

all specific claims that were presented in the conference. Any additional claims under the policy shall be presented as separate claims. However, the release shall not constitute a final waiver of rights of the insured with respect to claims for damages or expenses if circumstances that are reasonably unforeseen arise resulting in additional costs that would have been covered under the policy but for the release.

(13) If the insured decides not to participate in this claim resolution process or if the parties are unsuccessful at resolving the claim, the insured may choose to proceed under the appraisal process set forth in the insured's insurance policy, by litigation, or by any other dispute resolution procedure available under Florida law.

(14) If as a result of mediation it is determined that the only coverage applicable is provided under the National Flood Insurance Program, the administrative fee and mediator's fee paid by the insurer for the mediation shall be refunded to the insurer or credited to the insurer's account with the administrator.

(15) The Department is authorized to designate an entity or person as its administrator to carry out any of the Department's duties under this rule.

(16) If a court holds any subsection or portion of a subsection of this rule or the applicability thereof to any person or circumstance invalid, the remainder of the rule shall not be affected thereby.

(17) The applicable provisions of Rule 69B-166.031, F.A.C., shall govern issues relating to mediation that are not addressed in this rule. The provisions of this rule shall govern in the event of any conflict with the provisions of Rule 69B-166.031, F.A.C.

Specific Authority 624.308, 626.9611, 627.7015(4) FS. Law Implemented 624.307(1), (2), (4), (5), 624.316, 624.3161, 624.317, 624.318, 624.320, 624.324, 624.418(2)(a), 624.4211, 626.859, 626.874, 626.877, 626.9541(1)(a),(e),(i),(u), 626.9561, 626.9641(1)(g), 627.7015 FS. History—New _____.

Section II Proposed Rules

DEPARTMENT OF STATE

Division of Elections

RULE TITLE: Third-Party Voter Registration Organizations
 RULE NO: 1S-2.042
 PURPOSE AND EFFECT: The purpose of the proposed rule is to implement the provisions of Section 97.0575, F.S., as set forth in Chapter 2005-277, Laws of Florida. The proposed rule provides guidance to and forms to be used by third-party voter registration organizations to register and report voter registration drives. The proposed rule also provides forms for voter registrant complaints and supervisor of elections' reports of violations. The proposed rule also includes procedures for

documenting receipt and processing voter registration applications submitted by third-party voter registration organizations.

SUMMARY: The proposed rule provides procedures and forms for addressing voter registration activities conducted by third-party voter registration organizations and investigating violations under Section 97.0575, F.S. The proposed rule incorporates by reference four forms that relate to registration of third-party voter registration organizations, quarterly reports of voter registration drives, voter registrant complaints and reports of violations.

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

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

SPECIFIC AUTHORITY: 20.10(3), 97.012(1),(2), 97.0575 FS.

LAW IMPLEMENTED: 97.0575 FS.

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

TIME AND DATE: 1:30 p.m., Monday, March 13, 2006

PLACE: Florida Heritage Hall, Plaza Level, R. A. Gray Building, 500 S. Bronough Street, Tallahassee, Florida

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person needing special accommodations to participate in this proposed rule workshop should contact the Department of State, (850)245-6531, no later than March 8, 2005. Any person who is hearing or speech impaired may contact the Department by using the Florida Relay Service with the following toll free numbers: 1(800)955-8770 (Voice) or 1(800)955-8771.

Copies of the proposed rule and the forms incorporated by reference may be obtained by writing or contacting directly the Division of Elections, Department of State, 3rd Floor, R. A. Gray Building, 500 S. Bronough Street, Tallahassee, Florida 32399, (850)245-6531, or by viewing or downloading from the Division of Elections' website: <http://elections.dos.state.fl.us/index.html>.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Maria I. Matthews, Assistant General Counsel, Office of the General Counsel, Division of Elections, Department of State, 500 S. Bronough Street, Tallahassee, Florida 32399-0250

THE FULL TEXT OF THE PROPOSED RULE IS:

1S-2.042 Third-Party Voter Registration Organizations.

(1) Forms. The Department of State, Division of Elections, is authorized to adopt forms for registration, reporting and complaint forms as pertains to third-party voter registration

organizations. The following forms are hereby incorporated by reference and available from the Division of Elections, R. A. Gray Building, Room 316, 500 South Bronough Street, Tallahassee, Florida 32399-0250, by contacting at (850)245-6200, or by download from the Division of Elections' rules webpage at: <http://elections.dos.state.fl.us/index.html>:

(a) Form DS DE 106 (eff. ___/___/___), entitled "Form for Registration and Registered Agent of Third-Party Voter Registration Organization."

(b) Form DS DE 107 (eff. ___/___/___), entitled "Quarterly Report Form for Voter Registration Drives by Third-Party Voter Registration Organization."

(c) Form DS DE 108 (eff. ___/___/___), entitled "Form for Complaint Against Third-Party Voter Registration Organization."

(d) Form DS DE 109 (eff. ___/___/___), entitled "Supervisor of Elections' Report of Alleged Violation(s) by Third-Party Voter Registration Organization."

(2) Registration.

(a) A third-party voter registration organization shall use Form DS DE 106 to submit the name of a registered agent and register the organization prior to conducting any voter registration activities. The organization shall file the form with the Division of Elections.

(b) The Division shall assign a unique identification number to the third-party voter registration organization. The Division shall also provide the registered agent of the organization a packet of information containing at a minimum, a copy of Section 97.0575, F.S., this rule and Forms DS DE 106 and DS DE 107. The Division shall post on the Division of Elections' website at: <http://election.dos.state.fl.us/index.html> and keep current a list of the registered third-party voter registration organizations, the names of their registered agents with contact information, and the assigned identification number.

(c) A registered third-party voter registration organization is responsible for providing written notice to the Division of Elections of any change in information submitted on Form DS DE 106 as filed with the Division and shall also use such form to update or revoke a registration.

(3) Voter Registration Drive Quarterly Report.

(a) A third-party voter registration organization shall use Form DS DE 107 to submit a report to the Division of Elections at the end of each calendar quarter as to whether any organized voter registration drives were conducted in the preceding calendar quarter. If no drives were conducted, the organization shall indicate so on the form.

(b) The quarterly reports are due no later than April 15, July 15, October 15, and January 15 to cover the preceding calendar quarter respectively. If a due date falls on a Saturday, Sunday or legal holiday, the report is due on the next day which is not a Saturday, Sunday or legal holiday.

(4) Voter Registration Applications Submitted by a Third-Party Voter Registration Organization. The following procedures apply in processing voter registration applications submitted by a third-party voter registration organization:

(a) A third-party voter registration organization that submits a voter registration application by hand-delivery or by mail shall enclose the application in an envelope or container that is clearly marked on the exterior with the name and address of the organization.

(b) The Division of Elections or the voter registration official shall request that the person who hand-delivers a voter registration application sign a register or log indicating his or her name and the name of the third-party voter registration organization on whose behalf the application is being submitted. The Division of Elections or the voter registration official shall stamp or mark the voter registration application or the envelope or the mailing label of the container in which the application is enclosed with the applicable receipt date as set forth in paragraph (c). The Division or the voter registration official shall retain with the voter registration application the information of the person who hand-delivered the application, or the original of the envelope or mailing label of the container in which the application was enclosed. If more than one voter registration application is enclosed in the envelope or container, a copy of the stamped envelope or mailing label of the container shall be kept with the voter registration application.

(c)1. The receipt date of a voter registration application that has been hand-delivered by a third-party voter registration organization is the date that the application is first received by the Division of Elections or the voter registration official.

2. The receipt date of a voter registration application that has been mailed by a third-party voter registration organization is the date of the postmark on the envelope or the mailing label of the container. If the envelope or the mailing label of the container does not bear a postmark or the postmark is unclear, the receipt date of a voter registration application is the date the Division or the voter registration official received the application except that if the voter registration application is received within 5 days after the closing of the books for an election for any federal or state office, excluding Saturdays, Sundays, and legal holidays, the receipt date for the application is the book closing date of that election.

(d) A voter registration application submitted by a third-party voter registration organization shall be processed without delay in accordance with state and federal law in the same manner as a voter registration application received from any other source. If the voter registration application is submitted by a third-party voter registration organization directly to the Division, the Division shall process the application and then forward all documentation to the supervisor of election of the voter registrant's county of residence.

(5) Complaints, Reports, and Investigations.

(a) The Division of Elections may investigate a potential violation of Section 97.0575, F.S., upon the receipt of a complaint submitted pursuant to paragraph (b) or a supervisor of elections' report filed pursuant to paragraph (c). The Division may enlist the assistance of law enforcement in conducting an investigation and may refer the matter if a criminal violation might have occurred.

(b) Any person claiming to have been registered by a third-party voter registration organization but whose name does not appear as an active voter on the voter registration rolls may file a written complaint with the Division of Elections and shall use Form DS DE 108. The Division of Elections shall notify such complainant of the outcome of any investigation.

(c) A supervisor of elections of the voter registrant's county of residence may report to the Division any potential violation of Section 97.0575(3), F.S. The supervisor of elections shall submit the report using Form DS DE 109 to report such violations and attach copies of all supporting documentation to the Division. The supervisor of elections of the voter registrant's county of residence shall retain the original documentation in his or her office records.

(6) Fines.

(a) If Division of Elections finds that a third-party voter registration organization has violated Section 97.0575(3), F.S., the Division shall issue an administrative order that shall include the name of the third-party voter registration organization, the ground(s) for the violation, the number of voter registration applications involved, where the violation(s) occurred, the amount of the fine assessed per voter registration application, whether the fine was reduced, if applicable, and the time limit for payment of the fine.

(b) A third-party voter registration is only entitled to a fine reduction if the organization, in accordance with Section 97.0575(1), F.S., was registered and submitted a timely report for the preceding quarterly calendar period corresponding to the voter registration application and voter registration drive activity that are the subject of the administrative order.

(c) Such administrative fine is to be paid no later than thirty (30) days from the date the administrative order is issued.

(7) Prohibition. No person or entity otherwise exempt under Section 97.012(36), F.S., may delegate or otherwise confer exempt status to a third-party voter registration organization to conduct an organized voter registration drive on its own. A political party that is otherwise exempt under Section 97.012(36), F.S., does not mean a political committee or political club.

Specific Authority 20.10(3), 97.0575 FS. Law Implemented 97.021(36), 97.0575 FS. History--New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
 Maria Matthews, Assistant General Counsel
 NAME OF SUPERVISOR OR PERSON WHO APPROVED
 THE PROPOSED RULE: Sarah Jane Bradshaw, Assistant
 Director of the Division of Elections
 DATE PROPOSED RULE APPROVED BY AGENCY
 HEAD: February 15, 2006
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT
 PUBLISHED: August 12, 2005

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Office of Agricultural Water Policy

RULE CHAPTER TITLE: Best Management Practices RULE CHAPTER NO.: 5M-7

for Gulf Citrus RULE NOS.: 5M-7.001

Purpose 5M-7.002

Approved BMPs 5M-7.003

Presumption of Compliance 5M-7.004

Notice of Intent to Implement 5M-7.005

Record Keeping 5M-7.005

PURPOSE AND EFFECT: The purpose of this rule is to effect pollutant reduction through the implementation of non-regulatory and incentive based programs which may be determined to have minimal individual or cumulative adverse impacts to the water resources of the state.

SUMMARY: The purpose of Chapter 5M-7, F.A.C., is to effect pollutant reduction through the implementation of non-regulatory and incentive based programs which may be determined to have minimal individual or cumulative adverse impacts to the water resources of the state. Chapter 5M-7, F.A.C., references the document titled *Best Management Practices for Gulf Citrus*, which provides details on the practices which will be used to achieve the purpose. The manual, which may be obtained from the FDACS Office of Agricultural Water Policy, 1203 Governor's Square Boulevard, Suite 200, Tallahassee, Florida 32301, (850)488-6249, lists approved BMPs for the Gulf Citrus growing region of Florida. Citrus growers wishing to participate in the program will file a *Notice of Intent to Implement* (NOI), and will agree to confirm implementation by preserving documentation sufficient for the purpose. Upon implementation of BMP practices, growers will be granted a presumption of compliance.

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

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

SPECIFIC AUTHORITY: 403.67(7)(c)2. FS.

LAW IMPLEMENTED: 403.67(7)(c)2. FS.

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

TIME AND DATE: 10:00 a.m. – 11:30 a.m., March 17, 2006
 PLACE: Florida Department of Agriculture and Consumer Services, Eyster Auditorium, Conner Building, 3125 Conner Boulevard, Tallahassee, Florida 32399-1650

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Mr. Ken Kuhl: FDACS Office of Agricultural Water Policy, 1203 Governor’s Square Boulevard, Suite 200, Tallahassee, Florida 32301, (850)488-6249

THE FULL TEXT OF THE PROPOSED RULES IS:

5M-7.001 Purpose.

The purpose of this rule is to effect pollutant reduction through the implementation of non-regulatory and incentive based programs which may be determined to have minimal individual or cumulative adverse impacts to the water resources of the state.

Specific Authority 403.067(7)(c)2. FS. Law Implemented 403.067(7)(c)2. FS. History–New _____.

5M-7.002 Approved BMPs.

The document titled *Best Management Practices for Gulf Citrus* is hereby adopted by reference in this rule for the area contained within the Gulf Citrus growing region of Florida. Copies of the document may be obtained from the FDACS Office of Agricultural Water Policy, 1203 Governor’s Square Blvd. Suite 200, Tallahassee, FL 32301, (850)488-6249.

Specific Authority 403.067(7)(c)2. FS. Law Implemented 403.067(7)(c)2. FS. History–New _____.

5M-7.003 Presumption of Compliance.

In order to obtain the presumption of compliance with state water quality standards and release from the provisions of Section 376.307(5), F.S., for those pollutants addressed by the practices the applicant must:

(1) Conduct an assessment of the subject properties using the *Gulf Citrus BMP Checklist*.

(2) Submit a Notice of Intent to Implement as outlined in Rule 5M-7.004, F.A.C.

(3) Implement the non-regulatory and incentive-based programs identified as a result of the assessment of the subject properties and listed in the Notice of Intent to Implement.

(4) Maintain documentation to verify the implementation and maintenance of the non-regulatory and incentive-based programs.

Specific Authority 403.067(7)(c)2. FS. Law Implemented 403.067(7)(c)2. FS. History–New _____.

5M-7.004 Notice of Intent to Implement.

A *Notice of Intent to Implement* best management practices shall be submitted to FDACS, Office of Agricultural Water Policy, 1203 Governor’s Square Boulevard, Suite 200, Tallahassee, Florida 32301.

(1) Such notice shall identify practices the applicant will implement. The notice shall also include: the name of the property owner; the location of the grove(s); the property tax ID number(s); a timeline for implementation; the gross acreage on which each practice will be implemented; the name and contact information of an authorized representative; and the signature of the owner, lease holder, or an authorized agent.

(2) Once filed with FDACS, the Notice of Intent to Implement shall enable the applicant to apply for assistance with implementation as identified in Section 403.067(7)(c)2., F.S.

Specific Authority 403.067(7)(c)2. FS. Law Implemented 403.067(7)(c)2. FS. History–New _____.

5M-7.005 Record Keeping.

All participants must preserve sufficient documentation to confirm implementation of the non-regulatory and incentive based programs identified in the Notice of Intent to Implement. All documentation is subject to FDACS inspection.

Specific Authority 403.067(7)(c)2. FS. Law Implemented 403.067(7)(c)2. FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mr. Ken Kuhl: FDACS Office of Agricultural Water Policy, 1203 Governor’s Square Boulevard, Suite 200, Tallahassee, Florida 32301, (850)488-6249

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Mr. Rich Budell: FDACS Office of Agricultural Water Policy, 1203 Governor’s Square Boulevard, Suite 200, Tallahassee, Florida 32301, (850)488-6249

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 29, 2005

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 20, 2005

DEPARTMENT OF TRANSPORTATION

RULE CHAPTER TITLE: Fixed Guideway Transportation
 RULE CHAPTER NO.: 14-55

Systems Safety Criteria
 RULE TITLES: General Provisions
 RULE NOS.: 14-55.0012

Reports; Investigations; Audits; Corrective Actions of Accidents; and Unacceptable Hazardous Conditions
 14-55.0013

PURPOSE AND EFFECT: Two rules are being repealed as they have been superseded by Rule 14-15.017, F.A.C. Repeal of these two rules is part of the Department’s overall goal to review existing rules and to repeal any rules that are considered to be obsolete or unnecessary.

SUMMARY: Two rules are being repealed as they have been superseded by Rule 14-15.017, F.A.C.

SPECIFIC AUTHORITY: 334.044(2), 341.061(1) FS.

LAW IMPLEMENTED: 341.061(1) FS.

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

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

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: James C. Myers, Clerk of Agency Proceedings, Florida Department of Transportation, Office of the General Counsel, 605 Suwannee Street, Mail Station 58, Tallahassee, Florida 32399-0458

THE FULL TEXT OF THE PROPOSED RULES IS:

14-55.0012 General Provisions.

Specific Authority 334.044(2), 341.041(3) FS. Law Implemented 341.041(3) FS. History—New 5-22-97, Repealed _____.

14-55.0013 Reports; Investigations; Audits; Corrective Actions of Accidents; and Unacceptable Hazardous Conditions.

Specific Authority 334.044(2), 341.061(1) FS. Law Implemented 341.061(1) FS. History—New 5-22-97, Repealed _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: James Mike Johnson, Administrator, Transit Operations

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Denver J. Stutler, Jr., P.E., Secretary
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 13, 2006

DEPARTMENT OF TRANSPORTATION

Florida Seaport Transportation and Economic Development Council

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Small County Dredging Grant Program	14B-2
RULE TITLES:	RULE NOS.:
Definitions	14B-2.001
Port Project Funding Application Procedures and Requirements	14B-2.002
Measuring Economic Benefits	14B-2.003
Determination of Funding; Project Review Group/Agency Review	14B-2.004
Council Procedures	14B-2.005
Eligible Port Funding Requirements	14B-2.006
Reporting Requirements	14B-2.007

PURPOSE AND EFFECT: To implement the provisions of Section 311.115, F.S., by creating an administrative process to review and approve or disapprove applications for dredging grants.

SUMMARY: This rule implements the provisions of Section 311.115, F.S., by providing procedural and applicant requirements to seek and receive state funding for dredging projects located in small counties.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No regulatory costs on any parties are estimated with this proposed rule.

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

SPECIFIC AUTHORITY: 311.115 FS.

LAW IMPLEMENTED: 311.115 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE ANNOUNCED IN THE NEXT AVAILABLE ADMINISTRATIVE WEEKLY. (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Michael L. Rubin, Assistant Secretary, Florida Seaport Transportation and Economic Development Council, 502 East Jefferson Street, Tallahassee, Florida 32301

THE FULL TEXT OF THE PROPOSED RULES IS:

14B-2.001 Definitions.

(1) “Council” means the Florida Seaport Transportation and Economic Development Council as defined in Section 311.09(1), F.S.

(2) “Dredging Project” means a project to dredge or deepen channels, turning basins, or harbors.

(3) “Eligible Costs” means costs that are specifically required to initiate or complete a dredging project. Examples of eligible costs include: dredging and dredging machinery costs, design and engineering, permitting costs, environmental mitigation, and other infrastructure costs associated with the dredging project.

(4) “Eligible Port” means a port authority, as defined in Section 315.02(2), F.S., in a county having a population of less than 300,000, according to the last official census, that complies with the permitting requirements in Part IV of Chapter 373, F.S., and the local financial management and reporting provisions of Part III of Chapter 218, F.S.

(5) “Matching Funds” means those funds provided by the eligible port from any source other than the Florida Department of Transportation which shall, at a minimum, be an amount equal to the program funds allocated to the eligible port for a dredging project.

(6) “Program Funds” means those funds appropriated specifically for small county dredging projects in the annual appropriations bill passed by the Legislature and approved by the Governor.

(7) “Project Review Group” means the review group designated by the Council to review applications. Such group must include the three state agency representatives from the Council: one voting representative from the Department of Transportation; one voting representative from the Department of Community Affairs; and one voting representative from the Governor’s Office of Tourism, Trade, and Economic Development. The Project Review Group shall also include two voting seaport representatives from the Council.

Specific Authority 311.22 FS. Law Implemented 311.22 FS. History–New_____.

14B-2.002 Port Project Funding Application Procedures and Requirements.

(1) An application shall be accepted only from an eligible port. The eligible port shall apply for the grant by either electronically submitting or mailing to the Council an application entitled “Small County Seaport Dredging Project Application”, Form FSTED-2, hereby incorporated by reference, effective August, 2005. Applications shall be submitted by the authorized representative of such port.

(2) Applications must be submitted to the Council during the time period designated by the Project Review Group pursuant to Rule 14B-2.005, F.A.C., of these rules. Application forms are available via the following website: www.flaports.org, or by contacting the Florida Ports Council at their offices at 502 East Jefferson Street, Tallahassee, Florida 32301, (850)222-8028.

(3) The Project Review Group will have fifteen (15) days from the application submission deadline to examine the application and notify the applicant of any apparent errors or omissions and to request any needed additional information. The applicant shall then have fifteen (15) days from receipt of the request to provide the additional information. The application shall not be considered to be properly completed if the additional information is not provided.

Specific Authority 311.22 FS. Law Implemented 311.22 FS. History–New_____.

14B-2.003 Measuring Economic Benefits.

Each eligible and complete application shall be reviewed to determine the economic benefit of the dredging project measured by the potential for the proposed project to increase or maintain cargo flow, domestic and international commerce, port revenues, and the number of jobs for the port’s local community.

Specific Authority 311.22 FS. Law Implemented 311.22 FS. History–New_____.

14B-2.004 Determination of Funding; Project Review Group/Agency Review.

(1) The Project Review Group shall review and determine whether each application is complete and eligible for program funds within one hundred twenty (120) days of the application deadline. After such determination, the Project Review Group shall submit complete and eligible applications to the Secretary of Transportation; the Office of Tourism, Trade, and Economic Development; and the Secretary of Community Affairs for their review pursuant to this section.

(2)(a) Upon receipt of the applications and appropriate project information from the Project Review Group, the Department of Transportation, Department of Community Affairs, and the Office of Tourism, Trade, and Economic Development shall review the projects to determine whether there are any conflicts with state transportation and/or growth management plans, local approved local government comprehensive plans of the units of local government in which the port is located, or with any pertinent port master plan.

(b) The Office of Tourism, Trade, and Economic Development shall review the projects to evaluate the economic benefit of each project based upon the information required by Rule 14B-2.003, F.A.C.

(c) Within forty-five (45) days from receipt of the applications, the Department of Transportation, Department of Community Affairs, and Office of Tourism, Trade and Economic Development shall notify the Council whether the projects are eligible for funding or ineligible due to a conflict or lack of economic benefit. Should additional information be requested from one or more applicants to evaluate conflicts or economic benefit, the time limit for the review and notice to the Project Review Group shall be extended fifteen (15) days following receipt of the requested information.

(3) The Council shall review the findings of the Department of Community Affairs, the Office of Tourism, Trade, and Economic Development, and the Department of Transportation, and cast a vote to approve or disapprove funding for projects found eligible and not in conflict by the above agencies. Projects found to be in conflict pursuant to subsections (2), (3), and/or lacking an economic benefit pursuant to subsection (4) shall not be eligible for program funds. If enough appropriated funds are available to provide program funds to all eligible projects, the Council shall recommend funding for all projects found eligible and not in conflict pursuant to this rule section. If an adequate amount of appropriated funds are not available, the Council shall prioritize appropriated funds to those projects providing the greatest economic benefit.

(4) The Council shall submit to the Department of Transportation a list of approved projects for funding. Additionally, the Council shall submit to the department a list

of unfunded eligible projects that should receive additional program funds if such funds were made available in the next fiscal year.

Specific Authority 311.22 FS. Law Implemented 311.22 FS. History–New _____.

14B-2.005 Council Procedures.

(1) The Council shall allocate program funds for approved projects. A majority vote of the voting Council members present is sufficient to approve funding for a specific port dredging project and is sufficient for the Council to allocate funding for all approved projects. A majority vote of the voting Council members present is sufficient to disapprove funding for a specific port dredging project.

(2) Contingent upon the available appropriated funds, the Council shall publish in the Florida Administrative Weekly and any other appropriate publication method the period for submitting application for program funds. The Council shall ensure that the publication provides eligible ports with adequate notice to submit an applications. The application submission period must be for a period of not less than thirty (30) days. The Council may provide for more than one (1) application submission period in a fiscal year.

(3) Applicants whose dredging projects are not recommended for funding in any given year may reapply for subsequent funding consideration by the Council.

(4) The Council shall publish in the Florida Administrative Weekly, at least seven (7) days prior to Council meetings or workshops, notification of the time and place the Council will meet to discuss, review, and/or vote upon dredging projects. Such meetings or workshops shall be open to the public. At least seven (7) days prior to a meeting, the Council shall prepare and make available an agenda for distribution on request of any interested person.

(5) The Council may elect to provide an administrative staff, by contract or otherwise, to provide services to the Council on matters relating to the program and the Council.

Specific Authority 311.22 FS. Law Implemented 311.22 FS. History–New _____.

14B-2.006 Eligible Port Funding Requirements.

(1) Any project that receives funds pursuant to Section 311.22, F.S., shall be subject to a final audit pursuant to Department of Transportation rules and regulations.

(2) Funds received by eligible ports shall be expended on eligible costs only. If program funds are not expended on eligible costs, then the port shall immediately reimburse the Council for its share of the ineligible expenditures.

(3) Eligible ports awarded program funds shall enter into a written Joint Participation Agreement (JPA) with the Department of Transportation. The Department of Transportation will reimburse the eligible port an amount equal to amount approved by the Council on an approved project. This reimbursement will be made upon receipt of an invoice

showing total eligible costs incurred to date, less reimbursements received to date. These reimbursements will be made in compliance with the payment requirements set forth in Section 215.422, F.S. The final reimbursement to the port will be released upon the satisfactory completion of a final audit conducted by the Florida Department of Transportation.

(4) Eligible ports awarded program funds shall pay an administrative fee to the Council for the administration of the small county dredging program, based upon each recipient’s share of the funds. The administrative fee shall be paid in its total amount by the recipient port upon execution by the port and the Department of Transportation of a joint participation agreement. The Council shall vote on and set such fee at a properly noticed public hearing of the Council.

Specific Authority 311.22 FS. Law Implemented 311.22 FS. History–New _____.

14B-2.007 Reporting Requirements.

The eligible port shall enter into the Department of Transportation’s Joint Participation Agreement, as prescribed by the Department pursuant to Section 339.137, F.S., which sets forth the duties and obligations of the parties thereto regarding the expenditure and receipt of funds prior to any expenditure of state funds.

Specific Authority 311.22 FS. Law Implemented 311.22 FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Michael L. Rubin

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Nancy Leikauf

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 9, 2005

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 19, 2005

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Pursuant to Chapter 2003-145, Laws of Florida, all notices for the Board of Trustees of the Internal Improvement Trust Fund are published on the Internet at the Department of Environmental Protection’s home page at <http://www.dep.state.fl.us/> under the link or button titled “Official Notices.”

STATE BOARD OF ADMINISTRATION

Florida Hurricane Catastrophe Fund

RULE TITLES: Reimbursement Contract RULE NOS.: 19-8.010

Procedures to Determine Ineligibility for Participation in the Florida Hurricane Catastrophe Fund and to Determine Exemption from Participation in the Florida Hurricane Catastrophe Fund Due to Limited Exposure 19-8.012

Revenue Bonds Issued Pursuant to Section 215.555(6), Florida Statutes	19-8.013
Insurer Reporting Requirements	19-8.029
Insurer Responsibilities	19-8.030

PURPOSE AND EFFECT: The State Board of Administration, Florida Hurricane Catastrophe Fund, is proposing to amend the following rules in order to implement Section 215.555, Florida Statutes, regarding the Florida Hurricane Catastrophe Fund, for the 2006-2007 Contract Year: Rules 19-8.010, 19-8.012, 19-8.013, 19-8.029 and 19-8.030, F.A.C.

SUMMARY: Proposed amended Rule 19-8.010, F.A.C., adopts the reimbursement contract for the Contract Year 2006-2007. The proposed amendments to Rule 19-8.012, F.A.C. clarifies the exemption requirements. The proposed amendments to Rule 19-8.013, F.A.C., are both clarification and implementation of Section 215.555(3), F.S. Proposed amended Rule 19-8.029, F.A.C., adopts forms for insurer reporting to the Florida Hurricane Catastrophe Fund for the 2006-2007 Contract Year and updates incorporated forms. The proposed amendments to Rule 19-8.030, F.A.C. consist of clarifications and amendments necessitated by the losses experienced during the 2004 and 2005 hurricane seasons.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: With respect to the rules proposed for amendment, the Board has prepared a statement and found the cost to be minimal.

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

SPECIFIC AUTHORITY: 215.555(3) FS.

LAW IMPLEMENTED: 215.555(2),(3),(4),(5),(6),(7),(10) FS.

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

TIME AND DATE: 1:00 p.m. – 4:00 p.m., March 20, 2006

PLACE: Room 116 (Hermitage Conference Room), 1801 Hermitage Blvd., Tallahassee, FL 32308

Any person requiring special accommodations to participate in this proceeding is asked to advise Patti Elsbernd, P. O. Box 13300, Tallahassee, FL 32317-3300, (850)413-1346, at least five (5) calendar days before such proceeding.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Jack E. Nicholson, Senior FHCF Officer, State Board of Administration, P. O. Box 13300, Tallahassee, FL 32317-3300, (850)413-1340

THE FULL TEXT OF THE PROPOSED RULES IS:

19-8.010 Reimbursement Contract.

(1) through (11) No change.

(12) The reimbursement contract for the 2006-2007 contract year required by Section 215.555(4), F.S., which is called Form FHCF-2006K – “Reimbursement Contract” or

“Contract” between (name of insurer) (the “Company”)/NAIC #() and The State Board of Administration of the State of Florida (“SBA”) which Administers the Florida Hurricane Catastrophe Fund (“FHCF”), is hereby adopted and incorporated by reference into this rule. This contract is effective from June 1, 2006 through May 31, 2007.

~~(13)~~(12) Copies of the reimbursement contract may be obtained from the State Board of Administration. The mailing address is P. O. Box 13300, Tallahassee, FL 32317-3300. The street address is 1801 Hermitage Blvd., Tallahassee, Florida 32308, (850)413-1346.

Specific Authority 215.555(3) FS. Law Implemented 215.555 FS. History—New 5-31-94, Amended 8-29-95, 5-19-96, 6-19-97, 5-28-98, 5-17-99, 9-13-99, 6-19-00, 6-3-01, 6-2-02, 11-12-02, 5-13-03, 5-19-04, 8-29-04, 5-29-05, 11-13-05, _____.

19-8.012 Procedures to Determine Ineligibility for Participation in the Florida Hurricane Catastrophe Fund and to Determine Exemption from Participation in the Florida Hurricane Catastrophe Fund Due to Limited Exposure.

(1) through (2)(b) No change.

