

Section I

Notices of Development of Proposed Rules and Negotiated Rulemaking

DEPARTMENT OF EDUCATION

State Board of Education

RULE NO.: 6A-4.01796
 RULE TITLE: Specialization Requirements for Endorsement in Autism Spectrum Disorders – Academic Class

PURPOSE AND EFFECT: The purpose of this rule development is to change references from “autism” to “autism spectrum disorder” consistent with changes made to terminology referencing students with disabilities during the 2008 legislative session. The effect will be a rule that conforms to recently revised statutory language.

SUBJECT AREA TO BE ADDRESSED: Autism Endorsement.

SPECIFIC AUTHORITY: 1001.02, 1012.55, 1012.56 FS.

LAW IMPLEMENTED: 1001.02, 1003.01 1012.54, 1012.55, 1012.56 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 PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Ms. Bambi Lockman, Chief, Bureau of Exceptional Education and Student Services, 325 W. Gaines Street, Suite 614, Tallahassee, FL 32399

TO REQUEST A RULE DEVELOPMENT WORKSHOP, PLEASE CONTACT: Lynn Abbott, Agency Clerk, Department of Education, (850)245-9661 or e-mail lynn.abbott@fldoe.org

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

6A-4.01796 Specialization Requirements for Endorsement in Autism Spectrum Disorders – Academic Class.

(1) A bachelor’s or higher degree with certification in any exceptional student education area; and

(2) Twelve (12) semester hours to include:

(a) Nature of autism spectrum disorders (to include student characteristics, appropriate learning goals, teaching approaches, environmental arrangements, etc.);

(b) Use of assistive and instructional technology and natural, alternative and augmentative communication systems for students with autism spectrum disorders;

(c) Behavior management and positive behavior supports for students with autism spectrum disorders;

(d) Assessment and diagnosis of autism spectrum disorders; and

(e) Field-based experience with students with autism spectrum disorders.

Specific Authority 1001.02, 1012.55, 1012.56 FS. Law Implemented 1001.02, 1003.01, 1012.54, 1012.55, 1012.56 FS. History–New 7-1-02, Amended_____.

DEPARTMENT OF EDUCATION

State Board of Education

RULE NO.: 6A-7.099
 RULE TITLE: Challenge Grant Program for the Gifted

PURPOSE AND EFFECT: The purpose of this rule development is to reflect the correct statutory references and to ensure that criteria used to judge proposals is included in the rule. The effect will be a rule that includes the correct statutory references and applicable criteria for selection.

SUBJECT AREA TO BE ADDRESSED: Funding proposals for the Challenge Grant Program for the Gifted.

SPECIFIC AUTHORITY: 1001.02(1), 1001.42(4)(1), 1003.57 FS.

LAW IMPLEMENTED: 1011.75 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 PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Ms. Bambi Lockman, Chief, Bureau of Exceptional Education and Student Services, 325 W. Gaines Street, Suite 614, Tallahassee, FL 32399

TO REQUEST A RULE DEVELOPMENT WORKSHOP, please contact: Lynn Abbott, Agency Clerk, Department of Education, (850)245-9661 or e-mail lynn.abbott@fldoe.org

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

6A-7.099 Challenge Grant Program for the Gifted.

(1) The purpose of the Challenge Grant Program for the Gifted shall be to encourage public schools to implement exemplary programs which challenge gifted students.

(2) As provided by Section 1011.75(2) ~~236.1225(2)~~, Florida Statutes, the Commissioner shall cooperate and consult with associations and organizations concerned with the education of the gifted in administering this grant program. Such associations and organizations shall include at least the Florida Association for the Gifted ~~and the Florida Federation Council for Exceptional Children~~.

(3) Annually the Commissioner shall invite district school boards to submit up to five (5) a program proposals consistent with the requirements of Section 1011.75(3) 236.1225, Florida Statutes. Funds shall be awarded by the Department pursuant to a competitive grant proposal solicitation in the form of a Request for Proposals. In addition to the criteria required by Section 1011.75(3), Florida Statutes, tThe proposals shall be judged by the following criteria:

(a) The proposed program will improve the quality of existing programs;

(b) The proposed program will initiate a model or demonstration program; or

(c) The proposed program evidences an intent for collaboration between gifted students or teachers and other students, colleagues, or agencies;

~~(d)(e)~~ The proposed program will expand student participation in existing programs.

(e) The proposed program will identify the Sunshine State Standards and other required imperatives to be addressed.

(4) Based on the criteria in subsection (3) above, applications submitted by eligible recipients shall be ranked beginning with the application with the highest score, followed by applications with the next highest scores. The Department shall award available grants according to the highest scores. Each project funded shall, as provided by Section 236.1225(3)(d), Florida Statutes, contain provisions for the submission of an evaluation of the program and shall meet all requirements of law.

~~(5) Each project funded shall contain provisions for the submission of an evaluation of the program and shall meet all requirements of law.~~

Specific Authority 1001.02(1), 1001.42(4)(l), 1003.57 229.053(1), 230.23(4)(m), 236.1225 FS. Law Implemented 1011.75 236.1225 FS. History—New 1-6-83, Amended 5-3-83, Formerly 6A-7.99, Amended _____.

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

RULE NO.: RULE TITLE:

15-1.012 Delegation of Authority

PURPOSE AND EFFECT: To allow the Executive Director to settle claims against the Department without prior approval of the Governor or Cabinet.

The Executive Director will continue to report such settlements to the Governor or Cabinet at least quarterly.

The amendments also conform the rule to the amendments to Section 120.54, F.S., that were enacted by CS for CS for Senate Bill 704.

To raise the limit for the Executive Director to make purchases from \$25,000.00 to \$100,000.00.

SUBJECT AREA TO BE ADDRESSED: Rule 15-1.012, F.A.C., Delegation of Authority.

SPECIFIC AUTHORITY: 20.05(5), 120.53(1)(a), 320.011 FS. LAW IMPLEMENTED: 20.05(1)(b), 120.53(1)(a), 120.54 FS. IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: September 2, 2008, 12:00 Noon – 2:00 p.m.

PLACE: Department of Highway Safety and Motor Vehicles, 2900 Apalachee Parkway, Executive Conference Room #A436, Tallahassee, Florida 32399

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 24 hours before the workshop/meeting by contacting: Michael J. Alderman, Senior Assistant General Counsel, (850)617-3101. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Michael J. Alderman, Senior Assistant General Counsel, Department of Highway Safety and Motor Vehicles, 2900 Apalachee Parkway, Room #A432, Tallahassee, Florida 32399, (850)617-3101

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

15-1.012 Delegation of Authority.

Authority to take the following action is hereby delegated by the Governor and Cabinet acting as the head of the Department to the Executive Director of the Department of Highway Safety and Motor Vehicles or the Executive Director’s designee:

(1) through (5) No change.

(6) To expend appropriated funds and make purchases including operating capital outlay to carry out the day-to-day operations of the Department. However, all purchases over \$100,000 which are not made from a state contract established by the Department of Management Services shall be reported at least quarterly.

(7) through (11) No change.

(12) To settle claims, actions, causes of action and legal proceedings brought against the Department or its employees acting within the scope of his/her employment.

(13) through (14) No change.

(15) To act on behalf of the agency in carrying out the provisions of Chapter 120, F.S., unless prohibited by law or by directives issued by the Governor and Cabinet acting as the head of the Department. This delegation specifically includes, but is not limited to the following:

(a) To initiate rulemaking by publishing a notice of Rule Development.

(b) through (g) No change.

(16) No change.

~~(17) To initiate rule-making.~~

(18) through (25) renumbered (17) through (24) No change.

Specific Authority 20.05(5), 120.53(1)(a), 320.011 FS. Law Implemented 20.05(1)(b), 120.53(1)(a) FS. History–New 6-26-80, Amended 11-6-80, Formerly 15-1.12, Amended 6-6-93, 11-17-98,_____.

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.: 33-203.101
 RULE TITLE: Canteen Operations

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to give the Department the flexibility to change the amount that inmates may spend each week in the canteen as needed, up to the statutory limit of \$100, without requiring a rule amendment.

SUBJECT AREA TO BE ADDRESSED: Canteen operations.

SPECIFIC AUTHORITY: 20.315, 944.09, 945.215 FS.

LAW IMPLEMENTED: 20.315, 944.09, 945.215, 946.002 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 PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Jamie Jordan-Nunes, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

33-203.101 Canteen Operations.

(1) No change.

(2) Each inmate shall be allowed to purchase \$65.00 of canteen merchandise on a weekly basis in an amount not to exceed \$100. A weekly limit will be recommended by the Canteen Review Team based upon current canteen product mix and current resale prices, and approved by the Secretary. A two week notice of any changes to the weekly limit will be posted on inmate bulletin boards and at each canteen.

(3) through (8) No change.

Specific Authority 20.315, 944.09, 945.215 FS. Law Implemented 20.315, 944.09, 945.215, 946.002 FS. History–New 1-20-86, Formerly 33-3.035, Amended 11-21-91, 5-25-95, 11-13-95, 5-28-96, 2-12-97, Formerly 33-3.0035, Amended 11-18-02, 12-2-03, 12-14-04, 6-16-05, 11-29-06,_____.

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-302.1031
 RULE TITLE: Correctional Probation Officers – Appointment and Responsibility

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to allow officers to utilize a motorcycle or other two-wheeled vehicle to travel to and from work and court appearances.

SUBJECT AREA TO BE ADDRESSED: Correctional probation officers travel.

SPECIFIC AUTHORITY: 944.09 FS.

LAW IMPLEMENTED: 944.09 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 PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Jamie Jordan-Nunes, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

33-302.1031 Correctional Probation Officers – Appointment and Responsibility.

(1) Officers are appointed by the State of Florida under the authority of the Department of Corrections and are responsible for supervision and control of offenders, including the enforcement of conditions of supervision, conducting investigations and initiating arrest of offenders under their supervision as appropriate with or without warrant. Officers will notify the sentencing or releasing authority whenever the officer has reasonable grounds to believe that a willful violation of any condition of supervision has occurred.

(2) Officers may utilize a motorcycle or other two-wheeled vehicle to travel to and from work and court appearances. Officers shall utilize an enclosed four-wheeled or greater vehicle in the field.

Specific Authority 944.09 FS. Law Implemented 944.09 FS. History–New 8-23-07, Amended_____.

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-302.111
 RULE TITLE: Early Termination of Supervision

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to remove the requirement that an offender complete at least eighteen months of their supervision period and the requirement that approval for early termination of supervision be obtained from the circuit administrator.

SUBJECT AREA TO BE ADDRESSED: Early termination of supervision.

SPECIFIC AUTHORITY: 944.09 FS.

LAW IMPLEMENTED: 944.09 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 PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Jamie Jordan-Nunes, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

33-302.111 Early Termination of Supervision.

(1) Before a correctional probation officer considers recommending an offender for early termination of supervision, the following criteria shall be met:

(a) Completion of one-half of the supervision period ~~or at least eighteen months, whichever is greater;~~

(b) through (d) No change.

(e) A Florida Crime Information Center/National Crime Information Center (FCIC/NCIC) records check reveals no new arrest during the course of supervision of which the sentencing or releasing authority has not been previously notified; and

(f) No violations of supervision are pending; ~~and~~

~~(g) The offender has made satisfactory adjustment under supervision and is no longer in need of supervision.~~

(2) In order for an officer to request an early termination of supervision from the sentencing or releasing authority, approval must be obtained from the officer’s supervisor, ~~the circuit administrator,~~ the State Attorney’s Office, and the victim, if the offense involved a victim. If the State Attorney’s office denies the request, or the victim opposes the early termination, the department will not proceed with the early termination recommendation. The officer shall not disclose a victim’s objection to the offender.

(3) No change.

Specific Authority 944.09 FS. Law Implemented 944.09 FS. History–New 11-26-01, Amended 6-29-03, 12-2-04, _____.

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-601.314
RULE TITLE: Rules of Prohibited Conduct and Penalties for Infractions

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to allow inmates transferring an item to another inmate, which is prohibited as the item becomes contraband when passed to another inmate, to receive 15 days in disciplinary confinement and 30 days loss of gain time.

SUBJECT AREA TO BE ADDRESSED: Prohibited conduct and penalties for infractions.

SPECIFIC AUTHORITY: 944.09 FS.

LAW IMPLEMENTED: 20.315, 944.09, 944.14, 944.279, 944.28 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 PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Jamie Jordan-Nunes, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

33-601.314 Rules of Prohibited Conduct and Penalties for Infractions.

The following table shows established maximum penalties for the indicated offenses. As used in the table, “DC” means the maximum number of days of disciplinary confinement that may be imposed and “GT” means the maximum number of days of gain time that may be taken. Any portion of either penalty may be applied.

Section 1 through Section 2 No change.

Section 3 – CONTRABAND – ANY ARTICLE NOT SOLD IN THE CANTEEN, OR ISSUED BY THE INSTITUTION, OR FOR WHICH YOU DO NOT HAVE A SPECIFIC PERMIT AUTHORIZED BY THE INSTITUTION WHERE PRESENTLY HOUSED

Section 3-12 Possession of any other contraband or transfer of item to another inmate resulting in item becoming contraband
15 DC + 30 GT

Section 3-1 through Section 3-11 No change.

Section 3-14 through Section 3-15 No change.

Section 4 through Section 11 No change.

Specific Authority 944.09 FS. Law Implemented 20.315, 944.09, 944.14, 944.279, 944.28 FS. History—New 3-12-84, Amended 1-10-85, Formerly 33-22.12, Amended 12-30-86, 9-7-89, 11-22-90, 6-2-94, 10-1-95, 3-24-97, 7-9-98, 8-13-98, Formerly 33-22.012, Amended 9-30-99, 6-7-00, 4-18-02, 10-10-04, 1-9-05, 4-17-05, 6-5-05, 10-27-05, 10-12-06, 11-8-07, 5-18-08,_____.

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-601.719
 RULE TITLE: Visiting By Former and Current Department and Contract Employees

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to require approval for visitation from the warden of the institution housing the inmate to be visited and the (warden, circuit administrator, regional director, or Assistant Secretary of Institutions) employing the current or contract employee.

SUBJECT AREA TO BE ADDRESSED: Visitation by department and contract employees.

