, 194.013, 194.015, 194.032, 194.034, 194.035, 194.036, 194.301, 195.002, 195.027, 195.096, 196.011, 196.151, 196.193, 196.194, 197.122, 213.05 FS. History–New _____.

12D-9.002 Informal Conference Procedures.

(1) Any taxpayer who objects to the assessment placed on his or her property, including the assessment of homestead property at less than just value, shall have the right to request an informal conference with the property appraiser.

(2) The property appraiser or a member of his or her staff shall confer with the taxpayer regarding the correctness of the assessment.

(3) At the conference the taxpayer shall present facts that he or she considers supportive of changing the assessment and the property appraiser or his or her representative shall present facts that the property appraiser considers to be supportive of the assessment.

(4) The request for an informal conference is not a prerequisite to administrative or judicial review of property assessments. The petitioner should file a petition, while requesting an informal conference, to preserve his or her right to an administrative hearing. Requesting or participating in an informal conference does not extend the petition filing deadline.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 213.05 FS. History–New _____.

12D-9.003 Definitions.

(1) "Agent" means any person, including a family member of the taxpayer, who is authorized to represent the taxpayer before the board.

(2) "Board" means the local value adjustment board.

(3) "Clerk" means the clerk of the local value adjustment board.

(4) "Department," unless otherwise designated, means the Department of Revenue.

(5) "Hearing" means any hearing relating to a petition before a value adjustment board or special magistrate, regardless of whether the parties are physically present or telephonic or other electronic media is used to conduct the hearing, but shall not include a proceeding to act upon,

consider or adopt special magistrates' recommended decisions at which no testimony or comment is taken or heard from a party.

(6) "Petitioner" means the taxpayer or the taxpayer as represented by an agent or attorney.

(7) "Taxpayer" means the person or other legal entity in whose name property is assessed, including an agent of a timeshare period titleholder, and includes exempt owners of property, for purposes of this chapter.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 192.001, 194.011, 194.013, 194.015, 194.032, 194.034, 194.035, 194.036, 194.171, 195.022 FS., AGO 2002-058. History–New _____.

12D-9.004 Composition of the Value Adjustment Board.

(1) Every county shall have a value adjustment board which consists of:

(a) Two members of the governing body of the county, elected by the governing body from among its members, one of whom shall be designated as the chairperson of the value adjustment board;

(b) One member of the school board of the county, elected by the school board from among its members;

(c) Two citizen members;

1. One who owns homestead property in the county appointed by the county's governing body;

2. One who owns a business that occupies commercial space located within the school district appointed by the school board of the county. This person must, during the entire course of service, own a commercial enterprise, occupation, profession, or trade conducted from a commercial space located within the school district and need not be the sole owner.

3. Citizen members must not be:

a. A member or employee of any taxing authority in this state; or

b. A person who represents property owners, property appraisers, tax collectors, or taxing authorities in any administrative or judicial review of property taxes imposed on real or tangible personal property in this state.

4. Citizen members shall be appointed in a manner to avoid conflicts of interest or the appearance of conflicts of interest.

(2)(a) Each elected member of the value adjustment board shall serve on the board until he or she is replaced by a successor elected by his or her respective governing body or school board or is no longer a member of the governing body or school board of the county.

(b) When an elected member of the value adjustment board ceases being a member of the governing body or school board whom he or she represents, that governing body or school board must elect a replacement.

(c) When the citizen member of the value adjustment board appointed by the governing body of the county is no longer an owner of homestead property within the county, the governing body must appoint a replacement.

(d) When the citizen member appointed by the school board is no longer an owner of a business occupying commercial space located within the school district. the school board must appoint a replacement.

(3)(a) At the same time that it selects a primary member of the value adjustment board, the governing body or school board may select an alternate to serve in place of the primary member as needed. The method for selecting alternates is the same as that for selecting the primary members.

(b) At any time during the value adjustment board process the chair of the county governing body or the chair of the school board may appoint a temporary replacement for its elected member of the value adjustment board or for a citizen member it has appointed to serve on the value adjustment board.

(4)(a) To have a quorum of the value adjustment board, the members of the board who are present must include at least:

1. One member of the governing body of the county; and

2. One member of the school board; and

3. One of the two citizen members.

(b) The quorum requirements of Section 194.015, Florida Statutes, may not be waived by anyone, including the petitioner.

(5) The value adjustment board cannot hold its organizational meeting until all members of the board are appointed even if the number and type of members appointed are sufficient to constitute a quorum.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 213.05 FS., AGO 2008-056. History–New _____.

12D-9.005 Duties of the Board.

(1)(a) The value adjustment board shall meet not earlier than 30 days and not later than 60 days after the mailing of the notice provided in Section 194.011(1), Florida Statutes; however, no board hearing shall be held before approval of all or any part of the county's assessment rolls by the Department of Revenue. The board shall meet for the following purposes:

1. Hearing petitions relating to assessments filed pursuant to Section 194.011(3), Florida Statutes.

2. Hearing complaints relating to homestead exemptions as provided for under Section 196.151, Florida Statutes.

3. Hearing appeals from exemptions denied, or disputes arising from exemptions granted, upon the filing of exemption applications under Section 196.011, Florida Statutes.

4. Hearing appeals concerning ad valorem tax deferrals and classifications.

(b) The board may not meet earlier than July 1 to hear appeals pertaining to the denial of exemptions, agricultural and high-water recharge classifications, classifications as historic property used for commercial or certain nonprofit purposes, and deferrals.

(c) The board shall remain in session until its duties are completed concerning all assessment rolls or parts of assessment rolls. The board may temporarily recess from time to time but shall reconvene when necessary in the normal course of business or to hear petitions, complaints, or appeals and disputes filed upon that roll or portion of the roll finally approved which had been disapproved pursuant to Section 193.1142(2), Florida Statutes.

(2)(a) Value adjustment boards may have additional internal operating procedures, not rules, that do not conflict with, change, expand, suspend, or negate the rules adopted in this rule chapter or other provisions of law, and only to the extent indispensable for the efficient operation of the value adjustment board process. The board may publish fee schedules adopted by the board.

(b) These internal operating procedures may include methods for creating the verbatim record, provisions for parking by participants, assignment of hearing rooms, compliance with the Americans with Disabilities Act, and other ministerial type procedures.

(c) The board shall not provide notices or establish a local procedure instructing petitioners to contact the property appraiser's or tax collector's office or any other agency with questions about board hearings or procedures. The board, legal counsel to the board, board clerk, special magistrate or other board representative shall not otherwise enlist the property appraiser's or tax collector's office to perform administrative functions for the board. Personnel performing any of the board's functions shall be independent of the property appraiser's and tax collector's office. This section shall not prevent the property appraiser from providing data to assist the clerk with the notice of tax impact.

(3) The board must ensure that all board meetings are duly noticed under Section 286.011, Florida Statutes, and are held in accordance with the law.

(4) Other duties of value adjustment boards are set forth in other areas of Florida law. Value adjustment boards shall perform all duties required by law and shall abide by all limitations on their authority as provided by law.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 192.0105, 194.011, 194.015, 194.032, 194.034, 194.035, 194.037 FS. History–New _____.

12D-9.006 Clerk of the Value Adjustment Board.

(1) The clerk of the governing body of the county shall be the clerk of the value adjustment board.

(2) The clerk may delegate the day to day responsibilities for the board to a member of his or her staff but is ultimately responsible for the operation of the board.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 28.12, 192.001, 194.011, 194.015, 194.032, 213.05 FS. History–New _____.

12D-9.007 Role of the Clerk of the Value Adjustment Board.

(1) It is the clerk's responsibility to verify through board legal counsel that the value adjustment board meets all of the requirements for the organizational meeting before the board or special magistrates hold hearings. If the clerk determines that any of the requirements were not met he or she shall contact the legal counsel to the board or the chair of the board regarding such deficiencies and cancel any scheduled hearings until such time as the requirements are met.

(2) The clerk shall make petition forms available to the public upon request.

(3) The clerk shall receive and acknowledge completed petitions and promptly furnish a copy of all completed and timely filed petitions to the property appraiser or tax collector.

(4) The clerk shall prepare a schedule of appearances before the board based on petitions timely filed with him or her. If the petitioner has indicated on the petition an estimate of the amount of time he or she will need to present and argue the petition, the clerk must take this estimate into consideration when scheduling the hearing.

(5) No less than 25 calendar days prior to the day of the petitioner's scheduled appearance before the board, the clerk must notify the petitioner of the date and time scheduled for the appearance. The clerk shall simultaneously notify the property appraiser or tax collector. If, on the taxpayer's petition, he or she requests a copy of the property record card, the clerk shall obtain a copy of the property record card from the property appraiser and provide it to the petitioner no later than with the notice of the scheduled time of his or her appearance.

(6) If an incomplete petition, which includes a petition not accompanied by the required filing fee, is received within the time required, the clerk shall notify the petitioner and give the petitioner an opportunity to complete the petition within 10 calendar days. Such petition shall be timely if completed and filed including payment of the fee if previously unpaid within the time frame provided in the clerk's notice of incomplete petition.

(7) In counties with a population of more than 75,000, the clerk shall provide notification annually to qualified individuals or their professional associations of opportunities to serve as special magistrates.

(8) The clerk shall ensure public notice of and access to all hearings. Hearings must be conducted in facilities that are clearly identified for such purpose and are freely accessible to the public while hearings are being conducted.

(9) The clerk shall schedule hearings to allow sufficient time for evidence to be presented and considered and to allow for hearings to begin at their scheduled time. The clerk shall advise the chair of the board if the board's tentative schedule for holding hearings is insufficient to allow for proper scheduling.

(10) The clerk shall timely notify the petitioner by first class mail of the decisions of the board and shall otherwise notify the property appraiser or tax collector of such mailing. In counties using special magistrates the clerk shall also make available to both parties as soon as practicable a copy of the recommended decision of the special magistrate by mail or electronic means. No party shall have access to decisions prior to any other party.

(11) After the value adjustment board has decided all petitions, complaints, appeals and disputes, the clerk shall make public notice of the findings and results of the board in the manner prescribed in Section 194.037, Florida Statutes, and by the department.

(12) The clerk is the official record keeper for the board and shall maintain a record of the proceedings which shall consist of:

(a) All filed documents;

(b) A verbatim record of any hearing;

(c) All tangible exhibits and documentary evidence presented;

(d) Any meeting minutes; and

(e) Any other documents or materials presented on the record by the parties or by the board or special magistrate.

The record shall be maintained for four years after the final decision has been rendered by the board if no appeal is filed in circuit court or for five years if an appeal is filed or if requested by one of the parties, until the final disposition of any subsequent judicial proceeding relating to the property.

(13) The clerk shall make available to the public copies of all additional internal operating procedures and forms of the board or special magistrates described in Rule 12D-9.005, F.A.C., and shall post any such procedures and forms on the clerk's website, if any.

(14) The clerk shall provide notification of appeals taken with respect to property located within a municipality to the chief executive officer of each municipality as provided in Section 193.116, Florida Statutes.

(15) The clerk shall have such other duties as set forth elsewhere in these rules and Rule Chapter 12D-10, F.A.C., and in the Florida Statutes and as assigned by the board not inconsistent with law.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.013, 194.015, 194.032, 194.034, 194.035, 194.036, 195.022, 213.05 FS. History–New _____.

12D-9.008 Appointment of Legal Counsel to the Value Adjustment Board.

(1) Each value adjustment board must appoint private legal counsel to assist the board.

(2) This legal counsel must be an attorney in private practice. The use of an attorney employed by government is prohibited. Counsel must have practiced law for over five years and meet the requirements of Section 194.015, Florida Statutes.

(3) An attorney may represent more than one value adjustment board.

(4) An attorney may represent a value adjustment board even if another member of the attorney's law firm represents one of the enumerated parties so long as the representation is not before the value adjustment board.

(5) Legal counsel should avoid conflicts of interest or the appearance of a conflict of interest in their representation.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 213.05 FS., AGO 2008-055, History–New _____.

12D-9.009 Role of Legal Counsel to the Board.

(1) The legal counsel to the board shall have the responsibilities listed below consistent with the provisions of law.

(a) The primary role of the legal counsel to the board shall be to advise the board on all aspects of the value adjustment board review process to ensure that all actions taken by the board and its appointees meet the requirements of law.

(b) Legal counsel to the board shall advise the board in a manner that will promote and maintain a high level of public trust and confidence in the administrative review process.

(c) The legal counsel to the board is not an advocate for either party in a value adjustment board proceeding but instead ensures that the proceedings are fair and consistent with the law.

(d) Legal counsel to the board shall advise the board of the actions necessary for compliance with the law.

(e) Legal counsel to the board shall advise the board regarding:

1. Composition and quorum requirements;

2. Statutory training and qualification requirements for special magistrates and members of the board;

3. Legal requirements for recommended decisions and final decisions;

4. Public meeting and open government laws; and

5. Any other duties, responsibilities, actions or requirements of the board consistent with the laws of this state.

(f) Legal counsel to the board shall review and respond to written complaints alleging noncompliance with the law by the board, special magistrates, clerk, and the parties. The legal counsel shall send a copy of the complaint along with the response to the department.

(2) The legal counsel to the board shall, upon appointment, send his or her contact information, which shall include his or her name, mailing address, telephone number, fax number, and e-mail address, to the department by mail, fax, or e-mail to:

Department of Revenue
Property Tax Oversight Program
Attn: Director
P. O. Box 3000
Tallahassee, FL 32315-3000.
Fax Number: 850-922-7957
Email Address: VAB@dor.state.fl.us

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 213.05 FS. History–New _____.

12D-9.010 Appointment of Special Magistrates to the Value Adjustment Board.

(1) In counties with populations of more than 75,000, the value adjustment board shall appoint special magistrates to take testimony and make recommendations on petitions filed with the value adjustment board. Special magistrates shall be selected from a list maintained by the clerk of qualified individuals who are willing to serve.

(2) In counties with populations of 75,000 or less, the value adjustment board shall have the option of using special magistrates. The department shall make available to such counties a list of qualified special magistrates.

(3) A person does not have to be a resident of the county in which he or she serves as a special magistrate.

(4) The special magistrate must meet the following qualifications:

(a) A special magistrate must not be an elected or appointed official or employee of the county.

(b) A special magistrate must not be an elected or appointed official or employee of a taxing jurisdiction or of the State.

(c) During a tax year in which a special magistrate serves, he or she must not represent any party before the board in any administrative review of property taxes.

(d) All special magistrates must meet the qualifications specified in Section 194.035, Florida Statutes.

1. A special magistrate appointed to hear issues of exemptions, classifications, and portability assessment difference transfers shall be a member of The Florida Bar with no less than five years experience in the area of ad valorem taxation and having received training provided by the department, or with no less than three years of such experience and having completed training provided by the department.

2. A special magistrate appointed to hear issues regarding the valuation of real estate shall be a state certified real estate appraiser with not less than five years experience in real property valuation and having received training provided by the department, or with no less than three years of such experience and having completed training provided by the department. A real property valuation special magistrate must be certified under Chapter 475, Part II, Florida Statutes.

a. A Florida certified residential appraiser appointed by the value adjustment board shall only hear petitions on the just valuation of residential real property of one to four residential units and shall not hear petitions on other types of real property.

b. A Florida certified general appraiser appointed by the value adjustment board may hear petitions on the just valuation of any type of real property.

3. A special magistrate appointed to hear issues regarding the valuation of tangible personal property shall be a designated member of a nationally recognized appraiser's organization with not less than five years experience in tangible personal property valuation and having received training provided by the department, or with no less than three years of such experience and having completed training provided by the department.

4. All special magistrates shall attend or receive an annual training program provided by the department. Special magistrates substituting two years of experience must show that they have completed the training by taking a written examination provided by the department. A special magistrate must receive or complete any required training prior to holding hearings.

(5)(a) The value adjustment board or board legal counsel must verify a special magistrate's qualifications before appointing the special magistrate.

(b) The selection of a special magistrate must be based solely on the experience and qualification of such magistrate, and must not be influenced by any party, or prospective party, to a board proceeding or by any such party with an interest in the outcome of such proceeding.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 194.035, 195.022, 213.05, Chapter 475, Part II FS. History–New _____.

12D-9.011 Role of Special Magistrates to the Value Adjustment Board.

(1) The purpose of the special magistrate is to conduct hearings, take testimony and make recommendations to the board regarding petitions filed before the board. In carrying out these duties the special magistrate shall:

(a) Accurately and completely preserve all testimony, documents received, and evidence admitted for consideration;

(b) At the request of either party, administer the oath upon the property appraiser or tax collector, each petitioner and all witnesses testifying at a hearing;

(c) Conduct all hearings in accordance with the rules prescribed by the department and the laws of the state; and

(d) Make recommendations to the board which shall include proposed findings of fact, proposed conclusions of law, and the reasons for upholding or overturning the determination of the property appraiser or tax collector;

(2) The special magistrate shall perform other duties as set out in the rules of the department or Florida law.

(3) When an assessment is determined to be incorrect and the record contains competent substantial evidence for establishing value, an appraiser special magistrate is required to establish a revised value for the petitioned property. In establishing the revised value when authorized by law, the board or special magistrate is not restricted to any specific value offered by the parties.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 194.035, 195.022, 213.05, Chapter 475, Part II FS. History–New _____.

12D-9.012 Training of Special Magistrates, Value Adjustment Board Members and Legal Counsel.

(1) The department shall provide and conduct training for special magistrates at least once each state fiscal year available in at least five locations throughout the state. Such training shall emphasize:

(a) The law that applies to the administrative review of assessments;

(b) Taxpayer rights in the administrative review process;

(c) The composition and operation of the value adjustment board;

(d) The roles of the board clerk, the board attorney, and special magistrates

(e) Procedures for conducting hearings;

(f) Administrative reviews of just valuations, classified use valuations, property classifications, exemptions, and portability assessment differences;

(g) The review, admissibility, and consideration of evidence;

(h) Requirements for written decisions; and

(i) The department's standard measures of value, including the guidelines for real and tangible personal property.

(2) The training shall be open to the public.

(3) Before any hearings are conducted, in those counties that do not use special magistrates, all members of the board or the board's legal counsel must receive the training, including any updated modules, before conducting hearings, but need not complete the training examinations, and shall provide a statement acknowledging receipt of the training to the clerk.

(4)(a) Each special magistrate that has five years of experience and each board member or the legal counsel to the board must receive the training, including any updated modules, before conducting hearings, but need not complete the training examinations, and shall provide a statement acknowledging receipt of the training to the clerk.

(b) Each special magistrate that has three years of experience must complete the training including any updated modules and examinations, and receive from the department a certificate of completion, before conducting hearings and shall provide a copy of the certificate of completion of the training and examinations, including any updated modules, to the clerk.

(5) The department's training is the official training for special magistrates regarding administrative reviews. Clerks and legal counsel to the boards may provide orientation to the special magistrates relating to local operating or ministerial procedures only. Such orientation shall be open to the public for observation.

(6) Meetings or orientations for special magistrates, for any instructional purposes relating to procedures for hearings, handling or consideration of petitions, evidence, worksheets, forms, decisions or related computer files, must be open to the public for observation. Such meetings or orientations must be reasonably noticed to the public in the same manner as an organizational meeting of the board.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 194.035, 195.022, 213.05, Chapter 475, Part II FS. History–New _____.

12D-9.013 Organizational Meeting of the Value Adjustment Board.

(1) The board shall annually hold one or more organizational meetings, at least one of which shall meet the requirements of this section. The board shall hold this organizational meeting prior to the holding of value adjustment board hearings. The board shall provide reasonable notice of each organizational meeting and such notice shall include the date, time, location, purpose of the meeting, and information required by Section 286.0105, Florida Statutes. At one organizational meeting the board shall:

(a) Introduce the members of the board and provide contact information;

(b) Introduce the clerk of the board, approve or ratify any designee of the clerk and provide the clerks contact information;

(c) Appoint or ratify the private legal counsel to the board and provide the legal counsel's contact information;

(d) Appoint or ratify special magistrates, if the board will be using them for that year;

(e) Make available to the public, special magistrates and board members, Rule Chapter 12D-9, F.A.C., containing the uniform rules of procedure for hearings before value adjustment boards and special magistrates (if applicable), and the associated forms that have been adopted by the department;

(f) Make available to the public, special magistrates and board members, Rule Chapter 12D-10, F.A.C., containing the rules applicable to the requirements for hearings and decisions;

(g) Make available to the public, special magistrates and board members the requirements of Florida's Government in the Sunshine / open government laws including information on where to obtain the current Government-In-The-Sunshine manual; and

(h) Discuss, take testimony on and adopt or ratify with any required revision or amendment any local administrative procedures and forms of the board. Such procedures must be ministerial in nature and not be inconsistent with governing statutes, case law, attorney general opinions or rules of the department. All local administrative procedures and forms of the board or special magistrates shall be made available to the public and shall be accessible on the clerk's website, if any.

(i) Discuss general information on Florida's property tax system, respective roles within this system, taxpayer opportunities to participate in the system, and property taxpayer rights.

(j) Adopt or ratify by resolution any filing fee for petitions for that year, in an amount not to exceed $15.

(2) The board shall announce the tentative schedule for the value adjustment board taking into consideration the number of petitions filed, the possibility of the need to reschedule and the requirement that the board stay in session until all petitions have been heard. The board is not authorized to set and publish a deadline for late filed petitions.

(3) The board may hold additional meetings for the purpose of addressing administrative matters.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 194.032, 194.034, 194.035, 213.05, 286.011, 286.0105 FS. History–New _____.

12D-9.014 Prehearing Checklist.

(1) The clerk shall not allow the holding of scheduled hearings until the board legal counsel has verified that all requirements in Chapter 194, Florida Statutes, and department rules, were met as follows:

(a) The composition of the board is as provided by law;

(b) Legal counsel to the board has been appointed as provided by law;

(c) Legal counsel to the board meets the requirements of Section 194.015, Florida Statutes;

(d) No board members represent other government entities or taxpayers in any administrative or judicial review of property taxes, and citizen members are not members or employees of a taxing authority;

(e) In a county that does not use special magistrates, either all board members have received the department's training or legal counsel to the board has received the department's training;

(f) The organizational meeting, as well as any other board meetings, will be or were noticed in accordance with Section 286.011, Florida Statutes, and will be or were held in accordance with law;

(g) The department's uniform value adjustment board procedures, consisting of this rule chapter, were made available at the organizational meeting and copies were provided to special magistrates and board members;

(h) The department's uniform policies and procedures manual is available on the existing website of the clerk, if the clerk has a website;

(i) The qualifications of special magistrates were verified, including that special magistrates received the department's training, and that special magistrates with less than five years of required experience successfully completed the department's training including any updated modules and an examination, and were certified;

(j) The selection of special magistrates was based solely on proper experience and qualifications and neither the property appraiser nor any petitioners influenced the selection of special magistrates. This provision does not prohibit the board from considering any written complaint filed with respect to a special magistrate by any party or citizen;

(k) All procedures and forms of the board or special magistrate are in compliance with Chapter 194, Florida Statutes, and this rule chapter;

(l) The board is otherwise in compliance with Chapter 194, Florida Statutes, and this rule chapter; and

(m) Notice has been given to the chief executive officer of each municipality as provided in Section 193.116, Florida Statutes.

(2) The clerk shall notify the counsel to the board and the board chair of any action needed to comply with subsection (1).

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 194.032, 194.034, 194.035, 213.05 FS. History–New _____.

PART II – PETITIONS; REPRESENTATION OF THE TAXPAYER; SCHEDULING AND NOTICE OF A HEARING; EXCHANGE OF EVIDENCE; WITHDRAWN OR SETTLED PETITIONS; HEARING PROCEDURES; DISQUALIFICATION OR RECUSAL; EX PARTE COMMUNICATION PROHIBITION; RECORD OF THE PROCEEDING; PETITIONS ON TRANSFER OF "PORTABILITY" ASSESSMENT DIFFERENCE; REMANDING ASSESSMENTS; RECOMMENDED DECISIONS; CONSIDERATION AND ADOPTION OF RECOMMENDED DECISIONS; FINAL DECISIONS; FURTHER JUDICIAL PROCEEDINGS.

12D-9.015 Petition; Form and Filing Fee.

(1)(a) For the purpose of requesting a hearing before the value adjustment board, the department prescribes Form DR-486, hereby incorporated by reference.

(b) In accordance with Section 194.011(3), Florida Statutes, the department is required to prescribe petition forms. The department will not approve any local version of this form that contains substantive content that varies from the department's prescribed form. Any requests under Section 195.022, Florida Statutes, for approval from the department to use forms for petitions that are not identical to the department's form shall be by written board action or by written and signed request from the board chair or legal counsel to the board.

(2) Content of Petition. Petition forms as adopted or approved by the department shall contain the following elements so that when filed with the clerk they shall:

(a) Describe the property by parcel number;

(b) Be sworn by the petitioner;

(c) State the approximate time anticipated by the petitioner for presenting and arguing his or her petition before the board or special magistrate and may provide dates of nonavailability for scheduling purposes if applicable;

(d) Contain a space for the petitioner to indicate on the petition form that he or she does not wish to be present and argue the petition before the board or special magistrate but would like to have their evidence considered without an appearance;

(e) Provide a check box for the petitioner to request a copy of the property record card;

(f)1. Contain a signature field to be signed by the taxpayer, or if the taxpayer is a legal entity, the employee of the legal entity with authority to file such petitions;

2. Contain a signature field to be signed by an authorized agent. If the authorized agent is subject to licensure, a space to provide identification of the licensing body and license number. If the authorized agent is not subject to licensure, for example a family member, a space to indicate the petition is accompanied by a written authorization of the taxpayer if not otherwise signed by the taxpayer;

(g) A space for the petitioner to indicate if the property is four or less residential units; or other property type; provided the clerk shall accept the petition even if this space is not filled in;-and

(h) A statement that a tangible personal property assessment may not be contested until a return required by Section 193.052, Florida Statutes, is filed.

(3) The petition form shall provide notice to the petitioner that the person signing the petition becomes the agent of the taxpayer for the purpose of serving process to obtain personal jurisdiction over the taxpayer for the entire value adjustment board proceeding, including any appeals of a board decision by the property appraiser or tax collector.

(4) The petition form shall provide notice to the petitioner of his or her right to an informal conference with the property appraiser and that such conference is not a prerequisite to filing a petition nor does it alter the time frame for filing a timely petition.

(5) The department, the clerk, and the property appraiser or tax collector shall make available to petitioners the blank petition form adopted or approved by the department. The department prescribes the Form DR-486 series, for this purpose, incorporated in Rule 12D-16.002, F.A.C., by reference.

(6) If the taxpayer or agent's name, address, telephone, or similar contact information on the petition changes after filing the petition and before the hearing, the taxpayer or agent shall notify the clerk in writing.

(7) Filing Fees. By resolution of the value adjustment board, a petition shall be accompanied by a filing fee to be paid to the clerk of the value adjustment board in an amount determined by the board not to exceed $15 for each separate parcel of property, real or personal covered by the petition and subject to appeal.

(a) Only a single filing fee shall be charged to any particular parcel of property despite the existence of multiple issues or hearings pertaining to such parcels.

(b) No filing fee shall be required with respect to an appeal from the disapproval of a timely filed application for homestead exemption or from the denial of a homestead tax deferral.

(c) For joint petitions filed pursuant to Section 194.011(3)(e) or (f), Florida Statutes, a single filing fee shall be charged. Such fee shall be calculated as the cost of the time required for the special magistrate in hearing the joint petition and shall not exceed $5 per parcel. Said fee is to be proportionately paid by affected parcel owners.

(d) The value adjustment board or its designee shall waive the filing fee with respect to a petition filed by a taxpayer who demonstrates at the time of the filing by submitting with the petition documentation issued by the Department of Children

and Family Services that the petitioner is currently an eligible recipient of temporary assistance under Chapter 414, Florida Statutes.

(e) All filing fees shall be paid to the clerk at the time of filing. Any petition not accompanied by the required filing fee will be deemed incomplete.

(8) An owner of contiguous, undeveloped parcels may file a single joint petition if the property appraiser determines such parcels are substantially similar in nature. A condominium association, cooperative association, or any homeowners' association as defined in Section 723.075, Florida Statutes, with approval of its board of administration or directors, may file with the value adjustment board a single joint petition on behalf of any association members who own parcels of property which the property appraiser determines are substantially similar with respect to location, proximity to amenities, number of rooms, living area, and condition. The property appraiser shall provide the petitioner with such determination upon request by the petitioner. The petitioner must obtain the determination from the property appraiser prior to filing the petition and must file the determination provided and completed by the property appraiser with the petition.

(9)(a) The clerk shall accept for filing any completed petition that is timely submitted on a form approved by the department, with payment if required. If an incomplete petition is received, the clerk shall notify the petitioner and give the petitioner an opportunity to complete the petition within 10 calendar days. Such completed petition shall be timely if completed and filed within the time frame provided in the clerk's notice.

(b) A "completed" petition is one that provides information for all the required elements that are displayed on the department's form, and is accompanied by the appropriate filing fee if required.

(c) The clerk may rely on the licensure information provided by a licensed agent, or written authorization provided by an unlicensed agent, in accepting the petition.

(10) Timely Filing of Petitions. Petitions related to valuation issues may be filed at any time during the taxable year on or before the 25th day following the mailing of the notice of proposed property taxes. Other petitions may be filed as follows:

(a) With respect to issues involving the denial of an exemption on or before the 30th day following the mailing of the written notification of the denial of the exemption on or before July 1 of the year for which the application was filed;

(b) With respect to issues involving the denial of an agricultural classification application, on or before the 30th day following the mailing of the notification in writing of the denial of the agricultural classification on or before July 1 of the year for which the application was filed;

(c) With respect to issues involving the denial of a high-water recharge classification application on or before the 30th day following the mailing of the notification in writing of the denial of the high-water recharge classification on or before July 1 of the year for which the application was filed;

(d) With respect to issues involving the denial of a historic property used for commercial or certain nonprofit purposes classification application, on or before the 30th day following the mailing of the notification in writing of the denial of the classification on or before July 1 of the year for which the application was filed;

(e) With respect to issues involving the denial of a homestead tax deferral, on or before the 30th day following the mailing of the notification in writing of the denial of the deferral application or on or before the 20th day following receipt of the notification, whichever date is later.

(f) With respect to exemption claims relating to an exemption that is not reflected on the notice of property taxes, including late filed exemption claims, on or before the 25th day following the mailing of the notice of proposed property taxes, or on or before the 30th day following the mailing of the written notification of the denial of the exemption, whichever date is later.

(g) With respect to penalties imposed for filing incorrect information relating to tax deferrals for homestead, for recreational and commercial working waterfronts or for affordable rental housing properties, within 30 days after the penalties are imposed.

(11)(a) Late Filed Petitions. The board may not extend the time for filing a petition.

(b) The clerk shall accept but not schedule for hearing a petition submitted to the board after the statutory deadline has expired, and shall submit the petition to the board for good cause consideration if the petition is accompanied by a written explanation for the delay in filing. Unless scheduled together or by the same notice, the decision regarding good cause for late filing of the petition must be made before a hearing is scheduled, and the parties shall be notified of such decision. The board is authorized to require good cause hearings before good cause determinations are made.

(c) The clerk shall forward a copy of completed but untimely filed petitions to the property appraiser or tax collector at the time they are received or upon the determination of good cause.

(d) The board or a board designee, which includes the board legal counsel or a special magistrate, shall determine whether the petitioner has demonstrated, in writing, good cause justifying consideration of the petition. If the board or a board designee determines that the petitioner has demonstrated good cause, the clerk shall accept the petition for filing and so notify the petitioner and the property appraiser or the tax collector.

(e) If the board or a board designee determines that the petitioner has not demonstrated good cause, the clerk shall notify the petitioner and the property appraiser or tax collector.

(12) Acknowledgement of Timely Filed Petitions. The clerk shall accept all completed petitions, as defined by statute and subsection (2) of this rule. Upon receipt of a completed and filed petition, the board clerk shall provide to the petitioner an acknowledgment of receipt of such petition and shall provide to the property appraiser or tax collector a copy of the petition. If, in the petition, the petitioner requested a copy of the property record card, the property appraiser shall forward a copy of the property record card to the clerk. The clerk shall then provide to the petitioner a copy of the property record card, along with the notice of hearing.

(13) The clerk shall send the notice of hearing such that it will be received by the petitioner no less than twenty-five (25) calendar days prior to the day of such scheduled appearance. The clerk will have prima facie complied with the requirements of this section if the notice was deposited in the U.S. mail thirty (30) days prior to the day of such scheduled appearance.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.013, 194.032, 194.034, 195.022, 197.253, 197.301, 197.3041, 197.3047, 197.3073, 197.3079, 200.069, 213.05 FS. History–New _____.

12D-9.016 Filing and Service.

(1) In construing these rules or any order of the board, special magistrate, or a board designee, filing shall mean received by the clerk during open hours or by the board, special magistrate, or a board designee during a meeting or hearing.

(2)(a) Any hand-delivered or mailed document received by the office of the clerk after close of business as determined by the clerk shall be filed the next regular business day.

(b) If the clerk accepts documents filed by FAX or other electronic transmission, documents received on or after 11:59:59 P.M. of the day they are due shall be filed the next regular business day.

(c) Any document that is required to be filed, served, provided or made available may be filed, served, provided or made available electronically, if the board and the board clerk make such resources available, the parties agree and no party is prejudiced. Local procedure may dispense with, or use less than 3 copies if technology is available.

(3) When a party files a document with the board, other than the petition, that party shall serve copies of the document to all parties in the proceeding. When a document is filed that does not clearly indicate it has been provided to the other party, the clerk, board legal counsel, board members and special magistrates shall exercise care to ensure that a copy is provided to every party, and that no ex parte communication occurs.

(4) Any party who elects to file any document by FAX or other electronic transmission shall be responsible for any delay, disruption, or interruption of the electronic signals and accepts the full risk that the document may not be properly filed with the clerk as a result.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.013, 194.015, 194.032, 194.034, 194.035, 195.022 FS. History–New _____.

12D-9.017 Ex Parte Communication Prohibition.

(1)(a) No participant, including the petitioner, the property appraiser, the clerk, the special magistrate, a member of a value adjustment board, or other person directly or indirectly interested in the proceeding, nor anyone authorized to act on behalf of any party shall communicate with a member of the board or the special magistrate regarding the issues in the case without the other party being present or without providing a copy of any written communication to the other party.

(b) This rule shall not prohibit internal communications among the clerk, board, special magistrates, and legal counsel to the board, regarding internal operations of the board and other administrative matters. The special magistrate is specifically authorized to communicate with the board's legal counsel or clerk on legal matters or other issues regarding a petition.

(2) Any attempt by the property appraiser, tax collector, taxpayer or taxpayer's agent to provide information or discuss issues regarding a petition without the presence of the opposing party before or after the hearing, with a member of the board or the special magistrate shall be immediately placed on the record by the board member or special magistrate.

(3) The ex parte communication shall not be considered by the board or the special magistrate unless all parties have been notified about the ex parte communication, and no party objects, and all parties have an opportunity during the hearing to cross-examine, object, or otherwise address the communication.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 194.032, 194.034, 194.035 FS. History–New _____.

12D-9.018 Representation of the Taxpayer.

(1) A taxpayer has the right, at the taxpayer's own expense, to be represented by an attorney or by an agent.

(2) The individual, agent, or legal entity that signs the petition becomes the agent of the taxpayer for the purpose of serving process to obtain jurisdiction over the taxpayer for the entire value adjustment board proceedings, including any appeals of a board decision by the property appraiser or tax collector.

(3) The agent need not be a licensed individual or person with specific qualifications and may be any person, including a family member, authorized by the taxpayer to represent them before the value adjustment board.

(4) A petition filed by an unlicensed agent must also be signed by the taxpayer or accompanied by a written authorization from the taxpayer.

(5) As used in this rule chapter, the term "licensed" refers to holding a license or certification under Chapter 475, Part I or Part II, Florida Statutes, or membership in the Florida Bar.

(6) When duplicate petitions are filed on the same property, the clerk shall contact all petitioners to resolve the issue.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.013, 194.032, 194.034, 195.022, 213.05, Chapter 475, Part I and II FS. History–New .

12D-9.019 Scheduling and Notice of a Hearing.

(1)(a) The clerk shall prepare a schedule of appearances before the board or special magistrates based on timely filed petitions, and shall notify each petitioner of the scheduled time of appearance. The clerk shall simultaneously notify the property appraiser or tax collector. The clerk may electronically send this notification to the petitioner, if the petitioner indicates on his or her petition this means of communication for receiving notices, materials, and communications.

