

(2) Licensees shall submit renewal requests on Form DFS-N1-1771, Broker of Burial Rights Renewal, effective 10/06, which is incorporated by reference in Rule 69K-1.001, F.A.C., and is available from the Department at the address and website listed above. A renewal fee of \$100 and an unlicensed activity fee of \$5 shall accompany the form.

Request for Additional Information. Any request for additional information will be made by the Department within thirty (30) days after receipt of the application by the Department. The additional information must be received by the Department within forty five (45) days from the date of request. Failure to respond to the request within forty five (45) days from the date of request shall be construed by the Department as grounds for denial for failure to complete the application, and the application shall be denied pursuant to Section 120.60(2), F.S.

(3) Amendment of Registration. An applicant may amend the application for registration as to those factors generally within the control or selection of the applicant once, as a matter of course, at any time within thirty (30) days from its receipt for filing. Otherwise, the application may be amended only with prior permission from the Department. Requests to make changes which are material to the application or to the Department's evaluation of the registration filed at any time after the application has been received shall be deemed by the Department to be grounds for denial, and a new application for registration, accompanied by the appropriate filing fee, shall be required.

(4) Withdrawal of Registration. An applicant may request withdrawal of a registration prior to a determination of the registration being made by the Department by submitting a written request that the registration be withdrawn.

(5) Refunds. If the registration is withdrawn or denied, the registration fee is non-refundable.

(6) Upon approval of the registration, a license will be issued for the remainder of the biennial registration period.

Specific Authority 497.103(2)(c), (5)(b)(4), 497.281 FS. Law Implemented 497.103(2)(c), 497.281 FS. History--New 3-3-97, Formerly 3D-30.105, 69K-100.105, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Doug Shropshire, Director, Division of Funeral, Cemetery, and Consumer Services

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Alex Sink, Chief Financial Officer

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 10, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 31, 2008

Section III
Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF STATE

Division of Elections

RULE NO.: 1S-2.047
RULE TITLE: State Campaign Matching Funds Program

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 35, No. 6, February 13, 2009 issue of the Florida Administrative Weekly.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Donald L. Palmer, Director, Division of Elections

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 27, 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."

WATER MANAGEMENT DISTRICTS

Suwannee River Water Management District

RULE NOS.: 40B-9.021, 40B-9.041, 40B-9.042, 40B-9.123, 40B-9.131, 40B-9.1381, 40B-9.142, 40B-9.145, 40B-9.151
RULE TITLES: Definitions, Acquisition Procedures - Negotiations, Inholding and Addition Property, Additional Definitions, Public Use of District Lands, Prohibited Activities, Easements, Leases, Closure of District Lands

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 34, No. 50, December 12, 2008 issue of the Florida Administrative Weekly.

40B-9.021 Definitions.

When used in this part, the term herein:

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

(2) “Conservation easement” means a right of interest in real property which is appropriate to retaining land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition. A conservation easement restricts the underlying fee owner’s use of the property consistent with the purpose of the easement. Conservation easements are perpetual, undivided interests in property that run with the land. District conservation easements are governed by section 704.06, Florida Statutes.

~~(3)(4) “Department” means the Florida Department of Environmental Protection or its successor agency or agencies.~~

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

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

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

~~(5) “District lands” means any fee simple interest or other interests in real property titled to the District. “Plan” means the five year plan as adopted by the Governing Board of the Suwannee River Water Management District.~~

~~(6) “District lease” means the granting of either an exclusive or non-exclusive use of or interest in District lands for a specified period of time. “Project” means a parcel or parcels of land in a discrete unit of purchase.~~

~~(7) “Funding program” means the program established pursuant to section 259.105, Florida Statutes, the Florida Forever Act. “Survey” means a certified survey signed by a licensed land surveyor authorized to practice surveying in the state of Florida.~~

~~(8) “Governing Board” means the governing board of the Suwannee River Water Management District. “Acquisition” means the reduction of the title to land to be acquired to fee, or in the discretion of the District such other legal interest necessary for water management, water supply and the conservation and protection of water resources.~~

~~(9) “Management plan” means the District Land Management Plan adopted by the Governing Board that details the District’s land management activities or other property specific land management plan adopted by the Governing Board. “Lands” means real property acquired by the District pursuant to Section 373.59, Florida Statutes.~~

~~(10) “Project” means a parcel or parcels of land in a discrete unit of purchase. “Conceptual Management Plan” means the document discussing proposed management and use that is prepared prior to acquisition.~~

~~(11) “Public Use Guide” is a District publication approved by the Governing Board that specifies the authorized public uses of District lands and the conditions applicable to those uses. “Resource Management Plan” is the document approved by the Governing Board that specifies management activities and authorized uses of the lands.~~

~~(12) “Secretary” means the Secretary of the Florida Department of Environmental Protection or its successor agency or agencies. “Public Use Guide” is the summary document that list specific public uses for the Lands authorized by the Governing Board that can be permitted by the District.~~

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

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

40B-9.041 Acquisition Procedures – Negotiations.

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

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

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

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

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

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

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

~~(2) Criteria for evaluation of bona fide offers. Upon receipt, District staff will evaluate all bona fide offers for sale of real property to determine the extent to which the acquisition will contribute to achieving the goals in subsection 259.105(4), Florida Statutes, and provide a recommendation for disposition to the Governing Board. Ownership information shall be obtained and reviewed in order to determine the title to the land being acquired.~~

~~(3) Following Governing Board approval of a property for state priority funding, the following due diligence must be completed prior to a contract for sale: The District shall obtain at least one written appraisal pursuant to Rule 40B-9.061, F.A.C.~~

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

(b) The property owner must provide access to the District and its agents as needed to obtain an appraisal as required under paragraph 373.139(3)(c), Florida Statutes, and a Phase I environmental site assessment that addresses the federal Environmental Protection Agency standards in CFR Part 312, the state Department of Environmental Protection standards. The appraisal must be performed by a qualified appraiser who is registered, licensed, or certified under Part II, Chapter 475, F.S. The Phase I environmental site assessment must be performed by a professional engineer, professional geologist or other professional certified in environmental assessment as the District deems appropriate.

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

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

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

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

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

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

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

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

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

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

2. Identification of parcels by title memorandum number.

3. Legal interest or estate sought for acquisition.

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

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

Specific Authority 373.044, 373.083, 373.113, 373.139, 373.174 FS. Law Implemented 373.013, 373.139, 373.59 FS. History-New 3-1-83, Amended 5-26-88, _____.

40B-9.042 Inholding and Addition Property.

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

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

(a) Provide additional protection for natural resources, or

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

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

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

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

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

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

(a) Obtain a form or letter appraisal from the District's Land Acquisition Specialist or from a state certified general appraiser; and

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

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

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

40B-9.123 Additional Definitions.

When used in Part II of this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Effective: The amendment to Rule 40B-9.123, F.A.C., shall take effect on the day following the last day of the 2009 Regular Session of the Florida Legislature provided no action is taken by the Legislature to reject or modify the amendments.

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

40B-9.131 Public Use of District Lands.

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

~~(1)(2) The District shall publish and make available to the public upon request a “Save Our Rivers Lands an informational “Public Use Guide” which summarizes allowed activities and use restrictions for each District property. The Public Use Guide, approved by the Governing Board on January 21, 1993, is hereby incorporated by reference. The Public Use Guide will be considered by the Governing Board at a public meeting advertised in accordance with Chapter 120, Florida Statutes. Copies of the District’s Public Use Guide are available at from the District’s headquarters and on its website: www.srwmf.state.fl.us. Additionally, persons the public may apply for authorization of other public uses of District lands, as specified in Rule 40B-9.1411, F.A.C., “Special Use Authorizations Licenses.”, of other public uses of the Lands. These applications will be reviewed by District staff using the criteria listed in subsection 40B-9.131(1), F.A.C.~~

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

~~and Consumer Services and Florida Department of Natural Resources, from requiring compliance with other rules or laws to the fullest extent of their lawful authority.~~

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

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

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

1. Boats launched from trailers must use boat ramps.

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

(c) Camping is only allowed on District lands at approved locations and as permitted by a Special Use Authorization issued by the District under Rule 40B-9.1411, F.A.C.

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

1. Name and address of business;

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

3. Type of activity to be conducted;

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

5. Number of participants;

6. Dates and duration of the proposed activity; and

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

Any proposed commercial activity that will exceed one year in duration, require exclusive use of an area of land, or result in monetary consideration to the District, may only occur under a lease agreement approved by the Governing Board pursuant to Rule 40B-9.145, F.A.C.

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

(e) Dogs are allowed on District lands provided they are on a leash or caged at all times unless consistent with authorized uses in state wildlife management areas and federal wildlife refuges or specifically authorized by the District

through a Special Use Authorization issued under Rule 40B-9.1411, F.A.C. Other types of domesticated animals, such as cats, are prohibited on District lands.

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

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

(h) Group recreational, educational or public service uses are allowed on all District lands open to the public provided a Special Use Authorization is issued by the District under Rule 40B-9.1411, F.A.C.

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

(j) Hunting for recreation is allowed in Florida wildlife management areas in accordance with applicable wildlife management area rules of the Florida Fish and Wildlife Conservation Commission, in United States national wildlife refuges subject to permit, and on District lands as designated and identified by signage. The District may allow hunting on lands not designated through a Special Use Authorization issued under Rule 40B-9.1411, F.A.C.

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

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

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

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

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

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

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

(m) Research uses are allowed on all District lands provided a Special Use Authorization is issued by the District under Rule 40B-9.1411, F.A.C., and further provided that if the proposed use will close or restrict public access, a contract or lease with the District is required.

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

Effective: The amendment to Rule 40B-9.131 shall take effect on the day following the last day of the 2009 Regular Session of the Florida Legislature provided no action is taken by the Legislature to reject or modify the amendments.

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

40B-9.1381 Prohibited Activities.

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

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

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

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

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

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

1. District authorized research efforts;

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

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

(f) The introduction or release of any seed, plant or animal on District lands is prohibited.

(g) Removal, alteration or destruction of historic resources on District lands is prohibited unless specifically authorized by the District through a Special Use Authorization issued under Rule 40B-9.1411, F.A.C. The District shall consult the Florida Department of State, Division of Historical Resources, prior to authorizing the removal, alteration or destruction of any archaeological or cultural resources on District lands. Any person who discovers historic resources on District lands shall immediately notify the District of such discovery.

(h) Scuba diving or the use of underwater breathing apparatus on District lands is prohibited unless specifically authorized by the District through a Special Use Authorization issued under Rule 40B-9.1411, F.A.C. To receive a Special Use Authorization for scuba diving, in addition to meeting the criteria in Rule 40B-9.1411, F.A.C., the applicant must provide reasonable assurances that the dive is for a scientific or investigative purpose and the person performing the dive is certified for the type of dive to be performed. A person issued a Special Use Authorization to perform a dive on District land must submit a report upon completion of the dive informing the District of any scientific or historic evidence discovered during the dive.

(i) Taking off or landing aircraft on District lands is prohibited unless specifically authorized by the District through a Special Use Authorization issued under Rule 40B-9.1411, F.A.C., or the result of a bona fide emergency.

(j) Use of all-terrain, off-road, or other motorized vehicles not licensed for Florida highway use on District lands is prohibited unless specifically authorized by the District through a Special Use Authorization issued under Rule 40B-9.1411, F.A.C., unless associated with District authorized reforestation, exotic or nuisance species control, timber harvests, or other land management activities, or approved hunts managed by the Florida Fish and Wildlife Conservation Commission.

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

(l) The destruction, removal or alteration of any District-owned facilities, vehicles or other property is prohibited. District-owned property includes, but is not limited to, water control structures, boardwalks, kiosks and other recreational facilities, scientific study plots, photo points, transect lines, survey markers, buildings, towers, recorders, gauges, signs, gates, fences and monuments.

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

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

2. District initiated land management activities; or

3. A use specifically authorized by the District through a Special Use Authorization issued under Rule 40B-9.1411, F.A.C.

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

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

(o) The possession or discharge of any fireworks or explosives on District lands is prohibited unless specifically authorized by the District through a Special Use Authorization issued under Rule 40B-9.1411, F.A.C.