SPECIFIC AUTHORITY: 944.09, 944.23 FS.

LAW IMPLEMENTED: 20.315, 944.09, 944.23 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 PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Jamie Jordan-Nunes, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

33-601.719 Visiting By Former and Current Department and Contract Employees.

(1) No change.

(2) Current Department and Contract Employees. ~~The warden or designee shall consider approving~~ Current department employees and employees of a contractor currently under contract with the department shall only be granted for visiting privileges under the following conditions:

(a) No change.

(b) The employee has not violated the conditions ~~stipulated~~ in subsection 33-601.719(1), F.A.C.;

(c) Approval for visitation in writing is required from:

1. The ~~employing warden,~~ warden of the institution housing the inmate to be visited and

2. The employing:

a. Warden (for institution staff),

b. Circuit administrator (for community corrections ~~s~~Staff),

c. Regional director (for regional office staff), or ~~and~~
d. Assistant Secretary of Institutions (for central office staff).

(d) No change.

Specific Authority 944.09, 944.23 FS. Law Implemented 20.315, 944.09, 944.23 FS. History—New 11-18-01, Amended 5-27-02, 9-29-03,_____.

WATER MANAGEMENT DISTRICTS

Suwannee River Water Management District

RULE NO.: 40B-4.2020
 RULE TITLE: Content of Environmental Resource Permit Application

PURPOSE AND EFFECT: The purpose of the rule development is to update this section of Chapter 40B-4, Florida Administrative Code, to amend the required content of environmental resource permit applications. The effect of the proposed rule amendments will be to incorporate additional language that is required by Section 373.413, Florida Statutes.

SUBJECT AREA TO BE ADDRESSED: This proposed rule development will incorporate additional of language that is required by Section 373.413, Florida Statutes.

SPECIFIC AUTHORITY: 373.044, 373.113, 373.171 FS.

LAW IMPLEMENTED: 373.084, 373.085, 373.413, 373.416, 373.426 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 PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Linda Welch, Administrative Assistant, Suwannee River Water Management District, 9225 C.R. 49, Live Oak, Florida 32060, (386)362-1001 or (800)226-1066 (FL only)

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

WATER MANAGEMENT DISTRICTS

Suwannee River Water Management District

RULE NO.: 40B-400.215
 RULE TITLE: General Conditions for All Noticed General Permits

PURPOSE AND EFFECT: The purpose of the rule development is to update this section of Chapter 40B-400, Florida Administrative Code, to correct the authorized permit duration for a noticed general environmental resource permit. The effect of the proposed rule amendments will be to change the permit duration for a noticed general environmental resource permit from five years to three years.

SUBJECT AREA TO BE ADDRESSED: This proposed rule development will correct the authorized permit duration for a noticed general environmental resource permit from five years to three years.

SPECIFIC AUTHORITY: 373.044, 373.113, 373.118 FS.

LAW IMPLEMENTED: 373.118, 373.413, 373.416, 373.426 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 PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Linda Welch, Administrative Assistant, Suwannee River Water Management District, 9225 C.R. 49, Live Oak, Florida 32060, (386)362-1001 or (800)226-1066 (FL only)

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

WATER MANAGEMENT DISTRICTS

Southwest Florida Water Management District

RULE NOS.:	RULE TITLES:
40D-26.011	Policy and Purpose
40D-26.021	Definitions
40D-26.091	Publications Incorporated by Reference
40D-26.101	Conditions of Eligibility
40D-26.201	Program Application
40D-26.301	Eligibility Determination
40D-26.401	Cost-Share Rates

PURPOSE AND EFFECT: The District is initiating rulemaking to adopt the Facilitating Agricultural Resource Management Systems (FARMS) Program, a cost share reimbursement program with the purpose of implementing agricultural best management practices that will result in water resource benefits. The effect of this rule would be reduced groundwater withdrawals and improvements to water quality, water resources and ecology.

SUBJECT AREA TO BE ADDRESSED: Facilitating Agricultural Resource Management Systems Program.

SPECIFIC AUTHORITY: 373.044, 373.113, 373.171, 373.083 FS.

LAW IMPLEMENTED: 373.0831(3), 373.196(1), 373.196(3), 373.1961 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 PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Mary Beth McNeil, Senior Attorney, Office of General Counsel, 2379 Broad Street, Brooksville, FL 34604-6899, (352)796-7211, extension 4651

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

DEPARTMENT OF ELDER AFFAIRS

Long-Term Care Ombudsman Program

RULE NOS.:	RULE TITLES:
58L-1.001	Confidentiality and Disclosure
58L-1.005	Access
58L-1.006	Conflict of Interest
58L-1.007	Complaint Procedures
58L-1.008	Administrative Assessments

PURPOSE AND EFFECT: The purpose of the proposed rule amendments is to add additional language; incorporate conflict of interest language into this rule chapter, which is currently included in Rule Chapter 58L-2, F.A.C.; and develop two new rules for complaint procedures and administrative assessments, including two forms incorporated by reference.

SUBJECT AREA TO BE ADDRESSED: The proposed rule amendments and new rules address confidentiality and disclosure of information, access to information, conflict of interest, complaint procedures, and administrative assessments, including two forms incorporated by reference.

SPECIFIC AUTHORITY: 400.0071, 400.0077(5), 400.0081(2) FS.

LAW IMPLEMENTED: 400.0071, 400.0073, 400.0075, 400.0077, 400.0081 FS.

A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: September 10, 2008, 9:00 a.m. – 1:00 p.m. EST.

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

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 72 hours before the workshop/meeting by contacting: Jim Crochet, Department of Elder Affairs, Office of the General Counsel, 4040 Esplanade Way, Tallahassee, Florida 32399-7000; Telephone Number: (850)414-2000; Email address: crochethj@elderaffairs.org. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Jim Crochet, Department of

Elder Affairs, Office of the General Counsel, 4040 Esplanade Way, Tallahassee, Florida 32399-7000; Telephone Number: (850)414-2000; Email address: crochethj@elderaffairs.org

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

(Substantial rewording of Rule 58L-1.001 follows. See Florida Administrative Code for present text).

58L-1.001 Confidentiality and Disclosure.

(1) Policy and Procedure.

Pursuant to Section 400.0077(5), F.S., the Department of Elder Affairs, in consultation with the Office of the State Long-Term Care Ombudsman, hereby adopts, and incorporates by reference, the following as policy and procedure for the confidentiality and disclosure of information by an ombudsman and ombudsman council members:

(a) Section 400.0077(1) through (4), F.S., (2007); and

(b) Title VII, Chapter 2, Section 712(D) of the Older Americans Act of 1965, as amended in 2006, 42 USC 3058g.

(2) Applicability.

The confidentiality and disclosure of information procedure applies to the files maintained by the following entities established under Chapter 400, Part I, F.S.:

(a) The staff of the Office of the State Long-Term Care Ombudsman;

(b) Members of the State Long-Term Care Ombudsman Council, representatives and employees; and

(c) Members of the long-term care ombudsman district councils, representatives and employees.

(3) Complaint Case Files.

Case files involving complaints cannot be released by the Long-Term Care Ombudsman Program until the case is closed as defined in subsection (1) of Rule 58L-1.007, F.A.C.

Specific Authority 400.0077(5) FS. Law Implemented 400.0077 FS. History--New 7-25-95, Amended _____.

(Substantial rewording of Rule 58L-1.005 follows. See Florida Administrative Code for present text).

58L-1.005 Access.

(1) Definitions:

In addition to the terms defined in Section 400, Part I, F.S., the following term are defined in this rule:

(a) Access: The ability to investigate complaints pursuant to Section 400.0073, F.S. The denial of access constitutes an interference in the performance of official duties and is a violation of Section 400.0083, F.S.

(b) Administrative records, policies, and documents to which the residents, or the general public, have access: Records maintained by the facility which includes information about the resident's health, safety, or welfare.

(2) Policy and Procedure.

(a) Pursuant to Section 400.0081(2), F.S., the Department of Elder Affairs, in consultation with the Office of the State Long-Term Care Ombudsman, hereby adopts, and incorporates by reference, the following as policy and procedure to ensure access to long-term care facilities:

1. Section 400.0081(1), F.S., (2007); and

2. Title VII, Chapter 2, Section 712(D) of the Older Americans Act of 1965, as amended in 2006, 42 USC 3058g.

(b) The policy and procedure is intended to ensure access by:

1. The Office of the State Long-Term Care Ombudsman;

2. The State Long-Term Care Ombudsman Council;

3. The district long-term councils; and

4. Representatives of the entities outlined in subparagraphs 1. through 3. of this paragraph.

(c) This policy and procedure ensures access to:

1. Long-term care facilities as defined in subsection (1) of Rule 58L-1.006, F.A.C.;

2. Facility residents;

3. Facility records;

4. Resident records as defined in subsection (1) of this rule; and

5. Facility licensure and certification records maintained by the state.

Specific Authority 400.0081(2) FS. Law Implemented 400.0081 FS. History--New 7-31-95, Formerly 58L-3.001, Amended _____.

58L-1.006 Conflict of Interest.

This rule incorporates conflict of interest language that was formerly included under Rule Chapter 58L-2, F.A.C., Long-Term Care Ombudsman Conflict of Interest, F.A.C., specifically Rules 58L-2.001, 58L-2.003, 58L-2.005, and 58L-2.007, F.A.C. These rules have been repealed.

(1) Definitions.

In addition to the terms defined in Chapter 400, Part I, Florida Statutes, the following terms are defined in this rule:

(a) Conflict of Interest:

1. Having a direct involvement in the licensing or certification of a long-term care facility or of a long-term care service provider;

2. Having an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility or a long-term care service provider;

3. Having employment with, or participating in the management of, a long-term care facility in the state of Florida; or

4. Receiving, or having the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility.

(b) Department: The Department of Elder Affairs.

(c) District: A geographic area in which the ombudsman program is administered and services are delivered.

(d) Immediate family: Father, mother, husband, wife, son, daughter, brother, sister, or any other individual residing in the household.

(e) Indirectly: Receiving remuneration from a company providing a service to a long-term care facility, such as a consulting pharmacist.

(f) Long-term care facility: A nursing home facility, assisted living facility, or an adult family-care home as those terms are defined in Chapters 400 and 429, F.S.

(g) Long-term care services: Services provided by a long-term care facility, home health agency, adult day care center, hospice, intermediate care facility, home for special services, or transitional living facility as those terms are defined in Chapters 400 and 429, F.S. Long-term care services also include services provided to residents by geriatric care managers, guardians or representative payees who are not immediate family members.

(h) Program: The Office of the State Long-Term Care Ombudsman, its representatives and employees, the State Long-Term Care Ombudsman Council, and the district long-term care ombudsman councils as established in Chapter 400, Part I, Florida Statutes.

(2) Purpose.

The purpose of this rule is to ensure that every effort is made to minimize any perception of conflicts of interest affecting the ombudsman program, including the public perception of the program's independence. It is promulgated to further the ability of ombudsmen to independently and fully carry out their functions. The department shall monitor the program in this regard to ensure that the program and its representatives have the objectivity and independence required to qualify for federal funding under the Older Americans Act of 1965, as amended in 2006, and to comply with state laws, rules and regulations relating to the program.

(3) Prohibitions.

(a) No officer, employee or representative of the Office of State Long-Term Care Ombudsman or of the state or district long-term care ombudsman councils, nor any member of the immediate family of such officer, employee, or representative, may have a conflict of interest pursuant to Section 400.070, F.S., and this rule.

(b) No employee of the Agency for Health Care Administration, the Department of Business and Professional Regulation, the Department of Children and Family Services, the Department of Health, the Department of Elder Affairs, or the medical director of a long-term care facility shall be a member of the State Long-Term Care Ombudsman Council or district councils.

(4) Procedures.

(a) Upon approval, recertification, employment or affiliation with the program, each appointee, officer, employee or representative shall sign and date a conflict of interest statement that includes the following:

1. Acknowledgement that the individual has reviewed Section 400.070, F.S., and this rule;

2. Acknowledgement that the individual understands the prohibitions defined in Section 400.070, F.S., and this rule; and

2. A statement that the individual has no conflict of interest as defined in Section 400.070, F.S., and this rule.

(b) All acknowledgements referenced in paragraph (a) of this subsection must be submitted to the Office of the State Long-Term Care Ombudsman at the following address: Department of Elder Affairs, Office of the Long-Term Care Ombudsman, 4040 Esplanade Way, Tallahassee, Florida 32399-7000. The Office of the State Long-Term Care Ombudsman must keep the statements on file.

(c) The State Long-Term Care Ombudsman shall receive and review all violations and allegations of conflict of interest and, if appropriate, shall:

1. Request that the individual be removed from the council; or

2. Request that the individual remove the conflict of interest.

(d) If the individual does not comply with the recommendation to remove the conflict of interest pursuant to paragraph (c) of this rule, the State Long-Term Care Ombudsman shall disqualify the individual from carrying out any authorized ombudsman duty or responsibility, or shall terminate for cause any such employee.

(e) Deliberate failure to disclose any conflict of interest, either upon affiliation with the program or which subsequently develops, or the violation of any prohibition set forth in Section 400.070, F.S., or this rule, shall be considered sufficient grounds for disqualifying the individual from carrying out any authorized ombudsman duty or responsibility, or terminating for cause such employee.

Specific Authority 400.070 FS. Law Implemented 400.070 FS. History--New

58L-1.007 Complaint Procedures.

This rule outlines the procedures for conducting complaints against a long-term care facility or facility employee.

(1) Definitions. The following definitions apply to this rule:

(a) Case: An allegation consisting of one or more complaints brought to the attention of, or initiated by, the Long-Term Care Ombudsman Program on behalf of a long-term care facility resident or residents, which requires conducting an investigation.

(b) Closed Case: A situation where each complaint in a case requires no further action on the part of the ombudsman, each complaint has been assigned the appropriate disposition code, and each complaint has been reviewed by the local ombudsman council.

(c) Complaint: An allegation of a problem with resident care, rights, health, safety, or welfare that is made by a long-term care facility resident or someone on behalf of a resident. One or more complaints constitute a case as defined in paragraph (a) of this subsection.