1. A detailed explanation of any premium appearing on the insurer’s Florida Statutory Page 14, Exhibit of Premiums and Losses Form 2 of the National Association of Insurance Commissioners annual statement for lines of business which may contain covered policies. These lines are: Fire, Allied Lines, Homeowners Multiple Peril, Commercial Multiple Peril (non-liability portion), Inland Marine, Farmowners Multiple Peril.

2. A copy of the insurer’s Statutory Page 14, Exhibit of Premiums and Losses Form 2 of the annual statement, required by Section 624.424, F.S., and any rules adopted thereunder, for the State of Florida for the applicable year.

3. Form FHCF-E1, “Statement related to Covered Policies as defined in Section 215.555(2)(c), F.S.,” rev. 5/~~2006~~05, signed by two executive officers attesting to the fact that the insurer writes no covered policies. Form FHCF-E1 is hereby adopted and incorporated by reference. The form may be obtained from the Fund’s Administrator at the address stated in this paragraph.

(c)1. through 3. No change.

(3) Procedures to Determine Exemption from the Fund Due to Limited Exposure.

(a) An insurer requesting exemption from participation in the Fund because its exposure for covered policies, as defined in Section 215.555(2)(c), F.S., and in Article V of the reimbursement contract, as adopted and incorporated by reference in Rule 19-8.010, F.A.C., is less than \$10 million in the aggregate shall submit a written request for a determination regarding such an exemption no later than June 1 of the upcoming contract year. The request shall be sent to the Fund’s Administrator, Paragon Strategic Solutions Inc., at 3600

American Boulevard West, Suite 700, Minneapolis, Minnesota 55431. The insurer shall submit the following information no later than June 30 of the upcoming contract year:

1. A detailed explanation of any premium appearing on the insurer's Florida Statutory Page 14, Exhibit of Premiums and Losses Form 2 of the National Association of Insurance Commissioners annual statement for lines of business which may contain covered policies. These lines are: Fire, Allied Lines, Homeowners Multiple Peril, Commercial Multiple Peril (non-liability portion), Inland Marine, Farmowners Multiple Peril.

2. A copy of the insurer's Statutory Page 14, Exhibit of Premiums and Losses Form 2 of the annual statement, required by Section 624.424, F.S. and any rules adopted thereunder, for the State of Florida for the applicable year.

3. Form FHCF-E2, "Information regarding FHCF Covered Policies In-force at May 31, _____," rev. 5/200605. Form FHCF-E2 is hereby adopted and incorporated by reference. The form may be obtained from the Fund's Administrator at the address stated in this paragraph.

4. Form FHCF-E3, "Statement related to Aggregate Exposure for Covered Policies as defined in Section 215.555(2)(c), F.S., on behalf of _____," rev. 5/200605, signed by two executive officers attesting to the fact that the insurer writes no covered policies with an aggregate exposure of \$10 million or more. Form FHCF-E3 rev. 5/200605, is hereby adopted and incorporated by reference. The form may be obtained from the Fund's Administrator at the address stated in this paragraph.

(b)1. through 3. No change.

4. The exemption for minimal exposure permitted by Section 215.555(3), F.S., is optional for the insurer but, once the exemption is requested, cannot be withdrawn by the insurer. An insurer with less than \$10 million in aggregate exposure for covered policies is not required to ask for an exemption from the Fund. Such an insurer may continue to participate in the Fund if it so desires. An insurer which has been granted an exemption from the Fund may request to be reinstated in the Fund as a participating member. However, such a request must be made no later than June 1 of each contract year. No insurer which has been granted an exemption under this subsection shall be reinstated during the Atlantic Hurricane Season, which begins June 1 and ends November 30 of each year, so long as its aggregate exposure remains below \$10 million.

5. No change.

Specific Authority 215.555(3) FS. Law Implemented 215.555(2)(c),(3),(4),(5) FS. History--New 2-17-97, Amended 6-2-02, 5-13-03, 5-19-04, 5-29-05,

19-8.013 Revenue Bonds Issued Pursuant to Section 215.555(6), Florida Statutes.

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

2. Except as required by Section 215.555(7)(c), F.S., or as described in the following sentence, Reimbursement Premiums, together with earnings thereon, received in a given Contract Year will be used only to pay for losses attributable to Covered Events occurring in that Contract Year or for losses attributable to Covered Events in subsequent Contract Years and will not be used to pay for past losses or for debt service on revenue bonds. Amounts collected as part of the premium that are attributable to the rapid cash buildup factor, as permitted by Section 215.555(5)(b), F.S., may be used to pay for losses attributable to prior Contract years. Pursuant to Section 215.555(6)(a)1., F.S., Reimbursement Premiums, ~~or~~ earnings thereon or amounts collected as part of the premium that are attributable to the rapid cash buildup factor, may be used for payments relating to revenue bonds in the event Emergency Assessments are insufficient. If Reimbursement Premiums are used for debt service, then the amount of the Reimbursement Premiums, earnings thereon, or amounts collected as part of the premium that are attributable to the rapid cash buildup factor so used shall be returned, without interest, to the Fund when Emergency Assessments remain available after making payments relating to the revenue bonds and any other purposes for which Emergency Assessments were levied.

(d) through (e)2. No change.

3. The emergency assessment is subject to interest on delinquent remittances at the average rate earned by the SBA for the FHCF for the first five months of the Contract Year plus 5%. The emergency assessment is also subject to annual adjustments by the Board to reflect changes in premiums subject to assessments in order to meet debt obligations.

(5)(a) No change.

(b) Pursuant to the Order issued by the Office of Insurance Regulation levying the Emergency Assessment, each Assessable Insurer shall remit to the entity identified in the Order, an amount equal to the required percentage of its direct written premium for the ~~prior~~ calendar year to which the assessment applies from all Assessable Lines. Medical malpractice is an Assessable Line of business but only as to covered events occurring on or after June 1, 2007. In addition, pursuant to the doctrine of federal pre-emption, policies issued as part of the National Flood Insurance Program are not subject to the Emergency Assessment. The required percentage will be determined in accordance with Section 215.555(6)(b), F.S., and the procedures set out in subsection (4) of this rule.

(c) No change.

(d) Lines of Business Subject to Assessment.

1. The lines of business described in subparagraph 2., below, are the lines of business subject to the Emergency Assessment under Section 215.555(6)(b)(1), F.S.. For ease of reference, the lines of business are written and listed as they appear on Statutory Page 14 Form 2 Exhibit of Premiums and Losses in the property and casualty annual statement of the

National Association of Insurance Commissioners required to be filed by authorized insurers pursuant to Section 624.424, F.S.

2. No change.

Specific Authority 215.555(3) FS. Law Implemented 215.555(2),(3),(4), (5),(6),(7) FS. History—New 9-18-97, Amended 12-3-98, 9-12-00, 6-01-03, 5-19-04, 5-29-05, _____.

19-8.029 Insurer Reporting Requirements.

(1) through (2)(a) No change.

(b) Commutation means that period of time which is not less than 36 months or more than 60 months after the end of the Contract Year during which the loss occurrence took place.

(c)(b) Contract Year means the time period which begins June 1 of each calendar year and ends May 31 of the following calendar year.

(d)(e) Covered Policy is defined in Section 215.555(2)(c), F.S., and the Reimbursement Contract adopted by and incorporated into Rule 19-8.010, F.A.C.

(e)(d) Data Call means the annual reporting of insured values forms. These forms are the FHCF-D1A for Contract Years after the 2002/2003 year and the FHCF-D1A and FHCF-D1B for the Contract Year 2002/2003 and all prior years.

(f)(e) FHCF or Fund means the Florida Hurricane Catastrophe Fund.

(g)(f) Independent Consultant means the independent individual, firm, or organization with which the State Board of Administration of Florida (Board) contracts to prepare the premium formula and any other actuarial services for the FHCF, as determined under the contract with the consultant.

(h)(g) Loss Reporting Forms mean the FHCF-L1A and FHCF-L1B for Contract Years after the 2002/2003 Contract Year and means the FHCF-L1A, FHCF-L1B and FHCF-L1C for the Contract Years 2002/2003 and all prior years.

(i)(h) Office of Insurance Regulation means that office within the Department of Financial Services and which was created in Section 20.121(3), F.S.

(3) through (4)(g) No change.

(h) For the 2006/2007 Contract Year, the reporting shall be in accordance with Form FHCF-D1A, "Florida Hurricane Catastrophe Fund 2006 Data Call," rev. 05/2006, hereby adopted and incorporated by reference. The form may be obtained from the Fund's Administrator at the address stated in subsection (6) below. A new participant writing covered policies on or after June 1 but prior to December 1, shall report its actual exposure as of December 31 of the Contract Year on or before March 1 of the Contract Year, to the Administrator.

(5) Loss Reimbursement Reporting Requirements.

(a) As directed by the Board, after a covered event occurs, insurers shall report all their estimated ultimate net losses (as defined in the Reimbursement Contract, adopted and incorporated into Rule 19-8.010, F.A.C.) for Covered Policies on Form FHCF-L1A, "Florida Hurricane Catastrophe Fund

Interim Loss Report," rev. 05/2006 ~~05/2005~~, which is hereby adopted and incorporated by reference, in no less than fourteen days from the date of the notice from the Board that such a report is required. The Board may request subsequent Interim Loss Reports. To obtain copies of this form, see paragraph (6), below. Prompt reporting in the format requested will aid the Board in determining whether to seek additional sources of funds to pay for reimbursable losses. The losses reported on the Interim Loss Report Form FHCF-L1A are expected to result from a good faith effort on the part of the insurer to report as accurately as possible. Preliminary reports will not be binding. Reimbursements by the Fund will be made on the basis of the Proof of Loss Report Form FHCF-L1B, adopted in (b) below.

~~(b) If an insurer expects covered losses to exceed its retention, it shall report its paid and outstanding covered losses for each occurrence as of month end by the fifteenth of the following month in accordance with the table below:~~

<u>Submit Form FHCF-L1A Monthly</u>	
<u>For Losses under Covered Events prior to:</u>	<u>File by:</u>
June 30/XXXX	<u>July 15/XXXX, and on the 15th of each month through November</u>
July 31/XXXX	<u>August 15/XXXX, and on the 15th of each month through November</u>
August 31/XXXX	<u>September 15/XXXX, and on the 15th of each month through November</u>
September 30/XXXX	<u>October 15/XXXX and November 15/XXXX</u>
October 31/XXXX	<u>November 15/XXXX</u>

(b)(e) Insurers shall report their ultimate net losses (as defined in the Reimbursement Contract, adopted and incorporated into Rule 19-8.010, F.A.C.) for each loss occurrence on Form FHCF-L1B, "Florida Hurricane Catastrophe Fund Proof of Loss Report," rev. 05/2006 05/2005, which is hereby adopted and incorporated by reference. To obtain copies of this form, see subsection (6), below. To qualify for reimbursement, the Proof of Loss Report must have the original signatures of two executive officers authorized by the Company to sign the report. Proof of Loss Reports may be faxed only if the Company does not qualify for a reimbursement.

While a Company may submit a Proof of Loss Report requesting reimbursement at any time following a ~~Loss~~ occurrence, all Companies shall submit a mandatory Proof of Loss Report for each ~~Loss~~ occurrence no earlier than December 15 and no later than December 31 of the Contract Year during which the Covered Event(s) occurs using the most current data available, regardless of the amount of Ultimate

Net Loss or the amount of loss reimbursements or advances already received. Reports may be faxed only if the Company does not qualify for a reimbursement. Annually, all Companies shall submit a mandatory year-end Proof of Loss Report for each Loss Occurrence, using the most current data available unless the Company has no losses. This Proof of Loss Report shall be filed no earlier than December 15 and no later than December 31 of each year and shall continue until the earlier of the expiration of the commutation period or until all claims and losses resulting from the Loss Occurrence are fully discharged including any adjustments to such losses due to salvage or other recoveries. "Commutation" shall mean that period of time which is not less than 36 months or more than 60 months after the end of the Contract Year during which the Loss Occurrence took place. In reporting losses, deductibles or attachment points shall be applied first to the coverages provided by the FHCF. After the mandatory December Proof of Loss Report, quarterly Proof of Loss Reports are required. For purposes of this rule, quarterly Proof of Loss Reports shall be those reports submitted at each quarter end date after December 31 of the Contract Year in which the loss occurrence occurs and continuing until all claims and losses resulting from loss occurrences commencing during the Contract Year are fully discharged in accordance with the reporting requirements in this paragraph. "Fully Discharged" means the earlier of the date on which the insurer has paid its policyholders in full or the commutation clause, in Article X of the Reimbursement Contract, adopted in Rule 19-8.010, F.A.C., takes effect. For the quarterly report due on 3/31, any insurer whose losses reach or exceed 50% of its FHCF retention for a specific loss occurrence shall submit a Proof of Loss Report for that loss occurrence report its losses on Form FHCF-L1B. For the quarterly report due on 6/30, any insurer whose losses reach or exceed 75% of its FHCF retention for a specific loss occurrence submit a Proof of Loss Report for that loss occurrence shall report its losses on Form FHCF-L1B. For the quarterly reports due on 9/30 and thereafter, any insurer which anticipates that its losses will exceed reach 100% or more of its FHCF retention for a specific loss occurrence shall submit quarterly Proof of Loss Reports report its losses on Form FHCF-L1B until all its losses are paid to its policyholders and the insurer has received reimbursement from the Fund. For purposes of this rule, quarterly Loss Reports shall be those reports submitted at each quarter end date after December 31 of the Contract Year in which the covered event occurs and continuing until all claims and losses resulting from loss occurrences commencing during the Contract Year are fully discharged in accordance with the reporting requirements in this paragraph. "Fully Discharged" means the earlier of the date on which the insurer has paid its policyholders in full or the commutation clause, in Article X of the Reimbursement Contract, adopted in Rule 19-8.010, F.A.C., takes effect. Annually, all Companies which experienced losses for a specific loss occurrence, but are not required to report quarterly

loss reports for that loss occurrence because they do not meet the quarterly requirements outlined in this section, shall submit a mandatory year-end Proof of Loss Report for each loss occurrence, using the most current data available unless the Company has no losses. This Proof of Loss Report shall be filed no earlier than December 1 and no later than December 31 of each year and shall continue until the earlier of the expiration of the commutation period or until all claims and losses resulting from the loss occurrence are fully discharged including any adjustments to such losses due to salvage or other recoveries.

~~(c)~~(d) As a result of reports submitted on Form FHCF-L1B, reimbursements to insurers shall be adjusted in accordance with Section 215.555(4)(d)1., F.S., which requires the Fund to pay additional amounts to insurers and insurers to return overpayments to the Fund, based on the most recent calculation of losses.

(6) No change.

Specific Authority 215.555(3) FS. Law Implemented 215.555(2),(3),(4),(5), (6),(7),(15) FS. History—New 5-17-99, Amended 6-19-00, 6-3-01, 6-2-02, 11-12-02, 5-13-03, 5-19-04, 8-29-04, 5-29-05,_____.

19-8.030 Insurer Responsibilities.

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

(b) New Participants during the period of June 1 through November 30: Those Insurers that first begin writing Covered Policies from June 1 through November 30 of a Contract Year are "New Participants." New Participants must designate a coverage level in the annual Reimbursement Contract, make any required selections therein, and execute the Contract simultaneously with issuing the first Covered Policy. The completed and executed Reimbursement Contract, including all required selections and schedules, must be returned no later than 30 days after the effective date of the first Covered Policy is issued.

(c) through (6) No change.

(7) Examination Requirements. Company is required to prepare and retain an exam file in accordance with the specifications outlined in the Data Call instructions and a detailed claims listing to support losses reported on the Proof of Loss Report. Such records must be retained until the FHCF has completed its examination of a Company's exposure submission and any loss reports applicable to the Data Call Contract Year. The records provided for examination must be from the exam file as originally prepared unless a subsequent resubmission was sent to the FHCF. Note that both Citizens and Insurers participating in Quota Share Primary Insurance Arrangements must keep complete and accurate records, including copies of policy declaration pages and supporting claims documents, for the purpose of exposure and loss reimbursement examinations by the FHCF.

(a) Advance Examination Record Requirements: Within 30 days from the date on the letter from the FHCF, Companies are required to provide the FHCF with the records indicated in

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

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

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

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

The District does not discriminate on the basis of disability. Anyone requiring reasonable accommodation should contact: Dianne Lee, (352)796-7211, Ext. 4658, TDD only 1(800)231-6103.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Margaret M. Lytle, Senior Attorney, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, Extension 4651

THE FULL TEXT OF THE PROPOSED RULE IS:

40D-1.002 Delegation of Authority.

(1) through (2) No change.

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

(a) Well Construction Permitting Agreement Between the Southwest Florida Water Management District and Manatee County Board by County Commissioners, effective May 24, 2005.

(b) Well Construction Permitting Agreement Between the Southwest Florida Water Management District and Sarasota County Health Department, effective May 24, 2005.

(c) Well Construction Permitting Agreement Between the Southwest Florida Water Management District and Marion County Health Department” effective _____, 2006.

Specific Authority 373.044, 373.103, 373.113, 373.118, 373.219, 373.309 FS. Law Implemented 253.002, 373.103, 373.149, 373.219, 373.223, 373.224, 373.226, 373.308, 373.309, 373.427 FS. History—New 3-1-84, Amended 3-10-96, 7-22-99, 12-2-99, 9-26-02, 7-20-04, 10-19-05, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Tony Gilboy, Well Construction Regulation Manager, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, Extension 4305

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 24, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 17, 2006

WATER MANAGEMENT DISTRICTS

Southwest Florida Water Management District

RULE CHAPTER TITLE: Procedural
 RULE CHAPTER NO.: 40D-4

RULE TITLE: Publications and Agreements Incorporated
 RULE NO.: 40D-4.091
 by Reference

PURPOSE AND EFFECT: The proposed rule amendment will adopt revised maps of drainage basins in Appendix 6 and revised maps of watersheds in Appendix 4 of the ERP Basis of Review to correspond with the recent changes to the District's boundaries by the Legislature. The ERP Basis of Review is incorporated by reference into subsection 40D-4.091(1), F.A.C.

SUMMARY: Recent changes to District boundaries by the Legislature have created inaccuracies in the ERP drainage basins map and watersheds map. Amendments to the two maps are proposed to reflect the new District boundaries and update the District's rules.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: A Statement of Estimated Regulatory Cost is not being prepared based on the District's determination that the proposed revisions to Rule 40D-4.091, F.A.C., will not result in a substantial increase in the costs to affected parties and there will not be significant adverse effects on competition, employment, investment or productivity.

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

SPECIFIC AUTHORITY: 373.044, 373.046, 373.113, 373.171, 373.414 FS.

LAW IMPLEMENTED: 373.0361, 373.114, 373.171, 373.403, 373.413, 373.414, 373.416, 373.429, 373.441 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE FAW.

The District does not discriminate on the basis of disability. Anyone requiring reasonable accommodation should contact Dianne Lee, (352)796-7211, Ext. 4658, TDD only 1(800)231-6103.

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

THE FULL TEXT OF THE PROPOSED RULE IS:

40D-4.091 Publications and Agreements Incorporated by Reference.

The following documents are hereby incorporated into this chapter and Chapters 40D-40 and 40D-400, F.A.C.:

(1) Basis of Review for Environmental Resource Permit Applications within the Southwest Florida Water Management District, _____, 2006. This document is available from the District upon request.

(2) through (5) No change.

Specific Authority 373.044, 373.046, 373.113, 373.171, 373.414 FS. Law Implemented 373.0361, 373.114, 373.171, 373.403, 373.413, 373.414, 373.416, 373.429, 373.441 FS. History—New 4-2-87, Amended 3-1-88, 9-11-88, 10-1-88, 4-1-91, 11-16-92, 1-30-94, 10-3-95, 12-26-95, 5-26-96, 7-23-96, 4-17-97, 4-12-98, 7-2-98, 12-3-98, 7-28-99, 8-3-00, 9-20-00, 6-12-01, 10-11-01, 2-27-02, 7-29-02, 3-26-03, 7-23-03, 8-3-03, 3-11-04, 6-7-04, 2-1-05, 6-30-05, 10-19-05, 2-08-06, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Clark Hull, PWF ERP Program Director, Technical Services, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, extension 4302

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 24, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 17, 2006

WATER MANAGEMENT DISTRICTS

South Florida Water Management District

RULE TITLES:	RULE NOS.:
Policy and Purpose	40E-6.011
Definitions	40E-6.021
Exemptions	40E-6.051

PURPOSE AND EFFECT: This rulemaking concerns proposed revisions to parts of Chapter 40E-6, of the F.A.C., as it pertains to recreational and passive uses on the Districts right of ways. This rulemaking effort will remove any such uses and relocate them under Chapter 40E-7, Part V, F.A.C., the “Public Use Guide” which allows for ease and consistency to the public in regard to recreational uses and activities on District lands. This allows the District to create a single Chapter within the Florida Administrative Code concerning public recreational access to and use of South Florida Water Management District lands.

SUMMARY: The proposed amendments to Chapter 40E-6, F.A.C., will remove those portions of the Rule concerning recreational and passive use of the District's rights of way and relocate them to Chapter 40E-7, Part V, F.A.C., to create a consolidated rule dealing with public's access to and recreational use of all District lands, including its rights of ways.

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

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

SPECIFIC AUTHORITY: 259.101, 373.044, 373.113, 373.171 FS.

LAW IMPLEMENTED: 259.101, 373.016, 373.056, 373.103, 373.139, 373.1391, 373.1395, 373.1401, 373.59, 373.085, 373.086, 373.118, 373.129 FS.

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

TIME AND DATE: 9:00 a.m., April 12, 2006

PLACE: Okeechobee Shrine Club, 1855 S. W. 53rd Street, Okeechobee, FL 34974

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Fred Davis, South Florida Water Management District, Post Office Box 24680, Mail Stop Code 5720, West Palm Beach, FL 33416-4680, 1(800)432-2045, Extension 6636, (561)682-6636, internet: fdavis@sfwmd.gov

Although Governing Board meetings, hearings and workshops are normally recorded, affected persons are advised that it may be necessary for them to ensure that a verbatim record of the proceeding is made, including the testimony and evidence upon which any appeal is to be based.

Persons with disabilities or handicaps who need assistance may contact the Director of Governing Board and Executive Services, (561)682-6371, at least two business days in advance to make appropriate arrangements.

THE FULL TEXT OF THE PROPOSED RULES IS:

40E-6.011 Policy and Purpose.

(1) through (10)(a) No change.

~~(11) It is further the policy of the District to allow, without charge for admission or use, public, passive recreational uses of District owned rights of way, given legally sufficient District property interests. However, nothing contained herein shall limit the District's ability to, either temporarily or permanently, limit or otherwise preclude public access to certain portions of District works and lands, such as structures and associated facilities.~~

~~(11)~~(12) In managing its canal and levee system the District must, from time to time, change its criteria and permit requirements based on regional and site specific conditions. Applicants are cautioned that the information provided by District staff is based on the best available information at the time the information is conveyed, but is subject to change. This is particularly true when applicants delay months or years in submitting an application for permit. Therefore the rules, criteria and requirements in effect at the time a formal application is received for review will be applied to the permit application.

Specific Authority 373.113 FS. Law Implemented 373.016, 373.085, 373.086, 373.118, 373.129, 373.1395, FS. History–New 9-3-81, Formerly 16K-5.01(1), Amended 12-29-86, 9-15-99, _____.

40E-6.021 Definitions.

(1) through (9) No change.

~~(10) The term “passive recreational use” when used in these rules is intended to mean conventional leisure activities, with minimal land or water resource impacts, which include such uses as walking, jogging, hiking, bicycling, fishing, nature appreciation, and equestrian use. Passive recreational use shall not include the use of motorized vehicles, with the exception of motorized wheelchairs necessary for use by disabled persons.~~

~~(10)(11)~~ The term “permit transfer” when used in these rules is intended to mean the changing of responsibility for the permit authorization from one person or entity to another.

~~(11)(12)~~ The term “right of way” when used in these rules is intended to mean those lands acquired by the District in fee, easement, or other type of grant, for the purpose of operations and maintenance of the District’s canal and levee system, spoil areas, Stormwater Treatment Area’s (STA’s), and access and other easements.

~~(12)(13)~~ The term “right of way occupancy permit” when used in these rules is intended to mean a revocable license to occupy the works or lands of the District, either by a notice general permit or a standard permit.

~~(13)(14)~~ The term “STA” when used in these rules is intended to mean the District’s Everglades Nutrient Removal Project (“ENR”), as well as those areas currently, or in the future, designated by the District as Stormwater Treatment Area’s.

~~(14)(15)~~ The term “standard permit” when used in these rules is intended to mean a revocable license to occupy the works or lands of the District for all uses not covered by a notice general permit, with a full review by District staff, as set forth herein, and requiring Governing Board approval.

~~(15)(16)~~ The term “top of bank” when used in these rules is intended to mean the point at which the flat or nearly level ground surface transitions down to the channel along the side slope of the canal bank.

~~(16)(17)~~ The term “tree” when used in these rules is intended to mean not only the trunk of the tree, but the farthest part of the canopy of the tree at maturity as well.

~~(17)(18)~~ The term “utility” when used herein means companies actually providing essential water, electric, telephone, sewer, or natural gas services. All other services shall be considered non-essential.

~~(18)(19)~~ The term “violator” when used in these rules is intended to mean any persons or entities acting contrary to the provisions of Chapter 373, F.S., these rules, as well as the provisions of any permit issued pursuant to these rules.

~~(19)(20)~~ The term “Works of the District” when used in these rules is intended to mean the canals, levees, structures, lands, water bodies, and other associated facilities which have been adopted as such by the District’s Governing Board.

~~(20)(21)~~ The term “Zone 1” when used in these rules is intended to mean the canal channel from the top of bank to the opposite top of bank, as depicted in Figure 1.

~~(21)(22)~~ The term “Zone 2” when used in these rules is intended to mean the point on the right of way from the top of bank to a point five (5) feet landward, as depicted in Figure 1.

~~(22)(23)~~ The term “Zone 3” when used in these rules is intended to mean the point on the right of way from a point five (5) feet landward from top of bank to a point twenty (20) feet landward, as depicted in Figure 1.

~~(23)(24)~~ The term “Zone 4” when used in these rules is intended to mean the point on the right of way from a point twenty (20) feet landward from top of bank to a point forty (40) feet landward, as depicted in Figure 1.

~~(24)(25)~~ The term “Zone 5” when used in these rules is intended to mean any right of way located further than forty (40) feet from the top of bank, as depicted in Figure 1.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.085, 373.086 FS. History–New 9-15-99, Amended _____.

40E-6.051 Exemptions.

(1) No change.

(a) through (e) No change.

~~(f) Passive recreational use.~~

(2) through (4) No change.

Specific Authority 373.044, 373.113, FS. Law Implemented 373.085, 373.086 FS. History–New 12-24-91, Amended 9-15-99, _____.

40E-6.311 Access to Works and Lands of the District; Closures.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.016, 373.085, 373.086, 373.119, 373.1395 FS. History–New 9-15-99, Repealed _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Fred Davis, Division Director, Land Stewardship Division

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

DATE PROPOSED RULE APPROVED BY AGENCY: February 8, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN THE FAW: May 6, 2005

WATER MANAGEMENT DISTRICTS

South Florida Water Management District

RULE TITLES:	RULE NOS.:
Policy and Purpose	40E-7.511
Scope and Applicability	40E-7.520
Definitions	40E-7.521
Access to District Lands; Closures	40E-7.523

Use of Vehicles, Vessels, and Aircraft;
 Navigational Restrictions 40E-7.525
 Equestrian Activities; Use of Saddle Animals 40E-7.526
 Hunting; Possession and Use of Firearms
 or Hunting Devices 40E-7.527
 Bicycling 40E-7.528
 Overnight Camping 40E-7.529
 Trapping 40E-7.530
 Operating Hours 40E-7.532
 Special Use Licenses 40E-7.534
 Event Authorization 40E-7.535
 General Prohibitions 40E-7.537
 Special Provisions for Management Areas
 of the District Open to the Public 40E-7.538
 Special Provisions for Right of
 Way of the District 40E-7.5381
 Special Provisions for Vacant Undesignated
 District Lands Open to the Public 40E-7.5382
 Special Provisions for Stormwater
 Treatment Areas (STA's) of the
 District Open to the Public 40E-7.5383
 Special Provisions for Impoundment
 Areas of the District Open to the Public 40E-7.5384
 Penalties 40E-7.539

PURPOSE AND EFFECT: This rulemaking concerns proposed revisions to Chapter 40E-7, Part V, F.A.C., pertaining to public access to and recreational use of South Florida Water Management District lands. The proposed rules will (1) update the District's existing public access and recreational use rules concerning management areas, (2) relocate those portions of Chapter 40E-6, F.A.C., concerning public access to and recreational use of District rights-of-way to Chapter 40E-7, Part V, F.A.C., and (3) establish rules concerning public access to and recreational use of the District's stormwater treatment areas, impoundment areas and vacant undesignated lands. By consolidating these rules under Chapter 40E-7, Part V, F.A.C., the District will provide the public and land managers with rules that are more consistent with each other and easier to access and use, which should, in turn, increase the public's use of District lands for recreational purposes in ways that are compatible with the purpose for which the lands were acquired.

SUMMARY: The Rule establishes general rules for all District lands, as well as specific rules for those lands identified as conservation lands, rights of way, stormwater treatment areas, impoundments and vacant undesignated lands. The general rules address the use of vehicles, vessels and aircraft, equestrian activities, hunting, bicycling, camping and trapping on all District lands, with exceptions or prohibitions relative to specific project types contained in separate sections for each type of land. Those portions of Chapter 40E-6, F.A.C., concerning recreational and passive use of District rights of way will be relocated to Chapter 40E-7, Part V. The Rule will also provide for the issuance of "event authorizations" for

those types of events which are not otherwise contemplated by the Rule provided they meet certain criteria set forth in the Rule.

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

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

SPECIFIC AUTHORITY: 259.101, 373.044, 373.113, 373.171 FS.

LAW IMPLEMENTED: 259.101, 373.016, 373.056, 373.103, 373.139, 373.1391, 373.1395, 373.1401, 373.59, 373.085, 373.086, 373.118, 373.129, 373.4592 FS.

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

TIME AND DATE: 9:00 a.m., April 12, 2006

PLACE: Okeechobee Shrine Club, 1855 S. W. 53rd Street, Okeechobee, FL 34974

Although Governing Board meetings, hearings and workshops are normally recorded, affected persons are advised that it may be necessary for them to ensure that a verbatim record of the proceeding is made, including the testimony and evidence upon which any appeal is to be based.

Persons with disabilities or handicaps who need assistance may contact the Director of Governing Board and Executive Services, (561)682-6371, at least two business days in advance to make appropriate arrangements.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Fred Davis, South Florida Water Management District, Post Office Box 24680, Mail Stop Code 5720, West Palm Beach, FL 33416-4680, 1(800)432-2045, Extension 6636, (561)682-6636, internet: fdavis@sfwmd.gov

THE FULL TEXT OF THE PROPOSED RULES IS:

40E-7.511 Policy and Purpose.

