

RULEMAKING AUTHORITY: 560.105 FS.
 LAW IMPLEMENTED: 560.105 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: Gregory C. Oaks, Chief, Bureau of Regulatory Review, Finance, Division of Finance, Office of Financial Regulation, 200 East Gaines Street, Tallahassee, FL 32399-0376, phone (850)410-9805, Facsimile (850)410-9914, E-mail: Greg.Oaks@flofr.com

THE FULL TEXT OF THE PROPOSED RULE IS:

69V-560.1013 Electronic Filing of Forms and Fees.

(1) For purposes of this rule, "REAL System" means the Office of Financial Regulation's Regulatory Enforcement and Licensing System, which is accessible through the Office's website at www.flofr.com.

(2) All forms adopted under paragraphs 69V-560.1012(1)(a) through (1)(g), F.A.C., must be filed electronically with the Office through the REAL system.

(3) All fees required to be filed with the Office under Chapter 69V-560, F.A.C., must be paid electronically through the REAL System.

(4) Any person may request an exemption from the petition for a waiver of the requirement of electronic filing requirements of this rule by submitting a written request to: Office of Financial Regulation, Division of Finance, Bureau of Regulatory Review, 200 E. Gaines Street, Tallahassee, Florida 32399-0351. The request must set forth the person's technological or financial hardship that makes it difficult for the person to file forms and pay fees electronically. The request must be legible and include the applicant's or licensee's name, contact person, address and telephone number. The Office of Financial Regulation will provide any person granted an exemption under this subsection with instructions on how to file forms and fees in paper format of any form or fee under Chapter 69V-560, F.A.C., by filing a petition under Rule 28-106.301, F.A.C. The petition must demonstrate a technological or financial hardship that entitles the person to file the form or fees in a paper format. The Office will provide any person granted a waiver under this subsection a hardcopy version of the applicable form.

Rulemaking Specific Authority 560.105 FS. Law Implemented 560.105 FS. History--New 1-13-09, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
 Gregory C. Oaks, Chief, Bureau of Regulatory Review, Finance, Division of Finance, Office of Financial Regulation, 200 East Gaines Street, Tallahassee, FL 32399-0376, phone (850)410-9805, Facsimile (850)410-9914, E-mail: Greg.Oaks@flofr.com

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Financial Services Commission
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 17, 2009
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 2, 2009

Section III Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF EDUCATION

State Board of Education

RULE NO.: 6A-1.09401
 RULE TITLE: Student Performance Standards
 NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 35, No. 41, October 16, 2009 issue of the Florida Administrative Weekly.

Subsection (2) is amended to read:

(2) ~~No less than~~ Every twelve (12) years from the effective date of the last amendment of the standards for a subject area, the Commissioner shall convene an expert group ~~to shall~~ review the standards and make recommendations to the Commissioner for their review and revision. The Commissioner shall determine whether revisions are necessary based on the recommendations of the expert group, and shall propose such revisions to the State Board for adoption. The Commissioner may initiate expert review of a set of standards after a period of less than twelve (12) years, if the Commissioner determines that developments have occurred in that subject area such as to make existing standards inadequate.

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

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

WATER MANAGEMENT DISTRICTS

Suwannee River Water Management District

RULE NOS.:	RULE TITLES:
40B-2.025	Processing of Water Use Permit Applications
40B-2.041	Permits Required
40B-2.101	Content of Application
40B-2.301	Conditions for Issuance of Permits
40B-2.321	Duration of Permits
40B-2.331	Modification of Permits
40B-2.341	Revocation of Permits

40B-2.351	Transfer of Permits
40B-2.381	Limiting Conditions
40B-2.441	Temporary Water Use Permits

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 35, No. 33, August 21, 2009 issue of the Florida Administrative Weekly.

Notice is hereby given that these rules and provisions of the proposed Water Use Permitting Guide ("Guide"), which is proposed to be incorporated by reference in Rule 40B-2.301(3), F.A.C., published in the Florida Administrative Weekly, Volume 35, Number 33, on August 21, 2009, have been changed to reflect comments received from interested persons. These changes were approved by the Governing Board of SRWMD on October 13 and November 12, 2009. The changes to provisions of the Guide are summarized as follows: Paragraph 1.8.1 requires applicants to provide reasonable assurance of the ability to operate and maintain the withdrawal and/or diversion facilities; provides that demonstration of intent to exercise eminent domain authority is sufficient to meet this requirement; and specifies that this provision does not apply to projects permitted under the Power Plant Siting Act. In sub-paragraph 3.6.1.A, a reference to the subsection of the rule in which the application form is incorporated has been included. The language was changed from permissive to mandatory in sub-paragraph 3.6.1.P concerning permit modifications when a change in water use is proposed that may alter the permit allocations. In subsection 5.4, language regarding letter modifications has been revised for consistency with changes to Rule 40B-2.331, F.A.C. In addition to these changes to the Guide, the application forms incorporated by reference in Rule 40B-2.041, F.A.C., have been changed for consistency with the changes to paragraph 1.8.1 of the Guide. When changed, the specified rules shall read as noted below:

40B-2.025 Processing of Water Use Permit Applications.

(1) Water use permit applications will be processed pursuant to Section 120.60, F.S. and Chapter 28-107, F.A.C., Part II of Chapter 373, F.S. and this chapter, and Part VII of Chapter 40B-1, F.A.C. Water use permit applications are available at District headquarters and on the District's website at www.mysuwanneeriver.com.

(2) Proposed uses of water associated with an electrical power plant as defined in subsection 403.503(14), FS, that are within the scope of the Florida Power Plant Siting Act, are processed in accordance with such Act and Part I, Chapter 62-17, F.A.C.

40B-2.041 Permits Required.

(1) No change.

(2) The District issues three types of water use permits: minor water use permit by rule, general water use permit, and individual water use permit.

~~Minor Water Use Permit by Rule~~

(a) To obtain a minor water use permit by rule, water users must qualify and comply with the conditions specified in subsection (3) below. Permittees who wish to modify a general or individual water use permit to a minor water use permit by rule as provided in subsection (3) below, or who wish to abandon a water use permit, must complete and submit Form 40B-2.041A: Water Use Permit Status Form, effective DATE, which is hereby incorporated by reference. This form is available at District headquarters and on the District's website at www.mysuwanneeriver.com.

(b) To obtain a permit for water uses that require a general or individual permit, the applicant must complete and submit one of the following forms, as appropriate, which are hereby incorporated by reference:

1. Form 40B-2.041B Application for Water Use Permit Agricultural Use, effective DATE;

2. Form 40B-2.041C Application for Water Use Permit Augmentation/Other Use, effective DATE;

3. Form 40B-2.041D Application for Water Use Permit Commercial Use, effective DATE; and

4. Form 40B-2.041E Application for Water Use Permit Potable Water Supply Use, effective DATE.

These application forms are available at District headquarters and on the District's website at www.mysuwanneeriver.com.

(3) Minor Water Use Permit by Rule.

(a) Except as provided in subsections (4) and (5) paragraphs (b), (c) and (d) below, a minor water use permit by rule is hereby granted for the following ~~withdrawal~~ classes of water uses as referenced in paragraphs 40B-2.501(3)(a) through (e), F.A.C.: agriculture, commercial, potable water supply, augmentation and other uses, provided they meet the criteria specified below:

1. through 6. No change.

(b) Except as provided in subsections (4) and (5) paragraphs (d) and (e) below, a minor permit by rule is hereby granted for landscape irrigation uses, provided they meet the criteria specified below:

1. through 2. No change.

Any landscape irrigation uses that deviate from these criteria shall be required to obtain a permit in accordance with subsections (4) and (5) paragraphs (d) and (e) below.

(c) No change.

(4) General Water Use Permit

Except as provided in subsection (3) above or (5) below paragraph (a) and (b) above or (d) below, a general water use permit is required under the general permit procedures in paragraph 40B-1.703(1)(c), F.A.C., for all withdrawals or diversions which are less than ten million gallons per day maximum daily rate of withdrawal and less than ~~two~~ one million gallons per day average daily rate of withdrawal. Either the Executive Director, the Assistant Executive Director, or the

Deputy Executive Director shall approve general permit applications under this paragraph without a hearing, except that any application recommended for denial shall be presented to the Governing Board for final agency action.

(5) Individual Water Use Permit.

An individual water use permit is required under the individual permit procedures in subsection 40B-1.703(2), F.A.C., for all withdrawals or diversions which exceed the limits established in subsection (4) above paragraph 40B-2.041(2)(d), F.A.C., and for all bottled water uses regardless of the quantity of the withdrawal or diversion.

(6)(3) In the event the proposed water use is associated with a project that requires a water well permit under Chapter 373, Part III, F.S., and District rules, the water well application will be deemed part of the water use application and processed as one application under the WUP procedures.

40B-2.101 Content of Application.

Applications for permits required by this chapter shall be filed with the District and shall contain the following:

(1) No change.

(2) The appropriate application form hereby incorporated by reference in Rule 40B-2.041, F.A.C., which is available at District headquarters and on the District's website at www.mysuwanneeriver.com, as follows:

(a) ~~40B-2.101A Application for Water Use Permit Agricultural Use (DATE);~~

(b) ~~40B-2.101B Application for Water Use Permit Augmentation/Other Use (DATE);~~

(c) ~~40B-2.101C Application for Water Use Permit Commercial Use (DATE); and~~

(d) ~~40B-2.101D Application for Water Use Permit Potable Water Supply Use (DATE).~~

(3) Best available technical and other supporting information sufficient to demonstrate that the use meets the conditions for issuance as specified in subsection 373.223(1), F.S., and Rule 40B-2.301, F.A.C. Any supporting information or calculations required to be prepared by a professional regulated under Florida law shall bear the certification of such professional.

~~(4) Any supporting information or calculations required to be prepared by a profession regulated under Florida law shall bear the certification of such professional.~~

(4)(5) The relevant information required by section 2.0, Water Use Permitting Guide.

40B-2.301 Conditions for Issuance of Permits.

(1) through (2) No change.

(3) The standards and criteria set forth in the Water Use Permitting Guide, effective _____, hereby incorporated published by reference and ~~incorporated~~ into this chapter, if met, will must be used to provide the reasonable assurances required in this section. ~~This A current version of this~~

document is available at District headquarters and on the District's website at www.mysuwanneeriver.com ~~and at its headquarters.~~

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.042, 373.0421, 373.185, 373.219, 373.223, 373.226, ~~373.236~~, 373.227, 373.228, 373.229, 373.232, 373.236, 373.239, 373.250 FS. History--New 10-1-82, Amended 5-1-83, _____.

40B-2.321 Duration of Permits.

(1) No change.

(a) The District shall ~~may~~ issue permits with up to a 50-year duration to a municipality or other governmental body, or to a public works or public service corporation, when required to provide for the retirement of bonds for the construction of waterworks or waste disposal facilities.

(b) The District shall issue permits with at least a 20-year duration when the permit is approved for the development of alternative water supplies. The District shall extend the duration of such permits up to 50 years when the following conditions are met:

1. The permittee has issued bonds for construction of the alternative water supply project;

2. The permittee submits a written request to extend the duration of the permit to the District prior to the permit expiration date; and

3. The Governing Board determines that the water use will continue to meet the conditions for issuance in Rule 40B-2.301, F.A.C., for such additional time as is required for the retirement of the issued bonds.

(c) When a private, rural landowner contributes greater than fifty percent (50%) of the land or funding needed to ~~makes an extraordinary contribution of land or construction funding to~~ enable the expeditious implementation of an alternative water supply development project, the District shall ~~may~~ issue permits with up to a 50-year duration to a municipality, county, special district, regional water supply authority, multi-jurisdictional water supply entity, and public or private utilities. However, this provision does not apply to public or private utilities created for or by a private landowner after April 1, 2008. An applicant that requests a longer duration permit under this paragraph must have an agreement with the landowner to efficiently pursue an alternative public water supply development project identified in the District's regional water supply plan and meeting the water demands of both the applicant and the landowner. In addition, reasonable assurances must be provided that the District's conditions for issuance will be met for the duration of the permit. All such permits will require submittal of a compliance report every five years to maintain reasonable assurance that the conditions for permit issuance applicable at the time of review of the compliance report are met, following which the Governing Board may modify the permit as necessary to ensure that the use meets the conditions for issuance.

(d) through (4) No change.

40B-2.331 Modification of Permits.

