

Section I

Notices of Development of Proposed Rules and Negotiated Rulemaking

DEPARTMENT OF STATE

Division of Elections

RULE NO.:
IS-2.046

RULE TITLE:
Initiative Process for Method of
Selection for Circuit or County
Court Judges

PURPOSE AND EFFECT: The purpose of this rule is to implement the style and requirements for initiative petition forms used to change the method of selection for circuit and county court judges. The rule further provides the procedures for obtaining approval of the initiative petition forms and the requirements for signature verification of the forms. The effect of the rule is to implement the constitutional and statutory provisions that provide a mechanism for Florida voters to change the method of selection for circuit or county court judges.

SUBJECT AREA TO BE ADDRESSED: Method of selection for circuit or county court judges.

SPECIFIC AUTHORITY: 20.10(3), 97.012(1), 105.036 FS.

LAW IMPLEMENTED: Art V, Fla. Const., 101.161, 105.036 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: December 30, 2008, 1:00 p.m.

PLACE: Room 307, R. A. Gray Building, 500 S. Bronough Street, Tallahassee, Florida 32399-0250

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: Amber Barrett, Division of Elections, Department of State, R. A. Gray Building, 500 S. Bronough Street, Tallahassee, Florida 32399-0250; telephone: (850)245-6224. 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: Amber Barrett, Division of Elections, Department of State, R. A. Gray Building, 500 S. Bronough Street, Tallahassee, Florida 32399-0250; telephone: (850)245-6224. The text of the proposed rule and forms also can be found at <http://election.dos.state.fl.us/rules/proposed-rules/index.shtml>

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

IS-2.046 Initiative Process for Method of Selection for Circuit or County Court Judges.

(1) Submission of Petition Initiative.

(a) Any proposed initiative to change the method of selection of circuit court judges for placement on the ballot shall be submitted by the sponsoring political committee to the Division of Elections for approval as to format.

(b) Any proposed initiative to change the method of selection of county court judges for placement on the ballot shall be submitted by the sponsoring political committee to the Supervisor of Elections in the affected county for approval as to format.

(c) The submission of the proposed initiative shall be in writing and shall include a copy or a facsimile of the proposed form to be circulated.

(d) No initiative petition form may be circulated for signatures unless first approved by the Division of Elections or the Supervisor of Elections, as applicable.

(2) Requirements and Approval of Petition Form. The Division of Elections or Supervisor of Elections, as applicable, shall review the petition form solely for sufficiency of the format and shall render a decision within seven (7) days following receipt. The Division of Elections or Supervisor of Elections, as applicable, shall not review the petition form for legal sufficiency. The format of the petition form is deemed sufficient only if the petition form corresponds to the following:

(a)1. The format of an initiative petition submitted for review and approval by the Division of Elections shall be substantially in accordance with Form DS-DE 112 (eff. 12/08), entitled "Circuit Court Judge Selection Initiative Form."

2. The format of an initiative petition submitted for review and approval by a Supervisor of Elections shall be substantially in accordance with Form DS-DE 113 (eff. 12/08), entitled "County Court Judge Selection Initiative Form."

(b) Is printed on separate cards or individual sheets of paper. The minimum size of such forms shall be 3 inches by 5 inches and the maximum shall be 8 1/2 inches by 11 inches. The petition shall be contained on only one-side of the card or paper.

(c) Is clearly and conspicuously entitled at the top of the form "Circuit Court Judge Selection Initiative Form" or "County Court Judge Selection Initiative Form," as applicable.

(d) Includes adequate space for the voter's name, residential street address, city, county, voter registration number, date of birth, signature, and date of signature.

(e) Contains the ballot language in Section 101.161(3), F.S., for circuit or county court judges, as applicable. One form may not be used as a petition to change the method of selection for both circuit and county court judges.

(f) Contains space for only one voter's signature to be located below the applicable ballot language. Petition forms providing for multiple signatures per page will not be approved.

(g) Is marked, in accordance with Section 106.143, F.S., governing political disclaimers, with "paid political advertisement" or contains the abbreviation "pd. pol. adv." and identifies the name and address of the sponsoring political committee, and the name of the entity paying for the production or distribution of the petition form if different from the name of the sponsoring political committee.

(3) Forms DS-DE 112 and 113 are hereby incorporated by reference and are available from the Division of Elections, Room 316, R. A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399-0250, (850)245-6500, or by download from the Division of Elections' rules webpage at: <http://election.dos.state.fl.us>.

(4) Additional Information or Materials. Other than providing information or a method by which the petition form may be returned by mail to the sponsoring committee, no additional information or materials shall be printed directly on the form.

(5) Assignment of a Serial Number.

(a) The Division of Elections or Supervisor of Elections, as applicable, shall assign a serial number as noted herein to each approved petition form. The serial number assigned must be printed in the lower right hand corner of the petition form.

(b) The serial number assigned by the Division of Elections shall begin with the capital letter "C," followed by the last two digits of the calendar year in which the petition form is approved and by a number in numerical sequence. For example, the first petition form approved by the Division of Elections in 2009 would be assigned the serial number C09-1.

(c) The serial number assigned by a Supervisor of Elections shall begin, except as noted herein, with the first three letters of county's name, followed by the last two digits of the calendar year in which the petition form is approved and by a number in numerical sequence. Instead of the first three letters in the county's name, the following counties will use these letters: Collier – CLR and Martin – MRT. For example, the first petition form approved in 2009 by Palm Beach County would be assigned the serial number PAL09-1 and the first petition form approved in 2010 by Collier County would be assigned the serial number CLR10-1.

(6) Changes. Any change to a previously approved petition form shall be submitted to the Division of Elections or Supervisor of Elections, as applicable, for review. No person or entity other than the sponsoring political committee of the previously approved petition form can submit a change to a previously approved petition form. The Division of Elections or Supervisor of Elections must approve any material change to a previously approved petition form. A material change constitutes a change in the wording of the text of the proposed

ballot language, a change in punctuation or layout, or a change in the name of the sponsoring political committee. A translation into another language does not constitute a material change to an initiative petition form. Any material change submitted for approval to a previously approved initiative petition constitutes a request for approval of a new petition form and shall be assigned a different serial number upon approval by the Division of Elections or Supervisor of Elections, as applicable.

(7) Reproduction. A petition form may be reproduced in newspapers, magazines, and other forms of printed mass media or made available through the internet for download printing, provided the form is reproduced in the same format as approved by the Division of Elections or Supervisor of Elections, as applicable. The petition form may be included within a larger advertisement, provided the form is clearly defined by a solid or broken line border.

(8) Submission of Signed Petition Forms. All signed petition forms shall be returned to the sponsoring political committee. Only the sponsoring political committee shall submit the signed petition forms for verification of signatures to the Supervisor of Elections and the submission shall be in the county in which the signer is a registered voter. It is the responsibility of the sponsoring political committee to ensure that the signed petition form is properly filed with, or if misfiled forwarded to, the Supervisor of Elections of the county in which the signee is a registered voter. In the case of a misfiled petition, the filing date of the petition is the date such petition is filed with the proper county.

(9) Signature Verification.

(a) The Supervisor of Elections shall promptly verify the signatures on each petition form to ensure that each person signing the petition form:

1. Was, at the time of signing and verification of the petitions, a registered voter in the county in which the petition is submitted,

2. Had not signed the petition form more than two years prior to the date the Supervisor of Elections verified the petition, and

3. Had not ever previously signed a petition form containing the identical initiative.

(b) The Supervisor of Elections shall not verify a signature on the petition form unless all of the following information is contained on the petition form:

1. The voter's name,

2. The voter's address (including city and county),

3. The voter's date of birth or voter registration number,

4. The voter's original signature, and

5. The date the voter signed the petition, as recorded by the voter.

(10) Limitation on Use of Verified Signatures. Verified signatures used successfully to place a proposed initiative petition on the ballot that subsequently fails to be approved by the electors at the general election shall not be used again in support of any future initiative petition.

Specific Authority 20.10(3), 97.012(1), 105.036 FS. Law Implemented Art V, Fla. Const., 101.161, 105.036 FS. History--New _____.

DEPARTMENT OF EDUCATION

State Board of Education

RULE NO.: RULE TITLE:
6A-14.092 Textbook Affordability

PURPOSE AND EFFECT: The purpose of the rule is to implement Section 1004.085, Florida Statutes, relating to textbook affordability and to delineate the Department and institutions' responsibilities as required by the legislation.

SUBJECT AREA TO BE ADDRESSED: This rule will delineate implementation requirements for institutions within the Florida College System as required by Section 1004.085, Florida Statutes, which addresses the concern of textbook affordability in postsecondary education. The rule will also require the Department and institutions within the Florida College System to form a textbook affordability workgroup that will submit a report to the State Board of Education by December 1, 2009 with recommendations for providing textbooks to students otherwise unable to afford them.

SPECIFIC AUTHORITY: 1004.085(3), (4) FS.

LAW IMPLEMENTED: 1004.085 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: Julie Alexander, Division of Community Colleges, (850)245-9523 or Email: julie.alexander@fldoe.org

To request a rule development workshop contact: Lynn Abbott, Office of the Agency Clerk, Department of Education, (850)245-9661 or email lynn.abbott@fldoe.org

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

6A-14.092 Textbook Affordability.

Pursuant to Section 1004.085, Florida Statutes, institutions within the Florida College System shall:

(1) Adopt textbooks no later than 45 days prior to the first day of classes to allow sufficient lead time to bookstores to work with publishers so as to confirm availability of the requested materials and to ensure maximum availability of

used books. Where courses are added after this 45 day deadline, textbooks for such courses shall be adopted as soon as is feasible to ensure sufficient lead time.

(2) Pursuant to Section 1004.085(3), Florida Statutes, for those classes added after the 30 day notification deadline, institutions shall post textbook information on their websites immediately as such information becomes available.

(3) Collect and maintain, before textbook adoption is finalized, written or electronically transmitted certifications from course instructors attesting:

(a) That all textbooks and other instructional items ordered will be used, particularly each individual item sold as part of a bundled package, and

(b) The extent to which a new edition differs significantly and substantively from earlier versions, and the value of changing to a new edition.

(4) Provide assistance as requested by the statewide textbook affordability workgroup established by the Department of Education to recommend policies and strategies that address the availability of required textbooks to students otherwise unable to afford the cost. The workgroup shall consist of nine representatives from institutions within the Florida College System chosen based on variable student enrollment (small and large student populations), geographic location (north, central and south) and economic status of student body (high population receiving need-based financial aid). A report shall be submitted by the workgroup to the State Board of Education by December 1, 2009 that identifies the policies.

Specific Authority 1004.085(3), (4) FS. Law Implemented 1004.085 FS. History--New _____.

DEPARTMENT OF COMMUNITY AFFAIRS

Division of Community Planning

RULE NOS: RULE TITLES:
9J-5.003 Definitions
9J-5.006 Future Land Use Element
9J-5.010 Housing Element
9J-5.013 Conservation Element
9J-5.019 Transportation Element

PURPOSE AND EFFECT: The purpose and effect are to amend the rule to implement the new requirements established by Chapter 2008-191, Laws of Florida (CS/HB 697).

SUBJECT AREA TO BE ADDRESSED: Chapter 9J-5, F.A.C., is to be amended to establish minimum criteria to be used in reviewing comprehensive plans to determine whether they comply with the new requirements of Chapter 2008-191, Laws of Florida, regarding energy efficient land use patterns accounting for existing and future electric power generation and transmission systems, greenhouse gas reduction strategies, strategies to address reduction in greenhouse gas emissions from the transportation sector, factors that affect energy conservation, depicting energy conservation in the future land

use map series, energy efficiency in the design and construction of new housing, and the use of renewable energy resources.

SPECIFIC AUTHORITY: 163.3177(9) FS.

LAW IMPLEMENTED: 163.3177(6)(a), (b), (d), (f), (j) FS. (only as those sections were amended by Chapter 2008-191, Laws of Florida.)

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

DATE AND TIME: January 9, 2009, 10:00 a.m.

PLACE: Kelley Training Center, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100

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: Bobbe Pound, Department of Community Affairs, 2555 Shumard Oak Boulevard, Sadowski Building, Tallahassee, Florida 32399-2100, (850)922-1696. 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: Walker Banning and Bernard Piawah, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, (850)488-2356

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

DEPARTMENT OF REVENUE

Miscellaneous Tax

RULE NOS.:	RULE TITLES:
12B-5.130	Refunds
12B-5.150	Public Use Forms

PURPOSE AND EFFECT: Section 206.8745(6), F.S., grants a refund for undyed tax-paid diesel fuel that is consumed by a power take-off unit or engine exhaust for the purpose of unloading bulk cargo by pumping when the power takeoff unit or engine exhaust is mounted on a motor vehicle that has no separate fuel tank. Paragraph (2)(a) of Rule 12B-5.130, F.A.C. (Refunds), implements this statute. Originally, the Department administered Section 206.8745(6), F.S., to only apply to taxpayers that used pneumatic pumps to off-load bulk cargo. Based on a study of pneumatic pumps, the Department adopted paragraph 12B-5.130(2)(a), F.A.C., as a presumption that pneumatic pumps used 10 gallons of fuel to off-load a full load of cargo. Thus, taxpayers were granted a refund on 10 gallons of motor fuel for every full load of cargo that was unloaded. In *Pritchett Trucking, Inc. v. Department of Revenue* (Case No. 04-3093 CA, 2nd Circuit, July 3, 2008), the court held that

Section 206.8745, F.S., grants refunds for any type of pumping used to unload bulk cargo, regardless whether the means of pumping is by pneumatics, hydraulics, or any other method. Since the 10-gallon presumption in paragraph 12B-5.130(2)(a), F.A.C., was only valid for pneumatic pumps, the Department amended the rule to remove the 10-gallon presumption.

The purpose of this rulemaking is to solicit public information to adopt a new standard that can be used by taxpayers that use any type of pumping to off-load bulk cargo.

SUBJECT AREA TO BE ADDRESSED: The subject area of the workshop is refunds for undyed tax-paid diesel fuel that is consumed by a power take-off unit or engine exhaust for the purpose of unloading bulk cargo by pumping.

SPECIFIC AUTHORITY: 206.14(1), 206.59(1), 206.8745(6), 213.06(1) FS.

LAW IMPLEMENTED: 206.02, 206.021, 206.022, 206.025, 206.026, 206.027, 206.028, 206.05, 206.055, 206.095, 206.404, 206.41(4), (5), 206.43, 206.64, 206.86, 206.8745, 206.877, 206.90, 206.91, 206.92, 206.9931, 206.9943, 206.97 FS.

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

DATE AND TIME: February 5, 2009, 10:00 a.m.

PLACE: Room 118, Carlton Building, 501 S. Calhoun 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 48 hours before the workshop/meeting by contacting: Larry Green at (850)922-4830. 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: Ronald Gay, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4732

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

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."

PUBLIC SERVICE COMMISSION

RULE NOS.:	RULE TITLES:
25-24.516	Pay Telephone Rate Caps
25-24.630	Rate and Billing Requirements

PURPOSE AND EFFECT: To effectuate re-notice of rulemaking in Docket No. 060476-TL.

SUBJECT AREA TO BE ADDRESSED: Operator service and pay telephone rates.

SPECIFIC AUTHORITY: 350.127(2), 364.3375; 364.3376, 364.03 FS.

LAW IMPLEMENTED: 364.01, 364.03, 364.3375, 364.3376 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: Richard Bellak, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850)413-6092

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

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-204.005
 RULE TITLE: Cash Meals and Special Group Meals

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to amend Rule 33-204.005, F.A.C., to reflect the Department’s switch from a private food service contractor to self-operation.

SUBJECT AREA TO BE ADDRESSED: Food service.

SPECIFIC AUTHORITY: 944.09 FS.

LAW IMPLEMENTED: 110.502, 110.504, 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: Kendra Lee Jowers, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

33-204.005 Cash Meals and Special Group Meals.

(1) The cost of meals for employees or volunteers shall be borne by the individual being provided with the meal, except as provided in subsection (2) of this section. Employees or volunteers served meals shall be charged a the predetermined amount as determined by the Secretary designated in the current food services contract.

(2) No change.