(1) The purpose of the rule in this part is to further implement the legislative intent expressed in Sections 259.101, 373.016(2)(h), 373.1391, 373.1395, and 373.59(11), F.S., and Chapter 140, Article IV, South Florida Water Management District Policies and Procedures Code, District Land Management Policy 5-001, and therefore, to establish regulations governing public access to certain District lands and use of said lands for nature based recreation ~~outdoor recreational~~ and allied purposes. It is the intent of these regulations to protect the water resources, native plant communities, fish and wildlife populations, and related natural features of these lands together with any historic and cultural improvements thereon.

(2) Nothing contained in these regulations shall be construed as an assurance by the District that said District lands management areas are safe for any purpose, that the District has a duty of care toward any person entering said lands or that the District is responsible for any injuries or damage to persons or property caused by an act or omission of any person who enters said District lands management areas, including invitees, licensees, contractors, trespassers or other persons.

Specific Authority 279.101, 373.044, 373.113, 373.171 FS. Law Implemented 259.101, 373.016, 373.056, 373.103, 373.1391, 373.1395, 373.59 FS. History—New 5-24-94, Amended 1-5-03, _____.

40E-7.520 Scope and Applicability.

~~(1) Everglades Water Conservation Areas One, Two, and Three are exempt and will not be affected or governed by these rules.~~

~~(1)(2) The general regulations contained herein are broad in scope and applicable to all District lands management areas.~~

~~(2)(3) The regulations are applicable to all persons entering upon, using, or visiting said District lands management areas.~~

~~(3)(4) A copy of the regulations contained herein may shall be posted at entry points, activity areas, and recreation sites equipped with bulletin boards or otherwise made reasonably available to the public.~~

~~(5) The District shall publish and make available to the public, upon request, a “Public Use Guide for Designated Land Management Areas”. The Public Use Guide will be considered by the Governing Board at a public meeting advertised in accordance with Chapter 120, F.S. Only rules adopted by the Governing Board shall be effective. Copies of the Public Use Guide are available during working hours from the District headquarters.~~

~~(4)(6) Consistent with the environmental sensitivity of these areas and the purposes for which the lands were acquired, and all rights, privileges, and protections afforded by the provisions of Section 373.1395, F.S., all District lands management areas (including park areas, other land areas, and water areas) are hereby deemed open and available to the public for outdoor recreational purposes and access unless otherwise limited, restricted, or prohibited by special provision in this rule, by specific provision included in the Governing Board’s designated boundary change to an existing management area or the Governing Board’s creation of a new management area, or as set forth in the Public Use Guide. Nothing in this rule shall prevent other federal, state, or local agencies, including but not limited to those with management contracts with the District, from requiring compliance with their own rules, permits, regulations, ordinances, or laws to the fullest extent of their lawful authority.~~

~~(5)(7) Any signage, prohibiting access to or, use of District lands restricting the use of portions of the management areas (including District land areas, park areas, or water areas) shall~~

only apply to the property or area set forth in or delineated by such signage and a presumption shall exist that all other portions of the Management Areas, Stormwater Treatment Areas, and Impoundment Areas where public access or use is not (including District lands, park areas and water areas) specifically prohibited identified are open and available for outdoor recreational purposes unless otherwise limited, restricted or prohibited by the Governing Board. This provision shall not be construed to impede enforcement of trespass statutes including but not limited to Chapter 810, F.S.

(6) Chapter 40E-7, Part V, F.A.C., is supplemental to the laws, statutes, ordinances, and rules of other governmental entities where cooperative agreements for management of certain public uses of district lands have been approved by the Governing Board.

(7) Exemptions.

(a) District office buildings, service centers, field stations, water control structures and other facilities.

(b) District lands that are under a land management lease or agreement with city, county, state, federal agencies, or private entities, including without limitations Water Conservation Areas 1, 2 and 3.

(c) District lands that are commercially leased lands will not be governed by these rules unless the lease specifically permits public access.

(d) District lands on Tribal Reservations.

(e) Lands in which the District has a less than fee interest where the underlying fee owner has restricted or prohibited public access.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.016, 373.056, 373.1391, 373.1395, 373.1401, 373.59 FS. History—New 5-24-94, Amended 11-12-95, 1-7-97, 11-13-97, 1-1-99, 1-5-03, _____.

40E-7.521 Definitions.

When used in this part:

(1) “Activity area” means a zone within a management area designated for specific recreational activities.

(2) “Access point” means a designated location or boundary for public access to District land a management area.

(3) “Allied purposes” means other related outdoor activities including, but not limited to, frogging, photography, painting, environmental education, and nature study.

(4) “Camping” means to use a vehicle, tent or shelter, or to arrange bedding or both with the intent to stay overnight.

(5) “Designated road” means any road, path, lane, or trail officially designated by name or number for public vehicular travel.

(6) “District land” means any real property in which the District has an interest and is limited to Management Areas, Stormwater Treatment Areas, Impoundment Areas, Right of Way, and vacant undesignated lands.

(7) “Event Authorization” means a permission to access and use District lands in a manner not otherwise provided for or authorized in this part.

(8) “Executive Director” means the person who is in the position of Executive Director for the South Florida Water Management District.

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

(10) “Firearm” means a shotgun, rifle, pistol, revolver or muzzleloader designed to expel a projectile by the action of an explosive and any air gun, gas gun, blow gun, crossbow, spear, or any other device mechanically propelling an arrow, spear, or other projectile or any starter gun or blank firing device.

(11) “Group campsite” means a designated campsite for campers whose total is eight (8) or more people.

(12) “Horse cart” means a non-motorized two (2) wheeled vehicle pulled by a single saddle animal.

(13) “Hunting device” means any mechanical device used to take or attempt to take wildlife or feral hogs.

(14) “Idle Speed” means the minimum speed at which a motorized vessel is able to move and maintain adequate steering control.

(15) “Impoundment Area” means District lands designated by the Governing Board as an Impoundment Area.

(16) “Leased” means the granting of either an exclusive or non-exclusive use of or interest in District lands for a specified period of time.

(17)(6) “Outdoor recreational purposes” means natural resource based outdoor recreational activities including, but not limited to, fishing, hunting, horseback riding, bicycling, swimming, camping, hiking, canoeing, boating, airboating, scuba diving, birding, sailing, jogging, picnicking, pleasure driving, nature study, water skiing, motorcycleing, and visiting historical, archaeological, scenic or scientific sites.

(18)(7) “Management Area” means:

(a) Any Save Our Rivers land, other District land, or combination thereof, designated by the Governing Board as a Management Area listed in the Public Use Guide and, Such lands are managed as a single and distinct units for the purpose of restoring, preserving, and protecting the water and related environmental resources of said area, including regulating the public uses thereon, and

(b) Any such lands, acquired by the District since the most recent update of the Public Use Guide and designated by the Governing Board as a boundary change of contiguous lands to an existing management area, or by the creation of a new management area.

(19)(8) “Management Unit” means a portion of any Save Our Rivers land or other District land within a management area that requires a specific public use regulation due to legal,

cultural or environmental factors uniquely affecting the specific unit of land, but which is not applicable to the entire management area.

(20)(9) “Natural Resources” mean water, soils, flora, and fauna.

(21) “Personal watercraft” means a vessel less than 16 feet in length which uses an inboard motor powering a water jet pump as its primary source of motorized power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

(22)(10) “Primitive Camping” means no amenities are provided.

(11) “Public Use Guide” means the document updated and approved bi annually by the Board which sets forth management areas, the general rules and regulations governing public use, and any special provisions applicable thereto, and shall also include periodic supplements as to those management area lands referenced in paragraph 40E 7.521(6)(b), F.A.C., above.

(23)(12) “Recreation site” means an improved or unimproved site established to facilitate public use of a designated Management Area, Stormwater Treatment Area, Impoundment Area, Right of Way or vacant undesignated land.

(24)(13) “Recreational trail” means saddle animal riding, hiking, canoeing, bicycling, or jogging trails for use by the public.

(25) “Right of Way” means the Right of Way acquired for the construction, operation, and maintenance of the canals and levees adopted as Works of the District pursuant to Section 373.086, F.S. These Right of Way include the canals, levees, maintenance berms and spoil mounds located thereon.

(26)(14) “Saddle animal” means any animal used to transport a person or property.

(27) “Service animal” means an animal such as a guide dog, signal dog or other animal individually trained to provide assistance to an individual with a disability.

(28) “Special Use License” means a type of license granted by the District to allow access to and use of certain District lands and facilities as set forth in this Part.

(29) “Stormwater Treatment Area” means District lands designated by the Governing Board as a Stormwater Treatment Area.

(30) “Vacant undesignated land” means any land owned by the District that is not designated as a Management Area, Stormwater Treatment Area, Impoundment Area, or Right of Way which land is greater than ten (10) acres and has legal and practical public access.

(31) “Vessel” is synonymous with a boat as referenced in s. 1(b), Art. VII of the Florida State Constitution and includes every description of watercraft, barge, and air boat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

Specific Authority 373.019, 373.044, 373.113, 373.171 FS. Law Implemented 373.016, 373.056, 373.069, 373.0693, 373.073, 373.079, 373.083, 373.103, 373.1391, 373.59 FS. History--New 5-24-94, Amended 11-13-97, 1-1-99, 1-5-03, _____.

(Substantial rewording of Rule 40E-7.523 follows. See Florida Administrative Code for present text.)

40E-7.523 Access to District Lands Management Areas; Closures.

(1) When designated access points are indicated, entry onto and exiting from Management Areas, Stormwater Treatment Areas, and Impoundment Areas by the general public is only authorized at those designated access points.

(2) Entry onto and exiting from Right of Way may be at any legal public access point.

(3) District lands or areas within District lands shall be closed to public use under the following conditions:

(a) When necessary during emergency conditions such as floods, severe weather events, or wildfire for public safety and the protection of natural resources. Such closures shall require the approval of the Executive Director and concurrence of the Governing Board. In no event shall such closures exceed forty-five (45) days duration absent reconsideration and approval by the Governing Board.

(b) When necessary, in the judgment of the Executive Director or the Governing Board, based upon available information at the time, on a temporary, seasonal or permanent basis to protect natural, historic or archaeological resources. Such closures, to the extent they exceed forty-five (45) days, shall require approval by the Governing Board.

(c) During certain days, hours or periods of time, when such closure is necessary to implement land management practices such as prescribed burning, vegetation spraying, construction, operations, maintenance, research studies, data collection, resource protection, or as a condition of a contract or permit.

(d) Upon the designation by the Governing Board pursuant to Section 373.6055, F.S., that certain District lands or facilities are "critical infrastructure", as designated by the Regional Domestic Security Task Force pursuant to applicable law, whereupon such lands or facilities shall be immediately deemed closed for public use without further action required by the Governing Board.

(e) Specific uses permitted on District lands may be restricted to certain areas within those lands.

(4) Regulated closures under subsection 40E-7.523(3), F.A.C., temporary, seasonal, or permanent closures of District lands or areas within District lands will be posted at authorized points of entry or at an established boundary within said areas.

(5) The use or occupancy of existing buildings, structures, and related improvements is prohibited unless designated as a public use facility.

(6) Entry into and exiting from Management Areas and Right of Way from vessels is allowed when these lands are open for public access.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.016, 373.119, 373.1391, 373.59 FS. History--New 5-24-94, Amended 1-1-99, 1-1-01, _____.

(Substantial rewording of Rule 40E-7.525 follows. See Florida Administrative Code for present text.)

40E-7.525 Use of Vehicles, Vessels, Airboats, and Aircraft; Navigational Restrictions.

(1) The operation of licensed and unlicensed vehicles on District lands is prohibited with the following exception: District lands are open to licensed vehicles on designated named and numbered roads only unless otherwise authorized.

(2) Any person who drives a vehicle on District lands shall drive in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic and all other attendant circumstances, so as not to endanger the life, limb or property of any person.

(3) Motorized vehicle operators shall comply with posted speed limits on District lands and roads. If no speed limit is posted, the speed limit is 20 mph. Speed limits are not applicable to airboats, except when the latter are operated on roads on District lands.

(4) Parking or operating a motor vehicle, or trailer, in an unauthorized location or in a manner blocking roads, levees, maintenance berms, gates, or water control structures is prohibited except where the District has affirmatively opened a roadway or a parking area for such use.

(5) Servicing or maintaining vehicles and equipment is prohibited except when in conjunction with authorized recreational activities and allied purposes.

(6) The operation of unlicensed swamp buggies, tracked vehicles, off-road or off highway all terrain vehicles, motorcycles, off-road motorcycles or motocross motorcycles, or any other type of motorized vehicle on District lands is prohibited unless otherwise approved by an Event Authorization.

(7) Any restrictions to navigation established pursuant to state or federal law, applicable to District lands, shall be specified in Rules 40E-7.538, 40E-7.5381, 40E-7.5382, 40E-7.5383 and 40E-7.5384, F.A.C., and reasonably identified in the field by appropriate signs.

(8) No person shall enter or exit District lands from a vessel or airboat when public access to such land is closed.

(9) No person shall launch an airboat or motorized vessel except at designated boat launch facilities. Ramps constructed pursuant to Rule 40E-6, F.A.C., shall be deemed to be designated boat launch facilities.

(10) No person shall operate an airboat or vessel beyond posted District signs.

(11) The take off or landing of either motorized or non-motorized aircraft, including airplanes, helicopters, ultra lights, gliders and hang gliders, is prohibited except in an emergency or for official business.

(12) The take off or landing of model aircraft is prohibited unless otherwise specified in Rules 40E-7.538, 40E-7.5381, 40E-7.5382, 40E-7.5383 and 40E-7.5384, F.A.C., or approved by an Event Authorization.

Specific Authority 373.044, 373.113 FS. Law Implemented 316.192, 316.1925, 316.655, 373.016, 373.1391, 373.59 FS. History—New 5-24-94, Amended 1-5-03, _____.

(Substantial rewording of Rule 40E-7.526 follows. See Florida Administrative Code for present text.)

40E-7.526 Equestrian Activities; Use of Saddle Animals.

(1) Equestrian activities are allowed on vacant undesignated lands and on Right of Way on existing canal maintenance berms and levee tops. On all other District lands equestrian activities are allowed on designated trails and established roads where permitted by signs. District lands requiring a Special Use License for equestrian activities are identified in Rules 40E-7.538, 40E-7.5381, 40E-7.5382, 40E-7.5383 and 40E-7.5384, F.A.C.

(2) Users of saddle animals on District owned land must possess proof of negative Coggins test on their person.

(3) Equestrian activities are not permitted in wetland areas.

(4) The use of a horse cart as defined by subsection 40E-7.521(12), F.A.C., is permitted on Right of Way on existing canal maintenance berms and levee tops. On all other District lands, horse carts are prohibited except as authorized in Rules 40E-7.538, 40E-7.5381, 40E-7.5382, 40E-7.5383 and 40E-7.5384, F.A.C.

Specific Authority 373.044, 373.113 FS. Law Implemented 316.192, 316.1925, 316.655, 373.016, 373.1391, 373.59 FS. History—New 5-24-94, Amended 1-5-03, _____.

40E-7.527 Hunting; Possession and Use of Firearms or Hunting Devices.

(1) Consistent with Chapter 790, F.S., and other applicable provisions of local, state and federal law, concerning hunting or the possession and use of firearms or hunting devices, such as the rules of the Florida Fish and Wildlife Conservation Commission and the United States Department of Interior, Fish and Wildlife Service, hunting, unlawful possession, discharge, and use of firearms, hunting devices or archery equipment, trapping devices and the releasing of free-running hunting dogs are prohibited on District lands management areas unless the land is opened as a public hunting area and these uses are authorized in the specific public hunting area regulations. Nothing contained in Chapter 40E-7, Part V, F.A.C., shall be construed to prohibit the lawful possession of concealed weapons by persons properly licensed by the State of Florida to carry concealed weapons. The prohibition on the possession

and discharge of firearms or hunting devices shall not apply on land approved by the District for use as a small arms shooting range.

(2) Public hunting on District lands management areas is regulated, administered and enforced by the Florida Fish and Wildlife Conservation Commission, or the U.S. Department of the Interior, Fish and Wildlife Service in cooperation with the District. If a public hunting area, is permitted on District lands, included in a management area, it shall be posted as prescribed by Chapter 810, F.S. Management Areas currently established as public hunt areas are noticed in Rules 40E-7.538, 40E-7.5381, 40E-7.5382, 40E-7.5383 and 40E-7.5384, F.A.C. the Public Use Guide.

(3) Public hunting areas shall only be established on District lands management areas with approval of the Governing Board. Board approval shall be given at a public meeting which shall be advertised as required by Chapter 120, F.S. The District may enter into management agreements with the entity to be responsible for managing the public hunting on the management area. Agreements between the District and the Florida Fish and Wildlife Conservation Commission or the United States Fish and Wildlife Service are considered to be authorizations to remove designated game species. The agreements will be available at the District headquarters for review by the public.

(4) No person shall hunt or possess a hunting device or firearm except during regulated hunting seasons established and managed by the Florida Fish and Wildlife Conservation Commission.

(5) Erecting or maintaining tree stands on District lands more than 10 days before or more than 10 days after any authorized hunting season is prohibited.

(6) Placing, exposing or distributing any grain or other food for wildlife is prohibited.

(7) Hunting from improved roads is prohibited.

(8) Hunting in posted safety zones is prohibited.

(9) Hunting beyond posted signs is prohibited.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.016, 373.1391, 373.1401, 373.59, 790, 810.09 FS. History—New 5-24-94, Amended 1-1-01, 1-5-03, _____.

40E-7.528 Bicycling.

Bicycling is allowed on vacant undesignated lands and on Right of Way on existing canal maintenance berms and levee tops. On all other District lands, bicycling is allowed on designated trails and established roads except where restricted by signs. Lands requiring a Special Use License for bicycling are identified in Rules 40E-7.538, 40E-7.5381, 40E-7.5382, 40E-7.5383 and 40E-7.5384, F.A.C.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.016, 373.1391, 373.1401, 373.59, 790, 810.09 FS. History—New _____.

40E-7.529 Overnight Camping.

(1) ~~Management Areas Overnight, primitive camping on management areas is permitted unless otherwise specified in the Public Use Guide.~~

(a) Overnight, primitive camping on a first-come, first-serve basis is permitted only at designated campsites and shall require a Special Use License as specified in Rule 40E-7.538, F.A.C.

~~(2) Any restrictions applicable to overnight camping shall be specified in the Public Use Guide.~~

~~(b)(3) Designated campsites and amenities within specific Management Areas shall be specified in the Public Use Guide and reasonably identified in the field by appropriate signs or markers.~~

~~(c)(4) Overnight camping or the presence of camping equipment shall be limited to five (5) consecutive days, or 30 total days per year per District land where camping is authorized, unless authorized by Special Use License.~~

~~(d) Use of group campsites in Management Areas requires a Special Use License.~~

(2) Stormwater Treatment Areas, Impoundment Areas and Right of Way

(a) Overnight, primitive camping is permitted only along the Florida National Scenic Trail when in possession of a Special Use License.

(b) Overnight camping or the presence of camping equipment shall be limited to one (1) night unless authorized by a Special Use License.

(3) No person shall install, erect, or maintain any unauthorized camp, building, structure, shelter, residence or sign.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.016, 373.1391, 373.59 FS. History--New 5-24-94, Amended 11-13-97, 1-1-99, 1-5-03, _____.

40E-7.530 Trapping.

Trapping is prohibited on all District lands except where authorized by an Event Authorization which shall be limited to scientific study or removal of nuisance species. Trapping on District land is regulated, administered and enforced by the Florida Fish and Wildlife Conservation Commission.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.016, 373.1391, 373.59 FS. History--New _____.

40E-7.532 Operating Hours.

District lands Management areas shall be open to public use twenty-four (24) hours a day seven (7) days a week except during authorized closures as set forth in subsection 40E-7.523(3)(2), F.A.C., above or unless otherwise specified in Rules 40E-7.538, 40E-7.5381, 40E-7.5382, 40E-7.5383 and 40E-7.5384, F.A.C. Public Use Guide.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.016, 373.119, 373.1391, 373.59 FS. History--New 5-24-94, Amended _____.

40E-7.534 Special Use Licenses.

(1) A Special Use License, issued by the District's Land Stewardship Division or its authorized agents or contractors at no cost to the public, shall be required to engage in select activities on District lands management areas identified by the Governing Board, ~~during the bi-annual update of the Public Use Guide, as set forth in subsection 40E-7.521(9), F.A.C., above,~~ when determined necessary to protect the natural resources of said areas, prevent overuse of facilities, or to avoid conflicts between users. District lands Management Areas with Special Use License requirements, including the daily quota for Special Use Licenses for each District land, if any, each management area, shall be specified in Rules 40E-7.538, 40E-7.5381, 40E-7.5382, 40E-7.5383 and 40E-7.5384, F.A.C. the Public Use Guide.

(2) A Special Use Application and License shall be submitted to the District on Form #0830. Upon receipt of a properly completed Special Use Application and License Form #0830, the District's ~~Division of Land Stewardship~~ Division shall issue Special Use Licenses on a first come first served basis until the daily quota established by the District for that activity is reached.

(3) Special Use Licenses shall only be valid for the dates shown on the License and must be in the possession of the applicant while on the identified District land management area. If the applicant is a group, then the license must be in the possession of the designated group leader.

(4) Persons wishing to obtain a Special Use License, when required by the District, may apply in person, call, or write to request a copy of Special Use Application and License Form #0830 from the District at the following:

- (a) ~~Division of Land Stewardship~~ Division
South Florida Water Management Stewardship District
Post Office Box 24680 (mailing)
Building B-1, 3301 Gun Club Road (in person)
West Palm Beach, FL 33416-4680
Telephone: (561)686-8800 or Florida WATS
1(800)432-2045, or

(b) From the applicable service center as set forth in the special provisions for the specific District land management area, or

(c) From the District's web site:
www.sfwmd.gov/org/clm/lcd/public.html.

(5) In the event the daily quota has been reached, the District shall notify the Special Use License applicant that the District intends to deny the application, and the applicant may request further consideration by the Governing Board.

(6) The Executive Director, or his designee, shall revoke a Special Use License if the licensee violates any provisions of this Rule or the Special Use License.

(7) Special Use Licenses shall be issued by the District's Land Stewardship Department in accordance with the provisions of this section, for the purpose of providing mobility impaired persons the opportunity to use motorized vehicles to access portions of the District lands management areas not otherwise open to motorized vehicles. Licenses for this purpose will be issued upon request, including proof of mobility impairment, as long as the requested use will not adversely impact the resource, impair the safety and welfare of the user, interfere with the reasonable use by others, or result in substantial financial obligations by the District to accommodate the user. Mobility impaired hunting permits are shall be issued by the Florida Fish and Wildlife Conservation Commission.

(8) Any person prohibited from entering onto District land by a court order shall not be eligible to apply for a Special Use License, during the prohibition period.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.016, 373.1391, 373.59 FS. History—New 5-24-94, Amended 1-1-99, 1-1-01, 1-5-03,

40E-7.535 Event Authorization.

(1) A person or entity shall apply for an Event Authorization, at no cost to the applicant, to use District lands in a manner not otherwise provided for or authorized in this part.

(2) To receive an Event Authorization the applicant must provide reasonable assurance that:

(a) The requested use will not involve the permanent alteration of any District land or the permanent placement of any structure on District land;

(b) The requested use is resource-based;

(c) The requested use is consistent with the management plan for the District lands involved;

(d) The requested use will not harm the environmental resources of the District land;

(e) The requested use will not cause unreasonable expense to the District;

(f) The requested use will not create a substantial risk of liability to the District;

(g) The requested use will not harm any dam, impoundment, works, water control structure, road, or District-owned facilities or equipment;

(h) The requested use will not interfere with District water management, leased, or authorized uses of the land; and

(i) The requested use will not interfere with any other use allowed by this part.

(3) The District shall impose upon any Event Authorization issued pursuant to this part such reasonable conditions as are necessary to assure that the use or activity authorized will meet the criteria set forth in this part.

(4) The Governing Board delegates to the Executive Director or their Designee the authority to issue or revoke Event Authorizations pursuant to this part.

(5) A person or entity may apply for an Event Authorization according to the following procedure:

(a) Submit a written request to:

South Florida Water Management District

Land Stewardship Division

P. O. Box 24680

West Palm Beach, Florida 33416-4680

(b) If the requested use will create a substantial risk of liability to the District, the applicant must mitigate the substantial risk of liability by:

1. Providing proof of liability and property damage insurance naming the District as an insured in an amount sufficient and determined by the District to cover the cost of the potential liability; and

2. Providing waivers or releases of liability sufficient to eliminate the potential liability.

(c) If the requested use satisfies all of the criteria set forth in this section and is not otherwise inconsistent with District Policy, the Executive Director shall issue the Event Authorization.

(6) A person or entity receiving an Event Authorization from the District must have the Event Authorization in their possession at all times while on District lands.

(7) In the event the holder of an Event Authorization violates the terms of the authorization, engages in a use not permitted by the authorization, or the authorized activity is no longer consistent with District policy, the Event Authorization shall be subject to revocation by the Executive Director or designee.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.016, 373.1391, 373.59 FS. History—New _____.

40E-7.537 General Prohibitions.

The following shall be prohibited on all District lands unless otherwise specified management areas:

(1) Parking a motor vehicle in an unauthorized location or in a manner blocking roads, levees, maintenance berms, gates, or water control structures.

(2) Discharging firecrackers, rockets, or any other fireworks.

(3) Pets, other than leashed dogs and service animals under the control of the owner. This prohibition does not apply to hunting dogs utilized in conjunction with an approved hunting program where the use of dogs is permitted.

(4) Destroying, defacing, or removing any natural resource feature or native plant, including the felling of dead trees.

~~(3)(5)~~ Destroying, injuring, defacing, vandalizing, removing, or disturbing in any manner any public building, tower, recorder, gage, walkway, platform, well, sign, gate, fence, equipment, monument, marker, or other structure or improvement.

~~(4)(6)~~ Destroying or damaging scientific study plots, photo points, transect lines, benchmarks or survey monuments, or survey markers.

~~(5)(7)~~ Trespassing on, operating, vandalizing, or interfering with the operation of any water control structures.

~~(6)(8)~~ Discharging or disposing of oil, gasoline, paint, thinner, pesticides, fertilizer, explosives or other pollutants, chemicals and wastes.

~~(9)~~ ~~Serviceing or maintaining vehicles and equipment except when in conjunction with authorized recreational activities and allied purposes.~~

~~(10)~~ Disposing of any garbage, including paper, cans, bottles, waste materials, and rubbish other than in containers provided for such disposition.

~~(11)~~ ~~Draining or dumping refuse or waste from any travel trailer, camper, mobile home or recreation vehicle other than in places or receptacles designated for such use.~~

~~(7)(12)~~ Cleaning fish, game, or food at potable watering stations, ~~or~~ in rest rooms, at boat ramps, or trailheads, or washing clothing or articles, or washing, cleaning or servicing of vehicles except where facilities for such activities have been provided by the District or other management entity of household use at such facilities.

~~(8)(13)~~ Using refuse containers or other refuse facilities for disposal of household or commercial garbage or trash.

~~(14)~~ ~~Installing, erecting, or maintaining any unauthorized camp, building, structure, or sign.~~

~~(9)(15)~~ Building a fire in a place other than a in an authorized campsite or picnic area or outside of grills, fireplaces, or fire rings provided by the District or other authorized management agency for such purpose. This prohibition does not apply to portable campstoves or grills provided by the user.

~~(10)~~ Commercial activity by a for-profit person or entity without contractual agreement with the District.

~~(11)~~ Conducting an activity on District lands where prohibited by posted signs where such activity is regulated by the posting of signs under Rule 40E-7, Part V, F.A.C.

~~(12)~~ Installing or maintaining unauthorized signs.

~~(13)~~ Pets with the exception of service animals and leashed animals on Management Areas.

~~(16)~~ ~~Selling or offering for sale any merchandise without the prior written consent of the District's Governing Board. Requests to the District for consent shall be made in writing, directed to the Land Stewardship Division — Land~~

~~Management Department, and shall be submitted not less than 28 days prior to the regularly scheduled Governing Board Meeting for consideration.~~

~~Consideration to such consent shall be given at a regularly scheduled meeting of the District's Governing Board. Although the Board's analysis of requests to sell merchandise within a management area is primarily site specific in nature, consideration shall be given to such factors as: immediate and potential impact on the environment, immediate and potential impact on members of the public using the management area, the size of the management area in relation to the area impacted by the proposed sale, and overall benefits to the public.~~

~~(17)~~ ~~Operating bicyeles on trails closed to such use.~~

~~(18)~~ ~~Erecting or maintaining tree stands on District lands more than 10 days before or more than 10 days after any authorized hunting season.~~

Specific Authority 373.044, 373.113 FS. Law Implemented 373.016, 373.1391, 373.59 FS. History—New 5-24-94, Amended 1-1-99, 1-5-03,

(Substantial rewording of Rule 40E-7.538 follows. See Florida Administrative Code for present text.)

40E-7.538 Special Provisions for Management Areas of the District Open to the Public Establishment of South Florida Water Management District Management Areas Open to the Public.

(1) Rough Island North and South and Johnson Island Units.

(a) Seasonal public access to the Rough Island North limited access area is permitted from August 16 to February 14 only between the hours of 6:00 a.m. to 9:00 p.m., via the airboat gate. Users of this area must be in possession of a Special Use License.

(b) A quota of fifty (50) annual Special Use Licenses has been established for this area. Annual Special Use Licenses are available on June 1st of each year from the District's Upper Lakes Region land manager at the Orlando Service Center.

(c) Hunting is permitted in the Rough Island North limited access area only on those dates during seasonal public access period referenced in paragraph 40E-7.538(1)(a), F.A.C., which coincide with hunting seasons established by the Florida Fish and Wildlife Conservation Commission.

(d) Any person who has been issued an annual Special Use License for the limited use area shall have the annual Special Use License in possession while in the limited use area.

(e) Special Use License holders shall not operate any vessel not registered with the District in the limited access area without first notifying the District.

(f) The number of hunters that can accompany an annual Special Use License holder to hunt in the limited access area is limited to three.

(g) The annual Special Use License may be transferred from one registered airboat or watercraft to another airboat or watercraft after notifying the Upper Lakes Region land manager at the Orlando Service Center. The Special Use License holder may not operate that vessel in the limited access area until after such notification has been made.

(h) Any person convicted of violating a federal, District, state or local fish and wildlife law, statute, rule or ordinance within the previous 3 years shall not be eligible for a Special Use License to enter the Rough Island North limited use area.

(2) Lake Marion Creek Management Area in Polk County. Camping is permitted only at designated campsites when in possession of a Special Use License.

(3) Gardner-Cobb Marsh Management Unit in Osceola County

(a) Persons may enter and exit the management area from Lake Cypress, Lake Hatchineha, Lake Kissimmee, and Canal 36.

(b) Airboating is prohibited beyond the restricted area signs, on or across improved roadways or within hammock areas, except that airboats may cross the main grade at the designated crossing points.

(c) Hunting in Ike Hammock is prohibited.

(d) Possession of a firearm or hunting device in Ike Hammock is prohibited.

(4) Lower Kissimmee River Management Area located in Polk, Osceola, Highlands, Glades, and Okeechobee Counties.

