

Section II
Proposed Rules

DEPARTMENT OF INSURANCE

Division of State Fire Marshal

RULE CHAPTER TITLE: Uniform Firesafety Standards for
RULE CHAPTER NO.: 4A-43

Transient Public Lodging
Establishments

RULE TITLE: Standards of the National Fire Protection
RULE NO.: 4A-43.019

Association Adopted

PURPOSE AND EFFECT: To adopt standards of the National
Fire Protection Association for transient public lodging
establishments and update statutory references.

SUMMARY: Updates statute number and adopts National Fire
Protection Association standards for transient public lodging
establishments.

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

Any person who wishes to provide information regarding the
statement of 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: 509.215(5) FS.

LAWS IMPLEMENTED: 509.215 FS.

IF REQUESTED A HEARING WILL BE HELD AT THE
TIME, DATE AND PLACE SHOWN BELOW (IF A
HEARING IS NOT REQUESTED, NO HEARING WILL BE
HELD):

TIME AND DATE: 9:00 a.m., July 30, 2002

PLACE: Room 116, Larson Building, 200 East Gaines Street,
Tallahassee, Florida

Pursuant to the provisions of the Americans with Disabilities
Act, any person requiring special accommodations to
participate in this program, please advise the Department at
least 5 calendar days before the program by contacting
Millicent King, (850) 922-3171.

THE PERSON TO BE CONTACTED REGARDING THE
PROPOSED RULE IS: Jim Goodloe, Chief, Bureau of Fire
Prevention, Division of State Fire Marshal, Bureau of Fire
Prevention, 200 East Gaines Street, Tallahassee, FL
32399-0342, (850)922-3171, Fax (850)922-2553

THE FULL TEXT OF THE PROPOSED RULE IS:

4A-43.019 Standards of the National Fire Protection
Association Adopted.

(1) Except as modified by Section 509.215, Florida
Statutes, the standards of the National Fire Protection
Association, NFPA 101, the Life Safety Code, the edition as

adopted in Section 4A-3.012, Florida Administrative Code, are
hereby adopted and incorporated by reference and shall be the
uniform firesafety standards for "public lodging
establishments." as defined in paragraph (a) of subsection (4)
of Section 509.013, Florida Statutes, which are "transient
establishments." as defined in subsection (10) of Section
509.013, Florida Statutes.

(2) The codes and standards published by the National Fire
Protection Association may be obtained by writing to the
National Fire Protection Association at 1 Batterymarch Park,
Quincy, Massachusetts 02269-9101. All codes and standards
adopted and incorporated by reference in this rule are also
available for public inspection during regular business hours at
the Bureau of Fire Prevention, Division of State Fire Marshal,
325 John Knox Road, The Atrium, Third Floor, Tallahassee,
Florida 32303.

Specific Authority 509.215(5) FS. Law Implemented 509.215 FS. History-
New

NAME OF PERSON ORIGINATING PROPOSED RULE:
James Goodloe, Chief, Bureau of Fire Prevention, Division of
State Fire Marshal, Department of Insurance

NAME OF SUPERVISOR OR PERSON WHO APPROVED
THE PROPOSED RULE: Randall Napoli, Director, Division
of State Fire Marshal, Department of Insurance

DATE PROPOSED RULE APPROVED BY AGENCY
HEAD: June 20, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT
PUBLISHED IN FAW: May 31, 2002

DEPARTMENT OF REVENUE

RULE TITLES:
RULE NOS.:

Definitions 12-25.031

Eligibility and Qualifications 12-25.033

Responsibility for Program Training,
Certification Procedures, and
Program Availability 12-25.035

Applying for Participation in the Program 12-25.037

Withdrawal from the Certified Audit Program 12-25.042

Development of Agreed Upon Procedures 12-25.047

Submission of the Certified Audit Report 12-25.048

Review of Certified Audit Reports 12-25.049

PURPOSE AND EFFECT: The purpose of the proposed
amendments to Part II, Rule Chapter 12-25, F.A.C. (Certified
Audit Program), is to clarify guidelines for practitioners who
participate in the Department's Certified Audit Program. The
effect of these changes will: (1) remove the on-site supervision
requirement; (2) provide guidelines that expand the
Department's comprehensive review of audit reports, work
papers, and documentation; and (3) update the Statements on
Standards for Attestation Engagements #10 and form
DR-342000, Request to Participate in the Certified Audit
Program.

SUMMARY: The proposed amendments to Rule 12-25.031, F.A.C. (Definitions), revise the definition of the term “practitioner(s)” to include those individuals who have successfully completed a training course approved by the Department.

The proposed amendments to Rule 12-25.033, F.A.C. (Eligibility and Qualifications): (1) provide that a qualified practitioner will supervise the subject activities and will no longer be required to be physically on site where the activities are performed; and (2) require a qualified audit firm to receive a timely system review with an “Unqualified Opinion” dated prior to the Request to Participate in the Certified Audit program.

The proposed amendments to Rule 12-25.035, F.A.C. (Responsibility for Program Training, Certification Procedures, and Program Availability), remove the limitation on the number of consecutive temporary recertifications issued to a qualified practitioner.

The proposed amendments to Rule 12-25.037, F.A.C. (Applying for Participation in the Program): (1) incorporate by reference changes to form DR-342000, Request to Participate in the Certified Audit Program, effective May 2002; (2) provide that form DR-835, Power of Attorney, is incorporated by reference in Rule 12-6.0015, F.A.C.; (3) provide that the Department will notify the qualified practitioner when a Request to Participate in the certified Audit program is incomplete or requires clarification; (4) change the extension of time to resubmit a revised Request to Participate and/or supporting documentation from a 15-day period to a 30-day period; and (5) provide that the failure to register for, or file returns for, communications services tax is one of the grounds for Departmental denial of a Request to Participate.

The proposed amendments to Rule 12-25.042, F.A.C. (Withdrawal from the Certified Audit Program), clarify that the Department will conduct an audit of a taxpayer for the same audit period and taxes addressed by the Agreed Upon Procedures when a Certified Audit report is not provided to the Department within 90 calendar days upon approval of the Agreed Upon Procedures.

The proposed amendments to Rule 12-25.047, F.A.C. (Development of Agreed Upon Procedures), and Rule 12-25.048, F.A.C. (Submission of the Certified Audit Report), incorporate by reference the Statements on Standards for Attestation Engagements #10.

The proposed amendments to Rule 12-25.049, F.A.C. (Review of Certified Audit Reports), provide that the criteria for selecting an approved certified audit report for review include: (1) reports that are protested by the taxpayer; (2) reports that are submitted by a qualified practitioner after a previous report that required changes or clarification; (3) reports for audits where the Agreed Upon Procedures for the report were not followed; and (4) reports that indicate an overpayment has been made.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: Since these proposed amendments to Part II, Rule Chapter 12-25, F.A.C. (Certified Audit Program), only implement statutory provisions, no new regulatory costs are being created. Therefore, 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 in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 213.06(1), 213.285(7) FS.

LAW IMPLEMENTED: Ch. 98-95, L.O.F., 213.285 FS.

A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m., July 31, 2002

PLACE: Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida 32399-0100

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any proceeding before the Technical Assistance and Dispute Resolution Office is asked to advise the Department at least five (5) calendar days before such proceeding by contacting: Jamie Phillips, (850)488-0717. If you are hearing or speech impaired, please contact the Department by using the Florida Relay Service, 1(800)955-8770 (Voice), 1(800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Janet L. Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9407

THE FULL TEXT OF THE PROPOSED RULES IS:

12-25.031 Definitions.

(1) through (7) No change.

(8) “Practitioner(s)” means the individual(s) that are on the certified audit engagement team that are not qualified practitioners and who have successfully completed a training course approved by the Department prior to their performance of the subject activities, as described in Rule 12-25.033(1)(b), F.A.C.

(9) through (11) No change.

Specific Authority 213.06(1), 213.285(7) FS. Law Implemented Ch. 98-95, L.O.F., 213.285 FS. History—New 8-23-99, Amended.

12-25.033 Eligibility and Qualifications.

(1)(a) No change.

(b) Any practitioner employed by the qualified audit firm who performs audit analysis, who makes auditing decisions on source documents, taxpayer data, or sales transactions, or who performs agreed-upon procedures, except for the gathering of information for the planning work discussed in Rule rule 12-25.047(1)(b)1., 2., 4., 5., 6., and 7., scheduling, or

reconciling, must successfully complete a training course approved by the Department prior to ~~his or her~~ ~~their~~ initial performance of the subject activities. The Department will approve the training, including instructional curriculum and materials, and testing, administered and delivered by the contract provider, if the provider meets all the conditions contained in pages 20 through 23 of the contract required to be established by both parties pursuant to Section 213.285(1), F.S., and Section 4 of Chapter 98-95, Laws of Florida. This contract is adopted and incorporated by reference. However, the Department shall grant a waiver of this requirement for a specific certified audit in circumstances where a practitioner working on the subject audit can not complete his or her work due to a documented medical reason or; a documented family emergency, or the practitioner has left the employment of the firm. The training course will, at a minimum, teach the basics of Florida Sales and Use tax law, and it will include a required examination. The Department will be the final authority on the content of the training course and the nature, number, and type of questions on the examination. "Successfully complete" means the participant has met all the requirements for the course and achieved a scaled score of 70 percent. Further, any practitioner performing the subject activities shall be supervised by a qualified practitioner. ~~The subject qualified practitioner will be physically on site where the activities are performed.~~

(c) through (d) No change.

(e) ~~The In addition, The~~ qualified audit firm must have received a timely system review (on-site peer review) dated prior to the date of the Request to Participate and must have received an "Unqualified Opinion" on such system review (on-site peer review). Compliance with these requirements is based on the most recent system review (on-site peer review) received prior to the Request to Participate. If the qualified audit firm at the date of the Request to Participate has not received a system review (an on-site peer review) with an unqualified opinion, dated prior to the date of the Request to Participate, then the qualified audit firm is ineligible to participate in the certified audit program. The qualified audit firm can submit a new Request to Participate once the applicable requirements are met.