Specific Authority 944.09 FS. Law Implemented 110.502, 110.504, 944.09 FS. History–New 1-18-89, Formerly 33-30.005, Amended 5-21-00, 6-26-03, 10-24-04,_____.

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-208.507
 RULE TITLE: Responsibilities of Staff Housing Occupants

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to amend Rule 33-208.507, F.A.C., to eliminate a discrepancy that prohibits adult occupants from possessing electronic weapons or devices while allowing minors to possess such weapons under adult supervision.

SUBJECT AREA TO BE ADDRESSED: The possession of weapons by staff housing occupants.

SPECIFIC AUTHORITY: 20.315, 944.09(1), 945.025(1) FS.

LAW IMPLEMENTED: 20.315, 944.09(1), 944.10, 945.025(1) 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: Kendra Lee Jowers, 2601 Blair Stone Road, Tallahassee, Florida 32399-2500

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

33-208.507 Responsibilities of Staff Housing Occupants.

(1) through (3) No change.

(4) Firearms.

(a) through (e) No change.

(f) Occupants of staff housing shall follow the restrictions placed on the possession and use of BB guns ~~or~~ air or gas-operated guns, ~~or electric weapons or devices~~ by minors under 16 in accordance with Section 790.22, F.S.

Specific Authority 20.315, 944.09(1), 945.025(1) FS. Law Implemented 20.315, 944.09(1), 944.10, 945.025(1) FS. History–New 9-1-88, Formerly 33-26.007 33-602.507, Amended 8-16-00, 1-19-03, 3-30-05, 10-29-08,_____.

WATER MANAGEMENT DISTRICTS

Northwest Florida Water Management District

RULE NO.: 40A-2.051
 RULE TITLES: Exemptions
 40A-2.901 Forms

PURPOSE AND EFFECT: The purpose and effect of the proposed rule development is to: reduce the permitting requirements for water users whose withdrawals pose minimal impact to the water resources, minimize non-potable demands

Edwards, Sr. Administrative Assistant, 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 AVAILABLE AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

WATER MANAGEMENT DISTRICTS

Southwest Florida Water Management District

RULE NOS.:	RULE TITLES:
40D-2.091	Publications Incorporated by Reference
40D-2.301	Conditions for Issuance of Permits
40D-2.321	Duration of Permits

PURPOSE AND EFFECT: The rulemaking is intended to set forth the criteria to be met to obtain a water use permit with a 20 year duration. In addition, the rulemaking is intended to set forth environmental resource permitting requirements for issuance of a water use permit for multi-phase projects that require both a water use permit and an environmental resource permit.

SUBJECT AREA TO BE ADDRESSED: The subject area of the proposed rulemaking is amendments to the District water use permitting rules in Chapter 40D-2, F.A.C., and Part B, Basis of Review For Water Use Permit Applications, of the Water Use Permit Information Manual regarding the standards that must be met to obtain a water use permit with a duration of 20 years. Small General permits will be issued with a 20 year duration. General or Individual permits applicants may request a permit with up to a 20 year permit duration where the applicant demonstrates (1) exceptional implementation of alternative water supplies and water conservation, or (2) assistance in the provision of water to help meet a Minimum Flow or Level that would otherwise not be met, or (3) the provision of a significant quantity of alternative water supply that offsets the withdrawal of ground water, and (4) agreement to comply with conservation and water resource protection standards and associated water use compliance phase-in periods when adopted by rule. The proposed rules also describe required five year compliance reports and the information to be reported for 20 year permits.

SPECIFIC AUTHORITY: 373.044, 373.103, 373.113, 373.118, 373.171 FS.

LAW IMPLEMENTED: 373.036, 373.0361, 373.042, 373.0421, 373.0831, 373.103, 373.116, 373.117, 373.118, 373.149, 373.171, 373.1963, 373.216, 373.219, 373.223, 373.229, 373.236, 373.239, 373.243 FS.

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

DATE AND TIME: January 13, 2009, 10:00 a.m.

PLACE: Southwest Florida Water Management District Tampa Service Office, Governing Board Room, 7601 Hwy 301 North, Tampa, FL 33637-6759

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: Dianne Lee at (352)796-7211 or 1(800)423-1476, extension 4658; TDD only number 1(800) 231-6103; Fax number (352)754-6878/SUNCOM 663-6878. 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: Charlotte Edwards, Sr. Administrative Assistant, 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 AVAILABLE AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

DEPARTMENT OF ELDER AFFAIRS

Federal Aging Programs

RULE NOS.:	RULE TITLES:
58A-5.0131	Definitions
58A-5.014	License Application, Change of Ownership, and Provisional Licenses
58A-5.016	License Requirements
58A-5.0181	Admission Procedures, Appropriateness of Placement and Continued Residency Criteria
58A-5.0182	Resident Care Standards
58A-5.0183	Advance Directives and Do Not Resuscitate Orders (DNRO)
58A-5.019	Staffing Standards
58A-5.0191	Staff Training Requirements and Competency Test
58A-5.025	Resident Contracts
58A-5.029	Limited Mental Health
58A-5.033	Administrative Enforcement

PURPOSE AND EFFECT: The purpose and effect of the proposed rule amendments is to add a definition of “department”; provide the address for facilities to obtain forms for licensure applications; include additional licensure requirements; include an additional requirement for determining continued residency and changes to AHCA Form 1823, which is incorporated by reference; include changes to resident care standards as in pertains to third party services; include posting of the work schedule for direct care staff as part of the staffing standards; include changes to staff training requirements, specifically HIV/AIDS, pursuant to Section 381.0035, F.S., and additional limited mental health training; include changes to the resident contract, specifically

notification that the resident must be assessed for admission as well as for continued residency, requiring use of AHCA Form 1823 for the latter determination; include changes to require facilities to ensure that mental health residents receive appropriate services; and deletion of the use of a temporary license under administrative enforcement. The purpose and effect of a new rule is to outline procedures for advance directives and do not resuscitate orders.

SUBJECT AREA TO BE ADDRESSED: New definition of "department"; address for facilities to obtain forms for licensure applications; additional licensure requirements; additional requirement for determining continued residency; changes to AHCA Form 1823, which is incorporated by reference; changes to resident care standards as in pertains to third party services; posting of the work schedule for direct care staff; changes to staff training requirements, specifically HIV/AIDS, and additional limited mental health training; notification that the resident must be assessed for admission as well as for continued residency, requiring use of AHCA Form 1823 for the latter determination; changes to require facilities to ensure that mental health residents receive appropriate services; deletion of the use of a temporary license; and procedures for advance directives and do not resuscitate orders.

SPECIFIC AUTHORITY: 429.07, 429.15, 429.178, 429.23, 429.24, 429.255, 429.26, 429.275, 429.41, 429.42, 429.52 FS.

LAW IMPLEMENTED: 429.02, 429.04, 429.07, 429.075, 429.08, 429.11, 429.12, 429.14, 429.15, 429.17, 429.174, 429.176, 429.178, 429.19, 429.24, 429.255, 429.256, 429.23, 429.26, 429.27, 429.275, 429.28, 429.34, 429.41, 429.42, 429.44, 429.445, 429.47, 429.52 FS.

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

DATE AND TIME: January 7, 2009, 9:00 a.m. – 12:00 noon EST.

PLACE: Department of Elder Affairs, Conference Room 225F, 4040 Esplanade Way, 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:

58A-5.0131 Definitions.

In addition to the terms defined in Section 429.02, F.S., the following definitions are applicable in this rule chapter:

(1) through (10) No change.

(11) "Department" means the Department of Elder Affairs.

(11) through (34) renumbered (12) through (35) No change.

~~(35) "Temporary license" means a license issued by Agency for Health Care Administration to an assisted living facility that supersedes and temporarily replaces the current license and remains in place pending the final disposition of a proceeding involving the suspension or revocation of an assisted living facility license.~~

(36) through (37) No change.

Specific Authority 429.23, 429.41 FS. Law Implemented 429.02, 429.07, 429.075, 429.11, 429.14, 429.178, 429.19, 429.255, 429.23, 429.28, 429.41, 429.47, 429.52 FS. History—New 9-30-92, Formerly 10A-5.0131, Amended 10-30-95, 6-2-96, 4-20-98, 10-17-99, 1-9-02, 7-30-06,_____.

58A-5.014 License Application, Change of Ownership, and Provisional Licenses.

(1) LICENSE APPLICATION. An applicant for a standard assisted living facility (ALF) license, or a limited mental health (LMH), extended congregate care (ECC), or limited nursing services (LNS) license may obtain a license application package from the Agency Central Office.

(a) The completed application shall be signed, under oath, by an owner (or corporate officer if the owner is a corporation), the administrator, or an individual designated in writing by an owner or corporate officer, who is at least 18 years old. The complete application must shall include the following:

1. The Assisted Living Facilities (ALF) License Application, AHCA Form 3110-1008, January 2006, and the Assisted Living Facility Licensure Application Addendum, AHCA Form 3110-1016, January 2006, ~~which are incorporated by reference and can be obtained from the Agency Central Office,~~ with all requested information provided as specified in Section 429.11(3), F.S. Both forms are hereby incorporated by reference and available from the Agency Central Office at the address specified in Rule 58A-5.0131, F.A.C.

2. An assets and liabilities statement, or AHCA Form 3180-1003, January 1998, which is incorporated by reference and available from the Agency Central Office at the address specified in Rule 58A-5.0131, F.A.C. The assets and liabilities statement shall include information about the assets available to cover claims against the owner and administrator and to demonstrate that the applicant has the financial ability to operate.

3. A statement of operations, or AHCA Form 3180-1002, July 1995, which is incorporated by reference and available from the Agency Central Office at the address specified in Rule 58A-5.0131, F.A.C. The statement of operations shall include projected revenues, expenses, taxes, extraordinary items, and other credits or charges for the first 12 months of operation.

4. ~~If the proposed facility will be part of a continuing care retirement community, a copy of the Certificate of Authority to offer continuing care agreements issued pursuant to Chapter 651, F.S., if the proposed facility will be part of a continuing care retirement community.~~ The certificate may be used in lieu of fiscal documentation specified in subparagraphs 2. and 3. of this paragraph.

5. No change.

6. For applicants ~~applying for anticipating~~ a licensed capacity of 14 or fewer residents and ~~the home is~~ located in an area zoned single-family or multi-family, documentation of compliance with the community residential home requirements specified in Chapter 419, F.S., ~~obtained from the Department of Children and Family Services' district community residential home coordinator.~~ If not located in an area zoned single-family or multi-family, ~~one of the following documentations must be submitted to the agency; Local Zoning Form, AHCA Form 3180-1021, September 1996, which is incorporated by reference or a letter from the local zoning authority, signed by the county zoning official, which states that the applicant is in compliance with local zoning ordinances.~~

a. AHCA Form 3180-1021, Local Zoning Form, September 1996, which is hereby incorporated by reference and available from the Agency Central Office at the address specified in Rule 58A-5.0131, F.A.C.; or

b. A letter from the local zoning authority, signed by the county zoning official, which states that the applicant is in compliance with local zoning ordinances.

7. through 14. No change.

(b) through (e) No change.

(2) CHANGE OF OWNERSHIP (CHOW).

(a) through (e) No change.

(f) During a change of ownership, the owner of record is responsible for ensuring that the needs of all residents are met at all times in accordance with Part ~~III~~ of Chapter ~~42900~~, F.S., and this rule chapter.

(g) No change.

(3) through (4) No change.

Specific Authority 429.07, 429.41 FS. Law Implemented 429.02, 429.04, 429.07, 429.08, 429.11, 429.12, 429.174, 429.27, 429.275, 429.41, 429.44, 429.445, 429.47 FS. History—New 5-14-81, Amended 1-6-82, 5-19-83, 9-17-84, Formerly 10A-5.14, Amended 10-20-86, 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.014, Amended 10-30-95, 4-20-98, 10-17-99, 7-30-06,_____.

58A-5.016 License Requirements.

(1) through (6) No change.

(7) The facility administrator or designee must identify Medicaid waiver residents to the agency and the department for monitoring purposes authorized by state and federal laws.

(8) The facility administrator or designee must ensure that residents requiring services from an outside entity as described on AHCA Form 1823 receive those services. The form is incorporated by reference in paragraph 58A-5.0181(2)(b), F.A.C.

(9) In instances when a resident arranges for services as a result of a third party care plan, the facility administrator or designee, when notified by the resident, must ensure that he or she receives those services, unless the resident expressly does not wish the facility's involvement in the delivery of the services.

(10) The facility administrator or designee must coordinate with the service provider in an effort to ensure that the service goals are met, with the exception referenced in subsection (9) of this rule.

Specific Authority 429.41 FS. Law Implemented 429.07, 429.11, 429.12, 429.41, 429.44, 429.445 FS. History—New 5-15-81, Amended 1-6-82, 9-17-84, Formerly 10A-5.16, Amended 6-21-88, 9-30-92, Formerly 10A-5.016, Amended 10-30-95, 10-17-99, 7-30-06,_____.

58A-5.0181 ~~Residency Criteria and Admission Procedures, Appropriateness of Placement and Continued Residency Criteria.~~

(1) No change.

(2) HEALTH ASSESSMENT.

(a) The medical examination report must be completed within 60 days prior to the individual's admission to a facility pursuant to Section 429.26(4), F.S. A medical examination must be completed annually thereafter or after a significant change, as defined in Rule 58A-5.0131, F.A.C. The report must ~~shall~~ address the following:

1. through 8. No change.

(b) Medical examinations completed after the admission of the resident to the facility must be completed within 30 days of the date of admission and must be recorded on the Resident Health Assessment For Assisted Living Facilities (ALF), AHCA Form 1823, _____ 2009 ~~January 2006~~, which is hereby incorporated by reference. A faxed copy of the completed form is acceptable. A copy of AHCA Form 1823 may be obtained from the Agency Central Office or its website at www.fdhc.state.fl.us/MCHQ/Long_Term_Care/Assisted_living/pdf/AHCA_Form_1823%20Jan_2006_.pdf. *(New form date [_____ 2009] Previous versions of this form completed up to six (6) months after 7-30-06 are acceptable.*

(c) through (g) No change.

(3) ADMISSION PACKAGE.

(a) The facility shall make available to potential residents a written statement(s) which includes the following information listed below. A copy of the facility resident contract or facility brochure containing all the required information shall meet this requirement:

1. through 10. No change.

11. A statement of the facility policy concerning Do Not Resuscitate Orders pursuant to Section 429.255, F.S., and Advance Directives pursuant to Chapter 765, F.S., and Rule 58A-5.0183, F.A.C.

12. through 14. No change.

(b) Prior to or at the time of admission, the resident, responsible party, guardian, or attorney in fact, if applicable, shall be provided with the following:

1. No change.

2. A copy of the facility statement described in paragraph (a) of this subsection if one has not already been provided;

3. through 4. No change.

(c) No change.

(4) CONTINUED RESIDENCY. Except as follows in paragraphs (a) through (e) of this subsection, cCriteria for continued residency in a facility holding a standard, limited nursing services, or limited mental health license shall be the same as the criteria for admission. A determination of continued residency must be completed at least annually or after a significant change as defined in Rule 58A-5.0131, F.A.C. The facility must make the determination using AHCA Form 1823, which is incorporated by reference in paragraph (2)(b) of this rule. After the effective date of this rule, providers shall have up to 6 months to comply with this requirement, except as follows:

(a) through (e) No change.

(5) No change.

Specific Authority 429.07, 429.26, 429.41 FS. Law Implemented 429.02, 429.07, 429.075, 429.26, 429.41 FS. History—New 9-17-84, Formerly 10A-5.181, Amended 10-20-86, 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.0181, Amended 10-30-95, 6-2-96, 10-17-99, 7-30-06, 10-9-06,_____.

58A-5.0182 Resident Care Standards.

An assisted living facility shall provide care and services appropriate to the needs of residents accepted for admission to the facility.

(1) through (6) No change.

