

NAME OF PERSON ORIGINATING PROPOSED RULE: Don B. Saxon, Commissioner
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Financial Services Commission
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 17, 2006
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 6, 2006

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Notices for the Department of Environmental Protection between December 28, 2001 and June 30, 2006, go to http://www.dep.state.fl.us/ under the link or button titled "Official Notices."

Section III
Notices of Changes, Corrections and Withdrawals

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

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

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-601.210
RULE TITLE: Custody Classification
NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 32, No. 39, (September 29, 2006), issue of the Florida Administrative Weekly:

- 33-601.210 Custody Classification.
(1) through (3) No change.
(4) Progress Assessments.
(a) through (b) No change.
(c) Unless precluded for security or other substantial reasons, all inmates shall be scheduled to appear and be present for assessments and reviews. An inmate shall be notified a minimum of forty-eight hours in advance of an assessment and review unless the inmate waives such notice in writing. Assessments and reviews shall be completed as follows:
1. through 4. No change.
(d) through (m) No change.
(5) No change.

Specific Authority 944.09, 958.11 FS. Law Implemented 20.315, 921.20, 944.09, 944.17(2), 944.1905, 958.11 FS. History--New 12-7-81, Formerly 33-6.09, Transferred from 33-6.009, Amended 6-8-82, 10-26-83, 6-8-86, 7-8-86, 10-27-88, 1-1-89, 7-4-89, 10-12-89, 1-2-91, 7-21-91, 8-30-92, 5-13-96, 6-12-96, 11-19-96, 10-15-97, Formerly 33-6.0045, Amended 9-19-00,_____.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Table with 2 columns: RULE NOS. and RULE TITLES. Lists various rules such as 62-303.200 Definitions, 62-303.320 Aquatic Life-Based Water Quality Criteria Assessment, etc.

NOTICE OF CHANGE
Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 32 No. 31, August 4, 2006 issue of the Florida Administrative Weekly.

CHAPTER 62-303
IDENTIFICATION OF IMPAIRED SURFACE WATERS
PART I GENERAL

- 62-303.200 Definitions.
As used in this chapter:
(1) No change.
(2) "BioRecon" shall mean a biological evaluation conducted in accordance with standard operating procedures (SOPs) FT 3000, FS 7410, and LT 7100, as promulgated in Rule Chapter 62-160.800, F.A.C.
(3) through (21) No change.
(22) "Stream Condition Index" shall mean a biological evaluation conducted in accordance with SOPs FT 3000, FS 7420, and LT 7200, as promulgated in Rule Chapter 62-160.800, F.A.C.
(23) through (30) No change.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History--New 6-10-02, Amended _____.

PART II THE PLANNING LIST

62-303.320 Aquatic Life-Based Water Quality Criteria Assessment.

(1) Water segments shall be placed on the planning list if, using objective and credible data, as defined by the requirements specified in this section, the number of samples that do not meet an applicable water quality criterion due to pollutant discharges is greater than or equal to the number listed in Table 1 for the given sample size. For sample sizes up to 500, waters are placed on the planning list when 10% or more of the samples do not meet the applicable criteria with a minimum of an 80% confidence level using a binomial distribution. For sample sizes greater than 500, the Department shall calculate the number of samples not meeting the criterion that are needed to list the waterbody with an 80% confidence level for the given sample size using the binomial distribution.

Table 1: No change.

(2) No change.

(3) Unless information presented to the Department demonstrates otherwise, data older than ten years at the time the water segment is proposed for listing on the planning list are not representative of current conditions and shall not be used to develop planning lists, except to evaluate historical trends in chlorophyll a or TSIs. Any determinations by the Department to use data older than 10 years shall be documented, and the documentation shall include the basis for the decision that the data are representative of current conditions. Further, more recent data shall take precedence over older data if:

(a) through (b) No change.

(4) To place a water segment on the planning list using Table 1, a water segment shall have a minimum of ten samples for the ten-year period, with at least five temporally independent samples. To be treated as a temporally independent sample, samples shall be at least one week apart, regardless whether the samples are collected at different locations within the segment.

(a) through (c) No change.

(d) In making the determination to list water segments, the Department shall consider ambient background conditions, including seasonal and other natural variations.

(5) No change.

(6) Notwithstanding the requirements of paragraph (4), water segment shall be included on the planning list if:

(a) No change.