(2) No change.

Specific Authority 213.06(1), 213.285(7) FS. Law Implemented Ch. 98-95, L.O.F., 213.285 FS. History--New 8-23-99, Amended.

12-25.035 Responsibility for Program Training, Certification Procedures, and Program Availability.

(1) through (3)(a) No change.

(b) The Department shall issue temporary recertification if a previously certified qualified practitioner fails to timely apply for and receive a recertification. These temporary recertifications shall expire 90 consecutive calendar days after the date of issuance. ~~No more than two consecutive temporary recertifications shall be issued to a qualified practitioner.~~

(4) No change.

(5) Continuing professional education is required for practitioners and qualified practitioners as part of the training required pursuant to the directives in s. 213.285(1)(a), F.S., and Section 4 of Chapter 98-95, L.O.F. These laws require the training to be developed and delivered by the FICPA and approved by the Department pursuant to the contract signed by the Department and the FICPA. The Department shall approve the continuing professional education program if it meets all the criteria established in the contract.

(a) Practitioners must complete a continuing professional education program which will not exceed eight hours every two years.

(b) A qualified practitioner must complete a continuing professional education program, approved by the Department for recertification, which will not exceed sixteen hours every two years.

(6) through (8) No change.

Specific Authority 213.06(1), 213.285(7) FS. Law Implemented Ch. 98-95, L.O.F., 213.285 FS. History--New 8-23-99, Amended.

12-25.037 Applying for Participation in the Program.

(1) The following public use form is employed by the Department of Revenue in its dealings with the public, and is hereby incorporated in these rules by reference. Copies of this form are available by one or more of the following methods: 1) writing the Florida Department of Revenue, Forms Distribution Center, 168 Blountstown Highway, Tallahassee, Florida 32304; or 2) faxing the Forms Distribution Center at (850)922-2208; or, 3) using a fax machine telephone handset to call the Department's automated FAX on Demand system at (850)922-3676; or, 4) visiting any local Department of Revenue Service Center to personally obtain a copy; or, 5) calling the Forms Request Line during regular office hours at (800)352-3671 (in Florida only) or (850)488-6800; or, 6) downloading selected forms from the Department's Internet site at the address shown inside the parentheses (<http://myflorida.com/dor/>). Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331. When a qualified practitioner has a client who agrees to participate in the program, the qualified practitioner must complete a Request to Participate in the Certified Audit Program (form DR-342000), which includes a Power of Attorney (form DR-835, incorporated by reference in Rule 12-6.0015, F.A.C.), and submit the Request to Participate, including any required supporting information to the Department.

Form Number	Title	Effective Date
DR-342000	Request to Participate in the Certified Audit <u>Program program (r. 05/02 N. 8/99)</u>	<u>8/99</u>

(2) through (3) No change.

(4)(a) If the Request to Participate in the Certified Audit Program ~~program~~ received by the Department is incomplete or requires clarification, ~~it will be returned to~~ the qualified practitioner will be notified. When the Department determines that a request is incomplete ~~returns an incomplete Request and/or supporting documentation to a qualified practitioner~~, it will notify the qualified practitioner issue a letter, explaining how the Request and/or documentation must be revised, expanded, or clarified.

(b) The qualified practitioner will be given 30 calendar days from the date of notification ~~the letter is issued~~ by the Department to resubmit the revised Request to Participate and/or supporting documentation.

(c) No change.

(5) A qualified practitioner may submit a written request to the Department for a 30-day 15-day extension of the 30-day time period discussed in subsection (4) of this rule. The Department will not accept more than two consecutive written requests for a 30-day 15-day extension for the same Request to Participate.

(6) The Request to Participate is not, by definition, "proper and complete" if the Department requests clarification of submitted information or requests additional information. The Department will, within 10 ten working days of receiving a proper and complete Request to Participate in the Certified Audit program and application, issue written notification to the qualified practitioner:

(a) through (b) No change.

(7) Grounds for departmental denial of a Request to Participate include:

(a) through (b) No change.

(c) The taxpayer has failed to register for, or file the returns for, corporate income tax, intangible personal property tax, fuel taxes, documentary stamp tax, insurance premium tax, communications services tax, or gross receipts tax. The local option surtaxes and fees specific to the type of industry or location of the participating taxpayer will be included with the sales and use tax in the certified audit.

(d) through (f) No change.

(8) through (9) No change.

Specific Authority 213.06(1), 213.285(7) FS. Law Implemented Ch. 98-95, L.O.F., 213.285 FS. History--New 8-23-99, Amended.

12-25.042 Withdrawal from the Certified Audit Program.

(1) No change.

(2) If the taxpayer withdraws from the Certified Audit program subsequent to the Department approval of the Agreed Upon Procedures or if a Certified Audit report is not provided to the Department within 90 calendar days upon approval, of the Agreed Upon Procedures, and the Department denies an

extension of time, then the Department will conduct an audit of the taxpayer for the same audit period and taxes addressed by the Agreed Upon Procedures.

(3) No change.

Specific Authority 213.06(1), 213.285(7) FS. Law Implemented Ch. 98-95, L.O.F., 213.285 FS. History--New 8-23-99, Amended.

12-25.047 Development of Agreed Upon Procedures.

(1)(a) Certified Audits conducted pursuant to the authority of s. 213.285, F.S., are attestation engagements that are conducted under Statements on Standards for Attestation Engagements, #10 #4 – Agreed Upon Procedures, which are adopted and incorporated by reference.

(b) No change.

(2) through (5) No change.

Specific Authority 213.06(1), 213.285(7) FS. Law Implemented Ch. 98-95, L.O.F., 213.285 FS. History--New 8-23-99, Amended.

12-25.048 Submission of the Certified Audit Report.

(1) The certified audit report must meet all the requirements established by Statements on Standards for Attestation Engagements #10 #4.

(2) through (5) No change.

Specific Authority 213.06(1), 213.285(7) FS. Law Implemented Ch. 98-95, L.O.F., 213.285 FS. History--New 8-23-99, Amended.

12-25.049 Review of Certified Audit Reports.

(1) The Department will select certain ~~approved~~ certified audit reports for a ~~post-approval~~ comprehensive review of the supporting work papers and associated documentation.

(2) No change.

(3) The criteria for selecting a an approved certified audit report for review are is:

(a) through (d) No change.

(e) The certified audit report is protested by the taxpayer.

(f) The certified audit report is subsequent to the Department's review of a previous certified audit report submitted by the Qualified Practitioner, in which changes or clarification were required.

(g) The Agreed Upon Procedures for the certified audit report were not followed.

(h) The certified audit report indicates an overpayment has been made.

(4) When a qualified practitioner completes a certified audit and the Department approves the certified audit report, the qualified audit firm must request that the certified audit engagement be included as a part of its their next system review (on-site peer review).

Specific Authority 213.06(1), 213.285(7) FS. Law Implemented Ch. 98-95, L.O.F., 213.285 FS. History--New 8-23-99, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Janet L. Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9407

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Charles Strausser, Revenue Program Administrator II, Technical Assistance and Dispute Resolution, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone number (850)922-4746

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 21, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: The proposed rule amendments were noticed for a rule development workshop in the Florida Administrative Weekly on April 19, 2002 (Vol. 28, No. 16, pp. 1739-1742). A rule development workshop was held on May 7, 2002, in Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida. No one appeared to provide comments regarding the proposed changes to Rule Chapter 12-25, F.A.C. No written comments have been received by the Department. Additional changes were made by the Department to the proposed amendments to Rules 12-25.037 and 12-25.049, F.A.C. The proposed amendments to Rule 12-25.037, F.A.C. (Applying for Participation in the Program) provide that form DR-342000, Request to Participate in the Certified Audit Program, will be revised effective May 2002. The proposed amendments to Rule 12-25.049, F.A.C. (Review of Certified Audit Reports), provide that the Department will select certain certified audit reports for a comprehensive review of the supporting work papers and association documentation.

**DEPARTMENT OF REVENUE**

**Sales and Use Tax**

RULE TITLES: Consumer’s Certificates of Exemption; Exemption Certificates  
RULE NOS.: 12A-1.038

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12A-1.038, F.A.C. (Consumer’s Certificates of Exemption; Exemption Certificates), is to correct reference information.

The purpose of the proposed amendments to Rule 12A-1.094, F.A.C. (Public Works Contracts), is to: (1) incorporate legislative changes to ss. 212.06(14), 212.08(6), and 212.08(7)(bbb), F.S.; (2) remove obsolete and unnecessary guidelines for public works contracts; and (3) provide simple guidelines for taxpayers and tax administrators regarding the taxability of public works contracts for the repair, alteration, improvement, or construction of real property.

SUMMARY: The proposed amendments to Rule 12A-1.038, F.A.C., change the reference to Rule 12A-1.094, F.A.C., for suggested formats of exemption certificates for people mover systems and parts.

The proposed amendments to Rule 12A-1.094, F.A.C.: (1) revise the definition of the terms “contractor,” “governmental entity,” “public works,” and “real property,” as used in the rule; (2) provide that contractors who purchase supplies and materials for sale and for use by the contractor may buy such items tax exempt and remit tax when the items are withdrawn from inventory for use in a public works contract; (3) provide guidelines for when property purchased or manufactured for resale to a governmental entity is exempt from tax; (4) provide that contractors who manufacture asphalt for incorporation into public works projects are liable for tax, as provided in Rule 12A-1.051(12), F.A.C., and s. 212.06(1)(c), F.S.; and (5) provide guidelines regarding the exemption for the purchase of people mover systems, or components of such systems, installed by contractors in public works projects.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: Since these proposed amendments to Rules 12A-1.038 and 12A-1.094, F.A.C., only implement statutory provisions, no new regulatory costs are being created. Therefore, 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 in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 212.17(6), 212.18(2), 213.06(1) FS.  
LAW IMPLEMENTED: 95.091(3), 120.57(1),(2), 120.60(3), 120.80(14), 212.02(4), (14),(15),(16), (19),(20),(21), 212.05(1)(j), 212.06(1),(2),(14), 212.07(1), 212.08(6),(7), 212.085, 212.18(2),(3), 212.21(2) FS.

