

SUBJECT AREA TO BE ADDRESSED: Amending provisions relating to treatment, assessment, prevention and intervention, and facility operations.

RULEMAKING AUTHORITY: 985.601, 985.64 FS.

LAW IMPLEMENTED: 985.601 FS.

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

DATE AND TIME: Tuesday, April 13, 2010, 10:00 a.m.

PLACE: DJJ Headquarters, 2737 Centerview Drive, General Counsel's Conference Room 3223, Tallahassee, Florida

For information about participation by telephone, contact John Milla at (850)921-4129.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: John Milla, 2737 Centerview Dr., Ste. 3200, Tallahassee, FL 32399-3100, e-mail: john.milla@djj.state.fl.us

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

DEPARTMENT OF HEALTH

Board of Nursing Home Administrators

RULE NO.: 64B10-12.002 RULE TITLE: Application for Licensure

PURPOSE AND EFFECT: The Board proposes the rule amendment to delete reference to the provisional application fee as it is no longer necessary.

SUBJECT AREA TO BE ADDRESSED: Provisional licensure fee.

RULEMAKING AUTHORITY: 468.1685(1), 468.1695(2) FS.

LAW IMPLEMENTED: 456.013(2), 468.1685(4), 468.1705(1), 468.1735 FS.

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

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

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

DEPARTMENT OF HEALTH

Board of Nursing Home Administrators

RULE NOS.: 64B10-16.001, 64B10-16.002, 64B10-16.0025 RULE TITLES: General Information, Preceptor, Preceptor Training Seminar

PURPOSE AND EFFECT: The Board proposes to review the rules for necessary updates.

SUBJECT AREA TO BE ADDRESSED: General information, preceptor, and preceptor training seminars.

RULEMAKING AUTHORITY: 456.013(1)(a), 468.1685(1), 468.1695(2), (4) FS.

LAW IMPLEMENTED: 468.1695 FS.

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

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

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

**Section II
Proposed Rules**

DEPARTMENT OF COMMUNITY AFFAIRS

Division of Emergency Management

RULE NO.: 9G-2.002 RULE TITLE: State Comprehensive Emergency Management Plan Adopted

PURPOSE AND EFFECT: To adopt the 2010 revised version of the State CEMP as required by Chapter 252, F.S. This action would replace the 2004 version.

SUMMARY: Per Chapter 252, F.S., the State Comprehensive Emergency Management Plan (CEMP) shall be the master operations document for the State's response to emergencies and disasters. The CEMP has been revised since its last adoption in 2004. Rule 9G-2.002, F.A.C., establishes the most current version of the CEMP and incorporates it by reference into Chapter 252, F.S.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

RULEMAKING AUTHORITY: 252.35(2)(u) FS.
 LAW IMPLEMENTED: 252.35(2)(a) FS.
 IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):
 DATE AND TIME: April 20, 2010, 10:00 a.m. – 12:00 Noon
 PLACE: Room 305, Kelly Training Center, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399
 Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 7 days before the workshop/meeting by contacting: Brian Richardson, Planning Manager, Florida Division of Emergency Management, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399, (850)413-9872. 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 IS: Brian Richardson, Planning Manager, Florida Division of Emergency Management, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399, (850)413-9872

THE FULL TEXT OF THE PROPOSED RULE IS:
 9G-2.002 State Comprehensive Emergency Management Plan Adopted.

- (1) The Department hereby adopts and incorporates by reference into this Chapter the State Comprehensive Emergency Management Plan (February 1, 2010 ~~February 1, 2004~~ Edition).
- (2) The State Comprehensive Emergency Management Plan shall be the master operations document for the State of Florida in responding to all emergencies, and all catastrophic, major, and minor disasters.

Rulemaking Specific Authority 252.35(2)(u) FS. Law Implemented 252.35(2)(a) FS. History–New 1-4-01, Amended 7-8-02, 8-4-04, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Brian Richardson, Planning Manager, Florida Division of Emergency Management, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399, (850)413-9872
 NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: David Halstead, Interim Director, Division of Emergency Management
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 1, 2010
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 29, 2010

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:
60BB-8.210	Reenrollment for Good Cause and Extreme Hardship and Delayed Enrollment in the Voluntary Prekindergarten Education Program
60BB-8.700	Low-Performing Provider; Voluntary Prekindergarten Education Program Improvement Plan and Implementation
60BB-8.701	Low-Performing Provider; Voluntary Prekindergarten Education Program First Year Probation
60BB-8.702	Low-Performing Provider; Voluntary Prekindergarten Education Program Second Year Probation
60BB-8.703	Low-Performing Provider; Removal From Voluntary Prekindergarten Education Program Eligibility

PURPOSE AND EFFECT: The purpose of the proposed rule is to implement the Agency’s authority to administer the Voluntary Prekindergarten Education (VPK) Program by establishing a procedure by which VPK providers who fail to achieve minimum kindergarten readiness rates comply with Section 1002.67, F.S., and for reenrollment of VPK students.

SUMMARY: The Low Performing Provider rules establish procedures governing administration of the VPK Program by early learning coalitions and school districts for approving improvement plans, for placing providers on probation and requiring corrective actions, and for removing providers from eligibility to deliver the program. The rule regarding reenrollment establishes criteria for determining whether a student has substantially completed the VPK Program and whether a good cause or extreme hardship exists.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

RULEMAKING AUTHORITY: 1002.71(4), 1002.75(2)(i), 1002.79(2) FS.
 LAW IMPLEMENTED: 1002.67(3)(c), 1002.71(4), 1002.75(3)(a)-(c) FS.

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

DATE AND TIME: Monday, April 19, 2010, 2:30 p.m. – 4:30 p.m. or until business is concluded

PLACE: Agency for Workforce Innovation, 107 E. Madison St., Tallahassee, Florida 32399-4128 and via WebEx which may be accessed at http://www.floridajobs.org/earlylearning/oel_state_fed.html#proposedrules. The Agency requests that individuals who wish to attend the hearing via WebEx complete and submit a comment card to the Agency prior to the hearing. Comment cards are available online at the website above or from the contact person below.

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: Audrey Gaten at (850)245-7160. 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 RULES IS: Kristin R. 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 FULL TEXT OF THE PROPOSED RULES IS:

60BB-8.210 Reenrollment for Good Cause and Extreme Hardship and Delayed Enrollment in the Voluntary Prekindergarten Education Program.

(1) Definitions. As used in this rule:

(a) “Delayed enrollment” means recording the initial enrollment of a student in a Voluntary Prekindergarten Education Program (VPK) class after VPK instruction has begun.

(b) “Reenrollment” means the enrollment of a student in a new VPK program type (school-year or summer) or with a new VPK provider following the student’s removal or withdrawal from enrollment with a VPK provider after the student has attended a portion of VPK instruction.

(c) “Substantial completion” means a student has been enrolled in a VPK provider’s class for more than 70 percent of the instructional hours for the program type (school-year or summer).

(2) Reenrollment for good cause. A student may be reenrolled for good cause in the same program type (school-year or summer) in which the student was previously enrolled if all the following applies:

(a) The student has not substantially completed the VPK program;

(b) The student has not previously reenrolled for good cause or due to an extreme hardship; and

(c) The student’s parent or guardian completes the Delayed Enrollment and Reenrollment Application (Form AWI-VPK 05), dated April 9, 2010, which is hereby incorporated by reference, and submits it to the early learning coalition as documentation that the student was or is prevented from attending the VPK class. The following are examples of situations which prevent the student from attending the VPK class:

1. The illness of:

a. The student;

b. An individual living in the student’s household;

c. An individual which the student’s parent or guardian is responsible for caring for; or

d. The student’s parent, guardian, sibling, grandparent, step-parent, step-sibling, or step-grandparent.

2. A disagreement between the parent or guardian and the VPK provider or school concerning policies, practices, or procedures at the provider’s or school’s VPK program;

3. A change in the student’s residence;

4. A change in the employment schedule or place of employment of the student’s parent or guardian;

5. The VPK provider’s inability to meet the student’s health or educational needs;

6. The termination of the student’s VPK class before 70 percent of the class instructional hours is delivered;

7. The student is dismissed by a VPK provider for failure to comply with the provider’s attendance policy;

8. The provider’s designation as a low performing provider under Section 1002.67, F.S.;

9. Any condition described as an extreme hardship in paragraph (3)(c) below.

(3) Reenrollment for extreme hardship. A student may be reenrolled and reported for funding purposes as one full-time equivalent student, as defined by Section 1002.71(2), F.S., in the summer VPK program, if all the following applies:

(a) The student has not substantially completed the VPK program;

(b) The student has not previously reenrolled due to an extreme hardship or for good cause; and

(c) The student’s parent or guardian completes and submits to the early learning coalition the Delayed Enrollment and Reenrollment Application, and, where documentation is not supplied by the coalition or provider, supporting written documentation of one or more of the following:

1. The illness of the student, as documented in writing by a physician licensed under Chapter 458 or 459, F.S., if the illness would result in the student being absent from more than 30 percent of the number of hours in the program type in which the student is enrolled;

2. The provider’s misconduct or noncompliance which results in the provider’s inability to offer the VPK program, as documented by the early learning coalition;

3. The parent's or guardian's inability to meet the basic needs of the student, including, but not limited to, a lack of food, shelter, clothing, or transportation, as documented in writing by a federal, state, or local governmental official;

4. The provider's inability to meet the student's educational needs due to the student's learning or developmental disability as documented by a federal, state, or local governmental official;

5. The provider's inability to meet the student's health needs as documented by a physician licensed under Chapter 458 or 459, F.S., or a federal, state, or local governmental official; or

6. Displacement of a student from his or her place of residence or closure of the student's VPK provider as a result of a state of emergency as declared by a federal, state, or local governmental official.

(4) Additional restrictions on reenrollment.

(a) A VPK student may not be reenrolled except as described in this rule.

(b) This rule shall not be construed to allow a student to be enrolled simultaneously in multiple VPK classes.

(c) If the student is reenrolled with a coalition other than the coalition of the previous enrollment, the parent or guardian shall comply with the enrollment requirement of Rule 60BB-8.201, F.A.C., in addition to the requirements of this rule.

(d) Each early learning coalition shall comply with the eligibility determination and enrollment procedures described in Rule 60BB-8.202, F.A.C., when reenrolling a student, except that the coalition is not required to repeat the face-to-face parent orientation session.

(5) Delayed enrollment. A VPK student may enroll in a VPK class after instruction has begun. To enroll a student in a VPK class after instruction has begun, the student's parent or guardian shall complete the Delayed Enrollment and Reenrollment Application, and submit it to the early learning coalition. Each early learning coalition shall comply with the eligibility determination and enrollment procedures described in Rule 60BB-8.202, F.A.C., when enrolling a student in a VPK class in which instruction has already begun except that the coalition shall not be required to conduct the face-to-face parent orientation session for a parent who indicates on the Delayed Enrollment and Reenrollment Application that he or she has previously attended an orientation.

Rulemaking Authority 1002.71(4), 1002.75(2)(a), 1002.75(2)(i), 1002.79(2) FS. Law Implemented 1002.71(4), 1002.75(2)(a), 1002.75(2)(i) FS. History—New _____.

60BB-8.700 Low-Performing Provider; Voluntary Prekindergarten Education Program Improvement Plan and Implementation.

(1) Improvement Plans. An early learning coalition or school district, as applicable, shall require a Voluntary Prekindergarten (VPK) Education provider which fails to meet or exceed the minimum kindergarten readiness rate for a program type (school-year or summer) to submit an improvement plan designed to improve the provider's kindergarten readiness rate. An improvement plan shall include:

(a) A self assessment conducted no earlier than the previous VPK program year, which shall address, at a minimum, the manner in which the following areas of the VPK provider's program may be improved:

1. Administrative and management practices, including training, educational level, and retention of prekindergarten instructors;

2. Developmentally appropriate curricula;

3. Classroom learning environment;

4. Classroom instructional practices, which shall include an assessment of the need for instructors to attend an additional VPK Standards training and emergent literacy training course approved by the Department of Education under Section 1002.59, F.S.;

5. Child developmental screenings and assessments;

6. Social-emotional interactions among prekindergarten instructors and students;

7. Students' ability to make age appropriate progress in the development of language and cognitive capabilities and emotional, social, regulatory and moral capacities;

8. Percentage of students attending seventy (70) percent or more of the instructional hours offered by the VPK provider; and

9. Family involvement in the early childhood program.

(b) A description of strategies for improvement of the provider's VPK program which includes the following and any other additional areas at the discretion of the provider:

1. A list of target areas for the VPK provider's improvement based on the self assessment conducted under paragraph (1)(a) and any additional areas a provider deems important to its improvement;

2. A list of specific actions already taken, and/or proposed to be taken, by the VPK provider for improvement of targeted areas; and

3. An implementation schedule or timeline for the VPK provider to implement the proposed actions.

(2) Submission and Approval of Improvement Plan.

(a) A VPK provider shall submit its improvement plan electronically through the website <http://www.ImproveVPK.org> within 60 days of the date of adoption of the minimum kindergarten readiness rate by the State Board of Education under Rule 6A-1.099821, F.A.C.

(b) An early learning coalition or school district, as applicable, shall approve or disapprove a VPK provider's improvement plan within 14 days of receipt of the improvement plan. The early learning coalition or school district, as applicable, shall approve the improvement plan if the plan is submitted in accordance with this rule, addresses the criteria established within this rule, and does not negatively impact the health, safety, or well-being of students.

(c) If the improvement plan is not approved, the early learning coalition or school district, as applicable, shall disapprove the improvement plan and shall return it to the VPK provider with suggestions for revision. The VPK provider shall submit an amended improvement plan within 14 days of the receipt of notification of disapproval of its improvement plan and suggestions for revision. The early learning coalition or school district, as applicable, shall offer to work with the VPK provider to revise an insufficient improvement plan to ensure the improvement plan is sufficient.

(d) A low performing VPK provider must have an approved improvement plan in place for at least 60 days prior to receiving an advance payment or offering VPK instruction for the program type for which the provider must submit an improvement plan.

(3) An early learning coalition or school district, as applicable, shall offer to give technical assistance, in a manner and schedule prescribed by the coalition or school district, in developing and implementing an improvement plan to each provider which fails to meet or exceed the minimum kindergarten readiness rate. A provider may elect to receive technical assistance by contacting the coalition or school district, as applicable, in writing. Whether or not a provider elects to receive technical assistance, improvement of the provider's kindergarten readiness rate is the sole responsibility of the provider. Compliance with technical assistance does not guarantee that the provider will improve its kindergarten readiness rate.

Rulemaking Authority 1002.79(2) FS. Law Implemented 1002.67(3)(c)1., 1002.75(3)(a) FS. History--New _____.

60BB-8.701 Low-Performing Provider: Voluntary Prekindergarten Education Program First Year Probation.

(1) Probation. An early learning coalition or school district, as applicable, shall place on first year probation any Voluntary Prekindergarten Education (VPK) provider which receives two consecutive kindergarten readiness rates for the same program type (school-year or summer) which fail to meet or exceed the minimum kindergarten readiness rate.

Kindergarten readiness rates which fall below the minimum readiness rate are consecutive if the provider does not receive an intervening kindergarten readiness rate which meets or exceeds the minimum readiness rate.

(2) Use of Approved Curriculum.

An early learning coalition or school district, as applicable, shall require a VPK provider who has been placed on probation to use a curriculum approved in accordance with Section 1002.67(2)(c), F.S. A VPK provider shall demonstrate that it is using a curriculum approved in accordance with Section 1002.67(2)(c), F.S., including all program materials and professional development activities associated with the approved curriculum, by submitting the following to the early learning coalition or school district, as applicable:

(a) A receipt or invoice demonstrating that the VPK provider has purchased an approved curriculum and has scheduled instructor trainings developed by the curriculum publisher on use of the curriculum; or

(b) A notarized attestation that the VPK provider has received the complete approved curriculum through a donation and has scheduled instructor trainings developed by the curriculum publisher on use of the curriculum.

(3) First Year Probation Corrective Action. If a VPK provider is placed on probation under this rule, it shall submit a first year probation progress report electronically through the website <http://www.ImproveVPK.org> within 60 days of the date of adoption of the minimum kindergarten readiness rate by the State Board of Education under Rule 6A-1.099821, F.A.C. The first year probation progress report shall provide information regarding the provider's progress in implementing its improvement plan approved under Rule 60BB-8.700, F.A.C.

(a) The first year probation progress report shall contain the following information:

1. Identification of and description of the provider's proposed use of a curriculum approved in accordance with Section 1002.67(2)(c), F.S., the VPK provider shall use in the forthcoming program type, including all associated program materials and professional development activities; and

2. A description of strategies for improvement of the VPK program that includes the following:

a. A list of target areas for the VPK provider's improvement based on the self assessment as defined by Rule 60BB-8.700, F.A.C., and any additional areas a provider deems important to its improvement;

b. A list of those specific actions already taken, and/or proposed to be taken, by the VPK provider for improvement of the targeted areas; and

c. An implementation schedule or timeline for the VPK provider to implement the proposed actions.

(b) A provider must submit a first year probation progress report in accordance with this rule at least 60 days prior to receiving an advance payment or offering VPK instruction for the same VPK program type (school-year or summer) for which the provider is required to submit an improvement plan.

Rulemaking Authority 1002.79(2) FS. Law Implemented 1002.67(3)(c)2., 1002.75(3)(b) FS. History–New _____.

60BB-8.702 Low-Performing Provider; Voluntary Prekindergarten Education Program Second Year Probation.

(1) Probation. An early learning coalition or school district, as applicable, shall place on second year probation any Voluntary Prekindergarten Education (VPK) provider which receives three consecutive kindergarten readiness rates for a program type (school-year or summer) which fails to meet or exceed the minimum kindergarten readiness rate. Kindergarten readiness rates which fall below the minimum readiness rate are consecutive if the provider does not receive an intervening kindergarten readiness rate which meets or exceeds the minimum readiness rate.

(2) Second Year Probation Corrective Action. If a VPK provider is placed on second year probation, it shall submit a second year probation progress report electronically through the website <http://www.ImproveVPK.org> within 60 days of the date of adoption of the minimum kindergarten readiness rate by the State Board of Education under Rule 6A-1.099821, F.A.C. The second year probation progress report shall provide information regarding the provider's progress in implementing its improvement plan approved under Rule 60BB-8.700, F.A.C.

(a) The second year probation progress report shall contain the following:

1. A description of the provider's use of a curriculum approved in accordance with Section 1002.67(2)(c), F.S., including all associated program materials and professional development activities; and

2. A description of strategies for improvement of the VPK program that includes the following:

a. A list of target areas for the VPK provider's improvement based on the self assessment as defined by Rule 60BB-8.700, F.A.C., and any additional areas a provider deems important to its improvement;

b. A list of those specific actions already taken, or proposed to be taken, by the VPK provider for improvement of the targeted areas; and

c. An implementation schedule or timeline for the VPK provider to implement the proposed actions.

(b) A provider must submit a second year probation progress report in accordance with this rule at least 60 days prior to receiving an advance payment or offering VPK instruction for the same VPK program type (school-year or summer) for which the provider is required to submit an improvement plan.

Rulemaking Authority 1002.79(2) FS. Law Implemented 1002.67(3)(c)2., 1002.75(3)(b) FS. History–New _____.

60BB-8.703 Low-Performing Provider; Removal From Voluntary Prekindergarten Education Program Eligibility.

(1) An early learning coalition or school district, as applicable, shall remove a Voluntary Prekindergarten Education (VPK) Program provider from future eligibility to offer new VPK classes of the program type (school-year or summer) for which the provider receives four consecutive kindergarten readiness rates which fail to meet or exceed the minimum kindergarten readiness rates. Kindergarten readiness rates which fall below the minimum readiness rate adopted by the State Board of Education under Rule 6A-1.099821, F.A.C., are consecutive if the provider does not receive an intervening kindergarten readiness rate which meets or exceeds the minimum readiness rate.

(2) The early learning coalition or school district, as applicable, shall remove a VPK provider from future eligibility to offer new VPK classes of the program type by issuing a Letter of Removal to the provider in writing, which may include electronic mail, within 30 days of the adoption of the minimum kindergarten readiness rate, with a copy to the Office of Early Learning of the Agency for Workforce Innovation at the following address: Caldwell Building, Suite 100, 107 East Madison Street, MSC 140, Tallahassee, Florida 32399-4128. A Letter of Removal shall contain the following provisions:

(a) Notice of the program type (school-year or summer) for which the provider is ineligible;

(b) The date upon which the provider was deemed ineligible to offer the program type in the future; and

(c) Notice of termination of provider agreements, if applicable, under which the provider would begin a new VPK class for the VPK program type for which the provider has been deemed ineligible.

Rulemaking Authority 1002.79(2) FS. Law Implemented 1002.67(3)(c)4., 1002.75(3)(c) FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Kristin R. Harden

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Cynthia R. Lorenzo

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 3, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 18, 2010

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Barbers' Board

RULE NO.:
61G3-16.007

RULE TITLE:
Examination for Restricted Licensure

PURPOSE AND EFFECT: The purpose of this notice is to review for possible changes to bring the rule into compliance with the legislature requirement.

SUMMARY: The purpose of this notice is to review for possible changes to bring the rule into compliance with the legislature requirement.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

RULEMAKING AUTHORITY: 455.217, 476.064(4), 476.134, 476.144 FS.

LAW IMPLEMENTED: 455.217, 476.134, 476.144 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Robyn Barineau, Executive Director, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G3-16.007 Examination for Restricted Licensure.

(1) The examination for restricted licensure to practice barbering shall consist of ~~two parts~~, a written exam ~~and a practical exam~~. Applicants for a restricted license to practice barbering must achieve a passing grade on ~~both portions~~ of the examination to be eligible for a restricted license to practice barbering.

(2) The ~~written portion of the~~ examination for restricted licensure shall cover the laws and rules which govern the practice of barbering in Florida.

(3) ~~The practical portion of the examination for restricted licensure shall test the applicant's ability to perform the barbering services authorized by a restricted license to practice barbering. The practical examination for licensure shall have a maximum time limit of 1 1/4 hours. All applicants will provide their own model for the practical exam and will be required to shampoo the model's hair and perform a taper haircut to satisfy the practical portion of the examination. The areas to be tested and the relative weights are as follows:~~

GRADING AREA	RELATIVE WEIGHT
Haircut	45%
Shampoo	5%
Safety and Sanitation	50%

~~The grade sheet for the practical examination will contain spaces for comments by the grading examiner. The areas for comment shall be drawn from the following grading criteria:~~

~~(a) Haircut:~~

~~1. The top is even and without holes;~~

- ~~2. The top blends with the sides and back;~~
- ~~3. The front outline is even;~~
- ~~4. The haircut is proportional;~~
- ~~5. The sides and the back are without holes or steps;~~
- ~~6. The sides blend with the back;~~
- ~~7. The sideburns are equal in length;~~
- ~~8. The outlines are even;~~
- ~~9. The sideburns, outline, and neckline are clean shaven;~~
- ~~10. The model's skin was not cut or nicked during the haircut;~~
- ~~11. The neckline is properly tapered.~~
- ~~(b) Shampoo: After the shampoo, the model's hair and scalp were clean and free of shampoo.~~
- ~~(c) Safety and Sanitation:~~
 - ~~1. The candidate used the proper draping for the shampoo;~~
 - ~~2. The candidate used the proper protection on the shampoo bowl;~~
 - ~~3. The candidate properly stored clean and dirty linen during the shampoo;~~
 - ~~4. The candidate washed his or her hands before beginning work on the model;~~
 - ~~5. The candidate used the proper draping for the haircut;~~
 - ~~6. The candidate properly stored clean and dirty linen during the haircut;~~
 - ~~7. The candidate placed tools in the sanitizer before and after each use;~~
 - ~~8. The candidate used all tools in a safe manner and without any blood contact during the haircut;~~
- ~~(4) Failure of the examinee to complete the services required in a particular category tested in the practical examination shall result in the examinee losing the possible points assigned to that area.~~
- ~~(3)(5) The score necessary to achieve a passing grade on the written portion of the restricted licensure examination shall be no less than seventy-five (75) percent out of one hundred (100) percent of the total possible points on the written examination. The score necessary to achieve a passing grade on the practical portion of the restricted licensure examination shall be no less than seventy five (75) percent (based on the average of the examiners' scores) out of one hundred (100) percent of the total possible points on the practical examination. All examiner's scores will be averaged before any percentages are rounded according to the formula stated below. In rounding percentages, any percentage which is point five (.5) or above shall be rounded up to the next whole number. Percentages less than point five (.5) shall be rounded down to the next whole number.~~

Rulemaking Specific Authority 455.217, 476.064(4), 476.134, 476.144 FS. Law Implemented 455.217, 476.134, 476.144 FS. History-New 11-12-87, Amended 3-22-92, 1-26-93, Formerly 21C-16.007, Amended 9-15-94, 12-9-98, 11-27-02, 4-26-04, 8-1-05,

NAME OF PERSON ORIGINATING PROPOSED RULE:
Barbers' Board
NAME OF AGENCY HEAD WHO APPROVED THE
PROPOSED RULE: Barbers' Board
DATE PROPOSED RULE APPROVED BY AGENCY
HEAD: August 3, 2009
DATE NOTICE OF PROPOSED RULE DEVELOPMENT
PUBLISHED IN FAW: July 2, 2009

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 JUVENILE JUSTICE

Probation

RULE NOS.:	RULE TITLES:
63D-1.001	Purpose and Scope
63D-1.002	Definitions
63D-1.003	Preliminary Screening
63D-1.004	Comprehensive Assessment
63D-1.005	Documentation

PURPOSE AND EFFECT: The rule chapter governing the preliminary screening and comprehensive assessment of youth at intake is repealed as part of the reorganization of the subtitle. Much of the content of the repealed chapter will be found in newly-created Chapter 63D-9, F.A.C.

SUMMARY: Provisions addressing preliminary screening and comprehensive assessment of youth at intake are repealed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

RULEMAKING AUTHORITY: 985.245, 985.64 FS.
LAW IMPLEMENTED: 985.145, 985.24, 985.245, 985.25, 985.255 FS.

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

DATE AND TIME: Tuesday, April 20, 2010, 10:00 a.m.
PLACE: DJJ Headquarters, 2737 Centerview Drive, General Counsel's Conference Room 3223, Tallahassee, Florida
THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: John Milla, 2737 Centerview Dr., Ste. 3200, Tallahassee, FL 32399-3100, e-mail: john.milla@djj.state.fl.us

THE FULL TEXT OF THE PROPOSED RULES IS:

63D-1.001 Purpose and Scope.

Rulemaking Specific Authority 985.21, 985.405 FS. Law Implemented 985.21(1), (4) FS. History–New 1-4-07, Repealed _____.

63D-1.002 Definitions.

Rulemaking Specific Authority 985.21, 985.405 FS. Law Implemented 985.21(1), (4) FS. History–New 1-4-07, Repealed _____.

63D-1.003 Preliminary Screening.

Rulemaking Specific Authority 985.21, 985.405 FS. Law Implemented 985.21(1), (4) FS. History–New 1-4-07, Repealed _____.

63D-1.004 Comprehensive Assessment.

Rulemaking Specific Authority 985.21, 985.405 FS. Law Implemented 985.21(1)(a)4.c., (4)(a) FS. History–New 1-4-07, Repealed _____.

63D-1.005 Documentation.

Rulemaking Specific Authority 985.21, 985.405 FS. Law Implemented 985.21(1), (4) FS. History–New 1-4-07, Repealed _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Rex Uberman, Assistant Secretary for Probation & Community Intervention

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Frank Peterman, Jr., Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 15, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 13, 2009

DEPARTMENT OF JUVENILE JUSTICE

Probation

RULE NOS.:	RULE TITLES:
63D-2.001	Purpose and Scope
63D-2.002	Procedure for Assessing Risk
63D-2.003	Detention Risk Assessment Instrument

PURPOSE AND EFFECT: The rule chapter governing a juvenile probation officer's assessment of the risk posed by a child in custody when making an initial detention determination is repealed as part of the reorganization of the subtitle. Much of the content of the repealed rule chapter will be found in newly-created Chapter 63D-9, F.A.C.

SUMMARY: Provisions addressing the form and process for performing detention risk assessment of youth are repealed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

RULEMAKING AUTHORITY: 985.245, 985.64 FS.

LAW IMPLEMENTED: 985.145, 985.24, 985.245, 985.25, 985.255 FS.

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

DATE AND TIME: Tuesday, April 20, 2010, 10:00 a.m.

PLACE: DJJ Headquarters, 2737 Centerview Drive, General Counsel's Conference Room 3223, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: John Milla, 2737 Centerview Dr., Ste. 3200, Tallahassee, FL 32399-3100, e-mail: john.milla@djj.state.fl.us

THE FULL TEXT OF THE PROPOSED RULES IS:

63D-2.001 Purpose and Scope.

Rulemaking Specific Authority 985.213, 985.405 FS. Law Implemented 985.213 FS. History--New 1-4-07, Repealed.

63D-2.002 Procedure for Assessing Risk.

Rulemaking Specific Authority 985.213, 985.405 FS. Law Implemented 985.213 FS. History--New 1-4-07, Repealed.

63D-2.003 Detention Risk Assessment Instrument.

Rulemaking Specific Authority 985.213, 985.405 FS. Law Implemented 985.213 FS. History--New 1-4-07, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE: Rex Uberman, Assistant Secretary for Probation & Community Intervention

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Frank Peterman, Jr., Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 15, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 13, 2009

DEPARTMENT OF JUVENILE JUSTICE

Probation

RULE NOS.:	RULE TITLES:
63D-3.001	Purpose and Scope
63D-3.002	Definitions
63D-3.003	Assessment and Recommendation
63D-3.004	General Characteristics of Diversion Programs

63D-3.005 Intensive Delinquency Diversion Services (IDDS)

63D-3.006 Other Diversion Programs

63D-3.007 JPO Supervised Diversion

PURPOSE AND EFFECT: The rule chapter governing juvenile delinquency diversion programs is repealed as part of the reorganization of the subtitle. Much of the content of the repealed rule chapter will be found in newly-created Chapter 63D-10, F.A.C.

SUMMARY: Provisions addressing delinquency diversion programs for youth are repealed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

RULEMAKING AUTHORITY: 985.14, 985.435, 985.64 FS.

LAW IMPLEMENTED: 985.12, 985.145, 985.155, 985.16, 985.601(3)(a) FS.

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

DATE AND TIME: Tuesday, April 20, 2010, 10:00 a.m.

PLACE: DJJ Headquarters, 2737 Centerview Drive, General Counsel's Conference Room 3223, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: John Milla, 2737 Centerview Dr., Ste. 3200, Tallahassee, FL 32399-3100, e-mail: john.milla@djj.state.fl.us

THE FULL TEXT OF THE PROPOSED RULES IS:

63D-3.001 Purpose and Scope.

Rulemaking Specific Authority 985.64 FS. Law Implemented 985.145(5), 985.601(3)(a) FS. History--New 1-28-08, Repealed.

63D-3.002 Definitions.

Rulemaking Specific Authority 985.64 FS. Law Implemented 985.145(5) FS. History--New 1-28-08, Repealed.

63D-3.003 Assessment and Recommendation.

Rulemaking Specific Authority 985.64 FS. Law Implemented 985.145(4) FS. History--New 1-28-08, Repealed.

63D-3.004 General Characteristics of Diversion Programs.

Rulemaking Specific Authority 985.64 FS. Law Implemented 985.12, 985.145, 985.155, 985.16, 985.601(3)(a) FS. History--New 1-28-08, Repealed.

63D-3.005 Intensive Delinquency Diversion Services (IDDS).

Rulemaking Specific Authority 985.64 FS. Law Implemented 985.12, 985.145, 985.155, 985.16, 985.601(3)(a) FS. History–New 1-28-08, Repealed.

63D-3.006 Other Diversion Programs.

Rulemaking Specific Authority 985.64 FS. Law Implemented 985.12, 985.145, 985.155, 985.16, 985.601(3)(a) FS. History–New 1-28-08, Repealed.

63D-3.007 JPO Supervised Diversion.

Rulemaking Specific Authority 985.64 FS. Law Implemented 985.12, 985.145, 985.155, 985.16, 985.601(3)(a) FS. History–New 1-28-08, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Rex Uberman, Assistant Secretary for Probation & Community Intervention

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Frank Peterman, Jr., Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 15, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 13, 2009

DEPARTMENT OF JUVENILE JUSTICE

Probation

RULE NOS.:

RULE TITLES:

63D-4.001

Purpose and Scope

63D-4.002

Definitions

63D-4.003

Community Involvement in Design and Operation

63D-4.004

Life Safety Standards and Security

63D-4.005

Admission of Youth

63D-4.006

Medication Management

63D-4.007

Juvenile Assessment Center Role in Responding to Criminal Street Gangs

63D-4.008

Release of Youth

PURPOSE AND EFFECT: The rule chapter governing the department’s role in the operation of a juvenile assessment center is repealed as part of the reorganization of the subtitle. Much of the content of the repealed rule will be found in newly-created Chapter 63D-11, F.A.C.

SUMMARY: Provisions addressing the department’s participation in the operation of juvenile assessment centers are repealed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

RULEMAKING AUTHORITY: 985.64 FS.

LAW IMPLEMENTED: 985.135, 985.645 FS.

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

DATE AND TIME: Tuesday, April 20, 2010, 10:00 a.m.

PLACE: DJJ Headquarters, 2737 Centerview Drive, General Counsel’s Conference Room 3223, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: John Milla, 2737 Centerview Dr., Ste. 3200, Tallahassee, FL 32399-3100, e-mail: john.milla@djj.state.fl.us

THE FULL TEXT OF THE PROPOSED RULES IS:

63D-4.001 Purpose and Scope.

Rulemaking Specific Authority 985.64 FS. Law Implemented 985.135 FS. History–New 5-15-08, Repealed.

63D-4.002 Definitions.

Rulemaking Specific Authority 985.64 FS. Law Implemented 985.135 FS. History–New 5-15-08, Repealed.

63D-4.003 Community Involvement in Design and Operation.

Rulemaking Specific Authority 985.64 FS. Law Implemented 985.135(2), (3), 985.645 FS. History–New 5-15-08, Repealed.

63D-4.004 Life Safety Standards and Security.