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

(q) Igniting any fire on District lands is prohibited except for District authorized prescribed burns or fires specifically authorized by the District through a Special Use Authorization issued under Rule 40B-9.1411, F.A.C.

(r) Constructing, erecting or maintaining any facility or any other structure of a permanent or semi-permanent nature on District lands is prohibited unless specifically authorized by the District through a Special Use Authorization issued under Rule 40B-9.1411, F.A.C.

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

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

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

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

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

Effective: The amendment to Rule 40B-9.1381, F.A.C., shall take effect on the day following the last day of the 2009 Regular Session of the Florida Legislature provided no action is taken by the Legislature to reject or modify the amendments.

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

40B-9.142 Easements.

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

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

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

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

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

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

(3) Easements must be approved and executed by the Governing Board. The conveyance of any easement by the District shall require payment by the applicant of the fair market value as determined by any of the following:

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

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

Effective: The amendment to Rule 40B-9.142, F.A.C., shall take effect on the day following the last day of the 2009 Regular Session of the Florida Legislature provided no action is taken by the Legislature to reject or modify the amendments.

Specific Authority 373.044, 373.083, 373.1391 FS. Law Implemented 373.056, 373.085, 373.088, 373.093, 373.099, 373.1391, 373.1401 FS. History—New _____.

40B-9.145 Leases.

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

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

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

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

Effective: The amendment to Rule 40B-9.145, F.A.C., shall take effect on the day following the last day of the 2009 Regular Session of the Florida Legislature provided no action is taken by the Legislature to reject or modify the amendments.

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

40B-9.151 Closure of District Lands.

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

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

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

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

Effective: The amendment to Rule 40B-9.151, F.A.C., shall take effect on the day following the last day of the 2009 Regular Session of the Florida Legislature provided no action is taken by the Legislature to reject or modify the amendments.

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

WATER MANAGEMENT DISTRICTS

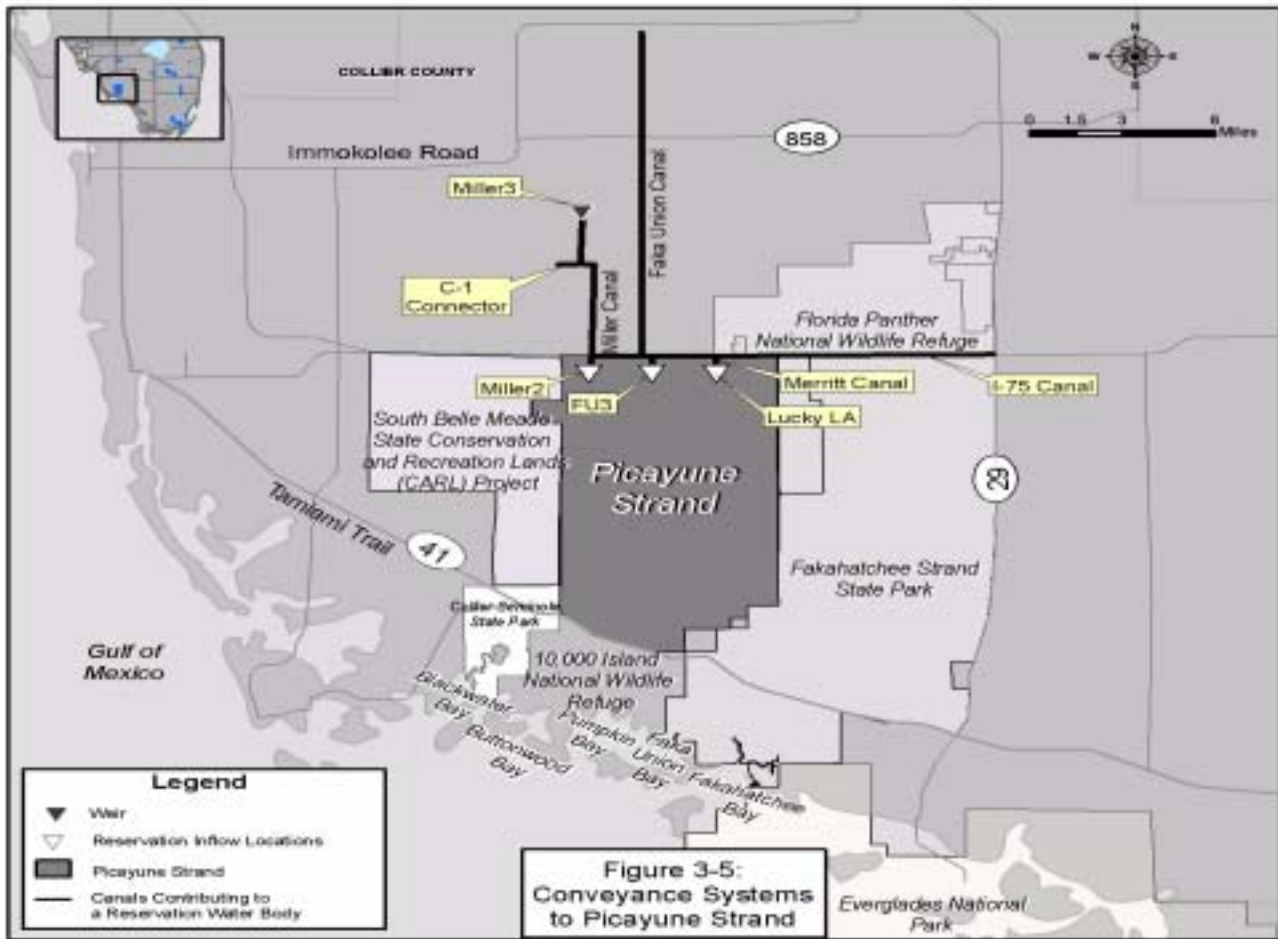
South Florida Water Management District

RULE NO.:	RULE TITLE:
40E-2.091	Publications Incorporated by Reference

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 35, No. 1, January 9, 2009 issue of the Florida Administrative Weekly.

In addition, the District has revised its Statement of Estimated Regulatory Cost based upon proposals for lower cost regulatory alternatives received. A copy of the revised SERC is located on the District’s website at www.sfwmd.gov/water supplyruledevelopment, or by contacting: Jan Sluth, Senior Paralegal, South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33406, (800)432-2045, ext. 6299 or (561)682-6299, email: jsluth@sfwmd.gov.



WATER MANAGEMENT DISTRICTS

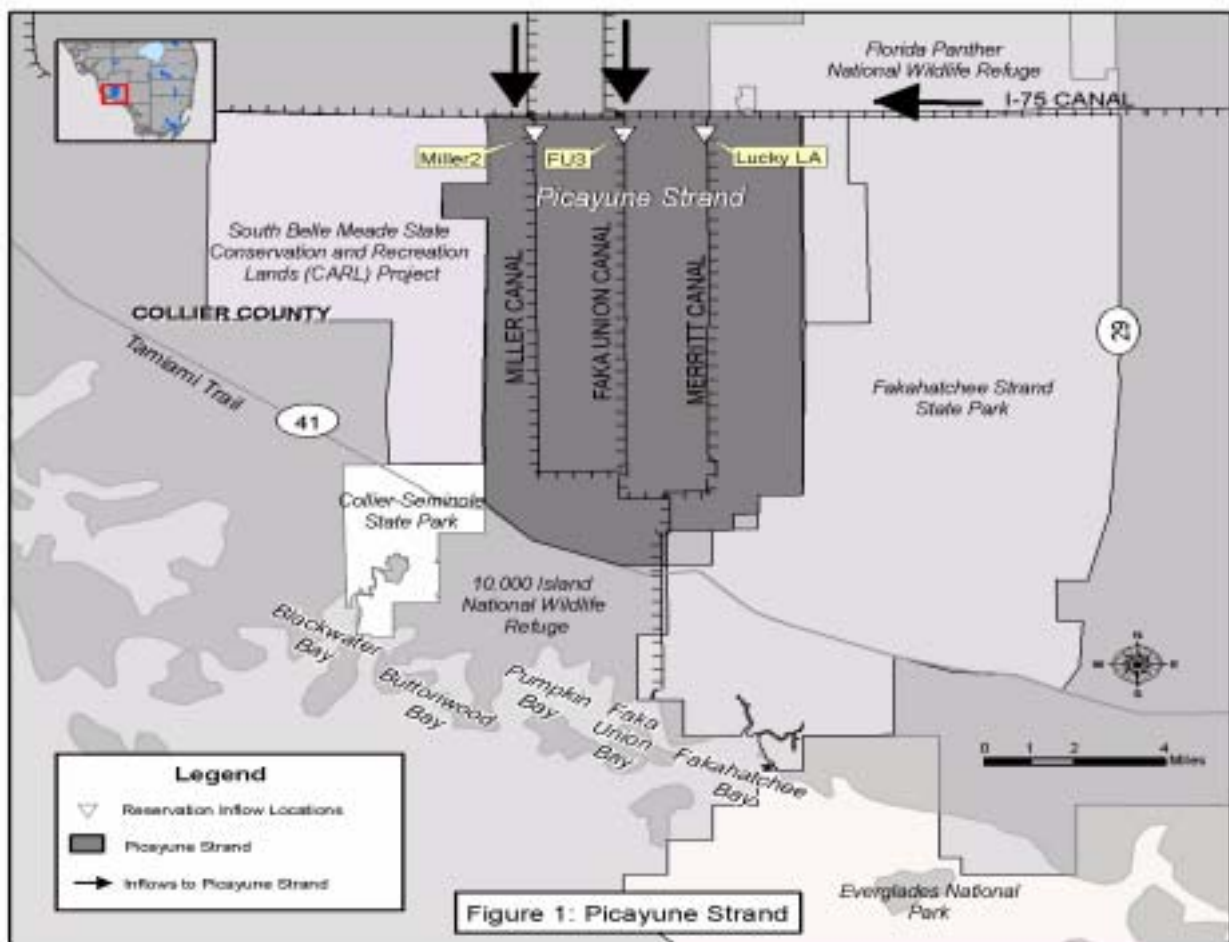
South Florida Water Management District

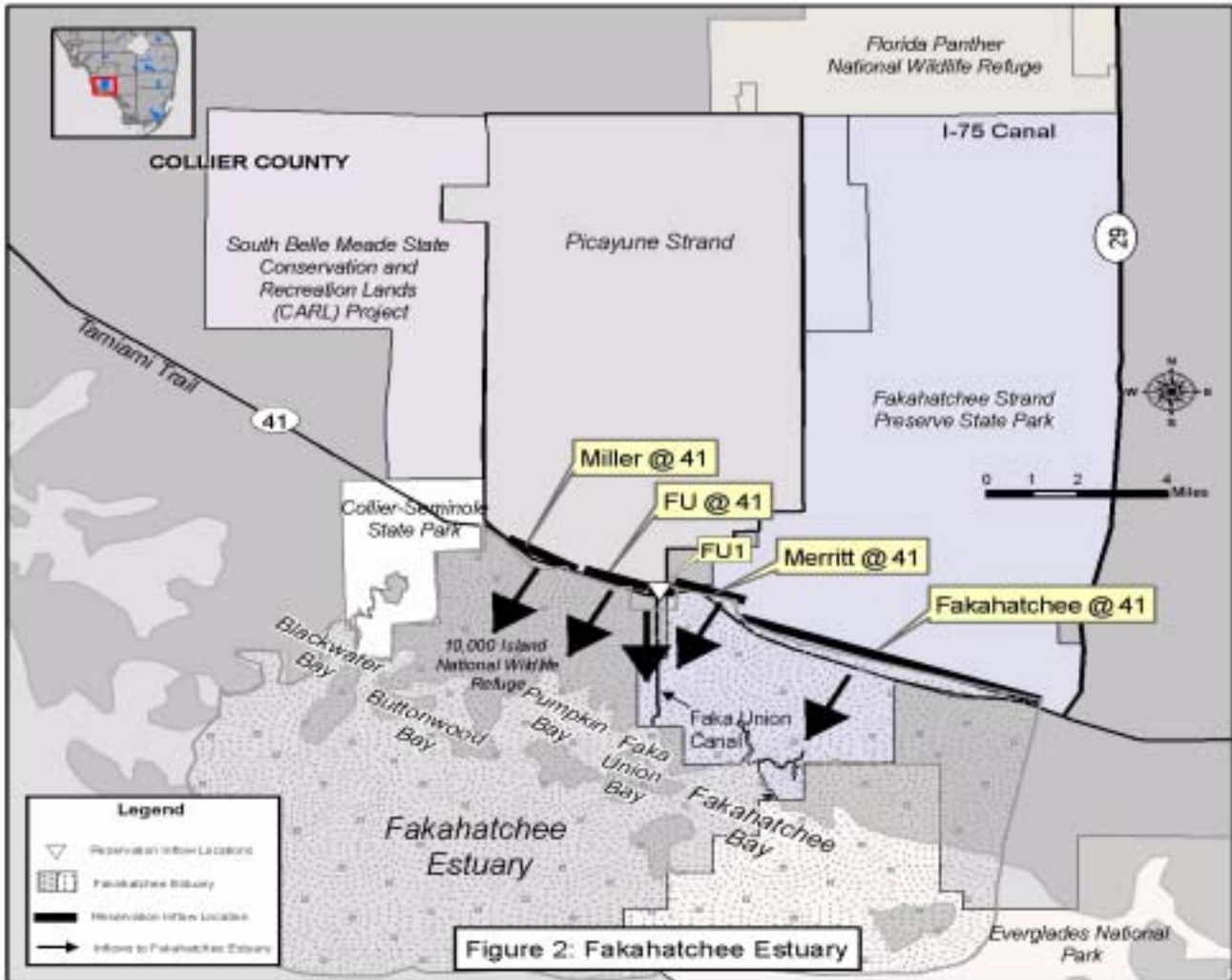
RULE NO.: 40E-10.041
 RULE TITLE: Water Reservation Areas: Lower West Coast Planning Area

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 35, No. 1, January 9, 2009 issue of the Florida Administrative Weekly.