(7) THIRD PARTY SERVICES. Nothing in this rule chapter is intended to prohibit a resident or the resident’s representative from independently arranging, contracting, and paying for services provided by a third party of the resident’s choice, including a licensed home health agency or private nurse, or receiving services through an out-patient clinic, provided the resident meets the criteria for continued residency and the resident complies with the facility’s policy relating to the delivery of services in the facility by third parties. The

facility’s policies ~~must~~ may require the third party to coordinate with the facility regarding the resident’s condition and the services being provided pursuant to subsection (8) of Rule 58A-5.016, F.A.C., with the exception referenced in subsections (9) and (10) of that rule. Pursuant to subsection (6) of this rule, the facility shall provide the resident with the facility’s policy regarding the provision of services to residents by non-facility staff.

(8) No change.

(9) No change.

Specific Authority 429.02, 429.41 FS. Law Implemented 429.02, 429.255, 429.256, 429.26, 429.28, 429.41 FS. History—New 9-17-84, Formerly 10A-5.182, Amended 10-20-86, 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.0182, Amended 10-30-95, 4-20-98, 11-2-98, 10-17-99, 7-30-06, 10-9-06,_____.

58A-5.0183 Advance Directives and Do Not Resuscitate Orders (DNRO).

(1) POLICIES AND PROCEDURES:

Each assisted living facility (ALF) must have written policies and procedures, which delineate its position with respect to state laws and rules relative to advance directives. These policies and procedures shall not condition treatment or admission upon whether or not the individual has executed or waived an advance directive. In the event of conflict between the ALF’s policies and procedures and the resident’s advance directive, provision should be made in accordance with Chapter 765, F.S. The ALF’s policy shall include the following:

(a) Providing each resident, or the resident’s representative, with the following information at the time of admission:

1. A copy of Form SCHS-4-2006, “Health Care Advance Directives – The Patient’s Right to Decide,” effective April 2006, or with a copy of some other substantially similar document which incorporates information regarding advance directives included in Chapter 765, F.S. Form SCHS-4-2006 is hereby incorporated by reference and is available from the Agency for Health Care Administration, 2727 Mahan Drive, Mail Stop 34, Tallahassee, FL 32308, or the agency’s Web site at: http://ahca.myflorida.com/MCHO/Health Facility Regulation/HC Advance Directives/docs/adv_dir.pdf.

2. Written information concerning the ALF’s policies regarding resuscitation and advance directives, including information concerning DH Form 1896, Florida Do Not Resuscitate Order Form, incorporated by reference in Rule 64E-2.031, F.A.C.

(b) The requirement that documentation must be contained in the resident’s record indicating whether or not the resident has executed an advance directive. If an advanced directive has been executed, a copy of that document must be made a part of

the resident's record. If the ALF does not receive a copy of a resident's executed advanced directive, the ALF must document in the resident's record that it has requested a copy.

(2) LICENSE REVOCATION.

An ALF shall be subject to revocation of its license pursuant to Section 408.815, F.S., if, as a condition of treatment or admission, it requires an individual to execute or waive an advance directive, pursuant to Section 765.110, F.S.

(3) DNRO PROCEDURES.

Pursuant to Section 429.255, F.S., an ALF should honor a DNRO as follows:

(a) In the event of cardiopulmonary distress, immediately contact "911."

(b) Cardiopulmonary resuscitation may be withheld or withdrawn from a resident only under the following conditions:

1. A valid DNRO is present; and

2. An individual, pursuant to Section 401.25, F.S., withholds or withdraws cardiopulmonary resuscitation.

(4) LIABILITY.

Pursuant to Section 429.255, F.S., ALF providers shall not be subject to criminal prosecution or civil liability, nor be considered to have engaged in negligent or unprofessional conduct, for following the procedures set forth in subsection (3) of this rule, which involves withholding or withdrawing cardiopulmonary resuscitation pursuant to a Do Not Resuscitate Order and rules adopted by the department. Any ALF provider, who, in good faith, obeys the directives of an existing DNRO, executed pursuant to Section 401.45, F.S., will not be subject to prosecution or civil liability for his or her performance regarding patient care.

Specific Authority 429.255 FS. Law Implemented 429.255 FS. History-New _____.

58A-5.019 Staffing Standards.

(1) through (3) No change.

(4) STAFFING STANDARDS.

(a) Minimum staffing:

1. through 2. No change.

3. In facilities with 8 ~~17~~ or more residents, there shall be at least one staff member awake at all hours of the day and night.

4. through 8. No change.

(b) No change.

(c) The facility shall maintain a written work schedule which reflects the facility's 24-hour staffing pattern for a given time period. The work schedule for direct care staff must be posted in a conspicuous area of the facility where residents gather.

(d) through (f) No change.

Specific Authority 429.41, 429.52, 429.275 FS. Law Implemented 429.02, 429.04, 429.174, 429.176, 429.19, 429.24, 429.255, 429.26, 429.275, 429.41, 429.52 FS. History--New 5-14-81, Amended 1-6-82, 9-17-84, Formerly 10A-5.19, Amended 10-20-86, 6-21-88, 8-15-90, 9-30-92, Formerly 10A-5.019, Amended 10-30-95, 4-20-98, 11-2-98, 10-17-99, 7-30-06, _____.

58A-5.0191 Staff Training Requirements and Competency Test.

(1) through (2) No change.

(3) HUMAN IMMUNODEFICIENCY VIRUS/ACQUIRED IMMUNE DEFICIENCY SYNDROME (HIV/AIDS). Pursuant to Section 381.0035, F.S., all facility employees, with the exception of employees subject to the requirements of Section 456.033, F.S., must complete biennially, a one-time continuing education course on HIV and AIDS, including the topics prescribed in the Section 381.0035, F.S. New facility staff must obtain the an initial training on HIV/AIDS within 30 days of employment, unless the new staff person previously completed the initial training and has maintained the biennial continuing education requirement. Documentation of compliance must be maintained in accordance with subsection (11) of this rule.

(4) through (7) No change.

(8) LIMITED MENTAL HEALTH TRAINING. Pursuant to Section 429.075, F.S., the administrator, manager, and staff in direct contact with mental health residents in a facility with a limited mental health license must receive a minimum of 6 hours training provided or approved by the Department of Children and Family Services within 6 months of the facility's receiving a limited mental health license or within 6 months of employment in a facility holding a limited mental health license. Staff in "direct contact" means direct care staff and staff whose duties take them into resident living areas and require them to interact with mental health residents on a daily basis. The term does not include maintenance, food service, or administrative staff if such staff have only incidental contact with mental health residents.

(a) Pursuant to Section 429.075, F.S., the administrator, manager and staff, who have direct contact with mental health residents in a licensed limited mental health facility, must receive the following training:

1. A minimum of 6 hours of specialized training in working with individuals with mental health diagnoses.

a. The training must be provided or approved by the Department of Children and Families and must be taken within 6 months of the facility's receiving a limited mental health license or within 6 months of employment in a limited mental health facility.

b. Staff in "direct contact" means direct care staff and staff whose duties take them into resident living areas and require them to interact with mental health residents on a daily basis.

The term does not include maintenance, food service or administrative staff, if such staff have only incidental contact with mental health residents.

2. A minimum of 6 hours of specialized continuing education training annually thereafter from a mental health provider in subjects dealing with mental health issues. Administrators, managers and staff affected by this requirement shall have up to 6 months from the effective date of this rule to meet this requirement.

(b)(a) Administrators, managers and staff receiving this training do not have to repeat the initial this training should they change employers provided they present the employee provides a copy of their the employee's training certificate to the employee's current employer for retention in the facility's personnel files. They must ensure that copies of the continuing education training certificates are retained in their personnel files.

(c)(b) Training received under this subsection may count one for 6 of the 12 hours of continuing education required for administrators and managers under subsection (1) of this rule.

(9) through (11) No change.

Specific Authority 429.178, 429.41, 429.52 FS. Law Implemented 429.07, 429.075, 429.178, 429.41, 429.52 FS. History–New 9-30-92, Formerly 10A-5.0191, Amended 10-30-95, 6-2-96, 4-20-98, 11-2-98, 10-17-99, 7-5-05, 7-30-06, 10-9-06, 7-1-08,_____.

58A-5.025 Resident Contracts.

(1) Pursuant to Section 429.24, F.S., prior to or at the time of admission, each resident or the residents legal representative, shall, prior to or at the time of admission, execute a contract with the facility which contains the following provisions:

(a) through (j) No change.

(k) A provision that residents must be assessed upon admission pursuant to subsection (2) of Rule 58A-5.0181, F.A.C., and periodically thereafter pursuant to subsection (4) of that rule.

(2) through (3) No change.

Specific Authority 429.24, 429.41 FS. Law Implemented 429.24, 429.41 FS. History–New 10-17-99, Amended 7-30-06,_____.

58A-5.029 Limited Mental Health.

(1) through (2) No change.

(3) RESPONSIBILITIES OF FACILITY. In addition to the staffing and care standards of this rule chapter to provide for the welfare of residents in an assisted living facility, a facility holding a limited mental health license must:

(a) through (e) No change.

(f) Ensure that residents assessed to be in need of mental health services, as indicated in their community living support plan, receive those services.

Specific Authority 429.41 FS. Law Implemented 394.4574, 429.02, 429.075, 429.26, 429.41, 409.912 FS. History–New 8-15-90, Amended 9-30-92, Formerly 10A-5.029, Repromulgated 10-30-95, Amended 6-2-96, 11-2-98, 7-30-06,_____.

58A-5.033 Administrative Enforcement.

Facility staff shall cooperate with Agency personnel during surveys, complaint investigations, monitoring visits, implementation of correction plans, license application and renewal procedures and other activities necessary to ensure compliance with Part I of Chapter 429, F.S., and this rule chapter.

(1) through (6) No change.

(7) TEMPORARY LICENSE. Temporary licenses as defined in subsection 58A-5.0131(37), F.A.C., may be issued by the Agency upon the initiation of any proceeding pursuant to Section 429.14(8), F.S.

Specific Authority 429.15, 429.23, 429.41, 429.42 FS. Law Implemented 429.07, 429.08, 429.11, 429.12, 429.14, 429.15, 429.17, 429.19, 429.12, 429.23, 429.27, 429.28, 429.34, 429.41, 429.42 FS. History–New 9-30-92, Formerly 10A-5.033, Amended 10-30-95, 10-17-99, 1-9-02, 7-30-06,_____.

DEPARTMENT OF ELDER AFFAIRS

Federal Aging Programs

RULE NOS.:	RULE TITLES:
58A-14.002	Definitions
58A-14.003	License Application, Renewal and Conditional Licenses
58A-14.004	License Requirements
58A-14.0061	Admission Procedures, Appropriateness of Placement and Continued Residency Requirements
58A-14.008	Staff Qualifications, Responsibilities and Training

PURPOSE AND EFFECT: The purpose and effect of the proposed rule amendments is as follows: include additional definitions; require the provider to produce documentation that he or she resides in the AFCH as a condition of licensure; prohibit a change of ownership of an AFCH; require posting of specific information; include an additional requirement for determining continued residency and changes to AHCA Form 3110-1023 (AFCH-1110), which is incorporated by reference; and rewrite the staffing requirements regarding communicable diseases, including tuberculosis, for more clarity.

SUBJECT AREA TO BE ADDRESSED: Additional definitions of “person” or “persons” and “reside” or “resides;” documentation that an AFCH provider resides in the home; prohibition of a change of ownership for an AFCH; posting of specific information in the AFCH; determination of continued residency and revision of AHCA Form 3110-1023 (AFCH-1110); and clarification of staffing requirements regarding communicable diseases, including tuberculosis.

SPECIFIC AUTHORITY: 429.67, 429.69, 429.71, 429.73, 429.75 FS.

LAW IMPLEMENTED: 429.65, 429.67, 429.71, 429.73, 429.75, 429.83, 429.85 FS.

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

DATE AND TIME: January 7, 2009, 1:00 p.m. – 2:30 p.m.

PLACE: Department of Elder Affairs, Conference Room 225F, 4040 Esplanade Way, 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:

58A-14.002 Definitions.

The following terms or phrases are defined in Section 429.65, F.S., and are applicable to this rule chapter: activities of daily living (ADLs), adult family-care home (AFCH), agency (AHCA), aging in place, appropriate placement, chemical restraint, department, disabled adult, frail elder, personal services or personal care, provider, relative, relief person, and resident. Additional definitions applicable to this rule chapter are as follows:

(1) through (14) No change.

(15) "Person" or "persons" means solely the licensee or licensees to whom the agency has issued the AFCH license.

(15) through (16) renumbered (16) through (17) No change.

(18) "Reside" or "resides" means the licensee or applicant lives in the adult family-care home as a primary residence. For purposes of this rule chapter, any two of the following documents, which include the adult family-care home address and the name of the licensee or applicant, are to be accepted by the agency as proof that he or she physically lives in the adult family-care home:

(a) Homestead exemption documentation; or

(b) Lease or rental agreement accompanied by a corresponding utility bill and telephone bill; or

(c) Personal identification issued by a state or federal agency.

(17) through (19) renumbered (19) through (21) No change.

Specific Authority 429.67, 429.73 FS. Law Implemented 429.65, 429.67, 429.71, 429.73 FS. History—New 5-14-86, Amended 2-2-95, Formerly 10A-14.002, Amended 9-19-96, 6-6-99,_____.

58A-14.003 License Application, Renewal and Conditional Licenses.

(1) LICENSE APPLICATION.

(a) Any individual desiring to obtain an initial license to operate an adult family care home shall file an Adult Family Care Home License application, AHCA Form 3180-1022, January 2006, which is incorporated by reference and may be obtained from the Assisted Living Unit, Agency for Health Care Administration, 2727 Mahan Drive, Mail Stop 30, Tallahassee, Florida 32308-5402, Phone (850)487-2515. The completed application must be signed by the applicant, notarized, and submitted to the Assisted Living Unit at the address cited above. The application shall be accompanied by the following:

1. through 8. No change.

9. Documentation that the provider resides in the adult family-care home pursuant to Section 429.67(2), F.S., and subsection (18) of Rule 58A-14.002, F.A.C.

(b) through (d) No change.

(2) LICENSE RENEWAL.

(a) No change.

(b) In addition to AHCA Form 3180-1022, all applicants for license renewal shall provide the following:

1. through 3. No change.

4. Documentation pursuant to subparagraph (1)(a)9. of this rule.

(c) No change.

(3) through (4) No change.

Specific Authority 429.67, 429.69, 429.71, 429.73 FS. Law Implemented 429.67, 429.69, 429.71, 429.73 FS. History—New 5-14-86, Amended 2-2-95, Formerly 10A-14.003, Amended 9-19-96, 3-25-98, 6-6-99, 1-1-04, 7-30-06,_____.

58A-14.004 License Requirements.

(1) LICENSE TIMEFRAME. Except for conditional licenses, all AFCH licenses shall be effective for 2+ years from the date of issuance.

(2) LICENSE CONDITIONS. A license to operate an AFCH is not transferable and is valid only for the provider named, the capacity stated, and the premises described on the license. A change of ownership is prohibited.

(3) CLOSING AN AFCH. The licensed provider shall give at least 60 days written notice of any intent to voluntarily close a currently licensed AFCH to the AHCA Assisted Living Unit, each residents or resident's representative, and case managers of OSS recipients, ~~of any intent to voluntarily close or sell a currently licensed AFCH.~~

(4) through (5) No change.

(6) POSTING OF INFORMATION. For the purpose of a resident's ability to lodge complaints, the AFCH licensee or designee must post the addresses and telephone numbers for the following entities in full view in a common area accessible to all residents:

(a) District Long-Term Care Ombudsman Council, (1(888)831-0404);

(b) Advocacy Center for Persons with Disabilities, (1(800)342-0823);

(c) Florida Local Advocacy Council, (1(800)342-0825);

(d) Agency Consumer Hotline (1(888)419-3456); and

(e) Florida Abuse Hotline (1(800)96-ABUSE or 1(800)962-2873).

Specific Authority 429.67, 429.73 FS. Law Implemented 429.67, 429.73, 429.83 FS. History—New 5-14-86, Amended 2-2-95, Formerly 10A-14.004, Amended 9-19-96, 6-6-99,_____.

58A-14.0061 Admission Procedures, ~~and~~ Appropriateness of Placement and Continued Residency Requirements.

(1) No change.

