

Section II Proposed Rules

PUBLIC SERVICE COMMISSION

RULE NOS.: RULE TITLES:
 25-4.020 Location of Records
 25-4.0201 Audit Access to Records
 PURPOSE AND EFFECT: Rule 25-4.020, F.A.C., would be amended to eliminate requirements for preservation of records for telecommunications companies. In addition, there would no longer be a waiver from the requirement for telecommunications companies to reimburse the Commission for travel when the records are located within 50 miles of the Florida state line. Rule 25-4.0201, F.A.C., would be amended to no longer require Commission access to a telecommunications company's affiliate company records. Also the word utility is changed to company. Docket No.: 120050-TP

SUMMARY: Rule 25-4.020, F.A.C., currently requires telecommunications companies to preserve their records for the period of time specified in Form PSC/ECR/17-T (5/93), and to keep their records at their offices within the State unless otherwise authorized by the Commission. The rule amendment would eliminate these requirements. The rule amendment would also eliminate the waiver of the reimbursement requirement for reasonable travel expenses incurred during a Commission review of out-of-state records that are located within 50 miles of the Florida state line. Rule 25-4.0201, F.A.C., currently requires Commission access to telecommunications company and affiliate company records. The rule amendment would no longer require Commission access to affiliate company records.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has been prepared by the agency.

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

RULEMAKING AUTHORITY: 350.127(2), 364.016, 364.183 FS.

LAW IMPLEMENTED: 364.016, 364.183, 364.183(1) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Rosanne Gervasi, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850)413-6224, rgervasi@psc.state.fl.us

THE FULL TEXT OF THE PROPOSED RULES IS:

25-4.020 Location and Preservation of Records.

~~(1) All records that a company is required to keep, by reason of these or other rules prescribed by the Commission, shall be kept at the office or offices of the company within the State unless otherwise authorized by the Commission.~~

~~(1)(2) No change.~~

~~(a) No change.~~

~~(b) The reimbursement requirement in subsection (1)(2) shall be waived:~~

~~± fFor any company that makes its out-of-state records available at the company's office located in Florida or at another mutually agreed upon location in Florida within 10 working days from the Commission's initial request. If 10 working days is not reasonable because of the complexity and nature of the issues involved or the volume and type of material requested, the Commission may establish a different time frame for the company to bring records into the state. For individual data requests made during an audit, the response time frame established in Rule 25-4.0201, F.A.C., shall control; or~~

~~2. For a company whose records are located within 50 miles of the Florida state line.~~

~~(3) All records shall be preserved for the period of time specified in Form PSC/ECR/17 T (5/93), entitled "Schedule of Records and Periods of Retention" which is incorporated by reference into this rule, and may be obtained from the Director, Division of Economic Regulation, Florida Public Service Commission.~~

~~(a) However, all source documents retained as required by subsection 25-4.020(3), F.A.C., shall be maintained in their original form for a minimum of three years, or for any lesser period of time specified for that type of record in Form PSC/ECR/17-T, after the date the document was created or received by the company. This paragraph does not require the company to create paper copies of documents where the company would not otherwise do so in the ordinary course of its business. The Commission may waive the requirement that documents be retained in their original form upon a showing by a company that it employs a storage and retrieval system that consistently produces clear, readable copies that are substantially equivalent to the originals, and clearly reproduces handwritten notations on documents.~~

~~(b) The company shall maintain written procedures governing the conversion of source documents to a storage and retrieval system, which procedures ensure the authenticity of~~

~~documents and the completeness of records. Records maintained in the storage and retrieval system must be easy to search and easy to read.~~

~~(2)(4)~~ No change.

Rulemaking Authority 350.127(2), 364.016, ~~364.17, 364.18~~, 364.183; ~~364.185~~ FS. Law Implemented 364.016, ~~364.17, 364.18~~, 364.183; ~~364.185~~ FS. History—Revised 12-1-68, Amended 3-31-76, Formerly 25-4.20, Amended 6-23-93, 11-13-95, 1-25-09, _____.

25-4.0201 Audit Access to Records.

This rule addresses the reasonable access to company utility and affiliate records provided by Section 364.183(1), F.S., for the purposes of management and financial audits.

(1) No change.

(2) Reasonable access means that company responses to audit requests for access to records shall be fully provided within the time frame established by the auditor. In establishing a due date, the auditor shall consider the location of the records, the volume of information requested, the number of pending requests, the amount of independent analysis required, and reasonable time for the company utility to review its response for possible claims of confidentiality or privilege.

(3) In those instances where the company utility disagrees with the auditor's assessment of a reasonable response time to the request, the company utility shall first attempt to discuss the disagreement with the auditor and reach an acceptable revised date. If agreement cannot be reached, the company utility shall discuss the issue with successive levels of supervisors at the Commission until an agreement is reached. If necessary, a final decision shall be made by the Prehearing Officer. If the audit is related to an undocketed case, the Chairman shall make the decision.

(4) The company utility and its affiliates shall have the opportunity to safeguard ~~its their~~ records by copying them or logging them out, provided, however, that safeguard measures shall not be used to prevent reasonable access by Commission auditors to company utility or affiliate records.

(5) through (7) No change.

Rulemaking Authority 350.127(2) FS. Law Implemented 364.183(1) FS. History—New 3-1-95, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Dale Mailhot

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 27, 2012

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Vol. 37, No 43, October 28, 2011; Vol. 38, No. 14, April 6, 2012

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-602.205
RULE TITLE: Inmate Telephone Use

PURPOSE AND EFFECT: Currently, inmates are only permitted to make collect calls to pre-approved, personal landline phones. The purpose and effect of the proposed rulemaking is to permit inmates to also make collect telephone calls to pre-approved, personal cell phones upon establishment of a payment account for such calls.

SUMMARY: The rule is amended to permit inmates to make collect calls to personal cell phones, to allow inmate family/friends to establish payment accounts for cell phone calls, and to permit the temporary deactivation of telephone accounts under limited circumstances.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: the rulemaking will not result in any adverse economic impacts or regulatory increases that would require legislative ratification.

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

RULEMAKING AUTHORITY: 944.09 FS.

LAW IMPLEMENTED: 944.09 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Laura Gallagher, 501 S. Calhoun Street, Tallahassee, Florida 32399

THE FULL TEXT OF THE PROPOSED RULE IS:

33-602.205 Inmate Telephone Use.