A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m., July 31, 2002  
PLACE: Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida 32399-0100

Copies of the agenda for the rule hearing may be obtained from Janet L. Young, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-9407.

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any proceeding before the Technical Assistance and Dispute Resolution Office is asked to advise the Department at least five (5) calendar days before such proceeding by contacting Jamie Phillips at (850)488-0717. If you are hearing or speech impaired, please contact the Department by using the Florida Relay Service, which can be reached at 1(800)955-8770 (Voice) and 1(800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Linda Bridges, Program Administrator I, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)488-7157

THE FULL TEXT OF THE PROPOSED RULES IS:

12A-1.038 Consumer's Certificates of Exemption; Exemption Certificates.

(1) through (4) No change.

(5) SALES EXEMPT BASED ON THE USE OF THE PROPERTY OR SERVICES.

(a) through (d)1. No change.

2. As provided in subparagraph (a)2. of this subsection, there are other suggested formats for exemption certificates based on the use of the property or services that are provided in other sections of Rule Chapter 12A-1, F.A.C., and in Taxpayer Information Publications (TIPs) issued by the Department. The following is a list of these suggested formats of exemption and the applicable rule section or TIP number that suggests the exemption certificate format. This list is not intended to be an exhaustive list:

a. through k. No change.

l. People Mover Systems and Parts. See Rule 12A-1.094, F.A.C. TIP 00A01-18, dated July 11, 2000.

m. through n. No change.

(6) No change.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 95.091(3), 120.57(1),(2), 120.60(3), 120.80(14), 212.02(14)(c), 212.05(1)(j), 212.06(1)(c), 212.07(1), 212.08(6),(7), 212.085, 212.18(2),(3), 212.21(2) FS. History—Revised 10-7-68, 6-16-72, Amended 9-28-78, 7-20-82, 4-29-85, Formerly 12A-1.38, Amended 8-10-92, 3-17-93, 9-14-93, 12-13-94, 10-2-01,

12A-1.094 Public Works Contracts.

(1) This rule shall govern the taxability of transactions in which contractors manufacture or purchase supplies and materials for use in public works contracts, as that term is referred to in Section 212.08 (6), F.S. This rule shall not apply to non-public works contracts for the repair, alteration, improvement, or construction of real property, as those contracts are governed under the provisions of Rule 12A-1.051, F.A.C. ~~This rule shall also not apply to contractors who entered into road construction contracts during the period from January 1, 1988, through February 11, 1988, and who chose to remit the tax based on 50 percent of the contract price. See Emergency Rule 12AER88-16 for provisions governing such contracts.~~ In applying this rule, the following definitions are used.

(a)1. "Contractor" is one that supplies and installs tangible personal property that is incorporated into or becomes a part who is engaged in the repair, alteration, improvement or construction of public property or a public facility pursuant to a public works contract with a governmental entity exercising its

authority in regard to the public property or facility real property. Contractors include, but are not limited to, persons engaged in building, electrical, plumbing, heating, painting, decorating, ventilating, paperhanging, sheet metal, roofing, bridge, road, waterworks, landscape, pier or billboard work. This definition includes subcontractors.

2. "Contractor" does not include one that furnishes tangible personal property that is freestanding and can be relocated with no tools, equipment, or need for adaptation for use elsewhere. For example, a vendor that sells a desk, sofas, chairs, tables, lamps, and art prints for the reception area in a new public building is not a public works contractor even if the sales agreement requires the vendor to place the furniture according to a floor plan, plug in the lamps, and hang the art prints.

3. "Contractor" does not include one that provides tangible personal property that will be incorporated into or become part of a public facility if such property will be installed by another party. If a manufacturer produces the structural steel or the prestressed concrete for a public works project and delivers those steel or concrete products but has not contracted to also install those products, that manufacturer is not a contractor for purposes of this rule. The party that has contracted to install those products into the public facility is a contractor for purposes of this rule, regardless of whether or not that party has also contracted to furnish the items to be installed.

(b) "Governmental entity" includes any agency or branch of the United States government, a state, or any county, municipality, or political subdivision of a state. The term includes authorities created by statute to operate public facilities using public funds, such as public port authorities or public-use airport authorities.

(c)(b) "Public works" are defined as ~~construction~~ projects for public use or enjoyment, financed and owned by the government, in which private persons undertake the obligation to do a specific piece of work that involves installing tangible personal property in such a manner that it becomes a part of a public facility. The term "public works" is not restricted to the repair, alteration, improvement, or construction of real property and fixed works, although such projects are included within the term where the sale of tangible personal property is made to or by contractors involved in public works contracts. Such contracts shall include, but not be limited to, building, electrical, plumbing, heating, painting, decorating, ventilating, paperhanging, sheet metal, roofing, bridge, road, waterworks, landscape, pier, or billboard contracts.

(d)(e) "Real property" within the meaning of this rule includes all fixtures and improvements to real property. The status of a project as an improvement or ~~fixture~~ fixture to real property will be determined by reference to the definitions contained in Rule 12A-1.051(2), F.A.C. is determined by the objective and presumed intent of the parties, based on the nature and use of the project and the degree of affixation to

reality. Mobile homes and other mobile buildings are deemed fixtures if they (1) bear RP license tags, or (2) have the mobile features (such as wheels and/or axles) removed, and are placed on blocks or footings and permanently secured with anchors, tie-down straps or similar devices.

(2) The purchase or manufacture of supplies or materials by the contractor for incorporation into a public works project, whether the purchase or manufacture occurs inside or outside Florida, is taxable to the contractor, since the contractor he is the ultimate consumer of all goods and services used to fulfill a public works contract. Contractors that purchase or manufacture such supplies and materials in Florida are liable for sales tax or use tax on such purchases and manufacturing costs. A contractor that purchases property that may be sold as tangible personal property or may be incorporated into a public works project may purchase such tangible personal property without tax by issuing a copy of the contractor's Annual Resale Certificate and accrue and remit tax upon withdrawing items from inventory for use in a public works contract. Contractors that purchase or manufacture such materials outside the State of Florida are liable for use tax, subject to credit for any sales or use tax lawfully imposed and paid in the state of purchase or manufacture. The applicable tax rate shall be determined on the basis of the invoice date, not the date of the contract, as follows:

(a) If invoiced before February 1, 1988, and delivered within a reasonable period of time the tax rate shall be 5 percent.

(b) If invoiced on or after February 1, 1988, the tax rate shall be 6 percent.

(3)(a) The purchase or manufacture of tangible personal property for resale to a governmental entity body is exempt from tax, provided this exemption shall not include sales of tangible personal property made to, or the manufacture of tangible personal property by, public works contractors employed either directly or as agents of the United States Government, a state, or any county, municipality, or political subdivision of a state when such tangible personal property goes into or becomes a part of public works financed or owned by a such governmental entity bodies or political subdivisions pursuant to a contract between the governmental entity and the contractor furnishing that tangible personal property.

(b) With regard to contracts with government entities, the exemption in subsection (3)(a) is appropriate only where the levy would otherwise fall on the government itself, or on an agency or instrumentality so closely connected with that government that the two cannot realistically be viewed as separate entities, at least insofar as the activity being taxed is concerned. A finding of exempt status, however, requires something more than the implication of traditional agency notions, so that to resist a state's taxing power, a private taxpayer must actually stand in the government's shoes as a

principal, rather than as a contractor employed either directly or as the government's agent. A contractor will not be deemed to actually stand in the government's shoes if the contractor has a substantial independent role in making purchases. Accordingly, the fact that title passes directly to the government and payment is made with government funds, in and of itself, cannot characterize the transaction as an exempt purchase if the purchasing entity, in its role as a purchaser, is sufficiently distinct from the government.

(4) The exemption in s. 212.08(6), F.S., subsection (3)(a) is a general exemption for sales made directly to the government. The exception in subsection (2)(a) is a specific exception for sales to contractors. A determination of whether a particular transaction is properly characterized as an exempt sale to a governmental government entity or a taxable sale to or use by a contractor shall be based on the substance of the transaction, rather than the form in which the transaction is cast. The Executive Director or the Executive Director's designee in the responsible program will determine whether the substance of a particular transaction is governed by subsection (2)(a) or is a taxable sale to or use by a contractor or an exempt direct sale to a governmental entity body as provided by subsection (3) of this rule based on all of the facts and circumstances surrounding the transaction as a whole. ~~Special~~ The Executive Director or the Executive Director's designee in the responsible division will give special consideration will be given to factors that which govern the status of the tangible personal property prior to its affixation to real property. The governmental entity must issue its purchase order directly to the vendor supplying the materials the contractor will use and supply the vendor with a copy of the entity's Florida Consumer's Certificate of Exemption. The vendor's invoice must be issued to the governmental entity, rather than to the contractor, and the governmental entity must make payment directly to the vendor using public funds. The entity must take title to and assume the risk of damage or loss of the property at the time of purchase or delivery by the vendor. Such factors include provisions which govern bidding, indemnification, inspection, acceptance, delivery, payment, storage, and assumption of the risk of damage or loss for the tangible personal property prior to its affixation to real property. Assumption of the risk of damage or loss is a paramount consideration. A governmental entity will party may be deemed to have assumed the risk of loss if the governmental entity party either: bears the economic burden of posting a bond or obtaining insurance covering damage or loss; or directly enjoys the economic benefit of the proceeds of such bond or insurance. Other factors that may be considered by the Executive Director or the Executive Director's designee in the responsible division include whether: the contractor is authorized to make purchases in its own name; the contractor is jointly or severally liable to the vendor for payment: purchases

are not subject to prior approval by the government; vendors are not informed that the government is the only party with an independent interest in the purchase; and whether the contractors are formally denominated as purchasing agents for the government. Sales made pursuant to so called "cost-plus", "fixed-fee", "lump sum", and "guaranteed price" contracts are taxable sales to the contractor unless it can be demonstrated to the satisfaction of the Executive Director or the Executive Director's designee in the responsible division that such sales are, in substance, tax exempt direct sales to the government.