In addition, the District has revised its Statement of Estimated Regulatory Cost based upon proposals for lower cost regulatory alternatives received. A copy of the revised SERC is located on the District’s website at www.sfwmd.gov/water-supply/ruledvelopment, or by contacting Jan Sluth, Senior Paralegal, South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33406, (800)432-2045, ext. 6299 or (561)682-6299, email: jsluth@sfwmd.gov.





WATER MANAGEMENT DISTRICTS

South Florida Water Management District

RULE NO.: RULE TITLE:
40E-20.091 Publications Incorporated by Reference

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 35, No. 1, January 9, 2009 issue of the Florida Administrative Weekly.

See Notice of Change for Rule 40E-2.091, F.A.C., in this issue. In addition, the District has revised its Statement of Estimated Regulatory Cost based upon proposals for lower cost regulatory alternatives received. A copy of the revised SERC is located on the District’s website at www.sfwmd.gov/water-supplyruledevelopment, or by contacting: Jan Sluth, Senior Paralegal, South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33406, (800)432-2045, ext. 6299 or (561)682-6299, email: jsluth@sfwmd.gov.

AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid

RULE NO.: RULE TITLE:
59G-8.600 Good Cause for Disenrollment from Health Plans

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 34, No. 41, October 10, 2008 issue of the Florida Administrative Weekly. The rule number has been changed from 59G-8.500 to 59G-8.600.

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 Nursing

RULE NO.: RULE TITLE:
64B9-4.002 Requirements for Certification

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 34, No. 49, December 5, 2008 issue of the Florida Administrative Weekly has been withdrawn.

DEPARTMENT OF HEALTH

Board of Nursing

RULE NO.: RULE TITLE:
64B9-4.002 Requirements for Certification

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 34, No. 46, November 14, 2008 issue of the Florida Administrative Weekly has been withdrawn.

DEPARTMENT OF HEALTH

Board of Osteopathic Medicine

RULE NO.: RULE TITLE:
64B15-14.007 Standard of Care for Office Surgery

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 34, No. 47, November 21, 2008 issue of the Florida Administrative Weekly.

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

1. Subsection (2)(c) shall now read as follows:

(c) The surgeon must maintain a log of all Level II and Level III surgical procedures performed, which must include a confidential patient identifier, time of arrival in the operating suite, the surgeon’s name, diagnosis, patient ASA classification, the type of procedure, the level of surgery, the anesthesia provider, the type of anesthesia used, the duration of the procedure, the type of post-operative care, duration of recovery, disposition of the patient upon discharge, during surgery, and recovery. The log and all surgical records shall be provided to investigators of the Department of Health upon request.

2. Subsection (2)(h)1. shall now read as follows:

(h) The surgeon must assure that the post-operative care arrangements made for the patient are adequate to the procedure being performed as set forth in Rule 64B15-14.006, F.A.C. Management of post-surgical care is the responsibility of the operating surgeon and may be delegated only as set forth in subsection 64B15-14.006(3), F.A.C. If there is an overnight stay at the office in relation to any surgical procedure:

1. The office must provide at least two (2) monitors, one of these monitors must be certified in Advanced Cardiac Life Support (ACLS), and maintain a monitor to patient ratio of at least 1 monitor to 2 patients. Once the surgeon has signed a timed and dated discharge order, the office may provide only one monitor to monitor the patient. The monitor must be qualified by licensure to administer all of the medications required on the crash cart and must be certified in Advanced Cardiac Life Support. The monitor must be certified in Advanced Cardiac Life Support. The full and current crash cart required below must be present in the office and immediately accessible for the monitors.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kaye Howerton, Executive Director, Board of Osteopathic Medicine, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3258.

DEPARTMENT OF HEALTH

Board of Osteopathic Medicine

RULE NO.: 64B15-14.0076
RULE TITLE: Requirement for Osteopathic Physician Office Registration; Inspection or Accreditation

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 34, No. 47, November 21, 2008 issue of the Florida Administrative Weekly.

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

- 1. Subsection (1)(b) shall now read as follows: (b) In order to register an office for surgical procedures, the osteopathic physician must comply with Department of Health Rule 64B-4.003, F.A.C., and provide documentation to support compliance with Rule 64B15-14.007, F.A.C.

- 2. Subsection (2)(b) shall now read as follows: (b) The office surgery inspection set forth in Department of Health Rule 64B-4.002, F.A.C., shall be remitted for each practice location.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kaye Howerton, Executive Director, Board of Osteopathic Medicine, 4052 Bald Cypress Way, Bin #C06, Tallahassee, Florida 32399-3258.

FISH AND WILDLIFE CONSERVATION COMMISSION

Freshwater Fish and Wildlife

RULE NO.: 68A-15.005
RULE TITLE: Quota Permits; Antlerless Deer Permits; Special-Opportunity Permits

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 34, No. 53, December 31, 2008 issue of the Florida Administrative Weekly.

Proposed amendment to Rule 68A-15.005 has been changed to include the following new subsection:

(6) Sunset of Revised Quota System. The Commission intends to sunset the rule amendments approved on February 4, 2009 and made effective May 1, 2009 that made changes to the quota hunt permit system prohibiting transferability of permits and allowing for guest permits. Therefore, Commission staff shall present at the next regularly scheduled Commission

meeting after November 1, 2012 draft rule proposals necessary to repeal those rule amendments unless prior to that deadline the Commission directs staff to prepare draft rules to repeal or amend the deadline in this subsection.

No other changes were made to the rule amendments as proposed.

FISH AND WILDLIFE CONSERVATION COMMISSION

Marine Fisheries

RULE NOS.: 68B-42.001, 68B-42.002, 68B-42.004, 68B-42.005, 68B-42.006, 68B-42.0065, 68B-42.007, 68B-42.009
RULE TITLES: Purpose and Intent; Designation of Restricted Species; Definition of "Marine Life Species" Definitions Size Limits Bag Limit Commercial Season, Harvest Limits Commercial Requirements; Endorsements; Requalifying; Appeals; Leasing; Transferability Gear Specifications and Prohibited Gear Prohibition on the Taking, Destruction, or Sale of Marine Corals and Sea Fans; Exception; Repeal of Section 370.114, Florida Statutes

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 34, No. 53, December 31, 2008 issue of the Florida Administrative Weekly.

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 34, No. 53, December 31, 2008 issue of the Florida Administrative Weekly.

Proposed amendments to Rules 68B-42.001, 68B-42.002, 68B-42.004, 68B-42.005, 68B-42.006, 68B-42.0065, 68B-42.007 and 68B-42.009, have each been changed to include a PROPOSED EFFECTIVE DATE of July 1, 2009.

No other changes were made to the rule amendments or rule repeal as proposed.

FINANCIAL SERVICES COMMISSION

Finance

RULE NO.: 69V-560.1000
RULE TITLE: Disciplinary Guidelines

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 34, No. 50, December 12, 2008 issue of the Florida Administrative Weekly.

The rule has been revised to address comments from the Joint Administrative Procedures Committee (JAPC).

Chapter 560, F.S., licensee for a material violation of Chapter 560, F.S. For purposes of this rule, the term "citation" means any written notice provided to and received by the licensee that specifies a violation of Chapter 560, F.S., or any rule promulgated under that chapter.

THE FULL TEXT OF THE PROPOSED RULE IS:

69V-560.1000 Disciplinary Guidelines.

Pursuant to Section 560.1141, F.S., listed below are disciplinary guidelines applicable to each ground for disciplinary action that may be imposed by the Office against a

	<u>Statute</u>	<u>Violation Description</u>	<u>1st Citation</u>	<u>2nd Citation</u>	<u>3rd Citation</u>
(1)	<u>560.109(3)(a)</u>	<u>Failure to make available to the Office within 3 days all required books and records after written notice.</u>	<u>Fine: A</u> <u>Suspension: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Suspension: C</u>
(2)	<u>560.109(7)</u>	<u>Failure to pay reasonable and necessary costs for exams or investigations based on actual costs incurred.</u>	<u>Fine: A</u> <u>Suspension: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Suspension: C</u>
(3)	<u>560.1092(1)</u>	<u>Failure to pay to the Office the expenses of an examination at a rate adopted by rule.</u>	<u>Fine: A</u> <u>Suspension: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Suspension: C</u>
(4)	<u>560.1105</u>	<u>Failure to maintain all records for 5 years.</u>	<u>Fine: A</u> <u>Suspension: A</u> <u>Revocation</u>	<u>Fine: B</u> <u>Suspension: B</u> <u>Revocation</u>	<u>Fine: C</u> <u>Suspension: C</u> <u>Revocation</u>
(5)	<u>560.1105(1)</u>	<u>Failure to make books and records available to the Office within 3 business days after receipt of a written request.</u>	<u>Fine: A</u> <u>Suspension: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Suspension: C</u>
(6)	<u>560.111(1)(a)</u>	<u>Receiving or possessing property, except in payment of a just demand, and, with intent to deceive or defraud, to omit to make or to cause to be made a full and true entry thereof in its books and accounts, or to concur in omitting to make any material entry thereof.</u>	<u>Fine: C</u> <u>Revocation</u>	<u>N/A</u>	<u>N/A</u>
(7)	<u>560.111(1)(b)</u>	<u>Embezzle, abstract, or misapply any money, property, or other thing of value belonging to the money services business, an authorized vendor, or customer with intent to deceive or defraud.</u>	<u>Fine: C</u> <u>Revocation</u>	<u>N/A</u>	<u>N/A</u>

(8)	<u>560.111(1)(c)</u>	<u>Making false entry in books and records with intent to deceive or defraud another person, appropriate regulator, or authorized third party appointed by the Office to examine or investigate a licensee or its authorized vendor.</u>	<u>Fine: C Suspension: C Revocation</u>	<u>N/A</u>	<u>N/A</u>
(9)	<u>560.111(1)(d)</u>	<u>Engaging in acts that violate 18 U.S.C. s. 1956., 31 U.S.C. s. 5324, or any law or rule of another state or the United States relating to a money services business, deferred presentment provider, or usury which is a ground for the denial or revocation of a money services business or deferred presentment provider or its equivalent.</u>	<u>Fine: C Revocation</u>	<u>N/A</u>	<u>N/A</u>
(10)	<u>560.111(1)(e)</u>	<u>Filing with the Office, signing as a duly authorized representative, or delivering or disclose to the Office any books and records known to be fraudulent or false as to any material matter.</u>	<u>Fine: C Revocation</u>	<u>N/A</u>	<u>N/A</u>
(11)	<u>560.111(1)(f)</u>	<u>Placing among a money services business any note, obligation, or security that the money services business or its authorized vendor does not own or is known to be fraudulent or otherwise worthless or to represent to the Office that these documents are known to be fraudulent or otherwise worthless.</u>	<u>Fine: C Revocation</u>	<u>N/A</u>	<u>N/A</u>
(12)	<u>560.114 (1)(a)</u>	<u>Failure to comply with any order of the Office or any written agreement entered into with the Office.</u>	<u>Fine: B Suspension: B Revocation</u>	<u>Fine: C Suspension: C Revocation</u>	<u>Fine: C Revocation</u>
(13)	<u>560.114(1)(b)</u>	<u>Fraud, misrepresentation, deceit, or gross negligence in any transaction by a money services business, regardless of reliance thereon by, or damage to, a customer.</u>	<u>Fine: C Suspension: C Revocation</u>	<u>Fine: C Revocation</u>	<u>N/A</u>