Rulemaking Specific Authority 985.64 FS. Law Implemented 985.135(3), (4) FS. History–New 5-15-08, Repealed.

63D-4.005 Admission of Youth.

Rulemaking Specific Authority 985.64 FS. Law Implemented 985.135 FS. History–New 5-15-08, Repealed.

63D-4.006 Medication Management.

Rulemaking Specific Authority 985.64 FS. Law Implemented 985.135 FS. History–New 5-15-08, Repealed.

63D-4.007 Juvenile Assessment Center Role in Responding to Criminal Street Gangs.

Rulemaking Specific Authority 985.64 FS. Law Implemented 985.135 FS. History–New 5-15-08, Repealed.

63D-4.008 Release of Youth.

Rulemaking Specific Authority 985.64 FS. Law Implemented 985.135 FS. History–New 5-15-08, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE: Rex Uberman, Assistant Secretary for Probation & Community Intervention
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Frank Peterman, Jr., Secretary
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 15, 2010
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 13, 2009

DEPARTMENT OF JUVENILE JUSTICE

Probation

Table with 2 columns: RULE NOS. and RULE TITLES. Rows include 63D-5.001 Purpose and Scope, 63D-5.002 Definitions, 63D-5.003 Planning the Supervision of the Youth and Selecting Relevant Interventions, 63D-5.004 Classification and Reclassification, 63D-5.005 Risk-Based Interventions, 63D-5.006 Violations of Supervision, 63D-5.007 Termination of Supervision

PURPOSE AND EFFECT: The rule chapter governing the provision of focused probation case management is repealed as part of the reorganization of the subtitle. Much of the content of the repealed rule chapter will be found in newly-created Chapter 63D-10, F.A.C.

SUMMARY: Provisions addressing supervision and case management are repealed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

RULEMAKING AUTHORITY: 986.14, 985.435, 985.64 FS.

LAW IMPLEMENTED: 985.14, 985.435, 985.46, 985.601(3)(a) FS.

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

DATE AND TIME: Tuesday, April 20, 2010, 10:00 a.m.

PLACE: DJJ Headquarters, 2737 Centerview Drive, General Counsel's Conference Room 3223, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: John Milla, 2737 Centerview Dr., Ste. 3200, Tallahassee, FL 32399-3100, e-mail: john.milla@djj.state.fl.us

THE FULL TEXT OF THE PROPOSED RULES IS:

63D-5.001 Purpose and Scope.

Rulemaking Specific Authority 985.14, 985.64 FS. Law Implemented 985.14, 985.435, 985.601(2) FS. History-New 8-23-07, Repealed

63D-5.002 Definitions.

Rulemaking Specific Authority 985.14, 985.64 FS. Law Implemented 985.14, 985.435, 985.601(2) FS. History-New 8-23-07, Repealed

63D-5.003 Planning the Supervision of the Youth and Selecting Relevant Interventions.

Rulemaking Specific Authority 985.14, 985.64 FS. Law Implemented 985.14, 985.435, 985.601(2) FS. History-New 8-23-07, Repealed

63D-5.004 Classification and Reclassification.

Rulemaking Specific Authority 985.14, 985.64 FS. Law Implemented 985.14, 985.435, 985.601(2) FS. History-New 8-23-07, Repealed

63D-5.005 Risk-Based Interventions.

Rulemaking Specific Authority 985.14, 985.64 FS. Law Implemented 985.14, 985.435, 985.601(2) FS. History-New 8-23-07, Repealed

63D-5.006 Violations of Supervision.

Rulemaking Specific Authority 985.14, 985.64 FS. Law Implemented 985.14, 985.435, 985.439, 985.601(2) FS. History-New 8-23-07, Repealed

63D-5.007 Termination of Supervision.

Rulemaking Specific Authority 985.14, 985.64 FS. Law Implemented 985.14, 985.435, 985.601(2) FS. History-New 8-23-07, Repealed

NAME OF PERSON ORIGINATING PROPOSED RULE: Rex Uberman, Assistant Secretary for Probation & Community Intervention

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Frank Peterman, Jr., Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 15, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 13, 2009

DEPARTMENT OF JUVENILE JUSTICE

Probation

Table with 2 columns: RULE NOS. and RULE TITLES. Rows include 63D-6.001 Purpose and Scope, 63D-6.002 Definitions, 63D-6.003 Facility-Based Program Model, 63D-6.004 Community Supervision Model

63D-6.005 Common Elements of Facility-Based and Community Supervision Models

63D-6.006 Admission and Orientation for Youth Committed as Minimum Risk

63D-6.007 Progress Reports
63D-6.008 Release

PURPOSE AND EFFECT: The rule chapter governing the provision of services to youth on probation or committed to a minimum-risk nonresidential program is repealed as part of the reorganization of the subtitle. Much of the content of the repealed rule chapter will be found in newly-created Chapter 63D-12, F.A.C.

SUMMARY: Provisions governing facility-based day treatment and non-facility-based community supervision programs are repealed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

RULEMAKING AUTHORITY: 985.435, 985.601, 985.64 FS.
LAW IMPLEMENTED: 985.03, 985.433, 985.435, 985.601 FS.

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

DATE AND TIME: Tuesday, April 20, 2010, 10:00 a.m.

PLACE: DJJ Headquarters, 2737 Centerview Drive, General Counsel's Conference Room 3223, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: John Milla, 2737 Centerview Dr., Ste. 3200, Tallahassee, FL 32399-3100, e-mail: john.milla@djj.state.fl.us

THE FULL TEXT OF THE PROPOSED RULES IS:

63D-6.001 Purpose and Scope.

Rulemaking Specific Authority 985.435, 985.601, 985.64 FS. Law Implemented 985.03, 985.433, 985.435, 985.601 FS. History–New 8-23-07, Repealed.

63D-6.002 Definitions.

Rulemaking Specific Authority 985.435, 985.601, 985.64 FS. Law Implemented 985.03, 985.433, 985.435, 985.601 FS. History–New 8-23-07, Repealed.

63D-6.003 Facility-Based Program Model.

Rulemaking Specific Authority 985.435, 985.601, 985.64 FS. Law Implemented 985.03, 985.433, 985.435, 985.601 FS. History–New 8-23-07, Repealed.

63D-6.004 Community Supervision Model.

Rulemaking Specific Authority 985.435, 985.601, 985.64 FS. Law Implemented 985.03, 985.433, 985.435, 985.601 FS. History–New 8-23-07, Repealed.

63D-6.005 Common Elements of Facility-Based and Community Supervision Models.

Rulemaking Specific Authority 985.435, 985.601, 985.64 FS. Law Implemented 985.03, 985.433, 985.435, 985.601 FS. History–New 8-23-07, Repealed.

63D-6.006 Admission and Orientation for Youth Committed as Minimum Risk.

Rulemaking Specific Authority 985.433, 985.601, 985.64 FS. Law Implemented 985.03, 985.433, 985.441, 985.601 FS. History–New 8-23-07, Repealed.

63D-6.007 Progress Reports.

Rulemaking Specific Authority 985.435, 985.601, 985.64 FS. Law Implemented 985.03, 985.433, 985.435, 985.455(3), 985.601 FS. History–New 8-23-07, Repealed.

63D-6.008 Release.

Rulemaking Specific Authority 985.435, 985.601, 985.64 FS. Law Implemented 985.03, 985.433, 985.435, 985.455(3), 985.601 FS. History–New 8-23-07, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE: Rex Uberman, Assistant Secretary for Probation & Community Intervention

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Frank Peterman, Jr., Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 15, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 13, 2009

DEPARTMENT OF JUVENILE JUSTICE

Probation

RULE NOS.:	RULE TITLES:
63D-7.001	Purpose and Scope
63D-7.002	Definitions
63D-7.003	Transition Planning While the Youth is in a Residential Commitment Facility
63D-7.004	Pre-Release Notification
63D-7.005	Post-Residential Supervision
63D-7.006	Admission to Post-Residential Supervision Program
63D-7.007	Managing Supervision and Designing Intervention Through the YES Plan
63D-7.008	Violations
63D-7.009	Termination of Services

PURPOSE AND EFFECT: The rule chapter governing the provision of services, sanctions and case management for youth leaving residential facilities is repealed as part of the reorganization of the subtitle. Much of the content of the repealed rule chapter will be found in newly-created Chapter 63D-10, F.A.C.

SUMMARY: Provisions addressing post-residential supervision are repealed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

RULEMAKING AUTHORITY: 985.14, 985.64 FS.

LAW IMPLEMENTED: 985.14, 985.435, 985.439, 985.601 FS.

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

DATE AND TIME: Tuesday, April 20, 2010, 10:00 a.m.

PLACE: DJJ Headquarters, 2737 Centerview Drive, General Counsel's Conference Room 3223, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: John Milla, 2737 Centerview Dr., Ste. 3200, Tallahassee, FL 32399-3100, e-mail: john.milla@djj.state.fl.us

THE FULL TEXT OF THE PROPOSED RULES IS:

63D-7.001 Purpose and Scope.

Rulemaking Specific Authority 985.46, 985.435, 985.64 FS. Law Implemented 985.14, 985.435, 985.46 FS. History–New 11-19-07, Repealed _____.

63D-7.002 Definitions.

Rulemaking Specific Authority 985.46, 985.435, 985.64 FS. Law Implemented 985.14, 985.435, 985.46 FS. History–New 11-19-07, Repealed _____.

63D-7.003 Transition Planning While the Youth is in a Residential Commitment Facility.

Rulemaking Specific Authority 985.46, 985.435, 985.64 FS. Law Implemented 985.14, 985.435, 985.46 FS. History–New 11-19-07, Repealed _____.

63D-7.004 Pre-Release Notification.

Rulemaking Specific Authority 985.46, 985.435, 985.64 FS. Law Implemented 985.14, 985.435, 985.46 FS. History–New 11-19-07, Repealed _____.

63D-7.005 Post-Residential Supervision.

Rulemaking Specific Authority 985.46, 985.435, 985.64 FS. Law Implemented 985.14, 985.435, 985.46 FS. History–New 11-19-07, Repealed _____.

63D-7.006 Admission to Post-Residential Supervision Program.

Rulemaking Specific Authority 985.46, 985.435, 985.64 FS. Law Implemented 985.14, 985.435, 985.46 FS. History–New 11-19-07, Repealed _____.

63D-7.007 Managing Supervision and Designing Intervention Through the YES Plan.

Rulemaking Specific Authority 985.46, 985.435, 985.64 FS. Law Implemented 985.14, 985.435, 985.46 FS. History–New 11-19-07, Repealed _____.

63D-7.008 Violations.

Rulemaking Specific Authority 985.46, 985.435, 985.64 FS. Law Implemented 985.14, 985.435, 985.46 FS. History–New 11-19-07, Repealed _____.

63D-7.009 Termination of Services.

Rulemaking Specific Authority 985.46, 985.435, 985.64 FS. Law Implemented 985.14, 985.435, 985.46 FS. History–New 11-19-07, Repealed _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Rex Uberman, Assistant Secretary for Probation & Community Intervention

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Frank Peterman, Jr., Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 15, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 13, 2009

DEPARTMENT OF JUVENILE JUSTICE

Probation

RULE NO.: 63D-8.001 **RULE TITLE:** Definitions

PURPOSE AND EFFECT: The rule provides centralized definitions for common terms relating to the provision of probation services for juveniles.

SUMMARY: The rule addresses common terminology for juvenile probation services.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

RULEMAKING AUTHORITY: 985.64 FS.

LAW IMPLEMENTED: 985.03, 985.135, 985.14, 985.145, 985.24, 985.245, 985.433, 985.435, 985.46, 985.601 FS.

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

DATE AND TIME: Tuesday, April 20, 2010, 10:00 a.m.

PLACE: DJJ Headquarters, 2737 Centerview Drive, General Counsel's Conference Room 3223, Tallahassee, Florida
THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: John Milla, 2737 Centerview Dr., Ste. 3200, Tallahassee, FL 32399-3100, e-mail: john.milla@djj.state.fl.us

THE FULL TEXT OF THE PROPOSED RULE IS:

63D-8.001 Definitions.

For the purpose of Chapters 63D-9 through 63D-12, F.A.C., the following terms are defined as follows:

(1) Chief Probation Officer (CPO) – The department employee who is responsible for managing community-based program operations and staff within each of Florida's twenty judicial circuits.

(2) Commitment conference – A multidisciplinary staffing conducted to discuss the department's recommendation to the court for youth who may be appropriate for residential commitment. Participants may include the youth, parent(s)/guardian(s), Juvenile Probation Officer (JPO), Juvenile Probation Officer Supervisor (JPOS), Commitment Manager, school officials, service providers, and other parties involved in the youth's case.

(3) Complainant – Any person or agency having knowledge of the facts related to the allegations of the delinquency of a youth and who makes a formal complaint or delinquency referral based upon these facts.

(4) Comprehensive Assessment – The gathering of information for the evaluation of a youth's physical, psychological, educational, vocational, social condition and family environment as they relate to the youth's need for rehabilitative and treatment services, including substance abuse treatment services, literacy services, medical services, family services, and other specialized services, as appropriate.

(5) Comprehensive Evaluation – The gathering of information addressing physical health, mental health, substance abuse, academic, educational, or vocational problems of a youth for whom a residential commitment disposition is anticipated, which is summarized in the youth's predisposition report.

(6) Conditional release (CR) – Assessment and intervention services provided to youth who are released from residential commitment programs. Under the legal status of conditional release, the youth remains on commitment status and is subject to transfer back to a residential commitment program if noncompliant.

(7) Criminogenic needs – Critical factors identified during the assessment process that have been statistically proven to predict future criminal behavior.

(8) Detention Risk Assessment Instrument (DRAI) – The instrument used to determine if a youth meets detention criteria and to determine whether a youth should be placed in secure, non-secure, or home detention care prior to a detention hearing.

(9) Direct discharge – The release of a youth from a residential commitment facility without any court ordered requirements for community supervision by the department.

(10) Intervention – An action taken or facilitated by the JPO to promote the reduction of a criminogenic need, and may include direct contact with youth, collateral contacts, referrals for services, monitoring progress, and following up with youth and family.

(11) Juvenile Justice Information System (JJIS) – The department's electronic information system, which is used to gather and store information on youth having contact with the department.

(12) Juvenile Probation Officer (JPO) – An employee of the department responsible for the intake of youth upon arrest and the supervision of youth on court ordered supervision in the community. The JPO serves as the primary case manager for the purpose of managing, coordinating and monitoring the services provided and sanctions required for each youth. In this rule chapter, whenever a reference is made to the objectives and duties of a JPO, it shall also apply to case management staff of a provider agency contracted to perform these duties and objectives.

(13) Juvenile Probation Officer Supervisor (JPOS) – An employee of the department or a contracted provider who provides first line oversight and management of the JPOs in the unit. The JPOS is responsible for overall direction and guidance of the services provided by the JPO including, but not limited to reviewing the progress of cases, documenting compliance with law and court orders, and approving YES Plans and revisions to YES Plans.

(14) Positive Achievement Change Tool (PACT) – The primary assessment instrument used by the JPO to determine the youth's risk to re-offend and identify criminogenic needs that require intervention. The Pre-Screen is completed and maintained for all youth who are referred to the department. The Full Assessment is completed and maintained for all youth who have been placed under the jurisdiction of the department by the court and have been identified as moderate-high or high risk to re-offend by the Pre-Screen.

(15) PACT Mental Health and Substance Abuse Screening Report and Referral Form – The form used by the JPO to refer the youth for a Comprehensive Assessment whenever the results of the PACT Pre-Screen indicate further assessment is required.

(16) Post-commitment probation (PCP) – Assessment and intervention services provided to youth who are released from residential commitment programs. Under the legal status of post-commitment probation, the youth is legally transferred from commitment status to probation status, and is subject to court-ordered sanctions.

(17) Preliminary Screening – The gathering of preliminary information to be used to determine a youth's need for further evaluation or assessment or for referral for other substance

abuse services through means such as psychosocial interviews, urine and breathalyzer screenings, and reviews of available educational, delinquency and dependency records of the youth.

(18) Probation – Assessment and intervention services provided to youth who are court-ordered to community supervision after the court has determined that the youth committed a delinquent act.

(19) Probation Medical and Mental Health Clearance Form – The form used to screen for mental health, substance abuse and medical problems when law enforcement delivers a youth to the department upon apprehension. The purpose of the form is to comply with statutory requirements for diverting youth to the proper community resource if they require urgent treatment or intervention upon arrest. The form (HS 051, January 2008) is incorporated, and is accessible electronically at: http://www.djj.state.fl.us/forms/health_services.

(20) Suicide Risk Screening Instrument (SRSI) – A form that documents the standardized questions asked by trained, designated staff upon a youth’s intake into the juvenile justice system, and upon admission to a detention center, to identify suicide risk factors and the need for referral for assessment of suicide risk.

(21) Violation of supervision – A noncompliant act committed by a youth that violates the conditions of the probation or post-commitment probation court order.

(22) Youth-Empowered Success (YES) Plan – The document developed by the youth, parent(s)/guardians(s), and JPO to plan for the completion of court-ordered sanctions and address criminogenic needs.

Rulemaking Authority 985.64 FS. Law Implemented 985.03, 985.135, 985.14, 985.145, 985.24, 985.245, 985.433, 985.435, 985.46, 985.601 FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Rex Uberman, Assistant Secretary for Probation & Community Intervention

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Frank Peterman, Jr., Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 15, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 13, 2009

DEPARTMENT OF JUVENILE JUSTICE

Probation

RULE NOS.:	RULE TITLES:
63D-9.001	Purpose and Scope
63D-9.002	Detention Screening
63D-9.003	Intake Services
63D-9.004	Risk and Needs Assessment
63D-9.005	Comprehensive Assessment
63D-9.006	Comprehensive Evaluation

PURPOSE AND EFFECT: The rule establishes uniform procedures for conducting and documenting detention screening, intake, risk and needs assessment, comprehensive assessment and comprehensive evaluation of youth to allow the department to provide the most appropriate services in the least intrusive manner.

SUMMARY: The rule addresses the provision of detention screening, intake, risk and needs assessment and comprehensive evaluation and assessment of juveniles.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

RULEMAKING AUTHORITY: 985.245, 985.64 FS.

LAW IMPLEMENTED: 985.03, 985.135, 985.14, 985.145, 985.24, 985.245, 985.433, 985.435, 985.46, 985.601 FS.

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

DATE AND TIME: Tuesday, April 20, 2010, 10:00 a.m.

PLACE: DJJ Headquarters, 2737 Centerview Drive, General Counsel’s Conference Room 3223, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: John Milla, 2737 Centerview Dr., Ste. 3200, Tallahassee, FL 32399-3100, e-mail: john.milla@djj.state.fl.us

THE FULL TEXT OF THE PROPOSED RULES IS:

63D-9.001 Purpose and Scope.

This rule establishes uniform procedures for conducting and documenting detention screening, intake, risk and needs assessments, comprehensive assessments, and comprehensive evaluations of youth to allow the department to provide the most appropriate services in the least intrusive manner.

(1) While the needs, strengths and history of the individual youth will determine the how, what, when and where of assessment, the process typically tracks the following sequence:

(a) Detention Screening is completed following the arrest and delivery of the youth to the department. The critical component of detention screening is the Detention Risk Assessment Instrument (DRAI), an automated tool containing the key data elements prescribed by statute for decision-making about detention placement. When a youth is delivered to the department for detention screening, the screener shall also look into the risk of suicidal behaviors. This screening is initiated through a process which includes administration of the Positive Achievement Change Tool (PACT) and administration of the Suicide Risk Screening Instrument (SRSI) as well as a review of any other

documentation of suicide risk factors that are available at the time of screening. The SRSI (MHSA 002, August 2007) is incorporated, and is available from the Assistant Secretary for Probation and Community Intervention at 2737 Centerview Drive, Suite 1300, Tallahassee, Florida 32399-3100.

(b) After determining whether or not the youth being delivered to the department meets detention criteria, a more comprehensive intake process is initiated. The intake process is an analysis of the facts that resulted in the youth being delivered to the department. A summary of those facts is provided within the State Attorney Recommendation (SAR) and the Pre-Disposition Report (PDR). The former is the tool used to inform the state attorney what the department's suggestion is as to how to proceed with the case. The latter is a resource used by the court to determine a disposition for the youth once he or she is adjudicated delinquent.

(c) All youth charged with a criminal or delinquent offense are evaluated using the Positive Achievement Change Tool (PACT). This is a resource that follows the youth from first contact through all phases of his or her history with the department. It is a validated instrument used to assess risk to re-offend, and it is the primary tool for case management, service planning, treatment progress and readiness for termination of services.

(d) A comprehensive evaluation is the gathering of information addressing physical health, mental health, substance abuse, academic, educational, or vocational problems of a youth for whom a residential commitment disposition is anticipated, which is summarized in the youth's predisposition report.

(2) While other specialized instruments may be used to meet the unique treatment needs of a youth, the evaluative processes described above comprise the core functions for supporting informed decision-making about the youth within the department's probation program.

Rulemaking Authority 985.64 FS. Law Implemented 985.03, 985.135, 985.14, 985.145, 985.24, 985.245, 985.433, 985.435, 985.46, 985.601 FS. History—New _____.

63D-9.002 Detention Screening.

(1) The Detention Risk Assessment Instrument (DRAI) directs the decision-making process as to whether detention care is warranted and whether the youth should be placed into secure detention, home detention, or some other form of non-secure detention status.

(a) The DRAI (DJJ 2049, March 2008) is incorporated, and is available from the Assistant Secretary for Probation and Community Intervention at 2737 Centerview Drive, Suite 1300, Tallahassee, FL 32399-3100.

(b) The DRAI shall consist of the following six (6) sections:

1. Section I: Identifying Data,
2. Section II: Admission Criteria,

3. Section III: Risk Assessment,

4. Section IV: State Attorney Review/Decision,

5. Section V: Screening Decision, and

6. Section VI: Narrative.

(2) A completed DRAI is required for all youth when presented to the department for detention screening.

(a) If the youth is not eligible for detention as determined by completing Section II of the DRAI, the Juvenile Probation Officer (JPO) is only required to complete Sections I, II, V, and VI.

(b) If the youth is eligible for detention, as determined by completing Section II of the DRAI, or if the youth is presented for detention screening on a technical violation of supervision, or a court order that requires secure detention, the JPO shall also complete Sections III and IV.

(3) In making the decision to detain or release a youth, the JPO shall take several key factors into consideration:

(a) The placement decision shall be based upon an independent assessment of risk as determined by the DRAI. To ensure equality of treatment, the Juvenile Probation Officer Supervisor (JPOS) shall make certain that the JPO does not discriminate based upon race, culture, gender, religion, ethnic origin, disability, sexual orientation, or socioeconomic status.

(b) The JPO shall attempt to contact the parent(s)/guardian(s), arresting law enforcement officer, victim, and others who have knowledge of the youth to obtain their assessment of the youth and the pending charge(s).

(c) The JPO shall check the Juvenile Justice Information System (JJIS), Department of Children and Families (DCF) client information system and Florida Criminal Investigation Center/National Criminal Investigation Center (FCIC/NCIC) system to obtain a prior history on the youth, if available. If one or more systems is not available at the time of screening then the JPO shall document all subsequent efforts to obtain background information from these systems.

(4) Section III-B of the DRAI is intended to score current, separate, non-related offenses with which the youth is charged, and which are not accounted for in Section III-A, referencing the most serious current offense.

(5) Section III-E of the DRAI, which scores aggravating or mitigating factors, allows the JPO to take into account relevant issues that are not scored in other parts of the DRAI, ensuring the appropriateness of detention and release decisions.

(a) The JPO shall consider any aggravating or mitigating circumstances that may exist.

(b) Because the DRAI is intended to be an independent and impartial measure of the risk posed by each youth, the decision to either aggravate or mitigate shall not be determined by pressures from outside influences that may lack objectivity.

(c) The JPO shall not consider factors that are accounted for elsewhere in the DRAI.

(d) The JPO shall fully explain what factors were considered in the narrative portion of Section VI.

(6) When the JPO believes that a youth who is otherwise eligible for detention should be released, he or she shall contact the state attorney to approve the release, as described in Section IV of the DRAI. The JPO shall document the reasons for the recommendation in narrative portion of Section VI. The state attorney may also approve home or non-secure detention for youth who are eligible for secure detention.

Rulemaking Authority 985.245, 985.64 FS. Law Implemented 985.145, 985.24, 985.245, 985.25, 985.255 FS. History—New _____.

63D-9.003 Intake Services.

(1) The purpose of the intake process is for the JPO to assess the youth's risk and needs to determine the most appropriate recommendations for services by considering the interests of the youth, parent(s)/guardian(s), victim, and community.

(2) The JPO shall review the written complaint (also called a report or affidavit) as the first step in case processing.

(a) A complaint is a written report alleging facts sufficient to establish the delinquency of a youth and the jurisdiction of the court.

(b) After the complaint is reviewed, the JPO shall attempt to gather information from the complainant and, if applicable, from the victim.

(c) The JPO shall conduct these contacts as soon as possible but no later than one week upon receipt of the complaint. During these contacts, the JPO shall obtain information that may not be contained in the complaint and request the complainant's and victim's opinion regarding case handling and disposition.

(3) The JPO shall use JJIS to enter and/or update information related to the new complaint(s), victim information, and youth demographics.

(4) An initial conference with the youth and parent(s)/guardian(s) shall be held for all cases unless the youth and parent(s)/guardian(s) refuse or are unable to participate. The initial conference is voluntary until the youth enters a plea (guilty or no contest) or the youth is found guilty.

(a) The conference may be completed at a juvenile assessment center (JAC), at a detention center, in the office of the JPO, or other suitable location.

(b) During the conference, the JPO interviews the youth and parent(s)/guardian(s) to gather information, explain the youth's status in the juvenile justice system, and conduct a risk and needs assessment.

(5) As with complainant and victim information, the information gathered during the initial conference is part of the youth's assessment of risk and needs and is used in developing the State Attorney Recommendation (SAR) and Pre-Disposition Report (PDR), if ordered.

(a) The SAR is a report detailing the department's recommendation and justification as to how the state attorney should proceed with case. The three primary options in making the recommendation to the state attorney are non-judicial handling, judicial handling, or handling as an adult.

(b) The SAR shall address the following: attitude of youth, cooperation of parent(s)/guardian(s), ability of parent(s)/guardian(s) to control youth, attitudes of complainant and victim, information related to youth's involvement or association with a criminal street gang, and any available information on mental and substance abuse needs. The SAR (DJJ/PACT Form 3, October 2006) is incorporated, and is available from the Assistant Secretary for Probation and Community Intervention at 2737 Centerview Drive, Suite 1300, Tallahassee, FL 32399-3100.

(c) The JPO shall submit the SAR within statutorily mandated timeframes.

(6) The PDR is a report detailing the department's recommendation for disposition and interventions to address the youth's criminogenic needs in the most appropriate and least-restrictive environment that reasonably ensures public safety. The PDR (DJJ/IS Form 8, April 2008) is incorporated, and is available from the Assistant Secretary for Probation and Community Intervention at 2737 Centerview Drive, Suite 1300, Tallahassee, FL 32399-3100.

(a) The PDR shall include an intervention plan that recommends the most appropriate placement to meet the youth's needs at the minimum restrictiveness level that reasonably ensures public safety and the youth's accountability.

(b) While the JPO has the final responsibility for making recommendations, the youth and parent(s)/guardian(s) shall be given an opportunity to be involved in the development of sanctions and intervention plans.

(c) If the PDR includes a recommendation for residential commitment, the recommendation must be the result of a pre-staffing between the JPO and JPOS, and a commitment conference with the Commitment Manager.

(d) The JPO shall submit the PDR within statutorily mandated timeframes.

(e) The JPO shall complete a Post-Disposition Report when residential commitment has been ordered by the court without the benefit of a PDR. In order to ensure appropriate placement and services, the Post-Disposition Report shall be completed within 14 working days following the disposition. The Post-Disposition Report (DJJ/IS Form 8, April 2008) is incorporated, and is available from the Assistant Secretary for Probation and Community Intervention at 2737 Centerview Drive, Suite 1300, Tallahassee, FL 32399-3100.

(7) The department is required to complete an Adult Sentencing Summary for youth being tried as an adult. This document provides information relevant to the youth's current status and history with the department, programs and services

provided or arranged by the department, family situation, any known special mental health or substance needs, and a recommendation as to whether the youth should be sentenced to the adult or juvenile justice system. This information is included in the Pre-Sentence Investigation submitted to the court by the Department of Corrections. The Adult Sentencing Summary (DJJ/IS Form 29, February 2009) is incorporated, and is available from the Assistant Secretary for Probation and Community Intervention at 2737 Centerview Drive, Suite 1300, Tallahassee, FL 32399-3100.

Rulemaking Authority 985.14, 985.145, 985.64 FS. Law Implemented 985.14, 985.145, 985.43, 985.565, 985.43, 985.435, 985.46 FS. History—New _____.

63D-9.004 Risk and Needs Assessment.

(1) The JPO shall conduct a risk and needs assessment on all youth charged with a criminal or delinquent offense using the Positive Achievement Change Tool (PACT). The PACT Pre-Screen is completed while screening a youth for detention eligibility or during the initial intake conference.

(2) The JPO administering the PACT shall use the results to determine whether a referral for further assessment or immediate intervention shall be made. The JPO shall refer youth directly to the designated assessment provider(s) for the comprehensive assessment using the PACT Mental Health and Substance Abuse Screening Report and Referral Form.

(a) If the youth is to be released to the parent(s)/guardian(s), the parent(s)/guardian(s) shall be informed of the results of the PACT and shall be given information as to the location of the comprehensive assessment provider, the appointment time (if arranged by the JPO), and the importance of delivering the youth for the follow-up appointment. The parent(s)/guardian(s) shall be provided a copy of the completed PACT Mental Health and Substance Abuse Screening Report and Referral Form.

(b) For detained youth, the PACT results shall be forwarded to the detention center where the youth is detained. The JPO shall provide written notification to the detention center using the PACT Mental Health and Substance Abuse Screening Report and Referral Form of any need for crisis intervention for youth who are indicated as at-risk for suicide, and shall notify the detention center of any need for referral to the center's mental health professional for youth who are in need of further mental health or substance abuse evaluation.

(3) When the PACT results or other information obtained at intake/admission indicates possible suicide risk, the youth shall be referred for an assessment of suicide risk to be conducted within 24 hours or immediately if the youth is in crisis. Assessment of Suicide Risk Form (MHSA 004, August 2006) must be utilized when the assessment of suicide risk is conducted in a DJJ facility or program. If the youth is released to the custody of the parent or legal guardian, the parent/legal guardian must be provided the form entitled Suicide Risk Screening Parent/Guardian Notification (MHSA 003, August

2006). These forms are incorporated, and are available from the Assistant Secretary for Probation and Community Intervention at 2737 Centerview Drive, Suite 1300, Tallahassee, Florida 32399-3100.

(4) The PACT is predominantly a self-report tool, and youth sometimes supply inaccurate information about themselves or their situation. The JPO completing the PACT shall use his or her own observations and those of collateral sources such as parents, other department staff, law enforcement, or other informed persons who have knowledge of the youth's behavior and background. If personal observations or collateral contacts reveal the need for further assessment regardless of the results of the PACT, a referral for further assessment shall be recommended. The reason for the override shall be documented on the PACT Mental Health and Substance Abuse Screening Report and Referral Form.

Rulemaking Authority 985.14, 985.145, 985.64 FS. Law Implemented 985.14, 985.145 FS. History—New _____.

63D-9.005 Comprehensive Assessment.

(1) A comprehensive assessment is a report on the youth's physical, psychological, educational, vocational, social condition and family environment as they relate to the youth's need for rehabilitative and treatment services, including substance abuse treatment services, literacy services, medical services, family services, and other specialized services, as appropriate. The comprehensive assessment is designed to guide the department to the right level of intervention based on the unique needs of the individual youth. A comprehensive assessment may be completed using either the Substance Abuse and Mental Health (SAMH-2 and SAMH-3) process or an equivalent department-approved instrument. The SAMH-2 (DJJ/PP Form 36, February 2005) and SAMH-3 (DJJ/PP Form 37, February 2005) are incorporated, and are available from the Assistant Secretary for Probation and Community Intervention at 2737 Centerview Drive, Suite 1300, Tallahassee, FL 32399-3100.

(2) The comprehensive assessment shall be administered in a timely fashion.

(a) The designated provider shall complete the comprehensive assessment within 10 calendar days for youth in secure detention. The provider shall complete the comprehensive assessment within 14 calendar days for youth not in secure detention. The timeframe for completion may be modified by order of the court.

(b) If a provider takes longer than 14 calendar days to complete a comprehensive assessment, the JPO shall notify the Chief Probation Officer (CPO) or designee, who shall notify the local DCF program administrator. The CPO shall request the program administrator to develop a plan to improve performance or change providers.

(3) After the comprehensive assessment or equivalent department-approved instrument is completed, the provider shall provide a written report of the results and outline recommendations for the disposition of the case.

(a) Recommendations can include treatment in a substance abuse or mental health setting, further in-depth evaluation to determine appropriate treatment response, or termination of substance abuse/mental health involvement.

(b) If the provider determines that a more in-depth evaluation is necessary, a referral for further in-depth evaluations shall be made prior to making any specific treatment recommendations.

(4) The provider shall forward the original comprehensive assessment to the JPO. When completing the PDR, the JPO shall incorporate the recommendations of the comprehensive assessment and attach the comprehensive assessment summary to the PDR. The JPO shall not attempt to summarize or interpret the comprehensive assessment summary or any subsequent evaluation in the PDR.

(5) If a PDR is required and the results of the comprehensive assessment have not been received from the provider within seven working days of the date the PDR is due, the JPO shall contact the provider and inquire as to why the results have not been received. If the youth and family have not participated in the assessment, the JPO shall contact the family by telephone or in writing and inform them of their obligation to participate in the assessment.

(6) If the comprehensive assessment is not received in time to be included in the PDR, the JPO shall document all efforts made to obtain the assessment in the PDR and case notes. The JPO shall notify the CPO or designee, who shall report in writing the noncompliance of the provider to the local DCF program administrator.

(7) When the comprehensive assessment is received, the JPO shall forward the assessment to the detention center for youth held in secure detention.