(5) Contractors ~~that who~~ manufacture materials for incorporation into public works shall be liable for tax in the manner provided in Rule 12A-1.051(10), F.A.C.

(6) Contractors ~~that who~~ supply raw materials such as rock, shell, fill dirt, and similar materials for incorporation into public works shall be liable for tax in the manner provided in Rule 12A-1.051(13), F.A.C.

~~(7) Contractors that manufacture and incorporate asphalt into public works projects are liable for tax on their costs, as provided in Rule 12A-1.051(12), F.A.C., subject to a partial exemption, as provided in s. 212.06(1)(c), F.S. Contractors who purchase tangible personal property outside the State of Florida, or inside the State but fail to pay sales tax, and use such property in a public works project shall be presumed to have the beneficial use of such property because the property is being used in furtherance of the contractor's essentially independent commercial enterprise. Accordingly, such contractors shall be liable for the use tax.~~

(8) Contractors that install people mover systems in public works projects are exempt from sales and use tax on their purchases of such systems or components of such systems and on any other costs incurred in the manufacture of such systems that would be taxable under the provisions of Rule 12A-1.051(10), F.A.C.

(a) A "people mover system" includes wheeled passenger vehicles and related control and power distribution systems that form a transportation system owned by a public entity and used by the general public. The vehicles may be operator-controlled, driverless, self-propelled, or externally powered. They may run on roads, rails, guidebeams, or other permanent structures that are an integral part of the system. "Related control and power distribution systems" includes electrical or electronic control or signaling equipment that distributes power or signals from the control center or centers or from the power source throughout the system. Embedded wiring, conduits, or cabling and the roads, rails, guidebeams, or other permanent structures on which the vehicles run are not included within the term "people mover system." A contractor that installs such embedded wiring, conduits, or cabling or that builds such a road, rail, guidebeam, or permanent structure is taxable on the purchase or use of tangible personal property incorporated into the project.

(b) A people mover system contractor should claim the exemption by providing a vendor with a certificate of entitlement to the exemption. The vendor must maintain copies of certificates until tax imposed by Chapter 212, F.S., may no longer be determined and assessed under s. 95.091, F.S. Possession by a vendor of such a certificate from the purchaser relieves the vendor from the responsibility of collecting tax on the sale, and the Department shall look solely to the purchaser for recovery of tax if it determines that the purchaser was not entitled to the exemption. A suggested form of certificate follows:

SUGGESTED PURCHASER'S EXEMPTION  
CERTIFICATE

PEOPLE MOVER SYSTEMS AND PARTS

(Purchaser's Name) certifies that the tangible personal property purchased on or after (date) will be used as part of a people mover system that will become a part of a publicly owned facility pursuant to a contract with the United States, a state, a county, a municipality, a political subdivision of a state, or the public operator of a public-use airport as defined in s. 332.004, Florida Statutes. Such contract requires Purchaser to purchase the tangible personal property for use in manufacturing, installing, manufacturing and installing, repairing, or maintaining, all or part of a people mover system operated by the governmental entity as a public facility.

(Purchaser's Name) further certifies: a) that all of the tangible personal property purchased pursuant to this certificate is or will be part of a wheeled passenger vehicle or of related control or power distribution systems that are part of a transportation system for use by the general public; and b) none of the tangible personal property purchased pursuant to this certificate will be used as embedded wiring, conduits, or cabling to transmit signals among the vehicles, control equipment, power distribution equipment, and signaling equipment that make up the people mover system.

The undersigned understands that if such tangible personal property does not qualify for this exemption, the undersigned will be subject to sales and use tax, interest, and penalties. The undersigned further understands that when any person fraudulently, for the purpose of evading tax, issues to a vendor or to any agent of the state a certificate or statement in writing in which he or she claims exemption from the sales tax, such person, in addition to being liable for payment of the tax plus a mandatory penalty of 200% of the tax, shall be liable for fine and punishment provided by law for conviction of a felony of the third degree, as provided in s. 775.082, s. 775.083, or s. 775.084, Florida Statutes.



Purchaser's Name (Print or Type)

Signature and Title      Date      Florida Sales Tax Number

Federal Employer Identification      Telephone Number  
Number or Social Security Number

Retain in vendor's records. Do not send to the Department of Revenue.

(c) Contractors that maintain an inventory of parts that may be incorporated into people mover system components that are sold as tangible personal property, may be used in performing real property contracts, and may be incorporated into exempt people mover systems pursuant to a public works contract may purchase such inventory parts by issuing a copy of the contractor's Annual Resale Certificate in lieu of providing a certification of specific eligibility under the people mover system exemption. If appropriate, tax should be remitted upon subsequent taxable sale or use of such parts.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(4), ~~(14)~~, (15), (16), (19), (20), ~~(21)~~, 212.06(1), (2), ~~(14)~~, 212.07(1), 212.08(6), ~~(7)(bbb)~~, 212.085, ~~212.14(5)~~, 212.18(2) FS. History--New 6-3-80, Amended 11-15-82, Formerly 12A-1.94, Amended 1-2-89, 8-10-92,

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Linda Bridges, Program Administrator I, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443; telephone (850)488-7157

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Charles Strausser, Revenue Program Administrator II, Technical Assistance and Dispute Resolution, P. O. Box 7443, Tallahassee, Florida 32314-7443; telephone number (850)922-4746

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 21, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: The proposed rule amendments were noticed for a rule development workshop in the Florida Administrative Weekly on January 18, 2002 (Vol. 28, No. 3, pp. 140-144). A rule development workshop was held on February 5, 2002, in Room 116, Larson Building, 200 E. Gaines Street, Tallahassee, Florida. No one appeared to provide comments regarding the proposed changes to Rules 12A-1.038 and 12A-1.094, F.A.C. No written comments have been received by the Department.

**WATER MANAGEMENT DISTRICTS**

**Southwest Florida Water Management District**

RULE CHAPTER TITLE:                      RULE CHAPTER NO.:  
Procedural                                      40D-1

RULE TITLE:                                      RULE NO.:  
Delegation of Authority                      40D-1.002

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to adopt by reference the Third Amendment to Well Construction Permitting Agreement Between the Southwest Florida Water Management District and Manatee County dated May 21, 2002 and the Third Amendment to the Well Construction Permitting Agreement Between the Southwest Florida Water Management District and Sarasota County dated [effective date].

SUMMARY: The District has a long standing delegation agreement with both Sarasota and Manatee counties for the implementation of the Well Construction Permitting and Inspection Program (permitting, compliance, and inspection). The delegation agreements were extended with several amendments by the Governing Board at its April, 2002 meeting.

In addition to continuing the delegation in effect, the amendments to the Manatee County agreement delete the reference to Rule 40D-1.607, F.A.C., in paragraph 16, and add an additional paragraph clarifying the District's permitting and oversight responsibility for District sanctioned well activities. The Sarasota agreement continues the delegation in effect without modification. The proposed rule revisions will adopt the amended agreements into the District's rules.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: A Statement of Estimated Regulatory Cost is not being prepared based on the District's determination that the proposed revisions to Rule 40D-1.002, F.A.C., will not result in a substantial increase in the costs to affected parties and there will not be significant adverse effects on competition, employment, investment or productivity.

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: 373.044, 373.103, 373.113, 373.118, 373.219, 373.309 FS.

LAW IMPLEMENTED: 253.002, 373.103, 373.149, 373.219, 373.223, 373.224, 373.226, 373.308, 373.309, 373.427 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Karen E. West, Deputy General Counsel, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, Extension 4651

THE FULL TEXT OF THE PROPOSED RULE IS:

40D-1.002 Delegation of Authority.

(1) No change.

(2) The Governing Board hereby incorporates by reference the following documents:

(a) "Third Amendment to Well Construction Permitting Agreement Between the Southwest Florida Water Management District and Manatee County" dated May 21, 2002 ~~May 18, 1999~~.

(b) "Third Amendment to Well Construction Permitting Agreement Between the Southwest Florida Water Management District and Sarasota County" dated \_\_\_\_\_ ~~May 27, 1999~~.

Specific Authority 373.044, 373.103, 373.113, 373.118, 373.219, 373.309 FS. Law Implemented 253.002, 373.103, 373.149, 373.219, 373.223, 373.224, 373.226, 373.308, 373.309, 373.427 FS. History--New 3-1-84, Amended 3-10-96, 7-22-99, 12-2-99, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Karen E. West, Deputy General Counsel, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, Extension 4651

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Governing Board of the Southwest Florida Water Management District

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 23, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 28, 2002

**WATER MANAGEMENT DISTRICTS**

**Southwest Florida Water Management District**

RULE CHAPTER TITLE: Procedural RULE CHAPTER NO.: 40D-1

RULE TITLE: Forms and Instructions RULE NO.: 40D-1.659

PURPOSE AND EFFECT: To incorporate by reference the Public Supply Well Information and Classification Form, Form No. 42.10-001 (\_\_\_/02), the Wholesale Public Supply Water Use Permit Application, Form No. 46.20-014 (\_\_\_/02) and, A Well Grouting/Abandonment Form, District form number 04.10R-026 (\_\_\_/02) into Rule 40D-1.659, F.A.C.