(b) When scheduling hearings, the clerk shall consider:

1. The anticipated amount of time if indicated on the petition;

2. The experience of the petitioner;

3. The complexity of the issues or the evidence to be presented;

4. The number of petitions/parcels to be heard at a single hearing;

5. The efficiency or difficulty for the petitioner of grouping multiple hearings for a single petitioner on the same day; and

6. The likelihood of withdrawals, cancellations of hearings or failure to appear.

(c) Upon request, the clerk shall consult with the petitioner and the property appraiser or tax collector to ensure that an adequate amount of time is provided for presenting and considering evidence.

(2) No hearing shall be scheduled related to valuation issues prior to completion by the governing body of each taxing authority of the public hearing on the tentative budget and proposed millage rate.

(3)(a) The notice of hearing before the value adjustment board shall be in writing, and shall be delivered by regular or certified U.S. mail or personal delivery, or in the manner requested by the petitioner on Form DR-486, so that the notice shall be received by the petitioner no less than twenty-five (25) calendar days prior to the day of such scheduled appearance. The notice of hearing form shall meet the requirements of this section and shall be subject to approval by the department. The department provides Form DR-481 as a format for the form of such notice. The notice shall include these elements:

1. The parcel number, account number or legal address of all properties being heard at the scheduled hearing;

2. The type of hearing scheduled;

3. The date and time of the scheduled hearing;

4. The time reserved, or instructions on how to obtain this information;

5. The location of the hearing, including the hearing room number if known, together with clerk contact information including office address and telephone number, for petitioners to request assistance in finding hearing rooms;

6. Instructions on how to obtain a list of the potential special magistrates for the type of petition in question;

7. A statement of the petitioner's right to participate in the exchange of evidence with the property appraiser;

8. A statement that the petitioner has the right to reschedule the hearing one time by making a written request to the clerk at least five calendar days before the hearing;

9. Instructions on bringing copies of evidence;

10. Any information necessary to comply with federal or state disability or accessibility acts; and

11. Information regarding where the petitioner may obtain a copy of the uniform rules of procedure.

(b) If the petitioner has requested a copy of the property record card, it shall be sent no later than the time at which the notice of hearing is sent. The clerk shall also publish any notice required by Section 196.194, Florida Statutes.

(4)(a) The petitioner may reschedule the hearing without good cause one time by submitting a written request to the clerk of the board no fewer than five (5) calendar days before the scheduled appearance. To calculate the five (5) days, the petitioner shall use calendar days and shall not include the day of the hearing in the calculation, and shall count backwards from the day of the hearing. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next previous day which is neither a Saturday, Sunday, or legal holiday.

(b) A petitioner may request a rescheduling of a hearing for good cause by submitting a written request to the clerk of the board before the scheduled appearance or as soon as practicable. A rescheduling for good cause shall not be treated as the one time rescheduling to which a petitioner has a right upon timely request under Section 194.032(2), Florida Statutes. Reasons for "good cause" that a clerk or board designee may consider in providing for a rescheduling are:

1. Petitioner is scheduled for a value adjustment board hearing for the same time in another jurisdiction;

2. Illness of the petitioner or a family member;

3. Death of a family member;

4. The taxpayer's hearing does not begin within a reasonable time of their scheduled hearing time; or

5. Other reasons beyond the control of the petitioner.

(c) The property appraiser or tax collector may submit a written request to the clerk to reschedule the hearing, and must provide a copy of the request to the petitioner. If there is a conflict, such as the attorney or staff needs to attend two different hearings which are scheduled at the same time, the property appraiser or tax collector may request a reschedule.

(5) A request to reschedule the hearing made by the petitioner fewer than five calendar days before the scheduled hearing may be made only for an emergency when good cause is shown. Such a request shall be made to the clerk who shall forward the request to the board or a board designee, which includes the clerk, board legal counsel or a special magistrate.

(a) If the board or a board designee determines that the request does not show good cause, the request will be denied and the board may proceed with the hearing as scheduled.

(b) If the board or a board designee determines that the request demonstrates good cause, the request will be granted. In that event, the clerk will issue a notice of hearing with the new hearing date, which shall be the earliest date that is convenient for all parties.

(c) The clerk shall give appropriate notice to the petitioner of the determination as to good cause. Form DR-485WCN is designated and may be used for this purpose. The clerk shall also appropriately notify the property appraiser or tax collector.

(d) When rescheduling hearings under this rule subsection or subsection (4) above, if the parties are unable to agree on an earlier date, the clerk is authorized to schedule the hearing and send a notice of such hearing by regular or certified U.S. mail or personal delivery, or in the manner requested by the petitioner on the petition Form DR-486, so that the notice shall be received by the petitioner no less than twenty-five (25) calendar days prior to the day of such scheduled appearance.

(6) If a hearing is rescheduled, the deadlines for the exchange of evidence shall be computed from the new hearing date, if time permits.

(7)(a) If a petitioner's hearing does not commence as scheduled, the clerk is authorized to determine good cause exists to reschedule a petition.

(b) In no event shall a petitioner be required to wait more than a reasonable time from the scheduled time to be heard. The clerk is authorized to find that a reasonable time has elapsed based on other commitments, appointments or hearings of the petitioner, lateness in the day, and other hearings waiting to be heard earlier than the petitioner's hearing with the board or special magistrate. If his or her petition has not been heard within a reasonable time, the petitioner may request to be heard immediately. If the clerk finds a reasonable time has elapsed and petitioner is not heard, the clerk shall find good cause is present and shall reschedule the petitioner's hearing.

(c) A petitioner is not required to wait any length of time as a prerequisite to filing an action in circuit court.

(8) Failure on three occasions with respect to any single tax year for the board to convene at the scheduled time of meetings of the board shall constitute grounds for removal from office by the Governor for neglect of duties.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 194.032, 194.034, 195.022, 213.05 FS. History–New_____.

12D-9.020 Exchange of Evidence.

(1) The petitioner has the option of participating in an exchange of evidence with the property appraiser. If the petitioner chooses not to participate in the evidence exchange, the petitioner may still present evidence for consideration by the board or the special magistrate. However, as described in this section, if the property appraiser asks in writing for evidence before the hearing in connection with a filed petition, and the petitioner has this evidence and knowingly refuses to provide it to the property appraiser a reasonable time before the hearing, the evidence cannot be presented by the petitioner or accepted for consideration by the board or special magistrate.

(2)(a) If the petitioner chooses to participate in an exchange of evidence with the property appraiser, at least fifteen (15) days before the hearing the petitioner shall provide the property appraiser with a list and summary of evidence to be presented at the hearing accompanied by copies of documentation to be presented at the hearing. To calculate the fifteen (15) days, the petitioner shall use calendar days and shall not include the day of the hearing in the calculation, and shall count backwards from the day of the hearing.

(b) If the petitioner chooses to participate in an exchange of evidence with the property appraiser and he or she shows good cause to the clerk for not being able to meet the fifteen (15) day requirement and the property appraiser is unwilling to agree to a different timing of the exchange, the clerk is authorized to reschedule the hearing to allow for the exchange of evidence to occur.

(c) No later than seven (7) days before the hearing, if the property appraiser receives the petitioner's documentation and if requested in writing by the petitioner, the property appraiser shall provide the petitioner with a list and summary of evidence to be presented at the hearing accompanied by copies of documentation to be presented by the property appraiser at the hearing. The evidence list must contain the property record card if provided by the clerk. To calculate the seven (7) days, the property appraiser shall use calendar days and shall not include the day of the hearing in the calculation, and shall count backwards from the day of the hearing.

(d) The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next previous day which is neither a Saturday, Sunday, or legal holiday.

(3)(a) If the petitioner does not provide the information to the property appraiser at least fifteen (15) days prior to the hearing pursuant to subsection (2)(a), the property appraiser need not provide the information to the petitioner pursuant to paragraph (2)(c).

(b) If the property appraiser does not provide the information within the time required by paragraph (2)(c), the hearing shall be rescheduled to allow the petitioner additional time to review the property appraiser's evidence.

(4) By agreement of the parties the evidence exchanged in subsection (2) shall be delivered by regular or certified U.S. mail, personal delivery, overnight mail, FAX or email. The petitioner and property appraiser may agree to a different timing and method of exchange. "Provided" means received by the party not later than the time frame provided in this rule section. If either party does not designate a desired manner for receiving information in the evidence exchange, the information shall be provided by U.S. mail. The property appraiser shall provide the information at the address listed on the petition form for the petitioner.

(5) Level of detail on evidence summary: The summary pursuant to subsection (2) shall be sufficiently detailed as to reasonably inform a party of the general subject matter of the witness' testimony, and the name and address of the witness.

(6) Hearing procedures: Neither the board nor the special magistrate shall take any general action regarding compliance with this section, but any action on each petition shall be considered on a case by case basis. Any action shall be based on a consideration of whether there has been a substantial noncompliance with this section, and shall be taken at a scheduled hearing and based on evidence presented at such hearing. "General action" means a prearranged course of conduct not based on evidence received in a specific case at a scheduled hearing on a petition.

(7) A property appraiser shall not use at a hearing evidence that was not supplied to the petitioner as required. The normal remedy for such noncompliance shall be a rescheduling of the hearing to allow the petitioner an opportunity to review the information of the property appraiser.

(8) No petitioner may present for consideration, nor may a board or special magistrate accept for consideration, testimony or other evidentiary materials that were requested of the petitioner in connection with a filed petition in writing by the property appraiser, of which the petitioner had knowledge and denied to the property appraiser. This provision does not preclude rebuttal evidence that was not specifically requested of the petitioner by the property appraiser.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 193.074, 194.011, 194.015, 194.032, 194.034, 194.035, 195.022, 200.069, 213.05 FS. History–New .

12D-9.021 Withdrawn or Settled Petitions; Petitions Acknowledged as Correct.

(1) A petitioner may withdraw a petition prior to the scheduled hearing. Form DR-485WI is prescribed by the department for such purpose; however, other written or electronic means may be used. Form DR-485WI shall indicate the reason for the withdrawal as one of the following:

(a) Petitioner agrees with the determination of the property appraiser or tax collector;

(b) Petitioner and property appraiser or tax collector have reached a settlement of the issues;

(c) Petitioner does not agree with the decision or assessment of the property appraiser or tax collector but no longer wishes to pursue a remedy through the value adjustment board process; or

(d) Other specified reason.

(2) The clerk shall cancel the hearing upon receiving a notice of withdrawal from the petitioner and there shall be no further proceeding on the matter.

(3) If a property appraiser or tax collector agrees with a petition challenging a decision to deny an exemption, classification, portability assessment difference transfer, or deferral, the property appraiser or tax collector shall issue the petitioner a notice granting said exemption, classification, portability assessment difference transfer, or deferral and shall file with the clerk a notice that the petition was acknowledged as correct.

(4) The clerk shall cancel the hearing upon receiving the notice of acknowledgement and there shall be no further proceeding on the matter.

(5) If parties do not file a notice of withdrawal or notice of acknowledgement but indicate the same at the hearing, the board or special magistrate shall so state on the hearing record and shall not proceed with the hearing and shall not issue a decision. The clerk shall list and report all withdrawals, settlements, acknowledgements of correctness as withdrawn or settled petitions. Settled petitions shall include those acknowledged as correct by the property appraiser or tax collector.

(6) For all withdrawn or settled petitions, a special magistrate shall not produce a recommended decision and the board shall not produce a final decision.

(7) When a petitioner does not appear by the commencement of a scheduled hearing and the petitioner has not indicated a desire to have their petition heard without their attendance and a good cause request is not pending, the board or the special magistrate shall allow at least three business days for the petitioner to provide good cause before issuing a decision or recommended decision. If the petitioner makes a

good cause request within this time period, the board or board designee shall rule on the good cause request before determining that the hearing should be rescheduled or that the board or special magistrate should issue a decision or recommended decision.

(8) When a petitioner does not appear by the commencement of a scheduled hearing and a good cause request is pending, the board or board designee shall rule on the good cause request before determining that the hearing should be rescheduled or that the board or special magistrate should issue a decision or recommended decision.

(a) If the board or board designee finds good cause for the petitioner's failure to appear, the clerk shall reschedule the hearing.

(b) If the board or board's designee does not find good cause for the petitioner's failure to appear, the board or special magistrate shall issue a decision or recommended decision.

(9) Decisions issued under subsection (7) or subsection (8) shall contain:

(a) A finding of fact that the petitioner did not appear at the hearing and did not state good cause; and

(b) A conclusion of law that the decision is being issued in order that any right the petitioner may have to bring an action in circuit court is not impaired.

Rulemaking Authority 194.011(5), 194.034(1), 194.034, 195.027(1) FS. Law Implemented 193.155, 194.011, 194.032, 194.037, 213.05 FS. History–New _____.

12D-9.022 Disqualification or Recusal of Special Magistrates or Board Members.

(1) If either the petitioner or the property appraiser communicates a reasonable belief that a special magistrate does not possess the statutory qualifications in accordance with Sections 194.035 and 475.611(1)(h) and (i), Florida Statutes, to conduct a particular proceeding, the basis for that belief shall be included in the record of the proceeding.

(2)(a) Upon review, if the board or its legal counsel determines that the original special magistrate does not meet the statutory requirements and qualifications, the board or legal counsel shall enter into the record an instruction to the clerk to reschedule the petition before a different special magistrate to hear or rehear the petition without considering actions that may have occurred during any previous hearing.

(b) Upon review, if the board or its legal counsel determines that the special magistrate does meet the statutory requirements and qualifications, such determination shall be issued in writing and placed in the record, and the special magistrate will conduct the hearing, or, if a hearing was already held, the recommended decision will be forwarded to the board in accordance with these rules.

(3) Board members and special magistrates shall recuse themselves from hearing a petition when they have a conflict of interest or an appearance of a conflict of interest.

(4)(a) If either the petitioner or the property appraiser communicates a reasonable belief that a board member or special magistrate has a conflict of interest, the basis for that belief shall be stated in the record of the proceeding.

(b) If the board member or special magistrate agrees with the basis stated in the record, the board member or special magistrate shall recuse himself or herself on the record. A special magistrate who recuses himself or herself shall close the hearing on the record and notify the clerk of the recusal. Upon a board member's recusal, the hearing shall go forward if there is a quorum. Upon a special magistrate's recusal, or a board member's recusal that results in a quorum not being present, the clerk shall reschedule the hearing.

(c) If the board member or special magistrate questions the need for recusal, the board member or special magistrate shall do one of the following:

1. If time permits, request an immediate determination on the matter from the board's legal counsel; or

2. State for the record that he or she questions the need for recusal and state the basis for the question, proceed with the hearing, and promptly present the matter to the board's legal counsel for review.

(d) Upon review, if the board legal counsel:

1. Determines that a recusal is necessary, the board member or special magistrate shall recuse himself or herself and the clerk shall reschedule the hearing; or

2. Is uncertain whether the board member or special magistrate has a conflict of interest, the board member or special magistrate shall recuse himself or herself and the clerk shall reschedule the hearing.

(e) In a rescheduled hearing, the board or special magistrate shall not consider any actions that may have occurred during any previous hearing on the same petition.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 194.035, 475.611 FS. History–New _____.

12D-9.023 Hearings Before Board or Special Magistrates.

(1) Hearing rooms, office space, computer systems, personnel, and other resources used for any of the board's functions shall be controlled by the board through the clerk of the value adjustment board. The clerk shall perform his or her duties in a manner to avoid the appearance of a conflict of interest. The clerk shall not use the resources of the property appraiser's or tax collector's office and shall not allow the property appraiser or tax collector to control or influence any part of the value adjustment board process.

(2) Boards and special magistrates shall adhere as closely as possible to the schedule of hearings established by the clerk but must ensure that adequate time is allowed for parties to present evidence and for the board or special magistrate to consider the admitted evidence. If the board or special magistrate determines from the petition form that the hearing

has been scheduled for less time than the petitioner requested on the petition, the board or special magistrate must consider whether the hearing should be extended or continued to provide additional time.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 195.022, 213.05 FS. History–New _____.

12D-9.024 Procedures for Commencement of a Hearing.

(1) If all parties are present and the petition is not withdrawn or settled, a hearing on the petition shall commence.

(2) The hearing shall be open to the public.

(3) Upon the request of either party, a special magistrate shall swear in all witnesses in that proceeding on the record. Upon such request and if the witness has been sworn in during an earlier hearing, it shall be sufficient for the special magistrate to remind the witness that he or she is still under oath.

(4) Before or at the start of the hearing, the board, the board's designee or the special magistrate shall give a short overview verbally or in writing of the rules of procedure and any administrative issues necessary to conduct the hearing.

(5) Before or at the start of the hearing, unless waived by the parties, the board or special magistrate shall make an opening statement or provide a brochure or taxpayer information sheet that:

(a) States the board or special magistrate is an independent, impartial, and unbiased hearing body or officer, as applicable;

(b) States the board or special magistrate does not work for the property appraiser or tax collector, is independent of the property appraiser or tax collector, and is not influenced by the property appraiser or tax collector;

(c) States the hearing will be conducted in an orderly, fair, and unbiased manner;

(d) States that the law does not allow the board or special magistrate to review any evidence unless it is presented on the record at the hearing or presented upon agreement of the parties while the record is open; and

(e) States that the law requires the board or special magistrate to evaluate the relevance and credibility of the evidence in deciding the results of the petition.

(6) The board or special magistrate shall ask the parties if they have any questions regarding the verbal or written overview of the procedures for the hearing.

(7) After the opening statement, and clarification of any questions with the parties, the board or special magistrate shall proceed with the hearing.

(8) If at any point in a hearing or proceeding the petitioner withdraws the petition or the parties agree to settlement, the petition becomes a withdrawn or settled petition and the hearing or proceeding shall end. The board or special magistrate shall state or note for the record that the petition is withdrawn or settled, shall not proceed with the hearing, shall not consider the petition, and shall not produce a decision or recommended decision.

(9)(a) If the petitioner does not appear by the commencement of a scheduled hearing, the board or special magistrate shall not commence the hearing and shall proceed under the requirements set forth in subsection 12D-9.021(7), F.A.C., unless:

1. The petition is on a "portability" assessment difference transfer in which the previous homestead is the subject of the petition and is located in a county other than the county where the new homestead is located. Requirements specific to hearings on such petitions are set forth in subsection 12D-9.028(6), F.A.C.; or

2. The petitioner has indicated that he or she does not wish to appear at the hearing but would like for the board or special magistrate to consider evidence submitted by the petitioner.

(b) A petitioner who has indicated that he or she does not wish to appear at the hearing, but would like for the board or special magistrate to consider his or her evidence, shall submit his or her evidence to the board clerk and property appraiser before the hearing. The board clerk shall:

1. Keep the petitioner's evidence as part of the petition file;

2. Notify the board or special magistrate before or at the hearing that the petitioner has indicated he or she will not appear at the hearing, but would like for the board or special magistrate to consider his or her evidence at the hearing; and

3. Give the evidence to the board or special magistrate at the beginning of the hearing.

(10) If the property appraiser or tax collector does not appear by the commencement of a scheduled hearing, the board or special magistrate shall state on the record that the property appraiser or tax collector did not appear at the hearing. Then, the board or special magistrate shall request the petitioner to state for the record whether he or she wants to have the hearing rescheduled or wants to proceed with the hearing without the property appraiser or tax collector. If the petitioner elects to have the hearing rescheduled, the clerk shall reschedule the hearing. If the petitioner elects to proceed with the hearing without the property appraiser or tax collector, the board or special magistrate shall proceed with the hearing and shall produce a decision or recommended decision.

(11) In any hearing conducted without one of the parties present, the board or special magistrate must take into consideration the inability of the opposing party to cross-examine the non-appearing party in determining the sufficiency of the evidence of the non-appearing party.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 195.022, 213.05 FS. History–New _____.

12D-9.025 Procedures for Conducting a Hearing; Presentation of Evidence; Testimony of Witnesses.

(1) As part of administrative reviews, the board or special magistrate must:

(a) Review the evidence presented by the parties;

(b) Determine whether the evidence presented is admissible;

(c) Admit the evidence that is admissible, and identify the evidence presented to indicate that it is admitted or not admitted; and

(d) Consider the admitted evidence.

(2)(a) In these rules, the term "admitted evidence" means evidence that has been admitted into the record for consideration by the board or special magistrate. Board and special magistrate proceedings are not controlled by strict rules of evidence and procedure. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

(b) For administrative reviews, "relevant evidence" is evidence that is reasonably related, directly or indirectly, to the statutory criteria that apply to the issue under review. This description means the evidence meets or exceeds a minimum level of relevance necessary to be admitted for consideration, but does not necessarily mean that the evidence has sufficient relevance to legally justify a particular conclusion.

(c) Rebuttal evidence is relevant evidence used solely to disprove or contradict the original evidence presented by an opposing party.

(d) If the board or special magistrate has a question relating to the admissibility or use of evidence, the board or special magistrate shall consult with board legal counsel. The special magistrate may delay ruling on the question during the hearing and consult with board legal counsel after the hearing.

(3)(a) In a board or special magistrate hearing, the petitioner is responsible for presenting relevant and credible evidence in support of his or her belief that the property appraiser's determination is incorrect. The property appraiser is responsible for presenting relevant and credible evidence in support of his or her determination.

(b) Under Section 194.301, Florida Statutes (2009), starting with 2009 assessments, "preponderance of the evidence" is the standard of proof that applies in assessment challenges. The "clear and convincing evidence" standard of proof no longer applies, starting with 2009 assessments. A taxpayer shall never have the burden of proving that the property appraiser's assessment is not supported by any reasonable hypothesis of a legal assessment.

(4)(a) No evidence shall be considered by the board or special magistrate except when presented and admitted during the time scheduled for the petitioner's hearing, or at a time when the petitioner has been given reasonable notice. The petitioner may still present evidence if he or she does not participate in the evidence exchange. However, if the property appraiser asks in writing for evidence before the hearing in connection with a filed petition, and the petitioner has this evidence and refuses to provide it to the property appraiser, the evidence cannot be presented by the petitioner or accepted for consideration by the board or special magistrate.

(b) If a party submits evidence to the clerk prior to the hearing, the board or special magistrate shall not review or consider such evidence prior to the hearing.

(c) In order to be reviewed by the board or special magistrate, any evidence filed with the clerk shall be brought to the hearing by the party. These requirements shall not apply where:

1. A petitioner does not appear at a hearing on a "portability" assessment difference transfer petition in which the previous homestead is the subject of the petition and is located in a county other than the county where the new homestead is located. Requirements specific to hearings on such petitions are set forth in subsection 12D-9.028(6), F.A.C.; or

2. A petitioner has indicated that he or she does not wish to appear at the hearing but would like for the board or special magistrate to consider evidence submitted by the petitioner.

(d) A petitioner who has indicated that he or she does not wish to appear at the hearing, but would like for the board or special magistrate to consider his or her evidence, shall submit his or her evidence to the board clerk before the hearing. The board clerk shall:

1. Keep the petitioner's evidence as part of the petition file;

2. Notify the board or special magistrate before or at the hearing that the petitioner has indicated he or she will not appear at the hearing, but would like for the board or special magistrate to consider his or her evidence at the hearing; and

3. Give the evidence to the board or special magistrate at the beginning of the hearing.

(e) The clerk may provide an electronic system for the filing and retrieval of evidence for the convenience of the parties, but such evidence shall not be considered part of the record and shall not be reviewed by the board or special magistrate until presented at a hearing. Any exchange of evidence should occur between the parties and such evidence is not part of the record until presented by the offering party and deemed admissible at the hearing.

(f)1. No petitioner shall present, nor shall the board or special magistrate accept for consideration, testimony or other evidentiary materials that were requested of the petitioner in writing by the property appraiser in connection with a filed petition, of which the petitioner had knowledge and denied to the property appraiser. Such evidentiary materials shall be considered timely if provided to the property appraiser no later than fifteen (15) days before the hearing in accordance with the exchange of evidence rules in Rule 12D-9.020, F.A.C., and, if provided to the property appraiser less than fifteen (15) days

before the hearing, shall be considered timely if the board or special magistrate determines they were provided a reasonable time before the hearing. A petitioner's ability to introduce the evidence, requested of the petitioner in writing by the property appraiser, is lost if not provided to the property appraiser as described in this paragraph. This provision does not preclude rebuttal evidence that was not specifically requested of the petitioner by the property appraiser.

2. A property appraiser shall not present undisclosed evidence that was not supplied to the petitioner as required under the evidence exchange rule, Rule 12D-9.020, F.A.C. The normal remedy for such noncompliance shall be a rescheduling of the hearing to allow the petitioner an opportunity to review the information of the property appraiser.

(5) When testimony is presented at a hearing, each party shall have the right to cross-examine any witness.

(6)(a) By agreement of the parties entered in the record, the board or special magistrate may leave the record open and postpone completion of the hearing to a date certain to allow a party to collect and provide additional relevant and credible evidence. Such postponements shall be limited to instances where, after completing original presentations of evidence, the parties agree to the collection and submittal of additional, specific factual evidence for consideration by the board or special magistrate.

(b) If additional hearing time is necessary, the hearing must be completed at the date, place, and time agreed upon for presenting the additional evidence to the board or special magistrate for consideration.

(c) The following limitations shall apply if the property appraiser seeks to present additional evidence that was unexpectedly discovered and that would increase the assessment.

1. The board or special magistrate shall ensure that such additional evidence is limited to a correction of a factual error discovered in the physical attributes of the petitioned property; a change in the property appraiser's judgment is not such a correction and shall not justify an increase in the assessment.

2. A notice of revised proposed assessment shall be made and provided to the petitioner in accordance with the notice provisions set out in Florida Statutes for notices of proposed property taxes.

3. A new hearing shall be scheduled and notice of the hearing shall be sent to the petitioner along with a copy of the revised property record card if requested.

4. The evidence exchange procedures in Rule 12D-9.020, F.A.C., shall be available.

5. The back assessment procedure in Section 193.092, Florida Statutes, shall be used for any assessment already certified.

(7)(a) The board or special magistrate shall receive, identify for the record, and retain all exhibits presented during the hearing and send them to the clerk along with the recommended decision or final decision. Upon agreement of the parties, the clerk is authorized to make an electronic representation of evidence that is difficult to store or maintain.

(b) The board or special magistrate shall have the authority, at a hearing, to ask questions at any time of either party, the witnesses, or board staff. When asking questions, the board or special magistrate shall not show bias for or against any party or witness. The board or special magistrate shall limit the content of any question asked of a party or witness to matters reasonably related, directly or indirectly, to matters already in the record.

(c) Representatives of interested municipalities may be heard as provided in Section 193.116, Florida Statutes.

(8) Unless a board or special magistrate determines that additional time is necessary, the board or special magistrate shall conclude all hearings at the end of the time scheduled for the hearing. If a hearing is not concluded by the end of the time scheduled, the board or special magistrate shall determine the amount of additional time needed to conclude the hearing.

(a) If the board or special magistrate determines that the amount of additional time needed to conclude the hearing would not unreasonably disrupt other hearings, the board or special magistrate is authorized to proceed with conclusion of the hearing.

(b) If the board or special magistrate determines that the amount of additional time needed to conclude the hearing would unreasonably disrupt other hearings, the board or special magistrate shall so state on the record and shall notify the clerk to reschedule the conclusion of the hearing to a time as scheduled and noticed by the clerk.

(9) The board or special magistrate shall not be required to make, at any time during a hearing, any oral or written finding, conclusion, decision, or reason for decision. The board or special magistrate has the discretion to determine whether to make such determinations during a hearing or to consider the petition and evidence further after the hearing and then make such determinations.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 193.092, 194.011, 194.032, 194.034, 195.022, 213.05 FS. History–New _____.

12D-9.026 Procedures for Conducting a Hearing by Electronic Media.

(1) Hearings conducted by electronic media shall occur only under the conditions set forth in this rule section.

(a) The board must approve and have available the necessary equipment and procedures.

(b) The special magistrate, if one is used, must agree in each case to the electronic hearing.

(c) The board must accommodate parties that have hardship or lack necessary equipment or ability to access equipment.

(2) For any hearing conducted by electronic media, the board shall ensure that all equipment is adequate and functional for allowing clear communication among the participants and for creating the hearing records required by law. The board procedures shall specify the time period within which a party must request to appear at a hearing by electronic media.

(3) Consistent with board equipment and procedures:

(a) Any party may request to appear at a hearing before a board or special magistrate, using telephonic or other electronic media. If the board or special magistrate allows a party to appear by telephone, all members of the board in the hearing or the special magistrate must be physically present in the hearing room. Unless required by other provisions of state or federal law, the clerk need not comply with such a request if such telephonic or electronic media are not reasonably available.

(b) The parties must also all agree on the methods for swearing witnesses, presenting evidence, and placing testimony on the record. Such methods must comply with the provisions of this rule chapter. The agreement of the parties must include which parties must appear by telephonic or other electronic media, and which parties will be present in the hearing room.

(4) Such hearings must be open to the public either by providing the ability for interested members of the public to join the hearing electronically or to monitor the hearing at the location of the board or special magistrate.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 195.035, 195.022 FS. History–New _____.

12D-9.027 Process of Administrative Review.

(1) This section sets forth the sequence of general procedural steps for administrative reviews. This order of steps applies to: the consideration of evidence during or after a hearing, the development of conclusions during or after a hearing, and the production of written decisions. The board or special magistrate shall follow this general sequence in order to fulfill the procedural requirements of Section 194.301, Florida Statutes (2009), starting with 2009 assessments. The following subsections set forth the steps for administrative reviews of:

(a) Just valuations in subsection (2);

(b) Classified use valuations in subsection (3);

(c) Assessed valuations of limited increase property in subsection (4); and

(d) Exemptions, classifications, and portability assessment transfers in subsection (5).

(2) In administrative reviews of the just valuation of property, the board or special magistrate shall follow this sequence of general procedural steps:

(a) Consider the admitted evidence presented by the parties.

(b) Identify and consider the essential characteristics of the petitioned property based on the factors in Section 193.011, Florida Statutes.

(c) Identify and consider the appraisal methodology used by the property appraiser in developing his or her just valuation of the petitioned property.

(d) Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's methodology complies with Section 193.011, Florida Statutes, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate.

(e) Determine whether the property appraiser's appraisal methodology is appropriate.

(f) Determine whether the admitted evidence proves by a preponderance of the evidence that:

1. The property appraiser's just valuation does not represent just value; or

2. The property appraiser's just valuation is arbitrarily based on appraisal practices that are different from the appraisal practices generally applied by the property appraiser to comparable property within the same county.

(g) If one or both of the preceding conditions are determined to exist, the board or special magistrate shall determine whether the hearing record contains competent, substantial evidence of just value which cumulatively meets the criteria of Section 193.011, Florida Statutes, and professionally accepted appraisal practices.

1. If the hearing record contains competent, substantial evidence for establishing just value, the board or an appraiser special magistrate shall establish the just value based only upon such evidence. When the prerequisite conditions exist, the board or an appraiser special magistrate is required to establish a revised just value for the petitioned property. In establishing a revised just value when required by law, the board or special magistrate is not restricted to any specific value offered by the parties.

2. If the hearing record lacks competent, substantial evidence for establishing just value, the board or special magistrate shall remand the assessment to the property appraiser with appropriate directions.

(3) In administrative reviews of the classified use valuation of property, the board or special magistrate shall follow this sequence of general procedural steps:

(a) Consider the admitted evidence presented by the parties.

(b) Identify the property classification applied to the petitioned property and identify the statutory criteria that apply to the classified use valuation of the property.

(c) Identify the essential characteristics of the petitioned property based on the statutory criteria that apply to the classified use valuation of the property.

(d) Identify the appraisal methodology used by the property appraiser in developing his or her classified use valuation of the petitioned property.

(e) Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's methodology complies with the statutory criteria that apply to the classified use valuation of the petitioned property.

(f) Determine whether the property appraiser's appraisal methodology is appropriate.

(g) Determine whether the admitted evidence proves by a preponderance of the evidence that:

1. The property appraiser's classified use valuation does not represent classified use value; or

2. The property appraiser's classified use valuation is arbitrarily based on classified use appraisal practices that are different from the classified use appraisal practices generally applied by the property appraiser to comparable property of the same property classification within the same county.

(h) If one or both of the preceding conditions are determined to exist, the board or special magistrate shall determine whether the hearing record contains competent, substantial evidence of classified use value which cumulatively meets the statutory criteria that apply to the classified use valuation of the petitioned property.

1. If the hearing record contains competent, substantial evidence for establishing classified use value, the board or an appraiser special magistrate shall establish the classified use value based only upon such evidence. When the prerequisite conditions exist, the board or an appraiser special magistrate is required to establish a revised classified use value for the petitioned property. In establishing a revised classified use value when required by law, the board or special magistrate is not restricted to any specific value offered by the parties.

2. If the hearing record lacks competent, substantial evidence for establishing classified use value, the board or special magistrate shall remand the assessment to the property appraiser with appropriate directions.

(4) In administrative reviews of the assessed valuation of limited increase property, the board or special magistrate shall follow this sequence of general procedural steps:

(a) Consider the admitted evidence presented by the parties.

(b) Identify and consider the essential characteristics of the petitioned property based on the statutory criteria that apply to the assessed valuation of the petitioned property.

(c) Identify and consider the methodology used by the property appraiser in developing his or her assessed valuation of the petitioned property.

(d) Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's methodology complies with the applicable statutory criteria.

(e) Determine whether the property appraiser's methodology is appropriate.

(f) Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's assessed value is incorrect.

(g) If the property appraiser's assessed value is determined to be incorrect, the board or special magistrate shall determine whether the hearing record contains competent, substantial evidence of assessed value which cumulatively meets the statutory criteria that apply to the assessed valuation of the petitioned property.

1. If the hearing record contains competent, substantial evidence for establishing assessed value, the board or an appraiser special magistrate shall establish the assessed value based only upon such evidence.

2. If the hearing record lacks competent, substantial evidence for establishing assessed value, the board or special magistrate shall remand the assessment to the property appraiser with appropriate directions.

(5) In administrative reviews of exemptions, classifications, and portability assessment transfers, the board or special magistrate shall follow this sequence of general procedural steps:

(a) Consider the admitted evidence presented by the parties.

(b) Identify the particular exemption, property classification, or portability assessment transfer issue that is the subject of the petition.

(c) Identify the statutory criteria that apply to the particular exemption, property classification, or portability assessment difference transfer that was identified as the issue under administrative review.

(d) Identify and consider the essential characteristics of the petitioned property or the property owner, as applicable, based on the statutory criteria that apply to the issue under administrative review.

(e) Identify and consider the basis used by the property appraiser in issuing the denial for the petitioned property. Additionally, in the case of an exemption, the board or special magistrate shall consider whether the denial was valid or invalid in determining whether to uphold or overturn the property appraiser's determination and shall:

1. Review the exemption denial, and compare it to the applicable statutory criteria in Section 196.193(5), Florida Statutes;

2. Determine whether the denial was valid under Section 196.193, Florida Statutes; and

3. Not give weight to any exemption denial found to be invalid but shall instead proceed as provided in Section 194.301, Florida Statutes (2009).

(f) Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's denial is incorrect and the exemption, classification, or portability assessment transfer should be granted because all of the applicable statutory criteria are satisfied.

(6) "Standard of proof" means the level of proof needed by the board or special magistrate to reach a particular conclusion. The standard of proof that applies in administrative reviews is called "preponderance of the evidence," which means "greater weight of the evidence."

(7) When applied to evidence, the term "sufficient" is a test of adequacy. Sufficient evidence is admitted evidence that has enough overall weight, in terms of relevance and credibility, to legally justify a particular conclusion. A particular conclusion is justified when the overall weight of the admitted evidence meets the standard of proof that applies to the issue under consideration. The board or special magistrate must determine whether the admitted evidence is sufficiently relevant and credible to reach the standard of proof that applies to the issue under consideration. In determining whether the admitted evidence is sufficient for a particular issue under consideration, the board or special magistrate shall:

(a) Consider the relevance and credibility of the admitted evidence as a whole, regardless of which party presented the evidence;

(b) Determine the relevance and credibility, or overall weight, of the evidence;

(c) Compare the overall weight of the evidence to the standard of proof;

(d) Determine whether the overall weight of the evidence is sufficient to reach the standard of proof; and

(e) Produce a conclusion of law based on the determination of whether the overall weight of the evidence has reached the standard of proof.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 193.122, 194.011, 194.015, 194.032, 194.034, 194.036, 194.037, 194.301, 195.002, 195.096, 196.011, 197.122, 213.05 FS. History–New _____.

12D-9.028 Petitions on Transfer of "Portability" Assessment Difference.

(1) This rule section applies to the review of denials of assessment limitation difference transfers or of the amount of an assessment limitation difference transfer. No adjustment to the just, assessed or taxable value of the previous homestead parcel may be made pursuant to a petition under this rule.

(2) A petitioner may file a petition with the value adjustment board, in the county where the new homestead is located, to petition either a denial of a transfer or the amount of the transfer, on Form DR-486PORT (Petition to Value Adjustment Board, Transfer of Homestead Assessment Difference – Request for Hearing; N. 07/08), which the Department of Revenue hereby adopts and incorporates in this rule by reference. Such petition must be filed within 25 days following the mailing of the notice of proposed property taxes as provided in Section 194.011, Florida Statutes. If only a part of a transfer of assessment increase differential is granted, the notice of proposed property taxes shall function as notice of the taxpayerís right to appeal tothe board.