(8) All individuals involved in the comprehensive assessment process shall comply with the confidentiality requirements of Section 985.04, F.S., and other applicable provisions of Florida Statutes.

Rulemaking Authority 985.14, 985.145, 985.64 FS. Law Implemented 985.14, 985.145 FS. History—New _____.

63D-9.006 Comprehensive Evaluation.

(1) The comprehensive evaluation builds on the information gathered in previous assessments, screenings, and interviews with the youth and parent(s)/guardian(s) to provide a summary of the youth's life that focuses on the following areas: vocational, academic, medical, mental health and substance abuse. The comprehensive evaluation is designed to guide the department to the right level of intervention, usually delivered in a residential setting, based on the unique needs of the individual youth.

(2) The JPO shall forward the signed authorization and referral packet to the provider that is responsible for completing the comprehensive evaluation. The referral packet shall include the following items:

(a) School information such as grades, behavior records, attendance, and IQ scores,

(b) Arrest affidavit, violation of supervision, or transfer request,

(c) Victim statement(s) (if available),

(d) PACT Mental Health and Substance Abuse Screening Report and Referral Form,

(e) PACT results,

(f) Any prior assessments available (i.e. SAMH-2, psychological, or bio-psychosocial),

(g) Any prior medical information available,

(h) Available job history and vocational training history,

(i) Latest PDR (if available), and

(j) A signed Authority for Evaluation and Treatment (AET) form (HS 002, May 2007).

(3) The JPO shall conduct a pre-conference review with the JPO supervisor to determine whether or not to pursue a commitment recommendation for the youth. If the result of the pre-conference is a recommendation for commitment, then the JPO shall schedule a comprehensive evaluation and a commitment conference. A DJJ commitment manager presides over the commitment staffing and, with the input of conference participants, and informed by the completion of a comprehensive evaluation, the commitment manager determines what the department's recommendation to the court will be.

(4) If a residential commitment is being considered or has been ordered by the court, a comprehensive evaluation shall be scheduled with the provider on contract with the circuit to complete the evaluations. The evaluation shall be provided to the commitment manager prior to the commitment conference. If the evaluation is not completed by the date of the commitment conference, the JPO shall make every effort to obtain a draft for the conference.

(5) When youth on conditional release are pending transfer back to residential commitment, a comprehensive evaluation is required for the transfer staffing. If the comprehensive evaluation completed prior to commitment is over 12 months old, a new evaluation shall be completed to facilitate the transfer process.

(6) Providers shall ensure all staff conducting comprehensive evaluations are either licensed or certified under applicable law for the position they hold or, if not licensed or certified, they work under the direct supervision of a licensed mental health professional and have received a Master's degree in one of the academic disciplines required for licensure by statute.

Rulemaking Authority 985.14, 985.145, 985.64 FS. Law Implemented 985.14, 985.145, 985.18, 985.185 FS. History—New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Rex Uberman, Assistant Secretary for Probation & Community Intervention

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Frank Peterman, Jr., Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 15, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 13, 2009

DEPARTMENT OF JUVENILE JUSTICE

Probation

RULE NOS.:	RULE TITLES:
63D-10.001	Purpose and Scope
63D-10.002	Diversion Services
63D-10.003	Community Supervision Services
63D-10.004	Violations of Supervision
63D-10.005	Residential Case Management and Transitional Planning
63D-10.006	Termination of Supervision

PURPOSE AND EFFECT: The rule establishes the standards and procedures for the provision of intervention and case management services for youth who have been court-ordered to be supervised by the department, placed in department custody, or have otherwise agreed to participate in a diversion program.

SUMMARY: The rule addresses all stages of service intervention, from diversion through court-ordered probation and aftercare.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

RULEMAKING AUTHORITY: 985.14, 985.435, 985.64 FS.

LAW IMPLEMENTED: 985.14, 985.435, 985.46, 985.601 FS.

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

DATE AND TIME: Tuesday, April 20, 2010, 10:00 a.m.

PLACE: DJJ Headquarters, 2737 Centerview Drive, General Counsel’s Conference Room 3223, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: John Milla, 2737 Centerview Dr., Ste. 3200, Tallahassee, FL 32399-3100, e-mail: john.milla@djj.state.fl.us

THE FULL TEXT OF THE PROPOSED RULES IS:

63D-10.001 Purpose and Scope.

This rule establishes the standards and procedures for the provision of intervention and case management services for youth who have been court-ordered to be supervised by the department, placed in the care and custody of the department, or have otherwise agreed to participate in a diversion program in lieu of adjudication.

Rulemaking Authority 985.14, 985.435, 985.64 FS. Law Implemented 985.14, 985.435, 985.46, 985.601(3)(a) FS. History—New _____.

63D-10.002 Diversion Services.

(1) Diversion services are non-judicial alternatives used to keep youth who have committed a delinquent act from being handled through the traditional juvenile justice system. These services are intended to intervene at an early stage of delinquency, prevent subsequent offenses during and after participation in the programs, and provide an array of services to juvenile offenders. Referrals are determined based upon the youth’s current offense, delinquency history, and Positive Achievement Change Tool (PACT) results.

(2) Typical interventions of diversion programs include community service hours, restitution, random urinalysis, curfew, anger management, educational training, and vocational services. Diversion programs may also include individual, group, or family counseling provided by licensed mental health providers, and substance abuse education and treatment provided by licensed substance abuse providers. Diversion programs may also include mentoring, providing instruction or imparting guidance outside the formal treatment intervention.

(3) Intensive Delinquency Diversion Services (IDDS) programs provide services to a specific population of juvenile offenders who appear to be at risk of becoming serious and chronic offenders, but who qualify for diversion based on certain criminogenic needs and age at first offense.

(a) The Juvenile Probation Officer (JPO) shall assess if the youth is appropriate for an IDDS program using the PACT. Youth who score moderate-high or high risk to re-offend on the PACT are eligible to participate.

(b) If found ineligible under paragraph (3)(a), youth who have a minimum of one documented risk factor in three of the four areas of family, school, substance abuse, or criminal history are also eligible for an IDDS program.

(c) An IDDS case manager shall be assigned to the youth within seven calendar days of the referral being received by the provider. The case manager shall make face-to-face contact with the youth and parent within seven working days of the provider receiving the referral.

(4) Civil citation programs provide law enforcement with an alternative to taking youth into custody, while ensuring swift and appropriate consequences for youth who commit non-serious delinquent acts.

(a) A record check of the Juvenile Justice Information System (JJIS) is made by the department to determine program eligibility.

(b) Upon receipt of the citation, the department shall enter the appropriate information into JJIS.

(5) Community arbitration is a diversion option whereby a neutral third party or a panel of citizens from the community listens to the facts and arguments presented by the parties and renders a decision and appropriate sanctions.

(a) The JPO may recommend community arbitration based on program criteria and availability. Section 985.16, F.S., specifically identifies eligibility criteria for community arbitration.

(b) Upon approval of the state attorney, if a case is to be referred to community arbitration, the JPO shall contact the youth and parent(s)/guardian(s) within 48 hours after the complaint is issued to advise them of the requirements and timeframes for arbitration.

(c) If the youth, parent(s)/guardian(s), and the state attorney accept community arbitration, the JPO shall provide copies of the complaint to the arbitrator within 24 hours.

(d) If the youth or parent(s)/guardian(s) are dissatisfied with the disposition of the arbitration proceedings, they may request a review by notifying the JPO within 15 working days. Upon receipt of the request, the JPO shall consult with the state attorney.

(6) Teen court is a diversion option in which first-time juvenile offenders can be diverted from traditional court processing and have their cases reviewed by a jury of their peers. After completion of assigned sanctions, the youth then participates in the process as a jury member and may also be used to serve in the role of prosecuting or defense attorney, judge, bailiff, or clerk. Teen court may accept referrals from the department, state attorney, juvenile court, law enforcement, Child In Need of Services/Families In Need of Services (CINS/FINS) provider, public defender, traffic court, and school officials. Ineligible offenses include third degree felonies involving violence toward a person, grand theft auto, or use of a weapon.

(7) The Juvenile Alternative Services Program (JASP) uses a balanced approach combining sanctions and services that address the needs of the youth, family, and victims. JASP may receive referrals from the department, state attorney's office, and juvenile court.

(8) The department may operate a diversion program allowing parent(s)/guardians(s) or a community-based diversion program to oversee the youth's completion of an individualized diversion plan.

(a) The JPO shall develop an individualized diversion plan with sanctions and interventions with input from the state attorney, the youth, and the parent(s)/guardian(s).

(b) The plan shall include a timeframe for completion of the sanctions and intervention services, typically 30 to 90 calendar days for substantial completion.

(9) If the youth fails to comply with the conditions and sanctions of any diversion program, the department shall notify the state attorney.

Rulemaking Authority 985.14, 985.435, 985.64 FS. Law Implemented 985.12, 985.145, 985.155, 985.16, 985.601(3)(a) FS. History—New _____.

63D-10.003 Community Supervision Services.

(1) These rules address the supervision of youth in the community, to include youth on probation, conditional release (CR), and post-commitment probation (PCP). The Youth-Empowered Success (YES) Plan is the primary planning tool for administration and organization of case management services for the youth.

(2) The JPO shall make an initial face-to-face contact with youth on community supervision.

(a) Initial contact will be made within the following timeframes:

1. For youth placed on probation at disposition, contact shall be made within three (3) working days of disposition.

2. For youth placed on CR or PCP following release from a residential program, contact shall be made within three (3) working days of the release date.

(b) The purpose of initial contact is to conduct a preliminary review of the court order and provide contact information to the youth and parent(s)/guardian(s).

(3) The JPO shall complete a risk and needs assessment using the PACT for all youth being supervised by the department on probation, CR, and PCP. The JPO shall update the previous assessment if one was done during the intake process. Otherwise, the JPO shall complete a new risk and needs assessment.

(a) All youth shall have a PACT Pre-Screen completed prior to the development of the initial YES Plan.

(b) If a youth is identified as a moderate-high or high risk to re-offend by the PACT, the JPO shall complete a PACT Full Assessment prior to the development of the initial YES Plan.

(4) The initial YES Plan shall be developed within 30 calendar days of disposition, in the case of probation, or release, in the case of CR or PCP, and must be signed by all parties, including the youth, parent(s)/guardian(s), JPO, and Juvenile Probation Officer Supervisor (JPOS).

(a) The youth and parent(s)/guardian(s) shall participate in the development of the YES Plan. The youth and parent(s)/guardian(s) shall participate in the development of action steps and target dates for the completion of all sanctions and goals. The JPO shall document the development process in the case notes.

(b) Court-ordered sanctions shall be documented in JJIS in the Youth Requirements module. Each Youth Requirement shall contain at least one specific action step for the youth, parent(s)/guardian(s), and JPO that clearly defines who is responsible, what action should be taken, and how often the action should be taken.

(c) For youth who are moderate-high or high risk to re-offend, at least one of the top three criminogenic needs shall be addressed by creating a PACT Goal in JJIS. Each PACT Goal shall contain at least one specific action step for the youth, parent(s)/guardian(s), and JPO that clearly defines who is responsible, what action should be taken, and how often the action should be taken.

(d) For youth who are identified by the PACT as high risk to re-offend, the YES Plan shall include an evidence-based intervention that targets one of the top three criminogenic needs, unless the JPO documents in writing barriers to participation, such as the lack of available services, lack of youth readiness to voluntarily participate, transportation difficulties, or lack of parental approval for participation.

(e) The youth and parent(s)/guardian(s) shall be informed of the consequences of failing to comply with the sanctions and goals of the plan.

(f) The youth and parent(s)/guardian(s) shall be provided with a copy of the initial YES Plan upon their review and signature.

(g) Parent/guardian requirements contained in paragraphs (a) through (f) are waived whenever a youth is 18 years of age or older, living independently, or otherwise disengaged from his/her parent(s)/guardian(s) as documented in the case notes.

(5) The JPO shall refer the youth and parent(s)/guardian(s) to the appropriate service(s) and provide support and follow-up as necessary to ensure the completion of sanctions and goals in the YES Plan.

(a) The JPO shall either provide the youth and parent(s)/guardian(s) with referral information or make a direct referral to the service provider within 10 calendar days of the approval of the YES Plan.

(b) The JPO shall make contact with the service provider within 30 calendar days of the approval of the YES Plan to ensure that the youth and parent(s)/guardian(s) have participated in the admission process and are receiving services.

(c) The JPO shall ensure that progress reports, written or verbal, are received from the provider on a regular basis. The JPO shall follow-up with the youth and parent(s)/guardian(s) on any compliance issues communicated by the service provider.

(d) The JPO shall document referrals for services, follow-up with the service provider, youth, and parent(s)/guardian(s), and any other related contacts in the case notes.

(6) While the youth is under the supervision of the department on probation, CR, or PCP, the JPO shall make contacts in accordance with his or her professional discretion to ensure compliance with the court order and the completion of YES Plan sanctions and goals. The JPO shall document all case activities, including:

(a) Face-to-face interaction with the youth and parent(s)/guardian(s).

(b) Telephone contact with the youth, parent(s)/guardian(s), and providers, and

(c) Review written or verbal reports from collateral sources, such as educational institutions, employers, counselors, electronic databases, etc.

(7) The assessment of youth is not a one-time event, but an ongoing process. Therefore, the JPO shall update the youth's risk and needs assessment on a regular basis to ensure that PACT results are reflective of the youth's current status, including changes in behavior and progress with YES Plan sanctions and goals.

(a) If the youth is low or moderate risk to re-offend, the PACT reassessment shall be done using the PACT Pre-Screen at least once every 180 calendar days.

(b) If the youth is moderate-high or high risk to re-offend, the PACT reassessment shall be done using the PACT Full Assessment at least once every 90 calendar days.

(8) The JPOS shall conduct a supervisory case review of each case at least once every 90 calendar days while the youth is under supervision (Probation, CR, or PCP).

(a) The JPO shall update the youth's risk and needs assessment (pursuant to paragraphs (7)(a) and (b) above) prior to the supervisory case review.

(b) The JPO shall update Youth Requirements and PACT Goals in JJIS prior to the supervisory case review, to include closing completed or terminated sanctions and goals, updating action steps for pending sanctions and goals to reflect the youth's progress, or adding sanctions or goals to address additional needs identified during the course of supervision.

(c) The JPOS shall ensure that the youth is receiving appropriate supervision and interventions.

(d) Within 14 calendar days of the supervisory case review, the JPO shall notify the youth and parent(s)/guardian(s) of the status of the YES Plan, including any changes made during the course of the supervisor case review. This notification may occur verbally or in writing, and shall be documented in the case notes.

Rulemaking Authority 985.14, 985.435, 985.64 FS. Law Implemented 985.14, 985.435, 985.46 FS. History--New _____.

63D-10.004 Violations of Supervision.

(1) These rules are applicable to youth on probation and PCP. Non-compliance with the court order for youth on CR shall be addressed through the transfer process defined by Rule 63E-7.012, F.A.C. Possible violations of supervision include the following:

- (a) New law violations,
- (b) Technical violations, and
- (c) Absconding.

(2) The JPO shall investigate all possible violations of supervision. Such investigations shall include interviewing the supervised youth, parents/guardians, school officials, and other important collateral sources as deemed necessary.

(3) In the case of a new law violation, the JPO shall file an Affidavit/Petition for Violation of Probation for any violation that results in the filing of a delinquency petition. All applicable technical violations shall be included in the affidavit. The JPO is not precluded from filing an affidavit based on the new law violation prior to the state attorney's decision to file a petition. The Affidavit/Petition for Violation of Probation (DJJ/IS Form 10, April 2008) is incorporated, and is available from the Assistant Secretary for Probation and Community Intervention at 2737 Centerview Drive, Suite 1300, Tallahassee, FL 32399-3100.

(4) Technical violations involve noncompliance with court-ordered sanctions, such as not reporting to the JPO as directed, failing to complete community service, failing to follow through with a referral, missing school, or failing to make restitution payments. Technical violations shall be addressed through the progressive response system, which shall describe in detail how the JPO should respond when youth under supervision are noncompliant with court-ordered sanctions, considering that responses should be based on public safety, the assessed criminogenic needs and risks of the youth, and how effective the sanction will be in promoting compliant behavior. However, the JPO shall comply with orders of the court that require the reporting of any technical violations.

(a) If the JPO and JPOS decide that a formal court hearing is not needed to address the violation, the JPO shall address the non-compliant behavior with an intervention, such as initiating a behavior contract, conducting a formal staffing with parents, referring the youth for services to address new needs, or increasing supervision. Under no circumstances can a JPO informally modify conditions related to contact with a victim.

(b) If the JPO and JPOS decide that court action is warranted, an Affidavit/Petition for Violation of Probation shall be filed with the state attorney alleging that the youth is in violation of supervision. The affidavit shall be filed within seven calendar days of the JPO becoming aware of the technical violation. Any violation that was previously addressed through progressive response shall be included in the affidavit.

(5) Absconding occurs when a supervised youth goes in a clandestine manner out of the jurisdiction of the court in order to avoid the legal process, or when the youth hides, conceals, or absents himself or herself with the intent to avoid the legal process. Mere absence or not appearing for appointments is not absconding, but may constitute a technical violation of supervision. In order for the youth to meet the criteria for absconding, the JPO shall have cause to believe that the youth is deliberately avoiding supervision, or has removed himself or herself from the home or community. A youth reported by parent(s)/guardian(s) to have run away is considered an absconder.

(a) At the point the JPO considers the youth to have absconded, the JPO shall document all efforts to locate the youth.

(b) Within one working day of determining that the youth has absconded, the JPO shall complete and file with the court an Affidavit for An Order to Take Into Custody, and an Affidavit/Petition for Violation of Probation. The Affidavit for Order to Take Into Custody (DJJ/IS Form 15, February 2009) is incorporated, and is available from the Assistant Secretary for Probation and Community Intervention at 2737 Centerview Drive, Suite 1300, Tallahassee, FL 32399-3100.

Rulemaking Authority 985.14, 985.64 FS. Law Implemented 985.14, 985.435, 985.439, 985.601 FS. History—New _____.

63D-10.005 Residential Case Management and Transitional Planning.

(1) Following a disposition to residential commitment, the JPO shall complete and submit the Commitment/Transfer Packet Checklist in JJIS no less than 24 hours prior to the youth's placement at the facility.

(2) While the youth is receiving treatment at the residential facility, the JPO shall assist the parent(s)/guardian(s) and program staff as necessary to ensure communication is conducive to the youth's successful completion of the program. If the JPO is requested by program staff to make contact with the youth, he or she shall respond. Contacts with youth, regardless of the method used must be meaningful and must capture the youth's progress in the program. At a minimum, the JPO shall have one face-to-face contact with the youth during the transition phase back home if within a 50-mile radius of the home office. Telephonic participation is acceptable outside the 50-mile radius.

(3) Planning for the youth's transition to the community shall begin at the commitment conference, when the appropriate post-residential services are identified. Planning for the youth's successful transition involves the ongoing efforts of the youth, parent(s)/guardian(s), treatment team, and JPO. Prior to the youth's release from residential care the program shall conduct an exit conference to finalize plans for the youth's release. It is at this time that the JPO shall make post-residential service referrals, if applicable.

(4) In notifying the JPO of the youth's planned release date, the commitment program, unless its length of stay is 45 calendar days or less, shall forward to the JPO the Pre-Release Notification and Acknowledgment (PRN) form 45 days prior to the youth's planned release date, and 90 calendar days prior to release for sex offenders who do not meet statutory criteria for involuntary civil commitment of sexually violent predators to the Department of Children and Families (DCF) as set forth in Chapter 394, F.S. The program's notification to the JPO of release from a low-risk residential program with a length of stay 45 calendar days or less shall be made within 72 hours of the youth's admission to the program.

(5) If the department concurs with the proposed release date, the JPO shall notify the committing judge of the program's intent to release and a plan for aftercare supervision using the Request for Release Letter. The Request for Release Letter (DJJ/IS Form 13, May 2009) is incorporated, and is available from the Assistant Secretary for Probation and Community Intervention at 2737 Centerview Drive, Suite 1300, Tallahassee, FL 32399-3100. The letter, along with a copy of the program's release Performance Summary, shall be delivered to the judge within three working days of receipt of the PRN. Copies of the letter shall be provided to the parent(s)/guardian(s), commitment program, and JPO. The JPO shall return the completed PRN to the commitment program within five working days of receipt of the form.

(6) The court has 10 working days, from receipt, to reject or approve the release. The adult court has 14 working days, from receipt, to reject or approve the release. If the court does not respond within the days specified, the request of the department shall be deemed granted. If the court does not accept the recommended release date, the youth shall be held in the program until a release date is accepted by the court.

(7) In accordance with Chapter 394 F.S., the JPO shall notify the DCF Sexually Violent Predator Program Multidisciplinary Team of the anticipated release of any youth who has been convicted of a sexually violent offense using the approved form. The Sexually Violent Predator Program Multidisciplinary Team Notification Letter (DJJ/BCS Form 24, September 2006) is incorporated, and is available from the Assistant Secretary for Probation and Community Intervention at 2737 Centerview Drive, Suite 1300, Tallahassee, FL 32399-3100. A copy of the written notice shall also be forwarded to the state attorney in the circuit where the youth was adjudicated. Notification to the multidisciplinary team and the state attorney shall take place 180 calendar days prior to the anticipated release of persons age 18 and older from a commitment program and who have been convicted of the sexually violent offenses defined in statute. The transition process for sex offenders who meet the statutory criteria for involuntary civil commitment shall commence 210 calendar days prior to the youth's anticipated release from the

commitment program if the program is a maximum or high-risk program or otherwise one with a length of stay of more than 180 calendar days.

(8) The residential commitment program shall not release any youth subject to the provisions of Chapter 394, F.S., until the DCF multidisciplinary team has determined eligibility and the state attorney's office has decided whether or not to file a petition. If it is determined that the youth will not be involuntarily committed to DCF, then the JPO shall notify the program using the Notification of the Decision to Not Involuntarily Commit to DCF form.

(9) Cases under the jurisdiction of a juvenile court shall be approved for direct discharge by said court prior to the department completing any direct discharge action. If a youth has reached the maximum age of jurisdiction or completed the maximum term of confinement that an adult would serve for the same offense while in the residential program, the department shall recommend direct discharge.

(a) If a youth commits a violation of law for which he or she is sentenced in the adult system, the department shall pursue direct discharge. To request termination of a youth sentenced as an adult, the JPO shall follow the same procedures used for terminating a case from juvenile court.

(b) When notifying the court of the youth's discharge date, the JPO shall provide the court with a notification letter that advises the court of the department's intent to directly discharge the youth and the reason for the direct discharge. The JPO shall also provide the court with a copy of the discharge Performance Summary and the adult court order, if the youth was sentenced in the adult system.

(10) While a youth is on post-residential supervision, he or she will typically reside with parent(s)/guardian(s). However, some youth may be referred to an independent living program. Independent living is a category that focuses on providing an array of specialized services, and for some youth, is an opportunity for a placement outside the family home. The program is intended for youth whose home environment is a barrier to a crime-free return to the community, youth who are homeless, and youth who cannot return to the family home. Youth with sexual offenses, developmental disabilities, and youth with histories of arson, cruelty to animals, or first-degree felonies shall be permitted to participate in an independent living program on a case-by-case basis, and documentation of the youth's appropriateness shall be maintained in the case file. When a youth is prescribed psychotropic medications, a medication evaluation shall be completed prior to consideration of residential independent living placement. Youths whose adjudication of dependency precedes the adjudication of delinquency should be referred back to DCF for an assessment of eligibility for the independent living program operated for dependent children aging out of foster care.

Rulemaking Authority 985.435, 985.46, 985.64 FS. Law Implemented 985.14, 985.435, 985.46 FS. History—New _____.

63D-10.006 Termination of Supervision.

(1) Completion of the court-ordered sanctions shall be the primary determinant when requesting termination of supervision. Voluntary goals shall not impede the release of a youth from supervision. The JPO shall recommend termination when:

(a) A youth has complied with all court-ordered sanctions,

(b) The department has lost jurisdiction because the youth has reached the maximum age provided in statute, or

(c) The department has lost jurisdiction based upon the maximum period of supervision applicable to the charge.

(2) Prior to requesting termination, the JPO shall check with local law enforcement to determine if there are outstanding warrants or charges for the youth that have not been filed. At a minimum, this includes the sheriff and police department of the youth's county and city of residence. The JPO shall also check the Florida Crime Information Center/National Crime Information Center (FCIC/NCIC) system to determine if there are outstanding warrants.

(3) If the youth is on probation or PCP, the Progress Report form will be used to request termination, and shall include the status of all court-ordered sanctions completed by the youth. The Progress Report Form (DJJ/IS Form 12, December 2008) is incorporated, and is available from the Assistant Secretary for Probation and Community Intervention at 2737 Centerview Drive, Suite 1300, Tallahassee, FL 32399-3100. If the youth is on CR, the JPO will follow the procedure described in subsections 63D-10.005(4)-(5), F.A.C., wherein the JPO will complete all documents required of residential commitment facilities.

(4) The JPO shall notify the court 15 working days prior to the loss of jurisdiction of a case by submitting a Progress Report. Upon loss of jurisdiction, the JPO shall close the case.

(5) Within five working days of receipt of the court's termination order or the date of loss of jurisdiction, the JPO shall update JJIS.

(6) The JPO shall notify the youth and parent(s)/guardian(s) in writing that the youth is no longer under supervision.

(7) Termination shall be sought for youth who are in substantial compliance with restitution and/or court fees. Substantial compliance means that the youth has exhibited, through routine payments, the intention to follow through with his or her obligation. The JPO shall verify the amount of restitution paid with the clerk of court.

(a) The JPO shall recommend that the court retain jurisdiction for restitution and/or court fees if full payment has not yet been made.

(b) The JPO shall notify the youth and parent(s)/guardian(s) that, by retaining jurisdiction, the court may find the youth in contempt for failure to make timely payments. The JPO shall also advise the youth and parent(s)/guardian(s) that the court may request that they enter into a voluntary promissory note for payment. At no time should the JPO become involved in the negotiation or development of the promissory note.

Rulemaking Authority 985.14, 985.64 FS. Law Implemented 985.14, 985.435, 985.601 FS. History—New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Rex Uberman, Assistant Secretary for Probation & Community Intervention

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Frank Peterman, Jr., Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 15, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 13, 2009

DEPARTMENT OF JUVENILE JUSTICE

Probation

RULE NOS.:

63D-11.001

63D-11.002

63D-11.003

63D-11.004

63D-11.005

63D-11.006

63D-11.007

RULE TITLES:

Purpose and Scope

Design and Operation

Safety and Security

Admission of Youth

Medication Management

Responding to Street Gangs

Release of Youth

PURPOSE AND EFFECT: The rule details the department's role in the operation of juvenile assessment centers (JACs), where referred youth undergo intake and screening.

SUMMARY: Provisions address the design and operation of JACs, the safety and security of the facilities, and the processing of youth at intake.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

RULEMAKING AUTHORITY: 984.64 FS.

LAW IMPLEMENTED: 985.135 FS.

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

DATE AND TIME: Tuesday, April 20, 2010, 10:00 a.m.

PLACE: DJJ Headquarters, 2737 Centerview Drive, General Counsel's Conference Room 3223, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: John Milla, 2737 Centerview Dr., Ste. 3200, Tallahassee, FL 32399-3100, e-mail: john.milla@djj.state.fl.us

THE FULL TEXT OF THE PROPOSED RULES IS:

63D-11.001 Purpose and Scope.

This rule specifies the requirements and criteria describing the role that the department has in the operation of juvenile assessment centers (JACs). JACs are also subject to Chapter 63D-9, F.A.C., relative to the provision of assessment services.

Rulemaking Authority 985.64 FS. Law Implemented 985.135 FS. History--New _____.

63D-11.002 Design and Operation.

(1) JACs provide co-located central intake and screening services for youth referred to the department. The department's role is to ensure that an adequate number of staff, either department employees or contracted provider staff, are deployed at a JAC to cover the functions of detention screening and the initiation of the intake process. The local JAC advisory committee, which shall be comprised of individuals who represent the agencies participating in the JAC, shall develop an interagency agreement that includes provisions regarding the development of protocols and procedures for conflict resolution, resource identification, roles, responsibilities, and communication between the agencies, and the daily operation of the JAC. In JACs where the department is not directly responsible for the functions defined herein, the interagency agreement must satisfy all requirements of this rule prior to department approval.

(2) Because local law enforcement agencies and local departments of corrections are often involved in staffing a JAC, the department shall rely on law enforcement standards where applicable except, as regards to specific statutory direction such as, for example, found in Section 985.645, F.S.

Rulemaking Authority 985.64 FS. Law Implemented 985.135(2), (3), 985.645 FS. History--New _____.

63D-11.003 Safety and Security.

(1) All JACs shall comply with sanitation and health codes. Written reports of inspections by state or local authorities shall be kept on file as assurance of continuing compliance with these codes.

(2) All JACs that use holding cells for youth shall include in their process for utilization of these holding cells the following conditions:

(a) Males and females shall never be placed together in the same holding cell.

(b) Staff shall visually observe youth in holding cells every 10 minutes.

(c) A behavioral review shall be held every 30 minutes.

(d) The observations and reviews shall be documented in writing, and

(e) If a holding cell is used by more than one youth at a time, a safety decision shall be made as to the potential risk of one youth to the other. Risk factors to consider are contagious disease, a marked difference in size, strength or age, predatory history, and emotional stability.

Rulemaking Authority 985.64 FS. Law Implemented 985.135(3), (4) FS. History--New _____.

63D-11.004 Admission of Youth.

(1) Each youth shall receive an initial medical and mental health clearance using the Probation Medical and Mental Health Clearance Form. The Juvenile Probation Officer (JPO) shall evaluate the condition of each youth prior to being accepted into the JAC for detention screening. The clearance process shall help ensure an appropriate response when law enforcement delivers a youth for screening who appears to be physically impaired due to drugs, alcohol, injury, or illness. The Probation Medical and Mental Health Clearance Form (HS 051, January 2008) is incorporated, and is available from the Office of Health Services at 2737 Centerview Drive, Suite 2426, Tallahassee, FL 32399-3100.

(a) If the clearance process reveals one or more medical or mental health concerns, the law enforcement officer shall be informed immediately so that law enforcement can transport the child to the appropriate facility to be seen by a qualified health care professional.

(b) If the law enforcement officer disagrees with the resulting need for medical clearance, or refuses to transport the youth to the appropriate facility, the JPO shall provide the law enforcement officer with copies of Sections 985.115(2)(c)-(e), F.S., and the local interagency agreement. Both should be posted in a prominent place.

(c) If the disagreement has still not been resolved, the JPO shall contact the Juvenile Probation Officer Supervisor (JPOS), who shall contact the law enforcement officer's supervisor. The department and law enforcement agency should subsequently resolve any issues of dispute following the appropriate chain of command.

(d) The Probation Medical and Mental Health Clearance Form shall be made a part of the packet of documents transferred to the detention center if the youth is eligible for, and is transported to, secure detention. A copy of the form shall be placed in the youth's case file.

(e) During the initial JAC intake each youth shall be screened for suicide risk. The JPO shall complete the Assessment of Suicide Risk Form (MHSA 004, August 2006). The form shall be sent with the youth if he or she is admitted to secure detention. If the youth is released to the custody of the parent or legal guardian, then the parent or legal guardian must be provided the form entitled Suicide Risk Screening Parent/Guardian Notification (MHSA 003, August 2006).

(2) There are circumstances where a youth who has already been admitted to the JAC becomes severely ill or injured while awaiting detention screening, transfer to detention, or release to the parent(s)/guardian(s). If it is obvious that the condition of the youth is severe or appears to be life threatening, the first person who becomes aware of the emergency shall call 911 immediately to request emergency medical services (EMS).

(a) If EMS determines that the youth requires prompt medical attention, the youth shall be immediately transported to the hospital via ambulance, regardless of his or her screening status. The JAC interagency agreement shall identify which staff shall accompany the youth to and remain present at the hospital until such time as the parent(s)/guardian(s) arrives (in the case of a youth not eligible for secure detention).

(b) If the detention screening was completed and the youth was determined to be eligible for secure detention, then a security plan while in the hospital shall be implemented in accordance with the JAC interagency agreement.

(c) If the youth requires hospitalization and has not been screened for detention, the JPO shall collect sufficient information telephonically and by other sources to complete the Detention Risk Assessment Instrument (DRAI) to make a preliminary determination as to the youth's qualification for secure detention, non-secure detention, or release with no detention status.

(d) If the youth requires hospitalization, has been screened for detention, and is to be released, then the JPO shall facilitate the release of the youth to the parent(s)/guardian(s), who shall then assume custody of the youth.

(e) If the youth requires hospitalization, has been screened for detention, and is awaiting transportation to the detention center, the JPO shall contact the detention center superintendent or designee to inform them as to which hospital the youth has been transported. As part of this process, the detention center shall deploy detention center staff to the hospital as soon as possible, but no later than three hours after receiving notice of the medical emergency.

(3) Mental health or substance abuse emergencies may occur in the JAC after the custody of the youth has been accepted from law enforcement. Procedures shall be in place at the JAC to ensure that staff immediately contact emergency medical services (911) for youth who are believed to be an imminent danger to themselves or others because of mental illness or substance abuse impairment.

(a) Procedures shall be in place for contacting the designated law enforcement agency and arranging for transportation of a youth believed to be mentally ill from the facility to a mental health receiving facility when the youth appears to meet the criteria for involuntary examination set forth in Section 394.463, F.S.

(b) Procedures shall be in place for transporting a youth who is believed to be substance abuse impaired, for emergency admission to a hospital, licensed detoxification facility, or addictions receiving facility. If involuntary substance abuse admission is initiated under Section 397.675, F.S., a law enforcement officer may implement protective custody measures as described in Section 397.677, F.S., and take the youth to a hospital or licensed detoxification or addictions receiving facility.

Rulemaking Authority 985.64 FS. Law Implemented 985.135 FS. History--New _____.

63D-11.005 Medication Management.

(1) If the youth reports that he or she is taking insulin, the JPO shall advise the law enforcement officer to take the youth to a licensed health care professional for an assessment to ensure that the youth's blood sugar levels are at satisfactory levels for admission into the JAC. The youth shall not be accepted for screening until documentation is provided by a licensed health care professional that the youth has an acceptable blood sugar level. Upon return to the JAC the youth shall be kept on constant sight and sound observation, and shall be prioritized for completion of the screening process.