~~(4) A permittee may seek modification of any terms of an unexpired permit as follows and consistent with Rule 40B-1.709, F.A.C.: Either the Executive Director, the Assistant Executive Director, or the Deputy Executive Director shall approve proposed modifications without a hearing, in the following circumstances, except that any request for modification recommended for denial shall be presented to the Governing Board for final agency action:~~

~~(1) A permittee may apply for modification by letter to the District: ~~(a) If the proposed modification involves an increase of water use of less than 100,000 gallons per day provided that the type of permit required does not change, and such modification does not change the water use class; and or~~~~

~~(a) A change in conditions has resulted in the water allowed under the permit becoming inadequate for the permittee's need; or~~

~~(b) The ~~if~~ proposed modification would result in a more efficient use of water than is possible under the existing permit; or~~

~~(c) if the proposed modification is for replacement of the source with an alternative water supply source, and~~

~~(d) If the expiration date of the permit is not changed and the location of the withdrawal is not changed pursuant to Section 373.239, Florida Statutes.~~

~~Either the Executive Director, the Assistant Executive Director, or the Deputy Executive Director shall approve qualifying proposed letter modifications under this subsection without a hearing, except that any request for modification recommended for denial shall be presented to the Governing Board for final agency action.~~

~~(2) All ~~other~~ permit modification applications other than under subsection (1) above shall comply with the requirements of Section 373.229, F.S., and shall contain all of the information required by the permit conditions and by Rule 40B-2.101, F.A.C. This shall include all permits that have been previously considered by the Governing Board for issuance.~~

(3) through (4) No change.

(5) The Governing Board shall ~~may~~ issue an order to modify an existing use when conditions warrant such action in order to obtain the most beneficial use of the water resources of the state and to protect the public health, safety, and welfare and the interests of the water users affected. Such order must include a finding by the Governing Board that the use proposed to be modified is detrimental to other water users or to the water resources of the state.

40B-2.341 Revocation of Permits.

(1) The Governing Board shall initiate proceedings to ~~may~~ revoke a permit in whole or in part, permanently or for a lesser period, ~~as provided in subsections 373.243(1), (2) and (3), F.S., for any material false statement, a willful violation of a permit~~

~~condition, or a violation of any provision of this Chapter 373, F.S., when such action is willful, flagrant, repeated, continuing, or when an emergency exists, or significant off-site impacts or environmental harm is occurring or threatens to occur.~~

(2) No change.

~~(3) The Governing Board shall revoke a permit permanently and in whole upon receiving written consent from the permittee to revoke the permit permanently and in whole. The permittee may formally request, in writing, the Governing Board to revoke the permit permanently and in whole.~~

~~(4) The Governing Board shall may revoke a permit when it finds that the water use has ceased to be reasonable or beneficial as the use is detrimental to other water users or to the water resources of the state.~~

40B-2.351 Transfer of Permits.

~~Water Use Permit Transfer Form; Form Number 40B-2.351A, effective DATE.~~ ~~Water Use Permit Transfer Form~~ is hereby incorporated by reference. This form is available at District headquarters and on the District's website at www.mysuwanneeriver.com.

~~(1) Persons who wish to continue a permitted water use and who have acquired the ability to operate and maintain the withdrawal and/or diversion facilities ownership of the land on which facilities are located, shall apply to the District within 90 days of acquiring ownership of such ability land, to transfer the permit. Such persons must provide reasonable assurances of the ability to operate and maintain the withdrawal and/or diversion facilities for the duration of the permit in accordance with the permit terms and conditions. Permit transfer requests shall be ~~The applicant shall request such transfer by letter or~~ submitted of the above referenced form and shall reference the permit number in the letter. The District shall transfer the permit provided the previously permitted use remains the same.~~

~~(2) Notwithstanding the provisions of subsection (1) above, the District will notify the current owner in writing of the need to transfer the permit in order to continue the water use upon discovery of a change in property ownership. The owner must request permit transfer within 90 days of receipt of notification from the District. The permit will be transferred in accordance with this section.~~

~~(2)(3) Persons who apply to transfer a permit under subsection (1) above and propose to change the source, use, or withdrawal quantity or source quality from those specified in the permit, must follow the procedures for modification in 40B-2.331, F.A.C.~~

~~(3)(4) All water use under a transferred permit must comply with the terms and conditions of that permit.~~

~~(4)(5) A permit not transferred as prescribed herein shall be void without any further action by the District.~~

Rulemaking Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.219, 373.239 FS. History—New 10-1-82, Amended _____.

1. through 2. No change.

3. The permittee has not commenced construction under the permit that required the conservation easement and has obtained a permit modification approving different mitigation, provided that the release or amendment shall not adversely affect the ecological value of other conservation lands or interests in lands, ~~owned by the District~~; or

4. For a mitigation bank or a permitted bank phase, no bank credits have been sold or used from the bank or permitted phase, as applicable; and the relevant permit for the mitigation bank or permitted phase has been surrendered to the District or to the Department of Environmental Protection for mitigation banks permitted by that agency.

(c) Public Projects. For the purpose of this paragraph, public projects are projects proposed or contracted by, or implemented on behalf of, an entity with the power of eminent domain to condemn the conservation easement, and may include linear facilities such as electric transmission and distribution facilities, pipeline transmission and distribution facilities, or public transportation corridors. For public projects, the District shall voluntarily negotiate for a voluntary release or amend amendment of the conservation easement under the following terms and conditions:

1. The entity making the request shall provide an analysis that demonstrates the public project cannot practicably be located in a manner that will avoid the conservation easement. If the analysis demonstrates that avoiding the easement is not technically capable of being done, is not economically feasible viable, or will adversely affect public safety through the endangerment of lives or property, location of the project in a manner that will avoid the easement shall not be considered "practicable" under paragraph 40C-1.1101(1)(c), F.A.C.

2. If the public project cannot be located to avoid the conservation easement pursuant to subparagraph 40C-1.1101(1)(c)1., F.A.C., the public project, to the extent practicable, shall be located, and hence the release area shall be identified, within the conservation easement as follows:

a. Adjacent to or within existing utility rights-of-way, along the boundary of the existing conservation easement, or adjacent to or within existing firelines or roadways;

b. To avoid wetlands or uplands encumbered by the existing conservation easement that are used by the bald eagle (*Haliaeetus leucaphalus*) or listed wildlife species as defined in subsection 40C-4.021(20), F.A.C.;

c. To avoid a plant community within the existing conservation easement that has been classified by a state rank of three (3) or lower in the document titled "FNAI [Florida Natural Areas Inventory] – Element Tracking Summary" (October 1, 2008); ~~and~~

d. To minimize impacts to wetlands and other surface waters located within the existing conservation easement; and

e. To avoid fragmentation of habitat and protect corridors for wildlife movement.

3. In exchange for the release or amendment, the entity making the request must provide the District with a conservation easement having substantially similar terms over other lands within the same drainage basin that have equivalent or greater ecological and monetary value to the area being released or amended. Alternatively, for public projects that are expansions of existing projects facilities, but are not extensions of linear facilities, the entity making the request may, ~~in exchange~~ for the release or amendment, provide credits from a mitigation bank with equivalent or greater ecological and monetary value, but no less than 0.01 credits, or participate in a regional off-site mitigation area (ROMA) sponsored by the Department or the District with equivalent or greater ecological and monetary value, located within the same drainage basin as the conservation easement being released or amended.

a. No change.

b. To establish monetary values, the District shall obtain an appraisal ~~and a review appraisal~~ for the conservation easement to be released or amended in accordance with subsection 40C-1.1101(3), F.A.C. If a conservation easement is proposed in exchange for the release or amendment, the District shall obtain an appraisal ~~and review appraisal~~ for the conservation easement offered in exchange and shall compare the values of the two conservation easements. The cost of measures taken to reduce environmental impacts as required solely by avoid and minimize impacts under subparagraphs 40C-1.1101(1)(c)1. and 2., F.A.C., shall be considered as part of the monetary consideration for the release or amendment value in the exchange. If mitigation bank credits or participation in a ROMA are offered ~~in exchange~~ for the release or amendment of conservation easement, the person requesting the release or amendment must provide the District with a written quote from a mitigation bank for the mitigation credits needed to provide equivalent or greater monetary and ecological value or an analysis from the government entity implementing the ROMA of what portion of the ROMA shall be attributed to the financial contribution proposed.

(d) No change.

(e) Single-Family Lots. The District shall release up to 6,000 square feet from a conservation easement located on a single-family lot in exchange for credits from a mitigation bank or participation in a government-sponsored regional off-site mitigation area (ROMA), located in the same drainage basin as the conservation easement to be released or amended when:

1. The mitigation bank credits or ROMA participation have equivalent or greater monetary and ecological value to the conservation easement being released or amended.

a. The District ~~shall develop an opinion of monetary value based upon the best available information for the conservation easement area to be released or amended. If this opinion of value is not acceptable to the person requesting the release or~~

~~amendment, the District shall obtain an appraisal and review appraisal of the conservation easement area to be released or amended in accordance with subsection 40C-1.1103(3), F.A.C.~~

b. through c. No change.

~~2. The owner of the single-family lot requesting the release or amendment demonstrates that the configuration of the conservation easement on the lot precludes construction of a residence and associated residential improvements consistent with the improvements present within lots in the same subdivision, phase or unit of a residential development. In no case shall the release of a conservation easement result in more than 6,000 square feet of buildable area excluding any setback areas required by local governments. The District shall release the minimum area of conservation easement needed for the lot owner to have a buildable area of up to 6,000 square feet on the lot, where buildable area means the portion of lot available for a residence and other improvements, excluding any setback areas required by local governments.~~

3. through 5. No change.

~~6. The 6,000 square foot limit in this paragraph (e) shall not apply to the following activities:~~

~~a. A residence and associated residential improvements that were constructed on the lot by a previous owner and the current owner requesting the release or amendment, despite the exercise of due diligence, was unaware that the construction by the previous owner breached the terms of the conservation easement; or~~

~~b. A residence and associated residential improvements constructed prior to November 10, 2009.~~

(f) through (g) No change.

(2) Notice of Receipt of Request to Release or Amend.

(a) Except as otherwise provided in this subsection, for any release of conservation easement greater than 1,000 square feet or amendment affecting more than 1,000 square feet of the conservation easement, the person requesting the release or amendment must provide the District with the names and addresses of all persons who own property abutting the conservation easement area proposed to be released or amended. In addition, the District shall provide notice to all persons who were "interested persons" regarding the permit that caused the conservation easement to be conveyed to the District. An "interested person" is a person, other than the permit applicant, that requested notice of agency action regarding the specific permit application. The District shall also provide notice to commanders of Department of Defense (DOD) installations located within a five mile radius of the conservation easement proposed to be released or amended. The District shall provide notice by U.S. Mail, or e-mail when an e-mail address is available, and provide a 30 day 14 day comment period from the date of the notice before taking action.

(b) through (d) No change.

(3) Appraisals.

(a) For the District to proceed with an appraisal, the person requesting a release or amendment shall provide: ~~a title report for the property to be encumbered by conservation easement in exchange for a release or amendment to the District. The title report shall include~~

~~1. A an adequate legal description by metes and bounds of the property to be encumbered by conservation easement in exchange for a release or amendment to the District that also states the size of the property;~~ and

~~2. A title report that identifies shall contain sufficient information to inform the District and the appraiser of the status of ownership, encumbrances, exceptions, and reservations on the property and;~~

~~3. The amount of wetlands and uplands on the property.~~

(b) If mitigation bank credits or participation in a ROMA are being proposed in exchange for the release or amendment, only an appraisal of the conservation easement area to be released or amended is required.

(c) Except as otherwise provided in this paragraph ~~sub-paragraph 40C-1.1101(1)(e)1.a., F.A.C.,~~ one appraisal ~~and a review appraisal~~ shall be prepared for each parcel to be released or amended and for each parcel offered in exchange for the release or amendment in order to establish monetary value. Two appraisals shall be required when the estimated value of the conservation easement to be released or amended exceeds \$1 million.

(d) All appraisals ~~and review appraisals~~ shall be prepared by appraisers certified under Chapter 475, F.S. ~~in accordance with the 2008-2009 edition of the Uniform Standards of Professional Appraisal Practice developed by the Appraisal Foundation ("USPAP").~~

1. Appraisals for Public Projects.

a. The appraisal assignment shall be to provide an opinion of market value of the District conservation easement over the release or amendment area and of the conservation easement offered in exchange. The market value of the conservation easement over the release or amendment area shall be based on the difference between the full fee simple valuation after the release or amendment and the value of the interests remaining with the person seeking the release before the release or amendment. The market value of the conservation easement over the area offered in exchange shall be based on the difference between the value of the full fee simple valuation before the conveyance of a conservation easement and the value of the interest remaining with the grantor of the easement after conveyance of the conservation easement.

2. Single Family Lots.

a. The appraisal assignment shall be to provide an opinion of market value of the District conservation easement over the release or amendment area. The market value of the conservation easement over the release or amendment area shall be based on the difference between the value of the

single-family lot after the conservation easement is released or amended and the value of the single-family lot without the conservation easement release or amendment.

(e) All appraisals ~~and review appraisals~~ shall be prepared by an appraiser selected and retained by the District.

(f) The person requesting the release or amendment shall pay the District for the cost of any appraisal ~~and any review appraisal~~, and payment for the cost of the appraisal(s) ~~and review appraisal~~ shall be made before the District proceeds with the appraisal(s).