(2) HEALTH ASSESSMENT. ~~Prior to admission to an AFCH, the individual must be examined by a health care provider using AHCA Form 3110 1023 (AFCH 1110) 01/08, Resident Health Assessment for Adult Family Care Homes (AFCH), January 2008, which is incorporated by reference, and available from the Agency for Health Care Administration, 2727 Mahan Drive, Mail Stop 30, Tallahassee, FL 32308. The form may also be obtained from the agency's Website at: http://ahea.myflorida.com/MCHQ/Long_Term_Care/Assisted_living/afe/Res_Health_Assmnt.pdf.~~

(a) Prior to admission to an AFCH, the individual must be examined by a health care provider using AHCA Form 3110-1023 (AFCH-1110) 01/08, Resident Health Assessment for Adult Family-Care Homes (AFCH), _____ 2009, which is incorporated by reference, and available from the Agency for Health Care Administration, 2727 Mahan Drive, Mail Stop 30, Tallahassee, FL 32308. The form may also be obtained from the agency's Web site at: http://ahea.myflorida.com/MCHQ/Long_Term_Care/Assisted_living/afc/Res_Health_Assmnt.pdf.

(b) Annually thereafter, or after a significant change, as defined in subsection (4) of Rule 58A-14.007, F.A.C., the resident must be examined by a health care provider using the form referenced in paragraph (a) of this subsection. After the effective date of this rule, providers shall have up to 6 months to comply with this requirement.

(3) HOUSE RULES AND COMPLAINT PROCEDURES. ~~Prior to, or at the time of admission a copy of the AFCH house rules, the Resident's Bill of Rights established under Section 429.85, F.S., the name, address, and telephone number of the district long-term care ombudsman council and the Florida Abuse Hotline, and the procedure for making complaints to the ombudsman council and the abuse registry must be provided to the resident or the resident's representative.~~

(a) Prior to, or at the time of admission, the facility must provide the resident or his or her representative with the following:

1. A copy of the AFCH house rules;

2. The Resident's Bill of Rights established under Section 429.85, F.S.;

3. The name, address, and telephone number of the district long-term care ombudsman council and the Florida Abuse Hotline, and the procedure for making complaints to the ombudsman council and the abuse registry.

(b) Additionally, the AFCH licensee or designee must make the resident or his or her representative aware of the documents posted pursuant to subsection (6) of Rule 58A-14.004, F.A.C.

(4) through (5) No change.

(6) CONTINUED RESIDENCY.

(a) The criteria for continued residency shall be the same as the criteria for admission, including an examination pursuant to subsection (2) of this rule, with the following exceptions that:

1. through 3. No change.

(b) through (c) No change.

(7) No change.

Specific Authority 429.73 FS. Law Implemented 429.65, 429.73, 429.85 FS. History—New 2-2-95, Formerly 10A-14.0061, Amended 9-19-96, 6-6-99, 1-1-04, 4-29-08,_____.

58A-14.008 Staff Qualifications, Responsibilities and Training.

(1) MINIMUM STAFF REQUIREMENTS.

(a) The provider, all staff, each relief person; and all adult household members must submit a statement from a health care provider that he or she is free from apparent signs and symptoms of communicable diseases, including tuberculosis. The statement must be based on an examination conducted within the last six months prior to employment, that the person is free from apparent signs and symptoms of communicable diseases including tuberculosis. Annually thereafter, the individual must submit documentation from a health care provider stating that he or she is free from apparent signs and symptoms of communicable diseases, including tuberculosis. Freedom from tuberculosis must be documented on an annual basis. An exception is that an individual Persons with a

positive tuberculosis test must submit a physician's statement that ~~he or she the person~~ does not constitute a risk of communicating tuberculosis.

- (b) through (c) No change.
- (2) through (4) No change.

Specific Authority 429.67, 429.73, 429.75 FS. Law Implemented 429.67, 429.73, 429.75 FS. History--New 2-2-95, Formerly 10A-14.008, Amended 9-19-96, 6-6-99, 1-1-04, 7-30-06, _____.

AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid

RULE NOS.:	RULE TITLES:
59G-13.030	Aged and Disabled Adult Waiver Services
59G-13.031	Aged and Disabled Adult Waiver Services Procedure Codes and Fee Schedule
59G-13.032	Aged and Disabled Adult Waiver Disposable Incontinence Medical Supplies Procedure Codes and Fee Schedule

PURPOSE AND EFFECT: The purpose of the rule amendment to Rule 59G-13.030, F.A.C., is to incorporate by reference the revised Florida Medicaid Aged and Disabled Adult Waiver Services Coverage and Limitations Handbook, January 2009. The revised handbook contains updated policies and procedures for Aged and Disabled Adult Waiver Services and policy for the Aging Out Program. The effect will be to incorporate by reference in rule the Florida Medicaid Aged and Disabled Adult Waiver Services Coverage and Limitations Handbook, January 2009.

The purpose of Rule 59G-13.031, F.A.C., is to incorporate by reference the Aged and Disabled Adult Waiver Services Procedure Codes and Fee Schedule, January 2009. The effect will be to incorporate by reference in rule the Aged and Disabled Adult Waiver Services Procedure Codes and Fee Schedule, January 2009.

The purpose of Rule 59G-13.032, F.A.C., is to incorporate by reference in rule the Aged and Disabled Adult Waiver Disposable Incontinence Medical Supplies Procedure Codes and Fee Schedule, January 2009, and Quality Standards, January 2009. The effect will be to incorporate by reference in rule the Aged and Disabled Adult Waiver Disposable Incontinence Medical Supplies Procedure Codes and Fee Schedule, January 2009, and Quality Standards, January 2009.

SUBJECT AREA TO BE ADDRESSED: Aged and Disabled Adult Waiver Services, the Aged and Disabled Adult Waiver Services Procedure Codes and Fee Schedule, and the Aged and Disabled Adult Waiver Disposable Incontinence Medical Supplies Procedure Codes and Fee Schedule.

SPECIFIC AUTHORITY: 409.919 FS.

LAW IMPLEMENTED: 409.906, 409.907, 409.908, 409.912 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: Tuesday, January 6, 2009, 10:00 a.m.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Carol Schultz, Medicaid Services, 2727 Mahan Drive, Building 3, Mail Stop 20, Tallahassee, Florida 32308-5407, (850)922-7349, schultzc@ahca.myflorida.com

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

59G-13.030 Aged and Disabled Adult Waiver Services. ~~The Department of Children and Family Services (DCFS) forms are available from DCFS. The Department of Elder Affairs (DOEA) forms are available from DOEA. The Agency for Health Care Administration (AHCA) forms are available by photocopying the forms in this handbook.~~

- (1) No change.

(2) All aged and disabled adult waiver services providers enrolled in the Medicaid program must be in compliance with the Florida Medicaid Aged and Disabled Adult Waiver Services Coverage and Limitations Handbook, January 2009 March 2004, updated August 2005, incorporated by reference, and the Florida Medicaid Provider Reimbursement Handbook, CMS-1500, Non-Institutional-081 which is incorporated by reference in Rule 59G-4.001 ~~13.001~~, F.A.C. Both handbooks are available from the Medicaid fiscal agent's Web Portal at <http://mymedicaid-florida.com>. Select Public Information for Providers, then Provider Support, and then Provider Handbooks. Paper copies of the handbook may be obtained by calling the Medicaid fiscal agent at (800)289-7799 and selecting option 7.

(3) The following forms that are included in the Florida Medicaid Aged and Disabled Adult Waiver Services Coverage and Limitations Handbook are incorporated by reference:

(a) Appendix ~~A B~~ contains the Adult Services Client Assessment Screening for Consideration for Community-Based Programs, CF-AA Form 3019 1022, PDF 10/2006 08/2004, eight four pages. The form is available from the Department of Children and Families website at: <http://www.dcf.state.fl.us/publications/eforms/aa3019.pdf>. ~~Appendix C contains the Florida Department of Children and Family Services and Florida Department of Elder Affairs, CF-MED 3008, Oct. 96, two pages;~~

(b) Appendix D contains the Notification of Level of Care, DOEA-CARES Form 603 (Revised March 2003), one page. The form is mailed to the provider by the Department of Elder

Affairs, CARES Unit. Appendix E contains the Notice of Hospice Election Waiver, AHCA Form 5000-29, March 2004, one page, and the Cooperative Agreement for a Hospice and Medicaid Waiver Enrolled Recipient, AHCA Form 5000-30, March 2004, two pages.

(c) Appendix E contains the Aged and Disabled Adult Services Waiver Agreement of Expectations, AHCA-Med Serv Form 033, July 2008, two pages. The form is available by photocopying it from the handbook.

(d) Appendix H contains the Request for Approval for Care Plan Services Increase, CF-AA 1116, PDF 05/2004, two pages. The form is available from the Department of Children and Families website at <http://www.dcf.state.fl.us/publications/eforms/aa1116.pdf>.

(e) Appendix I contains the Aged/Disabled Adult Waiver Aging Out Plan of Care, AHCA-Med Serv Form 047, January 2009, five pages. The form is available by photocopying it from the handbook.

(4) The following forms that are included in the Florida Medicaid Aged and Disabled Adult Waiver Services Coverage and Limitations Handbook are incorporated by reference in other Florida Administrative rules.

(a) Appendix A B also contains the Department of Elder Affairs Assessment Instrument, DOEA Form 701B, eight pages, which is incorporated by reference in Rule 58A-1.010, F.A.C. The form is available from DOEA's website at <http://elderaffairs.state.fl.us/english/pdfs/doea701b.pdf>.

(b) Appendix B contains the Medical Certification for Nursing Facility/Home and Community Based Services Form (MCNF/HCBS), AHCA-Med Serv Form 3008, May 2008, two pages. It is incorporated by reference in Rule 59G-4.200, F.A.C. The form is available on the DOEA website at <http://elderaffairs.state.fl.us/english/cares.html>.

(c) Appendix C contains the Informed Consent Form, AHCA-Med Serv Form 2040, May 2008, in English and Spanish, one page, available from the Department of Elder Affairs website at <http://elderaffairs.state.fl.us/english/CARES/3008ppp.html>.

(d) Appendix F contains the Notice of Hospice Election Waiver; AHCA 5000-29, October 2003, one page; the Cooperative Agreement for a Hospice and Medicaid Waiver Enrolled Recipient; AHCA 5000-30, October 2003, one page; and the Attachment to Cooperative Agreement for a Hospice and Medicaid Waiver Enrolled Recipient; AHCA 5000-30A, October 2003, one page. These forms are incorporated by reference in Rule 59G-4.140, F.A.C. The forms are available by photocopying them from the handbook or from the Medicaid fiscal agent's Web Portal at <http://mymedicaid.florida.com>. Click on Public Information for Providers, then on Provider Support, and then on Forms.

(e) Appendix G contains the Department of Elder Affairs Care Plan, DOEA Form #203A, Revised July 2001, one page. The form is incorporated by reference in Rule 58A-1.010, F.A.C. It is available from the Department of Elder Affairs lead agencies.

Specific Authority 409.919 FS. Law Implemented 409.906, 409.907, 409.908, 409.912 FS. History—New 6-1-05, Amended 4-17-06, _____.

59G-13.031 Aged and Disabled Adult Waiver Services Procedure Codes and Fee Schedule.

(1) This rule applies to all aged and disabled adult waiver services providers enrolled in the Medicaid program.

(2) All aged and disabled adult waiver services providers enrolled in the Medicaid program must be in compliance with the Aged and Disabled Adult Waiver Services Procedure Codes and Fee Schedule, January 2009, which is incorporated by reference. The Procedure Codes and Fee Schedule is available from the Medicaid fiscal agent's Web Portal at <http://mymedicaid-florida.com>. Click on Public Information for Providers, then on Provider Support, and then on Fee Schedules. Paper copies may be obtained from the Agency for Health Care Administration, Bureau of Medicaid Services, 2727 Mahan Drive, M.S. 20, Tallahassee, Florida 32308.

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

59G-13.032 Aged and Disabled Adult Waiver Disposable Incontinence Medical Supplies Procedure Codes and Fee Schedule.

(1) This rule applies to all aged and disabled adult waiver services providers enrolled in the Medicaid program.

(2) All aged and disabled adult waiver services providers enrolled in the Medicaid program must be in compliance with the Aged and Disabled Adult Waiver Disposable Incontinence Medical Supplies Procedure Codes and Fee Schedule, January 2009, and Quality Standards, January 2009, which are incorporated by reference. The Aged and Disabled Adult Waiver Disposable Incontinence Medical Supplies Procedure Codes and Fee Schedule and Quality Standards are available from the Medicaid fiscal agent's Web Portal at <http://mymedicaid-florida.com>. Click on Public Information for Providers, then on Provider Support, and then on Fee Schedules. Paper copies may be obtained from the Agency for Health Care Administration, Bureau of Medicaid Services, 2727 Mahan Drive, M.S. 20, Tallahassee, Florida 32308.

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

DEPARTMENT OF MANAGEMENT SERVICES**Agency for Workforce Innovation**

RULE NO.: 60BB-8.410
 RULE TITLE: Voluntary Prekindergarten Program
 Substitute Instructors

PURPOSE AND EFFECT: The purpose of the proposed rule is to establish the required qualifications of substitute instructors for the Voluntary Prekindergarten (VPK) Program and set forth the circumstances and time limits for which a private prekindergarten provider may assign a substitute instructor in accordance with the new requirements placed upon the Agency through Section 1002.55(3)(e), Florida Statutes, as amended by Chapter 2008-196, Laws of Florida.

SUBJECT AREA TO BE ADDRESSED: The proposed rule will address the required qualifications of substitute instructors in the VPK Program in addition to addressing the circumstances and time limits under which substitute instructors may be appointed.

SPECIFIC AUTHORITY: 1002.55(3)(e), 1002.61(6), 1002.63(7), 1002.79(2) FS.

LAW IMPLEMENTED: 1002.55(3)(e), 1002.61(6), 1002.63(7) 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: Kristin Harden, Assistant General Counsel, Agency for Workforce Innovation, Office of General Counsel, 107 East Madison Street, MSC #110, Tallahassee, Florida 32399-4128, (850)245-7150

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

60BB-8.410 Voluntary Prekindergarten Program Substitute Instructors.

(1) As used in this rule, the term “credentialed instructor” means a prekindergarten instructor who has the credentials required under Section 1002.55(3)(c), 1002.55(4), or 1002.61(4), F.S.

(2) Qualifications. Voluntary Prekindergarten (VPK) substitute instructors must be of good moral character and be screened using the level 2 screening requirements in Section 435.04, F.S., before employment as a VPK substitute instructor. In addition, a VPK substitute instructor must meet the following requirements:

(a) Has successfully completed one or more of the following before employment as a VPK substitute instructor:

1. In a school year VPK program class:

a. An associate’s or higher degree in any field of study;

b. A 40-clock-hour introductory course in child care for child care personnel of a child care facility which is approved by the Department of Children and Family Services under Section 402.305(2)(d)1., F.S.;

c. A 40-clock-hour introductory course in group child care for an operator of a large family child care home which is approved by the Department of Children and Family Services under Section 402.3131(3), F.S.; or

d. A 30-clock-hour introductory course in child care for an operator of a family day care home which is approved by the Department of Children and Family Services under Section 402.313(4), F.S.

2. In a summer VPK program class:

a. An associate’s or higher degree in any field of study;

b. A child development associate (CDA) credential issued by the National Credentialing Program of the Council for Professional Recognition; or

c. A credential approved by the Department of Children and Family Services as being equivalent to or greater than the national CDA.

(b) Has met the qualifications of a credentialed instructor.

(3) Circumstances. A VPK provider may assign a substitute instructor when a credentialed instructor is absent from the provider’s premises. A substitute instructor may not be assigned when a credentialed instructor remains on the provider’s premises in order to offer instruction in a classroom other than the one to which the credentialed instructor is assigned.

(4) Time limitation. Substitute instructors may not be assigned to substitute for an absent credentialed instructor in excess of 30 percent of the program hours. A new credentialed instructor must be assigned to replace the absent instructor in the event the absence of the credentialed instructor will exceed 30 percent of the program hours.

(5) Before the close of business on the day a substitute instructor is assigned, a VPK provider must provide the following information to its coalition:

(a) The name of the substitute instructor;

(b) The VPK class to which the substitute instructor is assigned;

(c) Documentation demonstrating that the substitute instructor has a current level 2 background screening and applicable credentials; and

(d) The estimated number of days the substitute instructor is expected to offer instruction in the VPK classroom.

