

Any person requiring special accommodation at this workshop because of a disability or physical impairment should contact Linda Hawthorne at the above address. If you are hearing or speech impaired, please use the Florida Dual Party Relay system which can be reached at 1(800)955-8771 (TDD).

Section II
Proposed Rules

DEPARTMENT OF BANKING AND FINANCE

Division of Finance

RULE CHAPTER TITLE: RULE CHAPTER NO.:
Cemeteries 3D-30
RULE TITLE: RULE NO.:

Defaults on Sold or Discounted Installment
Sales Contracts or Promissory Notes 3D-30.025

PURPOSE AND EFFECT: The rule is being repealed because it is unnecessary.

SUMMARY: Rule 3D-30.025 is being repealed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory costs has been prepared.

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

SPECIFIC AUTHORITY: 497.103 FS.

LAW IMPLEMENTED: Chapter 497 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE TO BE ANNOUNCED.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Diana M. Evans, Executive Director, Board of Funeral and Cemetery Services, Department of Banking and Finance, Suite 604, The Fletcher Building, 101 East Gaines Street, Tallahassee, Florida 32399-0350, (850)410-9843

THE FULL TEXT OF THE PROPOSED RULE IS:

3D-30.025 Defaults on Sold or Discounted Installment Sales Contracts or Promissory Notes.

Specific Authority 20.05(5), 497.011(1), 120.53(2)(a) FS. Law Implemented 497.048(7), 497.022 FS. History--New 1-27-81, Formerly 3D-30.25, Repealed

NAME OF PERSON ORIGINATING PROPOSED RULE: Diana M. Evans, Executive Director, Board of Funeral and Cemetery Services, Department of Banking and Finance, Suite 604, The Fletcher Building, 101 East Gaines Street, Tallahassee, Florida 32399-0350, (850)410-9843

NAMES OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Craig Kiser, Deputy Comptroller, Division of Finance, Department of Banking and Finance, Suite 120, The Fletcher Building, 101 East Gaines Street, Tallahassee, Florida 32399-0350, (850)410-9256

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 15, 1997

DEPARTMENT OF BANKING AND FINANCE

Division of Finance

RULE CHAPTER TITLE: RULE CHAPTER NO.:
Cemeteries 3D-30

RULE TITLE: RULE NO.:
Charge for Installation and Maintenance

of Marker or Monument 3D-30.026

PURPOSE AND EFFECT: The rule is being repealed because the statutory authority on which it is based has been repealed.

SUMMARY: Rule 3D-30.026 is being repealed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory costs has been prepared.

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

SPECIFIC AUTHORITY: 497.103 FS.

LAW IMPLEMENTED: Chapter 497 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE TO BE ANNOUNCED.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Diana M. Evans, Executive Director, Board of Funeral and Cemetery Services, Department of Banking and Finance, Suite 604, The Fletcher Building, 101 East Gaines Street, Tallahassee, Florida 32399-0350, (850)410-9843

THE FULL TEXT OF THE PROPOSED RULE IS:

3D-30.026 Charge for Installation and Maintenance of Marker or Monument.

Specific Authority 20.05(5), 497.011(1), 120.53(2)(a) FS. Law Implemented 497.023(3) FS. History--New 1-27-81, Formerly 3D-30.26, Repealed

NAME OF PERSON ORIGINATING PROPOSED RULE: Diana M. Evans, Executive Director, Board of Funeral and Cemetery Services, Department of Banking and Finance, Suite 604, The Fletcher Building, 101 East Gaines Street, Tallahassee, Florida 32399-0350, (850)410-9843

NAMES OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Craig Kiser, Deputy Comptroller, Department of Banking and Finance, Suite 120, The Fletcher Building, 101 East Gaines Street, Tallahassee, Florida 32399-0350, (850)410-9256

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 29, 1997

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Agricultural Environmental Services

RULE TITLES: RULE NOS.:
Categories of Licensure for Pesticide Applicators 5E-9.021
Category Certification Standards 5E-9.024
Procedures for Pesticide Applicator Recertification 5E-9.029

PURPOSE AND EFFECT: The purpose of the proposed action is to amend Rules 5E-9.021, 5E-9.024 and 5E-9.029 to add one new category of pesticide applicator certification and clarify the competency standards of another category. The effect is to make the rules appropriately address current pesticide use in Florida.

SUMMARY: The proposed rule amendment adds a new category of pesticide applicator certification entitled "Natural Areas Weed Management" to provide specific training and licensing of individuals who apply restricted use herbicides to manage undesirable vegetation in natural areas such as state preserves and recreation lands. The proposal also clarifies the competency standards of the sewer root control category by requiring knowledge of the effects of sewer root control chemicals on ground water and septic systems.

SPECIFIC AUTHORITY: 570.07(23), 487.0435, 487.044 FS.

LAW IMPLEMENTED: 487.0435, 487.044 FS.

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

TIME AND DATE: 1:00 p.m., May 4, 1999

PLACE: Department of Agriculture and Consumer Services, AES Conference Room, Building 8, 3125 Conner Boulevard, Tallahassee, Florida 32399-1650

If special accommodations are needed to attend the hearing because of a disability, please call: Mr. Steven J. Rutz, Director, Division of Agricultural Environmental Services, Florida Department of Agriculture and Consumer Services, Room 130, 3125 Conner Boulevard (C16), Tallahassee, Florida 32399-1650, telephone (850)488-3731, as soon as possible.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Mr. Steven J. Rutz, Director, Division of Agricultural Environmental Services, Department of Agriculture and Consumer Services, Room 130, 3125 Conner Boulevard, Tallahassee, Florida 32399-1650, Telephone (850)488-3731

THE FULL TEXT OF THE PROPOSED RULES IS:

5E-9.021 Categories of Licensure for Pesticide Applicators.

(1) Description of primary categories.

(a) through (q) No change.

(r) Category 21 – Natural Areas Weed Management. This category is applicable to individuals who use or supervise the use of restricted use herbicides to control unwanted vegetation to protect natural communities of conservation and recreation lands and natural areas. This category is valid for licensure of commercial and public applicators. Applicators acting under the authority of another license category prior to this category being established may continue activities under the alternate category until license renewal or expiration.

(2) No change.

Specific Authority 487.0435, 570.07(23) FS. Law Implemented 487.0435 FS. History–New 6-9-94, Amended 7-2-95, 9-24-98,_____.

5E-9.024 Category Certification Standards.

(1) Primary categories.

(a) through (n) No change.

(o) Category 7C – Sewer Root Control. Applicators seeking licensure in this category shall demonstrate practical knowledge of the safe handling and proper application of sewer root control chemicals, including practical knowledge of root growth and biology; equipment types and calibration procedures; proper pesticide handling, mixing and application procedures; proper use and maintenance of personal protective equipment; toxicity of root control pesticides to humans and non-target organisms via common exposure routes; proper cleaning, disposal and containment techniques; effects of root control pesticides on ground water, sewage treatment plants, septic tanks, holding tanks, lift stations, and other sewage treating, conveying, or handling equipment; environmental effect; factors that may lead to a hazardous condition; and the laws and regulations governing pesticide use.

(p) through (q) No change.

(r) Category 21 – Natural Areas Weed Management. Applicators seeking licensure in this category shall demonstrate practical knowledge of pest plants that invade natural communities in Florida, the chemical control measures that pertain to such pests, and the equipment or methodologies required to safely implement such pest control measures. This knowledge shall include special techniques and proper herbicide selection to effectively control target species and minimize adverse effects to the natural community. Knowledge of herbicide characteristics including toxicity to wildlife, behavior in plants, behavior in soil, persistence, and environmental fate, as well as methods for herbicide dilution and rate calculations will be demonstrated.

Specific Authority 487.0435, 570.07(23) FS. Law Implemented 487.0435, 487.044 FS. History–New 6-9-94, Amended 7-2-95, 9-24-98,_____.

5E-9.029 Procedures for Pesticide Applicator Recertification.

(1) No change.

(2) In all other circumstances, applicators shall have two options for recertification as follows:

(a) No change.

(b) Continuing Education Units (CEUs). An applicator may become recertified by accumulating a specified number of Continuing Education Units (CEUs) during the four (4) year licensure period. CEUs shall be earned by attending Department approved professional training meetings and seminars. The number of CEUs required for applicator recertification in each specific category is as follows:

PRIMARY CATEGORIES	CEU'S REQUIRED
Category 1A1	Agricultural Row Crop Pest Control 8
Category 1A2	Agricultural Tree Crop Pest Control 8
Category 1B	Agricultural Animal Pest Control 4
Category 1C	Private Applicator Agricultural Pest Control 8
Category 1D	Soil and Greenhouse Fumigation 4
Category 1E	RawAgricultural Commodity Fumigation 4
Category 2	Forest Pest Control 8
Category 3	Ornamental and Turf Pest Control 12
Category 4	Seed Treatment 4
Category 5A	Aquatic Pest Control 16
Category 5B	Organotin Antifouling Paint Pest Control 4
Category 6	Right-of-Way Pest Control 8
Category 7A	Wood Treatment 4
Category 7B	Chlorine Gas Infusion 4
Category 7C	Sewer Root Control 4
Category 9	Regulatory Pest Control 12
Category 20	Regulatory Inspection and Sampling 4
Category 21	Natural Areas Weed Management 16
SECONDARY CATEGORIES	CEU'S REQUIRED
Category 10	Demonstration and Research 4
Category 11	Aerial Application 8

The Ornamental and Turf Pest Control and Aquatic Pest Control categories may be renewed with 8 CEUs until January 1, 2000.

(3) through (11) No change.

Specific Authority 487.487.049, 570.07(23) FS. Law Implemented 487.049 FS. History--New 6-9-94, Amended 7-2-95, 9-24-98,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mr. Dale W. Dubberly, Chief, Bureau of Compliance Monitoring, Division of Agricultural Environmental Services, Florida Department of Agriculture and Consumer Services, Room 800A, Building 8, 3125 Conner Boulevard (L29), Tallahassee, Florida 32399-1650, Telephone (850)488-8731

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Mr. Steven J. Rutz, Director, Division of Agricultural Environmental Services, Florida Department of Agriculture and Consumer Services, Room 130, 3125 Connor Boulevard (C16), Tallahassee, Florida 32399-1650, Telephone (850)488-3731

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 31, 1998

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 5, 1999

DEPARTMENT OF TRANSPORTATION

RULE CHAPTER TITLE: Regulation of Encroachments Over State Rights of Way

RULE CHAPTER NO.: 14-43

RULE TITLE: Regulation of Encroachments Over State Rights of Way

RULE NO.: 14-43.001

PURPOSE AND EFFECT: This amendment adds a "Definitions" section and two other sections for clarification, updates obsolete organizational references, streamlines and clarifies language, and revises the scope of the rule to include state rights of way, instead of streets and sidewalks. This is the first amendment of this rule since 1975. The rule defines the methods used by the Department to control encroachments (banners, canopies, and overhanging signs) over limited access and non-limited access state right of way. Existing provisions addressing directional signs are deleted, as they have been superseded by the recent amendment of Rule 14-51.004.

This notice of rulemaking replaces the notice previously published in Vol. 23, No. 20, May 16, 1997, issue of the Florida Administrative Weekly, which is being withdrawn in this same issue. This revised notice of rulemaking includes changes resulting from review by the Joint Administrative Procedures Committee.

SUMMARY: This rule amendment revises Rule 14-43.001 by expanding the scope of the rule to include temporary banners that extend over the right of way. For purposes of the rule, a banner is a length of flexible material that is attached to one or more permanent supports and extends over the right of way. The existing provisions of the rule addressing overhanging signs and canopies are revised and clarified. New provisions are added to address the conditions under which temporary banners may be displayed within the right of way of limited access and non-limited access rights of way. Banners may be displayed only pursuant to a permit issued to a local government to promote a public event that is sponsored by the local government. Standards for vertical and horizontal clearance for limited and non-limited access facilities are included in the rule. The current provisions addressing directional signs located in the right of way are deleted, as Rule 14-51.004 was recently amended to include criteria for such signs.

This notice of rulemaking replaces the notice previously published in Vol. 23, No. 20, May 16, 1997, issue of the Florida Administrative Weekly, which is being withdrawn in this same issue.

SPECIFIC AUTHORITY: 334.044(2) FS.
LAW IMPLEMENTED: 316.006, 316.0745, 316.077, 316.0775, 334.044, 335.02, 335.14, 337.29, 337.407, 338.237, 479.01, 479.107, 768.28 FS.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Regulatory Cost has been prepared.

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

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 10:00 a.m., April 23, 1999
PLACE: Haydon Burns Building, Fourth Floor Conference Room, Room 479, 605 Suwannee Street, Tallahassee, Florida
THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: James C. Myers, Administrative and Management Support Level IV, Florida Department of Transportation, Office of the General Counsel, 605 Suwannee Street, Mail Station 58, Tallahassee, Florida 32399-0458

THE FULL TEXT OF THE PROPOSED RULE IS:

REGULATION OF ENCROACHMENTS SIGNS, CANOPIES OVER STATE RIGHTS OF WAY STREETS AND SIDEWALKS

14-43.001 Regulation of Encroachments Signs, Canopies Over State Rights of Way Streets and Sidewalks.

(1) Definitions.

(a) “Banner” means a temporary encroachment in the form of a length or sheet of cloth, fabric, plastic, or other flexible material bearing a message which may be either of the following:

1. “Pole Banner” means a banner which is located adjacent to the travel lanes of the roadway and is attached to an existing permanent support.

2. “Street Banner” means a banner which extends over the travel lanes of the roadway and is attached to one or more existing permanent supports.

(b) “Canopy” means a permanent or semi-permanent, on-premise roof-like encroachment or projection partially extending over the right of way.

(c) “Department” means the State of Florida Department of Transportation.

(d) “Governmental entity” has the same meaning as provided in Section 11.45(1)(c), Florida Statutes.

(e) “Overhanging Sign” for purposes of this rule means a permanent encroachment in the nature of an on-premise advertising display pursuant to Section 479.16, Florida Statutes, which extends over the right of way.

(2)(H) Overhanging Signs and Canopies. Overhanging signs and canopies are prohibited on limited access rights of way. Conditions under which overhanging signs or canopies may be placed adjacent to along and over state rights of way roads within corporate limits of municipalities or where curb and gutter construction exists outside municipalities as authorized under Section 337.407 335.13, Florida Statutes, are:

(a) Where curb and gutter construction exists, Canopies of signs may be allowed provided the entire structure, including attachments and supports, they clears the sidewalk vertically by at least nine 9 feet (2.7 meters) and provided the outside edge of the canopy or sign is at least two 2 feet (0.6 meters) behind the vertical line through the face of the curb; and the entire structure complies with the Department’s clear zone requirements Table 2.12.1 Clear Zone Widths and Table 2.12.2 Clear Zone Widths for curved Alignments on Highways With Flush Shoulders (January 1998), incorporated herein by reference. Copies of these tables are available from the Office of Right of Way, 605 Suwannee Street, MS 22, Tallahassee, Florida 32399-0450.

(b) Within municipalities where there is no curb and gutter construction, provided the sign or canopy, including attachments and supports, does not extend more than six feet (1.8 meters) over the right of way; does not extend closer than 12 feet (3.7 meters) from the edge of the driving lane; has a vertical clearance of at least ten feet (3 meters); and the entire structure complies with the Department’s clear zone requirements as set forth in the Department’s Plans Preparation and Design Manual, Volume 1, Rev. 05/97, which is incorporated herein by reference and which is available at no more than cost from the Department’s Maps and Publications Sales Office. Where overhangs are existent during construction and where they interfere with the normal operation of the contractor’s equipment, they shall be adjusted or temporarily removed at the owner’s expense.

(c) Where canopies or overhanging signs interfere with construction, they shall be adjusted or temporarily removed at the owner’s expense. That the design of said signs or canopies as to bracing and attachments to buildings shall be approved for safety features by the appropriate official of the governmental agency affected.

(d) The design of said signs or canopies as to bracing and attachments to buildings shall be approved for safety features by the appropriate official of the governmental agency affected. That no supports for canopies or signs extend below the 9 foot vertical clearance line.

(e) Within municipalities where there is no curb and gutter, signs and canopies may be allowed provided the sign or canopy does not extend more than 6 feet over the right of way and does not extend closer than 12 feet from the edge of the pavement and provided it has a vertical clearance of at least 10 feet above the elevation of the pavement.

~~(e)(f)~~ No canopy or That no overhanging sign shall be erected away from the site of the business which it the sign advertises.

(f) No canopy or sign may be erected or maintained which would interfere with the Department's maintenance, operations, or other use of a transportation facility.

(g) Overhanging signs and canopies may be lighted, provided, however, the lighting is in compliance with section 479.11(5), Florida Statutes.

~~(h)(g)~~ If the Department determines that a canopy or overhanging sign is not erected safely or is not in compliance with the setback or clearance requirements, upon prior written notice by the Department, it must be adjusted by the owner to meet such requirements or it shall be removed by the Department. If the canopy or overhanging sign is removed, the Department shall deliver written notice to the owner. The notice shall advise the owner of the canopy or overhanging sign of his or her right to request an administrative proceeding pursuant to Chapter 120, Florida Statutes. If the canopy or overhanging sign presents a safety hazard, the Department shall remove it and provide written notice of such removal to the permittee. That temporary banners may be allowed across the roadway under a permit from the Administrative Services Office of the State of Florida Department of Transportation. In no case will permanent signs or banners be permitted across the roadway nor banners or signs of a commercial or political nature.

(i) When a canopy or overhanging sign must be removed by the Department, the owner may reclaim the canopy or sign within 30 calendar days from the date of removal upon payment of any costs incurred by the Department in removing the canopy or sign.

(j) No new supports may be placed within state rights of way for purposes of supporting a canopy or overhanging sign.

~~(k)(h)~~ This rule That this policy shall not authorize the erection of any canopy or sign which is prohibited by the municipality, county, local zoning authority, or local governmental agency affected.

(3) Banners may only be erected pursuant to a permit issued to a local government entity under the following conditions:

(a) All banners for which permits are issued shall be erected in accordance with the *Manual on Uniform Traffic Control Devices*, which is incorporated by reference under Rule 14-15.010, F.A.C.

(b) Banners will be permitted for a period not to exceed 30 consecutive calendar days, on dates set forth in the application. Banner permits for the same event shall not be renewed within 180 days.

(c) Permits for banners may be issued for routinely recurring events, e.g., events occurring monthly or quarterly, unless otherwise provided in this rule, provided the banner is displayed for no more than three consecutive days per month. The permit duration shall be no more than 12 months.

(d) No banner may be erected or maintained which would interfere with the Department's maintenance, operation, or other use of a transportation facility.

(e) Any banner that interferes with construction shall be adjusted or removed at the owner's expense.

(f) No new supports may be placed within state rights of way for purposes of supporting a banner.

(g) The banner must advertise a public event which is sponsored or supported by a governmental entity.

(h) Banners may not obstruct the view of any traffic signal, traffic device, or official sign, nor in any way interfere with motorists' ability to safely operate their vehicles.

(i) The following additional conditions apply to banners adjacent to or across non-limited access roadways:

1. Pole banners must vertically clear any curb by at least nine feet (2.7 meters) and horizontally clear the curb face by at least two feet (0.6 meters). For non-limited access roads where there is no curb and gutter, the banners and support structures must vertically clear the pavement by at least 10 feet (3 meters) and horizontally clear the pavement by at least 12 feet (3.7 meters).

2. Street banners must vertically clear the pavement by at least 17 feet (5.2 meters), and may not obstruct or obscure the view of any traffic signal, traffic device, or official sign.

(j) In addition to the conditions identified in subsections (3)(a) through (g) above, the following conditions apply to limited access roadways:

1. Street banners are prohibited on limited access roadways.

2. Pole banners are allowed on limited access roadways only under the following conditions:

a. The lowest point of the pole banner must be at least 10 feet (3 meters) above the pavement elevation;

b. The outside edge of the pole banner may be no closer than 12 feet (3.7 meters) from the edge of the driving lane; and

c. The pole banner must be attached to a light standard or other such device, which is permanently located in the right of way. No new support structures for pole banners may be placed in the right of way. Placement of banners on frangible light standards or other frangible devices will require a load rating analysis, signed and sealed by a registered professional engineer, certifying that the specific light standards or devices used to support the banners will handle the additional loadings placed on the structures by the banner and attachments, not to exceed the wind loading design requirements of the structure.

(k) On the Interstate Highway System, pole banners will be permitted for display for a duration not to exceed 60 consecutive days and only for events of national or international significance, provided the municipality has not hosted the event within the preceding 12 months. The following are examples of events for which pole banners may be permitted on the Interstate highway system:

1. The World Cup
2. The Super Bowl
3. The Stanley Cup
4. The World Series
5. Summit of the Americas
6. The Olympic Games

(4) Permit Issuance. Applications for an overhanging sign, canopy, or banners must be made in writing to the appropriate District Maintenance Office.

(a) Applications for overhanging signs and canopies shall include:

1. The name and address of the applicant.
2. A sketch of the sign or canopy, drawn to scale, which includes the message, letterings, logos, or emblems.
3. A sketch of the specific location of the sign or canopy, including height, location of supports, proximity to utility poles, and the identification of the state highway where the sign or canopy will be located.
4. Sketches or specific descriptions of the method to be used to affix the sign or canopy to the support structure(s).
5. Proof of compliance with any applicable local governmental regulations.

(b) Banner Permit Issuance. Applications for banners shall include:

1. The name and address of the governmental entity that is sponsoring or supporting the event. For purposes of this rule, submission of an application for a permit for banners constitutes sponsorship or support for the event.
2. Identification of the event being advertised and a description of the event.
3. A sketch or drawing of the banner(s), drawn to scale, which includes the entire message that will appear on the banner(s).
4. A sketch of the specific location of the banner(s), including height, location of supports, proximity to utility poles, and the identification of the highway where the banner(s) will be located.
5. Sketches, photographs, or specific descriptions of the method to be used to affix the banner(s) to the support structure(s).
6. The beginning and ending dates of the display period(s).
7. Proof of compliance with the requirements of subsection (3) and any local governmental regulations.
8. Load rating analysis by a registered professional engineer, if required by subsection (3)(j)2.c.

(c) The Permittee shall agree as follows:

1. To the extent provided by law, the Permittee shall indemnify, defend, and hold harmless the Department and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Permittee, its agents, or employees arising from activities under this permit, except that neither the Permittee, its agents, or its employees will be liable under this provision for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Department or any of its officers, agents, or employees arising from activities under this permit.

2. When the Department receives a notice of claim for damages that may have been caused by the Permittee in the performance of activities that arise under this permit, the Department will immediately forward the claim to the Permittee. The Permittee and the Department will evaluate the claim and report their findings to each other within 14 working days and will jointly discuss options in defending the claim. After reviewing the claim, the Department will determine whether to require the participation of the Permittee in the defense of the claim or to require that the Permittee defend the Department in such claim as described in this section. The Department's failure to promptly notify the Permittee of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by the Permittee. The Department and the Permittee will each pay its own expenses for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all expenses at trial.

(d) If the application is denied, the Department shall advise the applicant in writing of the denial and advise the applicant of his or her right to request an administrative proceeding pursuant to Chapter 120, Florida Administrative Code.

(2) Exception for Directional Signs. Despite the above provisions of this rule, section signs are permitted within municipalities if they are strictly directional and contain no advertisement, subject to the following regulations:

(a) Neon Signs on state road right of way within municipalities will be permitted to direct traffic only to areas, buildings or places that are owned and operated by the public or nonprofit organizations. Business districts would fall within this classification, however directional signs for individual businesses are prohibited.

(b) The message on the neon sign must be approved by the State Department of Transportation to insure that it includes no descriptive words that could be construed as advertising.

(c) Letters shall be in colors other than red or green and shall not exceed eight inches in height and/or width. All signs shall be approved as to dimensions, area, and location by the State of Florida Department of Transportation.

~~(d) All signs approved are to be installed and maintained by the applicant and failure to properly maintain the signs according to State of Florida Department of Transportation specifications will be cause for their removal by the State of Florida Department of Transportation.~~

~~(e) Signs installed that have not been approved or which deviate from the approved signs shall be removed by the State of Florida Department of Transportation.~~

~~(f) Application for the erection or maintenance of such signs should be made to the Division of Road Operations, and must include a drawing, to scale, of the sign and message.~~

Specific Authority ~~20.05, 334.044(2) FS. Law Implemented 316.006, 316.077, 337.29, 337.407, 338.237, 479.01, 479.107, 768.28 FS. History—Amended 3-21-64, 5-9-70, 7-9-75, Formerly 14-43.01, Amended _____.~~

NAME OF PERSON ORIGINATING PROPOSED RULE:
Ken Towcimak, Director, Office of Right of Way
NAME OF SUPERVISOR OR PERSON WHO APPROVED
THE PROPOSED RULE: Thomas F. Barry, Jr., P.E.,
Secretary
DATE PROPOSED RULE APPROVED BY AGENCY
HEAD: March 15, 1999
DATE NOTICE OF PROPOSED RULE DEVELOPMENT
PUBLISHED IN FAW: February 14, 1997

DEPARTMENT OF TRANSPORTATION

RULE CHAPTER TITLE: RULE CHAPTER NO.:
Participation by Socially and
 Economically Disadvantaged
 Individuals in Department of
 Transportation Contracts 14-78

RULE TITLES: RULE NOS.:
Procedure for Certification 14-78.007
Challenge Procedure 14-78.0071
Suspension or Revocation 14-78.008

PURPOSE AND EFFECT: The rule chapter is being amended to conform with the new Uniform Rules of Procedure, which now govern all agency procedures.

SUMMARY: Rules 14-78.007, 14-78.0071, and 14-78.008 are being amended to conform with the new Uniform Rules of Procedure, which now govern all agency procedures.

SPECIFIC AUTHORITY: 334.044(2), 337.137(3), 339.0805(2) FS.

LAW IMPLEMENTED: 120.569, 120.57, 334.044(27), 337.137, 339.05, 339.0805 FS.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: James C. Myers, Administrative and Management Support Level IV, Florida Department of Transportation, Office of the General Counsel, 605 Suwannee Street, Mail Station 58, Tallahassee, Florida 32399-0458

THE FULL TEXT OF THE PROPOSED RULES IS:

14-78.007 Procedure for Certification.

(1) through (5) No change.

~~(6) The Department is required to provide written notice its intent to certify or deny the firm. If the Department intends to deny an application for certification as a DBE, notice of the Department's intended action will be provided in accordance with Rule 28-106.111, F.A.C. The Department's action will become final unless a timely petition for a hearing is filed in accordance with Rules 28-106.104, 28-106.201, and 28-106.301, F.A.C. In order to be timely, the petition must be filed with the Department's Clerk of Agency Proceedings within 21 days after receipt of the Department's notice, in accordance with Rule 28-106.111, F.A.C. the Department shall provide, by certified mail, return receipt requested, or by personal delivery to the office of the applicant, notice of the facts which warrant such action. A mailed notice shall constitute full and complete notice even if the mail is returned as refused or unclaimed by the applicant provided the Department mails such notice to the last known address as provided by the applicant in writing.~~

~~(a) The written notice of denial of an application for certification shall contain:~~

~~1. The particular facts or basis for denial of the application.~~

~~2. A statement that the applicant has the right to an administrative hearing pursuant to Section 120.57, Florida Statutes.~~

~~3. A statement that the denial shall become conclusive and final agency action if no request for a hearing is filed within 15 days of receipt of the notice of denial.~~

~~(b) All requests for hearing shall be made in writing and shall be filed with the Clerk of Agency Proceedings, 605 Suwannee Street, MS 58, Room 562, Hayden Burns Building, Tallahassee, Florida 32399-0458, within 15 days of receipt of the notice of denial of the application and shall include:~~

~~1. The name and address of the party making the request;~~

~~2. A statement that the party is requesting a formal proceeding pursuant to Section 120.57(1), Florida Statutes, or an informal proceeding pursuant to Section 120.57(2), Florida Statutes; and~~

~~3. A reference to the notice of denial of the application.~~

~~(c) If the applicant fails to file a request for a hearing within 15 days after receipt of the notice of denial of the application, the denial shall become conclusive and final agency action.~~

~~(d) Where the notice is refused or unclaimed, the 15 days will begin to run as of the last date of attempted contact by the delivery agent.~~

Specific Authority 334.044(2), 339.0805(1) FS. Law Implemented ~~120.569, 120.57, 120.60, 334.044(27), 339.05, 339.0805~~ FS. History–New 12-9-81, Amended 5-23-84, Formerly 14-78.07, Amended 9-21-87, 5-4-88, 6-24-91, 12-2-93, 4-30-96,_____.

14-78.0071 Challenge Procedure.

(1) Pursuant to 49 C.F.R. Subtitle A, Subpart D, Section 23.69, any third party may challenge the socially and economically disadvantaged status of any individual (except an individual who has a current 8(a) certification from the Small Business Administration) who is a member of one of the presumptive groups listed in Rule 14-78.002(18) if that individual is an owner of a firm certified by or seeking certification from the Department as a disadvantaged business.

(a) through (c) No change.

~~(d) The Department shall evaluate the information available to it and make a proposed determination of the disadvantaged status of the challenged party. The Department shall notify both parties of this proposed determination in writing, setting forth the reasons for its proposal. Notice of the Department's proposed determination will be provided in accordance with Rule 28-106.111, F.A.C. The Department's determination will become final unless a timely petition for a hearing is filed in accordance with Rules 28-106.104, 28-106.201, and 28-106.301, F.A.C. In order to be timely, the petition must be filed with the Department's Clerk of Agency Proceedings within 21 days after receipt of the Department's notice, in accordance with Rule 28-106.111, F.A.C. The Department shall provide an opportunity to the parties for an informal hearing, at which they can respond to this proposed determination in writing and in person.~~

~~(e) Following the informal hearing, the Department shall make a final determination. The Department shall inform the parties in writing of the final determination, setting forth the reasons for its decision.~~

~~(e)(f) In making the determinations called for in paragraphs (b) and (d) and (e) of this section, the Department shall use the standards set forth in 14-78.005 of this Rule Chapter.~~

~~(f)(g) During the pendency of a challenge under this section, the presumption that the challenged party is a disadvantaged individual shall remain in effect.~~

~~(g)(h) The final determination of the Department under paragraphs (1)(a)2.a. and (1)(a)5. may be appealed to the U.S. Department of Transportation by the adversely affected party to the proceeding under the procedures of 49 C.F.R. Subtitle A, Section 23.55.~~

(2) The Department shall initiate a challenge against any applicant's status or certified DBE if it obtains credible information which questions the disadvantaged status of the applicant.

(a) No change.

(b) If the Department challenges the socially and economically disadvantaged status of a currently certified DBE, the Department shall revoke certification under the procedures specified in Rule Sections 14-78.008(2) ~~and~~; (3); ~~and (4).~~

Specific Authority 120.53(1)(b), 334.044(2), 339.0805(1) FS. Law Implemented 120.57, 120.60, 334.044(27), 339.05, 339.0805 FS. History–New 6-24-91, Amended 12-2-93,_____.

14-78.008 Suspension or Revocation.

(1) through (2) No change.

