

(a) Meet the requirements of and be licensed by the Department of Education pursuant to Chapter 1005, F.S., or the equivalent licensing authority of another state or county, or be within the public school system of the State of Florida; and

(b) Offer a course of study that includes, at a minimum, the 500 classroom hours listed below, completed at the rate of no more than 6 classroom hours per day and no more than 30 classroom hours per calendar week:

Course of Study	Classroom Hours
Anatomy and Physiology	150
Basic Massage Theory and <u>History</u>	
<del>Clinical Practicum</del>	<del>100</del> <u>225</u>
<u>Clinical Practicum</u>	<u>125</u>
<del>Florida Statutes/Rules and History</del>	
<del>of Massage</del>	<del>40</del>
<del>Theory and Practice of Hydrotherapy</del>	<del>45</del>
Allied Modalities	<u>76</u> <sup>97</sup>
<u>Business</u>	<u>15</u>
<u>Theory and Practice of Hydrotherapy</u>	<u>15</u>
<u>Florida Laws and Rules</u>	<u>10</u>
<u>(Chapters 456 and 480, F.S. and</u>	
<u>Rule 64B7, F.A.C.)</u>	
<u>Professional Ethics</u>	<u>4</u>
HIV/AIDS Education	3
<u>Medical Errors</u>	<u>2</u>

(c) Apply directly to the Board of Massage Therapy and provide the following information:

1. Sample transcript and diploma;
2. Copy of curriculum, catalog or other course descriptions;
3. Faculty credentials; and
4. Proof of licensure by the Department of Education.

(2) All faculty members of the massage therapy school must meet the minimum requirements of the Department of Education.

(3) Board of Massage Therapy approval shall be withdrawn if the massage school:

(a) Modifies its curriculum to fall below the minimum standards set out in this rule, or fails to require its students to complete the minimum standards in order to graduate;

(b) Submits to the Board of Massage Therapy on behalf of an applicant for licensure documents containing information the school, through its owner, manager, instructors, or other employees or agents, knows to be false;

(c) Violates any standard applicable to the school pursuant to licensure by the Department of Education;

(d) Violates any applicable rule herein.

(4) A Board of Massage Therapy-approved school must notify the Board of Massage Therapy within 90 days of:

- (a) Changes in curriculum;

(b) Changes in faculty or staff, including submission of the credentials of new faculty; and

(c) Changes in address.

(5) Any change in ownership of a Board of Massage Therapy approved school must be approved by the Board of Massage Therapy.

Rulemaking Specific Authority 480.035(7) FS. Law Implemented 480.033(9), 480.041(1)(b) FS. History—New 3-25-86, Amended 8-15-89, 12-22-92, Formerly 21L-32.003, Amended 10-20-96, Formerly 61G11-32.003, Amended 8-16-98, 10-30-07,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Board of Massage Therapy

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Massage Therapy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 29, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 17, 2009

### Section III Notices of Changes, Corrections and Withdrawals

#### **BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND**

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

#### **DEPARTMENT OF CORRECTIONS**

RULE NO.:	RULE TITLE:
33-401.701	Medical and Substance Abuse Clinical Files

#### NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 35, No. 9, March 6, 2009 issue of the Florida Administrative Weekly.

33-401.701 Medical and Substance Abuse Clinical Files.

(1) through (9) No change.

(10) Use and disclosure of protected health information.

(a) through (g) No change.

(h) In accordance with 45 C.F.R. § 164.502, a personal representative of a deceased inmate shall have access to or authorize the disclosure of the deceased inmate's protected health information that is relevant to the personal representative's legal authority to act on behalf of the deceased inmate or the deceased inmate's estate. To authorize the

disclosure of the deceased inmate's protected health information. A certified copy of a letter of administration or other document demonstrating the legal authority of the personal representative shall be filed in the inmate's medical file and Form DC4-711B, Consent and Authorization for Use and Disclosure Inspection and Release of Confidential Information must be signed by a personal representative. In accordance with 45 C.F.R. § 164.514(h)(1), the Department shall verify and document the authority of the personal representative to serve in that capacity.

(i) In accordance with 45 C.F.R. § 164.502, a personal representative of a living inmate shall have access to or authorize the disclosure of the inmate's protected health information that is relevant to the personal representative's legal authority to make health care decisions on behalf of the inmate. Form DC4-711B, Consent and Authorization for Use and Disclosure Inspection and Release of Confidential Information shall be signed by the inmate or the inmate's personal representative in accordance with Florida law. In accordance with 45 C.F.R. § 164.514(h)(1), the Department shall verify and document the authority of the personal representative to serve in that capacity. A copy of a health care surrogate form, durable power of attorney, or other document demonstrating the personal representative's authority shall be filed in the inmate's medical file.