(a) Camping is permitted only at designated campsites when in the possession of a Special Use License.

(b) The use or possession of saddle animals is permitted when in the possession of a Special Use License.

(c) The use or possession of saddle animals and camping at designated campsites is permitted for both uses when in possession of a Special Use License permitting both uses.

(d) Safety Zones within the Public Use Area in Okeechobee, Highlands, Osceola, and Polk Counties.

1. All hunting devices and firearms shall be unloaded.

2. A person in possession of a Special Use License to camp within the Safety Zone at the Oak Creek Campsite during a hunting season shall have firearms or hunting devices unloaded and secured in a locked firearm or hunting device case while in camp and while in direct travel to and from the campsite.

(5) DuPuis Management Area located in Martin and Palm Beach Counties.

(a) The use or possession of saddle animals and horse carts is restricted to the equestrian center, designated equestrian trails, and named or numbered roads.

(b) The use of off road vehicles is restricted to the designated disabled hunt in accordance with Florida Fish and Wildlife Conservation Commission regulations.

(c) No dogs are allowed on DuPuis except as authorized by the Florida Fish and Wildlife Conservation Commission.

(d) Camping at the family campsite:

1. Only tent camping or tent popup camping is allowed.

2. A maximum of 8 people and 2 vehicles are allowed per campsite.

3. Generators are not allowed.

(6) CREW Marsh Management Area located in Lee and Collier Counties.

(a) Persons may enter and exit the Management Area each day between sunrise and sunset from any established trailhead off State Road 850 (Corkscrew Road).

(b) Overnight camping is permitted at the designated primitive campsite when in the possession of a Special Use License (See Rule 40E-7.534, F.A.C.) or as authorized by Florida Fish and Wildlife Conservation Commission. A quota of twenty (20) persons per night has been established by the District for use of the designated campsites.

(7) Bird Rookery Swamp Management Area located in Collier County. Persons may enter the Management Area on foot at the west end of N. W. 43 Avenue, Collier County.

(8) Flint Pen Strand Management Area located in Lee County. Persons may enter and exit the Management Area on foot from Poormans Pass.

(9) Nicodemus Slough Management Area located in Glades County.

(a) Persons may enter the Management Area each day between sunrise and sunset; nighttime activities other than those specified in paragraph 40E-7.538(9)(c), F.A.C., below are prohibited.

(b) Overnight camping is prohibited.

(c) Airboating and frogging are permitted on the Management Area. Airboaters operating on the Management Area must be in possession of a Special Use License. A quota of five airboats per day has been established by the District. A copy of the Special Use License must be displayed in a readily visible location within the licensee's vehicle while parked on the Management Area.

(d) The use or possession of a saddle animal is prohibited.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.016, 373.1391, 373.59 FS. History--New 1-1-01, Amended 1-5-03,_____.

40E-7.5381 Special Provisions for Right of Way of the District.

The following shall be prohibited on all Right of Way of the District; which include rights-of-way, canals, levees, maintenance berms, and spoil mounds:

(1) Hunting.

(2) Discharge of firearms or hunting devices.

(3) Discharging firecrackers, rockets, or any other fireworks.

(4) Operating a motor vehicle including licensed and registered motor vehicles as well as off highway and all terrain vehicles except where the District has affirmatively opened a roadway or a parking area for public use.

(5) Operating any all terrain vehicles or off highway vehicles, or amphibious vehicle on roads, levees, maintenance berms, or other District land unless authorized by the District. When authorized the District may specify the roads, trails, times of use and other restrictions.

(6) Parking vehicles or trailers in such a manner as to block access roads, levees, maintenance berms, gates or water control structures.

(7) Anchoring or tying a vessel or watercraft to a road, levee, maintenance berm, structure, fence, tree, post, sign, gauge, data recorder, weed barrier, or boat barrier.

(8) Vessels being occupied or used as a temporary or permanent residence or business.

(9) Operating or mooring a vessel or watercraft in such a manner as to impede the District's ability to construct, operate and maintain its structures.

(10) Pets, with the exception of service animals, leashed animals and animals otherwise under the effective control of the owner.

(11) Installing, erecting or maintaining a temporary or permanent place of residence including, but not limited to, a camp, trailer, or shelter. Overnight primitive camping along the Florida National Scenic Trail is permitted if camper possesses a Special Use License on their person.

(12) The abandonment of personal or commercial property.

(13) The removal of any spoil, rock or mineral formations by any person or entity without written authorization from the District.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.016, 373.1391, 373.59 FS. History—New _____.

40E-7.5382 Special Provisions for Vacant Undesignated District lands Open to the Public.

The following shall be prohibited on vacant undesignated lands, as that term is defined in subsection 40E-7.521(30), F.A.C.

(1) Possession of a firearm or hunting device.

(2) Hunting, unless otherwise authorized by the Governing Board and administered by the Florida Fish and Wildlife Conservation Commission.

(3) Camping.

(4) Motorized vessels.

(5) Pets with the exception of service animals, leashed animals, and animals otherwise under the effective control of the owner.

(6) Public access between 1/2 hour after sunset to 1/2 hour before sunrise.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.016, 373.1391, 373.59 FS. History—New _____.

40E-7.5383 Special Provisions for Stormwater Treatment Areas (STA's) of the District Open to the Public.

Persons may only enter and exit Stormwater Treatment Areas at designated public access points during the hours and days as designated by posted signs.

(1) The following are prohibited in all Stormwater Treatment Areas unless otherwise authorized:

(a) Pets, with the exception of service animals.

(b) Hunting, unless otherwise authorized by the Governing Board and administered by the Florida Fish and Wildlife Conservation Commission.

(c) Frogging.

(d) Fishing in areas closed to fishing within the STA's as posted by sign.

(e) Motorized and non-motorized vessels and boat trailers in interior waters.

(f) Entering interior waters.

(2) Vessels and vessel operation is permitted only on STA exterior canals under the following limitations:

(a) Vessel and vessel operation limitations shall be posted by sign.

(b) Vessel and vessel operation limitations may be made specific to each Stormwater Treatment Area exterior canal for: resource protection; protection of District structures, equipment, and levees; operations, maintenance; or as necessary to accomplish the District missions.

(c) Vessels shall be limited as motorized or non-motorized, and by engine horsepower, engine type, and vessel type.

(d) Vessel operation shall be limited by area, water depth, by distance from District structures, equipment, or levees, and by speed.

(3) The following vessel and vessel operations are prohibited in Stormwater Treatment Area exterior canals:

(a) Personal watercraft.

(b) Airboats.

(c) Vessel operation greater than Idle Speed within 300 feet of any District, structure or equipment.

(d) Vessel operation which causes damage to plants, injures animals or fish, or other environmental resources.

(e) Vessel operation within an area delineated by vessel barriers.

(f) Anchoring or tying a vessel or watercraft to a road, levee, maintenance, berm, structure, fence, tree, post, sign, gauge, data recorder, weed barrier, or vessel barrier.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.016, 373.1391, 373.59, 373.4592(4)(a) FS. History—New _____.

40E-7.5384 Special Provisions for Impoundment Areas of the District Open to the Public.

Persons may only enter and exit Impoundment Areas at designated public access points during the hours and days as designated by posted signs.

(1) The following are prohibited in all Impoundment Areas, unless otherwise authorized.

(a) Pets with the exception of service animals, leashed animals, and animals otherwise under the effective control of the owner.

(b) Hunting, unless otherwise authorized by the Governing Board and administered by the Florida Fish and Wildlife Conservation Commission.

(c) Frogging.

(d) Fishing in areas closed to fishing within the Impoundment Areas as posted by sign.

(e) Swimming, surfing, snorkeling, scuba diving or use of other underwater breathing apparatus.

(f) Water skiing, tubing, wake boarding or similar in water sports.

(2) Vessels and vessel operation is permitted on Impoundment Areas under the following limitations:

(a) Vessel and vessel operation limitations shall be posted by sign.

(b) Vessel and vessel operation limitations may be made specific to each Impoundment Area for: resource protection; protection of District structures, equipment, and levees; operation, maintenance; or as necessary to accomplish the District's mission.

(c) Vessels shall be limited as motorized or non-motorized, and by engine horsepower, engine type, and vessel type.

(d) Airboat operation shall be limited to designated areas.

(e) Vessel operation shall be limited by area, water depth, by distance from District structures, equipment, or levees, and by speed.

(3) The following vessels and vessel operations are prohibited in Impoundments:

(a) Personal watercraft.

(b) Vessel operation greater than Idle Speed within 300 feet of any District, structure or equipment.

(c) Vessel operation which causes damage to plants, injures animals or fish, or other environmental resources.

(d) Vessel operation within an area delineated by vessel barriers.

(e) Anchoring or tying a vessel or watercraft to a road, levee, maintenance berm, structure, fence, tree, post, sign, gauge, data recorder, weed barrier or vessel barrier.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.016, 373.1391, 373.59 FS. History--New _____.

40E-7.539 Penalties.

(1) Pursuant to Section 373.609, F.S., it shall be the duty of every state and county attorney, sheriff, police officer, and the appropriate city and county official to assist the District, and their agents, in the enforcement of the provisions of this rule.

(2) Any person who violates any provision of this rule is subject to eviction from the premises and/or arrest and prosecution for a second-degree misdemeanor, punishable as provided in Sections 775.082 or 775.083, F.S.

(3) The penalties identified in these rules do not supersede other remedies available to the District at law and/or in equity ~~penalties or options available to District such as civil remedies.~~

Specific Authority 373.044, 373.113 FS. Law Implemented 373.016, 373.129, 373.1391, 373.59, 373.609, 373.613 FS. History--New 5-24-94, Amended 1-5-03, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Fred Davis, Division Director, Land Stewardship Division
 NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Governing Board of the South Florida Water Management District
 DATE PROPOSED RULE APPROVED BY AGENCY: February 8, 2006
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 6, 2005

WATER MANAGEMENT DISTRICTS

South Florida Water Management District

RULE TITLES:	RULE NOS.:
Policy	40E-7.668
Definitions	40E-7.669
Competitive Solicitation Preferences	40E-7.670
District Implementation	40E-7.671
Compliance	40E-7.672
Certification Eligibility – Small Business Enterprise	40E-7.673
Certification Review Procedures	40E-7.674
Recertification Review Procedures	40E-7.675
Decertification	40E-7.676
Reciprocity	40E-7.677
Administrative Hearings	40E-7.678

PURPOSE AND EFFECT: The Rule is being created to implement the provisions of Section 373.1135, F.S., which authorizes each water management district to establish a small business program to encourage small businesses, to participate in district procurement and contract activities. The program will spur economic development and support small businesses to successfully expand in the marketplace.

SUMMARY: The Rule provides for three types of Competitive Solicitation Preferences designed to assist small businesses certified under the District's small business program. These preferences are the bid equalization, a sheltered market and a subcontracting requirement for both bids and proposals. The bid equalization component will provide up to a 10%

adjustment so that a Small Business Enterprise (SBE) who is not the low bidder would still be awarded a contract with the District. The sheltered market will allow only SBEs to bid on designated solicitations. The subcontracting requirement for bids and proposals will allow the District to set subcontracting goals for bids and proposals.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: This rule helps small businesses to participate in District procurement and contracting activities and to successfully expand in the marketplace. Up to 17,000 small businesses may be eligible for certification and all prime contractors will have to secure targeted small business subcontract participation in order to be considered responsive to District solicitations. Certification costs for each applicant are expected to be in the range of \$120 to \$160. For its part the District expects to expend slightly over \$1,000,000 each year for program implementation. Some procurements are also expected to be more expensive, especially those in the bid equalization program. The initial estimate is that the program will result in about \$30 million in additional procurements going to small businesses certified under the program.

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

SPECIFIC AUTHORITY: 373.044, 373.113, 373.171, 373.1135 FS.

LAW IMPLEMENTED: 373.1135 FS.

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

TIME AND DATE: 9:00 a.m., April 12, 2006

PLACE: Okeechobee Shrine Club, 1855 S.W. 53rd Street, Okeechobee, FL 34974

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Frank Hayden, South Florida Water Management District, Post Office Box 24680, Mail Stop Code 6611, West Palm Beach, FL 33416-4680, telephone 1(800)432-2045, extension 6043 or (561)682-6043 (internet: fhayden@sfwmd.gov). Although Governing Board meetings, hearings and workshops are normally recorded, affected persons are advised that it may be necessary for them to ensure that a verbatim record of the proceeding is made, including the testimony and evidence upon which any appeal is to be based. Persons with disabilities or handicaps who need assistance may contact the Director of Governing Board and Executive Services, at (561)682-6371 at least two business days in advance to make appropriate arrangements.

THE FULL TEXT OF THE PROPOSED RULES IS:

40E-7.668 Policy.

(1) The rules under this Small Business Enterprise Contracting Program establish policies and procedures designed to help small businesses, including those owned by women and minorities, to participate in the South Florida Water Management District's ("District") procurement and contract activities.

(2) It is the purpose of the Program to spur economic development and support small businesses, including woman-owned and minority-owned businesses, to successfully expand in the marketplace.

(3) The District shall annually evaluate the progress of this Program and determine whether the specific provisions require any modification, expansion, and curtailment.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History--New.

40E-7.669 Definitions.

(1) "Affiliate Business" means a business that is a subsidiary of or owned in part by another business concern. Entities are affiliates of each other when one impacts the other by sharing resources or controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.

(2) "Applicant" an entity that is seeking District Certification or recertification.

(3) "Certification" means the process by which the District determines that a business meets the District's criteria for a Small Business Enterprise (SBE).

(4) "Employees" means those individuals who received a W-2 from the Applicant. In determining number of employees a business has, the District shall count only those individuals who were supplied a W-2 by the Applicant. Whether employed on a full-time or part-time basis.

(5) "Gross Receipts" means the total sales for the Applicant as specified in its Federal tax return or if a new company which has not filed a Federal tax returns, in its audited financial statement before deductions for returned items, allowances, and discounts.

(6) "Industry Categories" means construction, commodities and services.

(7) "Responsible" means a business that is capable in all respects of fully performing the contract requirements and which has the integrity and reliability that will assure good faith performance.

(8) "Responsive" means a business's bid or proposal conforms in all material respects to the invitation to bid or request for proposal.

(9) "District Small Business Enterprise (SBE)" means a business certified by the District, that including affiliates, employs 100 or fewer part and/or full time employees. Additionally, a District Small Business Enterprise is licensed to

do business in the State of Florida if the business requires a license. Finally, a District Small Business Enterprise three (3) year average gross receipts shall not exceed \$4 million if the business provides construction, \$2.5 million if the business provides commodities, and \$3 million if the business provides services.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History—New _____.

40E-7.670 Competitive Solicitation Preferences.

The Small Business Enterprise Contracting Rule in this part provides for three types of Competitive Solicitation Preferences designed to assist small businesses. The Bid Equalization, Sheltered Market and Subcontracting Requirements as outlined below.

(1) Bid Equalization.

A process that enables the District to place SBE’s on a more level playing field when bids are submitted to the District. Often large businesses are able to submit bids at a lower cost than smaller businesses. When bids are submitted SBEs may receive up to a 10% downward adjustment on its bid for evaluation purposes only. For Solicitations where it is determined by the District to use a bid equalizations the District shall implement a one percent (1%), five percent (5%), and ten percent (10%) maximum bid adjustment. This bid adjustment will increase the likelihood that certified SBE’s may be awarded the contract even though they are not the low bidder so long as the difference in the amount of the bids does not exceed the bid equalization percentage see TABLE 7.6-1.

(a) The maximum Bid Equalization percent shall be determined by the estimated contract value and the dollar ranges as stated in subparagraph b., c. and d.

(b) For contracts with an estimated value of \$2,000,000 or more, the District shall implement a maximum bid adjustment of one percent (1%). If the adjusted lowest SBEs firms bid does not exceed the lowest non SBE firms unadjusted responsive and responsible bid by one percent (1%) then the award shall be made to the lowest responsive and responsible SBE firm.

(c) For contracts with an estimated value of more than \$500,001 but less than \$2,000,000, the District shall implement a maximum bid adjustment of five percent (5%). If the adjusted lowest certified SBE’s firms bid does not exceed the lowest non SBE firms unadjusted responsive and responsible bid by five percent (5%) then the award shall be made to the lowest certified responsive and responsible SBE firm.

(d) For contracts valued at \$500,000 or less, the District shall implement a maximum bid adjustment of ten percent (10%). If the adjusted lowest certified SBE’s firms bid does not exceed the lowest non SBE firms unadjusted responsive and responsible bid by ten percent (10%) then the award shall be made to the lowest certified responsive and responsible SBE firm.

(e) The Bid Equalization does not apply to bids let under the Sheltered Market Program or when all bids received are from SBE firms.

TABLE 7.6-1

Bid Equalization Example using 10% as Incentive Bonus

<u>Bid Incentive Example</u>	<u>Lowest Non-Certified Firm</u>	<u>Lowest Certified SBE Firm</u>
<u>Bid</u>	<u>\$100,000</u>	<u>\$103,000 *</u>
<u>Bid Equalization (10%)</u>	<u>-0-</u>	<u><10,300></u>
<u>Tabulation</u>	<u>\$100,000</u>	<u>\$92,700</u>
<u>Note: *In this example, the District will pay the \$103,000 award, with the difference between the 100,000 bid and the 103,000 bid, being the cost the District is willing to incur to advance the SBE Program commitment.</u>		

(2) Sheltered Market Program.

The District may provide for sheltered markets for only SBE’s to bid on designated solicitations. The District shall be guided in selecting sheltered market solicitations by selecting industries in which small businesses have usually not had an opportunity to compete for awards against larger businesses. Additionally in order to award a contract in a sheltered market the District must receive responses from at least 3 SBE’s. If no bid or response is received for a contract that has been designated for the Sheltered Market, the contract shall be competed pursuant to the District’s Procurement Policy.

(3) Subcontracting Requirements.

(a) Bids – The District shall set subcontracting goals for all bids in the amount of 30% of the total contract amount. Bidders may provide work to one or more District SBE’s in order to meet the goal. Any bidder failing to meet the 30% goal shall be deemed nonresponsive.

(b) Proposals – For contracts awarded based on an evaluation criteria up to 20 of the total evaluation points may be awarded to Prime contractors who subcontract 30% or more of the contract dollar amount to certified SBE’s. The District shall award points as reflected in Table 7.6-2.

(c) Failure to submit any of the documentation required herein shall lead to the business submitting a bid or proposal being deemed nonresponsive.

TABLE 7.6-2

EVALUATION POINT TABLE

<u>20 POINTS FOR SBE PARTICIPATION</u>	
<u>> 30% =</u>	<u>20 points</u>
<u>> 27% =</u>	<u>18 points</u>
<u>> 24% =</u>	<u>16 points</u>
<u>> 21% =</u>	<u>14 points</u>
<u>> 18% =</u>	<u>12 points</u>

> 15% =	10 points
> 12% =	8 points
> 9% =	6 points
> 6% =	4 points
> 3% =	2 points

(d) At the time of submittal of its bid or proposal the prime contractor using shall identify all SBE firms which will be utilized as subcontractors on the contract. Additionally the prime contractor must specify what specify work elements each SBE will perform. All prime contractors must submit proof of District certification of the SBEs they plan on using in the bid or proposal by providing a copy of the District certification letter. All SBE proposed tasks must be defined within the scope of work being solicited by completing these two forms: the Schedule of Subcontractor Participation Form and Statement of Intent to Perform as a Subcontractor Form.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History–New _____.

40E-7.671 District Implementation.

The District shall ensure all small businesses have the maximum opportunity to participate in the District’s contracting and procurement processes. The following are examples of efforts to be taken by the District:

- (1) Establish a Small Business Enterprise office to implement the rules established under this Part.
- (2) Identify all competitive contracting opportunities within the District budget for SBE participation.
- (3) Analyze SBE availability to provide the products or services identified for contracting at either the prime contract or subcontract levels.
- (4) Maintain a database of all SBEs.
- (5) Monitor and maintain records of steps taken and results achieved to maximize SBE participation.
- (6) Evaluate the District’s efforts to achieve SBE objectives.
- (7) Provide training to District staff on the District’s SBE Rule.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History–New _____.

40E-7.672 Compliance.

The District shall monitor and evaluate Program performance and compliance as follows:

- (1) Each District contract shall contain a provision requiring the contractor, during the term of the contract, to comply with, as to tasks and proportionate dollar amounts throughout the term of the contract, all commitments made in their bids or proposals for use of SBEs.

(2) Each District contract shall contain a provision requiring maintenance of records, and information necessary to document compliance with the rules under this Part and shall include the right of the District to inspect such records.

(3) Each District contract shall contain a provision prohibiting any agreements between a contractor and a SBE in which the SBE promises not to provide subcontracting quotations to other respondents or potential respondents.

(4) To ensure that all commitments by prime contractors under contracts awarded in which there are SBE subcontractors are met, the prime contractor’s efforts to meet its commitments throughout the performance of the contract shall be reviewed. The contractor shall advise the District of any situation in which regularly scheduled progress payments are not made to SBE subcontractors.

(5) Prime contractors must notify the District when the need to replace a SBE subcontractor arises. When a SBE substitution is requested, the Contract Specialist will request a letter from the contractor explaining why substitution is needed. The prime contractor shall attach a revised participation plan to the letter.

(a) Failure of the Prime Contractor to honor the SBE requirements of an awarded contract shall be a material breach of the contract which may result in suspension or debarment of the firms pursuant to Rule 40E-7, Part II, F.A.C.

(6) Each District contract awarded with SBE participation shall contain a provision incorporating the rules under this Part by reference and a statement that failure to comply with the requirements of the bid or proposal submitted to the District by a contractor shall be considered a material breach of contract which may result in suspension or debarment of the firms or individuals involved pursuant to Rule 40E-7, Part II, F.A.C.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History–New _____.

40E-7.673 Certification Eligibility – Small Business Enterprise.

District staff shall have the authority to accept, review, approve, certify, decertify and deny applications for SBE certification. An applicant business must be registered with the District as a vendor prior to submitting an application for certification.

(1) Applicant businesses shall submit applications for SBE certification using Form No. 1231, “SBE Certification Application”, which is hereby incorporated by reference and which can be obtained from the District upon request. Mailing addresses must include the number, name of the street, suite number, if any, city and correct zip code. A post office box will not be acceptable absent a street address.

(2) To establish that it is a small business, the applicant shall:

(a) Provide documentation to demonstrate that the three (3) year average gross receipts of the business concern, together with its affiliates, does not exceed \$4 million for Construction, \$2.5 million for Commodities, and \$3 million for Services. In determining the gross receipts of the business and its affiliates, the District shall consider the three (3) most recent federal tax returns, or if the business has not filed three (3) federal income tax returns for the three (3) years immediately preceding their application, the most recent audited financial statements for the business shall be considered.

(b) Provide documentation to demonstrate that it employs one hundred (100) or fewer Employees. In determining whether the applicant meets the criteria for a small business, the District shall consider the following documentation:

1. Latest Florida Quarterly Unemployment Reports.
2. Annual Federal Unemployment Report.
3. Most Current Payroll Ledgers.

ii. The applicant must demonstrate that it is licensed to do business in the State of Florida if the business requires a license.

(c) The Applicant may only have one (1) business certified with the South Florida Water Management District.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History–New _____.

40E-7.674 Certification Review Procedures.

(1) Upon receipt by the District, all applications for SBE certification shall be screened to ensure appropriate signature and completeness. The application must be signed by the individual with the authority to bind the applicant. If the application is submitted by means of a facsimile machine, the signature page of the application, with the original signature of the owner, must be submitted to the District within thirty (30) days of facsimile submission.

(2) Within sixty (60) days following receipt of the application, the District will request the applicant business to furnish omitted items or additional information, if any. If all requested information is not received by the District within thirty (30) days from the date of the request, the District will return the unprocessed application to the applicant business.

(3) An on-site verification review may be conducted by the District upon receipt of the completed application. Failure to cooperate with the scheduling of the on-site review or during the on-site review shall result in the denial of the application.

(4) Applicants determined eligible shall receive certification as an SBE from District staff. This document will state the length of time for which the business will be certified and the areas of business it is certified in. Once certified, an applicant shall remain certified for a period of three (3) years unless the applicant fails to follow this rule and is sanctioned pursuant to the Rule. The District retains the right to re-evaluate the certification of any business at any time.

(5) Applicants determined ineligible shall receive a notification from District staff. Applicants receiving this notification of ineligibility shall not be eligible to submit new applications until 180 days after the date of the notice denying certification.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History–New _____.

40E-7.675 Recertification Review Procedures.

(1) Applications for recertification shall be submitted using Form No. 1232 “SBE Application for Recertification”, which is hereby incorporated by reference and available from the District upon request.

(2) The District will notify SBEs no later than sixty (60) days before the end of the certification period that the SBE’s certification is about to expire. If the SBE is unable to use the recertification document because of changes to the applicant’s business, the SBE shall notify the District in writing of the changes to its company. The District shall determine if the company still complies with the certification criteria. Recertification requests must be filed with the District no later than the last effective date of the current certification period.

(3) Upon receipt, all recertification requests shall be given an initial screening to ensure appropriate signature and completeness. Within sixty (60) days following initial receipt of the applicant’s recertification request, the District may request the applicant to furnish omitted or additional information. If the requested information or items are not received by the District within thirty (30) days from the date of the request, the District will deny the application for recertification.

(4) An on-site verification review may be conducted by the District upon receipt and review of the recertification request. Failure to cooperate with the scheduling of the on-site review or during the on-site review shall result in the denial of recertification.

(5) Recertification shall be granted when the applicant has complied with this rule and substantiates continued eligibility for SBE status.

(6) Applicants deemed eligible shall receive a recertification letter stating the length of time for which the business has been re-certified and the specialty areas of the business. Once recertified, an applicant shall remain certified for a period of three (3) years unless the District determines that the applicant no longer meets the eligibility requirement of this Rule. The District retains the right to reevaluate the certification of any business at any time.

(7) Applicants determined ineligible for recertification shall receive a letter citing the applicable rules and shall not be eligible to submit new applications until 180 days after the date of the notice or the District’s final agency order denying recertification.

June 6, 2005, the City of Fort Myers adopted Resolution 2005-28 supporting the petition to amend the District's boundary.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: In association with the Petition, the Petitioner has caused a Statement of Estimated Regulatory Costs ("SERC") to be prepared in compliance with Section 120.541, F.S. The complete text of the SERC is contained at Exhibit "12" to the Petition. By way of summary, the SERC estimates the principal individuals and entities likely to be required to comply with the amended rule are the state, the City of Fort Myers, Lee County, Florida, the District and the landowners within the District's amended boundary. The SERC estimates the type of individuals likely to be affected by the amended rule as landowners within the District's amended boundary. The SERC estimates that rule amendment implementation and enforcement costs to the above-described entities will be minimal, are concurrently budgeted or not burdensome, and/or are offset by the payment of requisite filing and annual fees; and, estimates there will be no effect on state and local revenues from the proposed amendment of the rule. With respect to an estimate of the transactional costs likely to be incurred by individuals and entities required to comply with the requirements of the rule, the SERC indicates that if the Petition to amend the District is approved there is nothing peculiar about the District's financing that requires additional infrastructure over and above what would normally be needed. These costs are not in addition to normal development costs. The SERC further provides the decision to locate within the District is completely voluntary and potential residents are given full disclosure of the existence of the District and the level of anticipated assessments. Finally, the SERC concludes that the expansion of the District's boundary will have no impact on small businesses, that Lee County is not a "small" county as defined by Section 120.52, F.S., nor is the City of Fort Myers a "small" city under Section 120.52, F.S. The SERC analysis is based on a straightforward application of economic theory and no written proposal, statement adopting an alternative or statement of the reasons for rejecting an alternative has been submitted.

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

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

TIME AND DATE: 10:00 a.m. – 12:00 Noon, Tuesday, March 21, 2006

PLACE: Room 1802M, The Capitol, Tallahassee, Florida

Any person requiring a special accommodation to participate in the hearing because of a disability should contact Barbara Leighty, (850)487-1884, at least two (2) business days in advance to make appropriate arrangements.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Barbara Leighty, Senior Policy Analyst, Florida Land and Water Adjudicatory Commission, The Capitol, Room 1801, Tallahassee, Florida 32399-0001, (850)487-1884

THE FULL TEXT OF THE PROPOSED RULE IS:

42RR-1.002 Boundary.