(d) Resolved: The resolution of the complaint has been addressed to the satisfaction of the resident or the resident's legal representative pursuant the National Ombudsman Reporting System published by the U.S. Department of Health and Human Services, Administration on Aging.

(e) Visit: The onsite presence of the ombudsman at a facility to listen to, observe, and interact with residents.

(2) Receiving Complaints.

(a) Any person may make a written or verbal complaint to the Office of State Long-Term Care Ombudsman or its representatives (hereafter referred to as "ombudsman program" or "program").

1. A complaint may also be generated by a representative of the ombudsman program.

2. A complaint may be anonymous.

(b) All complaints made to the program will be directed to the ombudsman manager in the district where the facility involved in the complaint is located. The receipt of a complaint by the district ombudsman manager triggers the opening of a case.

1. The district ombudsman manager, or designee, must code complaints based on federal standards included in the National Ombudsman Reporting System published by the U.S. Department of Health and Human Services, Administration on Aging.

2. The district ombudsman manager, or designee, must initiate and submit DOEA Form LTCOP-001 to the ombudsman conducting the investigation. DOEA Form LTCOP-001, Case Investigation, _____ 2008, is hereby incorporated by reference and available from the Department of Elder Affairs, Office of the State Long-Term Care Ombudsman, 4040 Esplanade Way, Tallahassee, Florida 32399-7000. The form may also be obtained at the following Web site: (Web site TBA).

(3) Investigative Protocol.

(a) An investigation is initiated when an ombudsman makes contact with the complainant or resident. The investigation shall be initiated within 5 business days after the district ombudsman manager receives the complaint.

(b) The ombudsman must visit the resident or residents on whose behalf the complaint was filed.

(c) The complaint investigation must focus on the rights, health, safety and welfare of the resident or residents and may include direct observation, interviews with residents and other individuals, and record reviews.

(d) Investigations must be closed within 90 calendar days after receiving the complaint. The local council may grant a request for extension if it determines that 90 calendar days is not sufficient time to close the case.

(e) At the conclusion of a case investigation, the ombudsman must:

1. Complete DOEA Form LTCOP-0001, using disposition codes referenced in subparagraph (2)(b)1. of this rule.

2. Contact the resident or the resident's legal representative, if possible, to inform him or her of the disposition.

3. Conduct an exit interview with the facility administrator or his or her designee to present the findings.

(f) The quality assurance review team of the local council must review the investigative process and the case information upon completion of the investigation.

(g) Within 20 business days after the case investigation closure, the district ombudsman manager must submit a written summary of the case disposition to the resident or the resident's legal representative.

(h) If the ombudsman determines that an issue is resolvable but the issue remains unresolved at the conclusion of the investigation, the ombudsman, the local council and the state council will proceed with actions pursuant to Section 400.0075, F.S., in consultation with the State Ombudsman, or designee.

Specific Authority 400.0071 FS, Law Implemented 400.0071, 400.0073, 400.0075 FS. History-New _____.

58L-1.008 Administrative Assessments.

This rule outlines procedures for conducting administrative assessments of long-term care facilities.

(1) All long-term care facilities must have at least one onsite administrative assessment conducted during each federal reporting year, which is October 1 through September 30.

(2) In addition to the administrative assessment, the ombudsman program must conduct at least 3 additional onsite visits for long-term care facilities during the federal reporting year pursuant to the minimum requirements as detailed in the National Ombudsman Reporting System published by the U.S. Department of Health and Human Services, Administration on Aging.

(3) By October 1 of each year, the district ombudsman manager must assign all facilities within his or her district to individual members of the local council for administrative assessments to be completed by September 30 of the following year.

(4) Prior to the onsite administrative assessment, the ombudsman must review available Agency for Health Care Administration facility survey records.

(5) Administrative assessments may include observations, interviews with residents and other individuals, and review of facility records. The assessment must focus on issues from the resident’s perspective, including:

- (a) Resident rights;
- (b) Resident care;
- (c) Quality of life;
- (d) Administration of the facility; and
- (e) Disaster preparedness.

(6) At the conclusion of the assessment, the ombudsman must conduct an exit interview with the facility administrator or his or her designee to discuss the assessment findings.

(7) Problems identified during the administrative assessment must be provided in writing to the facility administrator. The district ombudsman manager may decide to code assessment findings as complaints and assign them to an ombudsman for further investigation and disposition pursuant to Rule 58L-1.007, F.A.C.

(8) The results of an administrative assessment must be recorded on the DOEA Form LTCOP-0002, 2008, Administrative Assessment, which is incorporated by reference and available from the Department of Elder Affairs, Office of the State Long-Term Care Ombudsman, 4040 Esplanade Way, Tallahassee, Florida 32399-7000. The form may also be obtained from the following Website: (Web site TBA).

(9) The district ombudsman manager must keep original assessment forms in the district office and forward copies to the facility administrator and the local Agency for Health Care Administration field office within 30 business days after receipt.

(10) If issues discovered during an assessment remain unresolved, the ombudsman, the local council and the state council will proceed with actions pursuant to Section 400.0075, Florida Statutes in consultation with the State Ombudsman.

Specific Authority 400.0071 FS. Law Implemented 400.0071, 400.0073 FS. History–New _____.

AGENCY FOR HEALTH CARE ADMINISTRATION

Health Facility and Agency Licensing

RULE NOS.:	RULE TITLES:
59A-4.103	Licensure, Administration and Fiscal Management
59A-4.106	Facility Policies
59A-4.107	Physician Services
59A-4.1075	Medical Director
59A-4.108	Nursing Services
59A-4.109	Resident Assessment and Care Plan
59A-4.110	Dietary Services

59A-4.112	Pharmacy Services
59A-4.118	Medical Records
59A-4.122	Physical Environment
59A-4.123	Risk Management and Quality Assurance
59A-4.1235	Liability Claims
59A-4.126	Disaster Preparedness
59A-4.128	Evaluation of Nursing Homes and Licensure Status
59A-4.1285	Respite Care
59A-4.1288	Exception
59A-4.1295	Additional Standards for Homes That Admit Children 0 Through 20 Years of Age
59A-4.130	Fire Prevention, Fire Protection, and Life Safety
59A-4.133	Plans Submission and Review and Construction Standards
59A-4.134	Plans Submission and Fee Requirements
59A-4.150	Geriatric Outpatient Nurse Clinic
59A-4.165	Nursing Home Guide
59A-4.166	Nursing Home Consumer Satisfaction Survey

PURPOSE AND EFFECT: The purpose of the proposed rule amendment is to incorporate changes in the authorizing statute and revise technical errors and update references.

SUBJECT AREA TO BE ADDRESSED: This proposed rule includes provisions for recent changes in licensure regulations and disaster preparedness, incorporates new laws regarding alternate bed placement and inactive licenses, reinstates provisions for respite care and amends technical errors and updates references throughout the Chapter.

SPECIFIC AUTHORITY: 400.23 FS.

LAW IMPLEMENTED: 400.011, 400.022, 400.141, 400.142, 400.23 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: September 16, 2008, 10:00 a.m.

PLACE: Agency for Health Care Administration, 2727 Mahan Drive, Bldg. 3, Conference Room B, Tallahassee, FL 32308

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Terrosa Buie, Agency for Health Care Administration, 2727 Mahan Drive, MS #33, Tallahassee, FL 32308; (850)488-5861

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

AGENCY FOR HEALTH CARE ADMINISTRATION

Health Facility and Agency Licensing

RULE NOS.:	RULE TITLES:
59A-35.020	Applicability
59A-35.030	Definitions
59A-35.040	License Required; Display
59A-35.050	Fees Required; Adjustments
59A-35.060	Licensure Application Process
59A-35.070	Change of Ownership
59A-35.080	License Categories
59A-35.090	Background Screening; Prohibited Offenses
59A-35.100	Minimum License Requirements
59A-35.110	Reporting Requirements; Electronic Submission
59A-35.120	Right of Inspection; Copies; Inspection Reports
59A-35.130	Unlicensed Activity
59A-35.140	Administrative Fines
59A-35.150	Moratorium; Emergency Suspension
59A-35.160	License or Application Denial; Revocation
59A-35.170	Injunctions
59A-35.180	Administrative Proceedings
59A-35.190	Health Care Trust Fund
59A-35.200	Rules
59A-35.210	Exemptions
59A-35.230	Denial, Suspension or Revocation of a License, Registration, Certificate or Application
59A-35.235	Emergency Preparedness and Response
59A-35.240	Conflicts

PURPOSE AND EFFECT: Chapter 59A-35, Florida Administrative Code, is being developed to establish uniform procedures for licensure of health care facilities as authorized in Chapter 408, Part II, Florida Statutes.

SUBJECT AREA TO BE ADDRESSED: Licensure requirements, application procedures and administrative proceedings for all health care providers regulated by the Agency for Health Care Administration.

SPECIFIC AUTHORITY: Chapter 408, Part II FS.

LAW IMPLEMENTED: Chapter 408, Part II FS.

A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: September 10, 2008, 1:30 p.m. – 5:00 p.m.

PLACE: Agency for Health Care Administration, 2727 Mahan Drive, Building #3, Conference Room A, Tallahassee, FL 32308

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 7 days before the workshop/meeting by

contacting: Erin Smith, Bureau of Long Term Care Services, 2727 Mahan Drive, Tallahassee, Florida, (850)414-9707. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Erin Smith, Bureau of Long Term Care Services, 2727 Mahan Drive, Tallahassee, Florida, (850)414-9707

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Professional Surveyors and Mappers

RULE NO.:	RULE TITLE:
61G17-4.001	Written Examination Designated; General Requirements

PURPOSE AND EFFECT: The Board proposes the rule amendment in order to delete the essay portion of the examination.

SUBJECT AREA TO BE ADDRESSED: Deletion of the essay portion of the examination.

SPECIFIC AUTHORITY: 455.217(1), 472.008 FS.

LAW IMPLEMENTED: 455.217(1), 472.013, 472.015 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 PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Rick Morrison, Executive Director, Board of Professional Surveyors and Mappers, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

61G17-4.001 Written Examination Designated; General Requirements.

(1) The examination shall consist of the following:

(a) Principles and Practice Examination prepared by the National Council of Examiners for Engineering and Surveying (NCEES);

(b) Fundamentals Examination prepared by the National Council of Examiners for Engineering and Surveying (NCEES);

(c) Florida Jurisdictional Multiple Choice Examination prepared by the Department or Board designee, and given prior to the NCEES examinations;

~~(d) Florida Jurisdictional Essay Examination, prepared by the Department, will be given following the Florida Jurisdictional Multiple Choice Examination.~~

(2) through (3) No change.

(4) National examination security requirements as set forth by the NCEES shall be followed throughout the administration of the NCEES Principles and Practice Examination and the NCEES Fundamentals Examination. Examination security requirements as set forth by the Department in Rule 61-11.014, F.A.C., shall be followed throughout the administration of the Florida Jurisdictional Multiple Choice Examination ~~and the Florida Jurisdictional Essay Examination.~~

Specific Authority 455.217(1), 472.008 FS. Law Implemented 455.217(1), 472.013, 472.015 FS. History—New 1-3-80, Amended 6-9-80, 1-25-84, 5-22-85, Formerly 21HH-4.01, Amended 9-16-87, 8-30-92, Formerly 21HH-4.001, Amended 5-30-95, 11-15-95, 4-16-96, 8-10-97, 7-27-00, _____.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

DEPARTMENT OF HEALTH

Board of Hearing Aid Specialists

RULE NO.: 64B6-3.001 RULE TITLE: Application for Initial License

PURPOSE AND EFFECT: The Board proposes the rule amendment to modify the application for initial licensure.

SUBJECT AREA TO BE ADDRESSED: Application for initial licensure.

SPECIFIC AUTHORITY: 484.044 FS.

LAW IMPLEMENTED: 456.013, 484.044(4), (5), 484.045 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 PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Sue Foster, Executive Director, Board of Hearing Aid Specialists/MQA, 4052 Bald Cypress Way, Bin #C08, Tallahassee, Florida 32399-3258

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

DEPARTMENT OF HEALTH

Board of Hearing Aid Specialists

RULE NO.: 64B6-7.007 RULE TITLE: Citations

PURPOSE AND EFFECT: The Board proposes the rule amendment to add language for dishonored checks to citations and providing for a fine.

SUBJECT AREA TO BE ADDRESSED: Citations for dishonored checks.

SPECIFIC AUTHORITY: 456.077, 484.044 FS.

LAW IMPLEMENTED: 456.077 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 PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Sue Foster, Executive Director, Board of Hearing Aid Specialists/MQA, 4052 Bald Cypress Way, Bin #C08, Tallahassee, Florida 32399-3258

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

DEPARTMENT OF HEALTH

Board of Nursing Home Administrators

RULE NO.: 64B10-11.0011 RULE TITLE: Mandatory HIV/AIDS and Prevention of Medical Errors Education for Initial Licensure and Renewal

PURPOSE AND EFFECT: The Board proposes the rule amendment to add language to clarify timing and required hours for HIV/AIDS and medical errors courses.

SUBJECT AREA TO BE ADDRESSED: Timing and required hours for HIV/AIDS and medical errors courses.

SPECIFIC AUTHORITY: 456.033(7) FS.

LAW IMPLEMENTED: 456.033(6) 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 PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Joe Baker, Jr., Executive Director, Board of Nursing Home Administrators/MQA, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3257

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

DEPARTMENT OF HEALTH**Board of Nursing Home Administrators**

RULE NO.: RULE TITLE:

64B10-12.010 Inactive Status

PURPOSE AND EFFECT: The Board proposes the rule amendment to increase inactive status fees.

SUBJECT AREA TO BE ADDRESSED: Fees for inactive status.

SPECIFIC AUTHORITY: 468.1685(1), 468.1725(2) FS.

LAW IMPLEMENTED: 468.1725 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 PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Joe Baker, Jr., Executive Director, Board of Nursing Home Administrators/MQA, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3257

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

DEPARTMENT OF HEALTH**Board of Nursing Home Administrators**

RULE NO.: RULE TITLE:

64B10-12.011 Temporary License

PURPOSE AND EFFECT: The Board proposes the rule amendment to increase the temporary license fees.

SUBJECT AREA TO BE ADDRESSED: Temporary license fees.