(14)	560.114(1)(c)	<u>Fraudulent misrepresentation, circumvention, or concealment of any matter that must be stated or furnished to a customer pursuant to Chapter 560, F.S., regardless of reliance thereon by, or damage to, such customer.</u>	<u>Fine: C Revocation</u>	<u>N/A</u>	<u>N/A</u>
(15)	560.114(1)(d)	<u>False, deceptive, or misleading advertising.</u>	<u>Fine: C Suspension: C</u>	<u>Fine: C Suspension: C Revocation</u>	<u>Fine: Suspension: C Revocation</u>
(16)	560.114(1)(e)	<u>Failure to maintain, preserve, keep available for examination, and produce all books, accounts, files, or other documents required by Chapter 560, F.S.</u>	<u>Fine: A Suspension: A</u>	<u>Fine: B Suspension: B Revocation</u>	<u>Fine: C Suspension: C Revocation</u>
(17)	560.114(1)(f)	<u>Refusing to allow the examination or inspection of books, accounts, files, or other documents by the Office pursuant to Chapter 560, F.S., or to comply with a subpoena issued by the Office.</u>	<u>Fine: B Suspension: B Revocation</u>	<u>Fine: C Revocation</u>	<u>Revocation</u>
(18)	560.114(1)(g)	<u>Failure to pay a judgment recovered in any court by a claimant in an action arising out of a money transmission transaction within 30 days after the judgment became final.</u>	<u>Fine: A Suspension: A</u>	<u>Fine: B Suspension: B</u>	<u>Fine: C Revocation</u>
(19)	560.114(1)(h)	<u>Engaging in acts prohibited under 560.111.</u>	<u>Fine: C Revocation</u>	<u>N/A</u>	<u>N/A</u>
(20)	560.114(1)(i)	<u>Insolvency</u>	<u>Fine: A Suspension: A Revocation</u>	<u>Fine: B Suspension: B Revocation</u>	<u>Fine: C Suspension: B Revocation</u>
(21)	560.114(1)(j)	<u>Failure to remove an affiliated party after the Office has issued and served a final order setting forth a finding that the affiliated party has violated a provision of Chapter 560, F.S.</u>	<u>Fine: A Suspension: A Revocation</u>	<u>Fine: B Suspension: B Revocation</u>	<u>Fine: C Suspension: C Revocation</u>
(22)	560.114(1)(k)	<u>Making a material misstatement, misrepresentation, or omission in an application, amendment, or appointment of an authorized vendor.</u>	<u>Fine: A Suspension: A Revocation</u>	<u>Fine: B Suspension: B Revocation</u>	<u>Fine: C Suspension: C Revocation</u>

(23)	560.114(1)(l)	<u>Committing any act that results in a license, or its equivalent, to practice any profession or occupation, being denied, suspended, revoked, or otherwise acted against by a licensing authority in any jurisdiction.</u>	<u>Fine: A Suspension: A Revocation</u>	<u>Fine: B Suspension: B Revocation</u>	<u>Fine: C Suspension: C Revocation</u>
(24)	560.114(1)(m)	<u>Being the subject of final agency action or its equivalent, issued by an appropriate regulator, for engaging in unlicensed money services business or deferred presentment provider activity in any jurisdiction.</u>	<u>Fine: C</u>	<u>Fine: C Suspension: C</u>	<u>Fine: C Suspension: C</u>
(25)	560.114(1)(n)	<u>Committing any act resulting in a license or its equivalent to practice any profession or occupation being denied, suspended, revoked, or otherwise acted against by a licensing authority in any jurisdiction for a violation of 18 U.S.C. s. 1956, 18 U.S.C. s. 1957, and 18 U.S.C. s. 1960, 31 U.S.C. s. 5324, or any law or rule of another state or the United States relating to a money services business, deferred presentment provider, or usury.</u>	<u>Fine: C Suspension: C Revocation</u>	<u>Fine: C Suspension: C Revocation</u>	<u>Fine: C Suspension: C Revocation</u>
(26)	560.114(1)(o)	<u>Having been convicted of, or entered a plea of guilty or nolo contendere to any felony or crime punishable by imprisonment of 1 year or more under the law of any state of the United States which involves fraud, moral turpitude, or dishonest dealing, regardless of adjudication.</u>	<u>Fine: C Revocation</u>	<u>N/A</u>	<u>N/A</u>
(27)	560.114(1)(p)	<u>Having been convicted of, or entered a plea of guilty or nolo contendere to a crime under 18 U.S.C. s. 1956 or 31 U.S.C. s. 5324 regardless of adjudication.</u>	<u>Fine: C Revocation</u>	<u>N/A</u>	<u>N/A</u>

(28)	560.114(1)(q)	Having been convicted of, or entered a plea of guilty or nolo contendere to <u>misappropriation, conversion, or unlawful withholding of moneys belonging to others, regardless of adjudication.</u>	<u>Fine: C</u> <u>Revocation</u>	<u>N/A</u>	<u>N/A</u>
(29)	560.114(1)(r)	<u>Failure to inform the Office in writing within 30 days after having pled guilty or nolo contendere to, or being convicted of, any felony or crime punishable by imprisonment of 1 year or more under the law of any state or the US, or any crime involving fraud, moral turpitude, or dishonest dealing.</u>	<u>Fine: B</u>	<u>Fine: C</u> <u>Revocation</u>	<u>N/A</u>
(30)	560.114(1)(s)	<u>Aiding, assisting, procuring, advising, or abetting any person in violating a provision of Chapter 560, F.S., or any order or rule of the Office or Commission.</u>	<u>Fine: B</u> <u>Suspension: B</u> <u>Revocation</u>	<u>Fine: C</u> <u>Suspension: C</u> <u>Revocation</u>	<u>N/A</u>
(31)	560.114(1)(t)	<u>Failure to pay any fee, charge, or cost imposed or assessed under Chapter 560, F.S.</u>	<u>Fine: A</u> <u>Suspension: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Revocation: C</u>
(32)	560.114(1)(u)	<u>Failure to pay a fine assessed by the Office within 30 days after the due date as stated in the final order.</u>	<u>Fine: B</u> <u>Suspension: B</u> <u>Revocation</u>	<u>Fine: C</u> <u>Revocation</u>	<u>Fine: C</u> <u>Revocation</u>
(33)	560.114(1)(v)	<u>Failure to pay any judgment entered by any court within 30 days after the judgment becomes final.</u>	<u>Fine: A</u> <u>Suspension: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Suspension: C</u>
(34)	560.114(1)(x)	<u>Payment to the Office for a license or other fee, charge, cost, or fine with a check or electronic transmission of funds that is dishonored by the applicant's or licensee's financial institution.</u>	<u>Fine: A</u> <u>Suspension: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Revocation</u>

(35)	<u>560.114(1)(y)</u>	<u>Violations of 31 C.F.R. ss. 103.20, 103.22, 102.23, 103.27, 103.28, 103.29, 103.33, 103.37, 103.41, and 103.125, and United States Treasury Interpretative Release 2004-1. Note: For purposes of the application of this violation, the distinct federal codes referenced shall be treated as separate violations and penalties shall be applied separately for each code violation cited.</u>	<u>Fine: B Suspension: B Revocation</u>	<u>Fine: C Suspension: C Revocation</u>	<u>Fine: C Suspension: C Revocation</u>
(36)	<u>560.114(1)(z)</u>	<u>Engaging in any practice or conduct that creates the likelihood of material loss, insolvency, or dissipation of assets of a money services business or otherwise materially prejudices the interests of its customers.</u>	<u>Fine: C Suspension: C Revocation</u>	<u>Fine: C Suspension: C Revocation</u>	<u>Fine: C Suspension: C Revocation</u>
(37)	<u>560.114(2)</u>	<u>Immediate Suspension for failure to provide required records upon written request.</u>	<u>Fine: A Suspension: A</u>	<u>Fine: B Suspension: B</u>	<u>Fine: C Suspension: C</u>
(38)	<u>560.118(1)</u>	<u>Failure to file annual financial audit reports with the Office pursuant to this Chapter 560, F.S. or related rules.</u>	<u>Fine: C Revocation if later than 90 days from due date</u>	<u>Fine: C Revocation if later than 90 days from due date</u>	<u>Fine: C Revocation if later than 90 days from due date</u>
(39)	<u>560.118(2)</u>	<u>Failure to submit quarterly reports to the Office in the format specified by rule.</u>	<u>Fine: A Suspension: A</u>	<u>Fine: B Suspension: B</u>	<u>Fine: C Suspension: C Revocation</u>
(40)	<u>560.123(3)</u>	<u>Failure to maintain a record of every transaction, which occurs in this state that involves currency greater than \$10,000, in one or in aggregate in one day, and involves the proceeds of unlawful activity or is designed to evade reporting requirements of Section 560.123, F.S. or Chapter 896, F.S.</u>	<u>Fine: C Revocation</u>	<u>N/A</u>	<u>N/A</u>
(41)	<u>560.123(3)(c)</u>	<u>Failure to file a currency transaction report for every transaction noted in Section 560.123(3), F.S.</u>	<u>Fine: A Suspension: A Revocation</u>	<u>Fine: B Suspension: B Revocation</u>	<u>Fine: C Suspension: C Revocation</u>

(42)	<u>560.123(4)</u>	<u>Failure to comply with the money laundering, enforcement, and reporting provisions of Section 655.50, F.S. involving currency transactions and payment instruments, and Chapter 896, F.S., concerning offenses relating to financial transactions.</u>	<u>Fine: A</u> <u>Suspension: A</u> <u>Revocation</u>	<u>Fine: B</u> <u>Suspension: B</u> <u>Revocation</u>	<u>Fine: C</u> <u>Suspension: C</u> <u>Revocation</u>
(43)	<u>560.1235(1)</u>	<u>Failure to comply with all state and federal laws and rules relating to money laundering, including Section 560.123, F.S.; and 31 C.F.R. ss. 103.20, 103.22, 103.23, 103.27, 103.28, 103.29, 103.33, 103.37, and 103.41.</u>	<u>Fine: A</u> <u>Suspension: A</u> <u>Revocation</u>	<u>Fine: B</u> <u>Suspension: B</u> <u>Revocation</u>	<u>Fine: C</u> <u>Suspension: C</u> <u>Revocation</u>
(44)	<u>560.1235(2)</u>	<u>Failure to maintain, review, and update an anti-money laundering program.</u>	<u>Fine: A</u> <u>Suspension: A</u> <u>Revocation</u>	<u>Fine: B</u> <u>Suspension: B</u> <u>Revocation</u>	<u>Fine: C</u> <u>Suspension: C</u> <u>Revocation</u>
(45)	<u>560.1235(3)</u>	<u>Failure to comply with United States Treasury Interpretive Release 2004-1.</u>	<u>Fine: B</u> <u>Suspension: B</u> <u>Revocation</u>	<u>Fine: B</u> <u>Suspension: B</u> <u>Revocation</u>	<u>Fine: C</u> <u>Suspension: C</u> <u>Revocation</u>
(46)	<u>560.126(1)(a)</u>	<u>Failure to provide the Office notice within 30 days after occurrence of a bankruptcy filing.</u>	<u>Fine: C</u> <u>Suspension: C</u>	<u>Fine: C</u> <u>Suspension: C</u>	<u>Fine: C</u> <u>Suspension: C</u>
(47)	<u>560.126(1)(b)</u>	<u>Failure to provide the Office notice within 30 days after occurrence of the commencement of an administrative or judicial suspension, revocation, or denial of a license from any other state in the United States.</u>	<u>Fine: A</u> <u>Suspension: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Suspension: C</u>