(2) Youth who report taking any one of the following medications shall be accepted for detention screening at the JAC: seizure medication, asthma medication, heart medication, psychotropic medication, blood pressure medication, or non-insulin diabetes medication. These youth shall be prioritized for completion of the screening process.

(3) If any youth taking the medication identified in subsection (1) or (2) above is screened as eligible for secure detention, detention staff shall be notified that a youth awaiting placement is using one of the critical medications. The JPO shall advise the parent(s)/guardian(s) to deliver the youth's medication as soon as possible. Once the medication is available at the JAC, detention staff shall be required to retrieve and transport the youth as soon as possible, but no later than three hours following notification.

(4) If the youth is on medication, in need of the next dose, and is not eligible for secure detention, the parent(s)/guardian(s) shall be notified to bring the medication when they come to the JAC to pick up the youth. In the event that the JPO cannot reach the parent(s)/guardian(s), or if they refuse to respond, the JPO shall make arrangements to transport the youth home, or to a responsible adult, and the JPO shall verbally advise the parent or the responsible adult of the youth's need for medication.

(5) In the event that the youth needs to be placed in a shelter, the JPO shall verbally advise the shelter supervisor prior to admission of the youth's imminent need for medication.

Rulemaking Authority 985.64 FS. Law Implemented 985.135 FS. History--New _____.

63D-11.006 Responding to Street Gangs.

(1) During the screening, intake, and supervision process, the JPO shall collect information to be used in determining a youth's gang involvement or affiliation, if any. A referral for suspected gang involvement for known gang activity will be reviewed by the identified circuit gang liaison prior to submission to local law enforcement. A gang member alert shall be entered into the Juvenile Justice Information System (JJIS) for any youth identified as a member of a criminal street gang as defined by Section 874.03, F.S., as follows:

(a) Other Suspected Gang Affiliation – A referral has been submitted to local law enforcement with information that indicates youths potential gang involvement or activities based on staff observations, youth statements, statements by other youth or sources, and or supplemental information such as pictures, drawings, or other documents.

(b) Documented Gang Associate – Written documentation has been received from law enforcement certifying youth as a gang associate per Section 874.03(2)(a)-(b), F.S.

(c) Documented Gang Member – Written documentation has been received from law enforcement certifying youth as a gang member per Section 874.03(3)(a)-(k), F.S.

(2) The methods and procedures in the interagency agreement shall ensure a coordinated effort between the department and local law enforcement agencies for the purpose of sharing information related to gang-involved youth. All gang-related information shall be shared with local law enforcement agencies, the assigned JPO and the educational provider or local school district providing educational services at a community based non-residential day treatment program. While in the JAC, reasonable efforts shall be made to keep members of the same or rival gangs separated.

Rulemaking Authority 985.64 FS. Law Implemented 985.135 FS. History–New _____.

63D-11.007 Release of Youth.

(1) A goal of the department is that youth shall not be held in a JAC for longer than six hours from the time he or she is turned over to the JPO from law enforcement or other authorities. If a youth is held over the six-hour period for any reason, the reason for the delay and the actions taken to comply with this six-hour goal shall be documented. Management shall use this documentation to identify any systemic problems with meeting the six-hour timeframe.

(2) If it is determined that the youth is in need of non-emergency medical attention, the following shall take place based on the youth's screening status:

(a) Upon arrival to pick up the youth from the JAC, the parent(s)/guardian(s) shall be notified verbally and in writing by the JPO that the youth appears to be ill or has complained of illness or injury, and that further medical assessment is needed after release. The parent(s)/guardian(s) shall provide written acknowledgement indicating their understanding of the situation.

(b) For youth being released to secure detention, the detention center superintendent or designee shall be notified immediately by phone of the youth's illness or injury. This person shall be provided all available information regarding the youth's specific symptoms or complaints in order to facilitate an appropriate and timely medical assessment.

(3) If a youth admitted to a JAC is identified through screening or other sources as a potential suicide threat, but the youth does not meet the criteria for immediate transportation to a facility for evaluation, the following is required:

(a) If the youth is to be released to the parent(s)/guardian(s), the parent(s)/guardian(s) shall be informed that suicide risk factors were disclosed during preliminary screening, and that a full assessment of suicide risk should be conducted by a qualified mental health professional. The parent(s)/guardian(s) shall be provided with the Suicide Risk Screening Parent/Guardian Notification form (MHSA 003, August 2006). A copy of the form shall be permanently filed in the youth's case file.

(b) If the youth is being detained in secure detention, a suicide risk alert shall be immediately entered into JJIS and the youth placed on constant observation until an assessment of suicide risk is conducted. The JPO will write "suicide risk" on the top page of the detention packet and verbally notify the detention center superintendent or designee prior to the youth's transfer from the JAC, and notify the transportation staff upon their arrival.

Rulemaking Authority 985.64 FS. Law Implemented 985.135 FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Rex Uberman, Assistant Secretary for Probation & Community Intervention

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Frank Peterman, Jr., Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 15, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 13, 2009

DEPARTMENT OF JUVENILE JUSTICE

Probation

RULE NOS.:	RULE TITLES:
63D-12.001	Purpose and Scope
63D-12.002	Safety and Administration
63D-12.003	Service Delivery
63D-12.004	Minimum-Risk Commitment
63D-12.005	Progress Reports
63D-12.006	Release

PURPOSE AND EFFECT: The rule establishes the standards and procedures for the provision of facility-based non-residential services to youth on probation, conditional release, and post-commitment probation, as well as those committed to a minimum-risk non-residential facility.

SUMMARY: Provisions address the administration and safety of non-residential facilities, service delivery, and the manner in which youths' progress is reported and their release is accomplished.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

RULEMAKING AUTHORITY: 985.435, 985.601, 985.64 FS.

LAW IMPLEMENTED: 985.03, 985.433, 985.435, 985.441, 985.455, 985.601 FS.

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

DATE AND TIME: Tuesday, April 20, 2010, 10:00 a.m.

PLACE: DJJ Headquarters, 2737 Centerview Drive, General Counsel's Conference Room 3223, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: John Milla, 2737 Centerview Dr., Ste. 3200, Tallahassee, FL 32399-3100, e-mail: john.milla@djj.state.fl.us

THE FULL TEXT OF THE PROPOSED RULES IS:

63D-12.001 Purpose and Scope.

This rule establishes the standards and procedures for the provision of facility-based non-residential services to youth on probation, conditional release (CR), and post-commitment probation (PCP), as well as those committed to a minimum-risk nonresidential facility. These facilities are designed to serve youth who present a minimum risk to public safety in the least restrictive environment, allowing the youth to live at home and receive interventions focusing on delinquent behaviors. Non-residential facilities are also subject to Chapters 63D-9 and 63D-10, F.A.C., relative to the provision of assessment and intervention services.

Rulemaking Authority 985.435, 985.601, 985.64 FS. Law Implemented 985.03, 985.433, 985.435, 985.601 FS. History – New _____.

63D-12.002 Safety and Administration.

(1) Safety and welfare standards of facilities shall incorporate the following:

(a) The physical plant of facilities shall meet the following standards:

1. All indoor areas and attached buildings shall be clean, neat, and well maintained. No graffiti shall be allowed to remain on walls, doors, or windows.

2. Weekly sanitation and safety inspections of all internal and external areas and equipment shall be conducted to ensure that the facility is clean and in good repair. Inspections shall be documented in writing.

3. To help ensure that the facility is clean and in good repair a maintenance and housekeeping plan shall be developed and employed.

4. For facilities that operate during evening hours, the facility perimeter and grounds shall be lit.

5. Separate bathroom facilities shall be provided for males and females. For every 30 youth, there shall be one operable toilet and washbasin with hot and cold running water and antibacterial soap.

6. Space shall be available for private counseling, group meetings, and classrooms.

(b) Facilities shall have a comprehensive safety regimen that includes:

1. Fire prevention.

2. Smoking shall not be permitted in the facility. Any designated smoking areas shall be outside of the facility and clearly marked.

3. A fire alarm and automatic detection system is required. All facility staff and youth shall be trained in the operation of the alarm system.

4. Fire protection equipment shall be available at strategic locations throughout the facility, and shall be checked quarterly. All facility staff and youth shall be trained in the proper operation and use of available equipment.

5. Fire drill procedures shall be approved by the State Fire Marshal or local fire officials, and shall include the following:

a. Unannounced fire drills conducted at least monthly.

b. Drills shall be conducted under varied conditions and across all shifts.

c. All fire drills shall be documented in the Fire Safety Log.

6. A Fire Safety Log shall be kept in the facility, and shall contain a record of annual fire safety inspections, a summary of all deficiencies found by fire officials, a record of corrections, and the results of periodic fire safety inspections and equipment checks.

(c) An evacuation plan shall specify routes of evacuation and provisions for medical care or hospital transportation for youth and facility staff.

1. The evacuation plan shall provide that the facility director or designee in charge shall make the decision to evacuate the facility, and the notice to evacuate shall be clearly communicated.

2. Facility staff in each area shall help control the exit of youth and visitors in an orderly manner.

3. Facility staff shall be alerted to the location of available alarm boxes and outside telephones.

4. A written emergency disaster plan shall be reviewed annually, updated as needed, and detail the procedures for fire, severe weather, hurricane and tornado warnings, flooding, youth riots, hostage taking, chemical spills and bomb threats.

5. A current listing of telephone numbers for local emergency departments shall be posted next to every facility telephone.

6. Facilities that allow youth to participate in water related recreational activities shall have a water safety plan. The facility shall provide one certified lifeguard for every eight participating youth. Youth shall take a swim test prior to any swimming activities.

(d) The facility shall provide for the prompt notification of a youth's parent or guardian in cases of serious illness, injury, or death.

(e) Facilities providing meals shall comply with the following requirements:

1. The food service and dining area shall be clean and well maintained.

2. A licensed dietitian shall annually approve the nutritional value of the food served.

3. There shall be a single menu for facility staff and youth.

(f) Facilities shall provide daily transportation to and from the facility, or shall arrange for such transportation.

1. All facility vehicles that transport youth shall receive an annual inspection by a certified mechanic.

2. Facility staff transporting youth shall have current, valid driver's licenses.

3. Facility vehicles shall have current insurance and automobile registration.

4. A youth cannot be denied services or penalized because of the lack of transportation.

5. All vehicles shall be locked when not in use.

6. Youth and staff shall wear seat belts while the vehicle is in operation.

(2) Facilities shall meet the following standards of administration and operation:

(a) The facility director is responsible for maintaining information on the facility and reporting to the department.

(b) Monthly reports shall be submitted to the department detailing major developments, incidents, and population data.

(c) Youth listed on the facility roster shall match the census report in the Juvenile Justice Information System (JJIS).

(d) Statistical information shall be maintained, including monthly data on admissions, releases, transfers, absconds, abuse reports, medical and mental health emergencies, incidents, personnel actions, volunteer hours and average length of stay.

(e) The facility shall comply with the department's Central Communications Center (CCC) incident reporting requirements.

(f) A daily facility log shall be maintained for facility staff to record significant facility activities, events, and incidents. Special attention shall be given to entries impacting the safety and security of the facility, which shall be highlighted to ensure attention.

1. The facility director shall review the log on a bi-weekly basis, taking action where appropriate. Any action taken shall be documented in the log.

2. Log entries shall be brief, and legibly written in ink. Recording errors shall be struck through with a single line, with "void" written by the error and the correction initialed by facility staff.

3. Each log entry shall provide the following information:

a. Date and time of incident;

b. Name of the youth and facility staff involved;

c. Brief statement of pertinent information; and

d. Name of the person making the entry with the date, time of entry and signature.

(g) Facility staff shall comply with the training requirements as outlined in Chapter 63H-1, F.A.C. (Protective Action Response), and Rules 63H-2.004 and 63H-2.006, F.A.C.

Rulemaking Authority 985.435, 985.601, 985.64 FS. Law Implemented 985.03, 985.433, 985.435, 985.601 FS. History—New _____.

63D-12.003 Service Delivery.

(1) Facility orientation shall be conducted within 24 hours of a youth's admission to the facility. The youth's parent(s)/guardian(s) shall be encouraged to attend. Orientation information shall be understandable to the youth.

(a) An orientation handbook or brochure shall be provided containing the following:

1. Program goals and available services;

2. Review of the case planning process;

3. Telephone guidelines;

4. Search policy;

5. Youth rights and grievances;

6. Florida Abuse Hotline telephone number;

7. Advocacy Center for Persons with Disabilities telephone number; and

8. Facility rules governing youth conduct and consequences for major rule violations.

(b) In addition to the handbook or brochure, the orientation shall also include the following:

1. Introduction to facility staff and a tour of the facility grounds;

2. A review of expectations, rules and the behavior management system;

3. A review of the daily activity schedule governing day-to-day operations;

4. A review of emergency medical and mental health services, emergency safety, and the evacuation procedures for the facility;

5. A list of contraband items and materials, and the consequences for introducing contraband into the facility;

6. A review of the performance planning process;

7. The average anticipated length of stay to successfully complete the program; and

8. The facility dress code, which shall prohibit pictures, logos, emblems and writing that depict illegal activity, violence, profanity, gang logos, or nudity.

(2) Within seven calendar days of a youth's admission, facility staff shall complete a risk and needs assessment using the Positive Achievement Change Tool (PACT).

(3) Within 14 calendar days of the youth's admission to the facility, the JPO shall complete the Youth-Empowered Success (YES) Plan in accordance with paragraphs 63D-10.003(4)(a)-(g), F.A.C. Monitoring, modification, and supervisory review of the YES Plan shall also be completed in accordance with subsections 63D-10.003(5)-(8), F.A.C.

(4) In addition to the requirements of Chapters 63D-9 and 63D-10, F.A.C., facilities shall also comply with the following:

(a) Facilities shall have a written description of program design, educational goals, and objectives. A mission statement encompassing the mission of the department shall be understood by facility staff, reviewed annually, and updated as necessary.

(b) Daily activity schedules shall be developed and substantially followed. This shall include structured outdoor/indoor recreational and leisure activities that teach values and encourage sportsmanship.

(c) All instances of time-out, in-facility suspension, and privilege suspension shall be logged, dated, and signed by facility staff implementing the discipline. Supervisory facility staff shall review the log daily.

(d) The facility shall have a behavior management system that provides a system of privileges and consequences to encourage youth to fulfill programmatic expectations. Consequences for violating facility rules shall be fair and have a direct correlation to the inappropriate behavior. The use of facility restriction shall not exceed seven consecutive days.

1. Disciplinary procedures shall be carried out promptly.

2. No youth or group of youth shall be allowed to control, have authority over, or otherwise discipline any other youth. Discipline or authority shall never be delegated to youth.

3. Rules shall be conspicuously posted.

4. All discipline problems shall be clearly documented in the youth's file.

5. "Time out" should only be used to interrupt a specific behavior of an individual or to allow the youth to regain composure by temporarily removing the individual to a separate area or room for a cooling-off period. Youth in

time-out shall not be secluded from supervision and must therefore be visually observed by a facility staff member at all times.

6. The use of time-out shall not exceed one hour.

a. Locked time-out rooms are prohibited.

b. Youth in time-out shall not be denied regular meals, healthcare, accommodation of religious needs, or facility staff assistance.

7. Privilege suspension may include denial of participation in recreational activities and other activities outside the facility. Privilege suspension shall not include loss of regular meals, healthcare services, contact with parent(s)/guardian(s), or legal assistance. Prior to privilege suspension, facility staff shall explain to the youth the reason for the restriction, and shall give the youth an opportunity to explain the behavior leading to the suspension.

(5) Mental Health and Substance Abuse Treatment Services. Mental health and substance abuse treatment services shall be provided in accordance with the following provisions:

(a) The non-residential program shall ensure that youth in the program have access to, at a minimum, the following mental health and substance abuse services based upon the identified treatment needs of the youth:

1. Mental health and substance abuse screening;

2. Comprehensive mental health and substance abuse evaluation;

3. Individualized mental health and substance abuse treatment planning and discharge planning;

4. Individual, group and family therapy;

5. Behavioral therapy;

6. Psychosocial skills training;

7. Psychiatric services;

8. Suicide prevention services;

9. Mental health crisis intervention;

10. Emergency mental health and substance abuse services; and

11. Developmental disability services for youth with a developmental disability.

(b) Screening. Mental health and substance abuse screening that addresses risk factors for suicide, mental disorder and substance abuse shall be conducted upon a youth's admission to a non-residential facility.

(c) Comprehensive Evaluation. Youth who demonstrate behaviors or symptoms indicative of mental disorder or substance abuse during the screening process or after admission to the program shall be referred for a comprehensive mental health or substance abuse evaluation or update to be conducted by a qualified person in accordance with Rule 63E-7.010, F.A.C.

(d) Suicide Prevention Services. Youth who demonstrate suicide risk factors shall be referred for assessment of suicide risk or emergency mental health services if the youth is in crisis.

(e) When a youth exhibits behaviors that constitute an imminent danger to self or others because of mental illness, the youth shall be referred for emergency mental health services in accordance with the provisions of Section 394.463, F.S.

(f) Treatment Plan Development and Implementation. When a comprehensive mental health or substance abuse evaluation indicates the youth is in need of mental health and/or substance abuse treatment, an individualized mental health and/or substance abuse treatment plan shall be developed, and timely treatment shall be provided based upon the youth's treatment plan. Pending development of an individualized mental health or substance abuse treatment plan, an initial plan is acceptable.

1. The individualized mental health treatment plan shall include the signatures of the youth, the mental health clinical staff person that prepared the plan, and any intervention and treatment team members who participated in its development. A licensed mental health professional shall review, sign and date the treatment plan within 10 days of completion.

2. The individualized substance abuse treatment plan shall include the signatures of the youth, the substance abuse clinical staff person that prepared the plan, and any intervention and treatment team members who participated in its development. The plan shall be completed by a qualified professional who is licensed under Chapter 458, 459, 490 or 491, F.S., or a substance abuse clinical staff person who is an employee of a service provider licensed under Chapter 397, F.S., or an employee in a facility so licensed. If a non-licensed substance abuse clinical staff person completes the treatment plan, it shall be reviewed as provided in Rule 65D-30.004, F.A.C.

(g) Mental Health and Substance Abuse Treatment. The program shall ensure the delivery of individual, group and family therapy, behavioral therapy, or psychosocial skills training in accordance with a youth's treatment plan. Mental health treatment shall be provided by a licensed mental health professional or a mental health clinical staff person working under the direct supervision of a licensed mental health professional. Substance abuse treatment shall be delivered by a qualified professional who is licensed under Chapter 458, 459, 490 or 491, F.S., a substance abuse clinical staff person who is an employee of a service provider licensed under Chapter 397, F.S., or an employee in a facility so licensed.

Rulemaking Authority 985.435, 985.601, 985.64 FS. Law Implemented 985.03, 985.433, 985.435, 985.601 FS. History—New _____.

63D-12.004 Minimum-Risk Commitment.

In addition to the requirements of Rule 63D-12.003, F.A.C., the following applies to youth who are court-ordered to the facility under minimum-risk commitment:

(1) Facility staff shall inspect the commitment packet using the Commitment/Transfer Packet Checklist. With the exception of the commitment order, missing documents are not grounds to reject a youth's admission.

(a) If a youth arrives at a facility without a copy of the commitment order, facility staff shall immediately contact the JPO or Juvenile Probation Officer Supervisor (JPOS) and request the order be faxed immediately so that the youth can be admitted.

(b) If documents other than the commitment order are missing from the packet, the youth shall be admitted and facility staff shall immediately notify the Juvenile Probation Officer (JPO) or JPOS to request the missing documents.

(c) If admitting facility staff discovers conflicts in the commitment order, the assigned JPO or JPOS shall be contacted and informed of the conflict.

(2) Within 24 hours of a youth's admission to a facility, facility staff shall provide written notification to the youth's parent(s)/guardian(s).

(a) The notification shall include a brief overview of the program.

(b) If the program includes scheduled recreational activities, the parent(s)/guardian(s) shall advise the facility if there is an objection to the youth's participation due to a physical or medical problem. Any such objection shall be accompanied by written documentation from a physician.

(3) Within 30 days of admission of a committed youth, the facility director or designee shall provide written documentation to the court, including a copy of the initial YES Plan. The notification shall indicate that the facility will provide quarterly progress reports, unless otherwise ordered by the court. A copy of the notification and the YES Plan shall be sent to the JPO, parent(s)/guardian(s), state attorney, and youth's attorney.

Rulemaking Authority 985.435, 985.601, 985.64 FS. Law Implemented 985.03, 985.433, 985.435, 985.441, 985.601 FS. History—New _____.

63D-12.005 Progress Reports.

(1) Facility staff shall complete a progress report every 90 days. The progress report is prepared after a review of the YES Plan and documents the youth's progress in the program.

(a) If the youth is on probation, CR, or PCP, the original report shall be sent to the JPO.

(b) If the youth is under minimum-risk commitment, the original report shall be sent to the court, with copies to the JPO, state attorney, youth's attorney, and the youth's parent(s)/guardian(s). Facility staff shall include a cover letter providing a brief description of the youth's overall performance, as well as any extraordinary information about the youth.

(2) Youth shall be given an opportunity to read the progress report and add comments.

(3) The progress report shall be signed and dated by the youth and the facility staff member who prepared it.

(4) The facility director or designee shall review, sign, and date the progress report prior to distribution.

Rulemaking Authority 985.435, 985.601, 985.64 FS. Law Implemented 985.03, 985.433, 985.435, 985.455(3), 985.601 FS. History–New _____.

63D-12.006 Release.

(1) For youth on probation, CR or PCP, the facility and JPO shall work together to facilitate the release of the youth upon completion of the program. The JPO may submit a termination request to the court or transfer the youth to community supervision.

(2) For youth under minimum-risk commitment, the facility shall follow the procedure outlined in Rule 63D-10.005, F.A.C., to facilitate the release of the youth upon completion of the program.

Rulemaking Authority 985.435, 985.601, 985.64 FS. Law Implemented 985.03, 985.433, 985.435, 985.455(3), 985.601 FS. History–New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Rex Uberman, Assistant Secretary for Probation & Community Intervention
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Frank Peterman, Jr., Secretary
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 15, 2010
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 13, 2009

DEPARTMENT OF HEALTH

Board of Chiropractic

RULE NO.: 64B2-13.004
RULE TITLE: Continuing Education

PURPOSE AND EFFECT: The Board proposes the rule amendment in order to update language concerning continuing education for acupuncture.

SUMMARY: Language concerning continuing education for acupuncture will be updated.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board determined the proposed rule will not have an impact on small business.

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

RULEMAKING AUTHORITY: 456.025(7), 460.408(3) FS.
LAW IMPLEMENTED: 456.013(6), 456.025(7), 456.036(10), 460.408 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Joe Baker, Jr., Executive Director, Board of Chiropractic Medicine, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3257

THE FULL TEXT OF THE PROPOSED RULE IS:

64B2-13.004 Continuing Education.

(1) through (2) No change.

(3) Each licensee certified in acupuncture by the Board shall obtain twelve (12) hours of Board approved acupuncture continuing education. These twelve (12) hours shall be obtained as part of the forty (40) hours required in each licensure biennium. Licensees certified in acupuncture must complete the hours required in subsection 64B2-13.004(2), F.A.C.

(3) through (13) through (4) through (14) No change.

Rulemaking Authority 456.025(7), 460.408(3) FS. Law Implemented 456.013(6), 456.025(7), 456.036(10), 460.408 FS. History–New 1-10-80, Amended 11-25-80, 1-13-82, Formerly 21D-13.04, Amended 6-22-86, 7-5-87, 1-25-88, 10-17-90, 10-15-92, Formerly 21D-13.004, Amended 10-26-93, Formerly 61F2-13.004, Amended 3-16-95, 7-18-95, 6-11-96, Formerly 59N-13.004, Amended 6-24-98, 8-4-99, 7-11-02, 11-30-03, 4-17-05, 11-14-06, 11-13-07, 7-1-09, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Chiropractic Medicine
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Chiropractic Medicine
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 29, 2010
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 5, 2010

DEPARTMENT OF HEALTH

Board of Nursing Home Administrators

RULE NO.: 64B10-11.011
RULE TITLE: Provisional License

PURPOSE AND EFFECT: The Board proposes the rule repeal since Rule 64B10-11.011, F.A.C., is no longer necessary.

SUMMARY: The rule repeal will delete Rule 64B10-11.011, F.A.C., since it is no longer necessary.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board determined that small businesses would not be affected by this rule.

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

RULEMAKING AUTHORITY: 468.1685(1), 468.1735 FS.
LAW IMPLEMENTED: 468.1735 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Joe Baker, Jr., Executive Director, Board of Nursing Home Administrators/MQA, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3257

THE FULL TEXT OF THE PROPOSED RULE IS:

64B10-11.011 Provisional License.

~~(1) An application for a provisional license must fully explain the circumstances surrounding the unexpected vacancy, include proof of the applicant's designation as next in command, and be accompanied by the appropriate fees. The application shall be made on the Application for Provisional License form DH-MQA-NHA015 (revised 8/08 hereby adopted and incorporated by reference) and can be obtained from the Board of Nursing Home Administrators' website at <http://www.doh.state.fl.us/mqa/nurshome/index.html>.~~

~~(2) A provisional license shall be valid for a single six (6) month period.~~

~~(3) Service as a provisional licensee shall not count as part of the requirements of an Administrator in Training program.~~

~~(4) An application for a provisional license shall not be granted unless the applicant can demonstrate that he or she possesses a minimum of six (6) months management experience within a skilled nursing facility, hospital, hospice, assisted living facility with a minimum of sixty (60) licensed beds, or a geriatric residential treatment program.~~

~~(5) A provisional license shall not be granted to any applicant whose Nursing Home Administrator license has been suspended or revoked in any jurisdiction.~~

Rulemaking Authority 468.1685(1), 468.1735 FS. Law Implemented 468.1735 FS. History—New 12-6-79, Amended 8-17-81, Formerly 21Z-11.11, Amended 4-22-87, Formerly 21Z-11.011, 61G12-11.011, Amended 7-21-97, Formerly 59T-11.011, Amended 10-30-00, 8-30-05, 11-9-06, 8-13-08, 4-22-09, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE: Nursing Home Administrators

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Nursing Home Administrators

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 26, 2010

DEPARTMENT OF HEALTH

Board of Orthotists and Prosthetists

RULE NO.: 64B14-7.003 RULE TITLE: Disciplinary Guidelines

PURPOSE AND EFFECT: The Board proposes the rule amendment to modify the disciplinary guidelines.

SUMMARY: The rule amendment will modify the disciplinary guidelines.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

RULEMAKING AUTHORITY: 456.072(4), 456.079(1), 468.802 FS.

LAW IMPLEMENTED: 456.072(1),(ii), (jj), (kk), (ll), 456.072(4), 456.079, 468.811 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Joe Baker, Jr., Executive Director, Board of Orthotists and Prosthetists /MQA, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3257

THE FULL TEXT OF THE PROPOSED RULE IS:

64B14-7.003 Disciplinary Guidelines.

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

VIOLATION

PENALTY RANGE

(u) Practicing beyond scope permitted. (456.072(1)(o), F.S.)

First Offense

MINIMUM

MAXIMUM

6 months probation with conditions including refund of fees billed and collected and \$500 fine

6 months suspension, 6 months probation with conditions or denial/revocation and \$10,000 4000 fine

Second Offense	6 months suspension, 6 months probation with conditions and \$1000 fine	1 year suspension, 1 year probation with conditions and \$ <u>10,000</u> 2500 fine
Third Offense	1 year suspension, 1 year probation with conditions and \$2500 fine	Revocation and \$ <u>10,000</u> 5000 fine

(2)(v) through (ee) No change.
(ff) Being convicted of, or entering a plea of guilty or nolo contendere to, any misdemeanor or felony, regardless of adjudication, under 18 U.S.C. s. 669, ss. 285-287, s. 371, s. 1001, s. 1035, s. 1341, s. 1343, s. 1347, s. 1349, or s. 1518, or 42 U.S.C. ss. 1320a-7bm relating to the Medicaid program.
(456.072(1)(ii), F.S.)

Revocation of application for licensure, denial of license.

(gg) Failing to remit the sum owed to the state for an overpayment from the Medicaid program pursuant to a final order, judgment, or stipulation or settlement.
(456.072(1)(jj), F.S.)

Revocation or in the case of application for licensure, denial of license.

First Offense

(hh) Being terminated from the state Medicaid program pursuant to s. 409.913, any other state Medicaid program, or the federal Medicare program, unless eligibility to participate in the program from which the practitioner was terminated has been restored.
(456.072(1)(kk), F.S.)

Revocation or in the case of application for licensure, denial of license.

First Offense

(ii) Being convicted of, or entering a plea of guilty or nolo contendere to, any misdemeanor or felony, regardless of adjudication, a crime in any jurisdiction which relates to health care fraud.
(456.072(1)(ll), F.S.)

Revocation or in the case of application for licensure, denial of license.

(3) through (4) No change.

Rulemaking Specific Authority 456.072(4), 456.079(1), 468.802 FS. Law Implemented 456.072(1), (ii), (jj), (kk), (ll), 456.072(4), 456.079, 468.811 FS. History—New 7-1-98, Amended 9-17-00, 7-5-06, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Orthotists and Prosthetists
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Orthotists and Prosthetists
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 12, 2010
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 20, 2009

DEPARTMENT OF HEALTH

Board of Physical Therapy Practice

RULE NO.: 64B17-3.002
RULE TITLE: Licensure Examination Subjects and Passing Score; Additional Requirements After Third Failure; Laws and Rules Examination

PURPOSE AND EFFECT: To move the special testing accommodations questions to another part of the application.

SUMMARY: The rule changes move special testing accommodations questions to another part of the application.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: (a) It is unknown how many applicants would be affected. (b) The only costs to be incurred are rulemaking costs. (c) through (d) None. (e) through (f) N/A.

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

RULEMAKING AUTHORITY: 456.017, 486.025, 486.051 FS.

LAW IMPLEMENTED: 456.017, 486.051 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Allen Hall, Executive Director, Board of Physical Therapy Practice, 4052 Bald Cypress Way, Bin #C05, Tallahassee, FL 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B17-3.002 Licensure Examination Subjects and Passing Score; Additional Requirements After Third Failure; Laws and Rules Florida Jurisprudence Examination.

(1) through (2) No change.

(3) An applicant must reapply, using DOH Form #DH-MQA 1143, Re-Exam Application, Revised 0802/09, incorporated by reference, which is available through

www.doh.state.fl.us/mqa, in order to retake the examination. If an applicant wishes to take the examination for the fourth time, the applicant must submit to the Board for approval satisfactory evidence of having successfully completed the following since the last taking of the examination: successful completion of a course of study or internship designed to prepare the applicant for the physical therapy examination. An applicant who has completed these additional requirements may take the examination on two more occasions.

(4) All applicants for licenser including those licensed by endorsement under Rule 64B17-3.003, F.A.C., are required to take and pass the Laws and Rules Florida Jurisprudence Examination developed by the Federation of State Boards of Physical Therapy. Passing scores on the Laws and Rules Examination are no longer valid if more that five (5) years have passed since the Applicant took the examination.

(a) The Laws and Rules Florida Jurisprudence Examination has 40 scored questions and the content and approximate weights are:

1. through 6. No change.

(b) Applicants must reapply to retake the Laws and Rules Florida Jurisprudence Examination, using DOH Form #DH-MQA 1143, Re-Exam Application, Revised 0802/09, which is available through www.doh.state.fl.us/mqa.

Rulemaking Authority 456.017, 486.025, 486.051 FS. Law Implemented 456.017, 486.051 FS. History—New 8-6-84, Formerly 21M-7.22, Amended 3-16-88, 6-20-89, Formerly 21M-7.022, Amended 6-6-90, 6-3-92, 3-24-93, Formerly 21MM-3.002, 61F11-3.002, Amended 12-22-94, Formerly 59Y-3.002, Amended 2-14-02, 4-23-02, 12-5-04, 4-9-06, 1-7-07, 6-27-07, 5-21-09, 8-10-09, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Physical Therapy Practice

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 5, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 16, 2009

DEPARTMENT OF HEALTH

Board of Physical Therapy Practice

RULE NO.: 64B17-4.002
RULE TITLE: Licensure Examination Subjects and Passing Score; Additional Requirements After Third Failure; Laws and Rules Examination

PURPOSE AND EFFECT: To change the name of the Jurisprudence Exam and to place a time limit on valid scores. Exam and places a time limit on valid scores.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: (a) It is unknown how many applicants would be affected. (b) The only costs to be incurred are rulemaking costs. (c) through (d) None. (e) through (f) N/A.

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

RULEMAKING AUTHORITY: 456.017(1)(b), 486.025, 486.104 FS.

LAW IMPLEMENTED: 456.017, 486.104 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Allen Hall, Executive Director, Board of Physical Therapy Practice, 4052 Bald Cypress Way, Bin #C05, Tallahassee, FL 32399-3255

THE FULL TEXT OF THE PROPOSED RULE IS:

64B17-4.002 Licensure Examination Subjects and Passing Score; Additional Requirements After Third Failure; Laws and Rules Florida Jurisprudence Examination.

(1) through (2) No change.

(3) An applicant must reapply, using DOH Form #DH-MQA 1143, Re-Exam Application, Revised 0802/09, which is available through www.doh.state.fl.us/mqa, in order to retake the examination. If an applicant wishes to take the examination for the fourth time, the applicant must submit to the Board for approval satisfactory evidence of having successfully completed the following since the last taking of the examination: successful completion of a course of study or internship designed to prepare the applicant for the physical therapy assistant examination. An applicant who has completed these additional requirements may take the examination on two more occasions.

(4) All applicants for licensure including those licensed by endorsement under Rule 64B17-4.003, F.A.C., are required to take and pass the Laws and Rules Florida Jurisprudence Examination developed by the Federation of State Boards of Physical Therapy. Passing scores on the Laws and Rules Examination are no longer valid if more that five (5) years have passed since the Applicant took the examination.

(a) The Laws and Rules Florida Jurisprudence Examination has 40 scored questions and the content and approximate weights are:

1. through 6. No change.