(3) The petitioner may petition to the board the decision of the property appraiser refusing to allow the transfer of an assessment difference, and the board shall review the application and evidence presented to the property appraiser upon which the petitioner based the claim and shall hear the petitioner on behalf of his or her right to such assessment. Such petition shall be heard by an attorney special magistrate if the board uses special magistrates.

(4) This subsection will apply to value adjustment board proceedings in a county in which the previous homestead is located. Any petitioner desiring to appeal the action of a property appraiser in a county in which the previous homestead is located must so designate on Form DR-486PORT.

(5) If the petitioner does not agree with the amount of the assessment limitation difference for which the petitioner qualifies as stated by the property appraiser in the county where the previous homestead property was located, or if the property appraiser in that county has not stated that the petitioner qualifies to transfer any assessment limitation difference, upon the petitioner filing a petition to the value adjustment board in the county where the new homestead property is located, the board clerk in that county shall, upon receiving the petition, send a notice using Form DR-486XCO, (Cross-County Notice of Appeal and Petition, Transfer of Homestead Assessment Difference; N. 07/08) which the Department of Revenue hereby adopts and incorporates in this rule by reference, to the board clerk in the county where the previous homestead was located, which shall reconvene if it has already adjourned.

(6)(a) If a cross county petition is filed as described in subsection (5), such notice operates as a timely petition and creates an appeal to the value adjustment board in the county where the previous homestead was located on all issues surrounding the previous assessment differential for the taxpayer involved. However, the petitioner may not petition to have the just, assessed, or taxable value of the previous homestead changed.

(b) The board clerk in the county where the previous homestead was located shall set the petition for hearing and notify the petitioner, the property appraiser in the county where the previous homestead was located, the property appraiser in the county where the new homestead is located, and the value adjustment board in that county, and shall hear the petition.

(c) The board clerk in the county in which the previous homestead was located must note and file the petition from the county in which the new homestead is located. No filing fee is required. The board clerk shall notify each petitioner of the scheduled time of appearance. The notice shall be in writing and delivered by regular or certified U.S. mail or personal delivery or delivered in the manner requested by the petitioner

on Form DR-486PORT, so that the notice shall be received by the petitioner no less than twenty-five (25) calendar days prior to the day of such scheduled appearance. The board clerk will have prima facie complied with the requirements of this section if the notice was deposited in the U.S. mail thirty (30) days prior to the day of such scheduled appearance.

(d) Such petition shall be heard by an attorney special magistrate if the value adjustment board in the county where the previous homestead was located uses special magistrates. The petitioner may attend such hearing and present evidence, but need not do so. If the petitioner does not appear at the hearing, the hearing shall go forward. The board or special magistrate shall obtain the petition file from the board clerk. The board or special magistrate shall consider deeds, property appraiser records that do not violate confidentiality requirements, and other documents that are admissible evidence. The petitioner may submit a written statement for review and consideration by the board or special magistrate explaining why the "portability" assessment difference should be granted based on applications and other documents and records submitted by the petitioner.

(e) The value adjustment board in the county where the previous homestead was located shall issue a decision and the board clerk shall send a copy of the decision to the board clerk in the county where the new homestead is located.

(f) In hearing the petition in the county where the new homestead is located, that value adjustment board shall consider the decision of the value adjustment board in the county where the previous homestead was located on the issues pertaining to the previous homestead and on the amount of any assessment reduction for which the petitioner qualifies. The value adjustment board in the county where the new homestead is located may not hold its hearing until it has received the decision from the value adjustment board in the county where the previous homestead was located.

(7) This rule does not authorize the consideration or adjustment of the just, assessed, or taxable value of the previous homestead property.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1) FS. Law Implemented 193.155, 194.011 FS. History–New _____.

12D-9.029 Procedures for Remanding Just Value or Classified Use Value Assessments.

(1) The board or appraiser special magistrate shall remand an assessment to the property appraiser when the board or special magistrate:

(a) Has concluded that the property appraiser's assessment does not represent just value or classified use value, as applicable; and

(b) Has concluded that the record does not contain the competent substantial evidence necessary for the board or special magistrate to establish just value or classified use value, as applicable.

(2) An attorney special magistrate shall remand an assessment to the property appraiser for a classified use valuation when the special magistrate has concluded that a property classification will be granted.

(3) The board shall remand an assessment to the property appraiser for a classified use valuation when the board:

(a) Has concluded that a property classification will be granted; and

(b) Has concluded that the record does not contain the competent substantial evidence necessary for the board to establish classified use value.

(4) The board or special magistrate shall, on the appropriate decision form from the Form DR-485 series, produce written findings of fact and conclusions of law necessary to determine that a remand is required, but shall not render a recommended or final decision unless a continuation hearing is held as provided in subsection (9).

(5) When an attorney special magistrate remands an assessment to the property appraiser for classified use valuation, an appraiser special magistrate retains authority to produce a recommended decision in accordance with law. When an appraiser special magistrate remands an assessment to the property appraiser, the special magistrate retains authority to produce a recommended decision in accordance with law. When the value adjustment board remands an assessment to the property appraiser, the board retains authority to make a final decision on the petition in accordance with law.

(6) For remanding an assessment to the property appraiser, the board or special magistrate shall produce a written remand decision which shall include appropriate directions to the property appraiser.

(7) The board clerk shall concurrently provide, to the petitioner and the property appraiser, a copy of the written remand decision from the board or special magistrate. The petitioner's copy of the written remand decision shall be sent by regular or certified U.S. mail or by personal delivery, or in the manner requested by the taxpayer on Form DR-486.

(8)(a) After receiving a board or special magistrate's remand decision from the board clerk, the property appraiser shall follow the appropriate directions from the board or special magistrate and shall produce a written remand review.

(b) The property appraiser or his or her staff shall not have, directly or indirectly, any ex parte communication with the board or special magistrate regarding the remanded assessment.

(9)(a) Immediately after receipt of the written remand review from the property appraiser, the board clerk shall send a copy of the written remand review to the petitioner by regular or certified U.S. mail or by personal delivery, or in the manner requested by the taxpayer on Form DR-486, and shall send a copy to the board or special magistrate. The board clerk shall retain, as part of the petition file, the property appraiser's

written remand review. Together with the petitioner's copy of the written remand review, the clerk shall send to the petitioner a copy of this rule subsection.

(b) The clerk shall schedule a continuation hearing unless the petitioner notifies the clerk that the results of the property appraiser's written remand review are acceptable to the petitioner and that the petitioner waives the right to a further hearing on the petition. The clerk shall send the notice of hearing so that it will be received by the petitioner no less than twenty-five (25) calendar days prior to the day of such scheduled appearance, as described in subsection 12D-9.019(3), F.A.C. If the petitioner agrees with the remand value, the board or special magistrate shall not produce a written decision; however, the petition shall be treated and listed as board action for purposes of the notice required by Rule 12D-9.038, F.A.C.

(c) At a continuation hearing, the board or special magistrate shall receive and consider the property appraiser's written remand review and additional relevant and credible evidence, if any, from the parties. Also, the board or special magistrate may consider evidence admitted at the original hearing.

(10) In those counties that use special magistrates, if an attorney special magistrate has granted a property classification before the remand decision and the property appraiser has produced a remand classified use value, a real property valuation special magistrate shall conduct the continuation hearing.

(11) In no case shall a board or special magistrate remand to the property appraiser an exemption, "portability" assessment difference transfer, or property classification determination.

(12) Copies of all evidence shall remain with the clerk and be available during the remand process.

(13) In lieu of remand, the board or special magistrate may postpone conclusion of the hearing upon agreement of the parties if the requirements of subsection 12D-9.025(6), F.A.C. are met.

(14) To the extent possible where the context will permit, remands of assessed valuations shall be handled procedurally under this rule chapter in the same manner as remands of just valuations.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 194.035, 194.301, 213.05 FS. History–New _____.

12D-9.030 Recommended Decisions.

(1) For each petition not withdrawn or settled, special magistrates shall produce a written recommended decision that contains findings of fact, conclusions of law, and reasons for upholding or overturning the property appraiser's determination. Each recommended decision shall contain sufficient factual and legal information and reasoning to enable the parties to understand the basis for the decision, and shall otherwise meet the requirements of law. The special magistrate and clerk shall observe the petitioner's right to be sent a timely written recommended decision containing proposed findings of fact and proposed conclusions of law and reasons for upholding or overturning the determination of the property appraiser. After producing a recommended decision, the special magistrate shall provide it to the clerk.

(2) The clerk shall provide copies of the special magistrate's recommended decision to the petitioner and the property appraiser as soon as practicable after receiving the recommended decision, and if the clerk:

(a) Knows the date, time, and place at which the recommended decision will be considered by the board, the clerk shall include such information when he or she sends the recommended decision to the petitioner and the property appraiser; or

(b) Does not yet know the date, time, and place at which the recommended decision will be considered by the board, the clerk shall include information on how to find the date, time, and place of the meeting at which the recommended decision will be considered by the board.

(3) Any board or special magistrate workpapers, worksheets, notes, or other materials that are made available to a party shall immediately be sent to the other party. Any workpapers, worksheets, notes, or other materials created by the board or special magistrates during the course of hearings or during consideration of petitions and evidence, that contain any material prepared in connection with official business, shall be transferred to the clerk and retained as public records. Value adjustment boards or special magistrates using standardized workpapers, worksheets, or notes, whether in electronic format or otherwise, must receive prior department approval to ensure that such standardized documents comply with the law.

(4) For the purpose of producing the recommended decisions of special magistrates, the department prescribes the Form DR-485 series, and any electronic equivalent forms approved by the department under Section 195.022, Florida Statutes. The Form DR-485 series is adopted and incorporated by reference in Rule 12D-16.002, Florida Administrative Code. All recommended decisions of special magistrates, and all forms used for the recommended decisions, must contain the following required elements:

(a) Findings of fact;

(b) Conclusions of law; and

(c) Reasons for upholding or overturning the determination of the property appraiser.

(5) As used in this section, the terms "findings of fact" and "conclusions of law" include proposed findings of fact and proposed conclusions of law produced by special magistrates in their recommended decisions.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1) FS. Law Implemented 193.155, 194.011, 195.022, 213.05 FS. History–New _____.

12D-9.031 Consideration and Adoption of Recommended Decisions of Special Magistrates by Value Adjustment Boards in Administrative Reviews.

(1) All recommended decisions shall comply with Sections 194.301, 194.034(2) and 194.035(1), Florida Statutes. A special magistrate shall not submit to the board, and the board shall not adopt, any recommended decision that is not in compliance with Sections 194.301, 194.034(2) and 194.035(1), Florida Statutes.

(2) As provided in Sections 194.034(2) and 194.035(1), Florida Statutes, the board shall consider the recommended decisions of special magistrates and may act upon the recommended decisions without further hearing. If the board holds further hearing for such consideration, the clerk shall send notice of the hearing to petitioners. The notice of hearing shall be in the same form as specified in paragraph 12D-9.019(3)(a), F.A.C., but need not include items specified in subparagraphs 6. through 10. of that subsection. The board shall consider whether the recommended decisions meet the requirements of subsection (1), and may rely on board legal counsel for such determination.

(3) If the board determines that a recommended decision meets the requirements of subsection (1), the board shall adopt the recommended decision. When a recommended decision is adopted and rendered by the board, it becomes final.

(4) If the board determines that a recommended decision does not comply with the requirements of subsection (1), the board shall proceed as follows:

(a) The board shall request the advice of board legal counsel to evaluate further action and shall take the steps necessary for producing a final decision in compliance with subsection (1).

(b) The board may direct a special magistrate to produce a recommended decision that complies with subsection (1) based on, if necessary, a review of the entire record.

(c) The board shall retain any recommended decisions and all other records of actions under this rule section.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 193.122, 194.011, 194.015, 194.032, 194.034, 194.035, 194.036, 194.037, 194.301, 195.002, 195.096, 196.011, 197.122, 213.05 FS. History–New _____.

12D-9.032 Final Decisions.

(1) For each petition not withdrawn or settled, the board shall produce a written final decision that contains findings of fact, conclusions of law, and reasons for upholding or overturning the property appraiser's determination. Each final decision shall contain sufficient factual and legal information and reasoning to enable the parties to understand the basis for the decision, and shall otherwise meet the requirements of law.

(2) A final decision of the board shall state the just, assessed, taxable, and exempt value, both before and after board action. Board action shall not include changes made as a result of action by the property appraiser. If the property appraiser has reduced his or her value or granted an exemption, property classification, or "portability" assessment difference transfer, whether before or during the hearing but before board action, the values in the "before" column shall reflect the adjusted figure before board action.

(3) The board's final decision shall advise the taxpayer and property appraiser that further proceedings in circuit court shall be as provided in Section 194.036, Florida Statutes.

(4) Upon issuance of a final decision by the board, the board shall provide it to the clerk and the clerk shall promptly provide notice of the final decision to the parties. Notice of the final decision may be made by providing a copy of the decision.

(5) For the purpose of producing the final decisions of the board, the department prescribes the Form DR-485 series, and any electronic equivalent forms approved by the department under Section 195.022, Florida Statutes. The Form DR-485 series is adopted and incorporated by reference in Rule 12D-16.002, Florida Administrative Code. The Form DR-485 series, or approved electronic equivalent forms, are the only forms that shall be used for producing a final decision of the board. Before using any form to notify petitioners of the final decision, the board shall submit the proposed form to the department for approval. The board shall not use a form to notify the petitioner unless the department has approved the form.

(6)(a) If, prior to a final decision, any communication is received from a party concerning a board process on a petition or concerning a recommended decision, a copy of the communication shall promptly be furnished to all parties, the clerk, and the board legal counsel. No such communication shall be furnished to the board or a special magistrate unless a copy is immediately furnished to all parties.

(b) The board legal counsel shall respond to such communication and may advise the board concerning any action the board should take concerning the communication.

(c) No reconsideration of a recommended decision shall take place until all parties have been furnished all communications, and have been afforded adequate opportunity to respond.

(d) The clerk shall provide to the parties:

1. Notification before the presentation of the matter to the board; and

2. Notification of any action taken by the board.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 194.032, 194.034, 194.035, 194.036, 195.022 FS. History–New _____.

12D-9.033 Further Judicial Proceedings.

After the board issues its final decision, further proceedings and the timing thereof are as provided in Sections 194.036 and 194.171, Florida Statutes.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.013, 194.015, 194.032, 194.034, 194.035, 194.036, 195.022 FS. History–New .

12D-9.034 Record of the Proceeding.

(1) The clerk shall maintain a record of the proceeding. The record shall consist of:

(a) The petition;

(b) All filed documents, including all tangible exhibits and documentary evidence presented, whether or not admitted into evidence; and

(c) Meeting minutes and a verbatim record of the hearing.

(2) The verbatim record of the hearing may be kept by any electronic means which is easily retrieved and copied. In counties that use special magistrates, the special magistrate shall accurately and completely preserve the verbatim record during the hearing, and may be assisted by the clerk. In counties that do not use special magistrates, the clerk shall accurately and completely preserve the verbatim record during the hearing. At the conclusion of each hearing, the clerk shall retain the verbatim record as part of the petition file.

(3) The record shall be maintained for four years after the final decision has been rendered by the board if no appeal is filed in circuit court, or for five years if an appeal is filed.

(4) If requested by the taxpayer, the taxpayer's agent, or the property appraiser, the clerk shall retain these records until the final disposition of any subsequent judicial proceeding related to the same property.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.032, 194.034, 194.035, 213.05 FS. History–New .

12D-9.035 Duty of Clerk to Prepare and Transmit Record.

(1) To the extent not inconsistent with the Florida Rules of Appellate Procedure, when applicable, when a change in the tax roll made by the board becomes subject to review by the Circuit Court pursuant to Section 194.036(1)(c), Florida Statutes, it shall be the duty of the clerk, when requested, to prepare the record for review. The record shall consist of a copy of each paper, including the petition and each exhibit in the proceeding together with a copy of the board's decision and written findings of fact and conclusions of law. The clerk shall transmit to the Court this record, and the clerk's certification of the record which shall be in the following form:

Certification of Record

I hereby certify that the attached record, consisting of sequentially numbered pages one through , consists of true copies of all papers, exhibits, and the Board's findings of fact and conclusions of law, in the proceeding before the County Value Adjustment Board upon petition numbered filed by .

Clerk of Value Adjustment Board

By:

Deputy Clerk

Should the verbatim transcript be prepared other than by a court reporter, the clerk shall also make the following certification:

CERTIFICATION OF VERBATIM TRANSCRIPT

I hereby certify that the attached verbatim transcript consisting of sequentially numbered pages through is an accurate and true transcript of the hearing held on in the proceeding before the County Value Adjustment Board petition numbered filed by:

Clerk of Value Adjustment Board

By:

Deputy Clerk

(2) The clerk shall provide the petitioner and property appraiser, upon their request, a copy of the record at no more than actual cost.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.032, 194.036, 213.05 FS. History–New .

12D-9.036 Procedures for Petitions on Denials of Tax Deferrals.

(1) The references in these rules to the tax collector are for the handling of petitions of denials of tax deferrals under Sections 197.253, 197.3041 and 197.3073, Florida Statutes, and petitions of penalties imposed under Sections 197.301, 197.3047, and 197.3079, Florida Statutes.

(2) To the extent possible where the context will permit, such petitions shall be handled procedurally under this rule chapter in the same manner as denials of exemptions.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.032, 194.036, 197.253, 197.301, 197.3041, 197.3047, 197.3073, 197.3079, 213.05 FS. History–New .

PART III UNIFORM CERTIFICATION OF ASSESSMENT ROLLS

12D-9.037 Certification of Assessment Rolls.

(1) After all hearings have been held, the board shall certify an assessment roll or part of an assessment roll that has been finally approved pursuant to Section 193.1142, Florida Statutes. The certification shall be on the form prescribed by the department in this rule. A sufficient number of copies of the board's certification shall be delivered to the property appraiser who shall attach the same to each copy of each assessment roll prepared by the property appraiser.

(2) The form shall include a certification signed by the board chair, on behalf of the entire board, on Form DR-488, designated for this purpose, that all requirements in Chapter 194, Florida Statutes, and department rules, were met as follows:

(a) the prehearing checklist pursuant to Rule 12D-9.014, F.A.C. was followed and all necessary actions reported by the clerk were taken to comply with Rule 12D-9.014, F.A.C.;

(b) The qualifications of special magistrates were verified, including whether special magistrates completed the department's training;

(c) The selection of special magistrates was based solely on proper qualifications and the property appraiser and parties did not influence the selection of special magistrates;

(d) All petitions considered were either timely filed, or good cause was found for late filing after proper review by the board or its designee;

(e) All board meetings were duly noticed pursuant to Section 286.011, Florida Statutes, and were held in accordance with law;

(f) No ex parte communications were considered unless all parties were notified and allowed to rebut;

(g) All petitions were reviewed and considered as required by law unless withdrawn or settled as defined in this rule chapter;

(h) All decisions contain required findings of fact and conclusions of law in compliance with Chapter 194, Florida Statutes, and this rule chapter;

(i) The board allowed opportunity for public comment at the meeting at which special magistrate recommended decisions were considered and adopted;

(j) All board members and the board's legal counsel have read this certification and a copy of the statement in subsection (1) is attached; and

(k) All complaints of noncompliance with Part I, Chapter 194, Florida Statutes, or this rule chapter called to the board's attention have been appropriately addressed to conform with the provisions of Part I, Chapter 194, Florida Statutes, and this rule chapter.

(3) The board shall provide a signed original of the certification required under this rule section to the department before publication of the notice of the findings and results of the board required by Section 194.037, Florida Statutes. See Form DR-529, Notice Tax Impact of Value Adjustment Board.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 193.122, 194.011, 195.022, 213.05 FS. History–New _____.

12D-9.038 Public Notice of Findings and Results of Value Adjustment Board.

(1) After all hearings have been completed, the clerk of the value adjustment board shall publish a public notice advising all taxpayers of the findings and results of the board decisions, which shall include changes made by the board to the property appraiser's initial roll. For petitioned parcels, the property appraiser's initial roll shall be the property appraiser's determinations as presented at the commencement of the hearing or as settled by the property appraiser during the hearing but before a decision by the board or a recommended decision by a special magistrate. The public notice shall be in the form of a newspaper advertisement and shall be referred to as the "tax impact notice". The format of the tax impact notice shall be substantially as prescribed in Form DR-529, Notice Tax Impact of Value Adjustment Board, incorporated by reference in Rule 12D-16.002, F.A.C.

(2) The size of the notice shall be at least a quarter page size advertisement of a standard or tabloid size newspaper. The newspaper notice shall include all of the above information and no change shall be made in the format or content without department approval. The notice shall be published in a part of the paper where legal notices and classified ads are not published.

(3) The notice of the findings and results of the value adjustment board shall be published in a newspaper of paid general circulation within the county. It shall be the specific intent of the publication of notice to reach the largest segment of the total county population. Any newspaper of less than general circulation in the county shall not be considered for publication except to supplement notices published in a paper of general circulation.

(4) The headline of the notice shall be set in a type no smaller than 18 point and shall read "TAX IMPACT OF VALUE ADJUSTMENT BOARD."

(5) It shall be the duty of the board clerk to insure publication of the notice after the board has heard all petitions, complaints, appeals, and disputes.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 50, 194.032, 194.034, 194.037, 213.05 FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Howard Moyes, Deputy Director, Property Tax Oversight Program, Department of Revenue, Bloxham Building, 725 S. Calhoun Street, Room G-12, Tallahassee, Florida 32399-0100, telephone (850)922-7991

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: The Governor and Cabinet of the State of Florida.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 25, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: These proposed rules in new Rule Chapter 12D-9, F.A.C., were developed using a multi-step process designed to maximize public participation: A) first, topics based on value adjustment board hearing procedure issues were discussed with interested parties in a round-table

forum at three day-long public meetings – March 13, 2009 (notice of which was published in the Florida Administrative Weekly (F.A.W.) in Vol. 35, No. 8, p. 1000); May 12, 13, and 14, 2009 (notice was published in the F.A.W. in Vol. 35, No. 16, p. 1990); and July 2, 2009 (notice was published in the F.A.W. in Vol. 35, No. 25, p. 3113); B) then, proposed rules were written based on these discussions; C) a subsequent rule development workshop was held to receive public comments on the proposed rules – August 4, 2009 (notice was published in the F.A.W. in Vol. 35, No. 28, pp, 3350-3352); and, D) a revised draft was developed based on the workshop. Members of the public attended each of these meetings and the workshop and made comments.

In 2008, the Department held seven workshops to develop an earlier rule draft. Members of the public attended each of these workshops and made comments. Notices for the workshops held on the earlier draft in 2008 were published on: July 11, 2008, for a workshop in Ft. Lauderdale, FL (see Vol. 34, No. 28, pp. 3613-3614 of the Florida Administrative Weekly/F.A.W.); July 18, 2008, for a workshop in Live Oak, FL (see Vol. 34, No. 29, p. 3668 of the F.A.W.); July 18, 2008, for a workshop in Tallahassee, FL (see Vol. 34, No. 29, p. 3668 of the F.A.W.); September 19, 2008, for a workshop in Tampa, FL (see Vol. 34, No. 38, p. 4803, of the F.A.W.); September 19, 2008, for a workshop in Panama City, FL (see Vol. 34, No. 38, p. 4803, of the F.A.W.); October 31, 2008, for a workshop in Orlando, FL (see Vol. 34. No.44, pp. 5709-5711 of the F.A.W.); and, October 31, 2008, for a workshop in Miami, FL (see Vol. 34, No. 44, pp, 5709-5711 if the F.A.W.). Members of the public attended each of this workshops and made comments on the forms.

In addition to these workshops, the Department published a notice of rule development on December 5, 2008, and posted a new draft of these proposed rules on the Internet site listed below on December 22, 2008, with a request that all public comments be submitted no later than January 16, 2009. The notice of rule development for these rules stated that a workshop would not be held unless one was requested in writing. The Department did not receive a written request to hold a workshop.

Throughout this rulemaking process written comments have been emailed to the Department and to an Internet site at: http://dor.myflorida.com/dor/property/vabwb/vabws.html,

which was created specifically to give the public access to all comments submitted on these proposed rules. In addition, written comments have been submitted to the Department be email, and to an Internet site at http://dor.myflorida.com/dor/property/vabwb/vabws.html, which was created specifically to give the public a location to post comments, to access all revised versions of the proposed rules and forms, and view comments submitted on these proposed new and amended rules and forms.

DEPARTMENT OF REVENUE

Property Tax Oversight Program

RULE NO.: RULE TITLE:

12D-16.002 Index to Forms

PURPOSE AND EFFECT: The purpose of the proposed revisions to this rule is to list and adopt the proposed new and amended forms that will support the proposed new rules in Rule Chapter 12D-9, Florida Administrative Code (Requirements for Value Adjustment Boards in Administrative Reviews; Uniform Rules of Procedure For Hearings Before Value Adjustment Boards). The effect of these proposed rules is that taxpayers who petition property tax matters to Value Adjustment Boards, including property tax assessments, denials of classifications, and denials of exemptions have access to, and have an opportunity to comment on, the proposed forms that support the proposed value adjustment board hearing procedures in new Rule Chapter 12D-9, F.A.C.

SUMMARY: The proposed revisions to Rule 12D-16.002, Florida Administrative Code, amend some form and add new forms to the list of forms used by the Department to support the proposed new and amended rules on hearings before value adjustment boards (the board).

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.

RULEMAKING AUTHORITY: 194.011(5), 194.034, 195.027(1), 213.06(1) FS.

LAW IMPLEMENTED: ss. 3, 4, 5, and 6, Ch. 2008-197, L.O.F., 92.525, 95.18, 136.03, 192.001(18), 193.052, 193.077, 193.085, 193.092, 193.114, 193.122, 193.461, 193.503, 193.625, 193.703, 194.011, 194.032, 194.034, 194.035, 194.037, 195.002, 195.022, 195.087, 195.095, 196.011, 196.015, 196.031, 196.075, 196.095, 196.101, 196.121, 196.141, 196.151, 196.193, 196.1961, 196.1983, 196.1995, 196.202, 196.24, 197.182, 197.222, 197.253, 197.304, 197.3041, 197.3632, 197.3635, 197.414, 197.432, 197.472, 197.502, 197.512, 197.552, 200.065, 200.069, 213.05, 218.66, Ch. 475, Part II FS.

A HEARING WILL BE HELD AT THE DATES, TIMES AND PLACE SHOWN BELOW:

DATES AND TIMES: October 9, 2009, 9:00 a.m. – 5:00 p.m. or upon adjournment; if necessary, a second hearing will be held on October 19, 2009, 9:00 a.m. – 5:00 p.m. or upon adjournment. If the October 19, 2009 hearing is not necessary, notification of cancellation will be sent to interested parties and posted to the PTO Internet site at http://dor.myflorida.com/dor/property/vabwb/vabws.html.

PLACE: Training Room D, Building C-1, Taxworld, 5050 W. Tennessee Street, Tallahassee Florida. The public can also participate in this hearing through a simultaneous electronic broadcast of this event by the Department of Revenue using WebEx, digital video production, and conference calling technology. The requirements to participate are access to the Internet and a phone. The public can participate in this electronic hearing by accessing the broadcast from their home or office. Specific information about how to participate in this electronic meeting from your home or office will be posted on the Property Tax Oversight Program's VAB Internet site on or before [to be determined if the Governor and Cabinet approve publishing this notice].

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Janice Forrester at (850)922-7945. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Janice Forrester, Tax Law Specialist, Property Tax Oversight Program, Department of Revenue, P.O. Box 3000, Tallahassee, Florida 32315-3000, telephone (850)922-7945, ForrestJ@dor.state.fl.us

Written comments may be submitted to the Department by email, and to an Internet site at http://dor.myflorida.com/dor/property/vabwb/vabws.html, which was specifically created to give the public access to all revised versions of the proposed rules and forms, to give the public a site to which they could submit comments, and to give the public the opportunity to view the comments submitted by others. The preliminary text of the proposed forms will be available from the contact person listed below or from the Department's website stated above at least 7 days before the scheduled hearing. General comments, questions, or suggestions about the value adjustment board process may be submitted by email to the Department at VAB@dor.state.fl.us

THE FULL TEXT OF THE PROPOSED RULE IS:

12D-16.002 Index to Forms.

(1) The following paragraphs list the forms utilized by the Department of Revenue. A copy of these forms may be obtained by writing to: Director, Property Tax Oversight ~~Administration~~ Program, Department of Revenue, Post Office Box 3000, Tallahassee, Florida 32315-3000. The Department of Revenue adopts, and hereby incorporates by reference in this rule, the following forms and instructions:

Form Number	Title	Effective Date
(2) through (21)(d) No change.		
(22) DR-481	Value Adjustment Board-Notice of Hearing (n. 8/09)	____
(23)(a) DR-482	Application and Return for Agricultural Classification of Lands (r. 12/00)	1/01
(b) through (d) No change.		
(24)~~(23)~~ DR-484	Budget form for Appraisers (n. 2/90)	2/90
(25)(a) DR-485R	Value Adjustment Board-Remand to Property Appraiser (n. 8/09)	____
(b) DR-485V	Decision of The Value Adjustment Board-Value Petition (n. 8/09)	____
(c) DR-485WCN	Value Adjustment Board-Clerk's Notice (n. 8/09)	____
(d) DR-485WI	Value Adjustment Board-Withdrawal of Petition (n. 8/09)	____
(e) DR-485XC	Decision of the Value Adjustment Board-Exemption, Classification, or Assessment Difference Transfer Petition (n. 8/09)	____
~~DR-485~~	~~Record of Decision and Notice of the Value Adjustment Board (r. 12/96)~~	~~12/96~~
(26)~~(25)~~(a) DR-486	Petition to The Value Adjustment Board-Request for Hearing (r. 8/09 ~~12/96~~)	____ ~~12/96~~
(b) DR-486DP	Petition to the Value Adjustment Board-Tax Deferral or Penalties-Request for Hearing (n.8/09)	____
(c) DR-486PORT	Petition to the Value Adjustment Board-Transfer of Homestead Assessment Difference-Request for Hearing (r. 8/09)	____
(d) DR-486XCO	Cross-County Notice of Appeal and Petition-Transfer of Homestead Assessment Difference (r. 8/09)	____
~~DR-486T~~	~~Petition to Value Adjustment Board-Tangible Personal Property (r. 2/92)~~	~~12/94~~

(e) DR-487	Certification of Compliance (r. 12/99)	12/96
(27)~~(26)~~ DR-488	Certification ~~Certificate~~ of the Value Adjustment Board (r. 8/09 ~~3/92~~)	____ ~~1/00~~

(27) through (28)(d) renumbered (28) through (29)(d) No change.

(30)~~(29)~~(a) DR-490	Notice of Disapproval of Application for Property Tax Exemption or Classification by The County Property Appraiser (r. 8/09 ~~12/03~~)	____ ~~1/04~~
(b) DR-490PORT	Notice of Denial of Transfer of Homestead Assessment Difference (r. 8/09)	____
~~(b) DR-491~~	~~Notice of Denial of Application for Agricultural or High-Water Recharge Classification of Lands (r. 12/96)~~	~~12/96~~

(30)(a) through (50)(b) renumbered (31)(a) through (51)(b) No change.

(c) DR-529	Notice ~~of~~ Tax Impact of Value Adjustment Board ~~(example only)~~ (r. 8/09 ~~12/96~~)	____ ~~12/96~~

(51)(a) through (55) renumbered (52)(a) through (56) No change.

(57)~~(a) DR-570~~	~~Application for Homestead Tax Deferral (r. 7/06)~~	~~10/07~~
~~(b) DR-570WF~~	~~Application for Recreational and Commercial Working Waterfronts Tax Deferral (n. 7/06)~~	~~10/07~~
DR-571A ~~DR-571~~	~~Notice of~~ Disapproval of Application for ~~Homestead~~ Tax Deferral-Homestead, Affordable Rental Housing, or Working Waterfront (n. 8/09 ~~r. 6/91~~)	___~~6/91~~
~~(d) DR-571WF~~	~~Notice of Disapproval of Application for Recreational and Commercial Working Waterfronts Tax Deferral (r. 12/05)~~	~~1/06~~
~~DR-572~~	~~Petition to Value Adjustment Board Homestead Tax Deferral (r. 6/91)~~	~~6/91~~
~~(b) DR-572WF~~	~~Petition to Value Adjustment Board Recreational and Commercial Working Waterfronts (n. 12/05)~~	~~1/06~~
(a)~~(c)~~ DR-584	Tax Collectors Budget Schedule (r. 2/94)	12/94
(b)~~(d)~~ DR-585	Minimum Standards Contract (n. 8/77)	8/77

(58) through (61)(b) No change.

Rulemaking ~~Specific~~ Authority 195.027(1), 213.06(1) FS. Law Implemented 92.525, 95.18, 136.03, 192.001(18), 193.052, 193.077, 193.085, 193.092, 193.114, 193.122, 193.461, 193.503, 193.625, 193.703, 194.011, 194.032, 194.034, 194.035, 194.037, 195.002, 195.022, 195.087, 195.095, 196.011, 196.015, 196.031, 196.075, 196.095, 196.101, 196.121, 196.141, 196.151, 196.193, 196.1961, 196.1983, 196.1995, 196.202, 196.24, 197.182, 197.222, 197.253, 197.304, 197.3041, 197.3632, 197.3635, 197.414, 197.432, 197.472, 197.502, 197.512, 197.552, 200.065, 200.069, 213.05, 218.66 FS. History–New 10-12-76, Amended 4-11-80, 9-17-80, 5-17-81, 1-18-82, 4-29-82, Formerly 12D-16.02, Amended 12-26-88, 1-9-92, 12-10-92, 1-11-94, 12-27-94, 12-28-95, 12-25-96, 12-30-97, 12-31-98, 2-3-00, 1-9-01, 12-27-01, 1-20-03, 1-26-04, 12-30-04, 1-16-06, 10-2-07, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Howard Moyes, Deputy Director, Property Tax Oversight Program, Department of Revenue, Bloxham Building, 725 S. Calhoun Street, Room G-12, Tallahassee, Florida 32399-0100, telephone (850)922-7991

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: The Governor and Cabinet of the State of Florida

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 25, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: The current proposed forms contained in this notice that support the proposed rules in new Rule Chapter 12D-9, F.A.C., were developed using a multi-step process designed to maximize public participation: A) first, topics based on value adjustment board hearing procedure issues were discussed with interested parties in a round-table forum at three day-long public meetings – March 13, 2009 (notice of which was published in the Florida Administrative Weekly (F.A.W.) in Vol. 35, No. 8, p. 1000); May 12, 13, and 14, 2009 (notice was published in the F.A.W. in Vol. 35, No. 16, p. 1990); and July 2, 2009 (notice was published in the F.A.W. in Vol. 35, No. 25, p. 3113); B) then, proposed rules were written based on these discussions; C) a subsequent rule development workshop was held to receive public comments on the proposed rules – August 4, 2009 (notice was published in the F.A.W. in Vol. 35, No. 28, pp, 3350-3352); and, D) a revised draft was developed based on the workshop. Members of the public attended each of these meetings and the workshop and made comments.

In 2008, the Department held seven workshops to develop an earlier rule draft. Members of the public attended each of these workshops and made comments.

Notices for the workshops held on the earlier draft in 2008 were published on: July 11, 2008, for a workshop in Ft. Lauderdale, FL (see Vol. 34, No. 28, pp. 3613-3614 of the Florida Administrative Weekly/F.A.W.); July 18, 2008, for a workshop in Live Oak, FL (see Vol. 34, No. 29, p. 3668 of the F.A.W.); July 18, 2008, for a workshop in Tallahassee, FL (see Vol. 34, No. 29, p. 3668 of the F.A.W.); September 19, 2008, for a workshop in Tampa, FL (see Vol. 34, No. 38, p. 4803, of the F.A.W.); September 19, 2008, for a workshop in Panama City, FL (see Vol. 34, No. 38, p. 4803, of the F.A.W.); October 31, 2008, for a workshop in Orlando, FL (see Vol. 34. No. 44, pp. 5709-5711 of the F.A.W.); and, October 31, 2008, for a workshop in Miami, FL (see Vol. 34, No. 44, pp, 5709-5711 if the F.A.W.). Members of the public attended each of this workshops and made comments on the forms.

In addition to these workshops, the Department published a notice of rule development on December 5, 2008, and posted a new draft of these proposed rules on the Internet site listed below on December 22, 2008, with a request that all public comments be submitted no later than January 16, 2009. The notice of rule development for this rule stated that a workshop would not be held unless one was requested in writing. The Department did not receive a written request to hold a workshop.