Rulemaking Specific Authority 373.044, 373.113, 373.088 FS. Law Implemented 373.096, 373.089, 373.139(2), 373.088 FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Veronika Thiebach, Sr. Asst. General Counsel, Office of General Counsel, St. Johns River Water Management District, 4049 Reid Street, Palatka, Florida 32177, (386)329-4488
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Governing Board of the St. Johns River Water Management District
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 13, 2009
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 18, 2008

WATER MANAGEMENT DISTRICTS

South Florida Water Management District

RULE NOS.:	RULE TITLES:
40E-2.051	Exemptions
40E-2.061	No-Notice General Permit by Rule
40E-2.091	Publications Incorporated by Reference
40E-2.331	Modification of Permits

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 34, No. 45, November 7, 2008 issue of the Florida Administrative Weekly.

- 40E-2.051 Exemptions.
- (1) through (2) No change.

Rulemaking Specific Authority 373.044, 373.113, 373.171, FS. Law Implemented 373.219 FS. History–New 9-3-81, Formerly 16K-2.025, Amended 2-24-85, 4-20-94, _____.

40E-2.061 No-Notice General Permit by Rule.

(1) The Board hereby grants a general water use permit by rule to each person that does not otherwise require a consumptive use permit, within the District to use, withdraw, or divert water at a single family dwelling or duplex including but not limited to home lawn and ornamental irrigation, car washing, and other incidental outdoor uses provided that water is obtained from a single on-site ~~one~~ withdrawal facility, such

as a private irrigation well or surface water diversion, for each single family dwelling or duplex, provided that landscape irrigation is conducted in accordance with Chapters 40E-21 and 40E-24, F.A.C., or with any approved variance, and that the amount of water used is limited to only that necessary for efficient utilization.

(2) No change.

(3) When reclaimed water is available, the use of a private irrigation well or surface water diversion for home lawn and ornamental irrigation is not authorized under this section. Reclaimed water is deemed available when reclaimed water is provided by a utility through a point of connection at the property boundary. As a condition of this permit, each person issued pursuant to this rule, each person shall comply with Chapters 40E-21 and 40E-24, F.A.C.

(4) No change.

(5) This no notice general permit by rule does not apply to domestic uses of water, such as water used for household purposes of drinking, bathing, cooking, sanitation, or other indoor uses, at single family dwellings and duplexes, which are addressed by subsection 40E-2.051(1), F.A.C.

Rulemaking Authority 373.044, 373.113, 373.118, 373.171 FS. Law Implemented 373.118, 373.219, 373.223 FS. History–New _____.

40E-2.091 Publications Incorporated by Reference.

The “Basis of Review for Water Use Permit Applications within the South Florida Water Management District – _____ ~~July 2, 2009~~”, is hereby published by reference and incorporated into this chapter. A current version of this document is available upon request.

Rulemaking Authority 373.044, 373.113, 373.118, 373.171 FS. Law Implemented 373.042, 373.0421, 373.109, 373.196, 373.219, 373.223, 373.224, 373.229, 373.232, 373.233, 373.236, 373.239, 373.250 FS. History–New 9-3-81, Formerly 16K-2.035(1), Amended 2-24-85, 11-21-89, 1-4-93, 4-20-94, 11-26-95, 7-11-96, 4-9-97, 12-10-97, 9-10-01, 12-19-01, 8-1-02, 6-9-03, 8-31-03, 4-23-07, 9-13-07, 2-13-08, 10-14-08, 7-2-09, _____.

“Basis of Review for Water Use Permit Applications Within the South Florida Water Management District”, incorporated by reference in Rule 40E-2.091, F.A.C.

Section 2.6.1(A)

All public water supply utilities applying for an individual permit are required to develop and implement a water conservation plan. The water conservation elements of each plan need to be identified as part of the application. A timetable outlining the implementation schedule of each of the required water conservation elements will be required to be submitted or shown to already exist prior to issuance or renewal of a public water supply water use permit. The conservation plan shall be prepared and implemented for the service area incorporating, at a minimum, the following mandatory components. For those components which require ordinance adoption, such ordinance should incorporate the

entire boundary of the enacting jurisdiction. The Permittee shall provide a copy of the ordinances for each of the mandatory elements for which ordinances are adopted. The mandatory water conservation elements are as follows:

A. The limitation of all lawn and ornamental irrigation to the hours and days specified in Rule 40E-24.201, F.A.C., or alternative landscape irrigation conservation measures ~~which have been approved by the District~~ pursuant to Rule 40E-24.301, F.A.C.

B. through I. No change.

40E-2.331 Modification of Permits.

(1) through 4.(b) No change.

Rulemaking Specific Authority 373.044, 373.113 FS. Law Implemented 373.223, 373.229, 373.239 FS. History–New 9-31-81, Formerly 16K-2.09(1), Amended 4-20-94, 7-11-96, 4-9-97, 12-10-97, 8-1-02, 4-23-07, 2-13-08, 7-2-09,_____.

WATER MANAGEMENT DISTRICTS

South Florida Water Management District

RULE NOS.:	RULE TITLES:
40E-20.091	Publications Incorporated by Reference
40E-20.331	Modification of Permits

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 34, No. 45, November 7, 2008 issue of the Florida Administrative Weekly.

40E-20.091 Publications Incorporated by Reference.

The “Basis of Review for Water Use Permit Applications within the South Florida Water Management District – _____ ~~July 2, 2009~~”, is hereby published by reference and incorporated into this chapter. A current version of this document is available upon request.

Rulemaking Specific Authority 373.044, 373.113, 373.118, 373.171 FS. Law Implemented 373.042, 373.0421, 373.109, 373.196, 373.219, 373.223, 373.224, 373.229, 373.232, 373.233, 373.236, 373.239, 373.250 FS. History–New 9-3-81, Formerly 16K-2.035(1), Amended 2-24-85, 11-21-89, 1-4-93, 4-20-94, 11-26-95, 7-11-96, 4-9-97, 12-10-97, 9-10-01, 12-19-01, 8-1-02, 6-9-03, 8-31-03, 4-23-07, 9-13-07, 2-13-08, 10-14-08, 7-2-09,_____.

(See Rule 40E-2.091, F.A.C., for changes to the “Basis of Review for Water Use Permit Applications Within the South Florida Water Management District”)

40E-20.331 Modification of Permits.

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

Rulemaking Specific Authority 373.044, 373.113 FS. Law Implemented 373.223, 373.229, 373.239 FS. History–New 4-20-94, Amended 7-11-96, 4-9-97, 12-10-97, 8-14-02, 8-31-03, 4-23-07, 2-13-08, 7-2-09,_____.

WATER MANAGEMENT DISTRICTS

South Florida Water Management District

RULE NOS.:	RULE TITLES:
40E-24.011	Policy and Purpose
40E-24.101	Definitions
40E-24.201	Year-Round Landscape Irrigation Conservation Measures
40E-24.301	Local Government Option
40E-24.401	Enforcement
40E-24.501	Variations and Waivers

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 34, No. 45, November 7, 2008 issue of the Florida Administrative Weekly.

40E-24.011 Policy and Purpose.

(1) This chapter comprises the Mandatory Year-Round Landscape Irrigation Conservation Measures within the boundaries of the South Florida Water Management District (District). These mandatory conservation measures are intended to provide a framework for consistent implementation to ensure the long-term sustainability of the water resources of the region, increase water use efficiency and prevent and curtail wasteful water use practices through regulatory means for landscape irrigation by all users. Water savings achieved by public and private water supply utilities through conservation may be used to extend the availability of all water sources to meet future demands and defer the need for additional capital investment in alternative water supplies, subject to compliance with Chapters 40E-2 and 40E-20, F.A.C. Local governments are encouraged to implement these conservation measures through the adoption of ordinances that would include these measures, variance and enforcement provisions. These measures are in addition to Chapters 40E-2 and 40E-20, F.A.C., provisions and non-regulatory measures, such as education and incentive programs, which are also utilized by the District to promote water conservation. These conservation measures prohibit landscape irrigation during those periods of the day when irrigation efficiency significantly decreases, and limit landscape irrigation water use to a maximum number of two days per week, ~~except as unless specified otherwise~~ herein. Users are encouraged to apply no more than 3/4-inch to 1-inch of water per week on their lawns and landscapes and only as needed to supplement rainfall. However, provisions have been made in this Chapter to allow landscape irrigation up to three days per week in designated counties to address utility operational, health, and safety and landscape concerns.

(2) through (3) No change.

(4) In concert with the establishment of the year round landscape irrigation conservation measures of this Chapter, the District commits to the following activities:

(a) Coordinate with stakeholders to develop and implement a water conservation partnership plan to further promote conservation and efficient use of water;

(b) On at least an annual basis, evaluate the implementation and effectiveness of the District's water conservation partnership plan; and,

(c) No later than five years from the effective date of this Chapter, District staff shall provide the Governing Board with recommendations based on a comprehensive evaluation of this Chapter and its implementation. The Governing Board may revise this Chapter at any time, as it deems appropriate.

Rulemaking Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.042, 373.0421, 373.171, 373.219, 373.223, 373.227 FS. History–New 6-12-03, Amended _____.

40E-24.101 Definitions.

When used in this chapter:

(1) through (4) No change.

(5) “Existing landscaping” means any landscaping which has been ~~which has been~~ planted and in the ground for more than ninety (90) sixty (60) days.

(6) through (10) No change.

(11) “New landscaping” means any landscaping which has been planted and in the ground for ninety (90) sixty (60) days or less.

(12) through (13) No change.

~~(14) “Supplemented reclaimed water” and “blended reclaimed water” means reclaimed water which has been commingled with other sources of water, such as potable water, groundwater, surface water, and water treatment process by-product by a public or private utility.~~

(14)(15) “User” means any person, individual, firm, association, organization, partnership, business trust, corporation, company, agent, employee or other legal entity whether natural or artificial, the United States of America, and the State and all political subdivisions, regions, districts, municipalities, and public agencies thereof, which directly or indirectly takes water from the water resource, including uses from private or public utility systems, uses under water use permits issued pursuant to Chapter 40E-2 or 40E-20, F.A.C., or uses from individual wells or pumps.

(15)(16) “Wasteful and unnecessary” means allowing water to be dispersed without any practical purpose to the water use; for example, excessive landscape irrigation, leaving an unattended hose on a driveway with water flowing, allowing water to be dispersed in a grossly inefficient manner, regardless of the type of water use; for example, allowing landscape irrigation water to unnecessarily fall onto pavement, sidewalks and other impervious surfaces; allowing water flow through a broken or malfunctioning water delivery or landscape irrigation system.

Rulemaking Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.042, 373.0421, 373.171, 373.219, 373.223, 373.227 FS. History–New 6-12-03, Amended _____.

40E-24.201 Year-Round Landscape Irrigation Conservation Measures.

(1) The year-round landscape irrigation conservation measures contained in this chapter are applicable to all users as defined in Subsection 40E-24.101(14)(16), F.A.C., including permitted ~~and exempt~~ users under Chapters 40E-2 and 40E-20, F.A.C., unless indicated otherwise herein. These conservation measures apply to all water sources, except that the use of reclaimed water, which may or may not be supplemented from another source, is allowed anytime landscape irrigation accomplished using reclaimed water and/or supplemented reclaimed water is subject to only paragraphs (5)(a), (1) and (5)(b), (1) of this section. In addition to the requirements of this section, all permitted users under Chapters 40E-2 and 40E-20, F.A.C., are required to maintain compliance with all CUP conditions and terms, including those designed to require the implementation of water conservation practices.

(2) through (3) No change.

(4) In addition to the specific conservation measures enumerated below, all wasteful and unnecessary water use as defined in Subsection 40E-24.101(15)(10), F.A.C., is prohibited.

(5) The following requirements or exceptions shall apply to all users unless specified otherwise herein:

~~(a) Landscape irrigation shall be prohibited daily between the hours of 10:00 a.m. and 4:00 p.m., except as otherwise provided herein.~~

~~2. Even addresses, installations with irrigation systems that irrigation both even and odd addresses within the same zones, including multi-family units and homeowners' associations, and right of way or other locations with no address as defined in Rule subsection 40E-24.101(4), F.A.C., may accomplish necessary landscape irrigation only on Thursday and/or Sunday.~~

~~3. Odd addresses as defined in subsection 40E-24.101(13), F.A.C., and right of way or other locations without an address may accomplish necessary landscape irrigation only on Wednesday and/or Saturday.~~

(b) Irrigation of new landscaping shall comply with the following provisions:

~~1. Irrigation of new landscaping shall be prohibited daily between the hours of 10:00 a.m. and 4:00 p.m., except as otherwise provided herein.~~

1.2. On the day the new landscaping is installed, the new landscaping may be irrigated once without regard to the normally allowable watering days and times. Irrigation of the soil immediately prior to the installation of the new landscaping is also allowable without regard to the normal allowable watering days and times.

~~2.3-~~ The ninety (90) ~~sixty (60)~~ day period begins the day the new landscaping is installed. The new landscaping shall be installed within a reasonable time from the date of purchase, which may be demonstrated with a dated receipt or invoice.

~~3.4-~~ Irrigation of new landscaping which has been in place for thirty (30) days or less may be accomplished on Monday, Tuesday, Wednesday, Thursday, Saturday, and/or Sunday.