(1) No change.

(2) Inmate telephone procedures will be conducted as follows:

(a) To initiate telephone privileges, inmates shall complete Form DC6-223, Inmate Telephone Agreement and Number List. Each inmate is limited to no more than 10 names and numbers of persons he or she wishes to access. Inmates shall not be allowed to telephone any person not on this list except

as outlined in paragraph (3)(a) and subsection (4) of this rule. Inmates shall not make three-way telephone calls nor make calls to numbers on the list which are then transferred to other telephone numbers. Inmates shall not be allowed to include business telephone numbers on the list. Collect calls to personal cell phone numbers will be allowed as follows:

1. The cell phone must be contracted through a wireless telecommunications company licensed by the Federal Communications Commission;

2. No calls to pre-paid or pay-as-you-go cell phones will be allowed;

3. No calls to business cell phone numbers will be allowed;

4. The inmate will be responsible for advising family/friends that they must contact the contractor for the inmate telephone system to establish a payment account for calls made to the cell phone number;

5. Billing information for the cell phone owner must be a physical address. The Department reserves the right to require that a copy of the cell phone contract be provided to the inmate telephone system contractor to verify ownership, physical address for billing information, and 1.-3. above.

(b) The reception center classification staff shall compile the inmate calling list through use of Form DC6-223, in conjunction with the acquisition of the inmate visiting list. Form DC6-223 shall become part of the inmate's permanent file and shall accompany the inmate with each subsequent transfer. Form DC6-223 is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator Office of Research, Planning and Support Services, 501 South Calhoun Street, Tallahassee, FL 32399-2500. The effective date of this form is 2012 September 24, 2007.

(c) through (l) No change.

(m) The Department shall have the ability to immediately temporarily deactivate any inmate's telephone account established under 2(a), upon approval of the Warden/Duty Warden, for any of the following reasons:

1. 48-hours prior to any transfer;

2. 48-hours prior to any outside medical appointment;

3. 48-hours prior to any outside court appointment.

(3) through (16) No change.

Rulemaking Authority 944.09 FS. Law Implemented 944.09 FS. History--New 11-19-81, Formerly 33-3.125, Amended 11-21-86, 1-6-92, 3-24-97, 7-22-97, 12-21-98, Formerly 33-3.0125, Amended 2-7-00, 6-18-02, 2-4-03, 12-30-03, 11-25-04, 1-7-07, 9-24-07, 3-23-08,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
James Upchurch, Deputy Assistant Secretary of Institutions
NAME OF AGENCY HEAD WHO APPROVED THE
PROPOSED RULE: Kenneth S. Tucker, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY
HEAD: February 27, 2012

DATE NOTICE OF PROPOSED RULE DEVELOPMENT
PUBLISHED IN FAW: March 9, 2012

WATER MANAGEMENT DISTRICTS

Southwest Florida Water Management District

RULE NO.: 40D-9.230
RULE TITLE: Potentially Dangerous Equipment

PURPOSE AND EFFECT: The purpose and effect of this rulemaking is to revise District Land Use Rule 40D-9.230, F.A.C., to conform with Section 790.33, Florida Statutes (2011), which expressly preempts the regulation of firearms and ammunition in Florida. District staff proposes amendments to the rule to eliminate any reference to firearms and ammunition regulation. Provisions relating to possession or use of other dangerous or potentially dangerous instruments, such as spears, paintball equipment and bows and arrows will remain.

SUMMARY: Section 790.33, Florida Statutes (2011), expressly preempts the regulation of firearms and ammunition in Florida. Effective October 1, 2011, all existing administrative rules, regulations or ordinances that seek to regulate firearms and ammunition were declared null and void. The Statute also establishes liabilities and penalties for any person or governmental entity that violates the law's occupation of the entire field of regulation by either enacting new regulations or enforcing any existing regulations concerning firearms and ammunition. District Land Use Rule 40D-9.230, F.A.C., prohibits the possession or use of firearms and other potentially dangerous equipment except in specific circumstances. In order to bring District Rules into conformance with Section 790.33, Florida Statutes, the District proposes amendments to the rule to eliminate any reference to firearms and ammunition regulation. Provisions relating to possession or use of other dangerous or potentially dangerous instruments, such as spears, paintball equipment and bows and arrows will remain. The District submitted the rule to the Legislature pursuant to Section 373.1391(6), F.S. for consideration during the 2012 session. The Legislature took no action, thereby resulting in approval of the rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency.

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

RULEMAKING AUTHORITY: 373.044, 373.113 FS.
 LAW IMPLEMENTED: 373.1391, 373.59 FS.
 IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: The Southwest Florida Water Management District Human Resources Director, 2379 Broad Street, Brooksville, Florida 34604-6899, telephone (352)796-7211, ext. 4702 or 1(800)423-1476 (FL only), ext. 4702, TDD (FL only) 1(800)231-6103 or email to ADACoordinator@swfwmd.tate.fl.us. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Barbara Martinez, Office of General Counsel, 7601 Highway 301 North, Tampa, FL 33637-6759, (813)985-7481 (4660) (OGC #2011046)

THE FULL TEXT OF THE PROPOSED RULE IS:

40D-9.230 ~~Potentially Dangerous Firearms and Similar Equipment.~~

The possession or use of ~~potentially dangerous firearms or similar~~ equipment on District Lands, as set forth below, is prohibited except:

- (1) For hunting purposes during specifically authorized hunts;
- (2) For District initiated land management activities;
- (3) As authorized by a Special Use Authorization.

~~Potentially dangerous equipment~~ ~~Firearms and similar equipment~~ includes ~~shotguns, rifles, muzzle loading guns, pistols, revolvers, air guns, gas guns,~~ blow guns, crossbows, spear guns, or other devices capable of mechanically propelling an arrow, spear, or ~~similar~~ other projectile. The use of paintball guns, paintball markers, and paintball equipment on District Lands is prohibited. Paintball equipment includes, but is not limited to: paint balls, paint gun refillable gas tanks, paint gun propellant canisters, and targets.