SUMMARY: The Public Supply Well Information and Classification Form is used by the District to acquire information necessary to properly classify public supply wells. The information is provided to the Florida Department of Environmental Protection or a County, whichever is responsible for permitting the public supply system. The classification of a public supply system determines the level of scrutiny the system will receive by the system permitting entity.

The Wholesale Public Water Supply Water Use Permit Application form requests the information necessary for District staff to determine whether a water use permit should be issued in accordance with Part II of Chapter 373, Florida Statutes and Chapter 40D-2, Florida Administrative Code. The application and supporting information must be completed by all public water supply providers in a water use caution area that do not have permitted wells or surface water withdrawal facilities and who receive 100,000 GPD or greater of water on a wholesale basis from one or more sources, or that have a per capita rate greater than 150 gallons per person per day.

The amendments to the Well Grouting and Abandonment Form revise certain grout quantities specified for the abandonment of a well and provide for an acknowledgment that the well grouting/abandonment was not observed by District Field Service personnel.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: A Statement of Estimated Regulatory Cost is not being prepared based on the District's determination that the proposed revisions to Rule 40D-1.659, F.A.C., will not result in a substantial increase in the costs to affected parties and there will not be significant adverse effects on competition, employment, investment or productivity.

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: 373.044, 373.113, 373.149, 373.171 FS.

LAW IMPLEMENTED: 373.116, 373.216, 373.219, 373.229, 373.239, 373.413, 373.414, 373.416, 373.419, 373.421 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Karen E. West, Deputy General Counsel, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, Extension 4651

THE FULL TEXT OF THE PROPOSED RULE IS:

40D-1.659 Forms and Instructions.

The following forms and instructions have been approved by the Governing Board and are incorporated by reference into this Chapter. Copies of these forms may be obtained from the District.

**GROUND WATER**

(1) through (5) No change.

(6) WELL GROUTING/ABANDONMENT FORM FORM NO. 04.10 R-026 (\_\_\_/02) ~~41.10-410-(6/01)~~

(7) No change .

(8) PUBLIC SUPPLY WELL INFORMATION AND CLASSIFICATION FORM FORM NO. 42.10-001 (\_\_\_/02)

(8) through (19) renumbered (9) through (20) No change.

(21) WHOLESALE PUBLIC SUPPLY WATER USE PERMIT APPLICATION FORM NO. 46.20-014 ( \_\_\_/02)

SURFACE WATER

Application for Permit – Used for Docks or Piers and Bulkheads

(1) through (13) No change.

Specific Authority 373.044, 373.113, 373.149, 373.171 FS. Law Implemented 373.116, 373.216, 373.219, 373.229, 373.239, 373.413, 373.414, 373.416, 373.419, 373.421 FS. History–New 12-31-74, Amended 10-24-76, Formerly 16J-0.40, 40D-1.1.901, 40D-1.901, Amended 12-22-94, 5-10-95, 10-19-95, 5-26-95, 7-23-96, 2-16-99, 7-12-99, 7-15-99, 12-2-99, 5-31-00, 10-26-00, 6-26-01, 11-4-01, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Karen E. West, Deputy General Counsel, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, Extension 4651

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Governing Board of the Southwest Florida Water Management District

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 28, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 28, 2002

**WATER MANAGEMENT DISTRICTS**

**Southwest Florida Water Management District**

RULE CHAPTER TITLE: Regulation of Wells RULE CHAPTER NO.: 40D-3

RULE TITLE: Abandoned Well Plugging RULE NO.: 40D-3.531

PURPOSE AND EFFECT: To incorporate by reference A Well Grouting/Abandonment Form, District form number 04.10R-026 ( \_\_\_/02) into Rule 40D-3.531, F.A.C.

SUMMARY: The amendments to the Well Grouting and Abandonment Form revise certain grout quantities specified for the abandonment of a well and provide for an acknowledgment that the well grouting/abandonment was not observed by District Field Service personnel.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: A Statement of Estimated Regulatory Cost is not being prepared based on the District’s determination that the proposed revisions to Rule 40D-3.531, F.A.C., will not result in a substantial increase in the costs to affected parties and there will not be significant adverse effects on competition, employment, investment or productivity.

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: 373.044, 373.113, 373.171, 373.309, 373.337 FS.

LAW IMPLEMENTED: 373.206, 373.207, 373.209, 373.306, 373.308, 373.309 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Karen E. West, Deputy General Counsel, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, Extension 4651

THE FULL TEXT OF THE PROPOSED RULE IS:

40D-3.531 Abandoned Well Plugging.

(1) through (3) No change.

(4) A Well Grouting/Abandonment Form, District form number 04.10R-026 ( \_\_\_/02) is incorporated herein by reference.

(5)(4) An abandonment permit is required for the abandonment of any well including an incomplete well.

Specific Authority 373.044, 373.113, 373.171, 373.309, 373.337 FS. Law Implemented 373.206, 373.207, 373.209, 373.306, 373.308, 373.309 FS. History–New 7-1-90, Amended 9-30-91, 12-31-92, 7-2-98, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Karen E. West, Deputy General Counsel, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, Extension 4651

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Governing Board of the Southwest Florida Water Management District

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 28, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 28, 2002

**DEPARTMENT OF HEALTH**

**Division of Medical Quality Assurance**

RULE TITLES:	RULE NOS.:
Initial Registration of Credentials	
Verification Organizations	64B-8.001
Biennial Renewal of Credentials	
Verification Organization Registration	64B-8.002
Documentation of Accreditation or Certification of a Credentials Verification Organization by a National Accrediting Organization	64B-8.003
Documentation of Liability Insurance Coverage by a Credentials Verification Organization	64B-8.004
Requirement for Notification of Change in Accreditation or Certification Status or Insurance Status	64B-8.005
Fee to Access Core Credentials Data File Forms	64B-8.006 64B-8.009

Prohibitions – Registered Credentials Verification Organizations 64B-8.013

Prohibitions – Subscriber Authorized to Access Core Credentials Data 64B-8.014

Penalties – Registered Credentials Verification Organizations 64B-8.015

Definition of “Fully Accredited or Certified as a Credentials Verification Organization” 64B-8.016

Initial Reporting of Core Credentials 64B-8.017

Notification of Corrections, Updates, or Modifications to Core Credentials Data 64B-8.018

PURPOSE AND EFFECT: House Bill 59-E, signed into law by the Governor on June 7, 2002, in part repealed section 456.047, FS; Standardized Credentialing for Health Care Practitioners, effective July 1, 2002. Accordingly the Department of Health is proposing the repeal of rules promulgated pursuant to authority found in Section 456.047, F.S., as these rules are no longer needed.

SUMMARY: Chapter 64B-8, FAC., is being repealed in its entirety.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: A statement of estimated regulatory cost has not been prepared regarding these proposed rules.

Any person who wishes to provide information regarding a 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: 456.047 FS.

LAW IMPLEMENTED: 456.047 FS.

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

All written material received by the Department within 21 days of the date of publication of this notice shall be made a part of the official record.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Lola Pouncey, Acting Bureau Chief, 4052 Bald Cypress Way, BIN #C10, Tallahassee, Florida 32399-3260

THE FULL TEXT OF THE PROPOSED RULES IS:

64B-8.001 Initial Registration of Credentials Verification Organizations.

Specific Authority 456.047(8) FS. Law Implemented 456.047(5),(7) FS. History–New 2-8-01, Repealed.

64B-8.002 Biennial Renewal of Credentials Verification Organization Registration.

Specific Authority 456.047(5),(8) FS. Law Implemented 456.047(5) FS. History–New 2-8-01, Repealed.

64B-8.003 Documentation of Accreditation or Certification of a Credentials Verification Organization by a National Accrediting Organization.

Specific Authority 456.047(8) FS. Law Implemented 456.047(2)(b),(l),(5) FS. History–New 2-8-01, Repealed.

64B-8.004 Documentation of Liability Insurance Coverage by a Credentials Verification Organization.

Specific Authority 456.047(8) FS. Law Implemented 456.047(5),(7) FS. History–New 2-8-01, Repealed.

64B-8.005 Requirement for Notification of Change in Accreditation or Certification Status or Insurance Status.

Specific Authority 456.047(8) FS. Law Implemented 456.047(2)(b),(5),(7) FS. History–New 2-8-01, Repealed.

64B-8.006 Fee to Access Core Credentials Data File.

Specific Authority 456.047(8) FS. Law Implemented 456.047(3)(b)3. FS. History–New 12-27-00, Repealed.

64B-8.009 Forms.

Specific Authority 456.047(8) FS. Law Implemented 456.047(3)(b)3.,4.,(c),(5) FS. History–New 2-8-01, Repealed.

64B-8.013 Prohibitions – Registered Credentials Verification Organizations.

Specific Authority 456.047(8) FS. Law Implemented 456.047(3),(4),(5),(7) FS. History–New 2-8-01, Repealed.

64B-8.014 Prohibitions – Subscriber Authorized to Access Core Credentials Data.

Specific Authority 456.047(8) FS. Law Implemented 456.047(3),(4) FS. History–New 2-8-01, Repealed.

64B-8.015 Penalties – Registered Credentials Verification Organizations.

Specific Authority 456.047(8) FS. Law Implemented 456.047(2),(3),(4),(5) FS. History–New 2-8-01, Repealed.

64B-8.016 Definition of “Fully Accredited or Certified as a Credentials Verification Organization.”

Specific Authority 456.047(8) FS. Law Implemented 456.047(5) FS. History–New 2-8-01, Repealed.

64B-8.017 Initial Reporting of Core Credentials.

Specific Authority 456.047(8) FS. Law Implemented 456.047(3) FS. History–New 2-8-01, Repealed.

64B-8.018 Notification of Corrections, Updates, or Modifications to Core Credentials Data.