~~4.5-~~ Irrigation of new landscaping which has been in place for thirty-one (31) to ninety (90) ~~sixty (60)~~ days may be accomplished on Monday, Wednesday, Thursday, and/or Saturday.

~~5.6-~~ Irrigation of the new landscaping is limited to areas containing the new landscaping only. An entire zone of an irrigation system shall only be utilized for landscape irrigation under this paragraph if the zone in question is for an area that contains at least 50% new landscaping. If a zone contains less than 50% new landscaping, or if the new landscaping is in an area that will not typically be irrigated by an irrigation system, only the individual new plantings are eligible for additional irrigation under this paragraph. Targeted watering may be accomplished by low volume hand watering, or any appropriate method which isolates and waters only the new landscaping.

(c) No change.

(d) Landscape irrigation for the purpose of watering-in fertilizers, insecticides, pesticides, fungicides and herbicides, where such watering-in is recommended by the manufacturer, or by federal, state or local law, or best management practices, shall be allowed under the following conditions:

1. No change.

2. Such watering-in shall be accomplished during normally allowable watering days and times set forth in paragraphs (5)(a), ~~(6) and (7) and (5)(b)~~ unless a professional licensed applicator has posted a temporary sign containing the date of application and the date(s) of needed watering-in activity.

(e) Any plant material may be watered using low volume irrigation, micro-irrigation, low-volume hand watering methods, and rain barrels, cisterns, or other similar rain-harvesting devices without regard to the watering days or times allowed pursuant to this section.

(6) Except as authorized in paragraph (7) below, irrigation of existing landscaping shall comply with the following provisions:

(a) Even addresses, installations with irrigation systems that irrigate both even and odd addresses within the same zones, such as multi-family units and homeowners' associations, and rights-of-way or other locations with no address as defined in subsection 40E-24.101(4), F.A.C., shall have the opportunity to accomplish necessary landscape irrigation only on Thursday and/or Sunday.

(b) Odd addresses as defined in subsection 40E-24.101(12), F.A.C., shall have the opportunity to accomplish necessary landscape irrigation only on Wednesday and/or Saturday.

(7) Users located in Broward, Collier, Glades, Hendry, Lee, Martin, Miami-Dade, Monroe, Palm Beach, and St. Lucie counties shall irrigate existing landscaping in accordance with the provisions set forth in paragraph (6) above, or as provided below.

(a) Even addresses, installations with irrigation systems that irrigate both even and odd addresses within the same zones, such as multi-family units and homeowners' associations, and rights-of-way or other locations with no address as defined in subsection 40E-24.101(4), F.A.C., shall have the opportunity to accomplish necessary landscape irrigation only on Tuesday and/or Thursday and/or Sunday.

(b) Odd addresses as defined in subsection 40E-24.101(12), F.A.C., shall have the opportunity to accomplish necessary landscape irrigation only on Monday and/or Wednesday and/or Saturday.

Rulemaking Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.042, 373.0421, 373.171, 373.219, 373.223, 373.227 FS. History—New 6-12-03, Amended _____.

40E-24.301 Local Government Option.

(1) Local governments that wish to enforce alternative landscape irrigation conservation measures, shall be considered to be in substantial compliance with this rule upon the enactment of an ordinance establishing landscape irrigation conservation measures which achieve water conservation and which allow no more cumulative days and time for landscape irrigation than subsections 40E-24.201(5)-(7), F.A.C. Such ordinance shall provide for variance and enforcement procedures which do not diminish the ~~intent and~~ effectiveness of the measures ~~and which do not conflict with the District's authority under Chapter 373, F.S., and District rules.~~

(2) No change.

(3) Local governments with a jurisdiction divided between the South Florida Water Management District and another water management district may enact an ordinance providing for alternative ~~propose an alternative schedule~~ of landscape irrigation conservation measures as necessary for the local government to achieve a uniform schedule within its jurisdiction.

(4) At least thirty (30) days prior to the adoption of an ordinance for alternative landscape irrigation conservation measures, the local government shall submit the proposed ordinance to the District ~~to review for consistency with Chapter 373, F.S., and District rules and approval. The ordinance must be adopted as approved by the District.~~

(5) In order to evaluate the effectiveness of the approved alternative landscape irrigation conservation measures, such local governments shall provide an annual report to the District

which includes any variances granted or denied, enforcement actions taken and any measures proposed to be amended in the next reporting period. Each annual report shall be submitted to the District no later than September 20th of each year following the adoption of this Chapter.

(6) Users within the jurisdiction or customers of such local governments shall comply with the alternative landscape irrigation conservation measures contained within the ordinance implementing that program and are not subject to the measures contained in subsections 40E-24.201(5)-(7), F.A.C.

Rulemaking Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.042, 373.0421, 373.171, 373.219, 373.223, 373.227, 373.609 FS. History–New 6-12-03, Amended _____.

40E-24.401 Enforcement.

(1) No change.

(2) A local government ~~is strongly encouraged to may~~ enforce Rule 40E-24.201, F.A.C., within its jurisdiction by adopting an ordinance ~~that incorporates incorporating~~ the provisions set forth in Rule 40E-24.201, F.A.C. specified herein. At least thirty (30) days prior to the adoption of an ordinance to enforce Rule 40E-24.201, F.A.C., the local government shall submit the proposed ordinance to the District ~~to review for consistency with Chapter 373, F.S., and District rules and approval. The ordinance must be adopted as approved by the District.~~

(3) No change.

Rulemaking Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.119, 373.171, 373.175(4), 373.219, 373.227, 373.246(7), 373.603, 373.609 FS. History–New 6-12-03, Amended _____.

40E-24.501 Variances and Waivers.

(1) Users may request relief from the provisions of this Chapter by filing a petition for variance or waiver pursuant to Section 120.542, ~~F.S. Florida Statutes~~, and Rule 28-104, F.A.C. Examples of circumstances, which, subject to the above-referenced statute and rule and the provisions below, may be candidates for the issuance of a variance, include but are not limited to:

(a) through (b) No change.

(c) ~~User maintains an irrigation system that uses soil moisture sensors with remote monitoring and adjustment capabilities that satisfies the requirements set forth in Section 373.62(7), F.S. A property utilizing modern, properly~~

~~maintained and highly efficient irrigation technologies, including but not limited to soil moisture sensors and weather/evapotranspiration-based irrigation controllers.~~

(2) No change.

(3) Where a local government has adopted an ordinance incorporating the provisions set forth in Rule 40E-24.201, F.A.C., or alternative landscape irrigation measures pursuant to Rule 40E-24.301, F.A.C., the local government may grant a variance from the specific day or days for landscape irrigation identified in the ordinance, or the specific day or days for landscape irrigation identified in the ordinance adopting the alternative landscape irrigation measures, provided that the applicant demonstrates with particularity that compliance with the schedule of days for landscape irrigation will result in a substantial hardship on the applicant requesting the variance or those served by the applicant. If granted, the applicant shall be required to post a notice at each parcel to which the variance pertains users requiring relief from such landscape irrigation conservation measures must petition that local government for relief.

Rulemaking Authority 120.542, 373.044, 373.113, 373.171, 373.62 FS. Law Implemented 120.542, 373.119, 373.171, 373.175(4), 373.219, 373.227, 373.246(7), 373.603, 373.609, 373.62 FS. History–New _____.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Professional Engineers

RULE NO.: 61G15-19.004
 RULE TITLE: Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 35, No. 13, April 3, 2009 issue of the Florida Administrative Weekly.

61G15-19.004 Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances.

(1) No change.

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

VIOLATION	PENALTY RANGE	
	FIRST VIOLATION	SECOND AND SUBSEQUENT VIOLATIONS

(a) Violating any provision of Section 455.227(1), 471.025 or 471.031, F.S., or any other provision of Chapter 471, F.S., or rule of the Board or Department (Sections 471.033(1)(a) and 455.227(1)(b), (q), F.S)	<u>Reprimand and \$1,000 fine, to One (1) year suspension, two (2) years probation and \$5,000 fine</u>	<u>One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation</u>
1. Failure to sign, seal or date documents (Section 471.025(1), F.S.)	<u>Reprimand to one (1) year probation</u>	<u>Reprimand and one (1) year probation to Revocation</u>
2. Sealing any document after license has expired or been revoked or suspended, or failure to surrender seal if the license has been revoked or suspended (Section 471.025(2), F.S.)	<u>Suspended license: Revocation and \$1,000 fine</u> <u>Revoked license: Referral to State's Attorney's office</u>	<u>Suspended license: Revocation and \$5,000 fine</u> <u>Revoked license: Referral to State's Attorney's office</u>
3. Signing or sealing any document that depicts work the licensee is not licensed to perform or which is beyond his or her profession or specialty therein or practicing or offering to practice beyond the scope permitted by law or accepting and performing responsibilities the licensee is not competent to perform (Sections 471.025(3), 455.227(1)(o), F.S., paragraphs 61G15-19.001(6)(c), (d), F.A.C.)	<u>Reprimand, one (1) year probation and \$1,000 fine; to \$5,000 fine, one (1) year suspension and two (2) years probation</u>	<u>Reprimand, \$5,000 fine, one (1) year suspension and two (2) years probation to Revocation</u>
4. Firm practicing without certificate of authorization (Section 471.023, F.S. and subsection 61G15-19.001(3), F.A.C.)	<u>Reprimand, \$1,000 fine to one (1) year suspension and \$5,000 fine</u>	<u>Reprimand, one (1) year suspension and \$5,000 fine to Revocation</u>
5. Failure to complete continuing education (Section 471.017(3), F.S. and Rule 61G15-22.001, F.A.C.)	<u>Reprimand and \$1,000 fine, to Suspend until licensee demonstrates compliance</u>	<u>Suspend until licensee demonstrates compliance to Revocation</u>
6. Practicing engineering without a license or using a name or title tending to indicate that such person holds an active license as an engineer (Sections 471.031(1)(a), (b), F.S.)	<u>\$1,000 fine to \$5,000 fine</u>	<u>\$5,000 fine to \$10,000 fine to referral to State Attorney's Office</u>
7. Presenting as his or her own the license of another (Section 471.031(1)(c), F.S.)	<u>\$1000 fine to \$5,000 fine</u>	<u>\$5,000 fine to \$10,000 fine and referral to State Attorney's Office</u>
8. Giving false or forged evidence to the Board or concealing information relative to violations of this chapter (Sections 471.031(1)(d), (g), F.S.)	<u>\$1,000 fine to \$5,000 fine and suspension</u>	<u>Reprimand and \$5,000 fine to Revocation</u>

<p>9. Employing unlicensed persons to practice engineering or aiding, assisting, procuring, employing unlicensed practice or practice contrary to Chapter 455 or 471, F.S. (Sections 471.031(1)(f) and 455.227(1)(j), F.S.)</p>	<p><u>\$1,000 fine and reprimand; to \$5,000 and suspension</u></p>	<p><u>Reprimand and \$5,000 fine to Revocation</u></p>
<p>10. Having been found liable for knowingly filing a false complaint against another licensee (Section 455.227(1)(g), F.S.)</p>	<p><u>\$1,000 fine and reprimand; to \$5,000 per count and suspension</u></p>	<p><u>Reprimand and \$5,000 fine to Revocation</u></p>
<p>11. Failing to report a person in violation of Chapter 455, Chapter 471, F.S., or the rules of the Board or the Department (Section 455.227(1)(i), F.S.)</p>	<p><u>Reprimand to \$5,000 and suspension for one (1) year</u></p>	<p><u>Reprimand and \$5,000 fine to Revocation</u></p>
<p>12. Failing to perform any statutory or legal obligation (Section 455.227(1)(k), F.S.)</p>	<p><u>Depending on the severity of the offense, from a Reprimand to Revocation</u></p>	<p><u>Depending on the severity of the offense, from a Reprimand to Revocation</u></p>
<p>13. Exercising influence on a client for financial gain (Section 455.227(1)(n), F.S.)</p>	<p><u>Reprimand to one (1) year suspension and \$5,000 fine</u></p>	<p><u>Reprimand and \$5,000 fine to Revocation</u></p>
<p>14. Improper delegation of professional responsibilities (Section 455.227(1)(p), F.S.)</p>	<p><u>\$1,000 fine and probation for one (1) year, to suspension</u></p>	<p><u>Reprimand and \$5,000 fine to Revocation</u></p>
<p>15. Improperly interfering with an investigation or inspection or disciplinary proceeding (Section 455.227(1)(r), F.S.)</p>	<p><u>\$1,000 fine and probation for one (1) year; to suspension</u></p>	<p><u>Reprimand and \$5,000 fine to Revocation</u></p>
<p>(b) Attempting to procure a license by bribery, fraudulent misrepresentation, or error of the Board or Department (Sections 471.033(1)(b) and 455.227(1)(h), F.S.)</p>	<p><u>One (1) years suspension and \$1,000 fine, to Revocation if licensed; if not licensed, denial of license and referral to State Attorney</u></p>	<p><u>Revocation and \$5,000 fine if licensed; if not licensed, denial of license and referral to State Attorney</u></p>
<p>(c) Having a license to practice engineering acted against or denied by another jurisdiction (Sections 471.033(1)(c) and 455.227(1)(f), F.S.)</p>	<p><u>Same penalty as imposed in other jurisdiction or as close as possible to penalties set forth in Florida Statutes</u></p>	<p><u>Same penalty as imposed in other jurisdiction or as close as possible to penalties set forth in Florida Statutes</u></p>
<p>(d)I. Being convicted or found guilty of, or entering a plea of nolo contendere to a crime which relates to the practice or ability to practice (Sections 471.033(1)(d) and 455.227(1)(c), F.S.)</p>	<p><u>Depending on the severity of the crime, from Reprimand \$1,000 fine, and one (1) year probation, to Revocation</u></p>	<p><u>Depending on the severity of the crime, from One (1) year suspension with 2 years probation to Revocation</u></p>