(j) through (m) No change.

(11) through (12) No change.

Rulemaking Authority 944.09, 945.10 FS. Law Implemented 119.07, 395.3025, 944.09, 945.10, 945.25, 945.6034 FS. History—New\_\_\_\_\_.

**WATER MANAGEMENT DISTRICTS**

**Southwest Florida Water Management District**

RULE NO.: RULE TITLE:  
40D-8.624 Guidance and Minimum Levels for Lakes

**NOTICE OF WITHDRAWAL**

Notice is hereby given that the above proposed rule development, as noticed in Vol. 35, No. 51, December 24, 2009 issue of the Florida Administrative Weekly has been withdrawn.

**AGENCY FOR HEALTH CARE ADMINISTRATION**

**Certificate of Need**

RULE NOS.: RULE TITLES:  
59C-1.008 Certificate of Need Application Procedures  
59C-1.010 Certificate of Need Application Review Procedures  
59C-1.012 Administrative Hearing Procedures  
59C-1.030 Criteria Used in Evaluation of Applications

**NOTICE OF CHANGE**

Notice is hereby given that the following changes in accordance with subparagraph 120.54(3)(d)1., F.S., have been made to the proposed rule published in Vol. 34, No. 48, November 26, 2008 issue of the Florida Administrative Weekly and subsequently amended by notices of change published in Vol. 35, No. 9, March 6, 2009 issue, in Vol. 35, No. 11, March 20, 2009 issue, in Vol. 35, No. 20 issue, and in Vol. 35, No. 23 issue of the Florida Administrative Weekly.

**59C-1.008 Certificate of Need Application Procedures.**

(1) Letters of Intent and applications subject to comparative review shall be accepted in two batching cycles annually each for hospital beds and facilities and for other beds and programs, as specified in paragraph (g) of this subsection. The category "hospital beds and facilities" includes proposals for new hospital facilities, replacement hospital facilities if being replaced more than a mile away, ~~acute care beds pursuant to Section 408.036(1)(g), F.S.,~~ the establishment of new neonatal level II and level III programs unless otherwise exempt pursuant to Section 408.036(3)(~~l~~), F.S., and comprehensive medical rehabilitation beds unless otherwise exempt pursuant to Section 408.036(3)(~~j~~), F.S., and except as provided in Section 408.037(2), F.S., for a general hospital. Unless otherwise directed by 408.037(2), F.S., general hospital applications shall conform to the schedules in this rule and will use all the application and schedules described in paragraph (1)(f) usual application and financial forms described below as applicable. The category "other beds and programs" includes proposals for pediatric open heart surgery, pediatric cardiac catheterization, specialty burn units, organ transplantation, community nursing home projects, hospice programs, hospice inpatient facilities, and intermediate care facilities for the developmentally disabled.

(a) No change.

(b) The contents of the letter of intent shall be consistent with paragraph 408.039(2)(c), F.S., and must be a written communication with an original signature. The applicant is solely responsible for the content and clarity of the letter of intent. The agency shall not assume any facts not clearly stated. Applications should be submitted with one bound copy and one unbound print copy ~~copy printed and any duplicates in electronic media format (DVD).~~

(c) through (e) No change.

(f) Certificate of Need Application Submission. An application for a certificate of need shall be submitted on AHCA Forms 3150-0001, March 2009 Application for a Certificate of Need, ~~March 2009~~ or 3150-0003, March 2009 Transfer of a Certificate of Need, ~~March 2009~~, which includes a Cover Page, Cover Page-TRN Schedules A, B or B-TRN, C, D, D-1, 1 or 1-TRN, 2, 3, 4, 5, 6, 6A, 7, 7A, 7B, 8, 8A, 9, 10 or 10-TRN, 11, and 12-TRN, which are incorporated by reference herein. An application for a general hospital shall be submitted

on AHCA Form 3150-0002, March 2009 Application for a General Hospital Certificate of Need which includes Schedules 11, A(H), B(H), C, D(H) in addition to a Cover (H) Page, which are incorporated by reference herein. Paper copies or copies on electronic media of AHCA Forms 3150-0001, March 2009 Application for a Certificate of Need ~~March 2009~~; AHCA Form 3150-0002, March 2009 Application for a General Hospital Certificate of Need; or AHCA Form 3150-0003, March 2009 Transfer of a Certificate of Need, ~~March 2009~~ and the Schedules may be obtained from:

Agency for Health Care Administration;  
 Certificate of Need  
 2727 Mahan Drive, Building 1, Mail Stop 28  
 Tallahassee, FL 32308.