(b) Applicants must reapply to retake the Florida Jurisprudence Examination, using DOH Form #DH-MQA 1143, Re-Exam Application, Revised 0802/09, which is available through www.doh.state.fl.us/mqa.

Rulemaking Authority 456.017(1)(b), 486.025, 486.104 FS. Law Implemented 456.017, 486.104 FS. History—New 8-6-84, Formerly 21M-10.22, Amended 4-12-87, 3-16-88, 6-20-89, Formerly 21M-10.022, Amended 6-3-92, 3-24-93, Formerly 21MM-4.002, 61F11-4.002, Amended 12-22-94, Formerly 59Y-4.002, Amended 2-14-02, 4-23-02, 12-5-04, 4-9-06, 6-27-07, 5-21-09, 8-10-09, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Physical Therapy Practice

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

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 5, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: January 22, 2010

DEPARTMENT OF HEALTH

Board of Athletic Training

RULE NO.: 64B33-2.001 RULE TITLE: Licensure Requirements

PURPOSE AND EFFECT: The proposed rule amendment is intended incorporate the revised licensure application into the Board’s licensure rule.

SUMMARY: The proposed rule amendment incorporates the revised application for licensure in the rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Board has determined that the proposed rule amendment does not have an impact on small business.

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

RULEMAKING AUTHORITY: 456.013(7), (9), 468.705, 468.707 FS.

LAW IMPLEMENTED: 456.013(7), 468.707 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Susan Foster, Executive Director, Board of Athletic Training, 4052 Bald Cypress Way, Bin #C08, Tallahassee, Florida 32399-3258

THE FULL TEXT OF THE PROPOSED RULE IS:

64B33-2.001 Licensure Requirements.

All candidates for licensure shall pay the application fee and shall submit to the Department a completed DOH form DOH-AT-001 entitled “BOARD OF ATHLETIC TRAINING STATE OF FLORIDA EXAMINATION APPLICATION FOR LICENSURE” (Revised 8/09 ~~2/09~~) incorporated herein by

reference. The application can be obtained by writing the Department of Health, Board of Athletic Training, 4052 Bald Cypress Way, Bin #C08, Tallahassee, Florida 32399-3258. The application is also available from the Board's website address as follows: http://www.doh.state.fl.us/mqa/athtrain/at_lic_req.html.

(1) through (2) No change.

Rulemaking Authority 456.013(7), (9), 468.705, 468.707 FS. Law Implemented 456.013(7), 468.707 FS. History—New 5-29-96, Formerly 61-25.002, 64B30-25.002, Amended 8-22-00, 5-9-02, 3-6-07, 8-12-08, 5-27-09, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Athletic Training

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Athletic Training

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 24, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 11, 2009

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Agency for Persons with Disabilities

RULE NOS.:	RULE TITLES:
65G-4.001	Definitions for Behavioral Services: Practice and Procedure
65G-4.0011	Recognized Certification Organizations for Behavior Analysts and Assistant Behavior Analysts
65G-4.002	Service Delivery
65G-4.003	Certification as a Behavior Analyst
65G-4.004	Certification as an Associate Behavior Analyst
65G-4.005	Renewal of Behavior Analysis Certification
65G-4.006	Approved Continuing Education
65G-4.007	Behavior Analysis Certification Fees
65G-4.008	Behavior Analysis Services Oversight System Organization
65G-4.009	Design, Implementation and Monitoring of Behavior Analysis Services
65G-4.010	Behavior Analysis Services Approval
65G-4.011	Determination of Mental Retardation in Capital Felony Cases: Intellectual; Tests to be Administered
65G-4.012	Determination of Mental Retardation: Tests to be Administered

PURPOSE AND EFFECT: The purpose of the proposed rulemaking is to clarify existing language, to ensure effective program administration and reflect changes in provider practice.

SUMMARY: The purpose of the proposed rulemaking is to clarify and amend certain provisions regarding the provisions of behavior analysis services provided under Rules 65G-4.001, 65G-4.008, 65G-4.009, 65G-4.010, and 65G-4.012 F.A.C., create new Rules 65G-4.0011 and 65G-4.0012, F.A.C. This amendment includes the repeal of Rules 65G-4.003, 65G-4.004, 65G-4.005, 65G-4.006, 65G-4.007, F.A.C.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: Statement of Regulatory Cost was prepared. The Agency determined the proposed rule will not have an impact on small business.

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

RULEMAKING AUTHORITY: 393.063, 393.125, 393.13(4)(g)3., 393.17, 393.501, 916.106 FS.

LAW IMPLEMENTED: 393.0651, 393.066, 393.067, 393.068, 393.125, 393.13, 393.17(2) FS.

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

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: Steve Coloman, PhD., Senior Behavior Analyst, Agency for Persons with Disabilities, Residential and Clinical Support, 4030 Esplanade Way, Suite 380, Tallahassee, Florida 32399. 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 RULES IS: Steve Coloman, PhD., Senior Behavior Analyst, Agency for Persons with Disabilities, Residential and Clinical Support, 4030 Esplanade Way, Suite 380, Tallahassee, Florida 32399

THE FULL TEXT OF THE PROPOSED RULES IS:

BEHAVIORAL SERVICES: PRACTICE AND PROCEDURE
SERVICE DELIVERY PRACTICE AND PROCEDURE

65G-4.001 Definitions for Behavioral Services: Practice and Procedure ~~Behavior Analysis Certification and Services Rules.~~

(1) Behavior analysis refers to the use of scientific methods to produce socially significant improvements in behavior. This process entails gathering information to analyze or describe the link between behavior and environment. It

includes assessment of the environment and consequences that are maintaining the behavior targeted for change. It also encompasses changing the situations in the environment that trigger problem behavior and arranging situations that will provide the opportunity for desirable behaviors to occur. Behavior Analysis interventions teach or increase occurrence of skills to replace the behavior targeted for change and arrange delivery of consequences for desirable and undesirable behavior. A behavior analytic intervention also includes strategies and approaches to maintain the gains of the intervention over time and in varied settings. Behavior change interventions are based on the principles and laws of behavior. Behavior analytic interventions require monitoring and evaluation for effectiveness through direct observation and quantification of the behavior targeted for change. Caregivers and family members are actively involved in the behavior analysis process and are taught how to implement specific techniques or changes in the environment. The design, implementation and evaluation of systematic environmental modifications for the purposes of producing socially significant improvements in and understanding of human behavior based on the principles of behavior identified through the experimental analysis of behavior. It includes the identification of functional relationships between behavior and environment. It uses direct observation and measurement of behavior and environment. Contextual factors, establishing operations, antecedent stimuli, positive reinforcers and other consequences are used, based on identified functional relationships between behavior and environment, in order to produce practical behavior change. Behavior analysis does not rely on cognitive therapies and expressly excludes psychological testing, neuropsychology, psychotherapy, sex therapy, psychoanalysis, hypnotherapy and long term counseling as treatment modalities.

(2) Behavior analysis services – The use of behavior analysis to assist a person or persons to learn new behavior, to increase existing behavior, to reduce existing behavior, and to emit behavior under precise environmental conditions. The term “behavior analysis services” includes the terms “behavior analysis service plan,” “behavioral programming,” “behavioral supports,” “behavior modification programs,” “behavior intervention plans,” “behavior plans” and “behavioral programs” as well as those interventions designed to ameliorate dangerous behavior as described in paragraphs 65G-4.010(2)(a) through (h), F.A.C., below. These services are supported in documentation showing that they are applied, behavioral, analytic, technological, conceptually systematic, and effective relative to the definitions of these terms found in “Some Current Dimensions of Applied Behavior Analysis” by D. M. Baer, M. M. Wolf, and T. R. Risley and available in the *Journal of Applied Behavior Analysis*, Volume 1, 1968. This article is incorporated by reference and may be found online at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1310980/pdf/jaba00083-0089.pdf>.

(3) Certification Body – A nonprofit corporation whose standards for certification of behavior analysts and assistant behavior analysts adheres to the national standards of boards that determine professional credentials to meet the needs of behavior analysts, state governments and consumers of behavior analysis services. The certification procedure of the nonprofit corporation must undergo regular psychometric review and validation pursuant to a job analysis survey of the profession and standards established by content experts in the field.

(4)(3) Consultation – Monthly contacts between a Board Certified Assistant Behavior Analyst (BCaBA) applicant for certification and a consulting Board Certified Behavior Analyst (BCBA) certified behavior analyst or a person with the education and experience required for certification as a behavior analyst, during which the behavior analysis services provided by the BCaBA applicant are evaluated. At the time consultation is provided, the consulting BCBA behavior analyst shall not be the BCaBA's applicant's subordinate, employee, spouse or family member. The consulting BCBA behavior analyst shall not be considered an employee of the BCaBA applicant if the only compensation received by the consulting BCBA behavior analyst consists of payment for consultation. Monthly contacts may include the BCaBA's applicant's presentation of behavior analysis services designed by the BCaBA applicant, with a focus on graphic displays of data, at local review committee meetings, established in Rule 65G-4.008, F.A.C.

(4) Supervision – Face-to-face meetings for at least two hours every two weeks or two hours per 40 hours of the applicant's contact with clients, between the applicant and a certified behavior analyst or a person with the education and experience required for certification as a behavior analyst, during which the supervising behavior analyst directs and evaluates the behavior analysis services provided by the applicant. The supervising behavior analyst shall not be, at the time supervision is provided, the applicant's subordinate or employee. The supervising behavior analyst shall not be considered an employee of the applicant if the only compensation received by the supervising behavior analyst consists of payment for supervision. The applicant's presentation of behavior analysis services designed and implemented by the applicant, with a focus on graphic displays of data, at local review committee meetings, established in Rule 65G-4.008, F.A.C., may be substituted for up to 25 percent of the total supervision time needed to be eligible to take the behavior analyst certification examination.

(5) Facility – Can be a publicly or privately established residential operation serving individuals with behavioral service needs.

(6) Provider – An enrolled professional authorized to provide behavior analysis services. Only individuals who are board certified behavior analysts – doctoral level, board

certified behavior analysts (BCBA), board certified assistant behavior analysts (BCaBA), Florida certified behavior analysts or persons licensed in accordance with Chapter 490 or 491, F.S., on active status, and demonstrating supervision as required, may be providers of behavior analysis services. Only those providers holding a certificate on active status from a recognized certification organization for behavior analysis shall use the title, "certified behavior analyst." Individuals performing behavior analysis services shall limit their practice to areas of documented expertise and in accordance with their education, training, and certification or licensure, unless otherwise demonstrating evidence of supervision by an individual meeting the requisite education, training, and certification.

(7) Regular psychometric review and validation – A certification process which complies with recognized national standards in the testing and certification industry to ensure the certification examinations are fair, valid and reliable and in conformance with recognized standards such as those of the International Organization for Standardization (ISO) or the National Commission for Certifying Agencies (NCCA).

Rulemaking Specific Authority 393.13(4)(g)3., 393.17 FS. Law Implemented 393.13, 393.17 FS. History–New 9-23-96, Formerly 10F-4.023, 65B-4.023, Amended _____.

65G-4.0011 Recognized Certification Organizations for Behavior Analysts and Assistant Behavior Analysts.

All providers of behavior analysis services must either be licensed to practice under Florida Statutes, or certified under a nonprofit corporation meeting the qualifications under Section 393.17(2), F.S. All providers of behavior analysis services must submit to the Agency for Persons With Disabilities proof of their active licensure or certification in order to provide behavior analysis services. Pursuant to Rule 65G-4.001, F.A.C., and as required by Section 393.17(2), F.S., recognizes the certification for behavior analysts awarded by the following organizations: Behavior Analyst Certification Board, Inc., 2888 Remington Green Lane, Suite C, Tallahassee, FL 32308.

Rulemaking Authority 393.17(2) FS. Law Implemented 393.17(2) FS. History–New _____.

65G-4.002 Service Delivery.

(1) The Agency shall provide all clients with appropriate supports and services in accordance with their support ~~habilitation~~ plan. Implementation of this policy, however, is subject to availability of funds.

(2) Clients of the Agency shall be integrated within local communities ~~the their general population~~ to the greatest extent possible ~~extent~~. To this end, generic and specialized community services rather than Agency services shall be used

whenever this will serve the best interest of the client. For referral purposes, each area office shall have a current descriptive directory of community resources.

(3) Programs and services provided by or for the Agency shall adhere to the policies, standards and procedures specified and made reference to in this chapter. The Agency shall make every effort to ensure that services provided are of good quality and at least comparable to those provided without disabilities to persons in the community non-retarded.

(4) All contracts for programs and services provided to the Agency shall include any appropriate guidelines.

Rulemaking Specific Authority 393.501(1) FS. Law Implemented 393.062, 393.066 FS. History–New 1-1-77, Formerly 10F-4.08, 10F-4.008, 65B-4.008-.654, Amended _____.

65G-4.003 Certification as a Behavior Analyst.

~~(1) Applicants for certification as a behavior analyst who meet the eligibility requirements specified in paragraph (a), [(b) or (c)] and (d), below, and pay the certification fees prescribed by the Agency are eligible to take the behavior analyst examination administered by the Agency:~~

~~(a) Possession of a minimum of a master's degree from an institution of higher education fully accredited by a regional accrediting body; an institution that is accredited as a member in good standing of the Association of Universities and Colleges of Canada; an institution of higher education located outside the United States or Canada, which at the time the applicant was enrolled and at the time the applicant graduated maintained a standard of training equivalent to the standards of training of those institutions in the United States.~~

~~(b) Completion of graduate level instruction in the content areas and for the number of hours specified in subparagraphs 1.-5., below. Experience from one of the categories specified in paragraph (c) below shall be substituted for this requirement. One semester credit is equivalent to 15 hours of instruction and one quarter hour of credit is equivalent to 10 hours of instruction.~~

- ~~1. Basic behavior analytic principles—45 hours.~~
- ~~2. The application of behavior analytic principles and methods in applied settings—45 hours.~~
- ~~3. Single subject research methods—20 hours.~~
- ~~4. Any other behavior analysis content area—70 hours.~~
- ~~5. Ethical and professional standards issues relevant to the practice of behavior analysis—10 hours.~~

~~(c) Experience in one of the following categories may be substituted for the required graduate level instruction. Experience substituted for course work under this rule shall not be used to meet the requirements specified in paragraph (d), below:~~

- ~~1. Completion of at least a one year, full time appointment in a tenure tract position on a college or university faculty during which the applicant taught classes on basic principles of~~

behavior, single-subject methodology, applications of basic principles of behavior in applied settings and ethical issues and conducted and published research in behavior analysis.

2. Completion of no less than 35 hours of employment per week, for at least 24 months within a 30 month period, with consultation in an educational, health or human services setting during which the applicant was responsible for the following:

a. The design, implementation and monitoring of behavior analysis services.

b. Oversight of behavior analysis services designed, implemented and monitored by others.

e. Instruction of classes or college or university courses in basic principles of behavior and applications of basic principles in applied settings.

d. The applicant shall document that the services provided were applied, behavioral, analytic, technological, conceptually systematic, and effective relative to the definitions of these terms found in "Some Current Dimensions of Applied Behavior Analysis" by D. M. Baer, M. M. Wolf, and T. R. Risley and available in the *Journal of Applied Behavior Analysis*, Volume 1, 1968. Such documentation shall include a portfolio of the behavioral assessments, plans of service based on these assessments, data displays related to these plans, and service plan monitoring reports produced during the term of employment applied to this experience requirement. The applicant shall also submit a description of the organizational and personnel management systems used at the place of employment.

e. Teaching experience shall be documented by the submission of a letter, signed by the applicant, certifying the dates, locations and content of classes and courses taught by the applicant.

(d) Completion of the experience requirements specified in either subparagraph 1. or 2., below, in an educational, health or human services setting.

1. Completion of no less than 20 hours of employment per week, for 6 months, with supervision; followed by the completion of no less than 35 hours of employment per week, for 6 months, with consultation. The applicant's primary duties during both employment periods must have been the design, implementation and monitoring of behavior analysis services and overseeing the implementation of behavior analysis services implemented by others. The employment with supervision requirement may be satisfied by completion of a practicum or field experience, with supervision, that included the design, implementation and monitoring of behavior analysis services, as part of a university or college degree program. Possession of a doctorate degree from an institution that meets the requirements specified in paragraph (a), above, with a dissertation that had behavior analysis as its central focus shall be substituted for the required hours of employment with consultation.

2. Completion of no less than 35 hours of employment per week for 18 months within a 21 month period, with consultation. The applicant's primary duties during the employment period must have been the design, implementation and monitoring of behavior analysis services and overseeing the implementation of behavior analysis services by others. Possession of a doctorate degree from an institution that meets the requirements specified in paragraph (a), above, with a dissertation that had behavior analysis as its central focus shall be substituted for 6 months of the required 18 months of employment.

(2) Applicants for examination for certification as a behavior analyst shall submit to the Agency a completed application form entitled "Application for Certification as a Behavior Analyst," which is incorporated by reference, and pay the certification fees prescribed by the Agency no less than 45 days in advance of the date of the examination for which they are applying.

(3) Applicants who pass the behavior analyst examination and pay the certification fees shall be certified as behavior analysts. Only persons who are certified pursuant to this rule shall use the title of "certified behavior analyst."

(4) Notwithstanding the above provisions, persons certified as behavior analysts prior to the effective date of this rule will retain their certification.

(a) These persons may continue to approve the implementation of behavior analysis services that includes one or more of the following restricted behavior analysis procedures, regardless of the behavior or behaviors being addressed:

1. Time out from reinforcement of 20 minutes or less.

2. Contingent removal or restriction of potential reinforcers.

3. Contingent effort of 10 minutes or less.

4. Contingent manual restraint of five (5) minutes or less.

(b) However, these persons may not approve the implementation of other restricted procedures unless they apply to the Agency to have their implementation approval privileges expanded to those established in Rule 65G-4.010, F.A.C., by submitting to the Agency a completed application form entitled "Expansion of Approval Privileges," incorporated by reference. Expansion of privileges requires that the applicant meet the education and experience requirements established above for eligibility to take the behavior analyst examination. Application for expansion of privileges may be submitted at any time after the effective date of these rules.

Rulemaking Specific Authority 393.13(4)(g)3., 393.17 FS. Law Implemented 393.13, 393.17 FS. History—New 9-23-96, Formerly 10F-4.024, 65B-4.024, Repealed.

65G-4.004 Certification as an Associate Behavior Analyst.

(1) Applicants for certification as an associate behavior analyst who meet the requirements specified in paragraphs (a) - (e), below, and pay the certification fees prescribed by the Agency are eligible to take the associate behavior analyst examination administered by the Agency:

(a) Possession of a minimum of a bachelor's degree from an institution that meets the requirements specified in Rule 65G-4.003, F.A.C.

(b) Completion of 90 hours of classroom instruction covering, at a minimum, basic principles of behavior analysis, the application of these basic principles, and ethical issues related to the delivery of behavior analysis services. Instruction shall be obtained through one of the following methods:

1. College or university courses in behavior analysis, that are taken from an institution that meets the requirements specified in Rule 65G-4.003, F.A.C. No more than three courses may be combined to meet the 90 hour requirement. One semester credit is equivalent to 15 hours of instruction and one quarter hour of credit is equivalent to 10 hours of instruction.

2. Non-college or university classes approved for this purpose by the Agency in accordance with Rule 65G-4.004, F.A.C.

3. A combination of college or university courses and approved classes.

4. However, credit shall be given only once for a course or class.

(c) Employment in one of the following categories in an educational, health or human services setting:

1. Completion, with consultation, of no less than 35 hours of employment per week, that included the design, implementation and monitoring of behavior analysis services, for 12 months within a 15-month period.

2. Completion, with supervision, of no less than 20 hours of employment per week, during which the applicant's primary duties were the design, implementation and monitoring of behavior analysis services, for six consecutive months. However, the employment requirement may be satisfied by completion of a practicum or field experience, with supervision, that included the design, implementation and monitoring of behavior analysis services, as part of a university or college degree program.

(2) Applicants for examination for certification as an associate behavior analyst shall submit a completed application form entitled "Application for Certification as an Associate Behavior Analyst," which is incorporated by reference, and pay the certification fees prescribed by the Agency no less than 45 days in advance of the date of the examination for which they are applying.

(3) Applicants who pass the associate behavior analyst examination and pay the certification fees shall be certified as associate behavior analysts. Only persons who are certified pursuant to this rule shall use the title of "certified associate behavior analyst."

(4) Approved Classes—Application for class approval shall be made by submitting a completed application form, entitled "Approval of Behavior Analysis Classes," incorporated by reference, 45 days in advance of the teaching of the class. Classes that meet the following criteria shall be approved by the Agency for a maximum of two years beginning on the approval date:

(a) The content of the class covers only behavior analysis and ethical issues related to the practice of behavior analysis.

(b) There are written learning objectives for the class.

(c) Student progress on each content area is evaluated during the class.

(d) The class is taught by a certified behavior analyst. The certified behavior analyst may be assisted by a certified associate behavior analyst.

Rulemaking Specific Authority 393.13(4)(g)3., 393.17 FS. Law Implemented 393.13, 393.17 FS. History—New 9-23-96, Formerly 10F-4.025, 65B-4.025, Repealed _____.

65G-4.005 Renewal of Behavior Analysis Certification.

(1) Certification in behavior analysis shall be renewed every two years from the date of certification under these rules, if the applicant for renewal meets the following requirements:

(a) Completion of 16 hours of continuing education for renewal of certification as an associate behavior analyst and 24 hours of continuing education for renewal of certification as a behavior analyst within the applicant's two-year certification period. However, to be accepted, one hour of continuing education must be no less than 50 minutes of instruction in one hour.

(b) Submittal of a completed renewal application form, entitled "Behavior Analysis Certification Renewal," incorporated by reference, and payment of the certification renewal fee prescribed by the Agency at least 45 days in advance of the expiration of the applicant's two-year certification period.

(2) The following shall be accepted toward fulfillment of the continuing education requirements:

(a) Completion of college or university courses, the content of which is entirely behavior analytic, taken from an institution that meets the requirements specified in Rule 65G-4.003, F.A.C.

(b) Completion of programs approved by the Agency under Rule 65G-4.007, F.A.C.

(c) Completion of programs not approved by the Agency provided such programs relate directly to the practice of behavior analysis or other topics pertinent to developmental disabilities.

~~(d) Attendance at local review committee meetings, established in Rule 65G-4.008, F.A.C., provided that the work of the applicant is discussed at the meeting with a focus on graphic displays of data.~~

~~(e) The combined total number of hours of continuing education from the categories defined in paragraphs (c) and (d), above, shall not exceed 25 percent of the total required hours of continuing education.~~

~~(f) Presentation or moderation by the applicant of approved continuing education programs on a one-time basis for each program. A maximum of 25 percent of the total required hours of continuing education may come from this category.~~

~~(g) Authorship or co-authorship of a research or review article on the application of behavior analysis that is published, during the two-year certification period to which credit is to be applied, in a journal that requires that authors meet the American Psychological Association's ethical guidelines for authorship. A publication shall count towards a maximum of 25 percent of the total required hours of continuing education.~~

~~(3) Prior to the end of the two-year certification period, an associate behavior analyst or behavior analyst may request in writing that the Agency place his or her certification on inactive status for a maximum period of four years. At the time of the request, the certificate holder shall pay the fee prescribed by the Agency for placing certification on inactive status. While certification is on inactive status, the person shall not exercise any privileges associated with certification.~~

~~(4) Inactive certification may be reactivated if the applicant:~~

~~(a) Submits the reactivation form entitled "Reactivation of Certification," which is incorporated by reference, and pays the certification renewal fee prescribed by the Agency. The applicant's two-year certification period will begin on the date the Agency reactivates the applicant's certification.~~

~~(b) Completes the number of hours of continuing education required for the period beginning with the last renewal of certification and ending with the date of reactivation of certification.~~

~~(5) Once an inactive certificate expires, in order to be recertified, the person must meet the eligibility and examination requirements and pay the certification fees prescribed by these rules.~~

~~Rulemaking Specific Authority 393.13(4)(g)3., 393.17 FS. Law Implemented 393.13, 393.17 FS. History-New 9-23-96, Formerly 10F-4.026, 65B-4.026, Repealed _____.~~

65G-4.006 Approved Continuing Education.

~~An individual or agency may apply to the Agency to have a course, class, seminar, workshop or institute approved for continuing education by submitting a completed application,~~

~~entitled "Application for Continuing Education (CE) Program Approval," incorporated by reference. An approved continuing education program shall:~~

~~(1) Cover behavior analysis practice, theory or methods.~~

~~(2) Have stated learning objectives.~~

~~(3) Be for the purposes of furthering and maintaining the skills or knowledge of behavior analysis.~~

~~(4) Be of sufficient duration to accomplish the stated learning objectives.~~

~~(5) Be instructed by a person who meets the following criteria:~~

~~(a) Is a certified behavior analyst or is a certified associate behavior analyst under the direction of a certified behavior analyst and~~

~~(b) Has received training in the subject taught in the program or~~

~~(c) Has experience of not less than one year of practical application or research in the subject taught in the program.~~

~~Rulemaking Specific Authority 393.13(4)(g)3., 393.17 FS. Law Implemented 393.13, 393.17 FS. History-New 9-23-96, Formerly 10F-4.027, 65B-4.028, Repealed _____.~~

65G-4.007 Behavior Analysis Certification Fees.

~~The following fees are prescribed by the Agency for associate behavior analyst and behavior analyst certification and certification renewal:~~

~~(1) The certification fee for an associate behavior analyst is \$125.00.~~

~~(2) The certification fee for a behavior analyst is \$175.00.~~

~~(3) The certification renewal fee for associate behavior analysts is \$75.00.~~

~~(4) The certification renewal fee for behavior analysts is \$100.00.~~

~~(5) The fee for placing a certificate on inactive status shall be \$50.00 for both categories of certification.~~

~~Rulemaking Specific Authority 393.13(4)(g)3., 393.17 FS. Law Implemented 393.17 FS. History-New 9-23-96, Formerly 10F-4.028, 65B-4.027, Repealed _____.~~

65G-4.008 Behavior Analysis Services Oversight System Organization.

~~(1) The Agency will establish and maintain a behavioral services program including a senior clinician, or Agency Senior Behavior Analyst (ASBA) to assume direction for standards of behavioral practice, develop and manage systems of quality, utilization and cost containment for statewide behavioral practice. The ASBA holds a doctorate from an accredited university program with behavior analysis as a primary focus, is a board certified behavior analyst, has completed a dissertation that had behavior analysis as its central focus and has at least one year of experience in the provision of behavior analysis services for persons with~~

developmental disabilities. However, if no one with these qualifications is available, then the ASBA must be a certified behavior analyst with at least the education and experience established by the designated certification board. The behavioral services program will also include the support of at least one master's level board certified behavior analyst. The ASBA will direct:

(a) Standards of practice.

1. Area Behavior Analysts will be recruited, appointed, given clinical supervision and direction and annually evaluated in conjunction with their functional supervisor in the area to which they are assigned.

2. Committees.

a. The Local Review Committees working in conjunction with the ASBA will establish guidelines for committee function, including the establishment of time frames for scheduling, reviewing, and approving, as well as tracking for efficient program review and approval, charter content, committee membership, meeting participants, confidentiality requirements and development of a process to resolve provider and LRC disputes.

b. The Peer Review Committee working in conjunction with the ASBA will establish a committee charter and membership, as well as annual projects including, at minimum, review of behavioral practices in at least one Developmental Disability Center, at least one state operated forensic facility, at least one area community residential behavioral provider, at least one Local Review Committee, and other services as identified by the Agency.

3. Standards for Behavior Analysis Provider Practices will be established in conjunction with Area Behavior Analysts, and providers of behavior analysis and behavior assistant services to assure that common operational requirements are implemented statewide, including but not limited to designating individuals as local service providers, standards for time frames and process for behavioral program reviews and approvals, standards for behavioral assessment content and behavioral program content, standards for graphic display of data, documentation, billing, and LRC presentation.

4. Residential Behavioral Provider Standards will be established to determine eligibility requirements, and a common process created for Area approval and designation for providers of behavioral residential services, consistent with programs provided by the Agency.

5. Quality management and utilization standards for behavior analysis services and behavioral residential habilitation will be coordinated and implemented in coordination with:

a. Agency Quality Management;

b. Contracted Quality Management;

c. Area Licensing Coordinators;

d. LRC and PRC Committees;

e. Prior Service Authorization agency; and

f. Agency for Health Care Administration.

~~(2)(4)~~ A statewide peer review committee (PRC) and local review committees (LRCs) shall be appointed by the Agency to provide oversight of behavior analysis services.

~~(a) The Agency will establish the composition, function and procedures to be followed by the committees. Each committee shall operate in accordance with by-laws written by the committee and approved by the Agency prior to their implementation by the committee.~~

(b) Each committee shall be chaired by a person who holds a doctorate from an accredited university program with behavior analysis as a primary focus, is a board certified behavior analyst, has completed a dissertation that had behavior analysis as its central focus and has at least one year of experience in the provision of behavior analysis services for persons with developmental disabilities. However, if no one with these qualifications is available, then the chairperson must be a certified behavior analyst with at least the education and experience requirements for taking the board's behavior analyst examination.

(c) Local review committees may establish subcommittees within varied locations outside the area office or within large facilities, upon mutual agreement between an area office and a provider, or between a primary facility campus and remote locations, and operate under the rules governing local review committees. Subcommittees shall ensure that at least two participating members are certified behavior analysts who are not employed or contracted by the facility, and who have no interest in the behavior programs produced by it. The LRC shall remain responsible for the decisions of the subcommittees.

1. A sufficient number of LRCs shall be established to allow for the timely review of behavior analysis services as required by law and rule. Subcommittees shall operate under the rules governing local review committees, however, the local review committees shall remain responsible for the decisions of the subcommittee.

2. Each LRC will be chaired by an individual meeting the qualifications above who is either an employee of the Agency or under contract to provide this service. Under no circumstances may the chair participate in the LRC review of his or her own services, services provided by or to a family member, or related services. Each subcommittee that oversees behavior analysis services of a single provider of a statewide program must be approved by the Agency in advance of the committee making decisions authorized by these rules.

~~(3)(2)~~ The PRC statewide committee shall conduct on-site reviews of behavior analysis services including the operations of local review committees; provide training and technical assistance related to client and systemic behavior analysis services issues; ~~monitor the development of the behavior analysis certification examinations to ensure that they are~~

consistent with practice and testing standards; and provide recommendations regarding laws and regulations that affect behavior analysis services.

~~(4)(3)~~ Each area office, and each developmental disabilities ~~center institution~~, hereafter referred to as “facility.” ~~institution~~ shall have a local review committee that shall oversee behavior analysis services provided to clients in their area or facility institution as specified in paragraphs (a)-(c), below:

(a) The committee shall review all behavior analysis services requiring review and use of reactive strategies, when necessary, to ensure that behavioral programs are implemented as required and with the intended improvement in target behaviors ~~these services are designed and approved~~ in accordance with Florida Statutes and Agency Rules.

1. The person who designed the services or a designee, who has sufficient knowledge of the plan and its implementation, shall be present during the initial committee review. A person with primary responsibility for the ongoing implementation and monitoring of the services shall be present at all future meetings at which the services are reviewed by the committee.

2. ~~The LRC chairperson~~ Any person can request that bring a behavior analysis services plan be brought before the committee for its review.

(b) The committee shall monitor behavior analysis services in accordance with a monitoring schedule reviewed by the committee plan developed and approved by the committee to ensure that behavior analysis services are in compliance with Florida Statutes and the Agency rules. Approval of services includes the determination by the LRC chairperson that the individual designing and implementing the behavior analysis services is in compliance with subsection 65G-4.002(5), F.A.C., above, or is appropriately supervised.

(c) If reactive strategies continue without the implementation of required behavioral programs or behavior analysis services requiring review are not presented to the LRC or are not found not to be in accordance with Florida law, the committee chairperson shall request that the Agency notify the behavior analyst, and when appropriate, the residential provider and behavior analyst’s supervisor, of the services, ~~in writing and~~ orally at the time of review and in writing within ten days of review in the language of the provider or supervisor, and in English, of each area of non-compliance.

1. Absent emergency circumstances that threaten public health, safety or welfare, the provider shall have twenty (20) days within which to demonstrate compliance or present to the committee chairperson in writing evidence showing that the services being provided are in compliance with Florida Statutes and the Agency rules. The provider may present whatever evidence the provider deems appropriate to demonstrate that the provider is in compliance with Florida Statutes and the Agency rules.

2. If, however, the committee determines that the behavior analyst, and when appropriate, the residential provider, is not in compliance with Florida Statutes or the Agency rules, the committee chairperson shall report all facts and circumstances to the Agency in writing within five (5) days of the provider’s response and request a final decision be made by the Agency.

3. Within twenty (20) days of such report, the Agency shall notify the committee, in writing, and the provider, in writing and orally in the language of the provider and in English, of its decision. In the event the Agency finds the provider is not in compliance with Florida Statutes or the Agency rules, the Agency shall allow the provider an additional ten (10) days to modify services to meet requirements. If modifications are not made within the time allotted, the Agency shall take appropriate action against the provider up to and including withdrawal of status as an authorized provider, notification of the designated certification or licensing board, and revoke the provider’s behavior analysis certification require that the services being provided be discontinued and notify the provider of the provider’s rights in accordance with Chapter 120, F.S.

4. Following a committee report set forth above, the Agency may require additional supervision of the provider’s services. The requirement for additional supervision may be a prerequisite for allowing the provider to continue to serve as an authorized behavior analysis services provider. Such required supervision may include the following conditions:

a. Supervision must be provided by a Board Certified Behavior Analyst – Doctoral level, Board Certified Behavior Analyst; or a person licensed under Chapter 490 or 491, F.S., (Psychologist, School Psychologist, Clinical Social Worker, Marriage and Family Therapist or Mental Health Counselor), with evidence (e.g. work samples) of at least three years of experience in the application of Applied Behavior Analysis procedures approved by a local review committee, to persons with exceptional needs post certification or licensure.

b. Face-to-face meetings for up to two hours every two weeks or two hours per 40 hours of the provider’s contact with clients. These meetings shall be between the provider and a board certified behavior analyst or a person licensed under Chapter 490 or 491, F.S., during which the supervisor directs and evaluates the behavior analysis services provided by the provider.

c. The supervisor shall not be, at the time supervision is provided, the provider’s subordinate or employee. The supervisor shall not be considered an employee of the provider if the only compensation received by the supervising behavior analyst consists of payment for supervision.

d. The provider’s presentation of behavior analysis services designed and implemented by the provider, with a focus on graphic displays of data, at local review committee meetings, established in Rule 65G-4.008, F.A.C., may be substituted for up to 25 percent of the total supervision time required.