Specific Authority 456.047(8) FS. Law Implemented 456.047(3) FS. History–New 2-8-01, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE: Lola Pouncey, Acting Bureau Chief, 4052 Bald Cypress Way, BIN #C10, Tallahassee, Florida 32399-3260

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Amy Jones, Division Director, Department of Health, Division of Medical Quality Assurance, 4052 Bald Cypress Way, Bin #C00, Tallahassee, Florida 32399-3250

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 11, 2002

**DEPARTMENT OF HEALTH**

**Board of Medicine**

RULE TITLE: Disciplinary Guidelines RULE NO.: 64B8-8.001

PURPOSE AND EFFECT: The proposed rule amendment is intended to ensure that the guidelines do not conflict with statutorily mandated penalties.

SUMMARY: The proposed rule amendment ensures that current guidelines do not conflict with statutorily mandated penalties.

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: 458.331(5), 458.309, 456.079 FS.

LAW IMPLEMENTED: 458.331(5), 456.072, 456.079 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Larry G. McPherson, Jr., Executive Director, Board of Medicine/MQA, 4052 Bald Cypress Way, Bin #C03, Tallahassee, Florida 32399-3253

THE FULL TEXT OF THE PROPOSED RULE IS:

64B8-8.001 Disciplinary Guidelines.

(1) No change.

(2) Violations and Range of Penalties. In imposing discipline upon applicants and licensees, in proceedings pursuant to Section 120.57(1) and 120.57(2), Florida Statutes, the Board shall act in accordance with the following disciplinary guidelines and shall impose a penalty within the range corresponding to the violations set forth below. The verbal identification of offenses are descriptive only; the full language of each statutory provision cited must be consulted in order to determine the conduct included.

RECOMMENDED RANGE OF PENALTY		
VIOLATION	FIRST OFFENSE	SECOND OFFENSE
(a) through (f) No change.		
(g) Failure to perform legal obligation. (458.331(1)(g), F.S.) (456.072(1)(k), F.S.)	(g) For any offense not specifically listed herein, based upon the severity of the offense and the potential for patient harm, from a letter of concern to revocation or denial and an administrative fine from \$1,000.00 to \$10,000.00, unless otherwise provided by law.	(g) For any offense not specifically listed herein, based upon the severity of the offense and the potential for patient harm, from a reprimand to revocation or denial and an administrative fine from \$5,000.00 to \$10,000.00, unless otherwise provided by law.
i. through 9. No change.		
(h) through (oo) No change.		

(3) through (7) No change.

Specific Authority 458.331(5), 458.309, 456.079 FS. Law Implemented 458.331(5), 456.072, 456.079 FS. History--New 12-5-79, Formerly 21M-20.01, Amended 1-11-87, 6-20-90, Formerly 21M-20.001, Amended 11-4-93, Formerly 61F6-20.001, Amended 6-24-96, 12-22-96, Formerly 59R-8.001, Amended 5-14-98, 12-28-99, 1-31-01, 7-10-01, 6-4-02.

NAME OF PERSON ORIGINATING PROPOSED RULE: Rules Committee, Board of Medicine

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Medicine

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 8, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 7, 2002

**DEPARTMENT OF HEALTH**

**Board of Nursing**

RULE TITLE: Continuing Education on Domestic Violence RULE NO.: 64B9-5.010

PURPOSE AND EFFECT: To allow specific applicants, who show good cause, six months from the date of licensure to complete the continuing education course on domestic violence.

SUMMARY: The Board proposes to add new language in this rule to set forth the time period for continuing education on domestic violence requirements for specified licensure applicants.

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: 456.031, 464.006 FS.

LAW IMPLEMENTED: 456.031 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE NEXT AVAILABLE ISSUE OF THE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Dan Coble, Executive Director, Board of Nursing/MQA, 4052 Bald Cypress Way, Tallahassee, FL 32399

THE FULL TEXT OF THE PROPOSED RULE IS:

64B9-5.010 Continuing Education on Domestic Violence. All licensees must complete a one-hour course on domestic violence, which meets the criteria of Section 456.031(1)(a), F.S. This is in addition to the continuing education hours required for biennial renewal. Applicants for initial licensure, upon showing of good cause by affidavit, shall be given six (6) months from the date of licensure to complete the Domestic Violence course. Good cause includes applicants for endorsement or examination who have been residing outside of Florida or have been on active military service.

Specific Authority 455.587, 456.031, 464.006 FS. Law Implemented 455.587, 456.031 FS. History--New 11-16-95, Formerly 59S-5.010, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Nursing

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Nursing

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 13, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 17, 2001

**DEPARTMENT OF HEALTH**

**Board of Nursing**

RULE TITLE: Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances

RULE NO.:

PURPOSE AND EFFECT: To promulgate a new rule stipulating the disciplinary grounds and penalties for certified nursing assistants.

SUMMARY: The Board proposes to set forth the disciplinary guideline criteria for certified nursing assistants pursuant to Section 456.072, Florida Statutes.

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: 464.204 FS.

LAW IMPLEMENTED: 456.072, 464.204 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE NEXT AVAILABLE ISSUE OF THE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Dan Coble, Executive Director, Board of Nursing /MQA, 4052 Bald Cypress Way, Tallahassee, FL 32399

THE FULL TEXT OF THE PROPOSED RULE IS:

64B9-15.009 Disciplinary Guidelines: Range of Penalties: Aggravating and Mitigating Circumstances.

(1) The Board is authorized by law to protect the public from certified nursing assistants (CNAs) who do not meet minimum requirements for safe practice or who pose a danger to the public. The suspensions, restrictions of practice, and conditions of probation used by the Board in discharging its duties under Sections 464.204 and 456.072, F.S., shall include, but are not limited to, the following:

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

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

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

(d) Suspension until evaluation by and treatment in the Intervention Project for Nurses. In cases involving substance abuse, chemical dependency, sexual misconduct, physical or mental conditions which may hinder the ability to practice safely, the Board finds participation in the IPN under a stayed suspension to be the preferred and most successful discipline.

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

(f) Probation with the minimum conditions of not violating laws, rules, or orders related to the ability to practice as a CNA safely, keeping the Board advised of the CNA's address and employment, and supplying both timely and satisfactory probation and employer/supervisor reports.

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

(h) Probation with added conditions of random drug screens, abstention from alcohol and drugs, participation in narcotics or alcoholics anonymous, psychological counseling, the prohibition on agency work, or the requirement that work must be under direct supervision on a regularly assigned unit.

(i) Personal appearances before the Board to monitor compliance with the Board’s order.

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

(2) The Board sets forth below a range of disciplinary guidelines from which disciplinary penalties will be imposed upon practitioners and applicants for licensure guilty of violating Chapters 464 and 456, F.S. The purpose of the disciplinary guidelines is to give notice to registrants and applicants of the range of penalties which will normally be imposed upon violations of particular provisions of Chapters 464 and 456, F.S. The disciplinary guidelines are based upon a single count violation of each provision listed. Multiple counts of violations of the same provision of Chapters 464 and 456, F.S., or the rules promulgated thereto, or other unrelated violations will be grounds for enhancement of penalties. All penalties set forth in the guidelines include lesser penalties, i.e., reprimand and or course-work which may be included in the final penalty at the Board’s discretion.

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

(a) Being found guilty, regardless of adjudication, of a forcible felony as defined in Chapter 776, F.S. (464.018(1)(d),(1), F.S.)

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>\$50 fine</u>	<u>\$150 fine and suspension to be followed by probation</u>
<u>SECOND OFFENSE</u>	<u>\$100 fine and probation</u>	<u>denial of certification or \$1000 fine and revocation</u>

(b) Being found guilty, regardless of adjudication, of a violation of Chapter 812, F.S., relating to theft, robbery, and related crimes. (464.018(1)(d),(2), F.S.)

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>\$50 fine</u>	<u>denial of certification or \$100 fine and suspension to be followed probation</u>
<u>SECOND OFFENSE</u>	<u>\$100 fine and probation</u>	<u>denial of certification or \$150 fine and revocation</u>

(c) Being found guilty, regardless of adjudication, of a violation of Chapter 817, F.S., relating to fraudulent practices. (464.018(1)(d),(3), F.S.)

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>\$50 fine</u>	<u>denial of certification or \$100 fine and suspension to be followed by probation</u>
<u>SECOND OFFENSE</u>	<u>\$100 fine and probation</u>	<u>denial of certification or \$150 fine and revocation</u>

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

(464.018(1)(d),(4), F.S.)

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>\$50 fine, IPN evaluation, and probation</u>	<u>denial of certification or \$100 fine, IPN evaluation, and suspension to be followed by probation</u>
<u>SECOND OFFENSE</u>	<u>\$100 fine, IPN evaluation and suspension to be followed by probation</u>	<u>denial of certification and \$150 fine and permanent revocation</u>

(e) Being found guilty, regardless of adjudication, of a violation of Chapter 784, F.S., relating to assault, battery, and culpable negligence.

(464.018(1)(d),(5), F.S.)

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>\$50 fine</u>	<u>denial of certification or \$100 fine and suspension to be followed probation</u>
<u>SECOND OFFENSE</u>	<u>\$100 fine and probation</u>	<u>denial of certification or \$150 fine and revocation</u>

(f) Being found guilty, regardless of adjudication, of a violation of Chapter 827, F.S., relating to child abuse.

(464.018(1)(d),(6), F.S.)

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>\$50 fine</u>	<u>denial of certification or \$100 fine and suspension to be followed by probation</u>
<u>SECOND OFFENSE</u>	<u>\$100 fine and probation \$150 fine and permanent</u>	<u>denial of certification or revocation</u>

(g) Being found guilty, regardless of adjudication, of a violation of Chapter 415, relating to protection from abuse, neglect, and exploitation.

(464.018(1)(d),(7), F.S.)