Rulemaking Specific Authority 373.044, 373.113 FS. Law Implemented 373.1391, 373.59 FS. History—New 7-20-04, Amended

NAME OF PERSON ORIGINATING PROPOSED RULE: Karen West, Managing Attorney, Office of General Counsel, Southwest Florida Water Management District
 NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Southwest Florida Water Management District Governing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 27, 2011
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 14, 2011

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Division of Hotels and Restaurants

RULE NO.: 61C-1.001
 RULE TITLE: Definitions

PURPOSE AND EFFECT: The purpose and effect of the proposed rule development is to revise the definitions to remove unnecessary definitions, and update definitions for consistency with the Food Code, standard terminology, and current practices.

SUMMARY: The proposed rule amends the definitions that apply to Rule Chapters 61C-1, 61C-3, and 61C-4, F.A.C., specifically the definition of commissary, fixed food establishment, hot water, and sewage. The proposed amendments also remove definitions of packaged and prepackaged, add definitions for temporary food service event and self-sufficient mobile food dispensing vehicle, and make technical changes to other definitions.

OTHER RULES INCORPORATING THIS RULE: None.

EFFECT ON THOSE OTHER RULES: Not Applicable

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: the economic review conducted by the agency.

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

RULEMAKING AUTHORITY: 509.032 FS.

LAW IMPLEMENTED: 509.032 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Michelle Comingore, Operations Review Specialist, Division of Hotels and Restaurants, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399, (850)488-1133, Michelle.Comingore@dbpr.state.fl.us

THE FULL TEXT OF THE PROPOSED RULE IS:

61C-1.001 Definitions.

Except when otherwise defined in this rule, the definitions provided in paragraph 1-201.10(B), Food Code, 2001 Recommendations of the United States Public Health Service/Food and Drug Administration; the 2001 Food Code Errata Sheet (August 23, 2001); and Supplement to the 2001 FDA Food Code (August 29, 2003) shall apply to Chapters 61C-1, 61C-3 and 61C-4, F.A.C. In addition, the following definitions apply to Chapters 61C-1, 61C-3 and 61C-4, F.A.C.:

(1) through (7) No change.

(8) Commissary – A public food service establishment licensed by the division or a food establishment permitted by the Department of Agriculture and Consumer Services, which is utilized by a mobile food dispensing vehicle for the purpose of providing all required support services, including potable water and wastewater disposal, that are not available on the mobile food dispensing vehicle. An approved food service establishment, commercial establishment, where food, containers, or supplies are stored, prepared, or packaged, or where utensils are sanitized for transit to, and sale or service at other locations, or where liquid and solid wastes are disposed, or where potable water is obtained.

(9) through (10) No change.

~~(11) District – The district administrator in one of the established district offices of the division, or their designee.~~

~~(11)(12) Double – As it refers to public lodging occupancy, this term means two people.~~

~~(12)(13) Fixed food establishment – A public food service establishment which operates at a specific location and is permanently connected to electrical, water, and sewage disposal systems.~~

~~(13)(14) Food Code – This term as used in Chapters 61C-1, 61C-3, and 61C-4, F.A.C., means paragraph 1-201.10(B), Chapter 2, Chapter 3, Chapter 4, Chapter 5, Chapter 6, and Chapter 7 of the Food Code, 2001 Recommendations of the United States Public Health Service/Food and Drug Administration including Annex 3: Public Health Reasons/Administrative Guidelines; Annex 5: HACCP Guidelines of the Food Code; the 2001 Food Code Errata Sheet (August 23, 2002); and Supplement to the 2001 FDA Food Code (August 29, 2003), herein adopted by reference. A copy of the Food Code, as adopted by the division, is available on the division's Internet website www.MyFloridaLicense.com/dbpr/hr. A copy of the entire Food Code is available on the U.S. Food and Drug Administration Internet website. Printed copies of the entire Food Code are available through the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.~~

~~(14)(15) Food establishment – As utilized in the Food Code, this term shall apply to public lodging establishments and food service establishments as defined in Chapter 509, F.S., according to the context of the applicable rule language.~~

~~(15)(16) Garbage – Food waste generated on premises that is not disposed of through the sewage disposal system. The term also includes solid waste such as discarded containers or wrappers that are contaminated with food waste.~~

~~(16)(17) Hot water – Hot water means a water temperature of 100 ~~110~~ degrees Fahrenheit or above.~~

~~(17)(18) Manager – An individual who has direct authority, control or supervision over employees engaged in the storage, preparation, display and serving of food to the public.~~

~~(18)(19) Misbranded – As provided in Section 500.11, F.S.~~

~~(19)(20) Owner – A person, firm or corporation who, or which, owns or controls the premises property.~~

~~(21) Packaged – Items prepared in a public food service establishment that are bottled, canned, cartoned, bagged, or securely wrapped, and sealed and sold for off-premises consumption. Such items customarily sold as “take-out” or “to-go” orders shall not be considered as packaged items for the purposes of this definition.~~

~~(20)(22) Potable water – Water satisfactory for drinking, culinary, and domestic purposes meeting quality standards of Rules 62-550 and 62-555, F.A.C.~~

~~(21)(23) Premises – The physical public food service or lodging establishment and the contiguous land or property under the control of the operator. The physical property may include all yards, alleys, driveways, sidewalks, and other exterior portions of the licensed premises.~~

~~(24) Pre-packaged – foods which have been prepared and bottled, canned, cartoned, bagged or securely wrapped in commercial food processing establishments.~~

~~(22)(25) Railway – Either a railing or a guardrail system of building components located near the open sides of elevated walking surfaces.~~

~~(23)(26) Remodel Remodeled – To make any The term remodeled means any change to an existing public food service establishment which affects the sanitation or safety of the establishment.~~

~~(24) Self-sufficient mobile food dispensing vehicle – A public food service establishment classified as a mobile food dispensing vehicle that contains, as part of the vehicle, a three compartment sink for washing, rinsing, and sanitizing equipment and utensils; a separate handwash sink; adequate refrigeration and storage capacity; full provision of power utilities including electrical, LP gas, or a portable power generation unit; a potable water holding tank; and a liquid waste disposal system in accordance with Subparts 5-3 and 5-4 of the Food Code.~~

~~(25)(27)~~ Sewage – Any liquid waste containing chemicals or animal, mineral, or vegetable matter, or in suspension or solution, and may include liquids containing chemicals in solution. ~~Included in this definition is~~ liquid waste from sinks, bathroom toilet facilities, grinders, garbage containers, dishwashing machines, floor drains, floor washing or handwashing facilities.