(3) With the exception of a change in the qualifying 51% minority ownership, prior to suspending or revoking certification as a DBE, notice of the Department's intended action will be provided in accordance with Rule 28-106.111, F.A.C. The Department's action will become final unless a timely petition for a hearing is filed in accordance with Rules 28-106.104, 28-106.201, and 28-106.301, F.A.C. In order to be timely, the petition must be filed with the Department's Clerk of Agency Proceedings within 21 days after receipt of the Department's notice, in accordance with Rule 28-106.111, F.A.C. the Department shall inform the DBE in writing by certified mail, return receipt requested, or personal delivery to the office of the DBE, of the following:

~~(a) The statutory provision(s) or rule(s) of the Florida Administrative Code which is alleged to have been violated.~~

~~(b) The specific facts or conduct relied upon to justify the revocation or suspension.~~

~~(c) A statement that the DBE has the right to file a request for an administrative hearing pursuant to Section 120.57, Florida Statutes, within 15 days of receipt of the notice of revocation or suspension.~~

~~(d) A statement that the suspension or revocation shall become conclusive and final agency action if no request for a hearing is filed within 15 days of receipt of the notice of revocation or suspension of certification.~~

~~(4) All requests for a hearing shall be made in writing and shall be filed with the Clerk of Agency Proceedings within 15 days of receipt of the notice of suspension or revocation of certification. The request shall include:~~

~~(a) The name and address of the DBE making the request;~~

~~(b) A statement that the DBE is requesting a formal proceeding pursuant to Section 120.57(1), Florida Statutes, or an informal proceeding, pursuant to Section 120.57(2), Florida Statutes; and~~

~~(e) A reference to the notice of revocation or suspension of certification received from the Department and a statement of the specific grounds on which the proposed action is being challenged.~~

~~(5) If the DBE fails to file a request for a hearing within 15 days after receipt of the notice of revocation or suspension of certification, the suspension or revocation shall become conclusive and final agency action.~~

Specific Authority 334.044(2), 337.137(3), 339.0805(2) FS. Law Implemented 120.569, 120.57, 334.044(27), 337.137, 339.05, 339.0805 FS. History--New 12-9-81, Amended 5-23-84, Formerly 14-78.08, Amended 9-21-87, 5-4-88, 6-24-91, 12-2-93,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:

Pamela S. Leslie, General Counsel

NAME OF SUPERVISOR OR PERSON WHO APPROVED

THE PROPOSED RULE: Thomas F. Barry, Jr., P.E., Secretary

DATE PROPOSED RULE APPROVED BY AGENCY

HEAD: March 10, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT

PUBLISHED IN FAW: January 22, 1999

DEPARTMENT OF TRANSPORTATION

RULE CHAPTER TITLE: RULE CHAPTER NO.:

Discrimination and Sexual

Harassment Complaints

14-84

RULE TITLE:

Discrimination and Sexual

RULE NO.:

Harassment Complaints

14-84.0011

PURPOSE AND EFFECT: Rule 14-84.0011 is being amended to update references to Section 760.10, Florida Statutes, and Rule 60L-28.003, F.A.C. Other amendments are to clarify language on false statements, to clarify the definitions, provide other overall clarification of language, and to delete internal Department procedures from the rule.

SUMMARY: Rule 14-84.0011 is being amended.

SPECIFIC AUTHORITY: 110.201(2), 334.044(2), 339.05 FS.

LAW IMPLEMENTED: 110.105, 110.112, 110.227, 119.07(3)(q), 760.10, 760.11 FS.

SUMMARY OF STATEMENT OF ESTIMATED

REGULATORY COST: None.

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

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 2:00 p.m., April 27, 1999

PLACE: Haydon Burns Building Auditorium, 605 Suwannee Street, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: James C. Myers, Administrative and Management Support Level IV, Florida Department of Transportation, Office of the General Counsel, 605 Suwannee Street, Mail Station 58, Tallahassee, Florida 32399-0458

THE FULL TEXT OF THE PROPOSED RULE IS:

14-84.0011 Discrimination and Sexual Harassment Complaints.

(1) Policy Statement.

(a) It is the policy of the Department to assure to each applicant or employee an equal employment opportunity without regard to that person's age, race, color, sex, religion, national origin, political opinions or affiliations, marital status, or handicap, except when such requirement constitutes a bona fide occupational qualification necessary to perform the tasks associated with the position.

(b) The Department's policy on sexual harassment is reflected in Section 760.10, Florida Statutes, and Rule 60L-28.003, F.A.C. It is the policy of the Department that sexual harassment is a form of sex discrimination recognized under Title VII of the 1964 Civil Rights Act as well as Chapter 760 of the Florida Statutes. Charges of sexual harassment shall be promptly investigated and resolved; and employees found to have sexually harassed another employee or job applicant shall be subject to disciplinary action up to and including dismissal as provided in Section 14-84.0011(3).

(c) Any employee in a supervisory capacity who has actual knowledge of discrimination ~~or sexual harassment~~ involving employees he or she supervises and does not take corrective action or report the matter directly to the appropriate District Intake Officer or the Minority Programs Equal Employment Opportunity (EEO) Staff, is in violation of these rules and subject to discipline as provided in Subsection 14-84.0011(3) below. Any employee who knowingly files a false complaint of discrimination or sexual harassment and knowingly includes therein a false statement of fact or knowingly makes a false statement of fact to an intake officer or the Minority Programs EEO Staff, is in violation of these rules and subject to discipline as provided in Subsection 14-84.0011(3) below.

(d) Any employee in a supervisory capacity who has actual knowledge of sexual harassment involving employees he or she supervises and does not take corrective action or report the matter directly to the appropriate authority, which would consist of that supervisory employee's next level of authority at a minimum, a District Intake Officer or the Minority Programs Office, is in violation of Rule 60L-28.008, F.A.C., and subject to discipline as provided in Rule 60L-28.008(2), F.A.C. Any employee who files a complaint of sexual harassment or knowingly includes therein a false statement of fact or makes a false statement of fact to an Intake Officer or the Minority Programs Office in the course of an investigation, is in violation of Rule 60L-28.008, F.A.C., and is subject to discipline as provided in Subsection (3) below.

(2) Definitions. For the purpose of this rule the following words and phrases shall have the meaning indicated:

(a) "Complaint" means a written or verbal statement which alleges the occurrence of an unlawful employment practice.

(b) "Discrimination" means any practice made unlawful by Title VII of the 1964 Civil Rights Act and Chapter 760 of the Florida Statutes.

(c) "Intake Officer" means a district or central office employee designated to receive discrimination and sexual harassment complaints and investigate and attempt resolution of the complaints on an informal basis, as provided in Subsection 14-84.0011(1) below.

(d) "Investigating Agency" means the Minority Programs Office, the Florida Commission on Human Relations (FCHR), or the U.S. Equal Employment Opportunity Commission (EEOC), which investigates complaints filed pursuant to this rule chapter.

(e) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

1. Black, a person having origins in any of the black racial groups of Africa;
2. Hispanic, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
3. Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; or
4. American Indian and Alaskan Native, a person having origins in any of the original peoples of North America.

(f) "Minority Program EEO Staff" means the Civil Rights ~~Compliance~~ Administrator and Civil Rights Analysts Specialists, who are authorized to conduct investigations for the Department in response to complaints of discrimination and sexual harassment.

(g) "Retaliation" means the act of discriminating against a person because the individual filed an employment discrimination charge or testified, assisted, or participated in any manner in a proceeding to file, investigate, or resolve employment discrimination charges ~~discrimination against a person because of that person's opposition to any unlawful employment practice prohibited in Chapter 760, Florida Statutes.~~

(h) "Sexual Harassment" has the meaning set forth in Rule 60L-28.002(1), F.A.C., or means those actions prohibited by Rule 60L-28.002(1), F.A.C. means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature from any person when:

1. ~~Submission to such conduct is either explicitly or implicitly a term or condition of an individual's employment;~~
2. ~~Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or,~~

3. ~~Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.~~

(i) "Complainant" means the individual or individuals who have filed a discrimination or sexual harassment complaint internally with the Minority Programs Office, or externally with the ~~FCHR Florida Commission on Human Relations~~, or the ~~EEOC Equal Employment Opportunity Commission~~.

(j) "Respondent" means the individual or individuals identified by a complainant as having committed an alleged act of discrimination or sexual harassment.

(k) "Confidentiality" means that all complaints and other records which relate to charges of employment discrimination and sexual harassment, are exempt from the public records law and shall be protected from disclosure. ~~Confidentiality shall be maintained pursuant to Sections 119.07(3)(q), (u), and (v), Florida Statutes. In accordance with Section 119.07(3)(q), Florida Statutes, confidentiality exists until a determination is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other records are made part of the official record of any hearing or court proceeding.~~

(3) Penalty and Relief.

(a) The Department shall discipline any career service employee found to have violated ~~the provisions of this these~~ rules or Chapter 60L-28, F.A.C., according to the provisions of Rule 14-17.012, F.A.C., Conduct Standards for Career Service Employees.

(b) The Department shall discipline any employee found to have violated these rules with any of the following actions:

1. written reprimand
2. suspension
3. demotion
4. dismissal

(c) The Department shall provide relief to any complainant who has been or may have been a victim of an act of discrimination or sexual harassment by taking any action allowed by the Laws of Florida and the Florida Administrative Code.

(4) Notice to Employees.

(a) Each new employee shall be notified ~~in accordance with Rule 60L-28.004, F.A.C. of the existence of this rule and how a copy may be obtained.~~

(b) Each employee shall be given a reasonable opportunity to discuss this rule ~~and Chapter 60L-28, F.A.C.~~, with the Intake Officer, the Minority Programs EEO Staff or Ombudsman.

(5) Time Frames. Section 760.11(1), ~~of the Florida Statutes,~~ requires any complaint of discrimination or sexual harassment be filed with the ~~FCHR Commission on Human Relations~~ within 365 days of the occurrence of the violation. Any complaint of discrimination or sexual harassment must be filed with the EEOC within 300 days of the alleged occurrence.

Any person filing a complaint with the Department is urged to file with the Commission at the same time in order to preserve his or her right to ask the Commission to review the Department's investigation and decision. Filing a complaint with either the ~~FCHR Florida Commission on Human Relations~~ or the ~~EEOC Equal Employment Opportunity Commission~~ will divest the Minority Programs Office of the requirements prescribed in ~~Subsection Rule 14-84.0011(8)~~. ~~In order to expedite complaints filed with the Department, the Department shall apply the following time frames to discrimination and sexual harassment: Within 10 work days of receiving a copy of a complaint the Minority Programs Office shall:~~

(a) ~~Determine if the provisions of this rule chapter are the appropriate method to seek redress of the stated complaint;~~

(b) ~~Provide written acknowledgement of the complaint to complainant and either the District Personnel Officer, if the complaint originated in a District, or the appropriate Director, if the complaint originated in the Central Office. The complainant will be advised in the letter of acknowledgement, of alternative courses of action if an internally filed complaint is untimely or does not otherwise meet all jurisdictional requirements to initiate a formal complaint.~~

(6) Discrimination and Sexual Harassment Complaint Filing.

(a) Any person aggrieved by discrimination or sexual harassment as defined in ~~Subsection 14-84.0011(2)~~ may file a complaint with the Department's Minority Programs Office.

(b) A complaint may be filed at any time within 180 days after the alleged unlawful employment practice. If the alleged unlawful employment practice is of a continuing nature, the date of the occurrence may be any date the unlawful employment practice began up to and including the date on which it ceased.

(c) Other avenues of grievance:

1. ~~Complaints filed with the Florida Commission on Human Relations (FCHR) or the U.S. Equal Employment Opportunity Commission (EEOC) and referred to the Department for investigation will be received and processed according to these rules.~~

2. Employment discrimination complaints based on race, color, sex, religion, national origin, age, handicap, marital status, political opinions or affiliation, or sexual harassment, will be referred to the Minority Programs Office and processed under these rules when the Department determines that the complaint is one of discrimination or sexual harassment, as defined in ~~Subsection 14-84.0011(2) above and Chapter 60L-28, F.A.C.~~

3. If an employee is in a position covered by a collective bargaining agreement, which provides for an alternative procedure for making a complaint covered by this rule chapter, the employee may use the alternative procedure in lieu of, but not in addition to, the procedure provided by this rule chapter.

Career Service employees may also pursue recourse through the Public Employees Relation Commission for other issues not addressed in this rule chapter.

~~4. A complaint filed under these rules and determined not to be one of discrimination or sexual harassment shall be referred to the proper office with authority to handle the complaint.~~

(d) Contents. Complaints of sexual harassment must satisfy the requirements of Rule 60L-28.006(3), F.A.C. Complaints of discrimination based upon a verbal complaint, anonymous complaint, or rumor shall be sufficient to initiate an informal inquiry by the Minority Programs EEO Staff into the alleged occurrence. Any informal inquiry based upon such complaints shall be conducted according to the Department procedures. To initiate a formal investigation of the alleged occurrence, complaints of discrimination ~~The complaint~~ shall be in writing and contain the following:-

~~1. In the event that a person makes a verbal complaint of discrimination to the Minority Programs EEO Staff, the person shall be interviewed and counseled pertaining to complaint processing procedures and rights under law. If necessary, the Minority Programs EEO Staff will assist the person in reducing the complaint to writing.~~

~~2. The complaints filed internally with the Minority Programs Office shall contain the following:~~

~~1.a.~~ The name(s), job title(s), address(es), and telephone number(s) of the person(s) filing the complaint; as well as the classification and unit assigned within the agency, if an employee.

~~2.b.~~ The name(s), job title(s), address(es), and telephone number(s) of the person(s) alleged to have performed unlawful employment practice(s).

~~3.c.~~ Nature and basis of the alleged complaint.

~~4.d.~~ A clear and concise statement of the facts, including pertinent dates, times, places, and circumstances constituting the unlawful employment practices.

~~5.e.~~ The statement shall be signed and dated by the complainant(s).

(e) Amendments and withdrawals.

1. A complaint may be amended to cure technical defects, omissions, or to clarify or amplify allegations made therein. An amendment may be filed at any time before a determination is rendered.

2. A complaint may be withdrawn by the complainant at any time.

(f) Retaliation.

1. If the complainant at any time believes retaliation is a consequence of having filed a complaint, complainant may make a statement concerning the facts and circumstances of the retaliation which will become the subject of a separate but related investigation.

2. Retaliation against an employee for filing a complaint of discrimination or sexual harassment or providing information regarding such complaint is a violation of these rules. Any employee found to be engaging in such retaliation shall be subject to discipline as provided in Subsection Rule 14-84.0011(3) above.

(7) Investigation.

(a) The investigation of complaints shall be conducted by the Minority Programs Office or intake officers under the guidance of the Minority Programs Office. The Minority Programs Office will act as the sole representative of the Department in all communication with external investigating agencies and will assist in the conduct of their investigations.

(b) Statement of Complainant. During the course of the investigation, the complainant will be required to provide a written statement which includes the following:

1. A statement of each particular harm which the complainant has suffered and the date on which each harm occurred;

2. For each harm, a statement specifying the act, policy, or practice which is alleged to be discriminatory;

3. For each act, policy, or practice alleged to have harmed the complainant, a statement of the facts which led the complainant to believe that the act, policy, or practice is discriminatory.

(c) Request for Additional Information from complainant. In the event the complaint does not contain sufficient information (as outlined above) to permit a determination of jurisdiction and investigative merit, the Minority Programs Office shall request the complainant to provide specific additional information. Such a request shall be made anytime during the course of the investigation.

(d) Investigative Inquiries. ~~During the course of the investigation, the Minority Programs Office shall request information concerning the facts and circumstances of the complaint. Investigative inquiries and requests for information requested from the respondent will be directed to the appropriate District Personnel Officer or Director, if the complaint originated in the Central Office.~~ All pPersonnel will respond to the investigative inquiries and requests for information as outlined in this Rule Subsection, 14-84.0011(7)(g). Investigative inquiries and requests for information may be made in the following manner:

1. Oral interviews;

2. Written investigative questionnaires, sworn statements, or position statements by any party or witness;

3. Requests for production of supportive documents;

4. Fact-finding conferences or on-site investigative visits ~~conducted by the Minority Programs EEO Staff and involving the complainant, respondent, Department employees and other witnesses.~~

(e) The Minority Programs EEO Staff shall investigate the complaint and attempt to resolve all conflicts of fact. Such evaluation results shall be discussed with all parties.

(f) The Minority Programs EEO Staff shall determine, based upon the analysis and evaluation of the evidence, whether the preponderance of the evidence supports a determination that there is or is not probable cause to believe that discrimination has occurred.

(e)(g) Cooperation. Complainant, respondent, and all Department employees shall provide the Minority Programs Office with:

1. With Any work-related documentation requested within 14 days of receipt of the request.
2. With Responses to oral or written questions presented.
3. Employees who violate this provision rule are subject to discipline as provided in Subsection 14-84.0011(3) above.
4. Where the complainant fails to cooperate with the investigative procedures specified in this Subsection Rule 14-84.0011(7), and after notification via certified mail return receipt requested or personal delivery, the complainant has failed to duly respond in the manner requested, the manager, Minority Programs Office, will dismiss the complaint.

(8) Investigative Report. (a) Upon completion of an internal investigation, the Minority Programs Office EEO Staff shall prepare an investigative report, which shall include:

1. The complaint and allegations;
2. Background information and facts related to each allegation;
3. The recommendation of the Minority Programs EEO Staff to the Manager, Minority Programs Office, regarding whether the preponderance of the evidence supports a determination that there is or is not probable cause to believe that discrimination has occurred.

(b) The Minority Programs Office shall retain the investigatory report and all related documentation as required in Section 14-84.0011(11).

(9) Resolution of Complaint. Complaints may be resolved prior to issuance of an investigative report by one of the following means:

(a) Withdrawal. Withdrawal of a charge by the complainant may occur at any stage of the investigation, upon written request of the complainant.

(b) Negotiation. A negotiated settlement agreement will resolve the complaint prior to determination of whether there is probable cause to believe discrimination occurred. A negotiated settlement occurs when the complainant and Department sign a written agreement concerning specific actions or promises resolving the complaint. A negotiated settlement agreement requires the signatures of the complainant, District Secretary or Division Director if the

issue arises in the District, Director of Administration, Central Office and Manager, Minority Programs Office, and the Office of General Counsel, Central Office.

(c) Conciliation. Conciliation efforts to resolve the complaint shall proceed when a determination, based upon a preponderance of evidence, indicates probable cause to believe that discrimination has occurred. A conciliation agreement will be drafted and signed as specified in Subsection 14-84.0011(9)(b).

(d) Dismissal pursuant to Subparagraph (7)(e)4. above. A determination, by the Manager, Minority Programs Office, FCHR, Florida Commission on Human Relations or EEOC that dismissal of the complaint is appropriate will Equal Employment Opportunity Commission, concludes responsibilities of the Minority Programs Office to investigate the complaints, unless the complainant requests a re-determination of an externally investigated complaint. Complaints will be closed upon conclusion of any re-determination.

(e) Notice of dismissal will be mailed to complainant and either the District Personnel Manager or appropriate Director, and shall include at least the following:

1. A summary of the complaint and pertinent issues.
2. The determination of the investigating agency.
3. Notice if conciliation efforts have been unsuccessful.
4. A statement informing the complainant of the time limits specified in Section 760.11, Florida Statutes, to request the Florida Commission on Human Relations to review internally investigated complaints.

(f) Requests for an administrative hearing or the initiation of litigation by the complainant will result in the complaint being submitted to General Counsel.

(10) Maintenance and Disposition of Records.

(a) The Minority Programs Office will house the complaint files and a chronologic log of complaints filed for two years. The files will then be processed for storage with DOT Records Management for an additional four years.

(b) No information regarding the investigation of a discrimination or sexual harassment complaint shall be placed in the respondent's personnel file until a determination is rendered by the investigating Agency and disciplinary action is taken according to the provision of Sections 14-84.0011(9)(e) and (f).

(10)(11) Intake Officers. (a) Each District Secretary shall identify two or more employees who shall act as intake officers. The Minority Programs Office EEO staff act as the intake officers for the Central Office. to perform the functions identified by this rule. The District Secretary shall issue a memorandum identifying the Intake Officers and providing telephone numbers where they can be contacted. The memorandum will be posted at a bulletin board in each work location, and a copy will be sent to Minority Programs Office.

~~2. An updated memorandum will be issued and circulated as provided in Rule Section 14-84.0011(11)(a)1. each time the Intake Officer is changed.~~

~~(b) Intake Officers will have responsibility for the following functions:~~

~~1. Receiving and informally investigating discrimination and sexual harassment complaints;~~

~~2. Providing recommendations to either the District Secretary and Personnel Manager or appropriate Director, in an effort to resolve the complaint.~~

~~3. Counseling the complainant regarding formal filing alternatives with the Minority Programs Office, the Florida Commission on Human Relations or the Equal Employment Opportunity Commission if the Complaint has not been resolved after 30 days.~~

~~4. Providing the Minority Programs Office with all documentation secured during an investigation, upon failure to resolve the complaint if the complaint is not resolved.~~

~~(11)(12) Form. The following form, effective November 1990, is incorporated and used in implementing this rule: Form 275-010-01-b, MINORITY PROGRAMS, Rev. 07/98 03/90, Discrimination/Sexual Harassment Complaint Form. A copy of the form can be obtained by contacting the Florida Department of Transportation, Minority Programs Office, 3717 Apalachee Parkway, Suite G Haydon Burns Building, 605 Suwannee Street, Mail Station 65, Tallahassee, Florida 32311 32399-0450.~~

Specific Authority 20.05(5), 110.201(2), 334.044(2), 339.05 FS. Law Implemented 110.105, 110.112, 110.227, 119.07(3)(q), 760.10, 760.11 FS. History—New 8-5-96, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Ruth Dillard, Manager, Minority Programs Office

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Thomas F. Barry, Jr., P.E., Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 15, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 7, 1998

PUBLIC SERVICE COMMISSION

DOCKET NO. 990206-TI

RULE TITLE:

RULE NO.:

Transfer of Certificate of Public

Convenience and Necessity as to

all or Portion of Service Area

25-4.005

PURPOSE AND EFFECT: To eliminate the requirements for a local exchange company (LEC) to provide a complete list of the noticed subscribers to the Commission. Such information contained in the list may be confidential and disclosure of such could violate 364.24, FS.

SUMMARY: The rule requires that when a local exchange carrier (LEC) requests approval to transfer its certificate (or portion thereof), a written notice be issued to each subscriber in the area to be transferred and that a complete list of the noticed subscribers, by telephone number, name, address, and class of service, be submitted to the Commission.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: A SERC was not prepared since no significant additional costs or negative impacts on utilities, ratepayers, small businesses, small cities, or small counties could be identified. It is expected that the elimination of the requirement would relieve the LECs and the Commission of some administrative burden.

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

SPECIFIC AUTHORITY: 350.127(2) FS.

LAW IMPLEMENTED: 364.335 FS.

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

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Director of Appeals, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850)413-6245

THE FULL TEXT OF THE PROPOSED RULE IS:

25-4.005 Transfer of Certificate of Public Convenience and Necessity as to all or Portion of Service Area.

(1)(b) No change.

(c) By written notice subject to Commission approval, issued to each subscriber in the area to be transferred concurrent with the filing of the petition. ~~A complete lists, by telephone number (numerical sequence), name, address, and class of service of all subscribers sent a written notice shall be furnished the Commission immediately following distribution.~~

(2) through (3) No change.

(4) Any subscriber or group of subscribers of a telephone company may petition the Commission for transfer from the service area of such telephone company to that of another telephone company serving contiguous territory. After public hearing, if one is requested, the Commission may, ~~on a finding of just cause,~~ require such transfer and amend the existing certificates of the telephone companies involved or change the exchange service area maps to reflect any changes found justified.

(5) No change.

Specific Authority 350.127(2) FS. Law Implemented 364.335 FS. History--New 12-1-68, Amended 5-4-81, Formerly 25-4.05, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Ray Kennedy

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 16, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 16, 1998, Vol. 24, No. 42

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of Records and Reporting, (850)413-6770, at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at 1(800)955-8771 (TDD).

DEPARTMENT OF THE LOTTERY

RULE TITLES: FLORIDA LOTTO Jackpot Pool
FLORIDA LOTTO Payment Options

RULE NOS.: 53-28.006
53-28.007

PURPOSE AND EFFECT: The Department proposes to promulgate a rule to amend rule section 53-28.006 F.A.C., and create a new rule section that sets forth the specifics of the two (2) FLORIDA LOTTO Jackpot prize payment options, "Cash Option" and "Annual Payment."

SUMMARY: The annual payment option set forth in rule 53-28.006, is being amended to thirty annual payments and is also being relocated to rule 53-28.007. 53-28.007 sets forth the two options of payment for FLORIDA LOTTO Jackpot prizes.
SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 24.105(10)(e) FS.

LAW IMPLEMENTED: 24.105(10)(e) FS.

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

TIME AND DATE: 9:00 a.m., April 28, 1999

PLACE: Department of the Lottery, Office of the General Counsel, 250 Marriott Drive, Tallahassee, Florida 32399-4011
THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Diane D. Schmidt, Office of the General Counsel, Capitol Complex, Tallahassee, Florida 32399-4011, (850)487-7724

THE FULL TEXT OF THE PROPOSED RULES IS:

53-28.006 FLORIDA LOTTO Jackpot Pool.

(1) No change.

~~(2) If the cash available in the Jackpot pool is sufficient to yield at least a total of one million dollars in twenty (20) annual installments for each winning ticket, the Lottery shall pay the Jackpot winner or winners in twenty (20) annual payments.~~

Specific Authority 24.115(1) FS. Law Implemented 24.105(10)(e) FS. History--New 11-22-93, Amended _____.

53-28.007 FLORIDA LOTTO Payment Options.

(1) Effective for draw dates on and after October 24, 1998, players can choose one (1) of two (2) payment options for receiving their portion of the FLORIDA LOTTO Jackpot prize. Payment options are "Cash Option" and "Annual Payment."

(2) Jackpot winners have sixty (60) days after the winning draw date to choose between the two payment options. Once the jackpot winner signs the Winner Claim Form and exercises the winner's chosen option, the election of that option shall be final. Winner Claim Form DOL-173-2, Revised 07/93, and Addendum B, Effective 10/21/98, are incorporated herein by reference and may be obtained from the Florida Lottery, Winner Validation, Capitol Complex, Tallahassee, Florida 32399-4027. In order to select Cash Option, the winner must claim his or her prize within sixty (60) days after the winning draw date; otherwise, the Annual Payment option will be applied.

(3) Cash Option prizes will be paid in one lump sum cash payment. The jackpot winner who chooses the Cash Option for payment will receive his or her portion of the amount in the jackpot pool that is available immediately for investment.

(4) The jackpot winner whose ticket, including an advance play ticket, was purchased prior to November 15, 1998, shall be paid in twenty (20) annual payments if:

(a) the Jackpot winner elects the Annual Payment Option;

(b) the Jackpot winner does not make an election within sixty (60) days after the winning draw date as provided in subsection (2); and

(c) the cash available in the Jackpot pool is sufficient to yield at least a total of one million dollars in twenty (20) annual installments for each winning ticket.

(5) The jackpot winner whose ticket, including an advance play ticket, was purchased on November 15, 1998, or thereafter shall be paid in 30 (thirty) annual payments if:

(a) the Jackpot winner elects the Annual Payment Option;

(b) the Jackpot winner does not make an election within sixty (60) days after the winning draw date as provided in subsection (2); and

(c) the cash available in the Jackpot pool is sufficient to yield at least a total of one million dollars in thirty (30) annual installments for each winning ticket.

(6) Federal income taxes will be applied and withheld from the prize amount at the time payment is made pursuant to applicable Internal Revenue Code and Regulations.

(7) Any interest or earnings accrued on a Florida Lotto Jackpot prize prior to the prize payment, under either the Cash Option or the Annual Payment Option, shall accrue to the State of Florida and not to the winner.

Specific Authority 24.105(10)(e) FS. Law Implemented 24.105(10)(e) FS. History--New 3-17-99, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Diane D. Schmidt, Office of the General Counsel
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Kenneth H. Hart, Jr., General Counsel
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 10, 1999
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 29, 1999

DEPARTMENT OF THE LOTTERY

RULE TITLE: FANTASY 5 Drawings
PURPOSE AND EFFECT: The purpose of the rule is to clarify the FANTASY 5 draw machine's ball display devices.
SUMMARY: The rule amends and broadens the description of the "display tubes" on the FANTASY 5 draw machine to a "display device" which may include either display tubes or a display tray as the ball display device, dependent upon the FANTASY 5 draw machine that is selected for the draw.
SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 24.105(10)(d) FS.
LAW IMPLEMENTED: 24.105(10)(d) FS.
IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):
TIME AND DATE: 10:00 a.m., April 28, 1999
PLACE: Department of the Lottery, Office of the General Counsel, 250 Marriott Drive, Tallahassee, Florida 32399-4011

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Diane D. Schmidt, Office of the General Counsel, Capitol Complex, Tallahassee, Florida 32399-4011, (850)487-7724

THE FULL TEXT OF THE PROPOSED RULE IS:

53-29.002 FANTASY 5 Drawings.

(1) through (7) No change.

(8) Five (5) of the twenty-six (26) balls are drawn by vacuum action into a ball display device ~~the display tubes~~. Either display tubes or a display tray shall be used as the ball display device, dependent upon which draw machine is selected. The numbers shown on the five (5) balls, after certification by the Draw Manager and the certified public accounting firm, are the official winning numbers for the drawing.

(9) through (12) No change.

Specific Authority 24.105(10)(d) FS. Law Implemented 24.105(10)(d) FS. History--New 11-22-93, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Diane D. Schmidt, Office of the General Counsel
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Kenneth H. Hart, Jr. General Counsel
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 10, 1999
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 29, 1999

DEPARTMENT OF ELDER AFFAIRS

Federal Aging Programs

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Assisted Living Facilities	58A-5
RULE TITLES:	RULE NOS.:
Definitions	58A-5.0131
License Application, Change of Ownership and Provisional License	58A-5.014
License Renewal and Conditional License	58A-5.015
License	58A-5.016
Inspection Responsibilities	58A-5.0161
Residency Criteria and Admission Procedures	58A-5.0181
Resident Care Standards	58A-5.0182
Marketing; Rebates Prohibited	58A-5.0184
Medication Practices	58A-5.0185
Staffing Standards	58A-5.019
Staff Training Requirements and Training Fees	58A-5.0191
Food Service Standards	58A-5.020
Fiscal Standards	58A-5.021
Facility Maintenance and Housekeeping Standards	58A-5.022
Water Supply	58A-5.0221

Garbage and Rubbish	58A-5.0223
Physical Plant Standards	58A-5.023
Records	58A-5.024
Resident Contracts	58A-5.025
Emergency Management	58A-5.026
Extended Congregate Care Services	58A-5.030
Limited Nursing Services	58A-5.031
Administrative Enforcement	58A-5.033

PURPOSE AND EFFECT: During the 1998 session there were several bills that amended part III, chapter 400, F.S., relating to the regulation of assisted living facilities: Chapter 98-80, L.O.F., relating to licensing and assistance with medication; chapter 98-148, L.O.F., relating to rule promulgation authority; and chapter 98-171, L.O.F., relating to licensing and background screening. This rule development proposal implements all of these bills as well as carry out the agency rule directive established in sections 120.536 and 120.74, F.S.