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>\$50 fine</u>	<u>denial of certification or \$100 fine and suspension to be followed by probation</u>
<u>SECOND OFFENSE</u>	<u>\$100 fine and probation</u>	<u>denial of certification or \$150 fine and permanent revocation</u>

(h) Being found guilty, regardless of adjudication, of a violation of Chapter 39, F.S., relating to child abuse, abandonment, and neglect.

(464.018(1)(d),(8), F.S.)

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>\$50 fine</u>	<u>denial of certification or \$100 fine and suspension to be followed by probation</u>
<u>SECOND OFFENSE</u>	<u>\$100 fine and probation</u>	<u>denial of certification or \$150 fine and permanent revocation</u>

(i) Having been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under Section 435.03, F.S., or under any similar statute of another jurisdiction; or having committed an act which constitutes domestic violence as defined in Section 741.28, F.S.

(464.018(1)(e), F.S.)

<u>FIRST OFFENSE</u>	<u>MINIMUM</u> \$50 fine	<u>MAXIMUM</u> denial of certification or \$100 fine and suspension to be followed probation
<u>SECOND OFFENSE</u>	\$100 fine and probation	denial of certification or \$150 fine and permanent revocation

(j) False, misleading, or deceptive advertising.

(464.018(1)(g), F.S.)

<u>FIRST OFFENSE</u>	<u>MINIMUM</u> \$25 fine	<u>MAXIMUM</u> \$100 fine and probation
<u>SECOND OFFENSE</u>		\$100 fine \$125 fine and suspension to be followed by probation
<u>THIRD OFFENSE</u>	\$125 fine and probation	\$150 fine and suspension to be followed by probation

(k) Engaging or attempting to engage in the possession, sale, or distribution of controlled substances as set forth in Chapter 893, F.S., for any other than legitimate purposes authorized by this part.

(464.018(1)(i), F.S.)

<u>FIRST OFFENSE</u>	<u>MINIMUM</u> \$25 fine, IPN evaluation, and probation	<u>MAXIMUM</u> denial of certification or \$50 fine, IPN evaluation and suspension to be followed by probation
<u>SECOND OFFENSE</u>	\$100 fine, IPN evaluation, and suspension to be followed by probation	denial of certification and \$125 fine and permanent revocation
<u>THIRD OFFENSE</u>	\$125 fine and revocation	\$150 fine and permanent revocation

(l) Failing to report to the department any person who the registrant knows is in violation of this part or of the rules of the department or the board; however, if the registrant verifies that such person is actively participating in a board-approved program for the treatment of a physical or mental condition, the registrant is required to report such person only to an impaired professionals consultant.

(464.018(1)(k), F.S.)

<u>FIRST OFFENSE</u>	<u>MINIMUM</u> \$25 fine	<u>MAXIMUM</u> \$25 fine and probation
<u>SECOND OFFENSE</u>	\$50 fine	\$100 fine and suspension to be followed by probation
<u>THIRD OFFENSE</u>	\$75 fine and probation	\$150 fine and suspension to be followed by probation

(m) Making misleading, deceptive, or fraudulent representations in or related to the practice of the registrant's profession.

(456.072(1)(a), F.S.)

<u>FIRST OFFENSE</u>	<u>MINIMUM</u> \$50 fine	<u>MAXIMUM</u> denial of certification or \$100 fine and suspension to be followed by probation
<u>SECOND OFFENSE</u>	\$100 fine and probation	denial of certification or \$150 fine and revocation

(n) Knowingly violating any provision of this part, a rule of the board or the department, or a lawful order of the board or department previously entered in a disciplinary proceeding or failing to comply with a lawfully issued subpoena of the department.

(456.072(1)(b) & 464.018(1)(n), F.S.)

<u>FIRST OFFENSE</u>	<u>MINIMUM</u> \$50 fine and compliance with rule or terms of prior order	<u>MAXIMUM</u> \$100 fine and suspension until compliance with rule or terms of prior order
<u>SECOND OFFENSE</u>	\$100 fine and suspension until compliance with rule or terms of prior order	\$125 and suspension until compliance with rule or terms of prior order plus extended probation

<u>THIRD OFFENSE</u>	\$125 fine and suspension until compliance with rule or terms of prior order plus extended probation	\$150 fine and revocation
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(o) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of a certified nursing assistant or to the ability to practice as a certified nursing assistant.

(456.072(1)(c), F.S.)

<u>FIRST OFFENSE</u>	<u>MINIMUM</u> \$50 fine	<u>MAXIMUM</u> denial of certification or to be followed by probation
<u>SECOND OFFENSE</u>	\$100 fine and suspension	denial of certification or \$150 fine and revocation

(p) Having a license or the authority to practice any regulated profession revoked, suspended, or otherwise acted against, including the denial of licensure or certification, by the licensing authority of any jurisdiction, including its agencies or subdivisions, for a violation that would constitute a violation under Florida law.

(456.072(1)(f), F.S.)

<u>FIRST OFFENSE</u>	<u>MINIMUM</u> \$50 fine and same penalty imposed by the other jurisdiction	<u>MAXIMUM</u> denial of certification or \$100 fine and suspension followed by probation
<u>SECOND OFFENSE</u>	\$100 fine and same penalty imposed by the other jurisdiction which at a minimum must include a term of probation	denial of licensure or \$150 fine and revocation
<u>THIRD OFFENSE</u>	\$150 fine and same penalty imposed by the other jurisdiction which at a minimum must include a term of suspension	denial of licensure or \$150 fine and permanent revocation

(q) Having been found liable in a civil proceeding for knowingly filing a false report or complaint with the department against another registrant.

(456.072(1)(g), F.S.)

<u>FIRST OFFENSE</u>	<u>MINIMUM</u> \$50 fine	<u>MAXIMUM</u> denial of certification or \$100 fine and suspension to be followed by probation
<u>SECOND OFFENSE</u>	\$100 fine and probation	denial of certification or \$150 fine and revocation

(r) Procuring or attempting to procure certification to practice as a CNA by bribery, by knowing misrepresentations, or through an error of the department or the board.

(456.072(1)(h), F.S.)

<u>FIRST OFFENSE</u>	<u>MINIMUM</u> \$50 fine and probation	<u>MAXIMUM</u> denial of certification or revocation
<u>SECOND OFFENSE</u>	\$150 fine and probation	denial of certification or permanent revocation



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

	MINIMUM	MAXIMUM
FIRST OFFENSE	\$50 fine	\$75 fine and probation
SECOND OFFENSE	\$75 fine	\$100 fine and suspension to be followed by probation
THIRD OFFENSE	\$100 fine and probation	\$125 fine and suspension to be followed by probation

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

	MINIMUM	MAXIMUM
FIRST OFFENSE	\$50 fine	denial of certification or to be followed by probation
SECOND OFFENSE	\$100 fine and suspension	denial of certification or \$150 fine and revocation

(u) Failing to perform any statutory or legal obligation placed upon a registrant.  
(456.072(1)(k), F.S.)

	MINIMUM	MAXIMUM
FIRST OFFENSE	\$50 fine and compliance with legal obligation	\$100 fine and suspension until compliance with legal obligation
SECOND OFFENSE	\$100 fine and suspension until compliance with legal obligation	\$125 and suspension until compliance with legal obligation plus extended probation
THIRD OFFENSE	\$125 fine and suspension until compliance with legal obligation plus extended probation	\$150 fine and revocation

(v) Making or filing a report which the registrant knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, or willfully impeding or obstructing another person to do so.  
(456.072(1)(l), F.S.)

	MINIMUM	MAXIMUM
FIRST OFFENSE	\$50 fine	\$75 fine and suspension to be followed by probation
SECOND OFFENSE	\$75 fine and probation	\$100 fine and suspension to be followed by probation
THIRD OFFENSE	\$125 fine and suspension	\$150 fine and revocation to be followed by probation

(w) Making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession.  
(456.072(1)(m), F.S.)

	MINIMUM	MAXIMUM
FIRST OFFENSE	\$50 fine	denial of certification or \$100 fine and suspension to be followed by probation
SECOND OFFENSE	\$100 fine and probation	denial of certification or \$150 fine and revocation

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

	MINIMUM	MAXIMUM
FIRST OFFENSE	\$75 fine and probation	denial of certification or revocation and \$125 fine
SECOND OFFENSE	\$125 fine and probation	denial of certification or permanent revocation and \$150 fine

(y) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities the registrant knows, or has reason to know, the registrant is not competent to perform.  
(456.072(1)(o), F.S.)

	MINIMUM	MAXIMUM
FIRST OFFENSE	\$75 fine and probation	denial of certification or revocation and \$125 fine
SECOND OFFENSE	\$125 fine and probation	denial of certification or permanent revocation and \$150 fine

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

	MINIMUM	MAXIMUM
FIRST OFFENSE	\$75 fine and probation	denial of certification or revocation and \$125 fine
SECOND OFFENSE	\$125 fine and probation	denial of certification or permanent revocation and \$150 fine

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

	MINIMUM	MAXIMUM
FIRST OFFENSE	\$50 fine	denial of certification or \$100 fine and suspension to be followed by probation
SECOND OFFENSE	\$125 fine and probation	denial of certification or \$150 fine and revocation

(bb) Engaging or attempting to engage in sexual misconduct as defined and prohibited in Section 456.063(1), F.S.  
(456.072(1)(u), F.S.)

	MINIMUM	MAXIMUM
FIRST OFFENSE	\$100 fine, IPN evaluation, and probation	denial of certification or \$125 fine, IPN evaluation, and suspension to be followed by probation
SECOND OFFENSE	\$125 fine, IPN evaluation, and suspension to be followed by probation	denial of certification and \$150 fine and permanent revocation

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

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>\$50 fine</u>	<u>\$100 fine and suspension to be followed by probation</u>
<u>SECOND OFFENSE</u>	<u>\$125 fine and probation</u>	<u>\$150 fine and suspension to be followed by probation</u>

(dd) Failing to report to the board, or the department if there is no board, in writing within 30 days after the registrant has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction. Convictions, findings, adjudications, and pleas entered into prior to the enactment of this paragraph must be reported in writing to the board, or department if there is no board, on or before October 1, 1999.  
(456.072(1)(w), F.S.)