If a particular substitute instructor is assigned to the same VPK classroom on consecutive business days, a VPK provider is not required to resubmit the information on each of the consecutive business days.

(6) Nothing in this rule shall be considered to supersede employment requirements for instructional personnel in public schools which are more stringent than the requirements of this rule. This exception shall not be construed to permit employment of substitute instructors for time periods greater than those enumerated in this rule.

Specific Authority 1002.55(3)(e), 1002.61(6), 1002.63(7), 1002.79(2) FS. Law Implemented 1002.55(3)(e), 1002.61(6), 1002.63(7) FS. History—New _____.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Construction Industry Licensing Board

RULE NO.: 61G4-16.001
RULE TITLE: Written Certification Examination Requirements

PURPOSE AND EFFECT: The Board proposes the rule amendment to address the certification exam for solar contractors.

SUBJECT AREA TO BE ADDRESSED: Certification exam for solar contractors.

SPECIFIC AUTHORITY: 455.214, 489.108 FS.

LAW IMPLEMENTED: 455.217, 489.113 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: G. W. Harrell, Executive Director, Construction Industry Licensing Board, P. O. Box 5257, Tallahassee, Florida 32314-5257

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

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 ENVIRONMENTAL PROTECTION

Division of Beaches and Shores

RULE NOS.: 62B-36.001, 62B-36.002, 62B-36.003, 62B-36.005, 62B-36.006, 62B-36.007, 62B-36.009
RULE TITLES: Purpose, Definitions, Policy, Annual Funding Requests, Project Ranking Procedure, Project Cost Sharing, Project Agreements

PURPOSE AND EFFECT: To amend the existing rule that establishes beach erosion control funding request procedures, project ranking, cost sharing procedures, and project agreement requirements.

SUBJECT AREA TO BE ADDRESSED: The BBCS proposes amendments to the rule in order to implement new inlet management priorities and procedures set forth in Section 161.143, F.S., and make other minor changes to improve program implementation. This rule will also allow for inclusion of recommendations from the Beach Management Working Group.

SPECIFIC AUTHORITY: 161.143 FS.

LAW IMPLEMENTED: 161.088, 161.091, 161.101, 161.161 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: Wednesday, January 14, 2009, 9:00 a.m. – 1:00 p.m.

PLACE: Department of Environmental Protection, Bureau of Beaches and Coastal Systems, Training Room #307, 505 West Tennessee Street, Bldg. B, Tallahassee, FL 32304

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: Stephanie Gudeman, Department of Environmental Protection, Bureau of Beaches and Coastal Systems, Mail Station #300, 3900 Commonwealth Blvd., Tallahassee, FL 32399-3000, (850)488-7816. 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: Stephanie Gudeman (850)488-7816 or by email at Stephanie.Gudeman@dep.state.fl.us

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

DEPARTMENT OF HEALTH

Board of Dentistry

RULE NO.: 64B5-1.021
RULE TITLE: List of Approved Forms; Incorporation

PURPOSE AND EFFECT: The Board proposes the rule amendment to modify and adopt changes to the master application form.

SUBJECT AREA TO BE ADDRESSED: List of approved forms.

SPECIFIC AUTHORITY: 466.004 FS.

LAW IMPLEMENTED: 120.52(15) 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 Dentistry/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 Medicine

RULE NO.: 64B8-51.001
 RULE TITLE: Manner of Application
 PURPOSE AND EFFECT: The Board proposes the rule development to incorporate updated application form.
 SUBJECT AREA TO BE ADDRESSED: Manner of Application.
 SPECIFIC AUTHORITY: 478.43(1), (4) FS.
 LAW IMPLEMENTED: 478.45 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, Electrolysis Council, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3253
 THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

FLORIDA INLAND NAVIGATION DISTRICTS

Florida Inland Navigation District

RULE NOS.: 66B-1.004, 66B-1.005, 66B-1.008
 RULE TITLES: Policy, Funds Allocation, Project Eligibility
 PURPOSE AND EFFECT: The purpose of the proposed rule making is to include the following provisions in the program rule: Ensure consistency with the rule and Chapter 374, F.S. consolidate rule references to the necessary permitting requirements prior to project funding; clarify the rule provisions for land acquisition and shoreline stabilization eligibility; add waterfront parks to the eligibility list; and correct the rule language to be consistent with the small-scale derelict vessel program.

The effect of the rule modifications is to implement changes in the administration of the District’s Assistance Program that will support the District and program applicants in the review and evaluation of applications submitted pursuant to the rule.

SUBJECT AREA TO BE ADDRESSED: Cooperative Assistance Program rule sections: Policy, Funds Allocation, and Project Eligibility.

SPECIFIC AUTHORITY: 374.976(2) FS.

LAW IMPLEMENTED: 374.976(1)-(3) FS.

IF REQUESTED 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: December 30, 2008, 11:00 a.m.

PLACE: The District office, 1314 Marcinski Road, Jupiter, Florida.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Mark Crosley, Assistant Executive Director, Florida Inland Navigation District, 1314 Marcinski Road, Jupiter, Florida 33477, Telephone Number: (561)627-3386

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS

66B-1.004 Policy.

The following constitutes the policy of the District regarding the administration of the program.

(1) Financial Assistance Eligibility: Eligible federal, state and regional agencies may be provided financial assistance, support or cooperation in planning, acquisition, development, construction, reconstruction, extension, improvement, operation or the maintenance of public navigation, local and regional anchorage management, beach renourishment, public recreation, inlet management, environmental education and boating safety projects directly related to the waterways. Eligible projects shall include the acquisition and development of public boat ramps, and launching facilities, land acquisition for additional trailer parking at an existing boat ramp, and public boat docking and mooring facilities, including those in man-made, navigable waterways contiguous to “waterways” as defined in Rule 66B-1.003, F.A.C.

(2) through (10) No change.

(11) Fees: Any public project eligible for District program funds that charges a fee or will charge a fee must demonstrate that the facility will utilize 50% or greater of the collected funds for project maintenance and improvements throughout the anticipated 25-year life of a development project or the design life of other project types, as applicable.

Specific Authority 374.976(2) FS. Law Implemented 120.53(1)(a) FS. History–New 11-11-90, Formerly 16S-1.004, Amended.

66B-1.005 Funds Allocation.

(1) through (4) No change.

(5) Public Navigation: Projects or project elements in the category of public navigation that will qualify for up to seventy-five percent (75%) program funds must provide public navigation channel access to public launching, mooring or docking facilities. In addition, the following shall apply:

(a) Navigation channel dredging: The project sponsor must demonstrate that the source of channel sedimentation has been identified and is in the process of, or has been controlled, or that the frequency and amount of shoaling is such that dredging will provide an improvement to the channel that will last for twenty (20) years or more and therefore is more cost effective than identifying and correcting the cause of shoaling, or that the cost of identifying the source of channel sedimentation exceeds the cost of the dredging project;

(b) Navigation channel lighting and markers must be located on primary or secondary public navigation channels. All other public navigation projects or project elements will only qualify for up to fifty percent (50%) program funding. Dredging that is associated or ancillary to another use (such as a boat ramp, marina or pier) will be prioritized according to the associated use.

Specific Authority 374.976(2) FS. Law Implemented 120.53(1)(a) FS. History—New 11-11-90, Formerly 16S-1.005, Amended _____.

66B-1.008 Project Eligibility.

(1) Eligible Projects: Financial assistance and support through this program shall be used to plan or carry out public navigation and anchorage management, public recreation, environmental education, boating safety, acquisition and development of spoil sites and publicly owned commercial/industrial waterway access directly related to the waterways, acquisition and development of public boat ramps, launching facilities and boat docking and mooring facilities, and inlet management, environmental mitigation and beach renourishment directly related to the waterways.

(a) Program funds may be used for projects such as acquisition planning, development, construction, reconstruction, extension or improvement, ~~operation or maintenance~~ of the following for public use on land and water:

1. Public navigation channel dredging;
2. Public navigation aids and markers;
3. Inlet management projects that are a benefit to public navigation in the District;
4. Public shoreline stabilization directly benefiting the District's waterway channels;
5. Acquisition and development of publicly owned spoil disposal site and public commercial/industrial waterway access;
6. Waterway signs and buoys for safety, regulation or information;

7. Acquisition, dredging, shoreline stabilization and development of public boat ramps and launching facilities;

8. Acquisition, dredging, shoreline stabilization and development of public boat docking and mooring facilities;

9. Derelict Vessel Removal;

10. Waterways related environmental education programs and facilities;

11. Public fishing and viewing piers;

12. Public waterfront parks and boardwalks and associated improvements;

13. Waterways boating safety programs and equipment;

14. Beach renourishment on beaches adversely impacted by navigation inlets, navigation structures, navigation dredging, or a navigation project; and

15. Other waterway related projects.

(b) through (c) No change.

(d) Phasing of Projects: Applications for eligible waterway projects ~~may will~~ be submitted as a phased project where Phase I will include the design, engineering and permitting elements and Phase II will include the construction of the project. A description and cost estimate of the Phase II work will be submitted along with the Phase I application for Board review. ~~Applicants for construction projects that include elements that require state or federal environmental permits will demonstrate that all required environmental permitting and proprietary authorizations will be completed by the District's final TRIM hearing. This demonstration will be by the submission of the required environmental permit(s) or by the submission of a letter from the agency(s) stating that a permit is not required. Should the environmental permitting element of an application for a construction project that includes elements that require state or federal permits or exemptions not be completed by the District's final TRIM hearing, the construction portion of the project will not be considered for funding. The District will not deviate from the funding schedule, whereby funding decisions are completed at the final TRIM hearing, to accommodate any application deficiency.~~

(2) No change.

(3) Permits: The project sponsor is responsible for obtaining and abiding by any and all federal, state and local permits, laws, proprietary authorizations and regulations in the development and operation of the project. Applicants for construction projects that include elements that require state or federal environmental permits or proprietary authorizations will demonstrate that all required environmental permitting and authorizations will be completed by the District's final TRIM hearing. This demonstration will be by submission of the required environmental permit(s) and authorizations, or by submission of a letter from the agency(s) stating that a permit or authorization is not required. Should the environmental permitting element of an application that has construction elements requiring state or federal environmental permits or authorizations not be completed by the District's final TRIM

hearing, the construction portion of the project will not be considered for funding. Whereby funding decisions are completed at the final TRIM hearing, the District will not deviate from the funding schedule to accommodate any application deficiency.

(4) Public Marina Qualifications: All public marina projects funded through this program shall include sewage pumpout facilities for vessels, unless the applicant can demonstrate that inclusion of such a facility is physically, operationally or economically impracticable. All public marina projects funded through this program shall have at least ten percent (10%) of their slips or mooring areas available for transient vessels. Public marina dockage rates shall be within market comparison of the dockage rates of other area marinas. Program funds to public marina projects shall not be utilized for replacement maintenance of the facilities if revenues generated by the facility are not ~~exclusively~~ allocated to the operation, maintenance and improvement of the public marina facility in accordance with subsection 66B-2.004(10), F.A.C. Certification that revenues generated by a marina facility are exclusively allocated to the operation, maintenance and improvement of the public marine facility will be required to be submitted with the application and, if approved, thereafter on an annual basis using form No. FIND 03-01 (effective date 3-3-04), hereby incorporated by reference and available from the District office.

Specific Authority 374.976(2) FS. Law Implemented 120.53(1)(a) FS. History--New 11-11-90, Formerly 16S-1.008, Amended.

FLORIDA INLAND NAVIGATION DISTRICTS

Florida Inland Navigation District

RULE NOS.:	RULE TITLES:
66B-2.004	Policy
66B-2.005	Funds Allocation
66B-2.008	Project Eligibility

PURPOSE AND EFFECT: The purpose of the proposed rule making is to include the following provisions in the program rule: Ensure consistency with the rule and Chapter 374, F.S. consolidate rule references to the necessary permitting requirements prior to project funding; clarify the rule provisions for land acquisition and shoreline stabilization eligibility; add waterfront parks to the eligibility list; and correct the rule language to be consistent with the small-scale derelict vessel program.

The effect of the rule modifications is to implement changes in the administration of the District's Assistance Program that will support the District and program applicants in the review and evaluation of applications submitted pursuant to the rule.

SUBJECT AREA TO BE ADDRESSED: Waterways Assistance Program rule sections: Policy, Funds Allocation, and Project Eligibility.

SPECIFIC AUTHORITY: 374.976(2) FS.

LAW IMPLEMENTED: 374.976(1)-(3) FS.

IF REQUESTED 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: December 30, 2008, 11:00 a.m.

PLACE: The District office, 1314 Marcinski Road, Jupiter, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Mark Crosley, Assistant Executive Director, Florida Inland Navigation District, 1314 Marcinski Road, Jupiter, Florida 33477, Telephone Number: (561)627-3386

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS

66B-2.004 Policy.

The following constitutes the policy of the District regarding the administration of the program:

(1) Financial Assistance Eligibility: Financial assistance, support and cooperation may be provided to eligible governmental agencies for approved projects as follows:

(a) Member counties may be provided financial assistance, support or cooperation in planning, acquisition, development, construction, reconstruction, extension, improvement, operation or the maintenance of public navigation local and regional anchorage management, beach renourishment, public recreation, inlet management, environmental education, law enforcement and boating safety projects directly related to the waterways. ~~Member counties may also be provided financial assistance, support, and cooperation in planning and carrying out beach renourishment and inlet management projects.~~

(b) Eligible local governments may also be provided financial assistance, support and cooperation in planning and carrying out public navigation, local and regional anchorage management, beach renourishment, public recreation, inlet management, environmental education, law enforcement and boating safety projects directly related to the waterways. ~~Eligible local governments may also be provided financial assistance, support and cooperation in planning and carrying out beach renourishment and inlet management projects.~~

(c) Navigation related districts may be provided with financial assistance to pay part of the costs of the planning and acquisition of dredge material management sites if the Board finds that the site is required for the long-range maintenance of the Atlantic Intracoastal Waterway channel. All such sites must meet the development and operational criteria established by the District through a long-range dredge material management plan for that county. Navigation related districts may also be provided with assistance for waterway related access projects, environmental mitigation projects associated with waterway improvement related activities, and inlet management projects if the Board finds that the project benefits public navigation in the Atlantic Intracoastal Waterway. All navigation related

districts shall contribute at least equal matching funds to any District financial assistance provided. Seaports may also be furnished assistance and support in planning and carrying out environmental mitigation projects. All seaport projects shall benefit publicly maintained channels and harbors. Each seaport shall contribute matching funds for funded projects.

(d) Eligible projects shall include the acquisition and development of public boat ramps, and launching facilities, land acquisition for additional trailer parking at an existing boat ramp, and public boat docking and mooring facilities, including those in man-made, navigable waterways contiguous to "waterways" as defined in Rule 66B-2.003, F.A.C.

(2) through (9) No change.

(10) Fees: Any public project eligible for District program funds that charges a fee or will charge a fee must demonstrate that the facility will utilize 50% or greater of the collected funds for project maintenance and improvements throughout the anticipated 25-year life of a development project or the design life of other project types, as applicable.

Specific Authority 374.976(2) FS. Law Implemented 374.976 FS. History--New 11-11-90, Formerly 16S-1.004, Amended.

66B-2.005 Funds Allocation.

(1) through (6) No change.

(7) Public Navigation: Projects or project elements in the category of public navigation that will qualify for up to seventy-five percent (75%) program funds must provide public navigation channel access to public launching, mooring or docking facilities. In addition, the following shall apply:

(a) Navigation channel dredging: The project sponsor must demonstrate that the source of channel sedimentation has been identified and is in the process of, or has been controlled, or that the frequency and amount of shoaling is such that dredging will provide an improvement to the channel that will last for twenty (20) years or more and therefore is more cost effective than identifying and correcting the cause of shoaling, or that the cost of identifying the source of channel sedimentation exceeds the cost of the dredging project.

(b) Navigation channel lighting and markers must be located on primary or secondary public navigation channels. All other public navigation projects or project elements will only qualify for up to fifty percent (50%) program funding. Dredging that is associated or ancillary to another use (such as a boat ramp, marina or pier) will be prioritized according to the associated use.