(b) ~~There are~~ more than one sample does not meet exceedance of an acute toxicity-based water quality criterion listed in Chapter 62-302.530, F.A.C., or a water quality criterion for a synthetic organic compound or synthetic pesticide in any three year period.

(7) through (11) No change.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Amended.

62-303.360 Primary Contact and Recreation Use Support.

(1) A Class I, II, or III water shall be placed on the planning list for evaluating primary contact and recreation use support if:

(a) through (d) No change.

(e) The water segment includes a sampling location that has two or more monthly geometric mean average values above the monthly geometric mean average fecal coliform or enterococci criterion during the planning period. To calculate a monthly ~~average value for a sampling location, which shall be calculated as a~~ geometric mean, there shall be at least ~~five~~ ~~ten~~ samples collected within that month, with at least one sample from each full week of the month, ~~or~~.

(f) The water segment includes a sampling location that exceeds 400 counts per 100 ml in more than ten percent of the samples collected in at least two different months during the planning period. To assess the monthly data for a sampling location, there shall be at least five samples collected within that month, with at least one sample from each full week of the month.

(2) ~~When evaluating a water segment for bacteriological quality under subparagraph (1)(a), the criterion used for fecal coliforms shall be that the Most Probable Number (MPN) or Membrane Filter (MF) shall not exceed 400 counts per 100 ml.~~

(3) through (4) No change.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Amended.

62-303.370 Fish and Shellfish Consumption Use Support.

A Class I, II, or III water shall be placed on the planning list for fish and shellfish consumption if:

(1) through (2) No change.

(3) For Class II waters, the water segment includes an area that ~~is has been~~ classified by the Department of Agriculture and Consumer Services' Shellfish Environmental Evaluation and Assessment Section (SEAS) in one of the following shellfish harvesting classifications:

(a) through (c) No change.

(4) No change.

(5) When evaluating a water segment for bacteriological quality under paragraph (1), the criterion in Rule 62-302.530(6), F.A.C. used for fecal coliform shall be that the MPN ~~or MF~~ shall not exceed 43 counts per 100 ml.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Amended.

62-303.380 Drinking Water Use Support and Protection of Human Health.

(1) A Class I water shall be placed on the planning list for drinking water use support if:

(a) through (b) No change.

(c) The water segment includes a sampling location that has two or more monthly geometric mean average values above the monthly geometric mean average fecal coliform criterion during the planning period. To calculate a monthly geometric mean average value for a sampling location, there shall be at least five samples collected within that month, with at least one sample from each full week of the month.

(2) through (3) No change.

(a) through (b) No change.

~~(4) The water segment includes a sampling location that exceeds 400 counts per 100 ml in more than ten percent of the samples collected in at least two different months during the planning period. To assess the monthly data for a sampling location, there shall be at least five samples collected within that month, with at least one sample from each full week of the month. When evaluating a water segment for bacteriological quality under subparagraph (1)(a), the criterion used for fecal coliforms shall be that the MPN or MF shall not exceed 400 counts per 100 ml.~~

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Amended.

PART III THE VERIFIED LIST

62-303.420 Aquatic Life-Based Water Quality Criteria Assessment.

(1) The Department shall reexamine the data used in Rule 62-303.320, F.A.C., to determine whether water quality criteria are met.

(a) If values exceeding the criteria are not due to pollutant discharges or reflect natural background conditions, including seasonal or other natural variations, the water shall not be listed on the verified list. In such cases, the Department shall note for the record why the water was not listed and provide the basis for its determination that the exceedances were not due to pollutant discharges.

(b) No change.

(2) through (4) No change.

(5) Values that exceed possible physical or chemical measurement constraints (pH greater than 14, for example) or that represent data transcription errors, outliers the Department determines are not valid measures of water quality, water quality criteria exceedances due solely to violations of specific effluent limitations contained in state permits authorizing discharges to surface waters, water quality criteria exceedances within permitted mixing zones for those parameters for which the mixing zones are in effect, and water quality data collected following contaminant spills, discharges due to upsets or bypasses from permitted facilities, or rainfall in excess of the 25-year, 24-hour storm, shall be excluded from the assessment carried out under this rule. However, the Department shall note for the record that the data were excluded and explain why they were excluded.

(6) No change.

(7) Notwithstanding the requirements of paragraph (2), water segments shall also be included on the verified list if, based on representative data collected and analyzed in accordance with Chapter 62-160, F.A.C.:

(a) No change.

(b) Scientifically credible and compelling information regarding the magnitude, frequency, or duration of samples that do not meet an applicable water quality criterion ~~that~~ provides overwhelming evidence of impairment. Any determinations to list waters based on this provision shall be documented, and the documentation shall include the basis for the decision.

(c) No change.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Amended.

62-303.450 Interpretation of Narrative Nutrient Criteria.

(1) A water shall be placed on the verified list for impairment due to nutrients if there are sufficient data from the last five years preceding the planning list assessment, combined with historical data (if needed to establish historical chlorophyll a levels or historical TSIs), to meet the data sufficiency requirements of rule 62-303.350(2). If there are insufficient data, additional data shall be collected as needed to meet the requirements. Once these additional data are collected, the Department shall determine if there is sufficient information to develop a site-specific threshold that better reflects conditions beyond which an imbalance in flora or fauna occurs in the water segment. ~~If there is sufficient information, the Department shall re-evaluate the data using the site-specific thresholds. If there is insufficient information, the Department shall re-evaluate the data using the thresholds provided in Rules 62-303.351-.353, F.A.C., for streams, lakes, and estuaries, respectively, or alternative, site-specific thresholds that more accurately reflect conditions beyond which an imbalance in flora or fauna occurs in the water segment.~~ In any case, the Department shall limit its analysis to the use of data collected during the five years preceding the planning list assessment and the additional data collected in the second phase. If alternative thresholds are used for the analysis, the Department shall provide the thresholds for the record and document how the alternative threshold better represents conditions beyond which an imbalance in flora or fauna is expected to occur.

(2) No change.

(3) The thresholds for impairment due to nutrients ~~impairment~~ used under this section are not required to be used during development of wasteload allocations or TMDLs.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Amended.

62-303.460 Primary Contact and Recreation Use Support.

(1) through (2) No change.

(3) Water segments shall be included on the verified list if:

(a) The number of samples that do not meet the applicable single-sample bacteriological water quality criteria ~~that are not stated as monthly averages~~ meet the requirements in subsection 62-303.420(6), F.A.C. ~~or~~

(b) There are two or more exceedances of a bacteriological water quality criterion expressed as a monthly geometric mean average during a calendar year or more than four exceedances of a monthly geometric mean average criterion over the verified period, or,

(c) There are two or more months during a calendar year or more than four months during the verified period in which greater than 10 percent of the samples at a given station exceed 400 counts per 100 ml.

(d) As to paragraphs (3)(b) and (c) above, to assess the monthly data for a sampling location, there shall be at least five samples collected within that month, with at least one sample from each full week of the month.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History—New 6-10-02, Amended.

62-303.470 Fish and Shellfish Consumption Use Support.

(1) through (2) No change.

(3) Class II waters shall be included on the verified list for coliform impairment if, following review of the available data as described in subsection 62-303.460(2), F.A.C.

(a) The number of samples above 43 counts per 100 ml ~~that do not meet the applicable single-sample criteria~~ meet the requirement in subsection 62-303.420(6), F.A.C., or,

(b) No change.

(4) No change.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History—New 6-10-02, Amended.

62-303.480 Drinking Water Use Support and Protection of Human Health.

If the water segment was listed on the planning list due to exceedances of a human health-based water quality criterion and there were insufficient data from the last five years preceding the planning list assessment to meet the data sufficiency requirements of Section 303.320(4), F.S., additional data will be collected as needed to meet the requirements. Once these additional data are collected, the Department shall re-evaluate the data using the methodology in subsection 62-303.380(2), F.A.C., and limit the analysis to data collected during the five years preceding the planning list assessment, the additional data collected pursuant to this paragraph (not to include data older than 7.5 years), and data older than 7.5 years if it is demonstrated to be representative of current conditions. Any determinations to use older data shall

be documented by the Department, and the documentation shall provide the basis for the decision that the data are representative of current conditions. For this analysis, the Department shall exclude any data meeting the requirements of subsection 62-303.420(5), F.A.C. The following water segments shall be listed on the verified list:

(1) For human health-based criteria expressed a maximums, water segments that meet the requirements in subsection 62-303.420(6)(7), F.A.C., or

(2) No change.

(3) For bacteriological water quality criteria, water segments shall be included on the verified list if:

(a) The number of samples that do not meet the applicable single-sample bacteriological water quality criteria meet the requirements in subsection 62-303.420(6), F.A.C.

(b) There are two or more exceedances of a bacteriological water quality criterion expressed as a monthly geometric mean during a calendar year or more than four exceedances of the monthly criterion over the verified period, or

(c) There are two or more months during a calendar year or more than four months during the verified period in which greater than 10 percent of the samples at a given station exceed 400 counts per 100 ml.

(d) As to paragraphs (3)(b) and (c) above, to assess the monthly data for a sampling location, there shall be at least five samples collected within that month, with at least one sample from each full week of the month.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History—New 6-10-02, Amended.

PART IV MISCELLANEOUS PROVISIONS

62-303.720 Delisting Procedure.

(1) No change.

(2) Water segments shall be removed from the State's verified list only after completion of a TMDL for all pollutants causing impairment of the segment or upon demonstration that the water meets the water quality standard that was previously established as not being met.

(a) through (f) No change.

(g) For waters listed pursuant to paragraphs 62-303.460(3)(b) and (c), or 62-303.480(3)(b) and (c), F.A.C., based on a monthly average or median water quality criteria for bacteriological quality, the water shall be delisted when the criteria applicable to those sections are met for three consecutive years. For waters listed pursuant to paragraphs 62-303.460(3)(b) and (c), or 62-303.480(3)(b) and (c), F.A.C., based on a monthly average criterion, there shall be sufficient data available to calculate monthly average values for at least the same seasons in which the exceedances occurred.

(h) through (k) No change.

(3) No change.

Specific Authority 403.061, 403.067 FS. Law Implemented 403.062, 403.067 FS. History–New 6-10-02, Amended.

DEPARTMENT OF HEALTH

Board of Medicine

RULE NO.: 64B8-9.0092
RULE TITLE: Approval of Physician Office Accrediting Organizations

NOTICE OF PUBLIC HEARING

The Board of Medicine hereby gives notice of a public hearing on the above-referenced rule to be held on Thursday, November 30, 2006, at 6:00 p.m., at the Rosen Centre, 9840 International Drive, Orlando, Florida 32819. The rule was originally published in Vol. 32, No. 36, of the September 8, 2006, Florida Administrative Weekly.

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

Any person requiring a special accommodation at this hearing because of a disability or physical impairment should contact the Board’s Executive Director at least five calendar days prior to the hearing. If you are hearing or speech impaired, please contact the Board office using the Florida Dual Party Relay System which can be reached at 1(800)955-8770 (Voice) and 1(800)955-8771 (TDD).

DEPARTMENT OF HEALTH

Board of Nursing Home Administrators

RULE NO.: 64B10-11.012
RULE TITLE: Notification of Change of Address or Employing Facility

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 32, No. 36, September 8, 2006 issue of the Florida Administrative Weekly.

The date of the Notice of Proposed Rule Development was incorrectly published. The correct date for the publication of the Notice of Proposed Rule Development is: July 21, 2006.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Joe Baker, Jr., Executive Director, Board of Nursing Home Administrators/MQA, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3253.

FINANCIAL SERVICES COMMISSION

OIR – Insurance Regulation

RULE NO.: 69O-170.0155
RULE TITLE: Forms

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 32, No. 36, September 8, 2006 issue of the Florida Administrative Weekly.

These changes are being made to address concerns expressed at the public hearing.

1. Paragraph (j) of subsection (1) is changed to read:
 - (j) Effective March 1, 2007, OIR-B1-1655, “Notice of Premium Discounts for Hurricane Loss Mitigation”, (Rev. 3/07), is adopted and incorporated herein by reference.
 2. Form OIR-B1-1655, “Notice of Premium Discounts for Hurricane Loss Mitigation”, (Rev. 3/07), has been changed. Copies are available by contacting Michael Milnes at E-mail: Michael.Milnes@fldfs.com.
 3. Sections 627.701, 627.0629, and 215.5586, F.S. are added to the Law Implemented.

The remainder of the rule reads as previously published.

**Section IV
Emergency Rules**

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

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

DEPARTMENT OF THE LOTTERY

RULE NO.: 53ER06-52
RULE TITLE: Instant Game Number 672, SURPRIZE PACKAGE

SUMMARY OF THE RULE: This emergency rule describes Instant Game Number 672, “SURPRIZE PACKAGE,” for which the Department of the Lottery will start selling tickets on a date to be determined by the Secretary of the Department. The rule sets forth the specifics of the game; determination of prizewinners; estimated odds of winning, value and number of prizes in the game.

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