(48)	560.126(1)(c)	Failure to provide the office notice within 30 days after occurrence of a felony indictment relating to a money services business or deferred presentment provider involving the licensee, a vendor, or affiliated party. Note: Any licensee suspended under this provision shall be suspended until a final disposition has been reached by the court for the case defined in the suspension order. Any rights to appeal with not be considered in the application of this section.	Fine: B Suspension: B	Fine: C Suspension: C	Fine: C Suspension: C
(49)	560.126(1)(d)	Failure to provide the office notice within 30 days after occurrence of a felony conviction, guilty plea, or plea of nolo contendere, regardless of adjudication, of a licensee, vendor, or affiliated party.	Revocation	Revocation	Revocation
(50)	560.126(1)(e)	Failure to provide the office notice within 30 days after occurrence of an interruption of any corporate surety bond required.	Fine: B Suspension: B	Fine: B Suspension: B	Fine: C Suspension: C
(51)	560.126(1)(g)	Failure to provide the office with written notice sent by registered mail within 30 days after the occurrence or knowledge of the notification by law enforcement or a prosecutorial agency that the licensee or vendor is under criminal investigation.	Fine: B Suspension: B	Fine: C Suspension: C	Fine: C Revocation
(52)	560.126(2)	Failure to report to the Office any change in application or renewal information on Form OFR 560-01, which is incorporated by reference in Rule 69V-560.1012, within 30 days after the change.	Fine: A	Fine: B	Fine: C Suspension: C

(53)	560.126(3)	Failure to report any <u>change in ownership, control, or responsible persons of the licensee.</u>	Fine: A	Fine: B	Fine: C Suspension: C
(54)	560.128(1)	Failure to provide each customer with a toll-free number or the office's toll-free number and address for consumer contact.	Fine: A	Fine: A	Fine: B
(55)	560.208(4)	Failure to place assets that are the property of a customer in a segregated account in a federally insured institution or the failure to maintain separate accounts for operating capital and the clearing of customer funds.	Fine: B	Fine: C Suspension: C	Fine: C Revocation
(56)	560.208(5)	Failure to ensure that money transmitted is available to the designated recipient within 10 business days after receipt.	Fine: B	Fine: C	Fine: C Suspension: C
(57)	560.208(6)	Failure to immediately upon receipt of currency or payment instrument provide a confirmation or sequence number to the customer verbally, by paper, or electronically.	Fine: A	Fine: C	Fine: C Suspension: C
(58)	560.2085(1)	Failure to notify the Office within 60 days after a vendor commences or terminates licensed activity.	Fine: A	Fine: B	Fine: C Suspension: C
(59)	560.2085(2)	Failure to enter into a written contract with an authorized vendor, signed by the licensee and the authorized vendor.	Fine: A	Fine: B	Fine: C Suspension: C
(60)	560.2085(2)(a)	The vendor contract must set forth the nature and scope of the relationship between the licensee and the vendor, including rights and responsibilities of the parties	Fine: A	Fine: B	Fine: C Suspension: C
(61)	560.2085(2)(b)	Failure to enter into a written contract that includes requirements of Section 560.2085(2)(b) (1-8), F.S.	Fine: A	Fine: B Suspension: B	Fine: C Suspension: C

(62)	<u>560.2085(3)</u>	<u>Failure to develop and implement written policies and procedures to monitor compliance with applicable state and federal law by a licensee's authorized vendors.</u>	<u>Fine: B</u>	<u>Fine: B</u>	<u>Fine: C</u> <u>Suspension: C</u>
(63)	<u>560.209(1)</u>	<u>Failure to maintain at all times net worth of at least \$100,000 plus and additional \$10,000 for each location up to \$2 million. Note: Suspension will be ordered until adequate net worth has been obtained and accepted by the Office</u>	<u>Fine: B</u> <u>Suspension: B</u> <u>Revocation</u>	<u>Fine: B</u> <u>Suspension: B</u> <u>Revocation</u>	<u>Fine: C</u> <u>Suspension: C</u> <u>Revocation</u>
(64)	<u>560.209(2)</u>	<u>Failure to obtain an annual financial audit report and submit it to the Office within 120 days after the end of the licensee's fiscal year end.</u>	<u>Fine: B</u> <u>Suspension: B</u> <u>Revocation</u>	<u>Fine: B</u> <u>Suspension: B</u> <u>Revocation</u>	<u>Fine: C</u> <u>Suspension: C</u> <u>Revocation</u>
(65)	<u>560.209(3)(a-b)</u>	<u>Failure to provide and pledge to the Office a surety bond not less than \$50,000 or more than \$2 million.</u>	<u>Fine: C</u> <u>Revocation</u>	<u>N/A</u>	<u>N/A</u>
(66)	<u>560.209(3)(c)</u>	<u>Canceling a surety bond without written notice to the Office by registered mail or a canceling a bond within 30 days after receipt by the Office of the written notice. Note: Suspension will be ordered until adequate surety device has been obtained and accepted by the Office</u>	<u>Fine: C</u> <u>Suspension: C</u>	<u>Fine: C</u> <u>Suspension: C</u>	<u>Fine: C</u> <u>Suspension: C</u>
(67)	<u>560.209(3)(e)</u>	<u>Failure to furnish a new or additional surety bond so that the total or aggregate principal sum of the bond equals the required bond under Section 560.209(3)(e), F.S.</u>	<u>Fine: C</u> <u>Suspension: C</u>	<u>Fine: C</u> <u>Suspension: C</u>	<u>Fine: C</u> <u>Suspension: C</u>
(68)	<u>560.209(4)(a-b)</u>	<u>Failure to deposit collateral cash, securities, or alternative security devices as provided by Rule 69V-560.402 in at least the amount required by Form OFR-560-07.</u>	<u>Fine: C</u> <u>Suspension: C</u>	<u>Fine: C</u> <u>Suspension: C</u>	<u>Fine: C</u> <u>Suspension: C</u>

(69)	560.209(4)(c)	Failure to pledge collateral cash, securities, or alternative security devices on Form OFR-560-05, which is incorporated by reference in Rule 69V-560.1012, or to maintain such collateral in an insured financial institution as set forth in Rule 69V-560.402.	Fine: C Suspension: C	Fine: C Suspension: C	Fine: C Suspension: C
(70)	560.210(1)	Failure to possess, at all times, permissible investments with an aggregate market value of at least the aggregate face amount of all outstanding money transmissions and payment instruments issued or sold by the licensee or authorized vendor in the United States.	Fine: B	Fine: B Suspension: B	Fine: C Revocation
(71)	560.211(1)	Failure to maintain all records required to be kept by Section 560.211, F.S. for 5 years.	Fine: B Suspension: B	Fine: B Suspension: B	Fine: C Revocation
(72)	560.211(1)(a)	Failure to maintain a daily record of payment instruments sold and money transmitted.	Fine: B Suspension: B	Fine: B Suspension: B	Fine: C Revocation
(73)	560.211(1)(b)	Failure to maintain a general ledger containing all asset, liability, capital, income, and expense accounts, which must be posted at least monthly.	Fine: B Suspension: B	Fine: B Suspension: B	Fine: C Revocation
(74)	560.211(1)(c)	Failure to maintain daily settlement records received from authorized vendors.	Fine: B Suspension: B	Fine: B Suspension: B	Fine: C Revocation
(75)	560.211(1)(d)	Failure to maintain monthly financial institution statements and reconciliation records.	Fine: B Suspension: B	Fine: B Suspension: B	Fine: C Revocation
(76)	560.211(1)(e)	Failure to maintain records of outstanding payment instruments and money transmitted.	Fine: B Suspension: B	Fine: B Suspension: B	Fine: C Revocation
(77)	560.211(1)(f)	Failure to maintain records of each payment instrument paid and money transmission delivered.	Fine: B Suspension: B	Fine: B Suspension: B	Fine: C Revocation

(78)	<u>560.211(1)(g)</u>	<u>Failure to maintain a list of the names and addresses of all of the licensee's authorized vendors.</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Revocation</u>
(79)	<u>560.211(1)(h)</u>	<u>Failure to maintain records that document the establishment, monitoring, and termination of relationships with authorized vendors and foreign affiliates.</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Revocation</u>
(80)	<u>560.211(1)(i)</u>	<u>Failure to maintain any records, as prescribed by rule, designed to detect and prevent money laundering as set forth in Rules 69V-560.608, 69V-560.609, 69V-560.610, 69V-560.702, 69V-560.703, and 69V-560.706.</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Revocation</u>
(81)	<u>560.213</u>	<u>Failure of each payment instrument sold or issued by a licensee, directly or through its authorized vendor, to bear the name of the licensee.</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Revocation</u>
(82)	<u>560.303(3)</u>	<u>Charging fees in excess of those provided by Section 560.309, F.S. by a person exempt from licensure under Chapter 560 part III.</u>	<u>Fine: A</u> <u>Restitution</u>	<u>Fine: B</u> <u>Restitution</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Revocation</u>
(83)	<u>560.309(1)</u>	<u>Failure to transact business under Chapter 560, part III, F.S. under the legal name under which the person is licensed.</u>	<u>Fine: B</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Revocation</u>
(84)	<u>560.309(2)</u>	<u>Failure to endorse a payment instrument that is accepted or cashed by the licensee using the legal name under which the licensee is licensed.</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Revocation</u>	<u>N/A</u>
(85)	<u>560.309(3)</u>	<u>Failure to deposit payment instruments into a commercial account at a federally insured financial institution or sell payment instruments within 5 business days after the acceptance of the payment instrument.</u>	<u>Fine: B</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Revocation</u>

(86)	<u>560.309(4)</u>	<u>Accepting or cashing multiple payment instruments from a person who is not the original payee, unless the person is licensed to cash payment instruments pursuant to Chapter 560, Part III, F.S., and all payment instruments accepted are endorsed with the legal name of the person.</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Revocation</u>	<u>N/A</u>
(87)	<u>560.309(5)</u>	<u>Failure to report all suspicious activity to the office in accordance with the criteria set forth in 31 C.F.R. s. 103.20.</u>	<u>Fine: B</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Revocation</u>
(88)	<u>560.309(6)</u>	<u>Failure to equip each location of a licensee where checks are cashed with a security camera system that is capable of recording and retrieving an image in order to assist in identifying and apprehending an offender unless the licensee has installed a bulletproof or bullet-resistant partition or enclosure in the area where checks are cashed.</u>	<u>Fine: B</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Revocation</u>
(89)	<u>560.309(7)</u>	<u>Failure to post a notice listing the charges for cashing payment instruments.</u>	<u>Fine: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Revocation</u>
(90)	<u>560.309(8)(a)</u>	<u>Charged fees, except otherwise provided by Section 560.309, F.S., and exclusive of the direct costs of verification in excess of 5 percent of the face amount of the payment instrument, or \$5, whichever is greater.</u>	<u>Fine: A</u> <u>Restitution</u>	<u>Fine: B</u> <u>Restitution</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Restitution</u> <u>Revocation</u>