2. Conviction of crime related to building code inspection or plans examination (paragraph 61G15-19.001(7)(a), F.A.C.)	<u>Reprimand \$1,000 fine, and one (1) year probation.</u>	<u>One (1) year suspension with 2 years probation to Revocation</u>
(e) Knowingly making or filing a false report or record, failing to file a report or record required by law, impeding or obstructing such filing (Sections 471.033(1)(e), 455.227(1)(l), F.S. and paragraph 61G15-19.001(7)(c), F.A.C.)	<u>Reprimand and \$1,000 fine to one (1) year suspension, two (2) years probation.</u>	<u>One (1) year suspension, 2 years probation, and \$1,000 fine, to Revocation and \$5,000 fine</u>
(f) Fraudulent, false, deceptive or misleading advertising (Sections 471.033(1)(f), F.S. and subsection 61G15-19.001(2), F.A.C.)	<u>Reprimand to one (1) year probation and \$5,000 fine</u>	<u>One (1) year probation and \$5,000 fine to Revocation</u>
(g) Fraud, deceit, negligence, incompetence or misconduct (Sections 471.033(1)(g) and 455.227(1)(a), (m), F.S.)		
1. Fraud or deceit	<u>Reprimand, two (2) years probation and \$1,000 fine, to one (1) years suspension and \$5,000 fine.</u>	<u>One (1) year suspension and \$5,000 fine to Revocation</u>
2.a. Negligence (subsection 61G15-19.001(4), F.A.C.)	<u>Reprimand, two (2) years probation and \$1,000 fine, to \$5,000 fine, five (5) year suspension and ten (10) years probation</u>	<u>Two (2) years probation and \$1,000 fine, to \$5,000 fine and Revocation</u>
b. Negligence in procedural requirements (61G15-30.003(2), (3) and (5), F.A.C.; 61G15-30.005 and 61G15-30.006, F.A.C.)	<u>Reprimand to two (2) years probation and \$1,000 fine.</u>	<u>Two (2) years probation and \$1,000 fine, to \$5,000 fine and Revocation</u>
c. As a special inspector	<u>Reprimand, two (2) years probation and \$1,000 fine, to \$5,000 fine.</u>	<u>Two (2) years probation and \$1,000 fine, to \$5,000 fine and Revocation</u>
3. Incompetence (subsection 61G15-19.001(5), F.A.C.)	<u>Two (2) year probation to Suspension until ability to practice proved followed by two (2) year probation</u>	<u>Suspension until ability to practice proved followed by two (2) year probation, to Revocation</u>
4. Misconduct (subsection 61G15-19.001(6), F.A.C.)	<u>Reprimand and \$1,000 fine to one (1) year suspension</u>	<u>One (1) year suspension to Revocation and \$5,000 fine.</u>
a. Expressing an opinion publicly on an engineering subject without being informed as to the facts and being competent to form a sound opinion (paragraph 61G15-19.001(6)(a), F.A.C.)	<u>Reprimand and \$1,000 fine to one (1) year suspension</u>	<u>One (1) year suspension to Revocation and \$5,000 fine.</u>

b. Being untruthful, deceptive or misleading in any professional report, statement or testimony or omitting relevant and pertinent information from such report, statement or testimony when the result or such omission would or reasonably could lead to a fallacious conclusion (paragraph 61G15-19.001(6)(b), F.A.C.)	<u>Reprimand and \$1,000 fine to one (1) year suspension</u>	<u>One (1) year suspension to Revocation and \$5,000 fine.</u>
c. Offering directly or indirectly any bribe or commission or tendering any gift to obtain selection or preferment for engineering employment other than the payment of the usual commission for securing salaried positions through licensed employment agencies (paragraph 61G15-19.001(6)(e), F.A.C.)	<u>Reprimand, \$5,000 fine per count and suspension for five (5) years, to Revocation</u>	<u>Five (5) years suspension to Revocation</u>
d. Soliciting or accepting gratuities without client knowledge (paragraphs 61G15-19.001(6)(g), (h), F.A.C.)	<u>Reprimand, one (1) year probation and \$1,000 fine, to one (1) year suspension, two (2) years probation and \$5,000 fine</u>	<u>One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation</u>
e. Failure to preserve client's confidence (paragraph 61G15-19.001(6)(r), F.A.C.)	<u>Reprimand, one (1) year probation and \$1,000 fine, to one (1) year suspension, two (2) years probation (if pecuniary benefit accrues to engineer)</u>	<u>One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation</u>
f. Professional judgment overruled by unqualified person (paragraph 61G15-19.001(6)(i), F.A.C.)	<u>Reprimand, one (1) year probation and \$1,000 fine, to one (1) year suspension, two (2) years probation and \$5,000 fine</u>	<u>One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation</u>
g. Use of name/firm in fraudulent venture (paragraph 61G15-19.001(6)(k), F.A.C.)	<u>Reprimand, one (1) year probation and \$1,000 fine, to \$5,000 fine, one (1) year suspension and two (2) years probation</u>	<u>One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation</u>
h. Undisclosed conflict of interest (paragraphs 61G15-19.001(6)(f), (p), F.A.C.)	<u>Reprimand, \$1,000 fine and two (2) years probation, to Revocation and \$5,000 fine</u>	<u>One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation</u>
(h) Violating any provision of Chapter 455, F.S. (Sections 471.033(1)(h) and 455.227(1)(q), F.S.)	<u>Depending on the severity of the violation, Reprimand and \$1,000 fine per count, to \$5,000 fine and revocation</u>	<u>Depending on the severity of the violation, One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation</u>
(i) Practicing on a revoked, suspended, inactive or delinquent license (Sections 471.033(1)(i) and 471.031(1)(e), F.S.)		
1. Delinquent license	<u>Fine based on length of time in practice while inactive; \$100/month or \$1,000 maximum, renewal of license or cease practice</u>	

2. Inactive license	<u>Fine based on length of time in practice while inactive; \$100/month or \$1,000 maximum, renewal of license or cease practice</u>	
3. Suspended license	<u>Revocation and \$1,000 fine</u>	
4. Revoked license	<u>Referral to State Attorney</u>	<u>Referral to State Attorney</u>
(j) Affixing or permitting to be affixed his or her seal, name, or digital signature to any documents that were not prepared by him or her or under his or her responsible supervision, direction or control (Section 471.033(1)(j), F.S. and paragraphs 61G15-19.001(6)(j), (q), F.A.C.)	<u>Reprimand, one (1) year probation and \$1,000 fine, to \$5,000 fine, one (1) year suspension and two (2) years probation</u>	<u>One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation</u>
(k) Violating any order of the board or department (Sections 471.033(1)(k), 455.227(1)(q), F.S. and paragraph 61G15-19.001(6)(o), F.A.C.)	<u>Depending on the severity of the violation, from Suspension until compliant with the order of the Board and \$1,000 fine, to Revocation and \$5,000 fine</u>	<u>Depending on the severity of the violation, Suspension until compliant with the order of the Board and \$1,000 fine, to Revocation and \$5,000 fine</u>
(l) Aiding, assisting, procuring, employing unlicensed practice or practice contrary to Chapter 455 or 471, F.S. (Section 455.227(1)(j), F.S.)	<u>\$1,000 fine and probation for one (1) year, to \$5,000 fine and suspension</u>	<u>Reprimand and \$5,000 fine to Revocation</u>
<u>(m) Failing to report in writing a conviction or plea of nolo contendere, a crime in any jurisdiction (Section 455.227(1)(t), F.S.)</u>	<u>Reprimand to \$5,000 fine</u>	<u>Six (6) month suspension to \$5,000 fine and Revocation</u>

(3) No change.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE CHANGE AND A COPY OF THE RULE, IS: Carrie Flynn, Executive Director, Board of Professional Engineers, 2507 Callaway Road, Suite 200, Tallahassee, Florida 32301

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Florida Real Estate Appraisal Board

RULE NO.: 61J1-4.010
 RULE TITLE: Supervision and Training of Registered Trainee Appraisers

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 35, No. 17, May 1, 2009 issue of the Florida Administrative Weekly.

Although the Notice of Proposed Rulemaking stated that a Statement of Estimated Regulatory Costs (SERC) had been prepared and was available, the Notice did not summarize the SERC. The following is a Summary of the Statement of Estimated Regulatory Costs:

- The estimate of the number of individuals likely to be required to comply with this rule amendment is approximately 14,978, consisting of registered trainee appraisers, certified residential appraisers, and certified general appraisers.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Accountancy

RULE NO.: 61H1-19.008
 RULE TITLE: Committees

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 35, No. 31, August 7, 2009 issue of the Florida Administrative Weekly has been withdrawn.

• The type of individuals likely to be affected by the rule are individuals who are currently licensed as registered trainee appraisers and are applying to sit for the exam to become certified under federal criteria and those persons who are their designated supervisory appraisers.

• The department implementing the proposed rule will incur no additional costs because the department intends to enforce the proposed rule within its current workload with existing staff.

• There will be minimal costs to be incurred by individuals and entities, including local governmental entities required to comply with the requirements of the proposed rule.

• Only small business that employs registered trainee appraisers will be impacted. The determining factor to the overall costs to a small business would be the volume of approved reports completed by the trainee appraiser.

• There is no small county or small city that will be impacted by the proposed rule.

This correction does not affect the substance of the rule as it appeared in the Florida Administrative Weekly as outlined above.

THE PERSON TO BE CONTACTED REGARDING THE ABOVE CORRECTION IS: Thomas W. O’Bryant, Jr., Deputy Director, Division of Real Estate, 400 West Robinson Street, Hurston Building, North Tower, Suite N801, Orlando, Florida 32801

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE NO.: 64B16-26.350
RULE TITLE: Requirements for Pharmacy Technician Registration

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 35, No. 38, September 25, 2009 issue of the Florida Administrative Weekly.

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

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

(1) All applicants for registration must be made on form DH-MQA PH1183, “Pharmacy Technician Registration Application and Instructions” effective September 2009, which is incorporated by reference. Contact the Board of Pharmacy at 4052 Bald Cypress Way, Bin #C04, Tallahassee, FL 32399-3254, or (850)488-0595 to request an application or

download the application from the board’s website at <http://www.doh.state.fl.us/mqa/pharmacy>. The application must be accompanied with a non-refundable application fee and an initial registration fee set forth in Rules 64B16-26.1001 and 64B16-26.1002, F.A.C.

2. Subsection (2)(b) shall now read as follows:

(b) Worked as a registered pharmacy technician for a minimum of 1500 hours under the supervision of a pharmacist; or

3. Subsection (3) shall now read as follows:

(3) Applicants applying for registration after January 1, 2011 must submit proof of completion of a Board approved training course as outlined in Rule 64B16-26.351, F.A.C.

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

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE NO.: 64B16-26.351
RULE TITLE: Standards for Approval of Registered Pharmacy Technician Training Programs

NOTICE OF PUBLIC HEARING

The Board of Pharmacy announces a hearing regarding the above rule, as noticed in Vol. 35, No. 38, September 25, 2009 Florida Administrative Weekly.

DATE AND TIME: Tuesday, December 8, 2009, 10:00 a.m., or as soon thereafter as can be heard

PLACE: Hilton University of Florida Conference Center, 1714 S.W. 34th Street, Gainesville, Florida 32607

GENERAL SUBJECT MATTER TO BE CONSIDERED: A continuation from the November 16, 2009 rule hearing for Rule 64B16-26.351, F.A.C.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least five days before the workshop/meeting by contacting: Rebecca Poston, Executive Director, Board of Pharmacy, 4052 Bald Cypress Way, Bin #C04, Tallahassee, Florida 32399-3254. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE NO.: 64B16-26.1005
RULE TITLE: Retired License Election; Renewal; Fees

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 35, No. 35, September 4, 2009 issue of the Florida Administrative Weekly.

This correction is pursuant to a request made by the Joint Administrative Procedures Committee for a corrected Purpose and Effect and Summary. The corrections are as follows:

(1) The Purpose and Effect shall be corrected to read as follows:

PURPOSE AND EFFECT: The Board proposes the rule amendment to clarify the requirements for an inactive pharmacist applying for an active Florida licensure by endorsement.