SPECIFIC AUTHORITY: 468.1685(1) FS.

LAW IMPLEMENTED: 456.025, 468.1705(4) 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 PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Joe Baker, Jr., Executive Director, Board of Nursing Home Administrators/MQA, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3257

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

DEPARTMENT OF HEALTH**Board of Nursing Home Administrators**

RULE NO.: RULE TITLE:

64B10-12.012 Preceptor Certification and Recertification Fee

PURPOSE AND EFFECT: The Board proposes the rule amendment to increase the preceptor initial certification fee.

SUBJECT AREA TO BE ADDRESSED: Preceptor initial certification fee.

SPECIFIC AUTHORITY: 468.4685(1), 468.1695(5) FS.

LAW IMPLEMENTED: 468.1695(4) 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 PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Joe Baker, Jr., Executive Director, Board of Nursing Home Administrators/MQA, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3257

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

DEPARTMENT OF HEALTH**Board of Nursing Home Administrators**

RULE NO.: RULE TITLE:

64B10-12.016 Delinquency Fee

PURPOSE AND EFFECT: The Board proposes the rule amendment to add language increase the delinquency fee.

SUBJECT AREA TO BE ADDRESSED: Delinquency fees.

SPECIFIC AUTHORITY: 456.036 FS.

LAW IMPLEMENTED: 456.036 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 PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Joe Baker, Jr., Executive Director, Board of Nursing Home Administrators/MQA, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3257

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

DEPARTMENT OF HEALTH

Board of Occupational Therapy

RULE NO.: RULE TITLE:
64B11-2.003 Fees; Application

PURPOSE AND EFFECT: The Board proposes the rule amendment to add language to clarify the rule and to modify the application for licensure as an occupational therapist.

SUBJECT AREA TO BE ADDRESSED: Fees and applications for licensure as an occupational therapist.

SPECIFIC AUTHORITY: 468.204, 468.221 FS.

LAW IMPLEMENTED: 468.209(1), 468.221 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 PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Allen Hall, Executive Director, Board of Occupational Therapy/MQA, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

DEPARTMENT OF HEALTH

Board of Occupational Therapy

RULE NO.: RULE TITLE:
64B11-3.001 Fees; Application

PURPOSE AND EFFECT: The Board proposes the rule amendment to add language to clarify the rule and to modify the application for licensure as an occupational therapy assistant.

SUBJECT AREA TO BE ADDRESSED: Fees and application for licensure as an occupational therapy assistant.

SPECIFIC AUTHORITY: 468.204, 468.221 FS.

LAW IMPLEMENTED: 468.209(1), 468.221 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 PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Allen Hall, Executive Director, Board of Occupational Therapy/MQA, 4052 Bald Cypress Way, Bin #5, Tallahassee, Florida 32399-3255

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

DEPARTMENT OF HEALTH

Board of Occupational Therapy

RULE NO.: RULE TITLE:
64B11-4.005 Citations

PURPOSE AND EFFECT: The Board proposes the rule amendment to add language to the rule for citation for failure to timely respond to a continuing education audit request: and to add the requirement for licensee to provide documents showing compliance within 10 days.

SUBJECT AREA TO BE ADDRESSED: Citations.

SPECIFIC AUTHORITY: 456.077, 468.204 FS.

LAW IMPLEMENTED: 456.072, 456.077 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 PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Allen Hall, Executive Director, Board of Occupational Therapy/MQA, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

DEPARTMENT OF FINANCIAL SERVICES

Division of State Fire Marshal

RULE NO.: RULE TITLE:
69A-3.012 Standards of the National Fire
 Protection Association and Other
 Standards Adopted

PURPOSE AND EFFECT: The rule was amended effective May 18, 2008, to update the Florida Fire Prevention Code ("Code") as required by Section 633.0215(1), Florida Statutes, by adopting current National Association of Fire Protection Standards. The Code is updated once every three years, together with the Florida Building Code. The Florida Building Commission recently voted to extend the effective date of the new Florida Building Code to December 31, 2008; therefore, the Department is extending the effective date of the updated Code to the same date for consistency.

SUBJECT AREA TO BE ADDRESSED: Effective date of updated Florida Fire Prevention Code.

SPECIFIC AUTHORITY: 633.01, 633.022, 633.0215 FS.

LAW IMPLEMENTED: 633.01, 633.022, 633.0215 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: Friday, September 5, 2008, 9:00 a.m.

PLACE: Third Floor Conference Room, The Atrium Building, 325 John Knox Road, Tallahassee, Florida 32303

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Belinda Chukes, (850)413-3619. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Jim Goodloe, Chief, Bureau of Fire Prevention, Division of State Fire Marshal, 200 East Gaines Street, Tallahassee, FL 32399-0342; Phone: (850)413-3171; Fax: (850)414-6119

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

69A-3.012 Standards of the National Fire Protection Association and Other Standards Adopted.

(1) through (5) No change.

(6) Proposed Effective Date is changed from May 18, 2008 to December 31, 2008.

Specific Authority 633.01(1), 633.022, 633.0215 FS. Law Implemented 633.01, 633.022, 633.0215 FS. History—New 5-14-86, Amended 2-12-87, 4-8-90, 10-30-91, 4-3-95, 11-27-01, Formerly 4A-3.012, Amended 8-7-05, 5-18-08, 12-31-08.

DEPARTMENT OF FINANCIAL SERVICES

Division of State Fire Marshal

RULE NOS.:	RULE TITLES:
69A-60.002	Scope; Description of Florida Fire Prevention Code
69A-60.003	Standards of the National Fire Protection Association, NFPA 1, the Uniform Fire Code, Florida 2006 Edition, Adopted
69A-60.004	Standards of the National Fire Protection Association, NFPA 101, the Life Safety Code, Florida 2006 Edition, Adopted
69A-60.005	Publications Referenced in NFPA 1, the Florida 2006 Edition, and NFPA 101, the Florida 2006 Edition, Added to the Florida Fire Prevention Code

PURPOSE AND EFFECT: The rule was amended effective May 18, 2008, to update the Florida Fire Prevention Code (“Code”) as required by Section 633.0215(1), Florida Statutes, by adopting current National Association of Fire Protection Standards. The Code is updated once every three years, together with the Florida Building Code. The Florida Building

Commission recently voted to extend the effective date of the new Florida Building Code to December 31, 2008; therefore, the Department is extending the effective date of the updated Code to the same date for consistency.

SUBJECT AREA TO BE ADDRESSED: Effective date of updated Florida Fire Prevention Code.

SPECIFIC AUTHORITY: 633.01, 633.0215, 633.025 FS.

LAW IMPLEMENTED: 633.01, 633.0215, 633.025 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: Friday, September 5, 2008, 10:00 a.m.

PLACE: Third Floor Conference Room, The Atrium Building, 325 John Knox Road, Tallahassee, Florida 32303

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Belinda Chukes, (850)413-3619. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Jim Goodloe, Chief, Bureau of Fire Prevention, Division of State Fire Marshal, 200 East Gaines Street, Tallahassee, FL 32399-0342; Phone: (850)413-3171; Fax: (850)414-6119

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

69A-60.002 Scope; Description of Florida Fire Prevention Code.

(1) through (3) No change.

(4) Proposed Effective Date is changed from May 18, 2008 to December 31, 2008.

Specific Authority 633.01, 633.0215, 633.025 FS. Law Implemented 633.01, 633.0215, 633.025 FS. History—New 11-15-01, Formerly 4A-60.002, Amended 11-28-04, 5-18-08, 12-31-08.

69A-60.003 Standards of the National Fire Protection Association, NFPA 1, the Uniform Fire Code, Florida 2006 Edition, Adopted.

(1) through (2) No change.

(3) Proposed Effective Date is changed from May 18, 2008 to December 31, 2008.

Specific Authority 633.01, 633.0215, 633.025 FS. Law Implemented 633.01, 633.0215, 633.025 FS. History—New 11-15-01, Formerly 4A-60.003, Amended 11-28-04, 5-18-08, 12-31-08.

69A-60.004 Standards of the National Fire Protection Association, NFPA 101, the Life Safety Code, Florida 2006 Edition, Adopted.

(1) through (2) No change.

(3) Proposed Effective Date is changed from May 18, 2008 to December 31, 2008.

Specific Authority 633.01, 633.0215, 633.025 FS. Law Implemented 633.01, 633.0215, 633.025 FS. History–New 11-15-01, Formerly 4A-60.004, Amended 11-28-04, 7-12-06, 5-18-08, 12-31-08.

69A-60.005 Publications Referenced in NFPA 1, the Florida 2006 Edition, and NFPA 101, the Florida 2006 Edition, Added to the Florida Fire Prevention Code.

(1) through (5) No change.

(6) Proposed Effective Date is changed from May 18, 2008 to December 31, 2008.

Specific Authority 633.01, 633.0215, 633.025 FS. Law Implemented 633.01, 633.0215, 633.025 FS. History–New 11-15-01, Formerly 4A-60.005, Amended 11-28-04, 5-18-08, 12-31-08.

DEPARTMENT OF FINANCIAL SERVICES

Division of Worker’s Compensation

RULE NO.: 69L-7.020
 RULE TITLE: Florida Workers’ Compensation Health Care Provider Reimbursement Manual

PURPOSE AND EFFECT: To amend the rule to adopt the 2008 Edition of the Florida Workers’ Compensation Health Care Provider Manual and implement the 2008 conversion factors issued by the Centers for Medicare and Medicaid Services, as approved by the Three Member Panel, pursuant to Section 440.13(12), Florida Statutes. Additional proposed amendments to the rule will adopt the CPT® 2008 Current Procedural Terminology Professional Edition, Copyright 2007, American Medical Association and the “Healthcare Common Procedure Coding System, Medicare’s National Level II Codes, HCPCS 2008”, American Medical Association, Twentieth Edition, Copyright 2007, Ingenix Publishing Group. The 2008 Edition of the Florida Workers’ Compensation Health Care Provider Manual also provides new language addressing issues relating to co-payments, insurer reimbursement responsibilities, and reimbursement disputes. Specifically, it states that while health care providers are entitled to collect a \$10.00 co-payment from injured workers who have reached maximum medical improvement, such co-payments are not in addition to any maximum reimbursement allowance or fee agreement, and that the reimbursement amount otherwise payable by the insurer shall be reduced by the amount of the co-payment. It further specifies that such co-payments do not apply in cases involving

emergency care or service of injured employees. The 2008 Manual also provides new language recognizing National Correct Coding Initiative Edits as an appropriate resource for insurer use in the bill review process. On the subject of reimbursement disputes, new language provides that where an insurer has disallowed or adjusted payment for services rendered pursuant to an authorized workers’ compensation managed care arrangement, a health care provider may not elect to petition the Department of Financial Services pursuant to Section 440.13, Florida Statutes.

SUBJECT AREA TO BE ADDRESSED: Reimbursement to health care providers for services performed for injured workers pursuant to Chapter 440, Florida Statutes.

SPECIFIC AUTHORITY: 440.13(14)(b), 440.591 FS.

LAW IMPLEMENTED: 440.13(7), (12), (14)(c) FS.

A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: Tuesday, September 9, 2008, 2:00 p.m. – 4:00 p.m.

PLACE: 104J Hartman Bldg., 2012 Capital Circle S. E., Tallahassee, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Sam Willis at (850)413-1898. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Sam Willis, Office of Medical Services, Division of Workers’ Compensation, Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-4226, (850)413-1898

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

69L-7.020 Florida Workers’ Compensation Health Care Provider Reimbursement Manual.

(1) The Florida Workers’ Compensation Health Care Provider Reimbursement Manual, 2008~~7~~ Edition, is adopted by reference as part of this rule. The manual contains the Maximum Reimbursement Allowances determined by the Three-Member Panel, pursuant to Section 440.13(12), F.S., and establishes reimbursement policies, guidelines, codes and maximum reimbursement allowances for services and supplies provided by health care providers. Also, the manual includes reimbursement policies and payment methodologies for pharmacists and medical suppliers.

(2) The CPT[®] 2008~~7~~ Current Procedural Terminology Professional Edition, Copyright 2007~~6~~, American Medical Association; the Current Dental Terminology, CDT-2007/2008, Copyright 2006, American Dental Association; and in part for D codes and for injectable J codes, and for other medical services and supply codes, the “Healthcare Common Procedure Coding System, Medicare’s National Level II Codes, HCPCS 2008~~7~~”, American Medical Association, Twentieth Nineteenth Edition, Copyright 2007~~6~~, Ingenix Publishing Group, are adopted by reference as part of this rule. When a health care provider performs a procedure or service which is not listed in the Florida Workers’ Compensation Health Care Provider Reimbursement Manual, 2008~~7~~ Edition incorporated above, the provider must use a code contained in the CPT[®]-2008~~7~~, CDT-2007/2008 or HCPCS-2008~~7~~ as specified in this section.

(3) The Florida Workers’ Compensation Health Care Provider Reimbursement Manual, 2008~~7~~ Edition incorporated above, is available for inspection during normal business hours at the Florida Department of Financial Services, Document Processing Section, 200 East Gaines Street, Tallahassee, Florida 32399-0311, or via the Department’s web site at <http://www.fldfs.com/wc>.

Specific Authority 440.13(14)(b), 440.591 FS. Law Implemented 440.13(7), (12), (14)(c) FS. History—New 10-1-82, Amended 3-16-83, 11-6-83, 5-21-85, Formerly 38F-7.20, Amended 4-1-88, 7-20-88, 6-1-91, 4-29-92, 2-18-96, 9-1-97, 12-15-97, 9-17-98, 9-30-01, 7-7-02, Formerly 38F-7.020, 4L-7.020, Amended 12-4-03, 1-1-04, 7-4-04, 5-9-05, 9-4-05, 11-16-06, 10-18-07, _____.

FINANCIAL SERVICES COMMISSION

OIR – Insurance Regulation

RULE NOS.:	RULE TITLES:
69O-163.0075	Term and Evidence of Insurance
69O-163.009	Determination of Reasonableness of Benefits in Relation to Premium Charge
69O-163.011	Credit Disability Insurance Rates

PURPOSE AND EFFECT: Credit Life and Credit Disability Insurance is being amended to address the statutory changes contained in House Bill 343, which the Governor approved on May 28, 2008. The bill removes the fifty thousand dollars (\$50,000) for credit life, but did not remove the ten (10) year limit that is still contained in Section 627.681, Florida Statutes. Similarly, the bill removed the ten (10) year limit for credit disability, but did not remove the fifty thousand dollar limit (\$50,000) that is still contained in Section 627.679, Florida Statutes.