Specific Authority 374.976(2) FS. Law Implemented 374.976 FS. History--New 11-11-90, Formerly 16S-1.005, Amended.

66B-2.008 Project Eligibility.

(1) Eligible Projects: Financial assistance and support through this program shall be used to plan or carry out public navigation and anchorage management, public recreation, environmental education, boating safety, acquisition and

development of spoil sites and publicly owned commercial/industrial waterway access directly related to the waterways, acquisition and development of public boat ramps, launching facilities and boat docking and mooring facilities, inlet management, environmental mitigation and beach renourishment.

(a) Program funds may be used for projects such as acquisition, planning, development, construction, reconstruction, extension, or improvement, ~~operation or maintenance~~ of the following types of projects for public use on land and water. These project types will be arranged into a priority list each year by vote of the Board. The priority list will be distributed to applicants with the project application.

1. Public navigation channel dredging;
2. Public navigation aids and markers;
3. Inlet management projects that are a benefit to public navigation in the District;
4. Public shoreline stabilization directly benefiting the District's waterway channels;
5. Acquisition and development of publicly owned spoil disposal site and public commercial/industrial waterway access;
6. Waterway signs and buoys for safety, regulation or information;
7. Acquisition dredging, shoreline stabilization and development of public boat ramps and launching facilities;
8. Acquisition dredging, shoreline stabilization and development of public boat docking and mooring facilities;
9. Derelict Vessel Removal;
10. Waterways related environmental education programs and facilities;
11. Public fishing and viewing piers;
12. Public waterfront parks and boardwalks and associated improvements;
13. Waterways boating safety programs and equipment;
14. Beach renourishment on beaches adversely impacted by navigation inlets, navigation structures, navigation dredging, or a navigation project; and
15. Other waterway related projects.

(2) No change.

(a) through (c) No change.

(d) Phasing of Projects: Applications for eligible waterway projects may ~~will~~ be submitted as a phased project where Phase I will include the design, engineering and permitting elements and Phase II will include the construction of the project. A description and cost estimate of the Phase II work will be submitted along with the Phase I application for Board review. ~~Applicants for construction projects that include elements that require state or federal environmental permits will demonstrate that all required environmental permitting and proprietary authorizations will be completed by the District's final TRIM hearing. This demonstration will be by the submission of the~~

~~required environmental permit(s) or by the submission of a letter from the agency(s) stating that a permit is not required. Should the environmental permitting element of an application for a construction project that includes elements that require state or federal permits or exemptions not be completed by the District's final TRIM hearing, the construction portion of the project will not be considered for funding. The District will not deviate from the funding schedule, whereby funding decisions are completed at the final TRIM hearing, to accommodate any application deficiency.~~

(2) No change.

(3) Permits: The project sponsor is responsible for obtaining and abiding by any and all federal, state and local permits, laws, proprietary authorizations and regulations in the development and operation of the project. Applicants for construction projects that include elements that require state or federal environmental permits or proprietary authorizations will demonstrate that all required environmental permitting and authorizations will be completed by the District's final TRIM hearing. This demonstration will be by submission of the required environmental permit(s) and authorizations, or by submission of a letter from the agency(s) stating that a permit or authorization is not required. Should the environmental permitting element of an application that has construction elements requiring state or federal environmental permits or authorizations not be completed by the District's final TRIM hearing, the construction portion of the project will not be considered for funding. Whereby funding decisions are completed at the final TRIM hearing, the District will not deviate from the funding schedule to accommodate any application deficiency.

(4) Public Marina Qualifications: All public marina projects funded through this program shall include sewage pumpout facilities for vessels, unless the applicant can demonstrate that inclusion of such a facility is physically, operationally or economically impracticable. All public marina projects funded through this program shall have at least ten percent (10%) of their slips or mooring areas available for transient vessels. Public marina dockage rates shall be within market comparison of the dockage rates of other area marinas. Program funds to public marina projects shall not be utilized for ~~replacement~~ maintenance of the facilities if revenues generated by the facility are not ~~exclusively~~ allocated to the operation, maintenance and improvement of the public marina facility in accordance with subsection 66B-2.004(10), F.A.C. Certification that revenues generated by a marina facility are exclusively allocated to the operation, maintenance and improvement of the public marine facility will be required to be submitted with the application and, if approved, thereafter on an annual basis using form No. FIND 03-01 (effective date 3-3-04), hereby incorporated by reference and available from the District office.

Specific Authority 374.976(2) FS. Law Implemented 374.976 FS. History--New 11-11-90, Formerly 16S-1.008, Amended.

DEPARTMENT OF FINANCIAL SERVICES

Division of Workers' Compensation

RULE CHAPTER NO.:	RULE CHAPTER TITLE:
69L-24	Workers' Compensation Insurers' Standards and Practices
RULE NOS.:	RULE TITLES:
69L-24.001	Purpose
69L-24.002	Scope
69L-24.003	Definitions
69L-24.004	Monitoring, Examining and Investigating
69L-24.005	Maintaining and Providing Records
69L-24.006	Administrative Penalties and Fines
69L-24.007	Patterns and Practices
69L-24.021	Minimum Performance Standards
69L-24.0211	Monitoring
69L-24.022	Auditing
69L-24.0222	Re-Audit and Certification for Noncompliance
69L-24.0231	Benefits and Administration Trust Fund Penalties Improper Filing Practices
69L-24.024	Medical Penalties
69L-24.0241	Employee Failure to Appear for Independent Medical Examination

PURPOSE AND EFFECT: The purpose and effect of this rule chapter is to establish uniform guidelines under which the Department of Financial Services, Division of Workers' Compensation will monitor, audit and investigate regulated entities to ensure compliance with statutory obligations under Chapter 440, Florida Statutes, including requirements to provide timely payment of workers' compensation benefits to injured workers, to timely pay medical bills to providers, and to timely report workers' compensation data to the Department. Regulated entities include but are not limited to carriers, service companies, third-party administrators, self-serviced self-insured employers or funds, managing general agents, and data submitters that are responsible for adjusting workers' compensation claims or submitting information and data regarding those claims to the Department. The purpose and effect is also to establish uniform guidelines to penalize regulated entities for failure to provide timely payment of workers' compensation benefits to injured workers, for failure to timely pay medical bills to providers, and for failure to timely report workers' compensation information or data to the Department, based on findings made during the process of monitoring, auditing and investigating those regulated entities.

SUBJECT AREA TO BE ADDRESSED: Establishment of guidelines to monitor, audit and investigate regulated entities for compliance with requirements of Chapter 440, Florida Statutes, regarding timely payment of benefits to injured workers, timely payment of medical bills, and timely reporting

of data to the Department, and establish penalty guidelines for assessment of penalties for failure to comply with the statutory requirements.

SPECIFIC AUTHORITY: 440.13(11), 440.185(10), 440.20(6), 440.525(4), 440.591, 440.593(5) FS.

LAW IMPLEMENTED: 440.13(11), 440.185, 440.20(6), (8), 440.525, 440.593 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: Tuesday, January 6, 2009, 10:00 a.m.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Robin Ippolito, Bureau Chief, Bureau of Monitoring and Audit, Division of Workers' Compensation, Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-4224, (850)413-1775

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this program, please advise the Department at least 5 calendar days before the program by contacting: Robin Ippolito

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT

WORKERS' COMPENSATION INSURERS' STANDARDS AND PRACTICES

69L-24.001 Purpose.

The purpose and intent of this rule chapter is to promote the self execution of the workers' compensation system through monitoring and enforcement of a regulated entity's fulfillment of its statutory obligations to provide timely payment of workers' compensation benefits to injured workers, timely payment of medical bills to providers, and to timely report workers' compensation medical data to the Department. The timely and accurate reporting of medical data is critical in that it enables the Department to provide current information about medical costs to policymakers and stakeholders so they can make qualitative and objective decisions relating to reimbursements to health care providers. Timely and accurate reporting of first reports of injury or illness is critical in that it allows the Department to monitor claims to ensure that regulated entities are fulfilling their statutory and rule obligations regarding the claims. The purpose of this rule chapter is also to establish performance standards and uniform guidelines for administrative fines and penalties assessed upon regulated entities, for violations of Chapter 440 and other applicable Florida Statutes and Department Rules.

Specific Authority 440.13(11), 440.185(10), 440.20(6), 440.525(4), 440.591, 440.593(5) FS. Law Implemented 440.13(11), 440.185, 440.20(6), (8), 440.525, 440.593 FS. History–New _____.

69L-24.002 Scope.

This rule chapter applies to all regulated entities as defined in this rule chapter and applies to all violations discovered through monitoring, examining, or investigating. This rule chapter shall not be construed as creating any substantive violations not otherwise prescribed by statute or rule.

Specific Authority 440.13(11), 440.185(10), 440.20(6), 440.525(4), 440.591, 440.593(5) FS. Law Implemented 440.13(11), 440.185, 440.20(6), 440.525, 440.593 FS. History–New _____.

69L-24.003 Definitions.

The following definitions shall apply in the rule chapter:

(1) "Action" – an event or events leading to the commission of a violation.

(2) "Audit" – a process whereby the practices of regulated entities are examined to verify compliance with Chapter 440 and other applicable Florida Statutes and Administrative Rules. The term "audit" is synonymous with the term "examination".

(3) "Batch" – a group of data records that is created and evaluated by CPS from electronically submitted data received by the Department.

(4) "Centralized Performance System (CPS)" – a system that evaluates payment and filing data submitted to the Department.

(5) "Department" – the Florida Department of Financial Services.

(6) "Department Rules" – any and all rules adopted by the Department of Financial Services in its administration of Chapter 440 that apply to insurers or other regulated entities.

(7) "Division" – the Division of Workers' Compensation within the Florida Department of Financial Services.

(8) "Examination" – a process whereby the practices of regulated entities are examined to verify compliance with Chapter 440 and other applicable Florida Statutes and Department Rules. The term "examination" is synonymous with the term "audit".

(9) "F.A.C." – Florida Administrative Code.

(10) "F.S." – Florida Statutes.

(11) "Form DFS-F2-DWC-1" – Form DFS-F2-DWC-1 (First Report of Injury or Illness), or its electronic equivalent.

(12) "Investigation" – a Department review that is conducted to verify compliance with Chapter 440 and other applicable Florida Statutes and Department Rules.

(13) "Pattern or Practice" – a repeated or customary act(s) of non-compliance with any single provision of Chapter 440 or other applicable Florida Statutes or Department Rules on an individual claim or on multiple claims.

(14) “Regulated Entity” – any carrier as defined in Section 440.02(4), F.S., employer, service company, servicing agent, third-party administrator, self-serviced self-insured employer or fund, submitter of forms or data on behalf of a carrier, or managing general agent that is responsible for handling or adjusting claims, or fulfilling an insurer’s responsibility to transmit workers’ compensation claims data to the Department.

(15) “Violation” – any finding of non-compliance with Chapter 440, F.S., or other applicable Florida Statutes or Department Rules.

Specific Authority 440.13(11), 440.185(10), 440.20(6), 440.525(4), 440.591, 440.593(5) FS. Law Implemented 440.13(11), 440.185, 440.20(6), (8), 440.525, 440.593 FS. History–New _____.

69L-24.004 Monitoring, Examining and Investigating.

(1) The Department shall monitor, examine, or investigate the performance of regulated entities to ensure compliance with Chapter 440, F.S., and other applicable Florida Statutes and Department Rules as often as is deemed necessary.

(a) Monitoring includes, but is not limited to, the ongoing review of data provided to the Department by regulated entities.

(b) Examining or investigating includes, but is not limited to, the review of a regulated entity’s processes and may be based upon:

1. The regulated entity’s performance in prior examinations and/or investigations, or
2. Information obtained through the monitoring process, or
3. Information obtained through other methods utilized by the Department.

(2) Monitoring, examining, or investigating includes, but is not limited to, the review of the following:

(a) Timeliness and accuracy of indemnity and/or medical payments,

(b) Timeliness and accuracy of the filing of medical bill data,

(c) Timeliness and accuracy of the filing of Form DFS-F2-DWC-1,

(d) Timeliness and accuracy of the filing of Form DFS-F2-DWC-4 (Notice of Action/Change), or its electronic equivalent,

(e) Timeliness and accuracy of the filing of Form DFS-F2-DWC-12 (Notice of Denial), or its electronic equivalent,

(f) Timeliness and accuracy of the filing of Form DFS-F2-DWC-13 (Claims Cost Report), or its electronic equivalent,

(g) Timeliness and accuracy of the reporting of workers’ compensation coverage and changes in such coverage,

(h) Denial of claims,

(i) Delay in provision of benefits,

(j) Harassment, coercion or intimidation of any party,

(k) Compliance with Section 440.105(7), F.S., regarding fraud statements,

(l) Timeliness of the response to a Petition for Benefits,

(m) Timeliness of the compliance with a Judge of Compensation Claim’s order,

(n) Timeliness of the compliance with a Department order or directive,

(o) Compliance with CPS batch timeframes,

(p) Claims-handling practices,

(q) Timeliness of medical authorizations,

(r) Mailing of Form DFS-F2-DWC-65 (Important Workers’ Compensation Information for Florida’s Employers) or Form DFS-F2-DWC-66 (Informacion Importante Del Seguro De Indemnizacion Por Accidentes De Trabajo Para Los Empleadores De La Florida) to the employer,

(s) The date that Forms DFS-F2-DWC-60 or 61 (Important Workers’ Compensation Information for Florida’s Workers’ brochure or Informacion Importante De Seguro De Indemnizacion Por Accidentes De Trabajo Para Los Trabajadores De La Florida) were mailed to the injured worker, and

(t) Mailing of the Employee Notification Letter to the injured worker.

(3) Reports resulting from monitoring, examining, or investigating under Chapter 440 and other applicable Florida Statutes and Department Rules, are confidential and exempt from Section 119.07(1), F.S., pursuant to Section 624.319, F.S., until the investigation ceases to be active.

Specific Authority 440.13(11), 440.185(10), 440.20(6), 440.525(4), 440.591, 440.593(5) FS. Law Implemented 440.13(11), 440.185, 440.20(6), 440.525, 440.593(5) FS. History–New _____.

69L-24.005 Maintaining and Providing Records.

(1) Pursuant to Section 440.525(1), F.S., the Department may examine and investigate regulated entities as often as is warranted to ensure that they are fulfilling their obligations under Chapter 440, F.S. The Department shall have the power to conduct onsite inspections of claims records and documentation of a carrier, third-party administrator, servicing agent, or other claims-handling entity, and conduct interviews, both sworn and unsworn, of claims-handling personnel. Carriers, third-party administrators, servicing agents, and other claims-handling entities shall make all claims records, documentation, communication, and correspondence available to Department personnel during regular business hours, pursuant to Section 440.525(3), F.S. All regulated entities shall provide to the Department all information and documentation that is requested for the purposes of monitoring, examining, or investigating the regulated entity’s operations and processes. Such information and documentation, including specific data, shall be made available to the Department within 14 calendar days of any request by the Department unless the Department allows an extension of time.

(2) For examinations or investigations, if the regulated entity maintains hard-copy files, the hard-copy files shall be made available to the Department on or before the date requested by the Department. If the regulated entity maintains electronic files and an examination or investigation is conducted at the regulated entity's offices, a sufficient number of functioning computers shall be made available to the Department for access to the electronic documents and information. Requests for information may include, but is not limited to:

(a) The date of the first receipt of Form DFS-F2-DWC-1.

(b) The date it was known that the injured worker started losing time from work.

(c) The date that Form DFS-F2-DWC-1 was mailed or transmitted to the Department.

(d) The date that Forms DFS-F2-DWC-4 (Notice of Action/Change), DFS-F2-DWC-12 (Notice of Denial), and DFS-F2-DWC-13 (Claims Cost Report), or their electronic equivalents, were mailed or transmitted to the Department.

(e) The date that Form DFS-F2-DWC-1a (Wage Statement), or its electronic equivalent, was mailed or transmitted to the employer or the employee for completion.

(f) The date that Form DFS-F2-DWC-1a (Wage Statement), or its electronic equivalent, or the data needed to fill out the Wage Statement was received.