The boundaries of the District are as follows:

A PARCEL OF LAND LYING IN THE STATE OF FLORIDA, COUNTY OF LEE, LYING IN SECTIONS 2, 3, 10, 11, 12, 13, 14, 15, & 23, TOWNSHIP 45 SOUTH, RANGE 25 EAST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 12; THENCE N.89°55'59"E. ALONG THE NORTH LINE OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 12 FOR 2593.44 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 12; THENCE CONTINUE N.89°55'59"E. ALONG THE NORTH LINE OF THE NORTHEAST QUARTER (NE 1/4) OF SAID SECTION 12 FOR 69.69 FEET; THENCE S.01°05'49"E. FOR 2646.14 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHEAST QUARTER (SE 1/4) OF SAID SECTION 12; THENCE N.89°55'48"E. ALONG NORTH LINE OF THE SOUTHEAST QUARTER (SE 1/4) OF SAID SECTION 12 FOR 2524.41 FEET TO THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER (SE 1/4) OF SAID SECTION 12; THENCE S.00°57'31"E. ALONG THE EAST LINE OF THE SOUTHEAST QUARTER (SE 1/4) OF SAID SECTION 12 FOR 2645.06 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 12; THENCE S.00°40'57"E. ALONG THE EAST LINE OF THE NORTHEAST QUARTER (NE 1/4) OF SAID SECTION 13 FOR 2647.21 FEET TO THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER (NE 1/4) OF SAID SECTION 13; THENCE S.00°53'05"E. ALONG THE EAST LINE OF THE SOUTHEAST QUARTER (SE 1/4) OF SAID SECTION 13 FOR 2644.11 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 13; THENCE N.89°42'21"W. ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER (SE 1/4) OF SAID SECTION 13 FOR 2596.61 FEET TO THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER (SE 1/4) OF SAID SECTION 13; THENCE N.89°42'31"W. ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER (SW 1/4) OF SAID SECTION 13 FOR 2597.48 FEET TO THE SOUTHWEST CORNER OF SAID SECTION 13; THENCE S.88°09'06"W. ALONG THE SOUTH LINE OF SECTION 14 FOR 1353.20 FEET TO THE SOUTHWEST CORNER OF THE

SOUTHEAST QUARTER (SE 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF SAID SECTION 14; THENCE S.00°56'40"E. ALONG THE WEST LINE OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 23 FOR 1321.04 FEET TO THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 23; THENCE S.88°07'27"W. ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 23 FOR 1351.52 FEET TO THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 23; THENCE S.88°07'59"W. ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 23 FOR 1353.52 FEET TO THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 23; THENCE N.01°01'24"W. ALONG THE WEST LINE OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 23 FOR 909.59 FEET; THENCE N.13°29'05"E. FOR 98.76 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 1262.50 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 14°33'33" FOR 320.81 FEET; THENCE N.01°04'28"W. FOR 2645.55 FEET TO A POINT ON THE NORTH LINE OF THE EAST HALF (E 1/2) OF THE SOUTHWEST QUARTER (SW 1/4) OF SAID SECTION 14; THENCE N.00°52'49"W. FOR 843.65 FEET; THENCE S.89°07'11"W. FOR 65.00 FEET TO A POINT ON THE WEST LINE OF THE SOUTHEAST QUARTER (SE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 14; THENCE N.00°52'49"W. ALONG THE WEST LINE OF THE SOUTHEAST QUARTER (SE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 14 FOR 477.57 FEET THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER (SE 1/4) OF THE NORTHWEST QUARTER OF SAID SECTION 14; THENCE S.88°18'58"W. ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 14 FOR 1357.95 FEET TO THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 14; THENCE S.89°34'25"W. ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SAID SECTION 15 FOR 640.89 FEET TO AN INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF I-75; THENCE N.08°21'16"E. ALONG THE EAST RIGHT-OF-WAY LINE OF I-75 FOR 1925.01 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 5891.58 FEET; THENCE NORTHWESTERLY

ALONG SAID EAST RIGHT-OF-WAY LINE OF I-75 AND SAID CURVE THROUGH A CENTRAL ANGLE OF 23°11'09" FOR 2384.14 FEET; THENCE N.14°49'51"W. ALONG SAID EAST RIGHT-OF-WAY LINE OF I-75 FOR 2886.26 FEET TO AN INTERSECTION WITH THE CENTERLINE OF A WATER MANAGEMENT EASEMENT DESCRIBED IN OFFICIAL RECORD BOOK 2558, PAGE 2002, LEE COUNTY, FLORIDA; THENCE ALONG SAID CENTERLINE THE FOLLOWING COURSES; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 230.00 FEET, THROUGH A CENTRAL ANGLE OF 63°11'11" FOR AN ARC DISTANCE OF 253.65 FEET, A CHORD BEARING OF S.75°49'31"E. A CHORD DISTANCE OF 240.99 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 710.00 FEET, THROUGH A CENTRAL ANGLE OF 46°08'48" FOR 571.84 FEET; THENCE N.89°37'18"E. FOR 354.32 FEET; THENCE S.50°15'11"E. FOR 144.85 FEET TO THE BEGINNING OF A NON-TAGENT CURVE TO THE LEFT HAVING A RADIUS OF 600.00 FEET; THENCE ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 84°17'37" FOR 882.72 FEET, A CHORD BEARING OF N.87°36'01"E. A CHORD DISTANCE OF 805.24 FEET; THENCE N.45°27'12"E. FOR 398.60 FEET; THENCE N.67°03'34"E. FOR 478.36 FEET; THENCE N.34°14'49"E. FOR 127.19 FEET; THENCE N.23°40'29"E. FOR 475.63 FEET; THENCE N.06°52'49"W. FOR 109.55 FEET; THENCE N.36°30'44"E. FOR 109.13 FEET; THENCE N.20°42'13"E. FOR 118.75 FEET; THENCE N.60°38'04"E. FOR 92.29 FEET; THENCE N.74°41'42"E. FOR 85.73 FEET TO AN INTERSECTION WITH THE WESTERLY LINE OF TREELINE BOULEVARD; THENCE ALONG SAID WESTERLY LINE THE FOLLOWING COURSES; THENCE AROUND A CURVE TO THE LEFT, HAVING A RADIUS OF 2800.06 FEET THROUGH A CENTRAL ANGLE OF 05°12'07" AN ARC DISTANCE OF 254.22 FEET A CHORD BEARING OF S.01°14'59"E., A CHORD DISTANCE OF 254.14 FEET; THENCE S.03°51'03"E. FOR 959.31 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 2500.00 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 04°28'22" FOR 195.16 FEET TO THE NORTH LINE OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 11; THENCE N.89°04'48"E. ALONG THE NORTH LINE OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 11 FOR 576.50 FEET TO THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER OF SECTION 11; THENCE N.89°03'32"E. ALONG THE NORTH LINE OF THE NORTHEAST QUARTER (NE 1/4) OF SAID SECTION 11 FOR 2645.22 FEET TO THE POINT OF BEGINNING. CONTAINING 2479.13 ACRES, MORE OR LESS.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN) BEARINGS ARE BASED ON THE NORTH LINE OF SECTION 12 BEING N89°55'59"E.

LESS & EXCEPT:

A TRACT OR PARCEL OF LAND LYING IN THE STATE OF FLORIDA, COUNTY OF LEE, IN SECTIONS 2 AND 11, TOWNSHIP 45 SOUTH, RANGE 25 EAST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 2; THENCE S89°03'32"W ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER (SE 1/4) OF SAID SECTION 2 FOR 2645.22 FEET; THENCE S89°04'48"W ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER (SW 1/4) OF SAID SECTION 2 FOR 451.46 FEET TO AN INTERSECTION WITH THE EASTERLY RIGHT-OF-WAY OF TREELINE AVENUE AND THE POINT OF BEGINNING; THENCE ALONG SAID EAST RIGHT-OF-WAY LINE THE FOLLOWING BEARINGS AND DISTANCES: THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 2625.00 FEET (DELTA 29°12'53") (CHORD BEARING S15°09'21"W) (CHORD 1324.02 FEET) FOR 1338.47 FEET TO A POINT OF TANGENCY; THENCE S29°45'48"W FOR 618.63 FEET; THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 1487.50 FEET (DELTA 28°50'26") (CHORD BEARING S15°20'35"W) (CHORD 740.87 FEET) FOR 748.75 FEET TO A POINT OF TANGENCY; THENCE S00°55'22"W FOR 166.15 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHWEST QUARTER OF SECTION 11; THENCE S88°35'19"W ALONG SAID LINE FOR 125.10 FEET TO AN INTERSECTION WITH THE WESTERLY RIGHT-OF-WAY OF TREELINE AVENUE; THENCE ALONG SAID WEST RIGHT-OF-WAY LINE THE FOLLOWING BEARINGS AND DISTANCES: THENCE N00°55'22"E FOR 171.24 FEET; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 1612.50 FEET (DELTA 28°50'26") (CHORD BEARING N15°20'35"E) (CHORD 803.13 FEET) FOR 811.67 FEET TO A POINT OF TANGENCY; THENCE N29°45'48"E FOR 618.63 FEET; THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 2500.00 FEET (DELTA 33°36'51") (CHORD BEARING N12°57'22"E) (CHORD 1445.75 FEET) FOR 1466.69 FEET TO A POINT OF TANGENCY; THENCE N03°51'03"W FOR 959.31 FEET; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 2800.06 FEET (DELTA 05°12'07") (CHORD BEARING N01°14'59"W) (CHORD 254.14 FEET) FOR 254.22 FEET; THENCE S88°38'56"E FOR 125.00 FEET TO AN INTERSECTION WITH THE EASTERLY RIGHT-OF-WAY

OF TREELINE AVENUE; THENCE ALONG SAID EAST RIGHT-OF-WAY LINE THE FOLLOWING BEARING AND DISTANCES: THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 2675.06 FEET (DELTA 05°12'07") (CHORD BEARING S01°14'59"E) (CHORD 242.79 FEET) FOR 242.87 FEET TO A POINT OF TANGENCY; THENCE S03°51'03"E FOR 959.31 FEET; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 2625.00 FEET (DELTA 04°23'58") (CHORD BEARING S01°39'04"E) (CHORD 201.51 FEET) FOR 201.56 FEET TO THE POINT OF BEGINNING.

CONTAINING 12.28 ACRES, MORE OR LESS.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN)

Specific Authority 190.005, 190.046 FS. Law Implemented 190.004, 190.005, 190.046 FS. History--New 6-14-04, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Teresa Tinker, Florida Land and Water Adjudicatory Commission, Room 1801, The Capitol, Tallahassee, Florida 32399-0001

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Teresa Tinker, Florida Land and Water Adjudicatory Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 8, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 14, 2005

AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid

RULE TITLE: Optometric Services
 RULE NO.: 59G-4.210

PURPOSE AND EFFECT: The purpose of the proposed rule amendment is to incorporate by reference the revised Florida Medicaid Optometric Services Coverage and Limitations Handbook, January 2006. The coverage and limitations handbook revisions include policy clarifications and updated billing information. The effect will be to incorporate by reference in the rule the Florida Medicaid Optometric Services Coverage and Limitations Handbook, January 2006.

SUMMARY: The purpose of the proposed rule amendment is to incorporate by reference the revised Florida Medicaid Optometric Services Coverage and Limitations Handbook, January 2006. The effect will be to incorporate by reference in the rule the Florida Medicaid Optometric Services Coverage and Limitations Handbook, January 2006.

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

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

SPECIFIC AUTHORITY: 409.919 FS.

LAW IMPLEMENTED: 409.906, 409.907, 409.908, 409.9081 FS.

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

DATE AND TIME: 9:00 a.m., Monday, March 20, 2006

PLACE: Agency for Health Care Administration, 2727 Mahan Drive, Building #3, Conference Room B, Tallahassee, Florida
 THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Jason Ottinger, Agency for Health Care Administration, Bureau of Medicaid Services, 2727 Mahan Drive, MS 20, Tallahassee, Florida 32308, (850)922-7314

THE FULL TEXT OF THE PROPOSED RULE IS:

59G-4.210 Optometric Services.

(1) No change.

(2) All optometric practitioners enrolled in the Medicaid program must be in compliance with the provisions of the Florida Medicaid Optometric Services Coverage and Limitations Handbook, January 2006 2005, updated January 2005, which is incorporated by reference, and the Florida Medicaid Provider Reimbursement Handbook, CMS-1500 ~~and Child Health Check-Up 221~~, which is incorporated by reference in Rule 59G-4.001, F.A.C. Both handbooks are available from the Medicaid fiscal agent's website at <http://floridamedicaid.acs-inc.com> agent. Click on Provider Support, and then on Handbooks. Paper copies of the handbooks may be obtained by calling Provider Inquiry at (800)377-8216.

Specific Authority 409.919 FS. Law Implemented 409.906, 409.907, 409.908, 409.9081 FS. History--New 4-13-93, Amended 7-1-93, Formerly 10C-7.069, Amended 12-21-97, 10-13-98, 5-24-99, 4-23-00, 7-5-01, 2-20-03, 8-5-03, 5-24-05, 8-18-05,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
 Jason Ottinger

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Alan Levine, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 13, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 2, 2005

AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid

RULE TITLE: Developmental Disabilities Waiver Provider Rate Table

RULE NO.: 59G-13.081

PURPOSE AND EFFECT: The purpose of the proposed rule is to incorporate by reference the Developmental Disabilities Waiver Provider Rate Table, November 2003. The effect will be to incorporate the Developmental Disabilities Waiver Provider Rate Table, November 2003, into rule. The rate table is available on the Medicaid fiscal agent's website at <http://floridamedicaid.acs-inc.com>. Click on Provider Support, and then on Fees.

SUMMARY: The purpose of the proposed rule is to incorporate by reference the Developmental Disabilities Waiver Provider Rate Table, November 2003. The effect will be to incorporate the Developmental Disabilities Waiver Provider Rate Table into rule.

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

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

SPECIFIC AUTHORITY: 409.919 FS.

LAW IMPLEMENTED: 409.906, 409.908 FS.

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

DATE AND TIME: 10:00 a.m. – 11:00 a.m., Monday, March 20, 2006

PLACE: Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Conference Room B, Tallahassee, Florida 32308

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Pam Kyllonen, Bureau of Medicaid Services, 2727 Mahan Drive, Mail Stop 20, Tallahassee, Florida 32308, (850)414-9756

THE FULL TEXT OF THE PROPOSED RULE IS:

59G-13.081 Developmental Disabilities Waiver Provider Rate Table.

(1) This rule applies to all developmental disabilities waiver services providers enrolled in the Medicaid program.

(2) All developmental disabilities waiver services providers enrolled in the Medicaid program must be in compliance with the Developmental Disabilities Waiver Provider Rate Table, November 2003, which is incorporated by reference. The rate table is available from the Medicaid fiscal

agent and the Agency for Health Care Administration, Bureau of Medicaid Services, 2727 Mahan Drive, M.S. 20, Tallahassee, Florida 32308.

Specific Authority 409.919 FS. Law Implemented 409.906, 409.908 FS. History—New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Pam Kyllonen

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Alan Levine, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 13, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 22, 2005

AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid

RULE TITLE: Project AIDS Care Waiver Services

RULE NO.: 59G-13.110

PURPOSE AND EFFECT: The purpose of rule amendment is to incorporate by reference update December 2005 to the Florida Medicaid Project AIDS Care Waiver Services Coverage and Limitations Handbook, July 2003. The handbook update revises the eligibility criteria to allow recipients who are enrolled in a Medicaid HMO that is contracted as part of the 1915(b) HIV/AIDS Specialty Waiver to receive PAC waiver services. The handbook update also contains the new procedure code for PAC waiver pest control services that was effective January 2005. The effect will be to incorporate by reference in the rule update December 2005 to the Florida Medicaid Project AIDS Care Waiver Services Coverage and Limitations Handbook, July 2003.

SUMMARY: The purpose of rule amendment is to incorporate by reference update December 2005 to the Florida Medicaid Project AIDS Care Waiver Services Coverage and Limitations Handbook, July 2003. The effect will be to incorporate by reference in the rule update December 2005 to the Florida Medicaid Project AIDS Care Waiver Services Coverage and Limitations Handbook, July 2003.

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

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

SPECIFIC AUTHORITY: 409.919 FS.

LAW IMPLEMENTED: 409.906, 409.908, 409.912 FS.

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

DATE AND TIME: 2:00 p.m., Monday, March 20, 2006

PLACE: Agency for Health Care Administration, 2727 Mahan Drive, Building #3, Conference Room B, Tallahassee, Florida
THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Karen Huber, Agency for Health Care Administration, Bureau of Medicaid Services, 2727 Mahan Drive, MS 20, Tallahassee, Florida 32308, (850)414-2773

THE FULL TEXT OF THE PROPOSED RULE IS:

59G-13.110 Project AIDS Care Waiver Services.

(1) No change.

(2) All Project AIDS Care waiver services providers enrolled in the Medicaid program must be in compliance with the provisions of the Florida Medicaid Project AIDS Care Waiver Services Coverage and Limitations Handbook, July 2003, updated December 2005, which is incorporated by reference, and the Florida Medicaid Provider Reimbursement Handbook, Non-Institutional 081, which is incorporated by reference in Rule 59G-13.001, F.A.C. Both handbooks are available from the Medicaid fiscal agent by calling Provider Enrollment at (800)377-8216 or from the fiscal agent’s website at <http://floridamedicaid.acs-inc.com>. Click on Provider Support, and then on Handbooks.

(3) No change.

Specific Authority 409.919 FS. Law Implemented 409.906, 409.908, 409.912 FS. History—New 2-3-05, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Karen Huber

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Alan Levine

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 13, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 18, 2005

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Pursuant to Chapter 2003-145, Laws of Florida, all notices for the Department of Environmental Protection are published on the Internet at the Department of Environmental Protection’s home page at <http://www.dep.state.fl.us/> under the link or button titled “Official Notices.”

DEPARTMENT OF JUVENILE JUSTICE

Detention Services

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Secure Detention Services	63G-2
RULE TITLES:	RULE NOS.:
Purpose and Scope	63G-2.001
Definitions	63G-2.002
Construction and Maintenance	63G-2.003
Staffing and Operations	63G-2.004
Security	63G-2.005

Treatment, Training and Education of Youth	63G-2.006
Sanitation	63G-2.007
Capacity	63G-2.008
Bedding and Linens	63G-2.009
Nutrition	63G-2.010
Medical Treatment, Health and Comfort	63G-2.011
Disciplinary Treatment	63G-2.012

PURPOSE AND EFFECT: The proposed rule implements Section 985.404(10), F.S., governing the provision of secure detention services.

SUMMARY: The proposed rule establishes the standards and requirements governing the construction, staffing, operation, conditions of confinement, provision of services and administration of discipline in secure detention facilities.

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

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

SPECIFIC AUTHORITY: 20.316, 985.405, 985.404 FS.

LAW IMPLEMENTED: 985.404 FS.

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

TIME AND DATE: 10:00 a.m., March 20, 2006

PLACE: DJJ Headquarters, Knight Building, Probation Conference Room 108, 2737 Centerview Drive, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Clyde Benedix, Policy Development Officer, Department of Juvenile Justice, Office of Administration, 2737 Centerview Drive, Ste. 104, Tallahassee, FL 32399-3100, (850)921-3048

THE FULL TEXT OF THE PROPOSED RULES IS:

63G-2.001 Purpose and Scope.

This rule establishes the standards and requirements for the department's statewide, regionally administered system of secure detention services for juveniles.

Specific Authority 985.404(10)(b) FS. Law Implemented 985.404(10) FS. History—New _____.

63G-2.002 Definitions.

For the purpose of this chapter, the following words, unless the context does not permit, shall have the meanings indicated:

(1) Activity Schedule – The schedule of activities regulating the youth's daily routine in a secure detention facility.

(2) Admission – The procedural process of placing a youth in detention status.

(3) Admission Officer – The Juvenile Detention Officer responsible for admitting a youth to secure detention status.

(4) Behavior Management System – A system designed to promote positive behavior through the giving or taking of rewards or privileges based on youth behavior.

(5) Behavioral Confinement – The placement of youth in a designated room for behavioral reasons.

(6) Census Counts – Process used to physically count each youth in the facility to ensure the number of youth in the facility is consistent with the number of youth the data system indicates are in the facility.

(7) Classification – The identification and placement of youth in facility housing and programming based upon a classification matrix.

(8) Constant Sight and Sound Supervision – Continuous and uninterrupted observation of a youth by a staff member who has a clear and unobstructed view of the youth and unobstructed sound monitoring of the youth at all times.

(9) Corporal Punishment – Physical punishment applied to the body of the offender, i.e. whipping, spanking.

(10) Cost of Care Recovery – Fees ordered by the court for the care, support and maintenance of the youth while detained.

(11) Designated Health Authority – Those individuals authorized to supply oversight of medical services in secure detention facilities.

(12) Designated Mental Health Authority – Those individuals authorized to provide oversight of mental health and substance abuse services in secure detention facilities.

(13) Detention Screener – The individual who completes the detention screening and ensures proper paperwork is present to correctly screen a youth for detention status.

(14) Documentation – The act or an instance of the supplying of electronically or manually prepared documents, supporting references or records.

(15) Facility Operating Procedures – Individual facility procedures which implement statewide policies and procedures.

(16) Grievance – An actual or supposed circumstance regarded as just cause for complaint by a youth in a secure juvenile detention center.

(17) Grievance Procedure – A procedure for addressing youth grievances in secure detention centers.

(18) Group Punishment – The punishment of a group of youth for the behavior of a few.

(19) Inactive Files – File material resulting from previous contacts with the youth.

(20) Incident Reporting – An incident requiring mandatory reporting based on department requirements.

(21) Juvenile Detention Officer – The officer responsible for the direct supervision of the youth in secure detention.

(22) Juvenile Detention Officer Supervisor – The officer responsible for the direct supervision of other officers in the performance of their duties.

(23) Juvenile Justice Information System – The department’s electronic information system used to gather and store information on youth having contact with the department.

(24) Juvenile Probation Officer – The officer responsible for the supervision of a youth in the community or on post commitment probation or conditional release.

(25) Legal Guardian – An individual or agency with the legal status created by court order or letter of guardianship which vests in a custodian of the person or guardian the right to have physical custody of the child and the right and duty to protect, train, and discipline the child and to provide him or her with food, shelter, education, and ordinary medical, dental, psychiatric, and psychological care.

(26) Logbook – A written format for communication and record keeping in a secure detention facility.

(27) Master Control – The central security focal point in the facility for communication and tracking youth movement.

(28) Mechanical Restraints – Handcuffs, shackles, and belt chain.

(29) Quality Assurance System – A statutorily mandated process for the objective assessment of a program’s operation, management, governance, and service delivery based on established standards.

(30) Radio Ten Codes – Standardized communication codes to ensure fast, accurate, and universal communication in detention facilities.

(31) Regional Director – The person responsible for the supervision of the superintendents of regional juvenile detention centers in a specified region.

(32) Release – The removal of a youth from detention status.

(33) Secure Detention – A physically restricting facility for the temporary care of children, pending adjudication, disposition, or placement.

(34) Security Devices – Devices both mechanical and electrical that enhance security in the facility.

(35) Superintendent – The person responsible for the operation of a designated regional juvenile detention center.

(36) Supervision – The direct care, custody, and control of youth while in detention status.

(37) Verbal and Physical Intervention – Verbal and physical response used to maintain control of youth.

(38) Youth – Any youth ordered into secure detention status.

(39) Youth Rights – Rights conferred upon a youth by state and federal law, department policy, and current best practices.

Specific Authority 985.404(10)(b) FS. Law Implemented 985.404(10) FS. History–New _____.

63G-2.003 Construction and Maintenance.

(1) The Department shall ensure that any newly constructed facility is designed to comply with the following:

(a) Provide adequate space for the activities of the facility, to include sleeping rooms, dayrooms, classrooms and multipurpose areas.

(b) Provide adequate toilets, wash basins, and showers, consistent with the number of youth in the facility.

(c) Provide appropriate facilities to safely and securely meet the needs of handicapped youth.

(d) Provide adequate outdoor activity space to allow at least one hour of outside activity daily.

(e) All construction shall comply with established building codes and requirements.

(2) The detention superintendent or designee shall ensure that systems and/or programs, contracted or otherwise, are in place to address facility needs related to the maintenance, repair, replacement and continual evaluation of the:

(a) Integrity of the facility structure(s).

(b) Mechanical systems.

(c) Electrical systems.

(d) Communication and surveillance systems.

(e) Commercial food service equipment.

(f) Systems related to pest control, garbage removal and upkeep of the facility grounds.

(g) Systems related to fulfilling local and state health and sanitation requirements.

(h) Systems related to fire safety, disaster preparedness and the operation of the emergency generator.

(i) Documentation of issues as outlined above shall be maintained as required by state, department, facility and/or local guidelines, policies and procedures.

(k) The superintendent or designee shall ensure all tools and equipment related to maintenance are properly cared for, stored and inventoried.

Specific Authority 985.404(10)(b) FS. Law Implemented 985.404(10)(b)1. FS. History–New _____.

63G-2.004 Staffing and Operations.

(1) Organization:

(a) The Assistant Secretary for Detention Services, as appointed by the Secretary of the Department of Juvenile Justice, is responsible for all aspects of Detention Services including but not limited to the operation of all detention centers statewide.

(b) The regional director who, in turn, reports directly to the Assistant Secretary directs all operations related to detention services in their region.

(c) Detention superintendents report to a designated regional director.

1. The superintendent or designee shall maintain an organizational chart of the center's personnel structure. The organizational chart shall at a minimum include:

- a. An outline of the structure of authority and accountability within the center.
- b. Names, positions, position numbers and a clear chain of command for all facility positions.
- c. Updating as needed and reviews at least quarterly for accuracy.

2. Position descriptions shall be maintained for facility personnel and shall include all information as required by the Florida Administrative Code.

3. Shift schedules for detention officers shall ensure staffing that will provide for a safe and secure environment during all hours of each day of the week. The superintendent shall review staff schedules prior to implementation.

4. Schedules for administrative and support staff shall be developed at the discretion of the superintendent to best meet the needs of the facility.

(2) Monitoring and Assessment:

(a) Detention superintendents shall designate to their facility Assistant Superintendents the responsibility of preparing quarterly reports analyzing facility operations, which shall include:

- 1. Review, investigation and follow-up actions of incidents impacting the safety and security of daily operations.
- 2. Review of population trends.
- 3. Review of safe, secure and humane conditions of confinement for youth.
- 4. Review of other issues as identified by the superintendent.

5. Recommendations to best address any issues identified above.

(b) These reports shall be reviewed in a timely manner by the superintendent who will forward these reports with comments and or corrective actions to the regional director for review and action.

(c) The detention center shall be subject to periodic reviews by the Department's Quality Assurance unit. Should a facility fail to maintain at least a minimum satisfactory rating in quality assurance, a corrective action plan shall be implemented. Continued failure to maintain at least a satisfactory rating shall be addressed consistent with Florida Statute.

(3) Training:

(a) All juvenile justice officers should be trained within 180 days of the hire date. There will be 2 phases to the staff training.

1. Phase one of staff training will take place at Department detention centers, and will cover essential skills as identified by the Department of Juvenile Justice, Bureau of Staff Development and Training. No officer will be permitted to

assume the care and custody of detained youth until he or she has completed verbal and physical intervention training and has been certified to administer CPR/First Aid. Thereupon, the officer will be permitted to interact with detained youth on the floor of the detention center under the supervision of a certified staff officer.

2. Phase 2 of the Staff Training will be conducted at a Department of Juvenile Justice training academy. During phase 2 staff will complete training covering subjects as identified by the Department of Juvenile Justice, Bureau of Staff Development and Training. Upon successful completion of phase 2 training, the staff member will be permitted to assume the care and custody of detained youth.

(b) Training curricula shall address specifically the sequence, steps, methods, required paperwork and other applicable details officers would follow as part of their duties and responsibilities.

(c) Detention superintendents or designees shall ensure compliance with all training requirements as outlined herein.

(4) Interns and Volunteers:

(a) May be utilized to work directly with youth to promote a variety of educational, life and/or job related skills.

(b) All prospective interns or volunteers working more than 40 hours in a month shall be initially screened per departmental screening procedures, and must possess appropriate qualifications per guidelines established by the superintendent. Interns and volunteers working less than 40 hours in a month and who are under the direct and constant supervision of persons who have met the department's screening requirements are not required to undergo background screening.

(c) Interns and volunteers shall receive appropriate training to allow them to safely and securely interact with youth prior to having contact with any youth.

(d) The superintendent or designee shall maintain a file on all interns and volunteers including at a minimum, the approved background screening paperwork, the superintendent's approval to be an intern or volunteer and documentation of training.

(e) Interns and volunteers shall comply with all departmental policies and procedures and Florida Statutes.

(f) All activities, topics of discussion, lessons, etc. conducted by interns or volunteers shall be approved by the superintendent or designee.

(g) An officer shall maintain supervision of youth during all intern or volunteer sponsored activities.

(5) Admission:

(a) The superintendent shall ensure officers are trained in the admission process including the review and completion of required paperwork and the sequence of required actions.

(b) The admission process shall address the following:

1. Required paperwork prior to initiating the admission process.

2. Medical screening of youth.

3. The admission officer shall clearly communicate to the youth the rules of the center and expectations of behavior.

4. The youth shall be electronically searched, frisk searched, and strip searched by an officer of the same sex as the youth.

5. All items in the youth's possession, including clothing, shall be inventoried and documented, to include both the signature of the admission officer and the youth. All items shall be placed in a secure location.

6. A photograph of the youth shall be taken and maintained in the youth's file.

7. Inactive files shall be reviewed, if available, to obtain useful information.

8. The youth shall be allowed to place a telephone call at the facility's expense and the call shall be documented on all applicable forms. The youth shall not be allowed to telephone the victim(s) unless it is a relative who is a victim of domestic violence and the admission officer verifies that the victim is willing to talk with the youth.

9. If the admission process is completed two hours or more before the serving of the next scheduled meal, the youth shall be offered something to eat.

10. The youth shall be screened to identify medical, mental health, and substance abuse needs. Any indication requiring services shall be documented, and appropriate referrals and services provided. The detention facility shall use an alert system to identify youth with special needs. Staff shall give special attention to observing youth in the alert system.

(6) Transfers:

(a) Youth may be transferred into a detention center from either another detention center or from a residential commitment program.

(b) The admission process for transfers shall be as follows:

1. Active files shall be reviewed to ensure all required documents are present and to determine any special needs or supervision.

2. Youth shall be screened to determine if there are any mental health, substance abuse, or physical health issues, and necessary referrals and services provided.

3. Youth shall be electronically searched, frisk searched, and strip searched.

4. Any personal property shall be inventoried and securely stored.

(7) Documentation:

(a) All activities, incidents, and information relative to safety and security in the facility shall be properly documented.

(b) Written documentation includes a range of logbooks, reports, forms, and communications.

(c) All documents represent official records and are legal documents. Failure to document required information, falsification of information, or failure to properly retain written documents may result in disciplinary action.

(d) Reports related to facility operations fall into two categories: internal and external reports.

1. Internal reports refer to reports that are utilized regularly by officers and other facility staff in the day-to-day operation of the facility and are reviewed per facility operating procedures. Reports are retained per state retention guidelines. Internal reports include, but are not limited to:

a. Shift reports;

b. Incident reports;

c. Confinement reports;

d. Documentation of verbal and physical interventions to control behavior.

2. External reports refer to reports that are forwarded from the facility to sources required by the legislature, the department or other governmental agencies. External reports include, but are not limited to:

a. Reporting of incidents to the Central Communications Center.

b. National School Lunch meal reports.

c. Reports to the central abuse hotline, pursuant to Chapter 39, Florida Statutes.

Specific Authority 985.404(10)(b) FS. Law Implemented 985.404(10)(b)1. FS. History--New _____.

63G-2.005 Security.

(1) Security Audits: The Regional Director shall ensure security audits are conducted and documented by department personnel on a quarterly basis.

(2) Security Devices:

(a) Security devices are used to enhance the supervision provided by trained staff. The following security devices are utilized in detention centers:

1. CCTV, radios and other recording and audio devices.

2. Doors, vestibules, man-traps/interlocking doors, keys, locks, windows, and electronic controls.

3. Mechanical restraints i.e. handcuffs, restraining belt, leg cuffs, soft restraints.

4. Fencing, hardware clothe, razor wire, and sallyports.

(b) The detention superintendent shall ensure:

1. Security devices are checked for proper operation / status on each shift, with the findings documented on the shift report and applicable logs under Rule 63G-2.004, F.A.C.

2. Noted deficiencies are reported to maintenance and administration for corrective action.

(3) Master Control:

(a) Master control's function, as it relates to security, involves 24-hour, seven days per week observation and monitoring of all activities occurring within the facility. Master

Control performs a number of critical tasks related to safety and security. It is the central security focal point in the facility for communication and tracking youth movement.

(b) The detention superintendent shall ensure the master control operator or designee maintains a bound log book and documents admissions, releases, census counts at the beginning and end of each shift and throughout the shift as the count changes, youth movement, emergencies, and any other relevant incidents/information.

(c) Master Control or other security stations as designated by the superintendent shall ensure all visitors, both visiting DJJ staff and others, are documented.

(d) Master Control monitors and controls security devices.

(e) Master Control clears all movement of youth prior to the actual movement.

(4) Communications:

(a) The detention superintendent shall require that upon reporting to duty, officers and supervisors are briefed by the outgoing supervisor or designee on each shift. Briefings at a minimum shall include:

1. Review of census counts including admissions and releases.

2. Names of youth placed in confinement and current status.

3. Names and status of youth on suicide watch or special medical alerts.

4. Status of security devices.

5. Incidents that contribute to jeopardizing safety and security.

6. Any other information applicable to maintaining a safe and secure environment.

(b) The lead officers assigned to the direct supervision of a group of youth shall be issued radios to be used to communicate with other lead officers, supervisors and Master Control as needed. Facility administration shall be assigned radios compatible with those issued to staff.