Electronic versions of AHCA Forms 3150-0001, 3150-0002 and 3150-0003 and the Schedules are also available at: [http://ahca.myflorida.com/MCHO/CON FA/Application/index.shtm](http://ahca.myflorida.com/MCHO/CON_FA/Application/index.shtm).

1. The application must be actually received by the agency by 5:00 p.m. local time on or before the application due date.
2. Applications for projects which exceed the proposed number of beds contained in the letter of intent shall not be deemed complete for review by the agency and shall be withdrawn from further review.
3. Applications may propose a lesser number of beds than that contained in the letter of intent.
- ~~4. Applications for a certificate of need for a general hospital must address criteria contained in subsections 408.035(2), F.S., and be submitted on AHCA Form 3150-0002, March 2009 Application For A General Hospital Certificate of Need.~~

(g) Applications Subject to Comparative Review – Batching Cycles. In order that applications pertaining to similar types of services or facilities affecting the same service district or subdistrict may be considered in relation to each other for purposes of comparative review, letters of intent and applications shall be received by the agency no later than dates prescribed in the following schedule:

Hospital Beds and Facilities  
1st Batching Cycle—2008

<del>Summary Need Projections Published in F.A.W.</del>	<del>1-25-08</del>
<del>Letter of Intent Deadline</del>	<del>2-11-08</del>
<del>Application Deadline</del>	<del>3-12-08</del>
<del>Completeness Review Deadline</del>	<del>3-19-08</del>
<del>Application Omissions Deadline</del>	<del>4-16-08</del>
<del>Agency Initial Decision Deadline</del>	<del>6-13-08</del>

Hospital Beds and Facilities  
2nd Batching Cycle—2008

<del>Summary Need Projections Published in F.A.W.</del>	<del>7-25-08</del>
<del>Letter of Intent Deadline</del>	<del>8-11-08</del>
<del>Application Deadline</del>	<del>9-10-08</del>

<del>Completeness Review Deadline</del>	<del>9-17-08</del>
<del>Application Omissions Deadline</del>	<del>10-15-08</del>
<del>Agency Initial Decision Deadline</del>	<del>12-12-08</del>

Hospital Beds and Facilities  
1st Batching Cycle—2009

<del>Summary Need Projections Published in F.A.W.</del>	<del>1-23-09</del>
<del>Letter of Intent Deadline</del>	<del>2-09-09</del>
<del>Application Deadline</del>	<del>3-11-09</del>
<del>Completeness Review Deadline</del>	<del>3-18-09</del>
<del>Application Omissions Deadline</del>	<del>4-15-09</del>
<del>Agency Initial Decision Deadline</del>	<del>6-12-09</del>

Hospital Beds and Facilities  
2nd Batching Cycle – 2009

<del>Summary Need Projections Published in F.A.W.</del>	<del>7-24-09</del>
<del>Letter of Intent Deadline</del>	<del>8-10-09</del>
<del>Application Deadline</del>	<del>9-09-09</del>
<del>Completeness Review Deadline</del>	<del>9-16-09</del>
<del>Application Omissions Deadline</del>	<del>10-14-09</del>
<del>Agency Initial Decision Deadline</del>	<del>12-11-09</del>

Hospital Beds and Facilities  
1st Batching Cycle – 2010

<del>Summary Need Projections Published in F.A.W.</del>	<del>1-22-10</del>
<del>Letter of Intent Deadline</del>	<del>2-08-10</del>
<del>Application Deadline</del>	<del>3-10-10</del>
<del>Completeness Review Deadline</del>	<del>3-17-10</del>
<del>Application Omissions Deadline</del>	<del>4-14-10</del>
<del>Agency Initial Decision Deadline</del>	<del>6-11-10</del>

Hospital Beds and Facilities  
2nd Batching Cycle – 2010

<del>Summary Need Projections Published in F.A.W.</del>	<del>7-23-10</del>
<del>Letter of Intent Deadline</del>	<del>8-09-10</del>
<del>Application Deadline</del>	<del>9-08-10</del>
<del>Completeness Review Deadline</del>	<del>9-15-10</del>
<del>Application Omissions Deadline</del>	<del>10-13-10</del>
<del>Agency Initial Decision Deadline</del>	<del>12-10-10</del>

Hospital Beds and Facilities  
1st Batching Cycle – 2011

<del>Summary Need Projections Published in F.A.W.</del>	<del>1-21-11</del>
<del>Letter of Intent Deadline</del>	<del>2-07-11</del>
<del>Application Deadline</del>	<del>3-09-11</del>
<del>Completeness Review Deadline</del>	<del>3-16-11</del>
<del>Application Omissions Deadline</del>	<del>4-13-11</del>
<del>Agency Initial Decision Deadline</del>	<del>6-10-11</del>