~~(26)(28)~~ Single – As it refers to public lodging occupancy, this term means one person.

~~(27)(29)~~ Stairway – One or more flights of stairs or steps, either interior or exterior, and the landings, platforms, or other supporting structures necessary to connect separate levels in order to form a continuous passage from one level to another in a building structure.

~~(28)~~ Temporary food service event – Any event of 30 or fewer consecutive days in duration, advertised and recognized in the community, where food is prepared, served, or sold to the general public.

~~(29)(30)~~ Wholesome – Food which is in sound condition, clean, free from adulteration and otherwise suitable for human consumption.

Rulemaking Specific Authority 509.032 FS. Law Implemented 509.032 FS. History—Amended 9-20-63, 3-21-64, 1-7-70, Revised 2-4-71, Amended 10-18-71, 11-17-73, 12-18-74, 12-5-82, Formerly 7C-1.01, Amended 9-10-89, 12-31-90, 2-27-92, 11-4-92, Formerly 7C-1.001, Amended 3-31-94, 10-9-95, 9-25-96, 1-1-98, 12-6-00, 2-27-05, 8-12-08, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Bill Veach, Director, Division of Hotels and Restaurants,
Department of Business and Professional Regulation

NAME OF AGENCY HEAD WHO APPROVED THE
PROPOSED RULE: Ken Lawson, Secretary, Department of
Business and Professional Regulation

DATE PROPOSED RULE APPROVED BY AGENCY
HEAD: April 4, 2012

DATE NOTICE OF PROPOSED RULE DEVELOPMENT
PUBLISHED IN FAW: October 7, 2011

DEPARTMENT OF HEALTH

Board of Nursing

RULE NO.: 64B9-8.006
RULE TITLE: Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances

PURPOSE AND EFFECT: The Board proposes this rule amendment to include the penalties and sentencing guidelines for health care fraud of Ch. 2011-224, Laws of Florida to restructure the rule to group identical or similar violations in Chapters 456 and 464, F.S., together, and to adopt revisions determined by the Board in review of its rules.

SUMMARY: The purpose of this amendment is to include the penalties and sentencing guidelines for health care fraud of Ch. 2011-224, Laws of Florida to restructure the rule to group

identical or similar violations in Chapters 456 and 464, F.S., together, and to adopt revisions determined by the Board in review of its rules.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: During discussion of the economic impact of this rule at its Board meeting, the Board, based upon the expertise and experience of its members, determined that a Statement of Estimated Regulatory Costs (SERC) was not necessary and that the rule will not require ratification by the Legislature. No person or interested party submitted additional information regarding the economic impact at that time.

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

RULEMAKING AUTHORITY: 456.072, 456.079 FS.

LAW IMPLEMENTED: 456.072, 456.079, 464.018 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Joe R. Baker, Jr., Executive Director, Board of Nursing, 4052 Bald Cypress Way, Bin #C02, Tallahassee, Florida 32399-3252

THE FULL TEXT OF THE PROPOSED RULE IS:

(Substantial rewording of Rule 64B9-8.006 follows. See Florida Administrative Code for present text.)

64B9-8.006 Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances.

(1) The legislature created the Board to assure protection of the public from nurses who do not meet minimum requirements for safe practice or who pose a danger to the public. The suspensions, restrictions of practice, and conditions of probation used by the Board in discharging its duties under Sections 464.018 and 456.072, F.S., shall include, but are not limited to, the following:

(a) Suspension until appearance before the Board or for a definite time period and demonstration of ability to practice safely.

(b) Suspension until appearance before the Board, or for a definite time period, and submission of mental or physical examinations from professionals specializing in the diagnosis or treatment of the suspected condition, completion of counseling, completion of continuing education, and ability to practice safely.

(c) Suspension until fees and fines paid or until proof of continuing education completion submitted.

(d) Suspension until evaluation by and treatment in the Intervention Project for Nurses.

(e) Suspension stayed so long as the licensee complies with probationary conditions.

(f) Probation with the minimum conditions of not violating laws, rules, or orders related to the ability to practice nursing safely, keeping the Board advised of the nurse's address and employment, and supplying both timely and satisfactory probation and employer/supervisor reports, or the requirement that work must be under direct supervision on a regularly assigned basis.

(g) Probation with specified continuing education courses in addition to the minimum conditions. In those cases involving unprofessional conduct or substandard practice, including recordkeeping, the Board finds continuing education directed to the practice deficiency to be the preferred punishment.

(h) Personal appearances before the Board to monitor compliance with the Board's order.

(i) Administrative fine and payment of costs associated with probation or professional treatment.

(2) The Board sets forth below a range of disciplinary guidelines from which disciplinary penalties will be imposed upon practitioners and applicants for licensure guilty of violating Chapters 464 and 456, F.S. The purpose of the disciplinary guidelines is to give notice to licensees and applicants of the range of penalties which will normally be imposed upon violations of particular provisions of Chapters 464 and 456, F.S.

(3) The following disciplinary guidelines shall be followed by the Board in imposing disciplinary penalties upon licensees for violation of the noted statutes and rules:

(a) Procuring, attempting to procure, or renewing a license to practice nursing by bribery, by knowing misrepresentations, or through an error of the department or board. (Section 456.072(1)(h) or 464.018(1)(a), F.S.)

	MINIMUM	MAXIMUM
FIRST OFFENSE	\$500 fine and probation	revocation

(b) Having a license to practice nursing revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory or country. (Section 456.072(1)(f) or 464.018(1)(b), F.S.)

	MINIMUM	MAXIMUM
FIRST OFFENSE	Letter of concern	same penalty as penalty imposed in other jurisdiction
SECOND OFFENSE	same penalty as imposed by other jurisdiction	revocation

(c) Criminal Violations:

1. Being convicted of or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication a crime in any jurisdiction which directly relates to the practice of nursing or to the ability to practice nursing. (Sections 456.072(1)(c), 464.018(1)(c), misdemeanors in violation of 464.018(1)(d)3., or (d)7., or 464.018(1)(e), for crimes set forth in Section 435.04(2)(a) through (t), (v) through (dd) or (ff), F.S.)