(5) Key Control:

(a) The detention superintendent or designee shall maintain a key inventory accounting for all keys.

(b) Emergency key rings with keys providing egress through the facility exterior shall be maintained separately from other facility keys in areas designated by the superintendent. These keys shall be notched or be otherwise identifiable by touch only.

(c) Employees shall not allow youth to handle facility keys.

(d) Key rings shall not be removed from the facility or the facility grounds without authorization from the superintendent.

(e) Lost key rings shall be reported immediately to the supervisor on duty.

(f) Youth movement shall cease immediately in the event of a lost key ring.

(6) Supervision of Youth:

(a) The primary function of the Juvenile Detention Officers is to provide supervision, control, and custody of youth.

(b) Officers shall know the exact number and location of all youth assigned to them at all times.

(c) Census counts of youth shall be taken and documented, at a minimum:

1. At the beginning and end of each shift.

2. Prior to and following routine movement.

3. Following any evacuation of the facility due to emergency or fire drill.

4. Randomly, at least once, on each shift.

(d) Officers shall intervene following departmental guidelines for verbal and physical intervention when youth are noncompliant or present a danger to self or others.

(e) Officers are responsible for the care of youth at all times. At no time shall another youth be allowed to exercise control over or provide discipline or care of any type to another youth.

(f) Superintendents or designated supervisors shall tour the youth living areas more than once each shift.

(7) Classification of Youth:

(a) Youth admitted to the detention center shall be classified to provide the highest level of safety and security.

(b) The detention superintendent shall ensure the classification process is implemented by Juvenile Detention Officers.

(c) Youth shall be reclassified if changes in behavior or status are observed.

(d) Officers shall ensure classification factors include, but are not limited to, a youth's sex, age, physical characteristics, criminal history and level of aggressiveness.

(e) Youth classified as suicide risks shall be placed on constant sight and sound supervision.

(8) Living Area / Room Assignments:

(a) Youth shall be assigned to a room based on their classification.

(b) Youth with a history of committing sexual offenses or of being a victim of a sexual offense shall not be placed in a room with any other youth.

(c) Youth with a history of violent behavior shall be assigned to rooms where it is least likely that they will be able to jeopardize safety or security.

(d) Rooms shall be searched and findings shall be documented prior to the initial placement of a youth in a room.

(e) When a youth is confined to a room, whether for sleeping, disciplinary or other reasons, officers shall conduct, at a minimum, 10-minute checks to ensure safety and security. Ten-minute checks shall be documented to include the time of the check and the initials of the officer completing the check. If

an officer, in the course of completing checks, is unable to see any part of a youth's body, the officer shall, with the assistance of another officer, open the door to verify the youth's presence.

(9) Searches:

(a) The Detention Superintendent shall ensure the primary function of any search is to locate contraband and to identify any item or situation that may be hazardous or otherwise compromise safety or security.

(b) The result(s) of any search shall be documented in the designated logs and on the shift report.

(c) Any item or situation, which may compromise safety or security, shall be reported immediately to the on-duty supervisor.

(d) Law enforcement shall be contacted if any found item would be considered illegal as defined in Florida Statute, or if there is evidence of any type of unlawful activity.

(e) Youth shall have in their possession only those items they are authorized to have; any other item shall be considered contraband.

(f) Officers are to be trained in when, why and how to conduct a number of different searches, including, at a minimum:

1. Frisk searches shall be conducted during admissions, following activities outside the living area, prior to transportation, and randomly.

2. Electronic searches shall be conducted during admissions, following any transport, and randomly.

3. Strip searches shall be conducted during admissions, or if there is a reasonable suspicion a youth is harboring contraband. All strip searches shall be conducted by officers of the same sex as the youth.

4. Room searches shall be conducted during the first two shifts (morning and afternoon) or if there is a reasonable suspicion that a youth is harboring contraband in a room.

5. Recreation field searches shall be conducted at the beginning of each shift and prior to any outdoor activity.

6. Perimeter, outside the fence line, and parking lot(s) searches shall be conducted once during each shift.

7. Vehicle searches shall be conducted prior to the transportation of any youth.

(g) Officers and other facility staff shall not be allowed to introduce personal items into the secure area without authorization of the superintendent or designee.

(10) Firearm and Weapon Control:

(a) The Detention Superintendent shall ensure the following:

1. Firearms and weapons as defined in Chapter 790, F.S., shall not be in the possession of any department employee while on state property or during the performance of their job unless so authorized by the department.

2. Firearms and weapons may only be brought into the secure area of any detention facility by law enforcement when emergency conditions exist.

(b) The possession of any firearm or weapon by a youth is a criminal act. Such items shall be seized if there is no immediate danger posed and law enforcement must be contacted.

(11) Emergencies:

(a) Officers and other facility staff shall be trained and prepared to address emergency situations. All facility staff shall call 911, if they believe any youth or staff requires emergency care. If 911 services are requested, Master Control shall be notified of the request as soon as possible to assist arriving emergency personnel in getting to the proper location.

(b) Regardless of the type of emergency, the supervision of youth and safety and security may be adversely affected and will demand immediate officer response.

(c) Emergency situations are categorized into three broad categories: youth oriented; weather/nature; and man-made situations.

1. Youth oriented emergencies include: escapes, riots, hostages, threat to life caused by the possession of a firearm or weapon, general disturbances and medical crisis. In the event of a medical emergency, all staff are trained in CPR/First Aid and are required to immediately provide assistance to the youth.

2. Weather/nature emergencies include: hurricanes, tornadoes, fire, flooding or other severe weather conditions.

3. Man-made situations include: fire, bomb threats, chemical spills, power outages and the intrusion of any outside force.

(12) Non-facility Staff in Secure Areas:

(a) Access to secure areas must frequently be provided to a number of different entities including, but not limited to: probation officers, law enforcement, officials of the court, school board personnel, contracted medical and/or mental health personnel, representatives from the Department of Children and Families and the Agency for Persons with Disabilities, and service vendors.

(b) The superintendent shall ensure the following:

1. Visiting personnel conducting official business shall display proper identification.

2. The superintendent shall designate what areas persons not employed at the facility may enter.

(c) The supervision of youth remains the responsibility of officers even when youth are with non-facility staff.

(d) When youth are with non-facility staff, sight supervision should be maintained by an officer whenever possible. At a minimum, youth with non-facility staff shall be monitored by the facility's surveillance equipment.

(e) Service vendors will be accompanied by designated facility staff at all times when in the secure area of a detention center. The superintendent may authorize exceptions to this guideline. All tools or other service items introduced into the secure area shall be accounted for following all service calls.

(f) All contracted employees shall enter and exit the facility through the main entrance and shall sign in and out of the facility.

Specific Authority 985.404(10)(b) FS. Law Implemented 985.404(10)(b)1. FS. History—New _____.

63G-2.006 Treatment Training and Education of Youth.

(1) Orientation:

(a) Youth shall be advised of facility rules and regulations, expectations for behavior and related consequences, and youth rights during an orientation process completed by an officer.

(b) Orientation shall occur within 24 hours of a youth being admitted into the facility and documented accordingly.

(2) Officer and Youth Interaction:

(a) The interaction between officers and youth is a critical component of the youth's time in detention and significantly impacts the youth. The quality of the program is contingent largely upon officers setting reasonable expectations and youth understanding how to appropriately interact with the officers.

(b) Officers must be clear and concise and use appropriate language in order to communicate effectively.

(3) Officer Professionalism:

(a) Officers shall maintain professional relationships with all youth and should avoid the appearance of personal relationships.

(b) Officers are role models and shall act accordingly.

(c) Officers shall not engage in personal relationships nor discuss any personal information relating to themselves or other officers with any youth.

(d) If a youth is a relative or family friend of an officer, it is the responsibility of the officer to report this through the designated chain of command.

(e) Officers shall not enter the sleeping quarters of the opposite sex unless accompanied by an officer of the same sex as the youth. However, any officer that discovers a youth attempting to commit suicide must immediately survey the scene to assess the level of emergency, and call for assistance. If the youth is demonstrating any sign of medical distress or is unresponsive, the officer must take immediate action and begin life-saving measures. Single officer cell entry is permitted to save lives. Life-threatening behaviors require an immediate response. Officers must use extreme caution when intervening without assistance.

(f) Officers shall not engage in "horseplay," either verbal or physical, with any youth.

(g) Officers shall not have written correspondence or verbal communication, including telephone calls, with any youth unless the communication is part of the identified duties.

(h) Officers shall not have any physical contact with any youth that could be viewed as potentially inappropriate except in the necessary application of verbal and physical intervention.

(i) Physical abuse of youth is prohibited by law and any suspicion or knowledge of such must be reported to the central abuse hotline, pursuant to Chapter 39, F.S., and the Central Communications Center.

(k) Officers shall not verbally abuse, demean or otherwise humiliate any youth, and shall not use profanity in the performance of their duties.

(l) Officers shall maintain the confidentiality afforded to all youth and shall not release any information to the general public or the news media about any youth.

(4) Daily Activities:

(a) Youth shall be provided the opportunity to participate in activities that will benefit youth and the facility by involving youth in constructive activities.

(b) Youth are expected to participate in all activities unless exempted due to medical or disciplinary reasons.

(c) Juvenile Detention Officers shall supervise all activities and shall maintain safety and security.

(d) Documentation of all activities shall be made in all applicable logs.

(5) Activity Schedule:

(a) The superintendent or designee shall develop a daily schedule clearly outlining the days and times for every youth activity.

(b) Daily activity schedules shall be posted in all living areas.

(c) Juvenile Detention Officers shall adhere to the daily activity schedules. The on-duty supervisor must approve any significant changes in the activity schedule, e.g. (cancellations, extended delays, etc.), and shall document the rationale for the changes on the shift report.

(6) Education:

(a) Youth shall attend school per guidelines established by the Florida Statute and the Department of Education. Youth are required to receive 300 minutes per day of educational instruction.

(b) The superintendent or designee shall work in partnership through a cooperative agreement with local school officials to ensure a quality school program is available for all youth.

(c) The superintendent or designee shall ensure compliance with the cooperative agreement.

(7) Recreation and Leisure Activities:

(a) Physical training is designed to promote healthy physical growth and development by providing structured large muscle exercise daily.

(b) Youth shall be afforded at least one hour daily of large muscle exercise outdoors. Outdoor exercises may be canceled, postponed or moved indoors at the discretion of the on-duty supervisor for reasons related to weather, safety or security.

(c) Activities such as free weights, softball, baseball, tackle football and horseshoes are prohibited activities due to safety and security concerns.

(d) Officers shall not participate in any physical activity with youth, but may direct or otherwise instruct youth in an activity.

(e) Exercises shall be consistent with the youths' physical capabilities.

(f) Exercises shall not be used for punitive reasons nor to demean, embarrass or humiliate a youth.

(8) Indoor Activities:

(a) Indoor activities shall promote educational, problem solving and/or life skills.

(b) Permissible and prohibited activities shall be determined by the superintendent or designee, with safety and security being considered.

(c) All movies shall be rated G or PG and be previously approved by the superintendent or designee.

(d) Indoor activities shall be canceled or postponed at the discretion of the on-duty supervisor for reasons related to safety or security. Such actions shall be documented.

(e) The on-duty supervisor shall ensure that television/videos are used either for educational purposes or as part of the facility's behavior management system. Television programs and videos shall be content appropriate and should not promote violence, criminal activity, or sexual/abusive situations.

(9) Visitation:

(a) Visitation of youth in detention is strongly encouraged and supported. The superintendent shall develop a visitation plan consistent with the following:

1. One day, at a minimum, of the week with specified times, will be designated for visitation.

2. Guidelines for canceling any visits that may adversely affect safety or security of officers or youth shall be established.

3. The rules and visiting hours shall be conspicuously posted to ensure visibility to both visitors and youth.

4. All visitors must present a picture ID every time they visit and be cleared through the metal detector before being authorized to enter the visiting area. Any individual that fails to present proper identification, refuses to be searched or cleared through the metal detector shall be denied access to the facility.

5. Visitors shall not bring personal items (e.g., keys, purses, packages, etc.) into the secure area. Posted visitation rules shall include this information, along with a warning that the introduction of any unauthorized items into a detention center is a third-degree felony.

6. Visitors shall sign in on the Visitor's Log of the youth being visited.

7. Visitors shall be denied entrance if they:

a. Are disruptive or uncooperative.

b. Refuse to be searched.

c. Refuse to comply with officer instructions.

d. Are under the influence or appear to be under the influence of any intoxicating substance.

e. Fail to present proper photo identification.

f. Attempt to introduce contraband into the secure area.

g. Are dressed in inappropriate attire as outlined in the facility operating procedure and posted at the facility entrance.

(b) Legal counsel, guardians ad litem, probation, law enforcement, clergy and other professionals may visit youth as necessary, but are subject to the same requirements regarding signing in and contraband.

(c) Parents, grandparents, and legal guardians are approved visitors. Others may only visit if so ordered by the court or specifically approved by the superintendent or designee.

(d) Visitation may be terminated if the behavior of the visitor or youth is disruptive or not in compliance with facility policies or procedures, and officers will follow subsequent reporting procedures if a visit is terminated. The termination of a visit may lead to the suspension of future visitation privileges at the discretion of the superintendent.

(e) Visitation rooms or areas and any other common area will be searched both prior to and following visitation to ensure the absence of any hazardous or dangerous items or items that would be considered contraband.

(f) If a visitor has a question regarding a youth's case or charges, they shall be referred to the Juvenile Probation Officer.

(g) Youth shall be frisk searched following visitation, and if contraband is suspected, but not found during the frisk search, a strip search shall be initiated.

(10) Telephone Usage:

(a) The superintendent or designee shall develop procedures governing telephone usage.

(b) The following subsections outline the minimal procedural requirements.

1. Youth shall have access to use a telephone for 15 minutes a week.

2. This time may not be restricted as a consequence for non-compliant behavior; however, use of the phone may be postponed or rescheduled due to any safety or security concerns.

3. This time may be extended as outlined in the facility's behavior management system.

4. All telephone calls and attempted calls shall be documented on the youth's Telephone Log. These logs shall be placed in the youth's file upon release from detention.

5. Youth may not contact victims (with the exception of the victims of domestic violence as outlined in Rule 63G-2.004, F.A.C.) or co-defendants.

6. Telephone conversations shall be terminated if they are disruptive or, otherwise impact safety or security.

7. Youth shall have reasonable access to a telephone to contact their legal counsel, child welfare officer, and/or their juvenile probation officer. These telephone calls are not counted as part of the allocated 15 minutes of calls as referenced herein.

8. Youth who are unable to make contact with their parents or legal guardians because they will not accept collect calls, shall be allowed one free call to them per week. This call will be included in their 15 minute per week allotment.

(11) Mail:

(a) Youth shall be provided the opportunity to both receive and send mail.

(b) The superintendent or designee shall develop procedures governing mail consistent with the following:

1. All incoming and outgoing mail will be screened for content that could jeopardize safety or security. Mail shall be processed within 48 hours, excluding weekends and holidays.

2. Postage and writing materials will be provided by the facility for personal correspondence for youth to post a minimum of two letters weekly.

3. Youth shall not be denied the opportunity to write their attorneys, however, this time may be postponed or rescheduled due to any safety or security concerns.

4. Youth shall not write to other youth in any juvenile detention center or residential commitment program. Youth shall not write to anyone incarcerated in a correctional facility without the permission of the superintendent or designee.

5. Due to the possibility of biological or chemical contamination and in the interest of youth and staff safety, incoming packages and letters are not to be opened in the presence of the youth. They are to be opened at a location that offers the highest level of safety for staff and youth, using appropriate safety precautions. The only exception to the above is mail clearly marked from the youth's attorney. This mail is to be opened in the presence of the youth. Acceptable enclosures may include appropriate photos (not Polaroid) or paper drawings. Unacceptable enclosures may include money or potentially dangerous items, which will be seized and inventoried per facility operating procedures.

6. Postage stamps shall be removed from all envelopes prior to the delivery of mail to youth.

7. Mail received after a youth's release shall be returned to the sender.

(12) Grievances:

(a) Youth may file a grievance should they feel their rights have been violated or they have been treated unfairly.

1. Officers shall attempt to resolve any dispute or issue that could lead to the filing of a grievance prior to the actual filing of a grievance. Officers utilizing effective communication skills may resolve many disputes and/or issues that a youth may have prior to the initiation of the grievance process.

2. If youth have been afforded the same protections and rights as the general population, they may not file a grievance.

3. Any denial of a youth's request to grieve shall be documented.

4. The superintendent or designee shall review the supervisor's logbook to determine any patterns of abuse or misuse related to youths' opportunities to grieve.

(b) Grievances do not replace the responsibility of reporting abuse. If the grievance is an allegation of abuse, it must be reported to the Florida Abuse Hotline, pursuant to Chapter 39, F.S., and the Central Communications Center, and shall be handled pursuant to such guidelines and no longer as a grievance.

(c) The grievance process is as follows:

1. The supervising officer(s) will issue both a Grievance Form and a pencil to any youth who wishes to file a grievance.

2. Paper and pencil shall not be issued to any youth who is visibly angry and/or out of control.

3. The completed Grievance Form shall be forwarded within two hours to the on-duty supervisor.

4. The on-duty supervisor shall document his/her findings on the Grievance Form and will advise the youth of what actions, if any, may be taken.

5. Any action that may involve disciplinary proceedings against an officer shall not be reported to the youth.

6. If possible, the youth should be informed of the on-duty supervisor's findings by the end of the shift. Should there be circumstances that would not allow that, the youth will be informed within 24 hours.

7. The youth may agree or disagree with the supervisor's findings/actions, and will sign in the designated area on the form so indicating.

8. The supervisor shall forward the Grievance Form to the superintendent or designee upon completion.

9. The superintendent or designee shall review all completed Grievance Forms within 72 hours of receipt excluding weekends and holidays, and shall take whatever corrective actions deemed necessary. The superintendent's decision is final.

10. A separate file shall be maintained of all grievances. Grievances shall be maintained chronologically by month for one year.

Specific Authority 985.404(10)(b) FS. Law Implemented 985.404(10)(b)2. FS. History--New _____.

63G-2.007 Sanitation.

(1) Each detention facility is responsible for ensuring the physical plant and its grounds are maintained in a safe manner in compliance with all applicable codes and standards, such as fire safety, health, and sanitation. The Superintendent or designee shall conduct a weekly sanitation inspection and shall document findings.

(2) The detention center's potable water sources and supply shall be in compliance with jurisdictional laws and regulations.

(3) Biohazardous waste shall be disposed of in accordance with OSHA Standard 29 CFR 1910.1030. Youth shall not be allowed to clean, handle, or dispose of any other person's biohazardous material, bodily fluids, or human waste.

(4) All facilities shall be inspected by the appropriate persons in reference to state health sanitation and food service standards.

Specific Authority 985.404(10)(b) FS. Law Implemented 985.404(10)(b)3. FS. History--New _____.

63G-2.008 Capacity.

Each Facility shall develop an overcrowding contingency plan. The plan shall address:

(1) Identification of the maximum number of youth the facility is capable of housing safely and securely.

(2) Actions to be taken when the facility reaches the identified maximum capacity, to include requesting release of youth through the court and transferring youth to other facilities if deemed to be in the best interest of safety and security.

Specific Authority 985.404(10)(b) FS. Law Implemented 985.404(10)(b)4. FS. History--New _____.

63G-2.009 Bedding and Linens.

(1) All mattresses shall be individually certified as meeting national fire safety performance requirements. Polyurethane mattresses shall be prohibited.

(2) Clean bed linens shall be issued as follows:

(a) All newly admitted youth shall be provided with clean bedding.

(b) Clean bed linen shall be provided to all youth at least once per week and more often when health reasons dictate.

(c) Clean blankets shall be provided as seasonally necessary.

(3) Youth shall receive clean bath towels daily.

Specific Authority 985.404(10)(b) FS. Law Implemented 985.404(10)(b)5. FS. History--New _____.

63G-2.010 Nutrition.

(1) The nutritional needs of youth shall be met per dietary requirements consistent with the Dietary Guidelines for Americans established through the Department of Health and Human Services and Department of Agriculture (USDA).

(2) A 28-day menu cycle shall be implemented and shall be reviewed and approved by a licensed dietician on an annual basis.

(3) A minimum of two hot meals shall be served daily.

(4) No more than fourteen hours shall pass between dinner and breakfast.

(5) An evening snack shall be provided.

(6) Special dietary needs of youth due to health or religious reasons shall be met when verified by medical or religious authorities.

(7) The superintendent or designee shall ensure all guidelines and documents are maintained as required by the USDA National School Lunch and School Breakfast Programs.

Specific Authority 985.404(10)(b) FS. Law Implemented 985.404(10)(b)6. FS. History--New _____.

63G-2.011 Medical Treatment, Health and Comfort.

(1) Medical:

(a) Each juvenile detention center shall enter into a contract or written agreement with a medical provider(s) to provide medical services and to provide a Designated Health Authority for the center.

(b) Written health care policy and procedures shall be approved by the Designated Health Authority.

(c) Youth presented at the detention center for admission shall have been medically screened prior to their arrival at detention. No youth presented to be securely detained shall be accepted for detention if they are in need of emergency medical care, require mental health crisis intervention or are under the influence of any intoxicant.

1. If a youth in crisis is mistakenly accepted for admission into secure detention, the on-duty supervisor shall make the necessary arrangements for the youth to see the facility's medical or mental health staff or shall ensure the youth is transported to a hospital emergency room.

2. The on-duty supervisor shall document the incident and forward the report to the superintendent or designee.

(d) Facility entry screening shall be performed by trained facility staff or qualified health care personnel on all youth upon arrival at the facility. All youth entering a detention center shall receive the appropriate routine screenings and evaluations. Routine screening and evaluations are those procedures, tests, examinations and assessments that are required by the Department to be provided for each youth. Any urgent medical issue shall be brought to the attention of appropriate medical personnel.

(e) All youth will receive a Health Related History. Any acute or chronic problem identified will receive ongoing services and monitoring by the medical staff.

(f) Youth with known or suspected communicable diseases shall be isolated from the general population until evaluated by the Designated Health Authority or the facility medical staff.

(g) Each juvenile detention center shall have scheduled sick call days to address youth's medical complaints. Sick call request forms shall be reviewed by the shift supervisor during the same shift that they are submitted.

(h) Physician or dental orders shall be carried out by qualified health care personnel. All youth shall be furnished such food, medication and other items as prescribed by the responsible physician or dentist.

(j) Security of all drugs and medical supplies shall be maintained at all times. Medicine prescribed for a youth by a physician or dentist shall be administered in accordance with the physician's or dentist's directions by qualified health care personnel and so noted in the youth's record. For those times when there is no qualified health care personnel to administer medication, staff trained and authorized may administer medication to the youth.

(k) The superintendent shall provide for 24-hour emergency medical care and shall specify these arrangements in a written plan. The superintendent shall obtain a satisfactory arrangement with the nearest available hospital for the admission and services of youth on an emergency basis.

(l) The superintendent shall have policies and procedures in place in the case of a medical emergency within the facility. All direct care staff or any other personnel, including volunteers, who have direct contact with youth are to be trained and understand that they are to immediately call 911 in a medical emergency. Such training of emergencies might include but not be limited to: recognition of signs, symptoms and action required in potential emergency situations as provided through basic first aid training and cardiopulmonary resuscitation training; signs and symptoms of life threatening mental illnesses, and procedures for patient transfer to appropriate medical facilities or health care providers.

1. In a situation requiring immediate medical attention, the youth shall be taken to the nearest hospital for emergency care. The Designated Health Authority, the superintendent or assistant superintendent and parents or legal guardian shall be contacted immediately.

2. First aid kits shall be available in appropriate places. The responsible physician or designee shall approve the contents, number, location and procedure for periodic inspection of the kits.

3. All staff shall be trained in first aid and cardiopulmonary resuscitation procedures.

(m) Security regulations applicable to facility support personnel shall also apply to health personnel.

(n) Appropriate continuous state and federal licensure, certification or registration requirements and restrictions shall apply to personnel who provide health care services to youth. The duties and responsibilities of such personnel shall be governed by the Department manuals and policies. Written verification of current credentials and job descriptions shall be on file in the detention center.

(o) Medical, pharmaceutical or cosmetic experiments shall not be performed on youth in detention centers.

(2) Mental Health and Substance Abuse:

(a) Each juvenile detention center shall enter into a contract or written agreement with a mental health provider(s) to provide mental health, substance abuse, and psychiatric services and to act as the Designated Mental Health Authority. The provider shall provide or arrange for mental health and substance abuse services.

(b) The superintendent shall ensure that youth in the program have access to necessary and appropriate mental health and substance abuse services (on-site and off-site) performed by qualified mental health and substance abuse professionals or service provider(s) licensed in accordance with Florida Statutes.

(c) There shall be mental health and substance abuse screening upon admission to determine if the youth has any immediate mental health needs. Suicide risk screening shall be conducted upon a youth's admission to the program and/or when a youth that had been on inactive status re-enters the program.

(d) The juvenile detention center shall have access to Crisis Intervention and emergency mental health or substance abuse care. This shall include 24-hour response capability with access to acute care settings and mental health and substance abuse emergency management services.

(e) For those youth on medications, there shall be psychopharmacological therapy and follow-up services, as necessary.

(f) The detention facility shall use an alert system to identify youth with special needs. Staff shall give special attention to observing youth in the alert system and as follow-up to logbook entries.

(3) Hygiene:

(a) Youth shall engage in hygiene practices that promote health and well-being.

(b) Youth shall shower daily, participate in routine dental care and otherwise maintain a daily hygiene routine as promoted and endorsed by the Designated Health Authority.

(c) Youth shall be provided the items necessary to allow them to perform proper hygiene.

Specific Authority 985.404(10)(b) FS. Law Implemented 985.404(10)(b)7. FS. History--New _____.

63G-2.012 Disciplinary Treatment.

(1) Principles:

(a) The behavior of youth and their interaction with supervising officers must contribute to the maintenance of a safe, secure and professional environment.

(b) Youth must understand there are consequences for all behaviors, and it is the responsibility of the supervising officers to consistently communicate this concept.

(c) The behavioral norms and expectations for youth shall be explained to all youth during the admission process, during orientation, and will be posted in all living areas and shall clearly specify what are appropriate and inappropriate behaviors.

(d) Consequences for non-compliant behavior of youth must have a direct association with those behaviors and must be fair, reasonable and equitable.

(e) Consequences for the behavior of youth are outlined in the behavior management system of each facility.

(2) Behavior Management:

(a) A behavior management system will provide clear guidelines and consequences, both positive and negative, for the behavior of youth. It shall be used as a tool to provide rewards for positive socially acceptable behavior and consequences for rule and law violations. The fair and consistent implementation of a behavior management system enhances safety and security as it relates to youth behavior. The behavior management system shall be shared and consistent with related support services, including but not limited to, on site educational, mental health and medical services.

1. Each facility shall implement a behavior management system to meet the needs of the youth and the facility. The system shall include rewards for positive behavior.

2. It is the responsibility of the supervising officer(s) to carry out the facility's behavior management system.

(b) Corrective action shall be appropriate for the behavior and shall be fair and equitable.

(c) Group punishment shall not be used as a part of the facility's behavior management plan. However, corrective action taken with a group of youth is appropriate when the behavior of a group jeopardizes safety or security and should not be confused with group punishment.

(d) Corporal punishment shall not be used in detention facilities. All allegations of corporal punishment of any youth by facility staff shall be reported to the central abuse hotline, pursuant to Chapter 39, F.S., and the Central Communications Center.

(e) The use of drugs to control the behavior of youth is prohibited. This does not preclude the proper administration of medication as prescribed by a licensed physician.

(3) Mechanical Restraints:

(a) Mechanical restraints shall be used as a method of controlling youth who present a threat to safety and security within the facility.

(b) Mechanical restraints shall be used when transporting youth outside the secure area of the facility.

(c) Mechanical restraints shall not be used as a means of discipline.

(d) Whenever mechanical restraints are used, a report shall be completed and submitted for review. The only exception is when used to transport youth outside the secure area of the facility.

(4) Confinement:

(a) Confinement is the most restrictive method of behavior management and is designed to ensure security, protect youth, officers and facility staff, and create youth accountability. Confinement may be used to gain immediate control of a situation, to ensure safety and security or to punish a youth for violation of facility rules. Confinement may not be used to harass, embarrass, demean or otherwise, abuse a youth. It is the intent of the Department that confinement be used only after all reasonable efforts to work with a youth, through verbal de-escalation, have failed to bring the youth's behavior within the control of officers, or the youth's behavior is so egregious as to give rise to an imminent and significant danger to persons and/or property if the youth is allowed to remain in the general population. The use of confinement shall be monitored closely by the superintendent, or designee, to ensure appropriateness.

(b) There are conditions that must be maintained that relate to both rooms used for confinement and the supervision of youth in confinement.

1. Confinement room windows and cameras shall be free of obstructions.

2. Any room that possesses potential safety hazards shall not be used for confinement.

3. Rooms used for confinement will be free of any non-fixed items, including, but not limited to, sheets, blankets, mattresses, hygiene items, etc., and shall have been searched prior to the placement of any youth.

4. Youth in confinement shall be afforded living conditions approximating those available to the general population. This includes, but is not limited to: education, showers, meals, clothing, large muscle exercise, bedding (during sleeping hours only) and hygiene items as needed.

5. Youth shall not have contact with the general population while participating in these activities.

(c) Superintendents shall develop procedures for the placement of a youth in confinement. The following outlines the minimal procedural guidelines:

1. Verification of the level of supervision required including the documentation of visual observation. Youth who are determined to be at-risk of suicide shall be supervised. The level of supervision will be either close supervision (5-minute checks) or constant sight and sound. Youth on standard supervision must be observed every ten minutes while in confinement.

2. A confinement report shall be submitted within one hour to the on-duty supervisor by the officer making the placement. The confinement report shall include a description of the incident and efforts made by staff to control the youth's behavior.

3. The confinement report shall be reviewed by the on-duty supervisor within two hours of submission to ensure the fair and appropriate use of confinement. The supervisor shall determine the appropriateness of the confinement placement, and if the supervisor determines the placement to be inappropriate, the youth shall immediately be released to the general population. The supervisor shall also review the youth's file to assess any special needs the youth may have that would merit alternatives to room confinement.

4. The on-duty supervisor, following the review of the confinement report, shall evaluate the youth's status, at a minimum, every three hours to determine if the continued confinement of the youth is required. This review shall include supporting documentation.

5. The confinement report shall be submitted by the end of the shift to the superintendent or designee following the removal of a youth from confinement. The superintendent or designee shall review the report within 48 hours excluding weekends and holidays.

(d) The length of time a youth may be placed in confinement is dictated by a number of factors including:

1. Severity of the rule violation;
2. Past disciplinary history;
3. Behavior while in confinement.

(e) On-Duty Supervisor(s) may continue a youth's time in confinement for up to 24 hours. The on-duty supervisor shall document the continued need for confinement every three hours. The superintendent or designee shall approve confinements extended beyond 24 hours, and every 24 hours afterwards, with reasons documented on the confinement report.