(g) The date each indemnity payment was mailed to the injured worker, the amount of the payment, and the period of time that was covered in the payment.

(h) The date that Forms DFS-F5-DWC-9 (Health Insurance Claim Form/CMS-1500), DFS-F5-DWC-10 (Statement of Charges for Drugs and Medical Supplies Form and Instructions), DFS-F5-DWC-11 (American Dental Association Dental Claim Form), and DFS-F5-DWC-90 (Hospital Billing Form (UB-04)), or their electronic equivalents, were received from the health care provider.

(i) The date that Forms DFS-F5-DWC-9 (Health Insurance Claim Form/CMS-1500), DFS-F5-DWC-10 (Statement of Charges for Drugs and Medical Supplies Form and Instructions), DFS-F5-DWC-11 (American Dental Association Dental Claim Form), and DFS-F5-DWC-90 (Hospital Billing Form (UB-04)), or their electronic equivalents, were paid, disallowed, or denied.

(j) The date that Forms DFS-F5-DWC-9 (Health Insurance Claim Form/CMS-1500), DFS-F5-DWC-10 (Statement of Charges for Drugs and Medical Supplies Form and Instructions), DFS-F5-DWC-11 (American Dental Association Dental Claim Form), and DFS-F5-DWC-90 (Hospital Billing Form (UB-04)), or their electronic equivalents, were mailed or transmitted to the Department.

(k) The date that Forms DFS-F2-DWC-60 or 61 (Important Workers' Compensation Information for Florida's Workers' brochure or Informacion Importante De Seguro De Indemnizacion Por Accidentes De Trabajo Para Los Trabajadores De La Florida) were mailed to the injured worker.

(l) The date that Form DFS-F2-DWC-65 or 66 (Employer Informational Brochure) was mailed to the employer.

(m) The date that the Employee Notification Letter was mailed to the injured worker.

(n) The date that any written request for medical authorization was received and the date that the medical authorization was granted in response to the written request.

(o) Electronic Data Interchange (EDI) information pursuant to Rule Chapter 69L-56, F.A.C.,

(p) The date that the 120-day notice required under Section 440.20(4), F.S. was mailed.

(q) All diary notes, claim notes, and correspondence.

(3) Failure to provide the requested information and documentation within the required time frame and in the manner prescribed by the Department constitutes a willful violation as described in and penalized under paragraph 69L-24.007(1)(a), F.A.C.

(4) Failure to file all non-filed forms, or their electronic equivalents, and non-reported medical bills discovered during any monitoring, examination, and investigation process within the required time and in the manner prescribed by the Department constitutes a willful violation as described in and penalized under paragraph 69L-24.007(1)(a), F.A.C.

Specific Authority 440.13(11), 440.185(10), 440.20(6), 440.525(4), 440.591, 440.593(5) FS. Law Implemented 440.13(11), 440.185, 440.20(6), (8), 440.525, 440.593 FS. History—New _____.

69L-24.006 Administrative Penalties and Fines.

The Department shall utilize the monitoring, examination, or investigation processes to ensure compliance with Chapter 440 and other applicable Florida Statutes and Department Rules. The Department may assess administrative penalties and fines for violations. Violations within this rule are described in general language. The use of general language shall not be construed to expand or modify the statute. Violations are not necessarily described herein using the language that would be used to formally assert the violation in any specific case.

(1) Indemnity Violations.

(a) Late payments of compensation. In order to ensure carrier compliance under Chapter 440, F.S., the Department shall monitor, examine, and investigate the performance of carriers. The Department shall assess penalties for late payments of compensation that are below a minimum 95 percent timely payment performance standard. The carrier shall pay to the Workers' Compensation Administration Trust Fund a penalty of:

1. Fifty dollars per number of installments of compensation below the 95 percent timely payment performance standard and equal to or greater than a 90 percent timely payment performance standard.

2. One hundred dollars per number of installments of compensation below a 90 percent timely payment performance standard.

(b) Late filing of forms.

1. Employers shall be fined for each Form DFS-F2-DWC-1 which is not filed timely with the carrier or claims-handling entity as follows:

<u>Number of Days Late</u>	<u>Penalty for Untimely Filing</u>
<u>1-7 calendar days late</u>	<u>\$100 per form</u>
<u>8-14 calendar days late</u>	<u>\$200 per form</u>
<u>15-21 calendar days late</u>	<u>\$300 per form</u>
<u>22-28 calendar days late</u>	<u>\$400 per form</u>
<u>Over 28 calendar days late</u>	<u>\$500 per form</u>

2. The Division, through CPS, will calculate the penalties for untimely filing of forms in order starting with the greatest number of days late first. Carriers shall be fined for each Form DFS-F2-DWC-1 which is not filed timely with the Department as follows:

<u>Number of Days Late</u>	<u>Penalty for Untimely Filing</u>
<u>1-7 calendar days late</u>	<u>\$100 per form</u>
<u>8-14 calendar days late</u>	<u>\$200 per form</u>
<u>15-21 calendar days late</u>	<u>\$300 per form</u>
<u>22-28 calendar days late</u>	<u>\$400 per form</u>
<u>Over 28 calendar days late</u>	<u>\$500 per form</u>

3. If a carrier accepts the untimely filing penalties issued through CPS for a specific month and the total amount of untimely filing penalties for that month exceeds \$10,000 as calculated under subparagraph (1)(b)1. and 2. herein, the penalty for each untimely filing not included in the calculation of the penalty up to \$10,000 shall be recalculated and assessed a penalty of \$25.00 per untimely filing for that specific month.

4. Carriers that incur untimely filing penalties issued through CPS in excess of \$10,000 for three or more specific months in a calendar year shall, in addition to penalties assessed under this subparagraph, be assessed a \$20,000 penalty for a willful pattern or practice violation for the failure to timely submit Form DFS-F2-DWC-1 to the Department. In these instances, carriers must conduct quarterly self audits of their Form DFS-F2-DWC-1 filings to the Department documenting compliance by the carrier with the reporting requirements for Form DFS-F2-DWC-1, and submit the results of those audits to the Department documenting compliance with the reporting requirements for Form DFS-F2-DWC-1 for a one year period following the issuance of the pattern or practice violation.

5. Any carrier that has been assessed penalties in excess of \$10,000 for a calendar month in 2008 for untimely filing of Form DFS-F2-DWC-1 will have their penalty amount recalculated in accordance with subparagraph (1)(b)3. herein. If the carrier has already paid penalties to the Department for the untimely filing of Form DFS-F2-DWC-1, the Department shall refund the difference between the penalties paid and those recalculated under subparagraph (1)(b)3. herein to the carrier, unless the carrier owes any outstanding, unpaid penalties to the Department. The outstanding, unpaid penalties must be paid in full prior to any refund being issued by the Department.

(2) Medical Violations.

(a) Carrier Administrative Penalties and Administrative Fines for Untimely Health Care Provider-Payment or Disposition of Medical Bills.

1. The Department shall assess administrative penalties for failure to comply with the payment, adjustment, disallowance, or denial requirements pursuant to Section 440.20(6)(b), F.S. To evaluate the data for timely performance standards for timely payments, adjustments and payments, disallowances or denials, reported on Forms DFS-F5-DWC-9 (Health Insurance Claim Form/CMS-1500), DFS-F5-DWC-10 (Statement of Charges for Drugs and Medical Supplies Form and Instructions), DFS-F5-DWC-11 (American Dental Association Dental Claim Form), and DFS-F5-DWC-90 (Hospital Billing Form (UB-04)), or their electronic equivalents, the Department shall calculate penalties on a monthly basis for each separate form/category type that was received and accepted by the Department within a specific calendar month.

2. Pursuant to Section 440.20(6)(b), F.S., the Department shall calculate and assess administrative fines according to the following guidelines:

a. For medical services provided on or after January 1, 2004, carriers shall pay, disallow, or deny all medical, dental, pharmacy, and hospital bills properly submitted to the carrier in accordance with Department rule no later than 45 calendar days after the carrier's receipt of the bill. The Department shall assess penalties for late payments, disallowances, or denials of medical, dental, pharmacy, and hospital bills that are below a minimum 95 percent minimum performance standard. The carrier shall pay a penalty of:

i. \$25 for each bill below the 95 percent timely performance standard, but meeting a 90 percent timely performance standard.

ii. \$50 for each bill below a 90 percent timely performance standard.

(b) Carrier Administrative Penalties and Fines for Untimely Filing of Medical Bills.

1. Carriers that fail to timely electronically submit medical bills are subject to an administrative fine. The Division, through CPS, will calculate the penalties for untimely filing of

medical bills in order starting with the greatest number of days late first. Carriers shall be fined for each medical bill which is not timely filed with the Department as follows:

<u>Number of Days Late</u>	<u>Penalty for Untimely Filing</u>
<u>1-30 calendar days late</u>	<u>\$5</u>
<u>31-60 calendar days late</u>	<u>\$10</u>
<u>61-90 calendar days late</u>	<u>\$25</u>
<u>91 or greater calendar days late</u>	<u>\$50</u>
<u>Rejected or resubmitted 91 or greater calendar days late*</u>	<u>\$50</u>

* Each medical bill that does not pass the electronic reporting edits shall be rejected by the Department and considered not filed. If the medical bill remains rejected and the carrier does not correctly resubmit the bill within 90 calendar days of the original rejected date, an administrative fine shall be assessed against the carrier in the amount of \$50 for each such medical bill.

2. If a carrier accepts the untimely filing penalties of medical bills issued through CPS for a specific month and the total amount of untimely filing penalties for that month exceeds \$10,000 as calculated under subparagraph (2)(b)1. herein, the penalty for each untimely filing not included in the calculation of the penalty up to \$10,000 shall be recalculated and assessed a penalty of \$5.00 per untimely filing for that specific month.

3. Carriers that incur untimely filing penalties issued through CPS in excess of \$10,000 for three or more specific months in a calendar year shall, in addition to penalties assessed under this subparagraph, be assessed a \$20,000 penalty for a willful pattern or practice violation for the failure to timely submit medical bills to the Department. In these instances, carriers must conduct quarterly self audits of their medical bill filings to the Department documenting compliance by the carrier with the reporting requirements for medical bills, and submit the results of those audits to the Department documenting compliance with the reporting requirements for a one year period following the issuance of the pattern or practice violation.

4. Any carrier that has been assessed penalties in excess of \$10,000 for a calendar month in 2008 for untimely filing of medical bills will have their penalty amount recalculated in accordance with subparagraph (2)(b)2. herein. If the carrier has already paid penalties to the Department for the untimely filing of medical bills, the Department shall refund the difference between the penalties paid and those recalculated under subparagraph (2)(b)2. herein to the carrier, unless the carrier owes any outstanding, unpaid penalties to the Department. The outstanding, unpaid penalties must be paid in full prior to any refund being issued by the Department.

Specific Authority 440.13(11), 440.185(10), 440.20(6), 440.525(4), 440.591, 440.593(5) FS. Law Implemented 440.13(11), 440.185, 440.20(6), (8), 440.525, 440.593 FS. History--New _____.

69L-24.007 Patterns and Practices.

(1) A pattern or practice constitutes a willful violation if the regulated entity that committed the pattern or practice:

(a) Did so intentionally and with knowledge of the act's unlawfulness or with disregard to the unlawfulness of the act; or,

(b) Repeated the same pattern or practice within two (2) years of the date of assessment of a penalty by the Department for a non-willful violation. In the event the assessment of penalty for the previous non-willful violation is challenged pursuant to Chapter 120, Florida Statutes, said two (2) year period begins to run on the date of final agency action through which a penalty is assessed for the previous non-willful violation; or,

(c) Failed to comply with an order of a Judge of Compensation Claims or with an order of the Department.

(2) The penalties assessed under subsection (1) of this rule shall be \$20,000 for a single willful violation and not exceed an aggregate of \$100,000 for all pattern or practice violations arising out of the same action.

(3) The Department may issue a non-willful violation for a pattern or practice of unreasonable claims handling for any monitoring, examining, or investigating review activity listed in subsection 69L-24.004(2), F.A.C., or for any other pattern or practice identified by the Department. For each such non-willful violation, a penalty of \$2,500 shall be assessed against the carrier by the Department, with such fines not exceeding an aggregate of \$10,000 for all pattern or practice violations arising out of the same action. Any penalty imposed under this paragraph for a non-willful violation shall not duplicate a penalty imposed under another provision of Chapter 440, Florida Statutes or Department Rules.

(a) The Department will calculate a regulated entity's performance in order to determine if a non-willful violation will be assessed for a pattern or practice of unreasonable claims handling. If the performance falls below 90% compliance, except as otherwise stated in Chapter 440 and other applicable Florida Statutes and Department Rules, the Department may assess a penalty pursuant to paragraph (3) herein.

Specific Authority 440.13(11), 440.185(10), 440.20(6), 440.525(4), 440.591, 440.593(5) FS. Law Implemented 440.13(11), 440.185, 440.20(6), (8), 440.525, 440.593 FS. History--New _____.

69L-24.021 Minimum Performance Standards.

A ninety percent (90%) rate of compliance is the minimum standard of performance for carriers, self insurers, employers and servicing agents in each of the following areas: timeliness in which they report and handle claims; promptness of payment of compensation benefits; and payment and disposition of medical bills. The 90% performance rate applies to all applicable carriers, self insurers, employers, and

servicing agents who are subject to the following rules: Chapter 69L-3, F.A.C.; Chapter 69L-7, F.A.C.; or Chapter 38F-8, F.A.C.

Specific Authority 440.20(8)(c), 440.13(11)(b), 440.591 FS. Law Implemented 440.20, 440.13(11) FS. History—New 8-29-94, Formerly 38F-24.021, 4L-24.021, Repealed _____.

69L-24.0211 Monitoring.

(1) The Division shall continually monitor the performance of carriers, self-insurers, employers and servicing agents to ensure compliance with the performance standards prescribed in Rule 69L-24.021, F.A.C., and to assist these entities in improving their overall performance.

(2) Such monitoring will include the automated carrier performance system indicators as listed below:

(a) Timeliness and accuracy of all indemnity and medical payments;

(b) Timely and accurate reporting of required information;

(c) Volume and nature of employee complaints regarding the workers' compensation injury;

(d) Timeliness and accuracy of reporting coverage and changes in coverage;

(e) Compliance with rehabilitation status reviews and reporting requirements;

(f) Timeliness and accuracy of refunding overpayments;

(g) Effectiveness of utilization review program;

(h) Volume and cost of litigation in processing initial claims;

(i) Effectiveness in returning employees to work;

(j) Employee customer service ratings;

(k) Employer customer service ratings; and

(l) Amount of average medical costs and average total costs per claim.

In addition to the data in the Automated Carrier Performance System, review will be based on data received on referrals of questionable carrier practices received from other units of the Division, governmental entities, the Department of Financial Services, claimants, and other interested parties.

Specific Authority 440.20(15)(f), 440.591 FS. Law Implemented 440.20(15) FS. History—New 8-29-94, Amended 5-14-95, Formerly 38F-24.0211, 4L-24.0211, Repealed _____.

69L-24.022 Auditing.

(1) The audits by the Division will encompass all indicators covered by the Division's Automated Carrier Performance System as provided in Rule 69L-24.0211, F.A.C. However, carriers, self-insurers or servicing agents shall not be penalized for performance below 90 percent based on the following Automated Carrier Performance System indicators:

(a) Volume and cost of litigation in processing initial claims;

(b) Effectiveness in returning employees to work;

(c) Employee customer service ratings;

(d) Employer customer service ratings;

(e) Amount of average medical costs and average total costs per claim; and

(f) Volume and nature of employee complaints regarding the workers' compensation injury.

The Division will make recommendations to assist these entities to improve performance in the aforementioned areas for the specific purpose of rendering the Workers' Compensation system more effective and efficient.

(2) The Automated Carrier Performance System indicators and the other sources identified in this rule shall be reviewed by the Division to determine whether and how often to conduct audits of each carrier, self-insurer or servicing agent's practices. For purposes of this determination, substandard performance on any category outlined in Rule 69L-24.021, F.A.C., shall subject the entity to consideration for audit. No prior notice is required if the Division determines an audit is necessary. However, nothing set forth in these rules shall prohibit the Division from auditing all carriers, self-insurers and servicing agents at least once every three (3) years. Audits conducted under the three (3) year requirement shall cover the preceding three (3) fiscal years of the carrier, self-insurer or servicing agent's operation and must commence within twelve (12) months after the end of the most recent fiscal year being covered by the audit. The audit may cover any period of the entity's operations since the Division's last audit.