Hospital Beds and Facilities  
2nd Batching Cycle – 2011

<del>Summary Need Projections Published in F.A.W.</del>	<del>7-22-11</del>
<del>Letter of Intent Deadline</del>	<del>8-08-11</del>

<u>Application Deadline</u>	<u>9-07-11</u>
<u>Completeness Review Deadline</u>	<u>9-14-11</u>
<u>Application Omissions Deadline</u>	<u>10-12-11</u>
<u>Agency Initial Decision Deadline</u>	<u>12-09-11</u>

Hospital Beds and Facilities

1st Batching Cycle—2008

Summary Need Projections Published in F.A.W.	1-25-08
Letter of Intent Deadline	2-11-08
Application Deadline	3-12-08
Completeness Review Deadline	3-19-08
Application Omissions Deadline	4-16-08
Agency Initial Decision Deadline	6-13-08

Hospital Beds and Facilities

2nd Batching Cycle—2008

Summary Need Projections Published in F.A.W.	7-25-08
Letter of Intent Deadline	8-11-08
Application Deadline	9-10-08
Completeness Review Deadline	9-17-08
Application Omissions Deadline	10-15-08
Agency Initial Decision Deadline	12-12-08

Other Beds and Programs

1st Batching Cycle—2009

Summary Need Projections Published in F.A.W.	4-03-09
Letter of Intent Deadline	4-20-09
Application Deadline	5-20-09
Completeness Review Deadline	5-27-09
Application Omissions Deadline	6-24-09
Agency Initial Decision Deadline	8-21-09

Other Beds and Programs

2nd Batching Cycle – 2009

Summary Need Projections Published in F.A.W.	10-02-09
Letter of Intent Deadline	10-19-09
Application Deadline	11-18-09
Completeness Review Deadline	11-25-09
Application Omissions Deadline	12-23-09
Agency Initial Decision Deadline	2-19-10

Other Beds and Programs

1st Batching Cycle – 2010

Summary Need Projections Published in F.A.W.	4-02-10
Letter of Intent Deadline	4-19-10
Application Deadline	5-19-10
Completeness Review Deadline	5-26-10
Application Omissions Deadline	6-23-10
Agency Initial Decision Deadline	8-20-10

Other Beds and Programs

2nd Batching Cycle – 2010

Summary Need Projections Published in F.A.W.	10-01-10
Letter of Intent Deadline	10-18-10
Application Deadline	11-17-10
Completeness Review Deadline	11-24-10
Application Omissions Deadline	12-22-10
Agency Initial Decision Deadline	2-18-11

Other Beds and Programs

1st Batching Cycle – 2011

Summary Need Projections Published in F.A.W.	4-01-11
Letter of Intent Deadline	4-18-11
Application Deadline	5-18-11
Completeness Review Deadline	5-25-11
Application Omissions Deadline	6-22-11
Agency Initial Decision Deadline	8-19-11

Other Beds and Programs

2nd Batching Cycle – 2011

Summary Need Projections Published in F.A.W.	9-30-11
Letter of Intent Deadline	10-17-11
Application Deadline	11-16-11
Completeness Review Deadline	11-23-11
Application Omissions Deadline	12-21-11
Agency Initial Decision Deadline	2-17-12

(h) through (j) No change.

(2) through (5) No change.

Rulemaking Specific Authority 408.034(6), 408.15(8) FS. Law Implemented 408.033, 408.034, 408.036(2), 408.037(2), 408.038, 408.039, 408.042 FS. History—New 1-1-77, Amended 11-1-77, 9-1-78, 6-5-79, 2-1-81, 4-1-82, 7-29-82, 9-6-84, Formerly 10-5.08, Amended 11-24-86, 3-2-87, 6-11-87, 11-17-87, 3-23-88, 5-30-90, 12-20-90, 1-31-91, 9-9-91, 5-12-92, 7-1-92, 8-9-92, Formerly 10-5.008, Amended 4-19-93, 6-23-94, 10-12-94, 10-18-95, 2-12-96, 7-18-96, 9-16-96, 11-4-97, 7-21-98, 12-12-00, 4-2-01, 1-10-02, 6-26-03, 12-13-04, 9-28-05, 10-9-07, \_\_\_\_\_.

59C-1.010 Certificate of Need Application Review Procedures

(1) No change.

(2) General Provisions.