SUBJECT AREA TO BE ADDRESSED: The stipulation that a term of insurance shall not exceed ten years subject to certain restrictions under the term and evidence of credit life insurance is now gone. The revised rule effectuates a ten year cap for credit life insurance uniformly from the date of issue.

Also, the rule extinguishes the requirement of providing the lesser of 60 monthly payments or the number of monthly payments for the full term of the loan.

SPECIFIC AUTHORITY: 627.678, 627.6785 FS.
LAW IMPLEMENTED: 627.681, 627.682 FS.
IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:
DATE AND TIME: September 30, 2008, 1:30 p.m.
PLACE: 142 Larson Building, 200 East Gaines Street, Tallahassee, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Gerry Smith, Division of Life and Health, Office of Insurance Regulation, E-mail gerry.smith@fldfs.com. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Gerry Smith, Division of Life and Health, Office of Insurance Regulation, E-mail gerry.smith@fldfs.com

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

69O-163.0075 Term and Evidence of Insurance.
~~The term of insurance and evidence of insurance shall not exceed ten years subject to the following limitations:~~

- ~~(1) Credit life insurance shall not exceed ten years from the date of issue and provide coverage for at least 5 years or the term of the loan if the loan is for less than 5 years;~~
- ~~(2) Credit disability insurance shall provide for monthly payments which are the lesser of 60 monthly payments or the number of monthly payments for the full term of the loan.~~

Specific Authority 624.308(1), 627.678 FS. Law Implemented 624.307(1), 627.681, 627.6785(3), 627.681(3) FS. History—New 2-11-03, Formerly 4-163.0075, Amended _____.

69O-163.009 Determination of Reasonableness of Benefits in Relation to Premium Charge.

(1) Section 627.682, Florida Statutes, requires that benefits provided by credit insurance policies must be reasonable in relation to the premium charged. This requirement is satisfied if the premium rate charged develops or may be reasonably expected to develop a loss ratio of claims incurred to premiums earned of not less than:

- (a) 55% for credit life insurance, and
- (b) 50% for credit disability insurance.

(2) Use of rates not greater than those contained in Rules 69O-163.010 and 69O-163.011, F.A.C., (“prima facie rates”) shall be deemed premium rates reasonably expected to develop the required loss ratio. An insurer may only file and use rates with such forms which are greater than prima facie rates upon a

satisfactory ~~filing with the Office showing to the Director~~ that the use of such rates will not result on a statewide basis for that insurer of a ratio of claims incurred to premiums earned of less than the required loss ratio.

(3) If an actual rate is greater than the prima facie rates, the actual rate may not exceed the prima facie rates plus the difference between:

- (a) Claims which may be reasonably expected, and
- (b) The product of the required loss ratio and the prima facie rate set forth for the coverage being provided.

(4) When some rates are based on subsection (1) above and others on the prima facie rate, the expected loss ratios of statewide business must meet the minimum loss ratio standard in subsection (1) above.

(5) Nonstandard Coverage. If any insurer files for approval of any form providing coverage more restrictive than that described in Rules 690-163.010 and 690-163.011, F.A.C., the insurer shall make a filing to demonstrate to the satisfaction of the Office ~~Director~~ that the premium rates to be charged for

such restricted coverage comply with subsection (1) above or, are less than or equal to rates which are actuarially equivalent to the prima facie rates.

Specific Authority 624.308(1), 627.678 FS. Law Implemented 624.307(1), 627.678, 627.682 FS. History—New 5-9-82, Formerly 4-7.09, Amended 6-11-91, Formerly 4-7.009, Amended 3-15-94, 2-11-03, Formerly 4-163.009, Amended.

690-163.011 Credit Disability Insurance Rates.

(1) Credit disability insurance premium rates for the insured portion of an indebtedness repayable in equal monthly installments, where the insured portion of the indebtedness decreases uniformly by the amount of the monthly installment paid, shall not be greater than in paragraphs (a) and (b). Paragraphs (c), (d) and (e) refer to premium rates for other types of coverages either alone or in combination with the type of coverages applicable to paragraphs (a) and (b).

(a) If premiums are payable on a single-premium basis for the duration of the coverage:

TABLE I

No. of months in which indebtedness is repayable	14-Day Non-Retroactive	30-Day Non-Retroactive	7-Day Retroactive	14-Day Retroactive	30-Day Retroactive
6 or less	\$0.81	\$0.36	\$1.47	\$1.30	\$1.05
7-12	1.13	0.72	1.76	1.58	1.36
13-18	1.46	1.08	2.05	1.87	1.67
19-24	1.78	1.44	2.34	2.16	1.97
25-30	2.11	1.80	2.64	2.45	2.28
31-36	2.43	2.16	2.93	2.74	2.58
37-48	2.84	2.70	3.34	3.10	2.97
49-60	3.16	2.97	3.69	3.38	3.28
61-72 [⊛]	3.43	3.27	3.97	3.62	3.53
73-84 [⊛]	3.61	3.47	4.18	3.79	3.70
85-96 [⊛]	3.76	3.64	4.34	3.92	3.84
97-108 [⊛]	3.86	3.75	4.46	4.01	3.94
109-120 [⊛]	3.95	3.85	4.55	4.09	4.02
<u>Per month for terms exceeding 120 months</u>	<u>.0303</u>	<u>.0296</u>	<u>.0348</u>	<u>.0313</u>	<u>.0308</u>

[⊛]Maximum benefit is 60 monthly payments.

(b) If premiums are paid on the basis of a premium rate per month per thousand of outstanding insured indebtedness, these premiums shall be computed according to the formula: $OP_n = (20XSP_n) / (n + 1)$ using a rate no less than the 24 month rate in Table I above. A company may submit a different formula for approval which produces rates actuarially equivalent to the single premium rates in Table I:

Where

- SP_n = Single Premium Rate per \$100 of initial insured indebtedness repayable in equal monthly installments (Table I). The Single Premium Rate shall not be less than the 19-24 month rate for the appropriate coverage.
- OP_n = Monthly Outstanding Balance Premium Rate per \$1,000.
- n = Original repayment period, in months.

(c) Coverage which provides a constant maximum indemnity for a given period of time shall use rates no greater than those rates which are actuarially equivalent to the rates in paragraph (a) or (b).

(d) If the coverages provided are other than those described in this subsection (1), rates for such coverages shall be actuarially equivalent to the rates provided in paragraph (a), (b) or (c).

(e) Joint coverage rates shall be no greater than 175% of the specific rate for that type of coverage.

(f) The monthly outstanding balance rate for credit disability insurance may be either a term specified rate or may be a single composite term rate applicable to all insured loans.

(2) The premium rates in subsection (1) shall apply to policies providing credit disability insurance to be issued with or without evidence of insurability, to be offered to all eligible debtors, and containing:

(a)1. No provision excluding or denying a claim for disability resulting from pre-existing conditions, except for those conditions for which the insured debtor received medical advice, diagnosis, or treatment within six months preceding the effective date of the debtor’s coverage, and which caused loss within the 6 months following the effective date of coverage;

2. Disability commencing after 6 months following the effective date of coverage resulting from the condition shall be covered.

3. Coverage with no pre-existing provision limitation shall result in an additional premium of 10% of the amounts shown in subsection (1), above.

(b) No other provision which excludes or restricts liability in the event of disability caused in a specific manner, except that it may contain provisions excluding or restricting coverage for intentionally self-inflicted injuries and normal pregnancy.

(c) No provision which requires that the debtor be employed more than thirty (30) hours per week in order to be eligible for insurance coverage.

(d) No age restrictions, or only age restrictions making ineligible for coverage debtors 66 or over at the time the indebtedness is incurred.

(e) However, coverage shall be provided, at a minimum, until the earlier of the maturity date of the loan or the loan anniversary at age 66. Where loans are in the form of revolving credit arrangements, an insurer may terminate coverage when the debtor attains the age 66.

(f) A daily benefit equal in amount to one-thirtieth of the monthly benefit payable under the policy for the indebtedness.

(g)1. A definition of “disability” which provides that during the first 12 months of disability the insured shall be unable to perform the duties of his occupation at the time the disability occurred, and thereafter the duties of any occupation for which the insured is reasonably fitted by education, training or experience.

2. This paragraph shall not apply to lump sum disability coverage.

Specific Authority 624.308(1), 627.678 FS. Law Implemented 624.307(1), 627.678, 627.6785, 627.682 FS. History—New 5-9-82, Formerly 4-7.11, Amended 6-11-91, Formerly 4-7.011, Amended 2-11-03, Formerly 4-163.011, Amended _____.

FINANCIAL SERVICES COMMISSION

OIR – Insurance Regulation

RULE NO.: 69O-197.006
 RULE TITLE: Insurance Administrator Annual Report

PURPOSE AND EFFECT: To adopt a form Insurance Administrators must submit to the Office of Insurance Regulation to submit financial information.

SUBJECT AREA TO BE ADDRESSED: Rule adopts the annual report forms used by administrators, which insurance administrators must submit to report financial information to the Office.

SPECIFIC AUTHORITY: 626.8991 FS.

LAW IMPLEMENTED: 626.89 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: September 22, 2008, 9:30 a.m.

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

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Sandra DuPont, Specialty Product Administration, Office of Insurance Regulation, E-mail: Sandra.DuPont@flor.com. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Sandra DuPont, Specialty Product Administration, Office of Insurance Regulation, E-mail: Sandra.DuPont@flor.com

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

69O-197.006 Insurance Administrator Annual Report.

(1) The form adopted in subsection (2) below, is a form that Insurance Administrators must submit to the Office of Insurance Regulation to report financial information. This form may be viewed at the Office’s website: <http://www.flor.com/pdf/OIR-A3-975.pdf>.

(2) Form OIR-A3-975, “Insurance Administrator Annual Report” (REV 06/06), is hereby incorporated by reference and is to be submitted to the Office of Insurance Regulation to report financial information.

(3) All forms submitted for review or approval shall be submitted electronically to <https://portal.fldfs.com>.

Specific Authority 626.8991 FS. Law Implemented 626.89 FS. History—New _____.

FINANCIAL SERVICES COMMISSION

Finance

RULE NOS.:	RULE TITLES:
69V-40.0311	Effect of Law Enforcement Records on Applications for Mortgage Broker Licensure
69V-40.0511	Effect of Law Enforcement Records on Applications for Mortgage Brokerage Business Licensure
69V-40.201	Effect of Law Enforcement Records on Applications for Mortgage Lender and Correspondent Lender Licensure

PURPOSE AND EFFECT: The rules set forth the policies of the Office of Financial Regulation with respect to processing license applications for persons who have been found guilty of, or who have pled guilty or nolo contendere to, certain crimes. The policies address applications for licensure as mortgage brokers, mortgage lenders, correspondent lenders, and mortgage brokerage businesses.

The rules provide that a person who has been found guilty of, or who has pled guilty or nolo contendere to, a felony involving fraud, dishonesty, breach of trust or money laundering is not eligible for licensure as a mortgage broker. These crimes are classified as Class "A" crimes under the rules. A person who has been found guilty of, or who has pled guilty or nolo contendere to, certain other felonies constituting moral turpitude, including but not limited to specified serious violent crimes (e.g. murder, rape, armed robbery, etc.) is not eligible for licensure as a mortgage broker until 15 years have passed. These crimes are classified as Class "B" crimes. A person who has been found guilty of, or who has pled guilty or nolo contendere to, a felony constituting an act of moral turpitude that is not addressed under Class "A" or "B" crimes is not eligible for licensure as mortgage broker until seven years have elapsed. These crimes are classified as Class "C" crimes. A person who has been found guilty of, or who has pled guilty or nolo contendere to, a misdemeanor involving fraud, dishonest dealing or moral turpitude, is not eligible for licensure as a mortgage broker until five years have elapsed. These crimes are classified as Class "D" crimes.

For applicants applying for licensure as a mortgage lender, correspondent lender, or mortgage brokerage business, the applicant is not eligible for licensure until 15 years have elapsed, if a "relevant person" of the applicant has been found guilty of, or has pled guilty or nolo contendere to, a felony involving fraud, dishonesty, breach of trust or money laundering or certain other specified crimes constituting moral turpitude (e.g. murder, rape, armed robbery, etc.) These crimes are classified as Class "A" crimes under the rules. For applicants seeking licensure as a mortgage lender, correspondent lender, or mortgage brokerage business, the applicant is not eligible for licensure until seven years have elapsed, if a "relevant person" of the applicant has been found guilty of, or has pled guilty or nolo contendere to, any felony constituting moral turpitude that is not addressed under Class A crimes. These crimes are classified as Class "B" crimes. For "relevant persons" of the applicant who have been found guilty of, or who have pled guilty or nolo contendere to, a misdemeanor involving fraud, dishonest dealing or moral turpitude, the applicant is not eligible for licensure as a mortgage broker business, correspondent lender or mortgage lender until five years have elapsed. These crimes are classified as Class "C" crimes.

"Relevant persons" include each officer, director, control person, member, partner, or joint venturer of a mortgage brokerage business license applicant or of a mortgage lender of

correspondent lender license applicant. The term also includes each ultimate equitable owner with a 10-percent or greater interest in the license applicant.

The rules provide for mitigating and aggravating factors that may lengthen or shorten the time periods discussed above for applicants for licensure as a mortgage broker, mortgage brokerage business, mortgage lender or correspondent mortgage lender.

SUBJECT AREA TO BE ADDRESSED: Mortgage Broker, Mortgage Lender, Correspondent Lender, and Mortgage Brokerage Business Licensure.

SPECIFIC AUTHORITY: 494.0011 FS.

LAW IMPLEMENTED: 112.011, 494.0031, 494.0033, 494.0041, 494.0061, 494.0062, 494.0072 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 PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Terry Straub, Director, Division of Finance, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399, (850)410-9805, terry.straub@flofr.com. A request for a rule workshop must be in writing and received by the Office of Financial Regulation no later than 5:00 p.m. on August 29, 2008.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

69V-40.0311 Effect of Law Enforcement Records on Applications for Mortgage Broker Licensure.