	MINIMUM	MAXIMUM
FIRST OFFENSE	Reprimand	\$500 fine and suspension
SECOND OFFENSE	\$500 fine and probation	Revocation

2. Being found guilty, regardless of adjudication, of a violation of Chapter 776, 784, 812, 827, 415 or 39, F.S. (Sections 464.018(1)(d)1., (d)2., (d)5., (d)6., (d)7., or (d)8., or a misdemeanor violation of Chapter 409 or 817, F.S.)

	MINIMUM	MAXIMUM
FIRST OFFENSE	Reprimand	\$500 fine and suspension
SECOND OFFENSE	\$500 fine and probation	Revocation

3. Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication a felony violation of Chapter 409, 817 or 893, F.S., or of any crime related to health care fraud, F.S. (Section 456.072(1)(ll), 464.018(d)3., or 464.018(1)(e) for crimes set forth in Section 435.03(2)(u) or (ee), F.S.)

	MINIMUM	MAXIMUM
FIRST OFFENSE	\$500 fine and probation	revocation

4. Being found guilty, regardless of adjudication, of a violation of Chapter 800, F.S., relating to lewdness and indecent exposure. (Section 464.018(1)(d)4., F.S.)

	MINIMUM	MAXIMUM
FIRST OFFENSE	\$250 fine and probation	revocation

(d) Making or filing a false report or record, which the licensee knows to be false, intentionally or negligently failing to file a report or records required by state or federal law, willfully impeding or obstructing such filing or inducing another person to do so; Intentionally submitting a claim, statement or bill that has been upcoded as defined in Section 627.736, F.S. for a PIP claim or for services that were not rendered. (Section 456.072(1)(l), (ee) or (ff) or 464.018(1)(f), F.S.)

	MINIMUM	MAXIMUM
FIRST OFFENSE	\$250 fine, continuing education or probation	\$500 fine and suspension
SECOND OFFENSE	\$500 fine and suspension	Revocation

(e) False, misleading or deceptive advertising. (Section 464.018(1)(g), F.S.)

	MINIMUM	MAXIMUM
FIRST OFFENSE	\$100 fine	\$250 fine and probation
SECOND OFFENSE	\$250 fine and probation	\$500 fine and suspension

(f) Unprofessional conduct as defined by Rule 64B9-8.005, F.A.C. (Section 464.018(1)(h), F.S.).

1. Subsections 64B9-8.005(1), (2), (5) and (12), F.A.C.

	MINIMUM	MAXIMUM
FIRST OFFENSE	Reprimand, \$250 fine, and continuing education	\$500 fine and suspension with IPN evaluation or probation
SECOND OFFENSE	\$500 fine, suspension and IPN evaluation	Revocation

2. Subsections 64B9-8.005(6), (9), (10) and (11), F.A.C.

	MINIMUM	MAXIMUM
FIRST OFFENSE	Reprimand, \$500 fine and continuing education	Revocation

3. Subsections 64B9-8.005(3), (7), (8) and (13), F.A.C.

	MINIMUM	MAXIMUM
FIRST OFFENSE	Reprimand, \$250 fine and continuing education	\$500 fine and probation
SECOND OFFENSE	\$750 fine and probation	Revocation

4. Subsections 64B9-8.005(4) and (14), F.A.C.

FIRST OFFENSE	Revocation	
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5. Subsections 64B9-8.005(15), F.A.C.

	MINIMUM	MAXIMUM
FIRST OFFENSE	\$5,000 fine	Revocation

(g) Engaging or attempting to engage in the possession, sale or distribution of controlled substances as set forth in Chapter 893, F.S. for illegitimate purposes; being unable to practice nursing with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, or chemicals or any other type of material or as a result of any mental or physical condition; testing positive for any drug, as defined in Section 112.0455, F.S., on any confirmed pre-employment or employer-ordered drug screening when the practitioner does not have a lawful prescription and legitimate medical reason for using such drug; or being terminated from a treatment program for impaired practitioners for failure to comply without good cause with the terms of the monitoring or treatment contract, or not successfully completing a drug or alcohol treatment program. (Section 456.072(1)(z), (aa), or (hh), or 464.018(1)(i) or (j), F.S.)

	MINIMUM	MAXIMUM
FIRST OFFENSE	\$250 fine, suspension and IPN evaluation	\$500 fine, suspension
SECOND OFFENSE	\$500 fine, suspension and IPN evaluation	revocation

(h) Failing to report to the department any person who the licensee knows is in violation of this part or of the rules of the department or the board; however, if the licensee verifies that such person is actively participating in a board-approved program for the treatment of a physical or mental condition, the licensee is required to report such person only to an impaired professionals consultant. (Section 456.072(1)(i) or 464.018(1)(k), F.S.)

	MINIMUM	MAXIMUM
FIRST OFFENSE	\$100 fine and continuing education	\$250 fine and probation
SECOND OFFENSE	\$250 fine and probation	\$500 fine, continuing education and suspension

(i) Knowingly violating any provision of Chapters 456 or 464, F.S., a rule of the board or the department, or a lawful order of the board or department previously entered in a disciplinary proceeding or failing to comply with a lawfully issued subpoena of the department; or failing to perform any statutory or legal obligation placed on a licensee. (Section 456.072(1)(b), (k) or (q) or 464.018(1)(l) or (o), F.S.)

	MINIMUM	MAXIMUM
FIRST OFFENSE	\$250 fine and compliance with rule or terms of prior order	\$500 fine and suspension until compliant with rule or terms of prior order

<u>SECOND OFFENSE</u>	<u>\$500 fine and suspension until compliant with rule or terms of prior order</u>	<u>revocation</u>
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(j) Failing to report to the department any licensee under Chapter 458 or under Chapter 459, F.S., who the nurse knows has violated the grounds for disciplinary action set out in the law under which that person is licensed and who provides health care services in a facility licensed under Chapter 395, F.S., or a health maintenance organization certificated under part I of Chapter 641, F.S., in which the nurse also provides services. (Section 464.018(1)(m), F.S.)

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>Reprimand</u>	<u>revocation</u>

(k) Failing to meet minimal standards of acceptable and prevailing nursing practice, including engaging in acts for which the licensee is not qualified by training or experience, or practicing; or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities the licensee knows, or has reason to know, the licensee is not competent to perform. (Section 456.072(1)(o) or 464.018(1)(n), F.S.)