(a) Applications subject to comparative or expedited review shall be submitted to the agency on AHCA Form 3150-0001, March 2009 Application for a Certificate of Need; or 3150-0003, March 2009 Transfer of a Certificate of Need; or 3150-0002, March 2009 Application for a General Hospital Certificate of Need, ~~CON-4~~, as referenced in paragraph 59C-1.008(1)(f), F.A.C.

(b) through (d) No change.

(3) through (4) No change.

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

~~(e) Section 408.039(3)(e) and (d) and (5)(e), F.S., impose strict guidelines for who may challenge an application by a general hospital; when that challenge must be filed; the subjects which may be challenged and the timing of any response by the applicant. Participation in any subsequent hearing is precluded by those who do not challenge timely. Challenges must be received within 21 days of the Omissions Submission Deadline for each Batching Cycle as published in Rule 59C-1.008, F.A.C.~~

~~Rulemaking Specific Authority 408.034(6), 408.15(8) FS. Law Implemented 408.033(1), 408.035(2), 408.036(2), 408.037(2), 408.039(3), (4), (5) FS. History–New 1-1-77, Amended 11-1-77, 9-1-78, 6-5-79, 4-25-80, 2-1-81, 3-31-82, 12-23-82, Formerly 10-5.10, Amended 11-24-86, 11-17-87, 3-23-88, 8-28-88, 1-31-91, 7-1-92, 7-14-92, Formerly 10-5.010, Amended 10-8-97, 12-12-00, 4-2-01, 6-23-05.~~

59C-1.012 Administrative Hearing Procedures.

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

~~(e) For an application for a new construction or establishment of a general hospital, administrative hearings shall commence within 6 months after the administrative law judge has been assigned, and a continuance may not be granted absent a finding of extraordinary circumstances by the administrative law judge. Financial information which describes the applicant's ability to complete the project will be submitted at this point in the process and will be submitted on forms supplied by the Agency for Health Care Administration.~~

~~(e)(f) The party appealing a final order that grants a general hospital certificate of need shall post a \$1 million bond as directed in Section 408.039(6)(d), Florida Statutes. The bond must be made payable to the appellee or appellees Agency for Health Care Administration, bureau of Health Facilities Regulation, Office of Certificate of Need and must reference the appealing party, the CON number being appealed, and the Division of Administrative Hearings (DOAH) case number if available, and the date the CON was filed. The bond needs to be sent to:~~

~~Agency for Health Care Administration  
Attention: Agency Clerk  
2727 Mahan Drive, MS #3  
Tallahassee, Florida 32308  
AHCA Office of Certificate of Need  
2727 Mahan Drive, MS #28  
Tallahassee, Florida 32308~~

- ~~1. The appealing party must be clearly identified in the title of the Bond.~~
- ~~2. Without the necessary information in subparagraphs 59C-1.012(2)(f)2., a. and b., F.A.C., the appeal will not be accepted.~~

~~Rulemaking Specific Authority 408.034 (6), 408.15(8) FS. Law Implemented 408.039(5), 408.039(6) FS. History–New 1-1-77, Amended 9-1-78, 6-5-79, 10-23-79, 4-25-80, Formerly 10-5.12, Amended 11-24-86, 11-17-87, Formerly 10-5.012, Amended 12-14-92.~~

59C-1.030 Criteria Used in the Evaluation of Applications.

In addition to criteria set forth in Section 408.035, F.S., the following criteria are used in the review of an application.

(1) For a new general hospital as defined in Section 395.002, F.S. and subparagraph 59A-3.252(1)(a)1. and 3., F.A.C. the criteria for evaluation ~~are those found includes the need for health care facilities and health services being proposed, availability, accessibility, and extent of utilization of existing facilities and services in the service district of the applicant, the extent that access will be enhanced, the extent that competition, quality and cost-effectiveness will be fostered and provision of services to Medicaid patients and the Medically indigent and is as itemized in Sections 408.035(2) and 408.037(2), F.S. General Provisions (Reserved)~~

(2) No change.

~~Rulemaking Specific Authority 408.15(8), 408.034(3), (6)(5) FS. Law Implemented 408.035, 408.037 FS. History–New 1-1-77, Amended 11-1-77, 6-5-79, 4-24-80, 2-1-81, 4-1-82, 11-9-82, 2-14-83, 4-7-83, 6-9-83, 6-10-83, 12-12-83, 3-5-84, 5-14-84, 7-16-84, 8-30-84, 10-15-84, 12-25-84, 4-9-85, Formerly 10-5.11, Amended 6-19-86, 11-24-86, 1-25-87, 3-2-87, 3-12-87, 8-11-87, 8-7-88, 8-28-88, 9-12-88, 4-19-89, 10-19-89, 5-30-90, 7-11-90, 8-6-90, 10-10-90, 12-23-90, Formerly 10-5.011(1)(a), (b), Formerly 10-5.030, Amended.~~

**AGENCY FOR HEALTH CARE ADMINISTRATION  
Certificate of Need**

RULE NO.:                         RULE TITLE:  
59C-1.0355                        Hospice Programs  
  NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 35, No. 45, November 13, 2009 issue of the Florida Administrative Weekly has been withdrawn.