(3) If the Division conducts an on-site audit of any carrier's, self-insurer's or servicing agent's practices, the audit report shall be utilized to recommend changes in such entity's behavior and to ensure its continuing compliance with the minimum performance standards set forth in this rule.

(4) For purposes of this rule:

(a) On-Site audits will be conducted at the physical location of the entity being audited. The Division shall issue a written audit report within thirty (30) days after conclusion of an on-site audit conducted pursuant to this rule. This report shall include the Division's recommendations for improving the entity's overall performance in all categories as specified by the Automated Carrier Performance System.

(b) Desk audits will be conducted at the Division's office based on data reported to the Division. A written audit report shall be issued at any time the entity's performance is below the minimum performance standard.

(5) All carriers, self-insurers or servicing agents shall provide the Division with all information relevant to each case file and the Automated Carrier Performance System indicators, as needed, to permit a complete review of the entity's operations and processes during an audit. Such information may be furnished through hard copy or through a computerized format, as long as the information is made available to the Division at the time of the audit. In the event the information is kept in a format other than hard copy, such format shall be

accessible by the Division without unreasonable delay caused by access codes or the programming of access codes for entry into the entity's database by the Division.

Specific Authority 440.13(11)(b), 440.20(8)(c), (17), 440.591 FS. Law Implemented 440.13(11), 440.20 FS. History—New 8-29-94, Amended 5-14-95, Formerly 38F-24.022, 4L-24.022, Repealed.

69L-24.0222 Re-Audit and Certification for Noncompliance.

~~(1) Any carrier, self-insurer or servicing agent who fails to achieve at least 90 percent compliance on any initial audit shall be audited again within twelve (12) months of the date of the initial audit. During the re-audit, the Division shall examine the entity's performance based on the deficiencies identified in the initial audit report and the specific action proposed for eliminating the deficiencies in the entity's Statement of Objectives. Once the entity has been re-audited and determined not to satisfy the 90 percent compliance rate, that entity shall be subject to the following sanctions:~~

~~(a) If the entity's performance is below 90 percent compliance due to its failure to carry out the specific action proposed, it shall be certified to the Department of Financial Services or this Division, as applicable, under Section 440.20(15)(a), Florida Statutes, in addition to any penalty or fine authorized under Rule 69L-24.0221, F.A.C.~~

~~(b) All carriers, self-insurers, or servicing agents failing to submit a Statement of Objectives and who do not achieve at least 90 percent compliance on re-audit shall be certified to the licensing authority, in addition to any penalty or fine authorized under Rule 69L-24.0221, F.A.C.~~

~~(2) Any carrier, self-insurer or servicing agent whose initial audit indicates a failure to achieve at least 50 percent compliance, shall be certified to the Department of Financial Services or this Division, as applicable, under Section 440.20(15)(a), Florida Statutes.~~

~~(3) Upon conclusion of any on-site audit, the Division's personnel conducting the audit shall review the preliminary findings of such audit with the claims manager or the individual in charge of the office being audited or his designee. Carriers that will be sanctioned under subsection (2) of this rule may request that Division personnel hold, or cause to be held, a workshop which shall include, but not be limited to, the areas of deficiency identified in the audit.~~

~~(4) The Division shall not re-audit a carrier, self-insurer, or servicing agent for failure to achieve 90 percent compliance with the Automated Carrier Performance System indicators set forth in paragraphs 69L-24.0221(1)(a)-(f), F.A.C.~~

Specific Authority 440.13(11)(b), 440.20(15)(f), 440.591 FS. Law Implemented 440.20 FS. History—New 8-29-94, Amended 5-14-95, Formerly 38F-24.0222, 4L-24.0222, Repealed.

69L-24.0231 Benefits and Administration Trust Fund Penalties Improper Filing Practices.

~~(1)(a) Failure to timely file, by electronic or paper submission, legible and complete forms, reports, or documents as required by Chapter 440, F.S., Chapter 69L-3, F.A.C., or other Division rules implementing Chapter 440, F.S., shall subject the party required to file such form, report or document to assessment by the Division of an Administrative fine. For purposes of this rule, a paper form, report or document is timely filed when it is postmarked and mailed prepaid prior to the expiration of the time periods prescribed in this rule, and Chapter 69L-3, F.A.C. For purposes of this rule, if disability is immediate and continuous for 8 or more calendar days after the injury, an electronic equivalent of a First Report of Injury or Illness will be considered timely filed with the Division when it is received by the Division on or before the 21st day after the carrier's knowledge of the injury and is assigned an acknowledgement code of Transaction Accepted (TA). If the first 7 days of disability are nonconsecutive or delayed, the electronic equivalent of a First Report of Injury or Illness will be considered timely filed with the Division when it is received by the Division on or before the 13th day after the carrier's knowledge of the 8th day of disability and is assigned an acknowledgement code of Transaction Accepted (TA). Penalties shall be assessed as follows:~~

~~(b) DWC-1, First Report of Injury or Illness. Employers shall be penalized for each DWC-1 that is not timely filed with the carrier or servicing agent as follows:~~

- ~~1. \$100 for one through seven days of untimely filing;~~
- ~~2. \$200 for eight through 14 days of untimely filing;~~
- ~~3. \$300 for 15 through 21 days of untimely filing;~~
- ~~4. \$400 for 22 through 28 days of untimely filing; or~~
- ~~5. \$500 for over 28 days of untimely filing.~~

~~(c) Carriers shall be penalized for each DWC-1 that is not timely filed with the Division as follows:~~

- ~~1. \$100 for one through seven days of untimely filing;~~
- ~~2. \$200 for eight through 14 days of untimely filing;~~
- ~~3. \$300 for 15 through 21 days of untimely filing;~~
- ~~4. \$400 for 22 through 28 days of untimely filing; or~~
- ~~5. \$500 for over 28 days of untimely filing.~~

~~(d) If the electronic First Report of Injury or Illness is assigned an Application Acknowledgement Code of Transaction Accepted (TA) within 30 days after the Claim Administrator, as defined in Rule 69L-56.002, F.A.C., is first approved and required by the Division to send electronic First Reports of Injury or Illness to the Division pursuant to paragraph 69L-56.300(1)(d), F.A.C., the Insurer, as defined in Rule 69L-56.002, F.A.C., shall not be assessed a filing penalty pursuant to paragraph 69L-24.0231(1)(c), F.A.C., based on the filing requirements established in subsections 69L-56.301(1) and (2), F.A.C. After the completion of the 30-day period referenced above, all electronic First Reports of Injury or Illness must be assigned an Application Acknowledgement~~

Code of Transaction Accepted (TA) by the Division within the required filing timeframes established in subsections 69L-56.301(1) and (2), F.A.C., to be considered timely filed.

(2) ~~Improper Disposition of Medical Bill Penalties.~~ Any penalty imposed on a carrier or self insured for the improper disposition of medical bills when such disposition is below 90 percent compliance, after 7-1-94, shall be assessed, per quarter, as follows:

80% through 89.99%	1/4 percent of the prior year's assessment levied under Section 440.51, F.S., against the entity being fined.
70% through 79.99%	1/2 percent of the prior year's assessment levied under Section 440.51, F.S., against the entity being fined.
60% through 69.99%	3/4 percent of the prior year's assessment levied under Section 440.51, F.S., against the entity being fined.
0% through 59.99%	1 percent of the prior year's assessment levied under Section 440.51, F.S., against the entity being fined.

(3)(a) ~~Penalty to the Administration Trust Fund.~~ Any fine imposed on any carrier or servicing agent that is payable to the Administration Trust Fund for untimely payment of compensation benefits which were paid on or after 1-1-94 shall be as follows:

(b) \$50 for each late payment of compensation which is below 90 percent compliance not to exceed one percent of the prior year's assessment levied under Section 440.51, F.S.;

(4) ~~Benefit Penalty without an Award.~~ Any penalty payable to the employee for the untimely payment of compensation benefits, on dates of accident on or after 1-1-94, payable without an award, shall be as follows:

(a) 20 percent on the first of any late installments of compensation not paid within seven days after it becomes due;

(b) \$5 per subsequent installment of compensation not paid within seven days after it becomes due; and

(c) For dates of accident prior to 1-1-94, the penalty shall be the greater of 10 percent or \$5 for any installment of compensation not paid within 14 days after it becomes due.

(5) ~~Benefit Penalty with an Award.~~ Any penalty for the untimely payment of compensation for dates of accident on or after 1-1-94 payable under the terms of an award shall be 20 percent of such unpaid compensation not paid within 37 days after the date the order is mailed to the parties, unless review of the compensation order making such award is taken as provided in Section 440.25, F.S. For dates of accidents prior to 1-1-94, the penalty shall be 20 percent of such unpaid compensation not paid within 60 days after the date the order is mailed to the parties, unless review of the compensation order making such award is taken as provided in Section 440.25, F.S.

(6) ~~When a servicing agent is under contract with a carrier to fulfill the carrier's administrative responsibilities under this chapter, the payment practices of the servicing agent are~~

~~deemed the payment practices of the carrier, in which case the carrier shall be the responsible party for any penalties assessed under this section.~~

~~Specific Authority 440.13(11)(b), 440.185, 440.591, 440.593(5) FS. Law Implemented 440.13(11)(b), 440.185(9), 440.20(8)(a) FS. History-New 8-29-94, Amended 5-14-95, 6-4-97, 11-28-01, Formerly 38F-24.0231, 4L-24.0231, Amended 1-8-04, 5-8-08, Repealed _____.~~

~~69L-24.024 Medical Penalties.~~

(1) ~~Penalty for Willful Refusal to Provide Medical Records or to Discuss Medical Condition.~~ The Division, pursuant to Chapter 69L-7, F.A.C., shall assess a penalty against a health care provider who willfully refuses to provide medical records or to discuss the medical condition of the injured employee, after a reasonable request is made by the Division, employer, carrier or attorney for either of them for such medical records or to discuss the medical condition of the injured employee.

(2)(a) ~~Failure to Timely Compensate a Certified Expert Medical Advisor.~~ The Division shall assess a penalty which shall not exceed \$500 against any carrier, self-insurer or servicing agent that fails to timely compensate a certified expert medical advisor for services rendered, pursuant to Section 440.13(9), Florida Statutes. In accordance with Section 440.13(9)(f), Florida Statutes, the Division establishes the following penalty schedule, with \$500 being the maximum penalty for each failure to timely compensate such advisor:

(b) ~~Payment by the carrier, self-insurer or servicing agent to a certified expert medical advisor is deemed timely when such payment is made within 45 calendar days after the date the carrier, self-insurer or servicing agent receives the expert medical advisor's bill for services rendered.~~

1. ~~One through five calendar days of untimeliness in payment will result in a penalty of \$200;~~

2. ~~Six through ten calendar days of untimeliness in payment will result in a penalty of \$400;~~

3. ~~Over 10 calendar days of untimeliness in payment will result in a penalty of \$500.~~

(3) ~~Failure of Health Care Provider To Refund Overpayment Within 30 Days After Notification.~~ The Division, pursuant to Chapter 69L-7, F.A.C., shall assess a penalty against any health care provider who fails to refund an overpayment made by the carrier, self-insurer or servicing agent within 30 days after receipt of written notification with substantiation of the overpayment by either the carrier, self-insurer, servicing agent or the Division of Workers' Compensation.

~~Specific Authority 440.13(11)(a), 440.20(8)(c), 440.591 FS. Law Implemented 440.13(9)(f), (11) FS. History-New 8-29-94, 5-14-95, Formerly 38F-24.024, 4L-24.024, Repealed _____.~~

69L-24.0241 Employee Failure to Appear for Independent Medical Examination.

~~The carrier may contact the injured employee directly to schedule a reasonable time for an independent medical examination. The carrier has an obligation to confirm, in writing, the date and time of such examination to the injured employee within five days of the date and time the carrier and employee agreed to such examination. The carrier must also notify the injured employee's counsel, if any, of such examination no later than seven days prior to the date such examination is scheduled.~~

~~(1) For purposes of this section, "reasonable time" means a time acceptable to both parties.~~

~~(2) Injured employees are required to appear for all properly scheduled independent medical examinations, unless the injured employee can provide good cause for his absence. For purposes of this section, good cause can be established by showing that an immediate illness, injury, unforeseen event or intervening circumstances prevented the injured employee's appearance. An injured employee who does not properly provide at least 24 hours' notice of cancellation and cannot demonstrate good cause for his/her nonappearance for the independent medical examination shall not be excused from the sanctions of subsections (3) and (4) below.~~

~~(3) An injured employee who fails without good cause, as set forth above, to appear for the scheduled independent medical examination shall reimburse the carrier 50 percent of the cancellation or no show fee. The carrier may withhold no more than 20 percent of each bi weekly installment amount payable to the injured employee when recouping from the injured employee a cancellation or no show fee that has been paid by the carrier. The carrier shall not recoup more than 50 percent of the actual cancellation or no show fee.~~

~~(4) An injured employee who fails, without good cause as set forth in subsection (2), to appear for the scheduled independent medical examination is barred from recovering compensation for any period during which the injured employee has refused to submit to such examination. Compensation under this paragraph means indemnity benefits.~~

Specific Authority 440.591 FS. Law Implemented 440.13(5)(d) FS. History—New 8-29-94, Amended 5-14-95, Formerly 38F-24.0241, 4L-24.0241, Repealed _____.

Section II Proposed Rules

DEPARTMENT OF STATE

Division of Library and Information Services

RULE NOS.:	RULE TITLES:
1B-30.001	Rule Numbering and Rule Titles
1B-30.0015	Definitions

1B-30.002 Style and Form for Filing Rules; Certification Accompanying Materials

1B-30.003 Publication of Notices in the Florida Administrative Weekly (FAW)

1B-30.004 Legal Citations and History Notes

1B-30.005 Materials Incorporated by Reference

PURPOSE AND EFFECT: These rules were amended to: (1) clarify previously required agency rulemaking requirements by adding detail and changing the location of some rule sections; (2) to include instructions for electronic filing procedures for "e-rulemaking;" and (3) to include new rulemaking requirements to comply with changes in Chapter 120, Florida Statutes (2008).

SUMMARY: These rules were transferred from Chapter 1S-1 to Chapter 1B-30, F.A.C. References to "Bureau of Administrative Code" were changed to "Administrative Code and Weekly Section."

Rule 1B-30.001: Three agency rule titles were added (69, 70, and 71).

1B-30.0015: The following terms with definitions were added: "General notice," "Proposed Rule," "Promulgate," "Rule Certification Form," "Rule Notice," "Rule Number," "Rule Title," "Rulemaking," "Sub-unit," and "Title Number." The following terms with definitions were deleted: "Change/Change Notice/Modification," "Deliver for Publication," "New Rule," "Strike Through," and "Underline." The following terms with definitions were modified: "Amended Rule," "Law Implemented," "Rule Chapter," and "File for Adoption." The term "Coded Copy" was changed to "Coding."

1B-30.002: Agencies must include a cover letter with each certification packet, designating its contact person for the rule being filed for adoption. Agencies may submit rules on compact discs or DVD's, in addition to the previously required 3.5" diskette. The certification forms used when filing rules under Sections 120.54(3), 120.54(1)(i)5., 120.54(6), and 403.8055, Florida Statutes, were amended to include a provision that agencies have complied with all applicable rulemaking requirements of the Department of State. In addition, a rule of another agency or a federal regulation may only be effective upon or after the date of filing for its adoption."

1B-30.003: This rule was amended to include the instructions for use of the Department of State's electronic rulemaking website: "e-rulemaking." The rule number and first line of each sub-unit of rule text must be indented by 0.25 inch. Detail was added regarding how to code rule text. Several subsections were modified to clarify rulemaking requirements. The Notice of Rule Development provides agencies the option to voluntarily schedule a rule development workshop, without public request. A DEP Notice of Intent to Adopt A Rule in accordance with Section 120.54(1)(i)5., Florida Statutes, was