Throughout this rulemaking process written comments have been emailed to the Department and to an Internet site at http://dor.myflorida.com/dor/property/vabwb/vabws.html,

which was created specifically to give the public access to all comments submitted on these proposed rules. In addition, written comments have been submitted to the Department be email, and to an Internet site at http://dor.myflorida.com/dor/property/vabwb/vabws.html, which was created specifically to give the public a location to post comments, to access all revised versions of the forms, and view comments submitted on these proposed new and amended forms.

DEPARTMENT OF REVENUE

Division of Child Support Enforcement

RULE NOS.:	RULE TITLES:
12E-1.0052	Unidentifiable Collections
12E-1.014	Internal Revenue Service Tax Refund Offset Program; Passport Denial; Internal Revenue Service Full Collection Services

PURPOSE AND EFFECT: The purpose of creating proposed Rule 12E-1.0052, F.A.C., is to provide guidance to the public about the Department's procedures for resolving unidentifiable Title IV-D support payments received by the State Disbursement Unit. The proposed rule also provides information to the public about how to reclaim unidentifiable collections. The effect of the proposed rule is to provide: (1) information on identifying support payments that could not be processed because there was not enough information to identify who the payment was for; (2) information on how a noncustodial parent may seek the return of a payment which was never processed; and (3) guidance on how the Department will process payment return requests.

The purpose of the proposed amendments to Rule 12E-1.014, F.A.C., is to reflect the change in 42 United States Code (USC) Section 664(c) which now allows the certification of past-due amounts for Internal Revenue Service Tax Refund Offset in non-public assistance cases where the child has emancipated. The amendment also changes the certification threshold for passport denial from $5000 to amounts over $2500 as allowed by Section 409.2564(10), F.S., as amended July 1, 2007. Other amendments provide new exception criteria for restoring passport privileges to a non-custodial parent who owes more than $2500. The effect of the proposed rule is to inform the public the Department will certify past-due amounts for non-public assistance cases for a child for Internal Revenue Service Tax Refund Offset, even if the child has emancipated. The rule also informs the public that the certification threshold for past-due support for passport denial has changed from $5000 to more the $2500. Finally, the rule informs the public the Department may consider exceptions to restoring an obligor's passport even if the obligor was not certified in error and has not paid the past-due support balance amount below $2500.

SUMMARY: Rule 12E-1.0052, F.A.C., establishes a method for determining a support collection to be unidentifiable. The rule provides a method for retrieving unidentifiable collections once the collection becomes identified and establishes how the Department will process payment return requests. The rule also incorporates by reference CSE Forms CS-FM100 (Request to Return Payment), CS-FM101 (Request for Payment Return Denied), and CS-FM102 (Payment Return).

Rule 12E-1.014, F.A.C., allows certification for IRS Tax Offset in non-public assistance cases, whether or not the child is a minor. The amendment changes the certification threshold for passport denial from $5,000 to more than $2,500. The amendment also establishes exception criteria for restoration of a passport. The amendment also incorporates by reference CSE Form CS-EF36A (Notice of Decision of Informal Conference, Income Tax Refund or Passport Denial), as well as incorporates plain language.

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.

RULEMAKING AUTHORITY: 409.2557(3)(i), 409.2557(3)(j), 409.2558(4), 409.2558(9) FS.

LAW IMPLEMENTED: 61.17, 409.2558(3), 409.2558(4), 409.2564 FS.

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

DATE AND TIME: September 29, 2009, 9:00 a.m.

PLACE: Room 301, 4070 Esplanade Way, Tallahassee, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Larry Green at (850)922-4830. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: For Rule 12E-1.0052, F.A.C., Phil Scruggs, Government Analyst II, Child Support Enforcement Program, Department of Revenue, P. O. Box 8030, Tallahassee, Florida 32314-8030, telephone (850)922-9558, e-mail address scruggsp@dor.state.fl.us. For Rule 12E-1.014, F.A.C., Steve Robinson, Government Analyst II, Department of Revenue, Post Office Box 8030, Tallahassee, Florida 32314-8030, telephone number (850)922-9716, e-mail address robinsos@dor.state.fl.us

THE FULL TEXT OF THE PROPOSED RULES IS:

12E-1.0052 Unidentifiable Collections.

(1) Introduction. The Department is responsible for distribution and disbursement of child support payments under Section 409.2558, F.S. The State Disbursement Unit operating under Section 61.1824, F.S., is responsible for the collection and disbursement of child support payments for:

(a) cases enforced by the Department under Title IV-D of the Social Security Act; and

(b) cases not enforced by the Department under Title IV-D of the Social Security Act (non Title IV-D cases) in which an order was initially issued in Florida on or after January 1, 1994, and in which the obligor's support obligation is being paid through income deduction.

(2) Definitions. For purposes of this rule:

(a) "Comprehensive Case Information System" or "CCIS" means a secured internet portal developed and set up by Florida Association of Court Clerks and Comptrollers (FACC) that provides a single point of search for statewide court case information.

(b) "Department" means the Florida Department of Revenue.

(c) "State Disbursement Unit" or "SDU" means the unit set up and operated by the Title IV-D agency, under Section 61.1824, F.S. The SDU provides one central address for collection and disbursement of child support payments for the cases listed in subsection (1).

(d) "Unidentifiable collection" as defined by the social and economic assistance provisions of Section 409.2554(14), F.S., means a collection received by the SDU or Department for which the noncustodial parent, custodial parent, depository or circuit civil numbers, or source of the collection cannot be identified.

(3) Payment Processing Procedures.

(a) The State Disbursement Unit's automated remittance processing system will match and apply child support collections to the individual child support case.

(b) The following steps are taken, sequentially, to try to identify the payment instrument owner, recipient, or source of payment when support collections cannot be identified by the automated remittance processing system. If the manual search identifies the owner of the payment instrument or the recipient, the collection is applied to the correct case.

1. Search the State Disbursement Unit databases using available information on the payment instrument. The information can include case number, noncustodial parent name and social security number, and custodial parent name and social security number.

2. Search the payment transaction document imaging database. Searches will be by employer name, phone number, address, check routing number, checking account number, and noncustodial parent name. If an employer is found, an attempt will be made to match the collection amount with the check number, check routing number, checking account number, payment method, and check amount to identify the collection and match it to the correct case. If the collection cannot be matched to a case, the employer is contacted by phone to try to match the collection to the correct case.

3. Search the Department's automated case management computer system. Searches will be by names, social security numbers, case number, depository number, using the information available from the payment instrument.

4. If the searches under subparagraphs 1. through 3. do not identify the payment instrument owner, recipient, or employer within 10 business days, further research will be conducted in an attempt to identify the collection and match it to the correct case. Further research includes the following Internet searches.

a. Noncustodial parent and/or custodial parent name, address, and phone number.

b. Company name.

c. Clerk of court records.

d. Secretary of State's databases (corporations, trademarks, limited partnerships, federal lien registration, fictitious names, general and limited liability partnerships, and judgment liens).

e. Department of Business and Professional Regulation licensing.

f. Department of Health licensing.

g. Secretary of State licensing.

h. Florida Bar licensing.

5. If the searches under subparagraphs 1. through 4. do not identify the collection, repeat the steps described in subparagraphs 1. through 4. after one hundred business days from the original collection receipt date.

(c) If the searches under subparagraph (3)(b)5. of this rule do not identify the owner of the payment instrument, recipient or employer, the collection is considered unidentifiable. The Department shall declare the unidentifiable collection as program income, deposit the state share of the collection in the General Revenue Fund and the federal share of the collection in the Grants and Donations Trust Funds.

(d) The State Disbursement Unit may identify the case, but sends the case data and payment to the Department for Title IV-D processing. If the Department's automated system cannot find the case, search the Comprehensive Case Information System (CCIS) to find out if the collection was sent to the Department in error. If the collection was received in error, it is returned to the appropriate clerk of court.

(4) Reclaiming Unidentifiable Collections.

(a) The obligor may reclaim unidentifiable collections. The obligor may contact the local child support office or contact the Department at (850)922-9590 and ask for the Unidentified Collection Unit. The obligor may reclaim an unidentifiable collection up to five years from the date the collection was received by the State Disbursement Unit. Requests after five years will be denied. The five-year limit is based on the limitations of actions found in Section 95.11(2)(b), F.S.

(b) To reclaim a collection, the obligor must complete and send to the Department, Form CS-FM100, Request to Return Collection, dated June 2008, incorporated by reference in this rule. The obligor must prove they are the collection owner by giving his or her name, their mailing address, child support or case number, date and amount of collection, and proof of payment. Examples of acceptable proof include: front and back copy of canceled check; money order receipt; or pay stub showing date and amount of payment.

(c) The Department will review the information submitted by the obligor and respond in writing to approve or deny the request.

1. If approved, the Department will mail the collection and Form CS-FM102, Collection Return, dated June 2008, incorporated by reference in this rule, to the obligor.

2. If denied, the Department will mail Form CS-FM101, Request for Collection Return Denied, dated June 2008, incorporated by reference in this rule, to the obligor. Form CS-FM101 states the request is denied, reason for the denial, and the obligor may contest the decision by seeking an administrative hearing under Chapter 120, F.S. The form includes a Notice of Rights.

3. An obligor may seek an administrative hearing to contest the Department's decision to deny a request to reclaim a collection considered unidentifiable by the Department. A petition for an administrative hearing must be received by the Department of Revenue, Child Support Enforcement Program, Deputy Agency Clerk within twenty (20) days from the mailing date of Form CS-FM101. Administrative hearings shall be conducted pursuant to Chapter 120, F.S.

(d) Members of the public may get a copy of the forms used in this rule chapter, incorporated by reference, without cost, by writing to the Department of Revenue, Child Support Enforcement Program, Attn.: Forms Coordinator, P. O. Box 8030, Tallahassee, Florida 32314-8030.

Rulemaking Authority 409.2557(3)(j), 409.2558(4), 409.2558(9) FS. Law Implemented 409.2558(3), 409.2558(4) FS. History–New _____.

(Substantial rewording of Rule 12E-1.014 follows. See Florida Administrative Code for present text.)

12E-1.014 Internal Revenue Service Tax Refund Offset Program; Passport Denial; ~~Administrative Offset Program;~~ Internal Revenue Service Full Collection Services.

(1) Definitions. As used in this rule:

(a) "Assignment" means any assignment of rights to support as a condition of eligibility for temporary cash assistance, foster care maintenance payments, or medical support as authorized by 45 Code of Federal Regulations, Section 301.1.

(b) "Offset" means the complete or partial interception of an Internal Revenue Service income tax refund or rebate. The Department will intercept federal income tax refunds or rebates for past due support owed for a child, whether or not the child is a minor, as authorized by 42 United States Code, Section 664(c).

(c) "Past-due support" means the amount of support determined under a court order, or an order of an administrative process established under state law, for support and maintenance of a child which has not been paid, whether or not the child is a minor, as defined in 45 Code of Federal Regulations, Section 301.1.

(2) Certification for offset and passport denial. The Department shall certify obligors for offset and passport denial to the Federal Office of Child Support Enforcement when they meet the criteria in paragraphs (5)(b) and (6)(a).

(3) Notifying the obligor that the Department is certifying past-due support for offset and passport denial. The Federal Office of Child Support Enforcement mails one notice to each obligor. The notice tells the obligor he or she has 30 days from the date of the notice to pay the past-due amount in full to prevent certification. The certification continues until the obligor pays the past-due support in full. On a weekly basis, the Department will certify any increase or decrease in an obligor's past-due support amount. The notice also tells the

obligor that he or she may contest the amount of past-due support owed. To contest, the obligor must contact the Department at the address or telephone number provided in the notice within 30 days from the date of the notice.

(4) Right to informal review and administrative hearing.

(a) If the obligor contacts the Department within 30 days from the date of the notice, the Department shall review its records and any records submitted by the obligor and attempt to resolve the obligor's concerns informally.

(b) If the Department cannot resolve the obligor's concerns during the informal review, the Department shall notify the obligor by regular mail at his or her last known address using Department of Revenue Form CS-EF36A, Notice of Outcome of Informal Conference for IRS Offset Certification/Passport Denial. Form CS-EF36A (R. 02/08) is incorporated by reference in this rule. Members of the public may obtain a copy of this form by writing to: Department of Revenue, Child Support Enforcement Program, attn.: Forms Coordinator, P. O. Box 8030, Tallahassee, FL 32314-8030. The notice tells the obligor that the Department will certify the obligor's past-due support for offset, passport denial, or both. The notice also tells the obligor that he or she may ask for an administrative hearing by filling in the backside of the notice and returning it to the Department within 30 days from the date on the notice.

(c) If the Department does not resolve the obligor's concerns through an informal review, the obligor may ask for an administrative hearing.

1. If the past-due support is based on a Florida order, the obligor may ask for an administrative hearing in Florida. The Department of Children and Family Services, Office of Appeal Hearings conducts this hearing, as authorized by Section 120.80(7), F.S.

2. If the past-due support is based on an order entered in another state, the obligor may ask that a hearing be held either in Florida or in the state that issued the order. If the obligor asks for the hearing to be held in the issuing state, the Department will contact the state that issued the order within 10 days of receiving the obligor's request. The state that issued the order will tell the obligor of the date, time, and place of the administrative hearing.

(d) If the Department of Children and Family Services holds an administrative hearing and a final order is issued in the obligor's favor, the Department will tell the Federal Office of Child Support Enforcement to remove the obligor's certification or change the certification to show the correct past-due support amount. If the final order is issued in the Department's favor, the certification stays in place and any change in the past-due support amount is updated as stated in subsection (3).

(e) If the obligor does not ask for an informal review or administrative hearing within 30 days from the date of the notice, the obligor waives the right to contest the certification.

(5) Internal Revenue Service Tax Refund Offset Program.

(a) Obligors who owe past-due support in Title IV-D cases are subject to offset as authorized in 45 Code of Federal Regulations, Section 303.72.

(b) Certification for Offset. The Department shall certify an obligor for offset if the obligor owes past-due support as follows:

1. For support assigned to the State, the amount of past-due support is not less than $150.

2. For support owed to the obligee, the amount of past-due support is not less than $500.

(c) Notification of Offset. Once an offset occurs, the United States Department of Treasury notifies the obligor by regular mail that they are forwarding the offset amount from the tax refund to the Department.

(d) Distribution of Offset.

1. The Department shall keep federal income tax refund offset payments in current and former temporary cash assistance cases up to the amount of past-due support assigned to the State. After the amount of past-due support assigned to the State is paid in full, any remaining past-due support collected by the Department is paid to the obligee as required by 42 United States Code, Sections 657(a)(1) and (a)(2)(B)(iv).

2. For past-due support that is not assigned to the State, the Department delays distribution of the offset amount for six months for a refund from a joint federal income tax return as allowed by 42 United States Code 664 (a)(3)(B). Distribution is delayed to allow the unobligated joint filer to claim his or her share of the refund before the offset amount is distributed. In these instances, distribution is delayed until one of the following occurs:

a. The Department receives written verification from the United States Department of the Treasury that an injured spouse claim filed by the obligor's spouse has been resolved.

b. The obligor pays the past-due support owed in full.

c. Six months has passed since the receipt of the offset collection.

(6) Passport Denial.

(a) Obligors who are certified under subsection (2) and who owe more then $2500 in past-due support are also reported to the United States Department of State for passport denial as required by 42 United States Code, Section 652(k).

(b) When the United States Department of State takes action to deny an obligor's passport, they send the obligor a notice telling the obligor he or she is not eligible to receive a passport.

(c) If an obligor needs a United States passport, the obligor must contact the Department at the address or telephone number provided in the notice mailed by the Federal Office of Child Support Enforcement as out-lined in subsection (3) of this rule. To restore passport eligibility, the obligor must:

1. Reduce the amount of past-due support owed to $2500 or less: or

2. Prove he or she owes less then $2500 in past-due support; or

3. Provide documentation from a medical authority verifying a death or medical emergency requiring travel outside of the United States.

(d) An obligor may ask the Department to consider a request to reinstate a denied passport for reasons other than those listed in paragraph (6)(c) above. Such other reasons may include, but are not limited to, cases in which a passport is necessary for travel outside the United States for employment.

(e) Only the state that certifies an obligor for passport denial may decertify the obligor and restore the obligor's passport eligibility. If a state other than Florida certified the obligor for passport denial, the obligor must contact the other state at the address or telephone number listed in the notice discussed in subsection (3) of this rule to ask about passport reinstatement.

(7) Internal Revenue Service Full Collection Services. As allowed by 45 Code of Federal Regulations, 303.71, the Department will request the Federal Office of Child Support Enforcement to certify past-due support to the Secretary of the Treasury for full collection services under the Internal Revenue Code.

Rulemaking ~~Specific~~ Authority 409.2557(3)(i) FS. Law Implemented 61.17, 409.2564 FS. History–New 6-17-92, Amended 7-20-94, Formerly 10C-25.011, Amended 1-23-03, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: For Rule 12E-1.0052, F.A.C., Phil Scruggs, Government Analyst II, Child Support Enforcement Program, Department of Revenue, P. O. Box 8030, Tallahassee, Florida 32314-8030, telephone (850)922-9558, e-mail address scruggsp@dor.state.fl.us. For Rule 12E-1.014, F.A.C., Steve Robinson, Government Analyst II, Department of Revenue, Post Office Box 8030, Tallahassee, Florida 32314-8030, telephone number (850)922-9716, e-mail address robinsos@dor.state.fl.us

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: The Governor and Cabinet of the State of Florida

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 25, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 24, 2009, Vol. 35, No. 16, pp. 1932-1933. The workshop was held on May 11, 2009. No one appeared at the workshop and the Department did not receive written comments.

DEPARTMENT OF TRANSPORTATION

RULE NOS.:	RULE TITLES:
14-85.001	Definitions
14-85.002	Responsibilities of Program Administrator and Department
14-85.003	Qualification of Interchanges
14-85.004	Logo Sign Program
14-85.005	Logo Structures
14-85.006	Display Panel Configuration
14-85.007	Business Logos and Dual Business Logos
14-85.008	Installation, maintenance and Removal of Logo Structures and Business Logos
14-85.009	Qualification of Businesses
14-85.010	Permits
14-85.011	Priority of Applications
14-85.012	Permit Renewal
14-85.014	Denial, Revocation, Suspension, or Cancellation of Permit

PURPOSE AND EFFECT: A substantial amendment and rewrite of Rule Chapter 14-85, F.A.C., pertaining to the Logo Sign Program. Rule 14-85.004, F.A.C., is being repealed and additional rules are being added to the Rule Chapter to clarify Logo program requirements.

SUMMARY: New rules are being added to incorporate the revisions made to Section 479.261, F.S., during the 2009 legislative session.

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.

RULEMAKING AUTHORITY: 479.261 FS.

LAW IMPLEMENTED: 479.261 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:

DATE AND TIME: September 30, 2009, 10:00 a.m.

PLACE: Florida Department of Transportation, Haydon Burns Building Auditorium, 605 Suwannee Street, Tallahassee, Florida 32399

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 24 hours before the workshop/meeting by contacting: Deanna R. Hurt, Assistant General Counsel and Clerk of Agency Proceedings, Florida Department of Transportation, Office of the General Counsel, 605 Suwannee Street, Mail Station 58, Tallahassee, Florida 32399. If you are

hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Deanna R. Hurt, Clerk of Agency Proceedings, Florida Department of Transportation, Office of the General Counsel, 605 Suwannee Street, Mail Station 58, Tallahassee, Florida 32399-0458

THE FULL TEXT OF THE PROPOSED RULES IS:

14-85.001 Definitions.

All terms in this rule chapter shall have the same meanings as defined in Section 479.261, F.S. Additionally, the following terms are defined:

(1) "Business" means a commercial establishment providing gas, food, lodging or camping services, attractions, and other services located at a single site qualified interchange, as authorized by the *Manual on Uniform Traffic Control Devices*, incorporated herein by reference in Rule 14-15.010, F.A.C.

(2) "Business Logo" means a sign mounted on the display panel of a logo structure showing the name, symbol, trademark, or combination thereof for a business within a category of motorist services available at an interchange.

(3) "Category" means the motorist services of gas, food, lodging, camping, attraction, and other services, as authorized under the *Manual on Uniform Traffic Control Devices*.

(4) "Combination Logo Structure" means a logo structure designed to display a combination of business logos in no more than three categories.

(5) "Crossroad" means a road intersecting the interstate highway to which access is provided by means of an interchange.

(6) "Department" means the Florida Department of Transportation.

(7) "Display Panel" means the facing or surface of a logo structure to which business logos are affixed.

(8) "Double Exit Interchange" means an interchange configuration where, for a given direction of travel on the mainline, two exit ramps provide access to the crossroad, one for each direction of travel on the crossroad.

(9) "Dual Business Logo" means a logo displaying two businesses located under the same roof.

(10) "Exit Ramp" means the traffic lane or lanes at an interchange on an interstate highway leading from the mainline to the crossroad.

(11) "Full Size Logo Structure" means a mainline or ramp logo structure capable of displaying six business logos.

(12) "Half Size Logo Structure" means a mainline or ramp logo structure capable of displaying three business logo signs.

(13) "Logo Structure" means the support columns and display panel upon which separate business logos may be displayed.

(14) "Logo Trailblazer Signs" means signage in addition to mainline and ramp logo structures necessary to provide additional direction to otherwise qualifying businesses that are not located on, or visible from, the crossroad. Logo trailblazer signs shall consist of a business logo identical to a ramp business logo, a directional arrow, and supports.

(15) "Mainline" means the traffic lanes on the Interstate Highway System intended for through travel.

(16) "Mainline Business Logo Structure" means those logo structures located along the mainline.

(17) "Permit" means written authorization for the display of a business logo.

(18) "Permittee" means legal company/owner name to which a permit is issued.

(19) "Prepared Food" means hot or deli style food prepared on site.

(20) "Program Administrator" means the contractor hired by the Department to provide services relating to the logo sign program.

(21) "Project Manager" means the Department employee with oversight responsibility for the program.

(22) "Qualified Interchange" means an interchange that meets the requirements of Rule 14-85.003, F.A.C.

(23) "Ramp Logo Structure" means those logo structures located along an exit ramp.

(24) "Rural Area" means all areas outside an urban area.

(25)"Sign Configuration" means the arrangement of the logo categories on a display panel.

(26) "Single Exit Interchange" means an interchange configuration where, for a given direction of travel on the mainline, one exit ramp provides access to the crossroad for both directions of travel on the crossroad.

(27) "Traffic Control Device" means all signs, signals, markings, and devices placed on, over, or adjacent to a street or highway by authority of a public body or official having jurisdiction to regulate, warn, or guide motorists, as defined by the *Manual on Uniform Traffic Control Devices.*

(28) "Urban Area" means as defined in Section 334.03(32), F.S.

(29) "Wait List" means a compilation of businesses, by individual category, which have applied to participate in the logo program at a particular interchange at which there is currently no space available. Wait lists are maintained by interchange, category and application date.

Rulemaking Authority 334.044(2), 479.261(1) FS. Law Implemented 334.044(2) 479.261 FS. History–New _____.

14-85.002 Responsibilities of Program Administrator and Department.

(1) The Department is responsible for establishing the logo sign program pursuant to Section 479.261, F.S.

(2) The Program Administrator is responsible for administering all provisions of this Rule Chapter, including the receipt of applications and renewals and the issuance of Department-approved notices.

Rulemaking Authority 334.044(2), 479.261(1) FS. Law Implemented 334.044(7) 479.261(4) FS. History–New _____.

14-85.003 Qualification of Interchanges.

(1) Interchanges on the Interstate Highway System are qualified for the logo sign program when spacing requirements allow at least one logo structure on the mainline and one corresponding ramp logo structure, in addition to all necessary traffic control devices for each direction of travel on the mainline.

(2) An interchange on the Interstate Highway System is qualified only when the interchange configuration allows a motorist to exit and reenter the Interstate Highway System and continue in the same direction of travel.

(3) Interchanges are no longer qualified when either the spacing requirement or the configuration requirement cannot be met as a result of Department action. Either the Department or the Program Administrator shall relocate or remove logo structures.

Rulemaking Authority 334.044(2), 479.261(1) FS. Law Implemented 334.044(2), 479.261(2), (7) FS. History–New _____.

14-85.004 Logo Sign Program.

Rulemaking ~~Specific~~ Authority 479.08, 479.261, 334.044(2) FS. Law Implemented 334.044(28), 479.08, 479.261 FS. History–New 6-26-85, Formerly 14-85.04, Amended 3-20-91, Amended 10-10-96, 12-31-96, 10-8-97, 5-25-99, 8-31-99, 7-15-02, 1-7-03, 11-30-04, 3-29-05, 12-25-05, 2-13-08, 9-16-08, Repealed _____.

14-85.005 Logo Structures.

(1) The number of logo structures along an approach to an interchange and the corresponding ramp structures shall be limited to a maximum of four each.

(2) No more than six business logos shall be allowed on any logo structure.

(3) No category shall appear on more than two mainline and two ramp logo structures in each direction at an interchange.

(4) Arrangement of business logos on the display panel shall be based on the most efficient use of the display panel and not on the priority of the wait list or length of time a business has been participating in the program.

(5) At interchanges where sufficient spacing exists for mainline and corresponding ramp logo structures, preference shall be given in the successive order of gas, food, lodging, camping, attractions, and other permissible categories.

(6) At interchanges where sufficient spacing does not exist, the display panel configuration shall be based on that which maximizes participation in the logo sign program.

(7) Combination logo structures and ramp logo structures shall be used when spacing for separate structures is unavailable to accommodate all business categories for which applications have been submitted.

(8) A maximum of two dual business logos shall be displayed on any one logo structure.

(9) The display panel of mainline logo structures shall be:

(a) 15 feet wide by 10 feet high for a full size mainline logo structure;

(b) 15 feet wide by 6 feet high for a half size mainline logo structure;

(c) 15 feet wide by either 8 or 12 feet high for a combination mainline logo structure.

(10) The display panel of ramp logo structures shall be:

(a) 8 feet wide by 7 feet high for a full size ramp logo structure

(b) 8 feet wide by 4 feet high for a half size ramp logo structure

(c) 8 feet wide by 8 feet high for a combination ramp logo structure.

Rulemaking Authority 334.044(2), 479.261(1) FS. Law Implemented 334.044(2), 479.261(2), (7) FS. History–New _____.

14-85.006 Display Panel Configuration.

(1) If spacing is unavailable on a logo structure for categories with pending applications for the interchange, display panels shall be configured to best accommodate as many categories as practicable, with consideration given to the priorities listed in subsection 14-85.005(5), F.A.C.

(2) When a business logo is removed, the next qualified business, in the same category, on the waiting list will be displayed on the display panel subject to subsection 14-85.005(4), F.A.C.

Rulemaking Authority 334.044(2), 479.261(1) FS. Law Implemented 479.261(7) FS. History–New _____.

14-85.007 Business Logos and Dual Business Logos.

(1) Mainline business logos and mainline dual business logos shall be constructed of metal and shall be 48 inches wide and 36 inches high. Letters shall be at least 10 inches high, whether capital or lowercase. However, when only a symbol or trademark is used on the business logo, any legend on the symbol or trademark shall be proportional to the size customarily used on the symbol or trademark.

(2) Ramp business logos and ramp dual business logos shall be constructed of metal and shall be 24 inches wide and 18 inches high. Letters shall be at least 6 inches high, whether capital or lowercase. However, when only the symbol or trademark is used, any legend on it shall be proportional to the size customarily used on the symbol or trademark.

(3) Dual business logos may only be displayed where space is not available for the display of separate business logos.

(4) All supplemental messages shall be displayed within the business logo. Supplemental messages may include DISEL, 24 HOURS, CLOSED AND THE DAY OF THE WEEK, ALTERNATE FUELS, RV, and the handicapped symbol.

Rulemaking Authority 334.044(2), 479.261(1) FS. Law Implemented 479.261(1), (7) FS. History–New _____.

14-85.008 Installation, Maintenance and Removal of Logo Structures and Business Logos.

(1) Except as provided, all logo structures and business logos shall be installed and maintained in accordance with the *Manual on Uniform Traffic Control Devices*.

(2) The Program Administrator shall remove, replace, or cover any business logo that no longer meets Department standards.

(3) The Program Administrator will make all removed business logos available to the permittee for 15 calendar days from removal. Any business logos not picked up during that time will become the property of the Program Administrator.

Rulemaking Authority 334.044(2), 479.261(1), (4) FS. Law Implemented 479.261(4) FS. History–New _____.

14-85.009 Qualification of Businesses.

(1) To qualify for participation in any category, a business must be open and operating and meet all of the following conditions:

(a) Hold all necessary licenses and permits to provide the services required to qualify for the category being displayed.

(b) Comply with laws concerning the provision of public accommodations without regard to race, religion, color, age, sex, or national origin, and allow admission to the general public. A business shall not qualify if admission or access is based on a membership fee or other means of exclusive admission, or where minors are excluded.

(c) Provide on-site, modern sanitary facilities and a telephone for use by motorists.

(d) Be within a category set forth in subsection 14-85.001(4), F.A.C., and meet the requirements applicable to that category, including distance from the qualifying interchange. The distance will be measured along the crossroad from the point where the crossroad intersects with the centerline of the interstate highway median to the nearest entrance to the premises of the business.

(e) Be located on or visible from the crossroad so that a motorist can immediately discern the type of service provided. However, a business which meets all other qualifications but is not located on or visible from the crossroad will be permitted to display a business logo subject to all of the following conditions:

1. The business demonstrates that additional signs are in place, which are adequate to direct the motorist to its location. Such signs shall be maintained at all times while the business logo is displayed.

2 The business shall provide the Program Administrator with the logo trailblazer signs at its own cost. Written approval must be obtained from the entity having authority for sign placement prior to installation of the logo trailblazer sign. Logo trailblazer signs shall be maintained by the Program Administrator.

3. Space is available to display the business logo on an existing logo structure.

(2) A business qualified in a category of gas, food or lodging only, which is located between three and six miles from the interchange will be granted a permit for a business logo if fewer than six permits have been issued for businesses within three miles of the interchange for that category. A permit for a business logo issued for a business located between three and six miles of the interchange will not be renewed at the next billing date if space is needed to accommodate a business or businesses located within three miles of the interchange that have been qualified for permits. If more than one business is located between three and six miles of the interchange, the logo of the business furthest from the interchange shall be the first to be removed.

(3) A business shall qualify to display a business logo in one direction only, for that specific interchange, if any of the following conditions are met:

(a) The business is located at an interchange that serves one direction only.

(b) The business is located at an interchange serving both directions, but the business can only serve motorists traveling in one direction because of the interchange configuration.

(c) The business is located at an interchange serving both directions, but the business can only be signed in one direction because of sign spacing.

(d) The business is using supplemental signing in one direction but supplemental signing in the other direction is not available.

(4) RV Friendly.

(a) Businesses meeting the following requirements shall be granted a permit to display the RV friendly symbol on their business logo:

1. Roadway access and egress shall have a hard surface, be free of potholes, and be at least 12 feet wide with a minimum swing radius of 50 feet to enter and exit the facility.

2. Roadway access, egress, and parking facilities must be free of any electrical wires, tree branches, and other obstructions up to 14 feet above the surface.

3. Facilities requiring short-term parking, such as restaurants or tourist attractions, are required to have 2 or more parking spaces that are at least 12 feet wide and 65 feet long with a swing radius of 50 feet to enter and exit the spaces.

4. Fueling facilities with canopies are required to have at least a 14-foot clearance, and those selling diesel fuel are required to have pumps with non-commercial nozzles.

5. Fueling facilities must allow for pull-through with a swing radius of 50 feet.

6. Campgrounds shall have two or more spaces at least 18 feet wide and 45 feet long.

7. Businesses shall post directional signing on their sites, as needed, to RV friendly parking spaces and other on site RV friendly services.

8. If a left turn into the business is precluded by a median or some other design feature of the crossroad, and a U-turn will be required to access the RV friendly site, an engineering study provided by the applicant is required to demonstrate that a lawful U-turn can be made by RVs within 1,000 feet of the business.

(b) RV friendly symbol design and placement.

1. The design of the RV friendly symbol is a 12-inch diameter yellow circle with a 1/2-inch approved non-reflective black border. The yellow background sheeting will be AASHTO Type III Sign Sheeting (High Intensity). The black upper case letters “RV” are inside the circle and are 8 inches in height and will be approved non-reflective black.

2. The RV friendly symbol shall be located in the lower right-hand corner of the business logo.

3. The RV friendly symbol shall only be displayed on mainline logo structures.

(c) RV friendly participation.

1. Businesses interested in providing this service should contact the Program Administrator.

2. Businesses in all categories may apply to use the RV friendly symbol on their business logos at any time.

3. The Program Administrator will inspect the business to assure compliance with the RV friendly qualifying criteria.

4. If a business subsequently fails to satisfy the RV friendly criteria, the RV friendly symbol shall be removed by the Program Administrator.

5. Upon application, the business will be charged a one-time fee of $100.00 for each RV friendly symbol displayed.

(5) Gas. To qualify for a business logo in the gas category, an existing business must meet all of the following conditions:

(a) Operate year round at least 16 hours per day, 360 days a year. However, a business that meets all other qualifications but maintains operating hours other than 16 hours per day will be permitted to display a business logo in the gas category if it meets all of the following conditions:

1. Space is available to display the business logo in the gas category on an existing logo structure.

2. At least one other gas business logo is displayed at the same interchange for a business operating year round at least 16 hours per day, at least 360 days a year.

3. The gas business operating less than 16 hours per day shall operate at least 12 continuous hours per day at least 360 days a year.

(b) Provide on-site vehicle services including: fuel, oil, water, and tire inflation.

(c) Provide drinking water.

(d) Be located within six miles of the interchange.

(6) Accessibility. Any full or self service gas business interested in providing gas pumping service to motorists with disabilities during the hours the business is open, may display the International Symbol of Accessibility for the Handicapped (Symbol D9-5 *Manual on Uniform Traffic Control Devices*) on its business logo. The symbol shall be a minimum of 6 inches wide by 6 inches high and a maximum of 8 inches wide by 8 inches high for the mainline business logo. These dimensions shall be reduced by one half for corresponding ramp business logos. The symbol shall be located in the upper left hand corner of the business logo in a manner in which it touches both the business logo and the display panel and is positioned in such a way as to cause minimal interference with the artwork. Permitted gas category businesses may apply to use this symbol on their business logos at any time. A new participant may elect to participate when the first permit fee payment is submitted.

(a) Gas category businesses interested in providing gas pumping services to motorists with disabilities should contact the Program Administrator. In order to participate, a gas business shall meet all of the following conditions:

1. An attendant shall be on duty to pump gas for motorists with disabilities, without additional charge and;

2. At least one gas pump is plainly identified with the International Symbol of Accessibility for the Handicapped with an explanation of the method by which the driver can notify an attendant of the need for assistance without exiting the vehicle.

(b) Following the approval of the initial application, the Program Administrator will install the symbol on the mainline and ramp logo signs.

(7) Food. To qualify for a business logo in the food category, an existing business must meet all of the following conditions:

(a) Be licensed in accordance with Chapter 500 or 509, F.S., and serve prepared food.

(b) Be located within six miles of the interchange.

(c) Not require a cover charge for admittance.

(d) Maintain continuous operating hours from at least 7:00 a.m. to 10:00 p.m., at least 360 days a year. A business which meets all other qualifications, but maintains operating hours other than 7:00 a.m. to 10:00 p.m., will be permitted to display a business logo in the food category so long as it meets all of the following conditions:

1. Space is available to display the business logo on an existing logo structure.

2. At least one business logo in the food category is displayed at the same interchange, with continuous operating hours from at least 7:00 a.m. to 10:00 p.m.

3. The business shall operate for at least six consecutive hours between 6:00 a.m. and midnight, at least 360 days a year.

(e) If a food business is qualified, except for the fact that the business is only open six days a week, that business will be allowed to participate as a fully qualified business. The business shall identify the day it is closed on the business logo, e.g., Closed Sunday. The legend must be located in the lower one third of the business logo and the letters must be at least 6 inches high. The color of the letters must be in contrast to the color of the background.

(7) Lodging. To qualify to display a business logo in the lodging category, an existing business must meet both of the following conditions:

(a) Be licensed in accordance with Chapter 509, F.S.

(b) Be located within six miles of the interchange.

(8) Camping. To qualify for a business logo in the camping category, an existing business shall hold a permit under the provisions of Chapter 513, F.S., and must be located within fifteen miles of the interchange.

(9) Attraction. To qualify for a business logo in the attraction category, an existing business must meet all of the following conditions:

(a) Be open at least 5 days a week for 52 weeks a year.

(b) Have, as its principal focus, family-oriented entertainment or cultural, educational, recreational, scientific, or historical activities.