SUMMARY: Rule 58A-5.0131, relating to definitions, is amended to delete, add, and update definitions. Rule 58A-5.014, relating to licensing procedures, is separated into two rules: rule 58A-5.014 now applies to initial license applications, change of ownership, and provisional licenses; new rule 58A-5.015 applies to license renewal and conditional licenses. In addition, the new background screening requirements have been added, and the provisions updated and reorganized. Rule 58A-5.016, relating to licensure, has been reorganized and updated. Rule 58A-5.0161, relating to inspection responsibilities, has been updated. Rule 58A-5.0181, relating to admission and continued residency, has been amended to: permit residents with stage 2 pressure ulcers; delete self-preservation assessment; add admission package requirements; amend health assessment requirements; and update and reorganize provisions. Rule 58A-5.0182, relating to resident care standards, has been amended to: add a new subsection on nursing services; clarify provisions relating to third-party services; remove provisions relating to medications; and reorganize, streamline and update provisions. Rule 58A-5.0185, relating to medication practices, has been created to centralize, streamline, and update provisions relating to medication; and implement s. 400.4256, relating to assistance with medication. Rule 58A-5.019, relating to staffing standards, has been amended to: establish a minimum daily staffing requirement; delete provisions relating to clinics which are now in statute; and clarify, streamline, reorganize, and update remaining provisions. Rule 58A-5.0191, relating to staff training requirements, has been amended to: reduce training requirements for ECC staff; add training requirements for food preparation staff; delete training requirements for supervision of medication and create training requirements for assistance with medications; and amend the Alzheimer's training curriculum. Rule 58A-5.020, relating to food service, has been amended to: delete duplicate requirements covered by the Department of Health; require the provision of snacks; and to reorganize and update provisions. Rule 58A-5.021, relating

to fiscal standards, has been amended to delete provisions now in s. 400.4275, and to reorganize and update remaining provisions. Rule 58A-5.023, relating to physical plant standards, has been amended to: delete duplicate requirements covered by the Department of Health; require new facilities to be air conditioned; require locks on bathroom doors and grab bars around toilets; limit new facilities to 2 residents per room; add provisions relating to security; and to reorganize and update remaining provisions. Rule 58A-5.024, relating to records, has been amended to: include all records requirements in rule chapter; remove provisions relating to resident contracts and emergency procedures which are now in separate rules; and to reorganize, streamline and update remaining provisions. Rules 58A-5.025 and 58A-5.026, relating to resident contracts and emergency procedures, have been created from provisions transferred from rule 58A-5.024, and reorganized and updated. Rule 58A-5.030, relating to ECC, has been significantly reorganized, streamlined, and updated. Rule 58A-5.031, relating to limited nursing services, has been amended to: centralize provisions; modify nursing services; and to reorganize and update provisions. Rule 58A-5.033, relating to administrative enforcement, has been amended to delete fine provisions; delete publication list; and reorganize, clarify, and update provisions. Rule 58A-5.0184, relating to rebates, rule 58A-5.022, relating to housekeeping, rule 58A-5.0221, relating to water supply, and rule 58A-5.0223, relating to garbage and rubbish are repealed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 400.402, 400.407, 400.415, 400.424, 400.4256, 400.426, 400.427, 400.4275, 400.428, 400.431, 400.441, 400.442, 400.444, 400.452 FS.

LAW IMPLEMENTED: Part III, Chapter 400 FS.

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

TIME AND DATE: 9:00 a.m. – 4:00 p.m., Monday, April 19, 1999

PLACE: Florida Department of Elder Affairs, Conference Room 225F, 4040 Esplanade Way, Tallahassee, FL 32399-7000

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Pat Dunn, Office of General Counsel, (850)414-2000, Meta Calder, Assisted Living Program, (850)414-2309; Department of Elder Affairs, 4040 Esplanade Way, Tallahassee, FL 32399-7000

THE FULL TEXT OF THE PROPOSED RULES IS:

(Substantial rewording of Rule 58A-5.0131 follows. See Florida Administrative Code for present text.)

58A-5.0131 Definitions.

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

(1) "Advertise" means any written, printed, oral, visual, or electronic promotion, statement of availability, qualifications, services offered, or other similar communication appearing in or on television, radio, the Internet, billboards, newspapers, magazines, business cards, flyers, brochures or other medium for the purpose of attracting potential residents to an assisted living facility. A complimentary listing of a licensed facility's name, address, and telephone number in the telephone directory shall not be considered advertising.

(2) "AHCA central office" means the Assisted Living Unit, Agency for Health Care Administration located at 227 N. Bronough Street, Room 7100, Tallahassee, FL. The mailing address for the Assisted Living Unit is 2727 Mahan Drive, Tallahassee, FL 32308-5403, and the telephone number is (850)487-2515.

(3) "Apartment" means a self-contained dwelling unit with a bathroom, kitchen area, and living and sleeping space that is contracted for use as a residence by one or more persons who maintain a common household.

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

(a) Ambulation – Providing physical support to enable the resident to move about within or outside the facility. Physical support includes supporting or holding the resident's hand, elbow, or arm; holding on to a support belt worn by the resident to assist in providing stability or direction while the resident ambulates; or pushing the resident's wheelchair. The term does not include transfer.

(b) Bathing – Assembling towels, soaps, and other necessary supplies, helping the resident in and out of the bathtub or shower, turning the water on and off, adjusting water temperatures, washing and drying portions of the body which are difficult for the resident to reach, or being available while the resident is bathing.

(c) Dressing – Helping the resident to choose and to put on and remove clothing.

(d) Eating – Helping with cutting food, pouring beverages, and feeding residents who are unable to feed themselves.

(e) Grooming – Helping the resident with shaving, with oral care, with care of the hair, and with nail care.

(f) Toileting – Assisting the resident to the bathroom, helping to undress, positioning on the commode, and helping with related personal hygiene, including assistance with changing an adult brief. Assistance with toileting includes assistance with the routine emptying of a catheter or colostomy bag.

(5) "Assistance with transfer" means providing verbal and physical cuing or physical assistance or both while the resident moves between bed and a standing position or between bed and chair or wheelchair.

(6) "Bedridden" means confined to bed because of inability to ambulate or transfer to a wheelchair even with assistance, or to sit safely in a chair or wheelchair without personal assistance or mechanical restraint.

(7) "Capacity" means the number of residents for which a facility has been licensed to provide residential care.

(8) "Case manager" means an individual employed by or under contract with any agency or organization, public, or private, who has the responsibility for assessing resident needs; planning services; coordinating and assisting residents to gain access to needed medical, mental health, social, housing, educational or other services; monitoring service delivery; and evaluating the effects of service delivery.

(9) "Certified nursing assistant (CNA)" means a person certified under s. 400.211, F.S.

(10) "Deficiency" means an instance of non-compliance with the requirements of Part III, Chapter 400, F.S., and this rule chapter.

(11) "Direct care staff" means staff providing personal or nursing services to residents, or supervising staff providing such services.

(12) "Distinct part" means designated bedrooms or apartments, bathrooms and a living area; or a separately identified wing, floor, or building which includes bedrooms or apartments, bathrooms and a living area. The distinct part may include a separate dining area, or meals may be served in another part of the facility.

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

(14) "Food service" means the storage, preparation, serving, and cleaning up of food intended for consumption in a facility or a formal agreement that meals will be regularly catered by a third party.

(15) "Health care provider" means a physician or physician's assistant licensed under Chapter 458 or 459, F.S., or advanced registered nurse practitioner licensed under Chapter 464, F.S.

(16) “Hold itself out” means making any personal, verbal, telephone, mail contact, or other communication to a person or any announcement, solicitation, display, or advertisement to inform the general public of the services provided by the facility.

(17) “Licensed dietitian/nutritionist” means a dietitian or nutritionist licensed in accordance with s. 468.509, F.S.

(18) “Long-term care ombudsman council (LTCOC)” means the State Long-term Care Ombudsman Council or the district long-term care ombudsman councils established under Part I, Chapter 400, F.S.

(19) “Major incident” means:

(a) Death of a resident from other than natural causes;

(b) Determining that a resident is missing;

(c) An assault on a resident resulting in injury;

(d) An injury to a resident which requires assessment and treatment by a health care provider; or

(e) Any event, such as a fire, natural disaster, or other occurrence that results in the disruption of the facility’s normal activities.

(20) “Mental disorder” for the purposes of identifying a mental health resident means schizophrenic and other psychotic disorders; affective disorders; anxiety related disorders; and personality and dissociative disorders. However, mental disorder does not include residents with a primary diagnosis of Alzheimer’s disease, other dementias, or mental retardation.

(21) “Mental health care provider” means:

(a) An individual, agency, or organization under contract to the Department of Children and Families Services’ district Substance Abuse and Mental Health program office to provide mental health services to clients of the department;

(b) An individual licensed by the state to provide mental health services; or

(c) An agency or organization employing or contracting with individuals licensed by the state to provide mental health services.

(22) “Mental health case manager” means a case manager employed by or under contract to a mental health care provider to assist mental health residents residing in a facility holding a limited mental health license. A private mental health care provider may serve as a resident’s mental health case manager.

(23) “Newly licensed” means a new facility which is licensed for the first time. The term does not apply to an existing facility that has undergone a change of ownership.

(24) “Nurse” means a licensed practical nurse (LPN), registered nurse (RN), or advanced registered nurse practitioner (ARNP) licensed under Chapter 464, F.S.

(25) “Nursing assessment” means a written review of information collected from observation of and interaction with a resident, the resident’s record, and any other relevant sources; the analysis of the information; and recommendations for modification of the resident’s care, if warranted.

(26) “Nursing progress notes” or “progress report” means a written record of nursing services, other than medication administration or the taking of vital signs, provided to each resident who receives such services pursuant to a limited nursing or extended congregate care license. The progress notes shall be completed by the nurse who delivered the service and shall describe the date, type, scope, amount, duration, and outcome of services that are rendered; the general status of the resident’s health; any deviations; any contact with the resident’s physician; and shall contain the signature and credential initials of the person rendering the service.

(27) “Optional state supplementation (OSS)” means the state program providing monthly payments to eligible residents pursuant to s. 409.212, F.S., and rule chapter 65A-2.

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

(29) “Physician” means an individual licensed under chapter 458 or 459, F.S.

(30) “Registered dietitian” means an individual registered with the Commission on Dietetic Registration, the accrediting body of the American Dietetic Association.

(31) “Renovation” means additions, repairs, restorations, or other improvements to the physical plant of the facility within a 5 year period that costs in excess of 50 percent of the value of the building as reported on the tax rolls, excluding land, before the renovation.

(32) “Respite care” means facility-based supervision of an impaired adult for the purpose of relieving the primary caregiver.

(33) “Significant change” means a sudden or major shift in behavior or mood, or a deterioration in health status such as unplanned weight change, stroke, heart condition, or stage 2, 3, or 4 pressure ulcer. Ordinary day-to-day fluctuations in functioning and behavior, a short-term illness such as a cold, or the gradual deterioration in the ability to carry out the activities of daily living that accompanies the aging process are not considered significant changes.

(34) “Staff” means any person employed by a facility; or contracting with a facility to provide direct or indirect services to residents; or employees of firms under contract to the facility to provide direct or indirect services to residents when

present in the facility. The term includes volunteers performing any service which counts toward meeting any staffing requirement of this rule chapter.

(35) “Unscheduled service need” means a need for a personal service, nursing service, or mental health intervention which generally cannot be predicted in advance of the need for service and which must be met promptly within a time frame which provides reasonable assurance that the resident’s health, safety, and welfare and that of other residents shall be preserved.

Specific Authority 400.441 FS. Law Implemented 400.402, 400.404, 400.407, 400.4075, 400.411, 400.414, 400.417, 400.4178, 400.419, 400.424, 400.4255, 400.428, 400.429, 400.441, 400.447, 400.451, 400.452 FS. History—New 9-30-92, Formerly 10A-5.0131, Amended 10-30-95, 6-2-96, 4-20-98,

(Substantial rewording of Rule 58A-5.014 follows. See Florida Administrative Code for present text.)

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

(1) LICENSE APPLICATION. An applicant for a standard assisted living facility license, or a limited mental health, extended congregate care, or limited nursing license may obtain a license application package from the AHCA central office.

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

1. The Assisted Living Facilities License Application, AHCA Form 3110-1008, March 1999, which is incorporated by reference, with all requested information provided as specified in s. 400.411(3), F.S.

2. An assets and liabilities statement, or AHCA Form 3180-1003, January 1998, which is incorporated by reference. The assets and liabilities statement shall include information about the assets available to cover claims against the owner and administrator and to demonstrate that the applicant has the financial ability to operate.

3. A statement of operations, or AHCA Form 3180-1002, July 1995, which is incorporated by reference. The statement of operations shall include projected revenues, expenses, taxes, extraordinary items, and other credits or charges for the first 12 months of operation.

4. If the proposed facility will be part of a continuing care retirement community, a copy of the Certificate of Authority to offer continuing care agreements issued pursuant to chapter 651, F.S. The certificate may be used in lieu of fiscal documentation specified in subparagraphs 2. and 3.

5. Proof of liability insurance as required by rule 58A-5.021.

6. Local Zoning Form, AHCA Form 3180-1021, September 1996, which is incorporated by reference, or a letter from the local zoning authority, signed by the county zoning official, which states that the applicant is in compliance with local zoning ordinances.

7. Proof of legal right to occupy the property which may include copies of recorded deeds, or copies of lease or rental agreements, contracts for deeds, quitclaim deeds, or other such documentation.

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

9. Documentation of a satisfactory sanitation inspection by the county health department.

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

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

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

c. A check or money order to cover the cost of screening. One check or money order can be submitted to cover both the screening and license fee costs described in paragraph (c).

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

12. A copy of any surety bond required pursuant to rule 58A-5.021.

13. A copy of the proposed facility’s floor plan indicating those areas to be licensed as an assisted living facility and, if applicable, the distinct part to be licensed as an extended congregate care facility if the entire assisted living facility is not to be so licensed.

14. Certificates of Occupancy shall be required from authorities charged with seeing that new buildings or renovations to existing buildings comply with state and local building codes. This must be provided at the time of the agency survey.

(b) An applicant for a limited mental health, extended congregate care, or limited nursing services license must concurrently apply for or hold a standard license and comply, in addition, with the applicable requirements of rules 58A-5.029, 58A-5.030, and 58A-5.031, respectively. A limited

mental health, extended congregate care, or limited nursing license shall only be issued to a facility holding a standard license.

(c) The application shall be submitted to the AHCA central office and be accompanied by a license fee in the form of a check or money order payable to the State of Florida. The license fee shall be in accordance with s. 400.407, F.S.

1. The fee for any special license shall be in addition to the standard license fee required by statute. When a special license is requested during a facility's standard license period, the fee will be prorated in order that the additional license will expire at the same time as the facility's standard license.

2. One check or money order can be submitted to cover all license fees and background screening costs.

3. When a check is returned from the applicant's bank for whatever reason, the agency shall add to the amount due a service fee of \$20 or 5 percent of the face amount of the check, whichever is greater, up to a maximum charge of \$200.

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

(2) CHANGE OF OWNERSHIP (CHOW). An application package for a change of ownership of a currently licensed facility is available from the AHCA central office.

(a) Completed applications shall be filed with the agency by the transferee at least 60 days before the date of transfer of ownership as required by s. 400.412, F.S., and must include the information and fees required under subsection (1) of this rule.

(b) At the time of transfer of ownership, all resident funds on deposit, advance payments of resident rents, resident security deposits and resident trust funds held by the current licensee shall be transferred to the applicant. Proof of such transfer shall be provided to the agency at the time of the agency survey and prior to the issuance of a standard license. This provision does not apply to entrance fees paid to a continuing care facility subject to the acquisition provisions in s. 651.024, F.S.

1. The transferor shall provide to each resident a statement detailing the amount and type of funds credited to the resident for whom funds are held by the facility.

2. The transferee shall notify each resident in writing of the manner in which the transferee is holding the resident's funds and state the name and address of the depository where the funds are being held, the amount held, and type of funds credited.

(c) The current resident contract on file with the facility shall be considered valid until such time as the transferee negotiates a new contract with the resident.

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

(e) During a change of ownership, the owner of record is responsible for ensuring that the needs of all residents are met at all times in accordance with part II of chapter 400 and this rule chapter.

(3) PROVISIONAL LICENSE. The agency may issue a provisional license to an applicant making an initial application for a standard license or who has filed a completed application for a change of ownership, and who is waiting for an agency survey, the receipt of Federal Bureau of Investigation background screening results, or a response to a request for an exemption from disqualification due to violation of background screening standards.

(a) A provisional license issued pursuant to an initial application for license shall not be considered equivalent to a standard license for the purposes of issuing a limited mental health, extended congregate care, or limited nursing services license.

(b) A provisional license issued pursuant to a change of ownership application shall be considered equivalent to a standard license for the purpose of issuing a limited mental health, extended congregate care, or limited nursing services license.

(c) A provisional license shall be issued for a specific period of time as determined by the agency provided such time is not less than 1 month nor for more than 6 months.

(4) LICENSE DENIAL. Owners denied a license shall be notified by the agency of their right to appeal the denial, the remedies available, and the time limit for requesting such remedies as provided under part II of rule chapter 59-1 and chapter 120, F.S.

Specific Authority 400.407, 400.411, 400.441 FS. Law Implemented 120.569, 400.402, 400.404, 400.407, 400.408, 400.411, 400.412, 400.417, 400.4174, 400.419, 400.427, 400.4275, 400.441, 400.444, 400.4445, 400.447, 415.102, 415.107, 415.1075, 435.02, 435.03, 435.07 FS. History—New 5-14-81, Amended 1-6-82, 5-19-83, 9-17-84, Formerly 10A-5.14, Amended 10-20-86, 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.014, Amended 10-30-95, 4-20-98,

58A-5.015 License Renewal and Conditional Licenses.

(1) LICENSE RENEWAL. Applications for license renewal shall be mailed biennially by the AHCA central office to the licensee no less than 120 days prior to the expiration of the current license. Applications shall be postmarked or hand delivered to the agency a minimum of 90 days prior to the expiration date appearing on the currently held license. Failure to file a timely application shall result in a late fee charged to the facility as described in s. 400.417, F.S.

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

1. An Assisted Living Facilities License Application, AHCA Form 3110-1008, March 1998, completed as required under rule 58A-5.014.

2. Proof of liability insurance as required by rule 58A-5.021.

3. A copy of the annual fire safety inspection conducted by the local authority having jurisdiction over fire safety or the State Fire Marshall. Documentation of a satisfactory fire safety inspection shall be provided at the time of the agency's biennial survey.

4. A copy of the annual sanitation inspection by the county health department. Documentation of a satisfactory sanitation inspection shall be provided at the time of the agency's biennial survey.

5. An affidavit of current compliance with level 1 and 2 background screening conducted pursuant to s. 400.4174, F.S.

6. A copy of any surety bond or continuation bond required by rule 58A-5.021.

7. A copy of the facility's floor plan if different from the previous application.

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

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

(2) CONDITIONAL LICENSE. The agency may issue a conditional license to a facility if, at the time of license renewal the facility is found to have uncorrected violations which the facility has had an opportunity to correct.

(a) The issuance of a conditional license shall be contingent upon agency approval of a written plan of correction which includes corrective steps that will be taken to eliminate the deficiencies and a timetable for correction of the deficiencies by the expiration date of the conditional license.

(b) A conditional license shall be issued by the agency only for that time period necessary to comply with applicable licensing standards and complete license renewal procedures, but not to exceed 6 months.

(c) A conditional license shall be revoked and license denied if subsequent follow-up surveys by the agency indicate that necessary progress has not been made toward compliance with applicable licensing standards.

(d) The issuance of a conditional license does not change the biennial license expiration date.

(3) LICENSE DENIAL.

(a) Applicants denied a license shall be notified by the agency of their right to appeal the denial, the remedies available, and the time limit for requesting such remedies as provided under part II of rule chapter 59-1 and chapter 120, F.S.

(b) Pursuant to s. 400.414, agency notice of license denial following a renewal application shall be posted and visible to the public at the facility.

Specific Authority 400.441 FS. Law Implemented 400.402, 400.404, 400.407, 400.411, 400.414, 400.417, 400.4174, 400.427, 400.4275, 400.441, 400.447 FS. History—New _____

58A-5.016 License.

(1) An ALF may not hold itself out to the public as providing any service other than a service for which it is licensed to provide.

(2)(1) Licenses are not transferable. Whenever a facility is sold or ownership is transferred, including leasing, the transferor and transferee must comply with the provisions of s. 400.412, F.S., and the transferee must submit a change of ownership license application pursuant to rule 58A-5.014 shall make application to the agency for a new license at least 60 days prior to the date of transfer of ownership. Additionally, the transferor must notify the agency, in writing, at least 60 days prior to the date of transfer of ownership and comply with the provisions of Section 400.412, F.S. The transferee must provide the agency with a copy of the recorded warranty deed or lease agreement before a license will be issued by the agency.

(3)(2) A change in the use of space that increases or decreases a facility's bed capacity shall not be made without prior approval from the AHCA central office. A facility shall not commence any construction which will expand the licensed capacity unless the licensee first submits to the agency proof that such construction will be in compliance with applicable local zoning requirements.

(4)(3) A change in the use of space that involves converting to resident use an area which has not previously been inspected for such use shall not be made without prior approval from the AHCA area office.

(5) If a facility consists of more than one building, all buildings included under a single license must be on contiguous property. "Contiguous property" means property under the same ownership separated by no more than a two-lane street that traverses the property. A licensed location may be expanded to include additional contiguous property

with the approval of the agency to ensure continued compliance with the requirements and standards of part III, chapter 400, F.S., and this rule chapter.

Specific Authority 400.441 FS. Law Implemented 400.407, 400.411, 400.412, 400.441, 400.444, 400.4445 415-107 FS. History—New 5-15-81, Amended 1-6-82, 9-17-84, Formerly 10A-5.16, Amended 6-21-88, 9-30-92, Formerly 10A-5.016, Amended 10-30-95,_____.

~~58A-5.0161 Inspection Responsibilities of Health Program Office and the Agency for Health Care Administration.~~

(1) ~~HRS County Public health departments Units~~ shall be responsible for inspecting all license applicants and licensed and applicant assisted living facilities in matters regulated by the following sections of this rule:

(a) Rule 64E-12.004, and rule chapter 64E-11, relating to food hygiene 58A-5.020(2)(a).

(b) Rule chapter 64E-12 The applicable part of section 40D-23.006, F.A.C., relating to sanitary practices in community-based residential facilities.

(c) Rule chapter 64E-16, relating to biomedical waste 58A-5.022.

(2) The local authority having jurisdiction over fire safety or State Fire Marshall shall be responsible for inspecting all license applicants and licensed facilities in matters regulated by s. 400.441, F.S., relating to uniform fire safety standards and rule chapter 4A-40, Uniform Fire Safety Standards for Assisted Living Facilities.

(3)(2) The agency AHCA shall be responsible for inspecting all license applicants and licensed and applicant facilities in all other matters regulated by this rule chapter except as noted in 58A-5.023(17).

Specific Authority 400.441 FS. Law Implemented 400.441 FS. History—New 8-15-90, Formerly 10A-5.0161, Amended 10-30-95,_____.

(Substantial rewording of Rule 58A-5.0181 follows. See Florida Administrative Code for present text.)

58A-5.0181 Residency Admission Criteria and Admission Procedures.

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

(a) Be at least 18 years of age.

(b) Be free from signs and symptoms of any communicable disease which is likely to be transmitted to other residents or staff; however, a person who has human immunodeficiency virus (HIV) infection may be admitted to a facility, provided that he would otherwise be eligible for admission according to this rule.

(c) Be able to perform the activities of daily living, with supervision or assistance if necessary.

(d) Be able to transfer, with assistance if necessary. The assistance of more than one person is permitted.

(e) Be capable of taking his/her own medication with assistance from staff if necessary.

1. If the individual needs assistance with self-administration the facility must inform the resident of the professional qualifications of facility staff who will be providing this assistance, and if unlicensed staff will be providing such assistance, obtain the resident's or the resident's surrogate, guardian, or attorney-in-fact's informed consent to provide such assistance as required under s. 400.4256, F.S.

2. The facility may accept a resident who requires the administration of medication, if the facility has a nurse to provide this service, or the resident or the resident's legal representative, designee, surrogate, guardian, or attorney-in-fact contracts with a licensed third party to provide this service to the resident.

(f) Any special dietary needs can be met by the facility.

(g) Not be a danger to self or others as determined by a physician, or mental health practitioner licensed under chapters 490 or 491.

(h) Not require licensed professional mental health treatment on a 24-hour a day basis.

(i) Not be bedridden.

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

1. The facility has a LNS license and services are provided pursuant to a plan of care issued by a physician, or the resident contracts directly with a licensed home health agency or a nurse to provide care;

2. The condition is documented in the resident's record; and

3. If the resident's condition fails to improve within 30 days, the resident shall be discharged from the facility.

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

1. Oral or nasopharyngeal suctioning;

2. Assistance with tube feeding;

3. Monitoring of blood gases;

4. Intermittent positive pressure breathing therapy;

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

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

(l) Not require 24-hour nursing supervision.

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

1. An assessment of the strengths, needs, and preferences of the individual, and the medical examination report required by s. 400.426, F.S., and subsection (2) of this rule;

2. The facility's admission criteria, and the services the facility is prepared to provide or arrange for to meet resident needs; and

3. The ability of the facility to meet the uniform fire safety standards for assisted living facilities established under s. 400.441, F.S., and rule chapter 4A-40.

(n) Admission criteria for facilities holding an extended congregate care license are described in rule 58A-5.030.

(2) HEALTH ASSESSMENT.

(a) Within 60 days prior to the residents admission to a facility but no later than 30 days after admission, the individual shall be examined by a physician or advanced registered nurse practitioner who shall provide the administrator with a medical examination report, or a copy of the report, which addresses the following:

1. The physical and mental status of the resident, including the identification of any health-related problems and functional limitations;

2. An evaluation of whether the individual will require supervision or assistance with the activities of daily living;

3. Any nursing or therapy services required by the individual;

4. Any special diet required by the individual;

5. A list of current medications prescribed, and whether the individual will require any assistance with the administration of medication;

6. Whether the individual has signs or symptoms of a communicable disease which is likely to be transmitted to other residents or staff;

7. A statement that in the opinion of the examining physician or ARNP, on the day the examination is conducted, the individual's needs can be met in an assisted living facility; and

8. The date of the examination, and the name, signature, address, phone number, and license number of the examining physician or ARNP. The medical examination may be conducted by a currently licensed physician or ARNP from another state.

(b) Medical examinations conducted up to 30 days after the resident's admission to the facility must be recorded on the Resident Health Assessment, DOEA Form 1823, dated March 1999, which is incorporated by reference. A faxed copy of the completed form is acceptable. A copy of DOEA Form 1823 may be obtained from the DOEA Assisted Living Program.

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

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

(e) An assessment that has been conducted through the Comprehensive Assessment and Review for Long-Term Care Services (CARES) program may be substituted for the medical examination requirements of s. 400.426 and this rule.

(f) Any orders for medications, nursing, therapeutic diets, or other services to be provided or supervised by the facility issued by the physician or ARNP conducting the medical examination may be attached to the health assessment. A physician may attach a do-not-resuscitate order for residents who do not wish cardiopulmonary resuscitation to be administered in the case of cardiac or respiratory arrest.

(g) A resident placed on an temporary emergency basis by the Department of Children and Family Services pursuant to ss. 415.105 or 415.1051, F.S., shall be exempt from the examination requirements of this subsection for up to 30 days. However, a resident accepted for temporary emergency placement shall be entered on the facility's admission and discharge log and counted in the facility census; a facility may not exceed its licensed capacity in order to accept a such a resident. A medical examination must be conducted on any temporary emergency placement resident accepted for regular admission.

(3) ADMISSION PACKAGE.

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

1. The facility's residency criteria;

2. The daily, weekly or monthly charge to reside in the facility and the services, supplies, and accommodations provide by the facility for that rate;

3. Personal care services that the facility is prepared to provide to residents and additional costs to the resident, if any;

4. Nursing services that the facility is prepared to provide to residents and additional costs to the resident, if any;

5. Food service and the ability of the facility to accommodate special diets;

6. The availability of transportation and additional costs to the resident, if any;

7. Any other special services that are provided by the facility and additional cost if any;

8. Social and leisure activities generally offered by the facility;

9. Any services that the facility does not provide but will arrange for the resident and additional cost, if any;

10. A statement of facility rules and regulations that residents must follow as described in rule 58A-5.0182;

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

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

(b) Prior to or at the time of admission the resident, responsible party, guardian, or attorney in fact, if applicable, shall be provided with the following:

1. A copy of the resident's contract which meets the requirements of rule 58A-5.025;

2. A copy of the facility statement described in paragraph (a) if one has not already been provided;

3. A copy of the resident's bill of rights as required by rule 58A-5.0182; and

4. A Long-Term Care Ombudsman Council brochure which includes the telephone number and address of the district council.

(c) Documents required by this subsection shall be in English. If the resident is not able to read, or does not understand English and translated documents are not available, the facility must explain its policies to a family member or friend of the resident or another individual who can communicate the information to the resident.

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

(a) The resident may be bedridden for up to 7 consecutive days.

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

1. The facility has a LNS license and services are provided pursuant to a plan of care issued by a physician, or the resident contracts directly with a licensed home health agency or a nurse to provide care;

2. The condition is documented in the resident's record; and

3. If the resident's condition fails to improve within 30 days, the resident shall be discharged from the facility.

(c) A terminally ill resident who no longer meets the criteria for continued residency may continue to reside in the facility if the following conditions are met:

1. The resident qualifies for, is admitted to, and consents to the services of a licensed hospice which coordinates and ensures the provision of any additional care and services that may be needed;

2. Continued residency is agreeable to the resident and the facility;

3. An interdisciplinary care plan is developed and implemented by a licensed hospice in consultation with the facility. Facility staff may provide any nursing service permitted under the facility's license and total help with the activities of daily living; and

4. Documentation of the requirements of this paragraph is maintained in the resident's file.

(d) The administrator is responsible for monitoring the continued appropriateness of placement of a resident in the facility.

(e) Continued residency criteria for facilities holding an extended congregate care license are described in rule 58A-5.030.

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

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

(Substantial rewording of Rule 58A-5.0182 follows. See Florida Administrative Code for present text.)

58A-5.0182 Resident Care Standards.

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

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

(a) Monitor the quantity and quality of resident diets in accordance with rule 58A-5.020.

(b) Daily observation by designated staff of the activities of the resident while on the premises, and awareness of the general health, safety, and physical and emotional well-being of the individual.

(c) General awareness of the resident's whereabouts. The resident may travel independently in the community.

(d) Contacting the resident's health care provider and other appropriate party such as the resident's family, guardian, health care surrogate, or case manager if the resident exhibits a significant change; contacting the resident's family, guardian, health care surrogate, or case manager if the resident is discharged or moves out.