(91)	<u>560.309(8)(b)</u>	<u>Charged fees, except otherwise provided by Section 560.309, F.S., and exclusive of the direct costs of verification in excess of 3 percent of the face amount of the payment instrument, or \$5, whichever is greater for a payment instrument that is any kind of state public assistance or federal social security benefit payable to the bearer of the payment instrument.</u>	<u>Fine: A Restitution</u>	<u>Fine: B Restitution Suspension: B</u>	<u>Fine: C Restitution Revocation</u>
(92)	<u>560.309(8)(c)</u>	<u>Charged fees, except otherwise provided by Section 560.309, F.S., and exclusive of the direct costs of verification in excess of 10 percent of the face amount for personal checks or money orders, or \$5, whichever is greater.</u>	<u>Fine: C Restitution</u>	<u>Fine: C Restitution Suspension: C</u>	<u>Fine: C Restitution Revocation</u>
(93)	<u>560.309(9)</u>	<u>Assessed the cost of collections, other than fees for insufficient funds provided by law, without judgment from a court of competent jurisdiction.</u>	<u>Fine: A Restitution</u>	<u>Fine: B Restitution Suspension: B</u>	<u>Fine: C Restitution Revocation</u>
(94)	<u>560.309(10)</u>	<u>Failed to comply with the provisions of Section 68.065, F.S. and failed to comply with the prohibitions against harassment or abuse, false or misleading representations, and unfair practices in the Fair Debt Collections Act, U.S.C. ss. 1692d, 1692d, 1962f.</u>	<u>Fine: B Suspension: B</u>	<u>Fine: C Suspension: C</u>	<u>Fine: C Revocation</u>
(95)	<u>560.310(1)(a)</u>	<u>Failed to maintain customer files on all customers who cash corporate or third-party payment instruments exceeding \$1,000, as required by paragraph 69V-560.704(4)(d), F.A.C.</u>	<u>Fine: B Suspension: B</u>	<u>Fine: C Suspension: C</u>	<u>Fine: C Revocation</u>

(96)	560.310(1)(b)(1)	Failed to maintain a copy of the personal identification as used as identification as presented by the customer for a payment instrument accepted having a face value of \$1,000 or more.	Fine: B Suspension: B	Fine: C Suspension: C	Fine: C Revocation
(97)	560.310(1)(b)(2)	Failed to maintain a thumbprint of the customer, taken by the licensee, for a payment instrument accepted having a face value of \$1,000 or more.	Fine: B Suspension: B	Fine: C Suspension: B	Fine: C Revocation
(98)	560.310(1)(c)	Failed to maintain an electronic payment instrument log which reports aggregate payment instruments whose total cashed is greater than \$1,000.	Fine: B Suspension: B	Fine: C Suspension: B	Fine: C Revocation
(99)	460.404(1)	Failed to document each deferred presentment transaction in a written agreement signed by the deferred presentment provider and the drawer.	Fine: B	Fine: C Suspension: C	Fine: C Revocation
(100)	560.404(2)	Each deferred presentment transaction agreement failed to be executed on the day the deferred presentment provider furnishes currency or a payment instrument to the drawer.	Fine: A	Fine: B Suspension: B	Fine: C Suspension: C
(101)	560.404(3)(a)	Each deferred presentment transaction agreement failed to contain the name or trade name, address, and telephone number of the deferred presentment provider and the name and title of the person who signs the agreement on behalf of the provider.	Fine: A	Fine: B Suspension: B	Fine: C Suspension: C
(102)	560.404(3)(b)	Each deferred presentment transaction agreement failed to contain the date the deferred presentment transaction was made.	Fine: A	Fine: B Suspension: B	Fine: C Suspension: C
(103)	560.404(3)(c)	Each deferred presentment agreement failed to contain the amount of the drawer's check.	Fine: A	Fine: B Suspension: B	Fine: C Suspension: C

(104)	560.404(3)(d)	<u>Each deferred presentment agreement failed to contain the length of the deferment period.</u>	<u>Fine: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Suspension: C</u>
(105)	560.404(3)(e)	<u>Each deferred presentment agreement failed to contain the last day of the deferment period.</u>	<u>Fine: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Suspension: C</u>
(106)	560.404(3)(f)	<u>Each deferred presentment agreement failed to contain the address and telephone number of the office.</u>	<u>Fine: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Suspension: C</u>
(107)	560.404(3)(g)	<u>Each deferred presentment agreement failed to contain a clear description of the drawer's payment obligations under the deferred presentment transaction.</u>	<u>Fine: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Suspension: C</u>
(108)	560.404(3)(h)	<u>Each deferred presentment agreement failed to contain the transaction number assigned by the office's database.</u>	<u>Fine: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Suspension: C</u>
(109)	560.404(4)	<u>Failed to furnish a copy of the deferred presentment transaction agreement to the drawer.</u>	<u>Fine: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Suspension: C</u>
(110)	560.404(5)	<u>Accepting a check for a deferred presentment transaction where the face amount of the check taken exceeds \$500 exclusive of the fees allowed under Part IV of Chapter 560.F.S.</u>	<u>Fine: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Suspension: C</u>
(111)	560.404(6)	<u>Charging fees that exceed 10 percent of the currency or payment instrument provided for a deferred presentment transaction.</u>	<u>Fine: A</u> <u>Restitution</u>	<u>Fine: B</u> <u>Restitution</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Restitution</u> <u>Revocation</u>
(112)	560.404(7)	<u>Collecting the fees authorized for a deferred presentment transaction before the drawer's check is presented or redeemed.</u>	<u>Fine: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Suspension: C</u>
(113)	560.404(8)	<u>Accepting a deferred presentment transaction for a term longer than 31 days or less than 7 days.</u>	<u>Fine: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Suspension: C</u>
(114)	560.404(9)	<u>Requiring a drawer to provide additional security or guaranty for a deferred presentment transaction.</u>	<u>Fine: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Suspension: C</u>
(115)	560.404(10)(a)	<u>Including a hold harmless clause in a deferred presentment agreement.</u>	<u>Fine: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Suspension: B</u>

(116)	560.404(10)(b)	<u>Including a confession of judgment clause in a deferred presentment agreement.</u>	<u>Fine: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Suspension: C</u>
(117)	560.404(10)(c)	<u>Including an assignment of or order for a payment of wages or other compensation for services in a deferred presentment agreement.</u>	<u>Fine: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Suspension: C</u>
(118)	560.404(10)(d)	<u>Including a provision in which the drawer agrees not to assert any claim or defense arising out of the agreement in a deferred presentment agreement.</u>	<u>Fine: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Suspension: C</u>
(119)	560.404(10)(e)	<u>Including a waiver of any provision of Chapter 560, Part IV, F.S in a deferred presentment agreement.</u>	<u>Fine: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Suspension: C</u>
(120)	560.404(11)	<u>A deferred presentment provider shall immediately provide the drawer with the full amount of any check to be held, less only the fee allowed by Section 560.404, F.S.</u>	<u>Fine: B</u>	<u>Fine: C</u> <u>Suspension: C</u>	<u>Fine: C</u> <u>Revocation</u>
(121)	560.404(12)	<u>Holding a deferred presentment agreement or a drawer's check that is altered, the date is deleted, or fails to bear the same date for a deferred presentment transaction.</u>	<u>Fine: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Suspension: C</u>
(122)	560.404(13)	<u>Failure to ensure that each deferred presentment transaction complies with the disclosure requirements of 12 C.F.R., part 226, relating to the federal Truth-in-Lending Act, and Regulation Z of the Board of Governors of the Federal Reserve Board.</u>	<u>Fine: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Suspension: C</u>
(123)	560.404(14)	<u>Accepting or holding an undated check or a check dated on a date other than the date on which the deferred presentment provider agreed to hold the check and signed the deferred presentment transaction agreement.</u>	<u>Fine: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Suspension: C</u>

(124)	560.404(15)	<u>Failure to hold the drawer's check for the agreed number of days, unless the drawer chose to redeem the check before the presentment date.</u>	<u>Fine: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Suspension: C</u>
(125)	560.404(16)	<u>Charging an additional fee for issuing or cashing a deferred presentment provider's payment instrument, if licensed under Part II of Chapter 560, F.S.</u>	<u>Fine: B</u> <u>Restitution</u>	<u>Fine: B</u> <u>Restitution</u> <u>Suspension: B</u>	<u>Fine: B</u> <u>Restitution</u> <u>Revocation</u>
(126)	560.404(17)	<u>Requiring a drawer to accept a payment instrument issued by the licensee in lieu of currency in a deferred presentment transaction.</u>	<u>Fine: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Suspension: C</u>
(127)	560.404(18)	<u>Engaging in the rollover of a deferred presentment agreement. Redeeming, extending, or otherwise consolidating a deferred presentment agreement with the proceeds of another deferred presentment transaction made by the same deferred presentment provider or an affiliate.</u>	<u>Fine: B</u> <u>Restitution of any fees received for each subsequent rollover</u>	<u>Fine: B</u> <u>Restitution of any fees received for each subsequent rollover</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Restitution of any fees received for each subsequent rollover</u> <u>Revocation</u>
(128)	560.404(19)	<u>Entering into a deferred presentment transaction with a drawer who has an outstanding deferred presentment transaction with that provider or with any other deferred presentment provider, or with a person whose previous deferred presentment transaction with that provider or with any other provider has been terminated for less than 24 hours.</u>	<u>Fine: B</u> <u>Restitution of any fees received for each subsequent rollover</u>	<u>Fine: B</u> <u>Restitution of any fees received for each subsequent rollover</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Restitution of any fees received for each subsequent rollover</u> <u>Revocation</u>

(129)	560.404(19)(a)	<u>Failure to verify whether the deferred presentment provider or an affiliate has an outstanding deferred presentment transaction with a particular person or has terminated a transaction with that person within the previous 24 hours.</u>	<u>Fine: B</u> <u>Restitution of any fees received for each subsequent rollover</u>	<u>Fine: B</u> <u>Restitution of any fees received for each subsequent rollover</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Restitution of any fees received for each subsequent rollover</u> <u>Revocation</u>
(130)	560.404(19)(b)	<u>Failure to access the office's database and verify whether any other deferred presentment provider has an outstanding deferred presentment transaction with a particular person or has terminated a transaction with that person within the previous 24 hours.</u>	<u>Fine: B</u> <u>Restitution of any fees received for each subsequent rollover</u>	<u>Fine: B</u> <u>Restitution of any fees received for each subsequent rollover</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Restitution of any fees received for each subsequent rollover</u> <u>Revocation</u>
(131)	560.404(20)	<u>Failure to provide the notice defined in Section 560.404(20), F.S., in a prominent place on each deferred presentment agreement in at least 14-point type in substantially the form provided by Section 560.404(20), F.S., and must obtain the signature of the drawer where indicated.</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C</u> <u>Suspension: C</u>
(132)	560.404(21)	<u>Presenting a drawer's check if the drawer informs the provider in person that the drawer cannot redeem or pay in full in cash the amount due and owing the deferred presentment provider or charging an additional fee or penalty by virtue of any misrepresentation made by the drawer as to the sufficiency of funds in the drawer's account.</u>	<u>Fine: A</u> <u>Restitution</u>	<u>Fine: B</u> <u>Restitution</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Restitution</u> <u>Revocation</u>

(133)	560.404(22)	Failure to provide a grace period extending the term of an agreement for an additional 60 days after the original termination date, without any additional charge if by the end of the deferment period, the drawer informs the deferred presentment provider in person that the drawer cannot redeem or pay in full in cash the amount due and owing.	Fine: B Restitution	Fine: C Restitution Suspension: C	Fine: C Restitution Revocation
(134)	560.404(22)(a)	Failure to comply with and adhere to, including depositing the drawer's check before the end of the 60-day grace period, a repayment plan that a drawer agrees to comply with and adhere to, which was approved by a credit counseling agency. Discouraging a drawer from using the 60-day grace period.	Fine: B Restitution	Fine: C Restitution Suspension: C	Fine: C Restitution Revocation
(135)	560.404(22)(b)(1)	Failure to provide verbal notice of the availability of the 60-day grace period consistent with the written notice in Section 560.404(20), F.S.	Fine: A	Fine: B	Fine: C Suspension: C
(136)	560.404(22)(b)(2)	Failure to provide a drawer a list of approved consumer credit counseling agencies prepared by the office.	Fine: A	Fine: B	Fine: C Suspension: C
(137)	560.404(22)(b)(3)	Failure to provide a drawer the written notice in Section 560.404(22)(b)(3), F.S., in at least 14-point type in substantially the form in the section detailing the drawer's rights under the 60-day grace period.	Fine: A	Fine: B	Fine: C Suspension: C
(138)	560.404(22)(c)	Failure to pay one-half of the drawer's fee for a deferred presentment agreement to the consumer credit counseling agency if a drawer completes an approved payment plan.	Fine: A	Fine: B	Fine: C Suspension: C