**DEPARTMENT OF BUSINESS AND PROFESSIONAL  
REGULATION**

**Division of Hotels and Restaurants**  
RULE NO.:                         RULE TITLE:  
61C-8.004                         Program Requirements  
  NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 35, No. 39, October 2, 2009 issue of the Florida Administrative Weekly has been withdrawn.

**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."

**FINANCIAL SERVICES COMMISSION****OIR – Insurance Regulation**

RULE NO.: 69O-189.003  
 RULE TITLE: Workers' Compensation: Application and Audit Procedures  
 NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rules, in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 35, No. 25, June 26, 2009 of the Florida Administrative Weekly. These changes are being made to address concerns expressed by JAPC.

1) The phrase "to the extent that such notarization complies with Parts I and II of Chapter 668, F.S." was added at the end of the first sentence of paragraph 69O-189.003(2)(b), F.A.C., and at the end of the second sentence of paragraph 69O-189.003(2)(b), F.A.C.

2) In sub-subparagraph 69O-189.003(4)(b)2., F.A.C., "with reasonable grounds" was replaced with "unless such request is unnecessarily repetitive."

3) In sub-subparagraph 69O-189.003(4)(b)4., F.A.C., "but not be limited to" was stricken.

4) Sub-subparagraph 69O-189.003(4)(b)4.h., F.A.C., was added which reads "Any other employer records necessary to establish premium or assign classifications."

5) Sub-subparagraph 69O-189.003(4)(c)1.f., F.A.C., was rewritten as follows: "For all policies with a loss ratio of 120% or greater the first year the employer qualifies and thereafter, regardless of premium range, subject to the FWCJUA's or its service provider's determination whether such audit is unnecessarily repetitive;"

6) In sub-subparagraph 69O-189.003(4)(c)1.g., F.A.C., the phrase "on reasonable grounds" was replaced with "unless such request is unnecessarily repetitive".

7) In sub-subparagraph 69O-189.003(4)(c)1.h., F.A.C., "in" was replaced with "by"; "judgment by" was replaced with "evaluation of"; and the phrase "or by questions concerning" was stricken.

8) In subparagraph 69O-189.003(4)(c)3., F.A.C., "but not be limited to" was stricken.

9) Sub-subparagraph 69O-189.003(4)(c)3.h., F.A.C., was added which reads "Any other records necessary to establish premium or assign classifications."

The remainder of the rule reads as previously published.

**FINANCIAL SERVICES COMMISSION****Securities**

RULE NO.: 69W-600.0021  
 RULE TITLE: Effect of Law Enforcement Records on Applications for Registration as Associated Persons  
 NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 35, No. 42, October 23, 2009 issue of the Florida Administrative Weekly.

The rule has been revised to address comments from the staff of the Joint Administrative Procedures Committee. Subsection (1) has been amended to remove the requirement that a records custodian issue a "sworn or certified" statement with regard to missing records. The word "wherein" has been removed from subsection (6)(a)2. Subsection (9) relating to pre-trial intervention has been clarified. Subsection (18) is added to provide a definition of the term "certified".

**THE FULL TEXT OF THE PROPOSED RULE IS:****69W-600.0021 Effect of Law Enforcement Records on Applications for Registration as Associated Persons.**

(1) General Procedure Regarding Law Enforcement Records. As part of the application review process, the Office is required to consider an applicant's law enforcement record when deciding whether to approve an application for registration as an associated person. When conducting this review, the Office reviews the applicant's Form U-4 responses, criminal history information derived from the fingerprint check, and information from other resources such as the Financial Industry Regulatory Authority. In the event of a question regarding the applicant's criminal history, the Office may request additional information from the applicant to determine the status of a criminal event, the specific facts and circumstances surrounding a criminal event, or to address other issues determined relevant to the review of the law enforcement record. The Office will notify the applicant of any specific documents that it requires in order to complete its review. Documentation that is typically requested includes:

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

(b) A certified copy of the charges.

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

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

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

If the requested documentation cannot be obtained, the applicant shall submit evidence of that fact in order for the application to be deemed complete. Evidence that documentation cannot be obtained shall consist of a written statement on the letterhead of the agency that would be the custodian of the documents, signed by a representative of that agency, stating that they have no record of such matter, or that the record is lost or was damaged or destroyed, or otherwise stating why the document cannot be produced.