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

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

(a) The facility shall provide an ongoing activities program. The program shall provide diversified individual and group activities in keeping with each resident's needs, abilities, and interests.

(b) The facility shall consult with the residents in selecting, planning, and scheduling activities. The facility shall demonstrate residents' participation through one or more of the following methods: resident meetings, committees, a resident council, suggestion box, group discussions, questionnaires, or any other form of communication appropriate to the size of the facility.

(c) Scheduled activities shall be available at least 5 days a week for a total of not less than 10 hours per week. Watching television shall not be considered an activity for the purpose of meeting the 10 hours per week of scheduled activities unless the television program is a special one-time event of special interest to residents of the facility. An activities calendar shall be posted in common areas where residents normally congregate.

(d) If residents assist in planning a special activity such as an outing, seasonal festivity, or an excursion, this may be counted toward the activity time.

(3) ARRANGEMENT FOR HEALTH CARE. In order to facilitate resident access to needed health care, the facility shall, as needed by each resident:

(a) Assist residents in making appointments and remind residents about scheduled appointments for medical, dental, nursing, or mental health services.

(b) Provide transportation to needed medical, dental, nursing or mental health services, or arrange for transportation through family and friends, volunteers, taxi cabs, public buses, and agencies providing transportation for persons with disabilities.

(c) The facility may not require residents to see a particular health care provider.

(4) ACTIVITIES OF DAILY LIVING. Facilities shall offer supervision of or assistance with activities of daily living as needed by each resident. Residents shall be encouraged to be as independent as possible in performing ADLs.

(5) NURSING SERVICES.

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

1. Take or supervise the taking of vital signs;

2. Manage weekly pill-organizers and administer medications as described under rule 58A-5.0181;

3. Give prepackaged enemas pursuant to a physician's order; and

4. Maintain nursing progress notes.

(b) Pursuant to s. 464.022, F.S., the nursing services listed in paragraph (a) may also be delivered in the facility by family members or friends of the resident provided the family member or friend does not receive compensation for such services.

(6) RESIDENT RIGHTS AND FACILITY PROCEDURES.

(a) A copy of the Resident Bill of Rights as proscribed in s. 400.428, F.S., or a summary provided by the long-term care ombudsman council shall be posted in full view in a freely accessible resident area, and included in the admission package provided pursuant to rule 58A-5.0181.

(b) In accordance with s. 400.428, F.S., the facility shall have a written grievance procedure for receiving and responding to resident complaints, and for residents to recommend changes to facility policies and procedures. The facility must be able to demonstrate that such procedure is implemented upon receipt of a complaint.

(c) The address and telephone number for lodging complaints against a facility or facility staff with the district long-term care ombudsman council, the Advocacy Center for Persons with Disabilities, the Human Rights Advocacy Committee and agency area office, shall be posted in full view in a common area accessible to all residents.

(d) The statewide toll-free telephone number of the Florida Abuse Hotline "1(800)96-ABUSE or 1(800)962-2873" shall be posted in full view in a common area accessible to all residents.

(e) The facility shall have written statement of the facility's house rules and procedures which shall be included in the admission package provided pursuant to rule 58A-5.0181. The rules and procedures shall address the facility's policies with respect to such issues, for example, as resident responsibilities, the facility's alcohol and tobacco policy, medication storage, the delivery of services to residents by third party providers, and other administrative and housekeeping practices, schedules, and requirements.

(f) Residents may not be required to perform any work in the facility without compensation, except that facility rules or the facility contract may include a requirement that residents be responsible for cleaning their own sleeping areas or apartments. If a resident is employed by the facility, the resident shall be compensated, at a minimum, at an hourly wage consistent with the federal minimum wage law.

(g) The facility shall provide residents convenient access to a telephone to facilitate the resident's right to communicate on a private basis. For facilities with a licensed capacity of 17

or more residents in which residents do not have private telephones, there shall be, at a minimum, an accessible telephone in each building where residents reside.

(h) Pursuant to s. 400.441, F.S., the use of physical restraints shall be limited to half-bed rails, and only upon the written order of the resident's physician, who shall review the order biannually, and the consent of the resident or the resident's representative. Any device, including half-bed rails, which the resident chooses to use and can remove or avoid without assistance shall not be considered a physical restraint.

(7) THIRD PARTY SERVICES. Nothing in this rule chapter is intended to prohibit a resident or the resident's representative from independently arranging, contracting, and paying for services provided by a third party of the resident's choice, including a licensed home health agency or private nurse, or receiving services through an out-patient clinic, provided the resident meets the criteria for continued residency and the resident complies with the facility's policy relating to the delivery of services in the facility by third parties. The facility's policies may require the third party to coordinate with the facility regarding the resident's condition and the services being provided. Pursuant to subsection (6), the facility shall provide the resident with the facility's policy regarding the provision of services to residents by non-facility staff.

(8) OTHER STANDARDS. Additional care standards for residents residing in a facility holding a limited mental health, extended congregate care or limited nursing services license are provided in rules 58A-5.029, 58A-5.030, and 58A-5.031, F.A.C., respectively.

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

58A-5.0184 Marketing; Rebates Prohibited.

Specific Authority 400.441 FS. Law Implemented 400.4195, 400.441, 400.447 FS. History—New 8-15-90, Amended 9-30-92, Formerly 10A-5.0184, Amended 10-30-95, 6-2-96, Repealed _____.

58A-5.0185 Medication Practices.

Pursuant to ss. 400.4255 and 400.4256, F.S., and this rule, facilities holding a standard, limited mental health, extended congregate care, or limited nursing services license may assist with the self-administration or administration of medications to residents in a facility. A resident may not be compelled to take medications but may be counseled in accordance with this rule.

(1) SELF ADMINISTERED MEDICATIONS.

(a) Residents who are capable of self-administering their medications without assistance shall be encouraged and allowed to do so.

(b) If facility staff note deviations which could reasonably be attributed to the improper self-administration of medication, staff shall consult with the resident concerning any problems the resident may be experiencing with the medications, the need to notify the resident's health care provider, or to permit

the facility to aid the resident through the use of a pill organizer, provide assistance with self-administration, or the administer medications if such services are offered by the facility.

(2) WEEKLY PILL ORGANIZERS.

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

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

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

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

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

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

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

(3) ASSISTANCE WITH SELF-ADMINISTRATION.

(a) For facilities which provide assistance with self-administered medication, a staff member, who is at least 18 years old, trained to assist with self-administered medication in accordance with rule 58A-5.0191, and able to demonstrate to the administrator the ability to accurately read and interpret a prescription label, must be available to assist residents with self-administered medications in accordance with procedures described in s. 400.4256, F.S.

(b) In order to facilitate assistance with self-administration staff may prepare and make available such items as water, juice, cups, spoons, etc., as needed by residents. Staff may also return unused doses to the medication container. Medication which appears to have been contaminated, shall not be returned to the container.

(c) Staff shall observe the resident take the medication. Any concerns about the resident's reaction to the medication shall be reported to the resident's health care provider and documented in the resident's record.

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

1. The health care provider may prescribe a medication schedule which coincides with the resident's presence in the facility;

2. The medication container may be given to the resident or a friend or family member upon leaving the facility, with this fact noted in the resident's medication record;

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

4. Medications may be separately prescribed and dispensed in an easier to use form, such as unit dose packaging;

(4) MEDICATION ADMINISTRATION.

(a) For facilities which provide medication administration a staff member, who is licensed to administer medications, must be available to administer medications in accordance with a health care provider's order or prescription label.

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

(c) Medication administration includes the conducting of any examination or testing such as blood glucose testing or other procedure necessary for the proper administration of medication that the resident cannot conduct himself and that can be performed by licensed staff.

(d) A facility which performs clinical laboratory tests for residents, including blood glucose testing, must be in compliance with the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA) and part I of chapter 483, F.S. A copy of the state license or a Certificate of Exemption must be maintained in the facility for review. A state license or certificate of exemption is not required if the resident performs the test himself/herself or if the test is performed by a third party. Information about laboratory licensing is available from the Clinical Laboratory Licensure Unit, Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, FL 32308; telephone (850)487-3109.

(5) MEDICATION RECORDS.

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

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

(c) For medications which serve as chemical restraints, the facility shall, pursuant to s. 400.441, F.S., maintain a record of the prescribing physician's annual evaluation of the use of the medication.

(6) MEDICATION STORAGE AND DISPOSAL.

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

1. The facility assists with or administers the medication;

2. The resident requests central storage;

3. The medication is determined and documented by the health care provider to be hazardous if kept in the personal possession of the person for whom it is prescribed;

4. The resident fails to maintain the medication in a safe manner as described in this paragraph;

5. The facility determines that because of physical arrangements and the conditions or habits of residents, the personal possession of medication by a resident poses a safety hazard to other residents; or

6. The facility's rules and regulations require central storage of medication and that policy has been provided to the resident prior to admission as required under rule 58A-5.0181.

(b) Centrally stored medications must be:

1. Kept in a locked cabinet, locked cart, or other locked storage receptacle, room, or area at all times;

2. Located in an area free of dampness and abnormal temperature, except that a medication requiring refrigeration shall be refrigerated. Refrigerated medications shall be secured by being kept in a locked container within the refrigerator, by keeping the refrigerator locked, or by keeping the area in which refrigerator is located locked;

3. Accessible to staff responsible for filling pill-organizers, assisting with self-administration, or administering medication. Such staff must have ready access to keys to the medication storage areas at all times; and

4. Kept separately from the medications of other residents and properly closed or sealed.

(c) Medication which has been discontinued but which has not expired shall be returned to the resident or the resident's representative, as appropriate, or may be centrally stored by the facility for future resident use by the resident at the resident's request. If centrally stored by the facility, it shall be stored separately from medication in current use, and the area in which it is stored shall be marked "discontinued medication." Such medication may be reused if re-prescribed by the resident's health care provider.

(d) When a resident's stay in the facility has ended, the administrator shall return all medications to the resident, the resident's family, or the resident's guardian unless otherwise prohibited by law. If, after notification and waiting at least 15 days, the resident's medications are still at the facility, the medications shall be considered abandoned and may be disposed of in accordance with paragraph (e).

(e) Medications which have been abandoned or which have expired must be disposed of within 30 days of being determined abandoned or expired and disposition shall be documented in the resident's record. The medication may be taken to a pharmacist for disposal or may be destroyed by the administrator or designee with one witness.

(f) Facilities that hold a Special-ALF permit issued by the Board of Pharmacy may return dispensed medicinal drugs to the dispensing pharmacy pursuant to rule 64B16-28.870.

(7) MEDICATION LABELING AND ORDERS.

(a) No prescription drug shall be kept by the facility unless it is properly labeled and dispensed in accordance with chapters 465 and 499, F.S.

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

(c) If the directions for use are "as needed" or "as directed," the health care provider shall be contacted and requested to provide revised instructions. For an "as needed" prescription, the circumstances under which it would be appropriate for the resident to request the medication and any limitations shall be specified; for example, "as needed for pain, not to exceed 4 tablets per day." The revised instructions, including the date they were obtained from the health care provider and the signature of the staff who obtained them, shall be noted in the medication record, or a revised label shall be obtained from the pharmacist.

(d) Any change in directions for use of a medication for which the facility is providing assistance with self-administration or administering medication must be

accompanied by a written medication order issued and signed by the resident's health care provider, or a faxed copy of a such order. The new directions shall promptly be recorded in the resident's medication observation record. The facility may then place an "alert" label on the medication container which directs staff to examine the revised directions for use in the MOR, or obtain a revised label from the pharmacist.

(e) A nurse may take a medication order by telephone. Such order must be promptly documented in the resident's medication observation record. The facility must obtain a written medication order from the health care provider within 10 working days. A faxed copy of a signed order is acceptable.

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

(8) OVER THE COUNTER MEDICATIONS.

(a) A stock supply of OTC medications for multiple resident use is not permitted in any facility.

(b) Non-prescription over-the-counter drugs, when centrally stored, shall be labeled with the resident's name, and the manufacturer's label with directions for use shall be kept with the medication.

(c) When an over-the-counter medication is prescribed by a health care provider, the medication becomes a prescription medication and shall be managed in accordance with prescription medication under this rule.

Specific Authority 400.4256, 400.441 FS. Law Implemented 400.4255, 400.4256, 400.441 FS. History--New

(Substantial rewording of Rule 58A-5.019 follows. See Florida Administrative Code for present text.)

58A-5.019 Staffing Standards.

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

(a) The administrators shall:

1. Be at least 21 years of age;

2. If employed on or after August 15, 1990, have a high school diploma or general equivalency diploma (G.E.D.), or have been an operator or administrator of a licensed assisted living facility in the State of Florida for at least one of the past 3 years in which the facility has met minimum standards. Administrators employed on or after October 30, 1995, must have a high school diploma or G.E.D.;

3. Be in compliance with Level 2 background screening standards pursuant to s. 400.4174, F.S.; and

4. Complete the core training requirement pursuant to rule 58A-5.0191.

(b) Administrators may supervise a maximum of either three assisted living facilities or a combination of housing and health care facilities or agencies on a single campus. However, administrators who supervise more than one facility shall appoint in writing a separate "manager" for each facility who must:

1. Be at least 21 years old; and
2. Complete the core training requirement pursuant to rule 58A-5.0191.

(c) Pursuant to s. 400.4176, F.S., facility owners shall notify both the AHCA area office and AHCA central office within 10 days of a change in a facility administrator using AHCA Form 3180-1006, January 1999, which is incorporated by reference. The agency shall conduct a background check on the new administrator in accordance with s. 400.4174 and rule 58A-5.014.

(2) STAFF.

(a) Newly hired staff shall have 30 days to submit a statement from a health care provider, based on an examination conducted within the last six months, that the person does not have any signs or symptoms of a communicable disease including tuberculosis. Freedom from tuberculosis must be documented on an annual basis. Persons with a positive tuberculosis test must submit a health care provider's statement that the person does not constitute a risk of communicating tuberculosis. Newly hired staff does not include an employee transferring from one facility to another that is under the same management or ownership, without a break in service. If any staff member is later found to have, or is suspected of having, a communicable disease, he/she shall be removed from duties until the administrator determines that such condition no longer exists.

(b) All staff shall be assigned duties consistent with his/her level of education, training, preparation, and experience. Staff providing services requiring licensing or certification must be appropriately licensed or certified. All staff shall exercise their responsibilities, consistent with their qualifications, to observe residents, to document observations on the appropriate resident's record, and to report the observations to the resident's health care provider in accordance with this rule chapter.

(c) All staff must comply with the training requirements of rule 58A-5.0191.

(d) Staff provided by a staffing agency or employed by a business entity contracting to provide direct or indirect services to residents must be qualified for the position in accordance with this rule chapter. The contract between the facility and the staffing agency or contractor shall specifically describe the services the staffing agency or contractor will be providing to residents.

(e) For facilities with a licensed capacity of 17 or more residents, the facility shall:

1. Develop a written job description for each staff position and provide a copy of the job description to each staff member; and

2. Maintain time sheets for all staff.

(3) BACKGROUND SCREENING.

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

1. A completed Criminal History Check, AHCA Form 3110-0002, June 1998;

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

3. A check to cover the cost of screening.

(b) The results of employee screening conducted by the agency shall be maintained in the employee's personnel file.

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

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

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

3. Proof of employment with a corporation or business entity or related entity that owns, operates, or manages more than one facility or agency licensed under chapter 400, F.S., that conducted Level 1 screening as a condition of initial or continued employment.

(4) STAFFING STANDARDS.

(a) Minimum staffing:

1. At least one staff member shall be within the facility at all times when residents are in the facility. Residents serving as paid or volunteer staff may not be left solely in charge of other residents while the facility administrator and staff are absent from the facility.

2. In addition to the 24-hour staffing required in subparagraph 1., facilities with more than 5 residents shall, at a minimum, add the following staff hours per day, 7 days per week:

<u>Number of Residents</u>	<u>Staff Hours/Day</u>
<u>6 – 15</u>	<u>30</u>
<u>16 – 25</u>	<u>35</u>
<u>26 – 35</u>	<u>41</u>
<u>36 – 45</u>	<u>47</u>

46 – 55

56 – 65

66 – 75

76 – 85

86 – 95

53

58

64

70

75

For every 20 residents over 95 add 6 staff hours per day.

3. In facilities with 17 or more residents, there shall be one staff member awake at all hours of the day and night.

4. At least one staff member who is at least 18 years of age, has access to facility and resident records in case of an emergency, and is trained in First Aid and CPR as provided under rule 58A-5.0191, shall be within the facility at all times when residents are in the facility.

5. Staff whose duties are exclusively building maintenance, clerical, or food preparation shall not be counted toward meeting the minimum staffing hours requirement.

6. The administrator or manager's time may be counted for the purpose of meeting the required staffing hours provided the administrator is actively involved in the day-to-day operation of the facility, including making decisions and providing supervision for all aspects of resident care, and is listed on the facility's staffing schedule.

7. Only on-the-job staff may be counted in meeting the minimum staffing hours. Vacant positions or absent staff may not be counted.

(b) Notwithstanding the minimum staffing requirements specified in paragraph (a), all facilities, including those composed of apartments, shall have enough qualified staff to provide resident supervision, and to provide or arrange for resident services in accordance with the residents scheduled and unscheduled service needs, resident contracts, and resident care standards as described in rule 58A-5.0182.

(c) The facility shall maintain a written work schedule which reflects the facility's 24-hour staffing pattern for a given time period.

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

1. When additional staff is required above the minimum, the AHCA area office shall require the submission, within the time specified in the notification, of a corrective action plan indicating how the increased staffing is to be achieved and resident service needs will be met. The plan shall be reviewed by the AHCA area office to determine if the plan will increase the staff to needed levels and meet resident needs.

2. When the facility can demonstrate to the AHCA area office that resident needs are being met, or that resident needs can be met without increased staffing, modifications may be made in staffing requirements for the facility and the facility shall no longer be required to maintain a plan with the agency.

3. Based on the recommendations of the local authority with jurisdiction over firesafety, the agency may require additional staff when the facility fails to meet the firesafety standards described in s. 400.441 and rule chapter 4A-40, until such time as the local firesafety authority informs the agency that firesafety requirements are being met.

(e) Facilities that are co-located with a nursing home may use shared staffing provided that staff hours are only counted once for the purpose of meeting either assisted living facility or nursing home minimum staffing ratios.

(f) Facilities holding a limited mental health, extended congregate care, or limited nursing services license shall also comply with the staffing requirements of rule 58A-5.029, 58A-5.030, or 58A-5.031, respectively.

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

58A-5.0191 Staff Training Requirements and Training Fees.

(1) ASSISTED LIVING FACILITY CORE TRAINING AND UPDATES.

(a) No change.

(b) Administrators and managers their designees, must complete the assisted living facility core training program within 3 months from the date of becoming a facility administrator or manager designee. Administrators who attended core training prior to July 1, 1997, and managers designees who attended core training program prior to April 20, 1998, shall not be required to take the competency test.

(c) Administrators and managers their designees shall participate in 12 hours of continuing education in topics related to assisted living every 2 years as provided under s. 400.452, F.S.

(d) Administrators and managers their designees shall, in addition, attend update training for any portion of core training that has been revised as a result of new legislation, rule amendment, or updated materials. Update training received under this paragraph may count towards the 12 hours of continuing education required by s. 400.452, F.S., and this subsection.

(e) A newly hired administrator or manager designee who previously completed core training and has maintained update and continuing education requirements, shall not be required to retake core training. An administrator or manager designee who previously completed core training but has not maintained

the continuing education requirements and attended update training will be considered a new administrator and must retake core training.

(2) ~~DIRECT CARE STAFF IN-SERVICE TRAINING.~~ Each facility must provide the following in-service training to facility staff.

(a) ~~Newly hired S~~staff who provide direct care to residents, other than nurses, certified nursing assistants, or home health aides trained in accordance with Rule 59A-8.0095, must receive a minimum of 1 hour in-service training in infection control, including universal precautions, and facility sanitation procedures before providing personal care to residents. Documentation of compliance with the staff training requirements of 29 CFR 1910.1030, relating to blood borne pathogens, may be used to meet this requirement.

(b) ~~Newly hired S~~staff who provide direct care to residents ~~must shall~~ receive a minimum of 1 hour in-service training within 30 days of employment that covers in the following subjects:

1. Reporting major incidents.
2. Facility emergency procedures including chain-of-command and staff roles relating to emergency evacuation.

(c) ~~Newly hired S~~staff who provide direct care to residents, who have not taken the core training program, shall receive a minimum of 1 hour in-service training within 30 days of employment that covers in the following subjects:

1. Resident rights in an assisted living facility.
2. Recognizing and reporting resident abuse, neglect, and exploitation.

(d) ~~Newly hired S~~staff who provide direct care to residents, other than nurses, CNAs, or home health aides trained in accordance with ~~r~~Rule 59A-8.0095, must receive 3 hours of in-service training within 30 days of employment that covers in the following subjects:

1. Resident behavior and needs.
2. Providing assistance with the activities of daily living.

(e) Staff who prepare or serve food must receive a minimum of 1-hour in-service training within 30 days of employment in safe food handling practices.

(3) HUMAN IMMUNODEFICIENCY VIRUS/ ACQUIRED IMMUNE DEFICIENCY SYNDROME (HIV/ AIDS). Pursuant to s. 381.0035, F.S., all facility employees must complete biennially, a continuing education course on HIV and AIDS. Documentation of compliance must be maintained in accordance with subsection (10) of this rule.

~~(a) All facility staff, except those exempted under paragraph (d) of this subsection, must complete a 2-hour HIV/ AIDS education course within 6 months of facility licensure or within 6 months of employment, and must complete a minimum of one hour of continuing HIV/AIDS education every 2 years.~~

(b) A new employee who has taken the 2 hour initial HIV/AIDS course within the last 2 years, or if the course was taken more than 2 years ago, has maintained the 2 year continuing education requirement, shall be considered in compliance. A new employee who has taken the 2 hour initial HIV/AIDS course but has not maintained the continuing education requirement must retake the 2 hour initial HIV/AIDS course.

(c) Documentation of attendance at HIV/AIDS courses offered through the county health departments or an accredited college, university or vocational school shall satisfy this requirement as well as courses offered by a provider approved by health related professional boards in the Department of Health. Other HIV/AIDS courses taken in fulfillment of this requirement must be documented in accordance with subsection (10) this rule.

(d) Facility staff who are not involved in resident care and do not have access to resident records shall not be required to meet this requirement.

(4) No change.

(5) ASSISTANCE WITH SUPERVISION OF SELF-ADMINISTERED MEDICATION AND MEDICATION MANAGEMENT. Persons who will be providing assistance with self-administered medications as described in rule 58A-5.0185 must receive a minimum of 4 hours of training designated to supervise the self administration of medication pursuant to Rule 58A-5.0182 must receive a minimum of 2 hours of training prior to assuming this responsibility. A licensed registered nurse or pharmacist shall be considered as having met this requirement. Courses provided in fulfillment of this requirement must meet the following criteria:

(a) Training must cover state law and rule requirements with respect to the supervision, assistance, administration, and management of medications in assisted living facilities; procedures and techniques for assisting the resident with self-administration of medication including how to read a prescription label; providing the right medications to the right resident; common medications; the importance of taking medications as prescribed; recognition of side effects and adverse reactions and procedures to follow when residents appear to be experiencing side effects and adverse reactions; documentation and record keeping; and medication storage and disposal. Training shall include demonstrations of proper techniques and provide opportunities for hands-on learning through practice exercises. Completion of the core training program shall satisfy this requirement. Other courses taken in fulfillment of this requirement must be documented in accordance with this rule.

(b) The training must be provided by a registered nurse, licensed pharmacist, or department staff who shall issue a licensing certificate to a trainee who demonstrates an ability to:

1. Understand a prescription label;

2. Provide assistance with self-administration in accordance with s. 400.4256, F.S., and rule 5.0185, including:

a. Assist with oral dosage forms, topical dosage forms, and topical ophthalmic, otic and nasal dosage forms;

b. Measure liquid medications, break scored tablets, and crush tablets in accordance with prescription directions;

c. Recognize the need to obtain clarification of an "as needed" prescription order;

d. Recognize a medication order which requires judgement or discretion, and to advise the resident, resident's health care provider or facility employer of inability to assist in the administration of such orders;

e. Complete a medication observation record;

f. Retrieve and store medication; and

g. Recognize the general signs of adverse reactions to medications and report such reactions.

(6) No change.

(7) EXTENDED CONGREGATE CARE TRAINING.

(a) The administrator and extended congregate care supervisor, if different from the administrator, must complete core training and 6 hours of initial training in extended congregate care provided by the department prior to the facility's receiving its extended congregate care license or within 3 months of beginning employment in the facility as an administrator or ECC supervisor. Completion of core training shall be a prerequisite for this training. Supervisors who attended core training prior to April 20, 1998, shall not be required to take the core training competency test.

(b) No change.

(c) All direct care staff providing care to residents in an employed in a facility licensed to provide extended congregate care program must complete at least 2 6 hours of in-service training provided by the facility within 6 months of beginning employment in the facility. The training must address extended congregate care concepts and requirements, including statutory and rule requirements, and delivery of personal care and supportive services in an extended congregate care facility.

(8) No change.

(9) ALZHEIMER'S DISEASE AND RELATED DISORDERS. Facilities which advertise that they provide special care for persons with Alzheimer's disease and related disorders, or who maintain secured areas as described in rule 58A-5.023, must ensure that facility staff receive the following training.

(a) Facility staff who have regular contact with or provide direct care to residents with Alzheimer's disease and related disorders, shall obtain 4 hours of initial training within 3 months of employment. Facility staff who are already employed prior to April 20, 1998, shall have 6 months from that date to complete this training. Completion of the core training program after April 20, 1998, shall satisfy this requirement. Facility staff who meet the requirements for

Alzheimer's training providers under paragraph (g) of this subsection will be considered as having met this requirement. "Staff who have regular contact" means staff who interact on a daily basis with residents but do not provide direct care to residents. Initial training must address the following subject areas:

1. Understanding Alzheimer's disease and related disorders; including normal aging versus memory loss due to disease; diagnosing Alzheimer's disease; characteristics of the disease process; and behavior management.

2. Characteristics of Alzheimer's disease;

3. Communicating with residents with Alzheimer's disease;

4. Family issues;

5. Resident environment; and

6. Ethical issues.

~~2. Psychological issues including resident abuse; stress management and burnout for staff, families, and residents; and ethical issues.~~

~~3. Administrative issues including resident environment and composition; and staffing.~~

(b) Facility staff who provide direct care to residents with Alzheimer's disease and related disorders, must obtain an additional 4 hours of training within 9 months of employment. Facility staff who are already employed prior to April 20, 1998, shall have 9 months from that date to complete this training. Facility staff who meet the requirements for Alzheimer's training providers under paragraph (g) of this subsection will be considered as having met this requirement. Such training must address the following subject areas as they apply to these disorders:

1. Behavior management ~~Medical information;~~

2. Assistance with ADLs; ~~Behavior management; and~~

3. Activities for residents; ~~Therapeutic approaches.~~

4. Stress management for the care giver; and

5. Medical information.

(c) A detailed description of the subject areas that must be included in a curriculum which meets the requirements of paragraphs (a) and (b) of this subsection can be found in the document "Training Guidelines Curriculum Outline for the Special Care of Persons with Alzheimer's Disease and Related Disorders," March 1999 July 1998, incorporated by reference, available from the DOEA Assisted Living Program Department of Elder Affairs, 4040 Esplanade Way, Tallahassee, Florida 32399-7000.

(d) through (g) No change.

(10) TRAINING PROVIDER AND CURRICULUM APPROVAL; TRAINING DOCUMENTATION.

(a) All persons seeking to provide approved training which must be approved by the department under this rule shall submit an application provided by the department documenting their qualifications ~~documentation of qualification~~ to provide

training and proposed course curriculums to the department prior to training. Upon receipt of approval from the department, the training provider may identify the training program as "approved by the Florida Department of Elder Affairs for purposes of meeting the training requirements of s. 400.4178 or s. 400.452, F.S., and ~~Rule~~ 58A-5.0191." The department shall maintain a list of approved training providers and curriculum. Approval shall be granted for 3 years, whereupon the training provider must re-submit the training program to the department for re-approval.

(b) through (e) No change.

(11) TRAINING FEES. Fees for training provided by the department are as follows:

(a) Assisted Living Facility Core Training:

1. Less than 30% OSS residents	\$160 \$150
2. Between 30% and 49% OSS residents	\$120 \$115
3. Between 50% and 69% OSS residents	\$ 80 \$75
4. Between 70% and 89% OSS residents	\$ 40 \$35
5. 90% or more OSS residents	no charge

(b) No change.

(c) Extended Congregate Care Initial Training, ~~Alzheimer's Training,~~ and Core Update and Continuing Education programs of over 4 hours and up to 8 hours:

1. Less than 30% OSS residents	\$ 50
2. Between 30% and 49% OSS residents	\$ 40
3. Between 50% and 69% OSS residents	\$ 30
4. Between 70% and 89% OSS residents	\$ 20
5. 90% or more OSS residents	no charge

(d) ~~Supervision of Medication Management,~~ Alzheimer's Training, and Core Update and Continuing Education programs of 4 hours or less:

1. Less than 30% OSS residents	\$ 30
2. Between 30% and 49% OSS residents	\$ 20
3. Between 50% and 69% OSS residents	\$ 15
4. Between 70% and 89% OSS residents	\$ 10
5. 90% or more OSS residents	no charge

(e) Training materials, manuals and guides available from the department printed or on diskette/compact disk:

1. Assisted Living Facility Administrator's Guide	\$ 35
2. Extended Congregate Care Supplemental Guide	\$ 10
3. AHCA Survey Guidelines	\$ 5
4. Assisted Living Facility Law and Rule	\$ 5

(12) NOTIFICATION OF TRAINING. The department's assisted living trainer in the planning and service area where a facility is located shall notify licensed facilities when training is being offered by the department. Other persons or facilities who wish to receive notification of training provided by the department shall provide a current mailing address annually to the department's assisted living trainer in the planning and

service area in which the person is located or where the person or facility would like to receive training. A schedule of department training offered and a list of trainers is available from the DOEA Assisted Living Program, Department of Elder Affairs, 4040 Esplanade Way, Tallahassee, Florida 32399-7000, phone number 850-414-2309.

Specific Authority 400.407, 400.4178, 400.441, 400.452 FS. Law Implemented 400.407, 400.4075, 400.4178, 400.452 FS. History—New 9-30-92, Formerly 10A-5.0191, Amended 10-30-95, 6-2-96, 4-20-98,

(Substantial rewording of Rule 58A-5.020 follows. See Florida Administrative Code for present text.)

58A-5.020 Food Service Standards.

(1) GENERAL RESPONSIBILITIES. When food service is provided by the facility, the administrator or a person designated in writing by the administrator shall:

(a) Be responsible for total food services and the day-to-day supervision of food services staff.

(b) Perform his/her duties in a safe and sanitary manner.

(c) Provide regular meals which meet the nutritional needs of residents, and therapeutic diets as ordered by the resident's health care provider for resident's who require special diets.