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>Reprimand, \$250 fine, and continuing education</u>	<u>revocation</u>

(l) Making misleading, deceptive or fraudulent representations in or related to the practice of the licensee's profession or making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession. (Section 456.072(1)(a) or (m), F.S.)

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>Reprimand and \$250 fine</u>	<u>\$500 fine and suspension</u>
<u>SECOND OFFENSE</u>	<u>\$500 fine and suspension</u>	<u>revocation</u>

(m) Using a Class III or a Class IV laser device or product, as defined by federal regulations, without having complied with the rules adopted under Section 501.122(2), F.S., governing the registration of the devices. Section 456.072(1)(d), F.S.)

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>Reprimand and \$100 fine</u>	<u>\$250 fine and probation</u>
<u>SECOND OFFENSE</u>	<u>\$250 fine and probation</u>	<u>\$500 fine and suspension</u>

(n) Failing to comply with the educational course requirements (Section 456.072(1)(e) or (s), F.S. or Rule 64B9-5.002, F.A.C.).

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>Reprimand and \$250 fine</u>	<u>\$500 fine and suspension until licensee complies</u>
<u>SECOND OFFENSE</u>	<u>\$500 fine and suspension until licensee complies</u>	<u>\$750 fine, suspension until licensee complies followed by probation</u>

(o) Having been found liable in a civil proceeding for knowingly filing a false report or complaint with the department against another licensee. (Section 456.072(1)(g), F.S.)

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>Reprimand and \$250 fine</u>	<u>\$500 fine and suspension</u>
<u>SECOND OFFENSE</u>	<u>\$500 fine and suspension</u>	<u>Revocation</u>

(p) Aiding, assisting, procuring, employing, or advising any unlicensed person or entity to practice a profession contrary to this chapter, the chapter regulating the profession, or the rules of the department or the board. (Section 456.072(1)(j), F.S.)

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>\$250 fine and continuing education</u>	<u>\$500 fine and probation or suspension</u>
<u>SECOND OFFENSE</u>	<u>\$500 fine and probation or suspension</u>	<u>revocation</u>

(q) Exercising influence on the patient or client for the purpose of financial gain of the licensee or a third party. (Section 456.072(1)(n), F.S.)

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>\$250 fine and probation</u>	<u>Revocation</u>

(r) Delegating or contracting for the performance of professional responsibilities by a person when the licensee delegating or contracting for performance of the responsibilities knows, or has reason to know, the person is not qualified by training, experience, and authorization when required to perform them. (Section 456.072(1)(p), F.S.)

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>\$250 fine and probation</u>	<u>Revocation</u>

(s) Improperly interfering with an investigation or inspection authorized by statute, or with any disciplinary proceeding. (Section 456.072(1)(r), F.S.)

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>Reprimand and \$250 fine</u>	<u>\$500 fine and suspension</u>
<u>SECOND OFFENSE</u>	<u>\$500 fine and probation</u>	<u>revocation</u>

(t) Failing to identify through written notice, which may include the wearing of a name tag, or orally to a patient the type of license under which the practitioner is practicing. (Section 456.072(1)(t), F.S.)

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>Letter of concern</u>	<u>Reprimand and \$200 fine</u>
<u>SECOND OFFENSE</u>	<u>Reprimand and \$500 fine</u>	<u>\$500 fine and probation</u>

(u) Failing to comply with the requirements of Sections 381.026 and 381.0261, F.S., to provide patients with information about their patient rights and how to file a patient complaint.

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>\$100 fine and continuing education</u>	<u>\$250 fine and probation</u>
<u>SECOND OFFENSE</u>	<u>\$500 fine and probation</u>	<u>\$500 fine and suspension</u>

(v) Engaging or attempting to engage in sexual misconduct as defined and prohibited in Section 456.063(1), F.S.

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>\$250 fine, suspension and IPN evaluation</u>	<u>\$500 fine, suspension and IPN evaluation, or revocation</u>

(w) Failing to comply with the requirements for profiling and credentialing, including, but not limited to, failing to provide initial information, failing to timely provide updated information, or making misleading, untrue, deceptive, or fraudulent representations on a profile, credentialing, or initial or renewal licensure application. (Section 456.072(1)(w) or 456.041(7), F.S.)

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>Reprimand and \$250 fine</u>	<u>\$500 fine and suspension until compliant</u>

<u>SECOND OFFENSE</u>	<u>\$500 fine and probation</u>	<u>\$750 fine and suspension until compliant</u>
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For failure to verify the profile contents and to correct any factual errors in the licensee's profile within the 30-day period in Section 456.041(7), F.S.: A fine of \$50 per day.

(x) Failing to report to the board, or the department if there is no board, in writing within 30 days after the licensee has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction. (Section 456.072(1)(x), F.S.)

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>Reprimand, \$250 fine and continuing education</u>	<u>\$500 fine and probation</u>
<u>SECOND OFFENSE</u>	<u>\$500 fine and probation</u>	<u>revocation</u>

(y) Using information about people involved in motor vehicle accidents which has been derived from accident reports made by law enforcement officers or persons involved in accidents under Section 316.066, F.S., or using information published in a newspaper or other news publication or through a radio or television broadcast that has used information gained from such reports, for the purposes of commercial or any other solicitation whatsoever of the people involved in the accidents. (Section 456.072(1)(y), F.S.)

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>Reprimand and \$100 fine</u>	<u>\$250 fine and probation</u>
<u>SECOND OFFENSE</u>	<u>\$250 fine and probation</u>	<u>\$500 fine and suspension followed by probation</u>

(z) Performing or attempting to perform health care services on the wrong patient, a wrong-site procedure, a wrong procedure, or an unauthorized procedure or a procedure that is medically unnecessary or otherwise unrelated to the patient's diagnosis or medical condition or leaving a foreign body in a patient, such as a sponge, clamp, forceps, surgical needle, or other paraphernalia commonly used in surgical, examination, or other diagnostic procedures. (Section 456.072(1)(bb) or (cc), F.S.)

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>Reprimand, \$250 and continuing education</u>	<u>Reprimand, \$500 fine and continuing education</u>
<u>SECOND OFFENSE</u>	<u>\$500 fine and probation</u>	<u>\$750 and suspension</u>

(aa) Being convicted of, or entering a plea of guilty or nolo contendere to, any misdemeanor or felony, regardless of adjudication, being convicted of, or entering a plea of guilty or nolo contendere to, any misdemeanor or felony, regardless of adjudication, a crime in any jurisdiction which relates to health care fraud (Section 456.072(1)(ii) and (ll), F.S.).