(c) Be publicly recognized as a bona fide tourist destination. A bona fide tourist destination shall have, and keep current, all legally required permits and licenses, and comply with all laws concerning the provision of public accommodations pursuant to subsection 14-85.009(1), F.A.C.

(d) Advertise to the general public.

(e) Provide adequate parking.

(f) Not be advertised or displayed on any existing traffic control device, such as a supplemental guide sign or an overhead sign in the direction being signed by the logo sign program.

(g) Be located within fifteen miles of the interchange.

(10) Other permissible Services, as authorized by the Federal Highway Administration and in compliance with the Manual *on Uniform Traffic Control Devices*, shall be permitted.

Rulemaking Authority 334.044(2), 479.261(1) FS. Law Implemented 479.261(1)(a), (b), (7) FS. History–New _____.

14-85.010 Permits.

(1) Permit Period. All permits shall expire annually on December 31. However, initial permits approved after September 30, will expire December 31 of the year following approval.

(2) Permit Fees. Effective January 1, 2010, permit fees shall be in accordance with the provisions of Section 479.261(5), F.S. Annual fees for participation in the Logo Sign Program are computed based upon the Annual Average Daily Traffic (AADT) at each interchange, the population of the area surrounding the interchange, market conditions, and the costs of the program. The following charts show the groupings for both AADT and population:

AADT Grouping		
>	<=	Group
0	30,000	0
30,000	75,000	1
75,000	175,000	2
175,000		3

Population Grouping		
>=	<	Group
0	5,000	1
5,000	50,000	2
50,000	200,000	3
200,000	500,000	4
500,000		5

The following chart shows the weighted values assigned to each factor:

Fee Formula Factors	
AADT	600
Population	400
Cost	1000

The fee for each interchange is computed as follows:
(AADT Group x AADT Factor) + (Population Group x Population Factor) + Cost Factor

EXAMPLE: For an interchange with an AADT of 60,000 and a population of 75,000, the fee is computed as follows:

AADT Group = 1

Population Group = 3

(1 x 600) + (3 x 400) + 1000 = $2,800

The fees calculated above are for a mainline logo sign and ramp logo signs in both directions of the interstate. At interchanges where the configuration only allows access to the business in a single direction, one mainline logo sign and one ramp logo sign will be provided and the fee will be one-half (1/2) that computed for both directions.

(a) Payment of permit fees shall be by U.S. currency, postal money order, bank draft, cashier's check, personal check, or business check. If a personal or business check is not honored for any reason by the bank on which it is drawn, the application for which the fee was submitted will be denied. If an individual or company issues two or more checks to the Department or Program Administrator that are not honored, no further personal or business checks will be accepted from that individual or company, regardless of whether restitution has been made on previous checks.

(b) The permit fee will be prorated with 1/12 of the permit fee charged for each month or portion thereof remaining in the calendar year after the date of approval of an application. The fee for an application approved after September 30 will also include the fees for the next calendar year.

(c) A full service or self service gas business providing gas pumping service to motorists with disabilities and wishing to display the International Symbol of Accessibility for the Handicapped (Symbol D9-5 *Manual on Uniform Traffic Control Devices*) on its business logo, the business will be charged a one-time additional fee of $100 per display panel.

(d) When a participating business wishes to change a business logo, there will be a $100 change-out fee for each business logo.

(3) Initial Permit Application. A business applying to display a business logo must submit a completed Logo Sign Permit Application on Form 575-070-34, incorporated by reference, to the Program Administrator. A Logo Sign Permit Application may be obtained from the Program Administrator.

(4) Completed applications will be acted upon within 30 days of receipt. Written notice of the decision will be furnished to the applicant.

(5) Permit fees must be received by the Program Administrator within 30 days of the notification of permit approval.

(6) After notification of approval, the applicant shall be responsible for providing the Program Administrator with all required business logo signage.

(7) The business logo will generally be affixed to the display panel within 30 days of receipt of the business logo or the permit fee, whichever is later.

(8) When space is not available on a logo structure for a qualified business, the business will be placed on a waiting list in each individual category in the order in which the application was received. When space becomes available, notice will be provided to the business with the highest priority, providing the business 30 days within which to submit an application in accordance with this section.

Rulemaking Authority 334.044(2), 479.261(1), (7) FS. Law Implemented 334.044(2), 479.261(3), (4), (5), (7) FS. History–New _____.

14-85.011 Priority of Applications.

(1) For gas, food, and lodging categories only, applications received for businesses within three miles of an interchange shall have priority over businesses that are within three to six miles of that interchange.

(2) Active permit holders retain priority over other applications, except when retaining priority would conflict with subsection 14-85.009(1), F.A.C.

(3) Initial permit applications will be assigned priority based upon the date and time of receipt by the Program Administrator. The application received earliest will be given the highest priority subject to subsections 14-85.009(1) and (2), F.A.C. Processing will be in order of assigned priority. A business that fails to submit an application within 30 days of notice that space has become available shall be deemed to have withdrawn its application. The business shall resubmit the application in order to be assigned priority. Priority shall be based upon the date and time of receipt of the resubmitted application.

(4) Acceptance of an application and assignment of processing priority does not constitute approval of the application. Approval or denial of applications will be granted after processing is complete.

Rulemaking Authority 334.044(2), 479.261(1) FS. Law Implemented 479.261(3), (7) FS. History–New _____.

14-85.012 Permit Renewal.

(1) Each year, a dated renewal billing shall be sent to current permittees specifying the permit fee amount, due date, Interstate and interchange location, number of panels, and name of the business logo.

(2) Permit renewal payments must be received by the Program Administrator no later than 5:00 p.m. on December 1 of each year.

(3) It is the responsibility of the permit holder to keep the Program Administrator informed of any address changes, ownership changes, contact changes, billing address changes, and any other changes impacting notification or participation eligibility that have occurred since the last renewal period.

(4) If the Program Administrator has not received the permit fee(s) by 5:00 p.m. Eastern Standard time on December 1, the Department shall revoke the logo permit.

Rulemaking Authority 334.044(2), 479.261(1) FS. Law Implemented 479.261(3), (4) FS. History–New .

14-85.014 Denial, Revocation, Suspension, or Cancellation of Permit.

(1) Denial. An application for a permit will be denied if the business does not meet the eligibility requirements outlined in this rule or if permit fees are not timely received.

(2) Revocation. A business's permit to participate in the logo sign program shall be revoked if:

(a) The business no longer meets the eligibility requirements outlined in this rule chapter and has not been granted a suspension pursuant to subsection (3) below, or if permit fees are not received by the Program Administrator by 5:00 p.m. Eastern Standard time on December 1.

(b) Prior to revoking a permit, the Program Administrator shall issue by certified mail a Notice of Intent to Revoke for Noncompliance. This notice shall state the noncompliance found and provide the following:

1. The permittee shall have 30 calendar days from receipt of the Notice of Intent to Revoke to correct the noncompliance and present evidence to the Program Administrator of such correction or to file a request for an administrative proceeding.

2. If corrective action is not accomplished within the 30-day period, and a hearing request is not filed, the revocation becomes the final agency action of the Department.

3. The business logo shall be removed from the logo structure(s) after the revocation is final or after the entry of a Final Order pursuant to Chapter 120, F.S.

(3) Suspension. A permit will be suspended when the business notifies the Program Administrator that it is temporarily unable to provide the services required.

(a) The maximum period of suspension shall be 90 days, except in cases of national disaster or when substantial physical changes, such as retrofitting of fuel tanks, must be made to the business. An additional 90 days will be granted by the Program Administrator upon receipt of complete construction or engineering specifications for the physical changes and a construction schedule supporting the need for additional time.

(b) The permit must remain in force, including payment of all fees, during the period of suspension.

(c) The Program Administrator shall cover or remove the business logo until the business is again able to provide services.

(d) If the circumstances requiring suspension of the permit are not resolved within that time, the Program Administrator shall revoke the permit.

(4) Notice. In cases of denial or revocation, the Program Administrator shall provide written notice to the applicant or permittee by certified mail. The notice shall contain a statement of the reason for the action and an explanation of the permittee's rights under Chapter 120, F.S.

(5) Cancellation. If a business decides to no longer participate in the logo sign program, the business must provide the Program Administrator a written notice of its decision not to participate. Upon receipt of the notice, the Program Administrator will cancel the business' permit and remove the business' business logo.

Rulemaking Authority 334.044(2), 479.261(1) FS. Law Implemented 479.261(3), (4) FS. History–New .

NAME OF PERSON ORIGINATING PROPOSED RULE: John Garner, Director, Office of Right of Way

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Stephanie C. Kopelousos, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 21, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 17, 2009

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 BUSINESS AND PROFESSIONAL REGULATION

Barbers' Board

RULE NO.: RULE TITLE:
61G3-16.002 Reexamination

PURPOSE AND EFFECT: The purpose of this notice is to review for possible changes to bring the rule into compliance with the legislature requirement.

SUMMARY: The purpose of this notice is to review for possible changes to bring the rule into compliance with the legislature requirement.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board has determined that the amended changes to the rule will not have an impact on small businesses.

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.

RULEMAKING AUTHORITY: 455.217(2), 476.064(4), 476.114(3) FS.

LAW IMPLEMENTED: 455.217(2), 476.114(3) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Robyn Barineau, Executive Director, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G3-16.002 Reexamination.

(1) An applicant who fails the state examination for licensure in whole or in part shall be required to pay the reexamination fee as set forth in Rule 61G3-20.002, F.A.C.

(2) ~~An applicant shall be required to retake only the portion of the examination on which he or she failed to achieve a passing grade. However~~, An ~~an~~ applicant must pass ~~both portions of~~ the examination within a one year period from the date of the first licensure examination ~~attempt at either part~~ in order to qualify for licensure.

~~(3) An applicant who fails the practical portion of the examination may apply to the Department to retake the practical portion of the examination at least 30 days prior to the next administration date, provided that the applicant pays the reexamination fee as set forth in Rule 61G3-20.002, F.A.C.~~

(3)~~(4)~~ An applicant who fails ~~the written portion~~ of the examination may apply to the Department to retake ~~the written portion~~ of the examination by providing an application and paying the reexamination fee as set forth in Rule 61G3-20.002, F.A.C.

Rulemaking ~~Specific~~ Authority 455.217(2), 476.064(4), 476.114(3) FS. Law Implemented 455.217(2), 476.114(3) FS. History–New 7-16-80, Amended 4-6-82, 4-21-83, Formerly 21C-16.02, Amended 11-12-87, Formerly 21C-16.002, Amended 11-12-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Barbers' Board

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Barbers' Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 3, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 2, 2009

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Barbers' Board

RULE NO.: RULE TITLE:

61G3-16.005 Endorsement

PURPOSE AND EFFECT: The purpose of this notice is to review for possible changes to bring the rule into compliance with the legislature requirement.

SUMMARY: The purpose of this notice is to review for possible changes to bring the rule into compliance with the legislature requirement.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board has determined that the amended changes to the rule will not have an impact on small businesses.

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.

RULEMAKING AUTHORITY: 476.064(4), 476.144(5) FS.

LAW IMPLEMENTED: 476.144(5) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Robyn Barineau, Executive Director, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G3-16.005 Endorsement.

The Department of Business and Professional Regulation shall issue a license by endorsement to a person who:

(1) Makes application and pays to the Department the fee specified in Rule 61G3-20.002, F.A.C.;

(2) Demonstrates that he or she possesses a current active license in another state or country;

(3) Demonstrates that he or she has satisfactorily completed a written ~~and a practical~~ examination comparable to or more stringent than the examination given by the Department;

(4) Demonstrates that he or she has completed:

(a) 1,200 hours of schooling in a program similar to, comparable to or more stringent than that required of Florida students and, at a minimum, covering the subjects of Safety, Sanitation and Sterilization, Hair Structure and Chemistry, Hair Cutting, Shampooing, Chemical Services, and Shaving as specified by the Barbers' Board; or

(b) An apprenticeship program of 1,200 hours; or

(c) A combination thereof.

(5) Certifies that he or she has read and understood and will abide by Chapters 455 and 476, F.S., and Chapter 61G3, F.A.C.

(6) For purposes of demonstrating that the applicant has met the requirements of subsections (2), (3) and (4) above, the applicant must provide the Board with an education evaluation conducted by a credential evaluation service that is a member of the National Association of Credential Evaluation Services.

Rulemaking ~~Specific~~ Authority 476.064(4), 476.144(5) FS. Law Implemented 476.144(5) FS. History–New 10-14-85, Formerly 21C-16.05, Amended 6-1-87, 11-12-87, 7-4-90, 12-23-90, 1-26-93, Formerly 21C-16.005, Amended 11-30-93, 5-3-06, 5-31-07, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Barbers' Board
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Barbers' Board
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 3, 2009
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 2, 2009

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Barbers' Board

RULE NO.: RULE TITLE:
61G3-16.0010 Examination for Barber Licensure

PURPOSE AND EFFECT: The purpose of this notice is to review for possible changes to bring the rule into compliance with the legislature requirement.

SUMMARY: The purpose of this notice is to review for possible changes to bring the rule into compliance with the legislature requirement.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board has determined that the amended changes to the rule will not have an impact on small businesses.

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.

RULEMAKING AUTHORITY: 455.217(1)(b), (c), 476.064(4), 476.114(2), 476.134 FS.

LAW IMPLEMENTED: 455.217(1)(b), (c), 476.114(2), 476.134 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Robyn Barineau, Executive Director, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G3-16.0010 Examination for Barber Licensure.

(1) The examination for licensure to practice barbering shall consist of ~~two parts~~, a written examination ~~and a practical examination~~. Applicants for a license to practice barbering must achieve a passing grade on ~~both portions of~~ the examination to be eligible for a license to practice barbering. An applicant who has completed all requirements for examination and paid the fee specified in Rule 61G3-20.002, F.A.C., will be admitted to the examination for licensure.

(2) The following subjects will be tested on the written examination consisting of seventy-five questions and will be weighted approximately as designated:

Category	Weight
(a) Florida Laws and Rules	25%
(b) Safety, Sanitation and Sterilization	30%
(c) Hair Structure and Chemistry	10%
(d) Hair Cutting and Hair Styling	10%
(e) Shampooing	5%
(f) Chemical Procedures (Permanent Waving, Coloring and Bleaching, Hair Relaxing and Curling)	10 ~~15~~%
(g) Shaving, Beard and Mustache Trimming	5%

~~(3) The practical portion of the examination for licensure shall test the applicant's ability to perform the barbering services authorized by a license to practice barbering. The practical examination shall have a maximum time limit of 1 1/4 hours. All applicants will provide their own model for the practical exam and will be required to shampoo the model's hair and perform a taper haircut to satisfy the practical portion of the examination. The areas to be tested and the relative weights are as follows:~~

~~Grading Area~~	~~Relative Weight~~
~~(a) Haircut~~	~~45~~
~~(b) Shampoo~~	~~5~~
~~(c) Safety and Sanitation~~	~~50~~

~~(4) The grade sheet for the practical examination will contain spaces for comments by the grading examiner. The areas of comment shall be drawn from the following criteria:~~

~~(a) Haircut:~~

~~1. The top is even and without holes;~~

~~2. The top blends with the sides and back;~~

~~3. The front outline is even;~~

~~4. The haircut is proportional;~~

~~5. The sides and the back are without holes or steps;~~

~~6. The sides blend with the back;~~

~~7. The sideburns are equal in length;~~

~~8. The outlines are even;~~

~~9. The sideburns, outline, and neckline are clean shaven;~~

~~10. The model's skin was not cut or nicked during the haircut;~~

~~11. The neckline is properly tapered.~~

~~(b) Shampoo: After the shampoo, the model's hair and scalp were clean and free of shampoo.~~

~~(c) Safety and Sanitation:~~

~~1. The candidate used the proper draping for the shampoo;~~

~~2. The candidate used the proper protection on the shampoo bowl;~~

~~3. The candidate properly stored clean and dirty linen during the shampoo;~~

~~4. The candidate washed his or her hands before beginning work on the model;~~

~~5. The candidate used the proper draping for the haircut;~~

~~6. The candidate properly stored clean and dirty linen during the haircut;~~

~~7. The candidate placed tools in the sanitizer before and after each use during the haircut;~~

~~8. The candidate used all of the tools in a safe manner and without any blood contact during the haircut;~~

~~(5) Failure of the examinee to complete the services required in a particular category tested in the practical portion of the examination shall result in the examinee losing the possible points assigned to that area.~~

(3)~~(6)~~ The score necessary to achieve a passing grade shall be no less than ~~seventy five (75) percent out of one hundred (100) percent (based on the average of the examiners' scores) on the practical examination and~~ seventy five (75) percent out of one hundred (100) percent on the written examination. In rounding percentages, any percentage which is point five (.5) or above shall be rounded up to the next whole number. Percentages less than point five (.5) shall be rounded down to the next whole number.

Rulemaking ~~Specific~~ Authority 455.217(1)(b), (c), 476.064(4), 476.114(2), 476.134 FS. Law Implemented 455.217(1)(b), (c), 476.114(2), 476.134 FS. History–New 11-12-00, Amended 11-27-02, 4-26-04, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Barbers' Board

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Barbers' Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 3, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 2, 2009

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Barbers' Board

RULE NO.: RULE TITLE:

61G3-20.0075 Examination Review Fee

PURPOSE AND EFFECT: The purpose of this notice is to review for possible changes to bring the rule into compliance with the legislature requirement.

SUMMARY: The purpose of this notice is to review for possible changes to bring the rule into compliance with the legislature requirement.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board has determined that the amended changes to the rule will not have an impact on small businesses.

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.

RULEMAKING AUTHORITY: 455.217(2), 455.2171 FS.

LAW IMPLEMENTED: 455.217, 455.2171 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Robyn Barineau, Executive Director, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G3-20.0075 Examination Review Fee.

The fee for an ~~written~~ examination review shall be thirty dollars ($30.00) payable to aqualified outside testing vendor ~~professional testing service~~ when the ~~written~~ examination is conducted by the professional testing service pursuant to Section 455.2171, F.S. ~~The fee for obtaining copies of practical grade sheets shall be ten dollars ($10.00) payable to the Department.~~ In the event that a aqualified outside testing vendor ~~professional testing service~~ is not used for examination or reexamination, all fees shall be paid to the Department.

Rulemaking ~~Specific~~ Authority 455.217(2), 455.2171 FS. Law Implemented 455.217, 455.2171 FS. History–New 7-4-90, Formerly 21C-20.0075, Amended 11-6-00, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Barbers' Board

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Barbers' Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 3, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 2, 2009

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Professional Surveyors and Mappers

RULE NO.: RULE TITLE:

61G17-5.0043 Obligations of Continuing Education Providers

PURPOSE AND EFFECT: The Board proposes the rule amendment to elaborate on appropriate continuing education credit.

SUMMARY: Appropriate continuing education will be clarified.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board determined the proposed rule will not have an impact on small business.

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.

RULEMAKING AUTHORITY: 455.2178, 455.219, 472.008, 472.011, 472.018 FS.

LAW IMPLEMENTED: 455.2123, 472.018 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Rick Morrison, Executive Director, Board of Professional Surveyors and Mappers, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G17-5.0043 Obligations of Continuing Education Providers.

To maintain status as a continuing education provider, the provider must:

(1) through (9) No change.

(10) Allow only one continuing education credit for each fifty (50) minutes ~~hour~~ of classroom, audio or video instruction~~, an "hour of classroom, audio or video instruction" being no less or no more than sixty (60) minutes of instruction~~.

(11) through (19) No change.

Specific Authority 455.2178, 455.219, 472.008, 472.011, 472.018 FS. Law Implemented 455.2123, 472.018 FS. History–New 3-28-94, Amended 5-30-95, 7-27-00, 8-18-03, 8-18-04, 12-28-05, 1-29-07, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Professional Surveyors and Mappers

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Professional Surveyors and Mappers

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 30, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 1, 2009

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Professional Surveyors and Mappers

RULE NO.: RULE TITLE:
61G17-9.005 Mediation

PURPOSE AND EFFECT: The Board proposes the rule amendment in order to consider current applicability.

SUMMARY: The rule amendment is to consider current applicability.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board determined the proposed rule will not have an impact on small business.

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.

RULEMAKING AUTHORITY: 455.2235 FS.

LAW IMPLEMENTED: 455.2235 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Rick Morrison, Executive Director, Board of Professional Surveyors and Mappers, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G17-9.005 Mediation.

Violations of Section 472.033(1)(h), F.S., involving licensees, either individuals or business entities holding certificates of authority, who failed to pay any final judgment entered against the licensee in any civil proceeding against the licensee involving the licensee's practice of surveying and mapping, can be mediated pursuant to Section 455.2235, F.S.

~~(1) Violations of paragraph 61G17-2.0011(6)(h) and Rule 61G17-2.0013, F.A.C., concerning conflicts of interest, can be mediated pursuant to Section 455.2235, Florida Statutes.~~

~~(2) Violations of the minimum technical standards of Rule Chapter 61G17-6, F.A.C., can be mediated if those violations result in economic harm either~~

~~(a) To the person who paid for the survey or map, or~~

~~(b) To the person who is the owner of the property which was the subject matter of the survey or map.~~

Rulemaking ~~Specific~~ Authority 455.2235 FS. Law Implemented 455.2235 FS. History–New 5-30-95, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Professional Surveyors and Mappers

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Professional Surveyors and Mappers

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 30, 2009
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 31, 2008

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 HEALTH

Board of Medicine

RULE NO.: RULE TITLE:
64B8-30.005 Physician Assistant Licensure Renewal and Reactivation

PURPOSE AND EFFECT: The proposed rule amendment is intended to address continuing medical education (CME) for medical ethics.

SUMMARY: The proposed rule amendment permits physician assistants to obtain CME in medical ethics for attending a meeting of the Board which addresses disciplinary cases.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board has determined that the proposed rule amendments will not have an impact on small business.

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.

RULEMAKING AUTHORITY: 456.013, 456.031(1)(a), 456.033(1), 458.309, 458.347 FS.

LAW IMPLEMENTED: 456.013, 456.031(1), 456.033, 456.036, 458.347 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Larry McPherson, Jr., Executive Director, Board of Medicine/MQA, 4052 Bald Cypress Way, Bin # C03, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

64B8-30.005 Physician Assistant Licensure Renewal and Reactivation.

(1) through (2) No change.

(3)(a) For purposes of this rule, risk management means the identification, investigation, analysis, and evaluation of risks and the selection of the most advantageous method of correcting, reducing or eliminating identifiable risks.

(b) Five hours of continuing medical education in the subject area of risk management or medical ethics as designated by the licensee at the time of attendance may be obtained by attending one full day or eight (8) hours, whichever is more, of disciplinary hearings at a regular meeting of the Board of Medicine in compliance with the following:

1. through 3. No change.

(4) through (13) No change.

Rulemaking ~~Specific~~ Authority 456.013, 456.031(1)(a), 456.033(1), 458.309, 458.347 FS. Law Implemented 456.013, 456.031(1), 456.033, 456.036, 458.347 FS. History–New 5-13-87, Amended 1-9-92, Formerly 21M-17.0035, Amended 9-21-93, Formerly 61F6-17.0035, Amended 11-30-94, Formerly 59R-30.005, Amended 6-7-98, 3-3-02, 10-12-03, 7-27-04, 10-19-04, 2-25-07, 11-11-07, 6-2-08, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Council on Physician Assistants

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Medicine

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 14, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 24, 2009

DEPARTMENT OF HEALTH

Board of Medicine

RULE NO.: RULE TITLE:
64B8-30.013 Notice of Noncompliance

PURPOSE AND EFFECT: The proposed rule amendment is intended to set forth an additional violation which is appropriate for the issuance of a notice of noncompliance.

SUMMARY: The proposed rule amendment specifies that failure to complete the requirement for instruction on domestic violence in the appropriate biennium shall result in a notice of noncompliance.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board has determined that the proposed rule amendments will not have an impact on small business.

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.

RULEMAKING AUTHORITY: 456.073(3), 458.309, 458.347(7)(e), (g), (12) FS.

LAW IMPLEMENTED: 456.073(3), 458.331, 458.347(7)(g), (12) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Larry McPherson, Jr., Executive Director, Board of Medicine/MQA, 4052 Bald Cypress Way, Bin #C03, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

64B8-30.013 Notice of Noncompliance.

(1) through (2) No change.

(3) The following violations are those for which the board authorizes the Department to issue a notice of noncompliance:

(a) through (b) No change.

(c) Failure to complete the requirement for instruction on domestic violence in the appropriate biennium as required by Section 456.031, F.S. A notice of noncompliance would be issued for this violation only if the licensee completed the domestic violence course, but completion of said course was not during the appropriate biennial renewal period.

Rulemaking ~~Specific~~ Authority 456.073(3), 458.309, 458.347(7)(e), (g), (12) FS. Law Implemented 456.073(3), 458.331, 458.347(7)(g), (12) FS. History–New 3-3-02, Amended 8-2-06, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Council on Physician Assistants

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Medicine

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 14, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 24, 2009

DEPARTMENT OF HEALTH

Board of Opticianry

RULE NO.:	RULE TITLE:
64B12-16.003	Apprenticeship Requirements and Training Program

PURPOSE AND EFFECT: The Board proposes the rule amendment to clarify the procedures regarding apprenticeship requirements and training program.

SUMMARY: The rule amendment will clarify the procedures regarding apprenticeship requirements and training program.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board determined that small businesses would not be affected by this rule.

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.

RULEMAKING AUTHORITY: 484.005 FS.

LAW IMPLEMENTED: 484.002, 484.007(1)(d)4. FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Sue Foster, Executive Director, Board of Opticianry/MQA, 4052 Bald Cypress Way, Bin #C08, Tallahassee, Florida 32399-3258

THE FULL TEXT OF THE PROPOSED RULE IS:

64B12-16.003 Apprenticeship Requirements and Training Program.

(1) through (5) No change.

(6) Total training received by an apprentice during apprenticeship must consist of training in the following subject areas:

(a) through (g) No change.

(h) Filling contact lens prescriptions, fitting, adapting and dispensing contact lenses if the sponsor is a Board-Certified optician, Florida-licensed optometrist or Florida-licensed allopathic or osteopathic physician, or an optician pursuant to subsection 64B12-10.009(1), F.A.C., or the apprentice must complete a Board-approved course equivalent to 32 hours as a substitute for working experience with contact lenses. Such course must include the following instruction:

1 hour – contact lens history
2 hours – anatomy and physiology of the eye
1 hour – patient selection
2 hours – contact lens technology
2 hours – basic optics for contact lenses
4 hours – basic fitting methods
1 hour – patient follow-up
1 hour – data collection and record keeping
2 hours – ordering and verification
2 hours – patient instruction
2 hours – problem solving
2 hours – specialty fittings
1 hour – ANSI Standards
1 hour – Florida laws and rules
8 hours – hands on practice

Although the lecture sessions may be open to any number of students, the hands on sessions shall be limited to 20 students per qualified instructor and three assistant instructors. A qualified instructor is one who has been a Board-Certified optician, licensed optometrist or opthalmologist and actively engaged in contact lens fitting for 2 years immediately preceding instructorship or actively engaged as a contact lens instructor in an approved school of opticianry, an accredited school of optometry or an accredited medical school. The assistants must be Board-Certified or equally qualified to the instructor. Any request for course approval must be submitted

to the Board 30 days prior to the next Board meeting and must be reviewed every two years. The apprentice must complete the entire course within 31 days.

(i) No change.

Rulemaking Authority 484.005 FS. Law Implemented 484.002, 484.007(1)(d)4. FS. History–New 10-12-80, Amended 8-31-83, 8-30-84, Formerly 21P-16.03, Amended 3-5-87, 7-15-87, 1-26-88, 3-30-89, 10-17-90, 5-27-92, 9-30-92, 1-27-93, Formerly 21P-16.003, Amended 9-14-93, 5-2-94, Formerly 61G13-16.003, Amended 2-21-96, 4-23-97, Formerly 59U-16.003, Amended 10-1-97, 2-16-99, 6-25-02, 4-11-06, 9-27-06, 4-19-07, 11-20-07, 5-25-09, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Opticianry

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Opticianry

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 1, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 17, 2009

DEPARTMENT OF HEALTH

Board of Optometry

RULE NO.: RULE TITLE:

64B13-4.001 Examination Requirements

PURPOSE AND EFFECT: The purpose of this rule amendment is to specify the percentage ranges for the various items in the examination rather than exact percentages in the examination rule.

SUMMARY: The rule specifies the percentage rangers for examination items.

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.

RULEMAKING AUTHORITY: 456.017(2), 463.005, 463.006(2) FS.

LAW IMPLEMENTED: 456.017(2), 463.006(2) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Joe Baker, Jr., Executive Director, Board of Optometry, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3257

THE FULL TEXT OF THE PROPOSED RULE IS:

64B13-4.001 Examination Requirements.

The examination for licensure shall consist of the National Board of Examiners in Optometry examination (hereafter NBEO examination), and Parts I and II of the state examination for licensure. The examination for certification of a licensee shall consist of the Treatment and Management of Ocular Disease (hereafter TMOD) part of the NBEO.

(1) No change.

(2) State Examination.

(a) through (c) No change.

(d) Part II of the state examination shall consist of a clinical portion and a pharmacology/ocular disease portion.

1. The subject areas and associated weights for the clinical portion of the practical examination shall be as follows:

a. Confrontation Visual Field Testing for Neurologic Deficit (Finger Counting Visual Field Recognition, Location, and Disease Process)	7-12%~~9%~~
b. Muscle Balance and Motility	2-7%~~4%~~
c. Pupillary Examination	8-13%~~8%~~
d. Objective Examination (Retinoscopy)	1-6%~~2%~~
e. Subjective Refraction	1-6%~~3%~~
f. Internal Examination by Means of Binocular Indirect Ophthalmoscopy	15-20%~~18.5%~~
g. Biomicroscopy Anterior	17-22%~~21.5%~~
h. Biomicroscopy Posterior (Fundus Lens)	16-21%~~17%~~
i. Goldmann Tonometry	9-14%~~10%~~
j. Gonioscopy	6-11%~~7%~~

2. The grading criteria for each subject area and the points associated with each criterion shall be as follows:

a. Confrontation Visual Field Testing for Neurologic Deficit (Finger Counting and Visual Field Defect Recognition, Location, and Disease Process)	6-11~~9~~
1.1. Conducts specified visual field test in a manner consistent with obtaining accurate findings. Accurately identify visual field defect name, location, and disease process.	
b. Muscle Balance and Motility Testing	3-8~~-4~~
1.1 Conducts examinations in a manner that will allow for evaluation of any phoric and or tropic posture, deficiencies in extra ocular muscles, or cranial nerve paresis.	
c. Pupillary Examination	5-10~~8~~
1.1 Conducts pupillary tests in a manner consistent with obtaining accurate findings.	
d. Objective Examination (Retinoscopy)	2-7~~2~~
1.1. Conducts Retinoscopy in a manner capable of obtaining a visual acuity of 20/30	
e. Subjective Refraction	2-7~~3~~
1.1. Conducts refraction in a manner capable of obtaining a visual acuity of 20/20	
f. Internal Examination by Means of Binocular Indirect Ophthalmoscopy	16-21~~18.5~~

1.1. Accurately views and evaluates retinal landmark as requested g. Biomicroscopy (Anterior)	20-25~~21.5~~
1.1. Uses proper technique to demonstrate requested views of anterior structures of eye h. Biomicroscopy Posterior (Fundus lens.)	16-21~~17~~
1.1. Accurately views and evaluates posterior landmarks as requested. i. Tonometry	7-12~~10~~
1.1. Demonstrates accurate technique for the measurement of intra-ocular pressure j. Gonioscopy	4-9~~7~~
1.1. Demonstrates accurate technique for identifying angle structures	

3. through 6. No change.

(3) No change.

Rulemaking ~~Specific~~ Authority 456.017(2), 463.005, 463.006(2) FS. Law Implemented 456.017(2), 463.006(2) FS. History–New 11-13-79, Amended 5-28-80, 7-10-80, 8-20-81, 2-14-82, 6-6-82, 10-3-82, 4-10-84, 5-29-85, Formerly 21Q-4.01, Amended 7-21-86, 11-20-86, 7-27-87, 7-11-88, 7-18-91, 4-14-92, Formerly 21Q-4.001, Amended 2-14-94, Formerly 61F8-4.001, Amended 8-8-94, 11-21-94, 4-21-96, Formerly 59V-4.001, Amended 7-27-99, 7-15-02, 3-8-04, _____.

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: July 22, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 7, 2009

DEPARTMENT OF HEALTH

Board of Optometry

RULE NO.: RULE TITLE:

64B13-5.002 Criteria for Approval

PURPOSE AND EFFECT: The purpose of the amendment is to clarify that instructors for courses focusing on optometric practice management need not hold doctoral level degrees.

SUMMARY: The rule clarifies that instructors of optometric practice management courses need not hold doctoral degrees.

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.

RULEMAKING AUTHORITY: 463.005(1) FS.

LAW IMPLEMENTED: 463.007(4) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Joe Baker, Jr., Executive Director, Board of Optometry, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3257

THE FULL TEXT OF THE PROPOSED RULE IS:

64B13-5.002 Criteria for Approval.

(1) In determining whether to approve a program of continuing professional education, the Board shall consider whether the program contributes to the improvement, advancement, and extension of one's professional skill and knowledge to the benefit of the patient he or she serves. Continuing education courses in Florida jurisprudence as stated in paragraphs 64B13-5.001(1)(e) and (f), F.A.C., shall be provided by an individual or organization with demonstrated competence in Florida Law pertaining to optometric practice as evidenced by the individual or organization's credentials, education and experience.

(2) Approval of non-transcript quality continuing education programs.

(a) A non-transcript quality continuing education program must satisfy the following criteria or course content:

1. The course must be an organized program of learning that will contribute to the advancement and enhancement of professional competency and scientific knowledge in the practice of optometry, and must be designed to reflect the educational needs of Florida optometrists.

2. The course must have scientific and educational integrity and must contain customary and generally accepted optometric and medical practices.

3. The course must have an outline which demonstrates consistency with the course description and reflects the course content.

4. A course handout/outline must be provided to all participants.

5. The course must be taught in a manner appropriate to the educational content, objectives, and purpose of the program, and must allow suitable time to be effectively presented to the audience.

6. The minimum credit for any qualified course is one hour. One hour of continuing education credit equals fifty (50) minutes of instructional time.

7. Instructors must have the necessary qualifications, training and experience to present the course. Principal instructors must hold a minimum of a doctorate-level degree (O.D., M.D., Ph.D., D.O., J.D., D.D.S., D.C., Pharm.D., L.L.D., D.Ed., D.Sc., etc.) or its international equivalent. Faculties at accredited schools or colleges of optometry are exempt from this requirement. Individuals who do not hold at

least a doctorate-level degree, or are not on faculty at an accredited school or college of optometry shall only be listed as adjunct instructors for the course and only when the principal instructor holds a doctorate-level degree. For courses focusing on optometric practice management, instructors are not required to hold doctoral level degrees, but must demonstrate their expertise in providing such continuing education.

(b) A non-transcript quality continuing education program shall be approved upon presentation of the following information by the program or course provider or by a licensed practitioner who attended the course:

1. Compliance with the criteria or course content specified in subparagraphs (2)(a)1.-7., above;

2. Date(s) and time(s) of each course.

3. Complete outline of course, including a breakdown of hours for each subject.

4. Evidence that the fee specified in subsections 64B13-6.001(15) and (16), F.A.C., has been paid; provided however, should the provider not seek approval of the course, the licensed practitioner seeking approval of the course shall pay the fee.

5. Notwithstanding subparagraphs (2)(b)1.-3., if the program is non-transcript quality and has been previously approved by the Council on Optometric Practitioner Education (COPE), or by any other recognized organization that sponsors optometric education, utilizing the criteria set forth in paragraph (2)(a), the Board shall approve the program upon submission of the approved course number issued by COPE or other recognized organization and compliance with subparagraph (2)(b)4.

(3) Approval of transcript quality continuing education programs.

(a) A transcript quality continuing education program must satisfy the following criteria or course content:

1. Compliance with the criteria or course content specified in subparagraphs (2)(a)1.-6.

2. The course must be in consultation with or sponsored by a school or college of optometry or equivalent entity.

3. The course must be in at least two (2) hour blocks.

4. The course must be taught by instructors approved by the Board. Faculty members that instruct regular courses for the sponsoring school or equivalent educational entity will automatically be approved. Instructors not fitting into this category must be approved by the Board.

5. The course must require a Board approved examination with a passing grade. Grading and certification of examinations can be delegated by the provider to an equivalent educational entity.

6. The examination must be monitored or mailed to the licensee after the course.

(b) A transcript quality continuing education program shall be approved upon presentation of the following:

1. Compliance with the criteria or course content specified in subparagraphs (3)(a)1.-6.

2. Date(s) and time(s) of each course.

3. Complete outline of course, including a breakdown of hours for each subject.

4. A letter from the dean of the sponsoring school or college of optometry or equivalent educational entity certifying transcript quality credit.