(d) Maintain the in-service and continuing education requirements specified in rule 58A-5.0191.

(2) DIETARY STANDARDS.

(a) The Tenth Edition Recommended Dietary Allowances established by the Food and Nutrition Board – National Research Council, adjusted for age, sex and activity, shall be the nutritional standard used to evaluate meals. Therapeutic diets shall meet these nutritional standards to the extent possible. A summary of the Tenth Edition Recommended Dietary Allowances, interpreted by a daily food guide, is available from the DOEA Assisted Living Program.

(b) The recommended dietary allowances shall be met by offering a variety of foods adapted to the food habits, preferences and physical abilities of the residents and prepared by the use of standardized recipes. For facilities with a licensed capacity of 16 or fewer residents, standardized recipes are not required. Unless a resident chooses to eat less, the recommended dietary allowances to be made available to residents daily by the facility are as follows:

1. Protein: 6 ounces or 2 or more servings;
2. Vegetables: 3-5 servings;
3. Fruit: 2-4 or more servings;
4. Bread and starches: 6-11 or more servings;
5. Milk or milk equivalent: 2 servings;
6. Fats, oils, and sweets: use sparingly; and
7. Water.

(c) All regular and therapeutic menus to be used by the facility shall be reviewed annually by a registered dietitian, licensed dietitian/nutritionist, or by a dietetic technician supervised by a registered dietitian or licensed dietitian/

nutritionist, to ensure the meals are commensurate with the nutritional standards established in this rule. Portion sizes shall be indicated on the menus or on a separate sheet. Daily food servings may be divided among three or more meals per day, including snacks, as necessary to accommodate resident needs and preferences. This review shall be documented in the facility files and include the signature of the reviewer, registration or license number, and date reviewed. Menu items may be substituted with items of comparable nutritional value based on the seasonal availability of fresh produce or the preferences of the residents.

(d) Menus to be served shall be dated and planned at least one week in advance for both regular and therapeutic diets. Residents shall be encouraged to participate in menu planning. Planned menus shall be conspicuously posted or easily available to residents. Regular and therapeutic menus as served, with substitutions noted before or when the meal is served, shall be kept on file in the facility for 6 months.

(e) Therapeutic diets shall be prepared and served as ordered by the health care provider.

1. Facilities that offer residents a variety of food choices through a select menu, buffet style dining or family style dining are not required to document what is eaten unless a health care provider's order indicates that such monitoring is necessary. However, the food items which enable residents to comply with the therapeutic diet shall be identified on the menus developed for use in the facility.

2. The facility shall document a resident's refusal to comply with a therapeutic diet and notification to the resident's health care provider of such refusal. However, a competent individual shall not be compelled to follow a therapeutic diet. If a resident refuses to follow a therapeutic diet after the benefits are explained, a signed statement from the resident refusing the diet is acceptable documentation of a resident's preferences. In such instances daily documentation is not necessary.

(f) For facilities serving three or more meals a day, no more than 14 hours shall elapse between the end of an evening meal containing a protein food and the beginning of a morning meal. Intervals between meals shall be evenly distributed throughout the day with not less than two hours nor more than six hours between the end of one meal and the beginning of the next. For residents without access to kitchen facilities, snacks shall be provided upon resident request at least once per day when residents are normally awake. Snacks are not considered to be meals for the purposes of calculating the time between meals.

(g) Food shall be served attractively at safe and palatable temperatures. All residents shall be encouraged to eat at tables in the dining areas. A supply of eating ware sufficient for all residents, including adaptive equipment if needed by any resident, shall be on hand.

(h) A 3-day supply of non-perishable food, based on the number of weekly meals the facility has contracted with residents to serve, and shall be on hand at all times. The quantity shall be based on the resident census and not on licensed capacity. The supply shall consist of dry or canned foods that do not require refrigeration and shall be kept in sealed containers which are labeled and dated. The food shall be rotated in accordance with shelf life to ensure safety and palatability. Water sufficient for drinking and food preparation shall also be stored, or the facility shall have a plan for obtaining water in an emergency, with the plan coordinated with and reviewed by the local disaster preparedness authority.

(3) FOOD HYGIENE.

(a) Depending on the licensed capacity of the ALF, facilities shall comply with the applicable portions of rule 64E-12.004, or rule chapter 64E-11 in all matters pertaining to food hygiene.

(b) Copies of the quarterly food hygiene inspection reports issued by the county health department for the last 3 years shall be on file in the facility.

(4) CATERED FOOD SERVICE. When food service is catered the facility shall ensure that the catered food meets all dietary standards imposed by this rule and is adequately protected upon delivery to the facility pursuant to rule 64E-12.004(4). The facility shall maintain:

(a) A copy of the current contract between the facility and the food service establishment agreeing to provide food service in the facility which includes the terms of the agreement.

(b) A copy of the annually issued certificate or license authorizing the operation of the food service establishment issued by the applicable regulating agency. The license or certificate shall provide documentation of the food service establishment's compliance with food service regulatory requirements.

Specific Authority 400.441 FS. Law Implemented 381.0072; 400.441 FS. History—New 5-14-81, Amended 1-6-82, 5-19-83, 9-17-84, Formerly 10A-5.20, Amended 10-20-86, 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.020, Amended 10-30-95, 6-2-96, _____.

(Substantial rewording of Rule 58A-5.021 follows. See Florida Administrative Code for present text.)

58A-5.021 Fiscal Standards.

(1) FINANCIAL STABILITY. The facility shall be administered on a sound financial basis in order to ensure adequate resources to meet resident needs. For the purposes of s. 400.447, F.S., evidence of financial instability includes filed bankruptcy by any owner; issuance of checks returned for insufficient funds; delinquent accounts; nonpayment of local, state, or federal taxes or fees; unpaid utility bills; tax or judgment liens against facility or owners property; failure to meet employee payroll; confirmed complaints to the agency or district long-term care ombudsman council regarding withholding of refunds or funds due residents; failure to maintain liability insurance due to non-payment of premiums;

non-payment of rent or mortgage; non-payment for essential services; or adverse court action which could result in the closure or change in ownership or management of the ALF. When there is evidence of financial instability, the agency may require the facility to submit the following documentation:

(a) Facilities with a capacity of 25 or less:

1. Payment of local, state or federal taxes;

2. Delinquent accounts;

3. Number of checks returned for insufficient funds during the previous 24 months, if any;

4. Receipt of resident rent payment;

5. Amount of cash assets deposited in the facility bank account;

6. Capability of obtaining additional financing, if needed; and

7. A statement of operations or AHCA Form 3180-1002, July 1995, projecting revenues, expenses, taxes, extraordinary items, and other credits and charges for the next 12 months.

(b) Facilities with a capacity of 26 or more, shall provide the documentation described in paragraph (a) above, or submit a current asset and liabilities statement or AHCA Form 3180-1003, January 1998.

(2) ACCOUNTING PROCEDURES. The facility shall maintain written business records using a recognized system of accounting which accurately reflects the facility's assets and liabilities and income and expenses. Income from residents shall be identified by resident name in supporting documents, and income and expenses from other sources, such as from day care or interest on facility funds, shall be separately identified.

(3) PERSONAL EFFECTS.

(a) The facility, upon resident request, may provide for the safekeeping in the facility of up to \$200 in personal funds, and \$500 in personal property. If the resident is expected to be absent from the facility for more than 24 hours, the facility may provide for the safekeeping of more than \$500 in personal property.

(b) Any personal funds shall be kept separately from facility funds and shall be used by residents as they choose.

(c) Any personal property held by the facility, including property held for safekeeping, shall be itemized.

(4) RESIDENT TRUST FUNDS AND ADVANCED PAYMENTS.

(a) Funds or other property received by the facility belonging to or due a resident, including the personal funds described in subsection (2), shall be held as trust funds and expended only for the resident's account. Resident funds or property may be held in one bank account if a separate written accounting for each resident is maintained. A separate bank account is required for facility funds; co-mingling resident funds with facility funds is prohibited. Written accounting

procedures for resident trust funds shall include income and expense records of the trust fund, including the source and disposition of the funds.

(b) Money deposited or advanced as security for performance of the contract agreement or as advance rent for other than the next immediate rental period shall be kept separate from the funds and property of the facility, and shall be used, or otherwise expended, only for the account of the resident. On facility financial statements, such funds shall be indicated as restricted assets and there shall be a corresponding liability shown.

(5) BANK ACCOUNTS. Resident funds and property in excess of the amount stated in subsection (3), and money deposited or advanced as security for performance of the contract agreement or as advance rent for other than the next immediate rental period shall be held in a Florida banking institution, located if possible in the same community in which the facility is located. The facility shall notify the resident of the name and address of the depository where all funds are being held.

(6) SURETY BONDS. Pursuant to the requirements of Section 400.427(2), F.S.:

(a) A facility whose owner, administrator, or staff, or representative thereof, serves as the representative payee or attorney-in-fact for facility residents, must maintain a surety bond, a copy of which shall be filed with the agency. For corporations which own more than one facility in the state, one surety bond may be purchased to cover the needs of all residents served by the corporation.

1. If serving as representative payee:

a. The minimum bond proceeds must equal twice the average monthly aggregate income or personal funds due to residents, or expendable for their account which are held by the facility; or

b. For residents who receive OSS, the minimum bond proceeds shall equal twice the supplemental security income or social security disability income plus the OSS payments including the personal needs allowance.

2. If holding a power of attorney:

a. The minimum bond proceeds shall equal twice the amount or value of all monies or other assets included under the power of attorney, including the average trust fund balance, plus the value of any resident property held by the facility; or

b. For residents who receive OSS, the minimum bond proceeds shall equal twice the supplemental security income or social security disability income and the OSS payments including the personal allowance, plus the value of any resident property held at the facility.

(b) Upon the annual issuance of a new bond or continuation bond the facility shall file a copy of the bond with the AHCA central office.

(7) RESIDENT ACCOUNTING.

(a) If the facility provides safekeeping for money or property; holds resident money or property in a trust fund; or if the facility owner, administrator, or staff, or representative thereof, acts as a representative payee; the resident or the resident's legal representative shall be provided with a quarterly statement detailing the income and expense records required under subsection (4), and a list of any property held for safekeeping with copies maintained in the resident's file. The facility shall also provide such statement upon the discharge of the resident, and if there is a change in ownership of the facility as provided under rule 58A-5.014.

(b) If the facility owner, administrator, or staff, or representative thereof, serves as a resident's attorney-in-fact, the resident shall be given, on a monthly basis, a written statement of any transaction made on behalf of the resident.

(c) Within 30 days of receipt of an advance rent or security deposit, the facility shall notify the resident in writing of the manner in which the licensee is holding the advance rent or security deposit.

(8) LIABILITY INSURANCE. Pursuant to s. 400.4275, F.S., facilities shall maintain liability insurance coverage, as defined in s. 624.605, F.S., in force at all times. On the renewal date of the facility's policy or whenever a facility changes policies, the facility shall file documentation of continued coverage with the AHCA central office. Such documentation shall be issued by the insurance company and shall include the name of the facility, the street address of the facility, that it is an assisted living facility, its licensed capacity, and the dates of coverage.

Specific Authority 400.427, 400.4275, 400.441 FS. Law Implemented 400.411, 400.424, 400.427, 400.4275 FS. History--New 5-14-81, Amended 1-6-82, 9-17-84, Formerly 10A-5.21, Amended 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.021, Amended 10-30-95, 6-2-96, _____.

58A-5.022 Facility Maintenance and Housekeeping Standards.

Specific Authority 400.441 FS. Law Implemented 400.441(2),(3),(4) FS. History—New 5-14-81, Amended 1-6-82, 9-17-84, Formerly 10A-5.22, Amended 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.022, Amended 10-30-95, Repealed.

58A-5.0221 Water Supply.

Specific Authority 400.441 FS. Law Implemented 400.441 FS. History—New 8-15-90, Amended 9-30-92, Formerly 10A-5.0221, Repealed.

58A-5.0223 Garbage and Rubbish.

Specific Authority 381.031(1)(g), 381.80 FS. Law Implemented 381.031, 381.80(1)-(4), 403.708, 395.0101, 400.441(1) FS. History—New 8-15-90, Formerly 10A-5.0223, Repealed.

(Substantial rewording of Rule 58A-5.023 follows. See Florida Administrative Code for present text.)

58A-5.023 Physical Plant Standards.

(1) GENERAL REQUIREMENTS.

(a) The ALF shall be located, designed, equipped, and maintained to promote a residential, non-medical environment, and provide for the safe care and supervision of all residents.

(b) The facility's physical structure, including the interior and exterior walls, floors, roof and ceilings shall be structurally sound and in good repair. Peeling paint or wallpaper, missing ceiling or floor tiles, or torn carpeting shall be repaired or replaced. Windows, doors, plumbing, and appliances shall be functional and in good working order. All furniture and furnishings shall be clean, functional, free-of-odors, and in good repair. Appliances may be disabled for safety reasons provided they are functionally available when needed.

(c) In order to ensure a safe and sanitary environment, the ALF shall be subject to annual inspection by the county health department pursuant to rule chapter 64E-12.

(d) Indoor radon testing as mandated by s. 404.056(5), F.S., shall be completed by all facilities.

(2) HEATING AND COOLING.

(a) When outside temperatures are 65 degrees Fahrenheit or below, an indoor temperature of at least 72 degrees Fahrenheit shall be maintained in all areas used by residents during hours when residents are normally awake. During night hours when residents are asleep, an indoor temperature of at least 68 degrees Fahrenheit shall be maintained.

(b) Mechanical cooling devices must be used in those areas of buildings used by residents when inside temperatures exceed 85 degrees Fahrenheit. No residents shall be in any inside area that exceeds 90 degrees Fahrenheit. Newly licensed facilities or facilities renovated after (6 months after effective date of rule), shall not permit indoor temperatures to exceed 85 degrees in any area used by residents.

(c) Residents who have individually controlled thermostats in their bedrooms or apartments shall be permitted to control temperatures in those areas.

(3) COMMON AREAS.

(a) A minimum of 35 square feet of living and dining space per resident, live-in staff, and live-in family member shall be provided except in facilities comprised of apartments. This space shall include living, dining, recreational, or other space designated accessible to all residents, and shall not include bathrooms, corridors, storage space, or screened porches which cannot be adapted for year round use. Facilities

with apartments may count the apartment's living space square footage as part of the 35 square footage living and dining space requirement.

1. Those facilities which were licensed as of May 14, 1981, which demonstrate compliance with all other applicable rules shall be granted a 10 percent waiver in the square footage requirement upon request.

2. Those facilities also serving as adult day care centers must provide an additional 35 square feet of living and dining space per adult day care client. Excess floor space in residents' bedrooms or apartments cannot be counted toward meeting the requirement of 35 square feet of living and dining space requirements for adult day care participants. Day care participants may not use residents' bedrooms for resting unless the room is currently vacant.

(b) A room, separate from resident bedrooms, shall be provided where residents may read, engage in socialization or other leisure time activities. Comfortable chairs or sofas shall be provided in this communal area.

(c) The dining area shall be furnished to accommodate communal dining.

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

(a) Resident sleeping rooms designated for single occupancy shall provide a minimum inside measurement of 80 square feet of usable floor space. Usable floor space does not include closet space or bathrooms.

(b) Resident bedrooms designated for multiple occupancy shall provide a minimum inside measurement of 60 square feet of usable floor space per room occupant.

(c) Resident bedrooms designated for multiple occupancy in facilities newly licensed or renovated on or after (6 months after effective date of rule), shall have a maximum occupancy of two persons. Resident bedrooms designated for multiple occupancy in facilities licensed prior to (effective date of rule), shall have a maximum occupancy of four persons.

(d) All resident bedrooms shall open directly into a corridor, common use area or to the outside. A resident must be able to exit his bedroom without having to pass through another bedroom unless the 2 rooms have been licensed as one bedroom.

(e) Pursuant to s. 400.427, F.S., residents shall be given the option of using his/her own belongings as space permits. Each resident bedroom or sleeping area, where furnishings are supplied by the facility shall, at a minimum, be furnished with the following:

1. A clean, comfortable bed with a mattress no less than 36 inches in width and 72 inches in length with the top surface of the mattress a comfortable height to assure easy access by the resident;

2. A closet or wardrobe space for the hanging of clothes;

3. A dresser, chest, or other furniture designed for the storage of personal effects; and

4. A table, bedside lamp or floor lamp, waste basket, and comfortable chair shall be provided if requested.

(f) All resident bedrooms shall be for the exclusive use of residents. Live-in staff and their family members shall be provided with sleeping space separate from the sleeping and congregate space required for residents.

(5) BATHROOMS

(a) There shall be at least one bathroom with a one toilet and sink per six persons, and one bathtub or shower per eight persons. All residents, all live-in staff and family members, and respite care participants must be included when calculating the required number of toilets, sinks, bathtubs and showers. All adult day care participants shall be included when calculating the required number of toilets and sinks.

(b) Each bathroom shall have a door in working order to assure privacy. The entry door to bathrooms with a single toilet shall have a lock which is operable from the inside by the resident with no key needed. A non-locking door shall be permitted if the resident's safety would otherwise be jeopardized.

(c) There shall be non-slip safety devices such as bath mats or peel off stickers in the showers and bathtubs of all facilities. Showers and bathtubs with a non-skid surface require a separate non-skid device only if the surface is worn. Grab bars shall be required in showers and bathtubs. Grab bars, whether portable or permanent, must be securely affixed to the floor or adjoining walls. Facilities newly licensed or renovated (6 months after the effective date of this rule) must have grab bars next to the commode.

(d) Hot and cold water faucets shall be identified by use of H and C initials or by red and blue painted shading or dots.

(e) Sole access to a toilet or bathtub or shower shall not be through another resident's bedroom, except in apartments within a facility.

(f) Residents who use portable bedside commodes shall be provided with privacy in their use. Commodes must be emptied and sanitized daily.

(6) LINENS AND LAUNDRY. Facilities shall make available linens and personal laundry services for residents who require such services. Linens provided by a facility shall be free of tears, stains, and not threadbare.

(7) SECURITY. External boundaries of a facility or a distinct part of a facility, including outside areas, may be secured using egress control or perimeter control devices if the following conditions are met.

(a) The use of the device complies with all life-safety requirements.

(b) Residents residing within a secured area are able to move freely throughout the area, including the resident's bedroom or apartment, bathrooms and all common areas, and have access to outdoor areas on a regular basis and as requested by each resident.

(c) Residents capable of entering and exiting without supervision have keys, codes, or other mechanisms to exit the secured area without requiring staff assistance.

(d) Staff who provide direct care or who have regular contact with residents residing in secured areas complete Level 1 Alzheimer's training as described in rule 58A-5.0191.

Specific Authority 400.441 FS. Law Implemented 400.427, 400.441, 404.056, 514 FS. History--New 5-14-81, Amended 1-6-82, 5-19-83, 9-17-84, Formerly 10A-5.23, Amended 10-20-86, 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.023, Amended 10-30-95, 6-2-96, _____.

(Substantial rewording of Rule 58A-5.024. See Florida Administrative Code for present text.)

58A-5.024 Records.

The facility shall maintain the following written records in a form, place and system ordinarily employed in good business practice and accessible to department and agency staff.

(1) FACILITY RECORDS. Facility records include:

(a) The facility's license which shall be displayed in a conspicuous and public place within the facility.

(b) An up-to-date admission and discharge log listing the names of all residents and each resident's:

1. Date of admission, the place from which the resident was admitted, and if applicable, a notation the resident was admitted with a stage 2 pressure ulcer; and

2. Date of discharge, the reason for discharge, and the identification of the facility to which the resident is discharged or home address, or if the person is deceased, the date of death. Readmission of a resident to the facility after discharge requires a new entry. Discharge of a resident is not required if the facility is holding a bed for a resident who is out of the facility but intends to return pursuant to rule 58A-5.027.

(c) A log listing the names of all emergency shelter and respite care residents if not included on the log described in paragraph (b).

(d) An up-to-date record of major incidents occurring within the last 3 years. Such record shall contain a clear description of each incident; the time, place, names of individuals involved; witnesses; nature of injuries; cause if known; action taken; a description of medical or other services provided; by whom such services were provided; and any steps taken to prevent recurrence. These reports shall be made by the individuals having first hand knowledge of the incidents, including paid staff, volunteer staff, emergency and temporary staff, and student interns.

(e) The facility's emergency management plan, with documentation of review and approval by the county emergency management agency, as described under rule 58A-5.026, which shall be located where immediate access by facility staff is assured.

(f) Documentation of radon testing conducted pursuant to rule 58A-5.023.

(g) The facility's liability insurance policy required under rule 58A-5.021.

(h) For facilities which have a surety bond, a copy of the surety bond currently in effect as required by rule 58A-5.021.

(i) The admission package presented to new or prospective residents (less the resident's contract) described in rule 58A-5.0182.

(j) If the facility advertises that it provides special care for persons with Alzheimer's disease or related disorders, a copy of all such facility advertisements as required by s. 400.4177, F.S.

(k) A grievance procedure for receiving and responding to resident complaints and recommendations as described in rule 58A-5.0182.

(l) All food service records required under rule 58A-5.020, including menus planned and served; county health department inspection reports; and for facilities which contract for catered food services, a copy of the contract for catered services and the caterer's license or certificate to operate.

(m) All firesafety inspection reports issued by the local authority having jurisdiction or the State Fire Marshall pursuant to s. 400.441, F.S., and rule chapter 4A-40 issued within the last 3 years.

(n) All sanitation inspection reports issued by the county health department pursuant to s. 381.031 and rule chapter 64E-12, issued within the last 3 years.

(o) All completed survey, inspection and complaint investigation reports, and notices of sanctions and moratoriums issued by the agency within the last 5 years.

(p) Additional facility records requirements for facilities holding a limited mental health, extended congregate care, or limited nursing services license are provided in rules 58A-5.029, 58A-5.030, and 58A-5.031, respectively.

(2) STAFF RECORDS.

(a) Personnel records for each staff member shall contain, at a minimum, a copy of the original employment application with references furnished and verification of freedom from communicable disease including tuberculosis. In addition as applicable:

1. Documentation of compliance with all staff training required by rule 58A-5.0191;

2. Copies of all licenses or certifications for all staff providing services which require licensing or certification;

3. Documentation of compliance with level 1 background screening for all staff subject to screening requirements as required under rule 58A-5.019; and

4. For facilities with a licensed capacity of 17 or more residents, a copy of the job description given to each staff member pursuant to rule 58A-5.019.

(b) The facility shall not be required to maintain personnel records for staff provided by a licensed staffing agency or staff employed by a business entity contracting to provide direct or

indirect services to residents and the facility. However, the facility must maintain a copy of the contract between the facility and the staffing agency or contractor as described in rule 58A-5.019.

(c) The facility shall maintain the facility's written work schedules and staff time sheets as required under rule 58A-5.019 for the last 6 months.

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

(a) Resident demographic data as follows:

1. Name;

2. Sex;

3. Race;

4. Date of birth;

5. Place of birth, if known;

6. Social security number;

7. Medicaid and/or Medicare number, or name of other health insurance carrier;

8. Branch of military service and military identification number for residents admitted after September 30, 1992, if available;

9. Name, address, and telephone number of next of kin, responsible party, or other person the resident would like to have notified in case of an emergency, and relationship to resident; and

10. Name, address, and phone number of health care provider, and case manager if applicable.

(b) A copy of the medical examination described in rule 58A-5.0181.

(c) Any health care provider's orders for medications, nursing services, therapeutic diets, do not resuscitate order, or other services to be provided, supervised, or implemented by the facility that require a health care provider's order.

(d) A signed statement from a resident refusing a therapeutic diet pursuant to rule 58A-5.020.

(e) The resident record described in rule 58A-5.0182.

(f) A weight record which is initiated on admission. Information may be taken from the resident's health assessment. Residents receiving assistance with the activities of daily living shall have their weight recorded semi-annually.

(g) For facilities which will have unlicensed staff assisting the resident with the self-administration of medication, a copy of the written informed consent described in rule 58A-5.0181 if such consent is not included in the resident's contract.

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

(i) A copy of the resident's contract with the facility, including any addendums to the contract, as described in rule 58A-5.027.

(j) For a facility whose owner, administrator, or staff, or representative thereof serves as an attorney in fact for a resident, a copy of the monthly written statement of any transaction made on behalf of the resident as required under s. 400.427, F.S.

(k) For any facility which maintains a separate trust fund to receive funds or other property belonging to or due a resident, a copy of the quarterly written statement of funds or other property disbursed as required under s. 400.427, F.S.

(l) A copy of Alternate Care Certification for Optional State Supplementation (OSS) Form, CF-ES 1006, March 1998, if the resident is an OSS recipient. The absence of this form shall not be considered a deficiency if the facility can demonstrate that it has made a good faith effort to obtain the required documentation from the Department of Children and Family Services.

(m) Documentation of the appointment of a health care surrogate, guardian, or the existence of a power of attorney where applicable.

(n) For hospice patients, the interdisciplinary care plan and other documentation that the resident is a hospice patient as required under rule 58A-5.0181.

(o) For apartments, duplexes, quadruplexes, or single family homes that are designated for independent living but which are licensed as assisted living facilities solely for the purpose of delivering personal services to residents in their homes, when and if such services are needed, record keeping on residents who may receive meals but who do not receive any personal, limited nursing, or extended congregate care service shall be limited to the following:

1. A log listing the names of residents participating in this arrangement;
2. The resident demographic data required under this subsection;
3. The medical examination described in rule 58A-5.0181;
4. The resident's contract described in rule 58A-5.027; and
5. A health care provider's order for a therapeutic diet if such diet is prescribed and the resident participates in the meal plan offered by the facility.

(p) Except for resident contracts which must be retained for 5 years, all resident records shall be retained for 3 years following the departure of a resident from the facility unless it is required by contract to retain the records for a longer period of time. Upon request, residents shall be provided a copy of their resident records upon departure from the facility.

(q) Additional resident records requirements for facilities holding a limited mental health, extended congregate care, or limited nursing services license are provided in rules 58A-5.029, 58A-5.030, and 58A-5.031, respectively.

(4) RECORD INSPECTION.

(a) All records required by this rule chapter shall be available for inspection at all times by staff of the agency, the department, the district long-term care ombudsman council, and the advocacy center for persons with disabilities.

(b) All resident records shall be available to the resident, and the resident's legal representative, designee, surrogate, guardian, or attorney in fact, case manager, or the resident's estate, and such additional parties as authorized in writing.

(c) Pursuant to s. 400.435, F.S., agency reports which pertain to any agency survey, inspection, monitoring visit, or complaint investigation shall be available to the residents and the public.

1. Requestors shall be required to provide identification prior to review of records.

2. In facilities that are co-located with a licensed nursing home, the inspection of record for all common areas shall be the nursing home inspection report.

(d) The facility shall ensure the availability of records for inspection.

Specific Authority 400.441, 400.4275 FS. Law Implemented 400.402, 400.404, 400.407, 400.415, 400.424, 400.427, 400.4275, 400.428, 400.431, 400.435, 400.441 FS. History—New 5-14-81, Amended 1-6-82, 5-19-83, 9-17-84, Formerly 10A-5.24, Amended 10-20-86, 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.024, Amended 10-30-95, 4-20-98, _____.

58A-5.025 Resident Contracts.

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

(a) A list of the specific services, supplies and accommodations to be provided by the facility to the resident, including limited nursing and extended congregate care services if the facility is licensed to provide such services.

(b) The basic daily, weekly, or monthly rate.

(c) A list of any additional services and charges to be provided that are included in the daily, weekly, or monthly rates, or a reference to a separate fee schedule which shall be attached to the contract.

(d) A provision giving at least 30 days written notice prior to any rate increase.

(e) Any rights, duties, or obligations of residents, other than those specified in s. 400.428, F.S.

(f) The purpose of any advance payments or deposit payments and the refund policy for such advance or deposit payments.

(g) A refund policy which shall conform to s. 400.424(3), F.S.

(h) A written bed hold policy and provisions for terminating a bed hold agreement if a facility agrees in writing to reserve a bed for a resident who is admitted to a nursing home, health care facility, or psychiatric facility. The resident or responsible party shall notify the facility in writing of any change in status that would prevent the resident from returning

to the facility. Until such written notice is received, the agreed upon daily, weekly, or monthly rate may be charged by the facility unless the resident's medical condition, such as the resident's being comatose, prevents the resident from giving written notification and the resident does not have a responsible party to act in the resident's behalf.

(i) A provision stating whether the organization is affiliated with any religious organization, and, if so, which organization and its relationship to the facility.

(j) A provision that, upon determination by the administrator or health care provider that the resident needs services beyond those the facility is licensed to provide, the resident or the resident's representative, or agency acting on the resident's behalf, shall be notified in writing that the resident must make arrangements for transfer to a care setting that has services needed by the resident. In the event the resident has no person to represent him, the facility shall refer the resident to the social service agency for placement. If there is disagreement regarding the appropriateness of placement, provisions as outlined in s. 400.426(8), F.S., shall take effect.

(2) The resident, or the resident's representative, shall be provided with a copy of the contract.

(3) The facility may not levy an additional charge for any supplies, services, or accommodations that the facility has agreed by contract to provide as part of the standard daily, weekly, or monthly rate. The resident or resident's representative shall be furnished in advance with an itemized written statement setting forth additional charges for any services, supplies, or accommodations available to residents not covered under the contract. An addendum shall be added to the resident contract to reflect the additional services, supplies, or accommodations not provided under the original agreement. Such addendum must be dated and signed by the facility and the resident or the resident's legal representative and a copy given to the resident or the resident's representative.

Specific Authority 400.424, 400.427, 400.441 FS. Law Implemented 440.424, 400.427, 400.441 FS. History—New _____.

58A-5.026 Emergency Management.

(1) EMERGENCY PLAN COMPONENTS. Pursuant to s. 400.441, F.S., each facility shall prepare a written comprehensive emergency management plan in accordance with the "Emergency Management Criteria for Assisted Living Facilities," dated October 1995, which is incorporated by reference. This document is available from the local emergency management agency. The emergency management plan must, at a minimum address the following:

(a) Provision for all hazards.

(b) Provision for the care of residents remaining in the facility during an emergency including pre-disaster or emergency preparation; protecting the facility; supplies; emergency power; food and water; staffing; and emergency equipment.

(c) Provision for the care of residents who must be evacuated from the facility during an emergency including identification of such residents and transfer of resident records; evacuation transportation; sheltering arrangements; supplies; staffing; emergency equipment; and medications.

(d) Provision for the care of additional residents who may be evacuated to the facility during an emergency including the identification of such residents, staffing, and supplies.

(e) Identification of residents with Alzheimer's disease and related dementias, and residents with mobility limitations who may need specialized assistance either at the facility or in case of evacuation.

(f) Identification of and coordination with the local emergency management agency.

(g) Arrangement for post-disaster activities including responding to family inquiries, obtaining medical intervention for residents; transportation; and reporting to the county office of emergency management the number of residents who have been relocated and the place of relocation.

(h) The identification of staff responsible for implementing each part of the plan.

(2) EMERGENCY PLAN APPROVAL. The plan shall be submitted for review and approval to the county emergency management agency in accordance with rule 9G-20.007.