(2) The Summary shall be corrected to read as follows:

SUMMARY: Requirements for an inactive pharmacist applying for an active Florida licensure by endorsement will be clarified.

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

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE NOS.:	RULE TITLES:
64B16-27.100	Display of Current License; Pharmacist and Intern Identification
64B16-27.1001	Practice of Pharmacy
64B16-27.300	Standards of Practice – Continuous Quality Improvement Program
64B16-27.430	Responsibilities of the Pharmacist
64B16-27.440	Policies and Procedures

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 35, No. 35, September 4, 2009 issue of the Florida Administrative Weekly.

The correction is as follows:

Due to the amendment of Section 3, Ch. 2008-216, Laws of Florida (465.014, Florida Statutes), the rules cannot become effective until January 1, 2010, and as such the above-referenced rules will become effective on January 1, 2010.

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

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE NO.:	RULE TITLE:
64B16-27.410	Pharmacy Technician 1:1 Ratio

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 35, No. 35, September 4, 2009 issue of the Florida Administrative Weekly.

This correction is pursuant to a request made by the Joint Administrative Procedures Committee for a corrected Purpose and Effect and Summary and effective date. The corrections are as follows:

(1) The Purpose and Effect shall be corrected to read as follows:

PURPOSE AND EFFECT: The Board proposes the rule amendment to provide instructions regarding the ratio for registered pharmacy technicians to pharmacists.

(2) The Summary shall be corrected to read as follows:

SUMMARY: Instructions for the ratio for registered pharmacy technicians to pharmacists will be provided.

(3) Due to the amendment of Section 3, Ch. 2008-216, Laws of Florida (Section 465.014, Florida Statutes), the rule cannot become effective until January 1, 2010, and as such the above-referenced rule will become effective on January 1, 2010.

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

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE NO.:	RULE TITLE:
64B16-27.797	Standards of Practice for Compounding Sterile Preparations (CSPs)

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 35, No. 38, September 25, 2009 issue of the Florida Administrative Weekly.

The correction is as follows:

The Rule Development publication date listed in the Notice of Proposed Rulemaking should read:

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN THE FAW: March 27, 2009

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

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE NOS.:	RULE TITLES:
64B16-28.141	Requirements for an Automated Pharmacy System in a Community Pharmacy
64B16-28.451	Pharmacy Common Database
64B16-28.605	Class II Institutional Pharmacies – Automated Distribution and Packaging
64B16-28.607	Automated Pharmacy System – Long-Term Care, Hospice or Prison
64B16-28.830	Special – Closed System Pharmacy
64B16-28.901	Nuclear Pharmacy – General Requirements

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 35, No. 35, September 4, 2009 issue of the Florida Administrative Weekly.

The correction is as follows:

Due to the amendment of Section 3, Ch. 2008-216, Laws of Florida (465.014, Florida Statutes), the rules cannot become effective until January 1, 2010, and as such the above-referenced rules will become effective on January 1, 2010.

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

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Family Safety and Preservation Program

RULE CHAPTER NO.:	RULE CHAPTER TITLE:
65C-20	Family Day Care Standards and Large Family Child Care Homes
RULE NOS.:	RULE TITLES:
65C-20.009	Staffing Requirements
65C-20.013	Large Family Child Care Homes

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 35, No. 20, May 22, 2009, issue of Florida Administrative Weekly.

These changes are being made to address changes requested during public hearings, written material received by the Child Care Program Office, technical changes and written comments received from the Joint Administrative Procedures Committee. The proposed rule changes will have no transactional cost impact on small employers as defined in Section 288.703, F.S. Pursuant to Section 120.54(3)(b)1., F.S., the department's prepared a statement of estimated regulatory costs.

65C-20.009 Staffing Requirements.

(1) through (4) No change.

(5)(a) through (c) No change.

~~(d) The operator's children under the age of 13 shall be included in the home's capacity. However, supervision of the operator's children shall be left to the discretion of the operator.~~

65C-20.013 Large Family Child Care Homes (LFCCH).

(1) through (4) No change.

(5) No change.

(a) No change.

1. No change.

2. "Begin training for child care personnel" refers to a candidate's commencement of at least one (1) of the child care training courses listed in paragraph 65C-20.0013(5)(c), F.A.C. Section 402.305(2)(d), F.S. This may be accomplished by classroom attendance in a department-approved training course, acquiring an educational exemption from a department-approved training course, beginning a department-approved online child care training course, or by receiving results from completion of a department-approved competency examination within the first 90 days of employment in the child care industry in any licensed Florida family day care home or large family child care home. The large family child care home is responsible for obtaining documentation from child care personnel.

3. through 13. No change.

(b) through (d) No change.

(6) through (10) No change.

Rulemaking Specific Authority 402.309, 402.3131 FS. Law Implemented 402.302, 402.302(13), 402.305, 402.309, 402.3131 FS. History–New 5-21-00, Amended 1-4-01, 7-13-03, 9-12-04, 4-12-07, 5-1-08, _____.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Mental Health Program

RULE NOS.:	RULE TITLES:
65E-20.002	Definitions
65E-20.014	Seclusion and Restraint for Emergency Behavior Management Purposes

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 35, No. 35, September 4, 2009 issue of the Florida Administrative Weekly.

November 16, 2009

Proposed Revisions to 65E-20 Forensic Client Services Act Regulation

65E-20.002 Definitions.

(1) No change.

(2) Advanced Registered Nurse Practitioner: as defined in Section 464.003(7), Florida Statutes.

(2) through (12) renumbered (3) through (13) No change.

(10) Restraint: ~~for behavior management purposes~~ is defined in Section 916.106(14)(a), Florida Statutes. A drug used as a restraint is defined in Section 916.106(14)(b), Florida Statutes. Physically holding a person during a procedure to forcibly administer psychotropic medication is a physical restraint. ~~It is the intent of the legislature to minimize and achieve an on-going reduction in the use of restraint.~~

(11) Seclusion: ~~for behavior management purposes~~ is defined in Section 916.106(16), Florida Statutes. ~~It is the intent of the legislature to minimize and achieve an on-going reduction in the use of seclusion.~~

(14) Walking Restraint: a type of restraint device that allows an individual limited mobility but still prevents harm to self or others. It is intended as a less restrictive form of restraint (also referred to as an “ambulatory” restraint).

Rulemaking Specific Authority 916.1093, 916.1093(2) FS. Law Implemented 916.106, 916.106(14), 916.106(16) FS. History--New 9-29-86, Amended 7-1-96, Formerly 10E-20.002, Amended _____.

Florida Administrative Code 65E-20 is amended by creating 65E-20.014:

65E-20.014 Seclusion and Restraint for Emergency Behavior Management Purposes.

(1) General Standards.

(a) through (b) No change.

(c) Seclusion or restraint shall be employed only in emergency situations when necessary to prevent an individual from seriously injuring self or others, and less restrictive techniques have been tried and failed, or it has been clinically determined that the danger is of such immediacy that less restrictive techniques cannot be safely applied.

(e) Seclusion or restraint shall be employed:

1. Only in emergency situations;

2. When necessary to prevent an individual from seriously injuring self or others; and

3. Less restrictive techniques have been tried and failed, or it has been clinically determined that the danger is such that less restrictive techniques cannot be safely applied.

(d) through (l) No change.

(m) Seclusion and restraint may not be used simultaneously for children less than 18 years of age. For adults age 18 and over ~~individuals over the age of 18~~, simultaneous seclusion and restraint is only permitted if the individual is continually monitored face-to-face by an assigned, trained staff member or if the individual is continually monitored by trained staff using both audio and video equipment. Staff providing this monitoring must be in close proximity to the individual.

(3) Prior to the Implementation of Seclusion or Restraint.

(a) Prior intervention shall include individualized therapeutic actions identified in a personal safety plan that address individual triggers leading to psychiatric crisis. Recommended form CF-MH 3124, Feb. 05, “Personal Safety Plan,” which is incorporated herein by reference, may be used for the purpose of guiding individualized techniques. Recommended form CF-MH 3124 may be accessed from the department’s website at “http://www.dcf.state.fl.us/mental health/laws.”

(7) Reporting.

(a) All civil and forensic state mental health treatment facilities serving individuals committed pursuant to Chapter 916, F.S., are required to report each seclusion and restraint event to the Department of Children and Families. This reporting shall be done electronically using the Department’s web-based application, either directly via the data input screens, or indirectly via the File Transfer Protocol batch process. The required reporting elements include: provider tax identification number; individual’s social security number and identification number; date and time the seclusion or restraint event was initiated; discipline of the individual ordering the seclusion or restraint; discipline of the individual implementing the seclusion or restraint; reason seclusion or restraint was initiated; type of restraint used; whether significant injuries were sustained by the individual; and date and time seclusion or restraint was terminated. Facilities shall report seclusion and restraint events to the Department on a monthly basis. Events that result in death or significant injury, either to a staff member or individual, shall be reported to the department’s web-based system as required by the department. The purpose of collecting protected health information, such as social security number, is to uniquely identify each person served for treatment, payment, and health care operation as authorized by the HIPAA privacy and security standards, as referenced in 45 CFR 164.506 in accordance with department operating procedures and must also be reported according to the department’s incident reporting procedure.

(b) All facilities that are subject to the Conditions of Participation for Hospitals, 42 Code of Federal Regulations, part 482, under the Centers for Medicare and Medicaid Services (CMS), must report to CMS any death that occurs in the following circumstances:

1. While an individual is restrained or secluded;

2. Within 24 hours after release from seclusion or restraint;

OR

3. Within one week after seclusion or restraint, where it is reasonable to assume that use of the seclusion or restraint contributed directly or indirectly to the individual’s death.

Each death described in (7)(b) shall be reported to CMS by telephone no later than the close of business the next business day following knowledge of the individuals’ death. A report shall simultaneously be submitted to the Director of Mental Health/Designee in the Mental Health Program Office

Headquarters in Tallahassee, FL. The address is: 1317 Winewood Blvd., Tallahassee, FL 32399-0700. Facilities that are not required to report these deaths to CMS shall report the death to the Director of Mental Health/Designee in the Mental Health Program Office Headquarters at the address above to the department in accordance with Departmental operating procedures.

Rulemaking Specific Authority 916.1093(2) FS. Law Implemented 916.105(4), 916.107(4)(b), 916.1093(2) FS. History--New _____.

DEPARTMENT OF FINANCIAL SERVICES

Division of Consumer Services

RULE NO.: RULE TITLE:

69J-123.002 Procedures

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 35, No. 39, October 2, 2009 issue of the Florida Administrative Weekly.

This notice is to correct the “name of agency head who approved the proposed rule” section to read as follows:

NAME OF PERSON ORIGINATING PROPOSED RULE:
Greg Thomas, Chief of Education, Advocacy & Research, Division of Consumer Services, Department of Financial Services

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 14, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 5, 2009

**Section IV
Emergency Rules**

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

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

DEPARTMENT OF CITRUS

RULE NO.: RULE TITLE:
20ER09-1 Oranges: 2009-2010 Anhydrous Acid Maturity Standards

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Section 120.54(4)(b), Florida Statutes, states that those rules pertaining to perishable agricultural commodities shall be included in the definition of rules relating to the public health, safety, or welfare.

Due to adverse climactic conditions through periods of this growing season significant amounts of the Florida navel citrus crop in the 2009-2010 season will have an acid content below the 0.4 minimum established in Section 601.19, Florida Statutes. Strict enforcement of the anhydrous acid content requirements, which were adopted largely to control abuse of plant growth regulators which are no longer in use, could cause economic waste by allowing good and safe food to be ruled immature.

After taking testimony and discussing the matter at a public meeting and hearing in Lakeland, Florida on November 10, 2009, the Florida Citrus Commission found that there exist unusual growing conditions which could cause a substantial portion of the orange crop to fail minimum acid requirements. They voted to adopt Emergency Rule 20ER09-1, adjusting the percentage of anhydrous citric acid requirement for oranges for fresh and processed use from .40 to .36, for a 90 day period.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: Adequate notice procedures were used by the Department of Citrus to inform the public and the Florida citrus industry of the pending adoption of Emergency Rule 20ER09-1 adjusting the percentage of anhydrous citric acid requirements for oranges, in that notice was made via email and/or fax of the meeting notice on November 9, 2009 to members of the Florida Citrus Commission, all industry organizations, the Florida Press Corps and other interested persons.

SUMMARY: Emergency Rule 20ER09-1 adjusts the percentage of anhydrous citric acid requirement for oranges from .40 to .36 for a period of 90 days.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Alice P. Wiggins, License & Regulation Specialist, Legal Department, Florida Department of Citrus, P. O. Box 148, Lakeland, Florida 33802-0148 or awiggins@citrus.state.fl.us

THE FULL TEXT OF THE EMERGENCY RULE IS:

20ER09-1 (20-13.0011) Oranges: ~~2009-2010~~ ~~2004-2005~~ Anhydrous Acid Maturity Standards.