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>\$50 fine and probation</u>	<u>denial of certification or revocation and \$100 fine</u>
<u>SECOND OFFENSE</u>	<u>\$100 fine and probation</u>	<u>denial of certification or permanent revocation and \$150 fine</u>

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

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>\$50 fine</u>	<u>\$75 fine and probation</u>
<u>SECOND OFFENSE</u>	<u>\$75 fine</u>	<u>\$100 fine and suspension to be followed by probation</u>
<u>THIRD OFFENSE</u>	<u>\$100 fine and probation</u>	<u>\$150 fine and suspension to be followed by probation</u>

(ff) Being unable to practice as a CNA with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, or chemicals or any other type of material or as a result of any mental or physical condition.  
(456.072(1)(y), F.S.)

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>\$50 fine, IPN evaluation, and probation</u>	<u>denial of certification or \$100 fine, IPN evaluation, and suspension to be followed by probation</u>
<u>SECOND OFFENSE</u>	<u>\$100 fine, IPN evaluation, and suspension to be followed by probation</u>	<u>denial of certification and \$125 fine and permanent revocation</u>
<u>THIRD OFFENSE</u>	<u>\$125 fine and revocation</u>	<u>\$150 fine and permanent revocation</u>

(gg) Testing positive for any drug, as defined in Section 112.0455, F.S., on any confirmed preemployment or employer-ordered drug screening when the practitioner does not have a lawful prescription and legitimate medical reason for using such drug.  
(456.072(1)(z), F.S.)

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>\$50 fine, IPN evaluation, and probation</u>	<u>denial of certification or \$100 fine, IPN evaluation, and suspension to be followed by probation</u>
<u>SECOND OFFENSE</u>	<u>\$100 fine, IPN evaluation, and suspension to be followed by probation</u>	<u>denial of certification and \$150 fine and permanent revocation</u>

(hh) Performing or attempting to perform health care services on the wrong patient, a wrong-site procedure, a wrong procedure, or an unauthorized procedure or a procedure that is medically unnecessary or otherwise unrelated to the patient's diagnosis or medical condition.  
(456.072(1)(aa), F.S.)

	<u>MINIMUM</u>	<u>MAXIMUM</u>
<u>FIRST OFFENSE</u>	<u>\$50 fine</u>	<u>\$75 fine and suspension to be followed by probation</u>
<u>SECOND OFFENSE</u>	<u>\$75 fine and a term of probation</u>	<u>\$100 fine and suspension to be followed by probation</u>
<u>THIRD OFFENSE</u>	<u>\$125 fine and suspension to be followed by probation</u>	<u>\$150 fine and permanent revocation</u>

(4) In licensure and disciplinary matters involving impairment, the applicant or registrant may be referred to IPN in addition to the imposition of the above-outlined disciplinary action.

(5)(a) The Board shall be entitled to deviate from the foregoing guidelines upon a showing of aggravating or mitigating circumstances by clear and convincing evidence, presented to the Board prior to the imposition of a final penalty at informal hearing. If a formal hearing is held, any aggravating or mitigating factors must be submitted to the hearing officer at formal hearing. At the final hearing following a formal hearing, the Board will not hear additional aggravating or mitigating evidence.

(b) Circumstances which may be considered for purposes of mitigation or aggravation of penalty shall include, but are not limited to, the following:

1. The danger to the public.
2. Previous disciplinary action against the registrant in this or any other jurisdiction.
3. The length of time the registrant has practiced.
4. The actual damage, physical or otherwise, caused by the violation.
5. The deterrent effect of the penalty imposed.
6. Any efforts at rehabilitation.
7. Attempts by the registrant to correct or stop violations, or refusal by the registrant to correct or stop violations.
8. Cost of treatment.
9. Financial hardship.
10. Cost of disciplinary proceedings.

(6) In instances when a registrant or applicant is found guilty of any the above offenses involving fraud or making a false or fraudulent representation, the Board shall impose a fine of \$10,000.00 per count or offense.

Specific Authority 464.204 FS. Law Implemented 456.072, 464.204 FS. History–New

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Board of Nursing  
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Nursing  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 13, 2002  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 15, 2002

**DEPARTMENT OF HEALTH**

**Board of Pharmacy**

RULE TITLE: RULE NO.:

Standards of Practice for Filling Prescriptions 64B16-27.832  
Generated Through the Internet

PURPOSE AND EFFECT: The Board proposes to promulgate a rule to address the standards of practice for filling prescriptions generated through the internet.

SUMMARY: The Board proposes to promulgate a new rule to conform with established Florida medical practitioner-patient relationships in dispensing prescriptions generated through the internet.

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 regulatory cost alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 465.005, 465.0155 FS.

LAW IMPLEMENTED: 465.0155, 465.016, 465.026 FS.

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

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

THE FULL TEXT OF THE PROPOSED RULE IS:

64B16-27.832 Standards of Practice for Filling Prescriptions Generated Through the Internet.

A prescription issued by a practitioner to a patient with whom the practitioner has not established a valid physician-patient relationship is not a valid prescription. The Florida Board of Medicine and the Florida Board of Osteopathic Medicine have stated that prescribing medications based solely on the answers

to an electronic medical questionnaire to a patient without a documented patient evaluation, including a physical examination, is below the standard of practice. The Veterinary Medicine practice act provides that in order to establish a valid veterinarian-client-patient relationship, the veterinarian must be personally acquainted with the keeping and caring of the animal, and has either recently seen the animal or made medically appropriate and timely visits to the premises where the animal is kept. A pharmacist or a pharmacy that knowingly dispenses a prescription that has been issued not in compliance with the applicable prescriber’s standard of practice is dispensing outside the course of the professional practice of pharmacy.

Specific Authority 465.005, 465.0155 FS. Law Implemented 465.0155, 465.016, 465.026 FS. History–New

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Board of Pharmacy

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Pharmacy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 11, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 10, 2002

**DEPARTMENT OF HEALTH**

**Board of Pharmacy**

RULE TITLE: RULE NO.:

Minor Violations 64B16-30.002

PURPOSE AND EFFECT: The Board proposes to amend this rule to remove obsolete language.

SUMMARY: This rule sets forth what the Board deems minor violations and the penalties therefore consistent with Section 456.073(3), Florida Statutes.

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 regulatory cost alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 456.073(3), 465.005 FS.

LAW IMPLEMENTED: 456.073(3) FS.

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

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

THE FULL TEXT OF THE PROPOSED RULE IS:

64B16-30.002 Minor Violations.

(1) The Board sets forth the following guidelines for use by Department investigators when a licensee is in noncompliance of an initial offense of a minor violation. The Board deems the following violations, depending upon severity, to be consistent with s. 456.073(3), Florida Statutes.

(a) No change.

~~(b) Misbranded or adulterated products held for sale—499.005, F.S.~~

~~(b)(e)~~ No change.

~~(d) DEA biennial inventory not current or available—893.07, F.S.~~

(e) through (f) renumbered (c) through (d) No change.

~~(g) Closed sign missing, prescription department not padlocked—64B16-28.109.~~

~~(h) Daily hours not posted—64B16-28.404.~~

~~(i) Failure to notify the board of change in prescription department manager—465.018.~~

(j) through (k) renumbered (e) through (f) No change.

~~(l) Failure to notify the Board of change in Consultant Pharmacist—64B16-28.501.~~

(m) through (n) renumbered (g) through (h) No change.

~~(o) Policy and procedure manual not current or available for inspection—64B16-28.602(1), 64B16-28.702(5), 64B16-28.800(3).~~

(p) through (s) renumbered (i) through (l) No change.

(2) No change.

Specific Authority 456.073(3), 465.005 FS. Law Implemented 456.073(3) FS. History—New 11-12-90, Formerly 21S-17.002, 21S-30.002, 61F10-30.002, 59X-30.002, Amended 12-9-98.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Board of Pharmacy

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Pharmacy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 11, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 15, 2002

**DEPARTMENT OF HEALTH**

**Board of Pharmacy**

RULE TITLE: Citations RULE NO.: 64B16-30.003

PURPOSE AND EFFECT: The Board proposes to amend this rule to add violations with accompanying fines that may be disposed of by citation.

SUMMARY: The Board proposes to add additional criteria for dispensing prescriptions in a manner not authorized by §465.019(6) or §465.025, Fla. Stat.

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 regulatory cost alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 456.077, 456.073, 465.005 FS.

LAW IMPLEMENTED: 456.077 FS.

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

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

THE FULL TEXT OF THE PROPOSED RULE IS:

64B16-30.003 Citations.

(1) through (2) No change.

(3) The following violations with accompanying fines may be disposed of by citation:

(a) through (g) No change.

(h) Using in the compounding of a prescription, or furnishing upon prescription, an ingredient or article different in any manner from the ingredient or article prescribed, except as authorized in Section 465.019(6) or Section 465.025, Florida Statutes; or dispensing a medication with dosage instructions different in any way than prescribed, provided that:

1. No allegation of harm or ill effects is present;

2. The licensee has no prior disciplinary history; and

3. The event did not result in or pose a significant threat to the health and safety of the patient or the public.

The penalty shall be a fine of \$500 and completion of an approved continuing education course in the prevention of medication dispensing errors, of no less than eight (8) hours.

(4) through (5) No change.

Specific Authority 456.077, 456.073, 465.005 FS. Law Implemented 456.077 FS. History—New 12-22-91, Formerly 21S-30.003, 61F10-30.003, 59X-30.003, Amended 4-3-00, 1-2-02.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Board of Pharmacy

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Pharmacy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 11, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 15, 2002