(139)	<u>560.404(23)</u>	<u>Failure to submit data, including but not limited to the drawer's name, social security number or employment authorization alien number, address, driver's license number, amount of the transaction, date of transaction, the date that the transaction is closed, and such additional information as is required by rule before entering into each deferred presentment transaction in order to verify whether any deferred presentment transactions are outstanding for a particular person.</u>	<u>Fine: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Suspension: C</u>
(140)	<u>560.404(24)</u>	<u>Accepting more than one check or authorization to initiate more than one automated clearinghouse transaction to collect on a deferred presentment transaction for a single deferred presentment transaction.</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C</u> <u>Suspension: C</u>
(141)	<u>560.405(1)</u>	<u>Presenting a drawer's check before the end of the deferment period, as reflected in the deferred presentment transaction agreement.</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C</u> <u>Suspension: C</u>
(142)	<u>560.405(2)</u>	<u>Failure to endorse a drawer's check with the name under which the deferred presentment provider is doing business before the deferred presentment provider presents the drawer's check.</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C</u> <u>Suspension: C</u>
(143)	<u>560.405(3)</u>	<u>Failure to return a drawer's check, upon redemption, and provide a signed, dated receipt showing that the drawer's check has been redeemed.</u>	<u>Fine: A</u>	<u>Fine: B</u>	<u>Fine: C</u> <u>Suspension: C</u>

(144)	560.406(1)	<u>Sending or collecting on collection notices containing references to treble damages and criminal prosecution used for the collection of worthless check in a deferred presentment transaction.</u>	<u>Fine: A</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Revocation</u>
(145)	560.406(2)	<u>Failure to comply with the prohibitions against harassment or abuse, false or misleading representations, and unfair practices that are contained in the Fair Debt Collections Practices Act, 15 U.S.C. ss. 1692d, 1692e, 1692f.</u>	<u>Fine: B</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Revocation</u>
(146)	560.406(3)	<u>Assessing the cost of collection, other than charges for insufficient funds as allowed by law, without a judgment from a court of competent jurisdiction for a deferred presentment transaction.</u>	<u>Fine: A</u> <u>Restitution</u>	<u>Fine: B</u> <u>Restitution</u> <u>Suspension: B</u>	<u>Fine: C</u> <u>Restitution</u> <u>Revocation</u>

(147) In accordance with this rule:

(a) Depending on the severity and repetition of specific violations, the Office may impose an administrative fine, suspension of a license, or revocation of a license or any combination thereof;

(b) The Office may impose a cease and desist order in conjunction with and in addition to any of the designated sanctions set forth in this rule when appropriate under the circumstances;

(c) Notwithstanding this rule, the Office may, when appropriate, enter orders of removal or prohibition or orders denying applications, and may seek the entry of an injunction and appointment of a receiver by a court of competent jurisdiction; and

(d) The Office will consider the licensee's disciplinary history for the past five years in determining an appropriate penalty, and may impose a more severe penalty when the disciplinary history includes past violations.

(148) In accordance with Section 560.1141(3), F.S., when sufficient evidence is available, the Office shall consider the following circumstances in determining a penalty within the range of penalties provided in this rule and may impose a penalty that deviates from the range of penalties herein as a result of such circumstances:

(a) Whether the violation rate is less than 5% when compared to the overall sample size reviewed;

(b) The degree of harm to the customers or the public;

(c) The disciplinary history of the licensee;

(d) Whether the licensee detected and voluntarily instituted corrective responses or measures to avoid the recurrence of a violation prior to detection and intervention by the Office;

(e) Whether the licensee's violation was the result of willful misconduct or recklessness;

(f) Whether at the time of the violation, the licensee had developed and implemented reasonable supervisory, operational or technical procedures, or controls to avoid the violation;

(g) Where the violation is attributable to an individual officer, director, responsible person, or authorized vendor, whether the licensee removed or otherwise disciplined the individual prior to detection and intervention by the Office;

(h) Whether the licensee attempted to conceal the violation or mislead or deceive the Office;

(i) The length of time over which the licensee engaged in the violations;

(j) Whether the licensee engaged in numerous violations or a pattern of misconduct;

(k) The number, size and character of the transactions in question;

(l) Whether the licensee provided substantial assistance to the Office in its examination or investigation of the underlying misconduct;

(m) Other relevant, case-specific circumstances.

(149) The list of violations cited in this rule is intended to be comprehensive, but the omission of a violation from the list does not preclude the Office from taking any action authorized by Section 560.114, F.S.

(150) The ranges for administrative fines imposed by this rule are \$1,000 – \$3,500 for an “A” level fine; \$3,500 – \$7,500 for a “B” level fine; and \$7,500 – \$10,000 for a “C” level fine.

(151) The ranges for suspensions imposed by this rule are 3 to 10 days for an “A” level suspension; 10 to 20 days for a “B” level suspension; and 20 to 30 days for a “C” level suspension.

Specific Authority 560.105, 560.1141 FS. Law Implemented 560.109, 560.1105, 560.111, 560.114, 560.1141, 560.118, 560.123, 560.1235, 560.125, 560.126, 560.128, 560.204, 560.208, 560.2085, 560.209, 560.210, 560.211, 560.213, 560.303, 560.309, 560.310, 560.403, 560.404, 560.405, 560.406 FS. History–New _____.

FINANCIAL SERVICES COMMISSION

Finance

RULE NO.: 69V-560.1021
 RULE TITLE: Effect of Law Enforcement Records on Applications for Money Services Business Licensure

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 34, No. 51, December 19, 2008 issue of the Florida Administrative Weekly.

The rules have been revised to address comments from the Joint Administrative Procedures Committee (JAPC). Subsection (2) is clarified to reference the license application form. This section is also revised to remove the requirement that a written statement from a custodian of records be “certified or sworn”. Paragraph (19)(c) is clarified to provide examples of what is meant by “safeguards” in a criminal justice system. Technical corrections are made to the history notes.

THE FULL TEXT OF THE PROPOSED RULE IS:

69V-560.1021 Effect of Law Enforcement Records on Applications for Money Services Business Licensure.

(1) Definitions. For purposes of this rule:

(a) “Relevant persons” means each officer, director, responsible person, compliance officer, or controlling shareholder of the money services business applicant, and any other person who has a controlling interest in the money services business applicant as provided in Section 560.127, F.S. If the applicant is a natural person, he or she is the relevant person under this rule.

(b) “Trigger date” means the date on which an applicant was found guilty, or pled guilty, or pled nolo contendere to a crime.

(2) General Procedure Regarding Law Enforcement Records. At the time of submitting an Application for Licensure as a Money Services Business, Form OFR-560-01, which is incorporated by reference in Rule 69V-560.1012, F.A.C., the applicant shall disclose on the application form any pending criminal charges and all criminal matters in which a relevant person has pled guilty or nolo contendere to, or has been convicted or found guilty, regardless of whether adjudication was withheld, of any crime. In addition, the applicant shall supply the Office with required documentation for each relevant person, as specified in this rule, relating to: 1) all criminal matters in which the relevant person has pled guilty or nolo contendere to, or has been convicted or found guilty, regardless of whether adjudication was withheld, of a class “A”, “B”, or “C” crime as described in this rule, 2) any pending criminal charges for a relevant person relating to a class “A”, “B”, or “C” crime as described in this rule, or 3) shall supply evidence that such documentation cannot be obtained. Evidence that documentation cannot be obtained shall consist of a written statement on the letterhead of the agency that would be the custodian of the documents, signed by a representative of that agency, stating that they have no record of such matter, or that the record is lost or was damaged or destroyed, or otherwise stating why the document cannot be produced. The required documentation must be legible. Required documentation includes:

(a) A copy of the police arrest affidavit, arrest report or similar document.

(b) A certified copy of the charges.

(c) A certified copy of the plea, judgment, and sentence where applicable.

(d) A certified copy of an order of entry into pre-trial intervention, and the order of termination of pre-trial intervention showing dismissal of charges where applicable.

(e) A certified copy of an order of termination of probation or supervised release, if applicable.

(3) Effect of Failure to Fully Disclose Law Enforcement Record on Application.

(a) The omission of any part of a law enforcement record required to be disclosed pursuant to subsection (2) is a material misrepresentation or material misstatement on the application and the application shall be denied pursuant to Section 560.114(1)(k), Florida Statutes.

(b) Notwithstanding paragraph (3)(a), the Office shall not deny an application for failure to provide documentation listed in subsection (2) when the crime is not a class “A”, “B”, or “C” crime and the applicant has disclosed the crime on the application form.

(c) If the Office discovers the applicant's failure to disclose after a license has been granted, the Office will suspend or revoke each license currently held by the applicant as follows:

1. Suspension for 12 months if, had the license application been accurate, the application would have been granted, based on the statutes and licensing rules applicable to the application at the time the Office issued the license, and the documentation in the applicant's file at the time the Office issued the license.

2. Revocation if, had the license application been accurate, the application would have been denied, based on the statutes and licensing rules applicable to the application at the time the Office issued the license.

(4) Classification of Crimes.

(a) The Office makes a general classification of crimes into three classes: A, B and C, as listed in subsections (16), (17) and (18) of this rule.

(b) These classifications reflect the Office's evaluation of various crimes in terms of moral turpitude and the seriousness of the crime as such factors relate to the prospective threat to public welfare typically posed by a person who would commit such a crime.

(c) The names or descriptions of crimes, as set out in the classification of crimes, are intended to serve only as generic names or descriptions of crimes and shall not be read as legal titles of crimes, or as limiting the included crimes to crimes bearing the exact name or description stated.

(d) A charge in the nature of attempt or intent to commit a crime, or conspiracy to commit a crime, is classified the same as the crime itself.

(5) Effect on Licensure of Commitment of Single Crime. The Office finds it necessary to implement the following standards for applicants with relevant persons whose law enforcement record includes a single crime, subject to the mitigating factors set forth elsewhere in this rule before licensure. All disqualifying periods referenced in this rule run from the trigger date.

(a) Class A Crime. The applicant will not be granted a license until 15 years have passed since the trigger date.

(b) Class B Crime. The applicant will not be granted a license until 7 years have passed since the trigger date.

(c) Class C Crime. The applicant will not be granted licensure until 5 years have passed since the trigger date.

(6) Relevant Persons With Multiple Crimes.

(a) The Office construes Section 560.114(1)(o), (p), and (q), Florida Statutes, to require that an applicant with relevant persons whose law enforcement record includes multiple class "A", "B" or C crimes, or any combination thereof, wait longer than those whose law enforcement record includes only a single crime before becoming eligible for licensure in order to assure that such relevant person's greater inability or unwillingness to abide by the law has been overcome. Therefore, the Office finds it necessary that a longer

disqualifying period be utilized in such instances, before licensure can safely be granted. Accordingly, where the relevant person has been found guilty or pled guilty or pled nolo contendere to more than one crime, the Office shall add 5 years to the disqualifying period for each additional crime.

(b) The additional periods are added to the basic disqualifying period for the one most serious crime, and the combined total disqualifying period then runs from the trigger date of the most recent crime.

(c) Classification as "Single Crime" versus "Multiple Crimes." For purposes of this rule, two (2) or more offenses are considered a single crime if they are triable in the same court and are based on the same act or transaction or on two (2) or more connected acts or transactions.

(7) Mitigating Factors.

(a) The disqualifying period for a crime or crimes shall be shortened upon proof of one or more of the following factors. Where more than one factor is present the applicant is entitled to add together all the applicable mitigation amounts and deduct that total from the usual disqualifying period, provided that an applicant shall not be permitted an aggregate mitigation of more than three (3) years for the following factors:

1. One year is deducted if the probation officer or prosecuting attorney in the most recent crime states in a signed writing that the probation officer or prosecuting attorney believes the applicant would pose no significant threat to public welfare if licensed as a money services business.

2. One year is deducted if restitution or settlement has been made for all crimes in which restitution or settlement was ordered by the court, and proof of such restitution or settlement is shown in official court documents or as verified in a signed writing by the prosecuting attorney or probation officer.

3. One year will be deducted if the applicant was under age 21 when the crime was committed and there is only one crime in the applicant's law enforcement record.

4. One year is deducted if the applicant furnishes proof that the applicant was at the time of the crime addicted to drugs or suffering active alcoholism. The proof must be accompanied by a written letter from a properly licensed doctor, psychologist, or therapist licensed by a duly constituted state licensing body stating that the licensed person has examined or treated the applicant and that in his or her professional opinion the addiction or alcoholism is currently in remission and has been in remission for the previous 12 months. The professional opinion shall be dated within 45 days of the time of application.