Rulemaking Specific Authority 393.125, 393.13(4)(g)3., 393.17 FS. Law Implemented 393.066, 393.067, 393.125, 393.13, 393.17 FS. History—New 9-23-96, Formerly 10F-4.029, 65B-4.029, Amended _____.

65G-4.009 Design, Implementation and Monitoring of Behavior Analysis Services.

(1) Providers of behavior analysis services shall provide services only as certified and as provided by law.

(2) All aspects of behavior analysis services shall be integrated ~~by the provider~~ with other relevant services and supports being provided to the client by the provider within the scope of authorized behavioral services.

(3) The selection of behavior analysis procedures and decisions by the provider to make environmental changes that obviate the need for the use of behavior change procedures shall be based upon information obtained through direct and indirect functional assessment or functional analysis descriptive analysis or systematic environmental manipulations designed to identify patterns of behavior and the functional relationships between the behavior or behaviors targeted for change and the environment. Consistent with established Agency operating procedure, the assessment will contain at minimum:

(a) Operational definitions of all behaviors targeted for change.

(b) Description of conditions under which the behavior is most likely and least likely to occur.

(c) Measures of current level of behavior targeted for change.

(d) Other relevant personal, social, medical, pharmacological or historical information that may impact on behavior targeted for change, if any.

(e) Putative functional relationships between targeted behavior and environment.

(f) Recommendations for procedures to decrease maladaptive behavior and increase relevant appropriate alternative behavior.

(4) Behavior analysis services designed by the provider to decrease behavior shall include procedures for increasing functional replacement behavior, or acquisition of adaptive skills to serve as a functional alternative to the behaviors targeted for change.

(5) Behavior analysis procedures that are the least intrusive to the client and the most likely to be effective shall be used by the provider.

(6) Medical treatment to address purely medical etiologies or physical or occupational therapies to address behaviors that are related ~~are due~~ to physical limitations shall be provided concurrent with, or prior to, the implementation of behavior analysis services by the provider.

(7) Behavior analysis services shall not be provided continuously without appropriate considerations for maintenance and generalization of behavior change in relevant settings or a designation of criteria for termination of the interventions or services shall be addressed by the provider whenever behavior analysis services are provided.

(8) The provider shall ensure that persons responsible for implementing, monitoring and providing behavior analysis services receive performance-based training that prepares them to properly implement the behavior analysis procedures involved, within the circumstances under which the services will be provided.

(9) The provider shall take reasonable steps to ensure appropriate data collection that measurement for of behaviors targeted for increase change and decrease replacement behavior during the entire period services are in effect. Graphic displays of data on behaviors targeted for change shall be ~~kept~~ maintained and up-dated by the provider at least weekly, unless the local review committee determines that a less stringent requirement is acceptable for individual cases.

(10) The ~~LRC local review committee~~ shall approve the provider's behavior analysis services monitoring plan and specify the requirements for reporting of findings and data to the committee for behavior analysis services approved by the committee.

(a) Behavior analysis services plans are to be written as succinctly as is possible to effectively serve as a guide to those who will be implementing the plan.

(b)(~~a~~) Consistent Monitoring with established Agency operating procedure, the behavior analysis services plan shall include, either in text or by reference to appropriate documents:

1. Identifying information for the individual affected by the plan.

2. The name, signature and certification or licensure information of the individual who developed, supervises or approves the implementation of the procedures described in the plan.

3. Objective statements of goals relative to behavior reduction and behavior acquisition resulting in program termination.

4. Rationale for intervention being warranted, and selection of proposed interventions, consistent with assessment results.

5. Medical, social and historical information including previous treatment programs relevant to the current problems being addressed.

6. How and where behavioral services will be integrated with daily routines and other relevant services.

7. Identification of behaviors targeted for reduction.

8. Identification of behaviors targeted for acquisition or as replacement.

9. Data collection methods for behaviors targeted for reduction and acquisition.

10. Intervention procedures for behaviors targeted for reduction and acquisition.

11. Description of performance-based training for persons implementing procedures.

12. Techniques for maintaining and generalizing behavioral improvements, which could include the reduction and fading of behavioral services.

13. When employed, rationale for use of ancillary support staff, such as behavior assistants; a description of training, their routine or duties, performance monitoring and fading of services.

14. Methods and schedule of monitoring for programmatic fidelity, including data analysis and direct observation.

15. Signatures of informed participants as may be required by law and individuals authorized to approve the procedures.

1. Documentation of when and by whom monitoring was done.

2. Examination and interpretation of data.

3. Direct observations in the setting(s) where the plan is implemented, including the observation of the implementation of procedures or simulated implementation.

4. Discussions with and observations of individuals who implement the behavior analysis procedures involved.

5. Determination that the services are in accordance with Florida Statutes and the Agency rules.

(c)(b) Modifications to the behavior analysis service plan which includes procedures listed in Rule 65G-4.010, F.A.C., approved by the LRC committee shall be documented and submitted by the provider to the committee chairperson within one week after the changes are made, for determination of need for committee review. A summary of the effects of and modifications to behavior analysis services plan shall be created written by the provider at least annually. This summary may be a graphical display of data collected over the year with appropriate annotation of program modifications.

Rulemaking Specific Authority 393.13(4) FS. Law Implemented 393.0651, 393.066, 393.067, 393.068, 393.13, 393.17 FS. History—New 9-23-96, Formerly 10F-4.030, 65B-4.030, Amended _____.

65G-4.010 Behavior Analysis Services Approval.

(1) All written plans describing behavior analysis services approved for implementation pursuant to these rules shall be submitted to the local review committee chairperson within five working days following implementation. Behavior analysis services plans shall be consistent with the requirements of subsection 65G-4.009(10), F.A.C.

(2) The local review committee must review:

(a)(1) Behavior analysis services that include behavior analysis procedures that are designed to decrease the probability of the occurrence of a behavior by presenting, attenuating or removing a stimulus following each occurrence

of the behavior to be reduced, behavioral contingencies designed to increase the probability of a behavior by removing or attenuating a stimulus following each occurrence of the behavior to be increased, and the use of satiation and deprivation procedures, hereafter referred to as restricted procedures, and shall require the approval of one of the following practitioners prior to implementation: :

1.(a) A board certified behavior analyst as defined in subsection 65G-4.0011(5), F.A.C., who meets the education and experience requirements established in these rules for taking the behavior analyst certification examination.

2.(b) A person licensed pursuant to Chapter 490 or 491, F.S.

(b)(2) Approval by a certified behavior analyst who meets the education and experience requirements specified in these rules for taking the behavior analyst certification examination or a person licensed pursuant to Chapter 490 or 491, F.S., shall also be required prior to implementation for Bbehavior analysis services that are designed to address those actions of the individual which, without behavioral, physical, or chemical intervention can be expected to result in subparagraphs 1. through 8. below and will be provided or supervised by a Certified Behavior Analyst as defined in subsection 65G-4.001(5), F.A.C., or a person licensed pursuant to Chapter 490 or 491, F.S.:

1.(a) Have resulted in self-inflicted, detectable damage, or resulted in external or internal damage requiring medical attention or are expected to increase in frequency, duration, or intensity resulting in self-inflicted, external or internal damage requiring medical attention.

2.(b) Have occurred or are expected to occur with sufficient frequency, duration or magnitude that a life-threatening situation might result, including excessive eating or drinking, vomiting, ruminating, eating non-nutritive substances, refusing to eat, holding one's breath, or swallowing excessive amounts of air.

3.(c) Have resulted in detectable damage, or external or internal damage to other persons that requires medical attention or are expected to increase in frequency, duration or intensity resulting in external or internal damage to other persons that requires medical attention.

4.(d) Have resulted or are expected to result in major property damage or destruction.

5.(e) Have resulted or are expected to result in arrest and confinement by law enforcement personnel.

6. Have resulted in the need for behavioral services in a Behavior Focused or Intensive Behavioral Residential Habilitation program.

7. Have resulted in the need for additional staffing or Behavior Assistant Services.

8. Have resulted in the repeated use of reactive strategies without a formal approved plan.

(3) Behavioral programs or manuals implemented as group contingencies or behavior change systems, including behavioral program manuals, level systems and token economies, require local review committee review and approval. A written plans describing behavior analysis services approved for implementation pursuant to these rules shall be sent to the local review committee chairperson within five working days following implementation.

Rulemaking Specific Authority 393.13(4)(g)3. FS. Law Implemented 393.066, 393.067(14), 393.068, 393.13, 393.17 FS. History–New 9-23-96, Formerly 10F-4.031, 65B-4.030, Amended _____.

65G-4.011 Determination of Mental Retardation in Capital Felony Cases: Intellectual ~~Intelligent~~ and Adaptive Functioning; Tests to be Administered.

(1) When a defendant convicted of a capital felony is suspected of having or determined to have mental retardation, the standard criteria for determining mental retardation must be met. This means the defendant has significantly subaverage general intellectual functioning as determined by performance which is two or more standard deviations from the mean score on a standardized intelligence test, existing concurrently with deficits in at least two areas of adaptive behavior and manifested during the period from conception to age 18. ~~Intelligence tests as well as tests of adaptive functioning to determine intellectual functioning~~ as specified below shall be administered by a qualified professional who is authorized in accordance with Florida Statutes to perform evaluations in Florida. The test shall consist of an individually administered evaluation, which is valid and reliable for the purpose of determining intelligence and adaptive functioning. In all cases, the test(s) used must be current at the time of assessment.

(a) The tests specified below shall be used for determining intelligence:

1. ~~(a)~~ The Stanford-Binet Intelligence Scale.
2. ~~(b)~~ Wechsler Intelligence Scale.

3. If, given the condition of the individual to be tested, the Stanford-Binet Intelligence Scale or the Wechsler Intelligence Scales are not valid and reliable as determined by the person authorized to administer such tests as specified in subsection (1), an alternative test or evaluation procedure, administered and interpreted in conformance with instructions provided by the producer of the tests or evaluation materials, may be used. The results of the testing or evaluation must include reference to published validity and reliability data for the specified test or evaluation procedure. Alternative tests may include current versions of the:

- a. Universal Nonverbal Intelligence Test;
- b. Comprehensive Test of Nonverbal Intelligence;
- c. Wechsler Non-Verbal Test of Intelligence.

(b) Accepted tests for adaptive functioning include current versions of the following tests:

1. Vineland Adaptive Behavior Scales;

2. Adaptive Behavior Scale;

3. Adaptive Behavior Assessment System;

4. Adaptive Behavior Evaluation Scale;

5. Scales of Independent Behavior.

(c) The psychologist completing the assessments should also:

1. Look for Evidence of hospitalizations or treatments after age 18 based on conditions or injuries known to decrease cognitive and adaptive functioning.

2. Look for existence of a significant psychiatric diagnosis, history of psychiatric treatment, or the use of medicines or substances that decrease cognitive and adaptive function. Existence of such precludes a determination of eligibility unless it predates the applicant's 18th birthday.

3. Show validation of findings and make a recommendation to confirm diagnosis of retardation with onset prior to the age of 18.

4. Look for academic and intellectual test results and records prior to the person's 18th birthday.

(2) Notwithstanding this rule, the court, pursuant to Section 921.137, F.S., is authorized to consider the findings of the court appointed experts or any other expert utilizing individually administered evaluation procedures which provide for the use of valid tests and evaluation materials, administered and interpreted by trained personnel, in conformance with instructions provided by the producer of the tests or evaluation materials. The results of the evaluations submitted to the court shall be accompanied by the published validity and reliability data for the examination, and demonstrate whether the defendant meets all three criteria identified above for determining mental retardation.

Rulemaking Specific Authority 921.137(1) FS. Law Implemented 921.137(1) FS. History–New 1-13-04, Formerly 65B-4.032, Amended _____.

65G-4.012 Determination of Mental Retardation: ~~Intelligence~~: Tests to be Administered.

(1) For the purposes of Chapters 393 and 916, F.S., the Stanford-Binet Intelligence Scale or the Wechsler ~~Adult & Infant~~ Intelligence Scales, administered by or under the direct supervision of a psychologist or school psychologist licensed under Chapter 490, F.S., shall be used to ~~establish determine~~ mental retardation and the level of intellectual functioning, as one of the three criteria required for determining mental retardation. Significantly subaverage general intellectual functioning existing as determined by performance which is two or more standard deviations from the mean score on a standardized intelligence test, existing concurrently with deficits in adaptive behavior must also be present and both must be manifested during the period from conception to age 18. In all cases, the test(s) used must be current at the time of assessment.

(2) Notwithstanding subsection (1), if, given the condition of the individual to be tested, the Stanford-Binet Intelligence Scale or the Wechsler ~~Adult & Infant~~ Intelligence Scales are not valid and reliable as determined by the person authorized to administer such tests as specified in subsection (1), a current version of an alternative test or evaluation procedure, administered and interpreted in conformance with instructions provided by the producer of the tests or evaluation materials, may be used. The results of the testing or evaluation must include reference to published validity and reliability data for the specified test or evaluation procedure. Tests that might be used in situations where the Stanford-Binet or Wechsler scales are invalid or unreliable include:

- (a) Differential Abilities Scales;
- (b) Bayley Scales of Infant and Toddler Development;
- (c) Leiter International Performance Scale;
- (d) Universal Nonverbal Intelligence Test;
- (e) Test of Nonverbal Intelligence;
- (f) Comprehensive Test of Nonverbal Intelligence;
- (g) Wechsler Nonverbal Scale of Ability.

(3) Deficits in adaptive behavior are defined as either an overall score or scores in two or more areas of a standardized measure of adaptive behavior that fall more than two standard deviations below the mean of the test. In all cases, the test(s) used must be current at the time of assessment. Accepted tests for adaptive functioning include:

- (a) Vineland Adaptive Behavior Scales;
- (b) Adaptive Behavior Scale;
- (c) Adaptive Behavior Assessment System;
- (d) Adaptive Behavior Evaluation Scale;
- (e) Scales of Independent Behavior.

(4) In cases where there is a statistically significant difference between scores on an intelligence test, variability in subtest scores, or variability in scores obtained in different assessments, individual scores may not indicate mental retardation and should not be relied upon as a valid score. In these cases the following factors should also be considered:

- (a) The overall pattern of scores;
- (b) School records;
- (c) School placement;
- (d) Achievement scores;
- (e) Behavior during testing;
- (f) The psychosocial situation at the time of testing.

(5) In cases where there are no test scores available prior to the age of 18, determination may be based on test scores after the age of 18 combined with the following:

(a) A social history obtained from a family member or someone who has known the applicant since childhood indicating:

- 1. Developmental milestones and age of onset of problems of concern.
- 2. Reason why services were not previously requested.

3. Schools or training facilities person attended and types of placement and services received.

(b) The psychologist or other Agency for Persons with Disabilities staff should:

1. Look for evidence of hospitalizations or treatments after age 18 based on conditions or injuries known to decrease cognitive and adaptive functioning.

2. Look for existence of a significant psychiatric diagnosis, history of psychiatric treatment, or the use of medicines or substances that decrease cognitive and adaptive function. Existence of such precludes a determination of eligibility unless it predates the applicant's 18th birthday.

3. Show validation of findings and make a recommendation to confirm diagnosis of retardation with onset prior to the age of 18.

Rulemaking Specific Authority 393.063(38), 916.106, 393.501(1) FS. Law Implemented 393.063(38), 916.106 FS. History--New 6-13-06, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Steve Coloman, PhD., Senior Behavior Analyst, Agency for Persons with Disabilities, Residential and Clinical Support, 4030 Esplanade Way, Suite 380, Tallahassee, Florida 32399

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Jim DeBaugrine

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 9, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 23, 2009

FISH AND WILDLIFE CONSERVATION COMMISSION

RULE NO.: 68-5.004
 RULE TITLE: Amnesty for Persons Relinquishing Non-native Pets

PURPOSE AND EFFECT: The purpose of the proposed rule changes is to allow reptile of concern license holders to legally accept unlicensed reptiles of concern at any time of the year.

The effect of this rule change will provide outlets for these unwanted nonnative animals and help prevent their being released into Florida's natural habitats.

SUMMARY: Rule 68-5.004, F.A.C., (Amnesty for Persons Relinquishing Non-native Pets) would be amended to allow the transfer of unlicensed reptiles of concern to properly licensed recipients. Current rule language allows unlicensed wildlife to be transferred to a recipient only at nonnative pet amnesty day events, to a state or county wildlife control agency, or through confiscation by a law enforcement officer. Since January 1, 2008 a \$100 annual permit is required to possess reptiles of concern, and many reptile of concern owners have decided to relinquish their animals. There are few amnesty day events held around the state each year, and wildlife control agencies are not required to accept unwanted reptiles of concern. The

proposed rule change would allow reptile of concern license holders to legally accept unlicensed reptiles of concern at any time of the year. This will provide outlets for these unwanted nonnative animals and help prevent their being released.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will ___ or will not X have an impact on small business. A SERC has ___ or has not X been prepared by the agency.

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

RULEMAKING AUTHORITY: Article IV, Section 9, Florida Constitution.

LAW IMPLEMENTED: Article IV, Section 9, Florida Constitution.

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

DATES AND TIME: April 28-29, 2010, each day, during the regular meeting of the Commission, 8:30 a.m. – 5:00 p.m.

PLACE: Florida Public Safety Institute, Pat Thomas Law Enforcement Academy, 215 Academy Drive, Havana, FL 32333

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: The ADA Coordinator, (850)488-6411. 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 IS: Michael Yaun, Deputy General Counsel, Legal Office, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, FL 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

68-5.004 Amnesty for Persons Relinquishing Non-native Pets.

It is the policy of the Fish and Wildlife Conservation Commission to encourage persons possessing unwanted non-native fish or wildlife as pets to relinquish such pets to qualified adopters as an alternative to releasing them into Florida's environment. In furtherance of this policy, the Commission will sponsor amnesty events for such purpose.

(1) Persons adopting nonnative species through an FWC sponsored amnesty event may accept non-native fish or wildlife from persons who have not obtained a permit from the Commission for possession of such fish or wildlife.

~~(2) State and county wildlife control agencies may accept non-native fish and wildlife from persons who have not obtained a permit from the Commission for possession of such fish or wildlife.~~

~~(2)(3) Any person relinquishing or adopting non-native fish or wildlife pursuant to this rule is hereby deemed not to be in violation of the permit requirement of subsection 68A-6.0023(7) 68A-6.0021(2), F.A.C.~~

(3) Persons with a valid license to possess or exhibit reptiles of concern may accept reptiles of concern as defined in subsection 68A-6.007(1), F.A.C., from persons who have not obtained a permit from the Commission for possession of such reptiles without violating the provisions of subsection 68A-6.0023(7), F.A.C., which prohibits the buying, selling or transferring of wildlife to or from an unpermitted entity within Florida.

(a) Persons accepting unpermitted reptiles of concern shall complete a Captive Wildlife Inventory-Donated Reptile form, which is available from the Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, 620 South Meridian Street, Tallahassee, Florida 32399-1600, and submit the form to the same address within 72 hours of acquisition.

(b) Any person relinquishing or accepting reptiles of concern under this subsection is authorized to make such transfer and is not in violation of the prohibitions on buying, selling or transferring contained in subsection 68A-6.0023(7), F.A.C.

(c) Persons accepting unpermitted reptiles of concern under this subsection must otherwise comply with all permit conditions and Commission rules, specifically including provisions in Chapter 68A-6, F.A.C.

(4) State and county wildlife control agencies may accept non-native fish and wildlife from persons who have not obtained a permit from the Commission for possession of such fish or wildlife

PROPOSED EFFECTIVE DATE: July 1, 2010.

Rulemaking Specific Authority Article IV, Section 9, Florida Constitution. Law Implemented Article IV, Section 9, Florida Constitution. History-New 10-23-08, Amended 7-1-10.

BE ADVISED THAT THESE PROPOSED RULES MAY BE FILED FOR ADOPTION AS SOON AS POSSIBLE FOLLOWING THE COMMISSION MEETING AT WHICH THEY ARE CONSIDERED IF THE RULES ARE NOT CHANGED. IF CHANGED, THE RULES MAY BE FILED AS SOON AS POSSIBLE AFTER PUBLICATION OF A NOTICE OF CHANGE IN THE F.A.W.

NAME OF PERSON ORIGINATING PROPOSED RULE: Tim Breault, Director, Division of Habitat and Species Conservation, Florida Fish and Wildlife Conservation Commission

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Fish and Wildlife Conservation Commission
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 17, 2010
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 30, 2009

FISH AND WILDLIFE CONSERVATION COMMISSION

Freshwater Fish and Wildlife

RULE NOS.:	RULE TITLES:
68A-6.0022	Possession of Class I, II, or III Wildlife in Captivity; Permit Requirements
68A-6.0024	Commercialization of Wildlife; Bonding or Financial Responsibility Guarantee
68A-6.003	Facility and Structural Caging Requirement for Class I, II and III Wildlife
68A-6.005	Transportation Requirements for Wildlife; Caging Requirements for Performing and Non-Performing Animals
68A-6.0072	Identification of Non-Native Venomous Reptiles and Reptiles of Concern; Escape

PURPOSE AND EFFECT: The purpose and effect of the proposed rules are to address the possession, housing, shipment and sale of captive wildlife. The proposed rules will define “hobbyist” and exempt hobbyists from meeting sustained and consistent commercial activity requirements; clarify requirements for meeting local building and zoning codes for applicants requesting authorization to possess Class I or Class II wildlife; specify labeling requirements for the shipment of live wildlife; specify the marking requirements for Reptiles of Concern (ROC), and clarify submission requirements for the Critical Incident/Disaster Plan.

SUMMARY: The proposed rule changes address the possession housing shipment, and sale of captive wildlife. The summary of these changes are as follows:

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will ___ or will not X have an impact on small business. A SERC has ___ or has not X been prepared by the agency.

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

RULEMAKING AUTHORITY: Article IV, Section 9, Florida Constitution.

LAW IMPLEMENTED: Article IV, Section 9, Florida Constitution., 379.1025, 379.372, 379.373, 379.374, 379.305, 379.304, 379.3761, 379.303, 379.3762 FS.

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

DATES AND TIME: April 28-29, 2010, each day, during the regular meeting of the Commission, 8:30 a.m. – 5:00 p.m.

PLACE: Florida Public Safety Institute, Pat Thomas Law Enforcement Academy, 215 Academy Drive, Havana, Florida 32333.

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: The ADA Coordinator, (850)488-6411. 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 RULES IS: Bud Vielhauer, General Counsel, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)487-1764

THE FULL TEXT OF THE PROPOSED RULES IS:

68A-6.0022 Possession of Class I, II, or III Wildlife in Captivity: Permit Requirements.

(1) through (6) No change.

(7) Disaster and Critical Incident Plans: Applicants for permits to possess wildlife in captivity as authorized pursuant to Section 379.3761 or 379.303, F.S., or the provisions of this chapter shall document in writing a course of action to be taken in preparation for disasters or critical incidents. Such course of action shall be documented on the Captive Wildlife Critical Incident/Disaster Plan form FWCDLE_619 (06/09), which is adopted and incorporated herein by reference. Forms may be obtained by submitting a request to: Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, 620 South Meridian Street, Tallahassee, Florida 32399-1600, or at www.myfwc.com/permits. This form shall consist of two parts. Part A of form FWCDLE_619 shall be submitted at the time of initial application or renewal; and Part B shall be retained in the permittee’s files at the facility location and be made available for inspection upon request of Commission personnel. Permittees authorized for Class I or Class II shall provide a copy of Part B of form FWCDLE 619 to the county emergency manager in the county where the facility is located.

(a) Provisions of this subsection shall apply to permittees maintaining captive wildlife in Florida.

(b) For permittees where the facility is located out of state, the provisions of this subsection shall apply when such permittee is in travel status with Class I or Class II wildlife. In this instance Part B must accompany the Class I or Class II wildlife while in travel status in Florida and shall describe the course of action to be taken in the event of a critical incident or natural disaster in Florida.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const., 379.3761, 379.3762 FS. History—New 7-1-90, Amended 7-1-90, 7-1-91, 2-1-98, Formerly 39-6.0022, Amended 4-30-00, 1-1-08, 8-27-09,_____.

68A-6.0024 Commercialization of Wildlife; Bonding or Financial Responsibility Guarantee.

(1) Because the possession of wildlife in accordance with Section 379.3761, F.S., is commercial in nature any person permitted to possess wildlife per Section 379.3761, F.S., except hobbyist possessors of Class III wildlife, shall demonstrate consistent and sustained commercial activity in the form of exhibition or sale of such authorized wildlife. For the purposes of this section a “hobbyist” is defined as one whose primary purpose for possession of such Class III wildlife is personal enjoyment but may occasionally exhibit or sell such wildlife. Consistent and sustained commercial activity may be demonstrated by the following examples of business procedures including, but not limited to:

- (a) A regular media advertising campaign, or Internet Web site;
 - (b) Signs, billboards or flyers advertising commercial wildlife services or operations;
 - (c) Regular business hours during which the premises is open for commercial activity.
 - (d) Written business is conducted on printed letterhead, indicating the name of the company or business;
 - (e) Documented exhibition of wildlife to the public, with or without a charge;
 - (f) Sale of wildlife including any lesser acts thereof as defined in Rule 68A-1.004, F.A.C.
- (2) No change.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const., ~~379.303, 379.304, 379.305, 379.374~~ FS. Law Implemented Art. IV, Sec. 9, Fla. Const., 379.303, 379.304, 379.305, 379.373, 379.374 FS. History—New 2-1-08, Amended 8-27-09,_____.

68A-6.003 Facility and Structural Caging Requirement for Class I, II and III Wildlife.

- (1) No change.
- (2) In order to assure public safety, the facilities for the housing of Class I and Class II wildlife shall meet the requirements of this rule. Compliance with these requirements is a necessary condition for licensure. For the purposes of this rule, a “facility” means the site at which Class I or Class II wildlife are permanently kept or exhibited. ~~Applicants shall submit documentation verifying that the construction of the~~

facility, its cages and enclosures are not prohibited by county ordinance and, if within a municipality, municipal ordinance. Facilities housing Class I or Class II wildlife must meet local building codes and valid local zoning requirements. The county or municipality wherein the facility is to be located has 25 days, from receipt of the notification from the Florida Fish and Wildlife Conservation Commission of a pending application regarding Class I or Class II wildlife, in which to determine whether the facility is in compliance with local building codes and zoning requirements. If the county or municipality determines that applicant is not in compliance with local building codes and zoning requirements, the applicant must provide proof, including but not limited to, written documentation from a local government entity or a court of competent jurisdiction, to the Florida Fish and Wildlife Conservation Commission indicating that the conflict between the applicant and the county or municipality has been resolved in favor of the applicant before the Florida Fish and Wildlife Conservation Commission will consider the application complete. If the county or municipality fails to notify the Florida Fish and Wildlife Conservation Commission of its determination of compliance in a manner prescribed by the agency within 25 days, the Florida Fish and Wildlife Conservation Commission will deem the application in compliance with local building codes and zoning requirements.

- (a) through (f) No change.
- (3) No change.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const., 379.3761, 379.3762 FS. History—New 8-1-79, Amended 6-21-82, Formerly 39-6.03, Amended 6-1-86, 7-1-90, 7-1-92, 2-1-98, Formerly 39-6.003, Amended 1-1-08, 1-8-08, 8-27-09,_____.

68A-6.005 Transportation Requirements for Wildlife; Caging Requirements for Performing and Non-Performing Animals.

~~(1) This rule section applies to all Class I, all Class II and all Class III animals except those listed in subsection 68A-6.0022(2), F.A.C.~~

(1) No person shall import, export, transport, ship or deliver in interstate or intrastate commerce any container or package containing any live wildlife unless each container or package bares, in a conspicuous place on the outside, a tag with both the name and address of the shipper and consignee and the exact contents of the package. The exact content of the package shall include an accurate and legible list by species scientific name, common name and number of each species included in the entire shipment.

(2) General requirements for transporting wildlife in vehicles. This rule subsection applies to all Class I, all Class II and all Class III animals except those listed in subsection 68A-6.0022(2), F.A.C. No vehicle shall be used in transporting any wildlife except as follows:

(a) Vehicles shall be equipped to provide fresh air without injurious drafts and adequate protection from the elements to all animals.

(b) The animal traveling area shall be free of engine exhaust fumes.

(c) Fecal and food wastes shall be removed from the animal quarters daily.

(d) Animal cages shall have openings for emergency removal of wildlife.

(e) Wildlife in transport shall be protected from extremes in temperature that could be detrimental to the health and welfare of the animal.

(f) Wildlife transported in the same cage area shall be in compatible groups.

(g) Wildlife must be transported in a cage or enclosure. The cage or enclosure must be labeled "Live Animal" and list the number of specimens and common and scientific name of the wildlife. For wildlife that is transported in a trailer or compartment of a trailer, a label stating "Live Animal" must be affixed to the trailer access or loading door and the list containing the number of specimens and common and scientific name of the wildlife must be maintained in the vehicle. The animal's cage or enclosure shall be as follows:

1. Be of sufficient strength and security to prevent escape.

2. Large enough to ensure that each specimen has sufficient space to turn, stand erect, and lie naturally. Provided, however that certain species may be restricted in their movements according to professionally acceptable standards when such freedom of movement would constitute a danger to the animals, their handlers, or other persons. Elephants shall be tethered during transport (except nursing young).

(h) Wildlife shall not be placed in enclosures over other specimens unless each enclosure is fitted with floor which prevents excreta from entering lower enclosures.

(i) Wildlife shall be watered twice daily and fed daily.

~~(3)(2)~~ Mobile Exhibits – Performing Animals. No mobile exhibit shall utilize the performing animal caging dimensions prior to approval by the Commission. To obtain such approval, the permittee shall provide written schedules to the Commission of wildlife exercise intervals and scheduled performances. The exercise intervals shall be of such frequency, intensity and duration as to provide for the health and welfare of the animal over an extended period, provided that the animals shall not be caged without exercise or performances for more than a 72-hour period. Performing and exercise information shall be verifiable by Commission personnel through inspections. Performing animals used in mobile exhibits shall not be confined in any cage or enclosure that is smaller in dimension; or is not equipped as follows:

(a) Class I and Class II Carnivores (i.e., lions, tigers, jaguars, leopards, pumas, bears, hyenas, wolves).

For a single animal, a cage which shall permit the animal to turn or stand on all fours with head clearance, and confined in such a manner so that no animal can injure another. For Class I animals, cages shall be constructed of steel, case hardened aluminum, alloy, or strength equivalent material. If bars are used, bars shall be spaced no more than 2 inches apart. For Class II animals, cage construction shall not be less than 11 1/2 gauge chain link or strength equivalent material. Cages of Class I and Class II animals that the public can access, shall be equipped with a physical barrier, which is made of a material to prevent the public from coming in contact with the animals. All cages shall have secure locking devices.

(b) Primates, Class I and Class II. For a single animal, a cage which shall permit the animal to turn and stand erect with head clearance, confined in such a manner so that no animal can injure another. For Class I animals, cages shall be constructed of steel, case hardened aluminum, alloy or strength equivalent material. If bars are used, bars shall be spaced no more than 2 inches apart. For Class II animals, cage construction shall not be less than 11 1/2 gauge chain link or strength equivalent material. Cages of Class I and Class II animals that the public can access, shall be equipped with a physical barrier, which is made of a material to prevent the public from coming in contact with the animals. All cages shall have secure locking devices.

(c) Elephants. When not performing or being exercised, elephants shall either be:

1. Securely tethered.

2. Enclosed by an electric fence, under the supervision of at least one qualified handler in accordance with paragraph 68A-6.0042(2)(c), F.A.C., and in an area not accessible to the public.

(d) Class III Animals. For a single animal, a cage which shall permit the animal to turn and stand on all fours, or stand erect, with head clearance, confined in such a manner so that no animal can injure another.

(e) Time limitation on smaller travel caging allowed for housing performing animals. For performing wildlife possessed by traveling zoos and other traveling acts, wildlife shall be housed in cages or enclosures that meet or exceed the specifications as provided in Rule 68A-6.004, F.A.C., whenever such wildlife is housed in such travel cages or enclosures for more than 90 days. Performing wildlife shall not be kept in cages or enclosures below the size required by the standard caging requirements for more than a total of 90 days out of each 120 day period. Such mobile exhibits shall provide an itinerary of planned exhibition times and locations with annual renewal applications.

~~(4)(3)~~ Mobile Exhibits – Non-Performing Animals. Non-performing wildlife in mobile exhibits shall not be confined in any cage or enclosure that is smaller in dimension or is not equipped as follows:

(a) Class I and Class II Carnivores (i.e., lions, tigers, jaguars, leopards, pumas, bears, hyenas, wolves).

For a single animal, the cage length shall be double the body length (excluding tail), with a width that is equal to the body length, and a height that permits the animal to stand on all fours with head clearance. For two or more animals kept together, add one-third more cage length for each additional animal. For Class I animals, cages shall be constructed of steel, case hardened aluminum, alloy or strength equivalent material. If bars are used, bars shall be spaced no more than 2 inches apart. For Class II animals, cage construction shall not be less than 11 1/2 gauge chain link or strength equivalent material. Cages of Class I and Class II animals that the public can access, shall be equipped with a physical barrier, which is made of a material to prevent the public from coming in contact with the animals. All cages shall have secure locking devices.

(b) Primates. All cages shall be well ventilated and shall have secure locking devices. Each cage shall have an overhead pull bar and a seat. For two or more animals kept together, add one-third more cage length for each additional animal. For Class I animals, cages shall be constructed of steel, case hardened aluminum, alloy or strength equivalent material. If bars are used, bars shall be spaced no more than 2 inches apart. For Class II animals, cage construction shall not be less than 11 1/2 gauge chain link or strength equivalent material. Cages of Class I and Class II animals that the public can access, shall be equipped with a physical barrier, which is made of a material to prevent the public from coming in contact with the animals.