(f) The designated mental health professional shall evaluate and document the mental health status of all youth extended in confinement beyond 24 hours and every 24 hours afterwards excluding weekends and holidays.

(g) There are specific rule violations that, due to their severity and impact on safety and security, require mandatory confinement. The following violations require mandatory confinement:

1. A physical attack and/or battery by a youth on anyone in the facility;
2. Possession of any contraband that could reasonably be considered a weapon;
3. An escape or an attempt to escape;
4. Any gang related activities that could jeopardize safety or security;
5. Any attempt to resist staff that elevates to "active resistance" as defined in the Department's verbal and physical intervention policy;
6. Felony property damage.

(h) The length of time for mandatory confinements shall be as follows:

1. 1st occurrence = 3 days;
2. 2nd occurrence = 4 days;
3. 3rd occurrence = 5 days.

(i) In the event of an actual escape, a youth shall be placed in 5-day confinement upon his/her return to the facility. Occurrences are cumulative only for a youth's current stay in detention. The superintendent or designee shall review and document the status of youth placed in mandatory confinement every 24 hours. The superintendent may terminate a mandatory confinement at any time at his/her discretion. Supervisors shall not be required to document the continued need for confinement but shall check and document the status of youth in mandatory confinement a minimum of two times on each shift.

(j) Confinements shall be communicated to school personnel for appropriate record keeping and tracking of school assignments.

(k) The length of confinement shall not exceed 5 days unless the release of the youth into the general population would jeopardize the safety and security of the facility as documented by the superintendent. No youth shall be held in confinement beyond five days without a confinement hearing that is conducted by a management or supervisory level staff person who is not employed in the Detention Center where the confinement is occurring. Such hearings shall be conducted under the following procedure:

1. The Superintendent shall complete a confinement hearing report that includes:

- a. A copy of the confinement report and all documented reviews and interviews with the youth;
- b. A statement of the specific rules violated;
- c. A formal statement of the charge;
- d. A description of the facts and circumstances giving rise to the confinement;

e. The rationale for requesting a youth remain in room confinement;

f. Staff witnesses;

g. Disposition of any physical evidence;

h. Any immediate action taken including the use of force;

and

i. Date and time the report is made.

2. A written copy of the confinement hearing report shall be furnished to the youth to read prior to the hearing. If the youth cannot read, an officer shall read the information to the youth.

3. A reasonable effort will be made to notify the youth's parents or guardians, who are allowed to be present at the hearing.

4. The youth shall be given an opportunity to make a statement and present documentary evidence and to have in attendance any person who has relevant information.

5. The hearing officer shall make one or more of the following findings:

a. A determination whether the allegation is founded.

b. A determination that the original decision to place the youth in confinement was warranted or unwarranted.

c. A determination that the circumstances of the incident(s) warrant a request for charges to be filed.

d. A finding as to whether the youth continues to present a clear and present danger to others. In such a case, the hearing officer is authorized to continue the youth in confinement for an additional period of time as the officer may determine appropriate.

e. If the hearing officer finds that the youth does not continue to present a clear and present danger to others, the youth shall be returned to the general population.

6. Following any hearing in which a finding is reached that a youth will be continued in confinement, the hearing officer shall request that a mental health assessment be completed by a qualified mental health professional within 12 hours of the hearing. The mental health professional shall complete a report making recommendations to the hearing officer for the disposition of the youth that may include, but are not limited to, the following.

a. Continuation in room confinement for a specified period of time.

b. The filing of a Baker Act petition.

c. Returning the youth to the general population under conditions prescribed by the licensed mental health professional.

d. Referral for psychiatric evaluation and treatment.

7. If the hearing officer disagrees with any of the recommendations made by the mental health professional, the reasons for such disagreement shall be documented. All evidence and circumstances considered in arriving at a dispositional decision shall be fully explained in the hearing record.

8. A copy of the hearing record shall be distributed to the Regional Director for detention and the Assistant Secretary for Detention.

9. A youth may appeal the hearing officer's decision to the Regional Director or to his or her designee. The Regional Director shall rule on all such appeals within 48 hours.

10. A copy of the hearing record of all cases in which it is found that the original decision to place a youth in room confinement was unwarranted will be sent to the Regional Director and kept in a separate facility file.

(l) The superintendent or designee shall develop a system for tracking confinement and documenting the appropriateness of its use. The superintendent or designee, to ensure the fair and proper use of confinement, and shall review all

confinement reports. The superintendent or designee shall review the overall use of confinement monthly to determine any patterns of misuse.

(m) Designated regional management shall review the use of confinement quarterly.

Specific Authority 985.404(10)(b) FS. Law Implemented 985.404(10)(b)8. FS. History--New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Clyde Benedix, Policy Development Officer, Office of Administration, Department of Juvenile Justice

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Jane McElroy, Assistant Secretary for Administration, Department of Juvenile Justice

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 30, 2005

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 23, 2005

DEPARTMENT OF HEALTH

Board of Medicine

RULE TITLE: Fees for Application, Examination, Examination Review and Initial Licensure

RULE NO.: 64B8-51.007

PURPOSE AND EFFECT: The proposed rule amendment is intended to reduce the examination fee.

SUMMARY: The proposed rule amendment reduces the examination fee from \$300 to \$150.

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

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

SPECIFIC AUTHORITY: 456.064, 478.55(1) FS.

LAW IMPLEMENTED: 456.017, 456.064, 478.55 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: Susan Love, Executive Director, Electrolysis Council, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B8-51.007 Fees for Application, Examination, Examination Review and Initial Licensure.

(1) through (2) No change.

(3) Examination fee is ~~\$150~~ ~~\$300~~.

(4) through (6) No change.

Specific Authority: 456.064, 478.55(1) FS. Law Implemented: 456.017, 456.064, 478.55 FS. History–New 5-31-93, Formerly 21M-76.007, 61F6-76.007, Amended 7-11-95, Formerly 59R-51.007, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Electrolysis Council
 NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Medicine
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 4, 2006
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 27, 2006

DEPARTMENT OF HEALTH

Board of Medicine

RULE TITLES: Inactive and Retired Licensure Status; Reactivating of Licensure, Delinquent Renewal

RULE NOS.: 64B8-54.002
 64B8-54.004
 64B8-54.0041

PURPOSE AND EFFECT: The proposed amendments to Rules 64B8-54.002 and 64B8-54.004, F.A.C., are intended to set forth the criteria for reactivation of a license which is in retired status and to set forth the retired status fee. The proposed Rule 64B8-54.0041, F.A.C., is intended to establish a special assessment fee and to permit licensees to submit the special assessment in four equal installments.

SUMMARY: The proposed amendments to Rule 64B8-54.002, F.A.C., set forth the criteria for reactivation of a license which is in retired status. The amendments to Rule 64B8-54.004, F.A.C., set forth the fee for those seeking retired status. The proposed Rule 64B8-54.0041, F.A.C., establishes a special assessment fee in the amount of \$1,306.00, and permits licensees to submit the special assessment in four equal installments.

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

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

SPECIFIC AUTHORITY: 456.013(2), 456.025(5), 456.036(15), 478.43(1), (4), 478.50, 478.55 FS.

LAW IMPLEMENTED: 456.013, 456.025(2),(5) 456.036(2), (4)(b), (12), 478.50, 478.55 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Susan Love, Executive Director, Electrolysis Council, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE FULL TEXT OF THE PROPOSED RULES IS:

64B8-54.002 Inactive and Retired Licensure Status; Reactivating of Licensure, Delinquent Renewal.

(1) Ninety (90) days prior to the end of the biennium, the Department shall mail a notice of renewal to the last known address of the inactive or delinquent license holder contained in the official records of the Department.

(2) Any person holding an inactive license eligible for reactivation may return his license to active status upon submission of a complete application as set out below, ~~in subsection (3)~~ subsection (3) to the Department, payment of the fees indicated in Section 456.036, Florida Statutes, in the amounts indicated in Rule 64B8-54.004, F.A.C., and compliance with subsection (a) and (b), below: the following:

(a) through (b) No change.

(3) If the person holds a Florida retired license eligible for reactivation, he or she may return that license to active status upon submission of a complete application to the Department, payment of the appropriate fees and compliance with the provisions of subsection 456.036(12), F.S.

~~(4)(3)~~ No change.

(5) A licensee wishing to change to retired licensure status during the renewal period must pay the retired license fee. If changing to retired licensure status outside the renewal period, the change of status fee shall also be paid.

~~(6)(4)~~ Failure to renew ~~a~~ the delinquent license to either active, ~~or~~ inactive, or retired status by the expiration date of the current renewal period shall render the license null and void without further action of the Council or Department.

Specific Authority 456.036(15), 478.43(1),(4), 478.50 FS. Law Implemented 456.036(2),(4)(b),(12), 478.50 FS. History–New 9-29-93, Formerly 61F6-79.002, 59R-54.002, Amended 4-2-98, 9-26-01, _____.

64B8-54.004 Fees.

(1) through (4) No change.

(5) The initial retired license fee shall be \$50.00.

(5) through (7) renumbered (6) through (8) No change.

~~(8) The fee for a wall certificate of licensure shall be \$25.~~

Specific Authority 456.013(2), 456.036(15), 478.43(1), (4), 478.50, 478.55 FS. Law Implemented 456.013, 456.025(2), 455.036(4)(b), 478.50, 478.55 FS. History–New 9-29-93, Formerly 61F6-79.004, Amended 6-29-95, Formerly 59R-54.004, Amended 2-17-00, _____.

64B8-54.0041 Special Assessment Fee.

(1) In an effort to eliminate the current cash deficit of the Electrolysis Council, each active status licensee and each inactive status licensee shall pay a special one time assessment fee of one thousand three hundred and six dollars (\$1306.00). The fee may be paid in four equal installments of three hundred and twenty-six dollars and fifty cents (\$326.50), with one-half of the total fee due no later than May 31, 2006. The entire fee must be paid to and received by the Department no later than May 31, 2008.

(2) Failure to comply with this rule and pay the required fee shall constitute a citation violation as set forth in Section 456.077, F.S.

~~Specific Authority 456.025(5) FS. Law Implemented 456.025(5) FS. History--New _____.~~

NAME OF PERSON ORIGINATING PROPOSED RULE:
Electrolysis Council
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Medicine
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 4, 2006
DATES NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 2, 2005 (64B8-54.002 and 64B8-54.004); December 16, 2005 (64B8-54.0041)

FINANCIAL SERVICES COMMISSION

OIR Insurance Regulation

RULE TITLE: Reports by Insurers of Professional Liability

RULE NO.:

Claims and Actions Required 690-171.003

PURPOSE, EFFECT AND SUMMARY: Section 627.912, F.S., requires certain insuring entities to report liability claims. As amended Rule 690-171.003, F.A.C., sets up the process by which these claims are reported electronically to the Office and requires a "No Claim Report" if there are no claims.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: None.

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

SPECIFIC AUTHORITY: 624.308(1) FS.

LAW IMPLEMENTED: 624.307(1), 627.912, 627.918 FS.

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

TIME AND DATE: 9:30 a.m., March 21, 2006

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Lee Roddenberry, Director, Property and Casualty Product Review, Office of Insurance Regulation, E-mail: Lee.Roddenberry@fldfs.com.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this program, please advise the Office at least 5 calendar days before the program by contacting the person listed above.

THE FULL TEXT OF THE PROPOSED RULE IS:

690-171.003 Reports by Insurers of Professional Liability Claims and Actions Required.

~~(1)(a) Each entity self-insurer identified in Section 627.912(1)(a), or 627.912(5), F.S., authorized under Section 627.357, F.S., and each insurer or joint underwriting association providing professional liability insurance to a practitioner of medicine licensed pursuant to the provisions of Chapter 458, F.S., to a practitioner of osteopathic medicine licensed pursuant to the provisions of Chapter 459, F.S., to a podiatric physician licensed pursuant to the provisions of Chapter 461, F.S., to a dentist licensed pursuant to the provisions of Chapter 466, F.S., to a hospital licensed pursuant to the provisions of Chapter 395, F.S., to crisis stabilization units licensed under Part IV of Chapter 394, F.S., to a health maintenance organization certified under Part I of Chapter 641, F.S., to clinics included in Chapter 390, F.S., to an ambulatory surgical center as defined in Section 395.002, F.S., or to a member of the Florida Bar, shall report to the Office of Insurance Regulation (Office) any claim or action for damages for personal injuries claimed to have been caused by error, omission, or negligence in the performance of such insured's professional services or based on a claimed performance of professional services without consent. In any calendar year in which no claim or action for damages has been closed, the entity shall file a "No Claim Submission Report". Each entity insurer or self-insurer required to report under this rule shall submit such information to the Office using the "Professional Liability Claims Reporting ("PLCR") located at https://apps.fldfs.com/plcr, Form OIR-A1-1672 (1-06). The PLCR is incorporated and adopted by reference, electronically by using computer software provided by the Office. A copy of the judgment or settlement must be provided along with any other information required by the Office that is not included in the computer software. The following forms have been converted into the software provided by the Office are hereby incorporated by reference, and shall take effect on the effective date of this rule amendment: Form OIR 303 (5/99) "Florida Medical Professional Liability Insurance Claims Report" and OIR 304 (5/99) "Lawyers Professional Liability Closed Claim Reporting Form."~~ Professional liability closed claim reports must be filed by the insurer if the claim resulted in:

~~(a) A final judgment in any amount; or~~

~~(b) In addition to the requirements set forth in Section 627.912(2), F.S., reports shall contain: A settlement in any amount.~~

1. The type of entity insured to include but not limited to hospitals, individuals or other facilities;

2. The field of medicine in which a physician practices;

3. The facility license or registration number;

4. The amount the insurance company has set aside to pay the claim as of the closing date of the claim;

5. The names of all known defendants;

6. Whether or not the claim was closed due to a jury verdict or settlement;

7. The county in which the injury occurred; and

8. The date on which payment was made.

(c) In order to determine the cost of medical malpractice claims, the commissioner may require additional information, through filings, special data calls, informational hearings or by any other means consistent with statute or the Florida Administrative Code, that the commissioner believes will help in the determination of ultimate cost of medical malpractice claims.

(2) Each authorized insurer, risk retention group, joint underwriting association and surplus lines insurer shall annually report to the Office on or before April 1 of each calendar year a reconciliation of all paid claims and loss adjustment expenses reported pursuant to Section 627.912, F.S., and direct loss and loss adjustment expenses paid in the state of Florida and reported in their NAIC annual statement. Such reconciliation shall be reported using the method as described in paragraph (1)(a) and include but are not limited to the following:

(a) Payments on claims not closed in current calendar year;

(b) Payments made prior to January 1 on claims closed during the current calendar year;

(c) Losses paid on claims not settled under Florida law but which are reported in the NAIC annual statement;

(d) Payments on claims reported on policies written in another state;

(e) Reimbursements received;

(f) Rounding and statistical adjustments (explaining documentation must be provided);

(g) Un-reconciled amounts (explaining documentation must be provided);

(h) Closed claim subtractions; and

(i) Closed claim additions.

(3)(2) Any self-insurance program established under Section 240.213, F.S., shall report, using such method as described in paragraph (1)(a), in duplicate to the Office of Insurance Regulation any claim or action for damages for personal injuries claimed to have been caused by error, omission, or negligence in the performance of professional services provided by the Board of Regents through an employee or agent of the Board of Regents, including practitioners of medicine licensed under Chapter 458, F.S., practitioners of osteopathic medicine licensed under Chapter 459, F.S., podiatric physicians licensed under Chapter 461, F.S., and dentists licensed under Chapter 466, F.S., or based on a claimed performance of professional services without consent if the claim resulted in a final judgment in any amount, or a settlement in any amount.

~~(4)(3) Reports are due no later than 30 days after the claim has been closed, following the occurrence of one of the events listed in paragraph (a) or (b) above. "No Claim Submission Reports" are due no later than March 1st of each year. Entities not filing a closed claim or a "No Claim Submission Report" will be subject to fines and penalties as listed in Section 627.912, F.S. A closed claim report which is inaccurate, incomplete, or not properly formatted will be returned unprocessed and will be considered late until an accurate, complete and properly formatted report is received.~~

~~(5)(4) The Office shall impose a fine of \$250 per day per case, but not to exceed a total of \$10,000 \$1,000 per case against an entity required to report under Section 627.912(1)(a), F.S., insurer or self-insurer that violates the professional liability closed claim reporting requirements, except that the Office may impose a fine of no more than \$1,000 per case against an insurer providing professional liability insurance to a member of the Florida Bar. This applies to claims closed on or after October 1, 1997.~~

~~(5) Copies of the Professional Liability Closed Claim Software are available from the Office of Insurance Regulation, Bureau of Property and Casualty Forms and Rates, Room 238.14, Larson Building, Tallahassee, Florida 32399-0300, (850)413-5346.~~

Specific Authority 624.308(1) FS. Law Implemented 624.307(1), 627.912, 627.918 FS. History--New 1-16-83, Amended 6-14-83, 7-1-85, 12-31-85, Formerly 4-59.03, Amended 11-9-86, 6-15-88, Formerly 4-59.003, Amended 4-28-92, 6-13-99, Formerly 4-171.003, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Lee Roddenberry, Director, Property and Casualty Product Review, Office of Insurance Regulation

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Tom Streukens, Deputy Commissioner, Office of Insurance Regulation

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 17, 2005

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 17, 2005

FINANCIAL SERVICES COMMISSION

OIR Insurance Regulation

RULE TITLE: Medical Malpractice Insurance Open Claims Reporting

RULE NO.: 690-171.009

PURPOSE, EFFECT AND SUMMARY: Section 627.912(7), F.S., authorizes the Office to monitor losses and claims development in the Florida medical malpractice insurance market by establishment of an open claims database. This rule establishes such a database.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: None.

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

SPECIFIC AUTHORITY: 624.308(1), 627.912(7) FS.

LAW IMPLEMENTED: 627.912(7) FS.

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

TIME AND DATE: 9:30 a.m., March 21, 2006

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Claude Mueller, Property and Casualty Financial Oversight, Office of Insurance Regulation, E-mail Claude.Mueller@fldfs.com

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this program, please advise the Office at least 5 calendar days before the program by contacting the person listed above.

THE FULL TEXT OF THE PROPOSED RULE IS:

69O-171.009 Medical Malpractice Insurance Open Claims Reporting.

(1) Each insurer transacting medical malpractice insurance in this state shall file with the Office, on an annual basis, the information required by this rule. The information shall be filed electronically on or before March 1 for the immediately preceding calendar year to the Office using the "Professional Liability Claims Reporting ("PLCR") located at <https://apps.fldfs.com/plcr>, Form OIR-A1-1672 (1-06). The PLCR is incorporated and adopted by reference.

(2) Each insurer shall submit the following information in aggregate for all claims-made medical malpractice policies written in Florida. Information for direct, assumed, and ceded business shall be reported separately.

(a) Number of open claims for each year;

(b) Number of closed claims for each year;

(c)1. Direct premiums earned,

2. Assumed premiums earned, and

3. Ceded premiums earned for each year;

(d)1. Direct loss payments,

2. Assumed loss payments, and

3. Ceded loss payments for each year;

(e)1. Direct allocated loss adjustment expense payments and defense and cost containment expense payments,

2. Assumed allocated loss adjustment expense payments and defense and cost containment expense payments, and

3. Ceded allocated loss adjustment expense payments and defense and cost containment expense payments for each year;

(f)1. Direct case losses unpaid,

2. Assumed case losses unpaid, and

3. Ceded case losses unpaid for each year;

(g)1. Direct bulk losses unpaid,

2. Assumed bulk losses unpaid, and

3. Ceded bulk losses unpaid for each year;

(h)1. Direct incurred but not reported unpaid,

2. Assumed incurred but not reported unpaid, and

3. Ceded incurred but not reported unpaid for each year;

(i)1. Direct case allocated loss adjustment expense unpaid and case defense and cost containment expense unpaid,

2. Assumed case allocated loss adjustment expense unpaid and case defense and cost containment expense unpaid, and

3. Ceded case allocated loss adjustment expense unpaid and case defense and cost containment expense unpaid for each year;

(j)1. Direct bulk allocated loss adjustment expense unpaid and bulk defense and cost containment expense unpaid,

2. Assumed bulk allocated loss adjustment expense unpaid and bulk defense and cost containment expense unpaid, and

3. Ceded bulk allocated loss adjustment expense unpaid and bulk defense and cost containment expense unpaid for each year;

(k)1. Direct incurred but not reported allocated loss adjustment expense unpaid and incurred but not reported defense and cost containment expense unpaid,

2. Assumed incurred but not reported allocated loss adjustment expense unpaid and incurred but not reported defense and cost containment expense unpaid, and

3. Ceded incurred but not reported allocated loss adjustment expense unpaid and incurred but not reported defense and cost containment expense unpaid for each year.

(3) Each insurer shall submit the following information in aggregate for all occurrence medical malpractice policies written in Florida. Information for direct, assumed, and ceded shall be reported separately:

(a) Number of open claims for each year;

(b) Number of closed claims for each year;

(c)1. Direct premiums earned,

2. Assumed premiums earned, and

3. Ceded premiums earned for each year;

(d)1. Direct loss payments,

2. Assumed loss payments, and

3. Ceded loss payments for each year;

(e)1. Direct allocated loss adjustment expense payments and defense and cost containment expense payments,

2. Assumed allocated loss adjustment expense payments and defense and cost containment expense payments, and

3. Ceded allocated loss adjustment expense payments and defense and cost containment expense payments for each year;

(f)1. Direct case losses unpaid,

2. Assumed case losses unpaid, and
3. Ceded case losses unpaid for each year:
(g)1. Direct bulk losses unpaid,
2. Assumed bulk losses unpaid, and
3. Ceded bulk losses unpaid for each year:
(h)1. Direct incurred but not reported unpaid,
2. Assumed incurred but not reported unpaid, and
3. Ceded incurred but not reported unpaid for each year:
(i)1. Direct case allocated loss adjustment expense unpaid and case defense and cost containment expense unpaid,
2. Assumed case allocated loss adjustment expense unpaid and case defense and cost containment expense unpaid, and
3. Ceded case allocated loss adjustment expense unpaid and case defense and cost containment expense unpaid for each year:
(j)1. Direct bulk allocated loss adjustment expense unpaid and bulk defense and cost containment expense unpaid,
2. Assumed bulk allocated loss adjustment expense unpaid and bulk defense and cost containment expense unpaid, and
3. Ceded bulk allocated loss adjustment expense unpaid and bulk defense and cost containment expense unpaid for each year:
(k)1. Direct incurred but not reported allocated loss adjustment expense unpaid and incurred but not reported defense and cost containment expense unpaid,
2. Assumed incurred but not reported allocated loss adjustment expense unpaid and incurred but not reported defense and cost containment expense unpaid, and
3. Ceded incurred but not reported allocated loss adjustment expense unpaid and incurred but not reported defense and cost containment expense unpaid for each year.
- (4) Reporting Instructions.
- (a) Cumulative historical data by year for the immediately preceding 10 years and an aggregate amount of the total change for all other years ("prior") shall be reported. The "prior year" entry shall reflect only amounts paid, received or incurred in the current year or remaining reserved at its end. Loss payments shall be reported net of salvage and subrogation received.
- (b) Earned premium shall be reported on a calendar-year basis. Losses incurred shall be reported under the year in which the event occurred that triggered coverage under the contract. This may be a date of accident (occurrence policy), a date of report (claims-made policy) or a policy issue date (tail policy).
- (c) Claims-made earned premiums shall include earned premiums arising from any policy where the predominant exposure is claims-made, but claims-made earned premiums shall not include "tail" earned premiums. "Tail" earned premiums applicable to a claims-made insurance program, along with the claims they cover, are to be included in the occurrence part for the respective line.

(d) The following shall be used in accounting for claims-made losses:

1. For losses attributable to claims-made (but not "tail" forms), the incurred date shall be the report date.

2. Losses shall be booked to the report year that is consistent with the report year definition contained in the policy.

(e) Losses incurred on tail policies must be assigned to the year in which the policy was issued and are to be included in the occurrence data for the respective line.

(f) For reporting items that cover both allocated loss adjustment expense and defense and cost containment, note that new accounting directions for handling loss adjustment expenses in the Property and Casualty Annual Statement were adopted by the National Association of Insurance Commissioners effective January 1, 1998. Prior to January 1, 1998, loss adjustment expenses were split between "allocated loss adjustment expenses" and "unallocated loss adjustment expenses". The new directions split the loss adjustment expenses between "Defense and Cost Containment" and "Adjusting and Other". Most of the expenses that formerly fell within "allocated loss adjustment expenses" now fall within "Defense and Cost Containment". Insurers shall comply with this direction from the National Association of Insurance Commissioners. Each reporting entity shall report each calendar year portion of each accident year consistent with how that portion was reported in the entity's most recent annual statement Schedule P. For example, if the accident year 1996 paid defense and cost containment in the entity's most recent Schedule P consists of accident year 1996 allocated loss adjustment expenses paid during 1996 and 1997, and accident year 1996 defense and cost containment paid in 1998 and later years, the accident year defense and cost containment submitted with this form should be computed the same way. Entities that do not prepare a Schedule P or similar schedule shall report defense and cost containment for all portions of all years.

(g) If the company has data that is not available by individual claim, this data shall be reported separately via footnote disclosure. The method of disclosure shall be consistent with the reporting contained within the company's NAIC annual statement. An example of such information might be an aggregate excess of loss contract containing large deductibles that do not define individual claimants or a policy issued to a hospital organization insuring multiple locations.

(h) Many insurers have a pooling arrangement with affiliated companies, approved by the domiciliary commissioner, in which the business written is reallocated among the affiliated companies according to a specified percentage. Pooled business shall be reported as follows:

1. The premiums and losses are to be reported in the claims data after such pooling arrangements, not before.

2. In reporting pooled premiums and losses, the direct business results (prior to both pooling and reinsurance) shall first be allocated to the pool participants as direct premiums and losses. Then the reinsurance ceded to companies outside the pool shall also be allocated among the pool members. The transfer of premiums or losses between companies through the pooling mechanism shall not be reported as reinsurance.

3. If ceded reinsurance applies after the pool, i.e., the pooling inures to the benefit of the reinsurer, the ceded reinsurance is not to be allocated among the pool members.

Specific Authority 627.912(7), 624.308(1) FS. Law Implemented 627.912(7) FS. History—New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Claude Mueller, Director, Property and Casualty Financial Oversight, Office of Insurance Regulation

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Tom Streukens, Deputy Commissioner, Office of Insurance Regulation

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 24, 2006

DATES NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 19, 2003 and August 26, 2005

FINANCIAL SERVICES COMMISSION

Office of Financial Regulation

RULE TITLE: RULE NO.:

Prohibited Business Practices for Dealers and Their Associated Persons 69W-600.013

PURPOSE AND EFFECT: On August 29, 2003, the Securities and Exchange Commission (SEC) approved the adoption of Rule 2370 of the National Association of Securities Dealers (“NASD”), which prohibited registered persons from borrowing money from or lending money to a customer unless certain criteria were met. The NASD subsequently adopted amendments to NASD Rule 2370, which were approved by the SEC on February 18, 2004. Rule 69W-600.013, F.A.C., is being amended to allow registered persons to borrow from or lend to customers under certain conditions. These rule amendments are based on NASD Rule 2370. Rule 69W-600.013, F.A.C., is also being amended to reflect that a violation of Regulation SHO, as adopted by the SEC under the Securities and Exchange Act of 1934, is a prohibited business practice. The rule is also being amended to update references to applicable SEC and self-regulatory rules adopted by reference.

SUMMARY: Rules governing lending arrangements of funds between registered persons of dealers and customers have been promulgated at the national level by the NASD. The rule proposed by the Office is based on the amended NASD Rule 2370, which has been approved by the Securities and Exchange Commission. This rule amendment exempts some lending arrangements involving a registered person of a broker

dealer and a customer from being a prohibited business practice. The rule is also being amended to reflect that a violation of Regulation SHO, as adopted by the SEC under the Securities and Exchange Act of 1934, is a prohibited business practice.

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

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

SPECIFIC AUTHORITY: 517.03(1), 517.081, 517.1217 FS.

LAW IMPLEMENTED 517.12(1), 517.081, 517.1217, 517.161(1) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Bridget D. Dervish, Area Financial Manager, Bureau of Securities Regulation, Room 664, Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399-0374, (850)410-9805

THE FULL TEXT OF THE PROPOSED RULE IS:

69W-600.013 Prohibited Business Practices for Dealers and Their Associated Persons.