(1) Statement of Policy Implementation of Federal Law. It is the policy of the Office that the licensing standards set forth in Chapter 494, Florida Statutes, be construed consistently with federal law as expressed in Title V of H.R. 3221 of the 110th Congress, i.e. the S.A.F.E. Mortgage Licensure Act of 2008. This rule is intended to encompass that policy. Under Chapter 494, Florida Statutes, the Office may deny an applicant a license if the person has committed a crime involving fraud, dishonest dealing, or moral turpitude. The new federal legislation establishes stricter minimum standards for licensure to attempt to enhance prevention against persons who may pose a threat to Florida consumers from entering the mortgage industry. These stricter standards need to be applied in Florida based on studies of recidivism conducted by the Florida Department of Corrections.

(2) General Procedure Regarding Law Enforcement Records. At the time of submitting a mortgage broker application, an applicant for a mortgage broker license shall supply the Office with required documentation, as specified in this rule, relating to: 1) all criminal matters in which the

applicant has pled guilty or nolo contendere to, or has been convicted or found guilty, regardless of whether adjudication was withheld, of a crime, 2) any pending criminal charges, or 3) shall supply evidence that such documentation cannot be obtained. Evidence that documentation cannot be obtained shall consist of a certified or sworn written statement on the letterhead of the agency that would be the custodian of the documents, signed by a representative of that agency, stating that they have no record of such matter, or that the record is lost or was damaged or destroyed, or otherwise stating why the document cannot be produced. The required documentation must be legible. Required documentation includes:

(a) A copy of the police arrest affidavit, arrest report or similar document.

(b) A certified copy of the charges.

(c) A certified copy of the plea, judgment, and sentence where applicable.

(d) A certified copy of an order of entry into pre-trial intervention, and the order of termination of pre-trial intervention showing dismissal of charges where applicable.

(e) A certified copy of an order of termination of probation or supervised release, if applicable.

(3) Effect of Failure to Fully Disclose Law Enforcement Record on Application.

(a) The omission of any part of a law enforcement record required to be disclosed pursuant to subsection (2) is a material misrepresentation or material misstatement on the application and the application shall be denied pursuant to Section 494.0041(2)(c), Florida Statutes.

(b) If the Office discovers the applicant's failure to disclose after a license has been granted, the Office will suspend or revoke each license currently held by the applicant.

(4) Classification of Crimes.

(a) The Office makes a general classification of crimes into four classes: A, B, C, and D as listed in subsections (16), (17), (18), and (19) of this rule.

(b) These classifications reflect the Office's evaluation of various crimes in terms of moral turpitude, the seriousness of the crime as such factors relate to the prospective threat to public welfare typically posed by a person who would commit such a crime, and the standards for licensure set forth in Title V of H.R. 3221 of the 110th Congress, the S.A.F.E. Mortgage Licensing Act of 2008.

(c) The names or descriptions of crimes, as set out in the classification of crimes, are intended to serve only as generic names or descriptions of crimes and shall not be read as legal titles of crimes, or as limiting the included crimes to crimes bearing the exact name or description stated.

(d) For purposes of this rule, "trigger date" means the date on which an applicant was found guilty, or pled guilty, or pled nolo contendere to a crime.

(e) A charge in the nature of attempt or intent to commit a crime, or conspiracy to commit a crime, is classified the same as the crime itself.

(5) Effect on Licensure of Commitment of Single Crime. The Office finds it necessary to implement the following standards for applicants whose law enforcement record includes a single crime, subject to the mitigating factors set forth in this rule before licensure. All periods referenced in this rule run from the trigger date.

(a) Class A Crime. The applicant is not eligible for licensure.

(b) Class B Crime. The applicant will not be granted a license until 15 years have passed since the trigger date.

(c) Class C Crime. The applicant will not be granted licensure until 7 years have passed since the trigger date.

(d) Class D Crime. The applicant will not be granted licensure until 5 years have passed since the trigger date.

(6) Applicants With Multiple Crimes.

(a) The Office construes Section 494.0041, Florida Statutes, to require that an applicant whose law enforcement record includes multiple crimes wait longer than those whose law enforcement record includes only a single crime before becoming eligible for licensure in order to assure that such applicant's greater inability or unwillingness to abide by the law has been overcome. Therefore, the Office finds it necessary that a longer disqualifying period be utilized in such instances, before licensure can safely be granted. Accordingly, where the applicant has been found guilty or pled guilty or pled nolo contendere to more than one crime, the Office shall add 5 years to the disqualifying period for each additional crime.

(b) The additional periods are added to the basic disqualifying period for the one most serious crime, and the combined total disqualifying period then runs from the trigger date of the most recent crime.

(c) Classification as "Single Crime" versus "Multiple Crimes." For purposes of this rule, two (2) or more offenses are considered a single crime if they are triable in the same court and are based on the same act or transaction or on two (2) or more connected acts or transactions.

(7) Mitigating Factors.

(a) The disqualifying period for a crime or crimes shall be shortened upon proof of one or more of the following factors. Where more than one factor is present the applicant is entitled to add together all the applicable mitigation amounts and deduct that total from the usual disqualifying period, provided that an applicant shall not be permitted an aggregate mitigation of more than three (3) years for the following factors:

1. One year is deducted if the probation officer or prosecuting attorney in the most recent crime states in a signed writing that the probation officer or prosecuting attorney believes the applicant would pose no significant threat to public welfare if licensed as a mortgage broker.

2. One year is deducted if restitution or settlement has been made for all crimes in which wherein restitution or settlement was ordered by the court, and proof of such restitution or settlement is shown in official court documents or as verified in a signed writing by the prosecuting attorney or probation officer.

3. One year will be deducted if the applicant was under age 21 when the crime was committed and there is only one crime in the applicant's law enforcement record.

4. One year is deducted if the applicant furnishes proof that the applicant was at the time of the crime addicted to drugs or suffering active alcoholism. The proof must be accompanied by a written letter from a properly licensed doctor, psychologist, or therapist licensed by a duly constituted state licensing body stating that the licensed person has examined or treated the applicant and that in his or her professional opinion the addiction or alcoholism is currently in remission and has been in remission for the previous 12 months. The professional opinion shall be dated within 45 days of the time of application.

5. Other Mitigating Factors. An applicant is permitted to submit any other evidence of facts that the applicant believes should decrease the disqualifying period before licensure is allowed and one additional year shall be deducted if the Office agrees the facts have a mitigating effect on the licensure decision.

(b) In no event shall the aggregate mitigation result in less than a seven (7) year disqualifying period where the underlying crime committed was a felony.

(c) The burden is upon the applicant to establish these mitigating factors. Where the mitigating factor relates to or requires evidence of government agency or court action, it must be proved by a certified true copy of the agency or court document.

(8) Circumstances Not Constituting Mitigation. The Office finds that no mitigating weight exists, and none will be given, for the following factors:

(a) Type of Plea. The Office draws no distinction among types of plea, i.e., found guilty; pled guilty; pled nolo contendere.

(b) Collateral Attack on Criminal Proceedings. The Office will not allow or give any weight to an attempt to re-litigate, impeach, or collaterally attack judicial criminal proceedings or their results wherein the applicant was found guilty or pled guilty or nolo contendere. Thus the Office will not hear or consider arguments such as: the criminal proceedings were unfair; the judge was biased; the witnesses or prosecutor lied or acted improperly; the defendant only pled guilty due to financial or mental stress; the defendant was temporarily insane at the time of the crime; or the defendant had ineffective counsel.

(c) The Office finds that subjective factors involving state of mind have no mitigating weight.

(9) Effect of Pending Appeal in Criminal Proceedings: Reversal on Appeal.

(a) The Office interprets the statutory grounds for denial of licensure as arising immediately upon a finding of guilt, or a plea of guilty or nolo contendere, regardless of whether an appeal is or is not allowed to be taken. The Office will not wait for the outcome of an appeal to deny licensure, unless a Florida court specifically stays the Office's adverse action.

(b) If on appeal the conviction is reversed, the Office shall immediately drop the said crime as grounds for denial of license.

(10) Pre-Trial Intervention. The Office considers participation in a pre-trial intervention program to be a pending criminal enforcement action and will not grant licensure to any person who at time of application is participating in a pre-trial intervention program. The Office finds it necessary to the public welfare to wait until the pre-trial intervention is successfully completed before licensure may be considered.

(11) Effect of Sealing or Expunging of Criminal Record.

(a) An applicant is not required to disclose or acknowledge, and is permitted in fact to affirmatively deny, any arrest or criminal proceeding, the record of which has been legally and properly expunged or sealed by order of a court of competent jurisdiction prior to the time of application, and such denial or failure to disclose is not grounds for adverse action by the Office.

(b) Matters Sealed or Expunged Subsequent to Application. Occasionally an applicant will have a matter sealed or expunged after submitting his or her application. In such situations the Office policy is as follows:

1. If the applicant properly revealed the matter on the application, and thereafter has the record sealed or expunged, the Office will not consider the matter in the application decision.

2. However, if the applicant did not reveal the matter on the application and the matter had not been sealed or expunged at the time of making the application, the Office will construe the failure to disclose the matter on the application as a material misrepresentation or material misstatement, and the application shall be denied pursuant to Section 494.0041(2)(c), Florida Statutes.

(12) Effect of Restoration of Civil Rights.

(a) An applicant must disclose crimes even where civil rights have been restored.

(b) If a person's civil rights have been restored, the crimes will be evaluated in the application process consistent with Section 112.011 and Chapter 494, Florida Statutes, and the rules promulgated thereunder.

(c) The burden is upon the applicant to prove the restoration of their civil rights.

(13) Effect of Varying Terminology.

(a) With regard to the following six subparagraphs, the Office treats each phrase in a particular subparagraph as having the same effect as the other phrases in that same subparagraph:

1. Adjudicated guilty; convicted.
2. Found guilty; entered a finding of guilt.
3. Pled guilty; entered a plea of guilty; admitted guilt; admitted the charges.
4. Nolo contendere; no contest; did not contest; did not deny; no denial.
5. Adjudication of guilt withheld; adjudication withheld; no adjudication entered; entry of findings withheld; no official record to be entered; judgment withheld; judgment not entered.
6. Nolle prosequi; nolle prosequi; charges withdrawn; charges dismissed; charges dropped.

(b) In all other instances the Office will look to the substantive meaning of the terminology used in the context in which it was used under the law of the jurisdiction where it was used.

(14) Imprisoned Persons and Community Supervision.

(a) Imprisonment. Notwithstanding any provision to the contrary in this rule, the Office shall not license any applicant under Chapter 494, Florida Statutes, while the applicant is imprisoned, under arrest, or serving a sentence for any crime. Further, the Office shall not license any applicant who has been released from imprisonment until the later of the period otherwise set out in these rules or five (5) years after the date of release. The Office finds it necessary that the person be released from imprisonment and thereafter demonstrate an ability to abide by the law by passage of at least five (5) years on good behavior, before licensure can be granted without undue risk to the public welfare.

(b) Community Supervision. The Office shall not grant licensure to any person who at the time of application or at any time during the pendency of the application is serving term on community supervision for any felony crime, or any misdemeanor crime involving fraud, dishonest dealing, or moral turpitude. The Office shall not substantively consider an application until the applicant has successfully completed his or her probationary term.

(15) Effect of Disqualifying Periods. The disqualifying periods established in this rule do not give a licensee a right to licensure after any set period of time. Regardless of the expiration of any disqualifying period imposed by these rules, the burden to prove entitlement to licensure remains on the applicant.

(16) Class "A" Crimes include all felonies involving an act of fraud, dishonesty, or a breach of trust, or money laundering, and the Office finds that such crimes constitute crimes of moral turpitude. The Office finds the following list of crimes are Class "A" crimes. This list is representative only and shall not be construed to constitute a complete or exclusive list all crimes that are Class "A" crimes. No inference should be drawn from the absence of any crime from this list.

(a) Any type of fraud, including but limited to Fraud, Postal Fraud, Wire Fraud, Securities Fraud, Welfare Fraud, Defrauding the Government, Credit Card Fraud, Defrauding an Innkeeper, Passing worthless check(s) with intent to defraud,

- (b) Perjury.
- (c) Armed robbery.
- (d) Robbery.
- (e) Extortion.
- (f) Bribery.
- (g) Embezzlement.
- (h) Grand theft.
- (i) Larceny.
- (j) Burglary.
- (k) Breaking and entering.
- (l) Identity Theft.
- (m) Any type of forgery or uttering a forged instrument.
- (n) Misuse of public office.
- (o) Racketeering.
- (p) Buying, receiving, concealing, possessing or otherwise dealing in stolen property.
- (q) Treason against the United States, or a state, district, or territory thereof.
- (r) Altering public documents.
- (s) Witness tampering.
- (t) Tax evasion.
- (u) Impersonating or attempting to impersonate a law enforcement officer.
- (v) Money laundering.

(17) Class "B" Crimes include the following list of felonies, or similar felonies, and the Office finds that such crimes constitute crimes of moral turpitude.

- (a) Murder in all degrees.
- (b) Arson.
- (c) Sale, importation, or distribution of controlled substances (drugs); or possession for sale, importation or distribution.
- (d) Aggravated Assault (e.g., as with a deadly weapon).
- (e) Aggravated Battery (e.g., as with a deadly weapon).
- (f) Rape.
- (g) Sexually molesting any minor.
- (h) Sexual battery.
- (i) Battery of or threatening a law enforcement officer or public official in the performance of his/her duties.
- (j) Kidnapping.

(18) Class "C" Crimes include all felonies that involve any other act of moral turpitude and are not Class "A" or Class "B" crimes.

(19) Class "D" Crimes include any misdemeanor that involves fraud, dishonest dealing or any other act of moral turpitude.

(20) Foreign Law Enforcement Records. If a law enforcement record includes convictions, charges, or arrests outside the United States, the Office shall consider the following factors to reduce, eliminate, or apply a disqualifying period:

(a) Whether the crime in the criminal record would be a crime under the laws of the United States or any state within the United States;

(b) The degree of penalty associated with the same or similar crimes in the United States; and

(c) The extent to which the foreign justice system provided safeguards similar to those provided criminal defendants under the Constitution of the United States.