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

(a) The omission of any part of a law enforcement record required to be disclosed on the Form U-4 is a material misrepresentation or material misstatement on the application and the application shall be denied pursuant to Section 517.161(1)(b), F.S.

(b) If the Office discovers the applicant's failure to disclose any part of a law enforcement record required to be disclosed on the Form U-4 after a registration has been granted, the Office will suspend or revoke each registration currently held by the applicant as follows:

1. Suspension for 12 months if, had the application been accurate, the application would have been granted, based on the statutes and rules applicable to the application at the time the Office granted registration.

2. Revocation if, had the application been accurate, the application would have been denied, based on the statutes and rules applicable to the application at the time the Office granted registration.

(3) Classification of Crimes.

(a) The Office makes a general classification of crimes into two classes: A and B, as listed in subsections (14) and (15), of this rule.

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

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

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

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

(4) Applicants with a Single Crime. The Office finds it necessary to implement the following standards for applicants whose law enforcement record includes a single crime, subject

to the mitigating factors set forth in this rule before registration. All periods referenced in this rule run from the trigger date.

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

(b) Class B Crime. The applicant will not be granted registration until 5 years have passed since the trigger date.

(5) Applicants With Multiple Crimes.

(a) The Office construes Section 517.161, F.S., to require that an applicant whose law enforcement record includes multiple class "A" or "B" crimes, or any combination thereof, wait longer than those whose law enforcement record includes only a single crime before becoming eligible for registration in order to assure that such applicant's greater inability or unwillingness to abide by the law has been overcome. Therefore, the Office finds it necessary that a longer disqualifying period be utilized in such instances, before registration can safely be granted. Accordingly, where the applicant has been found guilty or pled guilty or pled nolo contendere to more than one crime, the Office shall add 5 years to the disqualifying period for each additional crime.

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

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

(6) Mitigating Factors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) Pre-Trial Intervention. If at the time of application an applicant is participating in a pre-trial intervention program based upon a charge of criminal conduct that would authorize denial of a registration under Section 517.161(1), F.S., the Office will deny the application for registration. The Office considers participation in a pre-trial intervention program to be a pending criminal prosecution under Section 517.161(6), F.S., and finds it necessary to the public welfare to wait until final disposition of all charges of criminal conduct that would authorize denial of a registration under Section 517.161(1), F.S., before an application for registration may be considered.

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

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

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

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

2. However, if the applicant did not reveal the matter on the application and the matter had not been sealed or expunged at the time of making the application, the Office will construe the failure to disclose the matter on the application as a material misrepresentation or material misstatement, and the application shall be denied pursuant to Section 517.161(1)(b), F.S.

(11) Effect of Varying Terminology.

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

1. Adjudicated guilty; convicted.

2. Found guilty; entered a finding of guilt.

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

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

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

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



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

(12) Imprisoned Persons and Community Supervision.

(a) Imprisonment. Notwithstanding any provision to the contrary in this rule, the Office shall not register any applicant under Chapter 517, F.S., while the applicant is imprisoned, under arrest, or serving a sentence for any crime. Further, the Office shall not register any applicant who has been released from imprisonment until the later of the period otherwise set out in these rules or five (5) years after the date of release. The Office finds it necessary that the person be released from imprisonment and thereafter demonstrate an ability to abide by the law by passage of at least five (5) years on good behavior, before registration can be granted without undue risk to the public welfare.

(b) Community Supervision. The Office shall not grant registration to any person who at the time of application or at any time during the pendency of the application is under supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of the courts, paroling authorities, correctional agencies, or other criminal justice agencies for any felony crime or any misdemeanor crime involving fraud, dishonest dealing, or moral turpitude.

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

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

(a) Any type of fraud, including but not limited to Fraud, Postal Fraud, Wire Fraud, Securities Fraud, Welfare Fraud, Defrauding the Government, Credit Card Fraud, Defrauding an Innkeeper, Passing worthless check(s) with intent to defraud,

(b) Perjury.

(c) Armed robbery.

(d) Robbery.

(e) Extortion.

(f) Bribery.

(g) Embezzlement.

(h) Grand theft.

(i) Larceny.

(j) Burglary.

(k) Breaking and entering.

(l) Identity Theft.

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

(n) Misuse of public office.

(o) Racketeering.

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

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

(r) Altering public documents.

(s) Witness tampering.

(t) Tax evasion.

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

(v) Money laundering.

(w) Murder in all degrees.

(x) Arson.