1. Gorillas. For a single animal, a cage 8 feet by 8 feet, with a height at least 2 feet over the standing height of the animal.

2. Orangutan. For a single animal, a cage 7 feet by 7 feet, with a height at least two feet over standing height of the animal.

3. Adult chimpanzee. For a single animal, a cage 6 1/2 feet by 6 1/2 feet, with a height at least two feet over standing height of the animal.

4. Chimpanzees up to 50 pounds and macaques. For a single animal, a cage 5 feet by 5 feet, with a height at least two feet over standing height of the animal.

(c) Elephants. For one animal in a non-performing capacity, a paddock that is double the body length in length and equal to the body length in width. For two or more animals kept together, increase square footage by one third for each additional animal. Other than for exercise periods, elephants not kept in a paddock shall either be:

1. Securely tethered.

2. Enclosed by an electric fence under the direct, on-site supervision of a least one qualified handler in accordance with paragraph 68A-6.0042(2)(c), F.A.C., and in an area not accessible to the public.

(d) Class III animals (except reptiles). For a single animal, the cage length shall be double the body length (excluding tail), with a width that is equal to the body length, and a height that will permit the animal to stand on all fours, or stand erect, with head clearance. For two or more animals kept together, add one third more cage length for each additional animal.

(e) Time limitation on smaller travel caging allowed for housing non-performing animals. For non-performing wildlife possessed by traveling zoos and other traveling acts, wildlife shall be housed in standard cage specifications as provided in Rule 68A-6.004, F.A.C., whenever such wildlife is present in such travel cages or enclosures for more than 45 days. Non-performing wildlife shall not be kept in cages or enclosures below the size required by the standard caging requirements for more than a total of 45 days out of each 90 day period. Such mobile exhibits shall provide an itinerary of planned exhibition times and locations with annual renewal applications.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const., 379.303, 379.304 FS. History—New 8-1-79, Amended 6-22-80, 6-4-81, Formerly 39-9.03, Amended 6-21-82, Formerly 39-6.05, Amended 5-10-87, 2-1-98, Formerly 39-6.005, Amended 8-27-09, _____.

68A-6.0072 Identification of Non-Native Venomous Reptiles and Reptiles of Concern; Escape.

(1) Any person who keeps or possesses any live reptile of concern; or who keeps or possesses for personal use any live venomous reptile not indigenous to Florida or any live reptile of concern, in accordance with Section 379.372 and 379.373, F.S., ~~or any live reptile of concern, in accordance with Section 379.303 and 379.3762, F.S.,~~ must permanently identify such reptile.

(a) Live venomous reptiles not indigenous to Florida shall be permanently identified by photographic identification or with a unique passive integrated transponder (PIT tag).

(b) Live reptiles of concern shall be permanently identified with a unique passive integrated transponder (PIT tag).

(c) Records of identification including PIT tag number where applicable, along with information about the specimen being identified (species, specimen name or number, gender, and age) must be maintained in the possessors records for as long as the specimen is possessed.

(2) For photographic identification the photograph of the specimen must include sufficient distinguishing characteristics (marks, scars, and patterns, etc.) to enable that particular specimen to be distinguished from other specimens of the same species.

(3) Passive integrated transponder (PIT tag) identification shall consist of the implantation of a unique PIT tag under the specimen's skin in a manner to maintain the PIT tag permanently in place.

(a) For snakes implantation shall be in specimens with a one (1) two (2) inch or greater diameter. The PIT tag shall be implanted in the back one-third (1/3) of the snake, forward of the anal plate.

(b) For lizards implantation shall be in the body cavity in close proximity to and forward of a rear leg or in a rear leg.

(c) The requirement pertaining to the location of the PIT tag implantation shall not apply to specimens implanted prior to acquisition of the animal or prior to the effective date of this rule.

(4) Exemption: Reptiles of concern being held for export by any person who possesses such reptile of concern in accordance with Sections 379.304 and 379.372, F.S., are exempt from the permanent identification requirement of this section for a period not to exceed 180 days provided such animals or their enclosures are permanently marked so as to be traceable to written records indicating the date such reptiles of concern were acquired.

~~(5)~~(4) Any person authorized to possess any venomous reptile not indigenous to Florida or reptile of concern must report any escapes to the Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement immediately upon discovery of escape.

~~(6)~~(5) Effective Date: The ~~all~~ permanent identification requirements for reptiles of concern in this rule shall not take effect until July 1, ~~2010~~ 2008, ~~for any live venomous reptile not indigenous to Florida or any reptile of concern possessed prior to January 1, 2008.~~

Rulemaking Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const., 379.303, 379.372, 379.373, 379.374, 379.3761, 379.3762 FS. History—New 1-1-08, Amended 1-8-08, _____.

BE ADVISED THAT THESE PROPOSED RULES MAY BE FILED FOR ADOPTION AS SOON AS POSSIBLE FOLLOWING THE COMMISSION MEETING AT WHICH THEY ARE CONSIDERED IF THE RULES ARE NOT CHANGED. IF CHANGED, THE RULES MAY BE FILED AS SOON AS POSSIBLE AFTER PUBLICATION OF A NOTICE OF CHANGE IN THE F.A.W.

NAME OF PERSON ORIGINATING PROPOSED RULE: Colonel Jim Brown, Director, Division of Law Enforcement
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Fish and Wildlife Conservation Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 17, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 30, 2009

FISH AND WILDLIFE CONSERVATION COMMISSION

Marine Fisheries

RULE NO.: 68B-27.018
RULE TITLE: Statewide Harvesting Restrictions

PURPOSE AND EFFECT: The purpose of this rule amendment is to modify the Fish and Wildlife Conservation Commission’s (Commission) oyster rule to give oyster harvesters additional time on the water. The harvest of oysters is jointly managed by the Division of Aquaculture and Consumer Services (DACS) and the Commission. DACS is currently developing a rule in response to a federal mandate for public health purposes that would require harvesters to deliver their oysters to a certified dealer by 11:30 a.m. May through July and by 12:00 Noon, August through October. These proposed DACS rules shorten the time oyster harvesters are allowed to be on the water in those months. Current Commission rules do not allow the harvest of oysters between sundown and sunrise and do not allow the tongs used to harvest oysters to be aboard a vessel that is in transit or moored in or on waters above any public oyster bed or privately controlled or owned bottom between sundown and sunrise. This provision prevents oyster harvesters from leaving the dock before sunrise when harvesting oysters. The proposed rule would modify the Commission’s oyster rules to allow harvesters to leave the dock, transit the bay, and arrive at the oyster bar prior to sunrise if tongs are properly stowed aboard the vessel.

The effect of this rule amendment will be to allow commercial oyster harvesters to leave the dock, transit the bay, and arrive at the oyster bar prior to sunrise with tongs properly stowed aboard the vessel, which would allow them additional time to harvest oysters and return to the dock in time to adhere to the proposed DACS regulations.

SUMMARY: Rule 68B-27.018, F.A.C., (Statewide Harvesting Restrictions) would be amended by removing the stipulation that a vessel must be moored and not in or on waters above any public oyster bed or privately controlled or owned bottoms between sundown to sunrise for hand tongs to be aboard a vessel. The new rule would allow hand tongs aboard a vessel between sundown and sunrise as long as the tongs are properly stowed and not in use.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will ___ or will not X have an impact on small business. A SERC has ___ or has not X been prepared by the agency.

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

RULEMAKING AUTHORITY: Article IV, Section 9, Florida Constitution.

LAW IMPLEMENTED: Article IV, Section 9, Florida Constitution.

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

DATES AND TIME: April 28-29, 2010, each day, during the regular meeting of the Commission, 8:30 a.m. – 5:00 p.m.

PLACE: Florida Public Safety Institute, 215 Academy Drive, Havana, FL 32333

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: The ADA Coordinator, (850)488-6411. 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 IS: Mark Robson, Director, Division of Marine Fisheries Management, 2590 Executive Center Circle East, Suite 201, Tallahassee, Florida 32301, (850)487-0554

THE FULL TEXT OF THE PROPOSED RULE IS:

68B-27.018 Statewide Harvesting Restrictions.

(1) through (5) No change.

(6) Ordinary hand tongs may be stowed in ~~moored~~ vessels from sundown until sunrise ~~provided said vessels are not moored on or in waters above any public oyster bed or privately controlled or owned bottoms.~~

Rulemaking Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History–New 3-10-91, Formerly 46-27.018, Amended.

BE ADVISED THAT THESE PROPOSED RULES MAY BE FILED FOR ADOPTION AS SOON AS POSSIBLE FOLLOWING THE COMMISSION MEETING AT WHICH THEY ARE CONSIDERED IF THE RULES ARE NOT CHANGED. IF CHANGED, THE RULES MAY BE FILED AS SOON AS POSSIBLE AFTER PUBLICATION OF A NOTICE OF CHANGE IN THE F.A.W.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mark Robson, Director, Division of Marine Fisheries Management, 2590 Executive Center Circle East, Suite 201, Tallahassee, Florida 32301, (850)487-0554

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Fish and Wildlife Conservation Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 18, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 5, 2010

FISH AND WILDLIFE CONSERVATION COMMISSION

Marine Fisheries

RULE NOS.:

68B-34.002

68B-34.003

RULE TITLES:

Definitions

Bonefish Size Limit; Bag and Possession Limits; Exception, Gear Restriction

PURPOSE AND EFFECT: The purpose of these rule amendments is to include all species of bonefish in state regulations, clarify that bonefish regulations apply within or without the state of Florida, and require bonefish to be landed in whole condition.

The effects of these rule amendments are to protect all species of bonefish found in waters off Florida and facilitate enforcement of bonefish regulations. Additionally, these rule amendments will extend Florida state regulations for bonefish into federal waters and protect bonefish from illegal sales or importation.

SUMMARY: Rule 68B-34.002, F.A.C., (Definitions) would be amended to include all species of the family Albulidae in the definition of “bonefish” and add a definition of “land.” Rule 68B-34.003, F.A.C., (Bonefish Size Limit; Bag and Possession Limits; Exception, Gear Restriction) would be amended to clarify that the size limit, bag and possession limits, gear restrictions, and prohibition of harvest of bonefish for commercial purposes apply within or without the state of Florida and specify that bonefish shall be landed in whole condition.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will ___ or will not X have an impact on small business. A SERC has ___ or has not X been prepared by the agency.

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

RULEMAKING AUTHORITY: Article IV, Section 9, Florida Constitution.

LAW IMPLEMENTED: Article IV, Section 9, Florida Constitution.

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

DATES AND TIME: April 28-29, 2010, each day, during the regular meeting of the Commission, 8:30 a.m. – 5:00 p.m.

PLACE: Florida Public Safety Institute, 215 Academy Drive, Havana, FL 32333

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: The ADA Coordinator, (850)488-6411. 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 RULES IS: Mark Robson, Director, Division of Marine Fisheries Management, 2590 Executive Center Circle East, Suite 201, Tallahassee, Florida 32301, (850)487-0554

THE FULL TEXT OF THE PROPOSED RULES IS:

68B-34.002 Definitions.

(1) "Bonefish" means any fish of the family Albulidae ~~species Albula vulpes~~, or any part thereof.

(2) through (3) No change.

(4) "Land" when used in connection with the harvest of fish, means the physical act of bringing the harvested fish ashore.

~~(5)~~(4) "Total length" means the straight line distance from the most forward point of the head with the mouth closed, to the farthest tip of the tail with the tail compressed or squeezed, while the fish is lying on its side.

PROPOSED EFFECTIVE DATE: July 1, 2010.

Rulemaking Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 3-1-88, Amended 1-1-98, Formerly 46-34.002, Amended 3-1-05, 7-1-06, 7-1-10.

68B-34.003 Bonefish Size Limit; Bag and Possession Limits; Exception, Gear Restriction.

(1) No person shall harvest within or without ~~in or from the waters of~~ the state at any time, or unnecessarily destroy, any bonefish of total length less than 18 inches.

(2) No person shall kill or harvest within or without ~~from the waters of~~ the state more than one bonefish per day, nor possess more than one bonefish at any time.

(3) No change.

(4) The harvest or attempted harvest of any bonefish within or without the state ~~in or from state waters~~ is prohibited except by use of hook and line gear.

(5) The harvest or possession of bonefish taken within or without the state for commercial purposes is prohibited.

(6) All bonefish harvested from Florida and federal waters shall be landed in whole condition. The possession of bonefish whether taken within or without the state, that have been deheaded, sliced, scaled, divided, filleted, ground, skinned, scaled, or deboned is prohibited. Mere evisceration or "gutting" of bonefish, or mere removal of gills from bonefish before landing is not prohibited.

PROPOSED EFFECTIVE DATE: July 1, 2010.

Rulemaking Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 3-1-88, Amended 1-1-98, Formerly 46-34.003, Amended 3-1-05, 7-1-10.

BE ADVISED THAT THESE PROPOSED RULES MAY BE FILED FOR ADOPTION AS SOON AS POSSIBLE FOLLOWING THE COMMISSION MEETING AT WHICH THEY ARE CONSIDERED IF THE RULES ARE NOT CHANGED. IF CHANGED, THE RULES MAY BE FILED AS SOON AS POSSIBLE AFTER PUBLICATION OF A NOTICE OF CHANGE IN THE F.A.W.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mark Robson, Director, Division of Marine Fisheries Management, 2590 Executive Center Circle East, Suite 201, Tallahassee, Florida 32301, (850)487-0554

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Fish and Wildlife Conservation Commission.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 18, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 5, 2010

FISH AND WILDLIFE CONSERVATION COMMISSION

Marine Fisheries

RULE NO.:

68B-56.002

RULE TITLE:

Commercial Licensing Requirements; Appeals

PURPOSE AND EFFECT: The purpose of this rule amendment is to modify the Commission's ballyhoo rule to allow the continuation of the ballyhoo lampara net endorsement program, which supplies the bulk of commercially available ballyhoo. The ballyhoo fishery is a small but valuable commercial fishery that supplies bait to recreational anglers and has an average annual worth over \$600,000. The 2008 stock assessment update indicated that the ballyhoo stock is not currently overfished and overfishing is not occurring. However, because ballyhoo are short-lived, they are subjected to large recruitment fluctuations caused by changes in climate and oceanographic conditions. In addition, the population migrates south to warm waters and forms highly vulnerable aggregated schools during winter in the Florida Keys. Due to the vulnerability of the winter aggregations and ballyhoo's susceptibility to recruitment fluctuations, the 2008 assessment update emphasized the need to keep ballyhoo stock biomass high relative to the maximum sustainable yield. Therefore, measures that would increase pressure on the stock are not recommended.

Specifically, this proposed rule would give the lampara net endorsement holders the option to sell their endorsement if they decide to leave the fishery. Currently, if an endorsement holder decides to leave the fishery the endorsement cannot be transferred or renewed. If the rules are not amended, the lampara net endorsement program will eventually disappear because no new harvesters will be able to enter the fishery.

The effect of these rule amendments will be to allow the continuation of the ballyhoo lampara net endorsement program, which supplies the bulk of commercially available ballyhoo while not significantly increasing pressure on the ballyhoo stock.

SUMMARY: Rule 68B-56.002, F.A.C. (Commercial Licensing Requirements; Appeals) would be amended by limiting the number of commercial lampara net endorsements to the current number and would allow all endorsement holders to sell their endorsement to other commercial fishers during a transfer window from July 1 through March 31, annually. The proposed rules would also restrict any one entity from holding more than two endorsements at any one time, prohibit leasing of endorsements, allow only one endorsement on a saltwater products license, and allow only one saltwater products license to be associated with a single endorsement.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will ___ or will not X have an impact on small business. A SERC has ___ or has not X been prepared by the agency.

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

RULEMAKING AUTHORITY: Article IV, Section 9, Florida Constitution.

LAW IMPLEMENTED: Article IV, Section 9, Florida Constitution.

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

DATES AND TIME: April 28-29, 2010, each day, during the regular meeting of the Commission, 8:30 a.m. – 5:00 p.m.

PLACE: Florida Public Safety Institute, 215 Academy Drive, Havana, FL 32333

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: The ADA Coordinator, (850)488-6411. 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 IS: Mark Robson, Director, Division of Marine Fisheries Management, 2590 Executive Center Circle East, Suite 201, Tallahassee, Florida 32301, (850)487-0554

THE FULL TEXT OF THE PROPOSED RULE IS:

68B-56.002 Commercial Licensing Requirements; Appeals.

(1) No change.

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

(d) In lieu of the requirements specified in paragraph (b), a person who has purchased another ballyhoo fisher's vessel between July 1, 2001, and May 1, 2003, ~~the date this rule becomes effective~~ shall receive a lampara net endorsement, provided that the seller's entire ballyhoo landing history was specifically part of the sale-purchase agreement and the seller's landings are sufficient to meet the criteria in paragraph (b). Additional proof of purchased ballyhoo landings history is a copy of a contract or bill of sale specifically identifying the seller's ballyhoo landings history as one of the items included in the sale of the vessel, or a letter from the seller to the Commission describing what specifically was included in the sale of the vessel.

(3) Effective July 1, 2010, Beginning in the 2004-2005 license year and until July 1, 2008, only persons holding a valid lampara net endorsement during the 2003-2004 license year will be eligible for issuance of a lampara net endorsement renewal and no new lampara net endorsements will be issued during the period, and no lampara net endorsements will be renewed or replaced except those that were issued pursuant to subsection (2).

(a) Beginning in the 2004-2005 license year and in subsequent license years ~~until July 1, 2008~~, persons, corporations, or other entities holding a lampara net endorsement ~~that was active in the 2003-2004 license year~~ or an immediate family member of that person must request renewal of the lampara net endorsement before September 30 of each year. Failure to renew the lampara net endorsement by September 30 of each year will result in forfeiture of the endorsement. ~~The Florida Fish and Wildlife Conservation Commission may consider extending the moratorium on issuance of lampara net endorsements at any time prior to July 1, 2008.~~

(b) No person, firm, or corporation shall hold more than two lampara net endorsements at any one time. Lampara net endorsements shall not be renewed if at least 10,000 pounds of ballyhoo or 55,000 individual ballyhoo are not landed by the endorsement holder in any one of the three most recent license years prior to application for renewal of the endorsement.

(c) A lampara net endorsement cannot be applied to more than one of an applicant's saltwater products licenses at any one time.

(d) No saltwater products license will be issued with more than one lampara net endorsement. In the event of death or disability of a person holding an active lampara net endorsement, the endorsement may be transferred by the person or the executor of the person's estate to a member of his or her immediate family.

(e) In the event of death or permanent disability of a person holding an active lampara net endorsement, the endorsement may be transferred by the person or the executor of the person's estate to a member of his or her immediate

family within 12 months of the date of death or disability and upon payment of all outstanding fees, fines, or penalties to the Commission in full.

(f)(e) Until such time that a fee is required for a lampara net endorsement, lampara net endorsement holders shall continue to renew their purse seine endorsements, as specified in Section 379.361(1), F.S.

(4) Requalification. Lampara net endorsements shall not be renewed if the endorsement holder does not land and document at least 10,000 pounds of ballyhoo or 55,000 individual ballyhoo per lampara net endorsement in any one of the three most recent license years prior to application for renewal of the endorsement. Once requalified, the endorsement will be valid for three license years, but must still be renewed annually as required by subsection (3).

(5)(4) Appeals. The Director of the Division of Marine Fisheries, or one or more designees of the director, shall consider disputes and other problems arising from the initial denial of lampara net endorsements. The Director shall submit a recommendation to the Executive Director of the Commission for resolution of the appeal, which will recommend either allocation of an endorsement to the appellant or upholding the denial of an endorsement.

(a) through (c) No change.

(6) Leasing Prohibited. The leasing or renting of lampara net endorsements is prohibited.

(7) Transferability. Lampara net endorsements are transferable upon approval of the Commission under the following conditions:

(a) A lampara net endorsement may be sold to an otherwise qualified buyer at fair market value.

(b) The buyer must hold a valid saltwater products license with a valid purse seine endorsement.

(c) A person who wishes to transfer an endorsement shall submit a notarized statement of intent within 72 hours of the final notarized signature, that has been signed by both parties to the transaction, hand delivered, or sent by United States Postal Service certified mail, return receipt requested, to the Commission between July 1 and March 31 each license year. Requests received by the Commission before July 1 or post marked after March 31 of the current license year will not be processed. The statement of intent shall include the following information:

1. The name, address, and SPL number of seller;
2. The name, address, and SPL number of buyer; and
3. The selling price.

(d) A lampara net endorsement shall not be transferred or issued until all license fees, surcharges, and any other outstanding fees, fines, or penalties owed to the Commission by either party to the transaction have been paid in full.

(e) Upon receipt of a lampara net endorsement, the transferee has three license years, including the current license year, to produce qualifying ballyhoo landings pursuant to

subsection (4) in order to requalify the endorsement. Once requalified, the endorsement will be valid for three license years, but must still be renewed annually as required by subsection (3).

PROPOSED EFFECTIVE DATE: July 1, 2010.

Remaking Specific Authority Art. IV, Sec. 9, Fla. Cost. Law Implemented Art. IV, Sec. 9, Fla. Cost. History–New 5-1-03, Amended 7-1-10.

BE ADVISED THAT THESE PROPOSED RULES MAY BE FILED FOR ADOPTION AS SOON AS POSSIBLE FOLLOWING THE COMMISSION MEETING AT WHICH THEY ARE CONSIDERED IF THE RULES ARE NOT CHANGED. IF CHANGED, THE RULES MAY BE FILED AS SOON AS POSSIBLE AFTER PUBLICATION OF A NOTICE OF CHANGE IN THE F.A.W.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mark Ribosome, Director, Division of Marine Fisheries Management, 2590 Executive Center Circle East, Suite 201, Tallahassee, Florida 32301, (850)487-0554

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Fish and Wildlife Conservation Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 18, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: February 5, 2010

DEPARTMENT OF FINANCIAL SERVICES

Division of Funeral, Cemetery, and Consumer Services

RULE NO.: 69K-1.001
 RULE TITLE: List of Approved Forms; Incorporation by Reference

PURPOSE AND EFFECT: Proposed rule amendment to delete subsection 69K-1.001(5), F.A.C., and referenced form DFS-RTF-1, "Preneed Funeral Contract Regulatory Trust Fund Remittance," and to delete form DFS-TFR-1, "Preneed Funeral Contract Consumer Protection Trust Fund Remittance," from subsection 69K-1.001(17), F.A.C. Subsection 69K-1.001(17), F.A.C., is changed to reference new form DFS-N1-2013, "Quarterly Preneed Remittance Invoice." The new form can be used to collect remittances for the Preneed Contract Consumer Protection Trust Fund as well as the Preneed Funeral Contract Regulatory Trust Fund Remittance, thereby streamlining the administrative process and conserving resources. The proposed rule is renumbered to reflect these changes.

SUMMARY: The proposed rule amendment incorporates a new form that replaces and consolidates the functions of two existing forms, which are deleted.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

RULEMAKING AUTHORITY: 497.101(8), 497.103(5)(b), 497.141(2), (12)(f), 497.142(10)(g), (12), 497.146, 497.147(4)(a), (d), (5), 497.263(2)(a), 497.264(2)(a), 497.266(2), 497.269, 497.270(2), 497.272(7), 497.283(2)(c), 497.287(2), 497.367(2), 497.370(1), 497.375(1), 497.380(4), (12), 497.382(1), (2), 497.385(1)(a), (g)1., (2)(f), (g), 497.453(1)(a), (4)(b), (5)(a), (b), (7)(a), (8), 497.454(1), 497.456(13)(f), 497.461(4), (8), (12), (16), 497.462(2), (10), 497.464(3), 497.466(5)(c), (8)(a), 497.550(2), 497.551(3), 497.553(2), (6)(a), 497.554(2), 497.602(2)(a), 497.603(2), 497.604(2)(a), (6), 497.606(2)(a), (6), (9)(a), 497.608(2) FS.

LAW IMPLEMENTED: 497.101(8), 497.103(2)(c), 497.149, 497.141, 497.142, 497.143, 497.146, 497.147, 497.263, 497.264, 497.266, 497.269, 497.270, 497.272, 497.281, 497.283, 497.287, 497.365, 497.367, 497.368, 497.369, 497.370, 497.373, 497.374, 497.375, 497.378, 497.379, 497.380, 497.382, 497.385, 497.453, 497.454, 497.456, 497.461, 497.462, 497.464, 497.466, 497.550, 497.551, 497.553, 497.554, 497.602, 497.603, 497.604, 497.606, 497.608 FS.

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

DATE AND TIME: Tuesday, April 20, 2010, 10:00 a.m.
PLACE: Alexander Building, 2020 Capital Circle Southeast, Tallahassee, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Doug Shropshire, (850)413-3039. 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 IS: Doug Shropshire, Executive Director, Board of Funeral, Cemetery, and Consumer Services, Alexander Building, 2020 Capital Circle S.E., Tallahassee, Florida 32399-0361 or (850)413-3039

THE FULL TEXT OF THE PROPOSED RULE IS:

69K-1.001 List of Approved Forms; Incorporation by Reference.

The following forms are hereby adopted and incorporated by reference, and can be obtained from the Department by writing to the Department of Financial Services, Division of Funeral, Cemetery, and Consumer Services, 200 East Gaines Street,

Tallahassee, Florida 32399-0361, by logging on to the Department's website at <http://www.myfloridacfo.com/FuneralCemetery/>, or by telephoning (850)413-3039:

(1) through (4) No change.

~~(5) DFS RTF 1, "Preneed Funeral Contract Regulatory Trust Fund Remittance," Rev. 10-06.~~

(6) through (16) renumbered (5) through (15) No change.

~~(16) DFS-N1-2013, "Quarterly Preneed Remittance Invoice," Eff. _____.~~

~~(17) DFS TFR 1, "Preneed Funeral Contract Consumer Protection Trust Fund Remittance," Rev. 10-06.~~

(18) through (102) renumbered (17) through (101) No change.

Rulemaking Specific Authority 497.101(8), 497.103(5)(b), 497.141(2), (12)(f), 497.142(10)(g), (12), 497.146, 497.147(4)(a), (d), (5), 497.263(2)(a), 497.264(2)(a), 497.266(2), 497.269, 497.270(2), 497.272(7), 497.283(2)(c), 497.287(2), 497.367(2), 497.370(1), 497.375(1), 497.380(4), (12), 497.382(1), (2), 497.385(1)(a), (g)1., (2)(f), (g), 497.453(1)(a), (4)(b), (5)(a), (b), (7)(a), (8), 497.454(1), 497.456(13)(f), 497.461(4), (8), (12), (16), 497.462(2), (10), 497.464(3), 497.466(5)(c), (8)(a), 497.550(2), 497.551(3), 497.553(2), (6)(a), 497.554(2), 497.602(2)(a), 497.603(2), 497.604(2)(a), (6), 497.606(2)(a), (6), (9)(a), 497.608(2) FS. Law Implemented 497.101(8), 497.103(2)(c), 497.149, 497.141, 497.142, 497.143, 497.146, 497.147, 497.263, 497.264, 497.266, 497.269, 497.270, 497.272, 497.281, 497.283, 497.287, 497.365, 497.367, 497.368, 497.369, 497.370, 497.373, 497.374, 497.375, 497.378, 497.379, 497.380, 497.382, 497.385, 497.453, 497.454, 497.456, 497.461, 497.462, 497.464, 497.466, 497.550, 497.551, 497.553, 497.554, 497.602, 497.603, 497.604, 497.606, 497.608 FS. History—New 9-28-03, Formerly 3F-5.010, 69K-5.010, Amended 1-24-08, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Doug Shropshire, Executive Director, Board of Funeral, Cemetery, and Consumer Services, Department of Financial Services

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Alex Sink, Chief of Financial Officer, Department of Financial Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 9, 2010

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

DEPARTMENT OF FINANCIAL SERVICES

Division of Funeral, Cemetery, and Consumer Services

RULE NO.: 69K-5.0024 **RULE TITLE:** Remittances to the Regulatory Trust Fund

PURPOSE AND EFFECT: The proposed rule amendment deletes language from subsection (3) that prohibits preneed licensees from making direct line item charges to customers on preneed contracts for the fee licensees must remit to the Regulatory Trust Fund. New language is also added to

subsection (3) to clarify that any refund of such fees to customers does not relieve preneed licensees of their obligation to remit to the Fund. The proposed rule amendment deletes and replaces all existing language in subsection (6), to reflect the deletion of Form DFS-RTF-1, "Preneed Funeral Contract Regulatory Trust Fund Remittance." That form is replaced by new Form DFS-N1-2013, "Quarterly Preneed Remittance Invoice." The new form serves to collect remittances from both the Regulatory Trust Fund and the Preneed Funeral Contract Consumer Protection Trust Fund, thereby streamlining the administrative process.

SUMMARY: The proposed amendment removes the prohibition against preneed licensees from charging customers, as a separate line item, the fee remitted to the Regulatory Trust Fund and clarifies procedures relating to the refund of such fees. The proposed amendment also deletes and replaces a form and related language.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

RULEMAKING AUTHORITY: 497.103, 497.453(1) FS.

LAW IMPLEMENTED: 497.453(6), (9) FS.

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

DATE AND TIME: Tuesday, April 20, 2010, 10:00 a.m.

PLACE: Alexander Building, 2020 Capital Circle Southeast, Tallahassee, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Doug Shropshire, (850)413-3039. 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 IS: Doug Shropshire, Executive Director, Board of Funeral, Cemetery, and Consumer Services, Alexander Building, 2020 Capital Circle S.E., Tallahassee, Florida 32399-0361, (850)413-3039

THE FULL TEXT OF THE PROPOSED RULE IS:

69K-5.0024 Remittances to the Regulatory Trust Fund.

The amounts required to be remitted by a preneed licensee to the Regulatory Trust Fund, pursuant to the provisions of Section 497.453(9), F.S., shall be determined in accordance with the following criteria:

(1) through (2) No change.

(3) Assessments required to be remitted pursuant to Section 497.453, F.S., shall not be payable from funds subject to the trust provisions of Sections 497.458 and 497.464, F.S.; ~~nor shall they be included in a preneed contract and passed on to the purchaser.~~ Refund of a regulatory trust fund fee by a licensee to its customer shall not relieve the licensee of its obligation to remit regarding that contract under Section 497.453(6), F.S.

(4) through (5) No change.

(6) Quarterly preneed remittances shall be made by preneed licensees using Department form DFS-N1-2013, Quarterly Preneed Remittance Invoice, (Effective: _____), as incorporated by reference in Rule 69K-1.001, F.A.C. The Department shall provide the form to the preneed licensee each quarter, pre-filled out with data specific to the preneed licensee. All remittances shall be sent with the Department of Financial Services Regulatory Trust Fund Remittance Form. This form, DFS-RTF-1, effective 5-13-97, which is hereby incorporated by reference, and shall be available from the Department of Financial Services, Board of Funeral, Cemetery, and Consumer Services, 200 East Gaines Street, Tallahassee, Florida 32399-0316. Checks should be made payable to the Department of Financial Services. Remittances should be submitted to the board office within 60 days following a calendar quarter.

(7) through (8) No change.

Rulemaking Specific Authority 497.103, 497.453(1) FS. Law Implemented 497.453(6), (9) FS. History—New 5-13-97, Amended 12-12-00, Formerly 3F-5.0024, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Doug Shropshire, Executive Director, Board of Funeral, Cemetery, and Consumer Services, Department of Financial Services

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Alex Sink, Chief of Financial Officer, Department of Financial Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 16, 2010

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

DEPARTMENT OF FINANCIAL SERVICES

Division of Funeral, Cemetery, and Consumer Services

RULE NO.: 69K-10.003
 RULE TITLE: Remittances to the Preneed Funeral Contract Consumer Protection Trust Fund

PURPOSE AND EFFECT: The proposed rule amendment adds new subsection (3) to the rule, which specifies that quarterly preneed remittances made by preneed licensees to the Preneed Funeral Contract Consumer Protection Trust Fund are to be made using new form DFS-N1-2013, "Quarterly Preneed Fund Remittance Invoice," which the Department shall provide to preneed licensees on a quarterly basis. The proposed amendment also includes a technical correction.

SUMMARY: The proposed amendment adds new subsection (3) to the rule, informing preneed licensees that quarterly preneed remittances shall be made using new form DFS-N1-2013.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

RULEMAKING AUTHORITY: 497.103, 497.461(4), 497.462(10), 497.464 FS.

LAW IMPLEMENTED: 497.456(2), 497.458, 497.461, 497.462, 497.464 FS.

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

DATE AND TIME: Tuesday, April 20, 2010, 10:00 a.m.
PLACE: Alexander Building, 2020 Capital Circle Southeast, Tallahassee, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Doug Shropshire, (850)413-3039. 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 IS: Doug Shropshire, Executive Director, Board of Funeral, Cemetery, and Consumer Services, Alexander Building, 2020 Capital Circle S.E., Tallahassee, Florida 32399-0361, (850)413-3039

THE FULL TEXT OF THE PROPOSED RULE IS:

69K-10.003 Remittances to the Preneed Funeral Contract Consumer Protection Trust Fund.

(1) No change.

(2) Each preneed licensee offering the sale of insurance or by establishing a trust pursuant to Section 497.458 or 497.464, F.S., shall remit the sum of \$1.00 per preneed contract. Each preneed licensee utilizing Sections 497.461~~4464~~ and 497.462, F.S., shall remit the sum of \$5.00 for each preneed contract.

(3) Quarterly preneed remittances shall be made by preneed licensees using Department form DFS-N1-2013, "Quarterly Preneed Remittance Invoice," (Eff. _____), as incorporated by reference in Rule 69K-1.001, F.A.C. The Department shall provide the form to the preneed licensee each quarter, pre-filled out with data specific to the preneed licensee.

Rulemaking Specific Authority 497.103, 497.461(4), 497.462(10), 497.464 FS. Law Implemented 497.456(2), 497.458, 497.461, 497.462, 497.464 FS. History--New 3-19-97, Amended 8-2-01, Formerly 3F-10.003, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Doug Shropshire, Executive Director, Board of Funeral, Cemetery, and Consumer Services, Department of Financial Services

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Alex Sink, Chief of Financial Officer, Department of Financial Services

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 8, 2010

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

FINANCIAL SERVICES COMMISSION

OIR – Insurance Regulation

RULE NO.: 69O-137.002
 RULE TITLE: Annual Audited Financial Reports

PURPOSE AND EFFECT: To adopt the model audit rule of the National Association of Insurance Commissioners (NAIC) as required by Section 624.424(8)(e), Florida Statutes.