(a) The county emergency management agency has 60 days in which to review and approve the plan or advise the facility of necessary revisions. Any revisions must be made and the plan resubmitted to the county office of emergency management within 30 days.

(b) Newly-licensed facility and facilities whose ownership has been transferred, must submit an emergency management plan within 30 days after obtaining a license.

(c) The facility shall review its emergency management plan on an annual basis. Any substantive changes must be submitted to the county emergency agency for review and approval.

1. Changes in the name, address, telephone number, or position of staff listed in the plan are not considered substantive revisions for the purposes of this rule.

2. Changes in the identification of specific staff must be submitted to the county emergency management agency annually as a signed and dated addendum that is not subject to review and approval.

(d) The county emergency management agency shall be the final administrative authority for emergency management plans prepared by assisted living facilities.

(e) Any plan approved by the county emergency management agency shall be considered to have met all the criteria and conditions established in this rule.

(4) PLAN IMPLEMENTATION. In the event of an internal or external disaster the facility shall implement the facility's emergency management plan in accordance with chapter 252, F.S.

(a) All staff must be trained in their duties and are responsible for implementing the emergency management plan.

(b) If telephone service is not available during an emergency, the facility shall request assistance from local law enforcement or emergency management personnel in maintaining communication.

(5) FACILITY EVACUATION. The facility must evacuate the premises during or after an emergency if so directed by the local emergency management agency.

(a) The facility shall report the evacuation to the local office of emergency management or designee and to the agency within 6 hours of the evacuation order and when the evacuation is complete if the evacuation is not completed with the 6 hour period.

(b) The facility shall not be re-occupied until the area is cleared for reentry by the local emergency management agency or its designee and the facility can meet the immediate needs of the residents.

(c) A facility with significant structural damage must relocate residents until the facility can be safely re-occupied.

(d) The facility is responsible for knowing the location of all residents until the resident has been relocated from the facility.

(e) The facility shall provide the agency with the name of a contact person who shall be available by telephone 24 hours a day, seven days a week, until the facility is re-occupied.

(f) The facility shall assist in the relocation of residents and shall cooperate with outreach teams established by the Department of Health or emergency management agency to assist in relocation efforts. Resident needs and preferences shall be considered to the extent possible in any relocation decision.

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

(a) Life safety will not be jeopardized for any individual.

(b) The immediate needs of residents and other individuals sheltered at the facility can be met by the facility.

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

(d) The facility maintains a log of the additional persons being housed in the facility. The log shall include the individual's name, usual address, and the dates of arrival and departure. The log shall be available for review by

representatives of the agency, the department, the local emergency management agency or its designee. The admissions and discharge log maintained by the facility may be used for this purpose provided the information is maintained in a manner that is easily accessible.

Specific Authority 400.441 FS. Law Implemented 400.441 FS. History—New

(Substantial rewording of Rule 58A-5.030 follows. See Florida Administrative Code for present text.)

58A-5.030 Extended Congregate Care Services.

(1) LICENSING.

(a) Any facility intending to establish an extended congregate care program must meet the license requirements specified in s. 400.407, F.S., and obtain a license from the agency in accordance with rule 58A-5.014.

(b) Only that portion of a facility which meets the physical requirements of subsection (3) and which is staffed in accordance with subsection (4) shall be considered licensed to provide ECC services to residents which meet the admission and continued residency requirements of this rule.

(2) EXTENDED CONGREGATE CARE POLICIES. Policies and procedures established through an extended congregate care program must promote resident independence, dignity, choice, and decision-making. The program shall develop and implement specific written policies and procedures which address:

(a) Aging in place.

(b) The facility's residency criteria developed in accordance with the admission and discharge requirements described in subsection (5) and ECC services listed in (8).

(c) The personal and supportive services the facility intends to provide, how the services will be provided, and the identification of staff positions to provide the services including their relationship to the facility.

(d) The nursing services the facility intends to provide, identification of staff positions to provide nursing services, and the license status, duties, general working hours, and supervision of such staff.

(e) Identifying potential unscheduled resident service needs and mechanism for meeting those needs including the identification of resources to meet those needs.

(f) A process for mediating conflicts among residents regarding choice of room or apartment and roommate.

(g) How to involve residents in decisions concerning the resident. The program shall provide opportunities and encouragement for the resident to make personal choices and decisions. If a resident needs assistance to make choices or decisions a family member or other resident representative shall be consulted. Choices shall include at a minimum:

1. To participate in the process of developing, implementing, reviewing, and revising the resident's service plan;

2. To remain in the same room in the facility, except that a current resident transferring into an ECC program may be required to move to the part of the facility licensed for extended congregate care, if only part of the facility is so licensed;

3. To select among social and leisure activities;

4. To participate in activities in the community. At a minimum the facility shall arrange transportation to such activities if requested by the resident; and

5. To provide input with respect to the adoption and amendment of facility policies and procedures.

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

(a) A private room or apartment, or a semi-private room or apartment shared with roommate of the resident's choice. The entry door to the room or apartment shall have a lock which is operable from the inside by the resident with no key needed. The resident shall be provided with a key to the entry door on request. The resident's service plan may allow for a non-locking entry door if the resident's safety would otherwise be jeopardized.

(b) A bathroom, with a toilet, sink, and bathtub or shower, which is shared with a maximum of 3 other residents. The entry door to the bathroom shall have a lock which is operable from the inside by the resident with no key needed. The resident's service plan may allow for a non-locking bathroom door if the resident's safety would otherwise be jeopardized.

(c) Air conditioning must be available to maintain inside temperatures not exceeding 85 degrees Fahrenheit in areas used by residents. Residents who have individually controlled thermostats in their rooms shall be permitted to control temperatures in their rooms.

(4) STAFFING REQUIREMENTS. Each extended congregate care program shall:

(a) Specify a staff member to serve as the extended congregate care supervisor if the administrator does not perform this function. If the administrator supervises more than one facility, he/she shall appoint a separate ECC supervisor for each facility holding an extended congregate care license.

1. The extended congregate care supervisor shall be responsible for the general supervision of the day-to-day management of an ECC program and ECC resident service planning.

2. The administrator of a facility with an extended congregate care license and the ECC supervisor, if separate from the administrator, must have a minimum of two years of managerial, nursing, social work, therapeutic recreation, or counseling experience in a residential, long-term care, or acute care setting or agency serving elderly or disabled persons. A baccalaureate degree may be substituted for one year of the

required experience. A nursing home administrator licensed under chapter 468, F.S., shall be considered qualified under this paragraph.

(b) Provide, as staff or by contract, the services of a nurse who shall be available to provide nursing services as needed by ECC residents, participate in the development of resident service plans, and perform monthly nursing assessments.

(c) Provide enough qualified staff to meet the needs of ECC residents in accordance with rule 58A-5.019 and the amount and type of services established in each resident's service plan.

(d) Regardless of the number of ECC residents, awake staff shall be provided to meet resident scheduled and unscheduled night needs.

(e) In accordance with agency procedures established in rule 58A-5.019, the agency shall require facilities to immediately provide additional or more qualified staff, when the agency determines that service plans are not being followed or that residents' needs are not being met because of the lack of sufficient or adequately trained staff.

(f) Ensure and document that staff receive extended congregate care training as required under rule 58A-5.0191.

(5) ADMISSION AND CONTINUED RESIDENCY.

(a) An individual must meet the following minimum criteria in order to be admitted to an extended congregate care program.

1. Be at least 18 years of age.

2. Be free from signs and symptoms of a communicable disease which is likely to be transmitted to other residents or staff; however, a person who has human immunodeficiency virus (HIV) infection may be admitted to a facility, provided that he would otherwise be eligible for admission according to this rule.

3. Be able to transfer, with assistance if necessary. The assistance of more than one person is permitted.

4. Not be a danger to self or others as determined by a health care provider, or mental health practitioner licensed under chapters 490 or 491.

5. Not be bedridden.

6. Not have any stage 3 or 4 pressure ulcers.

7. Not require any of the following nursing services:

a. Oral or nasopharyngeal suctioning;

b. Assistance with nasogastric tube feeding;

c. Monitoring of blood gases;

d. Intermittent positive pressure breathing therapy;

e. Skilled rehabilitative services as described in rule 59G-4.290; or

f. Treatment of a surgical incision, unless the surgical incision and the condition which caused it have been stabilized and a plan of care developed.

8. Not require 24-hour nursing supervision.

9. Have been determined to be appropriate for admission to the facility by the facility administrator. The administrator shall base his/her decision on:

a. An assessment of the strengths, needs, and preferences of the individual, the health assessment required by subsection (6) of this rule, and the preliminary service plan developed under subsection (7);

b. The facility's residency criteria, and services offered or arranged for by the facility to meet resident needs; and

c. The ability of the facility to meet the uniform fire safety standards for assisted living facilities established under s. 400.441, F.S., and rule chapter 4A-40.

(b) Criteria for continued residency in an ECC program shall be the same as the criteria for admission, except as follows:

1. A resident may be bedridden for up to 14 consecutive days.

2. A terminally ill resident who no longer meets the criteria for continued residency may continue to reside in the facility if the following conditions are met:

a. The resident qualifies for, is admitted to, and consents to the services of a licensed hospice which coordinates and ensures the provision of any additional care and services that may be needed;

b. Continued residency is agreeable to the resident and the facility;

c. An interdisciplinary care plan is developed and implemented by a licensed hospice in consultation with the facility. Facility staff may provide any nursing service within the scope of their license including 24-hour nursing supervision, and total help with the activities of daily living; and

d. Documentation of the requirements of this subparagraph is maintained in the resident's file.

(6) HEALTH ASSESSMENT. Prior to admission to an ECC program, all persons, including residents transferring within the same facility to that portion of the facility licensed to provide extended congregate care services, must be examined by a physician or advanced registered nurse practitioner pursuant to rule 58A-5.0181. A health assessment conducted within 60 days prior to admission to the ECC program shall meet this requirement. Once admitted, a new health assessment must be obtained at least annually.

(7) SERVICE PLANS.

(a) Prior to admission the extended congregate care supervisor shall develop a preliminary service plan which includes an assessment of whether the resident meets the facility's residency criteria, an appraisal of the resident's unique physical and psycho social needs and preferences, and an evaluation of the facility's ability to meet the resident's needs.

(b) Within 14 days of admission the congregate care supervisor shall coordinate the development of a written service plan which takes into account the resident's health assessment obtained pursuant to subsection (6); the resident's unique physical and psycho social needs and preferences; and how the facility will meet the resident's needs including the following if required:

1. Health monitoring;

2. Assistance with personal care services;

3. Nursing services;

4. Supervision;

5. Special diets;

6. Ancillary services;

7. The provision of other services such as transportation and supportive services; and

8. The manner of service provision, and identification of service providers, including family and friends, in keeping with resident preferences.

(c) Pursuant to the definitions of "shared responsibility" and "managed risk" as provided in s. 400.402, F.S., the service plan shall be developed and agreed upon by the resident or the resident's representative or designee, surrogate, guardian, or attorney-in-fact, the facility designee, and shall reflect the responsibility and right of the resident to consider options and assume risks when making choices pertaining to the resident's service needs and preferences.

(d) The service plan shall be reviewed and updated quarterly to reflect any changes in the manner of service provision, accommodate any changes in the resident's physical or mental status, or pursuant to recommendations for modifications in the resident's care as documented in the nursing assessment.

(8) EXTENDED CONGREGATE CARE SERVICES. All services shall be provided in the least restrictive environment, and in a manner which respects the resident's independence, privacy, and dignity.

(a) An extended congregate care program may provide supportive services including social service needs, counseling, emotional support, networking, assistance with securing social and leisure services, shopping service, escort service, companionship, family support, information and referral, assistance in developing and implementing self-directed activities, and volunteer services. Family or friends shall be encouraged to provide supportive services for residents. The facility shall provide training for family or friends to enable them to provide supportive services in accordance with the resident's service plan.

(b) An extended congregate care program shall make available the following additional services if required by the resident's service plan:

1. Total help with bathing, dressing, grooming and toileting;

2. Nursing assessments conducted more frequently than monthly;

3. Measurement and recording of basic vital functions and weight;

4. Dietary management including provision of special diets, monitoring nutrition, and observing the resident's food and fluid intake and output;

5. Assistance with self-administered medications, or the administration of medications and treatments pursuant to a health care provider's order. If the individual needs assistance with self-administration the facility must inform the resident of the qualifications of staff who will be providing this assistance, and if unlicensed staff will be providing such assistance, obtain the resident's or the resident's surrogate, guardian, or attorney-in-fact's informed consent to provide such assistance as required under s. 400.4256, F.S.;

6. Supervision of residents with dementia and cognitive impairments;

7. Health education and counseling and the implementation of health-promoting programs and preventive regimes;

8. Provision or arrangement for rehabilitation services; and

9. Provision of escort services to health-related appointments.

(c) Licensed nursing staff in an extended congregate care program may provide any nursing service permitted within the scope of their license consistent with the residency requirements of this rule and the facility's written policies and procedures, and the nursing services are:

1. Authorized by a health care provider's order and pursuant to a plan of care;

2. Medically necessary and appropriate for treatment of the resident's condition;

3. In accordance with the prevailing standard of practice in the nursing community;

4. A service that can be safely, effectively, and efficiently provided in the facility;

5. Recorded in nursing progress notes; and

6. In accordance with the resident's service plan.

(d) At least monthly, or more frequently if required by the resident's service plan, a nursing assessment of the resident shall be conducted.

(9) RECORDS.

(a) In addition to the records required under rule 58A-5.024, an extended congregate care program shall maintain the following:

1. The service plans for each resident receiving extended congregate care services;

2. The nursing progress notes for each resident receiving nursing services;

3. Nursing assessments; and

4. The facility's ECC policies and procedures.

(b) Upon request, a facility shall report to the department such information as necessary to meet the requirements of s. 400.407(3)(b)9., F.S.

(10) DISCHARGE. If the facility and the resident are unable to agree on a service plan, or if the facility is unable to meet the resident's needs as identified in the service plan, or if the resident no longer meets the criteria for continued residency, the resident shall be discharged in accordance with s. 400.426(8) and 400.428(1), F.S.

Specific Authority 400.407, 400.441 FS. Law Implemented 400.402, 400.407, 400.4255, 400.426, 400.428, 400.441 FS. History--New 9-30-92, Formerly 10A-5.030, Amended 10-30-95, 6-2-96, 4-20-98, _____.

(Substantial rewording of Rule 58A-5.031 follows. See Florida Administrative Code for present text.)

58A-5.031 Limited Nursing Services.

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

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

(a) Conducting passive range of motion exercises.

(b) Applying ice caps or collars.

(c) Applying heat, including dry heat, hot water bottle, heating pad, aquathermia, moist heat, hot compresses, sitz bath and hot soaks.

(d) Cutting the toenails of diabetic residents or residents with a documented circulatory problem if the written approval of the resident's health care provider has been obtained.

(e) Performing ear and eye irrigations.

(f) Conducting a urine dipstick test.

(g) Replacement of an established self-maintained indwelling urinary catheter, or performance of an intermittent urinary catheterizations.

(h) Performing digital stool removal therapies.

(i) Applying and changing routine dressings that do not require packing or irrigation, but are for abrasions, skin tears and closed surgical wounds.

(j) Care for stage 2 pressure ulcers. Care for stage 3 or 4 pressure ulcers are not permitted under this rule.

(k) Caring for casts, braces and splints. Care for head braces, such as a halo is not permitted under this rule.

(l) Conduct nursing assessments if conducted by a registered nurse or under the direct supervision of a registered nurse.

(m) For hospice patients, providing any nursing service permitted within the scope of the nurse's license including 24-hour nursing supervision.

(2) RESIDENT CARE STANDARDS.

(a) A resident receiving limited nursing services in a facility holding only a standard and limited nursing license must meet the admission and continued residency criteria specified in rule 58A-5.0181.

(b) In accordance with rule 58A-5.019, the facility must employ sufficient and qualified staff to meet the needs of residents requiring limited nursing services based on the number of such residents and the type of nursing service to be provided.

(c) Limited nursing services may only be provided as authorized by a health care provider's order, a copy of which shall be maintained in the resident's file.

(d) Facilities licensed to provide limited nursing services must employ or contract with a nurse(s) who shall be available to provide such services as needed by residents. The facility shall maintain documentation of the qualifications of nurses providing limited nursing services in the facility's personnel files.

(e) The facility must ensure that nursing services are conducted and supervised in accordance with chapter 464, F.S., and the prevailing standard of practice in the nursing community.

(3) RECORDS.

(a) A record of all residents receiving limited nursing services under this license and the type of service provided, shall be maintained.

(b) Nursing progress notes shall be maintained for each resident who receives limited nursing services.

(c) A nursing assessment conducted at least monthly shall be maintained on each resident who receives a limited nursing service.

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

(Substantial rewording of Rule 58A-5.033 follows. See Florida Administrative Code for present text.)

58A-5.033 Administrative Enforcement.

Facility staff shall cooperate with agency personnel during surveys, complaint investigations, monitoring visits, implementation of correction plans, license application and renewal procedures and other activities necessary to ensure compliance with part III of chapter 400, F.S., and this rule chapter.

(1) INSPECTIONS.

(a) The agency shall conduct a survey, investigation, or appraisal of a facility:

1. Prior to issuance of a license;
2. Prior to biennial renewal of a license;
3. When there is a change of ownership;

4. To monitor facilities licensed to provide limited nursing or extended congregate care services, or who were cited in the previous year for a class I or class II, or 4 or more uncorrected class III violations;

5. Upon receipt of an oral or written complaint of practices that threaten the health, safety, or welfare of residents;

6. At any time if the agency has reason to believe a facility is violating a provision of part III of chapter 400, F.S., or this rule chapter;

7. To determine if cited deficiencies have been corrected; and

8. To determine if a facility is operating without a license.

(b) The inspection shall consist of full access to and examination of the facility's physical premises and facility records and accounts, and staff and resident records.

(c) Agency personnel may interview facility staff and residents. Interviews shall be conducted privately.

(d) Agency personnel shall respect the private possessions of residents and staff while conducting inspections.

(2) ABBREVIATED SURVEY.

(a) An applicant for license renewal who does not have any class I or class II violations or uncorrected class III violations, confirmed long-term care ombudsman council complaints reported to the agency by the LTCOC, or confirmed licensing complaints within the two licensing periods immediately preceding the current renewal date shall be eligible for an abbreviated biennial survey by the agency. Facilities that do not have two survey reports on file with the agency under current ownership are not eligible for an abbreviated inspection. The agency shall inform the facility that it is eligible for and that an abbreviated survey will be conducted prior to the survey.

(b) Compliance with key quality of care standards described in the following statutes and rules will be used by the agency during its abbreviated survey of eligible facilities:

1. Section 400.426, F.S., and rule 58A-5.0181, relating to residency criteria;

2. Section 400.427, F.S., and rule 58A-5.021, relating to proper management of resident funds and property;

3. Section 400.428, F.S., and rule 58A-5.0182, relating to respect for resident rights;

4. Section 400.441, F.S., and rule 58A-5.0182, relating to the provision of supervision, assistance with ADLs, arrangement for appointments and transportation to appointments, and assistance with or administration of medications;

5. Section 400.441, F.S., and rule 58A-5.019, relating to the provision of sufficient staffing to meet resident needs;

6. Section 400.441, F.S., and rule 58A-5.0191, relating to minimum dietary requirements and proper food hygiene;

7. Section 400.4075, F.S., and rule 58A-5.029, relating to mental health residents' community support living plan;

8. Section 400.407, F.S., and rule 58A-5.030, relating to meeting the environmental standards and residency criteria in a facility with an extended congregate care license; and

9. Section 400.407, F.S., and rule 58A-5.031, relating to the provision of care and staffing in a facility with a limited nursing license.

(c) The agency will expand the abbreviated survey or conduct a full survey for facilities in which significant problems are identified during the abbreviated survey. The facility shall be informed that a full survey will be conducted. If one or more of the following serious problems are identified during an abbreviated survey, a full biennial survey will be immediately conducted:

1. Violations of rule Chapter 4A-40, relating to firesafety, that threaten the life or safety of a resident;

2. Violations relating to staffing standards or resident care standards that adversely affect the health or safety of a resident;

3. Violations relating to facility staff rendering services for which the facility is not licensed; or

4. Violations relating to facility medication practices that are a threat to the health or safety of a resident.

(3) SURVEY DEFICIENCY.

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

1. A description of the deficiency;

2. A citation to the statute or rule violated;

3. A time frame for the correction of the deficiency;

4. A request for a plan of correction which shall include time frame for correction of the deficiency; and

5. A description of the administrative sanction that may be imposed if the facility fails to correct the deficiency within the established time frame.

(b) Additional time may be granted to correct specific deficiencies if a written request is received by the agency prior to the time frame included in the agency's statement.

(c) The facility's plan of correction must be received by the agency within 10 working days of receipt of the deficiency statement and is subject to approval by the agency.

(4) EMPLOYMENT OF A CONSULTANT.

(a) Medication Deficiencies.

1. If a Class I, Class II, or uncorrected Class III deficiency directly relating to facility medication practices as established in rule 58A-5.0185, is documented by agency personnel pursuant to an inspection of the facility, the agency shall notify the facility in writing that the facility must employ, on staff or

by contract, the services of a pharmacist licensed pursuant to s. 465.0125, F.S., or registered nurse, as determined by the agency.

2. The initial on-site visit shall take place within 7 working days of the identification of a class I or class II deficiency and within 14 working days of the identification of an uncorrected class III deficiency. The facility shall have available for review by the agency a copy of the pharmacist's or registered nurse's license and a signed and dated recommended corrective action plan no later than 10 working days subsequent to the initial on-site consultant visit.

3. The facility shall provide the agency with, at a minimum, quarterly on-site corrective action plan updates until the agency determines after written notification by the consultant and facility administrator that deficiencies are corrected and staff has been trained to ensure that proper medication standards are followed and that such consultant services are no longer required. The agency shall provide the facility with written notification of such determination.

(b) Dietary Deficiencies.

1. If a Class I, Class II, or uncorrected Class III deficiency directly related to dietary standards as established in rule 58A-5.020 is documented by agency personnel pursuant to an inspection of the facility, the agency shall notify the facility in writing that the facility must employ, on staff or by contract, the services of a registered dietitian or licensed dietitian/nutritionist.

2. The initial on-site consultant visit shall take place within 7 working days of the identification of a class I or class II deficiency and within 14 working days of the identification of an uncorrected class III deficiency. The facility shall have available for review by the agency a copy of the dietitian's license or registration card and a signed and dated dietary consultant's recommended corrective action plan no later than 10 working days subsequent to the initial on-site consultant visit.

3. The facility shall provide the agency with, at a minimum, quarterly on-site corrective action plan updates until the agency determines after written notification by the dietary consultant and facility administrator that deficiencies are corrected and staff has been trained to ensure that proper dietary standards are followed and that such consultant services are no longer required. The agency shall provide the facility with written notification of such determination.

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

(a) The agency may impose a fine for unclassified violations which do not meet the criteria for either a Class I, II, III, or IV violation as provided under s. 400.419, F.S., but which are not trivial or are uncorrected. Unclassified violations include, but are not limited to, the following violations:

1. Exceeding licensed capacity except under emergency circumstances as permitted under rule 58A-5.026;
2. Providing services beyond the scope of the license;
3. Violation of a moratorium imposed pursuant to this rule; or
4. A prohibited solicitation by an agent, employee, owner, or representative of the facility as provided in s. 400.42, F.S.

(b) When an administrative fine payment is returned from the applicant's bank for whatever reason, the agency shall add to the amount due a service fee of \$20 or 5 percent of the face amount of the check, whichever is greater, up to a maximum charge of \$200. Proceeds from this fee shall be deposited in the same agency account as the fine.

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

(6) MORATORIUMS.

(a) An immediate moratorium on admissions to the facility shall be placed on the facility when it has been determined that any condition in the facility presents an immediate or direct threat to the health, safety, or welfare of the residents in the facility. The following conditions are examples of threats constituting grounds for a moratorium:

1. Presence of residents with stage 3 or 4 pressure ulcers;
2. The presence of residents who require 24-hour nursing supervision;
3. Food supply inadequate to provide proper nutrition to residents;
4. Lack of sufficient staff to supervision or meet immediate residents' needs;
5. Notification by the fire marshal or the county health department that conditions exist which pose an imminent threat to residents; or
6. Failure to provide medications as prescribed;

(b) The facility shall be notified of the placing of a moratorium by a telephone call from the appropriate agency area office. The effective date of the moratorium shall be the date a written notification is received by the facility from the area office and which contains the following information:

1. Confirmation of the placement of the moratorium;
2. A detailed explanation of the reasons for placing the moratorium;
3. The criteria which the facility shall be required to meet before the moratorium will be lifted;

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

5. Advising the facility of their right to request a hearing in accordance with part II of rule chapter 59-1 and chapter 120, F.S.

(c) Moratoriums shall not be lifted until the deficiencies have been corrected and the agency has determined through an appraisal survey that there is no longer any threat to the residents' health, safety, or welfare. The removal of the moratorium will be communicated by a telephone call and confirmed by written notification.

(d) During the moratorium, no new residents or previously discharged residents shall be admitted to the facility. Residents for whom the facility is holding a bed may return to the facility only after being informed that the facility is under a moratorium and with the prior approval of the local agency area supervisor or the supervisor's designee.

(e) When a moratorium is placed on a facility, agency notice of the moratorium shall be posted and visible to the public at the facility until the moratorium is lifted.

Specific Authority 400.415, 400.441, 400.442 FS. Law Implemented ~~120, 400 Part I, 400.317, 400.407, 400.408, 400.411, 400.412, 400.414, 400.415, 400.417, 400.419, 400.4195, 400.42, 400.421, 400.422, 400.427, 400.428, 400.429, 400.431, 400.434, 400.441, 400.442, 400.447, 419, 465.004~~ FS. History—New 9-30-92, Formerly 10A-5.033, Amended 10-30-95,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Meta Calder

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Gema G. Hernandez, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 11, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 11, 1998, November 20, 1998, and January 15, 1999

DEPARTMENT OF ENVIRONMENTAL PROTECTION

DOCKET NUMBER: 98-51R

RULE CHAPTER TITLE: RULE CHAPTER NO.:

Minimum Requirements for Earthen
Dams Used In Phosphate Mining
and Beneficiation Operations and
for Dikes Used in Phosphogypsum
Stack System Impoundments 62-672

RULE TITLES: RULE NOS.:

- General 62-672.100
- Definitions 62-672.200
- Construction of New Dams 62-672.300
- Operational Requirements 62-672.400
- Inspections 62-672.500
- Contingency Plans 62-672.550
- Non-Clay Phosphate Mining Impoundments 62-672.570
- Construction of New Perimeter Earthen Dikes 62-672.600
- Assessment of Existing Perimeter Earthen Dikes 62-672.620
- Operational Requirements for
Perimeter Earthen Dikes 62-672.650
- Inspection and Maintenance Requirements
for Perimeter Earthen Dike 62-672.670
- Construction of New Phosphogypsum Stacks 62-672.700
- Assessment of Existing Phosphogypsum Stacks 62-672.720
- Procedures for Raising Phosphogypsum Stacks 62-672.750
- Procedures for Decanting Process Water
from Top of Phosphogypsum Stack 62-672.760
- Phosphogypsum Stack Inspection
and Maintenance 62-672.770
- Phosphogypsum Stack System Operation Plans 62-672.780
- Training 62-672.800
- Contingency Plans 62-672.850
- Emergency Measures 62-672.870

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to ensure that phosphogypsum stack systems are operated to meet critical safety standards as required by Chapter 98-117, Laws of Florida.

SUMMARY: The proposed rule ensures that impoundment structures and water conveyance piping systems used in phosphogypsum management are designed and maintained to meet critical safety standards. The proposed rule requires that any impoundment structure used in a phosphogypsum stack system, together with all pumps, piping, ditches, drainage conveyances, water control structures, collection pools, cooling ponds, surge ponds, and any other collection or conveyance system associated with phosphogypsum transport, cooling water, or the return of process waste water, are constructed using sound engineering practices and are operated to avoid spills or discharges of materials which adversely affect surface or ground waters. The proposed rule requires that a phosphogypsum stack system owner maintain a log detailing the owner's operating inspection schedule, results, and any corrective action taken based on the inspection results. The

proposed rule also requires phosphogypsum stack owners to maintain an emergency contingency plan and demonstrate the ability to mobilize equipment and manpower to respond to emergency situations.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

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

SPECIFIC AUTHORITY: 403.061(22), 403.4155 FS.

LAW IMPLEMENTED: 403.061(22), 403.4155 FS.

A HEARING WILL BE HELD BEFORE THE ENVIRONMENTAL REGULATION COMMISSION AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m., April 29, 1999

PLACE: Department of Environmental Protection, Twin Towers Office Building, Room 609, 2600 Commonwealth Boulevard, Tallahassee, Florida 32399-2400

If an accommodation is needed for a disability in order to participate in this activity, please contact Jackie McGorty, (850)921-9717, at least seven days prior to the event.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Sam Zamani, Phosphogypsum Management Program, Bureau of Mine Reclamation, Tampa Office, 3804 Coconut Palm Dr., Tampa, Florida 33619, Telephone (813)744-6100

THE FULL TEXT OF THE PROPOSED RULES IS:

62-672.100 General.

(1) Phosphate Mining and Beneficiation Operations. The provisions of rules 62-672.100(1) and 62-672.200 through 62-672.570 apply to phosphate mining and beneficiation operations in the manner and to the extent set forth therein. It is the conclusion of the Environmental Regulation Commission that the most common causes for past failures of earthen dams used for impoundment of liquid industrial wastes from phosphate mining and ~~beneficiation processing~~ operations have been insecure foundations, inadequate supervision of construction, poor routine inspections, and/or inadequate maintenance. It is the intent of the Environmental Regulation Commission Board to establish requirements which will eliminate or reduce failures of earthen dams to the lowest possible ~~extent manner~~. This rule, therefore, emphasizes an intensive surveillance program which is designed to expose critical conditions in dams sufficiently in advance of failure to permit corrective maintenance and avoidance of disaster. It shall be incumbent upon owners of earthen dams to construct and maintain them on the basis that these requirements are minimum safety standards which shall normally be exceeded to ensure that there shall be no discharge from said dams into the waters of the State of Florida other than that specifically

authorized by the Department of Environmental Protection. All earthen dams for impounding, above natural ground elevation, liquid industrial wastes from phosphate mining and beneficiation processing operations shall be constructed in accordance with a design and set of detailed specifications prepared, sealed and signed by a professional engineer registered in Florida who is competent in the field of dam design, construction and maintenance. Results of field and laboratory tests from an adequate number of test borings and soil samples shall be the basis for computations pertaining to seepage and stability analyses. Construction specifications contained in this rule shall apply to dams on which construction begins after the effective date of the rule. Inspection and maintenance specifications contained in this rule shall apply to all active and retired phosphate industry dams immediately upon the effective date of the rule.