5. A copy of the examination to be given, with the answer key.

6. Identification of the entity responsible for grading and certifying the examination(s).

7. Evidence that the fee specified in subsections 64B13-6.001(15) and (16), F.A.C., has been paid.

(c) In order for a course to be considered transcript quality, it must be approved by the Board as transcript quality prior to the time it is taken.

(4) A course needs to be approved only once during the biennium in which it is presented so long as the presenter and the course outline do not change.

Rulemaking ~~Specific~~ Authority 463.005(1) FS. Law Implemented 463.007(4) FS. History–New 11-13-79, Formerly 21Q-5.02, Amended 12-16-86, 12-11-88, 7-10-91, 10-28-92, Formerly 21Q-5.002, 61F8-5.002, Amended 11-29-94, 7-5-95, 8-18-96, Formerly 59V-5.002, Amended 3-21-00, 5-8-02, 8-19-03, 12-26-05, 12-25-06, _____.

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: July 22, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 7, 2009

DEPARTMENT OF HEALTH

Board of Optometry

RULE NO.:	RULE TITLE:
64B13-6.001	Fees

PURPOSE AND EFFECT: The purpose of this rule amendment is to adopt a uniform initial licensure fee.

SUMMARY: A uniform licensure fee is adopted.

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.

RULEMAKING AUTHORITY: 456.013(2), 456.025(7), 456.036, 463.005, 463.0057, 463.006, 463.007, 463.008 FS.

LAW IMPLEMENTED: 456.013(2), 456.025, 456.036, 463.0057, 463.006, 463.007, 463.008 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Joe Baker, Jr., Executive Director, Board of Optometry, 4052 Bald Cypress Way, Bin C07, Tallahassee, Florida 32399-3257

THE FULL TEXT OF THE PROPOSED RULE IS:

64B13-6.001 Fees.

The following fees are prescribed by the Board:

(1) The initial licensure fee shall be $300.00 ~~license for those persons who are initially licensed during the first year of the biennial licensure period shall be $300~~.

~~(2) The license fee for those persons who are initially licensed during the second year of the biennial licensure period shall be $150.00.~~

(2)~~(3)~~ The biennial licensure renewal fee shall be $300.00.

(3)~~(4)~~ The fee to be paid for the renewal or reactivation of an inactive license shall be $300.00.

(4)~~(5)~~ The fee to be paid for the issuance of an initial Branch Office License shall be one hundred dollars ($100). The fee for issuance of additional Branch Office Licenses shall be twenty-five dollars ($25) each.

(5)~~(6)~~ The fee to be paid for biennial renewal of an initial Branch Office License shall be one hundred dollars ($100). The fee for renewal of additional Branch Office Licenses shall be twenty-five dollars ($25) each.

(6)~~(7)~~ A licensee shall pay a change of status fee of $300 when the licensee applies for a change in license status at any other time than during licensure renewal.

(7)~~(8)~~ The application fee for certification as a certified optometrist shall be $250.00.

(8)~~(9)~~ The fee for obtaining a duplicate wall certificate/license shall be $25.00.

(9)~~(10)~~ The application fee for a faculty certificate shall be $100.00.

(10)~~(11)~~ The initial license fee for a faculty certificate shall be $100.00.

(11)~~(12)~~ The renewal fee for a faculty certificate shall be $100.00.

(12)~~(13)~~ The fee for a delinquent status licensee applying for active or inactive status shall be $300.00.

(13)~~(14)~~ The fee to be paid for the laws and rules examination for licensees who either have to reactivate their license or are required pursuant to paragraph 64B13-7.005(1)(h), F.A.C., is one hundred dollars ($100).

(14)~~(15)~~ The initial fee for any entity seeking approval to provide continuing education courses or programs shall be $25.00.

(15)~~(16)~~ The biennial renewal fee for any entity seeking approval to provide continuing education courses or programs shall be $25.00.

(16)~~(17)~~ The retired-status fee is $50.00.

Rulemaking ~~Specific~~ Authority 456.013(2), 456.025(7), 456.036, 463.005, 463.0057, 463.006, 463.007, 463.008 FS. Law Implemented 456.013(2), 456.025, 456.036, 463.0057, 463.006, 463.007, 463.008 FS. History–New 12-13-79, Amended 2-14-82, 8-18-82, 12-2-82, 5-6-84, 7-29-85, Formerly 21Q-6.01, Amended 11-20-86, 7-21-88, 2-5-90, 5-29-90, 7-10-91, 4-14-92, 7-1-93, Formerly 21Q-6.001, Amended 1-24-94, Formerly 61F8-6.001, Amended 12-22-94, 2-13-95, 4-5-95, 5-29-95, 12-31-95, Formerly 59V-6.001, Amended 12-24-97, 3-21-00, 11-18-01, 5-9-02, 9-10-02, 7-3-03, 10-30-03, 8-29-04, 9-20-05, 11-16-05, _____.

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: July 22, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 7, 2009

DEPARTMENT OF HEALTH

Board of Optometry

RULE NO.:	RULE TITLE:
64B13-10.002	Administration and Prescription of Topical Pharmaceutical Agents

PURPOSE AND EFFECT: The purpose of the rule is to clarify that the Board, not the Department, identifies those topical ocular pharmaceutical agents that a Certified optometrists may administer and prescribe.

SUMMARY: The rule clarifies that the Board, not the Department, identifies those topical ocular pharmaceutical agents that a Certified optometrists may administer and prescribe.

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.

RULEMAKING AUTHORITY: 463.005(1) FS.

LAW IMPLEMENTED: 463.0055, 463.012, 463.0135, 463.016(1)(g), (k) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Joe Baker, Jr., Executive Director, Board of Optometry, 4052 Bald Cypress Way, Bin C07, Tallahassee, Florida 32399-3257

THE FULL TEXT OF THE PROPOSED RULE IS:

64B13-10.002 Administration and Prescription of Topical Pharmaceutical Agents.

(1) Only a certified optometrist may administer and prescribe topical ocular pharmaceutical agents. A licensed practitioner who is not certified may use topically applied anesthetics solely for the purpose of glaucoma examinations, but is otherwise prohibited from administering or prescribing topical ocular pharmaceutical agents. Certified optometrists may administer and prescribe only those topical ocular pharmaceutical agents identified by rule of the Board ~~Department~~.

(2) Any prescription for a topical pharmaceutical agent written by a certified optometrist shall contain the following information:

(a) Name of the person for whom the pharmaceutical agent is prescribed;

(b) Full name and address of the prescribing certified optometrist;

(c) Name of the topical pharmaceutical agent prescribed and the strength, quantity, and directions for use thereof; and

(d) Prescriber number and signature of the prescribing certified optometrist.

(3) When a topical pharmaceutical agent is either administered or prescribed to a patient by a certified optometrist, such shall be documented in the patients record.

Rulemaking ~~Specific~~ Authority 463.005(1) FS. Law Implemented 463.0055, 463.012, 463.0135, 463.016(1)(g), (k) FS. History–New 11-20-86, Formerly 21Q-10.002, 61F8-10.002, 59V-10.002, Amended _____.

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: July 22, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 7, 2009

DEPARTMENT OF HEALTH

Board of Orthotists and Prosthetists

RULE NO.: RULE TITLE:

64B14-4.100 Requirements for Prosthetic or Orthotic Residency or Internship

PURPOSE AND EFFECT: The proposed rule is necessary to incorporate the application form for residency or internship by reference.

SUMMARY: The proposed rule incorporates the application form for residency or internship by reference.

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.

RULEMAKING AUTHORITY: 468.802, 468.803 FS.

LAW IMPLEMENTED: 468.803 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Joe Baker, Jr., Executive Director, Board of Orthotists and Prosthetists, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3257

THE FULL TEXT OF THE PROPOSED RULE IS:

64B14-4.100 Requirements for Prosthetic or Orthotic Residency or Internship.

(1) through (7) No change.

(8) To register for an orthotic or prosthetic internship or residency program, the applicant must submit a completed ~~Registration Form for Orthotic or Prosthetic Internship/Residency Program~~, Application Form for Internship/Residency form number DH-MQA1126. 07/09, which is available from the Board office or at the Board's web site: http://www.doh.state.fl.us/mqa/OrthPros/index.html.

(9) If a change in supervisor is required, the applicant must submit a completed Update Supervisor Form Registration in an Orthotic or Prosthetic Internship/Residency Program, form number DH-MQA 1133. 08/09, which is available for the Board office or the Board's web site: http://www.doh.state.fl.us/mqa/OrthPros/index.html.

Rulemaking Authority 468.802, 468.803 FS. Law Implemented 468.803 FS. History–New 11-1-99, Amended 7-2-07, 5-28-09, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Orthotists and Prosthetists

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Orthotists and Prosthetists

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 13, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 19, 2009

DEPARTMENT OF HEALTH

Board of Osteopathic Medicine

RULE NO.: RULE TITLE:
64B15-6.0035 Physician Assistant Licensure Renewal and Reactivation

PURPOSE AND EFFECT: The proposed rule amendment is intended to address continuing medical education (CME) for medical ethics.

SUMMARY: The proposed rule amendment permits physician assistants to obtain CME in medical ethics for attending a meeting of the Board which addresses disciplinary cases.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board has determined that the proposed rule amendments will not have an impact on small business.

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.

RULEMAKING AUTHORITY: 456.013, 456.033(1), 459.005, 459.022 FS.

LAW IMPLEMENTED: 456.013, 456.031, 459.022(7)(b), (c) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kaye Howerton, Executive Director, Board of Osteopathic Medicine/MQA, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3256

THE FULL TEXT OF THE PROPOSED RULE IS:

64B15-6.0035 Physician Assistant Licensure Renewal and Reactivation.

(1) through (2) No change.

(3)(a) For purposes of this rule, risk management means the identification, investigation, analysis, and evaluation of risks and the selection of the most advantageous method of correcting, reducing or eliminating identifiable risks.

(b) Five hours of continuing medical education in the subject area of risk management or medical ethics as designated by the licensee at the time of attendance may be obtained by attending one full day or eight (8) hours, whichever is more, of disciplinary hearings at a regular meeting of the Board of Osteopathic Medicine in compliance with the following:

1. through 3. No change.

(4) through (13) No change.

Rulemaking ~~Authority~~ 456.013, 456.033(1), 459.005, 459.022 FS. Law Implemented 456.013, 456.031, 459.022(7)(b), (c) FS. History–New 10-28-87, Amended 4-21-88, 1-3-93, Formerly 21R-6.0035, Amended 11-4-93, 3-29-94, Formerly 61F9-6.0035, 59W-6.0035, Amended 6-7-98, 10-16-01, 3-10-02, 7-13-04, 7-27-04, 2-25-07, 11-11-07, 6-2-08, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Council on Physician Assistants

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Osteopathic Medicine

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 15, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 24, 2009

DEPARTMENT OF HEALTH

Board of Osteopathic Medicine

RULE NO.: RULE TITLE:
64B15-6.0105 Notice of Noncompliance

PURPOSE AND EFFECT: The proposed rule amendment is intended to set forth an additional violation which is appropriate for the issuance of a notice of noncompliance.

SUMMARY: The proposed rule amendment specifies that failure to complete the requirement for instruction on domestic violence in the appropriate biennium shall result in a notice of noncompliance.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board has determined that the proposed rule amendments will not have an impact on small business.

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.

RULEMAKING AUTHORITY: 456.073(3), 459.005, 459.022(7)(f), (12) FS.

LAW IMPLEMENTED: 456.073(3), 458.347(7)(f), (12), 459.015 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kaye Howerton, Executive Director, Board of Osteopathic Medicine/MQA, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3256

THE FULL TEXT OF THE PROPOSED RULE IS:

64B15-6.0105 Notice of Noncompliance.

(1) through (2) No change.

(3) The following violations are those for which the board authorizes the Department to issue a notice of noncompliance:

(a) through (b) No change.

(c) Failure to complete the requirement for instruction on domestic violence in the appropriate biennium as required by Section 456.031, F.S. A notice of noncompliance would be issued for this violation only if the licensee completed the domestic violence course, but completion of said course was not during the appropriate biennial renewal period.

Rulemaking ~~Specific~~ Authority 456.073(3), 459.005, 459.022(7)(f), (12) FS. Law Implemented 456.073(3), 458.347(7)(f), (12), 459.015 FS. History–New 3-10-02, Amended 8-2-06, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Council on Physician Assistants

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Osteopathic Medicine

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 14, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 24, 2009

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE NO.:	RULE TITLE:
64B16-26.104	Exemptions for Members of the Armed Forces; Spouses

PURPOSE AND EFFECT: The Board proposes the rule amendment to update the references to pharmacy technicians.

SUMMARY: References to pharmacy technicians will be updated.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board determined the proposed rule will not have an impact on small business.

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.

RULEMAKING AUTHORITY: 465.005 FS.

LAW IMPLEMENTED: 456.024 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Rebecca R. Poston, Executive Director, Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

64B16-26.104 Exemptions for Members of the Armed Forces; Spouses.

(1) Any ~~licensed~~ pharmacist or registered pharmacy technician on active duty with the Armed Forces of the United States who at the time of becoming a member of the Armed Forces of the United States was in good standing with the Board and was entitled to practice the profession of pharmacy or registered as a pharmacy technician in Florida shall be exempt from all license renewal provisions so long as the licensee is on active duty with the Armed Forces and for a period of six months after discharge so long as the licensee is not engaged in the practice of pharmacy in the private sector for profit.

(2) A pharmacist or registered pharmacy technician ~~licensee~~ who is a spouse of a member of the Armed Forces of the United States and who was caused to be absent from the State of Florida because of the spouse's duties with the Armed Forces shall be exempt from all license renewal provisions.

Rulemaking ~~Specific~~ Authority 465.005 FS. Law Implemented 456.024 FS. History–New 3-19-79, Amended 4-30-85, Formerly 21S-6.09, 21S-6.009, Amended 7-31-91, Formerly 21S-26.104, 61F10-26.104, 59X-26.104, Amended 1-11-05, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Pharmacy

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Pharmacy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 15, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 13, 2009

DEPARTMENT OF HEATH

Board of Pharmacy

RULE NO.:	RULE TITLE:
64B16-26.1004	Inactive License Election; Renewal; Fees

PURPOSE AND EFFECT: The Board proposes the rule amendment to update the references to pharmacy technicians.

SUMMARY: References to pharmacy technicians will be updated.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board determined the proposed rule will not have an impact on small business.

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.

RULEMAKING AUTHORITY: 456.036, 465.005, 465.012, 465.0125, 465.0126 FS.

LAW IMPLEMENTED: 456.036, 456.065(3), 465.012, 465.0125, 465.0126 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Rebecca R. Poston, Executive Director, Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

64B16-26.1004 Inactive License Election; Renewal; Fees.

(1) A pharmacist licensee may elect:

(a) through (d) No change.

(2) A consultant pharmacist licensee may elect:

(a) At the time of license renewal to place the license on inactive status by submitting a written request with the board for inactive status and submitting the inactive status renewal fee of $100 ~~$50~~ plus a $5 unlicensed activity fee pursuant to Section 456.065(3), F.S.

(b) At the time of license renewal, if the consultant pharmacist license is inactive, to continue the license on inactive status by submitting a written request with the board for inactive status and submitting the inactive status renewal fee of $100 ~~$50~~ plus a $5 unlicensed activity fee pursuant to Section 456.065(3), F.S.

(c) through (d) No change.

(3) No change.

(4) A registered pharmacy technician may elect:

(a) At the time of renewal to place the registered pharmacy technician registration on inactive status by submitting a written request with the board for inactive status and submitting the inactive status renewal fee of $50 plus a $5 unlicensed activity fee pursuant to Section 456.065(3), F.S.

(b) At the time of renewal, if the registered pharmacy technician registration is inactive, to continue the registration on inactive status by submitting a written request with the board for inactive status and submitting the inactive status renewal fee of $50 plus a $5 unlicensed activity fee pursuant to Section 456.065(3), F.S.

(c) At the time of renewal to change the inactive status registration to active status, provided the registered pharmacy technician meets the continuing education requirements of Rule 64B16-26.103, F.A.C., for each biennium the registration was on inactive status, and by submitting a reactivation fee of $50, and the active registration fee set forth in Rule 64B16-26.1003, F.A.C.

(d) At a time other than renewal to change the inactive status registration to active status, provided the registered pharmacy technician meets the continuing education requirements of Rule 64B16-26.103, F.A.C., for each biennium the registration was on inactive status and by submitting a reactivation fee of $50, a change of status fee of $25 and the difference between the inactive status renewal fee and the active status renewal fee, if any exists.

Rulemaking ~~Specific~~ Authority 456.036, 465.005, 465.012, 465.0125, 465.0126 FS. Law Implemented 456.036, 456.065(3), 465.012, 465.0125, 465.0126 FS. History–New 1-11-05, Amended 10-30-07, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Pharmacy

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Pharmacy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 15, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 6, 2009

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE NO.:	RULE TITLE:
64B16-26.1005	Retired License Election; Renewal; Fees

PURPOSE AND EFFECT: The Board proposes the rule amendment to update the references to pharmacy technicians.

SUMMARY: References to pharmacy technicians will be updated.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board determined the proposed rule will not have an impact on small business.

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.

RULEMAKING AUTHORITY: 456.036(15) FS.

LAW IMPLEMENTED: 456.013, 456.036(4)(b) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Rebecca R. Poston, Executive Director, Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

64B16-26.1005 Retired License Election; Renewal; Fees.

(1) No change.

(2) Any pharmacist ~~person~~ applying for an active status license who has been on retired status for 5 years or more, or if licensed elsewhere, has not been active during the past 5 years,

shall as a condition of licensure, demonstrate that he or she is able to practice with the care and skill sufficient to protect the health, safety, and welfare of the public by:

(a) through (b) No change.

~~(3) Any person applying for an active status license by endorsement who has not been active in his or her state of licensure during the past 5 years, shall as a condition of licensure, demonstrate that he or she is able to practice with the care and skill sufficient to protect the health, safety, and welfare of the public by:~~

~~(a) If inactive for less than 5 years, the applicant must pass a jurisprudence examination;~~

~~(b) If inactive 5 or more years, in addition to paragraph (a), the applicant must pass the NAPLEX.~~

Rulemaking ~~Specific~~ Authority 456.036(15) FS. Law Implemented 456.013, 456.036(4)(b) FS. History–New 11-29-06, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Pharmacy

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Pharmacy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 15, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 6, 2009

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE NO.:	RULE TITLE:
64B16-26.1021	Delinquent License Reversion; Reinstatement; Fees

PURPOSE AND EFFECT: The Board proposes the rule amendment to update the references to pharmacy technicians.

SUMMARY: References to pharmacy technicians will be updated.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board determined the proposed rule will not have an impact on small business.

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.

RULEMAKING AUTHORITY: 456.036, 465.005, 465.012 FS.

LAW IMPLEMENTED: 456.012, 456.036 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Rebecca R. Poston, Executive Director, Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

64B16-26.1021 Delinquent License Reversion; Reinstatement; Fees.

(1) No change.

(2) A pharmacist ~~licensee~~ may request that a delinquent license be reinstated to active or inactive status, provided the licensee meets the continuing education requirements of Rule 64B16-26.103, F.A.C., for each biennium the license was on inactive status, and by submitting a reactivation fee of $100 ~~$50,~~ plus the current fee for an active status or inactive status license set forth in Rule 64B16-26.1003 or 64B16-26.1004, F.A.C.

(3) A consultant pharmacist ~~licensee~~ may request that a delinquent consultant pharmacist license be reinstated to an active or inactive status by submitting a delinquent fee of $100 ~~$25~~ plus the current fee for an active or inactive status consultant pharmacist license set forth in Rule 64B16-26.1003 or 64B16-26.1004, F.A.C.

(4) A nuclear pharmacist ~~licensee~~ may request that a delinquent nuclear pharmacist license be reinstated to an active or inactive license status by submitting a delinquent fee of $100 plus the current fee for an active or inactive nuclear pharmacist license set forth in Rule 64B16-26.1003 or 64B16-26.1004, F.A.C.

(5) A registered pharmacy technician may request that a delinquent registered pharmacy technician registration be reinstated to an active or inactive status provided the registered pharmacy technician meets the continuing education requirements of Rule 64B16-26.103, F.A.C., for each biennium the registration was on inactive status, and by submitting a reactivation fee of $25 plus the current fee for an active or inactive status registered pharmacy technician registration set forth in Rule 64B16-26.1003 or 64B16-26.1004, F.A.C.

(6)~~(5)~~ A license in delinquent status that is not renewed prior to midnight of the expiration date of the current licensure cycle shall be rendered null without any further action by the Department. Any subsequent license shall be the result of applying for and meeting all requirements imposed on an applicant for new licensure.

Rulemaking ~~Specific~~ Authority 456.036, 465.005, 465.012 FS. Law Implemented 456.036, 465.012 FS. History–New 1-11-05, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Pharmacy

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Pharmacy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 15, 2009
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 13, 2009

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE NOS.:	RULE TITLES:
64B16-27.100	Display of Current License; Pharmacist, Registered Intern, and Registered Pharmacy Technician Identification
64B16-27.1001	Practice of Pharmacy
64B16-27.300	Standards of Practice – Continuous Quality Improvement Program
64B16-27.430	Responsibilities of the Pharmacist
64B16-27.440	Policies and Procedures

PURPOSE AND EFFECT: The Board proposes the rule amendment to update the references to pharmacy technicians.
SUMMARY: References to pharmacy technicians will be updated.
SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board determined the proposed rule will not have an impact on small business.
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.
RULEMAKING AUTHORITY: 465.005, 465.0155, 465.022 FS.
LAW IMPLEMENTED: 465.022, 465.003(11)(b), (13), 465.014, 465.026. 465.0155 FS.
IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.
THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Rebecca R. Poston, Executive Director, Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULES IS:

64B16-27.100 Display of Current License; Pharmacist, Registered ~~and~~ Intern, and Registered Pharmacy Technician Identification.

(1) through (2) No change.

(3) A pharmacist and registered pharmacy intern must be clearly identified by a means such as an identification badge or monogrammed smock showing their name and if they are a pharmacist or a registered pharmacy ~~an~~ intern.

(4) The current registration of each registered pharmacy technician shall be displayed, when applicable, in a conspicuous place in or near the prescription department, and in such a manner that can be easily read by patrons of said establishment. Registered pharmacy technicians employed in a secondary practice site shall present a valid wallet registration as evidence of registration upon request.

Rulemaking ~~Specific~~ Authority 465.005, 465.0155, 465.022 FS. Law Implemented 465.022 FS. History–Amended 5-19-72, Repromulgated 12-18-74, Formerly 21S-1.06, 21S-1.006, Amended 7-30-91, Formerly 21S-27.100, 61F10-27.100, Amended 1-30-96, Formerly 59X-27.100, Amended 11-18-07, _____.

64B16-27.1001 Practice of Pharmacy.

Those functions within the definition of the practice of the profession of pharmacy, as defined by Section 465.003(13), F.S., are specifically reserved to a pharmacist or a duly registered pharmacy intern in this state acting under the direct and immediate personal supervision of a pharmacist. The following subjects come solely within the purview of the pharmacist.

(1) A pharmacist or registered pharmacy intern must:

(a) through (f) No change.

(2) When parenteral and bulk solutions of all sizes are prepared, regardless of the route of administration, the pharmacist must:

(a) No change.

(b) Mix all extemporaneous compounding or be physically present and give direction to the registered pharmacy technician for reconstitution, for addition of additives, or for bulk compounding of the parenteral solution.

(c) through (d) No change.

(3) through (5) No change.

(6) The pharmacist may take a meal break, not to exceed 30 minutes in length, during which the pharmacy department of a permittee shall not be considered closed, under the following conditions:

(a) through (b) No change.

(c) The activities of registered pharmacy technicians during such a meal break shall be considered to be under the direct and immediate personal supervision of a pharmacist if the pharmacist is available on the premises during the meal break to respond to questions by the technicians, and if at the end of the meal break the pharmacist certifies all prescriptions prepared by the registered pharmacy technicians during the meal break.

(7) The delegation of any duties, tasks or functions to registered pharmacy intern and registered pharmacy technicians must be performed subject to a continuing review and ultimate supervision of the pharmacist who instigated the specific task, so that a continuity of supervised activity is present between one pharmacist and one registered pharmacy technician. In every pharmacy, the pharmacist shall retain the

professional and personal responsibility for any delegated act performed by registered pharmacy interns and registered pharmacy technicians in the licensee's employ or under the licensee's supervision.

Rulemaking ~~Specific~~ Authority 465.005, 465.0155 FS. Law Implemented 465.003(11)(b), (13), 465.014, 465.026 FS. History–New 11-18-07, Amended _____.

64B16-27.300 Standards of Practice – Continuous Quality Improvement Program.

(1) through (2) No change.

(3)(a) Each pharmacy shall establish a Continuous Quality Improvement Program which program shall be described in the pharmacy's policy and procedure manual and, at a minimum shall contain:

1. Provisions for a Continuous Quality Improvement Committee that may be comprised of staff members of the pharmacy, including pharmacists, registered pharmacy interns, registered pharmacy technicians, clerical staff, and other personnel deemed necessary by the prescription department manager or the consultant pharmacist of record;

2. Provisions for the prescription department manager or the consultant pharmacist of record to ensure that the committee conducts a review of Quality Related Events at least every three months.

3. A planned process to record, measure, assess, and improve the quality of patient care; and

4. The procedure for reviewing Quality Related Events.

(b) through (c) No change.

(4) through (5) No change.

Rulemaking ~~Specific~~ Authority 465.0155 FS. Law Implemented 465.0155 FS. History–New 7-15-99, Amended 1-2-02, 6-16-03, 11-18-07, _____.

64B16-27.430 Responsibilities of the Pharmacist.

The delegation of any duties, tasks or functions to registered pharmacy ~~licensed~~ interns and registered pharmacy technicians must be performed subject to a continuing review and ultimate supervision of the ~~Florida licensed~~ pharmacist who instigated the specific task, so that a continuity of supervised activity is present between one (1) pharmacist and one (1) registered pharmacy technician. In every pharmacy, the ~~licensed~~ pharmacist shall retain the professional and personal responsibility for any delegated act performed by registered pharmacy ~~licensed~~ interns and registered pharmacy technicians in his employ and under his supervision.

Rulemaking ~~Specific~~ Authority 465.005 FS. Law Implemented 465.014 FS. History–New 2-14-77, Formerly 21S-4.03, Amended 9-1-87, Formerly 21S-4.003, 21S-27.430, 61F10-27.430, 59X-27.430, Amended _____.

64B16-27.440 Policies and Procedures.

Any pharmacy utilizing registered pharmacy technicians shall be required to have written policies and procedures regarding the number of positions and their utilization, including the specific scope of responsibilities of technicians, available for inspection by the Florida Board of Pharmacy or its authorized agents and representatives.

Rulemaking ~~Specific~~ Authority 465.005 FS. Law Implemented 465.014 FS. History–New 2-14-77, Formerly 21S-4.04, 21S-4.004, Amended 9-9-92, Formerly 21S-27.440, 61F10-27.440, 59X.27-440, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Pharmacy

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Pharmacy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 15, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 13, 2009

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE NO.:	RULE TITLE:
64B16-27.410	Registered Pharmacy Technician, to Pharmacist Ratio

PURPOSE AND EFFECT: The Board proposes the rule amendment to provide a substantial re-write of the rule.

SUMMARY: Substantial re-write of the rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board determined the proposed rule will not have an impact on small business.

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.

RULEMAKING AUTHORITY: 465.005 FS.

LAW IMPLEMENTED: 465.014, 893.07(1)(b) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Rebecca R. Poston, Executive Director, Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

64B16-27.410 Registered Pharmacy Technician, to Pharmacist ~~1:1~~ Ratio.

(1) Registered p~~P~~harmacy technicians may assist a ~~Florida licensed~~ pharmacist in performing professional services within a ~~community pharmacy or institutional~~ pharmacy environment provided that no ~~licensed~~ pharmacist shall supervise more than one registered pharmacy technician unless otherwise permitted by the Florida Board of Pharmacy. A pharmacist's supervision of a registered pharmacy technician in a ~~1:1 ratio~~ working environment requires that a registered pharmacy technician be under the direct ~~and immediate~~ personal supervision of a ~~Florida licensed~~ pharmacist. ~~All pharmacy technicians shall identify themselves as pharmacy technicians by wearing a type of identification badge that is clearly visible which specifically identifies the employee by name and by status as a "pharmacy technician", and in the context of telephone or other forms of communication, pharmacy technicians shall state their names and verbally identify themselves (or otherwise communicate their identities) as pharmacy technicians. Pursuant to the direction of the licensed pharmacist, pharmacy technicians may engage in the following functions to assist the licensed pharmacist:~~

~~(1) Prepackaging and labeling of unit and multiple dose packages pursuant to appropriate procedures. The pharmacist shall directly supervise and conduct in-process and final checks, and affix his/her initials to the record. Such pharmacy technician activities would include the maintenance of control records;~~

(2) The prescription department manager or consultant pharmacist of record is required to submit a written request and receive approval prior to the pharmacy's allowing a pharmacist to supervise more than one registered pharmacy technician as permitted by law. Such requests shall be reviewed and pre-approved by Board staff according to the guidelines adopted herein, and submitted to the Board for ratification. ~~Assist the pharmacist in the preparation of the prescription. Such pharmacy technician functions include the typing of prescription labels on a typewriter or through entry into a computer system and the entry of prescription information or physicians' orders into a computer system. The pharmacist, however, must complete the dispensing act and initial the prescription;~~

(3) The request to practice with a ratio greater than 1:1 shall include a brief description of the workflow needs that justify the ratio request. The brief description of workflow needs shall include the operating hours of the pharmacy, number of pharmacists, registered interns, and registered pharmacy technicians employed. ~~Assist in the preparation of products in a pharmacy where such products are not directly dispensed and administered to the patient and when done pursuant to appropriate procedures under the direct and immediate supervision of a pharmacist who shall conduct in-process and final checks;~~

(4) A pharmacy that employs pharmacy technicians shall meet the following conditions: ~~Issue supplies and other products from an institutional pharmacy to physicians, nursing homes, and other departments in institutions, pursuant to appropriate procedures.~~

(a) Establish written job descriptions, task protocols, and policies and procedures that pertain to duties performed by the registered pharmacy technician and provide this information to the Board upon request;

(b) Establish that each registered pharmacy technician is knowledgeable in the established job descriptions, task protocols, and policy and procedures in the pharmacy setting in which the technician is to perform his or her duties;

(c) Ensure that the duties assigned to any registered pharmacy technician do not exceed the established job descriptions, task protocols, and policy and procedures, nor involve any of the prohibited tasks in Rule 64B16-27.420, F.A.C.; or

(d) Ensure that each registered pharmacy technician receives employer-based or on-the-job training in order for the registered pharmacy technician to assume his or her responsibilities and maintain documentation of the training.

(5) The pharmacy shall maintain a policy and procedure manual with regard to registered pharmacy technicians which shall include the following: ~~Initiate communication to a prescribing practitioner or their medical staffs (or agents) regarding patient prescription refill authorization requests. Such pharmacy technician activities allow initiating calls to the practitioner or agent, communicating the refill request and confirming the patients' name, medication, strength, quantity, directions and date of last refill. Any response to the above refill request that indicates a change in the order must be directly received by the pharmacist and/or pharmacy intern.~~

(a) Supervision by a pharmacist;

(b) Minimum qualifications as established by law;

(c) Documentation of in-service education and/or on-going training and demonstration of competency, specific to practice site and job function;

(d) General duties and responsibilities of registered pharmacy technicians;

(e) Retrieval of prescription files, patient files, patient profile information and other records pertaining to the practice of pharmacy;

(f) All functions related to prescription processing;

(g) All functions related to prescription legend drug and controlled substance ordering and inventory control, including procedures for documentation and recordkeeping;

(h) Prescription refill and renewal authorization;

(i) Registered pharmacy technician functions related to automated pharmacy systems; and

(j) Continuous quality improvement program.

~~(6) Under the direction and supervision of a licensed pharmacist, initiate communication to a prescribing practitioner or their medical staff (or agents) to obtain clarification on missing or illegible dates, prescriber name, brand/generic preference, quantity or DEA and/or license numbers. Nothing in this rule shall be construed to allow a technician to obtain information which will result in a change concerning a dosage or directions to the patient.~~

Rulemaking ~~Specific~~ Authority 465.005 FS. Law Implemented 465.014, 893.07(1)(b) FS. History–New 2-14-77, Amended 3-31-81, Formerly 21S-4.02, Amended 8-31-87, Formerly 21S-4.002, Amended 9-9-92, Formerly 21S-27.410, 61F10-27.410, Amended 1-30-96, Formerly 59X-27.410, Amended 2-23-98, 10-15-01, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Pharmacy

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Pharmacy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 15, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 14, 2009

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE NO.:	RULE TITLE:
64B16-28.140	Record Maintenance Systems for Community, Special-Limited Community, Special-Closed Systems, Special-Parenteral/ Enteral, and Nuclear Permits

PURPOSE AND EFFECT: The Board proposes the rule amendment to provide a substantial re-write of the rule.

SUMMARY: The rule amendment is a substantial re-write of the rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board determined the proposed rule will not have an impact on small business.

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.

RULEMAKING AUTHORITY: 465.005, 465.0155, 465.022 FS.

LAW IMPLEMENTED: 465.033(14), 465.022, 465.026, 893.07 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Rebecca R. Poston, Executive Director, Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

(Substantial rewording of Rule 64B16-28.140. See Florida Administrative Code for present text.)

64B16-28.140 Record Maintenance Systems for Community, Special-Limited Community, Special-Closed Systems, Special-Parenteral/Enteral, and Nuclear Permits.

(1) For the purposes of this rule, the term signature shall include biometric authentication and the term order is a prescription written for dispensing in an institution.

(2) Record Maintenance Requirements Records may be maintained in an automated data processing system or in a manual system if the following requirements are met:

(a) All original prescriptions or orders shall be retained.

(b) All transfer of prescriptions or orders must be strictly in accordance with the provisions of Section 465.026 F.S., and Rule 64B16-27.105, F.A.C., Title 21, Code of Federal Regulations (C.F.R.) Section 1306.25, (2008) which is incorporated by reference herein.

(c) Controlled substances listed in Chapter 893, F.S., dispensed from the pharmacy must comply with the provisions of Section 893.07, F.S., Title 21, C.F.R. Section 1304.04, Title 21, C.F.R. Section 1306.05, Title 21, C.F.R., Section 1306.11, Title 21, C.F.R , Section 1306.21, and Title 21, C.F.R. Section 1306.22, incorporated by reference here in.

(d) In an automated data processing system, a prescription or order for a non-controlled substance may be retained as an image.

(3) The pharmacy shall maintain a back-up copy of information stored in the data processing system using disk, tape or other electronic back-up system and update data at least every 24 hours, to assure that data is not lost due to system failure.

(4) Change or discontinuance of data processing system

(a) Records of dispensing. A pharmacy that changes or discontinues use of a data processing system must:

1. Transfer the records of dispensing to the new data processing system; or

2. Transfer the records of dispensing to a paper printout which contains the same information required on the daily printout as specified in paragraph (5)(a).

(b) Other Records. A pharmacy that changes or discontinues use of a data processing system must:

1. Transfer the records to the new data processing system; or;

2. Transfer the records to a paper printout, which contains all the information required on the original document.

(c) Maintenance of purged records. Information deleted or removed from a data processing system must be maintained by the pharmacy for two (2) years from the date of last entry into the data processing system.

(d) If multiple automated systems are utilized, all the data must be integrated and available from at least one terminal.

(e) The prescription department manager or consultant pharmacist of record shall report in writing to the Board any significant loss of information from the data processing system within 10 days of discovery of loss.

(5) Records of dispensing.

(a) Records of dispensing for original and refill prescriptions are to be maintained and readily retrievable for two (2) years from the date of the last filling and shall include:

1. Unique identification number of the prescription;

2. Date of dispensing and date written;

3. Patient name and address;

4. Prescribing practitioner's name, address and the federal controlled substance registration number if the prescription or order is for a controlled substance;

5. Date of issuance of the prescription or order if different from the date of dispensing;

6. Name and strength of the drug product actually dispensed and, if generic name, the brand name or manufacturer of drug dispensed;

7. Quantity prescribed and quantity dispensed if different from the quantity prescribed;

8. Directions for use;

9. Total number of refills dispensed to date for that prescription drug order;

10. Initials or an identification code of the dispensing pharmacist.

(b) A daily hard-copy print out shall be produced within 72 hours of the date on which the prescription was dispensed and shall be maintained in a separate file at the pharmacy. Records of controlled substances shall be readily retrievable from records of non-controlled substances.