(1) During the period beginning ~~November 12, 2009~~ ~~October 29, 2004~~ up to and including ~~February 10, 2010~~ ~~July 31, 2005~~ oranges shall be deemed mature when the juice sample contains not less than .36 percent of anhydrous citric acid.

(2) No change.

Rulemaking Specific Authority 601.10(1),(7), 601.11, 601.19 FS. Law Implemented 601.111, 601.19 FS. History--New 3-14-93, Amended 2-12-95, 1-17-96, 5-1-02, 2-19-03, 3-22-05, ~~11-12-09~~.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: November 12, 2009

DEPARTMENT OF THE LOTTERY

RULE NO.: 53ER09-62
RULE TITLE: Holiday MILLIONAIRE RAFFLE™

SUMMARY: This emergency rule describes the on-line game "Holiday MILLIONAIRE RAFFLE," for which the Department of the Lottery will sell tickets beginning November 13, 2009.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Faith L. Schneider, Legal Analyst, Department of the Lottery, Capitol Complex, Tallahassee, Florida 32399-4011

THE FULL TEXT OF THE EMERGENCY RULE IS:

53ER09-62 Holiday MILLIONAIRE RAFFLE™.

(1) How to Play Holiday MILLIONAIRE RAFFLE™.

(a) Holiday MILLIONAIRE RAFFLE is an on-line number match game.

(b) Each Holiday MILLIONAIRE RAFFLE ticket costs \$20.

(c) Holiday MILLIONAIRE RAFFLE tickets will go on sale on Friday, November 13, 2009. Sales of Holiday MILLIONAIRE RAFFLE tickets will cease immediately after the 1,000,000th ticket is sold or at midnight on December 30, 2009, whichever occurs first.

(d) Each Holiday MILLIONAIRE RAFFLE ticket will contain a unique ticket number that will be entered automatically into the Holiday MILLIONAIRE RAFFLE drawing. Holiday MILLIONAIRE RAFFLE tickets will automatically print from the terminal with ticket numbers issued in sequential order from 0000001 to 1000000 as they are sold around the state. Each Holiday MILLIONAIRE RAFFLE ticket will contain only one ticket number. Players cannot select their own ticket numbers.

(e) The overall odds of winning a prize in the Holiday MILLIONAIRE RAFFLE game depend upon the number of tickets sold and are 1 in 492 if all 1,000,000 tickets are sold.

(f) Holiday MILLIONAIRE RAFFLE tickets cannot be cancelled.

(2) Holiday MILLIONAIRE RAFFLE Drawing and Prizes.

(a) A random computerized drawing from among all Holiday MILLIONAIRE RAFFLE ticket numbers issued during the sales period will be held on December 31, 2009 to select 2,034 numbers. Prizes will be awarded in the order drawn. The first through ninth numbers drawn will win \$1 million cash. The 10th through 19th numbers drawn will win \$50,000 and will be alternates in the order drawn for a \$1 million prize in the event a top prize is not claimed within the 180-day claim period. The 20th through 34th numbers drawn will each win \$5,000 and the 35th through 2,034th numbers drawn will each win \$250.

(b) The Holiday MILLIONAIRE RAFFLE drawing shall be public and witnessed by an accountant employed by an independent certified public accounting firm, as required by paragraph 24.105(2)(d), F.S.

(c) The results of the drawing will be revealed on December 31, 2009, and will be available after the drawing on the Lottery's website at www.flalottery.com. The winning numbers in the top prize category will also be available by phone at (850)921-PLAY (529), [TDD (850)487-7784], and the winning numbers in the top three prize categories will be available at lottery retailers.

(3) How to Claim a Holiday MILLIONAIRE RAFFLE Prize.

(a) Holiday MILLIONAIRE RAFFLE prizes must be claimed by submitting the winning ticket for validation at a Lottery office or retailer within 180 days from the date of the drawing (June 29, 2010) and, if the prize is not paid at that time, by submitting the winning ticket for payment at a Florida Lottery office as required by the Lottery's rule governing payment of prizes. Tickets winning \$1 million must be submitted for payment at Lottery Headquarters. Failure of a prizewinner to claim a Holiday MILLIONAIRE RAFFLE prize by submitting the winning ticket for validation and payment in accordance with the Lottery's rule governing payment of prizes shall result in forfeiture of the prize. Information about procedures for filing a claim can be obtained by calling (850)487-7777 [TDD (850)487-7784]. Holiday MILLIONAIRE RAFFLE tickets are the only valid receipts to redeem a prize.

(b) A claim filed for a \$50,000 prize shall also be a contingent claim for a \$1 million prize. If a winning Holiday MILLIONAIRE RAFFLE ticket bearing any of the first nine winning numbers is not submitted for validation and payment in accordance with the Lottery's rule governing payment of prizes, the 10th through 19th prizewinners who have submitted their tickets for validation and payment in accordance with the Lottery's rule governing payment of prizes constitute contingent winners for the \$1 million prize and will be used in the order in which they were drawn to select a winner for the \$1 million top prize. The contingent winner will be awarded the cash difference between the \$50,000 prize and the \$1 million prize.

If applicable, the Lottery will attempt to notify, for a period of two weeks, the first contingent winner drawn in the \$50,000 prize category. If the Lottery is unable to contact the first contingent winner, the Lottery will attempt to notify, for a period of two weeks, the second contingent winner drawn. This process will continue until a contingent winner is contacted or the Lottery has exhausted the list of available contingent winners, in which case the \$1 million prize will not be awarded.

(c) Payment of federal, state and/or local taxes will be the responsibility of the winner. Federal withholding taxes will be deducted from the \$1 million and \$50,000 prizes.

(4) General Information.

(a) Players must be at least 18 years of age. Persons prohibited by Section 24.116, F.S., from purchasing a Florida Lottery ticket are not eligible to play.

(b) All *Holiday* MILLIONAIRE RAFFLE prizes are subject to the provisions of Chapter 24, F.S., and rules promulgated thereunder. Prizes will be paid in accordance with the rule of the Florida Lottery governing payment of prizes.

A copy of the current rule can be obtained from the Florida Lottery, Office of the General Counsel, 250 Marriott Drive, Tallahassee, Florida 32399-4011.

Rulemaking Authority 24.105(9), 24.109(1) FS. Law Implemented 24.105(9), 24.115(1) FS. History—New 11-9-09.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: November 9, 2009

DEPARTMENT OF THE LOTTERY

RULE NO.: RULE TITLE:
53ER09-63 *Holiday* MILLIONAIRE RAFFLE™
Retailer Incentive Program

SUMMARY: The Department of the Lottery will conduct a “Holiday Millionaire Raffle Retailer Incentive” program, in which certain retailers will receive bonus commissions during the promotion period.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Faith L. Schneider, Legal Analyst, Department of the Lottery, 250 Marriott Drive, Tallahassee, Florida 32399-4011

THE FULL TEXT OF THE EMERGENCY RULE IS:

53ER09-63 *Holiday* MILLIONAIRE RAFFLE™ Retailer Incentive Program.

(1) *Holiday* MILLIONAIRE RAFFLE™ is an on-line number match game. *Holiday* MILLIONAIRE RAFFLE tickets will go on sale Friday, November 13, 2009. Sales of *Holiday* MILLIONAIRE RAFFLE tickets will cease immediately after the 1,000,000th ticket is sold or at midnight on December 30, 2009, whichever occurs first.

(2) Each *Holiday* MILLIONAIRE RAFFLE ticket will contain a unique ticket number that will be entered automatically into the *Holiday* MILLIONAIRE RAFFLE drawing. A random computerized drawing from among all *Holiday* MILLIONAIRE RAFFLE ticket numbers issued during the sales period will be held on December 31, 2009. A

total of 2,034 prizes will be awarded. Prizes will be awarded in the order drawn. The first through ninth numbers drawn will win \$1 million cash. The 10th through 19th numbers drawn will win \$50,000 and will be alternates in the order drawn for a \$1 million prize. The 20th through 34th numbers drawn will win \$5,000 and the 35th through 2,034th numbers drawn will win \$250.

(3) A retailer who sells a winning \$1 million *Holiday* MILLIONAIRE RAFFLE ticket will receive a bonus commission of \$5,000 in addition to the regular five percent sales commission set forth in Rule 53ER05-14, F.A.C.

(4) Award of a bonus commission is not dependent upon the winning *Holiday* MILLIONAIRE RAFFLE ticket being claimed by the winner. Retailers who sell winning \$50,000 *Holiday* MILLIONAIRE RAFFLE tickets that subsequently become alternate winners of a \$1 million prize will not be eligible for a bonus commission.

(5) Retailers whose Florida Lottery contracts are terminated or inactivated prior to the bonus commission award shall be paid the bonus commission provided the termination or inactivation was not due to non-compliance with Florida Lottery laws, rules or contract terms.

(6) A bonus commission will be considered compensation to the retailer for Internal Revenue Service purposes. The Florida Lottery reserves the right to apply the bonus commission earned against a retailer’s outstanding debt to the Florida Lottery.

(7) This emergency rule is effective upon filing. *Holiday* MILLIONAIRE RAFFLE bonus sales commissions are subject to availability of funds appropriated for retailer incentives. This Promotion is subject to cancellation by future emergency rule if retailer incentive funding is not appropriated or if the Florida Lottery determines that it is no longer in the state’s best interest to use such funds for this purpose.

Rulemaking Authority 24.105(9), 24.109(1), 24.112(1) FS. Law Implemented 24.105(9), 24.112(1) FS. History—New 11-9-09.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: November 9, 2009

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Agency for Persons with Disabilities

RULE NOS.:	RULE TITLES:
65GER09-2	Tier Waivers
65GER09-3	Tier One Waiver
65GER09-4	Tier Two Waiver
65GER09-5	Tier Three Waiver
65GER09-6	Tier Four Waiver

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: 1) The First District Court of Appeal found the Agency’s Rules 65G-4.0021, 0022, 0023, 0024, and 0025, F.A.C. invalid in *Moreland v APD*, 34 FLA L. Weekly D1715 (1st DCA, August 21, 2009) Reh.Den. October 8, 2009.

2) The Agency provides essential medical, adaptive and behavioral services through a Home and Community Based (HCBS) Medicaid waiver program to 31,000 individuals with developmental disabilities.

3) All 31,000 individuals served by the Agency meet a level of need qualifying them for placement in an institution. The HCBS waiver provides these individuals an opportunity to remain at home or other non-institutional community settings.

4) In 2007, the Florida Legislature amended Section 393.0661, F.S., to create a four-tiered waiver system to deliver the medicaid waiver services provided through the HCBS waiver by this Agency.

5) Paragraph 393.0661(3)(e), F.S., directed the Agency and the Agency for Health Care Administration (ACHA), the State Medicaid Administrator, to implement the four-tiered system and provided authority to adopt any rules necessary to administer the four-tiered waiver system.

6) Paragraph 393.0661(3)(e), F.S., also directed AHCA to seek federal waivers consistent with the four-tiered waiver system.

7) The federal waivers consistent with the four-tiered system of 393.0661 were approved by the Centers for Medicare and Medicaid Services. The waivers serve as the Agency’s authority to provide HCBS waiver services to individuals with developmental disabilities.

8) The population APD serves through its Home and Community Based Services Waivers (referred to as “HCBS”) program includes some of Florida’s most vulnerable citizens. The service needs of these individuals change over time, often increasing, and the service need can change rapidly.

The emergency rules adopted today by APD are of critical need for the preservation of the health, safety, and welfare of this vulnerable population because, without them, APD lacks the capability and legal authority to adequately respond to changes in service needs and, as a result, APD is unable to provide certain services that have been established to be medically necessary, and that would otherwise be available through the HCBS Waiver.

As mandated by Section 393.0661(3), F.S., the majority of the individuals served by the waiver program have been assigned to tiers. Three of the tiers have spending limitations. Although APD’s tier rules were invalidated by the First DCA in *Moreland*, the statutory tier system remains in place. Thus, APD has no rules for the day-to-day operations that are affected by the tier system. APD uses an emergency protocol for delivery of services, but this protocol cannot be used until an emergency for the client exists. Thus, APD cannot act until a client’s health, safety or welfare is in jeopardy. It is the waiting until a client is in an emergency situation to deliver essential services that creates a danger to the health, safety and welfare of the vulnerable clients served by APD.

This is a significant problem. To access additional waiver services, an APD client must apply for Prior Service Authorization which determines that (1) the service is medically necessary and (2) the cost of the service is within the client’s budget allocated within the tier system. If the service cannot be added within the budget of the client’s present tier assignment, that client’s tier assignment must be reevaluated to determine whether that service can be added within the parameters of the tier system.

There are more than 1,000 HCBS Waiver clients who have requested Prior Service Authorizations for new or additional services, which cannot be provided without reevaluating their tier assignment. Many of these services have been determined to be medically necessary. However, due to the absence of tier assignment rules in place, APD cannot consider whether to approve any of these services until the lack of their provision develops into an emergency situation, triggering APD’s emergency 30-day protocol. Further, if the emergency protocol is triggered, a client cannot retain those services if no emergency situation continues to exist at the end of the 30-days. APD will then have to wait for a new crisis or emergency situation to develop before those services can again be provided.