(2) Phosphogypsum Stack Systems. The provisions of rules 62-672.100(2), 62-672.200, and 62-672.600 through 62-672.870 apply to phosphogypsum stack system impoundments in the manner and to the extent set forth therein. The purpose of these rules is to ensure the physical integrity of impoundments used to manage Phosphogypsum and process water generated during the course of production of phosphate fertilizer. These rules establish minimum design, construction, operation, inspection and maintenance requirements to ensure that phosphogypsum stack system impoundments meet critical safety standards and do not cause unplanned releases to the environment. Owners of phosphogypsum stack systems are required to maintain inspection logs and to develop and maintain plans to respond to emergency conditions. All requirements of this rule shall apply upon effective date of this rule except as otherwise provided in specific provisions of this rule.

Specific Authority 403.061(22)(25), 403.4155 FS. Law Implemented 403.061(22)(25), 403.4155 FS. History—Revised 12-8-72, Formerly 17-9.01, 17-9.001, 17-672.100, Amended _____.

62-672.200 Definitions.

(1) 100-Year Rainfall Event – A rainfall event which is characterized by a mean return period of one hundred years,i.e., a rainfall event which has a 99% probability for not being exceeded during any given year.

(2) 100-Year Annual Rainfall – The 100-Year rainfall event representing total annual rainfall of 76 inches.

(1) renumbered (3) No change.

(4) Above-Grade Perimeter Earthen Dike – A perimeter earthen dike that has its design freeboard above the adjacent ground surface.

(2) renumbered (5) No change.

(6) Backup power – Two sources of power not likely to fail simultaneously.

(3) through (6) renumbered (7) through (10) No change.

(11) Department – The Florida Department of Environmental Protection.

(12) Dike – A barrier to the flow of phosphogypsum and process water which is constructed of naturally occurring soil (earthen dike) or of phosphogypsum and which is a component of a phosphogypsum stack system.

(13)(7) Drain – A material more pervious than the surrounding fill ~~dam~~ which allows seepage water to drain freely from the dam while preventing piping or internal erosion of the fill material.

(a) through (c) No change.

(14)(8) Earthen dam or dam – A barrier to the flow of liquids which is constructed of naturally occurring soil and which is a component of a clay settling area.

(15) Earthen dike – A barrier to the flow of phosphogypsum and process water which is constructed of naturally occurring soil and which is a component of a phosphogypsum stack system.

(16) Engineer – An engineer registered in the State of Florida in accordance with Chapter 471, F.S. and with experience in the design, construction, and operation of systems covered by this rule.

(9) renumbered (17) No change.

(18)(10) Freeboard – The height of the lowest point on the dam or dike crest, excluding the emergency spillway, above the highest adjacent liquid surface within the impoundment.

(19) Gypsum dike – The outermost dike constructed within the perimeter formed by a starter dike for the purpose of raising a phosphogypsum stack and impounding phosphogypsum and/or process water. This term specifically excludes any dike inboard of a rim ditch, any partitions separating stack compartments, or any temporary windrows placed on the gypsum dike.

(20)(11) Inside (upstream) slope – The face of the dam or dike which will be in contact with the impounded liquids.

(21) Log – A written record maintained by the owner of an earthen dam or a phosphogypsum stack system that contains a schedule of inspections of system components, the findings of such inspections, and any remedial measures taken in response to such findings.

(22) New perimeter earthen dike – A perimeter earthen dike which is the subject of an application for a department permit to construct or laterally expand a phosphogypsum stack system completed after [effective date of rule].

(23) Non-clay phosphate mining impoundments – Above-grade, non-clay phosphate mining/reclamation berms and impoundments such as:

(a) units under reclamation receiving hydraulic fill;

(b) units constructed for impounding stormwater runoff;

(c) structures located in mine cuts that could impound water above grade, and where a failure of such structure could result in a release of waters to waters of the state; and,

(d) perimeter ditch and berm systems that impound water above grade.

(24) Operation plan – The operation plan required by 62-673.340(3).

(25)(12) Outside (downstream) slope – The face of the dam or dike which will not be in contact with the impounded liquids.

(26) Perimeter earthen dike – The outermost earthen dike surrounding a phosphogypsum stack system that has not been closed or any other earthen dike the failure of which could cause a release of process water outside the phosphogypsum stack system.

(27) Phosphogypsum or gypsum – The definition of “phosphogypsum” set forth in rule 62-673.200(13) is adopted and incorporated by reference.

(28) Phosphogypsum stack or stack – The definition of “phosphogypsum stack” set forth in rule 62-673.200(14) is adopted and incorporated by reference.

(29) Phosphogypsum stack system – The definition of “phosphogypsum stack system” set forth in rule 62-673.200(15) is adopted and incorporated by reference.

(30)(13) Phreatic Surface – The upper surface of the water table within the mass of the dam or dike. It would be the elevation of the water surface if an open hole were dug into the dam.

(31)(14) Piping – Progressive erosion of soil or solid material within the dam or dike, starting downstream and working upstream, creating a tunnel into the dam or dike. Piping occurs when the velocity of the flow of seepage water is sufficient for the water to transport material from the embankment.

(32) Process Water – The definition of “process wastewater” set forth in rule 62-673.200(16) is adopted and incorporated by reference.

(33) Qualified Company Employee – An employee trained pursuant to section 62-672.800 specifically in the area of their job duties.

(15) through (17) renumbered (34) through (36) No change.

(37)(18) Settling area – A phosphate mining clay settling area surrounded by dams, embankments, or natural soil masses in which liquids are introduced for the purpose of separating suspended solid matter from water used for transportation of such matter. The area surrounded by dikes, embankments, or natural soil masses into which liquids are introduced for the purpose of separating suspended solid matters from water used for transportation of such matter.

(38) Starter Dike – The initial dike constructed at the base of a phosphogypsum stack to begin the process of storing phosphogypsum.

(39)(19) Tailwater level – The elevation of the water at the downstream toe of the dam or dike.

(40) Third-party engineer – An engineer who is not an employee of any entity that owns or operates a phosphate mine or phosphate fertilizer manufacturing facility.

(41)(20) Toe – The toe of the dam or dike is the junction between the face of the dam or dike and the adjacent terrain.

Specific Authority 403.061(22)(25), 403.4155 FS. Law Implemented 403.061(22)(25), 403.4155 FS. History—Revised 12-8-72, Formerly 17-9.02, 17-9.020, 17-672.200, Amended _____.

Part I – Phosphate Mining and Beneficiation Operations

62-672.300 Construction of New Dams.

(1) Design.

(a) No change.

(b) Soil testing – A program of soil sampling and testing adequate to determine the characteristics of the foundation material which will support the proposed dam and of the material to be used for construction of the dam shall be performed. Sampling shall include borings and/or in-place samples from the exposed excavation face. All borings shall be logged using a recognized engineering soil classification system, (such as Unified System) with location and depths of all samples recorded on the log. Tests such as including, but not limited to, the determination of in-place densities, shear-strength; and permeabilities of the foundation and embankment soils shall be performed. Tests on foundation soils shall be performed on either undisturbed samples or on the in-place soil. Tests on embankment soils shall be performed on samples remolded to the densities to be used in construction. All soil test data used for design shall be derived from tests performed in compliance with the American Society of Testing Materials, American Association of State Highway Officials, or U.S. Army Corps of Engineers soil testing specifications and procedures.

(c) Cross Section design—There shall be a minimum freeboard of five feet (5') below the inside crest. The outside crest of the top of the dam shall be higher than the inside crest in order to force all crest drainage to the inside of the dam. Both inside and outside slopes shall be no steeper than two horizontal to one vertical. The design shall provide positive seepage control features, such as but not limited to:

1.(i) Cut-off trench in natural soil foundations.

2.(ii) Clay core.

3.(iii) Blanket drain.

4.(iv) Chimney drain and toe drain.

The top of the dam shall include a roadway which will permit wheeled vehicle traffic at all times. The design shall also incorporate an all-weather roadway near the downstream toe which will permit wheeled vehicle traffic around the perimeter of the dam for purposes of inspection of the slope, toe and natural ground beyond the toe, as well as maintenance.

(d) through (e) No change.

(f) If a cast dam is to be constructed where adequate site preparation, as defined in rule Section 62-672.300(2) below, has not been accomplished; or where the fill materials do not

meet the requirements of rule Section 62-672.300(3) below; then the design shall incorporate either of the following alternatives:

(i) through (ii) renumbered 1. and 2. No change.

(g) When the foundation for a cast dam meets the requirements of rule Section 62-672.300(2) and the materials used for the fill meet the requirements of rule Section 62-672.300(3), then the dam shall be designed in accordance with rules Sections 62-672.300(1)(a),(b),(c),(d) and (e); except that the computations of all required safety factors shall be based on only seventy-five percent (75%) of the indicated strengths of the cast materials which are tested at the same density as will exist within the dam.

(2) No change.

(3) Material to be Used – Material used for earthen dams shall be free of stumps, vegetation, trees, palmettos, muck, and other extraneous matter which could affect the compactability, density, permeability, or shear strength of the finished dam. Tailings may be used for dam fill when such a completed dam will meet the seepage and structural requirements in rule Section 62-672.300(1).

(4) No change.

(5) Methods of Construction.

(a) Each new dam shall be constructed to meet or exceed the minimum safety requirements of the specifications and design for that dam. Draglines, drag scrapers, tractor or other appropriate earth moving equipment shall be used to place materials in dam construction. Materials used in rolled dams shall be blended prior to compaction. The soil shall be compacted and density tests shall be performed to ensure that the designed densities are obtained. During dam construction, quality control/quality assurance inspections shall be conducted by the engineer of record or a personal representative under his or her direct supervision. A third-party engineer or his or her representative shall be on site at all times during dam construction and during installation of all spillways. A qualified representative of the design engineer shall be present on the site each working day during construction of a rolled dam or during the shaping and strengthening of a cast dam to ensure that materials and construction methods meet all specifications of the design. The Department of Environmental Protection Regional Engineer shall be advised 48 hours prior to of the date on which construction or shaping of a new dam will begin so that a department representative he can inspect the site.

(b) No change.

(i) through (ii) renumbered 1. through 2. No change.

(c) Areas around any water level control structure pipe, any other conduit, or any surface of discontinuity between materials within the mass of the dam shall be carefully installed to avoid potential concentration of seepages. The design of spillway structures associated with earthen dams shall ensure that soils under and around a culvert are uniformly

compacted and are in continuous contact with the external culvert surface. All conduits through dams shall have two or more seepage collars spaced in accordance with good engineering practices pertinent to the material used for the fill. Two collars will be installed within the core when there is a core within a dam. A third-party engineer shall evaluate the potential for piping around culverts and the engineering design shall reduce or eliminate such potential based upon site specific conditions. All pipes and joints in pipes extending through a dam shall be made leakproof and shall be constructed of materials suitable for the fluids carried and the load imposed. The elevation difference of any spillway pipe from its inlet to the outlet at the discharge ditch shall not cause supercritical flow conditions within the culvert. In order to avoid leaks associated with differential settlement, conduits through dams shall not be rigidly supported by piles or piers. Backfill around conduits shall be of a density that is equal to or greater than those of the surrounding embankment. Particular attention shall be devoted to the lower third of the conduit. The engineering design for the construction of a culvert shall require the use of a lean concrete cradle and gravel drain system or a design resulting in an equivalent level of protection.

(6) Documentation.

(a) The owner of an earthen dam shall maintain in a permanent file the following construction records pertaining to said dam. The owner He shall furnish a similar file and certification of completion of construction within 30 days after completion of the dam to the Department for approval. of Environmental Protection Regional Engineer for future reference should it be needed. This approval shall constitute authorization to operate said dam.

(i) through (viii) renumbered 1. through 8. No change.

Specific Authority 403.061(22)(25) FS. Law Implemented 403.061(22)(25) FS. History—Revised 12-8-72, Formerly 17-9.03, 17-9.030, 17-672.300, Amended _____.

62-672.400 Operational Requirements.

(1) Active dams – The water level in a settling area shall not be raised or lowered more than one (1) foot during any twenty-four (24) hour period, except under emergency conditions. The water level shall not be lowered more than five (5) feet per month. Each active settling area shall be inspected as prescribed in rule Section 62-672.500(2). Instrumentation for monitoring of seepage pore pressures within dams shall be installed and operated unless the department has been provided reasonable assurance during the permitting process that such monitoring is unnecessary to ensure dam integrity. New or yet unused spillways shall be placed into operation during the daylight and morning hours when their performance can be effectively monitored by the dam inspectors and waste system operators. Vegetative cover adequate to inhibit wind and water erosion shall be established and maintained on all exposed

surfaces of the dam. Such vegetation shall be maintained sufficiently low to permit visual inspection of the soil surfaces in critical areas outlined in rule Section 62-672.500.

(2) Retired dams – The department shall be notified prior to the retirement of a dam. The vegetative cover on retired dams shall be maintained sufficiently low to permit visual inspection of the soil surfaces in critical areas outlined in rule Section 62-672.500. In addition, the water level control structures in retired dams shall be adjusted to suit the circumstances of storm drainage requirements as the solids concentrations of the impounded liquids becomes progressively higher. Pools of trapped stormwater and/or clarified wastewater shall be drained away from the upstream face of the dam to the greatest extent possible. A dam shall not be considered as retired so long as pools of free water remain in contact with the dam.

Specific Authority 403.061(22)(25) FS. Law Implemented 403.061(22)(25) FS. History—Revised 12-8-72, Formerly 17-9.04, 17-672.040, 17-672.400, Amended _____.

62-672.500 Inspections.

Personnel or agents of the ~~dDepartment of Environmental Protection~~ may accompany inspectors on any ~~routine~~ inspection required by this rule, or inspect settling areas at any other time which is reasonable under the circumstances involved. They may also examine any ~~routine~~ inspection reports and be furnished copies thereof upon request.

(1) A completed new dam shall be thoroughly inspected prior to the deposition of industrial wastes above ground level behind it. Toe drains, spillways and water level control structures shall be certified by the design engineer as meeting all specifications of the design, and degree of compaction of the fill shall also be certified. Legible photographs, either aerial or ground, may be used to document this initial inspection, but shall not in themselves constitute certification. A complete file describing the items inspected and their condition shall be maintained by the owner, and a copy shall be furnished to the ~~dDepartment of Environmental Protection Regional Engineer~~ prior to the above-grade deposition of industrial wastes behind the dam.

(2) Active dams shall be inspected weekly unless a defect has been disclosed, in which event the defective area of the dam shall be inspected daily until corrective maintenance has cured such defect. Inspections shall be made by competent employees of the owner of the dam who have been trained in accordance with rule 62-672.500(9) instructed and tested by a qualified engineer regarding items to be checked. The findings on each inspection shall be recorded, signed by the inspector, and filed after any necessary corrective action is initiated by supervisory personnel. The inspector shall travel on foot, horseback, or wheeled vehicle suitable for traversing the terrain involved at slow speeds. Dams shall be inspected from the crest and from the toe through the use of all-weather toe

roads or other means of direct inspection from the toe of the dam. Items to be noted on weekly (or daily) inspections shall include, ~~but not limited to:~~

(a) through (f) No change.

(3) Retired dams shall be inspected monthly by a competent employee of the owner of the dam who has been instructed and tested by a qualified engineer regarding items to be checked. The findings on each inspection shall be recorded, signed by the inspector, and filed after any necessary corrective action is initiated by supervisory personnel. Such inspection shall include, ~~but not limited to:~~

(a) through (b) No change.

(c) Determination of seepage characteristic through analyses of infra-red aerial photographs or thermal imagery when surveillance by such means has been proposed by the owner of the dam and approved by the ~~dDepartment of Environmental Protection Regional Engineer~~.

(d) No change.

(4) When a condition as listed in rule Section 62-672.500(7) is suspected found during a weekly or monthly inspection, the inspector shall ensure that a competent technical representative of the dam owner is made aware of the condition immediately. If the existence of the critical condition is confirmed, the department shall be notified immediately. A written report of the condition and the actions proposed for its correction shall be made to the dDepartment of Environmental Protection Regional Engineer within seven (7) days from the time existence of the critical condition is confirmed, at the earliest practicable time. The Regional Engineer may confirm correction of the condition at an appropriate time.

(5) Each active and each retired dam shall be inspected annually by an third-party engineer registered in Florida who is experienced in the field of construction and maintenance of dams. Costs for such inspections shall be borne by owners of the dams. One copy of the report pertaining to such annual inspections shall be furnished to the ~~dDepartment of Environmental Protection Regional Engineer~~, and the original of the report shall be retained by the owner. These inspections shall include, ~~but not be limited to:~~

(a) through (e) No change.

The annual inspection report shall include recommendations and corrective measures taken. If corrective measures are not completed by the time of annual submittal, then follow up inspections shall be conducted by the third-party engineer with quarterly project reports submitted until completion of all corrective measures.

(6) A retired dam which is to be abandoned shall be inspected by an engineer registered in Florida who is competent to determine that no further impoundment is being accomplished by the dam involved and that no further surveillance or maintenance is required. A copy of the final inspection used by the engineer for making his determination as above shall be furnished to the ~~dDepartment of~~

Environmental Protection Regional Engineer, and a copy shall be retained by the owner of the dam. The department shall be notified prior to abandonment of any dam. Costs for such terminal inspections shall be borne by the owners of the dams which are to be abandoned.

(7) No change.

(8) The following items shall be considered as indicating potential trouble areas which should be closely checked on subsequent inspections and repaired as necessary:

(a) through (e) No change.

(9) The owner of a dam shall provide annual training to all dam inspection personnel by an engineer experienced in dam design, construction, operation and inspection, and shall provide training to all appropriate employees in the implementation of the contingency plan required by rule 62-672.550. The owner shall maintain records documenting such training.

(9) renumbered (10) No change.

Specific Authority 403.061(22)(25) FS. Law Implemented 403.061(22)(25) FS. History—Revised 12-8-72, Formerly 17-9.05, 17-9.050, 17-672.500, Amended _____.

62-672.550 Contingency Plans.

The owner of a dam shall prepare contingency plans to be followed in the event of a dam failure. Each plan shall include mapping showing areas subject to downstream flooding and a notification of local and state officials. The contingency plans shall be maintained on file for review by the department upon request.

Specific Authority 403.061(22) FS. Law Implemented 403.061(22) FS. History—New _____.

62-672.570 Non-Clay Phosphate Mining Impoundments.

Each owner of a non-clay phosphate mining impoundment shall implement best management practices for such impoundment in accordance with “BMPs for Non-Clay, Phosphate Mining and Reclamation Berms and Impoundments,” dated July 23, 1996, which is adopted and incorporated by reference. Upon request by the department, each such owner shall provide verification of implementation of the foregoing best management practices to representatives of the department’s Bureau of Mine Reclamation during quarterly inspections of affected facilities.

Specific Authority 403.061(22) FS. Law Implemented 403.061(22) FS. History—New _____.

Part II – Phosphogypsum Stack System Impoundments

62-672.600 Construction of New Perimeter Earthen Dikes.

(1) Design.

(a) Site investigation. The general area desired for construction of a perimeter earthen dike shall be carefully inspected by the design engineer prior to selection of the exact location for the dike. Areas of uneven natural subsidence,

sinkholes, pockets of organic matter, or other unstable soils shall be avoided, unless special provisions are made for their mitigation.

(b) Soil testing. The requirements for soil testing set forth in rule 62-672.300(1)(b) are adopted and incorporated by reference.

(c) Cross section design. The design freeboard of an above-grade perimeter earthen dike shall not be less than five (5) feet unless a design freeboard of less than five (5) feet is justified based on results of seepage and stability analyses and wave run-up analyses. However, in no event shall the design freeboard of an above-grade perimeter earthen dike be less than three (3) feet. The crest on the top of the dike shall be graded toward the inside or the outside slope. If the dike exceeds 10 feet in height and crest runoff is directed toward the outside slope, runoff controls shall be used to protect the outside slope against erosion. Both inside and outside slopes shall be no steeper than two and one-half (2.5) horizontal to one (1.0) vertical. Seepage control shall be provided by means of a liner placed on the inside slope of the dike and constructed in accordance with rule 62-673.400. The top of the dike shall include a roadway which will permit wheeled vehicle traffic at all times. The design of the outermost earthen dike shall also incorporate an all-weather roadway near the downstream toe which will permit wheeled vehicle traffic around the perimeter of the dike for purposes of inspection of the slope, toe and natural ground beyond the toe, as well as maintenance.

(d) Stability analysis. A seepage or flow net analysis shall be made, when applicable, for use in the stability analysis. The stability analysis shall consider the minimum fluid level as well as the fluid level at the design freeboard on the upstream slope of the dike, and possible fluctuations of the tail water level.

(e) Design safety factors. The design safety factors set forth in rule 62-672.300(1)(e) are adopted and incorporated by reference.

(2) Site preparation. The site preparation requirements of rule 62-672.300(2) are adopted and incorporated by reference.

(3) Material to be used. The requirements for materials to be used are set forth in rule 62-672.300(3) and are adopted and incorporated by reference.

(4) Process water control design. Conveyance ditches and hydraulic structures located within a phosphogypsum stack system shall have adequate capacity to circulate the process water stream(s), if applicable, and to contain or transfer runoff on the watershed upstream of the water control structures resulting from a storm event generating 12 inches of rainfall in 24 hours while maintaining at the same time the design freeboard of the perimeter earthen dike. If provisions are made to contain some or all of the storm surge resulting from such event within the phosphogypsum stack system upstream from

the conveyance system or water control structures, then the transfer capacity of the ditches and structures may be reduced accordingly.

(5) Methods of construction.

(a) Each new dike shall be constructed to meet or exceed the minimum safety requirements of the specifications and design for that dike. Appropriate earthmoving equipment shall be used to place materials in dike construction. The soil shall be compacted and density tests shall be performed to ensure that the designed densities are obtained. A qualified representative of the third-party engineer shall be present on the site during construction of the dike and liner, and during construction and installation of spillways and penetrations through the dike or liner. The department shall be advised of the date on which construction of a new dike will begin so that a department representative can inspect the site.

(b) Areas around any water level control structure pipe, any other conduit, or any surface of discontinuity between materials within the mass of the dike shall be carefully inspected to avoid potential concentration of seepages and to ensure that soils under and around a culvert are uniformly compacted and are in continuous contact with the external culvert surface. All penetrations through the liner on the upstream slope of the dike shall be made using water tight joints or connections and shall be capable of maintaining their integrity under anticipated in-use conditions. All pipes and joints in pipes or conduits extending through a dike shall be made leak proof and shall be constructed of materials suitable for the fluids carried and the load imposed. In order to avoid leaks associated with differential settlement, conduits through dikes shall not be rigidly supported by piles or piers. Backfill around conduits shall be of a density that is equal to or greater than those of the surrounding embankment. Particular attention shall be devoted to the lower third of the conduit.

(6) Documentation. Applicable provisions of the documentation requirements set forth in rule 62-672.300(6) are adopted and incorporated by reference with the following exception. The owner shall furnish a certification of completion of construction within 30 days after completion of the dike. The remaining documents shall be submitted within six (6) months of placing the facility into operation.

Specific Authority 403.4155 FS. Law Implemented 403.4155 FS. History—
New _____.

62-672.620 Assessment of Existing Perimeter Earthen Dikes.

(1) Within nine months of [the effective date this rule], the owner of a phosphogypsum stack system shall submit to the department documentation that existing perimeter earthen dikes have either been:

(a) authorized to be constructed or modified by a permit issued by the department in response to an application that addressed freeboard, dike seepage, factors of safety, and slope stability; or

(b) engineered, or retrofitted such that they are deemed by a third-party engineer to be in compliance with the seepage control feature provision of rule 62-672.300(1)(c), the freeboard provisions of rule 62-672.600(1)(c), and the design factors of safety and slope stability provisions of rule 62-672.600(1)(d) and (e); or

(c) evaluated by a third-party engineer who certifies the safety and stability of the dikes as being adequate.

(2) Within nine months of a final determination that a dike's safety and stability cannot be so verified, the owner shall submit to the department a proposal to upgrade or retrofit the dike to comply with the requirements of rule 62-672.620(1)(b), or to take the dike out of service as soon as practicable but no later than three (3) years from [effective date]. The owner of any such dike shall implement, within nine months of [the effective date of this rule], interim measures recommended by a third-party engineer that will ensure the safety and stability of the dike until such time as it is upgraded or retrofitted or taken out of service. These interim measures must be submitted to the department.

(3) At the time of the assessment required by rule 62-672.620(1), a third-party engineer shall also determine whether the existing system is equipped with process water conveyance/containment capabilities that conform to the design requirements set forth in rule 62-672.600(4). Within one year of a final determination that a system does not meet these design criteria, the owner shall submit to the department a proposal to modify the system to attain compliance. Such modification shall be completed as soon as practicable but not later than three years after [the effective date of this rule] or 18 months after the owner receives all necessary governmental permits or other prior approvals whichever shall later occur.

Specific Authority 403.4155 FS. Law Implemented 403.4155 FS. History—
New _____.

62-672.650 Operational Requirements for Perimeter Earthen Dikes.

(1) All perimeter earthen dikes shall be operated so as to maintain the design freeboard in accordance with 62-672.600(1)(c) unless temporary incursions into the freeboard are demonstrated to be safe pursuant to rules 62-672.650(2) or 62-672.870. Each perimeter earthen dike shall be inspected as prescribed in rule 62-672.670. Vegetative cover adequate to inhibit wind and water erosion shall be established and maintained on the outside slope of the dike. Such vegetation shall be maintained sufficiently low to permit visual inspection of the soil surfaces and critical areas outlined in rule 62-672.670.

(2) Temporary Use of Design Freeboard.

(a) To assure system safety and integrity or to reduce the probability of discharge, the department shall approve temporary use of the design freeboard of a perimeter earthen dike upon justification by the owner and review of written documentation prepared by a third-party engineer

demonstrating that such use can occur while maintaining the safety and stability of the dike. Any department approval shall include as conditions any specific limitations or other requirements recommended by the third-party engineer as necessary to maintain dike integrity and shall establish a specific time limit for such use. The third-party engineer shall base their recommendations on:

1. an inspection of the facility;
2. dike design and construction information;
3. results of seepage and stability analyses (including monitoring of seepage pressures within the dike if such monitoring is deemed necessary); and
4. wind surge and wave run-up analyses.

(b) The report by the third-party engineer shall specify conditions under which such use may be authorized, such as:

1. acceptable wind speeds in forecast;
2. acceptable rainfall levels in the forecast;
3. increased inspection frequencies; and
4. weekly monitoring of piezometric levels within the mass of the dike, if and as needed.

(c) No temporary use of the design freeboard pursuant to this section may be authorized unless the facility either:

1. prior to initiation of such temporary use has storage capacity adequate to contain a storm event generating 12 inches of rainfall in 24 hours below the design freeboard fluid level; or,
2. such action has been approved by the department under an action plan submitted pursuant to rule 62-672.780(8).

(d) Fluctuation in freeboard shall not result in activation of emergency overflow spillways.

(e) Changes in water levels during such temporary use shall not be deemed to reach any of the triggers established under 62-672.780.

Specific Authority 403.4155 FS. Law Implemented 403.4155 FS. History—New _____.

62-672.670 Inspection and Maintenance Requirements For Perimeter Earthen Dikes.

(1) Personnel or agents of the department may accompany inspectors on any inspection required by this rule, or inspect perimeter earthen dikes at any other time which is reasonable under the circumstances involved. They may also examine any inspection reports and be furnished copies thereof upon request.

(2) A completed new perimeter earthen dike shall be thoroughly inspected prior to the placement of process water behind it. Spillways and water level control structures shall be certified by the design third-party engineer as meeting all specifications of the design, and degree of compaction of the fill shall also be certified. Legible photographs, either aerial or ground, may be used to document this initial inspection, but shall not in themselves constitute certification. A complete file describing the items inspected and their condition shall be

maintained by the owner, and a copy shall be furnished to the department for approval prior to the deposition of process water behind the dike.

(3) All perimeter earthen dikes and water control structures shall be inspected weekly unless a critical condition listed in rule 62-672.670(5) has been disclosed, in which event the defective area of the dike shall be inspected daily until corrective maintenance has cured such defect. Water level elevations and freeboard compliance shall be determined at least every 12 hours. Piezometric water levels within the dike shall be measured quarterly if piezometers have been installed. The inspections shall be made by a qualified company employee or contractor employed or retained by the owner of the dike which employee or contractor has been trained in accordance with rule 62-672.800. The findings of each inspection shall be recorded in a log which log shall be made available to the department upon request.

(4) When a critical condition listed in rule 62-672.670(6) is suspected during an inspection, the inspector shall ensure that a competent technical representative of the dike owner is made aware of the condition immediately. If the existence of the critical condition is confirmed, the department shall be notified immediately. A written report of the condition and the actions proposed for its correction shall be made to the department within seven (7) days from the time existence of the critical condition is confirmed.

(5) Each perimeter earthen dike shall be inspected annually by a third-party engineer with experience in the field of construction and operation of perimeter earthen dikes. One copy of the report pertaining to such an inspection shall be furnished to the department, and the original report shall be retained by the owner. These inspections shall include:

(a) Analyses of seepage or other significant items shown on all aerial photographs of the dike which have been taken for any reason since the date of the last annual inspection.

(b) Condition of soil surfaces and top and slopes of the dike and in areas for fifty feet (50') downstream from the outside toe.

(c) Review of all periodic inspection reports to evaluate the effectiveness of maintenance which was done to the dike during the period since the last annual inspection.

(d) Examination and interpretation of data obtained from any instrumentation installed in the mass of the dike.

(e) Condition of spillway and water level control structures, including all conduits exiting the dike.

The annual inspection report shall include recommendations and corrective measures taken. If corrective measures are not completed by the time of annual submittal, then follow up inspection shall be conducted by the third-party engineer with quarterly project reports submitted until completion of all corrective measures.

(6) Any of the following items shall be considered as indicating a critical condition which requires immediate investigation and may require emergency maintenance action:

(a) Concentrated seepage on the downstream slope, at the toe of slope, or downstream from the toe of slope (e.g., boils, soil cones, springs or deltas).

(b) Evidence of slope instability including sloughing, bulging or heaving of the downstream slope, or subsidence of the dike slope or crest.

(c) Cracking of surface on crest or either face of the dike.

(d) General or concentrated seepage in the vicinity of or around any conduit through the dike.

(e) Observed or suspected damage to the liner system.

(7) The following items shall be considered as indicating potential trouble areas which should be closely checked on subsequent inspections and repaired as necessary:

(a) Abnormal dead vegetation or damp areas on the downstream slope, at the toe of slope, or downstream from the toe of slope that could be indicative of pond water seepage.

(b) Surface erosion, gulying or wave erosion on the upstream slope of the dike.

(c) Surface erosion or gulying on the downstream slope of the dike.

(d) Erosion below any conduit through the dike near or at the toe of slope of the dike.

(8) All logs and reports required under this section shall be retained by the owner of the phosphogypsum stack system for a period of not less than three years from the date of the last entry in the log or from the date of the report.

Specific Authority 403.4155 FS. Law Implemented 403.4155 FS. History—New _____.

62-672.700 Construction of New Phosphogypsum Stacks.

(1) Any new phosphogypsum stack or lateral expansion thereof as defined in rule 62-673.200(9) shall be designed in accordance with the minimum standards of rule 62-673, F.A.C., with an overall factor of safety of 1.5 for any potential failure surface encompassing the impoundment on top of the stack and passing through the gypsum slope or bottom liner interfaces, or extending into earthen material in contact with the bottom liner.