(c) Within seven days from the date of dispensing, each pharmacist who dispenses or refills a prescription or order shall verify that the data indicated on the daily hard copy printout is correct, by dating, signing and including her or his license number.

(d) In lieu of producing the hard-copy printout described in paragraphs (b) and (c) of this paragraph, the pharmacy shall maintain a log book or separate file in which each individual pharmacist using the data processing system shall sign a statement each day, certifying that the information entered into the data processing system that day has been reviewed and is correct as entered. The signature of the pharmacist shall be accompanied by her or his pharmacist license number. Such log book shall be maintained at the pharmacy employing such a system for a period of two (2) years after the date of dispensing provided, that the data processing system can readily retrieve the hard-copy printout upon request of an authorized agent of the Department. If no printer is available on site, the hard-copy printout shall be available within 72 hours with a certification by the individual providing the printout, stating that the printout is true and correct as of the date of entry and such information has not been altered, amended or modified.

(e) The prescription department manager or consultant pharmacist of record and the permit holder are responsible for the proper maintenance of any record system and its compliance with this section.

(f) Failure to provide the records, either on site or within 72 hours, constitutes failure to keep and maintain records.

(g) In the event that a pharmacy data processing system is not operating the pharmacy shall:

1. Establish an auxiliary procedure shall ensure that refills are authorized by the original prescription and that the maximum number of refills has not been exceeded or that authorization from the prescribing practitioner has been obtained prior to dispensing a refill; and

2. All of the appropriate data shall be retained for on-line data entry as soon as the system is available for use again.

(6) Records in institutional pharmacies may be made and kept as part of the patient's medical record. The consultant pharmacist of record for the pharmacy shall ensure that a manual system, an electronic system, or a combination thereof exists to meet the requirements of this subsection.

(a) Each time a controlled substance is dispensed, issued from, an automated dispensing machine, or returned to the pharmacy, a record of such dispensing, issuance, or return shall be recorded in the system(s).

(b) The systems shall have the capacity to produce a list of all patient specific orders reviewed by the pharmacist and dispensed or issued from the pharmacy. This list shall contain the following information:

1. Patient's name and room number or patient's facility identification number.

2. Name, strength and dosage form of the drug product dispensed.

3. Total quantity of patient specific controlled substances issued from and returned to the pharmacy.

4. Identity of the pharmacist certifying the accuracy of the order.

(c) Each institutional pharmacy shall compile and maintain a listing of all practitioners within the facility authorized to prescribe controlled substances listed within Section 893.03, F.S. Such listing shall include the practitioner's federal controlled substance registration number.

(d) Each institutional pharmacy shall comply with the requirements listed in subsection 59A-3.2085(2), F.A.C., which is incorporated by reference herein.

(e) A Class II Institutional Pharmacy shall require:

1. Patient specific order be verified by a pharmacist.

2. Patient specific refill orders be verified by a pharmacist;

3. Emergency Room dispensing records be checked by a pharmacist;

4. Medication Station and Departmental inspections be done monthly and reviewed by the consultant pharmacist of record; and

5. The formulary be routinely maintained by the institutions pharmacy and Therapeutics Committee.

(f) Failure to provide records set out in this section, either on site or within 48 hours, constitutes failure to keep and maintain records.

(7) Compounding records. A written record shall be maintained for each batch/sub-batch of a compounded product under the provisions of Rule 64B16-27.700, F.A.C. This record shall include:

(a) Date of compounding.

(b) Control number for each batch/sub-batch of a compounded product. This may be the manufacturer's lot number or new numbers assigned by the pharmacist. If the number is assigned by the pharmacist, the pharmacist shall also record the original manufacturer's lot number and expiration dates. If the original numbers and expiration dates are not known, the pharmacy shall record the source and acquisition date of the component.

(c) A complete formula for the compounded product maintained in a readily retrievable form including methodology and necessary equipment.

(d) A signature or initials of the pharmacist performing the compounding.

(e) A signature or initials of the pharmacist responsible for supervising registered pharmacy technicians involved in the compounding process.

(f) The name(s) of the manufacturer(s) of the raw materials used.

(g) The quantity in units of finished products or grams of raw materials.

(h) The package size and number of units prepared.

(i) The name of the patient who received the particular compounded product.

(8) Authorization of additional refills. Practitioner authorization for additional refills of a prescription drug order shall be noted on the original prescription or in the data processing system and available via computer monitor.

(9) Drug Enforcement Administration (D.E.A.) Inventory shall be maintained two (2) years and be in compliance with the initial inventory and biennial inventory requirements set forth in Title 21 C.F.R., s. 1304.11, which is incorporated by reference herein.

(10) Wholesale distributor, manufacturer invoices and pedigree documents shall be maintained two (2) years from the disposition of the prescription drug have approval for central record keeping and be readily retrievable.

(11) Schedule V Controlled Substance Records a record of over-the-counter product sales shall be maintained for two (2) years and the record shall be available for inspections by a representative of the Board or the Department.

(12) Prepackaging Records (Unit dose or multidose). A log shall be maintained two (2) years and shall contain the following:

(a) Date prepackaged;

(b) Number of units prepackaged;

(c) Drug name and strength;

(d) Manufacturer's lot number;

(e) Manufacturer's expiration date;

(f) Assigned expiration date;

(g) Verifying pharmacist's initials.

(13) Pharmacist Ordering Profiles and Prescriptions shall be maintained on file for two (2) years; and in accordance with Rule 64B16-27.210, F.A.C.

(14) Quality Assurance Records:

(a) Shall be maintained on file for two (2) years.

(b) Product testing results shall be maintained on a log or form.

(c) Equipment testing shall be maintained on a log or form.

(15) An institutional pharmacy shall maintain documentation of each after-hour entry into the pharmacy and the record shall include:

(a) The physician's order;

(b) Name of the drug, strength, and dosage form;

(c) Quantity of drug obtained;

(d) Name of the nurse supervisor who removed the drug from the pharmacy.

(16) Automated Bulk Dispensing Machines. A pharmacy which uses an automated dispensing machine shall maintain for 90 days, a log to include:

(a) Name of the drug, strength, and dosage form;

(b) Manufacturer's lot number;

(c) Manufacturer's expiration date; and

(d) The initials of the pharmacist who verified the medication placed in the system.

(17) Automated Unit Dose Dispensing Machines. An institution pharmacy which uses an automated dispensing machine shall maintain, for 90 days, a log to include:

(a) Name of the drug, strength, and dosage form,

(b) The initials of the pharmacist who verified the medication placed in system.

(18) Methamphetamine Precursor Sales: A record of over-the-counter product sales shall be maintained for two (2) years and be available for inspections by a representative of the Board or the Department.

Rulemaking ~~Specific~~ Authority 465.005, 465.0155, 465.022 FS. Law Implemented 465.003(14), 465.022, 465.026, 893.07 FS. History–New 3-16-94, Formerly 61F10-28.140, Amended 3-12-97, 6-4-97, Formerly 59X-28.140, Amended 10-27-97, 6-15-98, 11-11-98, 10-15-01, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Pharmacy

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Pharmacy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 15, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 14, 2009

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE NOS.:	RULE TITLES:
64B16-28.141	Requirements for an Automated Pharmacy System in a Community Pharmacy
64B16-28.451	Pharmacy Common Database
64B16-28.605	Class II Institutional Pharmacies – Automated Distribution and Packaging
64B16-28.607	Automated Pharmacy System – Long-Term Care, Hospice or Prison
64B16-28.830	Special – Closed System Pharmacy
64B16-28.901	Nuclear Pharmacy – General Requirements

PURPOSE AND EFFECT: The Board proposes the rule amendment to update the references to pharmacy technicians.

SUMMARY: References to pharmacy technicians will be updated.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board determined the proposed rule will not have an impact on small business.

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.

RULEMAKING AUTHORITY: 465.005, 465.022, 465.0155 FS.

LAW IMPLEMENTED: 465.003(14), 465.0126, 465.014, 465.018, 465.019, 465.0196, 465.022, 465.0235, 465.026, 465.0266 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Rebecca R. Poston, Executive Director, Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULES IS:

64B16-28.141 Requirements for an Automated Pharmacy System in a Community Pharmacy.

(1) No change.

(2) General Requirements. A pharmacy may use an automated pharmacy system provided that:

(a) The pharmacy develops and maintains a policy and procedure manual that includes:

1. The type or name of the system including a serial number or other identifying nomenclature.

2. A method to ensure security of the system to prevent unauthorized access. Such method may include the use of electronic passwords, biometric identification (optic scanning or fingerprint) or other coded identification.

3. A process of filling and stocking the system with drugs; an electronic or hard copy record of medication filled into the system including the product identification, lot number, and expiration date.

4. A method of identifying all the registered pharmacy interns ~~pharmacists~~ or registered pharmacy technicians involved in the dispensing process.

5. Compliance with a Continuous Quality Improvement Program.

6. A method to ensure that patient confidentiality is maintained.

7. A process to enable the prescription department manager or designee to revoke, add, or change access at any time.

(b) No change.

(c) The system shall maintain a readily retrievable electronic record to identify all pharmacists, registered pharmacy technicians, or other personnel involved in the dispensing of a prescription.

(d) No change.

(3) Additional Requirements for Patient Accessed Automated Pharmacy Systems. A pharmacy may use a patient accessed automated pharmacy system, provided that:

(a) No change.

(b) The stocking or restocking of a medicinal drug shall only be completed by a Florida ~~licensed~~ pharmacist, except as provided in paragraph (c) below.

(c) If the automated pharmacy system uses removable cartridges or container to store the drug, the stocking or restocking of the cartridges or containers may occur at a

licensed repackaging facility and be sent to the provider pharmacy to be loaded by personnel designated by the pharmacist if:

1. A Florida ~~licensed~~ pharmacist verifies the cartridge or container has been properly filled and labeled.

2. The individual cartridge or container is transported to the provider pharmacy in a secure, tamper-evident container.

3. The automated pharmacy system uses a bar code verification, electronic verification, weight verification, radio frequency identification (RFID) or similar process to ensure that the cartridge or container is accurately loaded into the automated pharmacy system.

4. The Florida ~~licensed~~ pharmacist verifying the filling and labeling is responsible if the cartridge or container is stocked or restocked incorrectly by the personnel designated to load the cartridges or containers.

(d) through (e) No change.

(f) The record of transactions with the patient accessed automated pharmacy system shall be available to authorized agents of the Department of Health. The record of transactions shall include:

1. Name of the patient.

2. Name, strength, and dosage form of the drug product dispensed.

3. Quantity of drug dispensed.

4. Date and time of dispensing.

5. Name of provider pharmacy.

6. Prescription number.

7. Name of prescribing practitioner.

8. Identity of the pharmacist who approved the prescription or order.

9. Identity of the person to whom the drug was released.

(4) The Florida ~~licensed~~ pharmacist responsible for filling, verifying, or loading the automated pharmacy system shall be responsible for her or his individual action.

(5) No change.

Rulemaking ~~Specific~~ Authority 465.005, 465.022 FS. Law Implemented 465.018, 465.022 FS. History–New 11-29-04, Amended 12-30-07, _____.

64B16-28.451 Pharmacy Common Database.

(1) through (5) No change.

(6) In addition to all record requirements of Rule 64B16-28.140, F.A.C., all pharmacies participating in prescription drug processing, shall maintain appropriate records which identify, by prescription, the name(s), initials, or identification code(s) of each pharmacist or registered pharmacy technician who performs a processing function for a prescription. Such records shall be maintained:

(a) Separately by each pharmacy and pharmacist; or

(b) In a common electronic file, as long as the records are maintained in such a manner that the data processing system can produce a printout which lists the functions performed by each pharmacy, pharmacist, registered pharmacy intern and registered pharmacy technician.

Rulemaking ~~Specific~~ Authority 465.005, 465.022 FS. Law Implemented 465.0266 FS. History–New 3-24-08, Amended _____.

64B16-28.605 Class II Institutional Pharmacies – Automated Distribution and Packaging.

(1) through (3) No change.

(4) Stocking or Restocking of a Decentralized Automated Medication System.

(a) Medications in a decentralized Automated Medication System shall be stocked or restocked by a pharmacist, registered pharmacy intern, or by a registered pharmacy technician supervised by a pharmacist.

(b) No change.

(5) through (9) No change.

Rulemaking ~~Specific~~ Authority 465.005, 465.0155, 465.022 FS. Law Implemented 465.019, 465.022, 465.0235, 465.026 FS. History–New 4-22-07, Amended _____.

64B16-28.607 Automated Pharmacy System – Long Term Care, Hospice, and Prison.

(1) No change.

(2) Provider Pharmacy Requirements.

(a) through (b) No change.

(c) Supervision of the automated pharmacy system shall be the responsibility of a Florida ~~licensed~~ pharmacist employed by the provider pharmacy.

(d) through (f) No change.

(3) through (4) No change.

(5) Security Requirements.

(a) through (b) No change.

(c) Access to the drugs shall be limited to a pharmacist or a registered pharmacy technician employed by the provider pharmacy or licensed personnel in the facility or institution who are authorized to administer medication.

(d) No change.

(6) through (7) No change.

Rulemaking ~~Specific~~ Authority 465.005, 465.0155, 465.022 FS. Law Implemented 465.019, 465.022, 465.0235 FS. History–New 4-22-07, Amended _____.

64B16-28.830 Special – Closed System Pharmacy.

(1) through (5) No change.

(6) The utilization of registered pharmacy interns and registered pharmacy technicians is subject to the rules as provided by Rule 64B16-26.400, F.A.C.

Rulemaking ~~Specific~~ Authority 465.005, 465.022 FS. Law Implemented 465.0196, 465.022 FS. History–New 7-31-91, Amended 10-1-92, Formerly 21S-28.830, 61F10-28.830, 59X-28.830, Amended _____.

64B16-28.901 Nuclear Pharmacy – General Requirements.

The process employed by any permit holder in this state concerning the handling of radioactive materials must involve appropriate procedures for the purchase, receipt, storage, manipulation, compounding, distribution and disposal of radioactive materials. In order to insure the public health and safety in this respect, a nuclear pharmacy in this state shall meet the following general requirements:

(1) through (7) No change.

(8) A nuclear pharmacist upon receiving an oral prescription order for a radiopharmaceutical shall immediately have the prescription order reduced to writing. The pharmacist may delegate this duty to a registered pharmacy technician only as authorized by Rule 64B16-27.410, F.A.C. The prescription order shall contain at least the following:

(a) through (i) No change.

(9) through (10) No change.

Rulemaking ~~Specific~~ Authority 465.005, 465.022 FS. Law Implemented 465.003(14), 465.0126, 465.014 FS. History–New 1-7-76, Formerly 21S-3.03, Amended 12-11-86, 4-4-88, Formerly 21S-3.003, 21S-28.901, 61F10-28.901, Amended 2-26-95, Formerly 59X-28.901, Amended 4-5-05, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Pharmacy

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Pharmacy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 15, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 13, 2009

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE NO.:	RULE TITLE:
64B16-28.303	Destruction of Controlled Substances All Permittees (excluding Nursing Homes)

PURPOSE AND EFFECT: The Board proposes the rule amendment to clarify requirements.

SUMMARY: Requirements will be clarified.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board determined the proposed rule will not have an impact on small business.

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.

RULEMAKING AUTHORITY: 465.005, 465.022 FS.

LAW IMPLEMENTED: 465.022, 465.018 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Rebecca R. Poston, Executive Director, Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

64B16-28.303 Destruction of Controlled Substances All Permittees (excluding Nursing Homes).

(1) No change.

(2) Permittees are required to legibly complete a United States Drug Enforcement Administration ~~legible~~ (D.E.A.) Form 41. This form, at the time of destruction, shall be witnessed and signed by the prescription department manager ~~pharmacist of record~~ and D.E.A. agent ~~inspector~~, or a Department ~~of Health~~ inspector~~, or a Health and Rehabilitative Services inspector~~. This method of destruction does not require prior approval from D.E.A., but does require that a copy of the completed and witnessed D.E.A. Form 41 be mailed to D.E.A. immediately after destruction.

(3) Another method of destruction requires the prescription department manager ~~pharmacist of record~~ for the permit, one other pharmacist, ~~a licensed physician, pharmacist, mid-level practtioner, or nurse~~, and a sworn law enforcement officer to serve as the witnesses. A copy of the D.EA. Form 41 and a letter providing the proposed date of destruction, the proposed method of destruction and the names and titles of the proposed witnesses must be received by D.E.A. at least two weeks prior to the proposed date of destruction which shall constitute a request for destruction. The drugs may not be destroyed until D.E.A. grants approval of the request for destruction. A copy of the completed and witnessed D.E.A. Form 41 shall be mailed to D.E.A. immediately after destruction.

(4) No change.

Rulemaking ~~Specific~~ Authority 465.005, 465.022 FS. Law Implemented 465.022, 465.018 FS. History–New 4-21-87, Formerly 21S-19.003, Amended 7-31-91, Formerly 21S-28.303, 61F10-28.303, Amended 1-30-96, Formerly 59X-28.303, Amended 2-5-07, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Pharmacy

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Pharmacy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 15, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 14, 2009

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE NO.: RULE TITLE:
64B16-28.840 Special – Non Resident (Mail Service)

PURPOSE AND EFFECT: The Board proposes the rule amendment in order to incorporate provision of 465.0156, F.S.

SUMMARY: The rule amendment incorporates a provision of 465.0156, F.S.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board determined the proposed rule will not have an impact on small business.

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.

RULEMAKING AUTHORITY: 465.005, 465.022, 465.0156 FS.

LAW IMPLEMENTED: 465.0156 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Rebecca R. Poston, Executive Director, Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

64B16-28.840 Special – Non Resident (Mail Service).

(1) through (4) No change.

(5) A pharmacy outside of this state and not registered as a Non Resident Pharmacy may make a one-time delivery of a dispensed medicinal drug to a patient in this state as provided by Section 465.0156(2), F.S.

Rulemaking ~~Specific~~ Authority 465.005, 465.022, 465.0156 FS. Law Implemented 465.0156 FS. History–New 10-14-91, Formerly 21S-28.840, 61F10-28.840, 59X-28.840, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Pharmacy

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Pharmacy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 10, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 14, 2009

DEPARTMENT OF HEALTH

Division of Emergency Medical Operations

RULE NO.: RULE TITLE:
64J-1.001 Definitions

PURPOSE AND EFFECT: This notice is to alert the public that the Department of Health, Bureau of Emergency Medical Services did not receive a request for a rule development workshop from the June 5, 2009 FAW Notice of Rule Development on the proposed revisions to the above referenced rule. Therefore, the Bureau of Emergency Medical Services and the Office of Trauma are moving forward with rulemaking to transfer the trauma terms and definitions from the EMS definitions section in Chapter 64J-1, F.A.C. to the new trauma definitions section in Chapter 64J-2, F.A.C.

SUMMARY: The proposed rule deletes trauma definitions from Rule 64J-1.001, F.A.C., and adds cross references to those terms in Rule 64J-2.001, F.A.C.

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.

RULEMAKING AUTHORITY: 381.0011(13), 395.401(2), 395.4025(13), 395.4036, 395.4045, 395.405(8), 401.45(5) FS.

LAW IMPLEMENTED: 381.0205, 395.1031, 395.3025(4)(f), 395.401, 395.4015, 395.402, 395.4025, 395.403, 395.4036, 395.404, 395.4045, 395.405, 401.30, 401.35,401.45, 765.401 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: John Bixler, Bureau of Emergency Medical Operations, Department of Health, 4052 Bald Cypress Way, Bin #C-18, Tallahassee, Florida 32399-1738, (850)245-4053, Email: john_bixler@doh.state.fl.us; Fax: (850)488-2512

THE FULL TEXT OF THE PROPOSED RULE IS:

64J-1.001 Definitions.

In addition to the definitions provided in Sections 395.401, 395.4001, 401.107, and 401.23, F.S., the following definitions apply to these rules:

(1) Abbreviated Injury Score (AIS-90) – as defined in Rule 64J-2.001, F.A.C. ~~means a consensus derived, anatomically based system that classifies individual injuries by body region on a 6-point ordinal severity scale ranging from 1 to 6. The methodology for determining AIS-90 Code is found in the "Abbreviated Injury Scale 1990 – Update 98," which is~~

~~incorporated by reference and is available from the Association for the Advancement of Automotive Medicine, P. O. Box 4176, Barrington, IL 60011-4176.~~

(2) through (10) No change.

(11) Glasgow Coma Scale Score – as defined in Rule 64J-2.001, F.A.C. ~~means the neurological assessment developed by G. Teasdale and B. Jennitte in "Assessment of Coma and Impaired Consciousness: A Practical Scale" Lancet, 1974; 2: 81-84, which is incorporated by reference and available from the department.~~

(12) ICD-9-CM – as defined in Rule 64J-2.001, F.A.C. ~~means the "International Classification of Disease, 9th Revision, Clinical Modification," March, 1989, U.S. Department of Health and Human Services Publication No. (PHS) 89-1260; an internationally applied method by which diseases or groups of medical conditions or injuries are coded for the purpose of statistical analyses. This book is incorporated by reference and available for purchase from the American Hospital Association, Central Office on ICD-9-DM, 1(800)242-2626, AHA, Post Office Box 92683, Chicago, IL 60675-2683.~~

(13) Injury Severity Score (ISS) – as defined in Rule 64J-2.001, F.A.C. ~~means the sum of the squares of the highest AIS 90 code in each of the three most severely injured body regions. The method for computing ISS is found in the "Abbreviated Injury Scale 1990 – Update 98."~~

(14) through (17) No change.

(18) Pediatric Trauma Patient – as defined in Rule 64J-2.001, F.A.C. ~~means a trauma patient with anatomical and physical characteristics of a person 15 years of age or younger.~~

(19) through (20) No change.

(21) Trauma – as defined in Rule 64J-2.001, F.A.C. ~~means a blunt, penetrating or burn injury caused by external force or violence.~~

(22) Trauma Alert – as defined in Rule 64J-2.001, F.A.C. ~~means a notification initiated by EMS informing a hospital that they are en route with a patient meeting the trauma alert criteria.~~

(23) Trauma Alert Patient – as defined in Rule 64J-2.001, F.A.C. ~~means a person whose primary physical injury is a blunt, penetrating or burn injury, and who meets one or more of the adult trauma scorecard criteria in Rule 64J-2.004, F.A.C., or the pediatric trauma scorecard criteria in Rule 64J-2.005, F.A.C.~~

(24) Trauma Patient – as defined in Rule 64J-2.001, F.A.C. ~~means any person who has incurred a physical injury or wound caused by trauma and who has accessed an emergency medical services system.~~

(25) Trauma Registry – as defined in Rule 64J-2.001, F.A.C. ~~means a statewide database which integrates medical and system information related to trauma patient diagnosis and the provision of trauma care by prehospital, hospital, and medical examiners.~~

(26) Trauma Transport Protocols (TTPs) – as defined in Rule 64J-2.001, F.A.C. ~~means a document which describes the policies, processes and procedures governing the dispatch of vehicles, and the triage and transport of trauma patients.~~

Rulemaking ~~Specific~~ Authority 381.0011(13), 395.401, 395.4025(13), 395.405, 401.121, 401.35 FS. Law Implemented 381.0011, 395.4001, 395.401, 395.4015, 395.402, 395.4025, 395.403, 395.404, 395.4045, 395.405, 401.121, 401.211, 401.23, 401.25, 401.35, 401.435 FS. History–New 4-26-84, Amended 3-11-85, Formerly 10D-66.485, Amended 11-2-86, 4-12-88, 8-3-88, 8-7-89, 6-6-90, 12-10-92, 11-30-93, 10-2-94, 1-26-97, Formerly 10D-66.0485, Amended 8-4-98, 7-14-99, 2-20-00, 11-3-02, 6-9-05, 10-24-05, 4-22-07, Formerly 64E-2.001, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: John Bixler, Bureau Chief, Bureau of Emergency Medical Services

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Ana Viamonte Ros, M.D., M.P.H.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 25, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 5, 2009

DEPARTMENT OF HEALTH

Division of Emergency Medical Operations

RULE NOS.:	RULE TITLES:
64J-2.001	Definitions
64J-2.004	Adult Trauma Scorecard Methodology
64J-2.006	Trauma Registry
64J-2.011	Trauma Center Requirements
64J-2.012	Process for the Approval of Trauma Centers
64J-2.013	Extension of Application Period
64J-2.014	Certificate of Approval
64J-2.015	Process for Renewal of Trauma Centers
64J-2.016	Site Visits and Approval
64J-2.017	Application by Hospitals Denied Approval

PURPOSE AND EFFECT: This notice is to alert the public that the Department of Health, Office of Trauma did not receive a request for a rule development workshop from the June 5, 2009 F.A.W. Notice of Rule Development on the proposed revisions to the above referenced rules. Therefore, the Office of Trauma is moving forward with this Notice of Proposed Rulemaking to create a new definitions section in Chapter 64J-2, F.A.C., to include the definitions that apply to Chapter 64J-2, Trauma, F.A.C., with cross references to definitions in 64J-1.001, F.A.C., that apply to both EMS and Trauma rules.

SUMMARY: The proposed rule revisions include: Creation of Rule 64J-2.001 Definitions, F.A.C.; Transfer trauma related definitions from Rule 64J-1.001, F.A.C., to the new 64J-2.001, F.A.C. The only definition that is revised is the definition of "department." In the new definition of 'department" refers to the Office of Trauma. Creates cross references to definitions in 64J-1.001, F.A.C., that apply to both EMS and Trauma rules. Technical revisions throughout 64J-2, F.A.C., where the definition of "department" and "Glascow Coma Scale Score" are referenced. The references for "department" are changed from subsection 64J-1.001(8), F.A.C., to subsection 64J-2.001(4), F.A.C., and the reference for "Glascow Coma Scale Score" is changed from subsection 64J-1.001(10) to subsection 64J-2.001(6). Technical revision to correct an error in the table number "IV" to table number "I" in Rule 64J-2.012, F.A.C.

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.

RULEMAKING AUTHORITY: 381.0011(13), 395.401(2), 395.4025(13), 395.4036, 395.4045, 395.405(8), 401.45(5) FS.

LAW IMPLEMENTED: 381.0205, 395.1031, 395.3025(4)(f), 395.401, 395.4015, 395.402, 395.4025, 395.403, 395.4036, 395.404, 395.4045, 395.405, 401.30, 401.35,401.45, 765.401 FS.

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

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 2 days before the workshop/meeting by contacting: Janet Collins (850)245-4444, Ext. 2775. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Susan McDevitt, Office of Trauma, Department of Health, 4052 Bald Cypress Way, Bin C-18, Tallahassee, Florida 32399-1738, (850)245-4440, ext. 2760; Email: susan_mcdevitt@doh.state.fl.us; Fax: (850)488-2512

THE FULL TEXT OF THE PROPOSED RULE IS:

64J-2.001 Definitions.

In addition to the definitions provided in Sections 395.401, 395.4001, 401.107, and 401.23, F.S., the following definitions apply to rules under Chapter 64J-2. F.A.C.:

(1) Abbreviated Injury Score (AIS-90) – means a consensus derived, anatomically based system that classifies individual injuries by body region on a 6-point ordinal severity scale ranging from 1 to 6. The methodology for determining AIS-90 Code is found in the "Abbreviated Injury Scale 1990 – Update 98," which is incorporated by reference and is available from the Association for the Advancement of Automotive Medicine, P. O. Box 4176, Barrington, IL 60011-4176.

(2) Application – means a completed application form, as specified by the department and is incorporated by reference in subparagraph 64J-2.012(1)(c)1., F.A.C., together with all documentation required by these rules.

(3) Burn – as defined in Rule 64J-1.001, F.A.C.

(4) Department – means the Florida Department of Health (DH), Office of Trauma, 4052 Bald Cypress Way, Bin C#18, Tallahassee, Florida 32399-1738, as referenced in Chapter 64J-2, F.A.C.

(5) Emergency Medical Services (EMS) Provider – as defined in Rule 64J-1.001, F.A.C.

(6) Glasgow Coma Scale Score – means the neurological assessment developed by G. Teasdale and B. Jennitte in "Assessment of Coma and Impaired Consciousness: A Practical Scale" Lancet, 1974; 2: 81-84, which is incorporated by reference and available from the department.

(7) ICD-9-CM – means the "International Classification of Disease, 9th Revision, Clinical Modification," March, 1989, U.S. Department of Health and Human Services Publication No. (PHS) 89-1260; an internationally applied method by which diseases or groups of medical conditions or injuries are coded for the purpose of statistical analyses. This book is incorporated by reference and available for purchase from the American Hospital Association, Central Office on ICD-9-DM, 1(800)242-2626, AHA, Post Office Box 92683, Chicago, IL 60675-2683.

(8) Injury Severity Score (ISS) – means the sum of the squares of the highest AIS-90 code in each of the three most severely injured body regions. The method for computing ISS is found in the "Abbreviated Injury Scale 1990 – Update 98."

(9) Patient Care Record – as defined in Rule 64J-1.001, F.A.C.

(10) Pediatric Trauma Patient – means a trauma patient with anatomical and physical characteristics of a person 15 years of age or younger.

(11) Transfer or transport – as defined in Rule 64J-1.001, F.A.C.

(12) Trauma – means a blunt, penetrating or burn injury caused by external force or violence.

(13) Trauma Alert – means a notification initiated by EMS informing a hospital that they are en route with a patient meeting the trauma alert criteria.

(14) Trauma Alert Patient – means a person whose primary physical injury is a blunt, penetrating or burn injury, and who meets one or more of the adult trauma scorecard criteria in Rule 64J-2.004, F.A.C., or the pediatric trauma scorecard criteria in Rule 64J-2.005, F.A.C.

(15) Trauma Patient – means any person who has incurred a physical injury or wound caused by trauma and who has accessed an emergency medical services system.

(16) Trauma Registry – means a statewide database which integrates medical and system information related to trauma patient diagnosis and the provision of trauma care by prehospital, hospital, and medical examiners.

(17) Trauma Transport Protocols (TTPs) – means a document which describes the policies, processes and procedures governing the dispatch of vehicles, and the triage and transport of trauma patients, which is incorporated by reference in Rule 64J-2.003, F.A.C., and is available from the department, as defined by subsection 64J-2.001(4), F.A.C.

Rulemaking Authority 381.0011(13), 395.401(2), 395.4025(13), 395.4036, 395.4045, 395.405(8), 401.45(5) FS. Law Implemented 381.0205, 395.1031, 395.3025(4)(f), 395.401, 395.4015, 395.402, 395.4025, 395.403, 395.4036, 395.404, 395.4045, 395.405, 401.30, 401.35, 401.45, 765.401 FS. History–New _____.

64J-2.004 Adult Trauma Scorecard Methodology.

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

(b) In assessing the condition of each adult trauma patient, the EMT or paramedic shall evaluate the patient's status for each of the following components: airway, circulation, best motor response (a component of the Glasgow Coma Scale which is defined and incorporated by reference in subsection 64J-2.001(6) ~~64J-1.001(10)~~, F.A.C.), cutaneous, longbone fracture, patient's age, and mechanism of injury. The patient's age and mechanism of injury shall only be assessment factors when used in conjunction with assessment criteria included in subsection (3) of this section.

(2) through (7) No change.

Rulemaking ~~Specific~~ Authority 395.4045, 395.405, 401.35 FS. Law Implemented 395.401, 395.4015, 395.402, 395.4025, 395.4045, 395.405, 401.30, 401.35 FS. History–New 8-3-88, Amended 12-10-92, 11-30-93, Formerly 10D-66.102, Amended 11-4-99, 2-20-00, Formerly 64E-2.01, Amended _____.

64J-2.006 Trauma Registry.

Instructions for completing and submitting data are defined in the Florida Trauma Registry Manual, February 2008, which is incorporated by reference and available from the department, as defined by subsection 64J-2.001(4) ~~64J-1.001(8)~~, F.A.C.

Rulemaking ~~Specific~~ Authority 395.405 FS. Law Implemented 395.3025(4)(f), 395.401, 395.4015, 395.402, 395.4025, 395.404, 395.4045, 395.405, 401.30, 401.35 FS. History–New 8-3-88, Amended 12-10-92, 11-30-93, Formerly 10D-66.103, Amended 7-14-99, 11-19-01, 6-3-02, 6-9-05, 4-25-06, 7-8-08, Formerly 64E-2.018, Amended _____.

64J-2.011 Trauma Center Requirements.

(1) The standards for Level I, Level II and Pediatric trauma centers are published in DH Pamphlet (DHP) 150-9, January 2008, which is incorporated by reference and available from the department, as defined by subsection 64J-2.001(4) ~~64J-1.001(8)~~, F.A.C. Trauma centers must be in full compliance with these standards by January 1, 2009.

(2) through (5) No change.

Rulemaking ~~Specific~~ Authority 395.405 FS. Law Implemented 395.401, 395.4015, 395.402, 395.4025, 395.404, 395.4045, 395.405 FS. History–New 8-3-88, Amended 12-10-92, 12-10-95, Formerly 10D-66.108, Amended 8-4-98, 2-20-00, 6-3-02, 6-9-05, 3-5-08, Formerly 64E-2.023, Amended _____.

64J-2.012 Process for the Approval of Trauma Centers.

(1) Beginning September 1, 1990, and annually thereafter, the department shall approve trauma centers in accordance with the schedule shown in Table I ~~VII~~ below; (Unless stated otherwise all dates given by calendar month and day refer to that date each year.)

Table I No change.

(a) The department shall accept a letter of intent, DH Form 1840, January 2008, "Trauma Center Letter of Intent", which is incorporated by reference and available from the department, as defined by subsection 64J-2.001(4) ~~64J-1.001(8)~~, F.A.C., postmarked no earlier than September 1 and no later than midnight, October 1, from any acute care general or pediatric hospital. The letter of intent is non-binding, but preserves the hospital's right to submit an application by the required due date if an available position, as provided in Rule 64J-2.010, F.A.C., exists in the hospital's TSA. If the hospital does not submit an application by April 1 of the following year, the hospital's letter of intent is void;

(b) By October 15, the department shall send to those hospitals submitting a letter of intent an application package which will include, as a minimum, instructions for submitting information to the department for selection as a trauma center, DHP 150-9, January 2008, Trauma Center Standards, which is incorporated by reference in Rule 64J-2.011, F.A.C., and available from the department, as defined by subsection 64J-2.001(4) ~~64J-1.001(8)~~, F.A.C., and the requested application(s);

(c) No change.

1. To apply for approval as a Level I Trauma Center, applicants must submit all forms contained in the Level I Trauma Center Application Manual, January 2008. The manual and the forms contained therein are incorporated by reference and available from the department, as defined by subsection 64J-2.001(4) ~~64J-1.001(4)~~, F.A.C. The manual contains the following forms: DH Form 2032, January 2008, General Information for Level I Trauma Center Application; DH Form 2032-A, January 2008, Level I Trauma Center Approval Standards Summary Chart; DH Form 2032-B, January 2008, Application for Level I Trauma Center Approval Letter of

Certification; DH Form 2032-C, January 2008, Level I Trauma Center Surgical Specialties Certifications; DH Form 2032-D, January 2008, Level I Trauma Center Non-Surgical Specialties Certifications; DH Form 2032-E, January 2008, Level I Trauma Center General Surgeons Commitment Statement; DH Form 2032-F, January 2008, Level I Trauma Center General Surgeons Available for Trauma Surgical Call; DH Form 2032-G, January 2008, Level I Trauma Center Neurosurgeons Available for Trauma Surgical Call; DH Form 2032-H, January 2008, Level I Trauma Center Neurological, Pediatric Trauma and Neurological, and Neuroradiology Statements; DH Form 2032-I, January 2008, Level I Trauma Center Surgical Specialists On Call and Promptly Available; DH Form 2032-J, January 2008, Level I Trauma Center Emergency Department Physicians; DH Form 2032-K, January 2008, Level I Trauma Center Anesthesiologists Available for Trauma Call; DH Form 2032-L, January 2008, Level I Trauma Center C.R.N.A.s Available for Trauma Call; and DH Form 2032-M, January 2008, Level I Trauma Center Non-Surgical Specialists On Call and Promptly Available.