MINIMUM

Revocation

(bb) Failing to remit the sum owed to the state for an overpayment from the Medicaid program pursuant to a final order, judgment, or stipulation or settlement (Section 456.072(1)(jj), F.S.).

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>\$500 and reprimand</u>	<u>Suspension until payment is made</u>
<u>SECOND OFFENSE</u>	<u>Suspend until payment is made</u>	<u>Revocation</u>

(cc) Being terminated from the state Medicaid program pursuant to Section 409.913, F.S., any other state Medicaid program, or the federal Medicare program, unless eligibility to participate in the program from which the practitioner was terminated has been restored (Section 456.072(1)(kk), F.S.).

	<u>MINIMUM</u>	<u>MAXIMUM</u>
	<u>\$500, Reprimand</u>	<u>Revocation</u>

(dd) Violating any of the provisions of Section 790.338 (Section 456.072(1)(nn), F.S.).

MINIMUM

Letter of Concern

Rulemaking Authority 456.072, 456.079 FS. Law Implemented 456.072, 456.079, 464.018 FS. History—New 2-5-87, Amended 8-12-87, 12-8-87, 11-23-89, 7-28-92, Formerly 21O-10.011, Amended 12-5-93, Formerly 61F7-8.006, Amended 5-1-95, Formerly 59S-8.006, Amended 8-18-98, 7-1-99, 3-23-00, 5-8-00, 5-2-02, 1-12-03, 2-22-04, 8-3-05, 7-5-06, 2-6-12, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Nursing

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Nursing

DATES PROPOSED RULE APPROVED BY AGENCY HEAD: May 3, 2011 and March 30, 2012

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 10, 2012

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Developmental Services Program

RULE NOS.:	RULE TITLES:
65B-38.001	Purpose and Intent
65B-38.002	Definitions
65B-38.003	General Standards

65B-38.004	Responsibilities for Operation
65B-38.005	License Required
65B-38.006	Licensure Procedure
65B-38.007	Admission Policies
65B-38.011	Dietary Services
65B-38.012	Drugs and Pharmaceutical Services
65B-38.013	Dental Services
65B-38.015	Training, Habilitation, Professional, and Special Programs and Services
65B-38.018	Psychological Services
65B-38.023	Administrative Management
65B-38.024	Personnel Standards
65B-38.025	Fiscal Standards
65B-38.026	Plant Maintenance and Housekeeping
65B-38.027	Rules of Procedures for Hearings
65B-38.028	Life Safety and Fire Protection
65B-38.030	Construction and Physical Environment Standards
65B-38.032	Severability
65B-38.033	Developmental Services Institutions and Developmental Services Funded Community Residential Facilities

PURPOSE AND EFFECT: The proposal will repeal all of the rules in Chapter 65B-38, F.A.C. These rules relate to a program no longer administered by the Department. The receiving agency did not want the rules transferred. The rules, therefore, are no longer necessary, and the Department no longer has statutory authority to maintain them.

SUMMARY: The Department is repealing these rules because they are unnecessary and the Department lacks statutory authority to maintain them.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein:

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

RULEMAKING AUTHORITY: 393.067, 393.051 FS.

LAW IMPLEMENTED: 393.067, 393.051 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Gregory Venz (850)488-2381 gregory_venz@dcf.state.fl.us

THE FULL TEXT OF THE PROPOSED RULES IS:

65B-38.001 Purpose and Intent.

Rulemaking Authority 393.067(7), 393.501(1), (2) FS. Law Implemented 393.067, 393.13, 393.501, 633.01, 633.022, 633.05 FS. History–New 12-1-78, Amended 7-7-81, Formerly 10D-38.01, Amended 9-3-89, 12-7-92, Formerly 10D-38.001, Repealed _____.

65B-38.002 Definitions.

Rulemaking Authority 393.067(7), 393.501(1), (2) FS. Law Implemented 393.063, 393.065(2), 393.067, 393.17 FS. History–New 12-1-78, Amended 7-7-81, 9-20-82, Formerly 10D-38.02, Amended 7-16-86, 9-3-89, 12-7-92, Formerly 10D-38.002, Repealed _____.

65B-38.003 General Standards.

Rulemaking Authority 393.067(7), 393.501(1) FS. Law Implemented 393.063(10), (29), 419 FS. History–New 12-1-78, Amended 7-7-81, Formerly 10D-38.03, Amended 9-3-89, 12-7-92, Formerly 10D-38.003, Repealed _____.

65B-38.004 Responsibilities for Operation.

Rulemaking Authority 393.067(7), 393.501(1) FS. Law Implemented 393.067(7), 393.13(2), 393.501(2), 393.062 FS. History–New 12-1-78, Amended 7-7-81, Formerly 10D-38.04, Amended 9-3-89, 12-7-92, Formerly 10D-38.004, Repealed _____.

65B-38.005 License Required.

Rulemaking Authority 393.067(7), 393.501(1) FS. Law Implemented 393.067(7), 393.501(2) FS. History–New 12-1-78, Amended 7-7-81, Formerly 10D-38.05, Amended 9-3-89, 12-7-92. Formerly 10D-38.005, Repealed _____.

65B-38.006 Licensure Procedure.

Rulemaking Authority 393.067(7), 393.501(1) FS. Law Implemented 393.0655, 393.067(4), (13), 393.501(2) FS. History–New 12-1-78, Amended 7-7-81, 9-20-82, 5-13-86, Formerly 10D-38.06, Amended 7-16-86, 9-3-89, 10-6-91, 12-7-92, Formerly 10D-38.006, Repealed _____.

65B-38.007 Admission Policies.

Rulemaking Authority 393.067(7) FS. Law Implemented 393.065, 393.067, 393.13(3) FS. History–New 12-1-78, Amended 7-7-81, 9-20-82, Formerly 10D-38.07, Amended 9-3-89, 12-7-92, Formerly 10D-38.007, Repealed _____.

65B-38.011 Dietary Services.

Rulemaking Authority 393.067(7) FS. Law Implemented 393.067 FS. History–New 12-1-78, Amended 7-7-81, 9-20-82, Formerly 10D-38.11, Amended 9-3-89, Formerly 10D-38.011, Repealed _____.