(1) The following are deemed demonstrations of unworthiness by a dealer under Section 517.161(1)(h), F.S., without limiting that term to the practices specified herein:

(a) Causing any unreasonable delay in the delivery of securities purchased by any of its customers, or in the payment upon request of free credit balances reflecting complete transactions of any of its customers;

(b) Inducing trading in a customer’s account which is excessive in size or frequency in view of the financial resources and character of the account;

(c) Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer’s investment objectives, financial situation and needs, and any other information known by the dealer;

(d) Executing a transaction on behalf of a customer without authority to do so;

(e) Exercising any discretionary power in effecting a transaction for a customer’s account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;

(f) Extending, arranging for, or participating in arranging for credit to a customer in violation of the provisions of Regulation T (12 CFR 220.1-~~220.12~~ ~~220.131~~, inclusive) promulgated by the Federal Reserve Board, as such provisions existed on February 1, 2006 ~~July 1, 2003~~;

(g) Executing any transaction in a margin account without obtaining from its customer a written margin agreement prior to settlement date for the initial transaction in the account;

(h) Failing to segregate customers' free securities or securities in safekeeping;

(i) Hypothecating a customer's securities in violation of SEC Rule 8c-1 (17 CFR 240.8c-1), as such rule existed on February 1, 2006 ~~July 1, 2003~~;

(j) Charging its customer an unreasonable commission or service charge in any transaction executed as agent for the customer;

(k) Entering into a transaction for its own account with a customer with an unreasonable mark-up or mark-down;

(l) Entering into a transaction with or for a customer at a price not reasonably related to the current market price;

(m) Failing to execute a customer's order;

(n) Executing orders for the purchase by a customer of securities not registered under Section 517.081 or 517.082, F.S., unless the securities are exempted under Section 517.051, F.S., or the transaction is exempted under Section 517.061, F.S.;

(o) Representing itself as a financial or investment planner, consultant, or advisor, when the representation does not fairly describe the nature of the services offered, the qualifications of the person offering the services, and the method of compensation for the services;

(p) With respect to any customer, transaction or business in this state, violating:

1. Any by-law, schedule thereto, rule, or appendix thereto, of the National Association of Securities Dealers ("NASD"), interpreted in accordance with the guidelines, policies, and interpretations of the NASD or SEC, including: the Conduct Rules; the Marketplace Rules; and the Uniform Practice Code, as published in the NASD Manual as of February 1, 2006 ~~July 1, 2003~~ ~~1998~~ and any amendments as existed on ~~July 1, 2003~~;

2. For members of the New York Stock Exchange, Rule 405, 412, ~~or 435~~ ~~or 445~~ of the New York Stock Exchange, as such rules existed on February 1, 2006 ~~July 1, 2003~~, interpreted in accordance with the guidelines, policies, and interpretations of the NYSE or SEC;

3. Sections 2, 4, 5, or 6 of the Securities Act of 1933 or SEC Rules 134 (17 CFR 230.134); 134a (17 CFR 230.134a); 135a (17CFR 230.135a); 144 (17 CFR 230.144); 144A (17 CFR 230.144A); 156 (17 CFR 230.156); 419 (17 CFR 230.419); 481 (17 CFR 230.481); or 482 (17 CFR 230.482) promulgated pursuant thereto, as such provisions existed on

February 1, 2006 ~~July 1, 2003~~, interpreted in accordance with the guidelines, policies, and interpretations of the NASD or SEC;

4. Section 15(b)(4)(E) of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78o) or REG SHO (17 CFR 242.200 through 242.203) as it existed on February 1, 2006 ~~July 1, 2003~~; or

5. Any rule of the Municipal Securities Rulemaking Board ("MSRB") including the Definitional Rules (Rules D-1 through D-11, inclusive), and the General Rules with the exception of Rule G-35 (Rules G-1 through G-34, inclusive), promulgated pursuant to section 15B of the Securities Exchange Act of 1934, as such rules existed on February 1, 2006 ~~July 1, 2003~~, interpreted in accordance with the guidelines, policies, and interpretations of the MSRB, NASD, or SEC;

6. To the extent that any of the rules described in subparagraphs 1. through 5. of this section or their interpretation by the NASD, NYSE, MSRB, or SEC, as appropriate, conflict or are inconsistent with other provisions of the Florida Securities and Investor Protection Act or rules promulgated pursuant thereto, this paragraph of this rule shall not be deemed controlling;

(q) Failing to furnish to a customer purchasing securities in an offering, not later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;

(r) Introducing customer transactions on a "fully disclosed" basis to another dealer that is not registered under Chapter 517, F.S., unless the customer is a person described in Section 517.061(7), F.S.;

(s) Recommending to a customer that the customer engage the services of an investment advisor that is not registered or exempt from registration under Chapter 517, F.S., unless the customer is a person described in Section 517.061(7), F.S.;

(t) Recommending to a customer that the customer engage the services of an investment advisor in connection with which the dealer receives a fee or remuneration (other than directed business) from the investment advisor, except as permitted in Rule 69W-600.003, F.A.C.;

(u) Selling or offering for sale any security in a transaction exempt from registration pursuant to Section 517.061(17)(a)1., F.S., where the issuer of such securities has not filed with the SEC within the specified period of time all reports required by Sections 13 or 15(d) of the Securities Exchange Act of 1934, as such sections existed on February 1, 2006 ~~July 1, 2003~~;

(v) Giving false or otherwise misleading customer information to any financial institution or regulatory agency.

(2) The following are deemed demonstrations of unworthiness by an associated person of a dealer under Section 517.161(1)(h), F.S., without limiting that term to the practices specified herein:

(a) Borrowing money or securities from a customer; except when persons are in compliance with NASD Rule 2370(a)(1), (a)(2)(a)-(c) only, and NASD Rule 2370(b)-(c), as such rules existed on February 1, 2006.

(b) Acting as a custodian for money, securities or an executed stock power of a customer;

(c) Effecting transactions in securities, or investments as defined by Section 517.301(2), F.S., not recorded on the regular books or records of the dealer, which the associated person represents, unless the transactions are disclosed to, and authorized in writing by, the dealer prior to execution of the transactions;

(d) Operating an account under a fictitious name, unless disclosed to the dealer, which the associated person represents;

(e) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the dealer, which the associated person represents;

(f) Dividing or otherwise splitting commissions, profits or other compensation in connection with the purchase or sale of securities in this state with any person not also licensed as an associated person for the same dealer, or for a dealer under direct or in indirect common control;

(g) Failing to furnish to each offeree of a SCOR registration a copy of the "Florida Guide to Small Business Investments"; and

(h) Engaging in any of the practices specified in paragraph (1)(b), (c), (d), (e), (f), (g), (m), (n), (o), (p), (q), (s), (t), (u), or (v).

Specific Authority 517.03(1), 517.1217 FS. Law Implemented 517.081, 517.1217, 517.161(1) FS. History—New 12-5-79, Amended 9-20-82, Formerly 3E-600.13, Amended 8-1-91, 6-16-92, 1-11-93, 11-7-93, 5-5-94, 9-9-96, 10-20-97, 1-25-00, 10-30-03, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Bridget D. Dervish, Area Financial Manager, Bureau of Securities Regulation

NAME OF SUPERVISOR OR PERSON WHO APPROVED PROPOSED RULE: Financial Services Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 14, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 23, 2005

FINANCIAL SERVICES COMMISSION

Office of Financial Regulation

RULE TITLES:	RULE NOS.:
Prohibited Business Practices for Investment Advisers and Their Associated Persons	69W-600.0131
Custody Requirements for Investment Advisers	69W-600.0132
Books and Records Requirements	69W-600.014

PURPOSE AND EFFECT: Section 517.1215(1), Florida Statutes, requires the Commission to specify by rule requirements for investment advisers deemed to have custody of client funds. The statute requires that the following areas be addressed: (a) notification of custody of, maintenance of, and safeguards for client funds; (b) communications with clients and independent representatives; (c) requirements for investment advisers who have custody of pooled investments; and (d) exceptions to the custody requirements. Section 517.1215(2), F.S., requires the Commission to prescribe rules of conduct and prohibited business practices for investment advisers and their associated persons. To implement the foregoing statutory requirements, the Commission is creating a new rule section, Rule 69W-600.0132, and amending existing Rules 69W-600.0131 and 69W-600.014, F.A.C. Rule 69W-600.014, F.A.C., is also being amended to update book and records requirements for dealers, branch offices, and associated persons. Rules 69W-600.0131 and 69W-600.014, F.A.C., are being amended to update references to applicable SEC and self-regulatory rules adopted by reference.

SUMMARY: Rule 69W-600.0132, F.A.C., is based on the model rules of the North American Securities Administrators Association, Inc., that establish uniform custody rules to be adopted by the states for state covered investment advisers. State covered investment advisers who fail to comply with the custody rules set forth in Rule 69W-600.0132, F.A.C., are committing a prohibited business practice.

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

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

SPECIFIC AUTHORITY: 517.03(1), 517.121(1), 517.1215 FS.

LAW IMPLEMENTED: 517.12(4), 517.121(1), 517.1215, 517.161(1) FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Bridget D. Dervish, Area Financial Manager, Bureau of Securities Regulation, Room 664, Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399-0374, (850)410-9805

THE FULL TEXT OF THE PROPOSED RULES IS:

69W-600.0131 Prohibited Business Practices for Investment Advisers and Their Associated Persons.

(1) The following are deemed demonstrations of unworthiness by an investment adviser or an associated person of an investment adviser under Section 517.161(1)(h), F.S., without limiting that term to the practices specified herein:

(a) With respect to any customer, transaction or business in, to or from this state, engaging in any conduct prohibited by, or failing to comply with the requirements of, the following:

Sections 204, 204A, 205, 206, 207, 208 of the Investment Advisers Act of 1940 or SEC Rules 204-3 (17 CFR 275.204-3); 205-1 (17 CFR 275.205-1); 205-2 (17 CFR 275.205-2); 205-3 (17 CFR 275.205-3); 206(3)-1 (17 CFR 275.206(3)-1); 206(3)-2 (17 CFR 275.206(3)-2); 206(4)-1 (17 CFR 275.206(4)-1); ~~206(4)-2 (17 CFR 275.206(4)-2)~~; 206(4)-3 (17 CFR 275.206(4)-3); and 206(4)-4 (17 CFR 275.206(4)-4) of the Investment Advisers Act of 1940 promulgated pursuant thereto, as such provisions existed on ~~February 1, 2006 July 1, 2003~~, interpreted with the guidelines, policies, no-action letters, and interpretations of the SEC;

(b) Borrowing money or securities from a customer unless the customer is a dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds;

(c) Loaning money to a customer unless the investment adviser is a financial institution engaged in the business of loaning funds or the customer is an affiliate of the investment adviser;

(d) Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by the investment adviser;

(e) Exercising any discretionary power in placing an order for the purchase or sale of securities for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders;

(f) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account;

(g) Placing an order to purchase or sell a security on behalf of a customer without authority to do so;

(h) Placing an order to purchase or sell a security for a customer's account upon instruction of a third party without first having obtained a written third-party trading authorization from the customer;

(i) Misrepresenting the qualifications of the investment adviser or any employee of the investment adviser to a client or prospective client when the representation does not fairly describe the nature of the services offered, the qualifications of

the person offering the services, and the method of compensation for the services or omitting to state a material fact;

(j) Charging a customer an unreasonable advisory fee;

(k) Failing to disclose to customers in writing before any advice is rendered any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

1. Compensation arrangements connected with advisory services to customers which are in addition to compensation from such customers for such services; and

2. Charging a customer an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees;

(l) Guaranteeing a customer that a specific result will be achieved with the advice to be rendered;

(m) Recommending to a customer that the customer engage the services of a dealer that is not registered or exempt from registration under Chapter 517, F.S., unless the customer is a person described in Section 517.061(7), F.S.;

(n) Recommending to a customer that the customer engage the services of a dealer in connection with which the investment adviser receives a fee or remuneration from the dealer, except as permitted in Rule 69W-600.003, F.A.C.;

(o) Disclosing the identity, affairs, or investments of any customer unless required to do so by law or consented to by the customer;

(p) Giving false or otherwise misleading customer information to any financial institution or regulatory agency;

(q) Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract; ~~and~~

(r) Entering into, extending or renewing any investment advisory contract contrary to the provisions of Section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers and investment adviser representatives registered or required to be registered under this Act, notwithstanding whether such adviser or representative would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940.

~~(s)(†)~~ Including, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of Chapter 517, F.S., or of the

Investment Advisers Act of 1940, or any other practice contrary to the provisions of Section 215 of the Investment Advisers Act of 1940; and

(t) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the requirements of Rule 69W-600.0132, F.A.C.

(2) The federal statutory and regulatory provisions referenced herein shall apply to investment advisers, investment adviser representatives and federal covered advisers, to the extent permitted by the National Securities Markets Improvement Act of 1996.

Specific Authority 517.03(1), 517.1215 FS. Law Implemented 517.12(4), 517.161(1), 517.1215 FS. History—New 1-25-00, Amended 7-31-04,

69W-600.0132 Custody Requirements for Investment Advisers.

(1) Definitions. For purposes of this section:

(a) “Custody” means holding directly or indirectly, client funds or securities, or having any authority to obtain possession of them or has the ability to appropriate them.

1. Custody includes:

a. Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving them;

b. Any arrangement (including a general power of attorney) under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian; and

c. Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives the investment adviser or the investment adviser's supervised person legal ownership of or access to client funds or securities.

2. Receipt of checks drawn by clients and made payable to unrelated third parties will not meet the definition of custody if forwarded to the third party within 24 hours of receipt and the adviser maintains the records required under subsections 69W-600.014(3)-(7), F.A.C.;

(b) “Independent representative” means a person who:

1. Acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners (or members, or other beneficial owners);

2. Does not control, is not controlled by, and is not under common control with the investment adviser; and

3. Does not have, and has not had within the past two years, a material business relationship with the investment adviser.

(c) “Qualified custodian” means the following independent institutions or entities that are not affiliated with the adviser by any direct or indirect common control and have not had a material business relationship with the adviser in the previous two years:

1. A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act;

2. A registered broker-dealer holding the client assets in customer accounts;

3. A registered futures commission merchant registered under Section 4f.(a) of the Commodity Exchange Act (7 U.S.C. § 6f), holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

4. A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

(2) Safekeeping required. If the investment adviser is registered or required to be registered, it is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice or course of business for the investment adviser to have custody of client funds or securities unless:

(a) Notice to Office. The investment adviser notifies the Office of Financial Regulation promptly in writing that the investment adviser has or may have custody. Such notification is required to be given on Form ADV, which is incorporated by reference in subsection 69W-301.002(7), F.A.C.;

(b) Qualified Custodian. A qualified custodian maintains those funds and securities in a separate account for each client under that client's name or in accounts that contain only the investment adviser's clients' funds and securities, under the investment adviser's name as agent or trustee for the clients;

(c) Notice to Clients. If the investment adviser opens an account with a qualified custodian on their client's behalf, either under the client's name or under the investment adviser's name as agent, the investment adviser must notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information.

(d) Account statements must be sent to clients, either:

1. By a qualified custodian for which the investment adviser has a reasonable basis for believing that the qualified custodian sends an account statement, at least quarterly, to each

of the adviser's clients for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period; or

2. By the adviser who sends an account statement, at least quarterly, to each client for whom the adviser has custody of funds or securities, identifying the amount of funds and of each security of which the adviser has custody at the end of the period and setting forth all transactions during that period; and an independent certified public accountant verifies all client funds and securities by actual examination at least once during each calendar year at a time chosen by the accountant without prior notice or announcement to the adviser and that is irregular from year to year, and files a copy of the auditors report and financial statements with the Office of Financial Regulation within 30 days after the completion of the examination, along with a letter stating that it has examined the funds and securities and describing the nature and extent of the examination; and the independent certified public accountant, upon finding any material discrepancies during the course of the examination, notifies the Office of Financial Regulation within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the Office of Financial Regulation;

3. If the investment adviser is a general partner of a limited partnership (or managing member of a limited liability company, or hold a comparable position for another type of pooled investment vehicle), the account statements required under paragraph (d) of this subsection must be sent to each limited partner (or member or other beneficial owner or their independent representative).

(e) Independent Representative. A client may designate an independent representative to receive, on his behalf, notices and account statements as required under paragraphs (c) and (d) of this subsection.

(f) Direct Fee Deduction. An adviser who has custody as defined in subparagraph (1)(a)1.b. of this rule by having fees directly deducted from client accounts must also provide the following safeguards:

1. Written Authorization. The adviser must have written authorization from the client to deduct advisory fees from the account held with the qualified custodian;

2. Notice of fee deduction. Each time a fee is directly deducted from a client account, the adviser must concurrently:

a. Send the qualified custodian an invoice of the amount of the fee to be deducted from the client's account; and

b. Send the client an invoice itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under managements the fee is based on, and the time period covered by the fee.

3. Notice of Safeguards. The investment adviser notifies the Office of Financial Regulation in writing that the investment adviser intends to use the safeguards provided

above. Such notification is required to be given on Form ADV, which is incorporated by reference in subsection 69W-301.002(7), F.A.C.

4. Waiver of Net Capital Requirement. An investment adviser having custody solely because it meets the definition of custody as defined in subparagraph (1)(a)1.b. of this rule and who complies with the safekeeping requirements in paragraphs (2)(a)-(f) of this rule will not be required to meet the financial requirements for custodial advisers as set forth in paragraph 69W-600.016(3)(a), F.A.C.

(g) Pooled Investments. An investment adviser who has custody as defined in subparagraph (1)(a)1.c. of this rule and who does not meet the exception provided under paragraph (3)(c) of this rule must, in addition to the safeguards set forth in paragraphs (a) through (e) of this subsection, also comply with the following:

1. Engage an Independent Party. Hire an independent party to review all fees, expenses and capital withdrawals from the pooled accounts;

2. Review of Fees. Send all invoices or receipts to the independent party, detailing the amount of the fee, expenses or capital withdrawal and the method of calculation such that the independent party can determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement) and forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser.

3. For purposes of this rule section, an Independent Party means a person that: is engaged by an investment adviser to act as a gatekeeper for the payment of fees, expenses and capital withdrawals from the pooled investment; does not control and is not controlled by and is not under common control with the investment adviser; and does not have, and has not had within the past two years, a material business relationship with the investment adviser. This shall not prohibit renewal of contracts with an existing independent third party.

4. Notice of Safeguards. The investment adviser notifies the Office of Financial Regulation in writing that the investment adviser intends to use the safeguards provided above. Such notification is required to be given on Form ADV, which is incorporated by reference in subsection 69W-301.002(7), F.A.C.

5. Waiver of Net Worth or Bonding requirements and Audited Financial Statement. An Investment adviser having custody solely because it meets the definition of custody as defined in sub-subparagraph (1)(a)1.c. of this rule and who complies with the safekeeping requirements under paragraphs (2)(a)-(e) and (g) of this rule, will not be required to meet the financial requirements as set forth in paragraphs 69W-600.016(3)(a), F.A.C.

(h) Investment Adviser or Investment Adviser as Trustee. When a trust retains an investment adviser, investment adviser representative or employee, director or owner of an investment adviser as trustee and the investment adviser acts as the investment adviser to that trust, the investment adviser will instruct the qualified custodian of the trust as follows:

1. Payment of fees. The qualified custodian will not deliver trust securities to the investment adviser, any investment adviser representative or employee, director or owner of the investment adviser, nor will the investment adviser instruct the qualified custodian to transmit any funds to the investment adviser, any investment adviser representative or employee, director or owner of the investment adviser, except that the qualified custodian may pay trustees' fees to the trustee and investment management or advisory fees to investment adviser, provided that:

a. The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than the investment adviser, investment adviser representative or employee, director or owner of the investment adviser), or a defined beneficiary of the trust has authorized the qualified custodian in writing to pay those fees:

b. The statements for those fees show the amount of the fees for the trustee and, in the case of statements for investment management or advisory fees, show the value of the trust assets on which the fee is based and the manner in which the fee was calculated; and

c. The qualified custodian agrees to send to the grantor of the trust, the attorneys for a testamentary trust, the co-trustee (other than the investment adviser, investment adviser representative or employee, director or owner of the investment adviser), or a defined beneficiary of the trust, at least quarterly, a statement of all disbursements from the account of the trust, including the amount of investment management fees paid to the investment adviser and the amount of trustees' fees paid to the trustee.

2. Distribution of Assets. Except as otherwise set forth in sub-paragraph a. below, the qualified custodian may transfer funds or securities, or both, of the trust only upon the direction of the trustee (who may be the investment adviser, investment adviser representative or employee, director or owner of the investment adviser), who the investment adviser has duly accepted as an authorized signatory. The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than the investment adviser, investment adviser representative or employee, director or owner of the investment adviser), or a defined beneficiary of the trust, must designate the authorized signatory for management of the trust. The direction to transfer funds or securities, or both, can only be made to the following:

a. To a trust company, bank trust department or brokerage firm independent of the investment adviser for the account of the trust to which the assets relate;

b. To the named grantors or to the named beneficiaries of the trust;

c. To a third person independent of the investment adviser in payment of the fees or charges of the third person including, but not limited to:

(I) Attorney's accountant's or custodian's fees for the trust; and

(II) Taxes, interest, maintenance or other expenses, if there is property other than securities or cash owned by the trust;

d. To third persons independent of the investment adviser for any other purpose legitimately associated with the management of the trust; or

e. To a dealer in the normal course of portfolio purchases and sales, provided that the transfer is made on payment against delivery basis or payment against trust receipt.

3. Statements. If the qualified custodian agrees to these instructions and is authorized to pay the fees, the investment adviser will send to the grantor of the trust, the attorney of the trust if it is a testamentary trust, the co-trustee (other than the investment adviser, investment adviser representative or employee, director or owner of the investment adviser), or a defined beneficiary of the trust, at the same time that it sends any statement to the qualified custodian, a statement showing the amount of the trustees' fees or investment management or advisory fee, the value of the assets on which the fees were based, and the specific manner in which the fees were calculated.

4. Notice of Safeguards. The investment adviser notifies the Office of Financial Regulation in writing that the investment adviser intends to use the safeguards provided above. Such notification is required to be given on Form ADV, which is incorporated by reference in subsection 69W-301.002(7), F.A.C.

5. Waiver of Net Capital Requirements. An investment adviser having custody solely because it meets the definition of custody as defined in sub-paragraph (1)(a)1.c. of this rule and who complies with the safekeeping requirements under paragraphs (2)(a)-(e) and (h) of this rule, will not be required to meet the financial requirements for custodial advisers as set forth in paragraphs 69W-600.016(3)(a), F.A.C.

(3) Exceptions.

(a) Shares of mutual funds. With respect to shares of an open-end company as defined in Section 5(a)(1) of the Investment Company Act of 1940 [15 U.S.C. 80a-5(a)(1)] ("mutual fund"), the investment adviser may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with subsection (2) of this rule;

(b) Certain privately offered securities.

1. The investment adviser is not required to comply with subsection (2) of this rule with respect to securities that are:

a. Acquired from the issuer in a transaction or chain of transactions not involving any public offering;

b. Uncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and

c. Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

2. Notwithstanding subparagraph (b)1. of this subsection, the provisions of paragraph (b) of this subsection are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, the audited financial statements are distributed, as described in paragraph (c) of this subsection and the investment adviser notifies the Office of Financial Regulation in writing that the investment adviser intends to provide audited financial statements, as described above. Such notification is required to be given on Form ADV, which is incorporated by reference in subsection 69W-301.002(7), F.A.C.

(c) Limited partnerships subject to annual audit. The investment adviser is not required to comply with paragraph (2)(d) of this rule with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit at least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of its fiscal year. The investment adviser must also notify the Office of Financial Regulation in writing that the investment adviser intends to employ the use of the audit safeguards described above. Such notification is required to be given on Form ADV, which is incorporated by reference in subsection 69W-301.002(7), F.A.C.

(d) Registered investment companies. The investment adviser is not required to comply with this rule with respect to the account of an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 to 80a-64].

(e) Beneficial Trusts. The investment adviser is not required to comply with safekeeping requirements of subsection (2) of this rule or the net capital requirements of paragraph 69W-600.016(3)(a), F.A.C., if the investment adviser has custody solely because the investment adviser, investment adviser representative or employee, director or owner of the investment adviser is the trustee for a beneficial trust, if all of the following conditions are met for each trust:

1. The beneficial owner of the trust is a parent, a grandparent, a spouse, a sibling, a child or a grandchild of the trustee. These relationships shall include "step" relationships.

2. For each account under subparagraph 1. the investment adviser complies with the following:

a. Provide a written statement to each beneficial owner of the account setting forth a description of the requirements of subsection (2) of this rule and the reasons why the investment adviser will not be complying with those requirements;

b. Obtain from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement required under sub-subparagraph a. above;

c. Maintain a copy of both documents described in sub-subparagraphs a. and b. above until the account is closed or the investment adviser is no longer trustee.

(f) Any investment adviser who intends to have custody of client funds or securities but is not able to utilize a qualified custodian as defined in subsection (1) of this rule must first obtain approval from the Office of Financial Regulation and must comply with all of the applicable safekeeping provisions under subsection (2) of this rule, including taking responsibility for those provisions that are designated to be performed by a qualified custodian.

Specific Authority 517.03(1), 517.1215 FS. Law Implemented 517.1215 FS. History—New _____.

69W-600.014 Books and Records Requirements.

Except as otherwise provided herein, every dealer, investment adviser, branch office, and associated person conducting business in this state shall prepare and maintain on a current basis, and preserve for the periods of time specified, such records, prescribed herein, as are appropriate for said dealer's, investment adviser's, branch office's, or associated person's course of business, and are sufficient to provide an audit trail of all business transactions by said dealer, investment adviser, associated person, or branch office. Associated persons who conduct business from a registered branch office in this state shall be exempt from the provisions of this rule.

(1) All dealers are required to prepare and maintain appropriate books and records relating to their business as described in either SEC Rules 17a-3 (17 CFR 240.17a-3) and 17a-4 (17 CFR 240.17a-4) or MSRB Rules G-7, ~~G-8 and G-9 and G-8~~, as such rules existed on ~~February 1, 2006 May 2, 2003~~; and records evidencing compliance with NASD Conduct rule 3000, as published in the NASD Manual as of ~~February 1, 2006 July 2002~~, and any amendments as existed on ~~May 2, 2003~~.

(2) All issuer/dealers are required to maintain at least the following records:

(a) Ledgers, journals (or other records) reflecting all assets, liabilities, income and expenses, and capital accounts properly maintained in accordance with generally accepted accounting principals;

(b) Copies of all promotional sales materials and correspondence used in connection with the sales of all securities as distributed;

(c) A record of all sales of securities made by, or on behalf of, said issuer, including but not necessarily limited to name and address of purchaser, date of transaction, money amount involved, and name of agent or principal executing such transaction;

(d) Securities certificate and securities holder records reflecting names and addresses of all holders of record, certificates issued to such holders, number of shares or bonds issued, and full details as to transfers or cancellations;

(e) In lieu of the issuer/dealer preparing and maintaining such records as detailed in paragraph (d) above, a qualified transfer agent/registrar may be appointed, provided such information is accessible to the issuer/dealer.

(3) All investment advisers, notwithstanding the fact that the investment adviser is not registered or required to be registered under the Investment Advisers Act of 1940, shall prepare and maintain true, accurate and current records relating to their business as described in SEC Rule 204-2 (17 CFR 275.204-2) as it existed on February 1, 2006, ~~July 1, 2003~~ and general rules and regulations promulgated by the Securities and Exchange Commission; and have available for the Department at least the following records;

(a) All trial balances, financial statements prepared in accordance with generally accepted accounting principles, and internal audit working papers relating to the investment adviser's business as an investment adviser. For purposes of this paragraph, "financial statements" means balance sheets, income statements, cash flow statements and net worth computations as required by Rule 69W-300.002, F.A.C.

(b) A list or other record of all accounts with respect to the funds, securities, or transactions of any client.

(c) A copy in writing of each agreement entered into by the investment adviser with any client.

(d) A file containing a copy of each record required by SEC Rule 204-2(11) (17 CFR 275.204-2(11)) as it existed on February 1, 2006, ~~July 1, 2003~~ including any communication by electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons, other than persons connected with the investment adviser.

(e) A copy of each written statement and each amendment or revision given or sent to any client or prospective client of the investment adviser in accordance with the provisions of SEC Rule 204-3 (17 CFR 275.204-3) as it existed on February 1, 2006, ~~July 1, 2003~~ and a record of the dates that each written statement, and each amendment or revision was given or offered to be given to any client or prospective client who subsequently becomes a client.

(f) For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser, records required by SEC Rule 206(4)-3 (17 CFR 275.206(4)-3) as it existed on February 1, 2006, ~~July 1, 2003~~.

(g) All records required by SEC Rule 204-2(16) (17 CFR 275.204-2(16)) as it existed on February 1, 2006, ~~July 1, 2003~~, including but not limited to electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons, other than persons connected with the investment adviser.

(h) A file containing a copy of all communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any customer or client complaint.

(i) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

(j) Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

(k) A file containing a copy of each document, other than any notices of general dissemination, that was filed with or received from any state or federal agency or self regulatory organization and that pertains to the registrant or its investment adviser representatives. Such file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

(4) Notwithstanding other record preservation requirements of this Rule, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

(a) Records required to be preserved under paragraphs (a)(3), (a)(7)-(11), (a)(14)-(15), (b) and (c) inclusive, of SEC Rule 204-2 of the Investment Advisers Act of 1940 (17 C.F.R. 275.204-2) as it existed on February 1, 2006; and

(b) Records or copies required under the provision of paragraphs (a)(11) and (a)(16) of SEC Rule 204-2 of the Investment Advisers Act of 1940 (17 C.F.R. 275.204-2) as it existed on February 1, 2006 which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number.

~~(5)~~(4) No provisions of this rule, unless specifically designated as a required form, shall be deemed to require the preparation, maintenance, or preservation of a dealer's or investment adviser's books and records in a particular form or system, provided that whatever form or system utilized by such dealer's or investment adviser's course of business is sufficient to provide an audit trail of all business transactions.

(6)(5) Every investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of this rule, provided the investment adviser is licensed in such state and is in compliance with that state's record keeping requirements.

(7)(6) All books and records described in this rule shall be preserved in accordance with the following:

(a) Those records required under subsection (1) of this rule shall be preserved for such periods of time as specified in either SEC Rule 17a-4 (17 CFR 240.17a-4), or MSRB Rule G-9, as such rules existed on February 1, 2006 July 1, 2003.

(b) Those records required under subsections (2) of this rule shall be preserved for a period of not less than five (5) years while effectively registered with the Department, nor for less than five (5) years after withdrawal or expiration of registration in this State.

(c) Books and records required to be prepared under the provisions of subsection (3) shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser.

(d) Books and records required to be made under the provisions of subsection (3), shall be maintained and preserved for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record or for the time period during which the investment adviser was registered or required to be registered in the state, if registered less than five years.

(e) Each investment adviser registered or required to be registered in this state and which has a business location in this state shall maintain at such business location:

1. The records or copies required under the provisions of paragraphs (a)(3), (a)(7)-(10), (a)(14)-(15), (b), and (c) of SEC Rule 204-2 (17 CFR 275.204-2), as such rule existed on February 1, 2006; and

2. The records or copies required under the provisions of paragraphs (3)(a)-(j) above related to customers or clients for whom the investment adviser representative provides or has provided investment advisory services; and,

3. The records or copies required under the provisions of paragraphs (a)(11) and (a)(16) of SEC Rule 204-2 (17 CFR 275.204-2), as such rule existed on February 1, 2006, which records or related records identify the name of the investment adviser representative or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in subsections (d) and (e) of SEC Rule 204-2 (17 CFR 275.204-2), as such rules existed on February 1, 2006. The investment adviser shall be responsible for ensuring compliance with the provision of this subsection.

(8)(7) To the extent that the U.S. Securities and Exchange Commission promulgates changes to the above-referenced rules of the Investment Advisers Act of 1940, investment advisers in compliance with such rules as amended shall not be subject to enforcement action by the Department for violation of this rule to the extent that the violation results solely from the investment adviser's compliance with the amended rule.

Specific Authority 517.03(1), 517.121(1), 517.1215 FS. Law Implemented 517.121(1), 517.1215 FS. History—New 12-5-79, Amended 9-20-82, Formerly 3E-600.14, Amended 10-14-90, 8-1-91, 6-16-92, 1-11-93, 9-9-96, 6-22-98, 1-25-00, 10-30-03, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Bridget D. Dervish, Area Financial Manager, Bureau of Securities Regulation
NAME OF SUPERVISOR OR PERSON WHO APPROVED PROPOSED RULE: Financial Services Commission
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 14, 2006
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 23, 2005

Section III Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF EDUCATION

State Board of Education

RULE NO.: 6B-4.010
RULE TITLE: Instructional Personnel Assessment
NOTICE OF CORRECTION

Notice is hereby given that the above proposed rule notice was submitted by the Department of Education, State Board of Education, and was changed by the publisher of the F.A.W. as shown in Vol. 32, No. 3, January 20, 2006 issue of the F.A.W.

DEPARTMENT OF COMMUNITY AFFAIRS

Division of Community Planning

RULE CHAPTER TITLE: Governing the Procedure for Submittal and Review of Local Government Comprehensive Plans and Amendments
RULE CHAPTER NO.: 9J-11
RULE TITLES: Submittal Requirements for Proposed Local Government Comprehensive Plans
RULE NOS.: 9J-11.004
Submittal Requirements for Proposed Local Government Comprehensive Plan Amendments
9J-11.006