In sum, absent tier rules, these clients cannot get medically necessary services implemented. Those services are not available through the tier system unless and until the lack of provision of these services develops into a crisis requiring the agency to respond on an emergency basis. This means that individuals’ needs are not met and this creates a significant and immediate danger to their health and safety. The individuals whose needs are not served will have deterioration in their health and safety. Further, the inability of APD to respond to changes in circumstances poses an immediate danger to the welfare of every member of the population subject to expenditure or service limitations. Thus, APD’s present inability to make changes to a client’s services results in clients not receiving medically necessary services that would otherwise be available through the HCBS Waiver program and

has therefore created a significant and immediate danger to the health, safety, and welfare of this vulnerable population that will continue until rules are in place.

As a specific example, one client served by the waiver recently lost his provision of personal care assistance (“PCA”), which had been provided to him through the state Medicaid program, as a result of his attaining the age of 21. He requires this service because he is totally disabled and is unable to bathe, toilet, or feed himself. Because the client was living at home and receiving PCA services through the state Medicaid plan, he was assigned to Tier 4. Because of the service limitations in Tier 4, this individual can no longer receive his necessary PCA services. Without tier rules in place, APD is without a framework to reevaluate the appropriate tier assignment for this individual in response to his change of circumstances. Thus, although he now has a life-long need for service, APD only has rules in place that authorize this service to the extent that it can be approved on a thirty-day emergency basis.

Similarly, another young individual became extremely physically aggressive at home. As a result, he cannot return home. Intensive behavior residential habilitation was recommended as the appropriate housing to address his behavior needs. This individual is currently assigned to Tier 3. Because of the spending limitation of Tier 3, he cannot receive the needed intensive behavioral residential habilitation. Without tier rules in place, he is only able to receive his necessary housing to the extent it can be approved on a thirty-day emergency basis.

Another specific example is an individual who recently had surgery. Her recovery for surgery is taking longer than expected. She cannot leave her home. She needs additional personal care assistance for this recovery period. Her health and safety are compromised without this additional service. However, her current tier assignment cannot accommodate this additional need. Without a tier rule in place, she can only get this additional service to the extent it can be approved on a thirty-day emergency basis.

The inability to approve medically necessary services in the regular course of APD’s operations threatens the health, safety and welfare of every one of the more than 20,000 individuals receiving services through the HCBS Waiver who have been assigned to tiers with spending limitations, as required by Section 393.0661(3), F.S. As explained above, individuals within this vulnerable population experience changing needs, and the absence of tier rules in place leaves APD helpless to respond to those changes unless and until changes in circumstances attain emergency status. APD’s inability to respond to changing circumstances for many members of this population endangers the health, welfare, and safety of every member of the population subject to limitations resulting from APD’s implementation of Section 393.0661(3), F.S.

There is a danger to the public welfare related to the appropriations for the operation of the HCBS Waiver services. APD was charged by state law with the duty to implement the Medicaid Waiver agreement between the state and CMS on behalf of the federal government. APD was directed by the Legislature to “mak[e] any other adjustment necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act.” Section 393.0661(7), F.S. Without tier rules the Agency cannot perform its statutory duties and its inability to act on any basis other than an emergency endangers the public welfare as described above.

9) Without administrative rules to operate the four-tiered waiver system, the State of Florida may have to provide institutional beds for thousands of individuals. This possibility contravenes the Legislative intent of Chapter 393, F.S.:

Section 393.62, F.S., Legislative findings and declaration of intent. – The Legislature finds and declares that existing state programs for the treatment of individuals with developmental disabilities, which often unnecessarily place clients in institutions, are unreasonably costly, are ineffective in bringing the individual client to his or her maximum potential, and are in fact debilitating to many clients. A re-direction in state treatment programs for individuals with developmental disabilities is necessary if any significant amelioration of the problems faced by such individuals is ever to take place. Such redirection should place primary emphasis on programs that prevent or reduce the severity of developmental disabilities. Further, the greatest priority shall be given to the development and implementation of community-based services that will enable individuals with developmental disabilities to achieve their greatest potential for independent and productive living, enable them to live in their own homes or in residences located in their own communities, and permit them to be diverted or removed from unnecessary institutional placements. . .

For the reasons stated above, the Agency finds that an immediate danger to the public health, safety, and welfare exists and requires immediate action.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: 1. The emergency action by the Agency uses the rules previously adopted and amends only those portions of rule specifically addressed by the Moreland case.

2. The proposed rules take only the action necessary to ensure that necessary services remain in place to protect the vulnerable, individuals with developmental disabilities served by the Agency.

3. Specifically, the following changes to the originally promulgated rules, consistent with the Moreland, opinion are contained in the emergency rules: Rule 65G-4.0021, F.A.C., identifies the Agency assessment instruments; Rule 65G-4.0024, F.A.C., no longer references any age limits; and Rule 65G-4.0025, F.A.C., deletes reference to client age limits,

and no longer includes reference to clients who received services under the Family and Supported Living waiver prior to the implementation of the four-tiered waiver system, or clients who are dependent children residing in residential facilities licensed by DCF.

SUMMARY: These emergency rules replace recently invalidated rules. They are necessary for the administration and continued implementation of Subsection 393.0661(3), F.S., which created a four-tiered waiver system. These rules are essential for the public health, safety, and welfare because without rules in place, the delivery system of Medicaid services cannot provide medically necessary services to 31,000 affected individuals in the manner prescribed by statute.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULES IS: Celeste Sanders, Agency for Persons with Disabilities, 4030 Esplanade Way, Tallahassee, Florida 32399, (850)922-0371

THE FULL TEXT OF THE EMERGENCY RULES IS:

65GER09-2 Tier Waivers.

(1) The Agency for Persons with Disabilities will assign clients of home and community-based waiver services for persons with developmental disabilities to one of the four Tier Waivers created by Section 393.0661, F.S. (2007). The Agency will determine the Tier Waiver for which each client is eligible and assign the client to that waiver based on the developmental disabilities waiver criteria and limitations contained in the following provisions: Sections 409.906(13) and 393.0661, F.S.; and Rules 59G-13.080 and 59G-13.083, F.A.C., and the following:

(a) The client's level of need in functional, medical, and behavioral areas, as determined through Agency evaluation of client characteristics, the Agency approved assessment process, and support planning information;

(b) The client's service needs as determined through the Agency's prior service authorization process to be medically necessary;

(c) The client's current living setting; and

(d) The availability of supports and services from other sources, including Medicaid state plan and other federal, state and local programs as well as natural and community supports.

(2) As part of the assessment process, the Individual Cost Guidelines (ICG) and the Questionnaire for Situational Information 4.0 (QSI) are hereby adopted by the Agency as valid and reliable assessment instruments. The ICG and the QSI are available at: <http://apd.myflorida.com/waiver/qsi-version-4.pdf>, or <http://apd.myflorida.com/waiver/>. The ICG is only valid through December 31, 2009. The QSI is valid in all other instances.

(3) The services described by the Developmental Disabilities Waiver Services Coverage and Limitations Handbook, July 2007 (available at <http://portal.flmmis.com/>

FLPublic/Portals/0/StaticContent/Public/HANDBOOKS/CL_08_070701_Waiver_DevSev_ver1%203%20(2).pdf or <http://apd.myflorida.com/waiver/>) (hereinafter referred to as the "DD Handbook"), adopted by Rule 59G-13.083, F.A.C. and incorporated herein by reference, are available to clients of the Developmental Disabilities Waiver (hereinafter called "the Tier One Waiver"), the Developmental Disabilities Tier Two Waiver (hereinafter called "the Tier Two Waiver"), and Developmental Disabilities Tier Three Waiver (hereinafter called "the Tier Three Waiver"). The following services described in the DD Handbook are available to clients assigned to the Tier Four Waiver (presently known as The Family and Supported Living Waiver):

(a) Adult Day Training;

(b) Behavior Analysis;

(c) Behavior Assistance;

(d) Consumable Medical Supplies;

(e) Durable Medical Equipment;

(f) Environmental Accessibility Adaptations;

(g) In-Home Support Service;

(h) Personal Emergency Response System;

(i) Respite Care;

(j) Support Coordination;

(k) Supported Employment;

(l) Supported Living Coaching; and

(m) Transportation.

(4) For all Tiers client must utilize all available State Plan Medicaid services including, but not limited to, personal care assistance, therapies, and medical services, that duplicate the waiver services proposed for the client. A client shall not be provided waiver services that duplicate available State Plan Medicaid Services including, but not limited to, personal care assistance, therapies, and medical services.

(5) The Agency will review a client's tier eligibility when a client has a significant change in circumstance or condition that impacts on the client's health, safety, or welfare or when a change in the client's plan of care is required to avoid institutionalization. The information identifying and documenting a significant change in circumstance or condition that necessitates additional or different services must be submitted by the client's Waiver Support Coordinator to the appropriate Agency Area office for determination.

Rulemaking Authority 393.0661(3) FS. Law Implemented 393.0661(3) FS. History--New 11-16-09.

65GER09-3 Tier One Waiver.

(1) The Tier One Waiver is limited to clients that the Agency has determined meet at least one of the following criteria:

(a) The client's needs for medical or adaptive services cannot be met in Tiers Two, Three, and Four and are essential for avoiding institutionalization, or

(b) The client possesses behavioral problems that are exceptional in intensity, duration, or frequency with resulting service needs that cannot be met in Tiers Two, Three, and Four, and the client presents a substantial risk of harm to themselves or others.

(2) Clients living in a licensed residential facility receiving any of the following services shall be assigned to the Tier One Waiver:

(a) Intensive behavioral residential habilitation services;

(b) Behavior focus residential habilitation services at the moderate or above level of support; or

(c) Standard residential habilitation at the extensive 1, or higher, level of support; or

(d) Special medical home care.

(3) Nursing service needs that can be met through the Tier Two, Tier Three, or Tier Four Waivers are not "services" or "service needs" that support assignment to the Tier One Waiver.

Rulemaking Authority 393.0661(3) FS. Law Implemented 393.0661(3) FS. History--New 11-16-09.

65GER09-4 Tier Two Waiver.

The total budget in a cost plan year for each Tier Two Waiver client shall not exceed \$55,000. The Tier Two Waiver is limited to clients who meet the following criteria:

(1) The client's service needs include placement in a licensed residential facility and authorization for a moderate level of support for standard residential habilitation services or a minimal level of support for behavior focus residential habilitation services; or

(2) The client is in supported living and is authorized to receive more than six hours a day of in-home support services.

Rulemaking Authority 393.0661(3) FS. Law Implemented 393.0661(3) FS. History--New 11-16-09.

65GER09-5 Tier Three Waiver.

The total budget in a cost plan year for each Tier Three Waiver client shall not exceed \$35,000. A client must meet at least one of the following criteria for assignment to the Tier Three Waiver:

(1) The client resides in a residential facility licensed by the Agency and is not eligible for the Tier One Waiver or the Tier Two Waiver; or

(2) The client resides in their own home and is authorized by the Agency to receive In-Home Support Services and is not eligible for the Tier One Waiver or the Tier Two Waiver and the need for these services cannot be met in Tier Four; or

(3) The client is authorized by the Agency to receive Personal Care Assistance services at the moderate level of support as defined in the DD Handbook.

(4) The client is authorized by the Agency to receive Skilled or Private Duty Nursing Services and is not eligible for the Tier One Waiver or the Tier Two Waiver; or

(5) The client is authorized by the Agency to receive services of a behavior analyst and/or a behavior assistant and the need for these services cannot be met in Tier Four.

(6) The client is authorized by the Agency to receive at least one of the following services:

(a) Occupational Therapy; or

(b) Physical Therapy; or

(c) Speech Therapy; or

(d) Respiratory Therapy.

Rulemaking Authority 393.0661(3) FS. Law Implemented 393.0661(3) FS. History--New 11-16-09.

65GER09-6 Tier Four Waiver.

(1) The total budget in a cost plan year for each Tier Four Waiver client shall not exceed \$14,792 per year.

(2) Clients who are not eligible for assignment to the Tier One Waiver, the Tier Two Waiver, or the Tier Three Waiver, shall be assigned to the Tier Four Waiver.

Rulemaking Authority 393.0661(3) FS. Law Implemented 393.0661(3) FS. History--New 11-16-09.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: November 16, 2009

Section V Petitions and Dispositions Regarding Rule Variance or Waiver

DEPARTMENT OF TRANSPORTATION

NOTICE IS HEREBY GIVEN THAT on November 13, 2009, the Department of Transportation has issued an order.

Morris-Depew Associates, Inc., shall be deemed qualified to perform work for the Department in Work Type Group 15: Landscape Architecture based upon the extensive experience, education, and qualifications of Vice-President, James M. McCord.

A copy of the Order may be obtained by contacting: Deanna R. Hurt, Assistant General Counsel and Clerk of Agency Proceedings, Department of Transportation, Haydon Burns Building, 605 Suwannee Street, Mail Stop #58, Tallahassee, Florida 32399-0458.