65B-38.012 Drugs and Pharmaceutical Services.

Rulemaking Authority 393.067(7) FS. Law Implemented 393.067, 465, 465.019, 499, 893 FS. History–New 12-1-78, Amended 7-7-81, 9-20-82, Formerly 10D-38.12, Amended 9-3-89, 12-7-92, Formerly 10D-38.012, Repealed _____.

65B-38.013 Dental Services.

Rulemaking Authority 393.067(7) FS. Law Implemented 393.067(7) FS. History–New 12-1-78, Amended 7-7-81, Formerly 10D-38.13, Amended 9-3-89, 12-7-92, Formerly 10D-38.013, Repealed _____.

65B-38.015 Training, Habilitation, Professional, and Special Programs and Services.

Rulemaking Authority 393.067(7) FS. Law Implemented 393.067(7), 393.13(2) FS. History–New 12-1-78, Amended 7-7-81, 9-20-82, Formerly 10D-38.15, Amended 7-16-86, 9-3-89, 12-7-92, Formerly 10D-38.015, Repealed _____.

65B-38.018 Psychological Services.

Rulemaking Authority 393.067(7) FS. Law Implemented 393.065(2), 393.067 FS. History–New 12-1-78, Amended 7-7-81, 9-20-82, Formerly 10D-38.18, Amended 9-3-89, Formerly 10D-38.018, Repealed _____.

65B-38.023 Administrative Management.

Rulemaking Authority 393.067(7) FS. Law Implemented 393.067(7) FS. History–New 12-1-78, Amended 7-7-81, Formerly 10D-38.23, Amended 9-3-89, 12-7-92, Formerly 10D-38.023, Repealed _____.

65B-38.024 Personnel Standards.

Rulemaking Authority 393.067(7), 381.0035(4) FS. Law Implemented 393.067(7), 393.13(2)(c), 381.0035(1), (2), (3) FS. History–New 12-1-78, Amended 7-7-81, 9-20-82, Formerly 10D-38.24, Amended 7-16-86, 9-3-89, 12-7-92, Formerly 10D-38.024, Repealed _____.

65B-38.025 Fiscal Standards.

Rulemaking Authority 393.067(7) FS. Law Implemented 393.13(3), (4)(b), 393.067(10), 402.17(2) FS. History–New 12-1-78, Amended 7-7-81, Formerly 10D-38.25, Amended 12-7-92, Formerly 10D-38.025, Repealed _____.

65B-38.026 Plant Maintenance and Housekeeping.

Rulemaking Authority 393.067(7) FS. Law Implemented 393.067 FS. History–New 12-1-78, Amended 7-7-81, Formerly 10D-38.26, Amended 9-3-89, Formerly 10D-38.026, Repealed _____.

65B-38.027 Rules of Procedures for Hearings.

Rulemaking Authority 393.067(7) FS. Law Implemented 393.125 FS. History--New 12-1-78, Amended 7-7-81, Formerly 10D-38.27, Amended 9-3-89, 12-7-92, Formerly 10D-38.027, Repealed

65B-38.028 Life Safety and Fire Protection.

Rulemaking Authority 393.067(7) FS. Law Implemented 393.067(7) FS. History--New 12-1-78, Amended 7-7-81, Formerly 10D-38.28, Amended 9-3-89, 12-7-92, Formerly 10D-38.028, Repealed

65B-38.030 Construction and Physical Environment Standards.

Rulemaking Authority 393.067(7) FS. Law Implemented 393.067(7), 553, Part V FS. History--New 12-1-78, Amended 7-7-81, 9-20-82, Formerly 10D-38.30, Amended 9-3-89, 12-7-92, Formerly 10D-38.030, Repealed

65B-38.032 Severability.

Rulemaking Authority 393.067(7) FS. Law Implemented 393.067 FS. History--New 12-1-78, Amended 7-7-81, Formerly 10D-38.32, 10D-38.032, Repealed

65B-38.033 Developmental Services Institutions and Developmental Services Funded Community Residential Facilities.

Rulemaking Authority 393.067(7), 393.501(1) FS. Law Implemented 393.067(7), 393.067(19) FS. History--New 12-7-92, Formerly 10D-38.033, Repealed

NAME OF PERSON ORIGINATING PROPOSED RULE: Gregory D. Venz, Assistant General Counsel
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: David E. Wilkins, Secretary
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 7, 2011

Section III
Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-601.226
RULE TITLE: Youthful Offender Program Participation

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 38, No. 11, March 16, 2012 issue of the Florida Administrative Weekly. The following language was inadvertently omitted after the first sentence of subsection (5)(a): Form DC6-188 is hereby incorporated by reference.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Division of Alcoholic Beverages and Tobacco

RULE NO.: 61A-10.083
RULE TITLE: Application for Retail Dealer Permit, Cigarette and Tobacco Products

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 38, No. 8, February 24, 2012 issue of the Florida Administrative Weekly has been withdrawn.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

RULE NOS.: 62-344.300, 62-344.500, 62-344.550, 62-344.600
RULE TITLES: Procedures for Requesting Delegation, Criteria for Review, Delegations to Entities Identified in Section 373.441(1)(g), F.S., Procedures for Identifying and Reconciling Duplicative Permitting and Incorporation of Stricter Local Standards

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. 38, No. 1, January 6, 2012 issue of the Florida Administrative Weekly.

62-344.300 Procedures for Requesting Delegation.

(1) through (12) No change.

(13) In the event a delegation under this chapter is not approved or denied within one year after being initiated, the local government seeking the delegation may petition the Governor and Cabinet for review of the request for delegation. Section 373.441(2), F.S., provides for Governor and Cabinet reversal of decisions of the Department. The date the local government submits its petition for delegation to the Department shall be considered the date the delegation was initiated. ~~The Governor and Cabinet may reverse the decision of the Department and may provide any necessary conditions to allow the delegation of authority to occur.~~

(a) through (c) No change.

(d) The petition shall include the following:

1. No change.

2. The mailing address, e-mail address, telephone number, and facsimile number of the primary contact person in the local government;

3. through 6. No change.

(14) through (17) No change.

62-344.500 Criteria for Review.

(1) through (3) No change.

(4) The Department shall not delegate the environmental resource permit program for the following.