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

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

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

(bb) Rape.

(cc) Sexually molesting any minor.

(dd) Sexual battery.

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

(ff) Kidnapping.

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

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

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

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

(c) The extent to which the foreign justice system provided safeguards similar to those provided criminal defendants under the Constitution of the United States; for example, the right of a defendant to a public trial, the right against self-incrimination, the right of notice of the charges, the right to confront witnesses, the right to call witnesses, and the right to counsel.

(17) Form U-4 is incorporated by reference in subsection 69W-301.002(7), F.A.C.

(18) For purposes of this rule, “certified” means that there must be a certification or attestation by the issuer of the record that the document is a true copy of a record contained in the issuer’s office and the issuer’s seal, if any.

Rulemaking Authority 517.1611(2) FS. Law Implemented 517.12, 517.161 FS. History—New \_\_\_\_\_.

## Section IV Emergency Rules

### BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

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

### DEPARTMENT OF MANAGEMENT SERVICES

#### Agency for Workforce Innovation

RULE NOS.:	RULE TITLES:
60BBER09-4	Definitions Relating to Emergency Unemployment Compensation
60BBER09-5	Eligibility for Emergency Unemployment Compensation
60BBER09-6	Emergency Unemployment Compensation Individual Accounts
60BBER09-7	How to Apply for Emergency Unemployment Compensation

**SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE:** The rate of unemployment in the State of Florida has risen dramatically over the last three years. Florida’s unemployment rate now stands at 11.2%, a dramatic increase from the 7.6% rate in December 2008, and over three times the 3.3% rate in July 2006. Currently, 658,986 Floridians receive unemployment compensation, an increase of 86% from the approximately 354,000 recipients in December 2008. Over 210,000 of the current recipients have exhausted the maximum 26 weeks of regular benefits authorized by Florida law. These individuals continue to receive unemployment compensation only because federal law now provides additional benefits to persons whose state benefits have been exhausted. By December 31, 2009, the Agency estimates that 250,000 recipients will have exhausted these additional benefits. Recent federal legislation has authorized and funded additional benefits, enabling most of the 250,000 to continue to receive unemployment compensation. Implementing this legislation, however, will require the creation of administrative rules. In order to ensure that these rules are in place before

unemployment compensation recipients lose their benefits, the Agency seeks to adopt emergency rules implementing the new federal legislation while it pursues the regular rulemaking process set forth in Section 120.54, Florida Statutes.

Since July 2008, Congress has passed five pieces of legislation which have progressively increased the duration of these additional benefits. These were: Title IV of the Supplemental Appropriations Emergency Unemployment Compensation (EUC) Act of 2008 (Public Law 110-252), the Unemployment Compensation Extension Act of 2008 (Public Law 110-449), Title II of the American Recovery and Reinvestment Act of 2009 (Public Law 111-4), the Worker, Homeownership and Business Assistance Act of 2009 (Public Law 11-92), and House Bill 3326. (House Bill 3326 does not yet have a Public Law number, as it was signed into law less than a week before this writing.)

The cumulative effect of the first three of these acts was to create and fund a system of Emergency Unemployment Compensation. Under this system, states can pay additional benefits to unemployed persons who had exhausted their regular state benefits. Eligible recipients can receive Tier One benefits for up to 20 weeks. Upon exhaustion of Tier One benefits, eligible recipients can receive Tier Two benefits for up to 13 weeks. As of this writing, 213,273 recipients have exhausted their Tier Two benefits.

The most recent federal legislation, the Worker, Homeownership and Business Assistance Act of 2009 (Public Law 11-92), created and funded a third and fourth tier of Emergency Unemployment Compensation and added an extra week of benefits to Tier Two. Under this law, Tier Three recipients may receive benefits for up to 13 weeks, and Tier Four recipients may receive benefits for up to 6 weeks. House Bill 3326 extended the duration of time within which eligible persons might collect these benefits.

In order to determine which individuals are eligible for benefits and provide compensation to them as quickly as possible, it is necessary that the processes set forth in this emergency rule, and the forms incorporated by reference, be implemented immediately, without the delay attendant with regular rulemaking procedures. The Agency is currently pursuing the regular rulemaking process for incorporating these forms and procedures into its current claims rules, found in Chapter 60BB-3, Florida Administrative Code.

**REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES:** The rules under development by the Agency provide the most efficient means of providing unemployment benefits to those individuals that are entitled to them. In adopting these forms, the Agency has acted to ensure that all procedural remedies available to recipients of regular state unemployment compensation will be available to Emergency Unemployment Compensation program applicants under state law and under the terms of the governing agreement with the United States Department of