(2) The maximum height of a starter dike for new phosphogypsum stacks or lateral expansions thereof shall be equal to or lower than the height of the associated lined perimeter dike.

Specific Authority 403.4155 FS. Law Implemented 403.4155 FS. History—New _____.

62-672.720 Assessment of Existing Phosphogypsum Stacks.

(1) Within nine months of the effective date of the new rule, the owner of an existing phosphogypsum stack for which a closure permit has not been issued shall provide to the department documentation that the stack has either been:

(a) authorized to be constructed by a permit issued by the department in response to an application that addressed stack stability; or

(b) evaluated by a third-party engineer who certifies the safety and stability of the stack as being adequate.

(2) Within nine months of a final determination that the stability of a stack or stack compartment cannot be so verified the owner shall submit to the department a proposal to upgrade or retrofit the stack or stack compartment to assure safety and stack stability or to develop and implement revised operating procedures that will assure safety and stability. The owner of any such stack shall implement, within nine months of [effective date], interim measures recommended by a third-party engineer that will ensure the safety and stability of the stack or stack compartment until such time as it is upgraded or retrofitted or is made subject to revised operating procedures. These interim measures must be submitted to the department.

Specific Authority 403.4155 FS. Law Implemented 403.4155 FS. History—New _____.

62-672.750 Procedures for Raising Phosphogypsum Stacks. Phosphogypsum stacks shall be raised in accordance with the following minimum standards:

(1) The crest width of each gypsum dike shall not be less than eighteen (18) feet.

(2) When constructing a gypsum dike, the thickness of each gypsum lift shall not exceed five (5) feet.

(3) The overall average exterior slope of the phosphogypsum stack shall be established based on the results of stability analyses previously performed by a third-party engineer to demonstrate or certify that the safety and stability of the stack are adequate throughout the life of the stack. The overall average exterior slope of the phosphogypsum stack shall be no steeper than two (2.0) horizontal to one (1.0) vertical for stacks greater than 50 feet in height.

(4) Except as provided in rule 62-672.750(5), sufficient lengths of the inboard dike, levee, or windrow used to create a rim ditch shall be maintained at a lower elevation than the crest of the associated gypsum dike so that the rim ditch will always discharge inward into a stack settling compartment.

(5) The fluid level in the rim ditch shall not be allowed to rise above the crest elevation of the gypsum dike in the vicinity unless site specific provisions or precautionary measures specifically outlined in the operation plan referred to in rule

62-672.780 are implemented. In no case shall the water level in the settling compartment be allowed to rise above the crest of the gypsum dike.

Specific Authority 403.4155 FS. Law Implemented 403.4155 FS. History--New _____.

62-672.760 Procedures for Decanting Process Water From Top of Phosphogypsum Stack.

The owner of a phosphogypsum stack system, including inactive stacks or temporarily inactive stacks, shall comply with the following requirements for decanting process water from the top of phosphogypsum stacks.

(1) One or more of the following three methods may be used to decant water from the top of an active phosphogypsum stack:

(a) overflow broad crested weir dug in gypsum, such as controlled flow through an open cut;

(b) decant pipe placed in a backfilled cut; or

(c) siphon line or positive pressure line that does not penetrate the gypsum dike.

Any exception to the above shall be specifically approved, on a case-by-case basis, by a third-party engineer and the department. Any exception to the requirements specified in rules 62-672.760(2)-(14) shall be specifically approved, on a case-by-case basis, by a third-party engineer and the department shall be notified of the exception in a timely manner.

(2) The maximum depth of any open cut used to decant water and any cut made to place or remove a decant pipe shall be limited to no more than 10 feet. The depth of cut shall be measured from the top of the fluid level elevation in the rim ditch at the decant location, i.e., from the maximum elevation of the slurry flowing in the rim ditch at any time prior to making the cut. The depth shall be measured to the bottom invert elevation of the decant pipe or open cut beneath the centerline of the gypsum dike.

(3) Each facility shall select a range of bottom widths and side slopes for any cut to be made that are consistent with the site-specific decanting and backfilling procedures adopted by that facility.

(4) The minimum distance from the decant location (within the settling compartment on top of the stack) to the outer edge of any cut on the exterior slope of the stack, measured along the invert of the cut, shall be no less than 40 feet. Moreover, if the distance from the decant location to the outer edge of the cut on the exterior slope is less than 55 feet, either one of the following additional precautionary measures shall be implemented:

(a) the cut made across the inner levee (upgradient from the rim ditch) shall be offset at least 15 feet relative to the cut made across the gypsum dike crest; or

(b) a gypsum "beach" or delta shall be placed or built into the inner settling compartment at the decant location prior to making the cut.

(5) The invert of any cut through a gypsum dike shall be located in material that has been allowed to consolidate and age for no less than 2 weeks.

(6) The centerline of a new decant cut shall be offset a minimum distance of 50 feet from the location of the most recently backfilled cut (i.e., older cut which is no longer being used to decant water).

(7) If an open cut is used to decant water, the depth of water over the broad-crested weir opening shall be controlled at less than 2 feet. If a decant pipe is used, the diameter of the pipe shall be no greater than 30 inches, and the pressure rating of the pipe shall be no less than 50 psi (e.g., for High Density Polyethylene (HDPE) pipes, the Standard Dimension Ratio (SDR) shall be no greater than 32.5; and for Polyvinyl Chloride (PVC) pipes, the pipe Schedule shall be equal to or greater than 40). Moreover, the horizontal section of any decant pipe placed in a backfilled trench shall be extended no less than 2 feet and no more than 5 feet beyond the edge of the cut on the exterior slope of the stack, or the discharge end of the pipe shall be laid along the exterior slope of the stack.

(8) Additional measures for decant pipe.

(a) If a decant pipe is used, and a cut is made to place or remove the pipe, the following precautionary measures shall be implemented prior to making the cut:

1. place a gypsum "beach" or delta into the inner settling compartment extending no less than 30 feet from the inside edge of crest of the inner levee, then lower the water level in the settling compartment below the bottom invert elevation of the decant pipe, and construct a temporary cofferdam on the gypsum beach as an added safety measure; or alternatively,

2. place a gypsum "beach" or delta into the inner settling compartment extending no less than 100 feet from the inside edge of crest of the inner levee, temporarily isolate the compartment where the decant is located to prevent the introduction of additional water or slurry, and construct a temporary gypsum cofferdam as needed to isolate the decant location. The cofferdam shall have a minimum crest width of 20 feet. The excavation shall not be allowed to extend across an imaginary 3.0 Horizontal : 1.0 Vertical line projected from the outside toe of the cofferdam towards the exterior slope of the stack; or alternatively,

3. place a gypsum "beach" or delta into the inner settling compartment extending no less than 500 feet from the inside edge of crest of the inner levee, and temporarily isolate the compartment where the decant is located to prevent the introduction of additional water or slurry.

(b) Once the excavation has progressed below the water level elevation in the settling compartment, the cut shall be completed and the excavation backfilled as expeditiously as possible but no later than within 48 hours.

(9) Prior to backfilling a cut, the exposed gypsum surface shall be scarified (e.g., with the dozer tracks or with the backhoe bucket) as needed to break up and remove any cemented surface crust, if present.

(10) Only moist or wet gypsum may be used in backfilling operations. Dry gypsum shall not be used unless it is moisture-conditioned prior to or during placement. Moreover, gypsum used in backfilling a decant cut shall have an equivalent texture and consistency to freshly sedimented gypsum excavated from the rim ditch.

(11) Backfilling operations shall incorporate one or more of the following construction steps or procedures, as applicable, or other equivalent methods approved by a third-party engineer.

(a) Any open cut through the gypsum dike shall be backfilled with wet or moist gypsum placed in lifts not exceeding 18 inches in thickness, as needed to ensure that the gypsum backfill is in intimate and complete contact with the sides of the cut and with the external surface of the decant pipe, when present.

(b) Either tracked equipment (e.g., dozer) shall be used to roll the surface and compact each lift of moist to wet gypsum, scarifying between lifts as needed; or the bucket of a hydraulic excavator (backhoe) shall be used to place and tamp wet to very wet (e.g., "sluiced" or flowable) gypsum, having a saturated paste consistency, in lifts, scarifying between lifts as needed. The latter method is suited for use in filling all around a decant pipe, when present, provided the pipe is restrained and prevented from being uplifted during any such filling operation.

(c) Construction equipment shall not be allowed to travel directly over any buried decant pipe until a gypsum cover thickness sufficient to prevent damage to the pipe has been placed over the pipe (as approved by a registered professional engineer).

(d) If saturated gypsum has been used in backfilling a cut through the gypsum dike (i.e., wet to very wet gypsum placed and tamped with the bucket of a hydraulic excavator), then the freshly backfilled plug shall be allowed to set for at least 48 hours before the remainder of the cut inboard of the restored outer dike is backfilled with gypsum slurry via the rim ditch, and before water is allowed to flow in the rim ditch across the backfilled cut.

(12) Backfilling of any decant cut through the gypsum dike shall be done during daylight hours only (unless the entire work area is well lighted); and shall be inspected and monitored by a qualified company employee familiar with the specified backfilling procedures.

(13) The placement in service and initial operation of the rim ditch adjacent to any backfilled cut shall be inspected and monitored by a qualified company employee, with periodic monitoring to continue at least once every 12 hours during the first 36 hours after re-activating the area adjacent to the cut.

Any of the following items shall be considered as indicative of a potentially critical condition requiring immediate notification of supervisory personnel and performance of more frequent inspections until the situation has stabilized or remedial action has been implemented: concentrated seepage on the outer face of the backfilled cut, any sign of sediment transport, cracking or subsidence of the exposed surface on the crest and downstream face, and concentrated seepage or boils in the vicinity of a decant pipe.

(14) All inspections shall be documented in writing and the findings shall be recorded, signed by the qualified company employee that conducted the inspection and maintained at the facility for a period of not less than three years.

Specific Authority 403.4155 FS. Law Implemented 403.4155 FS. History—New _____.

62-672.770 Phosphogypsum Stack Inspection And Maintenance.

(1) Personnel or agents of the department may accompany inspectors on any inspection required by this rule, or inspect starter dikes or gypsum dikes at any other time which is reasonable under the circumstances involved. They may also examine any inspection reports and be furnished copies thereof upon request.

(2) A completed new phosphogypsum stack system, including the starter dike, shall be thoroughly inspected prior to the deposition of process water in it. The liner, spillways and water level control structures shall be certified by the design third-party engineer as meeting all specifications of the design, and degree of compaction of the fill shall also be certified. Legible photographs, either aerial or ground, may be used to document this initial inspection, but shall not in themselves constitute certification. A complete file describing the items inspected and their condition shall be maintained by the owner, and a copy shall be furnished to the department.

(3) All stack compartments, including any noted areas containing critical conditions as listed in rule 62-672.770(5) until corrected, shall be inspected daily. Stack slopes, collection ditches, and drain outlets shall be inspected weekly. Flow from drain outlets shall be checked quarterly. The total areal coverage of water on the stack shall be estimated each month and the total water inventory on top of the stack shall be estimated annually. The then current height and elevation of the stack shall be measured and reported annually. The required inspections and estimates shall be carried out by a qualified company employee or contractor employed or retained by the owner of the phosphogypsum stack which employee or contractor has been trained in accordance with rule 62-672.800. The results of the required inspections and estimates shall be recorded in a log which shall be maintained by the owner of the phosphogypsum stack and made available to representatives of the department upon request.

(4) When a critical condition listed in rule 62-672.770(6) is suspected during an inspection, the inspector shall ensure that a competent technical representative of the phosphogypsum stack system owner is made aware of the condition immediately. If the existence of the critical condition is confirmed, the department shall be notified immediately. A written report of the condition and the actions proposed for its correction shall be made to the department within seven (7) days from the time existence of the critical condition is confirmed.

(5) Each phosphogypsum stack shall be inspected annually by a third-party engineer with experience in the field of construction and operation of phosphogypsum stacks at the same time that the annual inspection of the associated perimeter earthen dike occurs as required by rule 62-672.670. One copy of the report pertaining to such an inspection shall be furnished to the department, and the original report shall be retained by the owner. The report shall include an updated aerial photograph and shall state the area of the top of the stack and the current height or elevation of the stack. The annual inspection report shall include recommendations and corrective measures taken. If corrective measures are not completed by the time of annual submittal, then follow up inspections shall be conducted by the third-party engineer on a quarterly basis with quarterly project reports submitted until completion of all corrective measures.

(6) Any of the following items shall be considered as indicating a critical condition which requires immediate investigation and may require emergency maintenance action:

(a) Concentrated seepage (e.g., springs or boils) on the face of a stack slope, at the toe of the slope, or beyond the toe of slope with active signs of piping at the point of seepage (e.g., a gypsum or soil cone or delta at the point of seepage).

(b) Evidence of slope instability including sloughing, bulging or heaving of the face of the stack or the toe of the slope.

(c) Lateral movement or subsidence of the slope or crest of the stack.

(d) Formation of new non-shrinkage cracks or enlargement of wide cracks in the surface of the slope or crest of the stack.

(e) Observed or suspected damage to the liner system.

(f) Drains discharging turbid water.

(g) Concentrated seepage (i.e., springs or boils) in the vicinity of a decant pipe.

(7) The following items shall be considered as indicating potential trouble areas which should be closely checked on subsequent inspections and repaired as necessary:

(a) Concentrated seepage (e.g., springs or boils) on the face of a stack or at the toe of slope without active signs of piping at the point of seepage.

(b) Previously observed localized sloughing at the toe of slope of the stack.

(c) Previously observed cracks in the surface of the slope or crest of the stack.

(d) Nonflowing drains.

(8) All logs and reports required under this section shall be retained by the owner of the phosphogypsum stack system for a period of not less than three years from the date of the last entry in a log or from the date of the report.

Specific Authority 403.4155 FS. Law Implemented 403.4155 FS. History New _____.

62-672.780 Phosphogypsum Stack System Operation Plans.

The following items shall be included in the operation plan for each phosphogypsum stack system and shall be approved by an engineer experienced in the construction and operation of phosphogypsum stacks:

(1) The method used to raise and operate the stack.

(2) A description of the source and consistency of gypsum used in constructing the gypsum dikes and the method used for shaping and/or rolling the gypsum.

(3) The overall average exterior slope for raising the phosphogypsum stack and the maximum design height of the stack.

(4) The procedures used to assure that pipes used to transport phosphogypsum to the phosphogypsum stack systems and to return process water to the phosphate fertilizer production facilities are operated and maintained in a safe manner.

(5) The procedures used to decant process water from the top of the phosphogypsum stack.

(6) The location of pumps, spillways, and staff gauges.

(7) Provisions that address emergency measures to be taken in the event of mechanical failure of a pump or in the event of a power failure for any portion of a phosphogypsum stack system that relies on pumps or power to operate monitoring equipment or to transfer process water and/or rainfall-runoff from low areas to the main cooling pond. Such emergency provisions may include:

(a) back-up power (e.g. on-site power; diesel generator, etc.) and/or back-up pump which would be activated in the event of electrical or mechanical failure; or

(b) sufficient surge storage capacity or emergency surge capacity within the conveyance system to contain the process water stream(s), if applicable, as well as runoff from a storm event generating 12 inches of rainfall in 24 hours; or

(c) increased inspection frequencies or continuous monitoring (e.g., remote video camera or automatic water level control device tied to a warning system) to provide early warning of an imminent spill prior to its occurrence; and an emergency action plan that would be undertaken to prevent or contain an accidental spill.

(8) A site-specific water management plan updated annually to reflect changes in watershed area and storm surge.

(a) Each plan shall specify a set of specific actions that are put into motion when certain “triggers” are exceeded in the cooling/surge pond system. Each trigger shall correspond to the storage volume or operating water level(s) needed to contain the storm surge (or a fraction of the storm surge) in the system from a specific design storm (e.g., 12 inches in 24 hours, or the 25-year/24-hour event). If provisions are made to contain the direct rainfall quantity from a storm event generating 12 inches of rainfall in 24 hours in the settling compartments atop the phosphogypsum stack, then the top area of the stack need not be considered in calculating the watershed of the cooling/surge pond system and corresponding storm surge capacity.

1. For facilities that do not have sufficient emergency surge storage capacity to contain a storm event generating 12 inches of rainfall in 24 hours within a department-approved emergency holding pond (EHP), the trigger levels in the cooling/surge pond system shall include:

a. The “action plan” trigger corresponding to the storage volume or operating water level (s) required to contain the rainfall quantity from a storm event generating 12 inches of rainfall in 24 hours. When this level is exceeded for 72 consecutive hours, the owner of the system shall contact the department and present for the department’s review a site specific action plan (or refer the Department to a previously submitted site-specific action plan) for process water inventory management and/or consumption.

b. The “may treat” trigger corresponding to the storage volume or operating water level (s) required to contain the 25-year/24-hour storm event. When this trigger is exceeded for 48 consecutive hours, the owner of the system shall notify the department on the next working day and begin implementing activities needed for activating any permitted treatment station(s), or, alternatively, the owner shall undertake actions to increase the available surge storage capacity within the process system which could include reductions in the volume of water reporting to the process water system. The initiation of process water treatment and discharge at this level by facilities that have a department permit to discharge is optional.

c. The “must treat” trigger corresponding to the storage volume or operating water level(s) required to contain one half of the 25-year/24-hour storm event. When this level is reached or exceeded, the owner of the system for which the department has issued a discharge permit shall notify the department in writing by facsimile within 24 hours and begin treatment of process water for reuse or discharge.

2. For facilities that have a department-approved EHP, the storage capacity of the EHP shall be taken into account in establishing the “action plan,” “may treat,” and “must treat” triggers. When process water is released into the EHP, the owner of the system shall notify the department within 24 hours and immediately begin implementing all measures

needed to consume, remove or treat the water from the temporary emergency storage area within the time frame authorized under applicable provisions of rule 62-673.200(15), F.A.C.

(b) Each facility’s water management plan shall be site-specific and shall be based on a water balance analysis performed annually which considers occurrence of the 100-year monthly rainfall during September, and total precipitation of 65 inches for the calendar year.

(c) Each facility must maintain records to identify the various “trigger” levels. This record should contain as a minimum a site-specific water balance summary sheet which includes the following elements:

1. water levels in each impoundment area;
2. operating levels and trigger levels of each impoundment area;
3. acreage of each impoundment area;
4. acreage of watershed that contributes to the impoundment area; and
5. available storage capacity at the various operation levels, in inches and acre feet.

Each facility shall also regularly monitor water levels as required elsewhere by this rule as well as be able to demonstrate the water levels and available storage capacity at any time upon the request of the department.

(9) The adequacy of the facility’s site-specific action plan and emergency measures shall be based on a five-year water balance analysis which shall be rechecked at five year intervals. The water balance calculations shall be performed for the 5-year period using input rainfall quantities which shall include the 100-year September rainfall, the 100-year annual rainfall, and multi-year rainfall events that have an equivalent probability for not being exceeded during the 5-year period. The annual rainfall quantities shall be distributed amongst the various months, where applicable, in proportion to the long term normal monthly rainfalls. For any facility that has been issued a department permit authorizing the discharge of process water to surface waters of the state and that cannot demonstrate that the storage volume will remain below the “must treat” trigger in such a water balance analysis, the owner shall provide reasonable assurance that treatment systems are in place that will operate at a rate that will avoid overtopping of the perimeter dike, provided, however, that for inactive or temporarily deactivated phosphogypsum stack systems, alternate methods to comply with the intent of this recommendation may be proposed for department approval. Any additional treatment capacity necessary to meet the terms of this recommendation shall be installed within three years of the effective date of this rule or within 18 months of receipt by the owner of all necessary permits or other prior approvals whichever occurs later.

(10) The operation plan for each phosphogypsum stack system shall be modified to comply with all of the provisions of this section by no later than January 1, 2000.

Specific Authority 403.4155 FS. Law Implemented 403.4155 FS. History–New _____.

62-672.800 Training.

The owner of a phosphogypsum stack system shall provide annual training in inspection and operations requirements and contingency plan requirements to appropriate personnel. Newly hired personnel shall receive training prior to engaging in inspection or operations activities addressed by this rule. A training plan consistent with the requirements of this section shall be maintained at each facility and be available for inspection by the department upon request. Records demonstrating that appropriate personnel have received the necessary training shall be maintained by the facility owner for a period of three years.

Specific Authority 403.4155 FS. Law Implemented 403.4155 FS. History–New _____.

62-672.850 Contingency Plans.

The owner of a phosphogypsum stack system shall prepare, by January 1, 2000, and update annually thereafter, a contingency plan to address unplanned releases of process water. The elements of such a plan shall address the applicable elements of the “National Response Team’s Integrated Contingency Plan Guidance [61 Fed. Reg. 28,641 (June 5, 1996)] which is incorporated herein by reference and shall demonstrate the ability to mobilize equipment and manpower to respond to emergency situations. The plan shall be maintained at the facility and be available for inspection by the department upon request.

Specific Authority 403.4155 FS. Law Implemented 403.4155 FS. History–New _____.

62-672.870 Emergency Measures.

(1) Temporary use of the design freeboard.

(a) Temporary use of the design freeboard of a perimeter earthen dike shall be authorized during emergency water conditions if such use can occur safely and is necessary to prevent the release of untreated process water. Such use of the freeboard shall only be allowed when a third-party engineer has approved such use and when documentation demonstrating the continued safety and stability of the dike is submitted to the department. Such documentation shall include a listing of any operational limitations or constraints recommended by the third-party engineer as set forth in this section together with confirmation that the owner will comply with such recommendations. The third-party engineer shall base their recommendations on:

- 1. an inspection of the facility;
- 2. dike design and construction information;

3. results of seepage and stability analyses (including monitoring of seepage pressures within the dike if such monitoring is deemed necessary); and

4. wind surge and wave run-up analyses.

(b) The report by the third-party engineer shall specify conditions under which such use may be authorized, such as:

- 1. acceptable wind speeds in forecast;
- 2. increased inspection frequencies; and
- 3. weekly monitoring of piezometric levels within the mass of the dike, if and as needed.

(c) The third-party engineer shall reevaluate the facility each time such action is proposed by the owner. The department shall be informed of the proposed use and the engineer’s recommendations prior to or within 24 hours of each such occurrence.

(2) If the perimeter earthen dike of the phosphogypsum stack system is an above-grade earthen dike, the system may incorporate an emergency spillway to allow for the controlled release of process water during emergencies and avoid overtopping of the perimeter earthen dike. The spillway shall be located so as to minimize the environmental impact of any release to the extent practicable. This provision shall not be deemed to authorize a discharge from the spillway and shall not be construed to limit the department’s exercise of its enforcement discretion in the event that such discharge causes or contributes to a violation of applicable department rules.

(3) Notwithstanding any provision of rule 62-673, the department is authorized to allow the temporary use of unlined emergency diversion impoundments to receive and store discharges of process water through a spillway authorized by rule 62-672.870(2) or by pumping to avoid infringement of the design freeboard where such action will avoid or reduce the discharge of process water to surface waters of the state. Following any such discharge, the owner of the system shall initiate all steps reasonably necessary to remove the process water from the unlined emergency diversion impoundment as expeditiously as practicable. Any department approval under this section or any other department approval of measures designed to mitigate impacts of emergency discharges of process water shall not be construed to limit the department’s exercise of its enforcement discretion in the event that such measures cause or contribute to a violation of applicable department rules.

Specific Authority 403.4155 FS. Law Implemented 403.4155 FS. History—New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Mimi Drew, Director, Division of Water Facilities
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: David Struhs, Secretary
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 26, 1999
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 28, 1998

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
Division of Marine Resources**

DOCKET NO.: 98-71R
RULE CHAPTER TITLE: RULE CHAPTER NO.:
Non-refundable Processing Fee for
the Replacement of Saltwater Fishing
Licenses, Permits, Retail or
Wholesale Dealer Licenses 62R-19

RULE TITLES: RULE NOS.:
Introduction 62R-19.001
Replacement License or Permit Fees 62R-19.002
Saltwater Fishing License or Permit Application 62R-19.003

PURPOSE AND EFFECT: This new rule will allow assessment of a \$10.00 non-refundable processing fee for the replacement of saltwater fishing licenses, permits, retail or wholesale dealers licenses.

SUMMARY: The proposed rule will allow the agency to assess a \$10.00 non-refundable processing fee for the replacement of saltwater fishing licenses, permits, retail or wholesale dealers licenses. Three rule development workshops were held in Marathon, St. Petersburg, and Tallahassee, however, no one showed at any of them.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: None.

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

SPECIFIC AUTHORITY: 370.06, 370.021 FS.

LAW IMPLEMENTED: 370.06(8) FS.

IF REQUESTED IN WRITING WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m. to 10:00 a.m., April 19, 1999

PLACE: Florida Department of Environmental Protection, Marjory Stoneman Douglas Building, Conference Room B, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000

If accommodation for a disability is needed to participate in this activity, please notify the Personnel Services Specialist in the Bureau of Personnel at (850)488-2996 or (800)955-8771 (TDD), at least seven days before the meeting.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Alex M. Cordero, Environmental Specialist III, Office of Fisheries Management and Assistance Services, M.S. 240, 3900 Commonwealth Boulevard, Tallahassee, Florida, Phone: (850)922-4340

THE FULL TEXT OF THE PROPOSED RULES IS:

62R-19.001 Introduction.

This rule will provide a non-refundable processing fee for the replacement of saltwater fishing licenses, permits and retail or wholesale dealers licenses, during any given year.

(b) either the specialty surgery or primary care written examination.

(3) The minimum passing scores for the examination shall be:

(a) a standardized score of 600 for the general written examination;

(b) a standardized score of 600 for the specialty surgery written examination; and,

(c) a standardized score of 600 for the specialty primary care written examination.

(4) The general written examination shall assess candidate knowledge, and skill in applying knowledge, related to health care functions that physician assistants should be skilled in performing. The examination questions may be drawn from the entire range of physician assistant activities, including, but not limited to, the content area listed below:

(a) Endocrine System

- 1. General Skills 2-4%
- 2. Primary Care 3-5%
- 3. Surgical Skills 1-3%

(b) Pediatric

- 1. General Skills 6-8%
- 2. Primary Care 5-10%
- 3. Surgical Skills 1-3%

(c) Nutritional /Metabolism

- 1. General Skills 1-3%
- 2. Primary Care 2-4%
- 3. Surgical Skills 1-2%

(d) Blood and Blood-forming Hematology

- 1. General Skills 2-4%
- 2. Primary Care 3-5%
- 3. Surgical Skills 1-3%

(e) Head and Neck

- 1. General Skills 1-3%
- 2. Primary Care 2-4%
- 3. Surgical Skills 2-4%

(f) Eyes

- 1. General Skills 1-3%
- 2. Primary Care 2-3%
- 3. Surgical Skills 1-3%

(g) Ears

- 1. General Skills 1-3%
- 2. Primary Care 1-3%
- 3. Surgical Skills 1-3%

(h) Mental Health

- 1. General Skills 1-2%
- 2. Primary Care 1-3%
- 3. Surgical Skills 0-1%

(i) Nervous System and Sense Organs

- 1. General Skills 2-4%

2. Primary Care 3-5%

3. Surgical Skills 4-6%

(j) Circulatory System

1. General Skills 3-5%

2. Primary Care 4-6%

3. Surgical Skills 8-10%

(k) Respiratory System

1. General Skills 4-6%

2. Primary Care 4-6%

3. Surgical Skills 3-5%

(l) Digestive System

1. General Skills 3-5%

2. Primary Care 4-6%

3. Surgical Skills 8-10%

(m) Genitourinary System

1. General Skills 2-4%

2. Primary Care 2-4%

3. Surgical Skills 4-6%

(n) Gynecology and Pregnancy

1. General Skills 3-5%

2. Primary Care 4-6%

3. Surgical Skills 5-7%

(o) Skin and Subcutaneous Tissue

1. General Skills 2-3%

2. Primary Care 2-3%

3. Surgical Skills 2-4%

(p) Musculoskeletal System and Connective Tissue

1. General Skills 2-4%

2. Primary Care 2-4%

3. Surgical Skills 6-8%

(q) Infectious Diseases

1. General Skills 10-12%

2. Primary Care 10-20%

3. Surgical Skills 8-10%

(r) Trauma/Emergency

1. General Skills 4-6%

2. Primary Care 6-8%

3. Surgical Skills 12-15%

(s) Preventative Disease Section

1. General Skills 1-2%

2. Primary Care 1-2%

3. Surgical Skills 0-1%

(t) Pharmacology

1. General Skills 5-7%

2. Primary Care 6-10%

3. Surgical Skills 6-10%

(u) Scope of Practice

1. General Skills 1-3%

2. Primary Care 0%

3. Surgical Skills 0%

(v) Practice Competencies

- 1. General Skills 20-22%
- 2. Primary Care 0%
- 3. Surgical Skills 0%

(5) The specialty written examination shall assess candidates' knowledge, and skill in applying knowledge, related to health care functions that physician assistants should be skilled performing such as those noted above in paragraphs 64B-1.015(1)(a)-(v), F.A.C., as applied to patient care situations relevant to the appropriate specialty area.

(6) Examination fees shall be \$620 for candidates who want to take the general and one specialty examination and \$700 for candidates who want to take the general and both specialty examinations.

Specific Authority 458.347(7)(b)3. FS. Law Implemented 458.347(7)(b)3. FS. History-New

NAME OF PERSON ORIGINATING PROPOSED RULE:
Tanya Williams, Executive Director, Board of Medicine
 NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Gloria Crawford Henderson, Director, Division of Medical Quality Assurance
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 13, 1999
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 29, 1999

DEPARTMENT OF HEALTH

Board of Occupational Therapy

RULE TITLE: Fee; Certification of Public Record
 RULE NO.: 64B11-5.007

PURPOSE AND EFFECT: The Board has determined that it is necessary to create a new rule which will charge a fee for certification of public record.

SUMMARY: The Board proposes to promulgate a new rule, pursuant to 455.587(7), Florida Statutes, which will charge a fee for certification of public record.

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

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

SPECIFIC AUTHORITY: 468.204 FS.

LAW IMPLEMENTED: 455.587(7) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY. (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kaye Howerton, Executive Director, Board of Occupational Therapy/MQA, 2020 Capital Circle, S. E., Bin #05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B11-5.007 Fee: Certification of Public Record.

The fee for certification of a public record shall be \$25.00.

Specific Authority 468.204 FS. Law Implemented 455.587(7) FS. History-New

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Occupational Therapy
 NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Occupational Therapy
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 1, 1999
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 19, 1999

Section III
Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF BANKING AND FINANCE

Division of Finance

RULE NO.: 3D-30.025
 RULE TITLE: Defaults on Sold or Discounted Installment Sales Contracts of Promissory Notes

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 24, No. 18, May 1, 1998, Florida Administrative Weekly, has been withdrawn.

DEPARTMENT OF BANKING AND FINANCE

Division of Finance

RULE NO.: 3D-30.026
 RULE TITLE: Charge for Installation and Maintenance of Marker or Monument

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 24, No. 18, May 1, 1998, Florida Administrative Weekly, has been withdrawn.