2. To apply for approval as a Level II Trauma Center, applicants must submit all forms contained in the Level II Trauma Center Application Manual, January 2008. The manual and the forms contained therein are incorporated by reference and available from the department, as defined by subsection 64J-2.001(4) ~~64J-1.001(8)~~, F.A.C. The manual contains the following forms: DH Form 2043, January 2008, General Information for Level II Trauma Center Application; DH Form 2043-A, January 2008, Level II Trauma Center Approval Standards Summary Chart; DH Form 2043-B, January 2008, Application for Level II Trauma Center Approval Letter of Certification; DH Form 2043-C, January 2008, Level II Trauma Center Surgical Specialties Certifications; DH Form 2043-D, January 2008, Level II Trauma Center Non-Surgical Specialties Certifications; DH Form 2043-E, January 2008, Level II Trauma Center General Surgeons Commitment Statement; DH Form 2043-F, January 2008, Level II Trauma Center General Surgeons Available for Trauma Surgical Call; DH Form 2043-G, January 2008, Level II Trauma Center Neurosurgeons Available for Trauma Surgical Call; DH Form 2043-H, January 2008, Level II Trauma Center Neurological, Pediatric Trauma and Neurological, and Neuroradiology Statements; DH Form 2043-I, January 2008, Level II Trauma Center Surgical Specialists On Call and Promptly Available; DH Form 2043-J, January 2008, Level II Trauma Center Emergency Department Physicians; DH Form 2043-K, January 2008, Level II Trauma Center Anesthesiologists Available for Trauma Call; DH Form 2043-L, January 2008, Level II Trauma Center C.R.N.A.s Available for Trauma Call; and DH Form 2043-M, January 2008, Level II Trauma Center Non-Surgical Specialists On Call and Promptly Available.

3. To apply for approval as a Pediatric Trauma Center, applicants must submit all forms contained in the Pediatric Trauma Center Application Manual, January 2008. The manual and the forms contained therein are incorporated by reference and available from the department, as defined by subsection 64J-2.001(4) ~~64J-1.001(8)~~, F.A.C. The manual contains the following forms: DH Form 1721, January 2008, General Information for Pediatric Trauma Center Application; DH Form 1721-A, January 2008, Pediatric Trauma Center Approval Standards Summary Chart; DH Form 1721-B, January 2008, Application for Pediatric Trauma Center Letter of Certification; DH Form 1721-C, January 2008, Pediatric Trauma Center Surgical Specialties Certifications; DH Form 1721-D, January 2008, Pediatric Trauma Center Non-Surgical Specialties Certifications; DH Form 1721-E, January 2008, Pediatric Center General Surgeons Commitment Statement; DH Form 1721-F, January 2008, Pediatric Trauma Center General Surgeons Available for Trauma Surgical Call; DH Form 1721-G, January 2008, Pediatric Trauma Center Neurosurgeons Available for Trauma Surgical Call; DH Form 1721-H, January 2008, Pediatric Trauma Center Neurological, Pediatric Trauma and Neurological, and Neuroradiology Statements; DH Form 1721-I, January 2008, Pediatric Trauma Center Surgical Specialists On Call and Promptly Available; DH Form 1721-J, January 2008, Pediatric Trauma Center Emergency Department Physicians; DH Form 1721-K, January 2008, Pediatric Trauma Center Anesthesiologists Available for Trauma Call; DH Form 1721-L, January 2008, Pediatric Trauma Center C.R.N.A.s Available for Trauma Call; and DH Form 1721-M, January 2008, Pediatric Trauma Center Non-Surgical Specialists On Call and Promptly Available.

(d) through (m) No change.

(2) through (4) No change.

Rulemaking ~~Specific~~ Authority 395.405 FS. Law Implemented 395.1031, 395.401, 395.4015, 395.402, 395.4025, 395.404, 395.4045, 395.405 FS. History–New 8-3-88, Amended 12-10-92, 12-10-95, Formerly 10D-66.109, Amended 8-4-98, 2-20-00, 6-3-02, 6-9-05, 3-5-08, Formerly 64E-2.024, Amended _____.

64J-2.013 Extension of Application Period.

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

(b) A reference to each standard, or specific part of a standard, in DHP 150-9, January 2008, Trauma Center Standards, which is incorporated by reference in Rule 64J-2.011, F.A.C., and available from the department, as defined by subsection 64J-2.001(4) ~~64J-1.001(8)~~, F.A.C., that the hospital is unable to meet;

(c) through (d) No change.

(3) through (14) No change.

Rulemaking ~~Specific~~ Authority 395.405 FS. Law Implemented 395.401, 395.4015, 395.402, 395.4025, 395.404, 395.4045, 395.405 FS. History–New 12-10-92, Amended 12-10-95, Formerly 10D-66.1095, Amended 8-4-98, 2-20-00, 6-3-02, 6-9-05, 3-5-08, Formerly 64E-2.025, Amended _____.

64J-2.014 Certificate of Approval.

Each hospital approved as a trauma center shall be issued a DH Form 2032-Z, January 2008, Level I Trauma Center Certificate of Approval, DH Form 2043-Z, January 2008, Level II Trauma Center Certificate of Approval, or DH Form 1721-Z, January 2008, Pediatric Trauma Center Certificate of Approval, which are incorporated by reference and available from the department, as defined by subsection 64J-2.001(4) ~~64J-1.001(8)~~, F.A.C. The certificates shall include:

(1) through (3) No change.

Rulemaking ~~Specific~~ Authority 395.4025, 395.405 FS. Law Implemented 395.401, 395.4015, 395.402, 395.4025, 395.404, 395.4045, 395.405 FS. History–New 8-3-88, Amended 12-10-92, Formerly 10D-66.110, Amended 2-20-00, 4-15-01, 6-9-05, 3-5-08, Formerly 64E-2.026, Amended _____.

64J-2.015 Process for Renewal of Trauma Centers.

(1) At least 14 months prior to the expiration of the trauma center's certification, the department shall send, to each trauma center that is eligible to renew, a blank DH Form 2032R, January 2008, Trauma Center Application to Renew, which is incorporated by reference and available from the department, as defined by subsection 64J-2.001(4) ~~64J-1.001(8)~~, F.A.C., in accordance with the provisions of this section. Within 15 calendar days after receipt, the trauma center choosing to renew its certification shall submit to the department the completed DH Form 2032R, January 2008.

(2) through (4) No change.

Rulemaking ~~Specific~~ Authority 395.4025, 395.405 FS. Law Implemented 395.401, 395.402, 395.4025, 395.404, 395.4045, 395.405 FS. History–New 8-3-88, Amended 12-10-92, 1-23-96, Formerly 10D-66.111, Amended 3-15-98, 2-20-00, 6-9-05, 3-5-08, Formerly 64E-2.027, Amended _____.

64J-2.016 Site Visits and Approval.

(1) Each Provisional trauma center shall receive an on-site evaluation to determine whether the hospital is in substantial compliance with standards published in DHP 150-9, January 2008, Trauma Center Standards, which is incorporated by reference in Rule 64J-2.011, F.A.C., and available from the department, as defined by subsection 64J-2.001(4) ~~64J-1.001(8)~~, F.A.C., and to determine the quality of trauma care provided by the hospital.

(2) through (12) No change.

Rulemaking ~~Specific~~ Authority 395.4025, 395.405 FS. Law Implemented 395.401, 395.4015, 395.402, 395.4025, 395.404, 395.4045, 395.405 FS. History–New 8-3-88, Amended 12-10-92, 10-2-94, 12-10-95, Formerly 10D-66.112, Amended 8-4-98, 2-20-00, 6-3-02, 6-9-05, 3-5-08, Formerly 64E-2.028, Amended _____.

64J-2.017 Application by Hospital Denied Approval.

Any hospital that was not approved as a trauma center based on the application of criteria in Rule 64J-2.016, F.A.C., may submit a completed Letter of Intent DH Form 1840, January 2008, which is available from the department, as defined by subsection 64J-2.001(4) ~~64J-1.001(8)~~, F.A.C., postmarked no earlier than September 1 and no later than midnight October 1 of the following year.

Rulemaking ~~Specific~~ Authority 395.4025, 395.405 FS. Law Implemented 395.401, 395.4015, 395.402, 395.4025, 395.404, 395.4045, 395.405 FS. History–New 8-3-88, Amended 12-10-92, 12-10-95, Formerly 10D-66.113, Amended 2-20-00, 6-9-05, 3-5-08, Formerly 64E-2.029, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Susan McDevitt, Director, Office of Trauma

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Ana Viamonte Ros, M.D., M.P.H.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 25, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 5, 2009

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Mental Health Program

RULE NOS.:	RULE TITLES:
65E-20.002	Definitions
65E-20.003	The Right to Individual Dignity
65E-20.014	Seclusion and Restraint for Behavior Management Purposes

PURPOSE AND EFFECT: Chapter 65E-20, F.A.C., is being revised to comply with Section 916.1093(2), F.S., requiring forensic facilities to adopt rules governing the use of seclusion and restraint.

SUMMARY: As mandated by statute, the revisions provide standards for the use of restraint and seclusion which are consistent with recognized best practices; prohibit inherently dangerous restraint or seclusion procedures; establish limitations on the use and duration of restraint and seclusion; establish measures to ensure the safety of clients and staff during an incident of restraint or seclusion; establish procedures for staff to follow before, during, and after incidents of restraint or seclusion; establish professional qualifications of and training for staff who may order or be engaged in the use of restraint or seclusion; provide data reporting and data collection procedures relating to the use of restraint or seclusion; and provide for the documentation of the use of restraint or seclusion in the client's facility record.

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.

RULEMAKING AUTHORITY: 916.1093(2) FS.
LAW IMPLEMENTED: 916.105(4), 916.106(14), 916.106(16), 916.107(4)(b) 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: September 30, 2009, 2:00 p.m.
PLACE: 1317 Winewood Blvd., Building 6, 2nd Floor, Conference Room A, Tallahassee, FL 32399-0700
Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Wendy Scott, 1317 Winewood Blvd., Building 6, Rm. 227, Tallahassee, FL 32399-0700, (850)413-7282, email: wendy_scott@dcf.state.fl.us. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).
THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Wendy Scott, 1317 Winewood Blvd., Building 6, Rm. 227, Tallahassee, FL 32399-0700, (850)413-7282, email: wendy_scott@dcf.state.fl.us

THE FULL TEXT OF THE PROPOSED RULES IS:

65E-20.002 Definitions.

(1) Act: the Forensic Client Services Act.

~~(2) Treatment: mental health services which are provided to persons, individually or in groups, including: counseling, supportive therapy, chemotherapy, intensive psychotherapy, or any other accepted therapeutic process.~~

(2)~~(3)~~ Client Representative: the client's attorney of record, next of kin, or any other relative or person designated by the client. If none is designated, the attorney of record shall be the client representative.

(3)~~(4)~~ Commitment: a court ordered involuntary hospitalization or placement of a forensic client according to the procedures of this act. It does not include voluntary admission of any client.

(4) Individual: a person with a mental illness who has been charged with a felony offense and is being served in a forensic facility. The term is synonymous with "client," "patient," or "resident."

(5) Personal Safety Plan: a plan regarding strategies that the individual identifies as being helpful in avoiding a crisis. The plan also lists identified triggers that may signal or lead to agitation or distress.

(6) Physician: A medical practitioner licensed under Chapter 458, Florida Statutes or Chapter 459, Florida Statutes, who has experience in the diagnosis and treatment of mental and nervous disorders.

(7) Recovery Plan: may also be referred to as a "service plan" or "treatment plan." A recovery plan is a written plan developed by the individual and his or her recovery team to facilitate achievement of the individual's recovery goals. This plan is based on assessment data, identifying the individual's clinical, rehabilitative and activity service needs, the strategy for meeting those needs, documented treatment goals and objectives, and documented progress in meeting specified goals and objectives.

(8) Recovery Team: may also be referred to as "service team" or "treatment team." A recovery team is an assigned group of individuals with specific responsibilities identified on the recovery plan who support and facilitate an individual's recovery process. Team members may include the individual, psychiatrist, guardian, community case manager, family member, peer specialist, and others as determined by the individual's needs and preferences.

(9) Restraint: for behavior management purposes is defined in Section 916.106(14)(a), Florida Statutes. A drug used as a restraint is defined in Section 916.106(14)(b), Florida Statutes. Physically holding a person during a procedure to forcibly administer psychotropic medication is a physical restraint. It is the intent of the legislature to minimize and achieve an on-going reduction in the use of restraint.

(10) Seclusion: for behavior management purposes is defined in Section 916.106(16), Florida Statutes. It is the intent of the legislature to minimize and achieve an on-going reduction in the use of seclusion.

(11) Seclusion and Restraint Oversight Committee: a group at an agency or facility that monitors the use of seclusion and restraint at the facility. The purpose of this committee is to assist in the reduction of seclusion and restraint use at the agency or facility. Membership includes, but is not limited to, the facility administrator/designee, medical staff, quality assurance staff, and a peer specialist or advocate, if employed by the facility or otherwise available. If a peer specialist or advocate is not employed by the facility, an external peer specialist or advocate may be appointed.

(12) Treatment: mental health services which are provided to individuals, individually or in groups, including: counseling, supportive therapy, psychotherapeutic medication, intensive psychotherapy, or any other accepted therapeutic process.

Rulemaking ~~Specific~~ Authority 916.1093, 916.1093(2) ~~916.20(1)~~ FS. Law Implemented 916.106, 916.106(14), 916.106(16) FS. History–New 9-29-86, Amended 7-1-96, Formerly 10E-20.002, Amended _____.

65E-20.003 The Right to Individual Dignity.

In addition to those elements of dignity and respect enumerated in Section 916.107(1), F.S., every forensic client is entitled to the following:

~~(1) Restraint or seclusion only insofar as clinically authorized as necessary to prevent imminent harm to self, others, or property, or as necessary to prevent an escape;~~

(1)~~(2)~~ Freedom from neglect or abuse;

(2)~~(3) Reasonably~~ Safe living conditions and protection from harm;

(3)~~(4)~~ Appropriate seasonal attire; and

(4)~~(5)~~ The opportunity to be outdoors and to participate in physical exercise at regular intervals, in the absence of medical or security considerations.

Rulemaking ~~Specific~~ Authority 916.1093 ~~916.20(1)~~ FS. Law Implemented 916.107(1) FS. History–New 9-29-86, Amended 7-1-96, Formerly 10E-20.003, Amended_____.

65E-20.014 Seclusion and Restraint for Behavior Management Purposes.

(1) General Standards.

(a) Each facility will provide a therapeutic milieu that supports a culture of recovery, individual empowerment, and responsibility. Each individual will have a voice in determining his or her treatment options. Treatment will foster trusting relationships and partnerships for safety between staff and individuals. Facility staff will be particularly sensitive to individuals with a history of trauma and use trauma informed care.

(b) The health and safety of the individual shall be the primary concern at all times.

(c) Seclusion or restraint shall be employed:

1. Only in emergency situations;

2. When necessary to prevent an individual from seriously injuring self or others; and

3. Less restrictive techniques have been tried and failed, or it has been clinically determined that the danger is such that less restrictive techniques cannot be safely applied.

(d) There is a high prevalence of past traumatic experience among individuals who receive mental health services. The response to trauma can include intense fear and helplessness, a reduced ability to cope, and an increased risk to exacerbate or develop a range of mental health and other medical conditions. The experience of being placed in seclusion or being restrained is potentially traumatizing. Seclusion and restraint practices shall be guided by the following principles of trauma-informed care: assessing trauma histories and symptoms; recognizing culture and practices that are re-traumatizing; processing the impact of a seclusion or restraint with the individual; and addressing staff training needs to improve knowledge and sensitivity.

(e) When an individual demonstrates a need for immediate medical attention in the course of an episode of seclusion or restraint, the seclusion or restraint shall be discontinued and immediate medical attention shall be obtained.

(f) Individuals will not be restrained in a prone position. Prone containment will be used only when required by the immediate situation to prevent imminent serious harm to the individual or others. To reduce the risk of positional asphyxiation, the individual will be repositioned as quickly as possible.

(g) Responders will pay close attention to the respiratory function of the individual during containment and restraint. All staff involved will observe the individual's respiration, coloring, and other possible signs of distress and immediately respond if the individual appears to be in distress. Responding to the individual's distress may include repositioning the individual, discontinuing the seclusion or restraint, or summoning medical attention.

(h) Objects shall not be placed over an individual's face. In situations where precautions need to be taken to protect staff, staff may wear protective gear.

(i) Unless necessary to prevent serious injury, an individual's hands shall not be secured behind the back during containment or restraint.

(j) The use of walking restraints is prohibited except for purposes of off-unit transportation and may only be used under direct observation of staff who have been trained for this purpose. Direct observation means that staff maintains continual visual contact of the individual and remains within close physical proximity to the individual at all times.

(k) The individual shall be released from seclusion or restraint as soon as he or she is no longer an imminent danger to self or others.

(l) Seclusion or restraint use shall not be based solely on a history of dangerous behavior or history of seclusion or restraint use. Dangerous behaviors include those behaviors that jeopardize the physical safety of oneself or others.

(m) Seclusion and restraint may not be used simultaneously for children less than 18 years of age. For individuals over the age of 18, simultaneous seclusion and restraint is only permitted if the individual is continually monitored face-to-face by an assigned, trained staff member or if the individual is continually monitored by trained staff using both audio and video equipment. Staff providing this monitoring must be in close proximity to the individual.

(n) An individual who is restrained must not be located in areas subject to view by individuals other than involved staff or where exposed to potential injury by other individuals. This does not apply to individuals in walking restraints.

(o) Each facility utilizing seclusion or restraint procedures shall establish and utilize a Seclusion and Restraint Oversight Committee.

(2) Staff Training. Staff must be trained during orientation and subsequently at least annually. Prior to using seclusion or restraint, staff will demonstrate specific knowledge of or relevant competency in the following areas:

(a) Employing strategies designed to reduce confrontation and to calm and comfort people, including the development and use of a personal safety plan;

(b) Using nonphysical intervention skills as well as body control and physical management techniques to ensure safety;

(c) Observing for and responding to signs of physical and psychological distress during the seclusion or restraint event;

(d) Applying restraint devices safely;

(e) Monitoring the physical and psychological well-being of the individual who is restrained or secluded, including but not limited to: respiratory and circulatory status, skin integrity, vital signs, and any special requirements specified by facility policy associated with the one hour face-to-face evaluation;

(f) Identifying the specific behavioral changes that indicate restraint or seclusion is no longer necessary;

(g) Using first aid techniques; and

(h) Being certified in the use of cardiopulmonary resuscitation (CPR), including required periodic recertification. The frequency of training for cardiopulmonary resuscitation will be in accordance with CPR certification requirements and facility policy.

(3) Prior to the Implementation of Seclusion or Restraint.

(a) Prior intervention shall include individualized therapeutic actions identified in a personal safety plan that address individual triggers leading to psychiatric crisis. Recommended form CF-MH 3124, Feb. 05, "Personal Safety Plan," which is incorporated herein by reference, may be used for the purpose of guiding individualized techniques.

(b) Prior interventions should include verbal de-escalation, calming strategies, and environmental changes to reduce identified triggers. Non physical interventions must be the first choice unless safety issues require the use of physical intervention.

(c) A personal safety plan shall be completed or updated as soon as possible after admission and filed in the individual's medical record:

1. The personal safety plan shall be reviewed by the recovery team, and updated if necessary, after each incident of seclusion or restraint;

2. Specific intervention techniques from the personal safety plan that are offered or used prior to a seclusion or restraint event shall be documented in the individual's medical record after each use of seclusion or restraint; and

3. All staff shall be aware of and have ready access to each individual's personal safety plan.

(d) Contraindications to the use of specific seclusion or restraint techniques due to medical conditions will be documented in the individual's medical record as part of the individual's admission and subsequent physical examination or psychiatric evaluation. Staff shall be informed of any contraindications as determined by the physician or Advanced Registered Nurse Practitioner (ARNP) and shall utilize other techniques as indicated on the individual's personal safety plan.

(4) Implementation of Seclusion or Restraint.

(a) A registered nurse or highest level staff member, as specified by written facility policy, who is immediately available and who is trained in seclusion and restraint procedures may initiate seclusion or restraint in an emergency when danger to self or others is imminent.

(b) An order for seclusion or restraint must be obtained from the physician, ARNP, or Physician's Assistant (PA), if permitted by the facility to order seclusion and restraint and stated within their professional protocol. The treating physician must be consulted as soon as possible if the seclusion or restraint was ordered by another physician.

(c) The individual must be seen face-to-face by a physician or ARNP within one hour after initiation of seclusion or restraint. The face-to-face exam may be delegated to a Registered Nurse (RN) or PA if authorized by the facility and the individual has been trained in seclusion and restraint procedures as described in subsection (2). The staff member conducting the face-to-face examination shall evaluate or review, and document the following within one hour:

1. The individual's immediate situation;

2. The individual's reaction to the intervention;

3. The individual's medical and behavioral condition;

4. The individual's medication orders, including an assessment of the need to modify such orders during the period of seclusion or restraint. If the face-to-face exam is completed by the RN or PA, the RN or PA shall consult with the physician or ARNP regarding the need to modify the resident's medication orders;

5. The need or lack of need to elevate the individual's head and torso during restraint;

6. Whether the risks associated with the use of seclusion or restraint are significantly less than not using seclusion or restraint; and

7. The need to continue or terminate the intervention.

(d) A licensed psychologist may only conduct the behavioral assessment portion of the face-to-face exam indicated in subparagraph (4)(c)3., if authorized by the facility and trained in seclusion and restraint procedures as described in subsection (2). If the face-to-face evaluation is conducted by a trained Registered Nurse or physician assistant, the attending physician who is responsible for the care of the individual must be consulted as soon as possible after the evaluation is completed.

(e) Documentation of the face-to-face examination described in subparagraphs (4)(c)1.-7., including the time and date completed, shall be included in the individual's medical record.

(f) Each written order for seclusion or restraint is limited to four hours for adults, age 18 and over; and two hours for youth age 9 through 17. A seclusion or restraint order may be renewed every two hours for youth and every four hours for adults, after consultation and review by a physician, ARNP, or PA in person, or by telephone with a Registered Nurse who has physically observed and evaluated the individual. The order may only be renewed for up to a total of 24 hours. When the order has expired after 24 hours, a physician, ARNP, or PA must see and assess the individual before seclusion or restraint can be re-ordered. The results of this assessment must be documented. Seclusion or restraint use exceeding 24 hours requires the notification of the facility administrator or designee.

(g) Once seclusion or restraint has been terminated, a new order and subsequent assessments are required to place the individual back into seclusion or restraint as indicated in subsection (4) of this rule.

(h) Each seclusion or restraint order must be signed within 24 hours of the initiation of seclusion or restraint.

(i) The seclusion or restraint order shall include the specific behavior prompting the use of seclusion or restraint, the time limit for seclusion or restraint, and the behavior necessary for the individual's release. Additionally, for restraint, the order shall contain the type of restraint ordered and the positioning of the individual, including possibly elevating the individual's head for respiratory and other medical safety considerations. Consideration shall be given to the individual's age, physical fragility, and physical disability when ordering restraint type.

(j) An order for seclusion or restraint shall not be issued as a standing order or on an as-needed basis.

(k) In order to protect all individuals served by a facility, each individual shall be searched for contraband before or immediately after being placed into seclusion or restraints.

(l) The individual shall be clothed appropriately for the current temperature and at no time shall an individual be placed in seclusion or restraint in a nude or semi-nude state.

(m) For youth under the age of 18, the facility must notify the parent(s) or legal guardian(s) of the individual who has been restrained or placed in seclusion within 24 hours after the initiation of each seclusion or restraint event. This notification must be documented in the individual's medical record, including the date and time of notification and the name of the staff person providing the notification.

(n) Every secluded or restrained individual shall be immediately informed of the behavior that resulted in the seclusion or restraint and the behavior and the criteria necessary for release. Release criteria shall reflect that the individual is not an imminent danger to self or others.

(o) For each use of seclusion or restraint, the following information shall be documented in the individual's medical record:

1. The emergency situation resulting in the seclusion or restraint event;

2. Alternatives or other less restrictive interventions attempted, as applicable, or the clinical determination that less restrictive techniques could not be safely applied;

3. The name and title of the staff member initiating the seclusion or restraint; the date/time of initiation and release;

4. The individual's response to seclusion or restraint, including the rationale for continued use of the intervention; and

5. The individual was informed of the behavior that resulted in the seclusion or restraint and the criteria necessary for release.

(5) During Seclusion or Restraint Use.

(a) When restraint is initiated, except for walking/transport restraint, nursing staff shall see and assess the individual no later than 15 minutes after initiation and at least every hour thereafter. The assessment shall include checking the individual's circulation and respiration, including vital signs (pulse and respiratory rate at a minimum).

(b) The individual who is secluded shall be observed by trained staff every 15 minutes. At least one observation an hour will be conducted by a nurse.

(c) Restrained individuals must have continuous observation by trained staff. Documentation of the resident's condition will occur at least every 15 minutes.

(d) Monitoring the physical and psychological well-being of the individual who is secluded or restrained shall include but is not limited to: respiratory and circulatory status; signs of injury; vital signs; skin integrity; behavioral observations; verbal interactions; and any special requirements specified by facility policies. This monitoring shall be conducted by trained staff as required in subsection (2).

(e) During each period of seclusion or restraint, the individual must be offered reasonable opportunities to drink and toilet as requested. In addition, the individual who is restrained must be offered opportunities to have range of motion at least every two hours to promote comfort. Each facility shall have written policies and procedures specifying the frequency of providing drink, toileting, checking of body positioning to avoid traumatizing an individual, and retaining the individual's maximum degree of dignity and comfort during the use of bodily control and physical management techniques.

(f) Documentation of the observations and the staff person's name shall be recorded at the time the observation takes place.

(6) Release from Seclusion or Restraint and Post-Release Activities

(a) Release from seclusion or restraint shall occur as soon as the individual no longer appears or reports to present an imminent danger to self or others. Upon release from seclusion or restraint, the individual's physical condition shall be

observed, evaluated, and documented by trained staff. Documentation shall also include the name and title of the staff releasing the individual and the date and time of release.

(b) After a seclusion or restraint event, a debriefing process shall take place to decrease the likelihood of a future seclusion or restraint event for the individual and to provide support.

(c) Each facility shall develop policies to address:

1. A review of the incident with the individual who was secluded or restrained. The individual shall be given the opportunity to process the seclusion or restraint event as soon as possible but no longer than within 24 hours of release. This debriefing discussion shall take place between the individual and either the recovery team or another preferred staff member. This review shall address the incident within the framework of the individual's life history and mental health issues. It shall assess the impact of the event on the individual and help the individual identify and expand coping mechanisms to avoid the use of seclusion or restraint in the future. The discussion will include constructive coping techniques for the future. A summary of this review should be documented in the individual's medical record.

2. A review of the incident with all staff involved in the event and supervisors or administrators. This review shall be conducted as soon as possible after the event and shall address: the circumstances leading to the event; the nature of de-escalation efforts; alternatives to seclusion and restraint attempted; staff response to the incident; and ways to effectively support the individual's constructive coping in the future and avoid the need for future seclusion or restraint. The outcomes of this review should be documented by the facility for purposes of continuous performance improvement and monitoring. The review findings will be forwarded to the Seclusion and Restraint Oversight Committee.

3. Support for other individuals served and staff, as needed, to return the unit to a therapeutic milieu.

(d) Within 2 working days after any use of seclusion or restraint, the recovery team shall meet and review the circumstances preceding the event and review the individual's recovery plan and personal safety plan to determine whether any changes are needed in order to prevent the further use of seclusion or restraint. The individual who was secluded or restrained shall be provided an opportunity to participate in this meeting. The recovery team shall also assess the impact the event had on the individual and provide any counseling, services, or treatment that may be necessary. The recovery team shall analyze the individual's clinical record for trends or patterns relating to conditions, events, or the presence of other persons immediately before or upon the onset of the behavior warranting the seclusion or restraint, and upon the individual's release from seclusion or restraint. The recovery team shall review the effectiveness of the emergency intervention and develop more appropriate therapeutic interventions. Documentation of this review shall be placed in the individual's clinical record.

(e) If an individual has had multiple seclusion or restraint events, the recovery team shall conduct a thorough clinical review, including a medication review, to determine if any changes to the recovery plan or overall treatment and services are needed.

(f) The Seclusion and Restraint Oversight Committee shall conduct at least weekly reviews of each use of seclusion and restraint event. The Committee shall also monitor patterns of use, for the purpose of ensuring least restrictive approaches are utilized, to prevent or reduce the frequency and duration of use.

(7) Reporting.

(a) All civil and forensic state mental health treatment facilities serving individuals committed pursuant to Chapter 916, F.S., are required to report each seclusion and restraint event to the Department of Children and Families. This reporting shall be done electronically using the Department's web-based application, either directly via the data input screens, or indirectly via the File Transfer Protocol batch process. The required reporting elements include: provider tax identification number; individual's social security number and identification number; date and time the seclusion or restraint event was initiated; discipline of the individual ordering the seclusion or restraint; discipline of the individual implementing the seclusion or restraint; reason seclusion or restraint was initiated; type of restraint used; whether significant injuries were sustained by the individual; and date and time seclusion or restraint was terminated. Facilities shall report seclusion and restraint events to the Department on a monthly basis. Events that result in death or significant injury, either to a staff member or individual, shall be reported to the department's web-based system in accordance with department operating procedures and must also be reported according to the department's incident reporting procedure.

(b) All facilities that are subject to the Conditions of Participation for Hospitals, 42 Code of Federal Regulations, part 482, under the Centers for Medicare and Medicaid Services (CMS), must report to CMS any death that occurs in the following circumstances:

1. While an individual is restrained or secluded;

2. Within 24 hours after release from seclusion or restraint; OR

3. Within one week after seclusion or restraint, where it is reasonable to assume that use of the seclusion or restraint contributed directly or indirectly to the individual's death.

Each death described in paragraph (7)(b) shall be reported to CMS by telephone no later than the close of business the next business day following knowledge of the individuals' death. A report shall simultaneously be submitted to the Director of Mental Health/Designee in the Mental Health Program Office headquarters in Tallahassee, FL. The address is: 1317

Winewood Blvd., Tallahassee, FL 32399-0700. Facilities that are not required to report these deaths to CMS shall report the death to the Department in accordance with Departmental operating procedures.

(c) The Department shall collect and review the data on a monthly basis. The Director of Mental Health shall be informed of any deaths or significant injuries related to seclusion or restraint, and significant trends regarding seclusion and restraint use.

(8) Nothing herein shall affect the ability of emergency medical technicians, paramedics or physicians, or any person acting under the direct medical supervision of a physician to provide examination or treatment of incapacitated individuals in accordance with Section 401.445, F.S.

Rulemaking Authority 916.1093(2) FS. Law Implemented 916.105(4), 916.107(4)(b), 916.1093(2) FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Wendy Scott

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Secretary George H. Sheldon

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 19, 2009

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

DEPARTMENT OF FINANCIAL SERVICES

Division of Accounting and Auditing

RULE NO.:	RULE TITLE:
69I-44.021	Claim for Funds Paid to the Chief Financial Officer Pursuant to Section 43.19, 732.107, 733.816 or 744.534, F.S.

PURPOSE AND EFFECT: The purpose of the rule is to establish procedures and a form for filing a claim with the Chief Financial Officer for funds deposited with the Chief Financial Officer pursuant to Section 43.19, 732.107, 733.816 or 744.534, F.S. The purpose of the rule is also to specify to whom an approved claim for funds is to be paid.

SUMMARY: The Chief Financial Officer receives unclaimed funds pursuant to Sections 43.19, 732.107, 733.816 and 744.534, F.S. Petitions for funds held pursuant to Sections 43.19, 732.107, 733.816 and 744.534, F.S., are to be filed initially with the court that directed the deposit of the funds with the Chief Financial Officer. The petition must be served on either the state attorney of the circuit where the court is situated or the Department of Legal Affairs. If the court that directed the deposit of the funds with the Chief Financial Officer grants the petition, the claimant or claimant's representative may file a claim for the funds on a form to be established by the proposed rule. If the claim is approved, payment for funds reported pursuant to Sections 43.19 and 744.534, F.S., will be made to the ultimate beneficiary, as provided by Section 215.965, Florida Statutes. Payment for funds reported pursuant to Sections 732.107 and 733.816, F.S., will be made to the ultimate beneficiary unless the claimant assigns the right to receive payment and submits the original assignment simultaneously with the claim form.

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.

RULEMAKING AUTHORITY: Art. IV, s. 4(c), Fla. Const., 17.14, 17.29, 17.65 FS.

LAW IMPLEMENTED: Art. IV, s. 4(c), Fla. Const., 17.05(1), 17.29, 43.19, 92.525, 215.965, 732.107, 733.816, 744.534 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: Wednesday, October 7, 2009, 9:00 a.m.

PLACE: Suite B 103, The Fletcher Building, 101 E. Gaines St., Tallahassee, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Paul C. Stadler, Jr., (850)413-3010. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Paul C. Stadler, Jr., Assistant General Counsel, Department of Financial Services, 200 E. Gaines St., Tallahassee, Florida 32399-4247, (850)413-3010

THE FULL TEXT OF THE PROPOSED RULE IS:

69I-44.021 Claim for Funds Paid to the Chief Financial Officer Pursuant to Section 43.19, 732.107, 733.816 or 744.534, F.S.

(1) Petitions for funds held pursuant to Section 43.19, 732.107, 733.816 or 744.534, F.S., are to be filed initially with the court that directed the deposit of the funds with the Chief Financial Officer.

(a) Petitions proving the claimant's right to funds held pursuant to Section 43.19, F.S., must include written notice to the state attorney of the circuit where the court is situated.

(b) Petitions proving the claimant's right to funds held pursuant to Section 732.107 or 733.816, F.S., must be filed within 10 years of the deposit of the funds with the Chief Financial Officer and informal notice must be given to the Department of Legal Affairs.

(c) Petitions proving the claimant's right to funds held pursuant to Section 744.534, F.S., must be filed within 5 years of the deposit of the funds with the Chief Financial Officer and informal notice must be given to the Department of Legal Affairs.

(2) If the court that directed the deposit of the funds with the Chief Financial Officer grants the petition, each claimant or claimant's representative must file a Claim for Funds Deposited Pursuant to Sections 43.19, 732.107, 733.816 or 744.534, F.S., Form (DFS-A4-1988), effective , incorporated herein by reference and available from the Florida Department of Financial Services, Bureau of Unclaimed Property, 200 East Gaines Street, Tallahassee, Florida 32399-0358.

(a) The claim form must be accompanied by a certified copy of the final order or judgment awarding the funds to each claimant, supporting documentation establishing each claimant's right to the funds, and a government-issued photographic identification issued to each claimant.

(b) Payment for funds reported pursuant to Sections 43.19 and 744.534, F.S., will be made to the ultimate beneficiary, as provided by Section 215.965, F.S. Payment for funds reported pursuant to Sections 732.107 and 733.816, F.S., will be made to the ultimate beneficiary unless each claimant assigns the right to receive payment, pursuant to Section 732.107 or 733.816, F.S., and submits the original assignment simultaneously with the claim form.

Rulemaking Authority Art. IV, s. 4(c), Fla. Const., 17.14, 17.29, 17.65 FS. Law Implemented Art. IV, s. 4(c), Fla. Const., 17.05(1), 17.29, 43.19, 92.525, 215.965, 732.107, 733.816, 744.534 FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Walter Graham, Chief, Bureau of Unclaimed Property

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Alex Sink, Chief Financial Officer

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 1, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 8, 2009

Section III
Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF EDUCATION

State Board of Education

RULE NO.:	RULE TITLE:
6A-1.09981	Implementation of Florida's System of School Improvement and Accountability

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 35, No. 32, August 14, 2009 issue of the Florida Administrative Weekly.

A portion of subparagraph (8)(e)4. was inadvertently omitted in the Notice of Proposed Rulemaking as published in the above stated issue of the Florida Administrative Weekly. This subparagraph should read as follows:

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

(8)(e)4. Performance in accelerated coursework, defined as Advanced Placement (AP), International Baccalaureate (IB), dual enrollment, Advanced International Certificate of Education (AICE), and industry certification courses. Performance shall be calculated for the school by dividing the weighted number of grade 9-12 students with successful completions in accelerated coursework (numerator) by the count of all students in grades 9 through 12 who took an accelerated course or subject area examination during the academic year (denominator). For AP, IB, and AICE successful completion is defined as earning a passing score and being awarded credit for specific postsecondary course(s) as determined by the 2008 Articulation Coordinating Committee's Credit by Exam Equivalencies list which is hereby incorporated by reference and may be obtained at http://www.fldoe.org/articulation/pdf/ACC-CBE.pdf. For dual enrollment successful completion is defined as a passing grade of "C" or higher in a dual enrollment course for college academic credit. For industry certification successful completion is defined as passing an industry certification examination on the State Board of Education approved industry certification funding list. Schools can earn additional successful completions for students who achieve industry certifications that result in credit for more than one (1) college course through statewide articulation agreements. Those agreements can be accessed at http://www.fldoe.org/workforce/dwdframe/artic_frame.asp.

DEPARTMENT OF COMMUNITY AFFAIRS

Division of Housing and Community Development

RULE NO.:	RULE TITLE:
9B-70.002	Commission Approval and Accreditation of Advanced Building Code Training Courses

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 35, No. 19, May 15, 2009 issue of the Florida Administrative Weekly.

This is a Corrected Notice based on comments received from the Joint Administrative Procedures Committee. The Notice of Proposed Rule was prepared utilizing the incorrect version of the rule.