5. Other Mitigating Factors. An applicant is permitted to submit any other evidence of facts that the applicant believes should decrease the disqualifying period before licensure is allowed and one additional year shall be deducted if the Office agrees the facts have a mitigating effect on the licensure decision.

(b) In no event shall the aggregate mitigation result in less than a seven (7) year disqualifying period where the underlying crime committed was a felony.

(c) The burden is upon the applicant to establish these mitigating factors. Where the mitigating factor relates to or requires evidence of government agency or court action, it must be proved by a certified true copy of the agency or court document.

(8) Circumstances Not Constituting Mitigation. The Office finds that no mitigating weight exists, and none will be given, for the following factors:

(a) Type of Plea. The Office draws no distinction among types of pleas, i.e., found guilty; pled guilty; pled nolo contendere.

(b) Collateral Attack on Criminal Proceedings. The Office will not allow or give any weight to an attempt to re-litigate, impeach, or collaterally attack judicial criminal proceedings or their results in which the applicant was found guilty or pled guilty or nolo contendere. Thus the Office will not hear or consider arguments such as: the criminal proceedings were unfair; the judge was biased; the witnesses or prosecutor lied or acted improperly; the defendant only pled guilty due to financial or mental stress; the defendant was temporarily insane at the time of the crime; or the defendant had ineffective counsel.

(c) The Office finds that subjective factors involving state of mind have no mitigating weight.

(9) Effect of Pending Appeal in Criminal Proceedings; Reversal on Appeal.

(a) The Office interprets the statutory grounds for denial of licensure as arising immediately upon a finding of guilt, or a plea of guilty or nolo contendere, regardless of whether an appeal is or is not allowed to be taken. The Office will not wait for the outcome of an appeal to deny licensure, unless a Florida court specifically stays the Office's adverse action.

(b) If on appeal the conviction is reversed, the Office shall immediately drop the said crime as grounds for denial of license.

(10) Pre-Trial Intervention. The Office considers participation in a pre-trial intervention program to be a pending criminal enforcement action and will not grant licensure to any applicant with a relevant person who at time of application is participating in a pre-trial intervention program. The Office finds it necessary to the public welfare to wait until the pre-trial intervention is successfully completed before licensure may be considered.

(11) Effect of Sealing or Expunging of Criminal Record.

(a) An applicant is not required to disclose or acknowledge, and is permitted in fact to affirmatively deny, any arrest or criminal proceeding for a relevant person, the record of which has been legally and properly expunged or

sealed by order of a court of competent jurisdiction prior to the time of application, and such denial or failure to disclose is not grounds for adverse action by the Office.

(b) Matters Sealed or Expunged Subsequent to Application. Occasionally a relevant person will have a matter sealed or expunged after the applicant submits an application, but before a licensing decision is made by the Office. In such situations the Office policy is as follows:

1. If the applicant's relevant person properly revealed the matter on the application, and thereafter has the record sealed or expunged, the Office will not consider the matter in the application decision.

2. However, if the applicant's relevant person did not reveal the matter on the application and the matter had not been sealed or expunged at the time of making the application, the Office will construe the failure to disclose the matter on the application as a material misrepresentation or material misstatement, and the application shall be denied pursuant to Section 560.114(1)(k), Florida Statutes.

(12) Effect of Restoration of Civil Rights.

(a) An applicant's relevant person must disclose crimes even where civil rights have been restored.

(b) If a relevant person's civil rights have been restored, the crimes will be evaluated in the application process consistent with Section 112.011 and Chapter 560, Florida Statutes, and the rules promulgated thereunder.

(c) The burden is upon the applicant to prove the restoration of their civil rights.

(13) Effect of Varying Terminology.

(a) With regard to the following six subparagraphs, the Office treats each phrase in a particular subparagraph as having the same effect as the other phrases in that same subparagraph:

1. Adjudicated guilty; convicted.

2. Found guilty; entered a finding of guilt.

3. Pled guilty; entered a plea of guilty; admitted guilt; admitted the charges.

4. Nolo contendere; no contest; did not contest; did not deny; no denial.

5. Adjudication of guilt withheld; adjudication withheld; no adjudication entered; entry of findings withheld; no official record to be entered; judgment withheld; judgment not entered.

6. Nolle prosequi; nolle prosequi; charges withdrawn; charges dismissed; charges dropped.

(b) In all other instances the Office will look to the substantive meaning of the terminology used in the context in which it was used under the law of the jurisdiction where it was used.

(14) Imprisoned Persons and Community Supervision.

(a) Imprisonment. Notwithstanding any provision to the contrary in this rule, the Office shall not license any applicant under Chapter 560, Florida Statutes, while any relevant person of the applicant is imprisoned or serving a sentence for any

crime. Further, the Office shall not license any applicant with a relevant person who has been released from imprisonment until the later of the period otherwise set out in these rules or 5 years after the date of release. The Office finds it necessary that the person be released from imprisonment and thereafter demonstrate an ability to abide by the law by passage of at least 5 years on good behavior, before licensure can be granted without undue risk to the public welfare.

(b) Community Supervision. The Office shall not grant licensure to any person who at the time of application or at any time during the pendency of the application is serving term on community supervision for any felony crime involving fraud, dishonest dealing, moral turpitude, misappropriation, conversion, or unlawful withholding of moneys belonging to others; or any misdemeanor crime involving misappropriation, conversion, or unlawful withholding of moneys belonging to others. The Office shall not substantively consider an application until the applicant has successfully completed his or her probationary term.

(15) Effect of Disqualifying Periods. The disqualifying periods established in this rule do not give an applicant a right to licensure after any set period of time. Regardless of the expiration of any disqualifying period imposed by these rules, the burden to prove entitlement to licensure remains on the applicant.

(16) Class "A" Crimes include the following felonies involving financially related or white collar crime, or crimes involving violence, and the Office finds that such crimes involve an act of fraud, dishonest dealing, moral turpitude, misappropriation, conversion, or unlawful withholding of moneys belong to others regardless of adjudication. This list is representative only and shall not be construed to constitute a complete or exclusive list of all crimes that are Class "A" crimes. Crimes similar to the crimes on this list may also be considered Class "A" crimes, and no inference should be drawn from the absence of any crime from this list.

(a) Any type of fraud, including but not limited to Fraud, Postal Fraud, Wire Fraud, Securities Fraud, Welfare Fraud, Defrauding the Government, Credit Card Fraud, Defrauding an Innkeeper, Passing worthless check(s) with intent to defraud.

- (b) Perjury.
- (c) Armed robbery.
- (d) Robbery.
- (e) Extortion.
- (f) Bribery.
- (g) Embezzlement.
- (h) Grand theft.
- (i) Larceny.
- (j) Burglary.
- (k) Breaking and entering.
- (l) Identity Theft.
- (m) Any type of forgery or uttering a forged instrument.

(n) Misuse of public office.

(o) Racketeering.

(p) Buying, receiving, concealing, possessing or otherwise dealing in stolen property.

(q) Treason against the United States, or a state, district, or territory thereof.

(r) Altering public documents.

(s) Witness tampering.

(t) Tax evasion.

(u) Impersonating or attempting to impersonate a law enforcement officer.

(v) Money laundering.

(w) Murder in all degrees.

(x) Arson.

(y) Sale, importation, or distribution of controlled substances (drugs); or possession for sale, importation or distribution.

(z) Aggravated Assault (e.g., as with a deadly weapon).

(aa) Aggravated Battery (e.g., as with a deadly weapon).

(bb) Rape.

(cc) Sexually molesting any minor.

(dd) Sexual battery.

(ee) Battery of or threatening a law enforcement officer or public official in the performance of his/her duties.

(ff) Kidnapping.

(17) Class "B" Crimes include all felonies that involve any other act of fraud, dishonest dealing, moral turpitude, misappropriation, conversion, or unlawful withholding of moneys belonging to others, regardless of adjudication, and are not Class "A" crimes.

(18) Class "C" Crimes include any misdemeanor that involves misappropriation, conversion, or unlawful withholding or moneys belonging to others, regardless of adjudication.

(19) Foreign Law Enforcement Records. If a law enforcement record includes convictions, charges, or arrests outside the United States, the Office shall consider the following factors to reduce, eliminate, or apply a disqualifying period:

(a) Whether the crime in the criminal record would be a crime under the laws of the United States or any state within the United States;

(b) The degree of penalty associated with the same or similar crimes in the United States; and

(c) The extent to which the foreign justice system provided safeguards similar to those provided criminal defendants under the Constitution of the United States; for example, the right of a defendant to a public trial, the right against self-incrimination, the right of notice of the charges, the right to confront witnesses, the right to call witnesses, and the right to counsel.

Specific Authority 560.105 FS. Law Implemented 112.011, 560.114, 560.1401, 560.141 FS. History–New

Section IV Emergency Rules

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

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

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

Section V Petitions and Dispositions Regarding Rule Variance or Waiver

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

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

PUBLIC SERVICE COMMISSION

NOTICE IS HEREBY GIVEN THAT on February 12, 2009, the Florida Public Service Commission, received a petition for Emergency Variance or Waiver of the 60-day Notice Requirement In Rule 25-6.140, F.A.C. by Progress Energy Florida, Inc. in Docket No. 090079-EI – Petition for increase in rates by Progress Energy Florida.

Progress Energy Florida, Inc. has petitioned for emergency variance or waiver of the 60-day notice requirement in Rule 25-6.140, Florida Administrative Code (F.A.C.). Rule 25-6.140, F.A.C. provides in part:

(1) At least sixty (60) days prior to filing a petition for a general rate increase, a company shall notify the Commission in writing of its selected test year and filing date.

The full text of Progress’s petition can be found at the Commission’s website in Docket No. 090079.

Pursuant to Rule 28-104.005, F.A.C., the Commission must grant or deny a petition for emergency variance within 30 days of its receipt. The Commission received this petition on

February 12, 2009. The Commission will consider Progress’s Petition for Variance or Waiver of the 60-Day Notice Requirement at the Commission’s March 3, 2009 regularly scheduled Agenda Conference.

All interested persons have the right to submit written comments on the petition for emergency variance. Comments must be submitted within 5 days of the publication of this notice. The Commission notice was published on February 13, 2009, on the Commission website, and by electronic mail to interested persons of record. Written comments may be submitted to the Commission at: Commission Clerk, Attention Docket No. 090079, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850 or by electronic mail to the Commission Clerk: clerk@psc.state.fl.us and reference Docket No. 090079.

A copy of the Petition for Variance or Waiver may be obtained by contacting: Office of the Commission Clerk, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

WATER MANAGEMENT DISTRICTS

NOTICE IS HEREBY GIVEN THAT on February 12, 2009, the South Florida Water Management District (District or SFWMD) Governing Board has issued an order.

SFWMD Order No. 2009-033-DAO-ROW was issued pursuant to Section 120.542, Florida Statutes, to Paul Venturelli (Application No. 08-1205-1M). The petition for waiver was received by the SFWMD on December 5, 2008. Notice of receipt of the petition requesting the waiver was published in the Florida Administrative Weekly, Vol. 34, No. 51, December 19, 2008. No public comment was received. This Order provides a waiver of the District’s criteria to allow existing landscaping consisting of palm trees, low lying planters and a paver stairway/walkway to remain within the northerly right of way of the C-51 Canal, located at the rear of 246 Arlington Road; Section 15, Township 44 South, Range 43 East, Palm Beach County. Specifically, the Order grants a waiver from subsections 40E-6.011(4) and (6), Florida Administrative Code, and the Basis of Review for Use or Occupancy of the Works or Lands of the District, incorporated by reference in subsection 40E-6.091(1), Florida Administrative Code, which governs the placement of permanent and/or semi-permanent above-ground encroachments within 40 feet of the top of the canal bank within Works or Lands of the District. Generally, the Order sets forth the basis of the Governing Board decision to grant the waiver, as follows: 1) the facilities will not significantly interfere with the District’s current ability to perform necessary construction, alteration, operation, and routine maintenance activities; and 2) the Order granting a waiver from the subject rule would prevent Paul Venturelli from suffering a violation of the principles of fairness.