SUMMARY: Section 624.424(8)(e), Florida Statutes, provides that the Financial Services Commission must adopt rules in substantial conformity with the 1998 NAIC Model Audit Rule or subsequent amendments. The NAIC has adopted subsequent amendments to the 1998 Model Audit Rule. The rule being proposed amends the existing rule to conform with the subsequent amendments adopted by NAIC.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

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

RULEMAKING AUTHORITY: 624.308(1), 624.424(8)(e) FS.
LAW IMPLEMENTED: 624.307(1), 624.324, 624.424(8) FS.
IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: April 23, 2010, 9: 30 a.m.

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

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Paul Johns, Life and Health Financial Oversight, Office of Insurance Regulation, E-mail Paul.Johns@flor.com

THE FULL TEXT OF THE PROPOSED RULE IS:

690-137.002 Annual Audited Financial Reports.

(1) The purpose of this rule is to improve the Office's surveillance of the financial condition of insurers by requiring an annual audit examination by independent Certified Public Accountants of the financial statements reporting the financial position and the results of operations of insurers by: (a) independent certified public accountants (b) Communication of Internal Control Related Matters Noted in an audit, and (c) Management's Report of Internal Control over Financial Reporting.

(2)(a) Every authorized insurer, as defined in subsection (3), below, shall be subject to this rule. Insurers having direct premiums written in this state of less than \$1,000,000 in any calendar year and fewer than 1,000 policyholders or certificateholders of directly written policies nationwide at the end of the calendar year shall be exempt from this rule for the ~~that~~ year (unless the Office makes a specific finding that compliance is necessary for the Office to carry out statutory responsibilities), except that insurers having assumed premiums pursuant to contracts and/or treaties of reinsurance of \$1,000,000 or more will not be so exempt. Any insurer subject to an exemption must submit by March 1 following the year to which the exemption applies an affidavit sworn to by a responsible officer of the insurer specifying the amount of direct premiums written in this state and number of policyholders or certificateholders. Form OIR-DO-1431, (Rev. 7/01), "Audited Financial Statements Exemption Affidavit", is hereby incorporated by reference to be the form specified in Section 624.424(8)(b), Florida Statutes, for exemptions from

compliance with the filing of an annual audited financial statement. This form is available from Life & Health Financial Oversight or Property & Casualty Financial Oversight at 200 East Gaines Street, Tallahassee, Florida 32399. The form is also available from the Office of Insurance Regulation's website located at the following address: www.flor.com.

(b) Foreign or alien insurers filing Audited Financial Reports in another state, pursuant to ~~that the other~~ state's requirement for filing of Audited Financial Reports which has been found by the Office to be substantially similar to the requirements herein, may, in lieu of the other requirements herein, be exempt from subsections (4) through (13) of this rule if: requirements of this rule, file the following with the Office in accordance with the filing dates referenced below:

1. A copy of the Audited Financial Report, Communications of Internal Control Related Matters Noted in an Audit, Report on Significant Deficiencies in Internal Controls, and the Accountant's Letter of Qualifications which are filed with the other state are made available to the Office upon request in accordance with the filing dates specified in subsections (4), (11) and (12), respectively (Canadian insurers may submit accountants' reports as filed with the Office of the Superintendent of Financial Institutions, Canada); and the Canadian Dominion Office.

2. A copy of any Notification of Adverse Financial Condition Report filed with the other state are made available to the Office upon request within the time specified in subsection (10).

(c) This rule shall not prohibit, preclude, or in any way limit the Office from ordering and/or conducting and/or performing examinations of insurers under its rules.

(3) Definitions.

(a) "Audited Financial Report" means and includes those items specified in subsection (5), below.

~~(a)(b)~~ "Accountant" and "Independent Certified Public Accountant" means an independent Certified Public Accountant or accounting firm in good standing with the American Institute of Certified Public Accountants (AICPA) licensing authority or accrediting authority for Certified Public Accountants and in all states in which he or she is licensed to the accountant practices. For Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.

(b) "Affiliate" of, or person "affiliated" with, a specific person, is a person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(c) "Audit committee" means a committee (or equivalent body) established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or Group of insurers, and audits of financial statements of the insurer or Group of insurers. The Audit committee of any entity that controls a Group of insurers may be deemed to be the Audit committee for one or more of these controlled insurers solely for the purposes of this

regulation at the election of the controlling person. Refer to paragraph (14)(e) for exercising this election. If an Audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the Audit committee. "Office" means the Office of Insurance Regulation.

(d) "Audited Financial Report" means and includes those items specified in subsection (5), below. "Insurer" means an authorized insurer as defined in Section 624.09, Florida Statutes.

(e) "Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.

(f) "Independent board member" has the same meaning as described in paragraph (14)(c).

(g) "Insurer" means an authorized insurer as defined in Section 624.09, Florida Statutes.

(h) "Group of insurers" means those licensed insurers included in the reporting requirements of Chapter 628, Part IV, Florida Statutes or a set of insurers as identified by management, for the purpose of assessing the effectiveness of Internal control over financial reporting.

(i) "Internal control over financial reporting" means a process effected by an entity's board of directors, management and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements, i.e., those items specified in subparagraphs (5)(b)2. through 7. of this regulation, and includes those policies and procedures that:

1. Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflects the transactions and dispositions of assets;

2. Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, i.e., those items specified in subparagraphs (5)(b)2. through 7. of this regulation, and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and

3. Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements, i.e., those items specified in subparagraphs (5)(b)2. through 7. of this regulation.

(j) "Office" means the Office of Insurance Regulation.

(k) "SEC" means the United States Securities and Exchange Commission.

(l) "Section 404" means Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations promulgated thereunder.

(m) "Section 404 Report" means management's report on "internal control over financial reporting" as defined by the SEC and the related attestation report of the independent certified public accountant as described in paragraph (3)(a).

(n) "SOX Compliant Entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002: (i) the preapproval requirements of Section 201 (Section 10A(i) of the Securities Exchange Act of 1934); (ii) the Audit committee independence requirements of Section 301 (Section 10A(m)(3) of the Securities Exchange Act of 1934); and (iii) the Internal control over financial reporting requirements of Section 404 (Item 308 of SEC Regulation S-K).

(4) General Requirements Related to Filing and Extensions for Filing of Annual Audited Financial Reports- and Audit Committee Appointment.

(a) All insurers shall have an annual audit by an independent Certified Public Accountant and shall file an Audited Financial Report with the Office on or before June 1 for the year ended December 31 immediately preceding. The Office may require an insurer to file an Audited Financial Report earlier than June 1 with ninety (90) days advance notice to the insurer.

(b) Extensions of the June 1 filing date may be granted by the Office for thirty-day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting an extension and determination by the Office of good cause for an extension. The request for extension must be submitted in writing not less than ten (10) days prior to the due date in sufficient detail to permit the Office to make an informed decision with respect to the requested extension.

(c) If an extension is granted in accordance with the provisions in paragraph (4)(b), a similar extension of thirty (30) days is granted to the filing of Management's Report of Internal Control over Financial Reporting.

(d) Every insurer required to file an annual Audited Financial Report pursuant to this regulation shall designate a group of individuals as constituting its Audit committee, as defined in subsection (3). The Audit committee of an entity that controls an insurer may be deemed to be the insurer's Audit committee for purposes of this regulation at the election of the controlling person.

(5) Contents of Annual Audited Financial Report.

(a) The Annual Audited Financial Report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows, and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the Office of the state of domicile.

(b) The Annual Audited Financial Report shall include the following:

1. Report of independent Certified Public Accountant.

- 2. Balance sheet reporting admitted assets, liabilities, capital and surplus.
- 3. Statement of operations.
- 4. Statement of cash flows.
- 5. Statement of changes in capital and surplus.

6. Notes to financial statements. These notes shall be those required by the appropriate NAIC Annual Statement Instructions and the NAIC Accounting Practices and Procedures Manual and any other notes required by generally accepted accounting principles and shall also include: ~~a~~
~~A~~ Reconciliation of differences, if any, between the audited statutory financial statements and the Annual Statement filed pursuant to Section 624.424(1), Florida Statutes, with a written description of the nature of these differences.

~~b. A summary of ownership and relationships of the insurer and all affiliated companies.~~

7. The financial statements included in the Audited Financial Report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the Annual Statement of the insurer filed with the Office, and the financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. However, in the first year in which an insurer is required to file an Audited Financial Report, the comparative data may be omitted.

(6) Designation of Independent Certified Public Accountant.

(a) Each insurer required by this rule to file an annual Audited Financial Report must, by December 31 of the year subject to audit, register with the Office in writing the name and address of the independent Certified Public Accountant or accounting firm (~~generally referred to in this rule as the "accountant"~~) retained to conduct the annual audit set forth in this rule.

(b) The insurer shall obtain a letter from the accountant, and file a copy with the Office, stating that the accountant is aware of the provisions of the Insurance Code and the Rules and Regulations of the ~~Insurance Office of the state of domicile~~ that relate to accounting and financial matters, and affirming that the accountant ~~he~~ will express his or her opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that Insurance Department Office, specifying the exceptions as he or she may believe appropriate.

(c) If an accountant who was the accountant for the immediately preceding filed Audited Financial Report is dismissed or resigns, the insurer shall within five (5) business days notify the Office of this event. The insurer shall also furnish the Office with a separate letter within ten (10) business days of the above notification stating whether in the twenty-four (24) months preceding that event there were any disagreements with the former accountant on any matter of

accounting principles or practices, financial statement disclosure, or auditing scope or procedure; which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him or her to make reference to the subject matter of the disagreement in connection with his or her opinion. The disagreements required to be reported in response to this paragraph include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction.

~~(4)~~ Disagreements contemplated by this subsection are those that occur at the decision-making level, i.e., between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter, and if not, stating the reasons for which he or she does not agree; and the insurer shall furnish the responsive letter from the former accountant to the Office together with its own.

(7) Qualifications of Independent Certified Public Accountant.

(a) The Office shall not recognize any person or firm as a qualified independent Certified Public Accountant if the person or firm that is:

1. Is not in good standing with the American Institute of Certified Public Accountants (AICPA) and licensing authority or accrediting authority for Certified Public Accountants in all states in which the accountant is licensed to practices, or for a Canadian or British company, that is not a chartered accountant; or

2. Has either directly or indirectly entered into an agreement of indemnity or release from liability (collectively referred to as indemnification) with respect to the audit of the insurer.

(b) Except as otherwise provided in this rule herein, the Office shall recognize an independent Certified Public Accountant ~~shall be recognized~~ as qualified as long as he or she prepares reports, filings, and statements as required by the Florida Insurance Code, and conforms to the standards of his or her profession as contained in the Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the Florida Board of Public Accountancy, or similar code.

~~(c) 1. A~~ The lead (or coordinating) audit partner (having primary responsibility for the audit) or other person responsible for rendering a report may not act in that capacity for more than five (5) seven (7) consecutive years. The Following any period of service that person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of five (5) consecutive two (2) years. An insurer may make application to the Office for relief from the above rotation requirement based on an unusual hardship to the

insurer and a determination by the Office that the accountant is exercising independent judgement that is not unduly influenced by the insurer. This application should be made at least thirty (30) days before the end of the calendar year. The Office may consider ~~considering~~ the following factors in determining if the relief should be granted:

- a.1. Number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm;
- b.2. Premium volume of the insurer; and
- c.3. Number of jurisdictions in which the insurer transacts business.

2. The insurer shall file, with its annual statement filing, the approval for relief from paragraph (7)(c) with the states that it is licensed in or doing business in and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic form acceptable to the NAIC.

(d) The Office shall neither ~~not~~ recognize as a qualified independent Certified Public Accountant, nor accept any annual Audited Financial Report prepared in whole or in part by any natural person who:

- 1. Has been found guilty of, or has pleaded guilty or nolo contendere to, any felony or crime punishable by imprisonment of one year or more under the law of the United States or any state thereof or under the law of any other country, which involves moral turpitude, without regard to whether a judgement of conviction has been entered by the court having jurisdiction in such case;
- 2. Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this rule; or
- 3. Has failed to detect or disclose material information in previous reports filed under the provisions of this rule.

(e) In accordance with the provisions of Sections 624.307 and 624.324, Florida Statutes, and in its own rules of departmental practice, the Office shall conduct a hearing to determine whether an independent ~~a~~ Certified Public Accountant is qualified if Office records do not contain sufficient information to demonstrate that the Certified Public Accountant is qualified. Considering the evidence presented, the Office shall conclude that the accountant is not qualified for purposes of expressing his or her opinion on the financial statements in the annual Audited Financial Report made pursuant to this rule, if the accountant fails to meet the qualifications and other requirements of this rule. If the accountant is found to be not qualified, the Office shall require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this rule. Upon determination by the Office that the accountant is not qualified to express an opinion on the financial statements in the annual Audited Financial Report made pursuant to this rule the insurer may request a hearing pursuant to Section 120.57, Florida Statutes.

(f) A qualified independent certified accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under Chapter 631, Florida Statutes, the mediation or arbitration provisions shall operate at the option of the statutory successor.

(g)1. The Office shall not recognize as a qualified independent certified public accountant, nor accept an annual Audited Financial Report, prepared in whole or in part by an accountant who provides to an insurer, contemporaneously with the audit, the following non-audit services:

a. Bookkeeping or other services related to the accounting records or financial statements of the insurer;

b. Financial information systems design and implementation;

c. Appraisal or valuation services, fairness opinions, or contribution in-kind reports;

d. Actuarially-oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification ("opinion") on an insurer's reserves if the following conditions have been met:

(i) Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions;

(ii) The insurer has competent personnel (or engages a third party actuary) to estimate the reserves for which management takes responsibility; and

(iii) The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves;

e. Internal audit outsourcing services;

f. Management functions or human resources;

g. Broker or dealer, investment adviser, or investment banking services;

h. Legal services or expert services unrelated to the audit;

or
i. Any other services that the Office determines, by rule, are impermissible.

2. In general, the principles of independence with respect to services provided by the qualified independent certified public accountant are largely predicated on three basic principles, violations of which would impair the accountant's independence. The principles are that the accountant cannot function in the role of management, cannot audit his own work, and cannot serve in an advocacy role for the insurer.

(h) Insurers having direct written and assumed premiums of less than \$100,000,000 in any calendar year may request an exemption from subparagraph (g)1. The insurer shall file with the Office a written statement discussing the reasons why the insurer should be exempt from these provisions. If the Office finds, upon review of this statement, that compliance with this regulation would constitute a financial or organizational hardship upon the insurer, an exemption may be granted.

(i) A qualified independent certified public accountant who performs the audit may engage in other non-audit services, including tax services that are not described in subparagraph (g)1. or that do not conflict with subparagraph (g)2. only if the activity is approved in advance by the Audit committee, in accordance with paragraph (j).

(j) All auditing services and non-audit services provided to an insurer by the qualified independent certified public accountant of the insurer shall be preapproved by the Audit committee. The preapproval requirement is waived with respect to non-audit services if the insurer is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity or:

1. The aggregate amount of all such non-audit services provided to the insurer constitutes not more than five percent (5%) of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the non-audit services are provided;

2. The services were not recognized by the insurer at the time of the engagement to be non-audit services; and

3. The services are promptly brought to the attention of the Audit committee of the insurer and approved prior to the completion of the audit by the Audit committee or by one or more members of the Audit committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the Audit committee.

(k) The Audit committee may delegate to one or more designated members of the Audit committee the authority to grant the preapprovals required by subsection (1). The decisions of any member to whom this authority is delegated shall be presented to the full Audit committee at each of its scheduled meetings.

(l)1. The Office shall not recognize an independent certified public accountant as qualified for a particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for that insurer, was employed by the independent certified public accountant and participated in the audit of that insurer during the one-year period preceding the date that the most current statutory opinion is due. This subsection shall only apply to partners and senior managers involved in the audit. An insurer may make application to the Office for relief from the above requirement on the basis of unusual circumstances.

2. The insurer shall file, with its annual statement filing, the approval for relief from paragraph (l)(1) with the states that it is licensed in or doing business in and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

(8) Consolidated or Combined Audits.

(a) An insurer may make written application to the Office for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies which utilizes a pooling or one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves, and the insurer cedes all of its direct and assumed business to the pool. In these cases, a columnar consolidating or combining worksheet shall be filed with the report, as follows:

1. Amounts shown on the consolidated or combined Audited Financial Report shall be shown on the worksheet.

2. Amounts for each insurer subject to this section shall be stated separately.

3. Noninsurance operations may be shown on the worksheet on a combined or individual basis.

4. Explanations of consolidating and eliminating entries shall be included: and

5. A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the Annual Statements of the insurers.

(b)1. The application for approval to consolidate is required each year, and must be filed with the Office prior to the end of the calendar year for which the approval is being granted, except that applications for approval will be accepted after the end of such calendar year subject to the imposition of an administrative fine on each insurer involved in such application as provided for in Section 624.4211(2), Florida Statutes.

2. The amount of the fine shall be \$50 per day for each day beyond the end of the calendar year, not to exceed an aggregate amount of \$10,000 for the group of insurers requesting permission to file on a consolidated basis.

(c) Approval to consolidate or combine statements shall be granted unless the Office makes a specific finding that approval would prevent the Office from carrying out its statutory responsibilities.

(9) Scope of ~~Audit Examination~~ and Report of Independent Certified Public Accountant. Financial statements furnished pursuant to subsection (5), above, shall be examined by ~~the an independent certified public accountant~~ ~~Certified Public Accountant~~. The ~~audit examination~~ of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. In accordance with AU Section 319 of the Professional Standards of the AICPA,

Consideration of Internal Control in a Financial Statement Audit, the independent certified public accountant should obtain an understanding of internal control sufficient to plan the audit. To the extent required by AU 319, for those insurers required to file a Management's Report of Internal Control over Financial Reporting pursuant to subsection (16), the independent certified public accountant should consider (as that term is defined in Statement on Auditing Standards (SAS) No. 102, Defining Professional Requirements in Statements on Auditing Standards or its replacement) the most recently available report in planning and performing the audit of the statutory financial statements. Consideration should also be given to the other procedures illustrated in the Financial Condition Examiner's Handbook promulgated by the National Association of Insurance Commissioners as the independent Certified Public Accountant deems necessary.

(10) Notification of Adverse Financial Condition.

(a) The insurer required to furnish the annual Audited Financial Report shall require the independent Certified Public Accountant to report, in writing, within five (5) business days to the board of directors or its ~~Audit~~ audit committee any determination by the independent Certified Public Accountant that the insurer has materially misstated its financial condition as reported to the Office as of the balance sheet date currently under audit examination, or that the insurer does not meet the minimum capital and surplus requirement of the Florida Insurance Code as of that date. An insurer who has received a report pursuant to this paragraph shall forward a copy of the report to the Office within five (5) business days of receipt of said report and shall provide the independent Certified Public Accountant making the report with evidence of the report being furnished to the Office. If the independent Certified Public Accountant fails to receive the evidence within the required five (5) business day period, the independent Certified Public Accountant shall furnish to the Office a copy of its report within the next five (5) business days.

(b) An independent certified public accountant shall not be liable in any manner to any person for any statement made in connection with the above paragraph if the statement is made in good faith in compliance with the above paragraph.

(c) If the accountant, subsequent to the date of the Audited Financial Report filed pursuant to this rule, becomes aware of facts which might have affected his report, the Office notes the obligation of the accountant to take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the AICPA shall report those facts to the Office and the insurer within ten (10) calendar days of discovery.

(11) Communication of Internal Control Related Matters Noted in an Audit. Report on Significant Deficiencies in Internal Controls.

(a) In addition to the annual Audited Financial Report Statement, each insurer shall furnish the Office with a written communication as to any unremediated material weaknesses in its Internal control over financial reporting noted during the audit. Such communication shall be prepared by the accountant

within sixty (60) days after the filing of the annual Audited Financial Report, and shall contain a description of any unremediated material weakness (as the term material weakness is defined by Statement on Auditing Standard 60, Communication of Internal Control Related Matters Noted in an Audit, or its replacement) as of December 31 immediately preceding (so as to coincide with the Audited Financial Report discussed in subsection (4)) in the insurer's Internal control over financial reporting noted by the accountant during the course of their audit of the financial statements. If no unremediated material weaknesses were noted, the communication should so state ~~report prepared by the accountant describing significant deficiencies in the insurer's internal control structure noted by the accountant during the audit. The Report on Internal Controls Systems of the insurer shall be filed with the annual Audited Financial Report as required in subsection (4), above.~~

(b) The insurer is required to provide a description of remedial actions taken or proposed to correct unremediated material weaknesses if the ~~said~~ actions are not described in the accountant's communication ~~report~~.

(12) Accountant's Letter of Qualifications.

(a) The accountant shall furnish a letter to the insurer in connection with, and for inclusion in, the filing of the annual Audited Financial Report.

(b) The letter shall state:

1. That the accountant is independent with respect to the insurer and conforms to the standards of his or her profession as contained in the Code of Professional Ethics and pronouncements of the AICPA and the Rules of Professional Conduct of the Florida Board of Public Accountancy, or similar code;

2. The background and experience in general, and the experience in audits of insurers; of the staff assigned to the engagement and whether each is an independent Certified Public Accountant. Nothing within this rule shall be construed as prohibiting the accountant from utilizing his or her staff as he or she deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards.

3. That the accountant understands the annual Audited Financial Report, and his or her opinion thereon will be filed in compliance with this rule, and that the Office will be relying on this information in the monitoring and regulation of the financial position of insurers;

4. That the accountant consents to the requirements of subsection (13), below, and that the accountant consents and agrees to make the workpapers as defined in subsection (13), below, available for review by the Office.

5. A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the AICPA; and

6. A representation that the accountant is in compliance with the requirements of subsection (7) of this Rule, above.

(13) Definition, Availability, and Maintenance of Independent Certified Public Accountants. CPA Workpapers.

(a) Workpapers are the records kept by the independent Certified Public Accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's audit ~~his examination~~ of the financial statements of an insurer. Workpapers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules, or commentaries prepared or obtained by the independent Certified Public Accountant in the course of his or her audit ~~examination~~ of the financial statements of an insurer, and which support the accountant's ~~his~~ opinion ~~thereof~~.

(b) Every insurer required to file an Audited Financial Report pursuant to this rule shall require the accountant to make available for review by Office examiners all workpapers prepared in the conduct of the accountant's audit ~~his examination~~, and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the Office or at any other reasonable place designated by the Office. The insurer shall require that the accountant retain the audit workpapers and communications until the Office has filed a Report on Examination covering the period of the audit, but no less than seven (7) years from the date of the audit report.

(c) In the conduct of the aforementioned periodic review by the Office examiners, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the Office. The reviews by the Office examiners shall be considered investigations, and all working papers and communications obtained during the course of the investigations shall be afforded the same confidentiality as other examination workpapers generated by the Office until the Report of Examination is filed by the Office.

(14) Requirements for Audit Committee.

This section shall not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity.

(a) The Audit committee shall be directly responsible for the appointment, compensation and oversight of the work of any accountant (including resolution of disagreements between management and the accountant regarding financial reporting) for the purpose of preparing or issuing the Audited Financial Report or related work pursuant to this rule. Each accountant shall report directly to the Audit committee.

(b) Each member of the Audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to paragraph (e) and paragraph (3)(c).

(c) In order to be considered independent for purposes of this section, a member of the Audit committee may not, other than in his or her capacity as a member of the Audit committee, the board of directors, or any other board committee, accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary thereof. However, if law requires board participation by otherwise non-independent members, that law shall prevail and such members may participate in the Audit committee and be designated as independent for Audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

(d) If a member of the Audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the state, may remain an Audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent.

(e) To exercise the election of the controlling person to designate the Audit committee for purposes of this regulation, the ultimate controlling person shall provide written notice to the Office of the affected insurers. Notification shall be made timely prior to the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the Office by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.

(f)1. The Audit committee shall require the accountant that performs for an insurer any audit required by this regulation to timely report to the Audit committee in accordance with the requirements of SAS 61, Communication with Audit Committees, or its replacement, including:

a. All significant accounting policies and material permitted practices;

b. All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and

c. Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

2. If an insurer is a member of an insurance holding company system, the reports required by subparagraph (f)1. may be provided to the Audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the Audit committee.

(g) The proportion of independent Audit committee members shall meet or exceed the following criteria:

Prior Calendar Year Direct Written and Assumed Premiums		
\$0 – 300,000,000	Over \$300,000,000 – 500,000,000	Over 500,000,000
No minimum requirements. See also Notes A and B.	Majority (50% or more) of members shall be independent. See also Notes A and B.	Supermajority of members (75% or more) shall be independent. See also Note A.

Note A: The Office has authority afforded by state law to require the entity’s board to enact improvements to the independence of the Audit committee membership if the insurer is in a RBC action level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

Note B: All insurers with less than \$500,000,000 in prior year direct written and assumed premiums are encouraged to structure their Audit committees with at least a supermajority of independent Audit committee members.

Note C: Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from non-affiliates for the reporting entities.

(h) An insurer with direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500,000,000 may make application to the Office for a waiver from the subsection (14) requirements based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from subsection (14) with the states that it is licensed in or doing business in and the NAIC. If the non-domestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

(15) Conduct of Insurer in Connection with the Preparation of Required Reports and Documents

(a) No director or officer of an insurer shall, directly or indirectly:

1. Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review or communication required under this regulation; or

2. Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review or communication required under this regulation.

(b) No officer or director of an insurer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead or fraudulently influence any accountant engaged in the performance of an audit pursuant to this regulation if that person knew or should have known that the action, if successful, could result in rendering the insurer’s financial statements materially misleading.

(c) For purposes of paragraph (b) of this section, actions that, “if successful, could result in rendering the insurer’s financial statements materially misleading” include, but are not limited to, actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead or fraudulently influence an accountant:

1. To issue or reissue a report on an insurer’s financial statements that is not warranted in the circumstances (due to material violations of statutory accounting principles prescribed by the Office, generally accepted auditing standards, or other professional or regulatory standards);

2. Not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;

3. Not to withdraw an issued report; or

4. Not to communicate matters to an insurer’s Audit committee.

(16) Management’s Report of Internal Control over Financial Reporting.

(a) Every insurer required to file an Audited Financial Report pursuant to this regulation that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of \$500,000,000 or more shall prepare a report of the insurer’s or Group of insurers’ Internal control over financial reporting, as these terms are defined in subsection (3). The report shall be filed with the Office along with the Communication of Internal Control Related Matters Noted in an Audit described under subsection (11). Management’s Report of Internal Control over Financial Reporting shall be as of December 31 immediately preceding.

(b) Notwithstanding the premium threshold in paragraph (a), the Office may require an insurer to file Management’s Report of Internal Control over Financial Reporting if the insurer is in any RBC level event, or meets any one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in Section 624.418, Florida Statutes.

(c) An insurer or a Group of insurers that is

1. Directly subject to Section 404;

2. Part of a holding company system whose parent is directly subject to Section 404;

3. Not directly subject to Section 404 but is a SOX Compliant Entity; or

4. A member of a holding company system whose parent is not directly subject to Section 404 but is a SOX Compliant Entity; may file its or its parent’s Section 404 Report and an

addendum in satisfaction of this subsection (16) requirement provided that those internal controls of the insurer or Group of insurers having a material impact on the preparation of the insurer's or Group of insurers' audited statutory financial statements (those items included in subparagraphs (5)(b)2. through (5)(b)7. of this regulation) were included in the scope of the Section 404 Report. The addendum shall be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or Group of insurers' audited statutory financial statements (those items included in subparagraphs (5)(b)2. through (5)(b)7. of this rule) excluded from the Section 404 Report. If there are internal controls of the insurer or Group of insurers that have a material impact on the preparation of the insurer's or Group of insurers' audited statutory financial statements and those internal controls were not included in the scope of the Section 404 Report, the insurer or Group of insurers may either file (i) a subsection (16) report, or (ii) the Section 404 Report and a subsection (16) report for those internal controls that have a material impact on the preparation of the insurer's or Group of insurers' audited statutory financial statements not covered by the Section 404 Report.

(d). Management's Report of Internal Control over Financial Reporting shall include:

1. A statement that management is responsible for establishing and maintaining adequate Internal control over financial reporting;

2. A statement that management has established Internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its Internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;

3. A statement that briefly describes the approach or processes by which management evaluated the effectiveness of its Internal control over financial reporting;

4. A statement that briefly describes the scope of work that is included and whether any internal controls were excluded;

5. Disclosure of any unremediated material weaknesses in the Internal control over financial reporting identified by management as of December 31 immediately preceding. Management is not permitted to conclude that the Internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its Internal controls over financial reporting.;

6. A statement regarding the inherent limitations of internal control systems; and

7. Signatures of the chief executive officer and the chief financial officer (or equivalent position/title).

(e) Management shall document and make available upon financial condition examination the basis upon which its assertions, required in paragraph (d) above, are made. Management may base its assertions, in part, upon its review, monitoring and testing of internal controls undertaken in the normal course of its activities.

1. Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost effective manner and, as such, may include assembly of or reference to existing documentation.

2. Management's Report on Internal Control over Financial Reporting, required by paragraph (a) above, and any documentation provided in support thereof during the course of a financial condition examination, shall be kept confidential by the Office.

(17)(14) Exemptions and Effective Dates.

(a) Upon written application of any insurer, the Office may shall grant an exemption from compliance with any and all provisions of this rule the filing of an annual audited financial report received by the Office by March 1 of the year following the calendar year to which the application applies if the Office finds, upon review of the application, that compliance with this regulation would constitute a financial or organization hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten (10) days from a denial of an insurer's written request for an exemption from this rule, the insurer may request in writing a hearing on its application for an exemption. The hearing shall be held in accordance with the rules of the Florida Office of Insurance Regulation pertaining to administrative hearing procedures the insurer is under an order of receivership, conservatorship, rehabilitation, or is in another delinquency proceeding by the public insurance supervising official of any state, and the insurer has been granted an exemption from filing an annual audited financial report by its state of domicile. An exemption shall be granted for one year only. Exemptions for future years require additional applications.

(b) Domestic insurers shall comply with this rule for the year ending December 31, 2010 and each year thereafter unless the Office permits otherwise. All authorized insurers shall comply with this rule for the year ending December 31, 1991, and each year thereafter unless the Office permits otherwise.

(c) Foreign insurers shall comply with this rule for the year ending December 31, 2010 and each year thereafter, unless the Office permits otherwise. Form OIR-DO-1431, (Rev. 10/04), "Audited Financial Statements Exemption Affidavit", is hereby incorporated by reference to be the form specified in Section 624.424(8)(b), Florida Statutes, for exemptions from compliance with the filing of an annual audited financial statement. This form is available from Life & Health Financial Oversight or Property & Casualty Financial

Oversight at 200 East Gaines Street, Tallahassee, Florida 32399. The form is also available from the Office of Insurance Regulation's website located at the following address: www.fldfs.com/companies/.

(d) The requirements of paragraph (7)(c) shall be in effect for audits of the year beginning January 1, 2010 and thereafter.

(e) The requirements of subsection (14) are to be in effect January 1, 2010. An insurer or Group of insurers that is not required to have independent Audit committee members or only a majority of independent Audit committee members (as opposed to a super majority) because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one (1) year following the year the threshold is exceeded (but not earlier than January 1, 2010) to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one (1) calendar year following the date of acquisition or combination to comply with the independence requirements.

(f) The requirements of subsection (16) and other modified sections, except for subsection (14) covered above, are effective beginning with the reporting period ending December 31, 2010 and each year thereafter. An insurer or Group of insurers that is not required to file a report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two (2) years following the year the threshold is exceeded (but not earlier than December 31, 2010) to file a report. Likewise, an insurer acquired in a business combination shall have two (2) calendar years following the date of acquisition or combination to comply with the reporting requirements.

~~(18)~~(15) Canadian and British Companies.

(a) In the case of Canadian and British insurers, the annual Audited Financial Report shall be defined as the annual statement of total business on the form filed by the companies with their domiciliary supervision authority duly audited by an independent chartered accountant.

(b) For these insurers, the letter required in paragraph subsection (6)(b), above, shall state that the accountant is aware of the requirements relating to the annual Audited Financial Report statement filed with the Office pursuant to subsection (4), above, and shall affirm that the opinion expressed is in conformity with these requirements.

(19) Severability Provision.

If any section or portion of this rule or its applicability to any person or circumstance is held invalid by a court, the remainder of the rule or the applicability of the provision to other persons or circumstances shall not be affected.

Rulemaking Specific Authority 624.308(1), 624.424(8)(e) FS. Law Implemented 624.307(1), 624.324, 624.424(8) FS. History--New 3-31-92, Amended 3-14-94, 8-17-98, 4-4-01, 8-14-02, Formerly 4-137.002, Amended 11-3-05,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Paul Johns, Life and Health Financial Oversight, Office of Insurance Regulation, E-mail Paul.Johns@flor.com

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: The Financial Services Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 26, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 2, 2009

Section III Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Animal Industry

RULE NOS.:	RULE TITLES:
5C-3.001	Definitions
5C-3.003	Equidae
5C-3.007	Swine
5C-3.011	Cervidae (Farmed or Captive)

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. 36, No. 52, December 21, 2009 issue of the Florida Administrative Weekly.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS:

The agency has determined that this rule will have an impact on small business. A SERC has been prepared by the agency.

With the exception of added bovine tuberculosis test requirements for dairy cattle, rodeo bulls and roping steers and the Equine Piroplasmiasis (EP) requirements on horses imported for endemic areas, there is negligible impact on other animals that are already regulated by the existing rule.

Tuberculosis. In recent years, cases of bovine tuberculosis have increased in a number of states across the U.S. Most of the current increase is associated with Mexican cattle brought into the U.S. for feeding purposes. Mexican-origin tuberculosis found in U.S. cattle have been most often associated with dairy cattle, rodeo bulls and roping steers.

The small businesses impacted by this rule are those dairies and rodeo-type operations that import animals into the state and are considered the greatest risk for disease introduction. The impact on these operations would be the added costs of buying animals already tested and found to be negative in other