Specific Authority 494.0011 FS. Law Implemented 112.011, 494.0033, 494.0041 FS. History—New

69V-40.0511 Effect of Law Enforcement Records on Applications for Mortgage Brokerage Business Licensure.

(1) General Procedure Regarding Law Enforcement Records. For purposes of this rule each officer, director, control person, member, partner, or joint venturer of a Mortgage Brokerage Business License applicant, and each ultimate equitable owner with a 10-percent or greater interest in the applicant shall be referred to collectively as “relevant persons.” At the time of submitting a Mortgage Brokerage Business Application, the applicant shall supply the Office with required documentation for each relevant person, as specified in this rule, relating to: 1) all criminal matters in which the relevant person has pled guilty or nolo contendere to, or has been convicted or found guilty, regardless of whether adjudication was withheld, of a crime, 2) any pending criminal charges for a relevant person, or 3) shall supply evidence that such documentation cannot be obtained. Evidence that documentation cannot be obtained shall consist of a certified or sworn written statement on the letterhead of the agency that would be the custodian of the documents, signed by a representative of that agency, stating that they have no record of such matter, or that the record is lost or was damaged or destroyed, or otherwise stating why the document cannot be produced. The required documentation must be legible. Required documentation includes:

(a) A copy of the police arrest affidavit, arrest report or similar document.

(b) A certified copy of the charges.

(c) A certified copy of the plea, judgment, and sentence where applicable.

(d) A certified copy of an order of entry into pre-trial intervention, and the order of termination of pre-trial intervention showing dismissal of charges where applicable.

(e) A certified copy of an order of termination of probation or supervised release, if applicable.

(2) Effect of Failure to Fully Disclose Law Enforcement Record on Application.

(a) The omission of any part of a law enforcement record required to be disclosed pursuant to subsection (2) herein is a material misrepresentation or material misstatement on the application and the application shall be denied pursuant to Section 494.0041(2)(c), Florida Statutes.

(b) If the Office discovers the applicant’s failure to disclose after a license has been granted, the Office will suspend or revoke each license currently held by the applicant.

(3) Classification of Crimes.

(a) The Office makes a general classification of crimes into three classes: A, B and C, as listed in subsections (15), (16) and (17) of this rule.

(b) These classifications reflect the Office’s evaluation of various crimes in terms of moral turpitude and the seriousness of the crime as such factors relate to the prospective threat to public welfare typically posed by a person who would commit such a crime.

(c) The names or descriptions of crimes, as set out in the classification of crimes, are intended to serve only as generic names or descriptions of crimes and shall not be read as legal titles of crimes, or as limiting the included crimes to crimes bearing the exact name or description stated.

(d) For purposes of this rule, “trigger date” means the date on which an applicant was found guilty, or pled guilty, or pled nolo contendere to a crime.

(e) A charge in the nature of attempt or intent to commit a crime, or conspiracy to commit a crime, is classified the same as the crime itself.

(4) Effect on Licensure of Commitment of Single Crime. The Office finds it necessary to implement the following standards for applicants with relevant persons whose law enforcement record includes a single crime, subject to the mitigating factors set forth in this rule before licensure. All disqualifying periods referenced in this rule run from the trigger date.

(a) Class A Crime. The applicant will not be granted a license until 15 years have passed since the trigger date.

(b) Class B Crime. The applicant will not be granted a license until 7 years have passed since the trigger date.

(c) Class C Crime. The applicant will not be granted licensure until 5 years have passed since the trigger date.

(5) Relevant Persons With Multiple Crimes.

(a) The Office construes Section 494.0041, Florida Statutes, to require that an applicant with relevant persons whose law enforcement record includes multiple Class B or Class C crimes, or any combination thereof, wait longer than those whose law enforcement record includes only a single crime before becoming eligible for licensure in order to assure that such relevant person’s greater inability or unwillingness to abide by the law has been overcome. Therefore, the Office finds it necessary that a longer disqualifying period be utilized in such instances, before licensure can safely be granted. Accordingly, where the relevant person has been found guilty or pled guilty or pled nolo contendere to more than one crime, the Office shall add 5 years to the disqualifying period for each additional crime.

(b) The additional periods are added to the basic disqualifying period for the one most serious crime, and the combined total disqualifying period then runs from the trigger date of the most recent crime.

(c) Classification as “Single Crime” versus “Multiple Crimes.” For purposes of this rule, two (2) or more offenses are considered a single crime if they are triable in the same court and are based on the same act or transaction or on two (2) or more connected acts or transactions.

(6) Mitigating Factors.

(a) The disqualifying period based on a crime pursuant to this rule shall be shortened upon proof of one or more of the following factors. Where more than one factor is present the applicant is entitled to add together all the applicable mitigation amounts and deduct that total from the usual disqualifying period, provided that an applicant shall not be permitted an aggregate mitigation of more than three (3) years for the following factors:

1. One year is deducted if the probation officer or prosecuting attorney in the most recent crime states in a signed writing that the probation officer or prosecuting attorney believes the applicant would pose no significant threat to public welfare if licensed as a mortgage broker.

2. One year is deducted if restitution or settlement has been made for all crimes in which restitution or settlement was ordered by the court, and proof of such restitution or settlement is shown in official court documents or as verified in a signed writing by the prosecuting attorney or probation officer.

3. One year will be deducted if the applicant was under age 21 when the crime was committed and there is only one crime in the applicant’s law enforcement record.

4. One year is deducted if the applicant furnishes proof that the applicant was at the time of the crime addicted to drugs or suffering active alcoholism. The proof must be accompanied by a written letter from a properly licensed doctor, psychologist, or therapist licensed by a duly constituted state licensing body stating that the licensed person has examined or treated the applicant and that in his or her professional opinion the addiction or alcoholism is currently in remission and has been in remission for the previous 12 months. The professional opinion shall be dated within 45 days of the time of application.

5. Other Mitigating Factors. An applicant is permitted to submit any other evidence of facts that the applicant believes should decrease the disqualifying period before licensure is allowed and one additional year shall be deducted if the Office agrees the facts have a mitigating effect on the licensure decision.

(b) The burden is upon the applicant to establish these mitigating factors. Where the mitigating factor relates to or requires evidence of government agency or court action, it must be proved by a certified true copy of the agency or court document.

(7) Circumstances Not Constituting Mitigation. The Office finds that no mitigating weight exists, and none will be given, for the following factors:

(a) Type of Plea. The Office draws no distinction among types of pleas, i.e., found guilty; pled guilty; pled nolo contendere.

(b) Collateral Attack on Criminal Proceedings. The Office will not allow or give any weight to an attempt to re-litigate, impeach, or collaterally attack judicial criminal proceedings or their results in which the applicant was found guilty or pled guilty or nolo contendere. Thus the Office will not hear or consider arguments such as: the criminal proceedings were unfair; the judge was biased; the witnesses or prosecutor lied or acted improperly; the defendant only pled guilty due to financial or mental stress; the defendant was temporarily insane at the time of the crime; or the defendant had ineffective counsel.

(c) The Office finds that subjective factors involving state of mind have no mitigating weight.

(8) Effect of Pending Appeal in Criminal Proceedings; Reversal on Appeal.

(a) The Office interprets the statutory grounds for denial of licensure as arising immediately upon a finding of guilt, or a plea of guilty or nolo contendere, regardless of whether an appeal is or is not allowed to be taken. The Office will not wait for the outcome of an appeal to deny licensure, unless a Florida court specifically stays the Office’s adverse action.

(b) If on appeal the conviction is reversed, the Office shall immediately drop the said crime as grounds for denial of license.

(9) Pre-Trial Intervention. The Office considers participation in a pre-trial intervention program to be a pending criminal enforcement action and will not grant licensure to any applicant with a relevant person who at time of application is participating in a pre-trial intervention program. The Office finds it necessary to the public welfare to wait until the pre-trial intervention is successfully completed before licensure may be considered.

(10) Effect of Sealing or Expunging of Criminal Record.

(a) An applicant is not required to disclose or acknowledge, and is permitted in fact to affirmatively deny, any arrest or criminal proceeding for a relevant person, the record of which has been legally and properly expunged or sealed by order of a court of competent jurisdiction prior to the time of application, and such denial or failure to disclose is not grounds for adverse action by the Office.

(b) Matters Sealed or Expunged Subsequent to Application. Occasionally a relevant person will have a matter sealed or expunged after the applicant submits an application, but before a licensing decision is made by the Office. In such situations the Office policy is as follows:

1. If the applicant's relevant person properly revealed the matter on the application, and thereafter has the record sealed or expunged, the Office will not consider the matter in the application decision.

2. However, if the applicant's relevant person did not reveal the matter on the application and the matter had not been sealed or expunged at the time of making the application, the Office will construe the failure to disclose the matter on the application as a material misrepresentation or material misstatement, and the application shall be denied pursuant to Section 494.0041(2)(c), Florida Statutes.

(11) Effect of Restoration of Civil Rights.

(a) An applicant's relevant person must disclose crimes even where civil rights have been restored.

(b) If a relevant person's civil rights have been restored, the crimes will be evaluated in the application process consistent with Section 112.011 and Chapter 494, Florida Statutes, and the rules promulgated thereunder.

(c) The burden is upon the applicant to prove the restoration of their civil rights.

(12) Effect of Varying Terminology.

(a) With regard to the following six subparagraphs, the Office treats each phrase in a particular subparagraph as having the same effect as the other phrases in that same subparagraph:

1. Adjudicated guilty; convicted.

2. Found guilty; entered a finding of guilt.

3. Pled guilty; entered a plea of guilty; admitted guilt; admitted the charges.

4. Nolo contendere; no contest; did not contest; did not deny; no denial.

5. Adjudication of guilt withheld; adjudication withheld; no adjudication entered; entry of findings withheld; no official record to be entered; judgment withheld; judgment not entered.

6. Nolle prosequere; nolle prosequi; charges withdrawn; charges dismissed; charges dropped.

(b) In all other instances the Office will look to the substantive meaning of the terminology used in the context in which it was used under the law of the jurisdiction where it was used.

(13) Imprisoned Persons and Community Supervision.

(a) Imprisonment. Notwithstanding any provision to the contrary in this rule, the Office shall not license any applicant under Chapter 494, Florida Statutes, while any relevant person of the applicant is imprisoned or serving a sentence for any crime. Further, the Office shall not license any applicant with a relevant person who has been released from imprisonment until the later of the period otherwise set out in these rules or 5 years after the date of release. The Office finds it necessary that the person be released from imprisonment and thereafter demonstrate an ability to abide by the law by passage of at least 5 years on good behavior, before licensure can be granted without undue risk to the public welfare.

(b) Community Supervision. The Office shall not grant licensure to any person who at the time of application or at any time during the pendency of the application is serving term on community supervision for any felony crime, or any misdemeanor crime involving fraud, dishonest dealing, or moral turpitude. The Office shall not substantively consider an application until the applicant has successfully completed his or her probationary term.

(14) Effect of Disqualifying Periods. The disqualifying periods established in this rule do not give a applicant a right to licensure after any set period of time. Regardless of the expiration of any disqualifying period imposed by these rules, the burden to prove entitlement to licensure remains on the applicant.

(15) Class "A" Crimes include the following felonies which involve fraud, dishonest dealing, or moral turpitude. This list is representative only and shall not be construed to constitute a complete or exclusive list all of crimes that are Class "A" crimes. Crimes similar to the crimes on this list may also be considered Class "A" crimes, and no inference should be drawn from the absence of any crime from this list.

(a) Any type of fraud, including but limited to Fraud, Postal Fraud, Wire Fraud, Securities Fraud, Welfare Fraud, Defrauding the Government, Credit Card Fraud, Defrauding an Innkeeper, Passing worthless check(s) with intent to defraud.

(b) Perjury.

(c) Armed robbery.

(d) Robbery.

(e) Extortion.

(f) Bribery.

(g) Embezzlement.

(h) Grand theft.

(i) Larceny.

(j) Burglary.

(k) Breaking and entering.

(l) Identity Theft.

(m) Any type of forgery or uttering a forged instrument.

(n) Misuse of public office.

(o) Racketeering.

(p) Buying, receiving, concealing, possessing or otherwise dealing in stolen property.

(q) Treason against the United States, or a state, district, or territory thereof.

(r) Altering public documents.

(s) Witness tampering.

(t) Tax evasion.

(u) Impersonating or attempting to impersonate a law enforcement officer.

(v) Money laundering.

(w) Murder in all degrees.

(x) Arson.

(y) Sale, importation, or distribution of controlled substances (drugs); or possession for sale, importation or distribution.

(z) Aggravated Assault (e.g., as with a deadly weapon).

(aa) Aggravated Battery (e.g., as with a deadly weapon).

(bb) Rape.

(cc) Sexually molesting any minor.

(dd) Sexual battery.

(ee) Battery of or threatening a law enforcement officer or public official in the performance of his/her duties.

(ff) Kidnapping.

(16) Class "B" Crimes include all felonies that involve any other act of moral turpitude and are not Class "A" crimes.

(17) Class "C" Crimes include any misdemeanor that involves fraud, dishonest dealing or any other act of moral turpitude.

(18) Foreign Law Enforcement Records. If a law enforcement record includes convictions, charges, or arrests outside the United States, the Office shall consider the following factors to reduce, eliminate, or apply a disqualifying period:

(a) Whether the crime in the criminal record would be a crime under the laws of the United States or any state within the United States;

(b) The degree of penalty associated with the same or similar crimes in the United States; and

(c) The extent to which the foreign justice system provided safeguards similar to those provided criminal defendants under the Constitution of the United States.

Specific Authority 494.0011 FS. Law Implemented 112.011, 494.0031, 494.0041 FS. History—New _____.

69V-40.201 Effect of Law Enforcement Records on Applications for Mortgage Lender and Correspondent Lender Licensure.

(1) General Procedure Regarding Law Enforcement Records. For purposes of this rule each designated principal representative and each officer, director, control person, member, partner, or joint venturer of a Mortgage Lender or Correspondent Lender License applicant, and each ultimate equitable owner with a 10-percent or greater interest in the applicant shall be referred to collectively as "relevant persons." At the time of submitting a Mortgage Lender or Correspondent Lender Application, the applicant shall supply the Office with required documentation for each relevant person, as specified in this rule, relating to: 1) all criminal matters in which the relevant person has pled guilty or nolo contendere to, or has been convicted or found guilty, regardless of whether adjudication was withheld, of a crime, 2) any pending criminal charges for a relevant person, or 3) shall supply evidence that such documentation cannot be obtained. Evidence that

documentation cannot be obtained shall consist of a certified or sworn written statement on the letterhead of the agency that would be the custodian of the documents, signed by a representative of that agency, stating that they have no record of such matter, or that the record is lost or was damaged or destroyed, or otherwise stating why the document cannot be produced. The required documentation must be legible. Required documentation includes:

(a) A copy of the police arrest affidavit, arrest report or similar document.

(b) A certified copy of the charges.

(c) A certified copy of the plea, judgment, and sentence where applicable.

(d) A certified copy of an order of entry into pre-trial intervention, and the order of termination of pre-trial intervention showing dismissal of charges where applicable.

(e) A certified copy of an order of termination of probation or supervised release, if applicable.

(2) Effect of Failure to Fully Disclose Law Enforcement Record on Application.

(a) The omission of any part of a law enforcement record required to be disclosed pursuant to subsection (1) is a material misrepresentation or material misstatement on the application and the application shall be denied pursuant to Section 494.0072(2)(c), Florida Statutes.

(b) If the Office discovers the applicant's failure to disclose after a license has been granted, the Office will suspend or revoke each license currently held by the applicant.

(3) Classification of Crimes.

(a) The Office makes a general classification of crimes into three classes: A, B and C, as listed in subsections (15), (16) and (17) of this rule.

(b) These classifications reflect the Office's evaluation of various crimes in terms of moral turpitude and the seriousness of the crime as such factors relate to the prospective threat to public welfare typically posed by a person who would commit such a crime.

(c) The names or descriptions of crimes, as set out in the classification of crimes, are intended to serve only as generic names or descriptions of crimes and shall not be read as legal titles of crimes, or as limiting the included crimes to crimes bearing the exact name or description stated.

(d) For purposes of this rule, "trigger date" means the date on which an applicant was found guilty, or pled guilty, or pled nolo contendere to a crime.

(e) A charge in the nature of attempt or intent to commit a crime, or conspiracy to commit a crime, is classified the same as the crime itself.

(4) Effect on Licensure of Commitment of Single Crime. The Office finds it necessary to implement the following standards for applicants with relevant persons whose law

enforcement record includes a single crime, subject to the mitigating factors set forth elsewhere in this rule before licensure. All disqualifying periods referenced in this rule run from the trigger date.

(a) Class A Crime. The applicant will not be granted a license until 15 years have passed since the trigger date.

(b) Class B Crime. The applicant will not be granted a license until 7 years have passed since the trigger date.

(c) Class C Crime. The applicant will not be granted licensure until 5 years have passed since the trigger date.

(5) Relevant Persons With Multiple Crimes.

(a) The Office construes Section 494.0072, Florida Statutes, to require that an applicant with relevant persons whose law enforcement record includes multiple Class B or Class C crimes, or any combination thereof, wait longer than those whose law enforcement record includes only a single crime before becoming eligible for licensure in order to assure that such relevant person's greater inability or unwillingness to abide by the law has been overcome. Therefore, the Office finds it necessary that a longer disqualifying period be utilized in such instances, before licensure can safely be granted. Accordingly, where the relevant person has been found guilty or pled guilty or pled nolo contendere to more than one crime, the Office shall add 5 years to the disqualifying period for each additional crime.

(b) The additional periods are added to the basic disqualifying period for the one most serious crime, and the combined total disqualifying period then runs from the trigger date of the most recent crime.

(c) Classification as "Single Crime" versus "Multiple Crimes." For purposes of this rule, two (2) or more offenses are considered a single crime if they are triable in the same court and are based on the same act or transaction or on two (2) or more connected acts or transactions.

(6) Mitigating Factors for Class "C" Crimes.

(a) The disqualifying period for a Class "C" crime shall be shortened upon proof of one or more of the following factors. Where more than one factor is present the applicant is entitled to add together all the applicable mitigation amounts and deduct that total from the usual disqualifying period, provided that an applicant shall not be permitted an aggregate mitigation of more than three (3) years for the following factors:

1. One year is deducted if the probation officer or prosecuting attorney in the most recent crime states in a signed writing that the probation officer or prosecuting attorney believes the applicant would pose no significant threat to public welfare if licensed as a mortgage broker.

2. One year is deducted if restitution or settlement has been made for all crimes in which restitution or settlement was ordered by the court, and proof of such restitution or settlement is shown in official court documents or as verified in a signed writing by the prosecuting attorney or probation officer.

3. One year will be deducted if the applicant was under age 21 when the crime was committed and there is only one crime in the applicant's law enforcement record.

4. One year is deducted if the applicant furnishes proof that the applicant was at the time of the crime addicted to drugs or suffering active alcoholism. The proof must be accompanied by a written letter from a properly licensed doctor, psychologist, or therapist licensed by a duly constituted state licensing body stating that the licensed person has examined or treated the applicant and that in his or her professional opinion the addiction or alcoholism is currently in remission and has been in remission for the previous 12 months. The professional opinion shall be dated within 45 days of the time of application.

5. Other Mitigating Factors. An applicant is permitted to submit any other evidence of facts that the applicant believes should decrease the disqualifying period before licensure is allowed and one additional year shall be deducted if the Office agrees the facts have a mitigating effect on the licensure decision.

(b) The burden is upon the applicant to establish these mitigating factors. Where the mitigating factor relates to or requires evidence of government agency or court action, it must be proved by a certified true copy of the agency or court document.

(7) Circumstances Not Constituting Mitigation. The Office finds that no mitigating weight exists, and none will be given, for the following factors:

(a) Type of Plea. The Office draws no distinction among types of pleas, i.e., found guilty; pled guilty; pled nolo contendere.

(b) Collateral Attack on Criminal Proceedings. The Office will not allow or give any weight to an attempt to re-litigate, impeach, or collaterally attack judicial criminal proceedings or their results in which the applicant was found guilty or pled guilty or nolo contendere. Thus the Office will not hear or consider arguments such as: the criminal proceedings were unfair; the judge was biased; the witnesses or prosecutor lied or acted improperly; the defendant only pled guilty due to financial or mental stress; the defendant was temporarily insane at the time of the crime; or the defendant had ineffective counsel.

(c) The Office finds that subjective factors involving state of mind have no mitigating weight.

(8) Effect of Pending Appeal in Criminal Proceedings; Reversal on Appeal.

(a) The Office interprets the statutory grounds for denial of licensure as arising immediately upon a finding of guilt, or a plea of guilty or nolo contendere, regardless of whether an appeal is or is not allowed to be taken. The Office will not wait for the outcome of an appeal to deny licensure, unless a Florida court specifically stays the Office's adverse action.

(b) If on appeal the conviction is reversed, the Office shall immediately drop the said crime as grounds for denial of license.

(9) Pre-Trial Intervention. The Office considers participation in a pre-trial intervention program to be a pending criminal enforcement action and will not grant licensure to any applicant with a relevant person who at time of application is participating in a pre-trial intervention program. The Office finds it necessary to the public welfare to wait until the pre-trial intervention is successfully completed before licensure may be considered.

(10) Effect of Sealing or Expunging of Criminal Record.

(a) An applicant is not required to disclose or acknowledge, and is permitted in fact to affirmatively deny, any arrest or criminal proceeding for a relevant person, the record of which has been legally and properly expunged or sealed by order of a court of competent jurisdiction prior to the time of application, and such denial or failure to disclose is not grounds for adverse action by the Office.

(b) Matters Sealed or Expunged Subsequent to Application. Occasionally a relevant person will have a matter sealed or expunged after the applicant submits an application, but before a licensing decision is made by the Office. In such situations the Office policy is as follows:

1. If the applicant's relevant person properly revealed the matter on the application, and thereafter has the record sealed or expunged, the Office will not consider the matter in the application decision.

2. However, if the applicant's relevant person did not reveal the matter on the application and the matter had not been sealed or expunged at the time of making the application, the Office will construe the failure to disclose the matter on the application as a material misrepresentation or material misstatement, and the application shall be denied pursuant to Section 494.0072(2)(c), Florida Statutes.

(11) Effect of Restoration of Civil Rights.

(a) An applicant's relevant person must disclose crimes even where civil rights have been restored.

(b) If a relevant person's civil rights have been restored, the crimes will be evaluated in the application process consistent with Section 112.011 and Chapter 494, Florida Statutes, and the rules promulgated thereunder.

(c) The burden is upon the applicant to prove the restoration of their civil rights.

(12) Effect of Varying Terminology.

(a) With regard to the following six subparagraphs, the Office treats each phrase in a particular subparagraph as having the same effect as the other phrases in that same subparagraph:

1. Adjudicated guilty; convicted.

2. Found guilty; entered a finding of guilt.

3. Pled guilty; entered a plea of guilty; admitted guilt; admitted the charges.

4. Nolo contendere; no contest; did not contest; did not deny; no denial.

5. Adjudication of guilt withheld; adjudication withheld; no adjudication entered; entry of findings withheld; no official record to be entered; judgment withheld; judgment not entered.

6. Nolle prosequere; nolle prosequi; charges withdrawn; charges dismissed; charges dropped.

(b) In all other instances the Office will look to the substantive meaning of the terminology used in the context in which it was used under the law of the jurisdiction where it was used.

(13) Imprisoned Persons and Community Supervision.

(a) Imprisonment. Notwithstanding any provision to the contrary in this rule, the Office shall not license any applicant under Chapter 494, Florida Statutes, while any relevant person of the applicant is imprisoned or serving a sentence for any crime. Further, the Office shall not license any applicant with a relevant person who has been released from imprisonment until the later of the period otherwise set out in these rules or 5 years after the date of release. The Office finds it necessary that the person be released from imprisonment and thereafter demonstrate an ability to abide by the law by passage of at least 5 years on good behavior, before licensure can be granted without undue risk to the public welfare.

(b) Community Supervision. The Office shall not grant licensure to any person who at the time of application or at any time during the pendency of the application is serving term on community supervision for any felony crime, or any misdemeanor crime involving fraud, dishonest dealing, or moral turpitude. The Office shall not substantively consider an application until the applicant has successfully completed his or her probationary term.

(14) Effect of Disqualifying Periods. The disqualifying periods established in this rule do not give a applicant a right to licensure after any set period of time. Regardless of the expiration of any disqualifying period imposed by these rules, the burden to prove entitlement to licensure remains on the applicant.

(15) Class "A" Crimes include the following felonies which involve fraud, dishonest dealing, or moral turpitude. This list is representative only and shall not be construed to constitute a complete or exclusive list all of crimes that are Class "A" crimes. Crimes similar to the crimes on this list may also be considered Class "A" crimes, and no inference should be drawn from the absence of any crime from this list.

(a) Any type of fraud, including but limited to Fraud, Postal Fraud, Wire Fraud, Securities Fraud, Welfare Fraud, Defrauding the Government, Credit Card Fraud, Defrauding an Innkeeper, Passing worthless check(s) with intent to defraud.

- (b) Perjury.
- (c) Armed robbery.
- (d) Robbery.
- (e) Extortion.
- (f) Bribery.
- (g) Embezzlement.
- (h) Grand theft.
- (i) Larceny.
- (j) Burglary.
- (k) Breaking and entering.
- (l) Identity Theft.
- (m) Any type of forgery or uttering a forged instrument.
- (n) Misuse of public office.
- (o) Racketeering.
- (p) Buying, receiving, concealing, possessing or otherwise dealing in stolen property.
- (q) Treason against the United States, or a state, district, or territory thereof.
- (r) Altering public documents.
- (s) Witness tampering.
- (t) Tax evasion.
- (u) Impersonating or attempting to impersonate a law enforcement officer.
- (v) Money laundering.
- (w) Murder in all degrees.
- (x) Arson.
- (y) Sale, importation, or distribution of controlled substances (drugs); or possession for sale, importation or distribution.
- (z) Aggravated Assault (e.g., as with a deadly weapon).
- (aa) Aggravated Battery (e.g., as with a deadly weapon).
- (bb) Rape.
- (cc) Sexually molesting any minor.
- (dd) Sexual battery.
- (ee) Battery of or threatening a law enforcement officer or public official in the performance of his/her duties.
- (ff) Kidnapping.
- (16) Class "B" Crimes include all felonies that involve any other act of moral turpitude and are not Class "A" crimes.
- (17) Class "C" Crimes include any misdemeanor that involves fraud, dishonest dealing or any other act of moral turpitude.
- (18) Foreign Law Enforcement Records. If a law enforcement record includes convictions, charges, or arrests outside the United States, the Office shall consider the following factors to reduce, eliminate, or apply a disqualifying period:
 - (a) Whether the crime in the criminal record would be a crime under the laws of the United States or any state within the United States;

- (b) The degree of penalty associated with the same or similar crimes in the United States; and
- (c) The extent to which the foreign justice system provided safeguards similar to those provided criminal defendants under the Constitution of the United States.

Specific Authority 494.0011 FS. Law Implemented 112.011, 494.0061, 494.0062, 494.0072 FS. History--New _____.

Section II Proposed 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 CORRECTIONS

RULE NO.: 33-602.701
RULE TITLE: Use of Blue Lights and Sirens
PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to require officers who are currently certified to complete the Department's classroom training portion in order to highlight topics unique to the Department.
SUMMARY: The proposed rule requires officers who have completed a certified law enforcement crossover course and are currently certified to complete the Department's 4 hour classroom training portion of the 16 hour requirement.
SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.
 Any person who wishes to provide information regarding a 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: 944.09 FS.
LAW IMPLEMENTED: 316.003, 316.072, 316.2397 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: Jamie Jordan-Nunes, Office of the General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500
THE FULL TEXT OF THE PROPOSED RULE IS:
 33-602.701 Use of Blue Lights and Sirens.
 (1) through (5) No change.
 (6) Training: